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Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, SECOND SESSION

SENATE—*Wednesday, October 5, 1988*

(Legislative day of Monday, September 26, 1988)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable John D. Rockefeller IV, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

And God is able to make all grace abound toward you; that ye, always having all sufficiency in all things, may abound to every good work.—II Corinthians 9:8.

God of infinite love and mercy, in these days of pressure, endemic in our political process at election time, make real to every Senator and all who labor under this tension the availability of the inexhaustible grace of God. Help us to ponder the superlatives, the infinite adequacy in this promise of grace. Help us to live in its light and its sufficiency for days like these. And help us to remember, loving Lord, that pressure turns stones into diamonds and irritation into pearls.

In Jesus' name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. Stennis].

The assistant legislative clerk read the following letter:

U.S. Senate,
President pro tempore,
Washington, DC, October 5, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable John D. Rockefeller IV, a Senator from the State of West Virginia, to perform the duties of the Chair.

John C. Stennis,
President pro tempore.

Mr. ROCKEFELLER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

THE CHAPLAIN'S PRAYER

Mr. BYRD. Mr. President, I thank the Chaplain for his great prayer in which he is telling us to keep the faith when times are turbulent, and the storms of political frenzy wail around us.

Someone has said "I believe in the Sun, even when it is not shining; I believe in love even when I am hated; I believe in God even when he is silent."

A SOUTHERN GENTLEMAN AND GREAT SENATOR, JOHN C. STENNIS RETIRES

Mr. BYRD. Mr. President, the departure of Senator John C. Stennis from this Chamber marks the end of an era. Since his arrival more than 4 decades ago, nearly 300 persons have served in this Chamber and 8 different Presidents have occupied the White House. With his departure, an important segment of Senate history ends.

On November 15, 1985, he became the second longest-serving Senator in the history of the United States having served at that time, 38 years and 10 days. When he leaves the Senate on January 2, 1989, and the old Congress dies and the new Congress begins, he will have served 41 years and 2 months—just 8 months short of Senator Carl Hayden's all-time record.

In 1982, he became 1 of just 11 Senators in American history to be reelected to office when over 80 years of age—a list that includes George Aiken, Alben Barkley, Carter Glass, Jennings Randolph, and our colleague, Strom Thurmond.

Last June, nearly 1,000 people—including most of the U.S. Senate and President Reagan—honored our colleague in a celebration appropriately titled: "Celebration of a legend."

Senator Stennis has been one of the most respected and most trusted Members of the U.S. Senate. His contributions to the Senate and to the country over his long career are incalculable.

This remarkable career of public service began six decades ago when, in 1928, he was elected to the Mississippi House of Representatives. Three years later, in 1931, he was elected prosecutor for Mississippi's 16th Judicial District and, in 1937, he became circuit judge—a position he held until his election to the Senate.

In 1947, he came to the U.S. Senate, and an extraordinary career began.

This career is a portrait of a multitude of accomplishments for his beloved State of Mississippi. These include a number of farm programs, the Tennessee-Tombigbee Waterway, the National Space Testing Laboratory, and the Navy ammunition plant. When Mississippians first sent Mr. Stennis to the U.S. Senate in 1947, they did so based on his pledge to "plow a straight furrow right down to the end of my row." They have been neither disappointed nor betrayed. "Think Mississippi," reads a sign on John Stennis' desk.

On the national scene, Senator Stennis has also been a dominant figure in the U.S. Senate, an adviser to Presidents, and a man of enormous power and influence. His career has been marked by integrity, honesty, character, devotion, and leadership.

During his career in the Senate, he has held leadership positions on two of the most powerful Senate committees, Appropriations and Armed Services.

Regarding his chairmanship of the Appropriations Committee, let me say that I only hope that his successor in that position does as well.

Regarding national defense, Senator Stennis has always stood firm and refused to permit this great Nation to be second to any nation. Because of his work as chairman of the Senate Sub-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

committee on Preparedness, investigating of the Armed Services Committee, in 1966, the Reserve Officers Association presented Senator STENNIS with its "Minuteman of the Year" award as the citizen who has contributed most to national security.

In this day and age, when waste, fraud and abuse run rampant in the Pentagon, we can recall the good old days—in this case, the days when Senator STENNIS served as one of the best and most effective chairmen of the Armed Services Committee in the history of the Senate. During the 12 years—1969 to 1981—inclusive in which he held this position, more than 50 new weapons systems were authorized. Equally important, Senator STENNIS never gave the Pentagon a blank check—he demanded close and careful scrutiny of every proposed defense outlay. "To support military readiness," Senator STENNIS stated, "a Senator does not have to be a wastrel."

In 1974, along with Senators Jacob Javits and Thomas Eagleton, he authored the War Powers Resolution.

Senator STENNIS has consistently fought what he considered the excessive and gratuitous intrusions of the Federal Government upon the rights and privileges of the States and the American people. "Earning and doing for yourself rather than having government do everything for you," he constantly charged long before Ronald Reagan took the White House, "is the American way."

But he was not blinded by this ideology. He recognized and actively promoted the expansion of the creative abilities of the Federal Government in a number of areas including agriculture, medical research, forestry, small business, public works, and, especially, in industrial and rural development. He has been a strong supporter of health programs, of the REA, and TVA. He has been a consistent champion of education at all levels. And, as a member of the Senate Space Commission, he played an important role in putting the United States ahead in the race to put a man on the Moon and in interplanetary competition.

The senior Senator from Mississippi has brought to the U.S. Senate the judicial skills and temperament acquired during a decade on the judicial bench—1937-47. He has put those skills to effective use in this Chamber as time and again, from McCarthy to Watergate, this Chamber has called upon those particular talents.

In this Chamber, Senator STENNIS secured a justly deserved reputation for decency, unimpeachable integrity, and fairness. In recognition of his high ethical standards, in 1965, Senator STENNIS was selected as the first chairman of the Senate Committee on Standards and Conduct. In this position, he was instrumental in developing the Senate Code of Ethics.

Mr. President, I must confess that a tear as well as a chuckle came to my face when I read a description of him in the "Almanac of American Politics," as being "a tough old bird." As most of us know, Senator STENNIS' many accomplishments and experiences are dwarfed by the courage and strength of character that he has consistently demonstrated during his long and productive career in this Chamber. He has endured personal pain and hardships that most of us, we hope and pray, will be spared. Senator STENNIS has not only endured them, but has risen above them in a way that is an inspiration to us all.

In January 1973, Senator JOHN C. STENNIS was shot twice during a robbery in front of his house in Northwest Washington. The bullets penetrated several vital organs, and his condition was considered "grave." During those dark days in Senate history, I recollect the words of one of his dear friends who assured the worried Members of this Chamber that, "JOHN STENNIS will make it because he is not yet prepared to leave the Senate."

In November 1984, he lost one of his limbs to cancer. Barely a month later, however, he was back in this Chamber, performing his duties to his State and country.

He also survived heart surgery, and a severe bout with pneumonia, and he endured the pain of losing his beloved wife, "Miss Coy."

Mr. President, 6 years ago, on September 28, 1982, a reporter for the Washington Post wrote: "It's hard to imagine the Senate without JOHN C. STENNIS or JOHN C. STENNIS without the Senate." Now, the U.S. Senate and the senior Senator from Mississippi face that reality.

The retirement of this great American brings to a close a major congressional career. The U.S. Senate is proud of Senator STENNIS.

We will miss his wisdom, his decency, and the experience accumulated during more than four decades of service in this Chamber.

I cannot and will not say goodbye to this dear friend and colleague—and he has been a dear friend and colleague for 30 years. He continues to be, and will continue to be, an inspiration to me. Therefore, I will just say: "Thank you. Thank you for serving your beloved State. Thank you for serving our beloved country. And, personally, thank you for being my friend."

My wife, Erma, and I wish him the best of health and happiness in his retirement. He has earned it, just as he has earned the love and gratitude of the people of this Nation.

Mr. PROXMIRE. Mr. President, I congratulate the distinguished Democratic leader for a truly great statement about a superb public figure, Senator STENNIS.

RESERVATION OF THE REPUBLICAN LEADER'S TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the Republican leader be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

HERE COMES THE BIG SURGE IN HEAVY CORPORATE DEBT

Mr. PROXMIRE. Mr. President, anyone who believes that the enormous debt that plagues American business is not a serious threat to our economy is living in a dream world. At this very moment, business debt in America exceeds $4 trillion. But the real problem is that the growth of business debt in our country is just beginning. Doubt it? Consider the lead story in the Business section of the New York Times on Sunday, August 7. The Times article reports the huge increase in funds raised to engage in leveraged buyouts. Anise Wallace writes: "Investors seem obsessed with the idea that stripping companies of their equity and leaving them with mountains of debt makes compelling investment sense despite the maturity of the economic cycle." Mr. President, we are talking billions. Wallace argues that at least $25 billion is now targeted for leveraged buyout investments. And because of the 10-to-1 leverage generally used in these deals, the $25 billion will bring acquisitions totaling $250 billion.

Now, it is true that so far the leverage buyout has worked like a happy dream. Investors have been making money hand over fist. They have enjoyed returns that are said to average 20 to 25 percent annually. Frequently the returns exceed 100 percent. But Wallace points out these rolls of the dice have been coming in at exactly the right time. Interest rates, until recently, have generally been falling. Earnings have been rising. Stock prices have been on their way up. But, as Wallace notes in her New York Times article, this perfect environment for leveraged buyouts no longer exists. If the economy slows down, and especially if it slides into a recession, many of the highly leveraged companies would go bankrupt.

Is this an exaggeration? Consider a recent computer simulation by two Princeton University scholars, Ben Vernanke and John Campbell. These scholars studied the debt growth of

643 corporations on which there is detailed historical data from balance sheets and income statements. They concluded that a repetition of the 1973–74 fall in total market value would lead to "unprecedented" debt asset ratios. For at least 10 percent of the firms, the simulated debt-asset ratios exceed unity, indicating bankruptcy. Mr. President, the bankruptcy of 10 percent of our corporations would slam this country into a depression comparable with the 1930's. It would swiftly throw millions of Americans out of work. In view of the much greater international economic interdependency, the free world would suffer a cataclysmic disaster.

Prof. Benjamin Friedman of Harvard University commented on this Bernanke and Campbell study. Friedman pointed out that the problem lies not simply with business solvency, but with liquidity. Friedman writes:

> Since 1980, it has taken more than fifty cents of every dollar of the average non-farm, non-financial corporation's pretax earnings just to pay its interest bill. That is a far cry from the 1950's and 1960's when interest payments took just sixteen cents of every dollar of earnings on average, or even the 1970's when interest payments took thirty-three cents on average. Corporations' interest coverage eroded further in both 1986 and 1987 . . . the economic expansion that began in 1983 has been the only expansion since World War II to bring with it a rising, rather than falling, rate of business bankruptcies and debt defaults.

Mr. President, is this leveraged buyout mania increasing even in the wake of the 1987 market crash? It certainly is. It is true that in 1987 the October crash temporarily slowed the pace slightly. Buyout deals, which had zoomed from $13.1 billion in 1985 to $41.7 billion in 1986, fell slightly in 1987 to $39.3 billion. But the second quarter of 1988 was the biggest second quarter for leveraged buyouts in American history. With the above mentioned potential of $250 billion ready to explode into leveraged buyouts in coming months, hold on to your hats—the American economy is about to take a debt ride of a size and dimension it has never taken before.

Mr. President, in a comment on the Vernanke-Campbell study, Prof. Lawrence Summers of Harvard University demurs. Summers contends that Federal Reserve monetary policy can and will save corporate America from widespread corporate bankruptcies. Monetary policy can save borrowers from the burden of their debt presumably by keeping the interest rate and therefore the interest burden low enough to keep most of the very heavily indebted corporations from insolvency. But Summers does see serious problems for thrifts and money center banks that hold much of the debt. Of course, one has to look no further than Texas today to see the warning red flag for America tomorrow. This Senator has far less faith in monetary policy to save corporations up to their eyeballs in debt than Professor Summers has. But Summers is right in his conclusions that our country's financial institutions are likely to collapse first.

Mr. President, I ask unanimous consent that the article to which I referred, headlined "All Dressed Up and No Place To Go," by Anise C. Wallace in the August 7, 1988, New York Times, be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the New York Times, Aug. 7, 1988]

All Dressed Up and No Place To Go?

(By Anise C. Wallace)

At a time when many individual investors have fled the stock market in fear, one pack of investors is feverishly raising cash to buy up stocks. Leveraged buyout investors, who buy companies with borrowed capital and then resell them for hefty profits, are furiously piling up billions of dollars.

Even the recent bankruptcy of Revco D. S. Inc.—one of the largest companies taken private in a leveraged buyout—seems not to have slowed the pace. Investors seem obsessed with the idea that stripping companies of their equity and leaving them with mountains of debt makes compelling investment sense despite the maturity of the economic cycle.

"It's as if Oct. 19 never happened," said James C. Tappan, president of Tappan Capital Partners and a former executive of General Foods.

Investment bankers, corporate executives and Wall Street firms have all jumped into the lucrative game staked out by such well-known firms as Kohlberg Kravis Roberts & Company and Forstmann Little & Company. In a leveraged buyout, known as an L. B. O., investors borrow huge sums of money to buy companies, hoping to pay off the debt with the companies' earnings and to profit richly by the later resale of the companies or their divisions.

Almost 40 partnerships are currently trying to raise $8 billion to invest in leveraged buyouts, according to Wilshire Associates, a Santa Monica consulting firm that evaluates investments for pension funds. Last year, 42 firms raised a staggering $20 billion, much of which has not yet been invested. KKR alone has capital commitments from its limited partners worth an estimated $5 billion. There seems to be no public record of how many funds actually exist, but 40 is said to be only a portion of the total.

Experts estimate that at least $25 billion is now targeted for making leveraged buyout investments. And because of the 10-to-1 leverage typically used in these deals—that is, for every $1,000 of purchase price, investors put up only $100 of their own money and borrow the rest—these investment funds have the muscle to make acquisitions totaling $250 billion.

Commercial banks are also allocating billions of dollars to finance leveraged buyouts. In the past 12 months, banks have made 256 leveraged buyout-related loans totaling $54 billion. The dollar volume of bank leveraged buyout loans in July jumped to 40 percent of all commercial loans, up from 14 percent one year earlier, said Christopher L. Snyder, Jr., president of the Loan Pricing Corporation, which monitors bank lending.

Behind the frenetic race to raise funds, experts say, is the desire to tap into this gold mine in the final days of the lenient Reagan Administration, which has not tried to stop the huge deals of the 1980's. "There's an element of let's get this done today, because we may not get to tomorrow," said Mr. Tappan. Another executive characterized the activity as the "financial version of all-you-can-eat night."

But how and where these leveraged buyout investors will invest the newly raised piles of cash remains to be seen. "Sometimes you have to wonder if there are as many deals out there as there are people chasing deals," said Robert Zobel, investment director of private placements at the Wisconsin Investment Board, which has $350 million invested in 13 leveraged buyout funds.

This feverish capital raising and spending is causing some investors to worry that leveraged buyout mania may be nearing a crescendo. "It's a feeding frenzy," said Douglas K. Le Bon, a vice president at Wilshire. "I'm seeing a lot of deals I don't like."

In fact, despite the record sums of cash in search of these mulitbillion deals, the level of completed transactions had remained relatively flat since 1986, a rate of about $40 billion a year. One important reason: the buyout funds are being outbid by large industrial companies and international buyers.

Barry Friedberg, managing director of Merrill Lynch Capital Markets, which just raised $1.5 billion for an leveraged buyout fund, said the emphasis may shift to smaller companies with diverse holdings that industrial buyers do not want, or to private companies that do not want to become part of an industrial giant. His fund recently bought two small private companies for $200 million each.

Some predict that the pressure to spend the funds also could result in hostile deals, or other investments that depart from the leveraged buyout formula, such as KKR's purchase of 4.9 percent of Texaco's shares during the oil company's proxy battle last spring.

"I think the game's going to be played a little bit more aggressively," said Robert Johnston, founder of Beaton Hill Financial Company, which helped seven leveraged buyout firms, including Forstmann Little & Company, raise more than $5 billion from, investors over the last five years. "The way you define friendly is being redefined."

One thing is certain. The ever-expanding pool of capital is driving up prices for target companies, which will bring returns down from the stratospheric level of 50 to 100 percent average annual return of recent years. The average premium being paid for publicly traded companies this year has increased to 36.7 percent over the market price one month prior to the leveraged buyout's announcement, up from 29.2 percent in 1985, according to I.D.D. Information Services in New York.

"When you get a lot of capital chasing a finite number of deals, you chase the prices up," said Robert S. Morris, senior vice president of the General Electric Company's investment subsidiary, which manages G.E.'s $21 billion pension fund.

For nearly everyone, the lure is the same; the huge sums of money being made in this arena. Advisory fees on leveraged buyout deals, for example, have totaled $158 million so far this year, according to I.D.D. They amounted to $301 million last year and $317 million in 1986.

But that is only a small part of the attraction. On top of management and transaction fees, leveraged buyout firms also earn "the carry"—typically 20 percent of the profit made when a company is resold. Some early leveraged buyout partners, like Henry Kravis and Theodore Forstmann, are now among the wealthiest men in the United States.

An additional lure for Wall Street firms trying to get into the leveraged buyout act is the potential to earn big investment banking fees once these newly bought companies sell assets or go public again. Firms like Merrill Lynch & Company, Morgan Stanley & Company, Shearson Lehman Hutton Inc., Paine Webber Inc. and the Prudential-Bache Securities Corporation have all committed their own capital—and have raised or are in the process of raising billion-dollar funds to invest in leveraged buyouts.

In a leveraged buyout partnership, investors typically pledge their capital for up to five to six years but do not actually transfer the money until the buyout fund makes an investment. The buyout firm earns a management fee—usually at least 1 percent of the amount committed—during that period even when the fund makes no investments.

Wall Street firms and leveraged buyout boutiques are not the only ones chasing this wave of debt financing. The commercial banks have jumped in with the same frenzy. Lured by loans that can earn bankers almost 3 percentage points more than other commercial loans, lenders such as Wells Fargo Bank, the Banker's Trust Company and the Manufacturer's Hanover Trust Company have committed billions of dollars in short-term bridge loans for these deals.

But all this money has many people worried. While critics of leveraged buyouts have predicted problems for years, the concern now is that the competitive pressure may cause inexperienced players to invest their newly raised funds unwisely, if only to demonstrate to their clients that they can do deals. They could buy lower quality companies, or simply impose more debt than a company can handle and find themselves unable to make their debt payments, like Revco.

Already, there are established investors that the influx of capital has pushed up prices, making it harder to invest clients' funds and generate returns greater than 20 to 25 percent a year, which most of them have promised. Returns represent actual sales of properties as well as the upward revaluation—on paper—of holdings not yet sold.

"The world has gone crazy," said John G. Quigley, general partner at Adler & Shaykin in New York. "We're seeing very, very high prices in large, medium and small companies."

"The days of paying four to five times cash flow are behind us," said John S. Harrison, a managing director of the First Boston Corporation.

Investors point to two recent bids, Duracell Inc. and the Kendall Company, as examples of the new competitive pricing. In the Duracell deal, KKR paid $1.8 billion to acquire the battery company from Kraft Inc. Several bankers said KKR's price topped the lowest bid by almost $500 million. Before the market became so crowded, such bidding disparities were rare.

More recently, several investors said that they dropped out of the bidding for Kendall, a Colgate-Palmolive subsidiary which is for sale, when it became apparent that the likely price would prevent them from earning the returns they have promised clients. One veteran leveraged buyout investor laughed out loud when asked about the deal and said he expected the company would sell for as much as 40 percent more than his targeted price.

Executives say that investors in these deals are unlikely to lose money, but profits will probably be more limited.

As a result of this increased competition, some of the established fund managers find themselves with huge commitments for cash and nowhere to place it. Mr. Quigley of Adler & Shaykin said that his firm has not completed a purchase since it bought Wherehouse Entertainment early this year. Nonetheless, his firm is in the process of raising an additional $500 million in capital. "We think in the years to come the leveraged buyout business will continue to be a good business," he said.

But with greater numbers of inexperienced investor and higher prices for deals, the odds are increasing that more of these transactions will run into trouble. Even investors admit as much. "If, as I suspect, there is an economic downtown after the election, you're going to see a number of situations similar to Revco," said Joseph L. Rice, president of Clayton & Dubilier Inc., which has $220 million available for leveraged buyout investments.

For the moment, however, interest remains high. Early investors, such as the Oregon State Employees Fund, the Wisconsin Investment Board and General Electric, which allocated hundreds of millions of dollars to buyout funds, have been joined by many others.

In recent months, for example cash-rich Japanese institutions have begun directing some of their money to buyout funds and general investment firms that will do buyouts. The Nippon Life Insurance Company, which owns 13 percent of Shearson, has committed several hundred million dollars to Shearson's leveraged buyout fund. The Nomura Securities Corporation placed $100 million with Wasserstein, Perella & Company, a new boutique investment banking firm formed by executives who left First Boston. And the Yamaichi Securities Company gave the same amount to the Lodestar Group, another new boutique.

The growing role of the investment banking firms concerns some pension executives who fear that the leveraged buyout funds have been set up—at least in part—to generate investment banking fees. "Is their motive to earn a return for the partner, or is it revenue generation?" wondered one corporate executive.

Investment bankers deny that the potential conflicts will create problems. Since they are putting their own capital into these deals, they say, they are just as concerned with the return as their limited partners.

"It's just as important to us that investment banking services are well done," said Alan Altschuler, executive vice president of Prudential-Bache Securities, which has committed $800 million of its own capital to merchant banking, and which is said to be trying to raise more than $1 billion from institutional investors. Still, he expects Prudential-Bache to perform many investment banking services for the fund's leveraged buyouts.

The dangers of this frenetic deal-making could have more far-reaching consequences than just lower returns for investors.

The biggest question for many of these companies is the health of the nation's economy. When leveraged buyout funds were racking up their stunning performance records, interest rates were falling, price/earnings multiples were expanding and stock prices were rising. This perfect environment for leveraged buyouts no longer exists.

The real danger, though, comes if the economy slows significantly or slides into recession. Then, many of these highly leveraged companies could be tossed into bankruptcy, throwing workers out of jobs and slicing the value of the companies' publicly traded junk bonds held by mutual funds and savings institutions. The scenario could lead to a "general crisis of confidence," said Eric T. Miller, chief investment officer at Donaldson, Lufkin & Jenrette Securities Corporation.

A recent computer simulation by the Brookings Institution found that a recession similar in strength to the one in 1973 and 1974, would put one in 10 American companies into bankruptcy.

Obviously, the most highly leveraged companies will suffer the most. Because of their huge interest payments, they have little room for error in good times—and even less in bad times. An analysis by one Wall Street firm found that the majority of companies that financed their leveraged buyouts with junk bonds had debt-to-equity ratios higher than Revco's 512 percent. Revco, which was unable to meet its interest payments, filed for Chapter 11 bankruptcy protection last month. The average debt-to-equity ratio of the largest 300 industrial companies is 65 percent.)

Another downturn in the stock market could also present problems for the leveraged buyout funds by making it difficult to sell off the companies—or even divisions. Because of the way some leveraged buyouts are structured, many must begin selling assets within 90 days of the deal's completion to avoid interest costs that can be "prohibitive," said Mr. Snyder of Loan Pricing.

Junk bond investors are also adding to the pressures on leveraged buyout funds. They have bought almost $37 billion of the high-yield securities issued to finance leveraged buyouts, and they are not proving sympathetic when leveraged buyouts miss debt payments.

Revco, of course, is the most recent example. Although Bondholders formed a committee to work with the company when the drugstore chain began to stumble last fall, one junk bond fund manager, Magten Asset Management, later stopped negotiations when the company missed interest payments on its debt, which forced the company into bankruptcy.

"If companies don't pay their interest, we'll force them into bankruptcy," said Richard Swingle, vice president at T. Rowe Price Associates in Baltimore and president of the new Institutional Bondholders Rights Association. "We're not sitting here holding these bonds because we're good guys. We want a rate of return."

In fact, some investors believe the greatest investment returns in the future will be available from picking through the debris left by the wave of expected leveraged buyout bankruptcies. "I think returns are going to be very significant," said Francine Sommer, an independent investor who most recently was president of Gabelli Value Inc. "I think it's the next exciting area."

The buyout funds have entered a difficult era. With their newly raised capital, the uncertain economic environment and the increased competition, the days of huge, fast profits are clearly behind them. Investing the capital in new deals, said Mr. Friedberg of Merrill Lynch, is "going to be a bigger challenge."

AIR TRANSPORTATION

Mr. FORD. Mr. President, it is no exaggeration to say that safe, efficient, reliable air transportation is essential to the Nation's continued economic growth. More than 450 million passengers will fly in U.S. scheduled service during 1988 and nearly 800 million passengers annually are projected within the next few years.

As I have said before here on the Senate floor, I have been exposed to every conceivable problem that exists with this Nation's airport and airway system. During the past 2 years many of us have grown increasingly frustrated about our inability to solve national aviation problems.

During that time, a lot of Senate support has come about for S. 1600, which is now cosponsored by a majority of the Members of the Senate. There is no question that enactment of this legislation, which fundamentally restructures the Federal Aviation Administration, is an essential step toward revitalizing and streamlining the Agency to adapt it to our rapidly changing aviation system.

Virtually everybody knows the current structure and operating environment of the FAA is one of the basic problems we have to fix. There is virtually no leadership stability or continuity at the Agency. In the past 5 years there have been three FAA Administrators. We also know vital airport and airway safety and capacity projects are consistently underfunded because of budgetary constraints and that the FAA must abide by outdated civil service regulations which hamper its ability to fill key positions in the controller work force. I do not even have to describe the restrictive and inefficient procurement regulations the FAA must live with.

We have worked hard on this legislation which provides a good start toward dealing with many of these problems. The sooner we restructure the FAA so that its leadership, funding, personnel, and procurement problems can be solved and the Agency run more efficiently, the better.

I am disappointed that we will not enact this important legislation prior to adjournment. I have talked to numerous Senators who are cosponsors of S. 1600 and assured them that it is my intention to reintroduce this bill early next year. As far as I am concerned, it must be a top priority for our aviation agenda when we return and I am committed to giving it the urgent attention it deserves. I am pleased to report that many of my colleagues feel the same way, and we will be working together to get the job done next year.

FAA RESTRUCTURING

Mr. STEVENS. Mr. President, during the past 2 years many of us have expressed concern about our aviation industry and our national air transportation system. The rapid growth in air travel following deregulation has crafted an enormous problem. Our aviation infrastructure is inadequate to accommodate the demands being placed on it and the Federal Aviation Administration is ill-equipped to do its job.

This year in the Senate a majority of our colleagues cosponsored S. 1600, a bill that promises to provide solutions to some of our long-standing aviation problems. Unfortunately, this legislation will not be enacted this year.

We must provide FAA management the necessary flexibility to deal with its unique problems. I am thoroughly familiar with the problem FAA has in dealing with procurement regulation and personnel rules that are outdated. It is vital that we simplify the procurement process and correct deficiencies in personnel management practices. Most importantly, we must address the questions related to funding and insure that the FAA has access to an adequate level of guaranteed funding in the coming year.

I look forward to working with Senator KASSEBAUM, Senator FORD, members of the Commerce Committee and other interested Senators in getting FAA reform legislation moving as soon as possible next year.

CAMPAIGN ISSUES

Mr. BUMPERS. Mr. President, yesterday, I discussed what I thought were some of the real issues in the campaign and how they were not really being addressed. I will deliver these little talks from time to time, but one deals with education.

I want to point out that virtually every year for the past 8 years, there has been an assault by this administration on student loans and Pell grants. I think that anybody who watched the Barbara Walters show the night before last, styled "Our Children: Why Are They Flunking?" will take a very dim view of what has happened to education in this country in the past 8 years.

The other point I want to make is that we were talking about the deficit that has been accumulated in the past 8 years—almost $1.6 trillion. Bear in mind that when President Reagan came to office, the national debt which had accumulated in the preceding 200 years was less than $1 trillion. And in 8 years this administration has added $1.6 trillion more debt to that. As a matter of fact, every morning the first obligation of the Treasury is to print $575 million in hot checks just to pay the interest on the national debt to keep this Government going that day. People say you cannot make an issue out of that, people cannot relate to $2.6 trillion. They do not know how much money that is.

I want to say this: I will never forget the campaign in 1980 when there were calls on the floor of the U.S. Senate for Jimmy Carter's impeachment because they thought the deficit was going to be $35 billion that year then you saw President Reagan in New Orleans say "Why would you blame me for this deficit? You know that I do not spend the money; only Congress can appropriate money."

That is true, and the American people ought to be grateful for that because we have appropriated $20-$50 billion less in the past 8 years than President Reagan has requested to appropriate.

In short, if he had had his way, the deficit today would be more than $2.6 trillion.

Now the real point that I want to make, and I do not want to take any more of my distinguished Senator's time, is did you ever hear Ronald Reagan in 1980 say: "Jimmy Carter is not responsible for this deficit, only Congress can appropriate money; I am running for President against a President Carter, but I am certainly not going to blame him for the deficit because we all know that only Congress can appropriate money?"Did anybody hear that? Why, of course you did not. All you heard was deficit, deficit, deficit. "I will balance the budget by 1984, maybe by 1983." I remember that September evening when he looked into the lens of the camera—I was sitting in my living room—and Ronald Reagan said, "Jimmy Carter, if you can't balance the budget, move over and let me in because I can."

What do we have? An additional $1.6 trillion in debt, nearly twice as much as that incurred by all the preceding Presidents of the United States. I just wanted to make that record.

I thank my distinguished colleague.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. BUMPERS. I am happy to yield.

Mr. BYRD. Mr. President, I did not hear all of the distinguished Senator's remarks, but I was very interested by what I did hear.

I think it is about time that the American people are told the facts as they have been laid out by Senator BUMPERS. He spoke of the fact that 39 administrations over a period of 192 years had accumulated a debt of barely under $1 trillion, about $998 or $999 billion.

And then he said that during these 8 years that debt has grown to more than $2.5 trillion. In other words, he said it increased 160 percent, over $1.5 trillion in 8 years. And he pointed out that the interest on the national debt is $150, did the Senator say, or $151 billion? $151 billion this year.

Mr. BUMPERS. It is the deficit.

Mr. BYRD. Yes.

My granddaughter was over at my house recently. I said, "How much is a trillion dollars? How long would it take to count a trillion dollars at the rate of $1 per second?"

So we figured out, using the old math which is still good for me, and it would take 32,000 years to count a trillion dollars at a rate of $1 per second.

Now to count $2.5 trillion then it would require 80,000 years. We hear a lot about taxes, and the Senator spoke about the interest on this national debt, $150 billion a year. That is the most invidious tax of all.

Mr. President, it does not buy any national defense; it does not buy any health services; it does not buy any education; it does not buy any research. And mind you, much of that interest that the American taxpayer is paying on that national debt is going to foreigners, foreigners who are buying up our financial paper. That is the most invidious tax that is laid upon the taxpayer.

Now the administration is going to get out of town. We have had our borrow and spend spill, the borrow and spend binge, and now before the waitress brings the check for this borrow and spend banquet, they are going to get out of town, but the next President, be he Republican or Democrat, is going to be faced with that massive burden of over $2.5 trillion.

Mr. President, I thank the distinguished Senator from Arkansas for laying out the facts. These are the things that the American people need to be reminded of.

Mr. BUMPERS. If the Senator will indulge me just a few additional seconds, when the Senator says that the interest on the debt this year is going to be $151 billion that is the net interest, that does not count the interest income that we bring in. Actually, the gross interest on the debt this year is going to be over $200 billion.

If nobody remembers anything else I say I wish they would remember this: This year the deficit is going to be about $150 billion, $135 billion out of this year's deficit of $150 billion will be to pay the interest just on the debt that this administration has accumulated in the past 8 years.

I yield the floor.

Mr. BYRD. And the Senator pointed out in this statement that the increase in that national debt was 60 percent, that under this administration the national debt has increased 60 percent.

Mr. BUMPERS. More than that—over 150 percent.

Mr. BYRD. It is 150 percent, that is right. So what I am really saying is that 60 percent of the total debt was added by this administration.

Mr. BUMPERS. That is right.

Mr. BYRD. Which means that of $150 billion in interest we are paying 60 percent of that or $90 billion of that interest is the result of the borrow-and-spend banquet that this administration and we have had in these last 8 years, and in all that time the President who promised to balance that budget as the Senator said in 1984 or 1983——

Mr. BUMPERS. He said he might do it in 1983.

Mr. BYRD. Might even do it in 1982.

Mr. BUMPERS. Yes, I believe that is correct.

Mr. BYRD. And he has never yet sent to the Congress a balanced budget.

Mr. BUMPERS. Does the Senator remember when President Reagan, then candidate Reagan, was going around the country and saying, "let's cut your taxes 30 percent;" at that time the Kemp-Roth tax bill was a 30-percent cut. He said, "I am going to cut your taxes by 30 percent, double the defense budget and balance the budget."

An old 84-year-old Democrat down in Arkansas said, "What a dynamite idea. I wonder why anybody hadn't thought of that before."

One point six trillion dollars later we know why nobody ever thought of that before.

So, Mr. President, I just want to make that point plus one more about the tax cut of 1981. I think it was the proudest moment of my life when I was one of 11 U.S. Senators who voted against that tax cut. And you know how much mail I got over that vote? It was not the most popular thing I had ever done, but I tell you I want put on my tombstone a speech I made about an hour before we voted sitting at this very desk when I said, "If you pass this tax bill, you are going to create deficits big enough to choke a mule." Those were my exact words.

Now, nobody likes to hear anybody say, "I told you so." And most of us cannot resist saying, "I told you so."

But let me just give you some idea of how prophetic that was. First, I might point out here that some responsible Senators from that side of the aisle, and I am tempted to name their names, but some responsible Senators from that side of the aisle in 1982 saw an apocalypse coming and they went to the White House, under the leadership of Howard Baker, then majority leader, and they said—and I was not privy to the conversation, but I can just hear it—"Mr. President, we have overdone this thing. We are going to have deficits that the American people will not tolerate. We have to do something about it; namely, raise taxes."

And since then, of course, we raised taxes a little bit almost every year to stem the revenue drain from the 1981 tax cut.

But the tax cut of 1981, the tax cut of 1981 cost the Treasury in 1988, this year we just finished, $260.8 billion. You can look that figure up in the President's own budget at page 4-4. This is his estimate of the revenue loss, not mine.

I am saying that tax cut, in isolation, left alone, cost the Treasury $260.8 billion, this year also.

My point is this: we could have cut taxes by 10 percent instead of 25 percent then, we would now have a hot economy and a balanced budget this year. But, no. As Franklin Roosevelt said, "The fat pocketbooks of the rich groan louder than the empty bellies of the hungry."

I yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

THE DEPARTMENT OF ENERGY AND THE ENVIRONMENT

Mr. REID. Mr. President, on August 10, my good friend Congressman MEL LEVINE of California, and I, inducted the Department of Energy into the "Environmental Hall of Shame." The Department of Energy received the first Globe Rotter Award for an action which demonstrates "a callous disregard for the environment and the quality of life."

The DOE, manager of our Nation's nuclear weapons program, received the Globe Rotter Award for plutonium leaks at the radioactive waste site at the National Engineering Laboratory in Idaho Falls, ID. Tests indicate that radioactive waste has been found 240 feet below the surface, almost halfway to an underground water reservoir. Disregard for protective environmental practices resulted in DOE pumping hazardous waste into the Snake River aquifer, potentially contaminating the river and its arteries. The problems Congressman LEVINE and I outlined at the Idaho facility are just the tip of the iceberg. Estimates indicate that clean up of hazardous waste problems at DOE's defense-related facilities could cost $100 billion.

We were asked "Why the Department of Energy?" Some questioners chalked the award up to sour grapes because of DOE's activities surrounding the proposed high-level nuclear waste repository at Yucca Mountain, NE. Not so. There were many contenders for the first Globe Rotter Award.

Because of arrogance and inability to comply with the environmental standards that others are required to follow, various activities of other Federal agencies have contributed to the degradation of the environment. But, there is no question the Department of Energy deserved the first "Globe Rotter" Award for its activities in Idaho. Again, time has proven us correct. DOE's lack of public accountability and apparent disregard for public health and safety will haunt us all for years to come.

DOE's recent revelation surrounding its failure to disclose a number of serious reactor accidents that occurred at the agency's Savannah River plant in South Carolina should give us pause. Recent testimony before Congress refers to "30 reactor incidents of greatest significance" from 1957 to 1985, that had not been acted upon—nor been brought to the attention of the public. That is 30 separate incidents.

The accidents, summarized recently in a New York Times article:

> Occurred at five reactors that form the core of the operation at the Savannah River plant, which employes 16,700 people and accounts for 21 percent of the $7.75 billion DOE intends to spend next year on weapon programs.
>
> Among the accidents that occurred at the reactors were a number of unexplained power surges that threatened to go out of control. In one incident on January 12, 1960, the reactor increased in power more than 10 times faster than was considered safe.
>
> In another accident in November 1970, a radioactive rod that was a source of neutrons to start the atomic chain reaction in one reactor melted. A processing room adjacent to a reactor where cooling was filtered was thoroughly contaminated with radiation. It took 900 people three months to clean up the contamination.
>
> And in December 1970, a fuel assembly melted in another reactor. Melted fuel is considered among the worst accidents that can occur in a nuclear reactor; it can lead to the meltdown of the reactor core and release of large amounts of radiation into the environment.

The agency has told Congress that efforts to address these types of problems—attributed to DOE's lack of public accountability—are underway.

When asked about the "Globe Rotter" Award, a Department of Energy spokesman responded, "We are pursuing an aggressive program to remedy all our environmental concerns." I certainly hope so, Mr. President. We should all hope that DOE's efforts are not too late.

POSITION ON VOTE

Mr. HEINZ. Mr. President, on rollcall vote No. 349, to invoke cloture on the motion to recommit S. 2488—the parental and medical leave bill—I was necessarily absent. If I had been present, I would have voted "yea."

THE 35TH ANNIVERSARY OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION'S CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. SPECTER. Mr. President, I congratulate the American Political Science Association [APSA] on the occasion of the 35th anniversary of its Congressional Fellowship Program.

This program is the oldest and best known of all the congressional fellowships. Its members are recommended on merit and are selected through a rigorous competition.

Since 1953, APSA has detailed to Congress, Federal executives, political scientists, journalists, health professionals, and foreign professionals from a wide variety of backgrounds to learn firsthand about the legislative process. During the last 35 years more than 1,000 APSA fellows representing disciplines that range from anthropology to finance to nuclear regulation have worked in Congress. Many former fellows then have remained to serve the Senate and the House of Representatives as professional staff. This sharing of ideas and expertise with Members of Congress and the experience that fellows gain through their work, serve the Nation as a whole and are accomplished at no cost to the taxpayers.

In this nonpartisan program, fellows often transfer to other offices at the midpoint of their 10-month tenure to learn about both Chambers and each side of the aisle. My own office, for example, has benefited from the service of APSA fellows. Mr. Leo Bull, of Cheltenham, PA, served as a congressional fellow with my office from December 5, 1987, through August 10, 1988. As an employment and training specialist with the U.S. Department of Labor, Leo made a significant contribution in assisting my office with labor legislation and jobs initiatives. His knowledge and expertise in this important area were greatly appreciated.

Accordingly, I commend to my colleagues the APSA Congressional Fellowship Progam, and hope it will continue to serve Congress as an outstanding resource in the future.

FAREWELL TO SENATOR JOHN STENNIS

Mr. HOLLINGS. Mr. President, with the retirement of John Stennis at the end of the 100th Congress, the political scientists and pundits will note that the Senate is losing a legend, a Senator of historic impact and accomplishment within this body. His colleagues do not argue with that assessment, but forgive us for regretting, above all, the departure from the Senate of one of our best and most beloved friends.

It is traditional to measure a Senator's influence by the chairmanships or leadership posts he holds. As longtime chairman of Armed Services, and, more recently, as chairman of Appropriations, John Stennis has wielded those traditional maces of Senator power. He has done so with great skill. But the true source of this man's authority and influence lies in his character. I will be categorical on this point: I know of no other Senator who is more respected and revered for qualities of character than John Stennis. As one political observer put it very aptly:

> [Sen. Stennis] projects a dignity and rectitude transcending his physical frailty. His is an iron will tempered by grace and a genuine thoughtfulness about the issues.

Thirty-five years ago, when the President stood silent and the Senate was cowed by Joe McCarthy, it was John Stennis who took the floor to denounce what he called McCarthy's "slush and slime." It was this courageous speech that led directly to McCarthy's censure. Likewise, it was John Stennis who chaired the newly created Select Committee on Standards and Conduct in the wake of the Bobby Baker scandal. Time and again, in crisis and in calm, the Senate has turned to John Stennis for guidance and leadership—above all, on matters of integrity.

I hope it is no insult to characterize an 87-year-old man as "old fashioned," but the fact is that John Stennis truly does seem a Senator of a bygone era: A man for whom honor and duty are the supreme values. I can think of no other Senator to whom I would attach the word "gallant," yet that adjective fits John Stennis as naturally as it fits Robert E. Lee. Neither bullets nor cancer have defeated this exceptional man, and he has fulfilled his stated intention "to plow a straight furrow right down to the end of my row."

Mr. President, as a role model and as an inspiration, John Stennis is very special to us. Especially in recent years, we have admired his courage and his tenacity. He will always be a man of the Senate—an institution that has been ennobled and elevated by his presence. We wish John Stennis all the best in the years ahead. The Senate will miss him very much.

GODSPEED TO LAWTON CHILES

Mr. HOLLINGS. Mr. President, at the end of the 100th Congress, we will say farewell to our esteemed senior colleague from Florida, Lawton Chiles. I know I speak for his many friends in this body in saying that his departure will be a great loss to the Senate. We will miss his intelligence, his gutsiness, and his soft-spoken charm. For nearly two decades, LAWTON has been one of the best politicians in this body—and, like all superb politicians, he bears that label proudly.

Since his days in the Florida statehouse, LAWTON has been an old-fashioned good-government Democrat. Early in his Senate career, he insisted that "sunshine is the best disinfectant" to back-room dealing, and in 1976 he passed "sunshine" legislation to require that Government agencies open up their meetings to the public. That same refreshing Chiles style was the trademark of his campaigns: his 1,003-mile hike across Florida, and his disdain for the stampede to big-bucks Senate campaigns. Twelve years ago, LAWTON announced that he would accept no contribution larger than $10. In the face of massive out-of-State GOP assistance to his opponent in 1982, he compromised in degree but not in principle, raising his contribution ceiling to $100—still a far, far cry from the $10,000-per-week norm for Senate fundraising.

In part, it must have been this same good-Government penchant that led him to take on the thankless job of Budget Committee chairman in 1987. As ranking Democrat in 1985, he stood up for the integrity of the budget process by filibustering an attempt to pass the agriculture appropriations bill in the absence of a budget resolution. As chairman, he has worked doggedly to fashion compromises and forge consensus. The Budget chairman's job is to take the punch bowl away before the party gets out of hand. He makes hard choices, and in the process he makes people mad. To his everlasting credit, LAWTON has had the guts to push for tax increases and major budget cuts. Through it all, he has been low-key, patient, tolerant—even toward a certain former Budget chairman who insisted on different tax and freeze proposals.

I said just a minute ago that the Budget chairmanship is a thankless job: well, technically it is not a thankless job—not any more—because today, on behalf of the entire Senate, I want to say thank you, LAWTON, for the unselfish and exceptional job you have done the last 2 years.

Mr. President, since 1964, only one U.S. Senator has been reelected from the State of Florida: LAWTON CHILES. Perhaps the best measure of LAWTON's sanity and independence is his decision to walk away from a Senate seat that, in all probability, could have been his for another term. Nonetheless, we must respect his decision to retire—despite the fact that he is still a relative youngster.

LAWTON was an artilleryman in the Korean war, and now—with his plans for life after the Senate—he apparently intends to face retirement with the same attitude of old Gen. Oliver Smith during the Chosin Reservoir withdrawal: "Retreat, hell. It will be an attack in a different direction."

Mr. President, for 18 years in this body, LAWTON CHILES has served his State and Nation with great energy and dedication, and in the process he has done great service to the Senate as an institution. I wish LAWTON and Rhea all the best.

A TRIBUTE TO COACH DAVID M. "BOO" FERRISS

Mr. COCHRAN. Mr. President, an outstanding Mississippian and a living baseball legend has retired after a brilliant career as both a major league player and a college coach.

Coach David M. "Boo" Ferriss has just completed his 26th season as head baseball coach of the Delta State University Statesmen in Cleveland, MS. He closed out his final season with the best record in Delta State's history—44 wins and 13 losses.

Under Coach Ferriss' leadership, Delta State has become a recognized power in NCAA Division II collegiate baseball. His career record at Delta State is 639 wins, 387 losses, and 8 ties. His teams have won four Gulf South Conference championships, three NCAA regional titles, and placed second once and third twice in the College World Series.

A native of Shaw, MS, Coach Ferriss excelled early in a number of sports. His Shaw High School baseball coach, James Flack, helped him focus on the American pastime, and was responsible for converting Ferriss from a second baseman to a pitcher, which was a stroke of genius. Boo Ferriss went on to have a great career at Mississippi State University, and was signed by the Boston Red Sox after his junior year.

He immediately became a star pitcher for the Red Sox. His outstanding season records in 1945 and 1946 made him one of the premier pitchers of his day. In his initial season, 1945, he posted a 21-10 record, was named "Rookie of the Year," and defeated each American League team the first time he faced them. His eight consecutive wins at the beginning of a career is still a record—shared with Fernando Valenzuela's 1981 performance.

Ferriss' 1946 season was even more spectacular. As the American League's No. 1 pitcher with an amazing 25-6 record, he pitched the Red Sox to a 4-0 victory over the St. Louis Cardinals in the 1946 World Series. With his lifetime won-loss record at 65-30, an arm injury unfortunately brought Boo's brilliant and promising career to an early end. Boo continued with the Red Sox organization for several years as a pitching coach. There are many who know baseball who feel that, had Boo Ferriss not had his pitching career cut short, he would be in the Baseball Hall of Fame today.

There are other halls of fame, however, in which Boo Ferriss' name and reputation are now firmly implanted. He is a member of the Mississippi Sports Hall of Fame, the Mississippi State University Sports Hall of Fame, and the Mississippi Semi-Pro Baseball Hall of Fame. As a capstone to his many honors, this past January, Coach Ferriss was elected to the American Baseball Coaches Association's Hall of Fame—a tremendous tribute to a man who has given so much to the game of baseball.

But it does not take such lofty honors to convince Coach Ferriss' former players, fans, and supporters of his star qualities. People in Mississippi and throughout baseball coast to coast have long known and respected Boo Ferriss as a talented coach and an inspiration to the young men he has coached. Not only has Boo been a personal success and a big winner on and off the playing field, he has also touched the lives of his players in so many ways. Forty-three of his players have earned all-Gulf South Conference honors. Eighteen Statesmen players have been all-Americans. Seventeen of his stars have gone on to careers in the professional leagues. Twenty of his players earned academic all-America honors. And, it is typical of the Boo Ferriss style that today he maintains contact with hundreds of former players around the country because they were once part of his "baseball family."

Mr. President, I congratulate Boo Ferriss on his outstanding career. He has been a major influence on professional and collegiate baseball, as well as a wonderful mentor and example for the many young men who have had the good fortune to play for him.

This past summer, Delta State University honored Boo Ferriss by naming the university baseball field for him. The university also retired Coach Ferriss' jersey No. 33. Now, Boo is retired from the game that he has spent a lifetime playing and coaching, and I wish him and his wife, Miriam, every happiness in the years ahead.

Boo Ferriss has brought great distinction to himself, to Delta State University, to the State of Mississippi, and to the game of baseball. That legacy, Mr. President, will never be retired.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

BERNE CONVENTION IMPLEMENTATION ACT OF 1988

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 1301, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1301) to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Berne Convention Implementation Act of 1988".

SEC. 2. DECLARATIONS.

The Congress makes the following declarations:

(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1986, and all acts, protocols, and revisions thereto (hereafter in this Act referred to as the "Berne Convention") are not self-executing under the Constitution and Laws of the United States.

(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.

SEC. 3. CONSTRUCTION OF THE BERNE CONVENTION.

(a) Relationship With Domestic Law.—The provisions of the Berne Convention—

(1) shall be given effect under title 17, United States Code, as amended by this Act, and any other relevant provision of Federal or State law, including common law; and

(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

(b) Certain Rights Not Affected.—Any right of an author of a work, whether claimed under Federal, State, or common law, to claim authorship of the work, or to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, the adherence of the United States thereto, or the satisfaction of United States obligations thereunder.

SEC. 4. SUBJECT MATTER AND SCOPE OF COPYRIGHTS.

Chapter 1 of title 17 of the United States Code is amended—

(1) in section 101—

(A) in the definition of "Pictorial, graphic, and sculptural works" by striking out in the first sentence "technical drawings, diagrams, and models" and inserting in lieu thereof "diagrams, models, and technical drawings, including architectural plans"; and

(B) by inserting between the definition of "Audiovisual works" and the definition of "The best edition", the following:

"The 'Berne Convention' is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a State adhering to the Berne Convention, or in the case of a published work, one or more of the authors is a national of a State adhering to the Berne Convention on the date of first publication;

"(2) the work was first published in a State adhering to the Berne Convention, or was simultaneously published in a State adhering to the Berne Convention and in a foreign nation that does not adhere to the Berne Convention;

"(3) in the case of an audiovisual work—

"(A) if one or more of the authors is a legal entity, that author has its headquarters in a State adhering to the Berne Convention; or

"(B) if one or more of the authors is an individual, that author is domiciled, or has his or her habitual residence in, a State adhering to the Berne Convention; or

"(4) in the case of a pictorial, graphic, or sculptural work, such work is incorporated in a building or other structure located in a State adhering to the Berne Convention.

For purposes of paragraph (1), an author who is domiciled in or has his or her habitual residence in, a State adhering to the Berne Convention is considered to be a national of that State. For purposes of paragraph (2), a work is considered to have been simultaneously published in two or more nations if its dates of publication are within 30 days of one another.";

(2) in section 104(b)—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph (4):

"(4) the work is a Berne Convention work; or";

(3) in section 104 by adding at the end thereof the following:

"(c) Effect of Berne Convention.—No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the United States adherence thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon the provisions of the Berne Convention, or United States adherence thereto.";

(4) in section 108(a)—

(A) by inserting after the semicolon at the end of paragraph (1), "and";

(B) by striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by repealing paragraph (3); and

(5) by amending section 116 to read as follows:

"§ 116. Scope of exclusive rights in nondramatic musical works: Public performances by means of coin-operated phonorecord players

"(a) This section applies to any nondramatic musical work embodied in a phonorecord.

"(b)(1) In the case of a work to which this section applies, the exclusive right under paragraph (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited to the extent that paragraph (2) applies.

"(2) If, one year after the effective date of the Berne Convention Implementation Act of 1988, the Copyright Royalty Tribunal certifies by publication in the Federal Register that negotiated licenses authorized by subsection (c) have not come into effect so as to provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the one-year period ending on the effective date of such Act, then section 116 as in effect on the day before the effective date of such Act shall be effective with respect to musical works that are not the subject of such negotiated licenses.

"(c)(1) Notwithstanding any provision of the antitrust laws, any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

"(2) Parties to such a negotiation, within such time as may be specified by the Copyright Royalty Tribunal by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Copyright Royalty Tribunal of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

"(d) License agreements between one or more copyright owner and one or more operator of coin-operated phonorecord players, which are negotiated in accordance with subsection (c), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Tribunal.

"(e) Not later than 60 days after the effective date of the Berne Convention Implementation Act of 1988, if the Chairman of the Copyright Royalty Tribunal has not received notice, from copyright owners and operators of coin-operated phonorecord players referred to in subsection (c)(1), of the date and location of the first meeting between such copyright owners and such operators to commence negotiations authorized by subsection (c), the Chairman shall announce the date and location of such meeting. Such meeting may not be held more than 90 days after the effective date of such Act.

"(f) The Copyright Royalty Tribunal shall not conduct any ratemaking activity with respect to coin-operated phonorecord players unless, at any time more than one year after the effective date of the Berne Convention Implementation Act of 1988, the negotiated licenses adopted by the parties under this section do not provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the one-year period ending on the effective date of such Act.

"(g) Until such time as licensing provisions are determined by the parties under this section, the terms of the compulsory license, with respect to the public performance of nondramatic musical works by means of coin-operated phonorecord players, which is in effect on the day before the effective date of the Berne Convention Implementation Act of 1988, shall remain in force. If the negotiated licenses authorized by this section come into force so as to supersede previous determinations of the Copyright Royalty Tribunal, as provided in

subsection (d), but thereafter are terminated or expire without replacement by subsequent agreements, then section 116 as in effect on the day before the effective date of such Act shall be effective with respect to musical works that are not the subject of such negotiated licenses.

"(h) As used in this section, the following terms and their variant forms mean the following:

"(1) A 'coin-operated phonorecord player' is a machine or device that—

"(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

"(B) is located in an establishment making no direct or indirect charge for admission;

"(C) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

"(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

"(2) An 'operator' is any person who, alone or jointly with others—

"(A) owns a coin-operated phonorecord player; or

"(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

"(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.".

SEC. 5. RECORDATION.

Section 205 of title 17, United States Code, is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 6. PREEMPTION WITH RESPECT TO OTHER LAWS NOT AFFECTED.

Section 301 of title 17, United States Code, is amended by adding at the end thereof the following:

"(e) The scope of preemption under this section shall be neither expanded nor reduced by virtue of, or in reliance upon, the adherence of the United States to the Berne Convention, or the satisfaction of United States obligations thereunder.".

SEC. 7. NOTICE OF COPYRIGHT.

(a) VISUALLY PERCEPTIBLE COPIES.—Section 401 of title 17, United States Code is amended—

(1) in subsection (a) by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(2) in subsection (b) by striking out "The notice appearing on the copies" and inserting in lieu thereof "If a notice appears on the copies, it";

(3) by striking out "The notice" in subsection (c), and inserting in lieu thereof "Any notice referred to in subsection (a)"; and

(4) by adding at the end the following:

"(d) EVIDENTIARY WEIGHT OF NOTICE.—If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on 'innocent infringement' in mitigation of actual or statutory damages.".

(b) PHONORECORDS OF SOUND RECORDINGS.—Section 402 of title 17, United States Code, is amended—

(1) in subsection (a) by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(2) by striking out "The notice appearing on the phonorecords" in subsection (b), and inserting in lieu thereof "If a notice appears on the phonorecords, it";

(3) by striking out "The notice" in subsection (c), and inserting in lieu thereof "Any notice referred to in subsection (a)"; and

(4) by adding at the end thereof the following new subsection:

"(d) EVIDENTIARY WEIGHT OF NOTICE.—If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on 'innocent infringement' in mitigation of actual or statutory damages.".

(c) PUBLICATIONS INCORPORATING UNITED STATES GOVERNMENT WORKS.—Section 403 of title 17, United States Code, is amended by amending such section to read as follows:

"Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords consisting preponderantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions or the copies or phonorecords embodying any work or works protected under this title.".

(d) NOTICE OF COPYRIGHT; CONTRIBUTIONS TO COLLECTIVE WORKS.—Section 404 of title 17, United States Code, is amended—

(1) in subsection (a), by striking out "to satisfy the requirements of sections 401 through 403", and inserting in lieu thereof "to invoke the provisions of section 401(d) or 402(d), as applicable"; and

(2) in subsection (b), by striking out "Where" and inserting in lieu thereof, "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where".

(e) OMISSION OF NOTICE.—Section 405 of title 17, United States Code, is amended—

(1) in subsection (a), by striking out "The omission of the copyright notice prescribed by" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in";

(2) in subsection (b), by striking out "omitted," in the first sentence and inserting in lieu thereof "omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988,"; and

(3) by amending the heading of section 405 to read as follows:

"§ 405. Notice of Copyright: Omission of Notice on Certain Copies and Phonorecords"

(f) ERROR IN NAME OR DATE.—Section 406 of title 17, United States Code, is amended—

(1) in the section heading by inserting "on certain copies and phonorecords" after "date";

(2) in subsection (a) by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where";

(3) in subsection (b) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "distributed"; and

(4) in subsection (c)—

(A) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "publicly distributed"; and

(B) by inserting after "405" the following: "as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988".

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of title 17, United States Code, is amended by striking out the items relating to sections 405 and 406 and inserting in lieu thereof the following:

"405. Notice of copyright: Omission of notice on certain copies and phonorecords.
"406. Notice of copyright: Error in name or date on certain copies and phonorecords.".

SEC. 8. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407 of title 17, United States Code, is amended in subsection (a), by striking out "with notice of copyright".

SEC. 9. COPYRIGHT REGISTRATION.

(a) REGISTRATION IN GENERAL.—Section 408 of title 17, United States Code, is amended—

(1) in subsection (a), by striking out "Subject to the provisions of section 405(a), such" in the second sentence and inserting in lieu thereof "Such";

(2) in subsection (c)(2)—

(A) by striking out "all of" in the matter before subparagraph (A);

(B) by striking out subparagraph (A); and

(C) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) INFRINGEMENT ACTIONS.—

(1) REGISTRATION AS A PREREQUISITE.—Section 411 of title 17, United States Code, is amended to read as follows:

"§ 411. Registration and infringement actions

"(a) Registration is not a prerequisite to the institution of a civil action for infringement of copyright.

"(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner serves notice upon the infringer, not less than 10 or more than 30 days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work.".

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 4 of such title 17, United States Code, is amended by striking out the item relating to section 411 and inserting in lieu thereof the following:

"411. Registration and infringement actions.".

SEC. 10. COPYRIGHT INFRINGEMENT AND REMEDIES.

(a) Infringement.—Section 501(b) of title 17, United States Code, is amended by striking out "sections 205(d) and 411," and inserting in lieu thereof "section 411(b),".

(b) Damages and Profits.—Section 504(c) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking out "$250", and inserting in lieu thereof "$500"; and

(B) by striking out "$10,000", and inserting in lieu thereof "$20,000"; and

(2) in paragraph (2)—

(A) by striking out "$50,000.", and inserting in lieu thereof "$100,000."; and

(B) by striking out "$100.", and inserting in lieu thereof "$200.".

SEC. 11. COPYRIGHT ROYALTY TRIBUNAL.

Chapter 8 of title 17, United States Code, is amended—

(1) in section 801, by adding at the end of subsection (b) the following: "In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

"(i) the rates most recently determined by the Tribunal to provide a fair return to the copyright owner, and

"(ii) the rates contained in any license negotiated under the authorization of section 116 of this title."; and

(2) in section 804, by striking out the period at the end of section 804(a)(2)(C) and inserting in lieu thereof the following: ", and at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire without replacement by subsequent agreements; and

"(3) if negotiated licenses authorized by section 116 come into force so as to supersede previous determinations of the Tribunal, as provided in section 116(d), but thereafter are terminated or expire without replacement by subsequent agreements, the Tribunal shall, upon petition of any party to such terminated or expired negotiated license agreement, promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such interim royalty rate or rates shall remain in force until the conclusion of proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(d). The Tribunal may order that the royalty rates finally determined by the Tribunal to be reasonable shall be retroactive to the date such previously negotiated license agreements were terminated or expired.".

SEC. 12. WORKS IN THE PUBLIC DOMAIN.

Title 17, United States Code, as amended by this Act, does not provide copyright protection for any work that is in the public domain in the United States.

SEC. 13. EFFECTIVE DATE; EFFECT ON PENDING CASES.

(a) Effective Date.—This Act and the amendments made by this Act take effect on the same day the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States.

(b) Effect on Pending Cases.—Any cause of action arising under title 17, United States Code, before the effective date of this Act shall be governed by the provisions of such title as in effect when the cause of action arose.

Mr. DOLE. Mr. President, is my time reserved?

The ACTING PRESIDENT pro tempore. That is correct.

BICENTENNIAL MINUTE

JANUARY 31, 1873: SENATE ABOLISHES THE FRANK

Mr. DOLE. Mr. President, 115 years ago, on January 31, 1873, the U.S. Senate abolished its free franking privileges. This information may come as a surprise, since in fact the Senate still sends its mail out under the frank, but let me explain how this situation came to pass.

The ability of legislators to send mail by using their signature rather than postage dates back to the British House of Commons in the 17th century. The Continental Congress adopted the procedure during the American Revolution, and the first Congress wrote it into law in 1789. During the 19th century, the press began to complain of abuses in congressional use of the frank.

Some Senators supposedly used the frank to send their laundry home each week, others franked barrels of china, bedding, and other household goods. Legend has it that one antebellum Senator even attached his frank to his horse's bridle and sent the animal back home. More seriously, critics accused incumbents of flooding the mails with Government documents, speeches, and packages of seed from the Agriculture Department, all designed to enhance their reelection prospects.

These charges became so widespread that in 1873 Congress abolished the frank. But the new law made no provision for payment of legitimate mailings, such as sending copies of the Congressional Record and other public documents that their constituents might request. So, 2 years later, in 1875, Congress permitted these documents to be sent out postage-free.

Then there was correspondence with other Government agencies. In 1883, Congress required that all executive agencies enclose franked envelopes in their official communications with Congress. Because this cumbersome system still did not solve all problems of mailing, in 1891 Congress at last restored full franking privileges to its Members, with specific rules to prevent further abuse, which probably have not worked all that well.

THE SENATE'S SCHEDULE

Mr. DOLE. Mr. President, I will also indicate very briefly, because I know there is another matter on the floor, that we hope to be able today, at least on this side, to say that we have an agreement on the drug bill; we are ready to do business on the drug bill. It seems to me that that ought to be the first order of the day, either the drug bill or the tax bill. I guess we are going to be around here at least 2 or 3 more weeks, so we might as well take our time.

But I do hope that we can move on to matters of importance and stop playing games with this parental leave and child care and the other bill that is wrapped up in that package. Everyone knows that is not going to pass, not going to become law.

So we hope today, before the day is over, at least on this side, to go to the majority leader and say that we have an agreement on drugs. We want to go to the drug bill and the tax bill. We are going to stop playing games with what is on the floor. We want to get out of here. We want to go home.

Maybe the Democrats have made a judgment that it is better for their incumbents who are running to be on the floor. But I think we have an obligation, all of us, all of our colleagues—particularly those who are up for reelection—to get back to their States and do what best they can in their own election efforts. I am advising my colleagues on this side to do precisely that.

We cannot stick around here forever because somebody wants to keep us here with some legislation that has no chance of passage. The House is going to be out 4 or 5 days. They are coming back 2 or 3 days next week.

So, we do not intend to play that game. We are not the majority, but we have some rights in the minority and we are prepared to cooperate with the tax legislation and the drug legislation but little else.

We have tried cooperation. It has not worked. So, we want to get out of here. We have done the business. We have cooperated. We passed all the appropriations bills. We have worked on welfare reform; we have worked on a number of things that needed the attention in the hope and on the theory that we would complete our work and go home.

But now we are advised, well, we will probably be here next week and everybody knows it is going to be into the next week, so it will probably be the 22d, maybe even the next week. There is no way we can do a tax bill and a drug bill in a couple of days or 3 days or 5 days.

I suggest that we all recognize the facts of life and do our work. Keeping this bill on the floor is not going to turn the tide for Dukakis. I understand that was discussed in the policy luncheon yesterday.

I do not think it will turn the tide for Governor Dukakis, and it will not have any impact for George Bush either.

I do not find many people demanding that we take action on the issues that are on the floor today. So, I hope that we can reach some agreement. We are going to go home sometime.

And let minority Members know. Otherwise I do not know how we can continue to cooperate, and we are not going to let the bill be set aside and take up something else and set it aside. Get cloture, that is fine. But we are ready to do business. We are ready to do the business that is important, but not just do the monkey business. We have had enough of that.

We are ready to do the drug bill. We are ready to do the tax bill. We are ready to do other important matters that have to be dealt with, and there are a number of those: judges, genocide implementing legislation, and others that may be on the majority leader's list. But we hope that we will be given some consideration because if we stay here to the 15th or the 22d, we have precisely 2½ weeks before the election. And I was compelled to do that in 1986, so I can speak for some. We were here, I think, until the 20th or the 18th.

I took a lot of heat from some of my colleagues. Some did not get back and they always thought had they been out earlier they might have been reelected. Who knows?

I hope we can work out some schedule so we are going to have a date of adjournment so it does not go week to week to week. As some of my colleagues pointed out yesterday, it is pretty hard to plan when you are running for reelection if nobody tells you when we are going to leave this place. How can you set up some event 2 weeks from now and then find a very important vote here?

Maybe that is the strategy, keep the Republicans here. Maybe the Democratic incumbents are in good shape. I think ours are, too. But we believe that it is the election season. We have had a good year, we passed the appropriation bills, we passed welfare reform, we have done a lot of things that I think, if you look back on, people said, "Oh, that will not happen in this Congress." And it has all happened because we have had a spirit of cooperation.

I must say after our policy luncheon yesterday, that has rapidly deteriorated. I am going to do the best I can to cooperate with the majority leader. He has the toughest job in town. But I must say in advance, it is not going to be easy because some of my Members do not want to consent to anything—anything—until we have some specific idea of when we are going to leave this place and what the business is going to be for the remainder of the year.

Mr. BYRD. Mr. President, I ask unanimous consent to speak for 5 minutes out of order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I certainly understand the frustration of the distinguished Republican leader and I often have a similar sense of frustration. And he is right in saying that we have passed some very important legislation. We have established what I think is an excellent record for the 100th Congress. And it has only been accomplished through the cooperation of the leadership on both sides of the aisle. There have been times, of course, when we differed on measures and that is to be expected.

Let me say to the distinguished Republican leader, I do not recall any discussion in our conference yesterday to the effect that the profamily package of day care, parental leave, and child pornography, would turn the tide for Mr. Dukakis. I do not have any recollection of such comments having been made.

Mr. President, it is not monkey business. Day care legislation, child pornography, parental leave—that is not monkey business.

In West Virginia, 46 percent of the women with children between the ages of 6 and 17 have to work outside the home. And that is a lower percentage than the nationwide percentage.

In West Virginia, there are 15 counties out of the 55 that have no day care facilities.

In West Virginia, 32 percent of the women who have children under 6 years of age have to work outside the home. And they are not doing it to buy a second Porsche. They are doing it because they are either the heads of families or they are married to men whose salaries are under $15,000.

So, it is not monkey business when we deal with legislation to provide regulated day care, to provide it with adequate safety and health, for those children to have to be let out in the morning, when the mothers go to work, to the care of someone. That is not monkey business.

The deal on yesterday was no deal at all, that the Republican leader offered to me. What we see going on here is an effort to kill this bill. And it is not too subtle. For those Senators who want a date when the Senate and House will adjourn, I do not know of anyone who can give Senators a date. We all sign on when we take the oath of office up there, we sign on for our pay and that continues when we are out campaigning. We do not have to worry about our checks. They will continue to roll in.

We signed on to do our job. And I can understand with some sympathy, those who feel that they have to get out of "this place," the Senate of the United States, which is not just "this place." It is an institution for which most of us would have given our right arm to be a Member of. So, it is not just "this place."

We will go home. I am running also. We will go home. There will be some time to campaign.

But first we have a responsibility to do our work, and if the Republicans want to kill this bill, if they have the votes, they can do that. If they want to vote against cloture, they can do that, but at least we are going to make the effort. As I always have tried to do, if I lose, I smile. It is all over. If we do not have the votes, we do not have the votes, but let us see.

The President said on yesterday, I believe it was, "Get on with the drug bill. The drug bill has been on the calendar a long time," or something to that effect. The drug bill was not even introduced until Monday, the day before yesterday. Of course, there is a House bill over here on the calendar. The distinguished Republican leader and I have put two working groups together, good men and women, to develop a bipartisan drug bill. Those Members spent months, weeks, days, hours, and they came up with a good bill, but it has not been on the calendar a long time. The President should be notified of that.

We will get to that drug bill. The Senate drug bill is 610 pages, and the other Members of the Senate who are not on those working groups and the staffs who are not associated with those working groups certainly have a right and a responsibility to know what is in that bill. It takes a little while for that.

So, there is no reason to blame anyone because the drug bill has not been brought up. It will be brought up. I hope we can limit amendments. I would prefer having cloture on the drug bill. If Senators want to get out of "this place," let us have cloture on the drug bill and prevent the nongermane amendments from being called up.

I am for the death penalty. It was my recommendation that it be put in the bill so that it would not be offered as an amendment and thus create a filibuster on that amendment. We put it in the bill and it is a part of the bill. If Senators want to filibuster the death penalty, they would have to filibuster the whole bill.

I am as interested as anyone else in getting these measures passed. There are some items in the tax technical corrections amendments that I very much want to see enacted into law. We have time. We have Wednesday, today; Thursday, Friday, and Saturday of this week. We will be out on Monday for Columbus Day. What is wrong? If it is required to get the people's work done on this important legislation, then we will be back next week. The House will be back and there is no reason why, no justifiable reason why we cannot complete that work.

We can do this bill, the bill the distinguished leader has been talking about. We can do the drug bill and, hopefully, we can do the tax bill if we all set our heads to do it.

Mr. President, I ask that the time be extended 4 minutes, and I yield 2 minutes to the Republican leader.

Mr. LEAHY. Mr. President, reserving the right to object, and I shall not object, but just so I can tell——

The ACTING PRESIDENT pro tempore. Does the majority leader yield?

Mr. BYRD. Mr. President, I yield the floor. I ask that the distinguished Republican leader have 2 additional minutes.

Mr. LEAHY. I thought it was a unanimous-consent request.

Mr. BYRD. It is.

Mr. LEAHY. Reserving the right to object, and I shall not, we are holding a major Agriculture Committee meeting right now. I set that aside to follow the unanimous-consent agreement on Berne at 10:30. I am just curious as to how much longer it might be, otherwise I will go back to the Agriculture Committee.

Mr. BYRD. Two minutes.

Mr. LEAHY. I have no objection.

Mr. DOLE. I apologize to the Senator from Vermont and to the Senator from Arizona who is also here for the Berne Convention which is very important. I say quickly, we are not inferring monkey business of the issues. If we really want to get on the drug bill, we can start today. Why not do the business we ought to do? That is the drug bill and tax bill which has been on the calendar since August 3d. The technical corrections amendments bill has been hanging around here August, September, October. It is very important. Every farmer in my State is more concerned about that bill on the diesel tax and so-called heifer tax, and a lot of other business people are concerned about provisions in the technical corrections.

We have 100-some amendments filed. It is going to take Senator BAUCUS and Senator PACKWOOD I do not know how long to fight off those amendments.

My only plea is, if you can get cloture on these bills, this child care bill that only covers 7 percent of the people, might cover all of them in West Virginia, but there would not be any left, it has Federal standards and it has the Government telling you how to take care of your children. If that is what they want in West Virginia, they can have it.

A lot of these bills are not what they are cracked up to be. They have been slogans, and we have yet to offer a single amendment on this side. We have been closed out. We cannot offer amendments. We are supposed to vote for something we cannot even amend, correct, and have State standards and do a lot of other things to the bill.

We are not going to quarrel about child care, parental leave, and all those things that are going to be around next year and there will be a lot of national debate on them.

My plea is, let us move on to the issues that we are ready to move on. We have bipartisan support on a drug bill. Cloture would probably be a good alternative, if we cannot get unanimous consent. On our side, we already agreed to offer six amendments, period. I am ready to stand up, I hope in the next couple of hours, and say we can do it on this side with one amendment, to the leader, and the same would be on the other side. We may be able to do that. If we did that, we can do that bill in 2 days.

We want to cooperate, but we really think we ought to get into the business and not get into the money business of every day talking about legislation that we cannot amend and we know is not going to pass, it has not even been considered by the House. It is an election year ploy, and we understand that. We would do the same probably, maybe on other issues, if we were in the majority. Enough is enough. Let us go home.

Mr. BYRD. Mr. President, I ask for 30 seconds.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. I did not intend to respond. I thought the distinguished Republican leader should have the last word, but he made a remark about West Virginia. I do not intend, and I am sure the Republican leader does not intend, to see this encounter develop into something rather acerbic or acrid, but the distinguished Republican leader said his farmers want the heifer tax and other things. I am not going to say anything about the State of Kansas or the people of Kansas. I hope we will not become too wrapped up in our arguments that we start talking in terms that might not be too amicably received.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who seeks recognition?

Mr. DECONCINI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

BERNE CONVENTION IMPLEMENTATION ACT OF 1988

The Senate continued with the consideration of the bill.

Mr. DECONCINI. May I ask the Chair the pending business?

The ACTING PRESIDENT pro tempore. The question is on the committee substitute to S. 1301.

Mr. DECONCINI. I yield to the Senator from Vermont who has an amendment to offer.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

AMENDMENT NO. 3411

(Purpose: To amend provisions regarding registration, to make technical amendments, and for other purposes.)

Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Arizona, and I send an amendment, in the nature of a substitute, to the desk for myself, Senator DECONCINI and Senator HATCH and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. DECONCINI and Mr. HATCH proposes an amendment numbered 3411.

Mr. LEAHY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE AND REFERENCES TO TITLE 17, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Berne Convention Implementation Act of 1988".

(b) REFERENCES TO TITLE 17, UNITED STATES CODE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or a repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 2. DECLARATIONS.

The Congress makes the following declarations:

(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto (hereafter in this Act referred to as the "Berne Convention") are not self-executing under the Constitution and laws of the United States.

(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.

SEC. 3. CONSTRUCTION OF THE BERNE CONVENTION.

(a) RELATIONSHIP WITH DOMESTIC LAW.—The provisions of the Berne Convention—

(1) shall be given effect under title 17, as amended by this Act, and any other relevant provision of Federal or State law, including the common law; and

(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

(b) CERTAIN RIGHTS NOT AFFECTED.—The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—

(1) to claim authorship of the work; or

(2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.

SEC. 4. SUBJECT MATTER AND SCOPE OF COPYRIGHTS.

(a) Subject and Scope.—Chapter 1 is amended—

(1) in section 101—

(A) in the definition of "Pictorial, graphic, and sculptural works" by striking out in the first sentence "technical drawings, diagrams, and models" and inserting in lieu thereof "diagrams, models, and technical drawings, including architectural plans";

(B) by inserting after the definition of "Audiovisual works", the following:

"The 'Berne Convention' is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a nation adhering to the Berne Convention, or in the case of a published work, one or more of the authors is a national of a nation adhering to the Berne Convention on the date of first publication;

"(2) the work was first published in a nation adhering to the Berne Convention, or was simultaneously first published in a nation adhering to the Berne Convention and in a foreign nation that does not adhere to the Berne Convention;

"(3) in the case of an audiovisual work—

"(A) if one or more of the authors is a legal entity, that author has its headquarters in a nation adhering to the Berne Convention; or

"(B) if one or more of the authors is an individual, that author is domiciled, or has his or her habitual residence in, a nation adhering to the Berne Convention; or

"(4) in the case of a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, the building or structure is located in a nation adhering to the Berne Convention.

For purposes of paragraph (1), an author who is domiciled in or has his or her habitual residence in, a nation adhering to the Berne Convention is considered to be a national of that nation. For purposes of paragraph (2), a work is considered to have been simultaneously published in two or more nations if its dates of publication are within 30 days of one another."; and

(C) by inserting after the definition of "Copyright owner", the following:

"The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if—

"(1) in the case of a published work, the work is first published—

"(A) in the United States;

"(B) simultaneously in the United States and another nation or nations adhering to the Berne Convention, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

"(C) simultaneously in the United States and a foreign nation that does not adhere to the Berne Convention; or

"(D) in a foreign nation that does not adhere to the Berne Convention, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

"(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

"(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.";

(2) in section 104(b)—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) the work is a Berne Convention work; or";

(3) in section 104 by adding at the end thereof the following:

"(c) Effect of Berne Convention.—No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto."; and

(4) by inserting after section 116 the following new section:

"§ 116A. Negotiated licenses for public performances by means of coin-operated phonorecord players

"(a) Applicability of Section.—This section applies to any nondramatic musical work embodied in a phonorecord.

"(b) Limitation on Exclusive Right if Licenses Not Negotiated.—

"(1) Applicability.—In the case of a work to which this section applies, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited by section 116 to the extent provided in this section.

"(2) Determination by copyright royalty tribunal.—The Copyright Royalty Tribunal, at the end of the 1-year period beginning on the effective date of the Berne Convention Implementation Act of 1988, and periodically thereafter to the extent necessary to carry out subsection (f), shall determine whether or not negotiated licenses authorized by subsection (c) are in effect so as to provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending on the effective date of that Act. If the Copyright Royalty Tribunal determines that such negotiated licenses are not so in effect, the Tribunal shall, upon making the determination, publish the determination in the Federal Register. Upon such publication, section 116 shall apply with respect to musical works that are not the subject of such negotiated licenses.

"(c) Negotiated Licenses.—

"(1) Authority for negotiations.—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

"(2) Arbitration.—Parties to such a negotiation, within such time as may be specified by the Copyright Royalty Tribunal by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Copyright Royalty Tribunal of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

"(d) License Agreements Superior to Copyright Royalty Tribunal Determinations.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (c), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Tribunal.

"(e) Negotiation Schedule.—Not later than 60 days after the effective date of the Berne Convention Implementation Act of 1988, if the Chairman of the Copyright Royalty Tribunal has not received notice, from copyright owners and operators of coin-operated phonorecord players referred to in subsection (c)(1), of the date and location of the first meeting between such copyright owners and such operators to commence negotiations authorized by subsection (c), the Chairman shall announce the date and location of such meeting. Such meeting may not be held more than 90 days after the effective date of such Act.

"(f) Copyright Royalty Tribunal To Suspend Various Activities.—The Copyright Royalty Tribunal shall not conduct any ratemaking activity with respect to coin-operated phonorecord players unless, at any time more than one year after the effective date of the Berne Convention Implementation Act of 1988, the negotiated licenses adopted by the parties under this section do not provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the one-year period ending on the effective date of such Act.

"(g) Transition Provisions; Retention of Copyright Royalty Tribunal Jurisdiction.—Until such time as licensing provisions are determined by the parties under this section, the terms of the compulsory license under section 116, with respect to the public performance of nondramatic musical works by means of coin-operated phonorecord players, which is in effect on the day before the effective date of the Berne Convention Implementation Act of 1988, shall remain in force. If a negotiated license authorized by this section comes into force so as to supersede previous determinations of the Copyright Royalty Tribunal, as provided in subsection (d), but thereafter is terminated or expires and is not replaced by another licensing agreement, then section 116 shall be effective with respect to musical works that were the subject of such terminated or expired licenses."; and

(b) Technical Amendments.—(1) Section 116 is amended—

(A) by amending the section heading to read as follows:

"§ 116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players";

(B) in subsection (a) in the matter preceding paragraph (1), by inserting after "in a phonorecord," the following: "the performance of which is subject to this section as provided in section 116A,"; and

(C) in subsection (e), by inserting "and section 116A" after "As used in this section".

(2) The table of sections at the beginning of chapter 1 is amended by striking out the item relating to section 116, and inserting in lieu thereof the following:

"116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.

"116A. Negotiated licenses for public performances by means of coin-operated phonorecord players.".

SEC. 5. RECORDATION.

Section 205 is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 6. PREEMPTION WITH RESPECT TO OTHER LAWS NOT AFFECTED.

Section 301 is amended by adding at the end thereof the following:

"(e) The scope of Federal preemption under this section is not affected by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.".

SEC. 7. NOTICE OF COPYRIGHT.

(a) Visually Perceptible Copies.—Section 401 is amended—

(1) in subsection (a), by amending the subsection heading to read as follows:

"(a) General Provisions.—";

(2) in subsection (a), by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(3) in subsection (b), by striking out "The notice appearing on the copies" and inserting in lieu thereof "If a notice appears on the copies, it"; and

(4) by adding at the end the following:

"(d) Evidentiary Weight of Notice.—If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).".

(b) Phonorecords of Sound Recordings.—Section 402 is amended—

(1) in subsection (a), by amending the subsection heading to read as follows:

"(a) General Provisions.—";

(2) in subsection (a), by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(3) in subsection (b), by striking out "The notice appearing on the phonorecords" and inserting in lieu thereof "If a notice appears on the phonorecords, it"; and

(4) by adding at the end thereof the following new subsection:

"(d) Evidentiary Weight of Notice.—If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).".

(c) Publications Incorporating United States Government Works.—Section 403 is amended to read as follows:

"Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords consisting predominantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.".

(d) Notice of Copyright; Contributions to Collective Works.—Section 404 is amended—

(1) in subsection (a), by striking out "to satisfy the requirements of sections 401 through 403", and inserting in lieu thereof "to invoke the provisions of section 401(d) or 402(d), as applicable"; and

(2) in subsection (b), by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where".

(e) Omission of Notice.—Section 405 is amended—

(1) in subsection (a), by striking out "The omission of the copyright notice prescribed by" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in";

(2) in subsection (b), by striking out "omitted," in the first sentence and inserting in lieu thereof "omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988,"; and

(3) by amending the section heading to read as follows:

"§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords"

(f) Error in Name or Date.—Section 406 is amended—

(1) in subsection (a) by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where";

(2) in subsection (b) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "distributed";

(3) in subsection (c)—

(A) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "publicly distributed"; and

(B) by inserting after "405" the following: "as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988"; and

(4) by amending the section heading to read as follows:

"§ 406. Notice of copyright: Error in name or date on certain copies and phonorecords".

(g) Clerical Amendment.—The table of sections at the beginning of chapter 4 is amended by striking out the items relating to sections 405 and 406 and inserting in lieu thereof the following:

"405. Notice of copyright: Omission of notice on certain copies and phonorecords.

"406. Notice of copyright: Error in name or date on certain copies and phonorecords.".

SEC. 8. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407(a) is amended by striking out "with notice of copyright".

SEC. 9. COPYRIGHT REGISTRATION.

(a) Registration in General.—Section 408 is amended—

(1) in subsection (a), by striking out "Subject to the provisions of section 405(a), such" in the second sentence and inserting in lieu thereof "Such";

(2) in subsection (c)(2)—

(A) by striking out "all of the following conditions—" and inserting in lieu thereof "the following conditions:";

(B) by striking out subparagraph (A); and

(C) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) Infringement Actions.—

(1) Registration as a prerequisite.—Section 411 is amended—

(A) by amending the section heading to read as follows:

"§ 411. Registration and infringement actions";

(B) in subsection (a) by striking out "Subject" and inserting in lieu thereof "Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States, and subject"; and

(C) in subsection (b)(2) by inserting ", if required by subsection (a)," after "work".

(2) Table of sections.—The table of sections at the beginning of chapter 4 is amended by striking out the item relating to section 411 and inserting in lieu thereof the following:

"411. Registration and infringement actions.".

SEC. 10. COPYRIGHT INFRINGEMENT AND REMEDIES.

(a) Infringement.—Section 501(b) is amended by striking out "sections 205(d) and 411," and inserting in lieu thereof "section 411,".

(b) Damages and Profits.—Section 504(c) is amended—

(1) in paragraph (1)—

(A) by striking out "$250", and inserting in lieu thereof "$500"; and

(B) by striking out "$10,000", and inserting in lieu thereof "$20,000"; and

(2) in paragraph (2)—

(A) by striking out "$50,000.", and inserting in lieu thereof "$100,000."; and

(B) by striking out "$100.", and inserting in lieu thereof "$200.".

SEC. 11. COPYRIGHT ROYALTY TRIBUNAL.

Chapter 8 is amended—

(1) in section 801, by adding at the end of subsection (b) the following: "In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

"(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and "(ii) the rates contained in any license negotiated pursuant to section 116A of this title."; and

(2) by amending section 804(a)(2)(C) to read as follows:

"(C)(i) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, such petition may be filed in 1990 and in each subsequent tenth calendar year, and at any time within 1 year after negotiated licenses authorized by section 116A are terminated or expire and are not replaced by subsequent agreements.

"(ii) If negotiated licenses authorized by section 116A come into force so as to supersede previous determinations of the Tribunal, as provided in section 116A(d), but thereafter are terminated or expire and are not replaced by subsequent agreements, the Tribunal shall, upon petition of any party to such terminated or expired negotiated license agreement, promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such interim royalty rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116A(d).".

SEC. 12. WORKS IN THE PUBLIC DOMAIN.

Title 17, United States Code, as amended by this Act, does not provide copyright protection for any work that is in the public domain in the United States.

SEC. 13. EFFECTIVE DATE; EFFECT ON PENDING CASES.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act take effect on the date on which the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States.

(b) EFFECT ON PENDING CASES.—Any cause of action arising under title 17, United States Code, before the effective date of this Act shall be governed by the provisions of such title as in effect when the cause of action arose.

Mr. LEAHY. Mr. President, this is an important day for American artists, authors, and other creators whose ingenuity and imaginativeness is reflected in works protected by copyright. It is an important day for publishers, motion picture studios, computer software firms, and other copyright proprietors who market the fruits of American creativity throughout the world. And it is an important day for all who are concerned about the precarious position of American industry in world trade. Today, with the passage of my bill, S. 1301, we take a giant step toward strengthening copyright protection for American works, by moving toward U.S. adherence to the Berne Copyright Convention.

Recent debates in the Senate on trade legislation reflected diverse views within this body about trade policy. But we all agreed that the overall picture of recurring trade deficits is gloomy.

Fortunately, there are a few bright spots in the gloom. Among them, is one sector of our economy that constantly outsells the foreign competition and boasts a $1.5 billion trade surplus. Those who sell American ingenuity and vision, America's copyright community, are setting a standard for American industry.

The world's appetite for American books, computer software, records, movies, and other copyright materials appears to be insatiable. We are the world's largest exporter of copyrighted works because of the skill, inventiveness, and imagination of American authors, musicians, filmmakers, and software creativity will continue to flourish only if we act to preserve the environment that fosters it.

Too many times we have counted on goodwill and fairness in trade relations, and too many times we have seen American products victimized by discriminatory trade practices or plain old piracy.

S. 1301 will enable us to join the most prominent and effective mechanism for defending copyrights in the global marketplace: The Berne Convention for the Protection of Literary and Artistic Works.

For over 100 years, the Berne Convention has provided the framework for international copyright relations among nearly all the industrialized and developing countries. Today, 79 nations are members of the Berne Convention. Each Berne member nation is required to extend to works from all other member states the same copyright rules it applies to its own citizens. Berne also establishes minimum copyright standards that each member must meet. This combination—guarantees of equal treatment and of high standards—adds up to a powerful incentive for fair international trade in copyrighted materials.

For most of a century, differences between U.S. law and Berne Convention standards have kept our Nation from joining the convention. However, in the last two decades, changes in American law and in the Berne standards have narrowed that gap. S. 1301 makes the last few changes needed for the United States to join Berne.

When I introduced S. 1301 last May, I characterized it as following the minimalist approach. I encouraged my colleagues to make only those changes to our laws which are necessary in order to comply with Berne. I did not want to disrupt the assumptions now governing relations among creators, publishers, distributors, and consumers of copyrighted works.

The best illustration of my minimalist approach is in the area of moral rights. I believe Congress should reexamine the protections afforded American artists by current law to prevent improper alterations of their works. Some argued that we should use this legislation as a vehicle for that initiative. At the same time, others urged us to take this opportunity to freeze the development of our law in this area. But, after studying this question, I became convinced of two things. First, no change in our law on artists' rights is needed to meet Berne's standards. Second, the debate over this issue would not have advanced the vital goal of Berne adherence, which is the only object of this legislation. I am glad that my colleagues in the Senate and the House agreed that the only way the United States could join Berne this Congress was to leave the moral rights debate for another day.

The measure before us also reflects the principles underlying my original bill on the question of copyright formalities. Berne forbids the governments of member states from imposing formalities as conditions of "the enjoyment and the exercise" of copyright. I have consistently maintained that the requirement of copyright registration as a precondition to any lawsuit to enforce copyright is a formality prohibited by Berne. This view is supported by most American and European copyright experts who have examined the question in depth. The measure before us, representing a consensus among the principal Senate sponsors, is fully consistent with this approach. It makes the minimal change needed to overcome this obstacle to Berne adherence, by excepting only works originating in other Berne countries from the registration prerequisite. In the view of the Judiciary Committee, as reflected in our report on S. 1301, this is what Berne requires us to do; but this is all that Berne requires us to do with respect to this formality.

The approach reflected in the measure before us is workable, and sends the right message to current and potential Berne members who may be tempted to erect registration barriers to enforcement of copyright in American works. I believe that it also satisfies the concerns of the Library of Congress about the possible detrimental effect on the Library's collection of a flat repeal of the registration prerequisite. I do not expect this bill to harm the Library's acquisition efforts in any way, for the reasons stated in the report accompanying S. 1301. However, if the Library demonstrates that the changes to the registration requirement have some unanticipated detrimental impact on acquisitions, I will work with the Library to correct the problem.

The measure before us also contains several minor technical and clarifying amendments to S. 1301 as reported by the Judiciary Committee. I ask unanimous consent that my detailed analysis of the measure be printed in the RECORD at the conclusion of these remarks.

Mr. President, Berne membership is vital to U.S. interests. In the world marketplace of the 21st century, copyrights and other intellectual property will play a leading role. Explosive developments in technology—the office copier, the computer, the video recorder—foster new forms of creativity and advance American business every day.

America's reliance on these technologies is one of the reasons that a wide range of American industry supports our efforts to join Berne, including many firms not usually involved in copyright legislation. During our hearings, representatives of IBM, Pfizer, Inc., and other companies testified in support of Berne adherence. The Senate report contains the name of over 80 business groups and individual companies that support the action the Senate is taking today.

Finally, Mr. President, I would like to express my appreciation to the chairman and ranking member of the Patents, Copyrights and Trademarks Subcommittee, Senators DeConcini and Hatch. They have worked long and hard to fashion a consensus bill that fine tunes our copyright law and makes those changes necessary for us to join Berne. I would also like to thank my friend from the other body, Representative Robert Kastenmeier. Under this leadership, the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice compiled a valuable hearing record that greatly assisted us in our deliberations. And as the principal House sponsor of Berne implementing legislation, he contributed many valuable ideas that are reflected in the measure before us today. In addition, the hard work and perseverance of several dedicated Senate staffers has helped to make Berne adherence a reality. I would note particularly the contributions of my own staff, Steve Metalitz and Matt Gerson; Randy Rader who was sworn in as a judge of the U.S. Claims Court last week after working for many years for Senator Hatch; Ed Baxter with Senator DeConcini; Diana Huffman with Senator Biden. Let me also thank Chairman Rodino and Chairman Kastenmeier and members of their staff, Ginny Sloan, Mike Remington, and David Beier for their hard work in the House on this important legislation.

Mr. President, I urge the Senate to pass the Berne Convention Implementation Act of 1988. I call on the House of Representatives to act promptly on this legislation so that it can be signed by the President as soon as possible. I note also that the resolution of ratification of the treaty establishing the Berne Convention has been reported favorably by the Committee on Foreign Relations, and is now pending on the Executive Calendar. I look forward to speedy Senate approval of this resolution, which will complete the process of bringing the United States into full participation in the world copyright system of the decades ahead.

Mr. President, I yield to the distinguished Senator from Arizona.

The PRESIDING OFFICER (Mr. Breaux). The Senator from Arizona is recognized.

Mr. DeCONCINI. Mr. President, I thank the Senator from Vermont for his leadership in this endeavor. He initiated this process in the last Congress and very successfully has brought this legislation a long distance.

Mr. President, I rise today in support of S. 1301, a bill to provide for adherence by the United States to the Berne Convention for the Protection of Literary and Artistic Works. S. 1301 will bring the United States into the mainstream of international copyright law and will help assure U.S. citizens of protection of their copyright interests by most foreign nations.

As chairman of the Subcommittee on Patents, Copyrights and Trademarks, I heard extensive testimony concerning both the benefits and drawbacks associated with the adherence to the Berne Convention. From these hearings, I have concluded that adherence to Berne will greatly benefit the United States.

The Berne Convention was adopted over 100 years ago and currently has over 75 member nations. Berne provides the guidelines which govern the copywright relations between member nations. The specific provisions in Berne are designed to assure that the member nations grant nationals of other nations the same level of copyright protection provided to the members' own citizens. Although Berne has been the most important multilateral agreement governing international copyright policy, the United States has failed to join Berne, and has instead been concerned with domestic copyright laws.

As an alternative to Berne, the United States helped create the Universal Copyright Convention in 1954. The UCC was designed to protect the copyright interest of American artists throughout the world. However, the treaty obligations under the UCC are general, and have not proven sufficient to protect our interests abroad. The United States does not occupy a strong position in international copyright matters. It is time to strengthen copyright protection for artists from the United States.

There are several reasons why adherence to the Berne Convention will benefit the United States. Initially, adherence would establish copyright relations between the United States and 24 countries with which the United States currently has no copyright relations. This will provide a consistent basis upon which to build a copyright relationship. By establishing relations with these countries, the United States will assure itself of the opportunity to participate effectively in the establishment and management of international copyright policy.

Second, adherence to the Berne Convention would eliminate the need for U.S. copyright holders to employ the so-called back-door procedure for gaining copyright protection in Berne Convention nations. Currently, under provisions of the Berne Convention, the works of authors of non-Berne nations can be protected in member countries if the works are published simultaneously in the Berne nations. Recognizing the need to protect themselves from foreign copyright infringement, many larger scale producers have utilized this back-door provision. However, this process can be difficult and expensive, and there has been confusion over the definition of "simultaneously" in some nations. Adherence to Berne would save American authors from the expense and uncertainty attached to this back-door procedure by allowing for immediate protection in member nations.

Adherence to the Convention would also strengthen U.S. trade policy. Representative Kastenmeier stated in his testimony before the subcommittee, and I quote:

> The relationship of Berne adherence to promotion of U.S. trade improvement is clear. Our popular culture and information products have become a precious export commodity of immense economic value. That value is badly eroded by international copyright piracy. Berne standards are both high, reasonable and widely accepted internationally. Lending our prestige and power to the international credibility of those standards will promote development of acceptable copyright regimes in bilateral and multilateral contexts.

In addition to strengthening our trade policy, the United States has sought to formulate an intellectual property code within the General Agreement on Tariffs and Trade. A consistent, reliable copyright policy is crucial for any property code that would include a section on copyrights.

Berne Convention adherence will also help assure that the works of artists in the United States are effectively protected against piracy in foreign nations. It is clear that the works of U.S. artists are being exploited around the world. The subcommittee heard compelling testimony from various sources, describing the piracy taking place in foreign markets. The Under Secretary for Economic Affairs, Allen Wallis, testified that a 1985 study showed that piracy from only 10 countries cost U.S. industry 1.3 billion in lost sales annually.

> We have consulted with several foreign governments whose copyright policies were causing serious economic harm to U.S. copyright interests and pointed out the principal elements of a good copyright law which would provide "adequate and effective" pro-

tection for copyrighted works. During this exercise it has become clear that the provisions of Berne are the best standard on which to base that protection.

The U.S. failure to join Berne has made it more difficult for U.S. authors to gain protection against foreign pirates. An example of this difficulty can be found in Thailand, where, according to the Judiciary Committee report, Thai officials have reportedly pointed out the inconsistency in the United States position of trying to persuade the Thai Government to combat piracy, while at the same time the United States refuses to join Berne and work for further cooperation in the copyright area.

Mr. President, it is clear that adoption of the Berne Convention will benefit the United States in the areas I have discussed. There has been concern regarding the effect of compliance on existing and future copyright law. Let me take a moment to address the legitimate concerns raised by the provisions of the Berne Convention.

First, it is important to note that the provisions of the Berne Convention are not self-executing. This means the provisions are not directly enforceable in U.S. courts; instead, the private rights exist only to the extent provided for by U.S. law. Therefore, Berne will not allow foreign authors to assert rights superior to those afforded U.S. authors under U.S. law.

Another area of concern has been article 5(2) of the Berne Convention which states that "the enjoyment and the exercise of [copyright] shall not be subject to any formality." For many years, this provision was believed to be an absolute bar to U.S. compliance with Berne, because domestic U.S. copyright law has traditionally required formalities such as the copyright registration. However, the 1976 copyright law helped bridge the gap between U.S. law and the provisions of Berne. Today, the majority of experts believe that current U.S. copyright law requiring mandatory copyright registration conflicts with this provision of Berne. S. 1301 resolves this conflict by creating a two-tier registration system under domestic copyright law. It does this by eliminating the mandatory registration requirement for foreign copyrights, replacing it with a voluntary registration system. After a careful study, the Judiciary Committee concluded that the modification of the registration requirement would not prove detrimental in enforcing copyright laws. The use of the voluntary system for foreign copyright holders does provide incentives for registration under domestic copyright law. These incentives would allow foreign copyright holders to prove the existence of their copyright, and discourage frivolous lawsuits. Thus, U.S. law regarding formalities can be brought within the boundaries specified by Berne without disrupting the existing structure of U.S. copyright law.

Perhaps the greatest area of concern surrounding Berne comes in the area of moral rights. Article 6bis of the Berne Convention requires the recognition that "the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation." There has been debate as to whether these moral rights already exist under U.S. laws, or whether new laws must be created ensuring these rights to artists before the U.S. law can become compatible with Berne. The subcommittee heard testimony from concerned artists such as Steven Spielberg asking for greater protection; it also heard from parties such as Donald Kummerfeld of the Magazine Publishers of America, who believed that adoption of the Berne Convention moral rights provisions would prove disastrous to the periodical and other industries. After careful consideration, the committee report concluded that protection adequate to conform to Berne is provided for under existing laws. These existing U.S. laws include various provisions of the Copyright Act and Lanham Act, various State statutes, and common law principles such as libel, defamation, misrepresentation, and unfair competition. All of these existing laws have been applied by courts to redress authors for injuries suffered as a result of the violation of their moral rights. Application of U.S. law in the area of moral rights has struck the proper balance between the rights of artists and industry.

Mr. President, the time has come for the United States to join the 20th century in the area of international copyright law. The Berne Convention offers the opportunity to allow for greater protection of U.S. copyright interests, while at the same time establishing a solid U.S. role in international copyright affairs. I hope that my colleagues will join me in support of this worthwhile measure.

Finally, I thank my distinguished colleague, Senator LEAHY. He has labored a long time on this effort. It has taken an immense amount of patience, persistence, and hard work to get this bill where it is today. His foresight and patience have really been the key to our success here today.

Also, I thank my distinguished colleague from Utah, Senator HATCH, who has been instrumental in the formulation of this legislation. As the ranking minority member of the subcommittee, Senator HATCH cooperated immensely in making this a successful bipartisan effort.

I also thank the Senator from Mississippi, Senator COCHRAN, who has a very unique interest which he is going to discuss later. I share his concern and assure him that if I am again chairman of this subcommittee, we will address in all earnestness the particular area of his interest. He was very cooperative in permitting us to bring up this bill.

I thank the many staff members of the Judiciary Committee who labored long and hard: Matt Gerson; Steve Metalitz; Randy Rader, who is no longer with us; Abby Kuzma; Ed Baxter, my chief counsel, who has put in a tremendous amount of time and effort here; and Joe Kreamer.

I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I commend the distinguished Senator from Arizona for his work as chairman of the subcommittee. If we had not had his cooperation, leadership, and effort, we could not be at this point.

Mr. President, I ask unanimous consent to have printed in the RECORD a joint explanatory statement on the Leahy-DeConcini-Hatch amendment to S. 1301.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

JOINT EXPLANATORY STATEMENT ON AMENDMENT TO S. 1301

The Leahy-DeConcini-Hatch amendment to S. 1301 makes one principal substantive change to the bill as reported by the Senate Judiciary Committee. It also makes minor clarifying, technical and corrective amendments. Full discussion of the portions of the bill not amended by this amendment may be found in Senate Report 100-352.

The principal change made by the amendment deals with existing section 411 of the Copyright Act, 17 USC 411. This provision establishes the general rule that a claim of copyright in a work must be registered with the Copyright Office before any lawsuit claiming infringement of the work may be initiated. Section 411(a) contains an exception in the case of a work as to which the Copyright Office has refused to issue a certificate of registration, but the fact remains that a review by the Copyright Office of the validity of a copyright claim is a necessary precondition for enforcement of copyright protection under current law.

The Senate Judiciary Committee concluded that existing section 411 is incompatible with Article 5(2) of the Berne Convention, which states a principle that has been central to Berne almost since its inception: that "the enjoyment and the exercise of [copyright] shall not be subject to any formality." The Committee agreed with the view espoused by most experts who studied the question: the registration prerequisite established by section 411 is a formality prohibited by Berne. Accordingly, S. 1301, both as introduced and as reported by the Committee, eliminated the requirement of registration as a prerequisite to an infringement action. The Committee was convinced that the other, Berne-compatible, incentives for timely registration—including the prima facie evidentiary effect of registration, and the availability of statutory damages and attorneys' fees only in the case of successful infringement actions with respect to registered works—as strengthened by a doubling of statutory damages, were fully adequate to assure that the vase majority of works, whatever their provenance, would continue to be registered.

However, as the Committee noted in its report, the question before it was "whether the registration provisions of existing U.S. copyright law, *as applied to foreign works originating in states adhering to Berne*, constitute a prohibited formality. . . ." S. Rept. 100-352, at 13 (emphasis added). Berne does not restrict member nations from imposing formalities on works of domestic origin.

In other words, the elimination of section 411(a), as S. 1301 provides, is not, strictly speaking, the most minimal change that may be made in the Copyright Act in order to comply with Berne. All Berne requires is the elimination from U.S. law of formalities applicable to works originating in Berne countries other than the United States.

Following the Senate Judiciary Committee's approval of S. 1301, discussions continued among Senate and House staff, with expert assistance from the Copyright Office and copyright practitioners from the private sector. The goal was to craft a compromise on the issue of copyright registration, between the Senate's proposed elimination of the registration prerequisite contained in section 411, and the conclusion embodied in the House bill (H.R. 4262) that Berne required no change in that section.

The fruit of those discussions is embodied in the amendment to S. 1301 now before the Senate. It establishes a so-called "two-tier" system with respect to the requirements of section 411. Works whose country of origin is a foreign nation adhering to the Berne Convention are exempt from the registration prerequisite; infringement suits may be brought with respect to such works even if they have never been submitted for registration with the Copyright Office. All other works remain subject to existing section 411(a).

The amendment accomplishes four goals important to the effort to bring the United States into the Berne Convention.

First, it is fully consistent with the position embodied in S. 1301 as reported, which concludes that the registration prerequisite is a formality imposed on "the enjoyment and the exercise" of copyright, within the meaning of Article 5(2) of Berne. It thus avoids creating the undesirable precedent that would buttress other current or potential Berne adherents in arguing that they may impose truly onerous registration requirements on foreign works, including works of U.S. origin, without offending Berne standards.

Second, it establishes a workable test for determining which works may be the subject of infringement actions without prior registration with the Copyright Office. The amendment includes a provision clearly defining the circumstances under which the country of origin of a Berne Convention work is and is not the United States. This definitional provision tracks the definition of "country of origin" found in Article 5(4) of Berne.

This test is, of course, not as easy for the courts to apply as the corresponding provision of S. 1301 as reported. Under the committee-reported bill, the presence or absence of a registration certificate would be irrelevant to a plaintiff's right to sue for infringement, although of course the absence of a certificate would still have highly significant consequences for the plaintiff's ease of proof and for the relief the plaintiff could obtain. However, the amendment seeks to create the simplest possible two-tier system, in order to minimize the potential for disputes over whether or not registration is a prerequisite to a given lawsuit. Furthermore, since those cases in which registration is not a prerequisite to an infringement lawsuit are defined as an exception to the rule contained in section 411(a), it is the plaintiff's responsibility to plead and prove that his or her case comes within the exception for works originating in a foreign country adhering to Berne. It would remain the case, as contemplated by the Senate report, that copyright claimants would have strong business and legal incentives to register their claims to copyright protection in virtually every instance. However, the courthouse door would no longer be barred to any claimant who can demonstrate that the unregistered work he seeks to protect is one as to which registration is not required as a precondition of suit.

Third, this amendment further minimizes the policy objection asserted to the Committee-reported bill: that modification of the registration prerequisite will degrade the quality of the registration system and hamper the acquisition activities of the Library of Congress. While the Committee considered these concerns and rejected them as exceedingly unlikely to become reality (see S. Rept. 100-352 at 19-23), they appear even more unfounded under the amended version of the bill. The Copyright Office estimates that 95 percent of all registrations are made with respect to domestic works, a category which largely overlaps with the tier of works of United States origin as defined by this amendment. For these works, the incentives for registration are substantially increased, not decreased, by this bill, which maintains the registration prerequisite for infringement suits with respect to works of United States origin, and also doubles the statutory damages available to redress infringement. As the Committee report notes, "there is no basis for assuming that foreign publishers will be less eager to protect their works against infringement in this country than are domestic publishers." S. Rept. 100-352, at 23. Thus, while the Copyright Office advised the Congressional Budget Office that it anticipated a 5 to 10 percent decrease in the number of works registered if section 411(a) were repealed for all works, id. at 50, that estimate, even if valid, must be decreased by roughly 95 percent in light of the provisions of this amendment, which leave roughly that percentage of registrations unaffected. This calculation yields an estimated decrease in registrations of between one-quarter and one-half of one percent per annum. A registration dropoff of this small order of magnitude is unlikely to have any discernible effect either on the quality of the registry of works compiled by the Copyright Office, or on the ability of the Library of Congress to acquire works through registration deposit.

Finally, the two-tier system for registration embodied in this amendment achieves the goal of a reasonable compromise between the House and Senate positions on this question. It is anticipated that this compromise is fully acceptable to the House, and that the last remaining significant point of controversy between the bodies is thereby eliminated. In the view of the sponsors of this amendment, this consideration fully overcomes the reservations about a two-tier system which were pointed out by some of the witnesses before the Committee, and which led the Committee to reject a two-tier solution in favor of a simple elimination of section 411(a) as it currently exists.

The creation of a two-tier system with respect to the registration prerequisite of section 411(a) is not, and should not be regarded as, a precedent for establishing two-tiered approaches to any other area of copyright law in which the United States theoretically remains free, even after adherence to Berne, to treat copyright works differently based on their country of origin. In these other areas, a two-tiered approach might well be more complex to administer, and is completely unnecessary to avoid the establishment of potentially undesirable precedents with respect to interpretation of the Berne Convention.

With regard to the specifics of the amendment on registration, the two-tier system is established by making three amendments to the committee-reported bill. First, the repeal of existing section 411(a) is eliminated, in favor of an introductory phrase to the existing provision which makes it inapplicable to "actions for infringement of copyright in Berne Convention works whose country of origin is not the United States." Secondly, in section 411(b), dealing with works such as live broadcasts that are first fixed simultaneously with transmission, the amendment inserts after the reference to post-broadcast registration of the work the phrase 'if required by subsection (a).'' Finally, the amendment inserts in the definitional section of the Copyright Act, 17 USC 101, a definition of "country of origin" of a Berne Convention work.

The definition of country of origin, while a new feature of U.S. copyright law, is a familiar principle to students of Berne. The definition contained in the amendment tracks the definition of this phrase contained in Article 5(4) of Berne. For the guidance of practitioners, and of the courts, the following observations may be in order.

First, the bill's definition of "country of origin" is significant only with respect to section 411, and in particular only with respect to the question of whether an infringement lawsuit may be brought with respect to a work which has not been submitted to the Copyright Office for issuance of a certificate of registration. The application of the definition of country of origin of a work is irrelevant under U.S. law for any other purpose. For example, eligibility for protection under 17 USC 104 of a work authored for first published outside the United States is to be determined under the provisions of that section, not under the provisions for determining country of origin of a Berne Convention work. Similarly, in the case of lawsuits with respects to registered works, their country of origin is irrelevant to whether the successful plaintiff may recover statutory damages and attorneys' fees (see 17 USC 412, 504(c), 505).

Second, the country of origin of a work is significant only for a work which is a Berne Convention work, as defined by the bill. Thus, for example, a work authored by a national of the Soviet Union and first published only in that country does not fulfill the definition of a Berne Convention work, because the Soviet Union does not adhere to the Berne Convention. The work is subject to protection under U.S. law (see 17 USC 104(b)(2)), because the Soviet Union is a member of the Universal Copyright Convention. But registration remains a prerequisite to initiation of an infringement action with respect to such a work, as specified in section 411(a), because the exception created by this bill, as amended, applies only to Berne Convention works. Since the country of origin of a published work is relevant only if the work is a Berne Convention work, the test of simulataneous first publication set forth in the definition of a Berne Convention work is equally applicable to the determination of the country of origin of a work (i.e., first published in one country and published in another country or countries within thirty days of such first publication.)

Third, in the case of a Berne Convention work, it is not necessary in all cases to determine the precise country of origin of the work in order to know whether or not the registration prerequisite to suit applies. It is only necessary to determine whether the country of origin is or is not the United States. Thus, for example, a work authored by a French national, simultaneously first published in the United Kingdom and Canada, is not subject to the registration prerequisite, regardless of whether, under the provisions of Berne itself, its country of origin might be determined to be France, the United Kingdom, or Canada. It is sufficient that it fulfills the definition of a Berne Convention work, and that it cannot possibly be a work whose country of origin is the United States.

Fourth, for a published Berne Convention work, the situs of first publication determines whether or not its country of origin is the United States, with one exception. A work first published in a foreign nation not adhering to the Berne Convention—e.g., the Peoples Republic of China—may nevertheless be a Berne Convention work, under provisions of the committee-reported bill that are substantively unchanged by this amendment, if one or more of its authors is a national of a nation adhering to the Berne Convention on the date of first publication. Such a work is a work of United States origin if all of its authors are nationals of the United States. In such a case, the registration prerequisite must be satisfied. However, if one or more of the authors is not a U.S. national, the Berne Convention work first published in China is not a work of United States origin, and the exception to section 411(a) applies.

For all other published Berne Convention works, the situs of first publication determines whether or not the United States is the country of origin. Obviously, works first published in the United States are works of United States origin. So are works simulataneously first published in the United States and in a non-Berne country. Conversely, works first published solely in a foreign Berne member nation are not works of United States origin. The country of origin of works simultaneously first published in the United States and in another Berne member nation is determined by reference to the term of protection granted by the laws of the two nations to the class of work in question. If the term of protection granted by U.S. law is shorter or the same as the term granted by the other nation in question, the work's country of origin is the United States. Otherwise, the work's country of origin is not the United States. In all the instances described in this paragraph, the nationality of the author or authors is irrelevant to the determination of the country or origin.

Fifth, with respect to unpublished works, 17 USC 104(a) provides protection under U.S. law without regard to the nationality of the author, so long as the work remains unpublished. If none of the authors is a national of a Berne member nation (including the United States), the work, while unpublished, is not a Berne Convention work, and therefore the country of origin need not be determined; the registration prerequisite for initiating an infringement suit applies in any event. If one or more of the authors of the unpublished work is a national of a Berne member nation, the work is a Berne Convention work, and the registration prerequisite does not apply unless all the authors are United States nationals, in which case the work's country of origin is the United States and the work must be registered before suit, as specified in section 411(a). The definitional provision also incorporates the headquarters test for determining the nationality of a legal entity which is the author of a published or unpublished audiovisual work.

Sixth, if the work is a pictorial, graphic or sculptural work incorporated in a building or structure, the work is a Berne Convention work (under the definition of that term in the committee-reported bill) if the building or structure is located in a Berne member nation. If the situs of the building or structure is the United States, the work is of United States origin and must satisfy the registration prerequisite for suit.

Seventh, for every Convention work, the country of origin either is or is not the United States. Unless a work is shown to be a work whose country of origin is not the United States, and therefore exempted from the requirements of section 411(a), then the work's country of origin is the United States, and section 411(a) must be satisfied. As the factors establishing the non-United States origin of the work (whether situs of publications or nationally of the author of authors) are likely to be peculiarly within the knowledge of the copyright claimant, and since the exemption for works of non-United States origin is an exception to the general rule imposing a registration prerequisite, it is the obligation of the claimant in a work in a work not submitted for registration to demonstrate the applicability of the exception.

Finally, the amendment leaves unaffected the current provisions of section 411(a) with respect to works as to which the Copyright Office has refused to issue a certificate of registration. Like the committee-reported bill, it also leaves unaffected the provisions granting *prime facie* evidentiary weight to a timely registration certificate, and conditioning statutory damages and attorneys' fees upon timely registration.

Most of the other changes to the Senate-reported bill made by this amendment are technical, drafting or clarifying in nature. They include the following:

1. The amendment includes a technical provision specifying that amendments to or repeals of sections refer to sections of Title 17 of the United States Code.

2. The amendment corrects a typographical error in the declarations section with respect to the date of signature of the Berne Convention.

3. The amendment clarifies that the provisions of Berne may be given effect under, *inter alia*, the provisions of the common law.

4. The provision specifying that certain rights (those specified in Article 6bis of Berne) claimed under U.S. law shall be neither expanded nor reduced by virtue of adherence to Berne has been redrafted to conform to the language adopted by the House, without substantive change. See S. Rept. 100-352 at 9-10, 38-39.

5. In the definition of a Berne Convention work, the amendment replaces the word "State" with "nation." The existing text of the Copyright Act uses the term "State" (see, e.g., 17 USC 301) in the sense of one of the fifty States, and the term is explained in 17 USC 101 in the same context. The definition of a Berne Convention work in the committee-reported bill uses "State" in the sense of "nation." This amendment should prevent any unintended confusion between the two terms.

6. In the same definitional provision, the amendment replaces the term "simultaneously published" with "simultaneously first published," in order to clarify that the situs of first publication, not of some publication occurring more than thirty days after first publication, is determinative in some circumstances of whether a published work is a Berne Convention work. See S. Rept. 100-352, at 40. Once thirty days have elapsed since the first publication of a work, simultaneous publication in two or more countries other than the country of first publication is irrelevant to the work's status as a Berne Convention work.

7. In the same definitional provision, the paragraph concerning pictorial, graphic or sculptural works incorporated in a building or other structure has been redrafted to clarify that the provision has no application to any other pictorial, graphic, or sculptural work. See S. Rept. 100-352 at 40.

8. A drafting change has been included in the amendment to section 104 to refer to "adherence of the United States" to Berne, rather than "United States adherence" thereto, to conform the language of this section to that adopted by the House.

9. The amendment to section 108 of the Copyright Act has been eliminated. The House bill did not change section 108, which deals with the circumstances under which a library or archives may reproduce and distribute a single copy of a work without incurring liability for infringement. The report accompanying S. 1301 indicated that retention of the provision in question, section 108(a)(3), which concerns the inclusion of a copyright notice on works and parts of works reproduced and distributed under the authority of this section, might be confusing in light of the elimination of the notice requirement elsewhere in the Copyright Act. The sponsors of the amendment are persuaded that elimination of the provision might be more confusing and potentially disruptive of current practices than its retention, and that elimination of the provision is not clearly required in order to meet Berne standards. Accordingly, section 108(a)(3) has been retained.

10. The provisions of the House and Senate bills on jukebox performances of nondramatic musical works are virtually identical in substance. See S. Rept. 100-352, at 41-42. However, as a matter of drafting, the committee-reported Senate bill repealed the current provisions on this topic, contained in 17 USC 116, and substituted new provisions which contemplate the negotiation of voluntary licensing agreements with respect to such works. The existing system of compulsory licensing at rates set by the Copyright Royalty Tribunal would have remained in effect during the one-year transitional period during which licensing negotiations will take place, and thereafter in case of the lapse or expiration of such licensing arrangements. However, under these cir-

cumstances, jukebox performances would be governed by provisions that no longer appeared in the U.S. Code. The House drafting approach retained existing section 116, but made it subject to a new section 116A, which incorporate the mechanism for the recognition of voluntary licensing agreements. From a practical standpoint, this drafting approach, which leaves section 116 "on the books" for ready reference in circumstances in which it may govern, seems preferable, and the amendment contains the necessary technical and conforming amendments to accomplish this. The amendment also makes other drafting and clarifying changes, as follows:

(a) The provisions of section 116A (a)(2) (in the committee-reported bill, section 116 (a)(2)) have been redrafted to conform more closely to the House language, without substantive change. The provisions of section 116(a)(c)(1) have been redrafted to track the House language. The sponsors of the amendment agree with the statements in the House Report on the generally procompetitive effects of collectively negotiated licensing agreements, *see* House Report 100-609, at 25-26; therefore a specific statutory antitrust exemption is unneeded.

(b) A drafting change in section 116A(g) clarifies that the back-up compulsory license applies to those works which were the subject of expired or terminated voluntary licensing agreements prior to such expiration or termination.

(c) The definitional provisions of section 116(h) of the committee-reported bill have been eliminated as surplusage. These terms are defined in section 116(e) of existing law, which is retained under the drafting approach embodied in the amendment.

11. The amendment to the pre-emption provision of the Copyright Act, 17 USC 301, has been redrafted without substantive change to conform more closely to the House language. See S. Rept. 100-352, at 43.

12. The amendment contains minor drafting changes to section 7, which eliminates the mandatory notice requirement and replaces it with an incentive for voluntary notice. See S. Rept. 100-352, at 43-44. The principal clarifying change concerns the new sections 401(d) (for works other than phonorecords) and 402(d) (for phonorecords). The quotation marks around the term "innocent infringement" have been eliminated, and a specific reference to section 504(c)(2) has been incorporated from the House bill, to clarify that the presence of voluntary notice affects only the ability of a defendant to seek to mitigate damages under the second sentence of 17 USC 504(c)(2) (dealing with an infringer who was not aware and had no reason to believe that he was infringing), and not the ability of a library, archives, or public broadcasting defendant to seek remission of damages (as provided by the last sentence of 17 USC 504(c)(2)) under a reasonable belief that the fair use provisions of 17 USC 107 applied.

13. The amendment embodies a compromise between the House and Senate Committee provisions amending chapter 8 of Title 17 to accommodate the voluntary licensing regime for jukebox performances. The amendment retains the provision of the committee-reported bill that specifies factors to which the Copyright Royalty Tribunal (CRT) should give "appropriate weight," rather than seeking to bind the CRT more closely to these factors (see S. Rept. 100-352, at 47-48). However, the first such factor has been expanded to include not only the most recent CRT determinations, but all prior CRT determinations, since an earlier determination with respect to a similar grouping of works may be more relevant than the "most recent" determination if the latter concerns a grouping of works dissimilar to the works at issue when the CRT is called upon to set new rates. Furthermore, while the directive to the CRT to promptly establish an interim rate when the back-up compulsory licensing procedures are triggered has been retained, the authorization to make the finally determined rate retroactive to the date of expiration of voluntary licensing agreements has been eliminated, since it is unlikely to be of great practical utility. The sponsors anticipate that the interim compulsory license rate will, absent unusual circumstances, correspond to the rate established by the expired or terminated negotiated license agreement.

14. In the effective date provision of section 13, the amendment makes a drafting change to specify that the Act will take effect on the "date on which" the Berne Convention enters into force with respect to the United States, rather than the "same day" as Berne enters into force. This amendment clarifies that the changes to U.S. law made by this Act take effect simultaneously with the official action that requires the United States to meet its obligations under Berne. In order to further insure the simultaneity of these two events, the sponsors of the amendment expect that the Federal Register notice to be issued by the State Department will specify not only the date, but also the precise hour, of the entry into force of Berne and the coming into effect of the amendments made by this Act. This procedure would avoid any gap between the time U.S. law is changed and the time Berne enters into force for the U.S. As noted in the Committee report, if such a gap occurred, it could create uncertainty and inequity, and even give rise to a claim that U.S. courts are obligated to enforce rights claimed directly under Berne in the absence of implementing legislation (see S. Rept. 100-352, at 28).

One of the recurring issues of this legislation is the question of self-execution: that is, whether adherence to Berne would automatically cause some changes in our copyright law. Virtually every expert with whom the Judiciary Committee has consulted believed that the Berne Convention is not self-executing. That means that adherence itself does not change U.S. copyright law in any way. The State Department, Patent and Trademark Office, Copyright Office, and copyright experts who testified before the Senate have assured us that the Berne legislation is in no way self-executing. See. S. Rept. 100-352, at 38.

Of course, that means that no future revisions to the Berne Convention will be self-executing either. This bill defines the "Berne Convention" to include future revisions of the treaty because, as a Berne member, the U.S. may be obligated to protect works originating in countries adhering to any new revision of Berne, just as we will be obligated to protect the works orginating in countries that may join the current text of Berne after we do. But any revision of Berne will have no effect on our substantive copyright law. Our copyright law is controlled by what is written in the United States Code, as interpreted by the courts. The only way to change our copyright law is by an Act of Congress, passed by both Houses and signed by the President. Nothing in this bill changes this principle.

Mr. LEAHY. Mr. President, Senator HATCH, who is the ranking member of the committee and Senator COCHRAN, are here. Just so Senators know what I would like to do, after those gentlemen speak on the bill, we will have a voice vote on the amendment, which I believe is going to be possible. I would then call for third reading on S. 1301 with a request for the yeas and nays.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. He has yielded the floor.

The Senator from Utah controls 10 minutes.

The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I want to compliment the distinguished Senator from Vermont, as well as the distinguished Senator from Arizona, for the work they have done on this very, very important bill.

The position of the United States in worldwide trade and intellectual property negotiations has continually been undercut by our failure to participate in the Berne Convention for the Protection of Literary and Artistic Works. The benefits to American artists and copyright holders, rather than our posture in international negotiations, is the primary reason for joining the convention. The Berne Convention extends copyright protections beyond our borders to the worldwide coverage provided by the 76 current signatories to the multilateral treaty.

In testimony before the House of Representatives on adherence to the Berne Convention, the late Secretary of Commerce, Malcolm Baldrige, noted that copyright industries earned a trade surplus of $1.2 billion in 1982. This means that the United States, more than most signatories to the convention, has an important stake in international copyright protections. The United States produces and exports a remarkable amount of property protected by copyright. Accordingly, Secretary Verity appeared before the Senate Judiciary Committee to highlight the need for membership in the Berne Union. He noted that in 1984 copyright industries lost as much as $1.3 billion to piracy in only 10 selected countries. Once again, this underscores the stake of the United States in the protections for intellectual property provided by the convention.

As ranking member of the Senate's Patents, Copyrights, and Trademarks Subcommittee, it has been my pleasure to meld the efforts of the Reagan administration with the expertise of the Judiciary Committee in order to implement the Berne Convention. At the outset of this process, I introduced on behalf of the Reagan administration, S. 1971, which embodied the administration's plan to put the Berne Convention into effect. After hearings and extensive negotiations, many aspects of S. 1971 were incorporated in the bill currently before the Senate, S. 1301. Due to the spirit of cooperation and mutual dedication to the benefits of ratifying Berne, S. 1301 in its current form won unanimous approval in the Senate Judiciary Committee and deserves the same treatment by the entire body of the Senate.

HISTORY OF BERNE CONVENTION

The United States adopted its first copyright protection law pursuant to article I, section 8, of the Constitution in 1790, but that law did not provide protection for foreign works. Accordingly, when many nations gathered in 1886 to consider a multilateral treaty on copyright protections, the United States did not participate. United States copyright protections were extended to foreign works a few years later in 1891, but instead of joining the Berne Treaty, the United States decided to seek bilateral agreements with other countries. The primary benefit of Berne was that it allowed a foreigner to enter the courts of another signatory state and allege piracy of his artistic work with a guarantee that remedies would be available.

After World War I, the foreign market for U.S. goods grew rapidly. This prompted some U.S. businesses to suggest the benefits of ratifying Berne to give U.S. copyright holders more remedies against foreign piracy. Unfortunately this did not happen because the revisions necessary in U.S. law fell behind other priorities.

In 1928, this effort was doomed by the Rome revision of Berne, which added moral rights as a new obligation. Publishers and movie producers quickly voiced apprehensions that moral rights could disrupt existing copyright relationships. Moreover, U.S. law now included the manufacturing clause—raising tariff barriers to works published outside the United States—which was incompatible with Berne.

To compensate for failure to join Berne, the United States worked to create a new international copyright protection mechanism under the auspices of UNESCO. The result was the UCC—Universal Copyright Convention—which was ratified by the United States in 1954.

RECENT CHANGES CALLING FOR RATIFICATION OF BERNE

In recent years, several developments have dictated the wisdom of reconsidering membership in Berne. The obstacles to joining the Berne Union have nearly disappeared and the incentives for international protection of copyrights have grown. I will list only a few of these recent changes encouraging the United States to join Berne:

First, the United States withdrew from UNESCO, thus our input into the funding decisions and administration of the UCC was terminated.

Second, during trade and intellectual property negotiations, the United States has heard repeatedly that our failure to join Berne is an indication that the United States is not fully committed to protection of copyrights internationally—even though our protections are in many ways more comprehensive. As this issue complicated GATT talks, pressure grew for ratification.

Third, piracy of U.S. copyrighted properties abroad has mushroomed. Billions of dollars are lost each year due to foreign piracy of U.S. films, books, and more. Without the Berne Convention, enforcement of U.S. rights abroad is difficult.

Fourth, U.S. law is now more compatible with Berne. The manufacturing clause has expired and other provisions of U.S. law can be, and are in this bill, easily restructured to comply with the Berne Convention.

Fifth, international legal scholars, as well as the U.S. State and Commerce Departments, now agree that existing U.S. law is sufficient to satisfy the moral rights requirements of Berne. Thus, the few changes in U.S. law necessary to comply with Berne are found in S. 1301. In exchange for these few changes, which in many ways improve administration of U.S. law, the United States gains the many benefits of Berne membership.

MORAL RIGHTS

Mr. President, as I have stated earlier, one of the reasons that the Berne Convention has not been ratified earlier is the confusion over any incorporation of the "moral rights" concept into American common law. This was expected to be an obstacle to approval of S. 1301 in this Congress as well, but the remarkable cooperation that accompanied this bill overcame all concerns and forged language that prevented the problem from arising.

The term "moral rights" embraces two concepts: the right of paternity—the right to be acknowledged as the author of a particular work—and the right of integrity—the author's right to object to modification of artistic works. The rights have their origin in French law. If enforced in the United States, these moral rights would drastically alter current copyright relationships. The right of paternity could alter the work for hire doctrine whereby an author is paid to produce a work whose copyright is held by the author's employer, not the author. The right of integrity would make a magazine's or a movie producer's efforts to edit a written article or a film very difficult. At a minimum, moral rights would cause mountains of litigation if applied to the United States.

This difficulty was avoided by recognition that most international scholars now agree that current Federal and State laws provide adequate protections for an author's rights to constitute compliance with Berne. Accordingly, S. 1301's promise to neither "expand or reduce" existing copyright protections was sufficient to comply with Berne's moral rights provisions.

Mr. President, at the outset of this legislative process, I was concerned that U.S. adherence to Berne could have a deleterious effect on the development of copyright law here at home. When I introduced S. 1971 back in December, I expressed the view that we should render concerns about moral rights through Berne adherence "fully unfounded," that we should enact a high wall to prevent disruptive moral rights concepts from creeping into U.S. law. For that reasons, I submitted at the subcommittee's hearing in March a discussion proposal to ensure no change in the treatment of moral rights because of Berne. I intended at the time that the amendment would stimulate "a constructive discussion of this important subject." The discussions that ensued produced a series of compromises acceptable to all the concerned Senators.

This compromise simply built on the premise accepted by those supporting Berne from the beginning; namely, that U.S. implementing legislation should be neutral on the issue of moral rights. This was accomplished by recognizing and reinforcing the current delicate balance of rights between U.S. authors and copyright owners. In this context, while existing U.S. law satisfies U.S. obligations under article 6bis of Berne, our judicial system has consistently rejected causes of action denominated as "moral rights" or arising under the moral rights doctrine. The following case excerpts illustrate this point:

> The conception of "moral rights" * * * has not yet received acceptance in the law of the United States * * * what plaintiff in reality seeks is a change in the law of this country to conform to that of certain other countries * * * we are not desposed to make any new law in this respect. (*Vargas* v. *Esquire, Inc.*, 164 F.2d 522, 526 (7th Cir. 1947))
>
> In the present state of our law the very existence of the right is not clear. (*Shostakovic* v. *Twentieth Century-Fox Film Corp.*, 196 Misc. 67, 70–71, 80 N.Y.S. 2d 575, 578–79 (N.Y. Sup. Ct. 1948))
>
> The doctrine of moral right is not part of the law in the United States, except insofar as parts of that doctrine exist in our law as specific rights—such as copyright, libel, privacy and unfair competition. (*Geisel* v. *Poynter Products, Inc.*, 295 F. Supp. 331, 340 n.5 (S.D.N.Y. 1968))
>
> Declining to accept plaintiff's claim of moral rights violation, but granting relief on other grounds. (*Granz* v. *Harris*, 198 F.2d 585, 590–91 (2d Cir. 1952))

Under S. 1301, none of these cases would be decided differently post-

Berne, except if based upon factors not related to United States adherence to Berne.

Thus, to maintain this status quo on moral rights, the compromise made several modest adjustments to the bill. They included language to assure that Berne has no impact on: specifically the rights of paternity or integrity, section 3(b), more generally on rights claimed for works protected under title 17, section 4(c), or the scope of Federal preemption of copyrights law, section 6. With these changes in addition to the strongly expressed instruction that Berne is not self-executing, section 2, it is my belief that Berne under our bill will be moral rights neutral.

The Coalition to Preserve the American Copyright Tradition and the Magazine Publishers Association, which originally opposed Berne due to a concern over moral rights, helped craft the compromise and now feel comfortable enough about United States adherence to Berne to no longer oppose S. 1301. Their decision to participate in the process of compromise was constructive and beneficial.

In the future, there will no doubt be substantial efforts to expand moral rights in the United States. You can already see that beginning to happen with hearings that will be held in the other body later this month on colorization and moral rights for fine artists. While I continue to entertain some significant reservations about the concept of moral rights, the discussion will be wholly on the merits of this difficult policy question. Moral rights will not come in, if you will, the back door by virtue of our adherence to Berne. I look forward to the debate whenever it should come and expect to play a very active role, indeed.

SELF EXECUTION AND EFFECTIVE DATE

This an issue that arises with nearly every treaty. By the terms S. 1301, the Berne Convention is explicitly not self-executing. This means that its terms can only become U.S. law through enactment of implementing legislation. Thus, for instance, the French concept of moral rights could only become law if enacted by Congress.

S. 1301 ensures that the treaty will not be self-executing in two ways: first, by stating clearly that the treaty is not self executing in section 2(1) of the bill; second, by making the implementing legislation go into effect at the same time that the treaty goes into effect thus ensuring that the treaty does not take precedence by virture of timing. Thus, all rights under the Berne Convention are derived and governed exclusively by domestic law found in S. 1301 and preexisting State and Federal law.

JUKEBOXES

One aspect of United States law which requires some change in order to comply with the requirements of Berne are in provisions governing relations between jukebox operators and music copyright holders. This relationship has been governed in title 17 by a compulsory license. The Berne Convention prohibits some forms of compulsory license, including the jukebox license provisions of current law.

Article 11(1) of the Berne Convention states that "[a]uthors of * * * musical works shall enjoy the exclusive right of authorising * * * the public performance of their work." This exclusive right extends to public performance "by any means or process." Accordingly, the public performance provision of the Berne Convention encompasses performance by means of recordings. Thus, on its face, article 11(1) does not accommodate the jukebox compulsory license in the United States Code.

Although article 11(1)'s public performance provisions condemn compulsory licenses, other provisions of the Convention, such as those in article 11bis governing broadcasting rights, expressly permit some compulsory licenses. Article 11bis permits those compulsory licenses which guarantee "authors of literary and artistic works" an "equitable remuneration * * * fixed by a competent authority" and which have no extraterritorial application and no prejudicial effects on moral rights. Article 11bis(2). Accordingly, the committee's conclusion that the jukebox licensing provisions must be changed to comply with Berne does not mean that other compulsory licenses need to be altered. The cable compulsory license at 17 U.S.C. 111, for instance, is governed by the provisions of article 11bis(2) of Berne. Similarly, the mechanical license in section 115 of the Copyright Act is governed by article 13(1) of Berne which permits some compulsory licenses to record specified musical works. The Berne Convention permits some compulsory licenses while condemning others. Bernie's provisions governing public performances establish the need for a change in U.S. compulsory licensing for jukeboxes.

Thus, S. 1301 replaces the compulsory license in current law with provisions adequately protecting the domestic jukebox industry, but also complying with Berne. S. 1301 allows copyright owners and the jukebox operators to negotiate voluntary licensing agreements. As long as the parties negotiate suitable agreements, through voluntary negotiations, the new licensing agreements are to be given effect. If the parties cannot agree, the Tribunal is again authorized to institute a compulsory arrangement.

FORMALITIES

The Berne Convention prohibits any signatory from creating formalities which might present an obstacle to copyright protections. In order to comply with this requirement, for instance, S. 1301 eliminates the requirement that copyrighted material be marked with a small "c" in a circle.

In the United States, copyright laws require registration as a prerequisite to an author's lawsuit to seek redress for infringement. Thus, under section 411(a) of the current law, judicial enforcement of a copyright may not be obtained prior to registration. To the extent that this registration requirement makes the exercise or the enjoyment of a copyright subject to a formality, section 411(a) is incompatible with 5(2) of Berne.

Based on its conclusion that mandatory registration did create an incompatibility, the Judiciary Committee repealed section 411(a). At the same time, the committee strengthened incentives for voluntary registration include:

Retention of the prima facie evidentiary value of the certificate of registration, which shifts the burden of proof to the benefit of the copyright holder in any potential infringement litigation;

Enhancement of the statutory damages for infringement of copyrighted works to ensure that technical violations are discouraged by mandated statutory damages; and

Retention of the shifting of attorney fees to the infringer in the event a copyright holder is obliged to defend successfully a registered copyright.

These incentives for wholly voluntary compliance with the registration procedures are likely to ensure that copyright holders continue to seek registration as a matter of course. Accordingly, the courts will be able to continue to rely on the registration system to streamline copyright litigation.

The committee also proposed to repeal secton 411(a) for another reason. Retaining mandatory registration could cause other nations to consider imposing onerous formalities on U.S. copyright owners who seeks to enforce their rights abroad. For instance, U.S. copyright owners could be required to endure lengthy waiting periods or to translate their works into foreign languages or to jump through other procedural hoops before enforcing their legitimate rights abroad. In order to preclude any retaliation or to prevent any foreign nation from using U.S. registration requirements as an excuse to impose more onerous formalities, the Judiciary Committee voted unanimously to repeal 411(a).

In the spirit of minimalism—meaning making the fewest possible changes in United States law to comply with Berne—the proponents of S. 1301, Senators DECONCINI, LEAHY, and I, are now asking the Senate to approve an amendment which does not fully repeal section 411(a) but still fully removes any taint of a formality. The groundwork for this compromise with the House was laid by the Ad Hoc Committee on Berne Compliance which testified in the 99th Congress that "section 411 is * * * not compatible with Berne to the extent that it requires registration of a work of which the United States is not the country of origin."

In other words, as long as foreign copyright holders are not required to comply with the registration requirement, the United States is free to impose stricter procedural requirements on its own nationals. Because foreign copyrights are not burdened with additional requirements, no country can claim any justification for imposing formalities on U.S. copyright holders who attempt to enforce their rights abroad.

Thus, S. 1301, as it will pass the Senate a little later today, will create a two-tiered registration system. The United States Code will continue to require U.S. authors to register as a prerequisite to enforcing a copyright. The United States Code will not, however, require foreign authors or copyright holders to register prior to instituting a suit to protect their rights in this country. This clearly satisfies the requirements of article 5(2) of Berne. I still have doubts about treating U.S. citizens more harshly than foreign authors, but as I have stated earlier, S. 1301 contains incentives ensuring that practically every U.S. author would choose to register anyway.

This formalities issue was the major difference with the House. With the compromise version of section 411(a) in place, this bill is expected to be acceptable to the House of Representatives and ready for the President's desk.

OTHER CHANGES

S. 1301 also contains several other changes in U.S. copyright law in order to comply with the convention. For example, the bill codifies the protection of architectural plans. Current U.S. copyright law protects architectural blueprints and similar plans, but it has not been expressly stated in American copyright law. S. 1301 will ensure continued protection for architectural plans, but copyright protection will not be extended to the architectural structure, itself. Duplication of a building will still be permissible if done by visual observance of the structure without the use of the copyrighted blueprints.

CONCLUSION

For years the United States has been missing important benefits from Berne membership. As a member of the convention, the United States will gain for its authors more international protections for the rights of U.S. copyright owners in foreign lands. Because the United States is the world's foremost exporter of copyrighted material, this Nation has the most to gain from adherence to the Berne Convention. In addition, Berne membership will position the United States to negotiate further international protections for intellectual property.

Accordingly, adoption of S. 1301 will be a momentous event for the protection of U.S. intellectual property. I am very pleased to be a part of this moment. I would particularly like to express my appreciation for the spirit of cooperation which has prevailed throughout Senate consideration of this bill. Although Chairman DECONCINI, Senator LEAHY, and I have had differences of procedure and substance with regard to this bill, those differences were always secondary to the course which would secure passage of a bill and further U.S. intellectual property interests. I have appreciated that spirit of cooperation, mutual trust, and dedication to common objectives. It is a credit as well to the entire Patents Subcommittee and the full Judiciary Committee of the Senate. As I have said earlier, I am proud to be a participant in this process.

Again, I wish to compliment both Senators LEAHY and DECONCINI for the work they have done on this bill. Senator DECONCINI has done a terrific job in chairing this particular subcommittee, and it has been a pleasure to serve with him as well as the distinguished Senator from Vermont.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 8 seconds remaining.

Mr. HATCH. I yield back my time.

The PRESIDING OFFICER. The Senator yields back the remainder of his time.

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, is it correct that under the order previously entered, the Senator from Mississippi has 10 minutes?

The PRESIDING OFFICER. The Chair will state to the Senator from Mississippi that under the order there were to be 20 minutes divided on technical amendments to be offered and after that was disposed of, there was additional time allocated to the Senator from Mississippi of 30 minutes, and 20 minutes equally divided between the Senator from Arizona and the Senator from Vermont.

Mr. LEAHY. Mr. President, if the Senator from Mississippi would yield a minute, I think I know how the unanimous-consent agreement is set in. Maybe we could work it out there if Senators had no objection, if we voice voted the substitute amendment. Then I think that opens the time for the Senator from Mississippi.

I was not on the floor when it was taken up.

Mr. COCHRAN. Mr. President, I do not want to cut the Senator off, but we entered an order and I happened to be the acting leader on our side of the aisle when the order was entered.

Unless it was modified after it was entered, it is my recollection that 10 minutes were to be given to the Senator from Utah, Mr. HATCH, 10 minutes to the distinguished Senator from Arizona, Mr. DECONCINI, 5 minutes to the distinguished Senator from Vermont, Mr. LEAHY, and 10 minutes to this Senator.

The PRESIDING OFFICER. The Chair will state that the order would have allowed for 30 minutes to the Senator from Mississippi, and 20 minutes to be equally divided by the Senator from Arizona and the Senator from Utah with an additional 5 minutes to the Senator from Vermont on the bill and we had a 20-minute time limitation in addition on the technical amendments which we have just now completed.

The Senator may use his time at the present, the Chair would observe, or he may wait until after we dispose of the technical amendments.

Mr. COCHRAN. I thank the Chair.

Mr. WILSON. Mr. President, will the Senator yield for a question?

Mr. COCHRAN. I am happy to yield to the distinguished Senator.

Mr. WILSON. I thank my friend from Mississippi.

My question is, since I would like to make a brief statement in support of the legislation, if the Senator does not contemplate using all 10 minutes, I would be happy to be recipient of some of his time, if not, it would be my intention to ask unanimous consent for about 4 or 5 minutes to make a brief statement.

Mr. COCHRAN. Mr. President, I do not intend to use 30 minutes. I wish to use about 10 minutes to discuss the legislation and an amendment which I am going to have printed in the RECORD. After I have used that time, I will be happy to yield the necessary time to the Senator from California.

I also understand the Senator from Pennsylvania would like to speak on the bill for a few minutes. I hope his interest in speaking can be accommodated and I would be happy to yield time to him.

The PRESIDING OFFICER. The Senator may yield time if he desires and use his time at the present time.

The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I rise today to voice my concern about the failure of this legislation to address a fundamental issue affecting creators' rights under the Copyright Act.

S. 1301 does not make any changes in the "work made for hire" doctrine of the Federal copyright law. Under that doctrine, the rights of authorship and of copyright ownership vest not in the creator, but rather in his employer or in the party that commissions him.

This doctrine is an exception to the basic copyright principle that the "author" and copyright owner of an original creation is the creator of that work.

The interpretation of the work for hire doctrine by the courts, and its operation in the marketplace where creative work is commissioned, have broadened its scope far beyond the original intent and purpose. The effect of that expansion has been to deprive artists and other creators of all the rights that the copyright laws were intended to provide them.

The Berne Convention itself does not mention the work for hire doctrine. But, the convention was intended to protect the authorship rights of creators. It requires member States to recognize the right to claim authorship and the right to object to certain acts that affect the integrity of the work or the reputation of the author.

While Berne seeks to protect the rights of "authors," it does not define that critical term. The absence of such a definition has provided the rationale for avoiding the work for hire issue on the ground that it is beyond the scope of Berne. Proponents of this approach also cite the divergence of Berne member nations in defining who should be considered an author. Some nations recognize only natural persons as authors, while others allow corporate entities to assume that status.

This argument misses the point. The question is not whether the Berne Convention explicitly requires changes in our work for hire doctrine; it obviously does not. Instead, the question ought to be whether the rights proclaimed by Berne are protected by U.S. copyright law. In a very real and practical way, our current copyright statutes force artists into relinquishing many of their rights as a condition of being hired.

I have no quarrel with the view that the passage of this bill will enable U.S. copyright owners to better protect their intellectual property. But I believe that view is deficient to the extent that it neglects the need to encourage creativity at home. Work for hire is putting many creators out of business and is forcing many others to live at a subsistence level hardly conducive to the development of their creative talents. If the impact of work for hire is not addressed, the attractiveness and demand for works created in the United States will decline as the size and diversity of domestic creative talent diminishes.

Most important, enactment of Berne legislation without addressing the concerns of creators ignores the constituency that our copyright laws were designed to protect. No one has ever argued that our copyright laws were intended to reward investors or those with the resources to buy talent. Their purpose is to stimulate creativity and to strike a balance between creators' interests in exploiting their works and the public interest in using and enjoying them.

In short, the right to claim authorship of one's own works under the Berne Convention is an academic one if the legal and practical effects of our own copyright laws undermine that right.

The insufficiency of current U.S. copyright law to protect artists in the area of work for hire is similar to the problem of moral rights, which was discussed during hearings on the Berne legislation both in the Senate and in the other body.

The concerns of creators over this issue are also based on the lack of protection for the integrity of an artist's work. Unlike the issue of work for hire, U.S. copyright law does not explicitly provide for moral rights. The committee has concluded that the entire body of U.S. law, including State law, case law, common law and Federal trademark statutes, provides sufficient moral rights protection and that explicit treatment is unnecessary in order to meet Berne's minimum standards.

Others disagree with this view and believe that U.S. law should provide explicitly for moral rights protection in order to comply with the standards set by the Berne Convention. In addition to work for hire, this is another issue of fundamental importance to artists that should be addressed if we are to make our laws consistent with an international treaty for the protection of artists' rights.

The unfair and burdensome operation of work for hire agreements, and the court's expansive interpretation of the concept of "employee," have severely diminished the benefits to creators under the copyright laws. If a creator prepares a work made for hire, he or she is no longer the author, for copyright purposes. Rather, the Copyright Act vests initial copyright in that work in the employer or the commissioning party, who receives all future income that may be derived from any use of the work in any medium.

Under the work for hire arrangement, creators have no further relationship to their own creative output: they have no right to display it, to reproduce it, to distribute it, or to create other works based on it. Artists cannot even use works for hire in their own portfolios without the permission of the party that commissions them, and they cannot insist that they be identified as the author of their works.

Under current law, the client can change the art and use it again without limitation, without benefiting the true author. In addition to losing all these rights, the creator receives none of the normal employee benefits such as unemployment insurance, health insurance, sick pay, pension benefits, or disability. Nor are they provided with a workplace or materials.

The livelihoods of freelance artists, photographers, and writers depend on their ability to claim "authorship" for the pieces they produce. They build their reputation, and therefore their ability to attract clients, on the basis of past performance. Their careers succeed or fail by their skill and style in translating through their own creative expression the ideas and messages society needs to disseminate.

The adverse effects of work for hire extend beyond creators to our society as a whole. In our system, the copyright laws are intended to foster dissemination of diverse ideas, and to facilitate conversion of those ideas into tangible form by providing incentives and rewards for creators. When those incentives and rewards are eroded as they are by work for hire, the public interest in the free flow of information is thereby diminished.

An example of a practical problem that arises from the vague and uncertain rights of artists is a case involving a photographer in Chicago. The photographer, Stan Malinowski, was commissioned to take photographs for a magazine, but no written agreement assigning copyright ownership in the photographs to the publisher was ever signed. Instead, a form work for hire agreement was stamped on the back of the checks issued to Malinowski after his work was completed, so that when he endorsed the checks he would also be agreeing to a work for hire arrangement.

To prevent Malinowski from crossing out this language, the back of the checks provided that any alteration of the work for hire legend would void the check. Malinowski struck out that legend anyway, and cashed the checks. He then sued the publisher for copyright infringement, whereupon he was charged with fraud and racketeering for altering the checks. While the judge has dismissed these charges, Malinowski faces prolonged litigation over whether he should be considered an "employee" of the magazine, and over other work for hire questions.

The current definition of work for hire invites this sort of litigation, and it is by no means certain that artists will ultimately prevail. In fact, many creative artists since the 1976 Copyright Act went into effect have been on the losing end of work for hire cases, even when they operate as independent contractors and decline to sign work for hire agreements.

Most work for hire abuses never see the light of day in the courtroom. In 1982, at the only hearing ever held on work for hire legislation since enactment of the 1976 act, Robin Brickman, a Rhode Island illustrator and member of the Graphic Artists Guild, testified about another example of the destructive effect of work for hire on creators' careers and income.

Ms. Brickman had signed a work for hire contract with Doubleday to provide 28 drawings for use in the interior of a book. For a modest fee, she produced a series of drawings which the publisher found acceptable. In fact, the publisher liked the work so much that one of the drawings was altered and used as the front jacket for the book.

The illustrator received no additional payment for the use of her illustration on the jacket. Nor was she able to complain about the fact that the drawing had been altered. Nor would she have been able to complain if the publisher had chosen not to give her credit as the illustrator who did the art.

Why does not the creator simply refuse to sign the work for hire contract? Assignments are offered on a take-it-or-leave-it basis. If the artist, writer, or photographer asks for a limited transfer of rights, the publisher selects a different creator to do the assignment.

It is important to recognize that most independent artists, photographers, or writers working in highly competitive fields simply cannot negotiate effectively with corporate art buyers. Confronted with such superior bargaining power, most artists have no choice but to accept work for hire contracts. By cutting creators off from potential reuse fees and control of their work, work for hire makes it unlikely that their bargaining positions will be strengthened as their careers progress.

No creator is safe from work for hire abuses. A member of the American Society of Magazine Photographers who has been a professional photographer for 30 years relates an unfortunately typical example. In many of his advertising jobs, he is presented with work for hire language after the negotiations are completed and the work is underway. While this particular photographer refuses to give up all authorship and copyright rights under a work for hire arrangement, he has lost much of his business as a result. Even this well-established artist finds it difficult to survive when the prevailing industry practice is to insist upon work for hire agreements, or refuse to use any artist who declines that invitation.

To rectify the worst of these problems, I have prepared an amendment, which I will not call up, but which I will request be printed in the Record along with an explanatory statement. I believe this amendment, which is far less comprehensive than my bill, S. 1223, would ensure improved safeguards for artists' rights. I will not offer the amendment at this time because of the assurances given to me by the Senator from Vermont [Mr. Leahy], the manager of the bill, and the distinguished chairman of the Copyrights Subcommittee [Mr. DeConcini].

Mr. President, I ask unanimous consent that a copy of my amendment and the explanatory statement be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Proposed Amendment to S. 1301

Sec. 4. Subject Matter and Scope of Copyrights.

Chapter 1 of title 17 of the United States Code is amended—

(1) in section 101—

(C) in subdivision (1) of the definition of "work made for hire" by adding at the end thereof the following: "only if the employee receives all employment benefits due under applicable State and Federal law, and the employer withholds taxes from the compensation paid to the employee and remits such taxes to the Internal Revenue Service."

(D) in subdivision (2) of the definition of "work made for hire"—

(1) by inserting between "atlas," and "if" the word "only"; and

(2) by inserting after "written instrument signed by them" the following: ", prior to commencement of any physical or intellectual effort related to the specially ordered or commissioned work,"

(E) in the definition of "joint work," by adding the following sentence:

"For a specially ordered or commissioned work to be a joint work coowned by the specially ordering or commissioning party, the work must meet the foregoing definition, and for each such work all coowners must expressly agree in a separate written instrument, signed by them prior to the commencement of any physical or intellectual effort related to the work, that it shall be considered a joint work."

Explanation of Proposed Amendment to S. 1301

The proposed amendment to S. 1301 would make four changes to section 101 of the Copyright Act that are designed to improve the ability of independent creators to protect their authorship and copyright rights in their own works.

1. *Definition of "Employee" Under Subdivision (1) of Work Made For Hire Definition:*

In enacting a definition of "work made for hire" in the 1976 Copyright Act, Congress determined that any work prepared by an "employee" in the scope of his or her "employment" would be considered a work made for hire even without a written instrument so providing. 17 U.S.C. § 101 (subdivision (1) of the definition of "work made for hire"). While the legislative history of the 1976 Act strongly suggests that Congress intended the concept of employment to extend only to salaried employees,* Congress did not expressly define the term "employee" in the definition of work made for hire.

The lack of an express definition in the language of the statute has led to years of disagreement in the courts of appeals over the meaning of this key statutory term, and indeed over the proper interpretation of the significance of the 1976 revisions to the work made for hire doctrine. *Compare Community for Creative Non-Violence* v. *Reid*, No. 87-7051 (D.C. Cir. May 20, 1988), *and Easter Seal Society for Crippled Children and Adults of Louisiana, Inc.* v. *Playboy Enterprises*, 815 F.2d 323 (5th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3666 (Mar. 29, 1988), *with Aldon Accessories Ltd* v. *Spiegel, Inc.*, 738 F.2d 548 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984), *Brunswick Beacon, Inc.* v. *Schock-Hopchas Publishing Co.*, 810 F.2d 410 (4th Cir. 1987), *and Evans Newton Inc.* v. *Chicago Sys. Software*, 793 F.2d 889 (7th Cir.), *cert. denied*, 107 S. Ct. 434 (1986). Under one view adopted by the District of Columbia and Fifth Circuits, the determination whether a creator is an "employee" is guided by the rules of agency law set forth in the Restatement (Second) of Agency § 220 (1958). *See Reid*, slip op. at 19; *Easter Seal*, 815 F.2d at 335-36 n. 20. Under this view, if consideration of the Restatement factors leads to the conclusion that the creator of a commissioned work is not an "employee," the work cannot be a work made for hire unless it meets the criteria established in subdivision (2) of the definition of that term. That subdivision provides that a commissioned work qualifies as a work made for hire only if there is a written agreement so providing, and the work falls within one of nine enumerated categories of works. *See* 17 U.S.C. § 101 (subdivision (2) of definition of "work made for hire").

Under the approach embraced by the Second, Fourth and Seventh Circuits, and "employee" for work for hire purposes is determined by reference to principles developed under the 1909 Copyright Act, which posited that the right to supervise and direct the creator's work, together with the degree to which that right was actually exercised, were the guiding criteria. *Aldon*, 738 F.2d at 552. Thus, *Aldon* held that even independent contractors working on commission could be classified as "employees" if the court found that the requisite degree of supervision and control was exercised by the commissioning party over the creator's work.

The amendment's proposed definition of "employee" is intended to resolve the conflict in the courts by establishing two objective and yet flexible employment criteria. First, no creator can be classified as an "employee" unless he receives "all employment benefits due under applicable State and Federal law." The amendment does not attempt to identify the employment benefits necessary to warrant a finding that a creator is an "employee" because State law varies with respect to the indicia of employment, and both State and Federal law on that issue will change over time. It is nevertheless anticipated that the categories of employment benefits for a true "employee" under amended clause (1) may include: (1) payment of a salary or other form of regular compensation; (2) payment of overhead expenses by the employer (*e.g.*, rent, utilities, support staff, office and material expenses); (3) availability of a regular workplace for the employee; (4) paid vacation and sick leave; (5) coverage under a health and disability insurance program if such a program has been established by the employer; (6) eligibility for pension benefits if the employer has established a pension plan for employees; (7) coverage under the federal social security system and the payment of obligations thereunder; (8) eligibility for unemployment insurance and payment of unemployment taxes by the employer; and (9) eligibility for workman's compensation benefits and payment of workman's compensation insurance premiums by the employer if required by law. The place of employment will determine which state law governs for purposes of ascertaining the applicable state employment benefits. If only some, but not all, of the applicable employment benefits are extended to the purported "employee," the works created by such person cannot be considered "made for hire" under amended clause (1) of the definition.

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* For example, the publishing industry acknowledged at the time an early version of the work for hire language was drafted that the concept of employment was intended to apply only to salaried employees: "Works for hire—in which copyright is by law owned by the employer—would be redefined to include only work done by a salaried employee in the scope of his regular duties. . . ." Statement of the American Book Publishers Council to the Register of Copyrights, November, 1963, W. Patry, *Latman's The Copyright Law* 120 n. 28 (6th ed. 1986).

Second, the employer must withhold taxes from the payments to the employee, and must remit those taxes to the IRS, in order for the creations of the purported employee to be considered works made for hire under clause (1). This requirement is intended to ensure that a creator is treated as an employee for copyright purposes only if the employer itself takes action through withholding which clearly shows that the employer considers the creator to be an employee. Although the statute refers to taxes without specifying their precise nature, only federal income taxes are subject to withholding and are then paid to the IRS. Thus, the reference to taxes in the bill is intended to refer only to federal income taxes.

It is important to note that both of the employment criteria added by the proposed amendment must be satisfied in order to classify a creator as an "employee" under subdivision (1) of the work made for hire definition. Accordingly, it is not enough for the purported employee to receive all applicable employment benefits; the alleged employer must also withhold federal income taxes and remit them to the IRS in order for a work to be classified as an employee work made for hire. Conversely, it is not enough for the purported employer to withhold taxes and remit them to the IRS; the "employee" must also receive all applicable employment benefits in order to satisfy clause (1).

2. *Changes to Subdivision (2) of Definition of Work Made for Hire:*

The proposed amendment would make two changes to subdivision (2) of the work made for hire definition, which covers certain categories of specially ordered or commissioned works. First, the amendment would provide that the nine enumerated categories of commissioned works could qualify as works made for hire "only if the parties expressly agree in a written instrument signed by them. . . ." (emphasis on added word). The purpose of this amendment is to make absolutely clear that the nine categories of commissioned works set out in subdivision (2) cannot be works made for hire unless there is a written agreement to that effect. The amendment is intended to prevent courts from concluding that the commissioned works listed in subdivision (2) can still qualify as "employee" works made for hire under subdivision (1) if the prerequisites of subdivision (2) are not satisfied. Thus, the proposed amendment provides that the subdivision (2) categories of works can be classified as works made for hire only if the writing requirement is met.

The second modification to subdivision (2) of the work made for hire definition builds upon the first. It would provide that in order for a commissioned work falling within one of the nine categories to be a work made for hire, the parties must not only agree in writing, they must do so "prior to commencement of any physical or intellectual effort related to the specially ordered or commissioned work. . . ." The purpose of this proposal is to prevent abusive practices of commissioning parties that undermine the protection that the writing requirement was intended to give creators. The objective of that requirement was to ensure that both parties, particularly the creator who most often finds himself in the weaker bargaining position, makes a reasoned and independent determination to enter into a work made for hire arrangement. Unfortunately, some commissioning parties have forced creators to sign work for hire agreements by proposing such an agreement after the work is well underway or is completed but before the creator has been paid. In these situations, the creator must sign the agreement in order to get paid, or else undertake expensive litigation. The most egregious of these practices consists of stamping form work for hire language on the back of a check which the creator must then endorse in order to get paid.

The proposed amendment would prevent this and any other after-the-fact use of work made for hire agreements. In order to be enforceable under the amendment, such an agreement must be negotiated and executed before any effort, physical or intellectual, is expended on the project. With the knowledge that commissioned work made for hire agreements meeting the standards of subdivision (2) must be signed up front, the parties must decide at the outset of their relationship whether a work made for hire arrangement is desirable. At that stage, the creator retains his independence to decide whether such an agreement would be in his best interests. If the commissioning party desires to acquire all or some of the creator's copyright rights after the commencement of physical or intellectual effort on the project, it can do so only through an assignment agreement and not by a work made for hire contract. Any work made for hire contract signed after commencement of physical or intellectual effort would be void and unenforceable.

3. *Definition of Joint Work:*

Finally, the proposed amendment would change the definition of "joint work" in section 101 by establishing a new objective test for determining whether a specially ordered or commissioned work constitutes a joint work in which the co-authors own the copyright as tenants in common. As owners of the copyright, the co-authors of a joint work have an undivided interest in the work as a whole, and each co-author enjoys an independent right to exploit or license the copyright, as long as the co-author exercising that right accounts to the other co-author for the profits earned. *See Oddo* v. *Ries,* 743 F.2d 630, 633 (9th Cir. 1984); *Pye* v. *Mitchell,* 574 F.2d 476, 480 (9th Cir. 1978).

Under present law, the touchstone for determining whether a work is joint work is the intention of the parties. Section 101 currently provides that a "joint work" is "a work prepared by two or more authors with the intention that their contributions be merged into inseparable [as in a painting] or interdependent [as in a motion picture] parts of a unitary whole." 17 U.S.C. § 101 (definition of "joint work"). It is not enough merely for the parties to intend to create a joint work; each co-author must in fact make a genuine contribution to the creation of the joint work. *See Whelan Associates, Inc.* v. *Jaslow Dental Laboratory, Inc.,* 609 F. Supp. 1307, 1318-19 (E.D. Pa. 1985), *aff'd,* 797 F.2d 1222 (3d Cir. 1986), *cert. denied,* 107 S. Ct. 877 (1987) (the "general assistance and contributions" to the project by the commissioning party did not make him the co-author of the work).

The bill proposes to supplement this "intention of the parties" test only with respect to specially ordered or commissioned works. Artists and other independent contractors have been faced with *post hoc* claims that works created on commission, for which no written agreement regarding copyright ownership or work made for hire status exists, are joint works because the parties somehow "intended" them to be such. The evidence of intent frequently is not probative one way or another, particularly when the claim of joint authorship arises after-the-fact. Indeed, commissioning parties have frequently asserted a "joint authorship" claim as a back-up defense in cases in which their primary assertion is that they are the sole owners under the work for hire doctrine. *See, e.g., Reid,* slip op. at 19-20; *Schmid Bros., Inc.* v. *W. Goebel Porzellanfabrik KG.,* 589 F. Supp. 497, 501 (E.D.N.Y. 1982) (ceramic figurines held to be joint works); *Mister B. Textiles, Inc.* v. *Woodcrest Fabrics, Inc.,* 523 F. Supp. 21, 24-25 (S.D.N.Y. 1981) (fabric design held to a joint work).

To eliminate any possibility of nebulous or illusory after-the-fact claims of joint authorship of specially ordered or commissioned works, the amendment would change the definition of "joint work" to provide that the parties "must expressly agree in a separate written instrument, signed by them prior to the commencement of any physical or intellectual effort related to the work, that it shall be considered a joint work." Thus, the parties must still intend that their contributions "be merged into inseparable or interdependent parts of a unitary whole"; but in order for their work to be legally considered a joint work, they must memorialize that intention in a written instrument before the project begins.

If this proposal is adopted, the contributions to a commissioned work would not be merged into a joint work unless the writing requirement was satisfied. If that requirement was not complied with, the copyright in the contribution of each author would be owned by that author alone. Thus, if two or more contributing authors decided to enter into a joint work agreement after beginning work on the project, such an agreement would be void and unenforceable. The copyrights in their respective contributions would be separately owned by each individual author, much like copyright ownership is determined with respect to a contribution to a collective work. *See* 17 U.S.C. § 201(c) (copyright in each separate contribution to a collective work vests intitially in the author of the contribution).

Mr. COCHRAN. Mr. President, I would like to take a few moments to ask the cosponsors of the Berne bill, Senator LEAHY, and the chairman of the subcommittee responsible for copyright matters, Senator DECONCINI, a few questions concerning my work for hire bill, S. 1223.

First, I ask the distinguished Senator from Vermont whether he believes that Congress should take another look at the work for hire statutes and their impact on artists' rights?

Mr. LEAHY. I would support efforts by this subcommittee to look into this issue to determine if legislative action is necessary to provide proper guidance to the courts and to ensure that artists' rights are being protected in this area. We have not reviewed work for hire since October 1982, during the 97th Congress, and would undoubtedly benefit from another look at the issue.

While I am not convinced of the merits of all of the proposals contained in your bill, S. 1223, I believe it is a starting point for discussion and debate among the members of the Copyrights Subcommittee.

Mr. COCHRAN. I appreciate the comments of the Senator from Vermont. Now, I would like to ask the chairman of the Patents, Copyrights, and Trademarks Subcommittee whether he will bring this matter before the subcommittee in the next Congress?

Mr. DECONCINI. As I have informed my colleague from Mississippi, it was my intent to schedule a hearing on your work for hire bill during this Congress. Unfortunately, because of the lengthy Supreme Court confirmation process and consideration of the Berne Treaty and other parts of our agenda, it was not possible to do so.

If I am chairman of the subcommittee in the 101st Congress, I will schedule a hearing on work for hire legislation early in the first session. I have heard great concern voiced about work for hire arrangements throughout the creative industry, particularly from photographers, artists, and other freelance professional creators who work as independent contractors. I agree with my friends from Mississippi and Vermont that a full exploration of the issue is warranted. I therefore give the Senator from Mississippi my commitment to hold hearings on his work for hire bill promptly in the next Congress if it is in my authority to do so.

Mr. COCHRAN. I thank the chairman of the Copyrights Subcommittee and I look forward to working with you, along with other members of the subcommittee, toward the goal of enacting work for hire reform legislation next year.

Mr. President, I thank the distinguished Senators for their cooperation in assuring that this issue will receive attention in the early part of the next Congress and that we will get around to addressing this very important and unfair application of our copyright laws to independent artists.

Mr. President, may I inquire what the situation is with respect to the time on the bill?

The PRESIDING OFFICER. The Senator from Mississippi has 16½ minutes remaining.

Mr. COCHRAN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont has 5 minutes allocated to him.

Mr. LEAHY. Mr. President, I believe the Senator from Pennsylvania, Senator SPECTER, wanted to speak.

I wonder if we might do this while we are waiting: I said earlier that I was going to ask for a voice vote on this amendment. Would it be in order to ask for that at this point?

The PRESIDING OFFICER. The Senator is correct.

Mr. COCHRAN. Will the Senator yield for a question?

Mr. LEAHY. Of course.

Mr. COCHRAN. I have been advised that Senator WILSON, who was on the floor previously, would like to be heard for a few minutes on the subject of the bill. I would agree to the Senator's request, with the understanding that his right to speak will not be cut off.

Mr. LEAHY. Yes. I just thought, while we have the time, that if we went to a voice vote now we would still have third reading on the overall bill and give everybody a chance to speak before that.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3411) was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I do not want in any way to preclude anybody who wishes to speak, but would it be in order now to ask for the yeas and nays on S. 1301, as amended?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on S. 1301, as amended.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. I yield the floor.

Mr. HATCH. Mr. President, I do not intend to delay this debate or the final vote on this matter except a minute or so.

Let me just make a few comments on the work-for-hire issue that has been raised.

It is critical to reiterate that S. 1301 is neutral on the issue of moral rights and therefore, also on the issue of work for hire. The bill acknowledges that current Federal and State laws provide adequate protections for an author's rights to constitute compliance with Berne. The bill states that it will neither "enlarge or diminish" existing copyright protections.

The term "moral rights" embraces two concepts: The right of paternity—the right to be acknowledged as the author of a particular work—and the right of integrity—the author's right to object to modification of artistic works. As stated previously, if moral rights were enforced in the United States, these rights would drastically alter current copyright relationships.

Specifically, the right of paternity would abrogate the work-for-hire doctrine whereby an author is paid to produce a work whose copyright is held by the author's employer, not the author. The right of integrity would make a magazine's or movie producer's efforts to edit a written article or a film very difficult.

For example, in the context of a movie, it would be difficult even to decide which artist, given a host of players such as a number of actors and a director, should be given the editing rights—particularly in the event the artists disagree as to how the film should be edited. At a minimum, moral rights in the work for hire context would cause mountains of litigation if applied to the United States.

Moreover, alteration of the work for hire doctrine would be problematic in the publishing context. Given the strict deadlines in the publishing industry, questions have been raised as to the practicability of altering the work or hire doctrine in this area.

So those comments just need to be said, and with that we are prepared to vote on the bill.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Has the other side yielded back its time?

The PRESIDING OFFICER. The Senator from Arizona has 10 minutes remaining; the Senator from Utah has 5 minutes.

Mr. HATCH. I am prepared to yield back my time if the Senator from Vermont is prepared to yield back his time

Mr. LEAHY. Mr. President, I am prepared to yield back my time. However, the Senator from Mississippi has noted that the Senator from California, Senator WILSON, wishes to speak. The Senator from Pennsylvania, Senator SPECTER, also wishes to speak on the bill. If we are going to yield back time, I would ask unanimous consent that their statements be allowed to be printed in the RECORD prior to the vote. But I am perfectly willing to do whatever my colleagues would like on the other side. It is two colleagues on the other side who wish to speak. I want to be sure, if it is possible, to give Senators WILSON and SPECTER their opportunity to speak.

Mr. HATCH. Mr. President, I would suggest the absence of a quorum and see if we can get these two Senators the opportunity to speak; if not, then we will yield back.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, I yield such time as he may consume to the distinguished Senator from California [Mr. WILSON].

Mr. WILSON. Thank you, Mr. President. And I thank my distinguished friend from Mississippi.

Mr. President, I am very pleased that the Senate is moving ahead with legislation necessary to bring us into compliance with the Berne Convention.

The Berne Convention is the major international agreement on copyright protection. Indeed, its formal title is the Berne Convention for the Protection of Literary and Artistic Works.

American authors and artists, composers and filmmakers, photographers and musicians, and others who brighten our lives with entertainment and educational works deserve to have their creations protected. If we fail to act, we will deny to these people the fruits of their labors. And while, undoubtedly, many would continue to create, the lack of a fair, protected market for their works will certainly keep them from broad public dissemination. If that occurs, then we all will suffer for it.

Mr. President, our Nation has long protected the rights of our citizens to own property, both real and personal. We have undertaken efforts to assert those rights throughout the world. And, we have a Federal program, OPIC, that insures the property of U.S. businesses overseas. However, it is only in recent years that we have taken strong steps to protect the rights of our citizens in intellectual property—such as copyrights, trademarks, patents.

The passage of omnibus trade legislation included provisions significantly strengthening the protection of U.S. intellectual property rights. Among these provisions, legislation that I introduced, the Anti-Piracy and Market Access Act, was included in this massive bill. This new law directs the U.S. Trade Representative's office to take an even more aggressive stance in responding to international piracy and barriers to U.S. products and services that rely fundamentally on intellectual property protection.

The enactment of the Berne Convention legislation now before us will bring to American authors and artists greater international protections that they truly deserve. With these protections, it is hoped that we will be able to attain needed benefits without confrontation, such as through the section 301 trade process or through the Wilson Act.

Mr. President, I applaud the Judiciary Committee for its dedication to expanding the rights of American copyright holders. This is a complex subject, and they have done a workmanlike job.

I especially want to commend my two good friends who have been leaders on this and other issues of importance to intellectual property holders, Senator HATCH and Senator DECONCINI. They are the ranking member and the chairman of the Subcommittee on Patents, Copyrights, and Trademarks, and they have done outstanding work deserving of commendation from us all. I also want to commend Senator LEAHY for his important work on this legislation.

Also I would be remiss if I were to fail to commend and thank my friend from Mississippi, Senator COCHRAN, both for his statement this morning and for the work he has done in securing needed hearings early in the next session on the important problem of work for hire.

Mr. President, I urge passage of this legislation and hope to see its final enactment soon.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi has 13 minutes remaining.

Mr. COCHRAN. Mr. President, I yield such time as he may consume to the distinguished Senator from Pennsylvania.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Mississippi. I shall not take long. I want to compliment my colleagues for moving this legislation on the Berne Convention forward.

It is long past due that the Congress of the United States should act here to protect important U.S. property rights overseas. The reasons have been outlined in detail. They have come through the subcommittee under the chairmanship of the distinguished Senator from Arizona, Senator DECONCINI, and ranking member, the distinguished Senator from Utah, Senator HATCH. Senator LEAHY also has contributed to this bill.

The reasons have been articulated on this floor. The issues have come through the Judiciary Committee on which I sit and I think it is a very important matter for the welfare of individual property rights and I urge my colleagues to support this bill when it comes up for the rollcall vote.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi has 12 minutes remaining.

Mr. COCHRAN. Mr. President, is there other time remaining for other Senators under the order on the bill?

The PRESIDING OFFICER. The Senator from Mississippi controls 12 minutes. The Senator from Utah has 5 minutes and 25 seconds, and the Senator from Arizona, Senator DECONCINI, has 10 minutes. The Senator from Vermont has 5 minutes.

Mr. COCHRAN. Mr. President, I know of no other requests from Senators who want to speak. As I understand it, the yeas and nays have been ordered. I would be prepared to yield back the remainder of time if other Senators would be also willing to yield back.

Mr. LEAHY. If the Senator would yield for just a moment, I am perfectly willing to do that. I am able to yield back the time of Senator DECONCINI. I understand from the Parliamentarian we have some difficulty doing what we originally intended to do and upon yielding back—I just wanted to make sure with the Chair I am right on this—we would have to have a voice vote first on the Leahy-DeConcini-Hatch amendment? And then the rollcall would be, then, on the bill as amended? Am I correct?

The PRESIDING OFFICER. The Chair will state to the Senator from Vermont that the pending question is the substitute to the committee bill, which has not been amended by the Leahy-DeConcini-Hatch technical amendments which have already been adopted. The yeas and nays have been ordered on the passage of the bill, as amended.

Mr. LEAHY. We would still have to have the vote on the amendment before we went to final passage?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. Mr. President, I rise in support of S. 1301, the Berne Convention Implementation Act of 1987. This bill amends the copyright law so that the United States may become an adherent to the Berne Convention for the Protection of Literary and Artistic Works.

The Berne Convention is a multilateral copyright treaty which provides standards for the international protection of copyright. Currently 76 countries are adherents to the convention. However, the United States is not an adherent.

In order to become an adherent to the convention, the copyright laws of a country must meet the standards outlined in the convention. It is generally agreed that if the Berne Convention is ratified, the provisions would not automatically become a part of our law or, in other words, the Berne Convention is not self-executing. Therefore, in order for the United States to adhere to Berne, Congress must make the necessary changes to our copyright law.

The issue of joining the Berne Convention has been the subject of much discussion since the convention came into being in 1886, and especially since the copyright law was revised in 1976. During the last Congress, the Patents, Copyrights, and Trademarks Subcommittee of the Judiciary Committee held two hearings on this issue. In this Congress, the Patents Subcommittee also held hearings. As a result of these hearings, the committee approved a bill that takes the "minimalist" approach. In other words, the minimum amount of changes were made to our copyright law so that we may become adherents to the convention. One issue raised during consideration by the committee was with regard to moral rights. After examination of this issue, the committee determined that the current law provides the protection required by Berne. However, language was added to the bill to make it clear that adherence to Berne would not create any new rights or interests with regard to the issue of moral rights.

The bill approved by the Judiciary Committee differs from the measure previously passed by the House in the areas of copyright registration, jukebox compulsory licensing, and the effective date. I am confident that these differences will be worked out so that the Congress may pass this important legislation.

Mr. President, I am pleased that the Senate is passing this vital measure which is strongly supported by the administration and the intellectual property community. Further, passage of this legislation will clear the way for the Senate to consent to the ratification of the Berne Convention. As a cosponsor, I urge my colleagues to vote for this important bill.

Mr. PELL. Mr. President, I am pleased to join in supporting S. 1301 (H.R. 4262) and the Senate amendment thereto, to implement the Berne Convention for the Protection of Literary and Artistic Works.

This legislation represents a historic step in our efforts to provide international protection for copyrighted works. The United States has talked about joining the Berne Convention for over 100 years and today we will be taking a first step by amending our copyright laws to conform to the Berne standards.

It is my hope that the final and formal step to joining the convention; namely, the advice and consent of the Senate on the treaty itself, will be considered in the Senate as soon as this enabling legislation is approved by the House.

As chairman of both the Committee on Foreign Relations and the Joint Committee on the Library, I have special appreciation of the need to protect U.S. works from piracy—which presently costs U.S. industries billions of dollars annually.

Since domestic laws must be amended in order to adhere to this treaty, it is important to weigh the benefits of the protection it affords against the costs of taking this action.

Joining Berne enables us to negotiate in the world community on copyright issues important to the United States with other countries also party to the treaty, some 24 nations with whom we do not presently have comparable multilateral relations in this area. And the prestige with U.S. membership will add to Berne will hopefully encourage other countries to join, in the knowledge that they will be afforded high standards of protection and share in the benefits of the U.S. domesic copyright system.

The costs of joining Berne must be calculated in terms of the impact of the implementing legislation on our domestic copyright system, especially with respect to its institutional base, the Library of Congress. And here I would assert that international copyright considerations, however, important, cannot justify paying a price which would damage our viable and valuable copyright system, which plays such an important role in expanding the collections of the Library.

Happily, the price need not be that high. That is why I support the "minimalist approach" to joining Berne, making only those changes to our domestic copyright laws necessary for compliance with the clear obligations of the convention.

One of the principal differences between the House and Senate versions of the Berne implementation bill was over the question of whether we would need to change our current registration system. From the viewpoint of the Joint Committee on the Library, I was very concerned that the bill reported from the Senate Judiciary Committee would have changed the requirement of registration of copyrightable works as a precondition to the bringing of an infringement suit.

I was especially mindful, too, that the registration process, with its companion requirement of free deposit to the Library of Congress of each copyrighted item, lies at the core of the Library's acquisition program.

The differences between the House and Senate centered on section 411(a) of the current law which requires a party bringing an infringement suit first to register, or attempt and be refused registration for the copyrighted work.

It is apparent that there was strong disagreement among copyright experts as to whether changes to the current registration system would be needed in order to comply with Berne. The Senate Judiciary Committee took the position that it would be necessary to delete section 411(a). The House, however, took the opposite view when it passed its version of the bill which, under the minimalist theory, made no changes to section 411(a).

Without clear agreement on the issue of section 411(a), I believe it is the wiser course not to make changes other than those which are absolutely necessary, especially when the consequences of a change could be adverse to the Library of Congress and the copyright registry.

I am very pleased that a compromise has now been worked out in the form of the Senate amendment which we are considering today, making the minimal changes necessary to our registration system. I think all parties can agree that the changes made by this compromise amendment are clearly compatible with the Berne Convention. Just as important, the changes are adapted to the unique American system of copyright registration so as to maintain with minimal disruption, our copyright system and our national library system.

The Senate amendment, which I understand has been agreed to by the House Members working on this issue, creates a two-tiered approach to section 411(a) and seems to protect all of the Library's interests, both as to library acquisitions and copyright administration.

The mechanics of the amendment, as I understand it, would work as follows. It would exempt Berne Convention works from the requirement of having to register as a prerequisite to filing a lawsuit. It would leave unchanged the requirements of registration for authors whose works are first published in the United States, and for the unpublished works of U.S. authors.

In these latter two cases, these authors would still have to register their works under section 411(a) just as they have to register now. The Senate amendment also specifies which works would have to be registered in the case of simultaneous publication in two countries or of unpublished works of authors of different nationalities.

I ask the distinguished Senator from Arizona, who is chairman of the Subcommittee on Patents, Copyrights and Trademarks and who also serves on the Joint Committee on the Library, if I have correctly described the amendment.

Mr. DECONCINI. The Senator has correctly stated the thrust of the Leahy-DeConcini-Hatch amendment. For example, it would not change the current registration system for works of any author whose works were first published in the United States, or subject to certain conditions, to works first published here and abroad, or for unpublished works of U.S. authors. It would exempt from the registration requirements works which are first published in other Berne Convention countries or for unpublished works of nationals of Berne Convention countries other than the United States.

As you have described, there are special rules set out for works simultaneously published in two countries one of which is the United States or by more than one author where one of the authors is a U.S. national, domiciliary or resident.

Mr. PELL. Mr. President, I understand that the distinguished Senator from Vermont, as a member of the Subcommittee on Patents, Copyrights and Trademarks, fully supports the two-tiered approach, and I wonder if he would care to comment on my concern that we maintain the current registration system at least for domestic works, for the reasons I have outlined.

Mr. LEAHY. Mr. President, I agree with my colleague that we need to maintain a comprehensive registration system to keep a public record of registrations, to preserve and protect our national library system today and in the future and to promote efficiency in our courts. I would add that, in the Judiciary Committee's view, as detailed in the report on S. 1301, these important interests would not have been harmed by elimination of the section 411(a) requirement as a whole. But sharing with Senator PELL strong support for the Library, I believe this compromise should dispell any lingering anxieties.

As we stated in our committee report on the Berne Convention Implementation Act, we agree with the Copyright Office that the present system of registration benefits all participants in the copyright system, as well as the general public. We agreed that the system provides a useful public record and an efficient acquisition system for the Library of Congress.

While we are making changes in the system for other Berne Convention published works or authors, we need not change the system for works of U.S. origin—that is, generally speaking, works first published in this country or by U.S. authors.

In addition, we have maintained and strengthened the other current incentives for registration for all works, including registration as a prerequisite to the awarding of statutory damages and attorneys' fees in infringement actions. In fact, we have doubled the level of statutory damages for infringement of registered works, which should increase the incentives for registration. In addition, we have not changed the section 410 provisions providing for prima facie evidentiary results in infringement actions. Because of these incentives, and because of the advantages in registering, I anticipate that there will be no changes in registrations of domestic works and very few if any changes in the registration of foreign works.

Mr. PELL. In view of the possibility, hopefully remote, that the Library of Congress could be faced with some added costs in acquiring foreign works, I am wondering if the distinguished Senator from Arizona, as a member of the Appropriations Committee, can keep a watchful eye on this situation so that the Library will not find itself in a financial shortfall, unable to acquire such works.

Mr. DECONCINI. As the Senator knows, I am not in a position to make any binding commitments to my colleague, but I can assure the chairman of the Joint Committee on the Library that we on the Appropriations Committee would look at how the changes imposed by this bill today affected the financial status of the Library. I would not anticipate any other costs to the Library than what was estimated by the Congressional Budget Office in the House bill, because I believe the two-tier amendment would be closer to the House than the Senate in its cost implications of the Library's acquisitions, with the exception of certain foreign deposits. In this area, certainly we would not want the Library, which I too, as a member of the Joint Committee on the Library, am very concerned about, to experience any unexpected lost revenues as a result of the United States joining Berne. I agree with your analysis that when we weigh the costs of joining Berne in the private and public sectors, against the benefits, that it is something we want to do. But I do not expect, and would not want the Library of Congress nor the Copyright Office to bear, any unanticipated costs in our adherence to the Berne Convention, especially if it meant that by adopting our amendment on two-tier, the Library's acquisitions were to drop off significantly.

Mr. PELL. I thank the Senators for their very helpful responses and in view of their assurances, I ask unanimous consent that my name be added as a cosponsor of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I rise to join with my colleagues on the Judiciary Committee to urge Senate passage of the Berne implementation bill.

This legislation will make possible the United States' joining the Berne Convention, which will provide significant additional international protection of our exported copyrighted works. Because we are the leading exporter of copyrights, it is clearly in the national interest to become a part of the Berne union and enjoy "national protection" for our copyrights in the other countries that are members of Berne.

A broad, diverse array of groups supported this bill as it moved through the Judiciary Committee, and a bipartisan coalition on the committee emerged in response. While difficult issues arose, they were equitably and sensibly addressed. In particular, I would like to commend Senators LEAHY, DECONCINI, and HATCH for the processing of the legislation.

Mr. President, I am a cosponsor of the legislation, I believe it will serve our creative people and our Nation well, and I urge my colleagues to give it their approval.

Mr. LEAHY. Mr. President, I yield back my time and Senator DECONCINI's time.

Mr. HATCH. Mr. President, I yield back my time.

Mr. COCHRAN. I yield back my time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, let me, by unanimous consent, indicate we have a very important luncheon today in SR-325 honoring our majority leader. I urge all my colleagues after the vote to head for SR-325.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote by which the committee amendment, as amended, was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will report the bill for a third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read a third time, the question is, Shall it pass? The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Florida [Mr. CHILES] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from New York [Mr. D'AMATO], the Senator from Minnesota [Mr. DURENBERGER], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE] and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Connecticut [Mr. WEICKER] would each vote "yea."

The PRESIDING OFFICER (Mr. SHELBY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 90, nays 0, as follows:

[Rollcall Vote No. 350 Leg.]

YEAS—90

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boren
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Cochran
Cohen
Conrad
Cranston
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Evans
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Wilson
Wirth

NOT VOTING—10

Bentsen
Boschwitz
Chiles
D'Amato
Durenberger
Humphrey
Karnes
Quayle
Simon
Weicker

So the bill (S. 1301), as amended, was passed.

Mr. LEAHY. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. MELCHER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I ask unanimous consent that the remainder of the order be executed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I thank all Senators as I have earlier, on both sides of the aisle who made this historic piece of legislation possible.

I yield the floor.

TIME TO ADJOURN

Mr. DECONCINI. Mr. President, I think it would be wise for us to get out of here, as the minority leader has said. It seems to me that these bills that are pending, as important as they are—and I happen to be a cosponsor and support all three of them, parental leave, child pornography and the ABC child-care bill—have been around a long time. There is no reason they could not have been brought up sooner. Our job is not to stay here and do legislative work. We have done that. Our job, Mr. President, is to represent our people, to go home. And if it is necessary, as the majority leader thinks it is, to stay in session, perhaps we have to come back. That is the nature of this job. Nobody wants to do that, but perhaps that is what it will take.

This body runs best, I contend, Mr. President, when it is run in a spirit of compromise, and we have had compromise from the other side. They are willing to move ahead on a drug bill, they are willing to move ahead on a technical corrections bill, and they are not willing to move ahead on these other bills. As much as I support them, it seems to me, Mr. President, we would be much better off not to go out in a heat of temper, a heat of agony. We have a great record on which we can all stand. It so happens, Mr. President, the other night when I was denied by the majority leader of the right to have a rollcall vote, it flashed through my mind that, well, let us get tough and mean and nasty and let us just keep everybody here and not let the majority leader have the sterling record that I know he wanted very badly where he could pass all appropriations bills, but this Senator put that aside in a spirit of not wanting to be mean to anybody and not wanting to leave an impression that I was not willing to cooperate.

I think it is important that we on the Democratic side find a way to adjourn this session in a spirit of what this institution is all about. It is not about fighting and bad feelings. It is about accomplishments and the camaraderie that exists on both sides of the aisle. So it is my best wish that we should take demonstrative steps by passing a drug bill and go home.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair will inform the majority leader that the order remains to be executed.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I yield for the purpose of further execution of the order.

IMPLEMENTATION OF THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will proceed to the consideration of H.R. 4262, which the clerk will report.

The assistant legislative clerk read as follows:

> A bill (H.R. 4262) to amend Title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause of H.R. 4262 is stricken, and the text of S. 1301 is inserted in lieu thereof.

Mr. LEAHY. Mr. President, the amendment now before the Senate simply takes the text of S. 1301, the Senate bill to implement the Berne Convention, which we have just passed, and substitutes it for the text of the Berne bill passed by the House, H.R. 4262.

Since the text of this amendment is identical to the measure we have just passed, my remarks about S. 1301 are equally applicable to H.R. 4262. This applies as well to the explanatory material which I inserted in the record during our consideration of S. 1301.

Mr. President, I believe that this amendment is acceptable on both sides of the aisle. I urge my colleagues to support it and to send this measure back to the other body, which I anticipate will concur in it promptly.

Mr. President, as I noted previously, many Senators have contributed to the work on this important legislation. Once again, I would like to thank the chairman of the Subcommittee on Patents, Copyrights and Trademarks, Senator DECONCINI; the ranking member of the subcommittee, Senator HATCH; and our committee chairman, Senator BIDEN, whose efforts have made possible today's action by the Senate to bring U.S. copyright law into harmony with the Berne Convention. I also thank the majority and minority leaders for their cooperation in scheduling time on the Senate floor for consideration of the Berne Convention Implementation Act of 1988. Let me offer my thanks to the chairman of the Foreign Relations Committee, Senator PELL, and pledge my support to him in bringing to this floor the resolution of ratification of the treaty establishing the Berne Union, which is now pending on the Executive Calendar. Once we have ratified that treaty, the congressional process, for bringing the United States into the Berne Convention will be complete.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 4262), as amended, was passed.

Mr. LEAHY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, an order was entered on yesterday providing for the voting in sequence beginning at 2 p.m. today on the second-degree amendment to the first-degree amendment to the motion to recommit with instructions to report back, and without debate, motion, or amendment occurring between those votes.

The distinguished Republican leader has indicated to me that he would be willing to proceed by a voice vote on those matters now, and then there is a desire to recess until 2 p.m.

If no other Senator wishes to insist on a rollcall vote, we can proceed with the voice voting of those three matters right now.

Mr. WIRTH. Mr. President, before we recess, Senator HEINZ and I would like to be recognized, and have the floor so that we might have a 15-minute time period to speak.

Mr. BYRD. Very well.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed with the order which was otherwise to begin at 2 p.m. today. I see no Senator asking for a rollcall vote. I hear no Senator indicating that it is the intention to ask for a rollcall vote.

I, therefore, ask unanimous consent that immediately upon the disposition of the three matters, the last being the motion to recommit with instructions, immediately upon the disposition of that vote, that the Senate go into morning business; that the time not exceed 15 minutes for morning business; that Senators be permitted to speak therein for not to exceed 5 minutes each; and, that the Senate then stand in recess until the hour of 2 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

PARENTAL AND TEMPORARY MEDICAL LEAVE

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Byrd motion to recommit the bill, with instructions to report back forthwith, with an amendment, as contained in Byrd Amendment No. 3308, in the nature of a substitute.

(2) Byrd Amendment No. 3309, in the nature of a substitute for the instructions.

(3) Byrd Amendment No. 3310 (to Amendment No. 3308), of a perfecting nature.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The question is on the second-degree amendment.

The amendment (No. 3310) was agreed to.

The PRESIDING OFFICER. The question is now on the first-degree amendment, as amended.

The amendment (No. 3309) was agreed to.

The PRESIDING OFFICER. The question is now on agreeing to the motion to recommit.

The motion was agreed to.

The amendment (No. 3308) was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that a motion to reconsider en bloc be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for morning business not to exceed 15 minutes.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HEINZ. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator is correct. If the Senator from Colorado will withhold, the Senate is not in order.

Members will take their seats and clear the aisles.

The Senator from Colorado is entitled to be heard.

The Senator from Colorado is recognized.

Mr. WIRTH. Mr. President, I thank the Chair. I thank my colleague from Pennsylvania.

"PROJECT 88"

Mr. WIRTH. Mr. President, today, my colleague from Pennsylvania, Senator HEINZ and I are releasing the draft of a report on the tough environmental problems this Nation must deal with in the next administration, and we outline new approaches to solving those problems.

The theme of this report entitled "Project 88," is simple—that the forces that spur innovation, investment, and initiative in our economy can be brought to bear on solving our environmental problems, and that bold initiatives to do this need to be set out now.

The purpose of the report is to set the stage for these issues to be discussed by the Presidential candidates, and to be used by the new administration—whether Democratic or Republican.

No matter which candidate wins, they will be faced with tough environmental problems. Our cities have record-high air pollution. We have hardly started dealing with toxic waste sites across the country. We have been unable to come to grips with acid rain. And we face new threats that we are just beginning to understand the seriousness of, in the form of ozone depletion and global warming.

We are going to need every tool we can get to deal with these problems. This report sets out some of those that JOHN HEINZ and I think are worth adding to our arsenal.

Our recommendations include:

Using "tradable emission permits" to get market forces to work in reducing pollution. Instead of dictating a particular solution, we set out an environmental goal—and let industry compete in an open market to meet it. For example, tradable permits could allow us to have an orderly phaseout of the CFC's that are causing the ozone hole in the stratosphere—and that are major contributors to global warming. Auctioning the permits would enable us to capture what might otherwise be windfall profits reaped by manufacturers as CFC production is turned down—and use that money to fund further programs for reducing and replacing CFC's.

Recognizing economic forces that are now ignored. For example, the Federal Government's decisions on how to manage millions of acres of our national forests now emphasize increasing the Forest Service's budget and its cash receipts. That emphasizes timber cutting, but downplays recreation—which in many parts of Colorado is the biggest and most important part of our local ecomony, even though it may produce few cash receipts for the agency. A sensible policy would give more recognition to the growing importance of recreation and environmental values in our forests, and those environmental values related to that focused on such economic activities such as hunting, fishing, rafting, and so on.

Opening up markets to environmentally preferable alternatives. For example, "conservation contractors" who can free up power by saving it should be able to bid to meet a utility's need for additional electric power, rather than restricting bidding on power supply to new powerplants.

Recognizing areas where one action helps to solve more than one problem. For example, a higher gas mileage requirement for automobiles is essential to lowering carbon dioxide emissions, a key to fighting global warming. But it also reduces oil imports, helps our balance of trade, and reduces pressure to drill for oil in environmentally sensitive areas.

The report also recognizes that their economic approaches are not a panacea for environmental problems. Some problems need uniform, national solutions. Auto emission is one such area. There simply may not be a better way to reduce auto emissions than to tell the manufacturers they must do so.

But we are suggesting there is a mix of the so-called regulatory, or command and control approach to environmental problems—to mix those in with the use of the marketplace and economic incentives. The size and scope of the problems that we are about to deal with are coming up for us for the remainder of this decade, and well into the next century. Those problems are not going to be addressed simply by a regulatory approach down at EPA.

We are going to have to be creative, we are going to have to think how financial incentives can be used, how the discipline of the marketplace can be used, and "Project 88," the report that Senator HEINZ and I released today, is an attempt to begin this way of thinking, and to begin to focus the country on a different way of approaching our environmental issues.

Our endorsement of getting the economy to work for the environment does not mean that we intend to let economic factors set our environmental standards. We cannot and we should not let cold calculations about cost stop us from insisting on high standards for the protection of human life and a quality environment.

We think that the ideas in this report are good ones. We hope that, if nothing else, this report helps get the Presidential candidates thinking about new ways to help the environment.

Mr. President, I ask unanimous consent to print after the remarks of the distinguished Senator from Pennsylvania the forward of Project 88; chapter 1, the executive summary and introduction, and a summary of the major recommendation, and that those be included in full in the RECORD after the remarks of the Senator from Pennsylvania.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. WIRTH. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, as my friend, the Senator from Colorado, Senator WIRTH, mentioned he and I are today releasing our report, Project 88, and we are releasing it because at least in my judgment we are in a war for a safer, cleaner environment and the environment is losing. That's why we need to harness incentives and market forces in the battle. The strategies which Senator WIRTH and I have outlined in Project 88 will help our Nation move further, faster, at far less cost.

And I do not believe we can afford to fail in this challenge because our own health and safety, and even more importantly, that of our children and grandchildren will directly depend on the choices made today and in the next few years.

It occurs to me that being for a clean environment is very much like going to heaven. It is something that everybody is for, but there are too many people who do not want to do what they have to do in order to get there.

Because our environmental problems are growing more complex and difficult to solve and because the easy decisions have all been made, there is a limit to what current thinking about the environment can achieve and the traditional command and control strategies which we have been used to for the last 15 years often impose unnecessarily high costs in our economy and our international competitiveness. They are often politically very difficult and now unachievable, as well.

What our report demonstrates is that we can do better. It illustrates alternative and supplemental market-oriented strategies that can greatly reduce the cost of reaching our environmental goals, while providing us with the cleanup that is so urgently needed. Senator WIRTH and I are releasing the first draft of this report now, before the election, because we do not believe the issue can wait. The next President, whoever is chosen, is going to have to move from analysis to action before this inauguration. Presidential campaigns and Presidential transitions are about setting goals. Both candidates have campaigned for a cleaner environment. We hope our report will be a roadmap on ways to achieve that goal through an approach that relies as much or more on incentives and market forces as it does on traditional command and control.

At the same time, while Senator WIRTH and I believe strongly that proposals made in this report are sound, there will be debate and discussion, we are sure, about each and every recommendation in it.

We particularly hope, and that is why we bring them forward for public review and debate at this time, that they will stimulate discussion in the Presidential campaign in the coming Presidential debate and in the other campaigns that are taking place this year.

The issues that we discuss in this report, global warming, toxics, ozone depletion, solid waste management, acid rain, ground water contamination and issues that go even further are issues that will not go away. We propose new methods to mitigate the environmental damage resulting in each category.

Mr. President, just a few days ago, we had an example of a bad environmental decision, the decision to once again ignore the original corporate automobile fuel efficiency standards that were set which would have, had they remained in effect, encouraged Detroit to meet a 26.5-mile-per-gallon standard at the coming year.

This report, I think, demonstrates why we need to maintain good, strong performance-oriented standards in a way that encourages the marketplace to meet them without imposing specific methods of meeting those standards.

It is our belief that Project 88 will not only help head off any kind of unjustifiable policy decision in the future, but will permit all in the political process to set more ambitious goals which in my judgment and the judgment of my colleague, Senator WIRTH, we must have if we are to meet our responsibility to leave to our children a world that is safer and cleaner than the one we face today.

Mr. President, I yield the floor.

EXHIBIT 1

FOREWORD BY SENATOR TIMOTHY E. WIRTH AND SENATOR JOHN HEINZ

The United States and countries around the globe face a series of difficult and increasingly dangerous environmental challenges—from global warming to hazardous waste disposal. This election year presents us with a unique opportunity to commit the country to bold, new programs for protecting natural resources, the environment, and public health. These issues continue to rank high among the priorities of Americans of all political persuasions, and so the next President will have the opportunity to forge a strong bipartisan consensus in favor of sensible environmental protection, wise use of natural resources, and protection of the public's health. It is imperative that plans for such programs be developed now. We cannot wait until after the election; we need to act now to make these issues, and these proposals, part of the election debate, and to lay the foundation for the new Administration's activities starting on January 21, 1989.

Project 88 is a bipartisan effort to identify major environmental and natural resource problems which face us and to develop innovative policy responses to address these challenges. Three themes have been pursued throughout; first, to focus on how best to achieve environmental goals; second, to find common ground among solutions; and third, to recognize and—where appropriate—utilize market forces.

We hope that this report stimulates discussion; in that regard, we seek to pose questions, not to provide definitive answers. Although we do not necessarily endorse each and every idea presented here, and might take exception to some, we believe that these ideas warrant serious consideration and debate by the Presidential candidates and, for that matter, by all who are concerned about the environmental and economic health of our society.

Why have we emphasized in our investigations market-based approaches to environmental problems? The answer is that although incentive-based policies will by no means provide answers to all of our environmental problems, such innovative approaches merit consideration as supplements to conventional regulatory methods. By augmenting our current policies selectively with economic-incentive approaches, we may be able to achieve our environmental goals more effectively and at reasonable cost. Lower costs mean less resistance to stronger environmental protection, something which the American people clearly desire. By engaging the innovative capacity of our industry, incentive-based approaches hold the promise of providing more environmental protection per dollar of control effort. At the same time, the next Administration should not be deceived into believing that environmental protection can be achieved without incurring significant costs. The challenge is to build upon the public's commitment to these issues by adopting a set of sensible and effective policies.

To carry out this program, we arranged for the staff effort to be led by Dr. Robert Stavins, an economist and faculty member at Harvard University's John F. Kennedy School of Government, and an associate of its Energy and Environmental Policy Center. Dr. Stavins, a specialist in natural resource and environmental policy, with broad experience at the Giannini Foundation, the Environmental Defense Fund, and as a Peace Corps volunteer, worked with a team of experts on environmental and natural resource policy from across the country. A preliminary version of the report was reviewed by more than fifty persons from academia, private industry, environmental organizations, and government. We owe a substantial debt to all of these reviewers, but none should be held responsible for any remaining errors or omissions.

CHAPTER 1—EXECUTIVE SUMMARY AND INTRODUCTION

As we approach the last decade of the twentieth century, the United States and countries around the world are facing a series of increasingly difficult and perilous environmental challenges: from global climate change to widespread indoor air pollution; from stratospheric ozone depletion and acid rain to urban smog; from infectious wastes washing up on our shorelines to invisible contamination of our underground water supplies; from the degradation of our public lands to the sedimentation of our streams.

This country's environmental and natural resource policies—assembled over a twenty-year period—need to be enforced and expanded. Our existing laws and regulations appear incapable on their own of handling some remaining, unsolved environmental problems, and they may be less adequate for dealing with the new threats we will face in the 1990s. This is happening at a time when the Federal government is experiencing its greatest budgetary deficits in history—a time when it is less and less likely that we can increase environmental protection simply by spending more money on existing programs and policies. Furthermore, we need to enlist the nation's entrepreneurial creativity on behalf of more inventive and efficient approaches to environmental protection. The time has come to develop fresh, innovative, and most importantly, effective approaches, to address both old, seemingly intractable environmental problems, and grave, new ones.

A new sense of urgency is needed to begin meeting these massive challenges, and this election year presents us with a unique opportunity to commit the country to aggressive programs for protecting natural resources, the environment, and public health. Because these issues continue to rank high among the priorities of Americans of all political persuasions, the next President will have the opportunity to forge a strong bipartisan consensus in favor of sensible environmental protection, wise use of natural resources, and protection of the public's health.

This report describes the findings of Project 88, an enterprise designed to set out innovative solutions to major environmental and natural resource problems facing the United States. We have tried to pursue three themes throughout: (1) focusing not on identifying specific environmental goals, but on how best to achieve whatever goals are established; (2) finding common ground among solutions; and (3) recognizing and, where appropriate, utilizing market forces. The report addresses sixteen major environmental and natural resources problems, and for each recommends specific new policies—including innovative approaches which tend to rely more on decisions by individual citizens brought about by appropriate economic incentives. We believe that this approach has the potential to engage the innovative capacity of American industry and individuals in the development of efficient and equitable solutions to our environmental and natural resource problems.

In this first chapter, we begin by sketching the fundamental background of environmental and economic conditions, public opinion, and current policy. Then we explain how we evaluated alternative policy approaches to environmental problems. Next, we describe common threads running through our recommendations and some of their major implications. Finally, we briefly summarize our recommendations for major environmental and natural resource problems.

THE CONTEXT OF PROJECT 88: ENVIRONMENTAL AND ECONOMIC CONDITIONS, PUBLIC OPINION, AND CURRENT POLICY

The publication of Rachel Carson's "Silent Spring"[1] in 1962 crystallized the opinions of many individuals who believed that the nation's unparalleled economic growth in the post-war years had not come without severe social costs. It was not until the 1970 celebration of Earth Day, however, that it became clear how widespread were concerns about the state of the natural environment. Only two months later, President Richard Nixon proposed to Congress the establishment of the U.S. Environmental Protection Agency (EPA); and what has since been called the "environmental decade" began. During the subsequent ten years, a host of broad-reaching environmental laws were enacted by the Congress: the National Environmental Policy Act of 1970; the Occupational Safety and Health Act of 1970; the Clean Air Act Amendments of 1970 and 1977; the Clean Water Act of 1972; the Federal Insecticide, Fungicide, and Rodenticide Act of 1972; the Forest and Rangeland Renewable Resources Planning Act of 1974; the Toxic Substances Control Act of 1976; the Resource Conservation and Recovery Act of 1976; and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Through these laws and subsequent regulations, the Federal government assumed an increasingly large and vigorous role in protecting and improving the environment.

Environmental conditions and conventional policy responses

In the early days of environmental legislation, the sources of pollution were easy to identify, and relatively easy to control. The early environmental problems were obvious and the legislative solutions were frequently effective. Industrial sources of large and visible pollutants were the major target, and the new regulatory structure did the job rather well: in many spheres, the environment is cleaner now than if was then, despite a considerable amount of economic growth during the intervening years.

Now, environmental policy is at an important juncture. Having taken care of the relatively easy problems first, we face sources of pollution which are more difficult—and more costly—to control. Furthermore, there are major environmental problems with which we have not yet successfully dealt. Lastly, there are new environmental problems facing us which are absolutely enormous in their dimensions and which were not even considered by previous policies—such as global climate change caused by the greenhouse effect, and stratospheric ozone depletion.[2]

Public opinion

Public opinion polls consistently show that public concern over environmental quality has remained strong during energy crises, economic downturns, and tax revolts.[3] Indeed, public opinion analysts describe environmental quality as an "enduring concern of the American public."[4] Numerous polls, including ones conducted by CBS News/New York Times, Roper, and Harris, all indicate that the level of support for environmental protection has consistently increased over the past fifteen years.[5] Recent awareness of ocean pollution, stratospheric ozone depletion, and the threat of global climate change have led to even higher levels of public concern about environmental quality issues.

Economic conditions and budgetary realities

Despite a sustained period of economic growth, the nation faces current and anticipated deficits in the Federal budget and in the nation's balance of trade. Neither problem augurs well for conventional approaches to environmental protection. Growing concern with massive accumulations of national debt will likely constrain Federal expenditures of all kinds, including those for environmental protection and natural resource management. It is unlikely that we will see dramatic increases in Federal expenditures in the next few years,[6] although the next Administration should not be deceived into believing that environmental protection can be achieved without incurring significant costs. The American public frequently has affirmed its willingness to spend resources necessary to improve the quality of the environment and protect public health.

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[1] Carson, Rachel L. "Silent Spring." Boston: Houghton Mifflin Company, 1962.

[2] A discussion of future environmental challenges is provided by: Russell, Milton. "Environmental Protection for the 1990s and Beyond." Environment 29(1987):12-38.

[3] Dunlap, Riley E. "Polls, Pollution, and Politics Revisited: Public Opinion on the Environment in the Reagan Era." Environment 29(1987):7-37.

[4] Ladd, E. C. "Clearing the Air: Public Opinion and Public Policy on the Environment." Public Opinion, February/March 1982, pp. 16-20.

[5] Lamm, Richard D. and Thomas A. Barron. "The Environmental Agenda for the Next Administration." Environment 30(1988):17-29.

[6] Federal expenditures for all environmental and natural resource programs in 1985 were about $13.4 billion (1.4% of all Federal outlays). See: (1) U.S. Office of Management and Budget. "Budget of the U.S. Government, Historical Tables, Fiscal Year 1987." Washington, D.C.: U.S. Government Printing Office, 1986. (2) U.S. Council of Economic Advisors. "Economic Report of the President." Washington, D.C.: U.S. Government Printing Office, 1986. (1) Farber, Kit D. and Gary L. Rutledge. "Pollution Abatement and Control Expenditures." "Survey of Current Business" 66 (1986: 100-103. (2) U.S. Council of Economic Advisors 1986.

The overall status of the Federal budget, however, as well as concern for the international competitiveness of U.S. industry, argue strongly for new policies which place strong emphasis on economic efficiency in environmental protection. Such policies can ensure that every dollar spent on environmental protection[7] achieves the greatest amount of protection possible. The recommendations in this report are designed to do just that—to increase environmental protection and economic productivity by providing incentives for businesses and individuals to go beyond what regulators can require.[8]

IDENTIFYING INNOVATIVE SOLUTIONS TO MAJOR ENVIRONMENTAL PROBLEMS

Sixteen major environmental and natural resource problems are addressed in this report. For each problem, we considered a variety of possible policy responses, and assessed them according to nine major criteria:[9]

Will the policy effectively achieve our environmental goals?

Will the policy approach be cost-effective, that is, will it achieve the environmental goals at the least cost (to society at large)? This is essential if we are to maximize environmental protection for any given total expenditure level.

Will the strategy provide relevant government agencies with the information they need?

How easy (or costly) will monitoring and enforcement be?

Will the policy be flexible in the face of change? When changes occur in tastes, technology, or resource use, will the policy accommodate these changes and remain effective or will it be in danger of becoming ineffective (or even counter-productive)?

Will the policy give industry positive, dynamic incentives? For example, will it encourage firms to develop new, environment-saving technologies, or encourage firms to retain existing, inefficient plants?

Will the economic effects of the policy be equitably distributed?

Will the purpose and nature of the policy be broadly understandable to the general public?

Will the policy be truly feasible, both in terms of enactment by the Congress and in terms of implementation by the appropriate departments or agencies?

We thus identified what we believe to be effective new approaches to the sixteen recognized environmental and natural resource problems. Although each individual problem calls for its own distinct policies, certain common threads emerge from our recommendations. Before turning to a summary of our specific policy proposals, we describe some of these broad themes.

COMMON THREADS AND IMPLICATIONS FOR ENVIRONMENTAL POLICY

The major common threads of our investigation can be summarized as follows: (1) conventional regulatory approaches were a necessary first response to serious environmental problems: (2) such approaches still have important roles to play in many areas; and (3) in many other areas, conventional regulatory policies need to be supplemented by market-based strategies which can foster major improvements in environmental quality by enlisting the innovative capacity of our economy in the development of efficient and equitable solutions. More specific common threads and implications follow.

Building on a firm foundation for improved environmental protection

Many environmental problems are interrelated; some of the most effective policies will help with several problems simultaneously. For example, the comprehensive energy-efficiency program we advocate will help fight global warming, acid rain, and local air pollution, while strengthening U.S. energy security and international competitiveness.

Conventional regulatory approaches have been effective but need to be supplemented. The conventional approaches of setting uniform standards or requiring specific control technologies have been effective, but in many cases it is becoming more difficult and expensive to achieve environmental improvements in this manner.

Supplementing our regulatory system with innovative approaches

The key to reducing inefficient natural resource use and environmental degradation is to ensure that consumers and producers face the true costs of their decisions—not just their direct costs, but the full, social costs of the consequences of their actions.

Economic-incentive systems provide various ways to do this: tradeable permit systems;[10] pollution charges; removal of market barriers which promote inefficient resource use; and removal of unwarranted subsidies of environmentally destructive activities.

Incentive-Based systems for environmental protection

With incentive-based systems, scarce public-sector resources are magnified by the tens of thousands of decisions of individual firms. Charge systems impose a fee or tax on pollution, while tradeable permit systems set a total allowable level of pollution and authorize firms to conduct market exchanges of permits.

Tradeable permit systems are generally preferable to pollution taxes. They reduce uncertainty (present with tax approaches) regarding overall pollution reductions, and establish a maximum level of aggregate emissions.

Incentive-based approaches can make the environmental debate more understandable to the general public. Because they do not dictate a particular technology, approaches such as tradeable permit systems will tend to focus the debate directly on what our environmental goals should be, rather than on difficult technical questions concerning technological alternatives for reaching these goals. The establishment of environmental objectives—of how clean we want the environment to be—can become the very focus of political debate.

At a time of concern about our economy's international competitiveness, incentive-based approaches can provide huge savings and increases in productivity. For example, a market-based approach to acid rain reduction can save us $3 billion per year, compared with an approach which dictates a particular technological solution.

These policies will not exacerbate budgetary deficits. Incentive-based approaches are no more expensive for the government to administer than conventional, regulatory methods. In fact, funds from tradeable-permit auctions could be used to help finance an expanded EPA budget.[11]

Economic-incentive approaches allow greater levels of protection for any given aggregate cost of control. Rather than dictating to enterprises how they should manufacture their products, incentive-based systems impose a cost on pollution-causing activities, leaving it to individual firms to decide among themselves how to achieve the required level of environmental protection. Market forces will drive these decisions toward finding the least-cost solutions to environmental problems.

Market-based environmental protection measures can provide incentives for firms to develop and employ improved pollution-control systems. Economic incentives for pollution-control technologies and expertise.

A diversified portfolio of environmental-protection strategies

Reasonable concerns exist regarding the design and implementation of economic-incentive programs. The sensible response is neither blind retention of the status quo nor total abandonment of the present system. We propose incremental approaches which can build upon our own and other industrialized nations' initiatives with market-based policies.

Market-oriented policies are not a panacea for the problems we face. The inappropriateness of market-oriented approaches for some of the problems we investigated suggests that the optimum set of policies may involve a mix of market and more conventional regulatory processes.

Using economic-incentive methods to implement our environmental goals does not mean that we need to rely on economic criteria to select our goals. Adoption of incentive-based systems to achieve a particular aggregate pollution level does not imply that the permissible level should be selected by using economic criteria.

Removing market barriers and detrimental government subsidies

Market barriers and government subsidies which promote economically inefficient and environmentally unsound practices should be removed. These actions can simultaneously foster environmental protection; promote a stronger, more competitive economy; and reduce government budget deficits.

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[7] In 1984, total U.S. expenditures on pollution control amounted to about $65 billion—63% by businesses, 21% by all levels of government, and 16% by consumers. Total pollution control expenditures were about 1.8% of GNP. See:

[8] A "new environmentalism" which embraces such approaches has already emerged. See: Krupp, Frederic D. "New Environmentalism Factors in Economic Needs." Wall Street Journal, November 20, 1986, p. 34.

[9] This set of criteria is partly based upon a similar set of criteria described by: Bohm, Peter and Clifford S. Russell. "Comparative Analysis of Alternative Policy Instruments." "Handbook of Natural Resource and Energy Economics, Volume I," eds. Allen V. Kneese and James L. Sweeney, pp. 395-460. Amsterdam: North-Holland, 1985.

[10] Some environmental groups have expressed concerns regarding emission permit trading and similar incentive-based approaches. In Chapters 2 through 7, we address the major concerns which have been expressed. For responses to a broader set of criticisms, see: Stewart, Richard B. "Controlling Environmental Risks Through Economic Incentives." Paper presented at Colloquium on New Directions in Environmental Policy, Columbia University, New York, October 1, 1987.

[11] For further discussion of such possibilities, see: Ackerman, Bruce A. and Richard B. Stewart. "Reforming Environmental Law: The Democratic Case for Market Incentives." Paper presented at Colloquium on New Directions in Environmental Policy, Columbia University, New York, October 1, 1987.

Removing unwarranted subsidies does not mean that the Federal government should abandon to the market place all provision of goods and services. In addition to the government's regulatory role, important ownership roles remain for the government, such as with regard to public lands, wetland acquisition, and maintenance of the Strategic Petroleum Reserve.

Developing practical environmental policies for the 1990s and beyond

The policies we recommend are practical and politically feasible. New policies which deliver improved environmental quality at reasonable cost and which are consistent with American traditions favoring voluntarism and disliking government coercion should have a promising future.

With these themes and common threads as background, we turn to a brief summary of our specific policy recommendations for six categories of major environmental and natural resource problems.

MAJOR RECOMMENDATIONS

We make 34 individual recommendations for the environmental and natural resource problems investigated. Detailed descriptions of the various problems and our specific recommendations for each are provided in Chapters 2 through 7 of this report. An outline of our recommendations follows.

Global air pollution problems

Problem: The Greenhouse Effect and Climate Change.

Recommendations: Fund research on causes and consequences and on adaptation and prevention strategies.

Change current policies to encourage energy efficiency because the multiple benefits (air pollution, trade deficit, energy security) outweigh costs.

Offset new sources of greenhouse gases through trading—new powerplants can affordably offset CO_2—not by technology, but by working with farmers to plant trees on idle farmlands.

Prevent deforestation through debt-forest swaps.

Set up international trading in greenhouse gases.

Improve population policies.

Problem: Stratospheric Ozone Depletion.

Recommendations: Phase out potential ozone depletors (PODs) with tradeable permits. Auctioning permits for CFC production will enable an orderly phase-down without windfall profits to producers.

Provide incentives for recovery of PODs from products.

Support overseas marketing of alternative technologies.

Label POD-containing products.

Air quality issues

Problem: Local Air Pollution.

Recommendations: Implement tradeable permits for stationary sources.

Strengthen mobile-source regulations and incentives.

Problem: Acid Rain.

Recommendation: Initiate an acid rain reduction credit program.

Problem: Indoor Radon Pollution.

Recommendation: Consider several Federal actions, including tax incentives, subsidized loans, construction codes, soil tests, testing requirements for real estate transactions, and accelerated information dissemination.

Energy policy and the environment

Problem: Threats to energy security and environmental quality.

Recommendations: Increase motor vehicle fuel-efficiency standards.

Provide incentives for vehicle efficiency and alternative fuels. Tax gas guzzlers and use the money for rebates on "gas sippers"—super efficient cars.

Expand the strategic petroleum reserve.

Increase energy efficiency through comprehensive least-cost bidding at electrical utilities. Allow conservation to break into the power market—saving energy can make power available just as surely—and often more cheaply—as building a new powerplant.

Fund research on passively safe nuclear power.

Federal water policy

Problem: Inefficient use and allocation of water supplies.

Recommendation: Remove barriers to water markets.

Problem: Degradation of surface and ground water quality.

Recommendations: Implement a combination of regulatory and market programs for nonpoint sources.

Focus the Conservation Reserve Program on water quality problems.

Provide incentives for adoption of integrated pest management.

Implement tradeable discharge permit systems for point sources of water pollutants—set a total limit, and then let industry decide how to meet it. They will follow market principles to find a least-cost solution. They will control the sources where you get the biggest pollution reduction for the money.

Public land management and other land use issues

Problem: Management of the Public Lands.

Recommendations: Implement a public stewardship mandate—so that the total economic picture (including the importance of recreation) is recognized, rather than just cash receipts or agency budgets.

Reduce government subsidies to environmentally destructive, single-use policies like the rape of the Tongass NF.

Invest government revenue from non-renewable resources in recreational and environmental assets.

Problem: Depletion of American wetland resources.

Recommendations: Institute market incentives to reflect wetland values.

Improve use of environmental impact statements.

Restructure the Federal aid in fish restoration fund.

Develop a sport fishing conservation stamp.

Solid and hazardous waste management

Problem: Solid Waste Management.

Recommendation: Implement policies which allow recycling to compete.

Problem: Presence of Toxic Substances in the Environment.

Recommendation: Provide incentives for source reduction.

Problem: Management of Toxic and Infectious Waste.

Recommendation: Implement a deposit-refund system for containerized wastes.

PROGNOSIS FOR A NEW ERA OF ENVIRONMENTAL PROTECTION

There continues to be a broad national consensus in favor of effective environmental protection and improvement. In many cases, our environmental goals are clear—the question is how to get there. A theme of this study is that the policy tools chosen do make a difference. Although conventional regulatory policies have frequently been effective, they have also had the unfortunate effect of heightening antagonism between economic and environmental goals. But these goals should and must be complementary in the long run if either is to be achieved. Economic-incentive approaches to environmental protection cultivate this complementarity.

Private-sector innovation, which is encouraged by market-oriented environmental policies, is essential if the U.S. is to maintain both economic growth and environmental quality. Fairness to future generations dictates that we begin to deal with our long-term problems, both economic and environmental. Sustainable solutions to today's problems are required, because the debts which are incurred today—whether economic or environmental—will some day have to be paid.

If Theodore Roosevelt's conservation ethic at the beginning of this century represented the first important era of environmental concern in the United States, then the decade of important new laws and regulations following Earth Day was the second era. The challenge we face today is to move aggressively toward a third era—a period when practical and economically sensible policies will provide more effective and efficient management of natural resources and protection of the environment.

The **PRESIDING OFFICER**. The senior Senator from Pennsylvania.

Mr. **SPECTER**. Mr. President, I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of legislation are printed in today's RECORD under Statements on Introducing Bills and Joint Resolutions.)

RECESS UNTIL 2 P.M.

The **PRESIDING OFFICER**. The Senate stands in recess until 2 p.m.

Thereupon, the Senate at 12:33 p.m., recessed until 2:01 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

The **PRESIDING OFFICER**. In my capacity as a Senator from Washington, I note the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **STAFFORD**. Mr. President, I ask unanimous consent that further proceedings under the call of the quorum be dispensed with.

The **PRESIDING OFFICER** (Mr. DASCHLE). Without objection, it is so ordered.

Mr. **STAFFORD**. Mr. President, I ask unanimous consent to speak as if in morning business.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

ATMOSPHERIC CONTAMINATION—XVII

Mr. STAFFORD. Mr. President, the bad news is that our planet's air is dirty and it is going to get dirtier unless we take strong measures to reverse that trend. The good news is that those strong measures are readily available to us and we can clean up our act if we really want to.

That is the essence of the daily remarks I have delivered during each of the last 16 days with the forbearance of the Senate. I have discussed in some detail the threat to humanity posed by atmospheric contamination and some practical ways of responding to that threat.

In this concluding report on atmospheric contamination, I would like to review and summarize the problems and appropriate solutions.

AIR SUSTAINS OUR LIVES

Air is not naturally occurring on our planet. The atmosphere is produced by living things—animals produce the carbon dioxide and plants produce the oxygen.

Once the atmosphere has been created, it traps heat and, thus, enables life to continue and to change. The atmosphere also provides living things with protection from the radiation of the Sun. That radiation is strong enough to kill us, except for the screening provided by the atmosphere.

The air is also the source of nutrition. Just as we eat food to stay alive, so must we breathe air to survive.

That's why we must protect the food we eat and the air we breathe from contamination.

But, our air has been poisoned by pollution. That pollution has reached the point where humans, animals, fish, and plants have become ill—and even have died.

Pollution has also upset the atmospheric mix that allows just the right amount of life-sustaining heat from the Sun to enter and to leave our environment. As a result, the Earth is getting warmer—and that global warming threatens to create major changes in life on this planet.

Our carelessness in releasing manmade chemicals into the atmosphere has caused a thinning of the ozone layer—the shield that protects us from the Sun's deadly radiation. At the Antarctic, that thinning has become a hole each winter.

And, of course, we are all familiar with the various forms of air pollution closer to the ground—the pollution from tailpipes and smokestacks that irritates our eyes and our lungs and that threatens our health most directly.

THE NATURE OF THE THREAT

The technological development and economic activity that have brought us an enhanced standard of living have also changed the nature of the pollutants that now threaten our lives.

Our accelerating uses of fossil fuels and of manmade chemicals have placed all inhabitants of Earth at risk.

Chlorofluorocarbons—Freons, as they are known commercially—are the known cause of depletion of the ozone layer.

Carbon dioxide plays a key role in global warming.

Sulphur dioxide threatens human health and also is a major cause of acid rain.

Oxides of nitrogen and ground-level ozone threaten both human health and our environment.

Other pollutants—such as methane and carbon monoxide—play catalytic roles with other air pollutants.

Some of the consequences of these pollutants include global climate change; ground-level smog that threatens humans and trees; acid rain that kills trees, and the combination of all these that combine to make a deadly atmospheric soup.

CHLOROFLUOROCARBONS AND THE OZONE LAYER

Production of chlorofluorocarbons [CFC's] was minimal until 1931, but by 1984 nearly 1.5 billion pounds of CFC 11 and CFC 12—just two members of the Freon family—were being produced.

Because this family of chemicals has a lifetime of between 100 and 150 years, each and every molecule of CFC's ever produced by man is still in existence today and will be around for another century or so—destroying ozone molecules day after day.

When the CFC's are released into the atmosphere—as they are day after day—they destroy ozone molecules in the stratosphere. It is the ozone layer that protects this planet from the deadly radiation of the Sun.

That layer is being weakened everywhere by CFC's. In addition, over the Antarctic a hole as big as North America occurs in the ozone layer every winter.

The message is surely clear—the release of CFC's into the air is a threat to life on Earth. We must stop using CFC's as a blowing agent for cushions and building material; as refrigerants, and as a solvent in the computer chip industry.

Even the U.S. Environmental Protection Agency has reached that conclusion, although somewhat belatedly.

FOSSIL FUEL COMBUSTION

This may be a good place to remind ourselves that we Americans each year dump an average of 37,000 pounds of air pollution into the atmosphere for each man, woman, and child in our country.

Our use of fossil fuels to power our development in this world has resulted in sixfold increases in annual sulphur dioxide emissions since 1900. Nitrogen oxide emissions have increased tenfold in the same period. These gases, along with hydrocarbons, are the major sources of both urban air pollution and acid rain.

There is more. A large tank of gasoline produces about 400 pounds of carbon dioxide when that fuel is consumed. The average electric powerplant sends 2 pounds of coal up its smokestack for every pound it converts into electricity.

Most of the pollutants we pump into the atmosphere do not exist in nature and, when some do, they do so in vastly smaller quantities than man produces. So, it is easy for us to overlook the enormous aggregate total—and the extreme potency—of many of these pollutants.

For instance, the EPA has established 120 parts per billion of ozone as a level that is safe. In an earlier discussion, that level was inadvertently set at 12 parts per billion. But, at 120 parts per billion, ozone begins to change cell walls of the human lung within seconds. And, the level of ozone and other ingredients of the soup of pollution we breathe is thicker and more unhealthy than ever before.

Clearly, the time has come for us to uncouple the direct relationship of advances in our standard of living and increases in air pollution.

THE GREENHOUSE EFFECT

The impact of the Sun's light on the soil and water of Earth is enough to generate heat. Much of this heat is reflected back toward space as infrared radiation, but some of it is retained, including the heat that is trapped by the gases that form our atmosphere.

This is called the greenhouse effect, because it works the same way as glass panels in a hothouse trap solar heat before it has a chance to escape.

A variety of circumstances combine to deterine the climate and the heat of this planet, but scientists today are convinced global temperature is at or near its high point in a million years. And, that temperature may be going up—all because of air pollution.

The pollutants we are releasing into the air are trapping more and more heat in the Earth's atmosphere. These pollutants are carbon dioxide, CFC's, nitrous oxide, methane, and ground-level ozone—or smog.

We are surrounded by the signs. The years 1980, 1981, 1983, and 1987 are the hottest 4 years in recorded history—and 1988 promises to be hotter still.

Forest fires in our West are the worst in history. Glaciers have retreated in Alaska. Warm water is believed to be the cause of coral kill in the Caribbean. Red spruce are growing faster without explanation.

Carbon dioxide is the air pollutant that traps most of the heat and concentrations of carbon dioxide have been rising steadily.

The CFC family is another major greehouse gas, and accounts for about 20 percent of the global warming.

Another major pollutant with greenhouse impact is ground-level ozone, which we most often call smog. It is formed when hydrocarbons, like unburned gasoline, and oxides of nitrogen react in the presence of sunlight. With the high temperatures of this decade have come the highest smog levels in the country since the 1970's.

The consequences of continued global warming should be cause for global alarm. Unless action is taken to halt the rising tide of these pollutants, scientists warn that this planet's temperature will continue to rise to the point where it will be the same as if the Earth had moved 1 million miles closer to the Sun.

These same scientists tell us that could result in the following circumstances:

The Earth's temperature will increase; the stratosphere will cool; the number of monsoons and hurricanes will multiply; sea ice will melt; oceans will expand and their levels will rise; the ice cap will shrink; dustbowls will overtake the world's breadbaskets, and our lives will be very, very different.

ACID RAIN AND SMOG

There is no longer any question that atmospheric contamination has killed forests in North America from North Carolina to Vermont, as well as in Europe.

We can argue whether the killer pollution has been acid rain or ozone, or a combination of the two with other pollutants. But, it is clear that what we have called acid deposition is causing massive damage throughout North America and Europe.

And, that acid rain caused by oxides of nitrogen and sulphur dioxide damages more than forests. Acidic rain damages lakes and streams and the plant and fish life of those waters.

The soup of air pollutants that is becoming all too common in this country also damages the health of not only the very young and the very old and those with respiratory diseases, but also of those who are healthy and strong.

More than 100 million Americans are breathing air that does not meet Federal health standards. And, 35 million of those Americans live in dirty air regions where the air quality has actually gotten less healthy since 1981.

It is not just those who live in our big cities who are at risk. Scientists tell us that ozone levels in rural areas of Europe and even in the middle of the Pacific Ocean have doubled and tripled in the last century.

TAILPIPES AND SMOKESTACKS

Motor vehicles generate more air pollution than any other single human activity. Electric utilities hold down second place.

Cars and trucks are the major sources of carbon monoxide, oxides of nitrogen and hydrocarbons. They are a significant source of carbon dioxide and, particularly in this country, of CFC's. All of these pollutants cause or contribute to the formation of smog. And, some of them are enemies of the stratospheric ozone layer.

There were less than 50 million cars on this planet in 1950, and 85 percent of them were in North America. The auto population is now about 350 million, with 125 million of those outside North America. It is expected there will be more than 500 million motor vehicles on Earth by the year 2000.

Behind motor vehicles in the production of air pollution come electric powerplants. One third of all oxides of nitrogen released into the air of this Nation comes from powerplants. The figure is about the same for carbon dioxide emissions.

More than two-thirds of the coal, oil, and gasoline used to fuel our powerplants and motor vehicles is wasted because of the inefficiency of our technology—and that means more pollution than necessary.

TOWARD A BETTER, HEALTHIER FUTURE

An examination of the causes of atmospheric contamination provides us with the solutions to the problem—and also suggests that those solutions are not too difficult to achieve. But, first, we will have to overcome the fear of change.

That should not be too hard to do, since we must know by now that change is not only necessary, but it is inevitable. Clearly, we will have to change if we are to survive.

To continue business as usual is to gamble with the very future of our planet.

Let us first consider the depletion of the ozone layer and the role of CFC's in that happening.

It is clear that the time has arrived for a worldwide ban on the production and use of CFC's, or Freons as they are known to most people. If we can not accomplish a total ban, we had better get as close to it as possible, with exemptions for only necessary functions where there are no substitutes.

CFC's are considered to be essential in refrigeration, but in the United States only 5 percent of Freon production is devoted to refrigeration.

Most CFC's are used to blow foams—rigid foams such as those used in Styrofoam cups and insulation, or soft foams such as those used in couch cushions. Substitutes are available for virtually all these uses, but they will not be developed and put on the market until CFC's are banned.

Much the same condition exists for the use of CFC's in air conditioners and as cleaning agents in the electronics industry. In addition, the world must act to eliminate the releases of CFC's into the atmosphere. CFC's or Freons should be disposed of only through incineration or recycling.

But those are all attainable goals and will protect life on this planet from increased radiation from the sun that results from depletion of our stratospheric ozone layer that shields us from the sun's radiation.

If we must ban CFC's to protect our ozone shield, then it is clear that we must seek to immediately reduce—and eventually eliminate—air pollution if we are to solve our acid rain problem.

About 75 percent of the carbon dioxide emitted in the United States comes from electric powerplants, motor vehicles, and homes burning fossil fuels. These same sources are also responsible for most of the other air pollutants—sulphur dioxide, oxides of nitrogen, and carbon monoxide.

Vast amounts of each of these pollutants could be eliminated by simply increasing the efficiency of the polluting sources. And, the technology is at hand for achieving that goal.

New powerplants in this country achieve 38 percent efficiency. Old powerplants operate at 28 percent efficiency. The Japanese claim they achieve 43 percent efficiency with their new powerplants. Thus, by simply replacing old units with the best available current technology, air pollution could be reduced by as much as 50 percent from these sources.

Greater gains are available from automobiles. Volvo has a sedan that gets 60 miles on a gallon of gasoline. Toyota has a car that gets close to 100 miles on a gallon of gasoline.

Similar efficiencies are available in home furnaces, air conditioners, and hot water heaters.

As matters stand at present, we waste between 50 and 75 percent of the fossil fuel we burn in this country's automobiles, furnaces, and homes. That waste adds to our air pollution and it is not necessary. It damages our health and our environment and it costs us money and resources.

Science tells us that even greater efficiencies are available in the future, efficiencies that can save us money and end our deadly habit of poisoning ourselves, our environment, and our future.

So, there is no lack of solutions, only a lack of resolve.

However, as the danger we face from atmospheric contamination grows clearer each day—as it did this summer, for instance—I am confident we will take the steps that are already available to us to rescue ourselves from the hazards of our own creation.

We can do no less if we are to meet our responsibility to future generations and to the survival of our planet.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The **PRESIDING OFFICER** (Mr. Adams). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **STAFFORD**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

SENATOR ROBERT C. BYRD

Mr. **STAFFORD**. Mr. President, I take the floor only to say how much I enjoyed the noon presentation to the majority leader and, in the 18 years I have been privileged to serve here, how much I have enjoyed the relationship with the majority leader and admired his leadership in this body.

Mr. **BYRD**. Mr. President, I am deeply touched by the Senator's remarks, not by the length of them, because they were brief, but by the depth of sincerity and feeling that I see there. I thank my friend. He can be sure that the image of a good man will never fade from my memory.

ORDER OF PROCEDURE

Mr. **BYRD**. Mr. President, I have discussed with the distinguished Republican leader our taking up S. 430, the retail price maintenance bill. Under the order that was entered some time ago, the majority leader is authorized to take up that bill after consulting with the distinguished Republican leader. We discussed the matter at lunch and the Republican leader is here on the floor now.

So, unless the distinguished Republican leader has a preference that we not go to that just now, I will not exercise that order at the moment.

The Republican leader has indicated—I will yield to the Republican leader.

Mr. **DOLE**. Mr. President, the order previously entered authorizes the majority leader to move to go to that. He has consent to do that. We have no problem with that, except a temporary one.

Senator Thurmond, who will be handling the bill on this side, is involved now in a markup in the Judiciary Committee pertaining to judges and, I believe, 10 or 12 other pieces of legislation. That started at 2. I am not certain how long it will run. But, following that, we would certainly be in a position to do that.

Mr. **BYRD**. Very well. I believe the leader has stated certainly sufficient and good reasons and I will not go to that measure at the moment. Or we could go to it and simply have morning business and let Senators talk on other things in the meantime so there will be no action on it until Mr. Thurmond is able to come to the floor. I will do whichever the Republican leader wishes.

Mr. **DOLE**. That is fine.

RETAIL COMPETITION ENFORCEMENT ACT

Mr. **BYRD**. Mr. President, I ask that S. 430 be laid before the Senate, with the understanding that there will be no action on it until Mr. Thurmond can be on the floor. In the meantime, I will then ask unanimous consent that there be morning business and that Senators may be permitted during the morning business to speak for not to exceed 5 minutes each until such time as perhaps we can get some other matter up for the afternoon.

Any rollcall votes that are ordered, Mr. President, will be laid over until tomorrow morning. There are several Senators on both sides of the aisle who have to go elsewhere during the afternoon. It is for that reason that rollcall votes will be stacked for tomorrow if they are ordered today. So, I do hope the Senate can get some work done and the distinguished leader and I join in that hope.

There are several bills—I would not call them minor bills, but bills of a minor nature and important bills. They are important and we hope to get them done before we go out sine die.

So, this would be a good time, I believe, if we could find ways to have those bills taken up and disposed of either by voice vote or rollcall votes, if ordered, carried over.

So I ask that S. 430 be laid before the Senate under those conditions.

The **PRESIDING OFFICER**. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 430) to amend the Sherman Act regarding retail competition.

MORNING BUSINESS

Under the previous order, the Senate proceeded to conduct morning business.

THE DRUG BILL

Mr. **WILSON**. Mr. President, I am taking the floor to voice a plea, and that is that Senators who have an interest in the drug bill on both sides communicate to the managers of that legislation. The state of play, as I understand it, is that the two negotiators representing the Democratic and Republican sides of the aisle, Mr. Nunn and Mr. Rudman respectively, are ready, willing, and able to set, if it is possible, a list of amendments which, if agreed upon by the body, would permit us to go forward to the drug legislation.

Mr. President, I can only say that I hope that that will happen without delay because I greatly doubt that my constituents are different from those of my colleagues on this floor. If that be true, I will say that, in the judgment of my constituents, the most pressing business that remains for the 100th Congress is to complete action on a drug bill. We have, through dint of, I think, very good and earnest efforts made on both sides, come to a consensus on a core package.

There were certain amendments, certain subjects, certain proposals which could not be agreed upon. It was agreed that, instead, once we had come to a consensus on that core bill, on both sides we would agreed that a certain number of these proposals, more or less controversial proposals, would be offered as amendments. And the hope expressed by the negotiators was that we might come to some consensus that would limit the number of amendments on each side.

With all due respect to the proponents of other pieces of legislation that remain before us, however important they may seem to the individual sponsors, however meritorious they may be, I would have to say that in the view of our constituents—and I think that they are quite correct—far more important than anything else that remains upon our legislative agenda is action upon the drug bill. I really think that it is difficult for us to go home and explain with anything like convincing arguments why it is that we have not acted upon what they regard as the most urgent priority.

So I would simply say, Mr. President, that it is not a time for fingerpointing for recrimination; it is, instead, a time for action. If there are things that need to be resolved, then I would suggest and I would implore my colleagues to come with Mr. Nunn, come with Mr. Rudman, let us resolve them, let us go forward.

To my knowledge, on our side, we are ready to go. We are certainly ready to meet with Mr. Nunn. I know that the offer has been made by Mr. Rudman. And I will state that I think that we need, not just for our own credibility, but really to respond, as we should, to the wishes and to the clear needs of our constituents, we need to move on this legislation.

We are late already in attacking it. It is of the most basic importance for reasons well known to all of us. This is a contagion that is spreading throughout the land and afflicting more and more of our young people, endangering more and more of our peace officers. It is the kind of thing that we really cannot afford further delay upon.

So, again, I will simply say that I think that there should be no further delay, that there is the necessity for action. It is an urgent necessity. I doubt that anyone on the floor would disagree with that statement.

That being true, let us move upon our conviction and move upon this legislation without delay.

The PRESIDING OFFICER. Who seeks recognition? The Senator from New York.

ANNOUNCEMENT OF POSITION ON A VOTE—THE BERNE TREATY

Mr. D'AMATO. Mr. President, today, at about 11:50 a.m., the Senate passed S. 1301, the bill to implement the Berne Treaty. This Senator was not here to vote. Had I been here I would have voted for the bill.

I was absent by necessity, since I attended the U.S. Holocaust Memorial Museum dedication ceremony for the cornerstone, at which President Reagan was eloquent in his remarks on behalf of the people of this Nation. In addressing that terrible holocaust he spoke of the necessity that there be a living memorial, which this museum will be, so as to memorialize those who were so tragically brutalized. It will serve as a reminder and an institution of instruction to future generations to be mindful of all of those kinds of activity that brought this world to that tragic part in our history.

So, Mr. President, unavoidably, while the rollcall was being conducted, we were in the midst of ceremonies and they thereafter continued, which precluded my attendance at a luncheon in well-deserved tribute to the majority leader, Mr. BYRD.

THE DRUG BILL

Mr. D'AMATO. Mr. President, I would like to address something that I believe is absolutely unconscionable, and that is the manner in which we are conducting our business here in the Congress of the United States and in the Senate in particular. We have now been here for the past week, Monday, Tuesday, Wednesday, and we have done little if anything—nothing.

We talk about the necessity of a drug bill. We have the core drug bill, S. 2852. We have agreed upon it. We have heard one person after another. I have extolled the virtues, to the majority leader and minority leader, of getting together a bipartisan group, a task force, to work out the problems wherever they could, to finalize the bill, to bring it to the floor. But we are not acting on it, Mr. President. This is silly and it is wrong and it is politics at its worst form.

What do we do here? We are waiting to bring up those bills, as contentious as they may be, which will seek to maybe embarrass or put one party in a better position with the public. We are playing national propaganda games here while we promise the people back home that, yes, we are committed. We are going to pass a bill that is going to help. We are going to provide education money and rehabilitation money and law enforcement money to deal with the drug problem. And we are doing none of that.

And the shame of it is while this Chamber is empty, while we are conducting no business whatsoever, we should be doing the business of the people and that is acting on this bill, putting forth the serious amendments that those Members may think are necessary, voting on those amendments, going over this bill, striking those areas which we may not agree on.

But for us to be frittering away this precious time in an act which is just fraught with politics? That is all we are doing now and we are going to come back next week and by God I know what is going to take place. Come next Thursday, next Friday, maybe next Saturday, when everybody wants to get out of here, they will say we are too busy to be debating important issues.

Money laundering, how do we stop the billions of dollars going through the financial institutions of this country? Oh, we cannot talk about that.

How do we see to it that honest people, when they turn in suspected drug dealers, as it relates to those who come in and make large cash payments for their Porsches and other fancy cars, that information can be used effectively? Because many of those people who are doing this are using illegal funds that come from drug proceeds. How do we see to it that we make a law that begins to deal with this? Certainly not by the kind of games and charades we see here now.

If we want to try to influence the election, that is one thing. And this is one Senator who says what we are doing right now is nothing more than a political charade. The business of the people, acting on a drug bill, we are not doing. The business of attempting to cast one party or the other as uncaring, not having a social conscience, that is what we are doing. It is nothing but political pap.

I do not take to this floor that often, and certainly as it relates to making these kinds of what I feel are serious charges. I do not think I have done it before. But I do it now. This is the first time in my 8 years as a Senator that I have seen us embark upon this deadly dance of politics, while the deadly scourge of drug abuse needs action. And I predict again, and I serve notice to those of my colleagues who say: "Oh, ALFONSE, this is too contentious to debate," when we come around to next week. I am not going to be bound by some time-sensitive agreement to get out, that I should be precluded from following through on this important legislation, given the fact that for this entire week, and probably for the balance of the week, we have done little, if anything, while we could have been debating this bill, while we could be addressing the merits of it, while we could be improving it, having our debates, as contentious as they may be. We are going to save that to the last minute, using the clock of adjournment as the excuse to curtail legitimate, honest debate.

This Senate is not doing the business of the people, and its conduct is disgraceful.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENTS TO THE CLEAN AIR ACT

Mr. BREAUX. Mr. President, I listened with great interest yesterday to the eloquent comments of the Senator from Maine [Mr. MITCHELL], with regard to the disappointing prospects for enactment of legislation to revise and strengthen the Clean Air Act this year. I share his view that it is indeed unfortunate that no further action will be possible during this Congress, and commend him for his efforts and diligence in working to bring a bill to the Senate floor. Senator MITCHELL has been and will continue to be a strong and effective advocate for strengthening the Clean Air Act. He has my admiration for his tenacity in the face of strong opposition from extrme elements on both sides of this issue.

The political leadership of this country has a responsibility to provide our citizens with a healthful environment, and the need to significantly improve the quality of our air is an important component of that responsibility. Ozone and carbon monoxide threaten the health of Americans, particularly in urban areas throughout our entire Nation. Other air pollutants which may be hazardous or toxic are inadequately controlled. Acid rain continues to damage lakes and streams. The time for action is now, and I for one had hoped that the 100th Congress would tackle these difficult issues in a realistic manner.

At this point, I would like to offer a few thoughts on how we might break the impasse in which we find ourselves on air quality issues. if we are to be successful in moving forward with legislation that will genuinely improve the quality of the air we breathe, that will tackle the problem of emissions of toxic air pollutants, and that will aggressively address the problem of acid rain, we must find a different and realistic way of confronting the issues. We must reject the simplistic notion that to be concerned about the costs of regulatory programs is to somehow be unconcerned about the health and well-being of our citizens and of our environment. And we must reject the false logic that failure to act is cost-free. As so clearly expressed yesterday by my good friend, the Senator from Maine:

> A policy that imposes huge job losses in West Virginia or Ohio or Kentucky is no more acceptable than a policy that imposes heavy pollution damage on Maine or Vermont or North Carolina.
>
> We must confront this problem together. We must work together to solve it.

Mr. President, the public interest is ill-served by failure to act to resolve our air quality problems. We fail as an institution if we allow uncompromising demagogues on either extreme to prevent the reasonable and realistic solutions that will benefit the American public.

As a Senator representing the State of Louisiana, I am committed to producing a sound legislative approach to our air quality problems that recognizes reality. It is a reality that our citizens and our society suffer from our failure to strengthen the Clean Air Act. It is a reality that we must be concerned with the economic impacts of regulatory proposals, and search for ways to maximize the benefits of our actions while minimizing the costs. It is a reality that we must search for compromise among differing viewpoints. It is a reality that we are doomed to failure again and again if we construct proposals that galvanize and focus opposition rather than searching for innovative ways to resolve differences. Success in producing such a bill will demand a willingness and strength on the part of Senators to stand against those on either side who would have us do nothing rather than work together for the benefit of our citizens.

Mr. President, I intend to work with my colleagues during the months leading up to the 101st Congress to develop such a legislative proposal. I am committed to enactment of legislation to strengthen the Clean Air Act, and pledge my cooperation to the Senator from Maine and other of my colleagues who are prepared to end the impasse over air quality and work to produce amendments to the Clean Air Act that can become law.

THE DISTRICT OF COLUMBIA'S DECISION TO CLOSE ITS PRISONS TO NEWLY SENTENCED INMATES

Mr. TRIBLE. Mr. President, earlier today the residents of the Washington metropolitan area were given a rude awakening. Citizens of northern Virginia, Maryland and the District of Colubmia awoke to a Washington Post headline that read: "City Closes Its Prisons to New Inmates". Simply put, the Mayor has decided not to let any more inmates into city jails.

Once more, Mr. President, the District of Columbia has proven incapable of managing a prison system. And once more, the city's incompetence has imperiled the public safety.

To prevent that, Mr. President, I have today contacted the Attorney General to urge that he temporarily begin accepting newly sentenced District inmates into the Federal prison system. I do so reluctantly because the Federal Government is not to blame for this crisis. But I believe the city has left us little choice.

Last night's decision was the latest in a series of mistakes that make the keystone cops look like the height of efficiency. My colleagues have no doubt read or heard about the wave of escapes from Lorton Prison—10 so far this year. The city has done nothing to correct that problem.

The city's Lorton Prison is also the site of a rampant drug problem. More than 80 visitors to Lorton this year have been found to be in possession of illegal drugs, and law enforcement officials estimate that guards are intercepting less than one-third of the drugs flowing into Lorton. The city has done nothing to correct that problem.

But the city's inaction is most apparent in its unwillingness to seriously address the prison crowding crisis. For years, the city has been told by this Senator and by others that it must expand its prison capacity, and that it should look within the city for sites on which to do so. For years, the city has done nothing.

Its only response has been to blame others for a crisis of its own making. It has blamed the courts for forcing the city to comply with inmate ceilings at several of its prisons. It has blamed the Attorney General for not taking enough prisoners into the Federal system, even though Federal prisons now hold more than 2,000 city inmates. And the Mayor himself has had the nerve to blame President Reagan, saying that the flow of drugs into the United States is the reason the District of Columbia does not have enough prison space.

Enough is enough, Mr. President. The city has failed and failed miserably. It has proved that it is better at laying blame than at managing prisons. And we must help to devise a long-term solution to the mess that is the D.C. Corrections Department.

Unfortunately, the city has also created a short-term crisis. It has refused to accept newly sentenced inmates, and there is a danger that they may go free. There is a danger that they will escape easily from where they are being held; last night, for example, 23 newly sentenced inmates were housed in the basement of the courthouse downtown. These are dangers we cannot accept.

For that reason, I have contacted the U.S. Attorney General today to urge that he consider accepting newly sentenced city inmates into the Federal prison system. Let me make clear that I do so reluctantly, for this crisis was not caused by the Justice Department. I would greatly prefer that the city be forced to continue taking new prisoners, and face up to the contempt citations that will follow. But if that is not possible, then the Justice Department may hold the only solution to the crisis at hand.

If the city cannot be forced to accept new inmates, then I believe they should be taken into the Federal system, rather than be set free or sit in the basement of the courthouse downtown. I hope that Attorney General will act positively on this request.

I ask unanimous consent that my letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 5, 1988.

Hon. RICHARD THORNBURGH,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR DICK: I write to ask your urgent attention to the District of Columbia's decision not to admit newly sentenced inmates into its prison system.

As you know, the city's Director of Corrections announced last night that District prisons are too overcrowded to permit acceptance of additional inmates. I know that you share my concerns about the adverse impact of that decision on public safety in this area, and I urge that you begin accepting those newly sentenced inmates into the Federal prison system.

I understand fully that this crisis is not the fault of the Federal government. The U.S. Department of Justice has been most generous toward the D.C. prison system and already houses more than 2,000 of its inmates.'

Like you, I would greatly prefer that the city be forced to accept new prisoners and face the contempt citation that will follow. Nevertheless, I know that may not be possible and that the resulting choice we may face is a stark one: either admit D.C.'s newly sentenced prisoners into the Federal system, or risk letting them go free.

The Washington Metropolitan area, and Northern Virginia in particular, have already suffered greatly because of the District government's mismanagement of its prison population. Escapes have been frequent and other disturbances at Lorton Reformatory are a source of constant concern.

The District's latest decision compounds those problems and further threatens the public safety. I urge that you act swiftly to limit that threat by taking newly sentenced inmates into the Federal prison system.

This step will help alleviate the immediate crisis that the District government has created. I hope that you will support it and that we can work closely together to devise a long-term solution to the District of Columbia's prison problems.

Sincerely,

PAUL TRIBLE.

FRANKLIN DELANO ROOSEVELT, JR.

Mr. COHEN. Mr. President, I would like to pay tribute to a special friend who recently passed away. Franklin Delano Roosevelt, Jr., the son of our late President, died recently on his 74th birthday near his home in Milibrook, N.Y.

Franklin was the fourth of President and Mrs. Roosevelt's six children. He was born at his family's summer estate on Campobello Island, which is just across the Canadian border from Lubec, ME. During World War II he distinguished himself by admirable service to his country, commanding a Navy destroyer and winning the Purple Heart, Navy Cross, and Legion of Merit medals.

Franklin Roosevelt served three terms in Congress, representing his New York district from 1949 to 1955. He also worked in two Presidential administrations, beginning as Under Secretary of Commerce under President Kennedy and continuing his service under President Johnson. Later he built a successful business career based in New York City.

I had the pleasure of serving with Mr. Roosevelt and our former colleague, Ed Muskie, on the commission overseeing the Roosevelt Campobello International Park located at the site of the Roosevelt family's summer estate. The park was established 24 years ago as a joint memorial by the United States and Canada to President Franklin Roosevelt, who spent many summers there.

Senator Muskie delivered an eloquent and poignant address at Mr. Roosevelt's funeral in New York City. I ask unanimous consent that Senator Muskie's remarks be inserted in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

FRANKLIN D. ROOSEVELT, JR., MEMORIAL SERVICE

(Remarks by Senator Edmund Muskie)

By pure happenstance, the Roosevelt Campobello International Park Commission held its summer meetings this year in June. There was some quiet grumbling that we had rushed the season, that the gardens had not reached the familiar brilliance of August which is when we often have met in the past. But, we realize now that we would not have had Franklin with us in August. So we can be grateful.

He was in typical form at our June meeting, having taken a close look in advance at some of the construction work that had been done in our absence throughout the Park's natural areas. He was the first to report. He was disturbed by the appearance of the Glensevern Road which had lost some of its original beauty in the process of being upgraded. His Commission colleagues promised they would give it their scrutiny. He had another minor complaint; the crushed stone footpath to the Johnston Cottage, where he was staying, left a residue on shoes and it was being tracked into the Cottage. He worried constantly about a breakdown in zoning that might bring unsightly commercial intrusions to the Park area.

It was not that he opposed change but any changes that were to come to Campobello in his 24 years as one of the original United States Commission members had to comport with the ambience of his father's "Beloved Island"—and his own.

Franklin was born on the Island 74 years ago and returning, year after year to help oversee the development of this unique memorial to FDR, he had a perspective that none others of us had, a special devotion to the soil and the vistas and the people of the Island. In that respect, it can truly be said he was "beloved by the Island."

He enjoyed taking first-time visitors down the old drives and recapturing his youth. So much of it was still there. He could recall many associations with Campobello Island including the terrible night of August 10, 1921, when his father contracted polio on the Island. Speaking at a ceremony on the 100th anniversary of his mother's birth, Franklin noted that his father came back on only three occasions after the polio. "My mother then took up his beloved Island and came back many times. I think she came back to recharge her batteries."

One always had the feeling that Franklin, Jr. was recharging his batteries when he came back to Campobello. And, for the rest of us, the Roosevelt presence at the Commission meetings always got our own juices flowing. He was concerned about the proper development of the Park and we shared his concern. He worried about preserving its beautiful views and clean air and we shared his worries. He cared about the people who were employed by the Commission and they cared about him because he was one of them. It was he who made sure that they had an acceptable working agreement with the Park. They will miss him as much as his fellow Commissioners.

The public cannot imagine some of the wrangles the Commission got into behind closed doors when Franklin's stubborn determination made us think twice about our decisions. But we remember best the laughter and the camaraderie around the conference table in the glory days when Grace Tully and Jim Rowe, who worked at the White House with FDR, would invoke memories of New Deal events and personalities and delight all of us with first-hand reports of those days.

There came a time when because of my State Department appointment, I had to suspend my activities with the Campobello Commission. It has been my lot to assume the chairmanship every two years, alternating with the Canadian aide. Thus it was on July 19, 1980, that Franklin was elected chairman, vowing that he would make every effort to reinstate me to that role at the earliest opportunity. Well, that time came early the next year. Meanwhile, a Roosevelt was in charge at Campobello and I think the Island slept better at night.

THE BANKING BILL

Mr. PROXMIRE. Mr. President, as Senators know, we passed a banking bill by a 94-to-2 vote earlier this year. In fact, it was last March.

That bill has been tied up for jurisdictional reasons in the House. We think we have solved the jurisdictional reasons but it will take an action by the Senate in order to pass it. And I think we can do it in a relatively short time.

There are a number of Senators who understandably have holds because they are interested in perfecting what we have offered.

I just wanted to serve notice on the Senate that this bill is very important. It is important not simply to the banks; it is more important to all groups that raise money—the home builders, it is vital for them; it is important for the corporations of this country that raise capital; it is important for our States; it is important for our counties and our cities. It will make a big difference on the basis of very careful studies that we have had on this.

As I say, this bill passed the Senate overwhelmingly, 94 to 2. It is the kind of action that we should try to accomplish this year if we possibly can.

I simply wanted to serve notice that I intend to press hard for that legislation in the concluding days. I think it would be a tragedy for this country if we did not enact it. I am sure when it comes to a vote in the House it will also pass and by an overwhelming vote. We want to do our best to see that it does come to a vote.

NOTE

(In the RECORD of September 29, 1988, the remarks of Mr. ROCKEFELLER contained errors typographical in nature. The permanent RECORD will be corrected, as follows:)

Mr. ROCKEFELLER. I thank the Chair.

Mr. President, this is an historic day for the Senate, the welfare system, and in the career of DANIEL PATRICK MOYNIHAN. We are close, ever so close, to passing legislation that has eluded passage for the past 20 years. We have finally reached a bipartisan consensus on a way to reform the welfare system, something many people thought was absolutely impossible.

I urge my colleagues to vote affirmatively for this bill so that poor families in this country will not have to wait a minute longer for the help they so desperately need to improve their lives. I personally am very pleased to have been part of putting together this welfare reform package.

Much has already been said about Senator MOYNIHAN and much more will be said, not only today but in the future, in the many books that will be written about his accomplishments.

(Mr. MOYNIHAN assumed the chair.)

Mr. ROCKEFELLER. But I want to add my comments. As his friend, admirer, and fellow member of the Senate Finance Committee, I have been truly inspired by Senator MOYNIHAN's commitment to helping people. He would not let us conferees forget how far this bill does go in improving the lot of the very poorest of Americans. Senator MOYNIHAN would constantly remind us of reality. He would remind us that we had work to do, that there were people in need, and we could help them.

So I thank the distinguished Presiding Officer, Senator MOYNIHAN, for your inspiration, for your foresight, for your commitment, for your tenacity, for your writings, for your poetry, and for your nature. And I will stop at that.

What makes this bill remarkable in many ways is that it is truly bipartisan. The White House played a constructive role throughout the process.

Senator BENTSEN took time from the campaign trail to work on this bill. I also would like to commend Senator DOLE for his intuitive and instinctive compassion for people; Senator PACKWOOD for his wisdom and ability to think of ways to get things done when others cannot; Senator ARMSTRONG for his very humanistic and pragmatic approach to overcoming stumbling blocks; and Senators PRYOR, DASCHLE and WALLOP, for their tireless efforts to see this bill through to the end. This is an exciting moment in our country's history.

Our welfare system sorely needs a new direction. We have failed to provide the opportunity for all Americans to educate themselves, earn a decent living, and live a life of dignity. The welfare system has deteriorated to a meager cash assistance program that does little in the way of education, jobs training, or work experience—essential ingredients to helping poor men and women become prepared for and part of the work force.

With this bill, we can reshape and reform our current welfare system to one that will truly affect the lives of many of our poorest families.

Federal funding for our current employment and training program for welfare recipients—called the WIN Program—has been cut, Mr. President, by 80 percent since 1981. We can reverse that trend today. This bill will make $600 million available in the first year for important education and training programs.

Substantial research conducted in recent years, has demonstrated that we simply must devote more resources upfront if we are going to make a real difference in welfare families' lives.

Although 1987 represented the fifth year, Mr. President, of economic recovery for this Nation—the economic recovery left many poor Americans behind. In 1987, there were 8 million more poor people than there were in 1978.

What I find truly shocking is the striking increase in the number of children living in poverty. Some 13 million children were poor in 1987, compared to 9.9 million in 1978. That is the wrong direction. This bill will help to change that.

Mr. President, it is time to change the system throughout the country—in every State and on behalf of every one of the 32.5 million Americans living in dismal poverty. In order for this to happen, we are simply going to have to invest more money in the necessary programs.

I say "invest," as my predecessor, Senator Randolph used to say so frequently, because there have been real signs of hope from pilot projects that have spent money on education and training for AFDC recipients.

These initial investments will pay off in the long term as former welfare recipients become employed and earn wages and pay taxes.

I, along with my distinguished senior colleague, the majority leader, Senator BYRD, represent a State that is among those that needs this bill the most. West Virginia continues to have an extraordinary high rate of poverty and an extraordinary high rate of unemployment. Many people have left West Virginia to find employment in other States.

This year, Mr. President, in an average month, over 50,000 households in West Virginia receive AFDC benefits. They received through AFDC an average of $223 a month. Just imagine living on $223 a month.

I am extremely offended by statements made by some that poor people will not work; that welfare is permanent; that there is a welfare psychology that precludes people from having ambitions, from caring about their children, from caring about their lives. I reject that.

When I first went to West Virginia a quarter of a century ago, I worked with unemployed coal miners in communities where as many as 50 families out of 56 were on welfare.

I sometimes went with them into what we call in West Virginia punch mines or dog holes. These are coal mines that are closed, have been worked out, and totally unsafe. These coalminers would go in with newspapers wrapped into a funnel, pour in some rock dust, put in a little powder, put in a fuse, light the fuse, go around the corner of the wall and wait for the explosion to go off so rock and maybe some coal would come down. They would pick out the coal and hope they could deliver enough to a tipple so that they could make $8 a day.

Why do men do this? Why did they do it then? Why do some do it now? Because they want to support their families; because they want to live in dignity.

They want to work, but they lack essential training. Tell me how you go down to Union Carbide in south Charleston and apply for a job when you cannot add or subtract, you can barely read, and you cannot even admit that to yourself?

I remember many families when I was a VISTA worker in West Virginia, whose children did not go to school because they were needed at home.

You have to break the cycle, you have to cut into the cycle and give people education and training and hope. People, at least in my State of West Virginia, want to work.

The Family Security Act will significantly increase the funds available to West Virginia and the rest of the States to help children and their parents escape poverty.

The bill begins logically, Mr. President, with provisions to insist that fathers who can financially support their children, whether or not they live in a different household or in a different State, will do so. The statistics on child support collection in most parts of this country are extremely depressing. This legislation makes it clear that men and women who bring children into the world must accept responsibility for them.

A crucial section of this bill is the JOBS Program, with provisions that direct all States to design comprehensive work oriented services—that must include basic education, training, and work experience—for AFDC recipients.

For States, such as my own, it provides the first opportunity—because of the funding levels proposed—for extending this kind of constructive and positive assistance to citizens who are likely to be without a high school degree, without perhaps even the most basic math or science ability, and with little or no work experience. Again, you cannot get a job at Union Carbide if you do not know how to read a job application manual—or anywhere else. You cannot get a job in a coal mine, Mr. President.

One final point about this part of the legislation. When I was Governor of West Virginia, Mr. President, I chose to implement something called the community work experience program—abbreviated as CWEP but dubbed by many as work fare.

I want to comment on the debate about this method of assisting welfare recipients.

The CWEP Program has been enormously successful in West Virginia. I do not understand, Mr. President, the concern expressed by many of my colleagues that CWEP is a program meant to punish rather than help welfare recipients. I would once again like to emphasize that CWEP can be an important work experience and is an important work experience in West Virginia.

Just this past week a film crew from Australia was in West Virginia documenting West Virginia's success in running their CWEP Program. I am very proud of the accomplishments of my State's work and training programs where CWEP is but one of many programs to move an unemployed individual toward the goal of full employment.

Mr. President, there are also important transition benefits in this legislation. These benefits will help ease and encourage a move from the welfare rolls to work. Child care is frequently cited as the biggest reason why many mothers coming off welfare are unable to go to work—one study found that 60 percent of all welfare mothers listed lack of day care as a reason why they could not go to work. Almost a half million children a month will benefit from child care assistance provided by this bill. Helping mothers afford quality day care is an essential element of assisting mothers move from welfare to work.

Just as important, the length of time the entire family can receive health insurance is greatly expanded. Under current law, families receive 4 months of Medicaid coverage after leaving welfare. That is not very much. This bill guarantees a full year of health insurance coverage. Families will no longer have to choose between health insurance coverage for their children and themselves and going to work.

I know there are some who say to wait for next year. I say let us do it now, Mr. President. This is a good bill. It is not perfect. But let us not waste this opportunity. We have accomplished a tremendous feat and I do not think we should waste the opportunity we have at our fingertips to reform the welfare system.

Again, I congratulate Senator MOYNIHAN for this historical event. I believe Congress has risen to Senator MOYNIHAN's challenge of enacting legislation that will really make a difference in the lives of the poorest families in America.

I thank the Chair and I yield the floor.

AMERICAN CIVIL LIBERTIES UNION

Mr. THURMOND. Mr. President, we have heard much discussion lately about the various positions of the American Civil Liberties Union.

Vice President BUSH has criticized Governor Dukakis for boasting that he is a "card carrying" member of the ACLU. I have an article entitled "Where Does the ACLU Stand on the Issues?"; which outlines many of the positions of the ACLU.

Mr. President, according to this article, if the ACLU had its way, we would not be able to protect our children from pornography or have metal detectors in airports. I encourage every American to read this article. I will ask unanimous consent that this article be included in the RECORD immediately following these remarks.

Mr. President, the next President will have the opportunity to appoint many judges to the Federal bench. How these judges interpret the Constitution is of vital importance to the future of this Nation.

Mr. President, if Mr. Dukakis is elected President, I believe we are likely to see many judges, with views similar to the ACLU, appointed to the bench.

I urge every American to carefully consider this matter before they vote this November.

I ask unanimous consent that the article to which I referred be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WHERE DOES THE ACLU STAND ON THE ISSUES?

(By William A. Donohue)

The subject of civil liberties is fast developing into a major campaign issue as presidential candidates George Bush and Michael Dukakis line up on opposing sides. In the middle of the controversy is the American Civil Liberties Union, which has long been considered the nation's leading civil rights organization.

Dukakis, who boasts he is a "card carrying" member of the Union, is thought to be generally supportive of the ACLU's positions. Bush has recently opened fire on the group's record. The issue has been raised in the Bush camp that Dukakis, because of his affiliation, is likely to appoint ACLU-minded judges to the bench.

But just where does the ACLU stand on critical issues? The organization has put out a policy guide, approved by the ACLU's board of directors, which constitutes the official voice of the Union, in effect, a set of directives that are acted upon by both the national organization and affiliates around the country. When an affiliate goes to court, for instance, it uses the policy guide as a basis for its actions. The policy guide includes 270 separate issues the ACLU has endorsed.

The following I.Q. test is culled from the ACLU's most recent policy guide and provides a basis for further discussion about the wisdom of its policies.

Do you believe that all laws banning the sale and distribution of hard core pornography, including child pornography, should be declared unconstitutional? The ACLU does.

The Union says it opposes "any restraint on the right to create, publish or distribute materials to adults, or the right of adults to choose the materials they read or view, on the basis of obscenity, pornography or indecency." And then adds that: "Laws which punish the distribution or exposure of such materials to minors violate the First Amendment . . ." (Policy No. 4)

The ACLU says it does not support child pornography and maintains that it is perfectly fine for the police to prosecute those who harm children. But it defiantly defends those who profit from child pornography. Indeed the ACLU's passion for defending the sale and distribution of child pornography led it to argue before the U.S. Supreme Court that child pornography is a form of free speech, protected by the 1st Amendment.

Fortunately for the children, the high court rejected the ACLU's claims and agreed with the lawyers for Father Bruce Ritter's Covenant House (a shelter that serves children abused by the pornography industry). Child pornography, it was decided, was not what James Madison had in mind when he wrote the 1st Amendment allowing free speech. The ACLU, it should be noted, receives funding from the Playboy Foundation.

2. Do you believe that the film classification system, which designates movies G, PG, PG-13, R and X, constitutes censorship and should be eliminated? The ACLU does. The ACLU doesn't like the "restrictive impact on the marketplace of ideas" because of such a system, and says that ". . . experience has shown that ratings inevitably have serious chilling effects on freedom of expression." (Policy No. 18)

Since its founding in 1920, the ACLU has repeatedly asserted that it defends the right of Americans to be free from government censorship, claiming that what private groups do is not a First Amendment consideration. Not true. It openly rejects even nongovernmental, non-censorship systems which merely identify for prospective viewers (many of whom are parents) what the level of maturity is of various movies.

The ACLU is particularly disturbed by the R and X ratings, contending that such labels discourage further production of these movies! It is upset that hotels and airlines "frequently refuse to accept X-rated films." Children, of course, frequently board planes, and their parents hardly expect them to be subjected to "Deep Throat" while flying the friendly skies. The ACLU actually maintains that the rating system, "through its X and R ratings, interferes with the autonomy of the family. These ratings deprive parents of the right to determine what films their children may see." The policy speaks for itself.

3. Do you believe that a voucher system, or a policy allowing for tuitions tax credits, is unconstitutional and should be forbidden? The ACLU does. (Policy No. 88, sections c and e.)

There have been many reports on the status of the public schools in the 1980s and none has been glowing. The urban poor, many of whom are black and Hispanic, have been ill-served, as virtually everyone agrees. One would think that an organization that proclaims its support for minorities would be leading the fight to enable the disadvantaged to reject those schools they find unsatisfactory.

Moreover, it is rather strange to see an organization that never tires of boasting of its commitment to free choice (the ACLU is relentless in its defense of a woman's right to choose abortion, for example), leading the fight to deny parents the right to choose which schools they want their children to attend. But no, the ACLU's politics dictate that freedom of choice, in this case, be overruled.

4. Do you believe that the display of a Christmas Creche or Menorah on public property is unconstitutional and should be forbidden, even if paid for with private funds? The ACLU does.

Every December an ACLU affiliate files suit in a federal district court seeking to deny Christians and Jews the right to publicly express their religious beliefs. The same organization, which says that if people don't like to see pornography openly displayed by street vendors "they can avert their eyes," refuses to adopt the same logic when applied to a Nativity scene or Menorah. In these cases, nothing less than censorship will do.

Similarly, the ACLU will defend the freedom of any student to print obscenities in a school newspaper, but will not come to the defense of those who wish to sing "Silent Night" in the classroom. In fact it will try to stop them. This is a classic example of its moral priorities.

5. Do you believe that the words "under God" in the Pledge of Allegiance are unconstitutional and should be forbidden? The ACLU does. (Policy No. 84, section a.)

There are some people who feel that religious objectors should not be required to say the Pledge of Allegiance. The ACLU goes well beyond that position by literally stating that "The insertion of the words 'under God' into the pledge of allegiance is a violation of the constitutional principle of separation of church and state."

There are some officials in the ACLU who actually brag about their refusal to say the Pledge. Gara LaMarche, executive director of the Texas affiliate, has written that "The Pledge of Allegiance is not the essence of the Constitution. Not pledging is." To LaMarche, not pledging is more American than doing so because dissent is a Constitutional right. But rights entail responsibilities (though that is not something the ACLU likes to stress), and the essence of pledging is to affirm one's duty to country, not to affirm one's right to be a cad.

6. Do you believe that churches and synagogues should be denied their tax-exempt status? The ACLU does. (Policy No. 92, section a)

The ACLU is in court right now trying to deny the Roman Catholic Church its tax-exempt status. The problem? The Catholic Church preaches against abortion, and the way the ACLU sees it, that's a violation of its tax-exempt status. But the Catholic Church also preaches against murder, stealing, and adultery. So what? Aren't religious institutions entitled to freely express themselves on matters of morality?

Come to think of it, why hasn't the ACLU filed suit against Rev. Jesse Jackson for taking up a collection for his presidential campaign in the black churches of Chicago? The founder of the ACLU, Roger Baldwin, once told me that the Union's decision to strip churches and synagogues of their tax-exempt status was "very foolish." It's more than that: It's downright hostile to the freedoms traditionally understood to be both Constitutional and supportive of democratic society.

7. Do you believe that all drugs should be legalized, including crack and angel dust? The ACLU does. (Policy No. 210)

Survey data show that most Americans do not want to legalize drugs. Of those who do, few are in favor of legalizing every drug. There are some drugs, like crack and angel dust, that are so disabling and convulsive in their effect that almost no one wants them legalized. Furthermore, advocates of legalization usually specify that only certain people (e.g. those who have been "medically certified") should be able to obtain drugs. Finally, most proponents of legalization admit that their position is born of exasperation with present policies, and is not derived from a school of liberty that includes the right to self-abuse.

The ACLU differs in every respect. It wants all drugs legalized, stating that "the introduction of substances into one's own body" is a civil liberty. It is not against "reasonable regulatory restraints" but does not demand that any "reasonable regulatory restraints" be levied before crack is legalized. And most revealing of all is the ACLU's philosophical belief that liberty includes the right to self-abuse, even when it is certain that drug addicts cannot help but infringe on the rights of others by engaging in uncontrollably violent and deviant behavior and by burdening the taxpayers with enormous bills for their medical and welfare expenses.

8. Do you believe that prostitution should be legalized, including street solicitation? The ACLU does. The Union bluntly "supports the decriminalization of prostitution and opposes state regulation of prostitution. The ACLU also condemns the abuse of vagrancy or loitering laws or licensing or regulatory schemes to harass and arrest those who may be engaged in solicitation for prostitution." (Policy No. 211)

There is very little public support for legalization of prostitution. And with good reason: urban areas are already plagued with so many serious social problems that the idea of giving sanction to them is mad. It is an American phenomenon that where prostitutes congregate they act as a magnet for deviants and degenerates of all kinds. Drug addicts and muggers are drawn to these areas, making entire neighborhoods unsafe for families and consumers.

Legalization would spare no neighborhood, as prostitutes, assisted by ACLU lawyers, would demand that the police observe their "civil liberties" by allowing them free rein. And in all likelihood, prostitutes would not target those communities where civil libertarian lawyers live, leaving them immune, once again, from the consequences of their ideas.

9. Do you believe that curfew ordinances for juveniles are unconstitutional? The ACLU does. (Policy No. 206)

Communities do not indiscriminately order kids off the street at night. In the rare case that curfews are employed at all, it is because a series of unusual events are seen to merit preventive action on the part of the police. For example, in 1981, after scores of black children were found missing or dead, Atlanta Mayor Maynard Jackson approved a law that ordered children off the streets after 9 p.m. According to the logic of the ACLU, Mayor Jackson was not acting in the best of interests of the children—he was flatly violating their constitutional rights.

Once again, the Union's obsession with rights has blinded it from realizing that there are some occasions where the exercise of rights leads not to liberation, but to the loss of freedom. In this case, it was life itself that stood to be lost.

10. Do you believe that sobriety road checks are unconstitutional and should be forbidden? The ACLU does. (Policy No. 217)

In an attempt to apprehend drunk drivers, before they injure themselves or someone else, the police in many states have conducted road checks, usually at bridges or toll booths where traffic is required to stop anyway. Here again, the ACLU has its blinders on to legitimate public safety concerns. No one doubts that it is intrusive for the police to stop and check drivers for driving under the influence of alcohol. But the intrusion is minimal and, considering what is at stake, highly justified. The ACLU is even against the administration of a breathalyzer test, used as a spot check, to detect drunk drivers. (Policy No. 260)

11. Do you believe that school officials should be denied the right to search the lockers of high school students for drugs? The ACLU does. (Policy No. 76)

In this day and age of drug abuse, there has been tremendous public outcry in favor of cracking down on drug users. In particular, the public favors greater scrutiny of high school students. But the ACLU objects. It wants principals to secure a search warrant before student lockers can be checked for drugs, pretending, as it does, that a school locker is a sacred vestibule of privacy, off-limits to school authorities.

12. Do you believe that all prisoners should have the right to vote, regardless of the nature of their offense, and that they should be allowed out of prison to vote at their last place of residence prior to confinement? The ACLU does. (Policy No. 241, section b-5)

Convicted felons do not, and should not, have the same rights as others. They forfeited some of their rights when they chose to violate the rights of innocent people. If the people's representatives deem it wise to pass laws that deny citizenship rights to those who have yielded citizen responsibilities, that is as it should be. The ACLU not only wants to restore the rights to vote to all prisoners, regardless of the offense, it wants them to be allowed to vote at their last place of residence!

13. Do you believe that all criminals, except those guilty of such crimes as murder or treason, should be given a suspended sentence with probation and sent back to the community from which they came? The ACLU does. (Policy No. 242)

This is one of the more incredible policies of the ACLU. Aside from "the most serious offenses, such as murder or treason," no one should go to prison. The ACLU recommends that "a fine should always be the preferred form of penalty," though it is not clear what the appropriate fine might be for rape. The Union suggests that "re-integrating the offender into the community" is the most appropriate correctional approach, meaning that those who prey on others should not be removed from the neighborhood of their victims.

There is no way to understand the mindset that is at work here other than knowing how the ACLU feels about prisons in general. "Imprisonment is harsh," the policy reads, and that is why the ACLU prefers probation. According to the ACLU, "probation maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of law." But the purpose of punishment is not to maximize the liberty of criminals, it is to minimize their liberties so as to maximize the liberties of the innocent. And it is hard to know how the law is vindicated by treating muggers as if they were jaywalkers.

14. Do you believe that all military personnel should be granted an honorable discharge, including those found guilty of dishonorable behavior? The ACLU does. (Policy No. 253, section 8)

That's right. This is the official policy of the ACLU: "All service personnel should receive one form of discharge, with no qualifications." The reason? "Dishonorable, general and bad-conduct discharges do not serve any reasonable military need and impose a heavy and unnecessary stigma upon the military ex-convict which follows the person throughout his or her civilian life and which seriously affects future employment opportunities."

Does this mean that those guilty of treason, desertion, insubordination—even rape, robbery and murder—should be given an honorable discharge? Yes it does. Does this mean that all such persons would qualify for veterans' benefits? Yes it does. Does this mean that the ACLU believes that those who betray their country are entitled to exactly the same rewards as those who earned the Purple Heart? Yes it does. Does this mean that if a service- * * * his crime should be expunged from his record. Yes it does: "No * * * for crimes committed in service should be made on the discharge form." Flat statement—those are the words of the ACLU.

15. Do you believe that health professionals should not be allowed to trace for AIDS, and that doctors should be prohibited from notifying unsuspecting persons that they might be infected with the deadly disease? The ACLU does. (Policy No. 268, sections A-6 and B-5)

The ACLU is so wedded to the gay rights movement that it cannot objectively pass judgment on the issue of AIDS. It has resisted every conceivable effort to warn unsuspecting spouses that they might be infected with the deadly disease. Janlon Goldman, an official of the ACLU's Project on Privacy and Technology, has admitted where her bias lies: "The benefits of confidentiality outweigh the possibility that somebody may be injured." "May be injured" is ACLU-speak for die.

According to the ACLU, the emergence of AIDS "as a major threat to public health has serious implications for civil liberties such as control over one's body, freedom of association and the right of privacy of one's medical records." Nowhere in ACLU policy is there the slightest hint that promiscuous behavior is linked to AIDS, or that sexual restraint ought to be practiced. In fact it says that "judgments about AIDS often become entangled with perceived issues of personal morality, particularly regarding sexual conduct and intravenous use of illicit drugs, as the virus linked to AIDS seems to be transmitted predominantly, though not exclusively, through those two means." (My emphasis.) The ACLU cannot even summon the moral courage to say that promiscuous sodomy and heroin use is wrong; it's just a perception that some people have.

16. Do you believe that homosexuals have a Constitutional right to a) marry, b) operate bathhouses, c) become foster parents, d) become a Big Brother, and e) engage in street solicitation? The ACLU does. (Policy No. 264 and lawsuits)

The ACLU wants to eliminate every law that distinguishes between heterosexuals and homosexuals, allowing for no exceptions. It wants the law to recognize same-sex "marriages" so that homosexuals may qualify for the same tax advantages that married men and women have. It wants employers to extend to homosexual couples the same privileges they provide married couples.

It wants foster care agencies to rewrite their policies to accommodate the interests of the gay rights lobby. It wants to force voluntary associations to accede to homosexual demands. It wants to give homosexuals the right to solicit sex on the street and then be permitted to go to a bathhouse, the very spot where AIDS was spread in the first place. In short, it wants to replace the mores of society with the mores of the ACLU.

17. Do you believe that the existence of metal detectors in airports is unconstitutional and should be forbidden? The ACLU does, insisting that the "current practice of searching the persons and belongings of all individuals, simply because they wish to board an airplane, is completely inconsistent with . . . 4th Amendment principles." (Policy No. 270)

According to the mentality of the ACLU, anyone who has boarded a plane in recent years has had his Constitutional rights stripped from him by merely walking through metal detectors. That's right. The danger that terrorists pose is subordinate to walking through a metal detector. Better to run the risk of being hijacked to Cuba than to have a security agent take a peek at the insides of our luggage.

What is even more remarkable about this policy is the ACLU's inability to appreciate why the public favors keeping the defectors: "Perhaps the most troublesome aspect of the airport search question is the readiness with which most people, civil libertarians included, have accepted and indeed welcomed such procedures." No, the most troublesome aspect of the airport search question is the ACLU's readiness to sacrifice public safety to the idol of civil liberties.

11. Do you believe that workfare, and policies which require able-bodied adults to work as a condition for receiving welfare, are unconstitutional and should be forbidden? The ACLU does. (Policy No. 318)

Over the past decade, a consensus has grown among public policy analysts that welfare recipients ought to be required to work, if at all possible. The Reagan Administration and both houses of Congress are in favor of some kind of workfare provision, and the sentiment in the liberal media has also been receptive to this idea. Indeed one would be hard pressed to find any responsible organization that denies the merits of workfare. But look no more, for the ACLU is on record opposing any work requirement as a condition for receiving public assistance. Once again, the ACLU's fixation on rights is so total that it loses all interest in concomitant responsibilities.

It is often said that although the ACLU frequently takes extremist positions, it is nonetheless vital to the country that it continue to work in defending individual rights against governmental constraints. But this view suggests that a commitment to civil liberties must mean a commitment to extremism, for that is what the ACLU is all about—extremism.

To be sure, anyone who believes in freedom must necessarily believe in the rights of the individual. But are there not lines to be drawn? Aren't there other values that count in a free society, such as civility, community and public safety? No one would say that because law and order is necessary to a free society, we must necessarily approve of everything done in its name. Why then is it acceptable to say that respect for civil liberties means respect for everything done in its name?

The ACLU has been around since 1920, and over the past 68 years it has done many things that all Americans can be proud of, things which have helped to keep us free. Unfortunately the good deeds of the ACLU have too often been overshadowed by its extremism, especially in recent years. It has yet to learn, as Madison once said, that "liberty may be endangered by the abuses of liberty as well as by the abuses of power."

WORLD HABITAT DAY

Mr. CRANSTON. Mr. President, the United Nations designated October 3, 1988, as World Habitat Day. This year's theme is "Shelter and the Community" in an effort to focus attention on the urgent need for increased support for the urban and rural poor in developing countries and their efforts to improve their housing and quality of community life.

The U.N. Center for Human Settlements [UNCHS] is responsible for coordinating and facilitating human settlement activities in the United Nations and is directly responsible for executing shelter and community development projects.

UNCHS is working hard at bringing together some 58 countries to seek consensus on the dimension and seriousness of worldwide shelter and settlement problems and in developing reasonable and effective approaches to solutions. In New Delhi last April, representatives of some 58 nations agreed on a global shelter strategy for the year 2000. The strategy will be considered by the U.N. General Assembly this month. Given the economic, social and political diversity of the UNCHS membership, getting consensus on the strategy was a significant accomplishment.

However, the focus of World Habitat Day and/or the global shelter strategy should not be confined to developing countries. No country has solved its shelter problem. Adequate shelter for all citizens, especially the poor, remains a persistent problem and an elusive goal for every nation. It is an especially difficult objective for the less developed countries where one-third of the population is homeless and the numbers are increasing.

The UNCHS concluded that "despite efforts of governments and international organizations, more than 1 billion people have shelter unfit for human habitation and that this number will increase dramatically unless determined measures are taken immediately." In 1987, the International Year of Shelter for the Homeless, the work initiated by a host of nations and organizations confirmed the enormous dimension of shelter needs worldwide and mandated increased national and international efforts to produce and deliver improved shelter for all, especially for the poor and disadvantaged.

World Habitat Day promotes the idea that countries can and should assist one another with technical and managerial expertise in getting shelter strategies in place and working, and that the United Nations can coordinate and facilitate efforts to encourage all countries to have effective national shelter strategies in place and working by the year 2000.

Mr. President, as chairman of the Subcommittee on Housing and Urban Affairs and a member of the Foreign Relations Committee, I am pleased to have the opportunity to call the attention of my colleagues to the objectives of World Habitat Day and to endorse those objectives and the work of the United Nations Center for Human Settlements to improve shelter and community life throughout the world.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

RETAIL COMPETITION ENFORCEMENT ACT

The Senate continued with the consideration of the bill.

Mr. BOND. Mr. President, once again I rise in opposition to S. 430, more specifically to the recent amendment which has been introduced to that bill. One of the sponsors in his remarks concerning the amendment has described the amendment as "common sense, one that should make the bill acceptable to any Senator who is concerned about balancing the interests of the consumer in his or her State against the very legitimate concern of not opening up the floodgates of litigation."

With all due respect, I believe that we all share a very strong interest in the welfare of the consumers of our respective States. Those of us who oppose this bill and the proposed amendment are not anticonsumer but, rather, see this bill for what it is, special interest legislation for those who want a statutory mandate to pursue groundless litigation at great expense to manufacturers and ultimately to the consumer.

There is nothing in S. 430 that guarantees low prices for the consumer. Instead, this bill is about the level of proof necessary to prove a price-fixing conspiracy and about whether we should codify the per se rule for vertical price fixing. Obviously, the lower the level of proof, the easier it is to threaten expensive and time-consuming litigation.

The amendment is described by the cosponsor as a further clarification of the bill that was reported out of the Judiciary Committee last winter. I do not believe the amendment clarifies, but only highlights the difficulties of this legislation.

Although the amendment provides that there must be an agreement in order to prove a violation of sections 1 and 3, the bill still allows a jury to find an agreement based on facts which are ambiguous as to whether an agreement actually exists. Nor does the inclusion of a section precluding a jury from making implausible inferences correct the problems of the bill.

Under the terms of the bill, the existence of an agreement to set prices can be plausibly inferred from a complaint followed by a termination.

The most troublesome aspect of this amendment, however, is the inclusion of language in section 3, subsection 8(c) overruling the Supreme Court decision in the Sharp Electronics case. That decision was only issued last May. It has never been the subject of hearings before the Judiciary Committee and was never considered by the committee in fashioning what is presently S. 430.

The ranking member of the Antitrust Subcommittee and the Judiciary Committee, Senator THURMOND, has expressed his special concern that legislation as far reaching as this not be enacted without considering the views of various antitrust experts who have experience in this area.

In the Sharp case, the Supreme Court was asked to decide whether an agreement between a manufacturer and one of its retailers to terminate another retailer because of its pricing practices was per se illegal because it was an agreement to set prices. The Court held it was not because there was no agreement on price or price levels.

It is worth noting that the proponents of the amendment claim that the Court held that there must be an agreement on a specific price or price level but that was clearly not the case. In fact, the court of appeals judgment which was affirmed specifically held otherwise, stating that the dealer "must expressly or impliedly agree to set prices at some level, though not a specific one."

The Sherman Act will have its centennial anniversary in 1990. I think it would be a tragedy indeed, if at the same time, because of unwarranted anticonsumer rhetoric, we were to enact legislation that was anticompetitive rather than procompetitive. The amendment that has been offered does nothing to eliminate the central objection to the current evidentiary standard of S. 430. Under this amendment there is still no evidence of agreement required to take a resale price fixing dealer termination antitrust case to the jury.

Section 8(a)(1) of the amendment requires the court to find sufficient evidence of an agreement by the defendant in order to send the case to the jury. However, section 8(a)(2) of that amendment actually eliminates this requirement by stating that the court shall find that sufficient evidence of the agreement is present as long as the competitor's complaint was the major contributing cause of the dealer termination in question.

Thus the Rudman-Wilson amendment still allows the jury to find an agreement based on facts that are at best ambiguous as to whether an agreement actually exists or could in fact find an agreement where there was no such agreement.

It is also important to note that in addition to overruling the Monsanto decision as I said earlier, the amendment also directly overrules the Sharp Electronics case. The Sharp case had not been decided when S. 430 in its present form was drafted. Thus, even those who support its present form should note this significant addition to the controversy over S. 430.

Mr. President, there has been a good deal of discussion about the competitive impacts of this measure, the need to protect discount stores and customers of discount stores. I happen to be one who has patronized discount stores and I expect to do so in the future.

I do not believe that this bill is necessary to ensure the health of the discount store industry, nor is it necessary to protect the right of customers who patronize discount stores. This measure, as I have stated before, will result in increased litigation. The costs of that litigation are costs that ultimately are going to have to be passed on to consumers.

When S. 430 was initially introduced, its sponsor told us that we should pass the bill in order to allow consumers to maintain their right to shop at discount stores. It was implied that if we failed to pass S. 430, consumers would lose that right to save money by shopping at discount stores.

The sponsor, the distinguished Senator from Ohio, on June 29 on the floor said specifically:

> The issue is: Do you want your constituents to pay higher prices or lower prices? Do you want your constituents to have the option of shopping around for the best price—or will they have no choice on price?

I feel pretty confortable in venturing a guess that all of my colleagues favor choice and lower prices. If those were indeed the issues, then I would be a cosponsor of the bill, and I am sure the Senate would probably pass it 100 to nothing. But I must point out to my colleagues once again—and I apologize for belaboring the point but it is an important point that bears repeating—the questions that the sponsor of the bill has asked are not the issues that are raised by the bill. S. 430 does not mandate lower prices for our constituents.

S. 430 does not mandate that discount stores exist. In fact, nowhere in the text of S. 430 does the term "discount store" appear. What S. 430 actually does is make it much more difficult for a manufacturer to terminate his business dealings with a retailer. I think we would all agree that a manufacturer has—and should continue to have—this right. And I also should note these terminations normally occur because of poor service, fraud, or noncompliance with the contract. However, what this bill would do is increase the number of lawsuits that arise as a result of dealer terminations. Thus S. 430 is not proconsumer, it is prolawsuit. The Senator from Ohio has said that this bill should be known not as "The Retail Competition

Enforcement Act," but rather as "The Consumers' Rights Bill." In my humble opinion, a more appropriate title would be "The Lawyers' Relief Act of 1988."

Naturally, no one wants to be a supporter of a prolawsuit bill. In fact, the Senator from Ohio has spent much time on the floor this session saying that he did not want another piece of legislation—the plant closing bill—to become a lawyers' relief act. Therefore, it is not surprising that he has tried to couch the debate unfortunately in terms of the consumer because it does not assist the consumer.

The Senator from Ohio has shown us charts and graphs detailing how a consumer in his State can save an average of $550 per year by shopping at discount stores. I have little doubt that these figures are accurate. In fact this accounts for the tremendous recent growth in the discount industry.

As I have noted in previous statements, the Senator from Ohio has told us many things about the discount industry. He has told us about the important role that it plays in the lives of many shoppers. I know my colleagues have heard it before, but I am from Missouri—the Show Me State—and if my colleague from Ohio wants me to believe that we need S. 430 to save the very important discount industry, then he is going to have to show me.

Mr. President, my friend from Ohio creatively has built his case for this bill by implying that if we fail to pass S. 430: One, that discount stores will go out of business, two, that we will no longer have the option to do our shopping at discount stores, three, that consumers will have to pay more for their purchases and, four, that perhaps the sky will fall on us all as well.

They would be compelling arguments, if they were true. Fortunately, the statistics I have seen not only refute the Senator's dire predictions, but entirely reject his gloom and doom scenario.

Supporters of S. 430 seem to believe that without this bill, the discount industry will wither and die. They seem to be arguing that the U.S. Supreme Court's ruling in Monsanto versus Spray-Rite Service Corp. will cause this terrible occurrence. Thus a major thrust of their bill—section 8(a)—overturns the Supreme Court's unanimous decision in the Monsanto case.

Now, Mr. President, many people may forget that this case was decided in 1984. This means that we have had a 4-year laboratory to see how the decision has affected discounters. If indeed that unanimous decision is wreaking unimaginable havoc upon the discount industry, then we should see the negative impact reflected in the balance sheets of the Nation's discounters. Common sense dictates that we would observe a volatile combination of market share declining, expansions slowing, and stores closing. If that were the case, than after reviewing these facts we in Congress could review the Supreme Court decision and draft legislation accordingly.

But, what if instead we find that the discount business has been booming since 1984?

What if we find that market share is expanding, sales are up and new stores are opening all over the country?

Well, I would argue we certainly don't need to fix something that "ain't broke."

Mr. President, the facts speak for themselves. Discount Merchandiser, the professional journal of the discount retailing industry reports that sales volume for all discount stores increased from $62.2 billion in 1984 to $74.6 billion in 1987. The number of discount stores in the country rose from 8,738 to 9,402.

According to the magazine, "In terms of dollar volume, discount stores are the largest retailers of housewares and gifts, infants' wear, domestics, automotive accessories, small electric appliances, and stationery and greeting cards. They are the second leading retailers of camera and photo supplies, sporting goods, lawn and garden products, and toys and consumer electronics."

The report also gives even more specific information on individual discounters. Let me discuss a few of those statistics.

K-mart is the largest discounter in the country with more than 2,100 stores. According to the journal, more than half of all adult Americans shop at K-mart at least once a month. Last year 36 new stores were added to the chain.

Another leading discounter is Target, which has 317 stores in 24 States. Despite the existence of the much maligned Monsanto ruling, Target managed to add 73 new stores during 1987, and company officials plan to open 25 more in 1988.

Zayre Stores is another major discount chain, which, in 1987, reported sales of $3.3 billion. By the end of this year the company will complete construction of two new distribution centers, covering more than 2 million square feet; and approximately a dozen new stores will open as well.

Let us look at just a few more.

Ames stores had sales of $2.1 billion at its 342 locations. Twenty-one new stores were opened during 1987.

Bradlees has a net expansion of eight new stores to bring its total to 169 units.

Hills Department Stores opened 15 new stores in 1987. Pay Less Drug add 47 stores. Rose's Stores continued in its effort to add 20 to 25 new stores per year through 1990. Venture opened six new stores and plans four more for 1988. Shopko added 10 and plans to open another 10 by the end of this year. The list goes on and on.

I ask my colleagues, does this look like an industry in trouble? Does this look like an industry withering on the vine, praying for Congress to intervene? I think not.

Mr. President, to me this looks like a classic example of "if it ain't broke, don't fix it." And it is clear that this bill is not needed to save the discount retail industry from extinction. The industry is doing just fine and certainly will continue to do so. But if S. 430 is not needed to save the discounters, then what does it really do?

Mr. President, the discount indsutry is concentrated among several dozen large chains. According to Discount Merchandiser, the largest chains—those with 50 stores or more—control 80.6 percent of industry sales. These chains—K-mart, Target, Bradlees, Zayre—are the stores where our constituents are going to save the $550 to which the Senator from Ohio has referred. If manufacturers want to sell their products—and we know they do—they are going to sell these chains whether we pass this bill or not.

Manufacturers of infants' wear, for example, are not going to stop selling to discount stores which sell almost 38 percent of all infants' clothes.

General Electric is not going to stop selling to discount stores when one-third of all electric appliances are purchased there.

Mattel certainly is not going to cut off discounters at a time when 34.4 percent of toys, hobby goods, and games are purchased at discount stores.

I could go on all day giving examples, but I believe I have made my point. Discounters play too big of a role in the overall retailing picture to be cut off by manufacturers without an extraordinary good reason.

However, I can hear S. 430 supporters saying, "Well this may be true for the large discounters which make up the overwhelming majority of the industry, but what about small discounters, those with just a few or even just one store?" My response is that unfortunately, their bill could create serious problems for these folks if it were to become law. Again, Washington is pushing a remedy that is worse than the imagined disease.

With the law as it currently stands, manufacturers are aggressively selling to discounters; more so after the Monsanto decision than before, and we have no reason to believe that will change at any time in the foreseeable future. Thus, with or without S. 430 enacted into law, it is unlikely that manufacturers will move to terminate their existing relationships with discounters, unless of course fraud or mismanagement or some other legitimate dispute occurs.

However, it seems clear that if S. 430 is the law, they will be very hesitant about contracting with new discounters—large or small—for fear of future litigation. Facing the possibility of an expensive legal battle to terminate a retailer who does a poor job, a manufacturer will have little incentive to take a chance on selling its product to a small discounter who because of its small volume will add little to the manufacturer's balance sheet. Thus it will be the small discounters who will have trouble buying merchandise, and it will be the small dealers who will now have an even tougher time competing with the larger chains such as K-mart and Zayre.

The end result is that after passing S. 430, consumers will have fewer discount stores to shop at—not more. This is the great irony of this debate.

S. 430 is not a "save the discounters" bill. It is a bill which tells manufacturers that they better make darn sure they want the new distributors they choose because they will need 5 to 10 years, a couple of million dollars, and several teams of lawyers to terminate any dealer they believe is not fulfilling its contract.

The supporters of this bill may say this is a good thing—perhaps they believe we have the correct mix of distributors in place today and that we should, therefore, freeze from the marketplace any more.

Perhaps supporters of S. 430 do not really want to think that the very tough evidentiary standards required by this bill will put a damper on manufacturers' enthusiasm for new dealers.

Perhaps they have listened too long to the complaints of those discounters who have lost in court while the rest of the industry was merrily expanding.

Perhaps they believe that vertical integration manufacturers creating their own outlets, cutting out the independent distributors is the way retail goods should be sold.

But I hope that for whatever reason, my colleagues do not support S. 430 because they believe that that in itself would save their constituents $550 a year. If they do they are truly buying a pig in a poke.

Mr. President, the area of resale price maintenance price fixing is a very complex one. We have discussed this measure before. As it comes up and as the debate continues, there is much more that I will have to say about it if we are to continue on this bill.

I think it would be necessary to look into the background, the judicial decisions and examine at length both the original S. 430 and the amendment particularly in light of the new Supreme Court cases that have been issued on this subject.

If that in fact is the decision, I will join with my distinguished colleagues from South Carolina and others in assuring that we have a full and fair discussion of all of these relevant issues.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SANFORD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, this bill has been debated quite a bit. My colleagues and I have repeatedly explained that this bill is needed to protect consumers and small business people. It gives consumers the right to buy at a discount. That is the long and the short of it.

After the recent Supreme Court decision, manufacturers are moving to squeeze out those discount operations and say to them, "you sell our products at the higher price or else you are not going to be able to get the product."

This gives consumers the right to shop for the best deal, and frankly, I do not understand why anyone would oppose it unless there is some reason to defend the largest corporations in America who are distributing those products.

Furniture dealers came in to see me from North Carolina the other day and said, Senator, we are losing, we are being forced out of business, because we operate on a discount basis, and unless we get some protection from the U.S. Congress we will be out of business and our customers will have to be paying a higher price.

I did a study through my staff of what it means to have a right to buy at a discount. I found that the average Ohioan would pay about $550 more if they could not buy in discount stores because we compared the prices in the discount operations with the prices of the merchants who were not selling at a discount.

Contrary to the claim of my colleague from Missouri, recent events show an even greater need for this legislation.

Let us see where we are. In May of this year, the Supreme Court decided a case called Sharp. The Sharp case held an agreement to cut off a discounter because it is charging lower prices is not automatically anticompetitive. In other words, an agreement of the manufacturer with a merchant to cut off a discounter because the discounter is charging lower prices is not automatically anticompetitive. If that is not anticompetitive, I do not know what could be.

It is hard to imagine a more anticompetitive agreement than that one.

Why is it anticompetitive? The results of the agreement are that maverick businesses, discount operators, usually small businesses, are cut off, they are put out of business. The consumer's choice on where to shop is reduced. The consumer's right to shop around for the best deal is meaningless without stores that charge discount prices.

So, the agreement clearly hurts competition and consumers, even though the Supreme Court does not consider it automatically anticompetitive. We can already see the harm caused by this decision.

I have been visited by many small business entrepreneurs who have been cut off without good reason since the Sharp decision. Small businesses have been hurt, have been cut off, and the ability of consumers, including senior citizens, to stretch their income and to make it go further, has been jeopardized.

Let me tell you some examples that I have been told about since the Sharp case. I mentioned the North Carolina family that was in the furniture business for 103 years, and they were cut off by several major suppliers. No reason was given. I understand this family business gives its customers the best deal possible on furniture by charging lower than suggested retail prices. Now, that family business is threatened with bankruptcy.

I did not know these people when they came to my office. They came and asked for an appointment, and I was willing to see them. I did meet with them, and I talked with them. Almost with tears in their eyes, they told me how they had fought for their business for 103 years, and now they are being forced up against the wall.

A national catalog merchandiser charges discount prices. That is not unusual for catalog distributors. Within a week after the Supreme Court Sharp decision, five major appliance and computer electronics suppliers threatened to cut off the supplies of that catalog distributor if the company did not charge higher prices.

How can anybody come on this floor and make a case for the right of manufacturers to charge higher prices and then argue that it is not anticonsumer?

Another case: An association of service station dealers report threats of short supplies if the independent dealers discount premium unleaded gasoline.

There are more examples.

Mr. President, I ask unanimous consent to print articles from the Christian Science Monitor and by Jack Anderson in the RECORD at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Christian Science Monitor, July 8, 1988]

Discounters Say Supplies Have Been Cut Since Supreme Court Ruling

(By Kerry Elizabeth Knobelsdorff)

Washington.—In just two months, Priba Furniture's sales have dropped by 50 percent.

Owner Priscilla Knox says that because her full-service store in Greensboro, N.C., sells upscale furniture at a discount, full-price competitors have pressured manufacturers to restrict or cut off her supplies.

Now, she can no longer sell certain lines of furniture and because of supplier restrictions, can only sell other items to customers when they are actually in the store.

A wide range of other discount retailers—home-entertainment companies, camera stores, shoe stores, and clothing factories—complain that since the Supreme Court ruled in May that vertical price fixing is not automatically illegal, they have felt a similar squeeze.

Although manufacturers deny any change in their behavior, some discounters say that "they've been informed by their suppliers that if they don't agree to sell their merchandise for at least as high as a minimum price, the supplier will terminate them," says Richard Kelley, a lawyer for the National Association of Catalog Showroom Merchandisers. (Catalog showrooms sell products at a lower cost than full-price stores.

The practice of full-price retailers making their suppliers choose between them or their competing discounters has increased dramatically, he says, since early May, when the court ruled in Business Electronics Corporation vs. Sharp Electronics Corporation that vertical price restraints are not automatically illegal. Under the ruling, such allegations must be judged on a case-by-case basis, and terminated companies have to prove in court that the termination harmed competition.

The case arose when Sharp Electronics stopped supplying calculators to Business Electronics, which was selling them at a discount in the Houston area. Business Electronics alleged that its supply was cut off because another Houston retailer—selling Sharp calculators at full price—complained to Sharp that it was being undercut.

Michael Waldman, legislative director at Public Citizen's Congress Watch, a consumer group, says a lot of retailers aren't protesting because they are afraid of alienating their manufacturers or prejudicing various pending legal cases.

But reports of anticompetitive behavior have helped galvanize support for legislation that would overturn the Sharp case, as well as its 1984 precedent, the Monsanto case. In that case, the court decided that a complaining discounter had to provide either direct or circumstantial evidence showing that a manufacturer and another retailer had knowingly conspired to fix resale-price levels.

A bill that would overturn both decisions is awaiting Senate approval, having passed the House last year.

Sponsored by Sen. Howard Metzenbaum (D) of Ohio, it would make vertical price fixing automatically illegal. To prove that vertical price fixing occurred, the terminated retailer would only have to show prior communications between a competing retailer and the supplier took place, and that this price agreement was a substantial cause of the termination.

Manufacturers are fighting the bill.

"It makes it a conspiracy for a manufacturer to terminate a discounter in response to a request solicited from another retailer," says Gary Shapiro, vice-president of legal affairs at the Electronics Industry Association, an industry trade group.

Both the Justice Department and the administration contend that the legislation is too broad, and that vertical price fixing restraints have little effect on consumers, and may in fact prove beneficial.

As far as consumer groups are concerned, though, the legislation will have a significant impact.

To prove this, 11 consumer groups conducted a survey of popular summer merchandise that showed it is possible to save as much as 50 percent by buying through discounters. For example, a Weber "one touch" grill sells for over $119 in Odessa, Tex., but can be bought for about $59 from a discounter in the same city, according to the survey. Consumers can save an average of 24 percent nationally on a Sharp radio with compact-disc player bought from a discounter.

The kind of anticompetitive activity elicited by the Sharp case wipes out such consumer choices, and takes away the incentive to cut costs in order to cut prices, says Barry Lefkowitz, who represents the Burlington Coat Factory in Burlington, N.J.

"Prices will rise and competition will be hurt," Mr. Waldman argues.

[From the Washington Post, Sept. 6, 1988]

Twisting the Discounters' Arms

(By Jack Anderson and Joseph Spear)

When a major piano manufacturer said it would no longer stock its pianos in a Hutchinson, Kan., music store, the store owner smelled a rat. Brad Davison, of Nelson Music, suspected it might have something to do with his rock-bottom prices.

Nelson Music may be a casualty of a recent Supreme Court decision that allows manufacturers to cancel deliveries to discount stores whose bargain-basement prices are hurting higher-priced retailers. Vertical price fixing is illegal under the 1890 Sherman Antitrust Act, but the Supreme Court ruling this May makes it tough to enforce it.

Davison told us the piano maker was under pressure from music stores three hours away in Kansas City who were complaining about his low prices. The manufacturer never put it in writing, but Davison said the company's officials warned him vocally to stop selling pianos to customers outside his sales district.

At one time, the Sherman Antitrust Act protected discounters, but the Supreme Court opinion written by Justice Antonin Scalia changed that. The case that brought the issue to a head involved the Sharp electronics firm. Scalia wrote that Sharp could stop selling calculators to a Houston discounter in response to complaints from full-price retailers. The only thing that Scalia said should be illegal was an outright attempt by a company to set mandatory prices.

But vertical price restraints are rarely that blatant. Ask Jim Daskal of the Service Station Dealers of America. He said that oil companies like to keep a rein on pump prices. That usually means service stations are expected to sell leaded gas at below their cost and unleaded gas at one cent per gallon above cost. The stations make their profit on premium unleaded, which usually goes for 10 to 15 cents per gallon over the wholesale price.

A bill introduced by Sen. Howard M. Metzenbaum (D-Ohio) would stop the subtle forms of price restraint. But the chances of it passing are dimming as the 100th Congress winds to a finish. And Sens. Strom Thurmond (R-S.C.) and Christopher S. (Kit) Bond (R-Mo.) have threatened a filibuster.

Thurmond and his business allies aren't making any friends among the businesses, many of them small, that are falling victim to the Supreme Court ruling. One of the discounters hit, the Burlington Coat Factory, recently assembled a list of several more casualties. Here are a few:

Turner Tolson Furniture in New Bern, N.C., was cut off by several major suppliers without explanation. The 103-year-old business now faces bankruptcy.

The Northwood General Store in Madison, Wis., lost its supplier of metal detectors because of pressure from competing stores.

Service Merchandise Catalog of Nashville, Tenn., was threatened with a supply cutoff by five appliance and computer makers and one toy maker. The company was told it had to show price increases if it wanted to get the merchandise. That happened shortly after the court ruling.

Discounters aren't the only victims of the ruling. Consumers have also kissed many bargains goodbye.

Mr. METZENBAUM. Mr. President, these articles document the anticompetitive conduct since the Sharp decision. We may not pass this bill because there may be an effort on the part of some to discuss it at length. Let the Members of the Senate and let the Members of the Congress decide. Let us have a rollcall on whether or not we are going to protect those merchants who keep their prices higher, those manufacturers who insist upon keeping their prices higher, or whether we are going to be willing to stand up here on the floor and protect those people who need to buy at lower prices if they are going to be able to exist in this economy.

Not all people are living in the lap of luxury in this country. There are many of them who need to save on the toys they buy, who need to save on the clothing they buy, who need to save on electronics they buy, who need to save with respect to the appliances they buy.

Why will we not let them do that? Why will we not give them an equal opportunity? They do not have such strong lobbyists around here as some others do.

But the fact is if we can vote this up or down, if we can vote it up or down and accept the compromise proposal of my distinguished colleague who has been working with me on this matter, my colleague from New Hampshire, I think we can pass a fair bill. But if we run into a filibuster, then it will be obvious that there are some who do not want people to be able to buy at the lowest possible prices available but rather are prepared to protect those manufacturers and those merchants who want to sell at a higher price.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **BYRD**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT

Mr. **BYRD**. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2749.

The **PRESIDING OFFICER** laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist on its amendments to the bill (S. 2749) entitled "An Act to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees:

From the Committee on Armed Services, for consideration of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Aspin, Mr. Dellums, Mr. Montgomery, Mr. Hutto, Mr. Skelton, Mr. Leath of Texas, Mr. McCurdy, Mr. Foglietta, Mr. Hertel, Mr. Ortiz, Mr. Robinson, Mr. Dickinson, Mr. Martin of New York, Mrs. Martin of Illinois, Mr. Blaz, Mr. Ravenel, and Mr. Weldon.

For the Committee on Government Operations, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Brooks, Mr. Conyers, Mrs. Collins, Mr. Horton, and Mr. Walker.

From the Committee on Merchant Marine and Fisheries, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Jones of North Carolina, Mr. Studds, Mr. Hutto, Mr. Davis of Michigan, and Mr. Young of Alaska.

From the Committee on Rules, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Pepper, Mr. Moakley, Mr. Derrick, Mr. Beilenson, Mr. Frost, Mr. Quillen, and Mr. Taylor.

As additional conferees, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Foley and Mr. Armey.

Mr. **BYRD**. Mr. President, on behalf of Mr. Nunn and Mr. Warner, I move that the Senate disagree to the House amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. Nunn, Mr. Stennis, Mr. Exon, Mr. Levin, Mr. Kennedy, Mr. Bingaman, Mr. Dixon, Mr. Glenn, Mr. Gore, Mr. Wirth, Mr. Shelby, Mr. Warner, Mr. Thurmond, Mr. Humphrey, Mr. Cohen, Mr. Quayle, Mr. Wilson, Mr. Gramm, Mr. Symms, and Mr. McCain conferees on the part of the Senate.

Mr. **BYRD**. Mr. President, I ask unanimous consent to reconsider en bloc the votes that have just occurred.

Mr. **WARNER**. I have no objection, Mr. President.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The Senator from Virginia.

Mr. **WARNER**. Mr. President, I wish to thank the distinguished majority leader and the Republican leader and Members on both sides of the aisle for expediting the appointment of conferees. This conference is now under way in S. 407, and I am hopeful that a bill can be reported from the conference to both bodies for quick action. It is badly needed in our national defense.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **BYRD**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

PARENTAL AND MEDICAL LEAVE ACT

The Senate continued with the consideration of the bill.

Mr. **BYRD**. Mr. President, the amendments to the motion to recommit with instructions and report back had included language contained in Senator Thurmond's amendment earlier agreed to on child pornography, and, through inadvertence, I am told that some of the language was left out.

It was my intent, of course, to have that amendment included as it was when the Senate passed it, as offered by Mr. Thurmond.

I ask unanimous consent that the language which was inadvertently omitted be included in the committee substitute that was reported back.

The **PRESIDING OFFICER**. Is there objection? Without objection, it is so ordered.

Mr. **LEVIN**. Mr. President; this parental and medical leave legislation recognizes the changes that have taken place in this Nation's workplace. America is no longer a nation of one-paycheck families. In fact, the majority of U.S. families are now comprised of two-earner couples. Yet, all too often Congress has failed to recognize this change, and has passed legislation, such as the Tax Reform Act of 1986, which unfairly penalizes two-wage earner couples. The Parental and Medical Leave Act, as modified, reverses this trend.

I am pleased that this compromise version addresses many of the concerns raised by America's small businesses. The Parental and Medical Leave Act provides for a limited period of unpaid parental leave for the birth, adoption, or serious illnesses of a child, and medical leave for employees who are unable to perform their jobs due to a serious illness. It now has two major exemptions: it covers only businesses with at least 50 employees and it covers only employees who have been employed for at least 12 months. The legislation, as amended, exempts 95 percent of U.S. employers and 60 percent of U.S. employees.

I understand the concern that some have expressed that this legislation is an open invitation for abuse by employees. The modified version has greatly reduced the potential for such abuse. But there is a fundamental check on abuse already built into the legislation. Because the leave is unpaid, any absence from work will result in a reduction in pay. There is, therefore, a built-in economic disincentive for abusing the benefit.

In the long run, I believe this legislation will also help America to compete in the global marketplace in the 1990's and into the 21st century. We have to recognize that we cannot meet the challenge of foreign competition without a fundamental change in approach. We should try to reduce the number of times an employee is forced to choose between family responsibilities and job responsibilities. It is imperative that we find ways to attract and keep productive men and women in the workforce if America is to successfully compete with foreign business.

This bill is truly pro-family. I support Senator Dodd's efforts to craft legislation that strikes an appropriate balance between the needs of America's families, and the ability of businesses to meet those needs while remaining sensitve to the special requirements of small businesses.

Mr. **KENNEDY**. Mr. President, I hope the Senate will have a chance to vote on the parental leave and child care measures now before us. It is obvious that a filibuster is underway in earnest. The hypocrisy of the opponents is exposed. To avoid the appearance of obstruction, they acquiesced in a meaningless vote to end a meaningless filibuster on Monday, only to resume the reality of their obstruction with a new filibuster today.

I hope the Senate can agree on a time for a cloture vote as soon as possible, so that we will have a fair opportunity to end these unseemly delaying tactics.

Opponents are making a serious mistake by waging this filibuster against sensible proposals for parental leave and child care. The number of working parents has grown astronomically in recent years, but the availability of parental leave and child care has not.

Too many children across America are spending too much time in unattended, unhealthy, unsafe, and downright dangerous conditions. Working parents deserve time off from the job when a baby is born or a child is seriously ill, and they also deserve safe, affordable child care. What they don't deserve is a doubleheader antifamily filibuster.

Mr. PRYOR. Mr. President, I am seeking permission to speak for no more than 5 minutes, as in morning business.

The PRESIDING OFFICER. Without objection, the Senator from Arkansas is recognized.

ELECTORAL COLLEGE REFORM

Mr. PRYOR. Mr. President, as we approach a Presidential election in November which promises to be very close in the popular vote, it is ironic that 1988 marks the 100th anniversary of the last selection by the electoral college of a minority President. In 1888, Benjamin Harrison lost in the popular vote to Grover Cleveland by a margin of 5,439,853 to 5,440,309, but won the electoral college vote by a margin of 233 to 168.

The electoral college system has resulted in the selection of three minority Presidents, John Quincy Adams in 1824, Rutherford B. Hayes in 1876, and Harrison, and every election that is close in the popular vote presents the possibility of a fourth. Before this Nation again faces the constitutional crisis of the selection of a minority President, I think that we should seriously address the question of electoral college reform.

The electoral college system was highly controversial at the Constitutional Convention of 1787, and it presented many problems to the delegates chosen to frame our Constitution. The major contributing factor to the potential selection of a minority President is the fact that electoral votes are allocated by the winner-take-all method in 49 States and the District of Columbia. As a result, the allocation of electoral votes does not truly reflect the popular vote.

Four alternatives to the electoral college system have been proposed in the past. The first alternative is something called the district plan, last proposed in 1983. Electoral votes would be allocated by giving two to the winner of the statewide popular vote and one each to the winner of the popular vote in each of the State's congressional districts.

Under the proportional plan, last proposed in 1979, electoral votes would be proportioned based on the number of votes each candidate captured statewide. There is another plan called the automatic plan, once again last proposed in 1979. It would abolish the electoral college, Mr. President, eliminating the problem of the elector who does not vote as he or she was pledged to vote, and it would automatically allocate electoral votes on a winner-take-all basis.

But the alternative plan, Mr. President, that has received the most attention and congressional action in the past is what is known as the direct election plan. Under this procedure, the electoral college would be eliminated, it would be abolished, and the President and Vice President would be elected by a majority of the nationwide popular vote.

House Resolution 5 and House Joint Resolution 12, two versions of the direct election plan, are currently pending in this historic 100th Congress.

Direct election of the President is the approach that I have always supported. In fact, Joint Resolution 1 introduced by former Indiana Senator Birch Bayh was one of the first bills that I cosponsored upon coming to the Senate almost 10 years ago. As a Congressman 10 years earlier in 1969, I was a cosponsor of a House resolution which would have abolished the electoral college and provided for direct elections of the President. That resolution in 1969 passed the House of Representatives by an overwhelming vote of 339 to 70, but it never reached the Senate floor.

Although I have not seen a recent poll on this subject, I cannot help but believe that direct election of the President and the Vice President still enjoys the support of a very large majority of the American people, and I cannot understand the fear of those who oppose such a solution to this particular predicament. There is certainly nothing evil about proposing that each person's vote be counted equally. That is the way we have been taught to conduct elections from the time we first voted on our class officers in the first grade.

The electoral college, Mr. President, may have made sense before the advent of television, daily newspapers, radio and instant communication. But today now the miracles of modern communication enable every American citizen in this country to be well informed about Presidential and Vice Presidential candidates and the issues that they espouse.

Direct election of the President will give every man and woman in every State an equal voice and an equal vote in the election of our two national highest officials. I think it is time for our country, which believes in the quality of all citizens, to adopt an election framework which ensures this same quality at the voting booth.

Congress is usually a creature of reaction, not of action. We react. We very seldom act. I hope that we will not have to face the constitutional prices of the selection of yet another minority President before we act to correct this process. This 100th Congress is, I hope, close to an end. But next year, I intend to push for serious study and action on this particular issue.

I thank the Chair for recognizing me. I yield back the remainder of my time.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, what is the pending order of business?

The PRESIDING OFFICER. The Senate is currently conducting morning business and Senators are authorized to speak for not more than 5 minutes.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

(The remarks of Mr. McCAIN pertaining to the introduction of legislation appear in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BINGAMAN). Without objection, it is so ordered.

RETAIL COMPETITION ENFORCEMENT ACT

Mr. BYRD. Mr. President, in accordance with the order of June 22, and having consulted with the distinguished Republican leader, I ask that the Chair now lay before the Senate S. 430.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 430) to amend the Sherman Act regarding retail competition.

The Senate resumed consideration of the bill.

Pending:

Metzenbaum (for Inouye) Amendment No. 2509, to amend the Newspaper Preservation Act (Public Law 91-353), to provide that it shall not be unlawful for any person to enter into, perform, or enforce a joint operating agreement not already in effect, if the prior written consent of the Attorney General has been obtained.

Mr. METZENBAUM. Mr. President, is the Senator from Ohio correct in his understanding that the pending business is an amendment offered by the Senator from Ohio on behalf of Senator INOUYE and Senator BYRD?

The PRESIDING OFFICER. The Senator is correct. It is pending to the committee substitute.

Mr. METZENBAUM. Mr. President, I am informed that the manager of the bill on the opposite side desires a rollcall in connection with this amendment. I therefore ask unanimous consent that this amendment be set aside and that the yeas and nays in connection with it be ordered at 10 a.m. tomorrow.

Mr. BYRD. Mr. President, I would object to ordering the yeas and nays by unanimous consent.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that that rollcall occur at 10 a.m. tomorrow and be temporarily set aside.

Mr. BYRD. Mr. President, I have no problem with the Senator asking that the amendment be temporarily laid aside. Would he not set a time on it because the distinguished Republican leader and I may have to readjust that time later.

Mr. METZENBAUM. I certainly have no objections to that. I understand the majority leader and minority leader control the time of the floor. I understood 10 o'clock was satisfactory. We will just lay aside the rollcall to occur at such time as the majority and minority leaders agree.

The PRESIDING OFFICER. Without objection, the amendment will be set aside.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 3037

(Purpose: To clarify certain provisions regarding the need to show the existence of an agreement or conspiracy and the amount of evidence that must be presented in order to avoid summary judgment)

Mr. RUDMAN. Mr. President, I have an amendment at the desk numbered 3037. I ask it now be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. RUDMAN), for himself and Mr. WILSON, proposes an amendment numbered 3037.

Mr. RUDMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all beginning on page 3, line 10 through page 4, line 24, and insert in lieu thereof the following:

"SEC. 2. Findings.

"(a) Consumer welfare is greatly enhanced by an ability to purchase goods and services at lower prices as a result of vigorous price competition;

"(b) vertical price restraints generally have an adverse impact on competition that results in higher consumer prices;

"(c) recent court decisions have so narrowly construed the laws against vertical price restraints that consumer welfare has been put in jeopardy; and

"(d) it is necessary to enact legislation that protects the interests of consumers in vigorous price competition while recognizing the needs of manufacturers and others to maintain reasonable service, quality, and safety standards.

"SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

" "SEC. 8. (a)(1) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change, or maintain prices, if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for resale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

" "(2) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents sufficient evidence that such person—

(A) received from a competitor of the claimant an express or implied request or demand, including a threat to discontinue an existing business arrangement, that the seller take steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

" "(B) because of such request, demand, or threat terminated the claimant as buyer of such good or service for resale or refused to supply to the claimant some or all of such goods or services requested by the claimant: *Provided*, that a termination or refusal to supply is made 'because of such request, demand, or threat' only if such request, demand, or threat is the major contributing cause of such termination or refusal to supply.

" "(b) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

" "(c) In any civil action based on section 1 or 3 of this Act, including an action brought by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change, or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change, or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section except that this section shall not apply when the agreement to set, change, or maintain the resale price of a good or service is an agreement to set, change, or maintain the maximum resale price of a good or service. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to supply such other purchaser because of that purchaser's pricing policies shall constitute a violation of this section, whether or not a specific price or price level is agreed upon.".

"SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

"SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust law.".

Mr. RUDMAN. Mr. President, let me proceed just for a few moments to spread across the record the nature of this amendment, which is a compromise amendment that we who are in favor of this legislation believe solves the major antitrust problems the opponents of this bill have raised, and they have been valid objections.

I offer this amendment along with Senator WILSON.

The substitute amendment addresses both parts of the committee bill. First, it clarifies the original purpose of section (a)—to fill the gap left by the Supreme Court's decision in the Monsanto case. As in the committee report, the substitute still specifies what evidence, if presented, would be sufficient to send the case to the trier of fact. It explicity states that the Court must determine, in accordance with the Federal Rules of Civil Procedure, that there is sufficient evidence, direct or circumstantial, of a contract, combination, or conspiracy. The bill then clarifies that the evidence outlined in subparagraphs (B) (i) and (ii) normally constitutes evidence of collusion sufficient to meet the standards of the bill.

The description of the evidence outlined in subparagraphs (B) (i) and (ii) has been slightly changed. The word "suggestion" has been deleted due to a concern about the meaning of an "implied suggestion." Under the amendment, it is still the case that the plaintiff must show an "express or implied" "request," "demand," or "threat." The plaintiff need not show specific use of the words "request," "demand," or "threat" in the communication between the manufacturer and the claimant's competitor. Such a requirement would create an impossible burden and frustrate the purposes of the bill. Instead, the plaintiff must show, as under the committee compromise, that the communication, in essence, constitutes a "request," "demand," or "threat."

The definition of the causation requirement in subparagraph (B)(ii) has also been changed. The purpose of this modification is to respond to concerns raised by several of our colleagues which, I believe, are primarily due to ambiguous language in the committee's report. The amendment we are offering would change the causation requirement from "a major contributing cause" to "the major contributing cause." The purpose of this change is to make clear that the communication described in subparagraph (B)(i) must not only be a significant reason, but also the major contributing cause for the termination or refusal to supply.

The addition of section 8(a)(2) emphasizes the fact that the Court continues to have the role of applying the standards of the amendment in accordance with the Federal Rules of Civil Procedure and the purposes of this legislation. It clarifies that if a reasonable person could only find the existence of a conspiracy by making implausible inferences, then the case should not go to the trier of fact.

This standard is consistent with current procedural interpretations of the Federal Rules of Civil Procedure. Vertical price fixing cases frequently rely on circumstantial proof and inferences therefrom. Section 8(a)(2) does not mean that a case relying on such proof or inferences should be dismissed, unless the drawing of implausible inferences is the only way a trier of fact could find a conspiracy.

Second, the substitute amendment addresses section 8(b) of the committee compromise as well. As amended, section 8(b) would incorporate the previously accepted amendment exempting maximum vertical price fixing from the reach of the bill. Furthermore, it would deal with the recent Supreme Court decision in the Sharp case. In that case, the Supreme Court held that a termination of a retailer because of such retailer's pricing policies, that is discounting, was not a "price related" termination unless the parties to the agreement agreed to set or maintain prices at a specific price or price level.

I might add parenthetically, having read that decision thoroughly, that it is what you might call very strict or, if you would prefer, narrow construction.

This decision defies common sense. After the Sharp case, it is doubtful that there will continue to be any vertical price fixing cases brought because no manufacturer or retailer will be dumb enough to state expressly what is clearly implied by the termination.

Finally, section 4 of the substitute makes clear that a violation of section 1 or 3 of the Sherman Act requires the finding of an illegal contract, combination, or conspiracy. Section 5 of the substitute amendment incorporates a clarifying amendment which makes clear that the bill does not affect application of the rule of reason standard to vertical location clauses or vertical territorial restraints.

This is a commonsense amendment that consumers everywhere deserve. The changes made by this amendment should make the bill acceptable to any Senator who is concerned about balancing the interests of the consumers in his or her State against the very legitimate concern of not opening up the floodgates of litigation.

Mr. President, for those who will read this Record amongst the antitrust bar who have been in the forefront in many cases of the opposition to this bill, I want just to read something to the body that will be in the Record which ought to give some sense of relief to those who have not read this bill, and have only heard about it.

I want to in about 1 minute elicit some very interesting facts. Let me present them this way:

In order to survive a motion for summary judgment in a retail price maintenance case, the plaintiff must have presented the following. I am going to lay out the burden of proof on the plaintiff which I think if it is understood ought to allay some of the fears of those who do not understand the compromise. Here are five elements that the plaintiff must have presented.

First, evidence that a competitor made a price complaint to the plaintiff's superior; second, evidence that the complaint was accompanied by a request that the supplier curtail or eliminate the pricing policy of the plaintiff; third, evidence that the plaintiff was terminated because of the complaint; fourth, evidence that the major contributing cause of the termination was price complaint; and, after all of those have been proven by the plaintiff to the satisfaction of the trier of fact; and fifth, evidence that directly indicates a conspiracy existed between the supplier and the competitor or evidence from which a plausible inference can be drawn that such a conspiracy existed.

For anyone who has tried any complex litigation, I will tell you from my own experience that is a very heavy burden to carry. Yet, it is the compromise which we have reached here to assure those who have been concerned that this bill would open a "floodgate" of litigation.

So I hope, as this debate ripens on this legislation, people will keep in mind those five points. I intend to keep them in mind. If people want to make irresponsible references to this legislation as to what burden it imposes on defendants, I would like them to keep in mind the rather heavy burden of proof that is now imposed under this legislation on the plaintiff.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I appreciate the effort and cooperation that has been extended by the Senator from New Hampshire. I always enjoy working with him. He brings to the legislative process an astuteness and willingness to dig into the legislation word by word, and working with him on S. 430 is no exception to the usual rule.

While I was satisfied with the bill the way that it was, I appreciate the help of my colleague to clarify the bill and, therefore, Mr. President, I am prepared to accept the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. COCHRAN addressed the Chair.

Mr. RUDMAN. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. METZENBAUM. I thought the Senator from Ohio had the floor.

The PRESIDING OFFICER. If the Senator from Ohio has not completed speaking, he has the floor.

Mr. METZENBAUM. Mr. President, I just indicated I was prepared to accept the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi wishes to debate the bill.

Mr. COCHRAN. Mr. President, it is my understanding that the matter before the Senate is the amendment offered by the Senator from New Hampshire, Mr. Rudman. It was my understanding that Senator Thurmond had a statement he wished to make in rebuttal to the argument of the Senator from New Hampshire. Since he was engaged in conversation with the Senator from New Hampshire, I did not think he realized that the Chair was about to put the question on the amendment before he had a chance to make his statement. My rising at this point is simply to permit him to speak in opposition to the amendment if that is his intention.

Mr. RUDMAN. If the Senator will yield——

Mr. COCHRAN. I am happy to yield.

Mr. RUDMAN [continuing]. For the purpose of a comment, obviously the distinguished chairman of the Judiciary Committee opposes this legislation. I assume he will continue his opposition to it. If I might, with the indulgence of my friend from Mississippi, I actually had one more sentence to add to my statement before the Senator from Ohio sought the floor. If I might just finish that statement, then I will yield the floor.

Mr. COCHRAN. I am happy to yield the floor for that purpose, Mr. President, on condition that my right to reclaim the floor will not be jeopardized in any way by yielding.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I just wanted to conclude by simply stating that, if the amendment that is pending is adopted, the only real objection it seems to me is left to S. 430, as amended, would be the codification of the so-called per se rule for resale price maintenance.

That rule I would point out to my colleagues has been with us for about 75 years and it served the country very well.

I would hope that in evaluating how they will vote on this amendment people might look very carefully at how we have carefully drawn the amendment and keep in mind that we are codifying a rule that has been in existence in this body and in the law for three-quarters of a century.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I thank the Chair and appreciate the courtesy of the distinguished Senator from New Hampshire.

I am prepared to yield the floor to the distinguished Senator from South Carolina for his response to the arguments of the Senator from New Hampshire.

I participated in the debate on this bill earlier when it was on the floor, expressed my opposition to the legislation, and read into the RECORD a number of comments and concerns expressed to me by small businesses in my State of Mississippi who felt a very serious problem would be created for many small industries if the legislation were enacted as previously presented to the Senate.

I am glad the Senator from South Carolina is prepared to discuss the amendment of the Senator from New Hampshire, because it does provide some new language. I am not certain at this point, however, whether it changes the thrust of the bill sufficiently for Senators who previously opposed it to change their minds.

I am anxious to hear what the distinguished Senator from South Carolina has to say about the amendment.

I yield the floor at this point.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise in strong opposition to the substitute amendment introduced by Senators RUDMAN and WILSON. Senator RUDMAN has described this amendment as common sense and one that "should make the bill acceptable to any Senator who is concerned about balancing the interest of the consumers in his or her State against the very legitimate concern of not opening up the floodgates of litigation."

With all due respect to the Senator from New Hampshire, I am certain that each of my colleagues has a strong interest in the consumers of his or her State and the Nation as a whole. I am tired of the allegation that I, and other Senators who oppose this legislation, are anticonsumer. This is untrue. This bill should be seen for what it is—special interest legislation for those who want a statutory mandate to pursue groundless litigation against manufacturers at great expense to the manufacturers and ultimately the consumer.

There is nothing in S. 430 that guarantees low prices for the consumer. This bill is about the level of proof necessary to prove a price fixing conspiracy. Obviously, the lower the level of proof, the easier it is to threaten expensive and time consuming litigation.

The amendment is also described by Senator RUDMAN as a further clarification of the bill that was reported out of the Judiciary Committee last winter. In my view, the amendment does not clarify, but only highlights the difficulties of this legislation. Although the amendment provides that there must be an "agreement" in order to prove a violation of section 1 and 3 of the Sherman Act, the bill still allows a jury to find an agreement based on facts which are ambiguous as to whether an agreement exists. Nor does the inclusion of a section precluding a jury from making implausible inferences correct the problems of the bill. Under the terms of the bill, the existence of an agreement to set prices can be plausibly inferred from a complaint followed by termination.

The most troublesome aspect of this amendment, however, is the inclusion of language in section 3, subsection 8(c), overruling the Supreme Court's decision in the Sharp Electronics case. I remind the Senate again that this amendment would overrule the Supreme Court's decision in the Sharp Electronics case. That decision was only issued last May and has never been the subject of hearings before the Judiciary Committee and was never considered by the committee in fashioning what is presently S. 430. In the Sharp case, the Supreme Court was asked to decide whether an agreement between a manufacturer and one of its retailers to terminate another retailer because of its pricing practices was per se illegal because it was an agreement to set resale prices. The Court held that it was not, because there was no agreement "on price or price levels." In other words, the Court held that this agreement was to be treated as a vertical non-price agreement, subject to the rule of reason analysis.

It is worth noting that the proponents of the amendment claim that the Court held that there must be an agreement on a specific price or price level, but that is clearly not the case. In fact, the court of appeals, whose judgment was affirmed by the Supreme Court, specifically held otherwise, stating that the dealer "must expressly or impliedly agree to set its prices at some level, though not a specific one."

As the ranking member of the Antitrust Subcommittee and the Judiciary Committee, I am especially concerned that legislation as far reaching as this not be enacted without the considered views of various antitrust experts. The Sherman Act will have its centennial anniversary in 1990. It would be a tragedy indeed, if, at the same time, because of unwarranted anticonsumer rhetoric, and I repeat—anticonsumer rhetoric—we were to enact legislation that was anticompetitive rather than procompetitive.

Mr. President, apart from these objections to the amendment, I continue to oppose that part of the amendment that is unchanged from S. 430 as reported by the Judiciary Committee. Although I have spoken several times about this bill and my opposition to it, I wish to highlight some of the points I have previously made. S. 430 reverses the Supreme Court's 1984 holding in Monsanto versus Spray-Rite Service Corp. and codifies the per se illegality standard for vertical price fixing. Mr. President, I want to repeat that sentence: This bill, S. 430, reverses another Supreme Court decision, and that is the 1984 holding in Monsanto versus Spray-Rite Service Corp., and codifies the per se illegality standard for vertical price fixing. I am opposed to S. 430 because the Monsanto decision should not be reversed and does not need clarification. The evidentiary standard which that decision established carefully balances the Colgate principle of unilateral conduct against the use of circumstantial evidence to prove a conspiracy to fix resale prices. In my view, if we allow the existence of price complaints to be the only basis for a finding of a conspiracy, even if the dealer termination is in response to the complaints, we tip the scale against Colgate, and erode a principle that has been one of the main foundations of antitrust law for many years.

In addition, S. 430 is not necessary to protect discount operations in this country. Recent statistics indicate that there are some 67 publicly traded discount companies, including K-Mart, Wal-Mart, Federated Department Stores, and Burlington Coat. From 1985 to 1986, discount store openings increased by 2.3 percent, and sales increased by 6.3 percent. According to Discount Merchandiser, in terms of dollar volume, discount stores are the largest retailers of housewares and gifts, infants' wear, domestics, toys, small electrics, stationery and greeting cards.

Finally, although I believe that vertical price fixing should be per se illegal, I am opposed to codifying the per se standard and forever barring judicial review of this issue. It has been argued that resale price maintenance, in some circumstances, may promote interbrand competition. It may enable a manufacturer to create attractive and inviting stores and showrooms. It may enable dealers to train sales personnel to provide technical advice and assistance to customers regarding complex or new products. Resale price maintenance may also deter some dealers from taking a "free ride" on other dealers' sales efforts. In view of this debate, this hardly seems the time to be locking in the rule against a resale price maintenance. The courts should not be hamstrung this way.

In discussing this issue, it should be remembered that the Monsanto decision was not reached just by a majority of conservatives on the Supreme Court. With the exception of Justice White, who did not participate in the decision, Monsanto was decided by a unanimous Court. I would strongly urge all my colleagues to vote against S. 430, to allow the Monsanto decision to remain undisturbed, and to allow the courts, as they have always done, to fashion a per se standard where appropriate.

This legislation is opposed by a wide array of antitrust experts, and by the American Bar Association, the New York City Bar Association Antitrust Committee, as well as the Justice Department and the Federal Trade Commission. This legislation is also opposed by literally dozens of business trade associations and companies, including the U.S. Chamber of Commerce, the Business Roundtable, the National Association of Manufacturers, the American Textile Manufacturers Institute, and the American Paper Institute.

The major event spawning the creation of S. 430 was the Supreme Court's 1984 decision in Monsanto versus Spray-Rite Service Corp. In that decision, the Supreme Court held that a conspiracy to set vertical prices, in violation of section 1 of the Sherman Act, is not established by proof that a manufacturer terminated a distributor following, or even in response to, price complaints by other dealers. The Court held that "[s]omething more than evidence of complaints is needed. There must be evidence which tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently." The Court stressed that, "it is of considerable importance that independent action by the manufacturer, and concerted action on nonprice restrictions, be distinguished from price-fixing agreements since under present law the latter are subject to per se treatment and treble damages." Mr. President, I want to repeat this last statement because it is critical in understanding why S. 430 is wrong: "it is of considerable importance that independent action by the manufacturer, and concerted action on nonprice restrictions, be distinguished from price-fixing agreements since under present law the latter are subject to per se treatment and treble damages."

The proponents of S. 430 claim that this language is ambiguous and has engendered considerable confusion in the lower courts concerning the application of evidentiary standards in vertical price-fixing cases. I do not agree. In my view, Monsanto clearly articulates the appropriate evidentiary standard applicable to dealer termination cases. If there is confusion among lower court decisions, or if the lower courts are applying incorrect standards, the more appropriate way to correct the situation is through the judicial process, and not through legislation like S. 430, which is itself ambiguous and confusing.

Some have argued that the evidentiary standard established by Monsanto is so difficult for a plaintiff to meet that it is virtually impossible for a dealer termination case to reach the jury. Such an argument simply has no validity. In Monsanto itself, the Court found more than enough evidence to support the existence of price-fixing agreements and termination by the plaintiff, Spray-Rite, pursuant to the agreements.

The Court found that there was direct evidence of resale price maintenance agreements from testimony by a Monsanto district manager that on at least two occasions after Spray-Rite was terminated, Monsanto advised price-cutting distributors that they would not receive adequate supplies if they did not maintain the suggested resale prices. After one of the distributors still did not comply, its parent company was informed of the situation and the parent instructed its subsidiary to conform to the resale price. There was also a distributor newsletter, which the Court described as a "more ambiguous example," which stated that "every effort will be made to maintain a minimum market price level."

Mr. COCHRAN. Mr. President, S. 430 is being touted as proconsumer legislation. In reality, nothing in this bill guarantees low prices for the consumer. What the bill would do is to lower the level of proof that is necessary to prove a price-fixing conspiracy and to codify the per se rule for vertical price fixing.

Obviously, the lower the level of proof, the easier it is to threaten expensive and time-consuming litigation.

In effect, this bill would condemn virtually all distribution agreements that merely affect price competition, even if they make no reference to resale price maintenance. Often, distribution agreements, even those that "affect" price competition, benefit consumers. The courts usually recognize this economic reality and, with reasonable success, have been able to distinguish between those agreements which benefit competition and those which are harmful.

Assistant Attorney General Charles Rule, in a February 5, 1988, Wall Street Journal article, pointed to an actual case that illustrates this point:

> Mack Trucks, Inc., an American maker, allowed its distributors to participate in a "sales assistance program" that lowered the effective wholesale prices charged to dealers having a hard time competing against other manufacturers. Mack wanted its dealers to discount the trucks, so it made them available at the normal price and rebated enough money to guarantee the dealer a margin on a reduced sticker price, Mack would deny the rebate.
>
> When one of Mack's dealers challenged the program, claiming that it was a form of resale price maintenance, a federal court of appeals held the practice perfectly legal. Other courts have sensibly upheld similar agreements. But, because the scheme in the Mack example "affects" price competition—that is, cuts the price the distributor would otherwise charge—the agreement would be illegal under the pending legislation. Yet the sponsors maintain their bills are proconsumer.

Vertical restraints usually serve procompetitive purposes, such as facilitating services to consumers. Such agreements should not be prohibited, but should be judged on a case by case basis in order to distinguish between illegal price-fixing and legitimate price-setting.

Small manufacturers and retailers would be hurt by this bill. The bill would especially hurt small, high-technology companies which use innovative, service-oriented distribution efforts in order to establish their markets.

Without the ability to negotiate the type of distribution agreements that this bill would ban, many of these small firms may be unable to market their products effectively.

Peavy Electronics Corp. is an electronics firm located in Meridian, MS, which has worked 23 years to establish itself as a leader in the industry. The company manufactures speakers, amplifyers, and other highly-sophisticated electronic products which are distributed throughout the United States and in 102 foreign countries. This firm, which employs approximately 1,500 Mississippians in eight plants in my State, attempts to insure the satisfaction of its customers through selecting particular dealers and training those dealers on how to sell, service and install their equipment. Customer service is vital to this company's survival.

If S. 430 were enacted, it would severely inhibit Peavy Electronics' ability to deal with local retailers that it trains to service its products. Many discount and mail order dealers offer no service whatsoever.

In a letter to me opposing S. 430, the company's owner states:

> In all honesty, it completely blows my mind how Congress can take the commodity approach to everything that is sold in the U.S.A. This illustrates to me that perhaps the Congress is out of touch with the reality of many of today's high-tech products * * *. In today's marketplace, customers are just as important as they were in previous years. If Congress disallows the ability of operations like Peavy Electronics to select certain dealers and to deal through these dealers, then I fear that the future of our company is in dire jeopardy and, along with that, the entire economy of the U.S.A.

Mr. President, it concerns, me that we are being asked to consider this legislation in the name of consumer protection and consumer rights when, as my constituent correctly contends, these are the very values endangered by this legislation. Consumers could be denied the service that is just as important to them as price or product selection.

I hope the Senate will carefully review the provisions contained in this bill and weigh them against the realities of the modern marketplace.

I thank the distinguished Senator from South Carolina for yielding me this time.

Mr. FORD. Mr. President, I have joined as a cosponsor of S. 430 because I believe it addresses serious inequities which currently exist in the litigation of vertical price-fixing cases. The Senator from Ohio and others have worked diligently to fashion a piece of legislation which corrects many of these inequities and amends our antitrust laws to work as I believe they were initially intended.

However, Mr. President, I have recently been made aware of the concerns of a number of business groups in my State and elsewhere regarding the impact of this legislation on routine manufacturer/dealer relationships. I do not believe these fears are well-founded. However, in order to alleviate some of these concerns, I would like to engage my friend from Ohio in a brief colloquy.

My principal concern is that the bill as drafted might possibly be construed or misread as obscuring the distinction between vertical price restraints, which are per se illegal, and bona fide vertical territorial restraints which since the 1977 Supreme Court ruling in Continental TV versus GTE Sylvania, have been subject to a "rule of reason" analysis common to antitrust law.

May I ask the distinguished Senator from Ohio, was it the intent of the Judiciary Committee to modify the Sylvania Supreme Court ruling or any of the precedents that have evolved from that case, in any way that would alter the current legal treatment of vertical territorial restraints?

Mr. METZENBAUM. Let me assure my friend from Kentucky that there was absolutely no intent to change or amend application of the Sylvania Supreme Court decision to vertical territorial restraints not involving a price restraint. In fact, the Judiciary Committee report states quite clearly that "S. 430 does not apply to nonprice vertical restraints. Sylvania still governs the legality of nonprice vertical restraints."

The amendment I am offering clarifies that the bill does not address bona fide vertical location clauses or bona fide vertical territorial restraints.

Mr. FORD. I appreciate that clarification by my friend from Ohio. Let me ask him further, suppose that we have a wholesaler that has a bona fide exclusive territory contract with his or her supplier. There are clear benefits to such a contract. For example, it would require the wholesaler to service all accounts, including the unprofitable ones. And suppose that an adjoining wholesaler using the same supplier decides to ignore the exclusive territory arrangement and move into the first wholesaler's market and pick off some of the biggest, most profitable customers. This second wholesaler, I am told, is commonly referred to as a "transshipper." The only way such transshippers can succeed is by offering a lower price than the invaded wholesaler, either on a temporary or longer term basis. The transshipper often can afford to do this, since he or she may not be burdened with the requirements of an exclusive territory contract to service all retailers in the marketing area—large and small, profitable and unprofitable.

If the first wholesaler writes to or calls the supplier and complains about the transshipper for invading his or her territory, my understanding of current law is that the courts would consider this a Sylvania type case involving a vertical geographic territorial restraints and, therefore, subject to a rule of reason analysis, even though there is a specific price element involved. The reasoning would be that the price aspect is incidental to any subsequent termination that might follow for the violation of another wholesaler's exclusive territory.

If S. 430 is enacted in its current form, would the distinguished Senator agree that the courts should approach the case in exactly the same manner as under current law?

Mr. METZENBAUM. Provided that there was nothing more to the factual situation than what the Senator has just described, I would agree that the courts should approach the case in exactly the same manner as under current law. If the court currently would apply the Sylvania case, it would do the same after enactment of this bill.

Mr. FORD. So the factual situation that I have just described would be treated exactly as under current law if S. 430 is enacted. Many are fearful that valid exclusive territory arrangements would be deemed to restrict competition and thereby affect price competition, requiring courts to characterize and treat such practices as price constraints subject to per se condemnation under the provisions of S. 430. Is it the intent of the committee and the view of the Senator from Ohio that current legal standards used to judge the legality of vertical geographic territorial restraints will be unaffected by S. 430, so that a dealer termination case for violation of an exclusive territory arrangement without a price restraint component would continue to be subject to the Sylvania Supreme Court analysis?

Mr. METZENBAUM. That is correct with respect to the geographic territorial restraint you described.

Mr. FORD. I thank the distinguished Senator for the clarification with respect to the amendment he is offering on this issue.

On a more general level, would the bill change current legal standards applicable when there is an agreement to cut off a discounter because of its pricing practice, even if the termination leaves only one distributor in an area?

Mr. METZENBAUM. Yes, the bill would change current legal standards on this point only because of the Supreme Court's recent decision in the Sharp case. The agreement you describe would be per se illegal under section 8(b) of this bill.

The intent of S. 430 has not changed from its original introduction although the state of the law articulated by the Supreme Court changed on May 2, 1988. At that time, the Supreme Court, in Business Electronics Corp. versus Sharp Electronics Corp., found that an agreement between a manufacturer and a high-price retailer to cut off a discounter because it is price cutting is not per se illegal. Instead, the Court analyzed the agreement as a nonprice vertical restraint subject to the "rule of reason" standard.

The Supreme Court had not decided the Sharp case when the Judiciary Committee reported S. 430 and the committee report should be interpreted in light of the law articulated by the Supreme Court at the time the report was written. At that time, "nonprice vertical restraints" was not understood to mean an agreement to eliminate a distributor because of the distributor's pricing practice. The report's reference to "nonprice vertical restraints," therefore, does not include agreements such as the one in Sharp which the Supreme Court only subsequently determined to be a nonprice vertical restraint.

In those cases, proof of an agreement on price or price level is not necessary to find a per se violation of the antitrust laws. As the Senate report states,

> The phrase "price level," and similar terms, have almost become terms of art referring to a restrictive definition of vertical price fixing. The requirement of an agreement on a "price level" or on a specific price has never been the law. Such a requirement would make little sense, for example, when the vertical price-fixing conspiracy puts a distributor out of business because of its pricing practice.

The committee report also addresses the question of whether a per se violation must include an agreement between the supplier and higher-price distributor regarding the higher-price distributor's prices. It states that the bill as originally introduced—

> might have been interpreted to mean a vertical price-fixing conspiracy must involve an agreement between a supplier and a reseller related to that reseller's pricing of a good or service. This is certainly one of the traditional formulations of a vertical price-fixing conspiracy. It is not, however, an inclusive definition of vertical price fixing. * * * The amended language makes it clear that all forms of vertical price fixing are illegal per se.

These principles, expressed as the view of the majority of the Judiciary Committee, need to be restated, particularly after the Supreme Court's decision in the Sharp case. Passage of S. 340 before the Supreme Court's consideration of the Sharp case would have compelled a different result.

Mr. FORD. I agree that passage of S. 430 would mean that an agreement to stop doing business with a distributor because of its pricing practices would be analyzed as a vertical price restraint under section 8(b).

What about a case where a distributor is forced to agree to conditions that might conceivably be subterfuges for agreements to eliminate price cutting, such as the imposition of conditions not related to price that effectively destroy its ability to compete? For example, I understand that some retailers are being prohibited from taking orders by telephone or the mail, or from selling to persons not physically present in their showroom.

Mr. METZENBAUM. In all cases involving application of the per se rule, the factfinder must find that the distributor is cut off because of its pricing policies. Such a finding could be made in the circumstance you describe.

Mr. FORD. I thank the distinguished Senator. I would only add that I hope that this legislative intent and history would be preserved in conference.

Mr. METZENBAUM. I intend to keep the legislative history intact through conference.

AMENDMENT NO. 3414

(Purpose: To regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents)

Mrs. KASSEBAUM. Mr. President, I sent to the desk an amendment in the second degree and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 3414 to amendment numbered 3037.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of Amendment No. 3037, add the following new section, and renumber accordingly:

That this Act may be cited as the "General Aviation Accident Liability Standards Act of 1987."

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress finds that—

(1) transportation by air of passengers continues to comprise an increasingly important component of the nation's overall transportation system;

(2) although the incidence of injuries to passengers in general aviation accidents has decreased, the number of general aviation accident liability claims againt general aviation aircraft manufacturers and the amount of damages sought in such claims is increasing at disproportionate rates, beyond any relationship to the quality of the aircraft manufactured and in use;

(3) the current system for determining liability and damages for compensating individuals injured in general aviation accidents is inadequate;

(4) competent general aviation manufacturers and component part manufacturers are ceasing or limiting production of general aviation aircraft or some models of such aircraft because of the increasing costs and unavailability of product liability insurance;

(5) the increase in the number of liability claims and the size of awards and settlements, and the excessive time and expense devoted to the resolution of such claims, impose a substantial economic burden on general aviation manufacturers and their dealers;

(6) the Federal Government has an interest in the general aviation accident liability system because the Federal Government has established a comprehensive system for regulating general aviation, including—

(A) establishing standards for design, construction, and certification of general aviation aircraft,

(B) establishing standards for maintenance of aicraft, licensing of repair facilities, and licensing of persons who may perform or approve maintenance, repairs, and inspections,

(C) establishing standards for training and licensing of pilots,

(D) establishing a comprehensive air control system,

(E) conducting investigations to determine the probable cause of aviation accidents and prevent future accidents, and

(F) conducting other activities necessary to assure a safe air transportation system;

and this Federal system is the exclusive legal authority for regulating aviation operations and safety;

(7) it is in the national interest to reduce unnecesary expenditures related to general aviation accident liability claims while providing more rapid and more efficient compensation for individuals harmed in general aviation accidents; and

(8) Federal action to reform the general aviation accident liability system will result in—

(A) the maintenance of airworthy general aviation aircraft; and

(B) a more rational general aviation accident liability system.

(b) It is the purpose of this Act to establish standards for determining liability for harm arising out of general aviation accidents.

DEFINITIONS

Sec. 3. As used in this Act, the term—

(1) "Administrator" means the Administrator of the Federal Aviation Administration;

(2) "claimant" means any person who brings a general aviation accident liability action subject to this Act, and any person on whose behalf such an action is brought, including—

(A) the claimant's decedent; and

(B) the claimant's parent or guardian, if the action is brought through or on behalf of a minor or incompetent;

(3) "general aviation accident" means any accident which arises out of the operation of any general aviation aircraft and which results in harm;

(4) "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.) which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than twenty passengers, and which is not, at the time of the accident, engaged in scheduled passenger carrying operations as defined in regulations issued under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.);

(5) "general aviation manufacturer" means—

(A) the builder or manufacturer of the airframe of a general aviation aircraft;

(B) the manufacturer of the engine of a general aviation aircraft; and

(C) the manufacturer of any system, component, subassembly, or other part of a general aviation aircraft;

(6) "harm" means—

(A) property damage or bodily injury sustained by a person;

(B) death resulting from such bodily injury;

(C) pain and suffering which is caused by such bodily injury; and

(D) emotional harm (including bereavement and loss of affection, care, or society) which is caused by such bodily injury;

(7) "product" means a general aviation aircraft and any system, component, subassembly, or other part of a general aviation aircraft; and

(8) "property damage" means physical injury to tangible property, including loss of use of tangible property.

PREEMPTION: APPLICABILITY

SEC. 4. (a) This Act supersedes any State law regarding recovery, under any legal theory, for harm arising out of a general aviation accident, to the extent that this Act establishes a rule of law or procedure applicable to the claim.

(b) Nothing in this Act shall be construed to supersede or to waive or affect any defense of sovereign immunity asserted by the United States or any State.

(c) Nothing in this Act shall be construed to affect the liability of a manufacturer, owner, or operator of any aircraft that is not a general aviation aircraft, or a person who repairs, maintains, or provides any other support for any aircraft that is not a general aviation aircraft, for damages for harm arising out of the operation of an aircraft that is not a general aviation aircraft.

(d) No right of action for harm exists under this Act if that right would be inconsistent with the provisions of any applicable workers' compensation law.

(e) The provisions of this Act shall apply only to—

(1) any manufacturer, owner, or operator of any general aviation aircraft, and any person who repairs, maintains, or provides any other support for such an aircraft;

(2) any occupant of a general aviation aircraft at the time of a general aviation accident, and any person who brings an action for harm caused by such accident on behalf of such occupant; and

(3) any nonoccupant of a general aviation aircraft at the time of a general aviation accident, only if such nonoccupant is bringing an action for harm caused by such accident which arises out of the harm to an occupant of such aircraft at the time of such accident.

UNIFORM STANDARDS OF LIABILITY FOR GENERAL AVIATION ACCIDENTS

SEC. 5. (a) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a party and may recover damages from such party, if such party was negligent and such negligence is a proximate cause of the claimant's harm.

(b)(1) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the product, when it left the control of the manufacturer, was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible;

(B) the defective condition is a proximate cause of the claimant's harm; and

(C) the general aviation aircraft was being used at the time of the accident for a purpose and in a manner for which it was designed and manufactured.

(2) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) at the time the product left the control of the manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about a danger connected with the product that caused the claimant's harm; and

(ii) failed to provide the warnings or instructions that a person exercising reasonable care would have provided with respect to the danger which caused the harm alleged by the claimant, unless such warnings or instructions, if provided, would not have materially affected the conduct of the user of the product; or

(B) after the product left the control of the general aviation manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about the danger which caused the claimant's harm; and

(ii) failed to take reasonable steps to provide warnings or instructions, after the manufacturer of the product, which would have been provided by a person exercising reasonable care, unless such warnings or instructions, if provided, would not have materially affected the conduct of the product user;

and the failure to provide warnings or instructions described in subparagraph (A) or (B) of this paragraph is a proximate cause of the claimant's harm.

(3) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the manufacturer made an express warranty with respect to the product;

(B) such warranty relates to that aspect of the product which caused the harm;

(C) the product failed to conform to such warranty; and

(D) the failure of the product to conform to such warranty is a proximate cause of the claimant's harm.

(c)(1) In an action governed by subsection (b) of this section, a general aviation manufacturer shall not be liable if such manufacturer proves, by a preponderance of the evidence, that—

(A) the defective condition could have been corrected by compliance with action described in an airworthiness directive issued by the Administrator or a service bulletin issued by the manufacturer of the product; and

(B) such directive or service bulletin was issued at a reasonable time before the date of the accident and after the product left the control of the general aviation manufacturer.

(2) In any action governed by subsection (b) of this section, evidence of compliance with standards, conditions or specifications established, adopted or approved by the Federal Aviation Administration shall be admissible with regard to whether the product was defective and unreasonably dangerous for its intended purpose.

COMPARATIVE RESPONSIBILITY

SEC. 6. (a) All actions for harm arising out of a general aviation accident shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the claimant's conduct shall not bar recovery in an action under this Act, but shall reduce any damages awarded to the claimant in an amount proportionate to the responsibility of the cliamant. the trier of fact shall determine comparative responsibility by making findings indicating the percentage of total responsibility for the claimant's harm attributable to the claimant, each defendant, each third-party defendant, and any other person not a party to the action.

(b) Except as provided in subsection (c) of this section, a defendant is severally but not jointly liable in any action for harm arising out of a general aviation accident, and the liability of any defendant in any such action shall be determined on this basis of such defendant's proportionate share of responsibility for the claimant's harm.

(c) In any action for harm arising out of a general aviation accident—

(1) a general aviation manufacturer who is the builder or manufacturer of the airframe of the general aviation aircraft involved is jointly and severally liable for harm caused by a defective system, component, subassembly, or other part of such aircraft that the manufacturer installed or certified as part of the original type design for such aircraft; and

(2) a general aviation manufacturer who is the manufacturer of a system or component of the general aviation aircraft involved is jointly and severally liable for damages caused by a defective subassembly or other part of such system or component.

(d) A general aviation manufacturer and any other person jointly liable under subsection (c) of this section shall have the right to bring an action for indemnity or contribution against any person with whom they are jointly liable under subsection (c) of this section.

TIME LIMITATION ON LIABILITY

SEC. 7. (a) Except as provided in subsection (b) of this section, no civil action for harm arising out of a general aviation accident which is brought against a general aviation manufacturer may be brought for harm which is alleged to have been caused by an aircraft or a system, component, subassembly, or other part of an aircraft and which occurs more than—

(1) twenty years from—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such an aircraft; or

(2) with respect to any system, component, subassembly, or other part which replaced another product in, or which was added to, the aircraft, and which is alleged to have caused the claimant's harm, twenty years from the date of the replacement or addition.

(b) Subsection (a) of this section does not apply in the case of harm to a claimant which occurs after the period set forth in subsection (a) of this section if the general aviation manufacturer or the seller of the product that caused the claimant's harm gave an express warranty that the product would be suitable, for the purpose for which it was intended, for a longer period of time.

(c) Nothing in this section shall be construed to affect a person's duty to provide, after the sale or lease of an aircraft, to aircraft owners, and to repair facilities to which a license or certificate to perform repairs has been issued by the Administrator, additional or modified warning or instructions regarding the use or maintenance of such aircraft or any system, component, or other part of such aircraft.

SUBSEQUENT REMEDIAL MEASURES

SEC. 8. In any general aviation accident liability action governed by this Act, evidence of any measure taken after an event which, if taken previously, would have made the event less likely to occur is not admissible to provide liability. Such evidence is admissible to the extent permitted under rule 407 of the Federal Rules of Evidence.

ADMISSIBILITY OF CERTAIN EVIDENCE

SEC. 9. In an action governed by this Act, evidence of Federal, State, or local income tax liability or any Social Security or other payroll tax liability attributable to past or future earnings, support, or profits and the present value of future earnings, support, or profits alleged to have been lost or diminished because of harm arising out of a general aviation accident is admissible regarding proof of the claimant's harm.

PUNITIVE DAMAGES

SEC. 10. (a) Punitive damages may be awarded in an action under this Act for harm arising out of a general aviation accident only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious, flagrant indifference to the safety of the those persons who might be harmed by use of the general aviation aircraft involved.

(b) Evidence regarding the financial worth of a defendant or the defendant's profits or any other evidence relating solely to a claim for punitive damages under this Act is not admissible unless the claimant establishes, before any such evidence is offered, that the claimant can present evidence that will establish prima facie proof of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

(c) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages pursuant to the provisions of this Act regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

TIME LIMITATION ON BRINGING ACTIONS

SEC. 11. (a) Any action for harm arising out of a general aviation accident shall be barred, notwithstanding any State law, unless—

(1) the complaint is filed within two years after the date on which the accident occurred which caused the claimant's harm; and

(2) the summons and complaint are properly served upon the defendant within one hundred and twenty days after the filing of such complaint, unless the party on whose behalf such service is required can show good cause why such service was not made within such one-hundred-and-twenty-day period.

Paragraph (2) of this subsection shall not apply to service of process in a foreign country pursuant to rule 4(i) of the Federal Rules of Civil Procedure or any similar State law.

SANCTIONS

SEC. 12. It is the intent of Congress that, with respect to any action governed by this Act, the sanctions for violation of rule 11 of the Federal Rules of Civil Procedure, including orders to pay to the other party or parties the amount of their reasonable expenses, including a reasonable attorney's fee, be strictly enforced.

JURISDICTION

SEC. 23. (a) The district courts of the United States, concurrently with the State courts, shall have original jurisdiction, without regard to the amount in controversy, in all civil actions for harm arising out of a general aviation accident and in all actions for indemnity or contribution described in section 6(d) of this Act.

(b) A civil action which is brought in a State court may be removed to the district court of the United States for the district embracing the place where the action is pending, without the consent of any other party and without regard to the amount in controversy, by any defendant against whom a claim in such action is asserted for harm arising out of a general aviation accident.

(c) In any case commenced in or removed to a district court of the United States under subsection (a) or (b) of this section, the court shall have jurisdiction to determine all claims under State law that rise out of the same general aviation accident, if a substantial question of fact is common to the claims under State law and to the Federal claim, defense, or counterclaim.

(d)(1) A civil action in which the district courts of the United States have jurisdiction under subsection (a) of this section may be brought only in a district in which—

(A) the accident giving rise to the claim occurred; or

(B) any plaintiff or defendant resides.

(2) In an action pending in a district court of the United States under paragraph (1) of this subsection, a district court may, on motion of any party or its own motion, transfer the action to any other district for the convenience of parties and witnesses in the interest of justice.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the name of Senator Dole be added as a cosponsor of my amendment.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. DOLE. Mr. President, I rise in support of the amendment offered by my distinguished colleague from Kansas, Senator Kassebaum, and I commend her untiring leadership of the issue of product liability for the aviation industry. This amendment, which I am pleased to cosponsor, is essentially the text of S. 473, the General Aviation Accident Liability Standards Act. Since the 99th Congress, we have been trying to get this legislation enacted and now find ourselves in the position of having to take this approach.

SUPPORT FOR S. 473

Extensive hearings have been held on this bill in the Commerce Committee, and the testimony has documented a liability crisis of serious dimensions. This legislation in the 99th Congress, S. 2794, was reported out of the Commerce Committee without objection. S. 473 was also reported out of the Commerce Committee, and also discharged from the Judiciary Committee. Some of my colleagues may not be in agreement with this amendment, but it does have substantial support. The administration supports it—the Department of Commerce supports it, and the Justice Department supports it. Further, all of the national general aviation consumer groups support S. 473. This kind of support for product liabillity reform on the part of both manufacturers and users presents a rather unique situation.

CONDITION OF GENERAL AVIATION INDUSTRY

Mr. President, the general aviation industry in this country is in deep trouble and needs help. Jobs are being lost, export markets are being lost. Quite plainly, the recent dramatic increases in costs associated with product liability have resulted in serious financial difficulties for this industry. My concern is based on my view that this is the right policy, and also that Wichita, KS, is the home of the Beechcraft, Cessna, and Lear companies.

Let me describe the seriousness of the costs associated with product liability for the aviation industry. The total amount paid out by general aviation manufacturers and their insurers in liability claims about 10 years ago was $24 million. That same cost today is $200 million, and it is rising. It makes no sense considering that this outrageous increase occurred during a period where the safety record of general aviation has greatly improved.

In 1979, over 17,000 general aviation aircraft were sold in the United States. In 1987, there were only 1,495 airplanes sold. The statistics speak for themselves. The dramatic decline of America's general aviation competitiveness is largely due to the devastating effects of our current product liability situation; the future of this entire industry depends upon the resolution of this serious problem.

The economic impact of this situation is severely felt by the local community, as well as the industry at large. This means jobs for people who work at these companies, jobs for people who provide goods and services to these people.

General aviation manufacturers are primarily self-insured, so this is not a commercial insurance problem. It is fast becoming impossible for general aviation manufacturers to secure insurance at any level. The lack of access to this kind of protection is becoming a crisis, because there are only a few domestic insurance companies that provide any type of aviation liability insurance. Many general aviation manufacturers try to self-insure most of their risks, but they can't self-insure against the extraordinary rise in levels of risk that have occurred in recent years.

WHAT THIS AMENDMENT WOULD DO

Mr. President, it should be made clear at the outset that this amendment is not an aviation manufacturers' relief bill. If it were, we would not be standing up on the floor in support of it. Our amendment would create uniform Federal standards of liability, which have not been developed in an arbitrary way. Rather, they reflect the results of extensive negotiations and accommodations with the various interest involved. These uniform standards are absolutely critical, and there is extensive precedent for setting those standards at the Federal level. Currently, the Federal Government regulates the aviation industry from design to production. It regulates the training and licensing of pilots and mechanics. In addition, the air traffic control system is federally operated and regulated.

The language of this amendment does not cap damages in any way. It does not cap or limit attorneys fees or waive the manufacturers' responsibility to supply warnings against potential dangers. In fact, those responsibilities would continue regardless of the age of the product. Further, the amendment would not limit the right to sue. Therefore, it is somewhat baffling to me that some of my colleagues would continue to oppose this measure.

This amendment would retain strict liability and it retains completely joint and several liability between the manufacturers of all subsystems and component parts. But, it would enact comparative responsibility among other parties, as well as establish a 20-year statute of repose for aircraft and replacement parts, which would begin again each time a part is replaced.

There is an extensive Federal presence and involvement in aviation. One of the few exceptions in the area of litigation, which is conducted under individual and widely varying State laws. In our view, Federal product liability standards are necessary to provide uniformity and predictability. I urge my colleagues to support this measure, because of its extreme importance to the general aviation industry.

Mrs. KASSEBAUM. Mr. President, the amendment pending at the desk is the text of S. 473, the General Aviation Accident Liability Standards Act. Let me begin first by saying that this is not the way I would have preferred to approach this matter.

For a number of years now, I have attempted to bring my concerns as well as the concern of others, over aviation accident liability standards to the Senate floor. I introduced legislation to address the need for uniform standards at the beginning of this Congress. I also introduced similar legislation in the 99th Congress.

Both of those bills—S. 473 this Congress and S. 2794 last Congress—were reported out of the Commerce Committee; in the case of S. 2794, the report was without objection.

The Commerce Committee has, for two Congresses—running now, heald hearings on this legislation. The testimony taken at those hearings documented a liability crisis of major—if not catastrophic—proportions.

In addition to Commerce Committee hearings, the pending amendment has twice been referred to the Judiciary Committee—last Congress, in reponse to an informal request: this Congress, in reponse to a formal request. The measure was discharged from the Judiciary Committee earlier this year after hearings wer held by that committee.

The bill—now pending as an amendment—has widespread support. It is supported by the administration. It is supported by the Department of Justice. It is supported by the Department of Commerce. It is supported by the Separtment of Transportation. I ask unanimous consent that letters of support from these three Cabinet Departments be printed in the Record.

There being no objection, the letter were orderd to be printed in the Record, as follows:

The Secretary of Commerce,
Washington, DC, September 6, 1988.

Hon. Nancy Landon Kassebaum,
United States Senate,
Washington, DC.

Dear Nancy: Thank you for your letter regarding S. 473, the "General Aviation Accident Liability Standards Act." The general aviation inudstry has been particularly hard hit in recent years with rising product liability costs and the inadequacies of the tort liability system being major contributing factors to the decline. The Department of Commerce thinks that S. 473 is a very positive response to the problems of the general aviation industry. We also think that the success of this bill in obtaining meaningful Federal tort reform for the aviation industry will increase efforts to obtain comprehensive reform of the entire tort system.

We will continue to work actively within the Administration , with Congress and with the business community to obtain significant Federal reform of the tort system by lending our support for legislation like S. 473.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Bill,
Secretary of Commerce.

Department of Transportation,
Washington, DC, June 21, 1988.

Hon. Joseph R. Biden,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Department of Transportation would like to provide its views on S. 473 as reported June 2 from the Committee on Commerce, Science, and Transportation, the "General Aviation Accident Liability Standards Act of 1988."

This Department is seriously concerned about the tort liability crisis, especially as it affects the manufacture of general aviation aircraft. The tort liability systme is threatening the existence of the domestic manufacture of general aviation aircraft and, if left uncorrected, this industry may well be forced to move offshore to survive. Product liability insurance for these manufacturers is so expensive, and the deductibles are so high that manufacturers are no longer able to protect themselves adedquately from the effects of this exposure. Even where a manufacturer's alleged negligence is only a small factor in a general aviation accident, the lack of other financially response parties will make a manufacturer in effect the insurer of last resort under widely accepted principles of joint and several liability. Thus, a single judgment alleging a defect in a plane manufactured over twenty years ago can rob a manufacturer of its profits for an entire year, no matter how insignificant the risk caused by the alleged defect.

In our judgment, the bil takes a significan step towards correcting these and other inequities in the operation of the tort system for this particular industry. Accordingly, the Department supports the bill, deferring to the Department of Justice on technical aspects of the drafting.

Sincerely,

B. Wayne Vance.

Department of Justice,
Office of Legislative Affairs,
Washington, DC, July 26, 1988.

Hon. Robert C. Byrd,
Senate Majority Leader, U.S. Senate, Washington, DC.

Dear Mr. Leader: It has come to the Department's attention that S. 473, the General Aviation Accident Liability Standards Act of 1987, has reached the floor of the Senate and may soon be considered there. The Department previously provided its views on the bill in a letter dated June 13, 1988, to Senator Ernest F. Hollings, Chairman of the Committee on Commerce, Science, and Transportation. Apparently, there is some confusion about our position on S. 473. I would like to take this opportunity to erase any ambiguities.

The Department has steadfastly supported tort reform measures as a means of resolving the product liability problems faced by our American companies, and we have been seeking a comprehensive national approach to product liability reform rather than industry-by-industry reforms. This preference, however, does not draw the Department into opposition to this legislation, which offers generally well considered and workable solutions to the problems faced by the domestic general aviation industry. Our letter of June 13, 1988 did not oppose the bill. Rather, it was intended to focus on several amendments, technical in nature, that will add to the clarity and purpose of the bill.

As we stated in our letter to Chairman Hollings, the provisions of S. 473 should not be viewed as preempting the rights of States to pass additional tort reform measures deemed appropriate. For this reason, we suggested adding the language from the Department's product liability legislation:

"The provisions of this Act shall preempt and supersede any State law to the extent such law is inconsistent with the limitations contained in such provisions. The provisions of this Act shall not preempt or supersede any State law that provides defenses or places limitations on a person's liability in addition to those contained in this Act."

We would hope that this language, or similar language will be offered as an amendment to the Bill.

Section 4(b) of S. 473 preserves to the United States sovereign immunity defenses in the following language:

"Nothing in this Act shall be construed to supersede or to waive or affect any defense of sovereign immunity asserted by the United States or any State."

This savings clause, without some clarification, may affect the Federal Tort Claims Act's ("FTCA") statutory framework in ways which are not intended, such as FTCA provisions affecting venue. To alleviate any ambiguity, therefore, we suggest that a new phrase be added to the end of the savings clause, at section 4(b), to provide the following:

"Nor shall any provision of this Act be construed to supersede, waive or affect any condition, limitation, or procedure pertaining to any claim, action, or proceeding for damages otherwise applicable to the United States or any State."

The only additional technical change we feel is necessary would be to adopt the "amount in controversy" jurisdictional limits of Federal District Courts found at 28 U.S.C. § 1332. This amendment could be effected by deleting from section 13(a), the phrase "without regard to the amount in controversy" and substituting in its place the phrase "in cases where the amount in controversy exceeds the sum provided in 28 U.S.C. § 1332(a)." This would be consistent with current federal court practice, and would ensure that less complex matters involving small amounts in controversy (i.e., below $10,000) would not be brought in federal district courts. This would avoid any unnecessary burden being placed on the already overcrowded federal court system.

As previously stated, we believe these amendments are technical in nature, and as such, do not reflect on the substantive desirability of adopting S. 473, which the Department otherwise supports. We hope the Senate will move swiftly in acting favorably on this legislation.

The Office of Management and Budget has advised this Department that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

THOMAS M. BOYD,
Acting Assistant Attorney General.

Mrs. KASSEBAUM. The Office of Management and Budget has indicated it has no objection to the measure.

In addition, Mr. President, all of the national general aviation consumer groups support S. 473. This support for product liability reform by both manufacturers and users is unique. The measure is supported by the Aircraft Owners and Pilots Association, the National Business Aircraft Association, the National Air Transportation Association, the National Agricultural Aircraft Association, the Experimental Aircraft Association the Helicopter Association International, and the General Aviation Manufacturers Association.

I am offering this amendment because the general aviation industry in the United States is in serious trouble. The industry is on the brink of financial disaster because of recent dramatic increases in the costs associated with product liability.

Only 10 short years ago, $24 million was the total amount paid out by general aviation manufacturers and their insurers in liability claims. Today, that number is well over $200 million. This astronomical increase occurred over a period where the safety record of general aviation has greatly improved.

The source of this increase has not been in the number of claims against manufacturers. The increase has come in the size of the awards and in the expanding number of situations in which manufacturers are held responsible for damages.

It is important to understand that this is not an insurance problem. General aviation manufacturers are primarily self-insured. In fact, last year, all major manufacturers were self-insured for the first $100 million. And, if it is fast becoming impossible for general aviation manufacturers to secure insurance at any level.

Only a handful of domestic insurance companies provide any type of aviation liability insurance. As a result of several lawsuits, these companies are not subject to the provisions of the McCarren-Ferguson Act. They are exempt from Federal anititrust law with regard to insurability and rate issues.

To address that crisis, the pending amendment proposes the creation of Federal liability standards. Those standards were not selected in an arbitrary fashion. They are the product of many, many hours of negotiation. They reflect accommodations made over the past 4 years, including accommodations reached with those who will oppose the measure on the floor today.

The pending amendment is not an aviation manufacturers relief bill. The language of the amendment retains strict liability. It retains completely, joint and several liability between the manufacturers of all subsystems and component parts and enacts comparative responsibility among other parties. It also established a 20-year statute of repose for aircraft and replacement parts—which begins anew each time a part is replaced.

The amendment does not cap damages in any way. It does not cap or limit attorneys' fees. It does not waive the manufacturers responsibility to supply warnings against dangers. Those responsibilities continue regardless of the age of the product. The amendment does not limit the right to sue.

What the amendment does do is establish uniform Federal standards of liability. Uniform standards are critical, and there is ample precedent for setting those standards at the Federal level. The Federal Government regulates the aviation industry from design to production. It regulates the training and licensing of pilots and mechanics. The air traffic control system is federally operated and regulated.

The Federal interest and presence in aviation is all pervasive except in one area. Litigation is conducted under individual and widely varying State laws. Federal product liability standards are necessary to provide uniformity and predictability.

In 1979, over 17,000 general aviation aircraft were sold in the United States. In 1987 there were only 1,495 units sold; a dramatic change. The erosion of U.S. general aviation competitiveness is, in great part, the result of the devastating effects of our current product liability environment; its future is largely dependent on the resolution of the problem.

Unemployment in the domestic industry has risen to a staggering 65 percent. Such massive unemployment not only strips workers of a means of livelihood, it takes away the skills and dedicated work force necessary if we are to ever rebuild this industry.

Technology and innovation are being stifled because of prohibitive product liability costs. Airframe manufacturers are finding it increasingly difficult to find component manufacturers, as many businesses are totally giving up their aviation product lines as too costly to maintain. All of this adds up to even more American jobs lost. The increasing export of our industry is a tragedy. It is an area we have always excelled in, and it is one in which we are really rapidly losing ground.

The product liability problem facing the U.S. general aviation industry is much more than a domestic problem. The harm it causes is reflected in general aviation trade figures. Prior to 1981, U.S. general aviation exports contributed an annual multimillion dollar surplus to our Nation's balance of trade. In 1981, and every year since, the U.S. general aviation industry has suffered significant trade deficits—contributing to the national trade deficit, which has become a matter of grave concern.

Foreign manufacturers stand to be big winners if this product liability problem is not resolved. Their tort liability pales in comparison with that of the large U.S. manufacturers. This is in large part due to the fact that they do not have enormous numbers of aircraft in service in the United States, each of which remains a liability of the manufacturer, regardless of age. There is a significantly smaller percentage of foreign aircraft in service in the United States subject to our domestic tort laws. That results in considerably lower liability risk and a considerable competitive advantage for foreign manufacturers.

This same lack of competitive pricing is taking its toll on the U.S. market as well. Cessna Aircraft, the world's largest general aviation manufacturer, has suspended production of all piston-engine aircraft. Piper Aircraft has stated it may be forced to manufacture only one piston-engine aircraft. Beech Aircraft has cut back its production significantly. As foreign manufacturers move in to fill this near vacuum in domestic airplane supplies, the U.S. industry's negative trade balance will likely increase.

Mr. President, the pending amendment is fair and balanced. It attempts to afford judicial protections to both plaintiff and defendant. The amendment would guarantee compensation for innocent victims that is timely and fair. But, it would do so in a manner that provides treatment of product manufacturers that is reasonable and just. That, as simply as I can put it, is the purpose of this amendment. I urge its adoption.

Mr. GRASSLEY. Mr. President, I am pleased to rise in support of S. 430, the Retail Competition Enforcement Act, and explain my part in working out this compromise that is now S. 430, and to say that I think that the amendment that we have before us in the way of the Rudman amendment tends to do harm to that compromise and keep the bill from being a successful piece of legislation.

The DeConcini-Grassley-Metzenbaum-Leahy substitute that we consider today is the product of long hours of discussion and negotiation among many in the business community and those representing discount retailers—all mediated with great skill by my colleagues on the Judiciary Committee. I am pleased to have played a role in the compromise we have before us today.

The final product that has emerged is worthy of the Senate's support.

I would like to specifically commend the contents of the committee report to my colleagues. It is a careful description of what S. 430 does—and what it does not do. This bill has two relatively modest, yet important, purposes relating to the law of vertical price fixing. I would like to briefly discuss these objectives.

Section 8(a) of the bill addresses a type of vertical price-fixing in which it is claimed that a dealer has attempted to eliminate a competing dealer's price competition by causing a common supplier to discontinue sales to the competing dealer. Since the Supreme Court decided the Monsanto versus Spray-Rite Service Corp. case 3 years ago, there has been some confusion over the evidence that the terminated dealer in such a case must present to defeat summary judgment and send the case to the trier of fact.

The Monsanto case did not change the substantive requirements for proof of a vertical price-fixing conspiracy; it merely set forth the evidentiary standard which a plaintiff would have to meet in order to avoid judgment as a matter of law due to insufficient evidence. The Monsanto Court held that the mere fact that a terminated dealer had been the subject of price-related complaints from competing dealers did not permit the trier of fact to infer that the manufacturer was engaged in an illegal price-fixing conspiracy with those dealers.

The plaintiff prevailed in Monsanto because it had presented additional evidence that tended to show a conspiracy. However, some other language in the Court's opinion could be interpreted to impose burdens greater than those that the Monsanto plaintiff actually had to meet. Specifically, the Court said at one point that a terminated dealer did not raise a triable issue unless it produced evidence that "tends to exclude the possibility" that the supplier acted independently. This bill is intended to make clear that a terminated dealer need not "prove the negative," as suggested by the Monsanto Court.

This bill is also intended to address misinterpretations that have followed in the wake of Monsanto, such as Garment District Case. In this case, a terminated dealer failed to survive summary judgment, even where it was clear that the termination was directly caused by the price-related complaints, accompanied by "economic duress, coercion and threats."

This bill clarifies the Monsanto decision in a way that is consistent with the actual holding in the case, not the restrictive language that may have been lifted out of context.

This bill provides that if a dealer can show that certain kinds of price-related communications by other dealers were "a major contributing cause" of its termination, then the dealer is entitled to have the trier of fact consider whether the supplier and the complaining dealer "engaged in concerted action" to fix resale prices.

This is an important, but limited clarification of the post-Monsanto law. This bill does not address summary judgment standards for antitrust cases generally, nor does it prevent the granting of summary judgment to defendants in appropriate situations. Indeed, S. 430 contemplates that summary judgment is still available to defendants in vertical price-fixing cases.

S. 430 does not set out a precise roadmap for courts. Instead, it is designed to direct a court to consider whether a reasonable trier of fact could find that one, a competitor of a retailer or distributor had encouraged a supplier to act "to curtail or eliminate price competition," via "an express or implied suggestion, request, or demand, including a threat to discontinue an existing business arrangement," and two, that as a result of this encouragement, the supplier had terminated or refused to continue supplying goods to the claimant.

If a trier of fact could reasonably so conclude, summary judgment should be denied. The trier of fact is then permitted to find, on the basis of all the evidence presented in the case, that there has been an illegal vertical price-fixing conspiracy. Of course, the trier of fact may also find on the basis of the evidence that there has been no vertical price-fixing conspiracy. The jury is not required by anything in S. 430 to infer the existence of a vertical price-fixing conspiracy.

The court's determination as to whether a trier of fact could reasonably find the two predicate facts described in paragraphs (1) and (2) of subsection (a) is to be made on the basis of all the record evidence—defendant's as well as plaintiff's. This bill preserves the court's authority to withhold a case from the jury if there is insufficient evidence of a causal nexus between the price complaint and the termination, or when the complaint is insufficient to raise a jury issue.

This bill does not alter the law of summary judgment generally. Instead, as always, the standards for evaluating the sufficiency of the evidence are prescribed by the Federal Rules of Civil Procedure and cases construing the Federal rules.

Importantly, this bill does not address or affect the substantive legal standards to be applied by the court and the trier of fact in deciding the merits of resale price maintenance claims under sections 1 and 3 of the Sherman Act.

Important, and longstanding, precedents such as United States versus Colgate—manufacturer has a legitimate interest in taking unilateral action to affect the price at which its goods are resold—and Continental TV, Inc. versus Sylvania—nonprice vertical restraints are subject to a rule-of-reason analysis—and others, are neither discarded or modified. Such cases continue to have vitality as if S. 430 were not enacted.

Subsection (b) of S. 430 has a modest, but important, objective. That is to codify and preserve the longstanding rule of antitrust law—dating to 1911—that vertical price fixing is per se illegal.

However, S. 430 is not intended to codify or change the manner in which this per se rule has been applied by the courts in the past, or to constrain or otherwise affect how the per se rule is applied by the courts in the future. This bill has nothing to do with categorizing certain types of conduct as per se illegal. This is, and will continue to be, the province of the courts.

Mr. President, at this point, I am constrained to add a footnote with respect to the bill's effect on the recent Supreme Court decision in the Sharp case. In my judgment, as a sponsor of the proposal before us today, I can state clearly that I had no intention of overruling, or otherwise affecting, a pending Supreme Court case.

Indeed, earlier versions of the committee report on S. 430 contained language which might have been construed to resolve the issues addressed in Sharp. This language was removed precisely because we were concerned only with procedural aspects of a price-fixing case. We specifically did not concern ourselves with substantive antitrust standards, as the Supreme Court did in Sharp.

This compromise bill was carefully crafted, after weeks of discussion. Our aim was to make specific clarifications to summary judgment standards in response to the Monsanto case, and to codify the fact that vertical price fixing is per se illegal.

It would indeed be unfortunate if all the hard work that went into this compromise would be jeopardized by an overly expansive reading of the bill, at this late date.

Aside from the last-minute confusion, Mr. President, I again salute my colleagues and their staffs for their their hard work in ensuring that this bill accurately reflects the careful negotiations that went on over 15 months ago between all the parties.

I yield the floor.

Mr. HEFLIN. Mr. President, today, I must rise and express my reservations concerning S. 430, the Retail Competition Enforcement Act.

Throughout my tenure in the Senate, I have fought hard for the working men and women both in Alabama and throughout the United States. Every Member of Congress carries this burden. In fulfulling our obligation, we must carefully review pending legislation seeking flaws and ambiguities, while being ever mindful of the task at hand.

The Retail Competition Act of 1987 purports to be a bill which would merely codify existing law and ensure increased competition and lower retail rates. While I did support S. 430 when it was considered by the Senate Judiciary Committee, in the intervening months since that vote, I have spoken with many Alabamians who are very concerned about the effects of this legislation. I have studied the bill more extensively, and I have taken the time to talk with many experts about this bill. Upon reflection, and mindful of my obligation to the people of Alabama and the United States, I must oppose S. 430.

S. 430 has two substantive sections. The proponents of this bill allege the first section of this bill merely codifies existing case law that vertical price fixing is, per se, illegal. However, the recent decision of *Business Electronics Corp.* v. *Sharp Electronic Corp.* (No. 85-1910, Slip Op. (U.S. 1988), which was decided since this bill was voted on by the Senate Judiciary Committee and since the committee report was drafted, has properly clarified the current status of this area of antitrust law. In Sharp, the U.S. Supreme Court noted, "A vertical price restraint is not illegal per se unless it includes some agreement on price or price levels." (Sharp, Slip Op. at 16). But, the report language accompaning S. 430 contains language that, "A vertical price-fixing conspiracy need not include an agreement on a specific price or on a price level." (S. Rept. No. 280, 100th Cong., 2d sess. at 12 (1988).) Clearly, there is a current disparity between what the Supreme Court has ruled and the language in the report. Therefore, this legislation will not carry out its purported effects.

Vertical restraints on price or price levels are and should be, per se, illegal. However, I am equally convinced that Congress should not expand the list of per se illegal restraints beyond that of price and price level, and the effect of this legislation would be just such an expansion.

The second major section of this bill has even more difficulties. S. 430 would establish a new evidentiary standard applicable to resale price maintenance claims. The bill provides that where a manufacturer receives a communication from a competitor of a reseller, that the manufacturer curtail, or eliminate price competition, and where the complaint is a major contributing cause of the manufacturers later terminating the complained of supplier, such evidence is sufficient to create a jury question on whether a vertical restraint of trade existed. More importantly, the report language accompanying this bill states that the above evidence is sufficient "to obtain a jury finding of concerned action to set, change or maintain prices." (S. Rept. No. 280, 100th Cong., 2d sess. at 9 (1988). The committee report makes clear that a plaintiff no longer has to present any evidence of conspirary in order to reach the jury, or to win his case.

Although, the drafters of S. 430 state that this bill will merely clarify existing law regarding the evidentiary standard to be applied in consumer termination cases—this is simply not the case. In fact, S. 430 would overrule the Supreme Court's unanimous decision in *Monsanto Co.* v. *Spray-Rite Corp.* (465 U.S. 752 (1984)). Under current law a conspiracy cannot be proved merely by a plaintiff producing evidence that a dealer communicated with a manufacturer about price competition and thereafter terminated a competing dealer. Although, these facts are undoubtably probative, standing alone they are not currently sufficient to allow the case to get to the jury. However, this standard would be abolished by this legislation.

This evidentiary change is even more difficult when we are reminded that we are being asked to amend the Sherman Act. The new standard would, in practical terms, eliminate the requirement of providing or showing any evidence of conspiracy in order for a plaintiff to prevail. The committee report accompanying S. 430 makes clear that a plaintiff need not present any evidence of conspiracy. (See S. Rept. No. 280, 100th Cong., 2d Sess. at 9 (1988).) However, the first section of the Sherman Act states its purpose is to protect against trusts and conspiracies designed to restrain trade. (See 15 U.S.C. section 1.) What we are being asked to do is to eliminate the need for conspiracy evidence when we are seeking to prove an illegal conspiracy. Simply put, this makes no sense.

Additionally, those who believe that this section of the bill is proconsumer oriented are both mistaken and shortsighted. It is well known that contracts between a manufacturer and a dealer are usually beneficial and often lead to improvements in distribution systems, which leads to efficiency, and can result in lower prices and better service for all consumers. If this bill is enacted it could potentially have a chilling affect on communications between manufacturers and dealers. This would be a direct result of the fear of litigation between the parties. Proponents of S. 430 must not be allowed to prevail and create a commercial atmosphere filled with fear of pending litigation.

Further, proponents of S. 430 would have us believe that without the passage of this bill the day of the discount store is over—nothing could be further from the truth. Since the Monsanto decision, the discount trade industry has not been harmed. In fact, this industry has grown and prospered in recent years. Although, we can and should be diligent in our efforts to protect this strong and important business sector, this legislation has the potential of unleashing a Pandora's box of problems against the entire business community.

In addition to these reasons, I must oppose this legislation due to its draftsmanship. The Sharp decision serves to focus our attention on the difficulties in this bill. Even among cosponsors there is disagreement as to the effect of this legislation on that Supreme Court decision. What better evidence do we need to prove that this legislation needs more work. We owe our constituents our full efforts in passing legislation that is needed, and will do what its supposed to do. Unfortunately, this bill fails the test.

Last, Mr. President, I would like to conclude by reminding my fellow Senators that we have been hearing much in recent days about the necessity of American industries being able to compete at home and abroad. We need legislation which will aid the business community and foster an atmosphere of competition and growth, unfortunately S. 430 will do neither. Therefore, I must express my opposition to S. 430.

Mr. METZENBAUM. Mr. President, I rise to address myself to the amendment offered somewhat out of place, but I understand the procedure and I find no fault with it, having to do with the common-law liability as pertains to the manufacture of airplanes. That amendment has been offered as a second-degree amendment to the pending amendment.

What is being asked is that we abrogate the well-established common-law product liability standards for one particular industry, the manufacturers of planes that seat 20 or fewer passengers.

This amendment would make radical changes in the tort laws of many States. It would make it extremely difficult for someone injured in a small plane accident to obtain compensation.

When this legislation came before the Senate Judiciary Committee a few months ago, I said at the time that I was deeply troubled by the argument that Congress is more capable of crafting fair and balanced tort laws than are the States, which have established these policies over the history of this country.

There is a real State's rights issue here and that State's rights issue is: are we going to make the laws having to do with tort liability of airplane manufacturers or are the States going to make them as they have been doing?

Not only have State legislatures and State courts developed tort laws, they have been active in continuing to review and reform them. In the last few years, over 40 States have enacted some type of tort reform laws bearing on the issues raised by this amendment.

Is Congress really more expert in drafting these laws than the States? I do not think so. We are talking about the right to sue the manufacturer of an airplane.

But the general aviation industry is up here saying it needs this legislation to survive.

I do not question the fact that the industry is in a slump and that liability insurance rates are up.

But I want to say maybe you ought to take a look and see why the liability insurance rates are up and whether it has to do with the fact that the liability insurance companies and other insurance companies are exempt from the antitrust laws of this country.

Someday when this Congress has the temerity and the courage to move forward and repeal the McCarran-Ferguson Act that provides an exemption from the antitrust laws for the insurance industry, maybe then there will be a better answer to the airplane manufacturers than this proposed legislation.

The question is, is there a causal link between the rising liability costs and a turndown in the sale of planes? Is there enough of a link to justify placing gross restrictions on the rights of injured parties to sue in general aviation accidents?

The answer is no, unequivocally no.

Their booming sales during the late 1970's saturated the market. The fact is that many of these 9-, 10-, and 11-year-old planes are still operating. And that is a big reason why sales of new planes are down.

When there are enough planes out there and nobody needs new ones, and the American manufacturers build their planes well, therefore, people do not want to replace them. But why should we here in the U.S. Congress bail out this particular industry because it had that which some might say the "misfortune" of selling too many planes several years ago? It was not a misfortune. I am glad it is a viable, strong industry. But this is the worst case of Government interference in the marketplace to come along and say they are having some troubles; therefore, we should provide some changes in the applicable tort law to the airplane manufacturers.

The owners, the pilots, and manufacturers of general aviation aircraft have banded together to push this legislation because they believe it will solve some of the economic woes of this industry.

Let us talk about the economic woes of this industry. It comes about from increased foreign competition. It comes about from the profusion of high quality, lower cost, older aircraft on the market and they claim that it comes about by reason of these expensive liability insurance premiums.

But it is still dead wrong for Congress to go along with these special interest groups and adopt a proposal that is so unfair to injured passengers.

The injured passenger, or the passenger who possibly may be deceased and therefore his or her family, why should that person or that family be asked to suffer because the Congress decided that the manufacturer would no longer have liability?

This amendment is bad policy. It undercuts the doctrine of liability and replaces with negligence-based Federal standards. It expands the defense available to manufacturers to block cases brought against them by injured victims and their families. It limits the application of joint and several liability and arbitrarily cuts off recoveries for injuries caused by aircraft more than 20 years old.

Now, if the aircraft caused the injury, the mere fact that it was manufactured 20 years ago—if there was a defect and that is what caused the injury—why should that passenger, why should that pilot not have a right to bring an action against the manufacturer? There is no logical reason for that.

And if we were to pass this amendment, it would severely curtail the rights which passengers on private and chartered aircraft possess under current State law.

Consider the 20 years statute of repose contained in the amendment. Under the amendment's language, someone who was injured in a general aviation accident could not even initiate a claim for compensation if the accident involved an aircraft or its components which was more than 20 years old. It would not matter how defective the aircraft was. You would just be out of luck if the plane was more than 20 years old.

That limit bears no relation to the useful safe life of general aviation aircraft. Some of the planes flying today are at least 40 years old.

Under this amendment, a victim would be required to prove that a plane "was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible at the time the product left the control of the manufacturer."

How would you possibly prove what was reasonably feasible 20 or 30 or 35 years ago? That would not only be an extremely difficult new hurdle, but it would practically be impossible. The victim—the party without the expertise—would have the burden of proving if engineering and manufacturing practices were feasible at the time the plane was made.

The amendment bars recovery if the aircraft was not used for a purpose for which it was designed. This language could stop victims from recovering anything from airplane manufacturers. The amendment would allow manufacturers to argue that a plane was not intended to crash—of course—even though the situation may have been inevitable and forseeable.

Do not worry about safety. Do not worry about trying to make a plane crashworthy. You are not going to be liable because of this loophole in the amendment.

And there is more.

The amendment would limit joint and several liability unless the defect is a part of the original part of the design or there has been defective assembly; otherwise, liability is based on the responsibility attributable to the defendant. What this means, simply stated, is that a victim in a crash could be left undercompensated for his or her injury. If, for example, a manufacturer was held to be 50 percent responsible but the pilot was insolvent, the victim would only get that 50 percent. Now, would anybody argue that is fair?

Mr. President, the Senate must ask itself three questions: One is, is it appropriate to have this airplane liability amendment attached to a bill which is attempting to protect the consumers of this Nation so that they may go out and buy products at a discount?

The second question is, do we really want to leave passengers without adequate compensation?

Third, the question is, do we want to relax liability standards and thereby weaken incentives to design and manufacture safe aircraft?

The answer to all of these questions should be a loud, clear and unequivocal no.

As Consumers Union, the Consumer Federation of America, U.S. PIRG, and Public Citizen noted in a September 15, 1988 letter to all Senators, a letter just sent within the last several weeks:

> We oppose this legislation because we fear its efects on the legal rights of injured passengers and on aviation safety. This legislation would make it exceedingly difficult, if not impossible in many cases, for innocent passengers and their families to receive adequate compensation for the horrendous injuries and deaths associated with general aviation air crashes.

This special interest legislation must be defeated.

Mr. President, I want to point out something about this amendment. My opinion is that this amendment might actually carry if it were let to go to a vote, which I do not intend to do.

But let me tell you why it might carry. Because the lobbyists are down here working the Halls of this body; because the lobbyists have been around saying they want this. And there is no lobbyists, there is nobody there for the public interest. There is nobody concerned about the passengers on the plane. They do not have lobbyists. They do not know if they are going to be flying in a plane that is defective or that will not work or that is not crashworthy. So they have no lobbyists.

So the lobbyists who are representing the airplane manufacturers have done a fine job of lining up support for this kind of amendment. But that does not make it right. In fact, it is unequivocally, undeniably wrong. We are not going to pass this amendment and we should not pass this amendment. And, even if it were to be adopted, my guess is that those who are filibustering the basic bill would continue to do so.

Mr. President, I yield the floor.

Mrs. KASSEBAUM. Mr. President, my good friend from Ohio knows better than to make some of the statements that he made. I would start with one that he mentioned last, the fact that there are no lobbyists representing the other side on this case.

I know of no stronger lobby, Mr. President, than the Trial Lawyers Association, which has so successfully rallied their troops in order to keep this legislation from ever receiving an up-or-down vote on the Senate floor. And I think that is a travesty.

I would also like to state that the Senator from Ohio stated that there were gross restrictions in this amendment. They are not gross restrictions. No one is prevented from bringing a lawsuit. There are no caps on damages.

What it does do, what I have stated, is that it will allow greater predictability. No one's right to sue is limited. Awards are not, as I say, in any way capped. Those are just two basic statements that I think should be very clear to everyone in understanding this.

I can understand those who have concerns about tort reform and who view this as the camel's nose under the tent to the larger issue of product liability—they have grave concerns. But this is a very different issue, Mr. President, because aviation is so tightly regulated by Federal standards that I think it comes under a totally different section when we are talking about tort reform and liability. And because it has to meet all those Federal standards, I feel strongly that this is a very logical progression, in which we should have the predictability and uniformity that would be an asset to the industry. And that is why we should have it in Federal court. To me it is a sound and sensible and sane approach to a very serious condition in our general aviation industry.

It is not the special interests of our manufacturers. It is a question of jobs. It is a question of competitiveness. And a whole segment of our economy in which the United States has been a leader is being lost to us.

At this point, Mr. President, I yield for some comments to the Senator from Arizona.

Mr. McCAIN. Thank you, Mr. President. We are talking about a very serious issue here but I would like to thank my colleague from Ohio for injecting some humor into this debate.

One of the most amusing statements I have heard here is that there is no one lobbying in favor of those poor victims of air crashes. All of us know very well that perhaps the most powerful single lobby in America today is the American Trial Lawyers Association, which has basically become responsible for the death of an industry in this country.

Mr. President, if you think I am exaggerating, look at the figures of general aviation manufacturing in America today. About 10 to 15 years ago, general aviation in this country was manufacturing thousands of aircraft. Names like Beech and Piper and Cessna and so many others that have become part of the lexicon of American aviation lore are now either bankrupt or about to go out of business. And they can account that primarily to the skyrocketing costs of these incredible judgments that are going on day to day. So I do thank my friend from Ohio for injecting some humor into this debate.

Let me go back and say I have the utmost respect, admiration, and appreciation for the gentlelady from Kansas, who has pursued this legislation now for several years. As a member of the Aviation Subcommittee she has been heavily involved in this issue. I know of no one in America who is more qualified to address both sides of this issue than my friend, Mrs. KASSEBAUM.

Let me start out with a brief anecdote. This took place about 1 year ago in the course of deliberations over another bill on the part of the Aviation Subcommittee, Mr. Chairman. One of the witnesses before the Aviation Subcommittee was Mr. Frank Borman.

All of us know Frank Borman was a distinguished Air Force pilot, an astronaut, and later president of Eastern Airlines. At the conclusion of his testimony, one of the members of the committee asked Mr. Borman if he had any further concerns or issues that he would like to address to the committee. And he said, "Yes, there is one." He said to the members of the committee that since he had left Eastern Airlines he had had the opportunity to get back into general aviation, and he traveled around the country, and New Mexico in particular, to various airports. He was struck by the virtual disappearance of general aviation in airfields, throughout the country.

Mr. President, no longer are young Americans able to learn to fly planes in this country as we did for many generations. Frankly, that has profound implications. It has implications on our ability to recruit and train military pilots; it has implications on our ability to have qualified and experienced airline pilots. More and more of our commercial airlines are drawing their pool of qualified pilots from general aviation. Frankly, Mr. President, over time it is going to affect aviation safety, because no longer can young men and women in America afford to learn to fly.

They cannot afford to learn to fly because the costs, judgments, settlements, and defense costs incurred by the industry have skyrocketed from $24 million in 1977 to $209 million in 1985.

I greatly appreciate the concern of my friend from Ohio for the consumer and concern for the people who fall victim to an air tragedy, which happens all too often. Even though general aviation accident rates have continued to improve and the number of claims have remained constant, we see this dramatic increase in costs for judgments, settlements, and defense costs.

This situation, Mr. President, is very anecdotal. One of my favorite anecdotes is the court settlement in the State of Texas which is an argument for my friend's legislation, making Federal standards as far as liability standards are concerned. It was the case of a family who died in a small aircraft accident and the jury awarded, among many other millions of dollars, $2.5 million for preimpact trauma—preimpact trauma.

Do you know what that means, Mr. President? It means that they were frightened before the airplane hit the ground and they were killed.

We all know that that is ludicrous. What is happening with judges and juries around this country is outrageous. It is not the fact that we would mind compensating victims of an air crash. Certainly we want to. And there is nothing in this legislation which will prevent just and equitable awards to victims of any air tragedy.

The fact is, what this legislation does is set up Federal standards. I find it hard to understand why it would be opposed by anyone. Just briefly, Mr. President, this bill would establish jurisdiction in Federal courts and would establish standards for liability for airframe and component manufacturers based only on the following causes of action: negligence, defective products, failure to warn of known dangers, and breach of express warranty. It would require damages to be allocated based on comparative responsibility but hold general manufacturers of aircraft and components jointly liable and severally liable with other manufacturers, and allow claims for punitive damages only if a claimant first shows evidence of a conscious, flagrant indifference to the safety of others. It establishes a 2-year statute of limitations and a 20-year statute for aircraft and replacement parts.

Let me address that particular aspect. If I should happen to get into a Stearman, which was made prior to World War II, and that airplane should crash, the manufacturers of that airplane are still liable for anything that happens with that airplane, even if a part was not originally manufactured nor placed in the airplane at the time of manufacture. It seems to me that that is a pretty outrageous set of circumstances. I do not think it is unreasonable to establish a 2-year statute of limitations and a 20-year statute of repose for aircraft and replacement parts. It permits recovery of attorney's fees by plaintiffs and defendants in case of frivolous suits, motions, et cetera. We all know how clogged the courts are in America today.

Let me emphasize what this legislation does not do. It does not cap any damages. There is no cap on any damages that a jury might choose to impose. It does not impose any restrictions on attorneys' fees. Our friends from the American Trial Lawyers Association should be pleased to know that. I would like to repeat that again for the record. It does not impose any restrictions on attorneys' fees, including contingency fees.

It does not waive responsibility to supply warning against dangers, regardless of the age of the product. And it does not affect the rights of persons who are injured on the ground or affect other more general areas of product liability law.

Mr. President, the situation is grave. We are in danger of losing an industry in this country. We are losing our ability to compete with foreign manufacturers of general aircraft.

When you look at the trade deficit and the problems that we are having with our trade and look at the way the general aviation business is being taken over by foreign manufacturers, it should give us all pause.

A December 8, 1986, report from the United States Foreign Commercial Services staff in Switzerland provides an interesting trade perspective. "United States-made single-engine aircraft, especially at present exchange rates, would find a ready market in Switzerland as nearly half of the existing fleet will have to be replaced within the next 2 to 5 years. However, the present high cost of the U.S. product liability insurance makes most U.S. small aircraft uncompetitive."

That should not surprise anyone. It will inevitably take its toll, I think, in the U.S. market as well.

Cessna Aircraft, for example, has been building aircraft as long as anybody in the aviation community can remember. Cessna Aircraft, the world's largest general aviation manufacturer, has suspended production of all piston aircraft engines through the 1987 model year. Piper Aircraft has stated that it may be forced to manufacture only one piston engine aircraft, and Beech Aircraft has cut back its production significantly. No training aircraft are being made in the United States.

As foreign manufacturers move in to fill this near vacuum in domestic airplane supplies, the U.S. industry's negative trade balance will likely increase.

Mr. President, it was in the United States that the Wright brothers flew at Kitty Hawk. It is in the United States that the first jet aircraft was flown. It is the United States that had the first major jet commercial aircraft. What are we going to see in the next 5 or 10 years? Mr. President, we are going to see the disappearance of general aviation in America as we know it unless we adopt a reasonable standard as embodied in this bill proposed by my colleague from Kansas.

I would also like to point out that I think that it is wrong to block a vote on this bill. I think it is wrong for my friend from Ohio to say that he is not going to allow this body to vote on this piece of legislation. My colleague from Kansas has proposed this legislation in a variety of fashions. It has received a majority support of the members of our committee. I think we deserve a vote.

Mr. METZENBAUM. Will my friend from Arizona yield for a question?

Mr. McCAIN. I will be glad to yield to my friend for a question.

Mr. METZENBAUM. Does the Senator think that if we had a vote on this, the Senator from Ohio could then be assured that all those persons over on that side of the aisle would permit us to have a vote on the basic bill that is pending before us, the resale price maintenance bill? It is my understanding that I am going to have a very difficult time getting that to a vote.

Mr. McCAIN. I will be glad to join with my friend from Ohio in seeking the assistance and, indeed, the cooperation of the Members on this side of the aisle. I hope that my friend from Ohio does not somehow feel that that relieves him of the obligation of allowing a vote on this bill, nor does it make it right to block a vote on this bill. Two vote blockages do not make a right.

Mr. METZENBAUM. The fact is that this amendment does not belong on this bill. It has nothing at all to do with the issue of resale price maintenance, and I think it is a vain attempt to put it on and only confuses the issue. It may alienate some and add some by putting it on, but I suppose the Senator from Kansas would be prepared to say, and I would agree with her, that I have not indicated a willingness for this measure to come to a vote on any other bill or a separate standing bill because I think it is just bad legislation. I yield the floor.

Mr. McCAIN. I thank the Senator for yielding back to me. I would like to thank my colleague from Ohio for stating that one of his objections is that this amendment does not belong on this bill. I seem to recollect in the very short time I have been here and the 4 years I was in the House of Representatives, my friend and respected colleague from Ohio has a great proclivity for putting amendments on bills that really do not belong on those bills. Many people, myself, included, have admired his parliamentary skill tactics in that fashion.

Mr. METZENBAUM. If the Senator from Arizona will yield to me without losing his right to the floor, I say that I have more difficulty with those who add amendments than I do about putting on the amendments. It had been more of a problem for me when I saw all those Christmas tree amendments that were put on various and sundry bills. I guess on the scorecard, I probably objected to more extraneous amendments being added than I have been involved in myself of adding them on.

Let us be realistic. We operate by the rules of the Senate. The lady from Kansas is not violating any of the rules in offering this amendment. The Senator from Ohio was not violating any rules in seeing to it that it not come to a vote, and the Senator from South Carolina is not violating any rules in seeing to it that the basic bill not come to a vote. I think I understand him clearly and loudly that he does not intend to permit the basic bill to come to a vote.

Mr. McCAIN. If I might respond to my friend from Ohio, let me say I was expressing my admiration for his consonant parliamentary skills. I would say his record is replete with both objecting to amendments as well as a sizable record of addition of amendments. I certainly tip my hat to him for those skills.

I also would like to point out to my friend from Ohio in a moment of seriousness, and I understand the rules we are playing by here, but this really is a serious situation that we are facing as far as the general aviation industry in America is concerned.

I have the greatest respect and admiration for my colleague from Kansas, who has committed herself to a thorough debate on this issue. I am convinced that it is the only way we are ever going to get this legislation to a vote, which I think the American people deserve.

I would like to yield to the Senator from Kansas, if I might.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. If people were listening to what has been said here this afternoon as it relates to the general aviation product liability amendment that has been submitted by the distinguished and articulate Senator from Kansas, I doubt seriously that we would find very many who would vote against this amendment were it allowed to become an item that we could finally vote on.

Let us look a little bit at what has been said by the distinguished Senators from Kansas and Arizona.

I am amazed at the eloquence and the recall of the Senator from Arizona as he talks about the first—and he wants to be in the position of saying America is first, a first in all things. It is very difficult because of what we do to our manufacturers, what we do to those people who work for those manufacturers and how we continue to impose restrictions on our people so our people lose jobs so our jobs are transferred overseas.

Since 1980, if my figures are right—I am sure they are not far off—but in the aviation construction industry, 70 percent of the jobs have been lost. Think about that. How does that help the consumer when the consumer does not have a job, he does not buy anything? What do we do? We send his or her job overseas. They manufacture the airplanes and they send them back over here. They are not in the position to have the same responsibility we have imposed upon our industry. So it becomes somewhat more of an emotional issue with me than it does a technical amendment.

The reason it becomes an emotional issue with me is because I see Americans losing jobs; I see Americans slipping from No. 1 to whatever the other countries want to manufacture and send over here in an open-door trade policy.

As the distinguished Senator from Kansas, Senator KASSEBAUM, said, this is not a domestic issue. This is not a domestic issue. The harm it causes, as she said and I quote from her statement, "is reflected in general aviation trading figures."

Let us look at the past and let us look at the future. "Prior to 1981," she said, "U.S. general aviation exports contributed multimillion dollar surpluses to our Nation's balance of trade."

That is an industry of which we are all proud.

"In 1981, and ever since then," she states—and I accept it because I chaired the hearing—"the U.S. general aviation industry has suffered significant trade deficits, contributing to our national trade deficit, which has become a matter of grave concern."

Why should we not help ourselves for a change instead of helping them? Why should we not help our people to have jobs? Why should we not help our industry to build and improve and do better?

Foreign manufacturers are the big winners in what we are not doing, not allowing this amendment to come to a vote—putting the amendment, the distinguished Senator from Ohio says, goodness gracious, on this bill. Well, why not this bill? What other vehicle is out there? Why not play by the rules? Why be criticized for playing by the rules?

If I recall correctly, in the hearing we had an attorney who represented a client who received a great deal of money, maybe one of the largest settlements, if not the largest, and he came very close to agreeing with the committee, with Senator KASSEBAUM's position. Boy, I understand he was chastised significantly because he was agreeing with what was basically right. The distinguished Senator from Arizona said there is no cap, we have not placed a cap on any damages or imposed any restrictions on lawyers' contingency fees.

We need good lawyers every once in a while. My dad told me a long time ago, "Son, a little knowledge of the law is dangerous. Get you a good lawyer and stay with him."

I like lawyers. I have nothing against lawyers. They are important. They play a vital role in the system. I am for trial lawyers. I am for corporate lawyers. I am for general lawyers or whatever. I think I have supported them most of the time I have been here. But this is where I have to slip off the edge a little bit to support those people who are now not working, where we are slipping from No. 1 and other countries are shipping their airplanes in here and we are buying them because the price is less. Why? Because they do not have the liability our manufacturers are required to bear. So if we lose our production and get their production, what have the trial lawyers or any lawyer gained? They will wear out one of these days. They are bound to quit. But if you put in a new part that extends the life of the plane, then the manufacturer of the part has to take the liability.

So, Mr. President, I am very concerned that we will watch this amendment die because some do not want it. We are not going to have it. We are going to play by the rules. We are going to filibuster.

Let me say that those who want to prevent this amendment from coming up are making foreign manufacturers the big winners and saying to American manufacturers, "You are the losers." We can be big, brave defenders of the consumer, we can do all these things for the little people, but we say that 70 percent of the employees are now out of work—a reduction by 70 percent in the last 8 years. The foreign manufacturers stand to be the big winners and American manufacturers stand to be the big losers.

There will be a larger percentage of foreign aircraft in service in the United States as time progresses and their considerably lower liability risk means a competitive advantage for foreign manufacturers.

I wish there was some way I could be more persuasive. I wish there was some way I could reach out and say to the manufacturers we want to help you expand your operation, get back in competition, begin to hire more people, improve the economic conditions in the communities, improve their income sufficient so they can send their children to school and have hope. What we are doing is saying for the first time in my life—and I will soon be 65; I do not mind admitting it—is that my grandchildren will not have the same opportunity as my children, nor the same opportunity I had in this great country because we are beginning to squeeze to the point where their opportunities are not as bright and a great percentage worse than their parents.

So we have the opportunity to say that we want to be first again, we want to put our manufacturers in the place where they can be competitive and where the people in this country buy our product.

I admire the Senator from Kansas, Mrs. KASSEBAUM, for taking the opportunity to make this bill an amendment to S. 430. I think she is right. Around here you stand up for what you think is right.

You may not win as far as votes are concerned, but you sure do sleep a lot better at night.

Mr. President, I do thank the distinguished Senator from South Carolina for allowing me this time, and I encourage the Senator from Kansas to be a little stubborn, do what she thinks is right. There will be one or two Senators around here who will support her, and if they will not let her amendment come to a vote probably nothing else will come to a vote around here.

You can always play the game both ways. It is always two-sided.

I admire the distinguished Senator from Ohio. He has a great reputation around here for being the watchdog. In fact, he is the only Senator I know who has been given a title. There is the majority leader, the minority leader, and the commissioner. The commissioner watches over everything, and the commissioner gets us in a spot when there is very little time left and we get threatened with a filibuster or we get threatened with this. These threats are not idle and he has taught us a few lessons. He has kept me here all night, long nights, long days. But I want to tell you the time comes where my memory is not as good as it used to be, my memory is fading for those long nights, and I say to the commissioner it may be the time when we start another long night, it may be a time that we begin to talk about things and do what we feel is right.

So the threat of a filibuster or talking or not allowing it to become law does not bother me as much as it used to because they say, as the Senator from South Carolina, "You were a pretty good Governor."

And I say that in time and distance it might look a lot better. So time and distance has faded a little bit, and also the worry about a filibuster pushing us back against the wall at the end of the session.

Let me tell a story here, if I may. They say this is off on something, the institution is not working right, the rules do not help us any, and all that kind of stuff. I was campaigning down in western Kentucky in a county, and I was at the county seat. I was shaking hands with whittlers around the courthouse. I was telling who I was, what I was running for, and I would appreciate their vote. This one fellow—after I had gone through that, I tried to make a little idle conversation with him. And I said, "It certainly is hot, isn't it?"

He said, "Yep; but it happens about this time every year."

So what we see here happens just about this time every session. And it is not something new after 14 years. I have experienced it. Our distinguished majority leader is here. He has experienced it. Others have been here. We experience it. So we figure it is going to happen. So if it is going to happen, let it happen.

I am willing to stay here and try to help the Senator from Kansas with this amendment, if she can, regardless of those who say that we may not be able to bring it up. We might be able to work out a little something, a little agreement. I understand the Senator from Ohio. I come from Kentucky, the land of Henry Clay, "The Great Compromiser." And I do not intend to leave the table without a few attempts.

I yield the floor.

Mr. METZENBAUM. Mr. President, I want to say to my good friend from Kentucky that sometimes it takes a filibuster to beat a filibuster. It so happens we are engaged in a filibuster. My good friend from South Carolina over here is filibustering the basic underlying bill. I think if we stay here about 7 days or 7 weeks he would not let me bring this bill to a vote. What we have at the moment is the distinguished Senator from Kansas offered an amendment. And it so happened I do not think that amendment ought to come to a vote. But even if it came to a vote, even if she prevailed, that would never become law because it is attached to the underlying bill which the Senator from South Carolina makes no bones about. He does not intend to let us go to a vote on that subject.

Mr. FORD. Will the Senator from Ohio yield for a question?

Mr. METZENBAUM. Surely.

Mr. FORD. Under those circumstances, then, when the Senator is saying the distinguished Senator from South Carolina is conducting a filibuster against the Senator's bill, the one that he feels very strongly about, and this amendment is not going anywhere because of the filibuster, it might be nice and accommodating if the Senator would allow the Senator from Kansas to have her vote.

That would do two things: One, the Senator would be accommodating, and we would see if there is support for this amendment or not. And then, if it is not going anywhere, what does the Senator have to lose? It is not much for the Senator to lose to allow her amendment to come to a vote if the bill is not going to pass. At least this is the only vehicle we can have.

The Senator is saying—I can see the wheels turning now—she might persuade the Senator from South Carolina to let this bill go. So I know. Would it not be nice to just go ahead and let us vote on this amendment tomorrow?

Mr. METZENBAUM. That is a wonderful thought, and I certainly am going to sleep on that subject, but I doubt very much it will change my mind. But I will try to get a good rest. I will watch the debate tonight. Right after that I am going to cogitate about this matter.

Mr. FORD. I will be up also. If the Senator needs to cogitate with a friend, call me.

Mr. METZENBAUM. I thank the Senator from Kentucky.

THE RETAIL COMPETITION ENFORCEMENT ACT OF 1988

Mr. SIMON. Mr. President, today I commend my colleagues in the Senate for bringing to the floor once again for consideration S. 430, the Retail Competition Enforcement Act of 1988, which I originally cosponsored along with Senator METZENBAUM, Senator BRADLEY, and Senator RUDMAN. This measure will restore the legal protections that the Nation's antitrust laws traditionally have afforded to the practice of discounting by codifying the 75-year-old rule that vertical price fixing is per se illegal. Such action will be of primary benefit to consumers who wish to continue to buy goods at a discount. The savings that are achieved through discounting practices are enormous. In 1983, it was estimated—conservatively—that discounting saved the American people approximately $23 billion per year. Price survey after price survey documents that pricecutters save consumers many of their hard-earned dollars.

I urge my colleagues to take swift action in passing the bill with no unfavorable amendments. This is an important measure for consumers who wish to save their families' money by seeking the best possible price. This bill stands for the consumer and against higher prices and for the independence of the business person against fixed prices. It is a good bill that deserves to be passed expeditiously, and I urge my colleagues to do so.

The PRESIDING OFFICER (Mr. REID). The Senator from South Carolina has the floor.

Mr. THURMOND. Mr. President, I see the majority leader on the floor. I wanted to ask if he wishes to make a statement.

Mr. BYRD. Yes.

Mr. THURMOND. I yield to him without losing my right to the floor.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I am prepared to put the Senate over until tomorrow. And I ask for the regular order.

PARENTAL AND TEMPORARY MEDICAL LEAVE

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

The Senate continued with the consideration of the bill.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I am going to offer a cloture motion. I had indicated to the Republican leader that was my plan. I will be happy to wait. The leader is busy right now. He is tied up. I do not believe I would be showing any discourtesy if I went ahead and offered it. But I will offer it momentarily.

In the meantime, I will ask unanimous consent that there be a period for morning business, that that period not extend beyond 20 minutes, and that Senators may speak therein for not to exceed 5 minutes each.

There will be a rollcall vote on the amendment that has already been ordered. The Republican leader and I will determine the time of that vote momentarily. Before the Chair puts the request, I will offer the cloture motion. Is the parental leave bill still before the Senate?

The PRESIDING OFFICER. The parental bill is before the Senate.

CLOTURE MOTION

Mr. BYRD. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee substitute for the bill S. 2488, a bill to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

Senators Brock Adams, John Kerry, Wyche Fowler, Jr., Carl Levin, Spark Matsunaga, Howard M. Metzenbaum, Jeff Bingaman, Claiborne Pell, Tom Daschle, Edward M. Kennedy, Alan Cranston, George J. Mitchell, Frank Lautenberg, Christopher Dodd, Barbara A. Mikulski, and Jay Rockefeller.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that I may withdraw that cloture motion if, when the Republican leader comes to the floor, he would for some reason not want me to offer it. But I think both of us understand that was my plan.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that we have morning business for not to exceed 20 minutes, and that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, that will be the order.

Does the Senator from South Carolina seek recognition?

A TRIBUTE TO SENATOR DANIEL J. EVANS

Mr. THURMOND. Mr. President, the fast-approaching adjournment of this 100th session of Congress marks the retirement of Senator DANIEL J. EVANS from his post as U.S. Senator. As friends and colleagues of the distinguished Senator from Washington, we are all sorry to witness his departure from the Senate. In honor of Senator EVANS, I would like to take this opportunity to discuss the many contributions he has made to the Congress and to the people of the United States.

Senator EVANS has served the State of Washington in several capacities. Shortly after completing his studies at the University of Washington, Senator EVANS served in the Washington State House of Representatives from 1956 to 1964. Senator EVANS held the office of Governor of Washington from 1965 to 1977—he is the only three-term Governor in the State's history. Senator EVANS was appointed to the U.S. Senate by Gov. John Spellman on September 12, 1983, to fill the seat of the late Senator Henry M. Jackson. He then won a special Senate election in November of the same year to serve the following term in full.

During his term in the U.S. Senate, Senator EVANS has achieved many important goals. In particular, Senator EVANS has concentrated his efforts on the Federal budget, energy issues, and natural resources. The independent appropriations bill, sponsored by Senator EVANS, would assure the separate passage of certain appropriations in order to speed the budgetary process. In general, Senator EVANS has been a strong supporter of legislation designed to curb spending and decrease the deficit.

As a member of the Senate Energy Committee, Senator EVANS has taken a great interest in conservation legislation. He was the original sponsor of the Appliance Efficiency Standards Act, setting higher requirements for the electrical appliance industry to produce more energy efficient products. In an effort to maintain a strong defense posture, Senator EVANS was instrumental in ensuring the placement of the Hanford Reservation nuclear facility in his home State.

Senator EVANS has been actively involved in protecting the natural resources of Washington State. He sponsored the Columbia River Gorge Bill, protecting the river gorge from property jurisdiction disputes and ensuring its preservation. Senator EVANS has been instrumental in the establishment of wilderness preserves in Washington.

Senator EVANS is a fine man, and he has represented the State of Washington ably and honorably. It has been a pleasure to serve in the 100th Congress with my distinguished colleague from Washington, and I wish him the best in any and all future endeavors.

A TRIBUTE TO SENATOR PAUL TRIBLE

Mr. THURMOND. Mr. President, I rise today to pay tribute to my friend and colleague, Senator PAUL TRIBLE of Virginia, who will be ending his career in the U.S. Senate at the close of this 100th session of Congress.

Although still a young man, Senator TRIBLE has compiled an impressive résumé. Senator TRIBLE is a graduate of Hampden-Sydney College and Washington and Lee University Law School. He served as an assistant U.S. Attorney and commonwealth attorney for Essex County, VA, and was then elected to the U.S. House of Representatives in 1976. After serving in the House, Senator TRIBLE was elected to the U.S. Senate in 1982.

Since that time, Senator TRIBLE has worked hard to the benefit of Virginians and Americans alike. Specifically, Senator TRIBLE has been active in improving benefits for Federal employees and veterans. In 1985, he offered the former military spouses amendment to the Department of Defense Authorization Act. This amendment guarantees benefits for the divorced spouses of military personnel. In addition, Senator TRIBLE has committed himself to the issue of child support. Senator TRIBLE authored several key provisions of the 1984 Child Support Act, which improve interstate collection procedures and provide for mandatory wage deductions in the case of delinquent child support payments.

Senator TRIBLE has sponsored legislation to keep pace with the fast-changing world of technology. He introduced the Computer Crime Act of 1984, to prevent the use of computer technology to steal or tamper with Government data.

On a personal note, Senator TRIBLE is a man who holds the ideal of family in high esteem. When Senatorial duties become temporarily less pressing, one can almost always find Senator TRIBLE with his lovely wife and children. This commitment to his family reflects the honorable character of Senator PAUL TRIBLE.

Senator TRIBLE is one of the finest and ablest Members of the U.S. Senate, and is held in high esteem and respect by his colleagues. He will be greatly missed by many of us in the Senate.

I thank the distinguished Senator from Virginia for his fine contributions to the U.S. Senate, and I wish him the best in all future endeavors.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON MOTOR VEHICLE SAFETY—MESSAGE FROM THE PRESIDENT—PM 163

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

The Highway Safety Act and the National Traffic and Motor Vehicle Safety Act, both enacted in 1966, initiated a national effort to reduce traffic deaths and injuries and require annual reports on the administration of the Acts. This is the 20th year that these reports have been prepared for your review.

The report on motor vehicle safety includes the annual reporting requirement in Title I of the Motor Vehicle Information and Cost Savings Act of 1972 (bumper standards).

In the Highway Safety Acts of 1973, 1976, and 1978, the Congress expressed its special interest in certain aspects of traffic safety that are addressed in the volume on highway safety.

The national outrage against drunk drivers, combined with growing safety belt use and the voluntary cooperation we have received from all sectors of American life, has brought about even more improvements in traffic safety.

In addition, despite large increases in the number of drivers and vehicles, the Federal standards and programs for motor vehicle and highway safety instituted since 1966 have contributed to a significant reduction in the fatality rate per 100 million miles of travel. The rate decreased from 5.5 in the mid-60's to the 1986 level of 2.5

The progress we have made is, of course, no consolation to the relatives and friends of those 46,056 people who, despite the safety advances and greater public awareness, lost their lives in 1986. But it is indicative of the positive trend this Administration has established to make our roads safer.

During a time of economic prosperity and lower gas prices, the loss of approximately 126 lives per day on our Nation's highways is still too high. Also, with the increasing motor vehicle travel, we are faced with the threat of an even higher number of traffic fatalities. Therefore, there is a continuing need for effective motor vehicle and highway safety programs.

We will continue to pursue highway and motor vehicle safety programs that are most effective in reducing deaths and injuries. We are convinced that even during these times of fiscal austerity, significant progress in traffic safety can be achieved through the combined efforts of government, industry, and the public.

RONALD REAGAN.

THE WHITE HOUSE, *October 5, 1988.*

PRESIDENTIAL APRPOVALS

A message from the President of the United States announced that on October 4, 1988, he had approved and signed the following enrolled bills:

S. 1544. An act to amend the National Trails System Act to provide for cooperation with State and local governments for the improved management of certain Federal lands, and for other purposes.

S. 1583. An act for the relief of Maria Antonieta Heird.

S. 1972. An act for the relief of Irma Purisch and Daniel Purisch.

S. 2846. An act to provide for the awarding of grants for the purchase of drugs used in the treatment of AIDS.

MESSAGES FROM THE HOUSE

At 10:04 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4146. An act to designate wilderness within Olympic National Park, Mount Rainer National Park, and North Cascades National Park Complex in the State of Washington, and for other purposes;

H.R. 4210. An act to reauthorize title II of the Marine Protection, Research, and Sanctuaries Act of 1972, for fiscal years 1989 and 1990, and for other purposes;

H.R. 4211. An act to reauthorize the National Ocean Pollution Planning Act of 1978 for fiscal years 1989 and 1990, and for other purposes;

H.R. 4724. An act to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, MS;

H.R. 5199. An act to make nonmailable any plant, fruit, vegetable, or other matter, the movement of which in interstate commerce has been prohibited or restricted by the Secretary of Agriculture in order to prevent the dissemination of dangerous plant diseases or pests, and for other purposes;

H.R. 5280. An act to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the U.S. Congress;

H.R. 5315. An act to amend the Congressional Award Act to extend the Congressional Award Program; and

H.R. 5318. An act to amend the Egg Research and Consumer Information Act to limit the total costs that may be incurred by the Egg Board in collecting producer assessments and having an administrative staff, to eliminate egg producer refunds, and to delay the conducting of any referendum by egg producers on the elimination of such refunds.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 115. A concurrent resolution providing for participation by delegations of Members of both Houses of Congress in ceremonies to be held in April 1989 in New York City marking the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the inauguration of President George Washington, and the proposal of the Bill of Rights as the first 10 amendments to the Constitution; and

H. Con. Res. 331. A concurrent resolution to acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the U.S. Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution.

At 2:12 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 2100) to authorize the U.S. Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes, with an amendment; it insists upon its amendment to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

Mr. ANDERSON, Mr. ROE (except for section 30) Mr. NOWAK, Mr. HAMMERSCHMIDT, and Mr. STANGELAND, and as an additional conferee, for consideration solely of section 30 as contained in the House amendments and modifications committed to conference, Mr. BORSKI.

The message also announced that the House has passed the bill (S. 2030) to amend the Marine Protection, Research, and Sanctuaries Act, with amendments; it insists upon its amendments to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Merchant Marine and Fisheries: Mr. Jones of North Carolina, Mr. Studds, Mr. Lowry of Washington, Mr. Hughes, Mr. Carper, Mr. Manton, Mr. Davis of Michigan, Mr. Lent, Miss Schneider, and Mr. Saxton.

From the Committee on Public Works and Transportation: Mr. Anderson, Mr. Roe, Mr. Mineta, Mr. Oberstar, Mr. Nowak, Mr. Towns, Mr. Hammerschmidt, Mr. Stangeland, Mr. Molinari, and Mr. Gallo.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Energy and Commerce: Mr. Dingell, Mr. Waxman, Mr. Wyden, Mr. Madigan, and Mr. Nielson of Utah.

From the Committee on Interior and Insular Affairs: Mr. Udall, Mr. Campbell, Mr. Richardson, Mr. Young of Alaska, and Mr. Rhodes.

The message also announced that the House has passed the bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, with amendments; it insists upon its amendments to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Armed Services, for consideration of the Senate bill, and the House amendments, and modifictions committed to conference: Mr. Aspin, Mr. Dellums, Mr. Montgomery, Mr. Hutto, Mr. Skelton, Mr. Leath of Texas, Mr. McCurdy, Mr. Foglietta, Mr. Hertel, Mr. Ortiz, Mr. Robinson, Mr. Dickinson, Mr. Martin of New York, Mrs. Martin of Illinois, Mr. Blaz, Mr. Ravenel, and Mr. Weldon.

From the Committee on Government Operations, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Brooks, Mr. Conyers, Mrs. Collins, Mr. Horton, and Mr. Walker.

From the Committee on Merchant Marine and Fisheries, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Jones of North Carolina, Mr. Studds, Mr. Hutto, Mr. Davis of Michigan, and Mr. Young of Alaska.

From the Committee on Rules, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Pepper, Mr. Moakley, Mr. Derrick, Mr. Beilenson, Mr. Frost, Mr. Quillen, and Mr. Taylor.

As additional conferees, for consideration of section 921 of the Senate bill, and the House amendments, and modifications committed to conference: Mr. Foley and Mr. Armey.

The message further announced that the House has passed the bill (S. 2496) to provide for the leasing of certain real property to the American National Red Cross, District of Columbia Chapter, for the construction and maintenance of certain buildings and improvements; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 1476. An act to designate the Federal Record Center at 9700 Page Boulevard, Overland, MO, as the "SSG Charles F. Prevedel Building";

S. 1827. An act to designate the Federal building located at 330 Booth Street in Reno, NV, as the "C. Clifton Young Federal Building"; and

S. 1986. An act to study, control, and reduce the pollution of aquatic environments from plastic materials.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2800. An act to improve Environmental Protection Agency data collection and dissemination regarding reduction of toxic chemical emissions across all media, to assist States in providing information and technical assistance about waste reduction, and for other purposes;

H.R. 4547. An act to amend the Department of Transportation Act to reauthorize local rail service assistance:

H.R. 5050. An act to amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and controlled by women, and for other purposes;

H.R. 5052. An act to amend title 31 of the United States Code to provide for a transfer of control of the General Accounting Office Building and to improve the administration of the General Accounting Office;

H.R. 5186. An act to designate the Federal building and U.S. Courthouse located at 109 South Highland, Jackson, TN, as the "Ed Jones Federal Building and United States Courthouse";

H.R. 5200. An act to amend the Immigration and Nationality Act to limit the period of detention of excludable aliens pending removal in a manner similar to that provided in the case of deportable aliens pending deportation;

H.R. 5291. An act to provide the Secretary of the Air Force with authority to convey certain land; and

H.R. 5442. An act to provide the Environmental Protection Agency and the public with additional information about asbestos products.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 328. An act to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes;

S. 1165. An act to authorize the Secretary of the Interior to provide for the development and operation of a visitor and environmental education center in the Pinelands National Reserve, in the State of New Jersey; and

H.R. 1596. An act to amend title 28, United States Code, to create two divisions in the Judicial District of Maryland.

The enrolled bills were subsequently signed by the President pro tempore [Mr. Stennis].

At 6:44 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agree to the amendment of the Senate to the amendment of the House to the text of the bill (S. 2393) to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such act, and for other purposes; and that the House recedes from its amendment to the title of the bill.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendent of the House to the bill (S. 1579) to amend the Public Health Service Act to revise and extend the Block Grant Program, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (S. 908) to amend the Inspector General Act of 1978.

The message further announced that the House has passed the bill (S. 836) to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills; each with amendments, in which it requests the concurrence of the Senate:

S. 11. An act to amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to provide for judicial review of certain final decisions of the Board of Veterans' Appeals; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under law administered by the Veterans' Administration, and for other purposes", and

S. 744. An act to authorize the Environmental Protection Agency to assist States in development of radon programs, to conduct a study to determine the extend to which randon in the Nation's schools poses a threat to children and employees in such schools, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4833) to amend the Public Health Service Act to revise and extend the programs of nurse education established on title VIII of such act, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 60) to permot the Architect of the Capitol, under the direction of the Joint Committee on the Library to accept gifts of money for the purpose of works of fine art for the Capitol, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1510. An act to amend title 35, United States Code, and the National Aeronautics and Space Act of 1958, with respect to the use of inventions in outer space;

H.R. 2848. An act to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing, to prevent piracy of satellite cable programming, and for other purposes;

H.R. 4939. An act to amend the Safe Drinking Water Act to control lead in drinking water;

H.R. 4972. An act to authorize appropriations for the Patent and Trademark Office on the Department of Commerce, and for other purposes; and

H.R. 5410. An act to provide for the registration of foreign interests in U.S. property, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate;

H. Con. Res. 276. A concurrent resolution expressing the sense of the Congress that the Surgeon General should declare that drunk driving is a national crisis.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2800. An act to improve Environmental Protection Agency data collection and dissemination regarding reduction of toxic chemical emissions across all media, to assist States in providing information and technical assistance about waste reduction, and for other purposes; to the Committee on Environment and Public Works.

H.R. 5199. An act to make nonmailable any plant, fruit, vegetable, or other matter, the movement of which in interstate commerce has been prohibited or restricted by the Secretary of Agriculture in order prevent the dissemination of dangerous plant diseases or pests, and for other purposes; to the Committee on Governmental Affairs.

H.R. 5200. An act to amend the Immigration and Nationality Act to limit the period of detention of excludable aliens pending removal in a manner similar to that provided in the case of deportable aliens pending deportation; to the Committee on the Judiciary.

H.R. 5315. An act to amend the Congressional Award Act to extend the Congressional Award Program; to the Committee on Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 331. Concurrent resolution to acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the U.S. Constitution and to reaffirm the continuing government-to-government relationship between the Indian tribes and the United States established in the Constitution; to the Select Committee on Indian Affairs.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4146. An act to designate wilderness within Olympic National Park, Mount Rainier National Park, and North Cascades National Park Complex in the State of Washington, and for other purposes:

H.R. 4547. An act to amend the Department of Transportation Act to reauthorize local rail service assistance;

H.R. 5442. An act to provide the Environmental Protection Agency and the public with additional information about asbestos products.

MEASURES HELD AT THE DESK

The following bill and concurrent resolution were ordered held at the desk by unanimous consent:

H.R. 4758. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968 to increase the level of benefits payable with respect to the death of public safety officers and to provide that nondependent parents may be beneficiaries;

H. Con. Res. 115. A concurrent resolution providing for participation by delegations of members of both Houses of Congress in ceremonies to be held in April 1989 in New York City marking the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the inauguration of President George Washington, and the proposal of the Bill of Rights as the first ten amendments to the Constitution;

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 5, 1988, he had presented to the President of the United States the following enrolled bills:

S. 328. An act to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes; and

S. 1165. An act to authorize the Secretary of the Interior to provide for the development and operation of a visitor and environmental education center in the Pinelands National reserve in the State of New Jersey.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

H.R. 441. A bill for the relief of the heirs of Master Sergeant Nathaniel Scott, United States Army, retired, deceased.

H.R. 525. A bill for the relief of John M. Gill.

H.R. 945. A bill for the relief of Allen H. Platnick.

By Mr. BIDEN, from the Committee on the Judiciary, with amendments:

H.R. 1133. A bill for the relief of Thomas Nelson Flanagan.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

H.R. 1149. A bill to amend the Foreign Sovereign Immunities Act with respect to admiralty jurisdiction.

H.R. 1275. A bill for the relief of Joyce G. McFarland.

H.R. 1385. A bill for the relief of Travis D. Jackson.

By Mr. BIDEN, from the Committee on the Judiciary, with amendments:

H.R. 1388. A bill for the relief of David Butler, Aldo Cirone, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortensen, and Kurt Olofsson.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

H.R. 1826. A bill for the relief of Natasha Susan Middelmann, Samantha Abigail Middelmann, Naomi Katrina Orloff Middelmann, and Hannah Emily Middelmann.

H.R. 2109. A bill for the relief of Rosa Pratts.

H.R. 2461. A bill for the relief of Milena Mesin and Bozena Mesin.

H.R. 2511. A bill for the relief of Tarek Mohamad Mahmoud.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment:

H.R. 2802. A bill for the relief of Fleurette Seidman.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 3146. A bill to clarify certain restrictions on distribution of advertisements and other information concerning lotteries and similar activities.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

H.R. 3238. A bill for the relief of Maria Linda Sy Gonzalez.

H.R. 3347. A bill for the relief of Bibianne Cyr.

H.R. 3414. A bill for the relief of Meenakshiben P. Patel.

H.R. 3917. A bill for the relief of Rajani Lal.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 4612. A bill to amend title 28, United States Code, to provide for an exclusive remedy against the United States for suits based upon certain negligent or wrongful acts or omissions of United States employees committed within the scope of their employment, and for other purposes.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. Res. 73. Resolution to refer S. 329 entitled "A bill for the relief of Dynamic Technology International, Inc., Lew Malank Associates, Star Design, Inc., Riverside Precision Machines, and certain other individuals" to the Chief Judge of the United States Claims Court for a report thereon.

S. Res. 187. Resolution referring the bill for the relief of Frederick Paul to the Chief Judge of the United States Claims Court.

S. 1456. A bill for the relief of Paulette Mendes-Silva.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1482. A bill to amend title 18 and title 28, United States Code, to make certain improvements with respect to the Federal judiciary, and for other purposes.

S. 1619. A bill to amend the copyright law to secure the rights of authors of pictorial, graphic, or sculptural works to prevent the distortion, mutilation, or other alternation of such works, to provide for resale royalties, and for other purposes.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 1754. A bill for the relief of Fleurette Seidman.

By Mr. BIDEN, from the Committee on the Judiciary, with amendments:

S. 1878. A bill for the relief of Thomas Nelson Flanagan.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1961. A bill to amend title 28, United States Code, to provide Federal debt collection procedures.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 2279. A bill to amend title 11 of the United States Code, the bankruptcy code, regarding swap agreements.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

S. 2361. A bill to amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual materials and the use of library materials or services.

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 2488. A bill to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

By Mr. BIDEN, from the Committee on the Judicary, with an amendment:

S. 2500. A bill to amend title 28, United States Code, to provide for an exclusive remedy against the United States for suits based upon certain negligent or wrongful acts of omissions of United States employees committed within the scope of their employment, and for other purposes.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 2781. A bill to change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes.

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment:

S. 2793. A bill to amend title 18 of the United States Code to punish corruption.

By Mr. BIDEN, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 278. Joint resolution designating November 20-26, 1988, as "National Family Caregivers Week".

S.J. Res. 280. Joint resolution to designate the week of November 27, 1988 through December 3, 1988 as "National Home Care Week".

S.J. Res. 301. Joint resolution designating January 20, 1989, as "National Skiing Day".

S.J. Res. 327. Joint resolution commemorating January 28, 1989, as a "National Day of Excellence" in honor of the crew of the space shuttle Challenger.

S.J. Res. 337. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 21, 1988, as "National Military Families Recognition Day."

S.J. Res. 346. Joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

S.J. Res. 352. Joint resolution designating September 24, 1989, as "United States Marshals Bicentennial Day".

S.J. Res. 355. Joint resolution designating October 7, 1988, as "National Teachers Appreciation Day".

S.J. Res. 357. Joint resolution designating the week beginning November 6, 1988, as "National Women Veterans Recognition Week".

S.J. Res. 363. Joint resolution designating November 28 through December 2, 1988, as "Vocational-Technical Education Week".

S.J. Res. 365. Joint resolution to designate January 28, 1989, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger.*

S.J. Res. 372. Joint resolution to designate the week beginning November 21, 1988, through November 27, 1988, as "National Adoption Week".

S.J. Res. 385. Joint resolution to designate September 11 through 17, 1988, as "National Youth 2000 Week".

S.J. Res. 386. Joint resolution to designate the week of June 18 through June 24, 1989 as "National Grasslands Week".

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary.

John M. Duhe, Jr., of Louisiana, to be U.S. Circuit Judge for the Fifth Circuit.

Richard L. Nygaard, of Pennsylvania, to be U.S. Circuit Judge for the Third Circuit.

Lewis T. Babcock, of Colorado, to be U.S. District Judge for the District of Colorado.

Norwood Carlton Tilley, Jr., of North Carolina, to be U.S. District Judge for the Middle District of North Carolina.

Alex R. Munson, of the Northern Mariana Islands, to be Judge for the District Court for the Northern Mariana Islands for a term of 10 years.

Robert Leon Jordan, of Tennessee, to be U.S. District Judge for the Eastern District of Tennessee.

D. Brooks Smith, of Pennsylvania, to be U.S. District Judge for the Western District of Pennsylvania.

Charles R. Butler, Jr., of Alabama, to be U.S. District Judge for the Southern District of Alabama.

Jay C. Waldman, of Pennsylvania, to be U.S. District Judge for the Eastern District of Pennsylvania.

Paul V. Gadola, of Michigan, to be U.S. District Judge for the Eastern District of Michigan.

James R. McGregor, of Pennsylvania, to be U.S. District Judge for the Western District of Pennsylvania.

Thomas M. Boyd, of Virginia, to be an Assistant Attorney General.

Douglas W. Kmiec, of Indiana, to be an Assistant Attorney General.

Dennis C. Vacco, of New York, to be U.S. Attorney for the Western District of New York for the term of 4 years.

Jay B. Stephens, of Virginia, to be U.S. Attorney for the District of Columbia for the term of 4 years.

Richard W. Cameron, of California, to be U.S. Marshal for the Southern District of California for the term of 4 years.

Thomas J. Ashcraft, of North Carolina, to be U.S. Attorney for the Western District of North Carolina for the term of 4 years.

Noreen T. Skagen, of Washington, to be U.S. Marshal for the Western District of Washington for the term of 4 years.

Stuart E. Earnest, of Oklahoma, to be U.S. Marshal for the Western District of Oklahoma for the term of 4 years.

The following-named person to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1991: Clement Clay Torbert, Jr., of Alabama.

The following-named person to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1991: Daniel John Meador, of Virginia.

John F. Daffron, Jr., of Virginia, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1991.

Joseph Wentling Brown, of Nevada, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1989.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SPECTER:

S. 2863. A bill to establish constitutional procedures for the imposition of the death penalty for certain Federal offenses; to the Committee on the Judiciary.

By Mr. KARNES:

S. 2864. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit to parents for dependents under age 6, to provide liability reform and risk reduction for child care providers, to provide incentives for employer-provided child care, and for other purposes; to the Committee on Finance.

By Mr. MURKOWSKI:

S. 2865. A bill to enroll 20 individuals under the Alaska Native Claims Settlement Act; to the Committee on Energy and Natural Resources.

By Mr. LAUTENBERG:

S.J. Res. 393. A joint resolution to designate December 7, 1988, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER (for himself, Mr. DECONCINI, Mr. INOUYE, and Mr. KASTEN):

S. Res. 487. Resolution expressing the sense of the Senate with respect to limiting the sale of arms to nations in the Mideast; to the Committee on Foreign Relations.

By Mr. McCAIN:

S. Res. 488. Resolution providing for fair employment practices in the Senate; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 489. Resolution to direct the Senate Legal Counsel to represent an employee of the Senate in the case of United States v. Harold Freidman, et al; considered and agreed to.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 490. Resolution to direct the Senate Legal Counsel to represent Senator Stevens in the case of Hunter, et al. v. Kalamarides, et al; considered and agreed to.

By Mr. BYRD (for Mr. LEAHY):

S. Con. Res. 153. A concurrent resolution to correct the enrollment of S. 659; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2863. A bill to establish constitutional procedures for the imposition of the death penalty for certain Federal offenses; referred to the Committee on the Judiciary.

DEATH PENALTY LEGISLATION

Mr. SPECTER. Mr. President, today I introduce legislation which enhances the Federal Government's fight against crime. My bill will establish constitutional procedures for the imposition of the sentence of death in Federal criminal cases, as well as create two additional capital offenses.

It is my sense that this legislation is long overdue. The various Federal offenses which include a capital penalty have not met constitutional muster since the Supreme Court squarely addressed this issue in Furman versus Georgia, in 1972. This body has not responded to the High Court's ruling and I believe now is the time to do so. There are various Federal statutes which include capital crimes. These offenses include treason, assassination of the President, murder and air piracy and cover other offenses where existing Federal law calls for the death penalty, but procedures have not been updated to accommodate decision by the Supreme Court of the United States since 1972.

This legislation will create two additional capital crimes. The first provides for the death penalty for a prisoner serving a life sentence in a Federal confinement institution who commits murder. This is a continuing problem in our Nation's prison system, including our Federal system. This provision will apply to those prisoners already beyond redemption or rehabilitation—those already sentenced to life imprisonment for their prior heinous crimes.

Clearly, there is no deterrent for someone already serving a life sentence if the most that can happen with another murder is an additional life sentence. This provision will provide such a deterrent by allowing a jury or court to impose the sentence of death after considering numerous relevant factors, including whether the murder occurred during an escape attempt, a kidnapping, a prison riot, the taking of hostages, sexual assault as a result of drug dealing, or by use of a firearm.

This legislation also would amend a statutory provision that I authored in 1986, 18 U.S.C. 2331, and make a violation of that provision a capital crime. This section, which authorizes extraterritorial jurisdiction for the United States over terrorist acts abroad against American citizens, presently provides a maximum penalty of life imprisonment. Sadly, and with increasing frequency, terrorists are attacking American citizens throughout the world and I believe it is wholly appropriate that such despicable actions be considered a capital offense.

CONSTITUTIONALITY

Mr. President, a complete revision of the Federal Criminal Code to provide for the death penalty in appropriate circumstances must meet the constitutional guidelines set forth by the Supreme Court. In Furman versus Georgia, the Court did not conclude that capital punishment is unconstitutional, but only the procedures of the Georgia statute were constitutionally invalid because it provided unguided discretion to the fact-finder. Other States' statutes were similar to Georgia's and the ultimate effect of the Court's decision was the invalidation of most capital punishment statutes throughout the country. However, 37 States and Congress have reenacted capital punishment statutes in accordance with the procedures articulated by the Court. In fact, in 1976, *Gregg* v. *Georgia*, 428 U.S. 153, the Court again reviewed the constitutionality of capital punishment and upheld Georgia's revised death penalty law.

Since that time, procedures promulgated by the States have continually met constitutional muster. Some have argued, however, including members of the Supreme Court, that capital punishment itself is unconstitutional. My reading of the Constitution results in a different conclusion. There are numerous instances in the Constitution of the United States which specifically recognizes and permits capital punishment. For example, the fifth amendment specifies that "no person shall be held to answer for a capital * * * crime unless on a presentment or indictment of a Grand Jury * * *"; the fifth amendment also provides "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb * * *"; and that no person shall "be deprived of life, liberty or property without due process of law * * *"

Moreover, in 1958, Chief Justice Warren wrote:

> At the outset let us put to one side the death penalty as an index of the constitutional limit on punishment. Whatever the arguments may be against capital punishment both on moral grounds and in terms of accomplishing the purpose of punishment, and they are forceful, the death penalty has been employed throughout our history and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty." *Trop* v. *Dulles*, 356 U.S. 86, 99 (Dicta) (1958).

In addition to the legal underpinnings of the Court's conclusion that capital punishment is constitutional, there also was some consideration of the general sentiment throughtout the country in support of the death penalty:

> "Despite the continuing debate, dating back to the 19th Century over the morality and utility of capital punishment, it is now evident that a large portion of American society continues to regard it as an appropriate and necessary criminal sanction.
>
> The most marked indication of society's endorsement of the death penalty for murder is the legislative response to *Furman*. The legislators of at least 35 states have enacted new statutes to provide for the death penalty for at least some crimes that result in the death of another person. The United States Congress in 1974, enacted a statute providing the death penalty for aircraft piracy that results in death. . . . But all of the post-*Furman* statutes make clear that capital punishment itself has not been rejected by the elected representatives of the people." *Gregg* v. *Georgia*, 428 U.S. at 179–81.

Significantly, opinion polls—while not of legal significance, nonetheless support the Court's conclusion that there is "a marked indication of society's endorsement of the death penalty." A 1986 poll concluded that 70 percent favored the penalty with 22 percent in opposition and 8 percent with no opinion.

Consequently, with requisite procedural protections, capital punishment is an appropriate and supportable penalty. This legislation will offer the full panoply of procedural protections required by the Supreme Court for the accused and ensure that civil and constitutional rights are maintained. The procedural protections in this bill are similar to those promulgated by the States, as well as provided in S. 2455, "Death Penalty in Cases of Drug Related Killings," offered by my colleague, Senator D'AMATO, and passed by the Senate on June 10, 1988.

The procedural process includes bifurcated proceedings; a listing of aggravating factors and a nonexclusive listing of the mitigating factors; and a provision of the automatic appeal of the judgment.

The Government would be required to give notice to the defendant before trial of the intention to seek a sentence of death. If found guilty of the offense, a sentencing hearing would be held before the same jury, or another legally constituted factfinder. The factfinder would make a series of determinations before a sentence of death could be imposed. The threshold requirements for a capital sentence are: (1) a conclusion that a general aggravating factor exists, and (2) that a specific aggravating factor to the particular offense also exists. If these requirements are not met, the sentence of death cannot be imposed.

Additionally, a finding of any aggravating factor must be by unanimous agreement. The findings of any mitigating factors as specified in the bill or determined independently, would weigh against aggravating factors to determine whether the sentence of death should be imposed.

Unanimous consent would not be required to establish a mitigating factor, such a finding could be made by one or more members of the jury. Any member of the jury who finds a mitigating factor may consider such a factor when deliberating the application of the death penalty.

The imposition of the death penalty would only occur upon the unanimous vote by the jury. Importantly, a sentence of death would not be carried out upon a person who is under 18 years of age at the time the crime is committed, or because the offender by reason of mental disease or defect, is unable to understand his impending death or the reasons for it.

Mindful of the concerns by many that a capital sentence may be imposed discriminatorily, this legislation also would require the court to instruct the jury that it shall not consider the race or color, national origin, or sex of the defendant, or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question regardless of the race of the defendant or the victim. To buttress the jury instructions, each juror would be required to file with the court, a certificate stating that the above-mentioned factors were not considered when reaching his or her individual decision on the imposition of the death penalty.

Capital punishment has long been a contentious issue. However, it is critical in ensuring an orderly society. The Senate has recently addressed this issue with the passage of S. 2455 mentioned previously. Accordingly, that is a recognition that capital punishment is indeed necessary to effectively deter crime. During my years as a public servant, especially during my service as district attorney for the city of Philadelphia, it has been clear that criminals are extremely concerned about the potential sentence they may receive for a criminal act. I have found the death penalty to be a deterrent to burglars and robbers carrying weapons for fear that there may be a killing with the attendant possibility of the death penalty.

The retribution inherent in capital punishment illustrates that the community will not tolerate the disregard of basic human values. Consequently, in light of the Court's affirmative determination of constitutionality of capital punishment, it is my sense that we should expeditiously reform the present statutory codification in order to provide the complete set of penalties originally intended by Congress.

Mr. President, at the present time there are many statutes on the Federal books on capital punishment covering treason, assassination of the President, murder, air piracy, to name a few. None is valid under the interpretations of the Supreme Court of the United States on the decisions handed down since 1972.

There was one effort at legislation in 1974 under the Air Piracy Act and that bill does not conform to the decisions of the Supreme Court of the United States.

In Furman versus Georgia and certain labor cases, the Supreme Court set down certain procedural standards that had to be complied with and there has not been an updating on this important legislation on the Federal books to comply with those Supreme Court decisions.

Mr. President, this legislation would establish compliance with those important rules of procedure articulated by the Supreme Court and would validate those statutes now on the books.

This legislation would add two offenses for capital punishment. One is a situation where a U.S. citizen is murdered by terrorists in the course of a terrorist act.

The second is where someone is serving a life sentence in the Federal penitentiary and commits an additional murder.

Mr. President, the detailed statement which I will offer in a moment contains the full statement of my reasons, but I will state in essence with the remaining time that I have left that this legislation is very important because of the strong public concern that there be an adequate deterrent to murder. Some 35 States have reenacted capital punishment after the Supreme Court decision in Furman versus Georgia and this Senator, while district attorney of Philadelphia was the vice chairman of the Pennsylvania Commission to reconsider the death penalty. The chairman of that Commission was the attorney general of the State, who was opposed to the death penalty, who was the appointing authority, the then-Governor of Pennsylvania, Governor Milton Shapp.

The minority views prevailed and the death penalty was reenacted in Pennsylvania because of public concern on this issue which has been replicated in some 34 other States.

Mr. President, the experience that I have had as district attorney of Philadelphia has persuaded me that capital punishment is, in fact, a deterrent. One case is illustrative of many which I saw where would-be robbers and would-be burglars were reluctant to take along weapons for fear that a death would result and they would be liable, perhaps, for the death penalty.

There was a celebrated case, Mr. President, of Caters, Rivers, and Williams which was a robbery which three defendants perpetrated in Philadelphia in the late 1950's. Caters and Rivers were young men with marginal IQ's. Caters was 17 and Rivers was 18. They refused to go along on the robbery plan because Williams had a revolver.

Williams said, "Well, I won't take the gun with us." He put it in the drawer and slammed it shut and the three moved on to the scene of the robbery. But, unbeknownst to Caters and Rivers, Williams reached back into the drawer, pulled out the weapon, and put it in his pocket.

In the course of the robbery, Williams used the weapon and a murder ensued. All three received capital punishment. Caters and Rivers said in their statements that had they known that Williams was going to take the revolver, they would not have participated in the robbery because of their concern about capital punishment, about the death penalty.

These two men, Caters and Rivers, as I have indicated, had marginal IQ's, not really enormously adroit or enormously intelligent, but had sufficient capacity and understanding to refuse to go along on a robbery attempt if they faced the possibility of the death penalty.

Caters and Rivers, Mr. President, had their sentences commuted largely on the basis of that underlying concern. Their sentences were commuted to life imprisonment.

But I suggest, Mr. President, that that case is only illustrative of many cases, some of which this Senator has seen, where robbers do not want to carry weapons, where burglars do not want to carry weapons because they are concerned that a killing may occur and they may face the death penalty. My experience has convinced me that the death penalty is an effective deterrent and an appropriate weapon against murder.

Mr. President, I know that there will not be time, in the course of the 100th Congress, to consider this legislation, but this is a bill which this Senator intends to press in the 101st Congress. The death penalty issue is going to be before the Senate on the drug bill, but we need a comprehensive revision to the death penalty statutes on the Federal code which are there now but which are invalid. This will give my colleagues an opportunity to study this matter in advance of the 101st Congress when this Senator intends to reintroduce the bill and to press for action in the Judiciary Committee by the Senate and by the Congress.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEATH PENALTY PROCEDURES.

Title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"Sec. 3591. Sentence of death.
"Sec. 3592. Procedures applicable to the death penalty.

"§ 3591. Sentence of death

"A defendant who has been found guilty of any offense for which a sentence of death is provided shall be sentenced to death only if a hearing is held in accordance with section 3592.

"§ 3592. Procedures applicable to the death penalty

"(a) Notice by the Government in Death Penalty Cases.—

"(1) In general.—Whenever the Government intends to seek the death penalty for an offense for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors enumerated in subsection (g) and any other aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) Amendments.—The court may permit the attorney for the Government to amend this notice for good cause shown.

"(b) Hearing Before Court or Jury.—

"(1) In general.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) Composition of jury.—A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"(c) Proof of Aggravating and Mitigating Factors.—Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense for which the sentence provided is death, no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (f) and (g), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (g), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

"(d) Return of Findings.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in subsection (g), found to exist. If one of the aggravating factors set forth in subsection (g)(1) and another of the aggravating factors set forth in paragraphs (2) through (4) of subsection (g) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this subsection, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If an aggravating factor set forth in subsection (g)(1) is not found to exist or an aggravating factor set forth in subsection (g)(1) is found to exist but no other aggravating factor set forth in subsection (g) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subsection (g)(1) and one or more of the other aggravating factors set forth in subsection (g) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to impose a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death should be imposed.

"(e) Imposition of Sentence.—Upon a finding that a sentence of death should be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. A sentence of death shall not be carried out upon a person who is under 18 years of age at the time the crime was committed. A sentence of death shall not be carried out upon a person who, by reason of a mental disease or defect, is unable to understand his impending death or the reasons for it.

"(f) Mitigating Factors.—In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(2) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(3) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(4) The defendant could not reasonably have foreseen that his conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(g) Aggravating Factors for Homicide.—

"(1) General factors.—Except as provided in paragraphs (2), (3), and (4), in determining whether a sentence of death should be imposed for an offense for which one of the sentences provided is death, the jury, or if there is no jury, the court shall consider each of the following aggravating factors which are not exclusive:

"(A) The defendant—

"(i) intentionally killed the victim;

"(ii) intentionally inflicted serious bodily injury which resulted in the death of the victim;

"(iii) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(iv) intentionally engaged in conduct which—

"(I) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

"(II) resulted in the death of the victim.

"(B) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(C) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(D) In the commission of the offense or in escaping apprehension for a violation of an offense for which a sentence of death is provided the defendant knowingly created a grave risk of death to one or more persons in addition to the victim or victims of the offense.

"(E) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(F) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(G) The defendant committed the offense after substantial planning and premeditation.

"(H) The victim was particularly vulnerable due to old age, youth, or infirmity.

"(I) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(2) Aggravating factors for espionage and treason.—In determining whether a sentence of death should be imposed for an offense described in section 794, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(A) the defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by statute;

"(B) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(C) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(3) Aggravating factors for homicide and for attempted murder of the President.—In determining whether a sentence of death should be imposed for an offense described in section 1751(c), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(A) the death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy);

"(B) the defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism; or

"(C) the defendant committed the offense against—

"(i) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(ii) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(iii) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(iv) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(I) while he is engaged in the performance of his official duties;

"(II) because of the performance of his official duties; or

"(III) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense.

"(4) Aggravating factors for murder by a federal prisoner.—In determining whether a sentence of death should be imposed for an offense described in section 1118, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(A) the defendant committed the offense during the course of seizing, confining, inveighing, decoying, kidnaping, abducting, carrying away, holding hostage, or holding for ransom or otherwise any person;

"(B) the death or injury resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission or attempted commission of, an offense under section 751 (escape by prisoner in custody of institution or officer);

"(C) the defendant committed the offense during the course of perpetrating or attempting to perpetrate a sexual assault on any person;

"(D) the defendant committed the offense during the course of, on account of, or as a result of any transaction concerning or distribution of any controlled substance as defined by schedules I, II, III, IV, and V of section 812 of title 21;

"(E) the defendant committed the offense while armed with, or having readily available, a firearm, as defined in section 921(a)(3) of this title; and

"(F) the defendant committed the offense during the course of inciting, organizing, promoting, encouraging, participating in, carrying out, or aiding or abetting any person in inciting, participating in, or carrying on a riot as defined in section 2102 of this title.

"(h) Right of the Defendant to Justice Without Discrimination.—In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death should be imposed it shall not consider the race, color, national origin, or sex of the defendant or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what race the defendant, or the victim, may be. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what race the defendant, or the victim, may be.

"(i) Appeal in Capital Cases.—

"(1) Review.—In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28, United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) Matters to be considered.—On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information admitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) Affirming or remanding the sentence.—The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with or the failure to find any mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.

"(4) Appointment of counsel.—In any post-conviction proceeding under section 2254 or 2255 of title 28, United States Code, seeking to vacate or set aside a death sentence, the court shall appoint counsel to represent any defendant who is or becomes financially unable to obtain adequate representation.

"(j) REFUSAL TO PARTICIPATE BY STATE AND FEDERAL CORRECTIONAL EMPLOYEES.—No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

"(k) IMPLEMENTATION OF A SENTENCE OF DEATH.—A person who has been sentenced to death pursuant to the provisions of this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.".

SEC. 2. MURDER BY FEDERAL PRISONERS.

(a) OFFENSE.—Chapter 51 of title 18 of the United States Code is amended by adding the following new section after section 1117:

"§ 1118. Murder by Federal prisoners

"(a) Whoever, while confined in a Federal correctional institution under sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) For purposes of this section—

"(1) the term 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) the term 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death; and

"(3) the term 'murders' means committing first-degree murder or second-degree murder as defined by section 1111 of this title.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"1118. Murder by Federal prisoners.".

SEC. 3. DEATH PENALTY FOR TERRORIST ACTS ABROAD AGAINST UNITED STATES NATIONALS.

Section 2331(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) if the killing is a murder as defined in section 1111(a) of this title, be punished by death or by life imprisonment without possibility of parole;".

By Mr. DOLE (for Mr. KARNES):

S. 2864. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit to parents for dependents under age 6, to provide liability reform and risk reduction for child care providers, to provide incentives for employer provided child care, and for other purposes; referred to the Committee on Finance.

KIDCARE: A SOLUTION TO THE CHILD CARE ISSUE

● Mr. KARNES. Mr. President, as a husband and father of four young daughters, I am concerned about the plight of many Nebraska families who are having trouble finding affordable quality care for their young children. Last week I announced and today I am pleased to introduce legislation to address this problem. I call my program Kidcare—standing for Karnes Infants' Deductible Care. It is based on these four principles.

First, all children are important, they are primarily the responsibility of their parents, and they deserve quality care.

Second, we should provide meaningful choices for traditional families. Parents should have the freedom to choose the kind of work they do—homemaking or employment outside the home—and the kind of child care best suited to their needs.

Third, government should provide assistance in the form of tax relief for all families with young children, especially to low- and middle-income families who must spend a greater portion of their earnings on child care expenses.

Finally, we must recognize the importance of religious and moral values to society, especially to children. Government policy should not discriminate against church-sponsored care providers by denying them assistance or forcing them to sacrifice religious teaching as a condition of receiving assistance.

My Kidcare Program would reform the current dependent care tax credit which allows families to claim a nonrefundable credit for expenses for two children if both parents are employed. It is estimated that, in 1988, 43 percent of that credit will go to families earning more than $50,000 a year while only 23 percent will go to families making under $20,000. Clearly the credit is restrictive and unfair, since the neediest families cannot receive the benefit.

Under Kidcare the credit would be available to all families, regardless of the number of offspring. My proposal would make the credit refundable so that the neediest families could be helped, and would allow the credit to families where one parent stays at home to care for the children, thereby sacrificing extra income. The amount of the credit would be increased, starting at 50 percent—instead of 30 percent—for families with incomes of $10,000 or less, and phasing down to 20 percent for families with incomes of $40,000 or more—instead of $29,000 or more under current law. Single-parent families, who must work to support their youngsters or go on welfare, and for whom child care is a necessity, would receive an additional 15 percent credit. As a result of these changes, the credit would be targeted to help those most in need of assistance.

My Kidcare Program includes a number of legal reforms which would ease tort liability problems faced by all child care providers. Federal assistance would be made available to the States to enable them to establish insurance pools in which providers may participate.

Kidcare would also provide tax relief for businesses that include child care as an option in the benefit plans they offer to employees and establish onsite child care facilities or provide credits to employees for offsite care. This will encourage the private sector to provide child care as more and more mothers and young women enter the work force. It will also allow the employee parent a choice in the kind of care for their children while they are on the job, without being taxed on the benefit.

As you can see, Kidcare is straightforward and simple. It responds directly to the need of low- and middle-income families for quality child care and leaves the choice of provider to the parents. It provides tax relief to all families, regardless of whether both parents are employed or one parent chooses to remain at home to look after the children. It will make child care more readily available, by promoting employer-sponsored programs. It will make child care more affordable, by lowering costs and ensuring competition among providers. Its administrative costs are low. It does not create another wasteful government program run by a huge Federal child care bureaucracy, as the Dodd-Kildee ABC bill would do.

I believe my Kidcare proposal offers a reasonable profamily approach to a growing social problem. I shall work to see that it receives early consideration in the next Congress.

Nebraska families should be relieved of the burden of child care costs, with the knowledge that while both parents are employed away from the home or one parent remains at home, their young children will receive the kind of care and attention they need.

In America we are deeply concerned about the upbringing of our young children—and rightly so, for our Nation's future depends on the ability of families to provide for their children today. Parents everywhere are prepared to expend considerable sums to provide the best possible care for their children during their formative years.

My Kidcare Program will help families, especially low- and middle-income taxpayers, meet their responsibility to their children, their communities and their country, without sacrificing their freedom of choice.●

By Mr. MURKOWSKI:

S. 2865. A bill to enroll 20 individuals under the Alaska Native Claims Settlement Act; referred to the Committee on Energy and Natural Resources.

LEGISLATION TO ENROLL CERTAIN INDIVIDUALS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

● Mr. MURKOWSKI. Mr. President, I am introducing legislation today to resolve a longstanding dispute over the enrollment of 20 Alaska Natives under the Alaska Native Claims Settlement Act [ANCSA]. Even though these people have been found eligible for enrollment by the Department of the Interior, they have been continually denied enrollment by the BIA and thereby denied the benefits granted to them by Congress in the ANCSA.

Under the regulations promulgated by the Secretary of the Interior to carry out his responsibilities under ANCSA, the Alaska regional solicitor was delegated the final authority for determining eligibility for ANCSA enrollment. In 1984, the regional solicitor reconsidered a previous denial of eligibility for 20 Alaska Natives and found them eligible contingent on the filing of an affidavit of Native ancestry. Their eligibility had been originally denied because of their inability to prove blood quantum. The 20 individuals obtained the required affidavit from the Kenai Native Association indicating that they were regarded as Native by their community and filed it with the Bureau of Indian Affairs [BIA].

This should have resulted in the enrollment of these people under ANCSA. However, the BIA refused to abide by the regional solicitor's decision and would not enroll these people. As a result, 13 of these people brought suit against the BIA to try to enforce the regional solicitor's decision.

Mr. President, the Native corporations to which these Native people should be enrolled, Cook Inlet Region, Inc., and Kenai Native Association, did not oppose the court action and agreed that the Native plaintiffs ought to be enrolled and issued stock in the corporations. Neither corporation opposes this legislation and can see no reason for continuing to deny stock to these individuals who have been found eligible for enrollment and who are accepted as Natives by the very corporations to which they will be enrolled.

Following initiation of the lawsuit, the Assistant Secretary of the Interior responsible for Indian Affairs issued an order purporting to vacate the regional solicitor's 1984 decision. This action arguably denies these people any opportunity to benefit from the enrollment provisions of the recently enacted amendments to the ANCSA because they may no longer be considered eligible for enrollment.

Mr. President, I introduce this legislation to correct this wrong and to further the policy of the ANCSA to ensure that the settlement is accomplished in "conformity with the real economic and social needs of the Natives and without litigation." The regulations under which the regional solicitor acted have now been withdrawn and the circumstances which have led to this conflict are incapable of being repeated. These individuals are the only people who have been determined eligible for enrollment by the Interior Department and who have not been subsequently enrolled. This legislation will break this unfortunate deadlock and further the purposes of ANCSA.

Mr. President, I ask unanimous consent that the text of this bill be printed in the Record following my statement.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to enroll the following named individuals as Natives under the Alaska Native Claims Settlement Act (Public Law 92-203): Marilyn Jean (Warren) Sanchez, Theresa A. (Warren) Forbes, Linda Graham, Carol Graham, Debra (Sellers) Page, Glen Sellers, David P. Schmalzried, Odman H. Schmalzried, Carol Guzialek, Corbin Kooly, Charmaine I. (Warren) Forbes, John A. Warren, Jr., Phillip Graham, Sharon Graham, Wanda (Sellers) Clancy, Georgia A. (Schmalzried) Flood, Rhonda S. (Schmalzried) Koski, Paula Guzialek, Pamela Kooly, and Darrell Kooly. Each individual is entitled to receive 100 shares of stock in the Kenai Natives Association, and Cook Inlet Region, Inc. and such other benefits as the boards of directors of those corporations may approve.●

By Mr. LAUTENBERG:

S.J. Res. 393. Joint resolution designating December 7, 1988, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor; referred to the Committee on the Judiciary.

NATIONAL PEARL HARBOR REMEMBRANCE DAY

● Mr. LAUTENBERG. Mr. President, today I am introducing a resolution to designate December 7, 1988, the 47th anniversary of the attack on Pearl Harbor, as "National Pearl Harbor Remembrance Day."

This resolution also authorizes and requests the President to issue a proclamation calling upon the people of the United States to observe this solemn occasion with appropriate ceremonies and activities, and pledge our strong resolve to defend this Nation and its allies from all future aggression.

I would like to commend the New Jersey members of the Pearl Harbor Survivors Association, particularly Lee Goldfarb, the State chairman, and the approximately 10,000 members throughout the country, for their active interest and support in commemorating this 47th anniversary through a Presidential proclamation of National Pearl Harbor Remembrance Day.

On December 7, 1941, "a date which will live in infamy," while talks between Japanese and American diplomats were going on in Washington, the United States was attacked by the Imperial Japanese Navy and Air Force. Pearl Harbor was caught totally unprepared. The blow was deliberately planned for Sunday morning, when the ships of the Pacific Fleet were moored in perfect alignment, and their crews were ashore, having breakfast or relaxing on board. There was no advance warning.

About 360 Japanese planes attacked the Pacific Fleet units at the naval base, and army aircraft at Hickam Field and other nearby military installations. The surprise attack, launched entirely without provocation, took the lives of 2,403 Americans, and wounded 1,178. Some of those lost were civilians.

Fortunately, no aircraft carriers were tied up at the base during the attack. When the assault ended nearly 2 hours later, the Pacific Fleet had lost eight battleships, three light cruisers, three destroyers, and four other vessels. The attack also destroyed about 170 U.S. planes. The Japanese had concentrated on ships and planes, leaving repair facilities, the submarine base, and fuel oil shortage facilities relatively undamaged.

In short, the attack had dealt the Pacific Fleet and Hawaii's air defense a devastating blow. In less than 2 hours, the Japanese had crippled the Pacific Fleet and undermined America's strategic position in the Pacific.

The unification of the country under the impact was swift. It was the first time in U.S. history that we had been attacked first, and it wiped away the last vestige of isolationist sentiment. The entire country stood behind the President and gave him wholehearted support. The attack united U.S. public opinion, and propelled the United States into World War II. At 4:10 p.m., Monday, December 8, 1941, the United States declared war on the Japanese.

As "Remember Pearl Harbor" became the American war cry throughout World War II, so today we must "Remember Pearl Harbor." We must recall and pay tribute to those who died in that tragedy, and we must remember so that we will never be caught short or unprepared again.

Mr. President, a similar resolution I introduced in the 100th Congress to designate December 7, 1987, as "National Pearl Harbor Remembrance Day" was approved unanimously in the House and Senate and became Public Law 100-183. But that law was effective for only 1 year.

I ask unanimous consent that a copy of the joint resolution appear in the Record following my remarks, and I urge my colleagues to support this resolution.

There being no objection, the resolution was ordered to be printed in the Record, as follows:

S. J. Res. 393

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas on the morning of December 7, 1941, the Imperial Japanese Navy and Air Force launched an unprovoked surprise attack upon units of the Armed Forces of the United States stationed at Pearl Harbor, Hawaii;

Whereas over two thousand four hundred citizens of the United States were killed in action and one thousand one hundred and seventy-eight were wounded in this attack;

Whereas President Franklin Delano Roosevelt referred to the date of the attack as "a date that will live in infamy";

Whereas the attack on Pearl Harbor marked the entry of this Nation into World War II:

Whereas the people of the United States owe a tremendous debt of gratitude to all members of our Armed Forces who served at Pearl Harbor, in the Pacific Theater of World War II, and in all other theaters of action of that war; and

Whereas the veterans of World War II and all other people of the United States will commemorate December 7, 1988, in remembrance of this tragic attack on Pearl Harbor: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That December 7, 1988, the anniversary of the attack on Pearl Harbor, is designated as "National Pearl Harbor Remembrance Day" and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States—

(1) to observe this solemn occasion with appropriate ceremonies and activities; and

(2) to pledge eternal vigilance and strong resolve to defend this Nation and its allies from all future aggression.●

ADDITIONAL COSPONSORS

S. 702

At the request of Mr. Simon, the name of the Senator from New Mexico [Mr. Bingaman] was added as a cosponsor of S. 702, a bill to provide for the collection of data about crimes motivated by racial, religious, or ethnic hatred.

S. 1301

At the request of Mr. Pell, his name was added as a cosponsor of S. 1301, a bill to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised on July 24, 1971, and for other purposes.

S. 1429

At the request of Mr. Lautenberg, the name of the Senator from Pennsylvania [Mr. Heinz] was added as cosponsor of S. 1429, a bill to improve the Environmental Protection Agency data collection and dissemination regarding reduction of toxic chemical emissions across all media, to assist States in providing information and technical assistance about waste reduction, and for other purposes.

S. 2124

At the request of Mr. Boschwitz, the name of the Senator from California [Mr. Wilson] was added as a cosponsor of S. 2124, a bill to expand the availability of child care, and for other purposes.

S. 2326

At the request of Mr. McCain, the name of the Senator from Alaska [Mr. Murkowski] was added as a cosponsor of S. 2326, a bill to enhance the Federal Trade Commission's ability to prevent consumer fraud.

S. 2642

At the request of Mr. Pell the name of the Senator from New Jersey [Mr. Bradley] was added as a cosponsor of S. 2642, a bill to amend the Elementary and Secondary Education Act of 1965 to provide for National Geography Studies Centers.

S. 2702

At the request of Mr. Levin the name of the Senator from Massachusetts [Mr. Kennedy] was added as a cosponsor of S. 2702, a bill to provide OPIC insurance, reinsurance and financing to eligible projects in Poland.

S. 2796

At the request of Mr. Nunn, the name of the Senator from Tennessee [Mr. Gore] was added as a cosponsor of S. 2796, a bill to authorize funding for the Martin Luther King, Jr., Federal Holiday Commission.

S. 2797

At the request of Mr. Humphrey, the names of the Senator from Nevada [Mr. Reid], and the Senator from Alaska [Mr. Stevens] were added as cosponsors of S. 2797, a bill to amend title II of the Social Security Act to remove the dependency test applicable to certain children adopted by Social Security beneficiaries and to make improvements in the administration of the Social Security Program.

S. 2859

At the request of Mr. Domenici, the name of the Senator from New Mexico [Mr. Bingaman] was added as a cosponsor of S. 2859, a bill to clarify the rules concerning the unconventional fuels credit with respect to gas produced from a tight formation.

SENATE JOINT RESOLUTION 296

At the request of Mr. Shelby, the names of the Senator from Colorado [Mr. Wirth], the Senator from New Jersey [Mr. Lautenberg], the Senator from New York [Mr. D'Amato], the Senator from Arkansas [Mr. Pryor], the Senator from California [Mr. Cranston], and the Senator from Nebraska [Mr. Exon] were added as cosponsors of Senate Joint Resolution 296, a joint resolution designating April 1989 as "National Outdoor Power Equipment Safety Month."

SENATE JOINT RESOLUTION 307

At the request of Mr. Riegle, the names of the Senator from Oklahoma [Mr. Boren], the Senator from Nebraska [Mr. Exon], and the Senator from North Dakota [Mr. Conrad] were added as cosponsors of Senate Joint Resolution 307, a joint resolution to designate the decade beginning January 1, 1988, as the "Decade of the Brain."

SENATE JOINT RESOLUTION 309

At the request of Mr. Wilson, the name of the Senator from Idaho [Mr. Symms] was added as a cosponsor of Senate Joint Resolution 309, a joint resolution designating the month of May as "National Asparagus Month."

SENATE JOINT RESOLUTION 340

At the request of Mr. Packwood, the name of the Senator from Louisiana [Mr. Breaux] was added as a cosponsor of Senate Joint Resolution 340, a designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week."

SENATE JOINT RESOLUTION 354

At the request of Mr. Helms, the name of the Senator from Delaware [Mr. Biden] was added as a cosponsor of Senate Joint Resolution 354, a joint resolution to designate November 6 through 12, 1988, as "National Farm Broadcasters Week."

SENATE JOINT RESOLUTION 363

At the request of Mr. Sarbanes, the name of the Senator from Wyoming [Mr. Simpson] was added as a cosponsor of Senate Joint Resolution 363, a joint resolution designating November 28 through December 2, 1988, as "Vocational-Technical Education Week."

SENATE JOINT RESOLUTION 368

At the request of Mr. Pell, the name of the Senator from Vermont [Mr. Stafford] was added as a cosponsor of Senate Joint Resolution 368, a joint resolution to establish a National Commission on Human Resources.

SENATE JOINT RESOLUTION 372

At the request of Mr. Hatch, the name of the Senator from Michigan [Mr. Riegle] was added as a cosponsor of Senate Joint Resolution 372, a joint resolution to designate the week beginning November 21, 1988, through November 27, 1988, as "National Adoption Week."

SENATE JOINT RESOLUTION 373

At the request of Mr. Byrd, the names of the Senator from Oklahoma [Mr. Boren], the Senator from Utah [Mr. Garn], and the Senator from Maryland [Mr. Sarbanes] were added as cosponsors of Senate Joint Resolution 373, a joint resolution to designate the week beginning November 13, 1988, as "National Craniofacial Deformity Awareness Week."

SENATE JOINT RESOLUTION 387

At the request of Mr. Simon, the name of the Senator from Alaska [Mr. Stevens] was added as a cosponsor of Senate Joint Resolution 387, a joint resolution to express the sense of the Senate with respect to continuing reductions in the Medicare Program.

SENATE CONCURRENT RESOLUTION 127

At the request of Mr. Wilson, the names of the Senator from Minnesota [Mr. Boschwitz], the Senator from Michigan [Mr. Riegle], the Senator from Virginia [Mr. Trible], and the Senator from Washington [Mr. Evans] were added as cosponsors of Senate Concurrent Resolution 127, a concurrent resolution expressing the sense of the Congress concerning support for Amateur Radio and Amateur Radio frequency allocations vital for Public Safety purposes.

SENATE CONCURRENT RESOLUTION 152

At the request of Mr. Lugar, the name of the Senator from North Carolina [Mr. Helms] was added as a cosponsor of Senate Concurrent Resolution 152, a concurrent resolution commending the Republic of Korea in hosting the Games of the XXIV Olympiad, and for other purposes.

SENATE CONCURRENT RESOLUTION 153—TO CORRECT THE ENROLLMENT OF S. 659

Mr. BYRD (for Mr. Leahy) submitted the following concurrent resolution; which considered and agreed to:

S. Con. Res. 153

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 659), an Act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 2(ff)(1)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 101), strike out "it must" and insert "must".

(2) In section 4(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "such date" and insert in lieu thereof "such effective date".

(3) In section 4(f)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "(f)(1)" and insert in lieu thereof "(e)(1)".

(4) In section 4(K)(5)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "of such funds" and insert in lieu thereof "from such fund".

(5) In section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 201), strike out "(d)(4) or (e)(5)(A)" and insert in lieu thereof "(c)(4) or (d)(5)(A)".

(6) Section 302(a) is amended to read as follows:

"(a) In General.—Section 9(a) (7 U.S.C. 136g(a)) is amended—

"(1) in the first sentence—

"(A) by inserting '(1)' before 'For',

"(B) by inserting after 'employees' the following: 'of the Environmental Protection Agency or of any State',

"(C) by striking out 'at reasoanble times,' and inserting in lieu thereof the following: 'at reasonable times (A)', and

"(D) by inserting before the period at the end the following: ', or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 19'; and

"(2) in the second sentence, by inserting '(2)' before 'Before'.".

(7) In section 12(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 603(2)(A))—

(A) strike out "4, 5, 7, 8, or 19" In clause (i) and insert in lieu thereof "5, 7, 8, 11, or 19", and

(B) strike out "4, 5, 6, 7, 8, or 19" in clause (ii) and insert in lieu thereof "5, 6, 7, 8, 11, or 19".

(8) In section 14(b)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 604), strike out "that" each place it occurs and insert in lieu thereof "who".

(9) In section 19(f)(1)(B)(iv) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 403), strike out "the Resource Conservation and Recovery Act of 1976" and insert in lieu thereof "the Solid Waste Disposal Act".

(10) In section 31 of the Federal Insecticide, Fungicide and Rodenticide Act (as amended by section 701), strike out "sections" and insert in lieu thereof "section".

(11) In the amendment to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act made by section 801(b)(6)(D), insert a comma before "That".

(12) In section 801(b)—

(A) amend paragraph (2) to read as follows:

"(2) in subsection (c)(1)(D)(i)—

"(A) by striking out "With' and inserting in lieu thereof 'with', and

"(B) by striking out '; *Provided,* That' and inserting in lieu thereof ', except that';",

(B) amend paragraph (3) to read as follows:

"(3) in subsection (c)(1)(D)(ii), by striking out 'subparagraph (D)(i) of this paragraph' and inserting in lieu thereof 'clause (i)';", and

(C) amend paragraph (4) to read as follows:

"(4) in subsection (c)(1)(D)(iii), by striking out 'subparagraphs (D)(i) and (D)(ii) of this paragraph' and inserting in lieu thereof 'clauses (i) and (ii)';".

(13) In section 801(b), redesignate paragraphs (8), (9), and (10) as paragraphs (7), (8), and (9), respectively.

(14) In section 801(q)(1), strike out "(B) *Conforming Amendments.—*" and insert in lieu thereof "(D)".

(15) In the table of contents of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 802—

(A) in the item relating to section 6(f), strike out "(3) Existing stocks." and "(4) Additional information.",

(B) in the item relating to section 18, insert "and State" after "Federal",

(C) in the item relating to section 19—

SENATE RESOLUTION 487—EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO LIMITING THE SALE OF ARMS TO NATIONS IN THE MIDEAST

Mr. SPECTER (for himself, Mr. DeConcini, and Mr. Inouye) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 487

Resolved, That it is the sense of the Senate that the President be urged to undertake discussions and negotiations with other nations which are principal suppliers of arms in the Mideast for the purpose of limiting, to the maximum extent possible, the sale of arms to nations in the Mideast.

Mr. SPECTER. Mr. President, I am introducing a resolution that it is the sense of the Senate that the President be urged to undertake discussions and negotiations with other nations which are principal suppliers of arms to the Mideast for the purpose of eliminating to the maximum extent possible the sale of arms to nations in the Mideast.

Mr. President, I introduced this legislation on behalf of Senator DeConcini, Senator Inouye, and Senator Kasten.

The purpose of this resolution is to be certain that the record is complete on the sense of the Senate on this important subject.

On Friday last on consideration of a conference report on the foreign aid bill this Senator introduced this identical resolution with the same cosponsors and it was adopted by the Senate on a voice vote.

When the conference report came back later to the Senate, this resolution, the sense-of-the-Senate resolution, was attached to an amendment which had been deleted by the House of Representatives. I was advised at that time by the distinguished Senator from Hawaii, Senator Inouye, the chairman of the Foreign Operations Subcommittee, that the House had sought some way to separate this sense-of-the-Senate resolution but could not do so as a procedural matter. Senator Inouye then suggested to me that the resolution be introduced as a freestanding resolution with his assurance to do everything possible to expedite its consideration and passage by the U.S. Senate which I am doing at the present time.

Mr. President, I am deeply concerned about the administration's latest sale of sophisticated arms to Kuwait. The Reagan administration's efforts to sell 40 F/A-18 aircraft and over 800 missiles worth $1.9 billion to

Kuwait represents a policy based on the bland assertion that if we do not sell arms somebody else will. This attitude only results in more and more sales of advanced weaponry and it is time that we let the world know that we intend to take a lead role to put an end to the proliferation of arms sales in the Middle East.

Mr. President, the announcement in July of a 10-year, $29 billion arms deal between Great Britain and Saudi Arabia is the most recent example of world powers feeding the insatiable appetite of Middle East countries for expensive, sophisticated and dangerous weapons. The Saudi package contains highly sophisticated offensive weapons, and came on the heels of the covert Saudi acquisition of Chinese CSS-2 long-range, surface-to-surface missiles. In addition to this, in a deal seen primarily as a warning to the U.S. Congress not to block a $1.9 billion aircraft and missile sale to Kuwait, the Gulf Sheikdom announced it will purchase 245 armored personnel carriers worth $300 million from the Soviet Union.

Mr. President, the proliferation of sophisticated weapons in the volatile Middle East is not in the long-term interests of the United States, nor of the countries making these sales. The focus of U.S. efforts should be to stop the regional arms race, not feed it. Over the years, Congress has evolved a set of sensible standards for the sale of weapons to the Middle East which include some of the following:

Ensure America's most sophisticated military technology and advanced tactics are not shared with America's enemies—as occurred when Stinger missiles reportedly fell into the hands of Iranians and Hezbollah extremists in Lebanon.

Inhibit the runaway escalation of the Middle East arms race. In 1987, Arab states, excluding Egypt, budgeted $42.66 billion for arms—10 times the total Israeli defense budget.

Preserve Israel's qualitative military edge in the face of unending hostility of its neighbors. The unchecked sale of American state-of-the-art weaponry—the best in the world—to nations at war with Israel blunts that edge.

Mr. President, the constitutionally guaranteed right of Congress to participate with the executive branch in the formulation of foreign policy has ensured that American arms sales abroad to not undermine our interests or allies. By contrast, many nations which have adopted a cash-and-carry attitude that ignores moral and political considerations and permits the sale of weapons to opposite sides of Conflicts. China and France, for example, indiscriminately sell arms to Iran and Iraq.

Mr. President, arms sales should meet a threat, not create a new one. The British sale to Saudi Arabia of Tornado ground-attack aircraft and the Chinese sale of surface-to-surface ballistic missiles to Saudi Arabia, and reportedly to Syria, Iran, Iraq, Egypt, et al., exceed the legitimate security needs of the recipients while fueling the arms race. Now is the time for the United States to persuade China, the Soviet Union and our Western allies to work for peace instead of peddling their increasingly lethal wares to this most volatile and unpredictable of regions.

Mr. President, I would like to mention for a moment the United States sale to Kuwait. The sale of 300 Maverick G missiles was a mistake in my opinion. The Maverick G missile is a unique weapon. It is a day/night, infrared, heatseeking, "fire-and-forget "weapon. It has tremendous impact, incorporating a 300-pound warhead that can be used to destroy ships as well as heavily-fortified fixed installations. The Maverick missile is not a ballistic missile, but nevertheless, it is a highly sophisticated state-of-the-art missile and has never been sold in the Middle East region before. If the United States is going to set an example on limiting arms sales to this region, we should take the lead in curtailing arms sales and working with other nations which are major suppliers of arms in the Mideast to limit the sale of arms to these nations.

Mr. President, the entire issue of missile proliferation is a serious one. The United States should see this period as an opportunity to reduce tension in the Middle East by persuading its Western allies, as well as China and the Soviet Union, to restrict the sale of sophisticated weaponry. American policy in the Middle East should seek every chance to work for peace—and not to sell the tools of war. I believe that it is imperative that the United States intensify its efforts with other nations to establish international standards to limit arms sales so that such sales will not be made simply because someone else will make the sale if we do not. Accordingly, I urge my colleagues to join me in this resolution to work with other nations on this vital issue.

SENATE RESOLUTION 488—PROVIDING FOR FAIR EMPLOYMENT PRACTICES IN THE SENATE

Mr. McCAIN submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. Res. 488

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be cited as the "Fair Employment Practices Resolution".

SEC. 2. NONDISCRIMINATION IN SENATE EMPLOYMENT.

(a) In General.—Personnel actions affecting employment positions in the Senate shall be made free from discrimination based on race, color, national origin, religion, sex (including marital or parental status), handicap or age.

(b) Interpretations.—Interpretations under subsection (a) shall reflect the principles of current law, as generally applicable to employment.

(c) Construction.—Subsection (a) does not prohibit the taking into consideration of—

(1) the domicile of an individual with respect to a position under the administrative, legislative and clerical assistance allowance; or

(2) the political affiliation of an individual with respect to a position under the administrative, legislative and clerical assistance allowance or a position on the staff of a committee.

SEC. 3. PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The procedure for consideration of alleged violations of section 2 consists of 3 steps as follows:

(1) Step I, Counseling and Mediation, as set forth in section 5.

(2) Step II, Formal Complaint, Hearing, and Review by the Office of Fair Employment Practices, as set forth in section 6.

(3) Step III, Final Review by Review Panel, as set forth in section 7.

SEC. 4. ESTABLISHMENT OF OFFICE OF FAIR EMPLOYMENT PRACTICES.

There is established an Office of Fair Employment Practices (hereafter in this resolution referred to as the "Office"), which shall carry out functions assigned under this resolution. Employees of the Office shall be appointed by, and serve at the pleasure of, the Chairman and ranking minority party member of the Committee on Rules, acting jointly, and shall be under the administrative direction of the Secretary of the Senate. The Office shall be located in the District of Columbia and shall begin operation not more than 30 days after the date on which the resolution is agreed to.

SEC. 5. STEP I: COUNSELING AND MEDIATION.

(a) Counseling.—An individual aggrieved by an alleged violation of section 2 may request counseling by counselors in the Office, who shall provide information with respect to rights and related matters under that section. A request for counseling shall be made not later than 180 days after the alleged violation and may be oral or written, at the option of the individual. The period for counseling is 30 days. The Office may not notify the employing authority of the counseling before the beginning of mediation or the filing of the formal complaint, whichever occurs first.

(b) Mediation.—If, after counseling, the individual desires to proceed, the Office shall attempt to resolve the alleged violation through mediation between the individual and the employing authority.

SEC. 6. STEP II: FORMAL COMPLAINT, HEARING AND REVIEW BY THE OFFICE OF FAIR EMPLOYMENT PRACTICES.

(a) Formal Complaint and Request for Hearing.—Not later than 15 days after the end of the counseling period, the individual may file a formal complaint with the Office. Not later than 10 days after filing the formal complaint, the individual may file with the office a written request for a hearing on the complaint.

(b) Hearing.—The hearing shall be conducted—

(1) not later than ten days after filing of the written request under subsection (a), except that the Office may authorize a delay of not more than 30 days for investigation;

(2) on the record by an employee of the Office; and

(3) to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 555 and 556 of title 5, United States Code.

(c) Decision.—Not later than 20 days after the hearing, the Office shall issue a written decision to the parites. The decision shall clearly state the issues raised by the complaint, and shall contain a determination as to whether a violation of section 2 has occurred.

SEC. 7. STEP III: FINAL REVIEW BY REVIEW PANEL.

(a) In General.—Not later than 20 days after issuance of the decision under section 6, any party may seek final review of the decision by filing a written request with the Office. The final review shall be conducted by a penal constituted at the beginning of each Congress and composed of—

(1) 2 elected officers of the Senate, appointed by the Majority Leader of the Senate;

(2) 2 employees of the Senate, appointed by the minority leader of the Senate.

(3) 2 members of the Committee on Rules, (one of whom shall be appointed as chairman of the panel), appointed by the Chairman of that Committee; and

(4) 2 members of the Committee on Rules, appointed by the ranking minority party member of that Committee.

if any member of the panel withdraws from a particular review, the appointing authority for such member shall appoint another officer, employee, or Senator, as the case may be, to be a temporary member of the panel for purposes of that review only.

(b) Review and Decision.—The review under this section shall consist of a hearing (conducted in the manner described in section 6(b)(3)), if such hearing is considered necessary by the panel, and an examination of the record, together with any statements or other documents the panel deems necessary. A tie vote by the panel is an affirmation of the decision of the Office. The panel shall complete the review and submit a written decision to the parties and to the Committee on Rules not later than 30 days after filing of the request under subsection (a).

SEC. 8. RESOLUTION BY AGREEMENT.

If, after a formal complaint is filed under section 6, the parties resolve the issues involved, the parties shall enter into a written agreement, which shall be effective—

(1) in the case of a matter under review by the Office under section 6, if approved by the Office; and

(2) in the case of a matter under review by a panel under section 7, if approved by the panel.

SEC. 9. REMEDIES.

The Office or a review panel, as the case may be, may order the following remedies:

(1) Monetary compensation, to be paid from the contingent fund of the Senate.

(2) In the case of a serious violation, a payment in addition to compensation under paragraph (2), to be paid from the administrative, legislative and clerical assistance allowance of a Senator, or from personnel funds of a committee of the Senate or other entity, as appropriate.

(3) Injunctive relief.

(4) Costs and attorney fees.

(5) Employment, reinstatement to employment, or promotion (with or without back pay).

SEC. 10. COSTS OF ATTENDING HEARINGS.

An individual with respect to whom a hearing is held under this resolution shall be reimbursed for actual and reasonable costs of attending the hearing, if the individual resides outside the District of Columbia.

SEC. 11. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any person by an employing authority because of the exercise of a right under this resolution is a violation of section 2.

SEC. 12. CLOSED HEARINGS AND CONFIDENTIALITY.

All hearings under this resolution shall be closed. All information relating to any procedure under this resolution is confidential, except that a decision of the office under section 6 or a decision of a review panel under section 7 shall be published, if the decision constitutes a final disposition of the matter.

SEC 13. EXCLUSIVITY OF PROCEDURES AND REMEDIES.

The procedures and remedies under this resolution are exclusive except to the extent that the Rules of the Senate and the Rules of the Senate Committee on Ethics provide for additional procedures and remedies.

SEC. 14. DEFINITIONS.

As used in this resolution—

(1) the term "employment position" means, with respect to the Senate, a position the pay for which is disbursed by the Secretary of the Senate, and any employment position in a legislative service organization or other entity that is paid through funds derived from the administrative, legislative and clerical allowance;

(2) the term "employing authority" means the Senator or elected officer of the Senate with the power to appoint the employee;

(3) the term "Senator" means a Senator in the Congress;

(4) the term "elected officer of the Senate" means an elected officer of the Senate (other than the President Pro Tempore, the Deputy President Pro Tempore and the Chaplain).

Mr. McCAIN. Mr. President, I rise to introduce legislation that would provide for fair employment practices in the Senate. For too long, the Senate has operated under rules different from those imposed on other American employers. For too long, the Senate has exempted itself from discrimination rules concerning race, color, national origin, religion, sex, including marital or parental status, handicap, and age.

I think we have some questions to ask ourselves as we consider this situation. One is: Are we really fair to our employees? Is it really fair for them not to have the same kinds of safeguards enjoyed by all other citizens throughout the country? I think we also have to ask ourselves how this situation affects our standing in the eyes of the American people; should we subject others to standards to which we do not hold ourselves?

Americans who hear that our employees are not given the same safeguards and protections as every other citizen, are, first, confused and, second, are dissatisfied with the explanation that somehow the legislative branch, for constitutional reasons, is correct in exempting itself from those standards.

Can we not develop a set of rules, a set of guidelines, a set of protections for our employees, which would achieve the goals of providing for fair employment practices in the legislative branch and at the same time not erode the separation of powers in our Government?

Mr. President, this is not a new issue. Senator Glenn, my esteemed colleague from Ohio, Senator Boschwitz, Senator Levin and others have done pioneering work on this issue. Hearings have been held in years past. I am assured there will be hearings in the future. I am introducing this legislation in hopes of getting the process moving.

Just yesterday the other body passed legislation by an overwhelming vote of 408 to 12 enacting fair employment practices in the House. Mr. President, it is incumbent upon the Senate to pass similar rules and do it as soon as possible. My legislation is modeled on the House bill. It has a three-step process. The first step is a counseling board; the second is a review board to render decisions; and the third step is a final review board empowered to levy penalties.

There was an article in this morning's Washington Post concerning the House vote to protect its staff rights.

Mr. President, I ask unanimous consent that the article be printed in the Record to better explain the mechanisms entailed in this legislation.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post, Oct. 5, 1988]

House Votes To Protect Staff Rights—Bias Is Prohibited for the First Time in Hill Employment

(By Don Phillips)

The House voted for the first time yesterday to extend to its employees some of the same employment protections long enjoyed by other Americans—protection against discrimination based on race, color, national origin, religion, sex, handicap or age.

Reacting to news stories of sexual harassment and other cases of abuse in congressional offices, the House voted 408 to 12 to give the protections of the Civil Rights Act of 1964 to the 12,137 persons who work for House members, committees or in various Capitol offices.

The House also approved legislation yesterday to strengthen protections for federal employees who expose waste and mismanagement. The "whistle-blower" measure is expected to pass the Senate and be signed by the president. [Details on Page A23.]

The House vote on its employment practices does not affect Capitol employees who are not on the House payroll. Some Capitol employees are paid by the House, some by the Senate and some—such as those in the

Office of the Architect of the Capitol—by a seperate fund.

The Senate and the House contribute equally to the U.S. Capitol Police. Those officers who receive House paychecks will be covered while those paid by the Senate will not be.

The change in the House rules, which does not require Senate action or a presidential signature, takes effect immediately. The resolution will have to be reapproved by the 101st Congress when it convenes in January. Such ratification is expected to be routine.

Only the Senate remains open to charges that it is the "last plantation," where employees have none of the rights that Congress has written into law for the rest of the country. But the Senate is expected to face pressure to take similar action next year. Sen. John S. McCain III (R-Ariz.) said yesterday that he had received a commitment from Sen. John Glenn (D-Ohio) that Glenn's Governmental Affairs Committee will hold hearings on an identical plan next year.

House leadership sources acknowledged that the action was spurred by rumors that further news accounts were in the works. An advertisement in Roll Call, the Capitol Hill newspaper, asking disgruntled employees to call CBS' "60 Minutes" was the last straw, these sources said.

Rep. Leon E. Panetta (D-Calif.), who led the effort to develop an acceptable resolution, said the Democratic leadership is committed to writing the protections into law next summer and extending them to the Senate.

Panetta, Rep. Steve Bartlett (R-Tex.) and others at the center of the battle over rights of congressional employees, including the two most vocal—Reps. Patricia Schroeder (D-Colo.) and Lynn M. Martin (R-Ill.)—acknowledged the action is a first step. Congress has exempted itself from numerous statutes and yesterday's vote does not affect exemptions from such laws as the Occupational Health and Safety Act and the Fair Labor Standards Act, which governs wages and overtime.

Schroeder and Reps. Morris K. Udall (D-Ariz.) and Charlie Rose (D/N.C.) had formed an ad hoc panel to protect Hill workers, but it has no powers other than persuasion. A new fair employment office and a formal review panel—with extensive powers—will replace the ad hoc panel.

A staff member on the House Administration Committee said that researchers could find no other formal action to protect Hill workers since the First Congress in 1789.

In an emotional floor speech as the bill was first debated Monday, Martin said, "To the person who works on the elevator, to the person who works downstairs in the mail room, to the bright young black man who has come to work here on the D.C. Committee, to every bright young woman who has tried to work here and has sometimes worked under circumstances that are difficult to really appreciate . . . this bill is for you. . . ."

To attract widespread support, the compromise plan kept everything within the House of Representatives—setting up an Office of Fair Employment Practices whose decisions could be appealed to a new review panel. The office would be separate from the Equal Employment Opportunity Commission, but would be guided by all laws and court decisions affecting the EEOC.

A number of members opposed placing congressional employees under the EEOC on the grounds that making Congress subject to an executive branch agency would violate separation of powers.

An employee would have 180 days from the date of an alleged violation to file a complaint. The new fair employment office would first attempt to counsel the employee and mediate the dispute. If that failed, the employee may apply for—and must be given—a prompt hearing. Either party may appeal to the review panel, which would be made up of two Democrats and two Republicans from the House Administration Committee, plus four House officers and employees, two appointed by the speaker and two by the minority leader.

The review panel, whose decision is final and not subject to court review, could order monetary damages, reinstatement or promotion, plus back pay or attorney fees.

Mr. McCAIN. Mr. President, I am fully aware that there is no chance of this legislation being enacted into law this year. I do urge my colleagues, however, to join me in cosponsoring the bill, and in working with me to ensure that our employees enjoy the same safeguards as the rest of the American people. I hope that the Full Senate will address this issue at the earliest opportunity. I think the legislation is fair, I think it preserves the constitutional separation between the branches and, frankly, Mr. President, I think it is long, long overdue.

SENATE RESOLUTION 489—TO DIRECT SENATE LEGAL COUNSEL

Mr. BYRD (for himself and Mr. Dole) submitted the following resolution; which was considered and agreed to:

S. Res. 489

Whereas, in 1985 and 1986 the Permanent Subcommittee on Investigations of the Committee on Government Affairs conducted an investigation of the Government's handling of a criminal investigation into allegations that a union local had unlawfully hired employees who were not expected to perform any work;

Whereas, in the case of *United States* v. *Harold Friedman, et al.*, No. CR 86-114, pending in the United States District Court for the Northern District of Ohio, one of the defendants has obtained a subpoena for the production of documents from the investigation by Mary Robertson, Chief Clerk of the Permanent Subcommittee on Investigations;

Whereas, pursuant to section 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to represent employees of the Senate with respect to subpoenas issued to them in their official capacity;

Whereas, by the privileges of the Senate of the United States and Rule XI of the standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Mary Robertson in the case of *United States* v. *Harold Friedman, et al.*

Sec. 2. That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide records of the Subcommittee's investigation, if in their judgment circumstances so warrant.

SENATE RESOLUTION 490—TO DIRECT SENATE LEGAL COUNSEL

Mr. BYRD (for himself and Mr. Dole) submitted the following resolution; which was considered and agreed to:

S. Res. 490

Whereas, in the case of *Hunter, et al.* v. *Kalamarides, et al.*, Case No. 88-0500C, pending in the United States District Court for the Western District of New York, the plaintiffs have named Senator Ted Stevens as one of the defendants;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(1) (1982), the Senate may direct its counsel to defend the members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Senator Stevens in the case of *Hunter, et al.* v. *Kalamarides, et al.*

AMENDMENTS SUBMITTED

TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

RUDMAN (AND OTHERS) AMENDMENT NO. 3410

(Ordered to lie on the table.)

Mr. RUDMAN (for himself, Mr. Biden, Mr. D'Amato, and Mr. Chiles) submitted an amendment intended to be proposed by them to the bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . INCREASE IN TAX ON CIGARETTES AND ALCOHOL.

(a) Cigarettes—

(1) Rate of Tax.—Subsection (b) of section 5701 of the Internal Revenue Code of 1986 (relating to rate of tax on cigarettes) is amended—

(A) by striking "$8" in paragraph (1) and inserting in lieu thereof "$9"; and

(B) by striking "$16.80" in paragraph (2) and inserting in lieu thereof "$18.90".

(2) Floor Stocks.—

(A) Imposition of tax.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 1989, and held on such date for sale by any person, there shall be imposed the following taxes:

(i) Small cigarettes.—On cigarettes, weighing not more than 3 pounds per thousand, $1 per thousand;

(ii) Large cigarettes.—On cigarettes, weighing more than 3 pounds per thousand, $2.10 per thousand; except that, if more than 6 1/2 inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette.

(B) Liability for tax and method of payment.—

(i) Liability for tax.—A person holding cigarettes on January 1, 1989, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(ii) Method of payment.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 of the Internal Revenue Code of 1986 and shall be due and payable on February 16, 1989, in the same manner as the tax imposed under such section is payable with respect to cigarettes removed on January 1, 1989.

(C) Cigarette.—For purposes of this section, the term "cigarette" shall have the meaning given to such term by subsection (b) of section 5702 of the Internal Revenue Code of 1986.

(D) Exception for retail stocks.—The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1989, at the place where intended to be sold at retail.

(E) Foreign trade zones.—Notwithstanding the Act of June 18, 1934 (19 U.S.C. 81a et seq.) or any other provision of law—

(i) cigarettes—

(I) on which taxes imposed by Federal law are determined, or customs duties are liquidated, by a customs officer pursuant to a request made under the first proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1989, and

(II) which are entered into the customs territory of the United States on or after January 1, 1989, from a foreign trade zone, and

(ii) cigarettes which—

(I) are placed under the supervision of a customs officer pursuant to the provisions of the second proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1989, and

(II) are entered into the customs territory of the United States on or after January 1, 1989, from a foreign trade zone,

shall be subject to the tax imposed by paragraph (1) and such cigarettes shall, for purposes of paragraph (1), be treated as being held on January 1, 1989, for sale.

(b) Distilled Spirits.—

(1) In general.—Paragraphs (1) and (3) of section 5001(a) of the Internal Revenue Code of 1986 (relating to rate of tax) are each amended by striking out "$12.50" and inserting in lieu thereof "$14.00".

(2) Conforming amendment.—Subsection (a) of section 5010 of such Code (relating to credit for wine content and for flavors content) is amended by striking "$12.50" both places it appears and inserting in lieu thereof "$14.00".

(c) Wines.—Subsection (b) of section 5041 of the Internal Revenue Code of 1986 (relating to rates of tax) is amended—

(1) by striking out "17 cents" in paragraph (1) and inserting in lieu thereof "42 cents",

(2) by striking out "67 cents" in paragraph (2) and inserting in lieu thereof "92 cents",

(3) by striking out "$2.25" in paragraph (3) and inserting in lieu thereof "$2.50",

(4) by striking out "$3.40" in paragraph (4) and inserting in lieu thereof "$3.65", and

(5) by striking out "$2.40" in paragraph (5) and inserting in lieu thereof "$2.65".

(d) Beer.—Section 5051(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking out "$9" in paragraph (1) and inserting in lieu thereof "$11.80"; and

(2) by striking out "$7" in the caption and text of paragraph (2)(A) and inserting in lieu thereof "$9.80".

(e) Floor Stocks on Distilled Spirits, Wine, and Beer.—

(1) Imposition of tax on distilled spirits.—On articles manufactured in or imported into the United States which are taxable under section 5001(a) of the Internal Revenue Code of 1986, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) Distilled spirits.—On distilled spirits, $1.50 per proof gallon.

(B) Imported perfumes.—On imported perfumes described in section 5001(a)(3) of such Code, $1.50 per wine gallon.

(2) Imposition of tax on wines.—On wines produced in or imported into the United States which are taxable under section 5041(a) of such Code, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) On still wines containing not more than 14 percent of alcohol by volume, 25 cents per wine gallon;

(B) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, 25 cents per wine gallon;

(C) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, 25 cents per wine gallon;

(D) On champagne and other sparkling wines, 25 cents per wine gallon; and

(E) On artificially carbonated wines, 25 cents per wine gallon.

(3) Imposition of tax on beer.—On beer brewed or produced in, or imported into, the United States which is taxable under section 5051(a) of such Code, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) On beer described in section 5051(a)(1) of such Code, $2.80 per barrel.

(B) On beer described in section 5051(a)(2) of such Code, $2.80 per barrel.

(4) Liability for tax and method of payment.—

(A) Liability for tax.—A person holding distilled spirits, an article, wine, or beer on January 1, 1989, to which any tax imposed by paragraph (1), (2), or (3) applies shall be liable for such tax.

(B) Method of payment.—The taxes imposed by paragraphs (1), (2), and (3) shall be treated as taxes imposed under section 5001(a), 5041(a), and section 5051(a) of such Code, respectively, and—

(i) shall be paid in such manner as the Secretary shall by regulations prescribe, and

(ii) shall be paid as such date (not later than 6 months after the date of the enactment of this Act) as the Secretary shall by regulations prescribe.

(5) Exception for on-premises retail establishments.—To the extent provided in regulations prescribed by the Secretary, the taxes imposed by paragraphs (1), (2), and (3) shall not apply to distilled spirits, articles, wine, and beer held on January 1, 1989, on the premises of a retail establishment where alcoholic beverages are sold for consumption on the premises only.

(6) Definitions.—For purposes of this section—

(A) Distilled spirits.—The term "distilled spirits" has the meaning given to such term by section 5002(a)(8) of the Internal Revenue Code of 1986.

(B) Proof gallon.—The term "proof gallon" has the meaning given to such term by section 5002(a)(11) of such Code.

(C) Article.—The term "article" has the meaning given to such term by section 5002(a)(14) of such Code.

(D) Wine gallon.—The term "wine gallon" has the meaning given to such term by section 5041(c) of such Code.

(E) Beer.—The term "beer" has the meaning given to such term by section 5052(a) of such Code.

(F) Person.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(G) Secretary.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(f) Establishment of Drug-Free America Trust Fund.—Amounts equal to all additional revenues resulting from the provisions and amendments made by subsections (a), (b), (c), (d), and (e) of this section shall be deposited by the Secretary of the Treasury into a special fund of the United States Treasury, to be known as the "Drug-Free America Trust Fund", and shall remain available for making expenditures to carry out the purposes of the Omnibus Anti-Substance Abuse Act of 1988, as provided by appropriation Acts.

(g) Effective Dates.—

(1) Amendments.—The amendments made by subsections (a)(1), (b), (c), and (d) shall apply to cigarettes, distilled spirits, wine, and beer removed after December 31, 1988, and before January 1, 1991, but only if the Omnibus Anti-Substance Abuse Act of 1988 is enacted.

(2) Other provisions.—Subsections (a)(2), (e), and (f) shall take effect on the date of the enactment of this Act, but only if the Omnibus Anti-Substance Abuse Act of 1988 is enacted.

BERNE CONVENTION IMPLEMENTATION ACT

LEAHY (AND OTHERS) AMENDMENT NO. 3411

Mr. LEAHY (for himself, Mr. DeConcini and Mr. Hatch) proposed an amendment to the bill (S. 1301) to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes; as follows:

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE AND REFERENCES TO TITLE 17, UNITED STATES CODE.

(a) Short Title.—This Act may be cited as the "Berne Convention Implementation Act of 1988".

(b) References to Title 17, United States Code.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or a repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 2. DECLARATIONS.

The Congress makes the following declarations:

(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto (hereafter in this Act referred to as the

"Berne Convention") are not self-executing under the Constitution and laws of the United States.

(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.

SEC. 3. CONSTRUCTION OF THE BERNE CONVENTION.

(a) RELATIONSHIP WITH DOMESTIC LAW.—The provisions of the Berne Convention—

(1) shall be given effect under title 17, as amended by this Act, and any other relevant provision of Federal or State law, including the common law; and

(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

(b) CERTAIN RIGHTS NOT AFFECTED.—The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—

(1) to claim authorship of the work; or

(2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.

SEC. 4. SUBJECT MATTER AND SCOPE OF COPYRIGHTS.

(a) SUBJECT AND SCOPE.—Chapter 1 is amended—

(1) in section 101—

(A) in the definition of "Pictorial, graphic, and sculptural works" by striking out in the first sentence "technical drawings, diagrams, and models" and inserting in lieu thereof "diagrams, models, and technical drawings, including architectural plans";

(B) by inserting after the definition of "Audiovisual works", the following:

"The 'Berne Convention' is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a nation adhering to the Berne Convention, or in the case of a published work, one or more of the authors is a national of a nation adhering to the Berne Convention on the date of first publication;

"(2) the work was first published in a nation adhering to the Berne Convention, or was simultaneously first published in a nation adhering to the Berne Convention and in a foreign nation that does not adhere to the Berne Convention;

"(3) in the case of an audiovisual work—

"(A) if one or more of the authors is a legal entity, that author has its headquarters in a nation adhering to the Berne Convention; or

"(B) if one or more of the authors is an individual, that author is domiciled, or has his or her habitual residence in, a nation adhering to the Berne Convention; or

"(4) in the case of a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, the building or structure is located in a nation adhering to the Berne Convention.

For purposes of paragraph (1), an author who is domiciled in or has his or her habitual residence in, a nation adhering to the Berne Convention is considered to be a national of that nation. For purposes of paragraph (2), a work is considered to have been simultaneously published in two or more nations if its dates of publication are within 30 days of one another."; and

(C) by inserting after the definition of "Copyright owner", the following:

"The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if—

"(1) in the case of a published work, the work is first published—

"(A) in the United States;

"(B) simultaneously in the United States and another nation or nations adhering to the Berne Convention, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

"(C) simultaneously in the United States and a foreign nation that does not adhere to the Berne Convention; or

"(D) in a foreign nation that does not adhere to the Berne Convention, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

"(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

"(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.";

(2) in section 104(b)—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) the work is a Berne Convention work; or";

(3) in section 104 by adding at the end thereof the following:

"(c) EFFECT OF BERNE CONVENTION.—No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto."; and

(4) by inserting after section 116 the following new section:

"§ 116A. Negotiated licenses for public performances by means of coin-operated phonorecord players

"(a) APPLICABILITY OF SECTION.—This section applies to any nondramatic musical work embodied in a phonorecord.

"(b) LIMITATION ON EXCLUSIVE RIGHT IF LICENSES NOT NEGOTIATED.—

"(1) APPLICABILITY.—In the case of a work to which this section applies, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited by section 116 to the extent provided in this section.

"(2) DETERMINATION BY COPYRIGHT ROYALTY TRIBUNAL.—The Copyright Royalty Tribunal, at the end of the 1-year period beginning on the effective date of the Berne Convention Implementation Act of 1988, and periodically thereafter to the extent necessary to carry out subsection (f), shall determine whether or not negotiated licenses authorized by subsection (c) are in effect so as to provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending on the effective date of that Act. If the Copyright Royalty Tribunal determines that such negotiated licenses are not so in effect, the Tribunal shall, upon making the determination, publish the determination in the Federal Register. Upon such publication, section 116 shall apply with respect to musical works that are not the subject of such negotiated licenses.

"(c) NEGOTIATED LICENSES.—

"(1) AUTHORITY FOR NEGOTIATIONS.—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

"(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the Copyright Royalty Tribunal by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Copyright Royalty Tribunal of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

"(d) LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT ROYALTY TRIBUNAL DETERMINATIONS.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (c), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Tribunal.

"(e) NEGOTIATION SCHEDULE.—Not later than 60 days after the effective date of the Berne Convention Implementation Act of 1988, if the Chairman of the Copyright Royalty Tribunal has not received notice, from copyright owners and operators of coin-operated phonorecord players referred to in subsection (c)(1), of the date and location of the first meeting between such copyright owners and such operators to commence negotiations authorized by subsection (c), the Chairman shall announce the date and location of such meeting. Such meeting may not be held more than 90 days after the effective date of such Act.

"(f) COPYRIGHT ROYALTY TRIBUNAL TO SUSPEND VARIOUS ACTIVITIES.—The Copyright Royalty Tribunal shall not conduct any ratemaking activity with respect to coin-operated phonorecord players unless, at any time more than one year after the effective date of the Berne Convention Implementation Act of 1988, the negotiated licenses adopted by the parties under this section do not provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the one-year period ending on the effective date of such Act.

"(g) TRANSITION PROVISIONS; RETENTION OF COPYRIGHT ROYALTY TRIBUNAL JURISDICTION.—Until such time as licensing provisions are determined by the parties under this section, the terms of the compulsory license under section 116, with respect to the public performance of nondramatic musical works by means of coin-operated phonorecord players, which is in effect on the day before the effective date of the Berne Convention Implementation Act of 1988, shall remain in force. If a negotiated license authorized by this section comes into force so as to supersede previous determinations of the Copyright Royalty Tribunal, as provided in subsection (d), but thereafter is terminated or expires and is not replaced by another licensing agreement, then section 116 shall be effective with respect to musical works that were the subject of such terminated or expired licenses."; and

(b) TECHNICAL AMENDMENTS.—(1) Section 116 is amended—

(A) by amending the section heading to read as follows:

"§ 116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players";

(B) in subsection (a) in the matter preceding paragraph (1), by inserting after "in a phonorecord," the following: "the performance of which is subject to this section as provided in section 116A,"; and

(C) in subsection (e), by inserting "and section 116A" after "As used in this section".

(2) The table of sections at the beginning of chapter 1 is amended by striking out the item relating to section 116, and inserting in lieu thereof the following:

"116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.

"116A. Negotiated licenses for public performances by means of coin-operated phonorecord players.".

SEC. 5. RECORDATION.

Section 205 is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 6. PREEMPTION WITH RESPECT TO OTHER LAWS NOT AFFECTED.

Section 301 is amended by adding at the end thereof the following:

"(e) The scope of Federal preemption under this section is not affected by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.".

SEC. 7. NOTICE OF COPYRIGHT.

(a) VISUALLY PERCEPTIBLE COPIES.—Section 401 is amended—

(1) in subsection (a), by amending the subsection heading to read as follows:

"(a) GENERAL PROVISIONS.—";

(2) in subsection (a), by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(3) in subsection (b), by striking out "The notice appearing on the copies" and inserting in lieu thereof "If a notice appears on the copies, it"; and

(4) by adding at the end the following:

"(d) EVIDENTIARY WEIGHT OF NOTICE.—If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).".

(b) PHONORECORDS OF SOUND RECORDINGS.—Section 402 is amended—

(1) in subsection (a), by amending the subsection heading to read as follows:

"(a) GENERAL PROVISIONS.—";

(2) in subsection (a), by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(3) in subsection (b), by striking out "The notice appearing on the phonorecords" and inserting in lieu thereof "If a notice appears on the phonorecords, it"; and

(4) by adding at the end thereof the following new subsection:

"(d) EVIDENTIARY WEIGHT OF NOTICE.—If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).".

(c) PUBLICATIONS INCORPORATING UNITED STATES GOVERNMENT WORKS.—Section 403 is amended to read as follows:

"Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords consisting predominantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.".

(d) NOTICE OF COPYRIGHT; CONTRIBUTIONS TO COLLECTIVE WORKS.—Section 404 is amended—

(1) in subsection (a), by striking out "to satisfy the requirements of sections 401 through 403", and inserting in lieu thereof "to invoke the provisions of section 401(d) or 402(d), as applicable"; and

(2) in subsection (b), by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where".

(e) OMISSION OF NOTICE.—Section 405 is amended—

(1) in subsection (a), by striking out "The omission of the copyright notice prescribed by" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in";

(2) in subsection (b), by striking out "omitted," in the first sentence and inserting in lieu thereof "omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988,"; and

(3) by amending the section heading to read as follows:

"§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords"

(f) ERROR IN NAME OR DATE.—Section 406 is amended—

(1) in subsection (a) by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where";

(2) in subsection (b) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "distributed";

(3) in subsection (c)—

(A) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "publicly distributed"; and

(B) by inserting after "405" the following: "as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988"; and

(4) by amending the section heading to read as follows:

"§ 406. Notice of copyright: Error in name or date on certain copies and phonorecords".

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 is amended by striking out the items relating to sections 405 and 406 and inserting in lieu thereof the following:

"405. Notice of copyright: Omission of notice on certain copies and phonorecords.

"406. Notice of copyright: Error in name or date on certain copies and phonorecords.".

SEC. 8. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407(a) is amended by striking out "with notice of copyright".

SEC. 9. COPYRIGHT REGISTRATION.

(a) REGISTRATION IN GENERAL.—Section 408 is amended—

(1) in subsection (a), by striking out "Subject to the provisions of section 405(a), such" in the second sentence and inserting in lieu thereof "Such";

(2) in subsection (c)(2)—

(A) by striking out "all of the following conditions—" and inserting in lieu thereof "the following conditions:";

(B) by striking out subparagraph (A); and

(C) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) INFRINGEMENT ACTIONS.—

(1) REGISTRATION AS A PREREQUISITE.—Section 411 is amended—

(A) by amending the section heading to read as follows:

"§ 411. Registration and infringement actions";

(B) in subsection (a) by striking out "Subject" and inserting in lieu thereof "Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States, and subject"; and

(C) in subsection (b)(2) by inserting ", if required by subsection (a)," after "work".

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 4 is amended by striking out the item relating to section 411 and inserting in lieu thereof the following:

"411. Registration and infringement actions.".

SEC. 10. COPYRIGHT INFRINGEMENT AND REMEDIES.

(a) Infringement.—Section 501(b) is amended by striking out "sections 205(d) and 411," and inserting in lieu thereof "section 411,".

(b) Damages and Profits.—Section 504(c) is amended—

(1) in paragraph (1)—

(A) by striking out "$250", and inserting in lieu thereof "$500"; and

(B) by striking out "$10,000", and inserting in lieu thereof "$20,000"; and

(2) in paragraph (2)—

(A) by striking out "$50,000.", and inserting in lieu thereof "$100,000."; and

(B) by striking out "$100.", and inserting in lieu thereof "$200.".

SEC. 11. COPYRIGHT ROYALTY TRIBUNAL.

Chapter 8 is amended—

(1) in section 801, by adding at the end of subsection (b) the following: "In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

"(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and

"(ii) the rates contained in any license negotiated pursuant to section 116A of this title."; and

(2) by amending section 804(a)(2)(C) to read as follows:

"(C)(i) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, such petition may be filed in 1990 and in each subsequent tenth calendar year, and at any time within 1 year after negotiated licenses authorized by section 116A are terminated or expire and are not replaced by subsequent agreements.

"(ii) If negotiated licenses authorized by section 116A come into force so as to supersede previous determinations of the Tribunal, as provided in section 116A(d), but thereafter are terminated or expire and are not replaced by subsequent agreements, the Tribunal shall, upon petition of any party to such terminated or expired negotiated license agreement, promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such interim royalty rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116A(d).".

SEC. 12. WORKS IN THE PUBLIC DOMAIN.

Title 17, United States Code, as amended by this Act, does not provide copyright protection for any work that is in the public domain in the United States.

SEC. 13. EFFECTIVE DATE; EFFECT ON PENDING CASES.

(a) Effective Date.—This Act and the amendments made by this Act take effect on the date on which the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States.

(b) Effect on Pending Cases.—Any cause of action arising under title 17, United States Code, before the effective date of this Act shall be governed by the provisions of such title as in effect when the cause of action arose.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

THURMOND (AND OTHERS) AMENDMENT NO. 3412

(Ordered to lie on the table.)

Mr. THURMOND (for himself, Mr. Ford, Mr. Hatch, Mr. Evans, Mr. Hollings, Mr. Simon, Mr. Gore, Mr. Chiles, and Mr. Matsunaga) submitted an amendment intended to be proposed to the bill (S. 2238) to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a Cabinet-level position to centralize and streamline Federal activities with respect to both drug supply (interdiction and law enforcement) and drug demand (prevention, education, and treatment), to expand Federal support to ensure a long-term commitment of resources and personnel for a substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug law and enhance the interdiction of illicit drug shipments, and for other purposes; as follows:

At the end of the bill, add the following:

Sec. ____. (a) The Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) is amended—

(1) by inserting immediately after the enacting clause the following centered heading:

"TITLE I—FEDERAL ALCOHOL ADMINISTRATION";

(2) by redesignating the first section and section 2 through 17 as sections 101 through 117, respectively; and

(3) by adding at the end the following new title:

"TITLE II—ALCOHOLIC BEVERAGE LABELING

"SHORT TITLE

"Sec. 201. This title may be cited as the "Alcoholic Beverage Labeling Act of 1988".

"DECLARATION OF POLICY AND PURPOSE

"Sec. 202. The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce. The Congress finds that requiring such reminders on all containers of alcoholic beverages is appropriate and necessary in view of the substantial role of the Federal Government in promoting the health and safety of the Nation's population. It is therefore the policy of the Congress, and the purpose of this title, to exercise the full reach of the Federal Government's constitutional powers in order to establish a comprehensive Federal program, in connection with the manufacture and sale of alcoholic beverages in or affecting interstate commerce, to deal with the provision of warning or other information with respect to any relationship between the consumption or abuse of alcoholic beverages and health, so that—

"(1) the public may be adequately reminded about any health hazards that may be associated with the consumption or abuse of alcoholic beverages through a nationally uniform, nonconfusing warning notice on each container of such beverages; and

"(2) commerce and the national economy may be—

"(A) protected to the maximum extent consistent with this declared policy,

"(B) not impeded by diverse, nonuniform, and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health, and

"(C) protected from the adverse effects that would result from a noncomprehensive program covering alcoholic beverage containers sold in interstate commerce, but not alcoholic beverage containers manufactured and sold within a single State.

"DEFINITIONS

"Sec. 203. As used in this title—

"(1) The term 'alcoholic beverage' includes any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.

"(2) The term 'bottle' means to fill a container with an alcoholic beverage and to seal such container.

"(3) The term 'bottler' means a person who bottles an alcoholic beverage.

"(4) The term 'commerce' means—

"(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

"(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

"(C) commerce wholly within the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

"(5) The term 'container' means the innermost sealed container irrespective of the material from which made, in which an alcoholic beverage is place by the bottler and in which such beverage is offered for sale to members of the general public.

"(6) The term 'health' includes, but is not limited to, the prevention of accidents.

"(7) The term 'person' means an individual, partnership, joint stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, any State agency, or any officer or employee thereof.

"(8) The term 'sale' and 'distribution' include sampling or any other distribution not for sale.

"(9) The term 'Secretary' means the Secretary of the Treasury.

"(10) The term 'State' includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

"(11) The term 'State law' includes State statutes, regulations, and principles and rules having the force of law.

"(12) The term 'United States', when used in geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

"LABELING REQUIREMENT; CONSPICUOUS STATEMENT

"SEC. 204. (a) On and after the expiration of the 12-month period following the date of enactment of this title, it shall be unlawful for any person to manufacture, import, or bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the following statement:

'GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.'.

"(b) The statement required by subsection (a) of this section shall be located in a conspicuous and prominent place on the container of such beverage, as determined by the Secretary, shall be in type of a size determined by the Secretary, and shall appear on a contrasting background. The Secretary shall make such determinations within 90 days after the date of enactment of this title.

"(c) Subsection (a) of this section shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States: *Provided*, That this exemption shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

"(d) The Secretary shall—

"(1) have the power to—

"(A) ensure the enforcement of the provisions of this title, and

"(B) issue regulations to carry out this title, and

"(2) consult and coordinate the health awareness efforts of the labeling requirements of this title with the Surgeon General of the United States.

"PREEMPTION

"SEC. 205. No statement relating to alcoholic beverages and health, other than the statement required by section 204 of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

"REPORT TO CONGRESS

"SEC. 206. If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 24-month period following the date of enactment of this title, the Secretary finds that available scientific information would justify a change in, addition to, or deletion of the statement, or any part thereof, set forth in section 204(a) of this title, the Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this title as the Secretary determines to be appropriate and in the public interest.

"CIVIL PENALTIES

"SEC. 207. Any person who violates the provisions of this title shall be subject to a civil penalty of not more than $10,000, and each day shall constitute a separate offense.

"INJUNCTION PROCEEDINGS; COMPROMISE OF LIABILITY

"SEC. 208. (a) The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this title upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

"(b) The Secretary is authorized, with respect to any violation of this title, to compromise the liability arising with respect to such violation upon payment of a sum for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts.

"SEVERABILITY

"SEC. 209. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this title and this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

"EFFECTIVE DATE

"SEC. 210. Except as provided in section 204(a), this title shall take effect on the date of its enactment into law.".

(b) The Federal Alcohol Administration Act, as amended by this Act, is further amended—

(1) by amending section 101, as redesignated under subsection '(a)(2) of this Act, to read as follows:

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Federal Alcohol Administration Act'.";

(2) in sections 103, 104, 105, 107, 108, and 117, as so redesignated, by striking "this Act" each place it appears and inserting in lieu thereof "this title";

(3) in section 104(d), as so redesignated, by striking "section 5" and inserting in lieu thereof "section 105" and by striking "section 6" and inserting in lieu thereof "section 106"; and

(4) in section 107, as so redesignated, by striking "section 3 or 5" and inserting in lieu thereof "section 103 or 105".

TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

THURMOND (AND OTHERS) AMENDMENT NO. 3413

(Ordered to lie on the table.)

Mr. THURMOND (for himself, Mr. GRASSLEY, and Mr. HEFLIN) submitted an amendment intended to be proposed by them to the bill S. 2238, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . EXEMPTION OF CERTAIN RELIGIOUS SCHOOLS FROM FEDERAL UNEMPLOYMENT TAX.

(a) IN GENERAL.—Section 3309(b)(1) of the 1986 Code (relating to exemption from unemployment tax) is amended by inserting before the semicolon at the end thereof the following: ", or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services performed after December 31, 1988.

RETAIL COMPETITION

KASSEBAUM (AND OTHERS) AMENDMENT NO. 3414

Mrs. KASSEBAUM (for herself, Mr. DURENBERGER, and Mr. DOLE) proposed an amendment to amendment No. 3037 proposed by Mr. WALLOP to the bill (S. 430) to amend the Sherman Act regarding retail competition; as follows:

At the end of Amendment No. 3037, add the following new section, and renumber accordingly:

That this Act may be cited as the "General Aviation Accident Liability Standards Act of 1987."

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) transportation by air of passengers continues to comprise an increasingly important component of the nation's overall transportation system;

(2) although the incidence of injuries to passengers in general aviation accidents has decreased, the number of general aviation accident liability claims againt general aviation aircraft manufacturers and the amount of damages sought in such claims is increasing at disproportionate rates, beyond any relationship to the quality of the aircraft manufactured and in use;

(3) the current system for determining liability and damages for compensating individuals injured in general aviation accidents is inadequate;

(4) competent general aviation manufacturers and component part manufacturers are ceasing or limiting production of general aviation aircraft or some models of such aircraft because of the incresing costs and unavailability of product liability insurance;

(5) the increase in the number of liability claims and the size of awards and settlements, and the excessive time and expense devoted to the resolution of such claims, impose a substantial economic burden on general aviation manufacturers and their dealers;

(6) the Federal Government has an interest in the general aviation accident liability system because the Federal Government has established a comprehensive system for regulating general aviation, including—

(A) establishing standards for design, construction, and certification of general aviation aircraft,

(B) establishing standards for maintenance of aicraft, licensing of repair facilities, and licensing of persons who may perform or approve maintenance, repairs, and inspections,

(C) establishing standards for training and licensing of pilots,

(D) establishing a comprehensive air control system,

(E) conducting investigations to determine the probable cause of aviation accidents and prevent future accidents, and

(F) conducting other activities necessary to assure a safe air transportation system;

and this Federal system is the exclusive legal authority for regulating aviation operations and safety;

(7) it is in the national interest to reduce unnecesary expenditures related to general aviation accident liability claims while providing more rapid and more efficient compensation for individuals harmed in general aviation accidents; and

(8) Federal action to reform the general aviation accident liability system will result in—

(A) the maintenance of airworthy general aviation aircraft; and

(B) a more rational general aviation accident liability system.

(b) It is the purpose of this Act to establish standards for determining liability for harm arising out of general aviation accidents.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Administrator" means the Administrator of the Federal Aviation Administration;

(2) "claimant" means any person who brings a general aviation accident liability action subject to this Act, and any person on whose behalf such an action is brought, including—

(A) the claimant's decedent; and

(B) the claimant's parent or guardian, if the action is brought through or on behalf of a minor or incompetent;

(3) "general aviation accident" means any accident which arises out of the operation of any general aviation aircraft and which results in harm;

(4) "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.) which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than twenty passengers, and which is not, at the time of the accident, engaged in scheduled passenger carrying operations as defined in regulations issued under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.);

(5) "general aviation manufacturer" means—

(A) the builder or manufacturer of the airframe of a general aviation aircraft;

(B) the manufacturer of the engine of a general aviation aircraft; and

(C) the manufacturer of any system, component, subassembly, or other part of a general aviation aircraft;

(6) "harm" means—

(A) property damage or bodily injury sustained by a person;

(B) death resulting from such bodily injury;

(C) pain and suffering which is caused by such bodily injury; and

(D) emotional harm (including bereavement and loss of affection, care, or society) which is caused by such bodily injury;

(7) "product" means a general aviation aircraft and any system, component, subassembly, or other part of a general aviation aircraft; and

(8) "property damage" means physical injury to tangible property, including loss of use of tangible property.

PREEMPTION: APPLICABILITY

SEC. 4. (a) This Act supersedes any State law regarding recovery, under any legal theory, for harm arising out of a general aviation accident, to the extent that this Act establishes a rule of law or procedure applicable to the claim.

(b) Nothing in this Act shall be construed to supersede or to waive or affect any defense of sovereign immunity asserted by the United States or any State.

(c) Nothing in this Act shall be construed to affect the liability of a manufacturer, owner, or operator of any aircraft that is not a general aviation aircraft, or a person who repairs, maintains, or provides any other support for any aircraft that is not a general aviation aircraft, for damages for harm arising out of the operation of an aircraft that is not a general aviation aircraft.

(d) No right of action for harm exists under this Act if that right would be inconsistent with the provisions of any applicable workers' compensation law.

(e) The provisions of this Act shall apply only to—

(1) any manufacturer, owner, or operator of any general aviation aircraft, and any person who repairs, maintains, or provides any other support for such an aircraft;

(2) any occupant of a general aviation aircraft at the time of a general aviation accident, and any person who brings an action for harm caused by such accident on behalf of such occupant; and

(3) any nonoccupant of a general aviation aircraft at the time of a general aviation accident, only if such nonoccupant is bringing an action for harm caused by such accident which arises out of the harm to an occupant of such aircraft at the time of such accident.

UNIFORM STANDARDS OF LIABILITY FOR GENERAL AVIATION ACCIDENTS

SEC. 5. (a) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a party and may recover damages from such party, if such party was negligent and such negligence is a proximate cause of the claimant's harm.

(b)(1) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the product, when it left the control of the manufacturer, was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible;

(B) the defective condition is a proximate cause of the claimant's harm; and

(C) the general aviation aircraft was being used at the time of the accident for a purpose and in a manner for which it was designed and manufactured.

(2) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) at the time the product left the control of the manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about a danger connected with the product that caused the claimant's harm; and

(ii) failed to provide the warnings or instructions that a person exercising reasonable care would have provided with respect to the danger which caused the harm alleged by the claimant, unless such warnings or instructions, if provided, would not have materially affected the conduct of the user of the product; or

(B) after the product left the control of the general aviation manufacturer, the manufacturer—

(i) knew, or in the exercise of reasonable care should have known, about the danger which caused the claimant's harm; and

(ii) failed to take reasonable steps to provide warnings or instructions, after the manufacturer of the product, which would have been provided by a person exercising reasonable care, unless such warnings or instructions, if provided, would not have materially affected the conduct of the product user;

and the failure to provide warnings or instructions described in subparagraph (A) or (B) of this paragraph is a proximate cause of the claimant's harm.

(3) Any person claiming damages for harm arising out of a general aviation accident may bring an action against a general aviation manufacturer of a product and may recover damages from such general aviation manufacturer if—

(A) the manufacturer made an express warranty with respect to the product;

(B) such warranty relates to that aspect of the product which caused the harm;

(C) the product failed to conform to such warranty; and

(D) the failure of the product to conform to such warranty is a proximate cause of the claimant's harm.

(c)(1) In an action governed by subsection (b) of this section, a general aviation manufacturer shall not be liable if such manufacturer proves, by a preponderance of the evidence, that—

(A) the defective condition could have been corrected by compliance with action described in an airworthiness directive issued by the Administrator or a service bulletin issued by the manufacturer of the product; and

(B) such directive or service bulletin was issued at a reasonable time before the date of the accident and after the product left the control of the general aviation manufacturer.

(2) In any action governed by subsection (b) of this section, evidence of compliance with standards, conditions or specifications established, adopted or approved by the Federal Aviation Administration shall be admissible with regard to whether the product was defective and unreasonably dangerous for its intended purpose.

COMPARATIVE RESPONSIBILITY

SEC. 6. (a) All actions for harm arising out of a general aviation accident shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the claimant's conduct shall not bar recovery in an action under this Act, but shall reduce any damages awarded to the claimant in an amount proportionate to the responsibility of the cliamant. the trier of fact shall determine comparative responsibility by making findings indicating the percentage of total responsibility for the claimant's harm attributable to the claimant, each defendant, each third-party defendant, and any other person not a party to the action.

(b) Except as provided in subsection (c) of this section, a defendant is severally but not jointly liable in any action for harm arising out of a general aviation accident, and the liability of any defendant in any such action shall be determined on this basis of such defendant's proportionate share of responsibility for the claimant's harm.

(c) In any action for harm arising out of a general aviation accident—

(1) a general aviation manufacturer who is the builder or manufacturer of the airframe of the general aviation aircraft involved is jointly and severally liable for harm caused by a defective system, component, subassembly, or other part of such aircraft that the manufacturer installed or certified as part of the original type design for such aircraft; and

(2) a general aviation manufacturer who is the manufacturer of a system or component of the general aviation aircraft involved is jointly and severally liable for damages caused by a defective subassembly or other part of such system or component.

(d) A general aviation manufacturer and any other person jointly liable under subsection (c) of this section shall have the right to bring an action for indemnity or contribution against any person with whom they are jointly liable under subsection (c) of this section.

TIME LIMITATION ON LIABILITY

SEC. 7. (a) Except as provided in subsection (b) of this section, no civil action for harm arising out of a general aviation accident which is brought against a general aviation manufacturer may be brought for harm which is alleged to have been caused by an aircraft or a system, component, subassembly, or other part of an aircraft and which occurs more than—

(1) twenty years from—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such an aircraft; or

(2) with respect to any system, component, subassembly, or other part whcih replaced another product in, or which was added to, the aircraft, and which is alleged to have caused the claimant's harm, twenty years from the date of the replacement or addition.

(b) Subsection (a) of this section does not apply in the case of harm to a claimant which occurs after the period set forth in subsection (a) of this section if the general aviation manufacturer or the seller of the product that caused the claimant's harm gave an express warranty that the product would be suitable, for the purpose for which it was intended, for a longer period of time.

(c) Nothing in this section shall be construed to affect a person's duty to provide, after the sale or lease of an aircraft, to aircraft owners, and to repair facilities to which a license or certificate to perform repairs has been issued by the Administrator, additional or modified warning or instructions regarding the use or maintenance of such aircraft or any system, component, or other part of such aircraft.

SUBSEQUENT REMEDIAL MEASURES

SEC. 8. In any general aviation accident liability action governed by this Act, evidence of any measure taken after an event which, if taken previously, would have made the event less likely to occur is not admissible to provide liability. Such evidence is admissible to the extent permitted under rule 407 of the Federal Rules of Evidence.

ADMISSIBILITY OF CERTAIN EVIDENCE

SEC. 9. In an action governed by this Act, evidence of Federal, State, or local income tax liability or any Social Security or other payroll tax liability attributable to past or future earnings, support, or profits and the present value of future earnings, support, or profits alleged to have been lost or diminished because of harm arising out of a general aviation accident is admissible regarding proof of the claimant's harm.

PUNITIVE DAMAGES

SEC. 10. (a) Punitive damages may be awarded in an action under this Act for harm arising out of a general aviation accident only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious, flagrant indifference to the safety of the those persons who might be harmed by use of the general aviation aircraft involved.

(b) Evidence regarding the financial worth of a defendant or the defendant's profits or any other evidence relating solely to a claim for punitive damages under this Act is not admissible unless the claimant establishes, before any such evidence is offered, that the claimant can present evidence that will establish prima facie proof of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

(c) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages pursuant to the provisions of this Act regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

TIME LIMITATION ON BRINGING ACTIONS

SEC. 11. (a) Any action for harm arising out of a general aviation accident shall be barred, notwithstanding any State law, unless—

(1) the complaint is filed within two years after the date on which the accident occurred which caused the claimant's harm; and

(2) the summons and complaint are properly served upon the defendant within one hundred and twenty days after the filing of such complaint, unless the party on whose behalf such service is required can show good cause why such service was not made within such one-hundred-and-twenty-day period.

Paragraph (2) of this subsection shall not apply to service of process in a foreign country pursuant to rule 4(i) of the Federal Rules of Civil Procedure or any similar State law.

SANCTIONS

SEC. 12. It is the intent of Congress that, with respect to any action governed by this Act, the sanctions for violation of rule 11 of the Federal Rules of Civil Procedure, including orders to pay to the other party or parties the amount of their reasonable expenses, including a reasonable attorney's fee, be strictly enforced.

JURISDICTION

SEC. 23. (a) The district courts of the United States, concurrently with the State courts, shall have original jurisdiction, without regard to the amount in controversy, in all civil actions for harm arising out of a general aviation accident and in all actions for indemnity or contribution described in section 6(d) of this Act.

(b) A civil action which is brought in a State court may be removed to the district court of the United States for the district embracing the place where the action is pending, without the consent of any other party and without regard to the amount in controversy, by any defendant against whom a claim in such action is asserted for harm arising out of a general aviation accident.

(c) In any case commenced in or removed to a district court of the United States under subsection (a) or (b) of this section, the court shall have jurisdiction to determine all claims under State law that rise out of the same general aviation accident, if a substantial question of fact is common to the claims under State law and to the Federal claim, defense, or counterclaim.

(d)(1) A civil action in which the district courts of the United States have jurisdiction under subsection (a) of this section may be brought only in a district in which—

(A) the accident giving rise to the claim occurred; or

(B) any plaintiff or defendant resides.

(2) In an action pending in a district court of the United States under paragraph (1) of this subsection, a district court may, on motion of any party or its own motion, transfer the action to any other district for the convenience of parties and witnesses in the interest of justice.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

WALLOP AMENDMENT NO. 3415

(Ordered to lie on the table.)

Mr. WALLOP submitted an amendment intended to be proposed by him to the bill, S. 2852, supra; as follows:

At the appropriate place, add the following:

A new section 402(f) of the Social Security Act as follows,

SEC. 402(f)(1) each individual applying for assistance under this Section shall be required to be tested for abuse of controlled substances, in accordance with regulations promulgated by the Secretary;

(2) it is a condition of receipt of any such assistance that any individual receiving assistance under this Section shall submit to tests for the abuse of controlled substances at any time, in accordance with regulations promulgated by the Secretary;

(3) it is a requirement that any individual found to be an abuser of controlled substances shall, whether or not such individual is prosecuted pursuant to the Controlled Substances Act, be required to register for participation in a "qualified drug treatment program" as defined by regulations promulgated by the Secretary, which requires continued testing of such individual as a condition of continued participation in such program. If the individual refuses to register for participation in a "qualified drug treatment program", such individual's needs shall not be taken into account in making the determination of eligibility for any aid under this Section.

ANTI-APARTHEID ACT AMENDMENTS

PRESSLER AMENDMENTS NOS. 3416 THROUGH 3418

(Ordered to lie on the table.)

Mr. PRESSLER submitted three amendments intended to be proposed by him to the bill (S. 2756) entitled the "Anti-Apartheid Act Amendments of 1988;" as follows:

AMENDMENT No. 3416

At the end, add the following:

"SEC. . PROHIBITION ON ASSISTANCE TO THE AFRICAN NATIONAL CONGRESS.

None of the funds authorized to be appropriated by this or any other Act may be used, directly or indirectly, to fund activities of the African National Congress until the President certifies to the Congress that (1) the National Executive Committee of the African National Congress has taken a stand publicly and officially opposing the practice of "necklacing", the practice of execution by fire, used against South African blacks; (2) the membership of the National Executive Committee of the African National Congress is no longer dominated by communists; and (3) the African National Congress no longer receives its primary financial, military, and training support from the Soviet Union or other communist countries listed in section 620(f) of the Foreign Assistance Act of 1961.".

AMENDMENT No. 3417

At the end, add the following:

"SEC. . UNITED NATIONS PROJECTS WHOSE PRIMARY PURPOSE IS TO BENEFIT THE AFRICAN NATIONAL CONGRESS.

Section 114 of the Department of State Authorization, Fiscal Years 1984 and 1985, is amended—

(1) in subsection (a)(4)—

(A) by striking out "it or" and inserting in lieu thereof "it,", and

(B) by inserting before the semicolon", or to the African National Congress"; and (2) in subsection (b)—

(A) by striking out "it or" and inserting in lieu thereof "it,", and

(B) by inserting before the period at the end thereof ", or to the African National Congress".

AMENDMENT No. 3418

At the end, add the following:

"SEC. . PROHIBITION ON U.S. ASSISTANCE TO COUNTRIES SUPPORTING "NECKLACING".

Notwithstanding any other provision of law or this Act, no funds may be made available to any country for which the President proposes to disburse funds within the Southern Africa Development Coordination Conference until the President certifies that such country (1) has renounced the form of terrorism, commonly known as "necklacing" used against South African blacks; (2) has provided assurances that the government of that country opposes and is making a concerted effort to prevent the operation in its territory of any organization that supports, encourages, or will not renounce the practice of terrorism, including "necklacing" and state terrorism, against South African blacks; and (3) is, according to the best information available to the United States, making a concerted effort to prevent the operation in its territory of any organization that supports, encourages or will not renounce the practice of terrorism, including "necklacing" and state terrorism, against South African blacks.".

EXTENSION OF EXISTING SUSPENSION OF DUTY ON CERTAIN YTTRIUM ORES, MATERIALS, AND COMPOUNDS

LEAHY AMENDMENT NO. 3419

Mr. BYRD (for Mr. LEAHY) proposed an amendment to the bill (S. 2399) to extend until December 31, 1993, the existing suspension of duty on certain yttrium ores, materials, and compounds; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Forest Ecosystems and Atmospheric Pollution Research Act of 1988".

SEC. 2. FINDINGS.

Congress finds that—

(1) the health and productivity of forests in certain regions of the United States are declining;

(2) there is a special concern about the decline of certain hardwood species, particularly sugar maples and oaks, in the eastern United States and the effects of atmospheric pollutants on the health and productivity of these forests;

(3) declines in the productivity of certain commercially important southern pine species have been measured;

(4) existing research indicates that atmospheric pollution, including ozone, acidic deposition, and heavy metals, may contribute to this decline;

(5) there is an urgent need to expand and better coordinate existing Federal, State, and private research, including research by private industry, to determine the cause of changes in the health and productivity of domestic forest ecosystems and to monitor and evaluate the effects of atmospheric pollutants on such ecosystems; and

(6) such research and monitoring should not impede efforts to control atmospheric pollutants.

SEC. 3. ESTABLISHMENT OF RESEARCH PROGRAM.

Section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1642) is amended by adding at the end the following:

"(c)(1) The Secretary, acting through the United States Forest Service, shall establish not later than 180 days after the date of the enactment of this subsection a 10-year program (hereinafter in this subsection referred to as the 'Program') to—

"(A) increase the frequency of forest inventories in matters that relate to atmospheric pollution and conduct such surveys as are necessary to monitor long-term trends in the health and productivity of domestic forest ecosystems;

"(B) determine the scope of the decline in the health and productivity of domestic forest ecosystems;

"(C) accelerate and expand existing research efforts (including basic forest ecosystem research) to evaluate the effects of atmospheric pollutants on forest ecosystems and their role in the decline in domestic forest health and productivity;

"(D) study the relationship between atmospheric pollution and other climatological, chemical, physical, and biological factors that may affect the health and productivity of domestic forest ecosystems;

"(E) develop recommendations for solving or mitigating problems related to the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems;

"(F) foster cooperation among Federal, State, and private researchers and encourage the exchange of scientific information on the effects of atmospheric pollutants on forest ecosystems among the United States, Canada, European nations, and other nations;

"(G) support the long-term funding of research programs and related efforts to determine the causes of declines in the health and productivity of domestic forest ecosystems and the effects of atmospheric pollutants on the health and productivity of domestic forest ecosystems; and

"(H) enlarge the Eastern Hardwood Cooperative by devoting additional resources to field analysis of the response of hardwood species to atmospheric pollution, and other factors that may affect the health and productivity of these ecosystems.

"(2) The Secretary shall establish a committee to advise the Secretary in developing and carrying out the Program, which shall be composed of scientists with training and experience in various disciplines, including atmospheric, ecological, and biological sciences. Such scientists shall be selected from among individuals who are actively performing research for Federal or State agencies or for private industries, institutions, or organizations.

"(3) The Secretary shall coordinate the Program with existing research efforts of Federal and State agencies and private industries, institutions, or organizations.

"(4) The Secretary shall submit to the President and to Congress the following reports:

"(A) Not less than 30 days before establishing the Program, the Secretary shall submit an initial program report—

"(i) discussing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) outlining the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems;

"(iii) describing the Program; and

"(iv) estimating the cost of implementing the Program for each fiscal year of its duration.

"(B) Not later than January 15, 1990, and January 15 of each year thereafter, during which the Program is in operation following the year in which the initial program report is submitted, the Secretary shall submit an annual report—

"(i) updating information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) updating the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems, including efforts conducted under the Program;

"(iii) recommending additional research and monitoring efforts to be undertaken under the Program to determine the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems; and "(iv) recommending methods for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

"(C) Not later than 10 years after the date on which the initial program report is submitted, the Secretary shall submit a final report—

"(i) reviewing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) reviewing the nature and findings of all research and monitoring efforts conducted under the Program and any other relevant research and monitoring efforts related to the effects of atmospheric pollution on forest ecosystems; and

"(iii) making final recommendations for solving mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.".

SIPSEY RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM LEGISLATION

HEFLIN AMENDMENT NO. 3420

Mr. BYRD (for Mr. Heflin) proposed an amendment to the bill (S. 2838) to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as additions to the Cheaha Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the esthetic and recreational benefit of future generations of Alabamians, and for other purposes; as follows:

Strike out everything after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Sipsey Wild and Scenic River and Alabama Wilderness Addition Act of 1988".

TITLE I—WILD AND SCENIC RIVER DESIGNATION

Sec. 101. Section 3(a) of the Wild and Scenic River Act (82 Stat. 906, as amended; 16 U.S.C. 1274(a)) is amended by adding the following new paragraph:

"( )(A) Sipsey Fork of the West Fork, Alabama.—Segments of the Sipsey Fork and several tributaries, to be administered by the Secretary of Agriculture in the classifications indicated, as follows:

"(1) Sipsey Fork from the confluence of Sandy Creek upstream to Forest Highway 26, as a scenic river.

"(2) Sipsey Fork from Forest Highway 26 upstream to its origin at the confluence of Thompson Creek and Hubbard Creek, as a wild river.

"(3) Hubbard Creek from its confluence with Thompson Creek, upstream to Forest Road 210, as a wild river.

"(4) Thompson Creek from its confluence with Hubbard Creek upstream to its origin in section 4, township 8 south, range 9 west, as a wild river.

"(5) Tedford Creek from its confluence with Thompson Creek upstream to section 17, township 8 south, range 9 west, as a wild river.

"(6) Mattox Creek from its confluence with Thompson Creek upstream to section 36, township 7 south, range 9 west, as a wild river.

"(7) Borden Creek from its confluence with Sipsey Fork upstream to Forest Road 208, as a wild river.

"(8) Borden Creek from Forest Road 208 upstream to its confluence with Montgomery Creek, as a scenic river.

"(9) Montgomery Creek from its confluence with Borden Creek upstream to the southwest quarter of the southwest quarter of section 36, township 7 south, range 8 west, as a scenic river.

"(10) Flannigan Creek from its confluence with Borden Creek upstream to Forest Road 208, as a wild river.

"(11) Flannigan Creek from Forest Road 208 upstream to section 4, township 8 south, range 8 west, as a scenic river.

"(12) Braziel Creek from its confluence with Borden Creek upstream to section 12, township 8 south, range 9 west, as a wild river.

"(13) Hogood Creek from its confluence with Braziel Creek upstream to the confluence with an unnamed tributary in section 7, township 8 south, range 8 west, as a wild river.

"(B) A map entitled 'Sipsey Fork of the West Fork Wild and Scenic River', generally depicting the Sipsey Fork and the tributaries, is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.".

Sec. 102. The Secretary of Agriculture shall conduct a study to determine the feasibility of constructing a dam to establish a substantial lake, suitable for all types of recreational uses, to be located in the northeast portion of the Bankhead National Forest.

Sec. 103. The Secretary is authorized and directed to monitor the waters flowing towards and into Lewis Smith Lake and to take actions, including preventative maintenance, necessary to prevent any national forest management activities from causing injurious water quality.

TITLE II—WILDERNESS DESIGNATION

Sec. 201. (a) In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890), the following National Forest System lands in the State of Alabama, comprising approximately thirteen thousand nine hundred and seventy acres, as generally depicted on maps appropriately referenced and on file in the Office of the Chief of the Forest Service, Department of Agriculture, are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the William B. Bankhead National Forest which comprise approximately thirteen thousand two hundred and sixty acres as generally depicted on a map entitled "Sipsey Wilderness Additions-Proposed," dated September 1988, and which are hereby incorporated in and shall be deemed to be part of the Sipsey Wilderness.

(2) Certain lands in the Talladega National Forest which compromise approximately seven hundred and ten acres as generally depicted on a map entitled "Cheaha Wilderness Additions-Proposed," dated June 1988, and which are hereby incorporated in and shall be deemed to be a part of the Cheaha Wilderness.

(b) Subject to valid existing rights, wilderness designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964 (78 Stat. 890); *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(c) Consistent with section 4(d)(1) of the Wilderness Act of 1964, (78 Stat. 890), and the United States Forest Service policy, the Secretary of Agriculture may take such measures as may be necessary in the control of fire, insects, including the southern pine beetle, and diseases within the Sipsey Wilderness, and Sipsey Wilderness additions, including any areas within the designated boundaries of the Wild and Scenic Rivers, subject to conditions as the Secretary deems desirable: *Provided*, That such measures in the Secretary's judgment are deemed necessary to protect threatened resources on Federal, State, or private adjacent lands. Within five years from the date of enactment of this Act or sooner for good cause in the judgment of the Secretary, the Secretary shall evaluate the dangers and potential dangers created by the southern pine beetle and other insects in the Bankhead National Forest and adjacent State and private lands. If his evaluation of such dangers and potential dangers justify a review of present United States Forest Service policy about such insects, he shall review such policy for the Sipsey Wilderness additions, including any areas within designated boundaries of Wild and Scenic Rivers and adjacent Federal lands, relative to the control of such insects. Thereafter, he shall monitor the dangers and potential dangers of such insects and such policy, closely.

(d) The Secretary of Agriculture, at his discretion, shall convert existing roads within the Sipsey Wilderness Addition into suitable hiking or horse trails.

Sec. 202. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of National Forest System roadless areas in Alabama and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Alabama, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Alabama.

(2) with respect to the National Forest System lands in the State of Alabama which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), and those lands referred to in subsection (d), that review and evaluation or reference shall be deemed, for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plan, but shall review the wilderness option when the plans are revised, which revision will ordinarily occur on a ten-year cycle, or at least

every fifteen years, unless, prior to such time the Secretary finds that conditions in a unit have significantly changed;

(3) areas in the State of Alabama reviewed in such final environmental statement, or referenced in subsection (d), and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Planning Act of 1974, as amended by the National Forest Management Act of 1976: *Provided*, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Alabama are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable laws; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alabama for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

(d) The provision of this section shall also apply to National Forest System roadless lands in the State of Alabama which are less than five thousand acres in size.

SEC. 203. (a) As soon as practicable after enactment of this Act, the map and legal description of the Sipsey Wilderness Addition and the Cheaha Wilderness, as modified by section 201(a), shall be filed with the Committees on Agriculture and Interior and Insular Affairs of the House of Representatives and the Committees on Energy and Natural Resources and Agriculture, Nutrition, and Forestry of the Senate, and such map and legal description shall have the same force and effect as if included in this Act: *Provided, however,* That corrections of clerical and typographical errors in such legal description and map may be found.

FEDERAL EMPLOYEES' LEAVE-TRANSFER ACT

PRYOR AMENDMENT NO. 3421

Mr. BYRD (for Mr. PRYOR) proposed an amendment to the bill (H.R. 3757) to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of medical or other emergency situation; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Leave Act of 1988".

SEC. 2. VOLUNTARY TRANSFERS OF LEAVE.

(a) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapters:

"SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

"§ 6331. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means an employee as defined by section 6301(2), excluding an individual employed by the government of the District of Columbia;

"(2) the term 'leave recipient' means an employee whose application to receive donations of leave under this subchapter is approved;

"(3) the term 'leave donor' means an employee whose application to make 1 or more donations of leave under this subchapter is approved; and

"(4) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

"§ 6332. General authority

"Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee if such other employee requires additional leave because of a medical emergency.

"§ 6333. Receipt and use of transferred leave

"(a)(1) An application to receive donations of leave under this subchapter, whether submitted by or on behalf of an employee—

"(A) shall be submitted to the employing agency of the proposed leave recipient; and

"(B) shall include—

"(i) the name, position, title, and grade or pay level of the proposed leave recipient;

"(ii) the reasons why transferred leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

"(iii) if the employing agency so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under clause (ii); and

"(iv) any other information which the employing agency may reasonably require.

"(2) If an agency requires that an employee obtain certification under paragraph (1)(B)(iii) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

"(3) An employing agency shall approve or disapprove an application of a proposed leave recipient for leave under this subchapter, and, to the extent practicable, shall notify the proposed leave recipient (or other person acting on behalf of the proposed recipient, if appropriate) of the decision of the agency, in writing, within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receiving such application.

"(b) A leave recipient may use annual leave received under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued that leave under section 6303, except that any annual leave, and any sick leave, accrued or accumulated by the leave recipient and available for the purpose involved must be exhausted before any transferred annual leave may be used.

"(c) Transferred annual leave—

"(1) may accumulate without regard to any limitation under section 6304; and

"(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

"§ 6334. Donations of leave

"(a) An employee may, by written application to the employing agency of such employee, request that a specified number of hours be transferred from the annual leave account of such employee to the annual leave account of a leave recipient in accordance with section 6332.

"(b)(1) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave such donor would be entitled to accrue during the leave year in which the donation is made.

"(2) A leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may donate no more than the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

"(3) The employing agency of a leave donor may waive the limitation under paragraphs (1) and (2). Any such waiver shall be made in writing.

"(c) The Office of Personnel Management shall prescribe regulations to include procedures to carry out this subchapter when the leave donor and the leave recipient are employed by different agencies.

"§ 6335. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

"(1) the leave recipient notifies the employing agency of such leave recipient, in writing, that the medical emergency no longer exists;

"(2) the employing agency of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

"(3) the leave recipient is separated from service.

"(b)(1) The employing agency of a leave recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

"(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

"§ 6336. Restoration of transferred leave

"(a)(1) The Office of Personnel Management shall establish procedures under which, except as provided in paragraph (2), any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the appropriate accounts of the respective leave donors.

"(2) Nothing in paragraph (1) shall require the restoration of leave to a leave donor—

"(A) if the amount of leave which would be restored to such donor would be less than 1 hour or any other shorter period of time which the Office may by regulation prescribe;

"(B) if such donor retires, dies, or is otherwise separated from service, before the date on which such restoration would otherwise be made; or

"(C) if such restoration is not administratively feasible, as determined under regulations prescribed by the Office.

"(b) At the election of the leave donor, transferred annual leave restored to such leave donor under subsection (a) may be restored by—

"(1) crediting such leave to the leave donor's annual leave account in the then current leave year;

"(2) crediting such leave to the leave donor's annual leave account, effective as of the first day of the first leave year beginning after the date of the election; or

"(3) donating such leave in whole or part to another leave recipient; if a leave donor elects to donate only part of restored leave to another recipient, the donor may elect to have the remaining leave credited to the donor's annual leave account in accordance with paragraph (1) or (2).

"(c) The Office shall prescribe regulations under which this section shall be applied in the case of an employee who is paid other than on the basis of biweekly pay periods.

"(d) Restorations of leave under this section shall be carried out in a manner consistent with regulations prescribed to carry out section 6334(c), if applicable.

"§ 6337. Accrual of leave

"(a) For the purpose of this section—

"(1) the term 'paid leave status under subchapter I', as used with respect to an employee, means the administrative status of such employee while such employee is using sick leave, or annual leave, accrued or accumulated under subchapter I; and

"(2) the term 'transferred leave status', as used with respect to an employee, means the administrative status of such employee while such employee is using transferred leave under this subchapter.

"(b)(1) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual leave and sick leave shall accrue to the credit of such employee at the same rate as if such employee were then in a paid leave status under subchapter I, except that—

"(A) the maximum amount of annual leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days; and

"(B) the maximum amount of sick leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days.

"(2) Any annual or sick leave accrued by an employee under this section—

"(A) shall be credited to an annual leave or sick leave account, as appropriate, separate from any leave account of such employee under subchapter I; and

"(B) shall not become available for use by such employee, and may not otherwise be taken into account under subchapter I, until, in accordance with subsection (c), it is transferred to the appropriate leave account of such employee under subchapter I.

"(c)(1) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of such employee under subchapter I, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph (1) or (2) of section 6335(a).

"(2) If the employee's medical emergency terminates as described in section 6335(a)(3), no leave shall be credited to such employee under this section.

"§ 6338. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6339. Additional leave transfer programs

"(a) For the purpose of this section—

"(1) the term 'excepted agency' means—

"(A) the Central Intelligence Agency;

"(B) the Defense Intelligence Agency;

"(C) the National Security Agency;

"(D) the Federal Bureau of Investigation; and

"(E) as determined by the President, any Executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities; and

"(2) the term 'head of an excepted agency' means—

"(A) with respect to the Central Intelligence Agency, the Director of Central Intelligence;

"(B) with respect to the Defense Intelligence Agency, the Director of the Defense Intelligence Agency;

"(C) with respect to the National Security Agency, the Director of the National Security Agency;

"(D) with respect to the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation; and

"(E) with respect to an Executive agency designated under paragraph (1)(E), the head of such Executive agency, and with respect to a unit of an Executive agency designated under paragraph (1)(E), such individual as the President may determine.

"(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave transfer program established under any of the preceding provisions of this subchapter.

"(c)(1) The head of an excepted agency shall, by regulation, establish a program under which annual leave accrued or accumulated by an employee of such agency may be transferred to the annual leave account of any other employee of such agency if such other employee requires additional leave because of a medical emergency.

"(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established—

"(A) in a manner consistent with the provisions of this subchapter applicable to the program; and

"(B) without regard to any provisions relating to transfers or restorations of leave between employees in different agencies.

"(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

"§ 6340. Inapplicability of certain provisions

"Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in section 7351 shall apply with respect to a solicitation, donation, or acceptance of leave under this subchapter.

"SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

"§ 6361. Definitions

"For the purpose of this subchapter the term—

"(1) 'employee' means an employee as defined by section 6301(2), but shall exclude any individual employed by the government of the District of Columbia;

"(2) 'executive agency' means any executive agency or any administrative unit thereof;

"(3) 'leave bank' means a leave bank established under section 6363;

"(4) 'leave contributor' means an employee who contributes leave to an agency leave bank under section 6365;

"(5) 'leave recipient' means an employee whose application under section 6367 to receive contributions of leave from a leave bank is approved; and

"(6) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

"§ 6362. General authority

"(a) Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which—

"(1) annual leave accrued or accumulated by an employee may be contributed to a leave bank established by the employing agency of such employee; and

"(2) leave from such a leave bank may be made available to an employee who requires such leave because of a medical emergency.

"(b) To test voluntary leave bank programs under the provisions of this subchapter, the Office of Personnel Management shall establish a demonstration project in at least 3 Executive agencies, of which—

"(1) one such agency shall include approximately, but not less than, the equivalent of 100,000 full-time positions;

"(2) one such agency shall include approximately, but not less than, the equivalent of 25,000 full-time positions; and

"(3) one such agency shall include approximately, but not less than, the equivalent of 1,000 full-time positions.

"§ 6363. Establishment of leave banks

"Each agency that establishes a leave bank program under section 6362 shall establish 1 or more leave banks in accordance with regulations prescribed by the Office of Personnel Management.

"§ 6364. Establishment of Leave Bank Boards

"(a)(1) Each agency that establishes a leave bank shall establish a Leave Bank Board consisting of 3 members, at least one of whom shall represent a labor organization or employee group, to administer the leave bank under the provisions of this subchapter, in consultation with the Office of Personnel Management.

"(2) An agency may establish more than 1 Leave Bank Board based upon the administrative units within the agency. No more than 1 board may be established for each leave bank.

"(b) Each such Board shall—

"(1) review and approve applications to the leave bank under section 6367;

"(2) monitor each case of a leave recipient; and

"(3) monitor the amount of leave in the leave bank and the number of applications for use of leave from the bank; and

"(4) maintain an adequate amount of leave in the leave bank to the greatest extent practicable.

"§ 6365. Contributions of annual leave

"(a)(1) An employee may, by written application to the Leave Bank Board, request that a specified number of hours be transferred from the annual leave account of such employee to the leave bank established by such agency.

"(2) An employee may state a concern and desire to aid a specified proposed leave recipient or a leave recipient in the application filed under paragraph (1).

"(b)(1) Upon approving an application under subsection (a), the employing agency of the leave contributor may transfer all or any part of the number of hours requested for transfer, except that the number of hours so transferred may not exceed the limitations under paragraph (2).

"(2)(A) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave such contributor would be entitled to accrue during the leave year in which the contribution is made.

"(B) A leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may contribute no more than the number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

"(c) The Leave Bank Board of a leave contributor may waive the limitations under subsection (b)(2). Any such waiver shall be in writing.

"(d) The Office of Personnel Management shall prescribe regulations establishing an open enrollment period during which an employee may contribute leave under subsection (a) for a leave year.

"§ 6366. Eligibility for leave recipients

"(a) An employee is eligible to be a leave recipient if such employee—

"(1) experiences a medical emergency and submits an application pursuant to section 6367(a); and

"(2)(A) contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank of the employing agency of such employee, in the leave year (beginning in and including any part of a leave year in which such leave bank is established) that such employee submits an application to be a leave recipient under section 6367(a); and

"(B) such contribution is made before such employee submits an application under section 6367(a).

"(b)(1) An employee shall contribute the minimum number of hours required under subsection (a)(2)(A), if such employee is an employee—

"(A) for less than 3 years of service and contributes a minimum of 4 hours;

"(B) for between 3 years and less than 15 years of service and contributes a minimum of 6 hours; or

"(C) for 15 years or more of service and contributes a minimum of 8 hours.

"(2) Notwithstanding the provisions of paragraph (1), the Leave Bank Board of an agency, after consultation with the Office of Personnel Management, may—

"(A) reduce the minimum number of hours required under paragraph (1) for any leave year, if such Board determines there is a surplus of leave in the leave bank; and

"(B) increase the number of minimum hours required under paragraph (1) for the succeeding leave year, in any leave year in which the Board determines there is a shortage of leave in the leave bank.

"(c) An employee shall meet the requirements of subsection (a)(2)(A) if such employee contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank with which such employee submits an application to be a leave recipient under section 6367(a).

"(d) The provisions of subsection (a) may not be construed to limit the amount of the voluntary contribution of annual leave to a leave bank, which does not exceed the limitations of section 6365(b).

"§ 6367. Receipt and use of leave from a leave bank

"(a) An application to receive contributions of leave from a leave bank, whether submitted by or on behalf of an employee—

"(1) shall be submitted to the Leave Bank Board of the employing agency of the proposed leave recipient; and

"(2) shall include—

"(A) the name, position title, and grade or pay level of the proposed leave recipient;

"(B) the reasons why leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

"(C) if such Board so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under subparagraph (B); and

"(D) any other information which such Board may reasonably require.

"(3) If a Board requires that an employee obtain certification under paragraph (2)(C) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

"(b) The Leave Bank Board of an employing agency may approve an application submitted under subsection (a).

"(c) A leave recipient may use annual leave received from the leave bank established by the employing agency of such employee under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued such leave under section 6303, except that any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient shall be used before any leave from the leave bank may be used.

"(d) Transferred annual leave—

"(1) may accumulate without regard to any limitation under section 6304; and

"(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

"(e) Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in the provisions of section 7351 shall apply to any solicitation, contribution, or use of leave to or from a leave bank under this subchapter.

"§ 6368. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

"(1) the leave recipient notifies the Leave Bank Board in writing, that the medical emergency no longer exists;

"(2) the Leave Bank Board of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

"(3) the leave recipient is separated from service.

"(b)(1) The Leave Bank Board of a recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

"(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

"§ 6369. Restoration of transferred leave

"The Office of Personnel Management shall establish procedures under which any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates, shall be restored to the leave bank.

"§ 6370. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6371. Accrual of leave

"While using leave made available to an employee from a leave bank, annual and sick leave shall accrue to the credit of such employee and shall become available for use by such employee in the same manner as provided for under section 6337.

"§ 6372. Additional leave bank programs

"(a) For the purpose of this section—

"(1) the term 'excepted agency' has the same meaning as such term is defined under section 6338(a)(1) of this title; and

"(2) the term 'head of an excepted agency' has the same meaning as such term is defined under section 6338(a)(2) of this title.

"(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave bank program established under any of the preceding provisions of this subchapter.

"(c)(1) The head of an excepted agency may, by regulation, establish a voluntary leave bank program under which annual leave accrued or accumulated by an employee of such agency may be contributed to a leave bank, and any other employee of such agency may receive additional leave from such leave bank because of a medical emergency.

"(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established in a manner consistent with the provisions of this subchapter applicable to the program.

"(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

"§ 6373. Limitation on employee participation

"An employee in a unit of an agency that establishes a leave bank program under the provisions of this subchapter may not participate in a leave transfer program under the provisions of subchapter III.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

"Sec.
"6331. Definitions.
"6332. General authority.
"6333. Receipt and use of transferred leave.
"6334. Donations of leave.
"6335. Termination of medical emergency.
"6336. Restoration of transferred leave.
"6337. Accrual of leave.
"6338. Prohibition of coercion.
"6339. Additional leave transfer programs.
"6340. Inapplicability of certain provisions.

"SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

"6361. Definitions.
"6362. General authority.
"6363. Establishment of leave banks.
"6364. Establishment of Leave Bank Boards.
"6365. Contributions of annual leave.
"6366. Eligibility for leave recipients.
"6367. Receipt and use of leave from a leave bank.
"6368. Termination of medical emergency.
"6369. Restoration of transferred leave.
"6370. Prohibition of coercion.
"6371. Accrual of leave.
"6372. Additional leave bank programs.
"6373. Limitation on employee participation.".

(c) IMPLEMENTATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS.—(1) No later than 3 months after the date of the enactment of this Act, the Office of Personnel Management shall prescribe regulations to implement leave transfer programs pursuant to the amendments made by this Act.

(2) No later than 6 months after the date of the enactment of this Act—

(A) the head of each agency involved under sections 6332 and 6339 of title 5, United States Code, shall establish and begin operating a leave transfer program in accordance with applicable provisions of subchapter III of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office; and

(B) the Office of Personnel Management shall prescribe regulations to implement leave bank programs pursuant to the amendments made by this Act.

(3) No later than 9 months after the date of the enactment of this Act, the head of each agency involved under section 6362 of title 5, United States Code, shall establish and begin operating a leave bank in accordance with subchapter IV of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office.

(d) TERMINATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS AFTER 5 YEARS.—(1)(A) Subchapters III and IV of chapter 63 of title 5, United States Code, are repealed effective 5 years after the date of the enactment of this Act.

(B) The table of sections for subchapter III and the table of sections for subchapter IV of chapter 63 of title 5, United States Code, are repealed effective 5 years after the date of the enactment of this Act.

(2) If a leave transfer program under subchapter III of chapter 63 of title 5, United States Code, or the leave bank program under subchapter IV of such chapter, terminates before the termination of the medical emergency affecting a leave recipient under such program, any leave which was transferred to the leave recipient before the termination of the program shall remain available for use (including by restoration to leave donors or leave contributors, as the case may be, and if applicable) as if the program had remained in effect.

(3)(A) Any annual leave remaining in an agency's leave bank under subchapter IV of chapter 63 of title 5, United States Code, shall, upon the repeal of such subchapter be dispensed in accordance with subparagraph (B).

(B) If there are any employees who, based on applications submitted before the effective date of the repeal of such subchapter, are found (before, on, or after that date) to be eligible to receive leave in connection with any medical emergency, annual leave contributed to the leave bank before such date shall, until the last such emergency has terminated, remain available for use by any such employee under the same terms and conditions as if the program had remained in effect.

(4) For the purpose of this subsection, "medical emergency", "leave recipient", "leave bank", and "employee" each has the meaning given that term under subchapter III or subchapter IV of chapter 63 of title 5, United States Code, as applicable.

(e) REPORT TO THE CONGRESS.—(1)(A) Within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination date of any program under subchapter III or subchapter IV of chapter 63 of title 5, United States Code (excluding any program under sections 6339 and 6372 of such chapter) the Office of Personnel Management shall submit a written report to the Congress with respect to the operations of such programs.

(B) The Office of Personnel Management may require agencies to maintain such records and to provide such information as the Office may need to carry out subparagraph (A).

(2) The excepted agencies that establish programs under sections 6339 and 6372 of title 5, United States Code, shall report to the Congress on the operation of such programs within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination of any such programs.

(f) CONTINUATION OF TEMPORARY LEAVE TRANSFER PROGRAMS.—Any temporary program allowing for transfers of leave among officers or employees of the Federal Government may, if such program is being implemented with respect to an agency (or any unit thereof) as of the date of the enactment of this Act, continue to be implemented with respect to such agency (or unit), notwithstanding any provision of law which would otherwise terminate the authority for such program, pending the commencement of a leave transfer program with respect to such agency pursuant to amendments made by this Act. The Office of Personnel Management (or, in the case of a program established by another agency, such other agency) shall prescribe regulations to ensure that any leave which has been transferred to the credit of an officer or employee and which remains unused as of the date on which any such temporary program terminates (and a successor program commences pursuant to amendments made by this Act) shall not be lost by reason of that termination.

SEC. 3. TRAVEL EXPENSES OF CAREER APPOINTEES.

Section 5724(a)(3)(A) of title 5, United States Code, is amended by striking out "during the five years preceding eligibility to receive an annuity under subchapter III of chapter 88, or of chapter 84 of this title, and thereafter" and inserting in lieu thereof "during or after the five years preceding eligibility to receive an annuity under subchapter III of chapter 88, or of chapter 84 of this title".

SEC. 4. Section 6 of the Civil Service Miscellaneous Amendments Act of 1983 (Public Law 98-224; 98 Stat. 49) is amended by striking out "September 30, 1990," and inserting in lieu thereof "September 30, 1995.".

ROTH AMENDMENT NO. 3422

Mr. WILSON (for Mr. ROTH) proposed an amendment to the bill, H.R. 3757, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . Section 8112 of title 5, United States Code, is amended—

(1) by redesignating such section as subsection (a) of section 8112; and

(2) by adding at the end thereof the following new subsection:

"(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) of title 18, and was sustained in the performance of duty.".

NATIONAL SUPERCONDUCTIVITY AND COMPETITIVENESS ACT

JOHNSTON AMENDMENT NO. 3423

Mr. BYRD (for Mr. JOHNSTON for himself, Mr. FOWLER, Mr. DOMENICI, Mr. BINGAMAN, and Mr. BUMPERS) proposed an amendment to the bill (H.R. 3048) to establish a national Federal program effort in close collaboration with the private sector to develop as rapidly as possible the applications of superconductivity to enhance the Nation's economic competitiveness and strategic well-being, and for other purposes; as follows:

1. Strike all after the enacting clause and insert in lieu thereof the following:

"That this Act may be cited as the 'Research Initiatives and Technology Competitiveness Act of 1988'.

"TITLE I—SUPERCONDUCTIVITY AND COMPETITIVENESS

"SEC. 101. SHORT TITLE.

"This title may be cited as the 'National Superconductivity and Competitiveness Act of 1988'.

"SEC. 102. FINDINGS AND PURPOSES.

"(a) FINDINGS.—For purposes of this title, Congress finds that—

"(1) recent discoveries of high-temperature superconducting materials could result in significant new applications of these materials in such areas as microelectronics, computers, power systems, transportation, medical imaging, and nuclear fusion, yet most potential applications may well lie beyond our ability to predict them;

"(2) full application of the new superconductors is expected to require 10 to 20 years, thus calling for long-term commitments by the public and private sector to appropriate research and development programs;

"(3) the Nation's economic competitiveness and strategic well-being depend greatly on the development and application of critical advanced technologies such as those anticipated to evolve from the new superconducting materials;

"(4) the United States manufacturing industries confront strong competition in both domestic and world markets as other countries are increasingly taking advantage of modern technology and production techniques and innovative management focused on quality;

"(5) whereas we have as a Nation been highly successful in the conduct of basic research in a variety of scientific areas, including superconductivity, other nations have been highly successful in the commercial and military application of the results of such fundamental research;

"(6) if the United States is to regain its competitive advantage, it must commit sufficient long-term resources to solving processing and manufacturing problems in parallel with basic research and development;

"(7) Federal agencies have responded aggressively to this exciting challenge by reprogramming funds to basic superconductivity research while informally coordinating their efforts to avoid unnecessary duplication; and further commitment of Federal funding and efforts directed to developing manufacturing, materials processing, and fabrication technologies is essential so that these activities may be conducted in parallel;

"(8) successful development and application of the new superconducting materials will require close collaboration between the Federal Government and the industrial and academic components of the private sector, as well as coordinating among the Federal departments and agencies involved in research and development on superconductors;

"(9) a committed Federal programs effort with appropriate long-term goals, priorities, and adequate resources is necessary for the rapid development and application of the new superconducting materials; and

"(10) a national program should serve as a test of new agency authorities directed at technological competitiveness such as those provided to the Department of Energy.

"(b) PURPOSES.—The purposes of this title are—

"(1) to establish a 5-year national action plan to research and develop new high-temperature superconducting materials with appropriate goals and priorities; and

"(2) to designate the appropriate roles, mechanisms, and responsibilities of various Federal departments and agencies in implementing such a national research and development action plan.".

"SEC. 103. NATIONAL ACTION PLAN ON SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT.

"(a) ESTABLISHMENT.—(1) The Director of the Office of Science and Technology Policy shall establish a 5-year National Action Plan on Advanced Superconductivity Research and Development (hereinafter in this title referred to as the 'Superconductivity Action Plan').

"(2) The Office of Science and Technology Policy shall coordinate the development of the Superconductivity Action Plan and any recommendations required by this Act with the National Critical Materials Council and the National Committee on Superconductivity.

"(b) CONTENT AND SCOPE.—The Superconductivity Action Plan shall include—

"(1) goals and priorities for advanced superconductivity research and development to be carried out by individual departments and agencies and organizational elements therein;

"(2) the assignment of responsibility for the conduct of advanced superconductivity research and development among the departments, agencies, and organization elements therein;

"(3) recommendation of proposed funding levels for activities relating to superconductivity of the 5 years following the date of enactment of this title for each of the participating departments, agencies, and organizational elements therein; and

"(4) proposals for the participation by industry and academia in the planning and implementation of the Superconductivity Action Plan.

"(c) ACTION PLAN REPORT.—The Office of Science and Technology Policy, in conjunction with the National Critical Materials Council, shall submit a report detailing the Superconductivity Action Plan to the Committee on Science, Space and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate, within 9 months after the date of enactment of this title.

"(d) UPDATE REPORTS.—The Office of Science and Technology Policy, with the assistance of the National Critical Materials Council as specified in the National Critical Materials Act of 1984 (30 U.S.C. 1801 et seq.), shall prepare an annual report setting forth and evaluating the progress of the Superconductivity Action Plan. This report shall include a description of the amount of funds expended in the previous year by all Federal departments and agencies involved with superconductivity. This report shall be submitted with the President's annual budget request to the Committee on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate.

"SEC. 104. DEPARTMENT OF ENERGY.

"The Secretary of Energy shall conduct a program in superconductivity research and development in accordance with the provisions of subtitle A of title II. Within 180 days after the date of enactment of this title, and for the two succeeding years thereafter, the Secretary shall submit annual reports on the implementation of technology transfer activities under the Stevenson-Wydler Technology Innovation Act of 1980, title II of this Act, and related law with respect to superconductivity research and development to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate. Such report shall include recommendations for improvements in the technology transfer between government and industry, and in the management of property developed or made at the National Laboratories.

"SEC. 105. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

"In pursuance of the goals of this title, the National Institute of Standards and Technology shall promote fundamental research and materials standards to accelerate the use and application of the new superconducting materials, and shall utilize the Superconductivity Center focusing on electronic applications at the National Institute of Standards and Technology in Boulder, Colorado.

"SEC. 106. NATIONAL SCIENCE FOUNDATION.

"The National Science Foundation shall promote fundamental research in pursuance of the goals of this title.

"SEC. 107. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

"The National Aeronautics and Space Administration shall utilize existing programs in technology transfer, aeronautics and space technology, and space commercialization to promote the commercial applications of high-temperature superconductors, including applications relating to thin film technology, communications technology, sensors, space power, and propulsion.

"SEC. 108. DEPARTMENT OF DEFENSE.

"(a) FOCUS OF RESEARCH.—In conformance with the Superconductivity Action Plan, the Secretary of Defense, in the superconductivity research and development activities of the Department of Defense, shall give emphasis to fundamental research, materials processing, and applications of new superconducting materials.

"(b) ADDITIONAL ACTIVITIES.—In conducting research under subsection (a), the Secretary of Defense shall—

"(1) systematically define the engineering parameters for high-temperature superconducting materials; and

"(2) conduct the necessary development, engineering, and operation prototype testing considered appropriate to the overall mission of the Department of Defense. Such operational prototype testing shall, where appropriate, utilize criteria developed by the Defense Advanced Research Projects Agency.

"(c) DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.—The Director of the Defense Advanced Research Projects Agency shall, in conformance with the Superconductivity Action Plan, conduct activities to—

"(1) augment, as appropriate, basic and applied superconductivity research conducted in other federal agencies and industry; and

"(2) develop criteria for operational prototype testing within the Department of Defense.

"SEC. 109. INTERNATIONAL COOPERATION.

"The President, as part of the Superconductivity Action Plan, shall establish a program of international cooperation in the conduct of fundamental and basic research on superconducting materials. Such program of international cooperation shall include the exchange of basic information and data, as well as the development of international standards for the use and application of superconducting materials.

"SEC. 110. TECHNOLOGY TRANSFER.

"(a) PROMOTION.—In pursuance of the goals of this title, all Federal departments and agencies shall conduct technology transfer activities as appropriate to the overall mission of each department or agency to—

"(1) complement basic superconductivity research by promoting the rapid development of manufacturing and processing technologies necessary for the commercialization of high-temperature superconductors; and

"(2) promote collaborative arrangements and consortia of industry (which shall include small business) in order to lower the barriers to deployment of advanced high-temperature superconductor technology; such consortia to also include, as appropriate, universities and independent research organizations.

"(b) IMPEDIMENTS TO COMMERCIALIZATION.—The Director of the Office of Science and Technology Policy, in collaboration with the Secretary of Commerce and the Secretary of Energy, shall identify those Federal policies and regulations which impede the ability of the private sector to undertake long-term investment programs to commercialize superconductivity applications.

"TITLE II—NATIONAL LABORATORY COOPERATIVE RESEARCH INITIATIVES

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Department of Energy National Laboratory Cooperative Research Initiatives Act'.

"SEC. 202. DEFINITIONS.

"For purposes of this title, the term—

"(a) 'National Laboratory' means the following Department of Energy laboratories—

"(1) Lawrence-Livermore National Laboratory;

"(2) Lawrence-Berkeley National Laboratory;

"(3) Los Alamos National Laboratory;

"(4) Sandia National Laboratory;

"(5) Fermi National Accelerator Laboratory;

"(6) Princeton Plasma Physics Laboratory;

"(7) Idaho National Engineering Laboratory;

"(8) Argonne National Laboratory;

"(9) Brookhaven National Laboratory;

"(10) Oak Ridge National Laboratory, including the Y-12 Plant;

"(11) Pacific Northwest Laboratory;

"(12) Ames Laboratory;

"(13) Stanford Linear Accelerator Center;

"(14) Bates Linear Accelerator Facility;

"(15) Center for Energy and Environment Research;

"(16) Coal Fired Flow Facility;

"(17) Energy Technology Engineering Center;

"(18) Hanford Engineering Development Laboratory;

"(19) Inhalation Toxicology Research Institute;

"(20) Laboratory for Energy-Related Health Research;

"(21) Laboratory of Biomedical and Environmental Sciences;

"(22) Laboratory of Radiology and Enviromental Health;

"(23) Michigan State University-DOE Plant Research Laboratory;

"(24) Notre Dame Radiation Laboratory;

"(25) Oak Ridge Associated Universities;

"(26) Radiobiology Laboratory;

"(27) Savannah River Ecology Laboratory;

"(28) Savannah River Laboratory;

"(29) Solar Energy Research Institute; and

"(30) Stanford Synchrotron Radiation Laboratory.

"Such term also includes any future government-owned, contractor-operated laboratory facilities established as Department of Energy Multi-program Laboratories or Program-Dedicated Facilities. Such term does not include Naval Nuclear Propulsion Reactor Laboratories, or their contractors or subcontractors performing work covered under Executive Order 12344, as codified in section 7158 of title 42, United States Code.

"(b) 'Secretary' means the Secretary of Energy.

"(c) 'Federal Agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments defined by section 102 of title 5, United States Code.

"(d) 'contract' means any contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code, entered into between any Federal agency and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a contract.

"(e) 'cooperative research and development agreement' means any agreement between one or more National Laboratories and one or more federal or non-federal parties under which the Government, through its National Laboratories, provides personnel, services, facilities, equipment, or other resources with or without reimbursement and the non-federal parties provide funds, personnel, services, facilities, and equipment, or other resources toward the conduct of specified research, development, and demonstration efforts that are consistent with the missions of the National Laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.

"(f) 'funding agreement means any contract, grant, or cooperative agreement entered into between the Secretary of Energy and a contractor operating a National Laboratory of the Department of Energy that provides for such contractor to perform research and development at such National Laboratory.

"SEC. 203. POLICY.

"(a) It is a mission of the National Laboratories to foster, through the transfer of technology to the private sector consistent with the national security and a fair return on the taxapyers' investment, the commercialization of technologies developed in connection with activities of such Laboratories authorized under title I, subtitle A of this title, and other law.

"(b) The Secretary shall take such actions as he finds appropriate and consistent with law to further the mission set forth in subsection (a).

"SUBTITLE A—THE DEPARTMENT OF ENERGY NATIONAL LABORATORIES CENTERS FOR RESEARCH ON ENABLING TECHNOLOGIES FOR HIGH TEMPERATURE SUPERCONDUCTING APPLICATIONS.

"SEC. 210. FINDINGS.

"For purposes of this subtitle, Congress finds that:

"(1) the Department of Energy has conducted extensive research in superconducting materials to support its programmatic activities in High Energy Physics, Magnetic Fusion Energy, Energy Storage Systems, Electric Energy Systems, and Energy Conservation, pursuant to the Federal Nonnuclear Energy Reseach and Development Act of 1974 (P.L. 93-577), the Energy Reorganization Act of 1974 (P.L. 93-483), and the Department of Energy Organization Act (P.L. 95-91);

"(2) recent developments in high-temperature superconducting materials hold great promise for highly efficient energy storage and transmission, medical diagnostics, magnets for physics research and fusion reactors, and smaller supercomputers;

"(3) the United States is a world leader in basic research on high-temperature superconducting materials, and programs supporting this research at the Department of Defense, the National Science Foundation, and the Department of Energy should be maintained and strengthened;

"(4) international interest in the commercialization of high-temperature superconducting materials is high and the key to success in commercialization lies in the rapid development of these materials and the identification of their applications; and

"(5) the National Laboratories have demonstrated expertise in high-temperature superconductivity research and a proven record in research in enabling technologies which can benefit industrial efforts in product development.

"SEC. 211. PURPOSES.

"The purposes of this subtitle are—

"(1) to provide for research on critical enabling technologies to assist United States industry in the commercialization of high-temperature superconductors;

"(2) to provide national organization and coordination in the research, development and commercialization of high-temperature superconductors; and

"(3) to encourage private industry, university, and National Laboratory interaction through centers for research on enabling technologies for high-temperature superconductivity at the National Laboratories.

"SEC. 212. ESTABLISHMENT OF THE HIGH TEMPERATURE SUPERCONDUCTOR RESEARCH INITIATIVE.

"The Secretary of Energy shall initiate and carry out a cooperative program of research on enabling high-temperature superconductor technology and on the practical applications of such technology (hereafter in this subtitle referred to as the 'Initiative').

"SEC. 213. PARTICIPATION OF NATIONAL LABORATORIES.

"(a) Mission of National Laboratories.—The Secretary shall ensure that the National Laboratories participate in the Initiative, to the extent that such participation does not detract from the primary mission of any participating National Laboratory.

"(b) Agreements.—The Secretary shall enter into such agreements with other Federal agencies, with U.S. private industrial or research organizations, or consortia, or with any college or university, as may be necessary to provide for the active participation of the National Laboratories in the Initiative.

"(c) Required Provisions.—The Initiative shall include provisions for one or more National Laboratories to conduct research and development activities relating to research on high-temperature superconductivity. Such activities may include research and development in associated technologies including thin film and bulk ceramic synthesis and processing and the characterization of physical, chemical, and structural properties in materials.

"SEC. 214. FORMATION OF COUNCIL AND CENTERS FOR RESEARCH ON ENABLING TECHNOLOGIES.

"(a) Council.—The Secretary of Energy shall form the 'Council for Research on Enabling Technologies' (hereafter in this subtitle referred to as the 'Council') that shall be composed of representatives of appropriate government agencies, universities, and industry to provide advice to the Secretary in setting goals and strategies for the Initiative. The Council shall recommend guidelines for the release of the technical findings and developments made by the cooperative research centers established pursuant to subsection (b). Guidelines for releasing technical findings set forth by the Council shall be consistent with guidelines set forth by affected Federal agencies.

"(b) Cooperative Research Centers.—(1) The Secretary shall establish cooperative research centers in enabling technologies for high-temperature superconducting materials and applications (hereafter in this subtitle referred to as "Centers") at one or more National Laboratories with appropriate university and private industry participants.

"(2) The Centers shall be located at National Laboratories that demonstrate expertise in—

"(A) high-temperature superconductivity research; and

"(B) research in associated technologies including—

"(i) thin film and bulk ceramic synthesis and processing; and

"(ii) characterization of physical, chemical, and structural properties in materials.

"(c) Avoidance of Duplication.—The Council shall keep apprised of activities taking place at the existing Research Centers on Superconductivity and Superconductivity Pilot Centers. In carrying out the responsibilities of subsection (a), the Council shall recommend to the Secretary and such Centers measures to ensure that unnecessarily duplicative research or activities are not being carried out at these Centers.

"SEC. 215. PERSONNEL EXCHANGES.

"The Initiative may include provisions for temporary exchanges of personnel between any domestic firm or university referred to in this subtitle and the National Laboratories that are participating in the Initiative. The exchange of personnel may be subject to such restrictions, limitations, terms and conditions as the Secretary considers necessary in the interest of national security.

"SEC. 216. OTHER DEPARTMENT OF ENERGY RESOURCES.

"(a) Availability of Resources.—The Secretary shall make available to other departments or agencies of the Federal Government, and to any participant in research and development projects under the Initiative, any facilities, personnel, equipment, services, and other resources of the Department of Energy for the purpose of conducting research and development projects under the Initiative.

"(b) Reimbursement.—At his discretion, the Secretary may make facilities available under this section only to the extent that the cost of the use of such facilities is reimbursed by the user.

"SEC. 217. BUDGETING FOR HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH.

"To the extent the Secretary considers appropriate and necessary, the Secretary, in preparing the research and development budget of the Department of Energy to be included in the annual budget submitted to the Congress by the President for fiscal years 1990, 1991, 1992, 1993, 1994, and 1995 under section 1105(a) of title 31, United States Code, shall provide for programs, projects, and activities that encourage the development of new technology in the field of high-temperature superconductivity.

"SEC. 218. COST-SHARING AGREEMENTS.

"(a) Permitted Provisions.—The Secretary shall ensure that contracts for the operation of National Laboratories provide the director of each National Laboratory that is participating in the Initiative or the contractor operating any such National Laboratory the authority to receive funds under any cooperative research and development agreement entered into with a domestic firm or university under the Initiative.

(b) Considerations.—The director of each National Laboratory that is participating in the Initiative, in determining the type and extent of its laboratory participation in carrying out work for others, shall undertake such work only when facilities are available and when it would not interfere with Department of Energy programs, and such work shall be conducted in such a way as to not create a future detrimental burden on the National Laboratory.

(c) Limitations.—(1) An amount equal to not more than 10 percent of any National Laboratory's annual budget may be received from non-appropriated funds derived from work for others contracts entered into under the Initiative in any fiscal year, except to the extent appoved in advance by the Secretary.

"(2) Under subsection (a) no National Laboratory may receive from any person more than $10,000,000 of non-appropriatiated funds, or the equivalent of such amount, under any cooperative research and development agreement entered into under the Initiative, except to the extent approved in advance by the Secretary.

"SEC. 219. OVERSIGHT OF COOPERATIVE AGREEMENTS RELATING TO THE INITIATIVE.

"(a) Provisions Relating to Disapproval and Modification of Agreements.—(1) The Secretary may review a cooperative research and development agreement for the purpose of disapproving or requiring the modification of the cooperative research and development agreement. Each such agreement shall provide a 30-day period within which the agreement may be disapproved or modified by the Secretary beginning on the date the agreement is submitted to the Secretary.

"(2) In any case in which the Secretary disapproves, or requires the modification of, any agreement submitted to the Secretary under this section, within 30 days after such submission, the Secretary shall transmit a written explanation of such disapproval or modification to the head of the National Laboratory concerned.

"(b) Record of Agreements.—Each National Laboratory shall maintain a record of all agreements entered into under this subtitle section and submit such record to the Secretary on an annual basis.

"SEC. 220. AVOIDANCE OF DUPLICATION.

"In carrying out the Initiative, the Secretary shall ensure that unnecessarily duplicative research is not performed at the research facilities of the Department of Energy (including the National Laboratories) that are participating in the Initiative.

"SUBTITLE B—TECHNOLOGY MANAGEMENT AT THE DEPARTMENT OF ENERGY NATIONAL LABORATORIES

"SEC. 231. FINDINGS AND PURPOSE.

"(a) Findings.—For purposes of this subtitle, Congress finds that—

"(1) private industry has great interest in scientific collaboration with the National Laboratories but only if the present Department of Energy's present laboratory contracting process can be streamlined and intellectual property associated with joint ventures, adequately protected;

"(2) contracts for the operation of the National Laboratories must provide the directors of such Laboratories with sufficient management authority for intellectual property to ensure that the director can negotiate with industry to set up cooperative research and development agreements.

"(3) the authority provided to the directors of the National Laboratories should be subject to periodic audit and oversight by the Secretary, the Inspector General and the Comptroller General as well as Congress.

"(4) there should be timely, consistent review procedure to ensure that commercialization potential is considered when software is developed under a Department of Energy contract or may have involved some Department of Energy funding;

"(5) the National Laboratories must be perceived as "user-friendly" in order for industry to seriously consider the laboratories partners for collaborative research and development ventures;

"(6) the National Laboratories must aggressively seek contact with private industries to ensure that they recognize the technical and scientific expertise resident in these laboratories, in addition to publicizing the availability of user facilities and technological projects in progress;

"(7) the National Laboratories have demonstrated successes in technology transfer into the private sector but the effort can be significantly enhanced if—

"(A) industry becomes more aware of the National Laboratory research and development projects and capabilities;

"(B) technology transfer is considered a significant part of the National Laboratories' mission;

"(C) the National Laboratories become better educated in industry market requirements; and

"(D) industry gets involved with the National Laboratories early enough in the research and development process to direct development of commercially viable products; and

"(8) nuclear weapons design, development, production, and maintenance must remain the primary mission of the Department of Energy nuclear weapons complex.

"(b) Purpose.—The purpose of this subtitle is to better meet the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in the National Laboratories' research and development in meeting international competition.

"SEC. 232. DUTIES AND AUTHORITIES OF THE SECRETARY.

"(a)(1) The Secretary shall review all existing regulations, policy guidelines, orders, directives, procedures, and administrative processes associated with the National Laboratories directors' ability to:

"(A) enter into cooperative relationships and cooperative research and development agreements with private industry or universities;

"(B) undertake work-for-others; and

"(C) operate user facilities.

"(2) The Secretary shall review existing standards for resolving potential conflicts of interests to ensure that such standards adequately establish guidelines for situations likely to arise through the use of the authorities granted in this subtitle, including but not limited to cases where present or former National Laboratory employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the Department of Energy or the laboratory manager or operator with which the employee involved is or was formerly employed).

"(b) The Secretary shall—

"(1) review the impact of the exchange of scientific information, scientific innovation, and commercialization resulting from cooperative research and development agreements.

"(2) survey non-federal parties interested in entering into cooperative research and development agreements with the National Laboratories to determine if adequate measures exist to encourage scientific innovation and commercialization resulting from cooperative research and development agreements; and

"(3) based on the results of such review and survey develop policy recommendations that shall be submitted to the Congress.

"(c) The Secretary shall—

"(1) formulate and carry out a comprehensive set of policy guidelines to advance the goals of this subtitle, based on the review under subsection (a);

"(2) report to Congress and the President within 90 days after the date of the enactment of this subtitle on the status of this review; and

"(3) within 180 days after the date of the enactment of this subtitle, implement the policy guidelines under paragraph (1) that do not require regulations under section 242.

"SEC. 233. POLICY.

"It is the policy of Congress that—

"(a) intellectual property rights in technology developed at the National Laboratories be managed so as to promote the competitiveness of United States industries;

"(b) the Secretary prescribe regulations for cooperative research and development agreements and intellectual property rights arising under such agreements; and

"(c) the directors of the National Laboratories devise implementing procedures consistent with the policy guidelines set by the Secretary.

"SEC. 234. DEFINITIONS.

"(a) For purposes of this subtitle, the term—

"(1) 'collaborative party' means a party to a cooperative research and development agreement as defined in Section 202(e);

"(2) 'computer software' means recorded information, regardless of form or the media on which it may be recorded, comprising computer programs or documentation thereof;

"(3) 'director of a National Laboratory' means the employee of the Department of Energy laboratory manager or operator who directs the management and operation of such National Laboratory;

"(4) 'intellectual property' means patents, trademarks, copyrights, mask works, and other forms of comparable property rights protected by federal law;

"(5) 'invention' means any invention that is or may be patentable or otherwise protected under Title 35, United States Code, or any novel variety of plant that is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.);

"(6) 'laboratory manager or operator' means the contractor who has signed a contract with the Secretary for management and operation of a National Laboratory (but only with respect to activities relating to such management or operation);

"(7) 'laboratory owned' means any rights in intellectual property conveyed under this title to a contractor operating a National Laboratory or any rights in intellectual property arising under the operating contract for a National Laboratory where rights are not expressly taken by the United States Government or by a subcontractor;

"(8) 'made' when used in conjunction with any invention means the conception or first actual reduction to practice of such invention;

"(9) 'subject invention' means any invention of a National Laboratory first conceived or reduced to practice in the performance of work under a contract or funding agreement for the operation of a National Laboratory;

"(10) 'third parties' means domestic entities located in the United States who agree to manufacture and to conduct research, and development substantially in the United States including—

"(A) Federal agencies other than the Department of Energy;

"(B) units of State or local government;

"(C) industrial organizations, such as corporations, partnerships, limited partnerships, consortia, or industrial development organizations;

"(D) public and private foundations;

"(E) nonprofit organizations such as universities; and

"(F) licensees of inventions or computer software owned by the laboratory manager or operator.

"SEC. 235. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

"(a) General Authority.—The Secretary shall prescribe regulations ensuring that the contract for the operation of any National Laboratory authorizes the director of such Laboratory:

"(1) to enter into cooperative research and development agreements and to negotiate the terms and conditions of such agreements with—

"(A) other federal agencies;

"(B) units of state or local government;

"(C) industrial organizations including corporations, partnerships, and limited partnerships, consortia, and industrial development organizations;

"(D) public and private foundations;

"(E) nonprofit organizations including universities; or

"(F) other persons or entities, including licensees of inventions or computer software owned by the laboratory manager or operator.

"(2) to negotiate intellectual property licensing agreements for National Laboratory owned inventions or computer software, assigned or licensed to the National Laboratory by third parties including voluntary assignment by employees.

"(b) Specific Authority.—Each director of a National Laboratory may negotiate and include provisions in any cooperative research and development agreement entered into pursuant to this section permitting the laboratory manager or operator to—

"(1) accept, retain, and use funds, personnel, services, and property from collaborative parties and provide personnel, services, and property to collaborating parties;

"(2) grant or agree to grant in advance to a collaborative party, intellectual property licenses, assignments, or options thereto, in any invention or computer software, made, in whole or in part, by an employee of a laboratory manager or operator under the cooperative research and development agreement; and

"(3) to the extent consistent with Department of Energy regulations, orders, and directives pertaining to conflict of interest, permit employees or former employees of a laboratory manager or operator to participate in efforts to transfer to the private sector inventions or computer software, such employees developed or made while in the service of such laboratory manager or operator.

"(c) Criteria for Entering Into Agreements.—In determining whether to enter into a cooperative research and development agreement the director of a National Laboratory shall determine that—

"(1) facilities at the National Laboratory will be available to do the work that is the subject of the cooperative research and development agreement;

"(2) the work that is the subject of the cooperative research and development agreement would not interfere with Department of Energy programs;

"(3) the work that is the subject of the cooperative research and development agreement would not create a future detrimental burden on the National Laboratory; and

"(4) the proposed cooperative research and development agreement is consistent with applicable guidelines of the Secretary for cooperative research and development agreements.

"(d) Approval of Agreement by Secretary.—The Secretary may disapprove or require the modification of a cooperative research and development agreement under subsection (a). Such agreement shall provide a 30-day period beginning on the date the agreement is submitted to the Secretary by the director of the National Laboratory concerned, within which period such action may be taken by the Secretary. In any case in which the Secretary disapproves or requires the modification of any cooperative agreement submitted under this section, the Secretary shall transmit a written explanation of such disapproval or modification to the director of the National Laboratory concerned within 30 days after such submission. If such action is not taken within this thirty day period, the cooperative research and development agreement shall be deemed approved.

"(e) Limit on Percentage of the Total Work Cooperative Research and Development Agreements Can Comprise at the National Laboratories.—The cumulative total of non-appropriated funds contracted to be received in any year under all cooperative research and development agreements entered into by the director of any National Laboratory under this subtitle may not exceed an amount equal to 10 percent of the annual budget of such National Laboratory unless approved by the Secretary.

"(f) Records of Agreements.—The director of each National Laboratory shall maintain a record of all cooperative research and development agreements entered into under this subtitle, and shall submit a copy of such record to the Secretary on an annual basis.

"SEC. 236. AGREEMENT CONSIDERATIONS.

"In deciding which cooperative research and development agreements to enter into, and which licenses, assignments, and options to grant, the director of a National Laboratory shall:

"(a) give special consideration to small business firms and consortia involving small business firms;

"(b) give preference to business units located in the United States that agree that products embodying inventions or computer software, made under the cooperative research and development agreement or produced through the use of such inventions or computer software, will be developed and manufactured substantially in the United States;

"(c) in the case of any industrial organizations or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements; and

"(d) provide universities the opportunity to participate in such cooperative research and development agreements when such participation will contribute to the purpose of this subtitle.

"SEC. 237. PATENT OWNERSHIP AND THE CONDITIONS OF OWNERSHIP.

"(a) Disposal of Title to Investions.—Notwithstanding section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908), or other provision of law, the Secretary shall dispose of the title to any subject invention made in the performance of a Department of Energy contract to operate any National Laboratory in the same manner as applied to small business and nonprofit organizations under Chapter 18 of title 35, United States Code.

"(b) Retention of Title by United States.—(1) Whenever a manager, operator or employee of a National Laboratory under a contract makes a subject invention to which the Secretary has determined (at the time of contracting for the management and operation of the National Laboratory) to retain title for exceptional circumstances under section 202(a)(ii) of title 35, United States Code, the title to the subject invention shall be retained by the Government unless the National Laboratory at which the invention is made requests title to such invention and the Secretary does not notify the director of the National Laboratory within 90 days receipt of such request that the invention—

"(A) is covered by a determination under such section 202(a)(ii); or

"(B) has been classified or has been designated sensitive technical information as authorized by Federal statutes.

"(2) Whenever a manager or operator of a National Laboratory under a contract makes a subject invention to which the Secretary has determined (at the time of contracting for the management and operation of the National Laboratory) to retain title because the invention is made in the course of or under a funding agreement described in section 202(a)(iv) of title 35, United States Code, the title to the subject invention shall be retained by the Government unless the National Laboratory at which the invention is made requests title to such invention and the Secretary does not notify the director of the National Laboratory within 90 days after receipt of such request that the invention—

"(A) has been classified or has been designated sensitive technical information as authorized by Federal statutes; and

"(B) is covered by a determination under such subsection 202(a)(iv).

"(3) The Secretary may not use export control statues or regulations as the sole basis for refusing a request for title to a subject invention.

"(4) If the Secretary does not notify a National Laboratory that has requested title to a subject invention in accordance with this section, such Laboratory shall be deemed to have elected title to the invention under the Government-wide contractor patentable ownership provisions of chapter 18 of title 35, United States Code.

"SEC. 238. SPECIAL RULE FOR WAIVER OF GOVERNMENT LICENSE RIGHTS.

"Any of the rights of the Government or obligations of a National Laboratory described in chapter 18 of title 35, United States Code, including the license reserved in section 202(c)(4) of title 35, United States Code, may be waived or omitted if the Secretary determines that the interests of the United States and the general public will be better served or the objectives and policies of this subtitle will be better promoted by such waiver or omission. A waiver or omission shall be considered—

"(a) if it is necessary to obtain a uniquely or highly qualified collaborative party; or

"(b) if such waiver or omission relates to a subject invention involving cosponsored, cost sharing or joint venture research and development, and the contractor, cosponsor or joint venturer is making substantial contribution of funds, facilities or equipment to the work performed on such invention; or

"(c) if the subject invention will require substantial additional investment in development before a product is created even if it is expected that the primary market for such product is the United States Government.

"SEC. 239. INTELLECTUAL PROPERTY CONTRACT PROVISIONS.

"(a) Contract Provisions.—Any Department of Energy funding agreement to operate a National Laboratory shall provide—

"(1) that any royalties or income that is earned by the manager or operator of a National Laboratory from the licensing of laboratory-owned intellectual property rights in any fiscal year shall be used as authorized under subsection 202(c)(7)(E) of title 35, United States Code and Section 13(a)(1)(B) (i)-(iv) and section 13(a) (2)-(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B) (i)-(iv) and 3710c(a) (2)-(4); and

"(2) that the costs of obtaining and protecting intellectual property rights in any invention or computer software, owned by the National Laboratory shall be paid for by the laboratory manager or operator as a cost shared expense under a cooperative research and development agreement.

"(b) The Secretary shall ensure that all intellectual property granted to a laboratory manager or operator shall be subject to a royalty-free license to use and reproduce such intellectual property for United States Government purposes.

"(c) The Secretary shall establish procedures to have the management of intellectual property rights, including procurement, retention, and licensing of such rights, in connection with laboratory-owned inventions and computer software, be the responsibility of the director of the National Laboratory at which the invention or computer software are made, developed or assigned.

"(d) The Secretary shall prescribe regulations, orders, or directives prohibiting any laboratory manager or operator who has received title to intellectual property under this section from receiving money or other benefit from the use or licensing of such property for the benefit of the laboratory manager or operator, except for research and development associated with activities at the National Laboratory to promote technology transfer as authorized by law, or in special circumstances, as may be approved by the appropriate Department of Energy Operations Office manager.

"(e) Compensation.—(1) Subject to paragraph (2), in return for retaining title to any intellectual property rights in any invention or discovery made in performance of a Department of Energy cooperative research agreement, the manager or operator of any National Laboratory contractor shall pay to the United States reasonable compensation based on the value of the technology transferred. The amount of the payment arising as a result of the transfer shall be set by an arbitration board consisting of one member selected by the contractor, one member selected by the Secretary, and one member jointly selected by the contractor and the Secretary. In determining the payment, the arbitration boards shall set an amount that is proportionate with the research and development costs funded by the United States. The arbitration board shall have discretion to permit the payment to the made in installments according to the extent the contractor uses or employs the intellectual property.

"(2) Paragraph (1) shall not apply if:

"(A) the contractor is operating the National Laboratory for no profit or fee beyond expenses; and

"(B) such contractor is offering the intellectual property for fair market value and any value or royalties the contractor derives from the intellectual property will be returned to the National Laboratory or the Federal Treasury in accordance with Section 202(c)(7)(E) of title 35, United States Code.

"SEC. 240. MARCH-IN RIGHTS.

"The Secretary may require the licensing to third parties of all intellectual property owned by the laboratory manager or operator that is subject to the provisions of this subtitle in the same manner as provided under section 203 of title 35, United States Code.

"SEC. 241. OVERSIGHT.

"(a) The Secretary, the Inspector General of the Department of Energy, and the Comptroller General shall conduct periodic audits of activities of the National Laboratories under this subtitle.

"(b) Nothing in this title diminishes the responsibility of the Secretary to keep Congress fully and currently informed or the right of Congress to review and receive information with respect to any agreement, license, or intellectual property subject to this title.

"SEC. 242. REGULATIONS.

"(a) Within 180 days after the date of the enactment of this subtitle, the Secretary shall prescribe regulations for implementing sections 235, 237 and 239. In prescribing regulations under this section the Secretary shall provide opportunity for public comment on proposed regulations.

"(b) Any regulations under this section shall be guided by the purpose of this subtitle.

"(c) Before the Secretary issues regulations under this section, the Secretary shall consult and with the Office of Federal Procurement Policy to review such regulations for consistency with this subtitle.

"SEC. 243. COPYRIGHTS AND PATENTS.

"This title does not confer any new authority on the Department of Energy to obtain a copyright or a patent.

"SEC. 243. EFFECTIVE DATE.

"This subtitle shall take effect on the date of enactment. The Secretary shall immediately enter into negotiations with each laboratory manager or operator to amend all existing contracts for the operation of the National Laboratories, to reflect this subtitle. Pending such amendment, the provisions of this subtitle shall govern the disposition of all intellectual property rights covering laboratory owned inventions and computer software, generated in performance of Department of Energy contracts for the operation of the National Laboratories.

"TITLE III—RENEWABLE ENERGY AND ENERGY EFFICIENCY

"SECTION 301. SHORT TITLE.

"This title may be cited as the 'Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1988'.

"SEC. 302. PURPOSE.

"PURPOSE.—It is the purpose of this title to direct the Secretary of Energy, acting in accordance with authority contained in the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901-5920) and other law applicable to the Secretary, to pursue an aggressive national program of research, development, and demonstration of renewable energy and energy efficiency technologies in order to ensure a stable and secure future energy supply by—

"(1) providing a long-term stable environment for renewable energy and energy efficiency technology research and development activities through the establishment of long-term goals and multi-year funding levels;

"(2) directing the Secretary to undertake initiatives to hasten the commercialization in the near term of renewable energy and energy efficiency technologies; and

"(3) fostering collaborative research and development efforts involving the private sector through government support of a vigorous program of innovative joint research and development venture projects.

"SEC. 303. DEFINITIONS.

"As used in this title the term—

"(1) 'Secretary' means the Secretary of Energy; and

"(2) 'joint research and development venture' means a joint research and development venture under the National Cooperative Research Act of 1984 (98 Stat. 1815).

"SEC. 304. NATIONAL GOALS AND MULTI-YEAR FUNDING FOR FEDERAL WIND, PHOTOVOLTAICS AND SOLAR THERMAL PROGRAMS.

"(a) NATIONAL GOALS.—The following are declared to be the national goals for the wind, photovoltaics and solar thermal energy programs currently being carried out by the Secretary under existing law:

"(1) WIND.—(A) In general, the goals for the Wind Energy Research Program include improving design methodologies and developing more reliable and efficient wind turbines to increase the cost competitiveness of wind energy. Research efforts shall emphasize—

"(i) activities that address near-term technical problems and permit exploitation of current market opportunities of the wind energy industry;

"(ii) developing advanced airfoils and variable speed generators to increase wind turbine output and reduce maintenance costs by decreasing structural stress and fatigue;

"(iii) increasing the basic knowledge of aerodynamics, structural dynamics, fatigue and electrical systems interactions as applied to current wind energy technology; and

"(iv) improving the compatibility of electricity produced from windfarms with conventional utility needs.

"(B) Specific goals for the Wind Energy Research Program shall be to—

"(i) reduce average wind energy costs to 3 to 5 cents per kilowatt hour by 1995;

"(ii) reduce capital costs of new wind energy systems to $500 to $750 per kilowatt of installed capacity by 1995;

"(iii) increase installed wind generating capacity to 4000 to 8000 megawatts by 1995;

"(iv) reduce operation and maintenance costs for wind energy systems to less than 1.0 cents per kilowatt hour by 2000; and

"(v) increase capacity factors for new wind energy systems to 25 to 30 percent by 1995.

"(2) PHOTOVOLTAICS.—(A) In general, the goals of the Photovoltaic Energy Systems Program shall include improving the reliability and conversion efficiencies and lowering the costs of photovoltaic conversion. Research efforts shall emphasize advancements in the performance, stability and durability of photovoltaic materials.

"(B) Specific goals of the Photovoltaic Energy Systems Program shall be to—

"(i) improve operational reliability of photovoltaic modules to 30 years by 1995;

"(ii) increase photovoltaic conversion efficiency of new photovoltaic amorphous silicon modules to 15 percent by 1995;

"(iii) decrease new photovoltaic module direct manufacturing costs to $800 per kilowatt by 1995; and

"(iv) increase installed capacity of photovoltaic electric power production capacity to 100 to 200 megawatts by 1991.

"(3) SOLAR THERMAL.—(A) In general, the goal of the Solar Thermal Energy Systems Program shall be to advance research and development to a point where solar thermal technology is cost-competitive with conventional energy sources and to promote the integration of this technology into the production of industrial process heat and the conventional utility network. Research and development shall emphasize development of a thermal storage technology to provide capacity for shifting power to periods of demand when full insolation is not available; improvement in receivers, energy conversion devices, and innovative concentrators using stretch membranes, lenses and other materials; and exploration of advanced manufacturing techniques.

"(B) Specific goals of the Solar Thermal Energy Systems Program shall be to—

"(i) reduce solar thermal costs for industrial process heat to $9.00 per million Btu; and

"(ii) reduce average solar thermal costs for electricity to 4 to 5 cents per kilowatt hour.

"(4) The President's budget request for fiscal year 1991 shall contain the Secretary's recommendations for specific cost, installed capacity, and other pertinent goals for 1995 for Department of Energy research, development, and demonstration programs in Biofuels Energy Systems, Solar Buildings Energy Systems, Ocean Energy Systems and Geothermal Energy.

"(b) AUTHORIZATION.—There is authorized to be appropriated to the Secretary—

"(1) for the Wind Energy Research Program, an amount not to exceed $14,000,000 in fiscal year 1990; $22,000,000 in fiscal year 1991; and $26,000,000 in fiscal year 1992;

"(2) for the Photovoltaic Energy Systems Program, an amount not to exceed $43,100,000 in fiscal year 1990; $45,000,000 in fiscal year 1991; and $50,000,000 in fiscal year 1992;

"(3) for the Solar Thermal Energy Systems Program, an amount not to exceed $19,000,000 in fiscal year 1990; $22,000,000 in fiscal year 1991; and $25,000,000 in fiscal year 1992;

"(4) for the Biofuels Energy Systems Program, an amount not to exceed $22,000,000 in fiscal year 1990; $25,000,000 in fiscal year 1991; and $30,000,000 in fiscal year 1992;

"(5) for the Solar Building Energy Systems Program, an amount not to exceed $8,000,000 in fiscal year 1990; $9,000,000 in fiscal year 1991; and $10,000,000 in fiscal year 1992;

"(6) for the Ocean Energy Systems Program, an amount not to exceed $5,000,000 in fiscal year 1990; $5,000,000 in fiscal year 1991; and $5,000,000 in fiscal year 1992; and

"(7) for the Geothermal Program, an amount not to exceed $25,000,000 in fiscal year 1990; $29,000,000 in fiscal year 1991; and $35,700,000 in fiscal year 1992.

"(c) PROJECTS.—(1) The President's budget request for fiscal year 1992 shall include the Secretary's recommendations for at least one proposed proof-of-concept or near-commercial demonstration project in each of the catagories represented by paragraphs (1), (2), and (3) of subsection (b). Each proposed project shall be described in sufficient detail to support congressional authorization and solicitation of bids for construction of necessary facilities.

"(2) A list and description of alternative project plans under this subsection shall be submitted in President's fiscal year 1991 budget request. Such plans shall require funding or in-kind contributions from private sources in support of up to fifty percentum of total project costs.

"(3) In selecting projects under this subsection, the Secretary shall take into account the extent to which such projects will contribute to earlier commercialization of key technologies within such categories than might occur without Federal support under this subsection and the extent to which such projects will contribute to the competitiveness of U.S. firms engaged in international trade in renewable energy technologies.

"(d) Report on Options.—On or before May 1, 1991, the Secretary shall submit to Congress a report analyzing options available to the Secretary under existing law to accelerate the timely commercialization of wind, photovoltaic, solar thermal, biofuels, biomass, solar buildings, ocean and geothermal renewable energy technologies through emphasis on development and demonstration assistance to specific technologies in the research, development, and demonstration programs of the Department of Energy that are near commercial application.

"(e) Amended Goals.—Whenever the Secretary determines that any of the goals established under this section is no longer appropriate, he shall notify Congress of the reason for the determination and provide an amended goal that is consistent with the purposes of this title.

"SEC. 305. ENERGY EFFICIENCY RESEARCH AND DEVELOPMENT.

"(a) New Initiatives.—The President's budget request for fiscal years 1991 and 1992 shall include the Secretary's recommendations of amounts to be set aside for new initiatives in energy efficiency research, development, and demonstration. Funds made available for new initiatives shall supplement and not supplant funds available to complete on-going energy efficiency research, development, and demonstration projects supported in whole or in part by the Secretary during fiscal year 1990. Funds made available for new initiatives shall be used by the Secretary to support the most promising and deserving new ideas in energy efficiency research, development, and demonstration brought to the attention of the Secretary during the previous fiscal year.

"(b) Authorizations.—

"(1) Fiscal year 1990.—There is hereby authorized to be appropriated to the Secretary for the energy efficiency research, development, and demonstration programs of the Secretary, an amount not to exceed $176,600,000 in fiscal year 1990, of which $20,250,000 shall be available for new initiatives, as set forth below:

"(A) for transportation energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $58,000,000 of which $3,200,000 shall be made available for new initiatives;

"(B) for industrial energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $42,000,000, of which $5,800,000 shall be available for new initiatives;

"(C) for buildings and community systems energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $42,000,000, of which $9,250,000 shall be available for new initiatives;

"(D) for multi-sector energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $33,000,000, of which $2,000,000 shall be available for new initiatives; and

"(E) for energy efficiency research, development, and demonstration policy and management, there is authorized to be appropriated to the Secretary an amount not to exceed $1,600,000.

"(2) Fiscal year 1991.—There is hereby authorized to be appropriated to the Secretary for the energy efficiency research, development, and demonstration programs of the Secretary, an amount not to exceed $192,600,000 in fiscal year 1991, of which $6,000,000 shall be available for new initiatives, as set forth below:

"(A) for transportation energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $63,200,000, of which $2,000,000 shall be made available for new initiatives;

"(B) for industrial energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $45,000,000, of which $1,000,000 shall be available for new initiatives;

"(C) for buildings and community systems energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $45,000,000, of which $2,000,000 shall be available for new initiatives;

"(D) for multi-sector energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $35,700,000, of which $1,000,000 shall be available for new initiatives; and

"(E) for energy efficiency research, development, and demonstration policy and management, there is authorized to be appropriated to the Secretary an amount not to exceed $1,700,000.

"(3) Fiscal year 1992.—There is hereby authorized to be appropriated to the Secretary for the energy efficiency research, development, and demonstration programs of the Secretary, an amount not to exceed $204,047,000 in fiscal year 1992, of which $6,000,000 shall be available for new initiatives, as set forth below:

"(A) for transportation energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $65,460,000, of which $2,000,000 shall be made available for new initiatives;

"(B) for industrial energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $46,740,000, of which $1,000,000 shall be available for new initiatives;

"(C) for buildings and community systems energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $53,000,000 of which $2,000,000 shall be available for new initiatives;

"(D) for multi-sector energy efficiency research, development, and demonstration, there is authorized to be appropriated to the Secretary an amount not to exceed $37,050,000, of which $1,000,000 shall be available for new initiatives; and

"(E) for energy efficiency research, development, and demonstration policy and management, there is authorized to be appropriated to the Secretary an amount not to exceed $1,797,000.

"SEC. 306. JOINT RESEARCH AND DEVELOPMENT VENTURES.

"(a) Findings and Purposes.—

"(1) Findings.—For purposes of this section, Congress finds that joint research and development ventures can—

"(A) improve coordination in technology development among firms in industries attempting to commercialize renewable energy and energy efficiency technologies:

"(B) assist in setting national standards to improve the operation of markets for these technologies; and

"(C) enhance the ability of domestic firms to compete with foreign enterprises in sales of renewable energy and energy efficiency technologies.

"(2) Purpose.—The purpose of this section is to direct the Secretary of Energy to make use of joint research and development ventures to further commercialization of renewable energy and energy efficiency technologies.

"(b) Establishment.—

"(1) The Secretary shall establish six joint research and development ventures in accordance with the provisions of this section. Each joint research and development venture under this section shall include manufacturing firms, investors, an advisory committee appointed in accordance with this section, and such other participation as the Secretary deems appropriate to achieve the purposes of this section. Any facilities constructed under this section shall be located in the United States, Puerto Rico, the Virgin Islands, or the territories and possessions of the United States.

"(2) The Secretary shall require that at least 30 per centum of all costs of any joint research and development venture under this section be provided from non-federal sources.

"(3) Before establishing the joint research and development ventures under paragraph (1), the Secretary shall consult with, and take into consideration the recommendations of, the Advisory Committee on Renewable Energy and Energy Efficiency Technology under paragraph (4).

4)(A) The Secretary shall appoint members to an Advisory Committee on Renewable Energy and Energy Efficiency Technology (hereinafter referred to as the 'Advisory Committee') to assist the Secretary in carrying out his responsibilities under this section. The Advisory Committee shall include at least one member representing each of the following—

"(i) the Secretary of Commerce;

"(ii) The Secretary of Housing and Urban Development;

"(iii) the Solar Energy Research Institute;

"(iv) the Electric Power Research Institute;

"(v) the National Institute of Building Sciences;

"(vi) associations of firms in each of the major the renewable energy manufacturing industries; and

"(vii) associations of firms in each of the major energy efficiency manufacturing industries.

"(B) The Advisory Committee, within 120 days after its formation, provide the Secretary with recommendations for the establishment of joint ventures under paragraph (1) and shall advise the Secretary from time to time about the implementation of such ventures. Recommendations of the Advisory Committee shall be available to the public.

"(5) The Secretary shall establish at least one joint research and development venture in accordance with subsection (c) to develop technology and expertise in each of the following areas—

"(A) photovoltaics technology;

"(B) wind energy technology;

"(C) solar thermal technology;

"(D) factory-made housing;

"(E) advanced district cooling technology; and

"(F) renewable energy and energy efficiency technology exports.

"(6) Not later than 180 days after the date of the enactment of this section the Secretary shall publish plans to implement this section and report to Congress on such plans.

"(c) VENTURES.—

"(1) PHOTOVOLTAICS TECHNOLOGY.—(A) The Secretary shall establish and provide financial assistance to a joint research and development venture for the demonstration of photovoltaic conversion of solar energy in accordance with the provisions of this paragraph.

"(B) The purpose of the venture under subparagraph (A) shall be to design, test and demonstrate systems employing critical enabling technologies for photovoltaic conversion of solar energy so as to achieve, to the maximum extent practicable, the goals of the Photovoltaic Energy Systems Program set forth in section 304(a)(2), as those goals may be amended under section 304(e). The venture under this paragraph may emphasize production, distribution, storage, or end use of electricity from photovoltaic conversion of solar energy or any combination thereof.

"(C) In soliciting proposals for the joint research and development venture under this paragraph, the Secretary shall consider the recommendations of the Advisory Subcommittee on Photovoltaic Energy Technology under subparagraph (D).

"(D) The Secretary shall appoint members to an Advisory Subcommittee on Photovoltaic Energy Technology to assist the Secretary in carrying out his responsibilities with respect to the joint venture under this paragraph. Such subcommittee shall include such members of the Advisory Committee as the Secretary deems appropriate and, in addition, at least one member representing each of the following—

"(i) firms in the photovoltaic manufacturing industry;

"(ii) the Director of the Agency for International Development; and

"(iii) the Director of the Export-Import Bank.

"(E) There is authorized to be appropriated to the Secretary a total of not more than $1,200,000 for each of the fiscal years 1990, 1991 and 1992 to carry out the purposes of this paragraph.

"(2) WIND ENERGY TECHNOLOGY.—(A) The Secretary shall establish and provide financial assistance to a joint research and development venture for the demonstration of the conversion of wind energy in accordance with the provisions of this paragraph.

"(B) The purpose of the venture under subparagraph (A) shall be to design, test and demonstrate systems employing critical enabling technologies for the conversion of wind energy so as to achieve, to the maximum extent practicable, the goals of the Wind Energy Research Program set forth in section 304(a)(1), as those goals may be amended under section 304(e). The venture under this paragraph may emphasize production, distribution, storage, or end use of wind energy or any combination thereof and may include systems employing other sources of energy in addition to wind energy.

"(C) In soliciting proposals for the joint research and development venture under this paragraph, the Secretary shall consider the recommendations of the Advisory Subcommittee on Wind Energy Technology under subparagraph (D).

"(D) The Secretary shall appoint members to an Advisory Subcommittee on Wind Energy Technology to assist the Secretary in carrying out his responsibilities with respect to the joint venture under this paragraph. Such subcommittee shall include such members of the Advisory Committee as the Secretary deems appropriate and, in addition, at least one member representing each of the following—

"(i) firms in the wind energy equipment manufacturing industry;

"(ii) the Director of the Agency for International Development; and

"(iii) the Director of the Export-Import Bank.

"(E) There is authorized to be appropriated to the Secretary a total of not more than $1,200,000 for each of the fiscal years 1990, 1991 and 1992 to carry out the purposes of this paragraph.

"(3) SOLAR THERMAL TECHNOLOGY.—(A) The Secretary shall establish and provide financial assistance to a joint research and development venture for the demonstration of the use of solar thermal energy in accordance with the provisions of this paragraph.

"(B) The purpose of the venture under subparagraph (A) shall be to design, test and demonstrate critical enabling technologies for the use of solar thermal energy so as to achieve, to the maximum extent practicable, the goals of the Solar Thermal Energy Systems Program set forth in section 304(a)(3), as those goals may be amended under section 304(e). The venture under this paragraph may emphasize production, distribution, storage, or end use of solar thermal energy or any combination thereof and may include systems employing other sources of energy in addition to solar thermal energy.

"(C) In soliciting proposals for the joint research and development venture under this paragraph, the Secretary shall consider the recommendations of the Advisory Subcommittee on Solar Thermal Energy Technology under subparagraph (D).

"(D) The Secretary shall appoint members to an Advisory Subcommittee on Wind Energy Technology to assist the Secretary in carrying out his responsibilities with respect to the joint venture under this paragraph. Such subcommittee shall include such members of the Advisory Committee as the Secretary deems appropriate and, in addition, at least one member representing each of the following—

"(i) firms in the solar thermal manufacturing industry;

"(ii) the Director of the Agency for International Development;

"(iii) the Director of the Export-Import Bank; and

"(iv) the Gas Research Institute.

"(E) There is authorized to be appropriated to the Secretary a total of not more than $900,000 for each of the fiscal years 1990 through 1992 to carry out the purposes of this paragraph.

"(4) FACTORY-MADE HOUSING.—The Secretary shall establish and provide financial assistance to a joint research and development venture with such specialized private firms and investors as the Secretary deems appropriate in order to establish at least three regional projects to demonstrate techniques to improve the energy performance of factory-made housing offered by United States firms. In locating the projects under this paragraph, the Secretary shall consider regional differences in housing needs, housing design, construction technique, marketing practices, and construction materials.

"(C) The projects under this paragraph shall be designed to demonstrate state-of-the-art product quality, energy efficiency, and adaptability to renewable forms of energy of factory-made housing offered for sale in the United States. The projects shall be structured to demonstrate improvements in housing design, fabrication, delivery systems, construction processes, marketing, and product export techniques.

"(D) The demonstration strategy under this paragraph shall be guided by—

"(i) a detailed characterization of the needs of the home building industry;

"(ii) a close working relationship with all sectors of the home building industry; and

"(iii) coordination among the projects to pool and conserve resources.

"(E) In selecting projects under this section, the Secretary shall consider the recommendations of the Advisory Subcommittee on Energy Performance in Factory-Made Housing established under subparagraph (F).

"(F) The Secretary shall appoint members to an Advisory Subcommittee on Energy Performance in Factory-Made Housing to assist the Secretary in carrying out his responsibilities with respect to the joint research and development venture established under this paragraph. Such subcommittee shall include such members of the Advisory Committee as the Secretary deems appropriate and, in addition, at least one member representing each of the following—

"(i) the National Association of Home Builders;

"(ii) the National Laboratories of the Department of Energy; and

"(iii) the National Bureau of Standards.

"(G) There is authorized to be appropriated to the Secretary a total of not more than $10,000,000 for each of the fiscal years 1990 through 1992 to carry out the purposes of this paragraph.

"(5) ADVANCED DISTRICT COOLING TECHNOLOGY.—(A)(i) The Secretary shall establish and provide financial assistance to a joint research and development venture with such specialized private firms and investors as the Secretary deems appropriate in order to develop advanced district cooling technologies that are applicable in cities with high cooling loads.

"(ii) The purpose of the joint venture under this paragraph is to develop technical strategies for decreasing the capital cost and increasing the energy efficiency of major district heating and cooling system components and to assist in making district heating and cooling available to local governments.

"(B) The Secretary shall select three cities for application of advance district cooling technologies developed by the joint venture under this paragraph. The activities to be carried out in such application shall include district cooling assessment, feasibility, and engineering design studies.

"(C) In selecting the cities under subparagraph (B), the Secretary shall consider the recommendations of the Advisory Subcommittee on Advanced District Cooling Technology established under subparagraph (D).

"(D) The Secretary shall appoint members to an Advisory Subcommittee on Advanced District Cooling Technology to assist the Secretary in carrying out his responsibilities with respect to the joint research and development venture under this paragraph. Such subcommittee shall include such members of the Advisory Committee as the Secretary deems appropriate and, in addition, at least one member representing each of the following—

"(i) firms manufacturing district cooling equipment; and

"(ii) the National League of Cities.

"(E) There is authorized to be appropriated for each of the fiscal years 1990 through 1992 not more than $1,000,000 per year to carry out the purposes of this paragraph.

"(6) Export technology projects.—(A) for purposes of this paragraph Congress finds that—

"(i) the United States has several advanced energy efficiency and renewable energy technologies that lack only sufficient coordination, support, and emphasis to become important export items capable or reducing the United States' trade deficit;

"(ii) a major barrier to export of energy efficiency and renewable energy technology is the lack of information on overseas markets and technology development by foreign competitors;

"(iii) the industry that markets energy efficiency technology is highly fragmented, and the renewable energy industry is comprised of small firms that lack the necessary resources to identify and target overseas markets and;

"(iv) a joint research and development venture is needed to bring together a broad array of manufacturing firms, financial institutions, and Federal agencies to identify and develop promising technologies and export markets for energy efficiency and renewable energy technologies.

"(B) The Secretary shall establish and provide financial assistance to a joint research and development venture with such specialized private firms and investors as the Secretary determines appropriate for the purpose of improving energy efficiency and renewable energy manufacturing processes in order to enhance product reliability and cost competitiveness relative to foreign-made products. The joint venture under this paragraph shall be coordinated with research, assessment, and targeting of foreign markets for energy efficiency and renewable energy products.

"(C) In designing the joint venture under subparagraph (B), the Secretary shall consider the recommendations of the Advisory Subcommittee on Renewable Energy and Energy Efficiency Technology Exports established under subparagraph (D).

"(D) The Secretary shall appoint members to an Advisory Subcommittee on Renewable Energy and Energy Efficiency Technology Exports to assist the Secretary in carrying out his responsibilities with respect to the joint research and development venture under this paragraph. Such subcommittee shall include such members of the Advisory Committee as the Secretary deems appropriate and, in addition, at least one member representing each of the following—

"(i) the Director of the Agency for International Development;

"(ii) the Director of the Export-Import Bank;

"(iii) the United States Export Council for Renewable Energy;

"(iv) the National Laboratories of the Department of Energy.

"(E) There is authorized to be appropriated to the Secretary to carry out the purposes of this paragraph a total amount for each of the fiscal years 1990 through 1992 not to exceed $5,000,000 with respect to renewable energy activities under this paragraph and $5,000,000 with respect to energy efficiency activities under this paragraph.

"SEC. 307. RENEWABLE ENERGY EXPORTS.

"(a) Findings and Purpose.—(1) For purposes of this section, Congress finds that—

"(A) Among the major problems in promoting exports of renewable energy technology are the lack of available information on overseas markets and the absence of financing for the purchase of the technologies; and

"(B) the Committee on Renewable Energy, Commerce, and Trade ('CORECT') established under the Renewable Energy Industry Development Act (Public Law 98-370) currently coordinates Federal government activities to promote renewable energy exports.

"(2) The purpose of this section is to evaluate current efforts to promote exports of renewable energy technology, to establish a joint government-industry plan to identify promising technologies and increase the financing available for exports of renewable energy technologies, to target potential markets for these technologies, and to authorize funding of these activities.

"(b) Review of CORECT.—In order to provide reliable information on overseas markets for renewable energy technology, the Secretary shall review the activities of the Committee on Renewable Energy, Commerce, and Trade in order to determine if current efforts by such Committee to promote exports of renewable energy technology are sufficient and whether additional efforts are necessary. The Secretary shall report to Congress the results of such review within six months after the date of the enactment of this Act.

"(c) Report.—Each participating member of the Committee on Renewable Energy, Commerce, and Trade shall report annually to Congress on the actions of such agency during the previous fiscal year to achieve the purposes of the Committee on Renewable Energy, Commerce, and Trade and of this section. Such report shall describe the exports of renewable energy technology that have occurred as a result of such agency actions.

"(d) Plan.—The Committee on Renewable Energy, Commerce, and Trade shall—

"(1) establish a joint government-industry plan to maintain or increase the market share of the United States in international trade in renewable energy technologies, including technologies for production of alcohol fuels, biomass energy, geothermal energy, wood energy and in technologies for passive solar energy conversion, photovoltaics, solar thermal energy conversion and wind energy conversion. Such plan shall include guidelines for agencies that are members of the Committee with respect to the financing of exports of such renewable energy technologies;

"(2) develop, in consultation with representatives of affected industries, administrative guidelines for Federal export loan programs to simplify application by firms seeking export assistance for renewable energy technologies from agencies implementing such programs; and

"(3) target renewable energy technology markets for primary emphasis by Federal export loan programs, development programs, and private sector assistance programs.

"(e) Authorizations.—There is hereby authorized to be appropriated to the Secretary for activities of the Committee on Renewable Energy, Commerce, and Trade an amount not to exceed—

"(1) $1,500,000 in fiscal year 1990;

"(2) $2,200,000 in fiscal year 1991; and

"(3) $2,500,000 in fiscal year 1992.

"SEC. 308. RENEWABLE ENERGY.

"(a) Dissemination of Information.—Section 523 of the National Energy Conservation Policy Act (42 U.S.C. 8243) is amended by adding a new subsection (d) as follows:

"(d) In order to more widely disseminate information about the program under this part and under part 3 and the benefits of solar heating and solar heating and cooling technology, the Secretary shall establish a program to disseminate such information for Federal procurement officers and Federal loan officers that shall include site visits and technical briefings. The Secretary shall utilize available funds for the program under this subsection.

"(b) Department of Defense Housing.—Section 2857(b)(1) of title 10, United States Code, is amended by inserting after 'has the potential for' for following: 'reduced energy costs'.

"(c) Overseas Private Investment Corporation Loans.—Section 234(e) of The Foreign Assistance Act of 1961 is amended—

"(1) in the first sentence, by inserting after 'cooperatives' the following: 'and including the initiation of incentives, grants, and studies for renewable energy and other small business activities'; and

"(2) by adding at the end thereof the following new sentence: 'Administrative funds may not be made available for incentives, grants, and studies for renewable energy and other small business activities.'

"SEC. 309. REPORTS.

"(a) Report by the Secretary.—One year after the date of the enactment of this title and annually thereafter, the Secretary shall report to Congress on the programs, projects, and joint research and development ventures conducted under this title and the progress being made towards accomplishing the goals and purposes set forth in this title, including the national goals set forth in section 304(a).

"(b) National Energy Policy Plan Report.—Each annual submission of the National Energy Policy Plan under title VIII of Public Law 95-91 shall be accompanied by a three-year strategic plan for energy technology research, development, and demonstration. Such plan shall address the role of federally assisted research, development, and demonstration in the achievement of the national policy goals of the National Energy Policy Plan and shall assess both the level of support for energy research, development, and demonstration reasonably necessary to achieve these goals and the basis for allocating the support recommended by the President among the available alternatives. At a minimum, these alternatives shall include energy efficiency and renewable energy technologies.

"TITLE IV—MANUEL LUJAN, JR. NEUTRON SCATTERING CENTER

"SEC. 410. RENAMING FACILITY.

"The Los Alamos Neutron Scattering Center is hereby redesignated as the

'Manuel Lujan, Jr. Neutron Scattering Center.'

"SEC. 411. REFERENCES.

"Any reference in any law, regulation, map, record, or other document of the United States to the Los Alamos Neutron Scattering Center shall be considered a reference to the 'Manuel Lunan, Jr. Neutron Scattering Center'.".

2. Amend the title so as to read as follows: "A bill to establish a national Federal program effort in close collaboration with the private sector to develop as rapidly as possible the applications of superconductivity to enhance the Nation's economic competitiveness and strategic well being, to better integrate universities and private industry into the National Laboratory system of the Department of Energy so as to speed the development of technology in areas of significant economic potential, to provide Federal assistance and leadership to a program of research, development, and demonstration of renewable energy and energy efficiency technologies, and for other purposes.".

NATIONAL AIDS AWARENESS AND PREVENTION MONTH

HATCH AMENDMENT NO. 3424

Mr. WILSON (for Mr. Hatch) proposed an amendment to the joint resolution (S.J. Res. 192) to designate the month of October 1987, as "National AIDS Awareness and Prevention Month"; as follows:

On page 2, line 3, strike out "1987" and insert in lieu thereof "1988".

Amend the title to read as follows: "To designate the month of October 1988, as "National AIDS Awareness and Prevention Month".

ARMSTRONG AMENDMENT NO. 3425

Mr. WILSON (for Mr. Armstrong) proposed an amendment to the joint resolution, Senate Joint Resolution, 192, supra; as follows:

At the appropriate place add the following:

Section . The National Mining Hall of Fame and Museum, organized and incorporated under the laws of Colorado, is hereby recognized as such and is granted a charter.

POWERS

Sec. . The National Mining Hall of Fame and Museum (hereafter in this Act referred to as the "corporation"), shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

Sec. . The objects and purposes of the corporation are those provided in its articles of incorporation including—

(1) to honor citizens, mining leaders, miners, prospectors, teachers, scientists, engineers, inventors, governmental leaders, and other individuals, who have helped to make this Nation great by their outstanding contributions to the establishment, development, advancement, or improvement of mining in the United States of America;

(2) to perpetuate the memory of such individuals and record their contributions and achievements by the erection and maintenance of such buildings, monuments, and edifices as may be deemed appropriate as a lasting memorial;

(3) to foster, promote, and encourage a better understanding of the origins and growth of mining, especially in the United States, and the part mining has played in changing the economic, social, and scientific aspects of our Nation;

(4) to establish and maintain a library and museum for collecting and preserving for posterity, the history of those honored by the corporation, together with a documentation of their accomplishments and contributions to mining, including such items as mining pictures, paintings, books, papers, documents, scientific data, relics, mementos, artifacts, and things relating to such items;

(5) to cooperate with other mining organizations which are actively engaged and interested in similar projects; and

(6) to engage in any and all activities incidental thereto or necessary, suitable, or proper for the accomplishment of any of the purposes set forth in this section.

MEMBERSHIP

Sec. . Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

Sec. . The board of directors of the corporation and the responsibilities thereof shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

Sec. . The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

RESTRICTIONS

Sec. . (a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State of Colorado.

LIABILITY

Sec. . The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SERVICE OF PROCESS

Sec. . With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

BOOKS AND RECORDS; INSPECTION

Sec. . The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

Sec. . The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(60) The National Mining Hall of Fame and Museum".

ANNUAL REPORT

Sec. . The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 11 of this Act. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

Sec. . The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF "STATE"

Sec. . For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

Sec. . The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954.

TERMINATION

Sec. . If the corporation fails to comply with any of the restrictions or other provisions of this Act, the charter granted by this Act shall expire.

IMPORTED VEHICLE SAFETY COMPLIANCE ACT

INOUYE AMENDMENT NO. 3426

Mr. BYRD (for Mr. Inouye and Mr. Rudman) proposed an amendment to the bill (H.R. 2628) to amend the National Traffic and Motor Vehicle Safety Act of 1966 respecting the importation of motor vehicles in anticipation of compliance with safety standards under such act; as follows:

On the first page, line 5, strike out "1987" and insert "1988".

On page 3, beginning with line 15, strike out all through line 20 and insert in lieu thereof the following:

"(i)(I) the motor vehicle is determined to be substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114, and of the same model year (as defined by regulation by the Secretary) as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

"(II) where there is no substantially similar United States motor vehicle, the Secretary determines that the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate,".

On page 3, line 22, strike out "(F)" and insert in lieu thereof "(D)".

On page 4, line 16, strike out "(G)" and insert in lieu thereof "(E)".

On page 4, beginning with line 22, strike out all through line 14 on page 6 and insert in lieu thereof the following:

"(C)(i) The Secretary shall make the determination under paragraph (3)(A)(i)—

"(I) on the petition of any registered importer or any manufacturer, or

"(II) on the Secretary's own initiative.

"(ii) The Secretary shall establish by regulation (I) the information required to be provided by the petitioner to clearly show that the vehicle is capable of being brought into compliance with all applicable Federal motor vehicle safety standards and (II) the procedures for considering such petitions. In establishing such procedures, the".

On page 6, line 23, strike out "regarding the similarity of motor vehicles".

On page 6, line 24, strike out "those" and insert in lieu thereof "the same model of".

On page 7, line 1, strike out "cles until the end of 12" and insert in lieu thereof "cle until the end of 3".

On page 7, line 4, strike out "of motor vehicle similarity".

On page 7, line 7, immediately before the period insert the following: "consistent with ensuring expeditious, but full, consideration and avoiding delay by any person".

On page 7, line 12, strike out "regarding the similarity of motor vehicles".

On page 7, line 13, strike out "those motor vehicles" and insert in lieu thereof "the same model of motor vehicle".

On page 7, line 14, strike out "12" and insert in lieu thereof "3".

On page 7, line 19, strike out "motor vehicles" and insert in lieu thereof "same model of motor vehicle".

On page 7, line 20, immediately after the period, add the following: "A positive determination shall be sufficient authority for any other registered importer to import a vehicle of the same model under this subsection provided such registered importer complies with all the terms and conditions of such determination.".

On page 7, line 21, strike out "(F)" and insert in lieu thereof "(D)".

On page 8, line 22, strike out "(G)" and insert in lieu thereof "(E)".

On page 8, line 23, strike out "(G)" and insert in lieu thereof "(E)".

On page 10, line 4, strike out "concealed".

On page 10, line 9, strike out "concealed".

On page 12, line 3, strike out "(G)" and insert in lieu thereof "(E)".

On page 13, line 16, strike out "1987" and insert "1988".

On page 15, line 8, strike out "1987" and insert "1988".

On page 15, line 15, strike out "1987" and insert "1988".

On page 17, line 18, beginning with "(b)", strike out all through the quotation marks on line 19 and insert in lieu thereof "(b) of".

On page 18, line 6, strike out "(F)" and insert in lieu thereof "(D)".

On page 18, line 12, strike out "(E)" and insert in lieu thereof "(C)".

PARENTAL AND MEDICAL LEAVE ACT

DOLE AMENDMENTS NOS. 3427-3428

(Ordered to lie on the table.)

Mr. DOLE submitted two amendments intended to be proposed by him to the bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes; as follows:

AMENDMENT NO. 3427

At the appropriate place add the following:

None of the provisions of this Act shall become effective until the following is enacted:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Drug Initiative Act of 1988".

(b) TABLE OF CONTENTS.—

TABLE OF CONTENTS

Title I—Committee on Banking, Finance and Urban Affairs
Title II—Committee on Education and Labor
Title III—Committee on Foreign Affairs
Title IV—Committee on Government Operations
Title V—Committee on Interior and Insular Affairs
Title VI—Committee on the Judiciary
Title VII—Committee on Merchant Marine and Fisheries
Title VIII—Committee on Public Works and Transportation
Title IX—Committee on Ways and Means
Title X—Committee on Energy and Commerce
Title XI—Information on Illegal Foreign Drug Activities
Title XII—Organization

TITLE I—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Subtitle A—Money Laundering Control

SECTION 1001. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Control Amendments of 1988".

SEC. 1002. IDENTIFICATION REQUIRED TO PURCHASE CERTAIN MONETARY INSTRUMENTS OF $3,000 OR MORE.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§ 5325. Identification required to purchase certain monetary instruments

"(a) IN GENERAL.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or more unless—

"(1) the individual has an account with such financial institution and the financial institution—

"(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

"(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

"(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

"(b) REPORT TO SECRETARY UPON REQUEST.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported by such institution to the Secretary of the Treasury at the request of such Secretary.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5325. Identification required to purchase certain monetary instruments.".

SEC. 1003. MONETARY TRANSACTION RECORDKEEPING AND REPORTING REQUIREMENTS FOR TARGETED INSTITUTIONS.

(a) SECRETARY AUTHORIZED TO REQUIRE RECORDKEEPING FOR DOMESTIC COIN AND CURRENCY TRANSACTIONS.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5325 (as added by section 2(a) of this Act) the following new section:

"§ 5326. Records of certain domestic coin and currency transactions

"Under such circumstances as the Secretary of the Treasury may prescribe by regulation, the Secretary may issue an order requiring any domestic financial institution—

"(1) to obtain such information as the Secretary may describe in such order concerning—

"(A) any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

"(B) any other person participating in such transaction;

"(2) to maintain a record of such information for such period of time as the Secretary may require; and

"(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5325 (as added by section 2(b) of this Act) the following new item:

"5326. Records of certain domestic coin and currency transactions.".

SEC. 1004. FINANCIAL RECORDS OF INSIDERS.

Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end thereof the following new subsection:

"(l) Crimes Against Financial Institutions by Insiders.—Nothing in this title shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

"(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or

"(2) any provision of subchapter II of chapter 53 of title 31, United States Code.".

SEC. 1005. DELEGATION OF ENFORCEMENT POWER TO POSTAL SERVICE.

Section 5318(a)(1) of title 31, United States Code, is amended by inserting "and the Postal Service" after "appropriate supervising agency".

SEC. 1006. PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN RECORDKEEPING REQUIREMENTS.

(a) Insured Banks.—Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) is amended by adding at the end thereof the following new subsection:

"(j) Civil Penalties.—

"(1) Penalty imposed.—Any insured bank and any director, officer, or employee of an insured bank who willfully violates any regulation prescribed under this section shall be liable to the United States for a civil penalty of not more than $10,000.

"(2) Treatment of continuing violation.—A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

"(3) Assessment.—Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.".

(b) Insured Institutions.—Section 411 of the National Housing Act (12 U.S.C. 1730d) is amended—

(1) by striking out "The Secretary" and inserting in lieu thereof "(a) Regulations.—The Secretary"; and

(2) by adding at the end thereof the following new subsection:

"(b) Civil Penalties.—

"(1) Penalty imposed.—Any insured institution and any director, officer, or employee of an insured institution who willfully violates any regulation prescribed under subsection (a) of this section shall be liable to the United States for a civil penalty of not more than $10,000.

"(2) Treatment of continuing violation.—A separate violation of any regulation prescribed under subsection (a) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

"(3) Assessment.—Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.".

(c) Other Financial Institutions.—

(1) Institutions subject to recordkeeping requirement.—Section 123(b) of Public Law 91-508 (12 U.S.C. 1953(b)) is amended to read as follows:

"(b) Institutions Subject to Recordkeeping Requirements.—The authority of the Secretary of the Treasury under subsection (a) extends to any financial institution (as defined in section 5312(a)(2) of title 31, United States Code), other than an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any insured institution (as defined in section 401(a) of the National Housing Act), and any partner, officer, director, or employee of any such financial institution.".

(2) Increase in amount of civil penalties.—Section 125(a) of Public Law 91-508 (12 U.S.C. 1955(a)) is amended by striking out "$1,000" and inserting in lieu thereof "$10,000".

SEC. 1007. GOOD FAITH AS A DEFENSE FROM LIABILITY FOR DISCLOSURE OF FINANCIAL RECORDS OF INSIDERS.

Section 1117(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3417(c)) is amended—

(1) by inserting "or pursuant to the provisions of section 1113(l)" after "certificate by any Government authority"; and

(2) by inserting before the period at the end thereof the following: "under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State".

SEC. 1008. TECHNICAL CORRECTIONS.

(a) Subparagraphs (T) and (U) of section 5312(a)(2) of title 31, United States Code, are amended to read as follows:

"(T) any agency of the United States, or of any State or political subdivision of any State, which engages in any activity in which any business described in this paragraph is authorized to engage, including the United States Postal Service; and

"(U) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage.".

(b) Section 5312(a)(5) of title 31, United States Code, is amended—

(1) by inserting a comma after "Puerto Rico"; and

(2) by striking the second comma after "Pacific Islands".

(c) The first sentence of section 5321(a)(1) of title 31, United States Code, is amended by inserting "(if any)" after "transaction".

SEC. 1009. STUDY OF WITHDRAWAL OF LEGAL TENDER STATUS OF $100 FEDERAL RESERVE NOTES.

(a) Study Required.—The Secretary of the Treasury, in consultation with appropriate law enforcement agencies, shall conduct a study of the feasibility of withdrawing the legal tender status of $100 Federal Reserve notes.

(b) Factors To Be Considered.—The study conducted pursuant to subsection (a) by the Secretary of the Treasury shall include an analysis of the following factors:

(1) Whether $100 Federal Reserve notes are being used predominately for illegal activities, especially drug-related transactions.

(2) Whether withdrawing the legal tender status of $100 Federal Reserve notes would help deter such illegal activities.

(3) Whether withdrawing the legal tender status of $100 Federal Reserve notes would impair legitimate business transactions.

(4) Whether withdrawing the legal tender status of $50 Federal Reserve notes (in addition to the $100 notes) would result in even greater deterrence of illegal activities.

(c) Report Required.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on the study conducted pursuant to subsection (a).

SEC. 1010. TRANSFER BY GOVERNMENT AGENCY OF RECORDS TO THE DEPARTMENT OF JUSTICE FOR CRIMINAL INVESTIGATION.

Section 1112 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412) is amended by adding at the end thereof the following new subsection:

"(f) Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General upon the certification by a supervisory level official of the transferring agency or department that there is reason to believe that the records may be relevant to a violation of Federal criminal law. Records so transferred shall be used only for criminal investigative or prosecutive purposes by the Department of Justice and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department.".

SEC. 1011. AMENDMENT TO THE PRESENTATION OF RECORDS REQUIREMENT.

Section 1120(1) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420(1)) is amended by inserting before the semicolon at the end the following: "unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records".

Subtitle B—International Provisions

SEC. 1021. EXPORT-IMPORT BANK FINANCING FOR SALES OF DEFENSE ARTICLES AND SERVICES FOR ANTI-NARCOTICS PURPOSES.

Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) is amended—

(1) by inserting "(A)" before "The Bank";

(2) by striking "paragraph" and inserting in lieu thereof "subparagraph"; and

(3) by adding at the end the following new subparagraphs:

"(B) Subparagraph (A), and section 32 of the Arms Export Control Act, shall not apply to any sale of defense articles or services if—

"(i) the Bank is requested to provide a guarantee or insurance for the sale;

"(ii) the President determines, in accordance with subparagraph (C), that the sale is in the national interest of the United States;

"(iii) the Bank determines that, notwithstanding the provision of a guarantee or insurance for the sale, not more than 10 percent of the guarantee and insurance authority available to the Bank in any fiscal year will be used by the Bank to support the sale of defense articles and services; and

"(iv) the sale is made on or before September 30, 1992.

"(C) In determining whether a sale of defense articles or services would be in the national interest of the United States, the President shall take into account whether the sale would—

"(i) be consistent with the anti-narcotics policy of the United States;

"(ii) involve the end use of a defense article or service in a major illicit drug producing or major drug-transit country (as defined in section 481(i) of the Foreign Assistance Act of 1961); and

"(iii) be made to a country with a democratic form of government.

"(D) The Board shall not give approval to guarantee or insure a sale of defense articles or services unless the President determines, in accordance with subparagraph (C), that it is in the national interest of the United States for the Bank to provide such guarantee or insurance, and such determination has been reported to the Congress not less than 25 days of continuous session of the Congress before the date of such approval. For purposes of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25-day period referred to in such sentence.

"(E) The provision of a guarantee or insurance under subparagraph (B) shall be deemed to be the provision of security assistance for purposes of section 502B of the Foreign Assistance Act of 1961 (relating to governments which engage in a consistent pattern of gross violations of international recognized human rights).

"(F) To the extent that defense articles or services for which a guarantee or insurance is provided under subparagraph (B) are used for a purpose other than anti-narcotics purposes, they may be used only for those purposes for which defense articles and defense services sold under the Arms Export Control Act (relating to the foreign military sales program) may be used under section 4 of such Act.

"(G) As used in this paragraph, the term 'defense articles and services' means articles, services, and related technical data that are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act and listed on the United States Munitions List (part 121 of title 22 of the Code of Federal Regulations).".

SEC. 1022. LOAN PROGRAMS TO REDUCE ECONOMIC DEPENDENCE ON ILLICIT NARCOTICS.

The International Financial Institutions Act (22 U.S.C. 262 et seq.) is amended by redesignating section 1606 as section 1607 and by inserting after section 1605 the following new section:

"SEC. 1606. LOAN PROGRAMS TO REDUCE ECONOMIC DEPENDENCE ON ILLICIT NARCOTICS.

"(a) Findings.—The Congress finds that—

"(1) the illicit narcotics epidemic currently afflicting the United States represents a direct threat to the well-being of every United States citizen;

"(2) every effective means must be pursued to reduce the foreign production and subsequent importation into the United States of illicit narcotics;

"(3) the multilateral development banks can play an integral role in efforts to control the production of illicit narcotics;

"(4) producer country narcotics eradication programs will not be effective unless such programs provide an economic alternative to the production of narcotics;

"(5) efforts to address the illicit narcotics epidemic through production control are doomed to failure unless greater effort is applied to curb use of and demand for illicit narcotics; and

"(6) the appropriate role for the multilateral development banks in the 'War Against Drugs' is through coordinating and financing alternative economic opportunities in producer and trafficking countries.

"(b) Loan Programs to Reduce Economic Dependence on Illicit Narcotics.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development and the United States Executive Director of the Inter-American Development Bank to initiate discussions with other executive directors of such institutions and to advocate and support the creation, within such institutions, of specific country lending programs and policies (including crop substitution, creation of roads conducive to the expansion of markets for licit goods, other infrastructure development measures such as development projects generating employment, agricultural extension assistance, and region-specific development plans) which are particularly oriented to reducing or eliminating the economic dependence of regions of borrowing countries known to be areas in which illicit narcotics are produced or trafficked, on such production and trafficking.

"(c) Coordination Among Assistance Programs Designed to Reduce Economic Dependency on Illicit Narcotics.—In addition, the Secretary of the Treasury should instruct the United States Executive Director of the International Bank for Reconstruction and Development and the United States Executive Director of the Inter-American Development Bank to encourage such institutions to provide coordination among other multilateral and bilateral assistance programs designed to reduce the economic dependence of regions of borrowing countries known to be areas in which illicit narcotics are produced or trafficked, on such production and trafficking.".

Subtitle C—Drug-Free Public Housing

SEC. 1031. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Public Housing Act of 1988".

SEC. 1032. PURPOSE.

The purpose of this subtitle is to reaffirm the principle that decent affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require better coordination and training in drug prevention programs among the public officials and agencies responsible for administering the public housing programs of the Nation.

SEC. 1033. CLEARINGHOUSE ON DRUG ABUSE IN PUBLIC HOUSING.

(a) Establishment.—The Secretary of Housing and Urban Development shall establish, in the Office of Public Housing in the Department of Housing and Urban Development, a clearinghouse to receive, collect, process, and assemble information regarding the abuse of controlled substances in public housing projects.

(b) Functions.—The clearinghouse established under subsection (a) shall—

(1) respond to inquiries by members of the public requesting assistance in investigating, studying, and working on the problem of the abuse of controlled substances; and

(2) receive, collect, process, assemble, and provide information on programs, authorities, institutions, and agencies, that may further assist members of the public requesting information from the clearinghouse.

SEC. 1034. REGIONAL TRAINING PROGRAM ON DRUG ABUSE IN PUBLIC HOUSING.

(a) Establishment.—The Secretary of Housing and Urban Development shall establish a regional training program for the training of public housing officials, to better prepare and educate the officials to confront the widespread abuse of controlled substances in the communities in which the officials work.

(b) Operation.—The regional training program established under subsection (a) shall be conducted within 12 months after the date of the enactment of this Act by a national training unit established by the Secretary of Housing and Urban Development.

SEC. 1035. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall issue any regulations necessary to carry out this subtitle.

Subtitle D—Elimination of Drug-Related Crime in Public Housing

SEC. 1041. GRANTS TO PUBLIC HOUSING AGENCIES FOR THE ELIMINATION OF DRUG-RELATED CRIME IN PUBLIC HOUSING.

Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"GRANTS TO PUBLIC HOUSING AGENCIES FOR THE ELIMINATION OF DRUG-RELATED CRIME IN PUBLIC HOUSING

"Sec. 22. (a) Authority To Make Grants.—The Secretary may make grants to public housing agencies to enable the public housing agencies to carry out programs to eliminate drug-related crime in public housing projects.

"(b) Eligible Activities.—Any public housing agency receiving a grant under this section may use the grant only for the following purposes:

"(1) Employment of investigators.—The employment of 1 or more individuals—

"(A) to investigate the illegal manufacture, sale, distribution, use, or possession of controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) on or about the real property comprising any public housing project; and

"(B) to provide evidence relating to any such illegal activity in any administrative or judicial proceeding.

"(2) Assistance for tenant patrols.—The provision of training, communications equipment, and other related equipment for use by voluntary public housing tenant patrols acting under the supervision of local law enforcement officials.

"(c) Regulations.—The Secretary shall issue any regulations necessary to carry out this section.

"(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section. Any amount appropriated pursuant to this subsection shall remain available until expended.".

TITLE II—COMMITTEE ON EDUCATION AND LABOR

Subtitle A—Drug Education and Prevention Relating to Youth Gangs

SEC. 2001. ESTABLISHMENT OF DRUG ABUSE EDUCATION AND PREVENTION PROGRAM RELATING TO YOUTH GANGS.

The Secretary of Health and Human Services, through the Administration on Children, Youth, and Families, shall make grants to, and enter into contracts with, public and nonprofit private agencies, organizations (including community based organizations with demonstrated experience in this field), institutions, and individuals, to carry out projects and activities—

(1) to prevent and to reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities,

(2) to promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes,

(3) to prevent the abuse of drugs by youth, to educate youth about such abuse, and to refer for treatment and rehabilitation members of such gangs who abuse drugs,

(4) to support activities of local police departments and other local law enforcement agencies to conduct educational outreach activities in communities in which gangs commit drug-related crimes,

(5) to inform gang members and their families of the availability of treatment and rehabilitation services for drug abuse,

(6) to facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes,

(7) to facilitate coordination and cooperation among—

(A) local education, juvenile justice, employment and social service agencies, and

(B) drug abuse referral, treatment, and rehabilitation programs,

for the purpose of preventing or reducing the participation of youth in activities of gangs that commit drug-related crimes, and

(8) to provide technical assistance to eligible organizations in planning and implementing drug abuse education, prevention, rehabilitation, and referral programs for youth who are members of gangs that commit drug-related crimes.

SEC. 2002. APPLICATION FOR GRANTS AND CONTRACTS.

(a) Submission of Applications.—Any agency, organization, institution, or individual desiring to receive a grant, or to enter into a contract, under section 2001 shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require by rule.

(b) Contents of Application.—Each application for assistance under this subtitle shall—

(1) set forth a project or activity for carrying out one or more of the purposes specified in section 2001 and specifically identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of the operation of such project or activity,

(5) provide that regular reports on such project or activity shall be submitted to the Secretary, and

(6) provide such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subtitle.

SEC. 2003. APPROVAL OF APPLICATIONS.

In selecting among applications submitted under section 2002(a), the Secretary shall give priority to applicants who propose to carry out projects and activities—

(1) for the purposes specified in section 2001 in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and

(2) that the applicant demonstrates that it has the broad support of community based organizations in such geographical areas.

SEC. 2004. COORDINATION WITH JUVENILE JUSTICE PROGRAMS.

The Secretary shall coordinate the program established by section 2001 with the programs and activities carried out under the Juvenile Justice and Delinquency Prevention Act of 1974 and with the programs and activities of the Attorney General, to ensure that all such programs and activities are complementary and not duplicative.

SEC. 2005. AUTHORIZATION OF APPROPRIATIONS.

To carry out this subtitle, there are authorized to be appropriated $30,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

Subtitle B—Alcohol Abuse Education Programs

SEC. 2101. INNOVATIVE ALCOHOL ABUSE EDUCATION PROGRAMS.

Part F of title IV of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating section 4607 as section 4608, and

(2) by inserting after section 4606 the following new section:

"SEC. 4607. INNOVATIVE ALCOHOL ABUSE EDUCATION PROGRAMS.

"(a) Programs for Children of Alcoholics.—The Secretary is authorized to develop materials for innovative programs of alcohol abuse education, especially programs that focus on the effect of the disease of alcoholism on families of alcoholics, particularly with respect to children of alcoholics. Programs for which materials are developed under the preceding sentence should be programs designed to benefit young children, particularly children in grades 5 through 8.

"(b) Training Programs for Educators.—The Secretary may make grants to programs for educators that are designed to—

"(1) increase awareness of children's problems that may be caused by an alcoholic parent;

"(2) enhance the ability of such educators to identify children at risk for alcohol abuse;

"(3) inform such educators concerning referral of children of alcoholics for appropriate professional treatment; and

"(4) train such educators to inform the public about the special problems of children who have an alcoholic parent.".

Subtitle C—Drug Abuse Education and Prevention Programs for Incarcerated Individuals

SEC. 2201. DRUG ABUSE EDUCATION AND PREVENTION FOR INCARCERATED INDIVIDUALS.

Section 326 of the Adult Education Act is amended—

(1) by inserting "(a) Mandatory Programs.—" before "Funds set aside",

(2) by redesignating subsection (b) as subsection (c),

(3) by inserting after subsection (a) the following new subsection (b):

"(b) Optional Programs.—Funds set aside under section 322(b)(1) by a State may be used for the cost of drug abuse education and prevention programs and referral to drug abuse treatment programs for criminal offenders in corrections institutions.", and

(4) by inserting "Definitions.—" after the subsection designation for subsection (c) (as redesignated by paragraph (2)).

Subtitle D—National Youth Sports Program

SEC. 2301. ESTABLISHMENT OF NATIONAL YOUTH SPORTS PROGRAM.

The Secretary of Health and Human Services may make grants to eligible entities in accordance with this section to carry out a national youth sports program to provide to disadvantaged youth—

(1) medical and nutrition services,

(2) exposure to college and university campuses,

(3) sports instruction and competition in settings that provide high quality facilities and supervision, and

(4) related educational and counseling services.

SEC. 2302. APPLICATIONS FOR GRANTS.

A grant may be made under section 2301 only to an eligible entity that—

(1) submits to the Secretary an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require, and

(2) provides to the Secretary satisfactory assurances that—

(A) not less than 90 percent of the youth who participate in each activity for which such grant will be expended to carry out the program established under such section will be from families with an income not exceeding the poverty line,

(B) to carry out its activities under such program, such entity will provide a non-Federal contribution (in cash or in kind) that equals or exceeds the amount of such grant, and

(C) such entity will comply with section 2303.

SEC. 2303. REQUIRED ACTIVITIES.

Each eligible entity that receives a grant under section 2301 shall expend such grant and the contribution required under section 2302(2)(B) to carry out activities for disadvantaged youth throughout a 1-year period, concentrating such activities in June, July, and August. Such activities shall include providing to all participating youth—

(1) access to the facilities and resources of all the institutions of higher education at which such activities are carried out;

(2) an initial medical examination and follow-up referral or treatment, without charge, while such youth participate in any of such activities in the 90-day period beginning on June 1;

(3) at least 1 nutritious meal per day, without charge, while such youth participate in any of such activities in the 90-day period beginning on June 1;

(4) high quality instruction in a variety of sports by college, high school, and junior high school coaches and teachers; and

(5) enrichment instruction and information on matters relating to the well-being of youth, such as drug and alcohol abuse prevention, educational and career opportunities, health and nutrition, study practices, and job responsibilities.

SEC. 2304. SPECIAL EMPHASIS ON DRUG ABUSE EDUCATION AND PREVENTION.

In selecting among applications submitted under section 2302, the Secretary—

(1) shall give special emphasis to the applications of eligible entities that propose to carry out activities relating to drug abuse education and prevention,

(2) may approve the use of such grant—

(A) to train in the most advanced and effective methods of drug abuse education and prevention the staff that will carry out such activities,

(B) to provide quality technical assistance to develop and implement drug education and prevention activities,

(C) to develop, implement, or operate a drug education and prevention program at sites where the applicant carries out the activities required by section 2303,

(D) involve in drug education and prevention activities the parents of youth who participate in the national youth sports program, and

(E) develop and provide anti-drug abuse educational materials, including videotapes and booklets, for use in carrying out activities under section 2301, and

(3) shall give priority to eligible entities that propose to carry out such activities in or near geographical areas in which drug abuse and related problems are concentrated.

SEC. 2305. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $15,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991 to carry out this subtitle.

Subtitle E—Programs Relating to Juvenile Delinquency and to Runaway and Homeless Youth

PART 1—PROGRAM TO ENHANCE JUVENILE DELINQUENCY PREVENTION

Subpart A—Projects and Activities of State and Local Governments

SEC. 2401. ESTABLISHMENT OF PROGRAM.

The Administrator shall make grants to States for purposes of planning, establishing, operating, coordinating, and evaluating projects, directly or through grants and contracts with public and private agencies—

(1) to develop more effective education, prevention, treatment, and rehabilitation services related to the illicit use of drugs by juveniles,

(2) to provide to juveniles and their families referral to such services and to other appropriate services available to them, and

(3) to coordinate the referral and services described in paragraphs (1) and (2).

SEC. 2402. ALLOTMENT.

(a) In General.—Except as provided in subsection (b), funds appropriated to carry out this part shall be allotted by the Administrator among the States based on the relative population of individuals who are less than 18 years of age.

(b) Minimum Allotments.—(1) Any allotment made under subsection (a) to a State shall be not less than $75,000, except that an allotment to the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) shall be not less than $20,000 each.

SEC. 2403. APPLICATIONS FOR ALLOTMENTS.

(a) To receive an allotment under section 2402, a State shall submit an application that satisfies the requirements of section 2403 and that contains a plan that describes the drug abuse education, prevention, treatment, and rehabilitation projects and activities it proposes to carry out over a 3-year period with such grant. To the extent practicable, such projects and activities shall be designed to increase or enhance the programs and activities for which financial assistance is received under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) and the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 4601-4663). Such plan shall be developed with the participation and review of the advisory group established pursuant to section 223(a)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(a)(3)).

(b) In expending the amounts allocated under subsection (b), each State shall give priority to projects which—

(1) propose innovative methods of preventing or reducing juvenile delinquency through drug abuse education, prevention, and treatment programs,

(2) assist or support families,

(3) cooperate and coordinate with other youth serving agencies and organizations in the community,

(4) demonstrate strong community support, and

(5) provide services in geographical areas with a high frequency of illicit drug use.

SEC. 2404. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization.—Subject to subsection (b), to carry out this subpart, there are authorized to be appropriated $30,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Limitation.—No funds are authorized to be appropriated for a fiscal year to carry out this subpart unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611-5672) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

Subpart B—Other Projects and Activities

SEC. 2411. ESTABLISHMENT OF PROGRAM.

(a) In General.—The Administrator shall, on a competitive basis, make grants to and enter into contracts with public and private nonprofit agencies, organizations, institutions, and individuals to carry out activities designed—

(1) to prevent or to reduce juvenile delinquency by carrying out drug abuse education, prevention, and treatment projects,

(2) to support research on—

(A) the illicit use of drugs by juveniles,

(B) the effects on juveniles of the illicit use of drugs by family members,

(C) innovative and effective approaches to prevention and treatment of such use, and

(D) the correlation between delinquent behavior and such use,

(3) to develop community outreach and counseling projects related to reducing and preventing the illicit use of drugs, which involve providing services to juveniles by juveniles, and

(4) to provide training and technical assistance relating to innovative and effective drug abuse education, prevention, and treatment to persons and organizations involved in the prevention and treatment of juvenile delinquency.

(b) Limitation.—A grant or contract may be made under subsection (a) for a period not to exceed 3 years.

SEC. 2412. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization.—Subject to subsection (b), to carry out this subpart, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Limitation.—No funds are authorized to be appropriated for a fiscal year to carry out this subpart unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611-5672) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

Subpart C—Reports

SEC. 2431. ANNUAL REPORT.

Not later than 180 days after the end of a fiscal year for which funds are appropriated to carry out this part, the Administrator shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains—

(1) a description of—

(A) the projects and activities for which each State expended in such fiscal year funds received under subpart A, and

(B) how each State coordinated the projects and activities for which such funds were so expended with projects and activities for which funds were expended under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601) and the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 4601-4663),

(2) a summary of each project or activity for which funds received for such fiscal year under subpart B were expended, an evaluation of the results of such project or activity, and a determination of the feasibility and advisability of replicating such project or activity in other locations, and

(3) a description of exemplary drug abuse education, prevention, and treatment projects and activities, with particular attention to community based juvenile delinquency prevention projects and activities that involve and assist families of juveniles.

PART 2—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

SEC. 2451. ESTABLISHMENT OF PROGRAM.

(a) The Secretary shall make grants to public and private nonprofit agencies, organizations, and institutions to carry out research, demonstration, and services projects designed—

(1) to provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth,

(2) to develop and support peer counseling programs for runaway and homeless youth related to the illicit use of drugs,

(3) to develop and support community education activities related to illicit use of drugs by runaway and homeless youth, including outreach to youth individually,

(4) to provide to runaway and homeless youth in rural areas assistance (including the development of community support groups) related to the illicit use of drugs,

(5) to provide to individuals involved in providing services to runaway and homeless youth, information and training regarding issues related to the illicit use of drugs by runaway and homeless youth,

(6) to support research on the illicit drug use by runaway and homeless youth, and the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide, and

(7) to improve the availability and coordination of local services related drug abuse, for runaway and homeless youth.

(b) Priority.—In selecting among applicants for grants under subsection (a), the Secretary shall give priority to agencies and organizations that have experience in providing services to runaway and homeless youth.

(c) Limitation.—Grants under this section may be made for a period not to exceed 3 years.

SEC. 2452. ANNUAL REPORT.

Not later than 180 days after the end of a fiscal year for which funds are appropriated to carry out this part, the Secretary shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains—

(1) a description of the types of projects and activities for which grants were made under this part for such fiscal year,

(2) a description of the number and characteristics of the youth and families served by such projects and activities, and

(3) a description of exemplary projects and activities for which grants were made under this part for such fiscal year.

SEC. 2453. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization.—Subject to subsection (b), to carry out this part, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Limitation.—No funds are authorized to be appropriated for a fiscal year to carry out this part unless the aggregate amount appropriated to carry out title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701-5751) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

PART 3—GENERAL PROVISIONS

SEC. 2461. APPLICATIONS.

(a) Submission of Application.—Any State, unit of local government (or combination of units of local government), agency, organization, institution, or individual desiring to receive a grant, or enter into a contract, under this subtitle shall submit an application at such time, in such manner, and containing or accompanied by such information as may be prescribed by the Federal officer who is authorized to make such grant or enter into such contract (hereinafter in this part referred to as the "appropriate Federal officer").

(b) Contents of Application.—In accordance with guidelines established by the appropriate Federal officer, each application for assistance under this subtitle shall—

(1) set forth a project or activity for carrying out one or more of the purposes for which such grant or contract is authorized to be made and expressly identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of such project or activity,

(5) provide that regular reports on such project or activity shall be sent to the appropriate Federal officer, and

(6) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subtitle.

SEC. 2462. REVIEW OF APPLICATIONS.

(a) Consideration of Factors.—In reviewing applications submitted under this subtitle, the appropriate Federal officer shall consider—

(1) the relative cost and effectiveness of the proposed project or activity in carrying out purposes for which the requested grant or contract is authorized to be made,

(2) the extent to which such project or activity will incorporate new or innovative techniques,

(3) the increase in capacity of the State or the public or nonprofit private agency, organization, institution, or individual involved to provide services to address—

(A) juvenile delinquency through drug abuse education, prevention, and treatment, in the case of a application submitted under part 1, and

(B) the illicit use of drugs by runaway and homeless youth, in the case of an application submitted under part 2,

(4) the extent to which such project or activity serves communities which have high rates of illicit drug use by juveniles (including runaway and homeless youth),

(5) the extent to which such project or activity will provide services in geographical areas where similar services are unavailable or in short supply, and

(6) the extent to which such project or activity will increase the level of services, or coordinate other services, in the community available to eligible youth.

(b) Competitive Process.—(1) Applications submitted under this subtitle shall be selected for approval through a competitive process to be established by rule by the appropriate Federal officer. As part of such a process, such officer shall publish a notice in the Federal Register—

(A) announcing the availability of funds to carry out part 1 or 2, as the case may be,

(B) the general criteria applicable to the selection of applicants to receive such funds, and

(C) a description of the procedures applicable to submitting and reviewing applications for such funds.

(2) As part of such process, each application referred to in subsection (a) shall be subject to peer review by individuals (excluding officers and employees of the Department of Justice and the Department of Health and Human Services) who have expertise in the subject matter related to the project or activity proposed in such application.

(c) Expedited Review.—The appropriate Federal officer shall expedite the consideration of an application referred to in subsection (a) if the applicant demonstrates, to the satisfaction of the Administrator, that the failure to expedite such consideration would prevent the effective implementation of the project or activity set forth in such application.

Subtitle F—Drug Abuse Education for Participants in the Special Supplemental Food Program for Women, Infants, and Children

SEC. 2501. DRUG ABUSE EDUCATION FOR PARTICIPANTS IN THE SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended as follows:

(1) Purpose.—Subsection (a) is amended by striking "health problems" in the last sentence and inserting "health problems, including drug abuse,".

(2) Education.—Subsection (e)(1) is amended by inserting "and drug abuse education" after "nutrition education" each place it appears in the first and second sentences.

(3) State plan.—Subsection (f) is amended—

(A) in paragraph (1)(C)(iii), by inserting "drug abuse education," after "family planning,", and

(B) in paragraph (14)(A), by inserting "and instruction relating to drug abuse education and prevention" after "instruction".

(4) Study; authorizaton of appropriations.—Subsection (g) is amended by adding at the end the following new paragraph:

"(4)(A) The Secretary, before the end of the 6-month period beginning on the date of the enactment of this Act, shall conduct a study with respect to appropriate methods of drug abuse education instruction.

"(B) There is authorized to be appropriated, for purposes of carrying out the study required by subparagraph (A) and for purposes of preparing and distributing drug abuse education materials under this section, $10,000,000 for fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year.".

(5) National advisory council on maternal, infant, and fetal nutrition.—Subsection (k)(1) is amended—

(A) in the first sentence, by striking "twenty-one" and inserting "twenty-three", and

(B) in the last sentence—

(i) by striking "and" the last place it appears, and

(ii) by striking the period at the end and inserting the following: "; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.".

Subtitle G—Community-Based Volunteer Demonstration Projects for Drug Abuse Education and Prevention Services and Activities

SEC. 2601. COMMUNITY-BASED VOLUNTEER DEMONSTRATION PROJECTS FOR DRUG ABUSE EDUCATION AND PREVENTION SERVICES AND ACTIVITIES.

(a) Program Authorized.—

(1) General authority.—Section 124 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) is amended—

(A) by inserting "(a)" after the section designation, and

(B) by adding at the end the following new subsection:

"(b)(1) The Director is authorized to make grants to public and nonprofit organizations for innovative, community-based volunteer demonstration projects which provide comprehensive drug abuse education and prevention services and activities to youths during the summer months. Such projects may include—

"(A) extending effective school-based programs, or other programs operated during the school year, to the summer months;

"(B) developing or expanding summer recreational; volunteer service, and youth development activities to provide for youths positive alternatives to illicit drug use;

"(C) incorporating drug abuse education and prevention activities in public and private programs which serve youths during the summer months;

"(2) In awarding grants under this subsection, the Director shall give priority to projects that—

"(A) serve high-risk youths; and

"(B) provide opportunities for parent involvement.

"(3) For the purposes of this subsection, the term 'high-risk youth' has the same meaning given such term in section 5122(b)(2) of the Elementary and Secondary Education Act of 1965.".

(2) TECHNICAL AMENDMENT.—The table of contents contained in the first section of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 note) is amended by inserting after the item relating to section 123 the following new item:

"Sec. 124. Special initiatives.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 501 of the Domestic Volunteer Service Act (42 U.S.C. 5081) is amended—

(1) in the first sentence of subsection (c), by inserting "(other than section 124(b))" after "of this Act",

(2) in subsection (d)(1), by inserting "(other than section 124(b))" after "title I" the first place it appears, and

(3) by adding at the end the following new subsection:

"(f) There is authorized to be appropriated for each of the fiscal years 1989, 1990, and 1991 $5,000,000 for purposes of carrying out section 124(b).".

Subtitle H—Amendments to the Drug-Free Schools and Communities Act of 1986

SEC. 2701. LIMITATION ON ADMINISTRATIVE COSTS UNDER DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986.

Section 5121(a) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3191(a)) is amended—

(1) by inserting "(1)" after "PROGRAM.—"; and

(2) by adding at the end the following new paragraph:

"(2) Not more than 2.5 percent of the amount reserved under paragraph (1) may be used for administrative costs of the chief executive officer of the State incurred in carrying out the duties of the chief executive officer under this part.".

SEC. 2702. PARTICIPATION OF INDIVIDUALS OTHER THAN HIGH-RISK YOUTH IN INNOVATIVE STATE PROGRAMS UNDER THE DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986.

Section 5122(b) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3192(b)) is amended—

(1) in paragraph (1), by inserting "that are designed" after "coordinated services"; and

(2) by adding at the end the following new paragraph:

"(3) Not more than 10 percent of participants in programs under paragraph (1) may be individuals who are not high-risk youth if the Secretary determines that the participation of such individuals will not significantly diminish the amount or quality of services provided to high-risk youth.".

SEC. 2703. ACCURACY REQUIREMENT WITH RESPECT TO MATERIALS PROVIDED UNDER THE DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986.

(a) RESPONSIBILITIES OF STATE EDUCATIONAL AGENCIES.—Section 5124(b)(2) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3194(b)(2)) (hereafter in this section referred to as the "Act") is amended by inserting after "evaluation of" the following: "the most readily available, accurate, and up-to-date".

(b) LOCAL DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS.—Section 5125(a)(1) of the Act (20 U.S.C. 3195(a)(1)) is amended by striking "curricula" and all that follows through the semicolon and inserting the following: "curricula and textbooks and materials—

"(A) developed from the most readily available, accurate, and up-to-date information; and

"(B) which clearly and consistently teach that illicit drug use is wrong and harmful;".

(c) FEDERAL ACTIVITIES.—Section 5132(b)(3) of the Act (20 U.S.C. 3212(b)(3)) is amended by inserting after "disseminate" the following: "the most readily available, accurate, and up-to-date".

Subtitle I—Miscellaneous

SEC. 2801. DEFINITIONS.

For purposes of this title and the amendments made by this title—

(1) the term "Administrator" means the Administrator of the Office of Juvenile Justice and Delinquency Prevention,

(2) the term "community based" has the meaning given it in section 103(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(1)),

(3) the term "controlled substance" has the meaning given it in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)),

(4) the term "controlled substance analogue" has the meaning given it in section 102(32) of the Controlled Substances Act (21 U.S.C. 802(32)),

(5) the term "disadvantaged youth" means a youth whose family income does not exceed 130 percent of the poverty line,

(6) the term "drug" means—

(A) a beverage containing alcohol,

(B) a controlled substance, or

(C) a controlled substance analogue,

(7) the term "Director" means the Director of the ACTION Agency,

(8) the term "eligible entity" means an organization the members of which are institutions of higher education that have access to high-quality educational and sports facilities,

(9) the term "illicit" means unlawful or injurious,

(10) the term "institution of higher education" has the meaning given it in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)),

(11) the term "public agency" has the meaning given it in section 103(11) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(11)),

(12) the term "poverty line" has the meaning given it in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) and includes any revision required by such section,

(13) the term "Secretary" means—

(A) the Secretary of Health and Human Services for purposes of subtitles A, D, and E,

(B) the Secretary of Education for purposes of the amendments made by subtitles B and C, and

(C) the Secretary of Agriculture for purposes of the amendments made by subtitle F,

(14) the term "State" has the meaning given it in section 103(7) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(7)),

(15) the term "treatment" has the meaning given it in section 103(15) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(15)),

(16) the term "unit of general local government" has the meaning given it in section 103(8) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603(8)), and

(17) the term "youth" means both boys and girls.

TITLE III—COMMITTEE ON FOREIGN AFFAIRS

Subtitle A—General Provisions

SEC. 3001. SHORT TITLE.

This title may be cited as the "International Narcotics Control Act of 1988".

SEC. 3002. TABLE OF CONTENTS.

The table of contents for this title is as follows:

Subtitle A—General Provisions

Sec. 3001. Short title.
Sec. 3002. Table of contents.
Sec. 3003. Definitions.

Subtitle B—Latin American Regional Anti-Narcotics Force and Integrated Plan To Fight the International Cocaine Trade

Sec. 3011. Need for Latin American regional anti-narcotics force.
Sec. 3012. Negotiations to establish Latin American regional anti-narcotics force.
Sec. 3013. United States assistance for Latin American regional anti-narcotics force.
Sec. 3014. Establishment of a regional anti-narcotics training center in the Caribbean.
Sec. 3015. United States effort to establish other regional anti-narcotic forces.
Sec. 3016. Need for an integrated regional plan to fight the international cocaine trade.

Subtitle C—Authorizations and Earmarkings of Foreign Assistance

Sec. 3021. Authorization for international narcotics control assistance.
Sec. 3022. Herbicides for aerial coca eradication.
Sec. 3023. Procurement of weapons to defend aircraft involved in narcotics control efforts.
Sec. 3024. Training for narcotics control activities.
Sec. 3025. Military assistance for anti-narcotics efforts.
Sec. 3026. Reallocation of funds withheld from countries which fail to take adequate steps to halt illicit drug production or trafficking.
Sec. 3027. Increased funding for AID drug education programs.

Subtitle D—Provisions Relating to Specific Countries

Sec. 3031. Cooperative nonmajor drug-transit countries.
Sec. 3032. Assistance for Bolivia.
Sec. 3033. Assistance for Peru.
Sec. 3034. Assistance for Mexico.
Sec. 3035. Assistance for Colombia.
Sec. 3036. Illicit drug production and trafficking in Pakistan.
Sec. 3037. United States reliance on licit opium gum from foreign sources.
Sec. 3038. Afghanistan as a source of heroin.
Sec. 3039. Involvement of the Government of Laos in illicit drug production and trafficking.

Subtitle E—Annual Reporting and Certification Process for Foreign Assistance Programs

Sec. 3041. Expression in numerical terms of maximum achievable reductions in illicit drug production.
Sec. 3042. Reports on assistance denied.
Sec. 3043. Drug-related corruption by foreign government officials.

Sec. 3044. Determining major drug-transit countries.
Sec. 3045. Requirement for bilateral narcotics agreements.
Sec. 3046. Waiver of restrictions on United States assistance for certain major drug-transit countries.
Sec. 3047. Clarification of assistance termination requirement; congressional review of recertifications.
Sec. 3048. Definition of United States assistance.
Sec. 3049. Reports and restrictions on certain countries.
Sec. 3050. Removal of certification procedure for MDB financing from Foreign Assistance Act.

Subtitle F—Miscellaneous Provisions Relating to Assistance Programs

Sec. 3051. Reporting on transfer of United States assets.
Sec. 3052. Importance of suppressing international narcotics trafficking.
Sec. 3053. Prohibition on assistance to drug traffickers.
Sec. 3054. Procurement for international narcotics control assistance.
Sec. 3055. Prohibition on use of narcotics control assistance to acquire real property.
Sec. 3056. Correction of technical errors in prior Acts.
Sec. 3057. Reimbursement for DOD services used in providing international narcotics control assistance.

Subtitle G—Department of State Activities

Sec. 3061. Coordination of all United States anti-narcotics assistance to foreign countries.
Sec. 3062. Rewards for certain information.
Sec. 3063. Denial of passports to certain convicted drug traffickers.
Sec. 3064. Machine readable visas.
Sec. 3065. Extradition and mutual legal assistance treaties and model comprehensive antidrug laws.
Sec. 3066. Overseas investigative program.
Sec. 3067. Assignment of more Drug Enforcement Administration Agents to United States embassies.

Subtitle H—Miscellaneous Provisions

Sec. 3071. Covert actions directed at illicit international drug trafficking.
Sec. 3072. Encouragement of United Nations efforts to establish an international force aimed at stopping the trafficking of illegal drugs.

SEC. 3003. DEFINITIONS.

As used in this title, the terms "drug" and "narcotic" mean narcotic and psychotropic drugs and other controlled substances as defined in section 481(i)(3) of the Foreign Assistance Act of 1961.

Subtitle B—Latin American Regional Anti-Narcotics Force and Integrated Plan To Fight the International Cocaine Trade

SEC. 3011. NEED FOR LATIN AMERICAN REGIONAL ANTI-NARCOTICS FORCE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the operations of international illegal drug smuggling organizations pose a direct threat to the national security of the member nations of the Organization of American States;

(2) illegal international drug smuggling organizations have grown so large and powerful that they threaten to overwhelm small nations standing alone against them;

(3) to preserve the national sovereignty, protect the public health, and maintain domestic law and order within their borders, member nations of the Organization of American States should coordinate their efforts to fight the illegal drug trade;

(4) recent events in drug source and transit countries in the Western Hemisphere make clear the requirement for international agreement on the formation of a multinational strike force intended to conduct operations against these illegal drug smuggling organizations;

(5) the United States should make every effort to initiate diplomatic discussions through the Organization of American States aimed at achieving agreement to establish and operate a Latin American anti-narcotics force; and

(6) sensitive to the legitimate concerns of other member nations of the Organization of American States, the United States stands ready to provide equipment, training, and financial resources to support the establishment and operation of such an anti-narcotics force, but believes that the personnel for such a force should be provided by those nations facing the most serious threat from drug trafficking organizations.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to authorize the appropriation of $10,000,000 for the United States share of the expenses of a Latin American regional anti-narcotics force;

(2) to encourage agreement within the Organization of American States on the establishment of Latin American regional anti-narcotics force;

(3) to encourage the establishment, under appropriate multilateral auspices, of regional anti-narcotic forces in other regions of the world; and

(4) to encourage the creation of a comprehensive, integrated, multinational plan whose objective would be the substantial reduction or elimination of the international cocaine trade.

SEC. 3012. NEGOTIATIONS CONCERNING A LATIN AMERICAN REGIONAL ANTI-NARCOTICS FORCE.

(a) UNITED STATES INITIATIVE.—The President shall direct the United States representative to the Organization of American States to seek the views of other member nations of the Organization on the feasibility of establishing a Latin American regional anti-narcotics force.

(b) REGIONAL SUMMIT CONFERENCE.—If there is a positive response within the Organization of American States to the United States initiative described in subsection (a), the President shall call for a meeting of heads of government of member nations of the Organization to conclude an agreement providing for the establishment of a regional anti-narcotics force, with appropriate contributions of personnel, training, equipment and financial resources for this force to be made by members of the Organization.

SEC. 3013. UNITED STATES ASSISTANCE FOR LATIN AMERICAN REGIONAL ANTI-NARCOTICS FORCE.

(a) DOD ASSISTANCE FOR ANTI-NARCOTICS FORCE.—If an agreement is reached within the Organization of American States providing for the establishment of a regional anti-narcotics force, the President shall direct the Secretary of Defense to provide appropriate assistance for that force.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise available for such purpose, there are authorized to be appropriated to the President, as supplemental appropriations for fiscal year 1988 (which are authorized to remain available until expended), $10,000,000 for the United States share of the expenses of a Latin American regional anti-narcotics force, including reimbursement to the Department of Defense for assistance provided pursuant to subsection (a).

(c) NOTICE TO CONGRESS.—Not less than 15 days before obligating funds authorized to be appropriated by subsection (b), the President shall notify the committees of Congress specified in section 634A of the Foreign Assistance Act of 1961 in accordance with the reprogramming procedures applicable under that section.

SEC. 3014. ESTABLISHMENT OF A REGIONAL ANTI-NARCOTICS TRAINING CENTER IN THE CARIBBEAN.

It is the sense of the Congress that the Assistant Secretary of State for International Narcotics Matters—

(1) should seek the establishment of a regional anti-narcotics training center in the Caribbean;

(2) should contribute funds or other resources to such a center; and

(3) should seek such contributions from other countries for such a center.

SEC. 3015. UNITED STATES EFFORT TO ESTABLISH OTHER REGIONAL ANTI-NARCOTIC FORCES.

The Congress urges the President to seek the establishment, in each of the relevant regions of the world, of a multilateral regional anti-narcotics force similar to the Latin America regional anti-narcotics force contemplated by this subtitle.

SEC. 3016. NEED FOR AN INTEGRATED REGIONAL PLAN TO FIGHT THE INTERNATIONAL COCAINE TRADE.

(a) CONSULTATIONS CONCERNING CREATION OF AN INTEGRATED PLAN.—The Secretary of State shall consult with—

(1) the heads of appropriate agencies and departments of the United States Government,

(2) the governments of those countries in the Western Hemisphere that cultivate, process, or traffick in cocaine, and

(3) the governments of other cocaine consuming countries,

about the feasibility of creating a comprehensive, integrated, multinational plan whose objective would be the substantial reduction or elimination of the international cocaine trade.

(b) REPORT ON THE INTEGRATED PLAN.—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall report to the Congress on—

(1) the feasibility of creating a comprehensive, integrated, multinational plan whose objective would be the substantial reduction or elimination of the international cocaine trade;

(2) the measures in such areas as eradication, interdiction, crop substitution, economic development, extradition, money-laundering, precursor chemical control, and related fields, that would be required to achieve such an objective;

(3) the material resources, funding, and technological assistance each producer and transit country would require in order to achieve such an objective; and

(4) the resources, funding, and other assistance each producer, transit, and consuming country would be prepared to make available for such an effort.

Subtitle C—Authorizations and Earmarkings of Foreign Assistance

SEC. 3021. AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE.

Section 482(a) of the Foreign Assistance Act of 1961 is amended by striking out paragraphs (1) and (3) and by inserting the following new paragraph (1) after "(a)":

"(1) To carry out the purposes of section 481, there are authorized to be appropriated to the President $101,000,000 for fiscal year 1989.".

SEC. 3022. HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $500,000 of the funds made available for fiscal year 1989 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (relating to international narcotics control) to finance the testing and use of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 3023. PROCUREMENT OF WEAPONS TO DEFEND AIRCRAFT INVOLVED IN NARCOTICS CONTROL EFFORTS.

(a) Earmarking of MAP Funds.—Of the funds available to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), $900,000 for fiscal year 1989 shall be made available to arm, for defensive purposes, aircraft used in narcotic control eradication or interdiction efforts. These funds may only be used to arm aircraft already in the inventory of the recipient country, and may not be used for the purchase of new aircraft.

(b) Notification to Congress.—The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall be notified of the use of any such funds for that purpose at least 15 days in advance in accordance with the reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961.

SEC. 3024. TRAINING FOR NARCOTICS CONTROL ACTIVITIES.

(a) Earmarking of Funds.—Not less than $2,000,000 of the funds made available for fiscal year 1989 to carry out chapter 5 of part II of the Foreign Assistance Act (relating to international military education and training) shall be available only for—

(1) education and training in the operation and maintenance of equipment used in narcotics control interdiction and eradication efforts of countries in Latin America and the Caribbean which are described in subsection (c); and

(2) the expenses of deploying, upon the request of the government of a foreign country described in subsection (c), Department of Defense mobile training teams in that foreign country to conduct training in military-related individual and collective skills that will enhance that country's ability to conduct tactical operations in narcotics interdiction.

(b) Units Eligible for Training.—Education and training may be provided under subsection (a)(1) and training may be provided under subsection (a)(2) only for foreign law enforcement agencies, or other units, that are organized for the specific purpose of narcotics enforcement.

(c) Eligible Countries.—Assistance may be provided under this section only for countries—

(1) which are major illicit drug producing or major drug-transit countries (as defined in section 481(i) of the Foreign Assistance Act of 1961);

(2) which have democratic governments; and

(3) whose law enforcement agencies do not engage in a consistent pattern of gross violations of internationally recognized human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961).

(d) Coordination With International Narcotics Control Assistance Program.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of that Act (relating to international narcotics control).

(e) Waiver of Section 660.—Assistance may be provided pursuant to this section notwithstanding the prohibition contained in section 660 of the Foreign Assistance Act of 1961 (relating to police training).

SEC. 3025. MILITARY ASSISTANCE FOR ANTI-NARCOTICS EFFORTS.

(a) Purposes of Assistance.—Assistance provided under this section shall be designed to—

(1) enhance the ability of friendly governments to control illicit narcotics production and trafficking;

(2) strengthen the bilateral ties of the United States with friendly governments by offering concrete assistance in this area of great mutual concern; and

(3) strengthen respect for internationally recognized human rights and the rule of law in efforts to control illicit narcotics production and trafficking.

(b) Waiver of Certain Provisions.—Section 660(a) of the Foreign Assistance Act of 1961 shall not apply with respect to assistance provided under chapter 2 of part II of that Act (relating to the grant military assistance program) to countries described in subsection (c) for the procurement, for use in narcotics control, eradication, and interdiction efforts, of weapons or ammunition for foreign law enforcement agencies, or other units, that are organized for the specific purpose of narcotics enforcement.

(c) Eligible Countries.—Assistance may be provided under this section only for countries—

(1) which are major illicit drug producing or major drug-transit countries (as defined in section 481(i) of the Foreign Assistance Act of 1961);

(2) which have democratic governments; and

(3) whose law enforcement agencies do not engage in a consistent pattern of gross violations of internationally recognized human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961).

(d) Reports to Congress.—Not less than 15 days before funds are obligated to provide assistance authorized by this section, the President shall transmit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, in accordance with the procedures applicable under section 634A of the Foreign Assistance Act of 1961, a written notification which specifies—

(1) the country to which the assistance is to be provided;

(2) the type and value of the assistance to be provided;

(3) the law enforcement agencies or other units that will receive the assistance; and

(4) an explanation of how the proposed assistance will achieve the purposes specified in subsection (a) of this section.

(e) Reports on Human Rights Situation.—Section 502(c) of the Foreign Assistance Act of 1961 (relating to country-specific human rights reports upon the request of the foreign affairs committees) applies with respect to countries for which assistance authorized by this section is proposed or is being provided.

(f) Coordination With International Narcotics Control Assistance Program.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of that Act (relating to international narcotics control).

(g) Earmarking for Latin America and the Caribbean.—Of the amounts made available for fiscal year 1989 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961, $3,500,000 shall be available only to provide assistance authorized by this section for countries in Latin America or the Caribbean.

SEC. 3026. REALLOCATION OF FUNDS WITHHELD FROM COUNTRIES WHICH FAIL TO TAKE ADEQUATE STEPS TO HALT ILLICIT DRUG PRODUCTION OR TRAFFICKING.

(a) Requirement to Reallocate.—Chapter 8 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end the following:

"SEC. 486. REALLOCATION OF FUNDS WITHHELD FROM COUNTRIES WHICH FAIL TO TAKE ADEQUATE STEPS TO HALT ILLICIT DRUG PRODUCTION OR TRAFFICKING.

"(a) Additional Assistance for Countries Taking Significant Steps.—If any funds authorized to be appropriated for any fiscal year for security assistance are not used for assistance for the country for which those funds were allocated because of the requirements of section 481(h) or any other provision of law requiring the withholding of assistance for countries that have not taken adequate steps to halt illicit drug production or trafficking, the President shall use those funds for additional assistance for those countries which have met their illicit drug eradication targets or have otherwise taken significant steps to halt illicit drug production or trafficking, as follows:

"(1) International narcotics control assistance.—Those funds may be transferred to and consolidated with the funds appropriated to carry out this chapter in order to provide additional narcotics control assistance for those countries. Funds transferred under this paragraph may only be used to provide increased funding for activities previously justified to the Congress. Transfers may be made under this paragraph without regard to the 20-percent increase limitation contained in section 610(a). This paragraph does not apply with respect to funds made available for assistance under the Arms Export Control Act.

"(2) Security assistance.—Any such funds not used under paragraph (1) shall be reprogrammed within the account for which they were appropriated (subject to the regular reprogramming procedures under section 634A) in order to provide additional security assistance for those countries.

"(b) Definition of Security Assistance.—As used in this section, the term 'security assistance' means assistance under chapter 2 of part II of this Act (relating to the military assistance program), chapter 4 of part II of this Act (relating to the Economic Support Fund), chapter 5 of part II of this Act (relating to international military education and training), or the Arms Export Control Act (relating to foreign military sales credits).".

(b) Effective Date.—The amendment made by subsection (a) does not apply with respect to funds appropriated prior to the date of enactment of this Act.

SEC. 3027. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

There are authorized to be appropriated to the President, as supplemental appropriations for fiscal year 1988 (which are authorized to remain available until expended), $1,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance), which amount shall be used pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

Subtitle D—Provisions Relating to Specific Countries

SEC. 3031. COOPERATIVE NONMAJOR DRUG-TRANSIT COUNTRIES.

(a) Greater Attention.—The Congress urges the Assistant Secretary of State for International Narcotics Matters to give greater attention, and provide more narcotics control assistance, to those countries which are drug-transit countries but are not major drug-transit countries (as defined in section 481(i)(5) of the Foreign Assistance Act of 1961) and which are cooperating with the United States in its international narcotics control efforts.

(b) Earmarking of Assistance.—Of the amounts made available for fiscal year 1989 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (relating to international narcotics control), not less than $1,000,000 shall be available only for assistance to countries described in subsection (a).

SEC. 3032. ASSISTANCE FOR BOLIVIA.

(a) Security Assistance.—For fiscal year 1989, assistance may be provided for Bolivia under chapter 2 (relating to grant military assistance), chapter 4 (relating to the economic support fund), and chapter 5 (relating to international military education and training) of part II of the Foreign Assistance Act of 1961 and under chapter 2 of the Arms Export Control Act (relating to foreign military sales financing) only if the President certifies to the Congress that the Government of Bolivia has enacted and is implementing legislation that—

(1) establishes its legal coca requirements,

(2) provides for the licensing of the number of hectares necessary to produce the legal requirement,

(3) makes unlicensed coca production illegal, and

(4) makes possession and distribution of coca leaf illegal (other than for licit purposes).

(b) Section 481 Certification.—

(1) Conditions on certification.—For fiscal year 1989, the President may make a certification with respect to Bolivia under clause (i) or (ii) of section 481(h)(2)(A) of the Foreign Assistance Act of 1961 only if the Government of Bolivia—

(A) has entered into the narcotics cooperation agreement with the United States specified in section 611(2)(B) of the International Security and Development Cooperation Act of 1985;

(B) has fully achieved the eradication targets contained in that agreement; and

(C) has begun a program of forced eradication of illicit coca cultivation if the targets for voluntary eradication are not being met or are not continued.

(2) Nonwaivability.—The authorities contained in section 614 of the Foreign Assistance Act of 1961 may not be used to waive the requirements of this subsection, and may not be used to waive the requirements of section 481(h) of that Act for fiscal year 1989 with respect to Bolivia.

(c) Development Assistance.—For fiscal year 1989, the project agreement document for a project carried out pursuant to chapter I of part I of the Foreign Assistance Act of 1961 (relating to development assistance) shall contain—

(1) in the case of the Chapare Regional Development Project, a clause requiring that project activities be suspended if the Government of Bolivia fails to achieve the coca eradication targets contained in the November 23, 1987, agreement concerning that project; and

(2) in the case of a project to be carried out in an area in Bolivia in which there is no known illicit coca cultivation as of the date of enactment of this Act, a clause requiring that project activities be suspended if the Government of Bolivia fails to keep the project area free of illicit coca cultivation.

(d) Fiscal Year 1988 Earmarking.—Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202), is amended in the paragraph under the heading "INTERNATIONAL NARCOTICS CONTROL" by striking out "$15,000,000" and all that follows through "not less than" in the second proviso.

SEC. 3033. ASSISTANCE FOR PERU.

(a) Determinations Regarding Narcotics Control Cooperation.—In making determinations with respect to Peru pursuant to section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961 for fiscal year 1989, the President shall give foremost consideration to whether the Government of Peru made substantial progress in meeting its coca eradication targets during the previous year.

(b) Upper Huallaga Valley Project.—Funds authorized to be appropriated for fiscal year 1989 to carry out chapter 1 of part I of that Act (relating to development assistance) may be made available for the project of the Agency for International Development in the Upper Huallaga Valley of Peru only if the Administrator of that Agency determines, and reports to the Congress, that such project continues to be effective in reducing and eradicating coca leaf production, distribution, and marketing in the Upper Huallaga Valley.

SEC. 3034. ASSISTANCE FOR MEXICO.

(a) Limitation on Assistance.—Of the amounts made available for fiscal year 1989 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (relating to international narcotics control), not more than $15,000,000 may be made available for Mexico.

(b) Prosecution of Those Responsible for the Torture and Murder of DEA Agents.—Of the funds allocated for assistance for Mexico for fiscal year 1989 under that chapter, $1,000,000 shall be withheld from expenditure until the President reports to the Congress that the Government of Mexico—

(1) has fully investigated the 1985 murders of Drug Enforcement Administration agent Enrique Camarena Salazar and his pilot Alfredo Zavala Avelar;

(2) has fully investigated the 1986 detention and torture of Drug Enforcement Administration agent Victor Cortez, Junior; and

(3) has brought to trial and is effectively prosecuting those responsible for those murders and those responsible for that detention and torture.

(c) Joint Air Operations and Joint Crewing.—In making determinations with respect to Mexico pursuant to section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961 for fiscal year 1989, the President shall consider whether the Government of Mexico has responded favorably to the United States proposals to establish, and is making measurable progress toward implementing—

(1) a joint United States-Mexico airborne apprehension capability (commonly referred to as "joint air operations"); and

(2) joint air surveillance operations (commonly referred to as "joint crewing").

(d) Banking Information Concerning Money Laundering.—The Congress encourages the Government of Mexico, upon ratification of the Mutual Legal Assistance Treaty between the United States and Mexico, to furnish banking information pursuant to that treaty which would permit the successful investigation and prosecution in the United States of major narco-terrorists who use Mexican financial institutions to "launder" their profits.

SEC. 3035. ASSISTANCE FOR COLOMBIA.

(a) Size of Military Assistance Group.—The third sentence of section 515(c)(1) of the Foreign Assistance Act of 1961 (relating to countries authorized to have more than 6 members of the Armed Forces assigned to carry out international security assistance programs) is amended by inserting "Colombia," after "Honduras,".

(b) Increased Military Assistance.—There are authorized to be appropriated to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to the grant military assistance) $15,000,000 as supplemental appropriations for fiscal year 1988, which are authorized to remain available until expended. These funds shall be available only to provide defense articles to the armed forces of Colombia to support their efforts to combat illicit narcotics production and trafficking.

(c) Protection from Narco-Terrorist Attacks.—

(1) Earmark of funds.—Of the funds made available for fiscal year 1989 to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund), not less than $5,000,000 shall be used to provide to the Government of Colombia such assistance as it may request to provide protection against narcoterrorist attacks on judges, other government officials, and members of the press.

(2) Waiver of prohibition on assistance to police forces.—The assistance provided for in paragraph (1) may be provided without regard to section 660 of the Foreign Assistance Act of 1961.

(3) Notification to congress.—Funds made available pursuant to paragraph (1) may not be obligated until at least 15 days after the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate are notified of the proposed obligation in accordance with the reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961.

(4) Extension of period for obligation of funds.—Funds allocated to carry out this subsection shall remain available until expended, notwithstanding any other provision of law.

SEC. 3036. ILLICIT DRUG PRODUCTION AND TRAFFICKING IN PAKISTAN.

In making determinations with respect to Pakistan pursuant to section

481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961, the President shall take into account the extent to which the Government of Pakistan—

(1) is reducing illicit narcotics cultivation;

(2) is increasing drug seizures;

(3) is increasing its suppression of the manufacture of illicit narcotics;

(4) is increasing the number of illicit laboratories destroyed;

(5) is increasing the number of arrests and successful prosecutions of violators, with particular emphasis on putting major traffickers out of business;

(6) has made changes in Pakistani legal codes in order to enable Pakistani law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws; and

(7) is expeditiously processing United States extradition requests relating to narcotics trafficking.

SEC. 3037. UNITED STATES RELIANCE ON LICIT OPIUM GUM FROM FOREIGN SOURCES.

(a) Review.—The President shall conduct a review of United States narcotics raw material policy to determine—

(1) the current and reserve international needs for opium-derived pharmaceutical and chemical products, and the relative capabilities for meeting those needs through the opium gum process and the concentrated poppy straw method of production;

(2) whether the United States should continue to rely on a single foreign country for all its licit opium gum;

(3) whether it should be United States policy to encourage all countries which produce licit opium to use the concentrated poppy straw method of production; and

(4) what options are available, consistent with treaties to which the United States is a party, to reduce United States reliance on licit opium gum from foreign sources.

The results of this review shall be reported to the Congress by December 31, 1988.

(b) Section 481(h) Certifications With Respect to India.—For fiscal year 1989, the President may make a certification with respect to India under section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961 only if the President determines that the Government of India has taken steps to prevent significant diversion of its licit opium cultivation and production into the illicit market, to reduce its licit opium stockpile, and to eliminate illicit opium cultivation and production. If that certification is made, the President shall include with that certification a detailed report on what steps were taken and an estimate of the amount of licit opium still being diverted to the illicit market.

SEC. 3038. AFGHANISTAN AS A HEROIN SOURCE.

(a) Finding.—The Congress finds that Afghanistan remains the source of most of the heroin exported from southwest Asia.

(b) Statement of Policy.—It is the sense of the Congress that—

(1) the United States Government should pursue efforts to press the Government of Afghanistan, and should work with the Mujahadeen—

(A) to reduce production and trafficking in areas under their respective control, and

(B) to encourage drug eradication, interdiction, and crop substitution in Afghanistan; and

(2) an initiative should be developed which could be put in place as the Mujahadeen and successors to the present Kabul regime begin to exert more civil authority.

SEC. 3039. INVOLVEMENT OF THE GOVERNMENT OF LAOS IN ILLICIT DRUG PRODUCTION AND TRAFFICKING.

(a) Quarterly Reports.—Not later than 3 months after the date of enactment of this Act and every 3 months thereafter, the President shall prepare and transmit to the Congress a report containing the following determinations:

(1) Does the Government of Laos, as a matter of government policy, encourage or facilitate the production or distribution of illegal drugs?

(2) Does any senior official of the Government of Laos engage in, encourage, or facilitate the production or distribution of illegal drugs?

(3) Do other governments in the region assist the distribution of illegal drugs from Laos?

(b) Information to be Included.—(1) If an affirmative determination is made under paragraph (1) or (2) of subsection (a), the report shall describe the activities and identities of officials whose activities caused that determination to be made.

(2) If an affirmative determination is made under paragraph (3) of subsection (a), the report shall describe the activities of other governments in the region which caused that determination to be made.

(c) Restrictions.—If an affirmative determination is reported under paragraph (1) or (2) of subsection (a), United States assistance may not be furnished to Laos, and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of funds of such bank for the benefit of Laos, unless the President certifies to the Congress that—

(1) overriding vital national interests require that provision of such assistance; and

(2) such assistance would improve the prospects for cooperation with Laos in halting the flow of illegal drugs.

(d) Relation to Other Provisions.—The restrictions contained in subsection (c) are in addition to the restrictions contained in section 481(h) of the Foreign Assistance Act of 1961 or any other provision of law.

Subtitle E—Annual Report and Certification Process for Foreign Assistance Programs

SEC. 3041. EXPRESSION IN NUMERICAL TERMS OF MAXIMUM ACHIEVABLE REDUCTIONS IN ILLICIT DRUG PRODUCTION.

Section 481(e)(4) of the Foreign Assistance Act of 1961 is amended by inserting after the second sentence the following: "Each determination of the President under the preceding sentence shall be expressed in numerical terms, such as the number of acres of illicitly cultivated controlled substances which can be eradicated.".

SEC. 3042. REPORTS ON ASSISTANCE DENIED.

Section 481(e) of the Foreign Assistance Act of 1961 is amended by adding at the end the following:

"(8) Each report pursuant to this subsection shall describe the United States assistance for the preceding fiscal year which was denied, pursuant to subsection (h), to each major illicit drug producing country and each major drug-transit country.".

SEC. 3043. DRUG-RELATED CORRUPTION BY FOREIGN GOVERNMENT OFFICIALS.

Section 481(h) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (2)(A)(i)(I) by inserting "corruption by government officials and" after preventing and punishing"; and

(2) in paragraph (3)—

(A) by striking out "and" at the end of subparagraph (A);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(C) by inserting after subparagraph (B) the following:

"(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery.".

SEC. 3044. DETERMINING MAJOR DRUG-TRANSIT COUNTRIES.

(a) Procedures for Determining.—Section 481 of Foreign Assistance Act of 1961 is amended by adding at the end the following:

"(k)(1) For each calendar year, the Secretary of State, after consultation with the appropriate committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under subsection (i)(5)(A) and (B) of this section.

"(2) Not later than September 1 of each year, the Secretary of State shall make a preliminary determination of the numerical standards and other guidelines to be used pursuant to paragraph (1) with respect to that year and shall notify the appropriate committees of the Congress of those standards and guidelines.

"(3) Not later than October 1 of each year, the Secretary of State shall notify the appropriate committees of the Congress of—

"(A) which countries appear likely, as of that date, to be determined to be major drug-transit countries for that year under the numerical standards and other guidelines developed pursuant to this subsection; and

"(B) which countries appear likely, as of that date, to be determined to be major illicit drug producing countries for that year.

"(4) Each report submitted pursuant to subsection (e) shall discuss—

"(A) any changes made, since the notification provided pursuant to paragraph (2), in the numerical standards and other guidelines used in determining which countries were major drug-transit countries under subsection (i)(5) (A) and (B) during the preceding year; and

"(B) any changes made, since the notification provided pursuant to paragraph (3)—

"(i) in the countries determined to be major drug-transit countries under subsection (i)(5) (A) and (B) during the preceding year; or

"(ii) in the countries determined to be major illicit drug producing countries for that year.".

(b) Transition Provision.—For calendar year 1988, the Secretary of State—

(1) shall take the actions specified in subsection (k)(2) of section 481 of the Foreign Assistance Act of 1961 (as added by subsection (a) of this section) not later than 30 days after the date of enactment of this Act; and

(2) shall take the actions specified in subsection (k)(3) of that section (as added by subsection (a) of this section) not later than 60 days after the date of enactment of this Act.

SEC. 3045. REQUIREMENT FOR BILATERAL NARCOTICS AGREEMENTS.

(a) Definition of Bilateral Agreement.—Section 481(h)(2)(A)(ii) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(ii) A bilateral narcotics agreement referred to in clause (i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

"(I) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

"(II) increase drug interdiction and enforcement;

"(III) increase drug treatment;

"(IV) increase the identification of and elimination of illicit drug laboratories;

"(V) increase the identification and elimination of the trafficking of precursor chemicals for the use in production of illegal drugs;

"(VI) increase cooperation with United States drug enforcement officials; and

"(VII) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.".

(b) Multilateral Agreements.—Section 481(h)(2)(A)(i)(I) of that Act, as amended by subsection (c)(1) of the section of this title entitled "**CORRECTION OF TECHNICAL ERRORS IN PRIOR ACTS**", is amended by inserting "or a multilateral agreement which achieves the objectives of this subsection" after "(ii))".

(c) Requirement for Agreement.—Effective October 1, 1988, section 481(h)(2)(A) of that Act is amended by adding at the end the following:

"(iii) A country which in the previous year was designated as a major illicit drug producing country or a major drug-transit country may not be determined to be cooperating fully under clause (i)(I) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of this subparagraph.".

(d) Conforming Amendment.—Section 585(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202), is hereby superceded.

SEC. 3046. WAIVER OF RESTRICTIONS ON UNITED STATES ASSISTANCE FOR CERTAIN MAJOR DRUG-TRANSIT COUNTRIES.

Section 481(h) of the Foreign Assistance Act of 1961 shall not apply with respect to a major drug-transit country for fiscal year 1989 if the President certifies to the Congress, during that fiscal year, that—

(1) section 481(i)(5)(C) of that Act (relating to money laundering) does not apply to that country;

(2) the country previously was a major illicit drug producing country but, during each of the preceding two years, has effectively eliminated illicit drug production; and

(3) the country is cooperating fully with the United States or has taken adequate steps on its own—

(A) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in section 481(h)(1)(A)(ii) of that Act) or a multilateral agreement which achieves the objectives of subparagraph (A) of section 481(h)(1) of that Act;

(B) in preventing narcotic and psychotropic drugs and other controlled substances transported through such country from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States; and

(C) in preventing and punishing corruption by government officials.

SEC. 3047. CLARIFICATION OF ASSISTANCE TERMINATION REQUIREMENT; CONGRESSIONAL REVIEW OF RECERTIFICATIONS.

Section 481(h) of the Foreign Assistance Act of 1961 is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following:

"(4) Paragraph (1) shall apply without regard to paragraph (2) if, within 45 days of continuous session (within the meaning of section 601(b)(1) of the International Security Assistance and Arms Export Control Act of 1976) after receipt of a certification under paragraph (2), the Congress enacts a joint resolution disapproving the determination of the President contained in such certification.

"(5) If the President does not make a certification under paragraph (2) with respect to a country or the Congress enacts a joint resolution disapproving such certification, that country may not be provided with any of the United States assistance for the current fiscal year that was required to be withheld by paragraph (1), and may not be provided with any United States assistance for subsequent fiscal years, unless—

"(A) the President submits, at the time specified in paragraph (2)(A)(i) or at any other time, a certification under subclause (I) or (II) of that paragraph with respect to such country;

"(B) a period of 45 days of continuous session (within the meaning of section 601(b)(1) of the International Security Assistance and Arms Export Control Act of 1976) elapses after the Congress receives that certification; and

"(C) during that period, the Congress does not enact a joint resolution disapproving the determination of the President contained in such certification.

"(6)(A) Any joint resolution under paragraph (4) or (5) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(B) For the purpose of expediting the consideration and enactment of joint resolution under paragraphs (4) and (5), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.".

SEC. 3048. DEFINITION OF UNITED STATES ASSISTANCE.

(a) Exclusion of Certain Narcotics Education and Awareness Activities.—Section 481(i)(4) of the Foreign Assistance Act of 1961 is amended by striking out "or (vii)" and inserting in lieu thereof "(vii) assistance for narcotics education and awareness activities pursuant to section 126(b)(2) of this Act (but any such assistance shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of this Act), or (viii)".

(b) Conforming Amendment.—The amendment made by subsection (a) shall be in lieu of any amendment to section 481(i)(4) of the Foreign Assistance Act of 1961 that is contained in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, and that relates to assistance under section 126 of the Foreign Assistance Act of 1961; and any such amendment contained in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, shall not take effect.

SEC. 3049. REPORTS AND RESTRICTIONS CONCERNING CERTAIN COUNTRIES.

Section 2013(a) of the Anti-Drug Abuse Act of 1986 is amended—

(1) by striking out "Not later than 6 months after the date of enactment of this Act and every 6 months thereafter, the" and inserting in lieu thereof "The"; and

(2) by inserting ", as part of the report required by section 481(b)(2) of the Foreign Assistance Act of 1961," after "transmit to the Congress".

SEC. 3050. REMOVAL OF CERTIFICATION PROCEDURE FOR MDB FINANCING FROM FOREIGN ASSISTANCE ACT.

Section 481(h) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (1)—

(A) by striking out "country—" through "50 percent" and inserting in lieu thereof "country, 50 percent";

(B) by striking out "; and" at the end of subparagraph (A) and inserting in lieu thereof a period; and

(C) by striking out subparagraph (B);

(2) in the text of paragraph (2)(A)(i) preceding subclause (I)—

(A) by striking out "(1)(A)" and inserting in lieu thereof "(1)"; and

(B) by striking out "and the provisions of paragraph (1)(B) shall not apply"; and

(3) in paragraph (2)(B)(i) by striking out "or financing".

Subtitle F—Miscellaneous Provisions Relating to Assistance Programs

SEC. 3051. REPORTING ON TRANSFER OF UNITED STATES ASSETS.

(a) 15-Day Advance Notification.—Any transfer by the United States Government to a foreign country for narcotics control purposes of any property seized by or otherwise forfeited to the United States Government in connection with narcotics-related activity shall be subject to the regular reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961.

(b) Annual Reports.—Section 2061 of this title requires that all such transfers be reported annually to the Congress.

SEC. 3052. IMPORTANCE OF SUPPRESSING INTERNATIONAL NARCOTICS TRAFFICKING.

Section 481(a)(1) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and

(2) by inserting after subparagraph (A) the following:

"(B) suppression of international narcotics trafficking is among the most important foreign policy objectives of the United States;".

SEC. 3053. PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS.

Chapter 8 of part I of the Foreign Assistance Act of 1961, as amended by section 3026 of this title, is further amended by adding at the end the following:

"SEC. 487. PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS.

"(a) Prohibition.—The President shall take all reasonable steps to ensure that assistance under this Act and the Arms Export Control Act is not provided to or through any individual or entity that the President knows or has reason to believe—

"(1) has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating narcotic or psychotropic drugs or other controlled substances (as defined in section 481(i)(3) of this Act); or

"(2) is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such substance.

"(b) Regulations.—The President shall issue regulations specifying the steps to be taken in carrying out this section.

"(c) Congressional Review of Regulations.—Regulations issued pursuant to subsection (b) shall be submitted to the Congress before they take effect.".

SEC. 3054. PROCUREMENT FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE.

The Congress urges the Secretary of State to take appropriate corrective action to improve the Department of State's procurement operations in order to assure that the procurement of property or services for use in providing assistance under chapter 8 of part I of the Foreign Assistance Act of 1961 (relating to international narcotics control assistance) is timely, efficient, and in accordance with applicable procurement statutes and regulations.

SEC. 3055. PROHIBITION ON USE OF NARCOTICS CONTROL ASSISTANCE TO ACQUIRE REAL PROPERTY.

Chapter 8 of part I of the Foreign Assistance Act of 1961, as amended by sections 3026 and 3053 of this title, is further amended by adding at the end the following:

"SEC. 488. PROHIBITION ON USE OF NARCOTICS CONTROL ASSISTANCE TO ACQUIRE REAL PROPERTY.

"Funds made available to carry out this chapter may not be used to acquire (by purchase, lease, or other means) any real property for use by foreign military, paramilitary, or law enforcement forces.".

SEC. 3056. CORRECTION OF TECHNICAL ERRORS IN PRIOR ACTS.

(a) Anti-Drug Abuse Act of 1986.—

(1) Section 2015(b)(1) of the Anti-Drug Abuse Act of 1986 is amended by striking out "effects" and inserting in lieu thereof "efforts".

(2) Section 2030(b) of that Act is amended by striking out "subsection (A)(4)" and inserting in lieu thereof "subsection (a)(4)".

(b) 1986 Drug Act Amendments to Foreign Assistance Act.—Section 481 of the Foreign Assistance Act of 1961 (as amended by section 2005 of the Anti-Drug Abuse Act of 1986) is amended—

(1) in subsection (h)(2)(A), by striking out ", or" at the end of clause (ii) and inserting in lieu thereof a period;

(2) in subsection (h)(4)(A), by inserting "a" before "joint resolution"; and

(3) in subsection (i)(4)(vi), by striking out "section 1049(c)(2)" and inserting in lieu thereof "section 104(c)(2)".

(c) FY 1988 Continuing Resolution Amendments to Foreign Assistance Act.—Section 481(h) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (2)(A)(i)(I) by striking out ", (as described in (ii)) and," and inserting in lieu thereof "(as described in clause (ii)),";

(2) in paragraph (2)(A)(i)(II) by striking out "subclause (i)" and inserting in lieu thereof "subclause (I)"; and

(3) in paragraph (4) by striking out "clause (A)(ii)" and inserting in lieu thereof "subparagraph (A)(i)(II)".

SEC. 3057. REIMBURSEMENT FOR DOD SERVICES USED IN PROVIDING INTERNATIONAL NARCOTICS CONTROL ASSISTANCE.

Section 632(c) of the Foreign Assistance Act of 1961 is amended by inserting after "actual cost," the following: "or, in the case of services procured from the Department of Defense to carry out chapter 8 of part I, the amount of the additional costs incurred by the Department of Defense in providing such services,".

Subtitle G—Department of State Activities

SEC. 3061. COORDINATION OF ALL UNITED STATES ANTI-NARCOTICS ASSISTANCE TO FOREIGN COUNTRIES.

(a) Coordination.—The Secretary of State shall be responsible for coordinating all assistance provided by the United States Government to support international efforts to combat illicit narcotics production or trafficking.

(b) Annual Reports.—

(1) Requirement for reports.—At the time that the report required by section 481(e) of the Foreign Assistance Act of 1961 is submitted each year, the Secretary of State, in consultation with appropriate United States Government agencies, shall report to the appropriate committees of the Congress on the assistance provided by the United States Government during the preceding fiscal year to support international efforts to combat illicit narcotics production or trafficking.

(2) Specific items to be included.—(A) Each report pursuant to this subsection shall specify the amount and nature of the assistance provided.

(B) For each country which is a significant direct or indirect source of illicit narcotic and psychotropic drugs and other controlled substances significantly affecting the United States, each report pursuant to this subsection shall set forth separately the assistance with respect to narcotic control efforts provided or to be provided (as the case may be) to that country by the Drug Enforcement Administration, the Customs Service, and Coast Guard, respectively, during the preceding fiscal year, the current fiscal year, and the next fiscal year.

(C) Each report required by this subsection shall also list all transfers, which were made by the United States Government during the preceding fiscal year, to a foreign country for narcotics control purposes of any property seized by or otherwise forfeited to the United States Government in connection with narcotics-related activity, including an estimate of the fair market value and physical condition of each item of property transferred.

(3) Reports may be classified.—The reports required by this subsection may be provided on a classified basis to the extent necessary.

(c) Rule of Construction.—Nothing contained in this section shall be construed to limit or impair the authority or responsibility of any other Federal agency with respect to law enforcement, domestic security operations, or intelligence activities as defined in Executive Order 12333.

SEC. 3062. REWARDS FOR INFORMATION CONCERNING NARCOTICS-RELATED OFFENSES COMMITTED OUTSIDE THE UNITED STATES.

Section 36(g) of the State Department Basic Authorities Act of 1956 is amended by amending the second sentence to read as follows: "In addition to the amount authorized to be appropriated by the preceding sentence, there are authorized to be appropriated, without fiscal year limitation, $5,000,000 for 'Administration of Foreign Affairs' for use in paying rewards for information described in subsection (b)(1).".

SEC. 3063. DENIAL OF PASSPORTS TO CERTAIN CONVICTED DRUG TRAFFICKERS.

(a) Ineligibility for Passport.—

(1) In general.—A passport may not be issued to an individual who is convicted of an offense described in subsection (b) during the period described in subsection (c) if the individual used a passport or otherwise crossed an international border in committing the offense.

(2) Passport revocation.—The Secretary of State shall revoke a passport previously issued to an individual who is ineligible to receive a passport under paragraph (1).

(b) Drug Law Offenses.—

(1) Felonies.—Subsection (a) applies with respect to any individual convicted of a Federal drug offense, or a State drug offense, if the offense is a felony.

(2) Certain misdemeanors.—Subsection (a) also applies with respect to an individual convicted of a Federal drug offense, or a State drug offense, if the offense is misdemeanor, but only if the Secretary of State determines that subsection (a) should apply with respect to that individual on account of that offense. This paragraph does not apply to an individual's first conviction for a misdemeanor which involves only possession of a controlled substance.

(c) Period of Ineligibility.—Subsection (a) applies during the period that the individual—

(1) is imprisoned, or is legally required to be imprisoned, as the result of the conviction for the offense described in subsection (b); or

(2) is on parole or other supervised release after having been imprisoned as the result of that conviction.

(d) Emergency and Humanitarian Exceptions.—Notwithstanding subsection (a), the Secretary of State may issue a passport, in emergency circumstances or for humanitarian reasons, to an individual with respect to whom that subsection applies.

(e) Indicating Drug Law Violations On Travel Documents.—The President may, by regulation, prescribe procedures for indicating on—

(1) passports and other travel documents issued by the United States, and

(2) passports and other forms of personal identification presented during a United States immigration or customs inspection in order to establish the identity of an individual seeking admission or entry into the United States,

the fact that the holder has been convicted of, or has been assessed a civil penalty or has forfeited property on account of, a Federal drug offense or a State drug offense if, in committing the offense, the individual used the passport or other travel document or other form of personal identification in order to cross an international border.

(f) Definitions.—As used in this section—

(1) the term "controlled substance" has the same meaning as is provided in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(2) the term "Federal drug offense" means a violation of—

(A) the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(B) any other Federal law involving controlled substances; or

(C) subchapter II of chapter 53 of title 31, United States Code (commonly referred to as the "Bank Secrecy Act"), or section 1956 or section 1957 of title 18, United States

Code (commonly referred to as the "Money Laundering Act"), if the Secretary of State determines that the violation is related to illicit production of or trafficking in a controlled substance;

(3) the term "felony" means a criminal offense punishable by death or imprisonment for more than one year;

(4) the term "imprisoned" means an individual is confined in or otherwise restricted to a jail-type institution, a half-way house, a treatment facility, or another institution, on a full or part-time basis, pursuant to the sentence imposed as the result of a conviction;

(5) the term "misdemeanor" means a criminal offense other than a felony;

(6) the term "State drug offense" means a violation of State law involving the manufacture, distribution, or possession of a controlled substance; and

(7) the term "State law" means the law of a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

SEC. 3064. MACHINE READABLE VISAS.

There are authorized to be appropriated to the Department of State for "SALARIES AND EXPENSES", in addition to amounts otherwise authorized, $15,000,000 as supplemental appropriations for fiscal year 1988, which are authorized to remain available until expended. Amounts authorized to be appropriated by this section shall be available only for expenses of the Department of State in developing and implementing a machine readable visa system.

SEC. 3065. EXTRADITION AND MUTUAL LEGAL ASSISTANCE TREATIES AND MODEL COMPREHENSIVE ANTIDRUG LAWS.

(a) FINDINGS.—The Congress finds that—

(1) section 133 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (enacted August 16, 1985), directed the Secretary of State to increase United States efforts to negotiate updated extradition treaties relating to narcotics offenses with each major drug-producing country;

(2) section 803 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (enacted December 22, 1987) directed the Secretary of State to ensure that an objective of the United States diplomatic mission in each major illicit drug producing or major drug-transit country be to ensure that drug traffickers can be extradited to the United States; and

(3) although some progress has been made pursuant to these directives in increasing international law enforcement cooperation with respect to illicit drug production and trafficking, much greater international law enforcement cooperation is required in combating the illicit drug problem.

(b) GREATER EMPHASIS REQUIRED.—Therefore, the Congress directs the Secretary of State to place greater emphasis on updating extradition treaties, and on negotiating mutual legal assistance treaties, with major illicit drug producing countries and major drug-transit countries.

(c) MODEL TREATIES AND ANTIDRUG LAWS.—The Secretary of State and the Attorney General shall jointly develop a model extradition treaty with respect to narcotics-related violations (including extradition of host country nationals), a model mutual legal assistance treaty, and model comprehensive anti-narcotics legislation. The Secretary of State shall distribute such treaties and legislation to each United States mission abroad.

(d) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress, not later than six months after the date of enactment of this Act, on actions taken to carry out this section.

SEC. 3066. OVERSEAS INVESTIGATIVE PROGRAM.

It is the sense of the Congress that Regional Security Officers and other security personnel at United States embassies and other civilian posts abroad should be directed to expand their investigative activities with respect to illicit drug use and trafficking by United States Government personnel and their dependents.

SEC. 3067. ASSIGNMENT OF MORE DRUG ENFORCEMENT ADMINISTRATION AGENTS TO UNITED STATES EMBASSIES.

The Congress urges the Secretary of State to permit the assignment of additional Drug Enforcement Administration agents to United States diplomatic missions in those foreign countries where illicit narcotics production or trafficking is, or is likely to become, a significant problem.

Subtitle H—Miscellaneous Provisions

SEC. 3071. COVERT ACTIONS DIRECTED AT ILLICIT INTERNATIONAL DRUG TRAFFICKING.

It is the sense of the Congress that, given the magnitude of the illicit drug problem and the threat it poses to the national security of the United States, agencies of the intelligence community should, through the use of covert actions, be more actively involved in the effort to combat illicit international drug trafficking.

SEC. 3072. ENCOURAGEMENT OF UNITED NATIONS EFFORTS TO ESTABLISH AN INTERNATIONAL FORCE AIMED AT STOPPING THE TRAFFICKING OF ILLEGAL DRUGS.

The Congress encourages the United Nations to explore ways and means to establish an international force or mechanism aimed at stopping the trafficking of illegal drugs.

TITLE IV—COMMITTEE ON GOVERNMENT OPERATIONS

SEC. 4001. SHORT TITLE.

This title may be cited as the "Drug-Free Workplace Act of 1988".

SEC. 4002. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL CONTRACTORS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—No person or organization shall be considered a responsible source, under the meaning of such term as defined in section 4(8) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(8)), for the purposes of being awarded a contract for the procurement of any property or services from any Federal agency unless such person or organization has certified to the contracting agency that it will provide a drug-free workplace by—

(1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) establishing a drug-free awareness program to inform employees about—

(A) the dangers of drug abuse in the workplace;

(B) the person's or organization's policy of maintaining a drug-free workplace;

(C) any available drug counseling, rehabilitation, and employee assistance programs; and

(D) the penalties that may be imposed upon employees for drug abuse violations;

(3) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by paragraph (1) and that, as a condition of employment on such contract, the employee agree—

(A) to abide by the terms of the statement; and

(B) to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(4) notifying the contracting agency within 10 days after receiving notice under paragraph (3)(B) from an employee or otherwise receiving actual notice of such conviction;

(5) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 4004; and

(6) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), and (5).

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE CONTRACTOR.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder shall be subject to debarment, in accordance with the requirements of this section if the board of contract appeals of the contracting agency determines that—

(A) the contractor has made a false certification under subsection (a);

(B) the contractor violates such certification by failing to carry out the requirements of paragraph (1), (2), (3), (4), or (5) of subsection (a); or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—If a contracting officer determines, in writing, that cause for suspension, termination, or debarment exists, a suspension, termination, or debarment proceeding subject to this subsection shall, on application by a contracting officer of an agency, be conducted by the board of contract appeals of the agency which conducts the procurement. The board of contract appeals shall, based upon a preponderance of the evidence presented, resolve all issues of fact, determine whether a basis exists for the suspension or termination of the contract or debarment of the contractor, and issue a final decision in favor of or against suspension or termination of the contract or debarment of the contractor. A proceeding, decision, or order of the board pursuant to this subsection shall not be subject to interlocutory appeal or review. Determinations and final decisions of the board of contract appeals shall be final unless appealed by the contractor to the United States Court of Appeals for the Federal Circuit within 60 days after the receipt by the contractor of a copy of a final decision of the board of contract appeals. Section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)) shall apply with respect to the finality of such board determinations and decisions under this paragraph.

(3) Conduct by GSA board.—In the case of an agency that has not established a board of contract appeals under section 8(a)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(a)(1)), the General Services Administration Board of Contract Appeals shall make the determinations and issue final decisions under paragraph (2) for such agencies. Section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)) shall apply with respect to the finality of such Board determinations and decisions under this paragraph.

(4) Effect of debarment.—Upon issuance of any final decision under this subsection requiring debarment of a contractor, such contractor shall be ineligible for award of any contract by any Federal agency and for participation in any future procurement by any Federal agency for a period specified in the decision, not to exceed 5 years. Upon issuance of any final decision recommending against debarment of the contractor, the contractor shall be compensated as provided by law or regulations.

SEC. 4003. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL GRANT RECIPIENTS.

(a) Drug-Free Workplace Requirement.—No person or organization shall receive a grant from any Federal agency unless such person or organization has certified to the granting agency that it will provide a drug-free workplace by—

(1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) establishing a drug-free awareness program to inform employees about—

(A) the dangers of drug abuse in the workplace;

(B) the grantee's policy of maintaining a drug-free workplace;

(C) any available drug counseling, rehabilitation, and employee assistance programs; and

(D) the penalties that may be imposed upon employees for drug abuse violations;

(3) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by paragraph (1) and that, as a condition of employment on such grant, the employee agree—

(A) to abide by the terms of the statement; and

(B) to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(4) notifying the granting agency within 10 days after receiving notice of a conviction under paragraph (3)(B) from an employee or otherwise receiving actual notice of such conviction;

(5) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 4004; and

(6) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), and (5).

(b) Suspension, Termination, or Debarment of the Grantee.—

(1) Grounds for suspension, termination, or debarment.—Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to debarment, in accordance with the requirements of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a);

(B) the grantee violates such certification by failing to carry out the requirements of paragraph (1), (2), (3), (4), or (5) of subsection (a); or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) Conduct of suspension, termination, and debarment proceedings.—A suspension, termination, or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) Effect of debarment.—Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years. Upon issuance of any final decision recommending against debarment of the grantee, the grantee shall be compensated as provided by law or regulations.

SEC. 4004. EMPLOYEE SANCTIONS AND REMEDIES.

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 4002(a)(3)(B) or 4003(a)(3)(B)—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

SEC. 4005. WAIVER.

(a) In General.—A termination, suspension, or debarment under this title may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines, after the issuance of a final determination under section 4003(b) by a board of contract appeals regarding a contract entered into by that agency, that suspension or termination of the contract or debarment of the contractor, or refusal to permit a person or organization to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension or termination of the grant or debarment of the grantee would not be in the public interest.

(b) Exclusive Authority.—The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

SEC. 4006. AUTHORITY OF BOARDS.

Not later than 90 days after the date of enactment of this title, the chairman of each board of contract appeals shall prescribe rules and procedures governing actions under this title. Each judge of such board may administer oaths and affirmations and issue subpoenas.

SEC. 4007. DEFINITIONS.

For purposes of this title—

(1) the term "drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in section 4002 or 4003 of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this title;

(2) the term "employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 4002 or 4003;

(3) the term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812);

(4) the term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term "grantee" means the department, division, or other unit of a person or organization responsible for the performance under the grant;

(7) the term "contractor" means the department, division, or other unit of a person or organization responsible for the performance under the contract; and

(8) the term "Federal agency" means an agency as that term is defined in section 552(f) of title 5, United States Code.

SEC. 4008. EFFECTIVE DATE.

Sections 4002 and 4003 shall be effective 120 days after the date of the enactment of this title.

TITLE V—COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Subtitle A—Indian Alcohol and Substance Abuse Prevention and Treatment

SEC. 5001. AMENDMENTS TO INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT OF 1986.

Whenever in this subtitle a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.).

SEC. 5002. MINIMUM PERFORMANCE STANDARDS.

(a) In General.—Paragraph (3) of section 4205(a) (25 U.S.C. 2411(a)) is amended by striking out "minimum standards" and inserting in lieu thereof "minimum performance standards".

(b) Provisions of Tribal Action Plans.—Subparagraph (B) of section 4206(c)(1) (25 U.S.C. 2412(c)(1)) is amended by striking out "minimum standards" and inserting in lieu thereof "minimum performance standards".

(c) Report Regarding Standards.—The Secretary of the Interior and the Secretary of Health and Human Services shall submit a joint report to the Committee on Interior and Insular Affairs and the Committee on

Energy and Commerce of the House of Representatives and the Select Committee on Indian Affairs of the Senate on the minimum performance standards developed pursuant to section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411). Such report shall be submitted with the budget request submitted for fiscal year 1990.

SEC. 5003. REMEDIAL PLAN FOR COMPLYING WITH MINIMUM PERFORMANCE STANDARDS.

(a) Development and Implementation.—Subsection (c) of section 4206 (25 U.S.C. 2412) is amended by adding at the end thereof the following new paragraph:

"(3) Any Tribal Action Plan shall provide for developing and implementing remedial plan for complying with the minimum performance standards incorporated under paragraph (1)(B).".

(b) Responsibility of Office of Alcohol and Substance Abuse.—Paragraph (2) of section 4207(b) (25 U.S.C. 2413(b)) is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and";

(3) by adding at the end thereof the following:

"(C) monitoring the performance in achieving compliance with the minimum performance standards through the remedial plans developed and implemented pursuant to section 4206(c)(3); and

"(D) submitting to the Congress reports in each case where remedial plans are necessary to address program deficiencies, but not tribal specific problems with compliance.".

SEC. 5004. DEFINITIONS.

Section 4204 (25 U.S.C. 2403) is amended by inserting at the end thereof the following new paragraph:

"(6) The terms 'Urban Indian', 'Urban Center', and 'Urban Indian Organization' shall have the same meaning as provided in section 4 of the Indian Health Care Improvement Act.".

SEC. 5005. AMENDMENT AND REVISION OF TRIBAL DEVELOPMENT PLAN.

Paragraph (2) of section 4206(c) (25 U.S.C. 2412(c)) is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and"; and

(3) by adding at the end thereof the following new subparagraph (E):

"(E) the establishment of procedures for amendment and revision of the plan as may be determined necessary by the Tribal Coordinating Committee.".

SEC. 5006. AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.

Paragraph (2) of section 4206(d) (25 U.S.C. 2412(d)(2)) is amended to read as follows:

"(2) There is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992 for grants under this subsection.".

SEC. 5007. LEASING OF TRIBAL PROPERTY.

Section 4209 is amended—

(1) by amending the heading to read as follows:

"SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT; LEASING OF TRIBAL PROPERTY."; and

(2) by adding at the end thereof the following new subsection (c):

"(c) Leases.—(1) The Secretary of the Interior and the Secretary of Health and Human Services are authorized to enter into long-term leases of tribally owned facilities to house programs established by this subtitle where they determine that there is no Federal facility reasonably available for such purpose and the cost of constructing a new Federal facility would exceed the cost of such lease unless they determine that mitigating factors favor such a lease.

"(2) A tribal facility may be leased pursuant to this authority to house a regional treatment center to be established pursuant to section 4227(b) only if all the tribes within the Indian Health Service area to be served by such regional treatment center initially consent to such lease.".

SEC. 5008. EMERGENCY SHELTERS AND HALFWAY HOUSES.

(a) Halfway Houses.—Subsection (a) of section 4213 (25 U.S.C. 2433) is amended by adding at the end thereof "Halfway houses may be used as either an intake facility or an aftercare facility for youth admitted, or to be admitted, for long-term treatment of substance abuse. The Indian Health Service, the Bureau of Indian Affairs, and the tribes are authorized to use their respective resources to adequately staff and operate any such facility.".

(b) Authorization.—Subsection (e) of section 4213 (25 U.S.C. 2433) is amended to read as follows:

"(e) Authorization.—(1) For the planning and design, construction, and renovation of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $3,000,000 for each of the fiscal years 1990, 1991, and 1992.

"(2) For the staffing and operation of emergency shelters and half-way houses, there is authorized to be appropriated $2,000,000 for fiscal year 1990. Such amount shall be included in the base budget of the Bureau of Indian Affairs and funding thereafter shall be as authorized by the Act of November 1, 1921 (25 U.S.C. 13).

"(3) The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 5009. CERTAIN ILLEGAL NARCOTICS TRAFFICKING.

(a) Assistance.—The section heading and subsection (a) of section 4216 (25 U.S.C. 2442) are amended to read as follows:

"SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE TOHONO O'ODHAM AND ST. REGIS RESERVATIONS; SOURCE ERADICATION.

"(a)(1) Investigation and Control.—The Secretary of the Interior shall provide assistance to the—

"(A) the Tohono O'odham Tribe of Arizona for the investigation and control of illegal narcotics traffic on the Tohono O'odham Reservation along the border with Mexico, and

"(B) the St. Regis Band of Mohawk Indians of New York for the development of tribal law enforcement and judicial systems to aid in the investigation and control of illegal narcotics traffic on the St. Regis Reservation along the border with Canada.

"(2) The Secretary shall ensure that tribal efforts under this subsection are coordinated with appropriate Federal law enforcement agencies, including the United States Custom Service.

"(3) For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

"(A) $500,000 under paragraph (1)(A) for each of the fiscal years 1990, 1991, and 1992, and

"(B) $450,000 under paragraph (1)(B) for each of the fiscal years 1989 and 1990.".

(b) Authorization.—Subsection (b)(2) of section 4216 is amended to read as follows:

"(2) Authorization.—For the purpose of establishing the program required by paragraph (1), there are authorized to be appropriated $500,000 for each of the fiscal years 1990, 1991, and 1992.".

SEC. 5010. LAW ENFORCEMENT AND JUDICIAL TRAINING.

Subsection (b) of section 4218 (25 U.S.C. 2451) is amended to read as follows:

"(b) Authorization.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $1,500,000 for each of the fiscal years 1990, 1991, and 1992.".

SEC. 5011. TREATMENT OF JUVENILE OFFENDERS.

Section 4219 (25 U.S.C. 2452) is amended—

(1) by inserting "(a)" before "The Memorandum"; and

(2) by adding at the end thereof the following new subsection (b):

"(b) Treatment of Certain Committed Youth.—The Indian Health Service shall not refuse to provide necessary interim treatment for any Indian youth referred pursuant to subsection (a) who has been charged or is being prosecuted for any crime unless such referral is prohibited by a court of competent jurisdiction or the youth is determined by a court of competent jurisdiction to be a danger to others.".

SEC. 5012. JUVENILE DETENTION CENTERS.

Subsection (b) of section 4220 (25 U.S.C. 2453) is amended to read as follows:

"(b) Authorization.—(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1990 and 1991.

"(2) For the purpose of staffing and operating juvenile detention centers, there is authorized to be appropriated $5,000,000 for fiscal year 1990. Such amount shall be included in the base budget of the Bureau of Indian Affairs and funding thereafter shall be as authorized by the Act of November 2, 1921 (25 U.S.C. 13).".

SEC. 5013. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) Detoxification and Rehabilitation.—Subsection (a) of section 4227 (25 U.S.C. 2474) is amended by inserting "of Health and Human Services" after the "Secretary".

(b) Treatment Centers.—Subsection (b) of section 4227 is amended to read as follows:

"(b) Treatment Centers or Facilities.—(1) The Secretary shall construct or renovate, and appropriately staff and operate, a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For the purposes of this subsection, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office.

"(2)(A) For the purpose of constructing or renovating centers or facilities required by paragraph (1), there are authorized to be appropriated $5,000,000 for each of the fiscal years 1990 and 1991.

"(B) For the purpose of staffing and operating such centers or facilities, there are authorized to be appropriated $9,000,000 for fiscal year 1990. Such amount shall be included in the base budget of the Indian Health Service and funding thereafter shall be as provided in the Act of November 2, 1921 (25 U.S.C. 13).".

SEC. 5014. TRAINING AND COMMUNITY EDUCATION.

Section 4228 (25 U.S.C. 2475) is amended—

(1) by striking out subsection (c); and

(2) by amending subsection (d) to read as follows:

"(c) AUTHORIZATION.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 1990, 1991, and 1992.".

SEC. 5015. NAVAJO ALCOHOL REHABILITATION PROGRAM.

Subsection (c) of section 4229 is amended to read as follows:

"(c) AUTHORIZATION.—There are authorized to be appropriated for the purposes of grants under subsection (a) $200,000 for each fiscal year. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.".

SEC. 5016. URBAN INDIAN PROGRAM.

The subtitle is amended by adding at the end thereof the following new section 4231:

"SEC. 4231. URBAN INDIAN PROGRAM.

"(a) GRANTS.—The Secretary of Health and Human Services is authorized to make grants for the provision of health-related services in school and community-based education, prevention, treatment, or rehabilitation of alcohol and substance abuse in urban centers to those urban Indian organizations with whom the Secretary has entered into a contract under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.).

"(b) GOALS OF GRANT.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished pursuant to the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

"(c) CRITERIA.—The Secretary shall establish criteria for the grants made under subsection (a), including criteria relating to the—

"(1) size of the urban Indian population;

"(2) accessibility to, and utilization of, other health resources available to such population;

"(3) duplication of existing Indian Health Service or other Federal grants or contracts;

"(4) capability of the organization to adequately perform the activities required under the grant;

"(5) satisfactory performance standards for organization in meeting the goals set forth in such grant, which standards shall be negotiated and agreed to between the Secretary and the grantee on a grant-by-grant basis; and

"(6) identification of need for services.

The Secretary shall develop a methodology for allocating grants made pursuant to this section based on such criteria.

"(d) TREATMENT OF MONEYS RECEIVED BY URBAN INDIAN ORGANIZATIONS.—Any moneys received by an urban Indian organization under this or any other Act for substance abuse prevention, treatment, and rehabilitation shall be subject to the criteria set forth in subsection (c).

"(e) AUTHORIZATION FOR GRANT PROGRAM.—There is authorized to be appropriated $5,000,000 for each of the fiscal years 1990, 1991, and 1992 to carry out the purposes of this section, other than subsection (f).

"(f) RESEARCH.—There is authorized to be appropriated for each fiscal year beginning with fiscal year 1990 to the Secretary of Health and Human Services $1,000,000 for research into substance abuse prevention, treatment, and rehabilitation and the development of strategies for combatting substance abuse. Such research shall include the collection, compilation, and analysis of epidemiological data on substance abuse among the Indian population.".

SEC. 5017. TREATMENT OF FUNDS APPROPRIATED TO CARRY OUT ACT.

(a) SECRETARY OF THE INTERIOR AND SECRETARY OF HEALTH AND HUMAN SERVICES.—Section 4207 (25 U.S.C. 2413) is amended by adding at the end thereof the following:

"(d) TREATMENT OF FUNDS.—(1) Amounts appropriated pursuant to this part shall be identified in the agency accounts separate from any other funds appropriated to the Secretary of the Interior or the Secretary of Health and Human Services.

"(2) The Secretary of the Interior and the Secretary of Health and Human Services shall each separately identify the funds needed to carry out this part in their budget requests submitted to the Congress under section 1105 of title 31, United States Code.".

(b) INDIAN HEALTH SERVICE.—Section 4225 (25 U.S.C. 2472) is amended—

(1) by inserting "(a)" before "The Memorandum"; and

(2) by adding at the end thereof the following:

"(b) TREATMENT OF FUNDS.—(1) Amounts appropriated pursuant to this part shall be identified in the Indian Health Service accounts separate from any other funds appropriated to the Indian Health Service.

"(2) The Indian Health Service shall separately identify the funds needed to carry out this part in its budget request submitted to the Congress under section 1105 of title 31, United States Code.".

Subtitle B—National Park System, Public Lands, and National Forest System

SEC. 5101. AMENDMENTS TO TITLE V OF THE ANTI-DRUG ABUSE ACT OF 1986.

(a) NATIONAL PARK SERVICE POLICE.—Section 5052 of title V of the Anti-Drug Abuse Act of 1986 is amended to read as follows:

"SEC. 5052. NATIONAL PARK AUTHORIZATION.

"In order to improve Federal law enforcement activities relating to the use and production of narcotics and prohibited substances in National Park System units, from amounts appropriated there are made available to the Secretary of the Interior, in addition to sums made available under other authority of law, $3,000,000 for the fiscal year 1989, and for each fiscal year thereafter, to be used for the employment and training of additional and existing National Park Service police, for equipment and facilities to be used by such personnel and for expenses related to such employment, training, equipment, and facilities.".

(b) BUREAU OF LAND MANAGEMENT.—Title V of the Anti-Drug Abuse Act of 1986 is amended by adding at the end thereof the following:

"Subtitle C—Bureau of Land Management Program

"SEC. 5063. SHORT TITLE.

"This subtitle may be cited as the Bureau of Land Management Drug Enforcement Supplemental Authority Act.

"SEC. 5064. BUREAU OF LAND MANAGEMENT AUTHORIZATION.

"In order to improve Federal law enforcement activities relating to the use and production of narcotics and prohibited substances on Bureau of Land Management public lands, from amounts appropriated there are made available to the Secretary of the Interior, in addition to sums made available under other authority of law, $1,500,000 for the fiscal year 1989, and for each fiscal year thereafter to be used for the employment and training of additional and existing Bureau of Land Management law enforcement personnel, for equipment and facilities to be used by such personnel, and for expenses related to such employment, training, equipment, and facilities.".

SEC. 5102. NATIONAL FOREST SYSTEM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 15006 of title XV of the Anti-Drug Abuse Act of 1986 is amended to read as follows:

"SEC. 15006. FOREST SERVICE AUTHORIZATION.

"In order to improve Federal law enforcement activities relating to the use and production of narcotics and prohibited substances on lands administered by the Forest Service, from amounts appropriated there are made available to the Secretary of Agriculture, in addition to sums made available under other authority of law, $10,000,000 for the fiscal year 1989, and for each fiscal year thereafter, to be used for employment and training of additional and existing Forest Service law enforcement personnel, for equipment and facilities to be used by such personnel, for expenses related to such employment, training, equipment, and facilities, and for cooperative programs with State and local law enforcement agencies.".

(b) CRIMINAL PENALTY.—Title XV of the Anti-Drug Abuse Act of 1986 is amended by adding at the end the following new section:

"SEC. 15008. CRIMINAL PENALTY FOR CREATING A HAZARD ON FEDERAL LANDS WHILE USING A POISON, CHEMICAL, OR HAZARDOUS SUBSTANCE IN MANUFACTURING, DISTRIBUTING, OR DISPENSING A CONTROLLED SUBSTANCE.

"Whoever, in violating section 401(a)(1) of the Controlled Substances Act, or in attempting to do so, knowingly uses a poison, chemical, or other hazardous substance on Federal land and, by such use, creates a serious hazard to humans, wildlife, domestic animals, or the environment shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.".

Subtitle C—Insular Areas

SECTION 5201. SHORT TITLE.

This subtitle may be cited as the "Insular Areas Drug Abuse Amendments of 1988".

SEC. 5202. AMERICAN SAMOA.

Section 5004(a) of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494b(a)) is amended—

(1) in paragraph (2) by—

(A) striking "Secretary of" and inserting in lieu thereof "Secretaries of Education and";

(B) inserting ", as appropriate," after "States";

(C) inserting "and, upon request of the Government of American Samoa, shall" after "are authorized to";

(D) inserting "and other personnel" after "officers"; and

(E) inserting "or other substance" after "drug".

(2) in paragraph (3) by—

(A) striking "$700,000" and inserting in lieu thereof "$350,000 for fiscal year 1989 and annually thereafter for grants to the Government of American Samoa to be expended in accordance with a plan approved by the Secretary of Interior in consultation with the Attorney General and the Secretaries of Education and Health and Human Services"; and

(B) striking "subsection" and inserting in lieu thereof "Act"; and

(3) by adding at the end thereof the following:

"(4) The Secretary of the Treasury in consultation with the Secretary of the Interior shall provide the Government of American Samoa with a vessel to be used in the enforcement of narcotics and other laws. There are authorized to be appropriated $500,000 for this purpose.".

SEC. 5203. GUAM.

Section 5004(b) of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494b(b)) is amended—

(1) in paragraph (1) by—

(A) striking "Secretary of" and inserting in lieu thereof "Secretaries of Education and";

(B) inserting "and, upon request of the Government of Guam shall, provide appropriate training," after "may provide"; and

(C) inserting "or other substance" after "drug";

(2) in paragraph (2) by striking "$1,000,000" and all that follows through "shall" and inserting in lieu thereof "$500,000 for fiscal year 1989 and annually thereafter for grants to the Government of Guam to be expended in accordance with a plan approved by the Secretary of the Interior in consultation with the Attorney General and the Secretaries of Education and Health and Human Services, to carry out the purposes of this Act, to"; and

(3) by adding at the end thereof the following:

"(3) There are authorized to be appropriated for a grant to the Government of Guam $500,000 to be expended in accordance with a plan approved by the Secretary of the Interior in consultation with the Attorney General for drug abuse law enforcement equipment.".

SEC. 5204. NORTHERN MARIANA ISLANDS.

Section 5004(c) of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494b(c)) is amended—

(1) in paragraph (2) by—

(A) moving "of the United States" to after "Services";

(B) striking "Secretary of" and inserting in lieu thereof "Secretaries of Education and";

(C) inserting "and, upon request of the Government of the Northern Mariana Islands, shall" after "are authorized to";

(D) inserting "and other personnel" after "officers"; and

(E) inserting "or other substance" after "drug"; and

(2) in paragraph (3) by—

(A) striking "$250,000" and inserting in lieu thereof "$125,000 for fiscal year 1989 and annually thereafter for grants to the Government of the Northern Mariana Islands to be expended in accordance with a plan approved by the Secretary of the Interior in consultation with the Attorney General and the Secretaries of Education and Health and Human Services"; and

(B) striking "subsection" and inserting in lieu thereof "Act".

SEC. 5205. PUERTO RICO.

Section 5004(d) of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494b(d)) is amended—

(1) in paragraph (1) by striking all after "Rico" and inserting in lieu thereof "$7,000,000 for fiscal year 1989 and $2,000,000 annually thereafter for grants to the Government of Puerto Rico to carry out the purposes of this Act to be expended in accordance with a plan approved by the Executive Director of White House Task Force on Puerto Rico in consultation with the Attorney General and the Secretaries of Education and Health and Human Services of the United States, to remain available until expended."; and

(2) in paragraph (4) by—

(A) striking "Secretary of" and inserting in lieu thereof "Secretaries of Education and";

(B) inserting "and, upon request of the Government of Puerto Rico, shall provide appropriate training," after "may provide"; and

(C) inserting "or other substance" after "drug".

SEC. 5206. VIRGIN ISLANDS.

Section 5004(e) of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494b(e)) is amended—

(1) in paragraph (1) by striking all after "Islands" and inserting in lieu thereof a comma and "$2,000,000 for fiscal year 1990 and annually thereafter to carry out the purposes of this Act to be expended in accordance with a plan approved by the Secretary of the Interior in consultation with the Attorney General and the Secretaries of Education and Health and Human Services, to remain available until expended.";

(2) in paragraph (2) by striking "should" and inserting in lieu thereof "shall";

(3) in paragraph (3) by—

(A) striking "Secretary of" and inserting in lieu thereof "Secretaries of Education and"

(B) inserting "and, upon request of the Government of the Virgin Islands, shall provide appropriate training," after "may provide"; and

(C) inserting "or other substance" after "drug"; and

(4) by adding at the end thereof the following:

"(4) To assist in the prosecution of the violation of the narcotics laws of the United States, the Attorney General of the United States shall assign the necessary personnel to serve in the office of the United States Attorney for the Virgin Islands appointed pursuant to section 27 of the Revised Organic Act of the Virgin Islands, as amended (48 U.S.C. 1617).

"(5) Effective fiscal year 1989, there are authorized to be appropriated for a grant to the Government of the Virgin Islands $2,500,000 to be expended in accordance with a plan approved by the Secretary of the Interior in consultation with the Secretary of Health and Human Services for a substance abuse facility.".

SEC. 5207. PALAU.

Section 5004 of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494b) is amended by adding at the end thereof the following:

"(f) PALAU.—(1) The Attorney General and the Secretaries of Education and Health and Human Services are authorized to and, upon request of the Government of Palau, shall provide appropriate training, technical assistance, and equipment to carry out the purposes of this Act and any other applicable Federal or insular drug or other substance abuse laws.

"(2) There are authorized to be appropriated $500,000 for fiscal year 1989 and annually thereafter for grants to the Government of Palau to be expended in accordance with a plan to be approved by the Secretary of the Interior in consultation with the Attorney General and the Secretaries of Education, State, and Health and Human Services to carry out the purposes of this Act.

"(3) To the extent not prohibited under the Constitution of Palau, upon written request of the President of Palau or by resolution of the Congress of Palau, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Secret Service, the Immigration and Naturalization Service, and the Customs Service are authorized to investigate any United States criminal laws which are applicable in Palau in cooperation with law enforcement agencies of Palau.".

SEC. 5208. PURPOSES.

Section 5002 of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494) is amended by—

(1) inserting "and the Trust Territory of the Pacific Islands (or successor governments)" after "States" where it first appears;

(2) inserting "and other substance" before "prevention" and

(3) inserting "and associated" before "insular areas.".

SEC. 5209. ANNUAL REPORTS.

Section 5003 of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494a) is amended by—

(1) inserting "(a) IN GENERAL.—" before "The President";

(2) in such subsection (a) inserting ", the Trust Territory of the Pacific Islands," before "and states" in paragraph (1) and after "territories" each place in which it appears in paragraph (2); and

(3) adding at the end thereof the following new subsection:

"(b) TRANSMISSION DATE.—The annual reports required by subsection (a) shall be transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate not later than the first day of October each year. Notwithstanding any other provision of law, for any year that said report is not transmitted to said Committees on or before October 1, no funds shall be expended for the operation of the Office of Territorial and International Affairs of the Department of the Interior nor for the Office of Freely Associated State Affairs for the fiscal year which begins October 1 until said report is transmitted.".

SEC. 5210. DRUG ENFORCEMENT AGENCY PERSONNEL ASSIGNMENTS.

Title V of the United States Insular Areas Drug Abuse Act of 1986 (48 U.S.C. 1494 et seq.) is amended by adding at the end of Subtitle A the following new section:

"SEC. 5005. DRUG ENFORCEMENT AGENCY PERSONNEL ASSIGNMENTS.

"To assist in the enforcement of the controlled substances laws of the United States in coordination with law enforcement officers in insular areas in the eastern Caribbean and in the central and western Pacific, the Administrator of the Drug Enforcement Administration shall assign appropriate personnel and other resources to the Virgin Islands and Guam.".

TITLE VI—COMMITTEE ON THE JUDICIARY

SEC. 6001. SHORT TITLE.

This title may be cited as the "Anti-Drug Abuse Amendments Act of 1988".

Subtitle A—Chemical Diversion and Trafficking

SEC. 6051. SHORT TITLE.

This subtitle may be cited as the "Chemical Diversion and Trafficking Act of 1988".

SEC. 6052. REGULATION OF LISTED CHEMICALS AND CERTAIN MACHINES.

(a) IN GENERAL.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended to read as follows:

"REGULATION OF LISTED CHEMICALS AND CERTAIN MACHINES

"SEC. 310. (a)(1) Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the transaction—

"(A) for 4 years after the date of the transaction, if the listed chemical is a precursor chemical or if the transaction involves a tableting machine or an encapsulating machine; and

"(B) for 2 years after the date of the transaction, if the listed chemical is an essential chemical.

"(2) Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall retain as a record the certificate copy referred to in subsection (c) for two years after the date of the transaction.

"(3) A record under this subsection shall be retrievable and shall include the date of the regulated transaction, the identity of each party to the regulated transaction, a statement of the quantity and form of the listed chemical, a description of the tableting machine or encapsulating machine, and a description of the method of transfer.

"(4) It is the duty of each regulated person who engages in a regulated transaction to obtain identification of each other party to the transaction. It is the duty of such other party to present such identification to the regulated person. The Attorney General shall specify by regulation the types of documents and other evidence that constitute proof of identification for purposes of this paragraph.

"(b) Each regulated person shall report to the Attorney General, in such form and manner as the Attorney General shall prescribe by regulation—

"(1) any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this title;

"(2) any proposed regulated transaction with a person whose description or other identifying characteristic the Attorney General furnishes in advance to the regulated person;

"(3) any unusual or excessive (as determined under guidelines prescribed by the Attorney General) loss or disappearance of a listed chemical under the control of the regulated person; and

"(4) any regulated transaction in a tableting machine or an encapsulating machine.

Each report under paragraph (1) shall be made at the earliest practicable opportunity after the regulated person becomes aware of the circumstance involved. A regulated person may not complete a transaction with a person whose description or identifying characteristic is furnished to the regulated person under paragraph (2) unless the transaction is approved by the Attorney General.

"(c) The transferee of a listed chemical in a regulated transaction shall furnish to the regulated person a certificate of lawful use, in such form and manner as the Attorney General may require. The regulated person—

"(1) not later than 15 working days after the transaction, shall transmit the certificate to the Attorney General; and

"(2) shall retain a copy of the certificate as provided in subsection (a)(2).

Not later than March 31 of each year, the Attorney General shall report to the Congress the number and types of certificates furnished during the preceding fiscal year and shall include in the report an analysis showing the law enforcement effectiveness of the certificate requirement.

"(d)(1) Except as provided in paragraph (2), any information obtained by the Attorney General under this section which is exempt from disclosure under section 552(a) of title 5, United States Code, by reason of section 552(b)(4) of such title, is confidential and may not be disclosed to any person.

"(2) Information referred to in paragraph (1) may be disclosed only—

"(A) to an officer or employee of the United States engaged in carrying out this title, title III, or the customs laws;

"(B) when relevant in any proceeding for the enforcement of this title, title III, or the customs laws;

"(C) when necessary to comply with an obligation of the United States under a treaty or other international agreement; or

"(D) to a State or local official or employee in conjunction with the enforcement of controlled substances laws.

"(3) The Attorney General shall take such action as may be necessary to prevent unauthorized disclosure of information by any person to whom such information is disclosed under paragraph (2).

"(4) Any person who is aggrieved by a disclosure of information in violation of this section may bring a civil action against the violator for appropriate relief.

"(e)(1) The Attorney General may prescribe such regulations as may be necessary to carry out this section.

"(2) A regulation relating to subsection (c) of this section—

"(A) shall be prescribed only upon a finding by the Attorney General that the regulation is necessary to provide information to enable the Attorney General to attain the goal of prevention of diversion of listed chemicals to unauthorized manufacture of a controlled substances;

"(B) shall be in force for a period of one year from the effective date of the regulation;

"(C) may be renewed for subsequent one-year periods, upon findings referred to in subparagraph (A);

"(D) shall impose only requirements that are based on factors directly related to the goal referred to in subparagraph (A);

"(E) shall not require a regulated person to verify any information on a certificate furnished by a transferee; and

"(F) shall provide that a regulated person need not obtain a certificate from a transferee who is a regular customer of the regulated person more than once.

"(3) Each finding of the Attorney General referred to in paragraph (2)(A) shall state in detail each type of (A) chemical, (B) location of a transaction, and (C) party to a transaction, to be covered by the regulation.".

(b) CLERICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out the item relating to section 310 and inserting in lieu thereof the following:

"310. Regulation of listed chemicals and certain machines.".

SEC. 6053. NOTIFICATION, SUSPENSION OF SHIPMENT, AND PENALTIES WITH RESPECT TO IMPORTATION AND EXPORTATION OF LISTED CHEMICALS.

(a) IN GENERAL.—Part A of the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) is amended by adding at the end the following new section:

"NOTIFICATION, SUSPENSION OF SHIPMENT, AND PENALTIES WITH RESPECT TO IMPORTATION AND EXPORTATION OF LISTED CHEMICALS

"SEC. 1018. (a) Each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place.

"(b)(1) The Attorney General shall provide by regulation for circumstances in which the requirement of subsection (a) does not apply to a transaction between a regulated person and a regular customer of the regulated person.

At the time of any importation or exportation constituting a transaction referred to in the preceding sentence, the regulated person shall notify the Attorney General of the transaction.

(2) The regulations under this subsection shall provide that the initial notification under subsection (a) with respect to a customer of a regulated person shall, upon the expiration of the 15-day period, qualify the customer as a regular customer, unless the Attorney General otherwise notifies the regulated person in writing.

"(c)(1) The Attorney General may order the suspension of any importation or exportation of a listed chemical (other than a regulated transaction to which the requirement of subsection (a) does not apply by reason of subsection (b)) or may disqualify any regular customer on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance. From and after the time when the Attorney General provides written notice of the order (including a statement of the legal and factual basis for the order) to the regulated person, the regulated person may not carry out the transaction.

"(2) Upon written request to the Attorney General, a regulated person to whom an order applies under paragraph (1) is entitled to an agency hearing on the record. The hearing shall be held not later than 45 days after the request is made, except that the hearing may be held at a later time, if so requested by the regulated person.".

(b) EFFECTIVE DATE AND SPECIAL RULE.—Subsection (a) of section 1018 of the Controlled Substances Import and Export Act, as added by subsection (a) of this section, shall take effect 180 days after the Attorney General prescribes the regulations referred to in subsection (b) of such section 1018. Each regular customer whose identity is furnished to the Attorney General not later than 60 days after the Attorney General prescribes such regulations shall be a regular customer for purposes of any applicable exception from the requirement of subsection (a) of such section 1018, unless the Attorney General otherwise notifies the regulated person in writing.

(c) PENALTY FOR IMPORTATION OR EXPORTATION.—Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by adding at the end the following new subsection:

"(d) Any person who knowingly or intentionally—

"(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this title or, in the case of an exportation, in violation of the law of the country to which the chemical is exported; or

"(2) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance in violation of this title or, in the case of an exportation, in violation of the law of the country to which the chemical is exported;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.".

(d) Penalty for Failure to Notify.—Section 1011 of the Controlled Substances Import and Export Act (21 U.S.C. 961) is amended in the matter before paragraph (1) by inserting after "section 1004" the following: "or fails to notify the Attorney General of an importation or exportation under section 1018".

(e) Clerical Amendment.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by adding at the end of the items relating to part A of title III the following new item:

"Sec. 1018. Notification, suspension of shipment, and penalties with respect to importation and exportation of listed chemicals.".

SEC. 6054. DEFINITIONS.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (8), by inserting "or a listed chemical" after "a controlled substance";

(2) in paragraph (11), by inserting "or a listed chemical" after "a controlled substance" both places it appears; and

(3) by adding at the end the following new paragraphs:

"(33) The term 'listed chemical' means any listed precursor chemical or listed essential chemical.

"(34) The term 'listed precursor chemical' means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is critical to the creation of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following:

"(A) Anthranilic acid and its salts.

"(B) Benzyl cyanide.

"(C) Ephedrine, its salts, optical isomers, and salts of optical isomers.

"(D) Ergonovine and its salts.

"(E) Ergotamine and its salts.

"(F) N-Acetylanthranilic acid and its salts.

"(G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

"(H) Phenylacetic acid and its salts.

"(I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

"(J) Piperidine and its salts.

"(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

"(L) 3,4-Methylenedioxyphenyl-2-propanone.

"(35) The term 'listed essential chemical' means a chemical specified by regulation of the Attorney General as a chemical that is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this title, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following chemicals:

"(A) Acetic anhydride.

"(B) Acetone.

"(C) Benzyl chloride.

"(D) Ethyl ether.

"(E) Hydriodic acid.

"(F) Potassium permanganate.

"(G) 2-Butanone.

"(H) Toluene.

"(36) The term 'regular customer' means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported to the Attorney General.

"(37) The term 'regulated person' means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine.

"(38) The term 'regulated transaction' means—

"(A) a distribution, receipt, sale, importation or exportation of a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

"(i) a lawful distribution in the usual course of business between agents or employees of a single regulated person;

"(ii) any category of transaction specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this title or title III;

"(iii) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

"(iv) any transaction in a chemical mixture; and

"(B) a distribution, importation, or exportation of a tableting machine or encapsulating machine.

"(39) The term 'chemical mixture' means a combination of two or more chemical substances, at least one of which is not a listed precursor chemical or a listed essential chemical, except that such term does not include any combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity.".

SEC. 6055. AMENDMENTS TO SECTION 401 OF THE CONTROLLED SUBSTANCES ACT.

(a) Additional Offenses.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"(d) Any person who knowingly or intentionally—

"(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

"(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

"(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.

"(e)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

"(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.".

(b) Additional Penalty.—Section 401 of the Controlled Substances Act (21 U.S.C. 841), as amended by subsection (a) of this section, is further amended by adding at the end the following new subsection:

"(f) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, or importation of a listed chemical may be enjoined from engaging in any regulated transaction involving a listed chemical for not more than ten years.".

SEC. 6056. AMENDMENTS TO SECTION 402 OF THE CONTROLLED SUBSTANCES ACT.

(a) Confidential Information Amendment.—Section 402(a)(8) of the Controlled Substances Act (21 U.S.C. 842(a)(8)) is amended by inserting after "protection" the following: ", or to use to his own advantage or reveal (other than as authorized by section 310) any information that is confidential under such section".

(b) Identification Amendment.—Section 402(a)(9) of the Controlled Substances Act (21 U.S.C. 842(a)(9)) is amended to read as follows:

"(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by 310(a)(3).".

(c) Technical Amendment.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by striking out subparagraph (C).

(d) Records Violations.—Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (8), as amended by subsection (a) of this section, by striking out "or" at the end of the paragraph;

(2) in paragraph (9), as amended by subsection (b) of this section, by striking out the period at the end of the paragraph and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new paragraph:

"(10) to fail to keep a record or make a report under section 310.".

SEC. 6057. AMENDMENTS TO SECTION 403 OF THE CONTROLLED SUBSTANCES ACT.

(a) Additional Offenses.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) in paragraph (4)(B), by striking out "piperidine" and inserting in lieu thereof "a listed chemical";

(2) in paragraph (4)(B), by striking out "or" after the semicolon;

(3) in paragraph (5), by striking out the period at the end and inserting in lieu thereof a semicolon; and

(4) by adding after paragraph (5) the following new paragraphs:

"(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, with intent to manufacture a controlled substance except as authorized by this title;

"(7) to manufacture, distribute, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this title; or

"(8) to create a chemical mixture for the purpose of evading a requirement of section 310 or to receive a chemical mixture created for that purpose.".

(b) ADDITIONAL PENALTY.—Section 403 of the Controlled Substances Act (21 U.S.C. 843), is amended by adding at the end the following new subsection:

"(d) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, or importation of a listed chemical may be enjoined from engaging in any regulated transaction involving a listed chemical for not more than ten years.".

SEC. 6058. SUBPOENA POWER.

The first sentence of section 506(a) of the Controlled Substances Act (21 U.S.C. 876(a)) is amended by inserting "or listed chemicals" after "with respect to controlled substances".

SEC. 6059. FORFEITURE.

(a) IN GENERAL.—Section 511(a) of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new paragraph:

"(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this title or title III.".

(b) TECHNICAL AMENDMENT.—Paragraph (3) and paragraph (4) of section 511(a) of the Controlled Substances Act (21 U.S.C. 881 (a) and (4)) are each amended by striking out "paragraph (1) or (2)" and inserting in lieu thereof "paragraph (1), (2), or (9)".

SEC. 6060. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, this subtitle shall take effect 120 days after the enactment of this Act.

Subtitle B—Asset Forfeiture Amendments

SEC. 6071. SHORT TITLE.

This subtitle may be cited as the "Asset Forfeiture Amendments Act of 1988".

SEC. 6072. AUDITS AND REPORTS RELATING TO THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.

Section 524(c) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(9) The Comptroller General shall audit the fund annually.".

SEC. 6073. USE OF RESIDUAL AMOUNTS UNDER THE DEPARTMENT OF JUSTICE FORFEITURE FUND.

Section 524(c)(1)(H) of title 28, United States Code, is amended—

(1) by striking out "deposits from the Assets Forfeiture Fund to" and inserting in lieu thereof "from the fund, with respect to such fiscal year, not more than $150,000,000 for the following purposes (but not more than 25 percent of the amount so transferred may be transferred for any single purpose): (i)"; and

(2) By inserting after "institutions" the following: ", (ii) offices of United States attorneys, (iii) organized crime drug enforcement task forces under the Attorney General, (iv) foreign cooperative investigation programs under the Administrator of the Drug Enforcement Administration, and (v) diversion control programs under the Administrator of the Drug Enforcement Administration".

SEC. 6074. EXEMPTION OF CERTAIN CONTRACT SERVICES UNDER THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND FROM ADVERTISING AND PROCUREMENT REQUIREMENTS.

Section 524(c) of title 28, United States Code, as amended by section 6152 and section 6153, is further amended by adding at the end the following new paragraph:

"(11) The Attorney General may exempt contract services referred to in paragraph (1)(A) from section 3709 of the Revised Statutes of the United States and title III of the Federal Property and Administrative Services Act of 1949, if necessary to maintain the security and confidentiality of a criminal or civil investigation.".

SEC. 6075. USE OF DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND FOR SERVICES FOR CERTAIN INFORMATION SYSTEMS.

Section 524(c)(1)(A) of title 28, United States Code, is amended by striking out "90 percent" and inserting in lieu thereof "the majority".

SEC. 6076. INNOCENT OWNER PROVISIONS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Attorney General and the Secretary of the Treasury shall consult and prescribe regulations for expedited administrative procedures for seizures under section 511(a) (4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)), section 595 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)), and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. app. 782) for violations involving the possession of personal use quantities of a controlled substance.

(b) SPECIFICATIONS.—The regulations prescribed pursuant to subsection (a) shall minimize the adverse impact caused by prolonged detention and provide for a final administrative determination of the case within 21 days of seizure or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case. Such regulations shall provide that the appropriate agency official rendering such determination shall immediately return the property if the following conditions are established:

(1) the owner or interested party did not know of or consent to the violation; and

(2) reasonable steps were taken by the owner or interested party to prevent the illegal use of the property.

SEC. 6077. RESTORATION OF EQUITABLE SHARING PRINCIPLE RELATING TO TRANSFER OF FORFEITED ASSETS TO STATE AND LOCAL AGENCIES UNDER THE CONTROLLED SUBSTANCES ACT.

(a) IN GENERAL.—Section 511(e) of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by adding at the end the following new paragraph:

"(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

"(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

"(B) is not so transferred to circumvent any requirement of State law that prohibits forfeiture or limits use or disposition of property forfeited to State or local agencies.".

(b) TECHNICAL AMENDMENT.—Section 511(e)(1)(A) of the Controlled Substances Act (21 U.S.C. 881(e)(1)(A)) is amended to read as follows:

"(A) retain the property for official use or, in the manner provided with respect to transfers under section 616 of the Tariff Act of 1930, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;".

SEC. 6078. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle shall take effect on the date of the enactment of this subtitle, except that the amendments made by sections 6153(a), 6153(b), and 6155, and the repeal made by section 6153(c) shall apply with respect to fiscal years beginning after September 30, 1988.

(b) EFFECTIVE DATE FOR SECTION 6159.—The amendments made by section 6159 shall apply with respect to seizures made more than 120 days after the date of the enactment of this Act.

Subtitle C—State and Local Assistance

SEC. 6081. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1988".

SEC. 6082. GRANTS TO IMPROVE CRIMINAL HISTORY INFORMATION.

(a) AUTHORITY TO MAKE GRANTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after section 304 the following section:

"GRANTS TO IMPROVE CRIMINAL HISTORY INFORMATION

"SEC. 305. Not less than 5 per centum of the funds appropriated for a fiscal year to carry out this part shall be used by the Director to make grants under section 302(c) to States and units of local government to improve the accuracy and completeness of criminal history information.".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 304 the following new item:

"Sec. 305. Grants to improve criminal history information.".

SEC. 6083. APPOINTMENT OF THE DIRECTOR OF THE BUREAU OF JUSTICE ASSISTANCE.

The first sentence of section 401(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741(b)) is amended by striking "Attorney General" and inserting "President, by and with the advice and consent of the Senate".

SEC. 6084. ANTITERRORISM PLANS.

Section 403(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3743(a)) is amended—

(1) in paragraph (17) by striking "and" at the end,

(2) in paragraph (18) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(19) developing and implementing antiterrorism plans for deep draft ports, international airports, and other important facilities.".

SEC. 6085. CERTIFICATION REQUIREMENT.

Section 1303 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796j) is amended—

(1) in paragraph (4) by striking "and",

(2) in paragraph (5) by striking the period and inserting "; and", and

(3) by inserting after paragraph (5) the following:

"(6) a certification that the State is undertaking initiatives to reduce, through the enactment of innovative penalties or increasing law enforcement efforts, the demand for controlled substances by holding accountable those who unlawfully possess or use such substances.".

SEC. 6088. MATCHING REQUIREMENT.

Section 1307(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796n(a)) is amended by striking "75 per centum" and inserting "50 per centum".

SEC. 6089. DISCRETIONARY GRANTS.

(a) Limitation on Funds for Discretionary Grants.—Section 1311 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796r) is amended by inserting "or $50,000,000, whichever is less" after "20 per centum".

(b) Conforming Amendment.—Section 1305(a)(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796l(a)), as amended by section 6207(c) of this Act, is amended by striking "80 per centum" and inserting "the amount remaining after reserving the amount required to carry out section 1311 of this title".

SEC. 6090. DRUG LAW ENFORCEMENT PILOT PROJECT.

(a) Authority to Make Grants.—Section 1309 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796p) is amended—

(1) by striking "The" and inserting "(a) Subject to subsection (b), the", and

(2) by adding at the end the following:

"(b) With funds set aside to carry out this subsection, the Director is authorized to make grants to States and units of local government to improve drug law enforcement programs by—

"(1) providing additional compensation and incentives (including overtime pay) not normally available to drug law enforcement officers;

"(2) providing additional training for drug law enforcement officers;

"(3) developing programs to recruit youth who reside in areas with a high level of drug-related crime, to become drug law enforcement officers; and

"(4) providing logistical support to increase the efficiency of drug law enforcement officers.".

(b) Funds Set Aside.—Section 1311 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796r) is amended—

(1) by striking "Of" and inserting "(a) Subject to subsection (b), of", and

(2) by adding at the end the following:

"(b) Of the amount required by subsection (a) to be reserved and set aside in any fiscal year, $5,000,000 shall be set aside for section 1309(b) of this title in a special discretionary fund for use by the Director in carrying out the purposes specified in such section.".

(c) Definition.—Section 901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended—

(1) in paragraph (20) by striking "and",

(2) in paragraph (21) by striking the period and inserting "; and", and

(3) by adding at the end thereof the following:

"(22) 'drug law enforcement officer' means a law enforcement officer, as defined in section 1203(5) of this title, who is engaged more than 50 percent of the time he or she is engaged in performing official duties, in enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act.".

SEC. 6091. AUTHORIZATION OF APPROPRIATIONS.

(a) Bureau of Justice Statistics.—Section 1001(a)(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(1)) is amended—

(1) by striking "years 1984, 1985, 1986, 1987, and" and inserting "year", and

(2) by inserting after "necessary" the following: ", and $30,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992,".

(b) National Institute of Justice.—Section 1001(a)(2) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(2)) is amended—

(1) by striking "years 1984, 1985, 1986, 1987, and" and inserting "year", and

(2) by inserting after "necessary" the following: ", and $30,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992,".

(c) Bureau of Justice Assistance.—(1) Section 1001(a)(3) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(3)) is amended—

(A) by striking "is" and inserting "are",

(B) by striking "each of the fiscal years 1984, 1985, 1986, 1987, and" and inserting "fiscal year", and

(C) by inserting "and $100,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992" after "1988".

(2) Section 1001(a)(4) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(4)) is amended—

(A) by striking "1984, 1985, 1986, 1987, and", and

(B) by inserting ", 1989, 1990, 1991, and 1992" after "1988".

(3) Section 1001(a)(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(6)) is amended—

(A) by striking "$230,000,000" the first place it appears and all that follows through "and $230,000,000", and inserting "$250,000,000", and

(B) by inserting "and $500,000,000 for each of the fiscal years 1990, 1991, and 1992" after "1989".

SEC. 6092. AUTHORITY FOR PROGRAMS REGARDING ALCOHOL-DEPENDENT OFFENDERS AND FOR AUTOMATED FINGERPRINT IDENTIFICATION SYSTEMS.

(a) Alcohol-Dependent Offenders.—Section 403(a)(8) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3743(a)(8)) is amended by adding "and alcohol-dependent offenders" after "drug dependent offenders".

(b) Fingerprint Identification.—Section 403(a)(12) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3743(a)(12)) is amended by inserting "(including automated fingerprint identification systems)" after "systems" the first place it appears.

SEC. 6093. NAME OF PROGRAM.

Part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h et seq.) is amended by inserting before section 1301 the following:

"NAME OF PROGRAM

"Sec. 1300. The grant program established under this part shall be known as the 'Edward Byrne Memorial State and Local Law Enforcement Assistance Program'."

SEC. 6094. EFFECTIVE DATES.

(a) General Effective Date.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) Effective Date of Sections 6206 Through 6210.—Sections 6206, 6207, 6208, 6209, and 6210 shall take effect on October 1, 1988.

Subtitle D—Authorizations of Appropriations for the Department of Justice and for Prisons

SEC. 6101. AUTHORIZATIONS OF APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE.

(a) Fiscal Year 1988.—There is authorized to be appropriated, in addition to any sums otherwise authorized to be appropriated, for fiscal year 1988 for the Department of Justice for the Drug Enforcement Administration, $4,900,000.

(b) Fiscal Year 1989.—(1) There is authorized to be appropriated for fiscal year 1989 for the Department of Justice for the Drug Enforcement Administration, $625,551,000, of which $800,000 shall be available for voice privacy equipment.

(2) There is authorized to be appropriated, in addition to any sums otherwise authorized to be appropriated, for fiscal year 1989 for the Department of Justice for Organized Crime Drug Enforcement, $9,000,000.

(3) There is authorized to be appropriated, in addition to any sums otherwise authorized to be appropriated, for fiscal year 1989 for the Department of Justice for the Immigration and Naturalization Service, $82,300,000, to be used for the purposes of interdiction activities, investigations, detention and deportation, training and orientation.

(4) There is authorized to be appropriated for fiscal year 1989 for the Department of Justice for the Federal Bureau of Investigation for drug enforcement and related activities, $148,893,000.

(5) There is authorized to be appropriated, in addition to any sums othewise authorized to be appropriated, for the fiscal year 1989 for the Department of Justice for the United States Marshals Service, $53,800,000.

(c) United States Attorneys.—In addition to any sums otherwise authorized to be appropriated, there are authorized to be appropriated for fiscal years 1989, 1990, and 1991, for the Department of Justice for the offices of United States Attorneys, $30,000,000.

SEC. 6102. AUTHORIZATION OF APPROPRIATIONS FOR PRISONS.

There is authorized to be appropriated $1,380,084,000 for fiscal year 1989 for the Federal prison system.

SEC. 6103. DRUG ENFORCEMENT ADMINISTRATION AIR WING FACILITY.

The Administrator of the Drug Enforcement Administration shall take such action (including site acquisition, purchase of equipment and fixtures, and relocation from any former facility) as may be necessary to establish, maintain, and operate a special purpose facility for the use of the Drug Enforcement Administration Air Wing, to be located at a site having direct aircraft access to public aviation facilities. To carry out this section, there is authorized to be appropriated for the Department of Justice for the Drug Enforcement Administration, $10,800,000.

Subtitle E—Money Laundering

SEC. 6111. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Prosecution Improvements Act of 1988".

SEC. 6112. INVESTIGATIVE AUTHORITY.

(a) Section 1956 Violations.—Section 1956(e) of title 18, United States Code, is amended—

(1) by inserting "(including the Internal Revenue Service)" after "Department of the Treasury";

(2) by inserting after the first sentence the following: "Violations of this section involving specified unlawful activity which the United States Postal Service may investigate may also be investigated by the United States Postal Service."; and

(3) by inserting "and the United States Postal Service" after "the Secretary of the Treasury" each place it appears in the final sentence.

(b) Section 1957 Violations.—Section 1957(e) of title 18, United States Code, is amended—

(1) by inserting "(including the Internal Revenue Service)" after "Department of the Treasury";

(2) by inserting after the first sentence the following: "Violations of this section involving specified unlawful activity which the United States Postal Service may investigate may also be investigated by the United States Postal Service."; and

(3) by inserting "and the United States Postal Service" after "the Secretary of the Treasury" each place it appears in the final sentence.

(c) Conforming Amendments to Section 981.—Section 981 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "or the United States Postal Service" after "Secretary of the Treasury" the first place it appears; and

(B) by inserting "or the United States Postal Service, as the case may be," after "Secretary of the Treasury" the second place it appears; and

(2) in each of subsections (c) through (e), by inserting "or the United States Postal Service" after "Secretary of the Treasury" each place it appears.

SEC. 6113. APPLICATION OF SECTION 1957 TO ATTORNEYS FEES.

Section 1957(a) of title 18, United States Code, is amended by adding at the end the following: "This subsection does not apply to monetary transactions involving the bona fide fees an attorney accepts for representing a client in a criminal investigation or any proceeding arising therefrom.".

SEC. 6114. CROSS REFERENCE TECHNICAL CORRECTIONS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking out "section 38 of the Arms Export Control Act" and all that follows through "(50 U.S.C. App. 3)" and inserting in lieu thereof "section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, or section 16 (relating to offenses and punishment) of the Trading with the Enemy Act.".

SEC. 6115. DEFINITION OF MONETARY INSTRUMENT FOR MONEY LAUNDERING OFFENSES.

Section 1957 of title 18, United States Code, is amended by striking out "for the purposes of subchapter II of chapter 53 of title 31" and inserting "in section 1956(c)(5) of this title" in lieu thereof.

SEC. 6116. MONEY LAUNDERING WITH INTENT TO VIOLATE THE INTERNAL REVENUE CODE OF 1986.

Section 1956(a) of title 18, United States Code, is amended by adding at the end the following:

"(3) Whoever knowingly conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate section 7201 or 7206 of the Internal Revenue Code of 1986 shall be sentenced to a fine under this title or in an amount not more than twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.".

SEC. 6117. OPERATION STING AMENDMENTS TO MONEY LAUNDERING OFFENSES.

Section 1956 of title 18, United States Code, is amended—

(1) in paragraph 1956(a)(1), by inserting "or has been represented to be the proceeds of some form of unlawful activity", after ", knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity";

(2) by inserting "or has been represented, directly or indirectly, to be the proceeds of specified unlawful activity" after "in fact involves the proceeds of specified unlawful activity"; and

(3) in paragraph 1956(a)(2)(B)—

(A) by inserting "or have been represented to be the proceeds of some form of unlawful activity" after "transportation represent the proceeds of some form of unlawful activity"; and

(B) by inserting in paragraph 1956(a)(2)(B)(i) "or activity that has been represented to be unlawful activity" after "control of the proceeds of specified unlawful activity".

Subtitle F—Sense of Congress That Proposals To Legalize Illicit Drugs Should Be Rejected

SEC. 6121. SENSE OF CONGRESS THAT PROPOSALS TO LEGALIZE ILLICIT DRUGS SHOULD BE REJECTED.

It is the sense of Congress that—

(1) proposals to combat sale and use of illicit drugs by legalization should be rejected; and

(2) consideration should be given only to proposals to attack directly the supply of, and demand for, illicit drugs, such as proposals to strengthen and expand penalties for sale and use, proposals to encourage greater multinational cooperation in eradication and interdiction, and proposals to promote educational awareness programs for young people.

Subtitle G—Firearms Provisions

SEC. 6131. INTERDICTION OF SUPPLY OF FIREARMS TO DRUG TRAFFICKERS.

Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(f) Whoever, with the intent to engage in conduct which—

"(1) constitutes an offense listed in section 1961(1),

"(2) is punishable under the Controlled Substances Act (21 U.S.C. 802 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.),

"(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

"(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

"(g) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.".

SEC. 6132. CLARIFICATION OF DEFINITION OF DRUG TRAFFICKING CRIMES IN WHICH USE OR CARRYING OF FIREARMS AND ARMOR PIERCING AMMUNITION IS PROHIBITED.

Paragraph (2) of section 924(c) of title 18, United States Code, and paragraph (2) of section 929(a) of title 18, United States Code, are each amended to read as follows:

"(2) For purposes of this subsection, the term 'drug trafficking crime' means any felony punishable under the Controlled Substances Act (21 U.S.C. 802 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).".

SEC. 6133. SYSTEM TO IDENTIFY FELONS PURCHASING HANDGUNS.

(a) Guidelines and Study.—(1) Section 302 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731) is amended by adding at the end thereof the following:

"(f) The Bureau is authorized and directed to conduct studies of and develop guidelines for the use of identifying information used by the purchasers of firearms. Such study—

"(1) shall be done in consultation with representatives from Federal, State, municipal, and local agencies, and private organizations, and individuals involved with such information;

"(2) shall include the issuance of guidelines for the use of identifying information, including biometric information such as fingerprints, which may be used by federally licensed firearms dealers to identify individuals seeking to purchase a firearm; and

"(3) shall identify and develop means of accessing an exchange of information about prohibited persons listed in section 922(d)(4).".

(2) The study authorized by paragraph (1) shall begin within 2 months after the date of enactment of this Act and shall be completed within 2 years after such date.

(3)(A) The Director of the Bureau shall issue the guidelines mandated by paragraph (1) within 6 months after the date of the completion of such study.

(B)(i) When prescribing guidelines under subparagraph (A), the Bureau shall proceed in accordance with section 553 of title 5, United States Code, regarding the issuance of proposed rules, and shall publish a notice of proposed guidelines as well as a notice of a hearing and an opportunity to submit written data, arguments, and views.

(ii) Prior to the publication of any notice of proposed guidelines pursuant to clause (i), the Bureau shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

(I) contain a brief description of the guidelines under consideration, and the objectives which the Bureau seeks to achieve; and

(II) invite the response of interested parties with respect to such proposed guidelines, including any suggestions or alternative methods for achieving such objectives.

(III) The Bureau shall submit such advance notice of proposed guidelines to the Committees on the Judiciary of the Senate and the House of Representatives. The Bureau may use such additional mechanisms as the Bureau considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed guidelines under subparagraph (B)(i).

(iii) The Bureau shall, 30 days before the publication of a notice of proposed rulemaking pursuant to subparagraph (B)(i), submit such notice to the Committees on the Judiciary of the Senate and the House of Representatives.

(C) The Bureau may prescribe such reasonable rules concerning proceedings in the hearing required by this section as may avoid unnecessary costs or delay.

(b) VERIFICATION PROCESS.—(1) The Bureau shall carry out demonstration programs in cooperation with Federal, State, and local law enforcement and identification agencies, to determine the feasibility of using telecommunication systems to verify information submitted to federally licensed firearms dealers by prospective purchasers. The Bureau shall design a system which may be accessed by use of agreed upon individual identification descriptors and which provides that such information may be subject to verification through the use of biometric information.

(2) The Bureau shall conduct periodic evaluations of such demonstration projects for purposes of determining the effectiveness and value of the demonstration project in providing information and in protecting the privacy of persons involved.

(3) Not later than the date 2 years after the date of enactment of this Act, the Bureau shall prepare and submit to the Congress a detailed report setting forth the findings and conclusions of the Bureau as a result of the demonstration program established in this subsection. Such report shall include any recommendations of the Bureau with respect to the establishment of a permanent program of using such access system.

(4) The Bureau shall take all steps necessary to provide procedures which will assure the confidentiality of information in such system and to protect the privacy of persons involved.

(5) Any person who is a perspective purchaser and as such is not allowed to purchase a firearm on the basis of information obtained pursuant to the access system established by this subsection shall be allowed access to his or her personal files in such system. Such individual may inspect such records and may submit data or other information to be included in such file to verify, update or correct the information in such file.

(6) Any person who is not allowed to purchase a firearm after submitting information pursuant to paragraph (5) may obtain administrative review of such determination pursuant to the provisions of chapter 5 of title 5 of the United States Code and shall be given a decision on the record after an opportunity for an agency hearing, but no trial of the law or facts de novo in a court.

(c) NO NATIONAL IDENTIFICATION SYSTEM.—Nothing in this section shall be construed as authorizing the creation of a national system for the identification or registration of firearms or owners, or for a State or local registration system.

SEC. 6134. REVOCATION OF PROBATION.

Section 3565 of title 18, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of probation, the court shall, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.".

Subtitle H—Investigative Powers of Postal Service Personnel and National Forest System Drug Control

SEC. 6141. INVESTIGATIVE POWERS OF POSTAL SERVICE PERSONNEL.

(a) IN GENERAL.—Section 3061 of title 18, United States Code, is amended to read as follows:

"§ 3061. Investigative powers of Postal Service personnel

"(a) Subject to subsection (b) of this section, Postal Inspectors and other agents of the United States Postal Service designated by the Board of Governors to investigate criminal matters related to the Postal Service and the mails may—

"(1) serve warrants and subpoenas issued under the authority of the United States;

"(2) make arrests without warrant for offenses against the United States committed in their presence;

"(3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

"(4) carry firearms; and

"(5) make seizures of property as provided by law.

"(b) The powers granted by subsection (a) of this section shall be exercised only—

"(1) in the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails, and other postal offenses; and

"(2) to the extent authorized by the Attorney General pursuant to agreement between the Attorney General and the Postal Service, in the enforcement of other laws of the United States, if the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the Postal Service.".

(b) CLERICAL AMENDMENT.—The item relating to section 3061 in the table of sections of chapter 203 of title 18, United States Code, is amended to read as follows:

"3061. Investigative powers of Postal Service personnel.

SEC. 6142. POSTAL SERVICE FUND AMENDMENTS.

Section 2003(b)(7) of title 39, United States Code, is amended—

(1) by striking out "administrative"; and

(2) by striking out "under title 18".

SEC. 6143. CIVIL FORFEITURE AUTHORITY OF THE POSTAL SERVICE UNDER THE CONTROLLED SUBSTANCES ACT.

(a) IN GENERAL.—Section 511 of the Controlled Substances Act (21 U.S.C. 881), as amended by section 6159, is further amended by adding at the end the following new subsection:

"(l) The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.".

(b) DEPOSITS OF PROCEEDS IN POSTAL SERVICE FUND.—Section 511(e)(2)(B) of the Controlled Substances Act (21 U.S.C. 881(e)(2)(B)) is amended by striking out the period at the end and inserting in lieu thereof the following: ", except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of title 39, United States Code, such moneys and proceeds.".

SEC. 6144. NATIONAL FOREST SYSTEM DRUG CONTROL.

(a) OFFICERS.—Section 15003 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559c) is amended to read as follows:

"SEC. 15003. ENFORCEMENT.

"(a) The Secretary of Agriculture may designate and specially train employees of the Forest Service as officers to enforce—

"(1) criminal laws relating to controlled substances that are manufactured or distributed on National Forest System lands; and

"(2) any other Federal criminal law relating to the administration of the National Forest System lands.

"(b) The Secretary may authorize such officers, in the performance of duties under subsection (a)—

"(1) to carry firearms and conduct investigations;

"(2) to make arrests with a warrant in the case of any felony or misdemeanor;

"(3) to make arrests without a warrant in the case of any misdemeanor committed in the presence of the officer and in the case of any felony;

"(4) to serve warrants and other process; and

"(5) to conduct searches and seizures.".

(b) ASSISTANCE FROM OTHER DEPARTMENTS AND AGENCIES.—Section 15004 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559d) is amended—

(1) in paragraph (1), by striking out "and" after the semicolon;

(2) in paragraph (2), by striking out the period at the end and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(3) the Secretary of Agriculture is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such to be economical and in the public interest, and with the concurrence of that agency, to exercise the powers and authority of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service.".

(c) AGREEMENT.—Section 15007 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559f) is amended by striking out "conferred herein" and inserting in lieu thereof "under section 15003(a)(1)".

(d) REPORT.—Not later than 90 days after the date of the enactment of this Act, the

Attorney General and the Secretary of Agriculture shall each submit a report to the Committee on Agriculture, the Committee on Interior and Insular Affairs, and the Committee on the Judiciary of the House of Representatives, and to the Committee on Agriculture, the Committee on Energy and Natural Resources, and the Committee on the Judiciary of the Senate on the activities of the Attorney General and the Secretary of Agriculture in expediting investigations referred to in section 15003(a)(1) of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b et seq.).

Subtitle I—Travel Expenses and Health Care of Department of Justice Personnel Serving Abroad

SEC. 6151. AUTHORIZATION OF APPROPRIATIONS FOR TRAVEL AND RELATED EXPENSES AND FOR HEALTH CARE OF DEPARTMENT OF JUSTICE PERSONNEL SERVING ABROAD.

(a) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 530A. Authorization of appropriations for travel and related expenses and for health care of personnel serving abroad

"There are authorized to be appropriated, for any fiscal year, for the Department of Justice, such sums as may be necessary—

"(1) for travel and related expenses of employees of the Department of Justice serving abroad and their families, to be payable in the same manner as applicable with respect to the Foreign Service under paragraphs (3), (5), (6), (8), (9), (11), and (15) of section 901 of the Foreign Service Act of 1980, and under the regulations issued by the Secretary of State; and

"(2) for health care for such employees and families, to be provided under section 904 of that Act.".

(b) CLERICAL AMENDMENT.—The table of section for chapter 31 of title 28, United States Code, is amended by adding at the end the following new item:

"530A. Authorization of appropriations for travel and related expenses and for health care of personnel serving abroad.".

Subtitle J—Program-Related and Study Provisions

SEC. 6161. ENHANCEMENT OF THE DRUG AFTERCARE PROGRAM OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

Section 4(a) of the Contract Services for Drug Dependent Federal Offenders Act of 1978 (18 U.S.C. 4255 note) is amended by—

(1) striking out "$14,000,000" and inserting "$24,000,000" in lieu thereof, and

(2) striking out "$16,000,000" and inserting "$26,000,000" in lieu thereof.

SEC. 6162. DEMONSTRATION PROGRAM FOR DRUG TESTING OF ARRESTED PERSONS.

(a) ESTABLISHMENT.—The Director of the Administrative Office of the United States Courts shall establish a demonstration program of mandatory testing of criminal defendants.

(b) LENGTH OF PROGRAM.—The demonstration program shall begin not later than January 1, 1989, and shall last one year.

(c) SELECTION OF DISTRICTS.—The Judicial Conference of the United States shall select 5 Federal judicial districts in which to carry out the demonstration program, so that the group selected represents a mix of districts on the basis of criminal caseload and the types of cases in that caseload.

(d) INCLUSION IN PRETRIAL SERVICES.—In each of the districts in which the demonstration program takes place, pretrial services under chapter 207 of title 18, United States Code, shall arrange for the drug testing of defendants in criminal cases. To the extent feasible, such testing shall be completed before the defendant makes the defendant's initial appearance in the case before a judicial officer. The results of such testing shall be included in the report to the judicial officer under section 3154 of title 18, United States Code.

(e) MANDATORY CONDITION OF PROBATION.—In each of the judicial districts in which the demonstration program is in effect, it shall be an additional, mandatory condition of probation for any defendant convicted of a drug-related offense, as determined by the judge, that such defendant refrain from any use of any controlled substance (as defined in section 102 of the Controlled Substances Act) without a prescription by a licensed medical practitioner. Each probation officer shall provide for the random testing of probationers who are under that probation officer's supervision and to whom this condition applies, for the illicit use of such substances.

(f) REPORT TO CONGRESS.—Not later than 90 days after the end of the demonstration program, the Director of the Administrative Office of the United States Courts shall report to Congress on the effectiveness of the demonstration program and include in such report recommendations as to whether mandatory drug testing of defendants should be made more general and permanent.

SEC. 6163. NATIONAL TRAINING CENTER FOR PRISON DRUG REHABILITATION PROGRAM PERSONNEL.

(a) IN GENERAL.—The Director of the National Institute of Corrections, in consultation with persons with expertise in the field of community-based drug rehabilitation, shall establish and operate, at any suitable location, a national training center (hereinafter in this section referred to as the "center") for training Federal, State, and local prison or jail officials to conduct drug rehabilitation programs for criminals convicted of drug-related crimes and for drug-dependent criminals. Programs conducted at the center shall include training for correctional officers, administrative staff, and correctional mental health professionals (including subcontracting agency personnel).

(b) DESIGN AND CONSTRUCTION OF FACILITIES.—The Director of the National Institute of Corrections shall design and construct facilities for the center.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated with respect to the National Institute of Corrections, there are authorized to be appropriated to the Director of the National Institute of Corrections—

(1) for establishment and operation of the center, for curriculum development for the center, and for salaries and expenses of personnel at the center, not more than $4,000,000 for each of fiscal years 1989, 1990, and 1991; and

(2) for design and construction of facilities for the center, not more than $10,000,000 for fiscal years 1989, 1990, and 1991.

SEC. 6164. STUDY OF ALTERNATIVE JUDICIAL SYSTEM.

The Attorney General shall study the feasibility of prosecuting Federal drug-related offenses in a manner alternative or supplemental to the current criminal justice system. The Attorney General shall report the results of such study to Congress not later than 180 days after the date of the enactment of this Act.

Subtitle K—Manufacturing Offenses

SEC. 6171. CRIMINAL PENALTY FOR ENDANGERING HUMAN LIFE WHILE ILLEGALLY MANUFACTURING A CONTROLLED SUBSTANCE.

(a) IN GENERAL.—Part D of the Controlled Substances Act is amended by adding at the end the following new section:

"ENDANGERING HUMAN LIFE WHILE ILLEGALLY MANUFACTURING A CONTROLLED SUBSTANCE

"SEC. 417. Whoever, while manufacturing a controlled substance in violation of this title, or attempting to do so, creates a substantial risk of harm to human life shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.".

(b) CLERICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by adding at the end of the items relating to part D of title II the following new items:

"416. Establishment of manufacturing operations.

"417. Endangering human life while illegally manufacturing a controlled substance.".

Subtitle L—Common Carrier, Locomotive, and Motor Vehicle Offenses

SEC. 6181. AMENDMENT RELATING TO CERTAIN PRESUMPTIONS.

Section 343(1) of title 18, United States Code, is amended by inserting "percent" after ".10".

SEC. 6182. INCREASED PENALTY FOR OPERATION OF LOCOMOTIVE OR COMMON CARRIER WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

Section 342 of title 18, United States Code, is amended—

(1) by inserting "locomotive or" after "operation of a"; and

(2) by striking out "drugs," and all that follows through the end of the section and inserting in lieu thereof the following:

"drugs—

"(1) if death results, shall be fined under this title or imprisoned not more than 20 years, or both;

"(2) if serious bodily injury results, shall be fined under this title or imprisoned not more than 10 years, or both; and

"(3) in any other case, shall be fined under this title or imprisoned not more than 5 years, or both.".

SEC. 6183. LICENSE SUSPENSION AND OTHER PENALTIES FOR DRUNK AND DRUGGED DRIVING IN FEDERAL AREAS.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 36. License suspension and other penalties for drunk and drugged driving in Federal areas

"(a) Any penalty that, under the law of a State, territory, possession, or district, may be imposed pursuant to a conviction for drunk driving or drugged driving is, for purposes of section 13 of this title, a punishment provided by that law.

"(b) Any driving restriction imposed pursuant to a conviction for drunk driving or drugged driving under such section 13 shall apply only with respect to the special maritime and territorial jurisdiction of the United States.

"(c) As used in this section—

"(1) the term 'penalty' means, with respect to the offense of drunk driving or drugged driving, any criminal penalty or administrative or other sanction (including a driving restriction) that may be imposed for the offense under the law of a State, territory, possession, or district;

"(2) the term 'drunk driving' means the offense of operating a motor vehicle while impaired by, or under the influence of, alcohol, however such offense is denominated and defined under applicable law;

"(3) the term 'drugged driving' means the offense of operating a motor vehicle while impaired by, or under the influence of, a drug, however such offense is denominated and defined under applicable law; and

"(4) the term 'driving restriction' means a license suspension or other penalty that restricts the privilege of operating a motor vehicle.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of title 18, United States Code, is amended by adding at the end the following new item:

"36. License suspension and other penalties for drunk or drugged driving in Federal areas.".

SEC. 6184. CONSENT OF MOTOR VEHICLE OPERATORS TO ALCOHOL AND DRUG TESTS IN FEDERAL AREAS.

(a) IN GENERAL.—Chapter 2 of title 18, United States Code, as amended by section 1403, is further amended by adding at the end the following new section:

"§ 37. Consent of motor vehicle operators to alcohol and drug tests in Federal areas

"(a)(1) An individual who operates a motor vehicle in the special maritime and territorial jurisdiction of the United States consents, by reason of such operation, to submit to alcohol tests and drug tests, to be administered upon a determination by the appropriate law enforcement officer that there are reasonable grounds to believe the individual has committed the offense of drunk driving or drugged driving in that jurisdiction.

"(2) An individual may revoke the consent referred to in paragraph (1) by declining to submit to a test.

"(b) Before administration of a test under this section, the appropriate law enforcement officer shall inform the individual of—

"(A) the right of revocation under this section; and

"(B) the matters described in subsection (c).

"(c)(1) The results of any test and evidence of the circumstances of any revocation of consent under this section are admissible in any criminal, civil, or administrative proceeding to the extent provided by applicable law or rule.

"(2) An individual who, after having been informed under subsection (b), declines to submit to a test under subsection (a), may not operate a motor vehicle in the special maritime and territorial jurisdiction of the United States for one year, beginning on the date the individual so declines.

"(3) An individual who operates a motor vehicle in the special maritime and territorial jurisdiction of the United States in violation of paragraph (2) shall be considered for all purposes to have so operated such vehicle without a license or other authority to do so.

"(d) As used in this section—

"(1) the term 'alcohol test' means a chemical test of the blood, breath, or urine of an individual to determine if the individual is impaired by, or under the influence of, alcohol;

"(2) the term 'drug test' means a chemical test of the blood, breath, or urine of an individual to determine if the individual is impaired by, or under the influence of, a drug;

"(3) the term 'drunk driving' means the offense of operating a motor vehicle while impaired by, or under the influence of, alcohol, however such offense is denominated and defined under applicable law."; and

"(4) the term 'drugged driving' means the offense of operating a motor vehicle while impaired by, or under the influence of, a drug, however such offense is denominated and defined under applicable law.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 205 of title 18, United States Code, as amended by section 1403, is further amended by adding at the end the following new item:

"37. Consent of motor vehicle operators to alcohol and drug tests in Federal areas.".

Subtitle M—Death Penalty

SEC. 6191. DEATH PENALTY FOR DRUG-RELATED KILLINGS.

(a) ELEMENTS OF OFFENSE.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) by redesigning subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"Death Penalty

"(e) in addition to the other penalties set forth in this section any person who, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this title or title III, intentionally kills any law enforcement officer or any other person, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding at the end the following:

"Hearing Required with Respect to the Dealth Penalty

"(g) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held under this section.

"Notice by the Government in Death Penalty Cases

"(h)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors enumerated in subsection (n) and any other aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"Hearing Before Court or Jury

"(i)(1) When the attorney for the Government has filed a notice as required under subsection (h) and the defendant is found guilty of or pleads guilty to an offense under subsection (e), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled under paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"Proof of Aggravating and Mitigating Factors

"(j) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (e), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (m) and (n), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (n), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

"Return of Findings

"(k) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in subsection (n), found to exist. If one of the aggravating factors set forth in subsection (n)(1) and another of the aggravating factors set forth in paragraphs (2) through (12) of subsection (n) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this subsection, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If an aggravating factor set forth in subsection (n)(1) is not found to exist or an aggravating factor set forth in subsection (n)(1) is found to exist but no other aggravating factor set forth in subsection (n) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subsection (n)(1) and one or more of the other aggravating factors set forth in subsection (n) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified. The jury or the court, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

"Imposition of Sentence

"(l) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. A sentence of death shall not be carried out upon a person who is under 18 years of age at the time the crime was committed. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

"Mitigating Factors

"(m) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(2) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(3) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(4) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(5) The defendant was youthful, although not under the age of 18.

"(6) The defendant did not have a significant prior criminal record.

"(7) The defendant committed the offense under severe mental or emotional disturbance.

"(8) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

"(9) Other defendants in other cases who were equally culpable have not been sentenced to death.

"(10) The victim consented to the criminal conduct that resulted in the victim's death.

"(11) That other factors in the defendant's background or character mitigate against imposition of the death sentence.

"Aggravating Factors for Homicide

"(n) If the defendant is found guilty of or pleads guilty to an offense under subsection (e), the following aggravating factors shall be considered but are not excusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim;

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(D) intentionally engaged in conduct which—

"(i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

"(ii) resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State of Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offense punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (e), the defendant knowingly created a grave risk of death to one or more persons in addition to the victims of the offense.

"(6) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(7) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(8) The defendant committed the offense after substantial planning and premeditation.

"(9) The victim was particularly vulnerable due to old age, youth, or infirmity.

"(10) The defendant had previously been convicted of violating this title or title III for which a sentence of five or more years may be imposed or was engaged in a continuing criminal enterprise.

"(11) The violation of this title in relation to which the conduct described in subsection (e) occurred was a violation of section 405.

"(12) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"Right of the Defendant to Justice Without Discrimination

"(o)(1) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, or sex of the defendant or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what race the defendant, or the victim, may be. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what race the defendant, or the victim, may be.

"(2) Not later than one year from the date of enactment of the Anti-Drug Abuse Amendments Act of 1988, the Comptroller General shall conduct a study of the various procedures used by the several States for determining whether or not to impose the death penalty in particular cases, and shall report to the Congress on whether or not any or all of the various procedures create a significant risk that the race of a defendant, or the race of a victim against whom a crime was committed, influence the likelihood that defendants in those States will be sentenced to death. In conducting the study required by this paragraph, the General Accounting Office shall—

"(A) use ordinary methods of statistical analysis, including methods comparable to those ruled admissible by the courts in race discrimination cases under title VII of the Civil Rights Act of 1964;

"(B) study only crimes occurring after January 1, 1986; and

"(C) determine what, if any, other factors, including any relation between any aggravating or mitigating factors and the race of the victim or the defendant, may account for any evidence that the race of the defendant, or the race of the victim, influences the likelihood that defendants will be sentenced to death. In addition, the General Accounting Office shall examine separately and include in the report, death penalty cases involving crimes similar to those covered under this section.

"Sentencing in Capital Cases in Which Death Penalty Is Not Sought or Imposed

"(p) If a person is convicted for an offense under subsection (e) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.

"Counsel for Financially Unable Defendants

"(q)(1) Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert or other reasonably necessary services at any time either—

(A) before judgment; or

(B) after the entry of a judgment imposing a sentence of death but before the execution of that judgment;

shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (2), (3), (4), (5), and (6).

"(2) If the appointment is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.

"(3) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

"(4) With respect to paragraphs 2 and 3, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

"(5) Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications, for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

"(6) Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefore, under paragraph (7). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

"(7) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (6), at such rates or amounts as the court determines to be appropriate in order to provide such defendant with representation by counsel and other services as nearly equivalent as possible to those available to defendants who are financially able to obtain such representation and other services for their defense and appeal, and for the prosecution of any of the proceedings described in paragraph (5).

"Refusal To Participate by State and Federal Correctional Employees

"(r) No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.".

SEC. 6192. GAO STUDY OF THE COST OF EXECUTIONS.

(a) Study.—No later than three years after the date of the enactment of this Act, the Comptroller General shall carry out a study to review the cost of implementing the procedures for imposing and carrying out a death sentence prescribed by this title.

(b) Specific Requirement.—Such study shall consider, but not be limited to, information concerning impact on workload of the Federal prosecutors and judiciary and law enforcement necessary to obtain capital sentences and executions under this Act.

(c) Submission of Report.—Not later than four years after date of the enactment of this Act, the Comptroller General shall submit to Congress a report describing the results of the study.

Subtitle N—User Accountability

SEC. 6201. INELIGIBILITY FOR FEDERAL BENEFITS.

(a) In General.—Any individual—

(1) who is—

(A) convicted of a drug or narcotic offense that consists of the distribution of a controlled substance; and

(B) sentenced to a term of imprisonment that is not suspended or made probationary and exceeds one year; or

(2) who is convicted of two or more drug or narcotic offenses within a ten year period;

shall be ineligible for any Federal benefit during the period described in subsection (b).

(b) Period of Ineligibility.—The period of ineligibility referred to in subsection (a) begins on the date of the conviction creating the ineligibility and ends—

(1) ten years thereafter if the ineligibility is under subsection (a)(1);

(2) five years thereafter if the ineligibility is under subsection (a)(2); or

(3) the date (not later than the date otherwise provided under paragraph (1) or (2)) determined to be appropriate by the head of the Federal agency administering the benefit program in question, in the case of an individual who—

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section; or

(B) has otherwise been rehabilitated.

(c) Definitions.—As used in this section—

(1) the term "Federal benefit"—

(A) means any grant, contract, loan, license, or public housing provided by an agency of the United States or by appropriated funds of the United States;

(B) includes a veteran's benefit (other than a benefit described in subpargraph (C)), but only if the offense giving rise to the ineligibility consisted of the distribution of a controlled substance; and

(C) does not include any retirement, welfare, health, disability, or other similar benefit; and

(2) the term "drug or narcotic offense" means an offense defined as a drug or narcotic offense in section 404(c) of the Controlled Substances Act, and includes conduct relating to narcotic drugs, marijuana, or a depressant or stimulant substance which results in the imposition of civil penalties and which, if prosecuted under the Controlled Substances Act, would be a crime.

(d) Rules.—The Attorney General shall make rules to carry out this section.

Subtitle O—Limitation of the Fourth Amendment Exclusionary Rule

SEC. 6211. LIMITATION OF THE FOURTH AMENDMENT EXCLUSIONARY RULE.

(a) In General.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3508. Limitation of the fourth amendment exclusionary rule

"Except as specifically provided by law, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be excluded in a proceeding in a court of the United States if the search or seizure was undertaken in an objective, reasonable, good faith belief that it was in conformity with the fourth amendment to the Constitution. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such an objective, reasonable, good faith belief, unless the warrant was obtained through intentional and material misrepresentation.".

(b) Clerical Amendment.—The table of sections for chapter 223 of title 18, United States Code, is amended by adding at the end the following new item:

"3508. Limitation of the fourth amendment exclusionary rule.".

Subtitle P—Civil Penalty

SEC. 6221. CIVIL PENALTY FOR POSSESSION OF SMALL AMOUNTS OF CERTAIN CONTROLLED SUBSTANCES.

(a) In General.—Any individual who possesses a controlled substance that is listed in section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation. In determining the amount of a penalty under this subsection, the income and net assets of the individual shall be considered.

(b) Assessment.—A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

(c) Compromise.—The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(d) Judicial Review.—If the Attorney General issues an order pursuant to subsection (b) after a hearing described in such paragraph, the individual who is the subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, seek judicial review of the order pursuant to section 1331 of title 28, United States Code, and chapter 7 of title 5, United States Code.

(e) CIVIL ACTION.—If an individual does not request a hearing pursuant to subsection (b) and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (d) seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28, United States Code. Such interest shall accrue from the expiration of the 30-day period described in subsection (d). In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

(f) LIMITATION.—The Attorney General may not under this subsection commence proceeding against an individual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a).

Subtitle S—Serious Crack Possession Offenses

SEC. 6251. INCREASED PENALTIES FOR CERTAIN SERIOUS CRACK POSSESSION OFFENSES.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following new sentence: "Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be fined under title 18, United States Code, or imprisoned not less than 5 years and not more than 20 years, or both, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram.".

Subtitle T—United States Marshals Service

SEC. 6261. SHORT TITLE.

This subtitle may be cited as the "United States Marshals Service Act of 1988".

SEC. 6262. ESTABLISHMENT OF THE MARSHALS SERVICE.

(a) IN GENERAL.—Chapter 37 of title 28, United States Code, is amended by striking out sections 561 through 571 and inserting in lieu thereof the following:

"§ 561. United States Marshals Service

"(a) There is hereby established a United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States Marshals Service (hereafter in this chapter referred to as the 'Service') a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) The Director of the Service (hereafter in this chapter referred to as the 'Director') shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

"(c) The Attorney General shall appoint a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the civil service, and shall be paid in accordance with the provisions of chapter 51 and suchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

"(d) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that—

"(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and

"(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

"(e) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers, in accordance with such policies and procedures as the Director shall establish. Employees appointed under this subsection shall be appointed subject to the provisions of title 5 governing appointments in the civil service, and shall be paid in accordance with the provisions of chapter 51 and suchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(f) The Director shall supervise and direct the Service in the performance of its duties, including accounting for public moneys.

"(g) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

"(h) The Director may delegate to other officials of the Service the authority to carry out any functions of the Director.

"(i) There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Service.

"§ 562. Vacancies

"In the case of a vacancy in the office of a United States marshal, the Director may designate a person to perform the functions of and act as marshal until a marshal is appointed in accordance with the provisions of section 561(c).

"§ 563. Oath of office

"The Director and each United States marshal and law enforcement officer of the Service, before taking office, shall take an oath or affirmation to faithfully execute the duties of that office.

"§ 564. Powers as sheriff

"United States marshals, deputy marshals, and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.

"§ 565. Expenses of the service

"The Director is authorized to use funds appropriated for the Service to make payments for the conduct of its activities, including payments for—

"(1) the actual and necessary expenses associated with the offices established under section 561;

"(2) the expense of transporting prisoners, including the transporting between the United States and foreign countries of persons charged with crimes, and including the cost of necessary guards and the travel and subsistence expenses of prisoners and guards;

"(3) the lease, acquisition, maintenance, and operation of aircraft and vessels, and the lease and acquisition of law enforcement and passenger motor vehicles without regard to the general purchase price limitation for any current fiscal year and including the operation and maintenance for official use of vehicles seized and forfeited to the United States Government;

"(4) the supervision and care of United States prisoners in non-Federal institutions;

"(5) the purchase of firearms and ammunition and attendance at firearms matches and law enforcement competitions;

"(6) the payment of rewards, and payments for information;

"(7) expenses incurred for the use of facilities in the protection of witnesses, and planning, acquisition, construction, renovation, maintenance, remodeling, and repair of buildings, and the purchase of equipment incident thereto, for protected witness safesites;

"(8) expenses incurred pursuant to personal services contracts and cooperative agreements, authorized by the Attorney General, for security guards and for the service of summons upon complaints, subpoenas, and notices in lieu of service by United States marshals and deputy marshals; and

"(9) other necessary expenditures authorized by law.

"§ 566. Powers and duties

"(a) It is the primary role and mission of the Service to provide for the security of, and to obey, execute, and enforce all orders of, the United States district courts, the United States courts of appeals, and the Court of International Trade.

"(b) The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in that district, and of the Court of International Trade holding sessions in that district, and may, in the discretion of the respective courts, be required to attend any session of court.

"(c) Except as otherwise provided by law, the Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.

"(d) Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

"(e) The Service is authorized to provide such protective services to judges and other persons, and to investigate such fugitive matters, as may be directed by the Attorney General. Nothing in this subsection shall be construed to interfere with or supersede the authority of other Federal agencies, bureaus, or services.

"(f) In accordance with procedures established by the Director, and except for public money deposited under section 2041 of this title, each United States marshal shall deposit public moneys that the marshal collects into the Treasury, subject to disbursement by the marshal. At the end of each accounting period, the earned part of public moneys accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

"(g) Before leaving office on account of resignation, retirement, or removal from office—

"(1) a United States marshal shall deliver to the marshal's successor all prisoners and all unserved process in the custody of the marshal; and

"(2) a deputy marshal of a district shall deliver to the marshal of that district all process in the custody of the deputy marshal.

"(h) The United States marshals shall pay such office expenses of United States Attorneys as may be directed by the Attorney General.".

(b) TRANSITIONAL PROVISIONS FOR PRESIDENTIAL APPOINTMENT OF CERTAIN MARSHALS.—

(1) INCUMBENT MARSHALS.—Notwithstanding the amendments made by this subtitle, each marshal appointed under chapter 37 of title 28, United States Code, before the enactment of this Act, for a term of four years by the President, by and with the advice and consent of the Senate, shall, unless that marshal resigns or is removed from office by the President, continue to perform the duties of that office until the expiration of that term and the appointment of a successor.

(2) FIRST VACANCIES AFTER ENACTMENT.—Notwithstanding the amendments made by this subtitle, with respect to the first vacancy which occurs in the office of United States marshal in any State during the period beginning on the date of the enactment of this Act and ending on December 31, 1992, the President shall appoint, by and with the consent of the Senate, a marshal to fill that vacancy for a term of four years. A vacancy may be filled in the manner prescribed in the preceding sentence in only one judicial district in each State, and any vacancy in the office of United States marshal occurring in a State after the first such vacancy in that State, and before January 1, 1993, and any vacancy occurring in the office of United States marshal on and after January 1, 1993, shall be filled in accordance with section 562 of title 28, United States Code, as amended by subsection (a) of this section. Any marshal appointed by the President under this paragraph shall, unless that marshal resigns or is removed from office by the President, continue to perform the duties of that office after the end of the 4-year term to which such marshal was appointed until a successor is appointed in accordance with the provisions of section 561(c) of title 28, United States Code, as amended by subsection (a) of this section.

(c) ADDITIONAL AMENDMENTS.—Chapter 37 of title 28, United States Code, is amended—

(1) by striking out sections 572a, 573, and 574; and

(2) by redesignating sections 572, 575, and 576 as sections 567, 568, and 569, respectively.

(d) CONFORMING AMENDMENTS.—The chapter heading for chapter 37 of title 28, United States Code, and the table of sections at the beginning of such chapter, are amended to read as follows:

"CHAPTER 37—UNITED STATES MARSHALS SERVICE

"Sec.
"561. United States Marshals Service.
"562. Vacancies.
"563. Oath of office.
"564. Powers as sheriff.
"565. Expenses of the Service.
"566. Powers and duties.
"567. Collection of fees; accounting.
"568. Practice of law prohibited.
"569. Reemployment rights.".

SEC. 6263. OTHER AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Section 524(c)(1)(A) of title 28, United States Code, is amended by adding at the end thereof the following: "the Attorney General may, after appropriate notification to the Congress, exempt the procurement of contract services under the fund from section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following), and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations;".

(b) COMPENSATION OF BAILIFFS.—Section 755 of title 28, United States Code, is amended by striking out the third paragraph.

SEC. 6264. MARSHALS' FEES.

Section 1921 of title 28, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a)(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

"(A) Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order, or process in any case or proceeding.

"(B) Serving a subpoena or summons for a witness or appraiser.

"(C) Forwarding any writ, order, or process to another judicial district for service.

"(D) The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

"(E) The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

"(F) Copies of writs or other papers furnished at the request of any party.

"(G) Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

"(H) Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

"(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title.

"(3) For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

"(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

"(c)(1) The United States Marshals Service shall collect a commission of 3 percent of the first $1,000 collected and 1½ percent on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General. If the property is to be disposed of by marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984.

"(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

"(d) The United States marshals may require a deposit to cover the fees and expenses prescribed under this section.".

SEC. 6265. SUPPORT OF UNITED STATES PRISONERS IN NON-FEDERAL INSTITUTIONS.

(a) IN GENERAL.—Chapter 301 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 4013. Support of United States prisoners in non-Federal institutions

"(a) The Attorney General, in support of United States prisoners in non-Federal institutions, is authorized to make payments from funds appropriated to the United States Marshals Service for—

"(1) necessary clothing;

"(2) medical care and necessary guard hire;

"(3) payment of rewards for assistance in the capture or information leading to the capture of a Federal fugitive;

"(4) the housing, care, and security of persons held in custody of a United States marshal pursuant to Federal law under agreements with State or local units of government or contracts with private entities; and

"(5) entering into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services in any State or local jurisdiction which agrees to provide guaranteed bed space for Federal detainees within that correctional system, in accordance with regulations which are issued by the Attorney General and are comparable to the regulations issued under section 4006 of this title, except that—

"(A) amounts made available for purposes of this paragraph shall not exceed the average per-inmate cost of constructing similar confinement facilities for the Federal prison population,

"(B) the availability of such federally assisted facility shall be assured for housing Federal prisoners, and

"(C) the per diem rate charged for housing such Federal prisoners shall not exceed allowable costs or other conditions specified in the contract or cooperative agreement.".

(b) Conforming Amendment.—The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following:

"4013. Support of United States prisoners in non-Federal institutions.".

SEC. 6266. PAY OF DIRECTOR OF THE SERVICE.

Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director, United States Marshals Service.".

Subtitle U—Miscellaneous Drug Enforcement

SEC. 6271. REQUIREMENT OF ENVIRONMENTAL IMPACT STATEMENT WITH RESPECT TO USE OF WEED OIL IN CANNABIS ERADICATION EFFORTS IN HAWAII.

(a) Requirement of Preparation.—The Attorney General, acting through the Administrator of the Drug Enforcement Administration, shall ensure that a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is prepared with respect to the use in the State of Hawaii, in cannabis eradication efforts authorized by law, of the substance known as weed oil.

(b) Commencement of Process of Preparation.—Not later than 60 days after the date of the enactment of this Act, the Attorney General, acting through the Administrator of the Drug Enforcement Administration, shall commence the process of preparing the detailed statement described in subsection (a) by publishing in the Federal Register a notice of intent with respect to the preparation of such statement.

(c) Completion of Preparation.—The detailed statement required in subsection (a) shall, in accordance with regulations issued for such statements, be completed as soon as is practicable after the commencement, pursuant to subsection (b), of the process of preparing the statement.

SEC. 6272. PAYMENT OF BONUSES FOR FOREIGN LANGUAGE CAPABILITIES.

Notwithstanding any other provision of law, the Drug Enforcement Administration is authorized on and after October 1, 1988, to pay bonuses up to 25 percent of base pay to employees of the Drug Enforcement Administration who possess and make substantial use of one or more languages, other than English, in the performance of their official duties. The Administrator of the Drug Enforcement Administration will develop such policies as necessary to implement the payment of these bonuses.

TITLE VII—COMMITTEE ON MERCHANT MARINE AND FISHERIES

SEC. 7001. SHORT TITLE.

This title may be cited as the "Coast Guard Drug Enforcement Act of 1988".

SEC. 7002. AUTHORITY AND PROTECTION OF COMMANDING OFFICERS ON NAVAL VESSELS TO WHICH COAST GUARD PERSONNEL ARE ASSIGNED.

(a) In General.—Section 637 of title 14, United States Code, is amended to read as follows:

"§ 637. Stopping vessels; immunity for firing at or into vessel

"(a) Whenever any vessel liable to seizure or examination does not stop on being ordered to do so or on being pursued by an authorized vessel or authorized aircraft which has displayed the ensign, pennant, or other identifying insignia prescribed for an authorized vessel or authorized aircraft, the person in command or in charge of the authorized vessel or authorized aircraft may, after a gun has been fired by the authorized vessel or authorized aircraft as a warning signal, fire at or into the vessel which does not stop.

"(b) The person in command of an authorized vessel or authorized aircraft and all persons acting under that person's direction shall be indemnified from any penalties or actions for damages for firing at or into a vessel pursuant to subsection (a). If any person is killed or wounded by the firing, and the person in command of the authorized vessel or authorized aircraft or any person acting pursuant to their orders is prosecuted or arrested therefor, they shall be forthwith admitted to bail.

"(c) A vessel or aircraft is an authorized vessel or authorized aircraft for purposes of this section if—

"(1) it is a Coast Guard vessel or aircraft; or

"(2) it is a surface naval vessel on which one or more members of the Coast Guard are assigned pursuant to section 379 of title 10.".

(b) Conforming Amendment.—The item relating to section 637 in the table of sections at the beginning of chapter 17 of title 14, United States Code, is amended to read as follows:

"637. Stopping vessels; immunity for firing at or into vessel.".

SEC. 7003. MARITIME DRUG LAW ENFORCEMENT ACT AMENDMENTS.

(a) Section 3(a) Amendment.—Section 3(a) of the Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (46 U.S.C. App. 1903(a)), is amended by inserting after "jurisdiction of the United States," the following: "or who is a citizen of the United States or a resident alien of the United States on board any vessel,".

(b) Section 3(b) Amendment.—Section 3(b)(2) of such Act (46 U.S.C. App. 1903(b)(2)) is amended by inserting after "High Seas" the following: "and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law".

SEC. 7004. INDEMNIFICATION OF COAST GUARD MEMBERS AND EMPLOYEES.

(a) In General.—Title 14, United States Code, is amended by inserting after section 644 the following:

"§ 645. Indemnification of Coast Guard members and employees.

"The Commandant may indemnify any member or employee of the Coast Guard against any claim or judgment against the member or employee if the claim or judgment arises out of an act committed, as determined by the Commandant, within the scope of the official duties of the member or employee in carrying out law enforcement activities.".

(b) Conforming Amendment.—The table of sections at the beginning of chapter 17 of title 14, United States Code, is amended by inserting after the item relating to section 644 the following:

"645. Indemnification of Coast Guard members and employees.".

SEC. 7005. COAST GUARD LAW ENFORCEMENT DUTIES.

Section 2 of title 14, United States Code, is amended—

(1) by striking "on and under" the first time it appears and inserting in lieu thereof "on, under, and over"; and

(2) by striking "United States;" the first place it appears and inserting in lieu thereof "United States; shall engage in maritime air surveillance or interdiction to enforce or assist in the enforcement of the laws of the United States;".

SEC. 7006. GREAT LAKES DRUG INTERDICTION.

(a) Interagency Agreement.—The Secretary of Transportation and the Secretary of the Treasury shall enter into an agreement for the purpose of increasing the effectiveness of maritime drug interdiction activities of the Coast Guard and the Customs Service in the Great Lakes area.

(b) Negotiations With Canada on Drug Enforcement Cooperation.—The Secretary of State is encouraged to enter into negotiations with appropriate officials of the Government of Canada for the purpose of establishing an agreement between the United States and Canada which provides for increased cooperation and sharing of information between United States and Canadian law enforcement officials with respect to law enforcement efforts conducted on the Great Lakes between the United States and Canada.

SEC. 7008. AUTHORIZATION OF APPROPRIATIONS.

(a) Additional Authorization of Appropriations for the Coast Guard.—

(1) Acquisition, construction, and improvements.—There are authorized to be appropriated for acquisition, construction, and improvements of the Coast Guard $264,000,000 for fiscal year 1989, to remain available until expended.

(2) Operating expenses.—There are authorized to be appropriated for operating expenses of the Coast Guard $82,000,000 for fiscal year 1989 and $30,000,000 for each of fiscal years 1990, 1991, and 1992, to remain available until expended. Amounts appropriated pursuant to this paragraph shall be used to increase by 500 the full-time equivalent strength level for the Coast Guard for active duty personnel for fiscal years 1989, 1990, 1991, and 1992, and to procure, enhance, relocate, operate, and maintain vessels, aircraft, radar, equipment, and struc-

tures by the Coast Guard for drug interdiction purposes.

(b) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—Amounts and personnel authorized by this section are in addition to any other amounts or personnel strengths authorized for the Coast Guard for any fiscal year.

(c) AUTHORIZATION ENHANCEMENT.—Nothing in this Act shall require the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment except to the extent that—

(1) additional appropriations are made available in appropriations Acts for that purpose; or

(2) funds are transferred to the Secretary of Transportation for that purpose pursuant to this Act.

SEC. 7009. VESSEL IDENTIFICATION SYSTEM.

(a) CHAPTER 125, TITLE 46.—

(1) Title 46, United States Code, is amended by adding the following new chapter 125 after chapter 123:

"CHAPTER 125—VESSEL IDENTIFICATION SYSTEM

"Sec.
"12501. Establishment of a vessel identification system.
"12502. Identification numbers, signal letters, and markings.
"12503. Information available to the system.
"12504. Information available from the system.
"12505. Fees.
"12506. Delegation of authority.
"12507. Penalties.

"§ 12501. Establishment of a vessel identification system

"(a) The Secretary of Transportation shall maintain a vessel identification system to make available information under section 12503 of this title for use by the public for law enforcement and other purposes including—

"(1) the ownership of documented vessels;

"(2) the ownership of vessels numbered under chapter 123 of this title; and

"(3) the ownership of vessels titled under the law of a State.

"(b) The vessel identification system shall include information prescribed by the Secretary including—

"(1) identifying a vessel;

"(2) identifying the owner of the vessel;

"(3) identifying the State in which it is titled or numbered;

"(4) indicating whether the vessel is numbered or titled, or both;

"(5) if titled in a State, indicating where a lien or other security interest is recorded against the vessel in that State; and

"(6) information assisting law enforcement officials.

"(c) The Secretary may maintain information under this chapter in connection with any other information system maintained by the Secretary.

"§ 12502. Identification numbers, signal letters, and markings

"(a) For the identification of a vessel of the United States, the Secretary of Transportation—

"(1) shall maintain a unique numbering system and assign a number to each vessel of the United States;

"(2) may maintain a system of signal letters for a documented vessel;

"(3) shall record a name selected by the owner of a documented vessel approved by the Secretary as the vessel's name of record; and

"(4) may establish other identification markings.

"(b) The manufacturer or owner of a vessel shall affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other markings the Secretary may require.

"(c) Once a number is assigned under this section, it may not be used by another vessel.

"(d) Once a documented vessel's name is established, the name may not be changed without the approval of the Secretary.

"(e) A person may not tamper with or falsify a number or other marking required under this section.

"§ 12503. Information available to the system

"(a) Except as provided in subsections (b) and (c) of this section, a State or a State's delegee approved by the Secretary may make information available to the Secretary of Transportation if, in a manner and form prescribed by the Secretary, the State—

"(1) identifies the vessel;

"(2) identifies the owner of the vessel;

"(3) identifies the State in which it is titled or numbered;

"(4) indicates whether the vessel is numbered or titled, or both;

"(5) if titled in a State, indicates where a lien or other security interest is recorded against the vessel in that State;

"(6) includes information to assist law enforcement; and

"(7) includes other information agreed to by the Secretary and the State.

"(b) Except as provided in subsection (c) of this section, the Secretary also may accept information under conditions and in a manner and form prescribed by the Secretary.

"(c) The Secretary shall—

"(1) retain information on a vessel with a preferred mortgage under section 31322(d) of this title that is no longer titled in a State making information available to the Secretary under this chapter until the mortgage is discharged or the vessel is sold; and

"(2) accept information under section 31321(g) of this title only if that information cannot be provided to a State.

"§ 12504. Information available from the system

"For law enforcement or other purposes and under conditions prescribed by the Secretary, the Secretary—

"(1) shall make available information in the vessel identification system to a State making information available under section 12503(a) of this title; and

"(2) may make available information in the vessel identification system to others.

"§ 12505. Fees

"(a) The Secretary of Transportation may charge a fee under section 9701 of title 31 for providing information to or requesting information from the vessel identification system, except to—

"(1) an agency; or

"(2) a State making information available to the Secretary of Transportation under section 12503(a) of this title.

"(b) The Secretary may collect an annual fee of not more than $1.00 from the owner of each vessel of the United States under 9701 of title 31 for the vessel identification system. However, the collection of that fee may be delayed under conditions prescribed by the Secretary.

"(c) The Secretary may employ any agency, State, or person to collect the fee established under subsection (b) of this section.

"(d) If a State is employed to collect a fee under subsection (c) of this section, the State may retain one-half of the amounts collected. A State shall transfer one-half of the amounts collected under subsection (b) of this section to the Secretary.

"(e) The Secretary shall deposit amounts transferred or collected under this section in the general fund of the Treasury as proprietary receipts of the Secretary and ascribed to the vessel identification system.

"(f) The amounts retained by a State under this section may be used to make information available to the Secretary and to pay incremental administrative costs.

"§ 12506. Delegation of authority

"The Secretary of Transportation may delegated to an agency, a State, or a qualified person the authority to—

"(1) establish and maintain the vessel identification system; and

"(2) charge fees under section 12505 of this title to a person making information available to or requesting information from the vessel identification system.

"§ 12507. Penalties

"(a) A person shall be fined under title 18, imprisoned for not more than two years, or both, if the person with the intent to defraud—

"(1) provides false information to the Secretary or a State issuing authority regarding the identification of a vessel under this chapter; or

"(2) tampers with, removes, or falsifies the unique vessel identification number assigned to a vessel under section 12502 of this title.

"(b) A person is liable to the United States Government for a civil penalty of not more than $10,000 if the person—

"(1) provides false information to the Secretary or a state issuing authority regarding the identification of a vessel under this chapter;

"(2) violates section 12502 of this title; or

"(3) fails to comply with regulations prescribed by the Secretary under section 12505 of this title.

"(c) A vessel involved in a violation of this chapter, or regulation under this chapter, and its equipment, may be seized by, and forfeited to, the Government.

"(d) If a person, not an individual, is involved in a violation of this chapter, the president or chief executive of the person also is subject to any penalty provided under this section.

(2) The title analysis at the beginning of subtitle II of title 46, United States Code, is amended by adding after item 123 in part H:

"125. Vessel Identification System............ 12501".

(b) CHAPTERS 301 AND 313 OF TITLE 46.—

(1) Certain general and permanent laws of the United States, related to definitions and maritime commercial instruments and liens, are revised, consolidated, and enacted by paragraph (3) of this subsection as subtitle III of title 46, United States Code, "Shipping".

(2) The title analysis at the beginning of title 46, United States Code, is amended to read as follows:

"Subtitle	Sec.
"I. GENERAL	101
"II. VESSELS AND SEAMEN	2101
"III. MARITIME LIABILITY	30101
"[BALANCE OF TITLE RESERVED]"	

(3) Title 46, United States Code, is amended by adding at the end of the following new subtitle:

"SUBTITLE III—MARITIME LIABILITY

"Chapter	Sec.
"301. GENERAL	30101
"[CHAPTERS 303-311—RESERVED]	
"313. COMMERCIAL INSTRUMENTS AND MARITIME LIENS	31301
"[CHAPTER 315—RESERVED]	

"CHAPTER 301—GENERAL

"Sec.
"30101. Definitions.

"§ 30101. Definitions

"In this subtitle—

"(1) 'documented vessel' means a vessel documented under chapter 121 of this title.

"(2) 'foreign vessel' means a vessel of foreign registry or operated under the authority of a foreign country.

"(3) 'public vessel' means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country.

"(4) 'recreational vessel' means a vessel—

"(A) operated primarily for pleasure; or

"(B) leased, rented, or demise chartered to another for the latter's pleasure.

"(5) 'seaman' means a master or a crewmember of a vessel in operation.

"(6) 'State' means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

"(7) 'State vessel' means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State.

"(8) 'United States', when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

"(9) 'vessel of the United States' means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

"[CHAPTERS 303-311—RESERVED]

"CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

"SUBCHAPTER I—GENERAL

"Sec.
"31301. Definitions.
"31302. Availability of instruments, copies, and information.
"31303. Certain civil actions not authorized.
"31304. Liability for noncompliance.
"31305. Waiver of lien rights.
"31306. Declaration of citizenship.
"31307. State statutes superseded.
"31308. Secretary of Commerce or Transportation as mortgagee.
"31309. General civil penalty.

"SUBCHAPTER II—COMMERCIAL INSTRUMENTS

"31321. Filing, recording, and discharge.
"31322. Preferred mortgages.
"31323. Disclosing and incurring obligations before executing preferred mortgages.
"31324. Retention and examination of mortgages and documents of vessels covered by preferred mortgates.
"31325. Preferred mortgage liens and enforcement.
"31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims.
"31327. Forfeiture of mortgagee interest.
"31328. Limitations on parties serving as trustees of mortgaged vessel interests.
"31329. Court sales of documented vessels.
"31330. Penalties.

"SUBCHAPTER III—MARITIME LIENS

"31341. Persons presumed to have authority to procure necessaries.
"31342. Establishing maritime liens.
"31343. Recording and discharging liens on preferred mortgage vessels.

"SUBCHAPTER I—GENERAL

"§ 31301. Definitions

"In this chapter—

"(1) 'acknowledge' means making—

"(A) an acknowledgement or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

"(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

"(2) 'district court' means—

"(A) a district court of the United States (as defined in section 451 of title 28);

"(B) the District Court of Guam;

"(C) the District Court of the Virgin Islands;

"(D) the District Court for the Northern Mariana Islands;

"(E) the High Court of American Samoa; and

"(F) any other court of original jurisdiction of a territory or possession of the United States.

"(3) 'mortgagee' means—

"(A) a person to whom property is mortgaged; or

"(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement.

"(4) 'necessaries' includes repairs, supplies, towage, and the use of a dry dock or marine railway.

"(5) 'preferred maritime lien' means a maritime lien on a vessel—

"(A) arising before a preferred mortgage was filed under section 31321 of this title;

"(B) for damage arising out of maritime tort;

"(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

"(D) for wages of the crew of the vessel;

"(E) for general average; or

"(F) for salvage, including contact salvage.

"(6) 'preferred mortgage'—

"(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

"(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreing country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

"§ 31302. Availability of instruments, copies, and information

"The Secretary of Transportation shall—

"(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

"(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

"(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

"§ 31303. Certain civil actions not authorized

"If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

"§ 31304. Liability for noncompliance

"(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

"(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

"§ 31305. Waiver of lien rights

"This chapter does not prevent a mortgagee or other lien holder waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

"§ 31306. Declaration of citizenship

"(a) When an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

"(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

"(c) An instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

"(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

"§ 31307. State statutes superseded

"This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

"§ 31308. Secretary of Commerce or Transportation as mortgagee

"When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241 et seq.), subject to section 362(b) of title 11.

"§ 31309. General civil penalty

"Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.

"SUBCHAPTER II—COMMERCIAL INSTRUMENTS

"§ 31321. Filing, recording, and discharge

"(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

"(A) the grantor, mortgagor, or assignor;

"(B) the heir or devisee of the grantor, mortgagor, or assignor; and

"(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

"(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

"(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

"(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

"(1) identify the vessel;

"(2) state the name and address of each party to the instrument;

"(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

"(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

"(5) state the interest sold, conveyed, mortgaged, or assigned; and

"(6) be signed and acknowledged.

"(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel that has not yet been documented, and the Secretary decides that the vessel cannot be doumented by an applicant—

"(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each party whose name and address is stated on the instrument filed for recording; and

"(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

"(A) may terminate the filing; and

"(B) may return the instrument filed without recording it under subsection (d) of this section.

"(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

"(e) The Secretary shall—

"(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

"(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

"(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

"(g) On full and final discharge of the indebtedness under a mortgage filed under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

"§ 31322. Preferred mortgages

"(a)(1) A preferred mortgage is a mortgage, whenever made, that—

"(A) includes the whole of a vessel;

"(B) is filed in substantial compliance with section 31321 of this title;

"(C)(i) covers a documented vessel; or

"(ii) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

"(D) has as the mortgagee—

"(i) a State;

"(ii) the United States Government;

"(iii) a federally insured depository institution, unless disapproved by the Secretary;

"(iv) an individual who is a citizen of the United States;

"(v) a person qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); or

"(vi) a person approved by the Secretary of Transportation.

"(2) Paragraph (1)(D) of this subsection does not apply to a vessel operated only as a fishing vessel, fish processing vessel, or a fish tender vessel (as defined in section 2101 of this title) or to a vessel operated only for pleasure.

"(b) A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.

"(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

"(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

"(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

"(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

"(d)(1) A mortgage or instrument representing financing of a vessel under State law that is filed under applicable State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

"(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

"(B) information on the vessel covered by the mortgage or instrument is made available to the Secretary under chapter 125 of this title.

"(2) This subsection applies to mortgages or instruments covering vessels titled in a State after—

"(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

"(B) the State begins making information available to the Secretary under chapter 125 of this title.

"§ 31323. Disclosing and incurring obligations before executing preferred mortgages

"(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

"(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

"(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title.

"(2) wages for the crew of the vessel.

"(3) general average.

"(4) salvage, including contract salvage.

"(c) On conviction of a mortgagor under section 31330(a)(1) (A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

"§ 31324. Retention and examination of mortgages of vessels covered by preferred mortgages

"(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

"(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

"§ 31325. Preferred mortgage liens and enforcement

"(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

"(b) On default of any term of the preferred mortgage, the mortgagee may enforce the preferred mortgage lien in—

"(1) a civil action in rem for a documented vessel or a vessel to be documented under chapter 121 of this title;

"(2) a civil action in personam in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness; and

"(3) a civil action against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness.

"(c) The district courts have original jurisdiction of a civil action brought under subsection (b) of this section. However, for documented vessels or vessels to be documented under chapter 121 of this title, this jurisdiction is exclusive of the courts of the states for a civil action under subsection (b)(1) of this section.

"(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

"(A) the master or individual in charge of the vessel;

"(B) any person that recorded under section 31343 (a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and

"(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

"(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

"(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

"(e) In a civil action brought under subsection (b)(1) of this section—

"(1) the court may appoint a receiver and authorize the receiver to operate the mortaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

"(2) when directed by the the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

"§ 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

"(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

"(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

"(1) the preferred mortgage lien has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

"(2) for a foreign vessel, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

"§ 31327. Forfeiture of mortgagee interest

"The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

"§ 31328. Limitations on parties serving as trustees of mortgaged vessel interests

"(a) Without the approval of the Secretary of Transportation, an instrument or evidence of indebtedness secured by a mortgage of a vessel to a trustee may not be issued, assigned, or transferred to, or held in trust for, a person not qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), unless the trustee—

"(1) is a State;

"(2) is the United States Government;

"(3) is a person approved by the Secretary and qualifying as a citizen of the United States under that section 2; or

"(4) has been approved by the Secretary.

"(b) The Secretary shall approve a trustee under subsection (a) (3) or (4) of this section if the trustee—

"(1) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

"(2) is authorized under those laws to exercise corporate trust powers;

"(3) is subject to supervision or examination by an official of the United States Government or a State;

"(4) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

"(5) if the trustee is to be approved under subsection (a)(4) of this section, meets any other requirements prescribed by the Secretary.

"(c) If the trustee at any time does not satisfy the qualifications of subsection (b) of this section, the Secretary shall disapprove the trustee.

"(d) Except as provided in subsection (a) of this section, a right under a mortgage of a documented vessel may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322 of this title only with the approval of the Secretary.

"(e) The vessel may be operated by the trustee only with the approval of the Secretary.

"(f) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this section is void.

"§ 31329. Court sales of documented vessels

"(a) A documented vessel may be sold by order of a district court only to—

"(1) a person eligible to own a documented vessel under section 12102 of this title; or

"(2) a mortgagee of that vessel.

"(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

"(1) the vessel must be held by the mortgagee for resale;

"(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

"(3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

"(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

"(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

"(e) A sale of a vessel contrary to this section is void.

"§ 31330. Penalties

"(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

"(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

"(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

"(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

"(D) with intent to defraud, does not comply with section 31321 (f) or (g) of this title.

"(2) A mortgagor is liable to the United States Government for a civil penalty of not more than $10,000 if the mortgagor—

"(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

"(B) incurs a contractual obligation in violation of section 31323(b) of this title;

"(C) files with the Secretary a mortgage made not in good faith; or

"(D) does not comply with section 31321 (f) or (g) or with section 31322(d)(3)(A) of this title.

"(b)(1) A person that knowingly violates section 31328 or 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

"(2) A person violating section 31328 or 31329 of this title is liable to the Government for a civil penalty of not more than $25,000.

"(3) A vessel involved in a violation under section 31328 or 3129 of this title and its equipment may be seized by, and forfeited to, the Government.

"(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

"SUBCHAPTER III—MARITIME LIENS

"§ 31341. Persons presumed to have authority to procure necessaries

"(a) The following persons are presumed to have authority to procure necessaries for a vessel:

"(1) the owner.

"(2) the master.

"(3) A person entrusted with the management of the vessel at the port of supply.

"(4) an officer or agent appointed by—

"(A) the owner;

"(B) a charterer;

"(C) an owner pro hac vice; or

"(D) an agreed buyer in possession of the vessel.

"(b) A person tortuously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

"§ 31342. Establishing maritime liens

"A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title or a person authorized by the owner—

"(1) has a maritime lien on the vessel;

"(2) may bring a civil action in rem to enforce the lien; and

"(3) is not required to allege or prove in the action that credit was given to the vessel.

"§ 31343. Recording and discharging liens on preferred mortgage vessels

"(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel covered by a preferred mortgatge filed or recorded under this chapter may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

"(1) state the nature of the lien;

"(2) state the date the lien was established;

"(3) state the amount of the lien;

"(4) state the name and address of the person; and

"(5) be signed and acknowledged.

"(b) The Secretary shall record a notice complying with subsection (a) of this section.

"(c) On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

"(d) A person claiming a lien on a vessel covered by a preferred mortgage filed under section 31322(d) of this title must record and discharge the lien as provided by the law of the state in which the vessel is titled.

"[CHAPTER 315—RESERVED]".

(c) SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION.—

(1) Section 12111 of title 46, United States Code, is amended—

"(A) by striking the catchline and substituting the following:

"§ 12111. Surrender and invalidation of certificates of documentation"; and

"(B) by striking subsection (b) and substituting the following:

"(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

"(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

"(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

"(B) section 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

"(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

"(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

"(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

"(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgate filed or recorded under section 31321 of this title only if the mortgagee consents.".

(2) Item 12111 in the analysis of chapter 121 of title 46, United States Code, is amended to read as follows:

"12111. Surrender and invalidation of certificates of documentation.".

(d) MISCELLANEOUS AND CONFORMING PROVISIONS.—(1) Title 46, United States Code, is amended as follows:

(A) In section 2101(46), strike the period at the end and add "or titled under the law of a State.".

(B) In section 2110, strike "the licensing of masters, mates, pilots, and engineers, and the documentation of vessel," and substitute "and the licensing of masters, mates, pilots, and engineers,".

(C) In sections 12102(b), 12103(a), 12105(c), 12110(a), 12112(a), (b), and (c), 12117, 12119, and 12120, insert "of Transportation" after "Secretary" the first time it appears.

(D) Section 12103(c)(1) is amended to read as follows:

"(1) identify and describe the vessel;".

(2) The third paragraph of section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), is amended to read as follows:

"Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and 31328 of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

"(1) sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of this title) or in a vessel operated only for pleasure) owned by a citizen of the United States; or

"(2) place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.".

(3) The first sentence of section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242), is amended by striking "or under construction" and substituting "a documented vessel, or a vessel under construction".

(4) Section 1101(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(a)), is amended to read as follows:

"(a) The term 'mortgage' includes—

"(1) a preferred mortgage as defined in section 31301 of title 46, United State Code; and

"(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code;".

(5)(A) Before January 1, 1992, the annual fee under section 12505 of title 46, United States Code (as enacted by this section), is $1.00.

(B) To establish, centralize, and computerize records and other information maintained under chapters 121, 125, and 313 of title 46, United States Code, from the effective date of this Act through September 30, 1993, the Secretary of Transportation shall spend (out of amounts appropriated for the Department of Transportation under an appropriations law) not less than an amount that is equal to the amounts estimated to be—

(i) collected under section 9701 of title 31, United States Code, for fees paid for services and things of value provided under chapter 313 of title 46, United States Code, (as enacted by this section) and for documenting vessels under chapter 121 of title 46; and

(ii) transferred to or collected by the Secretary under chapter 125 of title 46, United States Code (as enacted by this section).

(6) Chapter 313 of title 46 (enacted by this section), United States Code, does not affect the rules of law in existence on June 5, 1920, about—

(A) the right to proceed against a vessel for advances;

(B) laches in enforcing liens on a vessel;

(C) the right to proceed in personam;

(D) the rank of preferred maritime liens among themselves; and

(E) priorities between maritime liens and mortgages (except preferred mortgages) on documented vessels.

(7) Section 12502(a)(1) of title 46, United States Code (as enacted by this section), applies to a vessel of the United States that does not have a unique number as prescribed by the Secretary of Transportation under that section until the earlier of the following:

(A) the next time the vessel is documented, numbered, or titled.

(B) January 1, 1995.

(8) Nothing in this section requires the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment to carry out chapter 125 of title 46, United States Code (as enacted by this section), except to the extent that appropriations are made available in an appropriations law for the Department of Transportation.

(e) LEGISLATIVE PURPOSE AND CONSTRUCTION.—

(1) A reference to a law replaced by subsection (b) of this section, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this section.

(2) An order, rule, or regulation in effect under a law replaced by subsection (b) of this section continues in effect under the corresponding provision of this section until repealed, amended, or superseded.

(3) An action taken or an offense committed under a law replaced by subsection (b) of this section is deemed to have been taken or committed under the corresponding provision of subsection (b) of this section.

(4) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by subsection (b) of this section.

(5) If a provision of subsection (b) of this section is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of subsection (b) of this section is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

(f) REPEALS.—

(1) The repeal of a law by subsection (b) of this section may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(2) The following laws are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of subsection (b) of this section:

(A) sections 9(4th par.) and 40 of the Shipping Act, 1916 (46 App. U.S.C. 808(4th par.), 838).

(B) section 30 of the Merchant Marine Act, 1920 (46 App. U.S.C. 911-984).

(C) the Act of February 16, 1925 (46 App. U.S.C. 1011-1014).

(D) Reorganization Plan No. 1 of 1967 (46 App. U.S.C. 961 (note)).

(E) Sections 12109(c), 12113, 12114, 12115, 12116, 12118, and 12121 of title 46, United States Code.

(g) EFFECTIVE DATES.—

(1) Subsection (b) of this section and amendments made by subsection (b) of this section take effect on January 1, 1989. How-

ever, sections 31321 and 31322 of title 46 (enacted by subsection (b) of this section, United States Code (as sections 31321 and 32322 apply to vessels for which an application for documentation has been filed), take effect on January 1, 1990.

(2) An instrument filed before January 1, 1989, but not recorded before that date, is deemed to comply with section 31321 of title 46, United States Code, if it is in substantial compliance with the provisions in that section that had corresponding requirements under the law on December 31, 1988. However, the mortgage may not become a preferred mortgage until the vessel is documented.

(3) This section and the amendments made by this section do not affect the validity of any instrument filed or recorded before January 1, 1989 if there was a corresponding requirement under the law on December 31, 1988.

(4) An instrument filed or recorded before January 1, 1989 is deemed to comply with any new requirement under chapter 313 of title 46, United States Code (as enacted by subsection (b) of this section), affecting the validity of that instrument.

(5) Subsection (b) of this section and amendments made by subsection (b) of this section do not affect any civil action filed before January 1, 1989.

(6) The Secretary of Transportation shall establish the vessel identification system required under chapter 125 of title 46, United States Code (as enacted by subsection (a) of this section) before January 1, 1994.

(h) COASTWISE AND FISHERIES DOCUMENTATION.—Notwithstanding sections 12106-12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for the following vessels:

(1) ALEUTIAN TRAWLER, United States official number 236979;

(2) ENCORE, United States official number 545162;

(3) FAIR TIDE, United States official number 644363;

(4) FREEDOM, United States official number 569163;

(5) PAVLOF, United States official number 597532;

(6) SUVA, United States official number 225008;

(7) RA, United States official number 655181;

(8) TE DE II, United States official number 572205;

(9) FRE-N-EZE, United States official number 659826;

(10) BETA LYRA, United States official number 679226;

(11) POLAR ICE, United States official number 604676;

(12) COMPASS ROSE III, United States official number 559647;

(13) SCOTCH 'N WATER, United States official number 264090;

(14) ERSA, United States official number 229511;

(15) GILBERT, United States official number 230568, with a restriction that this vessel may engage in the coastwise trade of the United States only for the purpose of moving barges filled with seafood waste and wastewater to designated ocean disposal sites from Port Canaveral, Florida;

(16) MARY L, United States official number 275311;

(17) ZB-6, United States official number 505317; and

(18) KUT N OUT, hull identification number BERL1087M-80A-385-80 and Florida registration number FL7665FG.

(i) FISHERIES DOCUMENTATION.—Notwithstanding sections 508 and 510(g) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158, 1160(g)), and United States Department of Transportation Contract MA 6772 (IFB PD-X-945) and its amendments, the vessel OCEAN TEMPEST, United States official number 248773, may engage in the coastwise trade and fisheries of the United States. The vessel may only be scrapped in the domestic market, and only with the approval of the Secretary of Transportation.

(j) REPEAL OF OBSOLETE LAWS.—The following laws related to shipping are repealed:

(1) The paragraph immediately before the heading "UNITED STATES VETERANS' BUREAU" in the first section of the Independent Offices Act, 1928 (46 App. U.S.C. 810a).

(2) The Act of July 3, 1926 (46 App. U.S.C. 817a).

(3) Sections 3 and 4 of the Act of July 7, 1960 (46 App. U.S.C. 817b, 817c).

(4) Sections 2, 4, 5, 16, and 23 of the Merchant Marine Act, 1920 (46 App. U.S.C. 862-864, 874, 878, 879).

(5) Section 2 of the Act of March 4, 1927 (46 App. U.S.C. 870a).

(6) The Act of April 16, 1934 (46 App. U.S.C. 870b-870d).

(7) Section 2 of the Act of April 24, 1944 (46 App. U.S.C. 1128e-1).

(8) Sections 203, 401-404, 716, 904, 907, 1001-1005, and 1010-1012 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1113, 1141-1144, 1206, 1243, 1246, 1251-1255, 1260-1262).

(9) The first section and sections 2 and 3 of the Act of February 6, 1941 (46 App. U.S.C. 1119a, 1119b, 1214).

(10) The Act of June 12, 1960 (46 App. U.S.C. 1401-1413).

(11) Section 7 of the Martime Act of 1981 (46 App. U.S.C. 1606).

TITLE VIII—COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Subtitle A—Federal Aviation Administration Drug Enforcement Assistance

SEC. 8001. SHORT TITLE.

This subtitle may be cited as the "Federal Aviation Administration Drug Enforcement Assistance Act of 1988".

SEC. 8002. FINDINGS AND POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Illegal drug consumption and the trafficking in illegal drugs is a major problem in the United States.

(2) The smuggling of drugs into the United States through the use of general aviation aircraft is a major contributing factor in the illegal drug crisis facing our Nation.

(3) The Federal Government has a significant role in combatting such drug crisis.

(4) The Federal Aviation Administration has played an important role in assisting law enforcement agencies in certain aspects of drug interdiction and enforcement activities.

(5) The current systems of registering aircraft, certificating pilots, and processing major aircraft repair and alteration forms and enforcement of the requirements associated with such systems need to be improved in order to more effectively contribute to drug interdiction and enforcement efforts.

(6) Improving such systems and enforcement of such requirements will require providing the Federal Aviation Administration with additional funding and other resources.

(7) Improved systems of registering aircraft, certificating pilots, and processing major aircraft repair and alteration forms and increased enforcement of requirements associated with such systems will benefit all users of such systems (including law enforcement officials) and the general public.

(b) POLICY.—Section 103 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1303) is amended by redesignating paragraphs (a), (b), (c), (d), and (e) (and any references thereto) as paragraphs (1), (2), (3), (4), and (5), respectively, by striking out the semicolons at the end of each of paragraphs (1), (2), (3), and (4) (as so redesignated) and inserting in lieu thereof a period, and by adding at the end thereof the following new paragraph:

"(6) The provision of assistance to law enforcement agencies in the enforcement of laws relating to the regulation of controlled substances, to the extent consistent with aviation safety.".

SEC. 8003. AIRCRAFT REGISTRATION SYSTEM.

(a) MODIFICATION AUTHORITY.—Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401) is amended by adding at the end thereof the following new subsection:

"(h) MODIFICATION OF SYSTEM.—The Administrator is authorized and directed to make such modifications in the system established under this title for registration and recordation of aircraft as may be necessary to make such system more effective in serving the needs of buyers and sellers of aircraft, officials responsible for enforcement of laws relating to the regulation of controlled substances (as defined in section 102 of the Controlled Substances Act), and other users of such system. Such modifications may include a system of titling aircraft or of registering all aircraft whether or not operated, shall assure positive, verifiable, and timely identification of the true owner, and shall address, at a minimum, each of the following deficiencies in and abuses of the existing system:

"(1) The registration of aircraft to fictitious persons.

"(2) The use of false or nonexistent addresses by persons registering aircraft.

"(3) The use by a person registering an aircraft of a post office box or 'mail drop' as a return address for the purpose of evading identification of such person's address.

"(4) The registration of aircraft to corporations and other entities established to facilitate unlawful activities.

"(5) The submission of names of individuals on applications for registration of aircraft which are not identifiable.

"(6) The ability to make frequent legal changes in the registration markings which are assigned to aircraft.

"(7) The use of false registration markings on aircraft.

"(8) The illegal use of 'reserved' registration markings on aircraft.

"(9) The large number of aircraft which are classified as being in 'self-reported status'.

"(10) The lack of a system to assure timely and adequate notice of the transfer of ownership of aircraft.

"(11) The practice of allowing temporary operation and navigation of aircraft without issuance of a certificate of registration under this section.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—That portion of the table of contents contained in section 1 of such Act relating to section 501 of such Act is amended by adding at the end thereof the following:

"(h) Modification of system.".

SEC. 8004. REVOCATION OF AIRMAN CERTIFICATES.

(a) LIMITATION ON REISSUANCE OF REVOKED CERTIFICATES.—Section 602(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1422(b)) is amended by striking out subparagraphs (A) and (B) of paragraph (2) and inserting in lieu thereof the following:

"(2) LIMITATION ON REISSUANCE OF REVOKED CERTIFICATES.—

"(A) GENERAL RULE.—Except as provided in subparagraphs (B) and (C), the Administrator shall not issue an airman certificate to any person whose airman certificate has been revoked under section 609(c).

"(B) SPECIAL RULE FOR LAW ENFORCEMENT PURPOSES.—The Administrator may issue an airman certificate to any person whose airman certificate has been revoked under section 609(c) if the Administrator determines that issuance of such certificate will facilitate law enforcement efforts.".

(b) WAIVER OF REVOCATION REQUIREMENT.—Section 609(c) of such Act (49 U.S.C. 1429(c)) is amended by adding at the end thereof the following new paragraph:

"(5) WAIVER OF REVOCATION REQUIREMENT.—Upon request of a Federal or State law enforcement official, the Administrator may waive the requirements of paragraphs (1) and (2) that an airman certificate of any person be revoked if the Administrator determines that such waiver will facilitate law enforcement efforts.".

SEC. 8005. MODIFICATION OF SYSTEM FOR ISSUING AIRMAN'S CERTIFICATES TO PILOTS.

(a) MODIFICATION AUTHORITY.—Section 602 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1422) is amended by adding at the end thereof the following new subsection:

"(d) MODIFICATION OF SYSTEM.—The Administrator is authorized and directed to make such modifications in the system established under this title for issuance of airman's certificates to pilots as may be necessary to make such system more effective in serving the needs of pilots and officials responsible for enforcement of laws relating to the regulation of controlled substances (as defined in section 102 of the Controlled Substances Act). Such modifications shall assure positive and verifiable identification of each person applying for or holding such a certificate and shall address, at a minimum, each of the following deficiencies in and abuses of the existing system:

"(1) The use of fictitious names and addresses by applicants for such certificates.

"(2) The use of stolen or fraudulent identification in applying for such certificates.

"(3) The use by a person applying for such a certificate of a post office box or 'mail drop' as a return address for the purpose of evading identification of such person's address.

"(4) The use of counterfeit and stolen airman's certificates by pilots.

"(5) The absence of information concerning physical characteristics of holders of such certificates.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—That portion of the table of contents contained in section 1 of such Act relating to section 602 of such Act is amended by adding at the end thereof the following:

"(d) Modification of system.".

SEC. 8006. MODIFICATION OF SYSTEM FOR PROCESSING FORMS FOR ALTERATIONS OF FUEL SYSTEMS.

(a) MODIFICATION AUTHORITY.—Section 605 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1425) is amended by adding at the end thereof the following new subsection:

"(c) MODIFICATION OF SYSTEM.—The Administrator is authorized and directed to make such modifications in the system established under this title for processing forms for major repairs or alterations of fuel tanks and fuel systems of aircraft as may be necessary to make such system more effective in serving the needs of users of such system, including officials responsible for enforcement of laws relating to the regulation of controlled substances (as defined in section 102 of the Controlled Substances Act). Such modifications shall address, at a minimum, each of the following deficiencies in and abuses of the existing system:

"(1) The lack of a special identification feature to permit such forms to be easily distinguished from other major repair and alteration forms.

"(2) The excessive amount of time required for receiving such forms at the Airmen and Aircraft Registry of the Federal Aviation Administration.

"(3) The backlog of such forms which are awaiting processing at the Airmen and Aircraft Registry.

"(4) The lack of ready access by law enforcement officials to information contained on such forms.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—That portion of the table of contents contained in section 1 of such Act relating to section 605 of such Act is amended by adding at the end thereof the following:

"(c) Modification of system.".

SEC. 8007. REGISTRATION, CERTIFICATION, AND FUEL SYSTEM ALTERATION REGULATIONS.

(a) RULEMAKING.—Not later than 10 months after the date of the enactment of this subtitle, the Administrator shall issue final regulations for carrying out the objectives of sections 501(h), 602(d), and 605(c) of the Federal Aviation Act of 1958 and provide a written explanation of how such regulations address each of the deficiencies and abuses required to be addressed by such sections. Such regulations shall include, but not limited to, a requirement that each individual listed in an application for registration of an aircraft provide, together with such application, his or her driver's license number and each person (other than an individual) listed in such an application provide, together with such application, its Federal tax identification number.

(b) CONSULTATION REQUIREMENT.—In issuing regulations in accordance with this section, the Administrator shall consult the Drug Enforcement Administration of the Department of Justice, the United States Customs Service, other Federal law enforcement officials, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(c) FEES.—

(1) GENERAL RULES.—Section 313 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1354) is amended by adding at the end thereof the following new subsection:

"(f) PROCESSING FEES.—

"(1) ESTABLISHMENT AND COLLECTION.—The Administrator may establish and collect such fees as may be necessary to cover the costs associated with issuance of certificates of registration of aircraft, issuance of airman certificates to pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

"(2) MAXIMUM FEE SCHEDULE.—The amount of any fee which may be collected under this subsection—

"(A) with respect to issuance of an airman's certificate to a pilot may not exceed $12;

"(B) with respect to registration of an aircraft after transfer of ownership may not exceed $25;

"(C) with respect to renewal of an aircraft registration may not exceed $15; and

"(D) with respect to processing of a form for a major repair or alteration of a fuel tank or fuel system of an aircraft may not exceed $7.50.

The amounts established by this paragraph shall be adjusted by the Administrator for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(3) LIMITATION.—No fee may be collected under this subsection before the date on which the final regulations referred to in section 6(a) of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 take effect.

"(4) CREDIT TO ACCOUNT; AVAILABILITY.—The amount of fees collected under this subsection shall be credited to the account in the United States Treasury from which expenses were incurred by the Administrator for carrying out titles V and VI of this Act and shall be available to the Administrator for paying expenses for which such fees are collected.".

(2) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—That portion of the table of contents contained in section 1 of such Act relating to section 313 is amended by adding at the end thereof the following:

"(f) Processing fees.".

(3) CONFORMING AMENDMENT TO SECTION 334 OF TITLE 49.—The first sentence of section 334 of title 49, United States Code, is amended by striking out "only when" and all that follows through the period and inserting in lieu thereof the following:

"only when—

"(1) the charge—

"(A) was in effect on January 1, 1973, and

"(B) is not more than the charge that was in effect on such date, adjusted in proportion to changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor between January 1, 1973, and the date the charge is imposed; or

"(2) the charge is a fee established and collected in accordance with section 313(f) of the Federal Aviation Act of 1958.".

(4) GAO AUDIT.—During the 5-year period beginning after the date on which fees are first collected under section 313(f) of the Federal Aviation Act of 1958, the Comptroller General shall conduct an annual audit of the collection and use of such fees for the purpose of ensuring that such fees do not exceed the costs for which they are collected and submit to Congress a report on the results of such audit.

(e) REPORT.—Not later than 180 days after the date of the enactment of this subtitle and annually thereafter during the 5-year period beginning on such 180th day, the Administrator shall prepare and transmit to Congress a report on the following:

(1) The status of the rulemaking process, issuance of regulations, and implementation of regulations in accordance with this section.

(2) The progress being made in reducing the number of aircraft classified by the Federal Aviation Administration as being in "sale-reported status".

(3) The progress being made in expediting the filing and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

(4) The status of establishing and collecting fees under section 313(f) of the Federal Aviation Act.

(f) DEFINITIONS.—For purposes of this subtitle—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) AIRCRAFT.—The term "aircraft" has the meaning such term has under section 101 of the Federal Aviation Act of 1958.

SEC. 8008. CIVIL PENALTIES.

(a) RELATING TO OWNERSHIP AND REGISTRATION.—Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)) is amended by inserting before the period at the end of the first sentence the following: "and for each such violation which relates to registration or recordation of an aircraft under title V".

(b) ADMINISTRATIVE ASSESSMENT.—Section 901(a) of such Act (49 U.S.C. App. 1471(a)) is amended by adding at the end thereof the following new paragraph:

"(3) ADMINISTRATIVE ASSESSMENT OF CERTAIN REGISTRATION AND RECORDATION VIOLATIONS.—

"(A) GENERAL AUTHORITY.—The Administrator, or his delegate, may assess a civil penalty for a violation of title V, or a rule, regulation, or order issued thereunder, which relates to registration or recordation of an aircraft upon written notice and finding of violation by the Administrator.

"(B) NO REEXAMINATION OF LIABILITY OR AMOUNT.—In the case of a civil penalty assessed by the Administrator under this paragraph, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"(C) CONTINUING JURISDICTION OF DISTRICT COURTS.—Notwithstanding subparagraph (A), the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator—

"(i) which involves an amount in controversy in excess of $50,000;

"(ii) which is an in rem action or in which an in rem action based on the same violation has been brought;

"(iii) regarding which an aircraft subject to lien has been seized by the United States; and

"(iv) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"(D) LIMITATIONS.—

"(i) HEARING.—A civil penalty may be assessed by the Administrator under this paragraph only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

"(ii) VIOLATIONS.—This paragraph only applies to civil penalties initiated by the Administrator after the date of the enactment of this paragraph.

"(iii) MAXIMUM AMOUNT.—The maximum amount of a civil penalty which may be assessed by the Administrator under this paragraph in any case may not exceed $50,000.".

SEC. 8009. CRIMINAL PENALTIES.

(a) IN GENERAL.—Subsection (b) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472) is amended by redesignating paragraph (3) as paragraph (5) and by striking out the subsection heading and paragraphs (1) and (2) and inserting in lieu thereof the following:

"(b) FORGERY OF CERTIFICATES, FALSE MARKING OF AIRCRAFT, AND OTHER AIRCRAFT REGISTRATION VIOLATIONS.—

"(1) DESCRIPTION OF VIOLATIONS.—It shall be unlawful for any person—

"(A) to knowingly and willfully forge, counterfeit, alter, or falsely make any certificate authorized to be issued under this Act, or to knowingly sell, use, attempt to use, or possess with the intent to use any such fraudulent certificate;

"(B) to obtain any certificate authorized to be issued under this Act by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry;

"(C) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if such aircraft is not registered under section 501 or the certificate of registration of such aircraft is suspended or revoked, or if such owner knows or has reason to know that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(D) to knowingly and willfully operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration of such aircraft is suspended or revoked, or that such person does not have proper authorization to operate or navigate such aircraft without registration for a period of time after transfer of ownership;

"(E) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such capacity;

"(F) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity;

"(G) to operate an aircraft with a fuel tank or fuel system which has been installed or modified on the aircraft knowing that such tank or system or the installation or modification of such tank or system is not in accordance with all applicable rules, regulations, and requirements of the Administrator; or

"(H) to knowingly and willfully display or cause to be displayed on any aircraft any marks which are false or misleading as to the nationality or registration of the aircraft.

"(2) PENALTIES.—Any person who commits a violation of paragraph (1) shall be, upon conviction, subject to—

"(A) a fine of not more than $15,000 or imprisonment for a term of not more than 3 years, or both; or

"(B) a fine of not more than $25,000 or imprisonment for a term of not more than 5 years, or both, if such violation was in connection with the act of transportation by aircraft of a controlled substance or of the aiding or facilitating of a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding 1 year under a State or Federal law or is provided in connection with any act which is punishable by death or imprisonment for a term exceeding 1 year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance). Any term of imprisonment imposed under subparagraph (B) shall be in addition to, and shall not be served concurrently with, any other term of imprisonment imposed on such person.

"(3) SEIZURE OF AIRCRAFT.—

"(A) BY DEA OR CUSTOMS.—An aircraft used in connection with, or in aiding or facilitating, a violation of paragraph (1) whether or not a person is charged in connection with such violation, may be seized and forfeited by the Drug Enforcement Administration of the Department of Justice or the United States Customs Service in accordance with the customs laws.

"(B) PRESUMPTIONS.—For purposes of subparagraph (A), an aircraft shall be presumed to have been used in connection with, or to aid or facilitate a violation of—

"(i) paragraph (1)(B) if the aircraft is registered to a fictitious or false person;

"(ii) paragraph (1)(B) if the application form used to obtain the aircraft registration certificate contains a material false statement;

"(iii) paragraph (1)(A) if the registration for the aircraft has been forged, counterfeited, altered, or falsely made;

"(iv) paragraph (1)(C) if the aircraft has been operated while it is not registered under section 501;

"(v) paragraph (1)(H) if there is an external display of false or misleading registration numbers or false or misleading country of registration;

"(vi) paragraph (1)(G) if there is on the aircraft a fuel tank or fuel system which has not been installed or modified in accordance with all applicable rules, regulations, and requirements of the Administrator; and

"(vii) paragraph (1)(G) if, in the case of an aircraft on which a fuel tank or fuel system has been installed or modified, a certificate required to be issued by the Administrator for such installation or modification is not carried aboard the aircraft.

"(C) MEMORANDUM OF UNDERSTANDING.—The Federal Aviation Administration, the Drug Enforcement Administration, and the United States Customs Service shall enter into a memorandum of understanding for the purpose of establishing procedures for carrying out the objectives of this paragraph.

"(4) CONTROLLED SUBSTANCE DEFINED.—For purposes of this section, the term 'controlled substance' has the meaning that such term has under section 102 of the Controlled Substances Act (21 U.S.C. 802).".

(b) CONFORMING AMENDMENTS.—

(1) SECTION 902(b)(5).—Paragraph (5) of section 902(b) of such Act, as redesignated by subsection (a) of this section, is amended by inserting "EFFECT ON STATE LAW.—" before "Nothing" and by aligning such paragraph with paragraph (2) of such subsection, as inserted by subsection (a) of this section.

(2) TABLE OF CONTENTS.—That portion of the table of contents contained in section 1

of such Act relating to section 902 is amended by striking out

"(b) Forgery of certificates and false marking of aircraft."

and by inserting in lieu thereof

"(b) Forgery of certificates, false marking of aircraft, and other aircraft registration violations.".

(c) Lighting Violations.—

(1) In general.—Subsection (q) of section 902 of such Act (49 U.S.C. App. 1472) is amended—

(A) by striking out the section heading and paragraph (1) and inserting in lieu thereof the following:

"(q) Lighting Violations in Connection With Transportation of Controlled Substances.—

"(1) Description of violation.—It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator with respect to the display of navigation or anticollision lights."; and

(B) by striking out paragraphs (4), (5), and (6).

(2) Conforming amendments.—

(A) Section 902(q).—Section 902(q) of such Act is amended—

(i) in paragraph (2) by inserting "Relationship to controlled substance offenses.—" before "The act";

(ii) in paragraph (3) by inserting "Penalty.—" before "A person"; and

(iii) by aligning such paragraphs with paragraph (1) of such section, as amended by paragraph (1) of this subsection.

(B) Table of contents.—That portion of the table of contents contained in section 1 of such Act relating to section 902 is amended by striking out

"(q) Violations in connection with transportation of controlled substances."

and by inserting in lieu thereof

"(q) Lighting violations in connection with transportation of controlled substances.".

SEC. 8010. INFORMATION COORDINATION.

Not later than 180 days after the date of the enactment of this subtitle and annually thereafter during the 3-year period beginning on such 180th day, the Administrator shall prepare and transmit to Congress a report on the following:

(1) The progress made in establishing a process for provision of informational assistance by such Administration to officials of Federal, State, and local law enforcement agencies.

(2) The progress made in establishing a process for effectively pursuing suspensions and revocations of certificates of registration and airman certificates in accordance with the amendments made to the Federal Aviation Act of 1958 by the Aviation Drug-Trafficking Control Act, section 3401 of the Anti-Drug Abuse Act of 1986, and this subtitle.

(3) The efforts of such Administration in assessing and defining the appropriate relationship of such Administration's informational assistance resources (including the El Paso Intelligence Center and the Law Enforcement Assistance Unit of the Aeronautical Center of such Administration).

(4) The progress made in issuing guidelines on (A) the reporting of aviation sensitive drug-related information, and (B) the development, in coordination with the Drug Enforcement Administration of the Department of Justice and the United States Customs Service, of training and educational policies to assist employees of such Administration to better understand (i) the trafficking of controlled substances (as defined in section 102 of the Controlled Substances Act), and (ii) the role of such Administration with respect to such trafficking.

(5) The progress made in improving and expanding such Administration's role in the El Paso Intelligence Center.

SEC. 8011. FUNDING AND OTHER RESOURCES.

(a) 5-Year Cost Report.—No later than 30 days after the date on which the final regulations referred to in section 8006(a) of this subtitle are issued, the Administrator shall prepare and transmit to Congress a report on the resources (including funding and positions) which will be necessary on an annual basis during the 5-year period beginning after such 30th day to implement the objectives of this subtitle (including the amendments made by this subtitle).

(b) Transmittal of Budget Estimates.—Whenever—

(1) the Airmen and Aircraft Registry of the Federal Aviation Administration submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, or comment on legislation to the Administrator or the Secretary of Transportation; and

(2) the Administrator submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, or comment on legislation to the Secretary of Transportation, the President of the United States, or the Office of Management and Budget;

pertaining to funding to carry out the objectives of this subtitle (including the amendments made by this subtitle), it shall concurrently transmit a copy thereof to the Speaker of the House of Representatives, the Committees on Public Works and Transportation and Appropriations of the House of Representatives, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

(c) Exemption From Paperwork Reduction Act.—No information collection requests necessary to carry out the objectives of this subtitle (including the amendments made by this subtitle) shall be subject to review or approval of the Director of the Office of Management and Budget under chapter 35 of title 44, United States Code.

(d) Review of Certain Grade-Level Classifications.—

(1) Applicability.—This subsection applies with respect to—

(A) positions within the Airmen and Aircraft Registry of the Federal Aviation Administration; and

(B) positions within the Law Enforcement Assistance Unit of the Aeronautical Center of the Federal Aviation Administration.

(2) Review; remedy; report.—Not later than 120 days after the date of the enactment of this subtitle, the Office of Personnel Management shall—

(A) in accordance with section 5110(a) of title 5, United States Code, review a sufficient number of positions under paragraphs (1)(A) and (1)(B), respectively, to determine whether positions under those respective paragraphs are being placed in appropriate classes and grades;

(B) if the Office finds that positions have not been placed in appropriate classes and grades, and after consulting with appropriate officials of the Federal Aviation Administration, exercise any authority under section 5110(b) of title 5, United States Code, which may be necessary to ensure that those positions are placed in their appropriate classes and grades; and

(C) transmit to Congress a report on the results of such review and any actions taken in accordance with subparagraph (B).

SEC. 8012. USE OF TRANSPONDERS ON AIRCRAFT ENTERING THE UNITED STATES.

(a) Study.—The Secretary of Transportation shall study the feasibility, costs, and benefits with respect to drug interdiction of requiring each aircraft entering the continental United States—

(1) to have installed an operating transponder;

(2) to have a flight plan filed with the Federal Aviation Administration before such entry;

(3) to have the signal from such transponder identify, in the most efficient manner, such aircraft; and

(4) to have the signal from such transponder which identifies such aircraft provide information which ensures that such aircraft is following its filed flight plan.

(b) Report.—Not later than 180 days after the date of the enactment of this subtitle, the Secretary of Transportation shall transmit to Congress a report on the results of the study conducted under this section.

SEC. 8013. ESTABLISHMENT OF FLIGHT CORRIDORS.

(a) Study.—The Secretary of Transportation, in consultation with the Attorney General and the Secretary of the Treasury, shall study—

(1) the feasibility of establishing flight corridors across the borders of the continental United States and intercepting any aircraft which deviate from such corridors; and

(2) the impact of the establishment of such corridors on the safe and efficient movement of aircraft and on drug interdiction.

(b) Report.—Not later than 180 days after the date of the enactment of this subtitle, the Secretary of Transportation shall transmit to Congress a report on the results of the study conducted under this section.

SEC. 8014. LIMITATION ON APPLICABILITY.

This subtitle (including any amendments made by this subtitle) shall only apply to aircraft which are not used to provide air transportation (as defined in section 101 of the Federal Aviation Act of 1958).

SEC. 8015. DRUG ENFORCEMENT PROGRAMS.

(a) General Authority.—Subject to the provisions of this section, the Secretary of Transportation shall make grants to those States which adopt and implement drug enforcement programs which include measures described in this section to improve the effectiveness of drug enforcement laws. Such grants may only be used by recipient States to implement such programs.

(b) Maintenance of Effort.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for drug enforcement programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this Act.

(c) Federal Share.—No State may receive grants under this section in more than 3 fiscal years. The Federal share payable for any grant under this section shall not exceed—

(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the drug enforcement program adopted by the State pursuant to subsection (a) of this section;

(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

(d) Maximum Amount of Grants.—Subject to subsection (c) of this section, the amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) of this section shall not exceed 50 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of title 23, United States Code.

(e) Eligibility for Grants.—A State is eligible for a grant under this section if such State—

(1) provides for suspension or revocation for a period of not less than 6 months of the driver's license of a person who—

(A) is convicted after the date of the enactment of this Act of a violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), or

(B) is convicted after such date of enactment for any drug or narcotic offense chargeable under the law of such State or any other State;

(2) provides for suspension or revocation for a period of not less than 1 year of the driver's license of a person who, in a 5-year period, is convicted of more than one of the offenses described in paragraph (1); and

(3) establishes and implements a program which permits the issuance, under such terms and conditions (including drug rehabilitation) as such State establishes, of a restrictive driver's license to a person whose driver's license has been suspended or revoked as a result of a conviction described in paragraph (1).

(f) Authorizations of Appropriations.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1989 and $50,000,000 per fiscal year for each of fiscal years 1990 and 1991. Such sums shall remain available until expended.

(g) Definitions.—As used in this section—

(1) Driver's license.—The term "driver's license" means a license issued by a State to any individual which authorizes the individual to operate a motor vehicle on highways.

(2) Drug.—The term "drug" means any substance the possession of which is prohibited under the Controlled Substance Act.

(3) Drug or narcotic offense.—The term "drug or narcotic offense" means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any drug.

(4) State.—The term "State" has the meaning such term has when it is used in section 402 of title 23, United States Code.

SEC. 8016. DRUG RECOGNITION EXPERT REGIONAL TRAINING PROGRAM.

(a) Establishment.—The Secretary of Transportation, acting through the National Highway Traffic Safety Administration, shall establish a regional program for training law enforcement officers to recognize and identify individuals who are operating a motor vehicle while under the influence of alcohol, controlled substance, or other drugs.

(b) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of fiscal years 1989, 1990, 1991, 1992, and 1993. Such sums shall remain available until expended.

Subtitle B—Alcohol and Drug Traffic Safety

SEC. 8101. SHORT TITLE.

This subtitle may be cited as the "Alcohol and Drug Traffic Safety Act of 1988".

SEC. 8102. ENFORCEMENT PROGRAMS.

(a) General Rules.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 410. Drunk driving enforcement programs

"(a) General Authority.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement drunk driving enforcement programs which include measures described in this section to improve the effectiveness of the enforcement of laws the purpose of which are to discourage individuals from operating motor vehicles while under the influence of alcohol. Such grants may only be used by recipient States to implement such programs.

"(b) Maintenance of Effort.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for drunk driving enforcement programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this section.

"(c) Federal Share.—No State may receive grants under this section in more than 3 fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the drunk driving enforcement program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) Maximum Amount of Grants.—

"(1) Basic grants.—Subject to subsection (c) of this section, the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) of this section shall not exceed 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(2) Supplemental grants.—Subject to subsection (c) of this section, the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (f) of this section shall not exceed 20 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

"(e) Eligibility for Basic Grants.—For purposes of this section, a State is eligible for a basic grant if such State provides—

"(1) for an expedited driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol which requires that—

"(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense and such individual is determined, on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer serve such individual with a written notice of suspension or revocation of the driver's license of such individual and take possession of such driver's license;

"(B) the notice of suspension or revocation referred to in subparagraph (A) provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of an individual for operating a motor vehicle while under the influence of alcohol and specify any rights of the operator under such procedures;

"(C) the State establish in the administrative procedures referred to in subparagraph (B) so as to ensure due process of law;

"(D) after serving notice and taking possession of a driver's license in accordance with subparagraph (A), the law enforcement officer immediately report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this paragraph;

"(E) in the case of an individual who, in a 5-year period beginning after the date of the enactment of this section, is determined on the basis of one or more chemical tests to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer—

"(i) suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and

"(ii) suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and

"(F) the suspension and revocation referred to under subparagraph (D) take effect not later than 15 days after the day on which the individual first received notice of the suspension or revocation in accordance with subparagraph (B).

"(2) for a self-sustaining drunk driving enforcement program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles or such other programs for the prevention of such operations of motor vehicles as the Secretary approves; and

"(3) that any person with a blood alcohol concentration of 0.10 percent or greater when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol.

"(f) Eligibility for Supplemental Grants.—For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition such State—

"(1) provides for mandatory blood alcohol content testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in an accident resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense;

"(2) provides for an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages, which may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older; and

"(3) makes unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers.

"(g) Definitions.—As used in this section—

"(1) Alcoholic beverage.—The term 'alcoholic beverage' has the meaning such term has under section 158(c) of this title.

"(2) Motor vehicle.—The term 'motor vehicle' has the meaning such term has under section 154(b) of this title.

"(3) Open alcoholic beverage container.—The term 'open alcoholic beverage container' means any bottle, can, or other receptacle—

"(A) which contains any amount of an alcoholic beverage; and

"(B)(i) which is open or has a broken seal, or

"(ii) the contents of which are partially removed.

"(h) Authorizations of Appropriations.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1989 and $50,000,000 per fiscal year for each of fiscal years 1990 and 1991. Such sums shall remain available until expended.".

(b) Conforming Amendment.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following:

"409. Drunk driving enforcement programs.".

(c) Regulations.—The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 410 of title 23, United States Code, not later than 6 months after the date of the enactment of this section. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress not later than 1 year after such date of enactment.

SEC. 8102. ALCOHOL AND DRUG IMPAIRMENT STANDARDS.

(a) Study.—Not later than 30 days after the date of enactment of this Act, the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct—

(1) a study to determine whether or not the blood alcohol concentration level at or about which an individual when operating a motor vehicle is deemed to be driving while under the influence of alcohol should be reduced below 0.10 percent and if so to what level; and

(2) a study to establish standards for determining whether or not an individual when operating a motor vehicle is impaired by a controlled substance or any other drug.

(b) Report.—In entering into any arrangement with the National Academy of Sciences for conducting the study under this section, the Secretary shall request the National Academy of Sciences to submit, not later than 1 year after the date of enactment of this Act, to the Secretary a report on the results of such study. Upon its receipt, the Secretary shall immediately transmit the report to Congress.

(c) Authorization of Appropriation.—There is authorized to be appropriated to carry out this section $100,000 for fiscal year 1989.

TITLE IX—COMMITTEE ON WAYS AND MEANS

Subtitle A—Authorization of Appropriations for the United States Customs Service

SEC. 9001. AUTHORIZATION OF APPROPRIATIONS.

Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended to read as follows:

"(b) Authorization of Appropriations.—

"(1) For noncommercial operations.—There are authorized to be appropriated for fiscal year 1989 not to exceed $417,068,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations.

"(2) For commercial operations.—There are authorized to be appropriated for fiscal year 1989 not to exceed $622,753,000 from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

"(3) For air interdiction.—There are authorized to be appropriated for fiscal year 1989 not to exceed $197,262,000 for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.

"(4) For Advanced technology interdiction.—There are authorized to be appropriated for fiscal year 1989 not to exceed $15,000,000 for the purchase and construction of an x-ray imagery vapor sensitive cargo scanning device for use by the United States Customs Service.".

Subtitle B—Other Customs Provisions

SEC. 9011. INCREASED PENALTY FOR FAILURE TO DECLARE CONTROLLED SUBSTANCES.

(a) Amendment.—Section 497(a)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1497(a)(2)(A)) is amended by striking out "200 percent" and inserting "1,000 percent".

(b) Effective Date.—The amendment made by subsection (a) applies with respect to violations of section 497(a) of the Tariff Act of 1930 occurring on or after the date of the enactment of this title.

SEC. 9012. DISPOSITION OF FORFEITED PROPERTY.

(a) Amendment.—Section 616(c) of the Tariff Act of 1930 (19 U.S.C. 1616a(c)) is amended to read as follows:

"(c) The Secretary of the Treasury may apply property forfeited under this Act in accordance with paragraph (1) or (2), or both:

"(1) Retain any of the property for official use.

"(2) Transfer any of the property to any—

"(A) other Federal agency;

"(B) State or local law enforcement agency; or

"(C) foreign government;

that cooperates with the United States Customs Service in joint law enforcement operations.".

(b) Effective Date.—The amendment made by subsection (a) applies with respect to property forfeited under the Tariff Act of 1930 on or after the date of the enactment of this title.

SEC. 9013. TECHNICAL AMENDMENTS.

(a) Deposit Authority Conformed to Effective Period of Customs Forfeiture Fund.—Section 609(b) of the Tariff Act of 1930 (19 U.S.C. 1609(b)) is amended by striking out "September 30, 1987," and inserting "September 30, 1991,".

(b) Manifest Information Available for Public Disclosure.—Section 431(c)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)(G)) is amended to read as follows:

"(G) The country of origin of the shipment.".

SEC. 9014. AIR CARRIER SMUGGLING PREVENTION PROGRAM.

(a) The Secretary of the Treasury, in consultation with the Secretary of Transportation, shall issue controlled substances regulations for a 2-year demonstration program within 6 months of the enactment of this section. The regulations shall apply to at least three United States International Airports classified as high-risk by Customs and based upon the volume of cargo and number of aircraft arriving from high-risk points of departure. Such regulations shall establish procedures for air carrier development and Customs Service approval of foreign and domestic security and inspection practices. The regulations shall permit air carriers to request the Secretary of the Treasury to permit air carriers, the Customs Service, or an approved agent of the United States Customs to inspect at United States airports of entry, aircraft arriving from foreign locations. The Secretary of the Treasury shall approve such request if the applicant meets the requirements of the regulations. Taking into account all considerations of security, law enforcement, and commercial needs, inspections of aircraft, and cargo shall be conducted and completed within a reasonable period of time.

(b) Air carriers which have applied to the Secretary of the Treasury and which the Secretary determines to be in compliance with the regulations and inspection requirements promulgated under subsection (a) shall be considered participating air carriers. The Secretary of the Treasury shall establish by regulation a procedure for finding a carrier to be a participating carrier and procedures for subsequent removal of that status. The Secretary shall not remove an air carrier from the status of participating air carrier unless he or she shall first have provided it a written notice that the air carrier is not in compliance with the regulations or inspection requirements promulgated under subsection (a), which notice shall include the reasons for that determination, and shall have provided the air carrier a reasonable opportunity to correct such noncompliance.

(c) Participating air carriers shall be considered to have met the test of the highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of this section, if a controlled substance is discovered aboard an aircraft that they may own or operate or in the cargo they carried, if the participating air carrier establishes at an oral presentation that the air carrier was not grossly negligent nor engaged in willful misconduct, and complied with the applicable procedures established in the regulations promulgated under subsection (a).

(d) For the purpose of this section, the term "air carrier" shall mean air carrier or foreign air carrier as those terms are defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(e) No provision of this section shall have any effect on air transportation security requirements prescribed pursuant to the Federal Aviation Act of 1958, as amended.

SEC. 9015. TRANSFER OF AIRCRAFT.

The Secretary of the Treasury shall transfer to the office of the sheriff of Marion County, Indiana, for use by that office for drug enforcement and prisoner transportation purposes, a light twin engine or high-performance single engine aircraft having a capacity of not less than 4 passengers that—

(1) was forfeited to the United States under the customs laws;

(2) is not transferred to any Federal agency or State or local law enforcement agency under section 616 of the Tariff Act of 1930; and

(3) would, but for this section, be sold at public auction under section 609 of the Tariff Act of 1930.

Section 616(d) of the Tariff Act of 1930 applies to the aircraft transferred under this section.

Subtitle C—Annual Certification Procedures

SEC. 9021. TRADE AND AVIATION SANCTIONS.

(a) Congressional Review Period.—Section 802(b) of the Trade Act of 1974 (19 U.S.C. 2492(b)) is amended—

(1) in paragraph (3) by striking out "30 days" and inserting in lieu thereof "45 days";

(2) in paragraph (4)(A) by striking out "30 days" and inserting in lieu thereof "45 days"; and

(3) in paragraph (4)(B) by striking out "30 days" and inserting in lieu thereof "45 days".

(b) Criteria for Cooperation.—(1) Section 802(b)(1) of that Act is amended—

(A) by inserting after "on its own," the following: "in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in subparagraph (B) or a multilateral agreement which achieves the objectives of this paragraph,";

(B) by inserting "(A)" after "(1)"; and

(C) by adding at the end the following:

"(B) A bilateral narcotics agreement referred to in this paragraph is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

"(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

"(ii) increase drug interdiction and enforcement;

"(iii) increase drug treatment;

"(iv) increase the identification of and elimination of illicit drug laboratories;

"(v) increase the identification and elimination of the trafficking of precursor chemicals for the use in production of illegal drugs;

"(vi) increase cooperation with United States drug enforcement officials; and

"(vii) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.".

(2) The amendments made by paragraph (1) (A) and (C) apply with respect to any certification which is made by the President under section 802 of the Trade Act of 1974 on or after March 1, 1989.

(c) Requirement for Bilateral Narcotics Agreement.—Effective October 1, 1988, section 802(b)(1) of that Act is further amended by adding at the end the following:

"(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may not be determined to be cooperating fully under subparagraph (A) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of this paragraph.".

(d) National Interest Waiver.—Section 802(b)(1)(A) of that Act, as amended by subsection (b) of this section, is further amended—

(1) by inserting "(i)" after "1961, that"; and

(2) by inserting before the period at the end the following: "or, (ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) not be applied with respect to that country.".

(e) Determining Major Drug-Transit Countries.—Section 802 of that Act is amended by adding at the end the following:

"(e) For each calendar year, the Secretary of State, after consultation with the appropriate committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 805(3) (A) and (B).".

TITLE X—COMMITTEE ON ENERGY AND COMMERCE

SEC. 10001. SHORT TITLE.

This title may be cited as the "Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988".

SEC. 10002. PURPOSES.

(a) Substance Abuse.—The purposes of this title with respect to substance abuse are—

(1) to continue the Federal Government's partnership with the States in the development, maintenance, and improvement of community-based alcohol and drug abuse programs;

(2) to provide financial and technical assistance to the States and communities in their efforts to develop and maintain a core of prevention services for the purpose of reducing the incidence of substance abuse and the demand for alcohol and drug abuse treatment;

(3) to assist and encourage States in the initiation and expansion of prevention and treatment services to underserved populations; and

(4) to increase understanding about the extent of alcohol abuse and other forms of drug abuse by expanding data collection activities and supporting research on the comparative cost and efficacy of substance abuse prevention and treatment services.

(b) Mental Health.—The purposes of this title with respect to mental health are—

(1) to encourage the development and provision by the States of community mental health services;

(2) to encourage the development of a comprehensive community mental health system within each State;

(3) to encourage the implementation of new and innovative community mental health services;

(4) to encourage the provision of community mental health services in the least restrictive appropriate environment and to involve the families of individuals undergoing treatment in the development and provision of such services;

(5) to foster interagency coordination and integration among a broad range of human service providers, support groups, and advocates for the purpose of ensuring that mental health, rehabilitation, health, vocational, educational, and residential services are available to individuals who need them;

(6) to expend Federal funds for the purpose of expanding community mental health services within each State; and

(7) to increase understanding about the extent of mental illness and the need for appropriate treatment services by expanding data collection activities and supporting research on the comparative cost and efficacy of mental health services.

SEC. 10003. REVISION AND EXTENSION OF DRUG ABUSE, ALCOHOL ABUSE, AND MENTAL HEALTH PROGRAMS.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by striking parts B and C and inserting after part A the following new parts:

"Part B—Alcohol and Drug Abuse Prevention, Treatment, and Rehabilitation Services

"SEC. 1931. ESTABLISHMENT OF PROGRAM OF GRANTS TO STATES.

"(a) Requirement of Allotments.—For the purpose described in subsection (b), the Secretary, acting through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall for each fiscal year make an allotment for each State in an amount determined in accordance with section 1934. The Secretary shall make payments each fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 1933.

"(b) Purpose of Allotments.—The Secretary may not make payments under subsection (a) to a State for a fiscal year unless the State agrees that amounts paid under such subsection will be expended only for the purposes of establishing and carrying out programs of prevention, treatment, and rehabilitation with respect to substance abuse and activities relating to such programs, including—

"(1) planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs and activities to deal with the abuse of alcohol and other drugs;

"(2) activities to expand the capacity of treatment and rehabilitation programs and facilities to provide services to individuals suffering from the abuse of alcohol and other drugs; and

"(3) activities to provide access to vocational training, job counseling, and education equivalency programs for individuals at risk of, or undergoing treatment for, the abuse of alcohol or other drugs.

"SEC. 1932. REQUIREMENTS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

"(a) In General.—The Secretary may not make payments under section 1931(a) for a fiscal year unless the State involved agrees that—

"(1) not less than 35 percent of amounts received under such section for a fiscal year will be expended for the purposes of programs and activities relating to alcoholism and alcohol abuse;

"(2) not less than 35 percent of amounts received under such section for a fiscal year will be expended for the purposes of programs and activities relating to drug abuse;

"(3) not less than 20 percent of amounts received under such section for a fiscal year will be expended for the purposes of programs and activities relating to preventing the abuse of alcohol and drugs, including early intervention programs and activities directed to children and adolescents;

"(4) not less than 10 percent of the amounts received under such section for a fiscal year will be expended for the purposes of programs and services described in paragraphs (1) through (3) that are designed for women (including women with dependent children); and

"(5) from the amounts received under such section for a fiscal year, grants will be made for demonstration projects for the provision of residential treatment services to expectant mothers.

"(b) GROUP HOMES FOR RECOVERING SUBSTANCE ABUSERS.—

"(1) For fiscal year 1989, the Secretary may not make payments under section 1931(a) unless the State involved agrees—

"(A) to establish, directly or through the provision of a grant or contract to a nonprofit private entity, a revolving fund to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 4 individuals;

"(B) to ensure that the programs are carried out in accordance with guidelines issued under paragraph (3);

"(C) to deposit not less than $100,000 in the revolving fund;

"(D) to ensure that each loan made from the revolving fund does not exceed $4000 and that each such loan is repaid to the revolving fund not later than 2 years after the date on which the loan is made;

"(E) to ensure that each such loan is repaid through monthly installments and that a reasonable penalty is assessed for each failure to pay such periodic installments by the date specified in the loan agreement involved; and

"(F) to ensure that such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—

"(i) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

"(ii) any resident of the housing who violates such prohibition will be expelled from the housing;

"(iii) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

"(iv) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

"(2) For fiscal year 1990 and subsequent fiscal years, the Secretary may not make payments under section 1931(a) unless the State involved provides assurances satisfactory to the Secretary that the State has provided for the establishment and ongoing operation of a revolving fund in accordance with paragraph (1).

"(3) Not later than 90 days after the date of the enactment of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, the Secretary, acting through the Director of the National Institute on Alcohol Abuse and Alcoholism , shall issue guidelines for the operation of programs described in paragraph (1).

"SEC. 1933. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"The Secretary may not make payments under section 1931(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary an application for the payments containing agreements in accordance with sections 1931 and 1932 and with sections 1952 through 1954;

"(2) the agreements are made through certification from the chief executive officer of the State;

"(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

"(4) the application contains the description of intended expenditures required in section 1951; and

"(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"SEC. 1934. DETERMINATION OF AMOUNT OF ALLOTMENTS.

"(a) STATES.—

"(1) Subject to subsection (b), the Secretary shall determine the amount of the allotment required in section 1931(a) for a State for a fiscal year in accordance with the following formula:

$$A\left(\frac{X}{U}\right)$$

"(2) For purposes of the formula described in paragraph (1), the term 'A' means the difference between—

"(A) an amount equal to the amount appropriated pursuant to section 1937(a) for allotments under section 1931(a) for the fiscal year involved; and

"(B) an amount equal to 1.5 percent of the amount referred to in subparagraph (A).

"(3) For purposes of the formula described in paragraph (1), the term 'U' means the sum of the respective terms 'X' determined for each State under paragraph (4).

"(4)(A) For purposes of the formula described in paragraph (1), the term 'X' means the product of—

"(i) an amount equal to the term 'P' as determined under subparagraph (B); and

"(ii) the greater of—

"(I) 0.4; and

"(II) an amount equal to an amount determined in accordance with the following formula:

$$1-.6\left(\frac{S}{N}\right)$$

"(B) For purposes of subparagraph (A)(i), the term 'P' means the sum of—

"(i) an amount equal to the product of—

"(I) 0.3; and

"(II) an amount equal to the number of individuals in the State who are between 18 and 24 years of age, as indicated by the most recent data collected by the Bureau of the Census;

"(ii) an amount equal to the product of—

"(I) 0.2; and

"(II) an amount equal to the number of individuals in the State who are between 25 and 44 years of age, as indicated by the most recent data collected by the Bureau of the Census; and

"(iii) an amount equal to the product of—

"(I) 0.5; and

"(II) an amount equal to the number of individuals in the State who are between 25 and 64 years of age, as indicated by the most recent data collected by the Bureau of the Census.

"(C) For purposes of the formula described in subparagraph (A)(ii)(II), the term 'S' means the quotient of—

"(i) an amount equal to the most recent 3-year average of the total taxable resources of the State, as determined by the Secretary of the Treasury; divided by

"(ii) an amount equal to the term 'P' as determined under subparagraph (B).

"(D) For purposes of the formula described in subparagraph (A)(ii)(II), the term 'N' means the quotient of—

"(i) an amount equal to the sum of the respective amounts determined for each State under subparagraph (C)(i); divided by

"(ii) an amount equal to the sum of the respective terms 'P' determined for each State under subparagraph (B).

"(b) MINIMUM ALLOTMENT FOR STATES.—Subject to the extent of amounts made available in appropriation Acts, the amount of an allotment under section 1931(a) for a State for a fiscal year shall be the greater of—

"(1) an amount determined in accordance with subsection (a); and

"(2) an amount equal to the amount of the allotment for substance abuse services under former section 1913 for the State for fiscal year 1986.

"(c) TERRITORIES.—

"(1) Subject to subsection (d), the allotment for a territory of the United States under section 1931(a) for a fiscal year shall be the greater of—

"(A) $50,000; and

"(B) an amount determined in accordance with paragraph (2).

"(2) The amount referred to in paragraph (1)(B) is the product of—

"(A) an amount equal to the amounts reserved under paragraph (3); and

"(B) a percentage equal to the quotient of—

"(i) the population of the territory involved, as indicated by the most recently available data; divided by

"(ii) the aggregate population of the territories of the United States, as indicated by such data.

"(3) The Secretary shall reserve for the territories of the United States 1.5 percent of the amounts appropriated pursuant to section 1937(a) for allotments under section 1931(a) for the fiscal year involved.

"(d) TRANSITION RULES FOR TERRITORIES.—

"(1) For fiscal year 1989, the amount of the allotment required in section 1931(a) for a territory of the United States shall be the greater of—

"(A) an amount determined in accordance with subsection (c); and

"(B) an amount equal to 80 percent of the amount of the allotment for substance abuse services under former section 1913 for the territory for fiscal year 1987.

"(2) For fiscal year 1990, the amount of the allotment required in section 1931(a) for a territory of the United States shall be the greater of—

"(A) an amount determined in accordance with subsection (c); and

"(B) an amount equal to 60 percent of the amount of the allotment for substance abuse services under former section 1913 for the territory for fiscal year 1987.

"(e) Indian Tribes.—

"(1) Upon the request of the governing body of an eligible Indian tribe or tribal organization within a State, the Secretary shall—

"(A) reserve from the amount that otherwise would be allotted for the fiscal year to the State under subsection (a) an amount determined in accordance with paragraph (2); and

"(B) grant the amount reserved under subparagraph (A) to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

"(2)(A) The amount reserved under paragraph (1)(A) shall be an amount equal to the product of—

"(i) the amount that otherwise would be allotted to the State under subsection (a) for the fiscal year; and

"(ii) the percentage described in subparagraph (B).

"(B) The percentage referred to in subparagraph (A)(ii) is a percentage equal to the quotient of—

"(i) an amount equal to the amount the Indian tribe or tribal organization received under former section 1913 for fiscal year 1987; divided by

"(ii) an amount equal to the total aggregate amount received under such section in fiscal year 1987 by the State, Indian tribes in the State, and tribal organizations in the State.

"(3) The Secretary may not make a grant under paragraph (1)(B) to an Indian tribe or tribal organization unless the Indian tribe or tribal organization submits to the Secretary a plan for expending the grant that meets such criteria as the Secretary may establish.

"(f) Disposition of Certain Funds Appropriated for Allotments.—

"(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving allotments under section 1931(a) for the fiscal year (other than any State described in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment of the State for the fiscal year involved was determined.

"(2) The amounts referred to in paragraph (1) are any amounts made available in appropriations Acts for allotments under this part that are not allotted under section 1931(a) as a result of—

"(A) the failure of any State to submit an application under section 1933;

"(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"SEC. 1935. EVALUATION OF PROGRAMS.

"The Secretary, acting through the the Director of the National Institute on Alcohol Abuse and Alcoholism and the Director of the National Institute on Drug Abuse, shall evaluate alcohol and drug abuse treatment programs to determine the quality and appropriateness of various forms of treatment, including the effect of living in housing provided by programs established pursuant to section 1932(b)(1). Such programs shall be carried out through grants, contracts, or cooperative agreements provided to public and nonprofit private entities. In carrying out this section, the Secretary shall assess the quality, appropriateness, and costs of various treatment forms for specific patient groups.

"SEC. 1936. DEFINITIONS.

"For the purposes of this part:

"(1) The term 'former section 1913' means section 1913 of this Act as in effect on the day before the date of the enactment of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988.

"(2)(A) The term 'State' means, except as provided in subparagraph (B), each of the several States, the District of Columbia, and the territories of the United States.

"(B) For purposes of subsections (a) and (b) of section 1934, the term 'State' means each of the several States and the District of Columbia.

"(3) The term 'territories of the United States' means each of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

"SEC. 1937. FUNDING.

"(a) Authorization of Appropriations.—For the purpose of carrying out this part, part E, and section 509D(c), there are authorized to be appropriated $475,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) Allocation of Funds for Certain Programs of National Significance.—For the purpose of carrying out sections 509D(c), 1935, and 1958(a), the Secretary shall obligate not less than 5 percent, and not more than 15 percent, of the amounts appropriated pursuant to subsection (a) for a fiscal year.

"(c) Availability to States.—Any amounts paid to a State under section 1931(a), obligated by the State, and remaining unexpended at the end of the fiscal year for which the amounts were paid shall remain available during the succeeding fiscal year to the State for carrying out the purpose described in section 1931(b).

"Part C—Community Mental Health Services

"SEC. 1941. ESTABLISHMENT OF PROGRAM OF GRANTS TO STATES.

"(a) Requirement of Allotments.—For the purpose described in subsection (b), the Secretary, acting through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall for each fiscal year make an allotment for each State in an amount determined in accordance with section 1945. The Secretary shall make payments each fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 1944.

"(b) Purpose of Allotments.—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees that amounts paid under such subsection will be expended only for the purpose of planning, developing, and providing, in accordance with section 1942, community mental health services and related support services.

"SEC. 1942. REQUIREMENTS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

"(a) Certain Priorities With Respect to Development and Provision of Services.—

"(1) The Secretary may not make payments under section 1941(a) for a fiscal year unless the State involved agrees that, in carrying out the purpose described in section 1941(b), the State—

"(A) will give priority to the development and provision of community mental health services not available on October 1, 1988;

"(B) except as provided in paragraph (2), will, for fiscal year 1991 and subsequent fiscal years, expend not less than 55 percent of such payments for the development, implementation, and operation of services not available on October 1, 1988;

"(C) will, with respect to each service provided pursuant to subparagraph (A), provide funds for each such service only for a limited period of time (the duration of which period may be determined by the State);

"(D) will expend not less than 10 percent of such payments for services and programs for severely disturbed children and adolescents; and

"(E) will, if the amounts appropriated under section 1947(a) for the fiscal year exceed $260,000,000, expend not less than a specified percentage of such payments for services and programs for individuals not less than 65 years of age who are not inpatients or residents of mental institutions, which specified percentage is the percentage of the population of the State that the number of individuals not less than 65 years of age constitutes.

"(2) If the amount of the allotment under section 1941(a) for a State for a fiscal year is less than the amount of the allotment for mental health services under former section 1913 for the State for fiscal year 1986, the Secretary may waive the requirement established in paragraph (1)(B) for the State for the fiscal year upon a determination by the Secretary that such requirement will result in a significant reduction in the level of mental health services available in the State relative to such level on October 1, 1988.

"(b) Requirement of Development of State Comprehensive Community Mental Health System.—The Secretary may not make payments under section 1941(a) for a fiscal year unless the State involved agrees that, in carrying out the purpose described in section 1941(b), the State will facilitate the coordination among institutions offering mental health services in the State in order to establish a State community mental health system that—

"(1) provides for the development of a continuum of community mental health services within identified geographic areas;

"(2) ensures that mental health services offered by the system are accessible to all individuals in the State who need the services;

"(3) provides mental health services according to the particular needs of the individual for whom services are sought, including developing plans of care and providing services in the context most appropriate to the age, sex, and cultural background of the individual;

"(4) encourages such individual to be independent and encourages the family of the individual to provide emotional support to the individual with respect to achieving the optimal level of independence;

"(5) ensures that mental health services are provided in the least restrictive appropriate environment; and

"(6) ensures that the mental health services provided by the system meet applicable professional standards for such services.

"SEC. 1943. REQUIREMENT OF ESTABLISHMENT OF MENTAL HEALTH SERVICES PLANNING COUNCIL.

"(a) IN GENERAL.—The Secretary may not make payments under section 1941(a) for a fiscal year unless the State involved agrees to establish and maintain a State mental health planning council in accordance with subsections (b) and (c).

"(b) DUTIES.—The duties of the Council will be—

"(1) to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

"(2) to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

"(c) MEMBERSHIP.—

"(1) The Council will, subject to paragraph (2), be composed of residents of the State, including representatives of—

"(A) the principal State agencies with respect to—

"(i) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

"(ii) the development of the plan submitted pursuant to title XIX of the Social Security Act;

"(B) public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services; and

"(C)(i) chronically mentally ill individuals who are receiving (or have received) mental health services; and

"(ii) the families of such individuals.

"(2) Not less than 50 percent of the members of the Council will be individuals who are not State employees or providers of mental health services.

"(3) The Council may assist the State in the preparation of the description of intended expenditures required in section 1951.

"SEC. 1944. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"The Secretary may not make payments under section 1941(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary an application for the payments containing agreements in accordance with sections 1941 through 1943 and with sections 1952 through 1954;

"(2) the agreements are made through certification from the chief executive officer of the State;

"(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

"(4) the application contains the description of intended expenditures required in section 1951; and

"(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"SEC. 1945. DETERMINATION OF AMOUNT OF ALLOTMENTS.

"(a) STATES.—

"(1) Subject to subsection (d), the Secretary shall determine the amount of the allotment required in section 1941(a) for a State for a fiscal year in accordance with the following formula:

$$A\left(\frac{X}{U}\right)$$

"(2) For purposes of the formula described in paragraph (1), the term 'A' means an amount equal to the difference between—

"(A) an amount equal to the amount appropriated pursuant to section 1948(a) for allotments under section 1941(a) for the fiscal year involved; and

"(B) an amount equal to 1.5 percent of the amount referred to in subparagraph (A).

"(3) For purposes of the formula described in paragraph (1), the term 'U' means the sum of the respective terms 'X' determined for each State under paragraph (4).

"(4)(A) For purposes of the formula described in paragraph (1), the term 'X' means the product of—

"(i) amount equal to the term 'P' as determined under subparagraph (B); and

"(ii) the greater of—

"(I) 0.3; and

"(II) an amount equal to an amount determined in accordance with the following formula:

$$1-.5\left(\frac{S}{N}\right)$$

"(B) For purposes of subparagraph (A)(i), the term 'P' means the sum of—

"(i) an amount equal to the product of—

"(I) 0.4; and

"(II) an amount equal to the number of individuals in the State who are between 18 and 24 years of age, as indicated by the most recent data collected by the Bureau of the Census; and

"(ii) an amount equal to the product of—

"(I) 0.6; and

"(II) an amount equal to the number of individuals in the State who are between 25 and 44 years of age, as indicated by the most recent data collected by the Bureau of the Census.

"(C) For purposes of the formula described in subparagraph (A)(ii)(II), the term 'S' means the quotient of—

"(i) an amount equal to the most recent 3-year average of the total taxable resources of the State, as determined by the Secretary of the Treasury; divided by

"(ii) an amount equal to the term 'P' as determined under subparagraph (B).

"(D) For purposes of the formula described in subparagraph (A)(ii)(II), the term 'N' means the quotient of—

"(i) an amount equal to the sum of the respective amounts determined for each State under subparagraph (C)(i); divided by

"(ii) an amount equal to the sum of the respective terms 'P' determined for each State under subparagraph (B).

"(b) TERRITORIES.—

"(1) The amount of an allotment under section 1941(a) for a territory of the United States for a fiscal year shall be the greater of—

"(A) an amount equal to 80 percent of the amount of the allotment for mental health services under former section 1913 for the territory for fiscal year 1987; and

"(B) an amount determined in accordance with paragraph (2).

"(2) The amount referred to in paragraph (1)(B) is the product of—

"(A) an amount equal to the amounts reserved pursuant to paragraph (3); and

"(B) a percentage equal to the quotient of—

"(i) the population of the territory involved, as indicated by the most recently available data; divided by

"(ii) the aggregate population of the territories of the United States, as indicated by such data.

"(3) The Secretary shall reserve for the territories of the United States 1.5 percent of the amounts appropriated pursuant to section 1948(a) for allotments under section 1941(a) for the fiscal year involved.

"(c) INDIAN TRIBES.—

"(1) Upon the request of the governing body of an eligible Indian tribe or tribal organization within a State, the Secretary shall—

"(A) reserve from the amount that otherwise would be allotted for the fiscal year to the State under subsection (a) an amount determined in accordance with paragraph (2); and

"(B) grant the amount reserved under subparagraph (A) to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

"(2)(A) The amount reserved under paragraph (1)(A) shall be an amount equal to the product of—

"(i) the amount that otherwise would be allotted to the State under subsection (a) for the fiscal year; and

"(ii) the percentage described in subparagraph (B).

"(B) The percentage referred to in subparagraph (A)(ii) is a percentage equal to the quotient of—

"(i) an amount equal to the amount the Indian tribe or tribal organization received under former section 1913 for fiscal year 1987; divided by

"(ii) the aggregate amount received under such section in fiscal year 1987 by the State, Indian tribes in the State, and tribal organizations in the State.

"(3) The Secretary may not make a grant under paragraph (1)(B) to an Indian tribe or tribal organization unless the Indian tribe or tribal organization submits to the Secretary a plan for expending the grant that meets such criteria as the Secretary may establish.

"(d) TRANSITION RULES FOR STATES.—

"(1) For fiscal year 1989, the amount of the allotment required in section 1941(a) for a State shall be the greater of—

"(A) an amount determined in accordance with subsection (a); and

"(B) an amount equal to 90 percent of the amount of the allotment for mental health services under former section 1913 for the State for fiscal year 1986.

"(2) For fiscal year 1990, the amount of the allotment required in section 1941(a) for a State shall be the greater of—

"(A) an amount determined in accordance with subsection (a); and

"(B) an amount equal to 70 percent of the amount of the allotment for mental health services under former section 1913 for the State for fiscal year 1986.

"(3) For fiscal year 1991, the amount of the allotment required in section 1941(a) for a State shall be the greater of—

"(A) an amount determined in accordance with subsection (a); and

"(B) an amount equal to 50 percent of the amount of the allotment for mental health services under former section 1913 for the State for fiscal year 1986.

"(e) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

"(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving allotments under section 1941(a) for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment for the State for the fiscal year involved was determined.

"(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 1941(a) as a result of—

"(A) the failure of any State to submit an application under section 1944;

"(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"SEC. 1946. EVALUATION OF PROGRAMS.

"(a) In General.—

"(1) The Secretary, acting through the Director of the National Institute of Mental Health, shall evaluate community mental health programs and services, including evaluations of—

"(A) the most effective methods of providing community-based prevention, treatment, and rehabilitation services for the mentally ill; and

"(B) the quality, appropriateness, and costs of different methods of treatment utilized in such programs with respect to diagnoses of mental illness for which such programs provided treatment.

"(2) Evaluations required in paragraph (1) may be carried out through grants, contracts, or cooperative agreements.

"(b) Use of Research Centers.—The Director of the National Institute of Mental Health may, to the extent practicable, establish research centers to carry out the evaluations required in subsection (a)(1). Such research centers shall establish and maintain liaisons with community mental health systems that provide services to the mentally ill.

"(c) Model Plan With Respect to Chronically Mentally Ill Individuals.—The Secretary, acting through the Director of the National Institute of Mental Health, shall develop and make available, from time to time, a model plan for a community-based system of care for chronically mentally ill individuals. Such plan shall be developed in consultation with State mental health directors, providers of mental health services, chronically mentally ill individuals, advocates for such individuals, and other interested parties.

"SEC. 1947. DEFINITIONS.

"For purposes of this part:

"(1) The term 'Council' means the State mental health services planning council required in section 1944(a).

"(2) The term 'former section 1913' has the meaning given such term in section 1936(1).

"(3)(A) The term 'State' means, except as provided in subparagraph (B), each of the several States, the District of Columbia, and the territories of the United States.

"(B) For purposes of subsections (a) and (d) of section 1945, the term 'State' means each of the several States and the District of Columbia.

"(4) The term 'territories of the United States' means each of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

"SEC. 1948. FUNDING.

"(a) Authorization of Appropriations.—For the purposes of carrying out this part, part E, and section 509D(b), there are authorized to be appropriated $350,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) Allocation of Funds for Certain National Programs.—For the purposes of carrying out sections 1946, 1958(a), and 509D(b), the Secretary shall obligate not less than 5 percent, and not more than 15 percent, of the amounts appropriated pursuant to subsection (a) for a fiscal year.

"(c) Availability to States.—Any amounts paid to a State under section 1941(a), obligated by the State, and remaining unexpended at the end of the fiscal year for which the amounts were paid shall remain available during the succeeding fiscal year to the State for carrying out the purpose described in section 1941(b).

"Part D—General Provisions

"SEC. 1951. REQUIREMENT OF SUBMISSION OF DESCRIPTION OF INTENDED USES OF BLOCK GRANT.

"(a) In General.—The Secretary may not make payments under any of parts B and C to a State for a fiscal year unless—

"(1) the State submits to the Secretary a description of the purposes for which the State intends to expend such payments for the fiscal year;

"(2) such description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities; and

"(3) the State agrees that such description will be revised throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State pursuant to the program involved.

"(b) Program Specific Requirements.—

"(1) The Secretary may not make payments under part B to a State for a fiscal year unless the description required in subsection (a) identifies the populations and the geographic areas in the State that are at risk with respect to the abuse of alcohol or other drugs and that have a need for prevention, treatment, or rehabilitation services.

"(2) The Secretary may not make payments under part C to a State for a fiscal year unless the description required in subsection (a)—

"(A) describes intended expenditures for the provision of services described in section 1942(a)(1)(A); and

"(B) identifies the populations and the geographic areas in the State with a need for mental health services, including a description of the number of chronically mentally ill individuals and the number of severely emotionally disturbed children and youth in the State.

"(c) Opportunity for Public Comment.—The Secretary may not make payments under any of parts B and D for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a), the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

"SEC. 1952. RESTRICTIONS ON USE OF PAYMENTS.

"(a) In General.—

"(1) The Secretary may not, except as provided in paragraph (2), make payments under any of parts B and C for a fiscal year unless the State involved agrees that the payments will not be expended—

"(A) to provide inpatient services, except with respect to short-term residential treatment for substance abuse provided in settings other than hospitals;

"(B) to make cash payments to intended recipients of services under the program involved;

"(C) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment;

"(D) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

"(E) to provide financial assistance to any entity other than a public or nonprofit private entity.

"(2) If the Secretary finds that the purpose of the program involved cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified State, waive the restriction established in paragraph (1)(C).

"(b) Limitation on Administrative Expenses.—The Secretary may not make payments under any of parts B and C for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments for administrative expenses with respect to carrying out the purpose of the program involved.

"SEC. 1953. ADDITIONAL REQUIRED AGREEMENTS.

"(a) In General.—The Secretary may not, except as provided in subsection (c), make payments under any of parts B and C for a fiscal year unless the State involved agrees that—

"(1) the legislature of the State will conduct public hearings on the proposed use and distribution of the payments to be received for the fiscal year;

"(2) the State will, to the maximum extent practicable, ensure that services provided to an individual pursuant to the program involved will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual;

"(3) the State will provide for periodic independent peer review to assess the quality and appropriateness of treatment services provided by entities that receive funds from the State pursuant to the program involved;

"(4) the State will permit and cooperate with Federal investigations undertaken in accordance with section 1955;

"(5) the State will maintain State expenditures for services provided pursuant to the program involved at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments; and

"(6) the State will provide to the Secretary any data required by the Secretary pursuant to section 509D.

"(b) Program Specific Requirements.—

"(1) The Secretary may not make payments under part B for a fiscal year unless the State involved agrees to ensure that any entity in the State receiving funds with respect to carrying out the purpose described in section 1931(b) will comply with sections 544 and 548.

"(2) The Secretary may not make payments under part C for a fiscal year unless the State involved agrees that, to the maximum extent practicable, the State will develop and implement arrangements to locate jobs for employees affected adversely by actions taken by the State mental health authority with respect to emphasizing outpatient health services.

"(c) CERTAIN WAIVER.—The Secretary may, upon the request of a State, waive the requirement established in subsection (a)(5) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

"SEC. 1954. REQUIREMENT OF REPORTS BY STATES.

"(a) IN GENERAL.—The Secretary may not make payments under any of parts B and C for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

"(1) securing a record and a description of the purposes for which payments received by the State pursuant to any of parts B and C were expended and of the recipients of such payments;

"(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 1951(b);

"(3) determining whether the payments were expended in accordance with the purpose of the program involved; and

"(4) determining the percentage of payments received pursuant to any of parts B and C that were expended by the State for administrative expenses during the preceding fiscal year.

"(b) AVAILABILITY TO PUBLIC OF REPORTS.—The Secretary may not make payments under any of parts B and C unless the State involved agrees to make copies of the report described in subsection (a) available for public inspection.

"(c) EVALUATIONS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments under any of parts B and C in order to assure that expenditures are consistent with the provisions of the program involved.

"SEC. 1955. FAILURE TO COMPLY WITH AGREEMENTS.

"(a) REPAYMENT OF PAYMENTS.—

"(1) The Secretary may, in accordance with subsection (b), require a State to repay any payments received by the State pursuant to any of parts B and C that the Secretary determines were not expended by the State in accordance with the agreements required to be made by the State as a condition of the receipt of payments under the program involved.

"(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under the program involved.

"(b) OPPORTUNITY FOR A HEARING.—Before requiring repayment of payments under subsection (a)(1), the Secretary shall provide to the State an opportunity for a hearing.

"SEC. 1956. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

"(a) IN GENERAL.—

"(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from amounts paid to the State under any of parts B and C.

"(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any payments from amounts paid to the State under any of parts B and C may not conceal or fail to disclose any such event with the intent of fraudulently securing such amount.

"(b) CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 1957. NONDISCRIMINATION.

"(a) IN GENERAL.—

"(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds made available under the program involved shall be considered to be programs and activities receiving Federal financial assistance.

"(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under the program involved.

"(b) ENFORCEMENT.—

"(1) Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to the program involved, has failed to comply with a provision of law referred to in subsection (a)(1), with subsection (a)(2), or with an applicable regulation (including one prescribed to carry out subsection (a)(2)), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

"(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

"(B) exercise the powers and functions provided by the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, or title VI of the Civil Rights Act of 1964, as may be applicable; or

"(C) take such other actions as may be authorized by law.

"(2) When a matter is referred to the Attorney General pursuant to subsection (b)(1), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) or in violation of subsection (a)(2), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

"SEC. 1958. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) TECHNICAL ASSISTANCE.—The Secretary shall, without charge to a State receiving payments under any of parts B and C, provide to the State (or to any public or nonprofit private entity designated by the State) technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance directly, through contract, or through grants.

"(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) Upon the request of a State receiving payments under any of parts B and C, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out the program involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the fair market value of any supplies, equipment, or services provided by the Secretary and shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 1959. REPORT BY SECRETARY.

"Not later than October 1, 1990, the Secretary shall report to the Congress on the activities of the States carried out pursuant to any of parts B and C. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives.

"SEC. 1960. DEFINITIONS.

"For purposes of this part:

"(1) The term 'program involved' means the program of allotments established in part B, or in part C, or any or all of such programs, as indicated by whether the State involved is receiving or is applying to receive payments under part B, or part C, or under any or all of such parts.

"(2) The term 'State' has the meaning given such term in the program involved.".

SEC. 10005. CONTINGENT AUTHORITY FOR TRANSFERS BETWEEN CERTAIN BLOCK GRANTS.

(a) TRANSFER TO PART C.—If, under part C of title XIX of the Public Health Service Act (as added by section 10003 of this Act), the amount of the allotment for a State for a fiscal year is less than the amount of the allotment for mental health services under former section 1913 (as defined in section 1928(2) of such part) for the State for fiscal year 1986, the State may transfer to its allotment under such part C not more than 25 percent of the amount of the allotment for the State under part B of such title (as added by section 10003 of this Act).

(b) TRANSFER TO PART B.—If, under part B of title XIX of the Public Health Service Act (as added by section 10003 of this Act), the amount of allotment for a State for a fiscal year is less than the amount of the allotment for substance abuse services under former section 1913 (as defined in section 1937(1) of such part) for the State for fiscal year 1986, the State may transfer to its allotment under such part B not more than 25 percent of the amount of the allotment under part C of such title (as added by section 10003 of this Act).

SEC. 10006. DRUG TESTING CERTIFICATION PROGRAM REQUIREMENTS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall establish a procedure to be used to certify certain clinical laboratories that analyze and determine the results of drug tests conducted by other entities or individuals, and to ensure that such laboratories maintain high quality and appropriate security concerning the results of such tests.

(b) Requirements.—Under the procedures referred to in subsection (a), a laboratory that conducts drug testing shall, as determined under guidelines prescribed by the Secretary of Health and Human Services—

(1) meet the mandatory guidelines, or be determined by the Secretary of Health and Human Services to have met the mandatory guidelines, established by the Secretary under subclauses (I) and (III) of section 503(a)(1)(A)(ii) of the supplemental Appropriations Act, 1987;

(2) have been inspected and accredited by national accrediting bodies approved for such purpose by the Secretary; or

(3) have been a State clinical laboratory certified under a State certification programs that is as least as stringent as that established by the Secretary under subsection (a).

(c) Spending Restriction.—The Secretary of Health and Human Services shall not expend any Federal funds for certification of individual laboratories to conduct drug testing of any Federal employees under this Act (or any amendments made by this Act). Costs associated with such certifications shall be the responsibility of the laboratories seeking the certification, except that this section shall not be construed to prohibit the use of such funds to develop standards, measurement instruments, or such other activities and functions as are necessary to establish and maintain a certification system.

SEC. 10006A. EMPLOYEE ASSISTANCE PROGRAMS.

(a) Establishment.—The Secretary of Labor shall establish a program through which the Secretary shall provide grants to, or enter into contract with, employers to enable such employers to develop employee drug and alcohol abuse assistance programs.

(b) Applications.—Employers desiring to receive a grant or contract under this section shall submit to the Secretary of Labor, an application, in such form and containing such information as the Secretary may require.

(c) Regulations.—The Secretary of Labor shall promulgate regulations necessary to carry out this section.

(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, $4,000,000 for fiscal year 1989, and $5,000,000 for each of the fiscal years 1990 and 1991.

SEC. 10007. FUNDING FOR OFFICE FOR SUBSTANCE ABUSE PREVENTION.

Section 508(d) of the Public Health Service Act (42 U.S.C. 290cc-2(d)) is amended to read as follows:

"(d)(1) For the purpose of carrying out this section and sections 509, 509A, and 509E, there are authorized to be appropriated $75,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall make available not less than 5 percent to carry out subsection (b)(5) and not less than 10 percent to carry out section 509E.".

SEC. 10008. REQUIREMENT OF ANNUAL COLLECTION BY SECRETARY OF CERTAIN DATA WITH RESPECT TO MENTAL ILLNESS AND SUBSTANCE ABUSE.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following new section:

"DATA COLLECTION

"Sec. 509D. (a) The Secretary, acting through the Administrator, shall collect data each year on—

"(1) the national incidence and prevalence of the various forms of mental illness and substance abuse; and

"(2) the incidence and prevalence of such various forms in major metropolitan areas selected by the Administrator.

"(b) With respect to the activities of the Administrator under subsection (a) relating to mental health, the Administrator, acting through the Director of the National Institute of Mental Health, shall ensure that such activities include the collection of data on—

"(1) the number and variety of public and nonprofit private treatment programs;

"(2) the number of individuals receiving treatment through such programs and the diagnoses of such individuals; and

"(3) demographic characteristics of the population of such individuals.

"(c)(1) With respect to the activities of the Administrator under subsection (a) relating to substance abuse, the Administrator, acting through the Director of the National Institute on Alcoholism and Alcohol Abuse and the Director of the National Institute on Drug Abuse, shall ensure that such activities include the collection of data on—

"(A) the number of individuals admitted to the emergency rooms of hospitals as a result of the abuse of alcohol and other drugs;

"(B) the number of deaths occurring as a result of substance abuse, as indicated in reports by coroners;

"(C) the number and variety of public and private nonprofit treatment programs;

"(D) the number of individuals seeking treatment through such programs, the number and demographic characteristics of individuals receiving such treatment, and, with respect to individuals receiving such treatment, the length of time between an individual's request for treatment and the commencement of that treatment; and

"(E) the number of such individuals who return for treatment after the completion of a prior treatment in such programs and the method of treatment utilized during the prior treatment.

"(2) With respect to the collection of data under paragraph (1), the Director shall conduct annual surveys.".

SEC. 10009. MODEL PROJECTS FOR PREGNANT AND POST PARTUM WOMEN AND THEIR INFANTS.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended by section 10008 of this Act, is further amended by adding at the end the following new section:

"MODEL PROJECTS FOR PREGNANT AND POST PARTUM WOMEN AND THEIR INFANTS

"Sec. 509E. (a) The Secretary, acting through the Director of the Office, shall make grants to establish projects for prevention, education, and treatment regarding drug and alcohol abuse relating to pregnant and post partum women and their infants.

"(b) In making grants under subsection (a), the Director of the Office shall give priority to projects—

"(1) for low-income women and their infants; and

"(2) designed to develop innovative approaches to prevention, education, and treatment regarding the use of the drugs with respect to which there exists insufficient information (including cocaine and the cocaine derivative known as crack).

"(c) In making grants under subsection (a) for projects that provide treatment, the Director of the Office shall ensure that grants are reasonably distributed among projects that provide inpatient, outpatient, and residential treatment.

"(d) The Director of the Office may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director of the Office determines to be necessary to carry out this section.

"(e) The Director of the Office shall evaluate projects conducted with grants under this section.".

SEC. 10010. ESTABLISHMENT OF PROGRAM OF GRANTS WITH RESPECT TO REDUCTION OF WAITING PERIOD FOR DRUG ABUSE TREATMENT.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended by section 10009 of this Act, is further amended by adding at the end the following new section:

"REDUCTION OF WAITING PERIOD FOR DRUG ABUSE TREATMENT

"Sec. 509F. (a) The Secretary may make grants to public and nonprofit private entities for the purpose of expanding the capacity of grantees to carry out programs of treatment for drug abuse.

"(b) The Secretary may not make a grant under subsection (a) unless the applicant for the grant—

"(1) is experienced in the delivery of treatment services for drug abuse;

"(2) is, on the date the application is submitted, carrying out a program for the delivery of such services;

"(3) as a result of the number of requests for admission into the program, is unable to admit any individual into the program any earlier than one month after the date on which the individual makes a request for such admission; and

"(4) provides assurances satisfactory to the Secretary that, after funding is no longer available under this section, the applicant will have access to financial resources sufficient to continue the program.

"(c) The Secretary may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(d)(1) For the purpose of carrying out this section, there is authorized to be appropriated $100,000,000.

"(2) Amounts made available pursuant to paragraph (1) shall remain available until expended.

"(3) No grant may be made under this section after the aggregate amounts obligated by the Secretary pursuant to this section are equal to $100,000,000.".

SEC. 10011. REQUIREMENT OF EVALUATIONS OF FEDERALLY FUNDED PROGRAMS OF TREATMENT FOR DRUG ABUSE.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended by section 10010 of this Act, is further amended by adding at the end the following new section:

"EVALUATIONS OF PROGRAMS FOR TREATMENT OF DRUG ABUSE

"SEC. 509G. (a) The Secretary shall, directly or by contract, provide for an independent evaluation of federally funded programs of treatment for drug abuse and for independent evaluations of federally funded programs of research into methods of such treatment.

"(b) In carrying out the evaluations required in subsection (a), the Secretary shall—

"(1) assess the comparative effectiveness and costs of the various methods of treatment utilized for specific patient groups served by programs described in subsection (a);

"(2) clarify research and treatment objectives of such programs;

"(3) clarify research and treatment methodologies of such programs;

"(4) determine whether entities carrying out such programs have organizational biases with respect to providing treatment for drug abuse; and

"(5) determine the extent to which such programs are contributing to progress in the development of effective methods of treatment for drug abuse.

"(c) The Secretary shall, not later than 1 year after the date of the enactment of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, complete the evaluation required in subsection (a) and submit to the Congress a report describing the findings made as a result of the evaluation.".

SEC. 10012. AUTHORIZATION OF APPROPRIATIONS FOR RESEARCH WITH RESPECT TO ALCOHOL ABUSE AND ALCOHOLISM.

Section 513(a) of the Public Health Service Act (42 U.S.C. 290bb-2(a)) is amended by striking "1987." and inserting the following: "1987, and such sums as may be necessary for each of the fiscal years 1989 through 1991.".

SEC. 10013. FUNDING FOR RESEARCH WITH RESPECT TO DRUG ABUSE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 517 of the Public Health Service Act (42 U.S.C. 290cc-2) is amended by striking "1987." and inserting "1987, and such sums as may be necessary for each of the fiscal years 1989 through 1991.".

(b) SET-ASIDE WITH RESPECT TO PREGNANT WOMEN AND INFANTS.—Section 517 of the Public Health Service Act (42 U.S.C. 290cc-2) is amended—

(1) by redesignating such section as section 518;

(2) by inserting "(a)" after the section designation; and

(3) by adding at the end the following new subsection:

"(b) Of the amounts appropriated pursuant to subsection (a), the Secretary shall make available 5 percent to carry out section 516(b) and not less than 10 percent to carry out section 517.".

SEC. 10015. ESTABLISHMENT OF GRANT PROGRAMS FOR RESEARCH WITH RESPECT TO MENTAL HEALTH SERVICES.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) by amending section 504(f) to read as follows:

"(f)(1) The Secretary, acting through the Director, shall—

"(A) develop and publish information with respect to the causes of suicide and the means of preventing suicide; and

"(B) make such information generally available to the public and to health professionals.

"(2) Information described in paragraph (1) shall especially relate to suicide among individuals under 24 years of age.";

(2) by striking subsections (g) through (i) of section 504; and

(3) by adding at the end of part B the following new subpart:

"Subpart 3—Mental Health Research

"ESTABLISHMENT OF PROGRAM FOR MENTAL HEALTH RESEARCH

"SEC. 519. The Secretary, acting through the Director, may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities for the conduct of, promotions of, coordination of, research, investigation, experiments, demonstrations, and studies relative to the cause, diagnosis, treatment, control, and prevention of mental illness.

"NATIONAL MENTAL HEALTH EDUCATION PROGRAM

"SEC. 520. The Secretary, acting through the Director, shall establish a National Mental Health Education Program for the purpose of—

"(1) developing improved methods of treating individuals with mental health problems and improved methods of assisting the families of such individuals;

"(2) supporting programs of biomedical and behavioral research, training, and education with respect to the causes, diagnosis, and treatment of mental health problems;

"(3) collecting and making available, through publication and other appropriate methods, information on, and the practical application of, such research and other activities;

"(4) providing technical assistance to public and private entities that are providers of mental health services;

"(5) disseminating to such providers and to the public information with respect to mental health, including information on programs that provide financial assistance in obtaining mental health services; and

"(6) establishing a clearinghouse in order to collect information developed in mental health research and treatment programs and to make such information available to providers of mental health services, to individuals with mental health problems, and to the general public.

"ESTABLISHMENT OF GRANT PROGRAM FOR DEMONSTRATION PROJECTS

"SEC. 520A. (a) CHRONICALLY MENTALLY ILL INDIVIDUALS AND SERIOUSLY MENTALLY DISTURBED CHILDREN.—The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and nonprofit private agencies for mental health services demonstration projects for the planning, coordination, and improvement of community services (including outreach and self-help services) for chronically mentally ill individuals, seriously emotionally disturbed children and youth, elderly individuals, and homeless chronically mentally ill individuals, and for the conduct of research concerning such services.

"(b) INDIVIDUALS AT RISK OF MENTAL ILLNESS.—

"(1) The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and private nonprofit agencies for prevention services demonstration projects for the provision of prevention services for individuals who, in the determination of the Secretary, are at risk of developing mental illness.

"(2) Demonstration projects under paragraph (1) may include—

"(A) prevention services for populations at risk of developing mental illness, particularly displaced workers, young children, and adolescents;

"(B) the development and dissemination of education materials;

"(C) the sponsoring of local, regional, or national workshops or conferences;

"(D) the conducting of training programs with respect to the provision of mental health services to individuals described in paragraph (1); and

"(E) the provision of technical assistance to providers of such services.

"(c) LIMITATION ON DURATION OF GRANT.—The Secretary may make a grant under subsection (a) or (b) for not more than three consecutive one-year periods.

"(d) LIMITATION ON ADMINISTRATIVE EXPENSES.—The Secretary may not make a grant under subsection (a) or (b) to an applicant unless the applicant agrees that not more than 10 percent of such a grant will be expended for administrative expenses.

"(e) AUTHORIZATIONS OF APPROPRIATIONS.—

"(1) For the purposes of carrying out this section, there are authorized to be appropriated $32,000,000 for each of the fiscal years 1989 and 1990.

"(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall make available 25 percent for demonstration projects to carry out the purpose of this section in rural areas."

SEC. 10016. MISCELLANEOUS AMENDMENTS.

(a) TITLE V OF PUBLIC HEALTH SERVICE ACT.—

(1) The title of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended so as to read: "TITLE V—ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH PROGRAMS".

(2) Section 501 of the Public Health Service Act (42 U.S.C. 290aa) is amended—

(A) by adding at the end of subsection (b) the following new paragraph:

"(4) The Office of Substance Abuse Prevention.";

(B) in the first sentence of subsection (e)(2)—

(i) by striking "The" and inserting the following: "Not less than once each three years, the"; and

(ii) by striking "annually";

(C) by striking "fraud" each place it appears in subsection (f) and inserting "misconduct";

(D) by striking subsection (k); and

(E) by adding at the end the following new subsections:

"(k) The Administrator may accept voluntary and uncompensated services.

"(l) The Administrator may conduct and support research training—

"(1) for which fellowship support is not provided under section 487; and

"(2) that is not residency training of physicians or other health professionals.

"(m)(1) The Secretary, acting through the Administrator, may make grants to public and nonprofit private entities for the acquisition of small instrumentation necessary for carrying out the purpose of this title with respect to research.

"(2) The Secretary may not make a grant under paragraph (1) unless the small instrumentation acquired pursuant to the grant will be available for use in more than one grant under this title with respect to research.

"(3) Grants under paragraph (1) shall be subject to technical and scientific peer review under section 507.

"(4) A grant under paragraph (1) for a fiscal year may not exceed $100,000.

"(5) For the purpose of carrying out this subsection, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1989 through 1991.".

(3) Section 515(a) of the Public Health Service Act (42 U.S.C. 290cc) is amended in the matter after and below paragraph (6) by inserting before the period the following: "(particularly with respect to pregnant women and their children)".

(4) Section 516 of the Public Health Service Act (42 U.S.C. 290cc-1) is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(B) by inserting after subsection (a) the following new subsection:

"(b) In making grants under subsection (a), the Secretary shall give special consideration to projects for determining the effects of drug abuse among pregnant women and the resulting effects on the infants of such women, including the relationship between drug abuse during pregnancy and the birthweight of infants.".

(b) SECTION 303.—Section 303(d)(1) of the Public Health Service Act (42 U.S.C. 242a(d)(1)) is amended by inserting "marital and family therapy," after "nursing,".

(c) ANTI-DRUG ABUSE ACT OF 1986.—Section 6005(b) of the Anti-Drug Abuse Act of 1986 (Public Law 99-570) is amended by striking "one year" and all that follows through "Act" and inserting "18 months after the execution of the contract referred to in subsection (a),".

SEC. 10017. BANNING OF BUTYL NITRITE.

(a) IN GENERAL.—Except as provided in subsection (b), butyl nitrite shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

(b) LAWFUL PURPOSES.—For the purposes of section 8 of the Consumer Product Safety Act, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States butyl nitrite for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act.

(c) DEFINITIONS.—For purposes of this section:

(1) The term "butyl nitrite" includes n-butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, and mixtures containing these chemicals.

(2) The term "commercial purpose" means any commercial purpose other than for the production of consumer products containing butyl nitrite that may be used for inhaling or otherwise introducing butyl nitrite into the human body for euphoric or physical effects.

(d) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act.

SEC. 10018. FORFEITURE AND ILLEGAL TRAFFICKING IN STEROIDS.

Any conviction of a person for a violation of the Federal Food, Drug, and Cosmetic Act involving anabolic steroids or human growth hormone which is punishable by imprisonment for more than one year shall for purposes of section 413 of the Controlled Substances Act be considered a conviction for a violation of that Act.

SEC. 10019. PROHIBITED DISTRIBUTION OF ANABOLIC STEROIDS.

Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following new subsection.

"(e) Whoever distributes or possesses with the intent to distribute any anabolic steroid for any purpose other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than three years, or fined under title 18, United States Code, or both.".

SEC. 10020. ESTABLISHMENT OF TASK FORCE AND PROTECTION OF PUBLIC HEALTH WITH RESPECT TO ILLEGAL DRUG LABORATORIES.

(a) ESTABLISHMENT OF TASK FORCE.—There is established the Joint Federal Task Force on Illegal Drug Laboratories (hereafter in this section referred to as the "Task Force").

(b) APPOINTMENT AND MEMBERSHIP OF TASK FORCE.—The members of the Task Force shall be appointed by the Administrators of the Environmental Protection Agency and the Drug Enforcement Administration (hereafter in this section referred to as the "Administrators"). The Task Force shall consist of at least 6 and not more than 20 members. Each Administrator shall appoint one-half of the members as follows: (1) the Adminstrator of the Environmental Protection Agency shall appoint members from among Emergency Response Technicians and other appropriate employees of the Agency; and (2) the Administrator of the Drug Enforcement Administration shall appoint members from among Special Agents assigned to field divisions and other appropriate employees of the Administration.

(c) DUTIES OF TASK FORCE.—The Task Force shall formulate, establish, and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. In formulating such program, the Task Force shall consider the following factors:

(1) The volume of hazardous waste produced by illegal drug laboratories.

(2) The cost of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(3) The effectiveness of the various methods of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(4) The coordination of the efforts of the Environmental Protection Agency and the Drug Enforcement Administration in cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(5) The dissemination of information to law enforcement agencies that have responsibility for enforcement of drug laws.

(d) GUIDELINES.—The Task Force shall recommend to the Administrators guidelines for cleanup of illegal drug laboratories to protect the public health and environment. Not later than 180 days after the date of the enactment of this Act, the Administrators shall formulate and publish such guidelines.

(e) DEMONSTRATION PROJECTS.—

(1) The Attorney General shall make grants to, and enter into contracts with, State and local governments for demonstration projects to clean up and safely dispose of substances associated with illegal drug laboratories which may present a danger to public health or the environment.

(2) The Attorney General may not under this subsection make a grant or enter into a contract unless the applicant for such assistance agrees to comply with the guidelines issued pursuant to subsection (d).

(3) The Attorney General shall, through grant or contract, provide for independent evaluations of the activities carried out pursuant to this subsection and shall recommend appropriate legislation to the Congress.

(f) FUNDING.—Of the amounts made available to carry out the Controlled Substances Act for fiscal year 1989, not less than $5,000,000 shall be made available to carry out subsections (d) and (e).

(g) REPORTS.—After consultation with the Task Force, the Administrators shall—

(1) transmit to the President and to each House of Congress not later than 270 days after the date of the enactment of this Act a report describing the program established by the Task Force under subsection (c) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection);

(2) periodically transmit to the President and to each House of Congress reports describing the implementation of the program established by the Task Force under subsection (c) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection) and the progress made in the cleanup and disposal of hazardous waste produced by illegal drug laboratories; and

(3) transmit to each House of Congress a report describing the findings made as a result of the evaluations referred to in subsection (e)(3).

SEC. 10021. EFFECTIVE DATE.

Except as provided in section 10004(c) and 10017(d), this title and the amendments made by this title shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

TITLE XI—TRANSPORTATION INDUSTRY ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM

SEC. 11001. TRANSPORTATION INDUSTRY ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM.

(a) FINDINGS.—The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the armed forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's

right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b) TESTING PROGRAM.—(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake a rehabilitation program described in subsection (c), (B) fails to complete such a rehabilitation program, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this section;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"EFFECT ON OTHER LAWS AND REGULATIONS

"(e)(1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration) with responsibility for safety-sensitive functions.

"(3) In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, without lawful authorization, of a controlled substance by crew members in international civil aviation.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.

"(c) Program for rehabilitation.

"(d) Procedures.

"(e) Effect on other laws and regulations.

"(f) Definition.".

(c) Federal Railroad Safety Act of 1970.—Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) by subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d) Commercial Motor Vehicle Safety Act of 1986.—(1) The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) Regulations.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) Testing.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) Program for Rehabilitation.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) Procedures for Testing.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this section;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) for employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) Effect on Other Laws and Regulations.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) Application of Penalties.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) Definition.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C.

802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e) Commercial Motor Vehicles.—(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of 1 year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than 30 months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection, the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

(f) Urban Mass Transit.—(1) The Secretary of Transportation shall, in the interest of urban mass transportation safety, prescribe regulations within 12 months after the date of enactment of this section. Such regulations shall establish a program which requires urban mass transportation operations to conduct pre-employment, periodic recurring, random, and post-accident testing of urban mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary), and testing of such employees upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

(2) In prescribing such regulations, the Secretary shall require that post-accident testing of such an urban mass transportation employee be conducted in the case of any accident involving urban mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(3) The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of urban mass transportation employees referred to in paragraph (1) of this subsection who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude an urban mass transportation operation from establishing a program under this subsection in cooperation with any other such operation.

(4) In establishing the program required under paragraph (1) of this subsection, the Secretary shall develop requirements which shall—

(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(B) with respect to the laboratory and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

(ii) specify the drugs for which individuals may be tested; and

(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this subsection;

(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(D) require that all laboratories involved in the testing of any individual under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(5) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this subsection, except that the regulations promulgated under this subsection shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to urban mass transportation employees, or to the general public.

(6)(A) As the Secretary considers appropriate, the Secretary shall require—

(i) disqualification for an established period of time or dismissal of any employee referred to in paragraph (1) of this subsection determined to have used or to have been impaired by alcohol while on duty; and

(ii) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulation.

(B) Nothing in this subsection shall be construed to supersede any penalty applicable to an urban mass transportation employee under any other provision of law.

(7) For purposes of this subsection, the term—

(A) "controlled substance" means any substance under section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety; and

(B) "urban mass transportation" means all forms of urban mass transportation whose employees are not covered by either section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) or section 12020 of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 State. 5223), as added by this section.

(8) A person shall not be eligible for Federal financial assistance under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1604) or section 103(e)(4) of title 23, United States Code, if such person—

(A) is required, under regulations prescribed by the Secretary under section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431), section 12020 of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100; Stat. 5223), as added by this section, or subsection (e) of this section, to establish a program of alcohol and controlled substances testing; and

(B) fails to establish such a program in accordance with such regulations.

(g) For purposes of this section, the term—

(1) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, commonwealth, territory, district, or possession thereof, or of any foreign country; and

(2) "Secretary" means the Secretary of Transportation.

TITLE XII—ORGANIZATION

SEC. 12000. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE I—ORGANIZATION

Sec. 12000. Table of contents.

Subtitle A—National Drug Control Program

Sec. 12001. Short title.
Sec. 12002. Findings.
Sec. 12003. Purposes.
Sec. 12004. Definitions.
Sec. 12005. Establishment of office.
Sec. 12006. Appointment and duties of the director, deputy director and associate director.
Sec. 12007. Duties and responsibilities of the heads of executive branch departments and agencies.
Sec. 12008. Development and submission of national drug control strategy.

Sec. 12009. Submission of national drug control program budget with the annual budget request of the President.
Sec. 12010. High-intensity drug areas.
Sec. 12011. Termination of the National Drug Enforcement Policy Board, the National Narcotics Border Interdiction System, and the White House Drug Abuse Policy Office.
Sec. 12012. Executive reorganization authority.
Sec. 12013. Termination of the Office of National Drug Control Policy.
Sec. 12014. Authorization of appropriations.
Sec. 12015. Effective date.

Subtitle B—Department of Justice Civil Enforcement Enhancement

Sec. 12051. Short title.
Sec. 12052. Findings.
Sec. 12053. Civil enforcement report.
Sec. 12054. Civil enforcement enhancement.
Sec. 12055. Coordination and enhancement of field activities.

Subtitle A—National Drug Control Program

SEC. 12001. SHORT TITLE.

This subtitle may be cited as the "National Narcotics Leadership Act of 1988".

SEC. 12002. FINDINGS.

The Congress finds that—

(1) the problem of illegal drug activity and drug abuse falls across the entire spectrum of Federal activities, both domestically and internationally;

(2) any effective solution to the drug problem of the Nation must involve a comprehensive approach from all levels of government, combining reduction of the demand for drugs through education, research and treatment with rigorous law enforcement and supply reduction initiatives;

(3) an effective solution to the drug problem of the Nation is severely hampered by the large number of Federal agencies with overlapping jurisdiction and fragmented authority which does not encourage effective strategic planning, coordination and cooperation without centralized leadership;

(4) the magnitude and scope of the problem requires a Director of National Drug Control Policy with the responsibility for the coordination and direction of all Federal efforts by the numerous agencies; and

(5) such a director must have sufficient authority and responsibility to lead Federal agencies in making management, policy, and budgetary decisions with respect to all Federal agencies so that a unified and efficient effort can be made to substantially reduce the illegal drug problem.

SEC. 12003. PURPOSES.

The purposes of this subtitle are to—

(1) develop a comprehensive, long-range national drug control strategy for substantially reducing drug trafficking and abuse, particularly among young people;

(2) authorize one official to direct the national drug control policy of the Federal Government, coordinate all United States policy, resources, and operations with respect to drug control, and report directly to the President on all drug control matters;

(3) make such official accountable to the Congress and the people of the United States for the effectiveness of the national drug control strategy; and

(4) provide that the national drug control strategy ensures that Federal, State, and local governments are fully coordinated and efforts are designed to maximize the effectiveness of such strategy.

SEC. 12004. DEFINITIONS.

As used in this subtitle the term—

(1) "drug" shall have the same meaning as the term "controlled substance" as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6));

(2) "drug control" means any activity of a program conducted by a National Drug Control Program agency designed to reduce, directly or indirectly, the availability and use of drugs, including all efforts to decrease the production, manufacture, importation, distribution, or use of drugs through supply reduction and demand reduction programs;

(3) "supply reduction" means any activity of a program conducted by a National Drug Control Program agency that is designed to reduce, directly or indirectly, the supply of drugs in the United States and abroad, including, but not limited to—

(A) international drug control;

(B) foreign and domestic drug enforcement intelligence;

(C) interdiction; and

(D) domestic drug law enforcement;

(4) "demand reduction" means any activity of a program conducted by a National Drug Control Program agency that is designed to reduce, directly or indirectly, the demand for and use of drugs, including, but not limited to—

(A) drug abuse education;

(B) prevention;

(C) treatment;

(D) research; and

(E) private sector initiatives;

(5) "National Drug Control Program" means the drug control programs, policies and activities that—

(A) the National Drug Control Program agencies undertake pursuant to the responsibilities of each such agency under the national drug control strategy; and

(B) are subject to review by the Director and modification by the President;

(6) "National Drug Control Program agencies" mean the agencies and all dedicated units thereof with responsibilities under the national drug control strategy including the—

(A) Department of Justice, including—

(i) the Drug Enforcement Administration;

(ii) the Federal Bureau of Investigation;

(iii) the United States Attorneys;

(iv) the United States Marshals Service;

(v) the Immigration and Naturalization Service;

(vi) National Central Bureau Interpol; and

(vii) the Criminal and Tax Divisions;

(B) Department of the Treasury, including—

(i) the United States Customs Service;

(ii) the Internal Revenue Service;

(iii) the Bureau of Alcohol, Tobacco and Firearms; and

(iv) the United States Secret Service;

(C) Department of Transportation, including—

(i) the Coast Guard; and

(ii) the Federal Aviation Administration;

(D) Department of State, including—

(i) the Bureau of International Narcotics Matters;

(ii) the Agency for International Development; and

(iii) the United States Information Agency;

(E) Department of Defense;

(F) Department of the Interior;

(G) Department of Agriculture;

(H) Food and Drug Administration;

(I) Department of Health and Human Services, including—

(i) the Alcohol, Drug Abuse and Mental Health Administration;

(ii) the Office for Substance Abuse Prevention;

(iii) the National Institute of Drug Abuse; and

(iv) the Indian Health Service;

(J) Department of Education;

(K) Department of Labor;

(L) ACTION;

(M) Office of Personnel Management;

(N) Central Intelligence Agency and all other intelligence community agencies;

(O) staff elements of the Director of National Drug Control Policy; and

(P) other departments or agencies with drug control responsibilities designated—

(i) jointly by the Director for National Drug Control Policy and the head of the relevant department or agency; or

(ii) by the President.

SEC. 12005. ESTABLISHMENT OF OFFICE.

(a) ESTABLISHMENT OF OFFICE.—There is established in the Executive Office of the President the "Office of National Drug Control Policy" (hereafter in this subtitle referred to as the "Office ").

(b) DIRECTOR AND DEPUTY DIRECTORS.—(1) There shall be at the head of the Office, a Director of National Drug Control Policy (hereafter in this subtitle referred to as the "Director").

(2) There shall be two deputy directors of the Office (hereafter in this subtitle referred to as the "Deputy Directors") as follows:

(A) A Deputy Director for Demand Reduction to be responsible for all programs to reduce the demand for drugs, including drug education, prevention, treatment, research, and private sector programs.

(B) A Deputy Director for Supply Reduction to be responsible for all programs to reduce the supply of drugs, including domestic drug law enforcement, interdiction, international and intelligence programs, and any other program designed to halt the production, importation, manufacture, distribution, or use of drugs.

(3) The Deputy Directors shall assist the Director in carrying out the functions of the Director under this Act.

(c) BUREAU OF STATE AND LOCAL AFFAIRS.—(1) There is established in the Office of National Drug Control Policy a Bureau of State and Local Affairs (hereafter in this subtitle referred to as the "Bureau").

(2) There shall be at the head of the Bureau an Associate Director for National Drug Control Policy.

SEC. 12006. APPOINTMENT AND DUTIES OF THE DIRECTOR, DEPUTY DIRECTORS AND ASSOCIATE DIRECTOR.

(a) APPOINTMENT.—(1) The Director, the Deputy Directors, and the Associate Director shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director, the Deputy Directors, and the Associate Director shall each serve at the pleasure of the President. No person may serve as Director, a Deputy Director, or Associate Director for a period of more than 4 years, unless such person is reappointed to that same office by the President, by and with the advice and consent of the Senate. No person shall serve as Director, a Deputy Director, or Associate Director while serving in any other position in the Federal Government.

(3) The Director shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(4) Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth paragraph—

(1) in clause (6) by striking out "and" at the end thereof;

(2) by redesignating clause (7) as clause (8) and inserting before such clause the following:

"(7) the Director of the Office of Drug Control; and".

(5)(A) Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director of National Drug Control Policy.".

(B) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Director for Demand Reduction for National Drug Control Policy.

"Deputy Director for Supply Reduction for National Drug Control Policy.".

(C) Section 5315 of title 5, United States Code, is amended by adding at the end thereof:

"Associate Director for National Drug Control Policy.".

(b) Function of Director.—The Director shall serve as the principal director and coordinator of United States drug control policy.

(c) Authorities and Responsibilities of the Director.—(1) The Director is authorized and directed to notify any National Drug Control Program agency that its policies are not in compliance with the responsibilities of such agency under the National Drug Control Strategy.

(2) The head of each National Drug Control Program agency shall ensure that the agency is in compliance with the responsibilities of such agency under the National Drug Control Strategy, as notified pursuant to paragraph (1) of this subsection. The head of any National Drug Control Program agency may appeal to the President any decision of the Director issued under paragraph (1) of this subsection.

(3) The Director shall—

(A) develop, review, implement and enforce Federal Government policy with respect to drug control programs;

(B) direct and coordinate all Federal Government drug supply reduction efforts, including international, intelligence, interdiction, and domestic drug law enforcement and all other programs designed to halt the production, importation, manufacture, provided in section 12008 of this title;

(C) direct and coordinate efforts between the Federal, State, and local governments, including the review of State and local drug control strategies, and the development of a State and local component to the distribution, and use of drugs;

(D) direct and coordinate all Federal Government drug demand reduction efforts, including education, prevention, treatment, research, and private sector programs;

(E) prepare a national drug control strategy as national drug control strategy as provided in section 12008 of this title;

(F) direct and coordinate the collection and dissemination of information necessary to implement United States policy with respect to drug supply and demand reduction efforts; and

(G) develop a consolidated national drug control policy including—

(i) developing, with the advice of the program managers of departments and agencies with responsibilities under the National Drug Control Program, the consolidated National Drug Control Program budget, and presenting such budget proposal to the President for submission to the Congress; and

(ii) initiating, reviewing, and approving all agency requests for reprogramming National Drug Control Program funds, in accordance with guidelines which shall be established by the Office of Management and Budget.

(d) Consolidating National Drug Control Program Budget.—(1) In developing the National Drug Control Program budget, the Director shall provide each Federal Government program manager, agency head and department head with responsibilities under the national drug control strategy. Each such program manager, agency head, or department head shall submit the drug control budget request of the program, agency, or department to the Director at the same time as such request is submitted to their superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to the Congress under section 1105(a) of title 31, United States Code. The Director shall approve or revise such requests in consultation with the appropriate program manager, agency or department head.

(2) The Director may reprogram funds within National Drug Control Programs.

(3) The Director may transfer, after providing notification to the Committees on Appropriations of the Senate and the House of Representatives, an amount not to exceed 5 per centum of the funds appropriated for one such program to another such program within the same National Drug Control Program agency.

(4) The head of any National Drug Control Program agency may appeal to the President any decision of the Director on budget and reprogramming matters relating to such agency.

(e) Powers of Director.—In carrying out the responsibilities described under subsection (c) the Director may—

(1) select, appoint, employ, and fix compensation of such officers and employees as shall be necessary to carry out the powers and duties of the Office under this title;

(2) direct, with the concurrence of the Secretary of a department or head of an agency employing such personnel, the temporary reassignment of personnel within the Federal Government in order to implement United States drug control policy;

(3) to use, on a reimbursable basis, the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent the Director determines appropriate after considering the effectiveness of such existing services, equipment, personnel, and facilities;

(4) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, relating to appointments in the Federal Service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(5) accept and use donations of property from all government agencies;

(6) use the mails in the same manner as any other department or agency of the executive branch; and

(7) monitor National Drug Control Program implementation, including—

(A) conducting program and performance audits and evaluations; and

(B) requesting assistance from the Inspector General of the relevant agency in such audits and evaluations.

(f) Personnel Detailed to the Office.—(1) Notwithstanding any provision of chapter 42 of title 5, United States Code, the Director shall provide the evaluation of the performance of any employee detailed to the Office of National Drug Control Policy for purposes of the applicable performance appraisal system established under chapter 43 of title 5, United States Code, for any rating period, or part thereof, that such employee is detailed to the Office.

(2)(A) Subject to the provisions of subparagraph (B), in filling a position within any Executive agency through promotion, the head of such agency shall give preference to any employee who was detailed to the Office of National Drug Control Policy and received satisfactory performance appraisals during such detail, if—

(i) such employee is otherwise qualified for such position; and

(ii) such employee is eligible for appointment to such position.

(B)(i) Notwithstanding the provisions of subparagraph (A), no preference may be given to any employee under such subparagraph, with respect to a preference eligible (as defined under section 2108(3) of title 5, United States Code) who is eligible for the same position.

(ii) The provisions of subparagraph (A) shall apply to no more than one promotion for any employee.

SEC. 12007. DUTIES AND RESPONSIBILITIES OF THE HEADS OF EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES.

(a) Access to Information.—(1) The heads of all executive branch departments and agencies shall—

(A) provide the Director with all information necessary and relevant to the National Drug Control Program and the development of the national drug control strategy; and

(B) give complete consideration to the requests from the Director for appropriate support for National Drug Control Program activities.

(2) The Director of Central Intelligence shall prescribe such regulations as may be necessary to protect the sources and methods of intelligence program information provided to the Director of National Drug Control Policy under this section.

(b) Budget Responsibilities of Executive Departments and Agencies.—The heads of National Drug Control Program agencies shall ensure—

(1) timely development and submission to the Director by the program managers and heads of component activities of proposed drug control programs and budgets in the format designated by the Director; and

(2) that the Director is provided, in a timely and responsive manner, all information necessary to perform the program and budget responsibilities of the Director.

(c) Certification by the Director.—(1) The heads of National Drug Control Program agencies shall, unless exigent circumstances require otherwise, provide the Director in writing with any proposed changes in policies relating to the activities of such department or agency under the National Drug Control Program prior to implementation of such changes. The Director shall promptly review such proposals and certify to the department or agency head in writing whether such changes are consistent with the National Drug Control Program.

(2) If prior notice of a proposed change under paragraph (1) is not possible, the de-

partment or agency head shall notify the Director as soon as is practicable. The Director shall review such change and certify to the department or agency head in writing whether such change is consistent with the National Drug Control Program.

(d) General Services Administration.—The Administrator of General Services shall provide to the Director on a reimbursable basis such administrative support services as the Director may request.

SEC. 12008. DEVELOPMENT AND SUBMISSION OF NATIONAL DRUG CONTROL STRATEGY.

(a) Development and Submission of the National Drug Control Strategy.—(1) No later than 180 days after the first Director is confirmed by the Senate, and in each fiscal year thereafter, the President shall submit to the Congress a National Drug Control Program budget and a complete national drug control strategy. Any part of such strategy that involves classified information may be presented to the Congress in closed proceedings.

(2) The national drug control strategy shall—

(A) be a comprehensive, research based, long-range plan for the Nation to follow in reducing drug abuse in the United States;

(B) indicate the balance between resources devoted to supply and demand reduction; and

(C) include a component on State and local drug control to ensure that the United States pursues a well-coordinated and effective drug control program at all levels of government.

(3)(A) In developing the national drug control strategy, the Director shall consult with—

(i) the National Drug Control Program agencies;

(ii) State and local officials;

(iii) private citizens with demonstrated experience and expertise in drug demand reduction; and

(iv) private citizens with experience and expertise in drug supply reduction.

(B) An initial draft of such strategy shall be circulated by the Director for a period of 30 days, during the 180-day period described under paragraph (1), for the purpose of obtaining comments from the National Drug Control program agencies.

(C) After reviewing the comments obtained under subparagraph (B), the Director shall—

(i) compose a final draft strategy;

(ii) circulate such final draft strategy to National Drug Control Program agencies for a period of 30 days; and

(iii) transmit such final draft strategy and all agency comments to the President.

(D) At the time the President submits the national drug control strategy the Director shall transmit a report to the Congress indicating the persons consulted under this paragraph.

(4) Beginning with the second submission of a budget and strategy described under paragraph (1), the Director shall include a complete evaluation of the effectiveness of United States drug control policy during the preceding year.

(b) Goals and Priorities.—The strategy developed pursuant to subsection (a) shall include—

(1) a complete list of goals and priorities in—

(A) international narcotics control;

(B) intelligence efforts relating to drug supply reduction efforts;

(C) interdiction;

(D) domestic drug law enforcement;

(E) drug demand reduction efforts, including education, prevention, treatment, research, and private sector initiatives; and

(F) cooperative efforts between the Federal, State, and local governments in the area of drug control;

(2) 5 year projections for program and budget priorities and achievable projections for reductions of drug availability, purity, and usage;

(3) a complete assessment of the way the program and budget priorities developed under subsection (a) are intended to implement the strategy and whether such resource levels are sufficient to implement the strategy;

(4) a mechanism of independent, outside, annual assessment of the effectiveness of the national drug control strategy and all programs administered thereto;

(5) the designation of the division of authority in each of the major areas of the National Drug Control Program and a mechanism to ensure maximum coordination and cooperation among all involved agencies; and

(6) the designation of lead agencies with areas of principal responsibility for carrying out the strategy.

(c) Areas of Principal Responsibilities of Strategy.—(1) The Director shall require that any National Drug Control Program agency that conducts an activity which is in the area of principal responsibility of a lead agency as designated under subsection (b)(6) shall—

(A) notify such lead agency in writing of the activity; and

(B) provide such notification prior to conducting such activity, unless exigent circumstances require otherwise.

(2) If a lead agency objects to the conduct of an activity described under paragraph (1), the lead agency and the agency planning to conduct such activity shall refer the matter to the Director for resolution.

(3) Nothing in this subsection may be construed to limit the authority of the Director to establish policies relating to the responsibilities of any National Drug Control Program agency under the national drug control strategy.

SEC. 12009. SUBMISSION OF NATIONAL DRUG CONTROL PROGRAM BUDGET WITH THE ANNUAL BUDGET REQUEST OF THE PRESIDENT.

Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof the following:

"(26) a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.".

SEC. 12010. HIGH-INTENSITY DRUG AREAS.

(a) Designation and Assistance.—The Director, upon consultation with the Attorney General, National Drug Control Program agencies, and the several Governors, is authorized to designate certain areas of the country as high intensity drug areas. Upon making such a designation and in order to provide Federal assistance to such area, the Director may—

(1) direct, with the concurrence of the Secretary of a department or head of an agency employing such personnel, the temporary reassignment of Federal personnel to such areas;

(2) transfer, after providing notification to the Committees on Appropriations of the Senate and the House of Representatives, an amount not to exceed 5 per centum of the funds appropriated for one such program to another such program; and

(3) take any other action authorized under section 12006 of this subtitle to provide increased Federal assistance to such areas.

(b) Coordination.—The Director shall coordinate any action taken under subsection (a) of this section with State and local officials.

SEC. 12011. TERMINATION OF THE NATIONAL DRUG ENFORCEMENT POLICY BOARD, THE NATIONAL NARCOTICS BORDER INTERDICTION SYSTEM, AND THE WHITE HOUSE DRUG ABUSE POLICY OFFICE.

(a) National Drug Enforcement Policy Board.—(1) The National Drug Enforcement Policy Board is terminated effective on March 1, 1989. Upon such termination, all records and property of the National Drug Enforcement Policy Board shall be transferred to the Director. The Director of the Office of Management and Budget shall take such actions as are necessary to facilitate such transfer.

(2) All strategies, implementation plans, memoranda of understanding and directives that have been issued or made by the National Drug Policy Board before the date of the enactment of this subtitle shall continue in effect until modified, terminated, superseded, set aside, or revoked by the President or the Director.

(3) The National Narcotics Act of 1984 (21 U.S.C. 1201 et seq.) is repealed effective on March 1, 1989.

(b) National Narcotics Border Interdiction System.—Notwithstanding any other provision of law, no funds may be expended for any activities or operations of the national narcotics border interdiction system after 180 days after the date on which the first Director appointed under this title is confirmed by the Senate. The Director shall provide that the functions of the national narcotics border interdiction system are transferred to other agencies to the extent such activities continue after the date of the enactment of this title. The Director of the Office of Management and Budget shall take such action as is necessary to facilitate such transfer.

(c) White House Office of Drug Abuse Policy.—(1) No later than 90 days after the date of enactment of this title, the White House Drug Abuse Policy Office established under Executive Order No. 12368 shall terminate.

(2) Sections 103, 201, 202, 203, 204, and 206 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1103, 1111, 1112, 1113, 1114, and 1116) are repealed. Section 205 of such Act is redesignated as section 201.

SEC. 12012. EXECUTIVE REORGANIZATION AUTHORITY.

(a) Report to the Congress and the President.—No later than 1 year after the date of enactment of this title the Director shall submit a report to the President and the Congress on the necessity to group, coordinate, and consolidate agencies and functions of the Government involved in drug supply reduction and drug demand reduction in order to—

(1) promote better execution of the laws;

(2) provide more effective management of the executive branch;

(3) reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the executive branch; and

(4) reduce the number of agencies by consolidating agencies having similar functions

under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the executive branch.

(b) LEGISLATIVE RECOMMENDATIONS.—The report submitted under subsection (a) shall include any appropriate legislative recommendations for the Congress.

(c) UNITED STATES COAST GUARD STUDY.—In addition, the report submitted under subsection (a) shall include a comprehensive review of all options for United States Coast Guard reorganization including the creation of a separate department for the purpose of enhancing the capabilities, manpower and equipment of the United States Coast Guard in order to substantially increase the long-term role of the Coast Guard in drug interdiction and enforcement efforts and to ensure a steady and assured source of funding for this important mission.

SEC. 12013. TERMINATION OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY.

This subtitle and the amendments made by this subtitle are repealed effective on the date occurring 5 years after the date of the enactment of this subtitle.

SEC. 12014. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of carrying out this subtitle, there are authorized to be appropriated $7,500,000 for fiscal year 1989 and such sums as may be necessary for each of the 4 succeeding fiscal years, to remain available until expended.

SEC. 12015. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall be effective on January 21, 1989.

Subtitle B—Department of Justice Civil Enforcement Enhancement

SEC. 12051. SHORT TITLE.

This subtitle may be cited as the "Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1988".

SEC. 12052. FINDINGS.

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives appropriate weight to—

(A) the prosecution of drug-related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and organized crime groups;

(3) law enforcement components of the Department of Justice should give high priority to the enforcement of civil sanctions against drug networks and organized crime groups; and

(4) the structure of the Department of Justice Criminal Division needs to be reviewed in order to determine the most effective structure to address such drug-related problems.

SEC. 12053. CIVIL ENFORCEMENT REPORT.

(a) REPORT.—Not later than 1 year after the date of the enactment of this title, the Director of National Drug Control Policy (the Director) in consultation with the Attorney General, shall report to the Congress on the necessity to establish a new division or make other organizational changes within the Department of Justice in order to promote better civil and criminal law enforcement. In preparing such report, the Director shall consider restructuring and consolidating one or more of the following divisions and programs—

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program;

(b) LEGISLATIVE RECOMMENDATIONS.—The report submitted under subsection (a) shall include appropriate legislative recommendations for the Congress.

SEC. 12054. CIVIL ENFORCEMENT ENHANCEMENT.

(a) DUTY OF ATTORNEY GENERAL.—The Attorney General shall insure that each component of the Department of Justice having criminal law enforcement responsibilities with respect to the prosecution of organized crime and controlled substances violations, including each United States Attorney's Office, attaches a high priority to the enforcement of civil statutes creating ancillary sanctions and remedies for such violations, such as civil penalties and actions, forfeitures, injunctions and restraining orders, and collection of fines.

(b) DUTY OF ASSOCIATE ATTORNEY GENERAL.—The Associate Attorney General shall be responsible for implementing the policy set forth in this subsection.

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $2,175,000 for salaries and expenses to the Department of Justice General Legal Activities Account and $2,175,000 for salaries and expenses for United States Attorneys for fiscal year 1989.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1989 fiscal year budget submitted by the President to the Congress on February 18, 1988, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989; and

(B) used to increase the number of field attorneys and related support staff over such personnel levels employed at the Department of Justice on September 30, 1988.

(3) Any increase in full-time equivalent positions described under paragraph (2)(B) shall be exclusively used for asset forfeiture and civil enforcement and be assigned to appropriate field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces.

(d) REPORTING REQUIREMENT.—The Attorney General, at the end of each such fiscal year, shall file a report with the Congress setting forth the extent of such enforcement efforts, as well as the need for any enhancements in resources necessary to carry out this policy.

SEC. 12055. COORDINATION AND ENHANCEMENT OF FIELD ACTIVITIES.

(a) FIELD OFFICES.—To the greatest extent feasible, field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces should be colocated with offices of the appropriate United States Attorney in order to enhance and coordinate their respective activities.

(b) TASK FORCE AGENTS.—To the greatest extent feasible, those agents assigned to the Organized Crime Drug Enforcement Task Force program shall be dedicated exclusively to and located with the Task Forces so that the Task Force personnel may develop increased expertise and function as a working unit. Those agents assigned to the Task Forces from the various participating agencies shall be given credit for the work of the Task Force, regardless of the statutory authority used to prosecute Task Force cases or the criminal or civil nature of the investigation.

(c) EXPENSES OF TASK FORCES.—(1) Beginning in fiscal year 1990, the Attorney General in his budget shall submit a separate appropriations request for expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. Such appropriations shall be made to the Department of Justice's Interagency Law Enforcement Appropriation Account for the Attorney General to make reimbursements to the involved agencies as necessary.

(2) The appropriations and reimbursements procedure described under paragraph (1) shall—

(A) provide for the flexibility of the Task Forces which is vital to success;

(B) permit Federal law enforcement resources to be shifted in response to changing patterns of organized criminal drug activities;

(C) permit the Attorney General to reallocate resources among the organizational components of the Task Forces and between regions without undue delay; and

(D) ensure that the Task Forces function as a unit, without the competition for resources among the participating agencies that would undermine the overall effort.

AMENDMENT No. 3428

At the appropriate place add the following:

None of the provisions of this Act shall become effective until the following is enacted:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.60 an hour during the year beginning January 1, 1989, not less than $3.85 an hour during the year beginning January 1, 1990, and not less than $4.10 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) Special Industry Committees.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) Minimum Wage.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(b) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) Wage Orders.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) Employment Under Special Certificates.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate, except that" and inserting in lieu thereof the following: "in excess of—

"(1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1988, or

"(2) 50 percent of the applicable minimum wage rate after December 31, 1988, except that".

SEC. 6. NEW HIRE WAGE.

(a) Amendment.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

"(e)(1)(A) Any employer may, in lieu of the minimum wage prescribed by section 6, pay any employee the wage prescribed by subparagraph (B) if such employee has not been previously employed by such employer.

"(B) The wage referred to in subparagraph (A) shall be at least a wage equal to 80 percent of the wage prescribed by section 6, but at least $3.35 per hour.

"(2) An employer may pay an employee the minimum wage authorized by paragraph (1) for a period not to exceed 90 days beginning with the day the employee began employment with the employer.

"(3) No employee may be displaced by any employer (including partial displacement such as reduction in hours, wages, or employment benefits) as a result of an employer paying the rate described in this subsection.".

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to employees first employed by an employer on or after January 1, 1989.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

KERRY AMENDMENT NO. 3429

(Ordered to lie on the table.)

Mr. KERRY submitted an amendment to the bill, S. 2852, supra; as follows:

Strike section 2355(e) and at the appropriate place in the bill, insert the following:

SEC. . RESTRICTIONS ON LAUNDERING OF UNITED STATES CURRENCY.

(a) Purposes.—The purposes of this section are—

(1) to control United States currency laundering by imposing recordkeeping requirements on banks that handle large amounts of United States currency wherever those banks operate, and

(2) to provide for international negotiations to achieve compliance with such requirement.

(b) Negotiations.—(1) The Secretary of the Treasury (hereinafter referred to as the "Secretary") shall enter into negotiations with the appropriate financial supervisory agencies and other officials of all foreign countries the banks and other financial institutions of which do business in United States currency.

(2) The purposes of negotiations under this subsection are—

(A) to reach one or more international agreements to ensure that foreign banks and other financial institutions maintain adequate records of large United States currency transactions, and

(B) to establish a mechanism whereby such records may be made available to United States law enforcement officials.

In carrying out such negotiations, the Secretary should seek to enter into and further cooperative efforts, voluntary information exchanges, the use of letter rogatory, and mutual legal assistance treaties.

(c) Failure to Reach Agreement.—The provisions of subsection (d) of this section shall take effect and apply to the banks and other financial institutions located in a foreign country—

(1) upon the expiration of 2 years after the date of enactment of this Act; or

(2) upon the expiration of such longer period as the Secretary determines to be appropriate if the Secretary certifies that negotiations with a country under subsection (b) are proceeding in good faith.

unless the Secretary certifies that a satisfactory agreement with such country has been reached.

(d) Recordkeeping Requirements.—

(1) Applicability.—The provisions of this subsection apply to—

(A) any bank, financial institution, or other entity that is subject to the provisions of chapter 53 of title 31, United States Code;

(B) any foreign branch or subsidiary of a bank, institution, or entity referred to in subparagraph (A);

(C) any insured or uninsured branch or agency or other office of an institution referred to in subparagraph (A);

(D) any bank or institution participating in any United States dollar wire transfer or clearing system; and

(E) any bank or institution located in a foreign country which maintains an account at any bank or other financial institution chartered under the laws of the United States or any State.

(2) Records to be maintained.—An organization described in paragraph (1) shall—

(A) maintain records, in accordance with such regulations as the Secretary may prescribe, of all transactions (including interbank transactions) in United States currency in amounts in excess of $10,000;

(B) obtain from any person initiating a transaction subject to subparagraph (A) a waiver of any contractural secrecy or privacy right with respect to such records if such records are required in connection with a narcotics-related investigation; and

(C) require any person initiating a transaction subject to subparagraph (A) to document in writing the source of the currency being deposited or transferred.

(e) Sanctions.—If the Secretary determines that any person has violated any regulation in effect under subsection (d), the Secretary shall issue an order—

(1) prohibiting such person's participation in any United States dollar clearing or wire transfer system; and

(2) prohibiting such person from maintaining an account with any bank or other financial institution chartered under the laws of the United States or any State.

(f) Regulations.—Not later than January 1, 1991, the Secretary shall publish regulations specifying—

(1) the applicability of subsection (d);

(2) the form and content of the record required to be kept under subsection (d)(2)(A);

(3) the form and content of the waiver required by subsection (d)(2)(B); and

(4) the procedures for imposing the sanctions described in subsection (e) and any other penalties for violation of any requirement under this section.

● Mr. KERRY. Mr. President, I am introducing an amendment today that attacks the achilles heel of the illegal narcotics industry. International money laundering is a vital component of the narcotics business, but it is totally unaddressed by current law and by the drug bill that was introduced on Monday. In my view the reason for this is that money laundering is complex and not well understood.

As chairman of the Subcommittee on Narcotics and Terrorism I have heard testimony in numerous hearings on the scope, practice, and methods of worldwide money laundering operations. Witness after witness before our committee told us that the only effective way of slowing the drug trade is through the restriction of dealers' use of U.S. dollars.

What our amendment proposed to do is to protect U.S. currency from use by the international drug traffickers. Bank's branches in the United States already have to comply with money laundering control laws. In fact, a provision in the drug bill requires that threshold recording requirements in this country be lowered to $3,000 for certain transactions. This new requirement seems unnecessary, in light of the fact the banks must report all suspicious transactions to Treasury under current law. And in light of the continued existence of a huge loophole for laundering cash overseas, it seems shortsighted to impose such a burdensome regulatory requirement on domestic banks which already carry a large share of the costs of compliance with money laundering controls. I therefore plan to offer my amendment as a substitute to the $3,000 recordkeeping requirement.

The Kerry-McConnell proposal will place recordkeeping requirements on offshore banks with ties to the United States. All we are asking is that offshore banks keep records of anyone who seeks to deposit more than $10,000 in U.S. currency—no more than is required in this country and unlike the requirements for U.S. banking our amendment doesn't require that offshore banks report the information to tax or other government agencies. The information simply has to be available to law enforcement officials working on a narcotics-related criminal investigation. With the enactment of this amendment, international drug dealers will have to find a black market dry cleaner for the U.S. dollars because all legitimate laundermats will be closed to them.

Let me just say right off the bat that some have criticized this proposal as being anticompetitive and extraterritorial. I don't think either criticism is valid.

As I mentioned before, banks in this country not only have to record currency deposits, they have to report them. And they are doing so to an extraordinary degree. More than 14,000 financial institutions in this country file a total of 600,000 currency transaction forms a month. But the bill says nothing about foreign banks and that's where the problem lies. This amendment is procompetitive because it levels the playing field by saying unequivocally that we are not going to allow foreign banks to reap profits from our currency while our banks are cooperating with law enforcement officials despite the additional costs and administrative burden. The only disadvantage banks will encounter will be when it comes to competing for drug profits.

I also don't believe that this proposal is extraterritorial. The amendment would simply say that those banks that fail to keep records would not have access to either our Nation's private or government dollar clearing systems. You have to realize that for any interbank transfer of U.S. dollars, the actual accounting occurs in New York and is performed either by the chips service or the fedwire; so the nexus is there. It's not extraterritorial because the transfer of our currency—not francs or yen or sterling—the transfer of our currency takes place in this country—not in France, or in Japan, or in England—and it's our taxpayer dollars that support the transfer.

I am a cosponsor of the drug bill and was one of the original Members of the substance abuse working group. I think that it's a good bill that attacks the drug problem on all fronts—interdiction, enforcement, treatment, and education. I think the amendment I'm offering today strengthens the bill because for the first time we can really address the international dimensions of the problem.

I'm proud to have join me as cosponsors of this amendment Senators McCONNELL, BINGAMAN, MITCHELL, and KENNEDY. I am also extremely pleased that the National Council of Savings Institutions and the U.S. League of Savings Institutions, which together represent some 3,700 banks throughout the United States, have endorsed this amendment. I ask unanimous support that copies of letters I have received from these organizations be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL COUNCIL OF
SAVINGS INSTITUTIONS,
October 5, 1988.
Hon. JOHN KERRY,
U.S. Senate, Washington, DC.

DEAR SENATOR KERRY: This letter is in support of the Kerry-McConnell amendment (Omnibus Drug Initiative Act) that would restrict the international money laundering of United States currency. The National Council of Savings Institutions certainly recognizes the plague that illegal drugs represent in our society. We firmly support all federal and private programs that are designed to combat this destructive force. The answer does not lie in lowering the dollar amount of cash transactions that must be reported to the United States Treasury from $10,000 to $3,000.

Most financial institutions already report suspicious transactions to the Treasury regardless of the dollar amount. A blanket requirement on all transactions of $3,000 or more will create a tremendous amount of tedious paper work for both the reporting institution and the Treasury. In all likelihood, there will be no tangible increase in stopping the illegal drug dealer from laundering his United States funds.

While we understand that the Congress is under tremendous pressure to act regarding the drug crisis, the measure, as it now stands, can be improved substantially from an administrative standpoint. The approach tnat you and Senator McConnell have proposed will be much more effective for the financial institutions and the Treasury's efforts to halt money laundering by drug dealers.

The National Council of Savings Institutions is a trade association of over 500 savings banks and savings and loan associations with assets of $500 billion.

Sincerely,

MARK J. RIEDY.
President and Chief Executive Officer.

U.S. LEAGUE
OF SAVINGS INSTITUTIONS,
Washington, DC, October 5, 1988.
Hon. JOHN F. KERRY,
Senate Russell Building, House of Representatives, Washington, DC.

DEAR SENATOR KERRY: The U.S. League of Savings Institutions firmly supports the Kerry proposal designed to restrict the international laundering of United States currency. We believe that the proposal is appropriately targeted ot offshore money laundering activities conducted in concert with illegal drug trafficking activities.

In an attempt to curtail drug trafficking activities, Congress previously enacted a $10,000 currency reporting requirement for domestic United States depository institutions. The currency reporting requirement provisions, however, were inapplicable to cash deposited in financial institutions outside the United States. U.S. currency could, therefore, be easily smuggled out of the United States and anonymously deposited in offshore banks with U.S. branches or affiliates and subsequently credited by wire transfer to domestic banks.

Your proposed amendment would attack this problem directly by making it impossible for any bank with ties to the U.S. payment system to execute anonymous transactions in excess of $10,000 in U.S. currency. We believe that this is a reasonable and rational approach in attempting to solve this international drug trafficking problem. We applaud your efforts in this area.

Sincerely,

PHILIP GASTEYER,
Executive Vice President.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 5, 1988, for the purpose of holding a subcommittee hearing on the narcotics investigation.

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, October 5, on the subject of S. 2721, Federal Advisory Committee Act of 1988.

The PRESIDING OFFICER. Without objection, it is ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Government Affairs be authorized to meet on Wednesday, October 5, for a markup meeting on pending nominations in the committee as follows: James H. Atkins, Stephen E. Bell, John David Davenport, nominees for Federal Retirement Thrift Investment Board; and Bert H. Mackie, nominee for Governor of the U.S. Postal Service; and Eric Himpton Holder, Jr., and Mildred M. Edwards, nominees to be associate judge, Superior Court of the District of Columbia.

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, October 5, 1988, to consider testimony on current food prices.

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on October 5, 1988, to hold a hearing on H.R. 3763, Foreign Sovereign Immunities Act amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on October 5, 1988, to hold a business meeting.

The PRESIDING OFFICER. Without objection, it is ordered.

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet on Wednesday, October 5, 1988, in open session to review the new production reactor acquisition strategy.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. BYRD. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Wednesday, October 5, 1988, to hold a hearing on cost-of-living adjustments and the CPI: A question of fairness.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

INCREASING CANCER AWARENESS

● Mr. LEVIN. Mr. President, I rise today to bring to the attention of my colleagues and to applaud recent efforts by Kellogg Co. of Battle Creek, MI, to increase public awareness of the importance of diet to health.

Cancer is the second leading cause of death in the United States, striking 1 out of very 4 Americans. Last year, alone, over 475,000 people died from this devastating disease. It is not selective—there are few who have been spared personal experience with this illness. The sobering statistics are just that: statistics. They can not begin to represent the dashed hopes and shattered lives of cancer patients and those who love them. The emotional and financial toll resulting from this illness is overwhelming.

This grim picture is unacceptable. Effective treatment and ultimately, a cure is what we need. The possibility of such treatment and a cure instills hope in those affected by cancer. And, there is reason for hope.

We have come a long way in understanding the nature of this disease and in developing the most effective ways to treat patients. The National Cancer Institute [NCI] and many private health institutions have devoted thousands of research hours to finding new treatments and improving established methods. The American Cancer Society and other nonprofit groups have done invaluable work in providing support for cancer patients and their families and in communicating the importance of early detection and treatment. Progress in this area has led to as much as a 70-percent drop in death rates for some kinds of cancer.

Our ultimate goal is effective treatment and a cure for cancer. We are moving closer to that day, but there are choices we can make in our day-to-day lives which may reduce the risk of ever getting this disease in the first place. Many realize that smoking, excessive drinking, and overexposure to the Sun may increase the risk of cancer. In recent years, more and more attention has been paid to the role of dietary habits in reducing the risk of cancer. The types of foods we choose to eat may have a significant influence on the incidence of cancer. The National Cancer Institute has estimated that between 30 and 70 percent of all cancers could be prevented through changes in dietary habits.

All of these findings are useless unless the public knows about them. To get the word out, Secretary of Health and Human Services, Margaret Heckler launched the Cancer Prevention Awareness Program in 1984. The program asked private organizations, local groups, industry, and just about anybody else who was willing, to spread the word about cancer prevention. The goal was to get people thinking about cancer in a new way—to focus on what they can do now, before the fact, to fight cancer.

A company from my State, Kellogg Co., became involved in this effort after the National Cancer Institute issued a statement that a high-fiber, low-fat diet may reduce the risk of some kinds of cancer. Kellogg manufactures various bran cereals. One of their cereals they advertise contains more bran ounce-for-ounce than any other product on the market. Kellogg went to the NCI to develop an advertising campaign for their bran cereals which would publicize the Institute's findings and offer a way for individuals to get further information on cancer. Kellogg worked closely with NCI to develop accurate health messages and has continued its working relationship with NCI since 1984.

Officials at NCI estimate that the information supplied in the Kellogg ads has led to more than 70,000 calls to their toll-free cancer information number. And, as a result of its efforts in this area, Kellogg was the 1988 recipient of the Susan G. Komen Foundation's Corporate Award for Excellence. This is a foundation for the advancement of research into breast cancer and cancer awareness.

The Food and Drug Administration is now in the process of developing guidelines for the use of health messages on food products. Kellogg has led the way in this effort, and as the Senator from Michigan, I applaud their work in this field.●

IN RECOGNITION OF UNIVERSITY OF LOUISVILLE'S COMMONWEALTH CENTER OF EXCELLENCE IN APPLIED MICROCIRCULATORY RESEARCH

● Mr. McCONNELL. Mr. President, I rise today to recognize the contributions of a unique center of academic excellence. In recent years, the city of Louisville has emerged as one of the leading health care centers in the Nation, a center of advanced, high-technology services second to none. I am proud to note that not only is this institution on the leading edge of medical research, but it is also a leader in transferring innovative technology from the laboratory into practical diagnostic and therapeutic disciplines. Mr. President, I rise in praise of the Commonwealth Center of Excellence in Applied Microcirculatory Research.

It is not without a little pride that I note that the Commonwealth Center of Excellence in Applied Microcirculatory Research [Center] was established by the University of Louisville with the support of the Kentucky State and Federal Governments, and industry. I am proud to be an alumnus of the University of Louisville, and commend my school for contributing to its urban mission in this unique and innovative manner.

Through the center, the University of Louisville has sought to combine its varied expertise in the clinical medicine, psychological, and engineering disciplines into a research program which will develop microcirculatory science as a new health care tool. Mr. President, the potential for improving health care through these techniques are simply astounding.

The center's research is at the crest of a tremendous increase in knowledge and understanding for microcirculatory technique that has occurred over the past 15 years. Despite the growth in understanding of microcirculatory technique, there has been little transfer of this knowledge to the clinical sciences. The University of Louisville is uniquely prepared to pursue research and practical applications of microcirculatory technique through the strength of its outstanding faculty, 11 of which currently are productive in basic microcirculatory research.

At this time, I would like to recognize the University of Louisville faculty participating in this important project:

The list of faculty follows:

CENTER OF EXCELLENCE IN APPLIED MICROCIRCULATORY RESEARCH—UNIVERSITY OF LOUISVILLE

CENTER DIRECTOR

Patrick D. Harris, Ph.D., Professor/Chairman, Physiology/Biophysics.

CENTER ASSOCIATE DIRECTOR FOR CLINICAL AFFAIRS

Richard N. Garrison, M.D., Associate Professor, Surgery.

SCIENTISTS/ENGINEERS

Gary L. Anderson, Ph.D., Assistant Professor, Physiology/Biophysics.

Kiron C. Bordoloi, Ph.D., Professor, Electrical Engineering.

Dar-Jen Chang, Ph.D., Assistant Professor, Engineering Math/Computer Science.

Carol A. O'Connor, Ph.D., Associate Professor, Engineering Math/Computer Science.

Hollace L. Cox, Ph.D., Assistant Professor, Electrical Engineering.

Henry M. Cryer, M.D., Instructor, Surgery.

Ahmed H. Desoky, Ph.D., Assistant Professor, Engineering Math/Computer Science.

John T. Fleming, Assistant Professor, Physiology/Biophysics.

Mark A. Malangoni, M.D., Associate Professor, Surgery.

Constantine Mavroudis, M.D., Associate Professor, Surgery.

Frederick N. Miller, Ph.D., Associate Professor, Physiology/Biophysics.

James P. Porter, Ph.D., Assistant Professor, Physiology/Biophysics.

Andrew M. Roberts, Ph.D., Assistant Professor, Physiology/Biophysics.

Gurdarshan S. Thind, M.D., M.S., Professor, Medicine (Cardiology).

William B. Wead, Ph.D., Associate Professor, Physiology/Biophysics.

Thomas J. Wieman, M.D., Assistant Professor, Surgery.

The strength of the center, Mr. President, lies in the outstanding quality of the faculty participating. In addition, the center benefits from highly interactive research in the surrounding university community. Collaboration in microcirculatory research exists between faculty groups in the school of medicine, the department of physiology, and two engineering departments in the University of Louisville Speed Scientific School. The University of Louisville is a fertile medium for the center to grow and flourish.

Although the scope of the center's research defies any simple description, I would be remiss, Mr. President, if I failed to share at least a few examples with my colleagues. I am sure my colleagues will agree that the scope and breadth of the center's work is truly astounding.

For example, the most common cause of death to hospitalized trauma patients is the failure of other organs not injured in the initial trauma. Exploring a current hypothesis, the center is developing a method of studying the level of blood flow in vital organs of trauma victims. This research may lead to therapies which potentially could reduce the number of deaths from trauma-related injuries, the leading cause of death for people up to age 44.

Microcirculatory research may also lead to an early warning system for systemic vascular diseases such as diabetes mellitus and hypertension. Perhaps in time, we may even be able to reverse some of the effects of these terrible diseases.

Microcirculatory research may also lead to a potent tool to combat cancer. Past research has shown that certain compounds can target tumors with little or no accumulation in normal tissue. These compounds react with light, destroying the tumor. However, the center's research may reveal the mechanism by which this occurs. Further research is also required to find the means to govern the rate of the photochemical reaction and gauge the effectiveness of photodynamic therapy.

Other areas in which the center's research is progressing include intravenous techniques for assessment of heart function, study of the behavior of white blood cells in the blood stream, and development of methods to monitor the physiological effect of drugs to more precisely identify chemical structures with the highest efficacy but the fewest side effects.

Mr. President, I hope my colleagues will join me in recognizing the potential inherent in the University of Louisville's Commonwealth Center of Excellence in Applied Microcirculatory Research to advance knowledge and understanding of some of the most intricate processes of the human system. I am proud of both the University of Louisville and the center. I trust my colleagues will agree with me as well, that we all benefit from dynamic research like that at the Center of Excellence in Applied Microcirculatory Research. Mr. President, we owe it to ourselves, and to mankind in general to continue to support efforts to explore scientific frontiers. This program is certainly an encouraging start.●

DECLINE IN ECONOMIC FORTUNES IN RURAL AMERICA

● Mr. FOWLER. Mr. President, one of the most perplexing problems facing our Nation today is the continued decline in the economic fortunes of rural America.

In my own State of Georgia, as in other States, we are seeing the fruits of this decline in loss of jobs and lack of economic opportunity in far too many small towns and rural counties—the source of much of the traditional strength of America.

Since coming to the Senate in 1987, one of my legislative priorities has been to seek ways to reverse this decline and to revitalize the economies of rural communities. I am convinced that the Federal Government should be playing a more positive role in rural development, and I would like to cite an example from my own State of Georgia where Federal involvement helped to produce remarkable results.

More than two decades ago, the Economic Development Administration of the U.S. Department of Commerce joined with the private sector in helping to finance, through an industrial development loan, the establishment of a new paper mill on the Georgia coast. The new mill, owned and operated by Interstate Paper Corp., a privately owned company, was built on a long abandoned rice plantation, near the tiny town of Riceboro, in Liberty County.

This area of the Georgia coast is rich in history but, in the 1960's was extremely poor economically. Liberty and surrounding counties were then areas of high unemployment and had high minority populations, as they still do. Jobs were few and far between and economic opportunities for blacks were especially limited.

On October 15, Interstate Paper Corp. will celebrate the 20th anniversary of its operation on the Georgia coast—20 years of proving that properly structured rural economic development assistance can work.

The EDA loan has long since been paid off, and for 20 years Interstate has provided stable, well-paying jobs for some 300 persons spread over a 12-county area. The annual payroll is currently some $12 million, more than double the amount of the EDA loan. For 20 years Interstate has been the largest manufacturing facility on the Georgia coast between the cities of Savannah and Brunswick.

Interstate's work force—it's more of a family than a force—is unusual in many respects. Ninety current employees—almost a third—have been with the company since production began in 1966, and employee turnover is among the lowest in the pulp and paper industry. Twenty-nine employees are "second-generation" members of the Interstate family, meaning their father or mother worked for the company. Minorities and women are well represented throughout the operation, accounting for more than a third of total employment. Interstate was among the first to bring blacks into the pulp and paper crafts, and many of the original first employees have risen to supervisory and top operator positions. The mill is unionized, but there has been only one strike, which occurred during the first contract negotiations in 1966.

Interstate employees are notable for their service and dedication to the communities in which they reside. Many are active in community and civic affairs and an unusually large number serve in local and county government capacities. Their ranks include mayors, county commissioners, city councilmen, and other elective and appointive government officials.

Mr. President, the 20th anniversary of Interstate Paper will indeed be a significant event. I am honored to be invited to participate and hope the business of the Senate will permit me to do so. But I want to take this opportunity to commend and congratulate the entire Interstate family on achieving this milestone.

I also want to share with my colleagues of the Senate the role model that Interstate Paper provides in effective rural economic development. I hope in the next session of Congress we will enact meaningful legislation that will lead to similar success stories elsewhere in the Nation.●

ALABAMIANS REPRESENT UNITED STATES IN SEOUL

● Mr. SHELBY. Mr. President, I rise today to pay tribute to the 622 outstanding men and women who with agility, strength, speed, and grace represented the United States at the games of the XXIV Olympiad in Seoul.

I am proud to report that two members of the 1988 American team were Alabamians: Lillie Leatherwood from my hometown of Tuscaloosa, AL, who competed in the 400 meter track event and Jeff Branson of Millry, AL, who brought home gold from Seoul as a member of the U.S. baseball team.

These two athletes are a source of great pride for their State and I wish to extend to them heartfelt congratulations on being a part of what will undoubtedly go down as one of the strongest and most competitive U.S. Olympic teams in history.

I have enjoyed watching the coverage of the Seoul games. Sometimes though, it seems that we, as a Nation, become too engrossed in what is referred to as the "Medal Count." More important than the number of medals garnered in the name of the United States in Seoul, were the athletes who for 17 days drew our Nation into their world of sport and into their lives. They awed us with their technical skill, artistic grace and tenacity. They allowed us to celebrate with them in victory and share also in the poignancy of defeat. Years of training and sacrifice on the part of the athlete, family, and coach came down to just a few minutes or seconds of pure competition. They represent all that is held in high regard in this country: determination, strength, and success.

But mostly, Mr. President, they were sportsmen in the highly charged venue of international competition. There was a lot more than medal competition going on half a world away in Seoul. As observers of the games, we were given that very rare opportunity to witness the relaxing of world tension as East German swam against West German, as Turk competed against Greek, and as American raced against Soviet. The delicate balance of power that characterizes our world was broken down as philosophical and physical boundaries dissolved. What remained was absolute competition—talent, technique, and substance over politics, protocol, and diplomacy.

There is an old saying that goes "It's not whether you win or lose—it's how you play the game." Hats off to Jeff Branson, Lillie Leatherwood and the entire 1988 U.S. Summer Olympic team. Thank you for enriching our lives by allowing us to share in your success.●

TRIBUTE TO ALABAMA'S FALLEN FIREFIGHTERS

● Mr. SHELBY. Mr. President, I rise today to pay tribute to two Alabama firefighters who made the ultimate sacrifice while performing a unique service for their respective communities. Last year, Virginia Faye Bolton of the Gap-of-the-Mountain Volunteer Fire Department and David A. Damron of the Woodville Fire Department lost their lives while on active duty with their respective departments. These courageous Alabamians will be honored on Sunday, October 16, 1988 at the annual National Fallen Firefighters' Memorial in Emmitsburg, MD. At this time, I would like to take this opportunity to acknowledge these two special Alabamians and to extend to each of their families my deepest sympathy.

Both David and Virginia willingly placed themselves in a dangerous career knowing that they might be required to forgo their own safety for the sake of another human being. This selfless action needs to be recognized and commended. Every day, firefighters across the country perform heroic acts and place their own lives on the line in order to protect our national parks, our forests, our cities and our towns from fire.

Having individuals who protect this country's public lands from fire is something that I believe many of us take for granted. We must not forget these brave men and women, but recognize them for their commitment and valor. I am saddened to say that in protecting us many firefighters do lose their lives. In fact, in 1987, 127 firefighters were killed in the line of duty and over 50,000 are injured each year. Although these statistics are not alarming considering the vast number of career and volunteer firefighters working in this country, the loss and injury of loved ones is an extremely painful experience for the families involved.

This year, more attention has been focused on the unique job that firefighters perform. In August, many of us watched with a great deal of apprehension as firefighters struggled night and day to save Yellowstone National Park from being consumed by fire. The firefighters who dedicated themselves to saving Yellowstone National Park—one of this country's greatest natural treasures—performed a tremendous and perhaps truly miraculous job.

I am proud of the job these men and women do and appreciate their commitment and valor. It is our duty to recognize and praise America's firefighters. Mr. President, I stand before this prestigious body today to express my profound gratitude for the dedication and selfless service to all firefighters in my State and across the country. We are indebted to the brave men and women who have lost their lives in the line of duty and to the men and women who continue to protect each and every one of from fire.●

CHEMICAL PATENTS IN HUNGARY

● Mr. ROCKEFELLER. Mr. President, I would like to draw the attention of my colleagues in the Senate to an emerging patent protection problem in Hungary. In recent years, there has been significant improvement in the protection foreigners receive in Hungary for their intellectual property, and I am pleased with that development. However, a problem remains in the area of patents on chemical compounds, and I would like to address that issue today.

I understand that a Hungarian company is proposing to produce a chemical compound that was invented by an American company and which has been patented in most countries by that American company. Until now, the American company's product has been afforded limited protection as a composition. The Hungarian company, however, is planning to combine this compound with another compound in a temporary association called a complex. They contend that this complex is a new compound and, because, under Hungarian law, chemical compounds cannot be patented, the complex cannot be patented.

The end use of this complex is the same as for the composition patented by the American company. The result is that, through chemical gimmickry, for example, calling a complex a compound rather than a composition, the Hungarian company seeks to evade the patent protection that is presently provided to the American company. From the U.S. perspective, this would mean piracy of the American company's innovation and infringement of their patent. I believe our trade laws, as amended in 1984 and 1988, make very clear the congressional intent that such infringement should be responded to aggressively.

I sincerely hope that the Hungarian Government will take measures to prevent this. It would be an unfortunate development after we have been so successful in working together to improve the provision of intellectual property protection in Hungary.●

POLISH AMERICAN HERITAGE MONTH PULASKI DAY

● Mr. RIEGLE. Mr. President, I am pleased that the Congress has unanimously adopted legislation, which I joined Senator SIMON in introducing, designating the month of October 1988 "Polish American Heritage Month."

It is appropriate that we designate this month as the time to honor the Polish-American community, for it was in October of 1779 that the great Polish-American Revolutionary War hero, Casimir Pulaski, who is known as the "Father of the American Cavalry," died, at the age of 31.

Before coming to this country to fight for American independence, Pulaski fought for Polish freedom against Czarist Russia. His later encounter later with Benjamin Franklin in Paris paved the way for his journey to the United States.

Although Pulaski had been in America only 2 years at the time of his death, he will forever be remembered as one of this country's greatest heroes. His dedication and love for the cause of freedom were evident when he said:

> I came here to sacrifice everything for the independence of America. I wish to live in a free country, and before I settle down here I wish to fight for that country's freedom.

That dedication to the freedom and liberties we enjoy today is shared by the millions of Americans of Polish descent today. Just as Pulaski's commitment to freedom extended beyond Poland's borders to the United States, so too must we be supportive of freedom struggles going on around the world.

Today, more than two centuries after Pulaski gave his life in the fight for America's independence, the battle for freedom in Poland continues. Just as Pulaski fought for American freedom, we Americans must be part of the fight to achieve freedom for Poland, where developments are rapidly unfolding.

For the first time since 1980, Poles from government and opposition have held face-to-face discussions, and are expected to hold additional negotiations concerning Solidarity's future. Once again, there is an active, aboveground opposition, and the official Polish press mentions the possibility of free parliamentary elections.

All of us are hopeful that these developments represent a genuine interest by the Polish regime in restoring meaningful dialogue with the citizens of Poland on such critical issues of restoring individual freedoms and granting official recognition and legal status to Solidarity as an independent trade union.

The very survival of Solidarity since it was outlawed in 1981 is a tribute to the citizens of Poland, whose efforts, supported by the Catholic Church and the American people, have prevented government attempts to extinguish Solidarity's flame from succeeding. Today, several thousand Poles are actively involved in the opposition movement, which is becoming stronger, increasingly sophisticated and receptive to new initatives and methods. At Lech Walesa's urging, Solidarity has diversified and now extends into every aspect of Polish society.

The example provided by Solidarity has served as a catalyst for similar reform movements which have sprung up in the Baltic Republics and elsewhere in Eastern Europe. As they take advantage of General Secretary Gorbachev's new policies of openness, the people in these captive nations look to Poland for inspiration in their own struggle for freedom.

Continued United States pressure and vigilance in support of the freedom struggle in Poland is crucial. We must now push for the kind of long-lasting reforms which grant the Polish people the broad-based freedoms they seek.

Our ability to support those struggling in Poland requires that we maintain a strong Polish-American community here in this country. Members of the Polish-American community, whose heritage we honor this month, have distinguished themselves through outstanding accomplishments in a variety of areas, and have greatly enriched the lives of their families and their fellow citizens.

Today, Polish Americans comprise one of the largest ethnic groups in the United States, numbering about 8 million throughout the country. In my own State of Michigan, there are over 800,000 citizens of Polish descent. Like the countless other immigrants who came to America, those from Poland made very important contributions to the growth of our country.

Fighting beside Americans for our liberty from the very beginning, Poles like Thaddeus Kosciuszko, who helped to strengthen the fortifications at Saratoga, and Count Casimir Pulaski, link other Poles with Lech Walesa and the many other Solidarity activists who are continuing the freedom struggle in Poland today.

As one of America's most prominent and active ethnic groups, Polish Americans have distinguished themselves as leading business executives, athletes, artists, religious leaders and politicians. As President Johnson stated on the occasion of the Polish Millenium celebration in 1966 "Our national heritage is rich with the gifts of the Polish people."

We appreciate the added vitality and talent that is brought by recent arrivals from Poland who settle in the United States. We know that these individuals will follow the great tradition of other Polish Americans who have contributed so much to building America.

The bond which links the Polish and American people has grown even stronger in the 200 years since General Pulaski came to our shores to fight for our independence. Today, as we pay tribute to Casimir Pulaski and honor the Polish-American community, we recommit ourselves to completing the unfinished task to which Pulaski dedicated much of his brief life—the restoration of freedom to Poland.●

INFORMED CONSENT: RHODE ISLAND

● Mr. HUMPHREY. Mr. President, today I would like to insert into the RECORD a letter sent to my office in support of my informed consent legislation, S. 272 and S. 273. Today's letter comes from the State of Rhode Island.

The letter follows:

CRANSTON, RI.,
August 19, 1986.

DEAR SENATOR GORDON HUMPHREY: I am writing this letter to tell you sincerely how I feel concerning the abortion issue. I have been a victim of abortion, twice. The first time I was scared and confused. Some years later, I was still confused in life and I had another abortion. Afterwards, I looked back on the whole scene and I was devastated. When I got pregnant the second time, I couldn't make up my mind. It was harder to have the second one because I had promised God that I would never do that again. I was not in my right mind when I went through with it.

I believe they (the abortion clinics) should tell these girls the facts. That at 7 to 8 weeks old the heart beat is traceable, and there are hands and feet, etc. If the people could and would hear the truth, I'm sure there would be a change of heart. I for one know that if I had been told the truth about the fetus and that I would be supported, I would not have aborted the child.

They also don't warn you about the psychological effects which will occur shortly after and will grow progressively worse with time. I have experienced this and can only try to explain and have you understand the excruciating pain that I and many others have endured. You suffer guilt, a sense of loss, the realization of murder. You feel evil, unforgivable, and you loose whatever self respect you had. Those are just a few of the problems.

I don't think that there are many cases where the woman feels a sense of relief. Maybe initially she does, but it doesn't last, no matter what she thinks, or if she tries to deny it.

Words cannot express the torture that I put myself through, and I am writing to you so you can help to put an end to this violence against babies, women, and society itself. I know there are a lot of girls hurting out there and I hope we can save them and the ones who have not experienced this yet. The good Lord has looked down upon me with mercy and he has given me new life. I pray that I can do whatever I can to inform people of just how horrible abortion really is.

Sincerely,

JACQUELINE A. MURPHY.●

LABOR DISPUTE WITH MEXICO

● Mr. SIMON. Mr. President, I would like to bring to the attention of the Senate a regrettable situation now existing in a labor dispute between the International Association of Machinists and the International Brotherhood of Teamsters, and Aeromexico. Beginning September 23, these two unions initiated an informational picket at the international airports in Los Angeles, Houston, JFK in New York, Miami, and Tucson. The purpose of the picket lines is to inform the public of the recent occurrence in the relationships between these unions and the airline.

For more than 20 years, the Machinists and the Teamsters have represented almost 400 U.S. employees of Aeromexico. Five months ago, Aeromexico declared bankruptcy and ceased operations in the United States. On September 23, Aeromexico resumed its flights into and out of the United States but all the experienced and dedicated employees in the two unions were not allowed to return to their former jobs. Instead Aeromexico decided to resort to outside contractors to perform the work.

In March 1987, following lengthy and difficult contract bargaining, these employees gave up 20 percent salary, a paid lunch period, Christmas bonus, cost-of-living increases, a holiday, and various other work rule and pay benefits and were guaranteed employment security for a period of 3 years.

It seems as though Aeromexico has abrogated this contract with these workers, and may have violated the Railway Labor Act. Mr. President, I would hope that this dispute can be resolved in an orderly fashion with as little disruption as possible, and Aeromexico should be encouraged to abide by the terms of their agreement with these workers.

I hope this resolution can take place as soon as possible.●

AGE DISCRIMINATION IN EMPLOYMENT WAIVER PROTECTION ACT

● Mr. METZENBAUM. Mr. President, yesterday, I introduced S. 2856, the Age Discrimination in Employment Waiver Protection Act of 1988. Today's CONGRESSIONAL RECORD contains introductory statements describing the bill from myself and several other Senate supporters, but the text of S. 2856 was inadvertently omitted from the RECORD. I therefore ask that the full text of S. 2856 be printed in the RECORD at this point.

The bill follows:

S. 2856

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Age Discrimination in Employment Waiver Protection Act of 1988".

SEC. 2. WAIVER PROVISION.

Section 7 of the Age Discrimination in Employment Act of 1967 (hereafter in this Act referred to as the "Act") (29 U.S.C. 626) is amended by adding at the end thereof the following new subsection.

"(f)(1)(A) An individual may not waive any right under this Act without the supervision of the Equal Employment Opportunity Commission or a court, except in settlement of a bona fide claim alleging age discrimination of a kind prohibited under section 4 or section 15 of this Act.

"(B)(i) Subject to division (ii), a bona fide claim subject to settlement under paragraph (2) may not arise from any early retirement incentive or other employment termination program that involves an offer of enhanced benefits to a group or class of individuals.

"(ii) An individual who makes a bona fide claim arising from such an early retirement incentive or other empolyment termination program may settle the claim in accordance with paragraph (2) only if the individual is represented by counsel and receives consideration for settlement which is additional to the enhanced benefit.

"(2) A settlement of a bona fide claim pursuant to paragraph (1) may occur only if the settlement is knowing and voluntary and only if—

"(A) a settlement agreement applicable to the bona fide claim is in writing and specifically refers to rights or claims arising under this Act;

"(B) the agreement does not waive rights or claims that may arise after the date the agreement is entered into;

"(C) the rights or claims are waived in exchange for consideration other than benefits to which the individual already is entitled;

"(D) the individual is given a reasonable period of time in which to consider the agreement; and

"(E) the individual is advised in writing to consult with an attorney prior to entering into the agreement.

"(3) For the purpose of this subsection, the term 'bona fide claim' means—

"(A) a charge of age discrimination filed with the Equal Employment Opportunity Commission; or

"(B) a specific allegation of age discrimination communicated in writing by the individual or the individual's representative directly to the employer, employment agency, or labor organization or their representatives.".

SEC. 3. RULE PROVISION.

Section 9 of the Act (29 U.S.C. 628) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) On January 1, 1990, the Equal Employment Opportunity Commission shall issue a rule or interpretative regulation relating to the prohibition against discrimination on the basis of age in early retirement incentive or other employment termination programs that involve an offer of enhanced benefits to a group or class of individuals.".

SEC. 4. EFFECTIVE DATE.

(a) The amendments made by this Act shall take effect on March 1, 1989.

(b) Effective upon the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29 of the Code of Federal Regulations shall have no force and effect.●

JUDICIAL NOMINEES REPORTED BY JUDICIARY COMMITTEE

● Mr. LEAHY. Mr. President, at a business meeting this afternoon, the Judiciary Committee reported 10 Federal court nominations to the full Senate for action. All these nominees completed extensive questionnaires, were examined at public hearings, and in some cases responded to written questions from the committee. For the benefit of Senators who may soon be called upon to vote on these nominations, I offer the following brief summaries of the background of five of these nominees, and of the issues considered by the committee with respect to these nominations.

First, Norwood Tilley has been nominated to be U.S. district judge for the middle district of North Carolina. Since 1977, the nominee has conducted a private law practice in Greensboro, NC, concentrating on civil (commercial and personal injury) and criminal (Federal white-collar defense) litigation. He served from 1974-77 as U.S. Attorney, and previously as a Federal law clerk and an assistant U.S. attorney, all in the middle district of North Carolina. Mr. Tilley is 44 years old and holds college and law degrees from Wake Forest University. He is generally well-regarded by his colleagues at the bar, and was rated well qualified for this appointment by the ABA committee.

At the hearing on August 9, Mr. Tilley was introduced by Senators SANFORD and HELMS. I then questioned him about his record of pro bono work; anticipated conflicts of interest in cases handled by his law partners; and sentencing of criminal defendants. Senator THURMOND questioned the nominee about judicial activism.

Second, Lewis T. Babcock has been nominated to the district court for the District of Colorado. Since 1983, the nominee has been a judge of the middle level State court in Colorado, the Colorado Court of Appeals. Before that, he was a State trial court judge in the small town of La Junta, CO an assistant district attorney in La Junta, the city attorney for another rural town, and a private practitioner in yet another rural town. He is 45 years old and received both a B.A. and a J.D. from the University of Denver as well as in L.L.M. in judicial process from the University of Virginia School of Law. He was rated well qualified by the ABA committee.

At the nominations hearing on August 9, Judge Babcock was introduced by Senators ARMSTRONG and WIRTH, and then responded to questions concerning: First, his anticipated approach to complex Federal criminal practice; second, his willingness to roll up his sleeves to tackle the enormous workload now facing the district court in Colorado; and third, his approach to constitutional interpretation.

Third, Robert Leon Jordan has been nominated to the U.S. District Court for the Eastern District of Tennessee. Since 1980, the nominee has served as chancellor for the First Judicial District of Tennessee, where he presides over equity and various civil actions. Prior to that, he was in private practice with several different law firms in Johnson City, where he specialized in civil litigation, and also spent several years working as a trust officer at two commercial banks. Chancellor Jordan is generally well respected by the legal community in Johnson City. A majority of the ABA committee rated the nominee qualified, while a minority rated him well qualified.

At the nominations hearing on October 4, Chancellor Jordan was introduced by Senators SASSER and GORE and Representative QUILLEN, and then responded to questions on the following subjects: First, concerns raised in a newspaper report that Jordan had considered the religious practices of parties in cases before him; second, Jordan's approach to taking cases under advisement; and third, Jordan's lack of experience with criminal law, both as a lawyer and as a judge, and lack of experience in Federal court.

Fourth, John Duhe of Louisiana has been nominated to be U.S. circuit judge for the fifth circuit. The nominee has served since 1984 as U.S. district judge for the western district of Louisiana. From 1979-84, he was a State trial court judge, and prior to that engaged in a private law practice in New Iberia, LA, with a general civil practice, representing principally oil and gas companies and insurance companies. Judge Duhe is a 55-year-old graduate of Tulane University and Tulane Law School. He enjoys a good reputation among many lawyers who have appeared before him, and was rated well qualified by the American Bar Association's Standing Committee on the Federal Judiciary.

At the hearing on August 9, Judge Duhe was introduced by Senator BREAUX. I then questioned the nominee on the following topics: his membership in a sailing club that has no black members; his approach to sentencing convicted defendants; his recommendations for modifying procedures in Federal court consideration of habeas corpus petitions from death row prisoners; and his practice of ruling on such petitions without allowing for oral argument. Senator THURMOND then questioned Judge Duhe about judicial activism and the role of precedent.

Fifth, Alex Munson has been nominated to be U.S. district judge for the Northern Mariana Islands. The nominee has served since 1982 as chief justice of the trust territory high court in Saipan. This court is established under the provisions of article IV of the Constitution. It falls under the jurisdiction of the Department of the Interior, which is responsible for the administration of various Micronesian Pacific Islands under a United Nations trusteeship. The court has both trial and appellate jurisdiction; its appellate division is the court of last resort in Micronesia. However, the jurisdiction of this court has been virtually eliminated as most of the islands under the trusteeship have taken up the status of self-governing commonwealths. The nominee has also served by designation as a trial judge for the court to which he has been nominated, and as a trial and appellate judge of the principal local court in Micronesia, the Commonwealth Court of the Northern Mariana Islands. From 1977 through 1982, Judge Munson was an associate in two Los Angeles law firms, and worked primarily in tort defense litigation. Prior to that he was a high school teacher. Judge Munson, who is 47 years old, holds B.A. and M.A. degrees from Long Beach State College, an Ed.D. degree from the University of Southern California, and a law degree from Loyola Law School in Los Angeles. He was rated well qualified for this appointment by a majority of the ABA committee, with a minority finding him qualified.

At the hearing on August 10, Judge Munson was introduced by Froilan C. Tenorio, resident Representative to the United States from the Commonwealth of the Northern Mariana Islands. Senator SIMON then questioned him on the following topics: his efforts to learn about local customs that may play a part in judicial decisions in Micronesia; his actions in a case—Manglona versus Government of the CNMI—which he was assigned to hear in the Commonwealth court, but which he later turned back to the presiding judge of that court; his budgetary practices at the high court; and his organizational memberships. Senator THURMOND questioned the nominee about judicial temperament and stare decisis.

After the hearing, Judge Munson responded to written questions submitted by Senator SIMON on behalf of the committee on the following topics: First, his experience in presiding at the actual trial of cases, both within the jurisdiction of the trust territory high court and that of the commonwealth court; second, his experience in the trial of criminal matters; third, his reasons for not joining the unified bar association of the Northern Mariana Islands; and fourth, his policies and justification for expenditures from the high court's budget for maintaining his personal residence and entertainment functions.●

ACID RAIN

● Mr. MOYNIHAN. Mr. President, yesterday the distinguished chairman of the Subcommittee on Environmental Protection of the Environment and Public Works Committee, my great friend GEORGE J. MITCHELL, reported to the Senate that negotiations on revising the Clean Air Act had failed, and that we must resign ourselves to trying again in the next Congress.

This is a somber event. We were so close. And so much was at stake. To cite Senator MITCHELL—

> the health of more American children will suffer, more lakes will die, more forests will wither.

None could fault him. No one has worked harder, longer, with a greater capacity for constructive compromise. Yet once again we have failed.

In this context, I would call the attention of the Senate to a hearing on acid rain which I held in Lake Placid, NY, on July 23, 1988. Lake Placid, as many will know, is near the center of the single most threatened region of the country when it comes to acid rain.

The hearing is notable for the testimony of Thomas Jorling, the New York State Commissioner of Environmental Conservation, and the executive director of the Adirondack Council, Mr. Charles Clusen, but perhaps most especially for the paper presented by Dr. Volker Mohnen of the State University of New York at Albany's Atmospheric Sciences Research Center.

Dr. Mohnen is one of the many, many American scientists now engaged in the National Acid Precipitation Assessment Program, or NAPAP, which was established by the Acid Precipitation Act of 1980. This was a bill I introduced the previous year, and which remains the only legislation concerning acid rain—and other forms of acid deposition—yet to be enacted.

As I state in introductory remarks to the panel, the bill passed at a time when few were aware of acid rain, and little was known of its nature and origin. All that is past. Although the final NAPAP report is not due until 1990, Dr. Mohnen makes very clear what has come of this "massive research effort." Namely, we now know that we face an environmental crisis of global proportions, and we know that its origins lie in the reckless burning of fossil fuel. Let me cite Dr. Mohnen:

> * * * fossil fuel combustion is indeed our number one global problem at this time. From a scientific point of view, it means that we must strive for the highest efficiency whenever we burn fossil fuel. We should do it with the highest achievable efficiency. We should do it by also achieving the lowest emissions, not only for sulfur, but for other pollutants as well. If you only look for sulfur, you miss a lot of the other problems. Nitrogen oxides are a problem. You must also realize that in the atmosphere these products interact, and eventually you have that "chemical soup" that causes problems. The ecosystem has been weakened not by sulfur alone, but by the synergistic effects of sulfur, nitrogen, and carbon. All of these molecules come from fossil fuel combustion.
>
> The time has now come to do something, and I will close with this. Technology has leap-frogged science. We have the technology that can mean the repowering of old, coal burning plants; and also will lead to the introduction of clean coal technology. New products can come, and are coming to the marketplace, which will give us better fuel efficiency and therefore, better and lower emissions. Ultimately over a period of fifteen to thirty years, we may be able to lower emissions by at least fifty per cent all around—for nitrogen and sulfur. This will slow the growth of the carbon dioxide which so adversely affects our climate.
>
> Now Senator, if I may close with one other note. We have seen the acid rain problem grow from an Adirondack problem—a lake problem—into a national problem involving fossil fuel combustion everywhere. But it is bigger than that. This is a global problem that includes China, Russia, West Germany and the rest of the industrialized world. We have scientific tools that are now available through super-computers which model the entire eastern United States, and I think that from a technological point of view we have the solution to reduce these emissions. Not only for sulfur, but for all other substances too. You can look back with a great deal of pride that one single bill provided the incentive to do all that.

Even though the final NAPAP report is not due until 1990, NAPAP will have an interim report or "assessment plan" available in the very near future, before the 101st Congress convenes in January. This report will preview the final assessment due in 1990, and it should contain much useful data to guide our policy deliberations. Mr. President, we will have the facts—the scientific data—with which to resume our legislative labors in January in the 101st Congress.

Next time we will not fail.

In closing Mr. President, may I call attention to Dr. Mohnen's proposal that at the conclusion of the 10-year cycle which began with the 1980 legislation, we should commence a 10-year global measurement program. I have every reason to think we will find eager interest in such a proposal in Europe, Japan, and the Soviet Union, and, let us hope, other nations and regions of the world. I am preparing legislation and will introduce it on the opening day of the 101st Congress.

The discussion I will place in the CONGRESSIONAL RECORD today will be just one more piece of the already large record on acid rain. It is the transcript of the hearing I held in Lake Placid, NY, on July 23, 1988. Mr. President, I ask that the attached transcript be printed in the RECORD at this point.

The transcript follows:

PUBLIC HEARING REGARDING ACID RAIN CALLED BY SENATOR DANIEL PATRICK MOYNIHAN

Senator MOYNIHAN. We thank you all for coming today, and hope that today's hearing will add to the process of building a record on the subject of acid rain.

Some might think that what is said at these proceedings is not heard in Washington. Well, this is not true. These field hearings are truly integral to what we do in the nation's capital. These proceedings bring a touch of reality.

That's because New York has the unenviable position of being the region in the nation most affected by acid rain as we now understand the phenomenon. The northeasterly winds and storms that come up from (and Dr. Mohnen, follow me very carefully and make strange sounds if I get this wrong) the region encompassed by Ohio, West Virginia and Pennsylvania. These storms hit the Adirondacks first which are the first large chain of mountains along the path of these storms. And you can plainly see the effects here in the Adirondacks. The first, lakes that the storms encounter are the ones most seriously affected. I am going to be visiting one of these, Piseco Lake, a little later this morning.

And so we have the dubious distinction of being most affected, but it is also to be recorded that your delegation, the New York delegation, responded first. The first and the only legislation on acid rain that has ever been enacted in Washington was the bill I introduced in 1979, which was, you might say, a trout fisherman's bill.

We did not know that much about this subject, but we knew fish were dying, and more importantly, fish were not thriving in some of these lakes. It is not, as any layman such as I might think, that the water gets acid and the fish drink the water and the next thing you know they go belly-up. It is more complicated.

These are granitic lakes, and the acid releases aluminum—the granite has aluminum traces—and this gets into the gills. For example, Mirror Lake here in town has a limestone base, and the minerals in limestone act as a buffer to acid rain damage.

I introduced legislation in 1979—the Acid Precipitation Act of 1980. The bill was passed. It is very important to note that the bill was passed before the phenomenon of acid rain was clearly understood. There was a concurrent resolution introduced in 1978. It was in 1979 that I introduced a bill proper, which is S. 1754, which I amended on the Floor on November 9, 1980 and which became the Acid Precipitation Act of 1980.

This Act established the National Acid Precipitation Task Force, and set up $45 million dollars over 9 years to develop the data base and the scientific evidence needed if we were going to ask the country to do something. It is now time to go to the Congress and say "Now, we're asking for a large effort and this is why. This is what we have learned." We have learned a great deal.

It is a mystery, if you like, that in almost a century of forest research, a century in which they have measured the first robin to arrive in this area, the last leaf to fall, the depth of the snow, the color of the sky, they did everything but take measurements of the acidity of the water! They just did not.

The oldest data on acid rain is random and thus falls short of the scientific absolute. What is the longest study? Perhaps twenty years. Not one hundred but twenty! Now in recent years, we have ten years of data for every place, and that changes our understanding. Of course we quickly established the connection between coal emissions, particular kinds of high-sulfur coal, and wind streams. If I may say so, we are doing well. Congress is not resisting this new information.

I am now a ranking member of the Committee on Environment and Public Works. I was not a ranking member in 1980, I was a junior member, but approved the bill nonetheless.

But then as the evidence mounted, responses became more difficult. As I previously stated, in 1980, we passed the first bill, and the only bill to date. The next year, following a hearing in Saranac, I introduced the first measure to propose a control, a limit, on sulfur dioxide emissions. This was known as the Acid Precipitation Control Act of 1981. And then the troubles began.

The early evidence clearly indicated that something had to be done. The question facing legislators, however, was "To what extent does acid rain represent a national problem?" Unfortunately, and I do not mean to be critical—I just mean to be descriptive—an administration had come to office which was very unresponsive to this kind of issue. And I do mean unresponsive. In the case of the director of the EPA, as far as she was concerned, acid rain was caused by too many campers leaving too many bottles of vinegar behind, or something like that.

I remember a scene and I'd like to take a second to describe it. In the spring of 1981, the State University at Buffalo, which as a U.S.-Canada center, was holding a conference on acid rain. I was asked to speak at the luncheon. I arrived in Buffalo that morning, and had a meeting with the editorial board of the old Courier Express which, unfortunately, is no longer publishing.

When I arrived, they said, "You may be interested to know that the Canadian Foreign Secretary is at the Amherst Campus of the University of Buffalo. He is waiting to greet you." He was, as you may know, is a very fine gentlemen named McGuigen. Needless to say I was shocked. I said, "My heavens! And where is our Secretary of State, Alexander Haig?" "I don't know where Haig is," was the answer. Wherever he was, he was not in Buffalo." I could not believe it.

And so I asked if I might use their phone. I called the White House, and I said, "Hey, this is Senator Moynihan from New York." It happened to be someone at the White House that I knew and I told him, "the Canadian Minister of State for External Affairs is standing on the Campus of the State University of New York at Buffalo, and he is talking about acid rain! Why is there not even an assistant consul here to meet him? Where is the Secretary of State?"

The response I received was rather cool. I was told that the Secretary of State was enroute to a foreign ministers' meeting of NATO in Rome. And I said, "Well, where the hell do you think McGuingen is en route to? And who the hell do you think will be sitting next to him when he gets to Rome? Alexander Haig, that's who!" Once they realized their gaffe they immediately asked me what to do.

I told them that they must immediately send a cable of apology. So I wrote the cable for them. I dictated it to them, and asked if they could sign Haig's name. They responded that only Haig had such authority. And so it went. The idea that this might be an issue engaging the interest of the Secretary of State was beyond them. The fact that it was so hard to engage the interest of this country—even given the immense interest of the most important other country in the world to us—had just never sunk in.

The United States and Canada share so much together. And when we have a problem—a common problem—we both must work together on it. And such is acid rain.

And so later President Reagan appointed Drew Lewis, a very able former cabinet officer to be special emmissary to Canada on acid rain. He and the Canadian representative, Mr. Davis, came up with an agreement for emission reductions. It was never pursued by this Adminsitration. But it was not a proposal, it was an agreement. The two countries agreed. It is on that subject still that a problem exists.

The issue was who is going to pay for this. The first bill, I put in. The next one came from Senator Mitchell. (He had just arrived in Congress and immediately became interested in the subject. He is from Maine of course. And this is now his subcommittee).

Our bills said that whomever is putting this sulfur dioxide into the atmosphere has to put less of it. That's all. Period. That was easy for us to say because the costs were being born in other places. We used an old rule, which is, the polluter pays. And yet sulfur emissions are so heavily concentrated in one set of polluters, who would have to do the paying that the political arrangements were not there for a polluter bill to pass. We had to come up with a cost-sharing program. This was first proposed by a Representative from California, Mr. Waxman, and more recently, Governors Cuomo of New York and Celeste of Ohio who proposed a sharing program.

We now have in the Senate a big bill that is tied to a ten million ton reduction in sulfur dioxide emissions over a short period of time that will be paid for by an increase in electricity rates everywhere. I think we may now have the outline of a national solution.

I hope in the next two to three years, we can accomplish a viable solution to this crisis. Remember, this began with hearings held in the Adirondacks in the late 1970s. We were the first to pick up the problem. We were the first to identify it. We were the first to analyze it.

We are going to hear more about that this morning. I leave this introduction with one bit of hope—actually, more than that. I am generally optimistic that this is becoming much more an object of national awareness than it was when we first began talking in the seventies. People are finding problems in many other states.

There is a big smelter in Mexico that is aimed right at the Rocky Mountains. They are beginning to feel the effects of acid precipitation just as we have felt the effects of a Canadian smelter in Ontario.

The most startling event was a plume of acid rain that went from the Houston area more or less due east. It passed over the city of Tampa, Florida which of course is on the Gulf of Mexico. That city happens to be the place where most of the automobiles shipped into the eastern United States are off-loaded. They have vast parking lots, like Iowa cornfields, and there is literally nothing but cars. Two years ago there were hundreds of BMWs parked there, and acid rain spoiled the finish on all of them. The response from that part of the world was quite remarkable, in that you could do what you liked to lakes, but don't fool around with BMWs.

I now have the great honor to introduce Commissioner Tom Jorling, who is our very able and distinguished head of the State Department of Environmental Conservation. Mr. Jorling was formerly a member of the staff on the Senate Committee on Environment and Public Works. Commissioner, good morning.

Tom Jorling. Thank you Senator. Good morning. I think it's a testament to the interest in acid rain controls that after three days of acid rain falling, and a beautiful sunny day on a Saturday morning, that we have this kind of attendance here. Senator, I'd like to thank you for hosting this forum on the topic of acid rain. Especially, as you point out, here in the Adirondacks. I'm sure you have experienced the same thing I have, and you have alluded to it. That is, no matter where you go in this country and talk about acid rain, the Adirondacks are synonymous with acid rain damage. It is in effect *the* place that people point to as the part of the nation that is experiencing acid rain damage.

But it is not just the Adirondacks. There are many areas of the country that are suffering damage, including all of us that breathe sulfur-laden air.

We are also aware, Senator of your continued efforts dating back ten years, when you took the lead in efforts to address this very serious problem. You were the driving force behind the creation of the National Acid Precipitation Assessment Program, the NAPAP Program, designed to provide an objective look at the science underpinning both the release and the effects of acid rain. In the face of constant opposition from the Reagan-Bush administration, you, along with members of your committee and Senator Mitchell, have attempted to enact a very progressive acid rain control program. You are a leader. We in New York are very deeply appreciative of that.

You have also described some of the efforts in Washington to underscore the importance of getting acid rain controls enacted. I think it is important for us to point out that without the federal government's help, without federal legislation, no matter what we do in the State of New York, we cannot protect our environment and avoid the impacts of acid rain elsewhere.

Sources of emission in New York are responsible for only 17% of the acid deposition that falls in our state. The remainder comes from other states, and the great bulk of that remainder comes from fossil fuel burning sources in the Ohio Valley.

Even if we turned off every light, shut down every factory in the State of New York, we would still have acid rain damage produced. New York has taken as much action as it can in its effort to deal with acid rain. In addition to the continuing efforts of Senator Moynihan and the committees of Congress, we have enacted our own acid deposition control program in 1984. We were the first State in the Union to enact controls on emissions of sulfur which call for reductions beyond those established in the Federal Clean Air Act.

We have required the emitters of sulfur dioxide in New York to reduce their emissions already. As a result, we have reduced by 146,000 tons the emission of sulfur into the atmosphere. Simply put, we have applied additional controls on our own sources.

This produces an economic disadvantage for us and our economy, yet we have been so concerned about the effects of acid rain that we have been willing, as the State of New York and its citizens, to impose those additional costs. We will, under our own law, apply additional controls on those same sources under the second phase of the state acid rain control program.

When we do, we will have exceeded the reductions that will be applied, or would be applied, by any of the statutes enacted at the national level. So New Yorkers have attempted to be good citizens. We have not asked others to bear our burden—we have already borne that burden here. We have also made considerable efforts to develop the kind of information that is necessary to support national legislation.

Along with the Empire State Electric Research Corporation, which is a consortium of the electric utilities in the State of New York, we, the Department of Environmental Conservation, have put together what is called the Adirondack Lake Survey Corporation. Its job is to research the damage that has occurred in the Adirondacks. The results are clear. In fact, the results are even closer than those of the NAPAP study.

In the Adirondacks now, 26% of our lakes have reached a pH level below 5, which is the sort of agreed upon definition of a fully acidified aquatic system.

In addition, another 19% of our lakes fall between 5 and 6 on the pH scale. Those we consider to be extremely sensitive and vulnerable to further acid deposition damage.

This is in sharp contrast to the NAPAP study, which only found 10% of the lakes in the Adirondacks with an acidified character. The reason for the difference is that the NAPAP study only looked at lakes and ponds of 10 acres or larger. Obviously, common sense tells us that those ponds and lakes smaller than 10 acres have the least buffering capacity and are the most vulnerable.

In fact, our study shows, these have been acidified—damaged. The data is in. We know—and we think the evidence is conclusive enough this time—for the national government to act. But it has been trying to act in the face of steadfast opposition from the Reagan-Bush administration. We hope that given the changing political circumstances present in the country that we may be on the verge of a breakthrough.

To demonstrate the potential to achieve that kind of breakthrough (a potential that can only be achieved through political leadership) Governor Cuomo last year, at the National Governor's conference, concluded that the bugaboo of regional impasse—of regional conflict—alleged to be paralyzing Congress, could be addressed head-on. Governor Cuomo directed us to work with the staff of Governor Celeste of Ohio to determine whether or not the state identified with the most severe impact, New York, and the state identified clearly with the highest emissions from any state in the Union, Ohio, could sit down together and see if there was common ground.

Over the past winter, that common ground was established. We were able to agree with Ohio. Governors Cuomo and Celeste have announced an agreement on a control program—a control program that meets New York's requirements of at least a reduction of a half in the amount of acid deposition in our state, and Ohio's concern about the rate of economic impact that would be borne in its state.

We have reached agreement on those elements and have proposed to Congress an agreement which would, we hope, break that bugaboo of regional impasse which has so far paralyzed the national government. So, there is common ground and it is important that Congress act. Congress should have the support of a national administration in that regard.

Each day that passes without the elimination and reduction of sulfur compounds produces a greater impact here in the Adirondacks. If we look to the history of any environmental issue, it is clear that preventive measures are far cheaper and much more cost effective than trying to repair damage. That is most certainly the case with respect to acid rain. We now hope that the stage is being set for more effective action by Congress and continued action in the state.

Before I close, I would like to take this opportunity to acknowledge Senator Moynihan. I would like to express my thanks to you for your continued support—not just for the acid rain control programs that are so vital to the State of New York—but for environmental programs in general. As the Senator pointed out in some modesty, he is the ranking member of the Environment and Public Works Committee, and in that capacity has a great deal of influence over matters that effect our environment.

He has led the effort to provide assistance from the federal government in continued protection of our water through the Construction Grant Program and its transition to revolving funds. The fact that the State of New York receives approximately $100 million per year, more than any other state in the Union, including California, is a testiment to his effective representation of the State of New York.

I am very grateful for that, and I think all citizens should be grateful. His work on infrastructure, the kinds of systems he feels we must put in place to protect the environment over the long hall, are legendary. We are very fortunate to have that kind of representation. We are the direct beneficiaries of his efforts.

I want to take this opportunity, Senator, to assure you that we are deeply appreciative of those efforts. I am grateful for the opportunity you have afforded me to speak this morning, and I hope that we can have an interesting dialogue in the session that follows. Thank you.

Senator MOYNIHAN. We now have the very true distinction of having Dr. Volker Mohnen of the State University at Albany to speak with us. Dr. Mohnen, whose doctorate is from Munich, is a scientist of great promise and increasing achievement. He just handed me a paper which will appear in next month's Scientific American called "The Challenge of Acid Rain". The subtitle reads "Acid rain's effect in soil and water leave no doubt about the need to control its causes. New advances in technology have yielded environmentally and economically attractive solutions."

If I can make a point, it is that in proceeding with this situation, we did not do as some of our environmental counterparts did when they said, "There is a problem. I can see it, feel it, touch it or whatever, and I know what it is. Don't bother me with facts," and then proceed to respond in ways that did not have much effect.

From the beginning, we knew we were dealing with a complex matter. It is not just wet precipitation, it is dry precipitation. We must remember, my one and only bill says "acid precipitation" which means dry precipitation as well as wet.

There are cloud problems. The trees on top of the White Mountains spend about a quarter of the time surrounded by acidic clouds. We are learning to measure that, and we are learning what to do about it.

Here is a scientist who is at the cutting edge of all this enterprise. This paper, which I have just received and have not read, is obviously going to make a great deal of difference. Dr. Mohnen, won't you please come forward, sir.

Dr. VOLKER MOHNEN. Thank you, Senator, ladies and gentlemen. Let me first start off with a little anecdote. When the word acid rain was first heard, people started to make jokes at almost every meeting we had, that went like the following: If you were asked by the audience: "Do you have an acid rain problem at a certain place?" The standard answer of most scientists those days was "Well, if you plant cucumbers and you harvest sour pickles in the fall, you've got an acid rain problem."

I think time has long since gone that we joke about it. It is a deadly serious problem. What we recognize now is just the tip of an iceberg of a much, much more global problem. It is man's interference with the integrity of bio-geo-chemical cycles. And if anyone in the room says they understand what I just said, they are lying. So let me explain.

The atmosphere is a temporary holding reservoir through which material is constantly cycled. When you go in your rose garden, you smell roses. Well, the roses smelled before man came. This is part of the biology of the rose that some of its products are given off in the air—waste products. Trees smell of turpentine. Trees give off all kinds of gases. There are pollens in the air. So all of that makes the atmosphere really a holding reservoir. It is a reaction vessel where things are processed.

Why are they processed? Because the eternal rule of space and earth is: You must recycle. And Commissioner Jorling, you know what that means from a different aspect.

So here, good earth, mother earth, has given us the internal mandate that says: "You must recycle—re-use everything that is produced". If this space ship we call earth were to have nothing but rocks and inorganic material, and no living organisms, then obviously the question of recycling would be simple. But since this is one of the few planets that also has life, and life expands continuously through evolution, we are continuously producing more species. Speciation is the word of progress, and each species emits material into the atmosphere. Herein lies the rule of recycling.

It so happens that all sulfur-, nitrogen-, and carbon-containing molecules are given off by living organisms; may it be trees, or shrubs or microorganism in the soil. Sulfur is given off by bacteria in the ocean in the form of di-metal sulfite, which is pugnant to the nose. It is then oxidized in the atmosphere and hence comes back down to earth as sulfate.

So this cycle goes on and on, and what we now find is man, through his technology and through his activity, and most obviously through fossil fuel burning, is interfering with that natural process. While natural cycles will yield concentrations of sulfate in the air that are minute, hardly detectible by scientific instruments, man puts out those substances in a massive, concentrated way.

Since they must be recycled, they come back to earth in great quantity, as acid deposition. That's where the problem comes from.

Since biology is involved, chemistry is involved, and geology is involved (with volcanoes and soil erosion), we refer to this process as being bio-geo-chemical in nature. Since we recycle, we call them bio-geo-chamical cycles.

The integrity of those cycles is crucial for our own survival. If we interfere with those cycles, then life on earth will change. Finally, man has realized that. Finally!

Now, we talk about global changes. Acid rain is just one fraction, although the most visible fraction, of the change that is going on. You can measure a lake that is acidified. You can measure rain that falls from the sky and contains the impurities that rain must carry back. Rain washes the atmosphere—it is the global laundry. It brings down man's and nature's products but man's products dominate.

So in that sense, it was in 1980, a decade ago, that Senator Moynihan started in a very small way with the acid rain bill that he has described. This started a massive research effort. The very fact that I am here today and that my summer salary is paid quite confortably is in no little way thanks to your bill, Senator Moynihan.

So, I have a pesonal reason to be grateful, in addition to the official reason. I thank you on behalf of all scientists, and there are tens of thousands in the United States—in agencies such as the National Science Foundation, the Environmental Protection Agency, the Department of Energy, the Department of Interior, and the list goes on and on—who are part of this effort envisioned ten years ago by Senator Moynihan.

Those scientists, within government agencies, who follow to a good degree their own scientific instincts in working with us, the university scientists, and with others, do not to a great degree follow the political climate on top. Scientists, I hate to say, Senator, do not ask if you are a Democrat or a Republican. Rather we ask, "Is this Senator or that Senator responsive to the kind of problems we present to our legislative leaders?" And if the answer to that is yes, and quite frankly, if a little bit of money flows so we can do research, then we call him or her a good Senator. In that respect, you've been a good Senator. A leader!

Where are we today? There has been much criticism that the scientific community has not come forward with answers fast enough. In testimonies we have been told to cut off one of our hands to avoid the scientific habit of saying "on the one hand it is like this, but on the other hand it is like that". Famous indeed this speech has become to many legislative people in Washington. The point being that they did not want to listen anymore.

So, where are we today? I think through the National Acid Precipitation Assessment Program, or NAPAP as it is called, which will report its findings in 1990, we will establish that indeed interferes with the integrity of bio-geo-chemical cycles. Acid rain indeed is a problem not only for the Adirondacks but is a problem for many other areas, including the West.

We have established that there are other substances that must carefully be watched, most predominantly, photochemical oxidonts, (or ozone), hydrogen peroxide and others. We talk today about acid rain. We mean this as a catch-word as Senator Moynihan pointed out, for a larger variety of problems. Today, when the scientific community says acid rain, we mean rain, snow, clouds, sulphur dioxide gas, sulfate aerosol, nitrate aerosol, ozone, and perhaps others. We now include all of these under acid rain, because we now consider acid rain and all the other problems that come from fossil fuel burning as politically one problem. A problem yet to be resolved.

I guess this is what scientists will fight for in the next decade. The NAPAP program will come to an end in 1990. I can say on behalf of the entire scientific community as we are in close contact through conferences, workshops and other scientific endeavors, that I sincerely hope you will protect the vision you instilled ten years ago. I rest assured that you will protect this vision into the next bigger frame, that is called global change. We need to study in a greater context the integrity of bio-geo-chemical cycles, and ultimately extend our concern from one region to the entire globe.

Some of you might have heard that chloroflourocarbons, as were included in aerosol sprays, or the stuff you put under your underarm, is killing the ozone layer.

The irrefutable proof has now come in from the Antarctic. This phenomena indeed takes place. It took fifteen years to prove, but now that the proof is in, and CFCs are dead. You can see them going out. So, scientists can indeed come forward with answers, but they are slow in coming.

That leads us to the next question. How long should one wait for action? If you see something, but can not really prove it all the way, then should you look further? At the same time you must look at other sites where the ecosystem suffers.

If you do so, you will find that fossil fuel combustion is indeed our number one global problem at this time. From a scientific point of view, it meams that we must strive for the highest efficiency whenever we burn fossil fuel. We should do it with the highest achievable efficiency. We should do it by also achieving the lowest emissions, not only for sulfur, but for other pollutants as well. If you only look for sulfur, you miss a lot of the other problems. Nitrogen oxides are a problem. You must also realize that in the atmosphere these products interact, and eventually you have that "chemical soup" that causes problems. The ecosystem has been weakened not by sulfur alone, but by the synergistic effects of sulfur, nitrogen, and carbon. All of these molecules come from fossil fuel combustion.

The time has now come to do something, and I will close with this. Technology has leap-frogged science. We have technology that can mean the repowering of old, coal burning power plants; and also will lead to the introduction of clean coal technology. New products can come, and are coming to the marketplace, which will give us better fuel efficiency and therefore, better and lower emissions.

Ultimately over a period of fifteen to thirty years, we may be able to lower emissions by at least fifty percent all around—for nitrogen and sulfur. This will slow the growth of the carbon dioxide which so adversely affects our climate.

Now Senator, if I may close with one other note. We have seen the acid rain problem grow from an Adirondack problem—a lake problem—into a national problem involving fossil fuel combustion everywhere. But it is bigger than that.

This is a global problem that includes China, Russia, West Germany and the rest of the industrialized world. We have scientific tools that are now available through super-computers which model the entire eastern United States, and I think that from a technological point of view we have the solution to reduce these emissions. Not only for sulfur, but for all other substances too.

You can look back with a great deal of pride that one single bill provided the incentive to do all that. But you should not rest on your achievement. I strongly encourage you and your staff to work now for the next phase of concentrated study and effort—global change. You are to be commended for such strength and leadership.

Senator MOYNIHAN. I hope you saw at work not just a first rate mind, but a first rate enterprise. World science and American science, is learning. One of the great arts of government in our age—I think Commissioner Jorling would agree—is to bring science into our counsels in an intelligent way. It is difficult. More difficult than you might know, and I'll take just a moment to expand on this.

I plan to have these proceedings printed because so many suggestions have come forward. In the history of the United States Senate, there has been only two natural scientists that ever served in the body.

The second was Harrison Schmidt. Senator Schmidt was an astronaut and a geologist from Harvard. He and I used to have lunch sometimes when the Senate was not busy and we would merely talk about things. I used to tell him that he was the second natural scientist. He was the first natural scientist to actually serve in the Senate—Thomas Jefferson, another scientist presided over the Senate as Vice President.

I have a very slight connection to the scientific world. I was a member of PSAC (President's Science Advisory Committee). There were two and a half social scientists that had ever served on PSAC. The first was Herbert Simon who had a PhD and nobel prize for demonstrating that computers think. The second was Jim Coleman in Chicago, and I'm the half. But still I was there, and I can testify to some of the things Dr. Mohnen mentioned.

In 1969, there was a twentieth anniversary of NATO, and President Nixon had to make a speech. But what was he going to say about NATO the twentieth time? He sent around a message to get other ideas. I was an assistant from Urban Affairs in his administration.

At some point it was suggested that NATO take up environmental issues. He thought that was a good idea—any idea was a good idea. The result was something called the Committee on the Challenges of Modern Society, which the Europeans resisted with great distaste at first.

During this decade we have been trying to get out, but now the Europeans insist on it. We brought the environmental movement to Europe, as it was developing in the United States. The issue we brought was the question of ozone. But it was one of about half a dozen issues.

At that time, going back about twenty years, you could walk down a corridor of Cornell University, in the physics department, and knock on each door.

In one door you'd find a kindly old gentleman who claimed that the world was going to end in fire because the ozone layer is being depleted. You would knock on the next door and ask when this was going to happen, and the answer would be, "but not next year—in five million years".

As if this was not enough, you could knock on the next door and an equally kindly old gentleman would tell you that the world was going to end in ice because we are sending up so much particulate the sun would not be able to get through at all. We are all going to all freeze to death. How soon? About five million years. As you can

I am also a member of the Committee on Foreign Relations. Last August, a year ago, I went over to Moscow. Three of us went. They insisted we were a delegation.

In fact, we were actually there to look and see what the hell they had done to our embassy. They insisted that we were a delegation and we met in great formal meetings in the Kremlin.

We went well beyond the level of being polite or trying to change the subject from immigration and things such as that. They felt that we really ought to work on environmental problems. We have a lot in common regarding our environmental problems. Let me ask, how much distance separates the borders of the United States and the Soviet Union at their closest point? 25, miles at the Bering Strait.

Is it that mix of foreign and community concern and legislative action that has so successfully brought together our next speaker, Mr. Charles Clusen.

Mr. Clusen is Executive Director of the Adirondack Council. As many of you know, they have been a guardian of these green hills and mountains for so many generations. Sir, we welcome you.

Mr. **Charles Clusen**. Thank you Senator for holding this forum. We appreciate the opportunity, at any time, to talk about the grave problem of acid rain. I might start by saying that we have been experiencing now for the past eight years of our national administration the new version of the three ancient monkeys.

That is to say, we hear no evil about acid rain, we see no evil acid rain, and we say there is no evil acid rain. We sincerely appreciate your efforts in spite of this vulnerable and critical problem. I now believe that we are on the verge doing something very significant to solve at least part of the problem.

The Adirondack Council has, for over a decade, worked very hard to bring the acid rain problem to the forefront. This has been accomplished by publishing pamphlets and brochures; by educating our members; by working with the media, and the public at large.

We also are a lobby organization which frequently goes to Washington. We have played a significant role in organizing the New York State Acid Rain Coalition. In fact, one of our staff people was the chairman of that organization.

Lastly, we are a very active member of the National Clean Air Coalition.

Senator Moynihan, you have said it is an international problem, and the only way to solve it is through a combination of national legislation and international treaties. In any case, I think everybody in this room has, in some way, experienced acid rain or the result of acid rain. Virtually everybody knows of someone whose favorite fishing hole is no longer a good fishing hole.

I think everybody has seen the devastating effects of acid rain on the red spruce on our mountains. This is a very personal thing to all of us and we have all experienced it. We know there is this problem even if some say it doesn't exist. We do not believe them. The evidence is with us.

Acid rain is a very silent problem that is gradually choking our lakes and streams. As Commissioner Jorling has pointed out with the new results of the Adirondack lake survey, there is absolute proof that we have scratched the surface of a problem that must addressed in depth.

When you combine the lakes which are critically impacted and those that are endangered you are then speaking of almost fifty percent of the lakes in the Adirondack Park.

Senator, we all know there is a problem and we thank you for your great leadership. But we must move as a nation on this problem, not as an individual state. You do not need to live in the Adirondacks or in acid deposition areas to recognize that there are grave problems.

If we can not appeal to an individual's sense for the natural environment, then perhaps we can impress them with the cost of maintenance for public buildings that have been devastated by the effects of acid deposition. EPA studies indicate a three and one half billion dollar impact. Moreover, there is another study that indicates in the seventeen northeastern states there could be a six billion dollar per year problem soon if something is not done.

Forest decline is being reported in many places. In the southeast, yellow pines have been experiencing a decline of forty to fifty percent in growth rates. I was talking to the local Director of the Department of Environmental Conservation here yesterday. He was telling of the noticeable decline in forest growth in this area. He noted further that this is not an experience just in the east or the Appalachians.

It is being experienced in the Rocky Mountains, and it is being experienced in California. There are also studies that indicate economic damage or impact on the growth of agricultural crops.

In some areas, like California, this could be very significant. Let me reiterate, if I may, that even if one does not care about the natural environment—and I think everyone should—we have heard a fine presentation indicating why we should be concerned, at the very minimum about the economic impact.

Also to be considered is the insidious threat to our nation's health. The sulfates in the air pose a very significant health hazard to people who have respiratory problems. As many as fifty thousand premature deaths in our nation each year may be the direct result of this poison.

It is also, perhaps, causing an increase in the cancer rate and may pose a serious problem to our drinking water. When acid water infiltrates the water system it can literally decompose the pipes and sometimes heavy metals are released into the drinking water. They can be carcinogenic. It is also a suspect, in that it can leach out metals in the soil and run into lakes. If that lake is used as a water supply, you can see the problem.

So all in all, I think the case has been made that acid rain is not good for our individual health, and it is not good for our nation's economic health. I would like to particularly commend you, Senator, for being a sponsor of S. 1894. This bill is the bill that the citizens throughout this nation have supported.

We thank you for your very great efforts on the Committee on Environment and Public Works, and for your efforts behind the scenes to move that legislation. We are very hopeful that now, perhaps, we can accomplish something.

We would like to commend Governor Cuomo and Governor Celeste for their historic agreement. I would also like to commend Commissioner Jorling as he has been personally been involved. He has tremendous expertise dating back to when he worked for your committee, Senator. In any event, I think we now have a well-documented case. We know that there is a problem.

We have reached a situation where we have demonstrated this problem nationwide. We are breaking across the original lines and there are new ideas of how to deal with the problem of who must pay. There is little question that there will be a significant pricetag. At any cost, it is well worth it. It is time to move on this knowledge, and get it done.

We sincerely hope that a bill can be passed this Congress. I know you are working very hard to do that Senator Moynihan.

In any event, we certainly are pleased that you have made it an absolute top priority for the 101st Congress. It is very interesting that even though we know damage is being done and is being done at a very rapid pace, we still maintain a level of hope. Acid rain is not something that we have to live with, and there are now studies coming out that show that lakes can be recovered. We must somehow turn off that precipitation.

There is a natural resilience in the environment that enables recovery. It is not just a matter of saving those lakes that are left in the Adirondacks, but rather the restoration of all lakes in the Adirondacks to their natural state.

We commend you again for your efforts. While I'm up here, I would also like to commend the Senator for not only being a leader in the area of pollution, but also for your fine leadership in dealing with our natural environment on the Subcommittee on Public Works as well and particularly your co-sponsorship of S. 1804, the Arctic Wildlife Refuge protection bill.

Senator **Moynihan**. One point that should be made; we shouldn't think of anything as irreversible. For the last quarter century my wife Liz and I have lived on a farm down in Delaware County which is just on the western slopes of the Catskills. Around the 1880's there was a small publishing industry in that area which would publish county histories.

You could subscribe, and if you did, your farm would be included in the published volume you could have yourself and your wife or your horse (they usually seemed to pick their horse) in the picture.

My wife Liz gave me one of these things for Christmas fifteen years ago for the year 1884, for Delaware County. It was for the town of Davenport where we live, and in one entry, this obviously older gentleman was quoted a saying "Well, the first major animals to disappear were the deer." He had last seen a deer in 1854 and he had last eaten venison in 1855—that would be a quarter of a century earlier.

This was an area where there were a number of tanneries, and they would just cut the big hemlock trees down, strip the bark, and there were no more trees after a while, and no more deer.

But this gentleman was hopeful that the trout would one day return to the stream, and the deer to the forests. Well, that was ten years before Theodore Gordon began developing the American art of fly-casting on the Beaver. In ten years we had the richest trout streams in the eastern United States.

On a given spring day at our farm you can count eighteen deer in the dooryard. There are more deer shot in Delaware County than in any other county in the state. All this is by way of saying that once you damage a system, it is not irreversible. Natural systems recover in time. Not right away perhaps, but in time.

We have been working for many years down in Washington to pass the next stage acid rain bill. We may get it this year and we may not. If we do not, though, the next President will sign it. I said the next President, whoever that is. And when this happens we will start drafting a plan for the next decade of NAPAP, not to look just at our problems, the Adirondacks' problems, but global problems. There are things we need to know; how does the rule of recycling work, and how is it going, and what do we have to do with fossil fuels?

And so I think we have come full circle this morning, and all of you should know that we are at work down there in the Capital, and we will get at this problem.●

THE NAMES PROJECT AND THE FEDERAL AIDS POLICY ACT

● Mr. SIMON Mr. President, as some of my colleagues may know, this Saturday and Sunday, October 8 and 9, a 6.2-mile quilt will be unfolded on the Ellipse in this Nation's capital. The "Quilt" as it is referred to, is special because it represents the love and support of family and friends of those who have died of AIDS.

The NAMES project, started over a year ago, has overseen the inclusion of hundreds of panels for the Quilt, representing the loved ones who have died of AIDS. Many panels have been handmade by those who have lost a brother, sister, mother, father, daughter, son, lover, friend. These panels come from all 50 States, the District of Columbia and 11 other countries. More than any other symbol perhaps, the Quilt puts a face on the statistics.

This Quilt is a reminder of the devastation of AIDS. It quietly speaks the names to the world. It serves as a promise that we will not forget those who are now gone.

Since the Quilt's last appearance in Washington, DC, a year ago, it has grown five times larger. It is now as big as seven football fields.

I applaud the unselfish commitment of those who contributed their time and tireless dedication to such an important and touching tribute to those lost to AIDS.

I only hope that through grants for research, programs for testing, treatment, education, and counseling of people with AIDS, their families, friends, and all other citizens in our country, we can lessen the burden on those who are battling AIDS or who are caring for those who have AIDS.

AIDS knows no boundaries. AIDS strikes women, men, children, gays, and straights alike. Its impact is felt around the world. We must support efforts to help stop the spread of AIDS and support those who are dying of AIDS.

The Quilt is a moving tribute to those who should not be forgotten.

It is sad, however, that as this national tribute arrives in the Nation's Capital, the 100th Congress approaches adjournment without having completed action on a Federal AIDS policy. It pricks one's conscience to look upon those panels while looking away from the responsibilities we share to fight this disease. It is tragic to envision the Quilt increasing fivefold in the coming year as it has in the past year. That would be a 31-mile quilt. We have lost too many friends already.

Let us work harder in the next few days to prevent the further loss of life to this fatal disease. Let us resolve our differences and move on the Federal AIDS Policy Act. Let us hope that one day we will not be adding any more panels to the painfully long list that have been sewn into the Quilt already.●

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, there will be no further action today on S. 430. That matter had been displaced for the time being. There are some calendar items, matters, bills, and resolutions that I think we can act upon by unanimous consent shortly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished minority leader if the nomination of Robert P. Patterson, Jr., of New York, to be U.S. district judge for the Southern District of New York, has been cleared on his side of the aisle.

Mr. DOLE. That nomination has been cleared on this side of the aisle.

Mr. BYRD. Mr. President, I thank the leader.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider Calendar Order No. 838, the nomination of Robert P. Patterson, Jr., of New York, to be U.S. district judge for the Southern District of New York.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination will be stated.

THE JUDICIARY

The assistant legislative clerk read the nomination of Robert P. Patterson, Jr., of New York, to be U.S. district judge for the Southern District of New York./

Mr. MOYNIHAN. Mr. President, I rise today in strongest support of the nomination of Robert P. Patterson, Jr., to the U.S. District Court for the Southern District of New York.

Mr. Patterson is currently with the Manhattan law firm of Patterson, Belknap, Webb & Tyler, where he has been a partner since 1960.

Prior to that, he was the assistant U.S. attorney for the southern district in charge of narcotics prosecutions and investigations, assistant counsel to the U.S. Senate Banking Committee, and assistant counsel to the New York State Crime Commission Waterfront Investigation.

While in private practice, Mr. Patterson has continued in public service as director, and former president, of the Legal Aid Society, member of the Goldman panel for the Attica disturbance, member of the Temporary Commission on the New York Vietnam Veterans Memorial Commission, and member of the mayor's advising committee on police management and personnel policy.

Mr. Patterson has served as a delegate of the American Bar Association, president of the New York State Bar Association and vice president of the Association of the Bar of the city of New York.

He has served on the judicial screening panels of Senators Jacob Javits, James Buckley, and me. Under Governor Hugh Carey, he served on the Governor's judicial screening panel and the Governor's Sentencing Committee.

Born in 1923 in New York City, Mr. Patterson graduated from Harvard College and Columbia Law School. He served to captain in the U.S. Army Air Force from 1942 to 1946, and received the Distinguished Flying Cross with cluster and the Air Medal with clusters.

Robert Patterson has had a most distinguished career in private practice and in public service. He will bring a great deal of wisdom and experience to the bench. I am proud that he was the unanimous choice of my Judiciary Selection Committee, and I urge his approval by this body.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I inquire of the leader if the Coast Guard nominations shown on page 8 of the Executive Calendar have been cleared.

Mr. DOLE. Those nominations have been cleared.

Mr. BYRD. Mr. President, I ask unanimous consent that the nominations placed on the Secretary's desk in the Coast Guard, as shown on page 8 of the Executive Calendar, be considered en bloc, confirmed en bloc, a motion to reconsider en bloc be laid on the table, and the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE COAST GUARD

Coast Guard nominations beginning Lawrence F. Cox, Jr., and ending Robert R. Albright, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

Coast Guard nominations beginning James W. Meyer, and ending Bruce R. Mustain, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished acting Republican leader, Mr. WILSON, as to whether or not the following calendar orders on the Calendar of Business have been cleared for action on the other side of the aisle: Calendar Orders No. 956, 1009, 1052, 1058.

Mr. WILSON. Mr. President, they have been cleared.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the aforementioned calendar orders.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL COURTS STUDY ACT

The Senate proceeded to consider the bill (S. 951) entitled the Federal Courts Study Act, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Courts Study Act".

ESTABLISHMENT AND PURPOSES OF THE COMMISSION

SEC. 2. (a) There is hereby established a Federal Courts Study Commission on the future of the Federal Judiciary (hereafter referred to as the "Commission").

(b) The purposes of the Commission are to—

(1) study the jurisdiction of the courts of the United States;

[(2) evaluate the procedures, personnel business and administration of the courts;**]**

[(3)**]** *(2)* examine problems currently facing the courts;

[(4)**]** *(3)* order, receive, **[**and**]** review, *and evaluate* reports from all dispute resolving bodies, including courts, administrative agencies, and alternative dispute resolution entities; and further, collect, **[**and**]** review, *and evaluate* all private and public studies concerning the *jurisdiction and* effectiveness of courts of the United States**[**,-the jurisdiction of the courts and their procedures, personnel, business, and administration**]**;

[(5)**]** *(4)* report to the President, *the Chief Justice of the United States,* the Congress, the Judicial Conference of the United States, *the Conference of Chief Justices,* and the State Justice Institute, on the revisions, if any, in the Constitution and laws of the United States where the Commission, based on its study and evaluation, deems advisable; and

[(6)**]** *(5)* develop a long-range plan for the future of the Federal Judiciary, including assessments involving—

(A) alternative methods of dispute resolution;

(B) the actual structure and administration of the Federal court system;

[(C) the manner in which courts handle cases;**]**

[(D)**]** *(C)* methods of resolving intracircuit and intercircuit conflicts in the courts of appeals; and

[(E)**]** *(D)* the types of disputes resolved by the Federal courts and Federal agencies.

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) The Commission shall be composed of fourteen members appointed, within ninety days after the effective date of this Act, as follows:

(1) four members appointed by the President of the United States with not more than two members from any major political party;

(2) two members of the Senate appointed by the President pro tempore of the Senate, one of whom shall be appointed upon the recommendation of the majority leader and one of whom shall be appointed upon the recommendation of the minority leader;

(3) two members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be appointed upon the recommendation of the majority leader and one of whom shall be appointed upon the recommendation of the minority leader;

(4) four members appointed by the Chief Justice of the United States with no more than two of such members from any major political party; and

(5) two members appointed by the Conference of Chief Justices, with no more than one such member being from any major political party.

(b) The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the jurisdiction of the Federal courts.

(c) The term of office of each Commission member shall be five years. Any member who was appointed pursuant to paragraph (2) or (3) of subsection (a) who vacates such office during his term of office with the Commission shall vacate his position on the Commission also. A member appointed to fill any such vacancy shall be appointed only for the remainder of his predecessor's term. Vacancies in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(d) The Commission shall select a Chairman and a Vice Chairman from among its members.

(e) Eight members of the Commission shall constitute a quorum.

POWERS OF THE COMMISSION

SEC. 4. (a) The Commission or, on the authorization of the Commission, any subcommittee thereof may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and request the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission, or any such subcommittee may deem advisable.

(b) The Administrative Office of the United States Courts, and the Federal Judicial Center, and each department, agency, and instrumentality of the executive branch of the Government, including the National Institute of Justice and independent agencies, shall furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information, and assistance as the Commission may reasonably deem necessary to carry out its functions under this Act, consistent with other applicable provisions of law governing the release of such information.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Act relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such Act, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.

(d) To the extent or in such amounts as are provided in appropriation Acts, the Commission is authorized to enter into interagency agreements or contracts with the Federal Judicial Center, the National Center for State Courts, Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(e) The Commission is authorized to receive financial assistance from sources other than the Federal Government, including assistance from private foundations.

(f) The Commission is authorized, for the purpose of carrying out its functions and duties pursuant to this Act, to establish advisory panels consisting of members either of the Commission or of the public. Such panels shall be established to provide expertise and assistance in specific areas, as the Commission deems necessary.

FUNCTIONS AND DUTIES

SEC. 5. (a) The Commission shall—

(1) make a complete study of the jurisdiction of the courts of the United States and of the several States and report to the [President and the Congress] *President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute* on such study within two years after the effective date of this Act;

(2) recommend revisions to be made to the Constitution and laws of the United States as the Commission, on the basis of such study, deems advisable;

(3) collect and review studies on the effectiveness of the courts;

(4) develop a long-range plan for the judicial system;

(5) submit annual written reports to the [President and the Congress] *President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute* on the condition of the judiciary, which shall contain a summary of their findings, recommendations, and conclusions, submitting the first such report within one year after the study concluded pursuant to paragraph (1);

(6) make any recommendations and conclusions it deems advisable every year thereafter.

(b) The study of the jurisdiction of the courts conducted by the Commission pursuant to paragraph (1) of subsection (a) shall be completed within two years after the effective date of this Act and shall be given priority over the other functions and duties being carried out by the Commission during such time.

COMPENSATION OF MEMBERS

SEC. 6. (a) A member of the Commission who is an officer or full-time employee of the United States shall receive no additional compensation for his or her services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission, but such amount shall not exceed the maximum amounts authorized under section 456 of title 28, United States Code.

(b) A member of the Commission who is from the private sector shall receive $200 per diem for each day (including traveltime) during which he or she is engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties, but such amounts shall not be in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

REPORTS

SEC. 7. (a)(1) The Commission shall transmit to the [President and to the Congress] *President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute,* not later than two years after the effective date of this Act, a study of the jurisdiction of the courts of the United States and of the several States pursuant to section 5(a)(1) of this Act. The Commission shall thereafter, in keeping with its functions, annually transmit to the [President and the Congress] *President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute* a report on the condition of the judiciary and summarize any findings, and make any recommendations and conclusions it deems advisable on the basis of its previous activities.

(2) Not later than [ten] *five* years after the effective date of this Act, the Commission shall submit a final report containing a detailed statement of the findings and conclusions of the study conducted pursuant to this Act, together with any recommendations it deems advisable.

EXPIRATION OF THE COMMISSION

SEC. 8. The Commission shall cease to exist on the date ninety days ater it transmits the final report pursuant to section 7 of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. To carry out the purposes of this Act there are authorized to be appropriated [$700,000] *$800,000* for each of the fiscal years [1988 and 1989 and $800,000 for each of the eight succeeding fiscal years 1990 through 1997] *1988 through 1992.*

EFFECTIVE DATE

SEC. 10. This Act shall become effective upon the date of enactment.

Mr. HEFLIN. Mr. President, for many years I have been working with my colleagues to improve our court system. There is no doubt that an effective administration of justice is the key to ensuring the life, liberty and happiness of all Americans. Our constitutional freedom is premised on certain assumptions. One of these assumptions is the belief that our judicial system will serve the needs of every individual.

Passage of Senate bill S. 951, the Federal Courts Study Act, which I introduced on April 8, 1987, will establish a Federal Courts Study Commission to evaluate and suggest eventual solutions to the problems currently facing our courts.

The Federal Courts Study Commission will aid Congress in its constitutional mandate to establish and provide for the Federal judiciary. This Commission will collect and review information regarding the workings of the Federal courts, and provide proposals to enhance the judiciary's ability to meet present and future needs.

We cannot be a free society if our courts are not equipped to render justice equally and swiftly. We cannot be free when intercircuit conflicts and a backlog of cases prevent the orderly enforcement of our most cherished constitutional rights. And we cannot be free if we continue to ignore the mounting presures being exerted in our Federal court system.

Passage of this legislation will help develop a workable plan for the future which will avoid haphazard and piecemeal reforms. Unlike other groups which study our Federal court system, this Commission will provide a mechanism for implementing needed court reform. That is where other commissions in the past have fallen short; they have only had the authority to make recommendations, not to follow through on their implementation.

Judge J. Clifford Wallace, testifying before the Subcommittee on Courts and Administrative Practice on June 15, 1987, stated:

> A commission could bring together all the studies and shedding preconceptions, make objective recommendations. Academic efforts generally are isolated. Broader-based efforts, such as the Civil Litigation Research Project or the ongoing work of the Rand Institute for Civil Justice, still do not aim toward a plan for future needs. The Federal Judicial Center and the Administrative Office of the United States Courts do not have a mandate for such comprehensive planning and, particularly with the Administrative Office, must allocate most efforts to servicing the courts.

A Commission composed of all three branches of Government, as outlined by Senate bill 951, will be able not only to gather data and formulate possible solutions, but also suggest realistic ways to implement those changes. Final authority, of course, would lie with Congress to consider and enact the developed proposals.

The Federal Courts Study Commission, authorized by S. 951, will be responsible for making a complete study of the Federal and State courts and reporting its findings to the three branches of Government and various organizations. The Commission is also charged with the responsibility of evaluating public and private studies concerning the jurisdiction of the courts, and developing a long-range plan for how the judiciary will meet future demands.

As originally introduced, S. 951 proposed a 10-year Commission. In the spirit of compromise, I offered an amendment to reduce the time of the Commission from 10 years to 5 years and the authorization for funding from $8 million to $4 million. Although I personally would have preferred a longer initial period of authorization, I am confident that the merits of this Commission will prove its worth.

The greatness of America's judiciary will depend on our ability to determine the Nation's future needs and revise the judicial system in line with our constitutional principles. This legislation provides us an opportunity to shape the future of the judiciary, not merely accept what evolves over time because of our inaction.

In closing, I would like to thank those Members of this body who have continued to seek judicial reform. Those of us who believe in legislation of this nature do so not for any political reason, but simply because we believe the proposal has merit. Progress is the reward of persistence, and for those of us who care about the future of this judiciary, we will not be deterred by inaction. I therefore urge my colleagues to vote for this legislation and for the effective administration of justice it will ensure.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRANSFER OF COAST GUARD CUTTER "INGHAM"

The bill (S. 2408) to transfer the Coast Guard cutter *Ingham* to the Naval and Maritime Museum at Patriots Point, SC, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2408

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the department in which the Coast Guard is operating shall transfer the Coast Guard cutter "INGHAM" to the Naval and Maritime Museum at Patriots Point, South Carolina. The Secretary shall transfer the "INGHAM" along with such equipment and in such condition as the Secretary considers appropriate. The Secretary shall make the transfer upon the decommissioning of the "INGHAM" or at a later time as determined appropriate by the Secretary.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELEASE OF REVERSIONARY INTEREST IN CERTAIN LAND

The bill (H.R. 2835) to direct the Secretary of Agriculture to release certain restrictions on a parcel of land located in Henderson, TN, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONVEYANCE OF VESSEL, "LANE VICTORY"

The Senate proceeded to consider the bill (H.R. 2032) to authorize the conveyance of the vessel, *Lane Victory.*

Mr. WILSON. Mr. President, on behalf of the U.S. Merchant Marine Veterans of World War II, I want to thank the Senate for taking up and passing H.R. 2032, which was introduced in the House by my good friend and fellow Californian, Glenn Anderson. Today's passage is a significant step forward in helping the Merchant Marine Veterans of World War II, a nonprofit organization based in Seal Beach, CA, acquire the National Defense Reserve Fleet vessel *Lane Victory.*

The bill we are passing today is straightforward in scope and at no cost to the Government; it authorizes the Secretary of Transportation to convey the *Lane Victory,* to the U.S. Merchant Marines Veterans of World War II, a not-for-profit organization based in Seal Beach, CA, for use as a merchant marine memorial. They intended to dock the *Lane Victory* in the Los Angeles Harbor where it will be used to educate the public about the vital role and contributions of merchant marines during WWII.

But I especially want to point to the importance and significance this bill holds for the U.S. Merchant Marine Veterans of World War II, a very dedicated group of individuals who have committed themselves to memorializing the brave contributions and sacrifices merchant marines put forward in that war effort. Clearly, the conveyance of the *Lane Victory,* at no cost to the Federal Government, is not much to ask in our effort to honor merchant marines.

The bill was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

McKINNEY HOMELESS ASSISTANCE ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4352.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 4352) entitled "An Act to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees:

From the Committee on Banking, Finance and Urban Affairs, for consideration of titles I–IV, X, and section 1 of the House bill, and titles I (except section 107) and II (except section 262) and sections 1 and 2 of the Senate amendment, and modifications committed to conference: Mr. St Germain, Mr. Gonzalez, Mr. Fauntroy, Ms. Oakar, Mr. Vento, Mr. Garcia, Mr. Frank, Mr. Wylie, Mrs. Roukema, Mr. Ridge, and Mr. Bartlett.

From the Committee on Education and Labor, for consideration of title VII of the House bill, and subtitles B–F of title III of the Senate amendment, and modifications committed to conference: Mr. Hawkins, Mr. Williams, Mr. Martinez, Mr. Jeffords, and Mr. Gunderson.

From the Committee on Energy and Commerce, for consideration of title VI of the House bill, and subtitle A of title III of the Senate amendment, and modifications committed to conference: Mr. Dingell, Mr. Waxman, Mr. Leland, Mr. Lent, and Mr. Madigan.

From the Committee on Government Operations, for consideration of title V of the House bill, and section 107 to the Senate amendment, and modifications committed to conference: Mr. Brooks, Mrs. Collins, and Mr. Horton.

From the Committee on Veterans Affairs, for consideration of title VIII of the House bill, and title IV of the Senate amendment, and modifications committed to conference: Mr. Montgomery, Mr. Penny, and Mr. Hammerschmidt.

From the Committee on Ways and Means, for consideration of title IX of the House bill, and sections 262 and 308 of the Senate amendment, and modifications committed to conference: Mr. Rostenkowski, Mr. Downey of New York, and Mr. Gradison.

Mr. BYRD. Mr. President, I move that the Senate insist on its amendment and agree to the conference requested by the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to, and the Presiding Officer [Mr. Reid] appointed from the Committee on Banking, Housing, and Urban Affairs: Mr. Cranston, Mr. Riegle, Mr. Sarbanes, Mr. D'Amato, and Mr. Heinz.

From the Committee on Governmental Affairs: Mr. Glenn, Mr. Chiles, Mr. Sasser, Mr. Stevens, and Mr. Heinz.

From the Committee on Veterans' Affairs: Mr. Cranston, Mr. Matsunaga, and Mr. Murkowski.

From the Committee on Labor and Human Resources: Mr. Kennedy, Mr. Harkin, Mr. Adams, Mr. Hatch, and Mr. Stafford.

From the Committee on Finance: Mr. Bentsen, Mr. Matsunaga, Mr. Moynihan, Mr. Packwood, and Mr. Armstrong conferees on the part of the Senate.

Mr. SASSER. Mr. President, it is a pleasure to join my distinguished colleague Senator Glenn as a cosponsor of S. 2607, which is the Governmental Affairs Committee's portion of H.R. 4352, the Omnibus Stewart B. McKinney Homeless Assistance Act of 1988, passed by the Senate on September 28.

As a member of the Senate Governmental Affairs Committee, I was proud to have been a part of last year's efforts to provide assistance to homeless Americans. However, in the ensuing year, State and Federal officials alike have reported growing difficulties in ensuring that Federal aid is being provided to those most in need. S. 2607, as reported by the Senate Governmental Affairs Committee, contains several new provisions designed to enhance the delivery of assistance to homeless Americans. I would like to take a few minutes to elaborate on the merits of some of these provisions.

To assist in the coordination of State efforts to assist the homeless, S. 2607 encourages States to appoint interagency councils, headed by State coordinators, to assist in the distribution of Federal funds to aid the homeless. It is anticipated that these State interagency councils will complement the efforts of the Federal interagency council in distributing assistance to the homeless. Furthermore, S. 2607 requires all States choosing not to establish an interagency council to designate a lead agency to coordinate State efforts at homeless assistance. In such a fashion, S. 2607 ensures that aid to the homeless is distributed in a coordinated fashion by State governments.

In addition, S. 2607 strengthens Federal efforts at homeless assistance by appointing regional coordinators to oversee efforts at providing assistance to the homeless in each of the 10 Federal regions. These regional coordinators would be required to conduct biennial workshops to assist State governments in the administration of the Stewart-McKinney Act.

In yet another provision designed to enhance cooperative efforts between the Federal Government and the States, S. 2607 requires the Federal Interagency Council on the Homeless to distribute a bimonthly bulletin to the States summarizing Federal assistance programs and funding deadlines. Federal agencies administering homeless assistance programs are required to submit funding timelines to the Federal interagency council for inclusion in these bimonthly newsletters.

In order to ensure that homeless assistance is targeted to those individuals most in need, S. 2607 requires the Federal Emergency Management Agency to develop new statutory formulas for the administration of emergency food and shelter grants. This restructuring of Federal assistance efforts is essential to ensuring that homeless assistance meets the needs of those individuals it is designed to serve.

Finally, S. 2607 broadens the definition of surplus Federal property to be used by the homeless to include underutilized Federal buildings. This would permit Federal property which has been relinquished only on a temporary basis to be used as shelters for the homeless.

Mr. President, it is my firm belief that this particular provision is especially important to serving the needs of the homeless population. In such a fashion, the Federal Government performs two important functions. Not only does it provide the homeless with shelter, it also provides a use for underutilized Federal buildings—buildings which are maintained at taxpayer expense. By applying the costs of maintaining these buildings toward the cost of sheltering the homeless, the homeless are provided with a place to stay, free of additional taxpayer expense, and the taxpayers are relieved of the burden of maintaining underutilized Federal buildings.

I urge our distinguished colleagues to join with Senator GLENN and myself in support of S. 2607. In doing so, you will provide the homeless with the food and shelter necessary to become self-sufficient members of society.

CREDIT DISCLOSURE

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 515.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 515) entitled "An Act to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. St Germain, Mr. Annunzio, Mr. Gonzalez, Ms. Pelosi, Mr. Barnard, Mr. Schumer, Mr. Wylie, Mr. Shumway, Mr. Hiler, and Mr. Ridge be the managers of the conference on the part of the House.

Mr. BYRD. Mr. President, I move that the Senate insist on the amendment, agree to the conference requested by the House, and the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to, and the Presiding Officer (Mr. REID) appointed Mr. PROXMIRE, Mr. DODD, and Mr. GRAMM conferees on the part of the Senate.

AUTHORITY TO CONVEY CERTAIN LAND

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5291, to provide the Secretary of the Air Force with authority to convey certain land that the bill be considered as having been read the third time, passed, and the motion to reconsider laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL PLACED ON CALENDAR— H.R. 5420

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 5420, a bill to authorize the lease of a specified naval repair ship to Pakistan, and a drydock facility to the Philippines, and that this bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESEARCH ON AIR POLLUTION IMPACTS ON FORESTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be discharged from further consideration of H.R. 2399, a bill to provide for study and research on the decline in U.S. forest productivity and to determine the effects of atmospheric pollutants on forest environments, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2399) to provide for study and research on the decline in U.S. forest productivity and to determine the effects of atmospheric pollutants on forest environments, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3419

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Mr. LEAHY and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. LEAHY, proposes an amendment numbered 3419.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and in lieu thereof insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Forest Ecosystems and Atmospheric Pollution Research Act of 1988".

SEC. 2. FINDINGS.

Congress finds that—

(1) the health and productivity of forests in certain regions of the United States are declining;

(2) there is a special concern about the decline of certain hardwood species, particularly sugar maples and oaks, in the eastern United States and the effects of atmospheric pollutants on the health and productivity of these forests;

(3) declines in the productivity of certain commercially important southern pine species have been measured;

(4) existing research indicates that atmospheric pollution, including ozone, acidic deposition, and heavy metals, may contribute to this decline;

(5) there is an urgent need to expand and better coordinate existing Federal, State, and private research, including research by private industry, to determine the cause of changes in the health and productivity of domestic forest ecosystems and to monitor and evaluate the effects of atmospheric pollutants on such ecosystems; and

(6) such research and monitoring should not impede efforts to control atmospheric pollutants.

SEC. 3. ESTABLISHMENT OF RESEARCH PROGRAM.

Section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1642) is amended by adding at the end the following:

"(c)(1) The Secretary, acting through the United States Forest Service, shall establish not later than 180 days after the date of the enactment of this subsection a 10-year program (hereinafter in this subsection referred to as the 'Program') to—

"(A) increase the frequency of forest inventories in matters that relate to atmospheric pollution and conduct such surveys as are necessary to monitor long-term trends in the health and productivity of domestic forest ecosystems;

"(B) determine the scope of the decline in the health and productivity of domestic forest ecosystems;

"(C) accelerate and expand existing research efforts (including basic forest ecosystem research) to evaluate the effects of atmospheric pollutants on forest ecosystems and their role in the decline in domestic forest health and productivity;

"(D) study the relationship between atmospheric pollution and other climatological, chemical, physical, and biological factors that may affect the health and productivity of domestic forest ecosystems;

"(E) develop recommendations for solving or mitigating problems related to the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems;

"(F) foster cooperation among Federal, State, and private researchers and encourage the exchange of scientific information on the effects of atmospheric pollutants on forest ecosystems among the United States, Canada, European nations, and other nations;

"(G) support the long-term funding of research programs and related efforts to determine the causes of declines in the health and productivity of domestic forest ecosystems and the effects of atmospheric pollutants on the health and productivity of domestic forest ecosystems; and

"(H) enlarge the Eastern Hardwood Cooperative by devoting additional resources to field analysis of the response of hardwood species to atmospheric pollution, and other factors that may affect the health and productivity of these ecosystems.

"(2) The Secretary shall establish a committee to advise the Secretary in developing and carrying out the Program, which shall be composed of scientists with training and experience in various disciplines, including atmospheric, ecological, and biological sciences. Such scientists shall be selected from among individuals who are actively performing research for Federal or State agencies or for private industries, institutions, or organizations.

"(3) The Secretary shall coordinate the Program with existing research efforts of Federal and State agencies and private industries, institutions, or organizations.

"(4) The Secretary shall submit to the President and to Congress the following reports:

"(A) Not less than 30 days before establishing the Program, the Secretary shall submit an initial program report—

"(i) discussing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) outlining the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems;

"(iii) describing the Program; and

"(iv) estimating the cost of implementing the Program for each fiscal year of its duration.

"(B) Not later than January 15, 1990, and January 15 of each year thereafter, during which the Program is in operation following the year in which the initial program report is submitted, the Secretary shall submit an annual report—

"(i) updating information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) updating the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems, including efforts conducted under the Program;

"(iii) recommending additional research and monitoring efforts to be undertaken under the Program to determine the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems; and

"(iv) recommending methods for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

"(C) Not later than 10 years after the date on which the initial program report is submitted, the Secretary shall submit a final report—

"(i) reviewing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) reviewing the nature and findings of all research and monitoring efforts conducted under the Program and any other relevant research and monitoring efforts related to the effects of atmospheric pollution on forest ecosystems; and

"(iii) making final recommendations for solving mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.".

Mr. LEAHY. Mr. President, on September 30, Senator LUGAR, Senator FOWLER, Senator BOND, and I introduced S. 2851, the Forest Ecosystems and Atmospheric Pollution Research Act of 1988. As I mentioned at that time, this bill is very similar to the House-passed forest health study bill. In order to expedite this expanded program of research, we worked closely with the House to draft this legislation, and elected not to hold hearings on this measure in the Senate Agriculture Committee. Today, I ask that this bill be handled in this fashion, as an amendment to the House bill, H.R. 2399, to continue to expedite the passage of this important program.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3419) was agreed to.

Mr. FOWLER. Mr. President, I am pleased to join my colleagues Senator LEAHY and Senator LUGAR as an original cosponsor of H.R. 2399 the Forest Ecosystems and Atmospheric Pollution Research Act of 1988, a bill to provide for the research and coordination we so desperately need in our efforts to reduce the effects of air pollution on our Nation's forest resources.

When most of us think of cleaning up our air, we associate those efforts with our cities. But we are making a mistake if we do not focus our attention on air-quality issues in the countryside as well.

In Georgia, one of our most important industries depends on the clean air and land and water with which our countryside has been blessed for so long. Forestry is Georgia's leading manufacturing employer. Directly and indirectly, the forest products industry employs more southerners than any other. Timber is our most valuable agricultural commodity, and forestry supports hundreds of thousands of families across the South.

And forestry is hardly a fly-by-night business. No one—from the large forest products companies to the small private landowner—expects to get rich quick in the tree business. Forest farmers who plant their land in trees make a long-term investment whose return they will not realize for decades. And more and more farmers—in the South and across the country—have begun making a substantial investment in forest resources with the assistance and cooperation of the Federal Government, through the Conservation Reserve Program enacted in the 1985 farm bill.

In the last 2 years, my first 2 years in the U.S. Senate, we have addressed many threats to many industries. From unfair foreign competition to high interest rates, from taxes to worker training, we have endeavored to enact laws that provide a beneficial economic environment for many of our Nation's most important industries. Forestry, certainly among America's most important business sectors, faces similar threats, not just from taxes or interest rates, not just from foreign competition, but from the pollution of our air.

For some time now, we have had documented evidence of the effects of acid rain on forests in the Northeast, and there is reason to believe that we in the South will not be able to continue to escape these hazards for long. The Federal Government for almost a decade now has supported a major research effort into the causes and effects of acid rain, and much has been learned from this program about the threat that sulfur and nitrogen emissions pose to our trees.

But another long-term economic and environmental problem facing our forest resources is low-level ozone. The same ozone that, in our stratosphere, protects us from harmful radiation is a harmful pollutant when introduced into our lower atmosphere. It hurts our lungs, burns our eyes, and is thought by many scientists to be a major cause of death and low-growth of trees.

In our cities, ozone is the reason why on summer days you can't see Atlanta's skyline from the airport or the Capitol Dome from the Lincoln Memorial. In the countryside, ozone rarely blocks the view, but it can have grave impacts on agriculture and forestry—the economic backbone of the rural South.

Since 1950, scientists have known that ozone can hurt agricultural yields, but only recently have they started to focus their attention on ozone and forestry. The New York Times this summer reported the death of an entire forest atop Mount Mitchell in North Carolina. In this front-page article, several scientists expressed the fear that this may be the "canary in the coal mine"—an early warning of the potential impacts of acid rain, ozone, and other pollutants on our forest resources.

This legislation heeds the warning of Mount Mitchell. It recognizes the threat that air pollution poses to our forests and the millions who depend on them. And it responds appropriately.

This bill, which the House has passed twice in the last few years, establishes a 10-year program to determine the effects of air pollution on forest ecosystems. Now, no one is pretending that studying the problem will make it go away. On the contrary, we must take action to better control emissions, to better protect the air and all living things that depend on it. But this program is a helpful step in the right direction.

Under this program, the U.S. Forest Service will increase forest inventories and surveys in order to assess declining U.S. forest health. This program will accelerate and expand research on the effects of pollutants such as acid rain, ozone, heavy metals, and their potentially more harmful combinations, with the ultimate goal of clarifying the threat so that we can address it more effectively.

Mr. President, this is a noncontroversial bill that has garnered bipartisan support from all regions of the country. I urge my colleagues to join us in enacting this legislation before adjournment so that we may begin to address this long-term issue as soon as possible.

Mr. BYRD. Mr. President, I ask unanimous consent that the bill be advanced to third reading, passed, and the motion to reconsider laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

SIPSEY WILD AND SCENIC RIVER AND ALABAMA WILDERNESS ADDITION ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1043.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2838) to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as additions to the Cheaha Wilderness, and to preserve over 30 thousand acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3420

Mr. BYRD. Mr. President, on behalf of Mr. HEFLIN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. HEFLIN, proposes an amendment numbered 3420.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out everything after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "Sipsey Wild and Scenic River and Alabama Wilderness Addition Act of 1988".

TITLE I—WILD AND SCENIC RIVER DESIGNATION

SEC. 101. Section 3(a) of the Wild and Scenic River Act (82 Stat. 906, as amended; 16 U.S.C. 1274(a)) is amended by adding the following new paragraph:

"( )(A) SIPSEY FORK OF THE WEST FORK, ALABAMA.—Segments of the Sipsey Fork and several tributaries, to be administered by the Secretary of Agriculture in the classifications indicated, as follows:

"(1) Sipsey Fork from the confluence of Sandy Creek upstream to Forest Highway 26, as a scenic river.

"(2) Sipsey Fork from Forest Highway 26 upstream to its origin at the confluence of Thompson Creek and Hubbard Creek, as a wild river.

"(3) Hubbard Creek from its confluence with Thompson Creek, upstream to Forest Road 210, as a wild river.

"(4) Thompson Creek from its confluence with Hubbard Creek upstream to its origin in section 4, township 8 south, range 9 west, as a wild river.

"(5) Tedford Creek from its confluence with Thompson Creek upstream to section 17, township 8 south, range 9 west, as a wild river.

"(6) Mattox Creek from its confluence with Thompson Creek upstream to section 36, township 7 south, range 9 west, as a wild river.

"(7) Borden Creek from its confluence with Sipsey Fork upstream to Forest Road 208, as a wild river.

"(8) Borden Creek from Forest Road 208 upstream to its confluence with Montgomery Creek, as a scenic river.

"(9) Montgomery Creek from its confluence with Borden Creek upstream to the southwest quarter of the southwest quarter of section 36, township 7 south, range 8 west, as a scenic river.

"(10) Flannigan Creek from its confluence with Borden Creek upstream to Forest Road 208, as a wild river.

"(11) Flannigan Creek from Forest Road 208 upstream to section 4, township 8 south, range 8 west, as a scenic river.

"(12) Braziel Creek from its confluence with Borden Creek upstream to section 12, township 8 south, range 9 west, as a wild river.

"(13) Hogood Creek from its confluence with Braziel Creek upstream to the confluence with an unnamed tributary in section 7, township 8 south, range 8 west, as a wild river.

"(B) A map entitled 'Sipsey Fork of the West Ford Wild and Scenic River', generally depicting the Sipsey Fork and the tributaries, is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.".

SEC. 102. The Secretary of Agriculture shall conduct a study to determine the feasibility of constructing a dam to establish a substantial lake, suitable for all types of recreational uses, to be located in the northeast portion of the Bankhead National Forest.

SEC. 103. The Secretary is authorized and directed to monitor the waters flowing towards and into Lewis Smith Lake and to take actions, including preventative maintenance, necessary to prevent any national forest management activities from causing injurious water quality.

TITLE II—WILDERNESS DESIGNATION

SEC. 201. (a) In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890), the following National Forest System lands in the State of Alabama, comprising approximately thirteen thousand nine hundred and seventy acres, as generally depicted on maps appropriately referenced and on file in the Office of the Chief of the Forest Service, Department of Agriculture, are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the William B. Bankhead National Forest which comprise approximately thirteen thousand two hundred and sixty acres as generally depicted on a map entitled "Sipsey Wilderness Additions-Proposed," dated September 1988, and which are hereby incorporated in and shall be deemed to be part of the Sipsey Wilderness.

(2) Certain lands in the Talladega National Forest which comprise approximately seven hundred ten acres as generally depicted on a map entitled "Cheaha Wilderness Additions-Proposed," dated June 1988, and which are hereby incorporated in and shall be deemed to be a part of the Cheaha Wilderness.

(b) Subject to valid existing rights, wilderness designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964 (78 Stat. 890): *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(c) Consistent with section 4(d)(1) of the Wilderness Act of 1964 (78 Stat. 890), and the United States Forest Service policy, the Secretary of Agriculture may take such measures as may be necessary in the control of fire, insects, including the southern pine beetle, and diseases within the Sipsey Wilderness, and Sipsey Wilderness additions, including any areas within the designated boundaries of the Wild and Scenic Rivers, subject to conditions as the Secretary deems desirable: *Provided*, That such measures in the Secretary's judgment are deemed necessary to protect threatened resources on Federal, State, or private adjacent lands. Within five years from the date of enactment of this Act or sooner for good cause in the judgment of the Secretary, the Secretary shall evaluate the dangers and potential dangers created by the southern pine beetle and other insects in the Bankhead National Forest and adjacent State and private lands. If his evaluation of such dangers and potential dangers justify a review of present United States Forest Service policy about such insects, he shall review such policy for the Sipsey Wilderness additions, including any areas within designated boundaries of Wild and Scenic Rivers and adjacent Federal lands, relative to the control of such insects. Thereafter, he shall monitor the dangers and potential dangers of such insects and such policy, closely.

(d) The Secretary of Agriculture, at his discretion, shall convert existing roads within the Sipsey Wilderness Addition into suitable hiking or horse trails.

SEC. 202. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of National Forest System roadless areas in Alabama and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Alabama, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Alabama;

(2) with respect to the National Forest System lands in the State of Alabama which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), and those lands referred to in subsection (d), that review and evaluation or reference shall be deemed, for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plan, but shall review the wilderness option when the plans are revised, which revision will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary finds that conditions in a unit have significantly changed;

(3) areas in the State of Alabama reviewed in such final environmental statement, or referenced in subsection (d), and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Planning Act of 1974, as amended by the National Forest Management Act of 1976: *Provided*, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Alabama are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable laws; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alabama for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

(d) The provision of this section shall also apply to National Forest System roadless lands in the State of Alabama which are less than five thousands acres in size.

SEC. 203. (a) As soon as practicable after enactment of this Act, the map and legal description of the Sipsey Wilderness Addition and the Cheaha Wilderness, as modified by section 210(a), shall be filed with the Committees on Agriculture and Interior and Insular Affairs of the House of Representatives and the Committees on Energy and Natural Resources and Agriculture, Nutrition, and Forestry of the Senate, and such map and legal description shall have the same force and effect as if included in this Act: *Provided, however*, That corrections of clerical and typographical errors in such legal description and map may be made.

Mr. HEFLIN. Mr. President, today I am pleased to see agreement on this bill I introduced relative to the environmental, recreational, and commercial use of the William F. Bankhead National Forest and the Talladega National Forest. This bill ensures that the pristine natural treasures of these forests will provide the citizens of Alabama and this Nation with peaceful retreats and natural playgrounds for decades to come.

This bill represents a great step toward enhancing the National Forest System in Alabama. In order to conform with the House bill which has been changed by the House committees, I am today making some substantial changes in the bill I introduced. These changes are being made primarily because of the time restrictions on the Senate. In my judgment, it is crucial that we pass this bill before the Senate adjourns. Wilderness areas are fast disappearing and we must endeavor to preserve these areas for the enjoyment of our children and our children's children.

I am very pleased to have finally reached an agreement which enables us to proceed with this bill best utilizing the Sipsey and Cheaha Wilderness in the Bankhead and Talladega National Forests. I want to thank Congressman FLIPPO for his hard work. In addition, I want to thank Congressman NICHOLS and his staff for assisting in the Cheaha Wilderness portion of the bill.

Mr. President, I am hopeful that this bill will serve as a basis for reaching a balanced approach to both rounding out the Alabama Wilderness system and releasing areas to nonwilderness management.

As I stated when I introduced this bill, this legislation would add 13,260 acres to the existing Sipsey Wilderness and 710 acres to the Cheaha Wilderness. In addition, the legislation would designate some 5,085 acres of the heavily forested river canyons as part of the National Wild and Scenic River System. As the Senate knows, the purpose of the Wild and Scenic Rivers Act is to preserve free-flowing rivers which, with their immediate environments, possess particularly remarkable scenic, recreational, geologic, fish and wildlife, historical, cultural or other similar values.

The House committees made several changes in the bill which include two primary section changes and deletions. This bill earlier provided for the construction of a lake and recreational facilities in the northeast portion of the Bankhead National Forest. As a result of having to conform with the House committee amended version of the bill, this provision is being amended to provide for a study of the proposed lake rather than immediate construction of the lake. I will continue to work for this very needed lake in the northeast portion of the Bankhead National Forest.

The other House change which I am conforming with today deletes the section which provides for the use of horse-drawn vehicles in the Sipsey Wilderness. I understand that this section duplicates the Secretary of Agriculture's current authority and is not needed in the bill. I further understand that both the House and Senate Agriculture Committees agree on this interpretation. These horse-drawn vehicles have been a historically common practice in the Sipsey Wilderness. I am hopeful the Secretary will continue to allow this practice to continue.

Several important provisions remain from my introduced bill. Much concern was raised regarding the spread of the southern pine beetle within the wilderness area. This bill still gives authority to the Forest Service to take the necessary measures to control the spread of this infamous pest and to study U.S. Forest Service policy with respect to the beetle. Alabama has already lost thousands of acres of prime forest land to the pine beetle, and if such steps are not taken, the pristine wilderness area could be lost forever.

Also, early on in the discussion of wilderness expansion, there were concerns raised about the need to prevent possible contamination of the Sipsey River since it fed the water supply for residents of Birmingham. To ensure the protection of high water quality, I have directed the Secretary of Agriculture to monitor the water in the Bankhead National Forest flowing toward and into Lewis Smith Lake.

Mr. President, once again, I want to make clear my support for the wilderness concept. Our dwindling wilderness areas provide necessary places for spiritual and physical refreshment. The recreational and leisure opportunities of wilderness areas are unsurpassed by any manmade attractions. Since the time is running out on this session, I am hopeful the Senate will pass this bill immediately. I want to pass legislation which reasonably addresses the environmental, recreational, and economical utilization of the Bankhead National Forest and the Talladega National Forest and which the majority of Alabama's citizens can support.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3420) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 2838) was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL EMPLOYEES LEAVE-TRANSFER ACT OF 1988

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 3757.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3757) to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of a medical or other emergency situation.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3421

Mr. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. Pryor.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. PRYOR, proposes an amendment numbered 3421.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Leave Act of 1988".

SEC. 2. VOLUNTARY TRANSFERS OF LEAVE.

(a) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapters:

"SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

"§ 6331. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means an employee as defined by section 6301(2), excluding an individual employed by the government of the District of Columbia;

"(2) the term 'leave recipient' means an employee whose application to receive donations of leave under this subchapter is approved;

"(3) the term 'leave donor' means an employee whose application to make 1 or more donations of leave under this subchapter is approved; and

"(4) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

"§ 6332. General authority

"Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee if such other employee requires additional leave because of a medical emergency.

"§ 6333. Receipt and use of transferred leave

"(a)(1) An application to receive donations of leave under this subchapter, whether submitted by or on behalf of an employee—

"(A) shall be submitted to the employing agency of the proposed leave recipient; and

"(B) shall include—

"(i) the name, position title, and grade or pay level of the proposed leave recipient;

"(ii) the reasons why transferred leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

"(iii) if the employing agency so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under clause (ii); and

"(iv) any other information which the employing agency may reasonably require.

"(2) If an agency requires that an employee obtain certification under paragraph (1)(B)(iii) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

"(3) An employing agency shall approve or disapprove an application of a proposed leave recipient for leave under this subchapter, and, to the extent practicable, shall notify the proposed leave recipient (or other person acting on behalf of the proposed recipient, if appropriate) of the decision of the agency, in writing, within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receiving such application.

"(b) A leave recipient may use annual leave received under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued that leave under section 6303, except that any annual leave, and any sick leave, accrued or accumulated by the leave recipient and available for the purpose involved must be exhausted before any transferred annual leave may be used.

"(c) Transferred annual leave—

"(1) may accumulate without regard to any limitation under section 6304; and

"(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

"§ 6334. Donations of leave

"(a) An employee may, by written application to the employing agency of such employee, request that a specified number of hours be transferred from the annual leave account of such employee to the annual leave account of a leave recipient in accordance with section 6332.

"(b)(1) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave such donor would be entitled to accrue during the leave year in which the donation is made.

"(2) A leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may donate no more than the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

"(3) The employing agency of a leave donor may waive the limitation under paragraphs (1) and (2). Any such waiver shall be made in writing.

"(c) The Office of Personnel Management shall prescribe regulations to include procedures to carry out this subchapter when the leave donor and the leave recipient are employed by different agencies.

"§ 6335. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

"(1) the leave recipient notifies the employing agency of such leave recipient, in writing, that the medical emergency no longer exists;

"(2) the employing agency of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

"(3) the leave recipient is separated from service.

"(b)(1) The employing agency of a leave recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

"(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

"§ 6336. Restoration of transferred leave

"(a)(1) The Office of Personnel Management shall establish procedures under which, except as provided in paragraph (2), any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the appropriate accounts of the respective leave donors.

"(2) Nothing in paragraph (1) shall require the restoration of leave to a leave donor—

"(A) if the amount of leave which would be restored to such donor would be less than 1 hour or any other shorter period of time which the Office may by regulation prescribe;

"(B) if such donor retires, dies, or is otherwise separated from service, before the date on which such restoration would otherwise be made; or

"(C) if such restoration is not administratively feasible, as determined under regulations prescribed by the Office.

"(b) At the election of the leave donor, transferred annual leave restored to such leave donor under subsection (a) may be restored by—

"(1) crediting such leave to the leave donor's annual leave account in the then current leave year;

"(2) crediting such leave to the leave donor's annual leave account, effective as of the first day of the first leave year beginning after the date of the election; or

"(3) donating such leave in whole or part to another leave recipient; if a leave donor elects to donate only part of restored leave to another recipient, the donor may elect to have the remaining leave credited to the donor's annual leave account in accordance with paragraph (1) or (2).

"(c) The Office shall prescribe regulations under which this section shall be applied in the case of an employee who is paid other than on the basis of biweekly pay periods.

"(d) Restorations of leave under this section shall be carried out in a manner consistent with regulations prescribed to carry out section 6334(c), if applicable.

"§ 6337. Accrual of leave

"(a) For the purpose of this section—

"(1) the term 'paid leave status under subchapter I', as used with respect to an employee, means the administrative status of such employee while such employee is using sick leave, or annual leave, accrued or accumulated under subchapter I; and

"(2) the term 'transferred leave status', as used with respect to an employee, means the administrative status of such employee while such employee is using transferred leave under this subchapter.

"(b)(1) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual leave and sick leave shall accrue to the credit of such employee at the same rate as if such employee were then in a paid leave status under subchapter I, except that—

"(A) the maximum amount of annual leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days; and

"(B) the maximum amount of sick leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days.

"(2) Any annual or sick leave accrued by an employee under this section—

"(A) shall be credited to an annual leave or sick leave account, as appropriate, separate from any leave account of such employee under subchapter I; and

"(B) shall not become available for use by such employee, and may not otherwise be taken into account under subchapter I, until, in accordance with subsection (c), it is transferred to the appropriate leave account of such employee under subchapter I.

"(c)(1) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of such employee under subchapter I, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph (1) or (2) of section 6335(a).

"(2) If the employee's medical emergency terminates as described in section 6335(a)(3), no leave shall be credited to such employee under this section.

"§ 6338. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6339. Additional leave transfer programs

"(a) For the purpose of this section—

"(1) the term 'excepted agency' means—

"(A) the Central Intelligence Agency;

"(B) the Defense Intelligence Agency;

"(C) the National Security Agency;

"(D) the Federal Bureau of Investigation; and

"(E) as determined by the President, any Executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities; and

"(2) the term 'head of an excepted agency' means—

"(A) with respect to the Central Intelligence Agency, the Director of Central Intelligence;

"(B) with respect to the Defense Intelligence Agency, the Director of the Defense Intelligence Agency;

"(C) with respect to the National Security Agency, the Director of the National Security Agency;

"(D) with respect to the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation; and

"(E) with respect to an Executive agency designated under paragraph (1)(E), the head of such Executive agency, and with respect to a unit of an Executive agency designated under paragraph (1)(E), such individual as the President may determine.

"(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave transfer program established under any of the preceding provisions of this subchapter.

"(c)(1) The head of an excepted agency shall, by regulation, establish a program under which annual leave accrued or accumulated by an employee of such agency may be transferred to the annual leave account of any other employee of such agency if such other employee requires additional leave because of a medical emergency.

"(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established—

"(A) in a manner consistent with the provisions of this subchapter applicable to the program; and

"(B) without regard to any provisions relating to transfers or restorations of leave between employees in different agencies.

"(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

"§ 6340. Inapplicability of certain provisions

"Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in section 7351 shall apply with respect to a solicitation, donation, or acceptance of leave under this subchapter.

"SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

"§ 6361. Definitions

"For the purpose of this subchapter the term—

"(1) 'employee' means an employee as defined by section 6301(2), but shall exclude any individual employed by the government of the District of Columbia;

"(2) 'executive agency' means any executive agency or any administrative unit thereof;

"(3) 'leave bank' means a leave bank established under section 6363;

"(4) 'leave contributor' means an employee who contributes leave to an agency leave bank under section 6365;

"(5) 'leave recipient' means an employee whose application under section 6367 to receive contributions of leave from a leave bank is approved; and

"(6) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

"§ 6362. General authority

"(a) Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which—

"(1) annual leave accrued or accumulated by an employee may be contributed to a leave bank established by the employing agency of such employee; and

"(2) leave from such a leave bank may be made available to an employee who requires such leave because of a medical emergency.

"(b) To test voluntary leave bank programs under the provisions of this subchapter, the Office of Personnel Management shall establish a demonstration project in at least 3 Executive agencies, of which—

"(1) one such agency shall include approximately, but not less than, the equivalent of 100,000 full-time positions;

"(2) one such agency shall include approximately, but not less than, the equivalent of 25,000 full-time positions; and

"(3) one such agency shall include approximately, but not less than, the equivalent of 1,000 full-time positions.

"§ 6363. Establishment of leave banks

"Each agency that establishes a leave bank program under section 6362 shall establish 1 or more leave banks in accordance with regulations prescribed by the Office of Personnel Management.

"§ 6364. Establishment of Leave Bank Boards

"(a)(1) Each agency that establishes a leave bank shall establish a Leave Bank Board consisting of 3 members, at least one of whom shall represent a labor organization or employee group, to administer the leave bank under the provisions of this subchapter, in consultation with the Office of Personnel Management.

"(2) An agency may establish more than 1 Leave Bank Board based upon the administrative units within the agency. No more than 1 board may be established for each leave bank.

"(b) Each such Board shall—

"(1) review and approve applications to the leave bank under section 6367;

"(2) monitor each case of a leave recipient; and

"(3) monitor the amount of leave in the leave bank and the number of applications for use of leave from the bank; and

"(4) maintain an adequate amount of leave in the leave bank to the greatest extent practicable.

"§ 6365. Contributions of annual leave

"(a)(1) An employee may, by written application to the Leave Bank Board, request that a specified number of hours be transferred from the annual leave account of such employee to the leave bank established by such agency.

"(2) An employee may state a concern and desire to aid a specified proposed leave recipient or a leave recipient in the application filed under paragraph (1).

"(b)(1) Upon approving an application under subsection (a), the employing agency of the leave contributor may transfer all or any part of the number of hours requested for transfer, except that the number of hours so transferred may not exceed the limitations under paragraph (2).

"(2)(A) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave such contributor would be entitled to accrue during the leave year in which the contribution is made.

"(B) A leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may contribute no more than the number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

"(c) The Leave Bank Board of a leave contributor may waive the limitations under subsection (b)(2). Any such waiver shall be in writing.

"(d) The Office of Personnel Management shall prescribe regulations establishing an open enrollment period during which an employee may contribute leave under subsection (a) for a leave year.

"§ 6366. Eligibility for leave recipients

"(a) An employee is eligible to be a leave recipient if such employee—

"(1) experiences a medical emergency and submits an application pursuant to section 6367(a); and

"(2)(A) contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank of the employing agency of such employee, in the leave year (beginning in and including any part of a leave year in which such leave bank is established) that such employee submits an application to be a leave recipient under section 6367(a); and

"(B) such contribution is made before such employee submits an application under section 6367(a).

"(b)(1) An employee shall contribute the minimum number of hours required under subsection (a)(2)(A), if such employee is an employee—

"(A) for less than 3 years of service and contributes a minimum of 4 hours;

"(B) for between 3 years and less than 15 years of service and contributes a minimum of 6 hours; or

"(C) for 15 years or more of service and contributes a minimum of 8 hours.

"(2) Notwithstanding the provisions of paragraph (1), the Leave Bank Board of an agency, after consultation with the Office of Personnel Management, may—

"(A) reduce the minimum number of hours required under paragraph (1) for any leave year, if such Board determines there is a surplus of leave in the leave bank; and

"(B) increase the number of minimum hours required under paragraph (1) for the succeeding leave year, in any leave year in which the Board determines there is a shortage of leave in the leave bank.

"(c) An employee shall meet the requirements of subsection (a)(2)(A) if such employee contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank with which such employee submits an application to be a leave recipient under section 6367(a).

"(d) The provisions of subsection (a) may not be construed to limit the amount of the voluntary contribution of annual leave to a leave bank, which does not exceed the limitations of section 6365(b).

"§ 6367. Receipt and use of leave from a leave bank

"(a) An application to receive contributions of leave from a leave bank, whether submitted by or on behalf of an employee—

"(1) shall be submitted to the Leave Bank Board of the employing agency of the proposed leave recipient; and

"(2) shall include—

"(A) the name, position title, and grade or pay level of the proposed leave recipient;

"(B) the reasons why leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

"(C) if such Board so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under subparagraph (B); and

"(D) any other information which such Board may reasonably require.

"(3) If a Board requires that an employee obtain certification under paragraph (2)(C) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

"(b) The Leave Bank Board of an employing agency may approve an application submitted under subsection (a).

"(c) A leave recipient may use annual leave received from the leave bank established by the employing agency of such employee under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued such leave under section 6303, except that any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient shall be used before any leave from the leave bank may be used.

"(d) Transferred annual leave—

"(1) may accumulate without regard to any limitation under section 6304; and

"(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

"(e) Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in the provisions of section 7351 shall apply to any solicitation, contribution, or use of leave to or from a leave bank under this subchapter.

"§ 6368. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

"(1) the leave recipient notifies the Leave Bank Board in writing, that the medical emergency no longer exists;

"(2) the Leave Bank Board of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

"(3) the leave recipient is separated from service.

"(b)(1) The Leave Bank Board of a recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

"(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

"§ 6369. Restoration of transferred leave

"The Office of Personnel Management shall establish procedures under which any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates, shall be restored to the leave bank.

"§ 6370. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6371. Accrual of leave

"While using leave made available to an employee from a leave bank, annual and sick leave shall accrue to the credit of such employee and shall become available for use by such employee in the same manner as provided for under section 6337.

"§ 6372. Additional leave bank programs

"(a) For the purpose of this section—

"(1) the term 'excepted agency' has the same meaning as such term is defined under section 6338(a)(1) of this title; and

"(2) the term 'head of an excepted agency' has the same meaning as such term is defined under section 6338(a)(2) of this title.

"(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave bank program established under any of the preceding provisions of this subchapter.

"(c)(1) The head of an excepted agency may, by regulation, establish a voluntary leave bank program under which annual leave accrued or accumulated by an employee of such agency may be contributed to a leave bank, and any other employee of such agency may receive additional leave from such leave bank because of a medical emergency.

"(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established in a manner consistent with the provisions of this subchapter applicable to the program.

"(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

"§ 6373. Limitation on employee participation

"An employee in a unit of an agency that establishes a leave bank program under the provisions of this subchapter may not participate in a leave transfer program under the provisions of subchapter III.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

"Sec.
"6331. Definitions.
"6332. General authority.
"6333. Receipt and use of transferred leave.
"6334. Donations of leave.
"6335. Termination of medical emergency.
"6336. Restoration of transferred leave.
"6337. Accrual of leave.
"6338. Prohibition of coercion.
"6339. Additional leave transfer programs.
"6340. Inapplicability of certain provisions.

"SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

"6361. Definitions.
"6362. General authority.
"6363. Establishment of leave banks.
"6364. Establishment of Leave Bank Boards.
"6365. Contributions of annual leave.
"6366. Eligibility for leave recipients.
"6367. Receipt and use of leave from a leave bank.
"6368. Termination of medical emergency.
"6369. Restoration of transferred leave.
"6370. Prohibition of coercion.
"6371. Accrual of leave.
"6372. Additional leave bank programs.
"6373. Limitation on employee participation.".

(c) IMPLEMENTATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS.—(1) No later than 3 months after the date of the enactment of this Act, the Office of Personnel Management shall prescribe regulations to implement leave transfer programs pursuant to the amendments made by this Act.

(2) No later than 6 months after the date of the enactment of this Act—

(A) the head of each agency involved under sections 6332 and 6339 of title 5, United States Code, shall establish and begin operating a leave transfer program in accordance with applicable provisions of subchapter III of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office; and

(B) the Office of Personnel Management shall prescribe regulations to implement leave bank programs pursuant to the amendments made by this Act.

(3) No later than 9 months after the date of the enactment of this Act, the head of each agency involved under section 6362 of title 5, United States Code, shall establish and begin operating a leave bank in accordance with subchapter IV of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office.

(d) TERMINATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS AFTER 5 YEARS.—(1)(A) Subchapters III and IV of chapter 63 of title 5, United States Code, are repealed effective 5 years after the date of the enactment of this Act.

(B) The table of sections for subchapter III and the table of sections for subchapter IV of chapter 63 of title 5, United States Code, are repealed effective 5 years after the date of the enactment of this Act.

(2) If a leave transfer program under subchapter III of chapter 63 of title 5, United States Code, or the leave bank program under subchapter IV of such chapter, terminates before the termination of the medical emergency affecting a leave recipient under such program, any leave which was transferred to the leave recipient before the termination of the program shall remain available for use (including by restoration to leave donors or leave contributors, as the case may be, and if applicable) as if the program had remained in effect.

(3)(A) Any annual leave remaining in an agency's leave bank under subchapter IV of chapter 63 of title 5, United States Code, shall, upon the repeal of such subchapter be dispensed in accordance with subparagraph (B).

(B) If there are any employees who, based on applications submitted before the effective date of the repeal of such subchapter, are found (before, on, or after that date) to be eligible to receive leave in connection with any medical emergency, annual leave contributed to the leave bank before such date shall, until the last such emergency has terminated, remain available for use by any such employee under the same terms and conditions as if the program had remained in effect.

(4) For the purpose of this subsection, "medical emergency", "leave recipient", "leave bank", and "employee" each has the meaning given that term under subchapter III or subchapter IV of chapter 63 of title 5, United States Code, as applicable.

(e) REPORT TO THE CONGRESS.—(1)(A) Within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination date of any program under subchapter III or subchapter IV of chapter 63 of title 5, United States Code (excluding any program under sections 6339 and 6372 of such chapter) the Office of Personnel Management shall submit a written report to the Congress with respect to the operations of such programs.

(B) The Office of Personnel Management may require agencies to maintain such records and to provide such information as the Office may need to carry out subparagraph (A).

(2) The excepted agencies that establish programs under sections 6339 and 6372 of title 5, United States Code, shall report to the Congress on the operation of such programs within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination of any such programs.

(f) CONTINUATION OF TEMPORARY LEAVE TRANSFER PROGRAMS.—Any temporary program allowing for transfers of leave among officers or employees of the Federal Government may, if such program is being implemented with respect to an agency (or any unit thereof) as of the date of the enactment of this Act, continue to be implemented with respect to such agency (or unit), notwithstanding any provision of law which would otherwise terminate the authority for such program, pending the commencement of a leave transfer program with respect to such agency pursuant to amendments made by this Act. The Office of Personnel Management (or, in the case of a program established by another agency, such other agency) shall prescribe regulations to ensure that any leave which has been transferred to the credit of an officer or employee and which remains unused as of the date on which any such temporary program terminates (and a successor program commences pursuant to amendments made by this Act) shall not be lost by reason of that termination.

SEC. 3. TRAVEL EXPENSES OF CAREER APPOINTEES.

Section 5724(a)(3)(A) of title 5, United States Code, is amended by striking out "during the five years preceding eligibility to receive an annuity under subchapter III of chapter 88, or of chapter 84 of this title, and thereafter" and inserting in lieu thereof "during or after the five years preceding eligibility to receive an annuity under subchapter III of chapter 88, or of chapter 84 of this title".

SEC. 4. Section 6 of the Civil Service Miscellaneous Amendments Act of 1983 (Public Law 98-224; 98 Stat. 49) is amended by striking out "September 30, 1990," and inserting in lieu thereof "September 30, 1995.".

Mr. PRYOR. Mr. President, today we are amending H.R. 3757, which would allow Federal employees to transfer annual leave to coworkers in need because of a personal or family medical emergency. The bill also directs the Office of Personnel Management to establish a leave bank demonstration project in at least three Federal agencies to test the leave bank approach.

Before I explain the provisions of this bill, I would like to acknowledge and thank my colleagues who have been instrumental in developing this Leave Sharing Program for Federal employees. Congressman LEHMAN initiated the idea after he was approached by a group of IRS employees who wanted to donate some of their leave to fellow employees, a married couple, one of whom was stricken with cancer. Because the law did not permit such leave transfers, Congressman LEHMAN introduced legislation to make it possible in this case. The leave donations allowed the recipients to continue receiving their pay and benefits instead of leaving the Government or going into a leave without pay status.

This one successful experiment in leave sharing led Congress to establish a temporary leave transfer program in 1987. OPM selected three Federal employees out of 242 applicants to participate in the program. Two of the three employees were ill and received both annual and sick leave donations. Because the third case involved the illness of a dependent, only annual leave transfers were allowed. In all three cases, more than enough donations were made. Given the overwhelming response to the temporary leave transfer program, Congress authorized the Office of Personnel Management to continue experimenting with the leave transfer program on a Government-wide basis through 1988 with the expectation of enacting permanent legislation.

I want to commend Senator PETE DOMENICI, Congressman GARY ACKERMAN, and Congressman FRANK WOLF for their efforts in crafting Federal employee leave sharing legislation. This bill is the result of their hard work. The temporary program has been a success, as OPM affirmed in their feasibility report to Congress on July 12, 1988, but greater experience is needed to assess the administrative procedures and costs associated with implementing a Government-wide program.

H.R. 3757 authorizes the Office of Personnel Management to establish a Federal Leave Sharing Program for 5 years which allows both voluntary transfers of leave between employees and a leave bank demonstration project. Because the States of Connecticut, Alaska, Maryland, and Florida and numerous local jurisdictions have implemented successful leave bank programs, H.R. 3757 would test this approach on a limited basis on the Federal level. In addition, because OPM has determined that sick leave transfers would result in a significant increased costs to the Government, leave transfers would be limited to annual leave.

I would like to take a moment to relate a story which demonstrates why a Federal leave sharing program is needed. There is a 38-year old Federal employee at the Rock Island Arsenal, a Vietnam veteran, who is a single parent with two children. He has a shrapnel wound in his leg which just will not heal. Some doctors have told him that he should have his leg amputated, but others have offered him hope of keeping his leg if he undergoes experimental surgery. Because of the complexity of the surgical procedures—replacing valves and veins and performing skin grafts, the whole process will take a year. Federal employees at the arsenal have rallied around this employee by giving him 800 hours of annual leave to date. They are not finished, though, they hope to collect 1 year's worth of annual leave for this individual so he may go through this operation without any financial worries.

Mr. President, the Federal employees leave sharing program provides a humane response to employees facing personal or family medical emergencies. Leave sharing not only helps alleviate the financial hardship attendant upon exhausting one's leave options, but it boosts employee morale by allowing employees to make a meaningful gift to a coworker in need.

Mr. President, I am also offering a technical amendment to correct a drafting error in the "last move home" provision that was included in the treasury, postal appropriation bill. The change clarifies the eligibility requirement to ensure it is consistent with the intent of the authors of that provision.

Finally, the substitute includes a provision extending the authorization of the China Lake pay demonstration projects for 5 years.

I wish to thank the sponsors of this legislation and urge my colleagues to support H.R. 3757.

AMENDMENT NO. 3422

(Purpose: To amend chapter 81 of title 5, United States Code, to provide that the limitation on compensation payments shall not apply to employees injured in the line of duty by an assault)

Mr. WILSON. Mr. President, I send an amendment to the desk on behalf of Senator ROTH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON] for Mr. ROTH proposes an amendment No. 3422.

Mr. WILSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . Section 8112 of title 5, United States Code, is amended—

(1) by redesignating such section as subsection (a) of section 8112; and

(2) by adding at the end thereof the following new subsection:

"(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) of title 18, and was sustained in the performance of duty.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3422) was agreed to.

Mr. DOMENICI. Mr. President, I am pleased to support the pending legislation, H.R. 3757, the Federal Employees Leave Transfer Act of 1988. I would like to take this opportunity to commend my colleague, Senator PRYOR, for his efforts to bring this bill before us today.

Last year, I introduced my own leave share legislation, in the form of S. 1595. In fact, the pending legislation is very similar to my bill.

Also, I successfully offered an amendment to the continuing resolution last December to extend the leave share pilot program through the end of fiscal year 1988.

Like my bill, H.R. 3757 would establish a voluntary leave share program for Federal employees who are faced with a family medical emergency, and who have exhausted their annual leave and their sick leave. The bill would direct the Office of Personnel Management to authorize, for 5 years, a voluntary leave transfer program.

At Chairman PRYOR's suggestion, this legislation would also direct OPM to establish a demonstration project, in at least three agencies, to experiment with a leave bank program.

Under the leave share approach, employees would donate a portion of their unused annual leave directly to a coworker in need. The leave bank approach would establish a general leave fund, whereby employees would donate a portion of their leave to the bank fund. Each participating agency would then set up a leave bank board to distribute the leave time.

I first became aware of the need for a leave share program when I was approached by one of my constituents, Ms. Geraldine Grenko. Geraldine was a career employee with the Bureau of Indian Affairs in New Mexico.

In 1986, Geraldine learned that she had cancer. Geraldine was a tough individual, a fighter, and she was determined to beat the cancer, just as she had beat a different form of cancer several years earlier.

Unfortunately, she had to retire from her job. Why? Because she did not have sufficient medical leave.

Geraldine has since passed away, but before she died, she contacted me again and encouraged me to continue to push for this legislation. Had a Federal leave sharing act been in place, she believed she could have worked longer. Even if the bill was too late to help her, she said, she still wanted to urge us to pass leave share legislation so that other employees in need could obtain additional leave.

I see this bill as a "win-win-win" situation.

First, the employee who is faced with the emergency would win. Through his or her colleagues' good graces, he or she will receive sufficient time to address the emergency.

Second, the Government would win, because it can retain a loyal public employee.

Finally, the donor would win. These individuals would have the satisfaction of knowing they helped a colleague in a very personal way.

This legislation is beneficial for everybody, and I am pleased that the administration has taken an active interest in it. I am grateful of the leadership the Office of Personnel and Management has provided in this regard.

H.R. 3757 is an excellent opportunity for Congress to lend a helping hand to Federal employees, and I urge my colleagues to support this legislation.

The PRESIDING OFFICER. The question is on agreeing to the substitute, as amended.

The amendment (No. 3421), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (H.R. 3757), as amended was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 849 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

DIRECTING A REVERSIONARY INTEREST IN LAND LOCATED IN OKTIBBEHA COUNTY, MS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4724.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4724) to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, Mississippi.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. STENNIS. Mr. President, I am happy to support Senate passage of H.R. 4724. This bill directs the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, MS, and makes possible an exchange of property between Mississippi State University and a private landowner.

This bill accomplishes the same purpose as Senate bill 2437 which was introduced earlier this year by my colleague from Mississippi, Mr. COCHRAN, and myself. The exchange will allow Mississippi State University to obtain property contiguous with property already owned by the University for purposes of conducting effective property management studies.

I want to thank the distinguished chairman of the Senate Committee on Agriculture, Mr. LEAHY, and the majority leader, Mr. BYRD, and all Members of the Senate for expediting consideration of this matter. I also want to express my appreciation to my friend from Mississippi, Mr. COCHRAN, for his work on this matter.

The PRESIDING OFFICER. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4724) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 1051 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 988.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3048) to establish a national Federal program effort in close collaboration with the private sector to develop as rapidly as possible the applications of superconductivity to enhance the Nation's economic competitiveness and strategic wellbeing, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3423

(Purpose: To substitute for the text of H.R. 3048 the House-passed provisions on superconductivity and the provisions of S. 1480 and S. 1554 as reported to the Senate, and for other purposes)

Mr. BYRD. Mr. President, I send to the desk a substitute amendment on behalf of Senators JOHNSTON, FOWLER, DOMENICI, BINGAMAN, and BUMPERS.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. JOHNSTON (for himself, Mr. FOWLER, Mr. DOMENICI, Mr. BINGAMAN, and Mr. BUMPERS) proposes an amendment numbered 3423.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's Record under Amendments Submitted.)

Mr. JOHNSTON. Mr. President, I urge the Senate to adopt the substitute amendment being offered to H.R. 3048, the National Superconductivity and Competitiveness Act of 1988. This amendment preserves the text of the House bill, which passed the House under suspension last month. The substitute adds to the House-passed provisions the texts of two important bills reported by the Committee on Energy and Natural Resources. These two bills have a common goal: Better use of our Federal research, development, and demonstration assets to develop technology for American competitiveness.

The first of the bills reported by the Committee on Energy and Natural Resources included in the substitute is S. 1480, the Department of Energy National Laboratory Cooperative Research Initiatives Act, developed by Senator Domenici and Senator Bingaman. This bill provides the conditions for inventions and discoveries made in the Department of Energy national laboratories to be made available—where this can be done prudently—to the private sector to enhance the competitiveness of American industry. Existing protections for sensitive or classified technology are completely preserved.

This legislation has been the subject of extensive hearings and negotiations with the Department of Energy. I am happy to tell the Senate that the Department of Energy endorses the version that the Committee on Energy and Natural Resources reported and that the Department of Energy and the administration endorse the version of S. 1480 we are offering today as part of the substitute.

The second bill included in the substitute is S. 1554, the Renewable Energy and Energy Efficiency Technology Competitiveness Act, developed under the leadership of Senator Fowler. I particularly want to congratulate Senator Fowler for his hard work in this major legislative initiative. The substitute incorporates a version of S. 1554 reported by the Committee on Energy and Natural Resources and modified to reflect the concerns of several House committees interested in the bill. The changes proposed by the House have been helpful in increasing the flexibility of administration and reducing the budgetary impact of the legislation.

S. 1554 provides multiyear authorizations for Department of Energy research, development, and demonstration programs in renewable energy and energy efficiency and directs the Secretary of Energy to enter into joint ventures to commercialize technologies developed by these programs. There is a great opportunity to realize the benefits of a decade or more of research on renewable energy and energy efficiency technologies. Much of this work is now coming to fruition. A program aimed at commercializing the results of this research is highly appropriate, so that American industry can penetrate and hold the markets that our investment in renewable energy and energy efficiency research should gain for us.

Mr. President, improving the competitiveness of American industry is the common thread of the provisions of the substitute we are offering today. We have attempted to present a package that the House can accept. At this late date in the session, that is the only option. We hope the House will find favor with the legislation we are about to send them, so that the results of our labors can be sent to the President.

Mr. President, I particularly want to thank Senator McClure, the ranking member of the Committee on Energy and Natural Resources, and his senior professional staff, Richard Grundy, for tireless efforts to improve the committee's work product.

Mr. President, I ask unanimous consent that a summary of the substitute and a letter to Senator Domenici from the Secretary of Energy, John S. Herrington, dated September 28, 1988, endorsing S. 1480 be inserted in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

Substitute for H.R. 3048 (Calendar No. 988) the National Superconductivity and Competitiveness Act of 1988

TITLE I

Title I of the bill consists of the text of H.R. 3048, the "National Superconductivity and Competitiveness Act of 1988", which passed the House under suspension on September 20, 1988.

TITLE II

Title II of the bill consists of the text of S. 1480, the "Department of Energy National Laboratory Cooperative Research Initiatives Act", reported by the Committee on Energy and Natural Resources on September 23, 1988 (Calendar No. 985, Senate Report 100-544). This legislation is endorsed by the Department of Energy, and has been modified to meet the concerns of the Office of Management and Budget and the House Committees on Science, Space, and Technology; Ways and Means; and Judiciary.

TITLE III

Title III of the bill consists of the text of S. 1554, the "Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1988", reported by the Committee on Energy and Natural Resources on September 22, 1988 (Calendar No. 958, Senate Report 100-523). This legislation has been modified to reflect concerns of the House Committees on Science, Space, and Technology; Small Business; Banking, Finance, and Urban Affairs; Ways and Means; and Energy and Commerce.

TITLE IV

Title IV of the bill renames the Los Alamos Neutron Scattering Center as the Manuel Lujan, Jr. Neutron Scattering Center.

The Secretary of Energy,
Washington, DC, September 28, 1988.

Hon. Pete Domenici,
U.S. Senate, Washington, DC.

Dear Senator Domenici: This is to advise you of the Department's position on S. 1480, the Department of Energy National Laboratory Cooperative Research Initiatives Act, which has been ordered reported by the Senate Committee on Energy and Natural Resources. The bill as reported resolves a number of the concerns we have expressed to you previously and, therefore, the Department now supports the current version of S. 1480.

As the Department's commitment to technology transfer has grown, we have emphasized the use of cooperative arrangements as a means of accelerating the commercialization of national laboratory research developments. These efforts have resulted in record numbers of technologies that have originated from Federally sponsored research, crossing the traditional boundaries separating government, industry, and the academic community, and making their way to the U.S. commercial marketplace.

We believe S. 1480, by its emphasis on guidelines based on technology commercialization principles, will complement these efforts by streamlining the approval process for cooperative arrangements without unduly restricting the Department's management options and responsibilities. Also, your bill would help speed the transfer of resulting inventions to the marketplace where this can be done without jeopardizing information with national security implications. It is important to recognize, as this bill does, that the national laboratories should act as resources and partners to U.S. industry, not competitors. Maintaining this distinction will allow the laboratories to serve the needs of industry while preserving their central missions.

The Department, however, cannot support H.R. 532, as reported by the House Science, Space and Technololgy Committee (H.R. Rep. No. 100-943, Pt. 1). This legislation would unacceptably impede the Department's naval nuclear propulsion and atomic energy defense functions by discarding special relationships that have been consistently recognized by Congress as essential to those national security programs. We also believe H.R. 5132 would impede, rather than complement, our ongoing technology transfer efforts. Though having a similar goal to S. 1480, H.R. 5132 would deprive the Department of needed flexibility in this area.

We have been pleased to work with you and your staff in arriving at a constructive initiative that will help the Department achieve even greater results in technology commercialization while preserving its national security missions, and will help United States industry make optimum use of the great resources we have in the national laboratory system.

Yours truly,

John S. Herrington.

Mr. HOLLINGS. Mr. President, I am pleased to join the distinguished chairman of the Energy Committee and our other colleagues in supporting the Senate substitute for H.R. 3048.

Title I of the substitute contains the language of the original House-passed bill. Under this language, the Director of the Office of Science and Technology Policy would establish a 5-year "National Action Plan on Advanced Superconductivity Research and Development." The language also sets forth research responsibilities for four Federal research agencies.

Mr. President, since the activities of the Office of Science and Technology Policy, and interagency science programs in general, fall under the jurisdiction of the Committee on Commerce, Science, and Transportation, I have taken a close look at this title. I also recognize the interest of the Energy Committee in this legislation, since the Department of Energy is one of the research agencies mentioned. For that reason, I was pleased to join Senator JOHNSTON in requesting that H.R. 3048 be held at the Senate desk while our two committees both reviewed it.

That review is now complete. For my part, I want to say that title I establishes a reasonable planning process and costs no additional funds. Its planning process also will complement the work of the National Commission on Superconductivity, a Government-industry body established in the Commerce Committee portion of the recently enacted Omnibus Trade and Competitiveness Act. I support this title.

Titles II, III, and IV have been added by the Energy Committee and fall solely within its jurisdiction. I might add, however, that as an individual Senator I am pleased to support them. Title II is a revised version of S. 1480, a bill by Senators DOMENICI and BINGAMAN to make it possible for Energy Department laboratories to work more closely with American industry. In addition to performing vital Government work, these laboratories have unclassified inventions and expertise that can help improve the competitiveness of American companies. S. 1480 parallels the provisions of the Federal Technology Transfer Act of 1986, a Commerce Committee bill which allowed increased cooperation between industry and most other Federal laboratories. I want to commend the sponsors and the Energy Committee for this valuable piece of legislation.

Title III consists of the text of S. 1554, a renewable energy technology bill sponsored by my good friend from Georgia, Senator FOWLER. This is farsighted legislation to help create new energy options for our country.

Title IV, as Senator JOHNSTON has stated, renames the Los Alamos Neutron Scattering Center as the Manuel Lujan, Jr. Neutron Scattering Center. Congressman LUJAN is retiring at the end of this Congress after a distinguished career both as a Representative from New Mexico and as ranking member of the House Science Committee. This is a fitting tribute to his great accomplishments in the fields of science and energy.

In closing, Mr. President, I am pleased to join Senator JOHNSTON and other Members in supporting the Senate substitute. I urge our colleagues to support this valuable legislation.

Mr. DOMENICI. Mr. President, I am very pleased today to support passage of the committee substitute to H.R. 3048. I have been the prime sponsor of title II of this substitute measure, which is the National Laboratory Cooperative Research Initiatives Act. I am pleased to join several of my colleagues in bringing this bill before the Senate.

The House of Representatives recently passed H.R. 3048, "The National Superconductivity and Competitiveness Act," which would establish a 5-year national action plan for research into high-temperature superconducting materials. This House measure would direct the Office of Science and Technology Policy to establish the goals and priorities for federally funded research and development by the various Federal agencies supporting such work.

Today we are offering a substitute measure that includes, as title I, the full text of the House-passed measure, and adds to that several very important titles designed to enhance America's competitiveness in energy-related technologies.

Title II of the bill consists of the text of S. 1480, "The Department of Energy National Laboratory Cooperative Research Initiatives Act." This is a bill that I have sponsored and believe is very important to America's economic future.

This second title is designed to improve the integration of the DOE national laboratories with America's universities and private industry, and includes a specific subtitle to advance high-temperature superconductivity research and development at the DOE national laboratories. Title II of this substitute measure will greatly enable us to take advantage of the tremendous research capabilities of our national laboratories by improving technology transfer policies effecting those DOE laboratories.

I originally introduced S. 1480 in July 1987, and over the past year have incorporated many improvements into the bill that was reported by the Senate Energy and Natural Resources Committee on September 23, 1988. I am pleased that Secretary of Energy John Harrington now supports this measure. The committee-reported version of the bill, with a few technical improvements, is what is included in this substitute measure as title II.

Title III consists of the text of S. 1554, the "Renewable Energy and Energy Efficiency Technology Competitiveness Act," which was sponsored by Senator FOWLER and reported by the Energy Committee on September 22 of this year. This title takes steps to enhance commercialization of renewable energy and energy conservation technologies.

The fourth and final title of the bill simply provides for renaming the Los Alamos National Laboratory's Neutron Scattering Center as the Manuel Lujan, Jr. Neutron Scattering Center. This provision was earlier included in a House-passed DOE authorization bill that will not pass the Senate this year, and honors the ranking member of the House Science, Space, and Technology Committee and my very dear New Mexico colleague who is retiring this year after 20 years of distinguished congressional service.

THE NATIONAL LABORATORIES COOPERATIVE RESEARCH INITIATIVES TITLE

Mr. President, let me take a moment to say a few words about title II of the substitute bill we are proposing today.

America has been very strong—indeed, the world's leader—in supporting scientific research and technology development. In few places is this more true than at the Department of Energy's national laboratories.

Through the pursuit of their primary missions to assure America's energy security and develop our Nation's nuclear deterrent, the DOE national laboratories have developed tremendous capabilities in virtually all scientific fields, and are exceptionally strong in project-oriented technology development. The tremendous facilities, personnel, and experience truly represent a substantial scientific force and economic resource for our country.

Yet, the national laboratories really are America's secret economic weapon. Secret, unfortunately to too many American businesses. Because of a history of seclusion and secrecy experienced by several of the laboratories, and redtape and self-defeating technology management procedures at DOE, the tremendous capability of the labs to help the research and development capability of American business has been barely tapped.

The economic potential of technology transfer from the DOE National Laboratories is staggering. A good example of the economic possibilities is the comparison between DOE's technology program and the Massachusetts Institute of Technology [MIT]. While MIT has only one-tenth the budget of DOE, MIT saw 27 startup companies in the last year from DOE sponsored research along with 200 agreements to major companies to commercialize DOE research.

Given the relative size of the DOE research budget and work force of 23,000 DOE scientists, these numbers should be tenfold what they currently are just to equal MIT's accomplishments. Unfortunately, the numbers are actually comparable to statistics currently cited by all of DOE's national laboratories put together.

Title II of the bill we are considering today is designed to make sure we can take full advantage of the resources of these labs and help America get the most from the research dollars it spends. Let me take a moment to briefly describe what this title does.

The first subtitle would establish a cooperative program for research on enabling technologies for high-temperature superconducting applications. The national laboratories would be allowed to engage in cooperative research and development activities with universities and private industry. These activities will function to enhance research efforts and commercialization of the research by American companies.

Research centers would be established at the DOE national laboratories to conduct cooperative research, and a council would be created to bring industry, university, and lab representatives together to guide the activities of the centers. This subtitle will provide an excellent complement to title I of the substitute bill we are offering today.

Subtitle B of title II is the heart of the national laboratories provisions. This subtitle would change the way technology is managed at the DOE, and help open the DOE national laboratories so they will be better able to conduct cooperative research with America's industry and universities.

This second subtitle calls for the technology management process at DOE to be decentralized. It will allow the national laboratories—who work most directly with, and understand best, the innovations produced at the laboratories—to manage the proprietary rights to innovations created at the labs, and see that they are quickly transferred to American industry.

A key aspect to encouraging technology transfer is eliminating unnecessary and burdensome redtape from the process of allowing cooperative research to take place between these laboratories and our universities and private industry. This subtitle takes several steps to enable and encourage such cooperative R&D agreements.

While allowing the national laboratories to manage laboratory-developed technologies in order to improve technology transfer, several safeguards have been built-in to assure that these goals are carried out. Though the laboratories would retain proprietary rights to nonclassified innovations and could license these rights to private industry to commercially develop them, the Government would always retain the right to "march-in" and see that technologies are properly developed.

In addition, the Government will be able to retain full use of these technologies. Provisions are included that grant the Government a full, royalty-free license to use for its own purposes all technologies developed at the national laboratories.

These changes are not entirely new, the legislation builds upon the Bayh-Dole Act. Some of the provisions in this bill have been advanced in past legislation designed to improve technology transfer from our federally supported laboratories.

Mr. President, I will ask that a summary I have prepared listing some of the ways title affects technology management policies be included at the conclusion of my remarks.

This bill is significant in that it requires rules, already applied to many Federal laboratories, to be applied to all DOE laboratories, regardless of the nature of the labs—except for our naval nuclear propulsion labs. This will include application of these provisions to our nuclear weapons labs.

Mr. President, some may think it questionable and dangerous that we want technology transfer out of the weapons labs. Let me assure everyone that this bill does not compromise the defense missions of the weapons laboratories one bit—if it did, I could not support it.

This bill in no way relieves the laboratories of national security requirements to which they have always had to adhere. Technologies determined by DOE to be classified or sensitive will still be protected from disclosure and dissemination. The labs will still be subject to export-import restrictions, and DOE will continue to have oversight over all cooperative R&D agreements entered into by the labs.

In addition, this bill clarifies that the primary mission of the defense-program laboratories will remain to be nuclear defense research. Safeguards have been included to assure that cooperative R&D will not impinge on that mission, by limiting the total amount of cooperative agreement contracts to 10 percent of a laboratory's budget.

The provisions of title II designed to enhance technology transfer, are very consistent with policies that have been adopted by all other Federal agencies operating Federal research laboratories—including the Department of Defense.

Our DOE weapons labs and their programs have many scientific capabilities to contribute to America and the world outside of their narrow, project-oriented, defense missions. From superconductivity to human genetics, these labs are at the forefront of much of world's scientific research, and we cannot let such powerful resources be waisted in the clutch of unnecessary strong hand in Washington.

Mr. President, I am very pleased to finally be bringing this measure to the Senate, for I have two very fine national laboratories in my State of New Mexico: Los Alamos and Sandia. I know of the contributions they could make to America's economic machine—providing a strong scientific base and being able to translate that base into economic competitiveness.

I would like to thank the many people at Los Alamos, Sandia, the Department of Energy, many others from throughout the country who have helped bring this important legislation to this point. I also would like to thank my colleague from New Mexico, Senator Bingaman, and several other of my Senate and House colleagues who understand the potential this measure represents and have struggled with me to advance this legislation.

Mr. President, I urge the rest of my colleagues to support this bill, and hope that the House will be able to act quickly on its passage.

Mr. President, I ask unanimous consent that the material to which I referred be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Ways in Which Title II Affects Technology Management Policies

Principally, Title II would change the way technology is managed at the DOE—requiring DOE to treat all laboratories the same, and restore the weapons-related "exception" to a real exceptional circumstances and not an excuse to tie up a large portion of federal R&D.

The Legislation requires:

1. Bayh-Dole Act tech-transfer directives to be applied to all laboratories, regardless of the nature of their contractor—except for naval nuclear propulsion labs.

2. Restoration of original congressional intent re: the "weapons-related exemption." S. 1480 requires DOE to either classify or designate as sensitive data, an invention within 3 months or title will vest with the contractor-operator. This is consistent with past National Security Council (NSC) recommendations, and consistent with DOD regulations for the DOD laboratories.

It was not Congress' intent for the weapons-related exception to disqualify the entire laboratory, however, this has been DOE's position.

3. The contractor-operator at the Laboratories be given the authority to enter into cooperative research agreements, subject to a 30-day right of refusal, or modification by DOE.

4. The contractor-operator is to be further obligated to license the inventions out so innovations can be commercially developed. The federal government would retain both a royalty-free license to all such innovations, and "march-in" rights to assure appropriate development.

5. Personnel exchanges to be allowed between private industry, industry-university consortia and the national labs.

6. DOE to establish a cooperative research program for research on enabling technologies for high-temperature superconducting

applications. Centers for research would be established, along with a Council, made up of industry, university, and lab representatives, to guide the Centers.

Mr. FOWLER. Mr. President, I am very pleased and thankful that the full Senate has agreed to consider this legislation, which incorporates major provisions of S. 1554, the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1988.

I introduced S. 1554 on July 28, 1987. As I said at that time, I believe this legislation addresses our future energy needs in ways directly related to our international competitiveness and our national security.

For the last several years there has been an inverse relation between our rising dependence on inported energy and our declining commitment to the development of alternative energy sources. We cut research and development in this area by 80 percent since 1980. United States firms that pioneered these technologies have lost their lead in wind power to the Dutch, and are loosing it rapidly to the Japanese in photovoltaics.

My bill seeks to restore Federal assistance and leadership to a program of research, development and demonstration—to put the promise of wind, solar, biomass, geothermal and other renewables into practice. To this end, it calls for greater coordination between the executive and legislative branches, for enhanced cooperation between Government and the private sector.

Passage of this legislation will send a message that we remain complacent no longer—when it comes to meeting tomorrow's energy needs for American homes, transportation, business and industry.

Alternative energy sources which we invented hold the key to U.S. self-sufficiency in meeting those needs. Renewables can reverse our growing dependence on oil imports—imports which are higher than they were before the Arab oil embargo.

Renewable energy and energy conservation technologies will at the same time reduce our trade deficits. They can help us capture growing world markets that are turning to photovoltaics and other more reliable energy sources.

These are energy sources we can depend on indefinitely, without fear of exhausting irreplaceable resources. And that is not the end to the environmental benefits these technologies offer. They pose no risk of serious accident. And they produce none of the air pollution that upsets natural balances, alters our climate, endangers our health and damages our crops and forests.

This bill calls for a modest investment that will answer to all these critical needs.

I want to offer my thanks to my colleagues in the Senate for their favorable consideration, and to all those who contributed to this efforts, who nurture this legislation, who critiqued it and modified it and eventually—after more than a year of hard work—made it a reality.

I want to offer special thanks to my colleagues on both sides of the aisle who supported this effort, Senators MATSUNAGA, WIRTH, FORD, BUMPERS, DECONCINI, BYRD, KENNEDY, KERRY, STAFFORD, SANFORD, BINGAMAN, INOUYE, CONRAD, SHELBY, COCHRAN, PRYOR, SIMON, MITCHELL, CRANSTON, RIEGLE, HEINZ, and MOYNIHAN.

I want to thank the staff of the Senate Energy Committee, in particular Ben Cooper and Richard Grundy. Thanks also to Frances Zwenig, my former chief counsel, and to Tracey Thornton, my energy counsel, for all their efforts.

Today's action by the Senate demonstrates that the issues of energy independence, environmental protection, economic development, and national security addressed in this bill will finally begin to receive the attention they deserve—that they require.

I am proud of this legislation because it does more than react to immediate problems that we face. It won't address all our needs. There is still plenty of work to be done. But it will start us in the direction of an energy policy that is based on long-range, comprehensive strategies. I believe that its passage will contribute to an America that is better prepared to meet its future, secure at home and competitive in the international arena.

The PRESIDING OFFICER. The question is on agreeing to the amendmernt

The amendment (No. 3423) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 3048) was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO PLACE H.R. 3957 ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 3957, a bill to establish the Delaware and Lehigh Navigation Canal National Heritage in Pennsylvania, and that the bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered

NATIONAL AIDS AWARENESS AND PREVENTION MONTH

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1013, Senate Joint Resolution 192.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 192) to designate the month of October 1987 as "National AIDS Awareness and Prevention Month."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

AMENDMENT NO. 3424

(Purpose: To designate the month of October 1988, as "National AIDS Awareness and Prevention Month")

Mr. WILSON. Mr. President, I send an amendment to the desk for Mr. HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON], for Mr. HATCH, proposes an amendment numbered 3424.

Mr. WILSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 3, strike out "1987" and insert in lieu thereof "1988".

Amend the title to read as follows: "To designate the month of October 1988, as "National AIDS Awareness and Prevention Month".

Mr. HATCH. Mr. President, Senate Joint Resolution 192 provides for the designation of October 1988 as "National AIDS Awareness and Prevention Month." My amendment simply strikes out 1987 and inserts 1988, so that we can devote this upcoming month of October to increasing Americans' understanding of AIDS and the painful struggle that individuals with AIDS must face.

AIDS cases and deaths throughout the United States continue to climb. This September, the Centers for Disease Control reported that 72,645 Americans have been diagnosed with AIDS since the epidemic was first recognized in 1981, and almost 41,000 of those patients have died.

We still lack both a vaccine and a cure for this cruel and dreaded disease. And, despite the important steps and breakthroughs in the biomedical community's understanding of AIDS, today, we can only hope to control the spread of AIDS through aggressive public education efforts.

The Senate has passed some excellent legislation to ensure that all Americans get the information they need about AIDS. This spring, the Senate passed a comprehensive AIDS bill, S. 1220, of which I was a cosponsor. S. 1220 authorizes funds for priorities such as AIDS education, research, services, and prevention. This summer, the Centers for Disease Control sent a congressionally mandated AIDS education pamphlet to every American household in an effort to give people the information they need to protect themselves and their families from exposure to the AIDS virus. And, this fall, Congress passed the Labor-HHS appropriations for fiscal year 1989, which includes over $1 billion for our campaign against AIDS; much of this money will pay for AIDS education and prevention efforts. But, in order to truly protect Americans from the threat of AIDS, the Nation as a whole must cooperate in the effort to educate our citizens about AIDS myths and facts, risks and preventions.

During National AIDS Awareness and Prevention Month, the Department of Health and Human Services and the Public Health Service will sponsor special activities designed to increase Americans' understanding of how AIDS actually spreads and of what individuals can do to protect themselves from AIDS. They will also encourage State, local, and community governments and organizations to hold special AIDS awareness programs such as forums which will make the public more aware of and sensitive to the pain and anguish AIDS patients, and their families, friends and loved ones suffer. PTA's, volunteer groups, local health departments, the media, and other institutions can contribute a great deal to our fight against AIDS.

People must not die of AIDS because this country failed to channel all of the necessary resources, talent, and compassion into the battle to find a treatment and a cure. We must do everything we can responsibly do to protect the safety and the integrity of all our citizens and to win this war as quickly and as humanly possible.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3424) was agreed to.

Mr. GLENN. Mr. President, as an original cosponsor of Senator Joint Resolution 192, a joint resolution designating October as National AIDS Awareness and Prevention Month, I am pleased to rise and recommend its adoption by the Senate.

This legislation speaks to the need for a major national educational, informational, and public health effort to fight the AIDS epidemic. Federal researchers have predicted that the AIDS virus will likely prove fatal to everyone it infects unless drugs are developed to treat it. As scientists race against the clock to create the drugs that will allow persons with AIDS to lead normal lives, we are remainded that the simplest, cheapest and most effective method of fighting AIDS is by educating the public on how to avoid it.

Recently, the Federal Government mailed a candid brochure, called "Understanding AIDS," to every American household. There is no question that the distribution of 107 million copies of this national mailer was a necessary part of the campaign to educate the general public. But it is not enough. We know that nearly 90 percent of the current AIDS cases represent either male homosexuals or drug abusers, or both. Blacks and Hispanics make up a disproportionate 40 percent of the current cases. Therefore, we also need effective education programs that reach persons in these specific communities and counsel them about risk reduction behaviors.

Of course, AIDS education, like all other national public health campaigns, faces major challenges. We must learn how to best grab the attention of the persons targeted for information and how to motivate them to act safely. During this learning process, there are bound to be approaches that fail. However, it is imperative that these efforts be carefully evaluated so that we can learn from them and try again.

Last week, I released a report by the General Accounting Office—GAO/PEMD-88-35—which outlines a seven-step model for AIDS health education for use by researchers, public health agencies, medical personnel, and community-based organizations to ensure that effective programs are put into operation. I requested that GAO design this model after a Governmental Affairs Committee hearing earlier this year on the effectiveness of current AIDS education.

The GAO model draws on evidence gathered from previous public health research as well as reviews of exemplary education campaigns in the five U.S. cities hardest hit by AIDS. Key aspects of the model include: determining the target group; selecting the media most likely to reach that group; providing the skills necessary for preventing or changing risky behavior; and specifying the intended outcome of education messages.

The GAO report also recommends that the Secretary of Health and Human Services [HHS] collect data for assessing the relative effectiveness of different parts of AIDS education programs. The GAO further recommends that Congress enact legislation requiring HHS to report to Congress on its progress in evaluating the significance of various program components.

Effective AIDS education is critical now, and will remain so even after scientists have developed a drug to treat AIDS. Recent data show that the incidence of sexually-transmitted diseases is once again increasing in many parts of the Nation. From 1985 to 1987, infectious syphilis cases rose 30 percent. These facts impress upon us the need for continuing health education, even when treatment for a disease is available. In short, AIDS brutally reminds us that the job of the health educator is never finished.

I urge my colleagues to support the passage of Senate Joint Resolution 192.

AMENDMENT NO. 3425

(Purpose: to recognize the organization known as the National Mining Hall of Fame and Museum)

Mr. WILSON. Mr. President, I sent an amendment to the desk on behalf of Senator ARMSTRONG and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON], for Mr. ARMSTRONG, proposes an amendment numbered 3425.

Mr. WILSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDENT OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place add the following:

SECTION . The National Mining Hall of Fame and Museum, organized and incorporated under the laws of Colorado, is hereby recognized as such and is granted a charter.

POWERS

SEC. . The National Mining Hall of Fame and Museum (hereafter in this Act referred to as the "corporation"), shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

SEC. . The objects and purposes of the corporation are those provided in its articles of incorporation including—

(1) to honor citizens, mining leaders, miners, prospectors, teachers, scientists, engineers, inventors, governmental leaders, and other individuals, who have helped to make this Nation great by their outstanding contributions to the establishment, development, advancement, or improvement of mining in the United States of America;

(2) to perpetuate the memory of such individuals and record their contributions and

achievements by the erection and maintenance of such buildings, monuments, and edifices as may be deemed appropriate as a lasting memorial;

(3) to foster, promote, and encourage a better understanding of the origins and growth of mining, especially in the United States, and the part mining has played in changing the economic, social, and scientific aspects of our Nation;

(4) to establish and maintain a library and museum for collecting and preserving for posterity, the history of those honored by the corporation, together with a documentation of their accomplishments and contributions to mining, including such items as mining pictures, paintings, books, papers, documents, scientific data, relics, mementos, artifacts, and things relating to such items;

(5) to cooperate with other mining organizations which are actively engaged and interested in similar projects; and

(6) to enage in any and all activities incidental thereto or necessary, suitable, or proper for the accomplishment of any of the purposes set forth in this section.

MEMBERSHIP

SEC. . Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. . The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. . The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

RESTRICTIONS

SEC. . (a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State of Colorado.

LIABILITY

SEC. . The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SERVICE OF PROCESS

SEC. . With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

BOOKS AND RECORDS; INSPECTION

SEC. . The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. . The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(60) The National Mining Hall of Fame and Museum".

ANNUAL REPORT

SEC. . The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 11 of this Act. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. . The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. . For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. . The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954.

TERMINATION

SEC. . If the corporation fails to comply with any of the restrictions or other provisions of this Act, the charter granted by this Act shall expire.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3425) was agreed to.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall it pass?

So the joint resolution (S.J. Res. 192) was passed, as follows:

S.J. RES. 192

Whereas the President has declared AIDS as the number one public health enemy;

Whereas the Secretary of Health and Human Services has projected that, by the end of 1991, the cumulative total of all AIDS cases in the United States will reach 270,000 and result in nearly 180,000 deaths;

Whereas information, education, and public health measures are the nations primary weapons in prevention and control of the spread of AIDS;

Whereas if the AIDS epidemic is not controlled through a major national educational, informational, and public health effort, the devastating human and economic impact on society will be unprecedented in modern times;

Whereas informing and educating the American public, including the youth of today, about AIDS is crucial to preventing and controlling the spread of AIDS; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1988 is designated as "National AIDS Awareness and Prevention Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate activities.

TITLE I—NATIONAL MINING HALL OF FAME AND MUSEUM

SECTION 101. The National Mining Hall of Fame and Museum, organized and incorporated under the laws of Colorado, is hereby recognized as such and is granted a charter.

POWERS

SEC. 102. The National Mining Hall of Fame and Museum (hereafter in this title referred to as the "corporation"), shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 103. The objects and purposes of the corporation are those provided in its articles of incorporation including—

(1) to honor citizens, mining leaders, miners, prospectors, teachers, scientists, engineers, inventors, governmental leaders, and other individuals, who have helped to make this Nation great by their outstanding contributions to the establishment, development, advancement, or improvement of mining in the United States of America;

(2) to perpetuate the memory of such individuals and record their contributions and achievements by the erection and maintenance of such buildings, monuments, and edifices as may be deemed appropriate as a lasting memorial;

(3) to foster, promote, and encourage a better understanding of the origins and growth of mining, especially in the United States, and the part mining has played in changing the economic, social, and scientific aspects of our Nation;

(4) to establish and maintain a library and museum for collecting and preserving for posterity, the history of those honored by the corporation, together with a documentation of their accomplishments and contributions to mining, including such items as mining pictures, paintings, books, papers, documents, scientific data, relics, mementos, artifacts, and things relating to such items;

(5) to cooperate with other mining organizations which are actively engaged and interested in similar projects; and

(6) to engage in any and all activities incidental thereto or necessary, suitable, or proper for the accomplishment of any of the purpose set forth in this section.

MEMBERSHIP

SEC. 104. Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITIONS; RESPONSIBILITIES

SEC. 105. The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. 106. The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

RESTRICTIONS

SEC. 107. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State of Colorado.

LIABILITY

SEC. 108. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SERVICE OF PROCESS

SEC. 109. With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

BOOKS AND RECORDS; INSPECTION

SEC. 110. The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 111. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal Law", approved August 30, 1964, (36 U.S.C. 1101), is amended by adding at the end thereof the following:—

"(60) The National Mining Hall of Fame and Museum".

ANNUAL REPORT

SEC. 112. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 111 of this title. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 113. The right to alter, amend, or repeal this title is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. 114. For purposes of this title, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 115. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954.

TERMINATION

SEC. 116. If the corporation fails to comply with any of the restrictions or other provisions of this title, the charter granted by this title shall expire.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. WILSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL PLACED ON CALENDAR—H.R. 775

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 775, a bill to provide for the establishment of the Poverty Point National Monument, and that the bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRECTIONS IN THE ENROLLMENT OF S. 659

Mr. BYRD. Mr. President, on behalf of Mr. LEAHY I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Concurrent Resolution 153, a concurrent resolution to correct the enrollment of S. 659.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 153) making corrections in the enrollment of S. 659.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the concurrent resolution (S. Con. Res. 153) was considered and agreed to as follows:

S. CON. RES. 153

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 659), an Act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 2(ff)(1)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 101), strike out "it must" and insert "must".

(2) In section 4(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "such date" and insert in lieu thereof "such effective date".

(3) In section 4(f)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "(f)(1)" and insert in lieu thereof "(e)(1)".

(4) In section 4(k)(5)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "of such funds" and insert in lieu thereof "from such fund".

(5) In section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 201), strike out "(d)(4) or (e)(5)(A)" and insert in lieu thereof "(c)(4) or (d)(5)(A)".

(6) Section 302(a) is amended to read as follows:

"(a) IN GENERAL.—Section 9(a) (7 U.S.C. 136g(a)) is amended—

"(1) in the first sentence—

"(A) by inserting '(1)' before 'For',

"(B) by inserting after 'employees' the following: 'of the Environmental Protection Agency or of any State',

"(C) by striking out 'at reasonable times,' and inserting in lieu thereof the following: 'at reasonable times (A)', and

"(D) by inserting before the period at the end the following: ', or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 19'; and

"(2) in the second sentence, by inserting '(2)' before 'Before',".

(7) In section 12(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 603(2)(A))—

(A) strike out "4, 5, 7, 8, or 19" in clause (i) and insert in lieu thereof "5, 7, 8, 11, or 19", and

(B) strike out "4, 5, 6, 7, 8, or 19" in clause (ii) and insert in lieu thereof "5, 6, 7, 8, 11, or 19".

(8) In section 14(b)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 604), strike out "that" each place it occurs and insert in lieu thereof "who".

(9) In section 19(f)(1)(B)(iv) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 403), strike out "the Resource Conservation and Recovery Act of 1976" and insert in lieu thereof "the Solid Waste Disposal Act".

(10) In section 31 of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 701), strike out "sections" and insert in lieu thereof "section".

(11) In the amendment to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act made by section 801(b)(6)(D), insert a comma before "That".

(12) In section 801(b)—

(A) amend paragraph (2) to read as follows:

"(2) in subsection (c)(1)(D)(i)—

"(A) by striking out 'With' and inserting in lieu thereof 'with', and

"(B) by striking out ': *Provided*, That' and inserting in lieu thereof ', except that';",

(B) amend paragraph (3) to read as follows:

"(3) in subsection (c)(1)(D)(ii), by striking out 'subparagraph (D)(i) of this paragraph' and inserting in lieu thereof 'clause (i)';", and

(C) amend paragraph (4) to read as follows:

"(4) in subsection (c)(1)(D)(iii), by striking out 'subparagraphs (D)(i) and (D)(ii) of this paragraph' and inserting in lieu thereof 'clauses (i) and (ii)';".

(13) In section 801(b), redesignate paragraphs (8), (9), and (10) as paragraphs (7), (8), and (9), respectively.

(14) In section 801(q)(1), strike out "(B) CONFORMING AMENDMENTS.—" and insert in lieu thereof "(D)".

(15) In the table of contents of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 802)—

(A) in the item relating to section 6(f), strike out "(3) Existing stocks." and "(4) Additional information.",

(B) in the item relating to section 18, insert "and State" after "Federal",

(C) in the item relating to section 19—

(i) insert "(3) Solid Waste Disposal Act." at the end of the item relating to subsection (f),

(ii) amend the items relating to subsections (g) and (h) to read as follows:

"(g) Pesticide container study.
"(1) Study.
"(2) Report.
"(h) Relationship to Solid Waste Disposal Act.",

(D) amend the item relating to section 21 to read as follows:

"Sec. 21. Solicitation of comments; notice of public hearings.
"(a) Secretary of Agriculture.
"(b) Views.
"(c) Notice.",

(E) amend the item relating to section 24 to read as follows:

"Sec. 24. Authority of States.
"(a) In general.
"(b) Uniformity.
"(c) Additional uses.", and

(F) amend the items relating to sections 26 and 27 to read as follows:

"Sec. 26. State primary enforcement responsibility.
"(a) In general.
"(b) Special rules.
"(c) Administrator.
"Sec. 27. Failure by the State to assure enforcement of State pesticide use regulations.
"(a) Referral.
"(b) Notice.
"(c) Construction.".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WATER RESOURCES DEVELOPMENT ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2100.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the House insist upon its amendments to the bill (S. 2100) entitled "An Act to authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees:

Mr. Anderson, Mr. Roe (except for section 30) Mr. Nowak, Mr. Hammerschmidt, and Mr. Stangeland, and as an additional conferee, for consideration solely of section 30 as contained in the House amendments and modifications committed to conference, Mr. Borksi.

Mr. BYRD. Mr. President, I move that the Senate disagree to the House amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. MOYNIHAN, Mr. BURDICK, Mr. BREAUX, Mr. STAFFORD, and Mr. SYMMS conferees on the part of the Senate.

IMPORTED VEHICLE SAFETY COMPLIANCE ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 492, H.R. 2628.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2628) to amend the National Traffic and Motor Vehicle Safety Act of 1966 respecting the importation of motor vehicles in anticipation of compliance with safety standards under such act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3426

(Purpose: To make certain amendments relating to substantially similar vehicles, and other technical changes)

Mr. BYRD. Mr. President, I send an amendment to the desk for Senator INOUYE and Senator RUDMAN and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. INOUYE (for himself and Mr. RUDMAN) proposes an amendment numbered 3426.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On the first page, line 5, strike out "1987" and insert "1988".

On page 3, beginning with line 15, strike out all through line 20 and insert in lieu thereof the following:

"(i)(I) the motor vehicle is determined to be substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114, and of the same model year (as defined by regulation by the Secretary) as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

"(II) where there is no substantially similar United States motor vehicle, the Secretary determines that the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate,".

On page 3, line 22, strike out "(F)" and insert in lieu thereof "(D)".

On page 4, line 16, strike out "(G)" and insert in lieu thereof "(E)".

On page 4, beginning with line 21, strike out all through line 14 on page 6 and insert in lieu thereof the following:

"(C)(i) The Secretary shall make the determination under paragraph (3)(A)(i)—

"(I) on the petition of any registered importer or any manufacturer, or

"(II) on the Secretary's own initiative.

"(ii) The Secretary shall establish by regulation (I) the information required to be provided by the petitioner to clearly show that the vehicle is capable of being brought into compliance with all applicable Federal motor vehicle safety standards and (II) the procedures for considering such petitions. In establishing such procedures, the".

On page 6, line 23, strike out "regarding the similarity of motor vehicles".

On page 6, line 24, strike out "those" and insert in lieu thereof "the same model of".

On page 7, line 1, strike out "cles until the end of 12" and insert in lieu thereof "cle until the end of 3".

On page 7, line 4, strike out "of motor vehicles similarity".

On page 7, line 7, immediately before the period insert the following: "consistent with ensuring expeditious, but full, consideration and avoiding delay by any person".

On page 7, line 12, strike out "regarding the similarlity of motor vehicles".

On page 7, line 13, strike out "those motor vehicles" and insert in lieu thereof "the same model of motor vehicles".

On page 7, line 14, strike out "12" and insert in lieu thereof "3".

On page 7, line 19, strike out "motor vehicles" and insert in lieu thereof "same model of motor vehicle".

On page 7, line 20, immediately after the period, add the following: "A positive determination shall be sufficient authority for any other registered importer to import a vehicle of the same model under this subsection provided such registered importer complies with all the terms and conditions of such determinations.".

On page 7, line 21, strike out "(F)" and insert in lieu thereof "(D)".

On page 8, line 22, strike out "(G)" and insert in lieu thereof "(E)".

On page 8, line 23, strike out "(G)" and insert in lieu thereof "(E)".

On page 10, line 4, strike out "concealed".

On page 10, line 9, strike out "concealed".

On page 12, line 3, strike out "(G)" and insert in lieu thereof "(E)".

On page 13, line 16, strike out "1987" and insert "1988".

On page 15, line 8, strike out "1987" and inset "1988".

On page 15, line 15, strike out "1987" and insert "1988".

On page 17, line 18, beginning with "(b)", strike out all through the quotation marks on line 19 and insert in lieu thereof "(b) of".

On page 18, line 6, strike out "(F)" and insert in lieu thereof "(D)".

On page 18, line 12, strike out "(E)" and insert in lieu thereof "(C)".

Mr. INOUYE. Mr. President, I rise today with my distinguished colleague from New Hampshire, Mr. RUDMAN, to recommend that the Senate adopt by unanimous consent, with one substantive amendment, H.R. 2628, the Imported Vehicle Safety Compliance Act of 1987, which would regulate the automobile gray market. The House passed this bill on December 14, 1987. We think it is a good bill and ought to be enacted into law as early as is practicable. I understand the Department of Transportation has been consulted and has no objection to the enactment of this bill.

This legislation is similar to the measure which the Senate agreed to in 1986 by unanimous consent as title IV of S. 863, the reauthorization bill for the National Highway Traffic Safety Administration [NHTSA]. It also builds upon S. 2928, a bill Senator RUDMAN and I offered near the close of the 99th Congress. The House passed legislation comparable to S. 863 on October 6, 1986, as part of H.R. 2248, its NHTSA reauthorization bill. Unfortunately, the negotiators were unable to reconcile the House and Senate versions of the NHTSA bill, and our gray market provisions died with the adjournment of the 99th Congress.

The General Accounting Office subsequently issued a report highly critical of the current gray market importation process. The GAO report "found problems in each step of the gray market import process. These problems were either in ensuring that the vehicles had been modified to meet the standards or in processing the associated paperwork within and between [NHSTA, EPA, and the Customs Service]." The GAO concluded that a "substantial percentage of gray market vehicles approved by the NHSTA and EPA do not conform to Federal standards." Testimony before the Consumer Subcommittee of the Commerce, Science, and Transportation Committee confirmed GAO's findings.

With this legislation, we can ensure that gray market importers and modifiers are brought within the existing framework governing the manufacture and the sale of vehicles through authorized dealers. Given the differences between this bill as we propose to amend it and earlier versions of the bill, I thought it would be helpful to describe it in greater detail.

Under the program we are establishing, gray market vehicles may be imported into the United States if they are substantially similar to a model manufactured for the U.S. market and are modified by a registered importer to meet all applicable Federal motor vehicle safety standards. Further, in those instances where a substantially similar U.S.-made vehicle does not exist, a vehicle made for a foreign market may be imported and modified if the Secretary of Transporation determines that the vehicle can be modified to comply with all applicable Federal motor vehicle safety standards.

The most significant difference between this bill as passed by the House and as we would amend it relates specifically to the classes of vehicles that may be imported and then modified by registered importers. We share the goal of our House counterparts in ensuring that every vehicle imported under this new system will be ultimately modified to meet all governing U.S. standards. However, we disagree with the language included in the House bill to accomplish this objective. Thus, we offer an amendment today that simplifies this provision, while ensuring achievement of our mutual goal.

Under the relevant provisions of the House bill, the Secretary of Transportation must determine whether a proposed imported vehicle is "substantially similar" to another vehicle by looking at the "concealed safety features" of the vehicle. These features must be "substantially the same" or capable of being "readily modified" to the substantially the same. The House bill then provides definitions for these terms. We are not certain how these definitions would apply in practice.

As an alternative, our amendment authorizes the Secretary to exercise his discretion, within certain limits, to determine whether a vehicle can be modified to meet all applicable safety standards. In the usual case, a registered importer will seek to demonstrate to the Secretary that the model it proposes to import and then modify is substantially similar to a model built for the U.S. market. We recognize that registered importers also may wish to import and modify limited-edition or limited-production models for which there is no comparable U.S. model. Thus, our amendment adds a special provision providing that these models may be imported and modified if the registered importer can demonstrate to the Secretary that the model complies with or can be modified to meet all applicable Federal motor vehicle safety standards. For certain safety features, such as those protecting the passenger compartment, it is impossible to assess compliance by visual inspection. Thus, we have given the Secretary authority to require the registered importer to submit destructive test data and such other evidence as he determines is adequate to make such an assessment.

With respect to these determinations, we have provided that the Secretary may make them upon the basis of a petition being filed or upon his own initiative. This should be particularly helpful in the early stages of implementing the legislation. It is the intent of this legislation that determinations be based on petitions submitted in good faith by individuals interested in using the process to import vehicles.

Once the Secretary makes a positive determination that a model of motor vehicle can meet the applicable standards, any other registered importer may, on the basis of that approval, modify the same model of motor vehicle. Of course, the registered importer must meet all the substantive requirements imposed under this legislation and perform the work consistent with all the terms and conditions contained in the Secretary's determination. This provision is intended only to lessen paperwork for the agency, not to in anyway lessen the applicable standards or substantive requirements being imposed. In short, whether a registered importer initiates the petition with respect to a particular model of motor vehicle or relies upon a positive determination made with respect to such a petition, he must modify the vehicle to meet all applicable Federal motor vehicle safety standards in conformity with the determination. We trust the Secretary will be vigilant in ensuring that vehicles are being modified in strict adherence to the terms of his determinations.

If a determination has been revoked, vehicles of the same model may not be imported until a new determination is made pursuant to the applicable procedures. Similarly, if the Secretary makes a negative determination after reviewing a petition with respect to a particular model of motor vehicle, that model may not be imported and modified by anyone until such time as the Secretary makes a positive determination on the basis of a new or modified petition.

We have not required that the Secretary make these determinations through traditional notice and comment rulemaking. However, while we have minimized the regulatory burden, the Secretary must include the public in the process. Petitions and information underlying the Secretary's decision to proceed on his own initiative must be made available to the public, including original equipment manufacturers, so that they may submit comments and information relevant to the determination before it is made.

Mr. President, there has been a great deal of concern raised about vehicles being released to consumers before modifications have been made or in violation of the terms and conditions of the Customs bond placed on each vehicle. To get at this problem, the bill provides that it shall be unlawful to release custody of a vehicle, operate it—other than for testing—or ignore the conditions imposed by the applicable bond until the registered importer files a certification statement with the Secretary that the vehicle has been properly modified and the Secretary has reviewed the certification as valid and confirmed a consumer disclosure label has been placed on the vehicle. We have further provided that the Secretary may demand to inspect any vehicle prior to release by the registered importer.

The Secretary by regulation must establish requirements to ensure that the registered importers who will be making these modifications have the financial capability to meet their obligations under our safety laws and regulations. The posting of a prepaid surety bond on each vehicle would be one means of protecting consumers from financially irresponsible importers. The bill also includes a provision to ensure that so-called shell corporations are not used by the unscrupulous to escape the regulatory framework we are establishing. Under this provision, the Secretary may deny registration to any person who is or was, directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked.

To monitor compliance with the law, the Secretary must conduct inspections and tests, including—if he deems appropriate—destructive tests, of a representative number of vehicles imported under this new program. The status quo, under which voluntary compliance has been assumed, has proven to be ineffective in ensuring compliance with existing laws and regulations. We trust the Secretary will vigorously carry out his responsibilities to ensure that this pattern of noncompliance is brought to an end.

This new program will be financed through fees paid by registered importers upon registration, and annually thereafter, as calculated by the Secretary to cover the additional costs of administering the program. We felt it was appropriate in this limited instance to require the payment of such fees because this new program is being established solely for the benefit of registered importers and will continue to permit them to stay in business.

In closing, I might add that we remain quite concerned about a delay in the promulgation of the implementing regulations. To address this potential problem, the bill explicitly provides that the Secretary must issue a notice of proposed rulemaking within 6 months of the date of enactment of the legislation. If this date is met, the act will go into effect in 15 months. If not, the effective date will move forward by 3 months. We recognize that the change in administrations may create some delay in the promulgation of the regulations. At this point, however, we are not willing to extend these deadlines. We hope the agency will keep us apprised of its timetable as it moves forward.

Mr. President, it took many months of negotiations to craft this compromise. I believe the House bill, with our amendment, addresses the concerns of all parties affected by the automobile gray market. I urge my colleagues to support the passage of this bill.

Mr. RUDMAN. Mr. President, I rise to join the distinguished senior Senator from Hawaii, Mr. INOUYE, in supporting Senate passage, with certain amendments, of H.R. 2628, legislation passed by the House on December 14, 1987. This legislation is intended to strengthen the statutory and regulatory framework under which vehicles not originally manufactured for sale in the United States are brought into compliance with U.S. standards. This provision represents a compromise negotiated over many months to ensure that so-called gray market cars may continue to be imported into the United States provided that such vehicles comply with applicable Federal motor vehicle safety standards.

Direct import cars, often referred to as gray market cars, are foreign-manufactured cars that are imported directly by independent importers. This activity is entirely legal provided that certain procedures are followed to ensure that these cars, which may be different than vehicles originally manufactured for distribution in the United States, are brought into conformity with our Federal environmental and safety standards.

The gray market generally arises when foreign manufacturers implement discriminatory pricing policies whereby American consumers are charged a higher price for a product than is charged for the same or comparable item sold overseas. Independent importers take advantage of this dual pricing system by purchasing products at the world price and selling the product to the American consumer at a price considerably below that offered by the foreign manufacturer's U.S. distributor. It should be noted that there is a gray market for many products other than automobiles. In my view, the gray market provides enormous benefits to the consumers of this country by providing price and choice competition.

In the case of automobiles, my good friend, Senator INOUYE, has expressed concerns that the current regulation of direct import vehicles is not sufficient to protect safety. Although our views differ on this point, we have worked together to improve enforcement in this area while preserving the right of independent importers to market these automobiles. This bill is similar to an amendment we successfully offered to S. 863, the National Highway Traffic Safety reauthorization bill, passed by the Senate in 1986. We believe that this bill, with our amendment, improves upon the Senate amendment to S. 863.

I would like to take this opportunity to review a number of the bill's provisions. First, the measure directs the Secretary of Transportation to make a determination as to whether a model of a vehicle complies with or is capable of being modified to comply with applicable U.S. safety standards. This may be done either on the Secretary's own initiative, or pursuant to a petition by a registered importer. We intend that the Secretary will take steps to ensure that, when considering petitions, determinations will be based on petitions submitted in good faith by individuals interested in using the process to import vehicles.

The Secretary may make determinations based on one of two findings: The Secretary may make a determination that a vehicle is substantially similar to a vehicle originally manufacture for sale in the United States and that it can be modified to meet our standards. Alternatively, where there is no substantially similar domestic vehicle, the Secretary may make a determination based on destructive test data or other information which is sufficient to demonstrate that the vehicle is capable of meeting all applicable U.S. standards. Under the latter procedure, it will often be the case that destructive test data is necessary to make this determination. In some cases, however, other evidence may suffice. For example, if a vehicle is largely similar to a model of a U.S. vehicle certified as meeting our standards, but for the fact that it is of a different model year, destructive test data would not be necessary. Our amendment deletes language in the House-passed bill which attempts to introduce new terms for determining motor vehicle compliance with safety standards. We believe that these issues are better left to the Department of Transportation which has expertise in this area.

The Secretary is also directed to establish procedures to ensure that all interested parties, including other registered importers, may submit supplementary information to be considered prior to making determinations. Once a determination is made for a model vehicle, other registered importers—including those not involved in the original submission of the petition—or individuals may import that model vehicle provided that it is modified by a a registered importer in accordance with the terms of the approved petition. Our amendment includes language to clarify this point.

The bill imposes a requirement that vehicles imported pursuant to this bill be modified by an importer who is registered with the Secretary of Transportation. The registered importer must also pay user fees as necessary to cover the costs of administering certain provisions established by this legislation, making this a fiscally responsible piece of legislation. The user fees would not apply to the testing of these vehicles by the Secretary. This is a responsibility normally assumed by the Department.

Finally, the bill provides that a properly registered importer submit a certification to the Secretary for each vehicle modified. The Secretary is provided an opportunity to inspect any vehicle prior to approval. If the Secretary has not given notice of its intention to inspect the vehicle within 30 days, the Secretary shall provide for the prompt release of the importer's bond.

It should be noted that the bill does permit importation of automobiles by individuals, provided such vehicles are modified by a registered importer pursuant to an approved petition.

I believe that this legislation represents a reasonable compromise to improve the regulation of direct import automobiles while ensuring that the American consumer continues to benefit from the price and choice competition afforded by direct imports.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3426) was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be offered, the question is on the third reading and passage of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time. The bill was read the third time.

The bill (H.R. 2628), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY AUTHORIZATION

Mr. BYRD. Mr. President, I ask unanimous consent the Committee on Commerce, Science, and Transportation be discharged from further consideration of H.R. 4417, a bill to authorize the National Bureau of Standards.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4417.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

> A bill (H.R. 4417) to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1989, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, the bill now before the Senate, H.R. 4417, provides fiscal year 1989 authorizations for the Commerce Department's National Institute of Standards and Technology [NIST]—formerly the National Bureau of Standards. It also provides authorizations for related Department of Commerce [DOC] technology programs.

In addition, the bill also contains two other major provisions. One would place NIST and related programs into a new DOC Technology Administration, headed by a new Under Secretary for Technology. Currently, authority over technology programs is spread among several parts of the Department. This new arrangement will provide stronger leadership for DOC's increasingly important technology activities. A second provision provides a new, updated charter for DOC's National Technical Information Service [NTIS]. NTIS will remain a self-supporting clearinghouse for the collection and dissemination of unclassified Federal technical reports.

The language concerning the new Under Secretary for Technology is consistent with the recommendation of the administration. I particularly want to commend Secretary Verity for the leadership he has shown on this subject. In the case of the NTIS language, I want to say that while not everything the administration want is included in this legislation, a significant portion of their request is here.

Mr. President, I would like to make several brief observations about specific parts of this bill.

First, I want to comment on the authorization for NIST's important new Manufacturing Technology Centers Program. The Commerce, State, Justice appropriations conference report, which I had the privilege of managing on the Senate floor, appropriates $7.5 million in fiscal year 1989 funds for this program. The authorization for these Centers is not contained in the bill before us today, because the fiscal year 1989 and 1990 authorizations for this program already have been enacted in the recently approved omnibus trade bill.

Second, this bill contains an important provision to help boost American exports. Sponsored by Congressman DYMALLY and Senator BENTSEN, section 112 creates a pilot program by which NIST, through voluntary contributions from private industry, will help other countries develop new regulatory standards and help ensure that these standards are compatable with U.S. products. Several regions of the world are now rewriting standards which will determine what type of imported products are allowed into their countries. To date, China, Brazil, India, and the Arab States of the Gulf Cooperation Council have requested American help in rewriting their regulations. These markets currently import $24 billion a year from the United States, and American firms have a strong interest in ensuring that new standards are compatible with our products. NIST can play a valuable role in coordinating these American efforts. The Dymally-Bentsen provision promotes American exports and jobs, and I congratulate the sponsors for their farsighted leadership.

Third, section 201(b) of the bill conditions the appointment of an Under Secretary for Technology and an Assistant Secretary for Technology Policy on the availability of appropriations. This clause stems from concerns in the House that funds be available for programs before officials are appointed. However, each annual Commerce, State, Justice Appropriations Act has included funds for the ongoing DOC technology office—currently called the Office of Productivity, Technology, and Innovation [OPTI]. The fiscal year 1989 appropriations conference report, just passed by both Houses, is no exception. Since this technology office will now be the responsibility of the new Under Secretary and the Assistant Secretary for Technology Policy, it is clear that appropriations have been provided for these positions. As chairman of both the Commerce Committee and the appropriations subcommittee of jurisdiction, I can state therefore that this appropriations legislation provides the necessary authority to allow appointment of the new Under Secretary and Assistant Secretary. I also have reviewed this matter with the House Science, Space, and Technology Committee, and they concur.

Mr. President, the legislation now before the Senate is the result of extensive discussions between the Senate Commerce Committee and our House colleagues. It is a good compromise bill. The House approved it on September 27, and I urge my colleagues to pass it today.

The PRESIDING OFFICER. The bill is before the Senate and open to the amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4417) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar 882, S. 2701, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN CLAIMS COMMISSION EXPERT WITNESS LOAN FUND

Mr. BYRD. Mr. President, I ask unanimous consent the Select Committee on Indian Affairs be discharged from further consideration of S. 2691, a bill to extend eligibility for the Indian Claims Commission Expert Witness Loan Fund, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2691) to extend eligibility for the Indian Claims Commission Expert Witness Loan Fund, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. EVANS. Mr. President, the Bureau of Indian Affairs Expert Witness Loan Fund was established by act of November 1, 1963. The fund was intended to provide financial assistance to claimants before the Indian Claims Commission. Although the Commission was terminated on September 30, 1978, the fund is still being administered for the benefit of Indian Claims Commission cases that were transferred to the U.S. Court of Claims in 1978 and further transferred to the U.S. Claims Court in 1982.

The Expert Witness Loan Fund has assisted Indians to obtain the expert representation required for fair consideration of their legal claims against the Government. Under the original act, loans bear interest and are repayable out of any judgment. Since the act was passed in 1963, only $15,000 worth of loans have been defaulted. It has proven to be a simple and self-sustaining program.

The usual beneficiaries of these loans have been Indian tribes. However, the original act also allows loans to any "identifiable group" of Indians even if they do not constitute a tribe in a formal sense. This way funds can be available, for example, to a group of owners of individual trust allotments who may have similar or identical claims against the U.S. Government.

The bill would extend this funding to claims filed in the U.S. Claims Court. Since this court is the usual venue for cases brought against the United States by Indian tribes, extending availability of the fund to cases brought before the court is consistent with the purposes for which original fund was established.

The original act contains certain safeguards which would not be affected by the amendment. It limits loans to Indian groups which do not have funds available to pay for the expert assistance that they need. Furthermore, it authorizes the Secretary of the Interior to turn down any loan of the fees of the experts proposed to be hired are unreasonable in his or her opinion.

I am pleased that the Senate has the opportunity to consider S. 2691. I am hopeful that my colleagues will understand its importance and support it.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 2691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 1 of the Act of November 4, 1963 (Public Law 88-168, 77 Stat. 301), as amended, is further amended—

(a) by striking "$2,700,000" and inserting in lieu thereof "$4,000,000"; and

(b) by adding at the end thereof "or the United States Claims Court".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL PLACED ON CALENDAR—H.R. 5422

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 5422 just received from the House be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

DESIGNATING ED JONES FEDERAL BUILDING AND U.S. COURTHOUSE

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5186 just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5186) to designate the Federal building and United States courthouse located at 109 South Highland, Jackson, Tennessee, as the "Ed Jones Federal Building and United States Courthouse."

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SASSER. Mr. President, I rise today with my colleague from Tennessee, Senator GORE, to honor an esteemed public servant and a great man, Congressman ED JONES of Tennessee. For 20 years Mr. JONES has been a strong, unrelenting voice in support of the interests of the people of the Eighth District of Tennessee. In my 12 years in the U.S. Senate, his counsel and experience have been invaluable to me. I think I speak for all my colleagues when I say his keen insight will be greatly missed on Capitol Hill when he retires at the close of the 100th Congress. In tribute to his outstanding service, Senator GORE and I introduced S. 2754, legislation to designate the Federal building in Jackson, TN, as the "Ed Jones Federal Building." I am pleased that we are today taking final action before the House-passed version of this measure, H.R. 5186.

The monument we proposed is located in the heart of the district ED JONES has faithfully represented since 1969. During that time he has gained notoriety as Tennessee's agricultural expert in Congress. Farmers in west Tennessee, indeed, throughout the State and the Nation, will be losing a valuable friend in Congress upon his retirement. Presently the third ranking member of the House Committee on Agriculture, Mr. JONES has long been influential in matters of Federal agricultural policy. He serves as chairman of the Agriculture Subcommittee on Conservation, Credit, and Rural Development. He has presided over the restructuring of the Farm Credit System and written the watershed conservation provisions in the 1985 farm bill, among many other legislative achievements. In 1980, he was named "Man of the Year" by Progressive Farmer magazine.

Ed Jones' success in Congress can be attributed to long years of strict attention to the needs and concerns of his constituents and a deep-rooted understanding of how to work with his peers. His warmth and intelligence among both constituents and colleagues are an inspiration to those of us in public service. These are the attributes that define a great statesman.

Mr. Jones and his wife, Llewellyn, are at home on their farm in the town where he was born, Yorkville, in Gibson County, TN. After attending the University of Tennessee, he pursued several prestigious positions in the field of agriculture including agricultural representative to the Illinois Central Railroad and commissioner of the Tennessee Department of Agriculture. He was first elected to the House in March 1969, following the death of veteran Congressman Robert A. Everett.

It is with great pride that I urge my distinguished colleagues to join me in commemorating the career of the dean of the Tennessee congressional delegation, a dedicated family man, and a lifelong friend to farming in America. I urge my colleagues to support this legislation to designate the Jackson Federal Building as the "Ed Jones Federal Building."

Mr. GORE. Mr. President, I would like to join Senator Sasser and our fellow Tennesseans and colleagues in the U.S. Congress in expressing the deepest gratitude to and highest praise for Congressman Ed Jones for his admirable 20 years of service in the U.S. House of Representatives. Earlier this year, Representative Jones announced that he would retire at the close of the 100th Congress. In commemoration of his outstanding service to the State of Tennessee and Eighth Congressional District, I urge my colleagues to join the House of Representatives in approving final passage of the bill to designate the Federal building in Jackson, TN, as the "Ed Jones Federal Building."

This recognition is a very modest token of appreciation to a man who has always served his district and State with his constituents' best interests in mind. Ed Jones has been on the frontline of promoting the interests of our Nation's farmers and other residents of rural America since he was elected to Congress in 1969. The Federal building named in honor of this extraordinary public servant in the district which he has represented diligently for many years will serve as an appropriate reminder of his work for future generations.

Ed Jones' announcement of his retirement at the end of the 100th Congress was received by me, and I know all of my colleagues, with a great sense of sadness. His leadership on the House Committee on Agriculture and as chairman of the prestigous Agriculture Subcommittee on Conservation, Credit, and Rural Development will be sorely missed by all who have had the privilege to work with him. Additionally, his absence will be hard-felt in the Tennessee Democratic delegation, for which he has served as dean for many years.

Although Mr. Jones' retirement will leave a void in Tennessee, his accomplishments and decades of service to the State, particularly in the area of agriculture, will endure. He can reflect on a unique lifelong career as a farmer, family man, and distinguished stateman who has always had a strong sense of pride for Tennessee.

Ed Jones was born in Yorkville, TN, where he continues to live with his wife, Llewellyn. After attending college at the University of Tennessee, he accepted a position with the Tennessee Department of Agriculture. He continued to gain notoriety in the field of agriculture in his positions as a supervisor for the Tennessee Dairy Products Association, an agriculture representative of the Illinois Central Railroad, and as commissioner of the Tennessee Department of Agriculture.

Since his election to Congress in 1969, Mr. Jones has achieved the delicate balance of being a strong legislative voice in Washington and an attentive Congressman who maintains close ties with the people he represents. His various positions on the Agriculture Committee and its subcommittees have enabled him to have a strong role in the shaping of the country's long-term agriculture policy.

Mr. Jones' distinguished legislative achievements include participation in the writing of four omnibus farm bills. As chairman of the Conservation, Credit, and Rural Development Subcommittee, he has presided over the restructuring of the Farm Credit System and written the landmark conservation provisions included in the 1985 farm bill. He has also championed the causes of rural electric and rural telephone cooperatives. But perhaps Ed Jones' greatest attribute is his willingness to listen to opposing views from different interests and write legislation that reflects a fair consideration of each party's concerns.

Congressman Ed Jones' selfless presence in the U.S. Congress has enriched the lives of his constituents. His career serves as a luminous example to all of us who follow him in mutual pursuits. I urge my distinguished colleagues to join me in passing this legislation to name the Jackson Federal Building for Ed Jones.

The PRESIDING OFFICER. The bill is before the Senate and open for amendment. If there be no amendment to be offered, the question is on third reading and passage of the bill.

The bill (H.R. 5186) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATING THE LAWTON CHILES, JR., FEDERAL BUILDING

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of S. 2799 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

> A bill (S. 2799) to designate the Federal building to be constructed in Lakeland, FL, as the Lawton Chiles, Jr., Federal Building.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2799

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal Building to be constructed in Lakeland, Florida, that will replace the existing Federal Building in Lakeland, Florida, shall be known and designated as the "Lawton Chiles, Jr., Federal Building".

SEC. 2. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the building designated by section 1 is deemed to be a reference to the "Lawton Chiles, Jr., Federal Building".

SEC. 3. EFFECTIVE DATE.

This Act shall take effect on whichever of the following occurs later:

(1) The date of the enactment of this Act.

(2) January 3, 1989.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASUREMENTS HELD AT DESK—HOUSE CONCURRENT RESOLUTION 115 AND H.R. 4758

Mr. BYRD. Mr. President, I ask unanimous consent that the following measures be held at the desk:

House Concurrent Resolution 115, a concurrent resolution commemorating the bicentennial of Congress; H.R. 4758, the public safety officers death benefits bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL PLACED ON CALENDAR—H.R. 5052

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 5052, a bill to provide for a transfer of control of the GAO Building in the District of Columbia, now at the desk, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

DIRECTING THE SENATE LEGAL COUNSEL TO TAKE CERTAIN ACTIONS

Mr. BYRD. Mr. President, on behalf of myself and Mr. DOLE, I send to the desk a Senate resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 490) to direct the Senate Legal Counsel to represent Senator STEVENS in the case of *Hunter, et al.* v. *Kalamarides, et al.*

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, plaintiffs in a pro se civil lawsuit in the U.S. District Court for the Western District of New York have named Senator STEVENS as one of more than 50 defendants. No allegation in the complaint specifically mentions Senator STEVENS. This resolution will authorize the Senate Legal Counsel to represent Senator STEVENS and to seek the dismissal of the complaint against him.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 490) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 490

Whereas, in the case of *Hunter, et al.* v. *Kalamarides, et al.*, Case No. 88-0500C, pending in the United States District Court for the Western District of New York, the plainfiffs have named Senator Ted Stevens as one of the defendants;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(1) (1982), the Senate may direct its counsel to defend the Members of the Senate in civil actions relating to their official responsibilities: Now, therefore, be it *Resolved*, That the Senate Legal Counsel is directed to represent Senator Stevens in the case of *Hunter, et al.* v. *Kalamarides, et al.*

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DIRECTING THE SENATE LEGAL COUNSEL TO TAKE CERTAIN ACTIONS

Mr. BYRD. Mr. President, I send a resolution to the desk on behalf of myself and Mr. DOLE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 489) directing the Senate Legal Counsel to represent an employee of the Senate in the case of United States versus Harold Friedman, et al.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, in 1985 and 1986, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs conducted an investigation into the Government's handling of a criminal investigation of allegations that "ghostworkers," individuals who are hired without being expected to perform any work, were employed unlawfully by a local of the Teamsters Union in Cleveland, OH. Following the completion of the subcommittee's investigation, a number of criminal defendants were indicted by the Organized Crime Strike Force on labor fraud charges arising out of the ghostworkers matter. The trial of that indictment is now scheduled to begin in the U.S. District Court for the Northern District of Ohio on October 11, 1988.

One of the defendants has subpoenaed the chief clerk of the subcommittee to obtain records of the subcommittee's investigation, including transcripts of depositions taken by the subcommittee staff. The subcommittee held a hearing on its ghostworkers investigation, which it published, and also published a study of the findings of its staff. However, the subcommittee determined not to release its depositions publicly and exercised its authority to place the deposition transcripts in a confidential hearing record.

The determination whether to make records public is solely within the discretion of the subcommittee under the responsibility conferred upon the Congress by the framers of the Constitution. This resolution authorizes the Senate legal counsel to represent the chief clerk of the subcommittee in order to protect the right of the subcommittee to determine which of its records to make public and to vindicate the Senate's prerogative to control its records without interference. The resolution also authorizes the chairman and ranking minority member, acting jointly, voluntarily to provide any records of the subcommittee if warranted by subsequent developments.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 489) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 489

Whereas, in 1985 and 1986 the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs conducted an investigation of the Government's handling of a criminal investigation into allegations that a union local had unlawfully hired employees who were not expected to perform any work;

Whereas, in the case of *United States* v. *Harold Friedman, et al.*, No. CR 86-114, pending in the United States District Court for the Northern District of Ohio, one of the defendants has obtained a subpoena for the production of documents from the investigation by Mary Robertson, Chief Clerk of the Permanent Subcommittee on Investigations;

Whereas, pursuant to section 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (982), the Senate may direct its counsel to represent employees of the Senate with respect to subpoenas issued to them in their official capacity;

Whereas, by the privileges of the Senate of the United States and Rule XI of the standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Mary Robertson in the case of *United States* v. *Harold Friedman, et al.*

SEC. 2. That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide records of the Subcommittee's investigation, if in their judgment circumstances so warrant.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

A GRACIOUS TRIBUTE TO ROBERT C. BYRD

Mr. WILSON. Mr. President, the only thing that I have is a personal observation. I would like to share with those in the viewing audience what is well known to all of the colleagues of the distinguished majority leader, and that is today he was treated at a luncheon, a luncheon in his honor, to mark the very distinguished public service that he has given to this body as the majority leader. And though he will continue his service in the Senate, he will, at the conclusion of this session, be stepping down.

Those who were not privileged to be there today I think would have enjoyed it as did his colleagues. It was a splendid tribute to the majority leader. I thought his own remarks in response were very touching, and I think that it was, in fact, a very gracious tribute to him, one deserved and an honor that I wish could be shared with his many admirers who were not present, which is my purpose in making this observation.

Mr. BYRD. Mr. President, I thank the very distinguished Senator from California for his kind observation. I am glad that he was present upon that occasion. I was greatly touched by the Senators who were present, by what was said, and although I do not feel worthy, I guess I shall always remember that occasion with gratitude toward all who had a part in it. I thank my friend for making reference to it on the floor.

Mr. President, does the distinguished Senator from California have any further statements or any business he would wish to transact?

Mr. WILSON. I thank the distinguished majority leader.

Mr. President, I do not.

ORDERS FOR THURSDAY

Mr. BYRD. Mr. President, there will be rollcall votes on tomorrow.

I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 o'clock tomorrow morning; that all motions and resolutions over, under the rule, not come over; that the call of the calendar be waived; that there be a period for morning business following the two leaders under the standing order not to extend beyond 10:30 a.m.; that during that period for morning business, Senators may speak for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, the Senate stand in adjournment until the hour of 10 o'clock tomorrow morning.

The motion was agreed to and the Senate, at 6:47 p.m., adjourned until tomorrow, Thursday, October 6, 1988, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 5, 1988:

DEPARTMENT OF THE TREASURY

CHARLES H. DALLARA, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE ALFRED HUGH KINGON.

EDITH E. HOLIDAY, OF GEORGIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE MARGARET DEBARDELEBEN TUTWILER, RESIGNED.

DEPARTMENT OF THE INTERIOR

ROBERT H. GENTILE, OF OHIO, TO BE DIRECTOR OF THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, VICE JED DEAN CHRISTENSEN, RESIGNED.

DEPARTMENT OF JUSTICE

STANLEY J. GLOD, OF VIRGINIA, TO BE CHAIRMAN OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION FOR THE TERM EXPIRING SEPTEMBER 30, 1991 (REAPPOINTMENT).

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

LANCE BANNING, OF KENTUCKY, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR A TERM OF 6 YEARS (NEW POSITION).

PEACE CORPS NATIONAL ADVISORY COUNCIL

JULIA CHANG BLOCH, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM OF TWO YEARS EXPIRING OCTOBER 6, 1990 (NEW POSITION).

MISSISSIPPI RIVER COMMISSION

COL. GERALD EDWARD GALLOWAY, JR., SSN 057-74-4360, U.S. ARMY, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION, UNDER THE PROVISION OF SECTION 2 OF AN ACT OF CONGRESS APPROVED 28 JUNE 1879 (21 STAT. 37; 33 UNITED STATES CODE 642).

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTION 593 AND 8379, TITLE 10 OF THE UNITED STATES CODE. PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 593 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTION 8374, TITLE 10 OF THE UNITED STATES CODE. (EFFECTIVE DATE FOLLOWS SERIAL NUMBER)

LINE OF THE AIR FORCE

To be lieutenant colonel

MAJ. JAMES R. BELL, [redacted] 5/21/88
MAJ. KENT C. CARLSON, [redacted] 5/21/88
MAJ. THOMAS N. CHRISTIANSON, [redacted] 6/19/88
MAJ. SCOTT P. DEMING, [redacted] 6/19/88
MAJ. JOHN FRENCH II, [redacted] 5/21/88
MAJ. GEOFFREY A. GIDDINGS, [redacted] 6/27/88
MAJ. DENNIS E. KNAUB, [redacted] 7/9/88
MAJ. STEPHEN M. KOPER, [redacted] 6/1/88
MAJ. ROBERT D. MCINERNEY, [redacted] 7/10/88
MAJ. WILLIAM I. SMITH, [redacted] 7/9/88
MAJ. BRADLEY A. STONESIFER, [redacted] 7/19/88
MAJ. GREGORY L. VIEIRA, [redacted] 7/9/88

MEDICAL CORPS

MAJ. MICHAEL O. DANIELS, [redacted] 7/17/88
MAJ. DEMERICK C. FRADL, [redacted] 5/18/88
MAJ. RAYMOND L. WEBSTER, [redacted] 5/26/88

IN THE AIR FORCE

THE FOLLOWING PERSONS FOR RESERVE OF THE AIR FORCE APPOINTMENT, IN GRADE INDICATED, UNDER THE PROVISIONS OF SECTION 593, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 8067, TITLE 10, UNITED STATES CODE, TO PERFORM THE DUTIES INDICATED.

MEDICAL CORPS

To be lieutenant colonel

RODRIGO B. FLORO, [redacted]
PRIMITIVO I. REYNOLDO, [redacted]
WILLIAM E. RICE, [redacted]
SALAH H. YASHRUTI, [redacted]

IN THE AIR FORCE

THE FOLLOWING PERSONS FOR RESERVE OF THE AIR FORCE APPOINTMENT, IN GRADE INDICATED, UNDER THE PROVISIONS OF SECTION 593, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 8067, TITLE 10, UNITED STATES CODE, TO PERFORM THE DUTIES INDICATED.

MEDICAL CORPS

To be lieutenant colonel

JOHN W. BATCHELLER, [redacted]
WALTER A. CERANSKI, [redacted]
BRYANT H. HUDSON III, [redacted]

THE FOLLOWING OFFICERS FOR RESERVE OF THE AIR FORCE APPOINTMENT IN GRADE INDICATED, UNDER THE PROVISIONS OF SECTION 593, TITLE 10, UNITED STATES CODE.

MEDICAL CORPS

To be colonel

ROBERT M. HASSAN, [redacted]

To be lieutenant colonel

RICHARD A. ARTIM, [redacted]
THOMAS D. BAILEY, [redacted]
LOUIS BUTTINO, JR., [redacted]
RICHARD W. HOUK, [redacted]

DENTAL CORPS

To be lieutenant colonel

STARR W. CLARK, [redacted]

THE FOLLOWING OFFICERS FOR RESERVE OF THE AIR FORCE APPOINTMENT IN GRADE INDICATED, UNDER THE PROVISIONS OF SECTION 593, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 8067, TITLE 10, UNITED STATES CODE, TO PERFORM THE DUTIES INDICATED.

MEDICAL CORPS

To be colonel

ROBERT R. HYLTON, [redacted]

To be lieutenant colonel

JOHN F. AITA, [redacted]

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624, AND 628, TITLE 10, UNITED STATES CODE. THE OFFICER INDICATED WITH AN ASTERISK IS ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

JUDGE ADVOCATE GENERAL

To be lieutenant colonel

PAUL W. SCHWARZ, xxx-xx-xxxx

ARMY

To be major

*SAMUEL C. GUTIERREZ, xxx-xx-xxxx

CONFIRMATIONS

Executive nominations confirmed by the Senate October 5, 1988:

THE JUDICIARY

ROBERT P. PATTERSON, JR., OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING LAWRENCE F. COX, JR., AND ENDING ROBERT A. ALBRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 28, 1988.

COAST GUARD NOMINATIONS BEGINNING JAMES W. MEYER, AND ENDING BRUCE R. MUSTAIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 28, 1988.

HOUSE OF REPRESENTATIVES—*Wednesday, October 5, 1988*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we view the very real needs of our communities and world, we pray, O God, that we do what we ought to alleviate the hurts of humankind through deeds of love and works of faith. We recognize too, O God, that we can accomplish so little because there is much to do and so many places with need. So teach us, Gracious God, to use our wealth and our resources to help others, to use our gifts and funds, for by helping others we can make a difference in the lives of people everywhere. This we pray. Amen.

The JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Would the gentleman from Alabama [Mr. HARRIS] please come forward and lead us in our Pledge of Allegiance.

Mr. HARRIS. Mr. Speaker, I thank the Speaker, and I would ask that everyone rise and pledge allegiance to our flag.

Mr. HARRIS led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

PANAMA IS A UNITED STATES POLICY FAILURE

(Mr. TAUZIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, Panama is more than just a "hot issue" for Presidential debates. It is a United States policy failure that threatens our interests and the operation of the Panama Canal.

While the administration fights to keep its failed Panama policy out of the news, hundreds of Americans have been victimized—beaten, harassed, detained, and sexually assaulted—by General Noriega's henchmen. The administration's response is to quietly complain to the Noriega regime which, to no one's surprise, ignores the lame protests.

Let's face it. Panama's military and police forces are being used against Americans in Panama, and the United States policy is one of retreat! We've moved dependents out of Panama and garrisoned our troops in armed compounds.

However, American employees of the Panama Canal and their dependents are left to fend for themselves. They do not live on bases patrolled by military police. They must depend on whatever security is provided by the Noriega regime. Given the Noriega record, there is every reason for these Americans to be concerned for their personal safety.

Clearly, United States policy has not brought change to Panama. It has grown stale and has only increased the hardships on the Panamanian population whose support we need. It is only a matter of time before the operation of the Panama Canal will be jeopardized by the continuing existing policy.

RED SOX/A'S SERIES

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, like the swallows to Capistrano, like the bulls at Pamplona and the cherry blossoms in Washington, the time has come for the traditional baseball playoff wager, this year between the upstart Oakland Athletics and New England's team, the Boston Red Sox, in the American League.

In 1986, I made a friendly wager with the junior Senator from New York—a Long Island duck against a Massachusetts lobster. Well, the truth is that I ate a great deal more crow than I did duck! Briefly put, the duck is still paddling around Long Island Sound, while the lobster has long since met its maker.

Not since 1918, not since the days of Harry Hooper, Stuffy McInnis and, of course, Babe Ruth, has Boston hoisted the championship trophy above their collective heads.

But, as my pal GEORGE BUSH says,"Read My Lips"—This is the Red Sox year! "

The speed and control of Rocket Roger Clemens, Bruce Hurst, and Mike Boddicker, the unwavering bats of Dwight Evans, Wade Boggs, Ellis Burks, Jody Reed and Mike Greenwell, and the confidence and wisdom of rookie manager Joe Morgan make the outcome all but inevitable, Mr. Speaker.

And, to put the proverbial money where the mouth is—so confident am I of the BoSox that I am today offering to the gentleman from Oakland, Mr. DELLUMS, a close relative of the lobster that lost his life in 1986. I await the gentleman's response.

Yes, the Oakland Athletics may indeed be able to conquer such American League West teams as the Seattle Mariners and the Texas Rangers, Mr. Speaker, but they're up against the big boys now. And they're not gonna like it!

MAY THE BETTER TEAM WIN

(Mr. DELLUMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELLUMS. Mr. Speaker, for the first time in recent memory, all four teams in the major league playoffs will be playing baseball the way it was meant to be played—on real grass.

Thanks to the joint Vice Presidential press conference tonight, the first game between the Oakland A's and the Boston Red Sox will be played the way it was meant to be played—in sunlight—provided the clouds part at Fenway Park.

My colleagues from Massachusetts may revel in the memories of their transient success in 1975. However, I would remind them that this is the 70th anniversary of the last Red Sox triumph in the World Series—back when Babe Ruth was a pitcher!

Hope springs eternal in the land of the bean and the cod—but Oakland has Canseco, Henderson, and Baylor (remember them?), Polonia, Parker, McGwire, Phillips, Weiss, Lansford, Steinbach, Stewart, Welch, Davis, and Dennis Eckersley (remember him?)!

So, with apologies to Ernest Lawrence Thayer in "Casey at the Bat"—when the dust has settled, the band will be playing somewhere, and hearts will be light—but there will still be no joy in Mudville or in Beantown that night.

I want to assure my crestfallen-to-be colleagues that, after an appropriate sixth game victory party, I plan to enjoy a gourmet meal of their New England lobster with my California wine.

May the better team win—but we all know it's Oakland.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

JOIN THE OLYMPIC CAUCUS

(Mr. CAMPBELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Speaker, for several weeks, the eyes of our Nation have been upon the U.S. Olympic team in Seoul, South Korea. Those of us who could not go to the games in person to cheer on our U.S. competitors sent our cheering thoughts and prayers; for when they won, we shared the joy; when they stumbled, we shared the frustration; as Americans, we all shared the excitement of the competition.

As one of the three people now serving in the U.S. Congress who was honored to participate in the Olympic games, along with my friend and colleague from Maryland, Mr. McMILLEN, and the gentleman from New Jersey who serves in the other body, Mr. BRADLEY, I invite my colleagues to attend an organization meeting of a new congressional caucus.

Today at 3 p.m. in the Cannon Caucus Room, those of us who are interested in showing our support for our Olympic teams—today and in the future—will meet to define our goals and objectives.

I hope my colleagues will participate in the formation of the "Congressional Olympic Caucus." You need not have participated in the Olympic games to want to encourage the young athletes who so ably represent our Nation.

STARK, COMPELLING DIFFERENCES ON ABORTION BETWEEN CANDIDATES

(Mr. SMITH of New Jersey asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of New Jersey. Mr. Speaker, Justice Harry Blackmun, the author of Roe versus Wade—the 1973 Supreme Court decision that legalized abortion on demand—recently predicted that reversal of that decision is possible in the 1988-89 term.

While it is not clear as yet whether or not a new pro-life majority exists on the Court, it is possible that a fragile 5-to-4 majority may now be poised to begin to retreat from Roe—hence Justice Blackmun's forecast. But it is increasingly clear to me that the ball may well be in the next President's court, as to the final resolution of the abortion issue.

Most observers believe that at least a couple of Justices will retire during the next President's term, and members of the new Court will likely reflect the new President's general position on the issue.

And on no issue is there a more stark or compelling difference between Mr. BUSH nd Mr. Dukakis than on abortion. Four thousand children die in the United States every day by methods including dismemberment, suction, and chemical poisoning. Mr. Dukakis favors abortion on demand, and taxpayer funding of abortion on demand. Mr. Dukakis would try to repeal the Hyde amendment and similar pro-life riders.

Mr. BUSH on the other hand considers this wanton loss of life to be "a tragedy of shattering proportions which brings a renewed sense of urgency to adoption of a constitutional amendment to overturn Roe versus Wade and the effort for a human life amendment." He also supports constitutional protection of unborn children's rights and would continue Hyde-type restrictions of funding for abortion.

IS THIS PRO-LIFE?

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, the Vice Presidential nominee on the Republican ticket is considered to be a pro-life candidate. But I guess that assessment depends upon the definition of pro-life.

If it means restricting a woman's right to choose—if it means only what happens to the fetus in the 9 months from conception to birth—then his voting record substantiates a pro-life stance. But, if pro-life means that he supports life-sustaining legislation—programs that provide food, clothing, and shelter for those members of society who were not born into the same level of affluence and luxury as the Republican Vice Presidential candidate—his record is not pro-life but prosickness, propoverty and antilife. He opposed maternal and child health care programs.

Is this pro-life? He opposed funding for victims of domestic violence and their children. Is this pro-life? He opposed funding for work incentive programs, foster care and homeless programs. Is this pro-life? He opposed funding for the Women, Infants and Children Program. Is this pro-life? He opposed the school lunch program. Is this pro-life? What we have here is: a consistent antilife, antihope, anti-wellbeing record;

What we have here is: disdain for the Nation's 32 million poor, 13 million of whom are children who were not born with a silver spoon in their mouths—through no fault of their own—who therefore depend upon Federal programs for food, clothing, shelter, and health care services;

Mr. Speaker, for those 13 million innocent children and countless others, the Republican Vice Presidential candidate is the antilife candidate.

ONLY ONE SOLUTION TO "BUGS" IN OUR EMBASSY IN MOSCOW

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, I understand that the President is about to make a very important decision that will affect our ability to keep state secrets from the Soviets for decades to come.

He will decide what to do with an American Embassy that has more little microphones per square foot than the stage of a Michael Jackson concert.

There is only one viable solution to the problem of Soviet bugs in our Embassy in Moscow: tear the building down.

From what we now know of this problem, it is clear that nothing short of tearing the building completely down will give our diplomats the confidence that their most sensitive conversations are not being piped into KGB headquarters.

At the same time, the President should stick by his policy of keeping the Soviets out of their new Mount Alto chancery building in Washington unless and until we have a secure new facility in Moscow.

We have a very clear understanding with the Soviets on matters such as these. We should hold them to it.

HIGHER STANDARD NEEDED FOR JUDGING DEBATES

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, a funny thing happened on the way to the Vice Presidential debate this evening. The spinners, the pundits, and the critics started weaving their evil magic. All of a sudden we came up with a new standard for becoming Vice President in America. The standard was: Could they stand up straight, would they not fall down, could they state a completed sentence, did they know what century they lived in?

This is not an appropriate standard for someone who might become President of the United States. The standard for winning the debate should not be whether a candidate can speak in a complete sentence or who knows which century he is in. The standard should be who would make the best Vice President, and if things should come to pass, who would be the best President.

I hope the public and the news media will evalute the debate in this light. For instance, are the candidates consistent? Did they support important issues for the elderly last year the way they support them in the debate? Did they support rights for minorities and the disadvantaged the way they talk about them now?

□ 1015

What was their real position on defense procurement reform? Mr. Speaker, let us make sure that the candidates are judged on how good a President they will be, not whether they can remember which century they are in.

NUCLEAR STANDARDIZATION BILL

(Mr. CLEMENT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLEMENT. Mr. Speaker, today I am introducing legislation that amends the Atomic Energy Act of 1954 to encourage the development and use of standardized plant designs and to improve the nuclear licensing and regulatory process.

As many of my colleagues know, utilities have not ordered new nuclear power plants for 10 years and are not expected to do so until conditions affecting the nuclear power industry improve. As a former Tennessee Valley Authority Board member, I have witnessed the devastating effect of the old process where nuclear plants were "custom built" for each utility.

In addition to standardization, my bill would allow an electric utility proposing a standardized plant to receive a combined construction and operating license. This process would boost public participation, since hearings would be held on complete designs before construction.

We are going to need nuclear energy to meet our future energy needs and to cut our dependence on foreign oil. At present, we are overly dependent on foreign sources of oil for our energy needs and this overdependence will only grow over the next several years. Additional nuclear plants will help us to meet the increased energy demands of the future and prevent us from becoming even more dependent on insecure foreign sources of oil. Passage of my legislation will keep the nuclear option open, allowing the United States to have a diversified energy policy.

FORMATION OF THE CONGRESSIONAL OLYMPIC CAUCUS

(Mr. McMILLEN of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McMILLEN of Maryland. Mr. Speaker, I am pleased to join with Senator Bill Bradley and Congressman Ben Nighthorse Campbell as sponsors of the Congressional Olympic Caucus. In particular, I congratulate our colleague from Colorado on his efforts in this regard.

The initial meeting of the caucus will be today, Wednesday, October 5, 1988, at 3 p.m. in the Cannon Caucus Room. I hope that you will participate in the formation of what we envision as an important organization.

As a former Olympian, I am well aware of the importance of the support and encouragement our athletes receive from the American people. Through the caucus, we hope to focus public attention on our athletes and the U.S. Olympic Committee.

Robert Helmick, the president of the U.S. Olympic Committee, is scheduled to speak today at our meeting. Please show your support for our athletes and for the games, themselves, by joining with us in the Congressional Olympic Caucus.

SALUTE TO OPERATION RESCUE'S PRO-LIFE EFFORTS

(Mr. HOLLOWAY asked and was given permission to address the House for 1 minute.)

Mr. HOLLOWAY. Mr. Speaker, I want to commend the people who are participating in Operation Rescue's pro-life efforts this week in Atlanta.

The children's lives that they have saved speak strongly in their behalf.

When Jessica McClure was trapped in a well last October, the whole Nation watched in hope, while her rescuers made every attempt to save her. The pro-life Members in this Chamber are watching Atlanta with hope this week, while pro-life protestors are making every effort to save the lives of children.

The entire country rejoiced last year when Cecilia Cichan survived the Northwest crash. My pro-life colleagues and I are rejoicing because of the 359 children that have survived the disaster of abortion in our Nation as a result of the protests made by Operation Rescue.

Operation Rescue, I salute you. The lives you have saved are your reward. I am praying for a day to come when our whole Nation shares your commitment to preserve the lives of our most defenseless citizens. I support giving every American the right to life, liberty and the pursuit of happiness.

FOREIGN OWNERSHIP DISCLOSURE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFFICANT. Mr. Speaker, George Bush has now embraced the famous voodoo economics he labeled Ronald Reagan's politics in 1981, and that is bad news for areas like mine. In the 8 years, all that the Reagan-Bush administration has given steel towns and industrial workers has been rustproof paint.

We have seen good factory jobs close and we have seen benefits go down the drain. There is no national industrial policy, no national energy policy. I am trying to work out what, if anything, is the policy of this administration, and God forbid, a Bush-Quayle administration.

If the old theory is that a rising tide will raise all ships, Mr. Bush should recognize that very few Americans in the next couple of years will be able to afford to own a boat. We better do something about foreign ownership disclosure coming on the floor today.

I urge our President to act on the trade laws we have already passed.

RELEASE OF JOSE PUJALS MADERAS FROM CUBAN PRISON

(Mr. GARCIA asked and was given permission to address the House for 1 minute.)

Mr. GARCIA. Mr. Speaker, I am very pleased to take the podium today because tomorrow at 5 p.m. many Members of this Chamber, both Republicans and Democrats, liberals and conservations, about a year and a half ago sent a letter to Fidel Castro. Approximately 200 Members of this body signed a letter asking for the release of Jose Pujals Maderas, a person who was imprisoned since the Bay of Pigs, 26 years.

Well, tomorrow, for the first time, he will be here in Washington with us and I would hope that our colleagues would join us. The gentleman from Virginia [Mr. Wolf] and I, who circulated this letter and who received the support of the Members who ask that all of you come by and say hello to this courageous man. Twenty-six years in a Fidel Castro jail. He is finally free.

ECONOMIC GROWTH IN REPUBLICAN ADMINISTRATION

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, one of the previous speakers said what has the Reagan-Bush ticket done for America, indicating they had no policy. I tell you what they have done for America. I wish my colleague were still here.

They created 17 million new jobs. They took interest rates from 21½ percent down to where they are today so people can buy houses and cars and other items. Because interest rates came down, unemployment came down because people could buy things and produce things and people went back to work. Inflation came down from double digits to single digits to less than 4 percent in most of the Reagan administration.

My colleagues on the other side of the aisle continue to ignore these facts. The fact of the matter is, economic growth has been unparalleled in the history of this country. For the past 68 months we have seen tremendous economic growth, but they want the American people to forget that, and they attack DAN QUAYLE, my colleague, the Senator from Indiana. DAN QUAYLE has been in the Congress for 12 years, done an outstanding job, sponsored the Job Training Partnership Act and will be a great Vice President, and tonight you will see what he can do in a debate.

QUAYLE-BENTSEN DEBATE

(Mr. ATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ATKINS. Mr. Speaker, with the Olympics over and the new television season yet to begin, the networks tonight will offer a Vice Presidential debate for our entertainment. When you look at the Republican side of the stage you might think you are looking at the "Young and Restless."

Frankly, Mr. Speaker, I do not expect that much of anything said tonight will have a great effect on the election. The format of the debate is so structured that the only question is, will the Republican nominee be able to memorize his 4 by 5 cards. Will he be able to keep his mouth shut, smile and voice the platitudes they have given him to memorize.

I suspect the answer is yes, he will be able to. That is the Indiana Senator's forte. He has gone far on a smile and a shoeline, but I would hope, Mr. Speaker, that as Americans watch the debate tonight they ask themselves the question, who is fit to be a heartbeat away from the Presidency? Clearly, the Senator from Texas has the most distinguished record of accomplishment of concern for this country.

MEDICARE CATASTROPHIC HEALTH CARE BILL

(Mr. DAVIS of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, today I am introducing a bill for the senior citizens of the Fourth District of Illinois and the entire country. My bill repeals the Medicare so-called catastrophic health care bill (H.R. 2470).

It is a simple bill and reads as follows:

> The Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) is hereby repealed. Any provision of law amended or repealed by such act is hereby restored or revived, and shall be effective as if such act had not been enacted.

I am introducing this legislation in direct response to the elderly people in the Fourth District who have asked me to do something about this particular law. They realize that they got a bad deal and they want it reversed.

The catastrophic bill added benefits to Medicare that few seniors will use and by 1993, 25 percent of elderly taxpayers will be paying $1,092 in new taxes.

The worst part is that this new law does not even provide the benefits most needed by seniors—that is long-term nursing and home health care.

I think that Congress should admit its mistake, repeal the catastrophic provisions and pass a comprehensive long-term health care policy which is fair to senior citizens.

Twelve of my colleagues are joining me as original cosponsors. They are: Mr. DREIER, Mr. STUMP, Mr. COMBEST, Mr. OXLEY, Mr. FAWELL, Mr. MCCRERY, Mr. HUNTER, Mr. MCCANDLESS, Mr. PORTER, Mr. BURTON of Indiana, Mr. GOODLING, and Mr. RITTER.

We realize that time is short, but we wanted to act now to let the senior citizens know that some Members of Congress are trying to "fix" this new law and pass a comprehensive long-term care policy in its place. We will then reintroduce the legislation next Congress in response to the support we will generate.

THE AIR FORCE SHOULD KEEP THE HURRICANE RECONNAISSANCE PROGRAM

(Mr. ANDREWS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, last month, Texas and Mexico were spared any surprises about Hurricane Gilbert. Although the hurricane was devastating, it would have been worse if we did not have a fair warning. The Air Force and the National Hurricane Center deserve our thanks. The Air Force flew several reconnaissance missions to track Hurricane Gilbert, and the National Hurricane Center used this information to predict the path of Gilbert.

Yet, there are those in the Air Force who would have us dismantle the Weather Reconnaissance Program. They say that the Air Force cannot afford the $26 million cost. I say we cannot afford to risk the lives of millions of Americans who live in coastal States.

The mistakes from poor predictions of hurricanes take a heavy toll. Evacuation costs $50 million everytime a hurricane approaches a heavily populated area. If the evacuation area must be increased by 10 miles, the cost goes up by $10 million.

The reconnassiance flights reduce mistakes. They improve the accuracy of prediction by as much as 30 miles, which saves $30 million. This program can pay for itself with just one hurricane each year; let us not end it.

Let's not be penny wise and pound foolish. Let's not abandon our responsibility for the lives of those in the coastal States.

I urge my colleagues to join with me in supporting House Concurrent Resolution 366 that opposes any effort by the Air Force to dismantle the Weather Reconnaissance Program.

ELECTON IN CHILE

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, we as a Congress are encouraged today with the elections taking place in Chile. One of our colleagues yesterday stated that the State Department said that the results of the plebiscite must be adhered to. We would all underscore that; that is, that President Pinochet must adhere to the results.

But the corollary is that we, too, must adhere to the results. Let the voice and the people of Chile make their decision today, and we in the Congress will stand behind that decision. If the "no" vote prevails, or if President Pinochet wins, we will adhere to the result.

AYATOLLAH PLANNED HOSTAGE RELEASE?

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILLIAMS. Mr. Speaker, it occurred to many Americans that the Ayatollah Khomeini goes out of his way to influence American Presidential elections. He does so with the release and the timing of the release of hostages. We remember two elections ago, after former President Carter had worked many, many long man hours, along with his staff, with his own personal intervention, to secure the release of American hostages, but the Ayatollah held them until after election day.

The polls clearly showed it was the taking and holding of these hostages that was primarily responsible for President Carter's defeat, and now we see the Ayatollah is at it again.

I think the American people ought to ask why Ronald Reagan's election and reelection efforts had personnel, former personnel, the CIA, on their staff? I think the American people ought to ask why GEORGE BUSH has advisers from the CIA on his Presidential staff. What does the CIA have to do with the Presidential elections, and does it connect at all to the fact that we have negotiated with the Ayatollah, we sent him arms when he takes our hostages? Are the Republican Presidential campaign efforts negotiating with the Ayatollah in intervening with America in the Presidential elections?

IN PRAISE OF SENATOR QUAYLE

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, tonight is going to be a wonderful evening for the American people, for they are going to have a great discovery. They are going to discover what I have known, that Senator QUAYLE is a bright, articulate person, able to speak very clearly from the heart and from the head, things he understands.

Senator QUAYLE was a man that was able to understand the value to the American people, of endowing the President with the enhanced rescission power to exercise what is, in effect, a line item veto authority over the omnibus spending bill in the form of a continuing resolution, passed through this body last December. He worked hard for that effort. He understood it, and he was able to articulate the cause very well.

I hope the American people enjoy as much as I anticipate enjoying tonight, listening to this bright young man speak on their behalf.

DUKAKIS-BENTSEN TICKET, JUSTICE FOR ALL

(Mr. OWENS of New York asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of New York. Mr. Speaker, each day we say a Pledge of Allegiance that ends with the phrase, "Justice for all," but Michael Dukakis seems to be the only candidate who understands what this phrase "justice for all" means.

□ 1030

The Dukakis college plan says that every youth who wants to go to college and qualifies to go to college can go to college. That is justice. The Dukakis health care plan says every American who is working should have health care. That is justice. They do not have to get on welfare in order to get health care. They can go to work and have a health care program. That is justice.

I hope that in the coming days the American people will insist that the candidates address themselves to this issue of justice for all. Michael Dukakis understands it. I think, LLOYD BENTSEN will show tonight in the debate he understands it.

A decent health care plan, an opportunity to go to college for anybody who qualifies, that is justice for all.

FOREIGN OWNERSHIP DISCLOSURE ACT OF 1988

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 568 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 568

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5410) to provide for the registration of foreign interests in United States property, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one and one-half hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order except for a substitute, if offered by representative Michel of Illinois, or his designee, which shall be considered as having been read, which shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent and a Member opposed thereto, and which shall not be subject to amendment. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore (Mr. WATKINS). The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTA], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 568 is a modified closed rule providing for the consideration of H.R. 5410, the Foreign Ownership Disclosure Act. The provisions of H.R. 5410 are very similar to the provisions of the so-called Bryant amendment which was included in the House-passed Omnibus Trade and Competitiveness Act of 1988, H.R. 3, earlier in this Congress.

House Resolution 568 provides for 1½ hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce and provides that the bill shall be considered as having been read for amendment under the 5-minute rule. The rule further provides that no amendment to the bill shall be in order except for a substitute, if offered by the gentleman from Illinois [Mr. MICHEL] or his designee. House Resolution 568 provides that the substitute shall be considered as having been read, that it shall be debatable for 1 hour which is to be equally divided and controlled by the proponent and a Member opposed to the substitute, and that the substitute shall not be subject to amendment.

Finally, Mr. Speaker, House Resolution 568 provides that at the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments as may have been adopted and that the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. Speaker, the principle elements of the Bryant amendment and H.R 5410 have been amply debated during the 100th Congress. The Committee on energy and Commerce held a hearing on this matter prior to the committee's markup of H.R. 3 and during the markup the amendment was fully debated. In addition, during the debate on H.R. 3 earlier in this Congress, the House voted 230 to 190 to defeat an amendment which would have weakened the provisions of the Bryant amendment. The amendment was ultimately dropped in conference in the face of administration opposition. However, the Committee on Rules has recommended this rule providing for the consideration of H.R. 5410 in order that this provision, like the plant-closing provision which the administration also opposed, be afforded an opportunity to be presented to the President for his signature or his veto.

Mr. Speaker, H.R 5410 provides for the registration of foreign interests in U.S. Business or real estate in order that our Government might know the extent to which foreign investors have significant or controlling interest in U.S. business and real estate. Since 1982, foreign investment has more than doubled, exceeding $1.2 trillion, yet our Government, unlike many other governments who impose strict and detailed reporting requirements on foreign investors, does not have a complete and accurate accounting of the extent to which foreigners own or control American businesses and real estate. H.R. 5410 seeks to make that information available to the U.S. Government to ensure that national security is not endangered by concentrated foreign interests in various industries in our Nation.

Mr. Speaker, I was a strong supporter of the Bryant amendment when it was considered as part of H.R. 3, and was most disappointed when it was dropped from the bill during conference. For that reason, I urge my colleagues to support House Resolution 568 so that the House may once again express its strong support on this most important legislation.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule makes the consideration of a major new piece of legislation in order in the dying days of this Congress. This is terribly poor procedure to start with, but doubly so when we are about to consider a bill which is never going to become law.

This bill embodies an idea which was dropped in the conference report on the omnibus trade bill because of the temendous opposition to it once it was understood.

If by some remote chance this bill were to pass the Congress, it would be vetoed by the President. The administration has already sent us a statement of policy saying that if this bill, H.R. 5410, were presented to the President, his senior advisers would recommend that he veto it.

So, Mr. Speaker, we are being asked to waste time spinning our wheels on a bill that is going nowhere.

Mr. Speaker, let me mention a few of the administration's objections to this bill. First, the provisions which mandate registration and disclosure of foreign investment are potentially harmful to investment in the United States and will produce little or no useful information not already required to be furnished. The bill does not preclude investment. If we want to preclude investment, why do we not come forward with a bill to do that? Why should we go ahead with something and say we are going to have more registration when we already have it?

Let me quote from a letter from the Secretary of Commerce. It says, "This legislation would add a little to our ability to analyze the impact of foreign investment on our economy. Individual investment by foreign and domestic purchasers of over 5 percent of the stock of a publicly traded company is currently reported to the SEC." The question is why do we need further reporting?

"The Treasury Department collects aggregate data on foreign portfolio investment in U.S. equities. The Commerce Department already collects voluminous data on foreign direct investment in the United States." Mr. Speaker, another reason the administration opposes this bill is that it is a known fact that discriminatory treatment of foreign investors would discourage investment in America. Foreign investment is an important source of capital and a spur to economic growth and job formation.

I do not know of many who would want to dampen economic growth and the creation of more jobs in America.

Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. Broomfield].

Mr. BROOMFIELD. Mr. Speaker, I am strongly opposed to the rule.

The rule which we are considering today has made a strange and troubling journey to the floor of the House of Representatives.

In the process it has not been subject to a hearing or markup by a single committee of jurisdiction. This is a jurisdictional matter of serious concern to the Committee on Foreign Affairs and several other committees of the House.

As the chairman of the Committee on Foreign Affairs Dante Fascell and I wrote in a recent letter to the Speaker:

> Such an unusual procedure and disregard for the established rules of the House would be disconcerting with any legislation, but it is particularly troubling in the case of H.R. 5410. This bill represents a significant change in existing U.S. international investment policy. Similar language attached as an amendment to H.R. 3, the Trade Reform Act, created a major impediment to resolution of the House-Senate conference report and was eventually dropped with the consent of the majority of the House and Senate conferees.

This bill, requiring the registration of certain foreign-held assets in the United States, not only duplicates existing requirements under the International Investment Survey Act, but, by loosening confidentiality protection afforded under the existing law, it will in effect seek to discourage over a trillion dollars of investment in the United States.

I strongly urge my colleagues to oppose this rule on procedural and substantive grounds. Hasty action at the end of a Congress is not the time for such legislation.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Texas [Mr. Bryant].

Mr. BRYANT. Mr. Speaker, I appreciate the gentleman yielding me this time.

First I want to say a very sincere "thank you" to Chairman Dingell, Chairman Pepper, and the House leadership for bringing this bill to the floor.

Contrary to comments already made by the other side on this matter, House Resolution 5410 passed the House earlier in the year as an amendment to the trade bill. At that time an amendment was offered by Mr. Lent in an attempt to strip the bill of the effective provisions. After substantial debate, that amendment by Mr. Lent was defeated.

The bill then went to the Senate and accordingly the President included this bill to require reporting of foreign ownership in a list of matters which would force him to veto the trade bill. Accordingly, to avoid the veto House Resolution 5410, in substance, was dropped as an amendment to the trade bill.

Mr. Speaker, we are here today because of a strong feeling by a majority of the Members of the House that it is time that we begin to address adequately what is the most dramatic new development in the American economy today and that is foreign ownership.

Foreign ownership of basic American assets, farmland, factories, banks, businesses, buildings, Government securities, and all the other U.S. economic assets has tripled in the last 7 years. According to conservative estimates that total now is $1.5 trillion in value. Other sources estimated could total as much as $3 trillion in value.

Not a day passes without another news report of another foreign takeover, of another maker, an American industry.

If you look on the business page of the Washington Post today, you will find the headline that announces an attempt to take over the Pillsbury Co. Yesterday we read about a substantial foreign investment in Eastern and Continental Airlines. Just a few weeks ago we read about the takeover of the seventh largest American insurance company, Farmers Insurance Groups, by a major foreign, European-based conglomerate.

Mr. Speaker, I could go on at length about examples giving us reasons to be in favor of this bill. I will do that during general debate.

But let me simply say this: This bill simply requires the reporting of basic information about a significant foreign investment in the United States to give us the kind of data we need to be able to tell us where we stand. Every other nation in the world requires this data and much more. Most of them also require preclearance requirements, put limitations on investment and all sorts of restrictions on foreign investment. We do not propose that here today. We simply say in this bill we need basic data on which to base the decisionmaking with regard to foreign ownership in the United States. We do not have it today. The bill does not duplicate existing law. Existing law has been proven and is regarded by all observers to be completely inadequate in terms of giving us any type of inventory regarding foreign ownership.

The bill simply says that owners of a significant interest of more than 5 percent in a U.S. business or real estate property valued at over $5 million must report basic information about who they are, where they are from, the size of their percentage. With regard to companies in which a controlling interest of over 25 percent is bought, if that company is worth more than $20 million they then have to report more extensive data which even then is far less than publicly held companies now have to report to the Securities and Exchange Commission.

□ 1045

Mr. Speaker, this is a reasonable approach. We badly need it. We have a debate underway in this country with regard to what I said a moment ago was the most dramatic new development in our economy. Let us not resolve the debate by beginning to legislate in the future with a data base.

Mr. Speaker, this bill will give us that data base.

Mr. LATTA. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I fail to comprehend the situation when I hear the gentleman say that additional reporting is going to be helpful.

We already have the information. If we do not want the investment, let us stop it. This bill does not do that. Let us not hoodwink anybody into believing that this bill is going to stop foreign investment. It merely says that we are going to do some more reporting.

We listened to the gentleman tell us about these various companies that wanted to buy into the United States. That is already public knowledge. So what? If we do not want them to do that, let us stop it. Let us not just say that we want more reporting.

Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. Lent].

Mr. LENT. Mr. Speaker, I rise in opposition to the rule.

The reasons for my opposition are very simple: this bill should not be coming before the House at this time and under these circumstances.

The request for a rule on this bill is an extraordinary request: It is a request to provide for the consideration in the House of a bill that was introduced 1 week ago and that has not been the subject of hearings and has not been marked up in subcommittee or full committee. We are being asked to abandon the rigorous process that all other bills must go through before consideration in the House of Representatives. And we are being asked to do this with just a few days left in the 100th Congress when this legislation does not stand a chance of passing.

Remember that the subject matter of this bill is very controversial. When the Bryant amendment was offered to H.R. 3 in the Energy and Commerce Committee, it was approved 21 to 20, with one abstention. It was later tabled by the other body by a vote of 83 to 11, and later it was dropped from the trade bill by a majority of the conferees of both the House and the Senate. I can understand why the proponents of this legislation want to bypass the Energy and Commerce Committee and any other committee that might have jurisdiction. But it is certainly not a responsible way to legislate.

It is argued that this provision has been the subject of extensive debate during this Congress. In fact, neither the current bill, H.R. 5410, nor Mr. Bryant's earlier bill, H.R. 312, has been the subject of separate hearings in this Congress. Indeed, the subject of disclosure of foreign investment in the United States has not been the subject of a single hearing in the Energy and Commerce Committee in the 100th Congress. This is a complicated and controversial issue on which extensive hearings should be held to take testimony on the affects of the bill on the U.S. economy and on our trade negotiations.

In summary, we shouldn't be voting on this bill—certainly not under these extraordinary circumstances. The Congress has killed this legislation already this year. I find it highly objectionable that we are now confronted with a new bill on short notice and that the committee or committees of jurisdiction don't have the opportunity to air the issue out. This is a controversial bill that we should not be considering in the final days of the Congress.

For all these reasons, I urge the House to reject this rule.

Mr. FROST. Mr. Speaker, for the purpose of debate only, I yield 3 minutes to the gentleman from Ohio [Mr. Traficant].

Mr. TRAFICANT. Mr. Speaker, I wish to express my support for H.R. 5410. The need for it is quite evident.

Last year Japan alone bought CBS records, Bank America, American Express, Westin Hotels and Resorts, the largest bank in Los Angeles, the Dunes Hotel and the Aladdin Hotel in Las Vegas. They also bought Firestone. They are buying up our progressive high tech companies.

They are buying up our banks and our securities. In fact, an American citizen today can make a direct cash deposit into a Japanese national bank advertised in our major metropolitan markets. Think about that. The day is approaching when an American will have to pay rent to a Japanese landlord to live in our own country.

Our soldiers won the war, but Congress is letting Japan win the peace. And all of these other Europeans who keep our products and laugh in our face, and they are now buying up our country. We give them incentives, we give them tax breaks; we say we want jobs.

The bottom line is that they are beginning to own the rock, and there will not be a "piece of the rock" for our kids.

I think the least we can do is to pass this very appropriate preliminary type of ininitiative. As least we could find out how extensive their holdings are.

Mr. Speaker, I say this to the Members of Congress: The day will come when American's cash crops will not be soybeans and wheat and corn; they will be rice, and we will have a rice paddy on the East Lawn of the White House.

We ought to be ashamed of ourselves. I have lost 55,000 jobs, and I do not want any more harbored statistics. I want Congress to start acting like we represent America, not Japan and not Europe. We are here as special interest folks; we represent the people back home.

Mr. Speaker, we represent our own country. I think we should start acting like it.

Mr. LATTA. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, if I heard correctly, the gentleman who just left the well said that we do not want any more statistics. That is all this thing is going to provide, statitistics. If the gentleman wants to do something about stopping these foreign investors form coming into the United States, he ought to introduce a bill to do exactly that.

Mr. Speaker, I think the gentleman ought to take a look at this bill and see what it does not do. We are already getting this information. This is not going to stop anything.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, the gentleman from Ohio makes a very good point. I would just point out that foreign investment here in this country has nowhere near caught up with U.S. investment overseas. By official calculations, U.S. investment abroad is billions and billions of dollars greater than direct foreign investment here.

So if we are going to start passing a bill setting up a lot of restrictions on foreign investors coming in this country, which will be, I might add, in direct contravention to the big trade bill that President Reagan signed into law when many of us were down at the White House on that occasion, we are going to be inviting the same kind of restrictions against Americans who wish to invest abroad.

Mr. LATTA. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. Lungren].

Mr. LUNGREN. Mr. Speaker, we have been treated to some rather strong remarks with respect to the improper and deleterious penetration of our market in terms of investment by foreign investors. I would just like to say that if we followed that logic, frankly we would absolutely devastate the economy of my home State.

I happen to represent part of the port of Los Angeles and the entire port of Long Beach, combining the largest ports on the west coast. That is the largest port complex all the way from Alaska down to the tip of South America. Frankly, without foreign investment, we would literally have tens of thousands of jobs in my area lost.

Foreign investment comes in and makes contributions to buildings, to infrastructure, to companies, and ultimately to jobs in southern California, as well as the rest of the country. This nonsense about the fact that having foreign investors come in and put their money in America to create industry and to create jobs somehow takes jobs away does not make sense. If we are doing such a terrible job of exporting jobs, how come we have created 17 million new jobs in less than a decade? How come in all of Western Europe they have created zero new jobs? How come we are head and shoulders above the Japanese, not only in terms of numbers of jobs, but in terms of percentage of jobs increased over the last number of years? If that is exporting jobs, we ought to have more of it.

In this context, to say now that we do not want foreign investment is shooting ourselves in the foot, as we often do in the Congress. Actually we do not shoot ourselves in the foot until we have first placed our foot firmly in our mouth. That is what this is. What kind of jingoistic fear is this?

Do we say to people in my district who have jobs that are connected with foreign investment, "Your job is unworthy or dirty? The fact that you have a job is taking a job away from somebody else?"

When some of the older Fortune 500 companies in America were cutting back, other companies were being created in my area precisely because of foreign investment. What do we want them to do with their money, hold it in their countries, build more infrastructure in their countries, take that money out of the United States? Or maybe instead of investing, maybe they should just hold the debt of America. Maybe that is the better thing for them to do, so they can take it out at a moment's notice? When they invest in America, they make a commitment to America. They cannot easily take that money out. They cannot pick up a factory, they cannot pick up a new port as easily as they can wire somebody within 30 seconds to say that they want to sell off a debt they happen to own.

This is creating jobs in America. This is helping us be a real part of the international community. If anybody thinks we can close off our borders and have an insular marketplace, they are living a hundred years ago. "Back to the future," I guess, is the slogan. It is absolute nonsense. We ought to understand that it is absolute nonsense, and it is detrimental as far as jobs are concerned.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, I want to commend the gentleman in the well, the gentleman from California [Mr. LUNGREN] for his remarks.

Just by way of a footnote to those remarks, I would indicate that U.S. affiliates of foreign firms employed nearly 3 million Americans at the year end 1985, paid over $70 billion in payroll in this country, paid over $8.5 billion in U.S. income taxes, in addition to State, local, and county taxes, and exported over $55 billion in merchandise and trade.

So, Mr. Speaker, there is a great deal that can be said in favor of foreign investment in this country in terms of keeping America moving forward.

Mr. LUNGREN. Mr. Speaker, does that not worry the gentleman, those statistics that tell us those many jobs have been created and that much in tax dollars has been given to the Government? Is that not something we ought to be worried about? Do we not need to find more facts and put those people up on the wall at the post office and say, "Wanted"?

Mr. LENT. Mr. Speaker, it seems to me that if we were to pass this bill, a lot of these jobs would be lost, a lot of this investment would be chilled, and it would go to other competitive countries, and the net result would be that it would hurt our economy.

Mr. BRYANT. Mr. Speaker, I yield 4 minutes to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I thank the gentleman for yielding this time to me, and I rise in strong support of H.R. 5410, the Foreign Ownership Disclosure Act.

I will use my time to try to refute some of the arguments offered by those who oppose this legislation.

First of all, the gentleman from New York indicated that this legislation had never been considered by this Congress. Well, the gentleman must not have been paying attention because it certainly has been considered, not only in the Committee on Energy and Commerce, but in addition to that, it was fully considered and debated as a part of our trade bill and marked up both here on the floor where we passed it and in committee, and it went over to the Senate where it was considered in conference. So this is coming back to us, just like the plant closing legislation did. We have had an opportunity for full debate.

Second, the gentleman from Ohio indicated that the data is already available, and that we do not need any more information.

□ 1100

Mr. Speaker, let me tell my colleagues that, like the gentleman, I come from Ohio, and I personally have tried to gather information on foreign investment in our State and in this country as I have tried to understand Japanese investment in the auto and auto parts industry. And along with other Members of Congress I have requested an assessment by the GAO to help us so we could be more effective in trade negotiations with Japan. After a year of study, the GAO produced a report which read as follows. They could not give us the information we wanted on Japanese ownership in this country because private industry was not required to provide us with the information because of the intense competition within the industry which made it impossible to verify much of the information that they were asked to provide.

So, Mr. Speaker, that is from our own Government telling us we cannot get the information that we need during these most unusual times in our country where foreign investment is now coming in and has grown by more than 200 percent per year since 1980. We are talking about a brand new presence in our economy.

Recently, when I was traveling in New York City, I had a cab driver, and I said, "Sir, what kind of things do you think the Presidential candidate should be talking about," and he said to me, "Well, what I can't figure out," and the cab went by CBS Records, "is how come Japan now owns Bruce Springsteen?" He said, "Can you tell me that?"

I said, "That's a really good question, and I wish the Congress of the United States would spend a little more time thinking about it."

Frankly, I am not that pleased that there is all that foreign investment in the gentleman's district simply because that means his people have not been able to pay for their own investment, and now other nations hold the mortgage on his district, and I feel sorry for his district in the future. I hope his people will learn how to save more money so they can invest their own money in this country and not have the Bank of Japan hold the mortgage on the United States of America.

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I would just like to say in response to the remarks of the gentlewoman from Ohio [Ms. KAPTUR] that I suppose she is also concerned about the fact the Ford Motor Co. recently purchased Aston Martin in Britain, and I believe that is the car that the Prince of Wales drives. Maybe that is something that is so detrimental to the British

Commonwealth that we ought to restrict that. As I understand it, General Motors is considering purchasing Lotus.

So, Mr. Speaker, are we saying that we ought not to have investment in foreign countries just as they ought not to have investment in this country? The nonsense of that just does not seem worthy of the dignity of this House.

The fact of the matter is we have an international marketplace. Investment in my district, I would say to the gentlewoman from Ohio [Ms. Kaptur], is welcomed. Those jobs are created with investment from the outside. We are now building a world trade center in the Port of Long Beach. There is a combined investment by an American company and with Kagima, which is the No. 1, I believe, or No. 2 construction firm in Japan. They are combining with American investment to create a new world trade center which will bring in business from overseas as well as from all over the United States to make sure that the trade policy we have established, which is to bring down barriers, will be enhanced in this country.

Mr. Speaker, that makes sense.

Mr. LATTA. I yield myself 3 minutes.

Mr. Speaker, there seems to be a lot of confusion as to the reporting requirements right now. I cannot quite understand some of the statements that have been made about nonreporting.

The International Investment and Trader in Services Survey Act requires foreign investors or U.S. affiliates of foreign corporations to report to the Commerce Department within 45 days. I happen to have in my hand a copy, which is about a half an inch thick, of the reports and the instructions required to go to the Commerce Department now, under the act. It is on the books.

The Agricultural Foreign Investment Disclosure Act of 1978 requires that foreign investment in U.S. agricultural land be reported to the Secretary of Agriculture within 90 days of the investment. That is pretty clear.

The Department of Energy Organization Act requires the Department of Energy to report to Congress, to the extent practicable, on foreign ownership or foreign control of U.S. energy sources and supplies including the magnitude of annual foreign direct investment in the United States. That is law now.

The Foreign Investment in Real Property Tax Act of 1980 requires foreign investors owning U.S. real property to file annual information returns with the Internal Revenue Service which, like all tax filings, are confidential.

The question is: If these people do not want any foreign investment in this country, why do they not come forward with it instead of just another report? That is what this is all about. We are already getting all of this information. It is available now. Why should we ask foreign investors to fill out more forms when this one form going to the Commerce Department is already half an inch thick? What is this? Show? Or is this something that we are really interested in?

Mr. Speaker, I do not think we ought to be wasting our time here in the dying days of this Congress on this kind of legislation. If they do not want foreign investment, come forward with legislation to stop it. But do not come forward with some puny piece of legislation saying that we ought to have more reports. That is ridiculous.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield 2 minutes to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding because a couple of days ago we had a hearing, a very important hearing, over in the Committee on Government Operations where we were looking at the issue of whether or not Baretta, who makes weapons for the armed services, should have a company in Maryland continuing to produce those weapons.

Now under this kind of provision, what we are going to do is say, "Baretta, keep making them in Italy; don't bring the production to this country," and we fought on behalf of some of the Maryland delegation to make certain that Baretta could continue to be making those weapons in Maryland and sell them in this country.

Mr. Speaker, there were some of us who raised that issue. I mean I am absolutely shocked that we would have legislation out here on the floor that is designed to kill American jobs. It just does not make any sense at a time when we are trying to have a competitive advantage in the world that we would try to kill American jobs on a bill like this.

Mr. LATTA. Mr. Speaker, may I just comment on what the gentleman from Pennsylvania [Mr. Walker] said?

Out in Ohio they fell all over themselves, including the Governor, to get a Honda plant out there. Are we saying we do not want foreign-owned plants? I do not know.

This legislation just says what we want to do is have more reports. We already have all kinds of reports.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, I thank the gentleman from Ohio [Mr. Latta] for yielding.

Mr. LATTA. Mr. Speaker, I yield myself 2 additional minutes and yield to the gentleman from New York [Mr. Lent].

Mr. LENT. Mr. Speaker, I think the gentleman makes some very good points.

I would also add that for any of us in this Chamber who voted for the Omnibus Trade and Competitiveness Act of 1980 and the Canadian Free-Trade Agreement, this legislation directly contradicts an important provision in those two acts which are now signed into law by the President, so I think there is a contradiction here.

Mr. Speaker, the Omnibus Trade Act authorizes the President to negotiate the elimination of these kinds of barriers to international investment, and the act states that the principal negotiating objectives of the United States regarding foreign direct investment should be to reduce, and this is a quote from the law, "to reduce or to eliminate artificial or trade distorting barriers to foreign direct investment and to expand the principle of that national treatment."

I just point out that the goals of the Bryant amendment are directly antithetical to these provisions of the Trade Act. This amendment would create barriers to foreign direct investment, and it would violate the principle of national agreements since it would impose requirements on foreign investments that would not apply to domestic investors, and I think that the conferees on the trade bill, and many of us were conferees, recognized these points when we dropped the Bryant amendment from H.R. 3.

Mr. LATTA. Mr. Speaker, I thank the gentleman from New York [Mr. Lent] for his comments.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Texas [Mr. Bryant].

Mr. BRYANT. Mr. Speaker, I thank the gentleman from Texas [Mr. Frost] for yielding.

Mr. Speaker, I am disturbed that the other side continues to use the discrediting arguments that came up when we considered this bill before in the House to try to, I think, in effect make the Members of the House believe something about the bill that is not true. The gentleman from Ohio [Mr. Latta] says that we already collect all this data. That is clearly not the case. In fact, if my colleagues will just talk to the Bureau of Economic Analysis, which he referred to a moment ago, speak to them themselves and ask for their own interpretation of their performance over the last 7 years, they will say that the very fragmentary data which they collect at the present time had an error in it, which they would call a statistical discrepancy, indicating that they had missed $223 billion in foreign investment that had come into this country in the last 7 years that they do not even know about.

Furthermore, the Bureau of Economic Analysis does not require that the ultimate beneficial owner of the asset be disclosed. So, if we choose to hide the true owner with a dummy corporation, we do not know about that asset or investment at all.

Third, all of their data is kept secret so that it cannot be used by us as policymakers or by analysts who might be able to tell us what meaning even that fragmentary data might have.

The gentleman made reference to the Agriculture Department. What good does it do to have a law on the books, as we do now, which does not require that the ultimate beneficial owner of the property be disclosed?

The fact is that if we want to hide who the true owner is, we do not have to disclose, and so we do not have an accurate accounting of agricultural property either.

What about the Securities and Exchange Commission? The point was made yesterday; I think the gentleman may have made reference to it a moment ago, that, if one invests and buys 5 percent of a stock of a publicly traded company, they have to disclose it. That is correct, but that data is filed alphabetically, not according to whether or not a foreigner has bought the 5 percent, and so the data is of no use to it. It cannot be discovered, it cannot be collated, we cannot use it for analysis, it does not tell us anything.

Now the Members on the other side have heard these arguments before, and I think they know the truth of them.

Second, the gentleman from New York [Mr. Lent] made the point a moment ago that American investment abroad is much more vast than foreign investment here.

Well, that is interesting, if true, because all other foreign countries require enormous conditions that must be met before Americans can invest in their country. We must go through preclearance requirements. We face limitation, and we must disclose everything. Those kinds of requirements did not dissuade Americans from investing abroad.

Mr. Speaker, how can the gentleman then stand on the floor and argue that the minimal requirements of this bill would discourage foreigners from abroad from investing here? This is a bill to gather data. How can the other side argue that we should consciously remain ignorant of the most dramatic new development in our economy today? I think it is an argument that does not have credibility.

Mr. Speaker, I urge the Members to reject it and adopt this rule so we may go into general debate.

Mr. LENT. Mr. Speaker, is the gentleman aware of the fact that the United Kingdom, which has the most direct foreign investment in this country, does not require that foreign investment director portfolio to be registered with or screened by any government agency and, similarly, the Netherlands, which has the second most direct investment in this country, employs an approach similar to the approach we now have in force?

Mr. BRYANT. Mr. Speaker, I would like to read to the gentleman in answer to his question from the report here by the Congressional Economic Leadership Institute, which is the arm of the Competitiveness Caucus, which says, "Britain's Department of Trade and Industry retains the authority to screen all foreign takeovers of important manufacturing concerns."

Now the fact of the matter is every other country retains that authority, requires disclosure of us in a fashion that we do not require of them, and I simply ask in the offering of this bill that we begin to get basic economic data.

How can the gentleman say we should not get data? That is my question to him.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. BRYANT. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, what the gentleman from Texas is saying is simply not true, and we had a congressional research investigation into this whole subject, a survey completed also by the United Nations Center on Transnational Corporations. It says that most countries abide by a philosophy which favors the free international flow of capital and the equal treatment under the law of domestic enterprises and those established by foreigners.

Mr. BRYANT. Mr. Speaker, I say to the gentleman from New York [Mr. Lent] that I would simply urge him to go to his own Commerce Department and ask them what kind of barriers he is going to face in a foreign country, and the answer is that they are going to tell you is that they cannot give you that answer. They will tell you to go hire a lawyer and see what would be run into because the gentleman will run into a series of different obstacles in every country.

□ 1115

The fact of the matter is if we are talking about England, West Germany, Japan, or any of the other Western nations we run into serious obstacles to investment, as everyone knows, and I cannot believe that we are even debating that at this time. Certainly we run into very thorough reporting requirements, and all we are asking with this bill is very minimal reporting requirements of their investors here.

Mr. FROST. Mr. Speaker, may I inquire of the Chair whose time is running at this point?

The SPEAKER pro tempore (Mr. Watkins). The gentleman from Texas [Mr. Frost] yielded such time as he may consume to the gentleman from Texas [Mr. Bryant].

Mr. FROST. Mr. Speaker, I reclaim my time at this point.

Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Illinois [Mr. Hayes].

Mr. HAYES of Illinois. Mr. Speaker, I want to thank the gentleman for yielding me this time.

Mr. Speaker, it just disturbs me to sit and have to listen to the argument that the legislation that is being structured here in this House of Representatives, based on whether the President will sign it or not, particularly when we have looked at 8 years of track record of an administration which has shown little interest and concern about the plight of people who have to work for a living.

I certainly support this rule and the bill. I think that we need to understand one who has spent some time sitting down across the collective-bargaining table trying to negotiate protection for working people, when the place which they work at, they have been advised, is about to be sold to some unknown party in another country. They do not even know who is going to buy it. They do not know even what impact that is going to have on the lives of the families who have long been supported by the place at which they work.

Mr. Speaker, all this simple bill does, and certainly it is not a cure-all, but all it does is it requires that the prospective buyer, if it is from a foreign land, as I understand it, that we ought to at least know who they are. I see nothing wrong with that.

I have heard arguments here advanced on this floor several times about 17 million new jobs under this administration. Seventeen million jobs at $3.35 an hour, and they do not tell us that we have lost 5 million jobs that paid $12 an hour. This cannot help but have adverse impact on the standard of living of people in this country, and I think we ought to know and document people who are coming into this country, taking jobs away from our people, and I certainly want to support this kind of legislation.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Maryland [Mr. McMillen].

Mr. McMILLEN of Maryland. Mr. Speaker, I rise in support of this rule to consider H.R. 5410.

I think it is particularly timely we do so given the fact that foreign investment in this country now totals $1.5 trillion, tripled in the last year, and as long as we are continuing on a consumption binge in America, our dollar is deeply discounted, and foreigners will be able to come into this country and buy assets at bargain-basement prices. A couple of points to make at the outset. First, no one who is proposing this legislation believes that we should shut off foreign investment. Foreign investment is very important and critical to this country. The second point to make is that no one believes that we should build walls around America either, but the fact is we have to look at the reality of what is happening in our industries.

In the oil refinery industry, 23 to 24 percent of that industry is controlled by foreigners. In the banking industry, we see 20 to 25 percent controlled by foreigners. In our defense industrial base, in the second- and third-tier levels with subcontractors and component makers, we are beginning to see intrusion by foreign ownership.

The fact is what we are asking for is information so that our policymakers can make a good decision. The gentleman from Pennsylvania points out about a factory in my district, Beretta, controlled by Italians. I doubt very much if Beretta is going to close that factory up, take away those jobs, and move away from this lucrative American market because they have to fill out a postcard and send it to the Department of Commerce. That is ludicrous.

The fact is that this is not discriminatory. The Japanese require it of us. The rest of Europe requires it of us, and the fact is the United States is going to wake up and realize that laissez-faire economics might have applied in the 19th century, but it certainly does not apply in 1988.

Mr. LATTA. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, this really is not on this subject matter.

My dear, beloved friend, the gentleman from Maryland who just took the floor and said he did not believe that Beretta would leave Maryland if this bill passed, I hope Beretta does leave Maryland and that that contract goes to rightful persons, Smith & Wesson.

Mr. LATTA. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I still do not see how this legislation is going to help do what these speakers have talked about on the other side of the aisle. They have talked about American jobs. Do we not want foreign investment here to work hand in hand with domestic investment to create jobs? How in the world do they come to their conclusion, since they are going to eliminate American jobs by losing additional foreign investment in this country? Second, we are already getting this information. We are getting all the information we need to do exactly what some of these people would apparently like to do, and that is to build this wall around the United States and keep out foreign investment.

If they want to do that, this is not the vehicle to do it. This just provides for more information. As I have indicated, the Commerce Department requires all of this information right now, and I have indicated the other agencies or departments of Government that get information now.

Is this bill going to do what some of these people would like to have it do? Let us not kid ourselves, if we pass this legislation, that it is going to accomplish anything. It might accomplish this: It might keep some jobs from being created by some foreign investment. Every time there is talk about some foreign company coming into this country, they break their necks to try to come up with reasons as to why the foreign company ought to locate in their district to create jobs. It happens all the time in Ohio, and happens all the time in every one of the 49 States other than Ohio.

Let us not kid ourselves. It might sell with some people who do not know the facts, that we are trying to protect American industry by not having any investment in this country. That is ridiculous.

Let us vote down this rule and get on with the business to bring this Congress to a conclusion and save the taxpayers some money.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, let me say that having listened here for a while that at least on that side it seems to me to have been a lot of noise about nothing.

The gentleman from Texas has brought to this House, I think, a very reasonable proposal, a proposal which says that when we have foreign investment taking place in this country in large quantities, let us find out who and where and for what purpose. That is all he is saying. The question is: Does it matter who invests in this country, who owns this country's assets? The answer, of course, is yes, it does matter. No, we are not suggesting that we ought to close our borders. No one is suggesting that. We are saying let us understand who is coming across, let us understand whose dollars it is, let us understand what assets they are buying in this country. That does matter. That does make a difference for this country.

Ownership is control. If we do not understand that, we do not understand anything. Ownership is control. Who control assets, who controls how many assets in telecommunications, in finance, in robotics, in semiconductors is who controls. That is all the gentleman from Texas is asking.

We have a whole new class apparently of economic internationalists who believe somehow that if we offend anybody by asking for some basic information that we are going to injure the opportunity to create new jobs in this country. That is not what the issue is. The issue is as the gentleman from Texas requests, requests that I and others have joined saying we want to understand what is happening to American assets, who owns them and who controls them so that we can make some basic decisions about this country's national security, about this country's economic security. Is it old fashioned to start caring about this country again? Let us stop talking about all this internationalism and start understanding that our concern, as Members of Congress and of the United States of America, our concern is about the United States of America.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. MCEWEN].

Mr. McEWEN. Mr. Speaker, I had not intended to speak on this bill, but the discussion strayed not only from the bill but the idea of foreign investment.

I think it should be addressed directly. Perhaps one of the world's most famous economists, Ludwig von Mises, said in a foreword to a book called "The Anti-Capitalistic Mentality" that as a foreigner he observed the U.S. economy, and he said this, "In America they have the highest standard of living because the government of that nation embarked later than the government of any other nation upon a program of interfering with private enterprise."

Mr. Speaker, this country was not built by people who left their castles and got in their clipper ships and came to America to eke out an existence in the forest. This country was built because people around the globe invested their capital to build the railroads and the steel mills and the other factories that made this Nation the industrial power that it is. In fact, from the day that this country went on the gold standard under Alexander Hamilton, our first Secretary of the Treasury, until after World War II, we had a negative balance of investment, because capital from around the world made this an industrial power that surpassed any other in less than five generations, and now, Mr. Speaker, we are allowing some people to attempt to tell us that because successful individuals on this planet choose to build their plant in America rather than in Brazil or rather than Mexico or rather than in Italy that somehow or another we should be frightened of that.

Mr. Speaker, as someone who is interested in America, as someone who is interested in jobs for our country, as someone who is interested in a strong economic power base from which we will continue to drive the world economy, I want them all to be built here. I want the successful Japanese and the successful Germans and the successful Italians and the successful world community to build all of their plants in our country to make us the arsenal for freedom and democracy and economic power. Anything that discourages that is not to our benefit.

Mr. LATTA. Mr. Speaker, I yield myself 30 seconds.

I just wish that the membership would have an opportunity to examine these forms that are required now by the Department of Commerce for a company wanting to invest in America, and to see all of the information the Commerce Department asks for.

☐ 1130

I do not think that the speaker from the other side, the last speaker, would have made the statements that he did, had he examined these forms. They are very voluminous, very detailed and we are getting this information now.

The question is whether we want additional information over and above what all of these other departments and agencies of the Government are now securing.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield my remaining time to the gentleman from Texas [Mr. BRYANT].

The SPEAKER pro tempore (Mr. WATKINS). The gentleman from Texas [Mr. BRYANT] is recognized for 6 minutes.

Mr. BRYANT. Mr. Speaker, thank you, I will not use the full 6 minutes, but I want to make closing observations.

I think it is fair for us to conclude that there are those who have spoken from this side who do not want the true picture told with regard to what has been happening in the last 7 years regarding ownership of America's basic assets.

Foreign ownership of our basic assets has tripled in only 7 years. Surely we ought to have questions on what is happening. The gentleman from Ohio [Mr. LATTA] sardonically calls this bill and our efforts ridiculous. I tell you what is ridiculous. What is ridiculous is to advocate a policy of purposeful ignorance of what is going on in our own economy, to advocate a policy of purposeful ignorance of where foreign ownership is concentrating in our economy, and where we may be risking losing sovereignty over our own economic future. That is what is ridiculous.

Do we have this data? Of course we do not. I urge you to check any authoritative source about the nature of disclosure of foreign ownership in the United States today. What about the Bureau of Economic Analysis, which is the Commerce Department's subdivision's only method of keeping up with foreign ownership at the present time. They do not even require disclosure of the ultimate beneficial ownership, so if you have a dummy corporation you do not have to disclose this and admit to a $200 million discrepancy, foreign investment we do not know about.

That is the data Mr. LATTA is talking about that we have. What about the Agriculture Department? They do not require ultimate beneficial ownership to be disclosed and we cannot reach conclusions based on their data. We do not have data, but everyone else does have data and we sanction our Government's sanctions, their collection of it.

Let me refer you to the Canadian Free-Trade Agreement that this administration and these individuals stood on this floor and urged us to approve. What does it contain? It contains an explicit approval by our Government, of the Canadian Government's practice of continuing to keep and enforce the Investment Canada Act, which is the Canadian's registration and review for foreign investments, allowing Canada, with our blessing, not only to continue requiring the same reporting in Canada that my amendment calls for here today, that this bill calls for today, but also to continue prescreening and restricting foreign investment in Canada and a full range of Canadian industries.

Let me refer Members to the Organization for Economic Cooperation and Development, which is the organization of the major Western industrialized nations, of which we are a member. I refer Members to the 1984 declaration and decisions on international investment and multinational enterprises, of which we are a signatory. It specifically calls on foreign-owned companies to register and to publish the same information that this proposal before this House today requires. In that same declaration, the OECD called elimination of discriminatory foreign investment restrictions and adoption of national treatment for foreign-owned companies called for that policy.

My friends, nobody else regards what we are trying to do today as being hostile to foreign trading policies except a few people on this side. We need this data. We do not have the data today. I am making an appeal to Members to vote for this rule and to give America the opportunity to get a basic inventory of what is happening with regard to ownership of the American economy, which we do not have at the present time.

I urge all Members to vote for the rule.

Mr. FROST. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. WATKINS). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LENT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify the absent Members.

The vote was taken by electronic device, and there were—yeas 246, nays 163, not voting 22, as follows:

[Roll No. 427]

YEAS—246

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Carper
Carr
Chapman
Chappell
Clarke
Clay
Clement
Coelho
Coleman (TX)
Collins
Conte
Conyers
Cooper
Costello
Coyne
Craig
Crockett
Darden
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gephardt
Glickman
Gonzalez
Gordon
Grant
Gray (IL)
Guarini
Hall (OH)
Hamilton
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Herger
Hertel
Hochbrueckner
Holloway
Hoyer
Hubbard
Hughes
Hutto
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Leath (TX)
Lehman (CA)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lukens, Donald
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Miller (OH)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price
Rahall
Rangel
Ray
Regula
Richardson
Ritter
Rodino
Roe
Rose
Rostenkowski
Roth
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schulze
Schumer
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Solomon

Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Yatron

NAYS—163

Archer
Armey
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bilirakis
Bliley
Boehlert
Boggs
Broomfield
Brown (CO)
Bunning
Burton
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Coughlin
Courter
Crane
Dannemeyer
Davis (IL)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Edwards (OK)
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gejdenson
Gekas
Gibbons
Gingrich
Goodling
Gradison
Grandy
Green
Gunderson
Hall (TX)
Hammerschmidt
Hansen
Hastert
Hefley
Henry
Hiler
Hopkins
Horton
Houghton
Huckaby
Hunter
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Johnson (CT)
Kasich
Kemp
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lott
Lowery (CA)
Lujan
Luken, Thomas
Lungren
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McCrery
McDade
McEwen
McMillan (NC)
Meyers
Michel
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Neal
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Ravenel
Rhodes
Ridge
Rinaldo
Roberts
Robinson
Rogers
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sensenbrenner
Shaw
Shays
Shumway
Shuster
Skeen
Slaughter (VA)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Spence
Stangeland
Stump
Sundquist
Swindall
Tauke
Taylor
Thomas (CA)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wortley
Wylie
Young (AK)
Young (FL)

NOT VOTING—22

AuCoin
Boulter
Buechner
Campbell
Cardin
Daub
Dowdy
Gilman
Gray (PA)
Gregg
Lantos
Lehman (FL)
Lewis (CA)
Lowry (WA)
Mack
MacKay
McGrath
Smith (FL)
Solarz
Sweeney
Weiss
Yates

□ 1155

The Clerk announced the following pair:

On this vote:

Mr. Weiss for, with Mr. Boulter against

Mr. DAVIS of Illinois and Mr. PORTER changed their votes from "yea" to "nay."

Mr. STENHOLM and Mr. DICKS changed their vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Pursuant to House Resolution 568 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5410.

□ 1156

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5410) to provide for the registration of foreign interests in U.S. property, and for other purposes, with Mr. JENKINS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Michigan [Mr. DINGELL] will be recognized for 45 minutes and the gentleman from New York [Mr. LENT] will be recognized for 45 minutes.

The Chair recognizes the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would first like to thank Chairman JOHN DINGELL and Chairman CLAUDE PEPPER and the House leadership for once again bringing this bill back before the House. It passed the House as an amendment to the trade bill a few months ago. It went to the conference committee and was the subject of a veto threat by the White House and therefore was dropped in conference committee. It is fitting that we should take it up again because of the pressing need to begin to get for America a basic inventory of foreign ownership in the United States, at least as much information as other countries have about foreign investment in their countries. We do not have that data at the present time and we need it.

What dramatic fact brings us to this point today?

□ 1200

The fact of the matter is that foreign ownership of American farmland, factories, banks, businesses, buildings, government securities, and other U.S. economic assets has tripled in only the last 7 years. The value of that foreign ownership in the United States today exceeds $1.45 trillion. Some experts estimate that it could be twice as much as that.

There is not a day that passes that we do not read in the business pages of another attempt of a foreign entity to take over an American company. Today, if we read in the Business section of the Washington Post, we will see a headline saying that a foreign firm has made a $5.2 billion offer to take over the Pillsbury Co. Yesterday we read of additional foreign investments in the Continental and Eastern Airlines holding company called Texas Air.

Just a few days before that, we read that Farmers Insurance Group, the 7th largest insurance company in America, was being taken over by a major European conglomerate.

Forty-six percent of downtown Los Angeles today is believed to be owned by foreign investors; 39 percent of downtown Houston is owned by foreign investors; Hawaii is rapidly becoming a suburb of Tokyo, as is widely known. A report recently indicated that the products of 50 percent of American patent applications today were being made by foreign-owned companies inside the United States. Let me share this observation with the Members: British Petroleum now owns Standard Oil of Ohio, which makes it the holder of the lion's share of Alaska's 5 billion-barrel Prudhoe Bay Oil reserve. British Petroleum is now the target of an acquisition by the Kuwaiti Government, which now reportedly owns 28 percent of the stock of that company. In effect, that could mean that America's largest petroleum reserve may soon be owned by an OPEC nation.

This development with regard to foreign ownership is the most dramatic event taking place in our economy today. In spite of that, unlike every other nation in the world, we do not collect reliable, comprehensive data with regard to foreign ownership in our own country, so we cannot answer basic questions. Are we paying for irresponsible budget, trade, and economic policies by selling our economic independence? I think there is good reason to fear that. We do not have the data to tell us either way.

Are we narrowing our competitive and strategic edge by selling off an excessive share of our high tech industry? I think there is good reason to fear that, but we do not have the data to tell us the answer to that question either way.

Are we compromising our national security by selling off shares in our energy and defense-related industries? I think there is good reason to be worried that maybe we are, but we need the data to tell us for sure.

The fact is that we do not have a systematic, comprehensive system of the reporting of foreign ownership in America, and we should have and we must have it. I invite the Members to examine the practices of every other country which force Americans to go through preclearance requirements when they want to invest abroad, to face limitations on investments abroad, to face prohibitions on investments abroad, and to be required to disclose nearly everything that pertains to their investment if they are to be allowed to make that investment.

What does the United States require in this area? We have a hodgepodge of 16 different agencies that collect data that is of little use. It is not reliable, not usable, not comprehensive, and it is largely secret. The Bureau of Economic Analysis of the Commerce Department has been mentioned by the gentleman from Ohio [Mr. LATTA] during the debate on the rule. I made the point at that time that that data, which is thick and which does look good, basically tell us very little. Why? Because they permit foreign investors under the current practices to hide behind dummy corporations by not requiring a list of the ultimate beneficial ownership. Because their data is admittedly, by their own accounting, unreliable, they have a $223 billion discrepancy between what they claim in writing has been the extent of foreign ownership in America and what they admit is the fact as to currency inflows.

They made reference to the Agricultural Foreign Investment Disclosure Act. Again that permits registration in the name of a dummy corporation and does not permit us to know exactly what is going on. The Office of Trade and Investment Analysis publishes foreign investments by name, compiled from newspaper stories and already published sources, but it does not vouch for the accuracy of that data. Specifically, it was studied by the Subcommittee on Commerce of the Committee on Government Operations in 1980, which concluded that it was basically a useless activity done for public relations purposes to give the impression that it was a reliable source of data.

What bill is before us today? H.R. 5410 is a basic data collection bill which only requires that a foreign investor here disclose his investment if it amounts to 5 percent or more of an asset valued at $5 million or more. Basically, they would have to disclose basic data, give the foreign person's identity, nationality, address, the industry they are involved in, the date the interest was acquired, and the percentage, the name, location, and market value of the U.S. property they invested in, and no more. That could be disclosed on a postcard, and we fully expect that it would be.

Further, it requires disclosure in the event a controlling interest is obtained. That is more extensive than the other type of disclosure, that "controlling interest" being defined as over 25 percent of a U.S. business with assets or annual sales of over $20 million. And in that case the disclosure amounts to even less than what we now require publicly held corporations to disclose to the Securities and Exchange Commission under present law.

The access to that data is limited. It is limited to those who need to see it, to the Department of Commerce Employees, to the committees and subcommittees of Congress, to the employees of the General Accounting Office, to a single agency in each State which is selected by the legislature, and to persons who are designated by the Secretary of Commerce as being able to perform qualified research. Anyone receiving access to the information is required to establish strict safeguards to prevent disclosure to any unauthorized person and to conform to the safeguards we put forth in the law.

Mr. Chairman, I submit to the House that we need this information. We cannot continue to go forward into the future properly, remaining ignorant of what all other countries know about foreign investment within their own borders. Our opponents say this will offend our trading partners. I submit that we should only look at the contents of the Canadian Free-Trade Agreement that this administration urges us to approve. What did it say? It said that we specifically and explicitly approve of their practice of doing exactly the same thing.

I submit that we ought to take a look at the Organization for Economic Cooperation and Development. In their most recent proclamation on this matter, of which we are signatories, they sanction doing exactly the same thing.

Mr. Chairman, I urge each of the Members to consider whether or not it is a rational policy to go forward with a conscious purpose or to remain ignorant of what is the most dramatic new development in the American economy today, and that is a tripling of foreign ownership in the United States.

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?.

Mr. BRYANT. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Chairman, did I hear the gentleman correctly to say that British Petroleum is owned 28 percent by the Kuwaiti Government, and that British Petroleum is the major producer of oil in Alaska?

Mr. BRYANT. No, I did not say that British Petroleum was the major producer of oil in Alaska. I said the most recent reports indicate that the Kuwaiti Government has 28 percent of the company's ownership.

Mr. YOUNG of Alaska. Is the gentleman aware that as of yesterday the United Kingdom has ordered British Petroleum to divest itself to a level of 9 percent of the Kuwaiti-owned interest? Is the gentleman aware of that?

Mr. BRYANT. No, I am not, but I do not see how it bears on this debate.

Mr. YOUNG of Alaska. The difference is that I wanted to clarify it, although I do agree with the gentleman that the figures he was using are incorrect, that the Kuwaitis now only own 9 percent of British Petroleum.

Mr. BRYANT. Mr. Chairman, reclaiming my time, I think the point is that if what the gentleman said is correct, yesterday they owned 28 percent of British Petroleum. The gentleman is telling us that the British Government is telling the British Petroleum company to divest itself or force the Kuwaitis to divest themselves of all but 9 percent. That is an action which our Government does not have the legal ability to take, and I think we ought to make that point.

Mr. YOUNG of Alaska. Mr. Chairman, I am not disputing the gentleman. I just want the figures for the record because the gentleman's information is outdated.

Mr. BRYANT. No, the gentleman is totally inaccurate. My information is up to date, and the gentleman just verified that by his own statement.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. BRYANT. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Chairman, I think the gentleman just helped make the case for the gentleman from Texas.

Obviously Great Britain knew about the extent of ownership in the corporation the gentleman is talking about and decided to take some action. Those of us who are supporting this legislation feel it is important for this Nation to have that same degree of knowledge and to be able to take appropriate actions when they are required.

So the gentleman has been very helpful. He made the point that somehow there should be a right to know what it is that is in the national interest. This legislation provides that right to know.

Mr. BRYANT. Mr. Chairman, the gentleman is exactly right. In fact, we could not necessarily know that, and we certainly do not have the power today to do anything about it. I think the gentleman from Alaska inadvertently made the point for us, and I appreciate the gentleman's making that observation.

Mr. Chairman, I reserve the remainder of my time.

Mr. LENT. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL], a member of the Committee on Ways and Means.

Mr. FRENZEL. Mr. Chairman, when I asked the distinguished gentleman from New York to yield 1 minute to me, he asked, "Don't you want 2 minutes?" And I said, "No, this bill isn't worth 2 minutes."

It is not worth even 1 minute of this Chamber's time. We dispatched this bill earlier in the year. The Senate rejected the Bryant amendment by an 8 to 1 vote. No, the Senate did not reject it; it trashed the bill and that is exactly what it is worth.

If passed, this bill will dry up needed capital in the United States. Members should vote for it only if they are willing to stop spending to reduce our deficit. As long as we continue to incur massive deficits we will be dependent on capital from abroad.

This bill denies national treatment to our allies and trading partners, and therefore nullifies the whole thrust of our effort in the Uruguay round of GATT. Those of us who labor to open opportunities abroad, bilaterally and through the General Agreement on Tariffs and Trade [GATT], are constantly frustrated by legislation like this. We cannot get fair investment treatment for U.S. firms abroad, if we don't give it to foreign firms here. In order to finance our fiscal deficit and invest in new jobs in America, we need to import from $150 to $200 billion. That equals 4 percent of our GNP. Let those who want to let our economy dry up and who are willing to deny jobs to Americans, and those who like high interest rates vote for this bill. I shall not.

This is a silly bill. It has been killed once. It is going nowhere. The House should not waste time on it.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I rise in strong opposition to the legislation. This legislation is essentially identical to the provision which was excluded from the trade bill that the President signed into law in August. That legislation became law because of historic bipartisan cooperation in this Congress to solve clearly identified U.S. trade and competitiveness problems.

But the consensus of the trade bill was almost destroyed by one particularly controversial provision: the proposal for new reporting and disclosure requirements for foreign investment in the United States. As this House well knows, that provision raised a firestorm of opposition from the President, the multinational business community, and the whole range of organizations that represent the American business community: the NAM, the business roundtable, the U.S. Chamber of Commerce, and dozens of others.

At the final moment of the conference, faced with a veto threat over the so-called Bryant amendment, which would have absolutely doomed this important bill, the conference committee agreed to delete it. Now, despite the fact that Congress refused to put these objectionable requirements in the trade bill, we are faced with a last minute attempt to move a bill that would create the same burdens and essentially the same discriminatory access to confidential business information.

I oppose this legislation. If this Congress and the American people want and need more information on foreign investment, we can appropriately require that existing information be centralized, organized and analyzed. We do not need new, unproven, and controversial reporting rules, and we do not need broadened access provisions that will hurt U.S. businesses in which there is foreign investment.

This bill attacks and hurts American plants, businesses, and workers. Overseas investors come to America for new opportunities, and they will go elsewhere if these opportunities are limited by unreasonable economic protectionism.

We should take the time to consider a reasonable approach to the question of foreign investment. We must not trust the kind of antiforeign rhetoric, unfounded predictions, or extremist proposals that this bill represents.

I urge my colleagues to reject foreign investment reporting and access legislation.

Mr. BRYANT. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

[Mr. DURBIN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. LENT. Mr. Chairman, I yield myself 1 minute just to respond to the points the gentleman from Illinois [Mr. DURBIN] made.

Mr. Chairman, the gentleman who just left the well indicated that this bill merely requires foreign investors to give some information similar to the information that American investors give overseas.

I would just like to hold up, so that everyone in the Chamber can see, these reports that the Department of Commerce now requires any foreign investor to file in this country. These are the reports.

So, Mr. Chairman, it is clear that all the vital data that we need to assess the impact of foreign investment in our economy is already collected. For instance, we have the balance sheets, the income statements; we have the knowledge of the beneficial owner, the location of all foreign investors.

H.R. 5410 is very similar to simply reinventing the wheel. Why impose additional paperwork, additional burdens, on foreign investors with this duplication of legislation?

Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. RINALDO].

Mr. RINALDO. Mr. Chairman, I thank the gentleman from New York [Mr. LENT] for yielding me this time.

Mr. Chairman, the thing, the problem, I had with this legislation is the procedure primarily, and I have got to say this because this is one of the few times, maybe the only time that I can recall in my years on the Committee on Energy and Commerce, that we brought up a bill of this importance, of this magnitude, a bill as far reaching as this piece of legislation, without the benefit of any hearing whatsover. The bill before us has never been the subject of a single hearing in this Congress in the Committee on Energy and Commerce, the sole committee to which it was referred when it was introduced last week.

Mr. Chairman, I think a lot of us will really be sort of voting on something almost blindly or voting against it blindly because we have not had the benefit of those kinds of committee hearings, and, if that was not bad enough, the legislation is before the House without any subcommittee or committee markup, without a report, without any opportunity for additional or dissenting views, without a budget impact report, without any opportunity for analysis or other considerations.

Mr. Chairman, I think this is somewhat disturbing and should be to most of us. It comes to the floor after our committee without a vote, or even a discussion, waived its jurisdiction, and I for one am puzzled as to why the members of our committee were not even consulted before our jurisdiction was waived.

I for one would not have agreed to such a waiver since we all recognize that it sets a dangerous precedent for bypassing the committee process. I would have hoped we would have followed regular procedure on this legislation.

I am not debating the merits of the bill here because, quite frankly, I have a great amount of admiration and respect for the gentleman from Texas [Mr. BRYANT] for what I think he is trying to do. But I am disappointed that we are being asked to vote on a piece of legislation of this magnitude, a piece of legislation as far reaching as this bill, without the benefit of the kind of analysis that would have been provided if the normal committee procedure had been followed.

Mr. BRYANT. Mr. Chairman, I yield 3 minutes to the distinguished majority whip, the gentleman from California [Mr. COELHO].

Mr. COELHO. Mr. Chairman, I rise in support of Mr. BRYANT's legislation and in some degree of amazement over the debate.

Today, conservatives are liberals, caution is impulse, and study is considered a poor substitute for action.

Conservatives are arguing we should not study a problem before we address it.

Opponents of big government are against legislation that requires no coercive action.

Free traders are criticizing a bill that contains no protectionism.

What is going on?

The Bryant legislation springs from a philosophy as old as Adam Smith and as powerful as the American revolution.

Smith believed information was a prerequisite for markets to function efficiently.

And our Founding Fathers believed that economic concentration, particularly in the hands of foreign nations, was as dangerous as the concentration of political power.

To be sure, we can no more repeal foreign investment than we can the laws of economics.

Just as American investment in foreign nations provided economic growth in the United States and elsewhere, so too does foreign investment promote growth here at home.

But it is the reaction of an ostrich, and not a soveriegn nation, to express indifference at the extent to which that investment has grown.

The opponents of the bill may be indifferent, but most Americans are alarmed by a creeping loss of influence over their nation's economic future. They are concerned about investments by Japan totaling $110 billion in corporate stocks, bonds, Government securities and real estate.

They are concerned about the $160 billion in foreign capital that we need to finance our Federal deficit and investment. They are concerned when a U.S. agency which tracks this issue says it cannot account for a quarter trillion dollars in foreign investment.

I suspect these are among the reasons why the American people would have us go much further. There is broad support for legislation that would restrict altogether foreign investment in this country. But this bill does not stop investment; it requires that foreign investment be studied. Preparing my remarks today, I was reminded of a legislative battle we had in this House in 1981.

At that time, the Mobil Oil was seeking to take over the Marathon Oil Co. based in Findlay, OH. Our friends from Ohio, many from the Republican side of the aisle came to this well in support of legislation stopping oil company mergers. Why?

Mobil was threatening to destroy Ohio's influence over its own economy. Our friends feared that local Ohio businesses would lose contracts with Marathon. They feared Ohio workers would be cast adrift by employers in other States. So what did they do? They wrote a bill prohibiting oil company mergers. Who cosponsored this legislation? Mr. LATTA, Mr. MCEWEN, Mr. CHENEY, and that noted enemy of Adam Smith, our dear friend Mr. GINGRICH.

I think they had an important idea then, and I think this bill represents a similarly good idea today.

If you worry enough about your communities to support legislation prohibiting energy mergers across State lines, why not support a bill that simply studies foreign investment? If you are concerned about companies which pledge allegiance to our flag, how about the activities of companies located overseas?

The Bryant bill is good legislation and I urge my colleagues to adopt this important legislation.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. BLILEY], a member of the Committee on Energy and Commerce.

Mr. BLILEY. Mr. Speaker, I rise in opposition to this legislation.

This bill is simply too open-ended for anyone to have any idea of how much damage it will do to our economy or just how discriminatory it will be. I want to give my colleagues an example of how it could be used to trample the rights and freedoms of innocent investors in the United States just because they are from overseas.

The bill contains a section giving the Secretary of Commerce unbridled investigative authority over compliance. It simply cites the Federal Trade Commission Act, which is a civil enforcement statute against unfair and deceptive activities, not against legitimate economic investments. The bill places no limits on what the Secretary could investigate, who could be investigated, or what would be done with the results of the investigation. I thought we did away with this kind of kangaroo court, start chamber proceeding when we decided that everyone deserved due process of law, and equal treatment.

What are we doing here? There is another provision that would allow the Secretary to study a system to track "other capital flows." What does that mean? I assume we would start compiling lists of who buys Treasury bills and corporate bonds. I assume that we would start disclosing the names of foreign persons who make these investments. Let me assure my colleagues, nothing will drive those investors, and the billions and billions of dollars they control, more quickly to Paris, London, Tokyo, and Geneva, than such a requirement.

Perhaps those who are arguing for this bill think it is patriotic and honorable to set up discriminatory distinctions in our laws against foreigners, and to grant blanket, unrestricted investigative authority that invites abuse. Perhaps they also support high inflation and unemployment, and low exports. I certainly do not. I hope we can put this bill where it belongs, back where it was buried before this week.

Mr. LENT. Mr. Chairman, I yield 4 minutes to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. Mr. Chairman, I rise in opposition to H.R. 5410. As a member of the Energy and Commerce Committee I object to the attempted bypass of our committee. The legislation has not received proper consideration and not even one hearing has been held on H.R. 5410. In addition, when a similar measure was considered in an amendment form by the committee, it only barely passed by a vote of 21 to 20 with one member voting present. When it reached conference as an amendment to H.R. 3, it was rejected by the conferees.

This legislation is inconsistent with the intent of H.R. 3, the omnibus trade bill and would be detrimental to the creation of jobs and productivity in this country. In my own district is a perfect example of how foreign investment helped save jobs and, in turn, the economy of my State. Kennecott Copper Mine, which at one time, was the largest employer in my district, was completely shut down due to a downturn in the world copper price. Several thousand workers were laid off and the future looked bleak for Kennecott. Then, British Petroleum took over Kennecott's parent company, Standard Oil of Ohio. British Petroleum made a commitment and followed through on a massive modernization of Kennecott. Today Kennecott is thriving and many of the workers that were laid off are now back on the job. I would hate to see any sort of legislation that would discourage this kind of investment in America. We need a free flow of investment capital in order to have a thriving economy. Let's not do anything, particularly in haste, that would threaten this free flow. I urge my colleagues to reject H.R. 5410 until this legislation has had a chance for full consideration by the Energy and Commerce Committee.

Mr. Chairman, the supporters of this legislation complain that other countries impose similar or more onerous restrictions on foreign investment.

This statement is inaccurate in many aspects. First, our major foreign investing nations, Britain and the Netherlands, have much less restrictive foreign investment regimes than are proposed in this bill. Like the United States, their economic base is open to investment, with only national security restrictions imposed. Even the French, who do have a screening mechanism, have invoked it in only a rare number of cases in the past decade. That mechanism is only a simple report and approval process, similar to the Florio-Exon national security procedure we put in the Trade Act this year.

Much has been made of the Canadian investment screening regime. No one is justifying the continuing requirements, but its worth noting that because of pressure from the United States, those requirements have been made dramatically more narrow and less burdensome.

Certainly Japan's requirements are objectionable. But if we pass this bill, we will simply be copying Japan, and many underdeveloped countries that are trying to protect and isolate their economies. Moreover, no major economic power would even consider disclosing the economic data on foreign investment that is filed with it.

So, I would ask, why do we want to be following the most backward and objectionable countries, especially at a time when the United States, Britain, and other economic powers are pressuring the rest of the world in the GATT and elsewhere to drop these discriminatory restrictions. We should not be trying to prove that we can be as unfair as the worst nations, but that we can be an example of a careful and balanced approach to this issue. We should go back to the drawing board on the question of foreign investment, and we can do that only if we reject this bill.

I might add that if anyone thinks that the opposition to this bill is breaking out on party lines, they are very wrong. Two weeks ago, the Journal of Commerce quoted Lawrence Summers, professor of economics at Harvard, and Governor Dukakis' principal economic adviser, as saying: "I would be loath to restrict foreign efforts to create jobs for American workers by the opening of new plants. Capital protectionism should be on more acceptable than any other kind." Mr. Summers told the Journal of Commerce that Governor Dukakis shares this view. Another Dukakis adviser, Roger Altman, vice chairman of a New York Investment Banking Group, said that direct foreign investment leads to jobs and increased revenue for governments at the State, local, and Federal levels.

It is ironic that this House is voting, just before a Presidential election, on a bill that will certainly be vetoed by this President and would very likely be vetoed no matter which candidate were elected. This is simply a bad bill, and we should defeat it.

□ 1230

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Chairman, I rise in opposition to this bill.

Mr. Chairman, even if you agreed with the purposes of this bill, which I do not, you would have to recognize that this legislation is unworkable, and I think its sponsors and supporters know that. Among other problems, the definition of a group is totally confusing, and could cover even minuscule participants in investment pools. Very small and insignificant purchases would be covered by the definitions of significant and controlling interests.

The bill uses the concept of market value, which is meaningless as a predictable standard for reporting requirements, especially when failure to report accurately is subject to civil and criminal prosecution. What is the market value of an abandoned oil rig in Texas? Should we be putting restrictions on people who want to turn nonproductive assets into productive ones, just because they are from overseas?

The so-called SEC exemption is not really an exemption at all, except for one or two companies that have U.S. subsidiaries that are registered with the SEC. Even a foreign company whose share rights are traded on a U.S. stock exchange, and which registers with the SEC, could not use this exemption, because it applies only to the U.S. business enterprise, and only then if it already files with the SEC. So the idea that somehow most foreign entities will be able to file already available information is a myth.

The bill, like the trade bill section, fails to address the question of how a foreign bank that is prohibited by the laws of its own country from disclosing investor identities, could avoid civil and criminal penalties under this bill for failing to register and report.

These are serious problems. They cannot be ignored or glossed over. The bill would be bad law, bad policy, and bad politics. Let us kill it now, before it comes back to haunt us.

Mr. Chairman, I have already had to deal with the ominous effects of this bill in my own district. Twice now I have been asked by local chambers of commerce in my district to meet with potential foreign investors who have been somewhat discouraged by this bill and the existence of this bill, and somewhat alarmed that it might reflect an attitude in my part of Texas that is adverse to foreign investment.

I would like to be sure that everybody understands that I, for one, am willing to speak on behalf of the people in my district and tell them that we welcome investors in Texas who are willing to create plant capacity and job opportunities for the people of Texas.

I might also say, Mr. Chairman, that I would be remiss if I did not stand up for a great figure in the history of Western civilization, Adam Smith, and point out that the dear old gentleman must have done about 14 revolutions in his grave when he heard the mischaracterizations of his principles, as we saw earlier in the well by the gentleman from California.

Mr. BRYANT. Mr. Chairman, I yield 2 minuted to the gentleman from New Jersey [Mr. FLORIO]

Mr. FLORIO. Mr. Chairman, I support this bill very strongly.

What is wrong with our Government requiring that foreign firms and individuals who make substantial investments in productive U.S. assets provide basic information about the nature of these investments in the same way that our trading partners require information on foreign investments in their economies?

We are not limiting investments as they do to us; rather, what we are saying is that the American people have a right to know who owns America.

We have seen how foreign investment has tripled in the last 7 years to more than $1.5 trillion. In and of itself, there is nothing wrong with foreign interests investing in this country. As long as we have the huge Reagan-Bush trade deficit, we have to realize that foreign companies, who hold the dollars that we have paid to buy their goods and services, are going to have nowhere else to put those dollars other than the United States.

And incidentally, they do not invest in the United States because they just like us. They invest here because we are the most lucrative market in the world and they make money off investing in the United States.

We also know that U.S. exports alone are not large enough to absorb the huge supply of dollars now in the hands of foreign investors. Therefore, foreign investment in U.S. assets has inevitable increased.

No one is supporting this bill in order to erect a wall to keep foreign investments out of the United States

Instead, our only concern is that our economy not be harmed by foreign investment, and to make that determination we have to know more than we now know about such investments. And, the question is, Do we want to know? Some apparently do not want to know.

We had hearings in our committee on this subject and we had information brought to us that was startling. As of 1986 we found that close to 25 percent of all lending to American businesses was done by foreign banks. Foreign banks at that point, 1986, controlled over 16 percent of all bank assets in the United States.

We found out that banks that called themselves the First American Bank of Washington, or the Village Bank in New Jersey, or the First American Bank of Virginia were owned by Kuwaitis or other Middle Eastern consortium combinations.

We want to know, who owns America and that is what this legislation is all about.

I was struck by my good friend, the gentleman from New York [Mr. LENT], being concerned about the fact that our trade bill or our Canadian-United States Trade Treaty somehow would be violated by this bill. Let me assure him he has no reason to be concerned. Nothing in this bill in any way runs counter to those pieces of legislation.

As a matter of fact, ironically, the trade treaty with Canada allows the

Canadian Government, under the Investment Canada Act, to not only have foreign investment in Canada reported, but also to have such investment submitted for approval. In fact, foreign investment in Canada can be disapproved under this process.

Mr. Chairman, in conclusion, nothing this bill does is very different from what other countries in the world are doing to our investors. I urge my colleagues to support this legislation, because Americans have a right to know who owns America.

Mr. LENT. Mr. Chairman, I yield myself such time as I may consume to respond to the point that was made, or the assertion that was made, by the gentleman from New Jersey [Mr. FLORIO], who was just in the well.

I think earlier I indicated that this legislation would contradict the terms of the Omnibus Trade Act which was recently signed into law by the President, and I pointed out that act authorizes the President to negotiate the elimination of barriers to international investment. The Trade Act states that the principal negotiating objectives of the United States regarding foreign direct investment is to "reduce or to eliminate artifical or trade distorting barriers to foreign direct investment and expand the principle of national treatment."

So the goals of this legislation are directly antithetical to these provisions of the Trade Act, because they would create barriers to foreign direct investment.

I indicated earlier that it would be far more paperwork, and that is why the conferees on the trade legislation wisely eliminated this provision, because it was inconsistent with the thrust and thesis of the trade bill, which was to eliminate barriers, rather than raise these barriers.

In the other body, when they got a chance to vote on similar language to this, by a vote of 83 to 11 said, "No, we don't want this kind of legislation. We want to go the other way." That was the point I wanted to make to the gentleman.

Mr. FLORIO. Mr. Chairman, will the gentleman yield?

Mr. LENT. I cannot yield any more time.

Mr. BRYANT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS. Mr. Chairman, I am a little bit surprised at the discussion so far on the other side of the aisle regarding this piece of legislation. I have sat here and I have heard it referred to as protectionism, some statement about anticompetitivism, and that in fact it is discriminatory. I cannot see possibly how it is.

As the gentleman before me has said, we have a right to know. It seems to me that while all of us acknowledge that the contribution that foreign capital has made in the United States is certainly something that we enjoy, I think we also have the right and the responsibility to know who owns America.

During the tenure of the present administration in office, foreign investment in the United States has tripled to at least $1.5 trillion, and perhaps much more.

It seems to me we have a right to want to know about that trillion dollars.

I also remember the gentleman a short time ago saying there was something like a quarter of a trillion dollars that we cannot even account for. Certainly we have a right to know where that money is coming from. We have the right to know that we find ourselves in a vulnerable position unless we do in fact have the kinds of information that this bill seeks to have.

We are not talking about having a lot of unnecessary information. The author of the amendment has said that there is a possibility that we could get this information on something as small as a 3 by 5 card.

So what is all the big discussion about? It seems to me that we have every right to know who in fact is buying up America and why it is that we are not all agreeing on that, I just cannot possibly say.

There is, however, one question that I have that I thought would have made some kind of sense. I for one would like to know the source of the money that is coming in here buying up America.

It seems to me that somewhere along the line we ought to be able to identify interested parties, including where there might be other people investing in America that we do not know about.

Mr. Chairman, international interdependence used to be a remote, idealized notion of the world economy. In 1988, however, that scenario is reality.

Nowadays, national borders only occasionally function as barriers to investment from other countries. From manufacturing joint ventures and partnerships to the full ownership of subsidiaries and real estate, international investment has become commonplace. This has created worlds of financial opportunities and has benefited the overwhelming majority of countries, including the United States, as well as the investors who take advantage of these opportunities. But, while we acknowledge the contribution that foreign capital has made to the United States, we also have the right—and even the responsibility—to ask: "Who owns America?"

What was once a national boon has become a national time bomb. The American economy has become vulnerable to the financial vicissitudes of stock markets, currency valuations, commodity prices, and political developments of a whole list of countries. While a certain amount of foreign investment can offer a stabilizing effect for the United States, such an immense volume as presently exists has increased the volatility of the American economy. Imagine the consequences for the United States if the Japanese economy were to take a definite downturn in 5 or 10 years from now.

While we should, for the time being, be no less welcoming to our foreign competitors and colleagues than in the past, we are obliged to have at least *some* idea of how they are affecting our economic environment. To continue taking a "laissez faire" attitude toward the financial dealings in the United States by nationals of other countries would be creating a future tempest. Why not act now to prevent a portentous situation from becoming a full-blown crisis?

Foreign capital is concentrated in certain industries, localities, and ownership arrangements. Facts concerning its distribution will be of great interest and great utility to us, but we have absolutely no way of knowing. The only source we now have on this type of information is investigative journalism which, for all its attributes, does not necessarily have the same motivations for discovering these facts as our Government should have. The question must be asked: Is it appropriate for our Government to cede all responsibility in the realm of foreign ownership? I certainly believe it is not.

H.R. 5410, the Foreign Ownership Disclosure Act, takes a crucial first step in understanding the circumstances surrounding the huge influx of foreign capital into our country. By requiring the registration of large acquisitions by foreign nationals, we can begin to grasp the extent of their participation in the American economy. And, in the case of a foreign person owning a controlling interest in an American enterprise, it is not too much to ask to receive a copy of the same relevant documents which that national's own country requires disclosed. It is very important that this information be reported to the Congress and the President as the bill requires. Only by understanding the presence of foreign capital in financial America can we guide our financial climate in the most salubrious direction.

The cornerstone of the bill's effectiveness is in the registration requirement, and the information to be included in that registration is well chosen. There is, however, one clear omission which I believe must be addressed if we are to get the entire picture of foreign ownership in the United States, and that is the "source of financing". Clearly, the source of financing should be included in the registration because it is the key to numerous large transactions. Such disclosure in situations of foreign ownership has at least three functions:

First, to identify additional interested parties, including where "front men" and collusive activity are involved;

Second, to indicate our vulnerability to particular lenders within specific industries or sectors of our economy; and

Third, to identify ownership within the United States which could be made possible by involvement in illegal activities, such as drug trafficking.

Mr. Chairman, all in all, H.R. 5410 is a well conceived, inoffensive, and truly necessary bill. I encourage my colleagues to support this legislation so that we can know who owns America.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the ranking member of the Committee on Foreign Affairs, the gentleman from Michigan [Mr. BROOMFIELD].

Mr. BROOMFIELD. Mr. Chairman, H.R. 5410 requires the registration and disclosure of almost any significant property or business holding of a foreign entity in the United States. By passing this legislation the Congress will invite foreign governments to apply the same standards of registration and disclosure on U.S. companies, which have $1.2 trillion invested overseas. Such requirements will allow foreign consumers to discriminate against American-made products.

This legislation will also serve to retrict and discourage over a trillion dollars of investment in the United States, much of the same money that is currently fueling our economic growth and financing the U.S. deficit.

New restrictions on foreign investment go against stated U.S. policy since World War II. The United States is currently negotiating in the GATT to further eliminate such barriers.

Under the International Investment Survey Act of 1976, virtually all of the information this bill seeks to collect is already collected. The Defense Production Act of 1950 prohibits the purchase of U.S. companies involved in defense contracting by foreign entities, and language in the Trade Reform Act of 1988 permits the President to halt the acquisition or merger of U.S. businesses with a foreign entity if it is deemed to represent a threat to U.S. national security.

It is clear that the registration requirements in H.R. 5410 duplicate much that is currently required by law. This will be accomplished through the creation of another costly and redundant layer of Federal bureaucracy.

I urge my colleagues to vote against this bill.

□ 1245

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Chairman, I would like to read just a couple of comments from Secretary Brady's letter to us about this bill. He says:

> The bill's discriminatory treatment of foreign investors would make them reluctant to invest in America. It would make capital more costly in the United States, raising interest rates and cutting into economic growth and new jobs.

Mr. Chairman, I am frankly amazed at hearing what I have heard today. From the time I can remember, I have always been told that this was the party of the little guy and yet, bit by bit, bit by bit since I have been in this Congress I have seen that party doing everything they can to destroy jobs, protectionism, taxes, mandates, restrictions, and now this.

In the State of Washington, we have been fighting for years to try to curtail log exports and to get domestic manufacturing. Jobs were being exported overseas, and they still are. Then some Japanese investors came into our State, bought and modernized mills and are today processing lumber, selling it in this market and overseas. They have created American paychecks, American products, American exports with foreign capital, and I cannot understand why we are offended by that.

People who would otherwise have been unemployed are now working in a plant, yes, owned by foreigners. Why are we offended by that? I have not had one letter from them complaining about where that investment came from.

Mr. Chairman, I urge my colleagues to join the Secretary of the Treasury and other responsible people in this country who believe in jobs for Americans, in opposition to this bill.

Mr. Chairman, I include the letter from Nicholas F. Brady for the RECORD, as follows:

> THE SECRETARY OF THE TREASURY,
> *Washington, October 3, 1988.*
>
> DEAR CONGRESSMAN: I understand that there may be a vote on H.R. 5410, the Foreign Ownership Disclosure Act, before the 100th Congress adjourns. I am writing to urge most strongly that you vote against that bill.
>
> The bill, sponsored by Representative John Bryant (D-Tex), is very similar to a provision which was dropped during the House-Senate Conference on the Omnibus Trade Bill after the Administration and many others expressed vehement opposition. Furthermore, H.R. 5410 in its present form has by-passed the Congressional Committee process.
>
> The Administration believes that the great amount of information now collected by the government on foreign investment in this country is sufficient in both quantity and quality for policy purposes. Nevertheless, because some in Congress have raised concerns, on August 18, 1988, the Treasury Department initiated an interagency study on the adequacy of foreign investment data. When that study is completed, we intend to share its results with Members of Congress.
>
> The bill's discriminatory treatment of foreign investors would make them reluctant to invest in America, raise their costs through burdensome and intrusive reporting and public disclosure duties, and subject them to the risk of civil and criminal penalties—even for relatively small investments in privately held companies. It would make capital more costly in the United States, raising interest rates and cutting into economic growth and new jobs. In addition, it could push vital business offshore at the very time we are fighting to maintain our competitive edge.
>
> H.R. 5410 would discard the trump card which America has played to its advantage for 200 years—our open capital markets that invite investment to build our economy. If the bill is presented to the President, his senior advisors will recommend that he veto it.
>
> Sincerely,
>
> NICHOLAS F. BRADY.

Mr. BRYANT. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. McMILLEN].

Mr. McMILLEN of Maryland. Mr. Chairman, I rise in support of the Bryant amendment and remind the House that we passed such legislation in the trade bill 230 to 190.

I find it ironic that the administration opposes this provision quite frankly, because the administration has no long-term policy on foreign investment, because they do not have the facts to make those decisions.

Let me quote Richard Perle, the former Assistant Secretary of Defense, in May 1986, which I think points up some of these internal contradictions:

> We don't begin to know who owns what. There are security implications that are pointless to ignore. There are cases on the record where companies were acquired solely to acquire their technology.

Do we have to remind the House that in the mid-1970's the Soviet Union tried to acquire banks in California, to acquire technology from Silicon Valley? We cannot have our head in the sand as we approach a new world order of global interdependence.

As we look around the world and look at what other countries do, look, for example, in Japan, and where Japan prohibits against acquisitions that would harm national security and would disturb the public order. That catchall phrase has been used to discriminate against our investors in Japan. The facts bear it out.

Foreign investment in Japan right now is just $8 billion. In this country, reportedly it is $1.5 trillion, and maybe as high as $3 trillion. How can there be such a disparity, $8 billion to $3 trillion, unless something else is at work here?

We conclude we are being treated very differently abroad. What is at stake here is 78 percent of the American people want legal restrictions on foreign investment; 40 percent want an absolute ban. If we do not have information to make sensible, rational judgments, then we will find ourselves subjected to irrational demands from our constituents to do poor legislation.

The concluding question that I would like to ask is: Will anybody not invest in America for just filling out a postcard after the investment is made with no prerequirements?

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. OXLEY], a member of the Committee on Energy and Commerce.

Mr. OXLEY. Mr. Chairman, this legislation that we have debated before, I will remind my colleagues, came out of the committee at a very narrow 21-20 vote with one abstention. That is the only thing that kept this alive.

I represent a State that has had a significant amount of foreign investment, over $2 billion by Honda of America alone in the State of Ohio, employing over 6,000 people. I, like my friend from Washington, have not received any complaints from those 6,000 people, many of whom work in my district, that their jobs apparently are due to foreign investment. Quite the contrary.

We have an economy that is the wonder of the world. We are creating 250,000 jobs a month in our economy. We are attractive to foreign investment because we are open, because we believe in free markets, and because we believe in putting people to work, and we also believe in capital without borders; nothing wrong with any of those proposals. My major concern, Mr. Chairman, is what happens after the Bryant bill passes. What happens when all of that data is collected and has a chilling effect on investment? Is the next step then to pass a highly protectionist bill that would shut out foreign investment in this country?

Mr. Chairman, that is really the next question we have to ask. Where does it lead to? What does it lead to? If the 40-percent figure my friend from Maryland cited is correct, 40 percent of the American people want to totally ban foreign investment in this country. That is a scary thought, and I would suspect that that is somewhat represented here today on the floor.

Mr. Chairman, I received a letter from the Siemens Corp. They employ 26,000 people in 48 States. I am quoting from the letter from Jeremiah Murphy, vice president of Siemens, and he said, "We would like to expand our facility in Ohio in the coming years." He also says, "The specific registration requirements that would be imposed are detailed, burdensome, and comparatively prejudicial to foreign investors."

He goes on to say, "The United States traditionally leads the world in its support for open investment. H.R. 5410 impinges upon America's traditional policy of respect for private property rights in an open economy. Moreover, the Federal Government already has mechanisms for monitoring foreign investment."

Mr. Chairman, I do not think we want to kill the goose that lays the golden egg. I do not think we want to destroy jobs in our country. I do not want to destroy jobs in Ohio now that we have fought so hard to attract those kinds of investments into our State, but the Bryant amendment is a step backward. It brings back the fears of protectionism and, indeed, xenophobia.

Mr. Chairman, I think the time to stop this kind of nonsense is now. Let us vote against the Bryant amendment and proceed with reasonable economic policy.

Mr. LENT. Mr. Chairman, I yield 1 additional minute to the gentleman from Ohio [Mr. OXLEY].

Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I am happy to yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I wanted to comment to the gentleman on his statement and indicate to him that the Secretary of the Treasury of the United States, Nicholas Brady, has sent every Member of Congress a letter dated October 3, 1988, in which he essentially agrees with the gentleman's statement, and here is what he says, and I would like to just quote:

> The bill's discriminatory treatment of foreign investors would make them reluctant to invest in America, raise their costs through burdensome and intrusive reporting and public disclosure duties, and subject them to the risk of civil and criminal penalties—even for relatively small investments in privately held companies. It would make capital more costly in the United States, raising interest rates and cutting into economic growth and new jobs. In addition, it could push vital business offshore at the very time we are fighting to maintain our competitive edge.

I just wanted the gentleman to know he is in very good company with the Secretary of the Treasury, who joins the gentleman and me in urging a no vote on this legislation.

Mr. BRYANT. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Chairman, I am not a protectionist, and it troubles me deeply to be on the opposite side of this issue from the gentleman from Ohio [Mr. OXLEY], the gentleman from New York [Mr. LENT], and my other good friends.

I voted against the textile bill yesterday, voted against the Gephardt protectionist legislation throughout this Congress, and so I am committed to free trade.

Second, I am not against foreign investment. I think foreign investment is fine, and has created jobs and opportunity in this country. Do not make the mistake of believing that I am protectionist. Do not think that I support the Gephardt amendment. Do not think that I oppose foreign investment. I simply want to know what is going on in this country. I believe that we must face the increase in foreign investment and debate it intelligently. In order to do that we need more information.

Mr. Chairman, let me just close by saying that H.R. 5410 is not protectionist. It is a needed measure to fill a gap in information which is important to our understanding of the impact that foreign investment is having on our country. The bill will not discourage those foreign investors who are investing in the country, because we have a strong and a stable economy.

This will simply allow us to have the information as to who is investing in our country. The measure will only make reciprocal the requirements that American investors face abroad in nearly every other country—the reporting of purchases of sizable assets.

There is a critical need for debate on the growth of foreign investment in the United States and we must be able to determine the extent and source of this ownership if the debate is going to be meaningful.

Mr. Chairman, this legislation would give the American people the right to know who is coming to and investing in our country. I strongly urge my colleagues to join me in supporting this bill.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. DANNEMEYER], a member of the Committee on Energy and Commerce.

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Mr. SHUMWAY. Mr. Chairman, will the gentleman yield?

Mr. DANNEMEYER. I yield to the gentleman from California.

Mr. SHUMWAY. Mr. Chairman, I rise in strong opposition to the Foreign Investment Disclosure Act because it is unnecessary, discriminatory and against the economic interests of the United States.

We are already collecting a substantial amount of information about foreign investment in this country. Domestic and foreign purchasers of 5 percent or more of the stock of a publicly traded company must register with the SEC. The Treasury Department compiles information on foreign portfolio investment in U.S. equities. The Commerce Department and other Federal agencies also collect voluminous data on foreign investment. Furthermore, any direct investment which may have a negative effect on our national interests is reviewed by the Committee on Foreign Investment in the United States.

The administration believes that the information currently collected and analyzed provides a sufficient amount of data in terms of quantity and quality for policy purposes. In response to congressional concerns, the Treasury Department is currently conducting an interagency study on the adequacy of foreign investment data. Clearly, any changes in the disclosure requirements for foreign investment should await the results of this comprehensive study.

The Foreign Ownership Disclosure Act would discriminate against foreign investors by requiring disclosure of confidential information which U.S. companies are not required to disclose. Furthermore, the bill would increase the number of persons having access to the reported information. Broadly defined groups, such as "consultants" and "persons performing qualified research," would have access to the data. In effect, the bill would provide public disclosure of proprietary information.

The Foreign Ownership Disclosure Act would discourage foreign investments and even promote disinvestment by imposing costly and burdensome registration and public disclosure requirements and subjecting foreign investors to the risk of both civil and criminal penalties, even for relatively small investments. It would also invite retaliation against U.S. investment abroad at a time when the United States is urging our trading partners in the GATT and the OECD to remove obstacles to U.S. foreign investment.

This bill is against the economic interests of the United States. Foreign investment is of critical importance to the supply of venture capital in this country. Without foreign investment, we would experience a severe shortage in capital which is the lifeblood of economic growth and expansion. A major reason the United States continues to attract foreign investment is that it continues to deficit spend. Thus the Government must borrow to cover the shortfall. By discouraging foreign investment and increasing the cost for those who do invest in the United States, this bill would reduce foreign investment capital, increase interest rates, and threaten economic growth and employment.

In the words of Secretary of the Treasury Nicholas Brady, this bill would "discard the trump card which America has played to its advantage for 200 years—our open capital markets that invite investment to build our economy."

Mr. DANNEMEYER. Mr. Chairman, there are three things that are the cornerstones of liberal philosophy in America. This bill today illustrates the first principle, which is, if it moves, regulate it; the second principle is if it grows, tax it; the third one is if it makes a profit, investigate it, it must be doing something illegal.

The first one, if it moves, regulate it, well, what do we know? Foreign capital is moving into America at an increasing rate, and is that a mystery to any of us? We Members of Congress have managed the affairs of this Government so sadly, I may add in the course of the last 3 fiscal years that we have added three-quarters of a trillion of debt to be paid by our grandchildren or great-grandchildren in the name of higher economy. They are not around to protest.

Is it any wonder that the negative trade balance with the rest of our trading partners, $150 billion, that the people who have those dollars want to come to this country and invest it? Is that any mystery?

I ask my good friend from Texas, Mr. BRYANT, and these other distinguished gentlemen, do you think that requiring or restricting the ability of foreigners to invest in this country is going to increase or decrease their tendency to invest?

Mr. Chairman, I yield to my friend from Texas, Mr. BRYANT.

Mr. BRYANT. Mr. Chairman, I ask the gentleman, is there anything in this bill that restricts foreign ownership in this country? If there is, read it to me.

Mr. DANNEMEYER. On page 9, lines 6 through 18, and those lines contain what Members of Congress would gain access to all this sensitive information. We might just as well have published it in the pages of the New York Times and to say Members of Congress can get access, they will spread it to the whole world.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. DANNEMEYER. I yield to the gentleman from Texas.

Mr. COLEMAN of Texas. I heard the gentleman say the philosophy of the liberal side of the party or the Democratic Party. I want to say to the gentleman in the well that he has appropriately espoused the Republican philosophy of governing, which is keep the people in the dark.

Mr. DANNEMEYER. Mr. Chairman, I have never noticed the gentleman from Texas voting with us. Why does he not come over here and sit with us, if he says he is on our side.

Mr. COLEMAN of Texas. The gentleman is trying to espouse fooling, which is a big mistake.

Mr. BRYANT. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. JACOBS].

Mr. JACOBS. Mr. Chairman, I take as my text the words of a Republican who ran first for the President on the Republican ticket but later he ran for election not on the Republican ticket but the Union Party, Abraham Lincoln, who said let the people know the facts and the country will be saved.

I do not believe I have seen a public official indicted for a crime who does not say one of two things, either he has done nothing wrong or he has nothing to hide. So the question ought to be, what is the big secret? Let me tell Members the biggest secret of this administration. That is the fact that this administration is now paying Mafia interest rates to the Japanese businessmen to buy the deficit bonds of this administration. Why? Because in 1984, unknown to about 99 percent of the Members of Congress, this Congress voted and the President signed a bill that repealed the 30 percent withholding on taxation of foreign nationals for income derived from investment in the United States.

That means in essence that this Government is paying higher interest rates to foreigners, on the same bonds they are selling to its own citizens, and that is wrong. Why did they do it? To remove those bond sales from the money markets of the United States so a sense of well-being would descend upon the American electorate. Automobiles could be sold, interest rates would fall, despite the fact that the President's budget which requested deficits on the magnitude of $200 billion a year.

That is the biggest secret and probably the biggest hoax ever perpetrated on the American people by their own government. Let me repeat, those foreign investors do not pay income tax in this country because of a sleight of hand in the legislation of 1984. No longer is there 30 percent withholding. This Government is treating foreign investors better than it is treating its own citizens, and that is wrong. That is morally wrong, and if anyone ever finds out about it, really finds out about it, they will feel it is politically wrong.

Mr. LENT. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. COOPER], a member of the Committee on Energy and Commerce.

Mr. COOPER. Mr. Chairman, I rise in reluctant opposition to this bill. I do so despite my deep admiration for the gentleman from Texas and others on the committee.

I feel the intention behind this bill is excellent but the details of this legislation, and I would urge all Members to read it, although it is late in the session, it seems to me that the details make it a bad bill, an antiforeigner bill. In fact, an exercise in election year xenophobia. I am not against disclosure. I am for disclosure, but it should be equal disclosure.

My State of Tennessee has welcomed outside investment both from other States and from foreign nations. We have the welcome mat still out in Tennessee today because we like the factories. We like the jobs. As I am for disclosure I look forward to working with the committee and the House to try and fashion a bill with the same requirements for disclosure from private investors from California as from Japan.

In my opinion we should debate the fact that the Reagan administration has overseen our Nation becoming a debtor nation for the first time since World War I and we should debate the fact we have radically devalued our own currency to a level below that of World War I, but we are not debating that but debating an ancillary issue, hiding the real issue, and I urge my colleagues to oppose this bill.

Mr. BRYANT. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART. Mr. Chairman, let us be candid about this. The people who own our debt do not exactly have a Marshall plan in mind. They are not giving it to us for nothing. I strongly believe, as some of my colleagues suggest, that the Golden Rule could be applied here. In Ohio, we call the Golden Rule, "he who has the gold rules." And what comes with foreign ownership? If we have not figured it out yet, it is control, and with control comes a diminution of an important aspect of freedom.

Some say this rise in foreign ownership is all right. I say they are wrong. Dead wrong.

What we have to fully understand is that when we do not have control over our own destiny, much in the same way as the fight we made about immigration reform, we lose the ability to influence our future. Uncle Sam cannot be Uncle Sucker any longer.

For those of my colleagues who threaten a veto, Greg Louganis would be proud of the 2½ somersault with a twist that Ronald Reagan did on the plant-closing bill. We have heard that veto threat before. Do not believe it, now.

If Members believe in America, support the gentleman from Texas [Mr. BRYANT] and his legislation.

Mr. Chairman, I rise in strong support of H.R. 5410, the Foreign Ownership Disclosure Act of 1988 and I commend the untiring efforts of the bill's sponsor, Mr. BRYANT.

I am proud to support this bill. As a member of the Energy and Commerce Committee, I fought with Mr. BRYANT to keep this provision in the omnibus trade bill. I joined a majority of my colleagues in voting for this same provision on the House floor. Today again I strongly urge my colleagues to vote in favor of this bill.

Foreign investment has grown dramatically over the last few years. A recent report has documented this unprecedented transfer of American assets to foreign control. As far as we can tell, investments by foreign interests have tripled since 1981 and this surge in foreign investment has not peaked. Foreign buyouts of American companies are expected to quadruple this year.

Foreign investors hold approximately one-fifth of all bank assets in the United States and one-third of the bank assets in major banking cities like Los Angeles. Almost 46 percent of the prime commercial real estate in Los Angeles is foreign owned. Almost two out of every five office buildings that you pass in downtown Houston are foreign owned.

For the first time since World War I, this Nation has become a net debtor nation. And when we do something, we do it in world record-setting style. Overnight we have become the Nation with the largest foreign debt in recorded history.

All of us understand that it is important to encourage foreign investment in our economy. Countries all over the world compete to get foreign investors' money. But, foreign investment on the scale we are experiencing in the 1980's raises long-range concerns about the stability and independence of our economy. With ownership, comes control.

This is an issue that so profoundly affects the well-being of our economy that we should at least know how much money is coming in and whose money it is. Virtually every one of our major trading partners has a foreign ownership reporting law on the books. Meanwhile, we struggle in the dark. When President Reagan ordered a freeze on Libyan assets in our country in response to Qadhafi's terrorist threats, only a fraction of Libyan assets could be frozen. Why? Because we could not find them.

The terrible spectres and fears raised by the opponents of this bill are completely unfounded. There is no evidence that the disclosure of foreign investments would restrict the free flow of capital. Registration could be accomplished on the back of a postcard. This will not stop a single legitimate foreign investment from taking place.

Some may think we do not need to know what's going on in our own back yard, but they are wrong. Dead wrong. I urge my colleagues to support the passage of this bill.

Mr. LENT. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. BILIRAKIS], a member of the Committee on Energy and Commerce.

Mr. BILIRAKIS. Mr. Chairman, I rise in strong opposition to H.R. 5410 which would place burdensome reporting requirements on foreign investors.

This proposal espoused by the gentleman from Texas would in fact serve to dissuade foreign investment in the United States. I have not heard any rational basis for disclosure requirements put forth by the proponents of the bill except perhaps that Americans have a right to know the identity and nationality of those foreign investors because they are somehow suspect. Why are they suspect? I view this as outright discrimination against those who have faith in our economic growth and prosperity. This bill will only serve as a means to harass foreign investors.

Is the purpose of this bill to prevent further investment by foreign investors? Because, Mr. Chairman, that is the net effect of this bill. If we don't want foreign investment then let's prohibit foreign investment outright not require more burdensome reporting requirements that only foreign investors must meet.

We might ask the proponents of this legislation—are we creating jobs or are we driving them out? Foreign investment accounts for over $1.5 trillion in the United States. That means American jobs. By supporting this legislation we will dissuade foreign investment and eliminate American job potential. The Bryant proposal clearly states: "Don't invest in America and American jobs."

What is wrong with foreign investment? Why are we so paranoid about foreign investment—why this sudden phobia over foreigners because, that, Mr. Chairman, is the message we are sending loud and clear to the world today.

H.R. 5410 does little but harass foreign investors and force them to look elsewhere. The Department of Commerce, the Securities Exchange Commission, and the Treasury and other Federal agencies already collect foreign investment information. Why inflict further burdensome reporting requirements?

And last, Mr. Chairman, I wish to comment on the procedure by which this bill journeyed to the floor this morning. There were no hearings on this particular bill, no markup held by the Energy and Commerce Committee, upon which I serve, nor before the Foreign Affairs Committee, as my colleague Congressman BROOMFIELD has stated. This is a blatant abuse of the committee process and one which deeply disturbs me.

I urge my colleagues to vote against this bill and, in the process, vote for American jobs and American economic growth.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield to me?

Mr. BILIRAKIS. I yield to the gentleman from Texas.

Mr. COLEMAN of Texas. Mr. Chairman, I thank the gentleman for yielding and I would just say to the gentleman in answer to his question that I do not view this as a job creator or a job abolisher.

I would hope what the legislation does is inform America about the direction in which this country is now headed. Some of us happen to think that it is very, very important not to take on any nationality or any nation that may be investing in the United States, but determine how much we as Americans are losing, and I want to answer a question.

Mr. BILIRAKIS. Mr. Chairman, if I may repeat, the gentleman is incorrect. The damage is done. The Bryant proposal clearly states do not invest in America and American jobs.

Mr. BRYANT. Mr. Chairman, I yield 1 minute to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Chairman, I thank the gentleman for yielding.

It is difficult to understand exactly what we are debating. If you listen to the other side, the suggestion is we are proposing building a giant fence around the country and saying to any foreign investors that we do not want them, stay out, stay home. That is not what the bill is about.

If you want to defeat a bill like that, draft it, bring it to the floor, debate it, defeat it, and thump your chest?

That is not this bill. This bill says something that is very simple. It says a company wants to invest in this country, we want to understand what the company is doing, who the company is, who the company is investing in. That is all. Very simple.

Now, this jingoism we keep hearing, liberalism, protectionism, stands logic on its head. The gentleman from California talked about liberals. This President submitted eight budgets, $1.1 trillion in deficits.

Protectionism. Since when is it old fashioned for you or us to think that protecting our national interests is not something we are supposed to be doing around here? Not old fashioned in my judgment to start thinking about the interests of this country.

Yes; it is an international economy but we also have a national economic interest and a national sovereignty that we ought to start caring about.

Mr. LENT. Mr. Chairman, I yield 7 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Chairman, today's debate is not over whether we need to do a better job of collecting data. We must do a better job of collecting data. But there is data that is not even alluded to in this bill, without which we cannot stop the Japanese from developing this same restrictive supplier relationship that has been the primary barrier to American access to the Japanese markets.

Yes; we need better data, but we do not need a system that sets up a very intrusive system of data collection that would discourage foreign investment.

Mr. Chairman, I submit that this is not a foreign investment disclosure bill but a foreign investment limitation bill. Foreign investors have made it clear that this bill as first introduced and enactment will sharply reduce their interest in building the American economy.

Foreign governments who have for decades welcomed American investments in their economy have made it clear they would similarly restrict our investments.

Had this gone through the regular committee process we might debate a bill that would increase ability to track foreign influence in economy without discouraging it and endangering benefits. However, we have no choice but an up or down vote in the last days of the session, on a complex matter which will have unpredictable effects on our economy. We must reject this bill and use the normal legislative process to come up with a better alternative that includes, for example, tracking sales and supplies and the flow of goods to transplant companies.

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Without that level of data, we will not be able to identify our Nation's interests and adopt rational policies to defend them. This is the kind of half measure that can create more problems and cost more jobs than it creates power to address our Nation's needs. We need better data collection but we do not need this bill.

Mr. BRYANT. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Chairman, I think the American people have a right to know who holds the mortgage on America. We are not saying that we are going to block any foreign ownership or foreign investment in this country, but in view of the fact that foreign investment has increased by over 200 percent since 1980, the American people at least have a right to know. We demand no less from companies that operate in this country.

I listened to the arguments from this side of the aisle that this is anti-jobs, it will stop job creation in America.

You know, the interesting thing about foreign investment in America is it really has not created new jobs. Most of it has gone into buying existing companies. Where new companies have been built, for example in my own State of Ohio which was referenced earlier, some of the companies that have been built like Honda USA have actually caused a loss of jobs in adjoining districts like my own.

Japanese firms located in this country refuse to buy American made parts and mufflers and spark plugs and bolts and gas caps and wheel caps. We are talking about who holds the mortgage on America. The American people have a right to know.

Mr. BRYANT. Mr. Chairman, I yield 2 minutes to the gentleman from Hawaii [Mr. AKAKA].

Mr. AKAKA. I thank the gentleman for yielding time to me.

Mr. Chairman, I commend the gentleman from Texas [Mr. BRYANT] for his persistence and diligence in pursuing this legislation, and rise in strong support of H.R. 5410, the Foreign Ownership Disclosure Act.

Mr. Chairman, over the course of the past year, the nightly news broadcasts have done features on the tremendous upsurge in commercial and residential real estate investment in Hawaii by foreign investors. We are all by now familiar with the story of the Japanese billionaire who cruises the streets of Honolulu in a limousine, buying anything that strikes his passing fancy. This account has been well documented. Unfortunately, it tells us nothing about the impact or consequences of foreign investment in the United States.

What is not as well known or thoroughly documented is the scope of foreign investment in American farmland, factories, businesses, and real estate. Our best Government estimates place the total of foreign investment in the United States at $1.5 trillion. But other private sector experts argue that the sum is closer to $3 trillion. No one is really sure. And this administration has made quite clear that it doesn't want to know the accurate figures. Facts are frightening things, I guess.

Mr. Chairman, I have consistently supported the responsible efforts of the gentleman from Texas [Mr. BRYANT] to address our Nation's failure to collect reliable economic information. What we don't know can hurt us. The tripling in foreign ownership of American assets since 1981 is the most astonishing economic development of the decade. Yet, the information now available on foreign investment is inaccessible, incomplete, and inaccurate. Passage of H.R. 5410 would provide U.S. lawmakers and policy experts with the data needed to make rational, informed decisions.

This legislation will not impose any restrictions or preclearance requirements on foreign investment, and does not seek to discourage foreign investors. Numerous speakers have correctly noted the economic revitalization fueled and jobs created through foreign investment. Some have argued that the modest registration requirements of this bill will scare off foreign investment. Why? With enactment of H.R. 5410, the United States would still have the most open international investment policy.

The only consequence of this legislation is to ensure that our decisions on the direction of our Nation's economy reflect sound judgments ground in accurate, cohesive data; and that we no longer rely solely upon best estimates based on random access or astrological predictions. H.R. 5410 requires nothing more, and the American people deserve nothing less.

Mr. Chairman, in Hawaii, there is strong bipartisan support for this legislation. This support does not stem from a wish to insulate our State, or to rebuff foreign investment. Rather, it simply reflects a reasonable desire by the State and counties to know precisely where and what type of investment is occurring within Hawaii. Don't all our States have a right to this information? Shouldn't we in Congress base our trade and economic decision-making on the facts? For me the logical answer to these questions is "yes," and I urge my colleagues to support the Foreign Ownership Disclosure Act.

Mr. BRYANT. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. HAYES].

Mr. HAYES of Louisiana. Mr. Chairman, Americans looked upward and heavenward to see the shuttle, to see the American space industry again reenter with the only relaunchable vehicle in the world. The Soviets have a duplicate of it that cannot fly because the tile under its surface are unique technology and the company that produces that tile in this county is owned by whom? And do we have a right to know who owns it? The answer is either yes or no.

The banks that hold the mortgage on the assets of that company are owned by whom? We do have a right to know. Yes or no?

As we enter a world of new technology where now we compress what it previously took decades to accomplish, the question is, does America have a right to now with whom it is dealing and who holds its secrets? The answer is yes according to Mr. Bryant and no according to the opposition.

Mr. BRYANT. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. Donald E. "Buz" Lukens.]

Mr. DONALD E. "BUZ" LUKENS. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the bill, in very strong support. I think basically there is an element involved here that has been discussed back and forth today but one that is very basic to me and the district that I represent in southwestern Ohio. It is not just a matter of who owns America and how much, but the fact that most people cannot tell you what country, what investment, what corporation have invested in your part of the world. I think it is basic and very critical that my companies, my people, my newspapers, my news media at home in Ohio can say that X Corporation from Japan or from Great Britain or from the Netherlands or Germany has invested in Ohio because of their interest in the auto industry, the steel industry, the paper industry.

I do not see this bill as a great intrusion into the private enterprise life of the United States.

I wish we did not have to have so much structure, but it does bother me that I cannot find out from any organization in Government what corporate entities from what foreign countries are buying what percent of my real estate or my farmland or my corporate capability to produce.

I am very concerned with the lack of available information. For that basic reason, because I think it is an American right to know, I support the Bryant bill and I support it strongly.

Mr. LENT. Mr. Chairman, may I inquire how much time remains on each side?

The CHAIRMAN. The gentleman from New York [Mr. Lent] has 8 minutes remaining and the gentleman from Texas [Mr. Bryant] has 10 minutes remaining.

Mr. LENT. Mr. Speaker, I reserve the balance of my time.

Mr. BRYANT. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. Markey], the chairman of the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce.

Mr. MARKEY. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of H.R. 5410, the Foreign Ownership Disclosure Act of 1988. It is time for this country to take off the blinders and get a truly clear picture of the impact of foreign investment on our Nation's economy.

The Reagan administration policies of the last 7 years have created a giant game of "The Price is Right," with Ronald Reagan rather than Bob Barker yelling for anyone and everyone to "come on down" with cash to satiate our Nation's borrowing binge. But it continues to play "Hide and Seek" when it comes to improving registration and disclosure of foreign investment in this country.

The expansion of foreign investment in and ownership of critical American industries presents one of the most serious issues our economy will confront in the decade of the 1990's. Foreign investment has skyrocketed from $196 billion in 1974 to $1.5 trillion today. Foreign countries are buying up American oil and gas companies, and vastly expanding their holdings in the construction industry, real estate, and manufacturing industries like machine tools, automobiles, and auto parts.

The shortsighted economic policies of the Reagan administration have greatly accelerated this infusion of foreign investment. Led by the unprecedented budget deficits of the last 7 years, the American economy has been on a borrowing binge unlike anything the world has ever seen. We are increasingly relying on the investment of foreign governments and foreign corporations to keep afloat the illusion of a carefree economic recovery. The administration's orchestration of a sinking dollar value has also fueled this sweet tooth for foreign money.

This debate should not dissolve into one which members are asked no more than: "Are you fer'm, or are you agin'm?" The issue here is not whether the United States should take steps to prevent or discourage foreign investment. Nothing in this bill is an attempt to do that. The simple, basic issue at stake here, is whether, in the midst of the stunning increase in foreign investment, this country should willfully remain in the dark on the impact of this trend? Can we truly justify a policy of no policy on foreign investment?

This measure is an important step forward in the registration and disclosure of foreign investment. I urge my colleagues to support this important measure and take us out of the dark.

Mr. LENT. Mr. Chairman, I yield myself such time as remains.

The CHAIRMAN. The gentleman from New York [Mr. Lent] is recognized for 8 minutes.

Mr. LENT. Mr. Chairman, I listened with interest to the gentleman just in the well talking about what a terrible economic situation this country is in. And like the other gentleman from Massachusetts campaigning around the country, he conveniently leaves out the basic facts. The facts are that the economy in this country is very good. We have had 68 consecutive months of economic expansion in this country. We have the inflation rate held at the 4-percent rate for over 4 years. We have 17 million new jobs that have been created in this country. The prime rate for interest is half what it was when his party last held the office in this country.

I would also like to just take a minute to get some of the basic facts on foreign investment and these are from the Department of Commerce, because I think some of the other facts have been much distorted during the course of this debate.

It is true that foreign direct investment in the United States has grown from $35 billion in 1977 to $283 billion at the end of 1987.

I think this is good, because this foreign investment coming into this country helps create jobs for American workers. But the fact also is that this is still a rather small factor in our economy.

As a percentage of total tangible wealth as computed by the Department of Commerce, it has grown in the last 15 years from 1 to 4 percent.

So we are talking about 4 percent. In manufacturing, foreign direct investment has grown from 3 to 10 percent.

Another question that is much confused is who are these foreigners who are investing in this country? Well, two-thirds of foreign investment in the United States is European, British, Dutch, and German being the top three. The Japanese hold 13 percent, Canada 8 percent and Latin America 6 percent.

By comparison, 44 percent of all foreign investment in Japan is ours and 72 percent of all foreign investment in Canada is ours.

Foreign direct investment here has not caught up with U.S. investment abroad. By official calculations, U.S. investment abroad totals $315 billion compared to $283 billion in foreign direct investment here.

But this comparison is misleading. Investment is measured in terms of acquisition prices rather than current market value. Because much of U.S. foreign direct investment is decades old, it is understated. The Chamber of Commerce estimates in terms of current market value, U.S. direct investment abroad exceeds foreign investment here by more than $200 billion.

The popular conception that the flood of foreign investment in the United States must greatly exceed

U.S. investment going abroad is wrong. Even in 1987, U.S. investment abroad was greater than foreign investment coming to the United States—$49 billion compared to $41 billion.

We have a large and growing stake in how foreign investment is treated around the world and we should more carefully consider the consequences of our action.

Forty percent of the new foreign investment coming to the United States is earnings being reinvested by foreign-owned companies already operating here.

It is a simple matter of accounting arithmetic that our current account deficit—about $140 billion—must be matched by capital inflows. Commerce data shows that foreigners are investing mainly in assets—such as T-bills—not involving control of U.S. companies or real estate. The percentage of foreign assets in the form of direct investment peaked in 1982 at 33 percent. By 1987 it has declined to 21 percent.

H.R. 5410 is, very simply, a bad bill that could have serious adverse affects on the U.S. economy. The bill would impose discriminatory and burdensome reporting requirements on foreign investors under circumstances that would compromise the ability of those investors to keep sensitive business information confidential.

The bill would, for example, require extensive disclosure of information regarding privately held companies. We have never required this sort of reporting regarding privately held U.S. companies. In addition, the bill would require reporting regarding specific lines of business as opposed to aggregate reporting required of publicly held U.S. companies.

The inevitable result of these reporting burdens and the likelihood that competitors would gain access to confidential information is that foreign investors would be discouraged from investing in the United States.

One point that must be emphasized over and over again is that foreign investment has greatly benefited the U.S. economy. It has helped to build industrial plants and created jobs. The last thing we should be doing is taking action that might jeopardize those benefits.

The proponents of this legislation have never made clear why this additional information is needed and, more particularly, why it must be made public. The International Investment and Trade in Services Survey Act provides for the collection by the Department of Commerce of comprehensive information on the nature and extent of foreign investment in the United States. All of this information is treated as confidential and may be used only for official statistical or analytical purposes.

What, then, justifies the additional reporting burdens of confidential information? That question has not been satisfactorily answered.

The major problem with the Bryant amendment has always been the public availability of the information collected. Any investor faced with the prospect of having confidential business information revealed to competitors will consider taking his money elsewhere.

While H.R. 5410 attempts to modify the public access provisions, it does so in a way that will give little comfort to investors. Under the bill, the information can be given to Government employees and consultants, committees and subcommittees of Congress, GAO personnel, State agencies, and researchers. The notion that "persons performing qualified research" may have access to information is particularly troublesome since there is no limitation on this concept. It is broad enough, for example, to encompass research done by a domestic auto manufacturer concerning its foreign competitor's U.S. plants.

What happens if an individual discloses confidential information in violation of this bill? Nothing. There are no criminal penalties for disclosure under this bill as there are under the International Investment Survey Act for releases by employees of the Department of Commerce.

This bill has widespread opposition. We have received letters from the Secretary of the Treasury, the Secretary of Commerce, and the European Community opposing this bill in the strongest terms. The Chairman of the Federal Reserve Board, Alan Greenspan, and his predecessor, Paul Volcker, have both expressed opposition previously to the Bryant amendment. All of the major umbrella business groups, such as the National Association of Manufacturers, the Chamber of Commerce. The Business Roundtable, and the National Retail Federation are strongly opposed to the Bryant bill.

There is a reason for this opposition. This bill is not just a simple reporting bill as it is held out to be. It is a proposal that will have serious adverse affects on our economy.

The issue here is not keeping anyone in the dark. The U.S. Government now collects sufficient data on foreign investment for statistical and analytical purposes. The issue is confidentiality of information. This bill does not have adequate safeguards to protect information. There are no penalties in the bill for unauthorized disclosure of information. There is no definition of a qualified researcher. Because of the serious threat that confidential and sensitive business information would be compromised, foreign investors, including those already here, would be discouraged from investing here.

Mr. Chairman, I urge the Members to vote no on the Bryant bill.

□ 1330

Mr. BRYANT. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Chairman, I thank the gentleman for yielding this time to me.

I want to commend the gentleman from Texas [Mr. BRYANT] on bringing to the floor a bill that I think has for the future monumental implications of importance for this country.

The United States is the only major trading nation that permits unconditional investment. France and Korea impose local content requirements. Japan and Great Britain restrict investments that might damage domestic industries. Australia and Mexico impose preinvestment screening and approval processes. We have heard the litany over and over about countries like Japan that have made it almost impossible for us to trade, invest, joint venture, or do anything else in Japan. Yet they come here and they can buy us at will, and we do not even know who owns us. Twenty percent of this country's financial assets are now in the hands of foreigners. We need to know who owns us.

Mr. Chairman, our commercial and trade figures tell us who buys American. It is time that we find out who is buying America.

Mr. BRYANT. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. BENTLEY].

Mrs. BENTLEY. Mr. Chairman, I rise in support of H.R. 5410.

Mr. Chairman, yesterday, this House sustained the President's veto of the textile bill. Essentially, our country decided that 80 percent penetration of our consumer market by foreign manufactures was perfectly fine.

Today, these same advocates of free trade, who yesterday were telling us that our industrial base was healthy and growing, are today terrified that we will find out exactly how healthy our domestic industry really is. Are we afraid that we will discover that our domestic industrial base is really not ours after all?

I have spoken in the well here incessantly on the dangerous trend in foreign ownership of American production capacity. Now despite the hard evidence of massive invasion of our industries by foreign investors, there are Members who wish to bury their heads in the sand and not even allow us to know how bad the situation really is.

Much has been said here about the anti-American attitude involved in requiring disclosure. If that is so, this body has done much that is anti-American in the requirements it puts on our own corporations and individuals through the Internal Revenue Code and securities laws, not to mention laws on health, pensions, environment and a myraid of other burdens.

But none of the opponents of disclosure has mentioned the real problem. Most of our foreign trading competition is with foreign governments which are the silent partners of foreign industries. Our corporate heads would go to jail in America for doing what is national policy in most other countries. The bottom line remains the same. Is it wrong to know who owns us?

Can we doubt that Members who are proud of their States for snaring a Honda or a Toshiba plant must think twice about how they vote on trade legislation? Perhaps when we begin to see who owns us, it will be difficult to sing the praises of free enterprise.

Within the past 20 years, the price of a gallon of gasoline has risen from 30 cents to $1.20. That rise is the principal ingredient in our budget deficit. It was the result of concerted action by a group of foreign states. Today, nine Congresses later, we cannot agree on how to deal with that single example of "free trade."

Yet, the argument is that it is bad to amass data on the effects of foreign acquisition of America's principal assets. If it was perfectly all right last week to acquire facts on comparable worth, it is more important to know who own us. Vote for getting the information we need to meet a growing and critical problem. Vote for H.R. 5410.

Mr. BRYANT. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL], chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I rise in support of the bill authored by the distinguished gentleman from Texas [Mr. BRYANT]. It has been voted on by the House before, it has been approved by the House before, and it makes good sense.

It says that persons who buy certain kinds of U.S. assets, which are large and important assets, must tell us three things: Who they are, where they come from, and what they own. This information can be fitted on a three-by-five card.

Many have said that this bill is going to inhibit foreign investment. If we watch big foreign investment, we find that it is always announced with great pride, both in the country where the investment originates and in this country where the investment takes place. I do not believe that simply gathering information will discourage such investment.

It is said that we already have a program of this kind. That program is administered so badly that the GAO says it is useless for analytical or decision-making purposes. The attempt here is to get the information that is needed and put it in the hands of the decision makers under proper safeguards. There is nothing wrong with knowing who owns the assets of this country and what they are going to do with these assets.

One of the things that should trouble all of us is what is happening to the essential and important businesses of this nation—energy, national defense, high tech, and space—and what is happening to our financial institutions. We need to know whether we own those industries and institutions; we need to know how decisions about the future of these sectors are being made, and whether our defense industries are going to be crippled or strapped by foreign owners making decisions that are not in the interest of this country. We need to know whether our high tech knowledge is being kept here or whether it is being moved out by a secret foreign owner. These are just some simple questions. Would we not like to know if Libya or Iran or some Communist nation or Mr. Noriega and some of his drug-running friends own the United States or own essential and critical businesses? That is what is really at stake.

It is written that the guilty flee where no man pursueth. My colleagues on the other side of the aisle have spent a great deal of time describing the terrible events that would occur if this legislation were passed. They say that foreign investment would be inhibited or would be stopped. That is silly. All this bill says is that they must tell us on a modest size piece of paper who they are, what they own, and where they come from. That is not too much to ask.

The decisions that are made in the financial world affect the future of everybody in this country. I have watched foreigners, Canadians, come down to this country to depress the assets of American business so that they could more quickly take over U.S. firms using unfair practices they committed under the guise of Canadian law.

I have watched the Japanese exclude American investment in their country, and I have seen the Koreans do the same thing.

It is already a matter of policy at OECD that every other nation in the world should be able to collect this information. It is encouraged by OECD. What is wrong with knowing who owns what is this country, so that we can make essential and sensible judgments? Would it not be nice if the Congress were able to get this information?

The information collected by the Department of Commerce is so closely held that as a subcommittee and committee chairman, I can more quickly get information on Stealth bombers and other weapons programs from the Department of Defense than I can with regard to the purchase by foreigners of American corporations which are essential to U.S. technological development or to U.S. defense or to the U.S. business community and its financial affairs.

Mr. Chairman, I say that it is time we were able to obtain this information under proper safeguards for the good of the country.

Mr. BRYANT. Mr. Chairman, I yield myself the remainder of my time.

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] is recognized for 3 minutes.

Mr. BRYANT. Mr. Chairman, the simple fact is that today if an American policy maker wants to try to reach some conclusions about where foreign investment is concentrated in our society and what it may mean for our future and what impact our economic policies have had on that new development, he could not reach any conclusions about it because he could not get any data to tell him what is going on. No matter how the minority may protest and say that we already collected data, the simple fact is that we do not collect data in any usable form. Otherwise none of us would want to be here.

The chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL] just told us what the GAO found when he and other Members of Congress asked them to study the auto parts industry in the United States and the impact on it by foreign ownership in that sector. They could not reach a conclusion because, as he said, they did not have the data on which to base any conclusion.

How can anyone argue that America should not collect data which every other nation collects? What kind of a policy is it to urge purposeful ignorance of a critical economic fact in our society?

The Bureau of Economic Analysis, which is a subdivision of the Commerce Department, does not require a listing of those who really own property, and, therefore, if you just put your ownership in a dummy corporation, you do not have to disclose. That may account for why they admit to a quarter-of-a-million dollar error.

They cannot account for that much foreign ownership. That is only what they admit they cannot account for. There is no telling what the true situation is.

The Agriculture Department is in the same situation with regard to its reporting. The SEC disclosures today are listed in alphabetical order and are useless. We cannot find any information by going through those alphabetically.

What we ask for in this bill is very simple: Basic disclosure, no more than that, to tell us exactly what is going on in our economy. Everybody else has the data.

The chairman of the Committee on Energy and Commerce made the point just a moment ago about the Investment in Canada Act. We were asked to ratify that in this body, and we did so. It explicitly sanctions the Canadian Government to continue to do far more and far worse than the simple request we make in this bill of other countries.

What about the Organization for Economic Cooperation and Development composed of the major Western industrialized nations, including us? They specifically sanction exactly what we are asking for here.

Again, how can we face this issue and go forward with the United States not collecting data which everybody else collects, and far more?

In fact, I would ask again for an examination of the thesis of the Republican side that somehow passing a simple reporting bill would drive foreign investment away. How could it? Where would they go? Wherever they would go, they would meet a far more restrictive environment and would have to disclose far more than they would have to disclose under this very important reporting provisions which we bring forward today. The bill only requires very basic data.

I urge the Members of the House to do our country a favor and help us get a data base on which we can base public policy making decisions in this area in the future.

Let us not purposefully live in the dark. Let us get the facts.

Mr. Chairman, I yield such time as he may consume to the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Chairman, I rise today in favor of the Foreign Ownership Disclosure Act. The dramatic rise of foreign ownership in this country has profound implications on our economic independence and our national security.

H.R. 5410 requires the ultimate benefactor of foreign ownership of U.S. businesses and real estate to provide basic information to the Department of Commerce, who in turn would make this information available to appropriate agencies and congressional committees. This is less than most foreign governments require of U.S. companies that attempt to make investments abroad. This bill imposes absolutely no restrictions or preclearance procedures on foreign investors.

In the past 7 years, foreign ownership in the United States has tripled to where foreign nationals own more than $1.5 trillion in U.S. property and securities. We cannot allow foreign nationals to invest this amount of money in our Nation's resources without requiring them to provide basic information such as nationality, address, the date of acquirement and percentage and market value of the acquisition. Access to this information will be limited to the Department of Commerce, congressional committees and subcommittees, GAO, a designated office in each State and researchers approved by the Secretary of Commerce.

There is little doubt that foreign investment in this Nation has contributed to our national economic recovery, but we must protect industries vital to our national security. It is not unreasonable to require foreign investors to disclose less information than every publicly traded U.S. corporation is required to furnish to the SEC.

Once again, I would like to reiterate that this Foreign Ownership Disclosure Act places absolutely no restrictions on foreign ownership, and I would like to encourage any colleagues to vote in favor of the bill.

Mr. BRYANT. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Chairman, I rise in support of the Ownership Disclosure Act, H.R. 5410. I am very stunned by the arguments being expressed today against this legislation. They, in fact, sound quite familiar as those expressed yesterday, when the House considered an override to the Presidential veto of the Textile and Apparel Act. The arguments were just as weak yesterday as they are today.

Foreign ownership of American businesses has increased dramatically in the 1980's. Our industrial base has eroded substantially during the 1980's. Many American working people have lost their jobs as corporate sellouts, buy outs, mergers, and acquisitions have resulted in fewer businesses and lessened opportunities for American workers.

This legislation is fair and necessary. It simply requires foreigners who invest in certain U.S. businesses and properties to register with the Department of Commerce and file a report containing specific information concerning the investor and investment. The reports must be filed within 30 days of acquiring the U.S. asset. In addition, foreigners who invested before enactment of the bill would also have to file within a specified period. The bill does not cover foreigners who invest in debt obligations; for example, bonds and bank loans.

Most nations already require similar data on foreign investment in their countries. The information on foreign ownership is currently collected by 17 different Federal agencies. The agency that collects the best information on foreign investment admits that it has completely missed at least $255 billion in foreign capital over the last 7 years.

Working people have a right to know who owns the business which may, down the road, ask for concessions from workers in order to maintain high profits.

This legislation will not prevent foreign investment, but it will let us know who owns American business. There is nothing wrong with tracking the foreign investments in our country. I think that it is needed and necessary for us to be knowledgeable as to who is investing and directly influencing our economy. I stand in support of this legislation on behalf of the U.S. worker. This issue is certainly crucial to our long-term employment and economic interests. We owe it to working people to pass this carefully written amendment.

Mr. GAYDOS. Mr. Chairman, I rise in strong support of H.R. 5410, the Foreign Ownership Disclosure Act.

I believe the soundness of our Nation's trade policy depends upon reliable information and a clear understanding of our Nation's economy. We need accurate and detailed information on strengths and weaknesses of our Nation's businesses and industries. We also need to know how much foreign owners have invested in the United States.

For 15 years, I have been warning my colleagues in the House of possible dangers of unrestricted and uncontrolled foreign investment. And, over the past 15 years, foreign investments have increased significantly.

In 1973, America had a net international investment surplus of $48 billion. In 1988, we have an investment deficit of more than $300 billion.

In 1973, foreign banking companies controlled less than 4 percent of U.S. banking assets. In 1988, they control 19 percent and their share is increasing every year.

In 1973, foreign countries had only $175 billion invested in the United States. Right now, they hold a $1.5 trillion share of our capital and assets.

Just as it was in 1973, it is still impossible for us to judge the power which 1.5 trillion dollars' worth of foreign ownership represents. Overseas owners hold partial or full title to some of America's major banks, trading companies, steel companies, car plants, insurance companies, hotel chains, supermarkets, and real estate.

I wish that I could provide a complete list of what foreign company owns which American business, but I can't. The best we can come up with are partial listings which happen to appear in the press.

Right now, there is absolutely no way for even a Member of Congress to find out which foreign companies are buying up the United States.

Let me repeat that—there is simply no way for us to tell which foreign businesses are buying American stocks, bonds, real estate, businesses, manufacturing plants, and our national debt. There's a frightening lack of information on foreign investment, and it's an elusive issue which could come back to haunt us.

Foreign investment disclosure is absolutely necessary if we are serious about realistically evaluating the health and strength of our economy. We cannot possibly hope to formulate economic policy if we don't have all of the facts on foreign investment in the United States.

If foreign investors decide secretly to buy a controlling interest in a major manufacturing industry or brokerage house, then there will be very little to prevent them if they are skilled at covering their tracks in a maze of paper transactions.

There will simply be no way for us to uncover such a cleverly concealed transaction, because we don't require overseas investors to open their records to public scrutiny.

We have seen how the Japanese have carved their niche in the American television, typewriter, computer, and automobile markets and then proceeded to put United States companies out of business.

Those who argue against investment disclosure say that this information is already available to the Securities and Exchange Commission, and the Departments of Commerce and the Treasury. That is not good enough. The information needs to be available to Members of Congress, State governments, and other agencies which need it.

The Japanese recognize the importance of investment disclosure, and they have extensive reporting requirements. They also make that information publicly available so their businessmen and investors can make informed financial decisions.

Americans are being denied access to this same basic information, but requiring foreign investment disclosure could change all that.

If we don't have access to the same type of basic financial information which the Japanese have, we'll continue to fight for a share of the world's market with our hands tied behind our backs.

In the business community, knowledge is power and denying American businesses information on foreign investors is weakening their position in the world market. Investment information is available to the Japanese and if we are denied the same type of information, we are at a competitive disadvantage.

America needs a timely, effective, and comprehensive national trade policy. We can no longer ignore the sophisticated market strategies of foreign nations which are quickly gaining control over American financial and manufacturing resources. American businesses and the American people deserve to know who owns our Nation's businesses and industries.

Mr. Chairman, the time has come for us to face last year's $171 billion trade deficit head on. The omnibus trade bill is a good start, but we also need to require foreign owners to report their holdings.

Disclosure of foreign investment and ownership is a very simple and reasonable request. If they have nothing to hide, foreign companies should be glad to make this information available. But, if they resist offering this basic information too strongly, we need to ask why.

I urge all of my colleagues to support H.R. 5410 because we have a right to know who's buying their way into the United States of America.

Mr. LEVINE of California. Mr. Chairman, I am deeply concerned about the growing role of direct foreign investment in the U.S. economy. I agree with the sponsors of this legislation that the large influence of direct foreign investment in the United States demands that we have thorough and reliable information about foreign ownership interest in U.S. property and businesses.

However, I am concerned about the procedure followed in moving this bill to the floor without thorough, prior consideration in committee. I also have a number of concerns about the potential effect such legislation could have on discouraging foreign investment, upon which our economy is heavily dependent.

The committee with primary jurisdiction over this issue is the Committee on Foreign Affairs, and specifically, the Subcommittee on International Economic Policy and Trade. This legislation was not referred to Foreign Affairs, as it should have been. In bypassing the appropriate committee, I feel we have lost a valuable opportunity to investigate this matter in greater detail and to hear testimony on this legislation's effects on the international trade and investment climate.

Foreign direct investment is a critical issue that is likely to have growing importance in coming years and we must not neglect to give all future legislative initiatives in this area careful consideration by all the relevant committees. I would urge that the procedure followed in the case of this bill, H.R. 5410, not set a precedent for future proposals on this issue.

In addition, while I strongly support efforts to improve the collection of foreign investment data, I am concerned that increased distribution of this data to numerous government agencies and officials, both at the State and Federal levels, will jeopardize the confidentiality of much of the private investment information. Such public disclosure will unfairly discriminate against foreign-owned businesses, in violation of several of our bilateral investment and trade agreements, and may undermine our GATT negotiating position, which seeks to liberalize foreign investment among GATT members.

For these reasons, I am opposing the Bryant legislation at this time. This is an important issue, with potentially profound implications for our national economy and national security. It is not an issue to bring up hastily for floor consideration. Foreign investment is also an issue which will demand considerable attention from the International Trade Subcommittee in the next Congress, and I look forward to working closely with the sponsors of this legislation in a complete and thoughtful debate about U.S policy toward foreign investors in the coming months.

Mr. MICA. Mr. Chairman, I rise in opposition to H.R. 5410, the Foreign Ownership Disclosure Act. This legislation would impose registration requirements that would be burdensome and competitively prejudicial to foreign investors.

Just this year we considered and enacted into law the omnibus trade bill. We did so to promote a stronger economy, fewer imports, more jobs, and better working conditions. We deleted a similar provision from the trade bill. We need foreign investment in the United States. We do not need unjustified economic discrimination.

Under this bill, relatively small foreign-owned interests in the United States would trigger SEC-type reporting requirements. Domestic businesses of similar size are not subject to such regulation. It would also require disclosure of the market value of any investment in totally private transactions; translation of corporate documents prepared in the investor's home country; periodic submission of balance sheets and statements of sales, assets, and operating income; and disclosure of the identity and nationality of all directors and executive officers.

Current law already requires confidential reporting of foreign investment to the U.S. Government, which is able to keep track of those seeking to invest here.

While the bill purports to restrict public disclosure of reported information, the restrictions provide no meaningful protection of this sensitive data, and therefore make it essentially public.

The issues raised by foreign investment are important ones. Congress, the executive branch, and the private sector need to analyze these issues. Several responsible initiatives to do so are already underway. We should not revisit this issue during the final days of the 100th Congress.

Mr. Chairman, I urge members to vote against this unfair legislation.

Mr. BONKER. Mr. Chairman, I rise in opposition to H.R. 5410, the Foreign Ownership Disclosure Act. Let me first say that I heartily support the goal underlying this bill, and I commend the Congressman from Texas for his diligence in pursuing this goal. At a time when over $200 billion of foreign investment flows into our country each year, the need for reliable and useful information about this inflow can hardly be disputed.

The Foreign Affairs Committee has had a longstanding interest in issues relating to foreign investment and the quality of our information related thereto. The Subcommittee on International Economic Policy and Trade, which I chair, held hearings on precisely these topics less than 2 weeks ago. During the last 8 years, foreign investment has become critical for our economic health. Last year, we imported $135 billion more capital than we exported to finance our twin trade and budget deficits. While regrettable and, in the long run, unsustainable, our dependence on foreign capital is a fact of economic life which, according to Stephen Marris of the Institute for International Economics, keeps our interest rates 3 to 5 percentage points lower than they would otherwise be. We must address the long-term problem of our deficits, but in the meantime, as long as the large deficits persist, I think we should be cautious in taking any precipitous actions which may discourage foreign investment and raise interest rates.

Fundamentally, however, my opposition to this bill is based on the belief that this bill duplicates existing reporting requirements. While I strongly share its goals, this bill is grounded in the flawed premise that our information about foreign investment is hampered by inadequate data collection. Members should be aware that the United States currently collects more specific information about foreign investment transactions and foreign ownership than any other G-7 country except, possibly, Canada.

I must say I approach this issue with a strong feeling of deja vu. A dozen years ago, when I was a freshman Congressman, Congress was alarmed about the lack of information about the influx of investment from oil exporting countries. As a consequence of this concern, Congress enacted the International Investment Survey Act of 1976, which was carefully considered and reported by the Foreign Affairs Committee. Under this act, significant foreign investment transactions are already subject to rigorous disclosure requirements, which are in many respects more comprehensive than what the Congressman from Texas is now proposing. The Congressman from Texas has claimed in the past that all the information he would require could fit on a postcard. Yet currently, whenever a foreign parent acquires a significant interest in a U.S. business or piece of commercial property, a 4-page, 43-item report must be filed with the Department of Commerce's Bureau of Economic Analysis disclosing, among other things:

The identity and nationality of the foreign parent;

The date of the transaction;

The percentage of ownership interest;

The name, location, and industry of the U.S. business;

The U.S. business' assets, revenues, income, employment, and property ownership; and

Any State or local government investment incentives received by the foreign investor.

H.R. 5410 merely duplicates some of these existing requirements. Thus, virtually all the data which would be gathered under this bill already sits in Government computers at the Department of Commerce. I would suggest that the solution to our information problems concerning foreign investment is not primarily one of data collection, but one of data compilation, aggregation and presentation—problems which are not addressed in this bill. If we are to address these problems, we need to devote more resources to making better use of the extensive data we now possess, rather than on imposing redundant disclosure requirements. I urge my colleagues to vote against this bill.

Mr. MILLER of Washington. Mr. Chairman, I rise in opposition to H.R. 5410, the Foreign Investment Disclosure Act of 1988.

Mr. Chairman, let's focus on the goal of this bill. Does it give us any new information? Will it help Congress or the administration better understand where foreign dollars are going in our economy? The answer to these questions is no.

This bill allegedly will help gather more information to tell us what foreign investors are purchasing in the United States. Yet, Mr. Speaker, we already do this. If a foreign investor purchases 5 percent or more of the stock in a publicly traded company, he must register with the Securities and Exchange Commission. The Departments of Treasury and Commerce already collect and analyze data on foreign investments in the United States. The Department of Commerce already publishes the most comprehensive survey on foreign direct investment. This report provides sufficient information for the Congress and the executive branch.

If we pass this bill which microanalyzes foreign investment in the United States, we are sending the wrong message to our trading partners. We are saying to them, open your markets. We are asking them to reduce their regulations. And, now, Mr. Speaker, we are going to ask to look inside their check books. Mr. Chairman, if we are foolish enough to think that this bill will not come back to haunt U.S. investors we are living in a fantasy land. U.S. investors seeking access to foreign markets will find themselves subject to even more strict regulations.

Moreover, Mr. Chairman, if we pass this bill will we help create jobs? Some. The accountants and lawyers will love this law because it will keep them busy filling out forms. Our bureaucracy will drown in paper. But those jobs will not be in plants and stores. Foreign investors will find the United States a less desirable place to invest. They will think twice or three times and take their money elsewhere. And the jobs these investments could generate will go elsewhere too.

Mr. Chairman, there are other problems with this proposal. It comes before us without careful analysis by the House Foreign Affairs Committee. As a member of that committee, and the Subcommittee on International Economic Policy and Trade which shares jurisdiction over this bill, I would ask the same questions. I asked them as a member of the conference committee on the omnibus trade bill. And, Mr. Chairman, if the House were to ask the basic questions, we would agree that this bill comes up short.

Let's say no to this bill. We don't need it. And, Mr. Chairman, we don't want it. I urge my colleagues to vote no.

Ms. SNOWE. Mr. Chairman, I rise in support of H.R. 5410, the Foreign Ownership Disclosure Act.

I believe the United States must recognize the rapid increase in the levels of foreign investment and control of U.S. assets, including enterprises and property. I contend every Nation, especially leading world economies, need to have a complete understanding of how their economies function within the framework of an international flow of capital, goods, and services.

Other nations have long since taken simple steps to monitor the levels of foreign investment in their internal economies, and to do so only allows governments to develop a more coherent and consistent understanding of what drives national economies and how capital is being utilized. The United States lacks this understanding, and this is one of the reasons we have no sensible, long-range trade strategy or objectives.

This legislation will not result in Armageddon, as yesterday's free-trade theorists point out. Nevertheless, the American people have a legitimate concern about the growing levels of investment in U.S. assets, including land, capital, businesses, and other properties.

Foreign ownership of U.S. businesses and real estate is less than 5 percent, but the growth in ownership has climbed dramatically in recent years following emerging economic trends encouraging foreign investment in this country. As of 1987, foreign-held assets totaled approximately $1.5 trillion, a surely troubling statistic. In addition, over 45 percent of U.S. patents granted by the United States last year went to foreign interests.

My own State of Maine, in fact, has more foreign-owned land than any State in the Nation. About 9 percent of Maine's lands are foreign owned, representing approximately 14 percent of all foreign held land in the United States.

What raises concerns for most of us is that one-third of the total foreign investment in the United States has taken place in the last 3 years. Since 1979, U.S. investments abroad have grown by 60 percent, while foreign investment here has grown by 350 percent.

I believe this rate of growth in foreign investment indicates two things: The obvious fact that the U.S. economy represents an attractive investment, and the equally obvious fact about the extent of damage to the state of competitiveness of the U.S. economy.

And when it comes to the deficit, foreign capital is a double-edged sword. It partially funds the deficit, thus helping to sustain our economic expansion, but in so doing, raises doubts over our independence and destiny. At the same time, however, the United States has no direct experience with this level of foreign investment; we are simply not prepared to address its long-term implications.

Nor is the foreign investment in the United States a homogeneous presence. Is the investment in fixed assets or liquid? Are companies trying to establish a long-term presence or cut out with a quick profit? Are foreign businesses seeking to gain substantial market share in the United States or fill a market niche? And what does the full range of foreign investment portend for our economy, for jobs, for the very nature of our country?

Mr. Chairman, let's not get hung-up in tired rhetoric on either side of this issue. It is realistic and wise to achieve a more thorough analysis on foreign investment and capital accumulation, and that is all this legislation seeks to accomplish.

It is equally true that the U.S. economic philosophy doesn't allow for a closed mentality. We clearly will continue to need foreign investments, and should encourage the flow of capital between all nations and in all directions to further global economic expansion. But we must proceed carefully, with a full understanding of the dynamics of trade and investment, so I urge my colleagues to support this measure.

Mr. DANNEMEYER. Mr. Chairman, I appreciate the opportunity to join with my colleague, the distinguished gentleman from New York and ranking member of the Energy and Commerce Committee, Mr. LENT, in opposition to H.R. 5410, the Foreign Investment Disclosure Act. The Rules Committee approved a rule which brought H.R. 5410 to the floor without first going before the Energy and Commerce Committee. This is an unwarranted violation of standard House procedures, and, coming at the end of a quite hectic session, leaves most Members in the uncomfortable situation of having to vote on a measure which we have not considered properly.

The bill's supporters and opponents use dramatically different arguments to defend or oppose H.R. 5410. While I believe the bill unreasonably discriminates against foreign investors by requiring foreign entities to disclose confidential information that U.S.-owned companies are not required to publish, most Members will not have had the opportunity to read or understand the complex issues raised by the bill. Mr. Chairman, this is not the way the legislative process is supposed to work.

As a conferee to H.R. 3, the Trade and International Economic Policy Reform Act of 1987, I participated in the discussion and subsequent rejection of the Bryant amendment, as H.R. 5410 was then known, and I understand the shortcomings of this bill better than most Members. It is protectionism plain and simple. The Securities and Exchange Commission already collects data on all individual investments by foreign and domestic purchasers of over 5 percent of the stock of a publicly traded company. The Departments of Treasury and Commerce collect data on foreign portfolio investments in U.S. equities and other investments. As Secretary of Commerce William Verity said:

> Any new registration system which requires even limited disclosure of specific information—some of it proprietary—would discriminate seriously against foreign investors. Foreign investment, which has helped

fuel U.S. economic growth, has been encouraged by the United States' long history of respecting private property rights and investors' basic rights to financial privacy. If the United States removes these rights, foreigners will invest part of their money elsewhere—to our detriment.

My home State of California understands Secretary Verity's point all too well. By 1986, according to Commerce Department figures, foreigners had invested almost $3.3 billion in California, creating 300,000 jobs. And foreign investment is a two-way street. In 1987, U.S. investment overseas totaled $309 billion while foreign investment in the United States was $262 billion. Protectionism invites retaliation, and we have the most to lose.

I urge my colleagues to oppose this legislation.

Mr. DURBIN. Mr. Chairman, I rise in support of the Bryant amendment.

Let me say at the outset that foreign investment in the United States is a compliment to the United States. That other countries and companies overseas would see our economy as so stable and promising that they would invest their assets here is, I think, a good sign, and let us preface this debate by raising that point. But then let us ask the very basic question that is being asked by the Bryant amendment: Is it in the best interest of the United States to know the foreign investors who purchase significant interest in our Nation's assets and real estate?

Those of us who support the amendment believe the arguments are overwhelmingly in favor of the Bryant amendment. Foreign investment in U.S. securities, property, and land have risen dramatically during the Reagan administration years. We have seen rising foreign investment not only in companies but in real estate. And we have to concede the fact that with our budget deficit, dependence on foreign capital will certainly continue.

But there are dangers attached to foreign investment. There are threats to American strategic industries. We now have laws on the books to screen investment in telecommunications, aviation, banking, and other industries.

□ 1215

But without registration we do not know the timing and extent of foreign investment.

Let me also say that the United States does not keep good statistics on foreign investment. Seventeen different Federal agencies collect a hodgepodge of data. Current statistics grossly underestimate foreign investment.

In fact, the Commerce Department has admitted to underestimating foreign investment by $255 billion over the past 7 years. We track most foreign investments by reading newsletters that are published by different trade associations.

Mr. Speaker, I think the administration's objections to this amendment are unfounded. Virtually all other industrialized countries in the world, including Japan, Britain and West Germany, register and screen foreign investments. Furthermore, foreigners invest in the United States for reasons independent of registration requirements. Those reasons include the low value of the dollar, access to U.S. technology, the availability of raw materials and the chance to establish a foothold in our markets.

Mr. Speaker, who wants to kill the Bryant bill? Well, certainly the Reagan and Bush administration want to kill it, but who is really behind this? Frankly, I believe it is the multinational businesses which oppose allowing Americans to know the nature and extent of their ownership in America.

We hear a lot from the Reagan-Bush administration about allegiance to our flag. This administration's opposition to the Bryant bill pledges allegiance to the multinational corporations of the world and to the quarterly statements for which they stand, one profit motive under every flag, with secrecy and chicanery for all.

The Bryant amendment puts the debate over America's trade policy in the proper perspective. It asks that America be given the same information which our companies have to give to governments overseas, and it provides our Nation with critical information about the ownership of America's greatest assets.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of the bill, H.R. 5410, is as follows:

H.R. 5410

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Foreign Ownership Disclosure Act of 1988".

SEC. 2. REGISTRATION OF FOREIGN-HELD INTERESTS IN UNITED STATES PROPERTY.

(a) Interests Acquired After Effective Date.—Any foreign person who, after the effective date of the regulations prescribed pursuant to subsection (j), acquires directly or indirectly—

(1) a significant interest in a United States property, or

(2) a controlling interest in a United States business enterprise;

shall register that interest with the Secretary within 30 days after the acquisition.

(b) Interests Acquired Before Effective Date.—Any foreign person who, on the effective date of the regulations prescribed pursuant to subsection (j), holds directly or indirectly—

(1) a significant interest in a United States property, or

(2) a controlling interest in a United States business enterprise,

shall register that interest with the Secretary within 180 days after the effective date of such regulations.

(c) Contents of Registration.—Each registration required under subsection (a) or (b) shall be in such form and in accordance with such procedures as the Secretary may require by regulation and shall contain the following:

(1) The identity, address, legal nature, industry, and nationality of the foreign person.

(2) The date on which the foreign person acquired the interest.

(3) The relation of the foreign person to the United States property.

(4) The name, location, and industry of the United States property.

(5) The market value of (A) the assets of a United States business enterprise or (B) a United States real property.

(6) The percentage size of the interest acquired.

(d) Additional Disclosure for Controlling Interests.—If the interest registered under subsection (a) or (b) is a controlling interest in a United States business enterprise, the foreign person shall, by an amendment to the registration made within 180 days after registering such interest, provide the Secretary with the following additional current information:

(1) With respect to the foreign person, an English translation of so much of the information listed in subparagraphs (A), (B), and (C) of paragraph (2) that is publicly disclosed in the home country of the foreign person.

(2) With respect to the United States business enterprise—

(A) a—

(i) balance sheet and income statement;

(ii) statement of changes in financial condition; and

(iii) statement of sales, assets, operating income, and depreciation by industrial segment,

prepared in accordance with Generally Accepted Accounting Procedures or in accordance with Statutory or Regulatory Accounting Principles and accompanied by explanatory notes and any current auditor's statements and reports;

(B) the location of all facilities within the United States;

(C) the identity and nationality of each director and executive officer.

(e) Annual Reports.—(1) Within 90 days after the end of each calendar year, a foreign person who has registered an interest in United States property under this section, and who, at any time during such calendar year, held directly or indirectly—

(A) a significant interest in such property, shall report to the Secretary any changes in the information required under subsection (c) that have occurred since the filing of the registration under subsection (a) or (b) or the most recent report under this subparagraph; or

(B) a controlling interest in such United States business enterprise, shall report to the Secretary any changes in the information required under subsections (c) and (d) that have occurred since the filing of the registration under subsection (a) or (b) or the most recent report under this subparagraph.

(2) Any report filed under this section shall be in such form and in accordance with such procedures as the Secretary may require by regulation.

(f) Substitution of Other Documents.—(1) To the extent a foreign person has prepared other documents which contain information required under this section with respect to an interest required to be registered or reported under this section, the foreign person may provide a copy of such other documents (or the relevant portions thereof) for the purposes of complying with the requirements of this section.

(2) With respect to any interest required to be registered or reported under this section which a foreign person acquires or holds solely through, or by virtue of acquiring or holding a significant or controlling interest in, a United States business enterprise which is an issuer whose securities are registered under the Securities Exchange Act of 1934 and which has filed the material required to be filed by such United States business enterprise pursuant to sections 12, 13, 14, and 15(d) of such Act, the foreign person may, in lieu of providing the information otherwise required under this section, provide the Secretary with a copy of the most recent annual and periodic reports, statements, and notices filed pursuant to such Act.

(g) Civil Penalty.—Any foreign person who is late in registering an interest or reporting changes with respect to an interest in accordance with subsections (a) through (f) shall be subject to a civil penalty of not more than $10,000 for each week the registration or report is late, provided that the total amount of such penalty shall not exceed the market value of the interest with respect to which the penalty is assessed.

(h) Criminal Penalties.—Any foreign person who willfully fails to register an interest or submit a report in accordance with subsections (a) through (f), or who willfully submits false or misleading information in the registration or report, shall be fined not more than $10,000, or shall be imprisoned not more than 1 year, or both.

(i) Investigative Actions.—The Secretary may undertake such investigative actions as the Secretary considers necessary to monitor compliance with this section. For the purposes of conducting such investigations the Secretary shall have the same powers and authorities as the Federal Trade Commission under sections 9 and 10 of the Federal Trade Commission Act.

(j) Regulations.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish for notice and public comment regulations to carry out this section. The final regulations prescribed to carry out this section shall take effect not later than 180 days after such date of enactment. Such regulations shall—

(1) establish forms and procedures for making such disclosures required by this section; and

(2) establish procedures for indexing, and providing access to, the information disclosed under this section.

(k) Reports to Congress and the President.—The Secretary shall transmit in June of each year, beginning in 1989, a report to the President and the Congress describing—

(1) the extent to which foreign persons hold significant or controlling interests in United States properties, the nationality of those foreign persons, the industries in which those interests are concentrated, and the social, economic, and other effects in the United States of such foreign interests;

(2) the effectiveness and efficiency of the registration and reporting requirements contained in this section in providing the information required under this section and the extent to which the information provides a comprehensive description of the presence of foreign capital in the United States economy;

(3) other Federal data collection activities that overlap with, duplicate, or complement the registration and reporting requirements established under this section and that could be consolidated or eliminated without compromising the quality of data collected; and

(4) in the case of the first annual report, the feasibility of establishing a system to track individual transactions representing other capital flows into the United States.

(l) Registry of Foreign-Held Interests.—(1) Not later than 365 days after the effective date of the regulations prescribed pursuant to subsection (j), the Secretary shall compile (and thereafter keep current) a registry of interests registered or reported under this section and the information contained in such registrations or reports. The registry shall index the information for retrieval by—

(A) the name and nationality of any foreign person who registers or reports an interest under subsections (a) through (f) and the standard industrial classification number or numbers (as issued by the Director of the Office of Management and Budget) of any such foreign person; and

(B) the name of the United States property in which any interest registered or reported under this section is held, the standard industrial classification number or numbers of any such United States property, and the State in which any such United States property is located.

(2) Access to the information in the registry shall be available only in accordance with paragraph (3) and only to—

(A) officials or employees designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this Act, under procedures established by the Secretary of Commerce;

(B) committees or subcommittees of the Congress, under procedures established by the committee or subcommittee;

(C) duly authorized officials and employees of the General Accounting Office, under procedures established by the Comptroller General;

(D) a single agency of each State, as designated by State law, under procedures established by that State in conformance with the procedures established by the Comptroller General under subparagraph (C); and

(E) persons performing qualified research, under procedures established by the Secretary of Commerce by rule or regulation.

(3) The procedures established under paragraph (2) for access to the information in the registry shall be sufficient to prevent disclosure to any unauthorized person of any such information which specifically identifies any interest registered or reported under this section, any foreign person holding such an interest, or any United States property in which such an interest is held, except that duly authorized officials and employees of the General Accounting Office may disclose such information to a committee or subcommittee of the Congress.

(m) Definitions.—As used in this section:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(3) The term "United States business enterprise" means—

(A) any sole proprietorship, branch, partnership, associated group, association, estate, trust, corporation, or other organization organized under the laws of the United States or of a State or that has its principal place of business in the United States; and

(B) any two or more enterprises described in subparagraph (A) which are acting in concert.

(4) The term "United States property" means—

(A) any United States business enterprise; and

(B) any real property located in the United States, including any minerals therein.

(5) The term "foreign person" means—

(A) any individual who is not a citizen of the United States;

(B) any business enterprise that is organized under the laws of a foreign government or which has its principal place of business outside of the United States;

(C) any foreign government or any agency or instrumentality of a foreign government; and

(D) any two or more persons acting as a group for the purpose of acquiring or holding any interest referred to in subsection (a) or (b) (and each foreign person in such group), if any foreign person or persons described in subparagraph (A), (B), or (C) of this paragraph hold an equity or ownership interest in such group of 25 percent or more, or the equivalent of such an interest.

(6) The term "significant interest" means any equity or ownership interest that exceeds 5 percent of the total equity or ownership interests in—

(A) a United States property that (i) has assets or, in the case of real property, is an asset, in the United States with a market value in excess of $5,000,000; or (ii) had gross sales from the United States in the most recent fiscal year in excess of $10,000,000; or

(B) each of any two or more United States properties if the properties in the aggregate (i) have assets or, in the case of real property, are assets, in the United States with a market value in excess of $20,000,000; or (ii) had gross sales from the United States in the most recent fiscal year in excess of $40,000,000.

(7) The term "controlling interest" means an equity or ownership interest that exceeds 25 percent of the total equity or ownership interests in a business enterprise that—

(A) has assets in the United States with a market value in excess of $20,000,000; or

(B) had gross sales from the United States in the most recent fiscal year in excess of $20,000,000.

(8) The terms "acquire" and "hold", when used with respect to an interest, refer to the acquisition or holding of that interest by the ultimate beneficial owner regardless of whether such interest is held directly or through a nominee or other financial intermediary. Such terms do not refer to the acquisition or holding of that interest by a nominee or other financial intermediary on behalf of the ultimate beneficial owner.

(9) The term "equity or ownership interest" shall not include—

(A) any note, bond, debenture, loan, obligation, or other evidence of indebtedness, any put, call, straddle, option, or privilege on any debt, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any debt; and

(B) any mineral interest other than an interest in fee simple absolute or a reversionary interest.

(10) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(11) The term "branch" means the operation or activities carried out by a person in a different location in its own name, rather than through a separately incorporated entity.

(n) EFFECTIVE DATES.—(1) Subject to paragraph (2) and (3), this section shall take effect 90 days after the date on which regulations are prescribed under subsection (j).

(2) Subsection (j) of this section shall take effect on the date of the enactment of this Act.

(3) Subsection (g) shall take effect 365 days after the date on which regulations are prescribed under subsection (j).

The CHAIRMAN. No amendments to the bill are in order except an amendment by, and if offered by, Representative MICHEL or his designee.

Does the gentleman from New York [Mr. LENT] seek recognition?

Mr. LENT. Not at this time, Mr. Chairman.

The CHAIRMAN. Under the rule the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. JENKINS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee have had under consideration the bill (H.R. 5410) to provide for the registration of foreign interests in U.S. property, and for other purposes, pursuant to House Resolution 568, he reported the bill back to the House.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. LENT

Mr. LENT. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlemen opposed to the bill?

Mr. LENT. In its present form, I am, Mr. Speaker.

Mr. SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. LENT moves to recommit the bill, H.R. 5410, to the Committee on Energy and Commerce.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the final passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LENT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 250, nays 170, not voting 11, as follows:

[Roll No. 428]

YEAS—250

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Barnard
Bates
Beilenson
Bennett
Bentley
Bereuter
Bevill
Bilbray
Boggs
Boland
Bonior
Borski
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Buechner
Bustamante
Byron
Callahan
Campbell
Cardin
Carr
Chapman
Clarke
Clay
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conyers
Costello
Coyne
Crockett
Darden
Davis (IL)
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
Dingell
Dixon
Donnelly
Dorgan (ND)
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fazio
Feighan
Flake
Flippo
Florio
Ford (TN)
Frost
Garcia
Gaydos
Gephardt
Glickman
Gonzalez
Grandy
Grant
Gray (IL)
Gray (PA)
Guarini
Hall (OH)
Hamilton
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Herger
Hertel
Holloway
Hoyer
Hughes
Hunter
Hutto
Inhofe
Jacobs
Jeffords
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Lewis (GA)
Lipinski
Lloyd
Lott
Luken, Thomas
Lukens, Donald
Manton
Markey
Martin (IL)
Martinez
Mavroules
McCloskey
McCollum
McCurdy
McHugh
McMillen (MD)
Mfume
Miller (CA)
Miller (OH)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Murphy
Murtha
Nagle
Natcher
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Pashayan
Patterson
Payne
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price
Rahall
Rangel
Ravenel
Ray
Regula
Rinaldo
Ritter
Rodino
Roe
Rose
Roth
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Schneider
Schroeder
Sharp
Sikorski
Sisisky
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith (NJ)
Smith (TX)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stenholm
Stokes
Stratton
Studds
Sweeney
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Yates
Yatron
Young (FL)

NAYS—170

Archer
Armey
AuCoin
Badham
Baker
Ballenger
Bartlett
Barton
Bateman
Berman
Bilirakis
Bliley
Boehlert
Bonker
Bosco
Broomfield
Brown (CO)
Bunning
Burton
Carper
Chandler
Chappell
Cheney
Clement
Clinger
Coats
Coble
Combest
Conte
Cooper
Coughlin
Courter
Craig
Crane
Dannemeyer
DeLay
DeWine
Dickinson
Dicks
DioGuardi
Dornan (CA)
Downey
Dreier
Fascell
Fawell
Fields
Fish
Foglietta
Foley
Frank
Frenzel
Gallegly
Gallo
Gejdenson
Gekas
Gibbons
Gilman
Gingrich
Goodling
Gordon
Gradison
Green
Gunderson
Hall (TX)
Hammerschmidt
Hansen
Hefley
Henry
Hiler
Hochbrueckner
Hopkins
Horton
Houghton
Hubbard
Huckaby
Hyde
Ireland
Johnson (CT)
Kemp
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Lent
Levine (CA)
Lewis (FL)
Lightfoot
Livingston
Lowery (CA)
Lujan
Lungren
Madigan
Marlenee
Martin (NY)
Matsui
Mazzoli
McCandless
McCrery
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Mica
Michel
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Mrazek
Myers
Nielson
Oxley
Packard
Parris
Pease
Petri
Porter
Pursell
Quillen
Rhodes
Richardson
Ridge
Roberts
Robinson
Rogers
Rostenkowski
Roukema
Rowland (CT)
Saxton
Schaefer
Scheuer
Schuette
Schulze
Schumer
Sensenbrenner
Shaw
Shays
Shumway
Shuster
Skeen
Skelton
Slaughter (VA)
Smith (IA)
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Stallings
Stangeland
Stark
Stump
Sundquist
Swift
Swindall
Synar
Tauke
Thomas (CA)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wortley
Wyden
Wylie
Young (AK)

NOT VOTING—11

Boulter
Daub
Dowdy
Ford (MI)
Gregg
Lewis (CA)
Lowry (WA)
Mack
MacKay
Neal
Taylor

□ 1400

The Clerk announced the following pair:

On this vote:

Mr. Ford of Michigan for, with Mr. Lewis of California against.

Messrs. FOGLIETTA, DICKS, SHAYS, HALL of Texas, and LATTA changed their vote from "yea" to "nay."

Mr. GRANDY and Mr. THOMAS A. LUKEN changed their vote from "nay" to "yea."

So, the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BRYANT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5410, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON S. 908, INSPECTOR GENERAL ACT AMENDMENTS OF 1988

Mr. BROOKS. Mr. Speaker, I call up the conference report on the Senate bill (S. 908) to amend the Inspector General Act of 1978 to establish Offices of Inspector General in certain departments, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Friday, September 30, 1988, at page H9197).

The SPEAKER pro tempore. The gentleman from Texas [Mr. Brooks] will be recognized for 30 minutes and the gentleman from New York [Mr. Horton] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, since the first Office of Inspector General was established in 1976 in the then Department of Health, Education, and Welfare, 20 additional offices of inspector general have been established, bringing the total number of agencies with offices of inspector general to 21.

The inspectors general have proved to be a sound investment in good government. They have contributed substantially to improved efficiency and effectiveness in the departments and agencies where they are located.

Mr. Speaker, with approval of this conference report, offices of inspector general, headed by Presidentially appointed IG's, will be created in the Federal Emergency Management Agency, the Nuclear Regulatory Commission, the Office of Personnel Management and the two departments remaining without them—the Departments of Justice and the Treasury. The conferees have worked hard to fashion an agreement that meets the special needs of these two Departments, and, we have done so without sacrificing the independence of the inspectors general.

This conference report represents agreement among the conferees to extend the inspector general concept to all departments, all regulatory agencies and to all entities that receive $100 million or more in appropriations. In addition, it places all of the inspectors general under the same act so that there will be uniformity in duties, responsibilities, reporting, and expectations.

Mr. Speaker, the compromise is a good one and I urge all Members to vote in favor of this conference report.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill was unanimously reported from the Legislation and National Security Subcommittee and the full Government Operations Committee.

It expands on the tested inspector general concept and raises to 56 the number of statutory inspectors general in Federal agencies and departments. Ten years ago Chairman Brooks and I authored landmark legislation—the Inspector General Act of 1978. In the past decade inspectors general have saved literally tens of billions of dollars in direct savings, in improved operational efficiencies and in curbing waste, fraud, and abuse of taxpayer dollars.

The major provisions of this conference report are those creating statutory inspectors general in the Departments of Justice and Treasury—the only two departments currently operating without IG's. In addition, more than 30 agencies would be equipped with inspectors general if this conference report becomes law.

Mr. Speaker, this conference report is the result of numerous oversight hearings, and countless hours of drafting and negotiation between the House, the Senate, and the affected agencies. This is a solid piece of legislation and I urge my colleagues to support it.

Mr. HORTON. Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair will count. Two hundred nineteen Members are present, a quorum.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 418, nays 0, not voting 13, as follows:

[Roll No. 429]

YEAS—418

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lott
Lowery (CA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh

McMillan (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—0

NOT VOTING—13

Boulter
Coleman (TX)
Daub
Dowdy
Gregg
Hastert
Kemp
Lewis (CA)
Lowry (WA)
Mack
MacKay
Mica
Taylor

□ 1426

Mr. CONYERS changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON S. 1579, PREVENTIVE HEALTH AMENDMENTS OF 1988

Mr. WAXMAN submitted the following conference report and statement on the Senate bill (S. 1579) to amend the Public Health Service Act to revise and extend the block grant program, and for other purposes:

CONFERENCE REPORT (H. REPT. 100-1055)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1579) to amend the Public Health Service Act to revise and extend the block grant program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—REVISION AND EXTENSION OF CERTAIN PROGRAMS WITH RESPECT TO PREVENTIVE HEALTH AND HEALTH SERVICES

SEC. 101. BLOCK GRANTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1901(a) of the Public Health Service Act (42 U.S.C. 300w(a)) is amended by striking "and" after "1986," and by inserting before the period the following: ", $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991".

(b) USE OF ALLOTMENTS.—Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w-3(a)(1)) is amended—

(1) in subparagraph (B), by inserting before the period the following: "and elevated serum cholesterol";

(2) in subparagraph (C), by inserting before the period the following: ", including programs designed to reduce the incidence of chronic diseases";

(3) in subparagraph (D), by inserting before the period the following: ", including immunization services";

(4) in subparagraph (F), in the second sentence, by striking "systems (other" and all that follows and inserting the following: "systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems."; and

(5) by inserting after subparagraph (G) the following new subparagraph:

"(H) Establishing and maintaining preventive health service programs for screening for, the detection, diagnosis, prevention, and referral for treatment of, and follow-up on compliance with treatment prescribed for, uterine cancer and breast cancer.".

(c) APPLICATION AND DESCRIPTION OF ACTIVITIES.—Section 1905(d) of the Public Health Service Act (42 U.S.C. 300w-4(d)) is amended by adding at the end the following new sentence: "The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 1903.".

(d) REPORTS AND AUDITS.—

(1) Section 1906(a) of the Public Health Service Act (42 U.S.C. 300w-5(a)) is amended by adding at the end the following new paragraph:

"(3) Each annual report required in paragraph (1) shall include—

"(A) information and data on the number of individuals who received services provided through the use of payments under section 1903, the types of such services provided, the types of health care providers that delivered such services, and the cost of each type of such service;

"(B) such other information and data as the Secretary may require; and

"(C) an evaluation of the extent to which such services have been effective towards meeting the public health objectives described in the statement submitted to the Secretary pursuant to section 1905(d).".

(2) Section 1906(b)(6) of the Public Health Service Act (42 U.S.C. 300w-5(b)(6)) is amended by striking "1983," and inserting "1990,".

SEC. 102. GRANTS FOR EMERGENCY MEDICAL SERVICES FOR CHILDREN.

(a) DURATION OF GRANT.—Section 1910(a) of the Public Health Service Act (42 U.S.C. 300w-9(a)) is amended in the second sentence by striking "shall be for" and all that follows and inserting the following: "shall be for not more than a two-year period, subject to annual evaluation by the Secretary.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1910(d) of the Public Health Service Act (42 U.S.C. 300w-9(d)) is amended by inserting before the period the following: ", $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991".

SEC. 103. REPEAL OF PROGRAM OF STATE PLANNING GRANTS.

Part A of title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by striking section 1910A.

TITLE II—REVISION AND EXTENSION OF CERTAIN PROGRAMS WITH RESPECT TO SEXUALLY TRANSMITTED DISEASES, HEALTH INFORMATION, AND HEALTH PROMOTION

SECTION 201. GRANTS FOR PREVENTION OF SEXUALLY TRANSMITTED DISEASES.

Section 318 of the Public Health Service Act (42 U.S.C. 247c) is amended—

(1) in the title, by striking "and acquired immune deficiency syndrome";

(2) by striking subsections (d) and (f);

(3) by redesignating subsection (e) as subsection (d) and subsection (g) as subsection (e); and

(4) in subsection (d)(1) (as so redesignated)—

(A) in the first sentence—

(i) by striking "(b), (c), and (d)" and inserting "(b) and (c)";

(ii) by striking "and" after "1986,";

(iii) by striking the period and inserting a comma; and

(iv) by adding at the end the following: "$78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991.";

(B) in the third sentence, by striking "(b), (c), or (d)" and inserting "(b) or (c)"; and

(C) by striking the last sentence.

SEC. 202. HEALTH INFORMATION AND HEALTH PROMOTION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended—

(1) in section 1701(b)—

(A) by striking "this title," and inserting "sections 1701 through 1705,"; and

(B) by striking "and" after "1986," and inserting before the period the following: ", and $10,000,000 for each of the fiscal years 1989 through 1991"; and

(2) in section 1706(e), by striking "and" after "1986," and inserting before the period the following: ", $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991".

(b) Model Programs for Employee Health Promotion and Disease Prevention.—

(1) Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u(a)) is amended—

(A) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11), respectively; and

(B) by inserting after paragraph (6) the following new paragraph:

"(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 3 of the Small Business Act), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

"(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

"(C) in providing such technical assistance, give preference to small businesses;".

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the development of the model programs required in section 1701(a)(7)(A) of the Public Health Service Act (as added by paragraph (1)(B) of this subsection).

(c) Technical and Conforming Amendments.—Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u) is amended—

(1) in paragraph (9) (as redesignated by subsection (b)(1)(A) of this section), by striking "paragraph (7)" and inserting "paragraph (8)"; and

(2) in the matter after and below paragraph (11)(D) (as so redesignated)—

(A) by striking the first sentence; and

(B) by striking "paragraph (10)" and inserting "paragraph (11)".

TITLE III—GENERAL PROVISIONS

SEC. 301. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

John D. Dingell,
Henry A. Waxman,
James H. Scheuer,
Norman F. Lent,
Ed Madigan,
Managers on the Part of the House.

Edward M. Kennedy,
Claiborne Pell,
Brock Adams,
Orrin G. Hatch,
Dan Quayle,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1579) to amend the Public Health Service Act to revise and extend the block grant program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Revision and Extension of the Preventive Health and Health Services Block Grant (Prevention Block Grant)

(SECTIONS 1, 2 AND 3 OF THE SENATE BILL; SECTION 101 OF THE HOUSE AMENDMENT)

Current law

(a) *Services provided.*—The Preventive Health and Health Services Block Grant, Part A of Title XIX of the Public Health Service Act, provides States with grant funds to support various public and personal health services, including fluoridation, rodent control, home health services, health education and risk reduction, hypertension control, rape crisis counseling, emergency medical systems (excluding equipment), and general preventive health services.

(b) *Authorization of appropriations.*—The authorization of appropriations for the Prevention Block Grant for FY 1987 was $98.5 million.

(c) *Expiration of authority.*—The authority for the Prevention Block Grant expired on September 30, 1987.

(d) *Application and description of activities.*—Applications for Prevention Block Grant funds are accompanied by a State's certification that specified conditions for the receipt of funds have been met. The Secretary may not, however, prescribe the manner in which those conditions are to be fulfilled.

(e) *Secretary's report.*—The Secretary is required to report to the Congress, no later than October 1, 1983, on the State's activities supported with Prevention Block Grant funds.

Senate bill

(a) *Services provided.*—Clarifies that States may use their Prevention Block Grant funds for programs designed to reduce the incidence of chronic diseases.

(b) *Authorization of appropriations.*—Authorizes $128.5 for FY 1988; $133.6 million for FY 1989; and $138.9 million for FY 1990.

(c) *Expiration of authority.*—Extends the authority for the Prevention Block Grant through FY 1990.

(d) *Application and description of activities.*—Requires States to provide information to the Secretary on the programs and services to be supported with Prevention Block Grant funds and on the progress that has been made in meeting specified public health objectives.

(e) *Secretary's report.*—No provision.

House amendment

(a) *Services provided.*—Clarifies that States may use their Prevention Block Grant funds for cholesterol control projects, screening and referral programs for breast and uterine cancer, and immunization services, including services for the immunization of emergency workers against preventable occupational-exposure diseases such as hepatitis. Modifies current spending restrictions on States' ability to purchase emergency medical systems equipment to allow Block Grant funds to be used to pay for up to 50 percent of the costs of communications equipment for such systems.

(b) *Authorization of appropriations.*—Authorizes $100 million for each of the next 3 fiscal years.

(c) *Expiration of authority.*—Extends the authority for the Prevention Block Grant through FY 1991.

(d) *Application and description of activities.*—Deletes prohibition against the Secretary's prescribing the manner in which States must comply with the various conditions for the receipt of Prevention Block Grant funds.

(e) *Secretary's report.*—Requires that the Secretary report to the Congress no later than October 1, 1990 on the States' activities supported with Prevention Block Grant funds.

Conference agreement

(a) *Services provided.*—The Senate recedes to the House amendment with an amendment to include programs designed to reduce the incidence of chronic diseases among the services that can be funded with Prevention Block Grant dollars.

(b) *Authorization of appropriations.*—The Senate recedes to the House amendment with an amendment to authorize $110 million for FY 1989 and "such sums as may be necessary" for fiscal years 1990 and 1991.

(c) *Expiration of authority.*—The Senate recedes to the House amendment.

(d) *Application and description of activities.*—The Senate recedes to the House amendment with an amendment to require States to provide additional information on the use of Prevention Block Grant funds in both their applications and annual reports to the Secretary.

With respect to their applications for grants, States are required to specify and describe the public health objectives they expect to attain with the use of the funds awarded. This mandate is intended to go beyond the current application procedures which require only that States provide information on the programs and activities to be supported and the services to be provided. Under the conference agreement, States would also be required to provide the Secretary with information on the public health goals and objectives they plan to meet with the next fiscal year through these programs, activities, and services. For example, a State that intends to use its Block Grant dollars to decrease high infant mortality rates in the State would now be required to specify that objective in its application as well as its targeted rate of reduction. As required under current law, the State would go on to describe the populations to be served and the types of services to be provided in order to decrease the State's infant mortality rate by the specified rate of reduction.

With respect to their annual reports to the Secretary, States are required to include information on the number of persons served with Prevention Block Grant funds; the types of services that are provided; the types of providers that performed such services; the costs of each type of service; and any other information and data specified by the Secretary. In addition, States must include in their annual reports an evaluation of the effectiveness of the services provided with Prevention Block Grant dollars in meeting the public health objectives set forth in the States' application for funds.

(e) *Secretary's report.*—The Senate recedes to the House amendment.

2. Revision and Extension of Grants for Emergency Medical Services (EMS) for Children

(SECTION 4 OF THE SENATE BILL; SECTION 102 OF THE HOUSE AMENDMENT)

Current law

(a) *Services provided.*—The Children's EMS Grants Program makes funds available for up to 4 grants a year to support demonstration projects on emergency medical services for acutely ill and seriously injured children. Grants are awarded for a period of 1 year.

(b) *Authorization of appropriations.*—The authorization of appropriations for the Children's EMS Grants Program for FY 1987 was $2 million.

(c) *Expiration of authority.*—The authority for the Children's EMS Grants Program expired on September 30, 1987.

Senate bill

(a) *Services Provided.*—Makes funds available for the development, establishment, and operation of regional centers for pediatric emergency services to support training and research activities relating to pediatric medical emergencies. In addition, requires the Secretary to make a grant for FY 1988 for a study to determine the feasibility and advisability of establishing and operating a National Center for Pediatric Emergency Medical Services.

(b) *Authorization of appropriations.*—Authorizes $5 million for FY 1988 of which up to $1 million is to be available for the feasibility study of a National Center for Pediatric Emergency Medical Services. Authorizes "such sums as may be necessary" for both FY 1989 and FY 1990.

(c) *Expiration of authority.*—Extends the authority for the regional centers for pediatric emergency medical services through FY 1990.

House amendment

(a) Services provided.—Continues to make funds available for up to 4 grants a year to support demonstration projects on emergency medical services for acutely ill and seriously injured children.

(b) *Authorization of appropriations.*—Authorizes $2 million for each of the next 3 fiscal years.

(c) *Expiration of authority.*—Extends the authority for the Children's EMS Grants Program through FY 1991.

Conference agreement

(a) *Services provided.*—The Senate recedes to the House amendment with an amendment to make grants available for a 2-year period, subject to the Secretary's review of the projects at the end of the first year.

(b) *Authorization of appropriations.*—The Senate recedes to the House amendment with an amendment to authorize $3 million for FY 1989; $4 million for FY 1990; and $5 million for FY 1991.

(c) *Expiration of authority.*—The Senate recedes to the House amendment.

3. Repeal of State Planning Grants

(SECTION 103 OF THE HOUSE AMENDMENT)

Current law

The State Planning Grants Program makes funds available to States to assist in the development of activities and programs to carry out the preventive health objectives and goals established by the Secretary of the Department of Health and Human Services and to identify the particular needs within States for preventive health services. The Program's authority expired on September 30, 1987, at which time the appropriations level was set at $5 million.

Senate bill

No provision.

House amendment

Repeals the authority for the State Planning Grants Programs.

Conference agreement

The Senate recedes to the House amendment.

4. Revision and Extension of Programs To Prevent and Control Sexually Transmitted Diseases (STDs)

(SECTION 201 OF THE HOUSE AMENDMENT)

Current law

The Federal STD programs support both testing and treatment services for sexually transmitted diseases such as syphilis, gonorrhea, herpes, and chlamydia. In addition, the programs provide funding for STD public education programs and for STD research and training activities. The programs' authority expired on September 30, 1987, at which time the appropriations level was set at $68 million.

Senate bill

No provision.

House amendment

Extends the authority for the Federal STD programs through FY 1991 and sets the appropriations level at $78 million in FY 1989 and "such sums as may be necessary" for both FY 1990 and FY 1991. In addition, makes conforming and technical changes in the STD law.

Conference agreement

The Senate recedes to the House amendment.

5. Revision and Extension of Programs for Health Information and Health Promotion

(SECTION 202 OF THE HOUSE AMENDMENT)

Current law

Title XVII of the Public Health Service Act authorizes two specified programs designed to provide health information and to support health promotion efforts.

The first, the Office of Disease Prevention and Health Promotion, coordinates activities for both private and public preventive health programs. It provides information, supports research, and conducts programs on various health promotion/disease prevention efforts. The authority for these various activities expired on September 30, 1987, at which time the appropriations level was set at $10 million.

The Centers for Health Promotion and Disease Prevention, the second Title XVII program, support and conduct research programs on preventive health services and technology that can lead to significant reductions in morbidity and mortality. The authority for this research activity expired on September 30, 1987, at which time the appropriations level was set at $13 million.

Senate bill

No provision.

House amendment

Extends the Title XVII authorities for an additional 3 fiscal years. For the Office of Disease Prevention and Health Promotion, sets the appropriations level at $10 million for each of those 3 years. For the Centers for Health Promotion and Disease Prevention, sets the appropriations level at $5 million for FY 1989; $7 million for FY 1990; and $9 million for FY 1991.

Conference agreement

The Senate recedes to the House amendment with an amendment to set the appropriations level for the Office of Disease Prevention and Health Promotion at $10 million for each of FY 1989, FY 1990, and FY 1991, and for the Centers for Health Promotion and Disease Prevention at $6 million in FY 1989; $8 million in FY 1990; and $10 million in FY 1991. Technical and conforming changes are included as well.

In addition, the Conference Agreement requires that the Secretary develop model programs through which both public sector employers and employers that are small businesses (as defined in Section 3 of the Small Business Act) can provide programs for their employees to promote healthy behaviors and to discourage participation in unhealthy behaviors. These programs are to be developed within 18 months of the enactment of this legislation.

The Conference agreement also requires the Secretary to provide technical assistance to both public and private employers in implementing the model programs. Private employers which do not qualify as a small business and which plan to implement health promotion programs other than those developed by the Secretary may also receive technical assistance.

Because of its experience in working with both the private and public sector on various health promotion activities, the Conferees intend for these new requirements to be carried out by the Office of Health Promotion and Disease Prevention in consultation with the Centers for Disease Control. Such a joint effort is expected to result in the development and implementation of employer-based preventive health programs that are far-reaching in terms of both scope and rates of participation.

John D. Dingell,
Henry A. Waxman,
James H. Scheuer,
Norman F. Lent,
Ed Madigan,
Managers on the Part of the House.

Edward M. Kennedy,
Claiborne Pell,
Brock Adams,
Orrin G. Hatch,
Dan Quayle,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 3235, HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1988

Mr. WAXMAN submitted the following conference report and statement on the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations:

Conference Report (H. Rept. 100-1056)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment to the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE, REFERENCE.

(a) Short Title.—This act may be cited as the "Health Maintenance Organization Amendments of 1988".

(b) Reference.—Whenever in this Act (other than in section 6(a)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 2. ORGANIZATIONAL STRUCTURE.

Section 1301(a) (42 U.S.C. 300e(a)) is amended by striking out "legal entity" and inserting in lieu thereof "public or private entity which is organized under the laws of any State and".

SEC. 3. DEDUCTIBLES.

Section 1301(b)(1) (42 U.S.C. 300e(b)(1)) is amended by adding after the second sentence the following: "If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A), the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician.".

SEC. 4. PHYSICIAN SERVICES.

(a) General Rule.—Section 1301(b)(3)(A) (42 U.S.C. 300e(b)(3)(A)) is amended by striking out "the services of a physician which are provided as basic health services shall be provided" and insert in lieu thereof "at least 90 percent of the services of a physician which are provided as basic health services shall be provided".

(b) Dual-Choice.—Section 1310(b) (42 U.S.C. 300e-9(b)) is amended—

(1) in paragraph (1), by inserting before the comma at the end the following: "and provides at least 90 percent of such services through physicians described in section 1301(b)(3)(A)", and

(2) in paragraph (2), by inserting before the comma at the end the following: "and provides no more than 10 percent of such services through physicians who are not described in section 1301(b)(3)(A)".

SEC. 5. ORGANIZATION.

(a) Fiscal Operation.—

(1) Section 1301(c)(1)(A) (42 U.S.C. 300e(c)(1)(A)) is amended to read as follows:

"(1)(A) have—

"(i) a fiscally sound operation, and

"(ii) adequate provision against the risk of insolvency.

which is satisfactory to the Secretary, and".

(2) Section 1301(c) (42 U.S.C. 300e(c)) is amended by adding after and below paragraph (9) the following: "The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.".

(3) During the period prior to the effective date of regulations issued under section 1301(c) of the Public Health Service Act (as amended by paragraph (2)), the Secretary of Health and Human Services shall consider the application for qualification under section 1301(c)(1)(A) of such Act of a health maintenance organization—

(A) which is owned or controlled by another organization, and

(B) which requests that the resources of the other organization be considered in determining its qualification under such section.

if the Secretary receives satisfactory assurances from the other organization that it will asume the financial obligations of the health maintenance organization and if the Secretary determines that the other organization meets such other requirements as the Secretary determines are necessary.

(b) Board of Directors.—Paragraph (5) of section 1301(c) (42 U.S.C. 300e(c)) is repealed and paragraphs (6) through (9) are redesignated as paragraphs (5) through (8), respectively.

SEC. 6. DEFINITIONS.

(a) Organ Transplants.—Subsection (b) of section 812 of the Health Maintenance Organization Amendments of 1986 (42 U.S.C. 300e-1 note) is repealed.

(b) Community Rating.—

(1) The third sentence of section 1302(8)(C) (42 U.S.C. 300e-1(8)(C)) is amended to read as follows: "If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

"(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

"(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

"(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

"(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.".

(2) Section 1302(8)(C) (42 U.S.C. 300e-1(8)(C)) is amended by adding at the end the following: "If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclosure to that entity the method and data used in calculating the rates of payment.".

SEC. 7. EMPLOYEES' HEALTH BENEFIT PLANS.

(a) Revisions.—

(1) States and political subdivisions.—

(A) Section 1310(b) (42 U.S.C. 300e-9(b)) is amended (i) by striking out "subject to subsection (a)" and inserting in lieu thereof "or a State or political subdivision", and (ii) by striking out "employer pursuant" and inserting in lieu thereof "employer or State or political subdivision pursuant".

(B) Section 1310(c) (42 U.S.C. 300e-9(c)) is amended by inserting "or State or political subdivision" after "employer" each place it occurs.

(2) Discrimination.—Section 1310(c) (42 U.S.C. 300e-9(c)) is amended by adding at the end the following: "If a health benefits plan offered by an employer or a State or political subdividsion under subsection (a) includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.".

(3) Application.—Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e-9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act.

(b) Repeal of Dual choice.—Effective 7 years after the date of the enactment of this Act, section 1310 (42 U.S.C. 300e-9) is amended to read as follows:

EMPLOYEES' HEALTH BENEFITS PLANS

"Sec. 1310. (a) In accordance with regulations which the Secretary shall prescribe—

"(1) each employer—

"(A) which is required during any calendar quarter to pay its employees the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (or would be required to pay its employees such wage but for section 13(a) of such Act), and

"(B) which during such calendar quarter employed an average number of employees of not less than 25, and

"(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 317, 318, or 1002,

which offers to its employees in the calendar year beginning after such calendar quarter the option of membership in a qualified health maintenance organization which is engaged in the provision of basic health services in a health maintenance organization service area in which at least 25 of such employees reside shall meet the requirements of subsection (b) with respect to any qualified health maintenance organization offered by the employer or State or political subdivision.

"(b)(1) If a health benefits plan offered by an employer or a State or political subdivision includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is

designed to assure employees a fair choice among health benefits plans.

"(2) Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provide a health benefits plan to which an employee contribution is not required shall, with the consent of an employee who exercises option of membership in a qualified health maintenance organization, arrange for the employee's contribution for membership in the organization to be paid through payroll deductions.

"(3) No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this subsection than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees.

"(c) For purposes of this section, the term "qualified health maintenance organization" means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b) and that it is organized and operated in the manner prescribed by section 1301(c), and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 1301(b) and will be organized and operated in the manner prescribed by section 1301(c).

"(d)(1) Any employer who knowingly does not comply with one or more of the requirements of paragraph (1) or (2) of subsection (b) shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

"(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

"(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

"(e) For purposes of this section, the term "employer" does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

"(f) If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or any of its political subdivisions has failed to comply with paragraph (1) or (2) of subsection (b), the Secretary shall terminate payments to such State under sections 317, 318, and 1002 and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply."

SEC. 8. RESTRICTIVE STATE LAWS.

Section 1311(a)(1) (42 U.S.C. 300e-10(a)(1)) is amended by striking out "or" at the end of subparagraph (C), by striking out ", and" at the end of subparagraph (D) and inserting in lieu thereof ", or", and by adding at the end the following:

"(E) imposes requirements which would prohibit the entity from complying with the requirements of this title, and".

SEC. 9. PROHIBITION ON CERTAIN POLICY CHANGES.

With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policy statements, intreprations, or practices in effect on the date of the enactment of this Act.

And the Senate agree to the same.

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,
NORMAN F. LENT,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
PAUL SIMON,
BROCK ADAMS,
SPARK MATSUNAGA,
ORRIN G. HATCH,
DAN QUAYLE,
GORDON HUMPHREY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute next.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. ORGANIZATION: FISCAL OPERATION

Present law

Section 1301(c)(1)(A) requires each health maintenance organization (HMO) to "have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary."

House bill.

No provision.

Senate amendment

The amendment clarifies that an HMO can be federally qualified only if it has a fiscally sound operation that is satisfactory to the Secretary. The amendment requires the Secretary to issue regulations stating the circumstances under which the Secretary, in determining fiscal soundness, will consider the resources of an organization which owns or controls an HMO. The amendment also describes the circumstances under which the Secretary, prior to the effective date of the regulations, will consider an application for federal qualification from an HMO that is owned or controlled by such an organization.

Conference agreement

The agreement includes the Senate amendment with minor drafting changes that do not alter the substance of the provision.

2. COMMUNITY RATING

Present law

Section 1302(8) authorizes HMOs to establish their premiums in two ways—community rating and community rating by class.

House bill

The bill modifies the definition of community rating to permit premiums to be fixed for the individuals and families of a group on the basis of an HMO's revenue requirements for providing services to the group. If the group has less than 100 persons, the premiums could not be greater than 120 percent of the premiums that would be fixed for community rating.

Senate amendment

The amendment differs from the House bill in two ways. First, for groups of less than 100, the premiums could not exceed 110 percent. Second, an HMO which uses this new community rating system must, on the request of the entity with which it contracts to provide services to the group, disclose to the entity the method and data used in calculating the premiums for the group.

Conference agreement

The agreement includes the Senate amendments.

The conferees understand that a question has been raised about the description of community rating by class under current law in section 6(b) of the section-by-section analysis of both the House and Senate Committee reports. It appears that the brief description of community rating by class has been misunderstood as possibly allowing discrimination based on sex or age. The reference in both reports to "sex and age" was only in relation to putting employees in classes and does not alter the current statutory requirement in section 1302(8)(C) that premium rates "be equivalent for all individuals in the same group and for all families of similar composition in the same group."

There should be no doubt about Title XIII of the Public Health Service Act or this Conference Report with regard to sex or age discrimination. Nothing in either the statute or this Report authorizes or permits an HMO or an employer to engage in any conduct that constitutes a violation of any federal or state sex or age discrimination law.

3. EMPLOYEES' HEALTH BENEFITS PLANS

Present law

Section 1310 provides the circumstances under which employers are required to offer their employees the option of membership in a federally qualified HMO. Regulations specify how much an employer must contribute toward employee enrollment in HMOs offered by the employer.

House bill

The bill specifies that employer contributions on behalf of employees who enroll in an HMO may not financially discriminate against those employees.

Senate amendment

The amendment differs from the House bill in two ways: First, a provision is included which specifically states that the amendments to section 1310 shall not be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment. Second, a provision is included which would repeal section 1310 on October 1, 1993.

Conference agreement

The agreement includes the Senate amendment on collective bargaining agreements. The agreement also provides for a repeal of the "dual choice" provisions in section 1310 on the date seven years after the date of enactment.

In the seven years prior to the repeal of dual choice, the conference agreement does not alter the current interpretation of the way in which section 1310 applies to employers. Section 1310 applies to those employers which have been mandated by a federally qualified HMO. Therefore, only in the case of a mandated HMO would an employer be required by Title 13 to comply with the new "financial discrimination" language.

Once the repeal of dual choice occurs, this limitation to mandated HMOs is changed. Beginning at that time, employers and state and political subdivisions which voluntarily offer to their employees the option of enrollment in one or more federally qualified HMOs would be required to comply with the new "financial discrimination" language for each such HMO.

4. MEDICALLY NECESSARY PROCEDURES

Present law

HMOs are required to provide medically necessary services.

House bill

No provision.

Senate amendment

The amendment prohibits the Secretary from changing regulations, policy statements, interpretations and practices regarding the performance of medically necessary procedures that are in effect on the date of enactment.

Conference agreement

The agreement includes a prohibition only with respect to abortion services. Under the agreement, the Secretary would be prohibited from changing regulations, policy statements, interpretations and practices with respect to abortion services in effect on the date of enactment.

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,
NORMAN F. LENT,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
PAUL SIMON,
BROCK ADAMS,
SPARK MATSUNAGA,
ORRIN G. HATCH,
DAN QUAYLE,
GORDON HUMPHREY,
Managers on the Part of the Senate.

□ 1430

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I would like to inquire of the distinguished majority leader the program for the balance of the day and conceivably beyond.

Before yielding, if I might just make a gratuitous observation here. It is not unique when we get to the closing days of a session or a Congress, particularly, and more particularly in a Presidential election year that there is an absolute necessity for the leaders of both parties to get together from time to time and talk over where they are and where we are going and what has to be done and what does not have to be done. We are at this juncture, obviously.

If it were up to the Members of this body alone as distinguished from the other body, that probably could be done, we could facilitate a much earlier adjournment, but that is not the case. We are co-equal branches of this Capitol and there is another consideration. The closer we get to elections the more political considerations there are on both sides of the aisle. We happen to have the presidency now and there are things we like to attend when he is available and we have to understand that on the Democratic side that they have political considerations, too, to tend to, particularly as the majority party in this body.

So having said that I would hope that we could have an exchange here, Mr. Leader, that would give us some indication as to how we could at least plan this weekend, and knowing full well from what we are hearing from the other side we are bound to be back next week, and it is impossible to have that much wisdom as to determine whether it runs the full week or even beyond.

Mr. Speaker, I yield to the gentleman from Washington [Mr. FOLEY].

Mr. FOLEY. Mr. Speaker, I thank the gentleman for yielding.

First I want to thank him personally for the spirit in which he and other Members of the Republican leadership have attempted to work out the final days. It is important to both parties and all Members, and not without a sense of how important it is for Members to know that I have to say that we are not in a position as this time to assume that we will not be in session on Saturday of this week as well as Friday. That may change but it deals in part with questions related to the actions of the other body and it deals in part with procedures here in the House.

It is our intention to try to end the session this week if possible but we have had speeches in the well suggesting that Members should oppose the adjournment resolution and fight against the adjournment of the House unless certain legislative matters are brought before us, which matters are in the hands of the U.S. Senate.

I have to tell the Members that we intend to take up critical legislation if it does come from the other body and that may mean that we are in session not only the remainder of this week but into next week. It is simply impossible to predict how soon legislative conclusions may be reached in the Senate. No one can do that, not U.S. Senators, not the leadership of the Senate and certainly not anyone on this side. We will advise Members as soon as possible of any decisions to end the session for this week or resume next week and so on.

Let me say we have intentions now to have no further votes for the rest of this day. It does not mean we will not do legislative business tomorrow. We are going to take up 29 suspensions under the rules, which will require the House to be in session. Whether we take them up in the morning and vote in the afternoon, or take up different ones in the afternoon having attempted, without success, to vote on the morning of those of yesterday really does not change the fact that the schedule needs to be completed and we will have a fairly long day today if Members wish to remain until the end of the debate on all the 29 suspensions.

Tomorrow we will take up first of all the votes on the nine suspensions from yesterday that have not been voted. We hoped to do those today and we expected we would be concluded with them now if we would have proceeded as we hoped but since we gave assurance to Members, and I announced publicly that those that wish to attend the Vice Presidential debates, and I assume there are as many on your side who wish to support Mr. QUAYLE as there are on this side that wish to support Senator BENTSEN, we thought that was in the interest of both parties, particularly because it did not truncate in any way the legislative business of the day but change the order of debate in voting.

Tomorrow we will vote on the nine as the first order of business.

Mr. THOMAS of California. Mr. Speaker, will the gentleman yield to me?

Mr. MICHEL. I yield to the gentleman from California.

Mr. THOMAS of California. It is my understanding that DAN QUAYLE is also a Senator.

Mr. FOLEY. I think he is. I am sorry. I meant no disrespect.

Mr. THOMAS of California. Mr. Speaker, I understood the debate was between Senator QUAYLE and Senator BENTSEN.

Mr. FOLEY. If the gentleman from California will permit me to say, I meant no disrespect to U.S. Senator DANIEL QUAYLE who is debating today with U.S. Senator LLOYD BENTSEN.

I think the comments of the Republican leader about the tension and prickliness of the time has been best demonstrated by the gentleman from California.

Mr. THOMAS of California. It is my understanding the last time the gentleman took the microphone to explain to us why there may be Saturday votes it was based on the fact we had a number of suspension votes and we would have to get them out of the way. This time the gentleman indicates we may have Saturday votes because of the other House. My understanding is there may be four other reasons, veiled or otherwise, as to why we are going to have Saturday votes.

Some of us on this side, if the gentleman will allow me to continue, are more than willing to accept several different answers, but the tension does rise not so much on this side but because what we have received is an answer which seems to change over time.

Mr. FOLEY. Mr. Speaker, I think the gentleman does me discredit if he suggests I have been attempting to dissemble and to deceive the House of Representatives. I think he knows me better than that. Our colleagues know better. I have spoken the truth in this well always on the schedule and will continue to do so.

There are two reasons why we will have to possibly be in here Saturday and I hope we are not. One is to complete the business that we have scheduled. The other is to consider business that may come over from the Senate. They are not inconsistent reasons. They are both true.

Until we have an opportunity to advise the Members responsibly and correctly on the schedule we do not intend to make false promises or dissemble with anyone. This is not a matter of partisanship. It is in the interests of both sides of the aisle and of the whole Congress that we complete our business in an orderly way. That is what I am pledged to do and that is what the gentleman from Illinois [Mr. MICHEL], the Republican leader, has pledged to do and what we will do if we have the good support and faith of people on both sides. It is not helpful to suggest other motives and actions here.

We will debate tomorrow 15 suspensions following the votes on those that I have mentioned, and at that time I would be happy to consult in advance with the Republican leader and we will make an announcement tomorrow which I hope will be more conclusive with respect to the rest of the week.

Mr. MICHEL. Could the distinguished gentleman tell us a little bit about next week; obviously, Monday is Columbus Day and there have been strong suggestions that Members would not be asked to come back until Wednesday, that there may not be any votes on Tuesday.

Mr. FOLEY. We will have a session on Tuesday and we are not likely to have votes on Tuesday.

Mr. MICHEL. Not likely to?

Mr. FOLEY. Do not plan any on Tuesday.

□ 1445

Mr. MICHEL. When we have our little tete-a-tete here on how we orchestrate this day and tomorrow and Friday, I assume we can then, after that decision, can give Members some assurance one way or another, right?

Mr. FOLEY. I think tomorrow and possibly the rest of the week, and I hope it will be a short week as everyone does, we will have to make an assessment day by day in consultation with the leadership on the gentleman's side and we will, I think, need to be involved in this colloquy on a day by day basis, and I hope in a good mood and a good humor.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MURTHA). Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Thursday, October 6, or Friday, October 7, 1988.

PERSONAL EXPLANATION

Mr. YATES. Mr. Speaker, I missed the rollcall vote on the resolution (H. Res. 568) as I was attending the ceremony marking the laying of the cornerstone for the new Holocaust Museum Building.

Had I been present I would have voted "aye."

PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

Mr. DE LUGO. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 597) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes, as amended.

H.J. RES. 597

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Palau Compact of Free Association Implementation Act".

SEC. 2. ENTRY INTO FORCE OF COMPACT.

Entry into force of the Compact of Free Association between the Government of the United States and the Government of Palau (set forth in title II of Public Law 99-658 and hereafter in this joint resolution referred to as the "Compact") in accordance with subsections (a) and (d) of section 101 of Public Law 99-658 (100 Stat. 3673) is hereby authorized—

(1) subject to the condition that the Compact, as approved by the Congress in Public Law 99-658, is approved by a requisite percentage of the votes cast in a referendum pursuant to the constitution of Palau, which has been determined by the Government of Palau to be 75 percent in the absence of an amendment to the constitution of Palau which changes the percent of vote required to approve the Compact; and

(2) upon expiration of 30 days after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

SEC. 3. FISCAL PROCEDURES ASSISTANCE.

(a) PROCEDURES ON EXPENDING FUNDS.—Upon request of the Government of Palau, the Secretary of the Interior shall provide assistance to the Government of Palau to develop and promulgate regulations for the effective expenditure of funds received pursuant to this joint resolution, Public Laws 99-658 and 99-239, or any other Act of Congress.

(b) IMPLEMENTATION OF AUDIT RECOMMENDATIONS.—

(1) The President, with appropriate consultation with the Congress, is authorized to negotiate an agreement with the Government of Palau which shall provide that the Government of Palau will develop a plan within 120 days after an audit is submitted to that Government (or any entity or instrumentality thereof) by the Comptroller General of the United States) or his duly authorized representatives), or the Inspector General of the Department of the Inte-

rior, to implement the recommendations made by such audit or will inform the Secretary of the Interior of that Government's objections to implementing such recommendations.

(2) The Secretary of the Interior shall provide assistance to the Government of Palau to implement the recommendations made by such audit.

SEC. 4. LAW ENFORCEMENT ASSISTANCE.

(a) Law Enforcement Agreement.—The President, with appropriate consultation with the Congress, is authorized to negotiate an agreement with the Government of Palau in accordance with section 224 of the Compact which shall provide that the Government of the United States agrees to provide the Government of Palau with assistance under section 222 of the Compact for enforcement of its narcotics abuse and other laws and for the prevention and treatment of narcotics and other substance abuses.

(b) Technical Assistance.—The agreement referenced in subsection (a) of this section shall specifically describe the technical assistance, training, and equipment to be provided to Palau by the United States necessary to enforce narcotics abuse and other laws in Palau.

(c) Financial Assistance.—The agreement referenced in subsection (a) of this section shall provide that the Government of the United States shall provide the Government of Palau with not less than $400,000 annually for enforcement of its narcotics abuse and other laws and for the prevention and treatment of narcotics and other substance abuses for the second through the sixth years after the effective date of the Compact, which amounts shall be expended pursuant to a plan developed by the Government of Palau and approved by the Secretary of the Interior in consultation with the Attorney General of the United States and the Secretaries of Health and Human Services, State, and Education.

(d) Authorization of Appropriations.—There are authorized to be appropriated $400,000 annually for the first 15 years after the effective date of the Compact for grants to the Government of Palau for enforcement of its narcotics abuse and other laws and for the prevention and treatment of narcotics and other substance abuses.

(e) Investigatory Authority.—The agreement referenced in subsection (a) of this section shall provide that the Government of Palau authorizes officers of United States law enforcement agencies (including the Drug Enforcement Administration, the Federal Bureau of Investigation, the United States Secret Service, the United States Customs Service, and the Immigration and Naturalization Service) to conduct investigations in cooperation with the law enforcement agencies of the Government of Palau related to the enforcement of United States laws applicable in Palau under the Compact, the provisions of this joint resolution, or the provisions of Public Law 99-658.

SEC. 5. PUBLIC AUDITOR AND SPECIAL PROSECUTOR.

(a) Agreement.—The President, with appropriate consultation with the Congress, is authorized to negotiate an agreement with the Government of Palau in accordance with section 224 of the Compact which shall provide that—

(1) the Government of the United States agrees to provide the Government of Palau with assistance under section 222 of the Compact for maintaining offices of public auditor and special prosecutor, and

(2) the Government of Palau agrees to maintain and staff the independent offices of public auditor and special prosecutor established under the authority of its constitution and laws during the period that the Government of the United States provides assistance under subsection (e) of this section.

(b) Minimum Expenditure by Palau.—The agreement referenced in subsection (a) of this section shall provide that the Government of Palau agrees to expend not less than $100,000 annually each for the offices of public auditor and special prosecutor for the first five years after the effective date of the Compact in addition to the assistance provided by the Government of the United States pursuant to this section.

(c) Technical Assistance.—The agreement referenced in subsection (a) of this section shall provide that, upon request of the Government of Palau or its public auditor or special prosecutor, the President shall provide, on a nonreimbursable basis, appropriate technical assistance to the public auditor or special prosecutor. In any case, the assistance provided pursuant to this subsection for the first five years after the effective date of the Compact shall include the services of the following personnel in a technical assistance capacity, who shall be available on a full-time basis and present in Palau as needed in order to ensure the effective operation of the offices of public auditor and special prosecutor—

(1) an auditor or accountant, as determined by the public auditor, for the office of public auditor, and

(2) an attorney or investigator, as determined by the special prosecutor, for the office of special prosecutor.

(d) Minimum Expenditure by United States.—The agreement referenced in subsection (a) of this section shall provide that the Government of the United States shall provide the Government of Palau with not less than $300,000 annually for the offices of public auditor and special prosecutor for the first five years after the effective date of the Compact, at least $100,000 of which shall be expended for each office, the remainder to be expended solely for these offices as determined by the Government of Palau.

(e) Authorization of Appropriations.—There are authorized to be appropriated $300,000 annually for the first 15 years after the effective date of the Compact for grants to the Government of Palau for the offices of public auditor and special prosecutor and such other sums as may be necessary to carry out the purposes of this section.

(f) Failure to Maintain Offices of Public Auditor and Special Prosecutor.—If the Government of Palau, having agreed to maintain the offices of public auditor and special prosecutor under the authority of its constitution and laws, and pursuant to the agreement referred to in subsection (a) of this section, does not do so, the President shall initiate the conference and dispute resolution procedures provided for under Article II of Title Four of the Compact. If the Government of Palau does not conform its actions to any determinations reached through such procedures, the Government of the United States shall treat such nonconformance as a material breach of the Compact and, if no other efforts obtained compliance by the Government of Palau within 180 days of such determinations, the President shall take appropriate steps including, but not limited to, either withholding funds to be provided pursuant to this joint resolution and Public Law 99-658, or suspending the effectiveness of section 236 of the Compact until the Government of Palau conforms its actions to the determinations referenced above.

SEC. 6. ELECTRIC POWER GENERATION.

Section 104(e) of Public Law 99-658 (100 Stat. 3676) is amended to read as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that:

"(1) Palau may use any portion of the annual grant under Section 211(b) not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facility, and any portion of the funds under Section 212(b) of the Compact, for such purpose; and, in addition,

"(2) In the event that the Government of Palau and its creditors in the power plant debt and contract dispute referred to in this section have entered into a legally enforceable agreement for the full and final settlement of pending litigation and all existing claims related thereto for the amount of $32,000,000, the sum of $28,000,000, adjusted by Section 215 of the Compact at the time of its availability to Palau, shall be made available to Palau under Section 211(b) of the Compact as of October 1, 1989, $28,000,000 of which shall be for the purpose of executing such settlement agreement in accordance with its terms, and the remainder of which shall be for purposes consistent with the terms of Section 211(b). The expenditure of Section 211(b) funds as appropriated by Public Law 99-349 and pursuant to this paragraph shall be in fulfillment of all United States obligations under such section 211(b) of the Compact, and shall be subject to Section 236 of the Compact if the other terms and conditions set forth in this paragraph have been met.".

SEC. 7. DEVELOPMENT PLAN FOR PALAU.

The President is authorized to negotiate an agreement with the Government of Palau under which the Government of Palau agrees to provide in connection with the national development plan proposed pursuant to section 231 of the Compact and submitted pursuant to section 101(d)(1)(C) of Public Law 99-658 additional information which—

(1) ensures that the plan covers the first five years after the effective date of the Compact;

(2) lists in priority order the public sector projects to be financed with United States assistance;

(3) specifically describes the private sector projects to be financed with United States assistance; and

(4) outlines how existing obligations for national and State government capital projects will be met.

SEC. 8. MEDICAL SYSTEM.

(a) Medical Facilities.—In addition to any other amounts appropriated for construction of medical facilities in Palau before the effective date of the Compact, the United States shall provide $5,000,000 on a dollar for dollar matching basis (or the amount matched by the Government of Palau if less than $5,000,000) to the Government of Palau for such facilities, which amount shall be expended pursuant to a plan developed by the Government of Palau with the approval of the Secretary of the Interior in consultation with the Secretary of Health and Human Services, to be effective in fiscal year 1990. There is authorized to be appropriated such sums as may be necessary for such facilities.

(b) Medical Referral Debts.—The United States shall provide such sums as may be necessary for the payment of, or otherwise settle, the unliquidated obligations incurred by the Governments of Palau, the Federated States of Micronesia, and the Marshall Islands for the use of medical facilities in the United States, including any territories and Commonwealths, by citizens of Palau, the Federated States of Micronesia, and the Marshall Islands before the implementation of their respective Compacts.

SEC. 9. AUDIT CERTIFICATION.

The President shall annually certify that the audits to be conducted by the United States pursuant to paragraph (1) of sections 102(c) and 103(m) of the Compact of Free Association Act of 1985 (Public Law 99-239) and section 101(d)(1)(C) of Public Law 99-658 satisfy the requirements of such sections.

SEC. 10. ACQUISITION OF DEFENSE SITES.

(a) Obligation of Palau To Provide Just Compensation to Owners of Private Land.—In accordance with section 352 of the Compact, the United States recognizes that the Government of Palau, in meeting its obligations under title III of the Compact to provide defense sites to the United States, is obligated by its constitution to provide just compensation to the owners of any private land which may be used for that purpose.

(b) Agreements for Financial Assistance.—If the Government of Palau, in light of actual United States land use requirements in Palau which impact upon privately owned land, requests United States financial assistance in addition to that provided in the Compact, the President shall enter into appropriate agreements regarding additional funding for that purpose. Such agreements shall be approved in accordance with the constitutional processes of Palau and the United States.

(c) Basis of Agreements.—Any agreement concluded pursuant to subsection (b) of this section shall be based upon independently verified land value appraisals and other appropriate documentation of actual land use costs, and must be consistent with the mutual undertakings and interests of the United States and Palau under title III of the Compact, as well as equity and fairness.

(d) Authority To Extend Time for Making Land Available as a Defense Site.—In furtherance of subsection (b) of this section, the President may agree to extend the time in which the Government of Palau is required to make land available upon its designation as a defense site pursuant to title III of the Compact.

SEC. 11. CAPITAL IMPROVEMENTS.

The Government of the United States shall provide the Government of Palau with $800,000 for renovation or replacement of prison facilities.

SEC. 12. FEDERAL PROGRAMS TECHNICAL ASSISTANCE PERSONNEL.

(a) Assignment.—The Secretary of the Interior shall station at least—

(1) one professional and such other personnel as may be necessary in the office of the United States representative in Palau, and

(2) one professional and such other personnel as may be necessary to serve both—

(A) in the office of the United States representative in the Federated States of Micronesia, and

(B) in the office of the United States representative in the Marshall Islands.

to provide technical assistance and to carry out the purposes of paragraphs (1) and (2) of section 105(b) of Public Law 99-239, Public Law 99-658, this joint resolution, and other Acts of Congress.

(b) Authorization of Appropriations.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13. FURTHER REFERENDUM COSTS.

The Secretary of the Interior shall provide such sums as may be necessary for a further referendum on approval of the Compact, if one is required, or other appropriate costs of implementing the Compact. There is authorized to be appropriated up to $200,000 to carry out the purpose of this section.

SEC. 14. FURTHER AGREEMENTS.

The President, with appropriate consultation with the Congress, is authorized to negotiate an agreement with the Government of Palau to provide for the assistance required to be provided pursuant to sections 8, 11, and 13 of this joint resolution.

SEC. 15. STATUS OF FUNDS.

In any year that funds made available by the United States for that year pursuant to this joint resolution, Public Law 99-658 or Public Law 99-239, or any other Act of Congress are not completely obligated by the Government of Palau, the unobligated balances of such funds shall remain available in addition to the funds to be provided in subsequent years. The provisions of section 236 of the Compact of Free Association between the United States and the Government of Palau (100 Stat. 3692) shall apply to all funds and services required to be provided by this joint resolution to Palau pursuant to sections 4(c) ($2,000,000), 5(d) ($1,500,000), 8(a) ($5,000,000) and 11 ($800,000) in the same manner as such provisions apply to the sums and amounts specified in Article I of Title Two of the Compact.

SEC. 16. EFFECTIVE DATES.

(a) Conclusion of Certain Agreements.—The authority under section 2 of this joint resolution for the Compact to enter into force shall not be effective until after agreements have been concluded by the President with the Government of Palau which satisfy the requirements of subsection (b) of this section and sections 3, 4, 5, 7, and 14 of this joint resolution.

(b) Submission of Agreements to Congress.—Any agreement concluded with the Government of Palau pursuant to this joint resolution and any agreement which would amend, change, or terminate any such agreement, or portion thereof, shall be submitted to the Congress and may not take effect until after 30 days after the date on which such agreement is so submitted. An amendment or agreement substituting for or in addition to the subsidiary agreement negotiated under section 212(a) of the Compact or its annex shall take effect only when approved by an Act of Congress.

SEC. 17. ORDERLY REDUCTIONS IN UNITED STATES ASSISTANCE.

Section 104(c) of Public Law 99-658 (100 Stat. 3676) is amended to read as follows:

"(c) Authorization for Transition Purposes.—For the purposes of applying section 105(c)(2) of the Compact of Free Association Act of 1985 (99 Stat. 1792) to Palau, the terms 'fiscal year 1987', 'fiscal year 1988', and 'fiscal year 1989' shall be deemed to be the first, second, and third fiscal years, respectively, beginning after the effective date of the Compact.".

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from the Virgin Islands [Mr. de Lugo] will be recognized for 20 minutes and the gentleman from California [Mr. Lagomarsino] will be recognized for 20 minutes.

The Chair recognizes the gentleman from the Virgin Islands [Mr. de Lugo]

GENERAL LEAVE

Mr. de LUGO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution (H.J. Res. 597) presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the Virgin Islands?

There was no objection.

Mr. de LUGO. Mr. Speaker, I yield 10 minutes to the Committee on Foreign Affairs, the time to be managed by the gentleman from Florida [Mr. Fascell].

The SPEAKER pro tempore. Without objection, the gentleman from Florida [Mr. Fascell] will be recognized to control 10 minutes of the time allotted to the gentleman from the Virgin Islands [Mr. de Lugo].

There was no objection.

[Mr. de LUGO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. Speaker, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to urge my colleagues to approve this legislation authorizing the implementation of the Palau Compact of Free Association. This may be one of the final acts of the U.S. Government in discharging our resonsibility as administering authority for the United Nations Trust Territory of the Pacific Islands. Palau is the last trusteeship remaining of the 11 established by the United Nations after World War II.

The process that led to Palau's drive for self-determination began with negotiations between the United States and Palau in 1969. The complex and difficult negotiations continued through four administrations. It was this administration that was able to finally obtain a compact between the United States and Palau which provided reasonable and sometimes generous assistance while securing defense rights vital to the strategic interests of the United States in the western Pacific.

This administration's commitment to and recognition of the importance of the Palau compact and what it means to the people of Micronesia and the United States, was punctuated by the visits of President Reagan to Guam, Vice President BUSH to Saipan, the location of the trust territory administrative center for Palau, and Secretary of State George Shultz to Palau. The continuing involvement in and support for the implementation of the compact of free association has also been demonstrated by the Secretary of the Interior Donald Hodel, Under Secretary Earl Gjelde, and Under Secretary of State, Edward Derwinski.

In the last few years, we have seen the people of the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands take control of their destinies. These peoples have emerged from the trusteeship and demonstrated to the world that they are ready to face the challenges of self-government. Complicated legal and political issues have arisen as these new governments have established their posttrusteeship identity, but the people and their leaders have proven more than equal to these challenges.

In the case of the Freely Associated States, the continued pendency of the trusteeship for Palau was itself among the legal and political complications faced by these new governments. However, as we look back on the last 2 years it is clear that the Palau question strengthened rather than weakened the resolve of the self-governing peoples concerned to effectively implement their new status. More importantly, from my point of view, the process of seeking international recognition of the new status of the Freely Associated States reinforced the partnership underlying the free association relationship, and we saw many of the negative attitudes and feelings left over from the frustrations of trusteeship subside.

Instead of ending the trusteeship with feelings of estrangement, the task of working together to meet the challenges of the transition to self-government affirmed that a genuine friendship and common value system had been created between the United States and the people of the Federated States of Micronesia and the Marshalls during the trusteeship. This was not a matter of them becoming more like us. Rather, our executive branch used the unique features of the compact and the statutory framework Congress created in Public Law 99-239 to adapt U.S. policy to meet the needs and legitimate expectations of our newest allies.

Our governments have worked together, coordinating our joint and separate diplomatic and policy initiatives. The world community is finally realizing that the sterile legal debate over trusteeship termination is not the controlling issue. Instead, Australia, New Zealand, Papua New Guinea, Israel, the Republic of the Philippines, the International Civil Aviation Organization, and the South Pacific Forum, to name a few, have recognized the new sovereign and self-governing status of the Freely Associated States.

In the end, the effect of continuation of the trusteeship for Palau has been to make the Freely Associated States, and the free association relationship, stronger, and the experience and record of achievements behind us is no doubt greater than it would have been had we not faced the degree of difficulty that we have. It is gratifying to see the rewards of our commitment to self-determination as the FSM and RMI establish their identity and project their sovereignty, while at the same time the special relationship we have with them under the compact grows stronger. There is no turning back for us, there is no obstacle we will not overcome, and we are better for having acted together as governments, certain in our resolve.

When we compare the situation in the islands today to what existed during the trusteeship, we know we have taken the correct path, and that free association is a successful approach to ending the non-self-governing status of the peoples concerned. There are not restrictions on the political future of these peoples, only opportunities.

So now, today, we once again attempt to provide a domestic U.S. legal framework for implementation of the Palau Compact and termination of the trusteeship for that last part of the trust territory. In doing so, we recognize that Palau's domestic legal system now must be effectively employed by the Palauans to create an internal Palauan legal framework for implementation of the compact. After all that has taken place, in addition to out best wishes and prayers it is appropriate to share a few reflections on the question of self-determination as it relates to Palau.

Whenever a crisis arises in Palau, and Palau has had more than its share of them over the years, various parties in Koror and Washington become very busy casting blame on one another. Whenever a crisis in Palau is resolved, the same parties rush to take credit. Local Palauan politics and the politics of the outside world seem oddly interrelated. It is sometimes difficult to determine whether the Palauans are using the agenda of the larger world outside Palau to influence local politics, or if outsiders are using local Palauan politics to promote their own non-Palauan agenda. More often than not both processes are going on at the same time.

There has been a great deal of sensational, even hysterical commentary and media coverage on the situation in Palau. Without question, Palau has some real problems, and this bill will help them deal with some of those problems. However, Palau's greatest need is for self-governmet. Only then will Palau begin acting out of self-interest to deal with its problems, instead of being in a limbo status in which political accountability and self-government are easily undermined. It is long since time for Palauans to take control of their destiny. The alternative is retreat from sovereign self-government, and even though that might make some very happy, I have seen no indication yet that the Palauan people want that kind of outcome.

The events of the last few years in Palau are not unprecedented, but the media coverage and awareness among some as to conditions in the islands has improved. Abuses in the American, and then Palauan, administration of the trusteeship system—while the exception—are not new. Violence in Palau is not new. The only thing new in Palau is the prospect that Palauans will finally be responsible for their affairs once the trusteeship system ends.

Delay of self-government for Palau because of concern over abuses only delayed Palau's ability to deal with its problems. There is nothing in this bill that could not have been done months ago, and it would have been if we had begun discussions with the administration and Palau when we should have. This bill is basically what we expected to end up with last year at this time, and I know from our discussions with the administration and the Government of Palau that this present package would have been accepted by Palau and the administration had we put it on the table when we should have.

It was because of some of the frustrating conditions in the islands under the trusteeship that the United States negotiated the compact. The trusteeship had become a form of benign neglect under the policies supported by some of those who now suddenly have taken such an interest in Palau's local affairs. This legislation will promote compact implementation, but it is self-government that is the important change, and only self-government will enable Palau to solve its own problems. No amount of assistance provided in the compact or its implementing legislation can substitute for, or make the critical difference in, successful Palauan self-government.

Frankly, with the corruption we have seen in Guam and among the leaders of other insular areas, and the pressing needs of the U.S. territories, it is hard to justify the way Palau was handled. Palau's problems have been extreme at times, and I have supported efforts to address them. But I agree with Secretary of State Shultz, who wrote to Chairman UDALL earlier this year and advised that delay in our action on the Palau Compact might aggravate the very problems which concerned us.

I am not certain what we were really after, but I believe at this point we must recognize that some of the joy has gone out of this enterprise, and on a level quite beyond our official agenda innocence has been lost. Just as the administration has been trying to tell us for over a year, the moral and political course now before us is to give Palau the tools to achieve self-government with trust that they have the wisdom to take them up and use them well. I believe liberty and self-determination are the threshold requirements for a people to meet the challenges of this world, and I hope over the next few years that principle is redeemed by the people of Palau.

Because there has been such distortion of our policy toward Palau, the following review of recent events is offered:

Based upon its approval by over 72 percent of the Palauan people in February 1986, the Compact of Free Association between the United States and Palau was approved by Congress in November 1986 (Public Law 99-658). While that vote by the Palauan people, like earlier votes, provided the basis for the United States to terminate the United Nations trusteeship in Palau, there continued to exist legal ambiguities arising from the provisions of Palau's constitution prescribing Palau's internal governmental procedure for approval of the compact. In recognition of these legal issues my amendment to the legislation, which approved the Palau Compact, Public Law 99-658, section 101(d), requires that entry into force of the compact following completion of Palau's approval process be authorized by a subsequent measure by Congress and signed by the President.

In the period following enactment of Public Law 99-658, three additional votes were held on the compact, and one vote was held on an amendment to Palau's constitution which was intended to resolve the legal issues which had delayed compact implementation. Political tensions associated with these votes and related litigation compounded longstanding political and legal disputes in Palau. When Palau certified to the United States in late August 1987 that compact approval process had been completed, further strife occurred and Palau's certification was accepted with the expectation that it would be subjected to legal challenge in Palau's courts.

On November 30, 1987 the President requested that Congress pass a joint resolution authorizing compact implementation, rejecting the view that the United States should preempt or interfere in Palau's constitutional process for challenging that government's certification. Although the Department of the Interior did provide technical assistance to Palau's law enforcement agencies during this period, the political and judicial branches of Palau's government proved themselves capable of preserving orderly constitutional processes without outside intervention.

Indeed, as a result of the votes on the compact in Palau, the Palau Government's actions to certify and implement the results of those votes, and the legal challenges thereto, the long internal process leading to a clear and unambiguous definition of Palau's constitutional process for approval of the compact, with or without a constitutional amendment for that purpose, has finally been completed. On August 29, 1988, the Appellate Division of Palau's supreme court issued a ruling which, coupled with a 1986 decision on compact approval, clarifies the meaning of Palau's constitutional provisions relating to compact approval. This ruling sets the stage for completion of Palau's internal constitutional process for approval of the compact, and vindicates the legal position of the Government of Palau on the questions of constitutional interpretation which had delayed compact implementation for so long.

Throughout this long and difficult process, the importance of Public Law 99-658 has been that it represents a comprehensive and precise definition of the free association relationship between the United States and Palau—which has such strong support among all elements of the political branches of our Government that its approval was enacted into United States law even prior to completion of Palau's internal ratification procedures. Public Law 99-658 addressed all of the issues on which Congress and the administration reached agreement in connection with trusteeship termination and compact implementation for all three freely associated states.

As a result, Public Law 99-658 has been critical to informed decisions by the people of Palau in their pursuit of self-government. That is why the administration urged its passage in 1986, including section 101(d) requiring further authorizing legislation for its implementation, even though the Supreme Court has ruled that the compact approval process was incomplete prior to congressional passage of this legislation.

The importance of a clear United States position on compact implementation continues, and the events of the last 2 years required that the United States clarify its position further. Based on the President's request that this be done through competition of the U.S. process to authorize compact implementation, the Senate passed Senate Joint Resolution 231 on March 3, 1988 and the House Foreign Affairs Committee reported House Joint Resolution 479 shortly thereafter. The administration supported inclusion of provisions in those measures that, consistent with administration policy, precluded implementation of the compact prior to disposition of any pending legal challenge to the compact approval process in Palau.

Subsequently, on June 23, 1988, the House Interior Committee introduced its version of compact implementing legislation. This proposal introduced an entirely new agenda for compact implementation, and immediately became the focal point of yet another set of internal political disputes in Palau and Washington. There were times when it did not look as if we could ever get a bill out of the Interior Committee or the House, and frankly, we still face some real obstacles passing a bill that can be enacted into law.

It was only in the wake of President Salii's untimely death that the political leadership in Palau and here in Washington summoned the resolve to produce legislation that would allow the people of Palau to take the next step in their long and winding road to self-government. I think we are on the right tract at last, and I hope we can produce legislation which will focus attention away from short-term problems and back on the real political and legal questions facing the people of Palau. To assist in that process, I would like to include in the record an administration letter describing the internal legal situation in Palau at this time.

The text of letter follows:

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate.

DEAR MR. CHAIRMAN: On August 29, 1988, the Appellate Division of the Supreme Court of Palau issued a ruling which requires that additional steps be taken to complete Palau's internal constitutional process for approval of the Compact of Free Association. By thus exercising its power of judicial review, the Supreme Court of Palau, as of the date of its decision, in effect overturned the August 29, 1987, certification by the government of Palau that the Compact approval process was complete. This change in the State of Palauan law obviously removes the basis for the November 30, 1987, certification by the President of the United States that Palau's approval process had been completed.

Although disappointing, the ruling clarifies complex issues of constitutional interpretation which have proven vexatious to the Government of Palau for years. For example, the court rejected the arguments, advanced by Compact opponents, that Palau's constitution can be amended to achieve compatibility with the Compact only after the Compact is in effect. The court also rejected the view that the amendments may only be offered at general elections—ruling that the Palau constitution can be amended under its Article XV at any time. Finally, the court overturned the ruling of the lower court that the constitution cannot be amended to achieve compatibility between it and the Compact because there is no incompatibility between the two documents. The lower court's ruling in this regard was anomalous and, if sustained, would have restricted the methods available to the people of Palau to exercise their right of self-determination.

The Court's opinion, thus, upholds the legal position of the Government of Palau on the most significant constitutional issues relating to the constitutional amendment and Compact approval procedures employed in August of 1987. However, the court found the procedure employed by the Palau National Congress to enact the legislation which authorized the vote on the constitutional amendment to be ineffective. Since that statute was ineffective to authorize a vote on the amendment which cleared the way for simple majority approval of the Compact, the 73 percent vote to approve the amendment was set aside. The subsequent 73 percent vote to approve the Compact then could not satisfy the 75 percent requirement which applied in absence of the amendment.

Now that this decision has finally clarified the most ambiguous provisions of Palau's constitution, the elected leadership is in a position, for the first time, to adopt a procedure for carrying out the will of the people with a high degree of confidence that the process will not be open to successful legal challenge. Indeed, for the first time since 1982 it now should be possible for Palau to employ any of the available procedures for Compact approval without the distractions of legal and political controversy over the mechanics of the approval process itself.

However, just as the choices which must be made by the people of Palau seem to be more clearly defined than ever, the lack of any United States law authorizing implementation of the Compact threatens to confuse the issues and delay the process. Consequently, the Administration urges Congress to enact legislation based upon S.J. Res. 231 and H.J. Res. 479, but which provides for implementation of the Palau Compact upon its approval in a manner with the August 29, 1988, ruling of the Palau Supreme Court.

President Haruo I. Remeliik, followed by President Lazarus E. Salii, shouldered the heavy burden of leading Palau through the long and difficult struggle to render workable the overlapping and complex provisions of Palau's constitution relating to approval of the Compact. While it is a genuine tragedy that they will not be with us on that day when the goals of their long struggle are realized, it will be an appropriate tribute if we can advance the cause of Palauan self-government by clarifying the United States position in legislation providing for the earliest possible implementation of the Compact.

Sincerely,

J. EDWARD FOX,
Assistant Secretary,
Legislative Affairs.

I would like to thank my colleagues who have worked with me for literally years on this issue. Both chairman and vice chairman MO UDALL and DON YOUNG of the Interior and Insular Affairs Committee and chairman and vice chairman DANTE FASCELL and BILL BROOMFIELD of the Foreign Affairs Committee have demonstrated their leadership by helping to forge a compromise among the committee members which resulted in the legislation before this body today. I also want to commend STEVE SOLARZ and JIM LEACH, chairman and vice chairman of the Foreign Affairs Subcommittee on Asian and Pacific Affairs, and RON DE LUGO of the Insular and International Affairs Subcommittee, for reporting out bills authorizing the implementation of the Palau Compact as prescribed by Public Law 99-658.

One of our colleagues has the deepest passion and interest in seeing that this body enact the legislation before us today. He is the only one representing U.S. citizens in an area that will be directly affected by the success or failure of this legislation. He understands from a personal perspective the fervent emotional issues of self-determination and self-government that the people of Micronesia face. And he is the only Member of Congress with the qualifications and background to fully appreciate from the Pacific perspective, the defense rights contained in the Palau Compact and the possible related impact to the United States strategic interests and the communities in Micronesia. My good colleague from Guam, Gen. BEN BLAZ, has made invaluable contributions regarding the compact of free association during the past 4 years. I have relied heavily upon his judgement and input regarding issues affecting the people of the island areas. I have the benefit of working with BEN BLAZ on both the Interior and Insular Affairs Committee and the Foreign Affairs Committee, and I appreciate his contributions to both.

In closing, I want to make a few remarks about Lazarus E. Salii. The time for a more complete tribute to President Salii will come, but for now I want simply to reflect that he was a giant among the people of the region known as Micronesia. He had a vision of sovereign self-govenment which could lead—in accordance with the will of his people—to independence, to incorporation into our Nation or to permanent free association. As a young man of vision and intellect he dominated the politics of his time not only in Palau, but across the Pacific.

It is true that his life ended under a cloud of criticism and accusations, but we will not remember him in that way. We will remember him as a leader only of Palauans, and as an example not only to Palauans, but as a leader and example to all people. He was a brilliant person who loved liberty and rational government. He believed that the best model of government was a democratic republic, and his dedication to seeing Palau become a self-governing republic was unequivocal.

I am reminded of the life and times of Alexander Hamilton, whose political career and life ended at an early age, and under a cloud of corruption charges, after one of the most brilliant political careers in the history of our Nation. While his accusers are long forgotten, only three or four other men can be said to have had as much influence on the course of history in the United States as Hamilton.

I sense that it will be the same for President Salii, for his vision and spirit are alive, and the people of the United States, the FSM, RMI, and CNMI are all enjoying the blessings of his work over the years. It now remains to be seen when an end will come to the irony that his own people, the Palauans, alone among the peoples of the trust territory, have not yet chosen the path to their own future.

Mr. Speaker, I reserve the balance of my time.

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Joint Resoultion 597, as amended.

This legislation represents the culmination of more than a decade of negotiations between the United States and the last remaining part of the Trust Territory of the Pacific Islands, the Republic of Palau.

Although the major outlines of this agreement have been in place for some time, a nunber of events have prevented the entry into force of the compact of free association with Palau which is authorized in this bill. The legislation before us now attempts to deal with the problems which have prevented implementation of the compact in a manner that is fair to all concerned parties.

In particular, we have attempted to ensure that attention is given to establishing adequate legal and accounting systems, preventing drug trafficking, and providing adequate health care. In addition, we have addresed the issue of Palau's external debt.

I would like to commend my colleagues on the Foreign Affairs Committee, the chairman and ranking member of the Subcommittee on Asian and Pacific Affairs, Mr. SOLAZ and Mr. LEACH, and on the Committee on Interior and Insular Affairs, Chairman UDALL, Mr. DE LUGO, and Mr. LAGOMARSINO, for their outstanding work in fashioning this legislation. I urge Members to support House Joint Resolution 597, as amended, and give Palau the new status it has so long awaited.

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Mr. UDALL. Mr. Speaker, I thank the gentleman from the Virgin Islands [Mr. DE LUGO] for those kind remarks.

Mr. Speaker, we are dealing today with almost the last of the unfinished business of World War II. After our victory over the Japanese, we agreed under United States sponsorship to administer a number of islands in different catagories: Guam, the Micronesian Islands, and the territories we deal with here today. Of course, the important area of Guam is United States soil.

The idea was that the trusteeship would last long enough for these new partners in the Pacific to establish themselves as a working democracy, and then Uncle Sam's job would be to get out and let them make their own mistakes and win their own victories. So this is a red letter day when we are asked to pass this resolution, and I join with my friend, the gentleman from Florida [Mr. FASCELL], who made all of this possible with his cooperative attitude when times got tough.

Today the House will consider House Joint Resolution 597, the primary purpose of which is to authorize implementation of the Compact of Free Association with the Micronesian islands of Palau.

The compact would provide for Palau to become selfgoverning in all matters other than those affecting United States security in free association with the United States. It would also provide Palau with approximately $460 million, adjusted for inflation over the next 15 years. The United States would obtain the right to deny other countries access to this area in perpetuity and certain military base rights for a period of 50 years.

Palau is the last part of the Trust Territory of the Pacific Islands [TTPI] to determine its future political status. The TTPI has been under the jurisdiction of the United States pursuant to a 1947 trusteeship agreement with the United Nations Security Council.

BACKGROUND

In recent years Palau has been the scene of great turmoil and strife surrounding the approval of the Compact of Free Association. The people of Palau have seen the lives of their first two presidents come to tragic ends. They have made allegations of corruption of high places, drug abuse and trafficking, threats, intimidation and violence, lack of fiscal control—a general breakdown in the Rule of Law—and a series of failures in Palau of their governmental system of checks and balances.

Because of these problems, over a year ago this committee stepped-up its oversight activities related to Palau. That effort has resulted in confirmation of most of the allegations of which we became aware. The provisions of House Joint Resolution 597, we believe, will help Palau to address these serious problems after it approves the Compact of Free Association, if it does, in fact, approve the compact.

In 1986, Congress approved the compact in concept by enacting Public Law 99-658. The intent of the law was that after Palau approved the compact, the Congress would pass legislation to authorize its implementation.

Palau has attempted on six occasions in the past to approve the compact. Each of those efforts failed because the vote in favor fell short of the 75 percent required by Palau's Constitution.

Last summer during a tense period in Palau, some of Palau's leaders attempted to amend the constitution to provide that the compact would be approved by a lesser perventage of the vote. The result was violence against those who challenged the constitutionality of this maneuver.

The violence against compact approval challengers resulted in the withdrawal of a lawsuit challenging the approval process.

The President of the United States then accepted the President of Palau's claim that the compact had finally been approved by Palau in the sixth referendum on the compact even though its constitutionality had not been allowed to be challenged. The President asked Congress to authorize implementation of the compact after certifying that it indeed had been approved.

Because of the overriding importance to Palau's future as a democracy of the adherence to constitutional principles and the rule of law, this committee insisted that: First, the situation be safe for the plaintiffs to refile their lawsuit; and second, the intent of Congress in passing Public Law 99-658, that is, that the compact be constitutionally approved by Palau before its implementation, be carried out. The plaintiffs then refiled their lawsuit. The trial division of Palau's Supreme Court ruled that the compact had not been approved. This ruling was later unheld by the appellate division of Palau's Supreme Court.

While the trial court's ruling was under appeal, Members and staff met the leaders of the executive and legislative branches of Palau to develop legislation to implement the compact to help fulfill United States responsibilities to Palau, to protect American interests in the compact's approval, and to help bring about conditions in Palau that would allow the compact to be approved by the requisite vote of its people.

As a result of these efforts, House Joint Resolution 597 was introduced by 20 Members. It eventually was cosponsored by 65 Members, and supported by a large majority of Palau's Congress and many of its other leaders.

Although the then President of Palau agreed to support the provisions included in the resolution, he later changed his position of support apparently because of the provisions calling for Palau to implement its own special prosecutor and public auditor laws. After the President tragically took his own life in August, his successor and Palau's legislative leaders sent a unified Palau delegation to lobby for passage of House Joint Resolution 597.

This delegation met with a number of Members of Congress and attended a series of meetings with the staffs of the Interior and Insular Affairs Committee, the Foreign Affairs Committee, the Senate Energy and Natural Resources Committee as well as officials of the Administration from both the Departments of State and the Interior. Those meetings resulted in a number of suggested amendments to House Joint Resolution 597 as part of compromises with the other Federal parties interested in this legislation.

Recently, a number of members of the Foreign Affairs Committee and this committee met and agreed on compromises regarding issues on which full consensus had not been able to be reached at the staff level. We agreed to recommend that this compromise be the House position on the legislation.

KEY PROVISIONS OF HOUSE JOINT RESOLUTION 597

I want to briefly outline some of the key provisions of House Joint Resolution 597 reflecting those compromises. Section 4 provides for funding to assist Palau in tackling its drug and other substance abuse problems as well as for other law enforcement problems. Assistance would be provided for education and treatment as well as other related law enforcement. Palau has a serious heroin problem as well as a serious marijuana problem. Estimates vary as to how many times greater the rate of heroin abuse is than in the United States. However, there is no question that this is a very serious problem which is tearing at the fabric of Palau's society. It is widely known in Palau that marijuana is a large local cash crop.

The resolution would also provide Palau financial and other assistance with respect to its public auditor and special prosecutor laws as well as require a commitment by Palau that will implement those laws.

After analyzing the problems which have occurred in Palau, it is our judgment that the effective and independent funding and operation of these two offices will greatly assist in assuring that the system of checks and balances which is provided for in the Palauan Constitution and under its laws is functioning fully.

Another key section involves the IPSECO powerplant. Palau is facing a possible $46 million debt over this plant which, coupled with its other obligations to date, if ultimately they are held to be valid, could represent a debt so heavy as to jeopardize Palau's survival as an emerging democracy.

In order to assure that Palau does not step into a huge financial hole from which it cannot extricate itself once the compact has been implemented, the resolution provides that Palau may utilize compact funding for liquidating whatever debt they may have with respect to the IPSECO transaction.

Because most compact funding is either earmarked or committed to preexisting contractual obligations, a provision has been included to aid Palau in obtaining what amounts to an acceleration of payments in its energy account. This account provides for payments of $2 million per year during the 2d through the 15th year of the compact. If Palau reaches a settlement with the banks which were guarantors of financing for the IPSECO powerplant for $32 million, it is authorized to receive all of the money in that account during fiscal year 1990.

We cannot escape the fact that the IPSECO debacle occurred on the U.S. watch and some officials of our Government helped facilitate the transaction. Consequently, it appears to me that the United States has an obligation to go the extra mile to help the Palauans straighten out the problem which has been created.

In another section of the resolution, Palau will be provided with $5 million to complete its partially funded hospital on a 50-50 matching basis. The current hospital does not meet even minimal standards and is virtually unmaintainable. If the United States is to fulfill its obligations under the trusteeship agreement with the U.N., it certainly must help insure that Palau has at least one decent medical facility.

Another provision addresses the possible acquisition of defense sites. The Palau Constitution requires that just compensation be paid to private landowners for land taken by the Government. This resolution recognizes that mandate and requires the President of the United States to work out an agreement with Palau regarding additional funding if Palau determines that the assistance in the compact is not adequate for it to acquire privately owned land for U.S. military use. This is a crucial provision because the concern over the land use provisions of the compact have played a large role in the compact's defeat to date.

Also, the resolution provides $800,000 to Palau for renovation or construction of a new jail. The conditions in the current jail are abysmal and do not meet requirements of a current court order. This too is a basic infrastructure need which must be met if Palau is to improve its law enforcement system.

With respect to the funding provided under the resolution, the initial $9.3 million of this assistance would be provided on the same basis as most of the $460 million in the compact—on a full faith and credit of the United States guaranteed basis.

Providing such guaranteed spending for essential compact spending, is of course, precedented. In addition to most of the $2.5 billion in the compact with the Federated States of Micronesia and the Marshall Islands being provided on a full faith and credit basis, here are but a few other examples of where full faith and credit backing have been provided in law: loan guarantees for Conrail purchases of rolling stock; loan guarantees for mortgages on ships construction, reconstruction, and reconditioning; insurance of of loans to finance historic preservation project; biomass energy projects such as solar energy and waste heat; housing for Indian and low income housing; agricultural loans from the Agricultural Credit Insurance Fund; rural telephone facilities; geothermal energy resources projects; awards of arbitral tribunals; just compensation for lands and properties taken for Redwoods National Park; and all contracts and instruments of the Secretary of Energy of financial assistance for municipal waste energy projects.

Not only is there ample precedent for full faith and credit spending, without it in this joint resolution there would be no reason to proceed with the legislation to implement the compact. After the violence, trauma, and divisiveness Palau has experienced over this compact, Palau's leaders do not want to put their people through yet a seventh referendum on the compact without an iron-clad commitment in law to address the problems that have led to its rejection on six previous occasions.

The United States has a strong obligation here to protect the interest of the American people in Palau for the future, to help the Palauan people get their system of governmental checks and balances fully functioning, and to fulfill essential infrastructure requirements which should be adequately dealt with as part of our Nation's trusteeship obligations to Palau.

It is our belief that if the United States enacts this resolution to provide assistance on a full faith and credit basis along with the other provisions of House Joint Resolution 597, the chances are very good that the people of Palau will finally approve the compact.

The administration's action in expressing its support for this legislation including the $9.3 million of full faith and credit funding last week was very helpful in resolving an impasse over passage of the resolution. That action recognizes that just passing a compact is not constructive if the joint resolution to implement the compact does not assist in meeting United States obligations to Palau and in obtaining approval of the compact by Palau.

CONCLUSION

The road to free association for Palau has not been an easy one. The mettle, courage, and wisdom of its people and its leaders has been been severely tested.

This committee has done its best to do the right thing regarding Palau. Enormous time and energy have been expended by its Members and staff in pursuit of meeting the committee's legislative and oversight responsibilities under law to the Palauan and to the American people.

We are at a point now where if a reasonable joint resolution can be enacted, Palau will have an excellent chance of coping with the myriad problems currently facing it as well as those it will face in the future.

I have agreed that this legislation to authorize implementation of the compact without further act of Congress should be brought before the House today based on the understanding that the resolution we pass will be a firm House position.

It is my assessment that the fundamental provisions of House Joint Resolution 597 slice the issues razor thin. Consequently, if significant weakening amendments were made, and even if Congress could then pass such a weakened resolution, the Congress would not only fail to meet its responsibilities with respect to Palau, but also would have achieved only a pyrrhic victory: passage of a joint resolution in the United States. but defeat of the compact in Palau.

While Palau apparently could amend its Constitution to accept a lower percentage than 75 percent of the vote for compact approval, it is our clear understanding that the Palauan leadership does not intend to proceed on such a course of action in light of the severe strain that it would create on the Palauan people who have been subjected so many times in recent years to traumatic and tragic incidents related to the compact's approval.

I request and urge my colleagues in the House today as well as the Members of the other body to join with me in approving House Joint Resolution 597 without further weakening amendments so that the United States can help Palauans put this most difficult period in their history behind them and move into a long and mutually beneficial relationship with our Nation and its people.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I certainly agree with all that has been said on the other side of the aisle. I think this is a good bill. It is fully supported by the administration. The only criticism I would have at all is that we are several months late in bringing this bill to the floor.

We have a choice here of whether to go ahead and approve this process. We have approved it already several years ago, but we have a choice whether to finish that approval or to let it go on and on and on. I would suggest that in the two areas where we have finished the process, the Marshall Islands and the Federated States of Micronesia, in spite of the reservations that I had and that many others had, they have proven worthy of the trust we have placed in them, and their economies and their form of government have actually advanced and improved when they have been given that responsibility. I think the same thing will happen in Palau. It will not happen, though, unless we finish this. The uncertainty has led to all kinds of problems there. Not only politically but economically, and socially and even criminally. So I would urge my colleagues to act immediately. I hope the Senate will accept this bill so we can get on with it. I know the President will sign this bill.

In closing, Mr. Speaker, I would also like to extend my congratulations and thanks for the hard work and the patience and the genuine devotion to the cause shown by Jim Berg, director; and Howard Hills, legal counsel; from the Office of Freely Associated State Affairs. They have been absolutely incredible with their work on this issue.

Mr. DE LUGO. Mr. Speaker, may I inquire, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from the Virgin Islands [Mr. DE LUGO] has 3 minutes remaining.

Mr. DE LUGO. Mr. Speaker, I yield myself 3 minutes, the balance of my time.

Mr. Speaker, I would also like to thank the gentleman from Connecticut [Mr. GEJDENSON], who participated in a key meeting. He is a member both of our committee and of the Committee on Foreign Affairs.

Again I want to thank the chairman of the Committee on Foreign Affairs, the gentleman from Florida [Mr. FASCELL]. I join the chairman of the full committee in saying that we really mean this, that is for sure, because it was his flexibility and his leadership that really were crucial in this.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield?

Mr. DE LUGO. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I was unaware that this legislation would be on the floor at this moment. I want to ask the gentleman, do the contents of this bill with regard to IPSECO appear to be consistent with the agreement among Members that was worked out in the office of the gentleman from Arizona [Mr. UDALL], the distinguished chairman of the Committee on Interior and Insular Affairs?

Mr. DE LUGO. Mr. Speaker, let me say that there has been a revision, and it was worked out by the people of Palau and the banks. They came to a compromise. My understanding is that it has been supported by the administration.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. DE LUGO. I yield to the chairman of the committee.

Mr. UDALL. Mr. Speaker, let me put it this way as the one who hosted that meeting: This does not include every single item we discussed there, but the people who were there, without exception, have agreed to the further changes and modifications and tuning up that was done. So I do not think the gentleman's concerns ought to be serious.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield again to me?

Mr. DE LUGO. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Speaker, this gentleman was not present, and this gentleman has not been consulted with respect to what was in it, and I wonder if this is the same subject that is going to permit the funds of the taxpayers of the United States and the funds that will be going to the Palauan people to be used for a very corrupt deal that involved corruption on the part of American citizens and Palauans in which graft and bribes were paid and in which American and British banks were involved. Is this the same provision?

Mr. DE LUGO. Mr. Speaker, may I say to the gentleman from Nebraska that I know of his deep concern in this matter. The agreement that was reached before would have provided for some $45 million of taxpayer funds going to resolve this matter. This new agreement cuts that back to $32 million.

Mr. BEREUTER. What about the $3 million cap, I would ask the gentleman, that was agreed to in the office of the gentleman from Arizona [Mr. UDALL]?

Mr. DE LUGO. The $3 million cap would have worked out to some $45 million over the period of 15 years, and this cuts it back to $32 million.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. DE LUGO. I am happy to yield to the chairman of the Foreign Affairs Committee.

Mr. FASCELL. Mr. Speaker, the gentleman from Nebraska is absolutely correct. The tentative agreement that was reached at that time with regard to the cap was never put through in final form, and because it was the subject of continuing negotiations, we could not get an agreement on the language, I will say to the gentleman from Nebraska, even with the administration or with the Palauans or with the people representing the banks, and ultimately that series of discussions led to what was finally agreed to in legislation.

The gentleman from Nebraska, as far as I know, may not have been personally contacted, that may be true, but as far as the provision is concerned, the important thing we are saying here is that we think it is a good provision. I know of the gentleman's opposition to it, but we think it is a good provision. It is one the Palauans have agreed to and the banks have agreed to, with substantial loss, and the administration has finally agreed to it.

So taking into account all of those matters, we felt it was the better part of wisdom to go on with the agreement that had been reached, and that is basically what this legislation provides.

Part of that is to get rid of the lawsuit, to do it at a rate which was far less than the original rate, and to guarantee that there would be international financial capability on the part of the Palauans, and at no additional cost.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield further?.

Mr. DE LUGO. I yield further to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Speaker, I have the utmost respect for the chairman of the committee, and I do not know that I am in opposition to what has been worked out. What bothers this Member is that an agreement has apparently been reached, and the Members in that room understood that this Member is greatly concerned.

I have known about the corruption that has been a part of this process since the late Phil Burton discovered it and since John Seiberling was aware of it, and I would like to know to what extent American funds are going to be used to line the pockets of legitimate and illegitimate participants in this process.

That is what this gentleman would like to know. I think I have a right to resent the fact that I was not a part of this arrangement and was not provided information in advance, because the gentleman knew of my concern in this matter, I say to the gentleman from the Virgin Islands.

The SPEAKER pro tempore. All time of the gentleman from the Virgin Islands [Mr. DE LUGO] has expired.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to comment for a moment on the topic that has been raised here.

I think everybody who knows anything about this matter agrees that the powerplant and related agencies and facilities that were provided are not worth the amount of the judgment in the case, $45 million, but most people, I think, agree they are worth $28 million, maybe even $32 million. The agreement that was worked out does not give the Palauans any extra money at all. What it does is provide that the money that is given to the Palauans for the purpose of providing electrical energy, which this project will go, will be limited to this amount and will be paid in that amount. None of the money, though, I say to my friend, the gentleman from Nebraska, will go to anybody other than in settlement of the claim, to the creditors, to satisfy the judgment for the creditors in the legal action.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Nebraska.

Mr. BEREUTER. The creditors the gentleman is talking about are the banks that have participated in lending money for the construction of the IPSECO plant?

Mr. LAGOMARSINO. That is right. And that is far less than the amount of the judgments they received in the court action, which is $45 million.

Mr. BEREUTER. Mr. Speaker, I think the concerns of this gentleman should have been accommodated and he should have been a part of the discussions on this. When these provisions were basically being negotiated by Mr. Eisenstadt, on behalf of the Palauan people I gather they were in their best interests. I hope they were in the best interest of the Palauan people and of the American taxpayer, and I hope that is the outcome. I have great confidence in the gentleman here, but at this moment the gentleman is asking me to make a judgment based on information that I do not have, and I have great reservations about this kind of procedure among Members.

Mr. BROOMFIELD. Mr. Speaker, with the passage of House Joint Resolution 597, a resolution to implement the Compact of Free Association with Palau, the United States will enter into the final stage of ending its trusteeship responsibilities over the Micronesian Islands. These responsibilities were undertaken under U.N. auspices after the Second World War.

With entry into force of the compact with Palau, the United States will have changed our status from that of administrator to partner with all of the people of the Micronesian states. This is therefore a historic time in which we are witnessing the creation of independent and sovereign nations.

The Compact of Free Association with Palau has been presented to the people of Palau for their approval on six different occasions. While the compact has received the support of a vast majority of Palauans, it has never received the 75-percent approval required by the Palauan Constitution. The resolution before us today addresses concerns that go beyond the provisions of the compact. After enactment of this resolution it is to be hoped that the people of Palau will approve the compact which will establish a new and mutually beneficial relationship between our two countries.

The resolution requires additional funding at a time when our own resources are limited. This has been a matter of concern for me. However, I believe this resolution is restrained in terms of additional funding, and in many respects, fulfills previously unmet obligations that we have had as a trust territory administrator.

Mr. Speaker, there are still differences with the Senate that remain unresolved. However, this is a reasonable and responsible resolution that I encourage my colleagues to approve.

Let us continue on this historic path of bringing the final Micronesian territory to independence. After we voluntarily remove our authority over Palau and the United Nations formally discharges our obligations under the trusteeship, we will show the world our willingness to forego the territorial ambitions of other states and advance the lofty goal of self-determination in Micronesia.

Mr. DE LUGO. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, House Joint Resolution 597 would authorize the President to put a Compact of Free Association with the Pacific Trust Territory Islands of Palau into effect.

The President would be able to exercise this authority after: First, the compact is approved by the people of Palau; and second, several additional agreements to provide Palau with needed assistance have been entered into.

This legislation is fully supported by the administration; but it is not what the administration initially requested.

Instead, House Joint Resolution 597 is an alternative that 64 Members joined me in sponsoring.

We developed this alternative because an investigation conducted by the Insular and International Affairs Subcommittee had revealed serious problems in Palau including:

High-level corruption;

Drug trafficking;

Political intimidation;

Critical needs; and

Crippling debts.

The investigation convinced us that the compact should only take effect if the conditions in this legislation are met.

This is also the view of Palau's leaders. They have united for the first time in favor of the compact if approved by this legislation.

The United States has already enacted two laws supporting the compact. Palauans have, however, failed to approve it in six referenda in spite of these inducements.

The new unity in Palau on the compact may not be able to survive and oppositon to it may block approval again if the United States does not take advantage of Palau's clear support of this resolution.

It offers the only real chance of Palau approving the compact since it addresses reasons the compact failed in the past.

Because of these realities, the administration—and leaders of the Foreign Affairs Committee—agreed to support House Joint Resolution 597 with the compromises included in the substitute.

The compromises made thus far are substantial but still preserve the fundamental principles of House Joint Resolution 597. They are as extensive as can responsibly be made.

I appreciate the good judgment administration officials like Under Secretary of State Ed Derwinski, Deputy Secretary John Whitehead, and Secretary of the Interior Don Hodel exhibited in agreeing to this compromise.

Several members of the Foreign Affairs Committee have also been statesmen on this issue. The efforts and flexibility of Chairman DANTE FASCELL, Subcommittee Chairman STEVE SOLARZ, ranking Republican JIM LEACH, and Representative DOUG BEREUTER are particularly appreciated.

The Interior and Insular Affairs Committee minority, particularly ranking Republican DON YOUNG, subcommittee ranking Republican BOB LAGOMARSINO, and Delegate BEN BLAZ have also played key roles.

No one, though, has been of greater help to me in developing this legislation than Interior and Insular Affairs Committee Chairman MO UDALL. His courageous dedication has only been approached by that of ranking Democrat GEORGE MILLER of California.

I appreciate the cooperation of these and other Members, particularly SAM GEJDENSON, and urge the House to pass the substitute.

Mr. LAGOMARSINO. Mr. Speaker, I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from the Virgin Islands that the House suspend the rules and pass the joint resolution (H.J. Res. 597), as amended.

The question was taken.

Mr. BEREUTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PERMISSION FOR MEMBER TO INSERT STATEMENT IMMEDIATELY PRECEDING ROLLCALL VOTE ON HOUSE JOINT RESOLUTION 597

Mr. DE LUGO. Mr. Speaker, I ask unanimous consent that I may be permitted to insert a statement in the RECORD immediately preceding the rollcall vote on House Joint Resolution 597.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from the Virgin Islands?

There was no objection.

CONCURRING IN SENATE AMENDMENTS TO H.R. 60, PERMITTING THE ARCHITECT OF THE CAPITOL TO ACCEPT GIFTS UNDER CERTAIN CIRCUMSTANCES, WITH AMENDMENTS

Ms. OAKAR. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 572) providing for concurring in the Senate amendments to H.R. 60, to permit the Architect of the Capitol, under the direction of the Joint Committee on the Library, to accept gifts of money for the purpose of works of fine art for the Capitol, and for other purposes, with amendments.

The Clerk read as follows:

H. RES. 572

Resolved, That, upon the adoption of this resolution, the House shall be considered to have taken from the Speaker's table the bill H.R. 60, to permit the Architect of the Capitol, under the direction of the Joint Committee on the Library, to accept gifts of money for the purpose of works of fine art for the Capitol, and for other purposes, with the Senate amendments thereto, and concurred in the Senate amendments to the text and title with amendments as follows:

In lieu of the matter by the Senate amendment to the text of the bill, insert the following:

TITLE I—HOUSE OF REPRESENTATIVES PROVISIONS

SEC. 101. HOUSE OF REPRESENTATIVES FINE ARTS BOARD.

(a) ESTABLISHMENT AND AUTHORITY.—There is established in the House of Representatives a Fine Arts Board (hereafter in this title referred to as the "Board"), comprised of the House of Representatives members of the Joint Committee on the Library. The chairman of the Committee on House Administration of the House of Representatives shall be the chairman of the Board. The Board, in consultation with the House office building commission, shall have the authority over all works of fine art, historical objects, and similar property that are the property of the Congress and are for display or other use in the House of Representatives wing of the Capitol, the House of Representatives Office Buildings, or any other location under the control of the House of Representatives.

(b) CLERK OF THE HOUSE OF REPRESENTATIVES.—Under the supervision and direction of the Board, the Clerk of the House of Representatives shall be responsible for the administration, maintenance, and display of the works of fine art and other property referred to in subsection (a).

(c) ARCHITECT OF THE CAPITOL.—The Architect of the Capitol shall provide assistance to the Board and to the Clerk of the House of Representatives in the carrying out of their responsibilities under this title.

SEC. 102. AUTHORITY OF BOARD TO ACCEPT GIFTS AND CONDUCT OTHER TRANSACTIONS RELATING TO WORKS OF FINE ART AND OTHER PROPERTY.

(a) IN GENERAL.—In carrying out this title, the Board is authorized—

(1) to accept gifts of works of fine art, historical objects, and similar property;

(2) to accept gifts of money for the purchase and administration of property referred to in paragraph (1); and

(3) to acquire, administer, and dispose of property.

(b) REQUIREMENTS FOR CONDUCT OF TRANSACTIONS.—In conducting transactions under this section, the Board shall—

(1) accept money only in the form of a check or similar instrument made payable to the Treasury of the United States and shall deposit any such check or instrument in accordance with section 103;

(2) in making sales and engaging in other property transactions, take into consideration market conditions and other relevant factors; and

(3) assure that each transaction is directly related to the authority referred to in section 101(a).

SEC. 103. HOUSE OF REPRESENTATIVES FINE ARTS FUND.

(a) IN GENERAL.—There is established in the Treasury a fund, to be known as the "House of Representatives Fine Arts Fund" (hereafter in this title referred to as the "fund"), which shall consist of (1) amounts deposited, and interest and proceeds credited, under subsection (c), and (2) obligations obtained under subsection (d).

(b) AVAILABILITY OF FUND.—The fund shall be available to the Board for disbursment with respect to works of fine art, historical objects, and other property, and conduct of transactions under this title.

(c) DEPOSITS, CREDITS, AND DISBURSEMENTS.—The Board shall deposit in the fund gifts of money and proceeds of transactions under section 102. The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from sale or redemption of, obligations held in the fund. Disbursements from the fund shall be made on vouchers approved by the Board and signed by the chairman.

(d) INVESTMENTS.—The Secretary of the Treasury shall invest any portion of the fund that, as determined by the Board, is not required to meet current withdrawals. Each investment shall be made in an interest bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Board, has a maturity for the fund. In carrying out this subsection, the Secretary may make such purchases, sales, and redemptions of obligations as may be approved by the Board.

SEC. 104. AUDITS BY THE COMPTROLLER GENERAL.

The Comptroller General shall conduct annual audits of the transactions of the Board and shall report the results of each audit to the House of Representatives.

TITLE II—SENATE PROVISIONS

SEC. 201. GIFTS AND PURCHASES FOR THE SENATE AND THE CAPITOL.

(a) ACCEPTANCE OF GIFTS.—The Commission on Art and Antiquities of the United States Senate (hereinafter "Commission") is authorized to—

(1) accept gifts and bequests of money and other property of whatever character for the purpose of aiding, benefiting, or facilitating the work of the Commission, including the purchase of works of fine art for the Senate wing of the Capitol and any Senate office buildings, and rooms, spaces, or corridors thereof;

(2) hold, administer, use, invest, reinvest and sell gifts and bequests of property received under this section for the purpose stated in paragraph (1); and

(3) apply any income produced from the use of such gifts and bequests of property for the purpose stated in paragraph (1).

(b) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury a fund for use in accordance with the provisions of this section.

(2) DEPOSITS AND AVAILABILITY.—Gifts and bequests of money and the proceeds from sales of other property accepted under subsection (a) may be deposited in the fund, which shall be available to the Executive Secretary of the Commission for the work of the Commission and the administration of property received under this section. Such funds shall be held in trust by the Secretary of the Treasury.

(c) DISBURSEMENTS FROM THE FUND.—Disbursements from the fund established under subsection (b) shall be made on vouchers signed by the Executive Secretary of the Commission and approved by the Chairman of the Commission.

(d) TAXES.—For the purpose of Federal income, estate and gift laws, property accepted under this section shall be considered a contribution to or for the use of the United States.

(e) INVESTMENTS.—The Executive Secretary of the Commission may request the Secretary of the Treasury to invest such portion of the fund established under subsection (b) as is not in the judgment of the Commission required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the fund as determined by the Commission and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. The income from such investments shall be credited to and form a part of the fund.

(f) PUBLIC DISCLOSURE.—At least once each year, the Executive Secretary of the Commission shall make a public disclosure of the amount and source of each gift and bequest received under this section, and any investment thereof, and the purposes for which any amounts are expended under this section.

(g) COMMISSION ON ART AND ANTIQUITIES OF THE UNITED STATES SENATE.—

(1) INCORPORATION.—The provisions of Senate Resolution 382 (Ninetieth Congress; agreed to October 1, 1968) (as amended by this section) and Senate Resolution 95 (Ninety Second Congress; agreed to April 1, 1971) are hereby incorporated by reference.

(2) TECHNICAL CHANGES.—Senate Resolution 382 (Ninetieth Congress; agreed to October 1, 1968) is amended—

(A) in section 1(b) by adding at the end thereof "The Secretary of the Senate shall be the Executive Secretary of the Commission"; and

(B) in section 2(a)—

(i) by striking out "and protect" and inserting in lieu thereof "protect, and make known"; and

(ii) by striking out "within the Senate wing of the Capitol", and inserting in lieu thereof "within the Senate wing of the Capitol", any Senate Office Buildings".

(h) ADVISORY BOARD.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Commission is authorized to establish an Advisory Board (hereinafter "Board").

(B) COMPOSITION.—The Board shall be headed by a Chairman and composed of six members (including the Chairman). The membership of the Board may be expanded by Act of the Commission, consistent with the pattern established in paragraph (3)(B) of this section. The Board, with the approval of the Commission, may establish and maintain additional entities to further the purpose stated in subparagraph (C).

(C) PURPOSE.—The purpose of the Board shall be to encourage the acquisition of fine arts, furnishings, and historical documents and to foster activities relating to the preservation and enhancement of the history and traditions of the United States Senate.

(2) COMPENSATION.—The Chairman and Board members shall be from public and private life, and shall serve without compensation. The Chairman and Board members may be reimbursed for actual and necessary expenses incurred in the performance of the duties of the Board at the discretion of the Commission.

(3) TERMS.—

(a) CHAIRMAN.—The Chairman of the Board shall be appointed by the Chairman of the Commission, and shall serve at the pleasure of the Commission for a four-year term.

(B) OTHER MEMBERS.—The members of the Board shall be appointed by the President pro tempore of the Senate, and shall serve staggered four-year terms at the pleasure of the Commission. The term of the initial appointments of two Board members shall be for four years. The term of the initial appointment of the remaining three Board members shall be for two years.

(C) VACANCIES.—Any vacancies on the Board shall be filled in same manner as the appointment to such position was made.

(i) SENATE RULEMAKING POWER.—The provisions of this section (except subsections (b), (d), and (e)) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate, and as such they shall be considered as part of the rules of the Senate, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

In lieu of the matter inserted by the Senate amendment to the title of the bill, insert the following: "An Act to provide for administration of gifts of works of fine art, historical objects, and similar property for the Congress, and for other property.".

The SPEAKER pro tempore. Is a second demanded?

Mr. FRENZEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The gentlewoman from Ohio [Ms. OAKAR] will be recognized for 20 minutes and the gentleman from Minnesota [Mr. FRENZEL] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Ohio [Ms. OAKAR].

□ 1515

Ms. OAKAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 572 would establish the House Fine Arts Board, which would be authorized to accept gifts of money and fine art for the improvement and preservation of the U.S. Capitol and the House Office Buildings. In addition, the bill makes changes to the existing Senate Commission on Arts and Antiquities to ensure that its powers are equal and complementary to the House Fine Arts Board.

I would like to take this opportunity to thank the person who initiated this project, my colleague, Mr. BENNETT of Florida. Two years ago, he recognized the need for a vehicle that would allow for the contribution of money and gifts to purchase works of art for the Capitol, and he has worked very hard to ensure that this will be done in the correct manner.

In addition, I would like to thank the chairman of the Committee on House Administration, Mr. ANNUNZIO. He has done a tremendous job of ensuring that this Commission and its authority would complement the functions of the Joint Committee on the Library and the Senate Commission on Art and Antiquities. He has worked tirelessly on this bill, in all of its various shapes and forms.

The ranking minority member of the House Administration Committee, and the minority chair of my subcommittee, Mr. FRENZEL, also deserves a lot of credit. Many of us were interested in improving the way that the congressional art collections have been handled, and I think that, with the valuable suggestions of Mr. FRENZEL, we have accomplished this task. I appreciate all of his efforts on behalf of this legislation.

Mr. Speaker, this bill will enhance the historic preservation and improvement of the Capitol and the congressional office buildings while not adding any costs to the Government. As chair of the Subcommittee on Libraries and Memorials, I believe that we have drafted a good bill, and I urge my colleagues to support it. Mr. Speaker, I reserve the balance of my time.

Mr. FRENZEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I concur in the description of this bill given by the distinguished gentlewomen from Ohio [Ms. OAKAR]. The bill has had a checkered history, passed in the simplified form in the House, modified in the Senate, and our committee had some difficulty reconciling its views with those of the Senate. We have finally gone ahead on our own motion.

Mr. Speaker, that does not mean that ultimately we may not have some joint authority with the Senate on this particular problem; that is, the fine art preservation and acquisition, but for the moment this bill provides that the Senate will go ahead in its way and the House will go ahead in its own way, and I think we have come to the best compromise we can based on the time and the differing inclinations between the two Houses.

Mr. Speaker, I would ask the distinguished gentlewoman from Ohio [Ms. OAKAR], chairwoman of the Subcommittee on Libraries and Memorials, a question about House Resolution 572.

We do provide that this Commission can receive gifts, and it may in turn sell some of the artworks it gets. It has moneys available to it, and it can in turn purchase additional ones. It is my understanding, although there is no committee report, it is the committee's intent that none of this money will be spent for receptions or entertainment of potential donors or expenses of that nature.

Mr. Speaker, could the gentlewoman from Ohio confirm this?

Ms. OAKAR. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the distinguished gentlewoman from Ohio.

Mr. Speaker, I thank the gentlewoman from Ohio [Ms. OAKAR].

It may be necessary occasionally, to send the staff to look at a work, and I assume that travel expenses would be covered, but there would be no entertainment expense.

I thank the gentlewoman from Ohio [Ms. OAKAR] for her willingness to work out something that works fine for the House and does not inconvenience the Senate in what it wants to do.

Mr. Speaker, I would like to proceed for about a minute to indicate that I think this is the last bill, at least that I will be handling, for this committee this year, and I want to suggest that the cooperation which the minority has had from people such as the distinguished chairwoman from Ohio, and, even more importantly, more broadly, certainly from the distinguished chairman, the gentleman from Illinois [Mr. ANNUNZIO], that if every committee worked the way this one does in the House, we would get precious few complaints from the minority. We have, I think, had a model of cooperation in this committee, and I thank all of the Democrat members of the committee and their staffs for the courtesies and cooperation they have extended to the minority members and to our staff. I look forward to that kind of cooperation in the future.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. OAKAR. Mr. Speaker, I would like to comment for a few seconds on the very fine contributions of the gentleman from Minnesota [Mr. FRENZEL].

It is my understanding that the gentleman from Minnesota [Mr. FRENZEL] will temporarily be leaving the committee because of his assignment on the Committee on the Budget. From a personal standpoint I find that very regrettable because he has been a very, very fine ranking Member on the other side of the aisle, always willing to cooperate, a person who has strong views, but very often his views on issues, including the issue before us, were very worthwhile, and we were able to work out our differences on many, many pieces of legislation.

Mr. Speaker, I think back on the memorial pieces of legislation that have made so many of our veterans feel—like the Korean war veterans, and those minorities who served in various wars, as well as women who served in the armed services; those are all pieces of legislation that our committee has passed. I think of the times where we were able to get the Smithsonian Institution to, by virtue of our hearings, sell large amounts of its holding stock that unfortunately and not maliciously was being used to assist the coffers of South Africa, and I think of those thoughtful hearings we had on that. I think of the Folger Theater that we have saved, which so many people take advantage of those performances. They are marvelous. People come from all over the country, and they can still see Shakespare performed at a theater that is a replica in scale of the Globe Theater. And now this legislation.

Mr. Speaker, we have so many people who tour the Capitol. The Capitol belongs to the American people. It does not belong to Congress, or Members, or just a chosen few. It is their Capitol, and, when you see the thousands of people who come to see Washington, the Capital of our country, this legislation may seem to some as somewhat insignificant. But the thrust of it is to enhance and preserve the American Capital and the buildings immediately surrounding it that belong to the American people. So, I want to say to the gentleman from Minnesota [Mr. FRENZEL], my friend, that, even though he is leaving the committee for a period of time, he certainly has been responsible for a living legacy that many, many thousands, and indeed millions, of Americans will participate in and be sensitive toward and in some areas enjoy. So, I want to pay special tribute to him at this time and thank him for the wonderful cooperation we have had.

Mr. BENNETT. Mr. Speaker, I rise in support of House Resolution 572, a bill to authorize the Architect of the Capitol to accept gifts for the benefit of the Capitol Building. The need for this legislation was brought to my attention when several years ago a very fine late 18th-century chandelier became available for a gift to the Capitol, but although deemed appropriate by the Architect of the Capitol, it could not be secured by a proffered gift. Other facilities of the Government, like the White House, the State Department, and the Library of Congress can accept such gifts. After this law is enacted, the Capitol Building may also receive such gifts. It is a very meritorious piece of legislation. I am deeply grateful to Chairman MARY ROSE OAKAR and all the members of the commitee for their patience and support in the passage of this legislation.

Ms. OAKAR. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentlewoman from Ohio [Ms. OAKAR] that the House suspend the rules and agree to the resolution (H. Res. 572).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GILMAN. Mr. Speaker, earlier today I was unavoidably detained, and as a result I was not able to cast my vote on rollcall No. 427 on House Resolution 568, the rule providing for the consideration of H.R. 5410, the Foreign Ownership Disclosure Act. Had I been present, I would have voted "yea."

NUCLEAR INVESTIGATIONS IMPROVEMENT ACT OF 1988

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4140) to require an Office of Investigations within the Nuclear Regulatory Commission.

The Clerk read as follows:

H.R. 4140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nuclear Investigations Improvement Act of 1988".

SEC. 2. OFFICE OF INVESTIGATION.

Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 4851 et seq.) is amended by inserting after section 205 the following new section:

SEC. 205A. OFFICE OF INVESTIGATIONS.

"(a) There shall be in the Commission an office to be known as the Office of Investigations. The head of such office shall be a Director of Investigations who shall be appointed by and report directly to the Commission and serve at the pleasure of and be removable by the Commission.

"(b)(1) The Office of Investigations shall have the responsibility for initiating and conducting investigations into possible violations of any law the Commission is responsible for implementing (or any rule, regulation, order, license condition, or other requirement issued under any such law) in cases where there is information indicating that such violations were willfully or intentionally caused or were the result of careless disregard for regulatory requirements.

"(2) When the Director of the Office of Investigations has reasonable grounds to believe that there has been a violation of Federal criminal law, the Director, after notifying the Commission, shall report such violation to the Department of Justice.

"(c) All Commission employees shall report promptly to the Office of Investigations any information that would give rise to a reasonable belief that violations subject to investigation under subsection (b), were willfully or intentionally caused or were the result of careless disregard for regulatory requirements.".

SEC. 3. CONTINUATION OF FUNCTIONS AND PERSONNEL.

(a) FUNCTIONS.—In addition to functions described in section 205A of the Energy Reorganization Act of 1974, the Office of Investigations required by such section shall continue to perform the functions of the office of the Nuclear Regulatory Commission known as the Office of Investigations in existence on the day before the date of the enactment of this Act.

(b) PERSONNEL.—The codification of the office described in section 205A of the Energy Reorganization Act of 1974 shall not cause any employee of the office of the Nuclear Regulatory Commission known as the Office of Investigations in existence on the day before the date of the enactment of this Act to be separated or reduced in grade or compensation.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Arizona [Mr. UDALL] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4140 provides a statutory foundation for the Nuclear Regulatory Commission's Office of Investigations; it requires the Office to report to the Commissioners themselves rather than the agency's staff director; and it codifies the Office's current practices for initiating investigations and referring cases to the Justice Department for prosecution.

The Office of Investigations is responsible for investigating alleged violations of the Atomic Energy Act and the Nuclear Regulatory Commission's regulations by the Commission's licensees, license applicants, contractors, and vendors.

Prior to the creation of the Office in 1982, NRC investigations often were conducted, directed, or supervised by agency staff who may have shared responsibility for matters under investigation. In response to congressional criticism of this arrangement, the Commission created the Office of Investigations, made it independent of the rest of the agency staff, and staffed it with professional investigators. By all accounts, creation of the

Office has made a big improvement in the quality of NRC investigations.

From its creation in 1982 until this past February, the Office of Investigations was independent of other staff offices and reported to the Commission. In February, however, the Commission directed the Office to begin reporting to the agency's staff director. The Committee on Interior and Insular Affairs heard testimony from the Office's director that this change was a serious threat to the quality of the Office's performance. The chairman of the Commerce Committee's Energy and Power Subcommittee, PHIL SHARP, and the chairman of the Interior Committee's Oversight and Investigations Subcommittee, SAM GEJDENSON, took the initiative to right this situation. Under the leadership of my good friend PHIL SHARP, the bill moved swiftly through both the Interior and the Energy and Commerce Committees without amendment or opposition.

H.R. 4140 simply returns the Office of Investigations to the reporting arrangement that existed prior to this February. In addition, the bill codifies existing Commission policies governing: First, referral of matters to the Office for investigation; second, the threshold for initiating an investigation; and third, referral of matters to the Department of Justice for prosecution.

Mr. Speaker, the safety of the nuclear enterprise rests in large measure on the industry's strict adherence to NRC safety standards. Willful violation of those standards or careless disregard of them not only endangers public health and safety but undermines the public's acceptance of the nuclear enterprise. For this reason, the NRC must possess the capability to detect and investigate violations of its rules and take appropriate enforcement actions. That is why an independent Office of Investigations is so important and why enactment of this bill is called for. I urge my colleagues to pass this bill.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days, if there are 5 legislative days left in the life of this Congress, in which to revise and extend their remarks on H.R. 4140, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, the moving force behind bringing this meritorious bill to the floor today is undoubtedly the gentleman from Indiana [Mr. SHARP], to whom I yield such time as he may consume.

Mr. SHARP. Mr. Speaker, I rise in support of H.R. 4140 which establishes a statutory Office of Investigations within the Nuclear Regulatory Commission. Enactment of this bill is necessary to ensure the integrity of the NRC's process for regulating the safety of nuclear power plants.

The bill was reported by voice vote in the Energy and Commerce Committee and is noncontroversial. I wish to thank the distinguished chairman of the Energy and Commerce Committee, Chairman DINGELL, and JOHN BRYANT who cosponsored the bill. I also thank Chairman UDALL of the Interior Committee, and the minority of both committees for their cooperation in bringing this bill to the floor.

In response to congressional criticism of its investigative capability, the Nuclear Regulatory Commission formed an Office of Investigations (OI) in 1982. That office conducts investigations into allegations of misconduct by the NRC's utility licensees. The office was created to improve both the competence and the credibility of such investigations. The Commission established OI as an office reporting directly to the five NRC Commissioners to make it independent of the NRC staff and to provide high visibility to OI investigations.

However, in February of this year, the NRC downgraded the status of OI in response to nonbinding language in the Statement of Managers accompanying the conference report on the continuing resolution for fiscal year 1988. Despite the strong opposition of members of the authorizing committees, the NRC has indicated that it will abide by this language. The Commission has, as a result, buried OI deeper in the Commission Structure, and OI no longer reports directly to the NRC Commissioners. This is despite the fact that the Commission has told Congress that it prefers an OI reporting directly to the Commission.

H.R. 4140 restores OI to its prior status and makes that status permanent. I urge my colleagues to support it. The Senate has passed similar language in another bill, and our action will unequivocally signal the intent of Congress on this question.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would reconstitute an Office of Investigations within the Nuclear Regulatory Commission, for the purpose of ensuring expert and independent investigations of alleged violations of safety regulations by licensees of nuclear powerplants. Six years ago the NRC had determined on its own that such an office was needed, and so they created one. The Office reported directly to the Commission, rather than through the Commission's staff. A direct line of communication between the Commission and the Office of Investigations was established which reinforced the high priority given to that office.

The conferees assigned to the fiscal year 1988 continuing resolution bill approved report language characterizing the Office of Investigations as redundant to NRC staff and directed elimination of this redundancy. It has become clear, however, that the Office is not redundant. To the contrary, the NRC believes that the Office is a useful and appropriate tool in carrying out its safety mandate. I agree.

H.R. 4140 is further evidence that the members of the Energy and Commerce Committee have a shared objective when it comes to nuclear power. That objective is safety. With this common objective we can agree on a common solution.

I would like to go forward on this bipartisan basis next year and bring to the floor further reforms to the regulation of nuclear plant licensing. There is no question in my mind that we can reach agreement on a number of reforms that will significantly and demonstrably improve the safety of future nuclear powerplants. This is not to imply that the safety record of the industry is not a good one. The facts clearly show that nuclear power is one of the safest, if not the safest, forms of electric generation in this country. Nonetheless, nuclear power has come to be judged by a different standard and whether this is fair or unfair, the industry must measure up to this different standard. Improvements such as those contained in H.R. 4134, the Nuclear Standardization and Safety Reform Act, would both improve safety and help to turn around public perceptions of the industry.

□ 1530

I have been encouraged by the hearings on nuclear reform held earlier this year by the Subcommittee on Energy and Power. We have a solid record of information on these issues. The next step is to attempt to work out a consensus package of proposals and I stand ready to do so.

I will close by recognizing the work of the chairman of the Subcommittee on Energy and Power, the gentleman from Indiana [Mr. SHARP], and the full committee chairman, the gentleman from Michigan [Mr. DINGELL], along with the effort of the chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona [Mr. UDALL].

My colleague and ranking minority member of the Energy and Commerce committee, the gentleman from New York [Mr. LENT], and the gentleman from Florida [Mr. BILIRAKIS] should also be acknowledged for their leadership in this matter.

Mr. UDALL. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Mr. Speaker, I commend the chairman, the gentleman from Arizona [Mr. Udall], the gentleman from Indiana [Mr. Sharp], and the gentleman from California [Mr. Moorhead] for their leadership on this issue.

In my Subcommittee on Oversight Investigation, we reviewed the need for an OI at the NRC over the last year and it became clear that the independence of this agency was critical, not only for the NRC to do its work, but also to build confidence in the American people in the operation and the effectiveness of the Nuclear Regulatory Commission. The Nuclear Regulatory Commission relies on its licensees for honesty in the information they provide, and most cases investigated by the OI involve false reporting by the licensee. Therefore, it is necessary that the Office of Investigations have the capability to initiate and continue investigations without interference.

As the history has shown us in at least two instances, at Fermi in Michigan in 1986 and at the TVA Wattsbar in 1988. There were attempts by staff to interfere with investigations that OI had ongoing

The Reagan administration Justice Department has stated that there has been opposition and resistance within the NRC to investigations of misconduct by NRC licensees.

This is excellent legislation. It is long overdue. The chairman, the gentleman from Arizona [Mr. Udall], deserves great credit for taking the leadership on this issue, as well as the gentleman from Indiana [Mr. Sharp] for their work on this legislation.

I agree with my colleague, the gentleman from California, that we need to review the entire licensing process, as well as standardization for nuclear powerplants, if we are to take a serious look at them to make sure that safety is paramount, that cost-effectiveness is considered and that the American people get the protection they deserve.

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. Bilirakis].

Mr. BILIRAKIS. Mr. Speaker, I would just like to echo the remarks of my colleagues.

And, Mr. Speaker, although one should never take anything for granted—most certainly not the results of an election—I also hope to be part of a concerted effort in the 101st Congress to enact nuclear standardization and licensing reform legislation.

I think the need for such legislation is clear. The Energy and Power Subcommittee—of which I am a member—has received copious testimony regarding the benefits of standardized plant designs and the detriments of the present "design as you go" system. We have received testimony not only on the weighty regulatory problems of the present licensing system, but on the substantial promise of new technology designs.

Mr. Speaker, it is abundantly clear that as a result of present policies—we simply are not building new nuclear powerplants today. Under the status quo, no commercial nuclear powerplant has been ordered in this country in a decade.

Considered the implications of this fact. While other countries—notably France, Japan, and Korea—have taken steps to increase their resources of commercial nuclear power—the United States program has been frozen in time.

Is this the type of nuclear freeze we wish to promote and continue? Have we really forgotten our dependency on foreign oil supplies and the risky situation in the Persian Gulf? Indeed, what ever happened to our national goal of energy independence?

In another vein—by forgoing the nuclear option—are we overlooking the possible environmental benefits of this energy source? Are we blind to the promise of nuclear power as a means of minimizing the greenhouse effect? Do we not recognize the potential for reduced air emissions? Might nuclear energy not be much of the solution to our clean air and acid rain problems?

We all know some of the major reasons for the standstill in commercial nuclear construction. We know that the economics have gotten out of line and that utilities are simply not willing to bet the company on a new nuclear plant.

I feel, though, that we now know some of the solutions to the rebirth of nuclear power in America. And these solutions lie in new standardized designs and reformation of the regulatory process.

We have the legislation, or at least the outlines of a good bill in our hands. We have received reams of testimony from a variety of witnesses. We have many Members of Congress interested in this issue and willing to forge ahead on a consensus bill.

So let me again express my hope that we can work cooperatively in the next Congress to approve a comprehensive bill on this vital matter.

The current licensing and construction process is not working. It has not worked in 10 years. It is time for us to set aside our minor differences and take action in the best interests of our Nation's energy and environmental future.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona [Mr. Udall] that the House suspend the rules and pass the bill, H.R. 4140.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

AUTHORIZATION FOR STRATEGIC PETROLEUM RESERVE PROTECTIVE FORCE PERSONNEL

Mr. SHARP. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 836) to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes, as amended.

The Clerk read as follows:

S. 836

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTION OF STRATEGIC PETROLEUM RESERVE.

In General.—Title VI of the Department of Energy Organization Act (42 U.S.C. 7211-7270) is amended by adding at the end the following new sections:

"GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

"Sec. 661. Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

"(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

"(2) arrest without warrant any person for an offense against the United States—

"(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

"(i) has committed or is committing a felony; and

"(ii) is in or is fleeing from the immediate area of the felony; and

"(B) in the case of a felony or misdemeanor, or the violation is committed in the presence of the employee.

"TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

"Sec. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

"(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $5,000, imprisonment for not more than one year, or both.".

(b) Conforming Amendment.—The table of contents for the Department of Energy Organization Act is amended by adding after the item relating to section 660 the following new items:

"Sec. 661. Guards for Strategic Petroleum Reserve facilities.

"Sec. 662. Trespass on Strategic Petroleum Reserve facilities.".

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Indiana [Mr. Sharp] will be recognized for 20 minutes and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. Sharp].

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

The committee amendment before us today will significantly improve the security at strategic petroleum reserve sites. The SPR is the very heart of our Nation's defense against energy security problems. Today, the SPR contains over 553 million barrels of oil valued at over $8 billion.

Before I proceed with an explanation of the specifics of this bill, I want to note that it was jointly referred to the Committee on the Judiciary. The cooperation shown by the distinguished chairman of the Committee on the Judiciary, Mr. Rodino, and the chairman of the Subcommittee on Crime, Mr. Hughes, allowed significant improvements to be made to the bill. The committee amendment is actually the language of H.R. 3659 authored by Chairman Brooks. I want to thank these three gentlemen for their leadership and assistance in this essential bill.

The committee amendment to S. 836 will do four things:

Permit the arming of Strategic Petroleum Reserve [SPR] guards,

Permit SPR guards to make arrests without a warrant,

Make trespass on SPR sites a Federal offense, and

Accord SPR guards adequate personal protection from civil and criminal liability should they make reasonable mistakes in discharging a firearm or detaining persons.

SPR sites are in remote areas and are subject to joint jurisdiction of Federal Government and local law enforcement agencies. Local law enforcement agencies have been reluctant or have refused to deputize contract security personnel in order to provide such personnel with an appropriate measure of authority with which to conduct their security functions. Without Federal or State authority the guards can only make citizen arrests, which are more difficult to prosecute and subject the guard to an increased level of personal liability.

I need to point out that this bill does not in any way give authority to DOE to expand its activities into investigative areas that are the prime responsibility of other agencies. The Department will be expected to work closely with the Attorney General to assure this limitation is adhered to.

The SPR program does not have authority to arm its security guards. The guards do not have authority to detain or inspect persons or vehicles or make arrests. SPR guards carry firearms with permits issued by local law enforcement officials under authority granted by various State laws allowing the arming of private security personnel.

This bill has been requested by the Department of Energy. It has already passed the Senate. The GAO has verified the need for this report and has recommended its passage. It is similar to authority that has been granted to other high security Federal installations.

I urge my colleagues to pass this bill which will improve the security of the SPR.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker. I rise in support of S. 836 as approved by the Energy and Commerce Committee.

S. 836 would permit the arming of qualified guards at strategic petroleum reserve sites, permit arrests to be made without a warrant, and make trespassing on strategic petroleum reserve sites designated by the Secretary of Energy a Federal crime. This legislation was requested by the Department of Energy and would provide necessary protection for $19 billion worth of assets contained in our strategic petroleum reserve. The reserve now contains over 550 million barrels of oil, and is this Nation's first line of defense in the event of an oil supply disruption.

S. 836 is noncontroversial. It would simply provide the guards at our strategic petroleum reserve sites the same authority that is now held by guards at DOE nuclear facilities and personnel at other agencies, including Secret Service Inspectors and Agents, postal inspectors, U.S. Marshals, and General Services Administration Special Policemen. For these reasons I think S. 836 as approved by the Committee on Energy and Commerce constitutes sound policy and I urge enactment of this legislation.

I want to thank the chairman of the Energy and Power Subcommittee, Phil Sharp, for his work in moving this bill forward in an expeditious fashion.

Mr. BROOKS. Mr. Speaker, I rise in support of this legislation, which contains the language of my original bill, H.R. 3659.

This is a simple but crucial measure which is necessary to provide adequate protection to our Nation's strategic petroleum reserve facilities, including the big hill site located in my congressional district.

I have long been concerned that our Nation give its fullest commitment to establishing a secure and adequate reserve of crude for use by the Nation in the time of a possible disruption of our traditional oil supplies. Congress has been successful in keeping the SPR program alive and I am pleased to note that we are well on our way to accomplishing the goal set over 10 years ago to establish this vital energy security plan.

S. 836, as amended by the Committee on Energy and Commerce, will help assure that as we proceed with the filling of the reserve to capacity, the security personnel assigned to protect SPR facilities will be empowered with the means to prevent tampering with this crucial national resource. Under the legislation, SPR guards will now be armed and will be permitted to make arrests without a warrant. In addition, the bill makes trespass on SPR sites a Federal offense.

Mr. Speaker, all of these steps are necessary to assure adequate protection to our numerous SPR facilities and are in accordance with previous legislation passed by Congress to protect other facilities under the control of the Department of Energy. It is worthy legislation and I urge my colleagues in the House to support it wholeheartedly. Thank you, Mr. Chairman.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana [Mr. Sharp] that the House suspend the rules and pass the Senate bill, S. 836, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Kalbaugh, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On September 15, 1988:

H.J. Res. 453. Joint resolution designating September 16, 1988, as "National POW/MIA Recognition Day."

On September 16, 1988:

H.R. 1939. An act to provide for continuing interpretation of the Constitution in appropriate units of the National Park System by the Secretary of the Interior, and to establish a National center for the United States Constitution within the Independence National Historical Park in Philadelphia, Pennsylvania.

On September 20, 1988:

H.R. 1270. An act to award a congressional medal to Mrs. Jesse Owens, and for other purposes;

H.R. 4783. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1989, and for other purposes; and

H.R. 5143. An act to waive the period of congressional review for certain District of Columbia acts authorizing the issuance of revenue bonds.

On September 22, 1988:

H.R. 2701. An act to amend the Natural Gas Policy Act of 1978 to remove certain contract duration and right of first refusal requirements; and

H.R. 4775. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1989, and for other purposes.

On September 26, 1988:

H.J. Res. 518. Joint Resolution designating the week of September 25, 1988, as "Religious Freedom Week."

On September 27, 1988:

H.R. 4586. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes; and

H.R. 4867. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1989, and for other purposes.

On September 28, 1988:

H.R. 2342. An act to authorize appropriations for the Coast Guard for fiscal year 1988, and for other purposes; and

H.R. 5090. An act to implement the United States-Canada Free-Trade Agreement.

On September 29, 1988:

H.J. Res. 600. Joint Resolution to commemorate the fiftieth anniversary of the passage of the Federal Food, Drug, and Cosmetic Act;

H.J. Res. 665. Joint Resolution authorizing the hand enrollment of appropriations bills for fiscal year 1989 and authorizing the subsequent, postenactment preparation of printed enrollments of those bills;

H.R. 439. An act for the relief of Thomas Wilson;

H.R. 4387. An act to authorize appropriations for fiscal year 1989 for intelligence and intelligence-related activites of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes; and

H.R. 4481. An act to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

On September 30, 1988:

H.R. 4794. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1989 and for other purposes.

On October 1, 1988:

H.R. 4587. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1989, and for other purposes;

H.R. 4637. An act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1989, and for other purposes;

H.R. 4776. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1989, and for other purposes;

H.R. 4781. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes;

H.R. 4782. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1989, and for other purposes; and

H.R. 4784. An act making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1989, and for other purposes.

On October 3, 1988:

H.J. Res. 580. Joint resolution to designate the month of September 1988 as "National Sewing Month";

H.R. 517. An act to designate Soldier Creek Diversion Unit in Topeka, Kansas, as the "Lewis M. Paramore Diversion Unit"; and

H.R. 2046. An act to authorize the Secretary of State to conclude agreements with the appropriate representative of the Government of Mexico to correct pollution of the Rio Grande.

RADON POLLUTION CONTROL ACT OF 1988

Mr. THOMAS A. LUKEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2837) to amend the Toxic Substances Control Act to assist States in responding to the threat to human health posed by exposure to radon as amended.

The Clerk read as follows:

H.R. 2837

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDOOR RADON ABATEMENT.

(a) AMENDMENT OF TOXIC SUBSTANCES CONTROL ACT.—The Toxic Substances Control Act (15 U.S.C. 2601 and following) is amended by adding after title II the following new title:

"TITLE III—INDOOR RADON ABATEMENT

"SEC. 301. NATIONAL GOAL.

"The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.

"SEC. 302. DEFINITIONS.

"For purposes of this title:

"(1) The term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381);

"(B) the owner of any nonprofit elementary or secondary school building; and

"(C) the governing authority of any school operated pursuant to section 6 of the Act of September 30, 1950 (64 Stat. 1107), relating to impact aid for children who reside on Federal property.

"(2) The term 'nonprofit elementary or secondary school' has the meaning given such term by section 202(8).

"(3) The term 'radon' means the radioactive gaseous element and its short-lived decay products produced by the disintegration of the element radium occurring in air, water, soil, or other media.

"(4) The term 'school building' has the meaning given such term by section 202(13).

"SEC. 303. EPA CITIZEN'S GUIDE.

"(a) PUBLICATION.—In order to make continuous progress toward the long-term goal established in section 301 of this title, the Administrator of the Environmental Protection Agency shall, not later than June 1, 1989, publish and make available to the public an updated version of its document titled 'A Citizen's Guide to Radon'. The Administrator shall revise and republish the guide as necessary thereafter.

"(b) INFORMATION INCLUDED.—

"(1) ACTION LEVELS.—The updated citizen's guide published as provided in subsection (a) shall include a description of a series of action levels indicating the health risk associated with different levels of radon exposure.

"(2) OTHER INFORMATION.—The updated citizen's guide shall also include information with respect to each of the following:

"(A) The increased health risk associated with the exposure of potentially sensitive populations to different levels of radon.

"(B) The increased health risk associated with the exposure to radon of persons engaged in potentially risk-increasing behavior.

"(C) The cost and technological feasibility of reducing radon concentrations within existing and new buildings.

"(D) The relationship between short-term and long-term testing techniques and the relationship between (i) measurements based on both such techniques, and (ii) the actions levels set forth as provided in paragraph (1).

"(E) Outdoor radon levels around the country.

"SEC. 304. MODEL CONSTRUCTION STANDARDS AND TECHNIQUES.

"The Administrator of the Environmental Protection Agency shall develop model construction standards and techniques for controlling radon levels within new buildings. To the maximum extent possible, these standards and techniques should be developed with the assistance of organizations involved in establishing national building construction standards and techniques. The Administrator shall make a draft of the document containing the model standards and techniques available for public review and comment. The model standards and techniques shall provide for geographic differences in construction types and materials, geology, weather, and other variables that may affect radon levels in new buildings. The Administrator shall make final model standards and techniques available to the public by June 1, 1990. The Administrator shall work to ensure that organizations responsible for developing national model building codes, and authorities which regulate building construction within States or political subdivisions within States, adopt the Agency's model standards and techniques.

"SEC. 305. TECHNICAL ASSISTANCE TO STATES FOR RADON PROGRAMS.

"(a) Required Activities.—The Administrator (or another Federal department or agency designated by the Administrator) shall develop and implement activities designed to assist State radon programs. These activities may include, but are not limited to, the following:

"(1) Establishment of a clearinghouse of radon related information, including mitigation studies, public information materials, surveys of radon levels, and other relevant information.

"(2) Operation of a voluntary proficiency program for rating the effectiveness of radon measurement devices and methods, the effectiveness of radon mitigation devices and methods, and the effectiveness of private firms and individuals offering radon-related architecture, design, engineering, measurement, and mitigation services. The proficiency program under this subparagraph shall be in operation within 1 year after the date of the enactment of this section.

"(3) Design and implementation of training seminars for State and local officials and private and professional firms dealing with radon and addressing topics such as monitoring, analysis, mitigation, health effects, public information, and program design.

"(4) Publication of public information materials concerning radon health risks and methods of radon mitigation.

"(5) Operation of cooperative projects between the Environmental Protection Agency's Radon Action Program and the State's radon program. Such projects shall include the Home Evaluation Program, in which the Environmental Protection Agency evaluates homes and States demonstrate mitigation methods in these homes. To the maximum extent practicable, consistent with the objectives of the evaluation and demonstration, homes of low-income persons should be selected for evaluation and demonstration.

"(6) Demonstration of radon mitigation methods in various types of structures and in various geographic settings and publication of findings. In the case of demonstration of such methods in homes, the Administrator should select homes of low-income persons, to the maximum extent practicable and consistent with the objectives of the demonstration.

"(7) Establishment of a national data base with data organized by State concerning the location and amounts of radon.

"(8) Development and demonstration of methods of radon measurement and mitigation that take into account unique characteristics, if any, of nonresidential buildings housing child care facilities.

"(b) Discretionary Assistance.—Upon request of a State, the Administrator (or another Federal department or agency designated by the Administrator) may provide technical assistance to such State in development or implementation of programs addressing radon. Such assistance may include, but is not limited to, the following:

"(1) Design and implementation of surveys of the location and occurrence of radon within a State.

"(2) Design and implementation of public information and education programs.

"(3) Design and implementation of State programs to control radon in existing or new structures.

"(4) Assessment of mitigation alternatives in unusual or unconventional structures.

"(5) Design and implementation of methods for radon measurement and mitigation for nonresidential buildings housing child care facilities.

"(c) Information Provided to Professional Organizations.—The Administrator, or another Federal department or agency designated by the Administrator, shall provide appropriate information concerning technology and methods of radon assessment and mitigation to professional organizations representing private firms involved in building design, engineering, and construction.

"(d) Plan.—Within 9 months after the date of the enactment of this section and annually thereafter, the Administrator shall submit to Congress a plan identifying assistance to be provided under this section and outlining personnel and financial resources necessary to implement this section. Prior to submission to Congress, this plan shall be reviewed by the advisory groups provided for in section 403(c) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note).

"(e) Proficiency Rating Program and Training Seminar.—

"(1) Authorization.—There is authorized to be appropriated not more than $1,500,000 for the purposes of initially establishing the proficiency rating program under subsection (a)(2) and the training seminars under subsection (a)(3).

"(2) Charge imposed.—To cover the operating costs of such proficiency rating program and training seminars, the Administrator shall impose on persons applying for a proficiency rating and on private and professional firms participating in training seminars such charges as may be necessary to defray the costs of the program or seminars. No such charge may be imposed on any State or local government.

"(3) Special account.—Funds derived from the charges imposed under paragraph (2) shall be deposited in a special account in the Treasury. Amounts in the special account are authorized to be appropriated only for purposes of administering such proficiency rating program or training seminars or for reimbursement of funds appropriated to the Administrator to initially establish such program or seminars.

"(4) Reimbursement of general fund.—During the first three years of the program and seminars, the Administrator shall make every effort, consistent with the goals and successful operation of the program and seminars, to set charges imposed under paragraph (2) so that an amount in excess of operation costs is collected. Such excess amount shall be used to reimburse the General Fund of the Treasury for the full amount appropriated to initially establish the program and seminars.

"(f) Authorization.—(1) There is authorized to be appropriated for the purposes of carrying out sections 303, 304, and this section an amount not to exceed $3,000,000 for each of fiscal years 1989, 1990, and 1991.

"(2) No amount appropriated under this subsection may be used by the Environmental Protection Agency to administer the grant program under section 306.

"(3) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under subsection (a)(2).

"SEC. 306. GRANT ASSISTANCE TO STATES FOR RADON PROGRAMS.

"(a) In General.—For each fiscal year, upon application of the Governor of a State, the Administrator may make a grant, subject to such terms and conditions as the Administrator considers appropriate, under this section to the State for the purpose of assisting the State in the development and implementation of programs for the assessment and mitigation of radon.

"(b) Application.—An application for a grant under this section in any fiscal year shall contain such information as the Administrator shall require, including each of the following:

"(1) A description of the seriousness and extent of radon exposure in the State.

"(2) An identification of the State agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in radon programs, and description of the roles and responsibilities of any municipal, district, or areawide organization involved in radon programs.

"(3) A description of the activities and programs related to radon which the State proposes in such year.

"(4) A budget specifying Federal and State funding of each element of activity of the grant application.

"(5) A 3-year plan which outlines long range program goals and objectives, tasks necessary to achieve them, and resource requirements for the entire 3-year period, including anticipated State funding levels and desired Federal funding levels. This clause shall apply only for the initial year in which a grant application is made.

"(c) Eligible Activities.—Activities eligible for grant assistance under this section are the following:

"(1) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, school buildings, high-risk residential construction types).

"(2) Development of public information and educational materials concerning radon assessment, mitigation, and control programs.

"(3) Implementation of programs to control radon in existing and new structures.

"(4) Purchase by the State of radon measurement equipment or devices.

"(5) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment.

"(6) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees.

"(7) Payment of general overhead and program administration costs.

"(8) Development of a data storage and management system for information concerning radon occurrence, levels, and programs.

"(9) Payment of costs of demonstration of radon mitigation methods and technologies as approved by the Administrator, including State participation in the Environmental Protection Agency Home Evaluation Program.

"(10) A toll-free radon hotline to provide information and technical assistance.

"(d) Preference to Certain States.—Beginning in fiscal year 1991, the Administrator shall give a preference for grant assistance under this section to States that have made reasonable efforts to ensure the adoption, by the authorities which regulate building construction within that State or political subdivisions within States, of the model construction standards and techniques for new buildings developed under section 304.

"(e) Priority Activities and Projects.—The Administrator shall support eligible activities contained in State applications with the full amount of available funds. In the event that State applications for funds exceed the total funds available in a fiscal year, the Administrator shall give priority to activities or projects proposed by States based on each of the following criteria:

"(1) The seriousness and extent of the radon contamination problem to be addressed.

"(2) The potential for the activity or project to bring about reduction in radon levels.

"(3) The potential for development of innovative radon assessment techniques, mitigation measures as approved by the Administrator, or program management approaches which may be of use to other States.

"(4) Any other uniform criteria that the Administrator deems necessary to promote the goals of the grant program and that the Administrator provides to States before the application process.

"(f) Federal Share.—The Federal share of the cost of radon program activities implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the costs incurred by the State in implementing such program in the first year of a grant to such State, 60 percent in the second year, and 50 percent in the third year. Federal assistance shall be made on the condition that the non-Federal share is provided from non-Federal funds.

"(g) Assistance to Local Governments.—States may, at the Governor's discretion, use funds from grants under this section to assist local governments in implementation of activities eligible for assistance under paragraphs (2), (3), and (6) of subsection (c).

"(h) Information.—(1) The Administrator may request such information, data, and reports developed by the State as he considers necessary to make the determination of continuing eligibility under this section.

"(2) Any State receiving funds under this section shall provide to the Administrator all radon-related information generated in its activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

"(3) Any State receiving funds under this section shall maintain, and make available to the public, a list of firms and individuals within the State that have received a passing rating under the Environmental Protection Agency proficiency rating program referred to in section 305(a)(2). The list shall also include the address and phone number of such firms and individuals, together with the proficiency rating received by each. The Administrator shall make such list available to the public at appropriate locations in each State which does not receive funds under this section unless the State assumes such responsibility.

"(i) Limitations.—(1) No grant may be made under this section in any fiscal year to a State which in the preceding fiscal year received a grant under this section unless the Administrator determines that such State satisfactorily implemented the activities funded by the grant in such preceding fiscal year.

"(2) The costs of implementing paragraphs (4) and (9) of subsection (c) shall not in the aggregate exceed 50 percent of the amount of any grant awarded under this section to a State in a fiscal year. In implementing such paragraphs, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give a preference to low-income persons.

"(3) The costs of general overhead and program administration under subsection (c)(7) shall not exceed 25 percent of the amount of any grant awarded under this section to a State in a fiscal year.

"(4) A State may use funds received under this section for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

"(j) Authorization.—(1) There is authorized to be appropriated for grant assistance under this section an amount not to exceed $10,000,000 for each of fiscal years 1989, 1990, and 1991.

"(2) There is authorized to be appropriated for the purpose of administering the grant program under this section such sums as may be necessary for each of such fiscal years.

"(3) Notwithstanding any other provision of this section, not more than 10 percent of the amount appropriated to carry out this section may be used to make grants to any one State.

"(4) Funds not obligated to States in the fiscal year for which funds are appropriated under this section shall remain available for obligation during the next fiscal year.

"(5) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under section 305(a)(2).

"SEC. 307. RADON IN SCHOOLS.

"(a) Study of Radon in Schools.—

"(1) Authority.—The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's school buildings.

"(2) List of high probability areas.—In carrying out such study, the Administrator shall identify and compile a list of areas within the United States which the Administrator determines have a high probability of including schools which have elevated levels of radon.

"(3) Basis of list.—In compiling such list, the Administrator shall make such determinations on the basis of, among other things, each of the following:

"(A) Geological data.

"(B) Data on high radon levels in homes and other structures nearby any such school.

"(C) Physical characteristics of the school buildings.

"(4) Survey.—In conducting such study the Administrator shall design a survey which when completed allows Congress to characterize the extent of radon contamination in schools in each State. The survey shall include testing from a representative sample of schools in each high-risk area identified in paragraph (1) and shall include additional testing, to the extent resources are available for such testing. The survey also shall include any reliable testing data supplied by States, schools, or other parties.

"(5) Assistance.—(A) The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, a list of high risk areas within each State, including a delineation of such areas and any other data available to the Administrator for schools in that State. To assist such agencies, the Administrator also shall provide guidance and data detailing the risks associated with high radon levels, technical guidance and related information concerning testing for radon within schools, and methods of reducing radon levels.

"(B) In addition to the assistance authorized by subparagraph (A), the Administrator is authorized to make available to the appropriate agency of each State, as designated by the Governor of such State, devices suitable for use by such agencies in conducting tests for radon within the schools under the jurisdiction of any such State agency. The Administrator is authorized to make available to such agencies the use of laboratories of the Environmental Protection Agency, or to recommend laboratories, to evaluate any such devices for the presence of radon levels.

"(6) Diagnostic and remedial efforts.—The Administrator is authorized to select, from high-risk areas identified in paragraph (2), school buildings for purposes of enabling the Administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such school buildings. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States.

"(7) Status report.—On or before October 1, 1989, the Administrator shall submit to the Congress a status report with respect to action taken by the Administrator in conducting the study required by this section, including the results of the Administrator's diagnostic and remedial work. On or before October 1, 1989, the Administrator shall submit a final report setting forth the results of the study conducted pursuant to this section, including the results of the Administrator's diagnostic and remedial work, and the recommendations of the Administrator.

"(b) Authorization.—For the purpose of carrying out the provisions of paragraph (6) of subsection (a), there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary. For the purpose of carrying out the provisions of this section other than such paragraph (6), there are authorized to be appropriated such sums, not to exceed $1,000,000, as may be necessary.

"SEC. 308. REGIONAL RADON TRAINING CENTERS.

"(a) Funding Program.—Upon application of colleges, universities, institutions of higher learning, or consortia of such institutions, the Administrator may make a grant or cooperative agreement, subject to such terms and conditions as the Administrator considers appropriate, under this section to the applicant for the purpose of establishing and operating a regional radon training center.

"(b) Purpose of the Centers.—The purpose of a regional radon training center is to develop information and provide training to Federal and State officials, professional and private firms, and the public regarding the health risks posed by radon and demonstrated methods of radon measurement and mitigation.

"(c) Applications.—Any colleges, universities, institutions of higher learning or consortia of such institutions may submit an application for funding under this section. Such applications shall be submitted to the Administrator in such form and containing such information as the Administrator may require.

"(d) Selection Criteria.—The Administrator shall support at least 3 eligible applications with the full amount of available funds. The Administrator shall select recipients of funding under this section to ensure that funds are equitably allocated among regions of the United States, and on the basis of each of the following criteria:

"(1) The extent to which the applicant's program will promote the purpose described in subsection (b).

"(2) The demonstrated expertise of the applicant regarding radon measurement and mitigation methods and other radon-related issues.

"(3) The demonstrated expertise of the applicant in radon training and in activities relating to information development and dissemination.

"(4) The seriousness of the radon problem in the region.

"(5) The geographical coverage of the proposed center.

"(6) Any other uniform criteria that the Administrator deems necessary to promote the purpose described in subsection (b) and that the Administrator provides to potential applicants prior to the application process.

"(e) Termination of Funding.—No funding may be given under this section in any fiscal year to an applicant which in the preceding fiscal year received funding under this section unless the Administrator determines that the recipient satisfactorily implemented the activities that were funded in the preceding year.

"(f) Authorization.—There is authorized to be appropriated to carry out the program under this section not to exceed $1,000,000 for each of fiscal years 1989, 1990, 1991.

"SEC. 309. STUDY OF RADON IN FEDERAL BUILDINGS.

"(a) Study Requirement.—The head of each Federal department or agency that owns a Federal building shall conduct a study for the purpose of determining the extent of radon contamination in such buildings. Such study shall include, in the case of a Federal building using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

"(b) High-Risk Federal Buildings.—(1) The Administrator shall identify and compile a list of areas within the United States which the Administrator, in consultation with Federal departments and agencies, determines have a high probability of including Federal buildings which have elevated levels of radon.

"(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

"(A) Geological data.

"(B) Data on high radon levels in homes and other structures near any such Federal building.

"(C) Physical characteristics of the Federal buildings.

"(c) Study Designs.—Studies required under subsection (a) shall be based on design criteria specified by the Administrator. The head of each Federal department or agency conducting such a study shall submit, not later than July 1, 1989, a study design to the Administrator for approval. The study design shall follow the most recent Environmental Protection Agency guidance documents, including 'A Citizen's Guide to Radon'; the 'Interim Protocol for Screening and Follow Up: Radon and Radon Decay Products Measurements'; the 'Interim Indoor Radon & Radon Decay Product Measurement Protocol'; and any other recent guidance documents. The study design shall include testing data from a representative sample of Federal buildings in each high-risk area identified in subsection (b). The study design also shall include additional testing data to the extent resources are available, including any reliable data supplied by Federal agencies, States, or other parties.

"(d) Information on Risks and Testing.—(1) The Administrator shall provide to the departments or agencies conducting studies under subsection (a) the following:

"(A) Guidance and data detailing the risks associated with high radon levels.

"(B) Technical guidance and related information concerning testing for radon within Federal buildings and water supplies.

"(C) Technical guidance and related information concerning methods for reducing radon levels.

"(2) In addition to the assistance required by paragraph (1), the Administrator is authorized to make available, on a cost reimbursable basis, to the departments or agencies conducting studies under subsection (a) devices suitable for use by such departments or agencies in conducting tests for radon within Federal buildings. For the purpose of assisting such departments or agencies in evaluating any such devices for the presence of radon levels, the Administrator is authorized to recommend laboratories or to make available to such departments or agencies, on a cost reimbursable basis, the use of laboratories of the Environmental Protection Agency.

"(e) Study Deadline.—Not later than June 1, 1990, the head of each Federal department or agency conducting a study under subsection (a) shall complete the study and provide the study to the Administrator.

"(f) Report to Congress.—Not later than October 1, 1990, the Administrator shall submit a report to the Congress describing the results of the studies conducted pursuant to subsection (a).

"SEC. 310. REGULATIONS.

"The Administrator is authorized to issue such regulations as may be necessary to carry out the provisions of this title.

"SEC. 311. ADDITIONAL AUTHORIZATIONS.

"Amounts authorized to be appropriated in this title for purposes of carrying out the provisions of this title are in addition to amounts authorized to be appropriated under other provisions of law for radon-related activities.".

(b) Technical Amendments.—The Toxic Substances Control Act (15 U.S.C. 2601 and following) is amended by adding at the end of the table of contents in section 1 the following:

"TITLE III—INDOOR RADON ABATEMENT

"Sec. 301. National goal.
"Sec. 302. Definitions.
"Sec. 303. EPA Citizen's guide.
"Sec. 304. Model construction standards and techniques.
"Sec. 305. Technical assistance to States for radon programs.
"Sec. 306. Grant assistance to States for radon programs.
"Sec. 307. Radon in schools.
"Sec. 308. Regional radon training centers.
"Sec. 309. Study of radon in Federal buildings.
"Sec. 310. Regulations.
"Sec. 311. Additional authorizations.".

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. Thomas A. Luken] will be recognized for 20 minutes and the gentleman from Kansas [Mr. Whittaker] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. Thomas A. Luken].

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring before the House today H.R. 2837, "the Radon Pollution Control Act of 1988. This important piece of environmental legislation that I introduced last year will significantly further the national effort to reduce the risks to human health posed by radon, the naturally occurring, cancer-causing gas found in homes and schools throughout the United States.

At a time when many of the environmental hazards we confront are manmade, it is somewhat ironic that much of the Nation's radon pollution is a natural phenomenon produced by soil and rock. Nevertheless, this colorless and odorless gas poses a serious health threat when it enters homes, schools, and offices through cracks, pipe seals, or other avenues, and attaches itself to the lungs of the thousands of Americans exposed to it.

The U.S. Environmental Protection Agency [EPA] has cited radon gas as the No. 1 environmental cancer risk faced by the American people. EPA estimates that radon may cause as many as 20,000 lung cancer deaths annually. In a report released 2 weeks ago, EPA revealed that radon is a national problem and that one in three American homes may have dangerously high levels of radon in them.

The Surgeon General of the United States has recommended that Americans take immediate action to measure radon levels in their homes. And with good reason. Researchers have identified homes in which radiation levels from radon are the equivalent of having a Three Mile Island accident occur in the neighborhood once a week, and whose water supply is contaminated to a level equal in effect to smoking seven packs of cigarettes a day.

While at least 20 States have acknowledged radon problems, few have the necessary technical capabilities or financial resources to respond effectively to the situations in their States. New Jersey, Pennsylvania, and a handful of other States which have very serious problems have responded with limited State programs. Radon detection is not costly, and many of the hazards encountered can be abated by solutions which are neither elaborate nor expensive.

H.R. 2837, as reported by the Committee on Energy and Commerce, establishes the framework necessary for EPA to provide the assistance that States need to abate radon pollution. Under this legislation, EPA will design and implement training programs to teach State and local officials proper radon detection, monitoring, and mitigation techniques; help the States establish or augment their own programs to deal with current radon pollution; establish a national clearinghouse on radon-related information; and certify radon measurement devices and mitigation technologies.

Pursuant to the bill EPA will also administer a $10 million grant program for fiscal years 1988 through 1990, which will provide assistance to the States in their efforts to build effective radon control programs. Under this latter provision, grants will be available for certain activities including radon surveys, development of educational materials, purchase of laboratory equipment and measurement devices. Federal assistance will be limited to 75 percent of the cost of the State program in the first year, 60 percent in the second year, and 50 percent in the third year, and no State will receive more than 10 percent of Federal funds available in any fiscal year.

Finally, while we have some data that indicate hazardous levels of radon contamination in schools, we do not now know how prevalent this problem is because the necessary research has not been undertaken. This legislation provides an additional $1.5 million to EPA to conduct a survey of school buildings in the country to determine the level of radon contamination in schools.

During committee consideration of H.R. 2837 conern was raised about EPA's selection of 4 picocuries per liter as an "action level" at which homeowners were advised to make repairs to reduce radon levels. These concerns were raised because there is no "safe" level of exposure to radon—each increment of exposure increases the risk of developing lung cancer. It was feared that EPA's use of the 4-picocuries-per-liter action level might give a false sense of security to a homeowner with that level of radon in his or her home that might easily be reduced.

The bill now sets as a long-term national goal the reduction of radon levels in buildings to the level of the outside air. In addition, instead of suggesting an action level of 4 picocuries per liter in its publications, EPA is directed to provide information to the public about how much risk is associated with various levels of radon in the home and about available methods to measure and reduce radon levels. The homeowner can, therefore, make an informed decision with respect to the benefits and affordability in the reduction of radon in his or her particular situation and will not be misled to believe that any one action level provides a safe level of exposure to radon.

H.R. 2837 also directs EPA to develop model construction standards and techniques for use in new building construction that will lead to the reduction of radon levels. These will be done in conjunction with the organizations that today develop national building codes.

Finally, H.R. 2837 authorizes EPA to make grants to universities or other institutions of higher learning for the purpose of establishing and operating regional radon training centers. These centers are intended to develop information and provide education on the health risks posed by radon and methods of radon measurement and mitigation.

Mr. Speaker, the public health threats from radon contamination are substantial and real. The bill before the House today, H.R. 2837, puts the Nation on the right track for dealing with this environmental problem. I wholeheartedly urge adoption of the bill.

□ 1545

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am very pleased that today we are considering H.R. 2837. This bill—which I jointly introduced with Mr. LUKEN—was developed after extensive bipartisan discussion among the members of the committee. H.R. 2837 addresses one of the most serious environmental health threats we know—exposure to indoor radon. In terms of lung cancer risks, it is second only to smoking.

H.R. 2837 is a prudent and timely response to the radon problem. The bill directs EPA to undertake a full range of technical activities that will increase the level of our knowledge regarding radon, and the availability of that knowledge to State officials and the general public.

There are several aspects of this legislation which were added during markup before the Subcommittee on Transportation, Tourism, and Hazardous Materials—and with which I am particularly pleased. For example, without creating a new entitlement program, the legislation attempts to help those with limited financial resources by requiring EPA and the States to target distribution of radon measurement devices and radon mitigation demonstration programs on the homes of low-income persons. This will help ensure that even those without the resources to pay for radon mitigation will benefit from the assistance program.

The legislation also provides new authority to EPA to establish user fees for its proficiency rating program. The establishment of user fees will protect the proficiency rating program against future budget cutbacks as well as ensure the maximum quality controls.

In comparison to the funds that we authorize in other environmental areas, the resources this bill provides for radon protection might prove to be one of the most cost-effective investments we will make in the area of public health protection. The fact that we cannot identify any polluter or wrongdoer that is the source of radon does not lessen the health risk or importance of the problem, and it should not lessen our resolve to take appropriate action.

In closing, I want to thank my colleague, Mr. LUKEN, for his efforts in developing this bill in our subcommittee. I also want to commend Mr. MADIGAN and Mr. WAXMAN for the improvements they made to the bill in their subcommittee. I strongly encourage my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. WAXMAN], the chairman of the Subcommittee on Health and the Environment, which had joint referral of this and also reported out this bill.

Mr. WAXMAN. Mr. Speaker, I want to congratulate the gentleman from Ohio [Mr. THOMAS A. LUKEN] and all of the members of the committee and all the committees involved in producing this legislation. It is very worthwhile.

Mr. Speaker, I am pleased to rise in support of H.R. 2837, which amends the Toxic Substances Control Act, to assist States in responding to the threat to human health posed by exposure to indoor radon gas.

This legislation is vitally needed as a first step toward reducing indoor radon gas levels, the Nation's second greatest lung cancer threat after cigarette smoking. This cancer threat is especially dangerous because, unlike many other cancer threats, radon is naturally occurring, odorless, and invisible. The prognosis for lung cancer victims of radon exposure is poor—75 percent die within 1 year and 93 percent die within 5 years. Exposure to radon is estimated to cause between 5,000 and 20,000 lung cancer deaths each year in the United States.

The Center for Disease Control estimates that costs range from $250 million up to $1 billion for care and treatment of lung cancer caused by radon gas exposure.

Surveys of indoor radon have indicated that the health threat is much greater than many health scientists first believed. Last year EPA released the results of the largest survey of indoor radon done to date. The EPA survey indicated that 21 percent of the 11,600 homes tested in 10 States had dangerously elevated levels of radon. According to the Agency, these findings indicate that radon may be a problem in virtually every State in the country.

The bill before us today offers vitally important technical and financial assistance to help States and homeowners deal with this very dangerous problem. Under the bill, EPA would determine radon levels in our Nation's schools, provide technical guidance regarding risks associated with exposure to various radon levels, and work to develop model construction standards to assure that new homes are as free of radon as possible.

Two important aspects of the legislation before us today concern very serious deficiences in EPA's current radon program. The Environmental Protection Agency has set 4 picocuries per liter as the action level for radon indoors. EPA's citizen guide currently advises that "follow-up measurements are probably not required" if screening measurements are less than 4 picocuries per liter. In addition, EPA states that "exposures in this range are considered average or slightly above average for residential structures." These EPA statements have misled many in the public to believe that there is little or no risk from radon levels below 4 picocuries per liter.

According to other EPA information, however, exposure to 4 picocuries per liter is equivalent to smoking half a pack of cigarettes a day or receiving 300 chest x rays per year. A recent National Academy of Sciences report confirms that 4 picocuries per liter poses a very high lung cancer risk. This radon level translates into a probability of getting lung cancer of somewhere between 1 in 100 and 1 in 20. Given that at least 8 million homes housing 20 million people are estimated to exceed 4 picocuries per liter, EPA guidance to bring radon levels down to 4 picocuries per liter tragically translates into more than 4,000 people in these homes dying of lung cancer. Many thousands of additional lung cancer cases will occur where homeowners have been advised by EPA not to take corrective action at or below 4 picocuries per liter.

The bill before us requires that EPA cease advising the public through press releases, guidance documents, or any other information that 4 picocuries per liter is the "action level" or "guidance level" for corrective action so that the public will not continue to misinterpret levels below 4 picocuries per liter as safe. Instead, the Agency must set a series of action levels including action levels below 4 picocuries per liter so that homeowners and other members of the public can take appropriate action.

In addition, the bill establishes outdoor background radon levels as a national long-term goal for indoor radon levels. Outdoor background levels are approximately 0.2 picocuries per liter or a factor of 20 safer than EPA's current 4-picocuries-per-liter standard.

The other major deficiency in EPA's radon program which is addressed by this bill is EPA's current practice of advising the public to test for radon with a short 3- to 7-day test. Radon levels can fluctuate greatly on a daily basis in a home or building, sometimes by as much as a factor of 5. Again, the homeowners are being misled to believe that radon levels in their homes are safe if during this short test radon levels are below 4 picocuries per liter. Based upon the testing information submitted to the subcommittee, it is clear that "instantaneous" or short-term tests do not give a reliable, accurate, and valid indication of radon exposure in the home. I have included in the Congressional Record statements from a variety of experts including EPA experts that show the foolhardiness of continuing to advise the public to rely upon a short test for determining radon levels. For these reasons the bill requires that EPA take a hard look at the advantages as well as the disadvantages from only accepting as credible the use of long-term monitoring devices.

I am pleased to urge my colleagues to pass the bill before them today. I strongly believe that this is only our first step in combating radon. I know that we will have to return to this important public health problem soon to put into place a series of incentives to lower indoor radon levels across the country. But this is a good first step. It gives Federal and State agencies solid initial instructions on how to proceed to lower the risk of lung cancer from indoor radon exposure. It also should force EPA to provide the public with truthful information about the dangers from radon. The bill establishes a sound foundation for moving forward.

The Accuracy of Radon Detection Technology

ENTITIES SELECTING ONE TECHNOLOGY OVER ANOTHER

Preferences for radon testing devices

Alpha Track Detectors: U.S. Air Force, U.S. General Services Administration, U.S. Bonneville Power Administration, Utah's Bureau of Radiation Control.

Charcoal Canisters: None.

Alpha Track Detectors: Great Britain, France, West Germany, Italy, Sweden, Denmark, Belgium, Norway, Japan.

Charcoal Canisters: None.

Alpha Track Detectors: Environmental Defense Fund, American Lung Association (ALA), ALA of New Jersey, ALA of Central New Jersey, ALA of Philadelphia and Montgomery Counties, ALA of Delaware and Chester Counties, Pa., ALA of South-Central Pennsylvania, ALA of North Virginia, ALA of Tennessee, ALA of Ohio, ALA of Southeast Ohio (Athens), ALA of North Central Ohio, ALA of North Carolina, Tar River Region, ALA of North Central Illinois, ALA of Oklahoma, ALA of Green County, Okla. (Tulsa), ALA of Hennepin County, Minn. (Minneapolis), ALA of Ramsey County, Minn. (St. Paul), ALA of Montana, ALA of New Mexico.

Charcoal Canisters: None.

Alpha Track Detectors: U.S. Department of Energy, U.S. Environmental Protection Agency, U.S. Department of Housing and Urban Development, U.S. Army, U.S. General Accounting Office, National Council on Radiation Protection and Measurements, Consumer Reports, Science Magazine, George Mason University.

Charcoal Canisters: None.

EXPERT STATEMENTS ON THE ACCURACY OF RADON TESTING DEVICES—CHARCOAL AND ALPHA TRACK

U.S. Environmental Protection Agency (EPA)

"In most cases, the screening measurement (charcoal canister) is not a reliable measure of the average radon level to which you and your family are exposed."—Excerpt from EPA pamphlet, "A Citizen's Guide to Randon," issued August 1986.

"The passive nature of the activated charcoal allows continual adsorption and desorption of radon, and the adsorbed randon undergoes radioactive decay during the exposure period" . . . The carcoal canister "technique does not uniformly integrate radon concentrations during the exposure period" . . . Conclusions from investigations of charcoal canisters exposed to various conditions "led to a change in exposure time from 96 hours to 48 hours in the U.S. EPA charcoal canister measurement program, and an improved understanding of the limitations and capabilities of the charcoal adsorption technique." . . . "A 48-hour exposure to radon concentrations varying by a ratio of 10:1 underestimates the known result by 54 percent. This is in contrast to a 96-hour exposure to a similar concentration ratio which underestimates the results by 75 percent."—Exerpts from a draft EPA study, "The Influence of Changing Exposure Conditions on Measurement of Radon Concentrations with the Charcoal Adsorption Technique," presented at the Health Physics Society meeting in June 1987.

U.S. Department of Housing and Urban Development (HUD)

"Since indoor radon concentration levels can vary from day to day, depending upon atmospheric conditions and other variables, the readout over a period of time can read like a calculus sine curve with peaks and valleys. In view of this, a test using a short-term measuring device can be drastically misleading . . . The methodology employed in a short-range test develops a worse-case scenario, and cannot address averaging because of the limited time period involved. We at HUD consider averaging to be of paramount importance in determining a realistic measurement of indoor radon concentration levels. This of course requires relatively long-term testing . . . The resulting average will give a much more realistic readout, which can conceivably be instrumental in saving the homeowner unnecessary remedial work."—Excerpts from presentation by James L Christopulos, senior environmental engineer at HUD, to National Institute of Building Sciences in April 1985.

U.S. Department of Energy (DOE)

"Inexpensive monitors like charcoal canisters are available to monitor radon in the home for a one-week period. To get a more accurate ideal of your average exposure to radon, you need to monitor your house for longer periods. This is because radon concentrations vary widely from day-to-day and season-to-season. A simple device called a Track Etch detector is available for this purpose."—Excerpt from "Indoor Air Quality Environmental Information Handbook: Radon," published by DOE in 1986.

"Because of the temporal and spatial variations of indoor radon concentration levels, measurements for screening purposes should be averaged over as long a period of time as possible to eliminate short-term perturbation."—Statement by Andreas C. George in an article entitled "Instruments and Methods for Measuring Indoor Radon and Radon Progeny Concentrations," Environmental Measurements Laboratory, DOE New York.

U.S. Air Force

"The Air Force will be using the Track Etch monitors for its radon detection program, which will begin in December 1987 at 140 U.S. and overseas installations, because the long-term monitors provide a better measurement, an annual average of the exposure level."—Statement by Major Ed Maher, chief of radiation at the dosimetry branch at Brooks Air Force Base in San Antonio, Texas, in 7/22/87 conversion.

U.S. General Services Administration (GSA)

"Alpha track detectors "are better . . . You get a more realistic number that would justify long-term mitigation costs. The extra expense of the alpha track detector is justified. You get more reliable results. GSA will be using Track Etch detectors for better accuracy in its initial screening of 200 of about 2,500 GSA federal buildings.—Statement of Jeff Bauer, environmental engineer at GSA, in 8/4/87 conversation.

U.S. General Accounting Office (GAO)

"In general, the longer the test period, the more accurately the results will reflect a home's annual exposure to radon,"—Excerpt from GAO report entitled "Hazards of Indoor Radon Could Pose a National Health Problem." dated June 1986.

Congressional Research Service (CRS)

"The longer the test, the more accurate the results."—Excerpt from CRS report entitled, "Radon: Congressional and Federal Concerns," dated March 2, 1987.

National Council on Radiation Protection and Measurements (NCRPM)

"Long-term measurements for each locality and type of home are required before an assessment can be made of these variations."—Excerpt from NCRPM Report No. 77, dated March 15, 1984.

State of Utah

"'We use only long-term sampling and only when pressed will we use short-term testing. We can make better decisions on what needs to be done with long-term sampling. Grab sampling cannot be managed to produce long-term results."—Statement by Larry Anderson, director of Utah's Bureau of Radiation Control, in a July 1987 conversation.

Consumer Reports

"Varying radon levels in our test house show a problem with short-term sampling. While the readings average about 65 pCi/L over our test span (about 15 weeks), they were often atypically high or low, depending on the week of measurement."—Statement of Consumer's Union published in Consumer Reports, dated July 1987.

Science Magazine

"For the purpose of exposure (and risk) assessment, an integrated year-long measurement is ideal (and practical with etched-track monitors measuring 222 Rn concentration)."—Excerpt from article entitled "Distribution of Airborne Radon-222 Concentrations in U.S. Homes," published in Science Magazine, Vol. 234, dated November 21, 1986.

Environmental Defense Fund (EDF)

"Alpha track detectors provide the most reliable and useful data . . . Radon concentrations in a home can be as much as five times higher or lower from day to day because of changes that affect the rate of radon release from the earth . . . and changes in the ventilation of a house . . . Since these variables can contribute to large changes in radon concentrations from day to day, 'instantaneous' measurements should not be relied on as an indication of true average exposure in a house. Even measurements taken over short periods such as several hours or a few days can be misleading. If taken at the wrong time, a short-term measurement could make it appear that your exposure is dangerously high, or even worse, could make your house seem safe when your average exposure is actually hazardous. For this reason, EDF recommends that longer-term 'track etch' monitoring devices (such as the alpha track detectors noted above) should be used to obtain a measurement that more reliably reflects the true average radon exposure in your home . . . a 60- to 90-day sample taken with a track etch device during the heating season will provide the most useful information."—Excerpts from "The Citizens' Guide" published by Environmental Defense Fund on August 18, 1987.

American Lung Association

"We're particularly interested in the health effects (of radon) and we think the three-month test reflects better the average exposure levels in a home than the four-day charcoal canister test. Since October 1986, the association has been selling alpha track detectors at cost to anyone interested in purchasing them, but the low $20 cost was priced to reach low- and moderate-income people."—Statement by Linda Stansfield, environmental affairs consultant for the American Lung Association of New Jersey, in an 8/27/87 conversation.

"Alpha track detectors are the preferred passive sampling method" . . . We arranged an intitial agreement in January 1987 to make alpha track detectors available to all interested lung associations."—Statement by Ron White, manager of air conservation at American Lung Association headquarters, in an 8/27/87 conversation.

Other Radon Experts

"An actual home had radon levels such that one four-day average was twice as high as a second four-day average taken two weeks later."—Data collected by Authur Scott and Associates of Mississauga, Ontario.

" A homeowner should not rely on results of a short-term test, which could lead to unnecessary remedial action, or instill a false sense of security."—Statement by Douglas Mose, geology chairman of George Mason University, in an article by Joan E. Miller in the Mason Gazette, dated September 5, 1986.

"Finland, Sweden, Denmark, Norway, Great Britain, Belgium, France, Germany, and Italy have each developed their own alpha tracks for their government testing programs."—Dr. Bernard Cohen, professor or physics and radiation health at the University of Pittsburgh, in an 8/20/87 conversation.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I rise in support of H.R. 2837, to address the public health problem caused by radon in our homes, in our schools and in child care facilities. As a member of the Subcommittee on Transportation, Tourism and Hazardous Materials, I am proud to have worked with my colleagues in crafting H.R. 2837 and urge my colleagues to join with me in supporting this bill.

Recently, the Surgeon General issued a public health advisory on radon and urged that homes be tested as soon as possible and that steps be taken to reduce radon levels. The Environmental Protection Agency estimates that more than 1 house in 3 has high levels of cancer-causing radon gas. In addition, up to 20,000 Americans die each year from lung cancer caused by exposure to radon.

This bill will provide up to $10 million in assistance to the States to begin State radon programs and directs a national survey of radon levels in our Nation's schools.

I would like to underscore three components of this bill that were added at my request. First, the bill addresses, in part, the unsafe radon level that was set by the EPA as an "action level." Last year, I introduced H.R. 3110 to direct the EPA to set a national radon standard and base that standard on health, rather than cost. Despite the concern expressed about the effects of radon, EPA has not set a national standard for exposure to radon. Instead, EPA only has a guideline "action level," set at 4 picocuries per liter, that does not provide for an adequate margin of safety. States, homeowners, realtors, builders, and engineers are using this level as an informal standard, believing it to be safe.

Why is the magic No. 4 so dangerous? Why are we being misled to think that it is not?

The unfortunate reality is that, even by EPA's own figures, the EPA action level poses such a high cancer risk that 1 person out of every 100 will fall victim to lung cancer as a result of radon exposure. Other studies have put the risk as high as 1 in 30 or 1 in 65.

EPA's "safe" action level is equivalent to receiving 200 chest X-rays per year. EPA's own testimony at various committee hearings admits that there is no safe level of radon. EPA's allegedly safe radon guideline provides almost 5 times the average risk to a nonsmoker of getting lung cancer. Let's keep in mind that this risk is in addition to any cancer risks we face from other sources such as smoking.

H.R. 2837 includes a provision, that addresses, in part, my concerns. The provision sets as a national policy the goal of reducing indoor radon levels to outdoor background levels of 0.2 picocuries per liter. The provision has the effect of striking down the unsafe EPA guideline of 4 picocuries. Our intent is that EPA set a level that is truly safe rather than use the 4 action level and give people a false sense of security. Although it would be preferable for the EPA to set a health-based standard. I hope that this language will be sufficient to move the agency toward a more responsible policy.

Second, H.R. 2837 includes my amendment guaranteeing that child care facilities will not be overlooked. Millions of children spend most of their days in child care facilities that may have high radon levels. It is important that our efforts to search out and reduce radon also extend to child care facilities and H.R. 2837 directs the EPA to use some of the technical assistance funds to develop and demonstrate methods for measuring and reducing radon in child care facilities.

Last, H.R. 2837 also includes my amendment to spur increased efforts to develop better and cheaper technology to detect and reduce radon. The amendment authorizes $1 million in funding for regional training centers at universities. The training centers would be responsible for not only researching and demonstrating technology but also providing information and training to the public and to government officials.

I commend Mr. LUKEN, Mr. WHITTAKER, Mr. WAXMAN, and Mr. MADIGAN for their efforts and urge my colleagues to support this effort.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. SIKORSKI].

Mr. SIKORSKI. Mr. Speaker,. I thank the chairman of my subcommittee, the chairman of the Subcommittee on Health and the Environment, and the gentleman from Ohio [Mr. THOMAS A. LUKEN] for the good job, the gentleman from Kansas [Mr. WHITTAKER], the gentleman from New Jersey [Mr. ROE], the gentleman from New Jersey [Mr. FLORIO], and all of the others for the good job they are doing on this legislation.

Mr. Speaker, I am happy to join with them. It is important to Minnesota. In the most recent test results, Minnesota has, together with the Reading Prong in New Jersey and Pennsylvania, the not-too satisfactory situation of having 40 percent of the residences that were tested having dangerous or unsafe levels of radon. We took forward to using this legislation as a first step in a nationwide response.

Mr. THOMAS A LUKEN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I thank the gentleman for yielding time to me.

I would like to engage in a colloquy with the gentleman from Ohio [Mr. THOMAS A. LUKEN], the distinguished subcommittee chairman of the Committee on Energy and Commerce.

Mr. THOMAS A LUKEN. Mr. Speaker, with the gentleman yield?

Mr. ROE. I am happy to yield to the gentleman from Ohio.

Mr. THOMAS A LUKEN. Mr. Speaker, I thank the gentleman for yielding.

Mr. ROE. Mr. Speaker, section 304 of the bill requires the Administrator to establish model construction standards and techniques. It has been the concern of the Committee on Science, Space and Technology that such an effort would require the use of resources previously allocated for other Science and Technology priorities of the Center for Building Technology at the National Institute of Standards and Technology, an agency under the jurisdiction of this committee.

Is it the gentleman's understanding that if the Environmental Protection Agency uses the center for the establishment of such standards that the work would be done on a reimbursable basis?

Mr. THOMAS A. LUKEN. The gentleman is correct.

The Committee on Energy and Commerce agrees that the Center for Building Technology, which is a part of the National Institute of Standards and Technology and is under the jurisdiction of the Committee on Science, Space and Technology, should be reimbursed if it performs work to assist the EPA in establishing the radon building standards.

The intent of the provision, however, was to insure that the EPA did not ignore the valuable contribution that industry organizations, such as the National Association of Homebuilders, could make in carrying out the responsibilities of section 304. If appropriate, EPA can also consult with the National Institute of Standards and Technology.

Mr. Speaker, I yield 3 additional minutes to the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I rise in strong support of H.R. 2837, which is designed to assist States such as the State of New Jersey and any other States, of course, in responding to the threat to human health posed by exposure to radon.

May I at the outset pay my highest regard and commendation to the gentleman from Ohio [Mr. THOMAS A. LUKEN], our chairman of the subcommittee, the gentleman from Kansas [Mr. WHITTAKER], and certainly the gentleman from California [Mr. WAXMAN], and the gentleman from New Jersey [Mr. FLORIO], and all the others who have worked so diligently on this important piece of legislation.

Mr. Speaker, we know that radon is the second-leading cause of lung cancer after cigarette smoking, as mentioned by the chairman, causing some 5,000 to 20,000 cancer deaths every year.

In 1984, radon came to the national attention after the discovery, as, again, was mentioned, of a Pennsylvania home containing radon gas levels thousands of times higher than normal. This discovery led to efforts to survey rock formations which release radon gas, particularly in Pennsylvania and New Jersey.

Since 1984, we have learned from EPA's multiyear research that personal exposure to pollutants in the home is far more hazardous than exposure from living in highly industrialized areas.

Mr. Speaker, in certain parts of the United States such as the Reading Prong, again as mentioned earlier, in Pennsylvania, New York, and New Jersey, soil conditions are such that the area is at high risk of elevated radon gas levels, exceeding the EPA action level of 4 picocuries per liter of air.

A recent EPA report estimates that upwards of one in every eight American homes is at risk of higher radon than this level. New Jersey officials, who presently administer one of the best programs in the Nation, reported as recently as 2 weeks ago that only 10 to 15 percent of New Jersey residents living atop the Reading Prong have had their homes tested. In 1987, a report of the top EPA scientists concluded that indoor air pollution was likely to be as dangerous as other environmental problems which EPA regulated, including toxic waste sites. The EPA admitted that the amount of money it spends on indoor air pollution is only a tiny fraction of the amount of money it spends on toxic waste.

Special monitors are required to detect radon in buildings, as we know, and small, low-cost monitors can be placed in buildings for weeks or months at a time, and have the measurements analyzed by qualified laboratories.

Several strategies can be applied to rid dwellings and buildings of radon gas. The strategies vary depending upon the type of construction, soil conditions beneath the building, and EPA has recommended several guidelines to homeowners for limiting radon and is developing a national program to convince the public that radon is a serious health hazard.

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It is expected the issue of radon control will be a major environmental health issue for many years to come. The National Institute of Standards and Technology runs the Center of Building Technology which operates a research program in building construction, design, performance, and technology. The tradeoff between a well insulated building and one that traps radon indoors is a design problem well suited for the expertise of the Institute. I encourage the EPA to work with the NIST to initiate research into new model construction standards and techniques which involve this important agency and its valuable resources.

The time has come to recognize indoor air pollution as a serious public threat that it truly is. It is an invisible and insidious health epidemic.

Let me conclude that we in New Jersey had a very serious problem in the city of Newark and Glen Ridge, and it has already cost the State of New Jersey somewhere in the order and magnitude of $8 million to do the corrective measures that had to be taken in those communities.

I commend my colleagues, the gentleman from Ohio [Mr. LUKEN], the gentleman from Kansas [Mr. WHITTAKER], the gentleman from California [Mr. WAXMAN], the gentleman from New Jersey [Mr. FLORIO], and thank them for bringing an extremely important bill, one of the most important environmental bills before us and thank them for the progress and work they have done.

Mr. VENTO. Mr. Speaker, I rise in strong support of H.R. 2837 and urge its passage today.

Radon is a silent, invisible killer. Scientists estimate that radon causes up to 20,000 lung cancer deaths each year, the second leading cause after smoking. Concerns over the health effects of radon recently led the Public Health Service to issue a national health advisory on the dangers of radon.

On September 12, the Environmental Protection Agency released some shocking news to the residents of my State. On this day the results of the 1988 State/EPA Indoor Radon Survey were released. The survey found that more than 45 percent of the homes tested in Minnesota had radon levels over the Agency's guidance level. Levels in Minnesota and North Dakota were comparable in severity to the Reading Prong area of Pennsylvania, where the radon problem first came to national attention. While this news should not be a cause for panic, it is a demonstration of the intensity and national scope of the problem.

In most areas of the country, radon is a virtually unkown public health hazard. Only now is the widespread nature of the radon problem being recognized. This bill, in addition to increasing public awareness of the problem, will help States develop the resources to detect and reduce the threat of radon. Under this bill, grants would be given to States to establish information clearinghouses, training programs for Government officials, and demonstrations of radon mitigation methods. It would establish a national data base on location and amounts of radon. In addition to State grants, EPA would provide technical assistance including radon surveys, public information programs, and mitigation techniques. As a cosponsor of H.R. 2837, I am pleased to see this bill committing Federal resources to the radon problem reach the floor of the House today. I urge my colleagues to join me in supporting this needed legislation.

Mr. CONTE. Mr. Speaker, I rise in strong support of H.R. 2837, the Radon Pollution Control Act. This legislation is both timely and important, because it puts the 100th Congress out front in attempting to respond to the health threats posed by this naturally occuring environmental hazard.

Our action today follows closely on the heels of the release last month by the Environmental Protection Agency of the latest results from its nationwide survey of homes affected by radon.

The results of last month's survey findings in the States of Arizona, Indiana, Minnesota, Missouri, North Dakota, Pennsylvania, and my home State of Massachusetts led EPA to estimate that more than 3 million American homes have radon levels above the EPA guidance level, with more than 200,000 of them exceeding the current health-protection standards for uranium miners.

Along with the release of the survey results, the Administrator of the Environmental Protection Agency and the Surgeon General of the Public Health Service issued a national advisory urging most Americans to test their homes for radon. In issuing the health advisory, the Surgeon General pointed to the fact that radon is the second leading contributor to lung cancer, causing 20,000 lung cancer deaths each year. Mr. Speaker, we may be looking at only the tip of the radon iceberg as a health issue.

What do we know about radon? We know that it is a colorless, invisible radioactive gas produced by the decay of uranium in rock and soil. The gas forces its way through the soil and escapes into the air or into buildings. When inhaled, even at low levels of contamination, radon does substantial damage to lung tissue, leading to lung cancer. For example, according to EPA, even the low-level exposure anticipated in the EPA guidance level equates to smoking a half-pack of cigarettes per day or having 300 chest x rays per year. This relationship led the Assistant Surgeon General to describe radon-caused lung cancer as "one of today's most serious public health issues".

H.R. 2837 will go a long way to helping the American people understand and focus on radon as a health issue, by requiring EPA to keep the public informed about radon and to publish standards for new construction to measure and reduce radon levels in buildings. The bill authorizes a number of approaches to dealing with radon, including a program of technical assistance to States to create their own radon programs; a program of grants to colleges and universities for regional radon training centers; a study of radon in the schools to determine the extent of a suspected health threat to children who are particularly sensitive to radon; and a matching State grant program—with a declining Federal share—to assess the extent of the problem and possible solutions.

Mr. Speaker, I commend my colleagues on the Energy and Commerce Committee for bringing this legislation to the floor, and ask that I be added as a cosponsor.

Mr. MADIGAN. Mr. Speaker, today we are considering a bill that addresses a serious and widespread public health problem—indoor radon. EPA estimates that this naturally occurring gas causes up to 20,000 lung cancer deaths each year in the United States. So, for our nonsmoking population, radon is generally believed to be the largest source of lung cancer risk. H.R. 2837 will accelerate our understanding of the radon problem and promote the development and implementation of effective mitigation methods. I want to commend my colleagues—Representatives WHITTAKER and LUKEN—for working together to develop this bill in their Subcommittee on Transportation, Tourism, and Hazardous Materials.

When the legislation was considered by the Subcommittee on Health and the Environment, I reviewed the radon problem and EPA's response thus far, and concluded that a few additional provisions needed to be added to H.R. 2837. Accordingly, I developed an amendment with Mr. WAXMAN which was adopted by the subcommittee. This amendment improved the bill in two important respects:

First, it establishes a long-term goal for indoor radon levels and directs EPA to update its current citizen's guide for radon in accordance with the new goal.

Second, it directed EPA to develop model construction standards and techniques for new buildings.

The long-term goal and the updated citizen guide should deemphasize the attention currently given by EPA and the public to EPA's current single action level—which many members of the public have incorrectly interpreted as a safety level. Instead, EPA's updated citizen's guide will contain a series of action levels indicating the health risk associated with different levels of radon exposure. The updated guide must also contain information on the cost and technical feasibility of reducing radon concentrations to successively lower action levels within existing and new buildings.

The reason for directing EPA to develop model building techniques is that the Agency has found that significant radon reduction can be obtained in new homes for a few hundred dollars if certain building techniques are used. I want to ensure that EPA is working to improve these techniques and have them used by the building industry.

Mr. Speaker, radon poses a serious and widespread health risk. H.R. 2837 will help educate the public about the risk and how it can be reduced. I urge my colleagues to support this important legislation.

Mr. LENT. Mr. Speaker, I have been a strong supporter of the need for new legislation addressing indoor radon. So, I am very pleased to see that today we are considering H.R. 2837. Rarely do we see health risks as high as those EPA projects for indoor radon exposure. The last estimate I saw projected up to 20,000 radon-induced lung cancer deaths every year. Radon clearly represents a serious and widespread environmental health threat—and it deserves our immediate attention.

I encourage my colleagues to support H.R. 2837, which is the result of extensive bipartisan discussions. I want to commend the leadership of the two subcommittees that reported out this bill—Mr. WAXMAN and Mr. LUKEN, and my Republican colleagues Mr. MADIGAN and Mr. WHITTEN. I also want to commend the chairman for his efforts in developing the bill.

Mr. BRENNAN. Mr. Speaker, as a cosponsor H.R. 2837, I rise today in support of the Radon Pollution Control Act.

The need for this measure is clear. In a recent announcement, the Environmental Protection Agency urged the testing of most homes in the country for radon. The EPA estimates that radon is responsible for as many as 20,000 deaths per year, ranking it second only to smoking as a cause of lung cancer. In my home State of Maine, data collected by State and Federal researchers indicate that as many as 25 to 30 percent of Maine homes may exceed the Federal standard.

H.R. 2837 initiates a program to assist States in providing our citizens the protection they need from this deadly gas. The bill provides grants and technical assistance to States for radon control. Thirteen million dollars per year is authorized for 3 years for this purpose. H.R. 2837 also establishes a national radon information clearinghouse, sets up three regional radon training centers, and directs the EPA to conduct a study of radon in schools.

Although the serious health risk of radon remains unknown to many Americans, we must act on the growing evidence provided by the EPA and the scientific community. H.R. 2837 can help raise public awareness of radon and initiate vigorous State programs to make radon testing available in American homes.

I urge my colleagues to pass this badly needed legislation without delay. Similar legislation has been passed in the Senate, and I am hopeful that we can look forward to the enactment of H.R. 2837 into law this year.

Mr. WHITTAKER. Mr. Speaker, I yield back the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I thank the gentleman from New Jersey for helping to bring the bill to the floor.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from Ohio [Mr. THOMAS A. LUKEN] that the House suspend the rules and pass the bill, H.R. 2837, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 2837, RADON POLLUTION CONTROL ACT OF 1988

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 2837, the Clerk be authorized to correct section numbers, punctuation, and cross references, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in passing the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

GENERAL LEAVE

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in whch to revise and extend their remarks, and include extraneous matter, on H.R. 2837, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be discharged from further consideration of the Senate bill (S. 744) to authorize the Environmental Protection Agency to assist States in development of radon programs, to conduct a study to determine the extent to which radon in the Nation's schools poses a threat to children and employees in such schools, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 744

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Radon Program Development Act of 1987".

FINDINGS

SEC. 2. The Congress finds that—

(1) exposure to radon poses a serious threat to public health in certain areas of the country and is estimated to cause between 5,000 and 20,000 lung cancer deaths each year;

(2) a General Accounting Office report notes that 30 percent of about 40,000 indoor radon measurements were above the level at which the Environmental Protection Agency recommends that action be taken so as to reduce such level, thus indicating that indoor radon contamination is a national problem;

(3) Federal response to the health threat posed by radon is essential and should continue at existing or expanded levels;

(4) the Federal radon program should include authority to conduct training seminars and otherwise disseminate information to State and local governments and private firms and individuals on radon contamination;

(5) it is essential that in encouraging the private sector to increase its role in radon testing and remediation that there be safeguards for citizens to ensure the reliability and proficiency of testing and remediation firms;

(6) State governments should play a role in responding to the health threat posed by radon;

(7) Federal assistance to States will make possible a coordinated Federal-State effort to respond to the health threats posed by radon;

(8) according to the Environmental Protection Agency, scientific studies of other types of radiation exposure indicate that children may be more sensitive and, consequently could be more at risk than adults from exposure to radon; and

(9) assessment of the extent of exposure of children to radon in schools will facilitate appropriate response to such exposure.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "radon" means the radioactive gaseous element and its short lived decay products produced by the disintegration of the element radium occurring in air, water, soil, or other media;

(3) "State" means the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, and the Trust Territories;

(4) "local educational agency" means—

(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381);

(B) the owner of any non-profit elementary or secondary school building; and

(C) the governing authority of any school operated pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces;

(5) "non-profit elementary or secondary school" means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965) owned and operated by one or more

nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(6) "school building" means—

(A) structures suitable for use as classrooms, including school facilities such as laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) other facilities used for the instruction of students or for the administration of educational or research programs; and

(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A), (B), and (C).

TECHNICAL ASSISTANCE TO STATES

SEC. 4. (a) The Administrator, or another Federal department or agency when designated by the Administrator, shall develop and implement activities designed to assist State radon programs. These activities may include, but are not limited to—

(1) establishment of a clearinghouse of radon related information including mitigation studies, public information materials, surveys of radon levels, and relevant information;

(2) development and publication of informational materials for State and local officials concerning design and implementation of programs responding to radon;

(3) publication of public information materials concerning radon health risks and methods of radon mitigation;

(4) demonstration of radon mitigation methods in various types of structures and in various geographic settings and publication of findings; and

(5) establishment of a national data base, with data organized by State, concerning the location and amounts of radon.

(b) Upon request of a State, the Administrator, or another Federal department or agency when designated by the Administrator, shall, to the extent resources and statutory limitations allow, provide technical assistance to such State in development or implementation of programs addressing radon. Such assistance may include, but shall not be limited to—

(1) design and implementation of surveys of the location and occurrence of radon within a State;

(2) design and implementation of public information and education programs;

(3) design and implementation of State or local programs to control radon in existing or new structures; and

(4) assessment of mitigation alternatives in unusual or unconventional structures.

TRAINING, TESTING, AND CONTROL PROFICIENCY

SEC. 5. (a) The Administrator shall—

(1) implement a voluntary program to provide to the public information on firms or individuals that can reliably measure radon. The program shall include, but is not limited to—

(A) measuring radon in a consistent fashion;

(B) recording and reporting measurements accurately to homeowners; and

(C) providing measurements consistent with Environmental Protection Agency protocols;

(2) design and implement training seminars for State and local officials and professional and private firms addressing radon monitoring, analysis, mitigation, health effects, public information, and radon program design and implementation;

(3) develop a voluntary program to provide the public with information on firms or individuals that can reliably construct and implement measures to reduce radon levels. A judgment of proficiency in the program should include, but is not limited to—

(A) the training individuals have received in radon reduction techniques;

(B) knowledge of protocols used to diagnose and reduce radon levels; and

(C) other relevant information to be determined by the Administrator.

(b) For purposes of subsection (a)—

(1) the Administrator is authorized to establish and collect fees and charges from private firms and individuals for information and services provided under this section to cover the costs of carrying out the provisions of this section;

(2) in implementing paragraph (1) of this subsection, the Administrator shall assure that—

(A) all of the fees and charges collected by the Administrator shall be deposited in a separate account within the Treasury of the United States. Such account shall be known as the "Radon Service Fee Account" (hereinafter referred to as the "Account");

(B) no fees or charges shall be applied to State or local governments;

(C) all funds in the account shall only be available to the extent provided in appropriation Acts, for carrying out the provisions of this section; and

(D) within 180 days of the enactment of this Act, such rules and regulations as may be necessary to carry out the provisions of this section are promulgated.

GRANT ASSISTANCE TO STATES

SEC. 6. (a) For each fiscal year upon application of the Governor of a State, the Administrator may make a grant, subject to such terms and conditions as the Administrator considers appropriate, under this section to such State for the purpose of assisting the State in the development and implementation of programs for the assessment and mitigation of radon.

(b) An application for a grant under this section in any fiscal year shall contain such information as the Administrator shall require, including—

(1) an assessment of the seriousness and extent of radon exposure in the State;

(2) an identification of the State agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in radon programs, and description of the roles and responsibilities of any municipal, district, or areawide entity involved in radon programs;

(3) a description of the activities and programs related to radon which the State proposes in such year, and, to the extent practicable, an outline of long-range goals and objectives, and estimated resource needs, for the subsequent 2-year period; and

(4) a budget specifying Federal and State funding of each element of activity of the grant application.

(c) Activities eligible for such Federal grant assistance are—

(1) survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, school buildings, high risk residential construction types);

(2) development of public information and educational materials concerning radon assessment, mitigation, and control programs;

(3) implementation of programs to control radon in existing and new structures;

(4) purchase by the State of radon measurement equipment or devices, including assistance to persons which the State determines to be low-income;

(5) purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(6) payment of costs of Environmental Protection Agency approved training programs related to radon for permanent State employees;

(7) payment of general overhead costs and program administration costs, consistent with applicable regulations of the Environmental Protection Agency;

(8) development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(9) payment of costs of demonstration of radon mitigation methods and technologies, as approved by the Administrator; and

(10) operation of a toll-free radon information "Hot Line".

(d) The Administrator shall support eligible activities proposed in State applications with the full amount of available funds. In the event that State applications for funds exceed the total funds available in a fiscal year, the Administrator shall give priority to activities or projects proposed by States based on the following criteria—

(1) the seriousness and extent of the radon contamination problem to be addressed;

(2) the potential for the activity or project to bring about reduction in radon levels;

(3) the potential for development of innovative radon assessment techniques, mitigation measures, or program management approaches which may be of use to other States; and

(4) the need to assist each State submitting an application in development and implementation of an appropriate radon program.

(e) The Federal share of the cost of radon program activities implemented with Federal assistance under this section shall not exceed 75 percent of the costs incurred by the State in implementing such program in the first year of a grant to such State; 60 percent in the second year; and 50 percent in the third year. Federal assistance shall be made on the condition that the non-Federal share is provided from non-Federal funds.

(f) Notwithstanding any other provision of this section, not more than 15 percent of the amount appropriated to carry out this section may be used to make grants to any one State, including any grants to local governments or areawide organizations in such State.

(g) Funds not obligated to States in the fiscal year for which funds are appropriated shall remain available for obligation during the next fiscal year.

(h) Funds granted to a State pursuant to this section in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated and the following fiscal year.

(i) States may use funds from grants under this section for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(j) States may, at the Governor's discretion, use funds from grants under this section to assist local governments in implementation of activities eligible for assistance under paragraphs (2), (3), and (6) of subsection (c) of this section.

(k) No grant may be made under this section in any fiscal year to a State which in the preceding fiscal year received a grant under this section unless the Administrator determines that such State satisfactorily implemented such grant funded activities in such preceding fiscal year.

(l) The Administrator may request such information, data, and reports of the State as he considers necessary to make the determination of continuing eligibility under this section.

(m) The costs of purchasing radon measurement devices under subsection (c)(4) of this section shall not exceed 15 percent of the amount of the grant in such year. The costs of implementing demonstration programs under subsection (c)(9) of this section shall not exceed 10 percent of the amount of the grant in such year. The costs of general overhead under subsection (c)(7) of this section shall not exceed 25 percent of the amount of such grant in such year.

(n) States receiving funds under this section shall provide to the Administrator all radon-related information, generated in their activities, he considers necessary.

STUDY OF RADON IN SCHOOLS

SEC. 7. (a) The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's school buildings, including in the case of a school using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

(b)(1) In carrying out such study, the Administrator shall identify and compile a list of areas within the United States which the Administrator determines have a high probability of including schools which exceed the Environmental Protection Agency's recommended target level for remedial action.

(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

(A) geological data;

(B) data on high radon levels in homes and other structures nearby any such school; and

(C) physical characteristics of the school buildings.

(3) In conducting such study the Administrator shall design a survey which when completed allows Congress to characterize the extent of radon contamination in schools in each State. However, the survey model shall include testing data from a representative sample of schools in high-risk area identified in paragraph (1) of this subsection and shall include additional testing to the extent resources are available for such testing, including any reliable data supplied by States, schools, or other parties.

(c)(1) The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, a list of high-risk areas within each State, including a delineation of such areas and any other data available to the Administrator for schools in that State. The Administrator shall also provide guidance and data detailing the risks associated with high radon levels and technical guidance and related information concerning testing for radon within schools and water supplies, and methods of reducing radon levels to assist such agencies in testing for radon within school buildings.

(2) In addition to the assistance required by paragraph (1) of this subsection, the Administrator is authorized to make available to appropriate agencies of each State, as designated by the Governor of such State, cannisters or other devices suitable for use by such agencies in conducting tests for radon within the schools under the jurisdiction of any such State agency. The Administrator is authorized to make available to such agencies the use of laboratories of the Environmental Protection Agency, or to recommend laboratories, to evaluate any such cannisters or devices for the presence of radon levels.

(d) The Administrator is authorized to select, from high-risk areas identified in subsection (b), school buildings for purposes of enabling the Administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such school buildings. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States.

REPORTS

SEC. 8. (a) The Administrator shall provide to the Congress reports and plans concerning the implementation of this Act, including within 12 months after the date of enactment of this Act and annually thereafter, a plan describing the assistance provided to States under sections 4, 5, and 6 of this Act during the previous 12-month period and describing the assistance to be provided in the next following 12-month period, including a description of the personnel and financial resources necessary to implement these sections.

(b) On or before the expiration of the 12-month period following the date of the enactment of this Act, the Administrator shall submit to the Congress a status report with respect to actions taken by the Administrator in conducting the study required by section 7, including the results of diagnostic and remedial work.

(c) On or before the expiration of the 24-month period following such date of enactment, the Administrator shall submit a final report setting forth the results of the study conducted pursuant to section 7, including the results of the Administrator's diagnostic and remedial work, and the recommendations of the Administrator.

(d) Reports required under subsections (a) and (c) of this section shall be reviewed by the advisory groups provided for in section 403(c) of the Superfund Amendments and Reauthorization Act of 1986 prior to submittal to Congress.

(e) Not later than the 12 months after the date of enactment of this Act, the Administrator shall submit to the Congress a report on the effectiveness of radon mitigation measures as described in Environmental Protection Agency and State publications as such measures are actually performed by homeowners and contractors. Such report shall include information on average radon reductions and on the variability of the reductions achieved in practice due to inherent limitations of the mitigation measures, misapplication of the mitigation measures, and application of the mitigation measures to structures for which such measures are not suited. For the purposes of this subsection, "variability" includes, but is not limited to, variation between structures, within structures, and over time.

STUDY OF RADON IN FEDERAL BUILDINGS

SEC. 9. (a) The Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, the Administrator of the General Services Administration, and the Administrator of the Veterans' Administration shall conduct studies for the purpose of determining the extent of radon contamination in buildings owned by the Department of the Interior, the Department of Defense, the Department of Agriculture, the General Services Administration, and the Veterans' Administration including, in the case of a Federal building using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

(b)(1) The Administrator shall identify and compile a list of areas within the United States which the Administrator, in consultation with the departments and agencies identified in subsection (a) of this section, determines have a high probability of including Federal buildings which exceed the Environmental Protection Agency's recommended target level for remedial action.

(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

(A) geological data;

(B) data on high radon levels in homes and other structures nearby any such Federal building; and

(C) physical characteristics of the Federal buildings.

(3) Studies provided for in subsection (a) of this section shall be based on design criteria specified by the Administrator. Federal departments or agencies identified in subsection (a) shall not later than 180 days after enactment of this Act, submit a study design to the Administrator for approval. The study design shall follow the most recent EPA guidance documents including the Citizens Guide to Radon, and Interim Protocol for Screening and Follow Up: Radon and Radon Decay Products Measurements, and the Interim Indoor Radon & Radon Decay Product Measurement Protocol, or any more recent guidance documents. The study design shall include testing data from a representative sample of Federal buildings in each high-risk area identified in paragraph (1) of this subsection and shall include additional testing to the extent resources are available for such testing, including any reliable data supplied by States, Federal agencies, or other parties.

(c)(1) The Administrator shall provide to the departments or agencies identified in subsection (a) of this section guidance and data detailing the risks associated with high radon levels and technical guidance and related information concerning testing for radon within Federal buildings and water supplies, and methods for reducing radon levels.

(2) In addition to the assistance required by paragraph (1) of this subsection, the Administrator is authorized to make available to the departments or agencies identified in subsection (a) cannisters or other devices on a cost reimburseable basis, suitable for use by such departments or agencies in conducting tests for radon within Federal buildings. The Administrator is authorized to make available to such departments or agencies the use of laboratories of the Environmental Protection Agency, on a cost reimburseable basis, or to recommend laboratories, to evaluate any such cannisters or devices for the presence of radon levels.

(d) The Administrator or Secretary of the designated Federal agencies shall complete studies required pursuant to subsection (a) of this section and provide the study to the Administrator not later than 20 months after enactment of this Act.

(e) On or before the expiration of the 24-month period following such date of enactment, the Administrator shall submit a report to the Congress describing the results of the studies conducted pursuant to subsection (a) of this section.

REGULATIONS

SEC. 10. The Administrator is authorized to issue such regulations as may be necessary to carry out the provisions of this Act.

AUTHORIZATION

SEC. 11. (a) For carrying out the purposes of section 4 of this Act, there are authorized to be appropriated such sums as may be necessary.

(b) For fiscal year 1988, there is authorized to be appropriated, but not from the Account, such sum, not to exceed $1,500,000, as may be necessary to initiate the provisions of section 5 of this Act. Monies appropriated pursuant to this authorization shall remain available until expended.

(c) For carrying out the purposes of section 6 of this Act, there is authorized to be appropriated, for each of the fiscal years 1988, 1989, and 1990, such sum, not to exceed $10,000,000, as may be necessary.

(d)(1) For the purpose of carrying out the provisions of subsection (d) of section 7, there is authorized to be appropriated not to exceed $500,000.

(2) For the purpose of carrying out the provisions of section 7 other than subsection (d) of section 7, there is authorized to be appropriated such sum, not to exceed $1,000,000, as may be necessary. Not less than 50 percent of the sum shall be expended for testing of schools as required by section 7(b)(3) of this Act.

MOTION OFFERED BY MR. THOMAS A. LUKEN

Mr. THOMAS A. LUKEN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. THOMAS A. LUKEN moves to strike all after the enacting clause of the Senate bill, S. 744, and to insert in lieu thereof the provisions of the bill H.R. 2837, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Toxic Substances Control Act to assist States in responding to the threat to human health posed by exposure to radon."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 2837) was laid on the table.

LEAD CONTAMINATION CONTROL ACT OF 1988

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4939) to amend the Safe Drinking Water Act to control lead in drinking water, as amended.

The Clerk read as follows:

H.R. 4939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lead Contamination Control Act of 1988".

SEC. LEAD IN DRINKING WATER COOLERS AND IN SCHOOL DRINKING WATER.

(a) ADDITIONAL REQUIREMENTS TO REGULATE THE SAFETY OF DRINKING WATER.—The Safe Drinking Water Act (title XIV of the Public Health Service Act; 42 U.S.C. 300f and following) is amended by adding the following new part at the end thereof:

"PART F—ADDITIONAL REQUIREMENTS TO REGULATE THE SAFETY OF DRINKING WATER

"SEC. 1461. DEFINITIONS.

"As used in this part—

"(1) DRINKING WATER COOLER.—The term 'drinking water cooler' means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

"(2) LEAD FREE.—The term 'lead free' means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

"(3) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381),

"(B) the owner of any private, nonprofit elementary or secondary school building, and

"(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

"(4) REPAIR.—The term 'repair means, with respect to a drinking water cooler, to take such corrective action as is necessary to ensurse that water cooler is lead free.

"(5) REPLACEMENT.—The term 'replacement', when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

"(6) SCHOOL.—The term 'school' means any elementary school or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854) and any kindergarden or day care facility.

"(7) LEAD-LINED TANK.—The term 'lead-lined tank' means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead-free.

"SEC. 1462. RECALL OF DRINKING WATER COOLERS WITH LEAD-LINED TANKS.

"For purposes of the Consumer Product Safety Act, all drinking water coolers identified by the Administrator on the list under section 1463 as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after the enactment of the Lead Contamination Control Act of 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act. (15 U.S.C. 2064(d)).

"SEC. 1463. DRINKING WATER COOLERS CONTAINING LEAD.

"(a) PUBLICATION OF LISTS.—The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information avaiable to the Environmental Protection Agency. Within 100 days after the enactement of this section, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

"(b) PROHIBITION.—No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

"(c) CRIMINAL PENALTY.—Any person who knowingly violates the prohibition contained in subsection (b) shall be imprisoned for not more than 5 years, or fined in accordance with title 18 of the United States Code, or both.

"(d) CIVIL PENALTY.—The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisons of title 28 of the United States Code) to impose a civil penalty on any person who violates subsection (b). In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).

"SEC. 1464. LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

"(a) DISTRIBUTION OF DRINKING WATER COOLER LIST.—Within 100 days after the enactment of this section, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 1463(a).

"(b) GUIDANCE DOCUMENT AND TESTING PROTOCOL.—The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remedying such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after the enactment of this section.

"(c) Disssemination to Schools, Etc.—Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b), together with the list of drinking water coolers published under section 1463(a).

"(d) Remedial Action Program.—

"(1) Testing and remedying lead contamination.—Within 9 months after the enactment of this section, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

"(2) Public availability.—A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

"(3) Coolers.—In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after the enactment of this subsection all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

"SEC. 1465. FEDERAL ASSISTANCE FOR STATE PROGRAMS REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER.

"(a) School Drinking Water Programs.—The Administrator shall make grants to States to establish and carry out State programs under section 1464 to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after the enactment of this section for such testing and remedial action.

"(b) Limits.—Each grant under this section shall be used as by the State for testing water coolers in accordance with section 1464, for testing for lead contamination in other drinking water supplies under section 1464, or for remedial action under State programs under section 1464. Not more than 5 percent of the grant may be used for program administration.

"(c) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991."

"SEC. 3. LEAD POISONING PREVENTION PROGRAMS.

The Public Health Service Act is amended by adding the following new section after section 317:

"SEC. 317A. LEAD POISONING PREVENTION

"(a) Grants to States.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States and agencies of units of local governments for the initiation and expansion of community programs designed to (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning. In making grants under this paragraph, the Secretary shall give priority to applications for programs which will serve areas with a high incidence of elevated blood lead levels in infants and children.

"(b) Grant Applications.—No grant may be made under subsection (a), unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall prescribe and shall include each of the following:

"(A) A complete description of the program which is to be provided by or through the applicant.

"(B) Assurances satisfactory to the Secretary that the program to be provided under the grant applied for will include educational programs designed to communicate to parents, educators, and local health officials the significance and prevalence of lead poisoning in infants and children which the program is designed to detect and prevent.

"(C) Assurances satisfactory to the Secretary that the applicant will report on a quarterly basis the number of infants and children screened for elevated blood lead levels, the number of infants and children who were found to have elevated blood lead levels, the number and type of medical referrals made for such infants and children, the outcome of such referrals, and other information to measure program effectiveness as required under paragraph (2);

"(D) Assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require.

"(E) Such other information as the Secretary my prescribe.

"(2) The Secretary shall prepare and submit a report to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Labor and Human Resources of the United States Senate not later than one year after the enactment of this section, and annually thereafter, on the effectiveness during the period reported on the progress assisted under grants under subsection (a).

"(c) Maintenance of Effort.—No grant may be made under subsection (a) unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made and will in no event supplant such State, local, and other non-Federal funds.

"(D) Coordination.—No grant may be made under subsection (a) unless the Secretary determines that there will be coordination between the recipient of the grant and activities within the State in which the grantee is located under titles V and XIX of the Social Security Act relating to lead poisoning prevention.

"(e) Method and Amount of Payment.—The Secretary shall determine the amount of a grant under subsection (a). Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

"(f) Supplies, Equipment, and Employee Detail.—The Secretary, at the request of a recipient of a grant under subsection (a), may reduce the amount of such grants by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient, and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

"(g) Records.—Each recipient of a grant under subsection (a) shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(h) Audit and Examination of Records.—The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a), that are pertinent to such grant.

"(i) Indian Tribes.—For purposes of this section, the term 'units of local government' includes Indian tribes.

"(j) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section not more than $20,000,000 for fiscal year 1989, $22,000,000 for fiscal year 1990, and $24,000,000 for fiscal year 1991.".

SEC. 4. CERTIFICATION OF TESTING LABORATORIES.

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.

SEC. 5. CONFORMING AMENDMENT.

Section 1445 of the Safe Drinking Water Act (title XIV of the Public Health Service Act) is amended by adding the following new subsection at the end thereof:

"(f) INFORMATION REGARDING DRINKING WATER COOLERS.—The Administrator may utilize the authorities of this section for purposes of part F. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F."

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4939, the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, lead contamination of drinking water is one of the most important public health issues we face in this Nation. The Federal EPA has warned that some 42 million Americans, roughly one family in five, are now consuming water with unsafe levels of lead.

Lead contamination is a particularly worrisome threat to our children, whose developing nervous systems are extremely sensitive. The Federal EPA estimates that each year lead contamination of drinking water works to rob some 241,000 children of the ability to fully realize their intellectual potential.

The Lead Contamination Control Act includes three major programs designed to lower America's exposure to lead in drinking water, especially for children.

The first concerns water coolers found to elevate lead levels in the water they distribute. H.R. 4939 mandates that the Consumer Product Safety Commission initiate a recall of water coolers with lead or lead-lined tanks. EPA has found that such water coolers can have lead contamination levels some 400 times the level of the proposed standard. This bill also includes a ban on the manufacture or sale of water coolers that are not lead free.

The second major program area of H.R. 4939 is designed to help schools across the Nation evaluate and respond to lead contamination in school drinking water. Surveys have revealed that high levels of lead contamination may be a problem in many school systems. In fact, high lead levels have been found in drinking water at schools in Maryland, Minnesota, New Jersey, California, North Carolina, and New Hampshire. This bill calls on schools to address this problem, with extensive technical guidance and financial assistance from EPA.

Finally, H.R. 4939 also includes a lead screening program for children to be coordinated by the U.S. Centers for Disease Control. This program is designed to help in the initiation and expansion of programs to detect and prevent lead poisoning in infants and children.

The programs of the Lead Contamination Control Act of 1988 will make an important contribution in the effort to reduce and eventually eliminate lead poisoning among America's children.

Unfortunately, the legislation before us does not include provisions mandating that the Federal EPA establish a stringent new tap water standard for lead. Valuable, but controversial, provisions calling for such a standard were present in H.R. 4939 as introduced, but were removed to form a compromise vehicle that could move rapidly through the Congress with broad support in the very short time remaining.

I plan next year to continue the effort to assure that EPA establishes a responsible lead in drinking water standard—one that applies at the tap, where people actually get their drinking water. The current EPA standard, which applies only at the water distribution center, has little relation to the actual lead levels that Americans will find in the water in their homes. But that issue is for the next Congress.

Even though it does not address the lead standard, the legislation we now have before us is a compromise vehicle that will make important strides toward the protection of children from lead contamination. It has the strong support of key organizations concerned with the education of America's children, including the National PTA, and the National Education Association.

I want to congratulate JERRY SIKORSKI, the author of this H.R. 4939, for his efforts in developing legislation on this crucial topic. Without his commitment and concern this bill would not be possible. I also want to thank JOHN DINGELL for his efforts in moving this bill forward, and commend him for the many excellent hearings on lead contamination which he has held in the Oversight and Investigations Subcommittee of Energy and Commerce.

I urge all my colleagues to join me in supporting this important bill.

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, lead contamination of drinking water is a health problem affecting millions of children and adults across this country. Unlike other environmental health hazards, we have uncontested evidence that lead exposure can cause anemia, kidney damage, and reduced mental performance. Even more startling is the news that lead exposure can also increase blood pressure—a serious problem for many adults in this country.

The Lead Contamination Control Act of 1988 addresses the lead exposure problem in three important ways. First, the legislation requires the recall of water coolers found with lead-lined tanks, and the repair or replacement of coolers with lead contaminated parts. This will result in an immediate reduction in lead exposure for thousands of children across the country who may be drinking water from these coolers.

Second, the legislation establishes a testing and cleanup program for lead in the drinking water supplies of schools. Under the bill, schools will be required to test their water supplies for lead contamination and to reduce contamination when high levels are found.

Third, Mr. Speaker, and most important of all, the legislation establishes a lead screening program for children. This program is essential since our best evidence indicates that one out of every six children has unacceptably high blood levels of lead. The provisions in this legislation will help identify these children and assist their families in seeking the proper medical help. These families will also receive assistance and information on how to reduce their lead exposure.

Mr. Speaker, lets summarize by saying that I believe H.R. 4939 will be one of most effective environmental initiatives we have passed this Congress. I urge my colleagues to support the legislation.

Mr. WAXMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. SIKORSKI], the author of this legislation.

Mr. SIKORSKI. Mr. Speaker, I thank the gentleman and compliment him and the staff, especially Gregg Whetstone, for bringing this issue to the national attention late last year and carrying forward to a good conclusion for this session in this legislation.

The prospect of injury to the mind has always been more frightening to us than the thought of injury to the body. And most of us would wish harm on ourselves before we would see it perpetrated on our children.

This is why lead poisoning is so terrible.

It harms the body, but it is particularly damaging to the mind. It affects adults, but it hurts little children far more.

We've known about the toxicity of lead for centuries, and we've acted aggressively in recent years to control our exposure to it: Lead in gasoline is being phased out, although not quickly enough. Lead in paint and in baby food tins has been banned altogether. Lead in the air has been reduced by 80 percent. And the average level in human blood fell 37 percent between 1976 and 1980.

Nevertheless, we've recently discovered that lead is far more pervasive, and more dangerous, than ever suspected. The measures taken so far to control lead poisoning have completely missed a major source: The water we drink.

Forty-two million Americans, including 3.8 million little kids under the age of 6, drink water with levels of lead that the EPA considers unsafe. And the lowest detectable blood levels have been shown to reduce IQ.

Among our children, 1 in 11 under the age of 6—1.5 million kids—have blood lead levels that meet the U.S. Center for Disease Control's definition of acute lead poisoning. These children run a greater risk of acute kidney, blood, gastrointestinal, and central nervous system disease.

A quarter of a million American kids every year drink water with enough lead in it to impair their intellectual development; 82,000 children every year risk growth impairment—their bodies—and another, 82,000 children risk impaired blood cell formation—their health.

And 680,000 pregnant women and their unborn children are exposed to levels of lead in drinking water high enough to cause miscarriage, low birth weight, and retarded fetal growth and development.

This crippler of young minds and bodies rivals the proliferation of mind numbing drugs in our schools, but there is no local pusher to blame: just water fountains and plumbing. Our kids can't "Just Say No" to this problem: Only we can.

This problem has been identified by the American Academy of Pediatrics as the most serious toxicological threat to America's children. If it were foisted upon us by some outside source, we would not tolerate it. If it were drugs, we'd spend billions on interdiction, treatment, and enforcement. If it were poor schools, there would be Presidential commissions and solemn calls for reform.

But the lead epidemic is so silent and pervasive that it doesn't grab our attention. The solution is similarly short on drama and long on action: A serious commitment by Government to use the means available to eradicate lead contamination from our drinking water supplies. I have introduced legislation to do just that.

The Lead Containment Control Act, starts by hitting the most potentially dangerous source of lead in drinking water: Water coolers with lead-lined tanks. The water in some of these coolers has been tested at levels 100 times the EPA standard. Letting your kid drink from one of these is like handing her a glass of lead kool-aid. This bill requires the immediate identification and recall of all such coolers and holds the manufacturer responsible for all costs.

The bill bans the manufacture and sale of new water coolers that are not lead-free. A survey last winter by the House Health and Environment Subcommittee found hundreds of thousands of coolers currently in use containing lead solder in parts of the machine that come into contact with drinking water.

Next, the bill creates a Federal State partnership to help schools across the country identify and correct lead contamination in their water supplies.

Finally, the bill creates a lead screening and poisoning prevention program to help identify and refer for treatment children found to have elevated blood lead levels.

Even more needs to be done. H.R. 4939 originally contained provisions requiring the EPA to promptly set a tough new standard for lead in drinking water.

More than a decade ago, the National Academy of Sciences recommended that the EPA dramatically tighten its current drinking water standard for lead, but recently proposed EPA regulations for lead in drinking water contained no tap standard at all.

To achieve a compromise in the waning weeks of the 100th Congress and to get these vital measures on the books immediately, we were forced to temporarily set aside the important but controversial measure of a new EPA standard for lead in drinking water. I hope to return to it early in the next Congress.

This bill addresses the most acute threat: lead lined coolers, and protects one of the most vulnerable and easiest to reach groups: schoolchildren.

The Lead Contamination Control Act has garnered the support of the National Education Association, the National PTA, the U.S. Conference of Catholic Churches, the American Association of School Administrators, the Consumer Federation of America, and the Environmental Defense Fund. It is currently on the House of Representatives calendar, and similar legislation has been introduced in the Senate.

Like the polio epidemic of fifty years, we can stop this silent menace of lead poisoning through concerted, national action. Every moment that we delay risks the mental and physical health of millions of our children. The Lead Contamination Control Act should be passed by Congress and signed into law by the President immediately.

Mr. Speaker, I yeild back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the bill, H.R. 4939, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS AMENDMENTS ACT OF 1988

Mr. WAXMAN. Mr. Speaker, I move that the House suspend the rules and concur in the Senate amendment to the House amendments to the Senate bill (S. 2393) to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such act, and for other purposes, and recede from the House amendment to the title of the Senate bill.

The Clerk read as follows:

House amendments: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".

SEC. 2. REFERENCES IN ACT.

Except as otherwise specifically provided, whenever in this Act there is an amendment or repeal of a section or provision, the amendment or repeal shall be considered to be made to that section or provision of the Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1986 (42 U.S.C. 10801 et seq.).

SEC. 3. SCOPE OF COVERAGE.

(a) ABUSE OR NEGLECT RESULTING IN DEATH.—Section 102 (42 U.S.C. 10802) is amended—

(1) in paragraph (1), by striking "injury to a mentally ill individual" and inserting "injury or death to a mentally ill individual"; and

(2) in paragraph (4), by striking "injury" each place it appears and inserting "injury or death".

(b) Individuals Covered by Act.—Paragraph (3)(B) of such section is amended—

(1) by striking "(B) who is an inpatient or resident" and inserting "(B)(i) who is an inpatient or resident";

(2) by striking the period at the end and inserting the following: ", or who is in the process of being transported to such a facility for the purposes of being admitted as an inpatient or resident; or ", and

(3) by adding at the end the following new clause:

"(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense.".

SEC. 4. ESTABLISHMENT OF GOVERNING BOARD FOR SYSTEMS.

(a) Designation of Current Advisory Boards as Advisory Councils.—Section 105(a)(6) (42 U.S.C. 10805(a)(6)) is amended by striking "board" and inserting "advisory council."

(b) Rules for System Governing Boards.—Section 105 (42 U.S.C. 10805) is amended by adding at the end the following new subsection.

"(c)(1) Each system established in a State under section 103 to protect and advocate the rights of mentally ill individuals shall have a governing authority. Such governing authority shall—

"(A) together with the advisory council described in subsection (a)(6), have the responsibility for jointly developing the annual priorities of the system; and

"(B) have the final responsibility for the planning, design, implementation, and functioning of the system.

"(2) If the governing authority of such system is a multi-member governing board, such board shall include members (to be selected not later than October 1, 1990) who broadly represent the clients served by the system. In the case of a system organized as a private non-profit entity whose governing authority is a multi-member governing board, the chairperson of such system's advisory council shall serve as a member of the governing board.".

SEC. 5. REQUIREMENTS FOR SYSTEM ADVISORY COUNCIL.

(a) Advisory Functions of Council.—Section 105(a)(6)(A) (42 U.S.C. 10805(a)(6)(A)) is amended—

(1) by striking "policies and priorities" and inserting "ongoing policies and priorities"; and

(2) by striking "; and" and inserting ", and on annual plans, priorities, and reports of the system; and".

(b) Annual Report.—Section 105(a)(7) (42 U.S.C. 10805(a)(7)) is amended—

(1) by striking "describing the activities" and inserting "which describes the activities"; and

(2) by striking the period at the end and inserting the following: ", and which includes a section prepared by the advisory council describing the activities of the council and its assessment of the operations of the system;".

SEC. 6. RECORDS COVERED UNDER ACCESS PROVISIONS.

(a) Records of Missing Individuals.—Section 105(a)(4)(B)(i) (42 U.S.C. 10805(b)(4)(B)(i)) is amended by striking "such access;" and inserting "such access (including an individual who has died or whose whereabouts are unknown);".

(b) Definition.—Section 106(b) (42 U.S.C. 10806(b)) is amended by adding at the end the following new paragraph:

"(3) As used in this section, the term 'records' includes—

"(A) reports prepared by any staff of a facility rendering care and treatment, or by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility, which describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents; and

"(B) discharge planning records.".

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) Subcontracting.—Section 104(a)(2) (42 U.S.C. 10804(a)(2)) is amended by striking "which, on the date of enactment of this Act" and inserting ", including groups run by individuals who have received or are receiving mental health services, or by the family members of such individuals, which".

(b) Technical Assistance Limitations.—

(1) State assistance.—Section 104(b)(2) (42 U.S.C. 10804(b)(2)) is amended by striking "5 percent" and inserting "10 percent".

(2) Assistance by the secretary.—Section 114 (42 U.S.C. 10825) is amended—

(A) by striking "shall provide technical assistance" and inserting "shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance"; and

(B) by striking the period at the end and inserting the following: ", consistent with requests by such systems or such assistance.".

(c) Additional System Requirements.—Section 105(a) (42 U.S.C. 10805(a)) (as amended by section 5), is further amended—

(1) in paragraph (6)(B) by striking "; and" and inserting a semicolon; and

(2) by adding at the end the following new paragraphs:

"(8) on an ongoing basis, provide the public with a mechanism for commenting on the priorities established by, and the activities of, the system; and

"(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system.".

(d) Authorization of Appropriations.—Section 117 (42 U.S.C. 10827) is amended by striking "$10,000,000 for fiscal year 1986," and all that follows and inserting "$13,000,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.".

SEC. 8. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date of the enactment of this Act or on October 1, 1988, whichever comes later.

Amend the title so as to read: "An Act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize appropriations for activities under such Act, and for other purposes.".

Senate amendment to House amendments: In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988".

SEC. 2. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.).

SEC. 3. SCOPE OF COVERAGE.

Section 102 (42 U.S.C. 10802) is amended—

(1) in paragraph (1), by inserting "or death" after "caused, injury";

(2) in paragraph (3)—

(A) by inserting "(i)" after the subparagraph designation in subparagraph (B);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof the following: ", even if the whereabouts of such inpatient or resident are unknown;"; and

(C) by adding at the end thereof the following new clauses:

"(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or";

"(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense."; and

(3) in paragraph (4)—

(A) by inserting "or death" after "injury" each place such word occurs; and

(B) by inserting before the period at the end thereof the following: ", including the failure to maintain adequate numbers of appropriately trained staff".

SEC. 4. ESTABLISHMENT OF A GOVERNING AUTHORITY.

Section 105 (42 U.S.C. 10805) is amended—

(1) in subsection (a)(6), by striking out "a board" and inserting in lieu thereof "an advisory council"; and

(2) by adding at the end thereof the following new subsection:

"(c)(1)(A) Each system established in a State, through allotments received under section 103, to protect and advocate the rights of mentally ill individuals shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

"(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

"(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

"(2) The governing authority established under paragraph (1) shall—

"(A) be responsible for the planning, design, implementation, and functioning of the system; and

"(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.".

SEC. 5. ADVISORY COUNCIL REPORT.

Section 105(a)(7) (42 U.S.C. 10805(a)(7)) is amended by striking out the period and inserting in lieu thereof the following: ", including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;".

SEC. 6. ACCESS TO RECORDS.

(a) System Requirement.—Section 105(a)(4)(B) (42 U.S.C. 10805(a)(4)(B)) is amended by striking out "any individual" and inserting in lieu thereof "any individual (including an individual who has died or whose whereabouts are unknown)".

(b) Definition of Records.—Section 106(6) (42 U.S.C. 10806(b)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) As used in this section, the term 'records' includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

"(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) and paragraphs (1) and (2) of subsection (b).".

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) Subcontracting.—Section 104(a)(2) (42 U.S.C. 10804(a)(2)) is amended by striking out "which, on the date of enactment of this Act" and inserting in lieu thereof "including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which".

(b) Technical Assistance Limitations.—

(1) State assistance.—Section 104(b)(2) (42 U.S.C. 10804(b)(2)) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(2) Assistance by the Secretary.—Section 10 (42 U.S.C. 18025) is amended to read as follows:

"TECHNICAL ASSISTANCE

"Sec. 115. The Secretary shall use not more than 2 percent of the amounts appropriated under section 117 to provide technical assistance to eligible systems with respect to activities carried out under this title, consistent with requests by such systems for such assistance.".

(c) Additional System Requirements.—Section 105(a) (42 U.S.C. 10805(a)) (as amended by section 5), is further amended by adding at the end thereof the following new paragraphs:

"(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and

"(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system.".

(d) Applications.—Section 111 (42 U.S.C. 10821) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) Applications submitted under this section shall remain in effect for a 3-year period, and the assurances required under this section shall be for the same 3-year period.".

(e) Allotment Formula.—Section 112(a) (42 U.S.C. 18022(a)) is amended—

(1) in paragraph (2) to read as follows:

"(2) Notwithstanding paragraph (1) and subject to the availability of appropriations under section 117—

"(A) if the total amount appropriated in a fiscal year is at least $13,000,000—

"(i) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall be the greater of—

"(I) $140,000; or

"(II) $125,000 in addition to the amount determined under paragraph (3); and

"(ii) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be the greater of—

"(I) $75,000; or

"(II) $67,000 in addition to the amount determined under paragraph (3); and

"(B) if the total amount appropriated in a fiscal year is less than $13,000,000, the amount of the allotment of the eligible system—

"(i) of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than $125,000 in addition to the amount determined under paragraph (3); and

"(ii) of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than $67,000 in addition to the amount determined under paragraph (3)."; and

(2) by adding at the end thereof the following new paragraph:

"(3) In any casse in wihch the total amount appropriated under section 117 for a fiscal year exceeds the total amount appropriated under such section, as in effect on the day before the date of enactment of this paragraph, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the allotments under clauses (i)(II) and (ii)(II) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

"(A) the total amount appropriated under section 117 for the fiscal year for which the increase in minimum allotment is made, minus;

"(B) the total amount appropriated under section 117 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 117 for such preceding fiscal year.".

(f) Authorization of Appropriations.—Section 117 (42 U.S.C. 10827) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 117. For allotments under this title, there are authorized to be appropriated $14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.".

SEC. 8. EFFECTIVE DATE.

(a) In general.—The amendment made by this Act, other than the amendment made by section 7(f) shall become effective on the date of the enactment of this Act.

(b) Authorization of Appropriations.—The amendment made by section 7(f) shall become effective on October 1, 1988.

Resolved, That the Senate disagree to the amendment of the House of Representatives to the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. TAUKE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Waxman] will be recognized for 20 minutes and the gentleman from Iowa [Mr. Tauke] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Waxman].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2393 is the reauthorization of an important program of protection and advocacy services for the mentally ill. The system of protection and advocacy set up in 1986 is charged with safeguarding the rights of mentally ill individuals and investigating incidents of abuse and neglect of these persons when they are residents or inpatients at treatment facilities.

This legislation incorporates the major provisions of the Senate bill and the House amendment following extensive discussions to develop an acceptable substitute, which we now have before us.

S. 2393 has the support of the chairman of the Senate Subcommittee on the Handicapped, and the ranking minority member, Mr. Weicker. It passed the Senate yesterday.

The original House bill was cosponsored by Congressman Madigan, the distinguished ranking Member of the Subcommittee, and the substitute also has his support. I know of no opposition to this legislation and I urge its passage.

Set out below is a section-by-section analysis of the substitute prepared by both bodies. This analysis is in lieu of a conference report.

Section 1 of the Substitute specifies that the bill may be cited as the "Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988."

Section 2 of the Substitute specifies that references in the bill to a section of "the Act" are to the Protection and Advocacy for Mentally Ill Individuals Act of 1986."

Section 3 of the Substitute amends section 102 of the Act to make clarifications of several definitions included in the Act. Specifically, the Substitute amends the definition of "abuse" and "neglect" to add "death" to the list of manifestations of "abuse" and "neglect." Currently, the Act only includes "injuries."

In addition, section 3 of the Substitute amends the definition of the term "mentally ill individual" to include an inpatient or resident in a facility even if the whereabouts of such inpatient or resident are unknown and a person who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.

The intent of these changes is simply to clarify that the Act covers mentally ill individuals in these two situations and not to change the nature of a protection and advocacy system's (hereinafter referred to as "PAMI system" or "system") authority under the Act. Thus, for example, it is not our intent to authorize the system to provide assistance at civil commitment hearings. Furthermore, consistent with section 301 of the Act, these amendments do not establish any new rights for mentally ill individuals. Thus, for example, if a mentally ill individual being transported to a facility does not otherwise qualify for admission by the facility, such an individual does not gain that right by virtue of this provision.

Furthermore, section 3 of the Substitute amends the definition of the term "mentally ill individual" to include a mentally ill individual who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense. The intent of this provision is not to authorize representation by the system in criminal proceedings that may lead to incarceration.

Finally, section 3 of the Substitute amends the definition of the term "neglect" to clarify that the failure to provide a safe environment may include the failure to maintain adequate numbers of appropriately trained staff. Consistent with section 301 of the Act and the statement of intent set out on page 9 of Senate Report No. 99-109, this amendment does not grant any new rights to mentally ill individuals but reaffirms the original intent of the Act establishing a system of advocacy to help protect established rights articulated in Federal and State laws or under the Constitution of the United States.

Section 4 of the Substitute amends section 105 of the Act in order to clarify the relationship between the advisory council and the governing authority of the PAMI system. Specifically, the Substitute amends the Act to rename the "board" (established to provide advice) to be called the "advisory council." Second, each PAMI system is directed to have a governing authority.

In situations in which the governing authority is organized as a multimember governing board, such governing board must be selected according to the policies and procedures of the governing authority. In addition, the membership of the governing board must include members who broadly represent or are knowledgeable about the needs of the clients served by the PAMI system. In the case of a system organized as a private nonprofit entity, the governing board must also include the chairperson of the advisory council of the system.

Finally, section 4 of the Substitute specifies that the responsibilities of the governing authority include the planning, design, implementation, and functioning of the PAMI system. The bill also specifies that consistent with these responsibilities the governing authority shall jointly develop with the advisory council the system's annual priorities. We included the latter provision to ensure full and active participation of the advisory council in the discussion and development of the system's annual priorities. We recognize, however, that the final authority for the planning, designing, implementing, and functioning of the system continues to rest with the governing authority. Thus, the final decision regarding priorities remains with the governing authority.

Section 5 of the Substitute amends section 105 of the Act to include a new requirement for inclusion in the annual report submitted by the system. This new section should be prepared by the advisory council and should describe both the activities of the council and its assessment of the operations of the system.

Section 6 of the Substitute amends section 105 to clarify that, consistent with section 3 of the bill, a system's authority to access the records of mentally ill individuals includes access to records of mentally ill individuals who have died or whose whereabouts are unknown.

Section 6 of the Substitute also amends section 106 to clarify the meaning of the term "records." As amended by the Substitute, the term "records" includes discharge planning records as well as records prepared by any staff of a facility or by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents.

The term "agency" in this section refers to any state, county, or municipal agency charged with the responsibility of investigating incidents of abuse and neglect in public residential facilities for the treatment of mentally ill individuals. It is not the intent of this amendment to change in any way the requirements set out in section 106 of the Act governing access to records.

Section 7 of the Substitute includes a number of miscellaneous provisions. First section 7(a) of the bill amends section 104 of the Act to clarify that in their use of allotments, an eligible system should consider entering into contracts with organizations, including in particular groups run by individuals who have received or are receiving mental health services or the family members of such individuals. Contracts entered into with these groups and others must be consistent with the provisions of the Act, thereby assuring that contractors will be held to the same standards of compliance with the Act as the PAMI system.

Second, section 7(b)(1) of the Substitute amends section 104(b)(2) of the Act to increase the percentage of funds that may be used by PAMI systems for training and technical assistance from 5 to 10 percent. In addition, section 7(b)(2) of the Substitute amends section 115 of the Act to direct the Secretary to use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems, consistent with the stated needs as identified by the systems.

Third, section 7(c) of the Substitute amends section 105 of the Act to add requirements for (1) public input in the setting of priorities by the system, and (2) establishment of a grievance procedure for clients or prospective clients of the system.

Fourth, section 7(d) of the Substitute amends section 111 of the Act to clarify that applications and assurances shall remain in effect for a 3-year period. We do not intend that this provision should restrict the Secretary's current authority to conduct program reviews and take appropriate administrative action against a system if deemed necessary.

Fifth, section 7(e) of the Substitute amends section 112(a) of the Act to increase the minimum allotment for states from $125,000 to $140,000, if there is at least a $13 million appropriation. The bill also directs the secretary to increase the minimum administratively under the same circumstances applicable to protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act, regardless of whether or not the $13 million level of appropriations is reached.

Finally, section 7(f) of the Substitute provides authorization of appropriations of $14.3 million for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.

Section 8 of the Substitute specifies that the effective date of the amendments made by the Substitute, other than the amendment concerning the authorization of appropriations, is the date of enactment. The effective date for the section authorizing appropriations is October 1, 1988.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to support S. 2393, the Protection and Advocacy for the Mentally Ill Individuals Act of 1988 and to concur to the Senate amendments to this bill. This bill represents an agreement that has been reached with the Senate.

This legislation will reauthorize, with several needed improvements, the existing protection and advocacy program for the mentally ill. This program was initiated in 1986 under Public Law 99-319 to ensure that the rights of the mentally ill are protected while they are inpatients or residents in treatment facilities. This program distributes funds through the already established protection and advocacy systems set up under the Developmental Disabilities Act.

Under Public Law 99-319, these agencies were given the authority to investigate incidents of abuse and neglect of the mentally ill when they are residents of treatment facilities and for 90 days after discharge. These systems are responsible for pursuing the appropriate legal and administrative remedies for these individuals. The bill before us strengthens the current program with some new provisions. One of these provides protection to the mentally ill while being transported to a treatment facility and when temporarily detained in a municipal detention facility. Another amends the definition of the term "neglect" to clarify that the failure to provide a safe environment may include the failure to maintain an appropriate staff.

This improved legislation should better serve our mentally ill citizens. This bill represents a modest effort to try to assist the States in helping those individuals in society least able to help themselves. I know in my home State of Iowa the program has proven to be enormously beneficial.

I urge my colleagues to support this bill.

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Mr. TAUKE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and concur in the Senate amendment to the House amendments to the Senate bill and recede from its amendment to the title of the Senate bill.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended, the Senate amendment to the House amendments to the Senate bill was concurred in, and the House receded from its amendment to the title of the Senate bill.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 1579, PREVENTIVE HEALTH AMENDMENTS OF 1988

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the conference report on the Senate bill (S. 1579) to amend the Public Health Service Act to revise and extend the block grant program and for other purposes.

The Clerk read the title of the Senate bill.

(For conference report and statement, see prior proceedings of the House of today).

The SPEAKER pro tempore. Is a second demanded?

Mr. TAUKE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Iowa [Mr. TAUKE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of this legislation, Mr. Speaker, is simply to extend for the next 3 fiscal years, a number of public health programs whose authorities expired at the end of fiscal year 1987. Those programs include the Preventive Health and Health Services Block Grants; programs for health information and health promotion; the Emergency Medical Services for Children Grants Program; as well as programs to prevent and control sexually transmitted diseases.

The Preventive Health Block Grant Program provides funds directly to the States to carry out a variety of preventive health activities, including childhood immunization programs, prenatal care services, and breast cancer screening projects. This conference report would reauthorize the block grant at $110 million for fiscal year 1989—a slight increase over the current funding level. For fiscal years 1990 and 1991, the block grant would be authorized at an amount of such sums as may be necessary.

Programs designed to provide health information and to support health promotion efforts are authorized at title 17 of the Public Health Service Act. These programs fund important health promotion/disease prevention activities, including preventive health research, education, and training. The conference agreement would reauthorize two separate title 17 authorities for an additional 3 years. The first, for the Office of Disease Prevention and Health Promotion, would be extended at its current authorization level of $10 million a year. The second, for Research Centers for Health Promotion and Disease Prevention, would be reauthorized at a level of $6 million in fiscal year 1989; $8 million in fiscal year 1990; and $10 million in fiscal year 1991. Those figures represent a reduction from the program's current funding level.

The Emergency Medical Services for Children Grants Program supports small demonstration projects on emergency medical services for acutely ill and seriously injured children. The conference agreement would extend the authority for this program for the next 3 years at an authorization level of $3 million for fiscal year 1989; $4 million for fiscal year 1990; and $5 million for fiscal year 1991.

Finally, Federal programs to prevent and control sexually transmitted diseases provide testing and treatment services for diseases such as syphilis, gonorrhea, herpes, and chlamydia. In addition, these programs fund STD research and training projects which focus on the prevention of these diseases. The 3-year authorization levels established for these programs under the conference agreement would be $78 million in fiscal year 1989 and such sums as may be necessary for both fiscal year 1990 and fiscal year 1991.

Various pieces of legislation to reauthorize each of the programs I have just described, Mr. Speaker, were adopted by the House earlier this year on suspension votes. All of them have had strong, bi-partisan support throughout the legislative process and have been acted upon without controversy.

It is in that spirit that I ask Members to continue these important public health programs and to vote in favor of this conference report. I urge all Members to support the conference agreement on S. 1579.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to support the conference report on S. 1579, the Preventive Health and Health Services Block Grant. This conference report reauthorizes three important health programs.

S. 1579 renews authority for the Office of Disease Prevention and Health Promotion and the Grant Program for Prevention Centers. This simple reauthorization will extend these existing, worthwhile programs.

In addition, this bill reauthorizes the Preventive Health and Health Services Block Grant for fiscal year 1989 at $110 million a year, and at such sums as necessary for fiscal years 1990 and 1991. This bill makes several changes to the current statute which I believe will enhance the ability of States to address their preventive health needs. Among these are those that permit the use of funds to include immunization services and screening for uterine cancer and breast cancer.

Finally, this bill includes the identical text of a bill, H.R. 4915, to reauthorize the prevention and control programs for sexually transmitted diseases, that previously passed the House by voice vote. These provisions include a reasonable increase in the funding level for these programs that I believe is necessary for two reasons. The first is recent evidence that a number of sexually transmitted diseases are cofactors in the development of the AIDS virus. The second reason is recent developments in the technology for screening and testing for chlamydia that have given public health authorities an important opportunity to detect a significant and curable cause of infertility. I believe additional funds to expand such testing are important.

For these reasons, I am pleased to support the conference report on S. 1579 and I urge my colleagues to join me in doing so.

Ms. PELOSI. Mr. Speaker, today the House is scheduled to approve the "AIDS amendments of 1988," which provide authorization for AIDS research, services, and prevention efforts. The amendments also establish a National Commission on AIDS. Although far less extensive than the AIDS Federal Policy Act passed overwhelmingly by the House 2 weeks ago, the amendments do provide much needed policy on AIDS.

These amendments create a new title XV of the Public Health Services Act to provide for the establishment of education and information programs to prevent and reduce exposure to the virus that causes AIDS. I wish to commend Chairman WAXMAN and Mr. MADIGAN, the ranking minority member of the subcommittee, for negotiating the language describing limitations on the use of funds appropriated for this purpose. Specifically, I wish to commend them on lifting the most harmful restrictions which accompanied the fiscal year 1988 Labor-HHS-Education appropriations bill.

The new language states: "None of the funds appropriated under this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse."

However, the legislation further provides that this limitation may not be construed to restrict the ability of an educational program to provide factual information to reduce an individual's risk of exposure to the AIDS virus, provided that such informational materials are not obscene.

Thus, this legislation would prohibit the use of Federal funds for educational activities solely designed to encourage sexual activity while allowing educational activities with a goal of changing behavior for those at increased risk of infection with the AIDS virus. Clearly, the intent of this language is to avoid imposing unwarranted restrictions on the content of educational materials and to encourage the use of targeted messages designed to promote behavior change in those with increased risk.

The restrictions included in the fiscal year 1988 Labor-HHS-Education Appropriations Act have now been lifted. These restrictions have had a chilling effect on the ability of some of the most effective community based organizations in the country to conduct useful prevention campaigns. AIDS education must target behavior change messages to populations at increased risk in order to stop the further spread of the AIDS virus. This change in Federal policy will go far to improve our Nation's ability to adequately respond to the AIDS crisis.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the conference report on the Senate bill, S. 1579.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 3235, HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1988

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations.

The Clerk read the title of the bill.

(For conference report and statement, see prior proceedings of the House of today.)

The SPEAKER pro tempore. Is a second demanded?

Mr. TAUKE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Iowa [Mr. TAUKE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report before the House is on H.R. 3235, the Health Maintenance Organization Amendments of 1988.

H.R. 3235 is a noncontroversial bill that passed the House on the Suspension Calendar on November 3, 1987, and the Senate by voice vote on August 11, 1988. There were only a few differences between the two bills. The conferees have reached a consensus and all conferees support the conference agreement.

This conference report also enjoys broad support among the various organizations interested in it. Employers, HMO's, insurance companies, and labor have all been involved in the development of H.R. 3235 and the final decisions contained in the conference report. They support its adoption.

H.R. 3235 would provide for a number of important changes in the Federal regulation of health maintenance organizations under title 13 of the Public Health Service Act. The bill has the dual objective of providing greater flexibility within the current Federal qualification program. The legislation gives HMO's and employers the additional flexibility they need to respond to the ever-changing health care marketplace. In addition, the bill still assures that federally qualified HMO's will serve as the benchmark for the rest of the field.

I believe this bill is an important and timely step forward in the Federal HMO program. I urge all Members to support the conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to speak in support of the conference report on H.R. 3235, the Health Maintenance Organization Amendments of 1988, which makes a number of important changes in the Federal regulation of health maintenance organizations under title XIII of the Public Health Service Act.

H.R. 3235 provides more flexibility within the Federal qualification program and gives employers more freedom to design health care coverage for their employees. Under this legislation, employers will no longer have to contribute the same amount on behalf of employees enrolled in HMO's as for employees enrolled in other health care plans.

In addition, HMO's will have greater freedom in the way they offer physician services, design their corporate structure, and establish the rating systems which govern their premiums.

I believe this bill is a step forward in the Federal HMO Program. I urge all members to support the bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the conference report on the bill, H.R. 3235.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

EXPRESSING SENSE OF CONGRESS THAT THE SURGEON GENERAL SHOULD DECLARE DRUNK DRIVING A NATIONAL CRISIS

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 276) expressing the sense of Congress that the Surgeon General should declare that drunk driving is a national crisis.

The Clerk read as follows:

H. CON. RES. 276

Whereas drunk driving is the leading cause of death among young Americans;

Whereas in 1986, over 9,000 young Americans between the ages of 16 and 24 were killed in alcohol-related automobile crashes;

Whereas an estimated 3,538 of these young Americans were teenagers;

Whereas between 1972 and 1982, approximately 250,000 Americans of all ages were killed in alcohol-related automobile crashes;

Whereas between 1982 and 1986, approximately 119,000 Americans were killed in alcohol-related automobile crashes;

Whereas in 1986 alone, 23,987 Americans were killed in alcohol-related automobile crashes;

Whereas an estimated 2,000,000 alcohol-related automobile crashes occur in the United States each year;

Whereas an estimated 560,000 Americans are injured each year in alcohol-related automobile crashes and approximately 43,000 of these injuries are serious;

Whereas drunk driving is the Nation's leading cause of brain and spinal cord injury;

Whereas an estimated 2 out of every 5 Americans will be involved in an alcohol-related automobile crash at some point in their lives; and

Whereas drunk driving costs the Nation approximately $24,000,000,000 each year: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that the Surgeon General should declare that drunk driving is a national crisis.

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Iowa [Mr. TAUKE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Concurrent Resolution 276, the concurrent resolution presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of House Concurrent Resolution 276 is to express the sense of Congress that the Surgeon General should declare drunk driving a national crisis. There are currently 227 Members who have joined in cosponsoring this important resolution.

Death and injury due to drunk driving are a leading cause of death among our youth. In 1986, over 23,000 Americans, many of them young people, were killed in alcohol-related automobile accidents.

In recent years the Congress has worked with States to raise the minimum drinking age to 21 and to stiffen penalties for drunk driving. These were important steps but certainly not enough. We must do more.

The Secretary of Health and Human Services will announce a series of initiatives to focus public attention on the adverse health effects of alcohol abuse and alcoholism. The need to address the serious and continuing threat posed by drunk driving will be a critical component of these initiatives.

Passage of House Concurrent Resolution 276 will put the Congress clearly on record regarding this national tragedy. I urge the committee's support.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleagues in supporting this resolution which highlights one of the major public health concerns facing us today: drunk driving. The statistics cited in the resolution present a stark picture: 24,000 Americans are killed each year in alcohol-related automobile crashes; drunk driving is the leading cause of death among young Americans; and drunk driving is the leading cause of brain and spinal cord injury in the United States.

Drunk driving is a problem that must be fought on many fronts. I think the approach taken in this resolution is very constructive. We all know that reports of the Surgeon General can have powerful impacts. If the Surgeon General were to declare drunk driving to be a national crisis, the problem would receive the attention it deserves as a major public health crisis.

I commend my colleague, Mr. GOODLING, for his sponsorship of this measure and I urge its quick adoption today.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. TAUKE. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Speaker, I think for the Congress to go on record in this legislation is not just a useless act.

Some people may view it as "who is going to be against taking a position against drunk driving?" But this is going to be part of a number of initiatives. I think it is important when we recognize the tragedy involved in drunk driving. I am pleased to see stiffer criminal penalties at the state level. It is appropriate that driving while under the influence of any chemical substance which distorts the driver's ability to handle a dangerous vehicle which becomes a danger under the control of someone under those circumstances, I think it is important to bring home to people that that kind of offense should not be taken lightly.

I am also heartened by new technological developments that will allow, in cars, equipment that can measure the alcohol content of an individual's breath so that perhaps the ignition key would not be able to work at all, so that we could try to control individuals and urge upon them through this new technological advance ways that we can limit drivers under the influence from going on the roads.

This resolution is obviously one that everyone can support with good feelings of rightness and justice in the cause. And when the Department of Health and Human Services and others follow up on this resolution and undertake a number of the initiatives pursuant to this legislation I think we will see more progress. I think the gentleman from Pennsylvania [Mr. GOODLING] is to be commended for authoring it. I was pleased we were able to take it up in the Committee on Energy and Commerce and to present it to the House at this time.

Mr. TAUKE. Mr. Speaker, I thank the gentleman for his very helpful comments and his very thoughtful statement.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Speaker, I am happy to see this bill come to the floor with the full support of the Energy and Commerce Committee. I want to thank the chairman and vice chairman, Mr. DINGELL and Mr. LENT, for their support as well as Mr. WAXMAN, chairman of the Health Subcommittee for their efforts in behalf of the bill. I am also proud to say the bill has 265 cosponsors from both sides of the aisle and would have more if I could turn in those who have asked to be on the bill since it was reported out of committee.

As we all know, drunk driving has been the focus of much attention over the years in this House and the Nation. But, some of that attention has turned to other things lately and drunk driving is once again increasing in many areas. In my state of Pennsylvania, drunk driving fatalities were decreasing in the early and middle years of this decade, going from 800 fatalities in 1982 down to 720 in 1984. But, since then, the number rose to 839 last year. These statistics are not unique to Pennsylvania. Indeed, we have seen the number of fatalities nationwide grow to nearly 24,000 in 1986. That is why I introduced this bill last March: It is time to refocus national attention on the tragedy of drunk driving.

I hope we have not already forgotten the 27 schoolchildren killed by a drunk driver who ran head on into a schoolbus. Or the little girl here in Washington a couple of months ago who was hit by a drunk driver and killed as her mother tried desperately to pull her out of the way of the car coming straight at them. These kinds of horrible tragedies are happening all over the Nation at a rate of 70 deaths per day or 1 every 22 minutes.

This resolution would simply show our support for the Surgeon General's efforts to bring a halt to drunk driving. With a clear and certain goal of wiping out drunk driving as the leading killer of young people in this country, we can achieve it. With the leadership of Surgeon General Koop we can make great strides in reducing the property, bodily, and emotional damage caused by drunk driving. The Surgeon General is planning a national initiative on drunk driving to bring health and safety experts together to devise programs and implementation strategies that will move us toward that goal of eliminating drunk driving once and for all.

I wish to also thank the tireless efforts of Sandy Golden who approached me with this idea last spring. Without his persistence and encouragement, we could not have gained the overwhelming support this bill has. I thank the Pennsylvania Chapter of the National Trauma Society in Carlisle, PA, which has lent its support and assistance in furthering the cause of ending drunk driving. It will take a national effort to end drunk driving, and these folks are leading the way.

I hope my colleagues will give this bill their unanimous support and encourage colleagues from the other body to also unanimously concur in this resolution.

□ 1630

Mr. TAUKE. Mr. Speaker, I thank the gentleman for his outstanding leadership on this issue.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the concurrent resolution (H. Con. Res. 276).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CONCURRING IN SENATE AMENDMENT TO H.R. 4833, NURSING SHORTAGE REDUCTION AND EDUCATION EXTENSION ACT OF 1988, WITH AN AMENDMENT

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 573) to take from the Speakers table the bill (H.R. 4833) to amend the Public Health Service Act to revise and extend the programs of nurse education established in title VIII of such Act, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read as follows:

H. RES. 573

Resolved, Upon adoption of this resolution, the House shall be considered to have taken from the Speaker's table the bill, H.R. 4833, an Act to amend the Public Health Service Act to revise and extend the programs of nurse education established in title VIII of such Act, and for other purposes, with the Senate amendment thereto, and concurred in the Senate amendment with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Nursing Shortage Reduction and Education Extension Act of 1988".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

TITLE I—SPECIAL PROJECTS

SEC. 101. SPECIAL PROJECT GRANTS AND CONTRACTS.

(a) TRANSFER OF PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.—Part A of title VIII (42 U.S.C. 296k et seq.) is amended—

(1) by inserting after the heading for such part the following new heading:

"Subpart I—Special projects in General",

(2) by striking section 820(a)(1), and

(3) by adding at the end the following new subpart:

"Subpart II—Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

"SPECIAL PROJECTS

"SEC. 827. (a) The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary—

"(1) by identifying, recruiting, and selecting such individuals,

"(2) by facilitating the entry of such individuals into schools of nursing,

"(3) by providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

"(4) by providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

"(5) by paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education,

"(6) by publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools, and

"(7) by providing training, information, or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

"(b) No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Education. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(c) For payments under grants and contracts under subsection (a), there are authorized to be appropriated $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

(b) STRIKING OF CERTAIN PROGRAMS.—Section 820(a) (42 U.S.C. 296k(a)) as amended—

(1) by striking paragraphs (3), (7), and (9), and

(2) by redesignating paragraphs (2), (4), (5), (6), and (8) as paragraphs (1) through (5), respectively.

(c) GERIATRIC TRAINING.—Section 820(a)(2) (as redesignated by subsection (b)(2)) of this section) is amended to read as follows—

"(2) demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);".

(d) UPGRADING SKILLS.—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by amending paragraph (3) (as redesignated by subsection (b)(2) of this section) to read as follows:

"(3)(A) increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and

"(B) provide nursing education via satellite;", and

(2) by amending paragraph (4) (as so redesignated) to read as follows:

"(4) provide training and education—

"(A) to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs towards achievement of professional nursing degrees; and

"(B) to develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;".

(e) COORDINATION PROJECTS WITH RESPECT TO LOAN REPAYMENTS FOR SERVICE IN HEALTH FACILITIES.—Section 820(a) (42 U.S.C. 296k(a)) is amended by adding after paragraph (5) (as redesignated by subsection (b)(2) of this section) the following new paragraph:

"(6)(A) collect the names and addresses of health facilities willing to enter into agreements with nursing students and nursing personnel under which such individuals agree to serve as nurses in the health facilities in consideration of the health facilities agreeing to repay the principal and interest of the educational loans of such individuals;

"(B) collect data on the specific terms of such agreements offered by health facilities;

"(C) collect the names and addresses of nursing students identified pursuant to section 827(a), of other nursing students, and of nursing personnel, willing to enter into such agreements; and

"(D) coordinate and facilitate communications between health facilities and such individuals with respect to such agreements.".

(f) Geriatric Health Education Centers.—Section 820 (42 U.S.C. 296k) is amended—

(1) by redesignating subsections (b) through (d) as subsections (e) through (g), respectively, and

(2) by adding after subsection (a) the following new subsection:

"(b)(1) The Secretary may make grants to, and enter into contracts with, accredited schools of nursing to assist in meeting the costs of such schools in providing projects—

"(A) to improve the training of nurses in geriatrics;

"(B) to develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) to expand and strengthen instruction in methods of such treatment;

"(D) to support the training and retraining of faculty to provide such instruction;

"(E) to support continuing education of nurses who provide such treatment; and

"(F) to establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

"(2)(A) Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under paragraph (1) and has consulted with the Advisory Council on Nurses Education with respect to such application.

"(C) For the purpose of carrying out this subsection, the Secretary may obligate each fiscal year not more than $2,000,000 of the amounts made available for such purpose pursuant to subsection (g)(2).".

(g) Innovative Hospital Nursing Practice Models.—Section 820 (42 U.S.C. 296k), as amended by subsection (f) of this section, is further amended by inserting after subsection (b) the following new subsection:

(c)(1) The Secretary may make grants to public and nonprofit private entities for the purpose of demonstrating innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that hospital nursing practice models demonstrated pursuant to such subsection will include initiatives—

"(A) to restructure the role of the professional nurse, through changes in the composition of hospital staffs and through innovative approaches for interaction between hospital administration and nursing personnel, in order to ensure that the particular expertise of such nurses is efficiently utilized and that such nurses are engaged in direct patient care during a larger proportion of their work time;

"(B) to test innovative wage structure for professional nurses in order to—

"(i) reduce vacancies in work shifts during unpopular work hours; and

"(ii) provide financial recognition based upon experience and education; and

"(C) to evaluate the effectiveness of providing benefits for professional nurses, such as pensions, sabbaticals, and payment of educational expenses, as a means of developing increased loyalty of such nurses to health care institutions and reducing turnover in nursing positions.".

(h) Long-Term Care Nursing Practice Demonstrations.—Section 820 (42 U.S.C. 296k), as amended by subsection (g) of this section, is further amended by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary may make grants to public and nonprofit private entities accredited for the training of nurses for the purpose of—

"(A) demonstrating innovative nursing practice models for—

"(i) the provision of case-managed health care services (including adult day care) and health care services in the home; or

"(ii) the provision of health care services in long-term care facilities; or

"(B) developing projects to increase the exposure of nursing students to clinical practice in nursing home, home health, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that models demonstrated pursuant to such paragraph will be designed—

"(A) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and

"(B) to improve nursing care in home health care settings and nursing homes.".

(i) Authorization of Appropriations.—Section 820(g) (as redesignated by subsection (b)(2) of this section) is amended to read as follows:

"(g)(1) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $16,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.

"(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall obligate not less than 20 percent to carry out subsection (a)(2) and subsection (b) (subject to subsection (b)(2)(C)), not less than 20 percent to carry out paragraph (3) of subsection (a), and not less than 10 percent to carry out paragraph (4) of such subsection. Of the amounts appropriated pursuant to paragraph (1) for fiscal year 1989, the Secretary shall obligate not less than 20 percent to carry out section 827.

SEC. 102. ADVANCED NURSE EDUCATION.

Section 821(b) (42 U.S.C. 2961(b)) is amended to read as follows:

"(b) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $13,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.".

SEC. 103. NURSE PRACTITIONER AND NURSE MIDWIFE PROGRAMS.

(a) Required Number of Students in Training Programs.—Section 822(a)(2)(B)(ii) (42 U.S.C. 296m(a)(2)(B)(ii)) is amended by striking "not less than eight students" and inserting "not less than six full-time equivalent students".

(b) Commitment Under Traineeship Program to Serve in Certain Areas or Facilities.—Section 822(b)(3) (42 U.S.C. 296m(b)(3)) is amended by striking "332)" and all that follows and inserting the following: "332), in an Indian Health Service health center, in a Native Hawaiian health center, in a public health care facility, in a migrant health center (as defined in section 329(a)(1)), in a rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), or in a community health center (as defined in section 330(a))".

(c) Assurances of Compliance With Guidelines.—Section 822(c) (42 U.S.C. 296m(c)) is amended—

(1) by inserting "under subsection (a) or (b)" after "operate a program"; and

(2) by striking "midwives unless this application" and inserting "midwives unless the application".

(d) Authorization of Appropriations.—Section 822(d) (42) U.S.C. 296m(d)) is amended to read as follows:

"(d) For payments under grants and contracts under subsections (a) and (b), there are authorized to be appropriated $12,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and $21,000,000 for fiscal year 1991.".

SEC. 104. ENHANCEMENT OF QUALITY CARE.

(a) In General.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $650,000 for the purpose of enhancing the ability of a qualified hospital to provide high-quality inpatient services. For purposes of this subsection, the term "qualified hospital" means a hospital that, as of the date of the enactment of this Act, is the only general short-term acute care hospital located in a rural county that is adjacent to 7 counties, of which 1 such adjacent county is a county described in paragraph (8)(B) of section 1886(d) of the Act referred to in section 371(b)(1)(C) of the Public Health Service Act and, of the remaining 6 such adjacent counties, 5 such counties are (or are treated as) urban counties for purposes of such section 1886(d) and 1 such county is not (or is not treated as) an urban county for purposes of such section.

(b) Pro Rata Determination.—In making available amounts for a fiscal year for purposes of section (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $650,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 105. IMPROVING HEALTH CARE SERVICES.

(a) IN GENERAL.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $210,000 for the purpose of improving the health care services furnished by a qualified hospital. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county—

(1) that is adjacent to 6 counties, of which 3 adjacent counties are urban (2 of the urban counties being located in another State), and of which 2 of the adjacent rural counties are without hospital facilities,

(2) that is located within 7 miles of another urban county in a separate Metropolitan Statistical Area from the Metropolitan Statistical Area in which the urban counties adjacent to the rural counties are located,

(3) that has more than 17,500 residents but less than 17,550 residents according to the 1980 census,

(4) that has a workforce of which more than 39.5 percent of those reporting workplace commute to the adjacent urban counties to the 1980 census, and

(5) that has a health-related labor pool which is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in 1 of the adjacent urban counties (in another State) of several large health-related facilities, including that State's sole State-owned medical school/hospital complex with more than 5,500 employees, a large Veterans Administration Hospital with more than 1,000 beds, and a United States Army hospital with more than 350 beds.

(b) PRO RATA DETERMINATION.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $210,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 106. INCENTIVE SPECIAL PAY FOR PUBLIC HEALTH SERVICE NURSES.

Subsection (a) of section 208 (42 U.S.C. 210(a)) is amended by adding at the end the following new paragraph:

"(3) Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37, United States Code.".

SEC. 107. EXTENSION OF PERIOD FOR INSURANCE OF NEW LOANS.

Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: ", and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans and paying installments for such fiscal year."; and

(2) in the third sentence by striking "1991," and inserting "1994,".

TITLE II—ASSISTANCE TO NURSING STUDENTS

SEC. 201. TRAINEESHIPS FOR ADVANCED EDUCATION OF PROFESSIONAL NURSES.

(a) TRAINEESHIPS FOR CERTAIN PART-TIME STUDENTS IN ADVANCED NURSING PROGRAMS. —Section 830 (42 U.S.C. 297) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private schools of nursing to cover the costs of traineeships for students—

"(A) who are enrolled at least half-time in programs offering a masters degree in nursing; and

"(B) who agree to complete the requirements for degrees from such programs not later than the end of the academic year during which the student is to receive the traineeship.

"(2) In making grants under paragraph (1), the Secretary shall give special consideration to applications for traineeship programs that educate nursing students to serve in and prepare for practice as nurse practitioners, clinical specialists, or nurse midwives.".

"(b) AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIP PROGRAMS.—Section 830 (42 U.S.C. 297) is amended by amending subsection (d) (as redesignated by subsection (a) of this section) to read as follows:

"(d)(1)(A) For the purposes of subsections (a) and (c), there are authorized to be appropriated $13,000,000 for fiscal year 1989, $15,000,000 for fiscal year 1990, and $16,000,000 for fiscal year 1991.

"(B) Of the amounts made available pursuant to subparagraph (A), the Secretary shall make available not less than 25 percent to carry out subsection (c).

"(2) For the purposes of subsection (b), there is authorized to be appropriated $1,100,000 for each of the fiscal years 1989 through 1991.".

SEC. 202. NURSE ANESTHETISTS.

"(a) TRAINEESHIPS AND OTHER PROGRAMS.—

(1) Section 831(a)(1) (42 U.S.C. 297-1(a)(1)) is amended to read as follows:

"(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists and to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. In order to be eligible for such a grant, the program of an institution must be accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.".

(2) Section 831(a)(2) (42 U.S.C. 29701(a)(2)) is amended by amending the second sentence to read as follows: "Payments for traineeships shall be limited to such amounts as the Secretary determines to be necessary to cover the costs of tuition and fees and a stipend and allowances (including travel and subsistence expenses) for trainees.".

(b) AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 831(c) (42 U.S.C. 297-1(c)) is amended to read as follows: "For the purpose of making grants under this section, there is authorized to be appropriated $1,800,000 for each of the fiscal years 1989 through 1991.".

SEC. 203. LOAN PROVISIONS.

(a) RULE OF CONSTRUCTION WITH RESPECT TO CERTAIN UNCOLLECTABLE LOANS.—Section 835(c)(1) (42 U.S.C. 297a(c)(1)) is amended by adding at the end the following new sentence: "With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.".

(b) INCREASES WITH RESPECT TO ANNUAL AND AGGREGATE LOAN TOTALS.—Section 836(a) (42 U.S.C.297b(a)) is amended—

(1) in the first sentence, by inserting before the period the following: ", except that for the final two academic years of the program involved, such total may not exceed $4,000"; and

(2) in the second sentence, by striking "$10,000" and inserting "$13,000".

(c) PREFERENCE CATEGORY OF EXCEPTIONAL FINANCIAL NEED.—Section 836(a) (42 U.S.C. 297b(a)) is amended in the third sentence by striking "practical nurses and" and inserting "practical nurses, to persons with exceptional financial need, and".

(d) REDUCTION OF ELIGIBILITY STANDARD OF NEED.—Section 836(b)(1)(C) (42 U.S.C. 297b(b)(1)(C)) is amended to read as follows:

"(C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary).".

(e) DEFERRAL PERIOD FOR HALF-TIME PROFESSIONAL TRAINING.—Section 836(b)(2)(B) (42 U.S.C. 297b(b)(2)(B)) is amended—

(1) by striking "(up to five years)" and inserting "(up to ten years)"; and

(2) by inserting after "full-time" the following: "or half-time".

(f) REDUCTION IN INTEREST RATE.—Section 836(b)(5) (42 U.S.C. 297b(b)(5)) is amended by striking "6 per centum" and inserting "5 percent".

(g) STRIKING OF LOW-INCOME PROVISIONS WITH RESPECT TO LOAN REPAYMENT.—Section 836(j) (42 U.S.C. 297b(j)) is amended by adding "and" at the end of paragraph (2), by striking paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(h) USE OF CERTAIN UNEXPENDED FUNDS FOR ALLOTMENTS.—

(1) Section 838(a)(3) (42 U.S.C. 297d(a)(3)) is amended—

(A) by inserting "(A)" after the paragraph designation; and

(B) by adding at the end the following new subparagraph:

"(B) With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not alloted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 843 and, for such purposes, shall remain available until expended.".

(2) Except as provided in Public Law 100-436, the amendment made by paragraph (1) shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 205 of this Act, had been effective on such date.

(i) EXTENSION OF DATE CERTAIN FOR CAPITAL DISTRIBUTION.—Section 839 (42 U.S.C. 297e) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "1991" and inserting "1994"; and

(B) in paragraph (1), by striking "1991" and inserting "1994"; and

(2) in subsection (b), by striking "1991" each place it appears and inserting "1994".

SEC. 204. LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES.

(a) Agreements for Loan Repayments.—Section 836(h)(1)(C) (42 U.S.C. 297b(h)(1)(C) is amended to read as follows:

"(C) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses;".

(b) Priorities With Respect to Agreements.—Section 836(h) (42 U.S.C. 297b(h)) is amended at the end the following new paragraph:

"(5) In entering into agreements under paragraph (1), the Secretary shall give priority—

"(A) to applicants with the greatest financial need; and

"(B) to applicants that, with respect to health facilities described in such paragraph, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.".

(c) Definitions.—Section 836(h) (42 U.S.C. 297b(h)), as amended by subsection (b) of this section, is further amended by adding at the end of the following new paragraph:

"(6) For purposes of this subsection:

"(A) The term 'community health center' has the meaning given such term in section 330(a).

"(B) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(C) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(D) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.".

(d) Authorization of Appropriations for Loan Repayments.—Subpart II of part B of title VIII (42 U.S.C. 297a et seq.) is amended by inserting after section 837 the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES

Sec. 837A. For the purpose of payments under agreements entered into under section 836(h), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1989 through 1991.".

SEC. 205. NURSING SCHOLARSHIPS.

Part B of title VIII (42 U.S.C. 297 et seq.) is amended by adding at the end the following new subpart:

"Subpart III—Scholarships

"UNDERGRADUATE EDUCATION OF PROFESSIONAL NURSES

"Sec. 843. (a) The Secretary may make grants to public and nonprofit private schools accredited for the training of professional nurses for the purpose of providing scholarships to individuals who are enrolled (or accepted for enrollment) as nursing students of such schools and who are in financial need with respect to attending such schools.

"(b) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will give preference to individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary under section 844(a)).

"(c) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will provide a scholarship to an individual only if the individual agrees that, upon graduating from the program of nursing education offered by the applicant, the individual will serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

"(d) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that a scholarship provided pursuant to such subsection for attendance at a school described in such subsection may not, for any year of such attendance for which the scholarship is made, provide an amount exceeding an amount equal to the amount of the tuition and any fees for the year involved.

"(e) For purposes of this section:

"(1) The term 'community health center' has the meaning given such term in section 330(a).

"(2) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(3) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(4) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.

"(f) For the purpose of making grants under this section, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and $30,000,000 for each of the fiscal years 1990 and 1991.".

SEC. 206. ESTABLISHMENT OF DEMONSTRATION PROGRAM FOR STUDENT LOANS WITH RESPECT TO SERVICE IN CERTAIN HEALTH CARE FACILITIES IN UNDERSERVED AREAS.

Part B of title VIII (42 U.S.C. 297 et seq.), as amended by section 205 of this Act, is further amended by adding at the end the following new subpart:

"Subpart IV—Demonstration Program For Student Loans With Respect to Service in Certain Health Care Facilities in Underserved Areas

SEC. 847. ESTABLISHMENT OF PROGRAM.

"(a) In General.—The Secretary may, subject to subsections (c) and (d), make loans to individuals to assist the individuals in attending schools of nursing if the individuals enter into contracts with health facilities to engage, in consideration of the agreements made pursuant to subsection (d) (relating to loan repayments), in full-time employment as nurses for a period of time equal to not more than the period of time during which the individuals receive loan assistance under this section.

"(b) Preferences in Making Loans.—In making loans under subsection (a), the Secretary shall give preference to disadvantaged and minority individuals underrepresented in the nursing profession, as determined in accordance with criteria established by the Secretary.

"(c) Certain Requirements With Respect to Students.—The Secretary may not make a loan under subsection (a) unless—

"(1) the applicant for the loan is enrolled (or accepted for enrollment) as a full-time student in a public or nonprofit school accredited for the training of professional nurses;

"(2) the applicant agrees to expend the loan only for the payment of the costs of tuition, reasonable living expenses, books, fees, and necessary transportation; and

"(3) the applicant agrees that, if the applicant is dismissed from the school for academic reasons, voluntarily terminates academic training as a nurse, or violates the contract entered into pursuant to subsection (a), the applicant will be liable to the United States in an amount equal to 100 percent of the principal and interest due on the loan.

"(c) Certain Requirements With Respect to Health Care Facilities.—The Secretary may not make a loan under subsection (a) unless, with respect to contracts referred to in such subsection—

"(1) the applicant for the loan has entered into such a contract with a health care facility that is a nonprofit hospital or a long-term care facility certified under title XVIII or XIX of the Social Security Act;

"(2) such health care facility is located in a geographic area that is underserved with respect to the services of nurses, as designated pursuant to subsection (e);

"(3) the contract provides that the health care facility will repay 100 percent of the principal and interest of the loan made to the applicant under subsection (a);

"(4) the contract provides that, in serving as a nurse at the health care facility, the payments made by the facility on behalf of the applicant in repayment of the loan will be in addition to the pay that the applicant would otherwise receive for such service; and

"(5) the contract provides that, in the event the health care facility violates the contract, the facility will be liable to the United States in an amount equal to 100 percent of the principal and interest due on such loan.

"(e) Designation of Underserved Geographic Areas.—For purposes of subsection (d)(2), the Secretary shall through regulation establish criteria for the designation of such areas. The Secretary may, as appropriate, designate geographic areas using criteria in section 330(b)(4).

"(f) Maximum Amount of Loan.—The Secretary may not provide a loan under subsection (a) in an amount exceeding 100 percent of the costs described in subsection (c)(2).

"(g) Interest.—Loans awarded under this section shall bear interest on the unpaid balance of the loan at a rate of 5 percent per annum. Such interest shall accrue from the date the individual involved is no longer enrolled in the nursing program.

"(h) Waiver or Suspension of Student Obligations.—The Secretary shall by regulation provide for the waiver or suspension of any obligation of any individual receiving a loan under subsection (a) whenever compliance by the individual is impossible or would involve extreme hardship to the individual.

"(i) REQUIREMENT OF APPLICATION.—The Secretary may not make a loan under subsection (a) unless—

"(1) an application for the loan is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the loan is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(j) SET-ASIDE WITH RESPECT TO RURAL AREAS.—Of the amounts appropriated for fiscal year pursuant to subsection (1), the Secretary shall make available not less than 35 percent for loans under subsection (a) to individuals who will, pursuant to such loan, serve as nurses in rural areas designated under subsection (e) as geographic areas that are underserved with respect to the services of nurses.

"(k) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making loans under subsection (a), there is authorized to be appropriated $5,000,000 for the fiscal years 1989 through 1991.

"(1) SUNSET.—The authority to make loans under subsection (a) terminates September 30, 1991.".

TITLE III—GENERAL PROVISIONS OF TITLE VIII

SEC. 301. NATIONAL ADVISORY COUNCIL ON NURSE TRAINING.

(a) IN GENERAL.—Section 851 (42 U.S.C. 298) is amended—

(1) in the section heading, by striking "NATIONAL ADVISORY COUNCIL ON NURSE TRAINING" and inserting in lieu thereof "ADVISORY COUNCIL ON NURSES EDUCATION"; and

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking "National Advisory Council on Nurse Training" and inserting in lieu thereof "Advisory Council on Nurses Education"; and

(ii) by striking "nineteen" and inserting "twenty-one"; and

(B) in the second sentence, by striking "general public" and inserting the following: "general public, one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing,".

(b) CONFORMING AMENDMENTS.—

(1) Section 820 (42 U.S.C. 296k) is amended—

(A) in subsection (e) (as redesignated by section 101(b)(2)), by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education"; and

(B) in subsection (f) (as so redesignated), in the second sentence, by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

(2) Section 856(l) (42 U.S.C. 298b-3(1)) is amended by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

SEC. 302. EVALUATIONS AND REPORTS.

Part C of title VIII (42 U.S.C. 298 et seq.) is amended by adding at the end the following new section:

"EVALUATIONS

"SEC. 859. (a) The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out pursuant to this title and for the dissemination of information developed as result of such projects. Such evaluations shall include an evaluation of the effectiveness of such projects in increasing the recruitment and retention of nurses.

"(b)(1) The Secretary shall, not later than January 10, 1989, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the manner in which the Secretary intends to carry out subsection (a).

"(2) The Secretary shall, not later than January 10, 1991, and biannually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) during the preceding two fiscal years.

"(c) Of the amounts appropriated each fiscal year to carry out this title, the Secretary shall make available one percent to carry out this section.".

TITLE IV—WAIVER OF LIABILITY FOR CERTAIN SALE OF FACILITY UNDER PROGRAM OF CONSTRUCTION AND MODERNIZATION OF MEDICAL FACILITIES

SEC. 401. ESTABLISHMENT OF WAIVER AUTHORITY.

(a) IN GENERAL.—If, pursuant to subsection (b) of section 402, the Secretary of Health and Human Services makes a certification of compliance with the conditions described in subsection (a) of such section, section 609 of the Public Health Service Act (42 U.S.C. 291i) shall not, with respect to the transferor and transferee described in subsection (b), apply to the sale on November 26, 1986, of the medical facility—

(1) located in Blanding, in the State of Utah;

(2) known, prior to such date, as San Juan County Nursing Home; and

(3) with respect to which funds were received during the years 1967 through 1970 pursuant to title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

(b) DESCRIPTION OF PARTIES TO SALE.—In the sale described in subsection (a), the transferor is San Juan County, a political subdivision of the State of Utah, and the transferee is Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

SEC. 402. CONDITIONS OF WAIVER.

(a) IN GENERAL.—The conditions referred to in section 401(a) are that, not later than the expiration of the 12-month period beginning on the date of the enactment of this Act—

(1)(A) San Juan County establish an irrevocable trust with a res of $321,057 for the sole purpose of satisfying, with respect to the medical facility described in section 401(a), the obligation of San Juan County under regulations issued under clause (2) of section 603(e) of the Public Health Service Act (42 U.S.C. 291c(e));

(B) except to the extent inconsistent with this Act, San Juan establish such trust in accordance with regulations issued under section 609(d)(1)(A) of such Act for trusts established pursuant to such section; and

(C) San Juan County agree—

(i) except to the extent inconsistent with this Act, to administer such trust in accordance with regulations issued under such section 609(d)(1)(A); and

(ii) with respect to the obligation described in subparagraph (A)—

(I) to carry out such obligation at the medical facility known as San Juan County Hospital and located in Monticello, in the State of Utah:

(II) to ensure that uncompensated services provided at any location other than such medical facility will not be reimbursed from the trust established pursuant to subparagraph (A); and

(III) not to seek contribution from Auburn Corporation towards the satisfaction of such obligation; and

(2) Auburn Corporation agree—

(A) to satisfy, with respect to the medical facility described in section 410(a), the obligation of San Juan County under regulations issued under clause (1) of section 603(e) of the Public Health Service Act;

(B) to satisfy such obligation at the medical facility described in section 401(a); and

(C) not to seek contribution from San Juan County towards the satisfaction of such obligation.

(b) DETERMINATION AND CERTIFICATION OF SATISFACTION OF CONDITIONS.—The Secretary shall make a determination of whether the conditions described in subsection (a) are satisfied by San Juan County and Auburn Corporation within the period described in such subsection. If the Secretary makes a determination that the conditions have been satisfied, the Secretary shall certify to the Congress the fact of such determination.

SEC. 403. MONITORING OF COMPLIANCE WITH AGREEMENTS AND EFFECT OF FAILURE TO COMPLY.

(a) MONITORING.—The Secretary shall determine the extent to which San Juan County and Auburn Corporation are carrying out their respective duties under the agreements made pursuant to the conditions described in section 402(a).

(b) FAILURE TO COMPLY.—

(1) If the conditions described in section 402(a) are not satisfied by San Juan County and Auburn Corporation within the period described in such section, the Secretary shall ensure that proceedings under section 609 of the Public Health Service Act (42 U.S.C. 291i) with respect to the sale described in section 401(a) are commenced or continued against San Juan County or Auburn Corporation, or both, as determined by the Secretary.

(2) If San Juan County or Auburn Corporation fails to carry out its duties under the agreements made pursuant to the conditions described in section 402(a), the Secretary shall ensure that proceedings described in paragraph (1) are commenced or continued against San Juan County or Auburn Corporation, respectively.

SEC. 404. DEFINITIONS.

For purposes of this Act:

(1) The term "Auburn Corporation" means Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

(2) The term "San Juan County" means San Juan County, a political subdivision of the State of Utah.

(3) The term "Secretary" means the Secretary of Health and Human Services.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

The SPEAKER pro tempore. Is a second demanded?

Mr. TAUKE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Iowa [Mr. TAUKE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on House Resolution 573.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to present to the House a resolution that favorably settles the differences between H.R. 4833, the Nursing Shortage Reduction and Education Extension Act of 1988, and the Senate amendment. The legislation provides for a 3-year extension of the Nurse Education Act.

The principal purpose of the legislation is to respond to the serious shortage of professional nurses by extending the programs of assistance under title VIII of the Public Health Service Act. In addition, the legislation initiates an important new scholarship program to encourage greater numbers of young men and women to pursue careers in nursing.

I am pleased to report that it was possible to resolve the differences between the House bill and the Senate amendment without the need for a formal conference. Both versions of the legislation were similar. The compromise agreement provides significant increases in funding for nursing education programs. The bill represents a comprehensive response to our Nation's shortage of professional nurses.

The most important feature of this legislation is the emphasis it places upon undergraduate nursing education. It is a response to the declining enrollments that undergraduate nursing programs have experienced in recent years. For a variety of factors, nursing has become a less attractive career than it was a decade ago.

We simply must do more to attract talented young people to this vital profession. The legislation establishes an undergraduate scholarship program to assist students in financial need to attend nursing school. Under this program, special preference is to be given to students from disadvantaged backgrounds. Following graduation, all scholarship recipients will be required to serve in a health care facility which has a critical shortage of nurses.

At this time I want to recognize and commend the contributions of three Members, Mr. WYDEN, the bill's author; Mr. DINGELL, the chairman of the full committee; and Mr. MADIGAN, the subcommittee's ranking minority member. They have worked tirelessly with the subcommittee to address the nursing shortage.

This bill reflects the fact that the House and Senate are in agreement that the nursing shortage is real, the implications are serious to health care quality, and action is needed immediately. I urge all Members to join with us in passing this legislation.

Mr. Speaker, I include the following table of authorizations in this bill in the RECORD at this point.

H.R. 4833—NURSING EDUCATION: AUTHORIZATION OF APPROPRIATIONS

[By fiscal year; in millions of dollars]

Item	1989	1990	1991
Section 820: Special projects (with set-asides)	13	16	20
827: Disadvantaged student background assistance	3	4	5
821: Advanced nurse education	13	13	20
822: Nurse practitioner midwife	12	17	21
831: Nurse anesthetists	1.8	1.8	1.8
830: Nurse traineeships	13	15	16
	1.1	1.1	1.1
843: Nurse undergraduate scholarships	15	30	30
837A: Nurse loan repayment	5	5	5
847: Nurse student loan demonstrations	[1] 5		
Total	81.9	102.9	119.9

[1] This $5 million authorization is for fiscal years 1989 through 1991.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join the chairman of the Subcommittee on Health and the Environment in supporting this resolution to bring up the Nursing Shortage and Reduction Education Extension Act. The bill before us today represents an agreement that has been reached with members of the Senate Labor and Human Resources Committee. This bill reauthorizes the existing nursing education programs in title VIII of the Public Health Service Act and authorizes several new initiatives to address the nursing shortage. These initiatives to address the nursing shortage include grants for the purposes of demonstrating innovative hospital nursing practice models to: Reduce vacancies in professional nursing positions; and, to make such positions a more attractive career choice.

We are currently faced with an acute shortage of nurses nation-wide. This problem is even more serious in rural areas. According to a survey conducted by the American Hospital Association in 1987, one-fourth of Hospitals report nursing vacancy rates exceeding 15 percent and the average hospital vacancy rates for nurses rose to 11.3 percent. Therefore I am pleased that this bill incorporated provisions based on several recommendations of the House Rural Health Care Coalition, including programs for: Loan repayment for educational loans for nurses who agree to serve in rural health clinics hospitals, nursing homes and other facilities experiencing critical shortages; and the development of projects to bring nursing education to remote rural areas through satellite transmissions.

I am pleased that this agreement with the Senate expands the focus of the Public Health Service's nursing education programs by providing funds for undergraduate nursing programs, for scholarships to students in financial need and for a loan repayment program. I believe this renewed emphasis on undergraduate training and the staff R.N. is an important addition to the Public Health Service Act.

I urge my colleagues to join me in supporting this important bill.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon [Mr. WYDEN], the author of the legislation that is now before us. He has played a crucial and important role in many health initiatives, and on this one we are deeply indebted to him for doing what the Federal Government could do to bring about a way to cure the nursing shortage.

Mr. WYDEN. Mr. Speaker, first of all I want to thank the chairman of the subcommittee and our very able staff for all the help that they have given in working on this legislation. They came to Portland for a hearing when they certainly could have been doing lots of other things, and I want to thank them for it. I also want to thank the chairman of the full committee, the gentleman from Michigan [Mr. DINGELL] as well who had some special concerns particularly in the area of the rural and the geriatric nursing field, and his important contributions have been put into this legislation, and I think they are going to pay off greatly in the years ahead.

Mr. Speaker, it is quite obvious that from one end of the United States to another there is an acute shortage of nurses in this country, and it is affecting the quality of medical care in the United States. Whether we look at geriatric care, whether we look at care for kids, whether it is rural or urban, we are seeing a tremendous shortage of nurses. What Time magazine recently called an exodus of the exhausted has afflicted the profession and now requires that we move, and move quickly, to do something to bring more nurses into the profession and then keep them there once we have them in the field.

This legislation does authorize $300 million for 1989 to 1991, fiscal years. In particular I think the undergraduate nursing scholarship program is a landmark one. It would directly assist individuals committed to entering the nursing profession and would also include scholarship provisions that give practical and vocational nurses opportunities to receive R.N. degrees as well as allowing students to pursue graduate degrees with Federal assistance where they could attend school part time.

Mr. Speaker and colleagues, also this legislation allows us to try out some innovative, creative projects in the nursing field. I think this is particularly important as we look to new models to try to retain excellent nurses who may now be leaving the profession.

I think this legislation has strong bipartisan support. I want to thank my colleagues on the other side, the gentleman from Iowa [Mr. Tauke], and the gentleman from Illinois [Mr. Madigan] for their help on this legislation.

Mrs. ROUKEMA. Mr. Speaker, I rise in support of H.R. 4833, the Nursing Shortage and Education Extension Act.

This legislation, and one which will be addressed shortly by the House, seeks to address the issue of the severe nursing shortage facing this Nation. I am sure my colleagues are aware that over 200,000 nursing positions across this Nation are unfilled because our health care facilities and nursing schools have not been able to recruit or retain enough qualified nursing professionals. This is a crisis which, if left unchecked, calls into question the ability of this Nation to provide the proper health care needs the citizens of this country need and deserve. We must begin to take more seriously and do something about.

This legislation begins that process by reauthorizing existing nurse education programs and provides generally higher funding levels including those which provide nursing scholarships, and new demonstration grants and programs aimed to recruit and reduce nursing shortages.

Mr. Speaker, the lack of trained professional American nurses has forced our health care providers to look beyond our national borders for medical personnel. These foreign nurses have come here and generally have done a good job. But by the very nature of being from other lands we have encountered a whole different series of problems including the continuing expiration of visas. Later today we will consider legislation which our colleague, Mr. Schumer, and I have been very involved in which addresses the issue of foreign nurses. But for now, I urge adoption of this measure.

Mr. TAUKE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Waxman] that the House suspend the rules and agree to the resolution (H. Res. 573).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

SATELLITE HOME VIEWER ACT OF 1988

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2848) to amend title 17, United States Code, relating to copyrights, to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners, as amended.

The Clerk read as follows:

H.R. 2848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Home Viewer Act of 1988".

SEC. 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 111 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end;

(ii) by redesignating paragraph (4) as paragraph (5); and

(iii) by inserting the following after paragraph (3):

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or" and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following:

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119.".

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

"(a) Secondary Transmissions by Satellite Carriers.—

"(1) Superstations.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if a secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

"(2) Network stations.—

"(A) In general.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

"(B) Secondary transmissions to unserved households.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

"(C) Submission of subscriber lists to networks.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

"(3) Noncompliance with reporting and payment requirements.—Notwithstanding the provisions of paragraphs (1) and (2), the willfull or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringment under section 501, and is fully subject to the remedies provided by section 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

"(4) Willful alterations.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringment under section 501, and is fully subject to the remedies provided by section 502 through

506 and section 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(5) Violation of territorial restrictions on statutory license for network stations.—

"(A) Individual violations—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by section 502 through 506 and 509, expect that—

"(i) no damages shall be awarded for such act of infringment if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

"(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

"(B) Pattern of violations.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

"(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primany network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

"(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

"(C) Previous subscribers excluded.—Subparagraphs (A) and (B) do not apply to secondy transmission by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before the date of the enactment of the Satellite Home Viewer Act of 1988.

"(6) Discrimination by a satellite carrier.—Notwithstanding the provisions of paragraph (1), the willful of repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

"(7) Geographic limitations on secondary transmissions.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

"(b) Statutory License for Secondary Transmissions for Private Home Viewing.—

"(1) Deposits with the register of copyrights.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

"(B) a royalty fee for that 6-month period, computed by—

"(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

"(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

"(iii) adding together the totals computed under clauses (i) and (ii).

"(2) Investment of fees.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

"(3) Persons to whom fees are distributed.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

"(4) Procedures for distribution.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

"(A) Filing of claims for fees.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

"(B) Determination of controversy; distributions.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducing reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

"(C) Withholding of fees during controversy.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

"(c) Determination of Royalty Fees.—

"(1) Applicability and determination of royalty fees.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

"(2) Fee set by voluntary negotiation.—

"(A) Notice of initiation of proceedings.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

"(B) Negotiations.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

"(C) Agreements binding on parties; filing of agreements.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

"(D) Period agreement is in effect.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994.

"(3) Fee set by compulsory arbitration.—

"(A) Notice of initiation of proceedings.—On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

"(B) Selection of arbitration panel.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this subparagraph shall constitute an Arbitration Panel.

"(C) Arbitration proceeding.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

"(D) Factors for determining royalty fees.—In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

"(i) To maximize the availability of creative works to the public.

"(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

"(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

"(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

"(E) Report to copyright royalty tribunal.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

"(F) Action by copyright royalty tribunal.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

"(G) Period during which decision of panel or order of tribunal effective.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

"(H) Persons subject to royalty fee.—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, or copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

"(4) Judicial review.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

"(d) Definitions.—As used in this section—

"(1) Distributor.—The term 'distributor' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

"(2) Network station.—The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

"(3) Primary network station.—The term 'primary network station' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

"(4) Primary transmission.—The term 'primary transmission' has the meaning given that term in section 111(f) of this title.

"(5) Private home viewing.—The term 'private home viewing' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

"(6) Satellite carrier.—The term 'satellite carrier means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such proint-to-multipoint distriubition, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

"(7) Secondary transmission.—The term 'secondary transmission' has the meaning given that term in section 111(f) of this title.

"(8) Subscriber.—The term 'subscriber' means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellie carrier or to a distributor.

"(9) Superstation.—The term 'superstation' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

"(10) UNSERVED HOUSEHOLD.—The term 'unserved household', with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

"(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmission by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

"(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.".

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following:

"(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.".

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking "and 116" and inserting ", 116, and 119(b)".

(5) Section 804(d) of title 17, United States Code, is amended by striking "sections 111 or 116" and inserting "section 111, 116, or 119".

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item:

"119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.".

SEC. 3. SYNDICATED EXCLUSIVITY; REPORT ON DISCRIMINATION.

Title VII of The Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end of the following:

"SYNDICATED EXCLUSIVITY

"SEC. 712. (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

"(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

"(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

"(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.

"DISCRIMINATION

"SEC. 713. The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code.".

SEC. 4. INQUIRY ON ENCRYPTION STANDARD.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended by adding at the end thereof the following:

"(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

"(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

"(2) incorporation of technological enhancements, indluding advanced television formats;

"(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

"(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

"(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

"(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

"(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.".

SEC. 5. PIRACY OF SATELLITE CABLE PROGRAMMING.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) in subsection (c)—

(A) by striking "and" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting "; and" ; and

(C) by adding at the end the following:

"(6) the term 'any person aggrieved' shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.";

(2) in subsection (d)(1), by striking "$1,000" and inserting "$2,000";

(3) in paragraph (2) of subsection (d), by striking "$25,000" and all that follows through the end of that paragraph and inserting "$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.";

(4) in subsection (d)(3)(A), by inserting "or paragraph (4) of subsection (d)" immediately after "subsection (a)";

(5) in subsection (d)(3)(B) by striking "may" the first time it appears;

(6) in subsection (d)(3)(B)(i), by inserting "may" immediately before "grant";

(7) in subsection (d)(3)(B)(ii), by inserting "may" immediately before "award";

(8) in subsection (d)(3)(B)(iii), by inserting "shall" immediately before "direct";

(9) in subsection (d)(3)(C)(i)(II)—

(A) by inserting "of subsection (a)" immediately after "violation";

(B) by striking "$250" and inserting "$1,000"; and

(C) by inserting immediately before the period the following: ", and for each violation of paragraph (4) of this subsection involved in the action and aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just";

(10) in subsection (d)(3)(C)(ii), by striking "$50,000" and inserting "$100,000 for each violation of subsection (a)";

(11) in subsection (d)(3)(C)(iii), by striking "$100" and inserting "$250"; and

(12) by striking paragraph (4) of subsection (d) and inserting the following:

"(4) Any person who manufactures, assembles, modifies imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.".

SEC. 6. EFFETIVE DATE.

This Act and the amendments made by this Act take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 2 of this Act, takes effect on the date of the enactment of this Act.

SEC. 7. TERMINATION.

This Act and the amendments made by this Act (other than the amendments made by section 5) cease to be effective on December 31, 1994.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, what to do about Earth stations—or as some people call them "satellite dishes" or TVRO's—retransmitted television signals and copyright is a relatively new issue for the Congress. It was only about four decades ago that the science fiction writer, Arthur C. Clarke, laid out the blueprint for the modern system of transmitting television signals by satellite. It did not take long for Clarke's theory to become reality.

Today, the number of Earth stations is rapidly approaching the 2 million mark. Dishes have become a permanent feature of the American countryside, costing only a small fraction of the price of 10 years ago.

I first started working on the issue of Earth station and copyright almost 4 years ago when I realized that copyright law and telecommunications law were on a collision course. My subcommittee—the Subcommittee on Courts, Civil Liberties and the Administration of Justice—held oversight hearings, inquiring into the subject of new communications technologies and their impact on intellectual property law.

The purpose of our legal system is to serve the people in a clear and consistent fashion. Our laws, especially our intellectual property laws, should be in the public interest. Technological changes should be stimulated rather than thwarted. In addition, the creativity of authors should be promoted and rewarded.

To fashion a bill and to bring it to the floor have required a team effort. I would like to recognize the efforts of four subcommittee members who have worked long and hard on the legislation. They are Mr. BOUCHER, Mr. SYNAR, and the ranking minority member, Mr. MOORHEAD. Mr. BRYANT has also been very constructive in resolving several issues. All of these members are on the House Committee on Energy and Commerce, and once the bill was referred sequentially to that committee, were instrumental in crafting favorable amendments to the bill. I would like to thank the chairman of our sister Commerce Committee subcommittee, Mr. MARKEY, as well as the chairman of the full Commerce Committee, Mr. DINGELL

Let me now turn to a discussion of H.R. 2848, the Satellite Home Viewer Copyright Act of 1988. At the outset, I will identify the specific copyright problem that is confronted in the bill. Current copyright law is ambiguous on the question of whether common carriers may scramble and sell when they retransmit copyrighted signals to Earth station owners. Admittedly, this view presents carriers with a difficult choice: either do not scramble, raising the potential ire of cable television and program supplier interests; or scramble and to not sell to Earth station owners, losing a potential market. The Register of Copyrights has stated that a combination of activities by carriers—the scrambling of signals, the licensing of descrambling devices and the subsequent sale of descrambled signals to Earth station households—probably falls outside of the copyright exemption granted by statute to passive carriers for the secondary transmissions of copyrighted works.

H.R. 2848 is a compromise, which balances the rights of copyright proprietors with the interests of consumers, while paying careful heed so as not to conflict with provisions in copyright law pertaining to other distribution entities. The goal of the bill is to stimulate communications, especially to unserved areas of the country, and to place rural households on a more or less equal footing with their urban counterparts. Moreover, the bill takes affirmative steps to treat similarly the measure of copyright protection accorded to television programming distributed by national television networks and nonnetwork programming distributed by independent television stations. It does this by asking the FCC, within 120 days of the effective date of the act, to determine the feasibility of imposing syndicated exclusivity rules for the dish industry similar to those recently ordered for cable television.

In drafting the bill, we worked very hard with representatives of the Earth station industry, consumers, the motion picture industry, the cable television industry, the common carriers, the superstations, independent television and the three networks, and the rural electric cooperatives in order to arrive at a solution. As I previously stated, several Members have worked very constructively to improve the bill. Mr. SYNAR and Mr. BOUCHER deserve special mention. I am pleased to note that representatives of all the above-named groups have expressed support for the bill before us today.

Make no mistake about it; this is a very good bill for American farm families, especially those who live is areas with rolling hills or mountains.

In the Committee on the Judiciary, five major issue areas emerged; first, the network white area amendment; second, fairness in marketing; third, the exclusivity of television programming; fourth, the interim nature of the statutory license and its two phases; and fifth, the definition of satellite carrier. The bill resolves all of these issues.

First, the bill contains a network/white area provision which permits the retransmission of network programming by satellite carriers for private home viewing. The mandatory statutory license is restricted to retransmissions to unserved areas. The legislation sets forth a notification to network provision—about subscribership—and a penalty structure for retransmissions to persons who do not live in unserved areas.

Second, the bill requires the Federal Communications Commission to report to the Congress on whether, and to what extent, price discriminations exists pursuant to the Communications Act of 1934 and the rules and regulations of the Commission. Moreover, in order to promote fair marketing, the bill provides that copyright penalties can be imposed against carriers who unlawfully discriminate against distributors in the selling of retransmitted signals. The word "discrimination" has the same meaning as that found in the Communications Act of 1934.

Third, the bill contains an important provision regarding syndicated exclusivity. As you know, syndicated exclusivity is one of rights that broadcasters purchase from copyright proprietors in exchange for the payment of monies. The FCC recently ordered the imposition of syndex for the cable television industry. The bill requires the Federal Communications Commission to, within 120 days after the effective date of the act, to initiate a combined inquiry and rulemaking proceeding for the purpose of First, determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming, as defined by the Commission, for private viewing similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and second, adopting such rules if the Commission considers the imposition of such to be feasible. In the event that the FCC adopts rules imposing syndicated exclusivity for private home viewing, the bill further provides that violations of such rules shall be subject to remedies.

Fourth, the term of the statutory license contemplated by H.R. 2848 is 6 years—a 4-year statutory license followed by a 2-year arbitrated license. The act and all the amendments made by the act will cease to be effective on December 31, 1994. The bill does not restrict retransmission technology to any particular band. The interim nature of the statutory license will allow Congress to monitor new communications technologies.

Fifth, the bill contains a broaden definition of "satellite carrier" designed to cover newer carriers.

The Copyright Office will play a key role in administering the act. The Office will receive from satellite carriers reports of signal carriage and royalty fee calculations. By regulation, the Register of Copyrights specifies the form and content of these reports, which are called "statements of account." The Copyright Office has the authority to require submission of any data or information reasonably necessary to assure fair, effective administration of the statutory license.

Similar to its administration of the cable compulsory license, the Copyright Office will examine statements of account to detect errors in the reports filed by the satellite carriers and with respect to the calculation of the royalty payments. The Office will then correspond with the satellite carriers and require amended statements of account. In addition to its specific authority to specify the content of the statements of account, the Office has general rulemaking authority to issue regulations interpreting the Copyright Act, including the statutory licensing provisions. It is expected that the Office will exercise its rulemaking authority to establish procedures which allow copyright holders to request the Office to investigate, upon a proper showing, problems regarding statements of account. If satellite carriers fail to comply with the statutory and regulatory reporting requirements, and fail to pay the proper royalty, their willful or repeated secondary transmission of copyrighted works to the public becomes actionable as an infringement of copyright and subjects the carrier to potentially enormous damages, in the case of superstation programming.

I would like to mention two very important changes to the bill that were added by the Committee on Energy and Commerce, to which the bill was sequentially referred after being reported by the Committee on the Judiciary. The bill increases penalties for signal theft under section 705 of the Communications Act. Further, the bill calls for a FCC study of encryption technology to detemine the appropriateness of standards.

I support the Commerce Committee changes. They are balanced, substantively sound and politically wise. Overall, they improve the likelihood of enactment.

I am confident that we have achieved a legislative success. We have participated in an exciting legislative project, a project that brings a new technology within the mainstream of our copyright system. The net result will be more communications to more individuals and more regions, especially to people and areas that are generally unserved today.

I urge your support of this important legislation.

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I yield to the committee chairman.

Mr. RODINO. Mr. Speaker, I would like to put a question to the gentleman from Wisconsin [Mr. KASTENMEIER], the chairman of the subcommittee, that deals with this legislation.

Is it correct that the Congress does not intend that the section 119 statutory license should extend to anyone using a satellite or satellite service license by any foreign government to retransmit distant TV signals to Earth station owners? Eligibility for the license is expressly limited to satellite carriers who use the facilities of a satellite or satellite carrier licensed by the United States Federal Communications Commission. Thus, the retransmission of U.S. broadcast station signals to U.S. Earth station owners by means of a Canadian, Mexican, or other foreign satellite would not come under the terms of the section 119 statutory license and could be a violation of the Copyright Act.

□ 1645

Mr. KASTENMEIER. Mr. Speaker, the gentleman has stated a correct proposition. I am not certain that it is a violation of the Copyright Act, but the gentleman has stated the law correctly.

Mr. RODINO. Well, I am just stating that it could be. The question is whether or not it could go to litigation.

Mr. KASTENMEIER. Mr. Speaker, with that reservation, what the gentleman has stated is correct.

Mr. RODINO. Mr. Speaker, I thank the gentleman for that clarification.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to commend our subcommittee chairman, the gentleman from Wisconsin [Mr. KASTENMEIER], the gentleman from Oklahoma [Mr. SYNAR], the gentleman from Virginia [Mr. BOUCHER], the gentleman from New Jersey [Mr. MARKEY], who is the chairman of the Subcommittee on Telecommunications and Finance, and the gentleman from New Jersey [Mr. RINALDO], who is our ranking Republican member of that committee, for the tremendous amount of work they did to make this legislation possible.

I would also like to thank everyone responsible for working out the compromises that we had that brings this legislation here before the House.

We started out last Congress to try and correct a problem that the common carriers and dish owners were having with the scrambled superstation signals. The Copyright Act of 1976 did not address the status of a common carrier. A court later ruled that since they did nothing more than transmit a signal they were passive and did not have to pay a copyright fee. However, if a common carrier was to retain this copyright exemption it would not be able to scramble or unscramble signals nor could they negotiate package deals with the dish owners. As pointed out by the gentleman from Wisconsin, H.R. 2848 changes all of that.

In order to devleop the broad base of support which this legislation enjoys a number of compromises were reached. H.R. 2848, has the support of the common carriers, the dish owners, the dish manufacturers, the cable TV industry, and the Motion Picture Association of America.

I urge my colleagues to vote favorably for the bill.

Mr. KASTENMEIER. Mr. Speaker, I yield 1 minute to a supporter of the bill, the gentleman from Virginia [Mr. OLIN].

Mr. OLIN. Mr. Speaker, I thank the gentleman from Wisconsin for yielding this time to me.

Mr. Speaker, I rise in strong support of H.R. 2848, the Satellite Home Viewer Act of 1988. I am very glad to see that legislation to address the problems of home satellite dish owners has finally come to the House floor.

This issue has been one of major interest to me for several years. My congressional district, the Sixth District of Virginia, is rural and mountainous. Many of my constituents face a problem faced by thousands of other rural Americans. They live in areas where normal, over-the-air TV broadcasts are unavailable—they live too far from transmission sites or in areas where the signals are blocked by mountains. These people are cut off from the information and entertainment programing offered by television.

Technological advances, including the increased use of satellites to relay signals, offered a solution to this problem. That solution was the home satellite dish. In order to get programming, rural families purchased dish equipment, spending from $2,000 to as much as $5,000. With satellite dishes, families which had been cut off from television service were suddenly able to get a multitude of programing.

But the program producers did not think this was such a good idea, in fact they thought it was theft. They feared that they would lose their business if dish owners were allowed to get this programming free. In order to prevent free access, the programmers encrypted, or scrambled, their signals.

At first dish owners complained. They had spent a lot of money for their satellite dishes, and they felt they should be entitled to receive the programming for free. Gradually, dish owners came to accept the fact that the programmers had a legal right to scramble, and that dish owners would have to pruchase programming.

There is nothing wrong with encrypting signals in order to protect property rights, but it is important that home dish owners have the same ability to purchase such programing as cable customers do. This is only fair. Television and radio broadcasts have traditionally been available to all citizens, under a policy of free airways. The creation of signals for special broadcasts to cable owners created a different situation. The producers of these signals offset the costs of their business through rents paid by subscribers, unlike the commercial stations which obtain their profits from broad-based advertising. It is proper that dish owners pay for these signals, but they should be able to purchase this programing easily, and at a reasonable price. A policy which I call the "right to buy."

Last winter I tried to find a way to speed consideration of the satellite dish legislation currently in Congress. As a cosponsor of both bills intended to address the problems of dish owners, I was dissatisfied that these measures were not moving through the legislative process with greater speed. Both H.R. 1885, the Satellite Television Fair Marketing Act, and H.R. 2848, the Satellite Home Viewer Copyright Act, seemed to be stalled in committees.

In order to focus attention on the problems faced by satellite dish owners, and the need for legislative action, I held two special orders on the House floor. I was joined in these discussions by many of my colleagues who also saw the need for satellite dish legislation.

Soon after the special orders, both bills began to receive increasing attention. The Judiciary Committee reported the copyright bill, which is before us today. This bill changes copyright law so that dish owners can legally purchase Superstation transmissions. As a byproduct, this bill should lay a foundation that will encourage development of a market structure enhancing the availability of program packages for dish owners. This should encourage competition.

The Energy and Commerce Subcommittee on Telecommunications also reported H.R. 1885, the Fair Marketing Bill. While the full committee did not consider H.R. 1885. The action of the subcommittee had a positive impact. Soon after the subcommittee vote, the National Rural Telecommunications Cooperative [NRTC] signed packaging agreements with the programmers. This is a step in the direction of increased access, a trend that I hope will continue and I am sure Congress will be monitoring.

I'm glad to see that several of the issues that would have been addressed in H.R. 1885, were included in H.R. 2848. In particular, a provision was included in this bill calling for an inquiry into the need for universal encryption standards so that dish owner access will not be impeded.

It is fitting that H.R. 2848 has been renamed the Satellite Home Viewer Act, because it has been expanded to more fully address the concerns of dish owners.

I am very pleased that H.R. 2848 has finally come to the House floor. This bill is badly needed to correct a growing problem, and to help bring the same television programing to rural residents as is already available to those in urban areas. I urge my colleague to vote for H.R. 2848, I look forward to its passage and I hope that it will be given priority consideration in the Senate.

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the ranking Republican member of the Telecommunications and Finance Subcommittee, the gentleman from New Jersey [Mr. RINALDO].

Mr. RINALDO. Mr. Speaker, I rise in support of this legislation.

In the late 1970's, many rural residents did not have access to boradcast TV stations or cable systems. So, they began to take advantage of the programming available on satellite. Preserving the ability of home dish owners to view broadcast and cable programming, while ensuring that programmers receive compensation for it, has been one of the thorniest communications issues faced by Congress in this decade.

We all know the problems that home dish owners have experienced in gaining access to broadcast and cable programming. We considered the issues in the 1984 Cable Act. The Energy and Commerce Committee has had these problems under constant scrutiny in a variety of bills to expand the marketing of cable channels to home dish owners. We have labored long and hard to balance the interests of programmers and viewers with one goal in mind: expanding the array of information and entertainment programs available to all Americans.

The bill before the House tackles the complex problem of determining how broadcast TV signals could be distributed to home dish owners. The issue boils down to how copyright holders could be compensated for the use of broadcast programming, and if cable's compulsory license could be used. In the past, the answer was unclear. But last month, a Federal court ruled that the cable compulsory license could not be used to distribute broadcast TV stations to dish owners. As a result, this problem is ripe for resolution.

Our solution to this dilemma is the creation of a compulsory license similar to cable's. It would exist for a total of 6 years, after which carriers would negotiate freely with the copyright holders for the right to distribute superstation programming. Many believe establishing another compulsory license to be administered by the Federal Government is not a perfect solution to this problem. Ideally, a compulsory license should be established only where there is compelling evidence that distributors lack the resources to negotiate for copyrights. Otherwise, there is a risk that the copyright holder will not be compensated adequately for the use of his product. However, the compulsory license contained in H.R. 2848 is a transitional measure. It is designed to jump start a market that will be sufficiently mature in 6 years to prosper without it. We should accept it on that basis—but not allow it to become a permanent substitute for free market mechanism.

The basic purpose of the Satellite Home Viewer Copyright Act is to extend the reach of broadcast TV stations and programs to citizens who cannot receive them any other way. Physical and economic limitations make it impossible to have television stations providing service everywhere in the United States. The provisions of H.R. 2848 will make it possible for our citizens who live in rural areas to greatly expand their news and and entertainment sources to include the backbone of the broadcast TV system in the United States, the broadcast TV networks, as well as the popular superstations that provide a rich array of independent television productions and off-network series. The fundamental purpose of the Communications Act is to ensure that the benefits of radio and television are available to all the people of this Nation. This legislation clearly furthers that purpose in a manner that reasonably balances the rights of the copyright holders and the dish owners.

The Energy and Commerce Committee approved H.R. 2848 last week. We adopted additional provisions designed to correct problems in the home dish programming market. Specifically, we amended the bill to increase criminal penalties for the widespread problem of signal piracy. Piracy threatens the entire market for satellite programming because broadcast and cable programmers will refuse to sell to home dish owners if they are being grossly undercompensated for the use of their programming. This situation is precisely the opposite of what we intended when we permitted signal scrambling in the Cable Act. The subcommittee amendment gives law enforcement officials and aggrieved parties the tools to stop piracy once and for all.

Finally, the subcommittee added a provision which directs the FCC to thoroughly investigate whether a standard method of scrambling is feasible or desirable. This is a reasonable and necessary step in light of the problems with piracy.

Some members of the Energy and Commerce Committee also serve on the Judiciary Committee. They were instrumental in bringing this legislation before the House. I particularly congratulate the gentleman from California [Mr. Moorhead] who is an original cosponsor of the bill as well as the ranking minority member of the judiciary subcommittee with jurisdiction. He and the other gentlemen who serve on both committees, particularly the gentleman from Oklahoma [Mr. Synar] and the the gentleman from Virginia [Mr. Boucher] should be commended for crafting consensus legislation that solves a dilemma for the industry and for millions of home dish owners.

Mr. KASTENMEIER. Mr. Speaker, I yield 10 minutes to the distinguished chairman of the Telecommunications and Finance Subcommittee of the Committee on Energy and Commerce, the gentleman from Massachusetts [Mr. Markey], who has made an enormous contribution to this bill.

Mr. Speaker, I ask unanimous consent that the gentleman from Massachusetts [Mr. Markey] may yield time to other Members.

The SPEAKER pro tempore (Mr. Gonzalez). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. MARKEY. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I would like to begin by stating the obvious, which is that a bill of this complexity could not pass without a close working relationship between sister subcommittees, that is the Judiciary Committee and the Energy and Commerce Committee. We have joint jurisdiction, but really for different purposes, and only in the melding of the two purposes do we produce a final result, and this is once again a tribute, I think, to the exemplary relationship that exists between the two subcommittees and has historically and once again I would like to compliment the gentleman from Wisconsin [Mr. Kastenmeier] for his leadership.

Mr. Speaker, I rise in strong support of H.R. 2848, the Satellite Home Viewer Act. H.R. 2848 clarifies the legal status of satellite retransmission of broadcast television signals to home satellite dishowners. The legislation would create an interim statutory license under the Copyright Act of 1976 for the secondary retransmission of superstations and television network stations for private home viewing.

Passage of H.R. 2848 is essential if we are to clarify the legal status of satellite carriers that provide broadcast television signals to the so-called white areas—areas that cannot receive over-the-air broadcast signals. For several years, various distributors have marketed the signals of superstations or network stations to satellite dishowners in, principally, rural areas. Recently, however, a ruling by a Federal court in Atlanta cast doubt on the continued ability of satellite retransmissions to home dishowners. Specifically, the court held that the Copyright Act does not entitle satellite carriers to use the cable compulsory license to retransmit broadcast signals free from copyright liability.

H.R. 2848 will clarify the copyright liability, it will work out the problems which have existed over the years, and I think result in a product which is to the benefit of all.

Mr. Speaker, I want to commend at this time, in addition to the gentleman from Wisconsin [Mr. Kastenmeier], my former ranking minority member, the gentleman from California [Mr. Moorhead], who works with the gentleman from Wisconsin [Mr. Kastenmeier] in producing legislation out of their subcommittee in the Judiciary Committee. The same working relationship I think that existed with me exists with the gentleman from Wisconsin [Mr. Kastenmeier], working with the gentleman from California [Mr. Moorhead].

I would also like to commend the gentleman from New Jersey [Mr. Rinaldo], wo works with me in our subcommittee in trying to produce as best we can consensus legislation that can be supported by Democrats and Republicans.

I would like to commend on our committee the gentleman from Louisiana [Mr. Tauzin], the gentleman from Oklahoma [Mr. Synar], and the gentleman from Virginia [Mr. Boucher]. Those three were the musketeers who pressed over the last several years for resolution of this issue and the product which we see here today is a tribute to what the gentleman from Louisiana [Mr. Tauzin] and the gentleman from Oklahoma [Mr. Synar] and the gentleman from Virginia [Mr. Boucher] have been telling us over the years was possible. It is a tribute to their work, to the work of the gentleman from Kansas [Mr. Slattery] and to the gentleman from Michigan [Mr. Dingell], the full committee chairman, that we are here today.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time.

Mr. KASTENMEIER. Mr. Speaker, I would encourage the gentleman from Massachusetts to yield what time he has left, because I have no further requests for time.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the author of the legislation in our committee, the gentleman from Louisiana [Mr. Tauzin].

Mr. TAUZIN. Mr. Speaker, there are compliments galore that could go around today, and many of them have already been expressed. I would join in those sentiments, because indeed it took the work and the encouragement of a great many leaders in both the majority and the minority side to bring this legislation forward, but I think it is important to make a couple points; first, that it is sort of significant that this legislation is moving in the House this week, the week we have seen a successful return of our shuttle from space.

We have in fact reopened the future in space for America with that enormously successful shuttle launch and return. This bill opens up space again for Americans in the telecommunications era.

This bill, in effect, says to satellite dish owners around America that indeed you will be protected in your right to receive television signals, that you will be protected in your right to receive network commercial signals that are scheduled to be scrambled like so many other signals, that you will be protected in your right to receive long distance signals that have become a part of the daily diet in television viewing around America, and that indeed you will begin to see improvements in your ability to buy for fair prices packages of programs that have become so important to satellite dish owners around America.

This good compromise is indeed a great step forward and a real opening of the skies for America, for it does create some new possibilities.

It is not the entire answer. We do not yet have antidiscrimination in program packaging and sales passed before this Congress. We may need yet to revisit that issue; but there is at least one third-party packager out there because of the efforts so many of you made and joined with us today.

Finally, this bill in fact begins protection against pirates and against the scandalous abuses of the technology of scrambling and descrambling.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. Slattery].

Mr. SLATTERY. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 2848, the Satellite Home Viewer Copyright Act of 1988. This legislation will increase television viewing choices for many rural Americans whose only link to the airways is a home satellite dish. The bill requires satellite firms that retransmit copyrighted programming to pay royalties to owners of the programs. Copyright owners have questioned the legality of scrambling superstation transmissions. Enactment of this measure will remove this legal uncertainty and ensure that superstation programming will continue to be made available to home satellite dish viewers.

The Energy and Commerce Committee has added two important provisions to H.R. 2848. Penalties for piracy of scrambled programming are increased. We also call upon the FCC to initiate an inquiry concerning the need for a universal encryption standard. Dish owners who have already paid $400 for a descrambler should not have to empty their wallets again because current scrambling technology has been compromised.

I commend the Telecommunications Subcommittee chairman, the gentleman from Massachusetts [Mr. MARKEY], for his interest in this measure, which is so important to rural Americans. Rural Americans are also grateful to Representative BILLY TAUZIN, who has consistently taken the lead in fighting for the interests of home satellite dish owners.

□ 1700

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, that concludes the speakers from our committee who wish to be recognized. The gentleman from Virginia [Mr. BOUCHER] and the gentleman from Oklahoma [Mr. SYNAR] would have wanted to have been here. This bill is as much a product of their work on both committees as it is any of the rest who have spoken. It took a cooperative effort, but I think the product is something which is going to make it possible for us to put this issue largely behind us after years of debate and indecision in terms of how it would be resolved. I think now people have some predictability with regard to the future in this area.

We will continue to monitor it, but for the time being I think that the job has been done. The gentleman from Louisiana [Mr. TAUZIN], the gentleman from Virginia [Mr. BOUCHER], the gentleman from Oklahoma [Mr. SYNAR], the gentleman from Kansas [Mr. SLATTERY], on our committee have done the job.

Once again, I want to compliment the chairman of the Committee on the Judiciary, the gentleman from New Jersey [Mr. RODINO], and our full committee chairman, the gentleman from Michigan [Mr. DINGELL], who make it possible in creating an atmosphere that the gentleman from Wisconsin [Mr. KASTENMEIER] and I and our committees can work together to produce legislation in an amicable and, I think, productive fashion.

Mr. Speaker, I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, first of all, I would like to again congratulate the Committee on Energy and Commerce and the gentleman from Massachusetts on the very constructive work on this bill that the Committee on Energy and Commerce and the Telecommunications Subcommittee have done and acknowledge the additional language offered by the gentleman from Louisiana [Mr. TAUZIN] to the bill. It is a very constructive contribution.

Mr. Speaker, the gentleman from Virginia [Mr. BOUCHER], if he were here, was to have asked me to engage in a short colloquy. Mr. BOUCHER would have observed that the committee report states that satellite carriers which transmitted network signals to the public prior to April 1, 1988, will be able to distribute network programming to those who do not reside in unserved households, if those subscribers contracted for the service prior to the effective date of the act, without liability under some conditions, and that is correct. He also would go on to ask me what conditions does that report language address, and I would have replied to him, and replied for the record, that between the date of enactment and the effective date of this legislation, January 1, 1989, the current satellite carriers and related distributors will be required to change operations, computer systems, and advertising in order to comply with this law. The report clarifies that service throughout the license period to customers who subscribed to receive satellite network programming during the operations transition will not be considered to be either willful or repeated violations of the law, to satisfy the question of the gentleman from Virginia [Mr. BOUCHER].

Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I thank the gentleman for yielding.

I would like to, as well, note the work of the staffs on this issue, the gentleman's staff, Mr. Remington, and our staffs, Mr. Leach, Mr. MacCarthy, Mr. Salemme, and Mr. Irving, along with the minority staff have all worked hard, and I know it is not a pay raise, but it is some recognition of the work which they have put in to make this.

Mr. MOORHEAD. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I am happy to yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, the amendment that is being offered has been cleared with the minority, and it is acceptable to us.

Mr. KASTENMEIER. Mr. Speaker, that is an additional contribution.

Mr. Speaker, I am also including for the RECORD a letter from the Register of Copyrights dated September 30, 1988:

THE REGISTER OF COPYRIGHTS
OF THE UNITED STATES OF AMERICA,
September 30, 1988.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Washington, DC.

DEAR CHAIRMAN KASTENMEIER: I welcome this opportunity to express Copyright Office support for H.R. 2848, the Satellite Home Viewer Copyright Act of 1988, as reported by the House Committee on the Judiciary on August 18, 1988, and as amended by the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce on September 23, 1988. This bill would create a temporary statutory license for satellite carriers that retransmit the signals of superstations and network stations for private home viewing by earth station owners.

H.R. 2848 assures that copyright owners receive adequate compensation for public performance of their works by satellite carriers and also assures reasonable access to the programming for the benefit of home earth station owners. The Copyright Office supports the public policy objectives of the bill. Copyright law should grant authors and copyright claimants rights that assure compensation in order to encourage creation and dissemination of works. The bill reflects balanced copyright policies: satellite carriers pay royalties for their use of copyrighted programming; home dish owners gain access to such programming. Without new copyright legislation, scrambling of signals may impede access. The bill most importantly encourages the development of voluntary licensing structures.

The bill, as reported by the House Committee on Energy and Commerce, would amend the Communications Act of 1934 to require that the Federal Communications Commission investigate whether use of a universal encryption standard should be required of satellite carriers, and to impose various remedies under the Communications Act upon individuals who intercept satellite cable programming in violation of that Act, or who knowingly manufacture or distribute equipment designed to assist such unauthorized interception of programming. The Copyright Office has no objection to the amendments to H.R. 2848 reported by the Committee on Energy and Commerce.

The Copyright Office concludes that passage of the bill would serve the public interest and resolve an important copyright policy issue: the copyright liability of satellite carriers.

Sincerely,

RALPH OMAN,
Register of Copyrights.

Mr. FISH, I would like to commend the subcommittee for all of the hard work that they have put into H.R. 2848. It is a popular piece of legislation and it enjoys a broad base of support. Whenever you've got the networks, broadcasters, cable TV and the motion picture industry, all supporting the same piece of legislation you had better quickly process it before the position of these organizations change.

As my friend from California has pointed out, the Judiciary Committee passed similar legislation last Congress but because of the lateness of the session, it was not taken to the House floor. The problems that the 2 million dish owners are going to have when all the superstations finish scrambling their signals are very real and it's important that we try and do something before the problem becomes acute.

This is important legislation and I hope we can persuade the other body to move on it as soon as possible and I urge a favorable vote for the passage of H.R. 2848.

Mr. ROTH. Mr. Speaker, I rise in strong support of H.R. 2848, the Satellite Home Viewer Copyright Act. This legislation will provide for the temporary licensing of the secondary transmission by satellite carriers of superstations for private viewing by earth station owners. In essence, this licensing process will allow satellite carriers to bring network programming to satellite dish owners.

As my colleagues know, television programming in rural areas is often limited. This bill ensures that rural homes with satellite dishes will continue to have access to the TV network and independent superstation signals. These signals are being scrambled more and more frequently. It is time to clarify the copyright laws that regulate descrambling devices.

This bill establishes a clear balance between the rights of copyright owners and the rights of satellite dish owners by assuring program availability at reasonable rates.

I have been in regular contact with satellite dish owners from my district in northeast Wisconsin. It is on their behalf that I rise to support this legislation. We must take definitive action to see that this problem is resolved.

Thus, I urge my colleagues to support this bill. It is a significant step forward for rural programming throughout the country. Please join me in supporting the Satellite Home Viewer Copyright Act.

Mr. NICHOLS. Mr. Speaker, I rise today in support of H.R. 2848, the Satellite Home Viewer Copyright Act of 1988, which is now being considered under suspension. It is my opinion that this important legislation which clarifies the legal status of satellite television carriers will clear the way for home satellite dish owners who live in the remote and rural parts of my district to gain access to the broadcast and cable stations which are now not available to them.

For sometime now I have supported the efforts this body has made to provide home satellite dish owners with the same viewing choices that many of us enjoy on cable television. Although many of my constituents would welcome the convenience and affordability cable provides, that option is not available to them because they live in areas where it would be too costly or too difficult to string the wires necessary to hook them up.

Finally, Mr. Speaker, I want to congratulate my colleague, the Honorable Billy Tauzin of the Third District of Louisiana and author of H.R. 2848, for seeing that this legislation made it to the floor of this House today. I support his amendments to this bill which hopefully will address the problem of signal piracy and the need for a universal decoding system.

It is my opinion that the Federal Communications Commission needs to initiate an inquiry concerning the establishment of a single descrambling standard. That way illegal access to the signals may be stopped and law-abiding home satellite dish owners will be able to watch broadcast and cable stations without making obsolete the equipment in which they have already invested.

Mr. KASTENMEIER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gonzalez). The question is on the motion offered by the gentleman from Wisconsin [Mr. Kastenmeier] that the House suspend the rules and pass the bill, H.R. 2848, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to provide for the interim statutory licensing of the secondary transmission by satellite carriers of superstations and network stations for private home viewing, to prevent piracy of satellite cable programming, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2848, the bill just passed.

The Speaker pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PATENTS IN SPACE ACT

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1510) to amend title 35, United States Code, and the National Aeronautics and Space Act of 1958, with respect to the use of inventions in outer space, as amended.

The Clerk read as follows:

H.R. 1510

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patents in Space Act.

SEC. 2. SPACE INVENTIONS.

(a) Amendments to Title 35, United States Code.—(1) Chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"§ 105. Inventions in outer space

"Any invention made, used or sold in outer space on an aeronautical and space vehicle (as defined in section 103(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2452(2)) under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for purposes of this title, except with respect to any space vehicle or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party.".

(2) The table of sections of chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"105. Inventions in outer space.".

(b) Amendment to National Aeronautics and Space Act.—Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) is amended by adding at the end the following new subsection:

"(m) Any invention made, used or sold in outer space on an aeronautical and space vehicle (as defined in section 103(2)) under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for purposes of this Act, except with respect to any space vehicle or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party.".

SEC. 3 EFFECTIVE DATE.

(a) In General.—Subject to subsections (b), (c) and (d) of this section, the amendments made by section 1 shall apply to all United States patents granted before, on, or after the date of the enactment of this Act, and to all applications for United States patents pending on or filed on or after such date of enactment.

(b) Amendments Not To Affect Prior Decisions.—The amendments made by section 1 shall not affect any final decision made by a court or the Patent and Trademark Office before the date of the enactment of this Act with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

(c) Amendments Not To Affect Certain Pending Cases.—The amendments made by section 1 shall not affect the right of any party in any case pending in a court on the date of the enactment of this Act to have the party's rights determined on the basis of the substantive law in effect before such date of enactment.

(d) Amendments to be Prospective in Application.—Subject to subsections (b) and (c) of this section, the amendments made by section 1 shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched prior to the effective date of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. Kastenmeier] will be recognized for 20 minutes and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. Kastenmeier].

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1510 is a relatively simple, noncontroversial bill. H.R.

1510 has the support of the administration, NASA, the Commerce and State Departments, and as far as can be ascertained all the appropriate parties in the private sector.

In general terms, the bill states that inventive or other activities which occur in outer space on board U.S. space vehicles[1] shall be treated for patent purposes as though these activities occurred within the United States. Specifically, the bill amends the patent law by adding a new section 105 to title 35, United States Code, to provide that an invention made, used or sold on space vehicles under the jurisdiction of the United States shall be deemed to have been made or used within the United States.

During subcommittee hearings on the bill during the 99th Congress, NASA suggested that greater certainty in the application of patent law to activities in outer space would enhance the commercialization of space. NASA contended that in the absence of clear statutory treatment of this issue, investors in the space shuttle and future space stations or platforms would be discouraged from commercially utilizing space.

The reason for clarifying legislation is that there is no clear judicial precedent in this area of patent law. H.R. 1510 acts in anticipation of the commercial exploitation of space.

There are four purposes for the legislation. The first purpose is to provide that actions which occur in outer space jurisdiction can infringe a U.S. patent.

The second is to rationalize the system by which priorities are given to inventions. This is particularly important since U.S. law is based on a "first to invent" system rather than "first to file" system.

The third purpose of the bill is to regulate prior art, and in this regard, to provide needed conformity in law.

Finally, and this may be important only to some, the bill makes it clear that—as relates to domestic concerns about national or international security—inventions in outer space are controlled by the Invention Secrecy Act.

For these four reasons, passage of this bill is necessary. H.R. 1510 contains two amendments suggested by the Committee on Science and Technology. First, the bill makes the sale of goods covered by a U.S. patent in outer space a potential act of infringement. Second, the bill makes clear that the provisions of the bill do not apply to pending cases—such as Hughes Aircraft versus United States. In addition, the bill does not apply to vehicles launched before the effective date of the bill. If, however, an existing patent covered a product launched after the effective date, use of the product aboard a U.S. vehicle without consent could constitute an act of infringement.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to indicate my support for H.R. 1510, patents in space, which would clarify the application of the U.S. patent law to activities aboard American vehicles in outer space. This legislation originated with the National Aeronautics and Space Administration [NASA] which happens to be celebrating its 30th birthday this month. The legislation is strongly supported by the administration.

Last Congress this legislation passed the House without opposition. It would amend the patent laws by adding a new section 105 to title 35 United States Code to provide that an "invention made or used" on space vehicles under the jurisdiction of the United States shall be deemed to have been made or used within the United States.

It is the opinion of various academic and industrial patent law experts that H.R. 1510 merely restates current law. Nonetheless, I agree with those who believe that it is important for us to resolve the issue in a timely fashion, as opposed to leaving its resolution to the judiciary. This is especially true in light of the increasing potential for the commercialization of space and the resulting use of inventions in the process.

The members of the Science and Technology Committee have also considered this legislation in the past and made positive contributions to it and I commend them for their efforts. The bill has strong support and is without additional costs to the Government. Accordingly, I urge my colleagues' support for it.

Mr. Speaker, I reserve the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, it is, indeed, a distinct pleasure to yield such time as he may consume to the gentleman from New Jersey [Mr. ROE], the chairman of the Committee on Science, Space, and Technology.

That committee has contributed to this bill, and I must say that this bill comes up at an opportune time, because he and I know, and the gentleman from Florida [Mr. NELSON] is here, more than perhaps any other Members, can revel in the success we have had these last couple of days with respect to our space program.

Mr. ROE. Mr. Speaker, I thank the distinguished gentleman for yielding time to me.

I want to at the outset pay my highest regards to both, the gentleman, as chairman of the Subcommittee on Courts, Civil Liberties and Administration of Justice, and the gentleman from California [Mr. MOORHEAD] for their outstanding work on a very important bill that has been before us today. And certainly I also pay tribute to my dear friend, the gentleman from New Jersey [Mr. RODINO], chairman of our full committee.

Mr. Speaker, I rise in support of H.R. 1510, a bill which would clarify the application of our patent laws with the respect to inventions occurring in outer space. The Committee on Science, Space, and Technology has reported this important legislation in cooperation with the Judiciary Committee. I want to commend my colleagues, Hon. PETER RODINO and Hon. ROBERT KASTENMEIER, for their outstanding leadership and cooperation on this legislation.

With the extraordinary performance of the space shuttle *Discovery* this week, Americans have returned to space flight once again. Finally, we can turn our Nation's introspection outward again, and focus on the enormous benefits to our society brought by the tremendous opportunities available through the exploration of outer space. The Committee on Science, Space, and Technology has recognized for a long time the enormous benefits to society that are possible if the entrepreneurial spirit of the private sector can be utilized in space. This year's NASA authorization legislation (H.R. 4561) took further steps in encouraging commercial activities by identifying goals leading toward increased cooperative agreements between NASA and the private sector. The bill went further by providing guidelines for the assurance of flight opportunities for commercial entrepreneurs. The private sector has repeatedly stated its requirement for certainty and reliability from the Government if it is to assume the high cost and risk of doing business in space.

With this legislation, H.R. 1510 addresses another critical area of public law—patent law—that must be clarified if we are to expect commercial enterprises to remain in space, We must assure that protections afforded private industry by the U.S. patent laws are extended to activities in outer space. H.R. 1510 addresses this concern and provides the needed clarity and certainty that will further private activities in outer space.

Simply, the bill would extend the application of U.S. patent laws to activities occurring on U.S. aeronautical and space vehicles. The bill specifically amends title 35 of the United States Code—the patent laws—and the National Aeronautics and Space Act of

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[1] This includes both the shuttle and any space stations. See Reynolds, Book Review Space Stations and the Law: Selected Legal Issues: Background paper, summer 1987 Jurimetrics 431, 435 n.9 (1987).

1958, which established NASA and guidelines within which it operates.

Importantly, H.R. 1510 accomplishes this jurisdictional change without changing the substantive patent laws. An inventor will receive the same protection under the patent laws whether his activities occur in space or here on Earth.

The major provisions of the bill follow:

The bill would provide that inventions made, used, or sold in outer space on an aeronautical and space vehicle under the jurisdiction or control of the United States shall be considered made, used, or sold within the United States. The bill would provide an exception with respect to any space vehicle or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party. This provides important flexibility in our negotiations with our space station partners—Europe, Japan, and Canada.

The bill clarifies that the bill's application is prospective in nature, that is, the bill will affect activities conducted on space vehicles launched after the date of enactment.

The bill will not affect the rights of parties involved in any existing litigation, nor certain decisions by the Patent and Trademark Office.

Mr. Speaker, I strongly support this legislation. In addition, I should acknowledge the strong support of the administration. This bipartisan effort deserves speedy passage.

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Mr. MOORHEAD. Mr. Speaker, I yield the balance of my time to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of H.R. 1510 pertaining to patents in space. This legislation is needed to address the fact that the present patent laws extend only to those inventions and discoveries made within the borders of the United States.

We all watched with pride as *Discovery* ascended from launch pad 39-B just 1 week ago, and we joined with all Americans in welcoming that brave crew home on Monday. Most Members are aware that the primary payload on STS-26 was the tracking and data relay satellite [TDRSS], that was deployed successfully on the first day of the mission. But less well known is the fact that there were a number of secondary payloads including a protein crystal growth experiment conducted by the crew that may unlock the answer the world is seeking to conquer AIDS.

Those who are familiar with the Space Program know that we stand at the very threshold of a new age. There are virtually unlimited horizons in the fields of biomedical and material sciences experiments to be carried out in the near weightlessness of space. Many of these experiments will lead to new products that will change the quality of life on Earth for future generations. Medications that will cure or prevent diseases are just beyond the horizon. Crystals such as galium arsenide which will launch a new computer revolution that will eclipse the silicone chip machine as obsolete. The scientific community will find endless avenues to explore, and the results will help build the space based economy of the future.

Mr. Speaker, that future must have the protection that we give through patents here on the ground. I urge the adoption of the legislation.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. NELSON].

Mr. NELSON of Florida. Mr. Speaker, let me just sort of sum up the comments that have already been made most articulately and eloquently. The need to take the patent law of the United States and apply it to processes that occur in outer space is self-evident because the time of manufacturing both materials and pharmaceuticals in space is upon us. Not the least of these was on this past mission by *Discovery* where Astronaut Pinky Nelson took a process called protein crystal growth and used an automated machine which is a change from earlier missions where it was all done by hand very laboriously in a time consuming process, and started growing crystals in the zero gravity of orbit. To our astonishment, what we found outside of the influence of gravity was that as the molecules attach themselves into the hardened condition of a crystal they align themselves so that the crystal is more pure, in the jargon of the day, and we find that the crystals grow faster and they grow larger. So if the hundreds of crystals that had come back on the mission of the Space Ship *Columbia* and of the hundreds of crystals that came back Monday on the Space Ship *Discovery*, we now find crystals of such clarity and size that upon examination by an x-ray defraction or electron microscope we may be able to unlock the secrets of those proteins and determine their molecular structure.

When that occurs then we are right in there knocking on the door of then manipulating that protein or enzyme that controls the replication of the AIDS virus, which was one of the proteins that was flown in space by Pinky Nelson, or manipulating that protein that has a role in the cancer research that we all have been laboriously moving on.

Having made the predicate, then it is self-evident why we need this kind of legislation, because these are the exciting processes that are going to be taking place in outer space, and we need to take the terrestrial law of patents and apply it to outer space.

Mr. Speaker, I rise in strong support of H.R. 1510, inventions in outer space. This is a piece of much needed legislation that will clarify how our patent laws apply to inventions made, used, or even sold in outer space.

Lest my colleagues think this legislation is ahead of its time or simply too far out, let me tell you of some of the things that were recently done on the space shuttle *Discovery* flight just last week.

3M Co. flew an experiment to find out how to grow thin films of organic materials in space. These will find countless uses in every day life on Earth.

The Burroughs Welcome Co. grew crystals of the reverse transcriptase enzyme which is responsible for the replication of the AIDS virus. This could lead to a breakthrough in curing AIDS.

The Du Pont Co. grew protein crystals that will lead to more potent fungicides for crop diseases such as rice blast.

The Merch Co. flew samples of elastace, an enzyme associate with emphysema.

Schering-Plough grew crystals of alpha-interferon which will help the body's immune system fight a variety of diseases including cancer.

The Upjohn Co. flew two protein samples, one of which may lead to new controls for blood pressure.

Mr. Speaker the list goes on and on. The point is, many of our most productive corporations are spending millions of dollars to develop new processes and products in space that will vastly improve our quality of life. These corporations need to protect their intellectual property rights. This bill will ensure these protections are provided.

I urge my colleagues to join me in supporting this bill.

Mr. KASTENMEIER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GONZALEZ). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 1510, as amended.

The question was taken; and two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

COMMUNITY TELEPHONE CENTERS

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 351) urging local telephone operating companies to establish community telephone centers to provide free local service for persons who cannot afford residential telephones.

The Clerk read as follows:

H. RES. 351

Whereas approximately 7,000,000 households in the United States, including 650,000 households headed by persons 65 years of age or older, are without residential telephone service;

Whereas approximately 65,000 Oregon households, including almost 8,300 households headed by persons 65 years of age or older, are without residential telephone service;

Whereas telephones are an essential means of communication with loved ones and with health and safety services;

Whereas telephones are an important means of securing employment, shelter, and other essentials of everyday life;

Whereas the Pacific Northwest Bell Telephone Company has recognized this need by establishing 14 community service centers in Oregon for the purpose of providing free local telephone service for persons who cannot afford that service in their homes; and

Whereas the cost of this program is borne entirely by the shareholders of the Pacific Northwest Bell Telephone Company:

Now, therefore, be it

Resolved, That the House of Representatives—

(1) believes that all Americans who cannot afford local residential telephone service should have access to free local telephone service at central locations;

(2) commends the Pacific Northwest Bell Telephone Company for providing such free service at 14 sites in Oregon; and

(3) urges other telephone operating companies to establish programs similar to the Pacific Northwest Bell Telephone Company model.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself 30 seconds for the purpose of commending the gentleman from Oregon [Mr. WYDEN] for his initiative. He has taken an idea that would provide telephone service to those in his region that do not in fact have access to that service.

That concept of universal service of telephones in this century has been at the heart of our telecommunications policy. The gentleman from Oregon has worked cooperatively with the Pacific Northwest Bell Company, with the community agencies, and put in place a system which now provides a service that otherwise would not be available to those who need a telephone. It is an enormous success.

This resolution sends a signal out with regard to its success, with the hope that it will be emulated by other telephone companies and communities around the country. Working with our subcommittee, we hope to see this as a national policy in place across the board before the end of the next term.

Mr. SPEAKER, I reserve the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this resolution. The gentleman from Massachusetts, the chairman of the Telecommunications Subcommittee, Mr. MARKEY, and I are both cosponsors of House Resolution 351, which urges local exchange telephone companies to establish community telephone centers to provide free local service for the 7 million persons who cannot afford telephones. The gentleman from Oregon, Mr. WYDEN, worked closely with Pacific Northwest Bell to establish the first program of this kind in Oregon. I commend him for his work on an innovative solution to a very real problem.

Free community phone centers would effectively address a problem faced by many Americans, principally senior citizens and the unemployed, who cannot afford local phone service. As we well know, the telephone is the essential tool of modern life. Without it, jobs and housing are much more difficult to obtain.

This program of free local community phones is already a great success in Oregon, where at least 14 centers have been set up around the State. It is also low-cost: Pacific Northwest Bell estimated its cost at only $1,600 per location per year.

In the area of telecommunications, we talk a great deal about "universal service." Through free community phone centers, local telephone companies could do even more to make universal service a reality. I urge my colleagues to support this resolution and encourage local telephone companies to consider programs of the kind as one way to accomplish that worthy goal.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon [Mr. WYDEN], the principal author of this legislation.

Mr. WYDEN. Mr. Speaker, let me thank the chairman of the subcommittee and the ranking minority member of the subcommittee, the gentleman from New Jersey [Mr. RINALDO] for their special cooperation.

Mr. Speaker, I will be very brief. The fact of the matter is that there is no reason why in all the communities of this country, in welfare offices, in churches, and community centers, we should not have this community phone.

In the State of Oregon, where we pioneered this effort, more than 22,000 phone calls were made in the first 8 months in these kinds of special service agencies, churches, welfare offices. We have accounts of people being able to find jobs, older people being able to contact doctors, and all we seek to do is see this program copied around the country, a program done without government and without bureaucracy and redtape, paid for by stockholders, something reasonable because it is just local phone service.

The gentleman from New Jersey [Mr. RINALDO] mentioned there are 7 million households in the country that do not have phone service, 650,000 headed by persons over the age of 65.

What we seek to do in the resolution is to try to make sure in the years ahead the community phones will be in every part of this country, in churches, in welfare offices, helping persons of modest means.

I want to thank the chairman of the subcommittee and the ranking minority member.

Mr. Speaker, I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume only to once again compliment the gentleman from New Jersey [Mr. RINALDO], who made this possible, working with the gentleman from New York [Mr. LENT], and the gentleman from Michigan [Mr. DINGELL]. And again the leadership of the gentleman from Oregon [Mr. WYDEN] is recognized in his region and, I believe, not nationally.

This program is a winner, bringing together a program that ought to be emulated.

Mr. Speaker, I yield back the balance of my time.

Mr. RINALDO. Mr. Speaker, I just want to reiterate that the gentleman from Oregon [Mr. WYDEN] certainly pioneered this effort, and I would like to compliment the gentleman from Massachusetts [Mr. MARKEY], the chairman of the subcommittee, for his cooperation in seeing that this bill got a quick and early hearing, and was passed by the subcommittee to the full committee and on to the floor.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and agree to the resolution (H. Res. 351).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 351, the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

CLARIFYING THE INVESTIGATORY POWERS OF THE U.S. CONGRESS

Mr. RODINO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2350) to clarify the investigatory power of the U.S. Congress, as amended.

The Clerk read as follows:

S. 2350

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Subsection (a) of section 1365 of title 28, United States Code, is amended by inserting after "his official capacity" the following: "if the head of the department or agency employing the officer or employee, with the approval of the Attorney General, has directed the officer or employee not to comply with the subpena or order and has provided the issuer of the subpena or order with a written statement setting forth the reasons for the refusal to comply".

SEC. 2. (a) Subsection (a) of section 6005 of title 18, United States Code, is amended by inserting after "any proceeding before" the following: "or ancillary to".

(b)(1) Paragraph (1) of subsection (b) of section 6005 of title 18, United States Code, is amended by inserting after "a proceeding before" the following: "or ancillary to".

(2) Paragraph (2) of subsection (b) of section 6005 of title 18, United States Code, is amended by inserting after "a proceeding before" the following: "or ancillary to".

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. RODINO] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. RODINO].

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2350 is a noncontroversial bill to clarify two statutes that relate to Congressional investigatory powers. It was introduced by Senators RUDMAN and INOUYE, the vice chairman and chairman of the Senate Iran-Contra Committee, to address two problems that arose during that investigation. The bill implements a legislative recommendation of the Iran-Contra Committees.

S. 2350 was approved on a voice vote by the House Committee on the Judiciary on September 30, 1988. Previously, the bill was unanimously approved by the Senate Governmental Affairs Committee in June and passed the full Senate on a voice vote on August 9, 1988. The Department of Justice has advised the Judiciary Committee that it has no objection to the legislation and would not recommend a veto. In fact, the Department helped draft section 1 of the bill. Senator RUDMAN has stated in the CONGRESSIONAL RECORD that the White House also has no objection to the bill.

S. 2350 contains two sections. The first amends 28 U.S.C. 1365, which provides a civil enforcement mechanism for Senate subpoenas. This section does not affect the House, which has no comparable mechanism. Under the present section 1365, there is an exception to the Senate's enforcement authority if a subpoena is directed to "an officer or employee of the Federal Government acting within his official capacity." The amendment contained in S. 2350 would make clear that this exception applies only in cases in which the Federal official has been directed by the head of his department or agency not to comply with the subpoena, with the approval of the Attorney General. A written statement of the reasons for the refusal to comply with the subpoena would also have to be provided to the Senate.

The reason for the exception to the Senate's enforcement authority was to encourage the Senate and the President to resolve executive privilege disputes through the political process, not litigation. However, as presently written, the exception clause could be read to apply to a Federal employee who, on his own, challenged enforcement of a Senate subpoena on the grounds that he was acting within his "official capacity," even though no Executive privilege claim had been made and there was no Presidential objection to his testifying. S. 2350 clearly restricts the exception to its original purpose.

The second section of S. 2350 amends 18 U.S.C. 6005, which deals with immunity orders issued by a Federal district court for testimony or production of documents before Congress or its committees. This amendment, which is applicable to both the House and Senate, makes clear that such immunity orders apply to depositions conducted by committee counsel without members present, as well as to testimony and production of documents before the members of the committees.

During the Iran-Contra investigation, counsel for several witnesses argued that section 6005 did not apply to staff depositions. This argument was based on the fact that the provision on immunity for witnesses in judicial proceedings (18 U.S.C. 6003) is applicable to witnesses "before or ancillary to" a court or grand jury, while the congressional immunity provision (18 U.S.C. 6005) is applicable only to witnesses in a proceeding "before" Congress or its committees. Because of this difference, counsel for the witnesses were concerned that prosecutors would challenge the applicability of an immunity order to information provided by an immunized witness during a deposition as opposed to a formal committee proceeding.

I believe that the legislative history of the current statute leaves no doubt that an immunity order obtained pursuant to 18 U.S.C. 6005 reaches testimony or documents produced at a staff deposition conducted without Members present. The statute was enacted in 1970 as part of the Omnibus Crime Control Act, and a statement by Senator McClellan at the time the legislation was being considered fully supports this view. Moreover, 18 U.S.C. 6002, the general immunity statute that gives effect to section 6005, provides that a witness who has been granted immunity may not then decline to testify "in a proceeding before or ancillary to * * * a committee of either House * * *." Although section 6005 does not refer to "ancillary" proceedings, it must be read in conjunction with section 6002, which was enacted at the same time as part of a coherent statutory scheme. Therefore, the omission of a direct reference to "ancillary" proceedings in section 6005 is arguably of no consequence, since section 6002 explicity includes such proceedings.

Despite this, the Judiciary Committee believed it was important to resolve any ambiguity about section 6005 so that future congressional investigations are not impeded. Therefore, S. 2350 adds the phrase "or ancillary to" to section 6005, the congressional immunity provision, so that it is consistent with the judicial immunity provision. This will clarify the matter once and for all.

S. 2350 will assure that future congressional investigations do not encounter some of the same problems that confronted the Iran-Contra Committees; the legislation is therefore important to Congress as an institution. So far as I am aware, the bill has no opposition. I urge its approval.

□ 1730

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of S. 2350 is to clarify two statutory provisions that relate to congressional investigatory powers. Section 1 of the bill addresses the Senate's use of its existing statutory authority under 28 U.S.C. 1365 to seek expeditious civil enforcement of its subpoenas, and clarifies an ambiguity relating to the exception to the Senate's enforcement authority. This section of the bill does not affect the House. Section 2 of the bill relates to the applicability of immunity orders obtained pursuant to 18 U.S.C. 6005 to congressional depositions and makes clear that such orders do apply to testimony during, or production of documents at, depositions conducted by House and/or Senate staff.

The committee believes it is important to resolve any ambiguity about section 6005 so that future congressional investigations are not impeded. Therefore, S. 2350 adds the phrase "or ancillary to" to section 6005, the congressional immunity provision, so that it is consistent with the judicial immunity provision. This will clarify the matter for future investigations.

The Judiciary Committee believes that the legislative history of the current immunity provisions, 18 U.S.C. 6001, et seq., leaves little doubt that an immunity order obtained pursuant to 18 U.S.C. 6005 would reach testimony or documents produced at a deposition conducted by committee staff without members present.

Mr. Speaker, I yield 10 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I rise to try to clarify just exactly what we are doing in section 1 of this amendment.

As I understand it, section 2 is fairly widely discussed in the committee and all parties are fairly well satisfied that what we are doing there is simply assuring that those people who testify before the committees have appropriate immunities.

But section 1 appears to be changing the relationship between the President and the Congress vis-a-vis his executive privilege claims. I am trying to find out whether this is further tightening the ability of the President to claim executive privilege on matters before the Congress or further politicizing that particular claim by the President.

Can I get some clarification as to just what this section is intended to do. Because in all honesty the committee report I have just had a chance to read for a couple of minutes here seems a little confusing on the issue.

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New Jersey.

Mr. RODINO. I thank the gentleman for yielding.

First of all, let me make clear that the language was suggested by the Justice Department, and it takes account of the concern of the gentleman from Pennsylvania. The Senator from New Hampshire, who is the author of this particular provision, Senator RUDMAN, has stated that neither the White House nor Justice objects.

Mr. WALKER. That does not necessarily mean they support. It seems to me that suggests——

Mr. RODINO. Mr. Speaker, if the gentleman will yield further, I just stated to the gentleman that the author of this provision was the Senator from New Hampshire who felt that it was necessary. With respect to the executive privilege, the bill only makes clear that in a case in which the President wants to claim executive privilege, the Senate subpoena enforcement mechanism does not apply. Executive privilege, if it exists, is not in any way cut back. What we do in S. 2350 is only make clear that when executive privilege is not asserted by the President, the mechanism does apply.

Mr. WALKER. So in other words, with this section what you are doing is saying that other people who work at the discretion of the President are not able to claim executive privilege, that only the President can claim executive privilege.

Mr. RODINO. That is presently what the situation is.

Mr. WALKER. Then why are we changing it? What does the change in language do here then? If that is presently the situation what does the change in that language do?

Mr. RODINO. This is a clarification in order that we avoid what occurred during the Iran/Contra committee investigation, when a question did occur.

Mr. WALKER. As I say, we are dealing in fairly sensitive areas here when we are dealing with the Iran/Contra thing which many of us think was a highly politicized process to begin with. What was the question that arose that this is addressing? What was that question which arose that we are now addressing with this particular section?

Mr. RODINO. Will the gentleman restate his question?

Mr. WALKER. Yes.

Mr. RODINO. I want to say if the gentleman is yielding that it was the Justice Department which suggested this language as necessary to clarify this issue.

Mr. WALKER. I will say to the gentleman I have not raised this question with anybody. This legislation came to the floor, I found out about it this afternoon. I have been trying to run through all these bills as they have been coming on the floor to find out what was in them. I came down to this bill, asked to look at the committee report. I looked at the committee report and I get very confused about the language.

Now the gentleman, in explaining it to me, has indicated what we are doing is clarifying a matter that arose as a question during the Iran/Contra hearings. I have got to tell the gentleman that I am a little bit suspicious of something that arose as a part of that process, because I think that process was very highly politicized. So therefore I am seeking to find out now what the question was that arose which this particular change in law is addressing.

Mr. RODINO. If the gentleman will yield further.

Mr. WALKER. Sure, I will be glad to yield to the gentleman.

Mr. RODINO. The gentleman, of course, is seeking to find out what the actual situation was. The situation that occurred during the Iran/Contra committee investigation was an executive branch official objected to a subpoena based on personal claims, although he was not authorized to assert a challenge on behalf of the administration.

Mr. WALKER. Would that have been Oliver North?

Mr. RODINO. Oliver North's case.

Mr. WALKER. Ollie North?

Mr. RODINO. Yes.

Mr. WALKER. Just so we know.

Mr. RODINO. With respect to section 1, it affects only the Senate and we deferred to the judgment of the Senate in writing this provision.

Mr. WALKER. All right. So in other words, what I think I have now heard is that what this is, the question that arose is whether or not Ollie North could prepare his defense in the way he prepared it and Senator RUDMAN and some of the people over there have decided that they did not like the idea, that they got pretty well taken on by Ollie North so now they are going to rewrite the law so that they do not have another Ollie North case come before them again.

I would say to the gentleman that I am not so certain that that is something that we want to do without a little bit of examination here on the floor.

Let me ask another question. Is there any current litigation with regard to Iran/Contra that this particular action might affect?

Mr. RODINO. No, there is not.

Mr. WALKER. There is not. In other words, all the stuff that is in the courts right now, this will have absolutely no impact upon that at all?

So what we are dealing with is future Iran/Contra kinds of hearings where you get a Colonel North who though he was acting in the White House in an official capacity, would no longer be able to come up and, when he is subpoenaed, claim any kind of executive privilege; that we are ending that. I say this is a pretty major change to bring to the floor under a situation like this and I do not think this is the noncontroversial kind of legislation that we ought to be considering on the suspension calendar.

Mr. RODINO. I merely want to make clear that there was no intention on the part of the sponsor of this legislation to in any way undercut the executive privilege.

Mr. WALKER. I understand. There were no hearings held in the gentleman's committee on this matter.

What we have is Sentor Rudman telling us that nobody in the administration objects, but we are not certain whether or not that means that they actually support this.

I would have a question. I would have to vote "no" on the bill based upon what I have heard here.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. RODINO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

□ 1745

The SPEAKER pro tempore (Mr. Gonzalez). The question is on the motion offered by the gentleman from New Jersey [Mr. Rodino] that the House suspend the rules and pass the Senate bill, S. 2350, as amended.

The question was taken.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

PATENT AND TRADEMARK OFFICE AUTHORIZATION

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4972) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4972

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Patent and Trademark Office—

(1) for salaries and necessary expenses, $117,504,000 for fiscal year 1989, $125,210,000 for fiscal year 1990, and $111,984,000 for fiscal year 1991; and

(2) such additional amounts as may be necessary for each such fiscal year for increases in salary, pay, retirement, and other employee benefits authorized by law.

SEC. 2. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.

SEC. 3. OVERSIGHT OF AND ADJUSTMENTS TO TRADEMARK AND PATENT FEES.

(a) Trademark Fees.—The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(b) Patent Fees.—The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(c) Report to Congress.—The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

SEC. 4. PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION.

(a) Repeal.—Section 4 of Public Law 99-607 (35 U.S.C. 41 note) is repealed.

(b) Maintenance of Collections.—The Commissioners of Patents and Trademarks shall maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Commissioner may not impose fees for use of such collections, or for use of public patent or trademark search rooms or libraries. Funds appropriated to the Patent and Trademark Office shall be used to maintain such collections, search rooms, and libraries.

(c) Fees for Access to Search Systems.—Subject to section 5(a), the Commissioner of Patents and Trademarks may establish reasonable fees for access by the public to automated search systems of the Patent and Trademark Office in accordance with section 41 of title 35, United States Code, and section 31 of the Trademark Act of 1946 (15 U.S.C. 1113). If such fees are established, a limited amount of free access shall be make available to all users of the systems for purposes of education and training. The Commissioner may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such waiver is in the public interest.

SEC. 5. FUNDING OF AUTOMATED DATA PROCESSING RESOURCES.

(a) Allocations.—Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1989, 1990, and 1991, not more than 30 percent of such amounts in each such fiscal year may be from fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code. The Commissioner of Patents and Trademarks shall notify the Committees on the Judiciary of the Senate and the House of Representatives of any proposed reprogrammings which would increase or decrease the amount of appropriations expended for automatic data processing resources.

(b) Use of Revenues by Patent and Trademark.—Except as otherwise specifically provided in this Act, Public Law 99-607, and section 42(c) of title 35, United States Code, the Patent and Trademark Office is authorized to use appropriated or apportioned fee revenues for any of its operations and activities.

SEC. 6. USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED.

The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data), and the Commissioner may not, on or after the date of the enactment of this Act, continue existing agreements for the exchange of such items or services. The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. Kastenmeier] will be recognized for 20 minutes, and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. Kastenmeier].

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I bring before the House the bill, H.R. 4972, to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for the next 3 fiscal years. Specifically, the bill authorizes appropriations for salaries and necessary expenses up to the following amounts: $117,504,000 for fiscal year 1989; $125,210,000 for fiscal year 1990;

and finally $111,984,000 for fiscal year 1991. These sums are consistent with the existing appropriations measures and comport with the administration's proposed authorization levels. I should note that in addition to appropriations the PTO receives substantial income from the collection of user fees.

An effective Patent and Trademark Office is the cornerstone for a reliable and effective intellectual property system in this country. By improving its manner of operation, the Office can have as great an impact on this Nation's inventiveness and technological change as any substantive changes to our patent and trademark laws.

Increasingly, the vitality of both the U.S. economy and the balance of trade depends on protecting the tangible expressions of new and innovative ideas. A well functioning Patent and Trademark Office can contribute positively to a healthy American economy in an international marketplace. Speaking of the need for a strong patent system, Mark Twain once observed that "* * * a country without a patent office and good patent laws was just a crab, and couldn't travel any way but sideways or backways." The goal of our patent laws and institutions is to move us forward.

This bill promotes the goal of forward movement in this Nation's patent and trademark system.

H.R. 4972 is the work product of my subcommittee—the Subcommittee on Courts, Civil Liberties and the Administration. We held a hearing on July 27, 1988, and H.R. 5972 was reported favorably by voice vote by the full committee on September 30, 1988. I would like to signal the efforts of the ranking minority member of the subcommittee, Mr. MOORHEAD, and the chairman of the House Committee on Government Operations, Mr. BROOKS, who also is a member of the Committee on the Judiciary. H.R. 5972 represents a joint effort, and without the input of these two respected Members, a bill would not be before us today.

Let me now present a brief explanation of the proposed legislation.

First, it authorizes adequate amounts of money for the next 3 fiscal years.

Second, it opens the door to allowing the Commissioner of Patents and Trademarks to establish reasonable fees for access by the public to automated search systems in the Office in accordance with current law. If such fees are established, a limited amount of free access shall be made available to all users of the systems for the purposes of education and training. The Commissioner has the authority to waive the payment by an individual of fees upon a showing of need or hardship, and if such waiver is in the public interest. The Commission therefore is conferred discretion to waive fees, or reduce them, for individuals who engage in small business endeavors or are university professors. He might exercise this rulemaking discretion in this regard.

According to testimony received by the committee from the Information Industry Association the PTO is currently considering including privately published, copyrighted works in its data bases. The PTO, as the executive branch agency whose primary function is the promotion of a strong intellectual property law, should honor the letter and spirit of the copyright owner before including such copyrighted works. In this regard, the PTO should follow the lead of the Copyright Office when it developed guidelines for its optical disk project. The Copyright Office has made a commitment that it will not enter copyrighted materials into its data bases without permission. The PTO should adopt the same policy. In permitting the PTO to charge for access to automated data bases. This authority should be accompanied by a firm commitment by the PTO to comply with the requirements of OMB circular A-130. This compliance will avoid costly and unfair competition with the private sector.

Third, the bill also safeguards against some management problems that have occurred in the PTO in recent years in connection with the automation of the patent and trademark files. Let's be candid; the automation program has not been the model of Government efficiency or effectiveness. In 1986 the Committees on the Judiciary of the House and Senate, working cooperatively with the House Committee on Government Operations and the Government Accounting Office, identified significant problems in the PTO automation project. The last authorization bill—Public Law 99-607—contained several restrictions on the spending of money for automation.

As regards automation, these restrictions have worked and they should be continued for another 3 years. H.R. 4972 opens the door to the charging of reasonable user fees for use of computer terminals to conduct trademark and patent searches, and that should give the Office adequate flexibility to continue making forward progress.

The following five restrictions found in the last authorization are to be continued.

First, the Commissioner may not increase current patent and trademark fees except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index. The underlying purpose of the patent system is to encourage use and this limitation ensures that use will not be thwarted by escalating fees.

Second, the Secretary of Commerce, at the time of the President's annual budget submission to the Congress, is required to provide information to the Committees on the Judiciary of both the House and the Senate, about patent and trademark fee collections, budget plans for the Office, and proposed distribution of surplus fees. This reporting restriction will promote congressional understanding and oversight of the Patent and Trademark Office. I am particularly perturbed that the Secretary's report for this fiscal year—1988—arrived 4 months late. Tardiness by the Secretary in respecting his reporting responsibilities, standing alone, is enough reason to continue this restriction.

Third, the bill prohibits the use of fee revenues to defray more than 30 percent of automation costs. The Commissioner of Patents and Trademarks shall notify the House and Senate Judiciary Committees of any proposed reprogramings which would increase of decrease the amount of appropriations expended for automatic data processing resources. Automation of the Office is an important policy goal, one that has already been made by the Congress, and a substantial part of this goal should be fulfilled by the expenditure of appropriated funds.

Fourth, the Commissioner is required to maintain, for use by the public, the current paper records for patents and trademarks. The Commissioner may not impose fees for use of such collections, or for the use of public patent or trademark search rooms or libraries. Public buildings are for the use of the public, and should be free of charge. Appropriated funds shall be used to maintain patent and trademark collections, search rooms and libraries.

Fifth, as for the past 3 fiscal years, during the next 3 fiscal years the Commissioner may not enter into any agreement for the exchange of items or services relating to automated data processing resources—including hardware, software, and related services, and machine readable data. Further, the Commissioner may not continue any existing exchange agreements. This latter restriction does not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

In sum, the bill before us is largely a carry over of the current law, with the exception I noted earlier. I hope that my colleagues can support this bill and promote the forward movement of this Nation's patent system.

I urge an "aye" vote.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the 3-year authorization proposed in H.R. 4972. In the late 1970's and early 1980's we found the Patent and Trademark Office in real trouble. It had been going downhill for years and at this critical time in our history, when we are experiencing technological revolution in almost every sector of private industry, we had a Patent Office that had not yet been brought into the 20th century.

We had made substantial progress since 1982. At that time, it took approximately 25 months to obtain a patent. If nothing was done we estimated by 1989 the pendency period would be between 42 and 44 months. The pendency period by the end of next year will be 18 months, not 44 months and at the same time they continue to improve the quality of issued patents.

In 1986 the PTO programs came under severe criticism by the private bar and we reviewed the programs and decided to increase oversight of the PTO through additional reporting requirements and funding restrictions. Also we prohibited the charging of fees to the public for use of the search room. All of these restrictions remain, although we do permit the development of an automated search room along side the existing paper search system. For use of the automated search system the PTO will be permitted to charge a reasonable fee. Also under this proposal those individuals who demonstrate need will be allowed free access to the automated systems. This imposed fee to the public will only reflect the marginal cost for using the new service and will not include the costs of the equipment or the development of the new systems. It's important to note that the new system will not be in lieu of the existing paper search system but will be in addition to it. The public will always have the option to use the free, paper search system which is now in place.

I want to thank the chairman of the subcommittee [Mr. KASTENMEIER] and the gentleman from Texas [Mr. BROOKS] for their continued support and concern over the operation of the Patent and Trademark Office.

The administration is not happy with all the restrictions we continue to impose on the PTO. I hope next year, we will take the time to determine whether these restrictions are still needed.

I urge support for H.R. 4972.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], the ranking member of the full Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I rise in support of H.R. 4972, the Patent and Trademark Office authorization legislation.

The Patent and Trademark Office is in the forefront of technological change and discovery. It's an important Office and it gets a lot of attention from the Judiciary Committee, as it should. We have gone from a committee that a decade ago merely rubber stamped the Department of Commerce's request for PTO authorization, to a committee that closely scrutinizes every aspect of that Office, and that too, is as it should be.

I believe we have come a long way since 1980 when our committee out of disappointment with the Department of Commerce voted to separate that Office from the Department of Commerce and make it an independent agency. That did not happen, but we made it clear how important the PTO is to this country and that we expected that Office to be the best in the world at what it does. Since that time under Secretary Baldrige and Secretary Verity, the Office has been elevated and received their encouragement and support.

Today, we are heading in the right direction. Two years ago, we had to impose some restrictions on the use of PTO funding. I supported that and I understand that those restrictions have been retained in this legislation before us but I hope the committee will, early next year, review these restrictions and if at all possible remove them.

I want to commend the gentleman from Wisconsin [Mr. KASTENMEIER] and the gentleman from California [Mr. MOORHEAD] for their quick action on this proposal and I hope we can persuade the other body to act expeditiously on the bill.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume. I have a question for the gentleman from Wisconsin and I would be glad to yield to him for an answer. Section 3, of H.R. 4972 precludes the Commissioner of Patents and Trademarks from increasing fees established under section 31 of the Trademark Act of 1946 and also from increasing fees established under section 41(d) of the Patent Act, except for the purpose of making inflationary adjustments. What about new fees for new services or new fees for improved services?

Mr. KASTENMEIER. Mr. Speaker, if the gentleman will yield, under the provisions of the bill, the Commissioner is not precluded from charging a new fee for a new service or material or from charging a different fee where a significant and material improvement in a service or material, such as in promptness or quality, is offered. Under any circumstances, augmented fees ought to be clearly justified and reported to the Congress.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 4972, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

RESTRAINT OF CERTAIN STATE TAXES ON INTERSTATE GAS TRANSMISSION PROPERTY

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2953) to amend title 28, United States Code, to permit the district courts of the United States to enjoin, suspend, or restrain certain State ad valorem property taxes on interstate gas transmission property, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2953

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1341 of title 28, United States Code, is amended by—

(a) inserting "(a)" before "The district"; and

(b) adding at the end thereof the following:

"(b)(1) Notwithstanding the provisions of subsection (a), and without regard to the amount in controversy or the citizenship of the parties, the district courts of the United States have jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to enjoin, suspend, restrain, or set aside any tax of any State or local unit of government which is in violation of paragraph (3) of this subsection. Relief may be granted under this subsection only if the ratio of assessed value to true market value of natural gas transmission property exceeds, by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the assessment jurisdiction. The burden of proof in determining such assessed value and true market value shall be governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a 'sales assessment ratio study', then the court shall hold unlawful and a violation of this subsection—

"(A) an assessment of the natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the assessed value of all other property in the assessment jurisdiction has to the true market value of all such other property; and

"(B) the collection of an ad valorem property tax on the natural gas transmission property at a tax rate that exceeds the tax rate applicable to taxable property in the taxing district.

"(2) Any sales assessment ratio study conducted pursuant to this subsection shall be carried out under statistical principles applicable to such study.

"(3) The Congress finds and declares that the acts specified in subparagraphs (A) through (D) of this paragraph unreasonably burden and discriminate against interstate commerce. No State or subdivision thereof may—

"(A) assess natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

"(B) levy or collect a tax on an assessment that may not be made under this paragraph;

"(C) levy or collect an ad valorem property tax on natural gas transmission property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction; or

"(D) levy or collect any new tax, or increase the rate or remove exemptions from any tax, that discriminates against a natural gas company subject to the jurisdiction of the Federal Energy Regulatory Commission.

Subparagraph (D) shall not apply to regulatory fees charged to natural gas companies for safety, environmental, or land use purposes, or for related administrative costs.

"(4) As used in this subsection—

"(A) 'assessment' means valuation for a property tax levied by a taxing district;

"(B) 'assessment jurisdiction' means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

"(C) 'natural gas transmission property' means property owned or used for the transportation of natural gas by a natural gas company providing transportation of natural gas by pipeline in interstate commerce;

"(D) 'commercial and industrial property' means all real and personal property devoted to a commercial or industrial use, other than natural gas transmission property, minerals, public utility property, and land used primarily for agricultural purposes or timber growing;

"(E) 'natural gas company' has the meaning natural gas company has under the Natural Gas Act, except that such term shall not include any person not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act solely by reason of section 1(c) of such Act (15 U.S.C. 717(c));

"(F) 'public utility property' means property (other than natural gas transmission property) (i) which is owned or used by a person whose rates are established or approved by a Federal, State, or local agency, and (ii) which is subject to the jurisdiction of such agency; and

"(G) 'new tax' means any tax which is enacted after the date of the enactment of this subsection.".

Sec. 2. It is the sense of the Congress that any savings accruing to any person (including any natural gas company) by reason of the enactment and implementation of this Act and the amendments made by this Act should be passed on to the ultimate consumers of natural gas through the applicable regulatory process.

Sec. 3. The amendments made by this Act shall become effective on January 1, 1990.

The SPEAKER pro tempore. Is a second demanded?

Mr. FISH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. Hughes] will be recognized for 20 minutes and the gentleman from New York [Mr. Fish] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Hughes].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2953 is legislation to stop State tax discrimination against interstate natural gas pipeline property. Currently, 11 States impose a higher ad valorem tax burden on interstate pipeline property than that placed on other, more locally based, industrial and commercial property. These higher taxes generally result from higher levels of assessed value. In 1986, the most recent year for which figures are available, the total excessive tax paid by the pipeline industry as a result of this discrimination was $67 million.

These discriminatory taxes are a clear burden on interstate commerce. They are also a form of tax exportation. States are obtaining revenues not from their own residents but from consumers in other States who are forced to pay higher rates for natural gas. Natural gas pipeline companies present an easy target for this tax exportation since they have no choice but to run pipelines through certain States if they are to take the most direct route from the point of production to the point of consumption.

Along with my colleagues, Mr. Smith of Florida, Mr. Fish, and Mr. Shaw, I introduced H.R. 2953 in July 1987 to stop this discrimination. Since then, H.R. 2853 has acquired broad bipartisan support and now has 40 cosponsors.

H.R. 2953 adds a new subsection (b) to 28 U.S.C. 1341 to present States and local jurisdictions from taxing interstate natural gas pipelines at a higher level than other commercial or industrial property. It does so by limiting both the tax rate applied to interstate natural gas pipeline property and the level of assessment placed on such property when compared to its true market value.

The bill grants concurrent jurisdiction to U.S. district courts to enjoin any State taxes above these limits. Currently, pipeline companies are denied access to Federal court in most cases, and their attempts to gain relief in State courts have met with little success.

The bill states the intent of Congress that any tax savings arising from enactment of this legislation should be passed on to consumers and not retained as profit by natural gas companies.

The bill would take effect on January 1, 1990. This gives the affected States more than a year to adjust their tax structures and to prepare for any loss in revenues.

Finally, H.R. 2953 includes a provision to prevent States from enacting any new tax—of whatever kind—that discriminates against a natural gas company, not just its pipeline property. The purpose here is to prevent the States from attempting to recoup revenues lost from no longer being able to collect discriminatory ad valorem tax by passing some other kind of tax that discriminates against pipelines.

Subsequent to the committee markup, additional language was added to this provision to make it clear that it refers only to new taxes, and does not apply to regulatory fees. This new language was added in response to concerns expressed by the National Association of Regulatory Utility Commissioners that this provision might be construed to overturn legitimate regulatory fees imposed on pipeline companies. This new language will ensure that States may continue to charge such fees. It should not, however, be interpreted to prevent States to circumvent the bill's intent to prevent new discriminatory taxes by imposing those taxes in the form of fees.

Mr. Speaker, H.R. 2953 is not new legislation. In the 99th Congress, the House of Representatives passed a similar provision as part of the budget reconciliation bill (H.R. 3500), but the provision was dropped in the conference report. Moreover, Congress has passed similar legislation to protect other interstate industries that have been the targets of discriminatory tax practices by the States. In 1976, Congress eliminated discriminatory State ad valorem taxation of railroads in the 4-R Act (Public Law 94-210, 49 U.S.C. 11503). And in 1980 and 1982, this practice was stopped for motor carriers (49 U.S.C. 11503a) and for airlines (49 U.S.C. 1513(d)).

Mr. Speaker, it is time to provide similar protection to natural gas pipelines, another interstate industry that is critical to this Nation's economy. I urge my colleagues to support this bill.

□ 1800

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 2953 is quite straightforward. It would permit interstate gas pipeline companies to seek an injunctive relief remedy in Federal district court, under certain carefully defined circumstances. Specifically, this would occur in those instances where a State has imposed a higher tax rate, or a higher tax assessment, on gas pipeline property than is applicable to other commercial or industrial property in the State.

The Judiciary Committee's Subcommittee on Monopolies and Commercial Law first considered this problem in 1985. In fact, our Subcommittee and the full Judiciary Committee favorably reported a bill almost identical to H.R. 2953 in June, 1985 (H. Rept. 99-121, part 3). Unfortunately, that measure, first an amendment to a Pipeline Safety Authorization bill, and, later, an amendment to the Budget Reconciliation Act, was not agreed to in the other body. This year's version (H.R. 2953) was the subject of a subcommittee hearing on April 14. The subcommittee favorably reported the bill, amended, on July 13. The full Judiciary Committee favorably reported H.R. 2953 last Tuesday, September 27, on a unanimous voice vote.

Eleven States currently make a distinction in tax assessments between interstate gas pipelines, on the one hand, and other commercial or industrial property located within their State on the other. The proponents of H.R. 2953 essentially make four arguments. First, the gas pipeline companies argue, with considerable validity, that this assessment and rate differentiation amount to a discriminatory and unfair burden on interstate commerce. Second, they argue that the States with such tax policies are, in fact, exporting their tax burden to the citizens (i.e., natural gas consumers) of other States. That is, that these States are really engaged in a form of tax exportation and they are, in fact, obtaining revenues not from their own residents but from the consumers of natural gas who reside in other States and pay higher rates for that natural gas. In my view, these taxing policies are an unfair exportation of the tax burden from those 11 States to the citizens of consumer States—such as my own State of New York. In 1986 (the most recent figures available), this excess taxation amounted to $67 million in the eleven States.

Third, right now, because of the language in 28 U.S.C. 1341 and court cases interpreting that provision, it is virtually impossible for gas pipeline companies to successfully challenge the fairness of a State ad valorem tax in a Federal court. Section 1341 provides that the district courts shall not "enjoin, suspend or restrain" a State tax where a remedy may be had in State court. But, ironically, because the State courts tend to defer to the "expertise" of the State taxation agency involved, there is no real remedy in a State court, either.

On this last point, the case law reflects that State courts tend to defer to the expertise of State tax administrators and view differing tax treatment as a valid exercise of State legislative authority. See: *Southern Pacific Company* v. *Cochise County,* 92 Ariz. 395, 377 P.2d 770 (1963); *Apache County* v. *Atchison Topeaka & Santa Fe Railroad Company,* 106 Ariz. 356, 476 P.2d 657 (1970), *appeal dismissed,* 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed.2d 542 (1971); *State ex rel. Poulos* v. *State Board of Equalization,* 646 P.2d 1269 (Okla. 1982); and *State of Alabama* v. *Colonial Pipeline Co.,* Civ. 3824 (Alabama Court of Civil Appeals, filed January 24, 1984).

Fourth, proponents of H.R. 2953 also point out that Congress has already afforded similar relief to railroads, trucking, bus, and airline companies operating in interstate commerce. The railroad industry sought and received relief in the Railroad Revitalization and Regulatory Reform Act of 1976, the so-called "4-R Act" (Public Law 94-210). The Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248) protects airlines from discriminatory State taxes of this type. The trucking industry was granted relief in the Motor Carrier Act of 1980 (Public Law 96-296), and most recently, the Bus Regulatory Reform Act of 1982 (Public Law 97-261), amending the Interstate Commerce Act (49 U.S.C. 11503a), granted relief to bus companies by prohibiting discriminatory property tax treatment of all motor carriers.

Before concluding, I want to mention that the bill before the House contains language in subsection (b)(3) that responds to a problem raised by the National Association of Regulatory Utilities Commissioners. This additional language makes it clear that subparagraph (D) is not intended to preclude fees charged by State regulatory agencies solely for the purpose of assuring compliance with a pipeline safety program. I want to make it absolutely clear that this language permits States to impose such regulatory fees on natural gas pipelines but it cannot in any way be used to permit States to impose new taxes or any type of taxes under the guise of fees.

Mr. Speaker, I strongly urge the Members of this House to again support legislation aimed at providing a due process remedy for those injured by discriminatory, inequitable tax policies. This is a matter of simple consumer fairness. Why should the residents of consumer States pay more for their heating bills because of the discriminatory policies of 11 States? I urge the passage of H.R. 2953.

Mr. HUGHES. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in opposition to H.R. 2953.

My major concern lies in the irrebutable presumptions created by this measure. The bill removes the ability of a State to defend in Federal court its tax classification of strictly in-State property on the basis of reasonable action and legitimate State interests.

By prohibiting the States from raising any defense in Federal court, what this bill really does is prohibit States from making any reasonable, rational classification of business property for tax purposes.

In every other case in which discrimination is claimed, the State is permitted to defend its classification. Surely, if gas pipelines are going to be given expedited access to the Federal courts, we should be giving the States the right to be heard there, too. We should not be in the business of undermining the constitutional prerogatives of States to determine their own tax policies and procedures.

In addition to simply providing a Federal forum in which to argue discriminatory treatment that creates an unconstitutional impediment to interstate commerce, the bill creates a presumption that any difference in the treatment between pipelines and other commercial and industrial property of more than 5 percent is, per se, such an impediment.

Without giving the States an opportunity to make an appropriate defense, Congress with this bill is not only intruding into local taxing matters without a clear showing of a burden on interstate commerce, but also basically prohibiting the States from drawing reasonable classifications—classifications that even the proponents of this measure acknowledge meet constitutional standards.

For these reasons, I cannot support H.R. 2953 and I urge my colleagues to vote against it.

I include following my remarks letters from the State of California and the National Association of Counties as follows:

ERNEST J. DRONENBURG, Jr.,
STATE BOARD OF EQUALIZATION,
San Diego, CA, October 3, 1988.

Hon. DON EDWARDS,
House of Representatives,
Washington, DC.

DEAR MR. EDWARDS: I understand that Tuesday, October 4th, the House may be asked to suspend the rules and adopt H.R. 2953, a bill to provide a multimillion dollar tax break for interstate natural gas pipelines which will be paid for out of local government revenues. On behalf of the California State Board of Equalization, a group of bipartisan, elected constitutional officers charged with the responsibility for assessing public utility property and pipelines, I urge you to oppose this rash and unwarranted usurpation of State taxing authority.

No record has been established that justifies H.R. 2953's drastic denial of States' ability to defend reasonable classifications of strictly in-state property for tax purposes. To hand over to U.S. District Court judges in cities far removed from our borders the authority to enjoin the collection of much-needed local revenue while they ponder the complexities of the equalization of assessment ratios is an affront to Federalism and a senseless overburdening of the Federal court system.

Fortunately, because of the technical definition of an interstate natural gas pipeline, this legislation will not create a financial impact in California this year. Nevertheless, it sets a very dangerous precedent that is already being used by other giant, multistate quasi-monopolies to gain similar treatment. For example, the telecommunications industry was narrowly defeated in an effort to be included in this bill; such a provision would have cost California counties as much as $100 million annually in lost revenues.

If the natural gas pipelines and then the telecommunications industry get their way, all that will be accomplished is an unjust enrichment of giant monopoly-like conglomerates at the expense of local schools, county hospitals, fire departments and all the other local government services that local property taxes directly support. I therefore urge you to oppose H.R. 2953. If you have any questions concerning this issue, please feel free to contact our Washington representatives, David Vienna & Associates, at 684-5236.

Sincerely,

ERNEST J. DRONENBURG, Jr.,
Chairman.

MULTISTATE TAX COMMISSION,
Washington, DC, October 3, 1988.

DEAR MEMBER OF CONGRESS: This week you will be asked to vote on legislation of great concern to state officials, local governments, schools, and individual taxpayers. We are opposed to H.R. 2953, sponsored by Representative William Hughes, that would give special tax breaks to the interstate natural gas pipeline industry and would cost school districts and local governments millions of dollars in lost tax revenues needed to fund essential services. The interstate natural gas pipelines seek to extend special tax benefits that were first granted in the 1970s to the then financially troubled railroad industry in the Railroad Revitalization and Regulatory Reform Act (4-R Act).

This legislation will preempt state taxing authority by allowing the pipelines the privilege of bypassing state administrative and judicial systems and challenging their state property taxes directly in federal court. Furthermore, it will grant injunctive relief while cases are pending which will tie up millions of dollars in tax revenues from local governments and school districts. Although packaged under the banner of tax equity, this bill will in fact, create tax inequity.

On September 16, 1988, the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation held an oversight hearing on the property tax provision of the 4-R Act. The hearing provided a forum for state officials, local governments, and taxpayers groups to describe the "Pandora's box" of problems created by the railroads, airlines, and truckers who already have special tax breaks. The states and localities are facing erosion in state taxing authority, disruption in the budgets of local governments and school districts, and ultimately, a shift in the property tax burden to other classes of taxpayers like farmers, ranchers, and homeowners.

We have asked Congress to re-examine the property tax provision of the 4-R Act and related legislation and believe it is premature to consider passage of H.R. 2953 in light of those efforts. We ask you to oppose any consideration of H.R. 2953. Thank you.

Sincerely yours,

DAN BUCKS,
Executive Director, on Behalf of the Federation of Tax Administrators, National Association of Counties, National Conference on Unit Valuation Standards, and National School Boards Association.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana [Mr. LIVINGSTON].

Mr. LIVINGSTON. Mr. Speaker, I thank my friend for yielding this time to me.

Mr. Speaker, this is an extraordinary bill which would overturn a century of jurisprudence, permitting local and State governments to assess taxes on pipelines within their own borders.

Not only does it provide an exemption from future assessments, but it actually grants injunctive relief to permit parties to go to court and overturn the basic tax structure of hundreds of State and local communities in Louisiana and other States.

Mr. Speaker, Louisiana is still the State with the highest unemployment in the Nation. Its tax base in the aftermath of the collapse of the oil market is still on the verge of total catastrophe, and this bill would only decimate this last vestige of reliable revenue base for the State of Louisiana.

Mr. Speaker, our new government and our legislature are struggling to restructure the fiscal foundation of our State. The passage of this bill would kick the props out from any hopes they might have to put Louisiana back on its feet.

It would not be the politicians who would suffer. It would be the people, the children we wish to educate, businesses and jobs we wish to cultivate, and their hopes for stability in a declining economy.

So Mr. Speaker, I urge the defeat of this bill.

Mr. HUGHES. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN], a member of the Committee on the Judiciary.

Mr. GLICKMAN. Mr. Speaker, I rise in opposition to this bill, but first I want to pay tribute to the gentleman from New Jersey [Mr. HUGHES], clearly one of the most talented Members of the House, with whom I usually agree 99.9 percent of the time, but in this case he just happens to be wrong, but usually he is right.

Mr. Speaker, I rise in opposition to this bill. This is a bill that we have had before. During the committee consideration of the bill, my own State had not made its position absolutely clear on the question of taxing an assessment of interstate natural gas pipelines. They have done so.

I have a memorandum from Harley Duncan, who is the executive director of the Federation of Tax Administrators, representing them as well as the State of Kansas in this matter.

He argues in his letter:

> There are avenues available at the state and local level that allow pipelines and other taxpayers to protest their property valuations. They should not be accorded access to the federal courts to pursue technical arguments about the value of their property.

He goes on to say:

> The provision prohibiting discrimination in taxes other than property taxes is widely drawn. Similar language in the 4-R Act has been used by the railroads to prevent the assessment of fees for railroad safety programs and to win exemptions for railroads that were intended for farmers.
>
> The bill will deprive state and local governments of revenue. Ninety-five percent of all property tax revenue goes to local governments and school districts. The tax burden will be shifted to homeowners, farmers and main street businesses.

Finally he states:

> The bill will discriminate against intrastate pipelines and other property owners without access to the federal courts.

Mr. Speaker, let me go on with my own statement. The gas pipelines are asking for special privileges that are not granted to other types of taxpayers, like homeowners, farmers, and small businesses. They want to bypass State administrative reviews and have their property tax valuations decided by a Federal court judge, unlike other taxpayers who must challenge their property taxes at the State and local level.

What this means is that the Federal court will be in the business of tax appraisal. Property taxation is historically a State and local matter.

Mr. Speaker, I want to assure my colleagues that I believe this is an intrusion into the State taxing authority, so I would urge my colleagues to oppose this bill. It creates wide diversity of taxing authorities in a number of States. I will hurt the consumers of my area.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume. I will be very brief.

We have been told that this is a congressional intrusion into State taxing authority, but we are dealing here with the Interstate Commerce clause of the Constitution.

Clearly, the effect of this tax is to pass on the cost to the consumers of natural gas in other States.

I might add that this measure before us is supported by the Northeast-Midwest coalition in this body, although as you know, it is only 11 States that depose this tax, so it is consumers in many other parts of the Nation that are protected.

Mr. HUGHES. Mr. Speaker, I yield 3 minutes to my friend and colleague, the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I thank my friend, the gentleman from New Jersey, for yielding this time to me.

Again, like my colleague, the gentleman from Kansas, it is not often that I have to rise in disagreement with my friend, the gentleman from New Jersey, but on this occasion I must.

As far as I am concerned, Mr. Speaker, this bill could cost school districts in many parts of this country and local governments all over America millions of dollars in lost tax revenues. I think it is very important for our colleagues to focus on this bill. The interstate natural gas pipelines, with this bill, are seeking to extend special tax benefits that were first granted in the 1970's to the then financially troubled railroad industry in the 4-R Act.

This bill will clearly preempt State taxing authority by allowing the pipelines the privilege of bypassing State administrative and judicial systems and challenging their State property taxes directly in Federal court. I think this is a major departure, certainly, for the treatment of pipelines. It raises the possibility also of tying up millions of dollars in tax revenues from local governments and school districts while cases are pending litigation in the Federal court system.

In addition to that, and my colleague, the gentleman from Kansas, I think did a good job of explaining this, what will occur if this legislation would pass and to the extent that it works to the benefit of the constituents of my friend, the gentleman from New Jersey, it works to the disadvantage of my constituent. Every dollar in relief that they would enjoy would result in a dollar increase in taxes for taxpayers in other parts of the country; so to the extent that the pipelines in my State are being overtaxed and if those taxes come down, which this legislation would like to achieve, then taxes on other classes of property owners in my State would have to go up to offset the loss of revenue.

And who are those other property taxpayers in our State, They are clearly consumers, homeowners, farmers, small business men and women all over the Midwest.

So Mr. Speaker, this is what I would call regional legislation. It certainly is going to benefit perhaps some in other parts of the country, but for those of us who have large numbers and miles of pipelines located in our States, this legislation is going to work to our disadvantage.

In closing, just let me say that the idea of the Federal Government preempting State authority in this area and the idea that the property taxation, which has traditionally been handled by the State level, the idea of that being preempted by the Federal Government is a wrong-headed idea as far as I am concerned, and we should defeat it. I think we should protect the historical authority of the States to deal with the area of property taxes.

Railroads, airlines, and truckers already have special tax rates in many jurisdictions. States and localities are already facing erosion in State taxing authority, disruption in the budgets of local governments and school districts, and, ultimately, a shift in the property tax burden to other classes of taxpayers like homeowners, personal property owners, farmers, ranchers, and small business people.

Enactment of this legislation could open the door to even more special tax preferences being sought by other regulated industries. In my home State of Kansas, our State government is in the midst of implementing a new property tax classification system. Property taxation traditionally has been a function of States, not of the Federal Government. It should remain so. I join with the Multistate Tax Commission in opposing H.R. 2953 and I hope my colleagues will also oppose this bill.

□ 1815

Mr. HUGHES. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, let me also echo the words of my friend, the gentleman from Kansas, in acknowledging the fine contributions of our friend from New Jersey, and most of the time in this House I usually agree with him, too, but this time I think we have got a bad bill on our hands.

The 19 major pipelines that carry gas on the interstate market in this country carry about 90 percent of the gas, to be precise. For those 19 pipelines that carry 90 percent of the natural gas in this country in the interstate market, this bill grants a special-interest tax break. That is the bottom line.

I suppose we could do that in this Congress if we wanted to, if we were using Federal funds to grant a tax break to 19 companies, but that is not what this bill does. This bill grants a tax break not out of Federal funds but out of local funds, out of school districts around this country.

In Louisiana alone, this will cost school districts and local governments $17 million. Somebody else will have to pay that $17 million—somebody else, a farmer, perhaps a homeowner, perhaps somebody else to pay for the tax break that the 19 pipeline companies get in this bill.

Mr. Speaker, let me make it clear that Louisiana does not discriminate against interstate pipelines. Interstate pipelines in Louisiana are assessed at 60 percent of the rate of interstate pipelines. We adjust our taxes to make sure we have equal taxation on that unequal assessment basis, and that is by court decision. We do not discriminate.

This bill would force discrimination. It would force discrimination in favor of the interstate pipelines, and it would force us to readjust our tax base against those who support the schools and those who support the local governments in our State. That is going to be true all over America.

This bill is bad legislation. We ought to defeat it. It is bad because of one additional reason, even though the author of the bill has indicated they tried to correct the problem, as pointed out, in the regulatory fees that are used to regulate for safety purposes pipelines across America, keep in mind that there is a thin line between a tax and a fee. The railroads in Oregon have already gone to court and have successfully gotten a court decision that said regulatory fees to protect the safety of the lives of people in Oregon were discriminatory taxation in Oregon.

Mr. Speaker, we think we have it corrected in this bill. Let me tell the Members something, railroads will think otherwise, and so will pipelines. Not only do they have the right in this bill to contest that in Federal court, but they have the additional right to enjoin the collection of the tax in the meantime. Can the Members imagine the Pandora's box that we open up when we say to pipelines, "You can contest regulatory fees and taxes to determine which is a tax and which is a fee and tie up all the money going to schools and local governments across America"?

Mr. Speaker, this is a bad bill. We need to kill it. We are going to ask for a recorded vote on it tonight, and we hope we get one tomorrow. When we do, Mr. Speaker, we will ask our colleagues to join us in opposition to this very special interest tax break that will hurt the citizens of this country.

Mr. HUGHES. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Washington [Mr. SWIFT].

Mr. SWIFT. Mr. Speaker, I thank the gentleman from New Jersey for yielding this time to me.

Mr. Speaker, I have received a letter from the Multistate Tax Commission on behalf of its executive director as well as the Federation of Tax Administrators, the National Association of Counties, the National Conference of

Unit Valuation Standards, and the National School Boards Association, and what it points out in part is that the property tax provision of the 4-R Act was intended to prohibit alleged discrimination of State taxation in rates and assessments of railroad property. In fact, it does much more.

Mr. Speaker, it grants the railroads the privilege of bypassing State administrative and court reviews, and going directly into Federal court. It allows the railroads to be granted injunctive relief while their cases are pending and, further, it gives the Federal courts purview over all types of State taxation, not just property taxation. These are special privileges, unavailable to the average business or individual property owner.

What this legislation purports to do is to give those same loopholes to gas transmission, and I believe that is inappropriate. I urge my colleagues to vote against this bill.

Mr. HUGHES. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Minnesota [Mr. SIKORSKI].

Mr. SIKORSKI. Mr. Speaker, I share the oft-repeated respect for the gentleman from New Jersey, but this is a controversial bill, very controversial for a lot of States and Members of Congress from those States, especially where we have a significant impact on local tax revenues which will then have to be picked up by local businesses and schools and farmers and homeowners and, according to the pipeline industry, the tax break for pipelines in Minnesota will total some $8 million annually, and although there are no hard figures, apparently from the national revenue loss, the Federation of Tax Administrators and the Multistate Tax Commission, the two major associations of State tax administrators, estimate that the tax break for pipelines could reach as high as $500 million annually because of the impact of H.R. 2953.

Again, groups opposed to this measure include the National Association of Counties, the National School Boards Association, the National Governors' Association, the Federation of Tax Administrators, the Multistate Tax Commission, and the National Association of Regulatory Utility Commissioners.

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are talking about basic equity. If a State does not discriminate against pipeline companies, the State has nothing to fear.

Mr. Speaker, I say to my colleague, the gentleman from Louisiana, that basically I do not know how Louisiana assesses property other than intrastate pipeline companies, but if in fact Louisiana and other States are treating pipeline companies like other commercial property, then there should be no problem.

The difficulty is that many States, 11 to be precise, treat pipeline companies differently than other commercial properties. That is the problem, and all that this legislation does is gives them a forum and a mechanism to prevent that kind of discrimination.

Some $67 million is exported to other States, consuming States, by those that assess companies at a higher ratio of valuation or impose a higher tax and, of course, that is passed on to the consumers. That is the difficulty, and that is what this bill attempts to redress, and that is why the Northeast/Midwest Coalition and many other organizations around the country and parts of the country are concerned about the discriminatory taxation. This merely provides a forum for that question to be litigated. It does nothing more nor less than that.

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Speaker, let me try to explain the problem as the gentleman's bill affects taxation in Louisiana.

There are two figures used in assessing tax bills against property in Louisiana. One is the valuation of a property, and the second is the percentage that it is taxed on, the millage rates. In Louisiana by court decision interstate pipelines are valued at 60 percent of intrastate pipelines. As a result, the percentage that is taxed is different to accommodate that difference in valuation, so that the end result is an equal taxation. There is a 15 percent applied to intras, and 25 percent applied to interstates, to make up for the difference in the 60-percent and the 100-percent valuation. The net effect is equality of taxation.

Under the gentleman's bill, that 25 percent would have to be reduced to 15 percent, and under the State law, we could not value the property at more than 60 under the gentleman's bill, and the interstates would get a big break of $17 million.

Mr. HUGHES. Mr. Speaker, reclaiming my time, I am not sure that this legislation would do that. What this legislation would do, however, is it would provide a forum for interstate pipeline companies to go to the Federal court, if that pipeline company is being discriminated against, as compared with other like commercial property.

It has been argued that it is going to impose a burden on those States where the pipeline company goes through. That is true if, in fact, what that State is doing is imposing an unfair burden on the pipeline company, thereby lessening the tax on other property within the State. That is discrimination no matter what we say about it. It is discriminatory, and this just provides for some redress of that discrimination.

I might say that pipeline companies just cannot pick up and move to some other State. They are sort of locked into that State. They cannot, like other companies which are discriminated against, move their factories to some other State. The pipeline companies have to go through a State because of the requirement that they have some direct route.

This is just basic equity and basic fairness, and I would urge my colleagues to support the legislation.

Mr. Speaker, I thank my colleagues for all of those wonderful accolades.

Mr. BEREUTER. Mr. Speaker, I rise in opposition to this legislation so that we are able to more carefully examine the implications of H.R. 2953 on State tax law. This measure contains language similar to that in section 306 of the 4-R Act which bars States from adopting tax policies concerning railroads. Such provisions have been used by the railroads to withhold $9.2 million personal property taxes in Nebraska. As is the case in other States, the railroads have argued that they should be exempt from paying taxes on their personal property in Nebraska because the State exempts some other types of commercial property from such taxation.

This taxation dispute is the result of a 1987 ruling by a U.S. district court, which held that there was discrimination against rail car line companies based upon the section 306 language of the 4-R Act. Since this decision, other Federal lawsuits seeking tax exemptions have now been filed by two pipeline companies and in State court by a telephone company. According to the Nebraska Tax Commissioner, if these claimants are successful, the State of Nebraska, for example, would lose 6.5 billion dollars' worth of value or approximately $161.5 million in local tax revenues.

Originally, the purpose of the 4-R Act was to assist in the restoration of the financial and operational stability of the ailing railway system. Many States were clearly guilty of overtaxing railroad companies relative to other commercial and industrial properties. The intent of section 306 was to prevent retaliatory legislation by States with discriminatory equalization and assessment schemes. However, these provisions now unexpectedly seem to be used and expanded to challenge a number of much different State tax programs and situations, including:

First, property tax exemptions such as those in Nebraska, Washington, Florida, California, Iowa, and North Dakota:

Second, railroad safety assessment fees such as that in Oregon; and

Third, carrier income tax such as that in West Virginia.

I am fearful that by extending the use of this section 306 language to natural gas pipelines, as contemplated by H.R. 2953, we will experience an erosion of the tax base of our States coupled with an unwarranted interference in the tax policy of our States.

Further study is needed to determine the effect of this provision in H.R. 2953 on State tax policy. I urge my colleagues to reject this legislation at this point so that the implications of this legislation for our State tax laws can be more completely and carefully explored. This proposed legislative action is premature.

Mrs. SMITH of Nebraska. Mr. Speaker, I rise today to voice my concerns over H.R. 2953, a bill that would limit the power of the States to impose taxes on interstate natural gas transmission property.

The measure will allow Federal courts to determine whether certain State taxes on natural gas pipeline property would burden and discriminate against interstate commerce. Such power was previously barred in most cases and thus required pipeline companies to seek relief in State courts. It will also grant injunctive relief while cases are pending.

H.R. 2953, if approved, would grant pipeline companies tax treatment similar to that Congress gave the railroad industry in 1976 under the Railroad Revitalization and Regulatory Reform Act—4-R Act—Public Law 94-210.

The 4-R Act was passed to forbid States from taxing rail companies in discriminatory ways and to assist in the restoration of the ailing railway system. I agreed with the overall concept of the 4-R Act; railroads should not be unfairly taxed.

However, because of recent court decisions, I am concerned about granting the pipeline industry some of the privileges granted to the railroads in 1976. Recently, we have run into trouble in Nebraska because of unintended expansions of the 4-R Act.

In Nebraska, judicial interpretations of the 4-R Act have had the effect of preempting State taxing authority and have tied up millions of dollars in tax revenues from local governments and school districts. I fear similar interpretation of H.R. 2953 would do the same.

Nebraska faces the loss of two pending lawsuits challenging its property tax system and faces more in the future. Citing the provisions under the 4-R Act, three railroads and three railcar line companies have brought suits against paying any personal property taxes in Nebraska to the U.S district court.

Because of these cases, Nebraska is facing erosion in State taxing authority and the disruption in the budgets of local governments and school districts.

Countries, cities, and school districts across Nebraska have been harmed as a result of successful challenges brought by railroads and rail car companies against Nebraska's property tax.

The short term impact: It is estimated that $12 million in property taxes for this tax year will be lost. Well over half of this money goes to school districts.

Eighty of Nebraska's 93 counties have railroad tracks or other rail property and, thus, at least temporarily have lost personal property tax revenues they normally collect. The Alliance, NE, school district lost $177,000 in tax revenue this year. The North Platte School District, a district where enrollment is growing, lost $288,000 this past year.

The long-term effect: The act could force the Nebraska unicameral to consider a major restructuring in the State's property tax system. In other words, the 4-R Act has preempted the State's taxing authority and threatened the integrity of the State tax system.

I believe H.R. 2953, as evidenced by the effects of the 4-R Act in Nebraska, could result in an inappropriate Federal intervention into State power to tax. I fear pipelines, like railroads before them, would now be able to challenge State property tax bills and not pay their share for schools and other essential State and local services.

It is imperative that Congress consider the revenue impact on States when adopting legislation such as H.R. 2953. Such legislation expands the Federal Government's role in the States' authority to set tax policies. It hinders the States' ability to adequately fund vital services.

The Governor of Nebraska has requested Congress to reexamine the property tax provision of the 4-R Act. The Omaha World Herald in a June 7, 1988, editorial stated, "The fact that the law has become a tool to tear down existing State tax systems strongly suggests that somebody has gone too far."

In light of these statements and efforts, I believe it is premature to consider passage of H.R. 2953.

I urge my colleagues to vote "no."

Mr. DORGAN of North Dakota. Mr. Speaker, I oppose H.R. 2953. If this bill is enacted it will cost our counties and school districts millions of dollars in lost revenue by giving the interstate natural gas pipeline industry substantial tax breaks.

The gas pipelines are asking for special privileges that are not granted to other types of taxpayers, like home owners, farmers, and small businesses. For instance, they want to bypass State administrative reviews and have their property tax valuations decided by a Federal court judge, unlike other taxpayers who must challenge their property taxes at the State and local level. What this means is that the Federal courts will be in the business of tax appraisal. Property taxation is historically a State and local matter. As a former State tax commissioner, let me assure my colleagues that this is a blatant intrusion into State taxing authority.

The pipelines claim that they are simply asking for property tax relief, but this bill extends that special treatment to any new taxes, rates, or exemptions, far beyond just property taxes. Furthermore, the gas pipelines are asking to have their tax payments enjoined while their cases are pending—a benefit not granted to other taxpayers who must pay first and seek refunds later. Most importantly, the injunctive relief provision will create budgetary havoc for our local communities who depend on a stable property tax base.

The pipeline industry claims that any tax relief it receives will be passed onto the consumer. I am here to tell you that the loss in revenues to our communities must be made up somewhere else and most likely that will be out of the pockets of individual taxpayers, like home owners, farmers, and small businesses.

The pipelines claim they are eligible for up to $67 million in annual tax savings. These are revenues used to fund our schools and essential community services. I believe that my colleagues are as concerned as I am about maintaining a stable economic base for our communities. The bill would jeopardize that stability.

There is increasing concern from local governments, educators, and taxpayer groups that this legislation is unwarranted. For example, the National Association of Counties opposes the bill. The American Farm Bureau which represents more than 3.6 million farm families opposes this bill. The National School Board Association which represents more than 95,000 school board members is also opposed.

Although supporters claim it is a tax package that will provide equity for the pipelines, it will in fact, create tax discrimination by giving tax breaks to a major property taxpayer that is not given to other individual taxpayers.

The gas pipeline industry claims that it is entitled to special treatment because the railroads, truckers, and airlines have received tax breaks from Congress. However, the pipeline industry has failed to provide adequate proof that any tax relief is warranted. They charge 11 States are overtaxing the pipelines, however, in a House hearing this spring, this assertion was challenged by the States. Furthermore, most pipelines have not pursued remedies through the States' legal or legislative review process.

The interstate natural gas pipeline industry wants to ease its property tax burden at the expense of individual taxpayers. The industry wants to join the railroads, who got this special tax treatment in the Railroad Revitalization and Regulatory Reform Act of 1976 to help stave off financial collapse, and the motor carriers and the airlines who received such treatment a few years ago. The railroads have successfully exploited the law and are getting millions of dollars in tax breaks. For example, in Washington State there is a railroad case pending in which over $6 million is enjoined from 32 of the 39 counties. In a pending California case four railroads were granted injunctive relief of over $11 million.

The telecommunications industry and electric utility industry are seeking similar tax preferences. The value of the property of all these industries—having received or seeking such preferences—is, according to 1981 census data, close to $160 billion. There's a lot at stake.

In light of the Pandora's box that this legislation will open, I urge my colleagues to oppose this bill.

Mr. DAUB. Mr. Speaker, this bill should not be considered under suspension of the rules.

This bill gives gas pipeline companies the same legal privileges currently enjoyed by railroads, specifically: Easy access to Federal court to fight State tax policies, and injunctive relief from Federal court when challenging State taxes.

These special legal privileges were given to railroads in legislation known as the 4-R Act. They were included in the 4-R Act to address cases of discrimination where rail property was assessed and valuated at higher rates than other commercial and industrial property.

In recent court challenges, railcar companies and railroads have used these statutes to challenge the payment of property taxes. Where there is any difference in tax treatment of property, railroads have initiated suits.

In Nebraska, railroads have won a court injunction and, consequently, are not liable for personal property taxes. This action may give railroads a degree or relief, but it also threatens the ability of local governments and schools to provide services to the people they serve.

I feel it is unwise to give a similar privilege to another industry until the long-term effects of the 4-R Act are known.

Mr. HUGHES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gonzalez). The question is on the motion offered by the gentleman from New Jersey [Mr. Hughes] that the House suspend the rules and pass the bill, H.R. 2953, as amended.

The question was taken.

Mr. TAUZIN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2953, the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

TEMPORARY SAFE HAVEN ACT OF 1988

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4379) to amend the Immigration and Nationality Act to provide to aliens who are nationals of certain foreign states in crises authorization to remain temporarily in the United States, as amended.

The Clerk read as follows:

H.R. 4379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Temporary Safe Haven Act of 1988".

SEC. 2. ESTABLISHMENT OF STATUTORY PROCEDURE TO PERMIT ALIENS WHO ARE NATIONALS OF CERTAIN FOREIGN STATES IN CRISIS TO REMAIN TEMPORARILY IN THE UNITED STATES.

(a) In General.—The Immigration and Nationality Act is amended by inserting after section 244 the following new section:

"AUTHORIZATION TO REMAIN TEMPORARILY

"Sec. 244A. (a) In General.—In the case of an alien who is a national of a country designated under subsection (b) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

"(1) shall permit the alien to remain temporarily in the United States and shall not deport the alien from the United States; and

"(2) shall authorize the alien to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit.

"(b) Designations of Foreign States.—(1) The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or, in the case of a finding under subparagraph (B), all or any part of such foreign state) under this subsection only if—

"(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state would pose a substantial threat to their personal safety;

"(B) the Attorney General finds that—

"(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

"(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

"(iii) the foreign state officially has requested designation under this paragraph; or

"(C) the Attorney General finds that—

"(i) there exist extraordinary and temporary conditions in the foreign state, and

"(ii) taking into account immigration, humanitarian, and international concerns, requiring the return of aliens who are nationals of that state would not be in the national interest of the United States.

A designation of a foreign state (or, in the case of a determination under paragraph (1)(B), all or any part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register.

"(2) The designation of a foreign state (or, in the case of a determination under paragraph (1)(B), all or any part of such foreign state) under paragraph (1) shall—

"(A) take effect upon the date of publication of the designation under such paragraph, unless the Attorney General otherwise provides in the notice published under such paragraph, and

"(B) shall remain in effect until the date of a determination under paragraph (3)(B).

"(3)(A) Not less often than annually the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in each foreign state (or, in the case of a determination under paragraph (1)(B), all or any part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions continue to justify such designation under this subsection.

"(B) If the Attorney General determines under subparagraph (A) that a foreign state (or, in the case of a determination under paragraph (1)(B), all or any part of such foreign state) no longer meets the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3).

"(C) If the Attorney General determines under subparagraph (A) that a foreign state (or, in the case of a determination under paragraph (1)(B), all or any part of such foreign state) continues to meet the conditions for the designation, the Attorney General may extend the designation and shall provide on a timely basis for the publication of notice of the determination (including the basis for the extension) in the Federal Register.

"(c) Aliens Eligible for Benefits.—(1) Subject to paragraphs (2) and (3), an alien, who is a national of a state designated under subsection (b), meets the requirements of this paragraph only if—

"(A) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; and

"(B) to the extent and in a manner which the Attorney General establishes, the alien registers for the benefits of this section.

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (B) or otherwise providing an alien with an 'employment authorized' endorsement or other appropriate work permit under this section.

"(2) In the determination of an alien's eligibility for benefits under this section—

"(A) the provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply;

"(B) except as provided in subparagraph (C), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest;

"(C) the Attorney General may not waive, of section 212(a)—

"(i) paragraphs (9) and (10) (relating to criminals);

"(ii) paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana;

"(iii) paragraphs (27), (28), and (29) (relating to national security and members of certain organizations); or

"(iv) paragraph (33) (relating to those who assisted in the Nazi persecution), and

"(D) the alien shall not be eligible if the Attorney General finds that—

"(i) the alien has been convicted of a felony or three or more misdemeanors in the United States; or

"(ii) the alien is described in section 243(h)(2).

"(3) The Attorney General shall withdraw any benefits provided to an alien under this section if—

"(A) the Attorney General finds that the alien was not in fact eligible for such benefits under this section,

"(B) except as provided in paragraph (4) and subsection (e)(3), the alien has not remained continuously physically present in the United States from the date the alien first was provided benefits under this section, or

"(C) the alien fails, without good cause, to register with the Attorney General annually, in a form and manner specified by the Attorney General.

"(4) For purposes of paragraphs (1)(A) and (3)(B) of this subsection and subsection (f), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard as to whether such absences were authorized by the Attorney General.

"(d) Documentation.—(1) At the time of approval of benefits with respect to an alien

under subsection (c), the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

"(2) Subject to paragraphs (3) and (4), such documentation and authorization shall be valid for an initial period of not less than 3 months and not more than 18 months. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or, in the case of a determination under subsection (b)(1)(B), all or any part of such foreign state).

"(3) If the Attorney General terminates the designation of a foreign state (or, in the case of a determination under subsection (b)(1)(B), all or any part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the date of the finding as the Attorney General determines to be appropriate in order to provide for an orderly transition).

"(e) Benefits and Status During Period of Extension.—During a period in which an alien is provided benefits under this section—

"(1) the alien shall not be considered to be permanently residing in the United States under color of law;

"(2)(A) the alien shall not be eligible for any program of public assistance furnished under Federal law, and (B) a State or political subdivision may treat the alien as being unlawfully present in the United States for purposes of determining the alien's eligibility for State and local programs of public assistance;

"(3) the alien, with the prior consent of the Attorney General, may travel abroad temporarily; and

"(4) the period shall not be counted as a period of physical presence in the United States for purposes of section 244(a).

"(f) Construction of Provisions.—(1) Nothing in this section shall be construed as requiring that an alien must be apprehended in order to become eligible for benefits under this section.

"(2) This section shall constitute the exclusive authority of the Attorney General under law to permit aliens (who are otherwise deportable or who have been paroled into the United States by virtue of their particular nationality or region of foreign state of nationality) to remain in the United States temporarily by virtue of their particular nationality or region of foreign state of nationality. The previous sentence shall specifically supersede the Attorney General's authority to extend periods of voluntary departure under the ninth sentence of section 242(b) or under section 244(e)(1), or to provide for deferred action in cases covered under the previous sentence, but shall not supersede section 243(h).

"(g) Annual Report.—The Attorney General, after consultation with the appropriate agencies of the Government, shall report to the Committees on the Judiciary of the House of Representatives and of the Senate annually on the operation of this section. Each report shall include—

"(1) a listing of the foreign states or parts thereof designated under this section,

"(2) the number of nationals of each such state who are provided benefits under this section, and

"(3) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or continued under such subsection.

"(h) No Judicial Review.—There shall be no judicial review of any determination made by the Attorney General under this section.".

(b) Clerical Amendment.—The table of contents of such Act is amended by inserting after the item relating to section 244 the following new item:

"Sec. 244A. Authorization to remain temporarily.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect 90 days after the date of its enactment.

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from Kentucky [Mr. Mazzoli] will be recognized for 20 minutes and the gentleman from Georgia [Mr. Swindall] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. Mazzoli].

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the distinguished gentleman from New York [Mr. Fish], the distinguished gentleman from Georgia [Mr. Swindall], and I introduced H.R. 4379 to fill a gap in current U.S. immigration law.

Under existing law an alien who can demonstrate a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion can be admitted to the United States as a refugee. This means the person becomes a lawful permanent resident alien, with full rights to become a U.S. citizen after the requisite number of years. An alien already in the United States, who can demonstrate that same type of well-founded fear, can be granted asylum which carries the same rights and privileges as refugee status.

On the other hand, an undocumented alien who is in the United States illegally, even one who is fleeing war, disaster, famine and the like has no ground to remain in the United States and must be deported.

Current law is all or nothing at all. The Judiciary Committee felt there should be a middle ground.

The refugee "well founded fear of persecution" test is not, and was never intended to be, a standard easily met. Under U.S. law a refugee must show a personalized fear. That is, a fear that he or she has been, or may be, singled out for harsh treatment on the basis of the prescribed grounds of race, religion, ethnicity and the like. Moreover, the concept of persecution entails the notion that the persecutor is action knowingly and intentionally against an individual. There is no such thing as negligent or unintended persecution.

Let me hasten to say, Mr. Speaker, that even though the 1980 refugee act does not cover the entire spectrum of humanitarian cases, it is an excellent measure. Under the Act, hundreds of thousands of individuals fleeing persecution have been admitted to the United States. In fiscal year 1989 the United States will admit approximately 94,000 refugees.

But, because an individual will not be persecuted if returned to his or her homeland that does not mean it is safe for the person to return—or be returned—home, returning to random violence or civil warfare, or an environmental disaster is not remarkably different than returning to personalized persecution. It hurts in either event.

This gap in current law has been recognized—and to some extent, corrected—by an executive branch policy action known as extended voluntary departure [EVD]. Since 1977, EVD has been granted administratively to Ethiopians, Ugandans, Poles, Afghans, Iranians, and Nicaraguans.

Quite simply, the EVD process is one by which the Attorney General allows individuals of a particular nationality to remain indefinitely in the United States to return to their homelands at unspecified times in the future. According to Elliot Abrams, who, as Assistant Secretary of State for Human Rights and Humanitarian Affairs, testified on this matter in 1984, the decision to grant EVD is based on "a balancing of judgments about the foreign policy, humanitarian, and immigration policy implications of such a grant."

Though the EVD mechanism represents a bona fide attempt to answer an obvious and ongoing need. It presents a number of problems of its own.

First, it has only the shakiest of legislative foundations, and indeed is arguably outside the scope of current law.

Second, the process by which EVD grants are made, extended, or terminated is without guidelines. There exists no statutory criteria to guide the administration in its actions.

Third, EVD decisions are neither publicized nor accompanied by an explanation as to why they were made. For example, in 1987 when EVD was extended for Poles the action was accomplished by means of an internal directive to Immigration Service offices. No notification or explanation accompanied the action.

Fourth, neither statutes nor regulations describe the rights and responsibilities of individuals who are in EVD status. What documents are issued to such individuals? Are they allowed to work in the United States? Can they travel abroad? Are they entitled to welfare benefits? Answers to these and similar questions are difficult, if not impossible, to find.

Given these obvious defects in current practice, and recognizing the compelling humanitarian arguments on behalf of allowing endangered aliens, who are not technically refugees, to remain in the United States temporarily, the committee has crafted the legislation before the House today: the Temporary Safe Haven Act of 1988. The basic features of the bill are as follows:

It establishes three criteria for authorization—for an alien—to remain temporarily [ART] in the United States: First, physical danger to alien due to armed conflict in the homeland; second, environmental disaster in the homeland; or third, U.S. national interest, taking into account international, humanitarian and immigration concerns.

It removes from the Attorney General his present powers to grant extended voluntary departure.

It requires foreign states to request ART for environmental cases only.

No judicial review or rejection of ART is permitted.

It allows the Attorney General to establish cutoff dates after which the alien must return home unless ART status is extended.

It requires all eligible aliens to register with INS, and then reregister annually, providing the INS with such information as it may require.

It requires continuous physical presence in the United States during ART status but permits brief casual and innocent departures—with permission—while ART is maintained.

It disqualifies ART status holders from public welfare.

It requires the Attorney General to report to Congress annually if ART was granted, extended, or terminated during that year.

It requires the Attorney General to publish findings of fact in the Federal Register whenever: First, grants of ART are made to a country; second, ART is revoked; or third, ART is extended for an additional period.

Mr. Speaker, I think this legislation is long overdue, and I urge my colleagues to vote for H.R. 4379.

□ 1830

Mr. Speaker, I reserve the balance of my time.

Mr. SWINDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I agree with everything the gentleman from Kentucky has stated.

Mr. Speaker, as an original cosponsor I rise in support of H.R. 4379, and urge my colleagues to vote for its passage. H.R. 4379 establishes much needed statutory criteria and procedures for the Attorney General to authorize foreign nationals from designated countries to remain in the United States temporarily.

The legislation gives the Attorney General discretion to authorize temporary safe haven for foreign nationals to remain in the United States when: First, their return would result in extreme physical danger due to an armed conflict; second, an environmental disaster has occurred; or third, if extraordinary temporary conditions exist in the foreign state involving serious international, humanitarian, and immigration concerns.

As my colleagues know, the Attorney General currently has discretion to grant extended voluntary departure [EVD] to allow individuals from certain countries to remain in the United States because of political persecution, chaos, and civil strife at home. However, no stationary criteria is now available which specifies when extended voluntary departure can be granted and why certain countries qualify.

These EVD decisions are neither publicized nor accompanied by an explanation of how and why they were made. For example, when EVD was extended for Polish nationals the action was accomplished by means of an internal directive to Immigration Service officers. No further notification or explanation accompanied the action.

Neither statutes nor regulations describe the rights and responsibilities of individuals who are in EVD status. What documents are issued to such individuals? Are they allowed to work in the United States? Can they travel abroad? Are they entitled to welfare benefits? Answers to these and similar questions are difficult, if not impossible, to find and are answered by this legislation.

In addition to establishing stationary criteria for such a grant, this bill also requires that all eligible aliens must register with INS, and then reregister each year, providing the INS with such information as they may require. The legislation also requires the Attorney General to report annually on the status of each country granted safe haven and to publish findings of fact in the Federal Register whenever a grant of such status is made, revoked or extended. It prohibits them from obtaining welfare benefits and establishes the parameters under which they may work and travel.

Mr. Speaker, last year the House passed H.R. 618, legislation which stays the deportation of Salvadorans and Nicaraguans pending a GAO report. I strongly opposed this legislation because it was an ad hoc, country-specific approach to the problem of temporary chaos. To give the Salvadorans and Nicaraguans living and working here a free pass undermines the new immigration law, intended to discourage sneaking into the country. In addition, the bill stops at those two groups and does not address the plight of the others whose plea for emergency protection fails to win administration or congressional sympathy.

H.R. 4379 provides an alternative to this ad hoc approach by establishing a statutory framework for all situations where temporary refuge is sought for foreign nationals whose country faces temporary chaos and establishes the conditions of their stay while they live in the United States.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SWINDALL. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I rise in support of H.R. 4379, the "temporary safe haven" legislation we have before us today. As a coauthor and cosponsor of this legislation, I would like to give my colleagues a brief summary of the genesis of this bill and why I believe it is needed.

The bill before us today is an alternative to nation-specific legislation to allow foreign nationals to remain temporarily in the United States and an alternative to administration grants of extended voluntary departure [EVD].

As my colleagues will recall, last year, the Judiciary Committee and the House of Representatives passed H.R. 618, legislation to stay deportation of Salvadorans and Nicaraguans pending a GAO report. I opposed this nation-specific legislation because I believed it was the wrong approach. It gave foreign nationals from these two countries an opportunity to remain in the United States while foreign nationals from other countries in similar circumstances have no such opportunity. The legislation before us would replace this nation-specific approach with a more evenhanded procedure for handling these cases.

This legislation also replaces the case-by-case approach use by every administration during the past 25 years. Since 1960, the executive branch has used an administrative remedy known as extended voluntary departure [EVD] to allow nationals of certain countries, upon expiration of their visas, to remain in the United States when conditions in their home countries present a hazard to their return. At present, individuals from Poland, Ethiopia, and Afghanistan have this EVD status. However, no criteria—statutory or otherwise—exists which specifies when extended voluntary departure can be granted and why certain countries qualify.

The legislation before us parallels numerous other examples where statutory framework establishes the criteria under which the executive department exercises its discretion to admit foreign nationals.

The Refugee Act of 1980 was passed by Congress to establish a uniform process by which we accept refugees—that is, those individuals having a "well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion." With the passage of the Refugee Act, the use of extended voluntary departure decreased. However, even after passage of this act, the administration continued to use its executive authority to grant extended voluntary departure in special circumstances for certain countries, such as Uganda, Poland, Ethiopia, and Afghanistan.

Another example is our preference system, which defines categories of aliens which Congress has decided are to be considered as immigrants. The consular officer in the field reviews the applications for immigrant visas, while the INS officer at ports of entry determines admissibility.

Our law also provides for admission by asylum into the United States, should a foreign national establish that he faces a "well-founded fear of persecution" upon return to his own country. The Department of Justice reviews these asylum applications and makes the necessary determinations on each case.

Mr. Speaker, I sympathize with all countries around the world that suffer from economic hardship, civil strife or national catastrophe. However, I think the present reliance on ad hoc use of EVD and nation-specific legislation demonstrates a clear need for congressional action to establish formal procedures for granting temporary safe haven. The purpose of the Refugee Act of 1980 was to establish a formal and orderly process for accepting refugees to supplant the use of parole and nation-specific procedure. We need to do the same for EVD. I believe the bill under consideration makes much more sense than granting a stay of deportation for El Salvador or Nicaragua only, pending completion of a GAO report, or granting administrative EVD to Polish nationals every 6 months.

H.R. 4379 is a rational, free-standing legislative approach to allow individuals here temporary refuge only until conditions in their country improves. The bill before us today establishes the criteria for such action and replaces the current ad hoc approach. It fills a gap between our Refugee Act and our immigration laws and deserves our support.

Mr. SWINDALL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gonzalez). The question is on the motion offered by the gentleman from Kentucky [Mr. Mazzoli] that the House suspend the rules and pass the bill H.R. 4379, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 4379, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

IMMIGRATION AMENDMENTS OF 1988

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5115) to amend the Immigration and Nationality Act to revise the numerical limitation and preference system for admission of independent immigrants, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration Amendments of 1988".

SEC. 2. 2-YEAR EXTENSION OF SECTION 314 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

(a) In General.—Section 314(a) of the Immigration Reform and Control Act of 1986 is amended by inserting "and 15,000 visa numbers in each of fiscal years 1989 and 1990" after "5,000 visa numbers in each of fiscal years 1987 and 1988".

(b) Administration.—In carrying out the amendment made by subsection (a), the Secretary of State shall continue to use the list of qualified immigrants established under section 314 of the Immigration Reform and Control Act of 1986 before the date of the enactment of this Act, and may continue to carry out such section under the regulations in effect (as of the date of July 1, 1988) under part 43 of title 22 of the Code of Federal Regulations.

SEC. 3. MAKING VISAS AVAILABLE TO IMMIGRANTS FROM UNDERREPRESENTED COUNTRIES TO ENHANCE DIVERSITY IN IMMIGRATION.

(a) Authorization of Additional Visas.—Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act (relating to worldwide level of immigration), but subject to the numerical limitations in section 202 of such Act (relating to per country numerical limitations), there shall be made available to qualified immigrants who are natives of underrepresented countries 10,000 visa numbers in each of fiscal years 1990 and 1991.

(b) Distribution of Visa Numbers.—The Secretary of State shall provide for making visa numbers provided under subsection (a) available in the same manner as visa numbers were made available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act, except that such visas shall be made available strictly in a random order among those who qualify during an application period established by the Secretary of State and except that if more than one petition is submitted with respect to any alien all such petitions submitted with respect to the alien shall be voided.

(c) Waiver of Labor Certification.—Section 212(a)(14) of the Immigration and Nationality Act shall not apply in the determination of an immigrant's eligibility to receive any visa made available under this section or in the admission of such an immigrant issued a visa under this section.

(d) Application of Definitions of Immigration and Nationality Act.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization.

(e) Underrepresented Country Defined.—In this section, the term "underrepresented country" means a foreign state natives of which used, during fiscal year 1988, less than 25 percent of the maximum number of immigrant visa numbers otherwise available to it in that fiscal year under section 202(a) of the Immigration and Nationality Act. In applying the previous sentence, there shall not be taken into account visa numbers issued under section 314 of the Immigration Reform and Control Act of 1986.

SEC. 4. EXTENSION OF H-1 STATUS FOR CERTAIN REGISTERED NURSES THROUGH DECEMBER 31, 1989.

The Attorney General shall provide for the extension through December 31, 1989, of nonimmigrant status under section 101(a)(15)(H)(i) of the Immigration and Nationality Act for an alien to perform temporarily services as a registered nurse in the case of an alien who has had such status for a period of at least 5 years if—

(1) such status has not expired as of the date of the enactment of this Act but would otherwise expire during 1988 or 1989, due only to the time limitation with respect to such status; or

(2)(A) the alien's status as such a nonimmigrant expired during the period beginning on January 1, 1987, and ending on the date of the enactment of this Act, due only to the time limitation with respect to such status,

(B) the alien is present in the United States as of the date of the enactment of this Act,

(C) the alien has been employed as a registered nurse in the United States since the date of expiration of such status, and

(D) in the case of an alien whose status expired during 1987, the alien's employer has filed with the Immigration and Naturalization Service, before the date of the enactment of this Act, an appeal of a petition filed in connection with the alien's application for extension of such status.

The SPEAKER pro tempore. Is a second demanded?

Mr. SWINDALL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. Mazzoli] will be recognized for 20 minutes and the gentleman from Georgia [Mr. Swindall] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. Mazzoli].

Mr. MAZZOLI. Mr. Speaker, time in this Congress ran out before the Judiciary Committee could conduct the requisite hearings to develop a comprehensive legal immigration reform bill.

Before the House today, therefore, is a barebones bill which corrects only the most pressing immigration problems facing the United States. The overall reform of the legal preference system must await the new 101st Congress when it convenes in 1989.

H.R. 5115, has three features two of which address unintended and unanticipated results of the 1965 law which abolished legal entry of immigrants based on national origins.

One feature addresses, short-term, the nursing shortages, which are being felt around the Nation.

In the 1965 act Congress repealed the national origins system of immigration which based future entry quotas for countries on the number of that country's natives already in the United States. Also, the law gave all nation's equal numbers of entries though not all nations use the full allotment of visas. The effect of the 1965 law has been to shift entries from Europe to Asia and Latin and South America.

The former old world countries do not have access to immigration channels, because family sponsorship links—the premise of the 1965 act—have been depleted. In order to redress this H.R. 5115 extends the so called NP-5 Program, section 314 of the 1986 Immigration Reform and Control Act, which provided 10,000 additional visas for those countries "adversely affected" by the 1965 act.

Section 314 is extended for 2 years, 15,000 visas annually are provided. Secretary of State will use existing NP-5 regulations to administer these new visas. Thirty-seven countries have been designated "adversely affected" under section 314, and these 37 nations will, by lottery, share the 30,000 visas provided for fiscal years 1989 and 1990.

The second feature is aimed at relieving effects of the 1965 act by increasing diversity in legal immigrant admissions. At committee hearings there was general agreement that diversity is an important factor in a balanced immigration policy.

This section establishes a 2-year pilot program for fiscal years 1990 and 1991 which achieves diversity without diminishing current immigration rights enjoyed by any nation under existing immigration and nationality laws.

The 20,000 visas under this provision would be available to countries which do not use 25 percent of their 20,000 per country ceiling.

The final factor in H.R. 5115 is a short-term response to the existing nursing shortage in the United States. Foreign nurses whose visas will or have expired will be allowed to remain in the United States until at least December 31, 1989.

A panel appointed by Secretary of Health and Human Services Otis R. Bowen, concluded that the national shortage of nurses "is real, widespread and of significant magnitude." Many of the nurses affected by the legislation are in "critical care" situations and emergency and other services would be curtailed without this legislation.

Until Congress has time to deal with the underlying causes of nursing shortages such as educational opportunities for those who wish to become nurses, low pay, stressful working conditions and long hours, this 1-year visa extension is the appropriate response.

In summary, H.R. 5115 as amended includes three programs:

First, extension of the previous NP-5 Program;

Second, a pilot program to encourage diversity in immigration; and

Third, an extension for foreign nurses now in the United States.

Mr. Speaker, the purpose of the legislation is to seek to ameliorate the devastating effects of the nursing shortage on a short term, emergency basis by allowing foreign nurses in the United States to remain beyond their authorized period of stay until December 31, 1989.

The need for the legislation stems from the shortage of registered nurses in the United States. A Government panel appointed by Secretary of Health and Human Services Otis R. Bowen, concluded that the national shortage of nurses "is real, widespread and of significant magnitude," with an estimated 117,000 vacant jobs in hospitals and 21,000 vacant in nursing homes. It is clear to the committee that grave nursing shortages exist across the country and that hospitals have a short-term need for foreign nurses to alleviate the crisis confronting them today. Many of the nurses affected by the legislation are in critical care situations; and emergency and other services would be curtailed in both inner city hospitals as well as rural hospitals. The need for interim relief is immediate as is the need for hospitals and other facilities to confront the problems associate with the underlying cause of the crisis, low pay, stressful working conditions, long hours, and increased responsibilities of nurses.

The American Nurses Association states:

> The pressure on nurses in hospitals today is tremendous. They are caring for critically ill patients in technologically complex environments, preparing patients and their families for earlier discharge and coping with chronic staffing shortages. The profession remains committed to providing the best possible care to consumers. However, it will be difficult to do so if we are not able to recruit and retain the caliber of nurses necessary to meet the demand.

At a time when the need for critical care is on the rise, as the result of an aging population, and an increasing number of AIDS patients, the loss of nurses would result in substantial disruption to health care services.

For many years, foreign nurses on temporary visas have helped mitigate the shortage of U.S. nurses. However, in 1987, as a result of the implementation of new regulations by the Immigration and Naturalization Service which limited the period of stay in the United States to 5 years with a possible 6th year in extraordinary circumstances, health-care facilities were placed in a precarious position. Insufficient familiarity with the new regulations coupled with the very real situation of losing their most experienced nurses brought fears of closedowns and stoppages in nursing care. While INS provided a stopgap measure to allow a blanket 6th year for some nurses, the approach did not cover many facilities where foreign nurses constituted the sole health care providers. Nor did it provide lead time for longer term planning for the replacement of foreign nurses.

Without this legislation, beginning January 1, 1989, many experienced temporary foreign nurses who currently serve in our hospitals would be forced to leave the country. This legislation addresses all of the above concerns in a more reliable fashion than the administrative mechanism established by INS. Nonetheless, it is clear that the nursing shortage will be resolved only through measures designed to make the profession more appealing to U.S. workers, such as, wage increases, better conditions, educational incentives, and decreased nonclinical responsibilities for professional nurses. Below is an article which summarizes the need to address the broader dimensions of the nursing crisis:

[From the New York Times, March 30, 1988]

WE NEED TO ENCOURAGE NURSING AS A CAREER

To the Editor:

While there is no consensus on a comprehensive solution to the shortage of registered nurses in United States hospitals, there is wide agreement that it is the legacy of hospital managements that nurses' salaries and working conditions have been kept in a poor state.

The Bureau of Labor Statistics put the median income for registered nurses in 1986 at $23,920, compared with $26,000 for all professionals, nearly $24,000 for crane operators, $32,500 for locomotive engineers. Between 1978 and 1987, nurses salaries rose 41.1 percent, while the cost of living rose 63.2 percent.

Relatively low pay alongside long and stressful working hours—the lot of many registered nurses—explain why fewer Americans are attracted to nursing, which requires two to four years of costly education at college level and years of additional intensive training. Nursing schools are closing for want of sufficient students.

Turning to foreign sources for our nurses (letter, Feb. 22), is a quick fix that would worsen the situation. It undermines efforts to improve conditions for nurses resident in the United States, allows us to put off providing appropriate incentives and support for a nursing career and eventually will harm further the quality of health care.

When Secretary of Labor Ann Dore McLaughlin was sworn in at the White House last December, she said: "The day must never come when skilled workers have to be imported. We must never have a worker deficit in this country because we failed as a nation to provide opportunities for excellence in education and training."

The solution to the registered nurse shortage lies in assistance for training young women and men; competitive salaries, and improved working conditions.

JACK GOLODNER,
Director, Dept. for Professional Employees, A.F.L.-C.I.O.
WASHINGTON, *March 10, 1988.*

Over the last several months, members of this committee worked with labor and hospital representatives, including the AFL–CIO, the American Hospital Association, the American Nurses Association, AFSCME, the National Association of Public Hospitals, and various local affiliates, to draft a bill to address the nursing crisis and the role of foreign nurses. That consensus bill would have provided health care facilities with a safety net of foreign nurses, while providing incentives for hospitals to take steps to recruit and retain U.S. nurses.

Due to the complexity of the legislation, and the lateness in the session that the bill was introduced, the subcommittee recommended a temporary measure be provided while advocating a long term need for legislation in this area early in the next Congress. The instant legislation was adopted to provide an interim relief while the subcommitteee explores the issue next Congress.

LEGISLATIVE HISTORY

On May 21, 1986, the Immigration and Naturalization Service proposed regulations on nonimmigrant H–1 visas relating to aliens of distinguished merit and ability. For the first time the INS placed a limit on the length of time H–1 aliens could remain in the United States to 5 years with a possible 1-year extension in extraordinary circumstances. The regulations were finalized February 26, 1987, and had an unanticipated immediate and critical impact on hospitals in the United States which were employing foreign nurses on H–1 visas. Chairman RODINO in a letter dated April 21, 1988, expressed the committee's desire to have INS look favorably upon a 1-year blanket extension for nurses to the maximum sixth year. In recognition of the severe health-care crisis and in response to the committee's letter and other Members of Congress and health-care providers appealing for relief, on May 26, 1988 INS provided a blanket sixth year for foreign nurses in the United States retroactive to January 1, 1988.

On September 16, 1988, Mr. SCHUMER introduced H.R. 5329 which would have addressed the problem in the following manner: First, by allowing nurses in the United States before January 1, 1988, to remain in the United States; second, creating a new H temporary visa program for a 5-year period which would place certain restrictions on the admission of foreign nurses. Hospitals would have been required to demonstrate that they had taken affirmative steps to recruit U.S. workers and improve wages and working conditions.

On September 30 the subcommittee met to consider H.R. 5329 and unanimously reported it to full committee by voice vote with an amendment in the nature of a substitute.

ANALYSIS

The legislation provides an interim solution to the longer term need for addressing the nursing crisis by extending the current 5-year stay in the United States of certain nurses to December 31, 1989. The committee's short timeframe of 1987, 1988, and 1989 should send a signal to hospitals to reexamine their nursing programs including wage levels and working conditions. The committee expects that facilities which are beneficiaries of the foreign nurse extensions will continue to take steps to recruit and retain U.S. workers, improve wages and working conditions, and provide loans and scholarships for those desiring to pursue the nursing profession. In this regard, the committee notes that an H–1 visa is a nonimmigrant—temporary visa—but that the institutions have used this visa to fulfill long-term needs. The committee urges the health-care facilities to familiarize themselves their immigration law responsibilities when employing such an alien.

In the administration of this provision, the committee expects INS to maintain statistics on the number of stays extended, the hospitals involved and those areas of the country most affected.

With respect to the group of nurses whose status expired during 1987, the committee expects that the Immigration and Naturalization Service will view favorably any affirmative action taken by a nurse who seeks administrative relief. As indicated previously, the change in regulations caught many hospitals and foreign nurses unaware. INS has already acknowledged the need to accommodate institutions by allowing administrative extensions. The equities for the 1987 group are compelling because they were caught in the implementation of the regulations. Those cases are clearly deserving of relief; and although the committee believes the numbers involved are few, the need to address this particular group is important because they are serving in critical care positions. For this reason, the committee expects the INS to be flexible in its approach to the timeliness of the filings and the documentation submitted.

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Let me call attention publicly to the work done on the third phase of our bill which was the nursing shortages by my colleague and friend from New York [Mr. SCHUMER] who could not be with us today because of an earlier conflict. But he did yeoman service in producing this measure which is incorporated into H.R. 5115.

Mr. Speaker, I would also like to pay tribute at this time to a gentleman who is on the floor who perhaps more than most is identified with the program I call NP-5 which was incorporated in the 1986 Immigration Act and which is the first to include the effort to rectify some of the unintended effects of the 1965 act which repealed the national origins quotas.

I would like to call attention to this gentleman from Massachusetts [Mr. DONNELLY] and the other gentleman from Massachusetts [Mr. BOLAND] and commend them for their work on this subject.

Mr. Speaker, I reserve the balance of my time.

Mr. SWINDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to express my support for H.R. 5115. The legal immigration portion of this bill provides for a 2-year extension of section 314 of the Immigration Reform and Control Act of 1986. This bill also extends certain H-1 immigration visas for foreign nurses whose visa expires in 1988 and 1989.

H.R. 5115 adds 15,000 permanent resident visas in each of fiscal years 1989 and 1990. These visas will come from the list of those who have already applied for the program authorized under section 314 of the 1986 act.

This legislation also includes a provision for 10,000 new visas to be made available for 1990 and 1991 for individuals seeking permanent residency from underrepresented countries. Underrepresented countries are defined as those foreign states which have received less than 25 percent of the maximum number of immigration visa numbers otherwise available to it under the per-country limit of the Immigration and Naturalization Act during fiscal year 1988.

The purpose of this legislation is to provide for permanent resident visas for those countries which have experienced a reduction in immigration since passage of the 1965 act. Visas are granted on a first-come first serve basis. No labor certification or family member petition is required for filing an application.

H.R. 5115 also incorporates another bill that passed unanimously in the Judiciary Committee. This bill now a part of H.R. 5115 extends certain H-1 immigration visas for foreign nurses whose visa expires in 1988 or 1989. This extension will also be available for those nurses whose legal status expired in 1987, but who have filed an appeal for an extension of such status prior to the date of enactment of this bill.

This legislation today responds to the critical nursing shortage in the United States. Although the exact size of such a shortage is unknown, approximately 200,000 nurses' positions are unfilled in our hospitals and nursing homes across the Nation. While our health care systems, nursing schools, and professional nurses organizations are working to find solutions to this crisis, health care facilities have found it necessary to recruit foreign nurses.

This legislation would extend the H-1 visa an additional year beyond the earlier INS extension. This bill provides only short-term relief until health care professions, administrative agencies, interests groups as well as Congress can further examine both long- and short-term solutions to this critical problem in the coming session.

I urge my colleagues to support this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. GEKAS] for purposes of a colloquy.

Mr. GEKAS. I thank the gentleman for yielding.

Mr. Speaker, when I came to the floor to participate in this debate I was under the impression that the administration opposed at least one segment of this legislation and, as often happens, the opinion or the position of the administration is very important to me before I cast my final vote. Plus the fact that in these kinds of cases where I always have determined that matters that have to do with immigration are also an extension of foreign policy in the United States, it becomes doubly important for me to determine what the administration position really is.

Setting aside for the moment, if the gentleman from Georgia would, the nursing quotient of this legislation, would the gentleman tell me what is the latest on the administration's position.

Mr. SWINDALL. Mr. Speaker, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Georgia.

Mr. SWINDALL. I thank the gentleman for yielding.

Mr. Speaker, the administration, it is true, originally had some objection about this legislation. They have since withdrawn their objection.

Mr. GEKAS. From whom did that missile come, if I may inquire?

Mr. SWINDALL. INS, Justice Department.

Mr. GEKAS. I thank the gentleman and I have no further questions.

Mr. SWINDALL. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker I thank the gentleman for yielding time to me.

Mr. Speaker, the first part of H.R. 5115 before us today, simply extends the program established in the 1986 Immigration Reform and Control Act which allows additional nonpreference immigrant visas to aliens from countries adversely affected by the repeal of the national origins quota system in 1965. No special requirements are attached to these visas other than that the individual comes from a country that has experienced a reduction in its permanent immigration into the United States in recent years.

Since 1965, when family reunification became the principle basis for admission, those wishing to immigrate from "traditional source" countries of Western Europe, such as Italy, Germany, or Ireland, have found their access to the United States severely reduced. This legislation addresses this problem by providing additional visas for such underrepresented countries.

Earlier this year, the Senate passed comprehensive legislation on legal immigration known as the Kennedy-Simpson bill. In addition, the chairman of the House Judiciary Committee, Chairman RODINO, and of the Immigration Subcommittee, Chairman MAZZOLI introduced legislation on this issue. Although the House Judiciary Subcommittee on Immigration, Refugees and International Law held hearings on these bills in September, there was simply not enough time to deal with comprehensive legislation on this topic. Therefore, the bill before us is a temporary solution until Congress can pass more comprehensive legislation revising our legal immigration laws that balance ethnic diversity and economic needs, as well as our traditional commitments to family reunification and admission of refugees.

I would like to compliment Senator SIMPSON and Senator KENNEDY as well as Congressman RODINO and Congressman MAZZOLI for their dedicated work on legal immigration reform legislation, this year. I look forward to continuing our work on this issue in the next Congress.

H.R. 5115 also contains the Schumer-Fish proposal, which provides for an extension of certain H-1 immigration visas for nurses whose visa expires in 1988 or 1989. This extension would also be available for those nurses whose legal status expired in 1987, but who have filed an appeal for the extension of such status, prior to the date of enactment of this bill.

As my colleagues know, currently the United States is facing an extraordinary nursing shortage. Although the exact size of such shortage is unknown, approximately 200,000 nurses positions are unfilled in our hospitals and nursing homes across the Nation. While our health care systems, nursing schools and professional nurses organizations are working to find solutions to this crisis, our health care facilities have found it necessary to recruit skilled medical personnel and nurses from abroad. Today, thousands of foreign nurses are employed throughout the Nation and are providing needed professional health care services for our citizens.

Many community hospitals throughout this country have suffered substantial disruption in their delivery of health care services. Some have had to close beds and even whole floors because of the large shortage of qualified nurses to provide nursing services. In my own district, approximately 160 foreign nurses have been recruited and are working in area hospitals—10 percent of that number being in the immediate risk loss category due to the expiring H-1 visas.

On May 26 of this year, the Immigration and Naturalization Service, aware of the critical shortage problem, announced that all foreign nurses now in the United States on H-1 visas and whose visas had expired or would expire in calendar year 1988, would be granted an additional year in the United States, thus allowing them to stay for a total of 6 years. In addition, INS directors were given the discretion to grant additional time—after 1988—for foreign nurses on a case-by-case basis. This new immigration policy was certainly welcomed by nurses, hospitals, nursing homes and other health care facilities, while long-term solutions are explored.

The uncertainty of discretionary decisions would continue, however, for the nurses at risk during 1989, and an unnecessary burden placed on hospitals when the crisis needs no proof.

The bill before us today, therefore, is a blanket extension of H-1 visas for an additional year ending December 1989. This will provide some short-term relief and enable the health care professions, administrative agencies, interest groups, as well as Congress to further examine both long- and short-term solutions to this critical problem.

Mr. Speaker, I would like to thank Chairman RODINO and Chairman MAZZOLI for bringing this legislation before the committee expeditiously. I would also like to compliment Congressman SCHUMER and his staff for their extensive work on this issue. Congressman SCHUMER introduced comprehensive legislation which I urge the Immigration Subcommittee to review early in the next Congress. In addition, the subcommittee should seek the cooperation of the health care professions, interest groups, administrative agencies, and other congressional committees in developing comprehensive and successful long-term solutions to this critical problem. I look forward to working with my colleagues on this issue next year.

Mr. MAZZOLI. Mr. Speaker, I would like at this point to pay suitable tribute to the gentleman from California [Mr. BERMAN], who is the prime author of the section that I described dealing with increasing the diversity of the legal entrance under the immigration system. I think his work is very creative.

Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Speaker, I rise in strong support of H.R. 5115 and I rise to pay tribute and give thanks to Chairman MAZZOLI, and the ranking Member, the gentleman from New York [Mr. FISH], and the gentleman from Georgia [Mr. SWINDALL], and most especially the chairman, the gentleman from New Jersey [Mr. RODINO].

Mr. Speaker, I rise in strong support of H.R. 5115, the Legal Immigration Amendments of 1988. I want to thank the gentleman from New Jersey [Mr. RODINO] and the gentleman from Kentucky [Mr. MAZZOLI], for their consideration in bringing this bill to the floor.

Mr. Speaker, my interest in immigration reform is longstanding. Over the past several years, I have sponsored legislation which would have made permanent—and, in my view, necessary—reforms of the legal system of immigration in this country.

In 1965, Congress made major long overdue and substantive reforms in the Nation's immigration laws. Unfortunately, one unintended effect of the 1965 reforms has been to reduce to a trickle immigration from some countries. Certainly, these results were not envisioned by the Congress in 1965—and over the years, I have developed legislative initiatives that address these results.

By introducing these legislative initiatives, I had hoped that we could find a permanent solution. In 1986 the House unanimously adopted an amendment I offered that led to the creation of the "NP-5" Program being enacted as part of the 1986 immigration reforms. The NP-5 Program created additional visas in each of fiscal years 1987 and 1988 for countries disadvantaged by the 1965 act. At the time the NP-5 Program was adopted, it was intended as a temporary solution awaiting more substantive reforms.

Unfortunately, the press of time made these substantive reforms unlikely this year. Consequently, we have H.R. 5115 before us today, unanimously approved by the subcommittee and full Judiciary Committee. H.R. 5115 extends the NP-5 Program for 2 additional years. In addition, it establishes a program devised by my friend Mr. BERMAN which will make additional visas available in 1990 and 1991 to immigrants from "underrepresented countries." I wholeheartedly endorse both provisions of H.R. 5115.

Mr. Speaker, immigration enhances and has enhanced the quality of American life. My own specific interest is Ireland, which has suffered a precipitous drop in immigration since the passage of the 1965 act. The NP-5 Program has helped turn that trend around, and H.R. 5115 will continue to turn the trend around.

I had hoped that Congress would have been able to address more substantive reform this year, but passage of this bill keeps the process alive into the next Congress. We have put off for another day important issues that need to be addressed. I thank the committee for bringing this bill up today and most especially Chairman RODINO the real champion in this effort.

Mr. BOLAND. Mr. Speaker, I support H.R. 5115, the Legal Immigration Amendments of 1988.

The preference system used by the United States for processing immigration applicants was established in 1965. That system places an overwhelming priority on the family preference categories and deemphasizes the occupational categories.

In 1965, that may have seemed like a good way to redress the inadequacies of the quota system, but in practice, it has turned out to be an over compensation. In the same way that the national origins quota system favored certain ethnic groups, the 1965 system has evolved into a policy which favors ancestry.

Such a policy not only does injustice to the people who are unjustly kept from coming to the United States; it is also injurious to the competitiveness of the United States. Well-educated individuals of many Western European countries, whose talents and expertise would be a great benefit to the United States are emigrating to European Common Market countries.

Clearly, then it is appropriate for Congress to reconsider what was done in 1965 and to make constructive changes toward correcting the deficiencies, while retaining the idea of family reunification. Regrettably, we will not accomplish those goals today.

The Senate bill called for a worldwide ceiling of immigrant visas, and proposed a new preference system for both family-connected and independent immigrants. In short, it directed a comprehensive revision of what has become a very skewed system of preferences. That bill may not have been perfect, but it was certainly more complete in scope than what we have here before us. The only way to achieve real and lasting parity in our immigration preference standards will be to create new standards.

The bill we are considering today is, at best, a stopgap measure to address the inadequacies of the 1965 act.

It extends and expands a program established in the Immigration Reform and Control Act of 1986 which increases the allocation of visas authorized to the 37 countries designated by the State Department as adversely affected by the 1965 law. The 2-year extension of this program, though by no means a long-term solution, will hopefully buy the Congress more time to revamp the system of preferences.

It is a very solution given the ample problems associated with our current immigration preference system. But I commend my colleagues who worked so hard in making sure this issue received consideration.

Mr. Speaker, I am delighted that H.R. 1515 extends the H-1 status for certain registered nurses. There is serious shortage of nurses in this country. Section 4 of this bill will help to alleviate this problem.

Mr. Speaker, I congratulate the distinguished chairman of the Immigration Subcommittee, Mr. MAZZOLI of Kentucky and the able minority member of that subcommittee, the gentleman from Georgia [Mr. SWINDALL], the chairman of the full Judiciary Committee, Mr. RODINO, and ranking minority member, Mr. FISH, for their leadership on this proposal.

Our colleague from Massachusetts [BRIAN DONNELLY] has given an enormous amount of time and talent and persuasion to bring this needed bill to the floor in the closing days of this session.

Mr. GREEN. Mr. Speaker, I would like to congratulate the chairman of the Judiciary Committee for bringing this legal immigration bill to the floor without a patently unfair provision which was contained in the Senate version.

The Senate measure, known as the Kennedy-Simpson bill, would add visas for underrepresented countries but would curtail eligibility for married brothers and sisters, in-laws, and nieces and nephews of U.S. citizens. This classification, known as the fifth preference, is especially important to Chinese-Americans who have waited for years to bring over these relatives legally and, I might add, who have traditionally made a great contribution to this country.

I had made my concerns known a few weeks ago in a meeting in the House majority leader's office between congressional friends of Ireland and the Deputy Prime Minister of Ireland, Mr. Lenihan. I made it clear then and I wish to reemphasize today that I welcome additional immigration from Ireland but not at the expense of Chinese-Americans. It cannot meet anyone's definition of fairness to benefit one country or nationality at the expense of another.

I should also like to express my support for the section of this bill which, at least temporarily, prevents the deportation of nurses from the Philippines whose visas are about to expire. Such deportations would cause a health care crisis in my district and many others. I should like to add, however, that it is my hope that in the next Congress we shall look at more long-term solutions to this problem.

Again, I thank the chairman for the bill before us today and hope that he and other members of the committee will stand firm in defending it against the Senate's misguided approach.

Mr. MOAKLEY. Mr. Speaker, I rise in support of H.R. 1515, legal immigration reform.

I commend the Committee on the Judiciary, and especially the distinguished chairman, the gentleman from New Jersey [Mr. RODINO] for bringing forward this important measure. The chairman and his cosponsors, Mr. MAZZOLI, Mr. HUGHES, and Mr. BERMAN, have worked tirelessly on this measure.

In the 99th Congress, Congress considered major reform legislation to control illegal immigration. The Committee on Rules considered the problem of countries like Ireland so important, however, that we singled out the question of underrepresented countries as the one legal immigration issue to be included in that bill.

Mr. GALLO. Mr. Speaker, in the closing days of the 100th Congress, a great deal of legislation is progressing through this body at a very rapid pace.

In many cases, the legislation being debated is the result of a great deal of discussion and amounts to a compromise that addresses an urgent need.

H.R. 5115 is an example of this type of compromise. Although this bill does not cover all of the needs that we have, it is a significant step that deserves the support of my colleagues today. By enacting H.R. 5115, we will be able to keep through 1989 thousands of trained foreign-born nurses.

I am deeply concerned about the nursing shortage in the United States and the impact of this shortage on the delivery of quality health care services not only to my constituents, but to all of the people in our country.

In order to develop programs to attract American young men and women into the nursing profession, I have created a task force of nursing professionals within the 11th District of New Jersey who will advise me concerning the steps we can take in the future to increase the number of urgently needed qualified health care professionals.

In addition to our long-term needs, we face an immediate crisis because of the expiration of H-1 visas for immigrant nurses.

According to data released by the New Jersey Hospital Association, the visas of at least 525 immigrant nurses in New Jersey alone will expire within 1 to 2 years.

Nationally, it is estimated that over 1,000 foreign nurses' visas expire this year and that some 10,000 foreign nurses currently serve in hospitals throughout this country.

If nothing is done by December 31, the current 17-percent shortage of nurses in northern New Jersey will grow to crisis levels, as the Immigration and Naturalization Service begins ordering immigrant nurses to leave the country. As these nurses leave, New Jersey health care facilities could face shortages up to 23 percent.

Still, extending the visas of foreign-born nursing professionals is only a short-term solution. We must solve this problem permanently by making the nursing profession a rewarding field that American men and women will want to pursue.

We must not simply move from crisis to crisis. We must develop a comprehensive national program to bring dedicated young people into the nursing profession.

I urge my colleagues to support H.R. 5115. Time is running out. Also, I urge my colleagues to work together with nurse associations, the hospital administrators and the State and Federal Departments of Health, as I am doing, to find a permanent solution to this critical problem.

Mr. SCHUMER. Mr. Speaker, H.R. 5115 was unanimously reported out of the Judiciary Committee. It provides temporary, but needed relief for citizens of countries who have been denied reasonable opportunities to immigrate to the United States as the result of changes made in our immigration laws in 1965. The measures contained in this bill will promote diversity, but leave untouched the preference system currently in place.

Many of us on the Immigration Subcommittee are anxious to report out a bill in the next Congress that contains more sweeping reforms in the legal immigration laws. But, due to the lateness in the session that the committee considered legal immigration reform, it was unfeasible to pass a more ambitious proposal.

Additionally, H.R. 5115 contains another temporary, but desperately needed measure—one that addresses the nursing shortage. The nursing provision in 5115 was an amendment offered by myself and Mr. FISH, the ranking member of the Judiciary Committee.

By some estimates, there are 300,000 vacancies for registered nurses nationwide. In its interim report, Secretary Bowen's Commission on Nursing states that the shortage of RN's is "real widespread, and of significant magnitude." The report notes that the shortage affects both urban and rural communities, and has resulted in the forced closing of hospital beds.

It is likely that every congressional district is affected by the nursing crisis. In my own State of New York, hospitals have 15-percent to 25-percent vacancy rates in their nursing staffs. And, most tragically, it is the critical care units that are the hardest hit by the shortage.

Couple the nursing shortage with our growing need for critical care, and the situation is truly a crisis.

It is clear that we cannot afford to lose more nurses. Yet, without this legislation, we stand to lose over 1,000 experienced and dedicated nurses beginning January 1.

As the result of INS regulations, that went into effect in 1987, foreign nurses with H-1 visas, cannot remain in the United States beyond 5 years, except in extraordinary circumstances where a 6-year extension may be granted.

In May, in recognition of the extraordinary circumstances presented by the nursing shortage, the INS granted a blanket 6-year extension to nurses whose visas expired in 1988.

H.R. 5115 would grant similar relief through the end of 1989.

Specifically, the bill would permit nurses whose visas have expired in 1987 or 1988, or will expire in the remainder of 1988 or 1989, to remain in their employment through December 31, 1989.

The majority of the nurses whose visas expired in 1988 are already included in the INS' blanket extension; however that extension will not take these nurses through the end of 1989. H.R. 5115 includes all nurses whose visas have expired or will expire in 1988.

With respect to the nurses whose visas expired in 1987, the bill requires that their employers have filed an appeal in connection with the nurses' application for extension of their status. These nurses, many of whom serve in hospital critical care units, were caught, unaware, by the 1987 changes in INS regulations.

In light of prior practice, these nurses had every reasonable expectation that their visas would be extended. Yet, because of the newly imposed 5-year cap, these nurses were unable to extend their visas. The equities of the situation dictate that the statutory requirement of an appeal filed in connection with an application for extension, be satisfied by any type of administrative challenge filed on behalf of these nurses, in connection with their desire to extend their visas.

This measure is not an attempt to solve the nursing crisis. Indeed it is clear that the only way that the nursing shortage will be resolved is through measures designed to make the profession more appealing to U.S. workers. However, it would be irresponsible for this Congress to fail to provide temporary relief that will save lives.

I urge my colleagues to support H.R. 5115.

Mr. HUGHES. I rise in support of this legislation.

I am particularly pleased that this bill contains provisions to allow desperately needed foreign nurses whose visas have either recently expired or are about to expire to remain in the country through the next year.

New Jersey has been particularly hard hit by our national nursing shortage. We now have a vacancy rate of over 17 percent for nursing positions, even higher than the 13 percent national average. Many New Jersey hospitals have had to close entire units because there simply aren't enough nurses to staff them.

I strongly support efforts to encourage more young people to pursue nursing careers and to improve working conditions among existing hospital nurses, but it will take time before initiatives like these—which are included in the Nursing Shortage Reduction Act we debated earlier today—will have a significant impact on the present nursing crisis.

New Jersey is one of the many States that has greatly benefited from the talents of nurses who have come to work in our country under H-1 visas. I support this effort to extend the visas of these valuable professionals, and urge my colleagues to do the same.

Mr. MANTON. Mr. Speaker, I rise in strong support of H.R. 5115, the Legal Immigration Amendments of 1988. I want to commend the chairman of the Judiciary Committee, Mr. RODINO, and the chairman of the Immigration Subcommittee, Mr. MAZZOLI, for bringing this important measure to the floor.

Mr. Speaker, this legislation would establish a separate immigrant visa preference for independent immigrants who do not have close family members in the United States. H.R. 5115 would make 15,000 visas available in fiscal year 1989 and another 15,000 in fiscal year 1990 to countries that were adversely affected by amendments to the Immigration Act in 1965 that heavily weighted preference for immigration based on close family ties in the United States.

Under current law, the vast majority of U.S. immigration comes from Latin America and Asia. Citizens from countries in Western Europe such as Ireland, who no longer have close relatives in the United States, have little chance to immigrate to this country. Because of the close family-tie requirement, Ireland sent only 1,852 immigrants to the United States in 1986 although its statutory ceiling was 20,000.

Mr. Speaker, under the current system, my parents would probably not qualify to immigrate from Ireland. H.R. 5115 would eliminate this injustice by increasing visas for independent immigrants based on a point system. The point system for independent immigrant visas would be based on age, education, English language ability, occupational training and work experience.

Mr. Speaker, this important legislation would restore fairness and equity to our Nation's immigration policy by opening our doors to citizens from Ireland and Western Europe who no longer have family connections in the United States. I urge my colleagues to support H.R. 5115.

Mr. RODINO. Mr. Speaker, the bill we are now considering—H.R. 5115, as amended, deals with two urgent subjects. The first deals with countries that were disadvantaged as a result of the unintended consequences of the 1965 act which repealed the national origins quota system of immigration.

The second deals with the nationwide nursing crisis and is designed to provide some measure of short-term relief for that problem.

Following 2 days of hearings on my original proposal, a consensus emerged among the witnesses and among the subcommittee and full committee members that the time was not ripe for acting on any comprehensive legal immigration proposal.

As a result, the commiitee adopted a substitute which retains only those portions of my original bill which deals with countries disadvantaged by the 1965 act.

In effect, this legislation will extend for a 2-year period the special program created in the 1986 Immigration Reform and Control Act for nationals of these disadvantaged countries and increases the annual number of visas available from 5,000 to 15,000. It also establishes a new program with 10,000 visas per year to promote ethnic and nationality diversity—another important objective of the 1965 act.

It is regrettable that time did not allow us to achieve a consensus on broader changes to our system of legal immigration, but I am confident that this matter will be explored properly during the next Congress.

In my view, this is the best that can be achieved in the current Congress and I urge my colleagues' support.

As I mentioned at the outset, the second aspect of this bill deals with the nursing shortage. In my own State of New Jersey and particularly in my city of Newark, the nursing shortage is severe. I am certain many other Members are experiencing similar problems in their districts.

I have been advised by hospitals and medical facilities in my district that unless remedial action is taken in the form of this legislation, there will be an acute medical care crisis over the next few months.

The bill addresses this problem by permitting foreign nurses whose temporary visas would otherwise expire to remain in the United States until the end of 1989. This would affect about 3,000 registered nurses, and though certainly not a solution to the nursing crisis, it will at least prevent the situation from further deteriorating.

Mr. Speaker, the Subcommittee on Immigration and the full Judiciary Committee considered all of the provisions contained in this bill and unanimously adopted them last Friday.

I urge my colleagues' support of H.R. 5115, as amended, in order that these urgent problems can be addressed before the 100th Congress adjourns.

Mrs. ROUKEMA. Mr. Speaker, I rise in support of H.R. 5115 and most especially, section 4 which provides a 1-year extension of H-1 work visas for foreign nurses whose visas would expire in 1988 or 1989. This section of the bill, while not as comprehensive a solution as some of my colleagues and I have worked for, does represent a major victory for our health care facilities who face severe shortages of professional nursing personnel.

Today there are over 200,000 unfilled nursing positions in the Nation's hospitals and nursing homes. In New Jersey alone, approximately 17 percent of the nursing positions are unfilled. While our health care systems, nursing schools, and professional nursing organizations are attempting to find solutions to this crisis by instituting new recruitment and retention programs, our health care facilities have found it necessary to recruit skilled nurses abroad.

Today, thousands of foreign nurses are currently employed throughout the Nation and are doing a good job providing the health care needs of our citizens. In New Jersey, there are over 1,200 employed foreign nurses holding H-1 visas. Over the next 2 years, some 700 of those visas will expire unless this legislation is adopted.

This past spring, I introduced legislation which would have extended for 1 year H-1 visas which would expire in 1988. The Immigration Service recognized the reality of the nursing shortage and administratively extended those expiring visas. At that time, however, it was acknowledged that 1 year was not enough time for our nursing schools to recruit and graduate enough nurses to take the place of the foreign nurses. This legislation extends expiring visas through 1989. This is a good second step but certainly more is needed to be done. I hope the responsible health care organizations and facilities and the committees of Congress will continue to pursue solutions to this problem next year.

Finally, I want to again thank the chairman and ranking minority member of the Judiciary Subcommittee for reporting this legislation and to my colleagues Mr. SCHUMER, Mr. GUARINI, and Mr. GALLO for their continued efforts in this area. I urge passage of this bill.

Mr. SWINDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GONZALEZ). The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill, H.R. 5115, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: A bill to extend for 2 years section 314 of the Immigration Reform and Control Act of 1986, to make additional visas available to immigrants from underrepresented countries to enhance diversity in immigration, and to extend through December 31, 1989, H-1 nonimmigrant status for certain registered nurses."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and to insert extraneous material, on H.R. 5115, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

TORTURE VICTIM PROTECTION ACT OF 1988

Mr. YATRON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1417) to amend the United Nations Participation Act of 1945 to carry out obligations of the United States under the United Nations Charter and the other international agreements pertaining to the protection of human rights by providing a civil action for recovery from persons engaging in torture, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1417

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Torture Victim Protection Act of 1988".

SEC. 2. TORTURE VICTIM PROTECTION.

(a) LIABILITY.—Every individual who, under color of law of any foreign nation, subjects any individual to torture or extrajudicial killing shall be liable to the party injured or that party's legal representative in a civil action.

(b) LIMITATIONS ON REMEDIES.—The court shall decline to hear and determine a claim under this section if the defendant establishes that clear and convincing evidence exists that the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred. The court shall not infer the application of any statute of limitations or similar period of limitations in an action under this section.

(c) DEFINITIONS.—For the purposes of this Act—

(1) the term "torture" means any act by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from that person or a third person information or a confession, punishing that person for an act that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind; and

(2) the term "extrajudicial killing" means a deliberated killing without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

SEC. 3. JURISDICTION OF UNITED STATES DISTRICT COURTS.

(a) JURISDICTION OVER NEW CAUSE OF ACTION.—Chapter 85 (relating to district court jurisdiction) of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1367. Cases under law creating remedies against torture and extrajudicial killings

"The district courts shall have jurisdiction over civil actions under section 2 of the Torture Victim Protection Act of 1988.".

(b) TABLE OF SECTIONS AMENDMENTS.—The table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by adding at the end the following new item:

"1367. Cases under law creating remedies against torture and extrajudicial killings.".

□ 1900

The SPEAKER pro tempore (Mr. GONZALEZ). Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes and the gentleman from Iowa [Mr. LEACH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. YATRON. Mr. Speaker, the Torture Victim Protection Act, H.R. 1417, as amended, represents an effort to clarify and expand existing law pertaining to the practice of torture by establishing a Federal right of action against violators of human rights. It also authorizes suits by both aliens and U.S. citizens who have been victims of gross human rights abuses.

Governments throughout the world continue to violate fundamental human rights. While in principle virtually every nation now condemns torture and extrajudicial killing, in practice more than one-third of the world's governments engage in, tolerate, or condone such acts. The United States has long recognized that if international human rights are to be given legal effect, adhering nations must make available domestic remedies and sanctions to address abuses regardless of where they occur.

In 1984, after a series of hearings before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs and before the Committee on Foreign Relations of the Senate on the phenomenon of torture, Congress adopted and the President signed into law a joint resolution condemning torture. Public Law 98-447 reaffirms the United States' abhorrence of the use of torture under any circumstances, and gives the U.S. Permanent Representative to the United Nations and each U.S. Chief of Mission specific instructions to adhere to in combating the use of torture throughout the world. During those hearings, it was also established that additional domestic legislation was needed in the United States to strengthen and clarify this area of law, which is the purpose and intent of the Torture Victim Protection Act.

H.R. 1417, as amended, is in keeping with the mandate of Public Law 98-447 and the recently signed U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The Torture Victim Protection Act allows victims of torture, or their representatives, residing in the United States to bring a civil action in Federal court against the torturer. Any person who, under color of law of any foreign nation, subjects another to torture or extrajudicial killing would be liable to the party injured or that party's legal representative in a civil action. It protects not only aliens living in this country, but also U.S. citizens who have been tortured.

International human rights violators visiting or residing in the United States have formerly been held liable for monetary damages under the Alien Tort Claims Act (28 U.S.C. section 1350). Several recent judicial decisions have questioned whether this statute provided a clear basis for future suits, which is the reason this measure was created.

This bipartisan initiative is extremely important to the furtherance of human rights law. It was the consensus of opinion of expert witnesses in the legal field, as well as prominent members of the human rights community, that passage of this legislation would be very beneficial in calling attention to the plight of torture victims, and curtailing this practice. Both the Foreign Affairs Committee and the Judiciary Committee have taken action on this measure. Members on both sides of the aisle in these committees have strongly endorsed this measure. It is also endorsed by the American Bar Association, Amnesty International, U.S.A., the Lawyers Committee for Human Rights, and numerous other organizations.

I urge my colleagues to support this very worthwhile initiative.

Mr. Speaker, I reserve the balance of my time.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would make just several points. First, I would like to begin by acknowledging the extraordinary leadership of the gentleman from Pennsylvania [Mr. YATRON] on this issue. He has brought a rather extraordinary bill to the House floor after a great deal of consideration and subtleties as well as the issue itself.

Second, I would like to stress that the administration has moved in a very progressive direction in recent years by helping lead in the negotiations of the U.N. Convention Against Torture and in seeking Senate ratification of this Convention. I feel compelled as a Member of the minority to note the administration, however, is skeptical about this particular bill and suggests it may be premature. Having said that, there are several aspects of this bill, however, that I find extraordinarily compelling.

Mr. Speaker, the first is that we are dealing with not an average crime. We are dealing with one of the most awful crimes imaginable to the human mind, that of torture.

Second, we are moving in a somewhat unique direction that does have a degree of presumption with it. That unique direction is, although it is not totally unprecedented, that courts of the United States of America shall have jurisdiction extraterritorially for acts committed in other parts of the world.

Having said that, I think one of the things the international community has to be concerned with is how in heaven's name can we help present not just simply moral barriers to crimes of this nature, but put in place the kinds of concerns that might lead those that are responsible for torture to retard their instincts and their actions.

Finally, let me just conclude by noting that what is involved in this presumption is a caveat to something that some of us have been concerned with in general, but I think it is something that makes a great deal of sense. Now and again in recent years critics of American foreign policy have alleged that we sometimes act as policemen of the world. Sometimes we do that for good cause. Sometimes we do it effectively; sometimes counterproductively. But in this particular approach what we are saying is that we are going to be and represent, and the first country so to do, although certainly consistent with the U.N. Convention Against Torture, we are going to provide a court to police the world. My own sense is that through courts, through the rule of law, through the western tradition, we have a greater chance to set a model for the world and to have an effect than we sometimes do through the exercise of force.

So with that, Mr. Speaker, I strongly urge passage of this particular resolution.

Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. Mr. Speaker, H.R. 1417, the Torture Victims Protection Act of 1988, was jointly referred to the Committees on Foreign Affairs and Judiciary. Hearings were held only by the Committee on Foreign Affairs and the measure was agreed to unanimously by that committee on June 7, 1988. This legislation was marked up by the full Judiciary Committee on September 28, 1988, and unanimously agreed to by the committee.

This legislation represents an effort to clarify ambiguities in existing law pertaining to acts of torture. H.R. 1417 establishes a Federal right of action against violators of human rights which falls under the definition of torture and extrajudicial killing. It would allow both aliens and U.S. citizens who have been the victims of such acts to bring a cause of action.

In 1984, Congress adopted and the President signed into law a joint resolution condemning acts of torture. Public Law 98-447 reaffirms this country's strong objections of the use of torture under any circumstances. During the hearing process on this legislation, it was established that additional domestic legislation was needed so as to strengthen and clarify this area of the law.

International human rights violators visiting or residing in the United States have formerly been held liable for monetary damages under the Alien Tort Claims Act, 28 U.S.C. 1350. This act which dates back to 1789 has rarely been used in our history and several recent judicial decisions have questioned whether this statute provided a sufficiently clear basis for future suits. The purpose of this legislation is to clarify ambiguities in law on these claims.

The act provides that any person, whether an alien or citizen of the United States, who has been a victim of torture or extrajudicial killing committed under actual or apparent authority for a nation to bring a cause of action under this law. The statute authorizes civil actions for money damages and any other appropriate relief. The individual must be subject to the personal jurisdiction of the Federal district court either by being present in the jurisdiction or by means of the long-arm statute.

Section 2 of the bill is intended to provide Federal court jurisdiction over cases arising out of state-condoned torture or extrajudicial killing. It is not intended to extend jurisdiction over all human rights violations committed by ordinary criminals who have no actual or apparent authority of any foreign nation.

The definition of "torture" contained in the statute is derived from the widely recognized definition contained in the U.N. Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. The definition of "extrajudicial killing" is derived from the Geneva Convention of 1949, Article III.

"Extrajudicial" is defined as a deliberate killing without previous judgment pronounced by a regularly constituted court affording all judicial guarantees recognized as indispensable under standards of international law. "Torture" is defined as an act intentionally inflicting severe physical or mental suffering in order to obtain information or confessions or to punish or coerce.

Among the organizations endorsing the Torture Victims Protection Act are the American Bar Association, Amnesty International, and the Lawyers' Committee for Human Rights. The administration has expressed its concerns that this legislation is not needed and that it could interfere with the executive branch's use of the Act of State Doctrine. In response to this concern, the Foreign Affairs committee report specifically states that it is the committee's view that the legislation is not intended to limit the ability of the executive branch to negotiate with foreign heads of state concerning their departure from their native countries.

Mr. YATRON. Mr. Speaker, I yield 10 minutes to the gentleman from Kentucky [Mr. MAZZOLI], the chairman of the Subcommittee on Immigration, Refugees, and International Law.

Mr. MAZZOLI. Mr. Speaker, I appreciate the gentleman from Pennsylvania yielding me this time.

Mr. Speaker, I am pleased to bring forward on behalf of the Judiciary Committee H.R. 1417, the Torture Victim Protection Act of 1988. Like the Foreign Affairs Committee, the Judiciary Committee was unanimous in support of this bill.

Mr. Speaker, in principle virtually every nation on Earth condemns torture and summary execution, and U.S. courts have found torture to be a violation of international law. Nevertheless, throughout the world officials of foreign governments continue to engage in such heinous acts, violating international human rights standards generally recognized since the 1920's, and actually specifically recognized since the U.N. Charter was established and the Nuremburg trials. In addition, the Torture Convention, establishing criminal sanctions for torturers, has been adopted by over 65 nations, has been signed by President Reagan, and is before the U.S. Senate for its advice and consent.

Mr. Speaker, I agree with my colleagues of the Judiciary and Foreign Affairs Committee who recommend this bill unanimously. Official torturers and killers should not be able to use the United States as a safe haven. When victims of such heinous abuse come to the United States, and find their torturers also within our borders, the victims should not have to stand by helplessly. They should be able to proceed against their tormentors.

Mr. Speaker, current law in the form of the Alien Tort Claims Act of 1789, provides for jurisdiction of U.S. District courts over civil actions by an alien for a tort committed in violation of international law. This provision has already been used in some U.S. judicial circuits successfully to provide jurisdiction over cases involving the crime of torture, committed under color of official authority. However other U.S. circuits have declined to apply this jurisdiction statute absent an explicit statutory cause of action enacted by Congress.

The ambiguous state of law should not continue. Accordingly, the Torture Victim Protection Act, H.R. 1417, creates an explicit cause of action for torture and extrajudicial killing committed under color of law. The bill defines these acts in language drawn from widely accepted international instruments.

Under the bill, only those who have no adequate recourse in the situs country could bring suit. The bill would create liability for officials and who intentionally inflict severe pain or suffering unlawfully for purposes of coercion, intimidation, obtaining information, and discrimination, as well as for killing without prior judgment by a regular court which has provided the defendant due process. Thus under this bill, no longer will torture victims have to stand by helplessly while their torturers enter and leave the jurisdiction of the United States untouched.

In addition, the Torture Victim Protection Act would accomplish its objectives without inhibiting the conduct of U.S. foreign policy. Suits brought under the act would be subject to the Foreign Sovereign Immunities Act, the Act of State Doctrine, forum non conveniens, and head of state immunity. Since few, if any, foreign governments would admit the use of torture, and would be immune from suit if they did so, the bill reaches only the individuals involved, not their governments.

Mr. Speaker, the Foreign Affairs Committee, after hearings on March 23, 1988, reported H.R. 1417 favorably on June 13. The Judiciary Committee on September 30 reported H.R. 1417 with my amendment in the nature of a substitute. My amendment incorporates all amendments adopted by the House Foreign Affairs Committee and some technical changes.

The changes are, first, to delete the reference to the U.N. Participation Act. This allows more appropriate codification; second, to replace the words "actual or apparent authority" with "under color of law" so the court can apply tested and familiar language whose roots are in existing U.S. civil rights laws; and third, to add the words "intimidating or" to the definition of torture to more closely reflect the language of the Torture Convention.

I would note also, to our Government's credit that the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, treating the criminal side of this same issue, has been signed by the President and is before the U.S. Senate awaiting its advice and consent.

I commend the gentleman from Pennsylvania [Mr. YATRON] the gentleman from Iowa [Mr. LEACH], and the Judiciary Committee chairman, the gentleman from New Jersey [Mr. RODINO], for their original cosponsorship of this bill, and for their omission in moving the bill so that it could be brought before this body today.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would simply like to state the minority has the most tremendous respect for the gentleman from Kentucky [Mr. MAZZOLI] who has brought a great deal of professionalism to this bill, and his reputation for professional conduct on this floor is unmatched. I want to thank him for his leadership and certainly for the improvements that he has wrought on this particular piece of legislation.

I would also like to thank the gentleman from Georgia [Mr. SWINDALL] who is likewise one of the finest Representatives of the minority side of the aisle.

Mr. FASCELL. Mr. Speaker, I want to add my support to this important measure. Torture is a violation of fundamental human rights, period. Torture in this country is a violation of the Constitution of the United States which prohibits cruel and unusual punishments. Torture is also a violation of international law. But more important than being a violation of any laws, torture like murder, is a violation of the very nature and fabric of human society.

This bill, the Torture Victims Protection Act, would permit victims of foreign torture to undertake a civil action against their torturers in the United States if they are unable to obtain redress in the country where torture took place. This is an important clarification of the legal status of torture victims in United States courts. No longer can torturers find safe haven from their crimes in the United States.

I want to commend the chairman of the Subcommittee on Human Rights and International Organizations, the Honorable GUS YATRON, for the outstanding leadership he has provided on this issue. In addition I want to thank the gentleman from Iowa [Mr. LEACH] who served as ranking member on the subcommittee when this issue first came to the committee's attention. He has played an important leadership role in closing a loophole through which torturers might escape justice.

Finally I want to commend my very distinguished colleague and friend from New Jersey, the chairman of the Committee on the Judiciary, PETER RODINO. Without Mr. RODINO's forthright leadership and cooperation this measure would not be before us. There have been many tributes to Mr. RODINO in this body as he prepares to retire. This bill is just part of his legacy. He has compiled a magnificent record of achievement in behalf of human rights and civil rights not only here at home but around the world. Chairman RODINO we salute you and thank you.

Mr. BROOMFIELD. Mr. Speaker, as a cosponsor of this bill, I join in urging my colleagues to support passage of H.R. 1417, the Torture Victim Protection Act.

This bill declares the United States off limits as a safe haven for those who would torture their fellow man.

It corrects an ambiguity in existing law by allowing individuals in the United States to seek the redress of grievances in cases involving torture or extrajudicial killing.

H.R. 1417 requires that a person first exhaust the remedies in the country where the torture took place. However, as a last recourse to justice, H.R. 1417 would then allow a person to turn to the Federal courts for help.

Mr. Speaker, I also wish to congratulate our good friend and colleague, Congressman GUS YATRON, for his leadership in bringing this important issue before us today.

This bill is not only supported by over 100 of our colleagues in the House, but also by the American Bar Association and several private human rights organizations.

I again urge my colleagues to approve H.R. 1417, and to close this country's door to human rights violators.

Mr. RODINO. Mr. Speaker, I am one of the original authors of H.R. 1417, the torture victim Protection Act of 1988. This legislation is designed both to clarify current law with respect to tort liability for human rights violations, and to send a message to torturers throughout the world that the United States will not serve as safe haven for torturers.

Mr. Speaker, judicial interpretations of the Alien Tort Act of 1789 have obfuscated the issue of an alien's right to bring a tort action for torture committed abroad under color of law of a foreign government. H.R. 1417 would clarify U.S. law by providing an explicit civil cause of action in tort for torture and extrajudicial killing, and by providing that U.S. courts shall have original jurisdiction over such actions. The legislation further allows U.S. citizens as well as aliens to bring suit, unlike current law.

In addition, this legislation would send a message to officials throughout the world who perpetrate torture under government auspices, that coming to the United States will not provide them with an escape from civil accountability for their violations of the international law of human rights. This approach will help assure that no matter where the official torturer runs, he can not hide.

Mr. Speaker, by passing this bill, we would in effect announce U.S. recognition of the principle enunciated in the second circuit case of Filartiga versus Pena Irala, namely that "for purposes of civil liability, the torturer has become—like the pirate and the slave trader before him—hostis humani generis, an enemy of all mankind.

I support this bill and hope that we will not hesitate to afford torture victims the civil relief this bill would provide.

I thank my colleague, the gentleman from Kentucky [Mr. MAZZOLI] for his work in perfecting the bill, and my colleagues on the Foreign Affairs Committee, the gentleman from Pennsylvania [Mr. YATRON], and the gentleman from Iowa [Mr. LEACH], for their hard work and original cosponsorship.

Mr. LEACH of Iowa. Mr. Speaker, I yield back the balance of my time.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and pass the bill, H.R. 1417, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PACIFIC TROPICAL BOTANICAL GARDEN NAME CHANGE

Mr. BERMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4480) to change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes.

The Clerk read as follows:

H.R. 4480

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHANGE OF NAME.

Upon the enactment of this Act, the Pacific Tropical Botanical Garden, created by the Act entitled "An Act to charter by Act of Congress the Pacific Tropical Botanical Garden", approved August 19, 1964 (Public Law 88-449; 78 Stat. 496), shall be known as the "National Tropical Botanical Garden", and any reference in that Act to the Pacific Tropical Botanical Garden shall be deemed to be a reference to the National Tropical Botanical Garden.

SEC. 2. ACTIVITIES PERMITTED IN TERRITORIES AND POSSESSIONS OF THE UNITED STATES.

Section 7(a) of the Act of August 19, 1964 is amended by adding at the end thereof the following: "For purposes of this subsection, the term 'United States' includes any commonwealth, territory, or possession of the United States.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California [Mr. BERMAN] will be recognized for 20 minutes and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 4480 is to change the name of the Pacific Tropical Botanical Garden, a corporation created by an act of Congress, from the Pacific Tropical Botanical Garden to the National Botanical Garden and to provide the organization clear authority to operate tropical botanical gardens, not only within the 50 States and the District of Columbia, but also in any Commonwealth, territory or possession of the United States.

Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii [Mr. AKAKA] for a further explanation of the reason for the need for this change.

Mr. AKAKA. Mr. Speaker, I rise in support of this bill.

Let me commend the chairman of the Subcommittee on Administrative Law and Governmental Relations, BARNEY FRANK, and the subcommittee's ranking member, Mr. SHAW, for their efforts in allowing this bill to reach the floor today. I also commend Mr. BERMAN, manager of this bill and Mr. COBLE on the minority side.

This bill makes technical changes in the congressional charter granted to the Pacific Tropical Botanical Gardens, an organization located in my congressional district. H.R. 4480 is a very modest bill, and I am aware of no opposition to its passage. Although the changes contained in H.R. 4480 are technical and modest, it is nonetheless important to my constituents at the Pacific Tropical Botanical Gardens.

H.R. 4480 has only two provisions. First, the bill would change the name of the botanical gardens chartered by Congress in 1964 from the "Pacific Tropical Botanical Gardens" to the "National Tropical Botanical Gardens." The name change is necessitated by the fact that the garden recently received a gift of a parcel of land in Florida that is of considerable botanical significance. Obviously, it would be inappropriate for this newly acquired Florida property to bear the name the "'Pacific' Tropical Botanical Gardens."

Second, the bill clarifies that the term "United States" which appears in the original charter includes not only the 50 States and the District of Columbia but also all U.S. Commonwealths, territories and possessions.

That is all the bill provides. The Congressional Budget Office has determined that there is no cost to the Federal Government or to State and local governments associated with this legislation.

Once again, I thank the chairman, the members of the committee, and staff for recognizing the need for action on this legislation. I urge all my colleagues to support this bill.

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Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume, and I will be brief.

Mr. Speaker, as has been pointed out, H.R. 4480 would simply change the name of the federally chartered Pacific Tropical Botanical Garden to the National Tropical Botanical Garden. As Congress has the authority over the creation of and amendments to Federal charters, it is only fitting that we provide this federally chartered organization the right to change their name. Consequently, Mr. Speaker, I encourage my colleagues to vote in favor of H.R. 4480.

Mr. COBLE. Mr. Speaker, I yield back the balance of my time.

Mr. BERMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. BERMAN] that the House suspend the rules and pass the bill, H.R. 4480.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

INCREASING MAXIMUM AMOUNT THE UNITED STATES MAY PAY IN CERTAIN SETTLEMENTS

Mr. BERMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3685) to amend title 31, United States Code, to increase from $25,000 to $40,000 the maximum amount that the United States may pay in settlement of a claim against the United States made by a member of the uniformed services or by an officer or employee of the Government.

The Clerk read as follows:

H.R. 3685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN SETTLEMENT AUTHORITY.

Section 3721 of title 31, United States Code, is amended—

(1) in subsection (b) by striking out "$25,000" and inserting in lieu thereof "$40,000"; and

(2) by amending subection (c) to read as follows:

"(c) On paying a claim under this section the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against a foreign country for the damage or loss for which the Government made the payment.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply only to claims arising on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California [Mr. BERMAN] will be recognized for 20 minutes and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3685 would amend the Military Personnel and Civilian Employees Claims Act to treat all incident-to-service losses the same way and to maintain the maximum available amount at $40,000. Currently, the statute allows the maximum amount payable at $40,000 for certain claims, which were primarily a response to the Iran Embassy episode, when the Americans who were held hostage lost all their personal belongings. All other incident-to-service claims are payable at $25,000.

This legislation is the result of an executive communication and is supported by the Departments of Defense and Justice.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from California has just indicated what I will say in a brief way.

As the gentleman from California [Mr. BERMAN] pointed out, the Iran hostage situation gave rise to this matter.

Mr. Speaker, H.R. 3685 would increase the amount of money that military service personnel could receive due to property damages which they incur pursuant to their military service. For many years the ceiling on that amount of money has been $25,000. During the Iran hostage crisis in 1980 there was a special new ceiling limit set for those individuals who were victims of the Iran hostage situation; that new ceiling was set at $40,000.

H.R. 3685 would simply increase the amount from $25,000 to $40,000 for all people involved in military service for compensation regarding property damages pursuant to military service. I believe this is a good bill and would urge my colleagues to support it.

Mr. Speaker, I yield back the balance of my time.

Mr. BERMAN. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. BERMAN] that the House suspend the rules and pass the bill, H.R. 3685.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GRANTING CONSENT OF CONGRESS TO COMPACT BETWEEN NORTH CAROLINA AND SOUTH CAROLINA ESTABLISHING THE LAKE WYLIE MARINE COMMISSION

Mr. BERMAN. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 644) granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission, as amended.

The Clerk read as follows:

H.J. RES. 644

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS TO COMPACT.

The Congress consents to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission. The compact is substantially as follows:

"SECTION 1. For purposes of this act:

"(1) 'Board' means the board of commissioners of Mecklenburg and Gaston Counties, North Carolina and the county council of York County, South Carolina.

"(2) 'Commission' means the Lake Wylie Marine Commission or its governing board as the case may be.

"(3) 'Commissioner' means a member of the governing board of the Lake Wylie Marine Commission.

"(4) 'Three counties' means Mecklenburg and Gaston Counties, North Carolina, and York County, South Carolina.

"(5) 'Joint ordinance' means an ordinance substantially identical in content adopted separately by the board in each of the three counties.

"(6) 'Lake Wylie' means the impounded body of water along the Catawba River in the three counties extending from the base of Mountain Island Dam downstream to the Catawba Dam.

"(7) 'Shoreline area' means, except as restricted by a joint ordinance, the area within the three counties lying within 1000 feet of the mean high-water line (570 feet) on Lake Wylie. In addition, the shoreline area includes all islands within Lake Wylie and all peninsulas extending into the waters of Lake Wylie.

"(8) 'Wildlife Commission' means the North Carolina Wildlife Resources Commission and the South Carolina Department of Wildlife and Marine Resources.

"SEC. 2. The three counties may by joint ordinance create the Lake Wylie Marine Commission. Upon its creation, the Commission has the powers, duties and responsibilities conferred upon it by joint ordinance subject to the laws of each applicable state. The provisions of any joint ordinance may be modified, amended, or rescinded by a subsequent joint ordinance. A county may unilaterally withdraw from participation as required by any joint ordinance or the provisions of this act, once the commission has been created. Any county may, by ordinance, unilaterally withdraw from the commission at the end of any budget period upon ninety days prior written notice. Upon the effectuation of the withdrawal, the Commission is dissolved and all property of the Commission must be distributed to or divided among the three counties and any other public agency or agencies serving the Lake Wylie area in a manner considered equitable by the Commission by resolution adopted prior to dissolution.

"SEC. 3. Upon its creation, the commission shall have a governing board of seven. Except as otherwise provided for the first four-year period, each commissioner shall serve either a three or a four-year term, with commissioners to serve overlapping terms so that two commissioner appointments are made each year. Upon creation of the Commission, the Board of Commissioners of Gaston County shall appoint three commissioners and the boards of the other two counties shall appoint two each. These initial appointees shall serve until September thirtieth following their appointment. Thereafter, appointments must be made for terms beginning each October first by the respective boards of the three counties as follows:

"(1) First Year: Three commissioners from Gaston, one appointed for a one-year term, one appointed for a three-year term and one appointed for a four-year term; two commissioners from Mecklenburg, one appointed for a one-year term and one appointed for a two-year term; two commissioners from York, one appointed for a two-year term and one appointed for a three-year term.

"(2) Second Year: Two commissioners from Mecklenburg, one appointed for a three-year term and one appointed for a four-year term.

"(3) Third year: Two commissioners from York, one appointed for a three-year term and one appointed for a four-year term.

"(4) Fourth Year: Two commissioners from Gaston, one appointed for a three-year term and one appointed for a four-year term.

"(5) Fifth and Succeeding Years: Appointments for one three-year and one four-year term in rotation by county in the order set out above.

"On the death of a commissioner, resignation, incapacity, or inability to serve, as determined by the board appointing the commissioner, or removal of the commissioner for cause, as determined by the board appointing the commissioner, the board affected may appoint another commissioner to fill the unexpired term.

"SEC. 4. The joint ordinance shall state the terms relating to compensation to commissioners, if any, compensation of consultants and staff members employed by the Commission, and reimbursement of expenses incurred by commissioners, consultants, and employees. The Commission is governed by those budgetary and accounting procedures as may be specified by joint ordinance.

"SEC. 5. Upon creation of the Commission, its governing board shall meet at a time and place agreed upon by the boards of the three counties concerned. The commissioners shall elect a chairman and such officers as they may choose. All officers shall serve one-year terms. The governing board shall adopt such rules and regulations as it may consider necessary, not inconsistent with the provisions of this act or of any joint ordinance or the laws of the appropriate state, for the proper discharge of its duties and for the governance of the commission. In order to conduct business, a quorum must be present. The chairman may adopt those committees as may be authorized by such rules and regulations. The commission shall meet regularly at those times and places as may be specified in its rules and regulations or in any joint ordinance. However, meetings of the commission must be held in all three counties on a rotating basis so that an equal number of meetings is held in each county. Special meetings may be called as specified in the rules and regulations. As to meetings held within South Carolina, the provisions of Chapter 4 of Title 30, Code of Laws of South Carolina, 1976 (Freedom of Information Act), apply. As to meetings held within North Carolina, the provisions of that State's Open Meetings Law, Article 33C of Chapter 143 of the North Carolina General Statutes apply.

"SEC. 6. (a) Within the limits of funds available to it and subject to the provisions of this act and of any joint ordinance the Commission may:

"(1) Hire and fix the compensation of permanent and temporary employees and staff as it may consider necessary in carrying out its duties;

"(2) Contract with consultants for such services as it may require;

"(3) Contract with the States of North Carolina, South Carolina, or the federal government, or any agency, department, or subdivision of them for property or services as may be provided to or by these agencies and carry out the provisions of these contracts;

"(4) Contract with persons, firms, and corporations generally as to all matters over which it has a proper concern and carry out the provisions of contracts;

"(5) Lease, rent, purchase, or otherwise obtain suitable quarters and office space for its employees and staff, and lease, rent, purchase, or otherwise obtain furniture, fixtures, vessels, vehicles, firearms, uniforms, and other supplies and equipment necessary or desirable for carrying out the duties imposed in or under the authority of this act;

"(6) Lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Lake Wylie and its shoreline area, or protection of property in the shoreline area subject however to the provisions of Title 50 Code of Laws of South Carolina, 1976, or regulations promulgated under that title as to property within South Carolina, and Chapter 113 of the General Statutes of North Carolina and rules promulgated under that Chapter as to property within North Carolina.

"(b) The Commission may accept, receive, and disburse in furtherance of its functions any funds, grants, services, or property made available by the federal government or its agencies or subdivisions, by the States of North Carolina or South Carolina or their agencies or subdivisions, or by private and civic sources.

"(c) The governing bodies of the three counties may appropriate funds to the Commission out of surplus funds or funds derived from nontax sources. They may appropriate funds out of tax revenues and may also levy annually taxes for the payments of such appropriation as a special purpose, in addition to any allowed by the Constitution or in North Carolina as provided by G.S. 153A-149.

"(d) The Commission is subject to those audit requirements as may be specified in any joint ordinance.

"(e) In carrying out its duties and either in addition to or in lieu of exercising various provisions of the above authorization, the Commission may, with the agreement of the governing board of the county concerned, utilize personnel and property of or assign responsibilities to any officer or employee of any of the three counties. Such contribution in kind, if substantial, may with the agreement of the other two counties be considered to substitute in whole or in part for the financial contribution required of that county in support of the Commission.

"(f) Unless otherwise specified by joint ordinance, each of the three counties shall annually contribute an equal financial contribution to the Commission in an amount appropriate to support the activities of the Commission in carrying out its duties.

"SEC. 7. (a) A copy of the joint ordinance creating the Commission and of any joint ordinance amending or repealing the joint ordinance creating the Commission must be filed with the Executive Director of the North Carolina Wildlife Resources Commission and the Executive Director of the South Carolina Department of Wildlife and Marine Resources. When the Executive Directors receive ordinances that are in substance identical from all three counties concerned, they, in accordance with procedures agreed upon, shall, within 10 days, certify this fact and distribute a certified single ordinance text to the following:

"(1) The Secretary of State of North Carolina and the Secretary of State of South Carolina;

"(2) The clerk to the governing board of each of the three counties;

"(3) The clerk of superior court of Mecklenburg and Gaston Counties and the clerk of court of York County. Upon request, the Executive Directors also shall send a certified single copy of any and all applicable joint ordinances to the chairman of the Commission;

"(4) A newspaper of general circulation in the three counties.

"(b) Unless a joint ordinance specifies a later date, it shall take effect when the Executive Directors' certified text has been submitted to the Secretaries of State for filing. Certifications of the Executive Directors under the seal of the Commission as to the text or amended text of any joint ordinance and of the date or dates of submission to the Secretaries of State is admissible in evidence in any court. Certifications by any clerk of superior court or county clerk of court of the text of any certified ordinance filed with him by the Executive Directors is admissible in evidence and the Executive Directors' submission of the ordinance for filing to the clerk shall constitute prima facie evidence that the ordinance was on the date of submission also submitted for filing with the Secretary of State. Except for the certificate of a clerk as to receipt and date of submission, no evidence may be admitted in court concerning the submission of the certified text of any ordinance by the Executive Directors to any person other than the Secretary of State.

"SEC. 8. (a) Except as limited in subsection (b) of this section, by restrictions in any joint ordinance and by other supervening provisions of law, the Commission may make regulations applicable to Lake Wylie and its shoreline area concerning all matters relating to or affecting the use of Lake Wylie. These regulations may not conflict with or supersede provisions of general or special acts or of regulations of state agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the Commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the three counties at least 10 days before the hearing. In lieu of or in addition to passing regulations supplementary to state law and regulations concerning the operation of vessels on Lake Wylie, the Commission may, after public notice, request that the North Carolina Wildlife Resources Commission and the South Carolina Department of Wildlife and Marine Resources pass local regulations on this subject in accordance with the procedure established by appropriate state law.

"(b) Violation of any regulation of the Commission commanding or prohibiting an act is a misdemeanor punishable by a fine not to exceed two hundred dollars or 30 days imprisonment.

"(c) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Wylie or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Lake Wylie or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area and it must be printed in a newspaper of general circulation in the three counties.

"(d) A copy of each regulation promulgated under this section must be filed by the Commission with the following persons:

"(1) The Secretaries of State of North and South Carolina;

"(2) The clerk of superior court of Mecklenburg and Gaston Counties and the clerk of court of York County;

"(3) The Executive Directors of the Wildlife Resources Commission of North Carolina and South Carolina Wildlife and Marine Resources Department.

"(e) Any official designated in subsection (d) above may issue certified copies of regulations filed with him under the seal of his office. These certified copies may be received in evidence in any proceeding.

"(f) Publication and filing of regulations promulgated under this section as required above is for informational purposes and is not a prerequisite to their validity if they in fact have been duly promulgated, the public has been notified as to the substance of regulations, a copy of the text of all regulations is in fact available to any person who may be affected and no party to any proceeding has been prejudiced by any defect that may exist with respect to publication and filing. Rules and regulations promulgated by the Commission under the provisions of other sections of this act relating to internal governance of the Commission need not be filed or published. Where posting of any sign, notice, or marker or the making of other communication is essential to the validity of a regulation duly promulgated, it is presumed in any proceeding that prior notice was given and maintained and the burden lies upon the party asserting to the contrary to prove lack of adequate notice of any regulation.

"SEC. 9. (a) Where a joint ordinance so provides, all law enforcement officers, or those officers as may be designated in the joint ordinance, with territorial jurisdiction as to any part of Lake Wylie or its shoreline area, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Lake Wylie and its shoreline area.

"(b) Where a joint ordinance provides it, the Commission may hire special officers to patrol and enforce the laws on Lake Wylie and its shoreline area. These special officers have and may exercise all the powers of peace officers generally within the area in question and shall take the oaths and are subject to all provisions of law relating to law enforcement officers.

"(c) Every criminal violation must be tried in the county where it occurred. However, a certificate of training by the South Carolina Criminal Justice Academy, or a similar certificate issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will suffice for certification in both states for the purposes of this act.

"(d) Where a law enforcement officer with jurisdiction over any part of Lake Wylie or its shoreline area is performing duties relating to the enforcement of the laws on Lake Wylie or in its shoreline area, he has such extraterritorial jurisdiction as may be necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of Lake Wylie and its shoreline area; conducting prisoners in custody to a court or detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

"(e) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this is considered an extension of the duties of the office held and no officer shall take any additional oath or title of office.

"SEC. 10. This act shall become effective upon enactment by the State of South Carolina and upon approval by the Congress of the United States.

"Either North Carolina or South Carolina may withdraw from this Compact by enacting a statute repealing the same, but no withdrawal is effective until the Governor of the withdrawing state has sent formal notice in writing to the Governor of each other party state informing the Governors of the action of the legislature in repealing the Compact and declaring an intention to withdraw. This withdrawal is effective on a date set by the withdrawing state, but not less than 90 days after enactment of the withdrawal statute. In case of the withdrawal, the property of the Commission must be divided in an equitable manner by the Commission as if dissolution had occurred under Section 2 of this act.".

SEC. 2. RESERVATION.

The right of Congress to alter, amend, or repeal this joint resolution is hereby expressly reserved.

The SPEAKER pro tempore. Is a second demanded?

Mr. COBLE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. BERMAN] will be recognized for 20 minutes and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Joint Resolution 644 grants the consent of Congress to an interstate compact that has been entered into between the States of North Carolina and South Carolina. The purpose of the Lake Wylie Marine Commission compact is to provide three counties, Mecklenburg and Gaston Counties, NC, and York County, SC, with the authority to create the Lake Wylie Marine Commission.

The compact grants to the Commission the authority to issue regulations applicable to Lake Wylie and its shoreline area concerning all matters relating to or affecting the use of the lake.

This compact was ratified by the State of North Carolina on June 22, 1988 and by the State of South Carolina on June 27, 1988.

Mr. Speaker, I am unaware of any opposition to this legislation.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Joint Resolution 644 comes before this body due to our duty to oversee and confirm interstate compacts.

The agreement between the States of North and South Carolina regarding the creation of a Lake Wylie Marine Commission does in fact comprise an interstate compact, and House Joint Resolution 644 provides for the approval of Congress of that interstate compact.

Lake Wylie is a lake which crosses the borders of North and South Carolina and is a popular lake for recreational activities by citizens of both States.

This year the States of North Carolina and South Carolina through their respective State legislatures passed separate and independent legislation creating a Lake Wylie Marine Commission. As is required by the rules of Congress, the legislation passed by both North and South Carolina legislatures is identical and those States are now requesting Congress to confirm the interstate agreement which they have accomplished.

Having heard the testimony at the hearing on House Joint Resolution 644 and having reviewed the resolution, I strongly urge my colleagues to vote in favor of House Joint Resolution 644 to allow North and South Carolina to create the Lake Wylie Marine Commission for the benefit and safety of the citizens of North and South Carolina.

Mr. BALLENGER. Mr. Speaker, House Joint Resolution 644, granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina to establish the Lake Wylie Marine Commission, although not of national importance, is legislation much needed by the citizens in the area concerned. I strongly urge its adoption.

This legislation is an attempt to address the concerns of local citizens and law enforcement officials over problems on Lake Wylie, heavily used for recreation. The lake crosses county lines in North Carolina and extends beyond our border into South Carolina. Conflicting multiple jurisdictions complicate law enforcement. This situation has been made worse by a growth in population and an increase in boating traffic. Boating accidents are on the increase and some of them have resulted in death. The area has also seen an increase in pollution largely from the dumping of garbage.

Landowners and users of the lake feel that the only way to solve the growing problems on the lake is to establish a central commission with the authority to patrol the entire area.

To this end, both the North and South Carolina State legislatures passed identical resolutions agreeing to the establishment of the Lake Wylie Marine Commission. However, because the compact is interstate in nature, it must be approved by Congress. Hence, the reason House Joint Resolution 644 was introduced.

It has the support of all the members of the North and South Carolina delegations and I urge its adoption today.

Mr. COBLE. Mr. Speaker, I yield back the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. BERMAN] that the House suspend the rules and pass the joint resolution (House Joint Resolution 644), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BERMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3685, House Joint Resolution 644 and H.R. 4480, the three pieces of legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON H.R. 4174, SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1988

Mr. LAFALCE. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 4174) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. CONTE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement, see proceedings of the House of Monday, October 3, 1988, at page 27801).

The SPEAKER pro tempore. The gentleman from New York [Mr. LAFALCE] will be recognized for 20 minutes and the gentleman from Massachusetts [Mr. CONTE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference report on the bill (H.R. 4174) the Small Business Administration Reauthorization and Amendment Act of 1988. This bill was developed in close cooperation with many members of the committee and has strong bipartisan support. In fact, it was overwhelmingly passed by the House last July 6 by a recorded vote of 342 to 40.

The purpose of the legislation is to reauthorize the Small Business Administration programs for fiscal years 1989 through 1991, and make necessary amendments to the Small Business Act and the Small Business Investment Act to improve programs which provide management, financial, and technical assistance to small business.

Mr. Speaker, this is a good bill which all Members should support. It contains most of the important provisions of the bill as passed by the House. As is the case with any conference, however, it simply was not possible to obtain Senate agreement on each and every item.

It does reauthorize SBA programs for the next 3 fiscal years basically at the 1988 levels. The only exception is that it does not provide funding for a bond guarantee program which was designed to provide financing for pollution control facilities. That program has had virtually no usage during the past several years, so instead we have substituted loan assistance for those small businesses which must modify their operations to meet pollution control laws.

It also provides a new miniloan program. Many Members know how hard it is for their small business constituents, particularly those owned by women, to get small amounts of loan money.

Some years ago direct loan funds were available to fill part of this need, but now those funds are virtually gone. Guaranteed loans have not been an adequate replacement for this funding because, due to the economies of scale involved in the processing and servicing of loans, it is more profitable for lenders to make larger loans. Thus many lenders simply will not make business loans in amounts less than $50,000.

In order to encourage SBA's most proficient lenders to provide guaranteed loans of $50,000 or less, the bill allows these lenders to retain one-half of the 2-percent fee collected from borrowers. In addition, it directs SBA to develop a new shorter package of loan forms for this program. There is no reason why the paperwork on these small loans cannot be reduced by 50 percent or more, and this will benefit everyone.

The bill also makes needed improvements in the surety bond program;

contains improvements in disaster loan assistance, changes suggested by Representative Olin; improves the development company program along the lines suggested by Mr. Hatcher; and provides more help to small businesses to obtain Government contracts pursuant to proposals from Mr. McDade, Mr. Conte, and Mr. Lancaster.

Mr. Speaker, it also contains many other matters which will assist small businesses and help our economy. It does not do everything I would have liked, but it is a very good bill which deserves the support of all Members of the House. For the information of my colleagues, I am attaching a comparison of the major provisions of the bill, the Senate amendment, and the compromise reached during conference.

In conclusion, I want to thank all the members of the Small Business Committee who have worked long and hard to develop this bill so that it could be presented to the House today. Particularly, I want to thank the ranking minority member of the committee, Representative Joe McDade and the other members of the committee who contributed proposals which were included in the committee's amendment, Mr. Skelton, Mr. Hatcher, Mr. Olin, Mr. Conyers, Mr. Lancaster, and Mr. Conte some of whom also served as House conferees. I also want to thank the other conferees on this matter: Mr. Smith of Iowa, Mr. Gonzalez, Mr. Luken, and Mr. Broomfield.

Summary of Compromises on Major Items in Conference on H.R. 4174 Small Business Administration Authorizations and Amendments

The agreements reached by the House and Senate conferees on the authorization bill (H.R. 4174) are as follows:

(1) AUTHORIZATIONS AND PROGRAM LEVELS

The House bill provides authorizations and program levels for three fiscal years, 1989 through 1991.

The Senate amendment only provides a one year authorization and program levels.

The conferees have agreed to provide two years of authorizations and specific program levels and add an open-ended authorization for the third year, thereby permitting the House to appropriate for 1991 even if we have not come back with specific program levels. The differences each year by program are reflected on the attached tables. The major difference is that the old energy guarantee loan program would be expanded to fund loan capital needed for pollution control equipment, with that program serving as a substitute for the pollution control bond guarantee program which is discontinued.

(2) FORM SIMPLIFICATION AND PREFERRED FINANCINGS

The House bill authorizes a mini loan program of up to $50,000 per borrower solely on bank forms and with the bank being authorized to keep one-half of the two point origination fee.

The Senate amendment authorizes a similar mini loan program but does not authorize any sharing of the fee.

The conferees have agreed that the mini loan program be authorized for loans up to $50,000 and that the bank be authorized to keep one-half of the two point fee; however, instead of the bank using its own forms, SBA would develop a shorter and uniform simplified form solely for this program, and the new form could not exceed half the length of the regular loan forms.

(3) GUARANTEED LOAN PERCENTAGE

The House bill prohibits SBA from reducing the guarantee percentage on loans made through the preferred loan program (SBA now limits the guarantee on these loans to 75% instead of the 85% or 90% guarantee received by other lenders).

The Senate amendment does not have any comparable provision.

The conferees have agreed to authorize a maximum difference of 5%. Thus a loan processed as part of the preferred lenders program rather than as part of the regular program, if it was small would carry a maximum guarantee of 85% instead of 90% and if it were a larger loan would carry a maximum guarantee of 80% instead of 85%.

(4) GUARANTEE PERCENTAGE FOR SURETY BONDS

The House bill requires that small bonds ($100,000 or less) must receive a 90% guarantee (instead of the 80% guarantee SBA now made available on all bonds regardless of size).

The Senate amendment imposes a similar 90% minimum level on small bonds of $150,000 or less and also applies the 90% guarantee across the board to all bonds to minorities.

The conferees have agreed that the 90% guarantee be made applicable to bonds of $100,000 or less and for any minority bond.

(5) PREFERRED SURETY PROGRAM

The House bill authorizes a new preferred surety bond guarantee program for the best sureties, including specialty companies; it also prohibits SBA from reducing the guarantee solely because the bond is processed under the preferred surety program.

The Senate amendment also authorizes a new preferred program but restricts participation solely to standard surety companies; it also requires that any bond guaranteed through the preferred program receiving a maximum guarantee of 70% instead of the 80% to 90% guarantee which would be given on bonds processed other than through the preferred program.

The conferees have agreed to establish a new preferred surety bond guarantees program which allows the best sureties to participate, but the guarantee made available under this preferred program would be at a maximum guarantee of 70%.

(6) AGENCY PARTICIPATION IN SBIR

The House bill authorizes SBA to issue policy directives for agencies which voluntarily participate in the SBIR program or withdraw from this program due to a decrease in their R&D budget.

The Senate amendment does not have a comparable provision.

The conferees have agreed to the House provision.

(7) INTEREST RATES ON 504 PACKAGES

The Senate amendment authorizes SBA to override state laws and establish a maximum legal interest rate on the non-guaranteed bank loan which compromises one-half of the total package of financing provided to development companies under the 503/504 program.

The House does not have a comparable provision.

The conferees have agreed to the Senate provision.

(8) DISASTERS

The House bill redefines disasters to specifically include red tide, brown tide and similar occurrences on a permanent basis.

The Senate amendment redefines disasters to include economic injury loan assistance to small businesses located in a county contiguous to a county with a disaster declared on account of drought.

The conferees have agreed to redefine "disaster" but to specifically exclude "economic dislocations" to satisfy SBA that we do not intend to re-open this category of loans which previously made assistance available to victims hurt by the peso devaluation, lack of snow, etc. The conferees also agreed to prohibit SBA from declining to make disaster loan assistance available solely because the damage occurred across a county line.

(9) SOUTH AFRICA

The House bill includes a provision denying SBA assistance to certain firms doing business in or with South Africa.

The Senate amendment does not have a comparable provision.

The conferees have agreed to the House provision.

(10) MANAGEMENT ASSISTANCE FOR WOMEN-OWNED BUSINESSES

The House bill authorizes $10 million in matching grants to provide management training and technical assistance to women-owned businesses.

The Senate amendment does not contain any comparable provision.

The conferees have agreed to the House provision.

(11) DEBT COLLECTION

The House bill requires SBA to contract out for debt collection.

The Senate amendment does not contain any comparable provision.

The conferees did not agree to this provision.

(12) SBIR FOR EXPORTS

The House bill authorizes matching grants under a small business export strategy development pilot program.

The Senate amendment does not contain any comparable provision.

The conferees did not agree to this provision.

(13) RURAL DEVELOPMENT

The House bill requires federal agencies having substantial procurement or grant making authority to develop rural area enterprise development plans.

The Senate amendment does not contain any comparable provision.

The conferees have agreed to require SBA to identify those federal agencies having substantial procurement or grant making authority which could be used to develop rural area enterprises. Those so identified would be required to develop a plan to utilize their authority to do so.

(14) PREFERENCES FOR AMERICAN MADE PRODUCTS

The House bill requires SBA to give preferences in buying American made products.

The Senate amendment does not contain any comparable provision.

The conferees did not agree to this provision.

(15) STUDY OF INFORMATION PROVIDED FOREIGN GOVERNMENTS

The House bill requires SBA's Chief Counsel for Advocacy to study the extent to which Federal agencies are performing services for foreign governments which small businesses are capable of performing.

The Senate amendment does not contain any comparable provision.

The conferees require a report from the Chief Counsel which assesses the extent to which employees of Federal agencies and departments are performing professional and technical services for foreign governments for which there are responsible domestic sources.

(16) PRIVATE SECTOR COOPERATION

The Senate amendment extends for two years SBA's authority to conduct joint training programs with "for-profit" firms.

The House bill contains no comparable provision.

The conferees agreed to the Senate provision but with tighter restrictions to eliminate past abuses, such as a firm sponsoring the joint training sessions primarily for PR to promote the firm's business or as a profit making activity.

(17) HANDICAPPED ELIGIBILITY TO BID ON SMALL BUSINESS SET-ASIDES

The Senate amendment authorizes nonprofit organizations of handicapped to bid on small business set-aside contracts for up to $50 million per year for each of the next five years.

The House bill does not contain any comparable provision.

The conferees agreed to this provision but with two restrictions: first, the amount of the contract would be phased in at $30 million in 1989, $40 million in 1990, and $50 million in each of the next three years. Also, the conferees expressly prohibited any small business set-aside contract obtained by a non-profit from being eliminated as a small business set-aside contract in future years solely because it was obtained by such a non-profit.

(18) WHITE HOUSE SMALL BUSINESS CONFERENCE

The Senate Amendment requires a White House Conference on Small Business at least every six years.

The House bill does not contain any comparable provision.

The conferees did not agree to this proposal.

SMALL BUSINESS ADMINISTRATION

[Program levels (dollars in millions)]

	1988 authorization	1988 appropriation	1989 House	1989 Senate	1989 conference	1990 House	1990 Senate	1990 conference	1991 House	1991 Senate	1991 conference
General Business Loans: Guaranteed	$2,727	$2,421	$2,817	$2,725	$2,817	$2,930		$2,930	$3,047		
Handicapped Loans	20	18	18	25	22	18		23	18		
Direct and IP	15	13	13	20	17	13		18	13		
Economic Opportunity Loans	105	59	84	95	89	84		93	84		
Direct and IP	40	19	19	30	24	19		25	19		
Guaranteed	65	40	65	65	65	65		68	65		
Energy Loans;[1] Guaranteed	16	5	16	75	60	16		62	16		
Veterans Loans: Direct and IP	20	17	17	25	21	17		22	17		
Development Company Loans: Guaranteed	450	450	468	450	460	487		478	506		
Investment Company Asst.	313	269	308	313	311	309		324	311		
Direct (MESBIC)	41	36	36	41	39	37	41	39			
Guaranteed (SBIC)	272	233	272	272	272	272		283	272		
Total Business Loans	3,648	3,239	3,728	3,708	3,780	3,861		3,932	3,999		
Direct and IP	116	85	85	116	101	86		106	88		
Guaranteed	3,532	3,154	3,643	3,592	3,679	3,775		3,826	3,911		
Disaster Loans	(2)	350	(2)	(2)	(2)	(2)		(2)	(2)		
Surety Bond Guarantees	1,250	1,250	1,600	1,400	1,500	1,664		1,560	1,731		
Pol. Control Bond Guarantees	75	50	50	0	0	50		0	50		

[1] Includes pollution control loans as proposed by the Senate for fiscal year 1989.

[2] Open ended.

SMALL BUSINESS ADMINISTRATION

[Budget authority (Dollars in millions)]

	1988 appropriations	1989 House	1989 Senate	1989 conference	1990 House	1990 Senate	1990 conference	1991 House	1991 Senate	1991[2] conference
Business Loan and Investment Fund	$176	$228	Open	Open	$259		Open	$297		
R/E LG	0	0	0	0	0		0	1		
Surety Bonds	9	20	18	Open	22		Open	22		
Salaries and expenses	[1] 226	208	248	228	219		238	232		
Pollution control	14	14	Open	Open	14		Open	14		
Totals	425	470	?	?	514		?	566		

[1] Includes $10.3 million disaster supplemental in Public Law 100-393.

[2] The conference substitute provides an openended authorization for 1991.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4174, the Small Business Administration Reauthorization and Amendment Act of 1988. I am pleased to commend the chairman of the Small Business Committee, JOHN LAFALCE and my good friend JOE MCDADE, the ranking minority member, for their tremendous effort on behalf of all small business. I supported this bill in committee and had the privilege to sit in conference with the other body to craft legislation that provides a 3-year reauthorization to the SBA and makes a number of improvements to its operation.

Mr. Speaker, while this bill contains a number of provisions which have already been discussed by the Chair and the ranking minority member, there are a number of noteworthy provisions that are of great interest to me and I would like to briefly list them.

First, the expansion of the "certified lender" program that will expedite loan processing and encourage lenders to make smaller loans. It has been my experience that most small businesses usually need loans of anywhere from $5,000 to $50,000—this program is targeted especially for that need.

Second, H.R. 4174 authorizes the SBA to establish regulations for the voluntary participation of agencies in the Small Business Innovative Research Program [SBIR]. Federal agencies with extramural research budgets less than $100 million can now participate in SBIR. As one of the original sponsors of the SBIR Program I am pleased at the inclusion of this provision in the bill. SBIR works exceedingly well because American small business is the cutting edge of new technology.

Third, greater authority to Breakout Procurement Center Representatives in the procurement process. This is my bill H.R. 3921 which I asked be incorporated into H.R. 4174. This proviso alone will save the taxpayers up to $50 million a year through increased small business competition.

Fourth, improving 504 Certified Development Corporations regarding sale of debentures, authorizing a secondary market in guarantees, a policy to further rural development, allow 33 percent lease out on new construction projects, and a provision for contracting out staff. I am proud to have three excellent CDC's serving my area and these changes coupled with provisions raising the authorization level that was provided for in the trade bill will greatly enhance the economic development capabilities of CDC's.

Fifth, changes in the disaster loan program to include SBA assistance and counseling to disaster victims, inclusion of red and brown tide in the definition, to provide for disaster mitigation actions and allowing the SBA to make unsecured disaster loans of $10,000 or less.

Sixth, provision for women-owned businesses including annual reporting requirements and management assistance, the importance of which was highlighted in the Small Business Committee Report "New Economic Realities: The Rise of Women Entrepreneurs."

Seventh, inclusion of handicapped organizations for small business set-asides on a 5-year authorization. This will allow organizations serving the blind and severely handicapped to compete in the small business set-aside program for up to $220 million in contracts over 5 years. This will strengthen the competitive skills of these organizations and provide meaningful projects for their employees.

Mr. Speaker, this is a most comprehensive and beneficial bill. I urge all my colleagues to support H.R. 4174.

Mr. LAFALCE. Mr. Speaker, I yield such time as he may consume to the gentleman from Idaho [Mr. STALLINGS].

Mr. STALLINGS. Mr. Speaker, I rise in support of the conference report on H.R. 4174, the Small Business Administration Reauthorization and Amendment Act of 1988. Small business is the backbone of the economy in Idaho and across the Nation. I support this bill because it will help sustain the growth in small business that we have seen in recent years, and make our small companies more competitive.

I want to particularly commend the chairman of the Committee, Mr. LAFALCE, the ranking minority member, Mr. MCDADE, and all the conferees for winning conference approval of a modified version of my amendment is to enlist the assistance of the Small Business Administration [SBA] in an effort to expand the international market for U.S. firms in the field of professional and technical services.

Section 131 of the bill requires the SBA's Office of Advocacy to develop recomendations whereby Government agencies would no longer compete with U.S. firms in the international market. SBA, working in consultation with other appropriate agencies and private sector groups, would identify those professional and technical services which U.S. Government agencies are providing to foreign governments or international markets with Federal employees and unfairly competing with U.S. firms. It is my hope these agencies would act as "agents" for, rather than competitors of, U.S. firms.

Mr. Speaker, the reason for my amendment is the fact that there has been a lack of attention to the unfair competition by Federal agencies faced by U.S. business of all sizes, and small businesses in particular, in the international market.

In the professional and technical services areas, United States Government agencies, not German, Japanese, or other foreign firms, are the single largest competitors for United States firms. These Federal agencies aggressively "market" their services to foreign governments. Furthermore, when foreign governments, or other nondomestic entities, approach a U.S. Government agency with a requirement for services, it is the Federal agency that fulfills that requirement with its own personnel. This practice represents a major barrier for U.S. firms attempting to export their services. Foreign clients become accustomed to getting the required services from the U.S. Government, rather than from U.S. private firms. It therefore becomes difficult, if not impossible, to gain entry into these markets.

The problem of government competition is particularly critical in the professional and technical services area, including such industries as architecture, engineering, surveying, and mapping. U.S. Government agencies—Bureau of Reclamation, U.S. Geological Mapping Agency, and others have extensive international activities.

These agencies routinely receive requests from foreign governments, other nondomestic entities, international lending and development institutions, in some cases even AID, for professional and technical services. The requests include such activities as feasibility studies, technical services, preparation of construction bid documents, consulting services, training services, as well as actual data collection, systems development, surveying, mapping, and design. In each case, Federal agencies fulfill the needs of foreign clients with Federal employees.

I would like to ask my good friend, the gentleman from New York [Mr. LAFALCE], the chairman of the Committee on Small Business, a question.

Under existing law, the Small Business Act (15 U.S.C. 634), the functions of the Office of Advocacy include requirements to:

> Recommend specific measures for creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential * * * develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of this chapter and communicate such proposals to the appropriate Federal agencies * * * (and) represent the view and interests of small business before federal agencies whose policies and activities may affect small business.

I would ask the gentleman, is it under this authority that the SBA Office of Advocacy would implement section 131 of this bill, develop recommendations and proposals and work with other Federal agencies to eliminate competition by the Government in the professional and technical services area?

Mr. LAFALCE. Mr. Speaker, yes, as the gentleman from Idaho knows, because he was the author of this provision, for which we give him thanks, his understanding is absolutely correct.

Mr. STALLINGS. Mr. Speaker, I thank the gentleman for that assurance and, again I commend him for his efforts on this matter in the conference.

A number of Idaho businesses have encountered competition from Federal agencies when they have attempted to export their services. I believe U.S. policy should be to support the free enterprise system, and particularly to help eliminate barriers to exports by small businesses. This provision is a giant step in that direction by making this issue a priority and focusing the attention of the SBA Office of Advocacy on this problem and being an advocate with other Federal agencies.

Mr. McDADE. Mr. Speaker, I rise in strong support of the conference report on H.R. 4174, the Small Business Administration Reauthorization and Amendment Act of 1988. This conference report authorizes programs and activities, including salaries and expenses, at the U.S. Small Business Administration for both fiscal years 1989 and 1990. It also provides budget authority for 1991, but without specifying program levels. This measure reflects broad bipartisan support for the continuation of the U.S. Small Business Administration as an independent Federal agency charged with the responsibility of assisting and promoting the creation, development, and growth of the Nation's small businesses. This is fully consistent with the President's own commitment to maintaining a strong, vigorous small business sector, and a Federal agency that can assist small concerns. There are more than 20 million small businesses nationwide that are contributing to the vitality, strength, and prosperity of the American economy. They are providing needed goods and services, generating tax revenues, and creating literally millions of new job opportunities. I believe that the small business men and women of this country not only want, but deserve, to have a strong voice and a helping hand in Washington. They need to be heard on the issues that concern them and have a say in the formulation of policies and legislation that can affect their bottom line. And they need to have an agency that will provide the kind of assistance that will help their firms grow and prosper. We have seen to that in this bill.

During the hearing process, we undertook a tough review of SBA programs and activities. This conference report, which we present for your consideration, represents our best efforts to address program weaknesses and to strengthen existing programs. It is also an attempt to develop innovative, forward-looking initiatives that will assist America's small businesses in today's business environment while helping these concerns cope with the new competitive demands and challenges confronting them. This conference report is a bipartisan approach to the task of providing the support and assistance our Nation's small business men and women need to sustain their commitment to making our economy second to none. I would like to commend the chairman, JOHN LAFALCE, distinguished members of the committee, and their outstanding staffs for their diligence and hard work. Also, I believe it is appropriate to commend our colleagues and their staffs in the other body for their hard work.

Chairman LAFALCE has reviewed some of the costs and program highlights. I would like to emphasize that the bill has used the 1988 authorization level as a baseline, adjusted for inflation, to set program and activity levels in the out years. Modest increases have been made in some programs to accommodate increased actual and anticipated demand. The Small Business Administration is the chief Federal agency charged with the responsibility of helping the Nation's small businesses. I believe it is important to review the broad scope of services and assistance the agency provides to small concerns:

The agency guarantees loans made by banks and other institutions to eligible small businesses. It offers direct loans to specific target groups, including businesses located in areas suffering from high unemployment, or owned by Vietnam-era or disabled veterans, handicapped individuals, and organizations employing the handicapped. We have authorized funds to maintain loan levels so that those men and women with promising ideas can start small businesses and current owners can expand their enterprises.

When disaster strikes at home, the SBA is there to make loans to help community businesses recover and rebuild. We have authorized funds to ensure that loans will continue to be available in times of disaster. The drought that has swept this Nation has laid waste to several crops. The repercussions caused by the drought are now being actuely felt by small firms whose business depends on farmers. I know from my own district that the drought has ravaged many crops, causing suffering and economic injury to both farmers and their suppliers. The conferees have agreed that victims of droughts—including agricultural cooperatives—who cannot obtain credit elsewhere, should be eligible for disaster loan assistance. This should help many of our small business owners in local drought-stricken communities get back on their feet.

Small contractors in need of surety bonds can utilize the SBA Surety Bond Guarantee Program. The conferees have agreed to increase the guarantee for surety bonds under $100,000. And we have authorized a 3-year pilot program for preferred surety bonds.

We have continued support for the Small Business Development Center Program. Under this private/public partnership, centers located at local colleges and universities deliver a wide range of management, technical assistance, and other services to aspiring and current small business owners.

The conferees have directed the Small Business Administration to identify those Federal agencies that have substantial procurement or grant making authority which could be used to promote rural small businesses. I believe that small businesses in rural America have much to contribute to this Nation through their increased participation in the economy. It is vitally important that the Federal Government recognize, as the conferees have, that rural small businesses have a role to play in creating jobs and furnishing needed products and services.

SBA assists minority entrepreneurs by providing management and technical assistance and administering a special procurement program for them. We have authorized several of these programs in this conference report, while we have brought far-reaching reform to the entire program in another bill.

One of the major obstacles to more effectively assisting the Nation's small businesses is the lack of data on existing small concerns. Therefore, I have asked the Small Business Administration to study and report to Congress on the feasibility of and need for developing an expanded national directory of small businesses which would include each company's capability, standard industrial code, Federal supply number, and other relevant data. This study will provide valuable clues and recommendations for improving data collection on the Nation's small concerns.

The agency ensures that small businesses receive a fair proportion of Federal Government contracts for the purchase of needed goods and services. We have authorized the agency's procurement program that is helping small concerns become suppliers of needed goods and services to the Federal Government through access to Federal contract opportunities.

Firms requiring specialized technical and management assistance can obtain it through the agency. We have made sure that these small concerns will continue to have access to the assistance and services they need to grow their businesses.

We have authorized $3.5 million for the SBA's Office of International trade to help small firms meet the challenges of global competition and embrace the opportunities to expand the market for their goods and services beyond our shores.

This is but a sampling of the full spate of services and assistance the Small Business Administration offers small concerns.

Mr. Speaker, the conference report before this body is a responsible and reasoned approach to maintaining an important Federal agency that continues to provide valuable assistance and services to our Nation's small business men and women. I strongly urge my colleagues to support the conference report.

Mr. GALLO. Mr. Speaker, I rise today to give my support to the conference agreement on H.R. 4174, a bill to reauthorize programs and activities at the U.S. Small Business Administration.

Let me congratulate the chairman of the House Small Business Committee, JOHN LAFALCE, and our ranking minority member, JOE MCDADE, for their expeditious work on this bill.

Passage of this conference report reaffirms our commitment to American small businesses. This conference agreement strengthens the U.S. Small Business Administration by reauthorizing all its programs.

It is important to realize the role that our small businesses play in our economy. Small businesses have been strong in creating new jobs in recent years. Their people have the ability to produce a large part of the goods and services we need. I firmly believe that the Government and business must work together to encourage small businesses in their growth and job creation, and thus strengthen the American economy.

H.R. 4174 provides business loan guarantees for each of fiscal years 1989 through 1991. The bill also provides for the disaster loan program and broadens the definition of disaster to mean any sudden event which causes severe damage or economic injury. The efforts of the Small Business Administration's programs are focused on "education, outreach, marketing, financing, and business development." H.R. 4174 would authorize the use of SBA resources for the growth and benefit of the small business community, which is so important to the economic future of America.

Small businesses employing fewer than 500 people are the fastest growing and most vital contributors to America's economic strength. They create new products and new jobs at a faster rate than any other sector of the economy. Among today's small businesses are the Fortune 500 companies of the future.

Because they are small businesses, most of these companies do not always have the resources to take advantage of available opportunities and that is why President Eisenhower pushed for creation of the SBA as an independent agency.

With House passage of the Small Business Administration reauthorization bill (H.R. 4174) and legislation to reform the 8(a) minority set-aside program (H.R. 1807), Congress nears completion of a 4-year revitalization of the

SBA. As a result, we have created new public-private cooperative programs to assist owners and managers of innovative small companies to grow and create jobs for our future.

As a member of the House Small Business Committee, I believe that these initiatives have opened the doors of opportunity for thousands of small- and medium-sized companies.

The Small Business Administration has survived its trial by fire. What has emerged is a stronger agency that is ready to meet the special needs of our small businesses through the turn of the century.

I urge my colleagues to support this bill.

Mr. CONTE. Mr. Speaker, I yield back the balance of my time.

Mr. LAFALCE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. LAFALCE] that the House suspend the rules and agree to the conference report on the bill, H.R. 4174.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LAFALCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the conference report on the bill, H.R. 4174, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

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VACATION OF SPECIAL ORDER AND REQUEST FOR SPECIAL ORDER

Mr. WEISS. Mr. Speaker, I ask unanimous consent to vacate my 60-minute special order today and request, instead, a 5-minute special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

ANNUAL REPORT ON ADMINISTRATION OF HIGHWAY SAFETY ACT AND NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Public Works and Transportation and the Committee on Energy and Commerce:

(For message, see proceedings of the Senate of today, Wednesday, October 5, 1988.)

IN RECOGNITION OF THE HEROIC ACHIEVEMENTS OF RAOUL WALLENBERG

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. WEISS] is recognized for 5 minutes.

Mr. WEISS. Mr. Speaker, 7 years ago today, President Reagan signed a bill passed by a bipartisan majority of both Houses of Congress to make Raoul Wallenberg an honorary citizen of the United States. Today I rise here to recognize the heroic achievements of Raoul Wallenberg, to remember the brutality against which he fought, and to urge that we all renew our efforts to secure his freedom.

It is most appropriate that we recognize Raoul Wallenberg today. Not only is it the anniversary of his honorary citizenship—and let me point out that Wallenberg is one of only three men, the others being Churchill and Lafayette, to become an honorary U.S. citizen—but it has also been a significant day here in the District of Columbia for all who remember the Holocaust. This morning, on the corner of Independence Avenue and Raoul Wallenberg Place, I attended the ceremonial laying of the cornerstone of the U.S. Holocaust Memorial Museum. That museum will serve to remind the American people of the greatest of human tragedies, the Holocaust, and help to ensure that its lessons are never forgotten.

Raoul Wallenberg, in fighting against that tragedy, became one of the true heroes of the modern era. In 1944, at the request of the United States War Refugee Board, Sweden sent a representative to Hungary to coordinate rescue operations for the Hungarian Jewish community, which was marked for liquidation by the Nazis. That representative was Raoul Wallenberg.

In July 1944, Wallenberg entered what Simon Wiesenthal referred to as "the slaughterhouse that was Budapest." By that time, some 5 million European Jews had already been sent to the gas chambers while the world watched in silence. The Nazis, knowing they were losing the war, became obsessed with wiping out the remaining Jews under their control. It became the personal task of Adolf Eichmann to liquidate the Hungarian Jewish community.

Eichmannn pursued this cause with a vengeance. It is ironic that Hungarian Jews, who survived longest among all the Jewish communities in Nazi Europe, were the quickest to be destroyed. In a 2-month period—from May 15 to July 8, 1944—430,000 Jews were deported from the Hungarian countryside in sealed cattle cars. Among those carried away to the gas chambers were many members of my family.

Between July 1944 and January 1945, Raoul Wallenberg accomplished what many thought was impossible. Through a combination of what has been described as "bluff, heroism and contempt for convention," Wallenberg saved the lives of 100,000 of the remaining Hungarian Jewish men, women, and children. Risking his own life constantly, he distributed Swedish passports by the thousands, provided supplies and medicine to residents of the ghettos, and rescued Jews from death marches and trains bound for Nazi concentration camps.

Even as troops of the Soviet Union encircled Budapest in late 1944, Wallenberg continued his sacred work. On January 13, 1945, Wallenberg contacted the Russians to persuade them to provide supplies for the remaining Jews under his protection. Four days later, he left Budapest for a meeting with the Russian commander. On his way to the meeting, Wallenberg was taken into Soviet "protective custody." Since then, there has been no official word from Raoul Wallenberg.

After more than a decade of silence, the Soviets announced in 1957 that a prisoner named "Wallenberg" died of a heart attack in prison in 1947. This communique was signed by none other than the former President of the Soviet Union, Andrei Gromyko. However, neither a body nor a death certificate was ever produced. In fact, eyewitness accounts over the years, and as recently as December 22, 1986, indicate that this was not the case. These accounts affirm that Wallenberg is alive, and has been imprisoned in the Soviet Union since his abduction 43 years ago.

It is a supreme irony that this man who saved thousands from the cruel tyranny of the Nazis could not save himself from becoming a prisoner of tyranny. While it is unclear why the Soviets have refused to allow the truth about this lost hero to be known, it is clear that we must continue to press them until we can learn his fate.

Indeed, the recent events in the Soviet Union may be a good sign for Raoul Wallenberg. Many have thought that as long as Andrei Gromyko remained in a position of influence in the Soviet leadership, the Wallenberg case would remain closed for fear of embarrassing him. Now Mikhail Gorbachev has a unique opportunity to reopen it. Now is the time to let Mr. Gorbachev know that the Wallenberg case is a top priority of the U.S. Congress and the U.S. people. I call the attention of my colleagues to an article in today's Wall Street Journal, which I would like to place in the RECORD, on this very subject.

Mr. Speaker, just as Raoul Wallenberg did not forget the Jewish people when it seemed that the rest of the world had, we must never forget Raoul Wallenberg and all that he did. In particular, the United States has a special responsibility to find out what has happened to him, as it was American sponsorship which apparently led the Soviets to erroneously believe that Wallenberg was on a spy mission in Budapest.

To this end, I introduced a resolution into Congress last month to declare today "Raoul Wallenberg Recognition Day." I am encouraged by and grateful for the support of 195 of my colleagues for this extremely important cause, and I look forward to reintroducing and passing this resolution next year. More importantly, I look forward to the day, not too far in the future, on which we will learn the fate of the true hero whose achievements we recognize today.

GORBACHEV COULD BE THE ONE TO FIND WALLENBERG

(By Bill Paul)

To: Mikail S. Gorbachev.
The Kremlin, Moscow.

Seize the moment, Mr. Gorbachev. Now that Andrei Gormyko has retired, order a search for Raoul Wallenberg, the Swedish, diplomat who saved thousands of Jews from the Nazis.

It was Mr. Gromyko who told the world in 1957 that Raoul Wallenberg had died of a heart attack in a Soviet prison in 1947. As long as Gromyko was in power, you of course had to tread lightly on the issue of whether Mr. Wallenberg might still be alive, as many eyewitnesses have claimed over the years.

But I believe that you—unlike Mr. Gromyko and the heads of state he served, including Josef Stalin—don't think, Mr. Wallenberg was a spy. Your prime minister, Nikolai Ryzhkov, said in a speech in Stockholm a few months ago, that Mr. Wallenberg was a great humanitarian.

From the news report, I know you recently had a hand in construction of a new monument to Mr. Wallenberg in Budapest, the city where he performed his miracle. Your predecessor ordered the original monument removed to a provincial pharmacological college, where it stands today without identifying marks.

I further know from press reports that your government is concerned about its own unreturned heroes—prisoners of war whom Afghan resistance leaders have acknowledged holding. That's a far cry from the days when the Stalin regime had returning Russian POWs shot on the docks of Odessa because, in Stalin's view, a Russian soldier who allowed himself to be taken prisoner was a traitor.

Please find Mr. Wallenberg, Gorbachev. As his brother noted in a speech in Philadelphia one year ago, Raoul Wallenberg may be buried alive in your prison system, a nameless inmate who even you Mr. Gorbachev, may think died long ago.

Mr. Gorbachev there's no question your predecessors lied about what happened to Mr. Wallenberg. In 1947, then-Soviet deputy foreign minister, Andrie Vshinsky said that "Wallenberg is not in the Soviet Union," and that "he is unknown to us." But then, in announcing Mr. Wallenberg's death in 1957, Mr. Gromyko said Mr. Wallenberg had in fact been a Soviet prisoner in 1947. So why when Mr. Gromyko says, as he did in 1957, that Mr. Wallenberg died of a heart attack should we—or you—believe him?

Recent press reports have noted that you've already got the KGB trying to find out what happened to the victims of Stalin's purges so that today the victims' relatives might find some inner peace. To find Mr. Wallenberg, you might want to start at the Blagoveshchenka labor camp, where a new book by Swedish author Kenne Fant says Mr. Wallenberg was seen in 1986 by "a very trustworthy source."

To millions of people, Raoul Wallenberg is a hero, a courageous humanitarian who stared down the Nazis—who were your enemy as well as ours, Mr. Gorbachev.

And, while you're searching for Mr. Wallenberg, please also search for the many German, Italian, French and other POWs from World War II whom your predecessors wouldn't release after the war. Indeed, your predecessors wouldn't even cooperate with a United Nations commission that, between 1950 and 1957, tried unsuccessfully to get your nation to return voluntarily these thousands of men.

I think you'll even find some American soldiers there, too.

Mr. LANTOS. Mr. Speaker, today marks two highly significant, symbolic, and interrelated events. This morning at a moving ceremony on the Mall we participated in laying the cornerstone of the U.S. Holocaust Memorial Museum. Engraved on that first granite stone that was put into place for this great building is today's date—October 5, 1988,

Today is a most appropriate time for the laying of that cornerstone, Mr. Speaker, for it marks the seventh anniversary of the signing by President Ronald Reagan of the legislation that I introduced proclaiming Raoul Wallenberg an honorary citizen of the United States.

It is likewise most appropriate, Mr. Speaker, that the location of the Holocaust Museum, the official address of the Holocaust Museum is Raoul Wallenberg Place. By Act of Congress that street has been named in honor of this great Swedish humanitarian.

I am convinced that the coincidence of this date and this place and the beginning of the Holocaust Memorial Museum are not just a fortuitous combination, not just chance.

Mr. Speaker, it is most appropriate that we commemorate the seventh anniversary of the proclaiming of Raoul Wallenberg as an honorary citizen of our Nation. It was a highly symbolic act. Just as Raoul Wallenberg saved the lives of 100,000 men, women and children in Hungary in 1944 by declaring them to be Swedish citizens, we proclaimed him an honorary American citizen in the hope that we might save him from Soviet prison.

Raoul Wallenberg was the second individual after Sir Winston Churchill to be honored with honorary citizenship by act of the U.S. Congress. Extending this honor to him was a fitting recognition that his humanitarian actions in Hungary in 1944 were undertaken at the request of the U.S. Government and with financial support of our War Refugee Board. He was there because our Government asked for his help, and he had the courage and dedication to agree to our request.

Mr. Speaker, the beginning of the construction of this museum today, which we mark today in conjunction with the seventh anniversary of the granting of honorary citizenship to Raoul Wallenberg together symbolize the unshakable commitment of the American people to the sacredness of life and our opposition to tyranny—and especially to the indescribably vicious, brutal inhumanity of the Nazi regime. These symbolic gestures are the assurance that we never forget this darkest horror of our generation.

Mr. Speaker, I commend my distinguished colleague from New York, Mr. WEISS, for calling this special order to mark this anniversary.

Mr. GREEN. Mr. Speaker, I should like to thank my distinguished colleague, Mr. WEISS, for organizing this special order on Raoul Wallenberg and for not allowing this important date to pass unrecognized. I should also like to thank Mr. LANTOS, who 7 years ago introduced the resolution, House Joint Resolution 220, which resulted in honorary citizenship for Raoul Wallenberg.

On October 5, 1981, this Nation bestowed honorary citizenship upon Raoul Wallenberg, the second person in history—after Winston Churchill—to be given this honor. But Raoul Wallenberg's works, which are now legendary, make him uniquely worthy of such a singular honor. In the darkest hour of mankind, in the Holocaust, he rose above the ignorance, the malice and the apathy to save, at great personal risk, 100,000 Hungarian Jews.

Keeping alive the name of Raoul Wallenberg and determining his fate have been a great preoccupation of mine in my 10 years in Congress. Along with the Raoul Wallenberg Committee of the United States, which is headquartered in my district, and on whose advisory board I have the privilege of serving, I have been involved in many measures to achieve those ends. Those measures include working for a stamp in honor of Raoul Wallenberg and the War Refugees Board, organizing a congressional tribute and exhibit on the 75th anniversary of his birth, and urging the administration to bring up the case of Raoul Wallenberg in every dealing this country has with the Soviets.

Recently, we were again given reason to hope that Mr. Wallenberg is still alive. In August of this year, the New York Times reported that several reliable Swedish sources claimed Wallenberg was seen alive as recently as December, 1986. As a result of this report, more than 80 Members of the House joined me and another New York colleague, Mr. ACKERMAN, in sending a letter to Mr. Gorbachev, asking for more information on Raoul Wallenberg.

Just this week, still another occurrence gives us optimism. As Andrei Gromyko was removed from the Presidency of his country, one more impediment to the truth of what happened to Raoul Wallenberg was removed. Mr. Gromyko was Deputy Foreign Minister in 1957 when a note, with his signature, was delivered to the Swedish Government stating that the "prisoner Wallenberg" died in his cell in 1947. It has been thought that so long as Gromyko was in the upper echelons of Soviet

Government, this proclamation could never be reversed.

The last paragraph of House Joint Resolution 220 states: "The President is requested to take all possible steps to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom." Now is the time for us all to redouble our efforts.

Mr. GILMAN. Mr. Speaker, I commend my good friend and colleague from New York, Mr. WEISS, for making this time available to pay tribute to Raoul Wallenberg.

There are a few men whose moral courage is so strong that the passing of time cannot dim the greatness of their deeds. Raoul Wallenberg is one of those men. In July, 1944, Raoul Wallenberg went to Hungary at the request of the Government of Sweden to organize rescue operations for Jews who were being persecuted by the Nazis. Continually putting his very life at risk, Raoul Wallenberg distributed Swedish passports by the thousands, provided supplies and medicine to residents of the ghettos and saved many Jews destined for the Nazi death camps.

We still do not know the fate of Raoul Wallenberg. In January 1945, he was taken into "protective custody" by the Soviet Union. Since then the Soviets have kept his whereabouts secret. There have been recent reports indicating that he is still alive. We have not forgotten Raoul Wallenberg and will continue to pray for the day when this great hero himself enjoys the freedom which he gained for so many.

On October 5, 1981, Raoul Wallenberg was declared an honorary citizen of the United States. So it is appropriate today that our nation pay tribute to a truly great statesman.

GENERAL LEAVE

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the subject of the special order today by the gentleman from New York [Mr. WEISS].

The SPEAKER pro tempore (Mr. HATCHER). Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE CHILEAN PLEBESCITE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska [Mr. BEREUTER] is recognized for 5 minutes.

Mr. BEREUTER. Mr. Speaker, today after over a decade and one-half of military rule, the Chilean people will go to the polls in a first step toward a return to democracy. This historic and important vote is not, however, a return to democratic elections in Chile. Instead, it is a plebescite to determine whether the military regime of Gen. Augusto Pinochet will continue to rule for another 8-year term accompanied by a popular elected Congress or whether Presidential elections will be convoked in 1 year. The plebescite, a fragile and flawed process prescribed by the 1980 Constitution, is apparently the best available vehicle toward the return to democracy.

The Pinochet regime's record leading up to the plebescite is very mixed to say the least. It is true that, despite governmental hurdles, an impressive 7.4 million out of a potential 8.2 million Chileans have registered to vote. The provisions of the 1980 constitution requiring the plebescite are apparently going to be met. In the year prior to the vote the Pinochet government has limited press freedom of the press and the news media generally, it has conducted a program of threats and intimidation against the opposition and the media, it has restricted political freedoms in part by declaring "a state of siege," and it has, in some instances, both practiced and condoned violence against those opposed to continued military rule.

The Pinochet regime does enjoy strong support among certain sectors of Chilean society including elements in the rural population and the entrepreneurial class. It is true that despite a dismal record of political restrictions and abuse, the ruling military junta has commendably opened the economy and implemented free market principles. The result, in contrast to most South American countries, has been a robust, dynamic export-oriented economy with government budget surpluses, foreign exchange surpluses, and a rapidly declining inflation rate. However, those results could also have been achieved under a Chilean democracy worthy of the name.

Some recent polls predict that the opposition—a coalition of 16 political parties—will carry the plebescite by a respectable margin, perhaps as much as 20 percent. Its success, if it comes, will be the expression of he overwhelming desire of the Chilean people to return to their democratic heritage despite the partisan diversity among the various noncommunist opposition parties. The opposition's campaign has been limited by lack of funds, lack of equitable access to the media, government restrictions on the media, restrictions on political gatherings, and a campaign of threats and intimidation against media representatives and opposition leaders.

Many observers believe that today's election will be open and fair. If election procedures are indeed followed, they seem to leave little room for fraud. All three registered opposition parties are entitled to have an observer at each polling station. A distinguished group of over 50 international observers will witness the plebescite. Indeed this Member was invited to be a part of that group as a parliamentarian, but the press of duties here in the hectic closing days of the 100th Congress prevented acceptance. Included in this group are respected former heads of state such as former President Adolfo Suarez of Spain, political leaders, and numerous election experts.

If the election is fairly conducted, as thus far expected, the real test will come once the results of the election are in.

The U.S. Government has maintained strong, steady, consistent encouragement to the military regime to implement the provisions of the Constitution and conduct a fraud-free election and fair electoral process. This U.S. policy has been supported equally and jointly by overwhelming bipartisan expressions by the Congress and the actions, views, and statements by the executive branch of the U.S. Government. That policy has been expressed clearly and has been applied without intention to unduly inflame reactions in Chile and without interjecting the United States as the issue in the plebescite. While our own democratic history and predilections obviously place out sympathies with the democratic opposition urging a "no" vote on the plebescite, our efforts and emphasis have been totally focused on supporting the efforts by the Chilean people who support democracy to see that constitutional provisions are carried out in an atmosphere of open, fair and democratic elections.

Even if today's election is transparent, fair, and absent of fraud, a period of political uncertainty and political volatility will follow the plebescite regardless of the outcome. During this period of uncertainty, it is imperative that all parties continue to adhere to the constitution and act responsibly.

Democrats in every nation of the hemisphere ask that the will of the Chilean people expressed at the plebescite must be respected and implemented. The transition must be peaceful and orderly—whether it is 8 more years of military rule accompanied by congressional elections in 1990 or be it Presidential elections to be held in 1 year. Violence, turmoil, and usurpation of power by any of the participating interests should and will be widely condemned by international opinion. The building of democratic institutions and processes requires responsible participants.

General Pinochet, the world is closely watching to see if Chile, like most of its Latin neighbors caught up in a wave of democratization, is ready to return, and will be permitted to return, to its long heritage of democracy.

AFRO-AMERICAN HERITAGE DAY IN PITTSBURGH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. COYNE] is recognized for 5 minutes.

Mr. COYNE. Mr. Speaker, October 22 will be a very special day in Pittsburgh. That will be the day of the 2d Annual Afro-American Heritage Day Parade.

Black parades in Pittsburgh are a venerable local tradition. Gladys C. Harper, the executive vice president of the Afro-American Heritage Parade Association, has newspaper accounts of black parades as far back as the 1870's.

Today, the Afro-American Heritage Day Parade—under the able leadership of Afro-American Heritage Parade Association president Harvey Adams, Jr.—keeps that tradition alive. It is special because it is the time when people of all races in my hometown come together to celebrate the history of Pittsburgh's black community, and the contribution that black people have made and continue to make to the country as a whole.

Black men and women have been making their mark in Pittsburgh for centuries. For example, we know that Charles Richards, a black man, owned and ran a tavern there in 1786, before the nation had its Constitution. And in the 1840's a black man named Martin Delany published a newspaper known as the Mystery.

The contribution that blacks have made to the Nation as a whole has been vast—and it is especially remarkable since for too much of our history, black people have been in circumstances where simple survival was a triumph.

The range of Afro-American accomplishment is as impressive as the quantity. We are all enriched by the poetry of Phillis Wheatley and Langston Hughes; the mathematics of Benjamin Banneker; the stirring oratory of Sojourner Truth and Frederick Douglass; the educational leadership of Booker T. Washington; the powerful social analysis of W.E.B. DuBois; the moving literature of Richard Wright, Langston Hughes, James Baldwin, and Toni Morrison; the scientific contributions of George Washington Carver; the music of Marian Anderson, Louis Armstrong, Jessye Norman, Duke Ellington, and Pittsburghers Billy Strayhorn and Billy Eckstine; the athletic prowess of Joe Louis and Hank Aaron; and the inspired labor and social organizing of A. Philip Randolph.

One of the greatest contributions has been made by the internationally respected leaders and the obscure foot-soldiers of the civil rights movement. If our era has any moral heroes, people like Martin Luther King, Jr., Roy Wilkins, Bayard Rustin, John Lewis, Thurgood Marshall, and their colleagues certainly qualify. But so does Rosa Parks, the woman in Montgomery, AL, who refused to move to the back of the bus in 1955.

Indeed, on Afro-American Heritage Day, we Pittsburghers will pay tribute not only to Frederick Douglass and James Baldwin and Dr. King. We will also honor Rosa Parks and the tens of thousands like her—those ordinary individuals who made some sacrifice or performed some act of courage that combined with 10,000 other sacrifices and acts of courage, and transformed this Nation.

Unfortunately, their work is not yet finished. There is still a lot to be done. On Afro-American Heritage Day, as we remember the dream of Martin Luther King, we will know that the United States is still short of its realization. And maybe that is where we find the most important message of October 22: That we can best honor the distinguished past of black America by teaching it to our children, but also by continuing the struggle for that day when all Americans, no matter what their color, are truly and fully equal.

On behalf of all Pittsburghers, I want to thank Harvey Adams, Jr., Gladys C. Harper, each of the other officers, board members, and volunteers of the association, and everyone who will be participating in the parade and publicizing it afterwards. Great quantities of time, energy, money, elbow grease, and vision go into a project like this. These individuals are making October 22 a special, memorable day.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 5 minutes.

[Mr. GINGRICH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

CHICAGO'S 1988 COLUMBUS DAY PARADE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, it was 496 years ago that Christopher Columbus discovered America, and on Monday, October 10, Chicagoans will celebrate this event with a gigantic parade through the city, sponsored by the Joint Civic Committee of Italian-Americans. The parade will not only pay tribute to the achievements of Christopher Columbus, but also the theme of this year's parade, the "Contributions of Italian-Americans to Commerce and Industry," will recognize the numerous and lasting contributions of Americans of Italian descent to the growth and advancement of business and commerce.

The guest of honor for this year's gala celebration will be the Honorable Richard F. Celeste, Governor of the State of Ohio. Other participants in this year's celebration will include Mayor Eugene Sawyer of the city of Chicago; Governor James R. Thompson of the State of Illinois; Congressman MARTY RUSSO; Dr. Leonardo Baroncelli, Consul General of Italy, and many other civic and political dignitaries, as well as myself.

Mr. Speaker, the President of the United States, the Honorable Ronald Reagan; the Governor of the State of Illinois, the Honorable James R. Thompson; and the mayor of the city of Chicago, the Honorable Eugene Sawyer, have issued proclamations commemorating the discovery of America by Columbus, and copies of these proclamations follow:

[A Proclamation by the President of the United States of America]

COLUMBUS DAY, 1988

We Americans proudly set aside time as a Nation each October to pay tribute to Christopher Columbus, whose voyage to the Americas in 1492 inaugurated communication between worlds old and new. Today, nearly 500 years after his epochal discoveries, Columbus remains for us a giant of exploration and of the human spirit—a man whose faith, vision, courage, and perseverance have won him an imperishable place in the history of America and the world.

The qualities Columbus exhibited so well have always made him a kindred soul to pioneering and individualistic Americans, who to this day confidently set sail in their own way toward far horizons in every area of achievement. Not for us the discouraging word, but rather the desire to do and to dare for a great good. Generations of Americans recall the lines of Joaquin Miller's poem, "Columbus": "'Now speak, brave Adm'r'l, speak and say'—He said: 'Sail on! sail on! and on!'" and its final lines, "He gained a world; he gave that world its grandest lesson: 'On! sail on!'" That was the spirit of Columbus, and it is the American spirit.

Today, our homage to Christopher Columbus includes recognition of the accomplishments of the many Italians who have followed him to America and of the achievements of their descendants. Columbus remains an inspiration for them and for all Americans, and a source of comity between the peoples of Italy and the United States.

The same is true for Americans of Spanish descent. Support by the Spanish monarchs Ferdinand and Isabella made the discoveries of Columbus possible and led to Spain's later cultural and economic contributions to the New World and the development of the heritage we share with our Spanish-speaking neighbors throughout the Western Hemisphere.

As we approach the 500th anniversary of the first voyage of Columbus to the New World in 1492, observances in his honor are growing in number and significance. The Christopher Columbus Quincentenary Jubilee Commission, a group of Americans assisted by representatives from Spain, Italy, and the Bahamas, has made recommendations for our Nation's celebration of the Quincentenary. The Commission is planning educational and commemorative programs that will take place across our land. We can all look forward to an appropriate, enjoyable, and truly memorable jubilee.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution approved April 30, 1934, (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

Now, therefore, I, Ronald Reagan, President of the United States of America, do hereby proclaim Monday, October 10, 1988, as Columbus Day. I invite the people of this Nation to observe that day with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

In witness whereof, I have hereunto set my hand this 3rd day of Oct., in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

RONALD REAGAN.

STATE OF ILLINOIS—PROCLAMATION

Whereas, every American knows what historic event occurred in 1492, for in that year, the history of the world took a dramatic leap. The voyage of Columbus, which spurred further exploration of the New World, is celebrated annually throughout the land; and

Whereas, Columbus and many other distinguished Italians have contributed to the growth of civilization. The Italian community is joined by Americans of every ethnic background in recognizing Columbus Day; and

Whereas, Italian-American residents in Illinois will be sponsoring their 32nd annual Columbus Day Parade to honor their native hero;

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim October 10, 1988, as Columbus Day in Illinois.

JAMES R. THOMPSON,
GOVERNOR.

CITY OF CHICAGO—PROCLAMATION

Whereas, the Joint Civic Committee of Italian-Americans (JCCIA), is sponsoring its annual Columbus Day Parade on October 10, 1988; and

Whereas, the courage and visionary wisdom displayed by Christopher Columbus in his intrepid voyage of discovery is exemplary of the Italian-American community; and

Whereas, those qualities of our Italian-American brothers and sisters are evident in the many contributions to the arts, politics, sports and socio-economic life of Chicago; and

Whereas, the Chicago Office of Fine Arts, Department of Cultural Affairs is presenting its annual Salute to Columbus "Under the Picasso" composed of an October concert series at the Daley Center as well as a multi-medium exhibit by Italian-American artists on October 3-14, 1988, to which the public is invited; and

Whereas, this year's parade honors Chicago's Italian-American Leaders of Commerce and Industry;

Now, therefore, I, Eugene Sawyer, Mayor of the City of Chicago, do hereby proclaim October 10, 1988, to be "Columbus Day in Chicago" and urge all citizens to be cognizant of the events held in connection with this historical observance in honor of the great navigator, Christopher Columbus.

Dated this 29th day of September, 1988.

EUGENE SAWYER,
MAYOR.

Mr. Speaker, the Columbus Day celebrations on Monday will begin at 9 a.m., with a concelebrated Mass at Our Lady of Pompeii Church. The principal celebrant will be Rev. Peter Sordi, provincial superior, Scalabrini Fathers. An introduction will be given by Theresa Petrone, the theme coordinator of the parade. Norman Boccio will serve as commentator, and the lectors will be Marion Ortale and Susan McFall. Ron Onesti will offer the prayer of the faithful, and the members of the offertory procession will include Rosemarie Sophia Andolino, who was chosen the Italian-American community queen; Mike Tassi, who will portray Christopher Columbus in this year's celebration; Marie Palello, secretary of the Joint Civic Committee of Italian Americans; and Ann Sorrentino, costume chairperson of the parade. The Italian Cultural Center Choir, under the direction of Leonora LiPuma, will provide music, and the organists will be Lawrence Salvador and Frank Pugno. Serving as ushers will be Nick Bianco, John DeBella, Anthony Lanzito, Mike Palello, and Lawrence Spallitta. The Fourth Degree Knights of Columbus will serve as the honor guard. Breakfast will be prepared and served following the Mass by the Mothers Club of Our Lady of Pompeii Church.

This year, the Columbus Statue in Arrigo Park, which has recently undergone repair and restoration, will be rededicated. Coordinating this event will be Thomas Baratta and Sam Garnello of the Order of the Sons of Italy in America, aided by the color guard of the Italian-American War Veterans. The invocation at the wreath laying and rededication ceremony will be given by Rev. Peter Sordi, and the host of this ceremony will be Anthony J. Fornelli. The posting of the colors will be under the direction of Joseph Leoni and Steve Mariani of the State of Illinois Italian-American War Veterans. Also participating in the dedication service will the the ladies auxiliary of the Italian American War Veterans with Ange Tufano, national auxiliary president.

Other individuals who are playing an important role in insuring the success of this year's parade include Lawrence Spallitta, chairman of float personnel; Marco DeStefano, chairman of the parade marshals; Norman Boccio, coordinating the finance and souvenir book; Rev. Lawrence Cozzi, C.S., and Rev. Leonard Mattei, cochairman of religious program and organization; Marie Palello and Ron Onesti, cochairpersons of floats; Dominic Di Frisco and Theresa Petrone, cochairpersons of program and arrangements; Fred Mazzei and Josephine Bianco, chairpersons of the queen contest; Ann Sorrentino, chairperson of authentic Italian Costumes; Anthony J. Fornelli, general chairman of the 1988 parade; Nello Ferrara, grand marshal; as well as the members who have served on these committees and the officers and trustees of the Joint Civic Committee of Italian Americans who have worked to make this year's parade an overwhelming success.

Each year one of the highlights of the Chicago Columbus Day celebration is the selection of the queen of the parade. This year, judged on her beauty, poise, and personality, Rosemarie Sophia Andolino of Elk Grove, IL, was chosen to reign as the Italian-American community queen. She received a $1,500 prize from the Joint Civic Committee of Italian-Americans and Festa Italiana—Amerital Unico.

The members of the queen's court include Linda Zec of Orland Park, IL; Sheri De Luca of Homewood, IL; Deanna Vitello of Streamwood, IL, and Lynette Ann Frederick of Oak Lawn, IL. Furs for the day for the queen and her court will be provided by the Associated Fur Industries of Chicagoland.

The chairman of the queen contest is Fred Mazzei and the cochairperson is Josephine Bianco. Judges for the contest include Joseph M. Caliendo, fur fashion designer and fur fashion show coordinator; Gil Cataldo, former executive director of the Illinois International Port and now with the firm of Kudrna & Associates; Michael Coli, president of Teamsters Local 727, president of Italo American National Union James E. Coli Chapter No. 15, and thoroughbred horse breeder; Barbara Dardanes, personnel consultant; Bernadette R. Dolce, certified travel consultant with Austin Travel; Dr. John Drammis, Jr., cosmetic plastic surgeon and director of the Cosmetic Surgery Center of Chicago; Rose Farina, manager of Daley Center Events for the city of Chicago's Department of Cultural Affairs, Chicago Office of Fine Arts; Marilyn Cusimano Fredericks, Italian Heritage Ball choreographer, program coordinator for Festa Italiana at Daley Center, and choreographer for the Italianettes Dance Troupe; Laura Spingola, president of Trade Resources Ltd.; Anthony Tolitano, president of National Shoe Products Inc., and Dr. Carl Tintari, cosmetic dentist and founder and director of the Midwest School of Facial Aesthetics.

The parade will be televised locally on WGN-TV in Chicago at 1 p.m., and this cable station has the capability of providing millions of people throughout the country the opportunity to watch this year's gala event. The sponsors for this year's parade include Joe Rizza of Rizza Ford, Dominick Di Matteo of Dominick's Finer Foods; Nello Ferrara of Ferrara Pan Candy Co.; Anthony Fornelli of Festa Italiana; Paul Butera of Butera Foods; Ron Turano of Turano Baking Co.; Alitalia Airlines; St. Paul Federal Bank for Savings; Sterling Dealer Group; True Value Hardware; and the Chicago Sun Times.

The Joint Civic Committee of Italian-Americans, comprised of more than 40 Italo-American civic organizations in the Chicagoland area, sponsors the Columbus Day Parade and other related activities. Many local groups cooperate with the Joint Civic Committee in this communitywide tribute to Columbus, and Robert Allegrini, the new executive director of the Joint Civic Committee with the help of Anthony Sorrentino, the former director, now consultant for the JCCIA, are working to coordinate the various activities of the parade.

The Columbus Day Parade and related festivities will conclude with a reception at the Como Inn Restaurant in Chicago, in honor of our guests, all officers, committee chairmen, and members who are participating in making the 1988 Columbus Day Parade a memorable event. Leaders of the Italo-American organizations from Illinois as well as officials from our State and city government will be in attendance at this reception.

Mr. Speaker, as the honorary parade chairman on this, the 19th celebration of Columbus Day as a national holiday, I am honored to participate in this grade parade. The members of the Joint Committee of Italian Americans are to be commended for their outstanding and dedicated work that goes into the planning of this event. Our community and our city are proud of these citizens and of the creative work they are successfully completing.

The officers and members of the 1988 Chicago Columbus Day Parade Committee are as follows:

LIST OF OFFICERS AND MEMBERS OF CHICAGO'S COLUMBUS DAY PARADE

COLUMBUS DAY PARADE COMMITTEE

Anthony J. Fornelli, Chairman.
Nello Ferrara, Grand Marshal.

HONORARY CHAIRMEN

Congressman Frank Annunzio.
Congressman Marty Russo.
Daniel C. Ligurotis.

JCCIA OFFICERS

Carl DeMoon, *President.*
Leonard Giampietro, *1st Vice President.*
Fred Mazzei, *2nd Vice President.*
Thomas C. Baratta, *3rd Vice President.*

John C. Porcelli, *4th Vice President.*

John Ciolfi, *5th Vice President.*

Emil Venuti, *Treasurer.*

Josephine L. Ortale, *Secretary.*

Lawrence Spallitta, *Sgt.-At-Arms.*

Anthony Sorrentino, *Consultant.*

Robert Allegrini, *Executive Director.*

Reverend Lawrence Cozzi, *Chaplain.*

BOARD OF TRUSTEES

Richard Parrillo, *Chairman.*

Congressman Frank Annunzio, *Vice Chairman.*

Thomas C. Baratta, Fred Bartoli, Anthony Bertuca, Victor Cacciatore, Jerry Campagna, Rep. Ralph Capparelli, Michael Cardilli, Gilbert Cataldo, Michael Coccia, James L. Coli, John Coli, Mike Coli, Hon. Jerry Cosentino.

Senator John D'Arco, Jr., Rep. James DeLeo, Pat DeLeo, Sen. Vince DeMuzio, Dominick DiMatteo, Marco Domico, Nello Ferrara, Anthony J. Fornelli, Anthony Fratto.

Fire Commissioner Louis Galante, Leonard Giampietro, Dr. James F. Greco, Ernie Kumerow, Joseph Lizzardo, Jr., Steve Lombardo, Charles LoVerde, Frank Mancari, Joseph Marchetti, Pat Marcy, Jr., Joseph Mazza, Michael R. Notaro.

Theresa Petrone, John C. Porcelli, Nunzio Raimondi, Ciro Rossini, Tom Roti, Dr. Salvatore Rotella, Dr. Mario O. Rubinelli, John Serpico, Dr. Raffaele Suriano, Anthony Terlato, Joseph Tolitano, Lester Trilla, Jerome N. Zurla.

EXECUTIVE COMMITTEE

Matthew Alagna, Jr., Tena Amico, Sam Andolino, Joseph Annunzio, Fred Bartoli, Alex Batnich, Larry Battisti, Norma Battisti, Josephine Bianco, Nick Bianco, Rudolph Bilotta, Shirlee Blacconeri, Norman Boccio.

Richard Caifano, Richard Caldarazzo, Dominic Candeloro, Enrico Caputo, Pasquale Caputo, Frank Paul Catrambone, Sam Cerniglia, Jack P. Cerone, Mike Coli, Louis DaPrato, Marie Davino.

John DeBella, Patrick DeMoon, Jr., Marco DeStefano, Alphonso DiBenedetto, Dominic DiFrisco, Ettore DiVito, Tony Falduto, Bernard Fio Rito, Camille Fotopoulas, Elena Frigoletti, Sam Garnello, Ronald J. Giordano, Dan Goduto.

Joseph LaCalamita, Leonora LiPuma, Anthony Lupo, Jerry Lonigro, Dr. Gregory Macaluso, Anthony Mandolini, Marino Mazzei, Susan McFall, Ron Onesti, Marion Ortale.

Michael Palello, Joseph Pantaleo, Pat Pavini, Molly Pavone, Theresa Petrone, Gino Pisani, Louis Rago, Fred Randazzo, Louis Ranieri, Joseph Rizza, Mike Rongo, Tom Roti.

Ann Sassetti, Phyllis Schoene, Fred Serpe, Jr., Dr. Joseph Sirchio, Ann Sorrentino, Mary Spallitta, Anthony Terlato, Anthony Tolitano, Ange Tufano, Renato Turano, Amedeo Yelmini.

WOMEN'S DIVISION OFFICERS

Marion Ortale, President.

Judy Guzaldo, 1st Vice President.

Carmella Tolitano, 2nd Vice President.

Rose Ortale, Treasurer.

Jo Anne Spata, Recording Secretary.

Marie Palello, Corresponding Secretary.

Marie Davino, Advisor.

WEST SUBURBAN WOMEN'S DIVISION OFFICERS

Susan Scribano McFall, President.

Elena Jo Frigoletti, 1st Vice President.

Charmaine Del Re Roth, 2nd Vice President.

Ida Coglianese, Treasurer.

Carol Pusateri Pederson, Recording Secretary.

Ann Sorrentino, Corresponding Secretary.

Tena Amico, Advisor.

YOUNG ADULT DIVISION OFFICERS

Ron Onesti, President.

Marissa Gargano, Vice President.

Richard Onesti, Treasurer.

Anna Glielmi, Recording Secretary.

Mary Jane Bellezzo, Secretary.

CHAPLAIN

Rev. Lawrence Cozzi, C.S.

THEME COORDINATOR

Theresa Petrone.

RELIGIOUS PROGRAM AND ORGANIZATIONS

Rev. Lawrence Cozzi, C.S., Chairman.

Rev. Leonard Mattei, Cochairman.

Rev. Armando Pierini, Advisor.

Nick Bianco, John DeBella, Michael Fortino, Mike Palello, Anthony Pope, Lawrence Spallitta.

AUTHENTIC ITALIAN COSTUMES

Ann Sorrentino, Chairperson.

Elena Frigoletti, Mary Spallitta.

FINANCE AND SOUVENIR BOOK

Norman Boccio, Angeline Annunzio.

LABOR COMMITTEE

Ernie Kumerow, James Coli, Robert LoVerde, Angelo Fosco, Daniel L. Ligurotis, Charles LoVerde.

Tony Judge, Chuck Spranzo, John Serpico, Bruno Caruso, Mike Coli, John Coli.

BANDS, MARCHERS, AND TRANSPORTATION

Marie Palello.

FLOATS

Marie Palello, Chairperson.

Ron Onesti, Cochairman.

PROGRAM AND ARRANGEMENTS

Dominic DiFrisco, Cochairman.

Theresa Petrone, Cochairperson.

Alderman William Banks.

Anthony Fornelli, James DeLeo, Charles C. Porcelli, Leonard Giampietro, Fred Serpe.

QUEEN CONTEST

Fred Mazzei, Chairman.

Josephine Bianco, Cochairperson.

Anita Louise Bianco, Marie Palello, Mike Palello, Josephine Ortale, Fred Serpe, Norman Boccio, Ron Onesti.

FLOAT PERSONNEL

Lawrence Spallitta, Chairman.

PARADE MARSHALS

Marco DeStefano, Chairman.

Larry Battisti, John DeBella, Nick Bianco, Pasquale Caputo, Ettore DiVito, Neil Francis.

Frank A. Lato, Mike Palello, Joseph Pantaleo, Louis Rago, Ron Onesti, Norman Boccio.

STAFF PHOTOGRAPHER

Sam Bruno.

COORDINATOR

Robert Allegrini, Anthony Sorrentino, Marie Palello.

OFFICE VOLUNTEERS

William Travers, Joan Piraino, Nancy Savino, Ann Sorrentino, Josephine Ortale.

Amadeo Yelmini, Lucille Brahill, Rose Ortale, Jo Ann Spata, Philomena Manno.

THE PROLIFERATION OF SPACE JUNK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, the successful launching of the space shuttle *Discovery* marks another successful step in our space program and the end of a very difficult period of time. Also it should bring to our mind and make sure that we are impressed with the importance of confronting a very, very troublesome and very dangerous problem that has arisen since the beginning of space travel.

Since man first began to explore space in the 1960's, we have been causing large numbers of manmade objects to come into orbit around the Earth. Today these are in excess of 5,000 manmade objects large enough to be tracked and hundreds of thousands of smaller objects orbiting the Earth. Some of these objects were intentionally sent into orbit. However, many of them have not been, smaller objects, infinitesimally small objects, a thousandth of a millimeter; a chip of paint traveling at a speed in excess of 23,000 miles per hour will penetrate any astronaut's spacesuit and will, in other instances, really provide a formidable threat to future space travel.

☐ 1945

What concerns me and many scientists is that the amount of space junk and other objects in space increases and as it does, the probability that these objects will collide with each other or with spacecraft, such as *Discovery* and its crew. The results of such a collision could be devastating. Objects in orbit are traveling at these tremendous speeds and velocity. The consequences of a spacecraft accident can be disastrous.

When the space shuttle *Challenger* returned to Earth in 1983 with a cracked windshield scientists determined that the windshield had been struck by a flake of paint. A larger object could have broken through. Because of the seriousness of this problem I have introduced House Joint Resolution 668, which merely would require NASA to develop and implement measures to reduce and control the amount of manmade materials in space that the United States is responsible for.

In addition, because this country is not the only one that is a source of space junk, this same legislation would require the United States to enter into discussions with other countries, including the Soviet Union, for the purposes of developing agreements to control and reduce space junk.

I urge my fellow Congressmen, my colleagues, to join me in this effort. I believe it is one that we should not sit around and wait until we have a disaster.

Mr. Speaker, I yield back the balance of my time.

TRIBUTE TO THE HONORABLE EDWARD P. BOLAND

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts, [Mr. Conte] is recognized for 60 minutes.

Mr. CONTE. Mr. Speaker, 11 years ago when my old pal, Tip O'Neill, was thinking about creating an intelligence oversight committee he knew the dangers involved. Our Nation's security could only be ensured if the committee's chairman was a man of great wisdom, a man of unwavering patriotism, and a man of unquestionable integrity. Tip O'Neill did decide to create the Intelligence Oversight Committee because he knew he had just the right man for the job.

He turned to the man we commemorate here today, Congressman Edward Patrick Boland from the Second Congressional District of Massachusetts.

It's been a great honor for me to serve alongside Eddie during the last 30 years in the Congress. I can say without hesitation that I've never known a more trustworthy and reasonable man than Eddie. He has anchored this institution to the fundamental virtues of good government and I am proud to have served with him in the House.

I am even more proud to have counted him as a good, good friend.

Eddie's life story is a very familiar one in Massachusetts politics. He's a first generation American—born to Irish immigrants. He was raised in Hungry Hill, a working class neighborhood in Springfield. He graduated from Boston College. He served in the State House. And he's a good Catholic. But Eddie didn't fit the mold, he helped cast the mold.

Eddie's accomplishments here in the Congress are remarkable. He has emerged as one of the most hard-working and responsible Members of the House Appropriations Committee. As chairman of the HUD-Independent Agencies Subcommittee during the last 17 years, Eddie has been confronted with the most challenging and difficult questions offered by any chairmanship in the Congress. He must balance national housing priorities with the growing space program.

He must balance this Nation's sacred commitment to its veterans with our commitment to the environment. And he must balance community development goals with hazardous waste management.

At a time of record budget deficits, Eddie has been put in an unenviable position. Yet, his accomplishments are many.

When millions of Americans watched the space shuttle *Discovery* go up last week and land this morning, they were watching the fruits of Eddie Boland's labor.

Eddie has guided the space program to new highs. And he has also provided guidance during the program's most profound lows.

And while he plans for our future in space, Eddie places a strong emphasis on the importance of this Nation's past as a member of the Smithsonian Institution's Board of Regents. During Eddie's tenure in the Congress he has witnessed the national sorrow over the death of one President and the scandal caused by the resignation of another. He served during the racial tensions of the sixties and during the war in Vietnam.

He has worked to implement the human needs programs of the Great Society and to nurture the economic growth of the eighties. Eddie Boland has a deep understanding and respect for the history of this great Nation and I'm delighted that he'll continue to serve with me at the Smithsonian.

Nowhere are Eddie's accomplishments more remarkable than in Springfield, MA. The city of Springfield records the legend of Eddie's 54 years of public service.

Thirty-six years ago when Eddie was elected to Congress, Springfield suffered economic depression, housing shortages, and a cityscape in disrepair. But Eddie worked with passion in the Congress. The respect and love he held for the people of the Second District inspired him to excellence. His dedication has paid breathtaking dividends for Springfield and he has turned that city into a monument visited by mayors and urban development officials from around the world. The city will forever remain a monument in Eddie's honor.

In fact, I can think of no better honor for Eddie, a man who prefers that this triumphs appear on the front pages while his name does not.

Eddie has been selfless in his work in the Congress. Last summer's Iran-Contra hearings are testament to that. Eddie worked long and hard as a member of the select committee and as the author of the statute in question.

Yet, Eddie didn't use the occasion for personal gain as he very well could have. He got the job done. His work here transcends personal ambition and that has earned him the respect of all.

Mr. Speaker, the people of Massachusetts and especially those from the Second Congressional District will miss Eddie Boland. He's been the "Dean of the Delegation." He's provided leadership at every level and excellence by every standard.

The people of the Second District have a relationship with their Representative in Congress that can never be duplicated. Eddie has provided jobs and prosperity. He has provided both moral and political leadership. He has found resolutions to problems big and small. He has served and protected the people of Massachusetts.

Mr. Speaker, I will miss Eddie here in the Congress. Eddie is much more than a colleague—we're like brothers. And like brothers, rivalries have developed over the years. Because we work so closely on a number of issues, we've worked equally hard to ensure that we're not confused. You don't have to be a careful observer to notice that we don't always use the same style to get things done. But as we all know, one brother doesn't like to be mistaken for another.

But also like brothers, I can't imagine working in the Congress without Eddie. I share a strong and silent bond with Eddie that I know can never be replaced. Through all the comings and goings of our lives, Eddie and I have always been there for each other. And I know that won't change with Eddie's retirement, but it's tough to see him leave the Congress.

It's going to be tough for all of us in the Massachusetts delegation.

Whenever we gathered to celebrate St. Patrick's Day, we knew we could always count on Eddie's beautiful voice to give the party some life. And it was Eddie that inspired me to take up singing—in fact, my family wants to talk to you about that.

Eddie doesn't slap your back to get a laugh. That's not Eddie's way. He's the kind of guy that earns your friendship. He'll work hard to bail a pal out of a jam. He'll go the extra mile to make sure he's prepared.

And probably more than anyone else in the Congress, Eddie's willing to not only share but surrender the limelight.

I'm glad we have this chance today to congratulate him on his retirement and to say goodbye.

Eddie, we'll miss you.

Your four children and your beautiful wife, Mary, are blessed with a father and husband of compassion, humor, and understanding, and I wish you the best in your years of retirement.

Congratulations are in order, Eddie. You've earned a place in history and a place in our hearts.

Thank you, Mr. Speaker.

Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. Moakley].

Mr. MOAKLEY. Mr. Speaker, I thank my friend from Massachusetts [Mr. Conte] for affording Members this opportunity to pay tribute to our esteemed colleague, the able gentleman from Massachusetts, Edward P. Boland.

Although we all delight in Eddie's decision to spend these years with his young children and charming wife, Mary, it is certainly sad to say farewell to one who has been the source of good friendship and wise counsel.

Eddie's retirement is particularly poignant for those of us in the Massachusetts delegation, since it represents, in many ways, the end of an era. Massachusetts is a State in which the folklore of politics runs very deep, and EDDIE BOLAND's 53-year career in elective office is the last living link between today's Massachusetts delegation and the memories—both revered and amusing—of the legendary figures of our State's modern history, including Speakers McCormack, Martin, and O'Neill.

EDDIE's career in public service began with his election to the Massachusetts House in 1934, a month after his 23d birthday. Shortly after Pearl Harbor, he joined the Army as a private, and rose to the rank of captain.

In 1952, he ran and was elected to the House of Representatives, arriving here with his old State House colleague, and fellow freshman, Tip O'Neill, and their two careers were to remain linked—during more than three decades of service—by common concerns and common friends.

In an odd irony of history, they both came to the Hall of the House on their first day in Congress, January 3, 1953, to take the oath of office under a new Massachusetts Speaker, Joe Martin, elevated to that office by the Republican victory in the election that brought them.

Throughout their careers here they were—and for the rest of the lives will remain—the best of friends. When they came to Congress in 1953 they discovered what a generation of Members after them would discover—that a Congressman's pay doesn't buy much in the way of housing in Washington.

Millie O'Neill remained in Cambridge to raise the children when Tip went to Washington. At the time, EDDIE was Congress' most eligible bachelor—a title he was to retain until the age of 61. Therefore, EDDIE and Tip decided to share an apartment.

Tip has described the two of them as the original "Odd Couple," although some visitors to the apartment claim that—unlike the play—neither of them cleaned. Indeed, Tip tells of a recess when they both went home and loaned the apartment to two ladies from EDDIE's district. When they came back, the noticed a strange smell that wouldn't go away. "We opened windows, sprayed the place with Lysol, and checked the refrigerator," O'Neill reported. Finally they opened the oven door and found a decomposed turkey that the ladies had cooked several weeks earlier.

"Now until this incident," O'Neill said, "we hadn't realized we even had an oven."

When the Democrats retook the House, at the beginning of their second term, Tip O'Neill went to the Rules Committee and EDDIE BOLAND went to the Appropriations Committee. Both men were ideally suited to the respective chores.

In his 34 years as a member of the Committee on Appropriations, EDDIE has been the very model of the kind of Member who has made that panel one of the most respected in the House.

As chairman of one of that panel's most prestigious and important subcommittees, EDDIE has built a reputation for fairness and restraint. More than once, I've discussed a pending project with the gentleman, only to exclaim, "EDDIE, you aren't going to have to write the check yourself."

But, of course, Mr. Speaker, we do have to write the check ourselves and so do our constituents. Throughout his service on the Appropriations Committee, EDDIE BOLAND has never lost sight of that. The vital and important programs he oversees include the Department of Housing and Urban Development, the National Aeronautics and Space Administration, and the Veterans' Administration.

He has attended to the needs of these programs with compassion—but he has never forgotten the shopkeepers, factory workers, and businessmen from Springfield who pay the bills.

Indeed EDDIE has displayed the same frugality in his private life. When the Watergate complex was being developed, a friend of theirs suggested that Tip and EDDIE should buy a unit. However, EDDIE decided the apartment was overpriced at $25,000.

Perhaps EDDIE will best be remembered in history as the first chairman of the House Intelligence Committee. By 1977, congressional oversight of foreign intelligence activities—or the lack of effective oversight—had come to disrepute.

As the commttee's first chairman, EDDIE BOLAND took on the serious tasks of restoring public confidence in intelligence activities, and in the ability of Congress to play a constructive role in oversight. This House and the Nation owe the gentleman from Massachusetts a deep debt of gratitude for the hard work and integrity he brought to that task.

Mr. Speaker, as the gentleman leaves us to return to Springfield—and begin his second career as America's oldest third base Little League coach—all of us join in wishing a dear friend much happiness, good health, and a long life. Above all, we wish his wife, Mary, and all the children—Martha Mary, Edward Patrick, Kathleen Mary and Michael James—the happy family life that EDDIE is retiring to devote himself to full-time.

□ 2000

Mr. CONTE. I yield to my good friend from Massachusetts, JOE EARLY, who has been very, very close to EDDIE BOLAND.

Mr. EARLY. I thank the gentleman for yielding.

Mr. Speaker, I would like to thank my friend, SIL CONTE for taking this special order.

There is no one that I could come to this microphone for and be more comfortable with than EDDIE BOLAND.

At the close of the 100th Congress, the people of the Commonwealth of Massachusetts, its Second Congressional District, and the Nation will lose a distinguished and dedicated public servant. For over half a century EDDIE BOLAND has had a distinguished career at the local, State, and Federal levels on behalf of the people. He has served with integrity, dedication, fairness, and energy. He has earned the respect and friendship of his colleagues on both sides of the aisle.

EDDIE BOLAND, in my opinion, is a very unique Congressman.

As we all know, EDDIE is a private person, a low keyed individual. He does not seek public attention and shuns the spotlight. Yet he has not been able to escape the limelight nor the attention of his colleagues. I would suggest to my dear friends that he has found himself in the limelight only because of his outstanding performance.

When I think of EDDIE BOLAND, and I often do, I think who he is most like. In my opinion, there is no one more similar than a former Member, the Speaker of this House, John McCormack, than EDDIE BOLAND. Both John McCormack and EDDIE BOLAND made everyone in public life very proud to be a politician. They are what we all should be. If one thinks about EDDIE BOLAND, about his style, it is so unique. I feel, and I think most of you know, EDDIE BOLAND has probably given out less press releases in his term in Congress than any of his predecessors. He does not even answer reporters when they call. EDDIE BOLAND is just dedicated to the people of this country. EDDIE BOLAND very seldom uses the pronouns I and me. And any one of the 435 Members in here are all embarrassed; how many times so many of us, myself included, it is I, me, I, me. EDDIE BOLAND never uses that. EDDIE BOLAND does more and takes less credit in my opinion than any Member of the U.S. Congress.

One only has to know EDDIE's style. Every Member, or many Members know EDDIE BOLAND. If you go to him for a request, and many of us have, before you conclude your request he says no. But he will listen, he will take it back to his staff, he will evaluate it. And if it is meritorious, he will do it. There will be no quid pro. EDDIE BOLAND will do it and that is the end of it.

Just like John McCormack, EDDIE BOLAND loves this institution. And when you love this institution the only way you can show it is by performance.

John McCormack, EDDIE BOLAND, they performed. The only thing important to them were the people of the United States.

EDDIE BOLAND, as I sum up, when you think of his priorities, they are almost identical to John McCormack's: His country, his church, his family, his State, especially his district.

Ladies and gentlemen, through you, Mr. Speaker, his love of country was not a rhetorical love. We hear that said often in here, but not expressed with action.

Think of EDDIE BOLAND, I do not care what end you want to go to, go to the environment. Fourteen years ago, the Environmental Protection Agency appropriations were shifted to his subcommittee. EDDIE BOLAND did not look for issues. He did not look except to get the best result for the United States of America.

Look what happened in this Congress: So many good environmental ideas are going to end up on the table because Members are looking for issues and not results. And I blame the environmentalists more than anyone that will not come to the middle, who will not make a compromise.

But EDDIE BOLAND, what he did for the environment is what we all should do. What he did with his Committee on Housing and Urban Development. EDDIE BOLAND looked for housing for the poor and the middle class. EDDIE BOLAND never used his committee for the developers and the money makers. The only thing he was concerned about were the poor and the underprivileged.

He was such a credit to this Congress with regard to housing and urban development.

Finally, with regard to country, SIL CONTE mentioned it, the Intelligence Committee. He was the first chairman. No one served with more dignity. EDDIE BOLAND would not leak one secret, he would not leak anything. You would think EDDIE BOLAND, when he was talking about intelligence, was a deaf mute. EDDIE BOLAND just cared about making that committee what it should have been. And he was a leader. He was someone for all of us to follow. When you look to church, ladies and gentlemen, we all talk about church; all EDDIE BOLAND did, and does, he attends often and he attends very privately. He does not go in that front door, he goes in the side door. He is what we all should be.

With regard to family, and I say to his wife Mary and their four children, he is everything a parent should be. The most important thing to EDDIE BOLAND of the specifics are his family. I am a parent of eight children. I would like my eight to have half of what EDDIE BOLAND does for his kids, because he does not do anything special. All he does is perform. All he does is come into the U.S. Congress and try to make people more comfortable. And when you think of State, in my opinion the most underrated Congressman in the State of Massachusetts is EDDIE BOLAND, because of his style and his privacy.

But you look around, he is very well known in the western part, in his own area, not known in the rest of the State. But look at Lowell, MA, go up to Lowell, MA and think of Tsongas and Shannon and now "CHET" ATKINS will get credit for doing what they are supposed to do for their district. But they did it through EDDIE BOLAND. That historical park up there is something EDDIE BOLAND can be proud of. Go to MOAKLEY's city of Boston, look at the tunnel, look at the artery, look at the moneys appropriated for the Boston Harbor; who was there to do it along with the people from that district, but BOLAND? Did he ever mention it to anyone? No one. EDDIE BOLAND was just what I would like to be. EDDIE BOLAND was what every Member of this U.S. Congress seeks to be.

You know, we use so many superlatives in here. If you say the best, you mean no one was ever better.

In my humble opinion, in my 14 years here the best Member of U.S. Congress that I ever served with was EDDIE BOLAND.

Thank you.

Mr. CONTE. Mr. Speaker, I thank the gentleman from Massachusetts, JOE EARLY and I yield to my good friend from Massachusetts, JOE KENNEDY.

Mr. KENNEDY. Mr. Speaker, first of all let me thank SIL CONTE for making this period of time available to pay tribute to a man who means a great deal to not only this Chamber but to many of us as a friend and as a person who has given his life to his country.

I'm honored this evening to take the floor to pay tribute to a man who has worked for over half a century to make life better for the people of Massachusetts.

In his service on the Appropriations Committee, EDDIE BOLAND has labored long to make sure that American tax dollars are spent efficiently and effectively. In my own work on the Housing Subcommittee, I have known what it's like to have a program scrutinized by the eagle eye of Chairman BOLAND. It's not a comfortable feeling, as I'm sure many of my colleagues can attest. I've seen his expertise and his knowledge of the details of every program in his jurisdiction.

Still more important, we all know of Chairman BOLAND's long and steadfast commitment to the section 202 program. As a freshman Congressman, I thought it would be useful to get nonprofit sponsors involved in building affordable housing projects. I found out that for over a decade, it was EDDIE BOLAND who championed the cause of nonprofits in the section 202 program. And as a result of his work with that program our elderly and handicapped citizens are better housed than they have ever been in the history of our Nation.

The people back home are the best witnesses to Chairman BOLAND's effectiveness as a legislator. Fifteen years ago, downtown Springfield was a declining urban center, but through EDDIE BOLAND's efforts, Springfield has secured the resources in UDAG's, HODAG's, and CDBG's to rebuild itself. Today it is a model of redevelopment and dynamic economic growth. Many people of that city know that it was EDDIE BOLAND who secured the financing for their homes, their schools, their post offices, athletic facilities, and their community centers.

Congressman BOLAND has earned his place in the history of this Nation through his long and often thankless service as chairman of the Intelligence Committee. As the author of the legendary Boland amendment, he laid the cornerstone for constructive United States policy in Central America. The fact that this administration chose to unleash an attack on that noble law does not take away from the significance of the Boland amendment. It stands for the principle of respect for the rights of other nations to control their own destinies, for the principle of respect for Congress and the Constitution, and for the principle of peace that is so dear to the American people.

There is an old saying, "If you are afraid to be lonely, don't try to be right." EDDIE BOLAND has known what it is to be the lonely advocate of a principle because he has had the courage to be right.

Yes; EDDIE BOLAND has made many of us squirm when he asks the tough questions about the merits of a favorite program before his committee. He has a reputation for evenhanded toughness when he's working with the taxpayers' money. But just as many of us can tell stories about EDDIE BOLAND giving freely of his own time and energy to help out someone in a jam. As one old comrade of EDDIE's told me earlier today, "He's never too busy to help out a friend."

EDDIE BOLAND served in Great and General Court of Massachusetts before he came to Congress. In a speech to that body, President Kennedy once said, "When at some future date, the high court of history sits in judgment on each of us, recording whether in our brief span of service we fulfilled our responsibilities to the State, our success or failure, in whatever office we hold, will be measured by the answers to four questions: First, were we truly men of courage; second, were we truly men of judgment; third, were we truly men of integrity; finally, were we truly men of dedication?

Eddie Boland took that challenge to heart. As I'm sure his old friend, President Kennedy, would say if he were here, the high court of history will surely acquit Eddie Boland as one of the finest public servants of our time, a man of deep religious beliefs, a man of scrupulous honesty, a man who bears the public trust with confidence and abiding commitment, a man of courage, of judgment, of integrity, and dedication.

My own family has felt the warmth of Eddie's friendship for many years. When Teddy was involved in a tough Senate primary in 1962, it was Eddie Boland whose speech and endorsement put him over the top. He was there for his old friend Jack Kennedy in 1960, and he was there for my father in 1968.

Many people here know Eddie Boland for his work in the Congress for the people of Massachusetts. For me, his name has always been one of mythical proportions. As a little boy, I can remember walking into our living room to see my father and my uncles planning strategies for winning elections or policy fights. Eddie Boland was always an integral part of the team. Through all of the good times and all of the sad times, Eddie has been someone that everyone in my family has been glad to call a friend.

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I wish Mary and her four children all the best because they will have a full-time father and husband.

Mr. CONTE. I thank the gentleman from Massachusetts [Mr. Kennedy] for those very kind, warm, and very touching remarks.

I yield to the gentleman from Tennessee [Mr. Quillen], my friend.

Mr. QUILLEN. Mr. Speaker, I want to commend the gentleman from Massachusetts [Mr. Conte] for calling this special order on the occasion of Eddie Boland's retirement from the Congress.

The distinguished dean of the Massachusetts congressional delegation, Congressman Edward P. Boland, is my friend, and I regret he will not be with us here in the House when the 101st Congress convenes in January of next year. At the same time, we all respect Congressman Boland's sense that this is the time to bring to an end his brilliant congressional career, and I want to wish Eddie and his lovely wife, Mary, many healthy and happy years ahead back home in Springfield.

Congressman Boland is one of the finest gentlemen it has been my privilege to know, and I can think of few, if any, Members of Congress who have discharged their duties and responsibilities with such professionalism and competence. I have had the honor to serve in the House with Congressman Boland since 1963, when I was a freshman and he was already a veteran beginning his sixth term. At that time, Congressman Boland was already an important leader of the House, a Member who was respected by all because of his capacity for hard work, his level-headed, commonsense approach toward reaching reasonable compromises, his genuine concern for those in need and his total integrity. Eddie Boland is a man you can talk to, work with, and the job will get done. You can absolutely rely on his word, without any exception. When Congressman Boland tells you he will do something, you can put it in the bank. He will do it, period.

Since 1963 down to this day, it has been a pleasure and an honor to serve with this distinguished gentleman from Massachusetts.

Congressman Boland is completing 36 years of service in the House and 34 years as a prominent and effective member of the House Committee on Appropriations. Since 1971, Congressman Boland has served as chairman of the Appropriations subcommittee on HUD-Independent agencies, and his stewardship of the subcommittee's areas of responsibilities has been without equal. In advancing his positions, there is no Member who surpasses Chairman Boland's command of the facts and history related to the bills he managed on the House floor. In managing those bills over the years, Chairman Boland was formidable, but was also without exception, courteous and fair with his opponents on the matters in dispute. He usually got his way on his bills, but he conducted himself always as a gentleman with courtesy to those on the other side and with respect for their views.

Over the years, Chairman Boland fought for adequate public housing and the enhancement of a number of programs administered by the Department of Housing and Urban Development which benefit those most in need of Government assistance in obtaining affordable housing. Likewise, we looked after the funding requirements of so many important independent agencies such as the National Aeronautics and Space Administration, the Environmental Protection Agency, the National Science Foundation, the Consumer Product Safety Commission, the Federal Emergency Management Agency, and so many others.

Setting spending priorities and providing funding for the operations of the Veteran's Administration is one of the responsibilities of Chairman Boland's subcommittee. The veterans of this country have many friends and champions in his House, and with the veterans is where I stand. But I want to state that our veterans have no greater friend and no greater champion in this House than Eddie Boland.

For 18 years, Chairman Boland has brought his appropriations bills forward from his subcommittee with as much money for the benefit of our veterans as the budget would or could permit. He has been solid as granite in his commitment to our veterans and has fought for their benefits and medical construction projects throughout the country. In my own congressional district, the list of veterans' Administration medical care facilities built or under construction is longer than my arm. Each and every one of them was absolutely needed by the veterans in my part of the country. The benefits these projects have been to my veterans are incalculable. The quality of the health care they are receiving is improving substantially and will continue to increase because of these projects funded by Chairman Boland's bills.

Mr. Speaker, his efforts helped in the construction of a medical school in my district, and today it bears my name, and without his help that medical school would not have been.

We worked together on all of these projects. Let the record show that without Chairman Boland's active support for each and every one of these VA construction projects and his willingness to stand shoulder to shoulder with me, success would probably not have been achieved. Eddie, I want you to know that I thank you from the bottom of my heart for the helping hand you have extended to me time and time again on behalf of the veterans in my part of the country. You have stood with me for the benefit of the veterans. We all owe you a debt of gratitude which can never be repaid because without you, Eddie, it would not have all been accomplished.

Besides his superb tenure as chairman of the HUD-Independent Agencies Subcommittee, Congressman Boland was picked by Speaker O'Neill to be the first chairman of the House Intelligence Committee when it was established in August 1977. Congressman Boland served as chairman until January 1985, and the standards he established for the conduct of the affairs for this committee should serve as a model for the future. Whether Chairman Boland was in agreement with the foreign policy objectives and intelligence operations of the Carter administration or the Reagan administration, he conducted the affairs of the Intelligence Committee with due regard for the security of the secrets of the United States and with the goal of enhancing administration-congressional cooperation and consultation in intelligence matters. When Chairman Boland disagreed with the administration, he fought it out fair and square, as in the case of national policy in Central America. Always, however, he was careful to advance his views in a manner which would not jeopardize the spirit of good-faith cooperation and consultation between the Congress and the administration. And this spirit of good faith is essential if such cooperation and consultation is to continue into the future. In my view, Chairman BOLAND showed us the way, and for this he deserves our commendation.

So, as EDDIE BOLAND approaches the end of his truly distinguished 36-year congressional career, I just want to say that I am one of his colleagues, and from the other side of the aisle, who comes forward to praise him for a job well done and to thank him for his help and friendship over the many years.

You're a great one, EDDIE, and to you and your lovely wife, Mary, and your four children, I wish all the best and health and happiness in the many years which lie ahead.

Good luck, old friend, it's a privilege to know you.

And for the benefit of the Members who might not know, EDDIE BOLAND and his wife and my wife share a common wedding anniversary date. We were both married on August 9, 1952, and I remember a happy reunion in Russia when we were traveling with Speaker Albert on an official trip. We sat down at a reception on August 9, and then realizing it was our wedding anniversary, we had a party, and EDDIE BOLAND sang. Oh, what a voice. So, we enjoyed it, and so I salute the gentleman from Massachusetts [Mr. BOLAND]. We wish him the best.

Mr. CONTE. Mr. Speaker, I thank the gentleman from Tennessee [Mr. QUILLEN].

I yield to the gentleman from Ohio [Mr. REGULA], my good friend.

Mr. REGULA. Mr. Speaker, EDDIE BOLAND is a Member's Member.

Mr. Speaker, for 14 years I have served with EDDIE BOLAND as a colleague on the Appropriations Committee.

When confronted with difficult issues the leadership and the Members turn to Congressman BOLAND for wise counsel.

EDDIE BOLAND has the courage of his convictions. His votes reflect a dedication to principle rather than partisan politics.

As chairman of the HUD and Independent Agencies Appropriations Subcommittee, EDDIE has been a tireless champion for the National Science Foundation, Veterans, Housing, Space, and Environmental programs.

While the Appropriations Committee traditionally operates in a bipartisan manner, EDDIE took this spirit a step further treating all his collegues equally.

It is said we leave behind a bit of ourselves wherever we have been. EDDIE BOLAND'S case we can only hope that maxim holds true.

His leadership and experience will be sorely missed. Those of us who knew him well and worked closely with him are richer for the experience. Congress, the Nation and the Second District of Massachusetts have benefited greatly from his 36 years of dedicated service.

His stewardship of responsibility as a member of the committee for the House gym has been marked by his fairness and his concern for all Members that enjoy this facility.

There is an oft-repeated adage: "Leave them while you're looking good." EDDIE, you've never looked better. I bid you a fond farewell. I will miss your guidance and leadership, but I will always value our friendship.

Mr. CONTE. Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. DONNELLY], my good friend.

Mr. DONNELLY. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. CONTE], and I applaud him for taking out this special order to honor EDDIE BOLAND.

How do you sum up 53 years of public service, 36 years in this institution? The words are "traditional," "dedicated," "honest," "conviction," and they all sum up a little bit about EDDIE BOLAND, the son of an Irish immigrant.

I mean in those 53 years he has seen America prosper and grow, but his service has helped America to prosper and grow. I do not know of any individual in this institution that has more respect for his peers than EDDIE BOLAND does. And although he is probably not known all over America, he is known here.

Mr. Speaker, the gentleman from Massachusetts [Mr. BOLAND] is known by the people that work with him, and I think there is no greater compliment that any individual can get than to have the respect of their peers because we know the type of work that he has done in his very quiet and effective way as he did in the area of housing. Millions of Americans are living in decent, affordable, clean housing because of the efforts, the quiet efforts, of EDDIE BOLAND.

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All of America lives in a better environment and our children will live in a better environment because of ED BOLAND'S efforts here in the House.

America reached for the stars and landed on the Moon, sought out the planets at the end of the universe because of the efforts of and many times unknown efforts of ED BOLAND.

Probably his finest hour and what gave him the most national recognition was during his stewardship with the creation of the Intelligence Committee and his remarkable stewardship as chairman of that committee. He proved to America that this institution could deal in an effective equal way with the Executive in dealing with intelligence matters, that we had a role, that we could keep a secret, that we had good advice to give.

Presidents, whether they be Democrat or Republican, have sought ED'S counsel and advice.

My State will take a special loss when ED BOLAND retires at the end of this year, but I think the Nation also takes a loss when ED BOLAND goes; but the people that gain will be Mary and those four beautiful children, because the time he spent here helping others is the time that they sacrificed their husband and their dad for the best interests of this country.

I say that this institution honors itself by honoring a person like ED BOLAND. If there were more ED BOLAND'S among us and maybe if we were all a little more like him, I think this would be a better place and America would be a better country to live in.

I just thank my distinguished colleague and friend who has served side by side with ED for taking out this time so that we could all in some way have a chance in a very small amount of time to verbalize our feelings about what is really a unique individual.

I wish the best of health to ED in his retirement years. I know that everybody in this institution knows that those kids are going to see a little more of somebody that they should have seen a little bit more of in the course of the last 10 or 15 years.

We thank you, EDDIE, and we are privileged to have served with you. We will remember that service and we will be better Members of Congress because of it.

Mr. CONTE. Mr. Speaker, I thank the gentleman for those beautiful remarks.

Mr. Speaker, I yield to the gentleman from New York [Mr. GREEN].

Mr. GREEN. Mr. Speaker, I owe a twofold thanks to the gentleman from Massachusetts, SIL CONTE, the dean of the Massachusetts delegation and the ranking minority member on the Appropriations Committee, first for yielding this time to me this evening on this special order, but second for giving me the opportunity to spend 8 years in very close relationship with ED BOLAND, because when by colleagues in the Republican Committee on Committees were good enough to move me on to the Appropriations Committee in 1981, it was you, SIL, who were good enough and had enough faith in me to make me ranking Republican on the HUD and Independent Agencies Appropriations Subcommittee. So I have literally enjoyed 8 years working very closely with EDDIE BOLAND, who we honor tonight by this special order.

As those who serve on the Appropriations Committee and maybe other Members of this House know, and as has been said earlier this evening, we do on the Appropriations Committee try to work out our differences within our subcommittees and within the full committee. As a result, the relationship between a chairman of a subcommittee and a ranking minority member when that process is working right and when we can bridge the differences between us is a very, very close process indeed. As a result, I have had 8 years of working very, very closely with ED BOLAND.

Others have told us of his long and distinguished career in Congress and of his work on the full Appropriations Committee and of his work on the Select Committee on Intelligence.

I would like to focus my remarks on the work of the Appropriations Subcommittee on Housing and Urban Development and Independent Agencies. That is a subcommittee with a very complicated workload. We cover the Department of Housing and Urban Development, the Veterans' Administration, the Space Program, the Environmental Protection Agency, the National Science Foundation and over a dozen smaller agencies, at least in dollar amount, though perhaps not in importance to those on whose work their activities impinge. The financing systems of those various agencies are quite complicated in many cases, particularly HUD, where the long-term nature of the programs, the fact that you are dealing with loan guarantees, mortgage insurance, annual contract authority extending out 40 years and a host of different financing devices leaves you with a very, very complicated financial situation with which to deal each year. The policy considerations of the various agencies are most heterogeneous, very diverse, and yet through it all EDDIE BOLAND as the master of every detail in every one of these agencies with all their complicated finances and with all their policy considerations.

It was really a great lesson to me as a junior Member of Congress when I came on to the Appropriations Committee to see the mastery that EDDIE BOLAND had of all these agencies and all their problems.

I knew one of them. I had been a regional administrator of HUD and so I knew a little bit about where the bodies were buried there. EDDIE knew where the bodies were buried in all of them, and it was a wonderful thing to see him running that subcommittee, but he always ran it in a way even though he knew where the bodies were buried, he had a great deal of respect for the people, even though in my years they were of the opposite political party from him, who were running those agencies. He really did not use his position to try to take advantage of them or to make political capital out of it. He viewed his role as one to try to see that the agency functioned properly, that they did not take political advantage on our side, but he never tried to micromanage those agencies to take political advantage on his side.

That is not to say he did not fight for what he believed in. Certainly there would not still be a public housing production program in this country if EDDIE BOLAND had not believed in public housing. I do not think there would have been a section 202 program for the elderly and the handicapped in housing if EDDIE BOLAND had not deeply believed in that program for nonprofit agencies.

He saw a couple other agencies in our subcommittee through very difficult times, the Environmental Protection Agency, NASA. Both of those have had some great tragedies over these last 8 years that I have been working with EDDIE.

While certainly he was prepared to expose the problems and see that they were not ignored, at the same time he always approached them with a view toward trying to see how those problems could be corrected as quickly as possible and how those agencies could go about their mission, rather than trying to take partisan advantage, as he easily could have.

So as we gather here this evening with your leadership, SIL, to pay honor to EDDIE BOLAND, I just want to join all my colleagues who are doing that. He is a very remarkable man. He has provided very remarkable leadership to the HUD and Independent Agencies Appropriations Subcommittee.

I know we shall all miss him, but I certainly hope that he will continue to be available, if only at the end of a phone line, to provide us with his wise counsel in the years ahead.

Mr. CONTE. Mr. Speaker, I want to thank the gentleman from New York for his fine comments.

Mr. Speaker, I yield to my dear and beloved friend, the gentleman from Ohio [Mr. STOKES].

Mr. STOKES. Mr. Speaker, I would like to thank my distinguished colleague, the gentleman from Massachusetts [Mr. CONTE], for reserving this time to pay tribute to our good friend, ED BOLAND, who is retiring after serving 36 years in the House of Representatives.

It has been an honor and a pleasure to work with ED BOLAND over the last 20 years. For most of these years I have had the good fortune of working with ED BOLAND on a variety of issues critical to our Nation's development and future. Beginning in 1971, we served together on the full Committee on Appropriations. Since that time, Mr. BOLAND has served as chairman of the Appropriations Subcommittee for the Department of Housing and Urban Development and the Independent Agencies. I became a member of that subcommittee in 1975.

As chairman of the HUD-Independent Agencies Subcommittee, ED BOLAND has played a leading role in the maintenance and enhancement of crucial domestic programs. Much of the progress our Nation has made in the areas of housing, space, science, environment, consumer protection, and veterans affairs is directly attributable to the relentless and insightful leadership of ED BOLAND.

During his tenure, Chairman BOLAND has had to make unpopular and tough decisions. Just this year, as Congress has wrestled with a ballooning budget deficit, the leadership provided by ED BOLAND reflects and epitomizes the fairness and skill the chairman has displayed during his 18-year service on the subcommittee. Thanks to his efforts, not only were we able to maintain vitally needed housing and space programs, but the HUD appropriations bill for fiscal year 1989 was one of the first to be passed by the Congress and signed into law by the President.

In addition to working with him on the HUD Subcommittee, I also worked with ED BOLAND on the Select Permanent Committee on Intelligence and the Iran-Contra investigation. His efforts and achievements as chairman of the Intelligence Committee will long be remembered. Not only has he gained worldwide recognition for the Boland amendment and his efforts to limit the unauthorized and illegal use of government funds in Nicaragua, but as the first chairman to serve on the Intelligence Committee, he is in many ways the architect of policies which will protect our national security for years to come.

Mr. Speaker, ED BOLAND's tenure in Congress is marked with distinction and has left an indelible impression on this body and this country. I wish him continued success upon his retirement from the House of Representatives. He is truly a gentleman and a colleague whom I deem it a great honor to have served with.

Mr. CONTE. Mr. Speaker, I thank my good friend, the gentleman from Ohio.

Mr. Speaker, I yield to my good friend, the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I am pleased to rise to join my colleagues to pay tribute to the distinguished dean of the Massachusetts delegation, Congressman EDDIE BOLAND. I join in commending the gentleman from Massachusetts [Mr. CONTE] for taking this time this evening to celebrate the career of our distinguished colleague who will be leaving the House of Representatives after 36 years of exemplary service.

The Second Congressional District of Massachusetts is fortunate to have been honored by the representation of EDDIE BOLAND for more than three-and-a-half decades. He has served his Nation and constituents with diligence and devotion and has demonstrated the quality of leadership which will be sorely missed upon his departure from the Congress at the end of this session.

Congressman BOLAND will perhaps be best remembered for his outstanding service from 1977 to January of 1985 as chairman of the Intelligence Committee and has a leading member of the Select Committee to Investigate Covert Arms Transactions with Iran. Representative BOLAND has demonstrated his wisdom, his determination, and steadfast leadership as chairman of HUD-Independent Agencies Appropriations Subcommittee in the quest to seek adequate resources to continue our campaign against homelessness, the housing shortage, and so many other domestic priorities. EDDIE BOLAND is a quiet man whose determination has served him well in his persistent efforts to represent the views of his constituents.

Mr. Speaker, I am pleased to join our colleagues saluting Congressman EDDIE BOLAND for his exemplary service to his constituents and to our Nation during his tenure in Congress. As he leaves us and moves on to new frontiers we wish EDDIE BOLAND good health and happiness in a well deserved retirement.

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Mr. CONTE. Mr. Speaker, I yield to a very valuable member of the Committee on Appropriations, the gentleman from Ohio [Mr. MILLER], my dear, beloved friend.

Mr. MILLER of Ohio. Mr. Speaker, it is my pleasure and honor to join with House colleagues today in paying tribute to the 36 years of service to this Nation by EDWARD BOLAND of Massachusetts.

I have served with ED for a number of years on the House Appropriations Committee, and I can testify firsthand about his dedication to the principles of fair play. On many occasions, I witnessed his effective leadership skills as we debated legislation that would have a far reaching impact on this Nation and our policies. He never placed the considerations of politics above the necessities of good government—one that responded to the need of every citizen, not just a few.

ED BOLAND will be missed by this House, in general, and by the Appropriations Committee, in particular.

As ED leaves us, and enters retirement, I want to extend my personal thanks for his years of service and for being the kind of friend and colleague we all cherish.

Mr. CONTE. Mr. Speaker, I yield very quickly to my good friend, the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Speaker, I will make this very quick.

I have listened to the tribute to EDDIE BOLAND and his activities over the last many, many years in Congress long before I came here. I am a guy who disagrees quite strongly with EDDIE BOLAND on foreign policy and have disagreed with his amendments, and, yet, when I came before his committee and his chairmanship seeking a solution to the environmental problems that attend the Mexican-California border, EDDIE BOLAND treated me fairly.

He is quite a leader, and I think that the way he comports himself in his leadership role in Congress, at least as long as I have seen him, has been a real model.

Mr. FORD of Michigan. Mr. Speaker, I rise to join my associates in paying tribute to our colleague EDWARD P. BOLAND, whose style and dedication we would all do well to imitate.

Recently former Speaker Tip O'Neill was asked to remark on EDDIE's announced retirement. Said Tip:

"EDDIE's been my close personal friend for over 50 years. We served in Congress together for 34 years. He's one of the most beautiful, talented, able guys you'd ever want to know. By any measure you'd use, he's a beautiful guy."

I really think that this is the way he is regarded by most of us—on both sides of the aisle.

We all know that during the 36 years EDDIE has represented the Second District of Massachusetts he has piled achievement upon achievement. But you never hear about them from EDDIE. He's as tight-lipped about his own accomplishments as anyone I have ever known. Look at his Congressional Directory biography. It is a scant two short sentences long—with the barest of facts. That's just the way EDDIE is.

He doesn't tell us that he was President John F. Kennedy's point man in the House for the new U.S. Space Program to send a man to the Moon.

Nor does it talk about the role he played in helping to rebuild the reputation of the Central Intelligence Agency after the debacles of Watergate and the war in Vietnam.

The people of the Second District have been fortunate to have EDDIE BOLAND. So were we.

Mr. LOWERY of California. Mr. Speaker, it has been my pleasure to have served on the Appropriations Committee with a congressional veteran of the stature of Representative EDWARD P. BOLAND of Massachusetts.

I have come to value his friendship, have learned from his example, and respect his knowledge and grasp of the issues.

Although we sit on opposite sides of the aisle. I heartily agree with something once said by Mr. BOLAND's good and close friend, former Speaker of the House Thomas P. (Tip) O'Neill:

> * * * but no matter what we agreed on, or disagreed on, we each understood that the other was speaking from his heart, with dedication to a set of principles the other may not share, but with love of country that we both held dear. (Oct. 17, 1986).

I want to wish you and your family the very best of the future along with the enjoyment of accumulated honors of the past. The House of Representatives will be the less for your absence, and I will miss an Irish compatriot.

Mr. FAZIO. Mr. Speaker, it is indeed a pleasure to participate in this special order to commemorate the 36 years of service to the House by my dear friend and colleague Congressman EDDIE BOLAND.

One of the great privileges and honors of sitting on the Appropriations Committee is that I have had the opportunity to serve with Representative BOLAND. As the ranking member of the committee and chairman of the Appropriations Subcommittee on HUD-Independent Agencies, Representative BOLAND has been one of the true pillars of wisdom and strength in our committee.

He has been a model to us all, carrying out his responsibilities with a great deal of dedication, integrity, and fairness.

It is particularly appropriate that we recognize his great contributions to this body and the Nation this week, the week which marks the United States' successful return to space with the safe landing of the crew of the *Discovery* shuttle mission. As chairman of the subcommittee which controls the purse strings for NASA, Congressman BOLAND has been instrumental in getting America back into space and throughout his career he has been a staunch proponent of a balanced and competitive space program.

Congressman BOLAND has always been a Member who his colleagues have called upon to represent their interests on sensitive issues. For example, his colleagues selected him to serve as the first chairman of the House Permanent Select Committee on Intelligence from 1977 to 1984. In this capacity, Congressman BOLAND was chiefly responsible for defining the role of Congress in overseeing the Central Intelligence Agency and the Nation's other intelligence-gathering agencies.

In his capacity as chairman, Representative BOLAND also authored the various amendments which prohibited or limited to humanitarian purposes U.S. aid to the Contras.

Congressman BOLAND was also called upon to serve on the committee charged with investigating the Iran-Contra affair. Once again, he served with great distinction.

Mr. Speaker, I know I speak for all Members in saying that we will greatly miss Congressman BOLAND, particularly his friendship and the guidance and wisdom from which we have each benefited and which have contributed so significantly to the bettering of this great institution.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise with great enthusiasm to pay tribute to one of the great Members of the House and one of my best personal friends, the type of man for whom the name "gentleman" should be reserved—EDWARD P. BOLAND, of Massachusetts.

EDDIE BOLAND'S record of service to his constituents, his State, and our Nation is one which will be held up as a model for the next generation of leaders.

As a founding member and first chairman of the House Permanent Select Committee on Intelligence, EDDIE distinguished himself and brought great prestige to the House of Representatives. Through his strong and effective leadership, he showed the importance of linking our intelligence policies and activities to the people, through their elected representatives. And he did it in a way which promoted bipartisan cooperation and unassailable security—much to the disappointment of those who predicted it couldn't be done.

His remarkable service on the House Committee on Appropriations have put him at the very center of some of the toughest and most important issues of the last two decades. We, and all the people of this country have been lucky enough to have the right man in the right place at the right time.

In housing appropriations, EDDIE BOLAND has kept alive the idea that the Federal Government plays an essential role in helping people meet their basic need for shelter. While others were laying the problem off on State and local officials, or pretending it did not exist, EDDIE BOLAND was keeping alive housing programs which would otherwise have fallen by the wayside—especially for the elderly and the handicapped.

We are entering a new era of recognition that people without homes, and families living in terribly overcrowed conditions, are our problem. We can thank EDDIE BOLAND that this challenge is not worse than it is. In Chicago alone, there are thousands of families who have no idea where they would be living now if EDDIE BOLAND has not gone out of his way, fought the good fight, and prevailed. His example will inspire many as housing returns to the center of the national consciousness.

Chairman BOLAND also ranks as one of our greatest environmentalists. His role in funding the Clean Water Act and the Clean Air Act has helped launch America's overdue drive to reclaim and preserve our natural resources for our children, our grandchildren, and all generations to come.

Are you keeping track of the number of people who owe their brighter future to EDDIE BOLAND? Don't bother—they are countless.

And speaking of the future, let's not forget that EDDIE BOLAND has been central to the space program—first its birth and nurturing, and now its restoration to health. Invigorated by his friend Jack Kennedy's vision, EDDIE has been at the heart of the drive to fund every memorable moment in the history of NASA since the moon landing.

When heads were hanging and the spotlight was off after the *Challenger* tragedy, it was EDDIE BOLAND who worked the long, thankless hours in implementing the recommendations of the Rogers Commission. Without his study, support, and leadership, it is likely that America would not be so gloriously back in space today. Again, this generation, and the next one, and all after that can thank the gentleman from Massachusetts.

On top of all this, he is one terrific fellow. I guess I first came to know EDDIE in his role with the JFK campaign in 1960, but we really became friends in the company of his Washington roommate of 25 years, the Honorable Tip O'Neill. Over the years, we must have eaten hundreds of meals together, and we have traveled widely. It has all been immensely enjoyable, and I'm going to miss it just as greatly.

I have done my best to follow in EDDIE'S footsteps, even to the point of moving into his suite of offices on the first floor of the Rayburn Building when he moved upstairs. I also hope that I look as good as he does when I retire. Personally, I think he looks like he can still do the 100 in 10 seconds.

My best wishes go with EDDIE BOLAND. This adviser to Presidents, superb legislator, warm friend, and inspiration to many deserves his rest with his lovely wife Mary and their children. It has been a pleasure working with the gentleman from Massachusetts and I look forward to his advice as we try to carry on without him.

Mr. BROOKS. Mr. Speaker, I know the people of Massachusetts' Second Congressional District are proud of the record of service Congressman EDWARD P. BOLAND established since entering Congress in 1953. It has been my privilege to serve with Congressman BOLAND for the past 36 years. His record in Congress has set a high standard for those who seek to fill the role of leadership for his Springfield constituency.

He has been a strong advocate and has left an indelible mark in the House of Representatives.

The people of his district have always known that they have a friend here in Washington with whom they can work on many projects of vital importance to the State of Massachusetts.

He has been a hard-working capable member of the outstanding Massachusetts legislative delegation and he has demonstrated time and again a spirit of independence and determination to pursue goals important to his constituency. His presence in Congress will be greatly missed by all of us, but his contributions will continue to benefit people all across the Nation.

I know him as a friend and I hope that he will continue to offer his advice and help to those of us he leaves behind.

Thank you.

Mr. HORTON. Mr. Speaker, I rise today to pay tribute to one of the most honorable men ever to have served in this body. I have known and respected ED BOLAND since I came to the House of Representatives 26 years ago. ED has done an outstanding job of representing the Second District of Massachusetts since first being elected in 1953. On several occasions, he received 100 percent of the votes cast in his reelection bids.

ED has served with distinction as chairman of the Appropriations Subcommittee on HUD and independent agencies. In an era where continuing resolutions are the rule rather than the exception, Chairman BOLAND has led his committee in a bipartisan spirit to arrive frequently at mutually acceptable levels of funding.

In 1977, ED BOLAND was chosen to chair the important Select Committee on Intelligence. ED has always shunned the spotlight and heading up this controversial committee was a difficult task. Nonetheless, Chairman BOLAND was an effective leader and worked tenaciously at keeping the committee working in a bipartisan and productive nature on important national security issues.

It is somewhat ironic that, after going out of his way to avoid publicity and controversy, ED BOLAND'S name was lent to one of the most controversial pieces of legislation of the last decade. The so-called Boland amendment prohibits the CIA from supporting guerrilla forces seeking to overthrow the Government of Nicaragua. To this day, the House of Representatives has periodic debates on whether to continue under the terms of the Boland amendment. No matter how heated the debate, there is one matter that Members on both sides of the issue agree, and that is in their great respect for the gentleman from Massachusetts.

We in Congress will miss Chairman BOLAND. On behalf of my wife, Nancy, and myself I would like to wish ED and his wife, Mary, a very long and happy retirement.

Mr. SHULZE. Mr. Speaker, I rise to pay tribute to my colleague, ED BOLAND of Massachusetts, on the occasion of his impending retirement. He will be sorely missed by those in Congress who have had the opportunity of knowing, and working with, this accomplished statesman.

ED was first elected to public office early in life. With his election to the Massachusetts State Legislature at the age of 23, ED became one of the youngest members to serve in the General Court. He served in that capacity until he was elected to serve as register of deeds of Hampden County, MA.

During World War II, ED took leave of his public service career to enter the U.S. Army. He entered the Army in 1942 as a private, attended Officer Candidate School, and was commissioned as a second lieutenant. ED served his country proudly in the Pacific and was discharged in 1946 as a captain.

Upon returning to Massachusetts ED resumed his duties as register of deeds for Hampden County; being elected to a second 6-year term in winning both the Republican and Democratic nominations. In 1949, ED began serving as military aide to Massachusetts Gov. Paul A. Dever and served in that position until 1952, when he was elected to the 83d Congress.

During his congressional career ED has proudly represented his Massachusetts constituents. Through his position on the House Appropriations Committee, where he is currently ranking majority member, and through his position as chairman of the Housing and Urban Development/Independent Agencies Subcommittee, he has judiciously directed funding for the Department of Housing and Urban Development, the Veterans' Administration, the National Aeronautics and Space Administration, the Environmental Protection Agency, and the National Science Foundation. Indeed, ED'S service has proven beneficial to all in the United States.

All in Congress have benefited from ED'S congressional career, and all will deeply miss the leadership and wisdom he has displayed over the last 36 years. I would like to join my colleagues in wishing ED farewell, also wishing him happiness and success in his future endeavors.

Mr. PETRI. Mr. Speaker, I am pleased to have the opportunity to offer a few words on the retirement of ED BOLAND. Congress will be a poorer place without the quiet leadership and statesmanship of our colleague, ED BOLAND.

As the first chairman of the Select Committee on Intelligence, he was thrust unwillingly into the public eye. Then, he demonstrated the remarkable trait that has been the hallmark of his career—to step forward to do his required solo, and fade back into the chorus when he was done. In a city where egos tend to be inflated, ED'S quiet competence is an example to us all.

As a freshman in Congress, I came across an unfortunate problem in my home district. Mr. and Mrs. Jump, a couple from Manitowoc, WI, had adopted a number of children of the same El Salvadoran family following the deaths of their parents. Unfortunately, the eldest daughter passed the magic age of 14 before her adoption could be completed. It was going to take a private bill to allow her to join her siblings here in America.

As the 96th Congress drew to a close, there were a number of private measures being held up for one reason and another. The Jump family was getting ever more anxious about the adoption. Because I was new around here, I didn't know what to do about getting this measure passed, especially since the Senate had already completed action. In desperation, I went to ED and told him my tale of woe. Thanks to his advice and generous assistance, the measure finally passed on December 22 and all the Jump children were united.

ED BOLAND will be sorely missed in the years to come. I wish him the very best in his future endeavors.

Mr. DE LUGO. Mr. Speaker, I am honored to join in this special order to EDDIE BOLAND, for the gentleman from Massachusetts has touched the lives of my people in the U.S. Virgin Islands as well as people all across our country.

EDDIE BOLAND'S retirement is a loss for all of us who have been privileged to know him and work with him. In his 36 years in Congress—an era that spans the administration of seven different Presidents—he has always been a voice for reason and quiet persuasion. We could always look to him for leadership when we were divided. When it appeared we were at an impasse in this House, EDDIE BOLAND was one of those special Members who had the trust of all of his colleagues and who could find a way to move us forward.

Somehow, among his countless interests, EDDIE BOLAND found time to attend to the needs of the U.S. Virgin Islands and the entire Caribbean. He has visited my home islands several times, to get to know our people and our special place in the American family. Even on vacation, I assure you, he was a keen observer of our islands who took a genuine interest in our efforts to strengthen our community.

I am still grateful that I could turn to EDDIE BOLAND when I needed help to get funds to expand our airport on the island of St. Croix. He led the way in the Appropriations Committee to secure funds to study the extension of that airport runway so it can handle large jets and even accept direct flights from Europe, which will further boost our tourism industry.

That was in 1985, but it is appropriate to remember it now because just last week the Virgin Islands learned that it will get a loan from the Department of the Interior to help fund the actual runway extension. Without EDDIE BOLAND'S crucial support for the initial funding three years ago, we would not be moving ahead on this project that will mean jobs and revenues for my people on St. Croix.

I also will always remember my opportunity to travel with EDDIE BOLAND in 1983 when he joined the congressional trip to Grenada to investigate the causes and effects of the United States invasion of that island in the Caribbean. He had the unique ability to closely listen to people and to sort out the real facts in a very turbulent situation.

EDDIE BOLAND has served his country with dedication and distinction for 36 years. He has been a model for all of us in this House, and his example will long be remembered. I am sad to see him retire, but I hope he will enjoy his new freedom to spend time with his wonderful wife, Mary, and their fine children. I also take some consolation in the hope that they all will be able to make many more visits to the U.S. Virgin Islands.

Mr. DOWNEY of New York. Mr. Speaker. The closing days of any Congress are always bittersweet times, for we often gather to pay tribute to our colleagues who have decided to retire. Tonight we pause to pay our respects to a quiet giant of the House, ED BOLAND.

During the summer of 1987, Americans had a chance to see Congressman BOLAND at his best during the Iran-Contra hearings. They saw a quiet man, an honest man, a man who means what he says, but above all they saw a man who has a deeply ingrained respect for the law. His mere presence in that hearing room, Mr. Speaker, was a reproach to those who thought they were better than the Congress, better than the American people, and better than the law.

It is impossible to summarize ED BOLAND'S career, a career that began when he was first elected to Congress in 1952. He has served with distinction on the Appropriations Committee, rising to become chairman of its Subcommittee on HUD and the Independent Agencies. He was chairman of the Permanent Select Committee on Intelligence and he was instrumental in forging a congressional consensus on Central American policy.

That was the public man. Many of us were privileged to know the private man. ED BOLAND is a good friend to many of us. He is a trusted adviser. For those of us in the class of 1974, he represents all that is good and solid in the traditions of this House. We will all miss him, his advice, his friendship, and his quiet skills. We wish him Godspeed.

Mr. RUSSO. Mr. Speaker, anytime we bid farewell to a retiring Member of the House, it is a parting tinged with sadness for our own loss along with happiness for their well-deserved rest from the demands of the work here—and sometimes from the demands of fellow Members. When it's a gentleman like EDDIE BOLAND, it is an especially difficult goodbye for us because we've come to rely on him, to trust his good advice and counsel, and because we realize the Nation is losing a statesman.

I count EDDIE as one of the old-fashioned guys, and that's a high compliment. You hold to the old virtues; you do your job; you're loyal and trustworthy. In being himself, EDDIE, over his 36 years of service, has had an impact on the process and been deeply influential on other Members. Without fanfare, this quietly effective gentleman has left his mark on appropriations, on our intelligence system, on policies for our children and youth, and on countless other areas of importance to the Nation. He has remembered the needs of his Massachusetts constituency while becoming a congressional leader for the Nation.

The Honorable EDWARD P. BOLAND is going to be greatly missed in the U.S. Congress. He has earned his place of honor here and I join with my colleagues in thanking him, commending him, and wishing him great happiness.

Mr. COLEMAN of Texas. Mr. Speaker, I am very pleased to be here this evening to pay tribute to Congressman ED BOLAND. I appreciate the thoughtfulness of the chairman's good friend and colleague from Massachusetts, Mr. CONTE, in recognizing his neighbor. I have not had the privilege of serving with Chairman BOLAND for even half of his 36 years in this body. But when I arrived here, and when I had the opportunity to serve on the Committee on Appropriations, I tried to watch Congressman BOLAND carefully. I understand just how difficult it is to move an appropriations bill through the Congress—and I have admired my colleague's dexterity in doing so time after time.

Anyone familiar with the proceedings in this House should know the measure of respect Chairman BOLAND has commanded. Even those in the most strident recesses of the minority, those from a different generation of politicians, those with a different sense of the importance of seniority and courtesy, all recognize the honesty and unshakeable fairness of the gentleman from Massachusetts.

In a career which has seen so many changes in the nature of politics itself, from the increasing importance of the electronic media—and the potential for manipulating those media—our colleague has stuck to a number of basic principles: That a deal is a deal and that you can accomplish a lot for the people you represent if you don't insist on taking credit for it.

I suspect that it was a source of quiet amusement that the Iran-Contra Committee last summer made so much of the Boland amendment. In the early 1980's, of course, the Boland amendment was the law of the land—no aid could go to the Contras other than humanitarian aid. Even as we speak tonight, that is still the law of the land. The fact that our colleague was the author of the original provision in question was not accidental—but to a freshman arriving to Congress in 1983, it was frankly not that critical either. The point is that the judgment of the gentleman from Massachusetts, that the U.S. Intelligence community in the early 1980's should not be involved in the delivery of aid to a counterrevolutionary force in Nicaragua, was accepted as a reasonable and sensible aspect of our policy in Central America both now and then.

I remember an incident earlier this year in committee when I was anxious to bring the problem of the colonias along the Southwestern United States border with Mexico to the attention of members. I went to Mr. BOLAND and described my hope that the EPA, an agency funded by his subcommittee, could be persuaded to address the needs of the residents of those colonias for access to drinking water and wastewater disposal systems. He told me that the committee could not direct wastewater construction grants down from the Federal to the local level—that it was the responsibility of the States to allocate that money. Instead, he told me to say exactly what I had said to him—that we had a significant problem, and that we wanted EPA to find a way to address that problem.

Mr. Speaker, that, I believe, is characteristic of Chairman BOLAND. I have been privileged to serve with him and wish him and his family all the best for the future.

Mr. CHAPPELL. Mr. Speaker, when I came to the Appropriations Committee in 1973 I was assigned to the HUD Independent Agencies Subcommittee on Appropriations. ED BOLAND was the chairman and I served with him then and again on the Public Works Subcommittee during the 95th Congress. ED BOLAND is one of the finest Members of Congress we have ever had. As chairman of the HUD Subcommittee he has been in the forefront of setting the direction for America's space program. He has been a caring friend to our veterans, a strong protector of the environment, and our leader in housing for the poor and elderly. As chairman of the Permanent Select Committee on Intelligence his oversight of America's intelligence-gathering has been a great service to the Nation.

Personally, ED has been a great teacher and inspiration to me. He is always fair, prompt at getting things done, and judging legislation on its merits. He has always had a great way of working with the Members, staunch but fair. It has been a real pleasure for me to serve with ED on the subcommittee and the full committee over the years, and to work with him on so many projects.

ED leaves such a great record of public service. We are all going to miss him, the Nation will miss him, and those who come after him will have mighty big shoes to fill.

I wish ED much health and happiness in his retirement.

Mr. COYNE. Mr. Speaker, 54 years ago, in the town of Springfield, MA, the son of an Irish immigrant railroad worker decided to run for the Massachusetts House of Representatives. He had grown up in a working-class neighborhood known as Hungry Hill, so he was not able to draw on any Ivy League connections. However, he did have a formidable political organization. As a playground director, he had organized a sandlot baseball league, so he had quite an army of young admirers eager to help out. He and they campaigned tirelessly, and he won.

I do not know if it is possible to track down any of those baseball players today, but the Nation owes them a debt of thanks for helping to launch the public career of one of the most decent, most respected, most principled, and best-liked members of Congress—EDDIE BOLAND. He went on to serve with distinction in other State and county offices, then was elected to the U.S. House of Representatives in 1952. This has been his home ever since; and now that he is retiring, it is an honor to pay tribute to him.

If you want to find out what EDDIE BOLAND's political principles are, his record says it all. He believes that the business of government is to help people who need it most. He has been a strong supporter of aid to education, public-works projects that create jobs, civil rights, urban development programs, support for the handicapped. Probably the most eloquent tribute to EDDIE BOLAND is his hometown of Springfield, MA. Largely because of his efforts in Massachusetts and Washington, Springfield has changed from an ailing factory town into a strong, vibrant economy.

I first met EDDIE when I came to Congress in 1981. Those were not easy times for him and others who share his views. It seemed that they were being defeated at every turn. As the chairman of the HUD and Independent Agencies Subcommittee of the Appropriations Committee, EDDIE had a special concern for programs that help middle-income and low-income home buyers, the homeless, and city dwellers. He saw many of these programs targeted for extinction—but he fought to keep them afloat and stuck by his principles. We are lucky that EDDIE BOLAND was there.

He is not now, and never has been, a person to seek publicity. A few years ago, when his chairmanship of the House Intelligence Committee at a very sensitive time thrust him in the national spotlight, he told a New York Times reporter, "I would prefer to remain anonymous. This kind of thing gives me visibility I don't cherish and I don't seek."

Still, in his quiet way, Congressman EDDIE BOLAND has an enormous influence on the House of Representatives as an institution and on all of who have the honor of being his friends. I join with my colleagues in wishing him well in his retirement. We will miss him, and the House will not be quite the same without him.

Mr. MAVROULES. Mr. Speaker, it is with both sadness and pride that I pause to wish my good friend and admired colleague, EDDIE BOLAND, the best as he prepares to retire. I am sad to see him leave this august body but am proud to count him among my friends.

This man's greatness will be remembered in many ways. He will be remembered for both his achievements and what he represents: His tireless efforts, his compassion, his strong character, his sense of what is right, and his dogged determination to fight for what he believes in. He is a public servant who took to heart the public trust. He represents a standard for all public servants.

During his 36 years, ED BOLAND has made the Second Congressional District, the Commonwealth of Massachusetts, and this great country proud.

ED BOLAND is a model of civility and humanity; a credit to both the people he represents and those of us fortunate enough to work with him. He is a man who has rejected brashness and bravura. He represents the very best of American politics. His soft-spoken manner belies the intensity of his commitment to the State and the Nation.

EDDIE is unwavering in his principles and represents the best of the Democratic Party. He is unafraid to extend his hand to those in need, he understands that our Nation's future greatness depends on how we nurture and nourish our young. He knows that while we must be prepared to defend our Nation, we must also always uphold those rights and principles that make our Nation great. ED BOLAND knows that being an American means the right to a life of freedom, opportunity, and dignity.

He is a man of indisputable credibility who has been vital in bridging the sometime seemingly unbridgeable chasm that can exist between and within parties. He is a man guided not entrapped by ideology. A man respected for both his intellect and his intuition. ED BOLAND is a man of his word whom I have often depended upon.

His accomplishments in Congress are too broad and numerous to list. His balanced and prudent approach on the Appropriations Committee and his very important work as chairman of the Permanent Select Committee on Intelligence will long be remembered. His years of service will continue to guide us.

Mr. Speaker, I join my colleagues in congratulating and thanking EDDIE BOLAND. I wish him nothing but the best in retirement.

Mr. ANNUNZIO. Mr. Speaker, I rise to join with my colleague from Massachusetts, Congressman SILVIO O. CONTE, in paying tribute to the Honorable ED BOLAND, who is retiring after 36 years of dedicated service to the House of Representatives.

During the entire 24 years I have served in the House of Representatives, I have admired and respected the work of ED BOLAND in the Congress of the United States. He continues to be an example to all new Members entering the Congress, as a conscientious, devoted Congressman dedicated to the principles of our Constitution.

ED BOLAND's retirement is a tremendous loss to the people of the Second Congressional District of Massachusetts whom he has represented, to the State of Massachusetts, and to our Nation. However, the role he has played in faithfully uplifting the spirit of America and protecting our constitutional system of government, shall be carried by all of us still serving here in the Congress, who have had the opportunity to know him and his great contribution to the work of the House of Representatives.

Before coming to the Congress, ED BOLAND served with distinction in the Massachusetts State House from 1935 through 1940. Elected to the 83d Congress in 1952, ED BOLAND has compiled an outstanding record of achievement during the 18 consecutive terms he has served in the House of Representatives. His accomplishments as the ranking member of the House Appropriations Committee, and as chairman of its Subcommittee on HUD-Independent Agencies are most worthy of recognition.

ED BOLAND is a Congressman of great ability, compassion, and courage, who has provided exemplary service to his constituents and to our Nation.

I extend to my colleague, ED BOLAND, my best wishes for continued success in devotion to the highest principles.

Mr. FASCELL. Mr. Speaker, I would like to join our colleagues in paying tribute to one of our most distinguished colleagues, EDWARD P. BOLAND, who has played a significant role in the House since 1952. As the second ranking Democrat of the Appropriations Committee, chairman of the Housing and Urban Development—Independent Agencies Subcommittee, and the fifth most senior Member in the House, he has provided quiet and strong leadership and has worked extensively to tie together party efforts.

EDDIE has been a terrific man to work with, and I feel fortunate that he served as a member of the United States-Canadian Parliamentary Group where I have had the distinct privilege of working with him side by side on a number of important issues. I also enjoyed working with him on the Select Committee on Iran-Contra Affairs. His dedication and efforts to improve the lives of Americans will be remembered for many years to come.

EDDIE has an enormous ability to unify a diverse group of individuals. In all his work, he has maintained a modest profile, which has enabled him to succeed in numerous endeavors. His appointment as the chairman of the newly created House Intelligence Committee by our former Speaker, Tip O'Neill, in 1977, provides an excellent record of his ability to deal discreetly and concisely with very difficult political problems.

For five decades, EDDIE has devoted a great part of his life to the service of the citizens of Massachusetts through his endeavors in local, State, and National Government. His dedication should be a model for us all, and his presence here will be sorely missed. Jeanne-Marie joins me in wishing EDDIE, his wife Mary, and his family a pleasant and productive retirement.

Mr. HOYER. Mr. Speaker, I want to thank my good friend SILVIO CONTE for organizing this special order in honor of one of the hardest working and most honorable men to have served in the House of Representatives, Congressman EDWARD BOLAND.

Since 1935, ED BOLAND has served the people of Springfield, MA, and since 1953, he has served not only his constituents with distinction, but all of the people of this great land through his studied and responsible leadership in the House of Representatives.

ED BOLAND was and is a fighter. The rigors of his boyhood years in "Hungry Hill" prepared him early for the challenges and conflicts he would face in public life. From day one, ED BOLAND's byline was "working hard."

Working hard for his constituents;

Working hard for fair and affordable housing;

Working hard for peace in Central America;

Working hard for the space program; and

Working hard for America.

I know that Chairman BOLAND worked hard for his constituents. I have witnessed first hand his mastery of detail and legislative craftsmanship which has earned him the respect and admiration of his colleagues. Chairman BOLAND could craft fair compromises because he took the time to understand both sides of an issue before beginning to work upon it.

Chairman BOLAND brought all of these skills to bear in his role as chairman of the Select Committee on Intelligence. As the first chairman of this committee, he assumed power when the intelligence community was highly suspect and its operations were handled largely apart from the normal governmental processes. Chairman BOLAND singlehandedly created the procedure by which the intelligence community could work with the legislature. In doing so, he preserved the principle of accountability to democratic procedure while maintaining the responsibility of sensitivity of intelligence work.

I do not need to dwell on the key role which Congressman BOLAND played in unveiling the administration's "Secret War in Nicaragua." History will award him well-deserved laurels for his professional and dispassionate review of the facts which led him to the conclusion that "the secret war is bad U.S. policy, because it does not work; because it is counterproductive to U.S. interests; because it is illegal."

Chairman BOLAND has served on the Appropriations Committee for nearly 34 years, and he has served on the HUD and independent agencies subcommittee for all of those years, 18 of which were as chairman. During his tenure, he was the cornerstone for President Kennedy's dream of an active American space program.

Chairman BOLAND was supportive of NASA from JOHN GLENN's orbit to the first footsteps on the Moon to the flight of the shuttle *Discovery.* The development and success of NASA is due in large part to the dedication of Chairman BOLAND and the country owes an enormous debt of gratitude for his role in this program.

I would be remiss to not mention the chairman's other contributions in his role on appropriations, but any list must be recognized as only highlights. Such a list must include his active support of community development programs which saw the revitalization of many of our inner cities; continued and strong support of veterans interests; and the dignity which he bestowed upon the National Science Foundation and its critical role in science education for the United States.

Chairman BOLAND has shunned publicity. I believe that he will not be as successful in avoiding the kudos of history as he has been in avoiding the press in his years on the hill.

History will not ignore his singlehanded defense of fair and affordable housing in the face on continuous onslaughts by the administration.

History will not ignore his steadfast support of America's leadership in space.

History will not ignore the over 50 years of commitment, integrity, and responsible leadership which EDWARD BOLAND has brought to public service and this House.

Chairman BOLAND, I thank you personally for the guidance you have provided me over the years and I thank you on behalf of my constituents, who view your record with respect and gratitude.

I wish you all the best in your years ahead, and join with all of my colleagues in saying, "well done."

Mr. JONES of Tennessee. Mr. Speaker, there may be many differences between the Second District of Massachusetts represented so ably by our retiring colleague ED BOLAND for the last 35 years and the Eighth District of Tennessee which I have represented for the past 19 years. Regardless of those differences, no congressional district could hope for more dignified or more distinguished service than ED BOLAND has brought to this House.

His quiet, steady, and diligent work on behalf of his district, his State, and his country is an example that every Member of Congress should try to emulate. He did not shy away from the difficult decisions we all have to face as public servants. He only shied away from the spotlight of publicity that comes with being willing to take on difficult and sometimes unpopular tasks.

ED BOLAND could always be counted upon to be fair and to bring level-headed judgment to whatever debate might be undertaken. He sought solutions that were in the best interests of our country, not ones that brought him personal fame.

Political science teachers refer to "show horses" and "work horses" in public life. ED BOLAND will surely be known as a work horse—the kind of Member of Congress who makes not only this House work but the kind who makes our Government work.

After these 35 years of dedication to public service, I want to wish he and his lovely wife a long and happy retirement together.

Mr. TRAXLER. Mr. Speaker, I rise today to join with all of my colleagues in offering words of the strongest praise and deepest admiration for our colleague, EDDIE BOLAND of Massachusetts. As one who has had the privilege of working closely with EDDIE BOLAND, on the House Appropriations Committee Subcommittee on HUD-Independent Agencies, I can personally attest to my daily observations of his singular blend of fairness, strength, and consistency. He is a model for all Members today and for Members who will come to this people's House, long after each of us has retired.

As chairman of the HUD-Independent Agencies Subcommittee, a post which I in all humility and deference will be honored to inherit, EDDIE BOLAND time and again demonstrated his unmatched abilities to balance the competing interests represented by the wide-ranging jurisdiction of the subcommittee and the wide-ranging interests of the Members of this great body. No appropriations bill ever has more potential for creating division within the House. Under his stewardship, however, the HUD-Independent Agencies bill has actually been among the earliest to reach enactment each year.

His legacies to the House and the Nation will be many: his compassionate commitment to our Nation's public housing program, his even hand in helping shape and guide our Nation's space program, and his foresight and innovation in dealing with our Nation's great environmental problems. His splendid example of statesmanship, serving as it does as an enduring example for all of us to emulate, will serve this House and the Nation for many, many years to come.

Mr. Speaker, I know that every Member joins with me in wishing EDDIE BOLAND the best and happiest of retirements, a retirement so richly deserved and which we know will be shared and enjoyed by his wife Mary and their four children. We hope also that we will have the benefit of at least his occasional presence in these halls, bringing with him his abundance of wisdom and counsel.

Mr. SYNAR. Mr. Speaker, I rise to honor a colleague in this House whom I regard as a true statesman and public servant: EDWARD P. BOLAND of Massachusetts.

EDDIE's entry in the Congressional Directory—inserted, I'm told by him—is a terse three lines; Name, party, district, and Congresses to which he was elected. Now, I realize that most of us in this body are not widely known for our modesty, but that sort of self-effacement is not what the public generally expect of us. Of course, we know very well that EDDIE is one of the men that makes this place work. A conspicuous display of importance, to him, would not be in keeping with his office or character.

Whether one considers his work as head of the Select Committee on Intelligence, his dominant presence in the housing field as chairman of the Appropriations of HUD-Independent Agencies Subcommittee, as vigilant overseer of the CIA and uncompromising defender of the rule of law, EDWARD P. BOLAND's personal integrity and devotion to principle have shaped public policy in vision of what we, as a people, stand for.

Thank you, EDDIE for what you bring to this body. And thank you for the example you provide for us all.

Mr. MINETA. Mr. Speaker, one of the greatest privileges that come with serving in Congress is the opportunity to work with the many distinguished leaders from around the country who make up this body.

For the last 36 years, the distinguished Member from Massachusetts, my good friend Mr. BOLAND, has been one of this body's and our country's finest leaders. Few Members have had such a profound effect on as broad an array of our Government's activities and on the important issues facing all Americans as has Mr. BOLAND. From his leadership post on the Appropriations Committee, he has guided our space program and overseen our national science efforts, safeguarded the environment, helped our country's poor and elderly, worked to revitalize our cities, provided fair and decent treatment for our veterans, and helped to keep alive a vital part of the American dream by working to see that affordable housing is available for all Americans. In all these areas, and more, our distinguished colleague from Massachusetts, Mr. BOLAND, has been on the frontline, providing leadership and inspiration.

Mr. BOLAND and I first met more years ago than either of us would probably like to remember, when I was still mayor of my hometown of San Jose, CA. In those days, Mr. BOLAND, as the chairman of the HUD/Independent Agencies Subcommittee, was already a national leader in the area of housing and community development, and it was my privilege to testify before his subcommittee on behalf of the U.S. Conference of Mayors.

Shortly thereafter, the voters of the 13th District of California saw fit to send me to join Mr. BOLAND in Washington on a more permanent basis, and in the years since then, it has been my special privilege to work closely with Mr. BOLAND on issues ranging from foreign policy to science policy, from housing programs to the space program.

In each of these areas and more, in good times and difficult times, the distinguished Member from Massachusetts has demonstrated the commitment, the expertise, and the wisdom to take on the key problems facing our country and work for solutions. In each instance, his high ideals and inspired leadership have served as guideposts for this Member, and for all Members of this body.

Of course, many of us, and indeed, many Americans will remember Mr. BOLAND as the man who took on the difficult, demanding, and vitally important responsibility of chairing the House Permanent Select Committee on Intelligence when that committee was reconstituted in 1977. As a member of that Intelligence Committee during the years of Mr. BOLAND's able stewardship, I would like to add my personal testament to the many accolades that our distinguished colleague from Massachusetts earned while filling this sensitive post. As chairman of the Intelligence Committee, EDWARD BOLAND served as the conscience of our country and one of the chief defenders of our Constitution, while at the same time helping to guide our Government through difficult national security situations and foreign policy crises. Simply put, he set the standard by which all future Intelligence Committee leaders will be judged.

Finally, I would like to point out that while he was fulfilling all of these important responsibilities—such as working for better housing, and better environment, decent treatment for America's veterans, a strong space program for our country, and a sane and lawful foreign policy—my good friend, Mr. BOLAND was also taking the time to serve on the Board of Regents of the Smithsonian Institute. In that role, the distinguished gentleman from Massachusetts helped lead the fight to preserve our country's cultural, artistic, and scientific heritage. As a member of that Board of Regents, I would like to express the heartfelt thanks of the entire Board for his dedication to this fine Institution.

Mr. Speaker, our very, very distinguished colleague from Massachusetts has served this House and his country long and well, and he will be sorely missed when he leaves us at the end of this Congress. His 36 years of service here have embodied the highest ideals of public service and statesmanship, and I join my colleagues in wishing him every happiness in the future.

Mr. BENNETT. Mr. Speaker, we will all greatly miss our beloved colleague, EDDIE BOLAND, as he retires at the end of this historic 100th Congress of the United States. He has been for us a Congressman's Congressman, meaning that we all looked to him for sound advice on the most stressful, difficult and complex matters before us. He has been a thoughtful pursuer of the truth and a man of sound judgment always. Most of all, however, we will miss him for his easily and warmly extended friendship. The United States and his constituency have been well served by him. We wish for a happy retirement in every respect. He richly deserves it.

Mr. MONTGOMERY. Mr. Speaker, I want to join with Mr. CONTE in this special tribute today to our retiring colleague from Massachusetts, Representative EDWARD BOLAND. He has been one of this Chamber's most respected Members over the 36 years he has served in the House of Representatives.

I have enjoyed working with EDDIE BOLAND to make sure that our veterans' programs were adequately funded. As chairman of the Appropriations Subcommittee with jurisdiction over the Veterans' Administration, I can truly say that EDDIE has been a friend of the veteran.

He had a great knowledge of our veterans' programs and was always willing to listen to our requests for VA funding. We could always count on him being fair in his efforts to take care of the needs of this country's veterans.

We will miss EDDIE BOLAND's experience and his leadership in the 101st Congress, but I know he is looking forward to a very pleasant retirement and I wish all the best.

Mr. ST GERMAIN. Mr. Speaker, since 1971, when he ascended to the chairmanship of the HUD/Independent Agencies Subcommittee, EDDIE BOLAND and I have worked side by side to assure that the Congress keep its promise that ours would be a nation of homeowners. As a member of the Housing Subcommittee and later as chairman of the House Banking Committee, I have worked assiduously to pass legislation in committee that will provide for housing for the poor and elderly. But my efforts would have been for nought had EDDIE not appropriated the necessary funds for these programs. His membership on the Appropriations Committee has enabled him to help revitalize distressed cities, provide emergency housing, shelter, and food programs for the homeless, and fund innovative new low- and moderate-income housing programs such as the Nehemiah Housing Program which is designed to promote the pride of home ownership.

I am not alone in paying tribute to my fellow New Englander. EDDIE's biography notes 15—yes 15—awards and honorary degrees he has received over the years. Many come from colleges and universities in New England. It's not hard to recognize that he is truly a "native son."

This Democrat from the Second District of Massachusetts has selflessly devoted himself to his congressional duties over the past 36 years. EDDIE has worked long and hard to become a ranking member of the Appropriations Committee, where, besides working on housing issues, he has provided funding for the Veterans' Administration, the Environmental Protection Agency, the National Science Foundation, and NASA. This week's successful launching and flight of the space shuttle *Discovery* must be particularly sweet to EDDIE, who has been actively involved in determining the direction of America's space program.

EDDIE also served well as the first chairman of the House Permanent Select Committee on Intelligence where he oversaw the CIA and the Nation's other intelligence-gathering agencies—and developed a reputation for fairness and impartiality.

After EDDIE's many long and productive years in Congress he will be sorely missed by this Member.

Mr. YATES. Mr. Speaker, my dear friend EDDIE BOLAND is retiring at the end of the Congress and I want him to know that I will miss him greatly. EDDIE and I have served together on the Appropriations Committee for some time now and my admiration for him has grown with every passing year. I was delighted when he decided to serve on my Interior Subcommittee in 1983.

He is a wonderful friend and a remarkably able, wise, kind, and effective Member of this body. In my opinion EDDIE BOLAND is about as close to being the perfect Congressman as any of us are likely to see. We are all in his debt and we are all going to miss him.

I know EDDIE is going to have an active, productive, and happy retirement with his family. I wish every possible happiness and I only ask that he save some time for his old friends and colleagues who need his wise counsel, guidance, and good conversation.

Mr. RINALDO. Mr. Speaker, I am pleased to join in the tribute to one of our most distinguished colleagues, EDWARD P. BOLAND.

For 36 years EDDIE has served in the House of Representatives and has earned the respect and admiration of all of us who have had the honor of serving with him.

EDDIE BOLAND's contributions to the Nation and the people of Massachusetts will not be forgotten. He deserves a sincere word of gratitude for his outstanding record of public service.

It has been a distinct privilege to serve in the House with EDDIE the past 16 years. He will be sorely missed when the House convenes in January 1989, but he leaves us with a record he can be proud of and one which sets an excellent example for us to follow.

I extend my congratulations on a job well done and best wishes for every future happiness.

Mr. DWYER of New Jersey. Mr. Speaker, it is always with mixed emotions that we say "good-bye" to a friend. Certainly, we wish them well and want them to pursue their interests but, selfishly, we dread the loss of their day-to-day friendship and the counsel on which we have come to depend.

So it is with this special order for our friend, ED BOLAND. EDDIE BOLAND has been in the Congress for 36 years. He has been a friend to many and has been an effective legislator for his entire career.

My association with ED BOLAND started in 1980, when I was elected to the House. However, the story of ED BOLAND and his contribution to this House and to the country starts many years ago before that.

In the early years of the Kennedy Presidency, EDDIE BOLAND was one supporter of the new President's space policy who was in a position to be of substantial help to the administration. As a member of the House Appropriations Committee's subcommittee which oversaw NASA's budget, he was a key ally for President Kennedy's plans to put America on the Moon. Years later, EDDIE would become the chairman of that subcommittee, which also provides the funding for the programs of the Department of Housing and Urban Development, the Veterans Administration, the Environmental Protection Agency and the National Science Foundation. He has seen America advance and grow in all of these areas and he has left his mark on so many of the programs which are now vital to thousands of Americans.

So respected is ED BOLAND, that former Speaker Thomas "Tip" O'Neill selected him to be the chairman of the Select Committee on Intelligence when it was created in 1977. That committee, on which I presently serve, has a reputation for confidentiality which is the direct result of the manner in which Congressman BOLAND ran it during his tenure as chairman.

Undoubtedly, EDDIE BOLAND is most famous for authorizing the Boland amendment, which reflected the deep concerns of the Congress over the type of aid being given to the Contras and the manner in which the aid was being distributed. Since enactment of the first Boland amendment, that phrase has become synonymous with the United States policy in Nicaragua. It came into national attention, as did its author, during the summer of 1987 when the Iran-Contra hearings called into question whether some in Government were outside the parameters of that law.

Throughout all of the years of service, EDDIE BOLAND has never wavered from doing the job he was elected to do—without ever seeking the spotlight for his many achievements.

I have had the privilege of serving with EDDIE on the Appropriations Committee and respect his quiet, but very effective manner. Our committee will miss his leadership and the House will not be the same without his presence. But the work he accomplished during his service will continue to guide this Congress for years to come.

I wish EDDIE all the best in his retirement. I know that his wife and children will relish having more of his time and I know that being a father to four children will be a full-time job equal to all of his talents.

Mr. DINGELL. Mr. Speaker, two words come to mind when I think of ED BOLAND: integrity and modesty. The simple, yet important, fact that one can always trust his word, best demonstrates his high integrity. As far as modesty is concerned, his resumé and achievements extend far beyond the minute entry in the most recent Congressional Directory. It reads: Democrat, of Springfield, MA; elected to 83d and reelected to each succeeding Congress. After reading that brief resumé, I said to myself, "That's just like ED, modest."

ED BOLAND will be ending a 54-year career of public service at the end of this 100th Congress and he will not "sneak away," as he modestly stated about his inability to leave Congress quietly, without a few words from his colleagues. ED began his career in public service at the age of 23, when he was elected to the Massachusetts State Legislature and reelected in 1936 and 1938. He was then elected as register of the deeds for Hampden County, MA, but took leave to serve in the U.S. Army during World War II in the Pacific theater. Following the war, he continued with the register of deeds and was reelected to 6 additional years. In 1949, ED became a military advisor to Massachusetts Gov. Paul A. Dever before he was elected to Congress in 1952.

I came to know ED in Congress, when I was first elected in a special election in 1955 to fill the vacancy resulting from the death of my father, John D. Dingell, Sr., who also served with ED for 3 years. Congressman BOLAND has been chairman of the House Appropriations Subcommittee of the HUD-Independent Agencies since 1971. In that capacity, he honored my requests for funding for vital Veterans projects, which include the Allen Park and Detroit Veterans Hospitals in Michigan. Given his subcommittee jurisdiction over EPA, he assured funding for the Environmental Protection Agency [EPA] Large Lakes Research lab in Grosse Isle located in my district. ED also was the first chairman of the House Permanent Select Committee on Intelligence, where he served diligently and faithfully through numerous crises from 1977 to 1984.

EDWARD P. BOLAND will always be remembered among his colleagues and his friends for his unyielding integrity and sincere modesty. Whoever wins ED's seat in this election year will be confronted with a difficult task: to match the achievements of this noble man and to do it so gracefully.

Ms. PELOSI. Mr. Speaker, it is my great honor and pleasure to rise to congratulate Congressman BOLAND on his 36 years of distinguished service in this body. It is also a sad farewell.

I know ED BOLAND to be a quiet, caring coalition builder who sticks by his commitments and knows his facts. He is always diplomatic and thorough and his integrity is unquestionable.

ED BOLAND has led the fight for a responsible Central American policy both as a member and as chairman of the House Intelligence Committee. He has consistently opposed a military solution in Nicaragua, even when he and his Democratic colleagues in the House were a minority in their vocal opposition to the program. When, in 1983, the administration insisted on a higher rate of funding for the Nicaraguan Contras and vowed to use the CIA counterinsurgency account to fund the program, Chairman BOLAND insisted on an absolute cap on money from the CIA.

Concerned that the administration was ignoring congressional reservations about the Contra policy, ED BOLAND secured passage of the now-famous "Boland amendment" to the 1984 Defense Department authorization which prohibited the United States Government from expending funds for the military support of the Nicaraguan Contras.

When the administration chose to ignore congressional directives and continued to support gunrunning to the Contras, the Boland amendment provided the framework for the legal debate which ensued. ED BOLAND was asked to serve on the Select Committee investigating the Iran-Contra affair and, as always he served with distinction.

Massachusetts has long had a tradition of effective Democratic leadership. The Bay State has given us Tip O'Neill, the Kennedys, Michael Dukakis, and ED BOLAND. It is a tradition of which to be proud.

Mr. Speaker, having served just over 1 year in this distinguished House, I am impressed by the high caliber of my colleagues and especially ED BOLAND. ED BOLAND has served with distinction and integrity and I congratulate him and wish him well in his future endeavors. We will miss him.

Mr. APPLEGATE. Mr. Speaker, we are witnessing at the end of this historic 100th Congress the retirement of several highly outstanding Members of the House of Representatives. But probably no one fits this description as much as does our departing colleague from Springfield, MA, EDWARD P. BOLAND.

EDDIE BOLAND has been one of the most likeable and pleasant colleagues that I've had the pleasure of working with in this Chamber. Ever since his election to the House 36 years ago, representing the Second District of Massachusetts, EDDIE BOLAND has become recognized as the epitome of leadership and outstanding public service in this Congress and in each of the previous 17 Congresses in which he has served.

Serving as chairman of the Appropriations Subcommittee on HUD and Independent Agencies, EDDIE BOLAND has come through consistently in providing essential funding for a number of key programs and benefits, especially those for America's 28 million veterans and their families. EDDIE has also done so much to help the growing ranks of America's homeless people and for the cause of housing and community development. And, for most Americans who are deeply concerned about violations of American laws and international transgressions, the Boland amendments will go down in U.S. history as shining moments when we decided to do what was right and proper, rather than being led down a path leading to our involvement in an illegal war in Central America.

Earlier this year EDDIE BOLAND received an honorary doctor of law degree from Fitchburg State College in Massachusetts. I think it would be appropriate to quote a few lines from the citation that was presented to EDDIE by the president of the college, Vincent Mara:

> For your extraordinary embodiment, as a first-generation American, of the freedom of opportunity given to all to achieve the American dream;
>
> For your record of compassionate efforts on behalf of those in need, as you worked tirelessly, quietly, and diligently in the Halls of the Congress of the United States to fund public housing;
>
> For your dedication to the rule of law and courageous responsibility in reinforcing the limits of justice in international military and diplomatic policy of our Nation through the Boland amendments;
>
> For your more than half-century of service in county, State, and the highest levels of Federal legislative office, where you have been a tower of honesty, integrity, loyalty, and faith in the ideals of the American Republic.

Mr. Speaker, I wish to extend my very best wishes to EDDIE and his lovely wife, Mary, and hope that they have the opportunity to enjoy many more years together following a highly illustrious career in public service by one of the best Members to ever serve in the U.S. House of Representatives.

Mr. ATKINS. Mr. Speaker, when we go home at the end of this week, we will be leaving a void. After 36 years of service in the House, EDDIE BOLAND is going home, leaving Congress to spend more time in his beloved Springfield with his wife and young children.

As I noted earlier this year when he announced he would not seek reelection, EDDIE BOLAND has been the conscience of the Congress, whether it's been in foreign policy or in his steadfast commitment to decent and affordable housing for all. His record of service to the Commonwealth of Massachusetts, his constituents in the Second District and the entire Massachusetts delegation stands as a monument to commitment and integrity.

He is retiring at the top of his form. Through more than 53 years of public life, and service in the House under seven Presidents, EDDIE BOLAND has been steadfast and loyal to his constituents, his party, and his country. Although political trends and fashions have changed, EDDIE BOLAND has never wavered when it comes to standing up for his ideals. He functioned in a quiet way and seldom took credit for his great works.

I particularly appreciated his commitment to Paul Tsongas' dream of an urban national park in Lowell, which was an idea met with tremendous skepticism when Paul first proposed creating a national park in a declining mill city. Thanks to EDDIE BOLAND, every year since then, Federal funding has been available, and now the park is a jewel in the National Park Service system, and it has turned around the city and helped turn around the State.

Perhaps his greatest achievement was crafting, in simple language intended to prevent another Watergate-style abuse of the CIA, the Boland amendment that this administration, to its shame, ignored.

A new President will address Congress next January, and whoever that is, he, too, will miss EDDIE BOLAND's wisdom and advice.

I know I'll be able to count on EDDIE's friendship and counsel after he returns to Springfield. I wish him and Mary well in the future.

Mr. WHITTEN. Mr. Speaker, I am pleased to point out a few of the many accomplishments of our colleague, EDDIE BOLAND, who came to the committee in 1955 and became chairman of the HUD Subcomittee in 1971.

EDDIE, as chairman of the HUD Subcommittee, is responsible for keeping alive the section 202 housing for the elderly program—and most importantly—keeping it alive with nonprofit sponsors being the only eligible developers.

In addition to supporting the overall assisted housing program, EDDIE was almost solely responsible for keeping alive the new public housing construction program. He has been a life-long supporter of public housing and feels that its continuation, including the construction of new units, is absolutely necessary to house the poorest of Americans.

EDDIE's support of the National Aeronautics and Space Administration has never wavered. However, that support has been tempered by being an honest critic of many of NASA's programs—including an effort to originate and mold various NASA programs.

Within the Environmental Protection Agency, EDDIE was successful in persuading the EPA to adopt a national review of advanced wastewater treatment to ensure that sewage treatment funds were not wasted on unnecessary advanced treatment projects. EPA esitmates that that single program thrust has saved more than $800 million in the past 8 years.

Under EDDIE's leadership, the HUD Subcommittee required EPA to develop technical guidelines for handling asbestos in buildings and contractor training and certification programs. These initiatives defused the growing panic over asbestos across the country and saved hundreds of millions of dollars by assuring that abatement work be appropriate to the problem and conducted safely.

In the Federal Emergency Management Agency, the HUD Subcommittee originated an entire new program for the homeless. The Emergency Food and Shelter Program was put together on very short notice and has distributed more than $650 million of food and shelter funding through non-profit organizations since its inception in 1983. We are all particularly proud of the fact that less than 3 percent of these funds have been devoted to the administration of the Emergency Food and Shelter Program. By any standard, it has been one of the most successful Federal programs ever devised.

Under EDDIE's leadership, the HUD Subcommittee has maintained the staffing in Veterans' Administration hospitals at 194.140 full-time employees for the past 5 years. This achievement has come in spite of the fact of ever tightening budget allocations and in spite of the fact that in each of the last 5 fiscal years the administration has proposed reductions in employment of between 2,000 and 9,000 people.

For the National Science Foundation, EDDIE has been solely responsible for preventing science education program funding from being cut off. Although in fiscal years 1982 and 1983 the administration proposed killing the program, EDDIE resisted that effort and has been successful in gradually restoring the funding to a new peak in 1989 of $171 million. Of all of his achievements, EDDIE is proud of his efforts to revitalize funding for programs that will improve the teaching of science and mathematics in the Nation's secondary schools.

Mr. NATCHER. Mr. Speaker, one of the nicest things that has happened to me since I have been a Member of Congress is the opportunity that I have had to serve with EDWARD P. BOLAND. He is one of the ablest Members to serve in the House of Representatives during the 20th century.

At this time, ED BOLAND and I are members of the Committee on Appropriations and have served as members of this committee since January 1955. We were elected members the same day and were seated on the committee alphabetically, which was the rule at that time. He is No. 2 in seniority on our committee and I am No. 3. Upon his retirement, I will then be No. 2 on this committee.

In addition to serving as chairman of the Subcommittee on HUD and Independent Agencies, ED BOLAND has served for a number of years as chairman of the Gymnasium Committee. He is considered as one of the ablest subcommittee chairmen in the Congress and always prepared and presented an excellent bill to the House. Every Member in the House of Representatives owes Ed Boland a debt of gratitude for his service as chairman of the Gymnasium Committee. John Myers of Indiana and I serve on this committee with Ed Boland and have assisted him at all times in making our gym the best in this country. Problems have arisen from time to time concerning the use of the gym and as chairman, Ed Boland has always been fair, but firm.

He has established an excellent record in the House, in his representation of the people in his district, and in his home State. His concept of public trust is without parallel and never has he hesitated to speak out against any proposal which he felt was not sound and in the best interests of his people. In every position he has held, either public or private, he has achieved distinction. His service in all of his assignments is marked by a high sense of conscience and duty. His character, achievements and faithful service will be an inspiration to generations yet to come. He will have a high place in the history of our country and in the hearts of his countrymen. His life exemplifies those virtues that make a great Congressman and those are fairness, generosity, a willingness to listen and an unyielding devotion to the principles of his party and to all matters which are in the best interests of our country.

All of us will miss Ed Boland. Certainly, he has a right to be proud of the record he has established as a Member of Congress. I want to wish for him and for the members of his family the best of everything in the future.

Mr. FAZIO. Mr. Speaker, it is indeed a pleasure to participate in this special order to commemorate the 36 years of service to the House by my dear friend and colleague, Congressman Eddie Boland.

One of the great privileges and honors of sitting on the Appropriations Committee is that I have had the opportunity to serve with Representative Boland. As the ranking member of the committee and chairman of the Appropriations Subcommittee on HUD-Independent Agencies, Representative Boland has been one of the true pilars of wisdom and strength in our committee.

Eddie is known as a chairman who can say "no" and often he does. The role he's played as subcommittee chairman is representative of the role played by many others who preceded him on the Appropriations Committee. Throughout its history, the committee has been the stopper, the place where realism prevailed and the higher funding targets of the authorizers were brought down to affordable levels. That image has changed somewhat, particularly in the last decade when the amount available for domestic appropriations has shrunk in general, but Eddie Boland has continued to use the same hard-eyed approach which has typified the committee throughout its history. Members came to respect the dedication, integrity, and fairness with which he carried out his responsibilities.

It is particularly appropriate that we recognize his great contributions to this body and the Nation this week, the week which marks the United States' successful return to space with the safe landing of the crew of the *Discovery* shuttle mission. As chairman of the subcommittee which controls the purse strings for NASA, Congressman Boland has been instrumental in getting America back into space and throughout his career he has been a staunch proponent of a balanced and competitive space program.

But Eddie Boland didn't have his head in the stars. His record as a staunch advocate of America's veterans is well known, and he has fought year after year against any erosion in the basic benefits program for our Nation's veterans.

As the country sees today's housing crunch worsening because of tight budgets over the last decade, we can only thank Chairman Boland for protecting those housing programs targeted by the Reagan administration for even deeper cuts. Ed Boland has been one of the greatest backers of programs for low- and moderate-income home buyers during his chairmanship of the HUD subcommittee.

Congressman Boland has always been a Member who his colleagues have called upon to represent their interests on sensitive issues. For example, his colleagues selected him to serve as the first chairman of the House Permanent Select Committee on Intelligence from 1977 to 1984. In this capacity, Congressman Boland was chiefly responsible for defining the role of Congress in overseeing the Central Intelligence Agency and the Nation's other intelligence-gathering agencies.

In his capacity as chairman, Representative Boland also authored the various amendments which prohibited or limited to humanitarian purposes U.S. aid to the Contras.

Congressman Boland was also called upon to serve on the committee charged with investigating the Iran-Contra affair. Once again, he served with great distinction.

Mr. Speaker, I know I speak for all Members in saying that we will greatly miss Congressman Boland, particularly his friendship and the guidance from which we have each benefited and which have contributed so significantly to the bettering of this great institution.

Mr. RANGEL. Mr. Speaker, I rise today to salute the long and distinguished career of public service of Representative Edward P. Boland. Eddie will soon be retiring as the Representative to the U.S. Congress for the citizens of the Second Congressional District of Massachusetts. He has represented their points of view, and protected their interests, in superb fashion for 36 years.

When I first met Eddie in January 1969, I immediately sensed a man who was sure of his convictions, and determined and able as a legislator. During the period that I have had the privilege to serve in this body, Eddie has never once caused my respect and admiration for him to ever be called into question.

Eddie is perhaps best known and identified with the Boland amendment. This provision forbids the CIA from supporting guerrilla forces that have as their goal overthrowing the Government of Nicaragua. As the author of this amendment, he has repeatedly caused the Reagan administration great concern and grief by questioning its total disregard for international law and order where Nicaragua is concerned.

Mr. Speaker, I know that I speak for all Members when I wish Eddie Boland the best as he and his family begin new lives out of the public limelight. Eddie, you have served your constituents, the U.S. Congress, and the Nation well. Your insight and wisdom expressed in this Chamber for 36 years will not soon be forgotten by any of us.

Mr. SMITH of Iowa. Mr. Speaker, when I came to the Congress in 1959, the gentleman from Massachusetts [Mr. Boland] was already one of the most respected Members of the House and a leader in appropriations. In his characteristically modest and unself-assuming way, he provided his counsel and encouragement whenever I sought it, and I am sure many other Members can attest to his wise and friendly help. Although his disposition is to avoid, rather than to seek, headlines, his quiet influence in this body has been pervasive. He is one of the most knowledgeable individuals in Congress on a wide range of subjects, including congressional procedures; he always has the facts straight and you can bank on his utter integrity.

In his 36 years of distinguished service in Congress, the record will show his outstanding work as chairman of the HUD-Independent Agencies Subcommittee on Appropriations encompassing the National Aeronautics and Space Administration and the Environmental Protection Agency, as well as housing, urban development, and related subjects. History will note his role as the first chairman of the House Intelligence Committee through difficult times and his leadership in both the Watergate and Iran/Contra investigations. The product of a working class background, Eddie has never lost his deep compassion for working men and women and for the underprivileged and handicapped in our society. As a colleague on the Appropriations Committee, I can vouch for the fact that Eddie has always treated the taxpayers' money with the same loving frugality most of us reserve for our personal finances. Eddie is a loving husband and proud father, a model of thoughtfulness and civility in the Halls of Congress. We wish Mary and Eddie and the family health and happiness in the years of well-earned retirement that lie ahead. We will surely miss Eddie's presence here. His life and career provide the exception to the old adage that "nice guys don't win." I want to thank the gentleman from Massachusetts, my good friend, Sil Conte, for securing this special order to facilitate showing our respect for our colleague Eddie Boland.

Mr. RODINO. Mr. Speaker, for most of my four decades in the Congress I have been privileged to know and work alongside Eddie Boland. He has been my good friend and my respected colleague. While saying goodbye is never easy, it is particularly difficult when you must bid farewell to someone like Eddie Boland whose commitment and leadership has left such an imprint upon this Chamber.

First and foremost, Eddie Boland has served his constituents. He ably and effectively represented the people of the Second Congressional District of Massachusetts for the past 36 years. Their interests have been his interests. Their concerns have always been his concerns.

EDDIE's accomplishments here in the Congress reflect his abiding faith in the promise of America and his dedication as a patriot in the truest sense of the word. His hallmark has always been his vision and his steadfast devotion to helping others. EDDIE's dream has been a simple one: To ensure a decent quality of life for every citizen.

As the chairman of the Appropriations Subcommittee on HUD and Independent Agencies, EDDIE has worked diligently to preserve those programs that benefit millions of Americans. He has been a tireless advocate on behalf of veterans and the homeless. He has always recognized that housing—the most basic of human needs—must be adequate, affordable, and available.

EDDIE's courageous commitment to the rule of law in the conduct of America's foreign policy has strengthened our Nation. He served as the chairman of the Permanent Select Committee on Intelligence and as a member of the Iran-Contra Committee. Through the amendments that bear EDDIE's name, we opted to do what was right, rather than what was expedient, and we signaled our intention that justice should be a vital frame of reference in American diplomacy.

During our nearly four decades together in this Chamber, EDDIE BOLAND has commanded my respect and admiration as a colleague and an outstanding legislator. He has held my genuine affection as a good friend over many years. Although EDDIE is retiring, his voice of reason and compassion will continue to echo and his record of public service will provide an enduring source of inspiration for those that follow him.

So it is with a sense of sadness that I say goodbye to EDDIE BOLAND. I want to extend my warmest best wishes to EDDIE and his lovely wife Mary for a very health and happy retirement. Even as I and EDDIE's colleagues will miss him—he will be sorely missed by the people and the Nation he loved and served so well.

Mr. GARCIA. Mr. Speaker, ED BOLAND has been one of the quiet leaders of this institution for well over three decades. He has served his community and this body well.

As a member of the House Appropriations Committee, ED has had a hand in any number of important pieces of legislation over the years. He has always been known as a tough negotiator but a fair one.

As chairman of the Select Committee on Intelligence, he gave that committee a prominent place in our deliberations on national security issues. As the author of the Boland amendment, he made certain that our Nation did not become involved in another Vietnam in Nicaragua.

ED BOLAND has been a steady force in this institution. He has been a man you could depend on. He will be missed by his friends and colleagues. He has left a positive mark on all of us who were privileged enough to have served with him.

Mr. GEPHARDT. Mr. Speaker, I want to take this opportunity to express a warm farewell to our friend and colleague, the Honorable EDWARD P. BOLAND. A leading force in Congress for 36 years, ED has won the admiration and respect of both Democrats and Republicans. When I say we will all miss the gentleman from Massachusetts, I firmly believe I speak for those on both sides of the aisle.

Born and raised in Springfield, MA, ED attended Boston College Law School. At the age of 23, he was elected to the Massachusetts State Legislature. He moved on to become register of deeds for Hampden County. ED's career was interrupted in 1942 when he enlisted in the Army. After distinguished service in the Pacific, ED was discharged a captain. In 1952 ED brought his skills and experience to Washington as the Representative for the Second Congressional District of Massachusetts.

During the Kennedy years ED became an instrumental voice for the President in challenging this Nation to put a man on the Moon. Throughout the years, ED has continued to be a strong supporter of the space program. In addition, ED has played a significant role as the second-ranking Democrat on the House Appropriations Committee and chairman of the HUD/Independent Agencies Subcommittee.

ED's vision of a strong America has not been limited to space. He has seen the need for a vigorous math and science curriculum in our schools. He has fought to restore needed funds for public housing and urban renewal. In addition, he has been a compassionate advocate for our veterans, the elderly, and this Nation's poor.

One of ED's most memorable achievements was his initiative to reverse this country's failed policy in Central America. It was unacceptable to him that the Congress and the American people should be lied to by administration officials. The secret war in Nicaragua had to end. In July of 1982, ED and Congressman Zablocki sponsored legislation which forbade U.S. assistance to groups fighting to overthrow the Government of Nicaragua. ED's fighting spirit gave us the motivation to win approval of the famous Boland amendment. ED has shown all of us that patriotism is best displayed by being committed to preserving the integrity of our Constitution. He fought to protect it in the Second World War and continued the fight by serving 36 honorable years as a Member of Congress. Thank you, ED, for devoting an entire career preserving the honor of those brave soldiers who gave their lives for this country.

ED, we appreciate the service you have dedicated to this body and to our country. You and your family have our continuing best wishes for a happy and rewarding retirement. Good luck and God bless.

Mr. MAZZOLI. Mr. Speaker, that the 101st Congress shall be convening in January 1989 without the presence in this House of the gentleman from Massachusetts [Mr. BOLAND], is indeed a sad prospect for us, his many friends, to consider.

This Nation, the Congress, and the people of the Second Congressional District of Massachusetts owe a great debt to EDDIE BOLAND for an outstanding record of distinguished service throughout his 36-year career in the House of Representatives. EDDIE's retirement leaves a void that cannot be filled.

Honor, integrity, intellect, and fairness are traits that easily come to mind in describing the character of EDDIE BOLAND. It is these special qualities which undoubtedly endear him to the people of his hometown of Springfield, MA, and have earned him the respect and admiration that he so widely enjoys.

His leadership and foreign affairs skills were recognized when he was selected as the first chairman of the newly formed Intelligence Committee. I served proudly with Chairman BOLAND as a member of the Intelligence Committee and I will cherish the friendship and respect I have for him, which have only increased.

A self-effacing man, EDDIE has always been a Member of the "workhorse" variety. While serving on the Appropriations Committee as a chairman of its HUD-Independent Agencies Subcommittee, he has been an honest steward of the Nation's resources. EDDIE has worked hard to support important housing programs that have been so critical to communities like my own hometown of Louisville and Jefferson County, KY, in addressing the needs of its citizens. It is most times a difficult balancing act but Chairman BOLAND has always sought to achieve the most effective use of limited Federal funds.

I think everyone can appreciate the difficult decision EDDIE has made in retiring from the House and returning to his home in Springfield, MA. But we can certainly understand his desire to spend "quality time" with his family and to be able to watch his children grow—an opportunity too often denied those who may hold public office.

Springfield has the distinction of being not only EDDIE BOLAND's home, but the home of the Basketball Hall of Fame—a subject about which folks around Louisville have acquired some considerable knowledge. Well, in my book, EDDIE BOLAND belongs in a "Hall of Fame", for the years of dedication and service to his people and this Nation—a great guy in every sense of the word. We will miss him. I wish EDDIE BOLAND much health and happiness in the years ahead.

Mr. LEHMAN of Florida. Mr. Speaker, I would like to add my own tribute to those of my colleagues in honor of Congressman EDDIE BOLAND who is retiring after 36 distinguished years of service in this body.

In the course of the current Presidential campaign, we have heard the Republican nominee speak of a "gentler and kinder" nation. Mr. Speaker, we need look no further than the example of EDDIE BOLAND to find gentleness and kindness personified. Such qualities did not diminish his effectiveness as a leader in the House of Representatives. As chairman of the Appropriations Subcommittee on HUD-Independent Agencies and as the first chairman of the House Permanent Select Committee on Intelligence, he knew how to make tough decisions and how to muster the necessary support from his colleagues.

As an advocate for housing programs and veterans programs, he was tireless in seeking to protect the benefits of those threatened by Reagan budget cutting. As one who recognized the importance of our efforts in space exploration, he was instrumental in seeing that the funds were there to put us back on track after the Challenger disaster.

EDDIE BOLAND was always eminently fair in his treatment of colleagues. He couldn't always say yes to their requests for help, but he always gave them a fair hearing.

We shall all very much miss Congressman BOLAND in the next Congress.

Mr. PEPPER. Mr. Speaker, this House is going to sustain a great loss when EDDIE BOLAND leaves us at the end of this Congress. Ever since he came to this House decades ago, EDDIE BOLAND has been one of the outstanding Members of this body. Keen of mind, indefatigable in his effort to serve his people and his country, deeply dedicated to all the people, EDDIE BOLAND has made a mark which will always be indelible in the records of this House. In the field of intelligence, he achieved outstanding patriotic service. During the years that he was chairman of the Intelligence Committee of the House, that committee stood in the highest esteem of our membership. It rendered immeasurable service to the House and to our country. It was a magnificent sentinel at the watchtower of our country. Always the charming gentleman, EDDIE BOLAND enjoyed the highest esteem of all of his colleagues. When he rose on the floor of the House to speak, every Member listened with rapt attention to the unvarying eloquence and soundness of his remarks.

This House will be poorer indeed when EDDIE BOLAND with all his graciousness and charm no longer adorns this floor. EDDIE BOLAND's friendship has meant much to me and I will cherish it wherever he and I may be all the days of my life.

EDDIE, yours has been a great record. I join your admiring and affectionate colleagues in extending to you and your family the warmest wishes of our hearts for a long, healthy, and happy life for you all.

Mr. COUGHLIN. Mr. Speaker, I rise to join my colleagues who have already spoken in praise of Congressman EDWARD P. BOLAND who is retiring after 36 years in the U.S. House of Representatives. During that time, he has compiled an impressive and distinguished record of service to his Massachusetts congressional district, the Nation, and the House, itself. For this reason, he has won the admiration and affection of all who had the great pleasure of serving with him.

I was most fortunate in being the ranking minority member of the Housing and Urban Development-Independent Agencies Appropriations Subcommittee for 4 years under EDDIE BOLAND's chairmanship. This subcommittee covers a wide variety of agencies and programs: housing, community development, urban development action grants, veterans, environment, space, science, and consumer protection. Chairman BOLAND is truly the renaissance man needed to be able to cover such a broad panoply of issues. He is a splendid chairman—fair, shrewd, smart—and made my assignment on the HUD Appropriations Subcommittee personally rewarding and professionally productive. It has been the HUD Subcommittee, under Chairman BOLAND's able leadership, which saved the section 202 Housing for the Elderly and Handicapped Program, kept UDAG's as long as they lasted, saw the Environmental Protection Agency and the National Aeronautics and Space Administration through troubled years, and increased funds for science activities.

It has been a delight to serve with EDDIE BOLAND. In retirement, I wish him a life filled with all the good Lord can give.

Mr. YATRON. Mr. Speaker, I rise today to pay tribute to my esteemed colleague and good friend, EDDIE BOLAND. As you know, he will be retiring from the House of Representatives at the end of the 100th Congress.

During his 36 years in Congress, EDDIE BOLAND has gained a reputation for being a pragmatist and effective consensus builder. Through his leadership as chairman of the Select Committee on Intelligence, Congress was able to increase the accountability of U.S. intelligence agencies. In addition, as chairman of the Subcommittee on HUD and Independent Agencies of the Appropriations Committee, EDDIE has continually been a steady force in maintaining a smooth appropriations process. He has continually been successful in passing appropriations measures without great controversy and usually on time. EDDIE's leadership and presence in the House will be missed by us all.

I know, too, that the citizens of the Second District of Massachusetts will also miss EDDIE BOLAND. The admiration and affection of his constituents are demonstrated by the fact that he has never lost an election. He has worked tirelessly to protect the interests of his constituents and his district has benefited from his dedication and commitment.

For my own part, I am honored to have been able to serve in this body with EDDIE BOLAND. He has served the people of Massachusetts and the country with dignity, devotion, and honor. His compassion and commitment have led to many accomplishments. It is a privilege to salute the 36 years of distinguished service of my good friend and colleague, EDWARD P. BOLAND, and I wish him and his family continued success and happiness for the future.

GENERAL LEAVE

Mr. CONTE. Mr. Speaker, I ask that all Members have 5 legislative days in which to revise and extend their remarks on the subject of my special order this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

TRIBUTE TO HON. DELBERT L. LATTA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. WYLIE] is recognized for 60 minutes.

Mr. WYLIE. Mr. Speaker, it is with great pleasure that I take this time to extoll the many virtues and qualities of one of the great people I have ever known, Mr. DELBERT L. LATTA.

I first met DELBERT L. LATTA in 1952. He has just been elected to the Ohio Senate at age 32. He came to my office in the attorney general's office where I was supervisor of the industrial commission section and said that he had some workmen's compensation cases he needed to clear up before he took up his duties as a new Ohio State senator. He had been a very successful lawyer and went over the cases with me in the same thoroughness that always would exemplify his later life in the Ohio Senate and as a Congressman from his beloved Fifth District.

We worked together later on when I was administrator of the Bureau of Workmen's Compensation. As a senator, he helped me with legislation I was interested in.

DEL LATTA was a good friend of former Gov. C. William O'Neill, and we came in close contact in my position as first assistant to the Governor.

Then he was elected to Congress in 1958 along with my good friend, Sam Devine. They were 2 of only 19 new Republicans elected to the House of Representatives that year. Later there was an Ohio vacancy on the Rules Committee, and Clarence Brown, who was then chairman of the Ohio Republican delegation, flipped a coin to determine who would get that seat on the Committee on Rules, and DEL LATTA won the toss, which put him on the Committee on Rules, where he has been a valuable member since 1965.

He has been a highly respected member of the Committee on the Budget, where he has worked diligently as a watchdog on that important committee.

DEL LATTA has been a most effective chairman of the Ohio Republican delegation. Since we have not had a Republican Senator from the State of Ohio while President Reagan has been in office, suggestions for patronage positions fell on the Republican congressional delegation, and DEL LATTA has made that a most effective mechanism, injecting the thinking of the members of our delegation who probably know better than anyone else the qualifications and fitness of people being considered from their congressional districts.

His service on the Committee on Committees demonstrates another job well done as evidenced by the representation of Ohio Members on major committees. The State of Ohio has, indeed, been fortunate to have DEL LATTA as the dean of our Ohio State delegation. Many times he has provided bipartisan leadership on issues of importance to the people and the economy of the State of Ohio.

The fact that he has served on the Committee on the Budget longer than the three terms normally allotted to a Member is an unprecedented testimonial to the confidence that the leadership has in his knowledge and his legislative skill. As the committee's ranking minority member since its inception in 1975, DEL LATTA has been the champion in the battle to reduce the Federal budget deficit. He is a dedicated fiscal conservative who authored the 1981 Gramm-Latta budget reduction act which set the stage for lower taxes and the country's recordbreaking economic growth during the current administration.

In 1982 DEL LATTA authored the Latta-Michel bill which made further real reductions in Federal spending. In his book "The Triumph of Politics" former OMB Director Dave Stockman saw fit to say that DEL LATTA was one of the few stalwart antispenders among the House GOP.

DEL LATTA's leadership on fiscal issues was demonstrated last year during the historic economic summit between the congressional leadership and the administration. An important member of the negotiating team, he helped bring about the budget plan which called for, and ultimately achieved, a $76 billion reduction in the Federal deficit for fiscal years 1988 and 1989.

DEL LATTA graduated from Ohio Northern University with an A.B. degree, and also received an LL.B. degree with scholastic honors. He lives in Bowling Green, and he has close connections with Bowling Green State University, where he will be honored on Friday with an honorary nonalumnus award. He received an honorary doctor's degree from Bowling Green State University in May. He holds doctor's degrees from four other institutions of higher learning.

Not long ago DEL and I were reminiscing about our younger days and how life has changed. DEL knows the value of hard work and determination and the rewards thereof. He was one of six children. In high school he tells me he hitchhiked to Findlay, 10 miles away, to sell shoes. He sold $43 worth of shoes on his first day. He went to work at 10 o'clock in the morning and got home at 8 o'clock that night, for which his commission for the day was $2.15. He says that was a lot of money in those days. He continued to work in the shoe store through college and law school, although while in college he got a job on a construction gang wheeling a wheelbarrow for the Rural Electrification Administration. The job was 10 hours a day, 6 days a week at 60 cents an hour, and he said he took it because he could make more money there. Yes, he knows the value of hard work and the rewards for it, which philosophically has served him well in Congress.

DEL has served with seven Presidents, five Speakers, and he says, "Unfortunately never in the majority." Through his leadership, even so, he has made the House of Representatives a better institution. His leadership will be missed.

DEL LATTA is truly a great American who has shaped a legacy which will benefit all Americans.

DEL LATTA and his wife, Rose Mary, have two fine children, Rose Ellen Kubek and Robert, and three delightful grandsons who are in the gallery this evening, Peter, David, and Andrew Kubek, who will always be proud of grandpa, I am sure.

My wife, Marjorie, and I have known the Lattas for many years and are proud to call them our friends.

Mr. Speaker, I yield to the gentleman from Tennessee [Mr. QUILLEN].

Mr. QUILLEN. Mr. Speaker, I want to thank the gentleman from Ohio [Mr. WYLIE], for calling this special order to honor the dean of the Ohio congressional delegation, Congressman DELBERT L. LATTA, on the occasion of his retirement from the House at the end of the 100th Congress.

DEL LATTA has achieved a truly outstanding record of accomplishment during his 30 years of service representing the people of Ohio's Fifth Congressional District in the House of Representatives. Especially in regard to reducing Federal Government spending, Congressman LATTA has no equal. His efforts to cut back Government spending have produced positive results for all of the country's taxpayers. Because of his hard work and leadership, tens of billions of dollars have been saved, particularly since he authored the historic Gramm-Latta budget reduction bill in 1981.

When the 101st Congress convenes, we are going to miss DEL LATTA around here. I have had the honor to serve with Congressman LATTA since I was sworn in as a first-termer in 1963. DEL was beginning his third term in the House at that time, and all through the 26 years since then, it has been a great pleasure to get to know and work with him. He's a great one and he is my friend. While I regret that he is leaving the House, at the same time, we all respect his sense that this is the time to bring to an end his tremendous congressional career, and I want to wish DEL and his lovely wife, Rose Mary, the best of everything and many, many healthy and happy years back home in Bowling Green.

Congressman LATTA joined me on the Rules Committee in August 1965 and since then we have worked together closely on the committee's business these last 23 years. During all that time DEL has played a prominent and influential role on the committee. His friendship, support, and good advice will be sorely missed, and the absence of his vigilant and steadfast opposition to unnecessary spending will leave an irreplaceable void in the Rules Committee next year.

Although Congressman LATTA has been an effective, forceful, and active member of the Rules Committee, it is his prominent leadership of the Republican Party membership on the House Budget Committee which gained Congressman LATTA well-deserved national attention and acclaim.

Congressman LATTA is the only ranking Republican member in the 14-year history of the Budget Committee. And what a great national leader on cutting wasteful Government spending he has been since January 1975, when he took the No. 1 Republican seat on the Budget Committee. For 14 years he has provided superb leadership to House Republican members on budget policy. He has made a difference.

It was in 1981 that Congressman LATTA achieved his famous victory. The time of the showdown contest on spending policy had arrived and the Rules Committee reported an outrageous rule to dictate procedure on the contending budget plans. Congressman LATTA had written a tough budget reduction plan with the help of the House Republicans, the new Reagan administration and many fiscally responsible Democratic members of the House. Notwithstanding this, and with a disgraceful contempt for any semblance of fairness, the Rules Committee decided Congressman LATTA could not have an up or down vote on his budget proposal, and the rule actually went so far as to write the motion to recommit which by tradition and the precedents has always been reserved for the minority party.

Congressman LATTA managed the rule on the Republican side, and led the charge against the outrageous rule. It was a tumultuous debate and when the vote was called, he achieved a narrow but decisive triumph. The unfair rule was rejected, and Congressman LATTA's substitute rule permitting a straight yes and no vote on his budget plan was adopted. He went on to lead the debate on his budget proposal. After a spirited debate, the vote was called. Again, Congressman LATTA prevailed and the House passed the historic GRAMM-LATTA budget reduction bill of 1981, which together with the 1981 tax cut bill, laid the foundation for the unprecedented economic expansion of the Reagan era. The great and decisive victory was won.

DEL LATTA's prominent place in the political history of these times is assured, and rightly so, because of his ability to lead the Congress toward significant spending reductions in the early 1980's. He led the charge that brought the great turnaround on Government spending.

So, as he prepares to leave this House which he has influenced so positively over the past 30 years, the record shows that Congressman LATTA is truly one who made a difference. His leadership of House Republicans on budget policy was superb and the results he achieved historic. His presence will be missed on the Rules Committee and on the Budget Committee, and in both instances, the two committees are diminished by his departure.

Del, you are leaving us after achieving a truly outstanding record of accomplishment, particularly as an effective national leader for frugality and fiscal responsibility regarding the Federal Government's budget. Well done, my friend.

To you, Del, and your lovely wife, Rose Mary, your two children and three grandsons, I wish all the best and health and happiness in the many years which lie ahead. It won't be the same around here next year without you. It's a privilege to know you, Del, and to call you my friend.

□ 2100

And my mind goes back, Del, to you and Rosemary, when we took an official trip to Taiwan, and I remember my wife, Cecil, was with us and you left one day and went down to a shop and found a large elephant, and you brought it back and I said, Del, that sure is a beautiful elephant. I would like to have one, and without hesitation Del Latta left, went back to the same shop and brought back an identical elephant which I now have and display proudly back in my home office in my congressional district.

I remember how wonderful both Del and his wife, Rosemary, were to me personally, and to Cecil, and my wife wishes she could be here this evening to celebrate with us this evening but she is not well, but my wife extends her love and I extend mine.

Good luck always. We are going to miss you, my friend, Del.

Mr. WYLIE. Mr. Speaker, I thank the gentleman from Tennessee [Mr. Quillen], the ranking Republican on the Rules Committee, for the most appropriate remarks.

Mr. Speaker, I yield to the gentleman from Ohio [Mr. Stokes], the cochairman of our Ohio delegation.

Mr. STOKES. Mr. Speaker, I thank my distinguished colleague for yielding to me, and I want to take this opportunity to commend the gentleman in the well, Mr. Wylie, for taking this special order so that we can, each of us, pay tribute to our colleague, Del Latta.

During my entire tenure in Congress, Del and I have served on two sides of the aisle, yet we have had a very special relationship. While Del is the dean of the entire Ohio delegation, I serve as dean of the Ohio Democratic delegation. In this capacity it has been necessary for him and me to consult with one another and to agree upon the necessity for any meetings of our delegation. Over the number of years we have worked together in this capacity when we have had to agree upon these kinds of matters, Del Latta and I have never had a disagreement. I am proud of that relationship that he and I have had on behalf of the business of our State and on behalf of the business of our delegation relating to our State.

Moreover I believe our State and our entire delegation has benefited from the relationship that he and I have had in our respective capacities.

For 6 years I also served on the Committee on the Budget with Del, and while Del and I are members of two different political parties and are philosophically and ideologically at opposite ends of the political spectrum, nevertheless I came to respect Del for being an articulate spokesman for his beliefs and for his points of view, and I think that is one of the strengths of this institution that men and women who do not agree with one another politically or philosophically, in order to respect one another, can come together in a way in which they form very firm and lasting friendships in this body.

Mr. Speaker, Del's hard work and his devotion to his constituents and to the State of Ohio has been the hallmark of his service in this body and as our dean I have enjoyed serving under his leadership for our State, and I want to take this opportunity to wish him a very enjoyable retirement.

I also, Mr. Speaker, want to take this opportunity to express my best wishes to his wife, Rosemary, and to the other members of his family whom I have had the privilege of coming to know and it is with respect for all of them that I join with Members this evening in paying tribute to our esteemed colleague, Del Latta.

Mr. Speaker, I thank the gentleman for yielding to me.

Mr. WYLIE. Mr. Speaker, I thank the gentleman from Ohio [Mr. Stokes].

Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. Conte].

Mr. CONTE. Mr. Speaker, I thank the gentleman from Ohio [Mr. Wylie] for taking this time to pay tribute to a great American and a great friend, Del Latta of Ohio.

Del and I are college mates. We came in here a couple of young men on a cold windy day back in 1959 full of energy and vigor and vitality, and down here ready to change the world, and it was the first time that I ever met Del Latta, and over the course of years both of us have matured, he on the Rules Committee and myself on the Appropriations Committee now for 30 years. I have gotten to know Del very closely and his family, and he is a great American and a great family man, but a great legislator, a guy who does his homework and one of the greatest things that we can say about Del is that Del is a man of his word.

He gives a person his word and it becomes his bond and whether down the line that word that he gave a person embarrasses him or wish that he could make a change, he will never make that change because he gave you his word, and his word is his bond.

One of the greatest things we say about a man is he is a good man, and in my book, Del Latta is a good man, and I wish him and his family the very best in retirement, and wish them a lot of good fishing and a lot of good hunting.

Mr. WYLIE. Mr Speaker, I thank the gentleman from Massachusetts for capturing our friend's attributes and I yield to my friend from Ohio, Mr. Miller

Mr. MILLER of Ohio. Mr. Speaker I want to join with my good friends from the Ohio congressional delegation to extend my personal thanks to Del Latta for providing the kind of legislative leadership that the good people of Ohio—and this Nation—both need and deserve. To be perfectly honest, this House will not seem the same without Del Latta—or Del's influence—around here. He has been a monumental force in making the economic programs we've enacted a reality. During the toughest debates on innovative, far-reaching economic policy changes and reforms, Del Latta stood at the front of the forces leading the drive for economic reform. The Nation benefited from his diligence and dedication. Every positive economic indicator that points to revival in the marketplace and business sector can trace its roots, in large part, to the work of this man.

In short, Del Latta was an architect of economic recovery in this Nation, and I don't think he has been given the credit or recognition that he richly deserves. This occasion gives us a chance to thank him. In the year of the Olympics, I am awarding Del Latta a gold medal for perseverance, his sense of purpose, and his priorities. The people of his congressional district have been fortunate to have a strong voice in the House. The people of this great Nation have been blessed to a degree far beyond their own imagination by the good work of a great man. I think it is fair to say that he will never be replaced, since such excellence and dedication are difficult to duplicate or copy.

We will miss Del, but we will continue to rely upon his good counsel and wise advice in the future. As was the case with him in the House, he'll always be nearby, But in his retirement I would like to off an old Irish blessing.

May the road rise to meet you
The wind be always at your back
May the Sun shine warm upon your face,
The rains fall soft upon your fields
And until we meet again
May God hold you in the palm of his hand.

Mr. WYLIE. Mr. Speaker, I thank the gentleman from Ohio [Mr. Miller] for a great statement about our friend, Mr. Latta.

Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. MOAKLEY], one of DEL LATTA's colleagues on the Rules Committee.

Mr. MOAKLEY. Mr. Speaker, I thank my friend from Ohio [Mr. WYLIE] for affording Members this opportunity to pay tribute to our esteemed colleague, the able gentleman from Ohio, DELBERT L. LATTA.

I have had the opportunity to work with DEL for many years on the Rules Committee and all of us view his departure as a real loss to our committee. Although we understand his decision to retire after 30 years in the House, DEL will be greatly missed.

He has been active and effective in a number of leadership positions—as a member of the Committee on Rules, senior member and the first Republican leader of the Committee on the Budget, dean of the Ohio congressional delegation, and a member of his party's official leadership, active in their Campaign Committee and Committee on Committees.

DEL has made a lasting contribution to this institution. During the 89th Congress he served on the Select Committee on Standards and Conduct. The select committee's report led to the first comprehensive effort to reform and regulate congressional ethics. That landmark study led to the adoption of the Code of Official Conduct and to the creation of a standing ethics committee.

During the 93d Congress, the gentleman from Ohio was a leading advocate of establishing a strong and effective congressional process. He worked tirelessly in committee, on the floor, and with the Senate to fashion the landmark Congressional Budget Act of 1974. Not content only to lead a revolution, the gentleman from Ohio personally took on the task of building the mechanism he helped design.

He was selected to serve as his party's leadership representative on the new Committee on the Budget. He has just begun his 15th year as the Senior Republican on the committee, and is the only ranking minority member the committee has had.

Mr. Speaker, DEL has been one of the Rules Committee's longest serving and hardest working members. He has been a source of history and wisdom for those of us who joined during his service, and our committee will be poorer for the loss of that expertise.

The Committee on Rules, we all realize, is one of the partisan committees. However, in my view, it is also one of the most civil and cordial committees of the House. DEL has contributed to that fairness and courtesy, in very significant measure.

But he has never let that stand in the way of a fight he feels needs to be waged. The gentleman from Ohio is always prepared to battle for what he believes in. As many of us remember from the bruising battles over the budget in recent years, he wins his share of fights, too.

Mr. Speaker, all of us offer DEL our warm wishes in retirement and extend our warmest regards to his wife, Rose Mary, to his children Rose Ellen and Robert, and to his handsome young grandsons, who we were all delighted joined us yesterday to attend their grandfather's last Rules Committee.

But, if the Rules Committee must meet again, I'm sure DEL will be there, and the Republican party and the Fifth District of Ohio will be well represented.

I would like to finish the Irish prayer of the gentleman from Ohio [Mr. MILLER] as he left out one line after "the wind be at your back"; the last line is, "May your soul be in heaven 24 hours before the devil knows you are dead."

Mr. WYLIE. Mr. Speaker, I appreciate those wonderful nonpartisan remarks from a Democratic colleague on the Rules Committee, and I know DEL LATTA and his family do, too.

Mr. Speaker, I yield to the gentleman from Ohio [Mr. REGULA].

Mr. REGULA. Mr. Speaker, I thank the gentleman from Ohio for having this special order for one of our colleagues for whom all of us have a great affection.

I have had the privilege and honor of working with DEL both on the Committee on the Budget and the Member of the Ohio delegation, and he has worked hard for our State and this Nation through his commitment to fiscal responsibility.

Some Members have served longer than DEL's 30 years, but few have served with such distinction. Few of us leave this body with major legislation carrying our name. DEL can be proud and the Nation grateful for his accomplishments in terms of getting us on the road to deficit reduction.

☐ 2115

It was a bitter pill but one that had to be swallowed. DEL had the courage to not only talk about deficit reduction, but to do something about it. I know a few among us who have been more committed to reducing Federal spending.

The wise counsel of DEL LATTA has often been sought by Presidents Nixon, Ford, and Reagan. While most of his colleagues are well aware of his efforts in this arena few may know the other side of DEL and that is a personal side, the man, not the legislator.

Underneath a seemingly all-business exterior is a very warm, generous and loyal human being. If DEL counts you among his friends, there is no limit to his support. It is with a sense of pride and good fortune that I count DEL among my true friends in this body. I would also want to mention Rosemary Latta. She has been a loyal teammate of DEL and has supported him in the sacrifices he has made to provide leadership for all of us. Each of us who know DEL and Rosemary will always cherish their friendship and wish for them years of good health and the time to enjoy their family.

Alexander Pope wrote to his fellow poet Joseph Addison the following, which I think is a fitting tribute to our friend and our colleague, DEL LATTA. "Statesmen, yet friend of truth, of soul sincere, in action faithful and in honor clear, who broke no promise, served no private end, who gained no title and who lost no friend."

We will all miss DEL. We cherish him as a friend and as a colleague and we certainly wish him well.

Mr. WYLIE. I thank the gentleman for those excellent deserved accolades.

Mr. Speaker, I yield to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. I thank the gentleman for yielding.

You know, I listened to the gentleman, my friend, Mr. WYLIE talk about those low paying jobs that DEL had early on in his career. I think that is what made him so tight with the taxpayers' dollar. You know, we have a lot of Congressmen around here who are personally very conservative with their own money, but not enough who are very concerned about the taxpayer dollars.

I remember as a Republican freshman coming in in 1981 when Ronald Reagan rode into town with 53 Republican freshmen. We were going to change the world. We did in a way, because we were among those who stood up and voted for that great Latta/Gramm reconciliation budget measure that saved some $140 billion for the American taxpayers.

DEL LATTA was a guy who always had in the back of his mind in that instinctive conservatism in favor of the American taxpayer. The guys who you go out there and you see every day, you see them as you drive to work, people who get up at 5:30, 6 driving their vehicles to that construction job or that restaurant where they are going to work. And we are the guys who come to Washington and spend their money.

DEL LATTA always had a great loyalty to those people, the working people of America.

I know DEL fairly well. We have been great buddies, hunting buddies, which are the best kind of comrades.

I am also a very good friend of his son, Bob and Marsha, his beautiful daughter-in-law. DEL and I and Bob and other members of the conference, JACK FIELDS and many others have spent some wonderful autumn mornings in west Texas chasing the wily mule deer.

I just recall one particular hunt that I think epitomizes DEL LATTA. All the rest of us liked to stand around the campfire or the cookhouse and talk about big bucks. I will tell you, there was some fine rhetoric. We talked about who was going to shoot and get the biggest one at that breakfast table before we went out and hunted.

We went out, I usually went out with Jack Fields and my brother and sometimes a couple of other people. We would go out and we would hunt and call back from time to time and try to find out who shot the biggest buck. We thought at one point that Jack had shot the biggest buck of the entire hunt. We had a radio that was connected to another hunting vehicle out there where Del was hunting. We radioed and said "We think we have got the biggest deer that is going to be shot this year." And the answer came back "Well, I wouldn't be too sure of it."

Sure enough, when we got back to the hunting headquarters there, Del Latta had bagged the biggest mule deer that was shot in Texas that year.

That was typical Del Latta. He did not strut and talk about it. But when we got back and you had to actually produce some game, produce a result, whether a big mule deer buck or the Latta/Gramm Budget Reconciliation Act, he came through.

I wanted to remind Del how vitally—and I know it is not necessary for me—but to remind him how very important his wonderful family is to him and particularly that great son of his, Bob Latta who is a personal friend of mine.

You know, I am reminded, we had kind of the same family experience except a little bit in reverse.

The Hunters used to run for office for years and never got elected. My dad ran for Congress in California, ran against John Tunney and lost in 1968. My cousin Clay Hunter ran when I ran in 1980, and lost. My wonderful, wonderful great uncle Joe Hunter in Kansas lost by just a few votes in Kansas. But the Hunters always came back and ran again. You know, I look back on those times and I look—we finally got one Hunter elected, I got in. We had one Hunter driven down the stretch and elected.

I look back on those times, those tremendous contests when our family was really driven together because there is nothing like a campaign to bring your family together because you have all those outside forces you are fighting against. It makes you kind of clutch each other a little tighter. I think of those times and, you know, those were the best times in my life because my whole family, my father, my mother, my brothers, my sisters, everybody was in good health and we were out there fighting the good fight for America.

Now Del has a wonderful son, Bob, a great friend of mine and just a tremendous, tremendous daughter-in-law Marsha. They ran a really tough tight race. They lost by some 27 votes out of some 64,000 votes cast in the Republican primary in Ohio this year. So they had a little opposite experience from the Hunter family.

Nonetheless, I think it is an experience in which I would hope that Bob draws that same lesson that I drew and that is that when you are out there in those tough, tight political contest, even if you lose them, when you have got your family there with you, whether it is the Hunter family or the Del Latta family with Del and his beautiful wife Rosemary who is so hospitable, those are the best times of your life.

I know Bob, Del's son, is going to be a real star. He is already a star as I am concerned and I am sure to his family.

I have been in the Latta household. It is a household of great traditional American values. Rosemary cooks the best English muffins I have ever had in my life. And I am coming back.

Let me tell you that when December rolls around, around the first of December there is going to be a good strong wind in west Texas, a little hunter's moon out. Del Latta and Duncan Hunter, Bob Latta and a lot of other great colleagues are going to stand around that cook tent with the wind whipping around our ears telling some good Texas stories and enjoying the big mule deer of Texas and some great comraderie.

We have had great comraderie for 8 years now since I have been in Congress. Del Latta is a wonderful friend.

Del, get that equipment ready to go this year, because this year I am going to get the biggest deer in Texas.

Mr. WYLIE. I thank the gentleman from California for sharing another side of the gentleman from Ohio.

The subject of this special order does indeed know the value of a dollar. When we go out to dinner we always pay our own bill.

Mr. Speaker, I yield to the gentleman from Ohio, Mr. Lukens.

Mr. DONALD E. "BUZ" LUKENS. I thank the gentleman from Ohio for yielding.

The gentleman from Ohio is a gentleman with whom I came into Congress.

I want to thank him very much for the dual opportunity here of first of all participating in this tribute to Del Latta a very old friend of mine and I know of the gentleman in the well's. Del Latta was here when I was first here in 1961 as a staff member of Congress of the United States on the Rules Committee, preceding Del's date of service on that committee as a member. I just wanted to say how very happy I am to have known the family from that time to today, and to make three or four very brief comments.

Much has been said about Del's service. I think I can probably not add much to that, except as an American back home in Ohio. Watching this prairie hero—up in northwest Ohio, of course, it is very flat, very fertile, is a pretty prairie in Ohio—watching this prairie hero become a national legend. It was exciting to know that our State could produce the kind of leadership that understood the vision and the purpose and the direction this Congress should have taken years ago and finally took under Latta-Gramm.

I am pleased and proud to have known the man then and only wish I could have been of more use in that campaign for cutting the budget, restraining Government growth, because I was not a Member of the House at the time.

It has been a source of inestimable pride to me that I have been able to call Del Latta and Rosemary Latta friends. I have come to know their family for the past 28, 29 years. I think that this body, having known them, known many, many great Members of Congress in the State of Ohio, from both sides of the aisle, will never know a person who has contributed more to the integrity and the moral character and moral authority of this body than Del Latta and his family.

We like to believe back home in the State of Ohio that we shape men and women for shaping the destiny of our country.

I think the gentleman in the well, Chalmers Wylie, that as a fellow Member of Congress and Clarence Miller, the three of us came in the same class together and we have never seen better leadership for the Ohio delegation, specifically the Ohio Republican delegation than Del Latta has given us over the special years and special times he has shared with us and led us.

We mentioned at lunch today, also honoring Del, the many, many times he has taken time out from his duties and his interests to assist in furthering the congressional political record of many of the younger Members and newer Members of Congress.

It is on a more personal note, however, that I would like to end my small part in this program and simply say that when I first came to Congress in 1966, that of all the men and women that were there who were ready to help me as a freshman and whom I found myself going to almost by rote for advice because of the common sense and the consistency and in my case the conservatism, there was none, none any wiser, any more accurate in his portrayal of the activities of the Congress, the direction of Congress and the future of this Congress.

If I might, I would like to share with this body, especially with Mr. Latta this evening, something that has always been a favorite of mine. I know he also favors T.R., Teddy Roosevelt, greatly. On April 10, 1899, speaking before the Chicago Club in Chicago, IL, a club that basically became the Chicago Rotary, he uttered a comment that has gone down in history and many people quote it many ways. But the literal quote is simply this: "Far better it is to dare mighty things, to win glorious triumphs, though checkered by defeat, than to rank with those poor and timid souls who neither enjoy much nor suffer much but live in that gray twilight that knows neither victory nor defeat."

To know Del Latta is to know a charger, a rough rider, a real American.

It has been my pleasure and privilege to work with him these several years in Congress, but more particularly to have Del as a friend.

Thank you for allowing me to participate.

Mr. WYLIE. I thank the gentleman very much for those inspiring remarks. It has indeed been a pleasure to serve with him and with Clarence and Del and all of the other members of the Ohio delegation for the many years that we have served together.

Del has been an inspiring leader to all of us. We are certainly fortunate to have benefited from his wisdom, experience, and expertise. His retirement from Congress will be a great loss to all of us and he will be missed. But I am proud as I can be, Del, to have had the honor to serve and work with you. Audrey and I want to wish, again, you and Rose Mary the very best in the years ahead when you return to private life back in Ohio.

I think you have to feel very proud indeed to have listened to all of these well-deserved accolades from your colleagues here this evening. May I say there were over 20 Members who called from both sides of the aisle and said they wanted to be here this evening to participate in this special order. Many of them have given the statements to include in the Record at this point which I will do soon. Some had to go back to the districts. Some left after it was announced they would not have any votes after 3 p.m. today because of the Quayle-Bentsen debate. But we had a good showing here this evening. I am glad that I was able to take this special order and to have other Members participate in it and allow you to hear some of the wonderful things that our Members in this body feel for you.

Mr. LOTT. Mr. Speaker, I want to join in this special order to pay tribute to our good friend and colleague from Ohio, Del Latta, who will be retiring at the end of this Congress.

Mr. Speaker, one of my first assignments upon being elected to Congress in 1972 was to the Judiciary Committee, which, as my colleagues will recall, became engaged in the very agonizing Presidential impeachment process. I count it my good fortune to be able to serve on that committee with a person of the stature and experience of Del Latta who had already been in Congress 14 years. I learned a great deal from observing and getting to know Del during that difficult period. As a young lawyer myself at the time, Del struck me as a lawyer's lawyer in the best sense of that term. He was thorough, fair, conscientious, and persistent in his committee responsibilities.

When I was appointed to the Rules Committee in 1975, I was again privileged to serve with Del who already had 10 years of experience on that committee under his belt. And again I was struck with Del's knowledge on the various issues that came before us, and his tenacity in questioning witnesses until they answered his hard questions. He always did his homework and it showed. And I think that both the House and his constituents have been the better for it.

These same traits were especially in evidence and valued during Del's service as our Republican leadership representative and ranking member on the Budget Committee since its inception. If ever there was a committee assignment tailored to Del's abilities, this was it, for he is a fiscal conservative who knows how to effectively and articulately implement that philosophy of government. I often think of Del as the personification of that award many of us have received—a real watchdog of the Treasury.

Year after year, in budget after budget, he has exercised real leadership on budgetary issues in the Rules and Budget Committees, and here on the House floor. In fact, the measure of his success is perhaps best exemplified by the enshrinement of his name in every governmental dictionary under the headings, "Gramm-Latta I" and "Gramm-Latta II," the first major victories of the Reagan administration in carrying out its economic game plan in its first year of existence.

On a more personal note, Mr. Speaker, I am going to miss Del Latta as a friend. Not only have we served together on the Rules Committee for the last 14 years, but for the last 10 of those years we've sat next to each other. And I guess in all that time, in our private conversations, at least, we've managed to solve all the world's problems and still have time for a few good laughs at each sitting. His retirement will leave a real void in this institution that will be difficult ever to fill. We thank you, Del, for all you have done for this institution, and we wish you all the best in your future endeavors.

Mr. HAMMERSCHMIDT. Mr. Speaker, it is hard to imagine this body without the strong leadership, sound judgment, and fierce integrity of my good friend, Del Latta. He has truly been one of the giants of the House and of the Republican Party.

We have served together for more than two decades, and I am grateful for our long association and friendship.

During all that time, Del has been a bulwark for fiscal integrity in government and for sensible, workable Federal budgets.

His leadership role on the Budget Committee has been crucial to our efforts to keep Federal spending under control and reduce the deficit. It has been a difficult job—there have been peaks and valleys—but the one constant in the equation has always been Del Latta.

He has always been a sensible, no-nonsense advocate of sound budget practices, and in 1981, authored the landmark Latta-Gramm budget reduction bill. Through his authorship of that legislation and his many years of productive support for balancing the Federal budget, Del Latta's positive impact on Federal fiscal policy will be felt for years to come.

We will miss his great strength and eloquence on the Budget Committee, and his important role in shaping the legislative agenda for this body as a senior member of the Rules Committee.

Like many in this body, I have appeared before Del and his colleagues on the Rules Committee more times than I can possibly recount. Whether we agreed or disagreed on the matter at hand, I could always depend on the courtesy, consideration, and fairness of Del Latta.

He has always been straightforward, practical-minded, and dedicated to the efficient and effective operation of the Congress and of the Government at large. For that, he has earned and enjoys the respect and admiration of his colleagues on both sides of the aisle.

I'm sure that the people of Ohio's Fifth Congressional District will also miss the services of Del Latta. They have benefited from his wisdom and hard work for 30 years, and that reflects not only on his outstanding record, but on their good judgment as well.

As he ends a remarkable three decades in this body, I want to extend to Del and his lovely wife, Rose Mary, my very best wishes for continued good health and prosperity.

Mr. APPLEGATE. Mr. Speaker, I wish to join with my colleagues from all across this country and from both sides of the aisle in honoring one of the truly legendary giants of this body and the dean of the Ohio congressional delegation, my good friend and colleague from Bowling Green, OH, Delbert Latta.

Del Latta has been a Member in the House representing the northwest rural areas of Ohio for 30 years. It is difficult to believe that Del has dedicated the majority of his adult life in service to his constituents in the Fifth Congressional District, and also to the people of Ohio and to all Americans who have benefited from Del's many outstanding years of service in Congress.

Having had attained the position as the ranking minority member on the House Budget Committee, and serving as a member of the exclusive Rules Committee, Del has fulfilled a commitment to the betterment of the world in which we live and to utilize his power and position to provide for an even greater future for Ohio and the United States.

Although we serve on different sides in this Chamber, I can think of no other Member in the House who has always acted consistently fair and just. Del Latta could always, and would always, minimize political differences in order to bring about the best for the people of Ohio, always remaining vigilant in safeguarding the interests of not only his own constituents but, just as well, looking out for all Ohioans from all parts of our large State. This is the real testament of his leadership that has spanned three decades on Capitol Hill.

I have tremendous respect for DEL LATTA and I can only say that he holds the admirable qualities of integrity and toughness that will be sorely missed by myself and others in this Chamber who wish to see the continuity of such attributes in the Congress of the United States. I wish him and his lovely wife, Rose Mary, the very best upon the start of many happy years together after the end of the 100th Congress. Not only do you have the admiration of your children, Rose Ellen and Robert, and your three grandsons, you also have the heartfelt respect of your colleagues in this Chamber who will miss your towering influence and importance.

Mr. TAYLOR. Mr. Speaker, I am glad the gentleman from Ohio [Mr. WYLIE] has reserved this time, because I believe that DEL LATTA's 30 years of service to this Nation deserves special recognition.

DEL LATTA has been a dedicated representative of the people of northwest Ohio since 1959, and during that time he has helped shape the history of the Congress and the history of our Nation's Government.

DEL LATTA is a tireless worker, one of a handful of Members who sit up late at night reading committee reports, and one of the very few Members who actually writes out his remarks in long hand.

DEL LATTA is truly a remarkable man. I am proud that he is my friend, I am grateful that he taught me so much about this House, and it has been an honor and a privilege to serve with him for the 16 years I have been in the Congress.

Mr. Speaker, when the history of American Government over the past 30 years is written, I believe DEL LATTA's name will stand out as one of the Republican Members of Congress who truly influenced national events.

DEL LATTA is as dedicated a fiscal conservative as we have in this House, and since 1965 he has been the intellectual anchor on our side of the Committee on Rules. DEL's personal commitment to fairness and honesty won him a seat on the Judiciary Committee in 1974, where he filled a vacancy just for the hearings on the impeachment of President Nixon.

Those were trying times for all of us who served in the House at that time, I know they were for me; but I remember the skill and dedication DEL LATTA brought to that difficult, difficult job.

When the Committee on Rules recommended the creation of the House Budget Committee as part of the Budget Impoundment Act of 1974, DEL LATTA was the natural choice as our ranking Republican member.

Mr. Speaker, as our Republican leader on budgetary matters, DEL LATTA was often ahead of his time. For nearly 15 years, he warned us about our growing national debt, expressed his concern about the lack of fiscal responsibility in Congress, and tried—often in vain—to do something about it.

Following President Reagan's election in 1980, the Nation's attention was finally focused on reducing spending, controlling the spiraling debt, and reducing the deficit. In the Congress, DEL LATTA redoubled his efforts and provided true leadership in the House for enactment of the cornerstone of President Reagan's Economic Recovery Program, the 1982 budget resolution and the 1982 Budget Reconciliation Act.

In May of 1981, both the President and the Congress turned to DEL LATTA. The House adopted his substitute for the fiscal 1982 budget resolution, which directed Congress to cut spending by $36 billion that year.

Mr. Speaker, on the afternoon of June 25, 1981, the fiscal 1982 budget cuts sought by the President were in jeopardy because of the action of the Rules Committee. The rule reported required a division of the President's package into a series of separate amendments.

The legislative and parliamentary skills of DEL LATTA once again moved to the forefront. To create the opportunity for winning the final vote for the President, DEL LATTA had to amend the rule. In order to amend the rule, he had to convince the House on four procedural votes. The votes were: 210 to 217 to defeat the original previous question motion; 219 to 208 to order the previous question on the Latta substitute for the rule; 216 to 212 for adoption of the Latta substitute for the rule; and 214 to 208 for adoption of the rule, as amended by the Latta substitute.

Mr. Speaker, when the Latta budget was adopted by the House on the next day, the newspapers were full of pictures of President Reagan accepting congratulations from his staff. Those of us who serve with the gentleman from Ohio know how and why it occurred.

The credit goes to DEL LATTA, pure and simple.

Mr. Speaker, during our Rules Committee meeting this morning, we had some visitors from Ohio, Dr. and Mrs. Bert Kuebeck, and their children, Peter, David, and Andrew. Mrs. Kuebeck is Rose Ellen Latta, and the three boys are DEL LATTA's grandsons. Peter Latta Kuebeck is 7, David Latta Kuebeck is 5, and Andrew Latta Kuebeck is 3.

Our friend and colleague, DEL LATTA, is retiring from the House after 30 years, so that he and his lovely wife Rose Mary may spend more time with their lovely grandsons.

Mr. Speaker, those three young boys will someday read what we say here tonight, and I hope they come to understand what a truly great man their grandfather is.

The Congress of the United States will certainly miss his leadership, but this Nation is better off today—and the future those grandsons will inherit will be a better one—because of DEL LATTA.

DEL LATTA is a warm, loving grandfather. He frequently quotes Peter. I guess all of us who are grandfathers know the feeling. DEL LATTA has just about been the closest friend I have around here, and my wife Dorothy joins me in wishing DEL, and his wonderful wife, Rosemary, the very best as their years of sacrifice and public service come to a close.

Mr. BENNETT. Mr. Speaker, Congressman DEL LATTA is an able legislator, a delightful gentleman and a dedicated American patriot. He has served our country and his district in Ohio with distinction and great achievement. His service on the Rules Committee and on the Budget and Ethics Committees has been one of leadership and constructive outlook. We will surely miss him not only because of this leadership he has wisely given us in the last 30 years, but also because of the friendship he has shown us each, and earned in return.

Mr. GRADISON. Mr. Speaker, I am grateful to my distinguished colleague from Ohio, Mr. WYLIE, for taking this special order so that we may pay tribute and bid adieu to our colleague and the dean of our State's delegation, DEL LATTA.

Regardless of who replaces DEL, the House will not be the same without him.

This institution has two types of Members—workers and showhorses. DEL LATTA has never been a showhorse. DEL is one Member who works quietly, consistently, and with dogged determination.

DEL LATTA established for himself and has set for all of us to follow the highest standards of integrity and honesty.

Those of us in the Ohio delegation have relied upon DEL for both leadership and representation. He has not let us down.

The good people of Ohio's Fifth Congressional District have had the good fortune, and the good judgment, to be represented in the House by DELBERT LATTA. I, along with all my colleagues, will miss DEL's commitment to public service.

I join all my colleagues in wishing DEL the very best.

Mr. ECKART. Mr. Speaker, I was 8 years old when DEL LATTA was first elected to the U.S. Congress. During the subsequent 30 years DEL has provided Ohio—specifically the Fifth District in northwestern Ohio—with steady and consistent representation in Washington. Always a fierce defender of his district and Ohio's interests, DEL has proved to be an effective dean of the Ohio delegation.

In the last 20 years, the Ohio economy has begun to evolve from an industrial and farm base to a service and corporate base. DEL and I have struggled with many of the same issues associated with this change in economy. Unemployment, a decaying infrastructure and changing patterns of trade are some of the more wrenching problems facing the communities across Ohio.

Although we have approached the issues from opposite sides of the aisle, our goals have been essentially the same: rebuilding the work force and providing expanded opportunities for Ohioans.

Perseverance and dedication are words that mark DEL's career in Congress. The people of the Fifth District and indeed the people of Ohio have been well served by DEL's long career in Congress.

Mr. RUSSO. Mr. Speaker, I join with my colleagues in paying well-deserved tribute to Congressman DEL LATTA. After three decades of service to his State and Nation, DEL can retire with pride in his accomplishments and with the sure knowledge that the continuing affection and respect of his colleagues go with him.

It was a special pleasure for me to serve with DEL on the Budget Committee. I appreciate someone who is a forceful advocate for their position but who also has the patience to be a good listener for an opposing view. That's how DEL has been in his legislative career, and it has been a part of his effectiveness, along with his dedication and commitment to his work and this body.

I'm going to miss working with DEL, and I count him a friend. My best wishes for happiness go with him in his retirement.

Mr. CONTE. Mr. Speaker, 30 years ago I walked through the Halls of Congress for the first time. It was an experience that all of us have gone through, and that few of us will forget.

I was joined on that cold January day of 1959 by 434 other Members of the House. Among those men and women with me were several Members still serving today, including SAM STRATTON and the gentleman we are here to honor this evening, DEL LATTA of Ohio.

Thirty years, Mr. Speaker. It's hard to beleive that it's been three decades since DEL, SAM, and I started our congressional careers. When I look back over those years and see how far the three of us have come, and what different paths we've taken, it is truly remarkable, given the humble expectations we had back in 1959. SAM has spent 30 years ensuring a strong, reliable national defense through his work on the House Armed Services Committee. I've worked to ensure reasonable funding for important Federal programs through my work on the Appropriations Committee. DEL had the foresight and resolve to request positions on the Budget and Rules Committees, thus ensuring himself a role in the most pressing issues of the day.

As the ranking member on the Budget Committee, DEL has taken a leadership role in the increasingly difficult task of assigning priorities to Federal spending programs. DEL has always taken his responsibilities in Congress very seriously, and throughout my 30 years with him in the House, I have had the utmost respect for DEL and his willingness to involve himself in the important and sometimes controversial questions put before this body.

History will record the efforts of the House Budget Committee during DEL's tenure. Of course, the dramatic changes to the Budget Act of 1974 including, but not limited to, Gramm-Rudman, were all handled with competence and thoughtfulness.

Many Members have come and gone over these decades, Mr. Speaker. But you would have to look long and hard to find a more reasonable, more wise, more conscientious Member than DELBERT L. LATTA. And no wife of a Member has been more supportive than his beautiful wife Rose Mary.

Mr. Speaker, I will certainly miss my good friend from Ohio. I'm sure that all who know DEL agree that he is due a well-deserved rest from the duties of public office. My wife Corrinne and I wish DEL and Rose Mary all the best—they deserve every bit of it and more.

Mr. HOUGHTON. Mr. Speaker, I would like to say a word about my boss on the Budget Committee, Congressman DEL LATTA.

I first got to know DEL LATTA when I was walking the Halls of Congress as a spanking new freshman hat in hand seeking a spot on some committee, any committee. DEL took me in—and to the Budget Committee I went.

Many shun the Budget Committee—a Congressman's purgatory, some will say, but not so with DEL LATTA. He simply felt that that was where the needed action action was. He simply hung in there, year after year.

DEL was responsible for the Gramm-Latta bill in 1981 which began the long road of congressional consciousness pointing to the Federal financial problem. There was one culprit—Congress—and he set out to provide a reminder, a mirror into which each legislator could look. Financial management was, is—never will be a popular task—but the basic Latta character and tenacity held true.

Since then no one has stood out more like a prophet than DEL LATTA pointing to the precipice this country slowly approaches if it soon does not come to its economic senses.

DEL, may we, your admirers, continue to follow where you have led the way.

Mr. ANNUNZIO. Mr. Speaker, it is a genuine pleasure for me to join with my colleagues in paying tribute to the Honorable DELBERT LATTA, who is retiring after 30 years of dedicated service in the House of Representatives.

I have had the privilege of knowing DEL as a good friend during the 24 years I have served in Congress, and his presence will be sorely missed by all of us in the House of Representatives who have had the opportunity to work with him. His commitment to the highest standards are an inspiration to his friends and fellow citizens, and his record of excellence and creative accomplishments as a citizen, as a public servant, and as a Member of Congress are most commendable.

Elected to the 86th Congress in 1958, DELBERT LATTA has conscientiously represented his constituents from the Fifth Congressional District of Ohio. During the 15 terms DEL has served in the House of Representatives, he has compiled an outstanding record of achievement, serving with distinction as the ranking minority member of the House Budget Committee, and as a member of the House Rules Committee.

DELBERT LATTA is highly respected—for his fairness, integrity, and legislative abilities. As a Member of Congress, he has made significant contributions in many leadership roles in his party, and has provided exemplary service to his constituents and to our Nation.

I extend to DELBERT LATTA my best wishes for continued success in devotion to the highest principles, and for a healthy and happy retirement.

Mr. SCHULZE. Mr. Speaker, I rise to offer a special tribute to my colleague, DEL LATTA of Ohio, who will be retiring from the House of Representatives at the close of this 100th Congress. Although DEL will soon be leaving this body, we are indeed fortunate that his legacy of distinguished service and accomplishments in Congress will remain.

The life of DELBERT LATTA has been one success after another. Born and bred an Ohioan, DEL epitomizes the "local boy does good" story. Upon graduation from high school, he attended Ohio Northern University, where he received an A.B. and an LL.B. As an attorney, he served his home district as a State Senator for three terms. From there, his success and commitment to the people of Ohio carried him to the U.S. Congress 30 years ago into the 86th Congress.

In Congress, DEL's role in leadership is well known. He has served in the House Republican leadership, as chairman of the Ohio Republican Congressional Delegation, as a member of the House Rules Committee, and as ranking minority member of the House Budget Committee.

Especially in the work he has done in shaping budgets of the United States, DELBERT LATTA will long be remembered for the significant and beneficial contributions his brand of fiscal conservatism brought to this country. Not least among these successes is the Gramm-Latta budget reduction bill in 1981, which set the stage for the lower taxes needed to unleash the current recordbreaking economic growth over the past 6 years. His 1982 Latta-Michel bill furthered real reductions in excessive Federal expenditures.

These are the lasting accomplishments DEL LATTA leaves behind when he retires from this body. It is no wonder that Bowling Green State University, Findlay College, Ohio; Northern University; Tiffin University; and the Toledo Medical College have all seen fit to confer honorary degrees to a man that has so dutifully and diligently served the State of Ohio and the United States.

Indeed, Congress will miss the candor, convictions, and contributions of DELBERT LATTA. I join my colleagues in wishing DEL every happiness in the future.

Mr. CRANE. Mr. Speaker, in January, the House of Representatives will lose one of its hardest working, dedicated Members when our friend and colleage from Ohio, DEL LATTA, takes a well-deserved retirement. He will leave us after three decades of service in this Chamber to his constituents and to his country.

For 30 years, DEL LATTA never gave up the fight for fiscal responsibility for our Government. For 30 years, he has struggled to educate the membership of this body that it is the duty of Congress to balance the budget, not to pass on unpaid bills to our children and our grandchildren. His was a lonesome fight for many of those 30 years.

DEL's continuous battle for a balanced budget led his Republican colleagues to elect him to the Budget Committee where he used his energies to fight for holding back Federal spending.

He has been forceful during the years of the Reagan administration in drafting legislation, and guiding it to passage, which has aided the President in achieving the goals he shares with DEL as they fought together for spending cuts.

For almost one-quarter of a century, he has served on the House Rules Committee where he became knowledgeable with all of the major legislation that has come before this body during that period.

For 30 years, DEL LATTA has served in this House of Representatives and, before that, in the Ohio State Senate. It is only fitting that DEL take time now to retire so that he and his lovely wife, Rose Mary, can enjoy their days separated from the strenuous pace he has set for all these years for the people of Ohio and this country.

Mr. WHEAT. Mr. Speaker, it is indeed a privilege to have this opportunity to honor the outstanding work of my friend and colleague on the Rules Committee, DELBERT LATTA, as he prepares to retire from his distinguished service in the House.

As a member of the minority on the Rules Committee, DEL has always been an eloquent spokesman for his cause. He has distinguished himself through his command of House rules and tradition and has earned my deep respect for the quiet intelligence with which he confronts the most difficult of issues.

After 30 years of service in the House, DEL LATTA has established a record of accomplishment that clearly demonstrate his effectiveness as a legislator. Without a doubt, his service will long be remembered for the energy he brought to this job and his integrity as a public servant.

Like my colleagues on the Rules Committee, I will surely miss DEL when we convene again next January. It has been a privilege working with Him, and I will recall our moments together on the committee for many years to come. It is truly my honor to commend DEL on the occasion of his retirement and to extend my very best to him in the years ahead.

Mr. HALL of Ohio. Mr. Speaker, I am pleased to join in this tribute to my retiring colleague, the gentleman from Ohio [Mr. LATTA]. I want to thank my other colleague from Ohio, Mr. WYLIE, for organizing this salute to DELBERT LATTA.

I have been pleased to serve with DEL on the House Rules Committee. DEL has been an effective leader of the minority position on a wide range of issues. Moreover, he has been a vigilant advocate for the administration's position on various legislation coming before the Rules Committee.

In addition, DEL has been a watchdog on spending bills. From his position on the Rules Committee, he has questioned the managers of funding measures to ensure that the expenditures in their bills are within the administration's requests and the budget resolutions' guildelines. He has helped to foster an awareness of the need for accountability and precision with respect to Federal spending legislation. This is part of the legacy he leaves to this institution.

I have enjoyed working with DEL on common issues of concern to our State of Ohio and to our region. I will miss his contributions on the minority side of the Rules Committee on such issues.

DEL, you have earned your retirement, and I join in wishing you all the best in the years ahead.

Mr. RINALDO. Mr. Speaker, our esteemed colleague, DEL LATTA, who has represented the Fifth District of Ohio for the past 30 years will retire at the end of this session.

Certainly he has earned the right to some leisure time after such a long and distinguished career, and I am pleased to join with his many friends in the House in congratulating him on his outstanding record of service and in wishing him much good health and happiness in the years ahead.

Mr. PASHAYAN. Mr. Speaker, much has been said about the great work produced by DEL LATTA in his three decades of service in the House. I shall dwell on a personal perspective on why he was a great Member.

The Gramm-Latta substitute was one of the hallmark pieces of legislation passed in the Reagan era. It signified that the Congress could, if it wished, grapple with its practice of excessive spending.

I remember the night well that it passed, June 26, 1981. Some of us spoke from the whip's office to an ebullient President—DEL, GENE TAYLOR, myself, and some others. Afterwards, the three of us—DEL, GENE, and I—went to Chinatown for dinner.

It is a remarkable tribute to DEL that he did not in the least steer the dinner conversation to the evening's triumph—no gloating, no bragging or brandishing. To him, Gramm-Latta was just another bill, just another day's work for the American people.

As usual, we finished dinner by 8:30 or 9, because DEL had to get back to his office to do some constituent work. No constituency ever had a harder working Member that I ever saw.

We are taught that there is greatness in humbleness. But we see too precious little of it.

DEL and men like him work for the Nation, not for themselves. They work for the ideals of America as they hold them, not for their own self-aggrandizement.

But their deeds speak louder than their words, and the stuff of history is deeds.

In DEL LATTA, the House will loose a Member who has made history.

He is my friend, and I shall miss him and his wise counsel. Thank you, DEL; you have made me a better Member; you have made us a better House.

Mrs. MEYERS of Kansas. Mr. Speaker, I rise in tribute to DEL LATTA, and his 30 years of outstanding service in the House. DEL has been a dedicated spokesman for the cause of fiscal responsibility and budgetary sense. I am sorry that I was only able to serve with him for 4 years.

Knowing that my predecessor in the House, Larry Winn, who served with DEL for 18 years, had the highest regard for DEL, I called him—and Larry extends his regards. Larry told me that if we had more Members like DEL LATTA, we wouldn't be faced with the deficit we have now. He also mentioned that DEL loved to play golf. He didn't mention what his handicap was, but I'll bet his game improves now that he's got some time to devote to it.

DEL, I'm going to miss you, and I join Larry in congratulating you on your good service, and wishing you a great retirement.

Mr. HUTTO. Mr. Speaker, I join with my colleagues in bemoaning the fact that the House is losing one of its finest Members with the retirement of DEL LATTA. In my 10 years in Congress, it has been my strong impression that DEL is one of the most respected Members on both sides of the aisle. As a long time member of the Rules Committee and the ranking minority member on the Budget Committee, we have all admired his good work and his dedication in presenting his positions on the floor. DEL LATTA will be greatly missed in this body. He has served America and his constituents with distinction and honor. I am glad that I had the opportunity to serve with him and I wish for him and his family much happiness and good health in his retirement.

Mr. WOLF. Mr. Speaker, I join with my colleagues today to salute the long and illustrious House career of the gentleman from Ohio, DEL LATTA, who is retiring at the end of the 100th Congress after serving the Fifth District of Ohio since his election in 1958.

I salute DEL LATTA for his work on the House Budget Committee. A true fiscal conservative, he has filled a vital role over the years as the chief House watchdog on big spending plans, always bringing to his colleagues' attention the necessity to bring the Federal budget into balance and to cut unnecessary spending.

DEL LATTA has also been a stalwart on the Rules Committee in protecting the rights of the minority in consideration of legislation.

It has been an honor to have served in Congress with DEL LATTA. We will miss his conservative voice in the House and wish him good health and happiness in his retirement years.

Mr. OXLEY. Mr. Speaker, I want to join my colleagues in paying tribute to my good friend and the dean of the Ohio delegation, DEL LATTA. As you know, DEL will be retiring at the conclusion of this Congress after 30 years of distinguished service to the people of Ohio.

DEL LATTA and I have worked together for many years. When I served in the Ohio General Assembly during the 1970's, DEL and I shared jurisdiction of three counties. It was then that I learned firsthand the effectiveness, hard work, and commitment that DEL LATTA has brought to public life. Coming from humble beginnings, DEL learned early in life that hard work and diligence pays off. DEL LATTA, who worked in a shoe store to put himself through college, practiced law in Bowling Green, OH for several years before winning a seat in the Ohio Senate. But DEL felt he could have a larger impact on public policy at the national level, and so in 1958, he left a safe State senate seat to run a successful campaign for the Fifth Ohio District. DEL LATTA has represented that district with distinction ever since.

DEL LATTA's achievements in public service are numerous. From his involvement in the Watergate hearings, to his 20-plus years of service on the House Rules Committee, DELBERT LATTA has had a significant effect on public policy. Yet, maybe his most significant achievement came in 1981, when the Congress passed the historic Gramm-Latta budget. This budget, possibly more than any other measure in this decade, spurred the economic recovery of this Nation.

As ranking Republican on the Budget Committee, DEL LATTA has consistently opposed the tax-raising, spend-all-you-can-spend mentality that has ruled the majority party of the House for so long. DEL'S efforts to bring our budget deficit under control and reduce domestic spending has won him the praise and respect from fiscal conservatives across the country.

In conclusion, Mr. Speaker, I commend my colleague, DELBERT LATTA, for his outstanding career in this body. His deeply held convictions, diligent work, and straightforward style will be sorely missed next year. I wish my friend good luck and Godspeed.

Mr. MICHEL. Mr. Speaker, I want to join with so many Members of the House in paying tribute to our good friend and long-time colleague, DEL LATTA, who is retiring at the end of the 100th Congress after 30 years of distinguished service to the House and to the country.

He is the dean of the Ohio delegation and I am glad to be able to say that we go back a long way together, back to the days of the late 1950's.

We both have memories of the great changes that transformed this institution since that time. But I guess the first few years of the Reagan administration were among the most memorable for Del and for me. After so many years, we Republicans at last had the momentum in the House to get things done. Del, as Republican ranking member of the Budget Committee, fought as only he can fight to lower spending and we passed what was known as the Gramm-Latta substitute in 1981. Those were exciting days for the Republicans in the House and for the Nation because they were the beginning of a time of dramatic—and needed—change in national economic policy.

Del was, as always, right in the thick of that fight. As Republican leader of the House I could always count on Del to present the case for the Republican budget with his typical candor and energy.

There are so many good memories I have of Del and I know that our colleagues have reminisced about his abilities and his example. But I just want to say that he has always been in the front lines of the debates we have had on economic and other issues. He has served the people of the Fifth District of Ohio with distinction and with dedication.

Del, we are going to miss your direct, nononsense style, your dedication to Republican principles, and your willingness to work in the interests of our country.

Mr. PEPPER. Mr. Speaker, we are losing many Members of great note and exceptional closeness to me, but one of those whose leaving pains me most acutely is Del Latta. Del Latta and I have served for many years on the Rules Committee together, and he has been the second ranking minority member on that committee during my entire chairmanship. I have had the greatest respect for Del's intelligence, integrity and genuine devotion to the work of the committee and to the duties of the House. Our personal relations have been exceptionally close and our friendship has been warm, and to me most meaningful. Del's conduct as a member of the committee and a Member of the House has exemplified the best and noblest traditions of the House. His integrity has been exemplary. His kindliness, gentleness and graciousness of manner have endeared him to all of his colleagues.

Del Latta and I are not of the same party and we have ideological differences, but our relationship reflects how invaluable personal friendship and mutual respect tie men together in spite of partisan differences. I shall always honor the service Del Latta has rendered to the Rules Committee, to the Budget Committee and the House because what he did, he did as an able, honorable, patriotic American.

I shall always cherish the memory of my warm association with and my friendship for Del Latta, and in my memories of my service in this House, one of the ones which will always be closest to my heart will be that happy association with the friendship for Del Latta.

Del, however distance may separate us in the days ahead, I can assure you that in memory we shall be close together. May the Lord bless you and your family, give you long life, good health and great happiness.

Mr. YATRON. Mr. Speaker, I want to recognize our distinguished colleague, Del Latta, for his outstanding service to our country and to the Fifth District of Ohio. As you know, Del will be retiring from the House of Representatives at the end of the 100th Congress.

Throughout his 30 years in Congress, Del has been a champion of balanced budgets and fiscal responsibility and has consistently worked to restore common sense to the budget process.

Del's constituents know and support him for his commitment to representing their views and interests in the House. Their admiration and affection for him are illustrated by the fact that Del was reelected 14 times. I know that they will miss his hard work and dedication.

It has been a pleasure for me to serve in the House with Del and I am honored to salute his 30 years of distinguished service in this body. I wish him and his family all the best in the future.

□ 2130

GENERAL LEAVE

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Lowry of Washington (at the request of Mr. Foley), for October 4 and 5, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the requests of Mr. Bereuter) to revise and extend their remarks and include extraneous material:)

Mr. Boehleri, today, for 5 minutes.

Mr. Bereuter, For 5 minutes, today.

Mr. Gingrich, for 5 minutes, today.

The following Members (at the request of Mr. Weiss) to revise and extend their remarks and include extraneous material:)

Mr. Brooks, for 5 minutes, today.

Mr. Coyne, for 5 minutes, today.

Mr. Annunzio, for 5 minutes, today.

Mr. Owens of New York, for 5 minutes, on October 6, 7.

Mr. Torricelli, for 60 minutes, on October 7.

Mrs. Boxer, for 60 minutes, on October 12.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Bereuter) and to include extraneous matter:)

Mr. Inhofe.
Mr. Wortley.
Miss Schneider.
Mr. Vander Jagt.
Mrs. Smith of Nebraska.
Mr. Gilman in two instances.
Mr. Denny Smith.
Mrs. Morella.
Mr. Lewis of Florida.
Mr. Buechner.
Mr. Conte.
Mr. Porter.
Mr. Schuette.
Mr. Bereuter.

(The following Members (at the request of Mr. Weiss) and to include extraneous matter:)

Mr. Rangel in two instances.
Mr. Traficant in three instances.
Mr. Levin of Michigan.
Mr. Rowland of Georgia.
Mr. Florio in two instances.
Mr. Murtha.
Mr. Morrison of Connecticut.
Mr. Yatron.
Mr. Roe in two instances.
Mr. Traxler in two instances.
Mr. Clement in two instances.
Mr. Wheat.
Mr. Clay.
Mr. Hamilton in two instances.
Mr. Fascell in two instances.
Mr. Campbell.
Mr. Sikorski.
Mr. Kildee.
Mr. Frank.
Mr. Yates.
Mr. Stark.
Mr. Scheuer.
Mrs. Collins.
Ms. Oakar.
Mr. Kanjorski.
Mr. Wise.
Mr. Skelton in two instances.
Mr. Espy.
Mr. Gordon.
Mr. Richardson.
Mr. Dorgan of North Dakota.
Mr. Miller of California.
Mr. Andrews.
Mr. Donnelly.
Mr. Studds.
Mr. Lantos.
Mr. Dymally.
Mr. Stokes.
Mr. Atkins.

ENROLLED BILL SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled the bill of the House of the following title, which was thereupon signed by the Speaker.

H.R. 1596. An act to amend title 28, United States Code, to create two divisions in the Judicial District of Maryland.

SENATE ENROLLED BILLS SIGNED

The Speaker announced his signature to enrolled bills of the Senate of the following titles:

S. 328. An act to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes; and

S. 1165. An act to authorize the Secretary of the Interior to provide for the development and operation of a visitor and environmental education center in the Pinelands National Reserve, in the State of New Jersey.

ADJOURNMENT

Mr. WYLIE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 31 minutes p.m.), the House adjourned until tomorrow, Thursday, October 6, 1988, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4423. A letter from the Department of Defense Retirement Board of Actuaries, transmitting the board's first report on the status of the Department of Defense military retirement fund, pursuant to 10 U.S.C. 1464(c) (97 Stat. 646); to the Committee on Armed Services.

4424. A letter from the Comptroller General, General Accounting Office, transmitting, a report on the audit of the Senate building beauty shop's financial statements for 1987 (GAO/AFMD-88-73; September 1988); to the Committee on Government Operations.

4425. A letter from the Administrator, Environmental Protection Agency, transmitting a report with findings and recommendations on the need for leaded gasoline for farm equipment, pursuant to 42 U.S.C. 7545 nt.; jointly, to the Committees on Energy and Commerce and Agriculture.

4426. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting implementation of law enforcement assistance agreements between the United States, the Republic of the Marshall Islands, and the Federated States of Micronesia, pursuant to 48 U.S.C. 1681 nt.; jointly, to the Committees on Foreign Affairs and Interior and Insular Affairs.

4427. A letter from the Railroad Retirement Board, transmitting the Board's budget request for fiscal year 1990, pursuant to 45 U.S.C. 231f(f); jointly, to the Committee on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and references to the proper calendar, as follows:

Mr. DINGELL: Committee of Conference. Conference report on S. 1579. (Rep. 100-1055). Ordered to be printed.

Mr. DINGELL: Committee of Conference. Conference report on H.R. 3235 (Rept. 100-1056). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5395. A bill to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as conditions to the Cheaha Wilderness, and to preserve over thirty thousand acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes; with an amendment (Rept. 100-1057, Pt. 1). Ordered to the printed.

Mr. de la GARZA: Committee on Agriculture. H.R. 5395. A bill to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as conditions to the Cheaha Wilderness, and to preserve over thirty thousand acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes; with amendments (Rept. 100-1057, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 4992. A bill to expand our national telecommunications system for the benefit of the hearing-impaired and speech-impaired populations, and for other purposes (Rept. 100-1058, Pt. 1). Ordered to be printed.

Mr. ACKERMAN: Committee on Post Office and Civil Service. H.R. 5319. A bill relating to compensation for members of the United States Park Police and members of the United States Secret Service Uniformed Division; with an amendment (Rept. 100-1059). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Miss SCHNEIDER (for herself, Mr. Brown of California, Mr. Gilman, Mr. Udall, Mr. Boland, Mr. Boehlert, Mr. MacKay, Mr. Stark, Mr. Jeffords, Mr. Scheuer, Mr. Miller of Washington, Mrs. Boxer, Mrs. Morella, Mr. St Germain, Mr. Shays, Mr. Mineta, Mr. Porter, Mr. Hunter, Mr. Smith of New Hampshire, Mr. Kennedy, Mr. Buechner, Mr. AuCoin, Mr. Torres, Mr. Atkins, Mr. Hochbrueckner, Mr. Bates, Mr. Beilenson, Mr. Ravenel, Mrs. Saiki, Mr. Berman, Mr. Blaz, and Mr. Levine of California):

H.R. 5460. A bill to establish national policies and support and encourage international agreements that implement energy and natural resource conservation strategies appropriate to preventing the overheating of the earth's atmosphere, known as the greenhouse effect; jointly, to the Committees on Energy and Commerce, Science, Space and Technology, Ways and Means, Foreign Affairs, Public Works and Transportation, Government Operations, Agriculture, Interior and Insular Affairs, Banking, Finance and Urban Affairs, Armed Services, and Merchant Marine and Fisheries.

By Mr. CLEMENT:

H.R. 5461. A bill to amend the Atomic Energy Act of 1954 to encourage the development and use of standardized plant designs and improve the nuclear licensing and regulatory process; jointly, to the Committees on Interior and Insular Affairs and Energy and Commerce.

By Mr. COLEMAN of Texas:

H.R. 5462. A bill to provide assistance for housing and community development in the United States-Mexico border region of the United States; to the Committee on Banking, Finance and Urban Affairs.

By Mr. DAVIS of Illinois (for himself, Mr. Dreier of California, Mr. Stump, Mr. Combest, Mr. Oxley, Mr. Fawell, Mr. McCrery, Mr. Hunter, Mr. McCandless, Mr. Porter, Mr. Burton of Indiana, Mr. Goodling, and Mr. Ritter):

H.R. 5463. A bill to repeal the Medicare Catastrophic Coverage Act of 1988; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. FLORIO:

H.R. 5464. A bill to provide financial assistance to States and localities for high quality early childhood development programs for prekindergarten children, and for other purposes; to the Committee on Education and Labor.

By Mr. HAYES of Louisiana:

H.R. 5465. A bill to release restrictions on certain property located in Calcasieu Parish, LA, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. ROE (for himself and Mr. Lewis of Florida):

H.R. 5466. A bill to require the Environmental Protection Agency to conduct research on the management of infectious medical wastes; jointly, to the Committees on Science, Space, and Technology and Energy and Commerce.

By Mr. SIKORSKI:

H.R. 5467. A bill to amend title 31, United States Code, to permit the Comptroller General of the United States to review and decide protests of Federal Government employees relating to converting certain functions performed by such employees to contractor performance, to require the heads of Federal agencies responsible for determining whether to convert to contractor performance any commercial activities of such agencies to regularly consult with employees who will be affected by such determinations, and for other purposes; jointly, to the Committee on Government Operatons and Post Office and Civil Service.

By Mr. STARK:

H.R. 5468. A bill to amend title XVIII of the Social Security Act to improve protections of individuals against inappropriate transfers from Medicare participating hospitals; jointly to the Committees on Ways and Means and Energy and Commerce.

By Mr. SWIFT (for himself, Mr. Synar, Mr. Sharp, Mr. Eckart, Mr. Tauzin, Mr. Slattery, Mr. Cooper, Mr. Bruce, and Mr. Boucher):

H.R. 5469. A bill to amend the Clean Air Act; to the Committee on Energy and Commerce.

By Mr. GLICKMAN:

H.J. Res. 673. Joint resolution proposing an amendment to the Constitution to provide for the direct popular election of the President and Vice President of the United States; to the Committee on the Judiciary.

By Mr. JONTZ (for himself, Mr. Marlenee, Mr. Nagle, Mr. Grandy, Mr. Johnson of South Dakota, Mr. Roberts, Mr. Dorgan of North Dakota, Mr. Emerson, Mr. Penny, Mr. Evans, Mr. Leach of Iowa, Mr. Madigan, Mr. Glickman, Mr. Holloway, Mr. Robert F. Smith, and Mr. Schuette):

H. Con. Res. 386. Concurrent resolution expressing the sense of the House regarding European Community actions affecting United States exports of corn gluten feed and corn byproducts; to the Committee on Ways and Means.

By Ms. OAKAR:

H. Res. 572. Resolution providing for concurring in the Senate amendments to H.R. 60, to permit the Architect of the Capitol, under the direction of the Joint Committee on the Library, to accept gifts of money for the purpose of works of fine arts for the Capitol, and for other purposes, with amendments; considered and agreed to.

By Mr. WAXMAN:

H. Res. 573. Resolution concurring in the Senate amendment to H.R. 4833 with an amendment; considered and agreed to.

By Mr. ROE (for himself, Mr. Nelson of Florida, Mr. Lujan, and Mr. Walker):

H. Res. 574. Resolution to commemorate the successful return to flight by the space shuttle *Discovery;* to the Committee on Science, Space, and Technology.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. HUNTER introduced a bill (H.R. 5470) for the relief of Luisito B. Deguzman; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

[Omitted from the Record of October 4, 1988]

H. Con. Res. 374: Mr. Roe, Mr. Lujan, Mr. Walker, Mr. Nelson of Florida, Mr. Lewis of Florida, Mr. Hall of Texas, Mr. Smith of New Hampshire, Mr. Buechner, Mr. Rowland of Connecticut, Mr. Boehlert, Mr. Sensenbrenner, Mr. Hefley, Mr. Ritter, Mr. Volkmer, Mr. Slaughter of Virginia, Mr. Rowland of Georgia, Mr. Stallings, Mr. Nagle, Mrs. Morella, Mr. Brown of California, Mr. Levine of California, and Mr. McMillen of Maryland.

H. Con. Res. 377: Mr. Owens of Utah, Mr. Smith of Florida, and Mr. Feighan.

H. Con. Res. 380: Mr. Kildee, Mr. Wise, Ms. Pelosi, Mr. Rhodes, Miss Schneider, Mr. Grant, and Mr. Ackerman.

H. Con. Res. 381: Ms. Oakar, Mr. Rahall, Mr. Hamilton, Mr. Mica, Mr. Wolpe, Mr. Lantos, Mr. Smith of Florida, Mr. Levine of California, Mr. Feighan, Mr. Weiss, Mr. Atkins, Mr. Broomfield, Mr. Gilman, Mr. Lagomarsino, Mr. Hyde, Mr. Burton of Indiana, Mrs. Meyers of Kansas, Mr. Miller of Washington, Mr. Donald E. Lukens, and Mr. Blaz.

H. Con. Res. 383: Mr. Bereuter, Mr. Dixon, Mr. Broomfield, Mr. Weiss, and Mr. Donald E. Lukens.

H. Res. 225: Mr. Solomon and Mr. Stallings.

H. Res. 300: Mr. Gekas and Mr. Eckart.

[Submitted October 5, 1988]

H.R. 190: Mr. Emerson.

H.R. 817: Mr. Emerson.

H.R. 1028: Mr. Vento, Mr. Shaw, Mr. Bilirakis, Mrs. Johnson of Connecticut, and Mr. Chappell.

H.R. 1716: Mr. Stark and Mr. Evans.

H.R. 1950: Mr. Carr and Mr. MacKay.

H.R. 2546: Mr. Harris, Mr. Davis of Michigan, and Mr. Nichols.

H.R. 2854: Mr. Kildee.

H.R. 3593: Mr. Weiss.

H.R. 4042: Mr. Scheuer.

H.R. 4226: Mr. Kildee, Ms. Kaptur, Mr. Swift, and Mrs. Schroeder.

H.R. 4277: Mr. Boucher, Ms. Oakar, Mr. Gray of Pennsylvania, Mr. Grandy, Mr. Mfume, and Mr. Rodino.

H.R. 4455: Mr. Murphy.

H.R. 4544: Mr. Kastenmeier.

H.R. 4710: Mr. Gingrich.

H.R. 4950. Weiss and Mr. Bates.

H.R. 4958: Ms. Kaptur.

H.R. 4992: Mr. Rangel and Mr. Petri.

H.R. 5023: Mr. Weiss.

H.R. 5151: Mr. Packard, Mr. Bunning, Mr. Smith of Florida, Mr. Shays, Mr. Vento, and Mr. Chapman.

H.R. 5230: Mr. Miller of Ohio.

H.R. 5377: Mr. Bonker.

H.R. 5396: Mr. Lent, Mr. Walker, Mr. Bilirakis, Mr. Coughlin, Mr. Coats, Mr. Lewis of Florida, Mr. Weldon, Mr. Hiler, Mr. Madigan, Mr. Hansen, Mr. Buechner,Mr. Shaw, and Mr. Dio Guardi.

H.R. 5450: Mr. Gregg.

H.J. Res. 1: Mr. Roe.

H.J. Res. 477: Mr. Perkins, Mr. Stump, Mr. Smith of New Hampshire, and Mr. Markey.

H.J. Res. 501: Mr. Kennedy, Mr. Lewis of California, Mr. Coelho, Mr. Pursell, Mr. Towns, Mr. Callahan, Mr. Green, Mr. Gradison, Mr. Levine of California, Mr. Roybal, Mr. Hastert, Mr. Sharp, Mr. Nichols, Mr. Payne, and Mr. Anthony.

H.J. Res. 526: Mr. Stenholm, Mr. Lewis of California, and Mr. Lipinski.

H.J. Res. 607: Mr. McMillen of Maryland and Mr. Rangel.

H.J. Res. 613: Mr. Bonker.

H.J. Res. 619: Mr. Moody, Mr. Borski, and Mr. Cheney.

H.J. Res. 654: Mr. Weiss, Mr. Cardin, Mr. Beilenson, Mr. Lehman of Florida, Mrs. Boxer, Mr. Wyden, Mr. Bateman, Mr. Yates, Mr. Gejdenson, Ms. Pelosi, Mr. Bonker, Mr. Molinari, Mr. Moakley, Mr. McDade, Mr. Dwyer of New Jersey, Mr. Feighan, Mr. Green, Mr. Gilman, Mr. Porter, Mr. Fascell, Mr. Clarke, Mr. Manton, Mr. Lipinski, Mr. Torricelli, Mr. Rinaldo, Mr. Weber, Mr. Lantos, Mr. AuCoin, Mr. Berman, Mr. Kostmayer, Mr. Smith of Florida, Mr. Wortley, Mr. Frost, Mr. Hochbrueckner, Mr. Dymally, Mr. Brown of California, Mr. Traxler, and Mr. Dellums.

H.J. Res. 660: Mr. Akaka, Mr. Barnard, Mrs. Bentley, Mr. Bevill, Mrs. Boxer, Mr. Brown of California, Mrs. Byron, Mr. Davis of Michigan, Mr. Dyson, Mr. Fazio, Mr. Fawell, Mr. Richardson, Mr. Thomas of Georgia, Mr. Rhodes, Mr. Rinaldo, Mr. Robinson, Mr. Gephardt, Mr. Saxton, Mr. Schuette, Mr. Tallon, Mr. Martinez, Mr. Lewis of California, Mr. AuCoin, Mr. Aspin, Mr. Gekas, Mr. Rodino, Mr. Jeffords, Mr. Jones of North Carolina, Mr. Kildee, Mr. Volkmer, Mr. Lancaster, Mr. McGrath, Mr. McMillen of Maryland, Mr. Quillen, Mr. Conyers, Mr. Ravenel, Mr. Horton, Mr. Levin of Michigan, Mrs. Martin of Illinois, Mr. Henry, Mr. Miller of Washington, Mr. Coleman of Missouri, Ms. Slaughter of New York, Mr. Wilson, Mr. Fields, Mr. Gilman, Mr. Ballenger, Mr. Bryant, Mr. Wortley, Mr. Martin of New York, Mr. Lagomarsino, Mr. Bilirakis, Mr. Smith of Florida, Mr. Ackerman, Mr. Pepper, Mr. Mazzoli, Mr. Moakley, Mr. Fauntroy, Mr. Young of Florida, Mr. Davis of Illinois, Mr. Lipinski, Mr. Neal, Mr. Schaefer, Mr. Darden, Mr. Tauzin, Mrs. Morella, Mr. Manton, Mr. Dingell, Mr. Emerson, Mr. Frost, Mr. Bliley, Mr. Smith of New Jersey, Mr. Yatron, Mr. Ireland, Mr. Parris, Mr. Hochbrueckner, Mr. Ortiz, Mr. Clay, Mr. McCollum, Mr. Jenkins, Mr. Hughes, Mr. Pickett, Mr. Harris, Mr. Rangel, Mr. Chapman, Mr. Roe, Mr. Bustamante, and Mr. Skaggs.

H.J. Res 669: Mr. Spratt, Mr. Buechner, Mr. Porter, Mrs. Vucanovich, Mr. Bateman, Mr. Stark, Mr. Slattery, Mr. Levine of California, Mr. Conyers, Mr. Smith of Florida, Mr. Towns, Mr. Owens of New York, Mr. Fauntroy, Mr. Foglietta, Mr. Applegate, Mr. Gray of Pennsylvania, Mr. Courter, Mr. Rinaldo, Mr. Harris, Mr. Hayes of Illinois, Mr. Moody, Mr. Anderson, Mr. Bliley, Mr. Bonior of Michigan, Mr. Borski, Mr. Campbell, Mr. Cardin, Mr. Darden, Mr. Livingston, Mr. Early, Mr. Wolpe, Mr. Dorgan of North Dakota, Mr. Espy, Mr. Houghton, Mrs. Johnson of Connecticut, Mr. Kasich, Mr. Traficant, Ms. Kaptur, Mr. Kleczka, Mr. de Lugo, Mrs. Kennelly, Mr. Lewis of California, Mr. MacKay, Mr. Coelho, Mr. Hoyer, Mr. Matsui, Mr. Mack, Mr. Lipinski, Mr. Leland, Mr. Hochbrueckner, Mr. Schuette, Mr. Udall, Mr. Walgren, Mr. Swindall, Mr. Brown of California, Mr. Packard, Mr. Dellums, Mr. Ravenel, Mr. Manton, Mr. Miller of Ohio, Mr. Gejdenson, Mr. Stump, Mr. Miller of Washington, Mr. Mineta, Mr. Wyden, Mr. Flippo, Mr. Murphy, Mr. Neal, Mr. Costello, Mr. Shays, Mr. Fawell, Mr. Ritter, Mr. Rodino, Mr. Roe, Mr. Rose, Mr. Rowland of Georgia, Mr. Roybal, Mr. Saxton, Mrs. Bentley, Mr. Synar, and Mr. Tauzin.

H. Con. Res. 258: Mrs. Collins.

H. Con. Res. 385: Mr. Sawyer, Mr. Eckart, Mr. Traficant, Mr. Stokes, Ms. Oakar, Mr. MuCurdy, Mr. Gray of Pennsylvania, Mr. Kanjorski, Mr. Walgren, Mr. Ridge, Mr. Spratt, Mrs. Patterson, Mr. Derrick, Mr. Cooper, Mr. Jones of Tennessee, Mr. Ford of Tennessee, Mr. Wison, Mr. Chapma, Mr. Bryant, Mr. Hall of Texas, Mr. Brooks, Mr. Coleman of Texas, Mr. Frost, Mr. Owens of Utah, Mr. Pickett, Mr. Sisisky, Mr. Boucher, Mr. Dicks, Mr. Staggers, Mr. Coelho, Mr. Flippo, Mr. Alexander, Mr. Herger, Mr. Kleczka, Mr. Bosco, Mr. Stark, Mr. Torres, Mr. Dymally, Mr. Brown of California, Mr. Bates, Mrs. Bentley, Mr. Bonker, Mr. St Germain, Mr. Hughes, Mr. Wortley, Mr. Rahall, Mr. Lehman of California, Mr. Williams, Mr. Dellums, Mr. DeFazio, Mr. Fazio, Mr. Ford of Michigan, Mr. Lehman of Florida, Mr. Bilbary, Mr. Florio, Mr. Torricelli, Mr. Roe, Mr. Hockbrueckner, Mr. Flake, Mr. Ackerman, Mr. Manton, Mr. Solarz, Mr. Rangel, Mr. Mfume, Mr. Boland, Mr. Atkins, Mr. Mavroules, Mr. Markey, Mr. Carr, Mr. Wheat, Mr. Sabo, Mr. Dowdy of Mississippi, Ms. Slaughter of New York, Mr. Lancaster, Mr. Price of North Carolina, Mr. Neal, Mr. Jones of North Carolina, Mr. Hefner, Mr. Dorgan of North Dakota, Mr. LaFalce, Mr. Gejdenson, Mr. Rowland of Connecticut, Mr. Grant, Mr. Lewis of Florida, Mr. Barnard, Mr. Jenkins, Mr. Hoyer, Mr. Akaka, Mr. Savage, Mrs. Collins, Mr. Russo, Mr. Durbin, Mr. Hamilton, Mr. Visclosky, Mr. Nagle, Mr. Slattery, Mr. Glickman, Mr. Natcher, Mr. Hayes of Louisiana, Mr. Holloway, Mr. Levin of Michigan, Mr. Lipinski, Mr. Leland, Mr. Fascell, Mr. Valentine, Mr. Kolter, Mr. Mineta, Mr. Richardson, Mr. Borski, Mr. Mrazek, Mr. Clement, Mr. Hubbard, Mr. Olin, Mr. Darden, Mr. Costello, Mr. Clay, Mr. Stallings, Mr. Sharp, Mr. Perkins, Mr. Gephardt, Mr. Vento, Mr. Hatcher, Mr. Cardin, Mr. Berman, Mr. Dingell, Mr. Hayes of Illinois, Mr. Downey of New York, Mr. Sikorski, Mr. Feighan, Mr. Moakley, Mr. Clarke, Ms. Pelosi, Mr. Andrews, and Mr. Watkins.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3822

By Mr. Livingston:

Page 22 after line 12 insert the following:

Sec. 6. Title V of the National Security Act of 1947 (50 U.S.C. 413, et. seq.) is amended by adding at the end thereof the following new section:

"UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION

Sec. 506. Consistent with the protections enumerated in Article 1, Section 6, Clause 1, of the Constitution, any Member, officer or employee of Congress who, having received classified information pursuant to the provisions of this title, knowingly and willfully discloses the substance of that information without the authorization of the President, unless pursuant to the applicable rules of the House of Congress of which that person is a Member, officer or employee, shall be fined not less than $1,000 nor more than $20,000 or imprisoned for not less than ninety days nor more than five years, or both.".

EXTENSIONS OF REMARKS

H.R. 2772

HON. BEN NIGHTHORSE CAMPBELL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. CAMPBELL. Mr. Speaker, I would like to begin by thanking Mr. MILLER for including several amendments to this legislation which are important to my congressional district.

The first amendment involves the Closed Basin project in the San Luis Valley, CO.

The amendment seeks to increase the authorization ceiling for the Closed Basin project being built by the Bureau of Reclamation in the San Luis Valley, CO. The current authorization ceiling of $75,176,000 indexed to October 1987 prices was reached in the 1988 fiscal year appropriations. For fiscal year 1989 it will be necessary to pass this legislation in order to continue work on the project. The House has passed an appropriations package containing $10.3 million for fiscal year 1989.

This ceiling increase was recommended by the Bureau, and, due to unanticipated problems, is necessary to finish the project which is already over 65 percent complete. All of the phases of the project are under construction and the additional money will be used, in part, to line a conveyance channel to carry salvage water to the Rio Grande River, build additional wells to fulfill project requirements, to install remote control operation units and to pay increased land acquisition costs.

Water is being delivered to the national wildlife refuges near Alamosa, CO. But without the authorization increase, the project cannot be completed, the recreational features important to the San Luis Valley will not be finished, and the wells in the last stages will not be hooked up and available for project production.

Geographically, the San Luis Valley is a broad, flat, high, arid valley that has an incredibly low amount of annual precipitation; only 7 inches per year.

Farmers in the valley are entirely dependent on water from the Rio Grande River and its tributaries. Potatoes, malting barley, vegetables, hay, alfalfa, and small grains are the major crops grown in the valley. By using their ingenuity, the valley's farmers have largely escaped the need to grow subsidized crops.

The San Luis Valley is regarded as a model for self-imposed water management efficiency and conservation techniques because its inhabitants have lived through years of water shortages. In fact, the San Luis Valley hosts one of the highest concentrations of sprinkler irrigation facilities in the world. The sprinklers, combined with recharge projects and water management plans, all locally financed, make it a model of efficient water use.

This project is critical to the long-term economic life and stability of the area. When it is completed and operating, it will save up to 100,000 acre-feet per year of water currently lost to nonbeneficial evapotranspiration. This water will allow Colorado to meet its obligations to the States of New Mexico and Texas without significantly diverting water from Colorado water users. The project also fulfills a United States treaty commitment with the Republic of Mexico which shares the water from the Rio Grande River.

The local sponsoring entity, the Rio Grande Conservation District, the National Wildlife Federation and other organizations have been cooperatively working together to address concerns about the project's construction and operation. This cooperative approach indicates the district's recognition of the several environmental goals of this project, and I appreciate the district's willingness to seek report language that would address some of the concerns of the federation.

I also appreciate the staff of the subcommittee taking the time to visit my district and touring the project facilities. The local water users enjoyed meeting them and discussing in detail how the project operations occur. I hope this subcommittee will help me ensure this project is completed on schedule by favorably reporting this legislation.

Since hearings were held on the necessity of this ceiling increase, Mr. MILLER and I have agreed that several amendments were needed. I would like to explain these amendments to the original authorizing legislation for the Closed Basin project on a section-by-section basis.

Section 1 eliminates channel rectification of the Rio Grande as an authorized project feature. Although such channel rectification activities would definitely improve Colorado's ability to deliver water to its sister States, the cost and environmental consequences would be substantial. In fact, a portion of the channel which was proposed for rectification is located on the Alamosa National Wildlife Refuge. The elimination of this activity as an authorized project feature removes any concern that the activity would be undertaken despite the environmental consequences.

Section 2 is intended to update the project's obligations to comply with the current Federal Clean Water Act.

Section 3 merely conforms the language of section 102(a) of the original act with the amendment to section 101(a) of the original act made by section 1 of this bill.

Section 4 adds a new subsection to the authorizing legislation which is intended to permit the Secretary to obtain the water necessary to fulfill project purposes from other sources within the Rio Grande Basin if such water can be purchased or leased more economically than by operating project facilities. However, recognizing the fragile environment in the Rio Grande basin, the tremendous demands on the basin's water resources, and the interrelationship of the various rivers and underground aquifers in the basin, it is necessary to provide assurance that any water supplies obtained from other sources comply with all conditions and limitations applicable to the project. In this regard, this new subsection is intended to require that any alternate water supply considered by the Secretary be obligated to meet exactly the same requirements as apply to the project to insure, for example, that no additional wetlands are dewatered or degraded; that the water table drawdown limitations, contained in the authorizing legislation, will be met; that there will be no reduction in the artesian head of the confined aquifers underlying the basin as the result of the use of the alternate supply; that all State laws, including water laws, are fully complied with; that all local regulations, including land use requirements, are met; and that the appropriate Federal environmental restrictions, including NEPA and section 404 of the Clean Water Act, are applied to the facilities and entities offering the alternate supply.

Only if the water from other sources can be acquired for less money than would be expended by operating some or all of the project features, while meeting each and every restriction, will the Secretary have authority to utilize the alternate source. If such water is determined to meet all project restrictions and provide a more economic supply it may be utilized for project purposes. It must be emphasized that the water thus acquired can only be utilized for project purposes as described in section 104 of the authorizing legislation. Nothing in this new subsection grants any right or ability to any nongovernmental entity to use or operate project facilities.

Section 5 is intended to permit the Secretary to execute an interim operating plan to allow for the development of a schedule by which water will be delivered to the Alamosa National Wildlife Refuge and the Blanca habitat area during any period when project production does not meet the requirements of priority one as set forth in section 104 of the authorizing legislation. This section is not intended to supplant the priorities set forth in section 104, but rather to facilitate any agreement whereby initial project production can be allocated in a manner agreed to by the Secretary and the affected and benefitted water users.

Section 6 requires that any water produced for priority four, as set forth in section 104 of the authorizing legislation, can only be delivered if the operation and maintenance expenses associated with the production of that priority four water are paid by the water users. This is appropriate because it requires the benefitted water users to pay the cost of producing the water. If payment of those costs is not forthcoming, the Secretary will not operate the facilities and the expenses will not be incurred. Although it will place a burden on the local water users it is a fair and appropriate amendment. The amendment does not

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

impose any requirement for the payment of any O&M costs associated with the production of water for priorities one, two, and three as set forth in section 104 of the authorizing legislation.

Section 7 both raises the current project ceiling by $19 million for Federal expenditures and requires cost sharing by the State of Colorado or the local water users. The cost-sharing formula meets the same standard Congress has required of other reclamation projects. Finally, this section requires the Secretary to agree to a limitation on the amount of overhead to be charged to the remainder of the project activities which will insure that the majority of the funds appropriated pursuant to this authorization will go to completing this project.

The next amendment I would like to thank Mr. MILLER for adding addresses the Grand Valley project in Colorado.

This measure is necessary for the continued operation of the Grand Valley powerplant.

On January 5, 1986, the contract for the operation of the Grand Valley powerplant expired. In the original law—(Pub. Law 71-708)—Congress made no arrangements for the plant's continued operation, and as a consequence, the plant was shut down.

On April 30, 1986, the Bureau of Reclamation entered into an interim contract for the operation of the powerplant until new legislation is passed. The interim contract expires on December 31, 1987. This legislation allows the plant to be operated for an additional 2 years.

The final amendment addresses problems arising from the operation of the Pueblo Reservoir in Colorado.

The amendment provides $1.17 million to repair an irrigation ditch in Pueblo. CO, that is leaking and undermining the foundations of dozens of adjacent homes and buildings.

The amendment allows the Bureau of Reclamation to start repairs on the ditch immediately. The funds will cover repairs for more than 11,000 feet of the Bessemer ditch. Local entities are responsible for 22 percent of the cost of the repairs.

This amendment completes the work begun in 1979 when the Federal Government paid $1.5 million to line another 11,000-foot stretch of the ditch with gunite. That repair only covered half the ditch's length; the unlined has since sprung leaks.

Mr. MILLER and I have worked hard on these measures and I hope my colleagues will accept them.

TRIBUTE TO ST. CLARE CHURCH OF CLIFTON, NJ, ON ITS 75TH ANNIVERSARY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ROE. Mr. Speaker, it is with the greatest pride that I rise today to salute a great house of worship in my Eighth Congressional District of New Jersey which, for three quarters of a century, has not only served as a beacon of faith to countless numbers of our people in the greater northern New Jersey area, but also as a pillar of service to the community.

I am speaking of St. Clare Church of Clifton, NJ, which will be marking a truly historic occasion on Sunday, October 30, 1988. On that day, Mr. Speaker, a diamond jubilee celebration will be held with a mass of thanksgiving followed by a dinner-dance at the Wayne Manor in Wayne, NJ. I know that the special committee charged with organizing this historic event has been working vigorously to ensure its overwhelming success, and I am certain their efforts will be rewarded. For the RECORD, this outstanding group includes the pastor of St. Clare, Rev. Msgr. Brendan P. Madden, the event's honorary chairman; Edward C. Swatt, chairman; Margaret Olszowy and Virginia Molinaro, cochairman; Pat and Marjorie Heckerman, history; Rose Foy, souvenir journal; Nicholas Scorziello, tickets; Joyce Boglivi, publicity, and Margaret Wilks, arrangements.

Mr. Speaker, St. Clare Church has been a vital part of the spiritual lives of so many people from the greater northern New Jersey area since its founding in 1913 that I would like to cite, for the RECORD, St. Clare's official history:

> In the Spring of 1911, Fr. Cunningham from St. Mary's, in Nutley, said the first Mass in the abandoned school house which had been built in 1842 on Allwood Rd. The mission was abandoned in the fall of 1911 because of Fr. Cunningham's illness and no other priest was available.
>
> Due to the people's enthusiasm to have a place to worship, a meeting of the parish was held on October 13, 1912 to find a way to reopen the Mission. An appeal was made to Bishop O'Connor of Newark, to send a priest. Since he had no priests to send, a request was made for permission to ask the Franciscan Fathers of Paterson, for assistance.
>
> The request was granted. The building was inspected by Fr. Hilary Reinholl and Fr. Stanislaus Woywood, and with proposed suitable changes found to be satisfactory. Fr. Bernard Spiegelberg was first Pastor. On March 7, 1913, the Mission became known officially by incorporation as St. Claire Catholic Church.
>
> First Sunday school class was opened on Sept. 14, 1913, by two Dominican Sisters from Holy Trinity School in Passaic.
>
> Land on which the Church stands was purchased for $1,250, and the Church was solemnly dedicated on July 4, 1914. First secular priest to be Pastor was Fr. William Looney in 1941. Then, in 1950, Fr. Dempsey became Pastor.
>
> Building of the School and Convent started in 1959, and opened in September 1960, staffed by the School Sisters of Notre Dame. First graduating class was in 1963.
>
> Fr. John Corr was the first Assistant assigned to St. Clare.
>
> Fr. Roger Hebert became Pastor in 1964, and began a building fund for a new Parish Center in 1968. When completed in 1970, it cost $300,000. Fr. Vecchiolo became Pastor before the Center was completed. Fr. Peter McBride worked with both Fr. Hebert and Fr. Vecchiolo.
>
> Fr. Kevin Flanagan was appointed in 1972. The church was redecorated and the organ rebuilt. A Parish Council was also established.
>
> School Sisters of Notre Dame were withdrawn in 1974, and replaced by Sisters of Charity of Convent Station.
>
> A new church was dedicated in 1980, and Msgr. Brendan Madden was appointed Pastor in June 1985.

Mr. Speaker, I appreciate this opportunity to present the history of this distinguished parish which has remained dedicated to helping others and guiding them spiritually. As St. Clare Church celebrates 75 years of providing unwavering spiritual guidance to the people of the Clifton area, I know that you and all of our colleagues here in Congress will want to join me in extending our warmest greetings and felicitations for both the service and guidance St. Clare Church has provided its community, State, and Nation.

PRESIDENT GEORGE VASSILIOU'S BOLD EFFORTS FOR LASTING PEACE AND RECONCILIATION IN CYPRUS

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TORRICELLI. Mr. Speaker, it is with great admiration that I welcome the President of the Republic of Cyprus, George Vassiliou, to New Jersey. Elected earlier this year, President Vassiliou has brought to life the chance for lasting peace and reconciliation on the island of Cyprus.

Many observers of the Cyprus situation have focused on the meetings between Prime Ministers Papandreou and Ozal and the efforts of U.N. Secretary General de Cuellar. While these men do indeed deserve our firm support for their efforts, it should not be overlooked that the impetus for the Cyprus peace talks came, principally, from President, Vassiliou.

In August, I had the opportunity to meet with President Vassiliou and to hear his views first hand. President Vassiliou's bold demilitarization plan for Cyprus and his willingness to meet with Turkish-Cypriot leaders are illustrative of the kind of peace he seeks for Cyprus. He desires more than a divided nation and a tenuous cease-fire. He has striven for real peace and unity on Cyprus by calling for the removal of all foreign troops and the maintenance of international peace-keeping forces as the defense forces for Cyprus. In short, President Vassiliou recognizes the importance of pursuing a negotiated political settlement for Cyprus—not military conflict.

On August 24 and 25, President Vassiliou met with Turkish-Cypriot leader Rauf Denktash in New York. In mid-September a round of ongoing talks began between both sides on this issue. Although there has been a news blackout on the progress of these talks, I feel that the vital element of these talks is that they are occurring. For this, we all owe President Vassiliou a great deal.

I look forward to progress on the Cyprus peace talks and the eventual reunification of Cyprus. Again, I wish to thank President Vassiliou for his steadfast commitment to peace and hope that his visit to New Jersey is a fruitful one.

ADDRESS TO AMERICAN WAR DADS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SKELTON. Mr. Speaker, this last Friday, I had the opportunity to address the national convention of the American War Dads and Auxiliary in my hometown of Lexington, MO. This organization has long been so very supportive of the men and women of our Armed Forces, and I compliment them on their continued dedication. My address to them is as follows:

REMARKS OF CONGRESSMAN IKE SKELTON, AMERICAN WAR DADS AND AUXILIARY CONVENTION

I appreciate the invitation to be with you this evening. It is particularly enjoyable to join in my own hometown of Lexington and speak with an audience that is dedicated to honoring and serving those who defend our country. As a member of the House Armed Services Committee, I proudly share this cause with you.

On September 2, 1945, the most destructive conflict in man's long history ended with a brief 23-minute ceremony on the decks of the U.S.S. *Missouri* in Tokyo Bay. Throughout the United States and Europe, celebrations followed, politicians delivered impassioned victory speeches and nations proudly displayed their gratitude for the brave fighting men who had made the world safe for democracy once again.

That September 2 ceremony ended an era of bitter fighting in which the soldier stood at center stage. Soon after that monumental day, however, the soldiers were safely home and the spotlight shifted to political movements, social changes and the events of everyday life. No one spoke of the soldier's valor anymore. So it is after every war.

God and the soldier all men adore
In time of danger and no more
For when the danger is past and all things righted
God is forgotten and the old soldier slighted.

The author of this brief verse is anonymous, but the words stand as a symbol for a world which too often forgets our soldiers in days of peace. The poem laments the fact that too few voices speak for the soldier in peacetime.

Who speaks for the soldier in times of peace? During a war, our soldiers are the heroes we hail in verse and song, the idols of our young boys and the wistful daydreams of men now too old to do battle themselves. During times of peace, these same soldiers are often forgotten, relegated to the back of our minds. But groups like the War Dads—dedicated to remembering and caring for our soldiers at all times—give us the opportunity to remember both the brave men who have fought for more than 200 years to preserve our great democracy and to pay tribute to those men and women today who wear the uniform of our armed services.

You are a voice for the soldier, the sailor, the marine and the airman.

History tells us that groups like yours are a rarity. The soldier, during times of peace, often finds himself misunderstood and unappreciated at home. For centuries, the British demonstrated a repeated lack of respect for their soldiers returning home from various wars. Often the Britons themselves knew little of the battles and, in many instances, cared neither about the battles nor the men who waged them.

British poet Rudyard Kipling—one of my personal favorites—penned a memorable work about the familiar British soldier, known more commonly as "the Redcoat" or "the Tommy." Kipling's words paint a vivid and sobering picture of public attitude toward the soldier of his day:

"Yes, makin' mock o' uniforms that guard while you sleep
Is cheaper than them uniforms, an' they're starvation cheap;
An' hustlin' drunken soldiers when they're goin' large a bit
Is five times better business than paradin' in full kit.
Then it's Tommy this, an' Tommy that, an' "Tommy, how's yer soul?"
But it's "Thin red line of heroes" when the drums begin to roll—
The drums begin to roll, my boys, the drums begin to roll,
O it's "Thin red line of heroes" when the drums begin to roll.

In America, in this greatest nation in the world, we do not have to fall prey to this forgetfulness and neglect of our warriors. We are a nation that remembers and respects. Years after our soldiers—perhaps some of your own children—had returned home from Vietnam, America places firmly in her heart and mind the 58,000 young men and women who died in the Vietnam War by erecting a monument listing them, one by one.

Throughout our nation, we have built monuments honoring the men who fought in all our wars. Arlington Cemetery, set amid sprawling acres of Virginia hillsides, stands as a quiet resting place for thousands of soldiers and a lasting salute to the unknown soldiers who selflessly gave their lives for our liberty.

As Americans with a strong sense of history, we also set aside days like Veterans Day and Memorial Day to recall our fallen heroes who carried the torch of American freedom with them to their death and to honor the American men who returned home from war to pass the flame of democracy to the next generation. And we dedicate ourselves to discovering the fate of the 2,416 military personnel still unaccounted for in Indochina. Our nation remembers and speaks for these brave servicemen.

As Americans and as members of the War Dads and Auxiliary, the greatest tribute you can pay to our nation is to acknowledge the achievements of our veterans and of today's soldiers, something your organization does in an admirable way. Our veterans are responsible for 200 years of constitutional freedom, and our nation's active servicemen are the foundation for the next 200.

The men and women of our armed services are our greatest weapon and our greatest deterrent against future wars. Perhaps, if the mission of our servicemen is successful today, we can have a truly lasting peace and there will no longer be a need to prepare for war.

In the meantime, the old Roman maxim—"if you want peace, prepare for war"—continues to apply. As all of us here tonight well know, today's American serviceman, serving in a time of violent peace, faces a sober and unenviable task. Even at this moment, there are American warships patrolling the seas and there are peace-keeping troops stationed worldwide.

For our part, we can do two important things. First, we can take the time to express our gratitude to those who served and sacrificed to protect the peace and liberty which we now enjoy. Second, we can thank the young men and women who are waging the battle for peace today. We owe a priceless debt of gratitude to all these men and women.

It has been said that there are few voices that speak for the warrior in times of peace. That need not be so.

We can be the voices that speak for the warrior. You and I can develop a true and lasting appreciation for the many American soldiers who, throughout the past two centuries, have literally sacrificed their lives for our sake.

An inscription on a plaque at Arlington Cemetery pays fitting tribute to the men and women in uniform who have served and continue to serve this country so well. I close with those simple, eloquent words:

"Not for fame or reward, not for place or for rank, not lured by ambition or goaded by necessity, but in simple obedience to duty as they understood it * * *"

Thank you for your efforts on behalf of the American armed services and God bless you.

MESSAGE FROM THE WEST GERMAN BUNDESTAG ON THE OCCASION OF GERMAN-AMERICAN DAY, OCTOBER 6, 1988

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. HAMILTON. Mr. Speaker, October 6 is German-American Day and a time to commemorate the enduring political, economic, and cultural bonds that exist between the German and American people and between our two countries. I would like to draw the attention of my colleagues to an important message of greeting to our Congress from Phillip Jenninger, president of the German Bundestag.

West Germany is one of America's most important allies. It is a key member of the North Atlantic Treaty Organization and one of our primary trading partners. An economically strong West Germany with close and solid ties to the United States has been, and remains, one of our critical foreign policy objectives.

On this occasion, let me mention two key programs which the Congress, together with the West German Bundestag, has taken an active role in promoting. These programs are helping to establish a new foundation for United States-German relations in the years ahead.

First, in 1983 several Members of Congress helped to create the Congress-Bundestag Exchange Program—today the largest single foreign exchange program sponsored by the U.S. Government. This exchange brings 400 young Americans to West Germany each year and the same number of Germans to this country.

It plays an increasingly important role in nurturing close bonds between younger generations of Germans and Americans—in high school and vocational school—to whom the events following World War II, which brought our two countries together, are ancient history. Interest in this exchange is greater today, after 3 years of success, than ever before and is likely to grow further as more Members have students from their States travel to Germany and return as young ambassadors for closer and stronger United States-German ties.

Second, in 1987 over 200 Members of the House of Representatives joined together to form a congressional study group on Germany. The Senate is currently considering creating a similar group. The study group on Germany serves as a vehicle for facilitating more frequent contacts between Members of Congress and their colleagues in the German Bundestag. The group has sponsored a series of events this year and last in which we have been able to discuss a wide range of issues of concern to our two countries, including agriculture, trade, defense, and social issues. I believe the study group is making an important contribution to strengthening mutual understanding between West Germany and the United States in these changing times.

President Jenninger's statement follows:

MESSAGE OF GREETING

On the occasion of German-American Day 1988 I send all the citizens of the United States of America greetings on behalf of my fellow countrymen and also my personal best wishes. I assure you of our close friendship, which is expressed particularly clearly on an occasion like this.

This friendship is based on our shared basic values—law, freedom and democracy; it is also reflected in the fact that our two countries belong to the Atlantic Alliance and in the stationing of American servicemen in the Federal Republic of Germany.

German-American Day reminds us of what Germans have achieved in building up America. It makes us aware of the mutual give and take between our two peoples. Only if consideration of this aspect of the past provides a stimulus for our common future will the relations between our two countries continue to develop in a spirit of confidence and friendship.

Our peoples make a crucial contribution to this. German-American friendship does not only concern governments, it also concerns every single citizen. Firm establishment of this friendship in people's hearts and minds is the most reliable guarantor of peace and freedom.

German-American Day reflects the building of this bridge across the Atlantic. I hope that last year's and this year's celebrations will become an established tradition in the United States of America.

WATCHING "DISCOVERY" FLY WAS NEARLY A SPIRITUAL MEDITATION

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SIKORSKI. Mr. Speaker, I would like to commend this article, written by Jim Klobuchar of the Minneapolis Star Tribune, to your attention and that of my colleagues. I believe that it states most eloquently the feelings shared by many Americans on the event of the space shuttle *Discovery*'s launch. I respectfully request that this article be added to the CONGRESSIONAL RECORD.

The article follows:

[From the Minneapolis Star Tribune, Sept. 30, 1988]

WATCHING "DISCOVERY" FLY WAS NEARLY A SPIRITUAL MEDITATION

(By Jim Klobuchar)

There were no cheers and no embraces in the small cluster of men and women with whom I watched Discovery rise into space Thursday.

One man's lip moved in prayer.

From the muted television audio we could hear the sounds of triumph in the firing room at Cape Canaveral. They were strong and spontaneous sounds of reassurance. It was a growing exhilaration they were feeling in Florida.

The liftoff was perfect and there was something glorious and unstoppable about the acceleration of the graceful machine, slowly turning above the thunder and the flame.

In Florida they had been living around the clock with the Discovery and its people. They had felt the doubts and groaned through the delays, experienced the burden and laughed and worried with the airmen.

They were human beings fearing for their friends, but they were something else. They were technicians and scientists and engineers and programmers.

Every millisecond that raced by on the digital readout as the rocket began to ascend was a judgment of their competence.

They were exhilarated not only because the astronauts were safe but because they had delivered.

Could you blame them for shouting?

But we were watchers more than a thousand miles away, and this time the moment of the flight of the spaceship created something closer to a spiritual meditation than it did a television spectacle.

Other rocket launches candidly incited the flag-waver in us. We're going to the moon. First in war, first in peace and first on the Sea of Tranquility. In your face, Ivan.

Well, OK. For a while, the launches were recurring epics, cheerfully ballyhooed and awaited because the heroes always won.

It was ocean-to-ocean PR for America, and it was better entertainment than "Star Trek" because nobody got hurt and you didn't have to line up at the box office. It was so good we almost got jocular about it. Go, baby, go.

The explosion in the heavens 2½ years ago, the terrible white streamers falling slowly into the sea, ended the carnival. Our people were dying in those streamers.

We had created a myth out of our technology, and when the myth dissolved we mourned and bickered, examined, sued and second-guessed. And then we wondered what it would be like on the day we went back into space.

Yesterday we went back into space, knowing more than we knew 2½ years ago about the fallibility of computers, technology, O-rings and rocket boosters.

We also knew more about the perishability of heroes. I think most of us waved no flags in those moments when Discovery began to rise toward the sun. Nor did we wave many flags two minutes later, in those moments when the astronauts and the machine had safely passed the crisis of the launch. It was victory for the American space program, yes, and a judgment of the care and patience that thousands had exercised in the rehabilitation of that program.

I think we were solemn rather than entranced in the hour of early triumph. We were solemn because we were not only relieved in the safety of the astronauts but because we also understood we were witnessing something more powerful than the achievement of national goals and the vindication of space prophets and machine builders.

We were witnessing the affirmation of the human spirit's longing to seek something beyond. Nations have made a military priority of space, but for the average human being, watching the rocket and its shuttle soar into the Florida sky yesterday, the triumph was quieter and more innocent. It was all right to dream again about flying through the heavens. For that, and for the safety of Pinky Nelson and his friends, we gave thanks.

URGENCY FOR THE CONGRESS TO PASS A DRUG BILL BEFORE ADJOURNING

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. GILMAN. Mr. Speaker, on September 22, 1988, the House passed H.R. 5210, the Omnibus Drug Initiative Act of 1988, by an overwhelming vote of 375-30. Yesterday, the other body introduced its drug bill.

Mr. Speaker, H.R. 5210 provides $2.3 billion in urgently needed resources for our antidrug effort. Funds are authorized to assist our front line drug prevention and control agencies: funds for our drug law enforcement agents, and for our Customs and Coast Guard officials. Furthermore crucial funds are authorized to help educate our citizens against the dangers of drug abuse and to help prevent this deadly epidemic from further infecting our cities, towns and school districts and to treat and rehabilitate those who have already fallen victim to drugs.

Drug trafficking and drug abuse have reached epidemic proportions, not only in the United States but throughout the world. Just in the United States alone the drug traffickers reap more than $140 billion in untaxed dollars from their deadly transactions. Their poisons undermine the health of our citizens and threaten our political, economic and social institutions.

Mr. Speaker, there is an urgent need for the Congress to adopt a comprehensive drug measure. It is imperative that leaders from both sides of this aisle and from both chambers pass such legislation to provide the needed resources for our war against drugs. A comprehensive omnibus drug measure is too important to be placed on the back burner of the 100th Congress. It is too important for us, as legislators, to adjourn this Congress without passing such a measure. We must not let the American people down by walking away from this Congress without enacting a drug measure.

BPW SUPPORTS H.R. 925

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mrs. MORELLA. Mr. Speaker, I join a number of my colleagues today in calling for final passage of H.R. 925, the Family and Medical Leave Act. This legislation is clearly needed, as demonstrated by the broad support it enjoys. I submit for the RECORD the text of a letter from Ms. Betty Forbes, national president for the National Federation of Business and Professional Women's Clubs, and I commend them for their leadership and strong support for this legislation:

BPW,
Washington, DC, September 30, 1988.

DEAR REPRESENTATIVE MORELLA: The Family and Medical Leave Act, H.R. 925, is being discussed in the House of Representatives. As a business woman and on behalf of the National Federation of Business and Professional Women (BPW/USA), I urge you to support this critical piece of legislation.

The U.S. Chamber of Commerce recently reported the results of a new survey showing the appalling lack of parental and medical leave policies in American businesses. According to the Chamber: 82 percent of employers do not have a sick child policy; 85 percent of employers do not have a sick parent policy; and 75 percent of employers do not have a paternity leave policy.

We also know that a substantial number of employers fail to provide medical leave for their workers.

As businesswomen, our members believe that employers should choose sick leave policies and benefit packages that best suit their company and their employees. But there must be a basic minimum standard that ensures the protection of all workers.

As this survey shows, too many businesses are chosing not to provide workers with a minimum amount of protection. And as women with children continue to enter the workforce in droves, and as the workforces grows older, the need for family and medical leaves policies increases. We believe that parents must never be forced to choose between taking care of a seriously ill child and keeping their job and health benefits. Nor should anyone lose a job and health benefits because of their own serious illness.

The Family and Medical Leave Act would set a minimum standard for protecting workers' jobs and benefits in the event of a family emergency. We believe this bill offers a fair foundation upon which employers can build their own leave policies and benefits packages.

As you make your final decision on H.R. 925, I urge you to review the attached letters from employers who have instituted successful family and medical leave policies. They know these policies build a strong workforce, reduce the costs businesses incur in recruiting, hiring and training new workers, and boost morale and productivity.

I urge you to follow in the footsteps and ensure that all men and women have access to these fair practices by voting for H.R. 925

Sincerely,

BETTY J. FORBES,
National President.

TRIBUTE TO SS. CYRIL AND METHODIUS ROMAN CATHOLIC CHURCH OF CLIFTON, NJ, ON ITS 75TH ANNIVERSARY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ROE. Mr. Speaker, it is with great pride and deepest reverence that I rise today to pay tribute to a great and vitally important house of worship in my Eighth Congressional District which, for three quarters of a century, has been a beacon of faith and a center for spiritual inspiration for countless numbers of people in the greater northern New Jersey area, including those of Slovak descent.

I am speaking of SS. Cyril and Methodius Roman Catholic Church of Clifton, NJ, which will celebrate the 75th anniversary of its founding on Saturday, October 22, 1988, with a Mass at the church and a dinner at the Three Saints Cultural Center in Garfield, NJ. This will be a gala event of which I know the pastor, Rev. Jerome Pavlik, O.F.M., and associate pastor, Rev. Robert Valent, O.F.M., will be justifiably proud. I know that Robert Raichel, the chairman of this event, is working hard to make it a success, as are trustees Rudolf Krack and John J. Pavlica; master of ceremonies, John D. Pogorelec, and Emily Antoniuk, chairman of the parish council. The principal speakers for this noteworthy event will be the Rev. Lawrence Pollack, O.F.M., in Slovak and Rev. William Reisteter in English. In addition, the Honorable Gloria J. Kolodziej, mayor of Clifton, will be on hand to bring a special message of greetings to all those celebrating this historic occasion.

Mr. Speaker, the history of SS. Cyril and Methodius—three-quarters of a century old—is a long and eventful one. I would like to share this rich background with my colleagues by quoting from the church's official history:

The foundation of our parish by peace-loving Slovaks became a reality on October 22, 1913, under the patronage of SS. Cyril and Methodius, who brought Christianity to the Slovaks in their motherland in 863.

Slovaks in Clifton and Garfield apparently felt that if faith can move mountains, it also can build a church. Plans for a Slovak parish were launched when the population of Clifton was about 15,000 and most of the area still farmland. After being in the talkative stage for some time, the Slovak parish of SS. Cyril and Methodius was actually founded on October 22, 1913, when a group of Slovaks from the Clifton area gathered in the Clifton Volunteer Fire Co. No. 2 Firehouse on old Arthur Street for the purpose of finding out what could be done about establishing a parish for themselves and other Slovaks in the locality. At this meeting, attended by 30 men, it was unanimously agreed to start a new Slovak parish.

Mr. Speaker, through the tireless efforts of an outstanding congregation and the early guidance of revered pastors such as Rev. Anthony Gracik, Rev. John J. Miklus and Rev. Anselm Murn, O.F.M., a new church was built and completed in 1924. Through the years the parish continued to grow, both in terms of size and in terms of its vast role in the community. Its parochial school was opened in 1929 and continues strong to this day. During the last year the school had 131 students who were taught by Sister Marcia O.S.F., principal; Sister M. Damian, O.S.F., and Sister M. Jean, O.S.F.

During its illustrious and inspiring history, SS. Cyril and Methodius has been fortunate to be guided by many visionary pastors who have brought this important house of worship to this important moment. This list includes Rev. Amand Kopac, O.F.M., Rev. Paul Kulka, O.F.M., Rev. Andrew Sulek, O.F.M., Rev. Ambrose Tomsa, O.F.M., and Rev. Raphael Chonta, O.F.M.

In recent years this fine parish has been the focal point of numerous important events and activities, including the celebration of the church's golden jubilee; the observance of the 25th anniversary of the ordination of Fr. Lawrence Pollak, O.F.M.; the completion of the new rectory in December 1968; the celebration of the golden jubilee of the parish school in 1979; the installation of the new carillon bell system in the church in 1980; and the celebration of the 40th anniversary of the ordination of Fr. Jerome J. Pavlik, who today is the pastor and guiding spiritual force for SS. Cyril and Methodius Church.

Mr. Speaker, the celebration of the 75th anniversary of the founding of SS. Cyril and Methodius Church has been a yearlong affair comprised of a number of important events, including a Slovak Heritage Day celebration in April during which many Slovak parishioners attended Mass in their native dress. I know the event which will be held on October 22, 1988, will be a fitting culmination of the celebration of 75 years that SS. Cyril and Methodius Church has served as a spiritual focal point and a brightly shining beacon of faith for those of Slovak descent and countless others in the greater northern New Jersey area.

Mr. Speaker, I appreciate this opportunity to present a brief portrait of the history of this distinguished parish that has remained dedicated to helping others and guiding them spiritually. As SS. Cyril and Methodius celebrates its 75th anniversary, I know that you and all of our colleagues here in Congress will want to join me in extending our warmest greetings and felicitations for both the service and guidance it has provided for its community, State, and Nation.

IN REMEMBRANCE OF MR. KAY K. SUGAHARA

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TORRICELLI. Mr. Speaker, it is with great sorrow that I speak of the death of Mr. Kay K. Sugahara, chairman of Fairfield-Maxwell Ltd., and the Fairfield Group of Companies. On September 25, Kay died at age 79 after a bout with liver cancer that could not even keep him from his work in the last weeks of his life.

This perseverance in the end of his life is illustrative of the kind of man Kay was. He will be remembered by many as a person who, no matter what the setting, was able to accomplish a great deal. Born of Japanese immigrant parents in Seattle, WA, he attended the University of California, Los Angeles. During the beginning of World War II, he lived with his family in a Government detention camp in Colorado for Americans of Japanese extraction. This, however, did not weaken Kay's commitment to this country as he joined the Office of Strategic Services in 1942 and played an integral role in formulating postwar Japanese policies.

More recently, Kay will be remembered for his behind-the-scenes work to ensure better relations between the United States and the growing countries of Asia. He was a long-time friend of former Prime Minister Nakasone and a personal friend of many great leaders in industry and government throughout Asia and the United States. In mid-September, Kay was honored by the United States-Asia Institute as United States-Asia "Man of the Year"—a fitting tribute to a man who spent a lifetime increasing understanding between Asia and the United States.

Those who knew Kay will miss him dearly. I would like to express my deepest sympathy for Kay's wife, Yone, and his three sons, Kaytaro, Bryan, and Byron. I am sure their memory of him will be as inspirational as it is for me and the many others who knew him.

SUBSTANCE ABUSE PREVENTION

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SKELTON. Mr. Speaker, in a time when we in the House are deliberating on how to deal with the drug problem that is wracking our Nation, it is gratifying to hear of a community level program that is doing much in the way of educating the public on drug prevention. I am specifically speaking of the Community Team Training for Substance Abuse Prevention, sponsored by the Missouri Safety Center, Central Missouri State University and the Missouri Division of Highway Safety.

The major goal of Team Training is to train teachers and others to help reduce alcohol and other drug abuse and related destructive behaviors, including traffic accidents—the greatest killer of our youth. The School Team Training approach was originally developed by the U.S. Department of Education's Division of Alcohol and Drug Abuse Education. The foundation model was implemented in Wichita, KS in 1981 and the Community Team Training, patterned after the successful "Kansas School Team Training," was conducted in Columbia, MO from 26 June through 1 July 1988. Garry Lowe, project manager, Vicky Williams, safety specialist, and Sharee Galnore, Cape Girardeau coordinator, are to be congratulated for engineering one of the most meaningful local programs in Missouri to date.

More than 30 Warrensburg participants in Community Team Training have already begun to make an impact on the Warrensburg community. A recent presentation by the team has increased the awareness of the Warrensburg Board of Education concerning current techniques for combating alcohol and substance abuse, as well as plans for implementing various programs in the Warrensburg public schools.

It is obvious that in order to effectively fight the Nation's current drug problem more local programs as this one in Missouri are needed to provide valuable information about alcohol and drug abuse as well as to develop substance abuse strategies.

BIOTECHNOLOGY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, October 5, 1988, into the CONGRESSIONAL RECORD:

BIOTECHNOLOGY ISSUES

Nature, often assisted by man, has been mixing and matching characteristics in plants as well as animals for thousands of years. When we hear of new pest-resistant plants, injections for cows to boost milk production, and insulin manufactured for diabetics, we are looking at the products of new techniques applied to ancient practices of animal husbandry, agriculture, and fermentation. These new techniques of biotechnology are posing difficult environmental, social, ethical, and economic problems for the Congress and for the nation.

Biotechnology is a set of techniques which uses living organisms to modify plants or animals, produce new drugs, or make microorganisms for specific uses. Once scientists know how to isolate a certain portion of a cell's hereditary material, they are able to add or subtract the material to alter that organism or others. Modifying organisms for human use is not new, but modern techniques allow scientists to manipulate hereditary material within and across species with increased precision, speed, and reliability.

Applications of these new techniques promise extraordinary improvements in the nation's health, economy, food supply, and environment. Biotechnology is expected to be a $100 billion industry by the year 2000. We are already witnessing a revolution in agriculture and medicine. Among the newest biotechnology projects are plants which are more resistant to pests, drought, and frost; crops with enhanced nutritional value; animals which are leaner, larger, and more reproductive; bacteria which break down toxic waste, purify water, and absorb nitrogen for plants; drugs to treat heart attacks; and new medical techniques to diagnose disease and predict birth defects.

A major question is how these new products and techniques should be regulated. It is widely agreed that new drugs and organisms must be adequately reviewed before they are available to the public or released into the environment. This is not, however, a simple regulatory issue for public officials. Instead of reacting to the practices of an established industry, the federal government is faced with anticipating biotechnology's new creations. Also, the rules have been requested in part by those who will have to follow them. Federal oversight of biotechnology has been evolving for a decade, but without clear legislative and regulatory direction. A dozen federal agencies which fund biotechnology research now regulate its products. The Reagan Administration's policy has been to apply existing laws to the new science's products and practices. The challenge is to design federal regulation that does not stifle a burgeoning industry, but ensures that it grows in the most efficient, productive, and safe manner possible.

Many questions must be addressed. Do we need stricter controls on biotechnology products than on conventional drugs and chemicals? Do we adequately know the implications on the environment of releasing newly engineered organisms? How far should scientists be allowed to go in creating and patenting new animals? What rules should be placed on the use of human tissues for scientific experiments? Should we alter infants' hereditary material to prevent birth defects? The record so far suggests that biotechnology products are fairly safe, but only a limited number of releases into the environment have been approved.

Basic questions about our national commitment to biotechnology must also be addressed. Federal and private spending on biotechnology research and development exceeded $4.5 billion last year, with the federal government contributing about $2.7 billion. Although the U.S. leads Europe and Japan in many aspects of biotechnology work, there is increasing concern that foreign nations, particularly Japan, are catching up with us. Government spending in western Europe last year on biotechnology research and development totaled $800 million, double their 1986 investment. Foreign nations are increasing their investment, while the U.S. has not made a specific commitment to spur our continued lead. We clearly do not want to see foreign competitors reap the benefit of our own initial research and development successes. We must also reduce the considerable delays in granting U.S. patents for biotechnology processes and products. Nearly 24,000 biotechnology patent applications have been received since 1983, and at the end of 1987, 6,907 applications were still awaiting patents. The backlog hinders the efficiency and productivity of companies engaged in biotechnology activities.

If the U.S. is to maintain its world leadership in biotechnology, we need to renew our investment in research and development. A government study has recommended additional funds for basic research, measures to boost private investment, and better coordination of public and private efforts. A bill is working its way through the Congress which would set up a national biotechnology policy board and several advisory panels to review federal biotechnology activities and to make recommendations to the President and the Congress. Also being considered is a massive project to map the billions of hereditary units that make up a human cell. That intricate map would improve the ability of researchers to treat genetic diseases, and could give a tremendous boost to pharmaceutical development. The Congress may also consider reauthorizing a congressional bioethics board which would comment on ethical concerns raised by the development or application of biotechnology.

As we move closer to pinpointing the recipes which determine the makeup of ourselves and the natural world around us, we must be prepared to address the ethical, social, and environmental questions this knowledge poses. My sense is that none of us has the correct answers. We need to evaluate these new developments carefully, while ensuring that we do not lose our preeminence in biotechnology fields. Even Thomas Jefferson in 1800 believed that "the greatest service which can be rendered any country is to add a useful plant to its culture". The products may be changing, but the same challenge to improve the nation's health and strength remains.

EFFICIENCY OUR BEST ALTERNATIVE ENERGY SOURCE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. GILMAN. Mr. Speaker, I am pleased to rise to bring to the attention of my colleagues a critical problem which merits thorough consideration and debate even in these waning days of the 100th Congress. Despite the fact that energy security and its associated topics have not been at the forefront of our deliberations this year, I am confident that the necessity of reform in our energy policy will warrant early consideration in the first few days of the next legislative session.

Mr. Speaker, the initial progress that has been made toward this effort in the 100th Congress is gratifying. Over the past several months, I have joined with several of my colleagues in creating an ad hoc working group on energy security policy. Our bipartisan forum has heightened our awareness of the problems confronting our current energy security efforts. In particular, our meetings and discussions have exposed the close connection between energy problems and the problems associated with the global interdependence of environment, economy, and national security.

Accordingly, I am pleased to report an initiative which I have cosponsored along with my colleague from Rhode Island, [Ms. SCHNEIDER], and 22 other Members of Congress. H.R. 5460, the Global Warming Prevention Act, is the most comprehensive legislation yet introduced to end the environmental hazard posed by the gradual trend of environmental warming. The interrelationship of global environmental problems and energy security is reflected in the extensive nature of our bill which requires a more thorough energy planning process at all levels of the Federal Government.

H.R. 5460 requires least cost energy policy options to receive high-priority consideration throughout all Federal programs. Least cost energy options have the beneficial effect of reducing energy consumption, while enhancing our productivity and economic competitiveness. In addition, the requirement will have the desirable consequence of limiting carbon dioxide and other noxious gases which deplete the ozone layer, contribute to the greenhouse effect, and cause acid rain.

At the heart of this effort to revitalize our domestic economy and preserve our environment is the promotion of energy efficiency technologies. H.R. 5460 authorizes $868 million over a 3-year period to launch a vigorous energy efficiency research and development [R&D] campaign. The legislation will establish 10 research centers throughout the Nation to assist energy intensive industries in improving their performance. Production enhancements, in turn, will improve upon our trade difficulties by creating high-efficiency energy products for export and reducing foreign oil imports. The bill will also establish target goals for the reduction of energy use in Federal offices and limitation of carbon emissions throughout the Nation.

Repeated testimony before Congress indicates that energy efficiency represents one of our largest sources of least-cost technology. Over the past 15 years, National investments into efficiency improvements in buildings, appliances, vehicles, industrial equipment, and other energy consuming devices have cut energy use by one-third, carbon emissions by 40 percent and costs to U.S. consumers by a whopping $160 billion per year.

In addition, Federal energy efficiency programs have been an unparalleled success story. Over the past 15 years, investment returns on just 7 of the most successful projects have been sufficient to provide a 50 fold return on all Federal expenditures of efficiency R&D.

However, efficiency is not a panacea for our environmental or energy security problems. To quote a recent publication by the American Council for an Energy-Efficient Economy [ACE^3], "We do not advocate saving energy as an end in itself. It makes sense only when saving energy costs less than providing energy, including environmental damage and security risks in the comparison."

Our legislation draws upon the ACE ^{3} comparison demonstrating that energy efficiency is consistent with economic growth and saves the national economy hundreds of billions of dollars per year. More importantly, our Japanese and West German competitors currently use half as much energy as the United States to produce the same one unit of economic output.

It is imperative, therefore, for our Nation to continue improving upon our past record of success. Unfortunately, despite our gains, our Nation has been losing momentum in the effort to improve energy efficiency and production economy. It is time for the United States to pursue a national energy policy that is far reaching and comprehensive. Energy efficiency works. Moreover, it does not require sacrifice. Efficiency technologies offer a cost-effective approach to ensure our energy security, enhance our economic competitiveness, and reduce our environmental problems.

I urge my colleagues to bear in mind the exigency of the Omnibus Global Warming Protection Act throughout the adjournment of Congress. Success breeds success, and it is of utmost importance for our Nation to return to the worthwhile pursuit of affordable, and environmentally sensible, alternative energy sources.

NATIONAL TEACHER APPRECIATION DAY

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mrs. MORELLA. Mr. Speaker, Joseph Addison, writing in 1711, said: "I consider a human soul without education like marble in the quarry, which shows none of its inherent beauties till the skill of the polisher fetches out the colours, makes the surface shine, and discovers every ornamental cloud, spot, and vein that runs through the body of it." Dedicated teachers have been the polishers of the marble. They have created the climate for students' self discovery, self worth, and ethical values.

As a former teacher, I am delighted to rise in support of House Joint Resolution 438, to designate October 7, 1988 as National Teacher Appreciation Day. Each of us here, I am sure, can recall teachers who encouraged, inspired, and instructed. It is fitting that these men and women who make such a profound effect on our lives should be thanked for their good work.

Mr. Speaker, teachers are the keystone of our educational system and our democratic form of government. "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives," stated President James Madison. I ask my colleagues to join me in supporting this resolution which proclaims our thanks to the teachers of our Nation.

APPLAUSE FOR GREENHOUSE LEGISLATION

HON. GEORGE J. HOCHBRUECKNER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. HOCHBRUECKNER. Mr. Speaker, I rise today in strong support of Congresswoman CLAUDINE SCHNEIDER's bill—the Global Warming Protection Act of 1988.

Such protective steps as those contained in this legislation should be taken to slow or limit the worst damage threatened by the greenhouse effect. I believe that many of these steps—such as recycling and improving the efficiency of our cars and fossil fuel powerplants—must be taken in any event.

Some scientists refuse to accept that global warming is even possible. They say that cloud formation would moderate any large rise in temperature. If the atmosphere heats up, water vapor will rise from oceans and lakes, creating more clouds, which will cool the atmosphere, they say. This mitigating force would nevertheless make our planet a less appealing place in which to live.

Conservation of energy, expanded use of solar energy, recycling and more efficient and better-tuned engines, all should help stave off the greenhouse effect as well as limit its damage.

Greater efficiency implies not just doing everything less wastefully, but changing the things we do. We will no longer be able to afford our throwaway ethic. Recycling can reduce our consumption of natural resources, thus slowing deforestation. Recycling can reduce energy inputs in manufacturing, thus avoiding the burning of more fossil fuels for power. This is because recycled glass, plastic, metals or paper are already close to their final-product form and would require less energy-intensive processing during remanufacturing.

My bill, H.R. 5000, is the first comprehensive recycling bill ever introduced on the Federal level. It addresses the greenhouse effect by promoting recycling.

I sit on the key House committee studying the greenhouse effect. The Science, Space, and Technology Committee, my third House committee, which I joined last December, has held several hearings on the causes of the greenhouse effect and what damage it might do. My colleague on this committee, CLAUDINE SCHNEIDER of Rhode Island, is now sponsoring legislation to focus Government efforts to study and to counteract the causes of the greenhouse effect. I am delighted that Congresswoman SCHNEIDER has incorporated provisions into this global warming legislation that are similar to provisions within H.R. 5000.

The drought this summer has been an eye-opener. It might not be the first expression of the greenhouse effect, but it gives us a peek at what might follow. Although we might hear arguments that the greenhouse effect is not upon us, that is no defense of inefficient, dirty engines. Nor is it a reason to perpetuate the throwaway ethic. We should move to promote recycling. We should move now to protect our vanishing tropical forests, if not because of the overaccumulation of carbon dioxide, then because deforestation is the greatest single threat to biological diversity. Deforestation kills off countless species of plants and animals that have never even been named, let alone studied for their medicinal benefit, or what they might tell us about our own evolution and survival.

I compliment Congresswoman SCHNEIDER and the other cosponsors of this critical new initiative to address the greenhouse effect.

The cause of the greenhouse effect is twofold: the production of greater amounts of so-called "greenhouse gases," and deforestation.

Greenhouse gases include carbon dioxide, chlorofluorocarbons [CFC's], methane, nitrous oxide, and ozone. Deforestation is the technocrats' term for chopping down too many trees and clearing jungle of all its wildlife. This process destroys our planet's lungs. Our planet's thick, lush tropical jungles, such as those of the Amazon basin, inhale carbon dioxide and exhale a great proportion of the world's oxygen-rich fresh air.

Carbon dioxide is the main greenhouse culprit and the first one identified as a contributor to the greenhouse effect. Each of us adds carbon dioxide to the atmosphere every time we exhale. The most significant source of carbon dioxide is the burning of fossil fuels, such as gasoline in cars, and coal in power and steel production. CFC's are used as industrial propellants and as the cooling medium in refrigerators. They have been banned from use as propellants in consumer spray-cans. They continue to be used, however, as blowing agents to shape styrofoam cups and fast-food containers. Methane, of course, is natural gas and is released into the atmosphere as plant and animal matter decays in nature or in garbage dumps. Nitrous oxide and ozone are produced by the inefficient burning of fossil fuels, notably in poorly tuned automobiles.

JAKE (JOAN) MILLER NAMED "WOMAN OF THE YEAR"

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. FLORIO. Mr. Speaker, I rise today to extend congratulations to Jake (Joan) Miller of Williamstown, NJ, who has been named "Woman of the Year" by the Knights of Columbus, Master Christi Council 8352, Williamstown. This tribute bears special significance since it is the first presented by council 8352.

For over a decade, Jake has been one of the principal fundraisers for the Sunshine Foundation, an organization that responds to the wishes of terminally ill or seriously ill children.

I have personally known Jake for many years and am touched by her kindness and compassion. I would like to share with you a recent article on Jake which appeared in the Sunshine Foundation publication:

THE "KARING KORNER"

(Features Jake (Joan) Miller)

She had recently come home from the hospital where she underwent her first mastectomy operation. Although Jake had experienced two other surgical procedures before, she was feeling a little blue. She turned on the radio in search for some comfort. She didn't have to wait long. Jake, as she is affectionately known to all her friends (and she has many), tuned in the Irv Homer show on WWDB. Bill Sample was telling the listening audience about the Sunshine Foundation, which was formed several months earlier, and how several seriously ill children had already been helped. Some of the heart wrenching stories touched Jake immediately. Her self pity suddenly abated, she picked up the phone and got through to the station. "Bill, what can I do to help?" This was 11 years ago. Today she can count approximately 50 fundraisers she ran for Sunshine. "I can remember my first fundraiser as though it were yesterday," says Jake. "It was a pancake breakfast that was held on January 14, 1977. I had my 11th anniversary recently."

Jake has undergone 26 surgical procedures in her lifetime, but despite these setbacks, epitomizes positive attitude and positive thinking. "There is always someone less fortunate than you or me. I focus my energies on our special children. Sunshine gives me strength and keeps me happy."

Jake Miller has received numerous awards in her prolific lifetime, but none so precious to her as the Sunshine Foundation's Caring and Sharing award, which was presented to her in 1980. "It was a real surprise to me," explains Jake. "I was sitting at a table awaiting the announcement so I could applaud the new recipient. Surprise, surprise!"

Jake Miller opened the Sunshine Foundation Thrift Shop in Williamstown, New Jersey on October 16, 1978. "It had a modest start," she says. "We had three card tables and one rack. Today we have a plethora of racks, tables and accessories." Jake added that they can always use decent clothing to sell. All proceeds go to the Sunshine Foundation.

Jake has run fashion shows, bike-a-thons, walk-a-thons, cake sales, raffles and golf tournaments. Although she has raised a lot of money for Sunshine and has invested much of herself, she puts Sunshine volunteerism in perspective. "It's not the number of fundraisers, nor the amount of money brought in, it is becoming involved and trying and giving of yourself. 'Every dollar counts,' $50.00 made on a cake sale is $50.00."

We love you, Jake Miller!

Mr. Speaker, I am sure my colleagues join me in congratulating Jake on receiving this well deserved award that recognizes her tremendous dedication. She is indeed an exemplary individual for her unselfish service to children and to the community.

TRIBUTE TO IVAN ANTHONY, MICHIGAN COUNTY CLERK OF THE YEAR

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. VANDER JAGT. Mr. Speaker, it is my distinct honor to pay tribute to Ivan Anthony, a resident of our Ninth Congressional District, who has been selected by the Michigan Association of County Clerks as the Michigan County Clerk of the Year. Ivan Anthony, an outstanding public servant, has been the Mason County clerk since 1976. He is a fine and decent man who through his dedication and hard work has made his community a better place to live. He is a great asset to Mason County, to Michigan and indeed, to our Nation.

It is my privilege to bring to my colleagues' attention two articles that appeared in the Ludington Daily News saluting Ivan Anthony's outstanding achievements. One article details his career, while the other, an editorial, underlines that this recognition of Mr. Anthony's accomplishments is indeed well-deserved.

Ivan Anthony has devoted his life to serving the people of Mason County. Our country could only benefit if there were more public officials like him. I know my colleagues will join me in saluting Ivan Anthony and congratulating him on being named, the Michigan County Clerk of the Year.

The newspaper articles follow:

[From the Ludington (MI) Daily News, August 31, 1988]

ANTHONY "CLERK OF YEAR"

Ivan Anthony, who is completing his 13th year as Mason County clerk, became the 13th person to be honored as Michigan Clerk of the Year by the Michigan Association of County Clerks.

Anthony was recognized by the association for his "leadership and service above and beyond the call of duty to the people of Mason County."

He was presented with a plaque Friday evening during the 80th annual convention of the association held last week at Shanty Creek.

The honor has been given annually since 1976 to the county clerk that the association believes has worked beyond his or her regular and prescribed duties of office. All 83 Michigan county clerks are eligible for the award.

Among his accomplishments was Anthony's successful work in getting the Legislature to pass House Bill 4090, which prevents a candidate defeated in the primary from running as an independent in the general election.

"If that part of the election law had been allowed to stand," Anthony said, "it would have rendered our primary elections meaningless. Anyone from either party who was defeated in August could then file as an independent and run again in November. Now independents must file in July, before the primary, just as all other candidates must do."

Anthony, who has served as secretary and later president of the association, has been active in the association's legislative, elections and vital records committees. He and two other clerks wre responsible for setting the rules by which access to birth, marriage and death records can be obtained.

The guidelines he and his committee established are still in use by the state.

Currently, Anthony is serving as a member of the board of directors of the association and serves on the legislative and election committees.

Anthony was elected to two terms as Mason County treasurer but in 1973 resigned to become manager of the Mason County Road Commission. In February of 1976 he resigned to accept the appointment as county clerk upon the retirement of Jerome Jorissen. He was elected to a full term as clerk in 1976 and re-elected in 1980 and 1984. Again this year, Anthony is unopposed for re-election.

A life-long resident of Mason County, Anthony and his wife reside in Summit Township.

[From the Ludington (MI) Daily News, Sept. 1, 1988]

As We See It—Well-Deserve Award

The Michigan Association of County Clerks made a wise and sound choice in selecting Ivan Anthony as the Michigan County Clerk of the Year. The Mason County official has a proven record of dedication—and ability—in the office he has held for the past 13 years.

On the face of it, being county clerk may not appear to be a terribly challenging job. Recording births, marriages and court records, and running an election or two a year may seem routine and uncomplicated. But the job is anything but routine. It demands knowledge of many state statutes and county and township ordinances, and accuracy in applying them.

Anthony received the 1988 award not just because he fulfills his duties with a high degree of professionalism, but because he has gone beyond the requirements of his office to help improve local government. One of his major accomplishments in recent months was to work very hard to remove a bad section from the state election law, the part that would have allowed defeated primary candidates to run again in November as independents.

In the years that Anthony has been clerk, we have had many, many opportunities to work with him and to observe him at work. While we are impressed by what he knows about is job—particularly in the area of elections—we are even more impressed by his fairness and honesty.

We are pleased that Anthony was singled out for this high honor and believe it reflects well on the people of the county who elect him.

HISTORICAL PERSPECTIVE OF THE HOLOCAUST

HON. SIDNEY R. YATES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. YATES. Mr. Speaker, earlier this year the Holocaust Memorial Foundation of Illinois sponsored an essay and poetry contest on the theme of "An Historical Perspective of the Holocaust." The contest, which was divided by age and category, produced a number of excellent entries and I would like to share with the membership the winning poem of Miss Malka Neuman, an eighth-grade student.

Only To Be Born a Jew

The fires leap up in many flames,
And from them fly six million names.
What was their crime?
What did they do?
Only to be born a Jew.

Have you ever heard the victim's cries?
Have you seen the pain in their eyes?
What was their crime?
What did they do?
Only to be born a Jew.

From all over Europe the Jews were brought,
From East to West they were sought,
To Treblinka, Maidenek and Auschwitz they came,
from there they departed in a flame.

What was their crime?
What did they do?
Only to be born a Jew.

"Be a light unto nations" the Torah proclaims,
Does that mean a Jew should go up in flames?
Let the world a lesson learn,
That never again will a Jew burn.

CORN GLUTEN FEED

HON. JIM JONTZ

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. JONTZ. Mr. Speaker, I rise today to speak out against an action by the European Community which could cause harm to our Nation's farmers and agribusinesses. During the last several years the European Community has continually tried to shut down the corn gluten feed export market into Europe.

Corn gluten feed is a byproduct of the corn wet milling process. Through this process, starch is extracted from raw corn. Starch constitutes approximately 70 percent of the weight of raw corn, with the remainder composed of protein, fiber, and oil.

The extracted starch is used in the production of a number of high-value products, including finished starch, glucose syrup, dextrose, high-fructose corn syrup, and fuel alcohol. The remaining oil is refined for use as edible oil, and the bulk of the remaining protein is used in production of corn gluten meal. The fiber portion of the kernel, along with the residual protein and starch is combined and pelletized to form corn gluten feed.

Corn gluten feed contains about 20 percent protein and 8 percent fiber and is categorized by feed compounders as a "middle-protein" ingredient, suitable for inclusion in finished rations for dairy cattle and other animals.

The latest attack on this major livestock feed ingredient is the threat to impose a countervailing duty on U.S. exports of corn gluten feed.

Recently, the French corn growers have filed an "antisubsidy" case against United States imports of corn gluten feed and the European commission is apparently preparing to initiate an investigation. The petition is filed by growers who have no standing against a processed product and hence is contrary to both GATT and the EC's own law.

The EC is considering this step in part as retaliation for passage of the U.S. Omnibus Trade Act, provision—section 1326—regarding processed agricultural products. Section 1326 provides that in an investigation concerning a processed agricultural product produced from a raw agricultural product, producers and growers may be considered a part of the "domestic industry" under certain specified conditions. This provision was enacted only after the GATT legality was carefully considered.

As you may know, Congress took into consideration previous GATT panels decisions on other agricultural provisions and structured the law to comply with GATT. Congress also took the unprecedented step of including a clause to terminate the provision if the U.S. Trade Representative notified Commerce and the ITC that the provision is inconsistent with U.S. international obligations of the United States. This is an open invitation to the European Community to use the GATT's dispute mechanism to test the provision if they believe it is contrary to the GATT. If they initiate an antisubsidy case instead, it is a sure sign that they believe they cannot win before a neutral decisionmaker.

The United States should retaliate strongly and immediately if the EC takes the unilateral route rather than going to GATT. For these reasons I am introducing the following concurrent resolution:

H. Con. Res. —

Concurrent resolution expressing the sense of the House regarding European Community actions affecting United States exports of corn gluten feed and corn byproducts

Whereas the French corn growers have proposed to file a countervailing duty petition against United States exports of corn gluten feed alleging that such exports are subsidized;

Whereas the French corn growers contend that subparagraph (E) of section 771(4) of the Tariff Act of 1930 (as added by section 1326 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418)) represents a new form of protectionism;

Whereas the French corn growers have urged the European Community to respond to such subparagraph (E) by applying a similarly broad definition of what constitutes a European Community "industry" whenever United States agricultural exports to the European Community are the subjects of antidumping or countervailing duty investigations;

Whereas the test set out in such subparagraph (E) can be met only when the raw agricultural product is substantially or completely devoted to processing and the processing yields only a single processed product, which in the case of corn, not only has multiple uses but also yields multiple products;

Whereas under such subparagraph (E) growers alone cannot bring a case against processed agricultural products and, therefore, growers and producers, even if they are considered part of the industry, must be joined by the producers;

Whereas under such subparagraph (E), there is a provision that would terminate the subparagraph if the United States Trade Representative notifies the Secretary of Commerce and the United States International Trade Commission that the application of the subparagraph is inconsistent with the international obligations of the United States;

Whereas because the European Community has consistently taken the position that the only parties who legitimately have standing to bring countervailing duty or antidumping cases are those which produce "like products" and that "like products" should be strictly and narrowly construed for the purpose of standing, French corn growers by themselves, under current practice, would not have standing to bring cases against imported processed agricultural products;

Whereas the European Community was bound under the General Agreement on Tariffs and Trade to impose no import duties on corn gluten feed and other corn byproducts and such zero-tariff bindings were agreed to in return for the United States trade concessions to the European Community during previous rounds of trade negotiations;

Whereas the European Community has not demonstrated sound economic justification for taking action to reduce the use of corn gluten feed and such action would shift some part of the financial burden of European Community Common Agricultural Policy from the European Community to United States agricultural exporters;

Whereas the export of corn gluten feed is valued at $500,000,000 and restrictions on these imports would increase the United States trade deficit;

Whereas the imposition of a countervailing duty on United States exports of corn gluten feed would force such feed into the domestic American market, thereby reducing corn and soybean prices at the expense of the American farmer and injuring the United States corn refining industry; and

Whereas the imposition of a countervailing duty on United States corn gluten feed by the European Community would be unjustifiable, unreasonable, discriminatory, and inconsistent with a negotiated General Agreements on Tariffs and Trade concession, a breach of which would severely erode the basic General Agreements on Tariffs and Trade principle of comparative advantage and set a dangerous precedent which could threaten other previously negotiated concessions: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the House of Representatives that—

(1) the President should firmly oppose the imposition of any measure designed to restrict European Community imports of nongrain feed ingredients, including corn gluten feed, and should support the current duty-free binding on such products;

(2) the President should vigorously oppose any European Community proposals which would violate the intent of the existing duty-free binding in the General Agreements on Tariffs and Trade for corn gluten feed and corn byproducts; and

(3) if unilateral action is taken by the European Community to inhibit the importation of corn gluten feed, the United States should act immediately to restrict imports from the European Community of at least the aggregate value of the reduced and potentially reduced United States export products.

INDIAN EDUCATION

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. KILDEE. Mr. Speaker, today I rise to recognize an almost herculean effort on the part of the administrators of the Bureau of Indian Affairs. Too often, when we talk about the Federal Government and the American Indian tribes and Alaska Native villages, the news is bad and the tone is dismal. In many instances, the Federal treaties have been dishonored. The commitment remaining unfulfilled. The Bureau of Indian Affairs, the Federal agency which has the primary responsibility for carrying out this Federal commitment, has been often accused of being more of an instrument for stifling, not promoting, progress.

One example of this was the ill-conceived and universally rejected proposal put forward by the Bureau in January of 1987. The Bureau proposed terminating all school operations regardless of local tribal wishes, and transferring these operations to either a tribe or a third-party entity. The tribes would have been forced to take over the operations of these schools under the Self-Determination Act contracting system, a system which had shown many problems in the past. Many tribes and Indian educators viewed this proposal as a method for the Bureau to simply transfer its responsibility and problems to others.

Without the tools or Federal commitment to assure success. It was not that tribes and Indian educators did not wish to take the responsibility for the education of their children. It was that a new method for facilitating this local control was needed.

Congress responded in Public Law 100-297, signed on April 28, 1988. Congress created a new authority for making tribally controlled school grants, streamlining the application and accounting procedures, assuring true local control of education, with local responsibility and third-party monitoring and allowing a unified grant to replace numerous and often confusing contracts.

The statute was specific, and there were a number of currently contracted tribally and community controlled schools who were ready to take the plunge and try the new system. However, as with any new law involving a new concept, the question of its success or failure ultimately lay with those charged with its implementation. Many waited anxiously, worried that the Bureau would, for its own arcane reasons, or because of bureaucratic inertia, implement the statute in such a fashion as to stifle its major component and mission—local Indian control. "What would the Bureau do?" and "when?" became the questions the Indian community, educators, and those of us committed to the program have lived with this summer.

Today, I rise to say that the Bureau has done its job, and to congratulate those within the Bureau responsible for this success. Questions involving interpretations and timing arose, and were resolved in favor of quick, decisive action on behalf of Indian grantees. Concerns over monitoring of programs, accountability for funds dispersed, and basically should we let Indian people handle their own money were voiced. However, those in charge, citing the statutory mandate, disposed of such concerns by insisting that now is the time when we must try something new. Applications and needed documents for the currently contracted programs to make the shift to the new grants authority this month were prepared in record time and distributed.

Today, 22 schools have announced their intent to try the new system, and the Bureau has not only taken the steps needed to implement these decisions, but has provided, and is providing, needed and appropriate technical assistance to give success a chance.

This could be a turning point in the history of this country's commitment to its Indian citizens and their education. I have, in the past, been unfailing in my recognition of the Bureau's examples of excellence in education and in my praise of those in the schools. Progress, often unrecognized, has been quietly made in the last 10 years. Today, education is the only social indice for the American Indian which shows a substantial improvement over the last decade.

I have also cited those instances where the central bureaucracy for whatever reason, has failed to support those in the schools and has slowed the movement toward excellence.

Today, it gives me greater pleasure than I have experienced in a long time to pay my respects to the entire Bureau of Indian Affairs and recognize the accomplishments of all parties and levels in implementing the new authority. Credit goes to all divisions of the Bureau, Education and Administration. Particularly, the Directors of Education and Administration, Wilson Babby and William P. Ragsdale, and their staffs deserve praise and thanks. I also want to recognize Assistant Secretary Swimmer, who placed his trust in these individuals and gave them the support they needed.

I will continue to monitor this program and this new authority carefully. I look forward to its success, largely as a result of the work which has been done to date. I hope that this noteworthy effort represents a new way of doing business, and signals the beginning of a cooperative effort between all those interested in Indian students and their future.

MEDICARE HOSPITAL PATIENT PROTECTION AMENDMENTS OF 1988

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. STARK. Mr. Speaker, I am today introducing the Medicare Hospital Patient Protection Amendments of 1988 to protect hospital patients from improper transfer for economic reasons. My bill will build on prior legislation I have introduced and the Congress has enacted to assure that patients in need of emergency care are not dumped from one hospital to another.

Patient dumping is a disgracefully common practice. It is simply not acceptable to kick desperately ill people from one hospital to another because they cannot pay the bill.

Far too many Americans are subjected to what is termed a "wallet biopsy" when they come or are brought to an emergency room seeking treatment. If immediate proof of ability to pay is not forthcoming, the patient is transferred to another facility, even though the transfer may threaten the life of the patient.

In 1986, the Congress adopted legislation which requires all Medicare-participating hospitals to provide necessary medical examinations and treatment to stabilize individuals with emergency conditions and women in active labor. After the patient is stabilized, the hospital may provide for appropriate transfer to another facility.

The transfer of patients from one hospital emergency room to another is a common practice and appears to be growing. During the past 5 years, several studies have found that patient transfers have increased dramatically. One study in Dallas found transfers had increased from 70 per month in 1982 to more than 200 per month in 1983; another found an increase from 169 per year in 1981 to 930 per year in 1985 in Washington, DC; and another for Chicago found an increase from 1,295 per year in 1980 to 5,652 per year in 1984.

Most of the hospitals involved are not-for-profit with a legal and moral obligation to provide charity care, yet they are turning people away at the expense of their health and, in some cases, their lives. I had to look no further than my own district to find an example of this.

William Trumball, of Castro Valley, CA, died in January 1987 because he did not have health insurance and because when he entered a hospital in great pain, he felt so hounded for money that he left. Tests that may have detected a blood clot were not performed. A man in Tennessee was physically removed from a hospital bed and deposited without shirt or shoes in the hospital parking lot.

Cases currently under investigation include a Texas woman in labor with bleeding who came to a hospital emergency room and was denied admission. She was told to sit on the curb to await transportation to a charity hospital.

A 16-year-old woman in Missouri came to an emergency room suffering contractions in her fifth month of pregnancy. While in the emergency room she spontaneously aborted without any medical attention. She was sent off to another hospital with the dead baby in her arms and the umbilical cord still attached.

A man with a dozen stab wounds came to a hospital emergency rooms in Texas. The emergency room physician called a host of thoracic surgeons throughout the area; none was willing to treat the man. Finally, the hospital administrator found a willing surgeon, but it was too late—the man died.

A number of studies have described the patients who are dumped. A 1984 study, from my own area, at Highland Hospital, a public hospital in Oakland, CA, found that of 458 patients transferred, 63 percent had no health insurance. Another study at Parkland Hospital in Dallas found that 77 percent of those transferred did not have insurance. At Cook County Hospital in Chicago, 87 percent of those transferred lacked adequate health insurance.

Patient dumping is but a symptom of a much larger problem. Thirty-seven million Americans are without health insurance. Low income sick people are finding it increasingly difficult to get needed health care and the burden of caring for them is falling on fewer and fewer hospitals. Hospitals are providing over $8 billion per year in uncompensated care.

I am sympathetic to the problems hospitals face in caring for the indigent. I have introduced legislation to mandate health insurance for every working American, to provide direct assistance to hospitals providing large volumes of charity care, and to assume fair rates of payment under the Medicaid Program. I have stated repeatedly that we need to provide fair and adequate reimbursement to hospitals for every patient they serve, particularly as we attempt to slow the rate of growth in Medicare and private health insurance expenditures for hospital care.

However, my sympathy for the problem which hospitals face does not, in my view, relieve hospitals of their responsibility to care for emergency patients.

I would hope that the antidumping statute would be self-enforcing and that the hospitals will take steps to assure that they never transfer an unstable patient or a woman in active labor. However, in those cases where the callous action of a hospital or physician requires enforcement, I believe that the amendments I am proposing today will assist in assuring proper prosecution of the law.

A summary of the bill follows:

MEDICARE HOSPITAL PATIENT PROTECTION AMENDMENTS

I. SCOPE OF HOSPITAL RESPONSIBILITY FOR SCREENING

(a) The amendment clarifies that a hospital's responsibility for initial treatment of emergency patients relates to the hospital's entire capabilities, not just the capacity of its emergency room.

II. AUTHORIZATION FOR PATIENT TRANSFERS

(a) Informed Consent: Clarifies that individuals requesting transfer to another hospital must give written informed consent;

(b) Physician Authorization: Clarifies that a qualified person other than a physician may authorize a transfer only in direct consultation with a physician, for example via telephone;

(c) Standard for Authorizing Transfer: Clarifies that the standard for appropriate transfer is that the risk of transfer to the individual or an unborn child is outweighed by the benefit of treament at another facility. Also clarifies that risk during transfer must be taken into account.

III. NOTICE AND RECORD-KEEPING REQUIREMENTS

(a) Requiring Maintenance of Records: Clarifies which records must be maintained and requires hospitals to maintain records of transfers as a condition of participation;

(b) Requiring Posting of Obligations: Requires hospitals to post a sign specifying rights of individuals under this section.

IV. ENFORCEMENT

(a) Hospital Liability: Clarifies hospital liability by deleting the requirement that hospitals "knowingly" violate the law and by specifying that a hospital is liable for the acts of its agents except that it is not liable if it relies in good faith on the medical judgment of a physician with respect to determining whether transfer is appropriate;

(b) Physician Liability: Clarifies physician liability by making clear that liability extends to attending physicians as well as staff physicians and by specifying that a physician is liable if he or she (i) refuses to provide a medically appropriate examination; (ii) falsifies the result of any examination, test, or other procedure in order to misrepresent an individual medical condition; (iii) makes a false certification; (iv) authorizes a transfer without certification; or, (v) misrepresents an individual's condition in order to induce them to consent to transfer.

V. ADDITIONAL OBLIGATION ON HOSPITALS WITH SPECIALIZED FACILITIES

(a) Requires hospitals with specialized facilities such as burn units, shock-trauma units, neonatal intensive care units, etc. to accept patients needing such services.

VI. MEDICARE CONDITIONS OF PARTICIPATION

(a) Requires hospitals as a condition of participation in Medicare to adopt and enforce a policy to ensure compliance with the requirements of this section and to maintain records.

VII. EFFECTIVE DATE

180 days after the date of enactment.

TRANSPORTATION EQUITY FOR RURAL AMERICA

HON. VIRGINIA SMITH

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mrs. SMITH of Nebraska. Mr. Speaker, yesterday, I outlined a new legislative initiative designed to bring about transportation equity for rural Americans.

My announcement was made in conjunction with the release of a report titled, "National Strategy for Reconnecting Rural America," which was presented to me by officials from the U.S. Department of Agriculture, Urban Mass Transportation Administration, and a representative of the United Bus Owners of America.

Following are my remarks on the report and on my new legislative package.

NATIONAL STRATEGY FOR RECONNECTING RURAL AMERICA

This morning, I had the privilege of meeting with Roland Vautour, Undersecretary for Small Community and Rural Development, USDA; Martin Fitzpatrick, Administrator of USDA's Office of Transportation; Matthew Wirgau, Deputy Administrator, and Brien Bensen, Associate Administrator for Budget and Policy, of the Urban Mass Transportation Administration; and Wayne Smith, executive director of the United Bus Owners of America.

Today we are releasing this report titled, "A National Strategy for Reconnecting Rural America," which is a compilation of recommendations made by participants at a national symposium on rural passenger transportation held this August in Omaha.

I'll be sending a copy of this report to every rural Member of Congress, asking for their assistance in bringing equity to mass transit funding to rural America.

The national symposium—as well as the three regional conferences in Des Moines, Annapolis, and San Francisco that preceded it—was sponsored in a joint effort by USDA, Urban Mass Transportation Administration, and the United Bus Owners of America.

Most important, these symposia brought together for the first time a broad-based coalition of individuals and groups to discuss the intercity transportation problems in rural America.

The recommendations made by the participants now will be considered by USDA, DOT, and UMTA as they develop a national strategy to coordinate the resources available to rural transit systems.

As a Member of Congress, it has been my continuing concern that while the transportation needs of rural America are painfully apparent, urban America—in a Congress dominated by urban Members—has received more than its fair share of available mass transportation funding.

According to the latest available figures, while 38 percent of the US population lives in rural areas, rural areas receive only 3.5 percent of mass transit assistance.

This is an obvious inequity, and we need to do better.

Comparing some of the figures in the 1989 transportation appropriation bill, just given final approval by the Congress, cements my case.

In fiscal 1989, we will spend $66.2 million in mass transit funds on rural America.

In contrast, we will spend $168 million on the Washington Metro system alone in fiscal 1989—a system, by the way, that runs operating losses of about $200 million a year.

In holding the national symposium, we had hoped to draw attention to the rural transportation crisis, and I'm pleased to say we have been successful in that regard.

Because of the growing awareness of its special transportation problems, rural America will do a little better in fiscal 1989.

For instance, the Agriculture Appropriation bill for fiscal 1989 directs FmHA to use a portion of its rural development loan program on rural transportation.

The bill also provides $500,000 in FmHA rural development grants to nonprofit organizations to provide technical assistance to rural communities with transportation needs.

And the fiscal 1989 Transportation Appropriation bill improves slightly the amount of funding that goes to rural areas.

Funding for Section 18 was increased from $64.6 million in FY 1988 to $66.2 million in FY 1989—an increase of about 2.5 percent, compared to an overall decrease in transportation formula programs overall.

But this is only a drop in the bucket compared to the needs of rural America.

Let me tell you about the initiatives I will undertake in the 101st Congress, some of which were included in the "Reconnect Rural America" report.

I call this my "essential bus service" package.

As I said, mass transit funding must be distributed in a more equitable fashion.

Using my position on the Appropriations Committee, I will work to increase the amount of Section 18 funding (in the DOT/UMTA appropriation), which is the only source of funding specifically designated for public transportation in non-urban areas.

It is my goal to double the amount of Section 18 funding, increasing Section 18 to $132 million.

And as vice-chairman of the Appropriations Subcommittee on Rural Development and Agriculture, I will continue to work to see that FmHA rural development loans and grants are set aside for rural transportation initiatives.

As Mr. Vautour will tell you, rural development will not occur unless transportation is available for its residents.

With that in mind, I intend to ask the chairman of the Agriculture Appropriations Subcommittee, Jamie Whitten, to join me in holding hearings on the connection between economic development and rural transportation.

I also will explore other alternatives to increase funding for rural areas, including earmarking agriculture and/or transportation appropriation funding for innovative pilot programs in rural areas—which could include the use of school buses to provide transportation in rural areas—and designating a certain amount of the Secretary's discretionary fund for rural transportation initiatives.

And beginning immediately, I will be working with USDA and UMTA to identify changes that can be made administratively to improve the climate for rural America.

For instance, I think we need to change the emphasis at UMTA from "Urban" mass transportation to "Public" transportation. After all, rural and urban areas both have transportation problems.

And today Mr. Vautour, on behalf of USDA, today will announce a new Rural Transportation Development and Financing Program.

This new program will make available $2.2 million in FmHA loan funds to Rural America, a nonprofit transportation organization, which will in turn lend the money at favorable terms to small, rural transit providers.

Now, for the long term.

As the Congress works toward the reauthorization of the federal highway and mass transit programs in 1991, I will be working on a new supplemental block grant program that would be made available to small towns and rural areas, to be funded by the mass transit account of the highway trust fund.

I also will be working to gather support to change the formula by which UMTA grants are allocated to the states.

Of course, this will be the real battle: the committees with jurisdiction are stacked with urban members.

But as a matter of equity, I think our case is clear.

And an investment in rural transportation makes infinite sense.

It's a commitment to economic development in rural America. And it's a commitment to quality of life for millions of rural Americans.

REPRESENTATIVE BROWN PROMOTES HUMAN RIGHTS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SCHEUER. Mr. Speaker, last month I had the pleasure of participating in a congressional delegation to the annual conference of the International Parliamentary Union [IPU] in Sofia, Bulgaria. The topic of this year's conference was human rights abuses. Joining me at the conference was, among other Members of Congress, my colleague Representative George E. Brown, Jr., who delivered a human rights speech that I would like printed in the Record.

Throughout his political career, Representative Brown has been a crusader for human rights. I have seen him fight for the rights of all Americans, and for the humane treatment of people around the world. In his remarks at the IPU conference, Representative Brown emphasized that "the promotion of human rights worldwide has been accepted by most Americans as a serious moral concern." This, in his view, helps explain the many actions taken by Congress to insist that nations around the world adhere to international standards of human rights.

At this conference attended by representatives of 108 nations, many of which have disgraceful human rights records, members of the U.S. delegation believed it was important to emphasize the moral imperative of human rights. Representative Brown did this, and he did it admirably. His concern about the rights of individuals has been reflected in his work to assist Soviet Jews wishing to emigrate; to establish a new United States-Soviet human rights commission, which will meet for the first time next month; and to promote United States foreign policies that carefully consider human rights issues.

Mr. Speaker, as you know, Congress appropriates funds to send congressional delegations to the annual IPU meetings to represent the interests and views of the United States. Our delegation took this mission seriously as it stressed the importance of human rights in our dealings with other nations.

I include the speech at this point in the Record:

STATEMENT OF HON. GEORGE E. BROWN, JR.

THE ROLE OF PARLIAMENTS IN DEVELOPING COOPERATION IN THE HUMANITARIAN FIELD

Mr. President, distinguished delegates: The promotion and protection of human rights is the foundation for the establishment of a peaceful and stable international system. Respect for human rights and fundamental freedoms has become a basic requirement for the creation of true trust and security between states. Universal respect for individual rights and freedoms, therefore, is essential for lasting world peace.

The policy of the United States has traditionally been to emphasize the fundamental rights of all human beings and to work to improve the observation of these rights throughout the world. The United States was instrumental in incorporating Human Rights, probably the most widely accepted statement identifying the importance of human rights. While the policies and programs of the U.S. Government have varied from administration to administration, and from Congress to Congress, our dedication to human dignity and human rights has remained constant and paramount.

As a member of the U.S. Congress who has devoted much of his life to trying to enhance and improve the rights and opportunities of all Americans, I can say that in the United States we have not yet achieved perfection. In my political career of nearly forty years, I have participated in many struggles to extend a full measure of equality to blacks, to women, to native Americans, and to other groups in our society. That struggle must include not only freedom from discrimination, but a positive effort to ensure that all Americans have the opportunity for education, health, and productive employment. And possibly most important, all Americans must share equitably and democratically in the political and economic power process, the determination of who makes the rules and receives the rewards in our society.

As I have said, we have not yet achieved perfection. I am not ashamed to admit this because I know that in our country, and in our Congress, we are continuing to struggle for more progress. I am proud to be a part of that struggle. I want to carry on that struggle not only in my own country, but, in the spirit of cooperation, to help other countries make progress in accordance with their national ideals.

The promotion of human rights worldwide has been accepted by must Americans as a serious moral concern. As a direct reflection of this concern, Congress has repeatedly linked U.S. foreign activity, particularly foreign assistance, to human rights standards and criteria established by the United Nations, the Helsinki Final Act and other international endeavors.

In the past two decades, Congress has included human rights provisions in its bilateral economic and security assistance laws, including requirements for annual reports on the status of human rights in all members states of the United Nations. In fulfillment of these provisions, Congress has limited or cut off assistance to a number of countries on human rights grounds and made assistance conditional on the providing to Congress of a certification by the President of human rights improvements. Congress has also sought to protect international labor rights in U.S. trade and investment policies.

In taking these actions, the Congress of the United States has faced a difficult dilemma. By conditioning our assistance to other countries, or by enacting sanctions based on their adherence to international standards of human rights, we may appear to setting ourselves up as somehow superior to these countries, entitled to judge their behavior in important areas of conduct which they consider to be their own internal affairs. May I make it clear that such is not the intention of the U.S. Congress. However, by failing to take any action to enhance the improvement of human rights on an international basis, we are guilty of hyprocrisy, of paying only lip service to our ideals whan we should be taking stronger action. We are constantly debating these kind of questions in the U.S. Congress, most recently in the case of apartheid in South Africa. I will not contend that we have achieved perfect decisions on these matters. But we have tried to make the best decisions possible, and when time and experience prove us wrong, we try to change.

The Congress has also acknowledged that foreign assistance programs themselves may have a negative human rights impact. For example, certain forms of economic or security aid may result in greater economic inequality or political repression. As a consequence, Congress has carefully scrutinized the weapons and training offered to the police, domestic intelligence or similar law enforcement forces of aid recipients. The U.S. International Security Assistance Act of 1978 prohibits security assistance to the law enforcement forces of a country violating human rights as well as the issuance of licenses for the export of crime control equipment to such a country.

The U.S. Congress has taken a leading role in championing human rights as part of the Conference on Security and Cooperation in Europe (CSCE) or Helsinki process, as it has become known. In a pioneering step, in 1976 the Congress established by law the Commission on Security and Cooperation in Europe, an organ of the Congress charged with monitoring and encouraging compliance with all the cooperative provisions of the Helsinki Final Act, human rights in particular, a task which has necessitated a strong focus on the Soviet Union and certain of its allies.

One of the more recent and most dramatic examples of the progress that has been made in fostering international cooperation in human rights is the very recent establishment of a U.S. Congress-USSR Supreme Soviet human rights mechanism which will be initiated this November. At that time members of the U.S. Helsinki Commission, which has been designated to represent the U.S. side, will travel to Moscow for several days of meetings with a newly formed human rights commission within the Supreme Soviet. It is expected that this meeting will initiate a process of periodic meetings and consultations on the whole spectrum of human rights concerns between the Parliaments of our two countries.

This event vividly demonstrates and symbolizes the distance we have travelled in the past decade towards the establishment of greater inernational cooperation on humanitarian issues, particularly between countries espousing entirely different concepts of human rights. We believe that this process between the United States and the USSR may help establish a model for constructive action in many situations. It is clear that in many countries, not just the United States and the USSR, there are different interpretations of the meaning of human rights, and imperfect understanding of the conditions in other countries. The necessary first step is improved communication and understanding.

In the years to come, I hope and trust we can build upon these difficult beginnings and help estalbish truly meaningful international cooperation on human rights which can only enhance the well-being of mankind everywhere.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, October 6, 1988, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 7

9:30 a.m.
Joint Economic
To hold hearings on employment and unemployment statistics for September.
SD-628

10:00 a.m.
Foreign Relations
To hold hearings on S. 2776, to prohibit exports of military equipment to countries supporting international terrorism.
SD-419

OCTOBER 11

10:00 a.m.
Governmental Affairs
To hold hearings to examine security weaknesses at the nuclear weapons laboratories.
SD-342

OCTOBER 12

9:30 a.m.
Select on Indian Affairs
To hold hearings on S. 1142, to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama.
SR-485G

SENATE—*Thursday, October 6, 1988*

The Senate met at 10 a.m., and was called to order by the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado.

The PRESIDING OFFICER. The prayer will be offered by the Reverend William A. Holmes.

PRAYER

The Reverend William A. Holmes, minister of preaching and administration, Metropolitan Memorial United Methodist Church, Washington, DC, offered the following prayer:

Let us pray:

Almighty and loving God, so down to Earth, so identified with all that's human, we dare to seek Your presence in this place. May it be more than just a political assembly; may it also be a place of hospitality for justice, mercy, integrity, and dreams—the very qualities through which our ancestors sought and found Your presence. Be down to Earth again, identify with us as we seek to do Your will, and keep us always as a nation under God, that we may serve You through serving others. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 6, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. WIRTH thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER. Under the standing order, the majority leader is recognized.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Arkansas such time as he needs.

Mr. BUMPERS. Mr. President, if the leader will yield first to Senator DASCHLE.

Mr. BYRD. Very well. I yield to Mr. DASCHLE, then to Mr. BUMPERS.

Mr. DASCHLE. I thank the leader.

REV. WILLIAM A. HOLMES

Mr. DASCHLE. Mr. President, this morning we had the good fortune to hear the words of Reverend Holmes. Reverend Holmes is the pastor of the Metropolitan Methodist Church in Washington, DC. He is a person with a tremendous amount of respect and whose words are beneficial to all of us as we consider the task before us today. He is our pastor; Senator BUMPERS and I and many others have had the good fortune to listen to him on Sunday mornings and to be moved by his words, his compassion, his conviction, and his leadership. It is an honor for me to be here this morning to introduce him to the Senate. We wish him well and thank him for providing us with wisdom and sensitivity, as he has for so many years as pastor of his church.

Mr. BUMPERS. Mr. President, first, I express my appreciation to Senator DASCHLE, who has been here a much shorter time than I but who had the presence and acuity to invite a very distinguished gentleman to open the Senate this morning with prayer, our very dear friend and our pastor, Rev. Bill Holmes. When Betty and I first came to Washington we started visiting Methodist churches. Sometimes I think we Methodists are on the endangered species list. We started looking for a church home, and about the third church we went to, Metropolitan Memorial, we heard Dr. Holmes. We were both extremely impressed and knew immediately that we had found our church home. And lo and behold, when I walked out and shook hands with him, I found that he grew up in Little Rock, AR, and a graduate of Hendricks College where my father played on the first football team, where my two sons graduated, and where my wife was on the board, a small Methodist school, a very prestigious liberal arts school in Arkansas.

From that day on Bill Holmes has not only been our pastor, but he and Nancy have been extremely dear supporting friends. We are most honored to have him this morning. I consider him one of the truly outstanding men in America, serving not only as a great religious leader in Washington, DC, but also serving his country extremely well. He is a very thoughtful and eloquent man, and we are most honored to have him here this morning.

I thank the leader for yielding us this time.

Mr. BYRD. Mr. President, I am delighted to yield.

I also welcome the Reverend Mr. Holmes this morning. His prayer was down to Earth. I think we all need to remember that prayer every day and several times every day, that we might retain our balance, our sense of direction, and our clarity of purpose. I join in hoping that he will return.

WE ARE NEVER READY FOR DEATH

Mr. BYRD. Mr. President, our faithful Chaplain's wife's mother passed away on last Sunday. The memorial services will be held this coming Saturday, and I know that all of us will extend our condolences and will share our thoughts and prayers with the Chaplain and his gracious lady on this coming Saturday. We are never ready for death. It is a most unwelcome visitor. We all know that it has to come and we have to meet with that stranger some day at some unappointed hour. Even with those who are very advanced in years, as was the Chaplain's wife's mother, having reached her 96th year, we are never really ready for death's coming. But there is comfort in the promise of eternal life that God has provided to all men through His Son Jesus Christ.

If I may, I would like to remember a little bit of verse. It is not something that I created, but it is a thought that I hope might be helpful to Mrs. Halverson and her husband during these hours of trial.

THE ROSE STILL GROWS BEYOND THE WALL

Near a shady wall a rose once grew,
  Budded and blossomed in God's free light,
Watered and fed by morning dew,
  Shedding its sweetness day and night.

As it grew and blossomed fair and tall,
  Slowly rising to loftier height,
It came to a crevice in the wall,
  Through which there shone a beam of light.

Onward it crept with added strength,
  With never a thought of fear or pride.
It followed the light through the crevice's length
  And unfolded itself on the other side.

The light, the dew, the broadening view
  Were found the same as they were before;
And it lost itself in beauties new,
  Breathing its fragrance more and more.

Shall claim of death cause us to grieve,
  And make our courage faint or fall?
Nay! Let us faith and hope receive:
  The rose still grows beyond the wall.

Scattering fragrance far and wide,
  Just as it did in days of yore,
Just as it did on the other side,
  Just as it will for evermore.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the Republican leader is recognized.

RESERVATION OF THE REPUBLICAN LEADER'S TIME

Mr. DOLE. Mr. President, I am going to reserve my time until the Senator from Wisconsin finishes his statement.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I want to thank my good friend, the distinguished Republican leader.

HALF WAY WITH SDI

Mr. PROXMIRE. Mr. President, one of the most frustrating aspects of public life at the national level is the unwillingness of the press and public to accept reasonable compromises on highly controversial issues. The strategic defense initiative [SDI] or star wars is a case in point. This Senator is one of those who have been challengers of SDI from the beginning. Here was a Federal program growing in cost by leaps and bounds. The physicists, engineers, and mathematicians who are best qualified to evaluate it have overwhelmingly agreed. They tell us that the ultimate concept as presented by President Reagan of an impenetrable shield that could make nuclear weapons obsolete is not a realistic prospect in the foreseeable future. On the other hand, these same scientists concede that a defense against an accidental or third country nuclear attack might become more feasible in a few years.

There is still more substantial scientific support for a stringently modified SDI that would be used to protect our nuclear deterrent from destruction. Since the credibility of deterrence is what has kept the nuclear peace for more than 40 years, SDI in this strictly limited sense deserves congressional support.

How much support? Presidential candidate Dukakis says $1 billion a year. The administration has asked for nearly $6 billion for this year. The Congress has provided about $4 billion. Those are very good differences. They foretell far greater differences as the years go on. The Dukakis $1 billion for SDI might mean $5 or $6 billion over the next 4 years. The Congress' $4 billion could lead to $20 to $30 billion by 1992. The administration's $6 billion would pave the way to $40 or $50 billion by the end of the next President's term.

The difference in the allocation of limited defense funds and the consumption of the Nation's limited scientific and technical talent could be far greater than the difference in dollars. A big SDI Program would come at the cost of improvement in our tanks, our planes, our helicopters, our artillery and/or in the training and readiness of our airmen, our marines, our land and sea forces. Or it could simply mean a bigger deficit, or a bigger tax load.

Many in the public and a few in the Congress have discussed the SDI issue as an "everything" or "nothing" issue. With the President all-the-way or kill it. If the former Defense Secretary's testimony before our Senate Appropriations Committee can be believed, all-the-way means $1 trillion in 1986 dollars. If the experts from the National Academy of Science can be believed all-the-way means no addition to the defense of our country from this mammoth expenditure during the next 25 years and maybe never.

And what does no funds for SDI mean? It means no attempt to defend against an accidental or third country nuclear attack on our country. It means no effort to advance a comparatively low cost and scientifically promising effort to protect the presently vulnerable land-based stationary leg of our nuclear deterrent triad against nuclear attack. The mobility and invisibility of our submarine deterrent which constitutes nearly 50 percent of our nuclear deterrent would neither receive nor require any significant additional protection from an advanced SDI. It is already virtually invulnerable. Similarly the mobility of our air borne leg that provides a third of our deterrent makes the protection of SDI slight.

So who is right? This Senator is convinced that as usual those who go all the way with the President on SDI are wrong as are those who would not spend an additional penny on SDI. The administration has been calling for much too much. The Congress has been appropriating billions more each year than can be justified. So is Governor Dukakis right? Is $1 billion a year—the amount we were spending on SDI when the President made his Star Wars-Make Nukes Obsolete speech 5 years ago on target? This Senator believes in holding down spending on every Federal project. I also believe that when in doubt on spending—just say no. Nevertheless, the protection of our country against a nuclear attack, including a Third World or accidental attack is so vital and the full protection of the great American deterrent and every part thereof is so crucial that I would support a higher figure than Governor Dukakis advocates. Two and a half billion dollars per year is a great deal of money. But in view of the realistic prospects that this expenditure could provide some significant protection against the most likely kind of nuclear attack the expenditure is worthwhile.

The protection this level of expenditure would provide for an important part of our nuclear deterrent also makes it worthwhile. This is the kind of reasonable compromise on SDI that many Americans will not buy because it is not the "everything" the administration has requested. It is not the "nothing" the all-out critics have called for—but it is right.

Mr. President, I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. DOLE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Republican leader.

COMMENDATION OF SENATORS QUAYLE AND BENTSEN ON THEIR DEBATE

Mr. DOLE. Mr. President, first of all, I want to compliment our two colleagues for their performance last night in Omaha, Senator LLOYD BENTSEN and Senator DAN QUAYLE. I think both demonstrated their knowledge of the issues. It was obvious that they had done their homework, and that they had been doing their homework in the U.S. Senate for a long time. They both did a good job.

As I made my objective analysis I came down on the side of DAN QUAYLE. I believe he demonstrated, as many of us have known, that he is tough, he is articulate, he is knowledgeable, that he is an asset to GEORGE BUSH and to the ticket, and will be an outstanding Vice President after the November election and the swearing in ceremony next January.

But I thought both our colleagues made us all proud that we serve with men of that caliber in this body.

THE THRIFT INDUSTRY CRISIS

Mr. DOLE. Mr. President, over the past 2 weeks, the thrift industry, the Federal Home Loan Bank Board [FHLBB], the administration, the Federal Savings and Loan Insurance Corporation [FSLIC], and various Members of Congress have been covered in every major newspaper in America. In fact, it is all over the paper again this morning.

Yesterday morning Danny Wall, Chairman of the Federal Home Loan Bank Board, testified, along with representatives of the thrift industry, before the Senate Budget Committee. The subject of the hearings was potential cost of the taxpayer bailout of the thrift industry.

The status of the industry is an issue which merits discussion. I hope it is brought up in the next Presidential debate. I have listened to the Senator from Wisconsin speak about it numerous times on the floor. I visited with Senator Garn privately about it. It is going to explode one of these days and we had better know in advance what is coming. Perhaps the commission will be implemented and it will be helpful.

I just suggest, and I think everybody would agree, that it is probably easy to let politics creep into something like this, but it is going to happen whoever is the President, and whoever controls the Congress. I want to just indicate in my statement how serious it is without trying to point the finger at anyone.

I just will make a couple of points. I know the distinguished chairman of the Banking Committee is present, and he is an expert. I am not. But it seems to me for some months it is an issue that ought to be addressed on a nonpartisan, bipartisan basis, and much of it we can trace to mismanagement—some of it maybe to deregulation, some of it maybe to the administration, and some of it maybe to a lack of action by the Congress. But the American people are going to have some tough choices in the voting booth in November.

The leaders they select are going to have to make some tough choices on this issue early next year. It has to be one of the top priorities. The next President should use his mandate to work with Congress to forge a final solution to the problem.

In this Senator's view it ought to be the first order of business next year. This and the deficit ought to be right on the front burner. There should be no delay. I know there is not going to be any footdragging on the part of anyone in this body because we know it is a deep, deep problem. I think we should move ahead.

HEADLINE NEWS

On Thursday, September 22, a Washington Post story charged that Danny Wall and the Federal Home Loan Bank Board engaged in "secret financing arrangements that vastly understate the cost of S&L rescues." According to the story, the accounting techniques used in these deals may have hidden as much as $8 billion in costs which will eventually become the responsibility of the U.S. Government.

On that same day, the chairman of the Senate Banking Committee. Senator Proxmire called for a $20 billion taxpayer bailout of the thrift industry. Senator Proxmire criticized the Federal Home Loan Bank Board, Mr. Wall and the administration for papering over the real problems in the industry by engaging in poorly capitalized "garbage deals," and intentionally underestimating industry losses. In the Senator's view, the administration is burying its head in the sand and trying to cover up a politically sensitive issue in an election year.

The former chairman and current ranking Republican on the Banking Committee, Senator Jake Garn, objected to the partisan nature of Senator Proxmire's statement. Senator Garn placed the lion's share of the blame for lack of any Federal solution to the thrift industry's problems on congressional inaction. He emphasized that "the administration proposed a $15 billion recapitalization (plan) over 2½ years ago, and everyone agrees that if the bill had passed then, the size of the FSLIC problem would be much smaller than it is now."

That is not all.

A recent article in the Wall Street Journal accused the Speaker of the House, Jim Wright, of intentionally dragging his feet on this issue. The Speaker allegedly used his influence to reduce the actual level of funding to the FSLIC in an effort to keep the doors of certain Texas savings and loans open. In addition, House Banking Committee Chairman Fernand St Germain has been criticized for refusing to report a clean FSLIC recapitalization bill in 1986, despite pleas from the Senate, the regulators, and the administration.

Last Thursday, Michael Dukakis charged that George Bush's "Inattention" to the problem will "cost tens of billion of dollars." The Vice President's campaign responded with a statement of its own which called Dukakis' statement "an inexcusable charge by a man who is trying to cover for his own party's foot-dragging and intransigence on the S&L crisis."

Yesterday morning, Mr. Wall testified with witnesses from the thrift industry before the Senate Budget Committee. The subject of the hearing was the potential cost to the Treasury of a taxpayer bailout of the thrift industry.

PARTISAN POLITICS IN AN ELECTION YEAR

Mr. President, the time has come to stop the political finger-pointing.

In my view, this should not be a partisan issue. The problems facing the thrift industry are serious. If unaddressed, they could affect the entire U.S. economy.

I am a Republican; and I know there are times when it is appropriate to be partisan. But, there are also times when we should sit down at the table, put our partisan beliefs aside, and try to do what's best for the country. This is one of those times.

And, it can be done. Look at the drought relief package. Look at welfare reform. We had not passed a welfare bill in 50 years, and I congratulate the distinguished Senator from New York [Mr. Moynihan] for his leadership on this issue. Unfortunately, time will limit what we can do on the S&L issue this year.

This is not a problem that we can simply throw money at or put a Band-Aid on. It is going to take time to come up with a responsible, workable solution, and the 100th Congress does not have any left.

AN AGENDA ITEM FOR THE 41ST PRESIDENT AND THE 101ST CONGRESS

The American people are going to have to make some tough choices in the voting booth in November, and the leaders they select are going to have to make some tough choices in 1989.

The thrift industry should be one of the top priorities for the next President and the next Congress. The next President should use his mandate and work with the Congress to forge a real solution to this problem. And, he should do it early in his term.

But, before we can develop a workable solution, we must take the time to define the problem and identify the factors that caused it. That is where the 100th Congress can play an important role. We can supply the framework upon which the next Congress can build.

A HISTORY LESSON

The thrift industry has undergone a series of changes over the past 20 years. In the early 1970's, the industry functioned primarily as a residential mortgage lender, relying on deposits as its primary source of funds. Regulation Q, which put a cap on the interest rates that banks and thrifts could offer to their depositors, provided the industry with what appeared to be a steady, inexpensive source of funds for their loans. The regulation was designed to encourage homeownership by enabling savings and loans and mutual savings banks to offer what were typically fixed-rate, low interest, residential mortgages.

DOUBLE-DIGIT INFLATION

Then came inflation. Everyone here remembers the double-digit inflation of the late 1970's and early 1980's. Inflation had a dramatic impact on the Nation's, and even the world's, economy. But, nowhere was the impact more sharply felt than in the financial services sector. The thrift industry was no exception.

Regulation Q affected banks and thrifts. It prevented them from offering competitive interest rates to attract depositors. Understandably, depositors all across the country withdrew their money from these institutions and invested it in other ways. If they kept their money in these institutions, they would actually lose money because their deposits in institutions would earn a lower rate of interest than the rate of inflation.

Inflation gave birth to a whole new generation of financial instruments. Investments such as money market mutual funds that offered a better rate of return than bank and thrift deposits became an attractive alternative to savings deposits. In effect, inflation created a shortage of loanable funds in the thrift industry.

But the shortage of funds was only the tip of the iceberg. In 1979, most of the assets on a savings and loan's balance sheet were long-term—30 year—mortgages with interest rates well below the market rate of interest. Under these conditions, savings and loans suffered major losses on the bulk of their assets. In many cases, the losses were so large that thrifts were forced to charge them off against their capital. These capital losses placed many institutions on the verge of bankruptcy.

With regulation Q intact, thrifts lacked the funds to offer new mortgages. At the same time, these institutions were suffering huge losses on their old loans.

THRIFT DEREGULATION

In 1980, Congress and the administration discussed proposals to address these problems. During the debate, it was argued that deregulation would allow the thrift industry to compete in the financial marketplace at a cost-savings to the consumer. Support for this idea appeared to be broad-based and bipartisan. It became the guiding principle behind the Depository Institutions Deregulation and Monetary Control Act [DIDMCA].

This legislation was designed to allow thrift institutions to compete more effectively against commercial banks. It gave thrifts the ability to diversify the term structure of their asset portfolio, so that their income would be less vulnerable to fluctuations in interest rates. The bill also allowed thrifts to offer higher interest rates to attract depositors.

Specifically, federally chartered thrifts were given the authority to offer commercial loans, invest in a variety of assets including commercial real estate loans, consumer loans, commercial paper and corporate bonds, and offer two types of interest-bearing checking accounts. In addition, this legislation called for a 6-year phaseout of the deposit rate ceiling for banks, thrifts and credit unions. Both the Congress and the Carter administration agreed that this was a good idea.

Over the next few years, a number of States chose to deregulate their own State-chartered thrift industry. In many cases, the States decided to proceed much more quickly with deregulation than the Federal Government had.

For example, the Federal Government placed strict limits on the percentage of assets a thrift could invest in commercial ventures and real estate development; the safety and soundness of the industry was their obvious concern. In spite of these reservations, many States—particularly, Texas, Florida, and California—decided to increase those limits dramatically and, in some cases, even remove them.

By increasing the limits on commercial and real estate investment, the potential earnings dramatically increased for State thrifts, but their potential losses also rose. The safety and soundness of institutions in these States became a concern.

THE LOSSES CONTINUED

And yet, the losses continued. Despite the regulatory changes, inflation pushed up market interest rates faster than the deposit rate ceilings. Thrift institutions continued to lose deposits to money market funds and other investments that offered a higher rate of return than their deposits. At the same time, increased deposit rate ceilings pushed the cost of loanable funds higher and higher.

OTHER PROBLEMS

Across the country, the industry struggled to survive.

But, a number of areas which were dependent on agriculture and the energy sector faced additional problems. Agricultural prices continued to slide and the oil market collapsed in 1982. Land values in these areas plummeted.

On a national scale, mutual savings banks lost $1.4 billion in 1981 and $1.3 billion in 1982, while savings and loans lost $4.6 billion in 1981 and $3.4 billion in 1982. U.S. thrift institutions failed in record numbers.

Further action was needed.

THE DEPOSITORY INSTITUTIONS ACT

In October 1982, the Garn-St Germain Act was passed in an effort to deal with the continuing crisis in the banking and thrift industries. The driving force behind this legislation was a provision which gave the Bank Board emergency authority to pursue mergers or acquisitions involving insolvent thrifts across State lines and between industries. In addition, depository institutions were allowed to offer accounts which were similar to money market mutual funds. The level of consumer and commercial lending permitted for thrift institutions also increased, but, overall, the powers extended to federally chartered thrifts remained much more limited than those granted at the State level.

The end result of the 1980 and 1982 Banking Acts is an increasingly competitive thrift system. The number of bank and thrift failures declined in 1983 and 1984. The improvement may have resulted from deregulation, but falling interest rates probably played a more important role. Falling interest rates made it easier to retain deposits and lowered the cost of acquired funds; it also reduced thrift losses on their old assets.

THE SOUTHWEST

If that were the end of the story, we would not be discussing the thrift industry today. The national economy has prospered over the past 6 years. As each month passes, we stretch the record for the longest peacetime recovery in U.S. history, but the Southwest has not shared fully in our prosperity.

The agricultural sector slumped from 1982 to 1986. Drought, flooding, and world oversupply in certain commodities all contributed to the problem. The 1985 farm bill laid the groundwork for a nationwide recovery in the agricultural sector. It was controversial at the time, but I think it has proved to be one of the best that we have ever enacted.

Unfortunately, additional problems were in store for the Southwest. Just before many struggling institutions could get their heads above water and before the rebound in agriculture prices took effect, oil prices crashed. Between January and July of 1986 field oil prices in Texas fell from $24.95 per barrel to $11.06 per barrel. In Texas, Louisiana, Oklahoma, Nebraska, and in my home State of Kansas, banks and thrifts reeled as the oil market collapsed.

This was the final blow to many of the institutions in the region. Farmers and oilmen defaulted on their loans and left the thrifts holding the real estate. Land values continued to decline.

Surely, no one can blame all of these problems on Danny Wall and the Home Loan Bank Board, and yet, the regulators have become scapegoats for Congress and the industry.

INADEQUATE OVERSIGHT

Some in the thrift industry have attacked the Federal Home Loan Bank Board for failing to contain the problem. They contend that the Home Loan Bank Board should have played a more active role in the deregulation of the industry. Certain institutions were allowed to expand too quickly and without enough regulatory supervision.

These critics argue that deregulation should have been implemented more gradually. The Bank Board should have exercised its discretionary authority to ensure that thrifts expanded their operations with adequate capital resources. New lending authority should not have been granted without first revising capital-growth regulations. Once insolvent institutions were identified, strict growth regulations should have been implemented to contain the problem.

But, the thrift industry spokesmen who criticize the Bank Board for failing to ensure the safety and soundness of the FSLIC system bear a striking resemblance to the individuals who, in 1986, supported the forebearance provisions which limited the Bank Board's power to close insolvent thrifts.

Nevertheless, the safety and soundness argument has some merit. When new powers were granted to the thrifts—particularly at the State level, the Bank Board should have beefed up its regulatory staff, but OMB refused to allow a staff increase.

This morning, Mr. Wall defended the Bank Board's performance. In his view, inadequate resources prevented the Bank Board from providing frequent enough examination and thorough enough supervision for both Federal and State-chartered institutions. Mr. Wall added that "wholly inadequate State supervision over changes in control" in Texas, for example, placed an additional strain on the insurance fund.

MISMANAGEMENT IN THE INDUSTRY

In the final analysis, the thrift industry must acknowledge its own contributions to the problem. Management decisions played a major role in creating the debt the industry now faces. An OCC study released in January 1988 blamed poor management for the majority of bank failures between 1979 and 1987. Because of the broad powers granted at the State level, it is highly probable that managerial mistakes played an even bigger role in thrift failures.

The bottom line is that many managers made poor investment decisions. Deposit insurance insulates management from the rigors of the market. Thrift managers are not always held financially liable for their losses. In many cases, the thrift losses exceed the management's personal stake in an institution and the Federal Government ends up footing the bill. In a sense, they are encouraged to gamble with other people's money.

If thrift managers had been more prudent in their investments, we might not be in the same predicament today.

FSLIC RECAPITALIZATION

There is another question which should be answered. Once the problems in the Southwest became obvious, what did the administration and the Congress do to try to improve the situation?

To the credit of the Reagan administration, the Treasury Department identified the problem early. The Treasury and the GAO estimated that this was approximately a $30 billion problem; $15 billion in FSLIC premiums were expected over 3 to 5 years, but additional financing was needed.

In March 1986, the administration proposed an additional $15 billion recapitalization to cover the difference. Under Treasury's plan, the industry would have picked up the tab for the additional financing.

As it turns out, the additional $15 billion may not have been enough to solve the problem entirely, but, if Congress had acted quickly on the Treasury's recommendations, the FSLIC fund would certainly be in better shape than it is today.

CONGRESSIONAL INACTION

Unfortunately, Congress did not act quickly. Senator JAKE GARN, then chairman of the Senate Banking Committee, pushed a clean 1986 FSLIC recapitalization bill through the Senate. The House also passed a $15 billion recapitalization package, but the House version included controversial housing reauthorization provisions. The House refused to recede on their housing provisions, and the bill died at the end of the Congress.

In August 1987, Congress passed a recapitalization plan which would provide $10.8 billion in revenue to FSLIC over 3 years. The funding would be provided through increased FSLIC borrowing which is backed up by the retained earnings of the Home Loan Bank Board System and a special FSLIC premium assessment paid by member institutions.

Recent news stories indicate that Speaker JIM WRIGHT and House Banking Committee chairman, FERNAND ST GERMAIN, dragged their feet in the recapitalization process allowing the bill to die at the end of the 99th Congress. There has been a lot of speculation about their motives on this issue, but I do not want to comment on that.

I do want to point out that the House was obviously interested in reducing the level of funding to FSLIC. They passed a $5 billion recapitalization bill which contained a number of restrictive forebearance provisions before agreeing to the $10.8 billion figure in conference.

UNDERSTATING THE PROBLEM

That brings us to 1988. The biggest issue this year appears to be the size of the FSLIC deficit. Part of the problem is that the numbers we see floating around are only estimates. The actual number remains an unknown. Measuring the size of the FSLIC deficit with any degree of precision would be a monumental undertaking. It would involve going to each institution and examining every single loan on its books. The costs of such a study would be prohibitive. Fact is that we must rely on estimates.

In May, Mr. Wall estimated that the cost of resolving the cases involving insolvent savings and loans at $22.7 billion, in July he increased the Bank Board's estimate to $30.9 billion. The GAO has estimated that the cost of closing these thrifts at between $26 billion and $36 billion. Private estimates ranged as high as $75 billion.

Regardless of the actual number, everyone agrees that the deficit has continued to grow. On September 7, Fred Wolf, Director of the GAO, indicated to the House Banking Committee that the GAO plans to revise its estimates up to approximately $50 billion. Yesterday, Mr. Wall raised the Bank Board's estimate of the size of the problem to between $45 and $50 billion.

WHAT THE NUMBERS MEAN

The FSLIC deficit figures are estimates of what it would cost FSLIC to resolve all the cases involving insolvent institutions in the thrift industry. Because thrift deposits are federally insured—up to $100,000—the Federal Government is ultimately responsible for paying the balance of this bill.

There are a number of factors that can influence these numbers. In deciding how to resolve each case, the Bank Board has three basic options. It may negotiate the merger of two or more institutions, assist in the acquisition of one or more thrifts by an outside bidder, or close the doors of an insolvent institution, sell its assets and pay off the insured deposits.

Because the third option is by far the most expensive, the Bank Board prefers to use it as a last resort. Of the 105 cases resolved so far this year, the Bank Board has only elected to close 19 thrifts.

The Federal Home Loan Bank Board employs a number of incentives—tax breaks, bad debt assumption agreements, income guarantees on certain assets, subsidized loans in the form of FSLIC notes and bonds, et cetera, in addition to actual cash payments by the FSLIC—to attract potential buyers for these troubled thrifts. Because many of these techniques create open-ended obligations on the part of the United States, the actual price tag for these incentives can only be roughly estimated.

The problem is that the Federal Government is ultimately responsible for fulfilling the financial obligations of the FSLIC. Jim Miller at OMB has ruled that all FSLIC notes must be included in the Federal budget. The press has called for a more accurate assessment of the real costs of these incentives, and I agree.

REASONS FOR THE INCREASE

Mr. Wall and the Federal Home Loan Bank Board should not be unduly criticized for increasing their numbers. They are resolving cases involving insolvent thrifts, through assisted mergers and acquisitions, at a record pace.

When the Bank Board estimates the cost of a deal, it bases its figures on the current value of the institution's assets and liabilities. But, the true value of the assets held by many of these institutions—primarily real estate—is only gradually coming to light. Changes in local and regional markets have forced the FSLIC to adjust its cost estimates.

In fairness to Mr. Wall and, to a lesser extent, the Treasury Department, the regulators have been asked to undertake a herculean task with limited resources and tight congressional restrictions on their activities. With a beefed up staff, improved data collection procedures and the experience gained over the past 2 years, the Bank Board's performance should continue to improve.

ZOMBIE THRIFTS

But, this picture is incomplete. The inability of the Bank Board to shut down all the insolvent thrifts has been the main factor contributing to the cost estimate revisions. Since the regulators obviously lack the funds to immediately close or merge all of the problem institutions, many of these so-called zombie thrifts are allowed to remain open and continue generating loses.

The problem is that the managers of insolvent thrift institutions are not financially liable for their losses. As a result, many of the zombie thrifts pursue increasingly risky investments in the hopes that they may be able to earn their way back to solvency. They are, in effect, encouraged to gamble with other people's money without exposing themselves to any risk.

The fact is that most of these investments do not pay off; they simply add to the debt in the system. This increase is compounded by the fact that the zombie thrifts bid up the cost of funds to their solvent competitors, placing an added strain on the local financial services sector.

The Bank Board has issued regulations limiting the activities of insolvent thrifts, but their effectiveness has been questioned.

WHERE DO WE GO FROM HERE?

The basic question left before the 100th Congress is how do we proceed from here? What do the events of the past 20 years suggest for future policy? How do we minimize the costs of a taxpayer bailout, and how do we prevent a recurrence of the FLIC's problems?

The first issue should be to find out more about what financial commitments FSLIC has made in mergers and acquisitions involving insolvent thrifts. The charges suggesting that the Bank Board is using fancy accounting techniques to paper over extensive U.S. financial commitments which may eventually fall to the U.S. taxpayer are serious.

We need accurate accounting in order to make responsible decisions.

Some have suggested increasing the staff at the Home Loan Bank Board as a prudent first step. We should make every effort to ensure that the Bank Board has an adequate professional staff, but another increase may or may not be necessary. Staff levels have already increased over the past few years, and the manpower problems evident in the mid-1980's appear to be resolved.

The regulators should have supervised the deregulation of the industry more carefully, particularly in those States which granted broad new powers to their State-chartered institutions. Federal regulators should have made sure that thrifts had adequate capital resources and that their managers had a working knowledge of their expanded powers before allowing them to enter new markets. Those who entered the industry over the past 8 years should have been more carefully scrutinized.

Congress granted new powers to thrifts, but the broadest powers were granted at the State level. Both the Congress and the States failed to recognize the added burden these changes placed on the Bank Board. Although the quality and quantity of the Bank Board staff has recently been upgraded, further staff improvements might enable the regulators to regulate and supervise the industry more effectively.

Granting new powers to the Bank Board may also be an option. Under current law, the Bank Board lacks the authority to close down thrifts before they become insolvent. Once an institution is insolvent, the prospects for turning the institution around are dim. We might consider allowing the Bank Board greater leeway in dealing with poorly capitalized thrifts. This could limit the growth of debt in the industry and help the industry turn institutions around before it is too late.

In reviewing the history, it is fair to say that deregulation of the industry has been successful in many ways. The problems centered in the Southwest more for economic than policy reasons. These institutions struggled through double-digit inflation, a slumping agricultural sector and dramatic declines in oil prices.

However, we do need to examine the role that the States have played. The dual banking and thrift systems are an integral part of the U.S. financial services sector. I do not question a State's authority to regulate a State-chartered institution, but I do think certain States should have proceeded more cautiously in deregulating federally insured institutions. Any legislative or regulatory solution to the problems must be implemented at both the Federal and State levels.

Some will undoubtedly call for a return to the good ol' days of regulated interest rates and reduced thrift powers. In my view, this is not a reasonable alternative. Inflation may be under control now, but we cannot guarantee low interest rates in the future. As long as thrifts are allowed to offer a market rate of interest on their savings and checking accounts, they must be able to diversify the term structure of their loans in order to minimize their vulnerability to fluctuations in interest rates. In addition, depositors have become accustomed to receiving market interest rates on their holdings. Reducing the interest rate a thrift could offer on deposits would most likely result in a large outflow of thrift deposits.

Unfortunately, we cannot rule out a taxpayer bailout. It is uncertain how much more the industry can come up with in terms of increased contributions to FSLIC. But, we most exhaust every revenue alternative before we turn to the American taxpayer.

The administration has suggested some alternative revenue sources including an additional $5 billion contribution from the thrift industry which would minimize the size of a bailout. Treasury Secretary Brady has called for a department study of these options which should help firm up their revenue estimates and give us a better information base to work from.

NATIONAL THRIFT COMMISSION

As so often happens, Congress may be passing on some of its toughest decisions to a study commission. But, at this time I don't see that the 100th Congress has another alternative.

The Senate has endorsed a bill creating a nonpartisan commission, and I understand that the House Banking Committee approved its own version of the bill on Friday. I certainly hope that we can get something enacted before the end of the Congress. This is an issue that will require a lot of thought and study, and it is an issue that should be a top priority in 1989.

The recommendations made by this Commission could be crucial in the debate.

CONCLUSION

Mr. President, in the final analysis this should not be a Democrat or Republican issue.

We should gather the best information available, cooperate with the administration and the industry, and proceed with a thorough review of options and sources of funds. So that the next Congress and the next administration can sit down at the table and work out a reasonable, workable solution to the thrift industry's problems.

Mr. PROXMIRE. Mr. President, will the distinguished Republican leader yield very briefly on this?

First, I want to thank the distinguished Senator from Kansas for bringing this up. There is no question about it. It is a very critical problem. There is no solution in the judgment of this Senator other than, as the Senator pointed out, having a biaprtisan approach. We have gotten into this difficulty because of the faults of the Congress, of the administration of the Home Loan Bank Board, and of the people in the industry itself. There is plenty of blame to share. But it is time that we have a look at this seriously. The sooner we act on it the less it is going to cost. For every single month that goes by, the problem costs $1 billion more. If we put this off another 12 months, it will cost another $12 billion; if we put it off 2 years, it will cost

$24 billion more. This is a bailout bigger than all of the other bailouts we have had combined.

So the Senator is speaking on an extremely important issue, and he is right that this should be treated in a bipartisan way. It is the only way we can really handle it well.

Mr. DOLE. I thank the distinguished Senator from Wisconsin who has played a leadership role, continues to, and I hope after his retirement he will continue to focus on this point.

I think one point that he made which I also made in my statement is it is not just the Government. In many cases the thrift managers were in effect gambling where they could not lose because of insurance. Now the taxpayer is going to have to pick up the bill for many of their depositors.

So I think some of the managers made their own contributions to the debt made in the industry, and management decision has played a big role in creating the industry's problem. The bottom line for investment decisions forced many institutions into insolvency, and if the thrift managers had been more prudent in their investments, we would not be in the same predicament today.

That is where we are. Whether it is going to be $50 billion, $75 billion, or whatever the amount may be, I think everybody will agree we cannot let the poor depositor take the rap for mismanagement, for inaction by Congress, by misdirection by any administration, by regulators or whatever. It will have to be very soon and very carefully, because, as the Senator from Wisconsin pointed out, every month we wait, it is going to cause the taxpayers another billion dollars, and we will not be here in November, December, and part of January. That is $3 billion, we know, and it is not going to be addressed on the first day or in the first month we return next year. So you can probably add another $3 billion, $4 billion, or $5 billion.

However, if the next President, whether it be George Bush of Michael Dukakis, makes this a priority and advises Congress early on that he is going to deal with this up front and make the tough decisions up front, then we may look for action early next year.

Mr. President, I reserve any time I have remaining.

Mr. BYRD. Mr. President, will my good friend yield?

Mr. DOLE. I am glad to yield.

WE KNOW WHO WON THE DEBATE

Mr. BYRD. Mr. President, as we have seen a vast multiplicity of times, the Republican leader is playing the role of being a good leader. He is the kind of leader who, on the battlefield, if he were told by his superiors to hold the gate, would be found at the gate, alive or dead, when the battle was over. He is a good leader.

This morning I have a little tinge of—well, let me put it this way: I could not go to sleep for 2 hours after that debate last night, I felt so good about it.

My good friend, Mr. Dole, this morning, of course, has put the very best face he could put on it, and I understand that. But we all know who won that debate. It spoke for itself. Of course, Senator Bentsen—I will just lay it on the record—won it hands down, and I say that with all respect to our other colleague, Senator Quayle. I think I have said enough.

I congratulate the distinguished Republican leader. He is doing the best he can, under very difficult circumstances, to be the loyal, dedicated party leader that he is.

SENATE SCHEDULE

Mr. BYRD. Mr. President, I hope we can take up the tax technical corrections bill today.

The cloture motion on the profamily package will not mature until tomorrow. I understand that Senator Stevens and Senator Baucus are working on a matter involving the tax technical corrections bill, and I have been asked by the distinguished Senator from Alaska to withhold going to that bill for an hour or so because he feels that they may be near an agreement. I will certainly honor that request.

So it is my plan to go to the tax bill, and on tomorrow we will have the cloture vote on the profamily legislation. I will make a decision at that point as to where we go from there on the profamily bill.

It is also my plan and my hope to go to the drug bill after action on the tax technical corrections amendments. This obviously will take some time, but it seems to me that all of us understand that we are in the closing days of the 100th Congress. We can act on both these measures—on all three, as a matter of fact. They all can go to conference with the House, and the conferees can act.

I hope that we will move forward as rapidly as possible and try to restrain ourselves from our normal inclinations to take a great deal of time and to offer a lot of amendments.

THE JOURNAL

Mr. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania.

(The remarks of Mr. Heinz pertaining to the introduction of legislation are located in today's Record under Statements on Introduced Bills and Joint Resolutions.)

IN SUPPORT OF S. 1429, THE HAZARDOUS WASTE REDUCTION ACT

Mr. HEINZ. Mr. President, every man, woman, and child in America goes to sleep each night with a time bomb under the bed. I'm talking about the potentially explosive danger of hazardous waste dumped in our water, soil, and ground water. Industries excrete up to 1 billion tons of toxic waste materials into our soil and water sources annually—or about 4 tons for every American. We spend about $77 billion—or 2 percent of our GNP—to manage this waste. Yet we still face daily threats to human health and the environment. S. 1429, the Hazardous Waste Reduction Act, rightly assumes that prevention is the best cure for this threat. I rise today in support of this bill.

Pennsylvanians have experienced such threats to our health and environment at our 80 Superfund sites—threats from arsenic at the Whitmoyer Labs site in Lebanon County, threats from beryllium and other heavy metals at the Keystone landfill in Adams County, and threats from PCB's at the Paoli Railyards outside of Philadelphia, to name a few.

Congress recognizes the threats posed by untreated hazardous waste and has phased out land disposal and deep well injection of these materials by 1990, through 1984 amendments to the Resource Conservation and Recovery Act [RCRA] reauthorization. Superfund liability provisions further discourage such waste treatment options.

While such trends are encouraging, the larger problem goes unresolved. Limiting where we store hazardous material does not get around the inherent dangers of dumping them at all. Toxic pollution, like time, knows no master. Current regulations, however well intentioned, shift materials from one medium to another at great expense, but without corresponding environmental benefit. For example, wastewater treatment requirements prevent hazardous substances from being discharged to the surface waters, but create a sludge that must be disposed of or incinerated.

Hazardous substance pollution is not merely a land disposal problem. INFORM—a New York-based environmental research firm—reports that "hazardous chemical waste were found to be generated in roughly equal amounts as air emissions, waste water discharges, and as solid wastes." The Environmental Protection Agency [EPA] recently released a study concluding that hazardous air emissions pose a greater threat to the public health than land disposal of hazardous waste.

Current regulations may limit, but they don't prevent, production and dumping of these various deadly waste. At a minimum, 600 million pounds of metals and 225 million pounds of organic chemicals regulated under the Clean Water Act are discharged annually to marine waters by permitted industrial and municipal sources. The public pays in fear; it also pays in hard dollars. OTA estimates it may cost taxpayers $100 billion to clean up Superfund National Priority sites, for example.

We need to replace these so-called end of the pipe solutions with preventive programs to plug the pipe before hazardous wastes are emitted. Specifically, we need to encourage generic waste reduction practices that include: First, process, operating, and/or equipment changes; second, product reformulation; third, material substitution; and fourth, improved housekeeping.

There is tremendous potential for hazardous waste reduction. The EPA estimates industry could reduce its waste output by 30 percent. OTA suggests that a 50-percent reduction is economically feasible. An INFORM study of organic chemical manufactures discovered some individual waste stream reductions of 80 percent and more.

In my State of Pennsylvania, DuPont Electronics in Emigsville uses an organic solvent—111-trichloroethane—for degreasing electronic connectors. They used to ship 30,000 gallons of used solvent—an EPA-classified hazardous waste—offsite. Now they run the solvent through a distilling/cleaning tank on site and recycle it. First-year savings totaled $148,000.

A Pittsburgh company, Papercraft Corp., reduced toxic sludge output from 50 tons per year to less than 5 tons by shifting production from high solvent ink to a high solids, low solvent ink.

Based on the relatively conservative EPA estimate of waste reduction potential, aggressive reduction practices could cut over $23 billion from industry's annual waste management costs—and help diffuse the time bomb of fear these wastes represent to our citizens. Such savings could be reinvested to boost the output, productivity, and competitiveness of domestic manufacturers.

Congress explicitly declared reduction at the source as the preferred method for waste control in the 1984 RCRA amendments. EPA reiterated this preference in a 1986 report to the Congress. The report identified the elements of a Federal waste reduction policy, which might include providing technical assistance to States and bolstering the Agency's ability to gather, analyze, and disseminate information about waste reduction.

But stating a preference stops short of issuing a mandate—and without a mandate from the Congress EPA continues not to make waste reduction a top priority. Without a congressional mandate, the EPA continues to operate on the principal of regulating pollution based on specific mediums, like ground water. EPA budget requests for waste reduction activities hover around $500,000 per year, less than 1 percent of the Agency's operating budget.

Given the escalating costs and regulatory restrictions of land disposal, deep well injection, high temperature incineration, or chemical treatment, the logical question is, Why hasn't industry embraced preventive measures? According to INFORM, OTA, and EPA, the impediments are largely institutional, not technical, legal, or economic.

The current regulatory scheme orients industry toward management of wastes already generated. Plant managers worry about compliance, not reduction. Typically, they lack the authority to implement plant or process changes necessary to effect waste reduction. EPA concluded in its 1986 report to Congress that successful changes in plant operation and/or design, policymaking and implementation processes is largely dependent upon upper management support.

And so it appears the principal barrier to greater use of waste reduction techniques is a knowledge gap about their potential and feasibility and the specific direction from Congress.

The bill I am cosponsoring today, S. 1429, will go a long way toward bridging that gap and determining that direction. Briefly, provisions of the bill would:

Improve the collection of information about waste reduction practices required under section 3002 of RCRA and section 313 of the Superfund Amendment and Reauthorization Act;

Establish a national clearinghouse for information on waste reduction and recycling techniques;

Authorize $10 million per year for technical assistance grants to States to initiate or expand their own waste reduction programs; and

Establish an Office of Waste Reduction within EPA to carry out the above responsibilities.

S. 1429 provides for an appropriate Federal role in promoting hazardous waste reduction. Reporting requirements are not onerous. No new regulatory scheme is erected. Authorization levels for the technical assistance grants—$10 million per year—and the Office itself—$8 million—are modest, particularly given the cost-savings potential of waste reduction.

Mr. President, a companion measure (H.R. 2800) has the bipartisan support of 234 cosponsors. I urge my colleagues who have yet to cosponsor this bill to consider doing so.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I note the time for morning business is about to expire or has expired. I ask unanimous consent that I be allowed to speak as in morning business for not to exceed 6 minutes.

The ACTING PRESIDENT pro tempore. Wihtout objection, it is so ordered. The Senator from Nevada is recognized.

DRUNK DRIVERS

Mr. REID. Mr. President, during the recess, I had the opportunity to see first hand how our law enforcement officers are working to combat the problem of drunk driving.

On September 2 I rode a shift with Officer Chet Gallagher, an expert on driving under the influence of controlled substances. He is a member of the Las Vegas Metropolitan Police Department.

This same evening I was also able to observe one other person in this very large police force who also is an expert with DUI and driving under the influence of controlled substances, a Mr. John Edwards.

It was certainly a pleasure to work with these fine, outstanding police officers. They are experienced, and certainly I learned a great deal from them.

During that shift, from 6 p.m. to 1 a.m., I was able to observe police operations in three separate DUI incidents. There could have been many more arrests if not for the substantial time it takes to process each potential violation, over 2 hours.

I was impressed with the degree of expertise required to identify and test for these violations. As the evening progressed, I became more and more aware of the need for this specialized training. Law enforcement officers must be able to identify violators with a degree of certainty to make sure that their time is used efficiently.

There are a number of indicators that the police all over the country use to identify drunk drivers. Obviously, if a driver is weaving back and forth across the road, it is likely that the driver is drunk. But it is not always that simple. Often the signs are much more subtle. Maybe it's slow reaction to a traffic signal, an unusually wide turn, or driving at night with the lights off.

For example, people who drive with their lights off, about 40 percent of them it has been proven through statistics are intoxicated. These officers can recognize all these signs, and they do it with amazing accuracy. Sometimes the officers can identify a drunk driver by observing the driver through the windows of the car. However, drivers are increasingly avoiding such detection through the use of tinted glass. This is an issue that we should consider here in the Congress. It seems to me that drivers should be able to be viewed by police at any time in their vehicle.

Testing is another important aspect of drunk driving detection. Police officers are trained in identifying impaired drivers through the use of field sobriety tests, and ultimately breathalyzers or blood alcohol tests. One interesting development in field testing is a vision test called horizontal gaze nystagmus or HGN test. Often alcoholics can adapt to having a constant high blood alcohol level and perform certain field sobriety tests with little discernible difficulty.

However, alcoholics have more trouble—in fact they cannot fool the HGN test. With the HGN test, the subject focuses his or her eyes on an object that moves from the center to the side. If the individual is impaired, the eye will involuntarily jerk or quiver as the eye engages outward from the center. I was able to watch the HGN test performed with success. The HGN test has already proven to be a helpful tool in drunk driving detection, because those people who are intoxicated cannot fool the test.

As I mentioned earlier, law enforcement expertise is a vital aspect of drunk driving prevention programs. This expertise requires training, and we in Congress must do what we can to support training programs like the ones offered by the National Highway Traffic Safety Administration. We must also do what we can to improve the morale of law enforcement officers by passing legislation encouraging States to enact more responsible drunk driving laws.

We must act favorably, for example, on S. 2367—we can do that this year—a bill that was introduced by Senators LAUTENBERG and DANFORTH, cosponsored by myself and a number of other individuals. S. 2367 provides incentive grants to States that provide for prompt administrative suspension or revocation of the licenses of drunk drivers. The bill also provides incentive grants for self-sufficient drunk driving programs and for programs that call for the impoundment of vehicle registration and license plates of repeat offenders. The bill also contains an amendment I added in committee which requests a study by the National Data Bank to provide law enforcement officials with information concerning previous arrests in other jurisdictions.

Mr. President, S. 2367 sends a tough message to drunk drivers. It tells them that we will not tolerate their abuse of our highways—we will not stand idly by while they murder 24,000 people a year. We must help the law enforcement community. We must pass S. 2367.

I yield the floor.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for not to exceed 10 minutes and that the Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Hawaii.

NEWSPAPER PRESERVATION ACT LEGISLATIVE DIALOG

Mr. INOUYE. Mr. President, on June 29, 1988, I offered an amendment (No. 2509) to S. 430, then pending before the Senate. This amendment was, with one small change, identical to S. 2314 which was favorably reported in the 99th Congress. My intent in offering this amendment was to clear up any ambiguities concerning the reach and scope of the Newspaper Preservation Act. In particular, I sought to clarify that the act encompassed activities such as the distribution of total market coverage [TMC] products. This amendment is still pending. However, I am now requesting that it be withdrawn because it is unnecessary. In doing so, I am joined by the Senators who cosponsored this amendment.

The Newspaper Preservation Act was passed in 1970, with the stated intention of preserving editorial and reportorial competition between two newspapers in cities which could no longer support commercial competition between two newspapers. The act provided for the commercial merger of the two newspapers by grandfathering such arrangements already in existence at the time the act was passed. It also established review and approval procedures by which the Attorney General would consider new applicants. In all such agreements, it is required that two separate news voices be maintained.

I believe that the act has served us well over the past 18 years. Some of the then existing joint operating arrangements have been terminated, but others were created through satisfaction of the application procedures, and approval of the Attorney General of the United States. In cities with joint operating arrangements, such as Honolulu in my State, we have enjoyed continued editorial and reportorial competition of two newspapers, giving full effect to the first amendment principles of our Constitution.

Needless to say, the act has been fully tested in the courts. Its constitutionality has been affirmed. Additionally, contrary to the dire predictions of those who opposed the act's passage, the weekly and suburban newspapers have prospered and increased in areas where joint operating agreements exist. This is noted in Senate Report 99-539, accompanying S. 2314.

Then, in 1984, a suburban newspaper instituted a lawsuit in Tucson, AZ, alleging that the joint operating newspapers in that city had exceeded the authority provided by the act. In *Wick v. Tucson Newspapers, Inc.*, 598 F. Supp. 1155 (D. Ariz. 1984), the plaintiff argued that the joint newspaper operating company could not distribute a total market coverage [TMC] advertising package to nonsubscribers. In a preliminary ruling, the judge ruled for the plaintiff. It held that the Tucson newspapers' distribution of a TMC product was outside the scope of the Newspaper Preservation Act, and as such, was a per se violation of the antitrust laws.

Since TMC activities by daily and weekly newspapers are part and parcel of newspaper publication, and because I believed that the court in Wick was in error, I joined with other Senators to introduce S. 2314 in the 99th Congress. During consideration of S. 2314, the Department of Justice sent a letter, dated July 22, 1986, to the chairman of the Judiciary Committee, wherein the Department stated that, in its opinion, the court in Wick misinterpreted the Newspaper Preservation Act. The Senate Judiciary favorably reported S. 2314 in the 99th Congress, but too late in the session for further action. In its report (No. 99-539), the Senate Judiciary Committee specifically declared that TMC activities could be conducted under the Newspaper Preservation Act as originally enacted.

The Wick decision was reversed on procedural grounds by a Federal Court of Appeals. The case remained pending, but dormant, before the Federal district court, until February 1988, when the case was dismissed without prejudice at the request of the defendants. Shortly thereafter, the same plaintiffs instituted another lawsuit in Tucson against the same joint operating agreement newspapers, again alleging that the distribution of a TMC product was not authorized under the Newspaper Preservation Act. The same legal arguments were made, but this time the court denied plaintiff's motion for a preliminary injunction. The court in Wick II did not reach any decision as to the Tucson newspapers' TMC distribution. The case was dismissed by stipulation.

The reason for withdrawing this amendment is simple. We no longer believe there is any doubt about the proper interpretation of the Newspaper Preservation Act. While the Federal district court in Wick II did not specifically rule on the TMC distribution, we believe that the court has recognized the error in its earlier decision in Wick I, in that it denied plaintiffs' motion for a preliminary injunction even though there was no question or doubt that the Tucson newspapers were distributing a TMC product, including slick-paper inserts. In Wick I, the court had originally held that such a TMC product was a per se violation of the antitrust laws, not covered or protected by the Newspaper Preservation Act. In Wick II, the court did not so hold, although the defendant, Tucson Newspapers, readily acknowledged that they were distributing a TMC product with slick-paper advertising inserts.

It should be noted that the defendants, in their legal arguments and briefs to the court in Wick II, made ample use of the Senate report on S. 2314, and the letter from the Department of Justice included in the report, to demonstrate that there was no violation of the antitrust laws. In particular, the defendants quoted to the court the following finding by the Judiciary Committee in Report No. 99-539, at page 6:

> The Committee believes that there is sufficient justification for reading into the Newspaper Preservation Act authority for joint operating agencies to enter in TMC activities. Because Congress intended to assist financially weak newspapers and to put participants in a joint operating agreement in the same position as single newspapers in all but editorial and reportorial respects, it would not serve the purpose of the Act to construe it in a way that precluded jointly operated newspapers from using TMC advertisement marketing techniques, which are part and parcel of newspaper publishing. Of course, even though TMC activities are included in the coverage of the Newspaper Preservation Act, the prohibition against any predatory or otherwise unlawful conduct in the Act, 15 U.S.C. § 1803(c), remains in force.

It would, therefore, appear that the Federal District Court in Tucson is now better acquainted with the reach and scope of the Newspaper Preservation Act.

I should also make mention of the fact that the Senator from Ohio, the manager of S. 430, and his able staff earlier advised me that there was no need for my proposed amendment to the Newspaper Preservation Act. In light of the filing of Wick II, however, the Senator was supportive of my efforts to clarify any of the act's ambiguities, and to thereby eliminate costly and wasteful litigation.

I am convinced that there is no longer a need for my proposed amendment. I am withdrawing it, with a caveat. If there should be any other litigation where congressional intent and purpose in passing the Newspaper Preservation Act is misinterpreted, I will again offer my amendment to make certain that joint operating newspapers are fairly treated and not put into a second-class status.

Mr. GARN. Mr. President, I join my colleague in requesting the withdrawal of amendment No. 2509, and fully concur in everything the Senator said with regard to our purpose in introducing S. 2314 in the last Congress, and the amendment in this Congress.

As stated at the outset, our proposed amendment to the Newspaper Preservation Act was and is considered by us to be of a technical nature—making clear the intent of Congress in the act, and attempting to correct a misinterpretation of the act in what may now be referred to as the first Wick case. In that case, the court incorrectly interpreted the act, and found that the distribution of a total market coverage product, including slick advertising inserts, to nonsubscribers, was a per se violation of the antitrust laws. The decision eventually could have jeopardized the joint opeating newspapers in other cities which were distributing TMC products.

We sponsored S. 2314 in the 99th Congress, and Amendment No. 2509 in this Congress, in order to clarify congressional intent under the Newspaper Preservation Act. We were not seeking to change the act, but to do away with any doubts or questions as to the coverage of the act and avoid expensive litigation.

The Department of Justice, in its comments on S. 2314, confirmed our interpretation of the act. The Department clearly stated that the act covered TMC distribution, and believed that the legislation was unnecessary, but indicated that it had no objection if Congress wanted to pass clarifying legislation. The Department of Justice acknowledged that if there were confusion, the language it proposed (and we adopted) in S. 2314 would clarify the situation. The Department considered the Wick decision to be an aberration, and unlikely to be followed.

The Senate Judiciary Committee, in favorably reporting S. 2314, also held that the Newspaper Preservation Act encompassed such publishing activities as TMC distribution. The report went on to state:

> This bill will clear up any ambiguity as to whether joint operating agencies may lawfully engage in TMC activities, such as shoppers, without newsprint or news or editorial content in the TMC product. There is no requirement that the TMC product itself be printed on newsprint, or contain news and editorial content—things which need be included only in the whole of the newspaper publication of which it is a part.

There was no intent in S. 2314 to expand the act—and thus, TMC activities, which were already authorized under the act, would continue as approved activities by a joint operating agency.

Questions were raised as to the need for legislation amending the Newspaper Preservation Act, since, aside from the Wick decision, there seemed to be no question as to the coverage of the act including TMC products. Therefore, no bill was introduced in this Congress. Then, earlier, this year, a second case was brought in Tucson by Wick against the newspaper agency. Again, there was no distpute as to the facts. The Tucson newspapers were distributing a TMC product, and it had slick-paper advertising inserts. The plaintiff again argued that this was a per se violation of the antitrust laws, not protected by the Newspaper Preservation Act. While we believed the report on S. 2314 to be correct on the interpretation of the act, including the position taken by the Department of Justice, there was concern that the Court in Tucson could again misapply the act to the fact situation.

Once more it became necessary to ensure correct interpretation of the act, and Amendment No. 2509 was offered—encompassing S. 2314 with a small addition. This was still a technical amendment, not intended to expand the act.

However, in the second Wick case, the Federal Court in Tucson denied plaintiff's motion for a preliminary injunction. If the court believed the distribution of a TMC product to be a per se violation of the antitrust laws, and not protected by the act, I must assume it would have granted the injunction—an unlawful activity would have to be proscribed and not allowed to continue. In denying the injunction, it is clear that the court has reconsidered its earlier decision—possibly based on the legislative history of S. 2314 and the position of the Department of Justice. In any event, the injunction having been denied, the case was dismissed.

Under these circumstances, it would indeed appear that there is not a need for the proposed amendment to the Newspaper Preservation Act. Newspapers in joint operating agreements have, for all intents and purposes, engaged in a commercial merger, and may lawfully engage in all commercial activities which are available to one-owner newspapers.

It is my hope that the courts will give proper consideration to the terms of the act. If, however, there should again be a failure to properly interpret the act, resulting in an unintended constriction on the commercial operations of JOA newspapers, I will join my colleague in reintroducing corrective legislation.

Mr. INOUYE. Mr. President, on June 29 of this year, together with the Senator from Utah, Mr. HATCH, and the Senator from West Virignia, Mr. BYRD, I submitted amendment No. 2509 to S. 430.

At this time, with the concurrence of the cosponsors and the leadership of the Senate, I ask unanimous consent that I be permitted to withdraw amendment No. 2509.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INOUYE. I thank you, Mr. President.

RECESS UNTIL 10:42 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 5 minutes awaiting the arrival of a Senator.

There being no objection, the Senate, at 10:37 a.m., recessed until 10:42 a.m.; whereupon, the Senate reassembled when called to order by the Acting President pro tempore [Mr. WIRTH].

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended 10 minutes and that Senators may speak therein for not to exceed 5 minutes each.

UNTIED CREDITS

Mr. HEINZ. Mr. President, I rise today to sound an alarm over expanding lending to the Soviet Union and her allies by Western commercial banks and financial markets. In particular, I am concerned by the rapid increase in "untied credits" to the Soviets, not linked in any way to Western exports or projects. Such credits totaled fully $19 billion in 1986.

I focus on untied credits because they are the real problem. Lending to the Soviets makes sense if it puts cash in the hands of a Western firm while moving Western goods that are not militarily significant to the East. The Soviets get credit but there is a balancing of benefits: We give them something; we get something. Untied credits put cash in the hands of East bloc governments with no offsetting benefit to the West. Of course, they may provide modest profits to the banks or investment firms involved, but the cash provided is at least as likely to buy trouble for the West as to buy Western goods.

The risks begin with Soviet support for surrogates like Cuba and Vietnam and for terrorist organizations. That support depends on ready access to hard currency. Efforts to steal Western military secrets and advanced technology are similarly fueled by hard currency. In fact, there is nothing we would like to see the Soviets do with Western currency that requires untied lending. Any legitimate deal can be accomplished with tied export or project credits.

If this were not reason enough to discourage such lending, untied sovereign loans are exactly the type of unsound banking practice that led to severe debt problems in Third World and some East bloc countries. U.S. banks now realize that such lending was unwise and are attempting to shift international lending toward trade credit and specific project finance. Despite these hard lessons, some Western banks are now rushing to make untied loans to governments with recognized serious economic management problems in the Eastern bloc.

This is not a new issue. In 1985 the Banking Committee held hearings in connection with Senator GARN's bill that would grant the President discretionary authority to block loans to the Soviet Union and her allies. The issue was raised last year in hearings in the House and has been debated in the Senate.

However, the issue has taken on increased urgency because Western lending has been rising at the very time that Soviet export earnings have been depressed by lower world oil prices and demand. Absent such loans, the Soviets would have less cash to finance overseas adventures against the West. Demands of the Soviet civilian economy would create pressure to lower defense spending. Instead of letting that pressure force Mr. Gorbachev to follow through on his pledges of glasnost and perestroika, Western financiers, especially in Europe and Japan, seem intent on letting him off the hook.

Diplomatic efforts to discourage untied lending could be launched through the OECD, NATO, or a direct approach to the economic summit countries. This proposed policy change that I ask—namely, an urgent policy initiative by the Reagan administration to gain the support of our allies to curtail the substantial risk posed by untied lending—must be achieved now. Time is short. There are only a few more months in the Reagan administration's tenure. Now is the time to discourage lending untied to specific transactions.

Let me add that, as with most international initiatives, the time needed to negotiate, to complete an agreement, will certainly extend even beyond this administration's tenure. And that fact argues strongly against delay and for prompt action now.

I would like to think history will remember Ronald Reagan as one who established a framework for fruitful United States-Soviet relations well into the next century and that it is built on a strong foundation.

I urge the President not to allow that foundation to be undermined and to bring untied lending under control so that Western loans supporting expanding economic ties can be made without undermining our hard-won national security.

EXPORT-LED GROWTH

Mr. HEINZ. Mr. President, earlier this year, the Congress finally ended years of debate on how our trade laws should be altered to address the huge U.S. trade imbalance. Now that the trade bill has become law, we have achieved a broad consensus that America must pursue an aggressive trade policy if we are to ensure that American products get a fair shake in world markets.

While this makes a welcome change in our trade posture, it is in fact only one step toward reversing our overwhelming deficit with the rest of the world. An integral part of the process must be a substantial reorientation of our economy toward export-led growth. In recent months we have seen modest reductions in trade deficits but the task ahead is massive. This morning, and in a series of statements in coming weeks, I intend to explore the export challenge ahead and outline an agenda for achieving this critical growth of exports.

First, lest there be any doubt, let me underscore the importance of the problem. During 1987, the U.S. economy sustained a 30-percent drop in the bond market in the early part of the year and a stock market plunge of 25 percent in October. Large and unsustainable budget and payments imbalances in the United States and abroad were major factors underlying these shocks. America has been importing almost double what it exports, spending more than it produces, and investing more than it saves. In a few years, our country has shifted from the world's largest creditor country to its largest debtor. Our future prosperity demands that we earn enough to pay our way in the world.

I also want to underscore just how large the problem is. Our current account deficit is $150 billion, about 3 percent of GNP. It is estimated that an adjustment of perhaps $200 billion is needed in our trade balance over the next 4 to 5 years to eliminate that deficit and pay an additional $30 to $40 billion of debt service on net external debt. This will require a massive change in the export orientation of the U.S. economy, where exports represent only 7 percent of the total domestic output compared to 26 percent for the rest of the economic summit countries. U.S. companies that view exporting as a novelty will have to emulate their counterparts in Europe, where even the smallest companies take exporting for granted.

In the face of this challenge, what progress are we making? Since 1985, U.S. goods have become more competitive as the value of the dollar dropped 30 percent. In the first half of 1988, the trade deficit has dropped 15 percent from its 1987 level. Yet most economists believe that if present policies and trends continue, the deficit is unlikely to drop much below $100 billion.

There is clearly a lot more to be done. A major step must be reduction of the Federal deficit. Despite all the program cuts and deficit reduction plans of the last 7 years, total deficit spending has exceeded $1¼ trillion. A renewed commitment by Congress and the new administration is needed to bring the deficit problem under control.

Beyond the deficit, we are not going to achieve export-led growth unless we overcome a range of other impediments in our way. Some are international and beyond our direct control, but we also face a variety of legal, budgetary and regulatory problems of our own making. International conditions include:

A dollar exchange rate which remains too high for balanced trade;

Uneven cooperation from our allies, especially Japan and Germany, in expanding and opening their domestic markets;

Limited commitment of advanced developing countries to the principles of free and fair trade;

An LDC debt problem that continues to stifle economic growth in key markets for U.S. goods; and

Continuing use of predatory mixed credit financing and abuse of foreign aid programs by other governments to capture export markets.

On the domestic front, we are pursuing a range of policies that discourage expansion of our exports.

Tax and regulatory policies which discourage commercial banks from providing export financing or engaging in export trade services.

Inadequate funding of lending programs and administrative budgets of the Export-Import Bank which remains the "whipping boy" of the budget process.

Lack of basic export services for small and medium-sized businesses and those new to exporting.

All of these problems must be addressed if we are to achieve the necessary adjustment from importing to exporting. An aggressive agenda of international negotiations and domestic policy changes must be pursued to achieve our objective.

Mr. President, the trade bill is an example of bipartisan consensus on matters of national import. We must now reach a similar consensus on an export policy that can complete our transition back to a creditor nation. This is one of the critical challenges facing the next administration. In coming weeks I plan to outline an agenda for addressing it on which I hope the Congress and the new President can cooperate to ensure continued prosperity for American.

THE DRUG BILL

Mr. D'AMATO. Mr. President, it was 3 days ago when a group of Senators came to the Senate floor and introduced this bill, S. 2852, a comprehensive bill dealing with the epidemic of drugs; comprehensive because there were many aspects that have heretofore not been addressed legislatively or at least not with the thoroughness and the comprehensiveness which came about as a result of a bipartisan effort.

It provided for the first time funding for rehabilitation that could be put into the form of brick and mortar, where some of our desperately needed facilities for drug treatment of addicts are in need of repair or expansion. Now, for the first time Federal dollars can be used in that area; additional dollars for education; comprehensive law enforcement programs for the first time that will target areas where the seizure of the drug assets is possible, taking those assets to help destroy that criminal enterprise system and turning them back to local governments, State governments, and the Federal Treasury specifically for the purposes of using those funds to continue to combat that menace which, in many cases, goes almost totally unchallenged.

There are many other aspects of the bill, some contentious, some not. Let me suggest that my colleagues, who in good faith may be opposed to the death penalty, were ready and willing and indeed agreed to allow the provisions for the death penalty as it related to the drug kingpin who orders the assassination of someone or those who have such a reckless disregard for human life would come into an area and open fire and kill innocent children and women, as we have seen take place so often throughout this country.

Yes, we were proud and we were hopeful. But, Mr. President, let me say to you, 3 days have passed by and we have not undertaken this bill. We will go home Friday and we will return Tuesday and maybe Thursday or Friday, when we are bumping up against adjournment and people want to get back to their State—those of my colleagues who are running for office to campaign and others—will be saying we are here too long, let us get out of here. I am afraid, Mr. President, the most important business—that of dealing with the adoption of this bill, those amendments that might be debated, those provisions which might enhance the bill or people feel should be considered—will never be taken up.

Mr. President, we are shirking our responsibilities and I dare say we are going to do little or nothing on this floor, as we did little or nothing yesterday and little if anything the day before.

When are we going to take up the drug bill? As I was proud of the bipartisan effort that brought the bill to this point I am now ashamed of what is taking place.

Mr. President, this weekend is a great weekend for those of us who are Italian-American. And, of course, I look and I see my dear friend, Senator LEAHY and he beams with pride because he is also of Italian-American background.

I do not know whether he intends to march in one of the Columbus Day parades that will be held in this Nation. I will be marching Monday in New York. And it is a great event. It is a holiday and it is a special celebration and spirit; particularly for those of us who are Italian-American. But I think that is the greatness of this country, having pride in one's ethnic roots and having it in a country that gives us the opportunity to see it flower so. It is that diversity and yet recognition of where we are from and where we are at and the opportunities that makes it so beautiful and so wonderful.

But I want to tell you something. If you could have a chat with Christopher Columbus today and you would say: Christopher, what do you think? Do you think the Senate of the United States is doing the right thing by not coming into session and having celebrations throughout this land? Or should they be back here doing the business of the people on the drug bill? I will tell you something, I know what that gallant man would have said. "Do the work of the people."

Mr. President, I challenge this institution. I tell you we should not go home this weekend. We should work on the drug bill and this is nonsense for us to be politicizing—and I say politicizing—this Chamber to the extent that we have.

Why are we not taking up that bill? If it is so important. I have heard my colleagues come down here and rattle off the statistics, 5,000 people today will try cocaine for the first time; thousands of cocaine deaths; thousands of youngsters becoming involved. And what are we doing? We are trivializing this bill. We are trivializing the importance of undertaking concerted action and I think it is wrong. I do not think that we are being fair to ourselves and more importantly to the American people.

Mr. President, I intend to continue to challenge this body publicly on this floor. And if this nonsense continues, I may begin to take this bill as an amendment and add it to every single legislative item that comes before this body for consideration. Even if the Chair rules us out of order, at least we will begin to focus our attention. Why are we not taking up this bill now? And debating it? It should be done.

We can put aside these other matters that may be of importance to people, but not nearly as important as doing something to combat the drug menace. And I am willing to live with whatever amendments come out, vote them up, vote them down; give people a right to be heard. I am willing to go along with time agreements and if people oppose them, fine. But let us get this bill out. There is no excuse not to do it. It is absolutely wrong. I want to go home this weekend but I am willing, if we take up this drug bill, to stay here and to have it debated and have it voted on.

Mr. President, I intend to continue to pursue this as long as we are doing literally nothing, treading water and failing to act on this bill. I am going to come to this floor and I will use any other forum by which to challenge the Members of this institution to deal with this bill.

Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

THE BERNE CONVENTION

Mr. LEAHY. Mr. President, first, I want to say again how pleased I am that we passed, yesterday, the enabling legislation on the Berne Convention. I think all Senators who voted for it, it was a bipartisan effort, can take a great deal of pleasure in that. They can tell those who write books or compose songs, design computer chips, do anything that has intellectual property involved with it in their State, that they have taken a significant step forward for them.

In my own State of Vermont the biggest employers are in the high tech field: IBM, Digital, General Electric, and others. This, for them, has to be considered a significant step forward.

My main reason for standing, the distinguished Senator from New York had mentioned Monday is Columbus Day. I agree with him it is a day that is a matter of pride for all those of Italian ancestry. I know the Leahy family will celebrate their Italian half on Monday, not their Irish half. My mother and sister, my brother, myself, our children, my wife, will wear the tricolors that day. We will think not of the wearing of the green, but the displaying of our ancestral feelings toward Italy.

I will be sending messages over to my uncles and aunts and cousins in the northern part of Italy and we will celebrate that day, partly because it tells us now, again, this country is made up of so many diverse groups, and that we have come from hardy immigrant stock, all of us. I am reminded of what Franklin Roosevelt said in addressing the Daughters of the American Revolution, when he stood up there and he said: "Welcome, fellow immigrants."

Of course, all of us come from such stock. I am proud of that background as I am my Irish background, as all of us are of the roots that go back, maybe just a generation back with some of you, and maybe even closer, as in at least one Member of the Senate who was born in another country and came here, or those of us whose families came here generations ago. All of us are part of that matrix that makes America so great, the background that each of us brings from other countries either in this generation, a generation ago as in my case, or generations and generations ago, as in the case of others of us.

This is what makes America strong. When I look in the home State of the distinguished Senator from New York and see the Statue of Liberty there, I am constantly reminded that that is a beacon, a welcoming symbol. I hope it always stands as such because it is that constant renewal and reinfusion into this country that makes it so great.

Mr. President, I yield the floor.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, how much time remain in morning business?

The ACTING PRESIDENT pro tempore. Two minutes remain in morning business.

Mr. BYRD. Did the distinguished Senator from Texas wish to use some time in morning business?

Mr. GRAMM. Mr. Leader, I had intended to use some. If I could get more than 2 minutes without in any way infringing on what we are doing I would like that. If not I would be willing to wait until we go on to the pending business and then speak.

Mr. BYRD. The Senate will go to the tax bill at some point, hopefully.

Mr. GRAMM. Mr. Leader, if we are going to go to the tax bill I will limit my remarks to 2 minutes because I am eager to get to it. If we were going to go to something else, other than the drug bill, then I would feel I was doing more good by speaking than we would be doing in these areas, other areas.

But I am happy to accommodate the distinguished majority leader in any way that I can.

Mr. BYRD. If the Senator is referring to the profamily package, there is a cloture motion that I introduced yesterday. That cloture motion will mature on tomorrow and there will be a vote to invoke cloture on the debate on the profamily package.

It is my intention today, if at all possible, to go to the tax technical corrections bill and to follow that with the drug bill. We will await the outcome of the cloture vote tomorrow to determine where we go from that point.

Mr. GRAMM. Mr. President, under those circumstances, I would not want to delay the Senate because the purpose of my statement is to urge that we get on with the tax bill and the drug bill. So if I might use the remaining minute of morning business, unless the distinguished majority leader wants to use it, I would be satisfied with that and happy to go on to the tax bill.

Mr. BYRD. I am not quite ready to go to the tax bill yet. As I indicated earlier today, Senator Stevens had asked me to delay for an hour or so if at all possible, thus giving him time to work out a matter on which there is some difference of opinion between himself and Senator Baucus, and perhaps others. It will be a little while yet.

I will be happy to extend morning business if the Senator wants to speak.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended 10 minutes and that Senators be permitted to speak therein and that the time for morning business not be charged against the morning hour.

The PRESIDING OFFICER (Mr. Adams). Without objection, it is so ordered.

The Senator from Texas.

GREAT PRIVILEGE TO SERVE WITH ROBERT C. BYRD

Mr. GRAMM. Mr. President, while we have the distinguished majority leader on the floor and being a private in the army and not among the sergeants and generals, I did not have an opportunity to speak at the luncheon yesterday, but I would like to say that it has been my great privilege to serve with the majority leader. I have learned a great deal from him. I doubt if I am ever going to achieve his patience in trying to make the system work, in waiting for consensus to form, but I think we can all learn a great lesson from the distinguished majority leader in terms of his commitment to this great deliberative body.

We are all prone to believe that our positions are correct. We often feel great passions for those positions. But I think the distinguished majority leader, in his commitment to the institution and the preservation of that institution, serves us all well.

I am happy to have had the opportunity to study under him by having the chance to watch him work here on the floor of the U.S. Senate. Every day I try to learn something more from the majority leader about not just his patience but about the rules of the Senate, and I appreciate having an opportunity to be with him on the floor to make these remarks.

IMPORTANCE OF A DRUG BILL

Mr. GRAMM. Mr. President, I want today to talk about two issues in the time I have. The first is my eagerness to get on with the drug bill. I want to be careful in terms of my concerns about getting on with the drug bill and the tax bill because, like everybody else here, we are at the end of the session. Many of us have commitments in our States since we had hoped to adjourn prior to today and certainly had hoped to adjourn by the end of this week or perhaps over the weekend.

I want to say I do not believe there is anything that we can do that is more important than passing a drug bill. We have worked a long time on a bipartisan basis to put together a core bill. The core bill is a good start but, Mr. President, from the very beginning we recognized that there were fundamental differences.

I want an opportunity to offer an amendment providing for mandatory sentencing. I know there is opposition to that. I know that many of the issues that will be debated here have become issues in the Presidential campaign, but I believe the American people want us to move ahead on these issues.

I want to offer an amendment providing 10 years in prison as a mandatory sentence for thugs who sell drugs to our children. I want to provide 15 years mandatory sentence for an adult who uses a child to sell or transport drugs, and I want a repeat offender of either selling drugs to a minor or using a minor in a drug sale, on the second offense, to get life in prison.

I support the death penalty. I support it because I think we need an effective deterrent. If we are going to ask men and women to pin on that star and go out in the streets and subject themselves to danger and read people their rights before taking the initial action to defend themselves, I think we need the deterrence so that every hoodlum in this country knows that if they kill a police officer, they are going to be put to death.

I think we need some stiff penalties. I know there is a debate here; I know there are differences of opinion about what we ought to do with the user.

Mr. President, we have made a tragic mistake, in my opinion, by acting as if the drug transaction was a transaction where only one criminal was involved. Too often we have acted like drug use was a victimless crime, as if the guy selling the drugs was a criminal, but the guy buying the drugs was a victim. The plain truth is, as we know now, most drug use is not by addicts. Most drug use is by people who go to work every day, have jobs, as you and I do, but by buying drugs, they are providing profits that have put a drug thug at the door of every high school in America. Their profits create the hoodlum gangs that kill our drug agents in Mexico. I believe we need to have some punishment, effective response to those who use drugs and violate the drug laws of this country.

We will propose that those who use drugs and are convicted of drug use lose benefits. I think a student in college ought to know they can lose their guaranteed student loan by being convicted of drug use. I think somebody with an FHA loan guarantee ought to know that if they are riding around in their Volvo using cocaine and they are arrested and convicted, that they can lose their FHA loan and that we can seize their Volvo.

I think, Mr. President, the only way we are going to deal with this problem is to grab the people who are profiteering off the health and happiness and safety of our children, by the throat and do it with mandatory sentencing and to also say to the roughly 25 million people in this country who are using drugs on more or less regular basis that we are not going to put up with it; that we are not going to tolerate it; that they are either going to change their lifestyle or they are going to pay for it. That is the only way we are ever going to win this war.

So I know there is a lot of dissention here. I know a lot of it is politically charged. When we have a candidate for President, such as Michael Dukakis, who has taken a hard position against virtually everything this drug bill stands, for, I know that it is a politically charged issue. Mr. President, the people of this country want us to act on this bill. I think it is vitally important that we move ahead, and I can assure anybody who is concerned about action that the American people want the bill, that the pressure is going to be on people on both sides of the philosophical debate to present their views, to let the Senate work its will because the American public is going to be outraged if we do not pass a bill.

Finally, I want to remind all of our colleagues that when we started negotiations almost a month ago on this bill, the agreement from the beginning was that the most controversial elements would be left out and that those elements would be decided in amendment. I hope in the waning hours here that we do not wait around until the end and then have someone file cloture and deny us the ability to vote on amendments that we agreed from the very beginning would be considered.

So I think really there are only two productive things of any real significance left to do. I am willing, obviously, to consider judges, to consider other things that we can do that are noncontroversial, but what we need to be doing is to pass these technical corrections to deal with problems like the diesel tax which is fundamentally unfair and counterproductive, and we need to deal with a drug bill. The sooner we can get on it, the better off we are.

I see Senator STEVENS is here, allowing us to move to the tax bill. I urge my colleagues to move to it with alacrity and attention. Let us adopt the technical corrections bill, let us adopt the drug bill so we can have conference with the House and so the President can sign it into law and so that every drug thug in this country knows that we are serious about seeing them pay for what they have done to the people of this country and to our great Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The time for morning business has expired.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MILDRED K. FERSH

Mr. LEAHY. Mr. President, today I rise to speak about a constituent of mine, Mildred K. Fersh of Bennington, VT, who has recently passed away.

Mildred was a good friend, as well as a loving wife, mother and grandmother, and her absence will be greatly missed. She and her husband George have always been special friends. She was an extremely talented woman, as is evident by the poem written below. In her memory, I ask unanimous consent that the poem be printed in the RECORD.

There being no objection, the poem was ordered to be printed in the RECORD, as follows:

RED RASPBERRIES

I must be out early . . . not too early
Lest some dew remain. They must be dry.
Early enough so bird-hordes at breakfast
Have not abandoned shade tree feasts
For these bigger, brighter orbs of juicy red.

Under relentless sun the canes reach up,
Worshippers of that sun, to be fulfilled.
Heat-burgeoned, rampant, urgent in their quest,
Fuller, higher, faster, brighter, bearing
Their sacrificial offerings as they die.

And I, the privileged priestess in these rites,
Secure a treasure haughtier than gold.
Did gold ever dictate terms so harsh? No,
Gold lies waiting the convenience of the miner,
Impervious to time or rain, pest or disease.

Here in labors long through fickle seasons,
No want goes unattended, no need unmet.
Feeding, pruning, mulching, and protecting,
I nurture the strong and vigorous, excise the weak,
Foster the fulfillment of their destiny.

Old canes—to the fingers withered, brittle with age,
Yet sturdy, prolific, bearing fruit—
Surround themselves with green and tender ones,
In autumn *their* turn to be kept or cut.
Life and death power exercised again.

Among curled leaves—beneath, behind, below,

Seeking and grasping the fragilest of fruit,
Perspiring, muscles straining with restraint,
Racing the threat of oncoming storm, or battling
Pest and pestilence . . . Is it worth the price?
What binds the self-appointed priestess to the task?
Why not cool mint drinks, hammocks in the shade?
Fingers manicured, unstained? Limbs liberated
To a rhythmic road-stride? Why not abdicate,
Let go to ground cover and perennials?
Reason argues. But magnet-drawn once more,
The masochist body in thorny search surrenders—
Willing acolyte—to sensual imperatives:
Bee-buzz drone of companion ritual priests,
Breeze benediction of fragrant hay and weeds,
Tart sweet incense from baskets ruby-filled,
Visions awake of tate delights to come:
Berry-drenched hot cakes, crusty, juicy pies,
To share with loved ones, neighbors, this earthy miracle,
Summer bounty and plenteous winter store.
Re-dedicated . . . Into the temple again,
I do not feel the scratches as I reach.

—Mildred K. Fersh.

DR. SHIGEO SHINGO

Mr. HATCH. Mr. President, in June 1988, Utah State University awarded an honorary doctorate to renowned Japanese management consultant Dr. Shigeo Shingo for his work on ways to improve manufacturing excellence. Dr. Shingo began his work in quality and productivity improvement 60 years ago, after reading the work of American expert Frederick Taylor. While at Utah State, Dr. Shingo lectured on his world famous "single-minute-exchange-of-die" [SMED] system, his "poke-yoke" defect prevention system, and his "just-in-time" production system.

Dr. Shingo also expressed his appreciation for the assistance Western management and manufacturing professionals have given to Japan over the years. Following his lectures, Dr. Shingo agreed to join with Utah State in sponsoring the Shingo Prize for Manufacturing Excellence, which will be awarded to students and business leaders for their work in promoting excellence in American manufacturing. He also endowed a chair at Utah State which will be dedicated to teaching and research on quality and productivity improvement.

As you know, quality and productivity are major factors in promoting competitiveness. Congress should encourage American universities to teach current business leaders and management students the skills necessary to improve the quality and productivity of American manufacturing. At this time, I want to express support for Utah State University's efforts to teach these skills to American managers and business students. I also want to commend Dr. Shingo for sharing his expertise with Americans by donating the Shingo Prize for Manufacturing Excellence and for endowing the Shigeo Shingo chair at Utah State University.

ENGLISH AS THE OFFICIAL LANGUAGE OF THE UNITED STATES

Mr. PRESSLER. Mr. President, as the debate continues on adoption of a resolution to establish English as the official language of the United States, I would like to share with the Senate Dr. S.I. Hayakawa's remarks on this issue. I ask unanimous consent that a speech by Senator Hayakawa be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

WHY THE ENGLISH LANGUAGE AMENDMENT?

AN AUTOBIOGRAPHICAL STATEMENT

(By S.I. Hayakawa, Ph.D.)

Let me talk a little about my own personal history to explain how I came to believe strongly in the importance of legally designating English as the official language of the United States, and, in Proposition 63 to be voted on in November of this year, the official language of the State of California.

I was born and brought up in Canada. In 1927 or thereabouts, I was invited by Canadian friends from Winnipeg to visit International Falls, Minnesota, for a holiday weekend. When we got to the U.S. border, immigration officials refused my entry, despite the protestations of my friends that I would be back in Canada in three days. "But I am a Canadian citizen, born and brought up in Canada," I said. "It doesn't matter," said the immigration officer, "You are Japanese by race—and that makes you inadmissible to the United States."

In 1929, however, I was awarded a graduate fellowship in English at the University of Wisconsin. This time there was no difficulty about coming to the United States. I came on a student visa, with documents from the University testifying to my student status.

After I got my Ph.D., the University of Wisconsin hired me as a full-time instructor in English. I had to return to Canada to be re-admitted with new documentation, known nowadays as a "green card." It gave me permanent residence, so long as I continued to be employed in the work for which I was admitted. But I still could not be naturalized.

Most of you here know, I am sure, what the situation was at that time as regards Oriental immigration. The Chinese Exclusion Act was passed in 1882. Then came the Japanese Exclusion Act of 1924. These laws denied to those two peoples even a tiny immigration quota, which would have defined them as naturalizable. I remained legally unable to become an American citizen until these laws were changed.

It was in 1952 that the McCarran-Walter Immigration Act eliminated race as a barrier to immigration and naturalization. I finally became an American citizen in naturalization ceremonies in Chicago in 1954, and ceased to be the one foreigner in my family of an American wife and three American children.

In the year of the passage of the McCarran-Walter Act, I was invited to teach a summer session at San Francisco State College. I must say I was surprised at this invitation from a California institution, because I had known since high school days in Winnipeg that California has been, throughout its history, the principal source in the U.S. of anti-Chinese and anti-Japanese agitation and politics. However, I accepted the invitation and enjoyed the experience very much.

At the close of the summer session, the chairman of the English Department, Dr. Caroline Shrodes, asked me if I wouldn't like a permanent position at San Francisco State. "Nothing doing," I said at once. "I've enjoyed myself here, but I don't want to bring up my children in the anti-Oriental climate for which California is famous."

Dr. Shrodes replied, "Come again for summer school next year, and bring the whole family." So we came, the summer of 1953 and the summer after that. And in 1955 we all moved to California, and we have never regretted the move.

Many of you have heard, I am afraid, the rest of my story. As professor of English, I continued to teach, to write, to give public lectures—then suddenly, in the midst of wild student turmoil, I found myself President of San Francisco State College.

Then a few years after that, the good people of California elected me as their U.S. Senator to represent them in Washington. What had happened to that California I had read about in high school? What had happened to that California where every politician who aspired to office played on public fears of "the rising tide of color," the Yellow Peril," that would inundate the United States if the Asiatic hordes were not kept at bay?

What I am leading up to is the fact that while many had been surprised at a Japanese becoming a president of an American university, and many more were even more surprised at his becoming a United States Senator, I am the individual who was most surprised.

It turns out that racism in America is neither unchanging nor implacable. As we who are the children and grandchildren of immigrants have become assimilated, the prejudices against the "damn Dagoes," the "dumb Polacks," the "shanty Irish," against "Chinky-chinky Chinaman" and the "sly Jap" dissolve into distant memories to appear no more—not even in comic strips.

Read the names of members of the Senate and the House in the U.S. Congress in which I had the honor to serve: Abouresk, Addabo, Biaggi, Boschwitz, Fuqua, Gonzales, Hammerschmidt, Javits, Lazalt, Oberstar, Rostenkowski, Tsongas, Vander Jagt, Zorinsky. American political leadership, like leadership in other fields, is full of foreign names. Among our governors are Atiyeh of Oregon, Ariyoshi of Hawaii, Cuomo of New York, Sununu of New Hampshire. And let's not forget George Deukmejian, whose name is harder to spell than mine!

In short, America is an open society—more open than any other in the world. People of every race, of every color, of every culture are welcomed here to create a life for themselves and their families.

Within the lifetime of people here in this room, new names, strange names will take their place in business and industry, in show business and sports, in government or the military: names from Vietnam and India and Cambodia; from Ethiopia and Indonesia, from Paraguay and Iraq. Like all of us here, they will sooner or later enter into the mainstream of American life and after a while, people will cease asking "Where the hell do they come from?"—a question that also asks, "Is there no way we can send them back?"

People have lone ago ceased asking where Deukmejian and Hayakawa came from. And as time goes on, we shall also take in later newcomers and learn to live with them—and even become proud of them, as we have done so many times before.

And what will all these strangers that enter into the American mainstream have in common? They will have learned English! English is the key to participation in the opportunities and self-realization that American life has to offer. As I see the rich variety of people who cross our borders or come to our shores, I look forward eagerly to the many things they will do that will make America richer in culture, richer in potentialities, richer in the rewards that life can offer.

So we come back to the English Language Amendment, known in California as Proposition 63. It is a measure aimed as much at future generations as to people who vote today. With English as our official language and, therefore, the unifying force that enables all of us to participate fully in American life, we can and shall continue to be enriched by the talents and cultural gifts that people will bring to us from all over the world.

The English Language Amendment says above all, "Let's see to it that our children, our young people, learn English. Let us not deny them the opportunity to participate in American life, so that they can go as far as their dreams and talents can take them."

Proposition 63 is vigorously opposed by militant ethnic organizations such as the League of United Latin-American Citizens, the Japanese-American Redress Committee, the Chinese for Affirmative Action, and the like. Each of these is organized to fight against the injustices suffered, or about to be suffered, by the ethnic group they claim to represent. Naturally, the reaction of such organizations is to view any new idea with suspicion and fear. One such organization asked in all seriousness if the California English Campaign had a secret plan to have certain minorities sterilized!

Far from targeting Hispanics or Asians or anybody else for special mistreatment, Proposition 63 is a measure to strengthen the ties that bind together all of us, of whatever national origin or race, through the magical bond of a common language.

Perhaps a measure such as Proposition 63 is difficult for these defensive organizations to understand, since their reason for existence is fear: fear of discrimination, fear of unfair treatment, fear of the majority culture.

President Woodrow Wilson showed his understanding of this minority-group mentality when he said in an address to new citizens in Philadelphia in 1915: "You cannot become Americans if you think of yourselves in groups. America does not consist of groups. A man who thinks of himself as belonging to a particular group in America has not yet become an American, and the man who goes among you to trade upon your nationality is no worthy son to live under the Stars and Stripes."

Let us also remember what President Theodore Roosevelt said about the real danger that is peculiarly the problem of a nation of immigrants: "The one absolutely certain way of bringing this nation to ruin, of preventing all possibility of its continuing to be a nation at all, would be to permit it to become a tangle of squabbling nationalities."

What President Wilson and President Roosevelt said in times of massive immigration remains urgently true today. Are we, or are we not, going to remain "One nation, indivisible?"

VA HEALTH CARE CUTBACKS IN THE FACE OF CRISIS IN VA HEALTH-CARE FUNDING

Mr. CRANSTON. Mr. President, I want to call to the attention of the Senate actions being implemented by the Veterans' Administration [VA] as of October 1, 1988, to offset the enormous health-care budget shortfall which it faces this fiscal year. On September 9 and 20, the Veterans' Affairs Committee held hearings to review the adequacy of funding for veterans' health care. Concerns had been raised by VA doctors, nurses, and other health-care professionals, as well as affiliated medical schools, that the agency is not fulfilling its responsibility to provide prompt and effective health care to eligible veterans, that there are long waits for certain outpatient clinic appointment, that there is no money for equipment replacement, that drug and supply stores are dangerously low, and that there are long delays for needed surgeries, especially those requiring prostheses. Similar concerns were being echoed by veterans' service organizations and other organizations familiar with the operations of the VA's Department of Medicine and Surgery [DM&S].

Witnesses at our hearings—which included four DM&S regional directors, four medical center directors, three chiefs of staff, and two chief nurses—verified these reports. They described the current fiscal situation as a "crisis" and as "the worst financial crunch" they have ever seen in VA health care over the past 20 years.

During the course of our hearings and in response to followup questions, it has became apparent that the Congress has been misled into believing that funds it was appropriating for the agency were adequate to meet veterans' health-care needs when, in fact, the VA is facing at least a $635 million deficit for fiscal year 1989. Additionally, over the years, the agency has been reallocating large amounts of money from both recurring items—such as inventories, drugs, and prostheses—and nonrecurring items—such as supplies and equipment and maintenance and repairs—in order to maintain daily operations. If the cumulative effect of this deferred-spending policy were added to the immediate shortfall, the total VA health-care deficit would be some $440 million greater, or approximately $1.1 billion in all.

This is the case even though Congress has added $1.6 billion to VA medical care budget requests over the last 8 years, including $972 million for the last 3 years. And this is the case even though, at our March 4 budget hearing, the VA testified that the funding level provided "ample resources to furnish care to all veterans expected to apply for and be in need of care."

On September 9, the Administrator of Veterans' Affairs testified that a supplemental request had been forwarded to the Office of Management and Budget [OMB] to assist in offsetting the anticipated deficit. The Administrator said he would do everything within his power, including appealing to the President if that's what was necessary, to obtain timely administration action on the request. On September 13, 1988, I wrote the Administrator to emphasize "two vitally important matters. * * * First, that the amount you ask to be included in such a request be sufficient to enable the VA in fiscal year 1989 to maintain its current levels of services and comply with all applicable laws; and, second, that your actions be most expeditious in order to produce an administration request that can be considered by the House Appropriations Committee when it marks up an fiscal year 1989 continuing resolution. * * * I would underscore the testimony of the Chief Medical Director [CMD], Dr. John Gronvall, that an additional appropriation of $608 million is necessary for this purpose. Otherwise, depending on the amount of the shortfall, the VA would be forced to take a number of actions * * * to cut back on health-care services to veterans."

Regarding timing, I reminded the Administrator that "Based upon * * * lengthy OMB processing time, I am concerned that your fiscal year 1989 request will not be reviewed and approved swiftly, and I therefore believe it is imperative that you closely monitor the progress of your request and take all actions you believe are necessary to obtain a prompt and favorable response.

"* * * [I]n order for a fiscal year 1989 VA supplemental request to be enacted during this Congress. * * * OMB must send the request forward and must do so in the very near future. I think it is highly unlikely that in the absence of such a request Congress will act to provide the VA with additional medical care account funds * * *.

"It is expected that the House Appropriations Committee will consider an fiscal year 1989 continuing resolution before September 23. Unless that committee has received before then a formal request for the funding and the request is in a sufficient amount, there will be very little chance that adequate funds will be made available in time to prevent substantial reductions in VA health care."

I concluded my letter with the following paragraph: "Tom, I am sure you must have been deeply impressed, as I was, by the gravity of the situation as portrayed at our committee's September 9 hearing by the service organizations' representatives and VA field and regional staff, all of whom testified under oath that the current situation is the worst fiscal crunch for VA medical facilities that they had ever seen. Thus, I urge that you take all action necessary to obtain the funding necessary to maintain safe and appropriate health care for our Nation's veterans in the coming fiscal year, and I would greatly appreciate your keeping me closely advised of your action in this regard."

On September 26, 1988, I wrote the Senate and House Appropriations Subcommittee chairman—Mr. PROXMIRE and Mr. BOLAND—describing in considerable detail the data submitted in connection with our hearings about the current VA fiscal crisis, and urged the Appropriations Committees to find a way to propose an emergency supplemental appropriation for the VA medical care account for fiscal year 1989 if a request for such a supplemental appropriation is forthcoming from OMB.

Mr. President, I ask unanimous consent that the full text of these letters and the VA's plan for dealing with the budget shortfall be inserted in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, as of today, October 6, I have had no response from the Administrator, but that is not important. What is important—and what is an unforgivable abrogation of our Nation's responsibilities to veterans—is that no supplemental request has been forthcoming from the administration. Faced with having to turn away veterans because of the anticipated shortfall, the VA's Department of Medicine and Surgery has taken certain actions. These actions include, but are not limited to:

First, charging the regional directors to develop plans for achieving geographic equity of access to care, taking into consideration the quantity of discretionary workload to be undertaken by each VA medical center.

Second, decentralizing accounts for contract hospitalization, community nursing home care, fee medical care, and fee dental care so that each facility will have the responsibility to promote prudent and effective use of these resources.

Third, providing only those prescription drugs that are listed in the VA formulary to all veterans, including those receiving fee-basis care. This applies the same drug policies to fee-basis treatment that are currently applied to direct VA care.

Fourth, limiting transplant services to those veterans whose care is mandated by statute and providing transplant services only in VA facilities or through the use of approved sharing agreements.

Fifth, putting a moratorium on medical district initiated program planning [MEDIPP] initiatives, thereby returning to the field $20 million which was taken from the field to fund those new programs.

Mr. President, in specific regard to the first action—charging the regional directors to develop plans for achieving geographic equity of access to care, taking into consideration the quantity of discretionary workload to be undertaken by each VA medical center—the VA plans to reduce its discretionary workload, those veterans referred to as category B and C, to the level being provided in the region currently able to provide the least discretionary care. This is region 3, the southeastern region. This reduction will be accomplished over a 3-year period and will involve both inpatient and outpatient care.

Under current law, section 610(a)(2) (A) and (B), the Administrator of Veterans' Affairs has the authority to furnish inpatient health care on a discretionary basis to certain low-income non-service-connected disabled veterans and other higher income veterans to the extent that resources and facilities are available. Section 612(a), amended by Public Law 100-322 on May 20, 1988, provides the Administrator with similar discretionary authority for the provision of outpatient care. These provisions were enacted in order to give the VA needed guidance as to for whom care must be provided—basically service-connected veterans and veterans with low incomes—rather than to leave that decision as to prioritization solely to the executive branch.

VETERANS' HEALTH CARE ELIGIBILITY

According to current law, section 610(a)(1) of title 38, the Administrator is required to furnish inpatient care as the Administrator determines is necessary to veterans—so-called category A—

One, rated as having a service-connected disability;

Two, retired from active duty for a disability incurred or aggravated while in military service;

Three, receiving compensation by reason of having incurred the disability as a result of VA care or the pursuit of vocational rehabilitation under chapter 31 of title 38, or would thus be entitled to compensation but for a suspension thereof resulting from a judgment or settlement, but only to the extent that the veteran's continuing eligibility for VA care is provided for in the judgment or settlement;

Four, rated at 50-percent or more for a service-connected disability and being treated for any disability;

Five, rated as having a service-connected disability and being treated for any disability;

Six, who are former prisoners of war and being treated for any disability;

Seven, in need of care for a condition possibly related to exposure to dioxin or other toxic substance—such as agent orange—while in Vietnam from August 5, 1964, through May 7, 1975;

Eight, in need of care for a condition possibly related to exposure to ionizing radiation from participating in nuclear tests or in the American occupation of Hiroshima or Nagasaki, Japan between September 11, 1945, and July 1, 1946;

Nine, of the Spanish-American War, the Mexican border period, or World War I and receiving treatment for any disability;

Ten, in receipt of a VA pension or eligible for Medicaid and receiving treatment for any disability; or

Eleven, who have an income below $15,833 for veterans with no dependents and below $18,999 for a veteran with a spouse—$1,055 is added for each additional dependent; income amounts are adjusted January 1 of each year by the same percent VA pension rates are increased in December of the preceding year—and receiving care for any condition.

The discretionary categories for inpatient care are so-called category B and C veterans. For the purposes of inpatient care, category B veterans are defined as those non-service-connected veterans with income between $15,833 and $21,110 for a veteran with no dependents and between $18,999 and $26,388 for a veteran with a spouse—$1,055 is added for each additional dependent. Category C veterans are defined as those with incomes in excess of such upper limit amounts.

For the purposes of outpatient care, the Administrator is required to furnish care only to veterans—

First, described above in one, two, and four for any disability of a veteran, and three for the disability described there, and

Second, in preparation for hospital admission, to obviate the need for hospital admission, or for post-hospitalization care for veterans who have a service-connected disability rated at 30 percent or 40 percent, and who are eligible for hospital care under section 610(a) of title 38—described above as category A veterans—and whose annual income is at or below the pension aid—and attendance income level—currently $9,940 for a veteran having no dependents, with higher amounts for those having one or more dependents).

The dollar amounts I have just listed will each increase by approximately 4 percent on January 1.

Other veterans described as category A for the purposes of inpatient care are not mandated to receive outpatient treatment, but a priority system does exist to guide the Administrator in making decisions as to furnishing health care for those veterans. The priorities for them, after eliminating priorities applying to the mandated eligibles include care in preparation for hospital admission, to obviate the need for hospital admission, or for posthospital care for:

First, a veteran (a) who has a service-connected disability rated at less than 30-percent disabling, or (b) who is being examined to determine the existence or severity of a service-connected disability;

Second, a veteran (a) who is a former prisoner of war, or (b) who is eligible for hospital care as described in (7) and (8) above in reference to inpatient care for category A veterans;

Third, a veteran (a) of the Mexican border period or of World War I, or (b) who is in receipt of increased pension or additional compensation or allowances based on the need of regular aid and attendance or by reason of being permanently housebound—or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance;

Fourth, a non-service-connected veteran whose income is above the pension aid-and-attendance income level—currently $9,940 for a veteran having no dependents, with higher amounts for those having one or more dependents—but not greater than the category A threshold—currently $15,833 for a veteran having no dependents, with higher amounts for those having one or more dependents.

Mr. President, for almost 20 years I have either chaired or been the ranking minority member of the Senate committee or subcommittee having oversight responsibilities for the VA medical system, and, during that time, I have never seen a more serious funding crunch than the VA medical system now faces. I believe that those who "have borne the battle" deserve the best we have to offer. I also believe that, in these days of scarce resources and towering Federal deficits, the VA must continue to focus its efforts on how to make the most effective use of those resources. The fact is that the VA is now facing an enormous shortfall and action must be taken to bring workloads into alignment with available resources. Quality is already suffering, and I am convinced that if the actions the VA is taking are not taken, quality of care will suffer far more. I know all Senators will agree that providing substandard care would be a far cry from offering our veterans the best, and is unacceptable.

I will continue to work with my colleagues on the Veterans' Affairs Committees and the Appropriations Committees to obtain a supplemental appropriation for the VA for fiscal year 1989, and I will be very closely scrutinizing the VA's fiscal year 1990 budget request when it comes before Congress next year.

In the meantime, I wanted my colleagues to be aware of the cutbacks that have been necessitated by the funding crisis affecting VA medical facilities and the administration's unwillingness to request the funding necessary to do the job.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, September 13, 1988.

Hon. THOMAS K. TURNAGE,
Administrator of Veterans' Affairs, 810 Vermont Avenue, Washington, DC.

DEAR TOM, I am writing in connection with your promise at the Committee's September 9 oversight hearing to do everything within your power, including appealing to the President if that's what is necessary, to obtain timely Administration action on a fiscal year 1989 supplemental request dealing with the projected shortfall in the VA's medical care account.

I wish to emphasize two vitally important matters in this regard: First, that the amount you ask to be included in such a request be sufficient to enable the VA in FY 1989 to maintain its current levels of services and comply with all applicable laws; and, second, that your actions be most expeditious in order to produce an Administration request that can be considered by the House Appropriations Committee when it marks up an FY 1989 continuing resolution.

As to the amount of the request, I would underscore the testimony of the Chief Medical Director (CMD), Dr. John Gronvall, that an additional appropriation of $608 million is necessary for this purpose. Otherwise, depending on the amount of the shortfall, the VA would be forced to take a number of actions—such as those described in the CMD's August 4, 1988, Task Force Report on the FY 1989 Budget—to cut back on health-care services to veterans. For example, if you are seeking additional funding for the purpose of covering only the FY 1989 costs of implementing the mandatory provisions of Public Law 100-322, estimated at $117 million, you need to increase your request substantially in order to avoid serious cutbacks in VA health care.

Regarding the timing of your actions, you will recall that the issue of the length of time needed to obtain Office of Management and Budget (OMB) approval of supplemental requests was raised during the hearing. At the hearing, Gary Cole, the VA's Deputy Controller, stated that the VA's supplemental request for FY 1988 (in connection with Public Law 100-322) was submitted to OMB in May 1988 but was not acted upon (rejected) until August 3. Based upon that lengthy OMB processing time, I am concerned that your FY 1989 request will not be reviewed and approved swiftly, and I therefore believe it is imperative that you closely monitor the progress of your request and take all actions you believe are necessary to obtain a prompt and favorable response.

In this regard, I would note that in order for an FY 1989 VA supplemental request to be enacted during this Congress, which is expected to adjourn before or during the second week of October, OMB must send the request forward and must do so in the very near future. I think it is highly unlikely that in the absence of such a request Congress will act to provide the VA with additional medical care account funds for FY 1989—as it did for FY 1988 as a result of my amendment on August 4. It is expected that the House Appropriations Committee will consider an FY 1989 continuing resolution before September 23. Unless that Committee has received before then a formal request for the funding and the request is in a sufficient amount, there will be very little chance that adequate funds will be made available in time to prevent substantial reductions in VA health care. The next opportunity for the Congress to consider such an action would be in late January, after the 101st Congress has convened. That would mean that it would be impossible for supplemental appropriations to be enacted until at least four months of FY 1989 had passed and drastic reductions in services would have been made based on the assumption—the only safe one that could be made under the circumstances—that no additional funds will be appropriated.

Tom, I am sure you must have been deeply impressed, as I was, by the gravity of the situation as portrayed at our Committee's September 9 hearing by the service organizations' representatives and VA field and regional staff, all of whom testified under oath that the current situation is the worst fiscal crunch for VA medical facilities that they had ever seen. Thus, I urge that you take all action necessary to obtain the funding necessary to maintain safe and appropriate health care for our Nation's veterans in the coming fiscal year, and I would greatly appreciate your keeping me closely advised of your actions in this regard.

With warm regards,
Cordially,

ALAN CRANSTON,
Chairman.

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, September 26, 1988.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate

Hon. EDWARD P. BOLAND,
Chairman, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, House of Representatives, Washington, DC.

DEAR BILL AND ED: I am writing to urge that your Committees find a way to propose an emergency supplemental appropriation for the Veterans' Administration (VA) medical care account for FY 1989 if a request for such a supplemental appropriation is forthcoming from the Office of Management and Budget (OMB). Without such a supplemental appropriation I have great concerns about the ability of the VA's Department of Medicine and Surgery (DM&S) to meet the health-care needs of veteran-patients. As I will discuss later, DM&S is actively considering major cutbacks of current services to veterans in view of a shortfall of anywhere from $635 million to over $1 billion in FY 1989 funding.

According to testimony received by the Senate Veterans' Affairs Committee at our recent oversight hearings, a supplemental appropriation request has been sent to OMB by the VA. The Administrator of Veterans' Affairs, Tom Turnage, has commited himself to the Committees on Veterans' Affairs in both bodies to do everything within his power, including going to the President if necessary, to obtain approval of this request. I understand that the Administrator met on September 19 with OMB Director James Miller, and I have asked for information about the outcome of that meeting.

HEARING TESTIMONY

On September 9 and 20, 1988, the Veterans' Affairs Committee held oversight hearings to explore concerns which had been raised by VA doctors, nurses, and other health-care professionals, as well as affiliated medical schools, that the agency is not fulfilling its responsibility to provide prompt and effective health care to eligible veterans, that there are long waits for certain outpatient clinic appointments, that there is no money for equipment replacement, that drug and supply stores are dangerously low, and that there are long delays for needed surgeries, especially those requiring prostheses. Similar concerns were being echoed by veterans' service organizations and other organizations familiar with the operations of the VA's DM&S.

At the September 9 hearing, VA field witnesses, many of whom have been in the system for over 20 years—including 4 DM&S Regional Directors, 4 medical center directors, 3 chiefs of Staff, and 2 chief nurses—testifying under oath, all described the current fiscal state of affairs as a "crisis" and "the worst financial crunch" they have ever seen in VA health care. They described FY 1989 shortfalls at their facilities of from $2 to $5 million and stressed that dollars had been stretched to the limit in FY 1988 and, that unless more resources are made available, major reductions below current services will be inevitable in FY 1989. I believe that those are accurate descriptions of the current, very perilous, state of affairs in the VA medical program.

It is clear that the current crisis has been in the making for a considerable length of time even though Congress has appropriated far more money than the Administration has requested for 7 of the last 8 fiscal years—since 1982 a total of $1.6 billion more. Well over half of that total—$972 million—was appropriated for the last three fiscal years. For fiscal year 1989 the Administration requested $10.3 billion for VA medical care and, as you are aware, under your leadership Congress appropriated $215 million more. Our Committee was told by the Administrator at our March 4 budget hearing that the Administration-requested funding level provided *ample* resources to furnish care to *all* veterans expected to apply for and be in need of care." [emphasis added]. I know that your Committees were given similarly inaccurate assurances by the VA about the adequacy of its FY 1989 budget request. Thus, the Congress has been misled into believing that amounts appropriated above the level requested would serve to enhance the agency's ability to meet veterans' health care needs.

Apparently, to make up the difference between the amounts appropriated and VA obligations, DM&S over the years has been reallocating large amounts of money from both recurring items, such as inventories, drugs, and prostheses, and non-recurring items, such as supplies and equipment and maintenance and repairs, to maintain daily operations. In response to Committee questions, the VA has advised that for FY 1988 it is anticipated that the following percentages of funds originally intended for other specified purposes were reallocated to daily operations: 22.6 percent ($14.33 million) of funds originally designated for replacement equipment; 11.5 percent ($8.01 milion) of funds originally designated for additional equipment; 23.1 percent ($41.28 million) of funds originally designated for non-recurring maintenance; and a total of 2.8 percent ($2.73 million) of funds originally designated for contract hospital, state home, fee medical, and fee dental care and for automated data processing. In addition, the VA also stated that approximately 5 percent $52.9 million) of funds originally designated for drugs, medical supplies, and prosthetics were reallocated in FY 1988 to meet the increased costs of operations. Therefore, the total amount of FY 1988 money used for other than its intended purpose appears to be at least $119.2 million—$66.3 million from non-recurring items and $52.9 from recurring ones. Several witnesses described this situation as "cannabalizing", and all witnesses described the practice as very detrimental to the ongoing viability of the VA medical system.

Since that hearing, we have learned that such reallocations from prior years have had the cumulative effect of eroding the FY 1988 base by an additional $440 million.

The VA has also told the Committee the following:

The anticipated shortfall for the care of AIDS patients will be $33.7 million in FY 1989.

The estimated cost of fully implementing "universal precautions"—the universal blood and body fluid precautions recommended by the Centers for Disease Control (CDC) in Atlanta and required to be implemented by the Occupational Safety and Health Administration for the purpose of protecting all U.S. health-care workers against infectious diseases (primarily AIDS and hepatitis)—would be $25.8 million for the VA, for which no specific funding is provided in FY 1989.

Of 12,272 beds not available for patient admission, approximately 1,700 are closed due to lack of operating funds to support available beds and approximately 2,458 are closed due to staffing shortages, an undetermined number of which are related to lack of funds to support increased salaries.

As of June 30, 1988, the range of average waiting times for outpatient appointments were as follows: general medicine clinic—from 13.17 to 37.83 days; general surgery clinic—from 13.55 to 22.7 days; orthopedic clinic—from 41.44 to 53.52 days; ophthamology clinic—from 40 to 84.94 days; cardiology clinic—from 45 to 74.94 days; and urology clinic—from 23.15 to 61.14 days.

As of June 30, 1988, the range of average waiting times for inpatient admission to bed care for the following areas were: general medicine—from 1.18 to 3.05 days; general surgery—from 3 to 10.32 days; orthopedics—from 9.12 to 26.67 days; urology—from 4.9 to 18.77 days; alcohol and drug abuse—from 4.11 to 10.31 days; psychiatry—from 1 to 13.81 days; intermediate care and VA nursing home care—from 3 to 30.05 days; and post-traumatic stress disorder—from 6 to 30.67 days.

As of June 30, 1988, the range of average waiting times for inpatient admissions for certain non-emergent surgery, was as follows: cardiac surgery—from 8 to 29.25 days; orthopedic surgery requiring prostheses (such as hip replacements)—from 12.06 days to 75.13 days; and intraocular lens implants—from 6 to 56.77 days.

It should be noted with reference to the above three items that "average" waiting times mean that many veterans are waiting far longer than the number of days at the upper ends of the average waiting-time ranges shown.

THE FY 1989 SHORTFALL

Although we have been unable to ascertain the exact amount of the VA's supplemental appropriation request, the Administrator testified that "we have submitted a supplement to OMB based on what we consider to be the shortfall for 1989". Later in the hearing the VA's Chief Medical Director (CMD) testified that a good estimate of the VA shortfall for FY 1989, based upon an assessment of operational needs and a review of funds appropriated for FY 1989, is $608.7 million. The CMD has since reestimated the shortfall as $634.56 million and submitted the following information to the Veterans' Affairs Committee as a breakdown of that shortfall:

$98,411.000—Productivity

This reflects the shortfall generated by the prospective productivity improvements for FY 1988 ($33 million) and FY 1989 ($66.411 million) that have not been withdrawn on a recurring basis from the medical centers. This "productivity improvement" which has been included in the Administration-requested budget for the past 4 years is clearly an arbitrary figure used by OMB to ratchet down the FTEE and is not based on thoughtful planning in regard to true productivity improvements. It is abundantly clear from the hearing testimony that no such productivity improvements have been realized in FY 1988 or are feasible for FY 1989.

$11,050,000—Imposed Savings

The budget contains projected savings for Supply improvements, the DHCP program, and Centralized Accounting for Local Management (CALM) improvements, a program to track payments for goods and services rendered to the VA. According to the VA, these reductions have to be withdrawn from field operating accounts even though these savings are not yet realized and may not be realized in FY 1989. This is another example of the fictitious "improvements" mandated by OMB for the purposes of making cuts in the budget.

$47,207,000—Contract Hospital

This is the current estimate of need less the funding level ($142.607 million) in the FY 1989 appropriation. According to the VA, the FY 1989 funding level also reflects a $37-million reduction ($18.5 million for each of FY 1988 and FY 1989) from FY 1987 levels to account for a change in VA policy which stipulates that the rate paid to contract hospitals be no more than the rate paid by the Federal government for Medicare patients. Because the regulations reflecting this new policy have not yet been promulgated, these savings have not been realized in FY 1988 and may not be realized in FY 1989.

$23,619,000—Homeless Program

This represents the funding shortfall in both the Homeless Domiciliary program and the Homeless Chronically Mentally Ill program. According to the VA, appropriated dollars expire in FY 1988 and funds to operate these programs must come from realignment of VA medical center resources.

$97,208,000—Special Pay

This represents an estimate of need accumulated since the end of FY 1987 for special pay rates less the amounts appropriated in FY 1988 ($40 million) and FY 1989 ($45 million).

$12,000,000—AIDS

This is the result of carrying out the Appropriations Committees' directions to "freeze" the FTEE levels of those facilities identified for special AIDS support in the FY 1989 Appropriations Act.

$120,029,000—Payroll

This is the total of the unfunded costs of within-grade increases ($45.029 million) and announced increases in the Federal Employee Health Benefits program ($75 million).

$86,065,000—Pay Raise

This is the amount needed to fully fund the 4.1-percent pay raise in January 1989. The appropriations Act provided $84.705 million to cover a 2-percent raise.

$113,164,000—Public Law 100-322

This represents funds necessary for the implementation of mandatory provisions of this new law—State Home per diems; revised outpatient eligibility; AIDS education, training, testing, and counseling; service-connected health care outside the United States; ex-POW dental care; beneficiary travel; Saturday premium pay; standardization of medical supply items; and a report on contract care—and for that law's new tuition reimbursement provision which the Administration has supported and previously indicated would be the subject of a supplemental budget request.

$25,800,000—Universal Precautions

This is the amount needed to implement the CDC's mandatory "universal precautions", described earlier.

Moreover, the $634.563 million figures does not include the cumulative effect of deferred-spending-produced deficits which are described earlier as a cumulative $440 million erosion of the FY 1988 base.

OPTIONS TO CUT SPENDING

A special task force, called the Chief Medical Director's Task Force, was created to advise the CMD as to the potential shortfall being faced and to arrive at recommendations for offsetting this shortfall. The CMD Task Force, in its report dated August 4 (a copy of which is enclosed), describes in detail 18 options to reduce the budget shortfall for FY 1989 and lists 68 other options for consideration. Among these 68 options, many of which could seriously impair services furnished to veterans, are proposals to close some medical centers; reduce inpatient admissions; lay off hospital employees; shut down Vet Centers; restrict provision of prosthetics; eliminate VA kidney transplants and certain forms of dialysis care; restrict organ transplants; eliminate or greatly reduce the provision of drugs; and cut back sharply on nursing home care. Most of the items listed are on the short list of 18.

The devastating effect of many of these options are, I believe, self evident. Some are already being implemented piecemeal across the system.

As you both know, since 1969 I have either chaired or been the ranking minority member of the Senate committee or subcommittee having oversight responsibilities for the VA medical system. The current situation is clearly the most serious I have observed since the early 1970's when we uncovered and began correcting over the next 8 fiscal years major problems in the system.

If you have any questions about the information contained in this letter or about other aspects of the hearing testimony or follow-up, please have your staff contact Sandi Isaacson (4-9126) of the Committee staff.

I hope that the above information is helpful in describing the current, unprecedented, funding shortfall of up to $1.1 billion confronting the VA health-care system and that you will join with me to see any VA 1989 supplemental request from the Administration is rapidly and favorable considered.

With warm regards,

Cordially,

ALAN CRANSTON,
Chairman.

INFORMATION AND DECISION PACKAGE FISCAL YEAR 1989 ACTION PLAN—MEDICAL CARE APPROPRIATION

FOREWORD

The Department of Medicine and Surgery faces an unusual combination of factors which have severely impacted the FY 1989 budget. A continuation of required absorptions of items such as within-grade increases and the productivity reduction, as well as new requirements for items such as special pay rates for selected positions, and new legislative authorizations, have brought the Medical Care appropriation of DM&S to the position of a significant shortfall in the operating budget. The options in dealing with this shortfall are limited because of the mandates for veteran's care and because of management limitations included by statute and stated Congressional intent. To respond to this challenge, the DM&S has gone through a process of analysis and self-examination with Central Office and field personnel to document the size and elements of the shortfall and to develop a workable strategy. As a result of this process, which involved all elements of DM&S, policies have been adopted for FY 1989 so that the missions of DM&S can be carried out within the available resources.

The budgetary problems are not an isolated instance relevant only to this year. The general shortfall problem can be expected to present a continuing challenge in the management of a system as complex as DM&S. Therefore, efforts (including active steps to seek supplemental support for the documented FY 1989 shortfall) will continue in several areas to address these complex budgetary issues. This paper will present those policies and provide guidance to VA personnel regarding the Department's budget and programs. Actions needed to implement these policies have already been identified and the decisions enabling these policies have been made.

Inherent in this guidance are several principles: protect the quality of care provided in VA health care facilities; assure the provision of service to veterans whose care is mandated by statute; satisfy the appropriation requirement to spend a minimum of $6,577,960,000 for personal services; maintain essential funding of special pay agreements through internal reallocations; and implement the mandatory provisions and beneficiary travel portion of PL 100-322 through internal reallocation.

In addition to these Departmental efforts, the creativity of our field management will be critical, if the responses to the budgetary shortfall are to be successful. Field managers are encouraged to take steps, consistent with these policies, which will increase their fiscal flexibility at the local level.

PERSONAL SERVICES/FTEE REQUIREMENTS

The appropriations law has established a personal services floor for DM&S expenditures for employees of $6.578 billion. This requires that DM&S expend that amount for no other purpose than employment, and expend no less than that amount on employment. In the Conference Committee report on the appropriation law, the DM&S is also assigned 194,720 full-time employees. Because the personal services floor is a legal mandate, it must be honored. DM&S will endeavor to fund the maximum number of personnel possible based on the funds available.

The regional director will assign each DM&S facility a personal services floor which they will translate to a staffing projection. The numbers and mix of personnel will be to best accomplish the mission and targeted workload for the facility.

WORKLOAD

After the mandated personal services floor is accounted for in the DM&S budget, the remainder is the 'All Other' expenses of providing care and for capital accounts such as equipment. The 'All Other' funds that are available for care are significantly less than the DM&S analysis would determine should be available to maintain the current level of workload and the predictable growth at the current level of quality. Systemwide, therefore, some management constraint on discretionary workload must be developed.

First, equity of access to care must be assured. Demographic shifts and other variables have created geographic imbalances in the amount of discretionary care available to veterans. This will be corrected by each region through removal of resources equal to the amount of discretionary workload in excess of the Region with the lowest proportion of discretionary workload.

Second, each facility will project the workload possible within the constraints of the 'All Other' funds and the available personnel. In calculating a workload target, the facility will assure the maintenance of quality care by maintaining an adequate relationship between the number of veterans served and the staff and 'All Other' funds available.

Each facility shall serve all veterans whose care is mandated by statute. In addition, it may treat up to the maximum allowable proportion of discretionary patients, as defined in the regional workload plan. When a facility has resources available to serve more than this proportion of discretionary workload, those excess resources will be withdrawn and reallocated to facilities or regions needing resources to reach the allowable level of discretionary workload.

NEWLY MANDATED RESPONSIBILITIES

PL 100-322 mandates the Department to implement on October 1, 1988 several new items, and permits several others. The mandatory activities are: revised outpatient eligibility, Saturday premium pay for nurses, AIDS prevention, readjustment counseling, dental care for POWs, standardization of medical and pharmaceutical items, increased state home per diems, tuition reimbursement for nurses, health care for veterans outside the U.S.A., and a Congressional report on contract care. In addition to these mandatory activities, Agency policy requires that the beneficiary travel portion of PL 100-322 will be implemented.

These new activities will be implemented within the currently identified resources since no additional appropriation for these activities was made.

TARGET ALLOWANCE DECISIONS

In the Target Allowance already distributed to the field, some actions were taken to respond to the shortfall as it was known then. Many of these decisions forced the field to absorb elements of the shortfall, and these must remain. However, the size of the shortfall has caused a reappraisal of all previous actions, and some will be reversed. Actions which have been reconsidered and are being reversed or altered are:

MEDIPP.—$20 million was earlier taken from the field to fund MEDIPP; however, the nature of the shortfall is such that new programming cannot be funded at a time when there are insufficient funds for existing programs. Funds and FTEE will be restored in the same way in which they were removed.

Contingency/RAC.—$17 million was withdrawn in order to create a pool which could be used by the Resource Allocation Committee for unanticipated needs. All possible funds are needed to maintain existing programs, therefore, the funds and FTEE will be returned as they were taken.

Pay Raise.—Initially a 2% pay raise was expected, and it was assumed that the field would have to absorb part of that, but the pay raise is now 4.1% and a supplemental budget request is expected to provide full funding of that pay raise. Field stations will receive full funding for the 4.1% pay raise. Absorptions which must remain as they were in the Target Allowance are: all liabilities carried over from FY 1988 for the productivity initiative and special pay; the FY 1989 1% productivity initiative; imposed savings for DHCP, CALM, standardization of supplies; shortfall in special pay; and items indicated as absorbed in Central Office accounts.

In addition to the actions described above, allocations of capital accounts, such as equipment, are restored to the amounts included in the 1989 appropriation to the extent possible.

A series of decision papers describing the original Target Allowance decisions has already been distributed. A second set of decision papers describing the actions needed to implement these changes has also been developed.

AIDS

Several actions relative to the treatment and prevention of AIDS have been taken for FY 1989.

AIDS Universal Precautions.—From the available funds for FY 1989, partial funding to VAMCs for Universal Precautions will be made available.

AIDS Treatment and Prevention.—Funds for treatment and prevention will be made available to the 16 DM&S facilities identified as AIDS-impacted to the extent appropriated funds are available for those purposes.

FTEE Floor.—The FTEE level mandated by the appropriation for the 16 identified AIDS centers will be established as required. After establishing that floor, those facilities will be subject to the same management actions as all other VAMCs.

OTHER ACTIONS

To establish other sources of funds and provide new incentives toward cost containment and budget and program control for field management, several other actions have been taken for October 1, 1988.

Decentralization of Fee Accounts.—The accounts for Contract Hospitalization, Community Nursing Home Care, Fee Medical, and Fee Dental will be distributed to the field. Each facility will have the responsibility to promote prudent and effective use of these resources. The Regions will have oversight responsibilities. No additional funding for these programs will be available from Central Office.

Limitation of Transplant Services.—Funding previously available from Central Office for transplants is being distributed to the field, and no additional funds are available in Central Office. Transplant patients will be accommodated within the same resource availability guidelines that have been implemented at the local level. Transplants are to be accomplished only through VA programs or approved sharing agreements.

Discontinuation of Non-formulary Drugs for Fee Basis Patients.—All Fee Basis patients and their physicians will be informed that only drugs in the VA formulary can be prescribed.

In addition, work is being undertaken to consider the implementation of the following as soon as practical:

Discontinuation of Prescriptions for All Veterans Other Than Those Whose Care Is Mandated by Statute.—The veterans whose care is mandated by statute and served by VAMCs will continue to receive prescription drugs, but all others will not receive the drugs free of charge.

IMPLEMENTATION OF FY 1989 BUDGET

All of the policies discussed above are effective beginning October 1, 1988, unless otherwise noted.

The distribution of facility specific changes to facility budgets will occur as changes to the target allowance issued to each facility. National control totals will be developed by the Office of Resource Management for the affected items. The ADCMD will recommend through the DCMD to the CMD a set of Regional control totals which equal the national totals. The Regional Directors will develop the facility specific totals and assignment of a personal services floor for approval by the ADCMD. In addition, the Regional Directors will be charged with managing, monitoring and adjusting the FTEE and workload levels of their Regions to ensure conformity with these policies.

ARTHUR J. LEWIS, M.D.,
Deputy Chief Medical Director.
JOHN A. GRONVALL, M.D.,
Chief Medical Director.

A TRIBUTE TO DUNBAR G. SUSONG, JR.

Mr. SYMMS. Mr. President, I rise today in commendation of, and to pay tribute to, Mr. Dunbar G. Susong, Jr. one of the finest National Park rangers our country has ever known.

A graduate of the Colorado School of Range Management, Mr. Susong learned his discipline well. Over the course of his career, he has shown an unwavering commitment to preserving some of America's most beautiful parks, and is an inspiration to us all.

Dunbar's record of wise resource management started in 1945, working for the Plumas National Forest in California. Presently, he is the head ranger overseeing the southwest corner of Yellowstone's Bechler range district, which, I might add, is the corner of Yellowstone that lies on the Idaho side of the State line. His career has been one of consecutive accomplishments and triumphs.

Dunbar began working for the Park Service in 1950, when he was Park Ranger in the Olympic National Park. In 1953 he transferred to Fort Carson, CO where, for 2 years, he trained U.S. troops in mountain and cold weather survival techniques. He spent from 1956 to 1972 as a Park Ranger in such premier Parks as the Rocky Mountain, Great Smoky Mountain, and Grand Teton National Parks. In 1962, he was promoted to Supervisory Park Ranger of Grand Teton National Park. It was there in the spectacular mountains of Jackson Hole, WY, where Mr. Susong spent 10 years employing his management techniques to improve and preserve the posterity of one of the Nation's most beautiful parks. His service there is marked by acts of distinction and bravery, such as the 1971 rescue of a mountain climbing accident on Symmetry Spire, a peak in the Teton Range.

In 1972, Dunbar moved north to lend his expertise to Yellowstone. There he worked for years as Resource Operations and Communications Center Supervisor before being assigned to the Bechler Ranger Station. In 1980, he conducted winter survival training for 13 agents from the Federal Bureau of Investigation, discharging the job with such skill that he received a letter of commendation from the FBI. In 1982, he was awarded for his leadership and innovation in effective backcountry management. Among his achievements are the design and building of several types of bridges, most noteably the backcountry suspension bridge.

To say that Dunbar Susong, Jr. has contributed a great deal to the management of our National Parks would be an understatement. For the last 13 years, he has managed the Bechler Ranger District—in my opinion, one of the better managed pieces of government land in the United States. Dunbar's success stems from a unique ability to know when and where a recreational improvement can be made without disrupting the wilderness environment, and knowing when and where it can not. It is this ability to use common sense, and a mix of management options, that defines stewardship. Dunbar has been a true steward of Bechler.

In concluding my tribute, I must say that I am disheartened to see Dunbar retire, but in the same breath, I am very honored and proud to have had such a distinguished American patriot in the front lines defending the parcels of nature that we call National Parks. His lifelong dedication to managing for the enjoyment of this and future generations has been invaluable, and his legacy, enduring. It is also worthy of note that this part of

Yellowstone Park did not burn off. It may be just that his flexibility in allowing some firewood removal may have kept the fire risk down—and thereby saved the beauty of the park. At any rate good luck to Dunbar and may his retirement be long, healthy, and happy.

THE OLYMPICS IN SEOUL

Mr. DASCHLE. Mr. President, the Olympics in Seoul were a special event for South Korea. They marked that country's advancement economically and politically.

It is a phenomenal enterprise to stage an event as gigantic as the Olympics. The games drew 13,600 athletes from 161 nations. But the athletes are only part of the show. More than 6,000 referees and officials were involved in the games, as well as 15,000 journalists and more than 6,000 interpreters.

Seoul, a city almost 600 years old and with a population of about 10 million people, proved an excellent host for the world's athletes.

As with life, the games had ups and downs. There were thrills and disappointments. There were controversies that mirror the problems we struggle with in the society at large.

But these controversies should not detract from the beauty, strength and courage displayed at the games. Nor should the controversies detract from the accomplishments of the Korean Government and people.

By its achievement as a successful host of the 1988 summer Olympics, South Korea has shown the world that it is ready to take its place among the world's nations.

AIDS UPDATE

Mr. CRANSTON. Mr. President, according to the October 3, 1988, AIDS Weekly Surveillance Report, 74,809 Americans have been diagnosed with AIDS; 42,142 Americans have died from AIDS; and 32,667 Americans are currently living with AIDS.

Mr. President, 2,164 more Americans have developed AIDS and 1,153 Americans have died from this horrible disease since I last noted these statistics 3 weeks ago.

Mr. President, this weekend the NAMES project returns to Washington nearly 1 year after the NAMES quilt was first displayed on the Washington mall. Since that time it has traveled all around the country—with new panels being added all along the way in memory of thousands of individuals who have been lost to the ruthless AIDS virus.

Mr. President, I visited the NAMES quilt in Los Angeles when it was beginning the national tour. It was one of the most moving experiences I have ever had. It brought home that behind every number, behind every statistic is a human being—a man, woman, or child, who is missed by a husband, wife, or lover, parents, children, and friends.

The NAMES project was begun in San Francisco, where the gay community has been devastated by AIDS. It was started as a way to mourn for lost friends and share grief. It has become a way to preserve memories as the spirit of those who have succumbed to the AIDS virus live on through the quilt.

Mr. President, as we continue to confront AIDS issues in the Congress and in legislatures around the country, the quilt serves as a reminder that AIDS is not about politics or agendas—it is about people who are suffering. I urge all my colleagues who have not yet visited the NAMES project to walk through the quilt this weekend on the Ellipse.

I ask unanimous consent that an article from the October 2 Washington Post on the NAMES project be printed in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

ON AIDS—THE NAMES PROJECT BRINGS ITS BANNER TO D.C., HONORING THE LIVES OF LOVED ONES

(By Joe Brown)

SAN FRANCISCO.—A 20-foot banner hangs over the entrance to the NAMES Project workshop on Market Street near Castro. In lavendar block letters it says "Return to Washington—Volunteers Needed."

Inside the warehouselike space, the air hums with hushed energy. Straight pins and glitter, thread and what looks like miles of multi-colored fabric are piled on floors and stuffed into shelves. Signs around the room say: "Practice sewing etiquette" and "I'm the person your mother warned you about."

From 9 in the morning until late at night, the energy builds as volunteers arrive and settle silently behind sewing machines. Many of them have seen friends who worked beside them become names in the National AIDS Memorial Quilt, which is returning to Washington next Saturday and Sunday, where it was first unfolded on the Mall.

In piecing lives together, the NAMES Project has taken on a life of its own, exploding in less than a year from a handful of panels made in a backyard by a handful of friends in San Francisco's predominantly gay Castro district to a 16-ton behemoth blanket known internationally as the Quilt, representing 11 countries and occupying the equivalent of seven football fields.

Where it's displayed—in New York's Central Park, in San Francisco's Moscone Center, at Kansas City's Municipal Auditorium, at Baltimore's Museum of Art, under gray skies or concrete ceilings—the Quilt becomes an emotional magnet, an enormous security blanket, a heartening ritual, a dramatic expression of personal grief and of the kindness of strangers. It's a powerful statement of the impact of AIDS, the scope of the losses. And it promises that each of those lost will be remembered.

When the Quilt is unfolded again in Washington, there will be 8,288 3-by-6-foot panels—including hundreds from the Washington-Baltimore area—all lovingly designed and handmade in homes and churches by friends, lovers and families, each bearing the name of a man, woman, lover, friend, father, mother, boy, girl or infant lost to AIDS.

It will be laid out on the Ellipse in a grid of 31 "ninepatch" squares, each consisting of nine 24-by-24-foot panels, arranged geographically and with a "signature square" at the center, allowing viewers to sign their names and make instant memorials.

Fifteen booths will be set up to sell Quilt merchandise—T-shirts, buttons, books—which accounts for approximately half of the NAMES Project's income.

A 12-by-12-foot section of the Quilt has been requested by the Smithsonian Institution for its permanent collections.

The Quilt will be mentioned in the Guinness Book of World Records as the largest in the world.

It has toured 20 U.S. cities, raising nearly half a million dollars for local AIDS agencies.

And now it's coming back to Washington, five times larger than it was a year ago.

You might well imagine that the NAMES Project headquarters would be Grief Central. And it is, in a way—some staffers jokingly refer to it as "Tears R Us."

But what's immediately striking is the amount of laughter and the feeling of something momentous happening in the vicinity of the Quilt. There's a serious elation here, and most of those involved say, somewhat ironically, that this is the time of their lives.
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"We're all going through the same thing," says NAMES Project founder and Director Cleve Jones, "so you can come here and you can cry, and people are going to understand. And within an hour you'll be laughing. It's especially amazing when the care providers come in, the nurses and hospice workers, who will come in after work to make panels for their clients who have died. The first half hour that they're in the workshop it's just grim, no noise, just silence and sad faces. And then after about a half hour people start to warm up a bit and they start sharing anecdotes and memories of people who have died. And after about 45 minutes maybe you'll hear the first giggle."

"It cannot be a maudlin place," says Production Manager Scott Lago. "It is a celebration of a person's life. Not a comment on a death. Hell, we know he's dead. but she was a *scream* when she was alive!"

"The project is a collage of people that have no other reason to be together," says Lance Henderson, who left a lucrative career as an investment banker with Dean-Witter to orchestrate merchandising and sales for the NAMES Project. "And it's not all a bucket of roses. It's a very tense place to work. No one has ever done what we're doing before."

"On more than one occasion," says Henderson, "I've come in at 7:30 a.m. and found people still there. Who were sewing the night before."

Christine, 37, a recovering drug and alcohol addict, veteran of more than a few 12-step programs, might be one of those people. She puts in eight to 12 hours on the Quilt nearly every day. "This seemed like something I could do about AIDS," she says one afternoon as she edges a 12-by-12-foot section with white canvas. "It's more than a full-time job."

Christine's a "fixer"—she takes the panels sent in by others and attaches appliqués more firmly, enlarges panels that are too small, hems the ones that come in too large. She says she's worked with pieces of leather, of vinyl. She's seen panels with favorite shirts attached—and toys, records, photographs, merit badges, drag gowns, packets of cremation ashes . . .

"I decided to make a panel for everyone I knew, whether I liked him or not," says Christine, who made her first panel for a friend who acted in a play called "Tokens," about the Black Plague. The play used fabric dummies to symbolize the plague's victims, and Christine affixed one to her friend's panel.

"I had a friend who was a gospel singer and a kind of a rascal, so I used vestment fabric and a halo but added a devil's tail below the robe. That was kind of both sides of him."

She also made a panel for "a couple of street queens from the Tenderloin who helped a lot of people out . . . I thought, nobody's going to make a panel for these guys. I put the names of their street friends on it, too."

"I think I was most moved by a mother who did a panel for both of her sons that died," Christine says. "It grabs my heart to see parents do loving things for their kids, because so many gay kids have lost the love of their parents."

"You should have seen us last year, the day we tore off the calendar and it was September," says Lago, who as NAMES Project production manager oversees the huge corps of volunteers—up to 200 people a week, who show up to do work from hands-on sewing to media tasks. He started volunteering himself last August when he made a panel for a coworker at Neiman-Marcus.

"We had 10 panels come in today, eight from Chicago and two from Virginia," says Lago, a southerner who speaks softly and rapidly as he arranges a 12-by-12 on the floor in anticipation of a visit by a Japanese dignitary from a Tokyo AIDS organization. "Is this not gorgeous? This is just stunning," he exults, unfolding a black and white and maroon knitted panel.

"I think we're doing very well," he says. "On the third of September last year we had 300 panels. That was it. Ten days later we had over 2,000. We had to make them 3 feet by 6 feet, we had to repair them and make them fit."

He details the workshop process: When a panel comes in to the NAMES Project, it's given an ID number and a production code, and assigned to one of eight regions of the country. Once there are eight panels from a geographic region, they are bundled together to form a 12-foot square. The panels are also grouped according to color or pattern: checkerboard, hearts, teddy bears—there are a lot of teddy bears.

"You have to think of them as eight different people who don't know each other and don't have any need to, but will have to get along together," Lago says, smoothing out a panel that says "David Hudson Maguire Gave So Much And Asked for So Little, 46–88."

These 12-by-12's are reinforced and edged and grommeted, and later will be taken out to San Francisco's Dolores Park, where there is enough space to bind four of them together into a 24-foot square before folding, packing and shipping to Washington.

"We have a lot of people who call us because we have their children," says Lago. "A woman called from Conroe, Texas. She wanted someone to take a color picture of her son's panel and of a panel she had made of a friend of her's whose lover had died. And she said, 'You can't know how lonely I am, you don't know how much I miss my son. He was so handsome.'

"And I usually try and laugh it off, but I said to her, 'If you're going to keep this up, I'm going to have to stop. Because I *do* know. Please don't do this to me.' I did okay with her. Till I got off the phone."

Cleve Jones, 35, a Quaker, long active in San Francisco's gay community, conceived of the Quilt, but he's quick to point out that it's not his. The idea came to him shortly after the death of his best friend, actor Marvin Feldman, from AIDS in October 1986. A photograph of the panel Jones made for him sits on the windowsill in a light-filled office lined with AIDS demonstration posters and awards.

At the November 1985 candlelight procession that commemorated the late Mayor George Moscone and supervisor Harvey Milk, Jones noticed a series of cardboard placards fastened to the stone wall of the Federal Building, each bearing the name of someone who had died of AIDS.

"I thought it looked like a quilt, and when I said that, it evoked powerful, comforting memories," he says. Making the first quilted panel for Feldman, Jones bucked the crippling inertia and dread that affects so many bereaved by the disease.

"On the one hand," says spokesman Dan Sauro, "the NAMES Project is really successful. On the other hand there's the horror of why it is." Sauro arrived to contribute a box of office supplies and ended up contributing himself.

"The NAMES Project started out in the Castro as gay men making panels for gay men," he says. "That changed immediately. It occurred to us that for every gay man that had died, the impact on his friends and family that are not gay was just as great."

To get the project moving, Jones teamed up with Michael Smith, a graduate of the Stanford Business School. NAMES Project staffers say the two are perfect partners, the visionary, impulsive Jones anchored by the methodical, pragmatic Smith.

"In July of 1987, literally a handful of people were doing everything," Sauro says. "Nobody knew outside of the Castro what it was. I am still amazed when I think of what occurred between July and October."

First priority for the fledgling organization was finding a workshop—coincidentally Milk's last camera shop—and once that was settled, a wish list was posted on the storefront window. "Within three weeks, we had everything we needed," Smith marvels. "We had 11 sewing machines, including four industrials. We raised the rent from local merchants. We survived off this neighborhood." The wish list ended with "backrubs, hugs, and money."

As the project gathered momentum, panel-making volunteers began to create job positions. "When we were able to get funding we were able to hire a few people full time," Jones says. "Our big struggle right now is trying to get health insurance. It's pretty hard," he says with an ironic chuckle.

Smith estimates that it takes about $500,000 a year to keep the NAMES Project running, what with staff salaries and transportation, maintenance and display costs. About 40 percent of that comes from individual donations, often sent in with the panels, and another 40 percent from "The Quilt" book and other merchandise. "We got some corporate support this year but probably not more than 40 or 50 thousand dollars," Smith says. Last week, the National Endowment of the Arts awarded the NAMES Project a $10,000 grant for the Washington display of the Quilt.

Now the project has a full-time staff of 16, and there have been more than 700 volunteers involved at the workshop. "I have no idea of the amount of man-hours involved would add up to," Smith says.

"I'm not an artist," Jones says. "I'm . . . an organizer. But I'm sort of a disorganized person."

Nevertheless Jones acknowledges that the Quilt has antecedents in community art, citing Judy Chicago's "Dinner Party," Maya Ying Lin's Vietnam memorial and Cristo's Northern California "Running Fence" project as influences. And the *arpilleras* created by anonymous Chilean women—patchwork pictures, fashioned from scavenged remnants, commemorating "disappeared," political prisoners or protesting government policies.

"But Judy Chicago had screenings—you couldn't participate in her project unless you were an artist," Jones says. "This is more democratic. You look at these panels and esthetically they're not much, but you realize the amount of struggle and effort that went into it. People who had never cut fabric with a pair of scissors. And it's just heart-wrenching. And I like to keep in mind what Cristo once said about this big projects, something like, 'Dealing with the bureaucracy is part of the artistic process.' "

"This is not a gimmick, it's not Hands Across America," Jones says. "The difference is that as much of a media event as we've become, the heart and soul of the whole operation is in people's living rooms and church and synagogue basements all over the country when they come together to sew those panels. And then when they come to see it."

"We think that the American people, if they understand what is happening, will respond correctly," he says, "so we want to show people in a compelling, dramatic way, how big the problem is. And the Quilt does that. People who visit the Quilt understand for the first time just how big this is, just how many lives we're talking about.

"And the Quilt quietly does advocate a certain stance in the fight against AIDS. We are not a political organization—we don't take stands on any of the political issues that surround the AIDS epidemic. But the Quilt very eloquently says, 'You're to love each other, you're to care for each other, these were real people whose lives were valued and whose memories are cherished.' The political message is that human life is sacred."

A large part of the Quilt's power involves what might be called "performance art," for lack of a better word. Beginning at dawn, as white-clad volunteers slowly and ceremonially unfold, raise, then settle each 24-foot quilted square into its place on the gridded Ellipse, each of the names stitched or sketched into each panel will be read aloud.

Smith estimates it will take about 14 hours to place the 6.2 miles of canvas walkways on the Ellipse Friday night. It will take 20 minutes for 496 volunteers to unfold the Quilt on Saturday and Sunday mornings. And it will take 11 hours for 320 speakers to read each name.

The names must be spoken.

"As a straight woman involved in the project I see things differently," says Nancy Katz, outreach coordinator for the NAMES Project. "The gay community has been zapped, financially and emotionally. There is this feeling that they're afraid that the bigger world just doesn't care. And my thing here is to say, 'Get over it, you guys; we do.' "

Right now, Katz is helping a new volunteer who walked in off the street and asked to help. "It keeps breaking!" complains the volunteer, who's trying to edge a panel on an industrial sewing machine.

"I live in the neighborhood, and I was with a really close friend when he tested positive. And it really changed my life. It made me realize how precious life is. I can't make him not get sick. I can't even make him *eat* better things," she laughs. "But here's something I can do. I was led here."

Katz says she had to struggle with the fact that she's "working in a foreign culture. 'It's not a gay organization' is what I keep hearing. But I have to say yes it is. There's a whole culture, a sense of humor, a whole way of dealing with emotions that are foreign to me. I'm foreign to them."

She returns to the volunteer, who's looking more and more frustrated.

"I don't think today's an edging day for you," Katz says, kindly.

There are 11 countries represented in the Quilt, including Senegal, Canada, Australia, Spain, Mexico, Israel, Sweden, German and New Zeland. The World Health Organization is negotiating with the NAMES Project to organize ceremonies in 25 American cities and six foreign countries for World AIDS Day Dec. 1.

"People all over the world have been encouraging and enthusiastic about this," says Jeannette Koijane, director of international programs, who with Jones recently took 10 12-by-12 sections of the Quilt to the second International AIDS Congress in Stockholm.

"It had an amazing impact," she says. "It was forcing a lot of scientists to look at real people. It is important to remember, especially for people who are making policy, that this disease is killing people. It was also exciting, because you could see people say, 'Oh, this could work in my country.' This wonderful Red Cross worker from Uganda said the way she would envision it is having wonderful unique batik panels. They have quite a tradition of batik there.

"We hear from the people that have come back from Brazil that they don't have blankets for the beds, no toilet paper in the AIDS wards. Obviously you can't talk about making a quilt before you talk about feeding people. But if you look at what the Quilt is capable of doing . . . you'll get the blankets, you'll get the toilet paper."

"In many cases for people this has replaced some kind of tombstone," says Henderson. "People expect to see them displayed. So there is an obligation on the part of the project to care for the panels and to display them . . .

"You have to recognize that the panel belongs to everyone. It doesn't belong to us. So if someone in Des Moines wants to do a display locally, we have to find a mechanism to display the Quilt. It's so large, there's no reason there can't be two or three displays simultaneously."

"One other responsibility that we did not anticipate was for the permanent caring for the Quilt," says Jones. "All those people who put all that work in have really entrusted them to us. We need a permanent home for the Quilt that's safe and climate controlled, where people can come and leave panels and view panels that were already made.

"Our goal is to be able to sew the last panel into the Quilt. I don't know how many of us will be around. But there will be a day when a panel is sewn into the Quilt and it's called the last panel. And there'll be a party.

"It'll happen," Jones says. "Hope I'm here."

THE IMPORTANCE OF STUDENT FINANCIAL AID PROGRAMS

Mr. PELL. Mr. President, at the recent National Conference of the National Association of Student Financial Aid Administrators several students were honored whose success in life was helped by Federal student assistance.

It is easy to become wrapped up in numbers when discussing student aid—so many thousands of students receiving so many millions of dollars—that the individual student is often overlooked. Thus I am pleased that NASFAA is reminding us to stop and look at the individual student, and how important Federal student aid is to his or her succeeding in life.

Much has been made recently of people who succeed in business. It is time that we praise those who succeed on a more personal level. These students are as much a success as any entrepreneur. And the Federal Government should be proud to have played such an integral role in helping them achieve their goals.

Of all the recognition I have received in my life as a public servant, none is more important than having one of the Federal student aid programs named after me. I believe strongly that availability of student aid is linked to the vitality of this country and its citizens. The success of the former students in the following testimony is proof of that, and I ask that the testimony be printed in the Record.

There being no objection, the testimony was ordered to be printed in the Record, as follows:

Testimony From NASFAA Student Financial Aid Success Story Breakfast, Denver, CO

Alice Louise Johnson,
Staff Nurse, Attended Rapid City Regional Hospital School of Nursing.

This has been a fantastic experience for me, getting to meet some of you and getting to talk to you. The concern and the commitment that you have put into your work is so impressive. I remember when going to the financial aid office often felt like going to the principal. Now it is so nice to be away from that, to be able to look back and see the kind of people that were working their fingers to the bone to find money for me.

I was a nontraditional nursing student. I had my degree in English and then decided, when I was 27, that I was going to nursing school. I faced a lot of hardship finding the money to finance my education, but my financial aid director stuck by me and was always working to scrape up some scholarships and get me plugged into loan programs, and I was able to graduate.

I am working in neonatal intensive care—that's most commonly known as the preemie ward—and I love my work. I can't imagine doing anything else.

I think the best way to understand the kind of work that I do is to tell you about a young lady that I had the privilege of taking care of. I'll call her Tessa, not her real name of course. Tessa was born 4 months prematurely and she died when she was 3 months and 3 days old. I was taking care of her when she died.

It was one of those experiences that you hear other people talking about, and until it happens to you, you just can't understand all of the feelings. Tessa's mom was 17 and was going through her own fear of hardship because of the stress of having a premature baby and the fact that Tessa had the many congenital abnormalities that eventually caused her death.

When she finally died, I held her because her mother was not able to be there and I said to myself: this is what nursing is all about. When her mother came in, she and I held Tessa for a while more. A week later, I had the privilege of being invited to Tessa's funeral. Her mother, Barbara, said I wanted you to be here and to sit with the family because you raised Tessa and she is just as much your child as she is mine.

That is the kind of experience that the work that you do enables. I can't thank you enough for making that sort of thing possible. I know there are many others in this position who have those kind of experiences in their own fields, and it is because of your work and your dedication that it happens. I just wanted to say thank you, you have touched me, I have grown, and I am continuing to grow. Thank you so much.

Dao Van Le,
Mechanical Drafter, Attended Triangle Technology, Inc.

I'd like to thank all of you who gave me the opportunity to be here today, to go through school by financial aid.

When I first came [to America from Vietnam] five years ago, I didn't have anything. Nothing but a little, very little English and advice from my father to seek higher education. So after I had been here for about 10 months, I started looking for school to get more education. When I applied to Triangle Tech, I talked to the lady there, her name is Brandi Darr. She has helped me a lot to get me the financial aid I needed.

You people are very helpful. After we are done with school, we just somehow forget about it. It is really very sad to be that way. I really appreciate the help from Brandi and, of course, from the financial aid.

Now I am working and I am going to school to get a bachelor's degree in Mechanical Engineering. My employer is paying for my school. I thank all of you for helping me. There are so many other people out there who appreciate it, but do not have a chance to say it.

Felix A. Alvarez Bracero,
President, Construction Corp., Attended College of Agriculture and the Arts, Mecanicas de Mayaguez (RUM).

Today I represent all those students who, thanks to the help provided by the United States Government, have been able to obtain a degree in higher education.

Without this help, I must confess that it is almost impossible for minority students, especially Hispanics, to develop their capacity according to their intellectual ability. By means of this aid I have personally been able to attain my profession, and that enabled me to help my family, friends, employees, and my country.

With the assistance of this financial program, I was able to become a civil engineer and contribute to both society and the interests of my country. By providing financial aid such as that received by me, the United States can continue developing the social leadership strongly needed. I hope that the financial aid system will continue to help needy people, as I was, and I know that we Spanish, especially Puerto Rico, will give it good use. God bless you all. God bless America and you are welcome to my country anytime you wish. Muchas gracias.

MARYLEE M. JAMES,
Ph.D. Candidate, Boston University, Attended Furman University.

Four years ago I did not think that it was possible for me to get a degree. I graduated from high school in 1957. In 1957, there weren't financial assistance programs for people who wanted to go to college. It was something I wanted, but I knew it couldn't be done.

I just put it out of my mind, but after a divorce and being out on my own, I really wanted an education. I knew I couldn't afford it by myself, but I thought if I was a nurse I could get flexible hours and that I could go on and get my liberal arts education. So I started in an RN program for nurses.

After working 8 hours a day and going to school 8 hours a day for a year, I realized I had to quit because I wanted to live through the experience. After a few years I was still drawn back, I still wanted that liberal arts education and I wanted it so bad. So I gave up heat in my house for one year to go to a technical college to take a few courses at night. By this time I had come to the point where I was the only person I could depend on, that nobody cared if I lived or died as far as I was concerned, and I was the only person that I could trust.

Financial aid did not just give me an education. An education would not have made the difference in my life by itself, but having people I could depend on, who cared about me, who would help me and help me see how far I could go and take over when I couldn't go any further, that's what made the difference in my life. It changed me inside. You have all given me a wonderful future and I am so pleased and so grateful to be able to stand here and say thank you.

SENATE SHOULD AUTHORIZE MEMORIAL TO MAHATMA GANDHI

Mr. PRESSLER. Mr. President, during these waning days of the 100th Congress, much legislation that has been introduced over the past 2 years will not become law. Some of this legislation is bad and should not become law. But some of it is good and should be enacted. Were it not for the press of time and parliamentary maneuvering, the good legislation would be passed by both Houses of Congress.

In the category of good legislation, I place S. 1766, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi, the great leader of Indian independence and modern apostle of non-violence, in the District of Columbia. As a cosponsor of this legislation, I believe it is unfortunate that the Rules Committee, which has had 1 year to examine the bill, does not seem prepared to report it out for consideration by the full Senate.

The principal argument against the Gandhi memorial bill seems to be that it is somehow inappropriate to erect statues or other memorials to foreigners in the Nation's Capital.

Mr. President, the Capital is blessed by many memorials, statues and monuments to foreigners. Adding a tasteful memorial to Mahatma Gandhi would be in keeping with our Nation's well-established tradition of honoring distinguished great personages from around the world.

Beginning with the Columbus Door on the East Front of the Capitol, and the Columbus Fountain in front of Union Station just two or three blocks down the street from the Capitol, any resident of or visitor to this city will find dozens of memorials to foreigners within easy walking distance.

The Library of Congress Main Building just across the street has granite portrait busts of such eminent foreign men of letters as Demosthenes and Goethe. The British philosopher, Edmund Burke, is honored with an 8-foot high bronze statue. Other Britishers honored by large statues or monuments throughout the city include: Field Marshall Sir John Dill, Sir William Blackstone, and Sir Winston Churchill. These are situated in prominent public locations. In addition, the nearby grounds of the Wesley Theological Seminary are graced by a large statue to the English founder of the Methodist denomination, John Wesley.

Thomas Circle has a massive, 11½-foot high statue of Martin Luther. Another German so honored is the physician, Dr. Samuel Hahnemann, on Scott Circle. The city's public places also include statues to the Irish revolutionary, Robert Emmet; the Ukrainian national poet, Taras Shevchenko; Polish Count Pulaski and General Kosciuszko; the Frenchmen, Generals Lafayette and Rochambeau. Statues of Dante and Joan of Arc may be found in Meridian Hill Park. Very large statues within blocks of the Capitol honor the famous Latin American liberators: Generals Artigas, Simon Bolivar, and José de San Martin, as well as Benito Juarez of Mexico.

Mr. President, the city of Washington, DC, is an impressive place to live and visit because it is populated by memorials to these famous foreigners, as well as honored Americans. Adding a statue or other suitable monument to the noble Mahatma Gandhi would be consistent with the American practice of honoring the greats of the past—those leaders whose life work has left a lasting legacy to all humanity. The memorial to Gandhi would be constructed entirely through private contributions at no expense to taxpayers. I am sure it would be appropriate and tasteful and a great attraction for foreign and American visitors to the District of Columbia.

Mr. President, I urge all Senators to encourage the members of the Senate Rules Committee to release the Gandhi Memorial bill for immediate consideration by the full Senate.

RECESS

Mr. BYRD. Mr. President, there are some discussions going on off the floor concerning an amendment, or some amendments. Hopefully, there can be some agreements reached within the next half-hour or so. In order to expedite those discussions, I am going to recess the Senate for 30 minutes.

I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 11:14 a.m. recessed until 11:44 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

TECHNICAL CORRECTIONS ACT OF 1988

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 861, S. 2238, the Technical Corrections Act.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia.

Mr. STEVENS. Mr. President, reserving the right to object, and I shall not object, the distinguished leader and my good friend has mentioned the negotiations that are ongoing and my request to him was that we have an opportunity to review some suggestions I have made for amendments. The timing is such that we just have not had the possibility of completing the drafting of those before this time.

I am assured that the rights of my constituents can be fully protected downstream should that necessity arise.

So I have indicated to the leader I shall not object and I am delighted we will have a tax bill and perhaps we will proceed more quickly to what I wish to accomplish.

I thank the distinguished leader for the consideration this morning.

Mr. BYRD. I thank the distinguished Senator from Alaska.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which

had been reported from the Committee on Finance, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Technical Corrections Act of 1988".

(b) DEFINITIONS.—For purposes of this Act—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) REFORM ACT.—Except where incompatible with the intent, the term "Reform Act" means the Tax Reform Act of 1986.

(c) CLERICAL AMENDMENT—Paragraph (29) of section 7701(a) of the 1986 Code is amended by striking out "of 1954" and inserting in lieu thereof "of 1986".

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Sec. 116. Amendments related to title XVI of the Reform Act.
Sec. 117. Amendments related to title XVII of the Reform Act.
Sec. 118. Amendments related to title XVIII of the Reform Act.
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TITLE II—AMENDMENTS RELATED TO TAX PROVISIONS IN OTHER LEGISLATION

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Sec. 204. Amendments related to the Revenue Act of 1987.
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Sec. 501. Short title.
Sec. 502. References to Railroad Unemployment Insurance Act.

Subtitle A—Financing Provisions

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Subtitle C—Retirement Act Amendments

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TITLE VI—AMENDMENTS RELATING TO SOCIAL SECURITY ACT PROGRAMS

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Sec. 611. Implementation of proposed regulation relating to assistance to homeless AFDC families delayed.
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Subtitle C—National Commission on Children

Sec. 621. Delay in reporting date for national commission on children.

TITLE I—TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

SEC. 101. AMENDMENTS RELATED TO TITLE I OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 101 OF THE REFORM ACT.—

(1) Paragraph (2) of section 6867(b) of the 1986 Code is amended by striking out "at a 50-percent rate" and inserting in lieu thereof "at the highest rate of tax specified in section 1".

(2)(A) Section 531 of the 1986 Code is amended to read as follows:

"SEC. 531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 28 percent of the accumulated taxable income."

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code.

(3) The last sentence of section 1(g)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: "and subparagraph (B) shall be applied as if a deduction for a personal exemption were allowable under section 151 to such individual for such individual's spouse."

(b) AMENDMENTS RELATED TO SECTION 102 OF THE REFORM ACT.—

(1) Paragraph (5) of section 63(c) of the 1986 Code is amended—

(A) by striking out "the standard deduction applicable" and inserting in lieu there-

of "the basic standard deduction applicable", and

(B) by striking out "STANDARD DEDUCTION" in the paragraph heading and inserting in lieu thereof "BASIC STANDARD DEDUCTION".

(2) Subclause (I) of section 6012(a)(1)(C)(i) of the 1986 Code is amended to read as follows:

"(I) income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or".

(3)(A) Subparagraph (A) of section 62(a)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies."

(B) Paragraph (2) of section 527(e) of the 1986 Code (defining exempt function) is amended by adding at the end thereof the following new sentence: "Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a)."

(c) AMENDMENT RELATED TO SECTION 111 OF THE REFORM ACT.—Paragraph (3) of section 32(i) of the 1986 Code is amended to read as follows:

"(3) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

(d) AMENDMENTS RELATED TO SECTION 123 OF THE REFORM ACT.—

(1)(A) Clause (ii) of section 4941(d)(2)(G) of the 1986 Code is amended to read as follows:

"(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),".

(B) Paragraph (1) of section 4945(g) of the 1986 Code is amended to read as follows:

"(1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),".

(2)(A) The second sentence of section 1441(b) of the 1986 Code is amended to read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act and which are—

"(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

"(2) in the case of an individual who is not a candidate for a degree at an educational organization described in 170(b)(1)(A)(ii), granted by—

"(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

"(B) a foreign government,

"(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

"(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States."

(B) Subsection (c) of section 871 of the 1986 Code is amended—

(i) by striking out "section 1441(b)(1) or (2)" and inserting in lieu thereof "the second sentence of section 1441(b)"; and

(ii) by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)".

(C) The following provisions of the 1986 Code are each amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)":

(i) Section 3121(b)(19).

(ii) Section 3231(e)(1).

(iii) Section 3306(c)(19).

(D) Clause (i)(I) of section 7701(b)(5)(D) of the 1986 Code is amended by striking out "subparagraph (F)" and inserting in lieu thereof "subparagraph (F) or (M)".

(E) Section 210(a)(19) of the Social Security Act is amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)".

(e) AMENDMENT RELATED TO SECTION 131 OF THE REFORM ACT.—Subsection (f) of section 86 of the 1986 Code is amended by inserting "and" at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(f) AMENDMENTS RELATED TO SECTION 132 OF THE REFORM ACT.—

(1) Section 67 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION WITH OTHER LIMITATION.—This section shall be applied before the application of the dollar limitation of the last sentence of section 162(a) (relating to trade or business expenses)."

(2) Paragraph (4) of section 67(b) of the 1986 Code is amended—

(A) by striking out "deduction" and inserting in lieu thereof "deductions", and

(B) by inserting before the comma at the end thereof "and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)".

(3) Subsection (e) of section 67 of the 1986 Code is amended to read as follows:

"(e) DETERMINATION OF ADJUSTED GROSS INCOME IN CASE OF ESTATES AND TRUSTS.—For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

"(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

"(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section."

(4) Subsection (c) of section 67 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: "The preceding sentence shall not apply—

"(1) with respect to cooperatives and real estate investment trusts, and

"(2) except as provided in regulations, with respect to estates and trusts."

(g) AMENDMENTS RELATED TO SECTION 142 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 274(n)(2) of the 1986 Code is amended to read as follows:

"(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),".

(2) Paragraph (2) of section 274(k) of the 1986 Code is amended to read as follows:

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and

"(B) any other expense to the extent provided in regulations."

(3) Clause (ii) of section 274(m)(1)(B) of the 1986 Code is amended to read as follows:

"(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).".

(4)(A) Paragraph (2) of section 274(n) of the 1986 Code is amended—

(i) by striking "or" at the end of subparagraph (C),

(ii) by striking the period at the end of subparagraph (D) and inserting ", or", and

(iii) by adding at the end thereof the following:

"(E) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82.

In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (E)."

(B) The following provisions of the 1986 Code are each amended by striking out "section 217" and inserting in lieu thereof "section 217 (determined without regard to section 274(n))":

(i) Section 3121(a)(11).

(ii) Section 3306(b)(9).

(iii) Section 3401(a)(15).

(C) Section 209(k) of the Social Security Act is amended by striking out "section 217 of the Internal Revenue Code of 1954" and inserting in lieu thereof "section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code)".

(5) Paragraphs (1) and (2) of section 274(h) of the 1986 Code are each amended by striking out "trade or business that" and inserting in lieu thereof "trade or business and that".

(h) AMENDMENTS RELATED TO SECTION 143 OF THE REFORM ACT.—

(1) Paragraph (5) of section 280A(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year."

(2) Clause (ii) of section 280A(c)(5)(B) of the 1986 Code is amended by striking out "trade or business" and inserting in lieu thereof "trade or business (or rental activity)".

SEC. 102. AMENDMENTS RELATED TO TITLE II OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 201 OF THE REFORM ACT.—

(1) Subsection (d) of section 1250 of the 1986 Code is amended by striking out paragraph (11).

(2) Subparagraph (B) of section 201(d)(14) of the Reform Act is amended by striking out "section 168(c)(2)(F)" and inserting in lieu thereof "within the meaning of section 168(c)(2)(F)".

(3) Paragraph (4) of section 312(k) of the 1986 Code is amended by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraph (1)".

(4) Paragraph (4) of section 46(e) of the 1986 Code is amended—

(A) by striking out "168(j)(6)" in subparagraph (B) and inserting in lieu thereof "168(i)(3)",

(B) by striking out "paragraphs (8) and (9) of section 168(j)" in subparagraph (D) and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)",

(C) by striking out "168(j)" in subparagraph (E) and inserting in lieu thereof "168(h)", and

(D) by striking out "168(j)(4)" in subparagraph (E) and inserting in lieu thereof "168(h)(2)".

(5) Clause (i) of section 168(d)(3)(A) of the 1986 Code is amended by striking out "and which are".

(6)(A) Subparagraph (B) of section 168(f)(5) of the 1986 Code is amended—

(i) by striking out "1st full taxable year" in clause (ii) and inserting in lieu thereof "1st taxable year", and

(ii) by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor."

(B) Paragraph (5) of section 168(f) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE.—In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986."

(7)(A) Subparagraph (A) of section 168(i)(7) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect."

(B) Subparagraph (B) of section 168(i)(7) of the 1986 Code is amended to read as follows:

"(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are—

"(i) any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731, and

"(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B)."

(C) Subparagraph (D) of section 168(i)(7) of the 1986 Code is hereby repealed.

(8) Subparagraph (B) of section 168(h)(2) of the 1986 Code is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN PROPERTY SUBJECT TO UNITED STATES TAX AND USED BY FOREIGN PERSON OR ENTITY.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

"(i) subject to tax under this chapter, or

"(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter."

(9) Subsection (a) of section 178 of the 1986 Code is amended by striking out "the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194" and inserting in lieu thereof "the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization".

(10) Subparagraph (A) of section 280F(d)(3) of the 1986 Code is amended by striking out "any recovery deduction" and inserting in lieu thereof "any depreciation deduction".

(11)(A) Paragraph (2) of section 168(b) of the 1986 Code is amended to read as follows:

"(2) 150 PERCENT DECLINING BALANCE METHOD IN CERTAIN CASES.—Paragraph (1) shall be applied by substituting '150 percent' for '200 percent' in the case of—

"(A) any 15-year or 20-year property, or

"(B) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply."

(B) Paragraph (5) of section 168(b) of the 1986 Code is amended by striking out "under paragraph (3)(C)" and inserting in lieu thereof "under paragraph (2)(B) or (3)(C)".

(C) Subsection (c) of section 168 of the 1986 Code is amended to read as follows:

"(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:

"In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Residential rental property	27.5 years
Nonresidential real property	31.5 years.

"(2) PROPERTY FOR WHICH 150 PERCENT METHOD ELECTED.—In the case of property to which an election under subsection (b)(2)(B) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C)."

(12) Clause (i) of section 56(a)(1)(C) of the 1986 Code is amended by striking out "do not apply" and inserting in lieu thereof "do not apply by reason of section 203, 204, or 251(d) of such Act".

(13) The heading of paragraph (24) of section 381(c) of the 1986 Code is amended by striking out "RECOVERY ALLOWANCE FOR RECOVERY PROPERTY" and inserting in lieu thereof "DEPRECIATION DEDUCTION".

(14) Paragraph (5) of section 48(a) of the 1986 Code is amended—

(A) by striking out "168(j)(4)(C)" and inserting in lieu thereof "168(h)(2)(C)",

(B) by striking out "168(j)(4)(A)(iii)" and inserting in lieu thereof "168(h)(2)(A)(iii)",

(C) by striking out "168(j)(4)(B)" and inserting in lieu thereof "168(h)(2)(B)",

(D) by striking out "168(j)(6)" and inserting in lieu thereof "168(i)(3)",

(E) by striking out "168(j)(3)(C)(ii)" and inserting in lieu thereof "168(h)(1)(C)(ii)",

(F) by striking out "paragraphs (8) and (9) of section 168(j)" and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)", and

(G) by striking out subparagraph (E) and inserting in lieu thereof the following:

"(E) CROSS REFERENCE.—

"For provision providing special rules for the application of this paragraph and paragraph (4), see section 168(h)."

(15) The last sentence of section 46(e)(3) of the 1986 Code is amended—

(A) by striking out "recovery property (within the meaning of section 168)" and inserting in lieu thereof "property to which section 168 applies",

(B) by striking out "present class life" and inserting in lieu thereof "class life", and

(C) by striking out "168(g)(2)" and inserting in lieu thereof "168(i)(1)".

(16)(A) Subsection (s) of section 48 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(9) TERMINATION.—This subsection shall not apply to any property placed in service after December 31, 1985, unless such property is transition property (as defined in section 49(e)(1))."

(B) Paragraph (4) of section 168(f) of the 1986 Code is amended to read as follows:

"(4) SOUND RECORDINGS.—Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied."

(17) Paragraph (7) of section 46(c) of the 1986 Code is amended—

(A) by striking out "recovery property" and inserting in lieu thereof "property to which section 168 applies",

(B) by striking out "168(c)" each place it appears and inserting in lieu thereof "168(e)",

(C) by striking out "168(f)(3)(B)" and inserting in lieu thereof "168(f)(3)(B) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)", and

(D) by striking out "RECOVERY PROPERTY" in the paragraph heading and inserting in lieu thereof "PROPERTY TO WHICH SECTION 168 APPLIES".

(18) Paragraph (1) of section 47(d) of the 1986 Code is amended by striking out "section 48(c)(8)(C)"

and inserting in lieu thereof "section 46(c)(8)(C)".

(19) Paragraph (1) of section 179(d) of the 1986 Code is amended by striking out "recovery property" and inserting in lieu thereof "tangible property (to which section 168 applies)".

(20) Section 48 of the 1986 Code is amended by redesignating the subsection (s) relating to cross references as subsection (t).

(21) Clause (v) of section 168(e)(3)(B) of the 1986 Code is amended by striking out "any property" and inserting in lieu thereof "any section 1245 property".

(22) The last sentence of section 167(l)(3)(G) of the 1986 Code is amended by striking out "section 168(e)(3)(C)" and inserting in lieu thereof "section 168(i)(9)(B)".

(23) Subparagraph (B) of section 168(d)(3) of the 1986 Code is amended to read as follows:

"(B) CERTAIN PROPERTY NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), there shall not be taken into account—

"(i) any nonresidential real property and residential rental property, and

"(ii) any other property placed in service and disposed of during the same taxable year."

(24) Subsection (a) of section 167 of the 1986 Code is amended by striking out the last sentence.

(25) Subparagraph (B) of section 46(d)(1) of the 1986 Code is amended—

(A) by striking out "recovery property (within the meaning of section 168)" in clause (i) and inserting in lieu thereof "property to which section 168 applies", and

(B) by striking out "which is not recovery property (within the meaning of section 168)" in clause (ii) and inserting in lieu thereof "to which section 168 does not apply".

(26)(A) Subparagraph (E) of section 47(a)(5) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(v) TREATMENT AS RECOVERY PROPERTY.—Any reference in this paragraph to recovery property shall be treated as including a reference to any property to which section 168 (as amended by the Tax Reform Act of 1986) applies."

(B) Subparagraph (D) of section 47(a)(5) of the 1986 Code is amended by striking out the last sentence.

(C) Clause (iii) of section 47(a)(5)(E) of the 1986 Code is amended by striking out "section 168(c)" and inserting in lieu thereof "section 168(e)".

(27) Subparagraph (A) of section 47(a)(9) of the 1986 Code is amended by striking out "section 168(j)(4)(C)" and inserting in lieu thereof "section 168(h)(2)".

(28) Clause (i) of section 47(d)(3)(C) of the 1986 Code is amended—

(A) by striking out "present class life (as defined in section 168(g)(2))" and inserting in lieu thereof "class life (as defined in section 168(i)(1))", and

(B) by striking out "no present class life" and inserting in lieu thereof "no class life".

(29) Paragraph (1) of section 48(a) of the 1986 Code is amended by striking out "recovery property (within the meaning of section 168)" in the material following subparagraph (G) and inserting in lieu thereof "property to which section 168 applies".

(30) Subparagraph (C) of section 48(1)(2) of the 1986 Code is amended by striking out "which is recovery property (within the meaning of section 168)" and inserting in lieu thereof "to which section 168 applies".

(31) Subsection (d) of section 167 of the 1986 Code is amended by striking out "recovery property defined in section 168" and inserting in lieu thereof "property to which section 168 applies".

(b) AMENDMENTS RELATED TO SECTION 202 OF THE REFORM ACT.—

(1) Paragraph (3) of section 179(b) of the 1986 Code is amended to read as follows:

"(3) LIMITATION BASED ON INCOME FROM TRADE OR BUSINESS.—

"(A) IN GENERAL.—The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

"(B) CARRYOVER OF DISALLOWED DEDUCTION.—The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

"(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

"(ii) the excess (if any) of—

"(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

"(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

"(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section."

(2) Paragraph (1) of section 280F(d) of the 1986 Code is amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsections (a) and (b), and the limitation of paragraph (3) of this subsection,".

(c) AMENDMENTS RELATED TO SECTION 203 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 203(a)(1) of the Reform Act is amended by adding at the end thereof the following new sentence: "No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986."

(2) Subsection (d) of section 203 of the Reform Act is amended—

(A) by striking out "the case of any taxable year" and inserting in lieu thereof "the case of any taxable year beginning before October 1, 1987", and

(B) by adding at the end thereof the following new sentence: "The preceding sentence shall only apply to property which would be taken into account if such amendments did apply."

(3) Notwithstanding section 203 of the Reform Act, the amendments made by section 201 of the Reform Act shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable.

(4) Paragraph (1) of section 203(b) of the Reform Act is amended by adding at the end thereof the following new sentence:

"For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer."

(5) Paragraph (1) of section 203(c) of the Reform Act is amended by striking out "Subparagraph" and inserting in lieu thereof "Except as otherwise provided in this subsection or section 204, subparagraph".

(6) Clause (i) of section 203(b)(2)(C) of the Reform Act is amended by striking out "shall be the class life" and inserting in lieu thereof "applies shall be the class life".

(7) Paragraph (3) of section 203(b) of the Reform Act is amended—

(A) by inserting before the comma at the end of subparagraph (A) "(or would have met such requirements if placed in service by such person)", and

(B) by inserting ", or is leased to such person," before "not later than".

(8) Paragraph (2) of section 203(a) of the Reform Act is amended to read as follows:

"(2) SECTION 202.—

"(A) IN GENERAL.—The amendments made by section 202 shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(B) SPECIAL RULE FOR FISCAL YEARS INCLUDING JANUARY 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

"(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for section 179 property placed in service during such taxable year and before January 1, 1987,

"(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

"(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987."

(d) AMENDMENTS RELATED TO SECTION 204 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 204(a)(1) of the Reform Act is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following new clause:

"(iv) described in subparagraph (F) or (H)."

(2) Subparagraph (C) of section 204(a)(1) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following:

"For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears."

(3) Subparagraph (E) of section 204(a)(1) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following: "For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears."

(4) Subparagraph (F) of section 204(a)(1) of the Reform Act is amended—

(A) by striking out "paragraph" and inserting in lieu thereof "subparagraph",

(B) by striking out ", or" at the end of clause (iii) and inserting in lieu thereof a period, and

(C) by striking out so much of clause (iv) as precedes subclause (I) thereof and inserting in lieu thereof the following:

"A project is also described in this subparagraph if it is a mixed-use development which is—".

(5) The last sentence of section 204(a)(1)(F) of the Reform Act is amended—

(A) by striking out "subsection (b)(2)" and inserting in lieu thereof "section 203(b)(2)", and

(B) by striking out "1993" and inserting in lieu thereof "1998".

(6) Subparagraph (H) of section 204(a)(1) of the Reform Act is amended by striking out "July 1, 1986" and inserting in lieu thereof "June 30, 1986".

(7)(A) Paragraph (4) of section 204(a) of the Reform Act is amended to read as follows:

"(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply—

"(A) to property described in section 12(c)(2) (as amended by the Technical Corrections Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984,

"(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984, and

"(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982."

(B) Paragraph (2) of section 12(c) of the Tax Reform Act of 1984 is amended by striking out "which is placed in service before January 1, 1988".

(8) Subparagraph (K) of section 204(a)(5) of the Reform Act is amended—

(A) by striking out "either" in the matter preceding clause (i),

(B) by striking out "super calendar" in clause (i) and inserting in lieu thereof "supercalendered",

(C) by striking out "were incurred" in clause (i) and inserting in lieu thereof "was incurred", and

(D) by inserting "the project" before "involves" in clause (v).

(9) Paragraph (5) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(Z) A project is described in this subparagraph if—

"(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

"(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network."

(10)(A) Paragraph (8) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma, and by adding at the end thereof the following new subparagraphs:

"(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

"(E) such facility is to serve Haverhill, Massachusetts."

(B) Paragraph (8) of section 204(a) of the Reform Act is amended by striking out ", and section 203(c),".

(11) Paragraph (10) of section 204(a) of the Reform Act is amended—

(A) by striking out "either" in the material preceding subparagraph (A),

(B) by striking out "wastewater treatment facility" in subparagraph (C) and inserting in lieu thereof "wastewater treatment facility serving Greenville, South Carolina", and

(C) by striking out "the letter of intent and service agreement described in subparagraph (A)(2) of this paragraph" in subparagraph (D) and inserting in lieu thereof "such letter of intent and service agreement".

(12) Paragraph (11) of section 204(a) of the Reform Act is amended—

(A) by striking out "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and inserting in lieu thereof "the United States",

(B) by striking out "the purchase" in subparagraph (C) and inserting in lieu thereof "the purchaser", and

(C) by striking out the last sentence.

(13) Paragraph (14) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a comma, and by inserting after subparagraph (E) the following:

"(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

"(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'."

(14) Paragraph (15) of section 204(a) of the Reform Act is amended—

(A) by adding "located in New Mexico" after "to a project",

(B) by striking out "$72,000" and inserting in lieu thereof "$72,000,000", and

(C) by striking out the last sentence and inserting in lieu thereof the following:

"For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears."

(15) Paragraph (24) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

"(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986."

(16) Paragraph (25) of section 204(a) of the Reform Act is amended by striking out "wood energy products" and inserting in lieu thereof "wood energy projects".

(17) Paragraph (27) of section 204(a) of the Reform Act is amended—

(A) in subparagraph (A)—

(i) by striking out "$400,000,000" and inserting in lieu thereof "$500,000,000", and

(ii) by striking out "letter of intent" and inserting in lieu thereof "memorandum of terms",

(B) in subparagraph (B), by striking out "525,000" and inserting in lieu thereof "540,000",

(C) in subparagraph (C)—

(i) by striking out "$32,000,000" and inserting in lieu thereof "$22,000,000", and

(ii) by striking out "before" and inserting in lieu thereof "on",

(D) in subparagraph (D), by striking out "and 7th Avenue", and

(E) in subparagraph (H), by striking out "$62,000" and inserting in lieu thereof "$62,600,000".

(18) Paragraph (27) of section 204(a) of the Reform Act is amended by adding at the end thereof the following:

"(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply."

(19) Paragraph (31) of section 204(a) of the Reform Act is amended by striking out "$10,200,000" and inserting in lieu thereof "$10,500,000".

(20) Paragraph (32) of section 204(a) of the Reform Act is amended—

(A) in subparagraph (A)—

(i) by striking out "July 30, 1984" and inserting in lieu thereof "December 26, 1985",

(ii) by striking out "February 28, 1985" and inserting in lieu thereof "July 2, 1986", and

(iii) by striking out "on June 17, 1985" and inserting in lieu thereof "in May 1985",

(B) in subparagraph (B)—

(i) by striking out "August 30, 1984" and inserting in lieu thereof "December 26, 1985",

(ii) by striking out "May 4, 1985" and inserting in lieu thereof "July 2, 1986", and

(iii) by striking out "on July 3, 1985" and inserting in lieu thereof "in July 1985",

(C) in subparagraph (E)—

(i) by striking out "$2,200,000" and inserting in lieu thereof "$5,000,000",

(ii) by striking out "on January 27, 1986" and inserting "in 1986", and

(iii) by inserting "in Masontown, Pennsylvania," after "plant",

(D) by amending subparagraph (K) to read as follows:

"(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),",

(E) in subparagraph (L), by inserting "in connection with" after "housing",

(F) by amending subparagraph (M) to read as follows:

"(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W),",

(G) in subparagraph (O), by striking out "New Orleans, Louisiana" and inserting in lieu thereof "Pensacola, Florida", and

(H) in subparagraph (S)—

(i) by inserting "to be" before "placed",

(ii) by inserting "Coal" before "Company",

(iii) by inserting "(or any subsidiary thereof)" after "Company", and

(iv) by striking out "on December 31, 1985" and inserting in lieu thereof "by December 31, 1985".

(21) Subparagraph (T) of section 204(a)(32) of the Reform Act is amended to read as follows:

"(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,".

(22) Subparagraph (U) of section 204(a)(32) of the Reform Act is amended by striking out "placed in service" and inserting in lieu thereof "constructed".

(23) Subparagraph (X) of section 204(a)(32) of the Reform Act is amended by striking out "the home rule city and the State housing finance agency adopted inducement resolutions on December 20, 1985"

and inserting in lieu thereof "the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions".

(24) Subparagraph (C) of paragraph (33) of section 204(a) of the Reform Act is amended to read as follows:

"(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

"(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,".

(25) Paragraph (33) of section 204(a) of the Reform Act is amended by striking out "and" at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and", and by inserting after subparagraph (K) the following:

"(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985."

(26) Subsection (a) of section 204 of the Reform Act is amended by adding at the end thereof the following new paragraphs:

"(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

"(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

"(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

"(C) ground clearing for such plant began before August 1986, and

"(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

"(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence and as not described in section 252(f)(1)(D) unless such project includes a nonprofit community health center—

(A) which receives funds under section 330 of the Public Health Service Act (42 U.S.C. 254(c)),

(B) which covers at least 12,000 (but not more than 18,000) square feet, and

(C) which is granted a lease for a period not ending before the close of the 20th year after the project is placed in service and the rent under which per square foot cannot exceed the average rent per square foot payable for rent-restricted units in the project.

"(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

"(A) in July of 1984 an initial binding construction contract was entered into for such facility,

"(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

"(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

"(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

"(38) The amendments made by section 201 shall not apply to—

"(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

"(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

"(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

"(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

"(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

"(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

"(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

"(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

"(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina."

(27) Subsection (b) of section 204 of the Reform Act is amended by inserting "(as amended by the Tax Reform Act of 1984)" immediately before the period at the end thereof.

(28) Subparagraph (A) of section 204(c)(1) of the Reform Act is amended by inserting "located in Pennsylvania and" before "constructed pursuant".

(29) Paragraph (3) of section 204(c) of the Reform Act is amended—

(A) by striking out "for the applicable date" and inserting in lieu thereof "(or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the applicable date",

(B) by striking out "before April 1, 1986" in subparagraph (A) and inserting in lieu thereof "on or before April 1, 1986", and

(C) by adding at the end thereof the following:

"In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply."

(30)(A) Paragraph (4) of section 204(c) of the Reform Act is amended by striking out all that precedes subparagraph (L) and inserting in lieu thereof the following:

"(4) The amendments made by section 201 shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

"(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

"(B) Campbell Soup Company: Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

"(C) The Southeast Overtown/Park West development, Florida, but only with respect to $9,000,000 of investments.

"(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

"(E) East Bank Housing Project.

"(F) $1,561,215 of investments by Standard Telephone Company.

"(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

"(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

"(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to $30,000,000 of investments.

"(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

"(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments."

(B) Paragraph (4) of section 204(c) of the Reform Act is amended by striking out all that follows subparagraph (L) and inserting in lieu thereof the following:

"(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

"(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

"(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $3,000,000 of investments.

"(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

"(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988."

(31) Paragraph (29) of section 204(a) of the Reform Act is amended—

(A) by striking out "January 18" in subparagraph (A) and inserting in lieu thereof "January 25", and

(B) by striking out "law suits filed on June 22, 1984, and November 21, 1985" in subparagraph (B) and inserting in lieu thereof "a law suit filed on October 25, 1985".

(32) Subparagraph (J) of section 204(a)(33) of the Reform Act, as amended by paragraph (25), is amended to read as follows:

"(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,".

(33) Paragraph (3) of section 204(c) of the Reform Act is amended—

(A) by inserting "and" at the end of subparagraph (B),

(B) by striking out subparagraph (C), and

(C) by redesignating subparagraph (D) as subparagraph (C).

(34) Subclause (II) of section 204(a)(5)(J)(ii) of the Reform Act is amended to read as follows:

"(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure."

(35) Subparagraph (T) of section 204(a)(5) of the Reform Act is amended to read as follows:

"(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and—

"(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

"(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

"(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction."

(e) Amendments Relating to Section 211 of the Reform Act.—

(1) Paragraph (1) of section 49(d) of the 1986 Code is amended to read as follows:

"(1) In general.—In the case of periods after December 31, 1985, with respect to so much of the credit determined under section 46(a) with respect to transition property as is attributable to the regular investment credit (as defined in subsection (c)(5)(B))—

"(A) paragraphs (1), (2), and (7) of section 48(q) and section 48(d)(5) shall be applied by substituting '100 percent' for '50 percent' each place it appears, and

"(B) sections 48(q)(4) and 196(d) shall not apply."

(2) Subparagraph (B) of section 49(c)(4) of the 1986 Code is amended to read as follows:

"(B) No carryback for years straddling July 1, 1987; gross up of carryforwards.—In any case to which paragraph (3) applies—

"(i) the amount of the reduction under paragraph (3) may not be carried back to any taxable year, but

"(ii) there shall be added to the carryforwards from the taxable year (before applying paragraph (2)) an amount equal to the amount which bears the same ratio to the carryforwards from such taxable year (determined without regard to this clause) as—

"(I) the applicable percentage, bears to

"(II) 1 minus the applicable percentage."

(3) Clause (i) of section 49(c)(5)(B) of the 1986 Code is amended to read as follows:

"(i) In general.—The term 'regular investment credit' means the credit determined under section 46(a) to the extent attributable to the regular percentage."

(4) Paragraph (1) of section 211(e) of the Reform Act is amended by adding at the end thereof the following new sentence: "Section 49(c) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to taxable years ending after June 30, 1987, and to amounts carried to such taxable years."

(5) Paragraph (4)(A) of section 211(e) of the Reform Act is amended—

(A) by striking out "Paragraphs (c) and (d) of section 49 of the Internal Revenue Code of 1954" and inserting in lieu thereof "Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986", and

(B) by striking out "1935" and inserting in lieu thereof "1985".

(6) Paragraph (4)(B) of section 211(e) of the Reform Act is amended by striking out "shall be treated as transition property" and inserting in lieu thereof "shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property".

(7) Paragraph (4) of section 211(e) of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carryforward from 1985 was elected in an amount equal to $12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

"(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

"(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 12, 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

"(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed $40,000,000.

"(iii) Property placed in service during 1986 by Satellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed $1,950,000.

"(E) Subsections (c) and (d) of section 49 of such Code shall not apply to property described in section 204(a)(4) of this Act."

(8)(A) Subsection (d) of section 38 is amended to read as follows:

"(d) Ordering Rules.—For purposes of sections 46(f), 47(a), 196(a), and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carryback or carryforward—

"(1) In general.—The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

"(2) Components of investment credit.—The order in which credits attributable to a percentage referred to in section 46(a) are used shall be determined on the basis of the order in which such percentages are listed in section 46(a) as of the close of the taxable year in which the credit is used.

"(3) Credits no longer listed.—For purposes of this subsection—

"(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive programs) and the credit allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

"(B) the employee plan percentage (as defined in section 46(a)(2)(E), as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as referred to after section 46(a)(2)."

(B) Subparagraph (C) of section 49(c)(5) of the 1986 Code is hereby repealed.

(C) The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.

(f) Amendments Related to Section 212 of the Reform Act.—

(1) Paragraph (2) of section 212(f) of the Reform Act is amended by striking out so much of such paragraph as precedes subparagraph (A) and insert in lieu thereof the following:

"(2) Special rule.—In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—".

(2) Subclause (I) of section 212(f)(2)(B)(i) of the Reform Act is amended by striking out "such involvement begins" and inserting in lieu thereof "when the corporation receives the refund".

(3) Subsection (g) of section 212 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for restructuring.—In the case of any corporation, any restructuring shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring."

(4) Section 212 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(h) Tentative Refunds.—Rules similar to the rules of section 6425 of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of this section."

(5) Subparagraph (B) of section 212(g)(2) of the Reform Act is amended by striking out "determined under" and inserting in lieu thereof "determined for periods before January 1, 1986, under".

(6) Paragraph (2) of section 212(f) of the Reform Act is amended by adding at the end thereof the following new sentence:

"In the case of the corporation referred to in the preceding sentence, no offset to any refund under this section may be made by reason of any tax imposed by section 4971 of the Internal Revenue Code of 1986 (or any interest or penalty attributable to any such tax), and the date on which any such refund is to be paid shall be determined without regard to such corporation's status under title 11, United States Code."

(g) Amendment Related to Section 213 of the Reform Act.—Subparagraph (B) of section 213(e)(2) of the Reform Act is amended by striking out "determined under" and inserting in lieu thereof "determined for periods before January 1, 1986, under".

(h) Amendments Related to Section 231 of the Reform Act.—

(1) Subsection (g) of section 41 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39."

(2) Subsection (c) of section 6411 of the 1986 Code is amended by striking out "unused research credit,".

(3) Section 936(h)(5)(C)(i)(IV)(c) of the 1986 Code is amended—

(A) by striking out "section 30" and inserting in lieu thereof "section 41", and

(B) by striking out "section 30(f)" and inserting in lieu thereof "section 41(f)".

(i) AMENDMENT RELATED TO SECTIONS 241 AND 242 OF THE REFORM ACT.—Section 167 of the 1986 Code is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following new subsection:

"(r) CERTAIN PROPERTY NOT TREATED AS DEPRECIABLE.—

"(1) IN GENERAL.—No depreciation deduction shall be allowable under this section (and no depreciation or amortization deduction shall be allowable under any other provision of this subtitle) with respect to—

"(A) any trademark or trade name expenditure, or

"(B) any railroad grading or tunnel bore.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) TRADEMARK OR TRADE NAME EXPENDITURE.—The term 'trademark or trade name expenditure' means any expenditure which is directly connected with the acquisition, protection, expansion, registration (Federal, State, or foreign), or defense of a trademark or trade name.

"(B) RAILROAD GRADING OR TUNNEL BORES.—The term 'railroad grading or tunnel bore' means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track."

(j) AMENDMENTS RELATED TO SECTION 243 OF THE REFORM ACT.—

(1) Section 243 of the Reform Act (related to deduction of bus and freight forwarder operating authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 shall be a reference to such section as in effect before its repeal."

(2) The heading of subparagraph (A) of section 243(b)(2) of the Reform Act is amended by striking out "TO BEGIN IN 1987".

(k) AMENDMENTS RELATED TO SECTION 251 OF THE REFORM ACT.—

(1) Paragraph (2)(B) of section 251(d) of the Reform Act is amended by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(2) Subparagraph (P) of section 251(d)(3) of the Reform Act is amended by striking out "San Francisco" and inserting in lieu thereof "San Jose, California".

(3) Paragraph (4) of section 251(d) of the Reform Act is amended—

(A) by striking out "Lakeland marbel Arcade" in subparagraph (K) and inserting in lieu thereof "Marble Arcade office building",

(B) by striking out "and" at the end of subparagraph (Y), and

(C) by striking out subparagraph (Z) and inserting in lieu thereof the following:

"(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,

"(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the pier area on the Hudson River at the end of such 125th Street,

"(BB) the Bristol Carpet Mill project rehabilitating 2 buildings for approximately 156 apartment units and accompanying commercial and office use,

"(CC) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,

"(DD) the Warehouse Row project in Chattanooga, Tennessee,

"(EE) any project described in section 204(a)(1)(F) of this Act,

"(FF) the Wood Street Commons project in Pittsburgh, Pennsylvania,

"(GG) the John Fitch Court in Windsor, Connecticut,

"(HH) any project described in section 803(d)(6) of this Act,

"(II) Union Station, Indianapolis, Indiana,

"(JJ) the Mattress Factory project in Pittsburgh, Pennsylvania,

"(KK) Union Station in Providence, Rhode Island,

"(LL) South Pack Plaza, Asheville, North Carolina,

"(MM) Old Louisville Trust Project, Louisville, Kentucky,

"(NN) Stewarts Rehabilitation Project, Louisville, Kentucky,

"(OO) Bernheim Officenter, Louisville, Kentucky,

"(PP) Springville Mill Project, Rockville, Connecticut, and

"(QQ) the D.J. Stewart Company Building, State and Main Streets, Rockford, Illinois."

(4) Subsection (d) of section 251 of the Reform Act is amended by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) EXPENSING OF REHABILITATION EXPENSES FOR THE FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with improvements (including repairs and maintenance) of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures to be made during the period 1986 through and including 1993 shall—

"(A) be treated as made (and allowable as a deduction) during 1986,

"(B) be treated as qualified rehabilitation expenditures made during 1986, and

"(C) be allocated in accordance with the partnership agreement regardless of when the interest in the partnership was acquired, except that—

"(i) if the taxpayer is not the original holder of such interest, no person (other than the taxpayer) had claimed any benefits by reason of this paragraph,

"(ii) no interest under section 6611 of the 1986 Code on any refund of income taxes which is solely attributable to this paragraph shall be paid for the period—

"(I) beginning on the date which is 45 days after the later of April 15, 1987, or the date on which the return for such taxes was filed, and

"(II) ending on the date the taxpayer acquired the interest in the partnership, and

"(iii) if the expenditures to be made under this provision are not paid or incurred before January 1, 1994, then the tax imposed by chapter 1 of such Code for the taxpayer's last taxable year beginning in 1993 shall be increased by the amount of the tax benefits by reason of this paragraph which are attributable to the expenditures not so paid or incurred.

"(7) SPECIAL RULE.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 shall be applied by substituting '1987' for '1986'."

(5) Subparagraph (B) of section 251(d)(3) of the Reform Act is amended by striking out "Pontabla" and inserting in lieu thereof "Pontalba".

(6) Subparagraph (T) of section 251(d)(4) of the Reform Act is amended by striking out "Louisville" and inserting in lieu thereof "Covington".

(l) AMENDMENTS RELATED TO SECTION 252 OF THE REFORM ACT.—

(1)(A) Subparagraph (A) of section 42(b)(2) of the 1986 Code is amended by striking out "for the month" and all that follows and inserting in lieu thereof "for the earlier of—

"(i) the month in which such building is placed in service, or

"(ii) at the election of the taxpayer—

"(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

"(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable."

(B) Clause (ii) of section 42(b)(2)(C) of the 1986 Code is amended by striking out "the month in which the building was placed in service" and inserting in lieu thereof "the month applicable under clause (i) or (ii) of subparagraph (A)".

(2)(A) Subparagraph (A) of section 42(c)(2) of the 1986 Code (defining qualified low-income building) is amended to read as follows:

"(A) which is part of a qualified low-income housing project at all times during the period—

"(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

"(ii) ending on the last day of the compliance period with respect to such building, and".

(B) Paragraph (1) of section 42(f) of the 1986 Code (defining credit period) is amended by striking out "beginning with" and all that follows and inserting in lieu thereof "beginning with—

"(A) the taxable year in which the building is placed in service, or

"(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable."

(3) Clause (ii) of section 42(d)(2)(D) of the 1986 Code is amended to read as follows:

"(ii) SPECIAL RULES FOR CERTAIN TRANSFERS.—For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

"(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

"(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

"(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation, or

"(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure."

(4) Paragraph (3) of section 42(d) of the 1986 Code is amended to read as follows:

"(3) ELIGIBLE BASIS REDUCED WHERE DISPROPORTIONATE STANDARDS FOR UNITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

"(B) EXCEPTION WHERE TAXPAYER ELECTS TO EXCLUDE EXCESS COSTS.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

"(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

"(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

"(ii) EXCESS.—The excess described in this clause with respect to any unit is the excess of—

"(I) the cost of such unit, over

"(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs."

(5) Subparagraph (A) of section 42(d)(5) of the 1986 Code is amended by inserting before the period "(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))".

(6)(A) Paragraph (5) of section 42(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) ELIGIBLE BASIS NOT TO INCLUDE EXPENDITURES WHERE 167(k) ELECTED.—The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k)."

(B) Subparagraph (A) of section 42(d)(5) of the 1986 Code is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(7) Subparagraph (A) of section 42(d)(6) of the 1986 Code is amended by inserting "or" at the end of clause (i), by striking out ", or" at the end of clause (ii) and inserting in lieu thereof a period, and by striking out clause (iii).

(8) Clause (ii) of section 42(d)(6)(B) of the 1986 Code (defining federally assisted building) is amended by striking out "of 1934".

(9)(A) Paragraph (3) of section 42(f) of the 1986 Code is amended to read as follows:

"(3) DETERMINATION OF APPLICABLE PERCENTAGE WITH RESPECT TO INCREASES IN QUALIFIED BASIS AFTER 1ST YEAR OF CREDIT PERIOD.—

"(A) IN GENERAL.—In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

"(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

"(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to ⅔ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

"(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase."

(B) Paragraph (3) of section 42(b) of the 1986 Code is amended to read as follows:

"(3) CROSS REFERENCES.—

"(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

"(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

"(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(6)."

(10) Subparagraph (B) of section 42(g)(2) of the 1986 Code (defining gross rent) is amended by striking out "Federal rental assistance" and inserting in lieu thereof "rental assistance".

(11) Paragraph (2) of section 42(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) UNITS WHERE FEDERAL RENTAL ASSISTANCE IS REDUCED AS TENANT'S INCOME INCREASES.—If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

"(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

"(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

"(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

"(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made."

(12) Paragraph (3) of section 42(g) of the 1986 Code is amended to read as follows:

"(3) DATE FOR MEETING REQUIREMENTS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 12-month period beginning on the date the building is placed in service.

"(B) BUILDINGS WHICH RELY ON LATER BUILDINGS FOR QUALIFICATION.—

"(i) IN GENERAL.—In determining whether a building (hereinafter in this subparagraph referred to as the 'prior building') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

"(ii) TREATMENT OF ELECTED BUILDINGS.—In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

"(iii) DATE PRIOR BUILDING IS TREATED AS PLACED IN SERVICE.—For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

"(C) SPECIAL RULE.—A building—

"(i) other than the 1st building placed in service as part of a project, and

"(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service."

(13) Paragraph (4) of section 42(g) of the 1986 Code is amended by inserting before the period "; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection".

(14)(A) Paragraph (1) of section 42(h) of the 1986 Code is amended to read as follows:

"(1) CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.—

"(A) IN GENERAL.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

"(B) TIME FOR MAKING ALLOCATION.—Except in the case of an allocation which meets the requirements of subparagraph (C) or (D), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

"(C) EXCEPTION WHERE BINDING COMMITMENT.—An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

"(D) EXCEPTION WHERE INCREASE IN QUALIFIED BASIS.—

"(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

"(ii) LIMITATION.—The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

"(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

"(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

"(iii) HOUSING CREDIT DOLLAR AMOUNT REDUCED BY FULL ALLOCATION.—Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2)."

(B) Clause (ii) of section 42(h)(6)(B) of the 1986 Code is hereby repealed.

(15) Subparagraph (A) of section 42(h)(4) of the 1986 Code is amended by striking out "financed" and all that follows and inserting in lieu thereof "financed by any obligation the interest on which is exempt from tax under section 103 if—

"(i) such obligation is taken into account under section 146, and

"(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing."

(16) Paragraph (5) of section 42(h) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) TREATMENT OF CERTAIN SUBSIDIARIES.—

"(i) IN GENERAL.—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

"(ii) QUALIFIED CORPORATION.—For purposes of clause (ii), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence."

(17)(A) Subparagraph (B) of section 42(h)(6) of the 1986 Code is amended by adding after clause (i) the following new clause:

"(ii) CARRYFORWARD WHERE SECRETARY DETERMINES UNFORESEEN DELAY IN PLACING BUILDING IN SERVICE.—A housing credit dollar amount which was allocated to a building for a calendar year after 1987 may be carried forward to the succeeding calendar year for such building if—

"(I) it was reasonable to believe that such building would be placed in service during the earlier calendar year but was not solely because of unforeseen conditions which, as determined by the Secretary, were not within the control of the taxpayer, and

"(II) such building is placed in service during such succeeding calendar year."

(B) Clause (i) of section 42(h)(6)(B) of the 1986 Code is amended by striking out "The portion" and inserting in lieu thereof "Except as provided in clause (ii), the portion".

(18) Subparagraph (D) of section 42(h)(6) of the 1986 Code is amended to read as follows:

"(D) CREDIT REDUCED IF ALLOCATED CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT WHICH WOULD BE ALLOWABLE WITHOUT REGARD TO PLACED IN SERVICE CONVENTION, ETC.—

"(i) IN GENERAL.—The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

"(ii) DETERMINATION OF PERCENTAGE.—For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

"(I) the housing credit dollar amount allocated to such building bears to

"(II) the credit amount determined in accordance with clause (iii).

"(iii) DETERMINATION OF CREDIT AMOUNT.—The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

"(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

"(II) subsection (f)(3)(A) were applied without regard to 'the percentage equal to ⅔ of'."

(19) Paragraph (6) of section 42(h) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) HOUSING CREDIT AGENCY TO SPECIFY APPLICABLE PERCENTAGE AND MAXIMUM QUALIFIED BASIS.—In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection."

(20)(A) Subparagraph (A) of section 42(i)(2) of the 1986 Code is amended—

(i) by inserting "or any prior taxable year" after "such taxable year",

(ii) by striking out "there is outstanding" and inserting in lieu thereof "there is or was outstanding", and

(iii) by striking out "are used" and inserting in lieu thereof "are or were used".

(B) Subparagraph (B) of section 42(i)(2) of the 1986 Code is amended to read as follows:

"(B) ELECTION TO REDUCE ELIGIBLE BASIS BY BALANCE OF LOAN OR PROCEEDS OF OBLIGATIONS.—A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d)—

"(i) in the case of a loan, the principal amount of such loan, and

"(ii) in the case of a tax-exempt obligation, the proceeds of such obligation."

(C) Paragraph (2) of section 42(i) of the 1986 Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) SPECIAL RULE FOR SUBSIDIZED CONSTRUCTION FINANCING.—Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if—

"(i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

"(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service."

(D) Subparagraph (D) of section 42(i)(2) of the 1986 Code is amended by striking out "subparagraph (A)" and inserting in lieu thereof "this paragraph".

(21) Paragraph (4) of section 42(j) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) NO RECAPTURE WHERE DE MINIMIS CHANGES IN FLOOR SPACE.—The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

"(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

"(ii) the building is a qualified low-income building after such change."

(22) Clause (i) of section 42(j)(5)(B) of the 1986 Code is amended to read as follows:

"(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and".

(23) Paragraph (6) of section 42(j) of the 1986 Code is amended—

(A) by inserting "(OR INTEREST THEREIN)" after "BUILDING" in the heading, and

(B) by inserting "or an interest therein" after "disposition of a building" in the text.

(24) Subparagraph (B) of section 42(k)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: ", except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

"(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

"(ii) the proceeds from the financing (if any) are applied to acquire or improve such building."

(25)(A) Subsection (l) of section 42 of the 1986 Code is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) ANNUAL REPORTS TO THE SECRETARY.—The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

"(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

"(B) the information described in paragraph (1)(C) for the taxable year, and

"(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor."

(B) The subsection heading of subsection (l) of section 42 is amended to read as follows:

"(l) CERTIFICATIONS AND OTHER REPORTS TO SECRETARY.—".

(26) Paragraph (1) of section 42(n) of the 1986 Code is amended by inserting before the period at the end thereof the following: ", and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989".

(27) Subsection (d) of section 39 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) NO CARRYBACK OF LOW-INCOME HOUSING CREDIT BEFORE 1987.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 42 (relating to low-income housing credit) may be carried back to a taxable year ending before January 1, 1987."

(28) Paragraph (1) of section 55(c) of the 1986 Code (defining regular tax) is amended by striking out "section 42(j)" and inserting in lieu thereof "subsection (j) or (k) of section 42".

(29) Subparagraph (A) of section 252(f)(1) of the Reform Act is amended by striking out "and" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof a comma, and by inserting after clause (ii) the following new clauses:

"(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

"(iv) the amendments made by section 803 shall not apply."

(30) Subparagraph (E) of section 252(f)(1) of the Reform Act is amended by striking out "maximum annual additional credit" and inserting in lieu thereof "maximum present value of additional credits".

(31) Subparagraph (E) of section 252(f)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building."

(32) Subsection (f) of section 252 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

"(A) the amendments made by this section shall not apply, and

"(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150."

(33) Subsection (g) of section 42 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE WHERE DE MINIMIS EQUITY CONTRIBUTION.—Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

"(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

"(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted."

(m) AMENDMENTS RELATED TO SECTION 261 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 7518(g)(6) of the 1986 Code, is amended by striking out "section 1(i)" and inserting in lieu thereof "section 1(j)".

(2) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936 is amended by striking out "section 1(i)" and inserting in lieu thereof "section 1(j)".

SEC. 103. AMENDMENTS RELATED TO TITLE III OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 301 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 172(d)(4) of the 1986 Code is amended by striking out ", (2)(B),".

(2) Paragraph (1) of section 3402(m) of the 1986 Code is amended by striking out "section 62) (other than paragraph (13) thereof)" and inserting in lieu thereof "section 62(a) (other than paragraph (10) thereof))".

(b) AMENDMENTS RELATED TO SECTION 302 OF THE REFORM ACT.—

(1) Section 302 of the Reform Act is amended by striking out subsection (c).

(2)(A) Paragraph (2) of section 904(b) of the 1986 Code is amended to read as follows:

"(2) CAPITAL GAINS.—For purposes of this section—

"(A) IN GENERAL.—Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

"(B) SPECIAL RULES WHERE CAPITAL GAIN RATE DIFFERENTIAL.—In the case of any taxable year for which there is a capital gain rate differential—

"(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

"(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

"(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain."

(B) Paragraph (3) of section 904(b) of the 1986 Code is amended by striking out subparagraph (D) and inserting in lieu thereof the following new subparagraphs:

"(D) CAPITAL GAIN RATE DIFFERENTIAL.—There is a capital gain rate differential for any taxable year if—

"(i) in the case of a taxpayer other than a corporation, subsection (j) of section 1 applies to such taxable year, or

"(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831 (a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)).

"(E) RATE DIFFERENTIAL PORTION.—

"(i) IN GENERAL.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

"(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

"(II) the highest applicable tax rate.

"(ii) HIGHEST APPLICABLE TAX RATE.—For purposes of clause (i), the term 'highest applicable tax rate' means—

"(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

"(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

"(iii) ALTERNATIVE TAX RATE.—For purposes of clause (i), the term 'alternative tax rate' means—

"(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(j), or

"(II) in the case of a corporation, the alternative rate of tax under section 1201(a)."

(3) Effective for taxable years beginning after December 31, 1987, paragraph (1) of section 1445(e) of the 1986 Code is amended by striking out "34 percent" and inserting in lieu thereof "34 percent (or, to the extent provided in regulations, 28 percent)".

(c) AMENDMENTS RELATED TO SECTION 311 OF THE REFORM ACT.—

(1) Subsection (a) of section 1201 of the 1986 Code is amended by striking out "831(a)" and inserting in lieu thereof "831 (a) or (b)".

(2) Subsection (c) of section 311 of the Reform Act is amended by inserting before the period at the end thereof the following: "; except that the amendment made by subsection (b)(4) shall apply to payments made after December 31, 1986".

(3) Subparagraph (D) of section 593(b)(2) of the 1986 Code is amended by striking out "and" at the end of clause (iii), by striking out the period at the end of clause (iv) and inserting in lieu thereof ", and", and by adding at the end thereof the following new clause:

"(v) if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year, by excluding from gross income the rate differential portion (within the meaning of section 904(b)(3)(E)) of the lesser of—

"(I) the net long-term capital gain for the taxable year, or

"(II) the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii)."

(d) Amendment Related to Section 321 of the Reform Act.—

(1)(A) Subsection (b) of section 422A of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option."

(B) In the case of an option granted after December 31, 1986, and on or before the date of the enactment of this Act, such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option.

(2)(A) Section 422A of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) $100,000 Per Year Limitation.—

"(1) In general.—To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

"(2) Ordering rule.—Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

"(3) Determination of fair market value.—For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted."

(B) Subsection (b) of section 422A of the 1986 Code is amended by adding "and" at the end of paragraph (5), by striking out "; and" at the end of paragraph (6) and inserting in lieu thereof a period, and by striking out paragraph (7).

(C) Paragraph (1) of section 422A(c) of the 1986 Code is amended by striking out "paragraph (7) of subsection (b)" and inserting in lieu thereof "subsection (d)".

SEC. 104. AMENDMENTS RELATED TO TITLE IV OF THE REFORM ACT.

(a) Amendments Related to Section 405 of the Reform Act.—

(1) Paragraph (1) of section 108(a) of the 1986 Code is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by adding at the end thereof the following new subparagraph:

"(C) the indebtedness discharged is qualified farm indebtedness."

(2) Paragraph (2) of section 108(a) of the 1986 Code is amended to read as follows:

"(2) Coordination of exclusions.—

"(A) Title 11 exclusion takes precedence.—Subparagraphs (B) and (C) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

"(B) Insolvency exclusion takes precedence over qualified farm exclusion.—Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

(3) Subsection (b) of section 108 of the 1986 Code is amended—

(A) by striking out "subparagraph (A) or (B)" in paragraph (1) and inserting in lieu thereof "subparagraph (A), (B), or (C)", and

(B) by striking out "in Title 11 Case or Insolvency" in the subsection heading.

(4) Subsection (g) of section 108 of the 1986 Code is amended to read as follows:

"(g) Special Rules for Discharge of Qualified Farm Indebtedness.—

"(1) Discharge must be by qualified person.—

"(A) In general.—Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

"(B) Qualified person.—For purposes of subparagraph (A), the term 'qualified person' has the meaning given to such term by section 46(c)(8)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

"(2) Qualified farm indebtedness.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

"(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

"(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

"(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets.—

"(A) In general.—The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

"(i) the adjusted tax attributes of the taxpayer, and

"(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

"(B) Adjusted tax attributes.—For purposes of subparagraph (A), the term 'adjusted tax attributes' means the sum of the tax attributes described in subparagraphs (A), (B), (C), and (E) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B) and (E) of subsection (b)(2).

"(C) Qualified property.—For purposes of this paragraph, the term 'qualified property' means any property which is used or is held for use in a trade or business or for the production of income.

"(D) Coordination with insolvency exclusion.—For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B)."

(5) Paragraph (4) of section 1017(b) of the 1986 Code is amended to read as follows:

"(4) Special rules for qualified farm indebtedness.—

"(A) In general.—Any amount which under subsection (b)(2)(D) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

"(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

"(ii) shall be applied to reduce the basis of qualified property in the following order:

"(I) First the basis of qualified property which is depreciable property.

"(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

"(III) Then the basis of other qualified property.

"(B) Qualified property.—For purposes of this paragraph, the term 'qualified property' has the meaning given to such term by section 108(g)(3)(C).

"(C) Certain rules made applicable.—Rules similar to the rules of subparagraph (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g)."

(6)(A) Paragraphs (6) and (7) of section 108(d) of the 1986 Code are each amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsections (a), (b), and (g)".

(B) The subsection heading for section 108(d) of the 1986 Code is amended by striking out "Subsections (a), and (b)" and inserting in lieu thereof "Subsections (a), (b), and (g)".

(C) The headings for paragraphs (6) and (7)(A) of section 108(d) of the 1986 Code are each amended by striking out "Subsections (a) and (b)" and inserting in lieu thereof "Subsections (a), (b), and (g)".

(b) Amendment Related to Section 406 of the Reform Act.—Section 406 of the Reform Act is amended—

(1) by inserting "before October 1, 1987," after "from the sale", and

(2) by striking out "to the extent such gain" and all that follows down through the period at the end thereof and inserting in lieu thereof "to the extent such gain is properly taken into account under the taxpayer's method of accounting during 1987.".

(c) Amendment Related to Section 413 of the Reform Act.—Subsection (a) of section 1254 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Adjustment for amounts included in gross income under section 617(b)(1)(A).—The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A)."

SEC. 105. AMENDMENTS RELATED TO TITLE V OF THE REFORM ACT.

(a) Amendments Related to Section 501 of the Reform Act.—

(1) Clause (ii) of section 469(e)(1)(A) of the 1986 Code (relating to certain income not treated as income from passive activity) is amended by inserting "not derived in the ordinary course of a trade or business which is" after "gain or loss".

(2)(A) Subparagraph (A) of section 469(g)(1) of the 1986 Code (relating to disposition of interests in passive activities in fully taxable transactions) is amended to read as follows:

"(A) In general.—If all gain or loss realized on such disposition is recognized, the excess of—

"(i) the sum of—

"(I) any loss from such activity for such taxable year (determined after application of subsection (b)), plus

"(II) any loss realized on such disposition, over

"(ii) net income or gain for such taxable year from all passive activities (determined without regard to losses described in clause (i)),

shall be treated as a loss which is not from a passive activity."

(B) Subparagraph (C) of section 469(g)(1) of the 1986 Code is amended to read as follows:

"(C) Income from prior years.—To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section."

(3) Subparagraph (A) of section 469(g)(2) of the 1986 Code is amended—

(A) by striking out "paragraph (1)" and inserting in lieu thereof "paragraph (1)(A)"; and

(B) by striking out "such losses" the first place it appears and inserting in lieu thereof "losses described in paragraph (1)(A)".

(4) Section 469(g)(3) of the 1986 Code is amended—

(A) by striking out "realized (or to be realized)" and inserting in lieu thereof "(realized or to be realized", and

(B) by inserting a closing parenthesis after "completed".

(5) Paragraph (4) of section 469(h) of the 1986 Code (relating to certain closely held C corporations and personal service corporations) is amended by inserting "only" before "if".

(6) Paragraph (1) of section 469(i) of the 1986 Code (relating to $25,000 offset for rental real estate activities) is amended by striking out "in the taxable year in which such portion of such loss or credit arose" and inserting in lieu thereof "in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year)".

(7) Subparagraph (C) of section 469(i)(6) of the 1986 Code (relating to interest as a limited partner) is amended by striking out "No" and inserting in lieu thereof "Except as provided in regulations, no".

(8) Subparagraph (A) of section 469(j)(6) of the 1986 Code (relating to special rule for gifts) is amended by inserting "with respect to which a deduction has not been allowed by reason of subsection (a)" before ", and".

(9) Section 469(j) of the 1986 Code (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraphs:

"(10) COORDINATION WITH SECTION 280A.—If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

"(11) AGGREGATION OF MEMBERS OF AFFILIATED GROUPS.—Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation."

(10) Section 501(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(4) INCOME FROM SALES OF PASSIVE ACTIVITIES IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987.—If—

"(A) gain is recognized in a taxable year beginning after December 31, 1986, from a sale or exchange of an interest in an activity in a taxable year beginning before January 1, 1987, and

"(B) such gain would have been treated as gain from a passive activity had section 469 of the Internal Revenue Code of 1986 (as added by this section) been in effect for the taxable year in which the sale or exchange occurred and for all succeeding taxable years,

then such gain shall be treated as gain from a passive activity for purposes of such section."

(11) Subsection (j) of section 469 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(12) SPECIAL RULE FOR DISTRIBUTIONS BY ESTATES OR TRUSTS.—If any interest in a passive activity is distributed by an estate or trust—

"(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

"(B) such losses shall not be allowable as a deduction for any taxable year."

(12) Subsection (m) of section 469 of the 1986 Code, as redesignated by section 10211 of the Revenue Act of 1987, is amended by striking all that precedes subparagraph (B) of paragraph (3) thereof and inserting in lieu thereof the following:

"(m) PHASE-IN OF DISALLOWANCE OF LOSSES AND CREDITS FOR INTEREST HELD BEFORE DATE OF ENACTMENT.—

"(1) IN GENERAL.—In the case of any passive activity loss or passive activity credit for any taxable year beginning in calendar years 1987 through 1990, subsection (a) shall not apply to the applicable percentage of that portion of such loss (or such credit) which is attributable to pre-enactment interests.

"(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the applicable percentage shall be determined in accordance with the following table:

"In the case of taxable years beginning in:	The applicable percentage is:
1987	65
1988	40
1989	20
1990	10.

"(3) PORTION OF LOSS OR CREDIT ATTRIBUTABLE TO PRE-ENACTMENT INTERESTS.—For purposes of this subsection—

"(A) IN GENERAL.—The portion of the passive activity loss (or passive activity credit) for any taxable year which is attributable to preenactment interests is the lesser of—

"(i) the amount of the passive activity loss (or passive activity credit) which is disallowed for the taxable year under subsection (a) (without regard to this subsection), or

"(ii) the amount of the passive activity loss (or passive activity credit) which would be disallowed for the taxable year (without regard to this subsection and without regard to any amount allocable to an activity for the taxable year under subsection (b)) taking into account only pre-enactment interests."

(b) AMENDMENTS RELATED TO SECTION 502 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 502(d)(1) of the Reform Act (defining qualified investor) is amended to read as follows:

"(A) if—

"(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

"(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and".

(2) Subsection (d) of section 502 of the Reform Act (defining qualified investor) is amended by adding after paragraph (2) the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

"(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

"(B) which was not treated as a new partnership or as terminated at any time on or after the date on which such property was placed in service and through the close of the taxable year for which the determination is being made,

paragraph (1)(A)(i) shall be applied by substituting 'December 31, 1988' for 'August 16, 1986' the 2nd place it appears."

(3) The subsection (d) of section 502 of the Reform Act which relates to special rules is redesignated as subsection (e).

(c) AMENDMENTS RELATED TO SECTION 511 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 163(d)(3) of the 1986 Code (defining investment interest) is amended by striking out "incurred or continued to purchase or carry" and inserting in lieu thereof "properly allocable to".

(2) Subparagraph (B) of section 163(d)(4) of the 1986 Code is amended to read as follows:

"(B) INVESTMENT INCOME.—The term 'investment income' means the sum of—

"(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and

"(ii) any net gain attributable to the disposition of property held for investment."

(3) Subparagraph (A) of section 163(d)(6) of the 1986 Code is amended to read as follows:

"(A) IN GENERAL.—The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

"(i) the amount which would be disallowed under this subsection if—

"(I) paragraph (1) were applied by substituting 'the sum of the ceiling amount and the net investment income' for 'the net investment income', and

"(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

"(ii) the applicable percentage of the excess of—

"(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

"(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2)."

(4) Subparagraph (A) of section 163(h)(2) of the 1986 Code is amended by striking out "incurred or continued in connection with the conduct of" and inserting in lieu thereof "properly allocable to".

(5) Subparagraph (C) of section 163(h)(3) of the 1986 Code (defining qualified residence interest) is amended to read as follows:

"(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—

"(i) IN GENERAL.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

"(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

"(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(ii) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (i)(I), or

"(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing)."

(6)(A) The heading for section 163(h)(5) of the 1986 Code is amended to read as follows:

"(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—".

(B) Paragraph (5) of section 163(h) of the 1986 Code is amended—

(i) by striking out "For purposes of this subsection—" in subparagraph (A), and

(ii) by striking out "For purposes of this paragraph, any" in subparagraph (B) and inserting in lieu thereof "Any".

(7) Clause (iii) of section 163(h)(5)(A) of the 1986 Code is amended by striking out "USED OR" in the heading thereof and by striking out "or use".

(8) Section 163(h)(5) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

"(C) UNENFORCEABLE SECURITY INTERESTS.—Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

"(D) SPECIAL RULES FOR ESTATES AND TRUSTS.—For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust."

(9) Paragraph (6) of section 163(h) of the 1986 Code is amended by striking out "subsection" the 3rd place it appears and inserting in lieu thereof "paragraph".

(10) Paragraph (2)(A) of section 511(d) of the Reform Act is amended to read as follows:

"(2)(A) Sections 467(c)(5) and 1255(b)(2) are each amended by striking out '163(d),'."

(11) If—

(A) any amount was disallowed as a deduction under section 163(d) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Reform Act),

(B) such amount would (but for this paragraph) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986, and

(C) the taxpayer makes an election under this paragraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe,

to the extent such amount is attributable to an activity subject to the limitations of section 469 of the 1986 Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year. Subsection (m) of section 469 of the 1986 Code and section 501(c)(2) of the Reform Act shall not apply to any amount so treated.

(12) Subparagraph (E) of section 163(h)(2) of the 1986 Code is amended by inserting before the period' "or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)".

(13) For purposes of applying the amendments made by this subsection and the amendments made by section 10102 of the Revenue Act of 1987, the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.

(14)(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

(ii) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).

(15) Clause (i) of section 7872(d)(1)(E) of the 1986 Code is amended by striking out "section 163(d)(3)" and inserting in lieu thereof "section 163(d)(4)".

SEC. 106. AMENDMENTS RELATED TO TITLE VI OF THE REFORM ACT.

(a) AMENDMENT RELATED TO SECTION 601 OF THE REFORM ACT.—Section 15 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) REFERENCES TO HIGHEST RATE.—If the change referred to in subsection (a) involves a change in the highest rate of tax imposed by section 1 or 11(b), any reference in this chapter to such highest rate (other than in a provision imposing a tax by reference to such rate) shall be treated as a reference to the weighted average of the highest rates before and after the change determined on the basis of the respective portions of the taxable year before the date of the change and on or after the date of the change."

(b) AMENDMENTS RELATED TO SECTIONS 611 AND 612 OF THE REFORM ACT.—

(1) In the case of dividends received or accrued during 1987—

(A) subparagraph (B) of section 245(c)(1) of the 1986 Code shall be applied by substituting "80 percent" for the percentage specified therein, and

(B) subparagraph (B) of section 861(a)(2) of the 1986 Code shall be applied by substituting "$^{100}/_{80}$ths" for the fraction specified therein.

(2) Paragraph (3) of section 854(b) of the 1986 Code is amended to read as follows:

"(3) AGGREGATE DIVIDENDS.—For purposes of this subsection—

"(A) IN GENERAL.—In computing the amount of aggregate dividends received, there shall only be taken into account dividends received from domestic corporations.

"(B) DIVIDENDS.—For purposes of subparagraph (A), the term 'dividend' shall not include any distribution from—

"(i) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

"(ii) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

"(C) LIMITATIONS ON DIVIDENDS FROM REGULATED INVESTMENT COMPANIES.—In determining the amount of any dividend for purposes of this paragraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section."

(c) AMENDMENTS RELATED TO SECTION 614 OF THE REFORM ACT.—

(1) Section 1059(d) of the 1986 Code (relating to extension to certain property distributions) is amended by striking out paragraph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(2) Section 1059(d)(5) of the 1986 Code (defining dividend announcement date), as redesignated by paragraph (1), is amended by inserting "amount or" before "payment".

(3) Section 1059(d)(6) of the 1986 Code (relating to exception where stock held during entire existence of corporation), as redesignated by paragraph (1), is amended to read as follows:

"(6) EXCEPTION WHERE STOCK HELD DURING ENTIRE EXISTENCE OF CORPORATION.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

"(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and

"(ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

"(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any corporation (including a predecessor corporation)—

"(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

"(ii) which has no earnings and profits—

"(I) which were earned by, or

"(II) which are attributable to gain on property which accrued during a period the corporation holding the property was, a corporation not described in clause (i).

"(C) APPLICATION OF PARAGRAPH.—This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section."

(4) Paragraph (1) of section 1059(e) of the 1986 Code (relating to treatment of partial liquidation) is amended by striking out "for purposes of this section (without regard to the holding period of the stock)" and inserting in lieu thereof: "to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock".

(5) Paragraph (2) of section 1059(e) of the 1986 Code (relating to qualifying dividends) is amended to read as follows:

"(2) QUALIFYING DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in regulations, the term 'extraordinary dividend' does not include any qualifying dividend (within the meaning of section 243).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

"(i) were earned by a corporation during a period it was not a member of the affiliated group, or

"(ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group."

(6) Subparagraph (A) of section 1059(e)(3) of the 1986 Code (relating to qualified preferred dividends) is amended to read as follows:

"(A) IN GENERAL.—In the case of 1 or more qualified preferred dividends with respect to any share of stock—

"(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

"(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

"(I) the qualified preferred dividends paid with respect to such stock during the period the taxpayer held such stock, over

"(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return."

(7) Clause (i) of section 1059(e)(3)(C) of the 1986 Code is amended—

(A) by striking out "any dividend payable" and inserting in lieu thereof "any fixed dividend payable", and

(B) by adding at the end thereof the following new sentence:

"Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent."

(8) Subparagraph (B) of section 1059(e)(3) of the 1986 Code is amended—

(A) by striking out "subparagraph (A)" and the material preceding clause (i) and inserting in lieu thereof "this paragraph", and

(B) by striking out "subparagraph (B)(i)(II)" in clause (ii) and inserting in lieu thereof "clause (i)(II)".

(9) Subsection (f) of section 1059 of the 1986 Code is amended by inserting before the period at the end thereof the following: "and in the case of stock held by pass-thru entities".

(d) AMENDMENTS RELATED TO SECTION 621 OF THE REFORM ACT.—

(1)(A) Section 382(e)(2) of the 1986 Code is amended—

(i) by inserting "or other corporate contraction" after "redemption" each place it appears, and

(ii) by inserting "OR OTHER CORPORATE CONTRACTION" after "REDEMPTION" in the heading thereof.

(B) Clause (ii) of section 382(h)(3)(A) of the 1986 Code is amended—

(i) by inserting "or other corporate contraction" after "redemption" each place it appears, and

(ii) by inserting "OR OTHER CORPORATE CONTRACTIONS" after "REDEMPTIONS" in the heading thereof.

(C) Section 382(m) of the 1986 Code is amended by inserting "and" at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(D) The amendments made by this paragraph shall apply with respect to ownership changes after June 10, 1987.

(2) Section 382(g)(4)(C) of the 1986 Code is amended by inserting "rules similar to" before "the rules".

(3)(A) Section 382(h)(1)(C) of the 1986 Code is amended to read as follows:

"(C) SPECIAL RULES FOR CERTAIN SECTION 338 GAINS.—If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

"(i) the recognized built-in gains by reason of such election, or

"(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B))."

(B) Paragraph (5) of section 382(h) of the 1986 Code is amended by striking out "recognized built-in gains and losses" and inserting in lieu thereof "recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)".

(4) Section 382(i)(3) of the 1986 Code is amended—

(A) by inserting "the earlier of" before "the 1st day", and

(B) by inserting "or the taxable year in which the transaction being tested occurs" after "1st post-change year".

(5)(A) Section 382(k)(1) of the 1986 Code is amended by inserting "or having a net operating loss for the taxable year in which the ownership change occurs" after "carryover".

(B) Section 382(k)(2) of the 1986 Code is amended to read as follows:

"(2) OLD LOSS CORPORATION.—The term 'old loss corporation' means any corporation—

"(A) with respect to which there is an ownership change, and

"(B) which (before the ownership change) was a loss corporation."

(6) Section 382(l)(3)(A) of the 1986 Code is amended by striking out "and" at the end of clause (iii), and by striking out clause (iv) and inserting in lieu thereof the following new clauses:

"(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

"(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

"(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

"(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I)."

(7) Clause (ii) of section 382(l)(5)(A) of the 1986 Code is amended by striking out "immediately after such ownership change" and inserting in lieu thereof "after such ownership change and as a result of being shareholders or creditors immediately before such change".

(8) Section 382(l)(5)(F) of the 1986 Code is amended—

(A) by inserting "'1504(a)(2)(B)' for '1504(a)(2)' and" after "substituting" in clause (i)(I), and

(B) by striking out "deposits described in subclause (II)" in clause (ii)(III) and inserting in lieu thereof "the amount of deposits in the new loss corporation immediately after the change".

(9) Paragraph (6) of section 382(l) of the 1986 Code is amended by striking out "shall be the value of the new loss corporation immediately after the ownership change" and inserting in lieu thereof "shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction".

(10) Section 382(l) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) PREDECESSOR AND SUCCESSOR ENTITIES.—Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity."

(11) Paragraph (1) of section 621(f) of the Reform Act is amended to read as follows:

"(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), and (c).—

"(A) IN GENERAL.—

"(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) shall apply to any ownership change after December 31, 1986.

"(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

"(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

"(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976) shall not apply to any increase in percentage points occurring after December 31, 1988, and

"(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382 (a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

"(C) COORDINATION WITH SECTION 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted."

(12)(A) Section 621(f)(2)(C) of the Reform Act is amended by inserting "and reincorporated in Delaware in 1987," after "1924,".

(B) Clause (ii) of section 621(f)(2)(C) of the Reform Act is amended to read as follows:

"(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring."

(13) Subparagraph (D) of section 621(f)(2) of the Reform Act is amended by striking out "or reorganization".

(14) Section 621(f)(3) of the Reform Act is amended by striking out "after December 31, 1986".

(15) Paragraph (4) of section 621(f) of the Reform Act is amended by striking out the

last sentence and inserting in lieu thereof the following:

"Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering)."

(16) Subparagraph (A) of section 621(f)(7) of the Reform Act is amended by striking out "the parent corporation referred to in section 203(d)(13)(B)" and inserting in lieu thereof "a parent corporation incorporated in March 1980 under the laws of Delaware".

(17)(A) Subsection (e) of section 382 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF FOREIGN CORPORATIONS.—Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States."

(B) The amendment made by subparagraph (A) shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.

(18) Subparagraph (C) of section 382(l)(5) of the 1986 Code is amended to read as follows:

"(C) REDUCTION OF TAX ATTRIBUTES WHERE DISCHARGE OF INDEBTEDNESS.—

"(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

"(ii) CLARIFICATION WITH SUBPARAGRAPH (B).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B)."

(19) Subparagraph (E) of section 382(l)(5) of the 1986 Code is amended by striking out so much of such subparagraph as precedes clause (i) thereof and inserting in lieu thereof the following:

"(E) ONLY CERTAIN STOCK TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—".

(20) Paragraph (4) of section 382(h) of the 1986 Code is amended—

(A) by inserting before the comma at the end of subparagraph (A) the following: "(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)", and

(B) by striking out "TREATED AS A NET OPERATING LOSS" in the paragraph heading and inserting in lieu thereof "ALLOWED AS A CARRYFORWARD".

(21) Paragraph (1) of section 382(g) of the 1986 Code is amended—

(A) by striking out "new loss corporation" and inserting in lieu thereof "loss corporation", and

(B) by striking out "old loss corporation" and inserting in lieu thereof "loss corporation".

(22) Paragraph (6) of section 382(h) of the 1986 Code is amended to read as follows:

"(6) TREATMENT OF CERTAIN BUILT-IN ITEMS.—

"(A) INCOME ITEMS.—Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

"(B) DEDUCTION ITEMS.—Any amount which is allowable as a deduction during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

"(C) ADJUSTMENTS.—The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts treated as recognized built-in gains or losses under this paragraph."

(23) Paragraph (9) of section 382(h) of the 1986 Code is amended by striking out "is transferred" and inserting in lieu thereof "was acquired (or is subsequently transferred)".

(24) Subsection (m) of section 382 of the 1986 Code (as amended by paragraph (1)) is amended by striking out "and" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and by adding at the end thereof the following:

"(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting '50 percent' for '80 percent' each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once."

(25) Clause (ii) of section 382(l)(5)(A) of the 1986 Code is amended by striking out "stock of controlling corporation" and inserting in lieu thereof "stock of a controlling corporation".

(26) Clause (ii) of section 382(h)(3)(B) of the 1986 Code is amended by striking out "there shall not" and inserting in lieu thereof "except as provided in regulations, there shall not".

(27) Subparagraph (B) of section 382(1)(5) of the 1986 Code is amended by striking out "the net operating loss deduction under section 172(a) for any post-change year shall be determined" and inserting in lieu thereof "the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed".

(28)(A) Clause (ii) of section 382(h)(3)(A) of the 1986 Code is amended by striking out "determinations under clause (i)" and inserting in lieu thereof "to the extent provided in regulations, determinations under clause (i)".

(B) The amendment made by subparagraph (A) shall apply in the case of ownership changes on or after June 21, 1988.

(29) Subclause (I) of section 382(1)(5)(F)(iii) of the 1986 Code is amended by striking out "section 368(a)(D)(ii)" and inserting in lieu thereof "section 368(a)(3)(D)(ii)".

(e) AMENDMENTS RELATED TO SECTION 631 OF THE REFORM ACT.—

(1) Clause (ii) of section 336(d)(2)(B) of the 1986 Code is amended to read as follows:

"(ii) CERTAIN ACQUISITIONS TREATED AS PART OF PLAN.—For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II)."

(2) Paragraph (3) of section 336(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution."

(3) Subsection (e) of section 336 of the 1986 Code is amended by striking out "such corporation may elect" and inserting in lieu thereof "an election may be made".

(4) Subparagraph (B) of section 337(b)(2) of the 1986 Code is amended—

(A) by striking out "or 511(b)(2)" in clause (i),

(B) by striking out "in an unrelated trade or business (as defined in section 513)" in clause (i) and inserting in lieu thereof "in an activity the income from which is subject to tax under section 511(a)", and

(C) by striking out "an unrelated trade or business of such organization" in clause (ii) and inserting in lieu thereof "an activity referred to in clause (i)".

(5) Subsection (d) of section 337 of the 1986 Code is amended—

(A) by striking out "made to this subpart by the Tax Reform Act of 1986" and inserting in lieu thereof "made by subtitle D of title VI of the Tax Reform Act of 1986", and

(B) by inserting "or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity" after "subchapter)" in paragraph (1).

(6) Subsection (b) of section 334 of the 1986 Code is amended to read as follows:

"(b) LIQUIDATION OF SUBSIDIARY.—

"(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332(a) applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.

"(2) CORPORATE DISTRIBUTEE.—For purposes of this subsection, the term 'corporate distributee' means only the corporation which meets the stock ownership requirements specified in section 332(b)."

(7)(A) Subparagraph (B) of section 453(h)(1) of the 1986 Code is amended by striking out "to one person" and inserting in lieu thereof "to 1 person in 1 transaction".

(B) Subparagraph (E) of section 453(h)(1) of the 1986 Code is amended by striking out "section 368(c)(1)" and inserting in lieu thereof "section 368(c)".

(8)(A) Part VII of subchapter C of chapter 1 of the 1986 Code is hereby repealed.

(B) Subsection (b) of section 311 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS OF PARTNERSHIP OR TRUST INTERESTS.—If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution."

(C) The table of parts for subchapter C of chapter 1 of the 1986 Code is amended by striking out the item relating to part VII.

(9) Paragraph (1) of section 267(a) of the 1986 Code is amended—

(A) by striking out "(other than a loss in case of a distribution in corporate liquidation)", and

(B) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation."

(10) Paragraph (1) of section 301(b) of the 1986 Code is amended to read as follows:

"(1) GENERAL RULE.—For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received."

(11) Subsection (d) of section 301 of the 1986 Code is amended to read as follows:

"(d) BASIS.—The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property."

(12) Section 301 of the 1986 Code is amended by striking out subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(13)(A) Subsection (a) of section 367 of the 1986 Code is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) PARAGRAPHS (2) AND (3) NOT TO APPLY TO CERTAIN SECTION 361 TRANSACTIONS.—Paragraphs (2) and (3) shall not apply in the case of an exchange described in section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation."

(B) The amendment made by subparagraph (A) shall apply to exchanges on or after June 11, 1987.

(C) Section 367(e)(2) of the 1986 Code (as amended by the Reform Act) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.

(14)(A) Subsection (d) of section 1248 of the 1986 Code is amended by striking out paragraph (2).

(B) Subparagraph (B) of section 1248(f)(1) of the 1986 Code is amended to read as follows:

"(B) such domestic corporation distributes stock of such foreign corporation in a distribution to which section 311(a), 337, or 361(c)(1) applies,".

(C) Paragraph (1) of section 1248(f) of the 1986 Code is amended by striking out "distribution, sale, or exchange" in the last sentence and inserting in lieu thereof "distribution".

(D) Subsection (f) of section 1248 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(E) The subsection heading for section 1248(f) of the 1986 Code is amended by striking out "SECTION 311, 336, OR 337 TRANSACTIONS" and inserting in lieu thereof "NONRECOGNITION TRANSACTIONS".

(15) Paragraph (1) of section 995(c) of the 1986 Code is amended by inserting "or" at the end of subparagraph (A), by striking out ", or" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C) and the sentence following subparagraph (C).

(16) Subsection (d) of section 245 of the 1986 Code is hereby repealed.

(17) Paragraph (14) of section 1223 of the 1986 Code is amended to read as follows:

"(14) CROSS REFERENCE.—

"For special holding period provision relating to certain partnership distributions, see section 735(b)."

(18) Clause (ii) of section 341(e)(1)(C) of the 1986 Code is amended—

(A) by striking out "sale or exchange" the first place it appears and inserting in lieu thereof "liquidating sale or exchange", and

(B) by striking out ", gain or loss on which was not recognized to such other corporation under section 337(a),".

(19) Subsection (l) of section 897 of the 1986 Code is hereby repealed.

(20) Paragraph (7) of section 338(h) of the 1986 Code is hereby repealed.

(21)(A) The heading of subsection (b) of section 336 of the 1986 Code is amended by striking out "IN EXCESS OF BASIS".

(B) The heading of paragraph (2) of section 311(b) of the 1986 Code is amended by striking out "IN EXCESS OF BASIS".

(22) Section 453B of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(h) CERTAIN LIQUIDATING DISTRIBUTIONS BY S CORPORATIONS.—If—

"(1) an installment obligation is distributed by an S corporation in a complete liquidation, and

"(2) receipt of the obligation is not treated as payment for the stock by reason of section 453(h)(1),

then, except for purposes of any tax imposed by subchapter S, no gain or loss with respect to the distribution of the obligation shall be recognized by the distributing corporation. Under regulations prescribed by the Secretary, the character of the gain or loss to the shareholder shall be determined in accordance with the principles of section 1366(b)."

(f) AMENDMENTS RELATED TO SECTION 632 OF THE REFORM ACT.—

(1) Subsection (a) of section 1374 of the 1986 Code is amended by striking out "a recognized built-in gain" and inserting in lieu thereof "a net recognized built-in gain".

(2) Subsection (b) of section 1374 of the 1986 Code is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

"(2) NET OPERATING LOSS CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation."

(3) Subparagraph (B) of section 1374(b)(4) of the 1986 Code is amended to read as follows:

"(B) the amount of the net recognized built-in gain shall be treated as the taxable income."

(4) Paragraph (2) of section 1374(c) of the 1986 Code is amended by striking out "recognized built-in gains" each place it appears and inserting in lieu thereof "net recognized built-in gain".

(5)(A) Section 1374 of the 1986 Code is amended by striking out all that follows paragraph (1) of subsection (d) and inserting in lieu thereof the following:

"(2) NET RECOGNIZED BUILT-IN GAIN.—The term 'net recognized built-in gain' means, with respect to any taxable year in the recognition period, the amount which would be the taxable income of the S corporation for such taxable year if (except as provided in subsection (b)(2)) only recognized built-in gains and recognized built-in losses were taken into account. If the S corporation is treated as an S corporation by reason of an election made before March 31, 1988, the net recognized built-in gain for any taxable year shall not exceed such corporation's taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

"(3) RECOGNIZED BUILT-IN GAIN.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

"(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

"(B) such gain exceeds the excess (if any) of—

"(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

"(ii) the adjusted basis of the asset as of such time.

"(4) RECOGNIZED BUILT-IN LOSSES.—The term 'recognized built-in loss' means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

"(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

"(B) such loss does not exceed the excess of—

"(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

"(ii) the fair market value of such asset as of such time.

"(5) TREATMENT OF CERTAIN BUILT-IN ITEMS.—

"(A) INCOME ITEMS.—Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain

for the taxable year in which it is properly taken into account.

"(B) Deduction items.—Any amount which is allowable as a deduction during the recognition period but which is attributable to periods before the 1st taxable year referred to in subparagraph (A) shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

"(C) Adjustment to net unrealized built-in gain.—The amount of the net unrealized built-in gain shall be properly adjusted for amounts treated as recognized built-in gains or losses under this paragraph.

"(6) Treatment of certain property.—If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3)—

"(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

"(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

"(7) Recognition period.—The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

"(8) Treatment of transfer of assets from C corporation to S corporation.—

"(A) In general.—Except to the extent provided in regulations, if—

"(i) an S corporation acquires any asset, and

"(ii) the S corporation's basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation,

then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

"(B) Modifications.—For purposes of this paragraph, the modifications of this subparagraph are as follows:

"(i) In general.—The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

"(ii) Subsection (c)(1) not to apply.—Subsection (c)(1) shall not apply.

"(9) Reference to 1st taxable year.—Any reference in this section to the 1st taxable year for which the corporation was an S corporation shall be treated as a reference to the 1st taxable year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations."

(B) Subparagraph (B) of section 1375(b)(1) of the 1986 Code is amended to read as follows:

"(B) Limitation.—The amount of the excess net passive income for any taxable year shall not exceed the amount of the corporation's taxable income for such taxable year as determined under section 63(a)—

"(i) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

"(ii) without regard to the deduction under section 172."

(C) Subsection (b) of section 1375 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Coordination with section 1374.—Notwithstanding paragraph (3), the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374."

(D) Subsection (c) of section 1375 of the 1986 Code is amended to read as follows:

"(c) Credits Not Allowable.—No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a)."

(E) Paragraph (2) of section 1366(f) of the 1986 Code is amended by striking out "as defined in section 1374(d)(2)" and inserting in lieu thereof "within the meaning of section 1374".

(6) Paragraph (3) of section 1362(d) of the 1986 Code is amended—

(A) by striking out clause (v) of subparagraph (D), and

(B) by adding at the end thereof the following new subparagraph:

"(E) Special rule for options and commodity dealings.—

"(i) In general.—In the case of any options dealer or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

"(ii) Definitions.—For purposes of this subparagraph—

"(I) Options dealer.—The term 'options dealer' has the meaning given such term by section 1256(g)(8).

"(II) Commodities dealer.—The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(III) Section 1256 contract.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b)."

(7) The subsection (d) of section 1363 of the 1986 Code which relates to distributions of appreciated property, and subsection (e) of section 1363 of the 1986 Code, are hereby repealed.

(g) Amendments Related to Section 633 of the Reform Act.—

(1) Subsection (b) of section 633 of the Reform Act is amended to read as follows:

"(b) Built-In Gains of S Corporations.—

"(1) In general.—The amendments made by section 632 (other than subsection (b) thereof) shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

"(2) Application of prior law.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act) shall be applied as if it read as follows:

" '(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or' ".

(2) Subparagraph (B) of section 633(c)(1) of the Reform Act is amended by striking out "50 percent or more" and inserting in lieu thereof "more than 50 percent".

(3) Paragraph (1) of section 633(d) of the Reform Act is amended—

(A) by striking out "this section" and inserting in lieu thereof "this subtitle",

(B) by striking out "would be recognized" and inserting in lieu thereof "would be recognized by the liquidating corporation", and

(C) by adding at the end thereof the following new sentence: "Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall continue to apply to any complete liquidation described in the preceding sentence.".

(4) Subparagraph (C) of section 633(d)(2) of the Reform Act is amended to read as follows:

"(C) any gain on an asset acquired by the qualified corporation if—

"(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

"(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection."

(5)(A) Subparagraph (A) of section 633(d)(5) of the Reform Act is amended by striking out "10 or fewer qualified persons" and inserting in lieu thereof "a qualified group".

(B) Paragraph (6) of section 633(d) of the Reform Act is amended to read as follows:

"(6) Definitions and special rules.—For purposes of this subsection—

"(A) Qualified group.—

"(i) In general.—Except as provided in clause (ii), the term 'qualified group' means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

"(ii) 5-year ownership requirement not to apply in certain cases.—In the case of—

"(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

"(II) any distribution not in liquidation made before March 31, 1988,

"(III) an election to be an S corporation filed before March 31, 1988, or

"(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term 'qualified group' means any group of 10 or fewer qualified persons.

"(B) Qualified person.—The term 'qualified person' means—

"(i) an individual,

"(ii) an estate, or

"(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

"(C) ATTRIBUTION RULES.—

"(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii), or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

"(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

"(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

"(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act)."

(6) Subsection (d) of section 633 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated."

(7) Paragraph (8) of the section 633(d) of the Reform Act is amended by striking out "becomes an S corporation for a taxable year beginning before January 1, 1989" and inserting in lieu thereof "makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated".

(8) Section 633 of the Reform Act is amended by redesignating the subsections following the first subsection (d) as subsections (e), (f), and (g), respectively.

(9) Subsection (f)(2) of section 633 of the Reform Act (as so redesignated) is amended by striking out "May 9, 1929" and inserting in lieu thereof "May 9, 1929 (or any direct or indirect subsidiary of such corporation)".

(10) Paragraph (3) of section 633(f) of the Reform Act (as so redesignated) is amended by striking out "of such Code)" in the last sentence thereof and inserting in lieu thereof "of such Code".

(11) Subclause (I) of section 633(f)(4)(A)(i) of the Reform Act (as so redesignated) is amended by striking out "binding on the selling corporation to sell substantially all its assets" and inserting in lieu thereof "to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976,".

(12) Subparagraph (A) of section 633(f)(5) of the Reform Act (as so redesignated) is amended to read as follows:

"(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

"(i) employees or retirees of such corporation, or

"(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and".

(h) AMENDMENTS RELATED TO SECTION 641 OF THE REFORM ACT.—

(1) Paragraph (3) of section 1060(b) of the 1986 Code is amended by striking out "the Secretary may find necessary" and inserting in lieu thereof "the Secretary deems necessary".

(2) Section 1060 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) TREATMENT OF CERTAIN PARTNERSHIP TRANSACTIONS.—In the case of a distribution of partnership property or a transfer of an interest in a partnership—

"(1) the rules of subsection (a) shall apply but only for purposes of determining the value of goodwill or going concern value (or similar items) for purposes of applying section 755, and

"(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b)."

(3)(A) Subparagraph (B) of section 6724(d)(1) of the 1986 Code (defining information return) is amended by striking out "or" at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(xi) section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions)."

(B) Section 1060 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) CROSS REFERENCE.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6721."

(i) AMENDMENTS RELATED TO SECTION 642 OF THE REFORM ACT.—

(1) Paragraph (1) of section 453(g) of the 1986 Code is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) subsection (a) shall not apply,

"(B) for purposes of this title—

"(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

"(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

"(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller."

(2)(A) Section 453(g) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) RELATED PERSONS.—For purposes of this subsection, the term 'related persons' has the meaning given to such term by section 1239(b), except that such term shall include 2 or more partnerships having a relationship to each other described in section 707(b)(1)(B)."

(B) Section 453(g)(1) of the 1986 Code is amended by striking out "(within the meaning of section 1239(b))".

(3) The heading of paragraph (2) of section 642(c) of the Reform Act is amended by striking out "TRADITIONAL" and inserting in lieu thereof "TRANSITIONAL".

(j) AMENDMENTS RELATED TO SECTION 643 OF THE REFORM ACT.—

(1)(A) Subsection (e) of section 171 of the 1986 Code is amended to read as follows:

"(e) TREATMENT AS OFFSET TO INTEREST PAYMENTS.—Except as provided in regulations, in the case of any taxable bond—

"(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

"(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term 'taxable bond' means any bond the interest of which is not excludable from gross income."

(B) Paragraph (5) of section 1016(a) of the 1986 Code is amended by striking out "allowable pursuant to section 171(a)(1)" and inserting in lieu thereof "allowable pursuant to section 171(a)(1) (or the amount applied to reduce interest payments under section 171(e)(2))".

(C) The amendments made by this paragraph shall apply in the case of obligations acquired after December 31, 1987; except that the taxpayer may elect to have such amendment apply to obligations acquired after October 22, 1986.

(2) Paragraph (2) of section 643(b) of the Reform Act is amended by striking out "issued after" and inserting in lieu thereof "acquired after".

(k) AMENDMENTS RELATED TO SECTION 646 OF THE REFORM ACT.—

(1) Paragraph (2) of section 646(b) of the Reform Act is amended to read as follows:

"(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and".

(2) Paragraph (3) of section 646(b) of the Reform Act is amended by inserting "as of October 22, 1986," after "publicly traded".

(3) Subparagraph (A) of section 646(c)(1) of the Reform Act is amended by inserting "before January 1, 1991" after "entity".

(4) Paragraph (2) of section 646(c) of the Reform Act is amended to read as follows:

"(2) AGREEMENT.—

"(A) IN GENERAL.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

"(B) PERMISSIBLE ACQUISITIONS.—Property is described in this paragraph if it is—

"(i) surface rights to property the acquisition of which—

"(I) is necessary to mine mineral rights held on October 22, 1986, and

"(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

"(ii) surface rights to property which are not described in clause (i) and which—

"(I) are acquired in an exchange to which section 1031 applies, and

"(II) are necessary to mine mineral rights held on October 22, 1986,

"(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

"(iv) part of any required reserves of the entity."

(5) Paragraph (1) of section 646(d) of the Reform Act is amended by striking out subparagraph (B) and inserting in lieu thereof:

"(B) for purposes of section 333 of such Code (as so in effect)—

"(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

"(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title and section 1804 of this Act shall not apply to any liquidation under this paragraph."

(6)(A) Paragraph (2) of section 646(d) of the Reform Act is amended to read as follows:

"(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years."

(B) Paragraph (3) of section 646(c) of the Reform Act is amended to read as follows:

"(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act and following the taxable year in which the election is made."

(7)(A) Subsection (e) of section 646 of the Reform Act is amended to read as follows:

"(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

"(1) a reversionary interest shall not be taken into account until it comes into possession, and

"(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation."

(B) Section 646(d)(3) of the Reform Act is amended by striking out "or by reason of subsection (e)".

(l) AMENDMENTS RELATED TO SECTION 651 OF THE REFORM ACT.—

(1)(A) Paragraph (6) of section 852(b) of the 1986 Code (as added by section 651(b)(1)(A) of the Reform Act) is redesignated as paragraph (7).

(B) Subsection (b) of section 855 of the 1986 Code is amended by striking out "section 852(b)(6)" and inserting in lieu thereof "section 852(b)(7)".

(2) Paragraph (2) of section 4982(e) of the 1986 Code is amended to read as follows:

"(2) CAPITAL GAIN NET INCOME.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'capital gain net income' has the meaning given such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).

"(B) REDUCTION BY NET ORDINARY LOSS FOR CALENDAR YEAR.—The amount determined under subparagraph (A) shall be reduced (but not below the net capital gain) by the amount of the company's net ordinary loss for the calendar year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) NET CAPITAL GAIN.—The term 'net capital gain' has the meaning given such term by section 1222(11) (determined by treating the 1-year period ending on October 31 of the calendar year as the company's taxable year).

"(ii) NET ORDINARY LOSS.—The net ordinary loss for the calendar year is the amount which would be the net operating loss of the company for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1)."

(3) Paragraph (2) of section 852(c) of the 1986 Code is amended to read as follows:

"(2) COORDINATION WITH TAX ON UNDISTRIBUTED INCOME.—For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss (or net foreign currency loss) attributable to transactions after October 31 of such year and with such other adjustments as the Secretary may by regulations prescribe. The preceding sentence shall apply—

"(A) only to the extent that the amount distributed by the company with respect to the calendar year does not exceed the required distribution for such calendar year (as determined under section 4982 by substituting '100 percent' for each percentage set forth in section 4982(b)(1)), and

"(B) except as provided in regulations, only if an election under section 4982(e)(4) is not in effect with respect to such company."

(4) Subparagraph (C) of section 852(b)(3) of the 1986 Code is amended—

(A) by striking out "net capital loss" each place it appears in the 3rd sentence and inserting in lieu thereof "net capital loss or net long-term capital loss", and

(B) by striking out "regulated investment company taxable income" in the last sentence and inserting in lieu thereof "the taxable income of the regulated investment company".

(5) Subsection (e) of section 4982 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF FOREIGN CURRENCY GAINS AND LOSSES AFTER OCTOBER 31 OF CALENDAR YEAR.—Any foreign currency gain or loss which is attributable to a section 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 shall not be taken into account in determining the amount of the ordinary income of the regulated investment company for such calendar year but shall be taken into account in determining the ordinary income of the investment company for the following calendar year. In the case of any company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31."

(6) Section 4982 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) EXCEPTION FOR CERTAIN REGULATED INVESTMENT COMPANIES.—This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was either—

"(1) a trust described in section 401(a) and exempt from tax under section 501(a), or

"(2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d)).

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding $250,000) made in connection with the organization of such company shall not be taken into account."

(7) Subsection (b) of section 852 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL RULE FOR TREATMENT OF CERTAIN FOREIGN CURRENCY LOSSES.—To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net foreign currency loss attributable to transactions after October 31 of such year, and any such net foreign currency loss shall be treated as arising on the 1st day of the following taxable year."

(8) Subsection (a) of section 852 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982."

(9) Effective with respect to dividends declared in 1988 and subsequent calendar years, paragraph (7) of section 852(b) of the 1986 Code (as redesignated by paragraph (1)) is amended—

(A) by striking out "in December" and inserting in lieu thereof "in October, November, or December",

(B) by striking out "in such month" and inserting in lieu thereof "in such a month",

(C) by striking out "on such date" in subparagraphs (A) and (B) and inserting in lieu thereof "on December 31 of such calendar year", and

(D) by striking out "before February 1" and inserting in lieu thereof "during January".

(10) Paragraph (1) of section 852(e) of the 1986 Code is amended by striking out "subsection (a)(3)" and inserting in lieu thereof "subsection (a)(2)".

(m) AMENDMENTS RELATED TO SECTION 652 OF THE REFORM ACT.—

(1) Paragraph (1) of section 851(a) of the 1986 Code is amended to read as follows:

"(1) which, at all times during the taxable year—

"(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2) as a management company or unit investment trust, or

"(B) has in effect an election under such Act to be treated as a business development company, or".

(2) Paragraph (1) of section 851(e) of the 1986 Code is amended by striking out "a registered management company or registered business development company" and inserting in lieu thereof "a management company or a business development company described in subsection (a)(1)".

(n) AMENDMENTS RELATED TO SECTION 653 OF THE REFORM ACT.—

(1) Subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Income derived from a partnership or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust."

(2)(A) Paragraph (3) of section 851(b) of the 1986 Code is amended to read as follows:

"(3) less than 30 percent of its gross income is derived from the sale or disposition of any of the following which was held for less than 3 months:

"(A) stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

"(B) options, futures, or forward contracts (other than options, futures, or forward contracts on foreign currencies), or

"(C) foreign currencies (or options, futures, or forward contracts on foreign currencies) but only if such currencies (or options, futures, or forward contracts) are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stocks or securities), and".

(B) Subsection (b) of section 851 of the 1986 Code is amended by striking out "which are not ancillary" in the material following paragraph (4), and inserting in lieu thereof "which are not directly related".

(C) Subparagraph (C) of section 851(b)(3) of the 1986 Code (as amended by subparagraph (A)), and the amendment made by subparagraph (B), shall apply to taxable years beginning after the date of the enactment of this Act.

(4) Clause (i) of section 851(g)(2)(A) of the 1986 Code (defining designated hedge) is amended by striking out "contractual option" and inserting in lieu thereof "contractual obligation".

(5) Subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

(o) AMENDMENTS RELATED TO SECTION 654 OF THE REFORM ACT.—Subsection (q) of section 851 of the 1986 Code (as added by section 654 of the Reform Act)—

(1) is redesignated as subsection (h), and

(2) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR ABNORMAL REDEMPTIONS.—

"(A) IN GENERAL.—Any fund treated as a separate corporation under paragraph (1) shall not be disqualified under subsection (b)(3) for any taxable year by reason of sales resulting from abnormal redemptions on any day and occurring before the close of the 5th business day after such day if—

"(i) the sum of the percentages determined under subparagraph (B) for the abnormal redemptions on such day and for abnormal redemptions on prior days during such taxable year exceeds 30 percent; and

"(ii) the regulated investment company of which such fund is a part would meet the requirements of subsection (b)(3) for such taxable year if all the funds which are part of such company were treated as a single company.

"(B) ABNORMAL REDEMPTIONS.—For purposes of subparagraph (A), the term 'abnormal redemptions' means redemptions occurring on any day if the net redemptions on such day exceed 1 percent of the fund's net asset value.

"(C) DETERMINATION OF NET ASSET VALUE.—For purposes of this paragraph, net asset value for any day shall be determined as of the close of the preceding day.

"(D) LIMITATION.—For purposes of subparagraph (A), any sale or other disposition of stock or securities held less than 3 months occurring during any day shall be deemed to result from abnormal redemptions until the cumulative proceeds from such sales or dispositions occurring during such day, plus the cumulative net positive cash flow of the fund for preceding business days (if any) following the day with abnormal redemptions, exceed the amount of net redemptions on the day with abnormal redemptions."

(p) AMENDMENTS RELATED TO SECTION 662 OF THE REFORM ACT.—

(1) Subclause (I) of section 856(c)(6)(D)(i) of the 1986 Code (as added by section 662 of the Reform Act) is amended by striking out "debt instrument" and inserting in lieu thereof "debt instrument (within the meaning of section 1275(a)(1))".

(2) Notwithstanding section 669 of the Reform Act, the amendment made by section 662(c) of the Reform Act shall apply to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986.

(3) Subsection (c) of section 856 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) TREATMENT OF LIQUIDATING GAINS.—In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

(4)(A) Paragraph (6) of section 856(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(G) TREATMENT OF INCOME RECEIVED UNDER CERTAIN AGREEMENTS LIMITING INTEREST RATE RISK.—

"(i) IN GENERAL.—In the case of any agreement described in clause (ii)—

"(I) any payment to the real estate investment trust under such agreement (and any gain from the sale or other disposition of such agreement) shall be treated as income qualifying under paragraph (2), and

"(II) such agreement shall be treated as a security for purposes of paragraph (4)(A).

"(ii) DESCRIPTION OF AGREEMENT.—An agreement is described in this clause if such agreement is a bona fide interest rate swap or interest rate cap agreement which protects the real estate investment trust from interest rate fluctuations under any variable rate indebtedness of such trust incurred to acquire (or carry) real property or interests in real property or committed to such an acquisition."

(B) The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

(5) Subclause (I) of section 856(c)(6)(D)(ii) of the 1986 Code (as added by section 662 of the Reform Act) is amended by striking out "stock in" and inserting in lieu thereof "stock (or certificates of beneficial interests) in".

(q) AMENDMENTS RELATED TO SECTION 663 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 856(d)(6) of the 1986 Code is amended to read as follows:

"(A) IN GENERAL.—If—

"(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

"(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant."

(2) Subsection (f) of section 856 of the 1986 Code is amended to read as follows:

"(f) INTEREST.—

"(1) IN GENERAL.—For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term 'interest' does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person except that—

"(A) any amount so received or accrued shall not be excluded from the term 'interest' solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

"(B) where a real estate investment trust receives any amount which would be excluded from the term 'interest' solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term 'interest'.

"(2) SPECIAL RULE.—If—

"(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property (not taking into account any gain on any disposition) from the leasing of substantially all of its interests in such property to tenants, and

"(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)),

then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term 'interest' by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor."

(r) Amendment Related to Section 664 of the Reform Act.—Clause (i) of section 857(e)(2)(B) of the 1986 Code is amended by striking out "as original issue discount on instruments" and inserting "with respect to instruments".

(s) Amendments Related to Section 668 of the Reform Act.—

(1) Paragraph (2) of section 4981(e) of the 1986 Code is amended to read as follows:

"(2) Capital gain net income.—

"(A) In general.—The term 'capital gain net income' has the meaning given such term by section 1222(9) (determined by treating the calendar year as the trust's taxable year).

"(B) Reduction for net ordinary loss.—The amount determined under subparagraph (A) shall be reduced by the amount of the trust's net ordinary loss for the taxable year.

"(C) Net ordinary loss.—For purposes of this paragraph, the net ordinary loss for the calendar year is the amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1)."

(2) Subparagraph (C) of section 857(b)(3) of the 1986 Code is amended by striking out "real estate investment trust taxable income" in the last sentence and inserting in lieu thereof "the taxable income of the real estate investment trust".

(3) Subparagraph (A) of section 4981(c)(1) of the 1986 Code is amended by striking out "such calendar year" and inserting in lieu thereof "such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D))".

(4) Subsection (a) of section 857 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981."

(5) Effective with respect to dividends declared in 1988 and subsequent calendar years, paragraph (8) of section 857(b) of the 1986 Code is amended—

(A) by striking out "in December" and inserting in lieu thereof "in October, November, or December",

(B) by striking out "in such month" and inserting in lieu thereof "in such a month",

(C) by striking out "on such date" in subparagraphs (A) and (B) and inserting in lieu thereof "on December 31 of such calendar year", and

(D) by striking out "before February 1" and inserting in lieu thereof "during January".

(t) Amendments Related to Section 671 of the Reform Act.—

(1) Paragraph (1) of section 860C(e) of the 1986 Code is amended to read as follows:

"(1) Amounts treated as ordinary.—Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be."

(2)(A) Paragraph (4) of section 860D(a) of the 1986 Code is amended—

(i) by striking out "4th month ending after" and inserting in lieu thereof "3rd month beginning after", and

(ii) by striking out "and each quarter ending thereafter" and inserting in lieu thereof "and at all times thereafter".

(B) The amendment made by subparagraph (A)(ii) shall take effect on January 1, 1988.

(3)(A) Clause (i) of section 860F(a)(2)(A) of the 1986 Code is amended to read as follows:

"(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),".

(B)(i) Paragraph (2) of section 860F(a) of the 1986 Code is amended by striking out the last sentence of subparagraph (A).

(ii) Subsection (a) of section 860F of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Exceptions.—Notwithstanding subparagraphs (A) and (D) of paragraph (1), the term 'prohibited transaction' shall not include any disposition—

"(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

"(B) to facilitate a clean-up call (as defined in regulations)."

(C) Subparagraph (D) of section 860F(a)(2) of the 1986 Code is amended by striking out "described in subsection (b)".

(4) Subparagraph (A) of section 860F(b)(1) of the 1986 Code is amended by striking out "the transfer of any property to a REMIC" and inserting in lieu thereof "the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC".

(5)(A) Paragraph (1) of section 860G(a) of the 1986 Code is amended to read as follows:

"(1) Regular interest.—The term 'regular interest' means any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if—

"(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

"(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

"(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

"(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments."

(B) Paragraph (2) of section 860G(a) of the 1986 Code is amended to read as follows:

"(2) Residual interest.—The term 'residual interest' means an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest."

(C) Paragraph (3) of section 860G(a) of the 1986 Code is amended—

(i) by striking out "on or before the startup day" in subparagraph (A)(i) and inserting in lieu thereof "on the startup day in exchange for regular or residual interests in the REMIC",

(ii) by inserting "if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day" before the comma at the end of subparagraph (A)(ii), and

(iii) by striking out "on or before the startup day" in subparagraph (C) and inserting in lieu thereof "on the startup day in exchange for regular or residual interests in the REMIC".

(D) Subparagraph (A) of section 860G(a)(4) of the 1986 Code is amended to read as follows:

"(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and".

(E) Paragraph (9) of section 860G(a) of the 1986 Code is amended to read as follows:

"(9) Startup day.—The term 'startup day' means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occurring on the day during such period selected by the REMIC for purposes of this paragraph."

(F) The amendments made by this paragraph shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before July 1, 1987.

(6) Paragraph (3) of section 860G(a) of the 1986 Code is amended—

(A) by striking out "directly or indirectly," in subparagraph (A), and

(B) by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property."

(7) Subparagraph (B) of section 860G(a)(7) of the 1986 Code is amended by inserting before the period at the end of the 1st sentence the following: "or lower than expected returns on cash flow investments".

(8)(A) Paragraph (8) of section 860G(a) of the 1986 Code is amended—

(i) by striking out "section 856(e)" in subparagraph (A) and inserting in lieu thereof "section 856(e) (without regard to paragraph (5) thereof)", and

(ii) by striking out the last sentence and inserting in lieu thereof the following:

"Solely for purposes of section 860D(a), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4)."

(B) Section 860G of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Tax on Income From Foreclosure Property.—

"(1) In general.—A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

"(2) Net income from foreclosure property.—For purposes of this part, the term 'net income from foreclosure property' means the amount which would be the REMIC's net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust."

(C) Paragraph (1) of section 860C(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c)."

(9)(A) Section 860G of the 1986 Code (as amended by paragraph (8)) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) TAX ON CONTRIBUTIONS AFTER STARTUP DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

"(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.

"(B) Any payment in the nature of a guarantee.

"(C) Any contribution during the 3-month period beginning on the startup day.

"(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

"(E) Any other contribution permitted in regulations."

(B) The amendment made by subparagraph (A) shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before July 1, 1987.

(10) Subsection (e) of section 860G of the 1986 Code (as redesignated by paragraph (9)) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a comma, and by adding at the end thereof the following new paragraphs:

"(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

"(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages)."

(11) Paragraph (6) of section 856(c) of the 1986 Code is amended by redesignating the last subparagraph as subparagraph (F) and by striking out the subparagraph (D) added by section 671(b)(1) of the Reform Act and inserting in lieu thereof the following:

"(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMIC's are part of a tiered structure, they shall be treated as one REMIC for purposes of this subparagraph."

(12) Clause (xi) of section 7701(a)(19)(C) of the 1986 Code is amended by striking out "are loans described" and inserting in lieu thereof "are assets described".

(13) Subparagraph (B) of section 860E(c)(2) of the 1986 Code is amended by striking out "issue price of residual interest" and inserting in lieu thereof "issue price of the residual interest".

(14) Clause (ii) of section 860F(b)(1)(D) of the 1986 Code is amended by striking out "the real estate mortgage pool" and inserting in lieu thereof "the REMIC".

(15) Subsection (a) of section 860E of the 1986 Code is amended by adding at the end thereof the following new paragraphs:

"(3) SPECIAL RULE FOR AFFILIATED GROUPS.—All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection, except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies.

"(4) TREATMENT OF CERTAIN SUBSIDIARIES.—

"(A) IN GENERAL.—For purposes of this subsection, a corporation to which section 593 applies and each qualified subsidiary of such corporation shall be treated as a single corporation to which section 593 applies.

"(B) QUALIFIED SUBSIDIARY.—For purposes of this subsection, the term 'qualified subsidiary' means any corporation—

"(i) all the stock of which, and substantially all the indebtedness of which, is held directly by the corporation to which section 593 applies, and

"(ii) which is organized and operated exclusively in connection with the organization and operation of 1 or more REMIC's."

(16)(A) Subsection (a) of section 860D of the 1986 Code is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(6) with respect to which there are reasonable arrangements designed to ensure that—

"(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

"(B) information necessary for the application of section 860E(e) will be made available by the entity."

(B) Section 860E of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) TAX ON TRANSFERS OF RESIDUAL INTERESTS TO CERTAIN ORGANIZATIONS, ETC.—

"(1) IN GENERAL.—A tax is hereby imposed on any transfer of a residual interest in a REMIC to a disqualified organization.

"(2) AMOUNT OF TAX.—The amount of the tax imposed by paragraph (1) on any transfer of a residual interest shall be equal to the product of—

"(A) the amount (determined under regulations) equal to the present value of the total anticipated excess inclusions with respect to such interest for periods after such transfer, multiplied by

"(B) the highest rate of tax specified in section 11(b)(1).

"(3) LIABILITY.—The tax imposed by paragraph (1) on any transfer shall be paid by the transferor; except that, where such transfer is through an agent for a disqualified organization, such tax shall be paid by such agent.

"(4) TRANSFEREE FURNISHES AFFIDAVIT.—The person (otherwise liable for any tax imposed by paragraph (1)) shall be relieved of liability for the tax imposed by paragraph (1) with respect to any transfer if—

"(A) the transferee furnishes to such person an affidavit that the transferee is not a disqualified organization, and

"(B) as of the time of the transfer, such person does not have actual knowledge that such affidavit is false.

"(5) DISQUALIFIED ORGANIZATION.—For purposes of this section, the term 'disqualified organization' means—

"(A) the United States, any State or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of any of the foregoing,

"(B) any organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter unless such organization is subject to the tax imposed by section 511, and

"(C) any organization described in section 1381(a)(2)(C).

For purposes of subparagraph (A), the rules of section 168(h)(2)(D) (relating to treatment of certain taxable instrumentalities) shall apply; except that, in the case of the Federal Home Loan Mortgage Corporation, clause (ii) of such section shall not apply.

"(6) TREATMENT OF PASS-THRU ENTITIES.—

"(A) IMPOSITION OF TAX.—If, at any time during any taxable year of a pass-thru entity, a disqualified organization is the record holder of an interest in such entity, there is hereby imposed on such entity for such taxable year a tax equal to the product of—

"(i) the amount of excess inclusions for such taxable year allocable to the interest held by such disqualified organization, multiplied by

"(ii) the highest rate of tax specified in section 11(b)(1).

"(B) PASS-THRU ENTITY.—For purposes of this paragraph, the term 'pass-thru entity' means—

"(i) any regulated investment company, real estate investment trust, or common trust fund,

"(ii) any partnership, trust, or estate, and

"(iii) any organization to which part I of subchapter T applies.

Except as provided in regulations, a person holding an interest in a pass-thru entity as a nominee for another person shall, with respect to such interest, be treated as a pass-thru entity.

"(C) TAX TO BE DEDUCTIBLE.—Any tax imposed by this paragraph with respect to any excess inclusion of any pass-thru entity for any taxable year shall, for purposes of this title (other than this subsection), be applied against (and operate to reduce) the amount included in gross income with respect to the residual interest involved.

"(D) EXCEPTION WHERE HOLDER FURNISHES AFFIDAVIT.—No tax shall be imposed by subparagraph (A) with respect to any interest in a pass-thru entity for any period if—

"(i) the record holder of such interest furnishes to such pass-thru entity an affidavit that such record holder is not a disqualified organization, and

"(ii) during such period, the pass-thru entity does not have actual knowledge that such affidavit is false.

"(7) WAIVER.—The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

"(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

"(B) there is paid to the Secretary such amounts as the Secretary may require."

(C) Paragraph (2) of section 26(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(L) section 860E(e) (relating to taxes with respect to certain residual interests)."

(D)(i) The amendments made by subparagraph (A) shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act) is after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date.

(ii) The amendments made by subparagraphs (B) and (C) (except to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

(iv) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subparagraph (B)) for any taxable year beginning before January 1, 1989.

(17) Subparagraph (B) of section 860E(c)(2) of the 1986 Code is amended—

(A) by inserting "(adjusted for contributions)" after "residual interest" the second place it appears, and

(B) by striking "decreased by" in clause (ii) and inserting in lieu thereof "decreased (but not below zero) by".

(18)(A) Subsection (e) of section 860F of the 1986 Code is amended by adding at the end thereof the following new sentences: "Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection."

(B) Unless the REMIC otherwise elects, the amendment made by subparagraph (A) shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before the date of the enactment of this Act.

(19) Subsection (a) of section 860D of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)."

(20) Subsection (a) of section 860A of the 1986 Code is amended by striking out "this chapter" each place it appears and inserting in lieu thereof "this subtitle".

(21) Paragraph (1) of section 860C(b) of the 1986 Code is amended by striking out "and in the same manner" and inserting in lieu thereof "and, except as provided in regulations, in the same manner".

(22) The following sections of the 1986 Code are each amended by striking out "real estate mortgage pool" and inserting in lieu thereof "REMIC":

(A) Section 382(l)(4)(B)(ii).

(B) Section 860F(a)(2)(A)(iii).

(C) Section 860F(a)(2)(C).

(D) Section 860F(b)(1)(C)(ii).

(E) Section 860F(b)(1)(D)(ii).

(23) Subsection (d) of section 860E of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies."

(24) Subparagraph (C) of section 6049(d)(7) of the 1986 Code is amended by striking out "the issue price" and inserting in lieu thereof "the adjusted issue price".

(25)(A) Paragraph (19) of section 7701(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi)."

(B) Paragraph (4) of section 593(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph."

(26) Section 860E of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF VARIABLE INSURANCE CONTRACTS.—Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion."

(27) Subsection (a) of section 860E of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) COORDINATION WITH SECTION 172.—Any excess inclusion for any taxable year shall not be taken into account—

"(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

"(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2)."

(u) AMENDMENTS RELATED TO SECTION 672 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 163(e)(2) of the 1986 Code is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraph (7)".

(2) Subparagraph (B) of section 1278(a)(4) of the 1986 Code is amended by striking out "section 1272(a)(6)" and inserting in lieu thereof "section 1272(a)(7)".

(3) Section 1288(a) of the 1986 Code is amended by striking out "paragraph (6)" each place it appears and inserting in lieu thereof "paragraph (7)".

(4) Sections 1271(a)(2)(A)(ii) and 1275(a)(4)(B)(ii)(I) of the 1986 Code are each amended by striking out "subsection (a)(6)" and inserting in lieu thereof "subsection (a)(7)".

(v) AMENDMENT RELATED TO SECTION 674 OF THE REFORM ACT.—Subparagraph (A) of section 6049(d)(7) of the 1986 Code is amended by inserting "(and such amounts shall be treated as paid when includible in gross income under section 860B(b))" before the period at the end thereof.

(w) AMENDMENTS RELATED TO SECTION 675 OF THE REFORM ACT.—

(1) Subsection (a) of section 675 of the Reform Act is amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle shall take effect on January 1, 1987."

(2) Section 675 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study of the operation of the amendments made by this part and their competitive impact on savings and loan institutions and similar financial institutions. Not later than January 1, 1990, the Secretary shall submit a report of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (together with such recommendations as he may deem advisable)."

SEC. 107. AMENDMENTS RELATED TO TITLE VII OF THE REFORM ACT.

(a) AMENDMENTS TO SECTION 55 OF THE 1986 CODE.—

(1) Paragraph (1) of section 55(c) of the 1986 Code is amended by inserting before the period at the end of the first sentence the following: "and the section 936 credit allowable under section 27(b)".

(2) Paragraph (2) of section 55(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence)."

(3) Effective with respect to taxable years ending after the date of the enactment of this Act, paragraph (3) of section 55(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of a taxpayer described in paragraph (1)(C)(i), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined with-

out regard to this sentence) over $155,000, or (ii) $20,000.".

(b) AMENDMENTS TO SECTION 56 OF THE 1986 CODE.—

(1) Paragraph (3) of section 56(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(2) by using the simplified procedures for allocation of costs prescribed under section 460(b)(4)."

(2) Subparagraph (E) of section 56(b)(1) of the 1986 Code is amended to read as follows:

"(E) STANDARD DEDUCTION AND DEDUCTION FOR PERSONAL EXEMPTIONS NOT ALLOWED.—The standard deduction under section 63(c), the deduction for personal exemptions under section 151, and the deduction under section 642(b) shall not be allowed."

(3) Subparagraph (C) of section 56(b)(1) of the 1986 Code is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof a comma, and by adding at the end thereof the following new clauses:

"(iv) in lieu of the exception under section 163(d)(3)(B)(i), the term 'investment interest' shall not include any qualified housing interest (as defined in subsection (e)), and

"(v) the adjustments of this section and sections 57 and 58 shall apply in determining net investment income under section 163(d)."

(4) Clause (iii) of section 56(b)(1)(C) of the 1986 Code is amended—

(A) by striking out "specified activity bond" and inserting in lieu thereof "specified private activity bond", and

(B) by striking out "section 56(a)(5)(B)" and inserting in lieu thereof "section 57(a)(5)(B)".

(5) Subparagraph (A) of section 56(d)(2) of the 1986 Code is amended—

(A) by striking out "(other than subsection (a)(6) thereof)", and

(B) by adding at the end thereof the following new sentence:

"An item of tax preference shall be taken into account under clause (ii) only to the extent such item increased the amount of the net operating loss for the taxable year under section 172(c)."

(6)(A) Paragraph (1) of section 56(e) of the 1986 Code is amended—

(i) by striking out "interest which is" and inserting in lieu thereof "interest which is qualified residence interest (as defined in section 163(h)(3)) and is", and

(ii) by striking out "section 163(h)(3)" in subparagraph (B) and inserting in lieu thereof "section 163(h)(4)".

(B) Paragraph (3) of section 56(e) of the 1986 Code is amended by striking out "interest paid or accrued" and inserting in lieu thereof "interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued".

(7) The last sentence of section 56(f)(2)(B) of the 1986 Code is amended by striking out "any such taxes" and inserting in lieu thereof "any such taxes (otherwise eligible for the credit provided by section 901 without regard to section 901(j))".

(8) Clause (iii) of section 56(f)(3)(A) of the 1986 Code is amended by striking out "an income statement" and inserting in lieu thereof "an income statement for a substantial nontax purpose".

(9) Subparagraph (B) of section 56(f)(3) of the 1986 Code is amended by striking out "paragraph (3)(A)" and inserting in lieu thereof "this subsection".

(10) Subparagraph (C) of section 56(f)(3) of the 1986 Code is amended by adding at the end thereof the following new sentence: "If the taxpayer has 2 or more statements described in the clause (or subclause) with the lowest number designation, the applicable financial statement shall be the one of such statements specified in regulations."

(11)(A) Subparagraph (F) of section 56(f)(2) of the 1986 Code is amended to read as follows:

"(F) TREATMENT OF TAXES ON DIVIDENDS FROM 936 CORPORATIONS.—

"(i) IN GENERAL.—For purposes of determining the alternative minimum tax foreign tax credit, 50 percent of any withholding tax or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

"(ii) LIMITATION.—If the aggregate amount of the dividends referred to in clause (i) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as a tax paid to a foreign country under clause (i) shall not exceed the amount which would be so treated without regard to this clause multiplied by a fraction—

"(I) the numerator of which is the excess referred to in paragraph (1), and

"(II) the denominator of which is the aggregate amount of such dividends.

"(iii) TREATMENT OF TAXES IMPOSED ON 936 CORPORATION.—For purposes of this subparagraph, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated)."

(B) Clause (iii) of section 56(g)(4)(C) of the 1986 Code is amended by striking out "clause (ii)(I)" and inserting in lieu thereof "clause (i)".

(12) Clause (iii) of section 56(g)(4)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any annuity contract held under a plan described in section 403(a)."

(13) Paragraph (1) of section 56(c) of the 1986 Code is amended—

(A) by striking out "ADJUSTED EARNINGS AND PROFITS" in the paragraph heading and inserting in lieu thereof "ADJUSTED CURRENT EARNINGS", and

(B) by striking out "ADJUSTED EARNINGS AND PROFITS" in the heading of subparagraph (B) and inserting in lieu thereof "ADJUSTED CURRENT EARNINGS".

(14)(A) Subsection (b) of section 56 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF INCENTIVE STOCK OPTIONS.—Section 421 shall not apply to the transfer of stock acquired (in a taxable year beginning after December 31, 1986) pursuant to the exercise of an incentive stock option (as defined in section 422A). The adjusted basis of any stock so acquired shall be determined on the basis of the treatment prescribed by the preceding sentence."

(B) Paragraph (3) of section 57(a) of the 1986 Code is hereby repealed.

(C) The amendments made by this paragraph shall apply with respect to options exercised after October 16, 1987.

(15) Clause (i) of section 56(a)(1)(A) of the 1986 Code is amended by striking out "REAL" in the heading and inserting in lieu thereof "PERSONAL".

(16) The heading of paragraph (1) of section 56(b) of the 1986 Code is amended by striking out "ITEMIZED".

(17) Subparagraph (A) of section 56(g)(4) of the 1986 Code is amended by adding at the end thereof the following new clauses:

"(vi) ELECTION TO HAVE CUMULATIVE LIMITATION.—

"(I) IN GENERAL.—In the case of any property placed in service during a taxable year to which an election under this clause applies, in lieu of applying clause (i), the depreciation deduction for such property for any taxable year shall be the lesser of the accumulated 168(g) depreciation or the accumulated book depreciation; reduced by the aggregate amount of the depreciation deductions determined under this subclause with respect to such property for prior taxable years.

"(II) ACCUMULATED 168(G) DEPRECIATION.—For purposes of this clause, the term 'accumulated section 168(g) depreciation' means the aggregate amount of the depreciation deductions determined under the alternative system of section 168(g) with respect to the property for all periods before the close of the taxable year.

"(III) ACCUMULATED BOOK DEPRECIATION.—For purposes of this clause, the term 'accumulated book depreciation' means the aggregate amount of the depreciation deductions determined under the method used for book purposes with respect to the property for all periods before the close of the taxable year.

"(IV) ELECTION.—The taxpayer may make an election under this clause for any taxable year beginning after 1989. Such an election, once made with respect to any such taxable year, shall apply to all property placed in service during such taxable year, and shall be irrevocable.

"(V) SIMILAR RULES FOR PROPERTY DESCRIBED IN CLAUSE (i), (iii), OR (iv).—Rules similar to the rules of the preceding provisions of this clause shall also apply in the case of property to which clause (ii), (iii), or (iv) applies.

"(vii) SPECIAL RULE FOR CERTAIN LEASED PROPERTY.—In the case of any property subject to a lease where the income of the taxpayer for book purposes with respect to such property is determined without an allowance for depreciation, the excess of—

"(I) the alternative minimum taxable income from the lease (determined without regard to this subsection and any allowance for depreciation), over

"(II) the income from such lease reported for book purposes,

shall be treated as the depreciation deduction determined with respect to such property determined for book purposes. In the case of property described in the preceding sentence, the rules of clause (vi) shall apply whether or not the taxpayer makes an election under such clause.

"(viii) SPECIAL RULE FOR CERTAIN PROPERTY.—In the case of any property described in paragraph (1), (2), (3), or (4) of section 168(f), the amount of depreciation allowable for purposes of the regular tax shall be treated as the amount allowable under the alternative system of section 168(g)."

(18) Paragraph (4) of section 56(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(I) ADJUSTED BASIS.—The adjusted basis of any property with respect to which an adjustment under this paragraph applies shall be determined by applying the treatment prescribed in this paragraph."

(19) Subsection (a) of section 56 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) SECTION 87 NOT APPLICABLE.—Section 87 (relating to alcohol fuel credit) shall not apply."

(c) AMENDMENTS TO SECTION 57 OF THE 1986 CODE.—

(1) Clause (iii) of section 57(a)(5)(C) of the 1986 Code is amended by inserting "(whether a current or advance refunding)" after "any refunding bond".

(2) Clause (i) of section 57(a)(5)(C) of the 1986 Code is amended to read as follows:

"(i) IN GENERAL.—For purposes of this part, the term 'specified private activity bond' means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103."

(3) Subparagraph (A) of section 57(a)(6) of the 1986 Code is amended by inserting "or 642(c)" after "section 170".

(d) AMENDMENTS TO SECTION 58 OF THE 1986 CODE.—

(1) Paragraph (2) of section 58(a) of the 1986 Code is amended—

(A) by striking out "(as modified by section 461(i)(4)(A))", and

(B) by striking out "section 469(d), without regard to paragraph (1)(B) thereof" and inserting in lieu thereof "section 469(c)".

(2) Paragraph (3) of section 58(a) of the 1986 Code is amended by striking out "section 469(g)(1)(C)" and inserting in lieu thereof "section 469(j)(2)".

(3) Subsection (a) of section 58 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) DETERMINATION OF LOSS.—In determining the amount of the loss from any tax shelter farm activity, the adjustments of sections 56 and 57 shall apply."

(4) Subsection (b) of section 58 of the 1986 Code is amended by striking out paragraphs (1), (2), and (3), and inserting in lieu thereof the following:

"(1) the adjustments of sections 56 and 57 shall apply,

"(2) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply, and

"(3) in lieu of applying section 469(j)(7), the passive activity loss of a taxpayer shall be computed without regard to qualified housing interest (as defined in section 56(e))."

(e) AMENDMENTS TO SECTION 59 OF THE 1986 CODE.—

(1) Paragraph (2) of section 59(e) of the 1986 Code is amended by striking out "would have been allowable as a deduction" and inserting in lieu thereof "would have been allowable as a deduction (determined without regard to section 291)".

(2) Subsection (h) of section 59 of the 1986 Code is amended by striking out "taxable year—" and all that follows and inserting in lieu thereof "taxable year with the adjustments of sections 56, 57, and 58."

(3) Paragraph (1) of section 59(a) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(D) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in section 55(b)(1)(A) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies)."

(4) Subsection (i) of section 59 of the 1986 Code is amended—

(A) by striking out "of this subtitle" and inserting in lieu thereof "of this subtitle (other than this part)", and

(B) by striking out "by this title" and inserting in lieu thereof "by this subtitle".

(f) TRANSITIONAL PROVISIONS.—

(1) In the case of the taxable year of an estate or trust which begins before January 1, 1987, and ends on or after such date, the items of tax preference apportioned to any beneficiary of such estate or trust under section 58(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be taken into account for purposes of determining the amount of the tax imposed by section 55 of the Internal Revenue Code of 1986 (as amended by the Tax Reform Act of 1986) on such beneficiary for such beneficiary's taxable year in which such taxable year of the estate or trust ends.

(2) The last sentence of subparagraph (B) of section 701(f)(6) of the Reform Act is amended to read as follows: "The aggregate amount of investment tax credits with respect to the unit in Mississippi allowed solely by reason of being described in this subparagraph shall not exceed $141,000,000."

(3) Subsection (f) of section 701 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(7) AGREEMENT VESSEL DEPRECIATION ADJUSTMENT.—

"(A) For purposes of part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986, in the case of a qualified taxpayer, alternative minimum taxable income for the taxable year shall be reduced by an amount equal to the agreement vessel depreciation adjustment.

"(B) For purposes of this paragraph, the agreement vessel depreciation adjustment shall be an amount equal to the depreciation deduction that would have been allowable for such year under section 167 of such Code with respect to agreement vessels placed in service before January 1, 1987, if the basis of such vessels had not been reduced under section 607 of the Merchant Marine Act of 1936, as amended, and if depreciation with respect to such vessel had been computed using the 25-year straight-line method. The aggregate amount by which basis of a qualified taxpayer is treated as not reduced by reason of this subparagraph shall not exceed $100,000,000.

"(C) For purposes of this paragraph, the term 'qualified taxpayer' means a parent corporation incorporated in the State of Delaware on December 1, 1972, and engaged in water transportation, and includes any other corporation which is a member of the affiliated group of which the parent corporation is the common parent. No taxpayer shall be treated as a qualified corporation for any taxable year beginning after December 31, 1991."

(4)(A) If any property to which this paragraph applies is placed in service in a taxable year which begins before January 1, 1987, and ends on or after August 1, 1986, the item of tax preference determined under section 57(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) with respect to such property shall be the excess of—

(i) the amount allowable as a deduction for depreciation or amortization for such taxable year, over

(ii) the amount which would be determined for such taxable year under the rules of paragraph (1) or (5) (whichever is appropriate) of section 56(a) of the Internal Revenue Code of 1954 (as amended by the Tax Reform Act of 1986).

(B) This paragraph shall apply to any property—

(i) which is described in paragraph (4) or (12) of section 57(a) of the Internal Revenue Code of 1954 (as so in effect), and

(ii) to which paragraph (1) or (5) of section 56(a) of the Internal Revenue Code of 1986 would apply if the taxable year referred to in subparagraph (A) began after December 31, 1986.

(5) In determining the amount of the alternative minimum tax foreign tax credit under section 59 of the 1986 Code, there shall not be taken into account any taxes paid or accrued in a taxable year beginning after December 31, 1986, which are treated under section 904(c) of the 1986 Code as paid or accrued in a taxable year beginning on or before December 31, 1986.

(g) MISCELLANEOUS AMENDMENTS.—

(1) Subparagraph (K) of section 26(b)(2) of the 1986 Code is amended by striking out the comma at the end thereof and inserting in lieu thereof ").".

(2)(A) So much of section 38(c) as precedes paragraph (4) thereof is amended to read as follows:

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—

"(A) the tentative minimum tax for the taxable year, or

"(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

For purposes of the preceding sentence, the term 'net income tax' means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term 'net regular tax liability' means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

"(2) REGULAR INVESTMENT TAX CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

"(A) IN GENERAL.—In the case of a C corporation, the amount determined under paragraph (1)(A) shall be reduced by the lesser of—

"(i) the portion of the regular investment tax credit not used against the normal limitation, or

"(ii) 25 percent of the taxpayer's tentative minimum tax for the taxable year.

"(B) PORTION OF REGULAR INVESTMENT TAX CREDIT NOT USED AGAINST NORMAL LIMIT.—For purposes of subparagraph (A), the portion of the regular investment tax credit for any taxable year not used against the normal limitation is the excess (if any) of—

"(i) the portion of the credit under subsection (a) which is attributable to the application of the regular percentage under section 46, over

"(ii) the limitation of paragraph (1) (without regard to this paragraph) reduced by the portion of the credit under subsection (a) which is not so attributable.

"(C) LIMITATION.—In no event shall this paragraph permit the allowance of a credit which would result in a net chapter 1 tax less than an amount equal to 10 percent of the amount determined under section 55(b)(1)(A) without regard to the alternative tax net operating loss deduction. For purposes of the preceding sentence, the term 'net chapter 1 tax' means the sum of the regular tax liability for the taxable year and the tax imposed by section 55 for the taxable year, reduced by the sum of the credits allowable under this part for the taxable year (other than under section 34)."

(B) Subsection (c) of section 38 of the 1986 Code is amended—

(i) by redesignating paragraph (4) as paragraph (3), and

(ii) by striking out "subparagraphs (A) and (B) of paragraph (1)" each place it appears in such paragraph and inserting in lieu thereof "subparagraph (B) of paragraph (1).

(3)(A) Subsection (c) of section 47 of the 1986 Code is amended by striking out "or D" and inserting in lieu thereof "D, or G".

(B) Subparagraph (D) of section 42(j)(4) of the 1986 Code is amended by striking out "or D" and inserting in lieu thereof "D, or G".

(4) The last sentence of clause (ii) of section 53(d)(1)(B) of the 1986 Code is amended by striking out "earnings and profits" and inserting in lieu thereof "current earnings".

(5) Sections 173(b), 174(e)(2), and 263(c) of the 1986 Code are each amended by striking out "section 59(d)" and inserting in lieu thereof "section 59(e)".

(6) Section 511 of the 1986 Code is amended by striking out subsection (d).

(7) Sections 616(e) and 617(j) of the 1986 Code are each amended by striking out "section 58(i)" and inserting in lieu thereof "section 59(e)".

(8) Paragraph (4) of section 701(c) of the Reform Act is amended by striking out "section 631(a)" and inserting in lieu thereof "section 221(a)".

(9) Subparagraph (B) of section 1362(e)(5) of the 1986 Code is amended by striking out "Subsection (d)(2)" and inserting in lieu thereof "Subsection (d)".

(10) Subsection (a) of section 6154 of the 1986 Code (as in effect before its repeal by the Revenue Act of 1987) is amended by striking out "11, 59A" and inserting in lieu thereof "11, 55, 59A".

(11) Paragraph (1) of section 962(a) of the 1986 Code is amended—

(A) by striking out "section 1" and inserting in lieu thereof "sections 1 and 55", and

(B) by striking out "section 11" and inserting in lieu thereof "sections 11 and 55".

(12) Subsection (h) of section 32 of the 1986 Code is amended by striking out "for taxpayers other than corporations".

(13)(A) Subsection (d) of section 2 of the 1986 Code is amended by striking out "the tax imposed by section 1" and inserting in lieu thereof "the taxes imposed by sections 1 and 55".

(B) Subsection (d) of section 11 of the 1986 Code is amended by striking out "the tax imposed by subsection (a)" and inserting in lieu thereof "the taxes imposed by subsection (a) and section 55".

SEC. 108. AMENDMENTS RELATED TO TITLE VIII OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 801 OF THE REFORM ACT.—

(1)(A) Subparagraph (B) of section 448(d)(2) of the 1986 Code (defining qualified personal service corporation) is amended by striking out "or indirectly" and inserting in lieu thereof "(or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a))".

(B) Section 448(d) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) USE OF RELATED PARTIES, ETC.—The Secretary shall prescribe such regulations as may be necessary to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section."

(2) Subparagraph (C) of section 448(d)(4) of the 1986 Code (relating to special rules for application of paragraph (2)) is amended by striking out "all such members" and inserting in lieu thereof "such group".

(3) Paragraph (2) of section 461(i) of the 1986 Code is amended to read as follows:

"(2) SPECIAL RULE FOR SPUDDING OF OIL OR GAS WELLS.—

"(A) IN GENERAL.—In the case of a tax shelter, economic performance with respect to amounts paid during the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

"(B) DEDUCTION LIMITED TO CASH BASIS.—

"(i) TAX SHELTER PARTNERSHIPS.—In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term 'cash basis' shall be substituted for the term 'adjusted basis'.

"(ii) OTHER TAX SHELTERS.—Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

"(C) CASH BASIS DEFINED.—For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

"(i) any liability of the partnership, and

"(ii) any amount borrowed by the partner with respect to such partnership which—

"(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

"(II) was secured by any asset of the partnership."

(4) Section 464 of the 1986 Code (relating to limitations on deductions for certain farming expenses) is amended by adding at the end thereof the following new subsection:

"(g) TERMINATION.—Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986."

(5) Paragraph (4) of section 801(d) of the Reform Act is amended by striking out "the completed contract method" and inserting in lieu thereof "a method of accounting for long-term contracts".

(6) Section 801(d) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR PARAGRAPHS (2) AND (3).—If any loan, lease, contract, or evidence of any transaction to which paragraph (2) or (3) applies is transferred after June 10, 1987, to a person other than a related party (within the meaning of paragraph (2)), paragraph (2) or (3) shall cease to apply on and after the date of such transfer."

(7) Paragraph (3) of section 448(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "An S corporation shall not be treated as a tax shelter for purposes of this section merely by reason of being required to file a notice of exemption from registration with a State agency described in section 461(i)(3)(A), but only if there is a requirement applicable to all corporations offering securities for sale in the State that to be exempt from such registration the corporation must file such a notice."

(8) Subparagraph (C) of section 448(d)(4) of the 1986 Code is amended by striking out "substantially all of" and inserting in lieu thereof "90 percent or more of".

(9) Paragraph (3) of section 448(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF PREDECESSORS.—Any reference in this subsection to an entity shall include a reference to any predecessor of such entity."

(b) AMENDMENTS RELATED TO SECTION 803 OF THE REFORM ACT.—

(1) Paragraph (2) of section 263A(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph."

(2) Section 263A(c) of the 1986 Code (relating to general exceptions) is amended—

(A) by striking out "263(c), 616(a), or 617(a)" and inserting in lieu thereof "263(c), 263(i), 291(b)(2), 616, or 617", and

(B) by adding at the end thereof the following new paragraph:

"(6) COORDINATION WITH SECTION 59(e).—Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof."

(3) Subparagraph (B) of section 263A(d)(2) of the 1986 Code (relating to special rule for person with minority interest who materially participates) is amended—

(A) by striking out "such grove, orchard, or vineyard" in clause (i) and inserting in lieu thereof "the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred", and

(B) by striking out "such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard, or vineyard was lost or damaged" and inserting in lieu thereof "the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred".

(4) Paragraph (3) of section 263A(f) of the 1986 Code (relating to interest relating to property used to produce property) is amended—

(A) by striking out "incurred or continued in connection with" and inserting in lieu thereof "allocable (as determined under paragraph (2)) to", and

(B) by inserting "(as so determined)" after "allocable".

(5) Section 447(b) of the 1986 Code is amended—

(A) by striking out "of" before "expenses", and

(B) by striking out "OF" before "EXPENSES" in the heading thereof.

(6) Section 447(g)(1) of the 1986 Code is amended by striking out "trade or business of farming" each place it appears and inserting in lieu thereof "qualified farming trade or business".

(7) Paragraph (4)(A)(i) of section 803(d) of the Reform Act is amended by striking out "203" each place it appears and inserting in lieu thereof "204".

(8) The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning inventory balances and the purchases during the year.

(c) AMENDMENTS RELATED TO SECTION 804 OF THE REFORM ACT.—

(1) Paragraph (3) of section 460(b) of the 1986 Code is amended—

(A) by striking out "subparagraph" and inserting in lieu thereof "paragraph",

(B) by striking out "paragraph (1)" each place it appears in subparagraph (B) and inserting in lieu thereof "subparagraph (A)", and

(C) by striking out "paragraph (1)" in subparagraph (C) and inserting in lieu thereof "subparagraph (B)".

(2)(A) Section 460(b) of the 1986 Code (relating to percentage of completion method) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES.—

"(A) SIMPLIFIED METHOD OF COST ALLOCATION.—In the case of any long-term contract, the Secretary may prescribe a simplified procedure for allocation of costs to such contract in lieu of the method of allocation under subsection (c).

"(B) LOOK-BACK METHOD NOT TO APPLY TO CERTAIN CONTRACTS.—Paragraph (2)(B) and subsection (a)(2) shall not apply to any contract—

"(i) the gross price of which (as of the completion of the contract) does not exceed the lesser of—

"(I) $1,000,000, or

"(II) 1 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the contract was completed, and

"(ii) which is completed within 2 years of the contract commencement date.

For purposes of this subparagraph, rules similar to the rules of subsections (e)(2) and (f)(3) shall apply."

(B) Section 460(b)(2) of the 1986 Code is amended by striking out "In" and inserting in lieu thereof "Except as provided in paragraph (4), in".

(3) Subparagraph (B) of section 804(d)(2) of the Reform Act is amended by striking out "section 263A(c)(5)" and inserting in lieu thereof "section 460(c)(5)".

(4)(A) Paragraph (3) of section 460(b) of the 1986 Code is amended by adding at the end thereof the following new sentences:

"For purposes of the preceding sentence, any amount received or accrued after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was received or accrued) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract."

(B) Subparagraph (B) of section 460(b)(2) of the 1986 Code is amended by striking out "completion of the contract" and inserting in lieu thereof "completion of the contract (or, with respect to any amount received or accrued after completion of the contract, when such amount is so received or accrued)".

(d) AMENDMENT RELATED TO SECTION 805 OF THE REFORM ACT.—

(1) Section 166(d)(1)(A) of the 1986 Code is amended by striking out "subsections (a) and (c)" and inserting in lieu thereof "subsection (a)".

(2) Subsection (b) of section 805 of the Reform Act is amended by inserting ", as amended by section 901(d)(4)," after "Section 166".

(3) Subsection (a) of section 582 of the 1986 Code is amended by striking out "subsections (a), (b), and (c) of section 166" and inserting in lieu thereof "subsections (a) and (b) of section 166".

(e) AMENDMENTS RELATED TO SECTION 806 OF THE REFORM ACT.—

(1)(A) Clause (i) of section 706(b)(1)(B) of the 1986 Code is amended to read as follows:

"(i) the majority interest taxable year (as defined in paragraph (4)),".

(B) Paragraph (4) of section 706(b) of the 1986 Code is amended to read as follows:

"(4) MAJORITY INTEREST TAXABLE YEAR; LIMITATION ON REQUIRED CHANGES.—

"(A) MAJORITY INTEREST TAXABLE YEAR DEFINED.—For purposes of paragraph (1)(B)(i)—

"(i) IN GENERAL.—The term 'majority interest taxable year' means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

"(ii) TESTING DAYS.—The testing days shall be—

"(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

"(II) the days during such representative period as the Secretary may prescribe.

"(B) FURTHER CHANGE NOT REQUIRED FOR 3 YEARS.—Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change."

(2) Clause (iii) of section 706(b)(1)(B) of the 1986 Code is amended by striking out "or such other period as the Secretary may prescribe in regulations" and inserting in lieu thereof "unless the Secretary by regulations prescribes another period".

(3) Section 706(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) APPLICATION WITH OTHER SECTIONS.—Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h), section 645, or section 1378(a) shall be taken into account."

(4) Paragraph (2) of section 441(i) of the 1986 Code (defining personal service corporation) is amended by adding at the end thereof the following:

"A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation."

(5)(A) Section 584 of the 1986 Code (relating to common trust funds) is amended by adding at the end thereof the following new subsection:

"(h) TAXABLE YEAR OF COMMON TRUST FUND.—For purposes of this subtitle, the taxable year of any common trust fund shall be the calendar year."

(B) The amendment made by subparagraph (A) shall apply only to taxable years beginning after December 31, 1987. For purposes of section 806(e)(2) of the Reform Act—

(i) a participant in a common trust fund shall be treated in the same manner as a partner, and

(ii) subparagraph (C) thereof shall be applied by substituting "December 31, 1987" for "December 31, 1986".

(6) Section 806(c)(2) of the Reform Act is amended by striking out "Section 267(a)" and inserting in lieu thereof "Section 267(a)(2)".

(7) Subparagraph (C) of section 806(e)(2) of the Reform Act is amended—

(A) by striking out "(including such short taxable year)", and

(B) by striking out "short taxable year" the second place it appears and inserting in lieu thereof "the partner's or shareholder's taxable year with or within which the partnership's or S corporation's short taxable year ends".

(8) Section 806(e)(2) of the Reform Act is amended—

(A) by striking out "any taxable year" and inserting in lieu thereof "the taxpayer's first taxable year beginning after December 31, 1986", and

(B) by striking out "taxpayer" each place it appears and inserting in lieu thereof "partnership, S corporation, or personal service corporation".

(9) Nothing in section 806 of the Reform Act or in any legislative history relating thereto shall be construed as requiring the Secretary to permit an automatic change of a taxable year.

(10) Subsection (e) of section 806 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(3) BASIS, ETC. RULES.—

"(A) BASIS RULE.—The adjusted basis of any partner's interest in a partnership or shareholder's stock in an S corporation shall be determined as if all of the income to be taken into account ratably in the 4 taxable years referred to in paragraph (2)(C) were included in gross income for the 1st of such taxable years.

"(B) TREATMENT OF DISPOSITIONS.—If any interest in a partnership or stock in an S corporation is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under paragraph (2)(C) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term 'spread period' means the period consisting of the 4 taxable years referred to in paragraph (2)(C)."

(f) AMENDMENTS RELATED TO SECTION 811 OF THE REFORM ACT.—

(1) Paragraph (4) of section 453C(b) of the 1986 Code is amended—

(A) by striking out "at any time during" and inserting in lieu thereof "as of the close of", and

(B) by striking out "as of the close of such taxable year in lieu" and inserting in lieu thereof "as of the close of such taxable year (determined by not taking into account any indebtedness described in paragraph (3)(B)) in lieu".

(2) So much of paragraph (2) of section 453C(d) of the 1986 Code as precedes subparagraph (A) is amended to read as follows:

"(2) EXCESS ALLOCABLE INSTALLMENT INDEBTEDNESS.—If the allocable installment indebtedness for any taxable year exceeds the amount which may be allocated under paragraph (1) to applicable installment obligations arising in (and outstanding as of the close of) such taxable year, such excess shall—".

(3) Subparagraph (A) of section 453C(e)(1) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Such term also includes any obligation held by any person if the basis of such obligation in the hands of such person is determined (in whole or in part) by reference to the basis of such obligation in the hands of another person and such obligation was an applicable installment obligation in the hands of such other person."

(4) Paragraph (2) of section 453C(e) of the 1986 Code (relating to aggregation rules) is amended by striking out "For" and inserting in lieu thereof "Except as provided in regulations, for".

(5) Subparagraph (B) of section 453C(e)(4) of the 1986 Code is amended by striking out "or (3)".

(6) Paragraph (4) of section 811(c) of the Reform Act is amended by striking out the second subparagraphs (D) and (E).

(7) Paragraph (5) of section 811(c) of the Reform Act is amended by striking out "October 23, 1985" each place it appears and inserting in lieu thereof "October 23, 1984".

(8) Section 811(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(9) SPECIAL RULES.—For purposes of section 453C of the 1986 Code (as added by subsection (a))—

"(A) REVOLVING CREDIT PLANS, ETC.—The term 'applicable installment obligation' shall not include any obligation arising out of any disposition or sale described in paragraph (1) or (2) of section 453(k) of such Code (as added by section 812(a)).

"(B) CERTAIN DISPOSITIONS DEEMED MADE ON FIRST DAY OF TAXABLE YEAR.—In the case of a taxpayer's 1st taxable year ending after December 31, 1986, dispositions after February 28, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day."

(9) For purposes of applying the amendments made by this subsection and the amendments made by section 10202 of the Revenue Act of 1987, the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.

(g) AMENDMENTS RELATED TO SECTION 812 OF THE REFORM ACT.—

(1) Section 453 of the 1986 Code is amended by redesignating the subsection (j) added by section 812 of the Reform Act as subsection (k).

(2) Subsection (c) of section 453A of the 1986 Code (as in effect on the date before the date of the enactment of the Revenue Act of 1987) is amended by striking out "453(j)" and inserting in lieu thereof "453(k)".

(3) Paragraph (1) of section 812(c) of the Reform Act is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2) and (3)".

(4) Subsection (c) of section 812 of the Reform Act is amended by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following new paragraph:

"(2) SALES OF STOCK, ETC.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date."

(5) Paragraph (3) of section 812(c) of the Reform Act (as so redesignated) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) such change shall be treated as having been made with the consent of the Secretary,

"(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall be equal to 4 years, and

"(D) except as provided in paragraph (4), the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

"In the case of the:	*The applicable percentage is:*
1st taxable year.......	*15*
2nd taxable year.....	*25*
3rd taxable year......	*30*
4th taxable year......	*30.*

If the taxpayer's last taxable year beginning before January 1, 1987, was the taxpayer's 1st taxable year in which sales were made under a revolving credit plan, all adjustments under section 481 of such Code shall be taken into account in the taxpayer's 1st taxable year beginning after December 31, 1986."

(6) Subsection (c) of section 812 of the Reform Act is amended by adding at the end thereof the following new paragraphs:

"(4) ACCELERATION OF ADJUSTMENTS WHERE CONTRACTION IN AMOUNT OF INSTALLMENT OBLIGATIONS.—

"(A) IN GENERAL.—If the percentage determined under subparagraph (B) for any taxable year in the adjustment period exceeds the percentage which would otherwise apply under paragraph (3)(D) for such taxable year (determined after the application of this paragraph for prior taxable years in the adjustment period)—

"(i) the percentage determined under subparagraph (B) shall be substituted for the applicable percentage which would otherwise apply under paragraph (3)(D), and

"(ii) any increase in the applicable percentage by reason of clause (i) shall be applied to reduce the applicable percentage determined under paragraph (3)(D) for subsequent taxable years in the adjustment period (beginning with the 1st of such subsequent taxable years).

"(B) DETERMINATION OF PERCENTAGE.—For purposes of subparagraph (A), the percentage determined under this subparagraph for any taxable year in the adjustment period is the excess (if any) of—

"(i) the percentage determined by dividing the aggregate contraction in revolving installment obligations by the aggregate face amount of such obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, over

"(ii) the sum of the applicable percentages under paragraph (3)(D) (as modified by this paragraph) for prior taxable years in the adjustment period.

"(C) AGGREGATE CONTRACTION IN REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of subparagraph (B), the aggregate contraction in revolving installment obligations is the amount by which—

"(i) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, exceeds

"(ii) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxable year involved.

"(D) REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of this paragraph, the term 'revolving installment obligations' means installment obligations arising under a revolving credit plan.

"(E) TREATMENT OF CERTAIN OBLIGATIONS DISPOSED OF ON OR BEFORE OCTOBER 26, 1987.—For purposes of subparagraphs (B)(i) and (C)(i), in determining the aggregate face amount of revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, there shall not be taken into account any obligation—

"(i) which was disposed of to an unrelated person on or before October 26, 1987, or

"(ii) was disposed of to an unrelated person on or after such date pursuant to a binding written contract in effect on October 26, 1987, and at all times thereafter before such disposition.

For purposes of the preceding sentence, the term 'unrelated person' means any person who is not a related person (as defined in section 453(g) of the Internal Revenue Code of 1986).

"(5) LIMITATION ON LOSSES FROM SALES OF OBLIGATIONS UNDER REVOLVING CREDIT PLANS.—If 1 or more obligations arising under a revolving credit plan and taken into account under paragraph (3) are disposed of during the adjustment period, then, notwithstanding any other provision of law—

"(A) no losses from such dispositions shall be recognized, and

"(B) the aggregate amount of the adjustment for taxable years in the adjustment period (in reverse order of time) shall be reduced by the amount of such losses.

"(6) ADJUSTMENT PERIOD.—For purposes of paragraphs (4) and (5), the adjustment period is the 4-year period under paragraph (3)."

(h) AMENDMENT RELATED TO SECTION 821 OF THE REFORM ACT.—Section 821(b)(3) of the Reform Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall also apply to any taxable year beginning after August 16, 1986, and before January 1, 1987, if the taxpayer treated such income in the same manner for the taxable year preceding such taxable year."

(i) AMENDMENT RELATED TO SECTION 822 OF THE REFORM ACT.—Paragraph (1) of section 703(b) of the 1986 Code is amended by striking out "or (d)(4)".

(j) AMENDMENTS RELATED TO SECTION 824 OF THE REFORM ACT.—

(1) Section 6501(o) of the 1986 Code which relates to cross references is amended by striking out paragraph (3).

(2) Paragraph (4) of section 824(c) of the Reform Act is amended by striking out "an indemnity agreement" and inserting in lieu thereof "an underwriting agreement".

SEC. 109. AMENDMENTS RELATED TO TITLE IX OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 901 OF THE REFORM ACT.—

(1) Subparagraph (C) of section 46(e)(4) of the 1986 Code is amended by adding at the end thereof the following new sentences: "Notwithstanding the preceding provisions of this subparagraph, any such election shall terminate effective with respect to the 1st taxable year of the organization making such election which begins after 1986 and during which such organization (or any successor organization) was not at any time the lessee under any lease of regular investment tax credit property. For purposes of the preceding sentence, the term 'regular investment tax credit property' means any section 38 property if the regular percentage applied to such property and the amount of qualified investment with respect to such property would have been reduced under paragraph (1) but for an election under this subparagraph."

(2)(A) Paragraph (5) of section 585(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Election binding on all members of group.—Any election under this subsection made by a member of a parent-subsidiary controlled group shall be binding on all banks which are members of such group for the taxable year of the election."

(B) Subclause (I) of section 585(c)(3)(A)(iii) of the 1986 Code is amended by striking out "or such greater amount as the taxpayer may designate" and inserting in lieu thereof "or such higher percentage of such net amount as the taxpayer may elect".

(C) Clause (ii) of section 585(c)(3)(B) of the 1986 Code is amended by striking out "designates an amount" and inserting in lieu thereof "elects a higher percentage".

(3) Paragraph (4) of section 585(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year."

(b) Amendments Related to Section 902 of the Reform Act.—

(1) Paragraph (3) of section 902(f) of the Reform Act is amended—

(A) in subparagraph (F), by striking out "distribution company" and inserting in lieu thereof "distribution facility",

(B) in subparagraph (L), by striking out "waterfront project" and inserting in lieu thereof "2 Festival Market Place projects at Union Pier Terminal and 1 project at the Remount Road Container Yard, State Pier No. 15 at North Charleston Terminal",

(C) in subparagraph (M), by striking out "Pontabla" and inserting in lieu thereof "Pontalba",

(D) in subparagraph (P), by striking out "Birmingham, Alabama," and inserting in lieu thereof "Homewood, Alabama, the", and

(E) by adding at the end thereof the following new subparagraphs:

"(T) Bellows Falls, Vermont—building project.

"(U) East Broadway Project, Louisville, Kentucky.

"(V) O.K. Industries, Oklahoma."

(2) Paragraph (4) of section 902(f) of the Reform Act is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(3)(A) Paragraph (3) of section 265(b) of the 1986 Code is amended to read as follows:

"(3) Exception for certain tax-exempt obligations.—

"(A) In general.—Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

"(B) Qualified tax-exempt obligation.—

"(i) In general.—For purposes of subparagraph (A), the term 'qualified tax-exempt obligation' means a tax-exempt obligation—

"(I) which is issued after August 7, 1986, by a qualified small issuer,

"(II) which is not a private activity bond (as defined in section 141), and

"(III) which is designated by the issuer for purposes of this paragraph.

"(ii) Certain bonds not treated as private activity bonds.—For purposes of clause (i)(II), there shall not be treated as a private activity bond—

"(I) any qualified 501(c)(3) bond (as defined in section 145), or

"(II) any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)).

"(C) Qualified small issuer.—

"(i) In general.—For purposes of subparagraph (B), the term 'qualified small issuer' means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed $10,000,000.

"(ii) Obligations not taken into account in determining status as qualified small issuer.—For purposes of clause (i), an obligation is described in this clause if such obligation is—

"(I) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section 145),

"(II) an obligation to which section 141(a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103(o)(2)(A)), or

"(III) an obligation issued to refund (other than to advance refund within the meaning of section 149(d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

"(iii) Allocation of amount of issue in certain cases.—In the case of an issue under which more than 1 governmental entity receives benefits, if—

"(I) all governmental entities receiving benefits from such issue irrevocably agree (before the date of issuance of the issue) on an allocation of the amount of such issue for purposes of this subparagraph, and

"(II) such allocation bears a reasonable relationship to the respective benefits received by such entities,

then the amount of such issue so allocated to an entity (and only such amount with respect to such issue) shall be taken into account under clause (i) with respect to such entity.

"(D) Limitation on amount of obligations which may be designated.—

"(i) In general.—Not more than $10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

"(ii) Certain refundings of designated obligations deemed designated.—Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

"(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

"(II) the average maturity date of the refunding obligations issued as part of the issue of which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

"(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

"(iii) Certain obligations may not be designated or deemed designated.—No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (ii)) if—

"(I) any obligation issued as part of such issue is issued to refund another obligation, and

"(II) the aggregate face amount of such issue exceeds $10,000,000.

"(E) Aggregation of issuers.—For purposes of subparagraphs (C) and (D)—

"(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

"(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

"(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

"(F) Treatment of composite issues.—In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

"(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

"(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue)."

(B) In the case of any obligation issued after August 7, 1986, and before January 1, 1987, the time for making a designation with respect to such obligation under section 265(b)(3)(B)(iii) of the 1986 Code shall not expire before January 1, 1989.

(C) If—

(i) an obligation is issued on or after January 1, 1986, and on or before August 7, 1986,

(ii) when such obligation was issued, the issuer made a designation that it intended to qualify under section 802(e)(3) of H.R. 3838 of the 99th Congress as passed by the House of Representatives, and

(iii) the issuer makes an election under this subparagraph with respect to such obligation,

for purposes of section 265(b)(3) of the 1986 Code, such obligation shall be treated as issued on August 8, 1986.

(D)(i) Except as provided in clause (ii), the following provisions of section 265(b)(3) of the 1986 Code (as amended by this subparagraph (A)) shall apply to obligations issued after June 30, 1987:

(I) subparagraph (C)(ii)(III),

(II) clauses (ii) and (iii) of subparagraph (D), and

(III) subparagraphs (E) and (F).

(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the provisions referred to in clause (i) shall apply to such issuer as if included in the amendments made by section 902(a) of the Tax Reform Act of 1986.

(4) Subparagraph (B) of section 291(e)(1) of the 1986 Code is amended by redesignating the clause (iv) added by section 902(c)(2) of the Reform Act as clause (v).

(5) Clause (i) of section 291(e)(1)(B) of the 1986 Code is amended by striking out "section 582(a)(2)" and inserting in lieu thereof "section 585(a)(2)".

(6) Paragraph (1) of section 902(e) of the Reform Act is amended by striking out "Section 163(h)(12)" and inserting in lieu thereof "Section 163(i)(2) (as redesignated by section 511(b) of this Act)".

(7) Paragraph (4) of section 902(f) of the Reform Act is amended—

(A) by inserting "and qualified 501(c)(3) bonds designated by such Governor for purposes of this paragraph," after "1987),", and

(B) by striking out "subparagraph" in the last sentence and inserting in lieu thereof "paragraph".

(c) Amendments Related to Section 903 of the Reform Act.—

(1) Paragraph (1) of section 172(b) of the 1986 Code is amended by redesignating subparagraphs (L) and (M) as subparagraphs (K) and (L), respectively.

(2) Subparagraph (A) of section 172(b)(1) of the 1986 Code is amended by striking out "Except" and all that follows down through "a net operating loss" and inserting in lieu thereof "Except as otherwise provided in this paragraph, a net operating loss".

(3) Subparagraph (B) of section 172(b)(1) of the 1986 Code is amended to read as follows:

"(B) Except as otherwise provided in this paragraph, a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss."

(d) Amendments Related to Section 905 of the Reform Act.—

(1) Subsection (l) of section 165 of the 1986 Code is amended by redesignating paragraph (6) as paragraph (7) and by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) Election to treat as ordinary loss.—

"(A) In general.—In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

"(B) Limitations.—

"(i) Deposit may not be federally insured.—No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

"(ii) Dollar limitation.—With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

"(6) Election.—Any election by the taxpayer under this subsection for any taxable year—

"(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

"(B) may be revoked only with the consent of the Secretary."

(2) Paragraph (1) of section 905(c) of the Reform Act is amended to read as follows:

"(1) In general.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1982."

(3) The subsection (f) of section 451 of the 1986 Code which was added by section 905(b) of the 1986 Reform Act is redesignated as subsection (g).

(4) If on the date of the enactment of this Act (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act or by this subsection (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

(A) credit or refund of any such overpayment may nevertheless be made if claim therefore is filed before the date 1 year after such date of enactment, and

(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment.

SEC. 110. AMENDMENTS RELATED TO TITLE X OF THE REFORM ACT.

(a) Amendments Related to Section 1011 of the Reform Act.—

(1) Paragraph (1) of section 813(a) of the 1986 Code (relating to foreign life insurance companies) is amended by striking out "the special life insurance company deduction and".

(2) Paragraph (1) of section 1011(d) of the Reform Act is amended—

(A) by striking out "any bond" and inserting in lieu thereof "any market discount bond (as defined in section 1278 of the Internal Revenue Code of 1986)",

(B) by striking out "28 percent" and inserting in lieu thereof "31.6 percent", and

(C) by adding at the end thereof the following new sentence: "The preceding sentence shall apply only if the tax determined under the preceding sentence is less than the tax which would otherwise be imposed."

(3) Paragraph (2) of section 1011(d) of the Reform Act is amended to read as follows:

"(2) Qualified life insurance company.—For purposes of paragraph (1), the term 'qualified life insurance company' means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986."

(b) Amendments Related to Section 1012 of the Reform Act.—

(1) Clause (iv) of section 1012(c)(4)(C) of the Reform Act is amended to read as follows:

"(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization."

(2) Clause (ii) of section 1012(c)(4)(C) of the Reform Act is amended by striking out "Association" and inserting in lieu thereof "Plan".

(3) The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act with respect to short taxable years which begin during 1987 by reason of section 843 of such Code.

(4)(A) Paragraph (3) of section 501(m) of the 1986 Code is amended by striking out "and" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(E) charitable gift annuities."

(B) Subsection (m) of section 501 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Charitable gift annuity.—For purposes of paragraph (3)(E), the term 'charitable gift annuity' means an annuity if—

"(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

"(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property)."

(C) Not later than January 1, 1989, the Secretary of the Treasury or his delegate shall revise the tables used in determining the amount of the charitable contribution in the case of annuity contracts so that such determination will reflect the value of such contribution based on market interest rates at the time such contract was issued and more recent mortality experience.

(c) Amendments Related to Section 1021 of the Reform Act.—

(1)(A) Subparagraph (C) of section 832(b)(7) of the 1986 Code (relating to special rules for determining premiums earned) is amended by striking out "this part" and inserting in lieu thereof "section 831(a)".

(B) The subparagraph heading for such subparagraph is amended by striking out "NONLIFE INSURANCE COMPANY" and inserting in lieu thereof "INSURANCE COMPANY TAXABLE UNDER SECTION 831(a)".

(2) Paragraph (7) of section 832(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

"(D) Treatment of companies which become taxable under section 831(a).—

"(i) Exception to phase-in for companies which were not taxable, etc., before 1987.—Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a) or 831(a) (as in effect on the day before the date of the enactment of *the Tax Reform Act of 1986) by reason of being—*

"(I) subject to tax under section 821(c) (as so in effect), or

"(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

"(ii) PHASE-IN BEGINNING AT LATER DATE FOR COMPANIES NOT 1ST TAXABLE UNDER SECTION 831(a) IN 1987.—In the case of an insurance company—

"(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

"(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a) or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for 'December 31, 1986' and the 1st day of the 7th succeeding taxable year for 'January 1, 1993'.

"(E) TREATMENT OF CERTAIN RECIPROCAL INSURERS.—In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses, subparagraphs (B) and (C) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses."

(3) Paragraph (5) of section 832(e) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A) and by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a comma.

(d) AMENDMENTS RELATED TO SECTION 1022 OF THE REFORM ACT.—

(1) Section 832 of the 1986 Code (defining insurance company taxable income) is amended by adding at the end thereof the following new subsection:

"(g) DIVIDENDS WITHIN GROUP.—In the case of an insurance company subject to tax under section 831(a) filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were not filing a consolidated return."

(2) Subclause (II) of section 832(b)(5)(B)(ii) of the 1986 Code (relating to losses incurred) is amended by inserting "(directly or indirectly)" after "attributable".

(3) For purposes of section 832(b)(5)(C)(i) of the 1986 Code, any stock or obligation acquired on or after August 8, 1986, by an insurance company subject to the tax imposed by section 831 of the 1986 Code (hereinafter in this paragraph referred to as the "acquiring company") from another insurance company so subject (hereinafter in this paragraph referred to as the "transferor company") shall be treated as acquired on the date on which such stock or obligation was acquired by the transferor company if—

(A) the transferor company acquired such stock or obligation before August 8, 1986, and

(B) at all times after the date on which such stock or obligation was acquired by the transferor company and before the date of the acquisition by the acquiring company, the transferor company and the acquiring company were members of the same affiliated group filing a consolidated return.

For purposes of the preceding sentence, the date on which the stock or obligation was acquired by the transferor company shall be determined with regard to any prior application of the preceding sentence. For purposes of this paragraph, if the acquiring corporation or transferor corporation was a party to a reorganization described in section 368(a)(1)(F) of the 1986 Code, any reference to such corporation shall include a reference to any predecessor thereof involved in such reorganization.

(e) AMENDMENTS RELATED TO SECTION 1023 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 846(f)(6) of the 1986 Code (relating to special rule for certain accident and health insurance lines of business) is amended by striking out "paid during the year" and inserting in lieu thereof "paid in the middle of the year".

(2) Subsection (g) of section 846 of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year."

(3) Subsection (e) of section 1023 of the Reform Act (relating to discounting of unpaid losses and certain unpaid expenses) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION OF FRESH START TO COMPANIES WHICH BECOME SUBJECT TO SECTION 831(a) TAX IN LATER TAXABLE YEAR.—If—

"(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

"(i) subject to tax under section 831(b) of such Code, or

"(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

"(B) such company becomes subject to tax under such section 831(a) for any later taxable year,

paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins as 1987; and paragraph (3)(B) shall not apply."

(f) AMENDMENTS RELATED TO SECTION 1024 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 831(b)(2) of the 1986 Code (relating to companies to which alternative tax applies) is amended by adding at the end thereof the following new sentence:

"The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary."

(2) Subsection (a) of section 835 of the 1986 Code (relating to election by reciprocal) is amended by striking out "section 821(a)" and inserting in lieu thereof "section 831(a)".

(3) Subsection (f) of section 835 of the 1986 Code is amended by striking out "subsection (e)" and inserting in lieu thereof "subsection (d)".

(4) Paragraph (6) of section 243(b) of the 1986 Code (relating to special rules for insurance companies) is amended by striking out "or 821".

(5) Subsection (c) of section 543 of the 1986 Code (relating to gross income of insurance companies other than life or mutual) is amended—

(A) by striking out "OR MUTUAL" in the heading and inserting in lieu thereof "INSURANCE COMPANIES", and

(B) by striking out "life or mutual" in the text and inserting in lieu thereof "a life insurance company".

(6) Subsection (g) of section 816 of the 1986 Code (relating to burial and funeral benefit insurance companies) is amended by striking out "section 821 or".

(7) The table of sections for part II of subchapter L of chapter 1 of the 1986 Code (relating to other insurance companies) is amended by striking out the item relating to section 831 and inserting in lieu thereof the following new item:

"Sec. 831. Tax on insurance companies other than life insurance companies."

(8) Paragraph (1) of section 1024(d) of the Reform Act is amended by adding at the end thereof the following new sentence: "In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any amount included in gross income under this paragraph shall be treated as gross investment income."

(g) AMENDMENTS RELATED TO SECTION 1031 OF THE REFORM ACT.—

(1) Paragraph (1) of section 1031(a) of the Reform Act is amended by inserting "(whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years)" after "any initial payment".

(2) Paragraph (2) of section 1031(a) of the Reform Act is amended by striking out "initial payment" each place it appears and inserting in lieu thereof "initial payment referred to in paragraph (1)".

(3) Paragraph (2) of section 1031(a) of the Reform Act is amended by striking out "this title" each place it appears and inserting in lieu thereof "the Internal Revenue Code of 1986".

(h) SPECIAL RULE FOR MUTUAL LIFE INSURANCE COMPANY.—

(1) IN GENERAL.—Paragraph (2) of section 217(i) of the Tax Reform Act of 1984 is amended to read as follows:

"(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1954 (relating to phaseout of small life insurance company deduction)."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of

the amendment made by this subsection shall not exceed $300,000 per taxable year.

(i) DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES.—Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

(2) such contract was outstanding on September 12, 1986, and

(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(j) TREATMENT OF ALTERNATIVE MINIMUM TAX WITH RESPECT TO SHAREHOLDERS SURPLUS ACCOUNT.—

(1) Paragraph (2) of section 815(c) of the 1986 Code (relating to shareholders surplus account) is amended by adding at the end thereof the following new sentence:

"If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(k) TREATMENT OF CERTAIN ITEMS AS NOT INTEREST FOR SOURCE RULES, ETC.—Subsection (f) of section 818 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) ITEMS DESCRIBED IN SECTION 807(C) TREATED AS NOT INTEREST FOR SOURCE RULES, ETC.—For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest."

SEC. 111. AMENDMENTS RELATED TO PARTS I AND II OF SUBTITLE A OF TITLE XI OF THE REFORM ACT.

(a) AMENDMENT RELATED TO SECTION 1101 OF THE REFORM ACT.—

(1) Paragraph (4) of section 219(g) of the 1986 Code (relating to special rule for married individuals filing separately) is amended to read as follows:

"(4) SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATELY AND LIVING APART.—A husband and wife who—

"(A) file separate returns for any taxable year, and

"(B) live apart at all times during such taxable year,

shall not be treated as married individuals for purposes of this subsection."

(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1987.

(B) A taxpayer may elect to have the amendment made by paragraph (1) apply to any taxable year beginning in 1987.

(b) AMENDMENTS RELATED TO SECTION 1102 OF THE REFORM ACT.—

(1) Sections 408(d)(2)(C) and 408(o)(4)(B)(iv) of the 1986 Code are each amended by striking out "with or within which the taxable year ends" and inserting in lieu thereof "in which the taxable year begins".

(2)(A) Section 408(d)(4) of the 1986 Code (relating to excess contributions returned before due date of return) is amended by striking out "to the extent that such contribution exceeds the amount allowable as a deduction under section 219".

(B) Section 408(d)(4) of the 1986 Code is amended—

(i) by striking out "excess" each place it appears, and

(ii) by striking out "EXCESS CONTRIBUTIONS" in the heading and inserting in lieu thereof "CONTRIBUTIONS".

(3) Sections 408(d)(5) and 4973(b) of the 1986 Code are each amended by striking out all that follows "section 219" in the last sentence thereof and inserting in lieu thereof "shall be computed without regard to section 219(g).".

(4)(A) Section 6693(b) of the 1986 Code (relating to overstatement of designated nondeductible contributions) is amended to read as follows:

"(b) PENALTIES RELATING TO NONDEDUCTIBLE CONTRIBUTIONS.—

"(1) OVERSTATEMENT OF DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS.—Any individual who—

"(A) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

"(B) overstates the amount of such contributions made for such taxable year,

shall pay a penalty of $100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause.

"(2) FAILURE TO FILE FORM.—Any individual who fails to file a form required to be filed by the Secretary under section 408(o)(4) shall pay a penalty of $50 for each such failure unless it is shown that such failure is due to reasonable cause."

(B)(i) The heading for section 6693 of the 1986 Code is amended by striking out "overstatement of" and inserting in lieu thereof "penalties relating to".

(ii) The item relating to section 6693 in the table of sections for subchapter B of chapter 68 is amended by striking out "overstatement of" and inserting in lieu thereof "penalties relating to".

(c) AMENDMENTS RELATED TO SECTION 1105 OF THE REFORM ACT.—

(1) Section 402(g)(2)(C) of the 1986 Code (relating to taxation of distribution) is amended—

(A) by striking out "(and no tax shall be imposed under section 72(t))" in clause (i),

(B) by striking out "such excess deferral is made" in clause (ii) and inserting in lieu thereof "such income is distributed", and

(C) by inserting at the end thereof the following new flush sentence:

"No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence."

(2) Section 402(g)(2) is amended by striking out "REQUIRED DISTRIBUTION" in the heading thereof and inserting in lieu thereof "DISTRIBUTION".

(3) Section 402(g)(2) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) PARTIAL DISTRIBUTIONS.—If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income."

(4) Section 402(g)(3) of the 1986 Code (defining elective deferral) is amended by striking out "paragraph" and inserting in lieu thereof "subsection".

(5)(A) Clause (iii) of section 402(g)(8)(A) of the 1986 Code (relating to special rule for certain organizations) is amended by inserting "(determined in the manner prescribed by the Secretary)" after "taxable years".

(B) Section 402(g)(8) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) YEARS OF SERVICE.—For purposes of this paragraph, the term 'years of service' has the meaning given such term by section 403(b)."

(6)(A) Section 402(g) of the 1986 Code, as added by section 1852(b)(3)(A) of the Reform Act, is redesignated as subsection (i).

(B) Section 402(g) of the 1986 Code, as added by section 1854(f)(2) of the Reform Act, is redesignated as subsection (j).

(C) Section 1854(f)(4)(C) of the Reform Act is amended by striking out "section 402(g)" and inserting in lieu thereof "section 402(j)".

(7)(A) Section 401(a) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year."

(B) Section 403(b)(1) of the 1986 Code is amended by striking out "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),".

(C) Subparagraph (A) of section 408(k)(6) of the 1986 Code, as amended by subsection (f)(1), is amended by adding at the end thereof the following new clause:

"(iv) LIMITATIONS ON ELECTIVE DEFERRALS.—Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met."

(D) Subparagraph (D) of section 501(c)(18) of the 1986 Code is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following new clause:

"(iv) the requirements of section 401(a)(30) are met."

(E)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to plan years beginning after December 31, 1987.

(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act, the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(II) January 1, 1989.

(8) Section 1105(c)(2)(A) of the Reform Act is amended by striking out "the last of such collective bargaining agreements" and inserting in lieu thereof "such agreement".

(9) Section 1105(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(6) Reporting requirements.—The amendments made by subsection (b) shall apply to calendar years beginning after December 31, 1986."

(10) Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.

(11) Section 402(g)(3) of the 1986 Code is amended by inserting at the end thereof the following new sentence: "An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

(12) Subparagraph (A) of section 403(b)(12) of the 1986 Code is amended by inserting after clause (ii) the following new sentence:

"For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

(d) Amendments Related to Section 1106 of the Reform Act.—

(1) Section 404(l) of the 1986 Code (relating to limitation on amount of compensation which may be taken into account) is amended by adding at the end thereof the following new sentence: "For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.".

(2) Section 415(b)(5)(D) of the 1986 Code (relating to application to changes in benefit structures) is amended by striking out "this paragraph" and inserting in lieu thereof "subparagraph (A)".

(3) Paragraph (2) of section 415(k) of the 1986 Code (relating to contributions to provide cost-of-living protection under defined benefit plans), as added by section 1106(c) of the Reform Act, is amended—

(A) by striking out "to the arrangement" in subparagraph (C)(ii) and inserting in lieu thereof "to such increase", and

(B) by striking out subparagraph (D) and inserting in lieu thereof:

"(D) Arrangement elective; time for election.—An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

"(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

"(ii) separates from service."

(4) Sections 401(a)(17) and 404(l) of the 1986 Code are each amended by adding at the end thereof the following new sentence: "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

(5) Paragraph (4) of section 1106(i) of the Reform Act is amended by striking the period at the end thereof and inserting in lieu thereof "(determined as if the amendments made by this section were in effect for such year).".

(6) Section 415(b)(5)(B) of the 1986 Code is amended by inserting "and subsection (e)" after "paragraphs (1)(B) and (4)".

(7) Subparagraph (A) of section 415(c)(6) of the 1986 Code is amended—

(A) by striking out "paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1))", and inserting in lieu thereof "paragraph (1)(A)"; and

(B) by striking out "paragraph (c)(1)(A) (as so adjusted)" and inserting in lieu thereof "paragraph (1)(A)".

(8) Sections 414(q)(1)(D) and 416(i)(1)(A)(i) of the 1986 Code are each amended by striking out "150 percent of the amount in effect under section 415(c)(1)(A)" and inserting in lieu thereof "50 percent of the amount in effect under section 415(b)(1)(A)".

(e) Amendments Related to Section 1107 of the Reform Act.—

(1) Section 457(c)(2) of the 1986 Code is amended by striking out "and paragraphs (2) and (3) of subsection (b)".

(2) Section 457(d)(1)(A) of the 1986 Code (relating to distribution requirements) is amended to read as follows:

"(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

"(i) the calendar year in which the participant attains age 70½,

"(ii) when the participant is separated from service with the employer, or

"(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations)."

(3) Paragraph (7) of section 401(k) of the 1986 Code (defining rural electric cooperative plan) is amended to read as follows:

"(7) Rural electric cooperative plan.—For purposes of this subsection—

"(A) In general.—The term 'rural electric cooperative plan' means any pension plan—

"(i) which is a defined contribution plan (as defined in section 414(i)), and

"(ii) which is established and maintained by a rural electric cooperative.

"(B) Rural electric cooperative defined.—For purposes of subparagraph (A), the term 'rural electric cooperative' means—

"(i) any organization which—

"(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

"(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

"(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i), and

"(iii) an organization which is a national association of organizations described in clause (i) or (ii)."

(4) Section 414(o) of the 1986 Code is amended by inserting "or any requirement under section 457" after "(n)(3)".

(5)(A) Paragraph (6) of section 818(a) of the 1986 Code (defining pension plan contracts) is amended—

(i) by striking out "State" in subparagraph (A),

(ii) by inserting "or any organization (other than a governmental unit) exempt from tax under this subtitle," after "foregoing," in subparagraph (B),

(iii) by striking out "or" before "agency" in subparagraph (B), and

(iv) by inserting ", or organization" after "instrumentality" the second place it appears in subparagraph (B).

(B) The amendments made by this paragraph shall apply to contracts issued after December 31, 1986.

(6) Section 1107(c)(3) of the Reform Act is amended—

(A) by striking out "eligible" each place it appears, and

(B) by inserting at the end of subparagraph (B) the following new sentence: "This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986."

(7) Paragraph (5) of section 1107(c) of the Reform Act is amended—

(A) by striking out "to employees on August 1, 1986, of",

(B) by striking out "a deferred compensation plan" in subparagraph (A) and inserting in lieu thereof "to employees on August 16, 1986,",

(C) by inserting "maintaining a deferred compensation plan" after "Alabama" in subparagraph (A), and

(D) by striking out "a deferred compensation plan" in subparagraph (B) and inserting in lieu thereof "to individuals eligible to participate on August 16, 1986, in a deferred compensation plan".

(8) Section 3121(v)(3)(A) of the 1986 Code is amended by striking out "457(e)(1)" and inserting in lieu thereof "457(f)(1)".

(9) Effective for years beginning after December 31, 1988, paragraph (9) of section 457(e) of the 1986 Code is amended by inserting "after separation from service and" before "within 60 days".

(10) Subclause (I) of section 457(d)(2)(B)(i) of the 1986 Code is amended to read as follows:

"(I) the amounts payable with respect to the participant will be paid at times specified by the Secretary which are not later than the time determined under section 401(a)(9)(G) (relating to incidental death benefits),".

(11)(A) Subsection (e) of section 457 of the 1986 Code (as amended by section 1107 of the Reform Act) is amended by adding at the end thereof the following new paragraph:

"(11) Certain plans excepted.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation."

(B)(i) Subsection (d) of section 457 of the 1986 Code (as in effect on the day before the date of the enactment of the Reform Act) is amended by adding at the end thereof the following new paragraph:

"(10) Certain plans excepted.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation."

(ii) The amendments made by this subparagraph shall apply to fiscal years beginning after December 31, 1978.

(f) Amendments Related to Section 1108 of the Reform Act.—

(1) Subparagraph (A) of section 408(k)(6) of the 1986 Code (relating to salary reduction arrangements under simplified employee pensions) is amended to read as follows:

"(A) Arrangements which qualify.—

"(i) IN GENERAL.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

"(II) to the employee directly in cash.

"(ii) 50 PERCENT OF ELIGIBLE EMPLOYEES MUST ELECT.—Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

"(iii) REQUIREMENTS RELATING TO DEFERRAL PERCENTAGE.—Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

"(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

"(II) 1.25."

(2) Section 408(k)(6)(B) of the 1986 Code (relating to exception where more than 25 employees) is amended by inserting "who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)" after "25 employees".

(3)(A) Section 408(k)(6)(D)(ii) of the 1986 Code (defining deferral percentage) is amended by striking out "(within the meaning of section 414(s))" and inserting in lieu thereof "(not in excess of the first $200,000)".

(B) Subparagraph (B) of section 408(k)(7) of the 1986 Code (defining compensation) is amended to read as follows:

"(B) COMPENSATION.—Except as provided in paragraph (2)(C), the term 'compensation' has the meaning given such term by section 414(s)."

(C) Subparagraph (C) of section 408(k)(3) of the 1986 Code is amended by striking out "total" before "compensation".

(D) Section 408(k)(8) of the 1986 Code is amended by striking out "paragraph (3)(C)" and inserting in lieu thereof "paragraphs (3)(C) and (6)(D)(ii)".

(4) Section 408(k)(6) of the 1986 Code (relating to employee may elect salary reduction arrangement) is amended by redesignating subparagraph (F) as subparagraph (G) and by inserting after subparagraph (E) the following new subparagraph:

"(F) EXCEPTION WHERE PENSION DOES NOT MEET REQUIREMENTS NECESSARY TO INSURE DISTRIBUTION OF EXCESS CONTRIBUTIONS.—This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

"(i) reporting requirements, and

"(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions."

(5) Section 408(d) of the 1986 Code (relating to tax treatment of distributions) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—

"(A) TRANSFER OR ROLLOVER OF CONTRIBUTIONS PROHIBITED UNTIL DEFERRAL TEST MET.—Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

"(B) CERTAIN EXCLUSIONS TREATED AS DEDUCTIONS.—For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) shall be treated as an amount allowable or allowed as a deduction under section 219."

(6) Subparagraph (C) of section 404(h)(1) of the 1986 Code is amended by inserting "(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))" after "taxable year" the second place it appears.

(7) Section 1108(h) of the Reform Act is amended to read as follows:

"(h) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1986.

"(2) INTEGRATION RULES.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs."

(8) Section 209(e)(8) of the Social Security Act is amended to read as follows:

"(8) under a simplified employee pension (as defined in section 408(k)(1) of such Code), other than any contributions described in section 408(k)(6) of such Code,".

(9) Section 3401(a)(12)(C) of the 1986 Code is amended—

(A) by striking out "section 219" and inserting in lieu thereof "section 402(h) (1) and (2)", and

(B) by striking out "a deduction" and inserting in lieu thereof "an exclusion".

(10) Section 408(k)(8) of the 1986 Code is amended by inserting ", except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)" after "section 415(d)".

(g) AMENDMENTS RELATED TO SECTION 1111 OF THE REFORM ACT.—

(1)(A) Section 401(l)(2)(B) of the 1986 Code (defining contribution percentages) is amended by inserting "by the employer" after "contributed" each place it appears.

(B) Clause (ii) of section 401(l)(3)(A) of the 1986 Code is amended by inserting "attributable to employer contributions" after "benefits".

(2) Section 401(l)(5)(C) of the 1986 Code (defining average annual compensation) is amended to read as follows:

"(C) AVERAGE ANNUAL COMPENSATION.—The term 'average annual compensation' means the participant's highest average annual compensation for—

"(i) any period of at least 3 consecutive years, or

"(ii) if shorter, the participant's full period of service."

(3) Section 401(l)(5)(E) of the 1986 Code (defining covered compensation) is amended—

(A) by striking out "age 65" each place it appears" and inserting in lieu thereof "the social security retirement age", and

(B) by adding at the end thereof the following new clause:

"(iii) SOCIAL SECURITY RETIREMENT AGE.—For purposes of this subparagraph, the term 'social security retirement age' has the meaning given such term by section 415(b)(8)."

(4) Section 1111(c)(3) of the Reform Act is amended by striking out "benefits pursuant to, and individuals covered by, any such agreement in".

(h) AMENDMENTS RELATED TO SECTION 1112 OF THE REFORM ACT.—

(1) Section 410(b)(4)(B) of the 1986 Code (relating to exclusion of employees not meeting age and service requirements) is amended—

(A) by striking out "do not meet" and inserting in lieu thereof "not meeting", and

(B) by striking out "and".

(2) Section 410(b)(6) of the 1986 Code (relating to definitions and special rules) is amended by redesignating subparagraph (F) as subparagraph (G) and by adding after subparagraph (E) the following new subparagraph:

"(F) EMPLOYERS WITH ONLY HIGHLY COMPENSATED EMPLOYEES.—A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year."

(3) Section 401(a)(26) of the 1986 Code (relating to additional participation requirements) is amended by redesignating subparagraph (F) as subparagraph (H) and by adding after subparagraph (E) the following new subparagraphs:

"(F) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph."

"(G) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term 'separate line of business' has the meaning given such term by section 414(r) (without regard to paragraph (7) thereof)."

(4) Section 402(b)(2) of the 1986 Code (relating to failure to meet requirements of section 410(b)) is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) HIGHLY COMPENSATED EMPLOYEES.—If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1), include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

"(B) FAILURE TO MEET COVERAGE TESTS.—If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraph (1) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

"(i) such taxable year, or

"(ii) any preceding period for which service was creditable to such employee under the plan."

(5) Subsections (m)(4)(A) and (n)(3)(A) of section 414 of the 1986 Code are each amended by striking out "and (16)" and inserting in lieu thereof "(16), (17), and (26)".

(6) Clause (iii) of section 1112(e)(3)(A) of the Reform Act is amended by striking out "a plan or merger" and inserting in lieu thereof "the plan".

(7) Section 1112(e)(2) of the Reform Act is amended by striking out "employees covered by such agreement in".

(8) Subsection (e) of section 1112 of the Reform Act is amended by striking out paragraph (3)(C) and by adding at the end of such subsection the following new paragraph:

"(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate."

(9) Subparagraph (B) of section 1112(e)(3) of the Reform Act is amended to read as follows:

"(B) INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

"(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

"(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

"(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

"(III) 5 percent.

"(ii) ELIGIBLE AMOUNT.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

"(I) may be rolled over under section 402(a)(5) of such Code,

"(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

"(III) may be transferred to another plan without inclusion in gross income.

"(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX.—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

"(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

"(II) the amount determined by using the interest rate applicable under clause (i).

"(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

"(I) the purchase price of such contract, over

"(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

"(v) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code."

(10) Section 413(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(9) PLANS COVERING A PROFESSIONAL EMPLOYEE.—Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting 'section 410(a)' for 'section 410', and paragraph (2) shall not apply."

(11) Section 410(b)(4) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) REQUIREMENTS NOT TREATED AS BEING MET BEFORE ENTRY DATE.—An employee shall not be treated as meeting the age and service requirements described in this paragraph until the first date on which, under the plan, any employee with the same age and service would be eligible to commence participation in the plan.

(i) AMENDMENTS RELATED TO SECTION 1114 OF THE REFORM ACT.—

(1) Paragraph (1) of section 414(q) of the 1986 Code (defining highly compensated employee) is amended by adding at the end thereof the following new flush sentence:

"The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d)."

(2) Section 414(q)(6) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) RULES TO APPLY TO OTHER PROVISIONS.—

"(i) IN GENERAL.—Except as provided in regulations and in clause (ii), the rules of subparagraph (A) shall be applied in determining the compensation of (or any contributions or benefits on behalf of) any employee for purposes of any section with respect to which a highly compensated employee is defined by reference to this subsection.

"(ii) EXCEPTION FOR DETERMINING INTEGRATION LEVELS.—Clause (i) shall not apply in determining the portion of the compensation of a participant which is under the integration level for purposes of section 401(l)."

(3)(A) Section 414(q)(8) of the 1986 Code (relating to excluded employees) is amended—

(i) by inserting "and" at the end of subparagraph (D), by striking ", and" at the end of subparagraph (E) and inserting in lieu thereof a period, and by striking out subparagraph (F), and

(ii) by striking out "The" in the last sentence thereof and inserting in lieu thereof "Except as provided by the Secretary, the".

(B) Section 414(q) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) SPECIAL RULE FOR NONRESIDENT ALIENS.—For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees."

(4)(A) Paragraph (8) of section 414(q) of the 1986 Code is amended by inserting "or the number of officers taken into account under paragraph (5)" after "paragraph (4)".

(B) Section 416(i)(1)(A) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded."

(5) Subparagraph (B) of section 408(k)(3) of the 1986 Code is amended to read as follows:

"(B) SPECIAL RULES.—For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3)."

(j) AMENDMENTS RELATED TO SECTION 1115 OF THE REFORM ACT.—

(1) So much of section 414(s) of the 1986 Code as precedes paragraph (2) is amended to read as follows:

"(s) COMPENSATION.—For purposes of any applicable provision—

"(1) IN GENERAL.—Except as provided in this subsection, the term 'compensation' has the meaning given such term by section 415(c)(3)."

(2) Section 414(s) of the 1986 Code is amended by striking out paragraph (2), by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and by adding at the end thereof the following new paragraph:

"(4) APPLICABLE PROVISION.—For purposes of this subsection, the term 'applicable provision' means any provision which specifically refers to this subsection."

(3)(A) Section 416(i)(1) of the 1986 Code (defining key employee) is amended by adding at the end thereof the following new subparagraph:

"(D) COMPENSATION.—For purposes of this paragraph, the term 'compensation' has the meaning given such term by section 414(q)(7)."

(B) The amendment made by this paragraph shall apply to years beginning after December 31, 1988.

(k) AMENDMENTS RELATED TO SECTION 1116 OF THE REFORM ACT.—

(1)(A) Subparagraph (B) of section 401(k)(2) of the 1986 Code (relating to distributions from a cash or deferred arrangement) is amended—

(i) by striking out subclauses (II), (III), and (IV) of clause (i) and inserting in lieu thereof:

"(II) an event described in paragraph (10),", and

(ii) by redesignating subclauses (V) and (VI) as subclauses (III) and (IV), respectively.

(B) Section 401(k) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) DISTRIBUTIONS UPON TERMINATION OF PLAN OR DISPOSITION OF ASSETS OR SUBSIDIARY.—

"(A) IN GENERAL.—The following events are described in this paragraph:

"(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan.

"(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

"(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

"(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

"(i) IN GENERAL.—An event shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the event.

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (H) thereof.

"(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition."

(C)(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.

(2) Subparagraph (B) of section 401(k)(2) of the 1986 Code is amended—

(A) by inserting "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" after "under which",

(B) by striking out "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" in clause (i), and

(C) by striking out "amounts" in clause (ii).

(3)(A) Clause (ii) of section 401(k)(3)(A) of the 1986 Code is amended by inserting "eligible" before "highly compensated employees" each place it appears.

(B) Section 1116(b)(4) of the Reform Act is amended by striking out "any" the first place it appears and inserting in lieu thereof "an".

(4) Subparagraph (C) of section 401(k)(3) of the 1986 Code, as added by section 1116(e) of the Reform Act, is redesignated as subparagraph (D).

(5) Subclause (I) of section 401(k)(3)(D)(ii) of the 1986 Code, as redesignated by paragraph (4), is amended by striking out "meets" and inserting in lieu thereof "meet".

(6) Section 401(k)(4)(A) of the 1986 Code is amended by striking out "provided by such employer".

(7) Section 401(k)(8) of the 1986 Code (relating to arrangement not disqualified if excess contributions distributed) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B)."

(8) Subparagraph (B) of section 1116(f)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: "If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date."

(9) Section 401(k)(4)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"This subparagraph shall not apply to a rural electric cooperative plan."

(10) Clause (i) of section 1116(f)(2)(B) of the Reform Act is amended by striking out "(or political subdivision thereof)" and inserting in lieu thereof "or political subdivision thereof, or any agency or instrumentality thereof,".

(l) AMENDMENTS RELATED TO SECTION 1117 OF THE REFORM ACT.—

(1) Paragraph (1) of section 401(m) of the 1986 Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by striking out "A plan" and inserting in lieu thereof "A defined contribution plan".

(2) Paragraph (3) of section 401(m) of the 1986 Code (relating to requirements) is amended by adding at the end thereof the following new sentence: "If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year."

(3) The last sentence of section 401(m)(2)(B) of the 1986 Code is amended by striking out "such contributions" the first place it appears and inserting in lieu thereof "contributions to which this subsection applies".

(4) Section 401(m)(4)(A) of the 1986 Code (defining matching contribution) is amended by striking out "the plan" each place it appears and inserting in lieu thereof "a defined contribution plan".

(5)(A) Section 401(m)(4)(B) of the 1986 Code (defining elective deferral) is amended by striking out "section 402(g)(3)(A)" and inserting in lieu thereof "section 402(g)(3)".

(B) The amendment made by this paragraph shall take effect as if included in the amendments made by section 1120 of the Reform Act.

(6) Subparagraph (C) of section 401(m)(6) of the 1986 Code is amended by striking out "EXCESS" in the subparagraph heading and inserting in lieu thereof "EXCESS AGGREGATE".

(7) Section 401(m)(7)(A) of the 1986 Code (relating to additional tax of section 72(t) not applicable) is amended by striking out "paragraph (8)" and inserting in lieu thereof "paragraph (6)".

(8) Section 4979(a)(1) of the 1986 Code (relating to tax on certain excess contributions) is amended by striking out "a cash or deferred arrangement which is part of".

(9) Section 4979(c) of the 1986 Code (defining excess contributions) is amended—

(A) by striking out "403(b),", and

(B) by striking out "408(k)(8)(B)" and inserting in lieu thereof "408(k)(6)(C)".

(10) Section 4979(d) of the 1986 Code (defining excess aggregate contribution) is amended by adding at the end thereof the following new sentence: "For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1)."

(11) Paragraph (2) of section 4979(f) of the 1986 Code (relating to inclusion in prior year) is amended to read as follows:

"(2) YEAR OF INCLUSION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

"(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than $100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made."

(12) Subsection (d) of section 1117 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 shall be treated as made in accordance with the provisions of the plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan."

(m) AMENDMENTS RELATED TO SECTION 1120 OF THE REFORM ACT.—

(1)(A) Section 403(b)(10) of the 1986 Code (relating to nondiscrimination requirements), as added by section 1120(b) of the Reform Act, is redesignated as paragraph (12).

(B) Subparagraph (D) of section 403(b)(1) of the 1986 Code is amended by striking out "paragraph (10)" and inserting in lieu thereof "paragraph (12)".

(2) Clause (i) of section 403(b)(12)(A), as redesignated by paragraph (1), is amended—

(A) by inserting "(17)," after "(5),", and

(B) by inserting ", section 401(m)," after "section 401(a)" the first place it appears.

(3) Section 1120(c) of the Reform Act is amended to read as follows:

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1988.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) January 1, 1991, or

"(B) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

SEC. 111A. AMENDMENTS RELATED TO PARTS III AND IV OF SUBTITLE A OF TITLE XI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1121 OF THE REFORM ACT.—

(1) Subparagraph (F) of section 402(a)(5) of the 1986 Code (relating to transfer treated as rollover contribution under section 408) is amended by striking out "described in subparagraph (A)" and inserting in lieu thereof "resulting in any portion of a distribution being excluded from gross income under subparagraph (A)".

(2)(A) Section 408(d)(3)(A) is amended by striking out the last sentence thereof.

(B) The amendment made by subparagraph (A) shall apply to rollover contributions made in taxable years beginning after December 31, 1986.

(3) Section 1121(d) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986."

(4) Section 1121(d)(3) of the Reform Act is amended by striking out "plan years" and inserting in lieu thereof "years".

(5) Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.

(b) AMENDMENTS RELATED TO SECTION 1122 OF THE REFORM ACT.—

(1)(A) Section 72(f) of the 1986 Code (relating to special rules for computing employees' contributions) is amended by striking out "for purposes of subsections (d)(1) and (e)(7), the consideration for the contract contributed by the employee,".

(B) Section 72(n) of the 1986 Code (relating to annuities under retired serviceman's family protection plan or survivor benefit plan) is amended by striking out "Subsections (b) and (d)" and inserting in lieu thereof "Subsection (b)".

(C) Sections 406(e) and 407(e) of the 1986 Code are each amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2)(A) Section 72 of the 1986 Code (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by adding after subsection (c) the following new subsection:

"(d) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS AS SEPARATE CONTRACTS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

(B) Section 72(e) of the 1986 Code is amended by striking out paragraph (9).

(3) Section 414(k)(2) of the 1986 Code (relating to certain plans treated as defined contribution plans) is amended by inserting "72(d) (relating to treatment of employee contributions as separate contract)," before "411(a)(7)(A)".

(4)(A) The amendment made by section 1122(e)(1) of the Reform Act is repealed and the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted.

(B) Subclause (I) of section 402(a)(5)(D)(i) of the 1986 Code is amended by inserting "is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and" after "such distribution" the first place it appears.

(C) Section 402(a)(5)(D)(i) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II)."

(D) Section 402(a)(5)(D)(iii) is amended by striking out "10-YEAR" in the heading.

(E) Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.

(5) Clause (ii) of section 402(a)(6)(H) of the 1986 Code (relating to special rule for frozen deposits) is amended by adding at the end thereof the following new flush sentence:

"A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence."

(6) Clause (i) of section 402(e)(4)(B) of the 1986 Code is amended by striking out "taxpayer" and inserting in lieu thereof "employee".

(7) The last sentence of section 402(e)(4)(J) of the 1986 Code (relating to unrealized appreciation on employer securities) is amended to read as follows: "In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a distribution is required to be included, not to have this subparagraph apply with respect to such distribution."

(8) Section 402 of the 1986 Code (relating to taxability of beneficiary of employees' trust) is amended as follows:

(A) Subsection (a)(1) is amended by striking out "paragraphs (2) and (4)" and inserting in lieu thereof "paragraph (4)".

(B) Subsection (a)(4) is amended by striking out "or (2)".

(C) Subsection (a)(6)(C) is amended by striking out "paragraph (2) of subsection (a), and".

(D) Subsection (a)(6)(E)(ii) is amended by striking out "paragraph (2) of subsection (a), and" and by striking out the comma after "subsection (e)".

(E) Subsection (e)(1)(A) is amended by striking out "ordinary income portion of a".

(F) Subsection (e)(4)(A) is amended—

(i) by striking out "Except for purposes of subsection (a)(2) and section 403(a)(2), a" and inserting in lieu thereof "A", and

(ii) by striking out "subsection (a)(2) of this section, and subsection (a)(2) of section 403,".

(G) Subparagraph (L) of subsection (e)(4) is hereby repealed.

(H) Subsection (e)(4)(M) is amended by striking out ", subsection (a)(2) of this section, and section 403(a)(2)".

(I) Subsection (e)(5) is amended by striking out "and paragraph (2) of subsection (a)".

(J) Subsection (e)(6)(C) is amended to read as follows:

"(C) SPECIAL LUMP-SUM TREATMENT.—For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution is taxed under this subsection by reason of an election under paragraph (4)(B)."

(9)(A) Section 72(e)(7) of the 1986 Code is hereby repealed.

(B) Section 72(e)(5)(D) is amended by striking out "paragraphs (7) and (8)" and inserting in lieu thereof "paragraph (8)".

(C) Section 72(e)(8)(A) is amended by striking out "(other than paragraph (7))".

(D) Section 72(q)(2)(E) of the 1986 Code is amended by striking out "(determined without regard to subsection (e)(7))".

(10) Section 402(e)(1)(B) of the 1986 Code (relating to amount of tax on lump-sum distributions) is amended by adding at the end thereof the following new flush sentence:

"For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof."

(11) Section 1122(h) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

"(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

"(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date."

(12) Subparagraph (B) of section 1122(h)(2) of the Reform Act is amended by inserting ", except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986" after "1986".

(13) Sections 1122 (h)(3)(C) and (h)(4)(C) of the Reform Act are each amended by striking out "with respect to any other lump sum distribution" and inserting in lieu thereof "for purposes of such Code".

(14) Clause (i) of section 1122(h)(3)(C) of the Reform Act is amended—

(A) by striking out "individual" and inserting in lieu thereof "employee", and

(B) by inserting "or by an individual, estate, or trust with respect to such an employee" after "1986".

(15) Section 1122(h)(5) of the Reform Act is amended—

(A) by striking out "individual" and inserting in lieu thereof "employee",

(B) by inserting "and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years" after "1986" in the last sentence, and

(C) by adding at the end thereof the following new sentence: "This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph."

(c) AMENDMENTS RELATED TO SECTION 1123 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 72(t)(2) of the 1986 Code (relating to subsection not to apply to certain distributions) is amended by striking out "on account of early retirement under the plan" in clause (v).

(2) Subparagraph (C) of section 72(t)(2) of the 1986 Code (relating to certain plans) is amended to read as follows:

"(C) EXCEPTIONS FOR DISTRIBUTIONS FROM EMPLOYEE STOCK OWNERSHIP PLANS.—Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

"(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(l)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

"(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities."

(3) Subparagraph (A) of section 72(t)(3) of the 1986 Code (relating to certain exceptions not to apply to individual retirement plans) is amended by striking out "and (C)" and inserting in lieu thereof "(C), and (D)".

(4) Subparagraphs (D) and (G) of section 72(q)(2) of the 1986 Code are each amended by striking out the period at the end thereof and inserting in lieu thereof a comma.

(5) Subparagraph (B) of section 72(q)(3) of the 1986 Code (relating to change in substantially equal payments) is amended by striking out "employee" each place it appears and inserting in lieu thereof "taxpayer".

(6) Section 72(q)(2) of the 1986 Code (relating to subsection not to apply to certain dispositions) is amended by inserting after subparagraph (G) the following new subparagraph:

"(H) to which subsection (t) applies (without regard to paragraph (2) thereof),".

(7) Subparagraph (D) of section 72(q)(2) and clause (iv) of section 72(t)(2)(A) of the 1986 Code are each amended by inserting "designated" before "beneficiary".

(8) Paragraph (2) of section 72(o) of the 1986 Code (relating to additional tax if amount received before age 59½) is hereby repealed.

(9) Subparagraph (I) of section 402(e)(4) of the 1986 Code is amended by striking out "clause (ii) of".

(10) Section 26(b)(2) of the 1986 Code is amended—

(A) by striking out ", (o)(2)," in subparagraph (C), and

(B) by striking out "408(f) (relating to additional tax on income from certain retirement accounts)" in subparagraph (D) and inserting in lieu thereof "72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans)".

(11) Section 1123(e)(2) of the Reform Act is amended—

(A) by striking out "taxable", and

(B) by inserting ", but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989" after "1988".

(12) Section 1123(e) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) shall not apply to any distribution under an annuity contract if—

"(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer's interest in such contract, and

"(B) such distribution is made pursuant to such written election."

(13) Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code.

(d) AMENDMENTS RELATED TO SECTION 1124 OF THE REFORM ACT.—

(1) Section 1124(a) of the Reform Act is amended to read as follows:

"(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986."

(2) Section 1124(b) of the Reform Act is amended—

(A) by striking out "employee" each place it appears and inserting in lieu thereof "individual, estate, or trust", and

(B) by inserting "with respect to an employee" after "receives".

(3) Section 1124 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code."

(e) AMENDMENTS RELATED TO SECTION 1131 OF THE REFORM ACT.—

(1) Subsection (c) of section 4972 of the 1986 Code (defining nondeductible contributions) is amended to read as follows:

"(c) NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section—

"(1) IN GENERAL.—The term 'nondeductible contributions' means, with respect to any qualified employer plan, the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed for the taxable year by the employer to or under such plan, over

"(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

"(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

"(i) the portion of the amount so determined returned to the employer during the taxable year, and

"(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

"(2) ORDERING RULE FOR SECTION 404.—For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

"(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

"(B) then from contributions made during such taxable year.

"(3) CONTRIBUTIONS WHICH MAY BE RETURNED TO EMPLOYER.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

"(4) PRE-1987 CONTRIBUTIONS.—The term 'nondeductible contribution' shall not include any contribution made for a taxable year beginning before January 1, 1987."

(2) Paragraph (1) of section 4972(d) of the 1986 Code (defining qualified employer plan) is amended to read as follows:

"(1) QUALIFIED EMPLOYER PLAN.—

"(A) IN GENERAL.—The term 'qualified employer plan' means—

"(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a), and

"(iii) any simplified employee pension (within the meaning of section 408(k)).

"(B) EXEMPTION FOR GOVERNMENTAL AND TAX EXEMPT PLANS.—The term 'qualified employer plan' does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1)."

(3) Section 1131(d) of the Reform Act is amended to read as follows:

"(d) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

"(A) January 1, 1989, or

"(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

(4)(A) Subparagraph (A) of section 404(a)(7) of the 1986 Code is amended—

(i) by striking out "provisions" and inserting in lieu thereof "paragraphs", and

(ii) by inserting "or in connection with trusts or plans described in 2 or more of such paragraphs" after "1 or more defined benefit plans".

(B) Paragraph (3) of section 404(h) of the 1986 Code is amended to read as follows:

"(3) COORDINATION WITH SUBSECTION (a)(7).—For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust."

(5) In the case of any taxable year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed

(B) the assets of such plan.

(f) AMENDMENTS RELATED TO SECTION 1132 OF THE REFORM ACT.—

(1) Section 4980(c)(1)(A) of the 1986 Code (defining qualified plan) is amended by striking out "this subtitle" and inserting in lieu thereof "subtitle A".

(2) Section 4980(c)(3)(A) of the 1986 Code (relating to exception for employee stock ownership plans) is amended—

(A) by inserting "or a tax credit employee stock ownership plan (as described in section 409)" after "section 4975(e)(7)", and

(B) by inserting ", except to the extent necessary to meet the requirements of section 401(a)(28)," after "must".

(3) Subparagraph (C) of section 4980(c)(3) of the 1986 Code is amended—

(A) by striking out "(by reason of the limitations of section 415)", and

(B) by adding at the end thereof the following new sentence:

"The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or ⅛ of the amount attributable to the securities acquired."

(4) Subparagraph (B) of section 1132(c)(2) of the Reform Act is amended by striking out "November 19, 1978" and inserting in lieu thereof "September 19, 1978".

(5) Section 1132(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985."

(6) Section 4980(c)(3) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

"(F) NO CREDIT OR DEDUCTION ALLOWED.—No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

"(G) AMOUNT TRANSFERRED TO INCLUDE INCOME THEREON, ETC.—The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements."

(7) Section 4980(c)(3)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities."

(g) AMENDMENTS RELATED TO SECTION 1133 OF THE REFORM ACT.—

(1)(A) Section 4981A of the 1986 Code (as added by section 1133 of the Reform Act) is redesignated as section 4980A.

(B) The table of sections for chapter 43 of the 1986 Code is amended by redesignating section 4981A as section 4980A.

(2) Paragraph (1) of section 4980A(c) of the 1986 Code (as redesignated by paragraph (1)) is amended by striking out "$112,500 (adjusted at the same time and in the same manner as under section 415(d))" and inserting in lieu thereof "the greater of—

"(A) $150,000, or

"(B) $112,500 (adjusted at the same time and in the same manner as under section 415(d))."

(3) Section 4980A(c)(2) of the 1986 Code (relating to exclusion of certain distributions), as redesignated by paragraph (1), is amended—

(A) by striking out "employee's" in subparagraph (C) and inserting in lieu thereof "individual's", and

(B) by adding after subparagraph (D) the following new subparagraphs:

"(E) Any retirement distribution with respect to an individual of an annuity contract the value of which is not includible in gross income at the time of the distribution (other than distributions under, or proceeds from the sale or exchange of, such contract).

"(F) Any retirement distribution with respect to an individual of—

"(i) excess deferrals (and income allocable thereto) under section 402(g)(2)(A)(ii), or

"(ii) excess contributions (and income allocable thereto) under section 401(k)(8) or 408(d)(4) or excess aggregate contributions (and income allocable thereto) under section 401(m)(6)."

(4)(A) Section 4980A of the 1986 Code, as redesignated by paragraph (1), is amended by adding at the end thereof the following new subsection:

"(f) EXEMPTION OF ACCRUED BENEFITS IN EXCESS OF $562,500 ON AUGUST 1, 1986.—For purposes of this section—

"(1) IN GENERAL.—If an election is made with respect to an eligible individual to have this subsection apply, the individual's excess distributions and excess retirement accumulation shall be computed without regard to any distributions or interests attributable to the accrued benefit of the individual as of August 1, 1986.

"(2) REDUCTION IN AMOUNTS WHICH MAY BE RECEIVED WITHOUT TAX.—If this subsection applies to any individual—

"(A) EXCESS DISTRIBUTIONS.—Subsection (c)(1) shall be applied—

"(i) without regard to subparagraph (A), and

"(ii) by reducing (but not below zero) the amount determined under subparagraph (B) thereof by retirement distributions attributable (as determined under rules prescribed by the Secretary) to the individual's accrued benefit as of August 1, 1986.

"(B) EXCESS RETIREMENT ACCUMULATION.—The amount determined under subsection (d)(3)(B) (without regard to subsection (c)(1)(A)) with respect to such individual shall be reduced (but not below zero) by the present value of the individual's accrued benefit as of August 1, 1986, which has not been distributed as of the date of death.

"(3) ELIGIBLE INDIVIDUAL.—For purposes of this subsection, the term 'eligible individual' means any individual if, on August 1, 1986, the present value of such individual's interests in qualified employer plans and individual retirement plans exceeded $562,500.

"(4) CERTAIN AMOUNTS EXCLUDED.—In determining an individual's accrued benefit for purposes of this subsection, there shall not be taken into account any portion of the accrued benefit—

"(A) payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee, or

"(B) attributable to the individual's investment in the contract (as defined in section 72(f)).

"(5) ELECTION.—An election under paragraph (1) shall be made on an individual's return of tax imposed by chapter 1 or 11 for a taxable year beginning before January 1, 1989."

(B) Section 4980A(c) of the 1986 Code, as redesignated by paragraph (1), is amended by striking out paragraph (5).

(5) Section 4980A(d) of the 1986 Code (relating to increase in estate tax if individual dies with excess accumulation), as redesignated by paragraph (1), is amended—

(A) by striking out "section 2010" in paragraph (2) and inserting in lieu thereof "chapter 11", and

(B) by adding at the end thereof the following new paragraphs:

"(4) RULES FOR COMPUTING EXCESS RETIREMENT ACCUMULATION.—The excess retirement accumulation of an individual shall be computed without regard to—

"(A) any community property law,

"(B) the value of—

"(i) amounts payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee, and

"(ii) the individual's investment in the contract (as defined in section 72(f)), and

"(C) the excess (if any) of—

"(i) any interests which are payable immediately after death, over

"(ii) the value of such interests immediately before death.

"(5) ELECTION BY SPOUSE TO HAVE EXCESS DISTRIBUTION RULE APPLY.—

"(A) IN GENERAL.—If the spouse of an individual is the beneficiary of all of the interests described in paragraph (3)(A), the spouse may elect—

"(i) not to have this subsection apply, and

"(ii) to have this section apply to such interests and any retirement distribution attributable to such interests as if such interests were the spouse's.

"(B) DE MINIMIS EXCEPTION.—If 1 or more persons other than the spouse are beneficiaries of a de minimis portion of the interests described in paragraph (3)(A)—

"(i) the spouse shall not be treated as failing to meet the requirements of subparagraph (A), and

"(ii) if the spouse makes the election under subparagraph (A), this section shall not apply to such portion or any retirement distribution attributable to such portion."

(6) Subparagraph (B) of section 4980A(d)(3) of the 1986 Code, as redesignated by paragraph (1), is amended to read as follows:

"(B) the present value (as determined under rules prescribed by the Secretary as of the valuation date prescribed in subparagraph (A)) of a single life annuity with annual payments equal to the limitation of subsection (c) (as in effect for the year in which death occurs and as if the individual had not died)."

(7) Section 2013 of the 1986 Code (relating to credit for tax on prior transfer) is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF ADDITIONAL TAX UNDER SECTION 4980A.—For purposes of this section, the estate tax paid shall not include any portion of such tax attributable to section 4980A(d)."

(8) Paragraph (1) of section 1133(c) of the Reform Act is amended by inserting ", other than a distribution with respect to a decedent dying before January 1, 1987" after "1986".

(9) Section 4980A(d)(3)(A) of the 1986 Code is amended by inserting "(other than as a beneficiary, determined after application of paragraph (5))" after "the individual's interests".

(10) Section 691(c)(1) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) EXCESS RETIREMENT ACCUMULATION TAX.—For purposes of this subsection, no deduction shall be allowed for the portion of

the estate tax attributable to the increase in such tax under section 4980A(d)."

(11) Section 2053(c)(1)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d)."

(12) Section 6018(a) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) RETURN REQUIRED IF EXCESS RETIREMENT ACCUMULATION TAX.—The executor shall make a return with respect to the estate tax imposed by subtitle B in any case where such tax is increased by reason of section 4980A(d)."

(h) AMENDMENTS RELATED TO SECTION 1134 OF THE REFORM ACT.—

(1) Section 72(p)(3)(A) of the 1986 Code (relating to denial of interest deductions in certain cases) is amended by inserting "to which paragraph (1) does not apply by reason of paragraph (2) during the period" after "loan".

(2) Subparagraph (B) of section 72(p)(3) of the 1986 Code is amended to read as follows:

"(B) PERIOD TO WHICH SUBPARAGRAPH (A) APPLIES.—For purposes of subparagraph (A), the period described in this subparagraph is the period—

"(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

"(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3)."

(i) AMENDMENTS RELATED TO SECTION 1135 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 72(u)(1) of the 1986 Code (relating to annuity contracts not held by natural persons) is amended by inserting "(other than subchapter L)" after "subtitle".

(2) Subparagraph (D) of section 72(u)(3) of the 1986 Code (relating to exceptions) is amended by striking out "until such time as the employee separates from service" and inserting in lieu thereof "until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary".

(3) Subparagraphs (D) and (E) of section 72(u)(3) of the 1986 Code (relating to exceptions) are each amended by striking out "which".

(4) Paragraph (4) of section 72(u) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period."

(j) AMENDMENTS RELATED TO SECTION 1136 OF THE REFORM ACT.—

(1) Section 401(a)(27) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe."

(2) Section 401(a)(27) of the 1986 Code is amended by striking out "(27)" and inserting in lieu thereof:

"(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

"(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—".

(k) AMENDMENT RELATED TO SECTION 1139 OF THE REFORM ACT.—Clause (i) of section 1139(d)(2)(A) of the Reform Act is amended by striking out "before January" and inserting in lieu thereof "after January".

(l) AMENDMENT RELATED TO SECTION 1145 OF THE REFORM ACT.—Subparagraph (E) of section 401(a)(11) of the 1986 Code (relating to cross reference) is redesignated as subparagraph (F).

(m) AMENDMENTS RELATED TO SECTION 1147 OF THE REFORM ACT.—

(1) Subparagraph (C) of section 7701(j)(1) of the 1986 Code (relating to tax treatment of Federal Thrift Savings Fund) is amended by inserting ", section 401(k)(4)(B)," after "paragraph (2)".

(2) Section 8440(a)(3) of title 5, United States Code, is amended by inserting ", 401(k)(4)(B) of such Code," after "subsection (b)".

SEC. 111B. AMENDMENTS RELATED TO SUBTITLES B AND C OF TITLE XI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1151 OF THE REFORM ACT.—

(1) Paragraph (2) of section 89(a) of the 1986 Code (relating to year of inclusion) is amended to read as follows:

"(2) YEAR OF INCLUSION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any amount included in gross income under paragraph (1) shall be taken into account for the taxable year of the employee with or within which the plan year ends.

"(B) ELECTION TO DELAY INCLUSION FOR 1 YEAR.—If an employer maintaining a plan with a plan year ending after September 30 and on or before December 31 of a calendar year elects the application of this subparagraph—

"(i) amounts included in gross income under paragraph (1) with respect to employees of such employer shall be taken into account for the taxable year of the employee following the taxable year determined under subparagraph (A), but

"(ii) any deduction of the employer which is attributable to such amounts shall be allowable for the taxable year with or within which the plan year following the plan year in which the excess benefits occurred ends."

(2) Paragraph (4) of section 89(b) of the 1986 Code (defining nontaxable benefits) is amended by adding at the end thereof the following new sentence: "Such term includes any group-term life insurance the cost of which is includible in gross income under section 79."

(3) Paragraph (1) of section 89(g) of the 1986 Code (relating to the aggregation of comparable health plans) is amended by adding at the end thereof the following new subparagraph:

"(C) EMPLOYEES COVERED BY MORE THAN 1 PLAN.—The Secretary may provide that 2 or more plans providing benefits to the same participant shall be treated as 1 plan for purposes of applying subsections (d)(1)(B), (d)(2), and (f)."

(4) Subparagraph (B) of section 89(g)(2) of the 1986 Code (relating to sworn statements) is amended by adding at the end thereof the following new sentence: "No statement shall be required under clause (ii) with respect to any individual eligible for coverage at no cost under a health plan which provides core health benefits and with respect to whom the employee does not elect any core health coverage from the employer."

(5) Subparagraph (D) of section 89(g)(2) of the 1986 Code is amended by striking out "under such plan" and inserting in lieu thereof "under such plans".

(6) Section 89(g) of the 1986 Code is amended by striking out paragraph (6).

(7) Subparagraph (A) of section 89(h)(1) of the 1986 Code (relating to excluded employees) is amended by inserting "(or 1st day of a period of less than 31 days specified by the plan)" after "month".

(8) Section 89(j) of the 1986 Code (relating to other definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(12) EMPLOYERS WITH ONLY HIGHLY COMPENSATED EMPLOYEES.—The requirements of subsections (d) and (e) shall not apply to any statutory employee benefit plan for any year for which the only employees of the employer maintaining the plan are highly compensated employees."

(9) Section 89(k) of the 1986 Code (relating to requirement that plan be in writing) is amended by adding at the end thereof the following new paragraph:

"(5) LOSS OF EXEMPTION FOR CERTAIN PLANS.—If a plan described in paragraph (2)(E) fails to meet the requirements of paragraph (1), the organization which is part of such plan shall not be exempt from tax under section 501(a)."

(10) Section 6652(l)(2)(B) of the 1986 Code (relating to amount of additional tax) is amended by striking out "subsection (g)(3)" and inserting in lieu thereof "subsection (g)(3)(C)(i)".

(11)(A) Subsection (a) of section 125 of the 1986 Code is amended to read as follows:

"(a) GENERAL RULE.—Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan."

(B) Paragraph (1) of section 125(b) of the 1986 Code is amended by striking out "A plan shall be treated as failing to meet the requirements of this subsection" and inserting in lieu thereof "In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year".

(C) Paragraph (2) of section 125(b) of the 1986 Code is amended by striking out "a plan shall be treated as failing to meet the requirements of this subsection" and inserting in lieu thereof "subsection (a) shall not apply to any plan year".

(12) Subparagraph (B) of section 125(c)(1) of the 1986 Code (defining cafeteria plans) is amended to read as follows:

"(B) the participant may choose among 2 or more benefits consisting of cash and qualified benefits."

(13)(A) Paragraph (1) of section 125(e) of the 1986 Code (defining qualified benefits) is amended by inserting "and without regard to section 89(a)" after "subsection (a)".

(B) The last sentence of section 125(b)(2) of the 1986 Code is amended to read as follows: "For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income."

(14) Subsection (d) of section 129 of the 1986 Code is amended by redesignating paragraph (8) as paragraph (7).

(15) Paragraph (7) of section 129(d) of the 1986 Code (as so redesignated) is amended—

(A) by inserting "under all plans of the employer" after "employees" the 2nd and 3rd time it appears in subparagraph (A),

(B) by striking out "there shall be disregarded" in subparagraph (B) and inserting in lieu thereof "a plan may disregard", and

(C) by striking out "415(q)(7)" in subparagraph (B) and inserting in lieu thereof "414(q)(7)".

(16) Section 414(m)(4) of the 1986 Code is amended by inserting "and" at the end of subparagraph (A), by striking out the comma at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraphs (C) and (D).

(17) Paragraph (2) of section 414(t) of the 1986 Code is amended by striking out "132," and inserting in lieu thereof "132, 162(i)(2), 162(k),".

(18) Paragraph (6) of section 129(e) of the 1986 Code is amended by striking out "of subsection (d)" and inserting in lieu thereof "of subsection (d) (other than paragraphs (4) and (7) thereof)".

(19) Subparagraph (C) of section 414(n)(3) of the 1986 Code is amended by striking out "132," and inserting in lieu thereof "132, 162(i)(2), 162(k),".

(20) Section 414(t)(1) of the 1986 Code (relating to application of controlled group rules to certain employees) is amended by striking out "of section 414" each place it appears.

(21) Section 89(j)(6) of the 1986 Code is amended by striking out "described in subparagraph (A), (B), or (C) of subsection (i)(2)".

(22)(A) Section 3121 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(x) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any paragraph of subsection (a) (other than paragraph (1)), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(B) Section 3231(e) of the 1986 Code (defining compensation) is amended by adding at the end thereof the following new paragraph:

"(8) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any other paragraph of this subsection (other than paragraph (2)), the term 'compensation' shall include any amount which is includible in gross income by reason of section 89."

(C) Section 3306 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(t) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any paragraph of subsection (b) (other than paragraph (1)), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(D) Section 3401 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(g) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any paragraph of subsection (a), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(E) The third to last sentence of section 209 of the Social Security Act is amended—

(i) by striking out the period at the end of clause (2) and inserting in lieu thereof ", or", and

(ii) by inserting after clause (2) the following new clause:

"(3) Any amount required to be included in gross income under section 89 of the Internal Revenue Code of 1986."

(F) The amendments made by this paragraph shall not apply to any individual who separated from service with the employer before January 1, 1989.

(23)(A) Sections 3121(a)(5)(G) and 3306(b)(5)(G) of the 1986 Code are each amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "section 125)".

(B) Section 209(e)(9) of the Social Security Act is amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "1986)".

(24) Section 1151(h)(3) of the Reform Act is amended by striking out "Section 6039B(c)" and inserting in lieu thereof "Section 6039D(c)".

(25) Paragraph (1) of section 1151(k) of the Reform Act is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986."

(26) Section 1151(k) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act."

(27)(A) Section 4976 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) TAX ON FUNDED WELFARE BENEFIT FUNDS WHICH INCLUDE DISCRIMINATORY EMPLOYEE BENEFIT PLAN.—

"(1) IN GENERAL.—If—

"(A) an employer maintains a welfare benefit fund, and

"(B) a discriminatory employee benefit plan (within the meaning of section 89) is part of such fund for any plan year,

there is hereby imposed on such employer for the taxable year with or within which the plan year ends a tax in the amount determined under paragraph (2).

"(2) AMOUNT OF TAX.—The amount of the tax under paragraph (1) shall be equal to the excess (if any) of—

"(A) the product of the highest rate of tax imposed by section 11, multiplied by the lesser of—

"(i) the aggregate excess benefits (as defined in section 89) for such plan year, or

"(ii) the taxable income of the fund for such plan year, over

"(B) the amount of tax imposed by chapter 1 on such fund for such plan year."

(B) Section 4976(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) LIMITATION IN CASE OF BENEFITS TO WHICH SECTION 89 APPLIES.—If section 89 applies to any post-retirement medical benefit or life insurance benefit provided by a fund, the amount of the disqualified benefit under paragraph (1)(B) with respect to such benefit shall not exceed the aggregate excess benefits provided by the plan (as determined under section 89)."

(C) Section 505(a)(1) of the 1986 Code is amended by adding at the end thereof the following new subsection: "This paragraph shall not apply to any organization by reason of a failure to meet the requirements of subsection (b) with respect to a benefit to which section 89 applies."

(28) Section 89(h)(4) of the 1986 Code is amended by striking out "subsection (h)(5)" and inserting in lieu thereof "subsection (g)(5)".

(29) Section 89(k)(1) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentences:

"Such inclusion shall be coordinated (under regulations prescribed by the Secretary) with any inclusion under subsection (a) with respect to such plan. In the case of a statutory employee benefit plan described in subsection (i)(1)(B), any amount required to be included in gross income under this subsection shall be included in the gross income of the beneficiary."

(30) Section 129(d)(1)(B) of the 1986 Code is amended by striking out "(6)" and inserting in lieu thereof "(7)".

(31)(A) Section 129(d) of the 1986 Code is amended—

(i) by striking out the last sentence of paragraph (3), and

(ii) by inserting at the end thereof the following new paragraph:

"(8) EXCLUDED EMPLOYEES.—For purposes of paragraphs (2), (3), and (7), there shall be excluded from consideration employees who are excluded from consideration under section 89(h)."

(B) Sections 117(d)(4), 120(c)(2), 127(b)(2), 132(h)(1), and 505(b)(2) of the 1986 Code are each amended—

(i) by striking out "may" the first place it appears and inserting in lieu thereof "shall", and

(ii) by striking out "may be" the second place it appears and inserting in lieu thereof "are".

(32) Section 505(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(7) $200,000 COMPENSATION LIMIT.—A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d)."

(33) Section 3401(a) of the 1986 Code is amended by inserting "or" at the end of paragraph (18), by striking out paragraph (19), and by redesignating paragraph (20) as paragraph (19).

(34)(A) Section 89(g)(3)(B) of the 1986 Code shall not apply to years beginning before the date which is 6 months after the Secretary of the Treasury or his delegate first issues such valuation rules as are necessary to apply the provisions of section 89 of the 1986 Code to health plans. The Secretary may provide in such rules a date which is later than the date determined under the preceding sentence.

(B) In the case of years beginning after December 31, 1988, and before the 1st year to which the rules described in subparagraph (A) apply—

(i) Except as provided in clause (ii), the value of coverage under a health plan for purposes of section 89 of the 1986 Code shall be determined in substantially the same manner as costs under a health plan are determined under section 162(k)(4) of the 1986 Code.

(ii) For purposes of determining whether an employer meets the requirements of subsections (d), (e), and (f) of section 89 of the 1986 Code, such value under clause (i) may be determined under any other reasonable method selected by the employer maintaining the plan.

(b) AMENDMENTS RELATED TO SECTION 1161 OF THE REFORM ACT.—

(1) Section 162(m) of the 1986 Code (relating to special rules for health insurance costs of self-employed individuals) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX PURPOSES.—The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2."

(2) Section 162(m) of the 1986 Code (relating to cross reference) as redesignated by section 1161(a) of the Reform Act, is redesignated as subsection (n).

(3) Section 162(m)(2)(A) of the 1986 Code is amended by inserting: "derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established" after "401(c))".

(4) Section 211(a) of the Social Security Act is amended by inserting after paragraph (13) the following new paragraph:

"(14) The deduction under section 162(m) (relating to health insurance costs of self-employed individuals) shall not be allowed."

(c) AMENDMENTS RELATED TO SECTION 1163 OF THE REFORM ACT.—

(1) Paragraph (8) of section 129(e) of the 1986 Code (relating to treatment of onsite facilities) is amended—

(A) by inserting "maintained by an employer" after "onsite facility",

(B) by inserting "of dependent care assistance provided to an employee" after "the amount",

(C) by inserting "of the facility by a dependent of the employee" after "utilization" in subparagraph (A), and

(D) by inserting "with respect to such dependent" after "provided" in subparagraph (B).

(2)(A) Paragraph (2) of section 129(a) of the 1986 Code is amended to read as follows:

"(2) LIMITATION OF EXCLUSION.—

"(A) IN GENERAL.—The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

"(B) YEAR OF INCLUSION.—The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

"(C) MARITAL STATUS.—For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e)."

(B) Section 6051(a) of the 1986 Code is amended by striking out the period at the end of paragraph (8) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(9) the total amount incurred for dependent care assistance with respect to such employee under a dependent care assistance program described in section 129(d)."

(C)(i) Except as provided in this subparagraph, the amendments made by this paragraph shall apply to taxable years beginning after December 31, 1987.

(ii) A taxpayer may elect to have the amendment made by subparagraph (A) apply to taxable years beginning in 1987.

(iii) In the case of a taxpayer not making an election under clause (ii), any dependent care assistance provided in a taxable year beginning in 1987 with respect to which reimbursement was not received in such taxable year shall be treated as provided in the taxpayer's first taxable year beginning after December 31, 1987.

(d) AMENDMENT RELATED TO SECTION 1164 OF THE REFORM ACT.—Section 119(d)(2) of the 1986 Code is amended—

(1) by striking out "(as of the close of the calendar year in which the taxable year begins)" in subparagraph (A)(i), and

(2) by adding at the end thereof the following:

"The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins."

(e) AMENDMENTS RELATED TO SECTION 1166 OF THE REFORM ACT.—Section 7701(a)(20) of the 1986 Code (defining employee) is amended—

(1) by striking out "106, and 125" and inserting in lieu thereof "and 106", and

(2) by inserting "and for purposes of applying section 125 with respect to cafeteria plans," before "the term".

(f) AMENDMENTS RELATED TO SECTION 1168 OF THE REFORM ACT.—

(1) Paragraph (1) of section 134(b) of the 1986 Code is amended by striking out "or regulation thereunder" and inserting in lieu thereof ", regulation, or administrative practice".

(2)(A) Section 134(b)(1) of the 1986 Code is amended by inserting "(other than personal use of a vehicle)" after "in-kind benefit".

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1986.

(3) Section 134(b)(3)(A) of the 1986 Code is amended by striking out "under any provision of law or regulation described in paragraph (1)".

(4) Section 1168(c) of the Reform Act is amended by striking out "1986" and inserting in lieu thereof "1984".

(g) AMENDMENTS RELATED TO SECTION 1172 OF THE REFORM ACT.—

(1) Section 1172(b)(1)(A) of the Reform Act is amended by inserting "each place it appears" before the comma.

(2) Paragraphs (2) and (3) of section 409(n) of the 1986 Code (relating to securities received in certain transactions) is amended by inserting "or section 2057" after "section 1042" each place it appears.

(3) Paragraph (1) of section 2057(b) of the 1986 Code (relating to qualified sale) is amended by striking out "is".

(h) AMENDMENTS RELATED TO SECTION 1173 OF THE REFORM ACT.—

(1) Section 133 of the 1986 Code (relating to exclusion of interest on securities acquisition loans) is amended by adding at the end thereof the following new subsection:

"(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES.—

"(1) IN GENERAL.—In the case of—

"(A) an original securities acquisition loan, and

"(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

"(2) EXCLUDABLE PERIOD.—For purposes of this subsection, the term 'excludable period' means, with respect to any original securities acquisition loan—

"(A) IN GENERAL.—The 7-year period beginning on the date of such loan.

"(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A).—If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

"(3) ORIGINAL SECURITIES ACQUISITION LOAN.—For the purposes of this subsection, the term 'original securities acquisition loan' means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1)."

(2)(A) Section 133(b) of the 1986 Code (defining securities acquisition loan) is amended—

(i) by striking out "or are used to refinance such a loan," in paragraph (1)(A),

(ii) by striking out ", except that this subparagraph shall not apply to any loan the commitment period of which exceeds 7 years" in paragraph (1)(B), and

(iii) by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF REFINANCINGS.—The term 'securities acquisition loan' shall include any loan which—

"(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

"(B) meets the requirements of paragraphs (2) and (3)."

(B) Subparagraph (B) of section 133(b)(3) of the 1986 Code is amended to read as follows:

"(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q))."

(3) Section 404(k) of the 1986 Code is amended—

(A) by inserting "(whether or not allocated to participants)" after "employer securities" in paragraph (2)(C), and

(B) by adding at the end thereof the following new sentence: "Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant."

(4) Subparagraph (C) of section 852(b)(5) of the 1986 Code (relating to interest on certain loans used to acquire employer securities) is amended by striking out "paragraph" and inserting in lieu thereof "section".

(5)(A) The amendments made by paragraphs (1) and (2) shall apply to—

(i) any loan used to acquire employer securities after July 18, 1984, and *(ii) loans made after July 18, 1984, which were used (or were part of a series of loans used) to refinance any loan which—*

(I) was used to acquire employer securities after May 23, 1984 (July 18, 1984, in the case of a loan described in section 133(b)(3)(B) of the Internal Revenue Code of 1986), and

(II) met the requirements of section 133 (other than subsection (b)(2) thereof) of such Code as in effect as of the later of the date on which the loan was made, or July 19, 1984.

In no event shall such amendments apply to any loan described in section 133(b)(1)(B) of such Code which is made before October 22, 1986 (or loan used, or part of a series of loans used, to refinance such a loan).

(B) Subparagraph (B) of section 1173(c)(2) of the Reform Act is amended to read as follows:

"(B) Section 133(b)(1)(A) of the Internal Revenue Code of 1986, as amended by subsection (b)(2), shall apply to any loan used (or part of a series of loans used) to refinance a loan which—

"(i) was used to acquire employer securities after May 23, 1984, and

"(ii) met the requirements of section 133 of the Internal Revenue Code of 1986 as in effect as of the later of—

"(I) the date on which the loan was made, or

"(II) July 19, 1984."

(6) Section 404(k) of the 1986 Code is amended by striking out "merely by reason of any distribution" in the third sentence and inserting in lieu thereof "or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment".

(i) Amendments Related to Section 1174 of the Reform Act.—

(1) Clause (ii) of section 409(o)(1)(A) of the 1986 Code (relating to distribution requirement) is amended by striking out "such year" and inserting in lieu thereof "distribution is required to begin under this clause".

(2) Section 1174(a)(2) of the Reform Act is amended by striking out "plan terminations" and inserting in lieu thereof "distributions".

(3) Section 409(o)(1)(A) of the 1986 Code is amended by striking out "unless the participant otherwise elects" and inserting in lieu thereof "if the participant and, if applicable pursuant to sections 401 (a)(11) and 417, with the consent of the participant's spouse elects".

(j) Amendments Related to Section 1175 of the Reform Act.—

(1) Subclause (II) of section 401(a)(28)(B) of the 1986 Code (relating to method of meeting requirements) is amended by inserting "and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election" after "clause (i)".

(2) Clause (iv) of section 401(a)(28)(B) of the 1986 Code is amended to read as follows:

"(iv) Qualified election period.—For purposes of this subparagraph, the term 'qualified election period' means the 6-plan-year period beginning with the later of—

"(I) the 1st plan year in which the individual first became a qualified participant, or

"(II) the 1st plan year beginning after December 31, 1986.

"For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988."

(3) The last sentence of section 409(d) of the 1986 Code (relating to employer securities must stay in the plan) is amended by inserting "or to any distribution or reinvestment required under section 401(a)(28)" after "section 401(a)(9)".

(4) Section 4978(d) of the 1986 Code (relating to section not to apply to certain dispositions) is amended by adding at the end thereof the following new paragraph:

"(4) Dispositions to meet diversification requirements.—This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28)."

(5) Section 409(h) of the 1986 Code (relating to right to demand employer securities; put option) is amended by adding at the end thereof the following new paragraph:

"(7) Exception where employee elected diversification.—Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B)."

(6) Section 401(a)(28)(B) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(v) Coordination with distribution rules.—Any distribution required by this subparagraph shall not be taken into account in determining whether—

"(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

"(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution."

(k) Amendments Related to Section 1176 of the Reform Act.—

(1) Section 401(a)(22) of the 1986 Code is amended by striking out "is not publicly traded" each place it appears and inserting in lieu thereof "is not readily tradable on an established market".

(2) Section 401(a)(22) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market."

(3) Section 409(l)(4) of the 1986 Code (relating to nonvoting common stock may be acquired in certain cases), as added by section 1176(b) of the Reform Act, is redesignated as paragraph (5).

(l) Amendments Related to Section 1177 of the Reform Act.—

(1) Paragraph (2) of section 1177(b) of the Reform Act is amended by striking out "section 143(d)(3)(C)" and inserting in lieu thereof "section 146(d)(3)(C)".

(2) Subsection (b) of section 1177 of the Reform Act is amended by striking out "made by this subtitle" and inserting in lieu thereof "made by section 1175".

(3) If any newspaper corporation described in section 1177(b) of the Reform Act, as amended by this subsection, pays in cash a dividend within 60 days after the date of the enactment of this Act to the corporation's employee stock ownership plans and if a corporate resolution declaring such dividend was adopted before November 30, 1987, and such resolution specifies that such dividend shall be contingent upon passage by the Congress of technical corrections, then such dividend (to the extent the aggregate amount so paid does not exceed $3,500,000) shall be treated as if it had been declared and paid in 1987 for all purposes of the Internal Revenue Code of 1986.

SEC. 112. AMENDMENTS RELATED TO TITLE XII OF THE REFORM ACT.

(a) Amendments Related to Section 1201 of the Reform Act.—

(1)(A) Subparagraph (C) of section 904(d)(2) of the 1986 Code is amended to read as follows:

"(C) Financial services income.—

"(i) In general.—Except as otherwise provided in this subparagraph, the term 'financial services income' means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

"(I) described in clause (ii),

"(II) passive income (determined without regard to subclause (I) of subparagraph (A)(iii)), or

"(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.

"(ii) General description of financial services income.—Income is described in this clause if such income is—

"(I) derived in the active conduct of a banking, financing, or similar business,

"(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

"(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

"(iii) Exceptions.—The term 'financial services income' does not include—

"(I) any high withholding tax interest,

"(II) any dividend from a noncontrolled section 902 corporation, and

"(III) any export financing interest not described in clause (i)(III)."

(B) Clause (i) of section 864(d)(5)(A) of the 1986 Code is amended by striking out "(C)(iii)" and inserting in lieu thereof "(C)(iii)(III)".

(2) Subparagraph (D) of section 904(d)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Such term does not include any dividend from a noncontrolled section 902 corporation and does not include any financial services income."

(3) Paragraph (3) of section 904(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(H) Exception for certain high withholding tax interest.—This paragraph shall not apply to any amount which—

"(i) without regard to this paragraph, is high withholding tax interest (including any amount treated as high withholding tax interest under paragraph (2)(B)(iii)), and

"(ii) would (but for this subparagraph) be treated as financial services income under this paragraph.

The amount to which this paragraph does not apply by reason of the preceding sentence shall not exceed the interest or equivalent income of the controlled foreign corporation taken into account in determining financial services income without regard to this subparagraph."

(4) Subparagraph (E) of section 904(d)(3) of the 1986 Code is amended—

(A) by striking out the first sentence and inserting in lieu thereof the following: "If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating

to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as income in a separate category, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income.", and

(B) by striking out "income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)" and inserting in lieu thereof "passive income".

(5) Paragraph (2) of section 1201(e) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(J) TREATMENT OF AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph, all members of an affiliated group of corporations filing a consolidated return shall be treated as 1 corporation."

(6) Subparagraph (A) of section 904(d)(2) of the 1986 Code is amended—

(A) by striking out "The term" in clause (ii) and inserting in lieu thereof "Except as provided in clause (iii), the term", and

(B) by adding at the end thereof the following new clause:

"(iv) CLARIFICATION OF APPLICATION OF SECTION 864(d)(6).—In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation."

(7) Subparagraph (F) of section 904(d)(3) of the 1986 Code is amended to read as follows:

"(F) SEPARATE CATEGORY.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).

"(ii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—

"(I) In determining whether any income of a controlled foreign corporation is in a separate category, subclause (III) of paragraph (2)(A)(iii) shall not apply.

"(II) Any income of the taxpayer which is treated as income in a separate category under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph."

(8) Clause (iii) of section 904(d)(2)(B) of the 1986 Code is amended to read as follows:

"(iii) REGULATIONS.—The Secretary may by regulations provide that—

"(I) amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph, and

"(II) a tax shall not be treated as a withholding tax or other tax imposed on a gross basis if such tax is in the nature of a prepayment of a tax imposed on a net basis."

(9) Clause (ii) of section 904(d)(2)(I) of the 1986 Code is amended by striking out "except to the extent that" and all that follows down through "and" at the end thereof and inserting in lieu thereof the following:

"except that—

"(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

"(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

"(III) such taxes shall be treated as paid or accrued with respect to high withholding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and".

(10) Clause (i) of section 904(d)(2)(E) of the 1986 Code is amended—

(A) by striking out "during which it was a controlled foreign corporation" and inserting in lieu thereof "during which it was a controlled foreign corporation and the taxpayer was a related person to such corporation", and

(B) by adding at the end thereof the following new sentence: "For purposes of this clause, the term 'related person' has the meaning given such term by section 954(d)(3), except that the Secretary may by regulation provide that such section be applied by substituting '10 percent' for '50 percent' each place it appears."

(11) Subparagraph (E) of section 904(d)(1) of the 1986 Code is amended by striking out "dividends" and inserting in lieu thereof "in the case of a corporation, dividends".

(b) AMENDMENT RELATED TO SECTION 1202 OF THE REFORM ACT.—

(1) Paragraph (7) of section 902(c) of the 1986 Code is amended—

(A) by striking out "secton 960" and inserting in lieu thereof "section 960", and

(B) by striking out "this section" the second place it appears and inserting in lieu thereof "this section and section 960".

(2) Paragraph (1) of section 902(c) of the 1986 Code is amended by striking out "sections 964 and 986" and inserting in lieu thereof "sections 964(a) and 986".

(3) For purposes of sections 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.

(4) Paragraph (3) of section 404A(d) of the 1986 Code is amended by striking out "the amount determined" and inserting in lieu thereof "except as provided in regulations, the amount determined".

(c) AMENDMENT RELATED TO SECTION 1203 OF THE REFORM ACT.—Paragraph (5) of section 904(f) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) DISPOSITIONS.—If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss."

(d) AMENDMENTS RELATED TO SECTION 1211 OF THE REFORM ACT.—

(1) Subsection (d) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH SUBSECTION (C).—

"(A) GAIN NOT IN EXCESS OF DEPRECIATION ADJUSTMENTS SOURCED UNDER SUBSECTION (C).—Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

"(B) SUBSECTION (C)(2) NOT TO APPLY TO INTANGIBLES.—Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible."

(2) Subparagraph (A) of section 865(e)(1) of the 1986 Code is amended by striking out "(d), or (f)" and inserting in lieu thereof "(d)(1)(B) or (3), or (f)".

(3)(A) Clause (ii) of section 865(g)(1)(A) of the 1986 Code is amended by striking out "partnership,".

(B) Subsection (h) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF PARTNERSHIPS.—In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level."

(4) Subsection (f) of section 865 of the 1986 Code is amended to read as follows:

"(f) STOCK OF AFFILIATES.—If—

"(1) a United States resident sells stock in an affiliate which is a foreign corporation,

"(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

"(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2) and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation."

(5) Effective with respect to taxable years beginning after December 31, 1987, subparagraph (B) of section 865(e)(2) of the 1986 Code is amended to read as follows:

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale."

(6)(A) Subsection (g) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN STOCK SALES BY RESIDENTS OF PUERTO RICO.—Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

"(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

"(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation."

(B) Subsection (i) of section 865 of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) providing that, subject to such conditions (which may include provisions comparable to section 877) as may be provided in such regulations, subsections (e)(1)(B) and (g)(2) shall not apply for purposes of sections 931, 933, and 936."

(7) Subparagraph (B) of section 864(c)(4) of the 1986 Code is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof "; or", and by adding at the end thereof the following new clause:

"(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale."

(8) Section 865 of the 1986 Code is amended by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively, and by inserting after subsection (g) the following new subsection:

"(h) TREATMENT OF GAINS FROM SALE OF CERTAIN STOCK OR INTANGIBLES AND FROM CERTAIN LIQUIDATIONS.—

"(1) IN GENERAL.—In the case of gain to which this subsection applies—

"(A) such gain shall be sourced outside the United States, but

"(B) subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such gain.

"(2) GAIN TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) GAIN FROM SALE OF CERTAIN STOCK OR INTANGIBLES.—Any gain—

"(i) which is from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) and which would otherwise be sourced in the United States under this section,

"(ii) which, under a treaty obligation of the United States (applied without regard to this section), would be sourced outside the United States, and

"(iii) with respect to which the taxpayer chooses the benefits of this subsection.

"(B) GAIN FROM LIQUIDATION IN POSSESSION.—Any gain which is derived from the liquidation of a corporation—

"(i) which is organized in a possession of the United States, and

"(ii) more than 50 percent of the gross income of which during the 3-taxable year period ending with the close of the taxable year immediately preceding the taxable year in which the liquidation occurs is from the active conduct of a trade or business in such possession."

(9) Subparagraph (A) of section 865(e)(1) of the 1986 Code is amended by striking out "outside the United States" the first place it appears and inserting in lieu thereof "in a foreign country".

(10) Subparagraph (B) of section 864(c)(4) of the 1986 Code is amended—

(A) by striking out "(including any gain or loss realized on the sale or exchange of such property)" in clause (i), and

(B) by striking out ", or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness" in clause (ii).

(11) Clause (i) of section 865(g)(1)(A) of the 1986 Code is amended to read as follows—

"(i) any individual who—

"(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

"(II) is a nonresident alien and has a tax home (as so defined) in the United States, and".

(12) Paragraph (2) of section 865(d) of the 1986 Code is amended by inserting "franchise," after "trade brand,".

(e) AMENDMENTS RELATED TO SECTION 1212 OF THE REFORM ACT.—

(1)(A) Paragraph (3) of section 883(c) of the 1986 Code is amended to read as follows:

"(3) SPECIAL RULES FOR PUBLICLY TRADED CORPORATIONS.—

"(A) EXCEPTION.—Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

"(B) TREATMENT OF STOCK OWNED BY PUBLICLY TRADED CORPORATION.—Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized."

(B) Paragraph (1) of section 883(c) of the 1986 Code is amended—

(i) by striking out "Paragraphs (1) and (2) of subsection (a)" and inserting in lieu thereof "Paragraph (1) or (2) of subsection (a) (as the case may be)", and

(ii) by striking out "such paragraphs (1) and (2)" and inserting in lieu thereof "such paragraph".

(2)(A) Paragraphs (1) and (2) of section 883(a) of the 1986 Code are each amended by striking out "to citizens of the United States and".

(B) Paragraphs (1) and (2) of section 872(b) of the 1986 Code are each amended by striking out "to citizens of the United States and to corporations organized in the United States" and inserting in lieu thereof "to individual residents of the United States".

(3)(A) The section heading for section 863 of the 1986 Code is amended to read as follows:

"SEC. 863. SPECIAL RULES FOR DETERMINING SOURCE."

(B) The table of sections for part I of subchapter N of chapter 1 of the 1986 Code is amended by striking out the item relating to section 863 and inserting in lieu thereof the following:

"Sec. 863. Special rules for determining source."

(4) Subsection (c) of section 862 is hereby repealed.

(5) Paragraphs (1) and (2) of section 872(b) of the 1986 Code and paragraphs (1) and (2) of section 883(a) of the 1986 Code are each amended by striking out "operation" and inserting in lieu thereof "international operation".

(6) Paragraph (1) of section 887(b) of the 1986 Code is amended—

(A) by striking out "under section 863(c)" and inserting in lieu thereof "under section 863(c)(2)", and

(B) by adding at the end thereof the following new sentence: "To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply."

(f) AMENDMENT RELATED TO SECTION 1213 OF THE REFORM ACT.—Paragraph (2) of section 863(e) of the 1986 Code is amended by striking out "foreign country" each place it appears and inserting in lieu thereof "foreign country (or possession of the United States)".

(g) AMENDMENTS RELATED TO SECTION 1214 OF THE REFORM ACT.—

(1) Paragraph (1) of section 1214(d) of the Reform Act is amended to read as follows:

"(1) IN GENERAL.—The amendments made by this section shall apply to payments made in a taxable year of the payor beginning after December 31, 1986."

(2) Subparagraph (B) of section 1214(d)(2) of the Reform Act is amended by striking out "section 904(d)(2)(G)" and inserting in lieu thereof "section 904(d)(2)(H)".

(3) Subparagraph (B) of section 861(c)(1) of the 1986 Code is amended—

(A) by striking out "subchapter)" in clause (i) and inserting in lieu thereof "subchapter) or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation",

(B) by striking out "or chain of subsidiaries of such corporation" in clause (ii), and

(C) by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, the term 'subsidiary' means any corporation in which the corporation referred to in this subparagraph owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting '50 percent' for '80 percent' each place it appears)."

(4) Paragraph (1) of section 2105(b) of the 1986 Code is amended by striking out "section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States" and inserting in lieu thereof "section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)".

(5) Paragraph (2) of section 864(c) of the 1986 Code is amended by striking out the last sentence.

(6) Paragraph (3) of section 907(c) of the 1986 Code is amended:

(A) by striking out subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively, and

(B) by striking out "and dividends described in subparagraph (B)".

(7) Subsection (a) of section 1442 of the 1986 Code is amended—

(A) by striking out "and the references in" and inserting in lieu thereof "the references in", and

(B) by inserting before the period at the end thereof the following: ", and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)".

(h) AMENDMENTS RELATED TO SECTION 1215 OF THE REFORM ACT.—

(1) Paragraph (4) of section 864(e) of the 1986 Code is amended to read as follows:

"(4) BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS ADJUSTED FOR EARNINGS AND PROFITS CHANGES.—

"(A) IN GENERAL.—For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

"(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

"(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

"(B) NONAFFILIATED 10-PERCENT OWNED CORPORATION.—For purposes of this paragraph, the term 'nonaffiliated 10-percent owned corporation' means any corporation if—

"(i) such corporation is not included in the taxpayer's affiliated group, and

"(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

"(C) EARNINGS AND PROFITS OF LOWER TIER CORPORATIONS TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

"(ii) STOCK OWNERSHIP REQUIREMENTS.—The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

"(iii) STOCK OWNED THROUGH ENTITIES.—For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(D) COORDINATION WITH SUBPART F, ETC.—For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock."

(2)(A) Paragraph (1) of section 864(e) of the 1986 Code is amended by striking out "from sources outside the United States".

(B) Subsection (h) of section 936 of the 1986 Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) SECTION 864(E)(1) NOT TO APPLY.—This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted."

(C) The heading for part I of subchapter N of chapter 1 of the 1986 Code is amended to read as follows:

"PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME".

(D) The table of parts for subchapter N of chapter 1 of the 1986 Code is amended by striking out the item relating to part I and inserting in lieu thereof the following:

"Part I. Source rules and other general rules relating to foreign income."

(3) Paragraph (3) of section 864(e) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: "A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined)."

(4)(A) Paragraph (5) of section 864(e) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF BANK HOLDING COMPANIES.—To the extent provided in regulations—

"(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

"(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C)."

(B) Subparagraph (B) of section 864(e)(5) of the 1986 Code is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply for purposes of paragraph (6)."

(5) Paragraph (6) of section 864(e) of the 1986 Code is amended by striking out "directly allocable and apportioned" and inserting in lieu thereof "directly allocable or apportioned".

(6)(A) Paragraph (7) of section 864(e) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma, and by adding at the end thereof the following new subparagraphs:

"(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

"(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company, and

"(F) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate."

(B) Subsection (e) of section 864 of the 1986 Code is amended by striking out "(except as provided in regulations)" in the material preceding paragraph (1).

(7) Paragraph (2) of section 1215(c) of the Reform Act is amended to read as follows:

"(2) TRANSITIONAL RULES.—

"(A) GENERAL PHASE-IN.—

"(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

"(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

"In the case of the:	The applicable percentage is:
1st taxable year...	75
2nd taxable year..	50
3rd taxable year...	25.

"(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

"(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

"(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

"(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

"(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

"(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

"(I) the general phase-in amount as determined for purposes of subparagraph (A),

"(II) the 5-year phase-in amount, and

"(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

"(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

"(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

"(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year.......	8⅓.....................	10
2nd taxable year.......	16⅔..................	25
3rd taxable year.......	25.....................	50
4th taxable year.......	33⅓..................	100
5th taxable year.......	16⅔..................	100.

"(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

"(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

"(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year	10	16⅔
3rd taxable year	15	37½
4th taxable year	20	100
5th taxable year	0	0.

"(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

"(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

"(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

"(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

"(I) the amount referred to in clause (v)(II), over

"(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

"(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

"(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

"(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

"(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

"(D) SPECIAL RULES.—

"(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	The applicable percentage is:
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

"(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

"(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

"(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a)), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

"(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return."

"(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election."

(i) AMENDMENTS RELATED TO SECTION 1221 OF THE REFORM ACT.—

(1)(A) Subparagraph (C) of section 953(c)(3) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986."

(B) Clause (i) of section 953(c)(3)(D) of the 1986 Code is amended to read as follows:

"(i) PERIOD DURING WHICH ELECTION IN EFFECT.—

"(I) IN GENERAL.—Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(II) TERMINATION.—If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year."

(C) Paragraph (3) of section 953(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) DISQUALIFIED CORPORATION.—For purposes of this paragraph the term 'disqualified corporation' means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year."

(2)(A) Paragraph (1) of section 953(c) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection."

(B) Subsection (c) of section 953 of the 1986 Code is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) DETERMINATION OF PRO RATA SHARE.—

"(A) IN GENERAL.—The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

"(i) the amount which would be determined under paragraph (2) of section 951(a) if—

"(I) only related person insurance income were taken into account,

"(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

"(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

"(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

"(B) COORDINATION WITH OTHER PROVISIONS.—The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A)."

(3)(A) Paragraph (2) of section 953(c) of 1986 Code is amended by striking out "with respect to which the primary insured is" and inserting in lieu thereof "with respect to which the person (directly or indirectly) insured is".

(B) Subparagraph (A) of section 953(c)(3) of the 1986 Code is amended—

(i) by striking out "persons who are the primary insured" and inserting in lieu thereof "persons who are (directly or indirectly) insured", and

(ii) by striking out "to any such primary insured" and inserting in lieu thereof "to any such person".

(C) The amendments made by this paragraph to the extent such amendments add the phrase "(directly or indirectly)" shall apply only to taxable years beginning after December 31, 1987.

(4)(A) Subsection (c) of section 953 of the 1986 Code (as amended by paragraph (2)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) RELATED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'related person' has the meaning given such term by section 954(d)(3).

"(B) TREATMENT OF CERTAIN LIABILITY INSURANCE POLICIES.—In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons."

(B) Paragraphs (2) and (3)(A) of section 953(c) of the 1986 Code are each amended by striking out "(within the meaning of section 954(d)(3))".

(5) Paragraph (2) of section 953(c) of the 1986 Code is amended by striking out "insurance income attributable" and inserting in lieu thereof "insurance income (within the meaning of subsection (a)) attributable".

(6) For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act.

(7) Subsection (b) of section 953 of the 1986 Code is amended—

(A) by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively,

(B) by striking out subparagraph (A) of paragraph (1) (as so redesignated) and inserting in lieu thereof the following:

"(A) The small life insurance company deduction.", and

(C) by striking out "(other than those taken into account under paragraph (3))" in paragraph (3) (as so redesignated).

(8) Subparagraph (B) of section 953(c)(3) of the 1986 Code is amended—

(A) by striking out "related person insurance income" and inserting in lieu thereof "related person insurance income (determined on a gross basis)", and

(B) by striking out "its insurance income" and inserting in lieu thereof "its insurance income (as so determined)".

(9) Subclause (II) of section 953(c)(3)(C)(i) of the 1986 Code is amended—

(A) by striking out "all benefits" and inserting in lieu thereof "all benefits (other than with respect to section 884)", and

(B) by striking out "under any income tax treaty" and inserting in lieu thereof "granted by the United States under any treaty".

(10) Paragraph (7) of section 861(a) of the 1986 Code is amended to read as follows:

"(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

"(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

"(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States."

(11) Subparagraph (A) of section 955(a)(2) of the 1986 Code is amended by striking out "beginning before 1987" and inserting in lieu thereof "beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)".

(12) Paragraphs (6) and (7) of section 954(b) of the 1986 Code are each amended by striking out "(determined without regard to the exclusion under paragraph (2) of this subsection)".

(13)(A) Subparagraph (C) of section 1221(g)(3) of the Reform Act is amended—

(i) by striking out "July 9" and inserting in lieu thereof "June 9", and

(ii) by striking out "March 31, 1982" and inserting in lieu thereof "November 3, 1981".

(B) Subparagraph (D) of section 1221(g)(3) of the Reform Act is amended—

(i) by striking out "as of August 16, 1986, under a reinsurance contract in effect on such date" and inserting in lieu thereof "under a reinsurance contract",

(ii) by striking out "the preceding sentence" and inserting in lieu thereof "this subparagraph", and

(iii) by adding at the end thereof the following: "For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of $27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph)."

(14)(A) Paragraph (3) of section 954(d) of the 1986 Code is amended by striking out "50 percent or more" each place it appears and inserting in lieu thereof "more than 50 percent".

(B) Clause (ii) of section 861(c)(2)(B) of the 1986 Code is amended to read as follows:

"(ii) such section shall be applied by substituting '10 percent or more' for 'more than 50 percent' each place it appears."

(15) Subsection (b) of section 951 of the 1986 Code is amended by striking out "section 957(d)" and inserting in lieu thereof "section 957(c)".

(16) Subsection (c) of section 952 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR DETERMINING EARNINGS AND PROFITS.—For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation."

(17) Subparagraph (A) of section 881(c)(4) of the 1986 code is amended by striking out clauses (ii), (iii), (iv), and (v) and inserting in lieu thereof the following:

"(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

"(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons)."

(18) Subparagraph (B) of section 954(c)(1) of the 1986 Code is amended by striking out "or" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) which is an interest in a trust, partnership, or REMIC, or".

(19)(A) Subsection (a) of section 6046 of the 1986 Code is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) each person (not described in paragraph (2)) who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and".

(B) Subsection (b) of section 6046 of the 1986 Code is amended by striking out "subsection (a)(2)" and inserting in lieu thereof "paragraph (2) or (3) of subsection (a)".

(C) Subsection (a) of section 6046 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), paragraph (1) shall be treated as including a reference to each United States person who is an officer or director of such corporation."

(20) Subparagraph (B) of section 954(c)(1) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following:

"In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph. Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(1) also shall not be taken into account under this subparagraph."

(21) Subsection (c) of section 953 (as amended by this subsection) is amended by striking out paragraph (7) and inserting in lieu thereof the following:

"(7) COORDINATION WITH SECTION 1248.—If any person is treated under paragraph (1) as a United States shareholder with respect to any foreign corporation, for purposes of section 1248, such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation.

"(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

"(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation."

(22) Subclause (III) of section 952(c)(1)(B)(iii) of the 1986 Code is amended by striking out "insurance income" and inserting in lieu thereof "insurance income or foreign personal holding company income,".

(23) Clause (iii) of section 952(c)(1)(B) of the 1986 Code is amended by redesignating subclauses (III) and (IV) as subclauses (V) and (VI), respectively, and by inserting after subclause (II) the following new subclauses:

"(III) foreign base company sales income,

"(IV) foreign base company services income,".

(24) Clause (ii) of section 952(c)(1)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to

the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that '1982' shall be substituted for '1962'."

(25)(A) Paragraph (1) of section 952(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) CERTAIN DEFICITS OF MEMBER OF THE SAME CHAIN OF CORPORATIONS MAY BE TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

"(ii) QUALIFIED CHAIN MEMBER.—For purposes of this subparagraph, the term 'qualified chain member' means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

"(I) all the stock of such other corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

"(II) all the stock of such controlled foreign corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

"(iii) COORDINATION.—This subparagraph shall be applied after subparagraphs (A) and (B)."

(B) Subparagraph (B) of section 954(c)(3) of the 1986 Code is amended by inserting before the period at the end thereof the following: "or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation".

(j) AMENDMENT RELATED TO SECTION 1224 OF THE REFORM ACT.—Paragraph (2) of section 901(g) of the 1986 Code and section 936(d)(3)(B) of the 1986 Code are each amended by striking out "section 957(c)" and inserting in lieu thereof "section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)".

(k) AMENDMENT RELATED TO SECTION 1225 OF THE REFORM ACT.—Subsection (c) of section 1225 of the Reform Act is amended by striking out "March 1, 1986" and inserting in lieu thereof "January 1, 1986".

(l) AMENDMENTS RELATED TO SECTION 1226 OF THE REFORM ACT.—

(1) Subsection (a) of section 246A of the 1986 Code is amended by striking out the last sentence.

(2)(A) Paragraph (8) of section 245 of the 1986 Code is amended to read as follows:

"(8) DISALLOWANCE OF FOREIGN TAX CREDIT.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the United States-source portion of any dividend received by a corporation from a qualified 10-percent-owned foreign corporation."

(B) Subsection (a) of section 245 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) COORDINATION WITH TREATIES.—If—

"(A) any portion of a dividend received by a corporation from a qualified 10-percent-owned foreign corporation would be treated as from sources in the United States under paragraph (9),

"(B) under a treaty obligation of the United States (applied without regard to this subsection), such portion would be treated as arising from sources outside the United States, and

"(C) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such dividend (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such portion of such dividend)."

(3) Subsection (a) of section 245 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) COORDINATION WITH SECTION 1248.—For purposes of this subsection, the term 'dividend' does not include any amount treated as a dividend under section 1248."

(m) AMENDMENTS RELATED TO SECTION 1228 OF THE REFORM ACT.—

(1) Subsection (a) of section 1228 of the Reform Act is amended by striking out "and" at the end of paragraph (3), and by striking out paragraph (4) and inserting in lieu thereof the following:

"(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

"(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

"(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical Corrections Act of 1988.

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical Corrections Act of 1988."

(2) Subsection (c) of section 1228 of the Reform Act is hereby repealed.

(n) AMENDMENTS RELATED TO SECTION 1231 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 1231(g)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: "In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting 'August 16, 1986' for 'November 16, 1985'."

(2) Subparagraph (B) of section 1231(g)(2) of the Reform Act is amended by striking out "was made" and inserting in lieu thereof ", if any, was made".

(3) Subsection (g) of section 1231 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

"(A) IN GENERAL.—If—

"(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

"(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

"(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

"(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

"(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

"(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

"(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A) shall not be treated as qualified possession source investment income for any taxable year."

(4) Subparagraph (B) of section 1231(a)(1) of the Reform Act is amended by striking out "at the end thereof" and inserting in lieu thereof "at the end of the material relating to payment of cost sharing".

(5)(A) Clause (ii) of section 936(d)(4)(A) of the 1986 Code is amended to read as follows:

"(ii) in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner."

(B) Clauses (i) and (ii) of section 936(d)(4)(C) of the 1986 Code are each amended by striking out "the Secretary of the Treasury of Puerto Rico" and inserting in lieu thereof "the Commissioner of Financial Institutions of Puerto Rico".

(o) AMENDMENT RELATED TO SECTION 1234 OF THE REFORM ACT.—Subsection (d) of section 6039E of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Nothing in the preceding sentence shall be construed to require the disclosure of information which is subject to section 245A of the Immigration and Nationality Act (as in effect on the date of the enactment of this sentence)."

(p) AMENDMENTS RELATED TO SECTION 1235 OF THE REFORM ACT.—

(1) Paragraph (1) of section 1291(d) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—This section shall not apply with respect to any distribution paid by a passive foreign investment company, or any disposition of stock in a passive foreign investment company, if such company is a

qualified electing fund for each of its taxable years—

"(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

"(B) which includes any portion of the taxpayer's holding period."

(2) Subsection (c) of section 1296 of the 1986 Code is amended by striking out "owns at least" and inserting in lieu thereof "owns (directly or indirectly) at least".

(3) Paragraph (3) of section 1291(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 551(d), 959(a), or 1293(c)."

(4) Paragraph (2) of section 1294(c) of the 1986 Code is amended—

(A) by striking out "is disposed of" in subparagraph (A) and inserting in lieu thereof "is transferred",

(B) by striking out "such disposition or cessation" each place it appears and inserting in lieu thereof "such transfer or cessation", and

(C) by striking out "DISPOSITIONS" in the paragraph heading and inserting in lieu thereof "TRANSFERS".

(5) Paragraph (1) of section 1296(b) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'passive income' means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c)."

(6)(A) Subsection (f) of section 1291 of the 1986 Code is amended to read as follows:

"(f) RECOGNITION OF GAIN.—To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

"(1) the fair market value of such stock, over

"(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence."

(B) Subsection (e) of section 1291 of the 1986 Code is amended by striking out "Rules similar" and inserting in lieu thereof "Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar".

(7)(A) Paragraphs (4) and (5) of section 1291(a) of the 1986 Code are hereby repealed.

(B) Section 1291 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) COORDINATION WITH FOREIGN TAX CREDIT RULES.—

"(1) IN GENERAL.—If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign investment company—

"(A) the amount of such distribution shall be determined for purposes of this section with regard to section 78,

"(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

"(C) to the extent—

"(i) that such excess distribution taxes are allocated to a taxable year referred to in subsection (a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

"(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904(d) and not below zero) the increase in tax determined under subsection (c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means, with respect to any distribution—

"(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

"(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

"(B) EXCESS DISTRIBUTION TAXES.—The term 'excess distribution taxes' means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

"(C) SECTION 1248 GAIN.—The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248."

(8) Section 1294 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) CROSS REFERENCE.—

"For provisions providing for interest for the period of the extension under this section, see section 6601."

(9) Paragraph (2) of section 1291(e) of the 1986 Code is amended by striking out "not" the second place it appears.

(10)(A) Subsection (a) of section 1297 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) OPTIONS.—To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock."

(B) Paragraph (5) of section 1297(a) of the 1986 Code (as redesignated by subparagraph (A)) is amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (4)".

(11) Paragraph (3) of section 904(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(I) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If—

"(i) a passive foreign investment company is a controlled foreign corporation, and

"(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category."

(12) Clause (ii) of section 1291(a)(1)(B) of the 1986 Code is amended to read as follows:

"(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and".

(13) Subparagraph (A) of section 1291(b)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B)."

(14) Subparagraph (A) of section 1291(a)(3) of the 1986 Code is amended by striking out "in the case of an excess distribution" and inserting in lieu thereof "for purposes of applying this section to an excess distribution".

(15) Subsection (b) of section 1293 of the 1986 Code is amended by adding at the end thereof the following new sentence: "To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period."

(16) Subparagraph (B) of section 1296(b)(2) of the 1986 Code is amended by striking out "by a corporation which" and inserting in lieu thereof "by a corporation which is predominantly engaged in an insurance business and which".

(17) Paragraph (5) of section 1297(b) of the 1986 Code is amended to read as follows:

"(5) APPLICATION OF PART WHERE STOCK HELD BY OTHER ENTITY.—

"(A) IN GENERAL.—Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

"(i) any disposition by the United States person or the person owning such stock which results in the United States person being treated as no longer owning such stock, or

"(ii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign investment company.

"(B) AMOUNT TREATED IN SAME MANNER AS PREVIOUSLY TAXED INCOME.—Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) and to any amount included in gross income under section 1293(a) (or which would have been so included but for section 951(f)) in respect of stock which the taxpayer is treated as owning under subsection (a)."

(18) Subsection (e) of section 1293 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) DETERMINATION OF EARNINGS AND PROFITS.—The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund."

(19) Subsection (d) of section 1248 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(7) AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 1293.—Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock sold or exchanged, but only to the extent the inclusion of such *amount did not result in an exclusion of an amount under section 1293(c)."*

(20) Paragraph (6) of section 1297(b) of the 1986 Code is amended by striking out "If a" and inserting in lieu thereof "Except as provided in regulations, if a".

(21) Section 1246 of the 1986 Code is amended by redesignating the subsection relating to information with respect to certain foreign investment companies as subsection (f), by redesignating the subsection relating to coordination with section 1248 as subsection (g), and by redesignating the subsection relating to cross reference as subsection (h).

(22) Subparagraph (A) of section 1297(b)(3) of the 1986 Code is amended to read as follows:

"(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year,".

(23) Subsection (c) of section 1293 of the 1986 Code is amended by striking out "shall be treated as a distribution which is not a dividend" and inserting in lieu thereof "shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits".

(24) Subsection (b) of section 1297 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) TREATMENT OF CERTAIN FOREIGN CORPORATIONS OWNING STOCK IN 25-PERCENT OWNED DOMESTIC CORPORATION.—

"(A) IN GENERAL.—If—

"(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

"(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation,

for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

"(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust."

(25) Section 1294 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF LOANS TO SHAREHOLDER.—For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(26)(A) Paragraph (2) of section 1296(b) of the 1986 Code is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or", and by adding at the end thereof the following:

"(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income.

For purposes of subparagraph (C), the term 'related person' has the meaning given such term by section 954(d)(3) determined by substituting 'foreign corporation' for 'controlled foreign corporation' each place it appears in section 954(d)(3)."

(B) The paragraph heading for paragraph (2) of section 1296(b) of the 1986 Code is amended by striking out "EXCEPTION FOR CERTAIN BANKS AND INSURANCE COMPANIES" and inserting in lieu thereof "EXCEPTIONS".

(27) Subsection (a) of section 1296 of the 1986 Code is amended by adding at the end thereof the following new sentences:

"A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

(28) Paragraph (2) of section 1291(d) of the 1986 Code is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) ADDITIONAL ELECTION FOR SHAREHOLDER OF CONTROLLED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(I) a passive foreign investment company becomes a qualified electing fund for a taxable year which begins after December 31, 1986,

"(II) the taxpayer holds stock in such company on the first day of such taxable year, and

"(III) such company is a controlled foreign corporation (as defined in section 957(a)),

the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under subsection (a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

"(ii) POST-1986 EARNINGS AND PROFITS.—For purposes of clause (i), the term 'post-1986 earnings and profits' means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

"(iii) COORDINATION WITH SECTION 959(e).—For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a).

"(C) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) or (B) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

"(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph."

(29)(A) Clause (ii) of section 904(d)(2)(A) of the 1986 Code is amended by striking out "or section 1293" and inserting in lieu thereof "or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293".

(B) Subparagraph (E) of section 904(d)(2) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(iii) TREATMENT OF INCLUSIONS UNDER SECTION 1293.—If any foreign corporation is a non-controlled section 902 corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation."

(30) Clause (ii) of section 864(b)(2)(A) of the 1986 Code is amended by striking out "section 542(c)(7)" and inserting in lieu thereof "section 542(c)(7), 542(c)(10),".

(31) Paragraph (1) of section 1291(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year."

(32) Section 1293 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) OTHER SPECIAL RULES.—

"(1) EXCEPTION FOR CERTAIN INCOME.—For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

"(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

"(B) such person establishes to the satisfaction of the Secretary that—

"(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

"(ii) such income is—

"(I) from sources within the United States,

"(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

"(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

"(2) PREVENTION OF DOUBLE INCLUSION.—The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once."

(33) Paragraph (3) of section 1291(b) of the 1986 Code (as amended by paragraph (3)) is amended by striking out "and" at the end of subparagraph (E), by striking out the period at the end of subparagraph (F) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign investment company."

(34) Paragraph (2) of section 1294(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor."

(35) Section 1297 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Treatment of Stock Held by Pooled Income Fund.—If stock in a passive foreign investment company is owned (or treated as owned under subsection (a)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

"(1) section 1291 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1291) a deduction would be allowable with respect to such gain under section 642(c)(3),

"(2) section 1293 shall not apply with respect to such stock, and

"(3) in determining whether section 1291 applies to any distribution in respect of such stock, subsection (d) of section 1291 shall not apply."

(36) Paragraph (1) of section 1297(b) of the 1986 Code is amended by striking out "passive foreign investment corporation" and inserting in lieu thereof "passive foreign investment company".

(q) Amendments Related to Section 1241 of the Act.—

(1)(A) Subparagraph (B) of section 884(b)(2) of the 1986 Code is amended to read as follows:

"(B) Limitation.—

"(i) In general.—The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

"(ii) Accumulated effectively connected earnings and profits.—For purposes of clause (i), the term 'accumulated effectively connected earnings and profits' means the excess of—

"(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

"(II) the aggregate dividend equivalent amounts determined for such preceding taxable years."

(B) For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) and 1021(e)(2)(C) of the Reform Act or arising from section 823(b)(4)(C) of the 1986 Code.

(2)(A) Paragraph (1) of section 884(e) is amended to read as follows:

"(1) Limitation on treaty exemption.—No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

"(A) such treaty is an income tax treaty, and

"(B) such foreign corporation is a qualified resident of such foreign country."

(B) Paragraph (3) of section 884(e) of the 1986 Code is amended to read as follows:

"(3) Coordination with withholding tax.—

"(A) In general.—If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

"(B) Limitation on certain treaty benefits.—If—

"(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

"(ii) subparagraph (A) does not apply to such dividend, rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend."

(C) Subsection (f) of section 884 of the 1986 Code is amended—

(i) by striking out the 2nd sentence of paragraph (1), and

(ii) by adding at the end thereof the following new paragraph:

"(3) Coordination with treaties.—

"(A) Payor must be qualified resident.—In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

"(i) such treaty is an income tax treaty, and

"(ii) such foreign corporation is a qualified resident of such foreign country.

"(B) Recipient must be qualified resident.—In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

"(i) such treaty is an income tax treaty, and

"(ii) such foreign corporation is a qualified resident of such foreign country."

(3) Paragraph (1) of section 884(f) of the 1986 Code is amended—

(A) by striking out "sections 871, 881, 1441, and 1442" and inserting in lieu thereof "this subtitle", and

(B) by adding at the end thereof the following new sentence:

"To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation."

(4) Paragraph (4) of section 884(e) of the 1986 Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) Corporations owned by publicly traded domestic corporations.—A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

"(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

"(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States."

(5) Subparagraph (A) of section 884(e)(4) of the 1986 Code is amended—

(A) by striking out "more than 50 percent" in clause (i) and inserting in lieu thereof "50 percent or more", and

(B) by striking out "or the United States" in clause (ii) and inserting in lieu thereof "or citizens or residents of the United States".

(6) Subsection (e) of section 884 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Exception for international organizations.—This section shall not apply to an international organization (as defined in section 7701(a)(18))."

(7) Subparagraph (B) of section 861(a)(2) of the 1986 Code is amended by striking out "other than under section 884(d)(2)" each place it appears and inserting in lieu thereof "other than income described in section 884(d)(2)".

(8) Paragraph (2) of section 26(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(L) section 884 (relating to branch profits tax)."

(9) Section 861 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Cross Reference.—

"For treatment of interest paid by the branch of a foreign corporation, see section 884(f)."

(10) The paragraph (6) of section 906(b) of the 1986 Code which was added by section 1241(c) of the Reform Act is redesignated as paragraph (7).

(11) Subsection (c) of section 2104 of the 1986 Code is amended by striking out "section 861(a)(1)(B), section 861(a)(1)(G), or section 861(a)(1)(H)" and inserting in lieu thereof "subparagraph (A), (C), or (D) of section 861(a)(1)".

(12) Subparagraph (A) of section 904(g)(9) of the 1986 Code is amended by striking out "861(a)(1)(B)" and inserting in lieu thereof "861(a)(1)(A)".

(13)(A) Paragraph (1) of section 4373 of the 1986 Code is amended to read as follows:

"(1) Effectively connected items.—Any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) pursuant to a treaty obligation of the United States."

(B) The amendment made by subparagraph (A) shall apply with respect to premiums paid after the date 30 days after the date of the enactment of this Act.

(14) Paragraph (1) of section 884(f) of the 1986 Code is amended by inserting "(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)" after "United States" in the material preceding subparagraph (A) thereof.

(r) Amendments Related to Section 1242 of the Reform Act.—

(1) Paragraph (7) of section 864(c) of the 1986 Code is amended to read as follows:

"(7) Treatment of certain property transactions.—For purposes of this title, if—

"(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

"(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account."

(2) Paragraph (6) of section 864(c) of the 1986 Code is amended to read as follows:

"(6) Treatment of certain deferred payments, etc.—For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

"(A) is taken into account for any taxable year, but

"(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A)."

(s) Amendments Related to Section 1246 of the Reform Act.—

(1)(A) Section 1446 of the 1986 Code is amended to read as follows:

"SEC. 1446. WITHHOLDING TAX ON FOREIGN PARTNERS' SHARE OF EFFECTIVELY CONNECTED INCOME.

"(a) General Rule.—If—

"(1) a partnership has effectively connected taxable income for any taxable year, and

"(2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

"(b) Amount of Withholding Tax.—

"(1) In general.—The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

"(2) Applicable percentage.—For purposes of paragraph (1), the term 'applicable percentage' means—

"(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

"(B) the highest rate of tax specified in section 11(b) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

"(c) Effectively Connected Taxable Income.—For purposes of this section, the term 'effectively connected taxable income' means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

"(1) Paragraph (1) of section 703(a) shall not apply.

"(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

"(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

"(d) Treatment of Foreign Partners.—

"(1) Allowance of credit.—Each foreign partner of a partnership shall be allowed a credit under section 33 for such partner's share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner's taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

"(2) Credit treated as distributed to partner.—A foreign partner's share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the last day of the partnership's taxable year (for which such tax was paid).

"(e) Foreign Partner.—For purposes of this section, the term 'foreign partner' means any partner who is not a United States person.

"(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships."

(B) Paragraph (2) of section 6401(b) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: "The preceding sentence shall not apply to any credit so allowed by reason of section 1446."

(C) The table of sections for subchapter A of chapter 3 of the 1986 Code is amended by striking out the item relating to section 1446 and inserting in lieu thereof the following:

"Sec. 1446. Withholding of tax on foreign partners' share of effectively connected income."

(D) The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A)).

(2)(A) Subsection (a) of section 872 of the 1986 Code is amended by striking out "the case of a nonresident alien individual" and inserting in lieu thereof "the case of a nonresident alien individual, except where the context clearly indicates otherwise".

(B) Subsection (b) of section 882 of the 1986 Code is amended by striking out the "the case of a foreign corporation" and inserting in lieu thereof "the case of a foreign corporation, except where the context clearly indicates otherwise".

(t) Amendments Related to Section 1247 of the Reform Act.—

(1) Subparagraph (A) of section 892(a)(2) of the 1986 Code is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) derived from the disposition of any interest in a controlled commercial entity."

(2) Clause (ii) of section 892(a)(2)(A) of the 1986 Code is amended to read as follows:

"(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity."

(3) Subsection (a) of section 892 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Treatment as resident.—For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States."

(4) Section 893 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) Limitation on Exclusion.—Subsection (a) shall not apply to—

"(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

"(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government."

(u) Amendment Related to Section 1249 of the Reform Act.—Subsection (d) of section 1503 of the 1986 Code is amended by adding at the end thereof the following new paragraphs:

"(3) Treatment of losses of separate business units.—To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

"(4) Income on assets acquired after the loss.—The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained."

(v) Amendments Related to Section 1261 of the Reform Act.—

(1)(A) So much of section 986 of the 1986 Code as precedes subsection (c) thereof is amended to read as follows:

"SEC. 986. DETERMINATION OF FOREIGN TAXES AND FOREIGN CORPORATION'S EARNINGS AND PROFITS.

"(a) Foreign Taxes.—

"(1) In general.—For purposes of determining the amount of the foreign tax credit—

"(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

"(2) Foreign income taxes.—For purposes of paragraph (1), 'foreign income taxes' means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.

"(b) Earnings and Profits and Distributions.—For purposes of determining the tax under this subtitle—

"(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

"(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate."

(B) Section 987 of the 1986 Code is amended by inserting "and" at the end of paragraph (2), by striking out ", and" at the end of paragraph (3) and inserting in lieu thereof a period, and by striking out paragraph (4).

(C) The table of sections for subpart J of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 986 and inserting in lieu thereof the following:

"Sec. 986. Determination of foreign taxes and foreign corporation's earnings and profits."

(2)(A) Subsection (c) of section 988 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Special rules where taxpayer takes or makes delivery.—If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold."

(B) The amendment made by subparagraph (A) shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987.

(3)(A) Subsection (b) of section 988 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN CONTRACTS, ETC.—In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be)."

(B) Subclause (II) of section 988(c)(1)(C)(i) of the 1986 Code is amended to read as follows:

"(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be)."

(C) Paragraph (2) of section 988(c) of the 1986 Code is amended by inserting "or" at the end of subparagraph (A), by striking out ", or" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(D) Paragraph (3) of section 988(c) of the 1986 Code is amended to read as follows:

"(3) PAYMENT DATE.—The term 'payment date' means the date on which the payment is made or received."

(4) The first sentence of paragraph (1) of section 988(d) is amended by striking out "this section" and inserting in lieu thereof "this subtitle".

(5) Subsection (b) of section 989 of the 1986 Code is amended—

(A) by striking out "951(a)" in paragraph (3) and inserting in lieu thereof "951(a)(1)(A)", and

(B) by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included."

(6) Clause (iii) of section 988(c)(1)(B) of the 1986 Code is amended to read as follows:

"(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year."

(7) Subparagraph (B) of section 988(a)(3) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(iii) SPECIAL RULE FOR PARTNERSHIPS.—To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level."

(8) Clause (i) of section 988(a)(3)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien."

(9) Section 903 of the 1986 Code is amended by striking out "this subpart" and inserting in lieu thereof "this part".

(w) AMENDMENTS RELATED TO SECTION 1274 OF THE REFORM ACT.—

(1) Subsection (e) of section 932 of the 1986 Code is amended to read as follows:

"(e) SPECIAL RULE FOR APPLYING SECTION TO TAX IMPOSED IN VIRGIN ISLANDS.—In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a)."

(2) Paragraph (4) of section 932(c) of the 1986 Code is amended to read as follows:

"(4) RESIDENTS OF THE VIRGIN ISLANDS.—In the case of an individual—

"(A) who is a bona fide resident of the Virgin Islands at the close of the taxable year,

"(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

"(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account."

(3) Paragraph (2) of section 932(c) of the 1986 Code is amended by striking out "his income tax return" and inserting in lieu thereof "an income tax return".

(4) Subsection (c) of section 1274 of the Reform Act is amended by striking out "this title" and inserting in lieu thereof "the Internal Revenue Code of 1986".

(x) AMENDMENT RELATED TO SECTION 1275 OF THE REFORM ACT.—Section 1444 of the 1986 Code is amended by striking out "(as modified by section 934A)".

(y) AMENDMENT RELATED TO SECTION 1276 OF THE REFORM ACT.—Subsection (a) of section 7654 of the 1986 Code is amended by striking out "an individual to which" and inserting in lieu thereof "an individual to whom".

(z) AMENDMENT RELATED TO SECTION 1277 OF THE REFORM ACT.—

(1) Section 1277 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986."

(2) Subsection (e) of section 1277 of the Act is amended by striking out "The preceding sentence" and inserting in lieu thereof "Notwithstanding subsection (b), the preceding sentence".

(aa) COORDINATION WITH TREATIES.—

(1) TREATY OBLIGATIONS.—(A) Subsection (d) of section 7852 of the 1986 Code is amended to read as follows:

"(d) TREATY OBLIGATIONS—

"(1) IN GENERAL.—For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

"(2) SAVINGS CLAUSE.—No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954."

(B) Section 7852(d)(1) of the 1986 Code, as added by subparagraph (A), shall apply to any taxable period with respect to which the time for assessment of any deficiency has not expired by reason of any law or rule of law before the date of the enactment of this Act.

(2) CERTAIN AMENDMENTS TO APPLY NOTWITHSTANDING TREATIES.—The following amendments made by the Reform Act shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

(A) The amendments made by section 1201 of the Reform Act.

(B) The amendments made by title VII of the Reform Act to the extent such amendments relate to the alternative minimum tax foreign tax credit.

(3) CERTAIN AMENDMENTS NOT TO APPLY TO THE EXTENT INCONSISTENT WITH TREATIES.—The following amendments made by the Reform Act shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

(A) The amendments made by section 1211 of the Reform Act to the extent—

(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

(ii) such amendments relate to income of a nonresident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

(B) The amendments made by section 1212(a) of the Reform Act; except for purposes of determining the amount of the foreign tax credit.

(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act.

(D) The amendments made by section 1214 of the Reform Act; except for purposes of determining the amount of the foreign tax credit.

(E) The amendment made by section 1241(a) of the Reform Act to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

(F) The amendment made by section 1241(b)(2)(A) of the Reform Act.

(G) The amendment made by section 1241(a) of the Reform Act to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

(H) The amendments made by section 1242 of the Reform Act to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

(I) The amendment made by section 1247(a) of the Reform Act.

(J) The amendments made by section 123 of the Reform Act.

(4) TREATMENT OF TECHNICAL CORRECTIONS.—For purposes of paragraphs (2) and (3), any amendment made by this title shall be treated as if it had been included in the provision of the Reform Act to which such amendment relates.

(5) REPORTING OF CERTAIN TREATY-BASED RETURN POSITIONS.—

(A) Subchapter B of chapter 61 of the 1986 Code is amended by redesignating section 6114 as section 6115 and by inserting after section 6113 the following new section:

"SEC. 6114. TREATY-BASED RETURN POSITIONS.

"(a) IN GENERAL.—Each taxpayer who, with respect to any tax imposed by this title, takes the position that a treaty of the United

States overrules (or otherwise modifies) a law of the United States affecting revenue which was enacted after the provision of such treaty entered into force shall disclose (in such manner as the Secretary may prescribe) such position—

"(1) on the return of tax for such tax (or any statement attached to such return), or

"(2) if no return of tax is required to be filed, in such form as the Secretary may prescribe.

"(b) WAIVER AUTHORITY.—The Secretary may waive the requirement under subsection (a) in cases in which the Secretary finds that the disclosure is not necessary for the administration of the internal revenue laws."

(B) Part I of subchapter B of chapter 68 of the 1986 Code is amended by adding at the end thereof the following new section:

"SEC. 6712. FAILURE TO DISCLOSE TREATY-BASED RETURN POSITIONS.

"(a) GENERAL RULE.—If a taxpayer fails to meet the requirements of section 6114, there is hereby imposed a penalty equal to $500 ($5,000 in the case of a C corporation) on each such failure.

"(b) AUTHORITY TO WAIVE.—The Secretary may waive all or any part of the penalty provided by this section on a showing by the taxpayer that there was reasonable cause for the failure and that the taxpayer acted in good faith.

"(c) PENALTY IN ADDITION TO OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty imposed by law."

(C)(i) The table of sections for subchapter B of chapter 61 of the 1986 Code is amended by striking out the item relating to section 6114 and inserting in lieu thereof the following:

"Sec. 6114. Treaty-based return positions.

"Sec. 6115. Cross reference.

(ii) The table of sections for part I of subchapter B of chapter 68 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6712. Failure to disclose treaty-based return positions."

(D) The amendments made by this paragraph shall apply to taxable periods the due date for filing returns for which (without extension) occurs after December 31, 1988.

(bb) MISCELLANEOUS FOREIGN TECHNICAL CORRECTIONS.—

(1) PROVISIONS RELATING TO FOREIGN PERSONAL HOLDING COMPANIES.—

(A) Subsection (f) of section 551 of the 1986 Code is amended—

(i) by amending paragraph (1) to read as follows:

"(1) a foreign partnership or an estate or trust which is a foreign estate or trust, or", and

(ii) by striking out the last sentence and inserting in lieu thereof the following: "In any case to which the preceding sentence applies, the Secretary may by regulations provide that rules similar to the rules of section 1297(b)(5) shall apply, and provide for such other adjustments in the application of this subchapter as may be necessary to carry out the purposes of this subsection."

(B) Subsection (a) of section 551 of the 1986 Code is amended by striking out "(other than estates or trusts the gross income of which under this subtitle includes only income from sources within the United States)" and inserting in lieu thereof "(other than foreign estates or trusts)".

(C) Subsection (c) of section 552 of the 1986 Code is amended to read as follows:

"(c) LOOK-THRU FOR CERTAIN DIVIDENDS AND INTEREST.—

"(1) IN GENERAL.—For purposes of this part, any related person dividend or interest shall be treated as foreign personal holding company income only to the extent such dividend or interest is attributable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which would be foreign personal holding company income.

"(2) RELATED PERSON DIVIDEND OR INTEREST.—For purposes of paragraph (1), the term 'related person dividend or interest' means any dividend or interest which—

"(A) is described in subparagraph (A) of section 954(c)(3), and

"(B) is received from a related person which is not a foreign personal holding company (determined without regard to this subsection).

For purposes of the preceding sentence, the term 'related person' has the meaning given such term by section 954(d)(3) (determined by substituting 'foreign personal holding company' for 'controlled foreign corporation' each place it appears)."

(D) The amendments made by this paragraph shall apply to taxable years of foreign corporations beginning after December 31, 1986.

(2) TREATMENT OF CERTAIN PAYMENTS OUTSIDE THE UNITED STATES.—

(A) Subparagraph (A) of section 3405(d)(13) of the 1986 Code is amended by striking out "the United States" and inserting in lieu thereof "the United States and any possession of the United States".

(B) Clause (i) of section 3405(d)(13)(B) of the 1986 Code is amended to read as follows:

"(i) a United States citizen or a resident alien of the United States, or".

(C) The heading of paragraph (13) of section 3405(d) of the 1986 Code is amended by striking out "UNITED STATES" and inserting in lieu thereof "UNITED STATES OR ITS POSSESSIONS".

(D) The amendments made by this paragraph shall apply to distributions made after the date of the enactment of this Act.

(3) CLARIFICATION OF DISCLOSURE UNDER CERTAIN AGREEMENTS.—

(A) Paragraph (4) of section 6103(k) of the 1986 Code is amended—

(i) by striking out "or other convention" and inserting in lieu thereof "or other convention or bilateral agreement", and

(ii) by striking out "such convention" and inserting in lieu thereof "such convention or bilateral agreement".

(B) Subparagraph (A) of section 6103(b)(5) of the 1986 Code is amended by striking out "the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau" and inserting in lieu thereof "and the Commonwealth of the Northern Mariana Islands".

(C) The amendments made by this paragraph shall take effect on the date of the enactment of the Tax Reform Act of 1986.

(4) COORDINATION OF TREATIES WITH SECTION 904(g).—

(A) Subsection (g) of section 904 of the 1986 Code is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(10) COORDINATION WITH TREATIES.—

"(A) IN GENERAL.—If—

"(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

"(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

"(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable).

"(B) SPECIAL RULE.—Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection)."

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984.

(5) TREATMENT OF ELECTION UNDER SECTION 338.—

(A) IN GENERAL.—Subsection (h) of section 338 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(16) COORDINATION WITH FOREIGN TAX CREDIT PROVISIONS.—Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation)."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987.

(6) TREATMENT OF TAX-EXEMPT SHAREHOLDERS OF A DISC.—

(A) Section 995 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF TAX-EXEMPT SHAREHOLDERS.—If any organization described in subsection (a)(2) or (b)(2) of section 511 is a shareholder in a DISC—

"(1) any amount deemed distributed to such shareholder under subsection (b),

"(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

"(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determing any such shareholder's DISC-related deferred tax liability under subsection (f)."

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1987.

(7) TREATMENT OF CERTAIN AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248.—

(A) IN GENERAL.—Subsection (e) of section 959 of the 1986 Code is amended by striking out "such person under" and inserting in lieu thereof "such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.

(8) TREATMENT OF SHARED FSC'S.—

(A) IN GENERAL.—Section 927 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF SHARED FSC'S.—

"(1) IN GENERAL.—Except as provided in paragraph (2) , each separate account referred to in paragraph (3) maintained by a shared FSC shall be treated as a separate corporation for purposes of this subpart.

"(2) CERTAIN REQUIREMENTS APPLIED AT SHARED FSC LEVEL.—Paragraph (1) shall not apply—

"(A) for purposes of—

"(i) subparagraphs (A), (B), (D), and (E) of section 922(a)(1),

"(ii) paragraph (2) of section 922(a),

"(iii) subsections (b), (c), and (e) of section 924, and

"(iv) subsection (f) of this section, and

"(B) for such other purposes as the Secretary may by regulations prescribed.

"(3) SHARED FSC.—For purposes of this subsection, the term 'shared FSC' means any corporation if—

"(A) such corporation maintains a separate account for transactions with each shareholder (and persons related to such shareholder),

"(B) distributions to each shareholder are based on the amounts in the separate account maintained with respect to such shareholder, and

"(C) such corporation meets such other requirements as the Secretry may by regulations prescribe."

(B) The amendment made by subparagraph (A) shall apply as if included in the provision of the Tax Reform Act of 1984 to which it relates.

(9) CLARIFICATION OF DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM A FSC.—

(A) Subsection (c) of section 245 of the 1986 Code is amended to read as follows:

"(c) CERTAIN DIVIDENDS RECEIVED FROM FSC.—

"(1) IN GENERAL.—In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to—

"(A) 100 percent of any dividend received from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC, and

"(B) 70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2)) of any dividend received from another corporation which is distributed out of earnings and profits attributable to effectively connected income received or accrued by such other corporation while such other corporation was a FSC.

"(2) EXCEPTION FOR CERTAIN DIVIDENDS.—Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

"(A) is section 923(a)(2) nonexempt income (within the meaning of section 927(d)(6)), or

"(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

"(3) NO DEDUCTION UNDER SUBSECTION (a) OR (b).—No deduction shall be allowable under subsection (a) or (b) with respect to any dividend which is distributed out of earnings and profits of a corporation accumulated while such corporation was a FSC.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) FOREIGN TRADE INCOME; EXEMPT FOREIGN TRADE INCOME.—The terms 'foreign trade income' and 'exempt foreign trade income' have the respective meanings given such terms by section 923.

"(B) EFFECTIVELY CONNECTED INCOME.—The term 'effectively connected income' means any income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States and is subject to tax under this chapter. Such term shall not include any foreign trade income."

(B) The amendment made by subparagraph (A) shall apply as if included in the provision of the Tax Reform Act of 1984 to which it relates.

SEC. 113. AMENDMENTS RELATED TO TITLE XIII OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1301 OF THE REFORM ACT.—

(1) Clause (iii) of section 142(d)(4)(B) of the 1986 Code is amended by striking out "average rent" and inserting in lieu thereof "average gross rent".

(2) Clause (iii) of section 143(a)(2)(A) of the 1986 Code is amended by striking out "no bond which is part of such issue meets" and inserting in lieu thereof "such issue does not meet".

(3) Paragraph (4) of section 143(b) of the 1986 Code is amended by inserting "is part of an issue which" after "which".

(4)(A) Clause (ii) of section 144(a)(12)(A) of the 1986 Code is amended by inserting "(or series of bonds)" before "issued to refund".

(B)(i) Subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code is amended to read as follows:

"(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,".

(ii) Subparagraph (A) of section 144(a)(12) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A)."

(iii) A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph.

(C) Clause (ii) of section 144(a)(12)(A) of the 1986 Code is amended by adding "and" at the end of subclause (II), by striking out subclause (III), and by redesignating subclause (IV) as subclause (III).

(5) Subparagraph (B) of section 144(b)(1) of the 1986 Code is amended—

(A) by striking out "to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply", and

(B) by striking out "of such Act" and inserting in lieu thereof "of the Higher Education Act of 1965", and

(C) by striking out "eligible" and all that follows in such subparagraph and inserting in lieu thereof the following: "eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a))."

(6) Subclause (I) of section 145(b)(2)(B)(ii) of the 1986 Code is amended by striking out "103(b)" and inserting in lieu thereof "103(b)(2)".

(7) Clause (i) of section 145(b)(2)(C) of the 1986 Code is amended by striking out "subparagraph (B)(ii)" and inserting in lieu thereof "subparagraph (B)".

(8) Paragraph (4) of section 145(b) of the 1986 Code is amended by striking out "subparagraphs (C) and (D)" and inserting in lieu thereof "subparagraphs (C), (D), and (E)".

(9) Subparagraph (A) of section 146(f)(5) of the 1986 Code (as in effect before the amendments made by section 10631 of the Revenue Act of 1987) is amended to read as follows:

"(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),".

(10)(A) Paragraph (1) of section 146(k) of the 1986 Code is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2) and (3)".

(B) Subsection (k) of section 146 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF GOVERNMENTAL BONDS TO WHICH VOLUME CAP ALLOCATED.—Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

"(A) for an output facility, or

"(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a),

if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6)) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility."

(11) Subsection (e) of section 147 of the 1986 Code is amended by striking out "treated as".

(12) Subsection (f) of section 147 of the 1986 Code (relating to public approval requirement for private activity bonds) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES FOR SCHOLARSHIP FUNDING BOND ISSUES AND VOLUNTEER FIRE DEPARTMENT BOND ISSUES.—

"(A) SCHOLARSHIP FUNDING BONDS.—In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a

State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

"(B) VOLUNTEER FIRE DEPARTMENT BONDS.—In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued."

(13)(A) Paragraph (1) of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue) is amended by striking out "aggregate face amount of the issue" and inserting in lieu thereof "proceeds of the issue".

(B) Paragraph (2) of section 147(g) of the 1986 Code is amended by striking out "aggregate authorized face amount of the issue does not" and inserting in lieu thereof "proceeds of the issue do not".

(C) The amendments made by this paragraph shall apply to bonds issued after June 30, 1987.

(14) Paragraph (2) of section 148(d) of the 1986 Code (relating to special rules for reasonably required reserve or replacement fund) is amended by striking out "any fund described in paragraph (1)" and inserting in lieu thereof "any reserve or replacement fund".

(15) Paragraph (3) of section 148(f) of the 1986 Code is amended by adding at the end thereof the following new sentence: "A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond."

(16)(A) Subclause (I) of section 148(f)(4)(B)(iii) of the 1986 Code (relating to safe harbor for determining when proceeds of tax or revenue anticipation bonds are expended) is amended by striking out "aggregate face amount of such issue" and inserting in lieu thereof "proceeds of such issue".

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(17)(A) Subparagraph (C) of section 148(f)(4) of the 1986 Code is amended—

(i) by striking out the heading and inserting in lieu thereof:

"(C) EXCEPTION FOR GOVERNMENTAL UNITS ISSUING $5,000,000 OR LESS OF BONDS.—

"(i) IN GENERAL.—",

(ii) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively, and moving the margins of such subclauses 2 ems to the right, and

(iii) by striking out the last sentence and inserting in lieu thereof the following new clauses:

"(ii) AGGREGATION OF ISSUERS.—For purposes of subclause (IV) of clause (i)—

"(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

"(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

"(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

"(iii) CERTAIN REFUNDING BONDS NOT TAKEN INTO ACCOUNT IN DETERMINING SMALL ISSUER STATUS.—There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

"(iv) CERTAIN ISSUES ISSUED BY SUBORDINATE GOVERNMENTAL UNITS, ETC., EXEMPT FROM REBATE REQUIREMENT.—An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

"(I) $5,000,000, or

"(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the $5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

"(v) DETERMINATION OF WHETHER REFUNDING BONDS ELIGIBLE FOR EXCEPTION FROM REBATE REQUIREMENT.—If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

"(I) the aggregate face amount of such issue does not exceed $5,000,000,

"(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

"(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

"(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

"(vi) REFUNDINGS OF BONDS ISSUED UNDER LAW PRIOR TO TAX REFORM ACT OF 1986.—If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

"(I) such issue was issued by a governmental unit with general taxing powers,

"(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(o)(2)(A), but without regard to any exception from such definition other than section 103(o)(2)(C)), and

"(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed $5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds."

(B) Subclause (IV) of section 148(f)(4)(C)(i) of the 1986 Code (as redesignated by subparagraph (A)) is amended by striking out "(and all subordinate entities thereof)".

(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to bonds issued after June 30, 1987.

(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986.

(18) Clause (i) of section 148(f)(4)(D) of the 1986 Code is amended—

(A) by inserting "for a program" before "described in section 144(b)(1)(A)",

(B) by striking out "such a program" and inserting in lieu thereof "such program", and

(C) by adding at the end thereof the following: "Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A)."

(19) Subparagraph (B) of section 148(f)(7) of the 1986 Code is amended by striking out "due to reasonable cause and not" and inserting in lieu thereof "not due".

(20) Clause (iii) of section 149(b)(3)(A) of the 1986 Code is amended by striking out "with respect to any bond issued before July 1, 1989".

(21) Subparagraph (A) of section 149(b)(4) of the 1986 Code is amended by striking out "a qualified student loan bond, and a qualified redevelopment bond" and inserting in lieu thereof "and a qualified student loan bond".

(22) Paragraph (3) of section 149(e) of the 1986 Code (relating to information reporting) is amended by striking out "there is reasonable cause for the failure to file such statement in a timely fashion" and inserting in lieu thereof "the failure to file in a timely fashion is not due to willful neglect".

(23)(A) Subparagraph (B) of section 150(b)(4) of the 1986 Code (relating to change in use of facilities financed with tax-exempt private activity bonds) is amended by inserting before the period "or a qualified small issue bond".

(B) The heading for paragraph (4) of section 150(b) of the 1986 Code is amended by inserting "AND SMALL ISSUE BONDS" after "EXEMPT FACILITY BONDS".

(C) Subparagraph (A) of section 150(b)(1) of the 1986 Code is amended by inserting "tax-exempt" before "qualified mortgage bond".

(24)(A) Subsection (e) of section 150 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT AS PRIVATE ACTIVITY BONDS ONLY FOR CERTAIN PURPOSES.—Bonds which are part of an issue which meets the requirements of paragraph (1) shall not be treated as private activity bonds except for purposes of sections 147(f) and 149(d)."

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(25) Clause (ii) of section 1301(f)(2)(C) of the Reform Act is amended to read as follows:

"(ii) Clause (ii) of section 25(c)(2)(A) is amended by striking out all that follows 'an amount of' and inserting in lieu thereof 'private activity bonds which it may otherwise issue during such calendar year under section 146,'."

(26) Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages) is amended by striking out "1987" and inserting in lieu thereof "1988".

(27) The date contained in section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such 103A(c)(1) applies.

(28)(A) Subparagraph (A) of section 146(i)(2) of the 1986 Code is amended to read as follows:

"(A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or".

(B) Subparagraph (A) of section 146(i)(3) of the 1986 Code is amended to read as follows:

"(A) the average maturity date of the qualified mortgage bonds to be refunded by the issue of which the refunding bond is a part, or".

(C) Subsection (i) of section 146 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) AVERAGE MATURITY.—For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A)."

(29) Subparagraph (D) of section 147(f)(2) of the 1986 Code is amended by striking out "the maturity date" and all that follows and inserting in lieu thereof "the average maturity date of the issue of which the refunded bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)."

(30) Subparagraph (A) of section 150(b)(1) of the 1986 Code is amended by inserting before the period "and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing".

(31) Subparagraph (A) of section 150(b)(2) of the 1986 Code is amended by striking out "described paragraph" and inserting in lieu thereof "described in paragraph".

(32) Paragraph (2) of section 150(b) of the 1986 Code is amended by adding at the end thereof the following: "If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond."

(33) Subsection (b) of section 150 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) SMALL ISSUE BONDS WHICH EXCEED CAPITAL EXPENDITURE LIMITATION.—In the case of any financing provided from the proceeds of any bond which, when issued, purported to be a qualified small issue bond, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period such bond is not a qualified small issue bond."

(34)(A) Paragraph (7) of section 103(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) is amended by striking out "necessary" and inserting in lieu thereof "necessary".

(B) Subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103-13 (1979) was provided to apply.

(35) VALIDATION OF SINKING FUND REGULATIONS.—

(A) Treasury Regulation section 1.103-13(g) (1979) is hereby enacted into positive law.

(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

(ii) Treasury Regulation section 1.103-13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations.

(36) Clause (i) of section 147(f)(2)(E) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term."

(37) The table of sections for part III of subchapter B of chapter 1 of the 1986 Code is amended by striking out the items relating to sections 103 and 103A and inserting in lieu thereof the following new item:

"Sec. 103. Interest on State and local bonds."

(38) Subparagraph (B) of section 141(b)(5) of the 1986 Code is amended by striking out "which would cause bond" and inserting in lieu thereof "which would cause a bond".

(39) Clause (ii) of section 142(b)(1)(B) of the 1986 Code is amended by striking out "(as defined in 168(i)(3))" and inserting in lieu thereof "(as defined in section 168(i)(3))".

(40) Subparagraph (B) of section 146(d)(4) of the 1986 Code is amended by striking out "with respect a possession" and inserting in lieu thereof "with respect to a possession".

(41) Clause (ii) of section 48(l)(11)(A) of the 1986 Code is amended by striking out "an industrial development bond (within the meaning of section 103(b)(2))" and inserting in lieu thereof "a private activity bond (within the meaning of section 141)".

(42) Subsection (a) of section 7478 of the 1986 Code is amended—

(A) by striking out "whether prospective obligations are described in section 103(a)" in paragraph (1) and inserting in lieu thereof "whether interest on prospective obligations will be excludable from gross income under section 103(a)", and

(B) by striking out "whether such prospective obligations are described in section 103(a)" and inserting in lieu thereof "whether interest on such prospective obligations will be excludable from gross income under section 103(a)".

(43)(A) Subsection (b) of section 148 of the 1986 Code (defining higher yielding investments) is amended by adding at the end thereof the following new paragraph:

"(3) ALTERNATIVE MINIMUM TAX BONDS TREATED AS INVESTMENT PROPERTY IN CERTAIN CASES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'investment property' does not include any tax-exempt bond.

"(B) EXCEPTION.—With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C)), the term 'investment property' includes a specified private activity bond (as so defined)."

(B) Paragraph (2) of section 148(b) of the 1986 Code (defining investment property) is amended by striking the last sentence.

(C) The amendments made by this paragraph shall apply to obligations issued after March 31, 1988.

(44) Subparagraph (B) of section 46(c)(5) of the 1986 Code is amended—

(A) by striking out "INDUSTRIAL DEVELOPMENT BONDS" in the heading and inserting in lieu thereof "PRIVATE ACTIVITY BONDS", and

(B) by striking "an industrial development bond (within the meaning of section 103(b)(2))" and inserting in lieu thereof "a private activity bond (within the meaning of section 141)".

(b) AMENDMENTS RELATED TO SECTION 1311 OF THE REFORM ACT.—

(1) Section 1311 of the Reform Act is amended by redesignating subsection (d) as subsection (f), and by inserting after subsection (c) the following new subsections:

"(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

"(e) REBATE REQUIREMENT FOR QUALIFIED SCHOLARSHIP FUNDING BONDS.—Section 150(d) of the 1986 Code shall apply to payments made after August 15, 1986."

(2) Paragraph (2) of section 1311(b) of the Reform Act (relating to effective date for section 1301(f)) is amended by inserting "with respect to non-issued bond amounts elected" after "issued".

(c) AMENDMENTS RELATED TO SECTION 1313 OF THE REFORM ACT.—

(1) Clause (i) of section 1313(a)(1)(B) of the Reform Act is amended by striking out "the proceeds" and inserting in lieu thereof "the net proceeds".

(2)(A) Subparagraph (C) of section 1313(a)(3) of the Reform Act is amended by striking out "section 148" and inserting in lieu thereof "sections 143(g) and 148".

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(3) Subparagraph (E) of section 1313(a)(3) of the Reform Act is amended by striking out "of such Code".

(4) Paragraph (3) of section 1313(a) of the Reform Act is amended by adding at the end thereof the following new sentence: "In the case of a refunding bond described in paragraph (1) with respect to a qualified bond described in paragraph (2)(B), the requirements of section 1312(b)(1) which applied to such qualified bond shall be treated as specified in this paragraph with respect to such refunding bond."

(5) Subparagraph (A) of section 1313(a)(4) of the Reform Act is amended by inserting

"and by substituting 'September 1, 1986' for 'August 16, 1986'" before the comma at the end thereof.

(6) Paragraph (2) of section 1313(b) of the Reform Act is amended by adding at the end thereof "For purposes of the preceding sentence, the determination of whether a bond is described in such subsection (o)(2)(A) shall be made without regard to any exception other than section 103(o)(2)(C) of such Code."

(7) Subparagraph (F) of section 1313(b)(3) of the Reform Act is amended by striking out "of such Code".

(8) Paragraph (3) of section 1313(b) of the Reform Act is amended by adding after subparagraph (F) the following new subparagraph:

"(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to $150,000,000 limitation on bonds other than hospital bonds)."

(9) Paragraph (5) of section 1313(b) of the Reform Act is amended by striking out "are to be" and inserting in lieu thereof "are or will be".

(10)(A) The heading for subsection (c) of section 1313 of the Reform Act is amended by striking out "CURRENT" and inserting in lieu thereof "CERTAIN".

(B) Paragraph (1) of section 1313(c) of the Reform Act is amended—

(i) by striking out "apply to any bond" and inserting in lieu thereof "apply to any bond (or series of bonds)", and

(ii) by striking out "law do not" and inserting in lieu thereof "law did not".

(11)(A) Subparagraph (A) of section 1313(c)(1) of the Reform Act is amended to read as follows:

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,".

(B) Paragraph (1) of section 1313(c) of the Reform Act is amended by adding at the end thereof the following new sentence:

"For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code."

(C) Paragraph (1) of section 1313(c) of the Reform Act is amended by adding "and" at the end of subparagraph (B), by striking out subparagraph (C), and by redesignating subparagraph (D) as subparagraph (C).

(D) Subparagraph (B) of section 1313(c)(2) of the Reform Act is amended by striking out "and (D)" and inserting in lieu thereof "and (C)".

(E) A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subparagraph (A) of section 1313(c)(1) of the Reform Act if such bond met the requirement of such subparagraph as in effect before the amendments made by this paragraph.

(12)(A) Subparagraph (N) of section 103(b)(6) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act (relating to termination dates), is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by striking out clause (i) and inserting in lieu thereof the following new clauses:

"(i) In general.—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

"(ii) Certain refundings.—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

"(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

"(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

"(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i)."

(B) The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies.

(13) Paragraph (2) of section 1313(c) of the Reform Act is amended—

(A) by striking out "apply to any bond" and inserting in lieu thereof "apply to any bond (or series of bonds)",

(B) by striking out "subsection does not" and inserting in lieu thereof "subsection did not", and

(C) by striking out "the proceeds" in subparagraph (A)(i) and inserting in lieu thereof "the net proceeds".

(14)(A) Section 1313 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(d) Mortgage and Student Loan Targeting Rules To Apply to Loans Made More Than 3 Years After the Date of the Original Issue.—Subsections (a)(3) and (b)(3) shall be treated as including the requirements of subsections (e) and (f) of section 143 and paragraphs (3) and (4) of section 144(b) of the 1986 Code with respect to bonds the proceeds of which are used to finance loans made more than 3 years after the date of the issuance of the original bond."

(B) The amendment made by subparagraph (A) shall apply with respect to refunding bonds issued after October 16, 1987.

(15) A bond issued to refund an obligation described in section 103(o)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code.

(d) Amendments Related to Section 1314 of the Reform Act.—

(1) Subsection (a) of section 1314 of the Reform Act is amended by adding at the end thereof the following: "The treatment under the preceding sentence shall also apply to a bond issued before September 26, 1985, but only for purposes of determining whether any bond issued after June 10, 1987, to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code)."

(2) Subsection (f) of section 1314 of the Reform Act is amended by striking out "December" and inserting in lieu thereof "August".

(3) Section 1314 of the Reform Act is amended by redesignating subsection (g) as subsection (i) and by inserting after subsection (f) the following new subsections:

"(g) Termination of Mortgage Bond Policy Statement Requirement.—Paragraph (5) of section 103A(j) of the 1954 Code (relating to policy statement) shall not apply to any bond issued after August 15, 1986, and shall not apply to nonissued bond amounts elected under section 25 of the 1986 Code after such date.

"(h) Arbitrage Restriction on Investments in Investment-Type Property.—In the case of a bond issued before August 16, 1986 (September 1, 1986 in the case of a bond described in section 1312(c)(2)), section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to investment-type property but only for purposes of determining whether any bond issued after October 16, 1987, to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code)."

(e) Amendments Related to Section 1315 of the Reform Act.—

(1) Subsection (c) of section 1315 of the Reform Act is amended—

(A) by inserting "for calendar year 1986" after "1954 Code" each place it appears,

(B) by striking out "before August 16" each place it appears and inserting in lieu thereof "on August 15", and

(C) by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply to the extent section 1313(b)(5) treats any bond as a private activity bond for purposes of section 146 of the 1986 Code."

(2)(A) Subsection (e) of section 1315 of the Reform Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any bond which (if issued on August 15, 1986) would have been an industrial development bond (as defined in section 103(b)(2) of the 1954 Code)."

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 10, 1987.

(f) Amendments Related to Section 1316 of the Reform Act.—

(1)(A) Subsections (a)(1), (b)(1), (c)(1), and (f)(1) of section 1316 of the Reform Act are each amended by inserting "and as having a carryforward purpose described in section 146(f)(5) of such Code" after "the 1986 Code".

(B) The amendment made by subparagraph (A) shall apply only with respect to carryforwards of volume cap for years after 1986.

(2) Subsection (c) of section 1316 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(4) Application of section 147(b).—A bond to which this subsection applies (other than a refunding bond) shall be treated as meeting the requirements of section 147(b) of the 1986 Code if the average maturity (determined in accordance with section 147(b)(2)(A) of such Code) of the issue of which such bond is a part does not exceed 20 years. A bond issued to refund (or which is part of a series of bonds issued to refund) a bond described in the preceding sentence shall be treated as meeting the requirements of such section if the refunding bond has a maturity date not later than the date which is 20 years after the date on which the original bond was issued."

(3) Paragraph (1) of section 1316(e) of the Reform Act is amended—

(A) by inserting "(and section 103(h)(2)(B)(ii) of the 1954 Code)" after "1986 Code" the first place it appears, and

(B) by inserting "(and section 103(b)(16) of the 1954 Code)" after "1986 Code" in the last sentence.

(4) Paragraph (2) of section 1316(g) of the Reform Act is amended—

(A) by striking out "described in the paragraph (3)" in subparagraph (A) and inserting in lieu thereof "issued to provide a facility described in paragraph (3)", and

(B) by striking out "which paragraph (3)" in subparagraph (C) and inserting in lieu thereof "which such paragraph (3)".

(5) Paragraph (6) of section 1316(g) of the Reform Act is amended by inserting "(and the provisions of section 1314)" after "section 1301".

(6) Paragraph (7) of section 1316(g) of the Reform Act is amended to read as follows:

"(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984—

"(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

"(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting '25 percent' for '10 percent' each place it appears, and

"(C) section 149(b) of the 1986 Code shall not apply.

This paragraph shall not apply to any bond issued after December 31, 1990."

(7)(A) Subparagraph (A) of section 1316(g)(8) of the Reform Act is amended by inserting "and as having a carryforward purpose described in section 146(f)(5) of such Code" after "the 1986 Code".

(B) The amendment made by subparagraph (A) shall apply only with respect to carryforwards of volume cap for years after 1986.

(8) Paragraph (2) of section 1316(j) of the Reform Act is amended to read as follows:

"(2) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting "the date which is 1 year after the date of the enactment of the Technical Corrections Act of 1988" for "December 31, 1984" and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply.' "

(9) Paragraph (2) of section 1316(k) of the Reform Act is amended by striking out "$55,000,000 must be redeemed no later than November 1, 1987" and inserting in lieu thereof "no more than $55,000,000 shall be outstanding later than November 1, 1987".

(10) Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 is amended by adding at the end of subsection (r) the following new sentence:

"Section 148(f) of the Internal Revenue Code of 1986 and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply to any bonds described in paragraph (1) which may be issued as a result of the amendments made by the Tax Reform Act of 1986."

(11) Subsection (l) of section 1316 of the Reform Act is hereby repealed.

(g) AMENDMENTS RELATED TO SECTION 1317 OF THE REFORM ACT.—

(1) Subparagraph (J) of section 1317(2) of the Reform Act is amended by striking out "began construction in 1980" and inserting in lieu thereof ", a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate".

(2) Subparagraph (C) of section 1317(3) of the Reform Act is amended to read as follows:

"(C) A facility is described in this subparagraph if—

"(i) it is one or more stadiums to be used either by an American League baseball team or a National Football League team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code,

"(ii) the bonds to be used to provide financing for one or more such stadiums are issued by a political subdivision or a State agency pursuant to a resolution approving an inducement resolution adopted by a State agency on November 20, 1985, as it may be amended (whether or not the beneficiaries of such issue or issues are the beneficiaries (if any) specified in such inducement resolution and whether or not the number of such stadiums and the locations thereof are as specified in such inducement resolution) or pursuant to P.A. 84-1470 of the State in which such city is located (and by an agency created thereby), and

"(iii) such stadium or stadiums are located in the city described in (i).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. In the case of any carryforward of volume cap for one or more stadiums described in the first sentence of this subparagraph, such carryforward shall be valid with respect to bonds issued for such stadiums notwithstanding any other provision of the 1986 Code or the 1954 Code, and whether or not (i) there is a change in the number of stadiums or the beneficiaries or sites of the stadium or stadiums and (ii) the bonds are issued by either of the state agencies described in the first sentence of this subparagraph."

(3)(A) Subparagraph (P) of section 1317(3) of the Reform Act is amended—

(i) by striking out "approved" and inserting in lieu thereof "authorized", and

(ii) by striking out "December 9, 1985" and inserting in lieu thereof "December 2, 1985".

(B) Section 1317(3)(A) of the Reform Act is amended by striking out "domed".

(C) Section 1317(3)(U) of the Reform Act is amended by deleting "coliseum complex." and inserting in lieu thereof "coliseum complex, or is a renovation of an existing stadium located in Oakland, California, and used by an American League baseball team."

(D) Section 1317(3)(W) of the Reform Act is amended by striking out "$225,000,000" and inserting "$25,000,000".

(4) Paragraph (3) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(Z) A facility is described in this subparagraph if—

"(i) such facility was a redevelopment project that was approved in concept by the city council sitting as the redevelopment agency in October 1984, and

"(ii) $20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on October 25, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000."

(5) Paragraph (4) of section 1317 of the Reform Act is amended—

(A) by striking out "1986. The bonds" and inserting in lieu thereof "1986, and the bonds",

(B) by striking out "and" at the end the subparagraph (A), and

(C) by adding "and" at the end of subparagraph (B).

(6) Subparagraph (W) of section 1317(6) of the Reform Act is amended to read as follows:

"(W) A project is described in this subparagraph if such project is—

"(i) a part of the Kenosha Downtown Redevelopment project, and

"(ii) located in an area bounded—

"(I) on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended),

"(II) on the north by 48th Street (extended),

"(III) on the west by the present Chicago & Northwestern Railroad tracks, and

"(IV) on the south by the north line of Eichelman Park (60th Street) (extended).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000."

(7) Paragraph (6) of section 1317 of the Reform Act is amended by redesignating subparagraph (X) as subparagraph (Z) and by inserting after subparagraph (W) the following new subparagraphs:

"(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(Y) Nothing in this paragraph shall be construed as having the effect of exempting from tax interest on any bond issued after June 10, 1987, if such interest would not have been exempt from tax were such bond issued on August 15, 1986."

(8) The last sentence of subparagraph (A) of section 1317(7) of the Reform Act is amended by inserting before the period "and section 149(d)(2) of the 1986 Code shall not apply to bonds so treated".

(9) Subparagraph (D) of section 1317(7) of the Reform Act is amended to read as follows:

"(D) A facility is described in this subparagraph if—

"(i) it is a convention, trade, or spectator facility,

"(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

"(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of $175,000,000 over the amount of bonds to which paragraph (48)(B) applies."

(10) Clause (ii) of section 1317(7)(G) of the Reform Act is amended to read as follows:

"(ii) such facility's location was approved in December 1985 by a task force created jointly by the Governor of the State within which such facility will be located and the mayor of the capital city of such State, and".

(11) Subparagraph (J) of section 1317(7) of the Reform Act is amended—

(A) by striking out "civic festival" in clause (i) and inserting in lieu thereof "aquafestival",

(B) by striking out clause (ii) and inserting in lieu thereof the following:

"(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and", and

(C) by striking out "$5,000,000" and inserting in lieu thereof "$10,000,000".

(12) Subparagraph (E) of section 1317(9) of the Reform Act is amended by striking out "March 5, 1985" and inserting in lieu thereof "March 6, 1985".

(13) Clause (iii) of section 1317(9)(J) of the Reform Act is amended by striking out all that precedes "by the governor" and inserting in lieu thereof the following:

"(iii) such facility's location was approved in December 1985 by a task force created jointly".

(14) Subparagraph (A) of section 1317(11) of the Reform Act is amended by striking out "and section 142(a)" and inserting in lieu thereof "in section 142(a)".

(15) Subparagraph (C) of section 1317(11) of the Reform Act is amended to read as follows:

"(C) A facility is described in this subparagraph if it is described in section 1865(c)(2)(C) of this Act."

(16) Subparagraph (X) of section 1317(13) of the Reform Act is amended by striking out the last sentence.

(17) Paragraph (13) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(BB) A residential rental property project is described in this subparagraph if—

"(i) a contract to purchase such property was dated as of August 9, 1985,

"(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

"(iii) there was a State court final validation of such financing on November 15, 1985, and

"(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $27,750,000."

(18) Paragraph (14) of section 1317 of the Reform Act is amended by striking out "$90,000,000" and inserting in lieu thereof "$130,000,000" and by inserting "incorporated on February 20, 1985" before the period at the end of the 1st sentence.

(19) Subparagraph (B) of section 1317(15) of the Reform Act is amended—

(A) by striking out all that follows "agreement with" in clause (i) and inserting in lieu thereof "an underwriter to provide planning and financial guidance for a possible bond issue, and", and

(B) by striking out "certificates" in clause (ii) and inserting in lieu thereof "bond issue"

(20) Paragraph (16) of section 1317 of the Reform Act is amended by striking out the last sentence.

(21) Clause (i) of section 1317(19)(D) of the Reform Act is amended by striking out "light rail transitway" and inserting in lieu thereof "fixed guideway".

(22) Paragraph (20) of section 1317 of the Reform Act is amended by striking out "Section 148(f)" and inserting in lieu thereof "Subsections (c)(2) and (f) of section 148".

(23) Subparagraph (B) of section 1317(21) of the Reform Act is amended—

(A) by striking out "Subsection (c)" and inserting in lieu thereof "Subsections (c)(2)", and

(B) by striking out "103A(g)(5)(C)l" and inserting in lieu thereof "103A(g)(5)(C)".

(24) Paragraph (22) of section 1317 of the Reform Act is amended to read as follows:

"(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

" '(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

" '(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

" '(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

" '(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.' "

(25) Subparagraph (A) of section 1317(24) of the Reform Act is amended by adding at the end thereof the following: "The last paragraph of this section shall not apply to the treatment under the preceding sentence."

(26)(A) Clause (i) of section 1317(25)(A) of the Reform Act is amended by striking out "3 counties" and inserting in lieu thereof "1 or more of 3 counties".

(B) Clause (i) of section 1317(25)(B) of the Reform Act is amended by adding at the end thereof the following new sentence: "For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of the use of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility."

(27) Subparagraph (I) of section 1317(27) of the Reform Act is amended by adding at the end thereof the following: "For purposes of determining whether any bond to which this subparagraph applies is a qualified small issue bond, there shall not be taken into account under section 144(a) of the 1986 Code capital expenditures with respect to any facility of the United States Government and there shall not be taken into account any bond allocable to the United States Government."

(28) Clause (i) of section 1317(29)(B) of the Reform Act is amended by striking out all that follows "1993" and inserting in lieu thereof ", by the State of Connecticut, and".

(29) Subparagraph (D) of section 1317(29) of the Reform Act is amended by striking out "the net proceeds" and inserting in lieu thereof "the proceeds".

(30) Section 1317(33)(A)(ii) of the Reform Act is amended—

(A) by striking out "on" and inserting in lieu thereof "dated" each place it appears, and

(B) by inserting "dated on December 1, 1985" after "(Series 1985A and 1985B)" in subclause (III).

(31) Subparagraph (B) of section 1317(33) of the Reform Act is amended—

(A) by striking out "and before August 7, 1988,", and

(B) by adding at the end thereof the following new sentence: "The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000."

(32) Subparagraph (G) of section 1317(33) of the Reform Act is amended by striking out "subparagraph (H)" and inserting in lieu thereof "subparagraph (F)".

(33) Subparagraph (H) of section 1317(33) of the Reform Act is amended—

(A) by striking out clause (ii) and inserting in lieu thereof the following:

"(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were the subject of a request transmitted to Congress on November 7, 1985", and

(B) by adding at the end thereof the following: "Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued on August 15, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part. Bonds issued to finance facilities described in this subparagraph shall be treated as issued to finance such facilities notwithstanding the fact that a period in excess of 1 year has expired since the facilities were placed in service."

(34) Subparagraph (K) of section 1317(33) of the Reform Act is amended—

(A) by striking out "the issue is" in clause (i) and inserting in lieu thereof "the issue or issues are",

(B) by inserting "at least" before "900 units",

(C) by striking out "2,000 square feet" and inserting in lieu thereof "245,000 square feet", and

(D) by striking out "$150,000,000" and inserting in lieu thereof "$112,000,000".

(35) Paragraph (33) of section 1317 of the Reform Act is amended by striking out subparagraphs (M), (N), and (O) and inserting in lieu thereof the following new subparagraphs:

"(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center or to finance construction and renovation projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than subparagraph (A) thereof) shall be taken into account in determining whether such section applies to any later issue.

"(O) In the case of any refunding bond—

"(i) to which any subparagraph of this paragraph applies, and

"(ii) to which the last sentence of section 1313(c)(2) applies,

such bond shall be treated as having such subparagraph apply (and the refunding bond shall be treated for purposes of such section as issued before January 1, 1986, and as not being an advance refunding) unless the issuer elects the opposite result."

(36) Paragraph (36) of section 1317 of the Reform Act is amended by striking out "$80,000,000" and inserting in lieu thereof "$400,000,000".

(37) Paragraph (38) of section 1317 of the Reform Act is amended by striking out "and sections 148 and 149".

(38) Paragraphs (39) and (40) of section 1317 of the Reform Act are amended to read as follows:

"(39) CERTAIN BONDS TREATED AS QUALIFIED 501(C)(3) BONDS.—A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

"(A) such bond would not (if issued on August 15, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

"(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $5,000,000.

"(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds."

(39) Paragraph (41) of section 1317 of the Reform Act is amended to read as follows:

"(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 net billed nuclear power facilities located in the State of Washington on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

"(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

"(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies."

(40) Paragraph (43) of section 1317 of the Reform Act is amended by inserting before the period "and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)."

(41) Paragraph (44) of section 1317 of the Reform Act is amended—

(A) by inserting after "1986 Code" the following: "and the temporary period limitation of section 148(c)(2) of the 1986 Code",

(B) by striking out "$100,000,000" and inserting in lieu thereof "$200,000,000", and

(C) by striking out "Hospitals Bond Pool" in the second item in the table and inserting in lieu thereof "Hospital Equipment Loan Council".

(42) Paragraph (48) of section 1317 of the Reform Act is amended by striking out "either" in the material preceding subparagraph (A) and inserting in lieu thereof "any".

(43) Subparagraph (B) of section 1317(48) of the Reform Act is amended by striking out "subparagraph (O)" and inserting in lieu thereof "paragraph (6)(U)".

(44) Paragraph (48) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000."

(45) Paragraph (49) of section 1317 of the Reform Act is amended—

(A) by striking out "149(d)" and inserting in lieu thereof "149(d)(2)", and

(B) by inserting "United States" before "Housing Act of 1937".

(46) Paragraph (50) of section 1317 of the Reform Act is amended to read as follows:

"(50) TRANSITIONED BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this section applies, except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of sections 147(g), 148, and 149(d) of the 1986 Code were included in each such section."

(47) Paragraph (51) of section 1317 of the Reform Act is amended—

(A) by striking out "Section 141(a)" and inserting in lieu thereof "Section 141(b)", and

(B) by striking out "141(a)(3)" and inserting in lieu thereof "141(b)(3)".

(48) Paragraph (52) of section 1317 of the Reform Act is amended by striking out "This section" and inserting in lieu thereof "Except as otherwise provided in this section, this section".

(49) The material preceding subparagraph (A) of section 1317(2) of the Reform Act is amended by striking out "section 103(b)(4)(C)" and inserting in lieu thereof "section 103(b)(4)(F)".

(50) Clause (ii) of section 1317(27)(H) of the Reform Act is amended by striking out "November 14, 1985" and inserting in lieu thereof "November 13, 1985".

(51) Subparagraph (I) of section 1317(33) of the Reform Act is amended by striking out "November 11, 1985" and inserting in lieu thereof "November 1, 1985".

(52) Subparagraph (J) of section 1317(3) of the Reform Act is amended by striking out "October 29" in clause (iv) and inserting in lieu thereof "November 5".

(h) AMENDMENTS RELATED TO SECTION 1318 OF THE REFORM ACT.—Section 1318 of the Reform Act (relating to definitions, etc., relating to effective dates and transitional rules) is amended—

(1) by inserting "(a) DEFINITIONS.—" before "For purposes of this subtitle—", and

(2) by adding at the end thereof the following new subsections:

"(b) MINIMUM TAX TREATMENT.—

"(1) IN GENERAL.—Any bond described in paragraph (2) shall not be treated as a private activity bond for purposes of section 57 of the 1986 Code unless such bond would (if issued on August 7, 1986) be—

"(A) an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), or

"(B) a private loan bond (as defined in section 103(o)(2)(A) of the 1954 Code, without regard to any exception from such definition other than section 103(o)(2)(C) of such Code).

"(2) BONDS DESCRIBED.—For purposes of paragraph (1), a bond is described in this paragraph if—

"(A) the amendments made by section 1301 do not apply to such bond by reason of section 1312 or 1316(g),

"(B) any provision of section 1317 applies to such bond, or

"(C) the proceeds of such bond are used to refund any bond referred to in subparagraph (A) or (B) (or any bond which is part of a series of refundings of such a bond) if the requirements of paragraphs (1), (2), and (3) of subsection (c) are met with respect to the refunding bond.

"(c) CURRENT REFUNDINGS NOT TAKEN INTO ACCOUNT IN APPLYING AGGREGATE LIMIT ON BONDS TO WHICH TRANSITIONAL RULES APPLY.—The limitation on the aggregate face amount of bonds to which any provision of section 1316(g) or 1317 applies shall not be reduced by the face amount of any bond the proceeds of which are to be used exclusively to refund any bond to which such provision applies (or any bond which is part of a series of refundings of such bond) if—

"(1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(3) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of paragraph (1), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code. Sections 1316(g)(5) and 1317(52) shall not apply to any refunding bond which meets the requirements of this subsection.

"(d) SPECIAL RULE PERMITTING CARRYFORWARD OF VOLUME CAP FOR CERTAIN TRANSITIONED PROJECTS.—A bond to which section 1312 or 1317 applies shall be treated as having a carryforward purpose described in section 146(f)(5) of the 1986 Code, and the requirement of section 146(f)(2)(A) of the 1986 Code shall be treated as met if such project is identified with reasonable specificity. The preceding sentence shall not apply so as to permit a carryforward with respect to any qualified small issue bond."

SEC. 114. AMENDMENTS RELATED TO TITLE XIV OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1401 OF THE REFORM ACT.—

(1) Subsection (e) of section 672 of the 1986 Code is amended to read as follows:

"(e) GRANTOR TREATED AS HOLDING ANY POWER OR INTEREST OF GRANTOR'S SPOUSE.—

"(1) IN GENERAL.—For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

"(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

"(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

"(2) MARITAL STATUS.—For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married."

(2) Paragraph (3) of section 675 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual."

(3) Subsection (c) of section 674 of the 1986 Code is amended by adding at the end thereof the following new sentence: "For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this sub-

section to the grantor shall be treated as including a reference to such individual."

(b) Amendment Related to Section 1402 of the Reform Act.—Section 673 of the 1986 Code is amended by adding at the end thereof the following new subsections:

"(c) Special Rule for Determining Value of Reversionary Interest.—For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

"(d) Postponement of Date Specified for Reacquisition.—Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement."

(c) Amendments Related to Section 1403 of the Reform Act.—

(1) If a beneficiary of a trust to which section 664 of the 1986 Code applies elects (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph apply, such beneficiary shall be entitled to the benefits of section 1403(c)(2) of the Reform Act with respect to amounts included in gross income under section 664(b) of the 1986 Code in the same manner as if such amounts were included in gross income under section 652(a) of the 1986 Code.

(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act.

(B) For purposes of subparagraph (A), the term "pass-thru entity" means any trust, partnership, S corporation, or common trust fund.

(4) If any trust was required to change its taxable year by the amendments made by section 1403 of the Reform Act, such change shall be treated as initiated by such trust and approved by the Secretary of the Treasury or his delegate.

(d) Amendments Related to Section 1404 of the Reform Act.—

(1) Subsection (a) of section 1404 of the Reform Act is amended—

(A) by striking out "Subsection (k) of section 6654" and inserting in lieu thereof "Subsection (l) of section 6654, as amended by section 1841 of this Act", and

(B) by striking out " '(k) Trusts" and inserting in lieu thereof " '(l) Trusts".

(2) Subsection (l) of section 6654 of the 1986 Code is amended to read as follows:

"(l) Estates and Trusts.—

"(1) In general.—Except as otherwise provided in this subsection, this subsection shall apply to any estate or trust.

"(2) Exception for estates and certain trusts.—With respect to any taxable year ending before the date 2 years after the date of the decedent's death, this section shall not apply to—

"(A) the estate of such decedent, or

"(B) any trust—

"(i) all of which was treated (under subpart E of part I of subchapter J of chapter 1) as owned by the decedent, and

"(ii) to which the residue of the decedent's estate will pass under his will.

"(3) Exception for charitable trusts and private foundations.—This section shall not apply to any trust which is subject to the tax imposed by section 511 or which is a private foundation.

"(4) Special rule for annualizations.—In the case of any estate or trust to which this section applies, subsection (d)(2)(B)(i) shall be applied by substituting 'ending before the date 1 month before the due date for the installment' for 'ending before the due date for the installment'."

(3) Subsection (g) of section 643 of the 1986 Code is amended—

(A) by striking out the last sentence of paragraph (1), and

(B) by amending paragraph (2) to read as follows:

"(2) Time for making election.—An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe."

(4) Subsection (g) of section 643 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Extension to last year of estate.—In the case of a taxable year reasonably expected to be the last taxable year of an estate—

"(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

"(B) the fiduciary of the estate shall be treated as the trustee."

(e) Amendments Related to Section 1411 of the Reform Act.—

(1) Paragraph (3) of section 1(i) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Coordination with section 644.—If tax is imposed under section 644(a)(1) with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying subparagraph (A) to the taxable year of the parent in which such sale or exchange occurs—

"(i) taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i), and

"(ii) the amount described in subparagraph (A)(ii) shall be increased by the amount of the excess referred to in section 644(a)(2)(A)."

(2) The last sentence of subparagraph (A) of section 1(i)(3) of the 1986 Code is amended by striking out "any deduction or credit" and inserting in lieu thereof "any exclusion, deduction, or credit".

(3) Subparagraph (A) of section 1(i)(4) of the 1986 Code is amended—

(A) by striking out "gross income for the taxable year which is not earned income" in clause (i) and inserting in lieu thereof "adjusted gross income for the taxable year which is not attributable to earned income",

(B) by striking out "his deduction" in clause (ii)(II) and inserting in lieu thereof "his deductions",

(C) by striking out "the deductions allowed" in clause (ii)(II) and inserting in lieu thereof "the itemized deductions allowed", and

(D) by striking out "gross income" in clause (ii)(II) and inserting in lieu thereof "adjusted gross income".

(4) Clause (iv) of section 6103(e)(1)(A) of the 1986 Code is amended by striking out "section 1(j)" and inserting in lieu thereof "section 1(i) or 59(j)".

(5) Section 59 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(j) Certain Unearned Income of Minor Children Taxed as if Parent's Income.—

"(1) In general.—In the case of any child to whom section 1(i) applies, the tax imposed by section 55 shall be equal to the greater of—

"(A) the tax imposed by section 55 without regard to this subsection, or

"(B) the sum of—

"(i) the tax which would be imposed by section 55 if—

"(I) the alternative minimum taxable income of such child for the taxable year were reduced by the net unearned minimum taxable income of such child, and

"(II) the regular tax of such child for the taxable year were reduced by the portion of such tax attributable to net unearned income (as defined in section 1(i)(4)), plus

"(ii) such child's share of the allocable parental minimum tax.

"(2) Allocable parental minimum tax.—For purposes of this subsection—

"(A) In general.—The term 'allocable parental minimum tax' means the excess of—

"(i) the tax which would be imposed by section 55 on the parent's alternative minimum taxable income if—

"(I) such income included the net unearned minimum taxable income of all children of the parent to whom section 1(i) applies, and

"(II) the amount of the parent's regular tax were increased by the amount of the aggregate of the regular taxes of all children of the parent to whom section 1(i) applies to the extent such taxes are attributable to net unearned income (as defined in section 1(i)(4)) of such children, over

"(ii) the tax imposed by section 55 on the parent without regard to this subsection.

For purposes of clause (i), the net unearned minimum taxable income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

"(B) Child's share.—A child's share of any allocable parental minimum tax shall be determined under rules similar to the rules of section 1(i)(3)(B).

"(C) Coordination with section 644.—Rules similar to the rules of subparagraph (C) of section 1(i)(3) shall apply.

"(3) Net unearned minimum taxable income.—For purposes of this subsection, the term 'net unearned minimum taxable income' means net unearned income (as defined in section 1(i)(4) computed with the adjustments provided in sections 56, 57, and 58; except that, notwithstanding section 56(b)(1)(E), the deduction under section 63(c) shall be allowed.

"(4) Other rules made applicable.—For purposes of this subsection, rules similar to the rules of paragraphs (5) and (6) of section 1(i) shall apply."

(6) Subparagraph (A) of section 1(i)(5) of the 1986 Code is amended by striking out "custodial parent" and inserting in lieu thereof "custodial parent (within the meaning of section 152(e))".

(7) Paragraph (3) of section 1(i) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Special rule where parent has different taxable year.—Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable *parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year."*

(f) Amendment Related to Section 1421 of the Reform Act.—Subsection (a) of section 1421 of the Reform Act is amended by striking out "within the time prescribed for filing such return (including extensions thereof)".

(g) Amendments Related to Section 1431 of the Reform Act.—

(1) Subsection (a) of section 2611 of the 1986 Code is amended by striking out "generation-skipping transfers" and inserting in lieu thereof "generation-skipping transfer".

(2) Subsection (b) of section 2611 of the 1986 Code is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(3)(A) Section 2642 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) Special Rules for Charitable Lead Annuity Trusts.—

"(1) In general.—For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

"(A) the numerator of which is the adjusted GST exemption, and

"(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

"(2) Adjusted GST exemption.—For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

"(A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and

"(B) for the actual period of the charitable lead annuity.

"(3) Definitions.—For purposes of this subsection—

"(A) Charitable lead annuity trust.—The term 'charitable lead annuity trust' means any trust in which there is a charitable lead annuity.

"(B) Charitable lead annuity.—The term 'charitable lead annuity' means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

"(4) Coordination with subsection (d).—Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection."

(B) The amendment made by subparagraph (A) shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.

(4)(A) Section 2642 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Special Rules for Certain Inter Vivos Transfers.—Except as provided in regulations—

"(1) In general.—For purposes of determining the inclusion ratio, if—

"(A) an individual makes an inter vivos transfer of property, and

"(B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

"(2) Valuation.—In the case of any property to which paragraph (1) applies, the value of such property shall be—

"(A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

"(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

"(3) Estate tax inclusion period.—For purposes of this subsection, the term 'estate tax inclusion period' means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

"(A) the date on which there is a generation-skipping transfer with respect to such property, or

"(B) the date of the death of the transferor.

"(4) Treatment of spouse.—Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

"(5) Coordination with subsection (d).—Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection."

(B) Paragraph (2) of section 2642(a) of the 1986 Code is amended by striking out the last sentence.

(C) Subparagraph (A) of section 2642(b)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: "; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

(D) Subsection (b) of section 2642 of the 1986 Code is amended by inserting "Except as provided in subsection (f)—" immediately after the subsection heading.

(E) Subparagraph (B) of section 2642(b)(2) of the 1986 Code is amended—

(i) by striking out "at or after the death of the transferor" and inserting in lieu thereof "to property transferred as a result of the death of the transferor"; and

(ii) by striking out "AT OR AFTER DEATH" in the subparagraph heading and inserting in lieu thereof "TO PROPERTY TRANSFERRED AT DEATH".

(F) Paragraph (3) of section 2642(b) of the 1986 Code is amended—

(i) by striking out "to any property is made during the life of the transferor but is" and inserting in lieu thereof "to any property not transferred as a result of the death of the transferor is"; and

(ii) by striking out "INTER VIVOS ALLOCATIONS" in the subparagraph heading and inserting in lieu thereof "ALLOCATIONS TO INTER VIVOS TRANSFERS".

(5)(A) Paragraph (1) of section 2613(a) of the 1986 Code is amended by striking out "a person assigned" and inserting in lieu thereof "a natural person assigned".

(B) Subsection (c) of section 2612 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Look-thru rules not to apply.—Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(e)(2) shall not apply."

(6) Subsection (c) of section 2652 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Certain support obligations disregarded.—The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

"(A) such use is discretionary, or

"(B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act."

(7) Paragraph (2) of section 2612(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property."

(8) Paragraph (2) of section 2652(c) of the 1986 Code is amended—

(A) by striking out "NOMINAL INTERESTS" in the paragraph heading and inserting in lieu thereof "INTERESTS", and

(B) by striking out "the tax" and inserting in lieu thereof "any tax".

(9) Paragraph (1) of section 2652(a) of the 1986 Code is amended—

(A) by striking out "a transfer of a kind" each place it appears and inserting in lieu thereof "any property", and

(B) by adding at the end thereof the following new sentence:

"An individual shall be treated as transferring any property with respect to which such individual is the transferor."

(10) Section 2663 of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b)."

(11) Paragraph (3) of section 2651(e) of the 1986 Code is amended to read as follows:

"(3) Treatment of certain charitable organizations and governmental entities.—Any—

"(A) organization described in section 511(a)(2),

"(B) charitable trust described in section 511(b)(2), and

"(C) governmental entity,

shall be assigned to the transferor's generation."

(12) Paragraph (2) of section 2654(a) of the 1986 Code is amended—

(A) by striking out "any increase" and inserting in lieu thereof "any increase or decrease", and

(B) by striking out "such increase" and inserting in lieu thereof "such increase or decrease (as the case may be)".

(13) Subsection (b) of section 2654 of the 1986 Code is amended to read as follows:

"(b) Certain Trusts Treated as Separate Trusts.—For purposes of this chapter—

"(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

"(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts."

(14) Paragraph (2) of section 2612(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for the preceding sentence."

(15) Paragraph (3) of section 2652(a) of the 1986 Code is amended—

(A) by striking out "any property" in subparagraphs (A) and (B) and inserting in lieu thereof "any trust", and

(B) by striking out "may elect to treat such property" and inserting in lieu thereof "may elect to treat all of the property in such trust".

(16) Paragraph (2) of section 2612(a) of the 1986 Code is amended to read as follows:

"(2) CERTAIN PARTIAL TERMINATIONS TREATED AS TAXABLE.—If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust's assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property."

(17) Paragraph (2) of section 2632(b) of the 1986 Code is amended by striking out "paragraph (1)) with respect to a prior direct skip" and inserting in lieu thereof "paragraph (1) with respect to a prior direct skip)".

(18)(A) Subsection (c) of section 2642 of the 1986 Code is amended to read as follows:

"(c) TREATMENT OF CERTAIN DIRECT SKIPS WHICH ARE NONTAXABLE GIFTS.—

"(1) IN GENERAL.—In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

"(2) EXCEPTION FOR CERTAIN TRANSFERS IN TRUST.—Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

"(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

"(B) if such individual dies before the trust is terminated, the assets of such trust will be includible in the gross estate of such individual.

"(3) NONTAXABLE GIFT.—For purposes of this subsection, the term 'nontaxable gift' means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

"(A) section 2503(b) (taking into account the application of section 2513), or

"(B) section 2503(e)."

(B) Paragraph (1) of section 2642(d) of the 1986 Code is amended by striking out "(other than a nontaxable gift)".

(C) The amendments made by this paragraph shall apply to transfers after March 31, 1988.

(19) Clause (i) of section 2642(d)(2)(B) of the 1986 Code is amended to read as follows:

"(i) the value of the property involved in such transfer reduced by the sum of—

"(I) any Federal estate tax or state death tax actually recovered from the trust attributable to such property, and

"(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and".

(20) Paragraph (2) of section 2651(b) of the 1986 Code is amended by striking out "a spouse of the transferor" and inserting in lieu thereof "a spouse (or former spouse) of the transferor".

(h) AMENDMENTS RELATED TO SECTION 1433 OF THE REFORM ACT.—

(1) Subsection (a) of section 1433 of the Reform Act is amended by striking out "this part" and inserting in lieu thereof "this subtitle".

(2) Paragraph (2) of section 1433(b) of the Reform Act is amended—

(A) by striking out "this part" in the material preceding subparagraph (A) and inserting in lieu thereof "this subtitle",

(B) by inserting before the comma at the end of subparagraph (A) the following: "(or out of income attributable to corpus so added)", and

(C) by inserting "or revocable trust" after "a will" in subparagraph (B).

(3)(A) Subsection (b) of section 1433 of the Reform Act is amended by striking out paragraph (3) and inserting in lieu thereof the following new paragraphs:

"(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

"(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term 'direct skip' shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000.

"(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

"(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

"(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

"(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

"(C) COORDINATION WITH SECTION 2653(a) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

"(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for subparagraph (A).

"(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor."

(B) Clause (iii) of section 1443(b)(3)(B) of the Reform Act (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.

(4) Subsection (d) of section 1433 of the Reform Act is amended—

(A) by striking out "shall be treated as a direct skip" and inserting in lieu thereof "shall be treated as a direct skip to such grandchild",

(B) by striking out "would be a direct skip" in subparagraph (B) and inserting in lieu thereof "would be a direct skip to a grandchild", and

(C) by adding at the end thereof the following new sentence: "Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence."

SEC. 115. AMENDMENTS RELATED TO TITLE XV OF THE REFORM ACT.

(a) AMENDMENT RELATED TO SECTION 1501 OF THE REFORM ACT.—Subparagraph (B) of section 6724(d)(2) of the 1986 Code is amended by striking out "6031(b)" and inserting in lieu thereof "6031(b) or (c)".

(b) AMENDMENTS RELATED TO SECTION 1503 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 6013(b)(5) of the 1986 Code is amended to read as follows:

"(A) COORDINATION WITH SECTION 6653.—For purposes of section 6653, where the sum of the amounts shown as tax on the separate returns of each spouse is less than the amount shown as tax on the joint return made under this subsection—

"(i) such sum shall be treated as the amount shown on the joint return,

"(ii) any negligence (or disregard of rules or regulations) on either separate return shall be treated as negligence (or such disregard) on the joint return, and

"(iii) any fraud on either separate return shall be treated as fraud on the joint return."

(2)(A) Paragraph (1) of section 6653(a) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to negligence (or disregard of rules or regulations), there shall be added to the tax an amount equal to 5 percent of the underpayment."

(B) Paragraph (1) of section 6653(b) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud."

(C) Paragraph (2) of section 6601(e) of the 1986 Code is amended by striking out "6659" each place it appears and inserting in lieu thereof "6653, 6659".

(3) Subsection (g) of section 6653 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If any penalty is imposed under subsection (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subsection (a)."

(4) The amendments made by this subsection (other than paragraph (3)) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1988.

(c) AMENDMENT RELATED TO SECTION 1504 OF THE REFORM ACT.—The repeal made by section 8002(c) of the Omnibus Budget Recon-

ciliation Act of 1986 shall take effect as if the Tax Reform Act of 1986 had been enacted on the day before the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

(d) Amendments Related to Section 1511 of the Reform Act.—Section 6621 of the 1986 Code is amended—

(1) by striking out "short-term Federal rate" each place it appears in subsections (a) and (b)(1) and inserting in lieu thereof "Federal short-term rate", and

(2) by striking out "Short-Term Federal Rate" in the heading of subsection (b) and inserting in lieu thereof "Federal Short-Term Rate".

(e) Amendments Related to Section 1521 of the Reform Act.—

(1)(A) Paragraph (1) of section 6045(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person."

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 311(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

(2)(A) Subsection (e) of section 6045 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Prohibition of separate charge for filing return.—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1)."

(B) The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act.

(3) Subsection (e) of section 6045 of the 1986 Code is amended—

(A) by striking out "real estate broker" each place it appears in the text and inserting in lieu thereof "real estate reporting person", and

(B) by striking out "Real estate broker" in the heading of paragraph (2) and inserting in lieu thereof "Real estate reporting person".

(f) Amendment Related to Section 1522 of the Reform Act.—Section 6050M of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) Exception for Certain Classified or Confidential Contracts.—

"(1) In general.—Except as provided in paragraph (2), this section shall not apply in the case of a contract described in paragraph (3).

"(2) Reporting requirement.—Each Federal executive agency which has entered into a contract described in paragraph (3) shall, upon a request of the Secretary which identifies a particular person, acknowledge whether such person has entered into such a contract with such agency and, if so, provide to the Secretary—

"(A) the information required under this section with respect to such person, and

"(B) such other information with respect to such person which the Secretary and the head of such Federal executive agency agree is appropriate.

"(3) Description of contract.—For purposes of this subsection, a contract between a Federal executive agency and another person is described in this paragraph if—

"(A) the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security, or

"(B) the head of such Federal executive agency (or his designee) pursuant to regulations issued by such agency determines, in writing, that filing the required return under this section would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity."

(g) Amendments Related to Section 1523 of the Reform Act.—Section 6676 of the 1986 Code is amended—

(1) by striking out "6049, or 6050N" in subsection (a)(3) and inserting in lieu thereof "or 6049",

(2) by striking out "6049, or 6050N" in subsection (b)(1)(A) and inserting in lieu thereof "or 6049", and

(3) by striking out ", Dividends, and Royalties" in the heading for subsection (b) and inserting in lieu thereof "and Dividend".

(h) Amendments Related to Section 1542 of the Reform Act.—Subsection (h) of section 6154 of the 1986 Code (as in effect before its repeal by the Revenue Act of 1987) is amended—

(1) by striking out "subject to the tax imposed by section 4940" in paragraph (1),

(2) by amending paragraph (2) to read as follows:

"(2) any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11, and", and

(3) by adding at the end thereof the following new sentence:

"In the case of an organization described in paragraph (1), subsection (c) of section 6655 shall be applied by substituting '5th month' for 'third month' and subsection (d)(3)(A) of section 6655 shall be applied by substituting '2 months' for '3 months' in clause (i), by substituting '4 months' for '5 months, in clause (ii), by substituting '7 months' for '8 months' in clause (iii), and by substituting '10 months' for '11 months' in clause (iv)."

(i) Amendment Related to Section 1551 of the Reform Act.—Clause (iii) of section 7430(c)(2)(A) of the 1986 Code is amended to read as follows:

"(iii) meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect)."

(j) Provision Related to Section 1556 of the Reform Act.—To the extent the salary recommendations submitted by the President on January 5, 1987, are inconsistent with the provisions of section 7443A(d)(1) of the 1986 Code, such recommendations shall not be effective for any period.

(k) Amendment Related to Section 1557 of the Reform Act.—

(1) Subsection (d) of section 7447 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge."

(2) The amendment made by paragraph (1) shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act regardless of when the services under section 7447(c) of the 1986 Code were performed.

(l) Amendments Related to Section 1561 of the Reform Act.—

(1) Subsection (e)(2) of section 7609 of the 1986 Code is amended—

(A) by inserting "or the summoned party's response to a summons described in subsection (f)," after "the summons described in subsection (c),", and

(B) by striking out "the summons is issued other" and inserting in lieu thereof "the summons is issued".

(2) Subsection (i) of section 7609 of the 1986 Code is amended—

(A) by striking out "the third-party recordkeeper" in paragraph (4) and inserting in lieu thereof "the summoned party", and

(B) by inserting "and Summoned Party" after "Recordkeeper" in the subsection heading.

(3) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(m) Amendment Related to Section 1562 of the Reform Act.—Subsection (d) of section 6212 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding."

(n) Amendment Related to Section 1563 of the Reform Act.—Subparagraph (B) of section 6404(e)(1) of the 1986 Code is amended—

(1) by inserting "error or" before "delay", and

(2) by inserting "erroneous or" before "dilatory".

(o) Amendment Related to Section 1565 of the Reform Act.—Effective with respect to levies made after December 31, 1988, paragraph (10) of section 6334(a) of the 1986 Code is amended—

(1) in subparagraph (A)—

(A) by striking out "IV" and inserting in lieu thereof "III, IV, V,", and

(B) by adding "or" at the end thereof,

(2) in subparagraph (C) by striking out "21," and inserting in lieu thereof "13, 21, 23," and

(3) by striking out subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

(p) Amendment Related to Section 1581 of the Reform Act.—Subsection (c) of section 1581 of the Reform Act is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee."

(q) General Requirement of Return, Statement, or List.—

(1) Subsection (a) of section 6011 of the 1986 Code is amended by striking out "for the collection thereof" and inserting in lieu thereof "with respect to the collection thereof".

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(r) Certain Refundable Credits To Be Assessed Under Deficiency Procedures.—

(1) Subsection (a) of section 6203 of the 1986 Code is amended by striking out paragraph (4).

(2) Paragraph (4) of section 6211(b) is amended to read as follows:

"(4) For purposes of subsection (a)—

"(A) any excess of the sum of the credits allowable under sections 32 and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

"(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax."

(3) Subsection (h) of section 6213 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(4) The amendments made by this subsection shall apply to notices of deficiencies mailed after the date of the enactment of this Act.

SEC. 116. AMENDMENTS RELATED TO TITLE XVI OF THE REFORM ACT.

(a) Amendments Related to Section 1603 of the Reform Act.—

(1)(A) Subparagraph (A) of section 501(c)(25) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (iii), the term 'real property' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest."

(B) The amendment made by subparagraph (A) shall apply with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.

(2) Subparagraph (D) of section 501(c)(25) of the 1986 Code is amended by striking out so much of such subparagraph as precedes clause (i) and inserting in lieu thereof the following:

"(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—"

(3)(A) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E)(i) For purposes of this title—

"(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

"(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

"(ii) For purposes of this subparagraph, the term 'qualified subsidiary' means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

"(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock."

(B) Subparagraph (C) of section 501(c)(25) of the 1986 Code is amended by inserting "or" at the end of clause (iii), by striking out ", or" at the end of clause (iv) and inserting in lieu thereof a period, and by striking out clause (v).

(4) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) For purposes of subparagraph (A), the term 'real property' includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease."

(5)(A) Paragraph (9) of section 514(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) Special rules for organizations described in section 501(c)(25).—

"(i) In general.—In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

"(I) as gross income derived from an unrelated trade or business, such holder's pro rata share of the items of income described in clause (ii)(I) of such organization, and

"(II) as deductions allowable in computing unrelated business taxable income, such holder's pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

"(ii) Description of amounts.—For purposes of clause (i)—

"(I) gross income is described in this clause to the extent such income would (but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

"(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

"(iii) Disqualified holder.—For purposes of this subparagraph, the term 'disqualified holder' means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C)."

(B) The amendment made by subparagraph (A) shall apply with respect to interests in the organization acquired after June 10, 1987, except that such amendment shall not apply to any such interest acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.

(6) The last sentence of section 514(c)(9)(B) of the 1986 Code is amended by striking out "clause (vi)" and inserting in lieu thereof "this paragraph".

(b) Repeal of Section 1608 of the Reform Act.—Section 1608 of the Reform Act is hereby repealed.

SEC. 117. AMENDMENTS RELATED TO TITLE XVII OF THE REFORM ACT.

(a) Amendments Related to Section 1701 of the Reform Act.—Clause (i) of section 51(d)(12)(B) of the 1986 Code is amended by striking out "subsection (a)(1)" and inserting in lieu thereof "subsection (a)".

(b) Amendment Related to Section 1702 of the Reform Act.—Subsection (j) of section 6652 of the 1986 Code, as added by section 1702(b) of the Reform Act and as in effect before its repeal by the Revenue Act of 1987, is amended by inserting "(and the corresponding provision of section 4041(d)(1))" after "section 4041(a)(1)".

(c) Amendments Related to Section 1703 of the Reform Act.—

(1)(A) Subsection (a) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by redesignating paragraph (2) as paragraph (3) and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) In general.—There is hereby imposed a tax at the rate specified in paragraph (2) on the earlier of—

"(A) the removal, or

"(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator.

"(2) Rates of tax.—

"(A) In general.—The rate of the tax imposed by this section is the sum of—

"(i) the Highway Trust Fund financing rate, and

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate.

"(B) Rates.—For purposes of subparagraph (A)—

"(i) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent a gallon."

(B) Subsections (b) and (c) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, are each amended by striking out "subsection (d)" and inserting in lieu thereof "subsection (a)".

(C) Subsection (e) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended—

(i) by striking out "subsection (d)(2)(A)" in paragraph (1) and inserting in lieu thereof "subsection (a)(2)", and

(ii) by striking out "subsection (d)(2)(B)" each place it appears in paragraph (2) and inserting in lieu thereof "subsection (a)(2)".

(D) Section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d).

(2) Subsection (b) of section 34 of the 1986 Code is amended by striking out "section 6421(i) or 6427(j)" and inserting in lieu thereof "section 6421(j) or 6427(k)".

(3) Sections 4041(b)(1)(C) and 6427(m)(3) of the 1986 Code are each amended by striking out "section 6421(d)(2)" and inserting in lieu thereof "section 6421(e)(2)".

(4) Paragraph (3) of section 4041(f) of the 1986 Code is amended to read as follows:

"(3) Termination.—Except with respect to the taxes imposed by subsection (d), paragraph (1) shall not apply on and after October 1, 1993."

(5) The amendment made by section 10502(d)(4) of the Revenue Act of 1987 shall be treated as if included in the amendments made by section 1703 of the Reform Act except that the reference to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988.

(6) Section 6421 of the 1986 Code is amended by redesignating subsection (i) (relating to income tax credit in lieu of payment) and subsection (j) (relating to cross references) as subsections (j) and (k), respectively.

(7) Subsections (a) and (b)(1) of section 6421 of the 1986 Code are each amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (j)".

(8) Paragraph (2) of section 6421(j) of the 1986 Code (as redesignated by paragraph (6)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)(2)".

(9) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) of the 1986 Code are each amended by striking out

"6421(f)(2)" and inserting in lieu thereof "6421(g)(2)".

(10) Paragraph (2) of section 6427(k) of the 1986 Code is amended by striking out "subsection" and all that follows and inserting in lieu thereof "paragraph (2) or (3) of subsection (i)."

(11) Paragraph (6) of section 6511(i) of the 1986 Code is amended by striking out "section 6421(c)" and inserting in lieu thereof "section 6421(d)".

(12) Subparagraph (G) of section 1703(e)(2) of the Reform Act is amended by striking out all that follows "are amended" and inserting in lieu thereof "by striking out '6427(i)(2)' and inserting in lieu thereof '6427(j)(2)'."

(13) Paragraph (2) of section 1703(f) of the Reform Act is amended by adding at the end thereof the following new sentence: "All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of the Internal Revenue Code of 1986 shall apply to the floor stocks taxes imposed by this section."

(14) Paragraph (1) of section 4081(c) of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by striking out "3 cents" and inserting in lieu thereof "3⅓ cents".

(15) Subsection (d) of section 6421 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Application to Sales Under Subsection (c).—For purposes of this subsection, gasoline shall be treated as used for a purpose referred to in subsection (c) when it is sold for such a purpose."

SEC. 118. AMENDMENTS RELATED TO TITLE XVIII OF THE REFORM ACT.

(a) Amendment Related to Section 1801 of the Reform Act.—Clause (iii) of section 1801(a)(2)(A) of the Reform Act is amended to read as follows:

"(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,".

(b) Amendments Related to Section 1802 of the Reform Act.—

(1) The last sentence of section 31(g)(17)(L) of the Tax Reform Act of 1984, as added by section 1802(a)(10)(G) of the Reform Act, is amended—

(A) by striking out "Registry of Deeds" each place it appears and inserting in lieu thereof "Register of Deed", and

(B) by striking out "May 7, 1985" and inserting in lieu thereof "May 7, 1984".

(2) Subparagraph (E) of section 168(j)(9) of the 1986 Code (as amended by section 1802(a)(2) of the Reform Act and as in effect before the amendments made by section 201 of the Reform Act) is amended—

(A) by striking out "this paragraph" in clauses (i) and (ii)(I) and inserting in lieu thereof "this paragraph and paragraph (8)", and

(B) by striking out clause (iii) and inserting in lieu thereof the following:

"(iii) Tax-Exempt Controlled Entity.—

"(I) In General.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

"(II) Only 5-Percent Shareholders Taken Into Account in Case of Publicly Traded Stock.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

"(III) Section 318 to Apply.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof)."

(c) Amendment Related to Section 1803 of the Reform Act.—

(1) Subparagraph (A) of section 1803(a)(8) of the Reform Act is amended by striking out "September 27, 1985" and inserting in lieu thereof "December 31, 1985".

(2) Subsection (c) of section 1278 of the 1986 Code is amended by inserting before the period ", including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments".

(d) Amendments Related to Section 1804 of the Reform Act.—

(1) Paragraph (3) of section 1804(b) of the Reform Act is amended by striking out "Paragraph (3) of section 54" and inserting "Paragraph (3) of section 54(d)".

(2) Clause (i) of section 54(d)(3)(D) of the Tax Reform Act of 1984 is amended by striking out "subtitle D of title VI" and inserting "subtitle D of title VI of the Tax Reform Act of 1986".

(3) Clause (ii) of section 54(d)(3)(D) of the Tax Reform Act of 1984 (as added by section 1804(b)(3) of the Tax Reform Act of 1986) is amended—

(A) by striking out "December 9, 1968," each place it appears and inserting in lieu thereof "December 10, 1968,", and

(B) by striking out "October 5, 1981" and inserting in lieu thereof "March 2, 1978,".

(4) Subsection (b) of section 312 of the 1986 Code is amended by striking out "of any property" and inserting in lieu thereof "of any property (other than an obligation of such corporation)".

(5)(A) Section 361 of the 1986 Code is amended to read as follows:

"SEC. 361. NONRECOGNITION OF GAIN OR LOSS TO CORPORATIONS; TREATMENT OF DISTRIBUTIONS.

"(a) General Rule.—No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

"(b) Exchanges Not Solely in Kind.—

"(1) Gain.—If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

"(A) Property Distributed.—If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

"(B) Property Not Distributed.—If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

"(2) Loss.—If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

"(3) Treatment of Transfers to Creditors.—For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3).

"(c) Treatment of Distributions.—

"(1) In General.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

"(2) Distributions of Appreciated Property.—

"(A) In General.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) Qualified Property.—For purposes of this subsection, the term 'qualified property' means—

"(i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or

"(ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

"(C) Treatment of Liabilities.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) Treatment of Certain Transfers to Creditors.—For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

"(4) Coordination With Other Provisions.—Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1)."

(B) Section 358 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Definition of Nonrecognition Property in Case of Section 361 Exchange.—For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization."

(C) Section 355 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) Taxability of Corporation on Distribution.—Section 311 shall apply to any distribution—

"(1) to which this section (or so much of section 356 as relates to this section) applies, and

"(2) which is not in pursuance of a plan of reorganization,

in the same manner as if such distribution were a distribution to which subpart A of part I applies; except that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation."

(D) Subsection (c) of section 336 of the 1986 Code (as amended by section 631 of the Reform Act) is amended to read as follows:

"(c) Exception for Liquidations Which Are Part of a Reorganization.—

"For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4)."

(E) Subsection (a) of section 311 of the 1986 Code is amended by striking out "distribution, with respect to its stock," and inserting in lieu thereof "distribution (not in complete liquidation) with respect to its stock".

(F) The table of sections for subpart C of part III of subchapter C of chapter 1 of the 1986 Code is amended by striking out the item relating to section 361 and inserting in lieu thereof the following new item:

"Sec. 361. Nonrecognition of gain or loss to corporations; treatment of distributions."

(G) Effective with respect to transfers on or after June 21, 1988, section 351 of the 1986 Code is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Treatment of Controlled Corporation.—If—

"(1) property is transferred to a corporation (hereinafter in this subsection referred to as the 'controlled corporation') in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

"(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies."

(6) Subparagraph (A) of section 280G(b)(5) of the 1986 Code is amended—

(A) in clause (i) by striking out "section 1361(b))" and inserting in lieu thereof "section 1361(b) but without regard to paragraph (1)(C) thereof)", and

(B) by adding at the end thereof the following: "Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights."

(7) Subparagraph (B) of section 280G(b)(5) of the 1986 Code (relating to shareholder approval requirements) is amended by adding at the end thereof the following new sentence:

"The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation."

(8) Paragraph (5) of section 280G(d) of the 1986 Code is amended by striking out "officer or any member" and inserting in lieu thereof "officer of any member".

(9) Paragraph (3) of section 338(e) of the 1986 Code is amended by striking out "which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)" and inserting in lieu thereof "which meet the requirements of section 1504(a)(2)".

(10)(A) Paragraph (7) of section 1504(b) of the 1986 Code is amended to read as follows:

"(7) A DISC (as defined in section 992(a)(1))."

(B) Section 1504 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Special Rule for Certain Amounts Derived From a Corporation Previously Treated as a DISC.—In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

"(1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under section 805(b)(2)(A) of the Tax Reform Act of 1984, and

"(2) any amount treated as received under section 805(b)(3) of such Act."

(e) Provision Related to Section 1806 of the Reform Act.—If—

(1) on a return for the 1st taxable year of the trusts involved beginning after March 1, 1984, 2 or more trusts were treated as a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954,

(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act, and

(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year,

then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year.

(f) Amendments Related to Section 1807 of the Reform Act.—

(1) Paragraphs (1)(A) and (2)(E) of section 468B(d) of the 1986 Code are each amended by striking out "the taxpayer" and inserting in lieu thereof "the taxpayer (or any related person)".

(2) Subparagraph (A) of section 468B(d)(2) of the 1986 Code is amended to read as follows:

"(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),".

(3) Clause (i) of section 1807(a)(7)(C) of the Reform Act is amended to read as follows:

"(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,"

(4) Paragraph (2) of section 468B(b) of the 1986 Code is amended—

(A) by striking out "the corporation," and inserting in lieu thereof "a corporation.", and

(B) by striking out "no other" and inserting in lieu thereof "No other".

(5)(A) Section 468B of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) Clarification of Taxation of Certain Funds.—Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise."

(B) Subparagraph (D) of section 1807(a)(7) of the Reform Act is hereby repealed.

(g) Amendments Related to Section 1810 of the Reform Act.—

(1) Paragraph (5) of section 1810(a) of the Reform Act is amended by striking out "section 125(b)(5)" each place it appears and inserting in lieu thereof "section 121(b)(5)".

(2) Section 133(d)(3)(B)(iii) of the Tax Reform Act of 1984, as amended by section 1810(i)(2) of the Reform Act, is amended by striking out "Tax Reform Act of 1985" and inserting in lieu thereof "Tax Reform Act of 1986".

(3) Clause (iv) of section 7701(b)(5)(A) of the 1986 Code is amended by striking out "section 274(k)(2)" and inserting in lieu thereof "section 274(l)(1)(B)".

(h) Amendment Related to Section 1821 of the Reform Act.—

(1) Subsection (e) of section 812 of the 1986 Code (relating to dividends from certain subsidiaries not included in gross investment income) is amended to read as follows:

"(e) Dividends From Certain Subsidiaries Not Included in Gross Investment Income.—

"(1) In general.—For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100 percent dividend.

"(2) 100 percent dividend defined.—

"(A) In general.—Except as provided in subparagraphs (B) and (C), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

"(B) Certain dividends out of tax-exempt interest, etc.—The term '100 percent dividend' does not include any distribution by a corporation to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this subparagraph).

"(C) Certain dividends received by foreign corporations.—The term '100 percent dividends' does not include any dividend described in section 805(a)(4)(E) (relating to certain dividends in the case of foreign corporations)."

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984.

(i) Amendment Related to Section 1822 of the Reform Act.—Clause (i) of section 216(b)(4)(C) of the Tax Reform Act of 1984 (relating to section 818(c) elections made by certain acquired companies) is amended by striking out "clause (i)" and inserting in lieu thereof "subclause (I)".

(j) Amendment Related to Section 1825 of the Reform Act.—Paragraph (4) of section 1825(a) of the Reform Act (relating to amendments related to section 221 of the Tax Reform Act of 1984) is amended by striking out "Section 7702(e)(2)" and inserting in lieu thereof "Effective with respect to contracts entered into after October 22, 1986, section 7702(e)(2)".

(k) Amendments Related to Section 1826 of the Reform Act.—

(1) Paragraph (5) of section 72(s) of the 1986 Code is amended by striking out "or" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment)."

(2) The paragraph heading of paragraph (5) of section 72(s) of the 1986 Code is amended by striking out "Annuity contracts which are part of qualified plans" and inserting in lieu thereof "Certain annuity contracts".

(l) Amendments Related to Section 1842 of the Reform Act.—

(1) Subsection (c) of section 425 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Transfers between spouses or incident to divorce.—In the case of any transfer described in subsection (a) of section 1041—

"(A) such transfer shall not be treated as a disposition for purposes of this part, and

"(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor."

(2) Paragraph (1) of section 425(c) of the 1986 Code is amended by striking out "paragraph (2) and (3)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(3) Effective with respect to transfers after June 21, 1988, subsection (d) of section 1041 of the 1986 Code is amended—

(A) by striking out "Paragraph (1) of subsection (a)" and inserting in lieu thereof "Subsection (a)", and

(B) by striking out "the spouse" and inserting in lieu thereof "the spouse (or former spouse)".

(m) Amendments Related to Section 1866 of the Reform Act.—

(1) Section 1866 of the Reform Act is amended by striking out "obligation issued to refund" and inserting in lieu thereof "obligation (or series of obligations) issued to refund".

(2)(A) Paragraph (1) of section 1866 of the Reform Act is amended to read as follows:

"(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,".

(B) Section 1866 of the Reform Act is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code."

(3) Paragraph (4) of section 1866 of the Reform Act is amended by striking out "30 days" and inserting in lieu thereof "90 days".

(4) Section 1866 of the Reform Act is amended by adding "and" at the end of paragraph (2), by striking out paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(5) A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act if such obligation met the requirement of such paragraph as enacted by the Reform Act.

(n) Amendments Related to Section 1869 of the Reform Act.—

(1) Clause (ii) of section 1869(c)(3)(A) of the Reform Act is amended by striking out "pursuant to the exercise of eminent domain" and inserting in lieu thereof "(by a governmental unit having the power to exercise eminent domain)".

(2) Subparagraph (C) of section 1869(c)(3) of the Reform Act is amended by inserting "(or similar issues)" after "resulting from the issue".

(o) Amendments Related to Section 1875 of the Reform Act.—

(1) Clause (ii) of section 6230(a)(2)(A) of the 1986 Code is amended by striking out "nonpartnership items" and inserting in lieu thereof "nonpartnership items (other than by reason of section 6231(b)(1)(C))".

(2) Subsection (g) of section 1246 of the 1986 Code (as redesignated by this Act) is amended by striking out "1248(g)(3)" and inserting in lieu thereof "1248(g)(2)".

(3) Subsection (f) of section 6229 of the 1986 Code is amended by adding at the end thereof the following new sentence: "The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner."

(p) Amendment Related to Section 1878 of the Reform Act.—Paragraph (1) of section 852(e) of the 1986 Code is amended by striking out "subsection (a)(3)" and inserting in lieu thereof "subsection (a)(2)".

(q) Amendments Related to Section 1879 of the Reform Act.—

(1) Subclause (II) of section 28(b)(2)(A)(ii) of the 1986 Code is amended to read as follows:

"(II) before the date on which an application with respect to such drug is approved under section 505(b) or 507 of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act; and".

(2) The last sentence of section 1361(d)(3) of the 1986 Code is amended by striking out "treated as a separate trust under section 663(c)" and inserting in lieu thereof "within the meaning of section 663(c)".

(3) Subsection (p) of section 1879 of the Reform Act is amended—

(A) by striking out "Subsection (a)" in paragraph (2) and inserting "Paragraph (1)", and

(B) by striking out "subsection (a)" each place it appears in paragraphs (2) and (3) and inserting in lieu thereof "paragraph (1)".

(4)(A) Subsection (d) of section 1286 of the 1986 Code is amended to read as follows:

"(d) Special Rules for Tax-Exempt Obligations.—

"(1) In general.—In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

"(A) the amount of the original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon—

"(i) shall be treated as original issue discount on a tax-exempt obligation to the extent such discount does not exceed the tax-exempt portion of such discount, and

"(ii) shall be treated as original issue discount on an obligation which is not a tax-exempt obligation to the extent such discount exceeds the tax-exempt portion of such discount,

"(B) subsection (b)(1)(A) shall not apply, and

"(C) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the sum of—

"(i) the interest accrued but not paid before such bond or coupon was disposed of (and not previously reflected in basis), plus

"(ii) the amount included in gross income under subsection (b)(1)(B).

"(2) Tax-exempt portion.—For purposes of paragraph (1), the tax-exempt portion of the original issue discount determined under subsection (a) is the excess of—

"(A) the amount referred to in subsection (a)(1), over

"(B) an issue price which would produce a yield to maturity as of the purchase date equal to the lower of—

"(i) the coupon rate of interest on the obligation from which the coupons were separated, or

"(ii) the yield to maturity (on the basis of the purchase price) of the stripped obligation or coupon.

The purchaser of any stripped obligation or coupon may elect to apply clause (i) by substituting 'original yield to maturity of' for 'coupon rate of interest on'."

(B)(i) Except as provided in clause (ii), the amendment made by subparagraph (A) shall apply to any purchase or sale after June 10, 1987, of any stripped tax-exempt obligation or stripped coupon from such an obligation.

(ii) If—

(I) any person held any obligation or coupon in stripped form on June 10, 1987, and

(II) such obligation or coupon was held by such person on such date for sale in the ordinary course of such person's trade or business,

the amendment made by subparagraph (A) shall not apply to any sale of such obligation or coupon by such person and shall not apply to any such obligation or coupon while held by another person who purchased such obligation or coupon from the person referred to in subclause (I).

(5) Clause (ii) of section 368(a)(2)(F) of the 1986 Code is amended—

(A) by striking out the two parenthetical phrases in the first sentence, and

(B) by adding at the end thereof the following new sentence: "For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust."

(6)(A) Subparagraph (A) of section 126(b)(1) of the 1986 Code is amended by inserting "or the Secretary of the Interior (whoever is appropriate)" after "Agriculture".

(B) For purposes of applying section 126(a)(10) of the 1986 Code to grants made after September 30, 1979, a State surface mining reclamation program which is primarily for 1 or more purposes specified in such section shall be treated as such a program primarily for such purposes whether or not such program is denoted as a program for public health and safety.

(r) AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.—

(1) Subsection (b) of section 1895 of the Reform Act is amended by striking out paragraphs (1) and (2).

(2)(A) Clause (ii) of section 3121(u)(2)(B) of the 1986 Code is amended by striking out "or" at the end of subclause (IV), by striking out the period at the end of subclause (V) and inserting in lieu thereof ", or", and by inserting after subclause (V) the following new subclause:

"(VI) by an individual in a position described in section 1402(c)(2)(E)."

(B) The amendment made by subparagraph (A) shall apply to services performed after March 31, 1986.

(s) MISCELLANEOUS PROVISIONS.—

(1) Subsection (a) of section 8021 of the 1986 Code is amended by striking out "6103(d)" and inserting in lieu thereof "6103(f)".

(2)(A) Section 2503 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF CERTAIN LOANS OF ARTWORKS.—

"(1) IN GENERAL.—For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if—

"(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

"(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

"(2) DEFINITIONS.—For purposes of this section—

"(A) QUALIFIED WORK OF ART.—The term 'qualified work of art' means any archaeological, historic, or creative tangible personal property.

"(B) PRIVATE FOUNDATION.—The term 'private foundation' has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3))."

(B) The amendment made by subparagraph (A) shall apply to loans after July 31, 1969.

(3)(A) Subparagraph (B) of section 1563(d)(1) of the 1986 Code is amended by striking out "subsection (e)(1)" and inserting in lieu thereof "paragraphs (1), (2), and (3) of subsection (e)".

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after the date of the enactment of this Act.

(t) ADDITIONAL AMENDMENTS RELATED TO PENSION PLANS.—

(1) AMENDMENTS RELATED TO SECTION 1826 OF THE REFORM ACT.—

(A) Section 72(s)(7) of the 1986 Code is amended by striking out "primary annuity" and inserting in lieu thereof "primary annuitant".

(B) Section 72(q)(2)(B) of the 1986 Code is amended by striking out the last parenthesis.

(C) Section 419A(f)(5) of the 1986 Code is amended by striking out "accounts" and inserting in lieu thereof "account".

(D) Section 1826(c) of the Reform Act is amended by striking out "made" and inserting in lieu thereof "commencing".

(2) AMENDMENTS RELATED TO SECTION 1851 OF THE REFORM ACT.—

(A) Section 1851(a) of the Reform Act is amended by striking out paragraph (4) thereof.

(B) Subclause (II) of section 512(a)(3)(E)(ii) of the 1986 Code is amended, (i) by striking out "subclause (II)" and inserting in lieu thereof "subclause (I)", and (ii) by striking out the comma at the end thereof and inserting in lieu thereof a period.

(C) Section 419(a)(1) of the 1986 Code is amended by striking out "subchapter" and inserting in lieu thereof "chapter".

(D) Subparagraph (B) of section 1851(a)(3) of the Reform Act is amended by inserting ", section 505, and section 4976(b)(1)(B)" after "section 419A".

(3) AMENDMENTS RELATED TO SECTION 1852 OF THE REFORM ACT.—

(A) Paragraph (4) of section 1852(a) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) An individual whose required beginning date would, but for the amendment made by subparagraph (A), occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986."

(B) Section 1852(h)(2) of the Reform Act is amended by striking out "section 416(l)" and inserting in lieu thereof "section 415(l)".

(C) Section 1852(h)(1) of the Reform Act is amended by striking out "Subsection" and inserting in lieu thereof "Effective for years beginning after December 31, 1985, subsection".

(D) Subparagraph (E) of section 408(d)(3) of the 1986 Code is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(4) AMENDMENTS RELATED TO SECTION 1854 OF THE REFORM ACT.—

(A) Section 404(k) of the 1986 Code is amended by striking out "avoidance" in the 4th sentence and inserting in lieu thereof "evasion".

(B) Section 409(h)(2) of the 1986 Code (relating to plan may distribute cash) is amended by striking out "section 409(o)" and inserting in lieu thereof "paragraph (1)(B)".

(C) Subparagraph (C) of section 409(n)(3) of the 1986 Code (defining nonallocation period) is amended to read as follows:

"(C) NONALLOCATION PERIOD.—The term 'nonallocation period' means the period beginning on the date of the sale of the qualified securities and ending on the later of—

"(i) the date which is 10 years after the date of sale, or

"(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale."

(D) Subparagraph (A) of section 1042(c)(4) of the 1986 Code (defining qualified replacement property) is amended by inserting "(as in effect immediately before the Tax Reform Act of 1986)" after "section 954(c)(3)".

(E) Clause (i) of section 1042(c)(4)(B) of the 1986 Code (relating to operating corporation) is amended by striking out "placement period" and inserting in lieu thereof "replacement period".

(F) Section 1854(a)(3)(B) of the Reform Act is amended by striking out "1042(b)(3)" and inserting in lieu thereof "1042(b)".

(G) Subparagraph (C) of section 1854(a)(3) of the Reform Act is amended to read as follows:

"(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to sales of securities after the date of the enactment of this Act.

"(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A))."

(H) Section 409(e)(5) of the 1986 Code is amended by striking out "(2) or".

(5) AMENDMENT RELATED TO SECTION 1875 OF THE REFORM ACT.—Section 1875(c)(7)(B) of the Reform Act is amended by striking out "and section 405(c)".

(6) AMENDMENT RELATED TO SECTION 1879 OF THE REFORM ACT.—Subparagraph (B) of section 125(c)(2) of the 1986 Code (relating to exception for cash and deferred arrangements) is amended by inserting "or rural electric cooperative plan (within the meaning of section 401(k)(7))" after "stock bonus plan".

(7) AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.—

(A) Section 106(b)(1) of the 1986 Code (relating to exception for highly compensated individuals where plan fails to provide certain continuation coverage) is amended—

(i) by striking out "any amount contributed by an employer" and inserting in lieu thereof "any employer-provided coverage", and

(ii) by striking out "to a group" and inserting in lieu thereof "under a group".

(B) Section 1895(d)(5)(A) of the Reform Act is amended by striking out "section 162(k)(2)" and inserting in lieu thereof "section 162(k)(5)".

(8) AMENDMENTS RELATED TO SECTION 1898 OF THE REFORM ACT.—

(A) Subparagraph (G) of section 402(a)(6) of the 1986 Code (relating to treatment of potential future vesting), as added by section 1898(a)(3) of the Reform Act, is redesignated as subparagraph (I).

(B) Subparagraph (A) of section 411(a)(11) of the 1986 Code is amended by striking out "vested" and inserting in lieu thereof "nonforfeitable".

(C) Section 402(f)(1) of the 1986 Code is amended by striking out "a eligible" and inserting in lieu thereof "an eligible".

(D) Section 1899A of the Reform Act is amended by striking out paragraph (13).

(E) Subparagraph (B) of section 414(p)(4) of the 1986 Code is amended—

(i) by striking out "means earlier of" and inserting in lieu thereof "means the earlier of", and

(ii) by striking out "in" each place it appears.

(F) Section 414(p)(10) of the 1986 Code (relating to waiver of certain distribution requirements) is amended by inserting ", 403(b)," after "section 401".

(G) Section 414(p)(9) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies."

(u) ADDITIONAL CLERICAL AMENDMENTS.—

(1) Paragraph (5) of section 104(b) of the Reform Act is amended by striking out "1222(b)" and inserting in lieu thereof "1122(b)".

(2) The amendment made by section 122(c)(2) of the Reform Act shall be applied as if it also struck out the comma at the end of section 274(b)(1)(B) of the 1986 Code.

(3) Clause (i) of section 280F(b)(3)(B) of the 1986 Code is amended by striking out "recovery deductions" and inserting in lieu thereof "depreciation deductions".

(4) Subparagraph (A) of section 803(b)(3) of the Reform Act is amended by inserting closing quotation marks after "section 189)" and by striking out the closing quotation marks following "subparagraph (B)".

(5) Paragraph (1) of section 823(b) of the Reform Act is amended to read as follows:

"(1) Paragraph (5) of section 461(h), as amended by section 805(c)(5), is amended by striking out subparagraph (B) and by redesignating subpargraph (C) as subparagraph (B)."

(6) The amendment made by section 1122(b)(2)(B)(iii) of the Reform Act shall be applied as if it struck out "Initial separate tax".

(7) The amendment made by section 1122(b)(2)(C) of the Reform Act shall be applied as if it did not strike out "the".

(8) Paragraph (2) of section 72(q)(2) of the 1986 Code is amended by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a comma.

(9) Subparagraph (A) of section 417(e)(3) of the 1986 Code is amended by striking out "subclause (II)" and inserting in lieu thereof "clause (ii)".

(10) Subparagraph (A) of section 246(c)(1) of the 1986 Code is amended by striking out "Which" and inserting in lieu thereof "which".

(11) Subsection (a) of section 164 of the 1986 Code is amended by striking out "the GST tax" and inserting in lieu thereof "The GST tax".

(12) Subparagraph (B) of section 1851(a)(6) of the Reform Act is amended by striking out "Subsection (b)" and inserting in lieu thereof "Subsection (a)".

(13)(A) Paragraph (1) of section 1878(e) of the Reform Act is amended by striking out "last sentence of section 514(c)(9)(B) (relating to exceptions)" and inserting in lieu thereof "second to the last sentence of section 514(c)(9)(B) (as amended by paragraph (3))".

(B) Paragraph (3) of section 1878(e) of the Reform Act is amended by striking out "is amended" and inserting in lieu thereof ", and the last sentence of such section, are amended".

(14) Paragraph (23) of section 501(c) of the 1986 Code is amended by striking out "any association" and inserting in lieu thereof "Any association".

(15) Paragraph (1) of section 501(c) of the 1986 Code is amended by striking out "any corporation organized" and inserting in lieu thereof "Any corporation organized".

(16) The table of chapters for subtitle E of the 1986 Code is amended by inserting "smokeless tobacco," after "cigarettes," in the item relating to chapter 52.

(17) Paragraph (4) of section 3321(c) of the 1986 Code is amended by adding a period at the end thereof.

(18) Paragraph (3) of section 521(b) of the Superfund Revenue Act of 1986 is amended by striking out "Paragraph (1) of section 9506(b)" and inserting in lieu thereof "Subsection (b) of section 9506".

(19) Paragraph (2) of section 5054(a) of the 1986 Code is amended by adding a period at the end thereof.

(20) Paragraph (3) of section 9507(b) of the 1986 Code is amended by striking out "Deep Water" each place it appears and inserting in lieu thereof "Deepwater".

(21) Subparagraph (I) of section 231(d)(3) of the Reform Act is amended by striking out "section 6511(d)(6)" and inserting in lieu thereof "section 6511(d)(4)".

(22) Subsection (a) of section 1016 of the 1986 Code is amended by striking out all that follows paragraph (20) and inserting in lieu thereof the following:

"(21) to the extent provided in section 48(q), in the case of expenditures with respect to which a credit has been allowed under section 38;

"(22) for amounts allowed as deductions under section 59(e) (relating to optional 10-year writeoff of certain tax preferences);

"(23) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends); and

"(24) in the case of qualified replacement property the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(d)."

(23) Paragraph (1) of section 7518(g) of the 1986 Code is amended by striking out "not qualified withdrawal" and inserting in lieu thereof "not a qualified withdrawal".

(24) The table of sections for part IV of subchapter P of chapter 1 of the 1986 Code is amended by striking out the item relating to section 1254 and inserting in lieu thereof the following:

"Sec. 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties."

(25) Paragraph (1) of section 453(f) of the 1986 Code is amended by striking out "subsection (g)" and inserting in lieu thereof "subsections (g)".

(26) Paragraph (8) of section 453(f) of the 1986 Code is amended by striking out "payment to be" and inserting in lieu thereof "payments to be".

(27) Subparagraph (B) of section 668(b)(1) of the Reform Act is amended by striking out "section 856" and inserting in lieu thereof "section 858".

(28) The second to the last sentence of section 857(b)(3)(C) of the 1986 Code is amended by striking out "such capital loss such" and inserting in lieu thereof "such capital loss shall".

(29) Subsection (a) of section 669 of the Reform Act is amended by striking out "this part" and inserting in lieu thereof "this subtitle".

(30) The table of parts for subchapter M of chapter 1 of the 1986 Code is amended by adding at the end thereof the following new item:

"Part IV. Real estate mortgage investment conduits."

(31) Subsection (c) of section 1277 of the 1986 Code is amended by inserting a closing parenthesis after "section 585(a)(2)".

(32) The table of parts for subchapter L of chapter 1 of the 1986 Code is amended by striking out the items relating to parts II, III, and IV and inserting in lieu thereof the following:

"Part II. Other insurance companies.

"Part III. Provisions of general application."

(33) Paragraph (7) of section 6051(a) of the 1986 Code is amended by adding a comma at the end thereof.

(34) Paragraph (14) of section 1114(b) of the Reform Act is amended—

(A) by striking out "section 501(c)(17)" and inserting in lieu thereof "section 501(c)(17)(A)", and

(B) by striking out "duties consists" and inserting in lieu thereof "duties consist".

(35) Subparagraph (C) of section 3121(v)(3) of the 1986 Code is amended by striking out "Saving" and inserting in lieu thereof "Savings".

(36) Paragraph (4) of section 6652(k) of the 1986 Code is amended by striking out "or section 6678" and inserting in lieu thereof "or part II of subchapter B of this chapter".

(37) The table of sections for part I of subchapter N of chapter 1 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 865. Source rules for personal property sales."

(38) The amendment made by section 1221(b)(3)(B) of the Reform Act shall be construed as striking out paragraph (3) of section 954(e) of the 1986 Code.

(39) The heading of section 861(a)(6) of the 1986 Code is amended by striking out "personal property" and inserting in lieu thereof "inventory property".

(40) Subsection (a) of section 1296 of the 1986 Code is amended by inserting a comma after "this subpart".

(41) Subsection (b) of section 7703 of the 1986 Code is amended by striking out "section 151(e)(3)" and inserting in lieu thereof "section 151(c)(3)".

(42) Paragraph (3) of section 1404(c) of the Reform Act is amended by striking out "section 6601" and inserting in lieu thereof "section 6601(b)".

(43) Subsection (a) of section 2611 of the 1986 Code is amended by striking out "mean" and inserting in lieu thereof "means".

(44) Subparagraph (D) of section 3406(h)(5) of the 1986 Code is amended by adding a period at the end thereof.

(45) The table of sections for part III of subchapter C of chapter 76 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 7475. Practice fee."

(46) The paragraph added to section 1276(b) of the 1986 Code by section 1803(a)(13)(A)(iii) of the Reform Act is amended—

(A) by inserting "(3)" before "SPECIAL" in the paragraph heading,

(B) by inserting a 1 em dash after "PAYMENTS." in the heading, and

(C) by adding a period at the end thereof.

(47) Subparagraph (C) of section 809(d)(4) of the 1986 Code is amended by striking out "the Secretary—" and inserting in lieu thereof "The Secretary—".

(48) Subsection (f) of section 7872 of the 1986 Code is amended by redesignating the paragraph (11) added by section 1854 of the Reform Act as paragraph (12).

(49) Paragraph (5) of section 7611(i) of the 1986 Code is amended by striking out "the title" and inserting in lieu thereof "this title".

(50) Section 13303(a) of Public Law 99-272 is amended (in the matter proposed to be inserted in section 3306(c) of the Internal Revenue Code of 1954), effective as of the date of its enactment, by inserting a comma immediately after "1988".

(51) Subsection (f) of section 6511 of the 1986 Code is amended—

(A) by striking out "chapter 42" in the text and inserting in lieu thereof "section 4912, chapter 42,", and

(B) by striking out "CERTAIN CHAPTER 43 TAXES" in the subsection heading and inserting in lieu thereof "SIMILAR TAXES".

(52) Subsection (b) of section 7703 of the 1986 Code is amended by striking out "section 151(e)(3)" and inserting in lieu thereof "section 151(c)(3)".

(53) Section 2503(e)(2)(B) of the 1986 Code is amended by striking out "section 213(e)" and inserting in lieu thereof "section 213(d)".

SEC. 119. EFFECTIVE DATE.

Except as otherwise provided in this title, any amendment made by this title shall take effect as if included in the provision of the Reform Act to which such amendment relates.

TITLE II—AMENDMENTS RELATED TO TAX PROVISIONS IN OTHER LEGISLATION

SEC. 201. AMENDMENTS RELATED TO SUPERFUND REVENUE ACT OF 1986.

(a) AMENDMENTS RELATED TO SECTION 513 OF THE ACT.—

(1) Subsection (e) of section 4662 of the 1986 Code is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) REFUNDS DIRECTLY TO EXPORTER.—The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

"(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

"(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations."

(2) Subparagraph (A) of section 4662(b)(10) of the 1986 Code is amended by striking out "a mixture of" and inserting in lieu thereof "one or more".

(b) AMENDMENTS RELATED TO SECTION 515 OF THE ACT.—

(1) Subparagraph (B) of section 4672(a)(2) of the 1986 Code is amended by inserting "(or more than 50 percent of the value)" after "more than 50 percent of the weight".

(2) Paragraph (2) of section 4672(a) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such listing, the Secretary shall make such determination within 180 days after the date the request was filed."

(3) Paragraph (4) of section 4672(a) of such Code is amended to read as follows:

"(4) MODIFICATIONS TO LIST.—The Secretary shall add to the list under paragraph (3) substances which meet either the weight or value tests of paragraph (2)(B) and may remove from such list only substances which meet neither of such tests."

(c) AMENDMENTS RELATED TO SECTION 516 OF THE ACT.—

(1) Section 59A of the 1986 Code (relating to environmental tax) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) EXCEPTION FOR RIC'S AND REIT'S.—The tax imposed by subsection (a) shall not apply to—

"(1) a regulated investment company to which part I of subchapter M applies, and

"(2) a real estate investment trust to which part II of subchapter M applies."

(2) Paragraph (1) of section 882(a) of the 1986 Code is amended by inserting "59A," after "55,".

(3)(A) Paragraph (2) of section 59A(b) of the 1986 Code (defining modified alternative minimum taxable income) is amended by striking out "section 164(a)(5)" and inserting in lieu thereof "section 164(a)(6)".

(B) The paragraph (5) of section 164(a) of the 1986 Code added by section 516(b) of the Superfund Revenue Act of 1986 is redesignated as paragraph (6).

(d) AMENDMENTS RELATED TO SECTION 521 OF THE ACT.—

(1)(A) The amendments made by subsections (b)(3) and (d)(17) of section 10502 of the Revenue Act of 1987 shall be treated as if included in the amendments made by section 521 of the Superfund Revenue Act of 1986 except that the last sentence of paragraphs (2) and (3) of section 4041(d) of the Internal Revenue Code of 1986 (as amended by such subsection (b)(3)) and the reference to section 4091 of such Code in section 9508(c)(2)(A) of such Code (as amended by such subsection (d)(1)) shall not apply to sales before April 1, 1988.

(B) Paragraph (2) of section 6416(b) of the 1986 Code is amended by striking out "(or under paragraph (1)(A) or (2)(A) of section 4041(a) or under paragraph (1)(A) or (2)(A) of section 4041(d) or under section 4051)" and inserting in lieu thereof "(or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051)".

(2) Paragraph (3) of section 4041(c) of the 1986 Code is amended by striking out "the rate at which" and inserting in lieu thereof "the Highway Trust Fund financing rate at which".

(3)(A) Subparagraph (A) of section 4041(b)(1) of the 1986 Code is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) or (d)(1)".

(B) Subparagraph (B) of section 4041(b)(1) of the 1986 Code is amended by inserting before the period "and by the corresponding provision of subsection (d)(1)".

(C) Subsection (b) of section 4041 of the 1986 Code is amended by striking out paragraph (3).

(D) Subparagraph (A) of section 4041(b)(2) of the 1986 Code is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel—

"(i) subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and

"(ii) subsection (d)(1) shall be applied by substituting '0.05 cent' for '0.1 cent' with respect to the sales and uses to which clause (i) applies."

(E) Subsection (f) of section 6421 of the 1986 Code is amended by striking out all that follows paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(2) GASOLINE USED IN AVIATION.—This section shall not apply in respect of gasoline which is used as a fuel in an aircraft—

"(A) in noncommercial aviation (as defined in section 4041(c)(4)), or

"(B) in aviation which is not noncommercial aviation (as so defined) with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

"(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX ON GASOLINE USED IN TRAINS.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used as a fuel in a train."

(F) The second sentence of section 6421(a) of the 1986 Code is amended by striking out "paragraph (3) of subsection (e)" and inserting in lieu thereof "paragraph (2) of subsection (f)".

(4)(A) Paragraph (1) of section 1703(f) of the Reform Act (relating to floor stock taxes) is amended by striking out "9 cents" and inserting in lieu thereof "9.1 cents".

(B) Paragraph (4) of section 1703(f) of the Reform Act is amended to read as follows:

"(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this section shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

"(A) at the Highway Trust Fund financing rate under such section to the extent of 9 cents per gallon, and

"(B) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cent per gallon."

(5)(A) Paragraph (1) of section 4081(c) of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by inserting "and by substituting '⅑ cent' for '0.1 cent'" before "in the case of the removal".

(B) The last sentence of section 4081(c)(2) of the 1986 Code, as amended by such section 1703, is amended by striking out "5⅔ cents a gallon" and inserting in lieu thereof "reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or sale of such fuel".

(6)(A) Paragraph (1) of section 4091(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be ⅑ cent per gallon."

(B) Paragraph (4) of section 4091(b) of the 1986 Code is amended by inserting "except as provided in subsection (c)," after "paragraph (1),".

(C) The last sentence of section 4091(c)(2) of the 1986 Code is amended by striking out "5 cents a gallon" and inserting in lieu thereof "reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel".

(D) The amendments made by this paragraph shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987.

(7)(A) The amendment made by section 10502(c)(4) of the Revenue Act of 1987 shall be treated as if included in the amendments made by section 1703 of the Reform Act except that references to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988.

(B) Subparagraph (A) of section 6427(f)(1) of the 1986 Code is amended—

(i) by striking out "regular Highway Trust Fund financing rate" each place it appears and inserting in lieu thereof "regular tax rate", and

(ii) by striking out "incentive Highway Trust Fund financing rate" and inserting in lieu thereof "incentive tax rate".

(C) Subparagraph (B) of section 6427(g)(1) of the 1986 Code is amended to read as follows:

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(I) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and

"(II) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof.

"(ii) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(I) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof, and

"(II) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof."

(D) Paragraph (2) of section 6427(l) of the 1986 Code is amended by inserting "under section 4041" after "exempt".

(E) The amendments made by this paragraph shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987.

(e) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall take effect as if included in the provision of the Superfund Revenue Act of 1986 to which it relates.

SEC. 202. AMENDMENTS RELATED TO HARBOR MAINTENANCE REVENUE ACT OF 1986.

(a) ORDER OF ENACTMENTS.—

(1) For purposes of section 4042 of the 1986 Code, the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 shall be treated as enacted after the amendment made by section 1404(a) of the Harbor Maintenance Revenue Act of 1986.

(2) Paragraph (2) of section 4042(b) of the 1986 Code is amended to read as follows:

"(2) RATES.—For purposes of paragraph (1)—

"(A) The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:

If the use occurs:	The tax per gallon is:
Before 1990	10 cents
During 1990	11 cents
During 1991	13 cents
During 1992	15 cents
During 1993	17 cents
During 1994	19 cents
After 1994	20 cents.

"(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon."

(b) CARGO TRANSPORTED BETWEEN POSSESSIONS, ETC.—Subparagraph (B) of section 4462(b)(1) of the 1986 Code is amended to read as follows:

"(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,".

(c) DELAY IN DUE DATE FOR STUDY OF CARGO DIVERSION.—Section 1407 of the Harbor Maintenance Revenue Act of 1986 is amended by striking out "1 year from the date of the enactment of this Act" and inserting in lieu thereof "October 1, 1988".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 to which it relates.

SEC. 203. AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986.

(a) AMENDMENT RELATED TO SECTION 1011 OF THE ACT.—

(1) Subparagraph (B) of section 501(c)(12) of the 1986 Code is amended by striking out "or" at the end of clause (ii), by striking out the period at the end of clause (iii), and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987)."

(2) Subparagraph (C) of section 501(c)(12) of the 1986 Code is amended to read as follows:

"(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

"(i) from qualified pole rentals, or

"(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987)."

(3) The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

(b) AMENDMENTS RELATED TO SECTION 8011 OF THE ACT.—

(1) The following provisions of the 1986 Code are each amended by striking out "the 14th day after the date on which" and inserting in lieu thereof "the 14th day after the last day of the semimonthly period during which":

(A) Subparagraphs (A) and (B) of section 5061(d)(2).

(B) Paragraph (3) of section 5061(d).

(C) Clauses (i) and (ii) of section 5703(b)(2)(B).

(D) Subparagraph (C) of section 5703(b)(2).

(2) The amendments made by paragraph (1) shall take effect as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986.

(c) AMENDMENT RELATED TO SECTION 8041 OF THE ACT.—

(1) IN GENERAL.—Paragraph (3) of section 901(j) of the 1986 Code is amended—

(A) by striking out "Section 275" and inserting in lieu thereof "Sections 275 and 78", and

(B) by inserting ", ETC." after "DEDUCTION" in the paragraph heading.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 1987.

(d) AMENDMENT RELATED TO SECTION 9002 OF THE ACT.—Paragraph (3) of section 3509(d) of the 1986 Code is amended by striking out "subsection (d)(3)" and inserting in lieu thereof "subsection (d)(4)".

SEC. 204. AMENDMENTS RELATED TO THE REVENUE ACT OF 1987.

(a) AMENDMENT RELATED TO SECTION 10101 OF THE ACT.—Section 10101(b) of the Revenue Act of 1987 is amended to read as follows:

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

"(2) SPECIAL RULE FOR CAFETERIA PLANS.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight."

(b) AMENDMENTS RELATED TO SECTION 10102 OF THE ACT.—

(1) Subsection (h) of section 163 of the 1986 Code is amended by redesignating paragraph (6) as paragraph (5).

(2) Clause (ii) of section 56(b)(1)(C) of the 1986 Code is amended by striking out "163(h)(6)" and inserting in lieu thereof "163(h)(5)".

(3) Paragraph (1) of section 56(e) of the 1986 Code is amended—

(A) by striking out "substantially rehabilitating" and inserting in lieu thereof "substantially improving", and

(B) by striking out "or is paid" in subparagraph (A).

(c) AMENDMENT RELATED TO SECTION 10103.—Paragraph (1) of section 10103(a) of the Revenue Act of 1987 is amended by inserting "in a plan established for its employees by the United States" after "participant".

(d) AMENDMENTS RELATED TO SECTION 10202 OF THE ACT.—

(1) Subparagraph (A) of section 453(l)(1) of the 1986 Code is amended by striking out "disposes of personal property" and inserting in lieu thereof "disposes of personal property of the same type".

(2) Section 453A of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—

"(1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and

"(2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity."

(3) Paragraph (3) of section 10202(e) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

"(C) CERTAIN DISPOSITIONS DEEMED MADE ON 1ST DAY OF TAXABLE YEAR.—If the taxpayer makes an election under subparagraph (A), in the case of the taxpayer's 1st taxable year ending after December 31, 1986—

"(i) dispositions after August 16, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day, and

"(ii) subsections (b)(2)(B) and (c)(4) of section 453A of such Code shall be applied separately with respect to such dispositions by substituting for '$5,000,000' the amount which bears the same ratio to $5,000,000 as the number of days after August 16, 1986, and before such 1st day bears to 365."

(4) Paragraph (2) of section 10202(e) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

"(C) CERTAIN RULES MADE APPLICABLE.—For purposes of this paragraph, rules similar to the rules of paragraphs (4) and (5) of section 812(c) of the Tax Reform Act of 1986 (as added by the Technical Corrections Act of 1988) shall apply."

(5) Subsection (k) of section 453 of the 1986 Code is amended by striking out "and section 453A".

(6) Subparagraph (A) of section 10202(e)(2) of the Revenue Act of 1987 is amended by striking out "section 453A of the Internal Revenue Code of 1986" and inserting in lieu thereof "section 453(l)(1) of

the Internal Revenue Code of 1986 as added by this section".

(7) Paragraph (2) of section 453A(b) of the 1986 Code is amended by striking out "for purposes of this paragraph" and inserting in lieu thereof "for purposes of this paragraph and subsection (c)(4)".

(8) Paragraph (3) of section 453A(b) of the 1986 Code is amended to read as follows:

"(3) EXCEPTION FOR FARM PROPERTY.—An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e) (4) or (5))."

(e) AMENDMENTS RELATED TO SECTION 10206 OF THE ACT.—

(1)(A) Subsection (a) of section 444 of the 1986 Code is amended by striking out "as provided in subsections (b) and (c)" and inserting in lieu thereof "as otherwise provided in this section".

(B) Paragraph (3) of section 444(d) of the 1986 Code is amended to read as follows:

"(3) TIERED STRUCTURES, ETC.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph—

"(i) no election may be under subsection (a) with respect to any entity which is part of a tiered structure, and

"(ii) an election under subsection (a) with respect to any entity shall be terminated if such entity becomes part of a tiered structure.

"(B) EXCEPTIONS FOR STRUCTURES CONSISTING OF CERTAIN ENTITIES WITH SAME TAXABLE YEAR.—Subparagraph (A) shall not apply to any tiered structure which consists only of partnerships or S corporations (or both) all of which have the same taxable year."

(C) Subparagraph (B) of section 444(d)(2) of the 1986 Code is amended by striking out "under subparagraph (A)" and inserting in lieu thereof "under subparagraph (A) or paragraph (3)(A)".

(2)(A) Section 444 of the 1986 Code is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

"(f) PERSONAL SERVICE CORPORATION.—For purposes of this section, the term 'personal service corporation' has the meaning given to such term by section 441(i)(2)."

(B) Subsection (f) of section 280H of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' has the meaning given to such term by section 441(i)(2)."

(3) Paragraph (2) of section 280H(f) of the 1986 Code is amended by striking out "section 296A(b)(2)" and inserting in lieu thereof "section 269A(b)(2) (as modified by section 441(i)(2))".

(4)(A) Paragraph (2) of section 7519(b) of the 1986 Code is amended to read as follows:

"(2) the net required payment balance."

(B) Subsection (e) of section 7519 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) NET REQUIRED PAYMENT BALANCE.—The term 'net required payment balance' means the excess (if any) of—

"(A) the aggregate of the required payments under this section for all preceding applicable election years, over

"(B) the aggregate amount allowable as a refund to the entity under subsection (c) for all preceding applicable election years."

(5) Subsection (c) of section 7519 of the 1986 Code is amended to read as follows:

"(c) REFUND OF PAYMENTS.—

"(1) IN GENERAL.—If, for any applicable election year, the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), the entity shall be entitled to a refund of such excess for such year.

"(2) TERMINATION OF ELECTIONS, ETC.—If—

"(A) an election under section 444 is terminated effective with respect to any year, or

"(B) the entity is liquidated during any year, the entity shall be entitled to a refund of the net required payment balance.

"(3) DATE ON WHICH REFUND PAYABLE.—Any refund under this subsection shall be payable on the later of—

"(A) April 15 of the calendar year following—

"(i) in the case of the year referred to in paragraph (1), the calendar year in which it begins,

"(ii) in the case of the year referred to in paragraph (2), the calendar year in which it ends, or".

"(B) the day 90 days after the day on which claim therefor is filed with the Secretary."

(6) Subsection (g) of section 7519 of the 1986 Code is amended by striking out "including regulations" and all that follows down through the period at the end thereof and inserting in lieu thereof

"including regulations providing for appropriate adjustments in the application of this section and sections 280H and 444 in cases where—

"(1) 2 or more applicable election years begin in the same calendar year, or

"(2) the base year is a taxable year of less than 12 months."

(7) Subparagraph (B) of section 7519(d)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: "(and such corporation shall be treated as an S corporation for such taxable year for purposes of paragraph (3))".

(8) Subsection (d) of section 7519 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF GUARANTEED PAYMENTS.—

"(A) IN GENERAL.—Any guaranteed payment by a partnership shall not be treated as an applicable payment, and the amount of the net income of the partnership shall be determined by not taking such guaranteed payment into account.

"(B) GUARANTEED PAYMENT.—For purposes of subparagraph (A), the term 'guaranteed payment' means any payment referred to in section 707(c)."

(9) Paragraph (4) of section 7519(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding provisions of this paragraph, for taxable years beginning after 1987, the applicable percentage for any partnership or S corporation shall be 100 percent if more than 50 percent of such entity's net income for the short taxable year which would have resulted if the entity had not made an election under section 444 would have been allocated to partners or shareholders who would not have been entitled to the benefits of section 806(e)(2)(C) of the Tax Reform Act of 1986 with respect to such income."

(10) Subparagraphs (A) and (B) of section 7519(d)(2) of the 1986 Code are each amended by striking out "(other than credits)" and inserting in lieu thereof "(other than credits and tax-exempt income)".

(11) Paragraph (4) of section 10206(d) of the Revenue Act of 1987 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only in the case of an election under section 444 of such Code made for a taxable year beginning before 1989."

(12) Subparagraph (A) of section 444(d)(2) of the 1986 Code is amended by inserting "or otherwise terminates such election" before the period at the end of the first sentence thereof.

(13) Paragraph (4) of section 444(b) of the 1986 Code is amended by striking out "the term" and inserting in lieu thereof "except as provided in regulations, the term".

(14)(A) Paragraph (4) of section 280H(f) of the 1986 Code is amended to read as follows:

"(4) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means taxable income determined without regard to—

"(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

"(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A)."

(B) Subparagraph (A) of section 7519(d)(3) of the 1986 Code is amended by striking out "or incurred".

(C) Subsections (c)(1)(A)(i) and (d)(1) of section 280H of the 1986 Code are each amended by striking out "or incurred".

(f) AMENDMENTS RELATED TO SECTION 10211 OF THE ACT.—

(1) Paragraph (4) of section 7704(e) of the 1986 Code is amended by striking out "as may be required" and inserting in lieu thereof "or to pay such amounts as may be required".

(2) Paragraph (2) of section 10211(c) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

"(C) COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.—In the case of an existing partnership, paragraph (1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for 'December 31, 1987' the earlier of—

"(i) December 31, 1997, or

"(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B)."

(3) Paragraph (1) of section 7704(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership."

(4) Paragraph (1) of section 7704(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the term 'mineral or natural resource' means any product of a character with respect to which a deduction for depletion is allowable under section 611."

(5) Paragraph (3) of section 7704(d) of the 1986 Code is amended to read as follows:

"(3) REAL PROPERTY RENT.—The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if—

"(A) such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements), and

"(B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under section 318(a)(3)(A) by the partnership unless 5 percent or more (by *value) of the interests in such partnership are owned, directly or indirectly, by or for such partner."*

(g) Amendment Related to Section 10212 of the Act.—Subsection (k) of section 469 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Coordination with subsection (g).—For purposes of subsection (g), a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership."

(h) Amendments Related to Section 10214 of the Act.—

(1) Subparagraph (E) of section 514(c)(9) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(iii) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations which may provide for exclusion or segregation of items."

(2) Clause (i) of section 514(c)(9)(E) of the 1986 Code is amended by striking out subclause (I) and by redesignating subclauses (II) and (III) as subclauses (I) and (II), respectively.

(i) Amendments Related to Section 10221 of the Act.—

(1) Paragraph (2) of section 10221(e) of the Revenue Act of 1987 is amended by striking out "amendments made by subsection (b)" and inserting in lieu thereof "amendments made by subsection (c)".

(2) Subsection (b) of section 244 of the 1986 Code is amended by striking out "section 243(c)(4)" and inserting in lieu thereof "section 243(d)(4)".

(j) Amendments Related to Section 10222 of the Act.—

(1)(A) Paragraph (1) of section 1503(e) of the 1986 Code is amended by striking out so much of such paragraph as precedes subparagraph (A) thereof and inserting in lieu thereof the following:

"(1) In general.—Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)—"

(B) Paragraph (2) of section 10222(a) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

"(C) Treatment of certain excess loss accounts.—

"(i) In general.—If—

"(I) any disposition on or before December 15, 1987, of stock resulted in an inclusion of an excess loss account (or would have so resulted if the amendments made by paragraph (1) had applied to such disposition), and

"(II) there is an unrecaptured amount with respect to such disposition,
the portion of such unrecaptured amount allocable to stock disposed of in a disposition to which the amendment made by paragraph (1) applies shall be taken into account as negative basis. To the extent permitted by the Secretary of the Treasury or his delegate, the preceding sentence shall not apply to the extent the taxpayer elects to reduce its basis in indebtedness of the corporation with respect to which there would have been an excess loss account.

"(ii) Special rules.—For purposes of this subparagraph—

"(I) Unrecaptured amount.—The term 'unrecaptured amount' means the amount by which the inclusion referred to in clause (i)(I) would have been increased if the amendment made by paragraph (1) and applied to the disposition.

"(II) Coordination with binding contract exception.—A disposition shall be treated as occurring on or before December 15, 1987, if the amendment made by paragraph (1) does not apply to such disposition by reason of subparagraph (B)."

(2) Subsection (e) of section 1503 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Adjustments.—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)—

"(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

"(B) in the case of any property, for any basis adjustment under section 48(q)."

(3)(A) Paragraph (2) of section 1503(e) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Application of section 312(n)(7) not affected.—The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection."

(B) Subsection (e) of section 301 of the 1986 Code (as redesignated by section 106(e)(12) of this Act) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Application of section 312(n)(7) not affected.—The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection."

(4) Subparagraph (B) of section 10222(b)(2) of the Revenue Act of 1987 is amended to read as follows:

"(B) Exception.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition of stock after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contact, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987."

(k) Amendments Related to Section 10223 of the Act.—

(1) Subparagraph (D) of section 355(b)(2) of the 1986 Code is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

"(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period."

(2) Subparagraph (A) of section 304(b)(4) of the 1986 Code is amended by striking out "stock of 1 member" and inserting in lieu thereof "stock from 1 member".

(3) Paragraph (2) of section 10223(d) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

"(D) Treatment of certain members of affiliated group.—

"(i) In general.—For purposes of subparagraph (A), all distributees which were in existence on the designated date and were members of the same affiliated group on such date shall be treated as 1 distributee.

"(ii) Limitation to stock held on designated date.—Clause (i) shall not exempt any distribution from the amendments made by this section if such distribution is with respect to stock not held by the distributee (determined without regard to clause (i)) on the designated date, directly or indirectly, through a corporation which goes out of existence in the transaction.

"(iii) Designated date.—For purposes of this subparagraph, the term 'designated date' means the later of—

"(I) December 15, 1987, or

"(II) the date on which the acquisition meeting the requirements of subparagraph (A) occurred."

(4) Subparagraph (B) of section 10223(d)(2) of the Revenue Act of 1987 is amended—

(A) by striking out "before January 1, 1993" and inserting in lieu thereof "on or before March 31, 1988", and

(B) by striking out "before January 1, 1989,".

(l) Amendment Related to Section 10224 of the Act.—Sections 1201(a) and 1561(a) of the 1986 Code, and section 904(b)(3)(D)(ii) of the 1986 Code (as amended by section 106(b)(2) of this Act), are each amended by striking out "section 11(b)" and inserting in lieu thereof "section 11(b)(1)".

(m) Amendments Related to Section 10226 of the Act.—

(1)(A) Subsection (a) of section 384 of the 1986 Code is amended to read as follows:

"(a) General Rule.—If—

"(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

"(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

"(2) either of such corporations is a gain corporation,
income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation)."

(B) Subsection (c) of section 384 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (8) and by inserting after paragraph (3) the following new paragraphs:

"(4) Gain corporation.—The term 'gain corporation' means any corporation with a net unrealized built-in gain.

"(5) Control.—The term 'control' means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

"(6) Treatment of members of same group.—Except as provided in regulations and except for purposes of subsection (b), all corporations which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard

to subsection (b) thereof for purposes of the preceding sentence.

"(7) TREATMENT OF PREDECESSORS AND SUCCESSORS.—Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof."

(C) Paragraph (2) of section 384(c) of the 1986 Code is amended to read as follows:

"(2) ACQUISITION DATE.—The term 'acquisition date' means—

"(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

"(B) in any case described in subsection (a)(1)(B), the date of the transfer in the reorganization."

(D) Paragraph (1) of section 384(c) of the 1986 Code is amended by striking out "subsection (a)(2)" and inserting in lieu thereof "subsection (a)(1)(B)".

(2) Paragraph (2) of section 384(e) of the 1986 Code is amended by striking out "the gain corporation" and inserting in lieu thereof "a corporation".

(3) Subsection (b) of section 384 of the 1986 Code is amended to read as follows:

"(b) EXCEPTION WHERE CORPORATIONS UNDER COMMON CONTROL.—

"(1) IN GENERAL.—Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

"(2) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means a controlled group of corporations (as defined in section 1563(a)); except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears,

"(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

"(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

"(3) SHORTER PERIOD WHERE GAIN CORPORATION NOT IN EXISTENCE FOR 5 YEARS.—If the gain corporation was not in existence throughout the 5-year period referred to in paragraph (1), the period during which the gain corporation was in existence shall be substituted for such 5-year period."

(4) Section 384 of the 1986 Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ORDERING RULES FOR NET OPERATING LOSSES, ETC.—

"(1) CARRYOVER RULES.—If any preacquisition loss may not offset a recognized built-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

"(2) ORDERING RULE FOR LOSSES CARRIED FROM SAME TAXABLE YEAR.—In any case in which—

"(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

"(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation."

(5) In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not apply. Such an election shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 120 days after the date of the enactment of this Act. Such an election, once made, shall be irrevocable.

(n) AMENDMENTS RELATED TO SECTION 10227 OF THE ACT.—Paragraph (4) of section 1363(d) of the 1986 Code (relating to recapture of LIFO benefits) is amended by adding at the end thereof the following new subparagraph:

"(D) NOT TREATED AS MEMBER OF AFFILIATED GROUP.—Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in gross income under paragraph (1)."

(o) AMENDMENTS RELATED TO SECTION 10228 OF THE ACT.—

(1)(A) Subsection (a) of section 5881 of the 1986 Code is amended by striking out "gain realized by such person on such receipt" and inserting in lieu thereof "gain or other income of such person by reason of such receipt".

(B)(i) Subsection (b) of section 5881 of the 1986 Code is amended by striking out "a corporation to directly or indirectly acquire its stock" and inserting in lieu thereof "a corporation (or any person acting in concert with such corporation) to directly or indirectly acquire stock of such corporation".

(ii) The amendment made by clause (i) shall apply to transactions occurring on or after March 31, 1988.

(C) Subsection (d) of section 5881 of the 1986 Code is amended—

(i) by striking out "the gain" and inserting in lieu thereof "the gain or other income", and

(ii) by striking out "GAIN RECOGNIZED" in the subsection heading and inserting in lieu thereof "AMOUNT RECOGNIZED".

(2) Section 5881 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) ADMINISTRATIVE PROVISIONS.—For purposes of the deficiency procedures of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A."

(p) AMENDMENTS RELATED TO SECTION 10241 OF THE ACT.—

(1) Paragraph (1) of section 811(d) of the 1986 Code is amended by striking out "the prevailing State assumed interest rate for the contract" and inserting in lieu thereof "the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract".

(2) Paragraph (2) of section 812(b) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following:

"In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A)."

(q) AMENDMENTS RELATED TO SECTION 10242 OF THE ACT.—

(1) Subsection (h) of section 816 of the 1986 Code is amended by striking out "section 842(c)(1)(A)" and inserting in lieu thereof "section 842(b)(2)(B)(i)".

(2)(A) Subparagraph (B) of section 842(b)(3) of the 1986 Code is amended by striking out "held for the production of such income".

(B) Subparagraph (B) of section 842(b)(4) of the 1986 Code is amended by striking out "held for the production of investment income".

(3) Subparagraph (d) of section 842 of the 1986 Code is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(4) which may provide that, in the case of companies taxable under part II of this subchapter, determinations under subsection (b) will be made separately for categories of such companies established in such regulations."

(r) AMENDMENT RELATED TO SECTION 10301 OF THE ACT.—Paragraph (3) of section 6655(g) of the 1986 Code is amended by striking the sentence following subparagraph (C) and inserting in lieu thereof the following:

"In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month', and subsection (e)(2)(A) shall be applied by substituting '2 months' for '3 months' and in clause (i)(I), by substituting '4 months' for '5 months' in clause (i)(II), by substituting '7 months' for '8 months' in clause (i)(III), and by substituting '10 months' for '11 months' in clause (i)(IV)".

(s) AMENDMENTS RELATED TO SECTION 10512 OF THE ACT.—

(1) Section 5276 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION FOR UNITED STATES.—Subsection (a) shall not apply to any permit issued to an agency or instrumentality of the United States."

(2) Subsection (a) of section 5113 of the 1986 Code is amended—

(A) by inserting "taxpaid wine bottling house," after "bonded wine cellar," each place it appears, and

(B) by striking out "DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, OR BREWERIES" in the heading and inserting in lieu thereof "CONTROLLED PREMISES".

(3) Section 5123 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) COORDINATION OF TAXES UNDER SECTION 5121.—No tax shall be imposed by section 5121(a) with respect to a person's activities at any place during a year if such person has paid the tax imposed by section 5121(b) with respect to such place for such year."

(t) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provisions of the Revenue Act of 1987 to which such amendment relates.

SEC. 205. AMENDMENTS RELATED TO PENSION PROTECTION ACT AND FULL FUNDING LIMITATIONS.

(a) AMENDMENT RELATED TO SECTION 9303.—

(1) Section 4972(c) of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULE FOR SELF-EMPLOYED INDIVIDUALS.—For purposes of paragraph (1), if—

"(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

"(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404."

(2)(A) Subparagraph (C) of section 412(1)(3) of the 1986 Code is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(B) Subparagraph (C) of section 302(d)(3) of the Employee Retirement Income Security Act of 1974 is amended—

(i) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(ii) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(b) AMENDMENTS RELATED TO SECTION 9307.—

(1) The last sentence of section 404(a)(1)(D) of the 1986 Code is amended by striking out "For purposes of this subparagraph" and inserting in lieu thereof "For purposes of determining whether a plan has more than 100 participants".

(2) Section 404(a)(7)(A) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(l).".

(3) Section 404(a)(1)(D) of the 1986 Code is amended by striking out "(without regard to any reduction by the credit balance in the funding standard account)".

(c) AMENDMENTS RELATED TO SECTION 9301.—

(1) Section 414(l) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(2) ALLOCATION OF ASSETS IN PLAN SPIN-OFFS, ETC.—

"(A) IN GENERAL.—In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

"(i) the original plan, or

"(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

"(i) the excess (if any) of—

"(I) the full funding limitation applicable to the plan under section 412(c)(7), over

"(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

"(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

"(C) EXCESS ASSETS.—For purposes of subparagraph (A), the term 'excess assets' means an amount equal to the excess (if any) of—

"(i) the fair market value of the assets of the original plan immediately before the spin-off, over

"(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

"(D) PLANS OUTSIDE CONTROLLED GROUPS.—

"(i) IN GENERAL.—This paragraph shall not apply to any plan involved in a spin-off if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan. The amount determined under subparagraph (C)(ii) shall be increased by the amount of any assets allocated to a plan described in the preceding sentence in excess of the amount described in subparagraph (C)(ii).

"(ii) CONTROLLED GROUP.—For purposes of this subparagraph, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

"(E) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

"(F) APPLICATION TO SIMILAR TRANSACTION.—Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs."

(2) Section 414(l) of the 1986 Code is amended by striking out the heading and inserting in lieu thereof:

"(l) MERGER AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—

"(1) IN GENERAL.—".

(3)(A) Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to transactions occurring after July 26, 1988.

(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action.

SEC. 206. AMENDMENTS RELATED TO SECTION 9201 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.

(a) Subsection (c) of section 4132 of the 1986 Code (relating to imposition of tax on certain vaccines) is amended by redesignating paragraphs (1) and (2) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

"(1) CERTAIN USES TREATED AS SALES.—Any manufacturer, producer, or importer of a vaccine which uses such vaccine before it is sold shall be liable for the tax imposed by section 4131 in the same manner as if such vaccine were sold by such manufacturer, producer, or importer.

"(2) TREATMENT OF VACCINES SHIPPED TO UNITED STATES POSSESSIONS.—Section 4221(a)(2) shall not apply to any vaccine shipped to a possession of the United States."

(b) Subsection (a) of section 9510 of the 1986 Code is amended—

(1) by inserting "appropriated or" before "credited", and

(2) by inserting "this section or" before "section 9602(b)".

(c) The amendments made by this section shall take effect as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987.

SEC. 207. ADDITIONAL PENSION TECHNICAL CORRECTIONS.

(a) AMENDMENT OF ERISA.—For purposes of this section, the term "ERISA" means the Employee Retirement Income Security Act of 1974.

(b) AMENDMENTS RELATED TO TAX REFORM ACT OF 1986.—

(1) AMENDMENTS RELATED TO TITLE XI OF THE REFORM ACT.—

(A) AMENDMENTS RELATED TO SECTION 1113 OF THE REFORM ACT.—

(i) Section 203(a)(2) of ERISA is amended—

(I) by striking out "following" the first place it appears, and

(II) by striking out "414(f)(1)(B)" in subparagraph (C)(ii)(I) and inserting in lieu thereof "3(37)(A)(ii)".

(ii) Section 1113(e)(3) of the Reform Act is amended by striking out "Section 202(B)(i)" and inserting in lieu thereof "Section 202(a)(1)(B)(i)".

(iii) The second subsection (e) of section 1113 of the Reform Act is redesignated as subsection (f).

(iv) Section 1113(f) of the Reform Act, as redesignated by clause (iii), is amended by adding at the end thereof the following new paragraph:

"(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) apply (and any subsequent plan year) if—

"(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

"(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in section 411(a)(6)(A) of the Internal Revenue Code of 1986, which include the 1st day of the 1st plan year to which the amendments made by subsections (b) and (e)(2) apply."

(v)(I) Section 411(a)(3) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(G) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B)."

(II) Paragraph (3) of section 203(a) of ERISA is amended by adding at the end thereof the following new subparagraph:

"(F) A matching contribution (within the meaning of section 401(m) of the Internal Revenue Code of 1986) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of such Code, an excess deferral under section 402(g)(2)(A) of such Code, or an excess aggregate contribution under section 401(m)(6)(B) of such Code."

(vi)(I) Section 411(a)(4)(A) of the 1986 Code is amended to read as follows:

"(A) years of service before age 18,".

(II) Subparagraph (A) of section 203(b)(1) of ERISA is amended to read as follows:

"(A) years of service before age 18,".

(B) AMENDMENTS RELATED TO SECTION 1140 OF THE REFORM ACT.—

(i) Subsection (a) of section 1140 of the Reform Act is amended by striking out "or subtitle C" and inserting in lieu thereof ", subtitle C, or title XVIII of this Act".

(ii) Section 1140(c) of the Reform Act is amended by inserting "on or" after "beginning" the second place it appears.

(iii) Section 1140(c) is amended by adding at the end thereof the following new flush sentence:

"For purposes of paragraph (1)(B) and any other provision of this title, an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act."

(C) AMENDMENTS RELATED TO SECTION 1145 OF THE REFORM ACT.—

(i) Subsection (f) of section 303 of the Retirement Equity Act of 1984 is amended by striking out "July 24, 1984" and inserting in lieu thereof "July 17, 1984".

(ii) Paragraph (3) of section 205(b) of ERISA, as added by section 1145(b) of the Reform Act, is redesignated as paragraph (4).

(2) AMENDMENTS RELATED TO TITLE XVIII OF THE REFORM ACT.—

(A) AMENDMENT RELATED TO SECTION 1852 OF THE REFORM ACT.—Paragraph (1) of section 4402(h) of ERISA is amended by striking out "January 12, 1982" the second place it appears and inserting in lieu thereof "January 16, 1982".

(B) AMENDMENT RELATED TO SECTION 1879 OF THE REFORM ACT.—Subsection (u) of section 1879 of the Reform Act is amended—

(i) by striking "206(h)" each place it appears in paragraphs (1) and (4)(B) and inserting in lieu thereof "204(h)";

(ii) by redesignating paragraph (4) as paragraph (5); and

(iii) by inserting after paragraph (3) the following:

"(4) CORRECTION OF CROSS REFERENCE.—Section 4218(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1398(1)(A)) is amended by striking out 'section 4062(d)' and inserting in lieu thereof 'section 4069(b)'."

(C) AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.—

(i)(I) Section 106(b)(2) of the 1986 Code (relating to exception to certain plans) is amended by striking out the last sentence thereof.

(II) Sections 601(b) of ERISA and 2201(b) of the Public Health Service Act are each amended by striking out the last sentence thereof.

(III) The amendments made by this clause shall apply to years beginning after December 31, 1986.

(ii)(I) Section 162(k)(7)(A) of the 1986 Code is amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))."

(II) Sections 607(2) of ERISA and 2208(2) of the Public Health Service Act are each amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986)."

(III) Section 4980B(f)(7) of the 1986 Code, as added by this Act, is amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))."

(IV) The amendments made by this clause shall apply to plan years beginning after December 31, 1988.

(iii)(I) Clause (iv) of section 162(k)(2)(B) of the 1986 Code is amended to read as follows:

"(iv) MEDICARE ELIGIBILITY.—In the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv), the date on which the qualified beneficiary first becomes, after the date of the election, entitled to benefits under title XVIII of the Social Security Act."

(II) Sections 602(2)(D) of ERISA and 2202(2)(D) of the Public Health Service Act are each amended to read as follows:

"(D) MEDICARE ELIGIBILITY.—In the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(D), the date on which the qualified beneficiary first becomes, after the date of the election, entitled to benefits under title XVIII of the Social Security Act."

(III) Clause (iv) of section 4980B(f)(2)(B) of the 1986 Code, as added by this Act, is amended to read as follows:

"(iv) MEDICARE ELIGIBILITY.—In the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D), the date on which the qualified beneficiary first becomes, after the date of the election, entitled to benefits under title XVIII of the Social Security Act."

(IV) The amendments made by this clause shall apply to events occurring after December 31, 1988, in plan years ending after such date.

(iv)(I) The last sentence of section 162(k)(2)(C) of the 1986 Code is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(II) The last sentence of sections 602(3) of ERISA and 2202(3) of the Public Health Service Act are each amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(III) The last sentence of section 4980B(f)(2)(C) of the 1986 Code, as added by this Act, is amended to read as follows:

"In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(IV) The amendment made by subclause (III) shall take effect as if included in the amendments made by section 431 of this Act.

(v)(I) Subclause (II) of sections 162(k)(2)(B)(i) and 4980B(f)(2)(B)(i) of the 1986 Code are each amended by striking out "paragraph (3)(F)" and inserting in lieu thereof "paragraph (3)(B) or (3)(F)".

(II) Clause (ii) of section 602(2)(A) of ERISA is amended by striking out "section 603(6)" and inserting in lieu thereof "section 603(2) or 603(6)".

(III) Clause (ii) of section 2202(2)(A) of the Public Health Service Act is amended by striking out "section 2303(6)" and inserting in lieu thereof "section 2303(2) or 2303(6)".

(IV) The amendments made by this clause shall apply to plan years beginning after December 31, 1988.

(D) AMENDMENTS RELATED TO SECTION 1898 OF THE REFORM ACT.—

(i)(I) Clause (ii) of section 417(a)(3)(B) of the 1986 Code (defining applicable period) is amended by striking out subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation."

(II) Clause (ii) of section 205(c)(3)(B) of ERISA is amended by striking out subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation."

(ii) Section 1898(b)(8) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to distributions after the date of the enactment of this Act."

(iii) Paragraph (12) of section 1898(b) of the Reform Act is amended by striking out all of subparagraph (B) from "(B) AMENDMENT" through "follows:" and inserting the following:

"(B) AMENDMENT TO ERISA.—Section 205(h) of the Employee Retirement Income Security Act of 1974 is amended—

"(i) by striking out 'the term' in paragraphs (1) and (3) and inserting in lieu thereof 'The term';

"(ii) by striking out the comma in paragraph (1) and inserting in lieu thereof a period; and

"(iii) by striking out paragraph (2) and inserting in lieu thereof the following:".

(iv) Subparagraph (B) of section 1898(d)(1) of the Reform Act is amended by striking out "Paragraph (1)" and inserting in lieu thereof "Subsection (e)(1)".

(v) Subsection (e)(1) of section 203 of ERISA is amended—

(I) by inserting "(e)" before "(1)", and

(II) by striking out "vested" and inserting in lieu thereof "nonforfeitable".

(vi) Subclause (IV) of section 205(c)(3)(B)(ii) of ERISA is amended by striking out "401(a)(11)" and inserting in lieu thereof "205".

(vii) Subparagraph (B) of section 1898(b)(7) of the Reform Act is amended by striking out "Subparagraph (C) of section 205(b)(1)" and inserting in lieu thereof "Clause (i) of section 205(b)(1)(C)".

(viii) Section 205(e)(2) of ERISA is amended by striking out "nonforfeitable accrued benefit" and inserting in lieu thereof "nonforfeitable right (within the meaning of section 203)".

(3) EFFECTIVE DATE.—Except as otherwise provided in this subsection, any amendment made by this subsection shall take effect as if included in the provision of the Reform Act to which such amendment relates.

(c) AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986.—

(1) AMENDMENTS RELATED TO SECTION 9202 OF THE ACT.—

(A) Section 411(b)(2) of the 1986 Code and section 204(b)(2) of ERISA are each amended by striking out subparagraph (B) and by *redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.*

(B) Section 411(b)(2)(C) of the 1986 Code, as redesignated by subparagraph (A), is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(C) Section 204(b)(2)(C) of ERISA, as redesignated by subparagraph (A), is amended by striking out "(C) and (D)" and inserting in lieu thereof "(B) and (C)".

(D) The amendments made by this paragraph shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986.

(2) AMENDMENTS RELATED TO SECTION 9203 OF THE ACT.—

(A) Sections 411(a)(8)(B) of the 1986 Code and 3(24)(B) of ERISA are each amended to read as follows:

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 5th anniversary of the time a plan participant commenced participation in the plan."

(B) The amendments made by this paragraph shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986.

(d) AMENDMENTS RELATED TO PENSION PROTECTION ACT.—

(1) AMENDMENTS RELATED TO SECTION 9303.—

(A)(i) Subclause (II) of section 412(l)(3)(C)(ii) of the 1986 Code is amended by inserting "(but not below zero)" after "reducing".

(ii) Subclause (II) of section 302(d)(3)(C)(ii) of ERISA is amended by inserting "(but not below zero)" after "reducing".

(B)(i) Clause (i) of section 412(l)(4)(B) of the 1986 Code is amended by inserting "and the unamortized portion of the unfunded existing benefit increase liability" after "liability".

(ii) Clause (i) of section 302(d)(4)(B) of ERISA is amended by inserting "and the unamortized portion of the unfunded existing benefit increase liability" after "liability".

(C)(i) Section 412(l)(5)(C) of the 1986 Code is amended by striking out "October 17, 1987" and inserting in lieu thereof "the first plan year beginning after December 31, 1988".

(ii) Section 302(d)(5)(C) of ERISA is amended by striking out "October 17, 1987" and inserting in lieu thereof "the first plan year beginning after December 31, 1988".

(D)(i) Section 412(l)(7)(D) of the 1986 Code is amended—

(I) by striking out "and" at the end of clause (iii)(I), by striking out the period at the end of clause (iii)(II) and inserting in lieu thereof ", and", and by adding at the end of clause (iii) the following new subclause:

"(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.", and

(II) by adding at the end thereof the following new clause:

"(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary."

(ii) Section 302(d)(7)(D) of ERISA is amended—

(I) by striking out "and" at the end of clause (iii)(I), by striking out the period at the end of clause (iii)(II) and inserting in lieu thereof ", and", and by adding at the end of clause (iii) the following new subclause:

"(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.", and

(II) by adding at the end thereof the following new clause:

"(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary of the Treasury."

(E)(i) Section 412(l)(8) of the 1986 Code is amended—

(I) by striking out "reduced by any credit balance in the funding standard account" in subparagraph (A)(ii), and

(II) by adding at the end thereof the following new subparagraph:

"(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary may provide for such reduction for purposes of any other provision which references this subsection."

(ii) Section 302(d)(8) of ERISA is amended—

(I) by striking out "reduced by any credit balance in the funding standard account" in subparagraph (A)(ii), and

(II) by adding at the end thereof the following new subparagraph:

"(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary of the Treasury may provide for such reduction for purposes of any other provision which references this subsection."

(F)(i) Section 412(c)(9) of the 1986 Code is amended—

(I) by striking out "3 years" and inserting in lieu thereof "year", and

(II) by striking out "3-YEAR" in the heading and inserting in lieu thereof "ANNUAL".

(ii) Section 302(c)(9) of ERISA is amended by striking out "3 years" and inserting in lieu thereof "year".

(G) Subclause (II) of section 9303(e)(3)(C)(ii) of the Pension Protection Act is amended by inserting "(and any income allocable to such amount)" after "clause (i)".

(H)(i) Subparagraph (C) of section 412(1)(3) of the 1986 Code is amended—

(I) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(II) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(ii) Subparagraph (C) of section 302(d)(3) of ERISA is amended—

(I) by striking out "October 17, 1987" in clause (i) and inserting in lieu thereof "October 29, 1987", and

(II) by striking out "October 16, 1987" in clause (iii) and inserting in lieu thereof "October 28, 1987".

(2) AMENDMENTS RELATED TO SECTION 9304.—

(A)(i) Subparagraph (A) of section 412(c)(10) of the 1986 Code is amended—

(I) by inserting "defined benefit" before "plan other", and

(II) by striking out "PLANS" in the heading and inserting in lieu thereof "DEFINED BENEFIT PLANS".

(ii) Subparagraph (A) of section 302(c)(10) of ERISA is amended by inserting "defined benefit" before "plan other".

(B)(i) Subparagraph (B) of section 412(c)(10) of the 1986 Code is amended—

(I) by striking out "multiemployer plan" and inserting in lieu thereof "plan not described in subparagraph (A)", and

(II) by striking out "MULTIEMPLOYER" in the heading and inserting in lieu thereof "OTHER".

(ii) Subparagraph (B) of section 302(c)(10) of ERISA is amended by striking out "multiemployer plan" and inserting in lieu thereof "plan not described in subparagraph (A)".

(C)(i) Section 412(m)(1) of the 1986 Code is amended by inserting "defined benefit" before "plan (other".

(ii) Section 302(e)(1) of the 1986 Code is amended by inserting "defined benefit" before "plan (other".

(D)(i) Subparagraph (D) of section 412(m)(4) of the 1986 Code is amended to read as follows:

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (l) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

"(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

"(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greater of—

"(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term 'unfunded percentage' means the percentage determined under subsection (l)(5)(A)(i)(I) for the plan year.

"(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (l)(8)(B)) for the plan year to 100 percent."

(ii) Subparagraph (D) of section 302(e)(4) of ERISA is amended to read as follows:

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (d) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

"(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

"(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greater of—

"(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term 'unfunded percentage' means the percentage determined under subsection (d)(5)(A)(i)(I) for the plan year.

"(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B)) for the plan year to 100 percent."

(E)(i) Section 101(d)(1) of ERISA is amended by striking out "an employer of a plan" and inserting in lieu thereof "an employer maintaining a plan".

(ii) Section 502(c) of ERISA is amended by adding at the end thereof the following new paragraph:

"(3) Any employer maintaining a plan who fails to meet the notice requirement of section 101(d) with respect to any participant or beneficiary may in the court's discretion be liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper."

(iii) Section 9304(d) of the Pension Protection Act is amended by striking out "Section" and inserting in lieu thereof "Effective with respect to plan years beginning after December 31, 1987, section".

(F)(i)(I) Subparagraph (B) of section 412(m)(1) of the 1986 Code is amended to read as follows:

"(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B))."

(II) Clause (ii) of section 412(d)(1)(A) of the 1986 Code is amended by inserting "(including adjustments under subsection (b)(5)(B))" after "costs".

(ii)(I) Subparagraph (B) of section 302(e)(1) of ERISA is amended to read as follows:

"(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B))."

(II) Section 303(d) of ERISA is amended by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), by redesignating clauses (i) and (ii) of paragraph (1) (as so redesignated) as subparagraphs (A) and (B), and by inserting "(including adjustments under section 302(b)(5)(B))" after "costs" in paragraph (1)(B) (as so redesignated).

(3) AMENDMENTS RELATED TO SECTION 9306.—

(A) The last sentence of section 412(f)(4)(A) of the 1986 Code is amended by striking out "the benefit liabilities" and inserting in lieu thereof "for benefit liabilities".

(B) The last sentence of section 303(e)(1) of ERISA is amended by striking out "the benefit liabilities" and inserting in lieu thereof "for benefit liabilities".

(C) Section 9306(f)(3) of the Pension Protection Act is amended to read as follows:

"(3) SUBSECTION (b).—The amendments made by subsection (b) shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988."

(4) AMENDMENTS RELATED TO SECTION 9307.—

(A)(i) Clause (iii) of section 412(b)(5)(B) of the 1986 Code is amended by striking out "for purposes of this section and for purposes of determining current liability,".

(ii) Clause (iii) of section 302(b)(5)(B) of ERISA is amended by striking out "for purposes of this section and for purposes of determining current liability,".

(B)(i) Section 302(b)(5)(B) of ERISA is amended by inserting the following matter after the heading and before clause (i): "For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 302(d) for any plan year—".

(ii) Section 302(b)(5) of ERISA is amended by striking out the matter following the heading thereof and preceding subparagraph (A).

(iii) Subclause (I) of section 302(b)(5)(B)(ii) of ERISA is amended by striking out "average rate" and inserting in lieu thereof "the weighted average of the rates".

(C) Section 9307(f) of the Pension Protection Act is amended to read as follows:

"(f) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1987.

"(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988."

(5) AMENDMENTS RELATED TO SECTION 9311.—

(A) Section 9311(a)(2) of the Pension Protection Act is amended by striking out "plan assets to the employer for purposes of section 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974" and inserting in lieu thereof "residual plan assets upon termination".

(B) Section 9311(d) of the Pension Protection Act is amended—

(i) by striking out "section 4041(c)" and inserting in lieu thereof "section 4041" in paragraph (1), and

(ii) by adding at the end thereof the following new flush sentence:

"Except as provided in subsection (a)(2), the amendments made by subsection (a) shall apply to any provision of the plan or plan amendment adopted after December 17, 1987."

(C) Section 9311(a)(2) of the Pension Protection Act is amended by striking out the last sentence.

(6) AMENDMENTS RELATED TO SECTION 9312.—

(A) Section 9312(b)(3)(B)(i) of the Pension Protection Act is amended—

(i) by striking out "section 4022(c)(1)" in subclause (I) and inserting in lieu thereof "section 4022(c)(3)", and

(ii) by striking out "subparagraph (B) of section 4022(c)(1)" and inserting in lieu thereof "subparagraph (C) of section 4022(c)(3)".

(B) Section 9312(b)(3)(B)(ii) of such Act is amended by striking out "section 4022(c)(1)(B)" and inserting in lieu thereof "section 4022(c)(3)(C)".

(C) Section 4062(a) of ERISA is amended—

(i) by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2), and

(ii) by striking out "subsection (d)" in paragraph (2) (as so redesignated) and by inserting in lieu thereof "subsection (c)".

(D)(i) Section 4064(b) of ERISA is amended by striking out "and clauses (i)(II) and (ii) of section 4062(b)(1)(A)" and inserting in lieu thereof "and section 4068(a)".

(ii) Section 4068(a) of ERISA is amended by striking out the last sentence.

(E) Section 4022(c)(1) of ERISA is amended by striking out "(or in the case of a deceased participant)".

(F) Section 4022(c)(3)(B)(ii) of ERISA is amended by inserting ", and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined" after "1987".

(G) Section 9312(b)(3)(B) of the Pension Protection Act is amended by striking out clause (ii).

(H) Section 4041(c) of ERISA is amended—

(i) by striking out "(or its designee under section 4049(b))" in paragraph (2)(A)(iii)(II),

(ii) by striking out "section 4049" in paragraph (2)(A)(iii)(II) and inserting in lieu thereof "section 4022(c)", and

(iii) by striking out the last sentence of paragraph (3)(C)(i).

(I) Section 4070(a) of ERISA is amended by striking out "4049,".

(J) Section 9312(d)(1) of the Pension Reform Act is amended by striking out "section 4041(c)" and inserting in lieu thereof "section 4041".

(7) AMENDMENTS RELATED TO SECTION 9313.—

(A) Section 4041(d)(1) of ERISA is amended by striking out "sufficient for benefit commitments" and inserting in lieu thereof "sufficient for benefit liabilities".

(B) Section 4041(c)(2)(B) of ERISA is amended by inserting "proposed" before "termination" in the parenthetical in the second sentence.

(C) Clause (ii) of section 4041(c)(2)(A) of ERISA is amended—

(i) by inserting "unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 4062," before "certification",

(ii) by inserting "and, if applicable, the proposed distribution date" after "termination date" in subclause (I), and

(iii) by striking out "date" and inserting in lieu thereof "dates" in subclauses (II) through (V).

(8) AMENDMENT RELATED TO SECTION 9331.—Subparagraph (E) of section 4006(a)(3) of ERISA is amended by adding at the end thereof the following new clause:

"(v) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of the Internal Revenue Code of 1986."

(9) AMENDMENTS RELATED TO SECTION 9341.—

(A)(i) Section 401(a)(29)(C)(i)(II) of the 1986 Code is amended by inserting "and any other plan amendments adopted after December 22, 1987, and before such plan amendment" after "amendment".

(ii) Section 307(c)(1)(B) of ERISA is amended by inserting "and any other plan amendments adopted after December 22, 1987, and before such plan amendment".

(B) Section 307(d) of ERISA is amended by inserting "of the Treasury" after "Secretary".

(C)(i) Section 307 of ERISA is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) NOTICE.—A contributing sponsor which is required to provide security under subsection (a) shall notify the Corporation within 30 days after the amendment requiring such security takes effect. Such notice shall contain such information as the Corporation may require."

(ii) Section 4071 of ERISA is amended—

(I) by striking out "or subtitle A, B, or C" and inserting in lieu thereof ", subtitle A, B, or C, as section 302(f)(4) or 307(e)", and

(II) by inserting "or such section" after "such subtitle".

(D)(i) Clause (i) of section 401(a)(29)(A) of the 1986 Code is amended by inserting "to which the requirements of section 412 apply" after "multiemployer plan)".

(ii) Section 307(a)(1) of ERISA is amended by inserting "to which the requirements of section 302 apply" after "multiemployer plan)".

(E) Section 9341(c) of the Pension Protection Act is amended by inserting "(without regard to any extension, amendment, or modification of such agreements on or after such date of enactment)" after "ratified before the date of enactment".

(10) AMENDMENTS RELATED TO SECTION 9342.—

(A) Paragraph (11) of section 103(d) of ERISA is amended—

(i) by striking out "60 percent" and inserting in lieu thereof "70 percent", and

(ii) by striking out "such percentage" and inserting in lieu thereof "the percentage which such value is of such liability.".

(B) Section 502(a)(6) of ERISA is amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (c)(2) or (i)".

(C) Section 502(c)(2) of ERISA is amended—

(i) by inserting "against any plan administrator" after "civil penalty", and

(ii) by striking out "a plan administrator's" and inserting in lieu thereof "such plan administrator's".

(11) AMENDMENT RELATED TO SECTION 9343.—Section 403(c) of ERISA is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(12) AMENDMENTS RELATED TO SECTION 9345.—

(A) Section 407(d)(9) of ERISA is amended by striking out "such arrangement" and inserting in lieu thereof "such individual account plan".

(B) Section 407(f) of ERISA is amended by striking out paragraph (3).

(13) AMENDMENTS RELATED TO SECTION 9346.—

(A)(i) Clause (iii) of section 411(c)(2)(C) of the 1986 Code is amended to read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

"(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

"(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age."

(ii) Subparagraph (B) of section 411(c)(2) of the 1986 Code is amended to read as follows:

"(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date)."

(iii) Section 411(c)(2) of the 1986 Code is amended by striking out subparagraph (E).

(iv) Section 411(a)(7) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) ACCRUED BENEFIT ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions."

(B)(i) Clause (iii) of section 204(c)(2)(C) of ERISA is amended to read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

"(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

"(II) at the interest rate which would be used under the plan under section 205(g)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age."

(ii) Subparagraph (B) of section 204(c)(2) of ERISA is amended to read as follows:

"(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 205(g)(3) (as of the determination date)."

(iii) Section 204(c)(2) of ERISA is amended by striking out subparagraph (E).

(iv) Paragraph (23) of section 3 of ERISA is amended by adding at the end thereof the following new flush sentence: "The accrued benefit of an employee shall not be less than the amount determined under section 204(c)(2)(B) with respect to the employee's accumulated contribution."

(C) If—

(i) during the period beginning December 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments made by section 9346 of the Pension Protection Act, and

(ii) such plan is amended to reflect the amendments made by this paragraph,

any plan amendment described in clause (ii) shall not be treated as reducing accrued benefits for purposes of section 411(d)(6) of the 1986 Code or section 204(g) of ERISA.

(14) EFFECTIVE DATE.—Except as otherwise provided in this subsection, any amendment made by this subsection shall take effect as if included in the provision of the Pension Protection Act to which such amendment relates.

TITLE III—CORRECTIONS TO DIESEL FUEL EXCISE TAX COLLECTION AND EXEMPTION PROCEDURES

SEC. 301. TAX-FREE PURCHASES OF CERTAIN FUELS.

(a) IN GENERAL.—Subsection (c) of section 4093 of the 1986 Code (relating to exceptions; special rule) is amended to read as follows:

"(c) EXEMPTION FOR NONTAXABLE USES AND BUS USES.—

"(1) IN GENERAL.—No tax shall be imposed by section 4091 on fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(l)(2)) or a use described in section 6427(b)(1).

"(2) EXCEPTIONS.—

"(A) CERTAIN LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.—In the case of fuel sold for use in—

"(i) a diesel-powered train, and

"(ii) an aircraft,

paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section.

"(B) CERTAIN BUS USES.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is not refundable by reason of the application of section 6427(b)(2)(A).

"(3) REGISTRATION REQUIRED.—Except to the extent provided by the Secretary, paragraph (1) shall not apply to any sale unless—

"(A) both the seller and the purchaser are registered under section 4101, and

"(B) the purchaser's name, address, and registration number under such section are provided to the seller.

"(4) INFORMATION REPORTING.—

"(A) RETURNS BY PRODUCERS AND IMPORTERS.—Each producer or importer who makes a reduced-tax sale during the calendar year shall make a return (at such time and in such form as the Secretary may by regulations prescribe) showing with respect to each such sale—

"(i) the name, address, and registration number under section 4101 of the purchaser,

"(ii) the amount of fuel sold, and

"(iii) such other information as the Secretary may require.

"(B) STATEMENTS TO PURCHASERS.—Every person required to make a return under subparagraph (A) shall furnish to each purchaser whose name is required to be set forth on such return a written statement showing the name and address of the person required to make such return, the registration number under section 4101 of such person, and the information required to be shown on the return with respect to such purchaser. The written statement required under the preceding sentence shall be furnished to the purchaser on or before January 31 of the year following the calendar year for which the return under subparagraph (A) is required to be made.

"(C) RETURNS BY PURCHASERS.—Each person who uses during the calendar year fuel purchased in a reduced-tax sale shall make a return (at such time and in such form as the Secretary may by regulations prescribe) showing—

"(i) whether such use was a nontaxable use (as defined in section 6427(l)(2)) and the amount of fuel so used,

"(ii) the date of the sale of the fuel so used,

"(iii) the name, address, and registration number under section 4101 of the seller, and

"(iv) such other information as the Secretary may require.

"(D) REDUCED-TAX SALE.—For purposes of this paragraph, the term 'reduced tax sale' means any sale of taxable fuel on which the amount of tax otherwise required to be paid under section 4091 is reduced by reason of paragraph (1) (other than sales described in subsections (a) and (b) of this section)."

(b) PENALTY FOR FAILING TO PROVIDE INFORMATION.—

(1) Subparagraph (B) of section 6724(d)(1) of the 1986 Code (defining information return) is amended by striking out "or" at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(xi) subparagraph (A) or (C) of subsection (c)(4), or subsection (d), of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels)."

(2) Paragraph (2) of section 6724(d) of the 1986 Code (defining payee statement) is amended by striking out "or" at the end of subparagraph (S), by striking out the period

at the end of subparagraph (T) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(U) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1988.

(2) REFUNDS WITH INTEREST FOR PRE-EFFECTIVE DATE PURCHASES.—

(A) IN GENERAL.—In the case of fuel—

(i) which is purchased from a producer or importer during the period beginning on April 1, 1988, and ending on September 30, 1988, and

(ii) which is used (before the claim under this subparagraph is filed) by any person in a nontaxable use (as defined in section 6427(l)(2) of the 1986 Code),

the Secretary of the Treasury or the Secretary's delegate shall pay (with interest) to such person the amount of tax imposed on such fuel under section 4091 of the 1986 Code (to the extent not attributable to amounts described in section 6427(l)(3) of the 1986 Code) if claim therefor is filed not later than December 31, 1988. Not more than 1 claim may be filed under the preceding sentence and such claim shall not be taken into account under section 6427(i) of the 1986 Code. Any claim for refund filed under this paragraph shall be considered a claim for refund under section 6427(l) of the 1986 Code.

(B) INTEREST.—The amount of interest payable under subparagraph (A) shall be determined under section 6611 of the 1986 Code except that—

(i) the date of the overpayment with respect to fuel purchased during any month shall be treated as being the 1st day of the succeeding month, and

(ii) the rate of such interest shall be the underpayment rate determined under section 6621(a)(2) of the 1986 Code.

No interest shall be paid under this paragraph with respect to fuel used by any agency of the United States.

(C) REGISTRATION PROCEDURES REQUIRED TO BE SPECIFIED BEFORE EFFECTIVE DATE.—Not later than October 1, 1988, the Secretary of the Treasury or the Secretary's delegate shall prescribe the procedures for complying with the requirements of section 4093(c)(3) of the 1986 Code (as added by this section).

SEC. 302. EXPEDITED REFUND OR INCOME TAX CREDIT ALLOWED FOR RETAIL SALES OF CERTAIN FUELS USED IN NONTAXABLE USES.

(a) EXPEDITED REFUND.—Section 6427(i) of the 1986 Code (relating to time for filing claims; period covered) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL TAXED UNDER SECTION 4091.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a claim may be filed under subsection (l) by any person with respect to fuel used for any period for which $750 or more is payable under such subsection (l) (disregarding any amount for which a claim has been previously filed under this subsection).

"(B) EXCEPTION FOR CERTAIN USES.—Subparagraph (A) shall not apply with respect to any use of fuel—

"(i) by any agency of the United States,

"(ii) described in subsection (b),

"(iii) described in subsection (e), or

"(iv) described in section 4093(c).

"(C) TIME FOR FILING CLAIM.—A claim may be filed under this paragraph on or after the last day of the quarter during which a period described in subparagraph (A) occurs."

(b) CLAIM PAID WITH INTEREST.—

(1) IN GENERAL.—Section 6427(l) of the 1986 Code (relating to refunds for nontaxable uses of diesel fuel and aviation fuel taxed under section 4091) is amended by adding at the end thereof the following new paragraph:

"(4) INTEREST.—The amount of interest payable under paragraph (1) shall be determined under section 6611 except that the date of the overpayment with respect to fuel purchased during any month shall be treated as being the 1st day of the succeeding month."

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 6427(l) of the 1986 Code is amended by striking out "(without interest)" and inserting in lieu thereof "(with interest)".

(c) ALLOWANCE OF INCOME TAX CREDIT.—Paragraph (2) of section 6427(k) of the 1986 Code (relating to income tax credit in lieu of payment) is amended by striking out "subsection (i)(2) or (h)(3)" and inserting in lieu thereof "subsection (i)(2), (i)(3), or (i)(4)".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6427(i) of the 1986 Code is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(2) Paragraph (2)(A) of section 6427(i) of the 1986 Code is amended by striking out "(l),".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel purchased for use in a nontaxable use (as defined in section 6427(l)(2) of the 1986 Code) after September 30, 1988.

SEC. 303. MARINE RETAILERS TREATED AS PRODUCERS.

(a) IN GENERAL.—Subparagraph (B) of section 4092(b)(1) of the 1986 Code (relating to certain persons treated as producers) is amended by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or" and by adding at the end thereof the following new clause:

"(iii) a retailer selling diesel fuel exclusively to purchasers as supplies for commercial and noncommercial vessels."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 1988.

TITLE IV—OTHER CORRECTIONS AND MODIFICATIONS

Subtitle A—Corporate Estimated Tax Payments

SEC. 401. AMOUNT OF CORPORATE ESTIMATED TAX INSTALLMENT REDUCTION RECAPTURE INCREASED.

(a) IN GENERAL.—Section 6655(e)(1) of the 1986 Code (relating to lower required installment where annualized income installment or adjusted seasonal installment is less than amount determined under subsection (d)) is amended—

(1) by striking out "90 percent" and inserting in lieu thereof "the applicable percentage", and

(2) by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

"In the case of any required installment in:	The applicable percentage is:
1989, 1990, or 1991	94.25
1992	95.00
1993 or thereafter	95.50."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to installments required to be made after December 31, 1988.

Subtitle B—Indian Fishing Rights

SEC. 411. FEDERAL TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS SECURED BY TREATY, ETC.

(a) GENERAL RULES.—Subchapter C of chapter 80 of the 1986 Code (relating to provisions affecting more than one subtitle) is amended by adding at the end thereof the following new section:

"SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.

"(a) IN GENERAL.—

"(1) INCOME AND SELF-EMPLOYMENT TAXES.—No tax shall be imposed by subtitle A on income derived—

"(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

"(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

"(2) EMPLOYMENT TAXES.—No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

"(b) DEFINITIONS.—For purposes of this section—

"(1) FISHING RIGHTS-RELATED ACTIVITY.—The term 'fishing rights-related activity' means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

"(2) RECOGNIZED FISHING RIGHTS.—The term 'recognized fishing rights' means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

"(3) QUALIFIED INDIAN ENTITY.—

"(A) IN GENERAL.—The term 'qualified Indian entity' means, with respect to an Indian tribe, any entity if—

"(i) such entity is engaged in a fishing rights-related activity of such tribe,

"(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

"(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

"(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

"(B) QUALIFIED INDIAN TRIBE.—For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

"(c) Special Rules.—

"(1) Distributions from qualified Indian entity.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

"(2) De minimis unrelated amounts may be excluded.—If, but for this paragraph, all but a de minimis amount—

"(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

"(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph."

(b) Clerical Amendment.—The table of sections for such subchapter C is amended by adding at the end thereof the following new item:

"Sec. 7873. Income derived by Indians from exercise of fishing rights."

SEC. 412. STATE TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS SECURED BY TREATY, ETC.

Section 2079 of the Revised Statutes (25 U.S.C. 71) is amended by adding at the end thereof the following new sentence: "Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of the Internal Revenue Code of 1986 does not permit a like Federal tax to be imposed on such income."

SEC. 413. CONFORMING AMENDMENTS RELATING TO COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.

(a) Exclusion From Wages of Income Derived by Indians From Exercise of Fishing Rights.—Section 209 of the Social Security Act (42 U.S.C. 409) is amended—

(1) in subsection (r), by striking out "or" at the end;

(2) in subsection (s), by striking out the period and inserting in lieu thereof "; or"; and

(3) by inserting after subsection (s) the following new subsection:

"(t) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)."

(b) Exclusion From Net Earnings From Self-Employment of Income Derived by Indians From Exercise of Fishing Rights.—Section 211(a) of such Act (42 U.S.C. 411(a)) is amended—

(1) in paragraph (12), by striking out "and" at the end;

(2) in paragraph (13), by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (13) the following new paragraph:

"(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)."

(c) Cross-References in SECA and FICA to Applicable Indian Fishing Rights Provisions.—

(1) SECA.—Subsection (a) of section 1402 of the 1986 Code (relating to net earnings from self-employment) is amended by striking out "and" at the end of paragraph (13), by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; and", and by inserting after paragraph (14) the following new paragraph:

"(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply."

(2) FICA.—Subsection (a) of section 3121 of the 1986 Code (relating to wages) is amended by striking out "or" at the end of paragraph (19), by striking out the period at the end of paragraph (20) and inserting in lieu thereof "; or", and by inserting after paragraph (20) the following new paragraph:

"(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights)."

SEC. 414. EFFECTIVE DATE; NO INFERENCE CREATED.

(a) Effective Date.—The amendments made by this subtitle shall apply to all periods beginning before, on, or after the date of the enactment of this Act.

(b) No Inference Created.—Nothing in the amendments made by this subtitle shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of March 17, 1988, by any treaty, law, or Executive Order.

Subtitle C—Repeal of Limitation on Treasury Long-Term Bond Authority

SEC. 421. REPEAL OF LIMIT ON LONG-TERM BONDS.

The last sentence of section 3102(a) of title 31, United States Code, is hereby repealed.

Subtitle D—Simplification and Clarification Provisions

SEC. 431. FAILURE TO SATISFY CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.

(a) In General.—Chapter 43 of the 1986 Code (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 4980B. FAILURE TO SATISFY CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.

"(a) General Rule.—There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

"(b) Amount of Tax.—

"(1) In general.—The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be $100 for each day in the noncompliance period with respect to such failure.

"(2) Noncompliance period.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(A) beginning on the date such failure 1st occurs, and

"(B) ending on the earlier of—

"(i) the date such failure is corrected, or

"(ii) the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

"(3) Minimum tax for noncompliance period where failure discovered after notice of examination.—Notwithstanding paragraphs (1) and (2) of subsection (c)—

"(A) In general.—In the case of 1 or more failures with respect to a qualified beneficiary—

"(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

"(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such beneficiary shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

"(B) Higher minimum tax where violations are more than de minimis.—

"(i) In general.—To the extent violations by the employer (or the plan in the case of a multiemployer plan) for any year are more than de minimis, subparagraph (A) shall be applied by substituting '$15,000' for '$2,500' with respect to the employer (or such plan).

"(ii) Persons other than employer or plan.—In any case where the tax under subsection (a) is imposed on a person described in subsection (e)(2), only violations by such person shall be taken into account under clause (i) in determining the amount of tax to be imposed on such person.

"(c) Limitations on Amount of Tax.—

"(1) Tax not to apply where failure not discovered exercising reasonable diligence.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) Tax not to apply to failures corrected within 30 days.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) $100 limit on amount of tax for failures on any day with respect to a qualified beneficiary.—The maximum amount of tax imposed by subsection (a) on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be $100.

"(4) Special rule where more than 1 qualified beneficiary.—For purposes of determining the amount of tax imposed by this section, if there is more than 1 qualified beneficiary with respect to a qualifying event for an employee, all failures with respect to such qualified beneficiaries shall be treated as occurring with respect to 1 beneficiary.

"(5) Overall limitation for unintentional failures.—In the case of failures which are due to reasonable cause and not to willful neglect—

"(A) Single employer plans.—

"(i) In general.—In the case of failures with respect to plans other than multiemployer plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

"(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

"(II) $500,000.

"(ii) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

"(B) MULTIEMPLOYER PLANS.—In the case of failures with respect to a multiemployer plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

"(i) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 213(d)) directly or through insurance, reimbursement, or otherwise, or

"(ii) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as 1 plan.

"(6) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) TAX NOT TO APPLY TO CERTAIN PLANS.—This section shall not apply to—

"(1) any failure of a group health plan to meet the requirements of subsection (f) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,

"(2) any governmental plan (within the meaning of section 414(d)), or

"(3) any church plan (within the meaning of section 414(e)).

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

"(A) In the case of a plan other than a multiemployer plan, the employer.

"(B) In the case of a multiemployer plan, the plan.

"(2) FAILURE TO COVER QUALIFIED BENEFICIARIES WHERE CURRENT EMPLOYEES ARE COVERED.—A person shall be liable for the tax imposed by subsection (a) on a failure with respect to a qualified beneficiary if—

"(A) such person provides coverage under a group health plan for any similarly situated beneficiary under the plan with respect to whom a qualifying event has not occurred, and

"(B) the employer, plan administrator, or such qualified beneficiary submits to such person a written request that such person provide to such qualified beneficiary the same coverage which such person provides to the beneficiary referred to in subparagraph (A).

"(f) CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.—

"(1) IN GENERAL.—A group health plan meets the requirements of this subsection only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

"(2) CONTINUATION COVERAGE.—For purposes of paragraph (1), the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(A) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

"(B) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

"(i) MAXIMUM REQUIRED PERIOD.—

"(I) GENERAL RULE FOR TERMINATIONS AND REDUCED HOURS.—In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

"(II) SPECIAL RULE FOR MULTIPLE QUALIFYING EVENTS.—If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

"(III) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

"(IV) GENERAL RULE FOR OTHER QUALIFYING EVENTS.—In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

"(ii) END OF PLAN.—The date on which the employer ceases to provide any group health plan to any employee.

"(iii) FAILURE TO PAY PREMIUM.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

"(iv) GROUP HEALTH PLAN COVERAGE OR MEDICARE ELIGIBILITY.—The date on which the qualified beneficiary first becomes, after the date of the election—

"(I) covered under any group health plan (as an employee or otherwise), or

"(II) in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv) entitled to benefits under title XVIII of the Social Security Act.

"(C) PREMIUM REQUIREMENTS.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

"(i) shall not exceed 102 percent of the applicable premium for such period, and

"(ii) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

"(D) NO REQUIREMENT OF INSURABILITY.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(E) CONVERSION OPTION.—In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

"(3) QUALIFYING EVENT.—For purposes of this subsection, the term 'qualifying event' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary—

"(A) The death of the covered employee.

"(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

"(C) The divorce or legal separation of the covered employee from the employee's spouse.

"(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (g)(1)(D) within one year before or after the date of commencement of the proceeding.

"(4) APPLICABLE PREMIUM.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable premium' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

"(B) SPECIAL RULE FOR SELF-INSURED PLANS.—To the extent that a plan is a self-insured plan—

"(i) IN GENERAL.—Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

"(I) is determined on an actuarial basis, and

"(II) takes into account such factors as the Secretary may prescribe in regulations.

"(ii) DETERMINATION ON BASIS OF PAST COST.—If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

"(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

"(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

"(iii) CLAUSE (ii) NOT TO APPLY WHERE SIGNIFICANT CHANGE.—A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

"(C) DETERMINATION PERIOD.—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

"(5) ELECTION.—For purposes of this subsection—

"(A) ELECTION PERIOD.—The term 'election period' means the period which—

"(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

"(ii) is of at least 60 days' duration, and

"(iii) ends not earlier than 60 days after the later of—

"(I) the date described in clause (i), or

"(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

"(B) EFFECT OF ELECTION ON OTHER BENEFICIARIES.—Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (g)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

"(6) NOTICE REQUIREMENT.—In accordance with regulations prescribed by the Secretary—

"(A) The group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

"(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days of the date of the qualifying event.

"(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event.

"(D) The plan administrator shall notify—

"(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

"(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

For purposes of subparagraph (D), any notification shall be made within 14 days of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

"(7) COVERED EMPLOYEE.—For purposes of this subsection, the term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

"(g) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED BENEFICIARY.—

"(A) IN GENERAL.—The term 'qualified beneficiary' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

"(i) as the spouse of the covered employee, or

"(ii) as the dependent child of the employee.

"(B) SPECIAL RULE FOR TERMINATIONS AND REDUCED EMPLOYMENT.—In the case of a qualifying event described in subsection (f)(3)(B), the term 'qualified beneficiary' includes the covered employee.

"(C) EXCEPTION FOR NONRESIDENT ALIENS.—Notwithstanding subparagraphs (A) and (B), the term 'qualified beneficiary' does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

"(D) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in subsection (f)(3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(i) as the spouse of the covered employee,

"(ii) as the dependent child of the covered employee, or

"(iii) as the surviving spouse of the covered employee.

"(2) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term by section 162(i)."

"(3) PLAN ADMINISTRATOR.—The term 'plan administrator' has the meaning given the term 'administrator' by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

"(4) CORRECTION.—A failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary shall be treated as corrected if—

"(A) such failure is retroactively undone to the extent possible, and

"(B) the qualified beneficiary is placed in a financial position which is as good as such beneficiary would have been if such failure had not occurred.

For purposes of applying subparagraph (B), the qualified beneficiary shall be treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure 1st occurred.".

(b) TECHNICAL AMENDMENTS.—

(1) Section 106 of the 1986 Code (relating to contributions by employer to accident and health plans) is amended to read as follows:

"SEC. 106. CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND HEALTH PLANS.

"Gross income of an employee does not include employer-provided coverage under an accident or health plan.".

(2) Subsection (i) of section 162 of the 1986 Code (relating to group health plans) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Section 162 of the 1986 Code is amended by striking out subsection (k) and by redesignating—

(A) the subsection relating to stock redemption expenses as subsection (k),

(B) the subsection relating to special rules for health insurance costs of self-employed individuals as subsection (l), and

(C) the subsection relating to cross references as subsection (m).

(4) Subparagraph (C) of section 414(n)(3) of the 1986 Code, as amended by section 111B(a) of this Act, is amended by striking out "162(i)(2), 162(k)(2)," and by striking out "and 505" and inserting in lieu thereof "505, and 4980B".

(5) Paragraph (2) of section 414(t) of the 1986 Code, as amended by section 111B(a) of this Act, is amended by striking out "162(i)(2), 162(k)(2)," and by striking out "or 505" and inserting in lieu thereof "505, or 4980B".

(6) Paragraph (1) of section 607 of the Employee Retirement Income Security Act of 1974 is amended by striking out "section 162(i)(3) of the Internal Revenue Code of 1954" and inserting in lieu thereof "section 162(i)(2) of the Internal Revenue Code of 1986".

(7) Paragraph (1) of section 2208 of the Public Health Service Act is amended by striking out "section 162(i)(3) of the Internal Revenue Code of 1954" and inserting in lieu thereof "section 162(i)(2) of the Internal Revenue Code of 1986".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 43 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 4980B. Failure to satisfy continuation coverage requirements of group health plans.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 432. MODIFICATIONS TO DISCRIMINATION RULES APPLICABLE TO CERTAIN EMPLOYEE BENEFIT PLANS.

(a) MODIFICATIONS TO SECTION 89.—

(1) DETERMINATIONS BASED ON TESTING YEAR.—

(A) Section 89 of the 1986 Code (as amended by title I) is amended by striking out "plan year" each place it appears and inserting in lieu thereof "testing year".

(B) Subsection (j) of section 89 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(13) TESTING YEAR.—The term 'testing year' means—

"(A) any 12-month period beginning with the calendar month designated in the plan for purposes of this section, or

"(B) if there is no such designation, the plan year.

Any designation under subparagraph (A) may be changed only with the consent of the Secretary.".

(C) Subsection (c) of section 4976 of the 1986 Code (as added by title I) is amended—

(i) by striking out "any plan year" in paragraph (1) and inserting in lieu thereof "any testing year (as defined in section 89(j)(13))"; and

(ii) by striking out "such plan year" each place it appears in paragraph (2)(A) and inserting in lieu thereof "such testing year".

(2) TIME FOR TESTING.—

(A) IN GENERAL.—Subsection (g) of section 89 is amended by adding at the end thereof the following new paragraph:

"(6) TIME FOR TESTING.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the determination of whether any plan is a discriminatory employee benefit plan for any testing year shall be made on the basis of the facts as of the testing day.

"(B) ADJUSTMENT WHERE BENEFIT OF HIGHLY COMPENSATED EMPLOYEE CHANGES.—If the employer-provided benefit (actually provided or available) of a highly compensated employee changes during the testing year by reason of any change in the terms of the plan or the making of an election by such employee, the amount taken into account as such employee's employer-provided benefit shall be adjusted to take into account such change and the portion of the testing year during which the changed benefit is provided (or made available).

"(C) TREATMENT OF NON-HIGHLY COMPENSATED EMPLOYEES WHERE CHANGE IN PLAN.—Rules similar to the rules of subparagraph (B) shall apply in the case of employees who are not highly compensated employees and who are affected by any change in the terms of the plan, except that the determination of such employees' employer-provided benefits (actually provided or made available) shall be determined as of the date after such change selected by the employer and permitted under regulations prescribed by the Secretary.

"(D) TESTING DAY.—For purposes of this paragraph, the term 'testing day' means—

"(i) the day designated in the plan as the testing day for purposes of this paragraph, or

"(ii) if there is no day so designated, the last day of the testing year.

"(E) LIMITATIONS.—

"(i) DESIGNATION MUST BE CONSISTENT FOR ALL PLANS OF SAME TYPE.—No day may be designated under subparagraph (D)(i) with respect to any plan unless the same day is so designated with respect to all other plans of the employer of the same type.

"(ii) DESIGNATION BINDING.—Any designation under subparagraph (D)(i) shall apply to the testing year for which made and all subsequent years unless revoked with the consent of the Secretary.".

(B) DESIGNATIONS FOR 1989 NOT BINDING.—Any designation of a testing day for a year beginning in 1989 shall be disregarded in determining the day which may be designated as the testing day for years beginning after 1989.

(3) SAMPLING.—Subsection (g) of section 89 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(7) SAMPLING.—For purposes of determining whether a plan is a discriminatory employee benefit plan (but not for purposes of identifying the highly compensated employees who have a discriminatory excess or the amount of any such excess), determinations under this section may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

"(A) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

"(B) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.".

(4) SPECIAL VALUATION RULE FOR MULTIEMPLOYER PLANS.—Paragraph (3) of section 89(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULE FOR MULTIEMPLOYER PLANS.—

"(i) IN GENERAL.—Except as provided in regulations and clause (ii), an employer may treat the contribution such employer makes to a multiemployer plan on behalf of an employee as the employer-provided benefit of such employee under such plan.

"(ii) ADJUSTMENT.—If the allocation of plan benefits between highly compensated employees and other employees under a multiemployer plan varies materially from the allocation of employer contributions to such plan, the employer-provided benefit determined under clause (i) shall be appropriately adjusted to take into account such material variation.".

(5) SPECIAL RULE FOR MULTIEMPLOYER PLANS UNDER EXCLUDED EMPLOYEE REQUIREMENTS.—Subsection (h) of section 89 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR MULTIEMPLOYER PLAN.—Except as provided in regulations, any multiemployer plan shall not be taken into account in applying subparagraph (A), (B), (C), or (D) of paragraph (1) with respect to other plans of the employer.".

(6) COMPARABILITY RULES.—Paragraph (1) of section 89(g) of the 1986 Code, as amended by section 111B(a)(3), is amended by adding at the end thereof the following new subparagraphs:

"(D) SPECIAL RULES FOR APPLYING SUBSECTION (f).—

"(i) IN GENERAL.—For purposes of applying subsection (f)—

"(I) except as provided in clause (ii), subparagraph (B) shall be applied by substituting '90 percent' for '95 percent', and

"(II) a group of plans of the same type shall be treated as comparable plans if the requirements of subparagraph (E) are met.

"(ii) ELECTION TO USE LOWER PERCENTAGE IN DETERMINING COMPARABILITY.—If an election by the employer under this clause applies for the testing year—

"(I) subclause (I) of clause (i) shall not apply,

"(II) for purposes of applying subsection (f), subparagraph (B) of this paragraph shall be applied by substituting '80 percent' for '95 percent', and

"(III) subsection (f) shall be applied with respect to all health plans maintained by the employer by substituting '90 percent' for '80 percent'.

"(E) PLANS TREATED AS COMPARABLE IF EMPLOYEE COST DIFFERENCE IS $100 OR LESS.—

"(i) IN GENERAL.—A group of plans of the same type shall be treated as comparable with respect to a group of employees if—

"(I) such plans are available to all employees in the group on the same terms, and

"(II) the difference in annual cost to employees between the plans with the lowest and highest annual employee cost is not greater than $100.

"(ii) COORDINATION WITH SUBPARAGRAPH (B).—A plan not in the group of plans described in clause (i) shall be treated as part of such group if, under subparagraph (B) (without regard to clause (iii) of this subparagraph), such plan is comparable to the plan in such group with the largest employer-provided benefit.

"(iii) OTHER PLANS.—A plan not in the group of plans described in clause (i) shall be treated as part of such group with respect to an employee if—

"(I) in the case of an employee who is not a highly compensated employee, such employee is eligible to participate in the plan in such group with the largest employer-provided benefit (without regard to clause (ii)),

"(II) in the case of an employee who is not a highly compensated employee, the annual cost to such employee under such plan is not lower or higher than the lowest and highest costs within such group.

"(III) the employer-provided benefit under such plan is less than the employer-provided benefit under the plan in such group with the largest such benefit (without regard to clause (ii)).

"(iv) SEPARATE APPLICATION OF REQUIREMENTS.—If an employer elects the application of paragraph (2)(A)(ii), the amount under clause (i) shall be allocated among plans covering spouses and dependents and plans covering employees in such manner as the employer specifies.

"(v) COST-OF-LIVING ADJUSTMENT.—In the case of testing years beginning after 1989, the $100 amount under clause (i) shall be increased by the percentage (if any) by which—

"(I) the CPI for the calendar year preceding the year in which the testing year begins, exceeds

"(II) the CPI for 1988.

For purposes of this clause, the CPI for any calendar year shall be determined under section 1(f).".

(7) OTHER COVERAGE.—

(A) Subparagraph (A) of section 89(g)(2) of the 1986 Code is amended—

(i) by striking out "subsection (e)" each place it appears and inserting in lieu thereof "subsection (e) or (f)", and

(ii) by adding at the end thereof the following new sentence: "The provisions of the preceding sentence shall not apply for purposes of applying subsection (f) unless the requirements of subsection (f) would be met if such subsection were applied without regard to the preceding sentence and on the basis of eligibility to participate rather than coverage.".

(B) Subparagraph (D) of section 89(g)(2) of the 1986 Code is amended by adding at the end thereof the following sentence: "The Secretary shall make such adjustments as are necessary in applying the rules of the preceding sentence to subsection (f).".

(8) SWORN STATEMENTS.—Paragraph (2) of section 89(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULE.—No employee who is not a highly compensated employee may be disregarded under subparagraph (A)(i) with respect to any health plan of the employer unless under such plan such employee is entitled, when the coverage under the other

health plan referred to in subparagraph (A)(i) ceases, to elect coverage under the plan of the employer (whether or not an election is otherwise available). Such election is to be on the same terms as if such employee was making such election during a subsequent open season. Rules similar to the rules of the preceding sentences of this subparagraph shall apply in the case of an employee treated as not having a spouse or dependents or having a spouse or dependents covered by a health plan of another employer providing core benefits.".

(9) DEFINITION OF PLAN.—Paragraph (11) of section 89(j) of the 1986 Code is amended by striking out "Each option" and inserting in lieu thereof "Except as provided in subsection (g)(1), each option".

(10) MODIFICATION OF PENALTY.—Subparagraph (B) of section 6652(k)(2) of the 1986 Code is amended to read as follows:

"(B) the amount which bears the same ratio to the employer-provided benefit (within the meaning of section 89 without regard to subsection (g)(3)(C)(i) thereof) with respect to the employee to whom such failure relates as the amount of such benefit required to be but not shown on timely statements under sections 6051(a) and 6051(d) bears to the amount required to be shown.".

(11) CAFETERIA PLANS.—Subparagraph (D) of section 89(g)(3) of the 1986 Code is amended to read as follows:

"(D) SALARY REDUCTIONS.—

"(i) IN GENERAL.—Except for purposes of subsections (d)(1)(A)(ii) and (j)(5), any salary reduction shall be treated as an employer-provided benefit.

"(ii) SPECIAL RULE FOR SUBSECTION (d)(1)(A)(ii).—Notwithstanding clause (i), any salary reduction under a cafeteria plan shall be treated as an employer-provided benefit for purposes of subsection (d)(1)(A)(ii) if—

"(I) the percentage of employees who are not highly compensated employees eligible to participate in the plan is not greater than the percentage of highly compensated employees so eligible,

"(II) all employees eligible to participate in the plan are eligible under the same terms and conditions, and

"(III) no highly compensated employee eligible under the plan is eligible to participate in any other plan maintained by the employer for any benefit of the same type under terms and conditions different from the terms and conditions available under the plan to employees who are not highly compensated employees.".

(12) TESTING OF PLANS OF DIFFERENT TYPES.—Paragraph (4) of section 89(g) of the 1986 Code is amended to read as follows:

"(4) ELECTION TO TEST PLANS OF DIFFERENT TYPES TOGETHER.—The employer may elect to treat all plans of the types specified in such election as plans of the same type for purposes of applying subsection (e).".

(13) PART-TIME EMPLOYEES.—Paragraph (5) of section 89(j) of the 1986 Code is amended by striking out the last sentence thereof.

(14) ACQUISITIONS AND DISPOSITIONS.—

(A) Clause (ii) of section 89(j)(8)(A) of the 1986 Code is amended to read as follows:

"(ii) either—

"(I) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members in such group), or

"(II) such plan meets such other requirements as the Secretary may prescribe by regulation.".

(B) Subclause (II) of section 410(b)(6)(C)(i) of the 1986 Code is amended by inserting "or such plan meets such other requirements as the Secretary may prescribe by regulation" before the end period.

(15) DEPENDENT CARE ASSISTANCE.—Subparagraph (B) of section 129(d)(7) of the 1986 Code (as redesignated and amended by section 111B of this Act) is amended—

(A) by striking out "(within the meaning of section 414(q)(7))", and

(B) by adding at the end thereof the following new sentence: "For purposes of this subparagraph, the term 'compensation' has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.".

(16) REPORTING REQUIREMENTS.—

(A) Section 6039D(d) of the 1986 Code is amended—

(i) by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, the plan shall be required to provide any information required by this section which the Secretary determines, on the basis of the agreement between the plan and employer, is held by the plan (and not the employer)", and

(ii) by inserting "AND SPECIAL RULES" after "DEFINITIONS" in the heading thereof.

(B) The amendments made by this paragraph shall apply to years beginning after 1984.

(b) MODIFICATION TO DEFINITIONS OF HIGHLY COMPENSATED AND COMPENSATION AND TO SEPARATE LINE OF BUSINESS RULES.—

(1) DEFINITION OF HIGHLY COMPENSATED.—Subsection (q) of section 414 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) SIMPLIFIED METHOD FOR DETERMINING HIGHLY COMPENSATED EMPLOYEES.—If an election by the employer under this paragraph applies to any year, in determining whether an employee is a highly compensated employee for such year—

"(A) subparagraph (B) of paragraph (1) shall be applied by substituting '$50,000' for '$75,000', and

"(B) subparagraph (C) of paragraph (1) shall not apply.".

(2) LINE OF BUSINESS REQUIREMENTS.—

(A) SAFE HARBOR RULE.—Paragraph (3) of section 414(r) of the 1986 Code is amended to read as follows:

"(3) SAFE HARBOR RULE.—

"(A) IN GENERAL.—The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

"(i) not less than one-half, and

"(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

"(B) DETERMINATION MAY BE BASED ON PRECEDING YEAR.—The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

"(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, and

"(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.".

(B) SEPARATE OPERATING UNITS.—Section 89(g)(5) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In applying section 414(r)(7) for purposes of this section, an operating unit shall be treated as in a separate geographic area from another unit if such units are at least 35 miles apart.".

(3) COMPENSATION FOR GROUP-LIFE INSURANCE PLANS.—

(A) Paragraph (4) of section 89(j) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) COMPENSATION.—For purposes of applying this paragraph—

"(i) 1989 AND 1990.—In the case of testing years beginning in 1989 or 1990, the term 'compensation' means, at the election of the employer, base compensation or compensation defined in 414(s).

"(ii) 1991 AND THEREAFTER.—In the case of testing years beginning after 1990, compensation shall be determined on any basis determined by the employer which does not discriminate in favor of highly compensated employees.".

(B) Subparagraph (A) of section 89(j)(4) of the 1986 Code is amended by striking out "(within the meaning of section 414(s))".

(c) TRANSITIONAL PROVISIONS FOR PURPOSES OF SECTION 89.—

(1) TEMPORARY VALUATION RULES.—In the case of testing years beginning before the later of January 1, 1991, or the date 1 year after the Secretary of the Treasury or his delegate first issues such valuation rules as are necessary to apply the provisions of section 89 of the 1986 Code to health plans—

(A) Section 89(g)(3)(B) of the 1986 Code shall not apply.

(B)(i) Except as provided in clause (ii), the value of coverage under a health plan for purposes of section 89 of the 1986 Code shall be determined in substantially the same manner as costs under a health plan are determined under section 4980B(f)(4) of the 1986 Code.

(ii) For purposes of determining whether an employer meets the requirements of subsections (d), (e), and (f) of section 89 of the 1986 Code, value under clause (i) may be determined under any other reasonable method selected by the employer.

(2) FORMER EMPLOYEES.—The amendments made by section 1151 of the Reform Act shall not apply to former employees who separated from service with the employer before January 1, 1989 (and were not reemployed on or after such date), and such former employees shall not be taken into account in determining whether the requirements of section 89 of the 1986 Code are met with respect to other former employees. The preceding sentence shall not apply to the extent that the value of employer-provided benefits provided to any such former employee exceeds the value of such benefits which were provided under the terms of the plan as in effect on December 31, 1988. Any excess value under the preceding sentence shall be determined without regard to any increase required by Federal law, regulation or rule or any increase which is the same for employees separating on or before December 31, 1988, and employees separating after such date and which does not discriminate in favor of highly compensated employees who separated from service after December 31, 1988.

(3) WRITTEN PLAN REQUIREMENT.—The requirements of section 89(k)(1)(A) of the 1986

Code shall be treated as met with respect to any testing year beginning in 1989, if—

(A) the plan is in writing before the close of such year,

(B) the employees had reasonable notice of the plan's essential features on or before the beginning of such year, and

(C) the provisions of the written plan apply for the entire year.

(4) Rules to be prescribed before October 1, 1988.—Not later than October 1, 1988, the Secretary of the Treasury or his delegate shall issue such rules as may be necessary to carry out the provisions of section 89 of the 1986 Code.

(d) Effective Dates.—

(1) Subsection (a).—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986; except that the amendment made by subsection (a)(8) shall apply to testing years beginning after December 31, 1989.

(2) Subsection (b).—The amendments made by subsection (b) shall apply to years beginning after December 31, 1986.

SEC. 433. ESTATE TAX VALUATION FREEZES.

(a) Deemed Gift.—

(1) In general.—Paragraph (4) of section 2036(c) of the 1986 Code is amended to read as follows:

"(4) Treatment of certain transfers.—

"(A) In general.—For purposes of this subtitle, if, before the death of the original transferor—

"(i) the original transferor transfers all (or any portion of) the retained interest referred to in paragraph (1), or

"(ii) the original transferee transfers all (or any portion of) the transferred property referred to in paragraph (1) to a person who is not a member of the original transferor's family,

the original transferor shall be treated as having made a transfer by gift of property to the original transferee equal to the paragraph (1) inclusion (or proportionate amount thereof). Proper adjustments shall be made in the amount treated as a gift by reason of the preceding sentence to take into account prior transfers to which this subparagraph applied.

"(B) Coordination with paragraph (1).—In any case to which subparagraph (A) applies, nothing in paragraph (1) or section 2035(d)(2) shall require the inclusion of the transferred property (or proportionate amount thereof).

"(C) Special rule where property retransferred.—In the case of a transfer described in subparagraph (A)(ii) from the original transferee to the original transferor, the paragraph (1) inclusion (or proportion thereof) shall be reduced by the excess (if any) of—

"(i) the fair market value of the property so transferred, over

"(ii) the amount of the consideration paid by the original transferor in exchange for such property.

"(D) Definitions.—For purposes of this paragraph—

"(i) Original transferor.—The term 'original transferor' means the person making the transfer referred to in paragraph (1).

"(ii) Original transferee.—The term 'original transferee' means the person to whom the transfer referred to in paragraph (1) is made. Such term includes any member of the original transferor's family to whom the property is subsequently transferred.

"(iii) Paragraph (1) inclusion.—The term 'paragraph (1) inclusion' means the amount which would have been included in the gross estate of the original transferor under subsection (a) by reason of paragraph (1) (determined without regard to sections 2032 and 2032A) if the original transferor died immediately before the transfer referred to in subparagraph (A). The amount determined under the preceding sentence shall be reduced by the amount (if any) of the taxable gift resulting from the transfer referred to in paragraph (1)(B).

"(E) Continuing interest in transferred property may not be retained.—A transfer (to which subparagraph (A) would otherwise apply) shall not be taken into account under subparagraph (A) if the original transferor or the original transferee (as the case may be) retains a direct or indirect continuing interest in the property transferred in such transfer.".

(2) Cross reference.—Subsection (d) of section 2501 of the 1986 Code is amended by adding at the end thereof the following:

"(3) For treatment of certain transfers related to estate tax valuation freezes as gifts to which this chapter applies, see section 2036(c)(4).".

(b) Exceptions.—Subsection (c) of section 2036 of the 1986 Code is amended by adding at the end thereof the following new paragraphs:

"(6) Exceptions.—

"(A) In general.—Paragraph (1) shall not apply to a transaction solely by reason of 1 or more of the following:

"(i) The receipt (or retention) of qualified debt.

"(ii) Except as provided in regulations, the existence of an agreement for the sale or lease of goods or other property to be used in the enterprise or the providing of services and—

"(I) the agreement is an arm's length agreement for fair market value, and

"(II) the agreement does not otherwise involve any change in interests in the enterprise.

"(iii) An option or other agreement to buy or sell property at the fair market value of such property as of the time the option is (or the rights under the agreement are) exercised.

"(B) Limitations.—

"(i) Services performed after transfer.—In the case of compensation for services performed after the transfer referred to in paragraph (1)(B), clause (ii) of subparagraph (A) shall not apply if such services were performed under an agreement providing for the performance of services over a period greater than 3 years after the date of the transfer. For purposes of the preceding sentence, the term of any agreement includes any period for which the agreement may be extended at the option of the service provider.

"(ii) Amounts must not be contingent on profits, etc.—Clause (ii) of subparagraph (A) shall not apply to any amount determined (in whole or in part) by reference to gross receipts, income, profits, or similar items of the enterprise.

"(C) Qualified debt.—For purposes of this paragraph, except as provided in subparagraph (D), the term "qualified debt' means any indebtedness if—

"(i) such indebtedness—

"(I) unconditionally requires the payment of a sum certain in money in 1 or more fixed payments on specified dates, and

"(II) has a fixed maturity date not more than 15 years from the date of issue,

"(ii) the only other amount payable under such indebtedness is interest determined at—

"(I) a fixed rate, or

"(II) a rate which bears a fixed relationship to a specified market interest rate,

"(iii) the interest payment dates are fixed,

"(iv) such indebtedness does not grant voting rights to the person to whom the debt is owed or place any limitation (other than in a case where the indebtedness is in default as to interest or principal) on the exercise of voting rights by others, and

"(v) such indebtedness—

"(I) is not (directly or indirectly) convertible into an interest in the enterprise which would not be qualified debt, and

"(II) does not otherwise grant any right to acquire such an interest.

The requirement of clause (i)(I) that the principal be payable on 1 or more specified dates and the requirement of clause (i)(II) shall not apply to indebtedness payable on demand if such indebtedness is issued in return for cash to be used to meet normal business needs of the enterprise.

"(D) Special rule for startup debt.—

"(i) In general.—For purposes of this paragraph, the term 'qualified debt' includes any qualified startup debt.

"(ii) Qualified startup debt.—For purposes of clause (i), the term 'qualified startup debt' means any indebtedness if—

"(I) such indebtedness unconditionally requires the payment of a sum certain in money,

"(II) such indebtedness was received in exchange for cash to be used in any enterprise involving the active conduct of a trade or business,

"(III) the person to whom the indebtedness is owed has not at any time (whether before, on, or after the exchange referred to in subclause (II)) transferred any property (including goodwill) which was not cash to the enterprise or transferred customers or other business opportunities to the enterprise,

"(IV) the person to whom the indebtedness is owed has not at any time (whether before, on, or after the exchange referred to in subclause (II)) held any interest in the enterprise (including an interest as an officer, director, or employee) which was not qualified startup debt,

"(V) any person who (but for subparagraph (A)(i)) would have been an original transferee (as defined in paragraph (4)(C)) participates in the active management (as defined in section 2032A(e)(12)) of the enterprise, and

"(VI) such indebtedness meets the requirements of clauses (iv) and (v) of subparagraph (C).

"(7) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including such regulations as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through distributions or otherwise."

(c) Treatment of spouse.—Subparagraph (C) of section 2036(c)(3) of the 1986 Code is amended by striking out "An individual" and inserting in lieu thereof "Except as provided in regulations, an individual".

(d) Right of Recovery.—

(1) In general.—Subchapter C of chapter 11 of the 1986 Code is amended by inserting after section 2207A the following new section:

"SEC. 2207B. RIGHT OF RECOVERY WHERE DECEDENT RETAINED INTEREST.

"(a) Estate Tax.—

"(1) In general.—If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 (relating to transfers with retained life estate), the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the total tax under this chapter which has been paid as—

"(A) the value of such property, bears to

"(B) the taxable estate.

"(2) Decedent may otherwise direct by will.—Paragraph (1) shall not apply if the decedent otherwise directs in a provision of his will specifically referring to this section.

"(b) Gift Tax.—If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2036(c)(4), such person shall be entitled to recover from the original transferee (as defined in section 2036(c)(4)(C)(ii)) the amount which bears the same ratio to the total tax for such year under chapter 12 as—

"(1) the value of such property for purposes of chapter 12, bears to

"(2) the total amount of the taxable gifts for such year.

"(c) More Than One Recipient.—For purposes of this section, if there is more than 1 person receiving the property, the right of recovery shall be against each such person.

"(d) Penalties and Interest.—In the case of penalties and interest attributable to the additional taxes described in subsections (a) and (b), rules similar to the rules of subsections (a), (b), and (c) shall apply."

(2) Conforming amendment.—The table of sections for subchapter C of chapter 11 of the 1986 Code is amended by inserting after the item relating to section 2207A the following new item:

"Sec. 2207B. Right of recovery where decedent retained interest."

(e) Effective Date.—

(1) In general.—Except as provided in this subsection, any amendment made by this section shall take effect as if included in the provisions of the Revenue Act of 1987 to which such amendment relates.

(2) Subsection (a).—The amendments made by subsection (a) shall apply in cases where the transfer referred to in section 2036(c)(1)(B) of the 1986 Code is on or after June 21, 1988.

(3) Subsection (d).—If an amount is included in the gross estate of a decedent under section 2036 of the 1986 Code other than solely by reason of section 2036(c) of the 1986 Code, the amendments made by subsection (d) shall apply to such amount only with respect to property transferred after the date of the enactment of this Act.

TITLE V—RAILROAD UNEMPLOYMENT AND RETIREMENT PROGRAMS

SEC. 501. SHORT TITLE.

This title may be cited as the "Railroad Unemployment Insurance and Retirement Improvement Act of 1988".

SEC. 502. REFERENCES TO RAILROAD UNEMPLOYMENT INSURANCE ACT.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or provision, the reference shall be considered to be made to a section or other provision of the Railroad Unemployment Insurance Act.

Subtitle A—Financing Provisions

SEC. 511. AMENDMENTS RELATING TO DEFINITION OF "COMPENSATION".

(a) In General.—Section 1(i) is amended—

(1) by inserting "(1) In General.—" after "(i)";

(2) by striking out ": Provided, however, That in computing" and all that follows through "1983, shall be recognized." and inserting in lieu thereof ", except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized."; and

(3) by adding at the end thereof the following new subdivision:

"(2) Monthly Compensation Base.—

"(A) In general.—For purposes of subdivision (1), the term 'monthly compensation base' means the amount—

"(i) of $400 for calendar months before January 1, 1984;

"(ii) of $600 for calendar months after December 31, 1983 and before January 1, 1989; and

"(iii) computed under subparagraph (B) for months after December 31, 1988.

"(B) Computation.—

"(i) In general.—The amount of the monthly compensation base for each calendar year beginning after December 31, 1988, is the greater of—

"(I) $600; or

"(II) the amount, as rounded under clause (iii) if applicable, computed under the formula:

$$B=600\left(1+\frac{A-37{,}800}{56{,}700}\right)$$

"(ii) Meaning of symbols.—For the purposes of the formula in clause (i)—

"(I) 'B' is the dollar amount of the monthly compensation base; and

"(II) 'A' is the amount of the applicable base with respect to tier 1 taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of the Internal Revenue Code of 1986.

"(iii) Rounding rule.—If the monthly compensation base computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5, with such rounding being upward in the event the amount computed is equidistant between two multiples of $5.".

(b) Conforming Amendment With Respect to Subsidiary Remuneration Rule.—Section 1(k) is amended by striking out "$1,500" and inserting in lieu thereof "an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act".

(c) Conforming Amendment With Respect to Limitation on Taking Account of Money Remuneration.—Section 2(c) is amended by striking out "not in excess of $775 in any month shall be taken into account:" and inserting in lieu thereof "shall be taken into account that is not in excess of $775 in any month before 1989 and, in any month in a base year after 1988, is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600:".

(d) Conforming Amendments With Respect To Required Compensation Amount.—Section 4(a-2)(i)(A) is amended by striking out the semicolon at the end and inserting in lieu thereof "and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 1(i) of this Act;".

(e) Duty of Board To Make Certain Computations.—Section 12 is amended by adding at the end the following new subsection:

"(r) Duty of Board To Make Certain Computations.—

"(1) Compensation base.—On or before December 1, 1988, and on or before December 1 of each year thereafter, the Board shall compute—

"(A) in accordance with section 1(i), the monthly compensation base which shall be applicable with respect to months in the next succeeding calendar year; and

"(B) the amounts described in section 1(k), section 2(c), section 3, and section 4(a-2)(i)(A) that are related to changes in the monthly compensation base.

"(2) Maximum daily benefit rate.—On or before June 1, 1989, and on or before June 1 of each year thereafter, the Board shall compute in accordance with section 2(a)(3) the maximum daily benefit rate which shall be applicable with respect to days of unemployment and days of sickness in registration periods beginning after June 30 of that year.

"(3) Notice in federal register and to employers.—Not later than 10 days after each computation made under this subsection, the Board shall publish notice in the Federal Register and shall notify each employer and employee representative of the amount so computed.".

(f) Effective Date.—The amendments made by this section shall take effect upon the date of the enactment of this Act.

SEC. 512. CONTRIBUTION ADJUSTMENTS.

(a)(1) Employer Contributions and Experience Rating.—Section 8 is amended by striking out "(a) Every employer" and all that follows through the end of subsection (a) and inserting in lieu thereof the following:

"(a) Employer Contribution.—

"(1) In general.—

"(A) General rule.—

"(i) Contribution rate generally.—Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined under subparagraph (B), (C), or (D), whichever is applicable, of so much of the compensation paid in any calendar month by such employer to any employee as is not in excess of the monthly compensation base for that month as computed under section 1(i).

"(ii) Multiple employer limitation.— If compensation is paid to an employee by more than one employer in any calendar month—

"(I) the contributions required by this subsection shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which is in excess of such monthly compensation base; and

"(II) each employer (other than a subordinate unit of a national-railway-labor-organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him to such employee bears to the total compensation paid in such month by all such employers to such employee.

In the event that the compensation paid by such employers to the employee in such month is less than such monthly compensation base, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in *such month bears to the total compensation paid by all such employers to such employee in such month.*

"(B) TRANSITIONAL RULE.—

"(i) 1ST, 2D, AND 3D CALENDAR YEARS.—Except as provided in clause (vi), with respect to compensation paid in calendar years 1988, 1989, and 1990, the contribution rate shall be 8 percent.

"(ii) 4TH CALENDAR YEAR.—With respect to compensation paid in calendar year 1991, the contribution rate shall be the smaller of—

"(I) the maximum contribution limit computed under paragraph (20); or

"(II) the percentage computed pursuant to the following formula:

$$R=\frac{2A+B.}{3}$$

"(iii) 5TH CALENDAR YEAR.—With respect to compensation paid in calendar year 1992, the contribution rate shall be the smaller of—

"(I) the maximum contribution limit computed under paragraph (20); or

"(II) the percentage computed pursuant to the following formula:

$$R=\frac{A+2C.}{3}$$

"(iv) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

"(I) 'R' is the applicable contribution rate expressed as a percentage for months in the calendar year;

"(II) 'A' is the contribution rate determined under clause (i);

"(III) 'B' is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1991; and

"(IV) 'C' is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1992.

"(v) SPECIAL RULE FOR CERTAIN COMPUTATIONS.—For purposes of computing B and C in such formulas—

"(I) the percentage rate computed under subparagraph (C), if more than the maximum contribution limit computed under paragraph (20) shall not be reduced to that limit; and

"(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

"(vi) SPECIAL TRANSITION RULE FOR PUBLIC COMMUTER RAILROADS.—With respect to each of calendar years 1989 and 1990, the contribution of an employer which on the date of the enactment of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 is a publicly funded and publicly operated carrier providing rail commuter service shall be equal to the amount of benefits attributable to such carrier, plus an amount equal to 0.65 percent of the total compensation paid by that employer in that year on which that employer's contribution would be based under clause (i) if such employer's contribution were determined under that clause.

"(C) EXPERIENCE-RATED CONTRIBUTIONS.—With respect to compensation paid in a calendar year that begins after December 31, 1992, the contribution rate for each employer shall be determined as follows:

"(i) STEP 1.—Compute the employer's benefit ratio as of the preceding June 30 to 4 decimal points in accordance with paragraph (2).

"(ii) STEP 2.—Subtract the employer's reserve ratio as of the preceding June 30 as computed to 4 decimal points in accordance with paragraph (4).

"(iii) STEP 3.—Subtract the pooled credit ratio for the calendar year, if any, as computed to 4 decimal points in accordance with paragraph (12).

"(iv) STEP 4.—Multiply by 100 the total arrived at under the steps set forth in clauses (i) through (iii) so as to obtain a percentage rate, which shall be rounded to the nearest 100th of 1 percent. If the total arrived at under such steps is 0 or less than 0, the percentage rate as so computed shall be 0.

"(v) STEP 5.—Add 0.65 to the percentage rate arrived at under clause (iv), representing the portion of the employer's contribution which is to be deposited to the credit of the fund under subsection (i).

"(vi) STEP 6.—Add the surcharge rate for the calendar year, if any, as computed under paragraph (14).

"(vii) STEP 7.—Add the pooled charge ratio for the calendar year, if any, as computed to 4 decimal points under paragraph (13) and multiplied by 100.

"(viii) STEP 8.—Reduce the percentage rate computed in accordance with the preceding steps to the maximum contribution limit computed under paragraph (20), if such rate is higher than such limit. The rate computed in accordance with the preceding steps, after any reduction under this clause, is the contribution rate.

"(D) NEW-EMPLOYER CONTRIBUTION RATES.—Notwithstanding subparagraphs (B) and (C), the contribution rate applicable to a new employer who does not become subject to this Act until after December 31, 1989, shall be determined as follows:

"(i) 1ST CALENDAR YEAR.—With respect to compensation paid in calendar months before the end of the first full calendar year in which the employer is subject to this Act, the contribution rate shall be the average contribution rate paid by all employers during the 3 calendar years preceding the calendar year before the calendar year in which the compensation is paid. The average contribution rate shall be determined—

"(I) by dividing the aggregate contributions paid by all employers under this subsection in those 3 calendar years by the aggregate compensation with respect to which such contributions were paid; and

"(II) by multiplying the resulting ratio as computed to 4 decimal points by 100.

"(ii) 2D CALENDAR YEAR.—With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of—

"(I) the maximum contribution limit computed under paragraph (20); or

"(II) the percentage rate computed pursuant to the following formula:

$$R=\frac{2(A2)+B}{3}$$

"(iii) 3D CALENDAR YEAR.—With respect to compensation paid in calendar months in the third full calendar year in which the employer is subject to the coverage of this Act, the contribution rate shall be the smaller of—

"(I) the maximum contribution limit computed under paragraph (20); or

"(II) the percentage rate computed pursuant to the following formula:

$$R=\frac{A3+2C}{3}$$

"(iv) SUBSEQUENT CALENDAR YEARS.—With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

"(v) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

"(I) 'R' is the applicable contribution rate expressed as a percentage for months in the calendar year;

"(II) 'A1' is the contribution rate determined under clause (i) for such employer's first full calendar year;

"(III) 'A2' is the contribution rate which would have been determined under clause (i) if the employer's second calendar year had been its first full calendar year;

"(IV) 'A3' is the contribution rate which would have been determined under clause (i) if the employer's third calendar year had been such employer's first full calendar year;

"(V) 'B' is the contribution rate for the employer as determined under subparagraph (C) for the employer's second full calendar year; and

"(VI) 'C' is the contribution rate for the employer as determined under subparagraph (C) for the employer's third full calendar year.

"(vi) SPECIAL RULE FOR CERTAIN COMPUTATIONS.—For purposes of computing B and C in such formulas—

"(I) the percentage rate computed under subparagraph (C), shall not be reduced under clause (viii) of that subparagraph; and

"(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter that begins after the date on which the employer first commenced paying compensation subject to this Act and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

"(2) BENEFIT RATIO.—An employer's benefit ratio as of any given June 30 shall be determined by dividing all benefits charged to the employer under paragraph (15) during the 12 calendar quarters ending on such June 30 by the employer's 3-year compensation base as of such June 30 as computed under paragraph (3).

"(3) 3-YEAR COMPENSATION BASE.—An employer's 3-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 12 calendar quarters ending on such June 30.

"(4) RESERVE RATIO.—An employer's reserve ratio as of any given June 30 shall be computed by dividing the employer's reserve balance as of such June 30, as computed under paragraph (6), by that employer's 1-year compensation base as of such June 30, as

computed under paragraph (5). The employer's reserve ratio may be either a positive or a negative figure, depending upon whether the employer's reserve balance is a positive or negative figure.

"(5) 1-year compensation base.—An employer's 1-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 4 calendar quarters ending on such June 30.

"(6) Reserve balance.—An employer's reserve balance as of any given June 30 shall be determined by subtracting the employer's cumulative benefit balance as of such June 30, computed under paragraph (7), from the employer's net cumulative contribution balance as of such June 30, computed under paragraph (8). An employer's reserve balance may be either positive or negative, depending upon whether or not that employer's net cumulative contribution balance exceeds the employer's cumulative benefit balance.

"(7) Cumulative benefit balance.—An employer's cumulative benefit balance as of any given June 30 shall be determined by adding—

"(A) the net amount of the benefits charged to the employer under paragraph (15) on or after January 1, 1990; and

"(B) the cumulative amount of the employer's unallocated charges for the same period, if any, as computed under paragraph (9).

"(8) Net cumulative contribution balance.—An employer's net cumulative contribution balance as of any given June 30 shall be determined as follows:

"(A) Step 1.—Compute the sum of

"(i) all contributions paid by the employer pursuant to this subsection;

"(ii) that portion of the tax imposed under section 3321(a) of the Internal Revenue Code of 1986 that is attributable to the surtax rate under section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988; and

"(iii) any taxes paid by the employer pursuant to section 3321(a) of the Internal Revenue Code of 1986 (after the outstanding balance of loans made under section 10(d) before October 1, 1985, plus interest, have been paid);

on or after January 1, 1990.

"(B) Step 2.—Subtract an amount equal to the amount of such contributions deposited to the credit of the fund under subsection (i).

"(C) Step 3.—Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (1)(C)(iii).

"(9) Unallocated charge.—An employer's unallocated charge as of any given June 30 is the amount that as of such June 30 bears the same ratio to the system unallocated charge balance, computed under paragraph (10), as the employer's 1-year compensation base, computed under paragraph (5), bears to the system compensation base computed under paragraph (11).

"(10) System unallocated charge balance.—The system unallocated charge balance as of any given June 30 shall be determined as follows:

"(A) Step 1.—Compute the aggregate amount of all interest paid by the account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to section 10(d), during the 4 calendar quarters ending on that June 30.

"(B) Step 2.—Add the aggregate amount of any additions to the system unallocated charge balance specified in paragraphs (15) and (16), during that period.

"(C) Step 3.—Add the aggregate amount of any other expenditures by the account during that period not chargeable to any individual employer under paragraph (15) or to the fund under section 11.

"(D) Step 4.—Subtract the aggregate amount of all income to the account, under section 10(a)(iv) or section 10(a)(vii), during that period.

"(E) Step 5.—Subtract the aggregate amount of all transfers to the account, pursuant to section 11(d), during that period.

"(F) Step 6.—Subtract the aggregate amount of all other income and receipts of the account, during that period, which are not assigned to individual employer balances.

"(G) Step 7.—Subtract the net cumulative contribution balance of each employer whose balance has been cancelled pursuant to paragraph (16), during that period, calculated as of the date of such cancellation.

"(11) System compensation base.—The system compensation base as of any given June 30 shall be determined by adding together the amounts of the 1-year compensation bases of all employers and employee representatives subject to this Act, computed in accordance with paragraph (5), as of such June 30.

"(12) Pooled credit ratio.—The pooled credit ratio, if any, for a calendar year shall be determined as follows:

"(A) Step 1.—Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of $250,000,000 or of the amount that bears the same ratio to $250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

"(B) Step 2.—If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio for the calendar year.

"(13) Pooled charge ratio.—The pooled charge ratio, if any, for a calendar year shall be determined as follows:

"(A) Step 1.—With respect to each employer whose contribution rate for that calendar year as computed through step 6 under paragraph (1)(C) was greater than the maximum contribution limit computed under paragraph (20), multiply the employer's 1-year compensation base as of the preceding June 30, as computed in accordance with paragraph (5), by the difference between—

"(i) the percentage rate determined under subparagraph (B), (C), or (D) of paragraph (1) before the reduction to the maximum contribution limit; and

"(ii) the maximum contribution limit.

"(B) Step 2.—Add the amounts arrived at under step 1 so as to obtain an aggregate amount for all such employers.

"(C) Step 3.—For each employer whose contribution rate as computed through step 3 under paragraph (1)(C) was less than 0, the percentage rate by which such employer's rate was raised in order to bring that rate to 0 shall be multiplied by that employer's 1-year compensation base as of the preceding June 30. Subtract the total of the amounts computed under the preceding sentence for all employers from the amount arrived at in step 2.

"(D) Step 4.—Divide the aggregate amount arrived at under step 3 by the system compensation base as of the preceding June 30 as computed under paragraph (11) minus the one-year compensation base of those employers whose rates computed through step 6 of paragraph (1)(C) exceeded the maximum contribution rate computed under paragraph (20). The result is the pooled charge ratio for the calendar year.

"(14) Surcharge rate.—The surcharge rate for a calendar year, if any, shall be determined as follows:

"(A) Step 1.—Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a surcharge rate for the calendar year only if that balance is less than the greater of $100,000,000 or of the amount that bears the same ratio to $100,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

"(B) Step 2.—(i) If the balance to the credit of the account is less than the greater of the amounts referred to in the 2nd sentence of step 1 but is equal to or more than the greater of $50,000,000 or of the amount that bears the same ratio to $50,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent.

"(ii) If the balance to the credit of the account is less than the greater of the amounts referred to in the clause (i), but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent.

"(iii) If the balance to the credit of the account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

"(15) Chargeable benefits.—

"(A) In general.—Beginning January 1, 1990, all benefits paid to an employee for days of unemployment or days of sickness shall be charged to that employee's base year employer by adding amounts equal to the amounts of such benefits to the employer's cumulative benefit balance except that benefits paid by reason of strikes or work stoppages growing out of labor disputes shall not be added to the employer's cumulative benefit balance but instead shall be added to the system unallocated charge balance.

"(B) Adjustments.—A sum equal to each amount realized in recovery for overpayment, erroneous payment, or reimbursement of benefits and credited to the account pursuant to section 10(a)(v) or 10(a)(viii) shall be subtracted from the cumulative benefit

balances of the employers of the employees to whom such an amount was paid as a benefit in the proportion to the amount by which each such employer's cumulative benefit balance was increased as a result of the payment of the benefit.

"(C) MULTIPLE EMPLOYERS.—

"(i) IN GENERAL.—All benefits paid to an employee who had more than 1 base-year employer shall be charged to the cumulative benefit balances of the employee's base year employers—

"(I) in reverse chronological order of the employee's employment with each such employer in the base year if the employer at the time of the claim was the last base year employer, and the amount charged to each employer shall not exceed the compensation paid by that employer to the employee in the base year; and

"(II) in all other cases, in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year.

"(ii) SPECIAL RULE FOR EMPLOYER WITH CANCELLED BALANCES.—All benefits chargeable under this subparagraph to an employer for which the Board has cancelled balances under paragraph (16) shall be added to the system unallocated charge balance.

"(16) DEFUNCT EMPLOYER.—Whenever the Board determines, pursuant to such regulations as the Board may prescribe, that an employer has permanently ceased to pay compensation with respect to which contributions are payable pursuant to this subsection, the Board shall, effective on the date of the Board's determination, transfer the employer's net cumulative contribution balance as a subtraction from, and cumulative benefit balance as an addition to, the system unallocated charge balance and cancel all other accumulations of the employer.

"(17) INDIVIDUAL EMPLOYER RECORD.—

"(A) IN GENERAL.—As of January 1, 1990, the Board shall commence maintaining an individual employer record with respect to each employer, and the records necessary to determine pooled charges, pooled credits and unallocated charge balances for the system. Whenever a new employer begins paying compensation with respect to which contributions are payable pursuant to this subsection, the Board shall establish and maintain an individual employer record for such employer.

"(B) DEFINITION.—As used in this paragraph, the term 'individual employer record' means a record of an individual employer's benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, reserve balance, net cumulative contribution balance, and cumulative benefit balance.

"(18) JOINT EMPLOYER RECORDS.—Pursuant to regulations prescribed by the Board, the Board may allow 2 or more employers, upon application, to establish and maintain, or to discontinue, a joint individual employer record for such employers as though such joint record constituted a single employer's individual employer record.

"(19) MERGERS, CONSOLIDATIONS, OR OTHER CHANGES IN EMPLOYER IDENTITY.—

"(A) WITH OTHER EMPLOYERS.—In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another employer and the combination entails no partitioning of the property of the employer, the individual employer records of the 2 employers shall be combined into a joint individual employer record if the parties request such joint treatment pursuant to paragraph (18) or if the Board otherwise determines, pursuant to regulations prescribed by the Board, that such joint treatment is desirable.

"(B) WITH NONEMPLOYERS.—In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another entity that is not an employer, the employer's individual employer record shall attach to the combined entity.

"(C) SALE OF ASSETS.—In the event property of an employer is sold or transferred to another employer or other entity, or is partitioned among 2 or more employers or entities, the cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of the employer shall be prorated among the employers which receive the property, including any entities which become employers by virtue of such transfer or partition, in such equitable manner as the Board by regulation shall prescribe.

"(D) REINCORPORATION.—The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification shall attach to the reincorporated or altered entity.

"(E) ABANDONMENT.—If an employer abandons property or discontinues service but continues to operate as an employer, the employer's individual employer record shall continue to be calculated as provided in this subsection without retroactive adjustment.

"(20) MAXIMUM CONTRIBUTION LIMIT.—The maximum contribution limit with respect to a calendar year is 12 percent, unless a 3.5 percent surcharge under paragraph (14) is in effect with respect to that calendar year. If such a surcharge is in effect the maximum contribution limit with respect to that calendar year is 12.5 percent.

"(21) SPECIAL RULES FOR CERTAIN COMPUTATIONS UNDER PARAGRAPH (1)(C).—(A) Any computation that is to be made under paragraph (1)(C) on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period—

"(i) beginning on the later of—

"(I) January 1, 1990;

"(II) the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this Act; or

"(III) July 1 of the third calendar year preceding that June 30; and

"(ii) ending on that June 30.

"(B) The amount computed under subparagraph (A) shall be increased to an amount that bears the same ratio to the amount so computed as 12 bears to the number of calendar quarters on which the computation is based.".

(b) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Subsection (b) of section 8 is amended to read as follows:

"(b) EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative as is not in excess of the monthly compensation base computed in accordance with section 1(i), at a rate which shall be determined under subsection (a) in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this Act.".

(c) EXTENSION OF REMEDIES.—Section 8(h) is amended by adding at the end the following: "The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall also apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) to be applicable to such employer or employee representative is inaccurate or otherwise improper.".

(d) BOARD PROCLAMATION OF BALANCE.—Section 8 is amended—

(1) by redesignating subsections (c) through (h) as subsections (f) through (k), respectively; and

(2) by inserting after subsection (b) the following new subsections:

"(c) BOARD PROCLAMATION OF BALANCE.—

"(1) IN GENERAL.—Not later than October 15, 1990, and October 15 of each year thereafter the Board shall proclaim—

"(A) the balance to the credit of the account as of the preceding June 30 for purposes of paragraphs (12) and (14) of subsection (a);

"(B) the balance of any advances to the account under section 10(d) after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30 of that year;

"(C) the system compensation base as of that June 30 as computed in accordance with paragraph (11) of that subsection;

"(D) the system unallocated charge balance as of that June 30, as computed in accordance with paragraph (10) of that subsection; and

"(E) the pooled credit ratio, the pooled charge ratio, and the surcharge rate, if any, as determined under paragraph (12), (13), or (14) of that subsection and applicable in the following calendar year.

"(2) PUBLICATION OF NOTICE.—As soon as is practicable after such proclamation, the Board shall publish notice in the Federal Register of the amounts so determined and proclaimed.

"(d) NOTIFICATIONS BY BOARD.—(1) Not later than the last day of any calendar quarter that begins after March 31, 1990, the Board shall notify each employer and employee representative of its net cumulative contribution balance and cumulative benefit balance as of the end of the preceding calendar quarter, as computed in accordance with paragraphs (7) and (8) of subsection (a) as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30.

"(2) Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, and reserve balance as of the preceding June 30 as computed in accordance with paragraphs (2), (3), (4), (5), (6), and (9) of subsection (a), and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under paragraphs (1) (B), (C), or (D) of that subsection.

"(e) INFORMATION TO VERIFY ACCURACY TO BE MADE AVAILABLE.—Notwithstanding any other provision of law, upon request by an employer or employee representative, the Board shall make available to such employer or employee representative any information available to the Board which may be necessary to verify the accuracy of a contribution rate determined by the Board to be applicable to such employer or employee representative, or of any component of that

contribution rate including the accuracy of the employer's individual employer record, upon payment by such employer or employee representative to the Board of the cost incurred by the Board in making such information available. The amounts so paid to the Board shall be credited to and deposited in the fund.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act.

SEC. 513. ADMINISTRATIVE EXPENSES.

(a) CHANGE IN PERCENTAGE TO BE DEPOSITED IN FUND.—Section 8(i), as so redesignated by section 512(d), is amended by striking out "0.5" and inserting in lieu thereof "0.65".

(b) CONFORMING AMENDMENTS.—(1) Section 10(a) is amended by striking out "0.5" and inserting in lieu thereof "0.65".

(2) Section 11(a) is amended by striking out "0.5" and inserting in lieu thereof "0.65".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid in months beginning after September 30, 1988.

SEC. 514. NOTIFICATION TO EMPLOYER.

(a) IN CONNECTION WITH CLAIM.—Section 5(b) is amended by adding at the end thereof the following: "When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this Act, the Board shall provide notice of such determination to the claimant's base-year employer or employers.".

(b) IN CONNECTION WITH ADMINISTRATIVE REVIEW.—Section 5(c) is amended—

(1) by inserting "(1)" after "(c)";

(2) by inserting at the end of the first paragraph the following: "In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.";

(3) by inserting "(2)" at the beginning of the second paragraph;

(4) by inserting after the second paragraph the following:

"(3) Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 2(d) of this Act. Upon an appeal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.";

(5) by inserting "(4)" at the beginning of the third paragraph;

(6) by inserting "(5)" at the beginning of the fourth paragraph;

(7) by striking out "two" in the first sentence of the fourth paragraph and inserting in lieu thereof "three";

(8) by inserting before the final paragraph the following:

"(6) For purposes of this subsection and subsections (d) and (f), any base-year employer of the claimant is a properly interested party."; and

(9) by inserting "(7)" at the beginning of the final paragraph.

(c) IN CONNECTION WITH JUDICIAL REVIEW.—Section 5(f) is amended—

(1) by inserting after "member," in the first sentence "or any base-year employer of the claimant,"; and

(2) by inserting after the second sentence the following: "A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding.".

(d) CONFORMING AMENDMENTS WITH RESPECT TO LIMITATION ON ADMINISTRATIVE DISCLOSURE.—Section 12(d) is amended—

(1) by striking out "and" where it appears before "(iii)"; and

(2) by striking out the period at the end of the first sentence and inserting in lieu thereof of the following: "; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 5 of this Act.".

(e) CONFORMING AMENDMENT WITH RESPECT TO COURT PROCEEDINGS LIMITATION.—Section 12(n) is amended by striking out "court" in the proviso to the second paragraph.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1990.

SEC. 515. ANNUAL REPORT.

On or before July 1 of 1989, and of each calendar year thereafter, the Railroad Retirement Board shall submit to the Congress a report on the financial status of the railroad unemployment insurance system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including any adjustment the Railroad Retirement Board recommends regarding the rates of employer contributions.

SEC. 516. AMENDMENTS RELATING TO RAILROAD UNEMPLOYMENT REPAYMENT TAX.

(a) IN GENERAL.—Chapter 23A of the 1986 Code (relating to railroad unemployment repayment tax) is amended to read as follows:

"CHAPTER 23A. RAILROAD UNEMPLOYMENT REPAYMENT TAX

"Sec. 3321. Imposition of tax.
"Sec. 3322. Definitions.

"SEC. 3321. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed on every rail employer for each calendar month an excise tax, with respect to having individuals in his employ, equal to 4 percent of the total rail wages paid by him during such month.

"(b) TAX ON EMPLOYEE REPRESENTATIVES.—

"(1) IN GENERAL.—There is hereby imposed on the income of each employee representative a tax equal to 4 percent of the rail wages paid to him during the calendar month.

"(2) DETERMINATION OF WAGES.—The rail wages of an employee representative for purposes of paragraph (1) shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were a rail employer.

"(c) TERMINATION IF LOANS TO RAILROAD UNEMPLOYMENT FUND REPAID.—The tax imposed by this section shall not apply to rail wages paid on or after the 1st day of any calendar month if, as of such 1st day, there is—

"(1) no balance of transfers made before October 1, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

"(2) no unpaid interest on such transfers.

"SEC. 3322. DEFINITIONS.

"(a) RAIL EMPLOYER.—For purposes of this chapter, the term 'rail employer' means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.

"(b) RAIL WAGES.—For purposes of this chapter, the term 'rail wages' means, with respect to any calendar month, so much of the remuneration paid during such month which is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act.

"(c) EMPLOYEE REPRESENTATIVE.—For purposes of this chapter, the term 'employee representative' has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

"(d) CERTAIN RULES MADE APPLICABLE.—For purposes of this chapter, rules similar to the rules of section 3307 and 3308 shall apply."

(b) CONTINUATION OF SURTAX RATE THROUGH 1990.—

(1) IN GENERAL.—In the case of any calendar month beginning before January 1, 1991—

(A) there shall be substituted for "4 percent" in subsections (a) and (b) of section 3321 of the 1986 Code the percentage equal to the sum of—

(i) 4 percent, plus

(ii) the surtax rate (if any) for such calendar month, and

(B) subsection (c) of such section shall not apply to so much of the tax imposed by such section as is attributable to the surtax rate.

(2) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

(A) 3.5 percent for each month during a calendar year if, as of September 30, of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

(B) zero for any other calendar month.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 6157 of the 1986 Code (relating to quarterly payment of railroad unemployment repayment tax) is hereby repealed.

(2) Paragraph (2) of section 6201(b) of the 1986 Code (relating to amount not to be as-

sessed) is amended by striking out "or tax imposed by section 3321".

(3) Section 6317 of the 1986 Code (relating to payments of Federal unemployment tax for calendar quarter) is amended—

(A) by striking out "or tax imposed by section 3321", and

(B) by striking out "and 23A, as the case may be,".

(4) Subsection (e) of section 6513 of the 1986 Code (relating to payments of Federal unemployment tax) is amended by striking out the last sentence.

(5) Subsection (i) of section 6601 of the 1986 Code (relating to exception as to Federal unemployment tax) is amended by striking out "or 3321".

(6) Subparagraph (A) of section 232(a)(2) of the Railroad Retirement Revenue Act of 1983 is amended by striking out "is attributable to the basic rate under section 3321(c)(1)(A) of the Internal Revenue Code of 1954" and inserting in lieu thereof "is not attributable to the surtax rate under section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988".

(7) Subparagraph (B) of section 232(a)(2) of such Act is amended by striking out "section 3321(c)(1)(B) of such Code" and inserting in lieu thereof "section 516(b) of such Act".

(d) EFFECTIVE DATE.—The amendments made by this section, and the provisions of subsection (b), shall apply to remuneration paid after December 31, 1988.

SEC. 517. GAO STUDY OF FRAUD AND PAYMENT ERRORS.

The Comptroller General shall study the frequency of fraud and payment errors in the railroad unemployment compensation program. Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall report to Congress the results of such study. Such report shall include—

(1) estimates of rates and amounts of annual losses due to fraud and overpayment;

(2) comparisons of such rates with the rates of losses in other Federal programs which experience such losses;

(3) recommendations for legislative measures that could be taken to reduce the losses in the railroad unemployment compensation program arising from fraud and payment errors; and

(4) such other matters relating to such fraud and payment errors as the Comptroller General determines are appropriate.

Subtitle B—Benefit and Other Adjustments

SEC. 521. WAITING PERIOD FOR BENEFITS AND BENEFIT INCREASES.

(a) IN GENERAL.—Section 2(a) is amended—

(1) by inserting "(1)" after "(a)";

(2) by striking out the first paragraph and inserting in lieu thereof:

"Benefits shall be payable to any qualified employee for each day of unemployment in excess of four during any registration period: Provided, however, That no benefits shall be payable for days of unemployment during the first registration period within a benefit year in which the employee has more than four days of unemployment: Provided further, That in any case in which the Board finds that an employee's unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, no benefits shall be payable for the first fourteen days of unemployment due to such stoppage of work, however, for subsequent days of unemployment due to such stoppage of work benefits shall be payable for days in excess of four during any registration period. Benefits shall be payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, but excluding four days of sickness in any registration period: Provided, however, That no benefits shall be payable for days of sickness in the first registration period within a benefit year in which the employee has both four consecutive days of sickness and more than four days of sickness. A period of continuing sickness means (i) a period of consecutive days of sickness, whether from one or more causes, or (ii) a period of successive days of sickness due to a single cause without interruption of more than ninety consecutive days which are not days of sickness.".

(3) by inserting "(2)" at the beginning of the second paragraph;

(4) by striking out "and" after "shall not exceed $24 per day of such unemployment or sickness" in the second paragraph and inserting in lieu thereof a comma;

(5) by inserting "but before July 1, 1988," after "June 30, 1976," in the second paragraph;

(6) by striking out the period at the end of the first sentence of the second paragraph and inserting in lieu thereof ", that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection.";

(7) by inserting after the second paragraph the following new paragraph:

"(3)(A) The maximum daily benefit rate which the Board is required to compute under section 12(r)(2) shall be the amount computed pursuant to the following formula, but shall be not less than $30:

$$BR=25\left(1+\frac{A-600}{900}\right)$$

"(B) For purposes of such formula—

"(i) 'BR' represents the maximum daily benefit rate; and

"(ii) 'A' represents the amount obtained by dividing the amount of the 'applicable base' with respect to tier 1 taxes as determined under section 3231(e)(2) of the Internal Revenue Code of 1986 for the calendar year in which the benefit year begins by 60, with this quotient being rounded down to the nearest multiple of $100.

"(C) If the maximum daily benefit rate computed under such formula is not a multiple of $1, it shall be rounded to the nearest multiple of $1, with such rounding being upward in the event the amount computed is equidistant between two multiples of $1."; and

(8) by inserting "(4)" at the beginning of the last paragraph.

(b) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) The amendments made by paragraph (2) of subsection (a) shall apply with respect to registration periods beginning after June 30, 1988.

SEC. 522. QUALIFYING CONDITION.

(a) IN GENERAL.—Section 3 is amended—

(1) by inserting "with respect to the base year" after "his compensation"; and

(2) by striking "$1,500 with respect to the base year" and inserting in lieu thereof "2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 523. INCREASE IN MAXIMUM PERMITTED SUBSIDIARY REMUNERATION.

(a) IN GENERAL.—The second paragraph of section 1(k) is amended by striking out "$10" and inserting "$15" in lieu thereof.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on July 1, 1988.

Subtitle C—Retirement Act Amendments

SEC. 531. ADDITIONAL LUMP SUM PAYMENT IN CERTAIN CASES.

Section 6 of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following new subsection:

"(e)(1) Every individual who will have completed ten years of service at the time of his retirement or death, who will have received compensation in the nature of separation or severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 3(i)(4) of this Act except for the fact that such individual was not in an employment relation to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 2(a)(1) of this Act begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under section 2(a)(1) begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1), or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

"(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 3(i)(4) of this Act if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986.".

SEC. 532. DELETION OF LAST PERSON SERVICE AS A DISQUALIFICATION.

(a) IN GENERAL.—Section 2(e) of the Railroad Retirement Act of 1974 is amended—

(1)(A) in subdivision (1), by striking out "any person, whether or not"; and

(B) by striking out "(but with the" and all that follows through "political subdivision of a State";

(2) in subdivision (2), by striking out "and of the person, or persons, by whom he was last employed"; and

(3) in subdivision (3), by striking out "or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) began to accrue".

(b) Deduction for Work.—Section 2(f) of such Act is amended by adding at the end thereof the following new subdivision:

"(6)(A) Except as provided in subparagraph (B)—

"(i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), shall each be subject to a deduction of $1 for each $2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; and

"(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) shall be subject to a deduction of $1 for each $2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) began to accrue.

"(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.".

(c) Effective Date.—The amendments made by this section shall apply to annuities payable under the Railroad Retirement Act of 1974 for months beginning after the date of enactment of this Act.

SEC. 533. EARNINGS OF DISABILITY ANNUITANTS.

(a) In General.—Section 2(e)(4) of the Railroad Retirement Act of 1974 is amended—

(1) by striking out "$200 in earnings" and inserting in lieu thereof "$400 in earnings (after deduction of disability related work expenses)";

(2) by striking out "$2,400" each place it appears and inserting in lieu thereof "$4,800 (after deduction of disability related work expenses)";

(3) by striking out "$200" each place it appears and inserting in lieu thereof "$400"; and

(4) by striking out "$100" and inserting in lieu thereof "$200".

(b) Effective Date.—The amendments made by this section shall apply with respect to months in calendar years beginning after December 31, 1987.

SEC. 534. ALLOWANCE OF CREDIT FOR MILITARY SERVICE.

(a) In General.—Section 1(g)(2) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following:

"For purposes of section 3(i)(2) of this Act, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this Act rendered service as an employee to an employer under this Act in the year such individual was released from active military service or in the year immediately following such year.".

(b) Effective Date.—The amendment made by this section shall apply with respect to annuities accruing in months after the date of enactment of this Act.

TITLE VI—AMENDMENTS RELATING TO SOCIAL SECURITY ACT PROGRAMS

Subtitle A—Old-Age, Survivors, and Disability Insurance and Related Provisions

SEC. 601. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1)(iii), by striking "June 1989" and inserting "June 1990"; and

(2) in paragraph (3)(B), by striking "January 1, 1989" and inserting "January 1, 1990".

SEC. 602. CONSOLIDATION OF REPORTS ON CONTINUING DISABILITY REVIEWS.

(a) In General.—Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)) is amended by striking "semiannually" and inserting "annually".

(b) Effective Date.—The amendment made by this section shall apply to reports required to be submitted after the date of the enactment of this Act.

SEC. 603. DENIAL OF BENEFITS TO INDIVIDUALS DEPORTED OR ORDERED DEPORTED ON THE BASIS OF ASSOCIATIONS WITH THE NAZI GOVERNMENT OF GERMANY DURING WORLD WAR II.

(a) In General.—Section 202(n)(1) of the Social Security Act (42 U.S.C. 402(n)(1)) is amended by striking "or (18)" in the matter preceding subparagraph (A) and inserting "(18), or (19)".

(b) Time of Deportation.—Section 202(n) of such Act is further amended by adding at the end the following new paragraph:

"(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of deportation has been issued under paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19) as of the date on which such order became final.".

(c) Effective Date.—The amendments made by this section shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act, and only to benefits for months beginning (and deaths occurring) on or after such date.

SEC. 604. REQUIREMENT OF SOCIAL SECURITY ACCOUNT NUMBER AS A CONDITION FOR RECEIPT OF SOCIAL SECURITY BENEFITS.

(a) In General.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended—

(1) in subparagraph (B)(i) in the matter preceding subclause (I), by inserting "and subparagraph (E)" after "subparagraph (A)"; and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) The Secretary shall require, as a condition for receipt of benefits under this title, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Secretary or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.".

(b) Effective Date.—The amendments made by this section shall apply to benefits entitlement to which commences after the sixth month following the month in which this Act is enacted.

SEC. 605. SUBSTITUTION OF CERTIFICATE OF ELECTION FOR APPLICATION TO ESTABLISH ENTITLEMENT FOR CERTAIN REDUCED WIDOW'S AND WIDOWER'S BENEFITS.

(a) Widow's Insurance Benefits.—Section 202(e) of the Social Security Act (42 U.S.C. 402(e)) is amended—

(1) by redesignating paragraph (1)(C)(ii) as paragraph (1)(C)(iii);

(2) by striking paragraph (1)(C)(i) and inserting the following:

"(C)(i) has filed application for widow's insurance benefits,

"(ii) was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

"(I) has attained retirement age (as defined in section 216(l)),

"(II) is not entitled to benefits under subsection (a) or section 223, or

"(III) has in effect a certificate (described in paragraph (8)) filed by her with the Secretary, in accordance with regulations prescribed by the Secretary, in which she elects to receive widow's insurance benefits (subject to reduction as provided in subsection (q)), or"; and

(3) by adding at the end the following new paragraph:

"(8) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

"(A) for the month in which it is filed and for any month thereafter, and

"(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62.".

(b) Widower's InsuranceBenefits.—Section 202(f) of such Act (42 U.S.C. 402(f)) is amended—

(1) by redesignating paragraph (1)(C)(ii) as paragraph (1)(C)(iii);

(2) by striking paragraph (1)(C)(i) and inserting the following:

"(C)(i) has filed application for widower's insurance benefits,

"(ii) was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

"(I) has attained retirement age (as defined in section 216(l)),

"(II) is not entitled to benefits under subsection (a) or section 223, or

"(III) has in effect a certificate (described in paragraph (8)) filed by him with the Secretary, in accordance with regulations prescribed by the Secretary, in which he elects to receive widower's insurance benefits (subject to reduction as provided in subsection (q)), or"; and

(3) by adding at the end the following new paragraph:

"(8) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

"(A) for the month in which it is filed and for any month thereafter, and

"(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.".

(c) Effective Date.—The amendments made by this section shall apply to benefits payable under section 202(e) or section 202(f) of the Social Security Act on the basis of the wages and self-employment income of an individual who dies after the month in which this Act is enacted.

SEC. 606. TECHNICAL CORRECTIONS IN OASDI PROVISIONS.

(a) Technical Corrections.—(1) Section 205(c)(2)(C)(iii) of the Social Security Act is amended by striking "the Social Security Act" and inserting "this Act".

(2) Section 211(a)(7) of such Act (as amended by section 9023(b)(1) of Public Law 100-203) is amended by inserting "of the Internal Revenue Code of 1986" before the semicolon at the end.

(3) The last sentence of section 226(b) of such Act (as added by section 9010(e)(3) of Public Law 100-203) is amended to read as follows: "In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the term '36 months' in the second sentence of section 223(a)(1), in section 202(d)(1)(G)(i), in the last sentence of section 202(e)(1), and in the last sentence of section 202(f)(1) shall be applied as though it read '15 months'.".

(4)(A) Subsection (d) of section 3121 of the Internal Revenue Code of 1986 (as amended by secuon 9002(b)(2) of Public Law 99-509) is amended—

(i) by redesignating paragraph (3) as paragraph (4), by striking "; or" at the end of such paragraph and inserting a period, and by moving such paragraph (as so redesignated and amended) to the end of the subsection; and

(ii) by redesignating paragraph (4) as paragraph (3), and by striking the period at the end and inserting "; or".

(B) Section 3306(i) of such Code (as amended by section 9002(b)(2) of Public Law 99-509) is amended by striking "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)" and inserting "paragraph (4) and subparagraphs (B) and (C) of paragraph (3)".

(5) Section 13303(c)(2) of Public Law 99-272 is amended—

(A) by striking "312(b)" and inserting "3121(b)";

(B) by striking "is amended" and inserting ", and paragraph (20) of section 210(a) of the Social Security Act, are each amended"; and

(C) by striking "after 'service' " and inserting "before 'performed' ".

(6) Section 9006(b)(1) of Public Law 100-203 is amended by striking "3111(a)" and inserting "3111".

(b) Effective Date.—(1) Except as provided in paragraph (2), the amendments made by this section shall be effective on the date of the enactment of this Act.

(2) Any amendment made by this section to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act or the Internal Revenue Code of 1986 as added or amended by a provision of a particular Public Law which is so referred to, shall be effective as though it had been included or reflected in the relevant provisions of that Public Law at the time of its enactment.

Subtitle B—Public Assistance and Unemployment Compensation

SEC. 611. IMPLEMENTATION OF PROPOSED REGULATION RELATING TO ASSISTANCE TO HOMELESS AFDC FAMILIES DELAYED.

Section 9118 of the Omnibus Budget Reconciliation Act of 1987 is amended by striking "October 1, 1988" and inserting "October 1, 1989".

SEC. 612. DISREGARD OF CERTAIN HOUSING ASSISTANCE PAYMENTS IN DETERMINING INCOME AND RESOURCES UNDER SSI PROGRAM.

(a) Income.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" after the semicolon at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting "; and"; and

(3) by adding after paragraph (13) the following new paragraph:

"(14) assistance paid, with respect to the dwelling unit occupied by such individual (or such individual and spouse), under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949, or section 202(h) of the Housing Act of 1959.".

(b) Resources.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(1) by striking "and" after the semicolon at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by inserting after paragraph (7) the following new paragraph:

"(8) the value of assistance referred to in section 1612(b)(14), paid with respect to the dwelling unit occupied by such individual (or such individual and spouse).".

(c) Effective Date.—The amendments made by this section shall be effective as though they had been included in section 162 of the Housing and Community Development Act of 1987 at the time of its enactment.

Subtitle C—National Commission on Children

SEC. 621. DELAY IN REPORTING DATE FOR NATIONAL COMMISSION ON CHILDREN.

Section 1139 of the Social Security Act (42 U.S.C. 1320b-9) is amended—

(1) by striking "September 30, 1988" in subsection (d) and inserting "September 30, 1989";

(2) by striking "March 31, 1989" in subsection (d) and inserting "March 31, 1990";

(3) by striking "March 31, 1989" in subsection (e)(1)(A) and inserting "April 30, 1990";

(4) by striking "March 31, 1989" in subsection (e)(4)(B) and inserting "March 31, 1990"; and

(5) by inserting "for each of fiscal years 1989 and 1990" after "section" in subsection (j).

The **PRESIDING OFFICER.** The Senator from Montana.

Mr. **BAUCUS.** Mr. President, on behalf of the Committee on Finance I send to the desk a modification of the amendment to S. 2238.

The **PRESIDING OFFICER.** The Senator has that right, and the amendment will be so modified.

The amendment is as follows:

(The modification is printed as amendment No. 3044 in the Record of September 16, 1988, pages S12731 and following.)

Mr. **BAUCUS.** Mr. President, the 1986 Tax Reform Act was the most significant tax law in over 30 years.

It reduced income tax rates to levels that few dreamed possible. To pay for lower rates, the Act modified dozens of deductions and exclusions. It closed loopholes. And it added complicated new provisions designed to increase the fairness of the tax system.

On the whole, the Tax Reform Act has worked out well. That is a tribute to Senator Packwood and others who put the bill together. I am honored to be floor managing this bill with Senator Packwood, who worked so diligently to achieve tax reform.

But the bill and conference report were close to 2,000 pages long. Any bill of such size and scope will contain many drafting errors.

The Tax Reform Act is no exception. Some provisions are ambiguous. Others lack conforming language. Some are inconsistent with other provisions in the bill or with the clear intent of the Congress. Others contain clerical errors or omissions. Frankly, some provisions are flat wrong or incomprehensible.

Mr. President, the Technical Corrections Act is designed to correct these mistakes.

I grant you, there are few things duller or more mind-boggling than technical corrections to a tax bill.

But this is not an academic exercise. When drafting errors make provisions inoperable, hundreds or thousands of taxpayers may be affected.

Let me give an example. The Tax Reform Act was supposed to provide the blind and elderly a higher standard deduction. But there is a mechanical problem with the provision. Unless we revise the provision, blind and elderly people who live with their families and are claimed as dependents will not get the higher deduction.

For another example, the 1986 act limited the amount that taxpayers can deduct for home mortgage interest. In the interest of fairness, we provided a grandfather rule for existing mortgages. But there is a glitch. Unless we act, the grandfather rule may not apply to mortgages that have been refinanced.

The bill we are considering today is designed to correct a series of problems like these. It should be a straightforward exercise. We made mistakes, so we should correct them.

But it has not been that simple. The Technical Corrections Act has taken a long, twisting path to the Senate floor. And it has evolved through several generations.

Let me briefly recap the history of this bill.

Before the ink was dry on the Tax Reform Act, the Finance Committee began receiving requests for technical corrections. Our committee staff worked with the staffs of the House Ways and Means Committee and the Joint Tax Committee. They sifted through literally thousands of requests, separating true technical corrections from requests for substantive changes in the law.

At the end of 1986, both the House and the Senate passed technical corrections bills but were not able to reconcile their different versions before adjourning.

In June 1987, the chairmen of the Finance Committee and the Ways and Means Committee together came back with a new bill. Identical versions were introduced in both Chambers. The House version was included in the 1987 House reconciliation bill. The Senate version was included in the first set of budget reconciliation provisions reported out by the Finance Committee last October.

However, under the budget summit agreement, the President insisted that all provisions that were not directly related to deficit reduction be stripped from the reconciliation bill. So the technical corrections bill was set aside again.

This past March, Chairman ROSTENKOWSKI and Chairman BENTSEN once again introduced identical technical corrections bills. The House passed its bill just this past month. The Finance Committee completed action on its bill on September 8.

So, Mr. President, at long last, in the closing days of the Congress, we are before the full Senate with a bill making technical corrections to the 1986 Tax Reform Act.

For 2 years, taxpayers and practitioners have struggled with provisions that were unclear, misleading, or just plain wrong.

It is time that we put an end to the ambiguity and uncertainty. A recent letter from Herbert Lerner of the American Institute of Certified Public Accountants puts it well:

> A self-assessment system of taxation must provide clear and certain rules if the public is to comply. Failure to enact technical corrections could result in a serious erosion of public confidence in the tax system.

Mr. President, in addition to technical corrections, the bill also contains provisions addressing several tax issues of broad concern to Members of the Senate.

Most importantly, the bill contains a provision that will restore the full diesel fuel excise tax exemption for farmers and other off-road users.

Last year's reconciliation bill requires that these exempt users pay the tax up front and then apply for a refund, without interest. These rules have imposed an unfair burden on our Nation's farmers, fishermen, miners, timbermen, construction businesses, and others.

We have all heard about the problem. It is corrected in this bill.

In addition, the bill extends many important tax incentives that expire this year or next, incentives that promote education, housing, research, and jobs.

We extend the educational assistance exclusion, which encourages employers to help workers get more education. This program has 55 Senate cosponsors.

We extend the Mortgage Revenue Bond Program, which helps young families buy their first homes. This program has 80 Senate cosponsors.

We extend the low-income housing credit, which encourages the construction of affordable housing for our neediest citizens. This program has 52 Senate cosponsors.

We extend the research and development credit and the research allocation rules, which are critical to our international competitiveness.

We extend the rules for payments from the FSLIC to troubled thrift institutions, and apply the rules to FDIC payments. This will help ease the crisis in the banking industry.

And we extend the targeted jobs credit, which helps bring disadvantaged workers into the work force and onto the tax rolls.

In addition, the bill makes three important changes that will help taxpayers cope with the tax system.

First, we repeal the provision that requires artists and writers to capitalize their research expenses.

This provision treats a struggling artist as if he were a major multinational corporation. As a result, it creates an unnecessary recordkeeping burden. Many Senators have asked that the provision be repealed.

In a similar vein, the bill repeals the so-called heifer tax that requires ranchers to monitor their feed, veterinary, and other preproductive expenses for every individual breeding animal. This provision, too, creates an unnecessary recordkeeping burden and should be repealed.

Finally, the bill enacts a comprehensive taxpayer bill of rights. Many of us have heard our constituents complain, justifiably, about unfair or high-handed treatment at the hands of the Internal Revenue Service.

This bill contains a series of provisions, developed by Senator PRYOR in conjunction with Chairman BENTSEN, that protect honest taxpayers from harrassment.

Those are the key provisions that the bill does include. Let me tell you a few things that it does not include.

First of all, it does not include any broad-based tax increases.

The bill's revenue losses are offset by several provisions that close tax loopholes, almost all of them loopholes that the Treasury Department brought to our attention.

As a matter of good tax policy, we should enact these provisions. They include accelerated payment requirements for corporate estimated taxes, tighter rules on investment oriented life insurance contracts, and limitations on sales of tax benefits by Alaska native corporations.

Second, the bill does not include any so-called rifle shot, provisions that target tax relief to a single taxpayer or a small number of taxpayers. Every provision in this bill is fully generic. It is a bill that none of us will have to apologize for.

Mr. President, this bill is the product of more than 2 years of work. And it is the result of a thoroughly bipartisan process. Senator PACKWOOD has been deeply involved in this bill from the beginning, and it was approved by the Finance Committee with full bipartisan support.

This bill corrects mistakes. It extends expiring provisions. It helps taxpayers cope with the tax system. And it closes unjustified loopholes. It is a good bill that deserves our support.

Mr. PACKWOOD. Mr. President, rather than echo everything Senator BAUCUS has said—and he has shown exemplary leadership in getting this bill this far—I would simply say that every example he has given is absolutely accurate. Ninety-five percent of this bill is genuinely correction of errors. About 5 percent of it, like the diesel fuel tax or like the provision for authors and composers, are mistakes that we made, some in the tax reform bill, some in the reconciliation bill last year.

The diesel fuel is a good example. We found we were losing about $500 million a year in deliberate evasion of gasoline and diesel taxes. So we changed the system of collection. It was not, by and large, from farmers and loggers and fishing fleets. We changed the law as to how the tax was collected and we, in essence, said to everybody: "You have to pay tax ahead of time, but if you really do not owe it, you can file and get a refund."

Well, what that meant is, for anybody that did not owe it, they made an interest-free loan to the U.S. Government for as long as the Government had their money. And, as the vehicles that were not taxable are off-road vehicles—tractors, ships, fishing ships—do not use the highways, there is no point for them to pay the tax.

This bill changes this. They do not have to pay it ahead of time and then file a refund and get it back. They just get to buy it tax-exempt.

For the artists and composers and publishers, Senator BAUCUS well stated what it is.

But picture this situation. You are an author. You are going to do a book on the history of Europe. You go to Europe and you hire a young researcher and you pay the researcher $15,000 or $20,000 a year to help you with your research. Under the old law, you could expense that. You could take the deduction this year. If you paid somebody $15,000 to $20,000, you could take the expense now.

We said to all of these people, "You have to capitalize your expenses." By that we mean you cannot take them now. You have to wait until you publish your book, see if you make any profits on it, then you can deduct from the profits the cost of your expenses.

Well, that is, I suppose, well and good for a major corporation. And we left this on for major corporations. They have enough cash that they can afford that. But for the person who does not have a lot of liquidity, they cannot afford to pay out money ahead of time year after year in the hopes that they might get to deduct it later on, if whatever they are working on turns out to be a success and they make money at it. And with many composers, artists, and photographers, most of them do not make money. So that is a change to correct what turned out to be an inequity.

The rest of the provisions in this bill are, by and large, provisions similar to that. I know we have 50 or 60 amendments that Members may want to offer on the floor. I am not going to speak any longer. I hope we could either accept, defeat, or otherwise dispose of the amendments that are coming on and finish this bill tonight because, as I say, 95 percent of it changes errors. The 5 percent that are not changes of errors are honest corrections of law where, for one reason or another, in tax reform or in reconciliation last year, we made a mistake in judgment and we are now correcting that mistake of judgment

The PRESIDING OFFICER. Who seeks recognition?

Mr. BAUCUS. Mr. President, essentially, this bill is open for amendment. I encourage Senators to come to the floor to offer their amendments. I think that this is a bill that we can dispose of in due course, perhaps by the end of this day. In fact, quite certainly by the end of this day.

I have spoken with many Senators about potential amendments they have. Senator Packwood has spoken with many Senators about potential amendments other Senators might have. I think that, based on those conversations, we have reached a resolution on many of those amendments.

I, therefore, encourage Senators, based upon those conversations—that is, reaching affirmative resolution—to come to the floor and offer their amendments so we can dispose of them very quickly.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Conrad). Without objection, it is so ordered.

AMENDMENT NO. 3442

(Purpose: To amend the Internal Revenue Code of 1986 to provide that service performed for an elementary or secondary school operated primarily for religious purposes is exempt from the Federal unemployment tax)

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina, Mr. Thurmond, for himself, Mr. Grassley, and Mr. Heflin, proposes an amendment numbered 3442.

Mr. THURMOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . EXEMPTION OF CERTAIN RELIGIOUS SCHOOLS FROM FEDERAL UNEMPLOYMENT TAX.

(a) In General.—Section 3309(b)(1) of the 1986 Code (relating to exemption from unemployment tax) is amended by inserting before the semicolon at the end thereof the following: ", or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a)".

(b) Effective Date.—The amendment made by subsection (a) shall apply to services performed after December 31, 1988.

Mr. THURMOND. Mr. President, this amendment would remove an inequity found in the Federal Unemployment Tax Act, and thus also in the State unemployment compensation acts which are directly patterned after this act. I am pleased to have Senators Heflin and Grassley join me as cosponsors.

In enacting FUTA Congress found it important to exempt from coverage of this act employees of churches, and religious organizations operated by churches. The Supreme Court of the United States, in *St. Martin Evangelical Lutheran Church* v. *South Dakota,* 451 U.S. 772 (1981), held that this exemption extends to schools which are operated by churches.

Apparently Congress had not been aware of the fact that there are religious schools which are not operated by churches but by lay boards of believers. These are as pervasively religious as the church-operated schools. These nonchurch religious schools would not exist except for their religious mission and are, in every way except church affiliation, religiously indistinguishable from the exempt schools. Technically, however, the nonchurch religious schools are not exempt under the terms of the statute. The Secretary of Labor has notified State unemployment compensation offices that they may not treat this class of schools as exempt.

These nonchurch affiliated religious schools are not numerous in the United States. However, they do constitute about 20 percent of the membership of the Protestant evangelical schools in the country. There are some Catholic and Jewish schools, as well as some other Protestant schools, which are likewise not operated by churches but are governed by religious lay boards.

The tax plight of these schools is very threatening to them. In 1979, a group of religious schools attempted to litigate the issue of nonexemption of the nonchurch religious schools on constitutional grounds, and won a favorable decision from the U.S. district court at Los Angeles. The Supreme Court, because of a jurisdictional difficulty in the case, and not addressing the merits of the case, refused to review that decision, leaving the schools to pursue litigation in State courts. Unfortunately, these schools simply do not have the major financial resources necessary to pursue new litigation in hopes of eventually getting the case before the U.S. Supreme Court. Such a litigation would take years, with no certainty that the Supreme Court would hear the case. Hence it is absolutely imperative that they get exemptive legislation immediately.

This amendment is revenue neutral. According to the Joint Committee on Taxation, the "net budget effect of this bill would be a gain of less than $5 million in fiscal year 1989, and a negligible effect in each year thereafter."

This amendment will enable the nonchurch-operated religious schools, now badly threatened by unemployment compensation tax debt, to continue their fine service to the country in producing good young citizens.

As far as I am sure, this legislation is noncontroversial, and its passage will be welcomed by friends of religious liberty.

The need for passage of this legislation this session is urgent.

Accordingly, I urge my colleagues to approve this amendment.

Mr. PACKWOOD. Mr. President, the amendment is acceptable on this side.

Mr. BAUCUS. Mr. President, the majority side has looked at the amendment offered by the Senator from South Carolina. The revenue estimate is very negligible. It is insignificant. We are prepared to accept the amendment.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3442) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I wish to express my appreciation to the able managers of the bill for accepting this amendment. It is a good sound amendment and brings fairness to these schools.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, there are Members coming to the floor to present amendments. I am fully aware of that. There are one or two Members of the Senate, some of them on the floor now, who have some concerns about some of the amendments that they have read may be offered and they may have some objections to them if they are offered, as we understand they might be. Some are rather expensive amendments.

For the sake of the authors of those amendments and for the Senate, it would help if those who are going to present those types of amendments could come to the floor and attempt to see if they can clear them or, if not, at least we know we are going to have a long debate.

I would hate to be in the situation where a Member comes with an amendment, never talks to anybody, starts on it and the Members who object to it will have to look it over and we would have to delay during that period.

It would be most helpful if Members could bring their amendments over or send their staff over with the amendments so we can take a look at it and others who are interested could take a look.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3468

(Purpose: To provide that gross income of an individual shall not include income from United States savings bonds which are transferred to an educational institution as payment for tuition and fees, and for other purposes)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] for himself, Mr. METZENBAUM, Mr. MCCLURE, and Mr. THURMOND proposes an amendment numbered 3468.

Mr. KENNEDY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1557, between lines 3 and 4, insert the following new subtitle:

Subtitle —Education Savings

SEC. . SHORT TITLE; STATEMENT OF PURPOSES.

(a) SHORT TITLE.—This subtitle may be cited as the "Education Savings Act of 1988".

(b) PURPOSES.—The purposes of this subtitle are—

(1) to encourage savings for higher education, and

(2) to encourage the sale of United States savings bonds.

SEC. . EXCLUSION FROM GROSS INCOME OF INCOME FROM UNITED STATES SAVINGS BONDS USED TO PAY TUITION AND FEES.

(a) IN GENERAL.—Part III of subchapter B of chapter I of the 1986 Code (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

"SEC. 135. INCOME FROM UNITED STATES SAVINGS BONDS TRANSFERRED TO PAY TUITION AND FEES.

"(a) GENERAL RULE.—If a taxpayer transfers a qualified United States savings bond to an eligible educational institution as payment for the higher education expenses of the taxpayer or the taxpayer's spouse or dependents, gross income shall not include the lesser of—

"(1) the amount which (but for this section) would be includible in gross income by reason of such transfer, or

"(2) the amount of such higher education expenses.

"(b) PHASE-OUT OF EXCLUSION.—

"(1) IN GENERAL.—In the case of a taxpayer with an adjusted gross income of $60,000 or more for the taxable year, the amount excludable under subsection (a) shall be equal to the following percentage of such amount determined without regard to this subsection:

If the adjusted gross income is:	The percentage is:
$60,000 or greater but less than $70,000	67
$70,000 or greater but less than $80,000	34
$80,000 or more	0

"(2) INDEXATION OF AMOUNTS.—In the case of taxable years beginning in any calendar year after 1988, each dollar amount under paragraph (1) shall be increased by the cost-of-living adjustment for such calendar year under section 1(f)(3).

"(3) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing separately, paragraph (1) shall be applied by taking into account only one-half of each dollar amount contained therein.

"(4) CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, this subsection shall be applied to such individual by taking into account the adjusted gross income of the other taxpayer.

"(c) QUALIFIED UNITED STATES SAVINGS BOND.—For purposes of this section, the term 'qualified United States savings bond' means a United States savings bond which—

"(1) is issued at discount under section 3105 of title 31, United States Code, and

"(2) is issued after the date of the enactment of this section.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) HIGHER EDUCATION EXPENSES.—The term 'higher education expenses' means tuition and required fees for the enrollment or attendance at an eligible educational institution.

"(2) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education; or

"(B) a vocational school.

"(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means the institutions described in section 1201(a) or 481(a) of the Higher Education Act of 1965.

"(4) VOCATIONAL SCHOOL.—The term 'vocational school' means an area vocational school as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act which is in any State (as defined in section 521(27) of such Act).

"(5) DEPENDENT.—The term 'dependent' means any child of the taxpayer with respect to whom a deduction is allowed under section 151 for the taxable year."

(b) PROMOTION OF PUBLIC AWARENESS PROGRAM.—The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this Act.

(c) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the 1986 Code is amended by striking out the item relating to section 135 and by inserting after the item relating to section 134 the following new items:

"Sec. 135. Income from United States savings bonds transferred to pay tuition and fees.

"Sec. 136. Cross references to other acts."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act of United States savings bonds issued after such date.

SEC. . TRANSFERABILITY OF UNITED STATES SAVINGS BONDS.

Section 3105 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) Nothing in subsection (c) shall restrict—

"(A) the transfer of a qualified United States bond to an eligible educational institution as payment for higher education expenses, or

"(B) the redemption of such bond by such institution.

"(2) For purposes of paragraph (1), any term used which is also used in section 135 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section."

SEC. . MODIFICATION OF ADDITIONAL EXEMPTION FOR STUDENT DEPENDENTS.

(a) IN GENERAL.—Clause (ii) of section 151(c)(1)(B) of the 1986 Code (relating to additional exemption for dependents) is amended by inserting "who has not attained the age of 24 at the close of such calendar year" before the period.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1989.

Mr. KENNEDY. Mr. President, this amendment was introduced last summer as S. 1817 by myself, Senator BENTSEN, Senator PELL, and Senator STAFFORD. It is now cosponsored by 50 other Members of the Senate.

Our amendment will help families save for college expenses. In the past, we have used the Tax Code to help bring the American dream to countless families. We have helped them meet medical bills. And we have helped them save for retirement.

But we have never encouraged them to save for college costs. This amendment will change that.

Our amendment offers a simple, sensible way to help families save for college. It will give children security in their future, without creating a new bureaucracy or spending program.

The plan works like this: If a family buys a U.S. savings bond and uses it to pay for their child's higher education, the interest earned on that bond will be tax-free. At the present time, the interest earned on savings bonds is tax deferred until the bond is redeemed. Our plan would eliminate the tax completely and give families an incentive to save for college expenses by investing in America.

Savings bonds are an ideal investment to help American parents invest in their children's education.

First, savings bonds are a safe investment. They are backed by the full faith and credit of the U.S. Government. There is no risk that savings will be lost.

Second, our proposal does not require complex rules for changing circumstances. If a child does not attend college, the bond can be used for any purpose. All that is lost is the tax exemption.

Third, savings bonds are a familiar way to save. According to recent surveys, lower- and middle-income families, those with children under 18, and minorities prefer savings bonds to other instruments of savings. To ensure that this plan is targeted on those who most need help the tax exemption will be reduced beginning at an income of $60,000 and will be completely phased out at $80,000.

Fourth, savings bonds are convenient. About 50,000 companies encourage employees to purchase them through payroll deductions. Approximately 75 percent of savings bonds are now bought through payroll deduction. Bonds are also readily available at banks and other financial institutions and can even be brought through the mail. Parents will have easy access to the program—with no application to fill out or difficult choices to make.

Fifth, this plan can be used at any higher education institution in the United States. It is not restricted to a single State or college.

But ultimately, I believe that the most important feature of this proposal is simply that it sends a loud, clear message about our priorities. Investment in American education through plans such as this is essential if we are to be economically competitive in the next century.

Mr. President, there will be no cost to the Treasury from this proposal. We have, with the assistance of Senator BENTSEN and the finance committee, included an offset. Our offset will clarify and limit the circumstances under which parents can claim a dependency exemption for full-time college students who are 24 years old or older. I emphasize that this provision does not eliminate the exemption for those over 24, but clarifies it and makes it consistent with the treatment of independent students in the Higher Education Act.

There is widespread support for the savings bond proposal. Senator DOLE introduced a very similar bill early this summer that embodies many of these ideas. Over two-thirds of the Senate have endorsed either my proposal or Senator DOLE's plan. I know that Vice President BUSH has called for the enactment of a similar program.

I believe that the widespread interest in this plan is a reflection of the bipartisan support that has historically characterized Federal support for higher education. The Federal role in higher education is, and must remain, focused on financial resources for economically disadvantaged students. But rising costs threaten to put a college degree out of the reach of average families, and we must find a safe, convenient and simple way to help them meet tuition bills. This is landmark legislation—never before have we tried to encourage savings for postsecondary education. I believe that this simple, safe, and convenient plan will help usher in a new era in the financing of higher education—an era when Federal and State governments help families plan for college expenses.

Mr. President, I want to express my appreciation to Senator BENTSEN for his efforts on behalf of this amendment. He does not usually cosponsor revenue measures but he has been a cosponsor of this measure from the start. In March of this year, the Finance Committee held a hearing on tax issues related to education and Senator BENTSEN again indicated his strong support for this plan. Senator BENTSEN has always been a strong supporter of Federal education programs and his work on this measure is a continuation of his long-time support.

We have long known the value of investing in education—and the cost of not doing so. Today we link two longstanding American institutions—the U.S. education system and U.S. savings bonds. Each will benefit the other, and make America stronger in the future.

I urge my colleagues to join me in voting to approve this measure.

Mr. STAFFORD. Mr. President, I rise today in support of this amendment to S. 2238, the Technical Corrections Act of 1988. I am a cosponsor of S. 1817, the education savings bond bill, which encourages families to invest in education through the purchase of tuition savings bonds. It is my firm belief that the enactment of this legislation would provide a vital expansion of existing Federal student financial aid programs while encouraging a principle which has been lost in our current Federal system of support for higher education—that principle is saving for our children's education.

The cost of a postsecondary education is skyrocketing. Consequently, the opportunity to pursue education beyond high school is moving out of reach for many of our Nation's youth. At a time when the importance of improved technological training to keep America competitive is in the forefront of the public consciousness, it is imperative that opportunities for postsecondary education expand, not diminish.

For the seventh straight year, tuition has risen faster than inflation. The projected tuition for a private school in the year 2005 is $88,778. In 1979, the average cost of attending 4 years at Middlebury College, my own alma mater, was $34,900. The current estimate for 4 years—that's only tuition, room and board—is $67,807. In less than 10 years the cost has almost doubled. Only the most affluent American families can afford such an investment without assistance. While the Federal commitment has grown via increased funding for Pell grants and Stafford student loans, this is only part of the solution. New initiatives which encourage savings must be enacted.

Only a decade ago, grants made up 75 percent of a student aid package; loans comprised the other 25 percent. Now, 10 years later, loans make up two-thirds of the financial aid package for a student. We are coming perilously close to a time when only the wealthy will be able to attend college at the institution of their choice.

In 1965, Congress established the Guaranteed Student Loan Program, designed as a loan of convenience for middle income families. Since its inception over 20 years ago, the GSL, has replaced the Pell grant as the principal form of aid for lower income students. Over $65 billion has been loaned to students through the GSL Program. The projected annual borrowing rate is $9 billion. In the past 7 years alone student indebtedness has increased by 60 percent. This means that close to 50 percent of all graduates begin job hunting $7,000 in debt. For graduates of private institutions that estimate jumps to $9,000. Granted, college graduates enter the work force at a distinct advantage in terms of future earning power; we must be careful, however, not to limit career choices to those positions which offer the highest salaries.

Currently, over 46,000 companies offer savings bonds through payroll deduction plans with about 6.5 million employees taking advantage of this program. In fiscal year 1987, 10.3 billion dollars' worth of savings bonds were sold to an estimated 9 million American families. Increasing the number of savings bonds sold each year has added benefits for the Federal Treasury which we all can support. Reducing tax revenues through enactment of savings bond legislation must certainly be an important consideration for the Congress. However, these cost factors should be weighed against benefits which include a better educated work force and reduced indebtedness.

This legislation encourages saving for the future—a value which I believe the Congress should promote. I grew up in an era in which saving for the future was emphasized, whether for a house or a college education. In the mind of this Senator, that is a value which our Federal financial aid programs should promote, not discourage. To burden the next generation with inordinate debt is shortsighted and potentially devastating to our economic future.

A federally enacted tuition savings plan has the added benefit of portability. A Federal commitment to such a plan will assure a student the right to attend an institution of choice, regardless of location. Many State-savings plans which have been enacted or are under consideration limit student options. A student from Massachusetts who wishes to attend one of Vermont's fine institutions, should have that opportunity.

Historically, our Federal student aid programs have guaranteed both access and choice in higher education. They are principles which we must strive to preserve if we want our institutions to retain their international preeminence.

I hope my colleagues will join me in supporting this amendment.

Mr. PELL. Mr. President, I rise to give my enthusiastic support to the Education Savings Act. During this century our Nation has removed many of the obstacles to education that previously existed. We have made sure that peoples' gender and skin color would not limit their access to the classroom. We have made it possible for a student from a poor family to pursue the dream of a college education—a dream that eluded their parents just a generation ago.

Unfortunately, progress has all but stopped during this decade. Ten years ago, Congress passed the Middle Income Student Assistance Act. The legislation was designed to extend Federal student aid programs to middle-income students. During the last 8 years, however, middle-income families have increasingly been shut out of these programs.

Poor students also have not fared well over the last decade. Because our grant programs have not grown, the poorest students are having to borrow the most.

The evidence is clear. Tuition prices have skyrocketed during the last 8 years while the relative value of Federal aid has declined. We desperately need to lend a helping hand to families who are struggling to send their children to college but are unable to qualify for Federal assistance or find current programs insufficient to meet total need.

By providing economic incentives to families who use U.S. savings bonds to finance their college education, the Education Savings Act is an important and prudent first step toward restoring financial help to students from the working families of this Nation.

Mr. President, during my tenure in the U.S. Senate, I have said time and time again the peoples' access to higher education should not be determined by the size of their pocketbooks but rather by their desire and ability for academic success. After 8 long years of fighting an administration fundamentally opposed to that principle, I am delighted to be a part of an effort to once again work toward fulfillment of that old but vital pledge.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senator from Ohio [Mr. METZENBAUM] be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I have had the opportunity to talk extensively about this amendment with the floor manager, Senator BAUCUS, and also talk to the Senator from Oregon about this proposal previously, and I hope it will be accepted.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. Is there further debate? The Senator from Montana.

Mr. BAUCUS. Mr. President, this education savings bond amendment has been offered by Senator KENNEDY. There are other versions of the same proposal, both in this body and the other. I think it is a good idea. Essentially, it is to help families pay for higher education, including vocational school. For savings bonds that families may have transferred to institutions of higher education or vocational school to pay for books and tuition, the interest that is earned on those savings bonds is excluded from income. Ordinarily, one pays interest on savings bonds when the savings bonds are actually retired or sold, but in this case when those savings bonds are transferred to the institution the interest would not be recognized as income. It would be excluded. The revenue cost is paid for by repealing a provision of current law which permits full-time college students above the age of 24 to be claimed as dependents. It seems, Mr. President, correct that students who are full-time college students 24 or older not enjoy the status of dependents any more. That is how the Senator from Massachusetts [Mr. KENNEDY] pays for his higher education savings bond amendment. We have discussed the amendment with the Senator from Massachusetts. It is a good amendment. I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

Mr. DOLE. Mr. President, much has been said and written about the need to improve education and education opportunities for our children. This legislation is a way actually to do something helpful.

President Reagan, in his State of the Union Address earlier this year, let us know that he intended to include a college savings bond proposal in his budget for fiscal year 1989. The proposal was outlined in the budget, and I introduced legislation to implement that proposal earlier this year.

College savings bonds are a convenient, easy, and safe way for millions of Americans seeking to provide postsecondary education for their families to accumulate the extraordinary sums that will be required.

It is a proposal that has substantial bipartisan support. I don't have to remind my colleagues that Vice President BUSH has made this proposal, as well as education savings accounts, a major part of his program for improving higher education in America.

A LONGSTANDING PROPOSAL

I am personally pleased that we are finally having the opportunity to vote on an incentive for college savings. As many of my colleagues know, I introduced my first education savings bond bill in 1978 and introduced legislation based on this once again in August of last year.

Savings bonds, as well as tax-advantaged savings accounts, another concept I have long advocated, deserve very serious consideration if we really intend to encourage Americans to save for their children's education.

RISING COLLEGE COSTS

A college education is one of the biggest expenditures a family encounters. Back in 1980, I noted that the cost of a college education at a private institution had increased 105 percent over the previous 10 years, and the cost of a college education had increased 80 percent at public schools over the same period. This sad state of affairs has, unfortunately, not changed much in the intervening years.

Last summer, the college board released the results of a study on the costs of college education. The survey showed that, for the seventh straight year, college costs out-stripped inflation.

For example, while the Consumer Price Index rose 3.7 pecent in 1986, college costs rose an average of 6 percent at 4-year public colleges and 5 percent at 2-year community colleges.

But the costs at private schools, as in the past, have increased at an even greater rate—8 percent from 1986 to 1987. The survey noted that the cost for a 4-year education at some of the most prestigious colleges and universities reached $75,000 for the school year ending this spring.

Let me give a few examples. The cost at the University of Kansas was $4,880 for the 1987-88 school year. At the University of Virginia it was $6,100. Penn State cost $7,800. Duke University cost $14,940, Stanford cost $17,458, and Princeton cost $17,805.

Not many students or their families will be able to afford these expenses without outside help. But, with the trends we have seen over the last couple of decades, it is frightening to think how families will afford these costs for babies born this year. It is obvious that most families will not be able to fund college expenses out of the parents' current salary and the student's part-time jobs. On the other hand, it is difficult for most of us to think ahead 18 or more years. Today's problems often seem to get in the way.

One of the most effective ways to help Americans set their priorities toward a long-term commitment to saving for college is to adopt a sense of partnership between the Government and taxpayers and their families. That is what a tax incentive is, after all.

Mr. President, I hope that the Senate will adopt this amendment so that this incentive has a chance to become law this year.

Mr. PACKWOOD. Mr. President, the amendment is acceptable to the Republican side. I think the sponsor may want to vote on it. I have just chatted with him. He has no desire to necessarily have a vote right now, and I think he may propound a request to get a vote at some other time so we do not have to interrupt the Senate with a 15 or 20 minute rollcall.

Mr. KENNEDY. Mr. President, I want to accommodate the floor managers. I would like to get a rollcall vote, but I will accommodate them for a brief period.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PACKWOOD. Mr. President, I talked to the chairman. He says he would just as soon have the vote now. I have no objection to having the vote now in that case.

Mr. BAUCUS. Mr. President, I think we might as well move on as quickly as we can and dispense with amendments.

Mr. PACKWOOD. All right.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. BYRD. Mr. President, let me say that I think Senators might do well to have a couple minutes' notice that a rollcall vote will occur. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. Let the Chair make clear that we are having a call of the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Massachusetts, Mr. Kennedy.

On this vote, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. Bentsen], the Senator from Iowa [Mr. Harkin], and the Senator from Hawaii [Mr. Matsunaga] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Nebraska [Mr. Karnes], the Senator from South Dakota [Mr. Pressler] and the Senator from Indiana [Mr. Quayle] are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska [Mr. Karnes], would vote "yea."

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 351 Leg.]

YEAS—94

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NOT VOTING—6

Bentsen
Harkin
Karnes
Matsunaga
Pressler
Quayle

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. McCLURE. Mr. President, will the Senator yield for a unanimous consent request?

Mr. DURENBERGER. I yield.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I ask unanimous consent to be listed as a cosponsor on the amendment just agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3469

Purpose: To extend the moratorium on Laboratory Payment Demonstrations.

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Minnesota (Mr. Durenberger) proposes an amendment numbered 3469.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS EXTENDED.

(a) IN GENERAL.—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9339(e) of the Omnibus Budget Reconciliation Act of 1986 and section 4085(c) of the Omnibus Budget Reconciliation Act of 1987, is further amended by striking "January 1, 1989" and inserting in lieu thereof "January 1, 1990".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective upon the date of enactment of this Act.

Mr. DURENBERGER. Mr. President, this is for the guidance of the managers of this bill. This is the so-called clinical laboratories amendment which I understand has been discussed at great length. It is an annual effort that we go through on the Finance Committee and over on the Ways and Means Committee.

The administration has been trying to conduct a demonstration to evaluate competitive bidding as a method of purchasing clinical laboratory services under Medicare.

Implementation of the demonstration has been consistently opposed by medical and laboratory groups as well as organizations representing Medicare consumers.

Congress has stopped the administration for 3 years in a row. My amendment would simply extend the moratorium for 1 more year.

The HCFA demonstration project on competitive bidding should not go forward.

The competitive bidding project design is flawed and will invite quality and access problems for Medicare beneficiaries.

A competitive bidding program of this type is administratively burdensome and expensive and, according to the very agency developing the plan, would be impossible to replicate nationwide.

It is also questionable as to whether realistic prices, which could be used for setting fee schedule amounts, could be gleaned from such a project.

I am opposed to the demonstration for the following reasons:

First, quality of care, and access, would suffer. Laboratories that bid prices higher than the winning bid price will be forced to accept payments which are lower than the winning bid price. The alternative to this penalty is to either refuse to provide services to Medicare beneficiaries or reduce quality of services to avoid absorbing the loss.

Second, certified laboratories would be excluded or otherwise prejudiced. The proposed demonstration serves to exclude laboratories that do not bid. Various qualified laboratories may not perform the full range of tests embraced by the competitive bid model. To bid, these laboratories must engage in burdensome and costly subcontracting for work they do not ordinarily perform. The demonstration design is almost certain to make these laboratories nonwinning bidders. Therefore, such laboratories are faced with the dilemma of not bidding—and being excluded from the Medicare Program or generating high aggregate bids and being compensated at unrealistic levels for work they ordinarily perform.

Third, competition among laboratories would actually decline. Some laboratories will be unable to bid because they cannot provide all of the services included in the request for bid. Smaller, specialized laboratories and hospital outpatient labs are particularly vulnerable. Other laboratories which bid higher than the winning bid will be paid, but the amount paid will be even lower than the amounts paid to the winning bidders. The result will be a decline in the number of labs providing services in the demonstration area. Those labs remaining will then be in a position to control pricing in the demonstration area as the number of competing labs will have been reduced.

Fourth, beneficiary out-of-pocket costs would rise. Certified labs, unable to bid because they cannot perform the full array of tests required under the project design, would not be able to bill Medicare. Beneficiaries in turn, would not be paid by Medicare because the laboratory test would be deemed a noncovered service. This is particularly unfair in situations where the patients primary physician has chosen a certified lab which in his judgment provides high quality laboratory services.

Over the past several years Congress through fee schedules has been successful in reducing the growth in outlays for clinical laboratory services. The questionable savings which might result from going forward with this project are not worth the continued disruption of the industry and the threat to beneficiary access to quality services which would surely result from its implementation.

Mr. President, my amendment would simply extend the current moratorium by 1 more year.

I would appreciate whatever comments the Senator from Montana and the Senator from Oregon might have on this before I move the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Montana.

Mr. BAUCUS. Mr. President, we are still looking at the amendment to determine the actual consequences of the amendment.

At this point, it appears that the amendment is revenue neutral. It is simply the extension of a moratorium. However, we have not had ample time to fully analyze the amendment.

At this time I must defer momentarily until we are able to make that determination.

The PRESIDING OFFICER. Is there further debate?

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I have had more opportunity to more fully examine the amendment by the Senator from Minnesota.

The amendment appears to be very acceptable and we do accept the amendment.

Mr. PACKWOOD. And we accept it on this side, Mr. President.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Minnesota.

The amendment (No. 3469) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, I rise to bring to your attention an untenable situation for Medicare risk contractors and the Medicare beneficiaries they serve.

As you know, HMO's and CMP's which have section 1876 risk contracts are required to provide all benefits covered under part A and part B of Medicare.

The HMO or CMP is at risk to provide these Medicare services for 95 percent of the adjusted average per capita cost which is what they would cost in the fee-for-service sector.

The HMO/CMP determines in advance of the contract period its adjusted community rate which is its projected revenue requirements to provide services to its medicare enrollees.

The adjusted community rate is determined by taking the HMO's community rate and revising it to account for the utilization characteristics of the Medicare enrollees.

The adjusted community rate must be approved by the Secretary.

If, during the course of a contract period, the Secretary reinterprets Medicare coverage requirements which result in additional costs to the HMO/CMP which have not been calculated in the adjusted average per capita cost or in the adjusted community rate, there is currently no change in the payment to reflect the additional costs.

On April 1, 1988, 3 months after current contracts went into effect, the Department of Health and Human Services reinterpreted the guidelines for coverage of Medicare beneficiaries in skilled nursing facilities [SNF].

The result was that the circumstances under which beneficiaries would be eligible for extended care were considerably expanded.

HMO's and CMP's with risk contracts were therefore faced with additional unanticipated costs for these increased services, adding new meaning to the word "risk".

The Health Care Financing Administration has taken the position that there has been no change in the SNF coverage requirements and that HMO's are not entitled to any adjustment in payment.

I therefore proposed an amendment to the Technical Corrections Act which would allow risk contractors to receive a one-time adjustment for those situations in which the HMO is required to provide expanded SNF benefits.

Although the Congressional Budget Office scored this proposal budget neutral, the Office of Management and Budget tagged it with a $32 million revenue loss.

The administration cannot have it both ways. On the one hand, they refuse to acknowledge that any financial adjustment to risk contractors is warranted.

Yet they score this legislative amendment as costing $32 million. Risk contractors are therefore caught in a no-win situation between the Office of Management and Budget and the Health Care Financing Administration.

Mr. President, the future of the Medicare Risk Contract Program is in serious jeopardy because of the disenchantment of many HMO's and CMP's with the Government as a reliable business partner.

Med-contract changes in Medicare requirements such as I have described are only one of the problems which place financial burdens on the plans.

The payment methodology itself is flawed and all too often results in inequitable and unpredictable rates.

I am firmly convinced that a prepaid managed care option ought to be available to the elderly in this country, And I also believe that HMO's want to serve that population.

The Government benefits as well by saving 5 percent off the top of the cost of Medicare services.

However, if the program is to continue, HHS must treat risk contractors fairly.

I deeply regret that because my amendment is not considered budget neutral, legislative relief for additional SNF expenses will not be available for HMO risk contractors this year.

However, I will continue my efforts to help them achieve an equitable resolution of the problem.

The risk assumed by risk contractors was not meant to include a risk that the Government would alter its requirements once a contract was signed.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 3470

(Purpose: To designate Pocatello and Chubbock in Idaho as a single metropolitan statistical area.)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS], for himself and Mr. MCCLURE, proposes an amendment numbered 3470.

At the appropriate place in the bill, insert the following new section:

SEC. . The cities of Pocatello and Chubbock in Idaho shall be considered for designation as a single metropolitan statistical area by the Director of the Office of Management and Budget, effective October 1, 1989.

Mr. SYMMS. Mr. President, I offer this amendment on behalf of myself and Senator MCCLURE, and it is a very simple amendment. We all have problems in our States with rural versus urban hospital classifications under Medicare and Medicaid for medical payments. The city of Pocatello, ID, is just across the street from the city of Chubbuck, ID. These two cities are not like someplace 25 miles apart. It is a small area, and the people there all go to the one hospital. It is an urban area, but statistically it is divided in two, so it is classified as a rural area.

There will be no cost to the Treasury in fiscal year 1989. There would be some cost to the Treasury in the following years, obviously, or my distinguished senior colleague and I would not be offering the bill.

But I think all of us in the Senate know that there is a true inequity to rural America today, and this amendment simply would clarify that the greater Pocatello area should be considered an urban area, as is Boise, ID; as is Spokane, WA, and other communities of similar size throughout America.

It is simply one of equity and fairness. The combined population of the two cities would naturally qualify for the urban legislation. They have to complete for medical professionals with the Greater Salt Lake hospitals, which are in an urban area, and this amendment would put Pocatello on an equal footing with the Salt Lake area.

I hope the committee will see fit to accept the amendment.

The PRESIDING OFFICER. Is there debate on the amendment?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I am sympathetic with the problems that the Senator from Idaho raises but the problem is particularly acute in rural parts of America. It is a problem that applies to many hospitals that do not enjoy the benefit of higher Medicare payments because they are not classified as urban hospitals or in a category which entitles them to greater revenue.

The problem I have, though, with the amendment is that there are many other hospitals in other States that requested similar treatment. I do not think at this time in a pure technical corrections bill we can go down that road of, first, trying to enact changes in Medicare; second, in the situation where other hospitals in other States are not afforded the same treatment; and, third, when as a practical matter in order to pay for this amendment we have to take money away from other hospitals.

So I very reluctantly must oppose this amendment. It is one that I do not think we can take. I am very sympathetic with the problems that the Senator from Idaho raises, and it is my hope that next year when we revisit Medicare, particularly rural reimbursement under Medicare, that we can find a solution to deal with this problem.

I see standing on the floor the Senator from Minnesota who is very knowledgeable about Medicare generally and certainly with respect to rural health care problems.

I know that working with the Senator from Minnesota we will probably find a solution to this problem.

I would hope, frankly, that the Senator would not press his amendment because although it is a good idea it is one I do not think we can deal with at this time.

Mr. SYMMS. Mr. President, I hear what the distinguished manager of the bill is saying and I understand the time constraints and the problem. I will, in a moment, withdraw the amendment, but I want to say, before I do that, one of the reasons that our Constitution has a U.S. Senate is so that when small, irrational inequities such as this happen, the two Senators from a State can help correct the inequity. This is a clear inequity in the code with respect to rural and urban hospitals, purely because of how the numbers of citizens are counted. Except for the fact that Chubbuck is a separate entity, for all other reasons it and Pocatello should be an urban-classified area.

So, Mr. President, in order to cooperate with the committee and understanding the rules, I withdraw the amendment.

The **PRESIDING OFFICER.** The Senator from Idaho has a right to withdraw his amendment.

The amendment was withdrawn.

AMENDMENT NO. 3471

Purpose: To amend the 1986 Tax Act to provide that certain loans between a domestic international sales corporation and a member of the same controlled group of corporations be treated as qualified export assets.

Mr. **SYMMS.** Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 3471.

Mr. **SYMMS.** Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . (a) Section 933(b) of the Internal Revenue Code of 1986 (defining qualified export assets) is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon, and by adding at the end thereof the following new paragraph: "(10) obligations issued to the corporations which includes such corporation, but only to the extent of $7,500,000 of such obligations outstanding at each taxable year end."

(b) The amendment made by this section shall apply to any corporation which derived over 80 percent of its gross income from sales of agricultural pulses, as principal and not as a commission agent, in all of its taxable years ending before December 31, 1984, and the amendment shall apply to such corporation's taxable years beginning after December 31, 1979, and ending December 31, 1984.

Mr. **SYMMS.** Mr. President, this amendment addresses a very serious problem in the Tax Code and it relates to 11 States. I will be very brief in making my explanation. I have talked to the committee and I hope that the committee could at least give this more consideration than I fear they are prepared to do today.

This amendment is intended to correct an inequity under the tax law prior to 1986 for agricultural exporters, a problem that has come to light only in the past few years, during the period of the strong dollar.

The Treasury Department, Office of Tax Policy, has been consulted on this problem. I understand that there is no opposition at Treasury, because the problem is very narrow. It is very technical, and it only affects a few agricultural exporters today.

I understand that the committee is concerned about having amendments that appear to help only a few people. The appearance of favoritism is too great. But I want to explain in my remarks why this is not just an amendment to aid one or three or four exporting companies that are affected. This problem affects a sector of American agriculture that operates outside the agricultural subsidy programs. We are prepared, in this Senate, to vote millions of dollars for farm programs to help our wheat, corn, and cotton exporters, but because our bean exporters do not have direct subsidies, we ought to be grateful and proud of them and their independent, self-sufficient spirit.

The Domestic International Sales Corporation [DISC] provision of the Tax Code prior to 1984 and the Foreign International Sales Corporation [FISC] of present law were designed specifically to promote the sale of American products and to put exporters on the same financial and tax basis as their foreign competitors.

The DISC and FISC programs, while important to major manufacturing industries of the country, have been shown to be of great significance to the agricultural industry. Due to the unique factors of agriculture, it is composed mostly of small businesses, both the farms themselves and export organizations. It is my opinion that a number of agricultural exporters were unfairly disadvantaged when the fairly technical definitions of "qualified export assets" were drafted by the Treasury Department in the late 1970's. This amendment corrects that inequity.

The export market is essential to agriculture, both in terms of moving surplus products and developing price levels that are satisfactory to the farmer. The ability to export U.S. agricultural produce in the world marketplace requires at a minimum that U.S. products be competitive in price and competitive in sales terms and conditions with foreign sellers. That is how we get the business. It is competition. In all instances were are competing with extensive direct and indirect subsidies given to foreign producers by their governments.

To compete effectively in this environment requires substantial investments of time, energy, and money. It also requires a great deal of work, traveling, financing, and planning to develop these markets.

This market has been developed in many foreign countries. It has had a dramatic impact on the dry bean producers in my State, who are farmers who grow pinto beans and other dry beans, peas, and lentils, and do not receive Government subsidies for the production of those products. But it took time, effort, energy, and money to develop the ability to market and sell these products.

During the years of 1980 through 1984, the international pulse trade—that is, beans and related crops—was an extremely important method of providing the lowest cost convertible protein to the people of the lesser developed nations of Latin America and Africa. This source of protein was crucial to the citizens of countries whose meat supply (or their ability to pay for imported meat) made that source of protein difficult or impossible to obtain.

Pulse sales from the United States during these years were substantial due to the aggressive export programs.

Now, I hope Senators will pay attention. There are 11 States that are affected by this. The States of California, Colorado, Idaho, Michigan, Minnesota, Nebraska, North Dakota, Oregon, Texas, Washington, and Wyoming benefited economically from the growing and exporting of pulse produce. These exports were successful despite the difficult environment of a strong U.S. dollar and difficult competitors from foreign subsidized producers. American exports reached record volume and price levels. This favorable balance of trade returned to the American farmers prices and per-acre profits substantially higher than in subsequent years. In addition, U.S. growers received this income during times when their alternative coarse grain crops were at record low levels.

I view this amendment as rectifying an important problem. That is why I brought it to the floor. I have discussed it briefly with both the manager and the ranking member of the committee. I believe it is an important amendment and I believe that we in the Senate should occasionally bend from the rigid rules with respect to issues within the jurisdiction of the Finance Committee, even though the hour is late. We need to encourage the growing and the sale and export unsubsidized crops, such as these. It is an important industry. When they can grow dry beans, they do not have to grow potatoes, or grain, or some other crop that may even qualify to receive a Government subsidy and cost the taxpayers of the country money. Not that potatoes do; they do not. But if there are too many potatoes grown in a particular year it depresses the price and farmers switch to grow more wheat, and get a subsidy. It all has an impact.

I view the agricultural business in general as an important part of America's economic strength. I think we need to support the export of American products as a whole.

Because I think we should not play "bait and switch" with exporters who did expand their foreign trade on the basis of the tax preferences specifically meant to encourage such expansion, I am offering this amendment.

That is why we need this legislation, and we need it now.

I would appeal to my two colleagues who are managing the bill that we cannot wait another year, because these questions are pending today. It has an impact on the growers of these crops because of the impact on how much the exporter has to pay to move these crops.

Therefore, we need the legislation now and in the future to encourage, not discourage, exporting and to show that the U.S. Government is prepared to help meet the intense foreign competition we have had to face in the last decade.

Such provisions of the law as the technical definition of export assets should not have operated as a series of obstacles and traps, which only work to destroy the benefits Congress intended to provide; but in a number of cases, this was what in fact occurred. This was especially true when the exporters relied upon those benefits in establishing prices and financing programs. A loss of faith in the assistance of the Government to stimulate exports would be a serious blow to agriculture, and to the American farmer, and to our trade balance.

It was a mistake to restrict and complicate what existing assistance the U.S. Government was giving the American farmer in the form of the DISC Program. The law gave them some preferences to be able to invest and keep some of the money in the exporting company to help further overseas sales. But the regulations have since complicated the operations, and the interpretation of those regulations to the detriment of people who are trying to help unsubsidized American agriculture by exporting is an injustice.

I should note that some DISC's; namely, the so-called "commission DISC's," were very superficial entities. The sponsoring corporation of such a DISC would sell its products overseas and record a transaction on its books to create a commission in favor of the DISC. On the other hand, there were genuine exporting DISC entities—so-called "buy-sell DISC's"—and these are the kind I believe the Congress needs to direct some relief to, in the form of this legislation.

This kind of DISC made specific sales, assumed risks and conducted its business in its own name. The legislation here proposed provides relief to these buy-sell DISC's and not to "commission DISC's."

Mr. President, I need to make one final comment on some misinformation about the costs of this amendment that I fear has originated with the Joint Committee on Taxation. Over a year ago I introduced a bill similar to this amendment, but with the important difference that the definition of "qualified export assets" was broadened to include all intercompany loans for all DISC's in all lines of business. The Joint Committee on Taxation gave us an estimate of $345 million over 5 years as the cost of that proposal. Based on meetings with the affected companies, we believe the estimate at that time was grossly exaggerated, but it was easier to restrict the application of the amendment to amounts under $7.5 million, and to further restrict it to agricultural products. When we asked the Treasury Department to comment on the amendment in its present form, restricted to agricultural pulses, the revenue estimate approaches zero.

Mr. President, when we asked the joint committee to give us an estimate for all agricultural "products" they have said it is $100 million in fiscal year 1989. I want my colleagues to understand that with the application of the amendment restricted to agricultural pulses—one of the major crops in my State—the revenue estimate is not $100 million. It is more like zero.

Obviously it may cost something or we would not be offering the amendment. I hope the chairman and ranking member could accept this amendment. If it turns out that they cannot accept it, I will be very, very disappointed because I think this is a policy issue that we should address.

That is what the Senate is all about, and this is an opportunity for us to help encourage American agricultural exports. As I said, the 11 States that are affected by it, and I will just repeat them, are California, Colorado, Idaho, Michigan, Minnesota, Nebraska, North Dakota, Oregon, Texas, Washington, and Wyoming.

I am sure that some critics of this proposal could say that it is a very narrow amendment, it is a rifle shot, and that it only affects a few companies. The aspersion is to try to paint a picture that somehow this is going to help only a few individuals.

The fact of it is, however, it is helping the farmers that have the ability to grow those crops in those 11 affected States and produce an unsubsidized crop, where they can make a profit, export it out of the United States, help our balance of payments, and keep us competitive. It encourages them to grow a crop that is not a participant in the Federal crop subsidy programs, which cost all of the taxpayers money.

I hope the distinguished manager of the bill could at least give this amendment more careful consideration and could accept it.

I would yield to my colleague, if he wants to comment.

I yield the floor, Madam President.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Montana.

Mr. BAUCUS. Madam President, I am very sympathetic of the effort of the Senator; that is increase American agricultural exports. There is no doubt that we Americans must make a greater effort if we are going to boost our farmers' incomes, if we are going to redress the balance of trade imbalance; if we are going to boost our exports. We must increase our agricultural exports.

Unfortunately the amendment that is now pending is one which goes back and retroactively overturns Treasury regulations and court decisions that applied to DISC's that operated from the end of 1979 to 1984. DISC has been replaced by the Foreign Sales Corporation, commonly known as FISC.

Mr. SYMMS. Would the Senator yield for a question?

Mr. BAUCUS. I will be happy to in a moment. And I do not think at this point we should be overturning those regulations and those court decisions. Certainly we cannot adopt the amendment which is so narrowly crafted it applies only to agricultural pulses.

This does not apply to wheat or a whole other variety of agricultural products in addition to agricultural pulses. I would hope, although we must stimulate exports, this is an amendment that the Senator from Idaho would withdraw.

Mr. SYMMS. What I would like to know is, if the Senator from Idaho is willing to withdraw the amendment and not go for a vote at this point, could the manager of the bill give me any indication we could get a full airing of this issue at the earliest possible date next year, and look for an opportunity? Because I believe, knowing well the Senator from Montana and the Senator from Oregon's views about encouraging agricultural exports, that this is something we should do.

It may be that it is not possible today for the Senators to accept it, but can we get some kind of signal that we can take action on this entire question sometime in the near future, as I have laid it out here on the floor today?

Mr. BAUCUS. Well, Madam President, there is no doubt that this body next year for a wide variety of reasons is going to reexamine the Foreign Sales Corporation specifically and also agricultural exports in general in the Finance Committee and Agriculture Committee and other committees that have jurisdiction over agriculture.

There is no doubt in my mind part of that I believe, although I cannot guarantee, will include the provision mentioned by the Senator from Idaho. Although the Senator from Idaho will certainly be here next year. If the Senator from Idaho so wishes I am sure the appropriate committee will examine it.

Madam President, I yield the floor.

Mr. SYMMS. Madam President, I withdraw the amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is thereby withdrawn.

The Senator from New Hampshire.

AMENDMENT NO. 3499

(Purpose: To amend the Internal Revenue Code of 1986 to deny tax-exempt status to organizations which perform or provide facilities for abortion)

Mr. HUMPHREY. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] for himself, Mr. PROXMIRE, Mr. ARMSTRONG, Mr. HELMS, Mr. GARN, Mr. GRAMM, Mr. HECHT, Mr. MCCLURE, Mr. NICKLES, and Mr. TRIBLE, propose an amendment numbered 3499.

Mr. HUMPHREY. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1557, between lines 4 and 5, insert the following new section:

SEC. 434. DENIAL OF TAX-EXEMPT STATUS TO ORGANIZATIONS WHICH PERFORM OR PROVIDE FACILITIES FOR ABORTIONS.

(a) DENIAL OF TAX-EXEMPT STATUS.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) DENIAL OF EXEMPTION FOR ORGANIZATIONS WHICH PERFORM OR PROVIDE FACILITIES FOR ABORTIONS.—

"(1) IN GENERAL.—An organization shall not be treated as described in subsection (a) for any taxable year if for such year such organization received more than 1 percent of its gross receipts from performing abortions or providing facilities for abortions.

"(2) RECEIPTS FROM CERTAIN ABORTIONS EXCLUDED.—In determining gross receipts under paragraph (1), gross receipts from abortions performed when the life of the mother would be endangered if the fetus were carried to term shall not be considered.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

Mr. HUMPHREY. Madam President, may we have order?

The PRESIDING OFFICER. The Senator is correct. I know there are many interesting conversations on the floor, but they can take place elsewhere.

Mr. HUMPHREY. I thank the Chair.

Madam President, for the information of Senators and staff, this is the amendment related to tax exemptions for abortion clinics, which was the subject of a "Dear Colleague" described a few days ago and the subject of this Senator's remarks on the floor a few weeks back.

Floor managers have copies. There are other copies available to those who wish to see it here on the floor. I simply want to alert Senators that this is a measure that has been anticipated for some time.

I want to state at the outset that the amendment is proposed on behalf of Senator PROXMIRE, Senator ARMSTRONG, Senator HELMS, Senator GARN, Senator HECHT, Senator MCCLURE, Senator NICKLES, Senator TRIBLE, AND Senator HUMPHREY.

I want also to emphasize that this amendment, not only in its substance and its precise wording, but in its being offered as an amendment to this bill, has the support of the administration as evidenced by an administration policy statement issued a week or 10 days ago, a copy of which later on I will seek to place in the RECORD.

Madam President, a few weeks ago I had the great pleasure and the honor to address the annual conventon of one of the foremost civil rights organizations in this country, the National Right to Life Committee. While I was the principal speaker, I am more than happy to acknowledge that the real star of that event, that evening, was a young woman named Cathy Clark. Cathy's part in that program was brief, but very important. Her part was to sing a song which she had composed about a very tragic experience in her young life. What a very poignant song that is. I wish all Senators could have been there to hear it sung, to hear Cathy sing it as only she can.

To hear her tell about the nightmare through which she passed in her life. She sang that song so very sweetly, so beautifully, and so movingly. Cathy Clark, you see, is one of millions of women who had an abortion and who now regrets it.

She suffered heartbreak when she realized that the abortion had destroyed a human being, her own child. But, through her religious faith, Cathy found foregiveness and peace. In her song, Cathy speaks to her departed child, a little boy, it turns out. I want to read the lyrics of that song to my colleagues. The song is entitled "two Little Hands," by Cathy Clark:

Two little hands that I'll never hold.
Two little feet I can't keep from the cold.
One little soul that will have no years.
Two little eyes, but I'll not dry your tears.
Searching for love, I let your love go.
I didn't know,
Little child of mine.
I was alone, and I was so blind.
I was so young
Little child of mine.
Beautiful smile that I'll never see.
Little fingers reaching for me.
One little heart that needed me so.
One little life that I just let go.
Searching for freedom I let you die.
And I don't know why,
Little child of mine.
I'll never heal sweet little boy.
You had no choice.
Little child of mine.
I'll never see you when you're at play.
Or help you take your first step someday.
I can't see you now
I can't watch you grow, or help you decide which way you should go.
Searching for love I let your love go
I didn't know
Little child of mine.
I was alone and I was so blind
I was so young.
Little child of mine.
Jesus deliver this message please.
Tell him I'm sorry for what I have done.
Hold him real close and don't let him cry.
Please won't you sing him a sweet lullabye.

Mr. President, no reading by this Senator can possibly transmit the feeling with which that song is sung by its author, but I am confident that every person hearing those words, even just the lyrics, must be touched, has to be touched by them. We need not ask why. There is no reason to ask why anyone would be touched by Cathy Clark's feelings as she expressed them in that song.

We all know intuitively that Cathy is right in regarding as her child that little being taken from her by the abortionist. If that were not so, if it were not so that we know intuitively that she is right, we would be completely unaffected by her song. The lyrics would, in fact, be laughable.

If the offspring of human beings are not human beings until the moment they are born, then there is nothing about abortion that could concern us in the least. If we were really convinced that human life does not begin until birth, then abortion would be perfectly acceptable and Cathy's words would not move us as they do. But they do move us, and the reason is self-evident.

Madam President, there is a myth in the public debate over abortion. The myth is there is something called the fetus which is destroyed by the abortionist but inside we know better. Every one of us knows that the offspring of human beings are human beings, and we know that abortion kills human beings. That is why abortion is so sad; that is why it is so tragic; that is why it is so disturbing.

We also know what the Supreme Court has said, and for now, we have no choice but to live by that Supreme Court decree, to live by it or die by it in the case of 20 million little prenatal infants who have been dispatched by abortions since 1973, little boys and girls like Cathy Clark's little boy.

So for now, the destruction of prenatal infants is lawful and unrestricted in any practical way.

There is another myth, Madam President, that exists about abortion. Most people think that abortion is only lawful in the first 3 months of pregnancy or that there are substantial regulations about the performance of abortion, such that abortions can be performed only in the most extenuating circumstances. That is totally a myth. Abortion is, for all practical purposes, completely unregulated now by virtue of Roe versus Wade.

Abortion in the first month or in the ninth month is perfectly legal, perfectly lawful. It does not matter in what month an abortion is performed. That is a fact of life or a fact of death, depending upon which end of the abortionist's instruments you happen to face.

Practice of abortion is a fact. It may be a fact but it does not follow that we must subsidize this ghastly practice. We do not have to subsidize it. We do not have to facilitate it. We do not have to encourage it. We do not have to place the Federal stamp of approval on the door of every abortion clinic in this country. We have no obligation to do that and, indeed, we should not, and that is the purpose for offering this amendment.

Let us stop subsidizing abortion. Let us stop facilitating abortion. Let us stop encouraging, let us stop stamping abortion with the approval of the Federal Government and the Congress of the United States.

Madam President, I should think the Senate would overwhelmingly adopt this amendment because if you ask just about any Senator in this body his views on abortion, inevitably he will reply that he is opposed to it. I do not think there is one Senator in this body who is affirmatively in favor of abortion as a fundamental matter.

When it comes to whether it ought to be a right or not then Senators begin to differ. Some Senators will answer when asked about abortion that, as I do and as many here do, abortion kills human beings. That is self-evident. Therefore, I am against it. I want to put a stop to it in all cases except in the case where the life of the mother is threatened.

Other Senators will answer, "Well, I am personally opposed to abortion, but I do not want to impose my views on others." I want to examine that rationale, if we can call it that, for just a moment. Why in the world could any Senator or anybody be personally opposed to abortion? Why should any one be personally opposed? There is only one conceivable reason to take such a position, and that is the recognition that abortion kills human beings. If abortion does not kill human beings, what possible reason is there for personally opposing abortion?

We know that abortion kills human beings. One does not have to be a scientist to know that. One does not have to be a geneticist or even an M.D. to know that the offspring of human beings are human beings; that the target of an abortion is a human being and that the victim of an abortion is a human being, and if that human being is not killed during abortion, then the abortion is a failure.

Let me say in those cases, even greater cruelties have been known to be resorted to: Sticking the kid in a pail in a closet until they expire from dehydration, malnutrition or smother the child by placing a wet towel over his face.

One knows intuitively that the offspring of human beings can only be human beings. For those who have had the intellectual courage to look at some of these films of abortions as they are taking place, one knows that those little arms and those little legs which are distinguishable from the otherwise bloody mass of residue after an abortion are not the appendages of cows or pigs or sheep or horses. Those are human legs and human arms. They are the arms and legs of one of us. Those body parts are clearly recognizable even after the mutilation of abortionists as parts of a human being. We know it is so; we know it cannot be otherwise. That is why nearly all Senators, probably all Senators, will state they are personally opposed to abortion.

Supposing this were 1858 instead of 1988, and supposing that we were in the old Senate Chamber just a few feet down the hallway where so much history was made. Supposing the question was the enslavement of black human beings. Yes, that was a controversial issue in its day, just as abortion is today. Those who raised the issue and confronted public servants with the issue were resented and discouraged because people did not want to face the unpleasant fact of enslavement, of slavery, that blacks were human beings, that it was just plain wrong to treat human beings as property, to deprive them of their rights and their freedom and their dignity.

Let us remember that in 1858, human slavery was sanctioned by law. The enslavement of human beings was sanctioned by law just as abortion is today. Human slavery was protected by the courts just like abortion is today. Indeed, human slavery was found consistent with the Constitution, just as abortion is today.

So let us ask the question: Did all of those sanctions make slavery right? They certainly did not. It was wrong, and ultimately that wrongness was corrected; that mistake was corrected.

But the point is that it is not good enough. I would argue that it is not good enough for Senators to take a principled, ethical position on a human rights issue and then to say, "But I will not impose my views on others." That would not have done in 1858 and it does not do today. It does not do justice.

No one in this body would have stood up in the old Senate Chamber in 1858 and said, "I am personally opposed to slavery. I would not hold a human being as property. But if others wish to do so, they may because I'm not going to impose my views on other people." That would have been an absurd, unethical argument then and I say, with all humility and respect, to my colleagues that resorting to that kind of argument today over this issue of human rights is just as unacceptable.

We are not asking Senators today to take a position on the fundamental issue of abortion, unfortunately. I wish we were, but we are not. We are not asking that much. We are merely asking Senators to end the subsidies for this ghastly practice of abortion—to end the subsidies. That is all we are asking. We are merely asking Senators to remove the U.S. Government stamp of approval from the door of the abortion clinics in this country.

A great many abortions, Madam President, by far the largest portion from all accounts, are solely for reasons of convenience. Let me cite a particularly outrageous case. I do not suggest this is a typical case, but it makes the case that abortion is available for any reason or for no reason, even the most outrageous reason. Take the case which recently arose in Terre Haute, IN, which resulted in the case of *Doe* v. *Smith*. It involved a citizen who wished to have an abortion so that her pregnancy would not interfere with wearing a bathing suit this summer. This is a true-to-life case. A citizen sought to have an abortion because she did not wish to be distended by pregnancy such that she could not wear her bathing suit at the beach this summer.

Pretty shocking, is it not? But there is not a word or a letter in law that prevents having an abortion for such an insubstantial, selfish reason. A citizen did not wish to be distended, so she sought an abortion, and the case arose when the child's father sought to have an injunction. Unfortunately, the father lost the suit, the baby was destroyed, and we presume the mother cut a svelt figure this summer in her bathing suit.

Abortion for any reason, abortion for no reason at all, abortion even for the sake of how one looks in one's bathing suit, subsidized by the taxpayers of this country. What kind of a message does it send to our youth, to whom we are always appealing to uphold high ideals of personal conduct, particularly in the area of sexuality, that the Government subsidizes abortions?

How can you argue with a young person, inexperienced, immature, so impressionable, when the Government is sanctioning this ghastly practice, and subsidizing it?

Again, I do not contend that every case is as shocking and irresponsible as this, but I cite the case as proof, vivid proof that one can secure an abortion today for any reason whatever or no reason at all, and we should not be subsidizing this. We should not be displaying approval of it.

If that case is not bad enough, there are even worse cases than abortions for reasons of convenience. Increasingly, there are cases of citizens seeking abortion for reasons of sex selection. You do not like the sex of the child you are carrying? Get rid of it. Physicians can now determine the sex of a child well before birth. A citizen dissatisfied with the sex of a child can have that child destroyed by abortion. There is not a word or even a letter in law to prevent it, absolutely nothing. Senators know that. And that is what we are coming to with this abortion mentality, abortion for any reason and abortion for no reason at all, abortion for the sake of convenience and now abortion even for the purposes of sex selection or, if you will, sex discrimination. Sex discrimination "in utero."

It has become widespread enough to warrant articles in prominent newspapers and other periodicals. I am talking about staff articles now. I am not talking about opinionated columns by syndicated writers. I am talking about staff articles.

For example, a number of years ago the Washington Post published a story by one of its staff writers—a staff writer, not a columnist—which reported that "Doctors at several prominent medical centers around the country, and an unknown number of private physicians as well, have begun helping some pregnant women abort their fetuses because the baby would be the wrong sex."

I ask unanimous consent, Madam President, that the article be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mr. EXON. What was the Senator's request?

The PRESIDING OFFICER. The Senator requested that a particular article regarding a rationale for abortion be printed in the RECORD at the end of his statement.

Mr. EXON. I have no objection.

The PRESIDING OFFICER. Without objection, the unanimous consent request is agreed to.

(See Exhibit 1.)

Mr. HUMPHREY. I do not want to suggest that sex selection is as yet widespread but it exists. Listen to this. This will really get your attention. In the same article, the director of prenatal diagnosis at Yale University, one of the great institutions, respected institutions in this Nation, states his belief that "Lots of obstetricians all over the country" are already doing sex determination tests.

Lots of obstetricians, according to the director of prenatal diagnosis at Yale. "'We are against it,' he emphasized, but under certain circumstances we will get this information for a prospective mother."

And then he says he hopes this prevents "the sacrifice of normal kids." The sacrifice of normal kids. Now, think about those words for a moment, not coming from one of the leaders of the Right-to-Life movement but from the director of prenatal diagnosis at Yale University, not from some sensationalist but from, surely, a respected member of the medical community, certainly one with a very high office in his profession talking about "the sacrifice of normal kids," to use his words.

There is a plain statement of fact in this debate on abortion which is so often infused with euphemisms. It is interesting, Madam President, how the truth will come out. Of course, it is much more comfortable to talk about abortion in abstract terms. It is more comfortable to speak of terminating a pregnancy rather than killing a human being or sacrificing kids.

But every now and then even the experts let the truth out. Sex selection abortions are not just pregnancy terminations. They are, to use the phrase of the director of prenatal diagnoses of Yale University, "The sacrifice of kids, children." And he admits it. Abortion kills kids. He also acknowledges that abortions are killing kids because they are boy babies or girl babies. As a matter of fact, the experts admit that it is usually the girl babies who are being killed. There is sex discrimination for you right at the outset of life. Talk about discrimination against females. There it is right in the womb, all sanctioned and subsidized by the Federal Government.

If you are a girl and your parents want a boy, do not look to the law for any help because you are in the free firestorm. This sacrificing of kids, this killing of children is all protected by law. I am not suggesting that this practice of sex selection by abortion is as yet widespread, but it is spreading, according to the journalists. Again, to cite this lawful practice, this awful lawful practice, to underline the fact that abortion is available in this country from the first moment of pregnancy to the last with no meaningful restrictions whatever, it is abortion for any reason or abortion for no reason at all.

That, my colleagues, is the heritage of Roe versus Wade and its project. That is the fact of life. But we do not have to subsidize it, nor should we. I come back to the original point. Abortion is now legal but let us stop subsidizing it.

The purpose of the amendment which is now before us is to end the subsidies for abortion. We thank President Reagan for his steadfast support of the right to life cause, and for his support of this amendment.

As to the amendment itself, Madam President, the amendment is drawn in large part from S. 264 introduced earlier in this Congress. The amendment is in fact more narrowly drawn than S. 264. The amendment would eliminate tax breaks for abortion. What sort of tax breaks? Under current IRS rulings, certain organizations that provide abortions are exempt from taxation just like schools, religious institutions, and charities. Let me emphasize that tax exemption is not a right. It is not a right. It is a privilege. According to the courts it is not a right, it is a privilege which the Congress may extend or withdraw.

The amendment proposes to withdraw the tax exempt status from abortion clinics because for the simple self-evident reason that abortion clinics should not be so privileged. The amendment is so narrowly drawn as to eliminate the risk that any hospital might be affected by this amendment. We have incorporated in the language in the amendment a threshold test which will exempt from coverage any organization which derives less than 1 percent of its gross receipts from performing abortions.

In other words, an organization that performs abortions would lose its tax exemption only if its income from abortions exceeds 1 percent of its gross receipts from all of its services.

While we do not mention hospitals per se in the language, we have deliberately and carefully in consultation frankly with the American Hospital Association formulated our language. I do not mean to suggest that the American Hospital Association supports this. I am sure the Senator from Oregon will dwell on that point to more than necessary length. But the point is we sought to cooperate with the American Hospital Association, and we carefully and deliberately formulated the language in this amendment to exclude hospitals.

We are aware as of this hour of no hospital that would be affected by this amendment. The reason is again obvious. There simply is not a hospital in the country which is so involved in abortion that its revenues from the performance of abortion exceed 1 percent.

The hospitals do lots and lots of things. They offer lots and lots of services, and their revenue breakdown is such that we know of not one that would be affected by this amendment. I hope that will comfort many of the Senators who had problems with a similar, much broader amendment 2 years ago. I recall that even our other colleague, the Senator from Oregon, Senator HATFIELD, who ordinarily supports what we call right-to-life measures had a problem with our amendment 2 years ago. He felt it was overly broad. He had concerns about certain teaching hospitals that would have been affected, and indeed they would have been affected. We have now drawn this amedment so narrowly and so tightly that we know of no hospital that will qualify and that would be affected by the amendment.

Not only would hospitals be excluded from coverage of the amendment, but certain other abortion providers would not be touched because they are not tax exempt in the first place. Obviously, you cannot withdraw tax exemption from an organization that has no tax exemption to being with. For-profit abortion clinics, and there are such—that is worth a separate speech, is it not people profiteering off this bloody, ghastly business, for-profit abortion clinics? It is worth another speech on another day. But in any event, for-profit abortion clinics are not tax exempt, and would not be affected by this amendment. And likewise Government-owned abortion clinics would not be affected by this amendment either since the Government does not pay taxes to the Federal Government. But there are many abortion clinics that do enjoy such tax breaks. There are about 3,000 abortion providers in this country, clinics, hospitals, and private physicians.

About 800 of those are abortion clinics of which somewhere between one-third and one-half are tax exempt. But it is important to remember for both sides of the argument, I will acknowledge, that 80 percent of the abortions in this country are performed in abortion clinics.

What about the constitutional implications of this amendment? Are we well within the Constitution? We are, indeed. Let us remember to begin with that we have repeatedly cut off cash subsidies for abortion. We no longer pay for abortion out of Medicaid or any other Federal program. We have repeatedly cut off cash subsidies for abortion. And naturally those cutoffs have been challenged in court a number of times, and the courts have always upheld the right of Congress to cut off these cash subsidies. And with good reason. For as the Supreme Court stated in the case of Taxation With Representation versus Regan, "A legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, quoting from TWR versus Regan. "A legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right."

From the same decision "Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."

There you have it. In TWR versus Regan, the court held that a tax exemption has much the same effect as a cash grant, and furthermore, that the Legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right. If this amendment is adopted, I will admit it is kind of an uphill fight given the fact that we have lost six of the Members from 2 years ago who supported this amendment—but for the sake of those who have concerns, constitutional concerns, if the amendment becomes law the right to abortion expressed in Roe versus Wade is not infringed. Abortion clinics may still operate, citizens may still seek abortions, perform abortions, and be involved in abortions.

Remember, we are not talking at all about advocacy, counsel, or referring. Those are all excluded by the language of this amendment. Abortion will continue. The only difference is that we will no longer subsidize it, and encourage it, and place the stamp of approval of the Federal Government on that practice. Tax exemptions and tax deductibility are a form of subsidy which the Congress may extend or withdraw because they are privileges, not rights. And to withdraw such a privilege in no way infringes the exercise of the right.

Therefore, the question is not the constitutionality of this proposal. It is sound. The question is, will Congress, will the Senate, continue to subsidize abortion? That is the substance of the amendment and the question before the body at this time.

This Senator argues, no: Abortion does not deserve subsidy, because self-evidently and inescapably, abortion is the destruction of human life. That is why every one of us is personally opposed to it.

Abortion does not deserve Federal subsidies. Churches, yes. Synagogues, yes. Schools, yes. Charities, yes. The Boy Scouts, yes. The Girl Scouts, yes. But killing of babies, no. Abortion is very much different.

What we are asking, Madam President, is for the Senate to make a value judgment favoring childbirth over abortion. That is what we have done when we cut off cash subsidies. We made a value judgment each time we adopted the Hyde amendment language. We should do it again this time, cutting off tax subsidies. It is right to cut off cash subsidies. It is right to cut off tax subsidies. The Supreme Court has said that it is the same as a cash subsidy.

The Supreme Court, in Maher versus Roe, speaking of the abortion right declared in Roe versus Wade, said, speaking of Roe versus Wade: "It implies a limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds."

In the amendment before the Senate, we are asking this body to make a value judgment favoring childbirth over abortion.

We should not be neutral on this subject. We have not been neutral when it comes to cash subsidies. It is intellectually inconsistent to be neutral when it comes to tax subsidies. We have expressed the value judgment favoring childbirth each time we enacted the Hyde amendment language, and now it is time to do the same thing on the other side of the coin, dealing with cash subsidies.

The amendment is constitutionally sound. Practically speaking, it will affect only abortion clinics. They will still be able to operate as they do today, with one difference: They will no longer enjoy tax breaks. They can, however, continue, unencumbered, to counsel and perform abortions.

Madam President, to conclude, and to try to put it all into focus: Let us remember just how these abortions accomplish their purpose. What is that purpose? The destruction of human life. That goal is not attained unless death is the product.

How is that done? How is that end accomplished? The child is either mechanically dismembered in utero, torn apart and extracted in bloody pieces, or the child is expelled from the womb by strong contractions induced by drugs, or the child is subjected to a caustic solution injected into the amniotic fluid in which that child is suspended—so caustic that it burns away the child's skin, including the delivery of what is known in the profession as a "candy apple baby." "Candy apple," why? Because the child comes out bright red—dead and red. Pretty awful, is it not?

For the love of humanity, let us stop subsidizing this ghastly practice, this injustice, this cruelty. Let us make a value judgment that favors childbirth and life.

Exhibit 1

Fetuses Aborted To Prevent Child of "Wrong" Sex

(By Victor Cohn)

Doctors at several prominent medical centers around the country—and an unknown number of private physicians as well—have begun helping some pregnant women abort their fetuses because the baby would be the "wrong" sex.

The number of these cases is now small, but some medical authorities predict—and one bioethicist advocates a rapid increase in the use of sophisticated tests and abortions to allow parents to select the sex of their offspring. And the procedure is already raising important moral and ethical questions within the medical profession.

The issue centers around a prenatal test called amniocentesis, in which doctors withdraw a sample of the fluid in the womb. The test provides genetic information about the fetus, and is primarily used to detect birth defects. But it also reveals the baby's sex.

It is on the basis of this test that some patients choose abortion to avoid having an unwanted boy or girl, though some doctors say the preference in this choice is most often for a boy.

In most cases, authorities said yesterday, those doctors who agree to do amniocentesis only to determine a fetus sex do so reluctantly. In the typical case, one or both parents are highly disturbed people who threaten to end the pregnancy in any case unless they can be sure the child is the desired sex.

Most doctors apparently still refuse to do an amniocentesis for sex determination alone even in cases like these.

But this situation could be changing. Doctors at Johns Hopkins, Yale, the University of California at Los Angeles and George Washington University here say they will do such tests in a few highly screened cases.

Dr. John C. Fletcher, a bioethicist at the federal government's National Institutes of Health in Bethesda, advocates that parents be permitted to use such tests for sex determination, if they choose.

Tabitha Powledge—of the noted Hasting Center and Institute for Science, Ethics and Life Sciences at Hastings-on-Hudson, N.Y. said she thinks the practice is not yet really common, but could become so in two or three years.

Fletcher states his position in the New England Journal of Medicine. He said in an interview that he wrote as an individual, not as an NIH official, and came to his position "with great difficulty."

He finally decided, he said, that "it's woman's right to decide her reproductive future and if she's going to seek this procedure and abortion anyway she should at least be able to get the very best medical care."

Doctors at Johns Hopkins' Prenatal Diagnostic Center have decided to "at least" counsel and advise parents who want the test for sex determination, and probably "reluctantly" agree in "one or two cases a year" reported Dr. Haig Kazazian, the center's director.

"Our position is that we will do it, in theory, in cases where the parents would abort the fetus if they did not know the sex," said Dr. John Larson at George Washington University here. "But this is a very restricted position, not an open-door policy."

The "actual situation", however, said the Hastings Center's Powledge, is that "more and more obstetricians are learning to do amniocenteses in their offices."

"As more and more learn," she said, "then in a way the lid will be off, because women will shop around until they find someone who's willing. And you can't tell me there won't be lots of obstetricians who are willing, for a price. I think the problem is probably not so much one of today as one of 1981 or 1982."

Dr. Maurice J. Mahoney, director of prenatal diagnosis at Yale University, said he believes "lots of obstetricians all over the country"—some in private practice, some at universities—are already quietly doing amniocenteses for sex determination.

"We're against it," he emphasized. "But under certain circumstances, we will get this information for a prospective mother, and we'll hope that this prevents" rather than cause "the sacrifice of normal kids."

He said Yale doctors have had "serious" requests for sex discrimination about twice a year, but only three women over the past 10 years have insisted on having the test after counseling about the risks and alternatives.

Neither of the two who learned that the fetus was not the desired sex chose abortion. "But we've given many other women information about sex," as well as genetic information, Mahoney added, "and we just don't know what they go on to do elsewhere."

He said "we would never agree to abort a pregnancy because of undesired sex," but pointed out that women can get abortions at many clinics today.

Dr. Barbara Crandall of UCLA recently told Ob. Gyn. News, a doctors' newspaper, that UCLA has done the test to determine sex in 10 cases since 1969, and, after counseling, none of the patients had an abortion. She added, "I don't feel I can deny this service to an emotionally stable individual with a reasonable case."

So far, said GW's Larson, his university has done the test only for sex determination, "when a patient tricked us into it by saying she wanted it for another reason. Then, when she found she had a child of an undesired sex, she asked for obstetrician to terminate the pregnancy. I don't know what happened."

"If we agreed to do the amniocentesis," said Johns Hopkins' Kazazian, "then our fertility control clinic would do the abortion. But we don't expect this to be very common. Our policy is to counsel such couples and tell them what it means and to a certain extent try to talk them out of it."

When an amniocentesis is done at a major medical center, a trained team takes a sonogram, or sound picture, to locate the fetus precisely, then inserts a fine needle into the abdomen to withdraw some amniotic fluid.

As done at Johns Hopkins, it costs $550. It can be done without hospitalization.

But most authorities think it should be done only at centers with skilled teams with much experience, since there is always some risk to the fetus. The risk, usually miscarriage, has been less than one in 100 at skilled American clinics.

In addition, however, the test can't be done until about halfway through pregnancy. This means that an abortion, if done, is a midterm operation with higher risk to the mother than an early abortion.

There are other dangers, including unknown consequences for society if parents widely seek this procedure, NIH's Fletcher writes. A doctor may state an opposing moral view, he argues, but should not withhold the test unless doing it would prevent its being done on some other child for more important reasons.

AMENDMENT NO. 3509 TO AMENDMENT NO. 3499

(Purpose: To exclude abortions performed when pregnancy is due to rape or incest from denial of tax-exempt status to organizations performing such abortions)

Mr. EXON. Madam President, I send to the desk an amendment in the second degree and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nebraska (Mr. Exon), proposes an amendment numbered 3509 to the Humphrey amendment numbered 3499:

On page 2, strike lines 11 through 16.

Paragraph (2) of section 501(n) of the Internal Revenue Code of 1986, as added by the amendment, is amended to read as follows:

"(2) Receipts from certain abortions excluded.—In determining gross receipts under paragraph (1), gross receipts from abortions performed when—

"(A) the life of the mother would be endangered if the fetus were carried to term, or

"(B) the pregnancy is due to rape or incest and such rape or incest has been promptly reported to a law enforcement agency or public health service,

shall not be considered.".

Mr. EXON. Madam President, I have sent this second-degree amendment to the desk and asked for its immediate consideration in order to stake out a position that I have always held on this issue, and a position on which the U.S. Senate has agreed with me in the past.

The amendment I have just proposed is in the second degree to the pending Humphrey amendment regarding the tax-exempt status for organizations that perform abortions.

I want to assure the Chair and Members of the Senate that I am going to be very brief, because I think the issue is well known, well documented, and I will ask for a vote and move things along very shortly.

I support the concept behind the pending amendment of my friend and colleague from New Hampshire, and I hope—and I underline the word "hope"—that I will be able to support the amendment. I agree that our Federal Government should not subsidize abortions, either through direct expenditures or through indirect tax exemptions.

The pending amendment disallows a tax-exempt status to an organization if more than 1 percent of the gross receipts of the organization come from performing abortions. That provision, however, does not include gross receipts from abortions performed when the life of the mother is at risk. That is a good exemption, and I support it. But, once again, the promptly reported rape and incest tragedy has been ignored.

Once again, I stand on the floor of the U.S. Senate to try to marshal the conscience and the fairness of this great body to, at a minimum, add the Exon amendment which I have offered in the second degree.

My amendment will change that provision to further exclude gross receipts from abortions that are the result of promptly reported rape or incest. The net effect will be to allow organizations to perform abortions when the life of the mother is at risk and in cases of rape or incest that are promptly reported and do not threaten their tax-exempt status.

It has been my long-held position that abortions should not be funded by the Federal Government except in cases where the life of the mother would be threatened if the fetus were carried to term and in cases of promptly reported rape or incest. My amendment will bring the Humphrey amendment in line with that position.

I will not belabor the point. The Senate in consideration of the Labor-HHS appropriations conference report but a few weeks ago dealt with the same proposition which prevailed in an overwhelming vote of 73 to 19.

Madam President, I am once again continuing my attempts to have all abortion-restricting legislation which passes the U.S. Senate to have as a part of that legislation to continue what I firmly believe in and I think what the majority of the Members of this body believe in, that if we are properly going to exclude from the restrictions life of the mother then we also should include along with that promptly reported rape and incest.

I urge my colleagues to adopt this amendment which I believe will improve the underlying amendment.

In just a brief moment, let me say that there are arguments on both sides of this issue, and I have no quarrel with those who do not agree with me because this is a fundamentally held belief that I think is very important.

I have never been able to accept the fact that we say in all piousness that we want to allow a mother to have an abortion if that mother's life is endangered while at the same time say "But not you, little 14-year-old girl," who has become pregnant through rape or incest. We take the doll out of her hand and pat her on the head and say "Sorry, dear, we are not going to help you because we do not think that is important."

I say that if it is important to allow funding in any form to save the life of the mother, which I think it is, then it is equally important to allow abortion for promptly reported rape or incest.

I might be wrong, but I would cite once again that the U.S. Senate in record vote No. 268 of July 27, 1988, voted overwhelmingly 73 to 19 on this proposition, and I hope that we will have that kind of a vote on the amendment once again.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. EXON. Mr. President, I ask unanimous consent that Senate Voting Record No. 268 be printed in the RECORD.

There being no objection, the voting record ordered to be printed in the RECORD, as follows:

SENATE VOTING RECORD NO. 268

LABOR-HHS APPROPRIATIONS 1989 (ABORTION)

Bill No.: H.R. 4783.

Amendment No.: 2699.

Title: "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act 1989."

Subject: Exon amendment (to the Committee amendment) which makes a victim of rape or incest eligible for a Federally-funded abortion only if the incident is reported promptly to a law enforcement agency; permits payments for drugs to prevent the implantation of a fertilized ovum and for the termination of an ectopic pregnancy; and allows any State the right to refuse to fund an abortion except where the mother's life would be endangered if the fetus were carried to term.

Note: Proponents asserted that exceptions to the abortion funding restrictions should be made carefully and narrowly. There should be a prompt reporting requirement of rape or incest in order to dissuade women from making false claims to secure a Federally-funded abortion under Medicare. States should have the option to determine their own abortion funding restrictions since some may not wish to go as far as the Federal government in funding abortions. Those who oppose abortion should support this amendment, they argued, since it controls abortions to some degree, whereas "dogmatically perfect" amendments serve only as "score card" votes and have no chance of passing the Senate.

Opponents countered that the Senate should not permit the use of Federal funds for abortions simply because of the circumstances surrounding a pregnancy. Allowing the use of Federal funds for rape and incest would open the floodgates for other exceptions, they argued, and would encourage false claims to qualify for a Federally-funded abortion. They pointed out that the Hyde amendment permits the use of Federal funds for adequate medical treatment of victims of rape or incest. Some opposed the amendment on the basis of the prompt reporting requirement, noting that promptness is not defined in the amendment and that a victim of incest may keep silent for months because of the embarrassment surrounding such a situation.

H.R. 4783: Vote Nos. 254, 255, 262-270.

Result: Amendment agreed to:

YEAS (73)

Democrats (34 or 71%): Baucus, Bingaman, Boren, Bumpers, Burdick, Byrd, Chiles, Conrad, Dixon, Dodd, Exon, Gore, Graham, Harkin, Hollings, Inouye, Kennedy, Kerry, Matsunaga, Melcher, Metzenbaum, Mikulski, Mitchell, Moynihan, Nunn, Pell, Proxmire, Pryor, Rockefeller, Sanford, Sarbanes, Sasser, Simon, Stennis.

Republicans (39 or 89%): Armstrong, Bond, Boschwitz, Chafee, Cochran, Cohen, D'Amato, Danforth, Dole, Domenici, Durenberger, Evans, Garn, Gramm, Grassley, Hatch, Hatfield, Hecht, Heinz, Humphrey, Karnes, Kassebaum, Kasten, Lugar, McClure, Murkowski, Nickles, Pressler, Quayle, Roth, Rudman, Specter, Stafford, Stevens, Thurmond, Trible, Wallop, Weicker, Wilson.

NAYS (19)

Democrats (14 or 29%): Bradley, Breaux, Cranston, DeConcini, Ford, Glenn, Heflin, Johnston, Lautenberg, Levin, Reid, Riegle, Shelby, Wirth.

Republicans (5 or 11%): Helms, McCain, McConnell, Packwood, Simpson.

NOT VOTING (8)

Democrats (6): Adams—2, Bentsen—2, Biden—3, Daschle—2, Fowler—2, Leahy—2.

Republicans (2): Symms—2, Warner—2.

Explanation of absence: 1—Official Business, 2—Necessarily Absent, 3—Illness, 4—Other.

Symbols: AY—Announced Yea, AN—Announced Nay, PY—Paired Yea, PN—Paired Nay.

Analysis of issue voted on:

Party Cohesion: Democrats—71%, Republicans—89%.

Measure of Party Support on Issue as Voted on:

For (73): Democrats—34 or 47%, Republicans—39 or 53%.

Against (19): Democrats—14 or 74%, Republicans—5 or 26%.

Mr. PACKWOOD. Madam President, could I ask the Senator from Nebraska a question?

I think I am going to support his amendment, but I want to make sure I understand how it works.

The amendment of the Senator from New Hampshire says that a nonprofit, a 501(c) organization loses its tax-exempt status if more than 1 percent of its gross receipts come from abortions, other than abortions to save the life of the woman.

The Senator adds to it, 1 percent of the gross receipts except to save the life of the woman or rape or incest.

Mr. EXON. The Senator is correct.

Mr. PACKWOOD. I normally support the Senator's rape or incest positions on this. It adds an unusual complication to the hospital of having to be very sure of how the pregnancy occurred so that they do not accidentally lose their entire tax-exempt status.

I think I am going to support the Senator, but I can see an additional element of confusion for the hospital wanting to be devilishly careful that they do not make a mistake.

Mr. EXON. I think the question from my friend and colleague from Oregon is well taken, and so I state for the RECORD and as a part of the consideration of this measure that all this amendment is intended to do is to add "promptly reported rape and incest" to the provisions that are already in the Humphrey amendment with regard to exempting or allowing an abortion when the mother's life is endangered.

I thank my friend from Oregon for asking and clarifying that point.

The PRESIDING OFFICER. (Mr. SHELBY). The Senator from Colorado.

Mr. ARMSTRONG. I thank the Chair.

Mr. President, I listened to the discussion of this amendment with a growing sense of destiny. While we do not know at this moment the outcome, what the vote will be, I have less and less doubt with the passage of time that at some day, and I expect I will live to see the day and I expect most Members of this body will live to see the day, when abortion will be outlawed in this country, when this barbaric practice will no longer be permitted under any except the most extreme circumstances, when the law that prevailed in most States of the country until very recently will be restored.

I do not know when that is going to be. I do not know whether it will be as a result of a statutory enactment or an amendment to the Constitution or perhaps a new interpretation by the U.S. Supreme Court, but it is more and more clear to me that the forces of history and the awakening conscience of thoughtful people throughout this country as well as those in this Chamber will not indefinitely permit abortion to continue.

I must say, Mr. President, that I rise not only to express my support for the amendment but to express my profound admiration for the sponsor of the amendment, our friend from New Hampshire, Mr. HUMPHREY. I have listened to his discussion, his thoughtful and well-reasoned advocacy of this pro-life position on many occasions here on the floor, and I have never been more impressed than I was today as I listened to his observations.

The issue before us, as he has correctly pointed out, is not whether you are for or against abortion. It is no secret that I am completely against it in all except the most extraordinary circumstances, but that is not the question. Nor, Mr. President, does a person have to adhere to the position I believe in, what is loosely characterized as a pro-life position, in order to see the logic and validity of the Humphrey amendment, because what we are saying here is not how do you feel about abortion, should it be legal or illegal, and if so under what circumstances.

The question is do we wish to grant a tax incentive to promote abortion.

I invite my colleagues to think for a few minutes about the underlying theory of charitable exemptions in the law. It is a well-established principle that Congress grants to certain kinds of organizations and activities a special tax status in order to encourage their work. The American Red Cross enjoys such a tax status, the Boy Scouts, the Girl Scouts, every church, most colleges and universities, the Community Chest, Alcoholics Anonymous, a long, long list of organizations whose purpose is charitable, eleemosynary, fraternal, and so on, organizations that are engaged in scientific research, organizations which feed the poor, which shelter the homeless, which tend to spiritual needs of people as they ascertain and determine their own spiritual needs. These are purposes which the Congress has historically found to be meritorious and worthy and, therefore, have sought to give them a special encouragement to enhance their work, including their voluntary character by giving them a special tax status.

The question that is before us in the Humphrey amendment is do we think abortion ought to have the same charitable status as the Red Cross, the universities, the churches, and the synagogues of this country. It appears to me that a thoughtful answer to that, however you might feel about abortion, whether you are for it or against it, whether you think it ought to be regulated by Congress or by the States, whether you think there are some circumstances or none at all in which it is appropriate, whether you think it ought to be a matter for decision only by the woman or by the man involved or with the consultation of a doctor, or a psychologist or a clergyman, however you might feel about those, the underlying question here is not up or down on abortion; the question is should it have a privileged tax status.

Do we wish to have it on the same plane of acceptability and social preference as the synagogue and the church, the university, and the Red Cross and those who shelter the homeless and feed the hungry?

I do not think so, Mr. President. I do not think that is something that Congress ever intended. In fact, I believe I can prove that it was never the intention of whose who wrote the underlying statute which permits abortion mills to claim a tax deduction.

I do not think it was ever the purpose or intent of the authors of that legislation to have such a thing happen. And the reason is obvious. Because at the time the relevant sections of the law were written, abortion was for the most part against the law in this country.

Now, that is how far we have come, not in a 1,000 years or a 100 years, but in less than two decades. An activity which two decades ago was, for the most part, a criminal offense now enjoys a tax preference. It happened by accident. We never voted on this. As far as I know, there has never been a vote by the Congress of the United States in which Congress said, "Yes, we want to extend this prerogative, this privilege, this special tax status to abortion mills." I am not aware of it if it ever happened. In fact, if that question was before us today, I believe it would surely be defeated.

What happened was that after the passage of the tax statutes, the court came along and made legal an activity which, for the most part, with some exceptions, was against the law prior to that time. So we are confronted with a situation which was never intended by those who wrote the Tax Code, which I think few people would, beyond this Chamber, agree with, and which we can now easily correct.

I do not think we ought to claim too much for this amendment. It is not going to put a stop to abortion. If I thought it would, I would be even more enthusiastically in support of it. But is is not going to. It may not change directly very many decisions about abortion, though it may change some.

What it does say is this: that the Congress of the United States does not want to be in the business of promoting abortions. And so, to the extent that we teach the people of our country, that we teach each other, that we give instruction to our young people, that we provided guidance as well as a legal framework, that we are coming down on the side of life instead of abortion; that, as the Senator from New Hampshire has correctly pointed out, we are appealing to the higher idealism of our young people rather than saying to them, by giving tax-preferred status, that abortion is OK, that it is permissible, that it is a valid option.

Mr. President, I doubt very much if there are very many occasions on which young people considering an abortion would first consult their accountant or lawyer to say, "What does Congress think about this? Does Congress think this is a tax preference activity or is it something that they have said should not be encouraged?"

I do not believe that. But I do believe that how we respond to this reflects the moral attitude we have toward it. Either we want to encourage it or we do not.

Mr. President, there are a lot of activities which are lawful, even some which are commendable, which do not enjoy a tax deductable status. Stamp collecting is a worthy activity, but it is not entitled to any tax preference. There are a lot of things. In fact, most activities, most organizations which make up our day-to-day life, are not in fact given tax preference. Only some which we have set aside as special because of the special contribution they make to our life, because of something important, something which is a part of a broad-gauge social consensus, such as religion, charity, education, eleemosynary, scientific research, and so on have we accorded this privileged tax status. I do not think abortion belongs in that kind of a tax status.

Let me say a word, while I am on my feet, about the Exon amendment. I do not agree with the Exon amendment. I do not think it adds anything to what Senator HUMPHREY has proposed, but I might just vote for it anyway, and I will tell you why. Because if I thought it would enhance the prospects for the passage of the underlying amendment, it would be a reasonable compromise.

And I understand, Mr. President, that both the Exon amendment and the underlying amendment are matters about which thoughtful men and women will disagree. And so, as the debate goes on, I am going to continue to listen and I am going to ask my colleagues as they come to the floor how they feel about it. And finally I am going to vote yes or no on the Exon amendment based on whether I think it will enhance the prospects for the ultimate passage of the Humphrey amendment.

I do not mean to be cynical about it, because I am not in the slightest. I think it is just a practical case of whether or not we ought to hold out for a more far-reaching amendment or settle for a more narrowly defined amendment that might improve its chances for passage.

But, having made that observation, let me point out that what the Senator from New Hampshire has proposed is by no means a sweeping amendment. It is less, in fact, than I wished he had originally offered. I personally would think it better policy just to deny altogether the tax-exempt status of any organizations which performs or provides facilities for abortions, whether it was 1 percent or 10 percent or 75 percent of their activity. That is just not an activity, in my judgment, which ought to be the subject of a tax preference or engaged in by a tax-exempt organization. The Senator's amendment does not begin to do that. He just says that if you exceed a certain threshold, then, in that case, you lose your tax-exempt status.

Mr. President, I encourage all Senators to reflect upon the Exon amendment and vote their conscience. I encourage all Senators to reflect upon the Humphrey amendment and, having consulted their conscience and their hearts, that they will join with me, and I trust that the majority, in supporting the amendment denying tax-exempt status to these abortion mills.

Mr. PACKWOOD. Mr. President, this is one in a long series of debates we have on the floor of the Senate on the subject of abortion. This is a sensitive subject, one in which all Members, I believe, hold strong opinions one way or the other, heartfelt opinions, honest opinions. And it is one in which this country, over its history, has held different opinions.

My good friend from Colorado, Senator ARMSTRONG, said two decades ago this was illegal in most of the country. In most of it, it was. There were four States where abortion was legal. I think they were New York, Washington, Alaska, and Hawaii.

But, as you look at the history in this country, going back two centuries to the time of the founding of this country, abortion was legal in the country. It was not outlawed in any State of the United States. It was not outlawed by the U.S. Constitution. Abortion was a common practice at the time of the founding of this country. It was well known and, for whatever reasons, our founders chose not to outlaw it, either in their participation in the State legislatures or State constitutional conventions or at the constitutional convention of the United States. It was commonly accepted. Now, that was two centuries ago.

Abortion started to become illegal in this country State by State in the 1830's and 1840's, partially propelled by religious fervor, partially by medical. Because many women were dying of botched abortions, dying of infections from abortions done under very unsanitary circumstances, there was a feeling that we simply could not continue that situation. So, between the moral fervor and the medical problem of unsanitary, unsafe abortions, it was outlawed State by State.

So, let us say 2 centuries ago abortion was legal in this country. A century ago it was illegal. It is now again legal. And you started to see the questioning in the late 1950's, both as to the moral opinions outlawing abortion and medical aspects. By this time, we had advanced far enough medically that clearly safe abortions can be done.

And then in the sixties you had a few States that decided that they would permit legalized abortions. As I say, I think they were New York, Alaska, Washington, and Hawaii, and you had other States moving down that road.

I do not know the records, but my guess would be in those four States where abortion was legal you probably had a number of nonprofit associations or organizations doing abortions. They probably had tax-exempt status.

What really galls the opponents of abortion, the opponents of giving a woman a choice as to whether or not she wants to make a decision for herself, is the Supreme Court decision in 1973 of Roe versus Wade that legalized abortion nationwide. And this was one in a long history of Supreme Court decisions. They rested the decision on portions of the Bill of Rights where the Supreme Court has gradually, over the last 2 centuries, extended the protections of the Bill of Rights to individuals and have indicated that States could not take that right away.

That is what the Roe versus Wade decision said. It said States can no longer prohibit a woman's right to make the decision as to whether or not she wants to have an abortion. But it was one in a long line of cases in which the Supreme Court has gradually extended the protection of the Bill of Rights, whether it is the first amendment in speech or the fourth amendment in search and seizure or the fifth amendment in self incrimination, extended it further and further, and, in my mind, correctly.

Up until about 1875, the Supreme Court's interpretation of the Bill of Rights was that it did not apply to the States. It only applied to the Federal Government. So that the States could do almost anything they wanted on freedom of speech, freedom of assembly, freedom of religion. They could abuse them, and the U.S. Supreme Court took the position that the Bill of Rights did not apply to State limitations on individual rights.

After the 14th amendment was passed, the due process amendment, the court began to gradually incorporate the first 10 amendments—not all at once, some of them have not been fully incorporated yet—and began to say that throughout the 14th amendment and the due process clause, the protections in the Bill of Rights guaranteed individuals protection against State as well as Federal action.

So we got to 1973 in the Roe versus Wade decision. That was one more extension of the concept of applying to the States the protections for individuals in the Bill of Rights, in this case the right of a woman to have an abortion. For those who said well, the Supreme Court never did this before, it was done arbitrarily—the Court never had a case on this subject until 1969. One had never been filed. So there was not much the Supreme Court could do about it until it actually had a case before it because the Supreme Court does not go out looking for cases. It cannot. It can only take cases that are filed and finally come to it.

And the thing that absolutely irritates the critics of the Court is they think the Court was overreaching. This is a common complaint about the Court when it makes a decision you do not like.

If it makes a decision you do like you think it is a very wise decision, a compassionate Court extending the protections and privileges of the Bill of Rights, and you take that decision and clutch it to your heart and say it was a wonderful decision. If you do not like it, you talk about the Court overreaching.

You see that time after time, Court decisions and then Congress tries to take away the right of the Court to make those decisions. In the 1950's, it had to do mostly with the House Committee on Un-American Activities and subversive activities and whether the Court had the power to uphold the right of individuals not to be compelled to testify before Congress, that they could use their self-incrimination protections and say "I refuse to testify before this House Committee because it could tend to incriminate me. I rest on my constitutional rights." The Court said that is right. Congress cannot compel a person to testify against himself. It violates the Constitution.

And we had a great outcry in the mid-1950's. This was a time of Communist witch hunts and the Communist Court and Earl Warren leading us down the road to degradation. We in the Congress attempted to take away the Court's right to hear those kinds of cases. But that fervor passed in a few years.

We got into the 1960's, and in the 1960's the court made the decision on Baker versus Carr. These were the reapportionment decisions: one man, one vote. Up until that time, in both Congress and the State legislatures, you did not have to apportion your legislatures on the basis of population and we did not. We did not apportion Congress that way, the districts for Congress. We did not apportion State legislatures that way. There was an absolute outcry, again understandably, from those who came from malapportioned districts. They did not like the thought that their district was going to be changed. You had a great outcry in the Congress, thoughts of passing a constitutional amendment or taking away from the courts the right to make decisions involving apportionment of legislature.

You had the issue a few years later that has continued over a few years, now, of school prayer. Does the Supreme Court have the power to pass on issues involving the establishment of religion, and especially school prayer? Can they pass upon the issue of whether or not, if a school board writes a prayer and says to the teachers, "You say this prayer and have the kids say this prayer," can the Court pass on that kind of issue? The Court said it could. The Court has struck down many of those.

I want to emphasize it has not struck down voluntary prayer. It is constitutional today to pray in school. Individuals can pray. They probably cannot make public nuisances of themselves. They probably cannot set themselves afire. But short of that, any student in a public school in the United States today can pray. He can pray before meals, he can pray before class, he can pray before testing. I think a lot of them probably do. And that is constitutional.

What the Court has struck down is what I would call enforced prayer, in this sense. Others would call it voluntary but I would not. It is a daily Bible reading or it is a prayer. And the student either says it or participates in it or is given the choice to go in the halfway or cloakroom and is separated from the rest of the students. The Court has said that is not voluntary prayer. That is social coercion

Picture yourself as an 8-, 9-, 10-, 11-year-old and the class is all standing up and reciting a prayer. You feel kind of like the odd man out. You say I do not want to go out in the hallway and separate myself from my fellow classmates. I do not like the prayer. And the Court said you cannot do that.

Well, there was a big uproar about that. Should we take away from the Court the power to pass on these issues? Then we get to abortion and the same battle. Take away the prayer from the Court.

We have had all kinds of votes in this Congress. Fortunately, they have not passed, have not become law, on what we call Court-stripping provisions. Senator HUMPHREY from New Hampshire and Senator ARMSTRONG from Colorado have supported them over and over. By Court-stripping we simply mean this. We will pass a bill that says: "Henceforth the Court may not consider cases involving * * * prayer, abortion, apportionment of legislatures, fifth amendment rights on self incrimination." Whatever it is. And you picture the dangerous situation.

Let us say the Court has come up with a decision, constitutional decision. They say you constitutionally cannot be compelled to testify against yourself before a congressional committee. You cannot be constitutionally compelled to say a prayer you do not agree with or listen to a prayer you do not agree with that is funded by public money.

Normally to overturn a constitutional decision of the Court takes a constitutional amendment. We did it with the income tax. The Supreme Court in the early part of the century said it was unconstitutional to have an income tax. We passed a constitutional amendment saying that the income tax was constitutional. That takes a two-thirds vote of the House, two-thirds vote of the Senate and a three-quarters vote of the States ratifying it before it can go into effect. And our Founders intended that process to be very difficult. They did not want the Constitution tampered with easily.

They did not want passion to so move us so quickly that we would do things that we would regret. But if by the simple expedient of passing a bill that says: the Court may not consider abortion, the Court may not consider apportionment, the Court may not consider school prayer—if that is constitutional we have in essence amended the Constitution by a simple majority in the House and Senate by taking away from the Court the right to hear the cases.

Then the school board can write the prayers and the Court cannot review them and the State can pass a law on abortion and the Court cannot review it. And we are easily moved by passion, especially in this day of rapid media.

Things can flare and flame up and cause us, I think, to lose our judgment. I hesitate to think of the things we might do in haste that we would not do under more reflection.

Well, so far those who want to take away the Court's jurisdiction to pass on abortion by simply stripping away its jurisdiction have failed. We have had a vote in this body on a constitutional amendment. To the credit of the Senator from Utah, Senator HATCH, he attempted to go that way. He attempted to get this Senate to pass a constitutional amendment which would have reversed the Supreme Court's decision. He lost it. In fact, not only did he not get two-thirds, he did not get a majority. But it was the fair way to go. I expect there will be more battles on these subjects.

One of these days the Court will come up with another decision on some other subject we are not thinking of right now, and it will make people mad and they will want to take away the jurisdiction of the Court. So far, we have been unsuccessful, fortunately, at overturning that Court decision.

What is the next-best thing, though, for those who oppose a woman's right to make a choice? What is the next-best thing they can do? Although I think they regard it as really relatively minor because in this country only about one abortion in 1,000 is funded by the Government, the other 999 women pay for themselves, but at least this Congress has almost taken away all of the funding that the Government used to provide for abortions under Medicaid for women too poor to afford medical treatment.

The Government used to fund abortions for them. We do not now, with very, very minor exceptions. So that poor women are forced to bear children that they might not wish to bear. Rich women or even modest-income women, even most low-income women, pay and have an abortion.

Well, those opposed to women having that choice have succeeded in cutting off almost all of the appropriated funds. Now they want to go the next step and they want to say, take away from a tax-exempt organization, usually a 501(c) organization, take away from them the right to have a tax-exempt status because they are performing abortions.

And you heard the Senator from Colorado indicate he does not even like the threshold that the Senator from New Hampshire has, which is a 1-percent threshold. He would just say if they perform an abortion or have a facility that could do an abortion they would lose their tax-exempt status altogether.

And the argument is made: Well, that sort of is funding of abortions, too. On the one hand, we can collect taxpayer's money, give it out to the Department of Health and Human Services for Medicaid and if they pay for an abortion for a woman, that is Government funding of an abortion. Is it not the same if we allow a tax-exempt status to an organization to do the same?

The Senator from Colorado mentioned the Red Cross and the Boy Scouts and other organizations that we all clearly agree are good and should be allowed to have a tax-exempt status because we all agree that what they do is good. They sell cookies; they help old ladies cross the street; they are nice organizations.

The problem with that theory is this: There are lots and lots of tax-exempt organizations, the purposes of which many people in this body would disagree with. One of them happens to be the American Civil Liberties Union. I would wager there are people in this body who would vote to take away their tax-exempt status because they bring cases on behalf of plaintiffs on issues involving school prayer or abortion or self-incrimination.

In this campaign, we are seeing a lot said about "card-carrying members of the American Civil Liberties Union," and it is said disparagingly that this is an almost dangerous anti-American organization. A dangerous anti-American organization, I guess, for defending Oliver North; dangerous for defending Lyn Nofziger, the convicted former aide to President Reagan; convicted of illegally lobbying. Their basic tenet is that in almost any battle of the individual against the Government they come down on the side of the individual. They come down on the side of the individual whether it is the Internal Revenue Service unconstitutionally harassing somebody; they come down on the side of the individual if they think the local school district is attempting to make a student listen to or say a prayer the student does not agree with.

They came down on the side of the individual in the famous Scopes trial in Tennessee 60 years ago, one of their first cases, in which the State of Tennessee attempted to compel that you could only teach creation according to the Bible. You could not teach Darwin or the theory of evolution. And a young teacher named Scopes was convicted of—he was not just teaching one side; he was teaching both sides and the American Civil Liberties Union defended him.

There are many people who think the rights of the individuals are all right so long as the right the individual wants to exercise agrees with me. But if the right that the individual wants to exercise does not agree with me, then that organization might be a dangerous organization, people would say.

All I would say is this: If we are going to start down the road of denying tax-exempt status to organizations that are upholding the law, and no one has maintained that a nonprofit organization that perfoms abortions is violating the law; they are not violating the law. The American Civil Liberties Union is not violating the law. If we are going to start down the road that says we are going to deny to tax-exempt organizations their tax-exempt status if some of the citizens in this country agree with some of their objectives, then we are going to deny the tax-exempt status to almost every controversial organization in this country. Only the ones who are homogeneous, who look like us and talk like us are going to be exempt.

On this subject of abortion and taking away the status, this is not now just a battle between those of us who believe that a woman ought to have the right to make a choice as to whether or not she can have an abortion. This particular amendment of the Senator from New Hampshire is opposed by the American Medical Association, the American Hospital Association, the Group Health Association, the Volunteer Trustees of Not-For-Profit Hospitals, the Association of American Medical Colleges and the American College of Obstetricians and Gynecologists. These are not organizations normally thought of as radical left-wing proabortion organizations.

You can sure understand it from a hospital administrator's standpoint. You are a nonprofit, big hospital, and you perform some abortions, and now you have a bill before you that says if this passes, if more than 1 percent of your total income for the year comes from abortions, unless it is to save the life of the woman, if the amendment of the Senator from Nebraska is adopted, in the cases of rape or incest, if you happen to go over 1 percent, you are going to lose your entire tax-exempt status and everything else you do in that teaching college and teaching hospital and everybody who gives to you who thought you were tax exempt and, therefore, took a tax deduction for a charitable contribution cannot take that, it is no wonder hospital administrators have a very practical misgiving about this amendment.

No wonder doctors have a misgiving about it. Also obviously opposed to the Humphrey amendment are the Planned Parenthood Federation of America, National Abortion Federation, National Abortion Rights Action League, the American Civil Liberties Union Foundation, and dozens of other organizations. I will submit later a list of specific individuals who are opposed that are made up of officials of the Internal Revenue Service, Assistant Secretaries of the Treasury for Tax Policy, presidents of various bar association tax sections, none of whom are associated with abortion. They are Republicans and Democrats; they are liberals and conservatives, who say this is a bad amendment.

At the bottom it comes down to this: Those who push this amendment are mad at the Supreme Court's decision. they are mad that a woman now has a legal right to make a decision as to whether or not she wants an abortion, just as she is entitled to make a legal decision as to whether or not she wants any other medical treatment. So they will separate out the issue of abortion, which they do not like, and say if she chooses to exercise that constitutional right, and if a hospital or a medical school or a nonprofit abortion clinic chooses to make the facilities available to her to exercise her constitutional right, they will lose their tax-exempt status.

The Senator from New Hampshire quoted a number of legal cases indicating that it is constitutional for us to cut off funding of abortion, direct appropriated funds, and he is correct. That is what the courts have held. I do not know whether or not they would find it constitutional for us to cut off the tax-exempt status of an organization which performs abortions and cut off the tax-exempt status of contributions to that organization.

I do not know where they would come down on that. But the argument I make is not based upon whether or not this particular bill might or might not be found constitutional if it ever wends its way through Congress and finally gets its way to the courts. Mine is an argument of policy. We give tax-exempt status to the Creation Science Legal Defense Fund, which is a tax-exempt organization attempting to promote throughout this country the philosophy that we can only teach science as creationism, we can only teach science and creation as it is taught in the Bible. It has a tax-exempt status. The National Academy of Astrologers has a tax-exempt status. The Krishna Consciousness Movement has a tax-exempt status. All of these are controversial organizations. All of them hold views that are very controversial. I think it is good that they have tax-exempt status.

If we have learned anything from the history of England and then this country, it is that the danger to human liberty comes when government attempts to compel conformity, conformity of thought, conformity of speech, conformity of action. Our liberties are most protected through diversity. They are most protected through allowing the astrologers to form their association and have a tax-exempt status and peddle the theory of astrology to the country, and allow the Hare Krishnas and the creationists and the evolutionists to pursue their beliefs.

God distinguished us from most of the other animals that he created—elephants are stronger, horses are swifter; a turtle lives longer; even the sponge is more durable. The only difference is that He created man to think. The only thing we ought to protect is the right to think differently, and this amendment is just a small step because what the amendment really seeks to do is to wipe out that whole Supreme Court decision. It is just a small step toward saying do not think differently or, if you do think differently, you are dangerous and we are going to take away your tax-exempt status because we do not agree with you. You better think our way and act our way or we will punish you.

That is the danger in this country. The debate today happens to be on abortion. But tomorrow or next week or next month it can just as well be on speech or prayer or self-incrimination. The same people who have misgivings about the right of a woman to make a decision for herself as to whether she wants to have an abortion—many of them, not all—have the same misgivings about many of the other liberties that are exercised by citizens who happen to disagree with most of us.

What we often forget is that this country was created by citizens who disagreed with most of England. As we are just midway now because celebrating 200 years of our Government in 1987 and 200 years of the Bill of Rights in 1991, I hope we remember that the greatest liberty we have is political liberty, the right to think as you want, be as you want, do as you want, and have the Government not be offended by it or criticize you for it but encourage you to do it and protect it. When we cease to do that—and this amendment is a very slight effort in that direction—that is when this country starts into decline.

I thank the Chair.

Mr. EXON. Mr. President, we are going on to 3 o'clock. We have had extensive debate on the matter. I am wondering if we could get some agreement. I am sure that Senator HUMPHREY wants to speak on the matter again. Could we get some agreement so we will not use the rest of the afternoon on this matter?

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. I judge that the inquiry of the Senator from Nebraska is rhetorical in nature.

Mr. EXON. It was rhetorical in nature. I would hope that the managers of the bill could possibly give us some idea about how much debate time they anticipate on this measure. I suspect that there are a few other minor details we will be handling on this technical corrections bill.

Mr. PACKWOOD. Unless something else is dramatically said following what I said, I do not have any intention of speaking further.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I believe there is one other Senator on this side who wishes to address this amendment. He is not here at this moment. I will have to inquire whether he really does want to come to the floor to speak. But other than that, I am not aware of anyone on our side who wants to speak at length.

Mr. EXON. To speed things along, I would agree to take—I probably would not use it but as the author of the second-degree amendment that is pending before us, I would agree to reserve only 2 minutes of time or yield it back. Could we get something worked out along those lines so we could begin to move just a little bit?

Mr. HUMPHREY. Will the Senator yield? With all due respect, this particular facet of debate has not been before the Senate for 2 years. If ever there was a definition of wasting time and keeping Senators from families, it has been the activity on the floor this week and much of last week.

However, the matter now before us I think is of a much more important nature in the view of this Senator. It has not been debated in 2 years. I do not think we should rush. It is not our purpose to consume undue amounts of time. I suspect we probably will get to a vote one way or another in the next 30 minutes. I am one Senator who is not willing to engage in a formal time agreement on this matter for the reasons I have outlined.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. I would just like to clarify one issue that arises as a result of the observations of the Senator from Oregon, and it is this, if I may address it in the form of a question to the sponsor of the amendment. Is there anything in this amendment that has to do with disallowing the tax exempt status of organizations based upon the positions that they advocate?

Mr. HUMPHREY. Absolutely not.

Mr. ARMSTRONG. How about the views that they hold on various matters of public policy, abortion or other issues?

Mr. HUMPHREY. There is no first amendment connection in the matter before the Senate.

Mr. ARMSTRONG. If an organization devoted 100 percent of its resources advocating and publishing and propagandizing, buying television commercials, or publishing newspaper ads, putting out handbills in support or opposition to abortion, would it be affected by the Senator's amendment?

Mr. HUMPHREY. Indeed not.

Mr. ARMSTRONG. What about if they advocated slavery, naziism, communism, or any other kind of political issue. Would they be affected by the amendment?

Mr. HUMPHREY. Not by the language of this amendment.

Mr. ARMSTRONG. The reason I make this point is very simple. The Senator from Oregon makes the point that man is a thinking being and appeals to us to use our intellect.

Mr. President, the point I make—and I do not want to dwell on it; I just want to establish it—is that the Senator from Oregon calls upon us to focus our attention and to make a reasoned distinction, and there is a very clear distinction is this amendment between what the Senator from New Hampshire desires and the concerns expressed by the Senator from Oregon. The Senator from Oregon is concerned that somehow a point of view or a belief or an advocacy might fall within the scope of this amendment or some future amendment.

I do not think that is a real fear because what we are talking about here is performing abortions. And that is quite different than advocating abortion as a point of view. The Senator says does this mean we will have to sometime debate the tax-exempt status of the American Civil Liberties Union. I do not think so. I do not think that is addressed in this at all. I happen to be a person who does not think we ought to allow tax-exempt status for the Republican Party. I happen to agree with most of the positions expressed by the Republican Party, but I do not think that means they ought to get tax-exempt status. In fact, with one limited exception that comes to mind, the Republican Party does not get a tax-exempt status.

My point is that—and maybe I should mention what the tax-exempt status is. It is a fact that the Republican Party and the Democratic Party get a subsidy to put on their National Convention. I think that is a colossal ripoff. I think we ought to put a stop to it. In fact, given the slightest encouragement, I would probably offer an amendment to do so, but I do not think I will do so today.

The point is even if one disagrees with an organization, that does not mean that we ought to cut off their tax-exempt status.

But there is a clear line of demarcation between thinking something, advocating something, pushing for the point of view, and performing the act. I do not think we ought to deny tax-exempt status to somebody that wants to raise the speed limits to 100 miles an hour. I do not agree with that. But I think that is the point of view. If somebody wants to advocate it within the context of, say, a university, it should not cause the university to lose its tax-exempt status. If the university starts driving its vehicles on the roads at 100 miles an hour, they are going to get arrested. In this case, there is a clear demarcation between thought and action, and it is the action which we do not seek to forbid, but simply stop subsidizing.

I thank the Chair. I again call for the adoption of the Humphrey amendment.

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. I thank the Senator from Colorado for making it clear in the way that he has that this amendment in no way infringes on the first amendment, or on the free speech rights of any citizen or any organization. Those who wish to advocate abortion are in no way touched by this. Those who wish to counsel abortion are in no way touched by this. Those who wish to participate in abortion—that is, perform abortion or help an abortionist perform an abortion—are in no way touched. Indeed, those who wish to have an abortion are in no way touched. This is not a first-amendment issue at all as the Senator from Oregon has sought to couch it in that context. It is not a first-amendment issue.

Second, the Senator from Oregon spoke at some length about Court stripping. There is nothing in this nature that advocates or even hints at Court stripping or what the Senator calls Court stripping. Nor is there anything in this that even hints at an amendment to the Constitution. That is not what this is. Nor is there anything in this that even hints that the ACLU ought to be next.

I will say for the record that as much as I disagree with the ACLU on most issues I cannot imagine circumstances in which this Senator would support the kind of proposal which the Senator from Oregon will have us believe will immediately follow on this if it is adopted. I think the arguments are just not convincing. The Senator from Oregon is using an argument much more persuasive than he has been on occasion, and it is no discredit to him if my judgment is right, as I believe it is because he has tried a rather weak case to argue. He has tried to argue it as best he can. But it is a weak case.

Let me say with respect to the AMA and others who have written letters opposing the amendment that it is not the least bit surprising that they would oppose this amendment. This amendment proposes to end the tax subsidies for abortion clinics.

The organizations which the Senator has cited, including the American Medical Association, have actively lobbied for cash subsidies for abortion, and have actively lobbied against Hyde amendment restrictions. The AMA wants the Federal Government to subsidize with cash payments the performance of abortions. Should it surprise anyone then that the AMA is opposed to cutting off not only cash subsidies but tax subsidies as well? Certainly not. It is logical. You have to give them that. That is consistent.

That brings me to my friend from Nebraska. He has presented us with a real dilemma here, and in that he was very consistent. He has consistently presented us with this dilemma. It is a real dilemma—the matter of making exemptions for rape and incest. Those are the tough cases. They are hard to argue against. There is no question about it.

But let us remember, they are the tiniest part of those total number of abortions that are being performed. As the lawyers around this place are fond of saying, hard cases make bad law. And in this case, they would make bad law for the very fundamental reason which underlies the amendment in the first place, the ethical reason that the offspring of human beings are human beings. Does the circumstance of conception change the humanity of the child if it is a child? I think most will acknowledge at least privately that it is a human being. Does the circumstance of conception really alter the humanness of that human being? Logically, of course it does not. It does not change the fact that, in cases of rape and incest, there is great injustice, great hardship, great tragedy, and great sadness. But two wrongs do not make a right.

So I would argue against the Exon amendment on that basis.

Let me just say this, finally. The Senator from New Hampshire had no hopes of succeeding in passage of this amendment. We lost six of our cohorts on this issue in the last 2 years due to retirements and a death. So we did not expect, frankly, to go over the top. But I thought it was important in this Congress as in every Congress to get a vote on this issue. That is the way you make progress in this business. That is my intent.

The Senator from Nebraska has created a dilemma which I propose to solve in a way that first may seem a little odd. So I will explain before I do it what I am going to do, so that I can get as close as possible to that which I sought; namely, a vote on the amendment, with the issue being confused.

I am going to move to table my own amendment. I want to make it clear to my colleagues that the point here is to get Senators on record with respect to this proposal. So Senators who think that we should not be subsidizing abortion through the Tax Code should vote against tabling, even though the Senator, the offerer of the amendment for parliamentary reasons is going to move to table his own amendment.

In other words, in plain English, the kind of political language we use around here sometimes, those who take the right to life position that taxpayers ought not to be subsidizing abortion should vote against tabling the amendment, vote against the Humphrey motion. Obviously those on the other side of the question will want to support the tabling motion. In this way we will get as close as we can to a real measure of Senate sentiment on this issue without confusing it with the very appealing arguments offered by the Senator from Nebraska.

So, Mr. President, I move—that is to say, if no one else wishes to be heard—to table the Humphrey amendment and I ask for the yeas and nays.

Mr. BAUCUS. Mr. President, will the Senator withhold?

Mr. HUMPHREY. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. State the inquiry.

Mr. HUMPHREY. I want to cooperate as fully as I can. But I do not wish to offer another Senator the opportunity for example calling for the yeas and nays on the Humphrey amendment which would then preclude certain other options. I am willing to yield for a question providing that I do not lose the right to the floor.

Mr. BAUCUS. Mr. President, I was only asking the Senator——

The PRESIDING OFFICER. The Senator from New Hampshire would have to withhold the motion in order to do that.

Mr. HUMPHREY. Yes, I withhold that on the understanding that I might yield for a question.

Mr. BAUCUS. Mr. President, I was going to ask the Senator to yield. It is my understanding that the Senator on this side wished yet to speak on the Humphrey amendment. I am informed now that he does not wish to speak.

Mr. HUMPHREY. With that advice, Mr. President, I move to table the underlying amendment, the Humphrey amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Hampshire to lay on the table the amendment of the Senator from New Hampshire.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN] and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska [Mr. KARNES] and the Senator from Wyoming [Mr. WALLOP] would each vote "nay."

The PRESIDING OFFICER (Mr. Dixon). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 352 Leg.]

YEAS—56

Adams
Baucus
Biden
Bingaman
Boren
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
Daschle
Dixon
Dodd
Evans
Fowler
Glenn
Graham
Harkin
Heinz
Inouye
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Metzenbaum
Mikulski
Mitchell
Moynihan
Nunn
Packwood
Pell
Pryor
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Weicker
Wilson
Wirth

NAYS—39

Armstrong
Bond
Boschwitz
Breaux
D'Amato
Danforth
DeConcini
Dole
Domenici
Durenberger
Exon
Ford
Garn
Gramm
Grassley
Hatch
Hatfield
Hecht
Heflin
Helms
Hollings
Humphrey
Johnston
Kasten
Lugar
McCain
McClure
McConnell
Melcher
Murkowski
Nickles
Pressler
Proxmire
Reid
Shelby
Symms
Thurmond
Trible
Warner

NOT VOTING—5

Bentsen
Gore
Karnes
Quayle
Wallop

So the motion to table amendment No. 3499 was agreed to:

The PRESIDING OFFICER. The majority leader.

CORRECTIONS IN ENROLLMENT OF H.R. 1720

Mr. BYRD. Mr. President, while the distinguished Republican leader is on the floor, I ask unanimous consent to proceed to the immediate consideration of Senate Concurrent Resolution 154, a concurrent resolution to correct technical errors in the enrollment of H.R. 1720, the welfare reform bill, submitted earlier today for Senators Bentsen and Parkwood.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 154) to correct additional technical errors in the enrollment of the bill H.R. 1720.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

(By request of Mr. Byrd, the following statement was ordered to be printed in the Record:)

● Mr. BENTSEN. Mr. President, this is a concurrent resolution to authorize the clerk of the House to make a number of technical corrections in enrolling H.R. 1720, the welfare reform bill. These corrections are designed to correct drafting errors which have been found in the conference report. All of the changes in the proposed resolution are aimed at carrying out the conference agreement as approved by the House and Senate conferees and subsequently ratified by the two bodies.●

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 154) was agreed to, as follows:

S. Con. Res. 154

That, in the enrollment of the bill (H.R. 1720) to revise the AFDC program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives, the Clerk of the House of Representatives shall make the following additional corrections:

(1) In the proposed subparagraph (B) of section 466(a)(8) of the Social Security Act (as added by section 101(b)(3) of the bill), redesignate clauses (i), (ii), and (iii) as clauses (ii), (iii), and (iv), respectively, and insert before the clause so redesignated as clause (ii) a new clause (with the quotation marks as shown) as follows:

"(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(2) In subparagraph (C)(i) of the proposed paragraph (10) of section 466(a) of the Social Security Act (as added by section 103(c) of the bill), strike "of a review" and insert "of any review of such order,".

(3) In section 103 of the bill, redesignate the second subsection (e) as subsection (f).

(4) In section 103(f) of the bill (as so redesignated by paragraph (3) of this concurrent resolution), strike "this section" and insert "subsections (a), (b), and (c)".

(5) In the proposed clause (D) of section 454(6) of the Social Security Act (as added by section 111(c)(2) of the bill), strike "(established under" and insert "(in accordance with".

(6) In subparagraph (C)(iii)(II) of the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill)—

(A) strike "of a child" and insert "for a child"; and

(B) strike "if the State" and insert "unless the State".

(7) In subparagraph (G)(i)(I) of the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill), strike "section 402(a)(7)" and insert "paragraph (7) of this subsection".

(8) In the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill), redesignate subparagraph (I) as subparagraph (H).

(9) In subsection (b) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill)—

(A) strike "Family Support Plan" in the heading and insert "Employability Plan"; and

(B) strike "such participations" in the second sentence of paragraph (1)(B) and insert "such participant".

(10) At the end of subsection (d) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), add the following new paragraph (with quotation marks as shown):

"(3) Notwithstanding any other provision of this section, the Secretary shall permit up to 5 States to provide services under the program, on a voluntary or mandatory basis, to non-custodial parents who are unemployed and unable to meet their child support obligations. Any State providing services to non-custodial parents pursuant to this paragraph shall evaluate the provision of such services, giving particular attention to the extent to which the provision of such services to those parents is contributing to the achievement of the purpose of this part, and shall report the results of such evaluation to the Secretary.

(11) At the end of paragraph (3) of subsection (e) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), add the following new subparagraph (with quotation marks as shown):

"(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 402(a)(13)(A)(ii) (and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

(12) In paragraph (2) of subsection (g) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), strike "402(a)(19)(B)(i)(I)" and insert "402(a)(19)(B)(i)".

(13) In paragraph (1) of subsection (i) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), strike "without" in the second sentence and insert "(without".

(14) In paragraph (3) of subsection (a) of the proposed section 483 of the Social Security Act (as added by section 201(b) of the bill), strike "subparagraph (B)" and insert "paragraph (2)".

(15) In subsection (d) of the proposed section 484 of the Social Security Act (as added by section 201(b) of the bill—

(A) strike "subsection (b)" in paragraph (1) and insert "subsection (c)"; and

(B) strike "subsection (e)" in paragraph (2) and insert "subsection (f)";

(16) In subsection (c) of the proposed section 485 of the Social Security Act (as added by section 201(b) of the bill), strike "482(b)(1)" and insert "482(a)(1)".

(17) In paragraph (2) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), move subparagraphs (C) and (D) 5 ems to the left so that they are flush with the left-hand margin.

(18) In paragraph (3)(E) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), insert "and part F" after "402(a)(19)" in clause (i).

(19) In paragraph (4)(A)(i) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), insert "or another basic education program" after "(or equivalent)" in the last sentence.

(20) In paragraph (4)(B) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), strike "fiscal year 1997 or 1998" in clause (iv) and insert "each of the fiscal years 1997 and 1998".

(21) In clause (ii) of paragraph (4)(D) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill)—

(A) strike "limited" and insert "limited)"; and

(B) strike "than" and insert "that".

(22) In section 201(d) of the bill, strike "202(a)(4)" an insert "202(b)(4)".

(23) In paragraph (8) of the first subsection (b) of section 202 of the bill, strike "482(c)(2)," and insert "409(a)(19)(C),".

(24) In section 202 of the bill, redesignate the second subsection (b) as subsection (c); and in such subsection—

(A) strike "redesignated" and insert "re-designated" in paragraph (5); and

(B) add at the end the following new paragraph:

(6) Section 51(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking "section 414" and inserting "section 482(e)".

(25) In paragraph (1) of subsection (a) of the proposed section 487 of the Social Security Act (as added by section 203(b) of the bill), insert "of this Act" after "section 486".

(26) In section 204(b) of the bill—

(A) after "1995" in paragraph (2) insert "(except that subparagraph (A) of such section 403(l)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein)"; and

(B) add at the end the following new paragraph:

(3) Subsections (a), (c), and (d) of section 203 of this Act, and section 486 of the Social Security Act (as added by section 201(b) of this Act), shall become effective on the date of the enactment of this Act.

(27) In subparagraph (C)(i) of paragraph (l) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "reimburse" and insert "make payment for".

(28) In subparagraph (C)(i)(II) of paragraph (l) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "section 402(a)(8)(A)(iii)" and insert "subsection (a)(8)(A)(iii)".

(29) In subparagraph (B)(iii) of paragraph (3) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "day" and insert "child".

(30) In the proposed clause (ii) of section 402(g)(1)(A) of the Social Security Act (as added by section 302(a)(3) of the bill), strike "and section 417".

(31) In section 302 of the bill, amend subsection (c) (with quotation marks and last period as shown) to read as follows:

(c) LIMITATIONS ON ELIGIBILITY.—Section 402(g)(1)(A) of the Social Security Act (as added by section 301 of this Act and as amended by subsection (a)(3) of this section) is amended by adding after clause (ii) the following new clauses:

"(iii) A family shall only be eligible for child care provided under clause (ii) for a period of 12 months after the last month for which the family received aid to families with dependent children under this part.

"(iv) A family shall not be eligible for child care provided under clause (ii) unless the family received aid to families with dependent children in at least 3 of the 6 months immediately preceding the month in which the family become ineligible for such aid.

"(v) A family shall not be eligible for child care provided under clause (ii) unless the family includes a child who is (or, if needy, would be) a dependent child.

"(vi) A family shall not be eligible for child care provided under clause (ii) for any month beginning after the caretaker relative who is a member of the family has—

"(I) without good cause, terminated his or her employment; or

"(II) failed to cooperate with the State in establishing and enforcing his or her child support obligations.

"(vii) A family shall contribute to child care provided under clause (ii) in accordance with a sliding scale formula which shall be established by the State agency based on the family's ability to pay.".

(32) In section 302(e) of the bill, strike "January 1, 1993." and insert "September 30, 1997.".

(33) In the proposed section 1925 of the Social Security Act (as inserted by section 303(a) of the bill)—

(A) in subsection (a)(1), insert a comma after "income from";

(B) in subsection (a)(1), insert "or because of section 402(a)(8)(B)(ii)(II) (providing for a timelimited earned income disregard)" after "subsection (e))";

(C) in subsection (a)(2)(A), strike "(b)(2)(A)(i)" and insert "(b)(2)(i)";

(D) in subsection (a)(4)(B), strike "or similar costs" and insert "and similar costs";

(E) in subsection (a)(4)(B), strike "a employer" and insert "an employer";

(F) in subsection (a)(4)(B)(i), insert "for the caretaker and the caretaker's family" after "extension of coverage under this subsection";

(G) in subsection (b)(1), strike "(2)(B)" and insert "(2)(B)(i)";

(H) in subsection (b)(2), indent clauses (i) and (ii) in each of subparagraphs (A) and (B) 2 additional ems;

(I) in subsection (b)(2)(A)(i), redesignate subclauses (i), (ii), and (iii) as subclauses (I), (II), and (III);

(J) in subsection (b)(2)(A)(ii), strike "premiums to be" and insert "premium";

(K) in subsection (b)(2)(B)(ii), strike "subsection (a)" and insert "this subsection";

(L) in subsection (b)(2)(A), strike "(2)(B)" the 3 places it appears and insert "(2)(B)(ii)";

(M) in subsection (b)(2)(A)(ii), strike "individual" and insert "family";

(N) in subsection (b)(3)(A)(iii)(III), strike "exceeds" and insert "exceed";

(O) in subsection (b)(4)(E)(i)(I), strike "or other" and insert "and other";

(P) in subsection (b)(5)(A), strike "exceeds" and insert "exceed"; and

(Q) in subsection (f), strike "of the Social Security Act".

(34) In subsection (a) of section 303 of the bill—

(A) insert "(1)" after "(a) IN GENERAL.—"; and

(B) add at the end of such subsection a new paragraph (with the quotation marks and last period as shown) as follows:

(2) Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by section 303(e) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by striking "and" at the end of paragraph (50),

(B) by striking the period at the end of paragraph (51) and inserting "; and"; and

(C) by inserting after paragraph (51) the following new paragraph:

"(52) meet the requirements of section 1925 (relating to extension of eligibility for medical assistance).".

(35) In section 303(b)(1)(A) of the bill, strike the single closing quotation mark after "(B)" and insert double closing quotation marks.

(36) In the proposed subparagraph (B) added by section 303(b)(1)(C) of the bill, strike "of the Social Security Act".

(37) In subsection (b) of section 303 of the bill, amend paragraph (3) (with the quotation marks and last period as shown) to read as follows:

(3) Paragraph (37) of section 402(a) of such Act is amended to read as follows:

"(37) provide that if any family becomes ineligible to receive aid to families with dependent children because of hours of or income from employment of the caretaker relative or because of paragraph (8)(B)(ii)(II), having received such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under title XIX for an extended period or periods as provided in section 1925, and that the family will be appropriately notified of such extension (in the State agency's notice to the family of the termination of its eligibility for such aid) as required by section 1925(a)(2);".

(38) In subsection (f) of section 303 of the bill, amend paragraph (2) to read as follows:

(2)(A) The amendment made by subsection (b)(3) shall become effective on April 1, 1990.

(B) Effective September 30, 1998, the amendment made by subsection (b)(3) is repealed.

(C) Section 402(a)(37) of the Social Security Act, as in effect immediately before April 1, 1990, shall become effective on September 30, 1998.

(39) In subparagraph (c)(i) of the proposed paragraph (2) of section 407(b) of the Social Security Act (as added by section 401(b)(1)(C) of the bill), strike "subparagraph (D), such section, and" and insert "such section and".

(40) In paragraph (4)(A) of section 401(c) of the bill, insert "of this section" after "subsection (b)(1)(C)".

(41) In section 401(f)(3) of the bill, strike "at the end" and insert "immediately after paragraph (41)".

(42) In section 402(c) of the bill—

(A) insert "(1)" after "CREDIT.—";

(B) redesignate paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) add at the end a new paragraph as follows:

(2)(A) Section 402(d) of such Act is repealed.

(B) Section 402(a)(30) of such Act is amended by striking "subsection (d)" and inserting in lieu thereof "subsection (e)".

(43) In the proposed subsection (e) of section 403 of the Social Security Act (as added

by section 606 of the bill), strike "402(a)(42), and 402(g)(1)(A)(i)," and insert "402(a)(43), and 402(g)(1)(A)".

(44) In subparagraph (C) of the proposed subsection (k), added by section 608(c) of the bill, strike "anethetist" and insert "anesthetist".

(45) In section 608(d)(5)(C) of the bill, strike "added" and insert "inserted".

(46) In section 608(d)(9)(B) of the bill, strike "for that individual" both places it appears and insert "to that individual".

(47) In section 608(d)(10)(A) of the bill, strike "as amended" and insert "as inserted".

(48) In section 608(d)(14)(D)(ii) of the bill, strike the comma at the end and insert "; and".

(49) In paragraph (14)(H)(ii) of section 608(d) of the bill—

(A) strike "subparagraph" and insert "subparagraphs";

(B) strike the double quotation marks and semicolon at the end of the subparagraph (B) added by such paragraph; and

(C) add after such subparagraph (B) a new subparagraph (with the quotation marks and semicolon as shown) as follows:

"(C) The second sentence of subsection (h)(2) of such section is amended by inserting '(except in the case of qualified medicare beneficiaries, as defined in section 1905(p)(1))' after 'shall be applied' the second place it appears.";

(50) In section 608(d)(15)(A)(i) of the bill, insert "the first place it appears" before "and inserting".

(51) In section 608(d)(15)(B) of the bill, strike "as added" and insert "as amended".

(52) In section 608(d)(16)(A)(i) of the bill, strike "has a right" and insert "has right".

(53) In section 608(d)(16)(B)(i) of the bill, strike the comma at the end of subclause (III) and insert a semicolon.

(54) In section 608(d)(16)(B) of the bill, designate the clause following clause (vi) as clause (vii).

(55) In paragraph (16)(D) of section 608(d) of the bill, strike "303" and insert "303(g)".

(56) In section 608(d)(20)(B)(ii) of the bill, indent the subclause amended by such section 2 additional ems.

(57) In section 608(d)(22)(B) of the bill, insert "the first place it appears" before "and inserting".

(58) In section 608(d)(24)(B) of the bill, strike "inserted" and insert "added".

(59) In section 608(d)(26)(D) of the bill, strike "redesignated" and insert "designated".

(60) In section 608(d)(26)(J), strike "added" and insert "inserted".

(61) In section 608(d)(27)(A) of the bill, in the subparagraph (D) added in such section, strike the second of the periods following "such drugs" and insert a semicolon.

(62) In section 609(a) of the bill, redesignate the proposed subsection (l) as subsection (m).

(63) In section 609(b) of the bill—

(A) strike "12302(c)(1)" in paragraph (1) and insert "12301(c)(1)"; and

(B) amend paragraph (2) to read as follows:

(2) Paragraph (2) of section 12301(c) of such Act is amended by inserting "under title XIX" before ", and shall reduce payments".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank the Chair.

TECHNICAL CORRECTIONS ACT OF 1988

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 3510

(Purpose: To amend the Internal Revenue Code of 1986 to increase the tax on cigarettes, distilled spirits, wines, and beer, and to appropriate the resulting revenues to fund the Omnibus Anti-Substance Abuse Act of 1988)

Mr. RUDMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. Rudman), proposes an amendment numbered 3510.

Mr. RUDMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . INCREASE IN TAX ON CIGARETTES AND ALCOHOL

(a) Cigarettes—

Mr. RUDMAN. Mr. President, I ask for the yeas and nays on that amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3511 TO AMENDMENT NO. 3510

Mr. RUDMAN. Mr. President, I send an amendment in the second degree to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. Rudman), for himself, Mr. Biden, Mr. D'Amato, and Mr. Chiles, proposes an amendment numbered 3511 to amendment numbered 3510.

Mr. RUDMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. I object. We are moving very rapidly. I would suggest that we have a reading so we can understand it.

Mr. RUDMAN. If the Senator from Nebraska will yield to me for the purpose of answering the question? What I intended to do when I got the floor was explain precisely what I have done, since I believe in doing business in the light of day. I will explain it if the Senator will give me 1 minute, without losing his right to the floor or his right to object.

Mr. EXON. Would you please do so?

Mr. RUDMAN. What I have done is to offer the underlying amendment, the first amendment, as a shell of the basic amendment which I offered then as a second-degree amendment. This amendment is one which has been well advertised. It is the amendment which establishes a trust fund to take proceeds from increasing taxes on cigarettes, beer, and alcohol and to fully fund the drug bill which this Senate hopes to pass this week. So the second-degree amendment is the entire new increased tax on those three items.

The reason I did that, of course, was to preclude anyone from maneuvering into a position of a meaningless vote and so that we eventually will have a vote, either up or down or tabling, on that second-degree amendment. So that is what the Senator from New Hampshire has done.

Mr. EXON. I withdraw the objection.

Mr. RUDMAN. I thank the Senator from Nebraska.

The PRESIDING OFFICER. Is there objection to the dispensing with the reading of the amendment offered by the Senator from New Hampshire? Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, strike "Cigarettes.—" and insert in lieu thereof the following:

( ) Cigarettes.—

(1) Rate of Tax.—Subsection (b) of section 5701 of the Internal Revenue Code of 1986 (relating to rate of tax on cigarettes) is amended—

(A) by striking "$8" in paragraph (1) and inserting in lieu thereof "$9"; and

(B) by striking "$16.80" in paragraph (2) and inserting in lieu thereof "$18.90".

(2) Floor Stocks.—

(A) Imposition of tax.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 1989, and held on such date for sale by any person, there shall be imposed the following taxes:

(i) Small cigarettes.—On cigarettes, weighing more than 3 pounds per thousand, $1 per thousand;

(ii) Large cigarettes.—On cigarettes, weighing more than 3 pounds per thousand, $2.10 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescibed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, the length of each as one cigarette.

(B) Liability for tax and method of payment.—

(i) Liability for tax.—A person holding cigarettes on January 1, 1989, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(ii) Method of payment.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 of the Internal Revenue Code of 1986 and shall be due and payable on February 16, 1989, in the same manner as the tax imposed under such section is payable with respect to cigarettes removed on January 1, 1989.

(C) Cigarette.—For purposes of this section, the term "cigarette" shall have the meaning given to such term by subsection (b) of section 5702 of the Internal Revenue Code of 1986.

(D) Exception for retail stocks.—The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1989, at the place where intended to be sold at retail.

(E) Foreign trade zones.—Notwithstanding the Act of June 18, 1934 (19 U.S.C. 81a et seq.) or any other provision of law—

(i) cigarettes—

(I) on which taxes imposed by Federal law are determined, or customs duties are liquidated, by a customs officer pursuant to a request made under the first proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1989, and

(II) which are entered into the customs territory of the United States on or after January 1, 1989, from a foreign trade zone, and

(ii) cigarettes which—

(I) are placed under the supervision of a customs officer pursuant to the provisions of the second proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1989, and

(II) are entered into the customs territory of the United States on or after January 1, 1989, from a foreign trade zone,

shall be subject to the tax imposed by paragraph (1) and such cigarettes shall, for purposes of paragraph (1), be treated as being held on January 1, 1989, for sale.

(b) Distilled Spirits.—

(1) In general.—Paragraphs (1) and (3) of section 5001(a) of the Internal Revenue Code of 1986 (relating to rate of tax) are each amended by striking out "$12.50" and inserting in lieu thereof "$14.00".

(2) Conforming amendment.—Subsection (a) of section 5010 of such Code (relating to credit for wine content and for flavors content) is amended by striking "$12.50" both places it appears and inserting in lieu thereof "$14.00".

(c) Wines.—Subsection (b) of section 5041 of the Internal Revenue Code of 1986 (relating to rates of tax) is amended—

(1) by striking out "17 cents" in paragraph (1) and inserting in lieu thereof "42 cents",

(2) by striking out "67 cents" in paragraph (2) and inserting in lieu thereof "92 cents",

(3) by striking out "$2.25" in paragraph (3) and inserting in lieu thereof "$2.50",

(4) by striking out "$3.40" in paragraph (4) and inserting in lieu thereof "$3.65", and

(5) by striking out "$2.40" in paragraph (5) and inserting in lieu thereof "$2.65".

(d) Beer.—Section 5051(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking out "$9" in paragraph (1) and inserting in lieu thereof "$11.80"; and

(2) by striking out "$7" in the caption and text of paragraph (2)(A) and inserting in lieu thereof "$9.80".

(e) Floor Stocks on Distilled Spirits, Wine, and Beer.—

(e) Imposition of tax on distilled spirits.—On articles manufactured in or imported into the United States which are taxable under section 5001(a) of the Internal Revenue Code of 1986, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) Distilled spirits.—On distilled spirits, $1.50 per proof gallon.

(B) Imported perfumes.—On imported perfumes described in section 5001(a)(3) of such Code, $1.50 per wine gallon.

(2) Imposition of tax on wines.—On wines produced in or imported into the United States which are taxable under section 5041(a) of such Code, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) On still wines containing not more than 14 percent of alcohol by volume, 25 cents per wine gallon;

(B) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, 25 cents per wine gallon;

(C) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, 25 cents per wine gallon;

(D) On champagne and other sparkling wines, 25 cents per wine gallon; and

(E) On artificially carbonated wines, 25 cents per wine gallon.

(3) Imposition of tax on beer.—On beer brewed or produced in, or imported into, the United States which is taxable under section 5051(a) of such Code, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) On beer described in section 5051(a)(1) of such Code, $2.80 per barrel.

(B) On beer described in section 5051(a)(2) of such Code, $2.80 per barrel.

(4) Liability for tax and method of payment.—

(A) Liability for tax.—A person holding distilled spirits, an article, wine, or beer on January 1, 1989, to which any tax imposed by paragraph (1), (2), or (3) applies shall be liable for such tax.

(B) Method of payment.—The taxes imposed by paragraphs (1), (2), and (3) shall be treated as taxes imposed under section 5001(a), 5041(a), and section 5051(a) of such Code, respectively, and—

(i) shall be paid in such manner as the Secretary shall by regulations prescribe, and

(ii) shall be paid as such date (not later than 6 months after the date of the enactment of this Act) as the Secretary shall by regulations prescribe.

(5) Exception for on-premises retail establishments.—To the extent provided in regulations prescribed by the Secretary, the taxes imposed by paragraphs (1), (2), and (3) shall not apply to distilled spirits, articles, wine, and beer held on January 1, 1989, on the premises of a retail establishment where alcoholic beverages are sold for consumption on the premises only.

(6) Definitions.—For purposes of this section—

(A) Distilled spirits.—The term "distilled spirits" has the meaning given to such term by section 5002(a)(8) of the Internal Revenue Code of 1986.

(B) Proof gallon.—The term "proof gallon" has the meaning given to such term by section 5002(a)(11) of such Code.

(C) Article.—The term "article" has the meaning given to such term by section 5002(a)(14) of such Code.

(D) Wine gallon.—The term "wine gallon" has the meaning given to such term by section 5041(c) of such Code.

(E) Beer.—The term "beer" has the meaning given to such term by section 5052(a) of such Code.

(F) Person.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(G) Secretary.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(f) Establishment of Drug-Free American Trust Fund.—Amounts equal to all additional revenues resulting from the provisions and amendments made by subsections (a), (b), (c), (d), and (e) of this section shall be deposited by the Secretary of the Treasury into a special fund of the United States Treasury, to be known as the "Drug-Free American Trust Fund", and shall remain available for making expenditures to carry out the purposes of the Omnibus Anti-Substance Abuse Act of 1988, as provided by appropriation Acts.

(g) Effective Dates.—

(1) Amendments.—The amendments made by subsections (a)(1), (b), (c), and (d) shall apply to cigarettes, distilled spirits, wine, and beer removed after December 31, 1988, and before January 1, 1991, but only if the Omnibus Anti-Substance Abuse Act of 1988 is enacted.

(2) Other provisions.—Subsections (a)(2), (e), and (f) shall take effect on the date of the enactment of this Act, but only if the Omnibus Anti-Substance Abuse Act of 1988 is enacted.

Mr. RUDMAN. I thank the Chair and I thank my good friend from Nebraska.

Mr. President, I have been here for about 8 years. That is not very long compared to many in this Chamber. But I would imagine those who have been here for a long time, such as my very dear friend and colleague, the chairman of the Appropriations Committee, Senator Stennis of Mississippi, would agree that once in a great while around here we come to an issue that really is a moment of truth.

Mr. President, we have been talking about the problem of drugs in America for the last 4 years in this Congress. Though I come from a small State, I can tell you that the problem of drugs in New Hampshire is becoming one of enormous concern to young families with young children. I have listened to my colleagues, Senator D'Amato from New York and Senator Moynihan from New York, Senator Wilson from California, talking about the problems in their cities.

Here in the Nation's Capital, I do not know the exact number, but I believe we now have more homicides, drug-related, than there have been days in the year so far; at least somewhere in the vicinity of 200-plus.

The overwhelming amount of violent crime in America is drug-related. This week, we had drug dealers being fire-bombed and burned to death outside of Madison Square Garden in New York. We have drug agents being murdered in the streets. We have young children dying from overdoses of heroin, PCP, and other atrocious substances.

If anyone does not believe that there is a war going on in this country today with drugs, then they obviously have not gone to the major urban centers of America. I suggest that anyone who doubts it spend a day in New York or Chicago or the District of Columbia, Los Angeles, St. Louis, Dallas, Houston, go wherever you wish to go, talk to your local law enforcement people, and you will see immediately that this is an enormous problem.

In addition to that, we have had more rhetoric on the issue of drugs and the eradication of that scourge than any other subject since I have been here. We have given it lip service. We have talked about it. We have passed bills. And, sitting with the distinguished chairman of the State, Justice, Commerce Subcommittee on the Appropriations Committee, year after year, we have been forced to underfund those aspects of law enforcement which could do a great deal to eradicate the problem.

For the past 3 months, a group of us, at the direction of the majority leader, Senator BYRD, and the Republican leader, Senator DOLE, have been working on a drug bill. It has been a pleasure to work with Senators NUNN, MOYNIHAN, D'AMATO, WILSON, DOMENICI and many others. We finally have a package which I believe is going to come to this floor sometime if not this week then next week. I can say without fear of rebuttal that it is an excellent bill as it stands. It, for the first time, does something substantial about treating the demand-reduction side of this problem, because that is the side we have ignored.

But let no one in America think that this is an inexpensive bill. It is a very expensive bill. It is $2½ billion over 2 years.

We sat down last week to try to find out how we could fund this bill and we came up with about 250 million real dollars for this year and another $150 million that we might be able to come up with. And, frankly, Mr. President, I doubt if the total amount available will exceed $300 million.

In other words, if we simply pass that bill and leave, then, to quote a great President, Teddy Roosevelt, in reverse: "We will have spoken very loudly and carried a very small twig."

In fact, this drug bill, in my opinion, as hard as I have labored personally on it, as hard as my friend, Senator D'AMATO, who has led the fight in many parts of that legislation, has worked on that legislation, in my view, Mr. President, it will be meaningless without funding.

I say that because I do not believe that a new Congress, with a new President, facing all of the issues that we will face next January, facing the size of the deficit this year as it is, will be able to come up with any more money then than we can now.

Now, I know the President of my party and the Presidential nominee of my party are against new taxes. And, Mr. President, I am pretty much against new taxes. But we have come to a moment of truth. Are we going to let this problem get away from us, have hundreds of thousands additional young children addicted, more drug dealers and police shooting it out on the streets of New York and San Francisco and Los Angeles, schools becoming jungles, streets unsafe to live in, elderly people fearful of their lives, living in small as well as large cities?

If anyone has any doubt, look at the statistics that regard rape and murder and armed robbery and aggravated assault. They are overwhelmingly connected with substance abuse.

So I thought about this last week and it occurred to me that the American people have spoken out over and over again and what they have said is that the drug problem is the number one problem facing America and the Congress ought to do something about it. And we, the American people, overwhelmingly in every public opinion poll taken have indicated that if we knew the money would be raised and go for that purpose, we would support it.

I want to give everyone a chance to back what I think is public opinion. These are, no doubt, sin taxes. They are excise taxes.

What this proposal does is to raise cigarettes by 2 cents a pack. That would cost the average smoker about $7.30 a year; increase the tax on distilled spirits by 1 percent. For the average drinker that is about $7.50 a year. It would raise taxes on beer and wine by 5 cents per six-pack. Incidentally, that is one penny per beer and about one penny per glass of wine. And, incidentally, those taxes have not been raised since 1954.

What will this raise? This will raise $2,850 million in 1989, and $1.2 billion in fiscal year 1990; and thus it would be, with the $300 million that we already have, fully funding the drug bill.

I know there are those in the Chamber, including my colleague and good friend who is here on the floor with whom I have worked long and hard on important legislation, my good friend PHIL GRAMM from Texas, who will say there are other ways to do it. Let us cut the Legal Services Corporation. Others in this body will say let us cut the defense budget. Others will say let us cut AFDC payments. Others will say cut NOAA. Others will say cut a whole range of programs.

Let me tell you something. Sitting on the Appropriations Committee, and I dare say the chairman of the committee would agree with me, we have gone through those accounts for 8 months. We have passed those bills. The President has signed them. And whether you like it or not, the amounts in those appropriations bills, represent the will of the Congress.

I disagree with some, agree with others, but I do not believe you are going to get a vote on this floor to cut anything more than is cut.

So that is why I come to this conclusion, that if there is an epidemic in this country, and I think there is; if we are in danger of losing hundreds of thousands more young people to drug addiction in this country, then, if it is that serious the American people ought to be willing to pay for it. And they are.

I come from a State that is rather tax sensitive. The State of New Hampshire does not have a sales tax, does not have an income tax. Really, we have no inheritance tax.

Several of the Presidential candidates found out in New Hampshire this fall that it was a very touchy subject.

I am willing to go back to that State, a State with a strong antitax bias, and say we have raised $2 billion from alcohol and tobacco to help your children to make sure they do not become addicted to drug. I will stand on that position because it is right.

It is easy to take the easy path. It is easy to leave here and tell our constituents what a great job we did when in fact we will have done nothing if we do not fund this drug bill.

I want to just tell my colleagues what this will buy, because we often talk about billions and billions of dollars. We do not tie it to anything. Let us lay out here for a moment what this money will buy.

I would like you all to listen to this because it is pretty impressive.

We will have $205 million for new medium security prisons. I will let the Senator from New York talk about the prison problems in his State.

We will provide an additional $40 million for 757 new U.S. attorneys; 757 new U.S. attorneys.

We will have $57 million for over 400 new DEA Agents. We will have $20 million for an additional 522 positions, and 350 new FBI agents that are involved in drug law enforcement activities.

We will have an additional $1 million for Interpol activities to coordinate with other countries that have this problem. In this INS we will have $36 million to increase the number of Border Patrol agents, which will have benefits far beyond just the drug problem.

Let us get down the the local grants. We will have $250 million to provide much-needed funding of State and local drug grant programs and other drug-related justice programs that will go to the cities and towns of this country. We will have $16 million for the Marshall Service, $16 million for additional support of U.S. prisoners and $85 million for the Federal judiciary for badly needed positions to process these cases.

That sounds like a lot, but that is not all. We are talking about $7 million to fund the office of the newly created drug czar. Hopefully that will become law. $84 million for the Coast Guard for interdiction efforts, $91 million for drug enforcement programs through the Customs Sevice, $11 million for BATF.

Finally, in the demand reduction area, and this is the most stunning that is contained in this bill, $172 million for drug-free schools and teacher training, something we have talked about and talked about and talked about, but you do not do a thing until you pay for it.

There are $9 million for the VA and its programs.

Finally, the largest single item, $1.286 billion for substance abuse block grants to the States and the ADAMHA block grants to the State health research and education training.

I happen to think that when you look at that array of things that we can do that no one can accuse this Congress of not addressing the drug program, if we fund it in that fashion.

Mr. D'AMATO. Will the Senator yield for a question?

Mr. RUDMAN. I will be happy to.

Mr. D'AMATO. If we do not find additional resources outside the bill that has been submitted, comprehensive drug bill, how many U.S. attorneys would we be able to hire this year?

Mr. RUDMAN. Well, I would say to my friend from New York that if the moneys that the Senator from New York has found are in fact allocated that way, we might be able to hire a few, but not very many.

Mr. D'AMATO. So we would not come anywhere close to 700?

Mr. RUDMAN. Oh, not a fraction.

Mr. D'AMATO. As it relates to prison construction, how many new prisons would we be able to fund?

Mr. RUDMAN. We are going to be able to fund, I believe, and I will check the records from our State, Justice appropriations, but possibly one or two. But nothing of the scope that we need.

Mr. D'AMATO. As the ranking member on State, Justice, Commerce, what is the prison population now in the U.S. prisons as it relates to percentage? What percentage of cells do we presently occupy?

Mr. RUDMAN. We are overcrowded in most of the prisons, and most, of course, of the State and local prisons are overcrowded. As a matter of fact, I noticed in the paper this morning the District of Columbia is thinking of turning over the whole prison problem to the U.S. Government because home rule is great except when it gets difficult.

Mr. D'AMATO. I understand that we are approximately 160 percent of capacity?

Mr. RUDMAN. Somewhere between 140 and 160. I do not know the current figures. But they are all full, overcrowded. Some of those prisons, I will tell my friend from New York, are holding twice as many prisoners as they were originally built to hold. It is getting worse, not better, and the judges will not put more people in those prisons because their constitutional rights cannot be protected under those circumstances.

Mr. D'AMATO. Would it be fair to say that without their being the additional resources, we are not going to, then, be able to make an improvement as it relates to DEA agents? There are just a handful more that we would be producing without the necessary revenues? And just several more, as it relates to U.S. attorneys? And, as it relates to the FBI, and as it relates to the Border Patrol? All of those programs, basically, as it relates to new people, would be put on hold?

Mr. RUDMAN. I would say to my friend from New York, I have worked with him and others going through the drug bill item by item. It is 626 pages long, last time I looked at it.

Unless we get an additional $2 billion in funding we will not be able to do anything of any substantial nature with the prisoners, with the judiciary, with the DEA agents, with the FBI. But in my view, I will say to my friend from New York, even more importantly, to help cities and States and county governments with their block grants to start doing something in the demand side. To get people of that age to understand that drugs will ruin their lives.

Mr. D'AMATO. No new substantial resources for education, prevention and rehabilitation will be forthcoming; is that correct?

Mr. RUDMAN. None. In fact, this $300 million I believe we have, frankly, will be a grain of sand in a windstorm. As a matter of fact, I will tell my friend from New York that many of us who worked on this bill believe that $2.5 million is not enough. We spend $300 billion for national defense, and we need it, but I happen to believe that the threat to America from within, the structure of this generation of young people, is in some ways as serious a threat as we face from without.

That may seem like an overstatement to some, but if they do not believe it, I suggest they go to not only inner-city schools but go talk to principals in medium-size cities about the dropout rate, about the addiction, about the violence. Talk to parents who have lost control of their children.

We are facing a national epidemic, and I can assure my friend from New York that it was after long and serious deliberation that I decided to go forward with this. This is not an easy amendment for me to offer. I have many of my colleagues who really would prefer I did not, for obvious reasons. I think there comes a time in everyone's life when you have to do what is right and needed. I am convinced after 3 years of this task force that this problem is destroying the young people of this country.

Mr. D'AMATO. If I might say at this point to my colleague from New Hampshire, notwithstanding the many friends and the relationships and also the political realities of having to work together to forge the kind of coalitions necessary so that Government functions, that notwithstanding your submission of this amendment may, indeed, be viewed as unfriendly as it relates certainly to some areas, I think the Senator from New Hampshire rises to the highest calling.

I believe there comes a time when we have to say we have to put aside some of our parochial interests. It is not easy because I have championed many causes that may be of particular import to my State, and there are very real interests in my State who will take objection at my support of this amendment. The wine producers and growers: we are the second largest in the country; the beer industry, which is of some substantial nature in our area.

So I understand that the Senator does not come to this decision lightly, but in spite of attempting to maintain the kind of coalitions necessary to move government forward, the Senator offers this in the highest spirit and the highest calling. I want to commend my friend from New Hampshire.

Mr. RUDMAN. I thank my friend from New York for his comments. I want to wind up with just a few interesting statistics which I will not say are conclusive because causal relationships in statistical studies are difficult to establish. These numbers are all from NIH.

Mr. DOMENICI. Will my friend yield for an observation?

Mr. RUDMAN. I will be pleased to yield for an observation.

Mr. DOMENICI. Let me just say to him and the others who put together the drug bill, I participated and it was my pleasure to be somewhat of a partner in that episode.

Mr. RUDMAN. The Senator from New Mexico was a major partner in that effort.

Mr. DOMENICI. I do believe it is a tremendous core bill. I think we have one of the worst social situations that our country has ever had. It is deserving of a war, a war on drugs. I have actually said as we developed that over the last 7 or 8 months that I truly thought the United States could suffer a tremendous economic setback if we do not solve the drug crises; that I believe the very basic fabric of our ability to create jobs and growth and opportunity in our country might be at stake because we are unable to appreciate the value of the resources that are being destroyed if we go through another generation of the kind of drug use in this country that has occurred in the past two and apparently continues in most respects to grow rather than diminish.

There is no doubt in my mind that what we have been doing is not enough, and even the focus of what we have been doing is probably inadequate. We must go after the demand side. Nobody is arguing that any more. From the standpoint of education, we have to take a chance that it might work. We have to do some things to just make people quit using drugs.

I think the Senator would agree with me that Sunday afternoon and Monday night football is living proof that illegal drugs are legal in the United States, not illegal. We run around the country talking about illegal use of drugs and illegal drugs. The use of drugs has been legalized in the United States. If that was not the case, you would not have heroes of the American athletic events cavorting around the television screen having acknowledged that they use illegal drugs. You would not have all kinds of Americans who flaunt. Those who say you are killing America, who admit they are using it, that has to be legal even though defined as illegal. I believe that attitude and the laws on the books have to change on that. If they are illegal, it has to be illegal to use them, and those who use them have to be punished, if not now, soon. Those who benefit from privileges in the American society and continue to use them and flaunt them have to be denied some privileges, perhaps after due notice, so that they, too, find out there is a penalty for this.

Those kinds of things are going to be done to some extent, more or less, on this bill.

Having said that, I want my friend from New Hampshire to know, and I said that in the manner that I did because I want him to know that I am just as much an advocate for America going to war on all fronts on drugs as he. Perhaps I have grown more cynical of what happens to tax dollars in the U.S. Congress and, therefore, I want to ask him just two questions.

On page 10 of this amendment, am I reading this correctly that if we set up the trust fund that the Senator is advocating, the appropriations process determines how much money is spent on the progams encapsulated and incorporated in a 1988 omnibus drug bill when we pass it and when the President signs it; is that correct?

Mr. RUDMAN. Obviously, only the Appropriations Committee can appropriate money, but that trust fund can only be used for those purposes.

Mr. DOMENICI. For 2 years and then it is done.

Mr. RUDMAN. It sunsets in 2 years, but what I tried to do with this bill in the event it passes the Congress to encourage the President to sign it is to make this a trust fund which specifically funds this bill which is referenced.

Obviously, there is nothing I can do and the Senator from New Mexico can do to guarantee that the Appropriations Committee will appropriate it precisely in the manner in which the drug bill is drawn.

I think it is fair to say that none of the money can be used for any purpose other than those captions in the omnibus drug bill.

Mr. DOMENICI. My last question, and then I will yield, and I hope the Senator knows that some of us must leave the floor, but we consider this serious enough where we will return shortly to further discuss it with you and others on the floor. I will, and I assume others will.

Let me just ask this last question: Is it not true that many of the stated uses of the trust fund in the new omnibus drug bill of 1988 are the same as current programs that we now appropriate for and we currently spend more on drug prevention activities within that general rubric than your trust fund will yield?

Mr. RUDMAN. I think that may be true except in the demand production area. I think in the law enforcement area, that is probably true. Let me amplify the answer.

Mr. DOMENICI. Let me just get my answer. That is true except for the education enhancement in here on the demand side.

Mr. RUDMAN. That is about $1.2 million. That is about half. I would say on the law enforcement side, although the Senator is correct, the problem we have, which the Senator appreciates very much, is that under the 302(b) allocations the Appropriations Committee gave to our subcommittee, we were forced to underfund DEA, prisons, marshal services, and drug abuse generally.

So what we are doing with this is bringing those amendments up to about the levels they ought to be under the President's request.

Mr. DOMENICI. I thank the Senator.

Mr. D'AMATO. If I might ask, as it relates to that——

Mr. RUDMAN. I would like to hold the floor, but I yield to my friend from New York.

The PRESIDING OFFICER. The Senator from New Hampshire yields the floor?

Mr. RUDMAN. I yield for purposes of a question.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Is it not true that as it relates to the additional funds that have been provided—and they are minimal—for the FBI and for U.S. attorneys, all of those funds will be used for the salary increases of 4 percent? And when one factors in the 4 percent as a practical matter, the FBI and U.S. attorneys will not be able to hire new personnel?

Mr. RUDMAN. I think the Senator is correct. What we have been faced with, with this year's appropriation bill, which has now been signed into law, is that we have been unable to fund those activities at a level which the people who are responsible for running them think is necessary, not necessary to meet the obligations that are coming on but even the situation as it exists now. In other words, we are short of prosecutors, agents, prison cells, judges, educators, and the whole panoply of things you need if you are serious about fighting drugs.

Mr. D'AMATO. I thank my colleague. I have some additional information which I share with Senators. The FBI has been told to suspend training for next year.

Mr. RUDMAN. That is correct.

Mr. D'AMATO. No training, no new agents. We are going to really fight this war. We are going to pass the comprehensive drug bill but we will not hire one new agent. We are just treading water. U.S. attorneys have been told to prepare for a freeze. So while we are going to prosecute and seize the assets and wage a real war, they have been told "Don't plan on bringing in any more than what you have".

So I again say to my friend from New Hampshire and to those who say let us fight this war, we cannot be fighting it unless we begin to bring those resources to bear.

Mr. SYMMS. Will the Senator yield for a question?

Mr. RUDMAN. I will be happy to yield to my friend from Idaho for a question.

The PRESIDING OFFICER (Mr. KERRY). The Senator from Idaho is recognized for a question.

Mr. SYMMS. I want, if I may, to make a brief observation that leads into the question. First, I admire the Senator's steadfastness and his willingness to bite the bullet on issues. I admire the Senator for his courage. But what concerns me is I hear the Senator from New York making the observation that this Congress already is underfunding the war on drugs. All the rhetoric to the contrary, we have plenty of money for many other programs. But that is a priority question from within the framework of the revenue the Government now has.

Second, back to Senator DOMENICI's point, as the Senator knows, we have around $14- to $15-billion combined between the Highway Trust Fund and the Airport Trust Fund that Congress already refuses to spend. What will guarantee, if these taxes and revenues are raised, that Congress is not going to do the same thing the Senator from New York has already talked about? There is plenty of money in this budget to fund the war on drugs right now. There is plenty of money to fund peace and freedom around the world right now but what is the assurance that this money will be spent if the taxes are raised? That is my question.

Mr. RUDMAN. I will answer. First let me thank my friend—and he is my good friend—from Idaho for recognizing me for my courage. I always get a little nervous when I hear that. I believe, if history is correct, the Japanese kamikaze pilots were always praised for their courage, so I am not sure what the Senator means by that. But if it takes courage, I am glad I have it. I think the difference between the highway trust fund and the aviation trust fund and this trust fund, which is a 2-year trust fund—it expires at the end of the 2 years—is the public outcry against the problem of drugs is so enormous that the administration itself and a successive administration, be it Bush or Dukakis, will be so committed to funding these programs it is inconceivable to me that there would be any way whatsoever we could ever see money left in the fund.

Let me say for anyone who wishes to guarantee it, I will be happy to support an amendment right here and now—and I will modify my own if it will get the votes of the Senator from Idaho and others—to earmark the money right here and now without the appropriations process. But I think that would probably give us a bit of a problem with some of our programs.

Mr. SYMMS. I appreciate my friend's comments. The point I am trying to make is if there is such a public outcry right now against the drug threat we all talk about, why then is the 100th Congress underfunding the FBI, DEA, underfunding the drug-related programs? We have over $1 trillion of spending and we are saying now we are going to raise taxes to guarantee to fight it. I think we ought to fight it, and I appreciate what the Senator is trying to do because I know in the Senator's mind, if you are going to do something, you want to pay for it. I can understand that.

Mr. RUDMAN. Let me make an observation to my friend from Idaho who does not sit on the Appropriations Committee but follows the process very carefully and sits on the Budget Committee. I want to point out to my friend from Idaho that this year's Federal budget, this trillion dollars my friend is talking about, is not available to the Appropriations Committee. I do not know the precise number, but I think between 40 and 50 percent of this year's Federal budget is entitlements. Now, nobody suggests we are going to cut Social Security to fund the drug program and nobody suggests we are going to cut veterans' benefits or Medicare or Medicaid or probably education or student loans.

What we have left to the Appropriations Committee—and I see the distinguished former chairman and ranking member from Oregon on the floor—is somewhere in the vicinity of—I am not sure of the exact number. I will ask my friend from Oregon how many dollars the Appropriations Committee had this year to actually allocate other than defense.

Mr. HATFIELD. It is $176 billion.

Mr. RUDMAN. I thank my friend. So you have $176 billion, not a trillion dollars. That $176 billion is what we call the Government. It is the agriculture programs, the education programs, the whole Government, not the military, not the entitlement programs. So let nobody misunderstand what we face in that committee. We start out with $175 or $176 billion and we try to fund all these programs. I will tell my friend from Idaho that many of the programs that he opposes I oppose, but we do not have 51 votes here or more than 50 percent over in the House and the bottom line is that unless we fund this drug bill this way, I can predict with absolute certainty that, No. 1, we will not fund it this year and, No. 2, taking a lesson from history in the West this year the Government thought that if you let the fires burn out, eventually you could catch up with them. Well, this fire is burning out of control, and I am not sure how long we have. I am not sure how much time we have before hundreds of thousands of young people, this generation starting at the age of 8 and 9 years of age in some of our city schools, are plagued by drugs.

I think it is that kind of a problem. I want to see it solved now. If somebody can give me a sure way to come up with another $2.5 billion here and now, then I will vote for it. But unless they can, I want anyone to tell me there is anything wrong with people who smoke paying $7.30 a year, people who drink paying $8.40 a year, people who drink beer paying 5 cents a six-pack to help eradicate the problem of drugs. I will cast that vote. I will go back to New Hampshire; I will identify with that vote and if people want to defeat me for reelection, if I should run, for that reason, I will be glad to retire.

Mr. SYMMS. I can say one thing to the Senator from New Hampshire——

Mr. SANFORD. Will the Senator yield?

Mr. SYMMS. Will the Senator yield?

Mr. RUDMAN. I will be happy to yield.

Mr. SYMMS. I compliment the Senator. We do not have to put him down as undecided on this issue.

Mr. RUDMAN. Or any other.

Mr. SYMMS. I want to say also the part the Senator did say in his comments that concerns this Senator is the same Government that we are going to raise $2.5 billion for is the same Government that burned off a million acres in Yellowstone Park with burn-baby-burn policies, and I am concerned about where we are putting our priorities. I think we do have enough money. Now I know that the former chairman, chairman emeritus of the Appropriations Committee, made the point of $176 billion.

That is true, I would say. It is $176 million which will add $300 million a year more to it in taxes but we have to remember that the only reason it is not $1 trillion is because of the 100th Congress is not willing to go out and do what the Senator from New Hampshire would do and take this from any part of the pie. Whether it comes from any program, it should be no sacred cow. That is the way I viewed it. I have voted that way consistently, and I was reelected.

But I yield the floor. I thank the Senator.

Mr. RUDMAN. Mr. President, let me just comment to my friend from Idaho that it took me about 4 years here to finally learn a very important lesson. I think the Senator from North Carolina learned it probably his first month here. It took me longer. That is, you have to deal with reality around here.

The reality of the situation is that Senator HOLLINGS and I fought, fought, and fought with our distinguished ranking member, Senator HATFIELD, and the chairman, Senator STENNIS, to try to get a greater allocation as did every other subcommittee. I commend Senator HATFIELD and the Senator from Mississippi, our beloved chairman, for being fair with everyone. But when we were done, the reality of the 100th Congress was that we did not have any more money.

Do I think it was all spent wisely? Of course not. Would I reallocate it? Of course I would. One of the things I would do is take $5 billion from the agricultural subsidies, and I would put it into drug abuse. Try to pass that in this place. That is like trying to paddle a canoe through a snowbank. It could not happen.

So I am dealing with reality. When I started this, all I said was we are facing a moment of truth. The moment of truth is, are we willing to put our vote where our mouths are? Or to put it another way, to quote Teddy Roosevelt again, one more time in reverse, because I kind of like the ring of it, Are we going to continue to speak loudly and carry a small twig? That is what it amounts to. Two cents on a pack of cigarettes, a penny for a glass of beer——

Mr. SANFORD. Will the Senator yield?

Mr. RUDMAN. A penny for a glass of wine.

I will, in a moment.

That is chicken feed if we can get $2.5 billion to fight drugs. So I am not doing this because I enjoy it. I am giving a lot of people grief around here, people from tobacco States, and from beer-producing States. By the way, one of the biggest beer companies in America has a large brewery 9 miles from where I live, and I am sure I will be hearing from them. But frankly, there comes a time when you have to do what you think is right. What is right is to raise $2.5 billion, and if anybody can show me a better way, I would be happy to do it.

I yield first to my friend from North Carolina.

The PRESIDING OFFICER. The Senator from New Hampshire yields to the Senator from North Carolina.

Mr. SANFORD. Mr. President, I wanted to respond to that question whether or not there is a better way to raise the taxes that are needed. In the first place, it strikes me that this is a continuation of a very regressive tax that puts the burden on a class of working people; second, it does not raise enough money if we are to do what needs to be done. My suggestion—since the Senator asked for suggestions for a better way to raise the money—we have now the top income tax bracket at the lowest level since Calvin Coolidge was President. Why not add 2 or 3 cents at that point and get enough money to do this right instead of piddling around with additional taxes.

Mr. RUDMAN. Mr. President, I would say to my friend from North Carolina, that no doubt would solve nothing because we have been assured by the President of the United States, and he feels very deeply about it, that he will not sign a bill, as I understand it, that will increase tax rates, as I understand.

Mr. SANFORD. May I, if the Senator would yield for another question? Why not make the same speech to him that we have to have the money to get his drug intentions carried out?

Mr. RUDMAN. I am not sure how much the President listens to my speeches. But I will say to my friend from North Carolina that if my friend from North Carolina would like to sit down, we can discuss the relative merits of this amendment. I know it is very politically risky, but I will tell the Senator voting for an income tax increase would be very risky for me. I might vote for that if my friend from North Carolina will vote for this one. Then we can raise $50 billion and take care of the problem.

Mr. SANFORD. I will go with the Senator in reverse order.

Mr. RUDMAN. I suggest my friend offer his amendment. I am getting surrounded by people from South Carolina, North Carolina, and Kentucky. That is what I expected. It was a sure way to get a good discussion going on the floor.

But I will tell you something. I have a funny feeling if the Senator went down to those States, I know how important those things are to his agriculture, and I believe I have been fairly sympathetic over the years to those problems coming from a State that does not grow tobacco, obviously, or much else. I would make the observation that I dare say the people of your States are so concerned about the drug problems that they well might support this kind of an increase on that product if they were sure the money was going as it will in this bill to the specific purpose, not to highways, not to airports, not to welfare, but to eliminating the scourge that is destroying young people in America. And make no mistake. They are getting destroyed. If you do not believe it, I will take you downtown and show you some things that will make you eyes pop.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. RUDMAN. I am happy to yield to my good friend from North Carolina, and I will be happy to yield to my friend from Kentucky.

Mr. FORD. I wanted to ask a question based on the last statement that my State would not object. They like fairness. There is nothing fair about this amendment. The Senator does not add a little something on to heating oil, he does not add a little something on to timber, he does not add a little something onto yachts, he does not add a little something on costume jewelry. He does not do all of those things. He just zeroes in on those 200,000 farm families. That puts them a little deeper, a little bit lower as it relates to the tax. The Senator knows it is regressive. Every time we add it on, we do not get as much as the 2 cents as we put on. Not only that, we lose production.

So my folks sure want to get rid of drugs. But they would like a little fairness. What I see here is the Senator zeroed in on, and it is easy to go to. But why not if we say it is a national problem, it is a world problem—why not spread it out just a little bit instead of just zeroing in on certain regions of the country?

Mr. RUDMAN. I would make an observation. That is a very compelling argument until you examine it. The people of Kentucky may grow tobacco. The people of North Carolina may grow tobacco. But the people of all 50 States use it. And the tax is collected from people who use it, not those who grow it. I know what the problem is. The problem is the concern that if you raise the tax, it raises the price. There are people here who want to raise it 50 cents a pack to eradicate smoking. I am not suggesting that for a moment. But the fact is that this is a regressive tax.

Any tax that is a sales tax or an excise tax is a regressive tax. But this one is voluntary. Nobody has to smoke and nobody has to drink. No. 2, it is spread across the 50 States because I dare say that alcohol, beer, and liquor consumption are fairly uniform. Nobody has a monopoly on it.

So I would simply say, though I agree with the regressive argument, I cannot agree it is unfair.

Mr. FORD. Some States grow timber, and that is used all over the United States. That is one thing that is used all over the United States. That would be fair, to put a little bit on that. Then we look at those who have the ability to buy yachts. Why not just say we will put a little tax on that and maybe instead of going 2 cents on cigarettes, it would be 1 cent. You spread it out a little bit.

The thing here is not what the Senator is trying to do. It is the fairness, and we lose, in my opinion, the ability to be fair to all people to share in the elimination. Somebody who does not smoke may have one whale of a drug problem in their family. They are not paying anything for rehabilitation. They are not paying anything under this bill to try to eliminate it. They are not paying anything toward border guards or whatever you might have in this bill.

But they are costing money, and we are paying for the problem.

Mr. President, I yield the floor.

Mr. RUDMAN. I believe my friend, the senior Senator from North Carolina, wanted me to yield for a question. I would be happy to.

Mr. HELMS. I will just observe, I say to my friend, that yielding, save by unanimous consent, must be confined to a question.

Mr. RUDMAN. That is correct.

Mr. HELMS. Let me pose a question. Can we at this point agree that we will dispense with the oratory about how opposed we are to drugs—because I think every Senator in this Chamber is opposed to drugs—and just address the issue here.

I know that the Senator from New Hampshire is stronlgy opposed to drugs. I know that Senator D'AMATO is. There is no question about that. But that is not the question with this amendment.

The issue on this amendment is as the Senator from Kentucky said: What is a fair way to do it? The Senator from New Hampshire, himself, has just acknowledged that it is a regressive tax.

I say to the Senator that I am going to withhold the rest of my remarks until I have the floor in my own right. The Senator from New Hampshire did not consult with any of us about the nature of this amendment with respect to the excise tax increase.

I might add that he continues to say, does he not—I will not conform to the rules—that it will be sunsetted in 2 years?

Mr. RUDMAN. It will have to be voted in again in 2 years by Congress; that is correct.

Mr. HELMS. The Senator used the word "sunset." When something has been sunsetted by statute, it has to be voted in again. My question is, they used to say that the Sun never set on the British Empire. Can the Senator identify one "temporary" tax that has never been sunsetted?

Mr. RUDMAN. As a matter of fact, I do not know if I can or cannot. But to give the Senator the answer he wants, I would vote to have it forever; but I put it in as 2 years because I thought it would be a good way to get votes.

I think addictive substances ought to be taxed. We are all against drugs. The Senator from North Carolina has been an opponent of all the abuses of drugs and the people who use them, and I have supported his amendments, so we have no argument on that.

I point out to the Senator from North Carolina that I am not sure what the statistical significance is, but there are some fascinating studies done at the national level about cigarettes and alcohol being gateways to marijuana and cocaine among high school students.

My theory, getting down to it, is that we have certain substances which are legal and which are addictive. The Surgeon General says that tobacco is addictive. There is no question that alcohol can be addictive—not in all cases. It seems to me that to place an excise tax on addictive substances which are legal——

Mr. FORD. Mr. President, will the Senator yield?

Mr. RUDMAN. When I finish—is not necessarily a bad idea to fund a fight against substances which are truly harmful and destructive.

I am not suggesting that cigarettes and alcohol in moderate use are as addictive or as destructive as cocaine, heroin, and other harmful drugs.

I want to see if I have answered the Senator from North Carolina as best I could.

Mr. HELMS. I think so.

Mr. RUDMAN. I yield to the Senator from Kentucky for a question.

Mr. FORD. The Senator is making a positive statement about addiction. In this Congress, no one else has found and made it law that tobacco is addictive. There have been statements that it is and statements that refuted it. Let us not get in the posture of saying this is true when we have some reluctance about that statement.

I would hope the Senator would be careful about couching his language. He is articulate and smart and he is a great debater, and I quiver when I am in something I am not sure that I ought to do. But I must do it to defend my people, and therefore courage comes.

Mr. RUDMAN. I will ask a question of my friend.

If I understood his comment, the Senator from Kentucky is not suggesting that for something to be so, Congress has to pass a law saying it is so.

Mr. FORD. You can say whatever you want to, but I think we ought to develop this a little further.

Mr. RUDMAN. As long as we are at that point, I want to give a few things from NIH. I had not planned to use these, but I think they are interesting.

I make no secret of the fact that, right or wrong, logical or illogical, as opposed to putting a tax on yachts or airplanes or home heating oil or gasoline, or whatever, to fund this, it occurred to me there was a sweet kind of irony to putting an excise tax on legal addictive substances to fund the use of illegal addictive substances. I confess to that. That is part of my logic. It may be logical or may not, but that is the way I think, and let me tell you why I think that way.

High school students between the ages of 15 and 17 who smoke cigarettes are five times more likely to use marijuana than those who do not smoke. A high school student who has tried marijuana is 100 times more likely to try cocaine.

The relationship between smoking and alcohol use is also very strong. Pack-a-day smokers are 11 times as likely to be current daily drinkers as those who never smoke—18.5 percent against 1.5 percent. They are also four times as likely to report an occasion of heavy drinking—68 percent to 17 percent.

People can criticize me for being unfair, and I certainly am not a scientist or a physician, and I understand that statistics can be inferential and they can also be circumvential.

The fact is that there seems to be something that is a relationship between substance abuse. We talk about heroin and cocaine. How many Members in this Chamber have friends or family members who are addicted to alcohol? Does anyone seriously argue that the statistics on alcohol abuse are that it is probably the single most prevailing substance abuse in America?

I am not here to join the Women's Christian Temperance Union. I am not here to go on a crusade against alcohol or tobacco or anything else.

It seems to me a sweet irony that we put a tax on legal addictive substances to fund a program.

Let me wind up, although you might hear from me again.

We finished the appropriations bills this year. We underfunded, woefully, law enforcement, judiciary. We almost did not fund demand reduction.

Senator BYRD and Senator DOLE, exerting the finest kind of leadership, and Senator NUNN and Senator MOYNIHAN on the Democratic side, with Senators D'AMATO, WILSON, GRAMM, DOMENICI, and me on the Republican side, and many others, worked for the last 3½ months to develop a drug bill. We have done that. It is a first-rate bill.

As one who has dealt with this problem going back to 1970, when I was attorney general in New Hampshire, this bill incorporates most of the things we have been talking about for years—in law enforcement, demand reduction, education, sanctions. It is there. There is only one thing that is not there, and that is money—$2.5 billion. We have a paltry $300 million.

Thus, in the closing days of this Congress, I reluctantly came to the conclusion that there had to be a moment of truth, where we either stood up here and said, "Let's do it and do it right, and let's cast a vote in the interests of the young people of this country," or let us go home and spout more rhetoric.

Mr. President, frankly, we have had enough rhetoric. My State of New Hampshire has been deluged with it since some time an hour and a half after President Reagan took his oath of office for his second term—nothing but rhetoric. I watched these campaigns, and there has been some good discussion but also a great deal of rhetoric. Well, this is not rhetoric.

We have to cast a very unpopular vote, in the minds of some people, but I believe that when the American people are told that the U.S. Congress put together a package of $2.5 billion to save their children, that that money is going into a trust fund to be used for that purpose, for the FBI, DEA, education, testing, sanctions, and for all those things, they will say, "We don't like to pay 2 cents on a pack of cigarettes and a penny on a glass of beer, but, you know, you did the right thing."

There is no such thing as a free lunch, and the American children should be getting better than we are giving them.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I assure my colleagues that I am not going to take a long time.

I am going to say that there will be people who supported me in the past who may be rather angered and disappointed as a result of what they see, a certain unfairness and unevenness that some of my colleagues have pointed out that has been used as the approach to try to find desperately needed revenues for the so-called war on drugs.

Right now we have no war on drugs. We acutally have people talking about surrendering; the legalization, they say, of drugs may be the answer.

You cannot beat it. I do not think you can beat it unless you can begin to engage the enemy.

Where are the education programs, the mass of public education, the prevention, the rehabilitation?

How do we call ourselves warriors when we arrest the drug merchant and salesman who has a litany of arrests and litany of convictions and turn them right back out on to the street as do the courts in New York. And why? No room. There is no prison space here in the Nation's Capital.

And we are going to pass this bill, S. 2852, and we will all go home and we will say what a wonderful thing we did.

There is no money in it. There is only enough money to make it possible not to fire U.S. attorneys, not to fire FBI agents. We will freeze it.

We have agents who are out there in the field working 24 hours, 36 hours, straight throughout this country, not just in New York City, in suburban areas, who are strained, strained. They want to quit. They want to give up.

Either we are going to tell them that we are with them, that we are committed to this, or we should just maybe leave, leave these institutions; we do not belong here. Maybe if we do not have the courage to pass some real revenue bills and people can justly say, "Why don't you have a tax that goes across? I will vote for a 1-percent excise tax or a tax on income." One percent of all income taxes, they tell me, is about $9 billion. I think that may be a little high, but if you added a 2-percent surcharge or 3-percent surcharge, and put the money in the fund and spend the kind of moneys to have real education, to have rehabilitation for the herion addict. The heroin addict is a walking crime machine. In 10 days, he or she has to produce $2,500 for that habit. Where do you think they get it? They rob, they steal, they sell their bodies. We see our kids in degradation on the streets, and we do not have the courage to provide the funds.

Let me say this to the Senator from North Carolina: If he is willing to support a surtax on income and put those dollars in a trust fund I will join with him for that tax. It is about time that we undertook this battle, and you have to mean it. If you cannot support this limited action, limited—this $2 billion is a pittance—you need $10 billion a year more, $11, $12, $13 billion if your are really goiing to undertake the battle.

But to leave those who are on the front line, our law enforcement officers, our social workers, our school people, our communities, our senior citizens who face the danger of the drug addict, the families who have a young addict and have no place to send them, what a tragedy.

I held a townhall meeting with Congressman DOWNEY 2 weeks ago. The most incredible moment was when a young woman got up in front of 150 people and had the courage to say, "Senator, Congressman, where do I send my husband who needs help? He is a drug addict. We cannot pay $3,000 a week."

You could hear a pin drop.

I would suggest to you that that is a case all too often throughout the length and breadth of this country.

I suggest to you that there are school officials who do not have a meaningful interdiction program to help youngsters to begin to route them to help because there is no place that they are aware of to help them get the treatment that they need.

I would suggest to you that this is just the beginning, that if we cannot pass this kind of simple legislation authorizing dollars, appropriating dollars specifically for this bill, then I suggest that we are not doing the business of the people.

I understand what it is to fight for an industry in one's town or community or State. This is not going to drive the alcohol, the beer people, out of business, absolutely not. And they have a cause in saying, "Are you willing to support revenue packages, additional revenue packages, for the additional resources which are to be raised?" They are right in raising that question.

I say this Senator will.

I want to tell you something. Do not use that argument to defeat a funding source that is real, that will not do the kind of damage that people say to their industry, that if anything will help the American youngster and family and will give them some real relief this year and will see to it that we keep our commitment to the law enforcement officers, to the educators, to the people on the front line, who are citizens, and to ourselves.

And that is why I join my colleague in sponsoring this amendment.

I hope that all of those who are going to get calls—and the phones are ringing off the receiver and I have begun to get them from friends and supporters—why are you doing this? I am doing it because there comes a time when you simply cannot just continue to do business as usual, when you have to stand up and make some tough decisions because they are in the interest of this Nation.

I want to leave you with a statistic which I picked up back in 1985 when we were having hearings on the Joint Economic Committee. It was in Rochester, NY, Mr. President, and we were getting from the various business community and local officials and law enforcement people the impact of drug and alcohol abuse. Of course, it is not new to find out from the local sheriff that 75 percent of the people who are in the lockup are there as a result of or are severely handicapped with the infirmity of drug and alcohol abuse. That is not unusual.

But what I found most shocking was when the vice president of General Motors testified that in some of his plants up to 30 to 35 percent of the work force had severe drug and alcohol problems.

I said to him, "What does severe drug and alcohol problems constitute? That is a term that can encompass and it is very broad.

He said, "Senator, we do not classify someone as having a severe problem until they miss at least 100 days of work a year."

Let me tell you what that problem costs General Motors in 1985 as it related to what the medical costs were for drug and alcohol abuse. At that time it was over $600 million.

If we want to talk about productivity, if we want to talk about doing the business of the people, we better begin to engage the enemy. We had better begin to provide the resources to fight this so-called war, because there is no war.

Mr. President, our lack of action has contributed to the annihilation of communitiers, towns, young people, families.

We have an opportunity to begin to reverse that and to give real meaning when we say we are prepared to galvanize this nation to win back our young people, our communities and to win this war.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I apologize to my colleagues for being a little tardy, since I am a primary cosponsor of this amendment and I may repeat a few things that have been said. But I will not be very long, at least in the outset.

We are offering this amendment to accomplish a very important purpose, and quite frankly, to do very little damage. No one likes to raise taxes on anything at all. No one likes to come to this floor and suggest we are going to increase the costs of anything to the American people, a segment of the American people, a single American.

It is not usually the smart thing to do, particularly at a time when the Presidential candidates are being bombarded with the question: "Will you take the pledge never to raise taxes?"

Pollsters indicate that candidates seeking public office are not particularly wise to discuss taxation in any form at all. And here we are on the eve of an election, Senator RUDMAN, myself, Senator D'AMATO, and many others, talking about raising a tax.

But this tax is designed, fashioned, for a very specific purpose. Poll after poll, as has been indicated here, shows that Americans believe drug abuse to be the number one problem confronting the Nation. You have all heard from me ad nauseum, as chairman of the Drug Task Force, as chairman of the Judiciary Committee, and prior to that as its ranking member, droning on about drugs and the problem. You have all had to stand here hour after hour, leave here hour after hour, as you heard me make my case for a drug czar and so on and so forth.

Now we are all united. Everybody is talking about this is the No. 1 problem; we are out to fight it; we are all united—Democrat, Republican, liberal, conservative—Because we are responding to either an enlightened base of knowledge or political pressure from home.

And one of the things—I know it does not matter much to my colleagues, but just maybe they might like to know. When asked the specific question: Would you be willing to have an increased tax—that awful word "tax"—on cigarettes, liquor, and wine if the tax from that money was dedicated to funding the fight against drugs, when asked that question I believe it is 61 percent—I will get the exact poll——

The **PRESIDING OFFICER**. If the Senator from Delaware will suspend for a moment.

The Senate is not in order. The Senate is not in order.

The Senator will suspend until order is restored.

All those having conferences, if they would retire to the cloakroom.

The Senator from Delaware.

Mr. **BIDEN**. When asked that question—and I will read the precise question: "Would you favor or oppose a law requiring Congress to balance the cost of any new programs by reducing other spending by the same amount or by raising revenue to pay for them?", 62 percent of all Americans said they would favor it.

Then the preceding question: "In recommending the possible use of tax increases to reduce the Federal deficit, the Democrats in Congress have suggested raising liquor, cigarette, and excise taxes. Would you favor or oppose such tax?" And 58 percent said yes. And that is just to reduce the budget deficit. And when you get down to asking them the question: "Would you favor the tax to specifically fund specific programs relating to drugs?", the answer is overwhelmingly yes.

In responding to this drug threat for several months, Senators from both sides of the aisle—and I can claim no credit at all because I was not here—but Senators from both sides of the aisle have drafted a bill that attacks the drug problem on many fronts.

The bill contains many provisions that we have sponsored in the past, including the provision to establish, as I said, a Cabinet-level Drug Policy Director, a provision based on legislation introduced in 1987 that would provide more than $500 million each year to assist State and local police and prosecutors in juvenile justice programs, and a provision that I strongly support to establish education and prevention programs to each and every child in this Nation about the dangers of drug abuse.

As introduced, I want our colleagues to understand, as introduced, this bill—by the way, the reason we are still here in the Senate is because the Republican caucus and the Democratic caucus said, "We can't go home until we do something about drugs."

Now we all may dance around that. And maybe I am not supposed to release that privileged information. That is one of the reasons why we are still here. Were there no drug bill left, I suspect that horses would have smelled the water by now and we would be gone. Maybe I am wrong. Just my opinion.

But we are here, because we are going to do something about drugs and we are about to pass a big, old, thick bill. That big, old, thick bill costs $2.6 billion. In fiscal 1989, with actual spending or outlays, as we call them around here—for the taxpayers of America, that means spending, how much we are going to actually spend in 1 year—it is $1.4 billion.

But, unfortunately, this bill would raise less than $200 million in actual revenue by hiring new IRS agents. And if we are all honest with one another, that is a bit speculative, how we arrive at that number with such certainty, that merely by hiring more agents we know we are going to get $200 million more.

Well, let us assume we do. Even with additional appropriations that we can spend without exceeding the law that my good colleague from Texas, who I see on the floor, was the author of, the Gramm-Rudman law, there is only 300 million bucks left for us to spend from now until the day we adjourn if we take every penny of it and use it to fund the drug bill. Forget any other legislation that is out there; anything else. If we pass the bill, we can shut down, because we will have violated the law. We will have to go into sequestering, which is a concept I think some people on the floor do not even understand, let alone the American people.

But, to put it in simple terms, the most you can get, the most you can find to fund our war on drugs is $500 million. And even there, we are playing games if we take every penny left and the exaggerated money we are going to get from the IRS agents.

So that leaves us $900 million short. Where I come from, we would say that is close to a billion dollars and a billion dollars is a lot of money.

Mr. President, I think we would be somewhat, to use a nickel word—it used to be a quarter word, but a nickel word—somewhat "disingenuous." In fact, we had been down right dishonest to pass a drug bill that we do not intend to pay for. We have no intention of paying for it.

Do you hear what I am saying? No intention of paying for it. We should hear that loud and clear—no way to pay. Tell everybody now. Let the word go forth: We are going to fight the drug lords; we are going to send out those new DEA agents we are hiring, we are going to send out those additional enforcement agents, we are going to open up those new clinics, except we are going to say to the DEA agent, "Do it on your own. We can't pay you." Voluntarism.

We are going to say, "Start those new drug programs, but do it on your own."

You folks in the gallery are ready to contribute, are you not? Voluntarism. Let us go home and tell all those people we are going to hire: "We may be able to pay you next year, maybe the year after, but this year it is going to be for free, and, by the way, not only for free they are going to work. You do not mind dipping in your own pocket and paying for the overhead, do you?"

This is preposterous. A war on drugs. We have not fought a war on drugs. I wish we would stop using that phrase "war on drugs."

Do you know what this would be like, to my friends who are so big on defense? Can you imagine us standing here on the floor of the U.S. Senate and saying, a year ago: "Mr. President, we, the U.S. Senate, think you should send those carrier fleets to the Persian Gulf. But, by the way, Mr. President, we will not give you the money for the fuel to get them there. We will not give you to money to pay for the crews. So, Mr. President, all we ask you to do is go out there and take up a collection. Get Ollie North, he is pretty good at it. Get him to go out there and take up a collection for a fuel fund, and then go down to those 15,000 personnel and say: You are patriotic Americans. If we can get the fuel to get you there, you are on your own in terms of salary. And, by the way, once you are there, if you are fired on, you have nothing to fire back. Because we have appropriated no money."

Or to say: "Mr. President, we think that you should go into Libya with a surgical strike. But, Mr. President, we prohibit you from using any of the jet fuel that the U.S. States military has as its disposal."

You might think I am kidding but think what we are about to do. We are going to pass this bill and right after this bill is passed we are going to say in an appropriations bill, you cannot spend beyond $500 million and, besides that, you cannot even obligate yourself to pay it later.

Mr. President, I do not think this makes a lot of sense. And now let me get to the second issue, if I may. That is why we are here, by the way. That is why the Senator from Delaware is standing up to say this. Like other Senators are, he is going to ride the train back home tonight and have everyone from the conductors to the person I end up sitting next to who just came from the cafe car with his little wine cooler saying: "Senator, are you the guy that is going to increase the cost of my beer and wine?"

Well, the reason I am standing here is not because I am looking forward to that grief. It is because if we are honest, if this is not the way, somebody stand up today and offer an alternative so we stop lying to the American people.

Mr. SYMMS. Will the Senator yield for a question?

Mr. BIDEN. No, not at this point I will not. I will be happy to in a moment.

The second point, now. You all may have a better way of doing it. The best way the Senator from Delaware could come up with, and he suggested it 2 years ago and last year and now, is let us go out there and increase the six-pack of beer a nickel; or a beer, less than a penny a bottle or can. If you are going to buy a quart of hard liquor it is going to cost you 40 cents more. If you are going to buy a pack of cigarettes, it is going to cost you about 2 cents a pack more.

These additional revenues raised by the amendment would be deposited in a newly established drug-free America trust fund, like the Highway Trust Fund. You all cannot go out and take highway revenues, when I ride back to Delaware on the Delaware Turnpike and pay my buck. You cannot take that money and have a food program with it. You cannot take that money and put it in education. You cannot take that money and go out and buy a new airplane for the Government. You have to take that money and put it back into the things relating to the highway.

We are saying we promise you America, if you are going to pay a penny more for a beer, we are going to put it into a fund that is not going to be wasted. It is going to go to fight a specific problem.

Mr. President, it seems perfectly reasonable to me to pay for substance abuse programs through excise taxes on the very substances that are abused or lead to abuse. Sixty percent of the funds in the drug bill are earmarked for drug abuse education, prevention, and treatment programs. That includes alcohol abuse. Alcohol is, in fact, the most abused drug in America. Alcohol causes 100,000 deaths per year; 18 million Americans are alcoholics, one out of every 3 high school seniors report drinking heavily. Alcohol abuse cost the United States $117 billion in 1983 through estimated lost productivity and increased health costs.

So, regarding tobacco, last May the Surgeon General, to the great chagrin, I understand, of my good friend from Kentucky and my good friend from North Carolina and Senators from other States who have a keen interest in this, last May he said smoking is as addictive as snorting cocaine. It kills 300 million Americans a year.

I do not know that that is true. I cannot say that. The Surgeon General recommended, though, that schoolchildren should be taught about its being dangerous. I have not heard anybody ever stand up on the floor and say: "By the way, smoking cigarettes is good. It is a good idea." I do not hear anybody saying that, any more than I hear people stand up and say drinking gasoline is good.

There is not a warning on gasoline saying do not drink it. Even if there were not a warning on cigarettes, that it caused cancer, does anybody argue that it is good?

So it is not like we are going out there and saying, "do not drink milk, Do not eat vegetables."

Mr. President, I could go on to a lengthy economic analysis about the benefits of this amendment that we are proposing. Instead I want to make a couple of specific points. First, the increase in the excise tax is modest, Less than a penny a beer; 5 cents a bottle of wine; 40 cents for a quart of alcohol, hard liquor; 2 cents for a pack of cigarettes.

Second, the real rate of excise taxes for alcohol and cigarettes have decreased significantly over the past 30 years.

If the excise tax rates for alcohol and cigarettes, which we enacted in 1951, this is the first time we thought that was a good idea, had been indexed for inflation, the tax on beer—I better put my glasses on for this, 7 months in the hospital got me a little blind—the tax on beer would be 64 cents. The tax on wine would be 12 cents. The tax on distilled spirits would be $8 a quart. And on cigarettes it would be 64 cents a pack. It would be more than four times what they are today.

With the small increases proposed in this amendment, the real rates of excise tax would still be greatly lower than 1951 level.

And, third, the amendment would raise taxes on exactly those substances that are widely abused and for which we are authorized and authorizing substance abuse education and treatment programs, and the revenues in this amendment, I emphasize, could not be used for anything else.

Mr. President, in closing, I would like to note that our election year frenzy to do something about drug abuse and drugs, if we mean it—maybe we should consider this amendment quite seriously. To do something about drugs we are considering a drug bill that has other provisions in this Senator's mind that may very well threaten some of our liberties and protections guaranteed by the Bill of Rights. But that is another fight.

Yet here we are. We have an amendment that could make a difference in our struggle against drugs. It would ensure that we have enough DEA agents and prosecutors and judicial resources to put the drug traffickers that we do catch behind bars, to assist State and local police officers, to educate our children about drugs, and to help those already using drugs to straighten up and hopefully lead a productive life, drug free.

Mr. President, if this amendment passes, I think it will be a signal that this body's commitment to taking effective action against drugs is real.

I think it will demonstrate this body can make the tough decisions needed to solve the most pressing problem confronting this Nation. On the other hand, Mr. President, if this amendment fails and we do not provide any other means beyond this one to fund this bill and we vote on a drug bill, it will be a hollow exercise.

What do you think all our good friends in the fourth estate are going to write? They are already skeptical about us anyway on this issue. Every drug bill we pass, and I have been here almost 17 years, every one we have dealt with, the first thing we had to do is understand we deal with the press and the American public. How many times has the press and the public heard about our war on drugs? How many times have they heard that? We are not only not funding a war, if we pass this bill without this amendment or some other that will raise an additional $900 million before we leave, we will not be funding a good fight, a good battle and people are sick.

When we passed the drug bill that the Senator from Florida, Senator CHILES, and I and others worked so hard on 2 years ago, we came up with the money, but the President would not spend the money. That was the biggest problem in that bill, and now we have cut out one problem. We do not have to worry about whether he will spend it; we will guarantee he does not have to worry about spending it because there will be no money.

You try to put together a program, you go out there with this bill passed and being expressly prohibited from spending more than $500 million and you go out there and try to make this bill we are going to pass make any sense. What do you do? Are you going to decide the DEA agent, like we did on one other occasion when we ran short, can still get his pay but cannot drive his car? The Senator from Florida knows what I am talking about. When we held a hearing down Senator Chiles' way, we found out that there were DEA agents who could not pursue their quarry because they could not drive a care. They had no money for gas.

What the devil are we doing? If anybody believes that by adding a penny to the price of a can of beer, less than a penny, 2 cents to a pack of cigarettes or 40 cents for hard liquor, or a nickel a bottle of wine, that we are going to shut down the vineyards in California and upstate New York, we are going to put every tobacco farmer in North Carolina out of business, we are going to shut down Jack Daniels in Kentucky—I assume that is where it is—and close up every distillery in America, throw all these people out of work, well, then, it is a tough choice. You throw them out of work or do you have a real drug bill? Then I think what you ought to do, if you think that is going to happen, is say, "Biden and Rudman, you're all wet. Sit down. Don't do this tax. I have a better tax that won't throw these folks out of work and we will still fund the bill."

But if you believe, as I think any reasonable person would believe, that the vineyards will still go on at a nickel a bottle, that the tobacco industry will still flourish with a 2-cent a pack increase in a tax, that Jack Daniels and others, and I do not mean to just pick Jack Daniels. I guess I do not drink enough to be conversant on this. The hard liquor industry is going to shut down, I just think that is preposterous. Were I from Kentucky, I would probably make the case the best I could. Were I from North Carolina, I would make the best case I could. But I would argue those folks, if they are going to make the case, which I fully understand and respect, make the case where we are going to get $900 million so we can leave here and say, "We are not lying to you, America; we mean it for real this time." I will be happy to answer questions or yield the floor or do whatever.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana, the manager of the bill.

Mr. BAUCUS. Mr. President, we are on the technical corrections bill. The bill before us is not the drug bill. It is the technical corrections bill. Make no mistake about it, if this amendment passes, it will be a killer amendment and there will be no technical corrections bill this year.

Mr. BIDEN. Will the Senator yield for a question.?

Mr. BAUCUS. No, I will not.

Mr. BIDEN. I do not blame him.

Mr. BAUCUS. The technical corrections bill does not raise any revenue to reduce the deficit. It does not lose revenue which would increase the deficit. There are no new spending programs in this technical corrections bill. There are no new revenues for existing programs in the technical corrections bill. It is absolutely clear that if this bill includes an amendment which increases taxes, increases taxes $2.4 billion whatever, that we no longer have a technical corrections bill this year. Certainly not 33 days before November 8.

Mr. President, when we move to the drug bill, that is the time to consider how we pay for the drug program this country must have. We have heard some excellent speeches in the last hour and a half—the Senator from New York, the Senator from New Hampshire, the Senator from Delaware, and we are about to hear one from the Senator from Florida who believes very strongly, who has spent hours, days, weeks, months, trying to craft a bipartisan drug bill that begins to solve the problem facing this country and contains the revenue that gets the job done.

So far that task force has been unable to agree upon or come up with a way to raise the revenue. It is a massive problem. They have not found a way. The bipartisan drug task force does not agree with this particular way to raise the revenue. Some Senators do. The bipartisan task force does not.

The White House opposes this amendment. The White House believes that this is not the way to raise money to fight the war on drugs. We should not raise taxes and certainly the White House is opposed to raising taxes on the technical corrections bill.

Mr. President, I submit that if this amendment passes, not only is it a killer amendment for the technical corrections bill, it will probably jeopardize the passage and signing into law of the drug bill this year.

When we get to the drug bill, and we will get to the drug bill in this Congress, that will be the time to address the question that is now before us; that is, how to pay for it, how to raise the revenue.

But, again, I must make sure that Members understand. The idea to raise more revenue for drug programs may be meritorious. In fact, Mr. President, at some time, maybe next year after we explore more thoroughly how to raise revenue, this proposal may be part of the way to do it. But not now, not on the technical corrections bill.

Again, I must make it very clear that if this amendment passes, there will not be a technical corrections bill this year.

Mr. President, I will yield to the majority leader.

Mr. BIDEN. I just have one question.

Mr. BYRD. Will the Senator indulge me?

Mr. BIDEN. Yes, of course.

S. CON. RES. 155, CORRECTING THE ENROLLMENT OF S. 136

Mr. BYRD. Mr. President, these two requests have been cleared with the distinguished Republican leader and the acting leader quickly so we can get the correcting resolutions over to the other body before they go out, probably for the week.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of a concurrent resolution to make corrections in the enrollment of S. 136, the Native Hawaiian health status bill, on behalf of Senator Inouye.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 136) to improve the health status of Native Hawaiians, and for other purposes, the Secretary of the Senate shall make the following correction:

In section 2(6)(D), strike out "School of Medicine" after "University of Hawaii".

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 155) was agreed to.

SENATE CONCURRENT RESOLUTION 156, TO CORRECT THE ENROLLMENT OF S. 2723

Mr. BYRD. Mr. President, I send a concurrent resolution to the desk and ask for its immediate consideration to correct the enrollment of S. 2723, and I make this request on behalf of Mr. Inouye.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 156) to correct the enrollment of S. 2723.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. INOUYE. Mr. President, I rise in support of Senate Concurrent Resolution 156, to provide that in the enrollment of the act, S. 2723, to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes, the Secretary of the Senate make certain technical corrections.

The first correction would strike from paragraph (2) of section (2)(C) of such act the second and third sentences of such paragraph. These two sentences would require the Secretary of the Interior to prepare and file with Congress a report on the advisability of conveying to the Yurok Tribe certain national park system lands within the Yurok Reservation. If the Secretary were to determine that such lands should not be conveyed to the tribe, then the report should include a proposed agreement with the tribe that would assure tribal members of reasonable hunting, fishing and gathering rights, and reasonable access to ceremonial and religious sites within such lands.

Mr. President, despite the fact these provisions require no more than a report to Congress, they have nevertheless generated a number of expressions of concern. These provisions are really peripheral to the primary thrust of this legislation, which is to partition the existing Hoopa Valley Indian Reservation between the Hoopa Tribe and the Yurok Indians and make possible the organization of the Yurok Tribe. The legislation provides for the effective governance of the two reservations and will allow these two tribes to function within the mainstream principles of Federal Indian law. These objectives are of paramount importance and should not be jeopardized by the study proposal.

Mr. President, the second technical correction simply makes clear that in exercising the authority to acquire lands or interests in land for the Yurok Tribe under the Indian Reorganization Act of 1934, such interests may only be acquired by virtue of a voluntary transaction between a willing buyer and a willing seller.

Mr. President, I urge my colleagues to support this concurrent resolution.

Mr. CRANSTON. Mr. President, I rise today to speak in support of Senate Concurrent Resolution 156 to correct the enrollment of S. 2723, an act to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, which was recently passed in the Senate and the House of Representatives.

As reported out of the Senate Select Committee on Indian Affairs, S. 2723 included a provision relating to National Park Services lands which was not contained in the version of the bill that I introduced on August 11, 1988, nor was it contained in the House companion bill introduced by Representative Bosco. I was not made aware of the addition of this provision by the select committee, and I cannot support any measure which contains such a provision.

I strongly support Senate Concurrent Resolution 156 which will eliminate this unacceptable provision. Finally, Mr. President, I would like to express my appreciation to the chairman of the Senate Select Committee on Indian Affairs, the Senator from Hawaii [Mr. INOUYE] for his prompt action to correct the enrollment of S. 2723.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 156) was agreed to, as follows:

S. CON. RES. 156

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the Act (S. 2723) to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes, the Secretary of the Senate shall make the following corrections:

In paragraph (2) of section 2(c) of such Act, strike out the second and third sentences thereof.

In subparagraph (A) of section 2(c)(3) of such Act, insert "from willing sellers" after "may acquire".

Mr. BYRD. Mr. President, I ask unanimous consent that a motion to reconsider en bloc be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

TECHNICAL CORRECTIONS ACT OF 1988

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from Montana.

Mr. BAUCUS. Mr. President, I think the Senator from Delaware has a question.

Mr. BIDEN. It is a very brief question. It is not asked in any way to be facetious. The reason why the Senator from Delaware and the Senator from New Hampshire and others chose this vehicle was because of our understanding the drug bill was a Senate bill, that revenue raising must originate in the House, it must be on a bill that, in fact, originates in the House, and the only vehicle available to us to do that was this bill. We cannot, as we understand the situation, move an amendment to raise revenues on the drug bill because it is a Senate bill. Is the Senator from Delaware correct?

Mr. BAUCUS. The Senator from Delaware is correct that there is a jurisdictional-constitutional problem here that would have to be dealt with in order to raise the revenue to pay for the drug bill, so long as it is revenue raised as payment for the drug bill. But as the Senator well knows, there are ways to put those packages together. That is, if in fact, in the opinion of the Congress and relevant committees, raising revenue is a part of the solution for paying for the drug programs that we want for this country, then there is a way to go through channels—procedures. At least there should be a hearing before the Finance Committee in order to determine whether this or some variation of this amendment makes sense.

But the precise technical answer to the question of the Senator from Delaware is yes, there is a constitutional-procedural difficulty, but a difficulty that can be overcome so long as there is proper time to look at this amendment.

The Finance Committee has not looked at this amendment. At 5 o'clock on a Thursday afternoon, lo and behold there it is. I think we owe it to ourselves and the integrity of this institution to try to find a more reasonable way to determine whether this is the correct way to raise the revenue or to pay for the drug program.

Mr. BIDEN. Mr. President, I will not ask another question. I think the Senator from Montana knows that seldom have I come to the floor late in the session to attach amendments to bills that do not directly relate to the legislation at hand.

The problem is one of a constitutional nature, and the idea of being able to get together the various committees with 6 days left when in fact we were not even certain 5 days ago we were going to have a drug bill considered on the floor is just not very practical. I apologize—I mean it sincerely—to the manager of the technical corrections bill. His is the only vehicle upon whose back we can ride to deal with a reasonable solution. But I understand his frustration and dilemma. I know how hard he has worked in the drug area over the years when he was on the Judiciary Committee and since he came off of it. I know he would like to do something to pay for it, whether it is by this or some other means. I understand the frustration. I just want him to know that it is the only vehicle we have.

Mr. BAUCUS. Mr. President, I thank the Senator for his comments. There are several days this week and into next week, when we do get to the drug bill, when we can perhaps work out a way to pay for the program.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I stand to support the amendment. I want to say to my good friend from Montana, who is managing this bill, all of us recognize the yeoman task he has taken on and the work he has done in trying to shepherd this bill. I think I join with many Senators saying we want the technical corrections bill to pass. We certainly do not want to jeopardize it. I assure the Senator that I look forward to working with him to try to do that.

I think one of the things we need to find out is how do Senators stand on the subject. Is this a serious proposition or are there four of us as cosponsors who are going to make our speeches and then we are going to get blown away and that will be the end of the subject? If it is, it is no problem. If, on the other hand, this is a subject that other people are preparing to deal with and are serious about, then I think we can look at the possibilities of trying to pay for it.

For people who maybe have not made up their mind, I think we ought to have just a little review of how we got to this point where we are trying to find some money.

Prior to the time we were dealing with the budget resolution for this year was the first time Senators started coming to grips with the fact that we needed to do something additional with regard to drugs, and it was the Senator from Arizona, Mr. DECONCINI, who was the prime mover, saying to those of us on the Budget Committee, "Where do we find some room in the Budget Act? Where do we find some funds if we can move a drug bill? We have to look at that."

That took place when we were on the floor, and there was no room to do anything meaningful in regard to drugs. The President had no room to do anything meaningful in regard to drugs. The President had made some proposals. He had added some money, as my good friend from Texas is going to point out, to a number of areas, but, of course, he made some substantial cuts that did not look like they were supported at the time. Part of that money was coming out of drug treatment programs. We were robbing Peter to pay Paul. And the other was taken out of some other important programs, some maybe not so important. But anyway, we tried to determine what we could do.

We put some language in the budget resolution. One of the major items we fought about with the House for a long time was that we said we could make available $1.3 billion in outlays, about $2.6 billion in budget authority, if Congress and the leadership and the President could come to some agreement as to the source of this additional money.

Now, that was the room we had in the budget resolution, and so then we went through the process, Mr. President. And remember, historically, we had had a budget summit last year, and at that time we locked in the amount of spending for domestic programs. We locked in the amount of spending for defense and the amount of spending for foreign aid, and we said we will not spend more than this particular amount of money. We locked that in at the time. And so we had the ceiling that we had come up with in the economic summit, but we also had Gramm-Rudman-Hollings as a ceiling, so what we had to do was go through this year and see what room we would have.

Well, it happens to be the Senator from Florida who through the Budget Committee, has had to come up with the scoring, and so when we began to look at the scoring of how much room there was, we found on the entire spending side we had approximately $200 million—$200 million on the entire spending side.

I point out to you, Mr. President, that is not $200 million to spend.

That is $200 million of borrowed money that we can spend, and not to hit our target but to be within $10 billion because remember we have a leeway. We have a $10 billion cushion under Gramm-Rudman-Hollings.

So it is not $200 million that would hit out target, but it is $200 million left to go over the cushion. What happens if we go over? Do we just have an across-the-board cut of the amount we are offering, We could go ahead and fund this bill more money, and say we just cut it across the board. No. Mr. President, for people who do not remember, we have whatever we are over plus the $10 billion that we have to cut across the board. And we know nobody in this body is eager to do that. We know nobody in the countryside is eager to do that.

We worked very hard all year not to have a sequester. We are slightly under it. So I am having to tell everyone on the task force, and everybody else along with my good friend from New Mexico, the ranking member, look, you have about $200 million you can spend this year in that way. "Wait a minute," they said. "We have a bill. We want to spend $1.3 billion. And we have this outlay of $2.6." We said, "Well, you are going to have a sequester if you do that. You are going to violate the economic summit agreement if you do that. And you are going to have a terrible time if you do that."

So then we started searching around. We had a task force, part of the subcommittee I guess of the major task force, come up with some funding mechanism. Show us how. We gave them option papers. We showed them what you could raise if you wanted to do it with some revenue. I have to tell you, Mr. President, there was not much enthusiasm in those committees and the committee at that time of doing anything on the revenue side. We wanted to find some other ways. Well, we finally came up with an area that I will have to tell you the Senator from Florida does not feel too good about. But that is if you add some more IRS agents, you will collect some more taxes. And you can spend that money.

The Vice President of the United States says we should not be adding additional agents out there to harass people to pay their taxes. He may be right in that. Some people feel that way. The Senator from Florida comes at it from another place. I do not know how long we can keep adding these people. But it seems like if that works, we could solve the whole deficit. We just add enough, about 100,000 IRS agents, and we would have the whole deficit solved.

But, Mr. President, we held a hearing on that in the Budget Committee, as the Senator from North Carolina well knows, to try to find out is there a way of really quantifying what you get back when you add these agents. The General Accounting Office tells us there is no methodology now that can tell you.

Anyway, a search started or a consultation started between the Congressional Budget Office, IRS, the Department of the Treasury, and OMB to try to look at this and see if there was a way of doing that. It went on for weeks. We could not get a number. Finally, we did get a number that says, well, we think you could get up to $200 million this year, more than that next year, because you have to put on those agents, you have to get them trained, and you have to get them out there going after that money. But we will get about $200 million this year.

Mr. President, someone else came up and said initially if you put on some more U.S. attorneys, direct them to go after forfeitures, you can get some more money. We had somebody score that at $50 million. The Senator from Florida does not want to have to put his house mortgage on the line that that $50 million is going to come in, or that that $200 million is going to come in. But I guess you could say I am prepared to hold my nose or say if it gets scored, then maybe it is not a fraud. Maybe it is just a sham. But anyway, that is part of the funding that we provided here.

So we have tried to inch this thing up so we have $200 million of borrowed money, deficit money, about $200 million for some kind of estimate that we put more IRS agents, and we are going to collect more money, approximately another $50 million we are going to get from the U.S. attorneys on fraud—that we hope we will get. Then we said, well, we are so close, we are $450 million, let us just say we will give another $50 million. We will pull that out of the skylight or something. So we have $500 million.

Mr. President, that is how we are talking about financing this war. That is how we are talking about taking on what the public says is their most important problem. We are seeing it talked about in the campaign, not just in the Presidential race. Every race for sheriff, county commissioner—I have been looking in my papers and they are all talking about they are stronger on drugs. Certainly everybody in the Congress is trying to be strong on drugs. We have in this core bill a very good thing. But at best with all of this we are talking about making a modicum of funding.

I really have a hard time. Boy, I do not like to put my name on any new revenue. I do not like to disturb this technical corrections bill or do any of that. But how in the world do you go face folks that you have been saying for a long time you really were trying to do something about drugs, we have really been trying and we have a package here that will do something but we are not going to fund it very much this year? We are going to kind of phase it in. We are going to phase it in. This country is spending well over a trillion dollars but we have to phase this in.

Mr. President, that is kind of hard to do. It is hard to tell people about. So the opportunity that we have here in the amendment from the Senator from New Hampshire and the rest of us who sponsored it is a way of saying we are serious about this. Not only that, Mr. President, it is not just that we are serious., We are putting our faith in that the American people are serious. I believe they are serious. I think the people who can support this amendment are the ones who believe the American people want to do something about this. I think this is good politics. I am not going to have to face the electorate this year. I really think this is good politics as well as being good government. I know it is good government.

But I think it is good politics as well to say we have some faith, some confidence in the people out there. They recognize we have a terrible, terrible scourge, an epidemic on our hands. What are we going to do? We are going to tax alcohol, but we are also in this bill talking about treating substance abuse. Alcohol abuse is a major sort of substance abuse that we have. We have some other terrible ones, too, but the major one is alcohol. If all we are talking about in this bill in treatment, we bring it up to where we cover 20 percent of the problem, that is kind of hard to say how much we are doing. But we bring it up to 20 percent. Are we not willing to fund it even to get to that kind of area? What kind of signal? This bill is good because for the first time it makes a major step willing to recognize the demand side. We have just touched on it in the 1986 bill. The Senator from Delaware is right. The President turned around, and cut the money in half for the drug education and the drug treatment. We have been fighting to get it back and the money did not get out to be spent. But then we just began to touch on it. This bill is 60-40; 60 percent of it goes to education and treatment and 40 percent for law enforcement to begin to build those things that you recognize you have to have and you do. You talk to any sheriff or any police chief, and they will tell you not to count on us, no matter what you give us, to be able to stop all of this on the street, to be able to stop it coming in, to be able to eradicate it in the host country. Whatever we do, and we are not doing it good enough, to interdict, to burn and stop it from coming in, and then to arrest people. All we do on that side, though, will never touch this until we get on to the other side of being able to treat people.

What we are trying to say in this bill is: "If you want some help, we'll give you some help. If you don't, then we're going to put you away." We are not willing to help 20 percent of them in this bill. We are not saying we will be able to help you all. We know that the lines for those treatments are huge, and we know the cost now is prohibitive.

What we are talking about in drug treatment centers and alcohol treatment centers is priced out of the range of middle income.

I guess if you pour enough in, someone has to pay; and if you are rich enough and have a great insurance policy, you might get there. But for middle America, look out, for being able to pay.

So I think what this amendment says is that we are going to at least have some truth in labeling. We label this bill as being $1.3 billion for outlays and $2.6 billion for VA. This is a truth in labeling provision that says we are going to have that much money.

It is not going to be a total sham, that we have $200 million of sort of blue-sky money that is supposed to produce $450 million for the forfeited money that is hoped to be produced. At least, we are going to put in a few dollars that are real dollars, that are coming off of where the problem is, coming off of alcohol, coming off of tabacco, coming off where the major problems are that we have, and we are putting in a few dollars. It operates for 2 years and then it terminates.

I do not want to tell you that I totally believe that, either, as far as the 2 years is concerned, what will happen. But it is put in there.

Mr. President, I say again to my good friend from Montana that we want to give the Senate an opportunity to really express itself as to whether it has faith that the American people are serious about this problem and are ready, willing, and able to do something about it.

I will say that I know that the President would rather do it another way. If you ask me would I be willing to cut something in the entire Federal budget and make up this money, I can tell you in a heartbeat that I would. I do not know how many people would agree with where I want to cut, but it would not be a majority.

I do not think there is a majority that agrees with where the President wanted to cut. We did not see that in the Budget Act or in the appropriations or anywhere down the line, that there was a majority. We had some test votes.We had a test on his budget. So there was not a majority there.

Is there a majority that believes now that the public is serious about this and will take this kind of revenue, this kind of excise tax? I think that is what the body needs to determine. If there is, then I think we can sit down and determine how we get that done. We do not want to jeopardize the technical corrections bill. There is usually a way to get something to happen in this body.

My feeling is that the President, and certainly through Mrs. Reagan, when they see that this is the only way this is going to be funded, will end up supporting it as well, because I think they see the seriousness of this.

I think it is the only way we are basically going to get some truth in labeling. We have labeled this bill as spending $1.3 billion, and I think it would be a lot easier to go home and say we really were serious about that; we meant what we said when we put that label on.

Mr. DOLE. Mr. President, I will take 1 minute.

We have been checking, and I think the House drug bill will be considered a revenue measure. It has some Ways and Means provisions in it. This means that when you bring up the Senate-passed drug bill and if there were this amendment to that bill, and it were passed, and that would be later substituted and would go back with the House number, H.R. 5210, title IX, then you would not have the problem. It would not be on this bill. It would not kill the technical corrections bill. It would be considered a revenue bill on the House side, and you would not have this difficulty.

I am not sure where the votes are, but it seems to me that it might resolve the problem of those who have offered the amendment, and it might resolve the problem of the managers, Senator BAUCUS and Senator PACKWOOD. We have done some checking and confirmed that.

I agree with Senator BAUCUS: The technical corrections bill is very important, and we should get it passed. We are going to have a drug bill up probably as early as Tuesday, and this amendment could be offered to the drug bill.

I think that on the basis of being considered revenue, a House-passed revenue bill, it would not be blueslipped. It would either be in conference or if the House took that bill, that would solve the problem. That would solve the dilemma faced now by the opponents of the amendment, and I think it would be a good solution.

I have not talked to the majority leader, but this bill is very important, and I would be constrained to try to help to table the amendment. I do believe there is a solution, and I suggest that the proponents might want to consult with the parliamentarian, and they might find a better vehicle next week.

Mr. CRANSTON. Mr. President, I rise to oppose the amendment offered by my friend from New Hampshire, and I would oppose it on the drug bill as well as on this bill if it came about. I regret having to oppose it because I believe my colleague from New Hampshire is correct in pointing out that we need to increase the resources dedicated to the war on drugs. But I speak my opposition forcefully because I believe the way Senator RUDMAN would raise the revenue is inappropriate.

We are here to debate, consider, and vote on the Technical Corrections Act. While we have already been presented with issues that go beyond the scope of true technical corrections, to suddently advocate increasing taxes on selected industries is beyond the scope of our mission today.

Mr. President, there has not been a single hearing on this issue recently, and it was not brought up in committee. Last year, we passed a reconciliation bill that included revenue raisers, but there was no attempt at that time to increase these taxes. We knew then we had a drug problem. Why should we do it now on a technical corrections bill?

Essentially, this is a tax on agriculture. I do not think we can or should pay for our war on drugs by taxing agriculture. In addition, excise taxes are extremely regressive, thereby disproportionately coming from those less able to pay.

With respect to the wine industry, we must acknowledge that foreign governments subsidize their wine industry. They would probably do so more heavily to make their products more competitive if the excise tax is increased. Thus, we would be hurting our farmers, our poor consumers, and, at the same time, allow foreign wines to flood our market at a time when domestic wine sales are down.

Finally, I want to speak to the issue of the trust fund established by this amendment. I think it is a very unwise precedent to establish this fund. The amendment would provide, in effect, that every time we are looking for funds to pay for any aspect of the drug problem, all we have to do is increase these taxes and increase the sums in the trust fund. That is extremely unwise. We should not support it.

My friend from New Hampshire has the best of intentions. He simply has carried out his intentions in an inappropriate way. It would be ironic, indeed, to adopt a grossly unfair tax amendment on a bill intended to make corrections to the Tax Reform Act of 1986, a bill intended to bring fairness at that time to our tax system. This would make our taxes more unfair. So I urge my colleagues to oppose the amendment.

Mr. RUDMAN. Mr. President, will the Senator from California yield for a quick question?

Mr. CRANSTON. I yield, certainly.

Mr. RUDMAN. Did I understand the Senator from California to say that his concern was that this could help further flood the American markets for foreign wine?

Mr. CRANSTON. I believe that would be the consequence.

Mr. RUDMAN. Let me tell the Senator from California I would like him very carefully to read the amendment because we were very careful in drafting it.

So let me make it very clear that this amendment will tax all foreign wines and beers as they are imported into this country, thus keeping the same price differential. And it exempts all domestic wines from the tax that are exported. So they will compete on an equal footing in foreign countries.

That argument, I will say to my friend from California, does not wash. Others may, but that one does not.

Mr. CRANSTON. I trust the others certainly do, and if that is the case I stand corrected on that single point.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I have listened to this long and mournful debate about this terrible tragedy—we have only from $200 million to $500 million to fight the war on drugs, only from $200 million to $500 million. How did that happen?

Well, the conclusion behind the amendment offered by my colleague from New Hampshire because Joe and Sarah Brown did not pay enough taxes. According to him, that is how it happened. And we are going to fix it by taxing them.

But let me remind my colleagues that this is not how it happened. In fact, when we wrote a budget earlier in the year, a budget that had a deficit target of $136 billion, we set aside about $2.6 billion to fight this war on drugs. You all remember it; you voted for it. We wrote a budget that said in meeting the targets of this deficit reduction law called Gramm-Rudman-Hollings, we were going to reserve $2.6 billion to fight this war on drugs. You all remember it, do you not?

So where is the money?

Why are we talking about having only $200 million to $500 millon for the war on drugs now?

Let me remind my colleagues we are talking about between $200 million and $500 million instead of $2.6 billion because we spent the $2 billion. In fact, we not only spent the $2 billion, we spent $10 billion in addition. In fact we are here at this sad moment with a deficit approaching $146 billion, not $136 billion, because we have cheated on the budget. And if we spend more than an additional $200 million to $500 million this year we are going to trigger an across-the-board spending cut.

How did we get to this sad state? Mr. President, we did not get to this sad state because the working men and women of America paid too little in taxes. We got to this sad state because we have overspent consistently in almost eveything we have done. What really riles me is listening to this siren song of misery and concern about the drug war. God knows I am committed to this war: I have worked on this bill as hard as anybody, and I want to grab these drug people by the throat. But let me remind my colleagues of some figures that I think you are going to find absolutely shocking. You tell me if they are not shocking. I am going to read you what the Appropriations Committee of the U.S. Senate adopted to fund the war on drugs, relative to what the President requested, before there ever was a Senate drug bill. Let me be sure everybody understands it.

President Ronald Reagan sent a budget to the Congress saying this is what we need in the Drug Enforcement Administration, the Federal Bureau of Investigation, and the U.S. attorney's offices to try to deal with drugs.

Now what did we do relative to what Ronald Reagan asked for? I hope my colleagues will listen to this and they will see that this sad song has a tinge of beat that is based on hypocrisy, and I urge them to hear it.

For the Drug Enforcement Administration, we provided $33 million less than the President asked for. For the FBI, we provided $94 million less than the President asked for. For the U.S. attorneys, we provided $33 million less than the President asked for. For the U.S. marshals, we provided $18 million less than the President asked for. For prison construction, we provided $282 million less than the President asked for. That is how concerned we were about putting these people in jail. For the INS and Border Patrol, we provide $59 millon less than the President asked for. For judicial salaries and expenses, we provided $256 million less than the President asked for. For the Coast Guard, we provided $205 million less than the President asked for. For Coast Guard capital expenditures, we provided $53 million less than the President asked for.

Listen to this one. You want to see how big our heart was in this war on drugs? For drug-free schools we provided $17 million less than the President asked for.

Mr. President, let me remind my colleagues of one thing and go back to this question. We have spent $10 billion more than the President asked for and yet we cut all these drug enforcement programs by some $800 million. We spent $10 billion more than the President asked for in the aggregate and yet we cut these drug programs by $800 million.

What did we do with the money? Mr. President, we spent it, of course. We spent it on the Legal Services Corporation.

We spent it on the beekeepers indemnity fund. We used to have this terrible injustice where you could only get $175,000 a year in cash subsidies if you were a beekeeper and that was a terrible tragedy and it was wrong and we were cheating these beekeepers. We took the cap off. Now you can get any amount.

We spent it on Amtrak, to subsidize people riding around on the train.

We spent it on program after program.

We are not here at this sad state because we do not have any money. To listen to my colleagues talk you would think that all that we are allowed, because of these terrible constraints needed to balance the budget, is to spend $200 million on the drug war. You cannot fight a war on drugs with $200 million. We all know that.

Mr. President, we could spend $1.1 trillion on the drug war if we wanted to, but the plain, rotten, stinking truth is that we do not want to.

I listened to my dear colleague, and I love my colleague from New Hampshire. I listened to him say that we have decided on our appropriations. We have decided it, and that's the end of it. But suppose a family man with a child has decided on a family budget. He has planned to go to Mexico on vacation. He is going to buy a washing machine and a new Chevrolet. He has all these plans, and the money budgeted, when his child falls down the steps and breaks his arm. It will cost $500 to treat him. Now, can you imagine him going into the hospital and saying, "I don't have the $500. You are going to have to fix this boy's arm for nothing"?

The hospital people would say, "Wait. You live in a nice house and you have your vacation planned, you are going to buy a new washing machine and you are going to buy a new car." How far do you think he'd get if he replied.

"Now, wait a minute, wait a minute. I have planned those things, I have decided on those things"?

Mr. President, when people's children get hurt, they undecide. They just do not buy the new washing machine, they do not buy the new car, they do not go on vacations.

But never ever once does the U.S. Senate go back and reorder priorities. Is there anybody here who really believes that, in the $1.1 trillion we are spending in fiscal year 1989, there are programs that are so critical that we should have cut the DEA and the FBI and the Border Patrol and prison construction in order to fund them? I think the plain, cold reality is "no."

Mr. BIDEN. Will the Senator yield for a question?

Mr. GRAMM. I would be happy to yield, but let me make this point, because I have been sitting here for 2 hours waiting to do it, and then I will yield. I am totally in agreement with the position of the Senator from Delaware. He has made it very clear, to begin with, that we ought to fund the drug bill and he said we have lots of options on ways to do so. I am going to present an option.

But, Mr. President, let me get back to my point. What happened here is a little fraud that we perpetrate all the time, and I want to be sure that people understand it.

Mr. President, we knew there was going to be a drug bill. We all knew it. We knew that political pressure was building for it.

So guess what the Appropriations Committee did? The Appropriations Committee went through Reagan's budget and for what the President had asked for drugs, they took out 800 million, taken out of programs like DEA that we speak of in reverent terms. And they went out and spent it on low-priority programs, programs that we would never have dreamed of raising taxes to fund.

Who here would vote to raise taxes to give more money to the Legal Services Corporation? There may be a few, but there are very few.

It is clear ruse, and Congress does it all the time. The media does not understand it, does not care about it. The public does not understand it.

What we did was overspend the budget by $10 billion, spent all that, and then cut from the President's request $800 million that the President wanted to fight drugs even before we ever had this grandiose bill.

Now, we come back and say, "You know, there is only $200 million to fight drugs. There is only $200 million."

Whose fault is it? To some, of course, it is the taxpayers' fault. They then raise the taxpayers' taxes, and then spend the money.

If the Senator's amendment passed—we all know it is not going to become law—but if it did becomes law, would it really be enough to fund the war on drugs? Do you realize that even if his amendment passed, in this first year we would not be spending as much on drugs as Ronald Reagan requested?

In fact, this tax increase will not even fund the drug effort that the President sought before we ever had a war on drugs.

What we will be doing, really, is raising taxes to fund the programs that were funded because we cheated the drug programs.

Now, Mr. President, that, in essence, is what we are talking about. My belief is that we ought to go through the budget. If we have a crisis, let us put ourselves in the position of Joe and Mary Brown, whose son who has fallen down the steps and broken his arm, costing them $500. They do not have the ability to go out and raise taxes on somebody. They cannot breach their budget by $10 billion, which is what we have already done.

So what do they do? They go back and they look over the budget. Applying the logic we use in Congress, though, we might say, "Well, their budget is already decided. I mean, it is inconvenient. They already planned to go to Mexico. They got out the road map. They have already plotted their route. They are almost off on their way. They have been studying Spanish. They are going to make a trip to Mexico."

But in the real world, Mr. President, they do not go. They cancel the vacation. They fix Johnny's arm and next year they save up money again for their vacation.

I do not know why we cannot operate like that. I do not know why we have to have this sham over and over and over again. We find those parts of our spending program that have public support, do not fund them, spend money on everything else, and then, at the end of the year, we show up and say, "We have only $200 million to spend on the items the public supports."

Well, Mr. President, we have $1.1 trillion to spend if anybody really cares enough to take it away from another program. But, as usual, people do not want to decide. They do not want to set priorities. They want to pass it back to the working men and women of America. And I think it is wrong.

Now, Mr. President, I am going to yield to a couple of Senators here, but I want to make it clear what I plan to do after I get my time back. I plan to offer a motion to recommit, and I do not normally like to do so. My objective is not to take the bill off the floor, but the distinguished Senator from

New Hampshire filled the amendment tree and, therefore, denied us the ability to vote on cutting spending in some other area to fund a higher priority like the drug war. So all my motion to recommit would do is bring back everything that we already had before us. It would take the amendment of the Senator from New Hampshire away, and it would substitute, in lieu thereof, the following proposal:

Mr. President, I have picked five programs. Some of these programs are highly valued by the Members, but I do not think that they compare to try to get at these thugs that are selling drugs to our children. In each of these five programs, I do not decimate the programs in the sense that mine are not proposals that came out of nowhere. I just propose to take the programs back to what the President proposed. And, certainly, if there are Members who think that one of these programs is a high priority and they want to offer something else in its stead, if I am convinced that they are right, I will support it, and if a majority is convinced, they can make the change anyway.

What I would do is lower the Economic Development Administration, the Legal Services Corporation, Amtrak, low-income energy assistance, and the coal purchase. The last item is one my colleagues may remember. It involved a great debate regarding coal the Pentagon did not want, which would have to be stacked 20 feet high over dozens of acres because we were making them buy something they could not use.

So, after I yield to my colleagues for their comments, I will make the motion to recommit with instructions. Again, it is not in any way an effort to preempt the leadership or to derail the bill. It is just that the amendment tree has been closed by our colleague from New Hampshire, and the only way that we can get a vote on funding the drug war by reducing spending in some other program is to go about it in this way.

I first am happy to yield to the Senator from Delaware.

Mr. BIDEN. I think the Senator makes a compelling point. As always has been the case here in the 16 years I have been here, the last bill up finds itself in a position that is, in fact, arguably in the situation the Senator from Texas has mentioned.

That is why I remember when Senator MAGNUSON was here, the appropriation bills we would bring up last were the ones that everyone needed the most and we would always end up in a position of not having enough money, and so on. So I understand that.

I want to point out to the Senator that the 1986 drug bill had $1.6 billion. This Senator, who was the primary author of that, was right up front with everybody and said it was going to cost $1.6 billion, we have to waive the Budget Act, and told you all ahead of time that was the proposal we were going to make, and that is what we did. And I think that is the way you should do it.

But I must tell you that the Senator from Delaware—I am not suggesting I would have been any smarter had I been here—but I have been away for 7 months and I come back and here we are with a bill that is in a position that cannot be funded.

Now, the Senator from Texas raises a very, very good point and he says that, basically, what he wants to do is not go back to square one, but to go back to square one of some of the things that we have already not authorized but appropriated for and say, "Let's reconsider it."

So the choice really is whether or not anybody thinks that the programs that we have already passed are worthy of staying in and being paid for by whatever mechanism the Senator suggests and whether or not you would trade off a tax on liquor, a tax on cigarettes for the maintenance not only of a war on drugs but the programs the Senator has.

But my question is this: Where I come from if, in fact, you have a child and you have already decided to go to Florida, to use the Senator's example, and you are going to buy the new Chevrolet and your child breaks an arm and the bill is $500, you have several choices, not just the one the Senator suggested.

If you already paid a big downpayment of $800 to the airlines and the hotel in Florida that you will lose, if you already had your car broken down and the reason you are buying a Chevy is so you have the Chevy to get back and forth from work and you have a $500 downpayment on that, you sit there and say, "Wait a minute, now. Even if I cancel the two, I have ended up losing $1,300. So maybe I have to get a second job."

And the fact of the matter is that that is the kind of judgment we are making here. Do the American people think that paying less than an extra penny a beer, less than 2 cents for a pack of cigarettes, less than 40 cents for a fifth of liquor, is that, in fact, something that is equivalent to the extra job? Is that something we are willing to pay for?

If you are willing to pay for it, fine. If you are not willing to pay for it, then it is not fine.

So I think the Senator is correct, but I point out to him that the argument he made can be made about any legislation that is remaining, any legislation at all.

And so I ask the Senator whether or not he enjoyed yielding the time to me? That is my question.

Mr. GRAMM. I would say to the Senator from Delaware that we have not yet left the airport on our vacation. There is plenty of money left in our budget. We can go back and say, Now, children, if I take a second job I am taking this second job to pay for the vacation, not Johnny's arm."

Mr. BIDEN. If, I ask the Senator, if you already paid for the airline ticket and it is not redeemable, you have to either sell that airline ticket or eat it and sometimes it may be better to do it.

I thank the Senator for answering my question I did not ask.

Mr. GRAMM. To reclaim my time and make my point again, I think the example the distinguished Senator uses is an interesting one but it does not apply to this case. The point is that our ticket is redeemable. We have $1.1 trillion of programs out there. The fiscal year is—and I cannot be too careful because the other day in Tyler, TX, I announced it was the 31st of September by my old Cotton Bowl watch and that came to a shock to everybody but me—but by my watch it is October the 6th today. We have been spending money only for 6 days. We have all kinds of money in all these other programs. So this ticket is redeemable and we do not have to go off to Florida on this vacation.

Mr. BIDEN. Will the Senator yield for a very short question? Did the Senator lend that watch to Vice President BUSH? Is that the explanation of what happened?

Mr. GRAMM. I did not, but if he asked for it I would lend it to him. And he would be reading it right side up.

Mr. ARMSTRONG. Mr. President, if the Senator would yield, I would just like to say, as I have some times in the past, that the Senator from Texas is one smart hombre. I would like to bask in his reflected glory by becoming a cosponsor of his amendment and I ask unanimous consent that I be added as a cosponsor.

Mr. RUDMAN. Would the Senator from Texas yield for a couple of quick questions?

Mr. GRAMM. I will be happy to yield.

Mr. RUDMAN. It is my understanding the amendment offered by the Senator from Texas will produce approximately $850 million, which is about what we are looking for in the first year, plus what we have; am I correct?

Mr. GRAMM. That is correct.

Mr. RUDMAN. It is also my understanding that by offering this amendment, making this transfer, the Senator from Texas agrees with me, I am sure, that we do need to fund this drug bill.

Mr. GRAMM. I believe we need to fund the drug bill. We are picking up new funds in the second year, but I think again if we claim that we are doing something, that clearly the right thing to do would be to provide enough money the first year to step out smartly and do something.

Mr. RUDMAN. I agree with the Senator. So I guess we are going to have a vote on the Senator's motion to recommit, which essentially will be a vote on whether or not people agree with the reductions that the Senator from Texas is introducing; is that correct?

Mr. GRAMM. Well, they may not agree with them, if I might reclaim my time. They may dislike them.

But what they are saying is that in order to pay for the drug bill, since the effort to deal with the illegal drug problem is of such a high priority, cutting back to the level the President requested on programs such as Legal Services is a sacrifice we are willing to make in order to fund this war on drugs.

Mr. RUDMAN. If I could just continue with a couple of other questions—and I agree with the Senator—my understanding is that amendment contains, among other things, low-income energy assistance, which is very important to the Northeast.

Having said that, it also includes Legal Services Corporation; am I correct?

Mr. GRAMM. It does. But it does only cut it to the level the President requested.

Mr. RUDMAN. I understand. But in the view of some, it cuts both of those programs below safe levels. But nonetheless, let me say to the Senator, I intend to vote for his amendment and it is against my own self-interest.

Let me ask the Senator this question: If his amendment fails, does he agree we still have to do something to raise money for this bill?

Mr. GRAMM. If this amendment fails, I think we ought to look at taking money out of foreign aid. If this amendment fails, I think maybe we ought to go back and look at programs for international economic development.

Mr. RUDMAN. I wonder if my good friend, and you are my good friend from Texas, is planning on inviting me to his home for Thanksgiving this year, because I expect we will be here then.

Mr. GRAMM. I would be happy to.

Mr. RUDMAN. Thank you. Because if we go through all those amendments we will go through the entire appropriations process. I would say to my friend from Texas, I thank my friend for his answers. I am going to very reluctantly support his amendment because I do think in terms of priorities, this drug bill needs to be funded and thus I will vote for that amendment.

I hope I might get consideration when a motion to table is offered on our amendment because I believe that nothing is more important than funding this bill in any way that we can within reasonable parameters.

Mr. DOMENICI. Would the Senator from Texas yield?

Mr. GRAMM. I will be happy to yield.

Mr. DOMENICI. I understand you want to retain your right to make your motion?

Mr. GRAMM. In fact, it probably would be easier if the Senator would yield back to me just to send the motion to recommit to the desk. I would then yield the floor and the Senator would have his own time.

MOTION TO RECOMMIT WITH INSTRUCTIONS

Mr. GRAMM. Mr. President, I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] offers a motion to recommit.

Mr. GRAMM. Mr. President, I ask unanimous consent that reading of the motion to recommit be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion to recommit with instructions is as follows:

Mr. President, I move to recommit the bill to the Committee on Finance with instructions that it be reported back with the committee substitute as modified and as amended by amendments No. 3468, 3442, 3469 and with the following amendment:

AMENDMENT NO. 3512

"Notwithstanding any other provision of law, there are hereby transferred to the Attorney General, the Secretary of Health and Human Services, and the Secretary of Education for the purpose of carrying out programs under the Omnibus Anti-Substance Abuse Act of 1988, the following funds appropriated for fiscal year 1989—

(1) from the Economic Development Administration, $182,028,000;

(2) from the Legal Services Corporation, $58,555,000;

(3) from Amtrak, $584,000,000;

(4) from the Low-Income Energy Assistance Fund, $196,200,000; and

(5) from funds authorized for a 300,000 ton coal purchase in the Department of Defense stock fund, $21,900,000.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

Mr. DOMENICI. Will the Senator yield for further remarks since I have no motions or proposals, rather than have a quorum call?

Mr. WILSON. I would make the same request.

Mr. BAUCUS. Mr. President, if I might keep the floor, I ask unanimous consent the Senator from New Mexico speak so long as I can keep my right to the floor.

Mr. DOMENICI. I ask unanimous consent I be permitted to speak for 10 minutes without the Senator losing his right to the floor.

Mr. WILSON. Mr. President, I would make the same request to the manager, that while he retains the floor that he relinquish certain time to the Senator from California for similar remarks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I want to compliment the distinguished Senator from Texas for his analysis and remarks here and I want to make just two points. I might not even take the 10 minutes.

Let me suggest that I have looked at the amendment that my good friend, and he is that, from New Hampshire submitted to us, which would raise taxes in some areas commonly known as sin taxes. The amendment would set up what is called a drug-free America trust fund, into which the new tax money would go. In addition, the words that are really significant and that everyone should understand are right at the end, on page 10 of his amendment, when the distinguished Senator from New Hampshire says, "Shall remain available for making expenditures to carry out the purposes of the Omnibus Anti-Substance Abuse Act of 1988, as provided by appropriation acts."

As provided by appropriation acts.

Mr. President, and Members of the Senate, what that language really means is that we are asking the American people to pay additional taxes. I want to make sure that I do not overstate the case here but I believe I am right. We are asking that they pay taxes on these various items that are in this package. Then we are saying that the money goes into a trust fund. And finally, the appropriations process, which we were just here discussing, appropriates money for this new omnibus drug bill and to the extent that they appropriate money for this new omnibus bill it comes out of this trust fund.

Now, Mr. President, and Members of the Senate, I regret to tell you that the truth of the matter is that you have absolutely, unequivocally no assurance that the approximately $800 million in new taxes will increase current levels of expenditures on drug prevention by $800 million; nor do you have any assurance that the programs which have been alluded to in that Omnibus Drug Act would be funded with that $800 million.

As a matter of fact, I will give you the best example which tells this Senator it will not happen, and that is the Omnibus Homeless Assistance Act. You recall we did that legislation 2 years ago or so with great pomp and ceremony on the floor. I joined in it. We put on things for the mentally ill in the streets. We got a budget waiver for the bill and we said here we go.

We found the money then and there, but I regret to tell the Senate 1 year later, when it was not out here in front of everyone so they can look at it, we did not have the money. Those programs were cut.

As for antidrug programs, we are already spending hundreds of millions of dollars in the very same areas that are in this new bill. And all you have to do to rob the trust fund, I say to my friend from Oregon, is spend the first $800 million on existing drug prevention programs, and in your appropriation bill say: We are using the trust fund for it.

That is legal and absolutely perfect. There goes the tax dollars of the American people, and it is the first $800 million for existing drug prevention activities, not new drug prevention activities.

I assure my colleagues, next year and the year following, as the budget is tightened, the appropriators will assign money to the committee that my friend from New Hampshire is talking about. If there are priorities again pushing on them with reference to expenditures, they will not give the committee enough money because it is going somewhere else. When that occurs, that committee will spend money on the other priority items in this, and the first $800 million coming out of this trust fund will go to pay for drug prevention included in the omnibus bill. We are expecting it not to be $800 million or $900 million or $1 billion; we are expecting it to fund almost the entire new proposals discussed here on the floor. It will not happen.

Mr. RUDMAN. Will the Senator yield for a question?

Mr. DOMENICI. I want to make my point. Somebody could say to my friend from Texas, his motion will not necessarily fund the second year. If they said that, they are right. But I submit they are just as apt to get funded in the second year under the Gramm amendment to levels that the appropriators will appropriate as they are in the second year under the new tax trust fund because they do not have to spend that money to raise the levels of activity in drug prevention, and my friend from New Hampshire knows that.

I will yield and he will say, "But it is so important that they will." I submit the Senator from Texas made a pretty good argument that they probably would not.

Mr. RUDMAN. Will the Senator yield?

Mr. DOMENICI. I yield.

Mr. RUDMAN. I hate to disappoint my friend. That is not what I am going to say. Is the Senator from New Mexico aware, and I am sure he is, of the fact this entire amendment is subject to the passage of the drug bill?

Mr. DOMENICI. Yes, indeed.

Mr. RUDMAN. Then I have a simple solution for which I would like to gain the Senator's support. The State, Justice, Commerce, and Judiciary appropriations bill and all the other 12 appropriations bills are signed into law by the President. I have discussed this with those who understand the bill we are putting together.

Would the Senator agree with me that if we pass this on the technical corrections bill, if we then appropriate the money that is raised, which we have the right to do dollar for dollar as recommended within this drug bill that we will pass next week, if we pass it, then the Senator's argument at that point, of course, becomes moot; am I correct?

Mr. DOMENICI. It probably is moot for the first year. It is far less than moot for the second year.

Mr. RUDMAN. For $1 billion, I am willing to take that chance. I yield the floor.

Mr. DOMENICI. It may be, but do not forget the taxpayer is not paying for just 1 year and we are expecting a multiyear program. We are really talking about that down here. I am not even sure it will work out as discussed here.

Let me state the last part of my discussion. I said I had two points. There is a Presidential debate around, there is a commission appointed to reduce the deficit of the Federal Government and people are running around the country saying, "Who is for new taxes and who is not, to reduce the deficit?" Everybody is running from that. They are saying we will leave that for next year or the year after: that we do not know how we are going to handle a deficit.

But the suggestion around is that maybe we ought to look at sin taxes. I am not sure we should, but I would like to make sure that everybody understands: Today if we vote in the Rudman amendment, we will raise $800 million in new taxes, but not 1 penny of it will go to reduce the deficit of the United States because somehow we have found at least a billion dollars' worth of new programs we need. I submit that the Senator from Texas is right. If this is such a tremendously high priority item, we ought to start down that path of fixing the budget deficit by funding high priority items out of the money we have, the $1.1 trillion that we spend. We ought to be able to find enough programs that we could cut a little bit to pay for this one, or we are doing exactly the following: collecting $800 million in new taxes.

The American people are saying: "What about the deficit? When are you going to take care of it?" Surely not now because we just found a billion dollars' worth of new programs. We are asking you to pay taxes and we are going to spend it. It is not going to reduce any deficit.

I believe that if we are serious about the deficit, at a minimum, new taxes, if you are going to pass them, ought to await a budget reduction plan. Maybe we do not even need them then. But surely we ought not to spend them on new programs that in no way would reduce the deficit.

I yield the floor.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from California. The Senator from California has 10 minutes.

Mr. WILSON. Mr. President, as I listened to my friend from Texas enrich the pages of the CONGRESSIONAL RECORD with analogies about Johnny's broken arm, and my friend from Delaware enrich them further about vacations in Florida with prepaid reservations, I began to wish that we could tax analogies. Perhaps we would tax good ones less than bad, but it would seem we would have a virtually limitless new revenue source here on the floor of the Senate.

I commend them for their exchange, and I commend my friend from New Hampshire for dealing in a very forthright fashion because the situation that we face very simply described is this: This 100th Congress has yet to do the most important work that our constituents expect of us. We dare not leave this Chamber adjourning sine die without having acted at least upon the drug bill that has been represented as the so-called core package, the consensus bill.

The second need facing us is that we must fund that bill. You cannot have all of the assistant U.S. attorneys, the additional members of the Drug Enforcement Administration, you cannot engage in all of the drug education, the rehabilitation, the treatment called for in that consensus package without new funding. And we are short. The revenues that have been identified do not support the level of funding called for in that drug bill.

So if we are not to be hypocrites, we dare not leave this floor having passed that authorizing bill without having funded it. So the question before us is how do we fund it? What are our choices?

Let me just say one of the choices put by the Senator from New Hampshire is what he calls a modest increase on sin taxes. I do not like the phrase "sin taxes." They are excise taxes, taxes upon consumers ultimately and it has been presented in that fashion: 2 cents on a pack of cigarettes, 5 cents for a bottle of wine, 5 cents for a six-pack of beer. Those are not crushing burdens, I quite agree.

On the other hand, what options do we have? We could have a surcharge on the income tax. I think that is a nonstart. I do not think it would be popular. I do not think it would pass.

Of the choices for a new revenues by new taxes, probably what the Senator from New Hampshire offers is the path of least resistance. Before taking that path, we should have the honesty and the gumption to look at the alternative proposed by the Senator from Texas, the alternative of spending cuts.

He made a very cogent answer a moment ago when he was asked this question: Was he supporting a program that was supported in all of its parts by those who would vote for it? He said: No, not necessarily. I do not know that the people will want to vote for cuts in energy assistance funds to low-income families, and he is right, I do not like that. I wish to take it out and find something else.

In fact, I am not opposed to the expenditures that are proposed for any of the other items there, but the duty of this body is to set and keep priorities. It is the tough part of the job. It is not a question of picking between good and evil. It is between competing goods and deciding what makes the cut. So our choice really is whether or not we will increase excise taxes in a way that I think can do some harm. Clearly, it will do harm to the wine industry, or at least threaten it, because even though that nickel per bottle will go on imported wine as well, it is quite correct, as has been stated on this floor this afternoon, that French, Italian, foreign competitors subsidize that nickel. They will just as certainly as we are standing on this floor.

So I think the real question is, What do we think a priority? We said we think that combating drug traffic in this country is the urgent priority, so the next question, the subissue, is, If we are to fulfill these good intentions and actually put some money where our mouth is, are we going to do it by levying a new tax called a sin tax, if you will? I think it is a mistake. I think there is a reason we have not seen an increase in the excise tax on beer and wine in all the years since they have been increased. The reason is fairness. But even though I would support an increase as a last resort, it should not be that we are required to resort to it. Instead, we should vote to cut spending for other programs that are not nearly as important as providing the new U.S. assistant attorneys, the new DEA agents, the additional personnel for Customs, the drug education and treatment and rehabilitation personnel. What is important, Mr. President, is that we make a decision as fairly as we can, but we dare not shirk from making that decision.

Let me add one practical reason why I think the Senator from New Hampshire is right in having the great courage to say that he will support the motion of the Senator from Texas to recommit. I must say I think that shows not just character but great courage, particularly considering the element contained in that motion to recommit. the practical reason is that the President of the United States will veto the increase in the excise taxes that are being proposed in the amendment by the Senator from New Hampshire. I do not know whether or not there will be sufficient votes to override that veto. I doubt it. I greatly doubt it. But what the Senator from Texas is proposing instead is that we cut back spending within four or five areas to a level that has been proposed by the President. There is clearly no veto danger there. Perhaps as much as Members on this floor might support some increase for legal services or Amtrak or the DOD purchases of coal, none of those things begin to come even remotely close in terms of the urgency of the priority to funding this drug bill, and we should do it as has been proposed by the Senator from Texas.

I greatly admire and commend the courage of my friend from New Hampshire. He has a lot of guts. For some weeks now I have worked with him, the Senator from Texas and our friend, the Senator from New York, our Democratic colleagues and our staffs trying to devise this drug package.

Forgive me if I feel a little passionate about it. My constituents feel passionate about it. Many Members on this floor do. It is time that we face the necessity to set and keep priorities. The priority is that we fund this drug package in a way that the President will approve it and not veto it. Though I do not like all the elements of Mr. GRAMM's package, I am going to vote to recommit. I earnestly urge my colleagues who believe in the urgency of this drug package to do so as well.

Mr. President, I thank the manager and yield any time that may remain to me to him.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from Florida.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Florida is recognized for 10 minutes.

Mr. GRAHAM. Mr. President, I appreciate the yielding of time from my friend, the Senator from Montana. I will not use the full 10 minutes, but I would like to make some remarks about the credibility of this institution.

Many of us who have been very concerned about the drug issue have been operating on the assumption that this legislation would carry with it appropriate authorization and appropriations to make the goals of the legislation reality. When the individual appropriations bills were being considered, questions were asked about funding for the drug legislation which we all anticipated would follow, and we were given what appeared to be assurances that there would be money available to fund the drug treatment programs, the drug education programs, and enhanced law enforcement.

We now come to the last days of the session, with the recognition that that in fact may not be the case; we may be placed in the position of either passing no drug bill at all, passing a drug bill which is rhetoric but with unreliable resources to fund it, or to take one of the actions being suggested tonight, either that we raise a new revenue source and earmark it specifically to fund the drug bill or that we go back into the appropriations bills that have been passed and signed into law by the President and reallocate in order to fund this drug measure.

Mr. President, frankly, I will vote for either of the latter approaches. I think it is unconscionable for us to pass a drug bill which we represent to the people to be a war on a scourge that threatens the very fiber of this Nation and then not be willing to provide the dollars to make it reality. I suggest that we have also set ourselves up for a series of unfortunate events. Let me use as an example what lies before us if we take the path of either not passing a drug bill or passing a drug bill without providing the additional resources. Anyone who has worked with the criminal justice system understands the importance of balance in that system, that there must be a harmony among that part of the system which is responsible for the arrest and apprehension function, that middle part of the system, courts and prosecutors responsible for adjudication, and then the conclusions of the criminal justice system, the ability to carry out the sentence of the court, particularly to provide appropriate incarceration or other supervision for those who have been found guilty and are sentenced.

At the front end of the system, which is from where, frankly, most of the political benefits for supporting law enforcement come, we have had an uneven record thus far in this session of Congress. I use as an example of a positive, an area that I strongly support, the increases we provided to the Coast Guard. Last year we learned a lesson from not adequately funding the Coast Guard when we found for many weeks and months we had almost half of our Coast Guard assets tied up to the dock because the administration had not elected to allocate the funds which had been provided to use the Coast Guard for drug interdiction activities. We have recently redeemed that circumstance by providing in a dire emergency supplemental bill $60 million which went into effect in August and will be carried over into the 1989 fiscal year.

We have also substantially increased overall 15 percent the drug interdiction funding for the Coast Guard. So we have this important arrest and apprehension agency funded at a new heightened level—good. We should take pride in our recognition of the importance of that.

Where are all of these people who are going to be apprehended and arrested by the Coast Guard going to go next? One of the first places they are going to go is to a U.S. district attorney who will have the responsibility for making the case, and actually prosecuting these individuals who we now have increased our capacity to arrest. What have we done with the U.S. district attorney? This year, we spent $76.7 million on U.S. attorneys. That was for 1988 outlays. For 1989 outlays we have approved $80.6 million, an increase of approximately 4 to 5 percent.

I would like to point out that in the overall increase in funding for the salaries of U.S. district attorneys we have provided for a 4.1-percent increase. In essence, what we have said is that we are going to observe virtually all of the absolute increases in funding for U.S. district attorneys in the salary adjustments available with almost no dollars left to add new units of prosecutorial capacity.

So we are going to have more people apprehended, arrested and brought to the district attorneys for prosecution, and no more U.S. district attorneys to carry out that responsibility. That is constipation in the Federal criminal justice system.

The consequences of that example that I have just cited are first going to be the firestorm which we experienced last year in the Coast Guard; next year is going to be in the U.S. district attorneys; next year it is going to be in the DEA; next year it is going to be in the FBI, agencies which have all failed to be provided with the adequate resources to keep pace with the demands that we are about to place upon them through existing law, including the 1986 Drug Act, and the 1988 Drug Act which we intend to pass next week.

Second, we are going to see increased pressure on State criminal justice systems. Let me use the example of the busiest U.S. district attorney's office in America in terms of drugs, and that is the Southern District of Florida. That district last year had approximately 110 to 115 authorized U.S. district attorney positions. Because of our fiscal year 1988 budget, they and all the other district attorneys' offices in America suffered a mandatory reduction of 10 percent in their authorized prosecutorial positions.

The numbers that I have just cited indicated that situations will get no better and possibly worse in fiscal year 1989. So what did the U.S. district attorney have to do in that jurisdiction, and no doubt in others across the country faced with this cascading larger and larger number of drug cases to be prosecuted? What they had to do was set thresholds and say, yes, you committed a Federal crime. Yes, you should be prosecuted in the Federal system but we do not have the capacity to prosecute you. So what are we going to do? We are going to say because the crime you committed did not meet our prosecutorial standards, we are not going to accept the case. There is no place in the Federal Code that says there is an internal threshold that you have to meet, a threshold different than that which the Congress has established as a Federal crime. But out of necessity we are going to impose it.

And thus what is the situtation for the State prosecutorial agency? Their alternative if you could turn the person loose on the streets who has committed a Federal and in most cases also a State crime and take it in for State prosecution, I think responsibly the answer of the State prosecutors has been yes, we will prosecute even though it should be a Federal prosecution. It was an arrest made by a Federal agency. But we will prosecute, which means our system, our probation, our local jails, and if the person is found guilty and sentenced, our State prisons are now going to be carrying a new Federal responsibility because the Federal criminal justice system was incapable of responding.%

So we will have a firestorm. We will have the State assumption of responsibilities and increased pressure on already overburdened State systems. We are going to have growing cynicism as to our seriousness in this world against drugs, and finally we are going to have to admit a retreat for what we have stated to be a major national objective of a drug-free America.

Mr. President, I do not think those are the kinds of reports that this 100th Congress, this historic Congress, wishes to have delivered after our adjournment.

I will support either of the two courses of action which are being proposed, reallocation of appropriation or additional revenue earmarked to fund this drug program. But I will not accept, I do not believe a majority of the Members of this Congress will accept, and I know the people of America will not accept the cynicism of us passing under the flag of a war on drugs but unwilling to pass the ammunition necessary to make the war effective.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia. Is there objection? Without objection, the Senator from West Virginia is recognized for 5 minutes.

Mr. ROCKEFELLER. Mr. President, I thank the Senator from Montana, and I rise to support him in his general approach to what is going on right now on the floor, not only as my opposition to the Gramm amendment, but also my opposition to the Rudman amendment which preceded that which is the matter of discussion.

We are not talking about the drug bill here. We are talking about tax law corrections. I agree with what the Senator from Florida has just said. There are ways within the drug bill, there are ways within this body in working with the Ways and Means Committee to work out a means by which we can raise the funds to pay for a drug bill which is not a cynical effort, which is a proper effort, a decent effort, and a decent amount of money. But we are not talking about that now. We are talking about corrections in the tax law.

We have passed in 1986 and in recent years and avalanche of tax measures. And they are terrific when they are passed except when you find out what is going wrong with some of language that was put in with intent to the right thing, but causing unfairness.

That is what concerns me now. With the tax technical corrections bill, we are talking about trying to make fair what was made unfair because of the mistakes that Congress made on the 1986 Tax Code.

We are also dealing in this tax bill with programs for housing, low-income housing that will expire if we do not correct it in this bill. We are dealing with programs for employee education, which will expire if we do not deal with that in this bill. We are dealing with programs for research and development, and for many other programs that will expire if we do not deal with that in this bill.

There are a number of people who would say that prior enactments may be unintentionally threatening the tax status of pensions unless we correct certain language and words which we are dealing with in this particular bill, not the drug bill, but the tax corrections bill.

For small business and many others there is the unintended and unfair tax matter that relates to the use of diesel fuel for off-road use. That is a very major matter. That is not a drug bill matter. That is a technical tax corrections bill matter. That is what we are about. That is what we are here for.

What I worry about is we are not in a situation where we have a lot of flexibility. We are in a situation where we need to make these corrections.

The drug bill is going to come along. We can fix that. We can put in revenues, working with the House Ways and Means Committee. There are ways to do it, I am so advised. I believe that. I accept that. But what I know is that these amendments are bill killers for the tax technical corrections bill. They are bill killers just as the Senator from Montana indicated, and that is unfair. That is not what we are about.

So I hope Members will reconsider this matter, and that we will dispose of this matter of the tax technical corrections bill, and not throw a curve ball right into the middle of it and ruin it. The drug bill will come. We will deal with that. We will deal with it effectively, but let us deal with what is before us in an equitable and fair manner so people's tax matters are treated fairly.

I yield the floor.

Mr. BAUCUS. Mr. President, I yield the floor, and it is my hope that we can vote very quickly on the recommittal motion.

Mr. GRAMM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, I opposed the pending motion to recommit.

I find it curious that the Senate would be asked to reconsider the very extensive analysis and judgments already made on major portions of the budget and issues which have been considered at length in committee, in markups, in floor debate.

I also find it curious that the Finance Committee is being asked to take up a motion to recommit the tax technical corrections measure on issues which are within the jurisdiction of other committees.

If a motion of this sort were to succeed, then this Senator would have his own preference for the budget of the United States, and we are preparing a motion to recommit to tailor the Federal budget to my own personal preferences, if that is appropriate in this course, of the consideration for the fiscal year 1989 budget.

I had thought that these matters had been laid to rest. We were in this Chamber at 11:57 last Friday night and had finished the last of the appropriations bills which had been crafted laboriously. We finally came to a conclusion and sent them to the President, who worked on Saturday to sign the bills which contained these appropriations, the will of Congress and the judgment of the Government of the United States had been accomplished.

However, if we are going to go back and reconstruct the Federal budget, then I know that this Senator has many preferences, and would like to rediscuss many items in the Federal budget. I would not be surprised if there were 98 Senators besides the Senator from Texas and the Senator from Pennsylvania who are not entirely pleased with what is going on.

We are discussing the Economic Development Administration and an effort to achieve the President's request to zero out the administration instead of the appropriated figure of $182 million. In the past, there has been efforts to eliminate the Economic Development administration, every year for 3, 4, 5, or 6 years. However, it has not been done because it is the will of Congress, and the President has ultimately acquiesced, signing the appropriations bills, because the Economic Development Administration does important work, at least in the judgment of Congress.

The debate on Amtrak has been going on since at least 1982. OMB Director Stockman was in the office of the then majority leader, Senator Baker, and wanted to eliminate Amtrak. He raised the arguments that the better parts of Amtrak would be taken over in bankruptcy and the line from Boston to Washington would continue to run.

This Senator made the argument on the floor that if we eliminated Amtrak, the Baltimore tunnel would be jammed; you would not be able to land at National Airport or Dulles or any of the other airports on the eastern seaboard.

I would be interested to know of the experience of the movant of this matter, as to the familiarity he has with Amtrak in this country, at least on the run from Boston to Washington.

When we had that discussion in Senator Baker's office with Director Stockman, we discussed at some length what happens in a bankruptcy proceeding: If somebody takes over Amtrak, how long it would take to put those trains back into service. Director Stockman had a very vague idea of how the bankruptcy courts work. You put Amtrak through the bankruptcy process, and it would be a long time before the trains ran from Washington to New York.

This matter has been debated again and again. The figure is now $580 million. It had been $616 million and went to $606 million.

If there is anything that has been decided by this Congress, by this Government, it is that we want Amtrak for good and sufficient reasons.

If we are going to have a debate on Amtrak, I do not know that we are going to get to any other bills for the balance of the year, until Christmas and beyond, if that question has not been laid to rest at this point.

We have an issue on low-income housing energy assistance, where the moving party here wants to lower the appropriated number from 1.4 billion to 1.187 billion.

I wish the Senator from Texas had access to the records I have seen about my State and the urgent pleas that have come to this Senator to raise that figure because people are subjected to hardships on insufficient funds to take care of heating problems in the winter. At one point there appeared to be sufficient funds, and we considered transferring additional funds into the low income housing assistance program.

If there is another issue which has been considered extensively and subjected to compromise, it is this. If we are to reconsider the appropriation of $1.4 billion on low income housing energy assistance, I can assure this body that we will be considering funding on many, many items—at least, at the urging of this Senator.

Then you had the Legal Services Corporation. That matter has been debated again and again and again. In 1981, the first year this Senator was present, there was a figure of $363 million from the prior year, and there was an effort made to zero it out, and it was coming to $100 million. It finally ended up at $260 million, and the Legal Services Corporation tightened its belt and eliminated some of its services, and that organization has remained. There has been an effort by the administration to curtail it and cut it back for a great many reasons. It has been the subject of debate virtually endlessly on this floor.

It is with little surprise, certianly no chagrin, that I hear this matter argued this evening.

Then you have the DOD anthracite coal issue, which was debated at great length. That is within the purview, most recently argued, of the Department of Defense. There was a heated exchange involving the Senator from Texas and my colleague from Pennsylvania, Senator HEINZ. We were going to write down the comments that were made, and all that went by the boards. However, it was discussed extensively in the Appropriations Committee.

Finally, the compromise was crafted which stands to this day, not to the satisfaction of this Senator. Plans are now to make those purchases over a 5-year period, which raises a doubt in this Senator's mind as to the legality.

However, if we are going to reconsider the DOD anthracite issue in committee and again on the floor of the Senate, we will be here until the 1992 elections, not to adjourn before the 1988 elections.

So I would hope that this move would be resoundingly defeated, for many reasons. One, because the procedure is inappropriate to try to send to the Finance Committee this kind of issue, because these matters have been debated at length, considered extensively, and the Senate ought not be considering an individual Senator's wish list for how he would like to reconstruct the Federal budget. It would be entirely different. We might run through it 435 times on the House side.

These are important programs on the merits; Congress has decided that.

But more fundamentally this is not a matter which we ought to reargue ad infinitum. There ought to be an end. There ought to be some limitations on double jeopardy. We ought to let the budget for the fiscal year 1989 stand.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The question is on the motion to recommit with instructions. Is there further debate?

The Senator from Idaho.

Mr. McCLURE. Mr. President, first of all I very strongly commend the Senator from Texas for raising the issue in the format that he has because I think he said it exactly correctly.

I also understand what the distinguished Senator from New Hampshire has done with respect to presenting us with the issue of: Do not pass a drug bill, do not posture before the American public and then do nothing, and that we will do nothing if we do not provide money.

I agree with the point that the Senator from Texas has made that if we really think this is a priority, we can find the money for it.

I agree with the point that he has made: You do not have to do it just through increased taxes.

I do believe that if we wait until the end of the year and then we put up a very politically attractive argument and say the only way to fund that is with increased taxes while we would never have considered increasing taxes to fund some of the activities that we have funded through the regular appropriations process.

I take this time of the Senate only to make one further point that I made before this body a dozen times before and will continue to make because I think it is essential for the American public to understand what the appropriations process is and what the limitations are, and I am not just defending the Appropriations Committee.

The budget summit of last year set up certain categories that were to be observed by the appropriations process, and out of that roughly you can say defense was carved out a special category not subject to the crossover between that and other appropriation items.

I have remarked constantly that you have no real option with respect to interest on the national debt. Whatever that interest is you pay it, and that is not an appropriations discretion. That is mandatory expenditure because we have accumulated far too much debt in the past and the bill for that debt has to be paid. That is 15 percent of the total budget nearly.

So, when you take defense and interest out of the area of discretionary expenditure, the Appropriations Committee actually has only about 15 percent of the total budget over which we can exercise discretion in the traditional accepted meaning of that term. The balance is entitlements which all other committees and very largely the Finance Committee have jurisdiction over. The Appropriations Committee cannot affect it.

So the appropriations process that we are talking about here today is really with respect to about 15 percent of the total budget out of which we must find the money that is necessary for the drug war unless we are willing to look at the entitlements programs, which are 43 percent of the total budget, and I take this time to indicate it is not just the appropriations measures that are discretionary. So are the entitlements. I do not buy this idea that entitlements are nondiscretionary because Congress cannot touch them. They are discretionary because Congress can if they will and if they wish change the parameters of entitlements programs and recapture money that is a part of this $1.1 trillion budget.

Aside from that, I agree totally with what the Senator from Texas has said and what he is trying to do. I agree with what the Senator from New Hampshire has said and, yes, there are within the programs covered by the motion to recommit sensitivities for the Senator from Idaho.

I think every one of us has to recognize that if we are going to reduce the Federal deficit and the burden upon the American taxpayer we have to have political courage in this body, and every person in this body, new Member, old Member, Democrat, Republican, conservative, or liberal cannot duck the responsibility for priority setting, and we have not done that.

And in small measure the Senator from Texas gives us the opportunity and presents us with a challenge of stand up and do your job. If you do not like his set of priorities, then bring in your own. But do the job somehow in setting priorities. The American taxpayer cannot foot all of the bill and should not be required to because we lack political courage to confront realities in this country today.

I will support the motion to recommit, and I would hope that this body does indeed adopt it.

I thank the Chair and I yield the floor.

SEVERAL SENATORS. Vote, vote.

Mr. DURENBERGER. Mr. President, I rise to speak in support of the amendment offered by the distinguished Senator from New Hampshire. This amendment ensures that when Congress soon adopts a responsible program to fight drugs, there will be a guaranteed source of revenue available to fund the program.

Mr. President, this amendment adopts the philosphy that I have always expressed concerning excise taxes. As I noted in a trip to Minnesota earlier this week, if the Federal Government is to consider raising excise taxes, it should do so only if it targets the revenue for a related purpose.

However, I have always believed that Federal excise taxes should not be commingled with other Federal revenues to help balance the Federal budget simply because higher Federal excise taxes make it more difficult for States to balance their budgets.

Mr. President, 3 years ago I introduced the Health Promotion and Disease Prevention Act of 1985 (S. 1633) which would have made the temporary 16 cent excise tax on cigarettes permanent. However, this legislation also required that 50 percent of the tax be placed in a trust fund for distribution to the States for disease prevention and health promotion activities. Unfortunately, when I offered this legislation as an amendment in the Finance Committee, the amendment was not accepted. I hope adoption of Senator RUDMAN's amendment indicates that the next Congress may want to reconsider a revised version of the Health Promotion and Disease Prevention Act.

Unlike other excise tax proposals, this amendment will not foreclose State government from financing local and State programs. It will, in fact, assist the States in their efforts to fight drug abuse. By guaranteeing a consistent source of revenue for the drug program, States will be assured that they will receive $1.2 billion for substance abuse block grants, and for health research, education, and training.

This amendment will also provide the funds for the $170 million Drug Free Schools Program and for teacher training. And $250 million would be available for funding State and local drug grant programs and other drug-related justice assistance programs.

Moreover, this amendment will ensure funding for law enforcement efforts to fight drug trafficking. This will facilitate the hiring of 757 new positions in the U.S. attorneys offices, and will allow more than $200 million for new medium security prisons. This amendment will also ensure $84 million to enhance Coast Guard Drug interdiction and $91 million for Customs Service drug enforcement. And it would provide funding for the creation of a new drug czar, a post that I have advocated creating for more than 6 years.

Mr. President, no one likes to vote for any type of tax increase. However, lets level with the American public—we have to pay for the new drug bill, and a modest targeted increase in the excise tax on beer, cigarettes, wine, and alcohol, is a fair price to pay to help eradicate drugs in America.

Mr. KERRY. Mr. President, I support the amendment offered by my colleague Senator RUDMAN to fund the drug bill through the establishment of a temporary increase in the excise tax on cigarettes and alcoholic beverages.

For the last 6 months I have been working with many of my colleagues to draft the omnibus drug bill; first as a member of the Democratic drug task force and then as a member of the bipartisan substance abuse working group. That bill was introduced on Monday and I was proud to have been an original cosponsor.

For the first time in many years we have anti-narcotics legislation that actually embodies a strategy—not just a patchwork of band-aid provisions. We have strategy that recognizes that while we might fight the war on drugs on all fronts, we must give particular attention to the demand side of the problem. Without sacrificing our efforts in eradication and interdiction, we must devote more of our energy and more of our resources to enforcement, education, prevention, and treatment. So, in this bill we have abandoned the traditional supply-side approach. No longer will we devote nearly 70 percent of our resources to trying to keep drugs from coming into this country. Now we will give equal emphasis to punishing those who are dealing the drugs, equal emphasis to treating those who are already addicted, and equal emphasis to educating those who have not yet, and will hopefully never become involved with drugs.

We may have a new strategy for tackling the drug problem in this country, but that doesn't count for much if we don't fund that strategy. If the drug bill were fully appropriated in fiscal year 1989, it would cost approximately $2.6 billion in budget authority and $1.4 billion in outlays. If we are serious about the war on drugs then we must find the money.

There has been a great deal of discussion about how Congress will actually pay for the drug bill. There has been discussion about a tax enforcement and collections initiative. There has been discussion about generating funds through forfeited assets. There has been discussion about spending room under the Gramm-Rudman-Hollings ceiling. These are all possible ways of finding the necessary revenues, but even under the most optimistic projections we would have no more than $800 million in budget authority and $450 million in outlays.

So the truth is that we don't have the money to fund the drug bill. We have a great strategy. We have great intentions. We have great rhetoric. But we don't have the money. So either we balk, after months of work, or we step up to the plate, which means finding the funding we need to attack this grave threat to the future of our country.

Having heard a number of alternative discussions here this afternoon, I am convinced that the proposal by the Senator from New Hampshire is an appropriate response. This excise tax, which would expire after 2 years, would raise nearly $850 million in budget authority for fiscal year 1989, and roughly $2.5 billion over 2 years. There are some, however, who want to protect the big tobacco companies and alcohol producers. So, we have a choice: Do we protect those companies, or do we, for the first time, implement a drug strategy, that may, after all these years of inaction, begin to yield results.

The fact is, Mr. President, that the abuse of alcohol and tobacco products, like drug abuse, has imposed a terrible cost on our society over the years, and the existence of excise taxes is in part the recognition that society can and must insure that those who consume these products reimburse the general public for these costs. According to some estimates by public health experts, for example, alcohol abuse cost American society $120 billion per year in medical expenses and decreased productivity. More importantly the Surgeon General C. Everet Koop estimates that alcohol abuse is responsible for 125,000 annual deaths. The cost to our society of cigarette smoking is equally devastating. Annual health costs have been estimated at $53.7 billion, and tragically smoking accounts for the deaths of an estimated 350,000 Americans annually.

Consumption of alcohol and tobacco products is, of course, completely voluntary. Those who use these products in moderation will find this 2-year increase to be quite modest. Those who consume these products in excess may just be encouraged to scale back their habits.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the motion to recommit with instructions. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Texas [Mr. BENTSEN] and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

The PRESIDING OFFICER (Mr. LAUTENBERG). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 22, nays 72, as follows:

[Rollcall Vote No. 353 Leg.]

YEAS—22

Armstrong
Bond
Boschwitz
Dole
Garn
Graham
Gramm
Hatch
Hecht
Helms
Humphrey
Kassebaum
McClure
McConnell
Nickles
Proxmire
Rudman
Symms
Thurmond
Trible
Warner
Wilson

NAYS—72

Baucus
Biden
Bingaman
Boren
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Glenn
Grassley
Harkin
Hatfield
Heflin
Heinz
Hollings
Inouye
Johnston
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Rockefeller
Roth
Sanford
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Weicker
Wirth

NOT VOTING—6

Adams
Bentsen
Gore
Karnes
Quayle
Wallop

So the motion was rejected.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. BAUCUS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senator from New Hampshire be recognized for 2 minutes. At the end of that time, it would be my intention to move to table the Rudman amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RUDMAN. Mr. President, it is my understanding that there will now be a tabling motion made by the Senator from Montana. I want to just make an observation. We have just had a vote and I voted with Senator GRAMM to cut programs the Appropriations Committee already appropriated, including some I happen to think were already funded at a low level but not of things so important as not to reduce them further to fund this drug bill. That is just my view.

That vote was, I believe, 72 to 20-some-odd. It ought to be obvious to everybody in this Chamber that this drug bill is not going to be funded with spending reductions. The appropriations bills were passed and they are now operational.

I know there are others here who are also going to offer spending cuts and I dare say they will meet the same fate. I will put it to the Senate one more time.

We have a drug bill here that is one of the finest pieces of legislation, even without amendments, that this Congress has ever produced. It funds all of the agencies and it funds demand reduction for the first time in a major way. It is necessary to stamp out a scourge facing the country.

It is a national emergency. It is an epidemic. I hope people will not vote to table this amendment. I have no great expectations if we win this particular vote that that is the end of the matter. I dare say there are many other things that will happen here before they can come to final passage. But at the very least, let us keep this viable. Vote not to table and let us see if we can find a way to fund the bill.

Or else we will leave this city sometime next week and we can tell the American people: Oh, sure, we passed a great drug bill. We did not do a thing. We did not give a tinker's damn for the problem. We underfunded it with $300 million.

Let us stop kidding ourselves. Let us stop kidding the American people. If the American children, the young people are suffering that badly, let us do something about it or let us stop talking about it. But let us not do both.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the bill before us is a technical corrections bill. I am not going to take the time of the Senate to explain a technical corrections bill. It raises no revenue. The bill closes loopholes, perfects lots of mistakes.

The time and place, Mr. President, for us to take action to find a way to raise the revenue for the drug bill is on the drug bill or at some other time. This amendment, if it passes, is a killer amendment. There will be no technical corrections bill if the amendment passes.

That means no diesel fuel provision, no heifer tax provision. The other provisions that are so important will not be enacted into law.

Mr. President, I move to lay on the table the underlying amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana [Mr. BAUCUS] to lay on the table the amendment (No. 3510) of the Senator from New Hampshire [Mr. RUDMAN].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCAIN (when his name was called). Present.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Texas [Mr. BENTSEN], and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator for Wyoming [Mr. WALLOP] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 60, nays 33, as follows:

[Rollcall Vote No. 354 Leg.]

YEAS—60

Armstrong
Baucus
Bond
Boren
Boschwitz
Breaux
Bumpers
Burdick
Byrd
Cochran
Conrad
Cranston
Danforth
Daschle
Dixon
Dodd
Dole
Domenici
Exon
Ford
Fowler
Gramm
Grassley
Harkin
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kasten
Matsunaga
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Nickles
Nunn
Packwood
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Sanford
Sarbanes
Sasser
Shelby
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Wirth

NAYS—33

Biden
Bingaman
Bradley
Chafee
Chiles
Cohen
D'Amato
DeConcini
Durenberger
Evans
Garn
Glenn
Graham
Hatch
Hatfield
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
McClure
Moynihan
Murkowski
Pell
Rudman
Simon
Simpson
Specter
Stafford
Weicker
Wilson

ANSWERED "PRESENT"—1

McCain

NOT VOTING—6

Adams
Bentsen
Gore
Karnes
Quayle
Wallop

So the motion to table the Rudman amendment (No. 3510) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPLANATION OF VOTE

Mr. McCAIN. Mr. President, I have voted "Present" on the motion to table the Rudman amendment because a close relative of mine would be directly affected by it. For this reason I feel obliged not to vote "yea" or "nay" on this proposal.

Mr. BYRD. Mr. President, there will be no more rollcall votes today. As I understand it, there may be some Senators who wish to make some statements on the subject. I yield the floor.

DIVIDENDS RECEIVED DEDUCTION

Mr. MATSUNAGA. Mr. President, I want to commend my colleagues on the Senate Finance Committee for not including a reduction of the dividends received deduction (DRD) in the Senate version of the Technical Corrections Act of 1988. The committee rejected the House position which would reduce the DRD from 70 to 50 percent and I respectfully urge my colleagues to oppose any amendment which would reduce the DRD.

Mr. President, the House provision has attracted significant opposition from the business community since it represents a triple level tax on the same stream of business income. The income is first taxed at the payor corporation level. The income is taxed again at the payee corporation level and then taxed again when the shareholder of the payee corporation receives the dividend.

Mr. President, I am concerned that this proposed cutback in the DRD could disrupt capital markets, raise the cost of capital for many businesses and encourage businesses to rely more heavily on debt financing.

The following letter which was sent to me by the U.S. Chamber of Commerce indicates the degree of support for the Finance Committee position on the DRD provision. I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OCTOBER 4, 1988.

Hon. SPARK M. MATSUNAGA,
U.S. Senate, 109 Hart Senate Office Building, Washington, DC.

DEAR SENATOR MATSUNAGA: The House version of the Technical Corrections Act of 1988 would increase the triple taxation of intercorporate dividends by reducing the dividends received deduction (DRD) from 70 to 50 percent. This provision would have an adverse impact on a wide variety of industries. The undersigned associations and corporations believe that a reduction in the DRD would be counterproductive and would have a significant negative impact on the U.S. economy. Exacerbating the triple taxation of intercorporate dividends would also be inequitable.

We commend the Senate Finance Committee bill, which contains no provision reducing the DRD.

A reduction in the DRD would exacerbate the triple taxation of intercorporate dividends. The income these dividends represent is taxed to both the payor and payee corporations and to the individual shareholders of the receiving corporation. Taxing a particular form of income so heavily is both inequitable and distorts the economic decision-making process.

Triple taxing intercorporate dividends would raise the cost of equity capital substantially and have an adverse affect on investment, economic growth and the international competitiveness of U.S. business. As a recent Arthur Young study (July, 1988) shows, the United States taxes intercorporate dividends much more heavily than do our trading partners.

Reducing the DRD will force certain businesses to rely more heavily on debt financing. This will make U.S. business less able to weather difficult financial times and more likely to be forced into radical cost cutting measures, including layoffs.

Financial institutions often are required by regulatory agencies to maintain a certain degree of equity financing. Utilities are subject to somewhat similar regulatory oversight. Whether required by regulators or not, preferred stock is an integral part of financing needed expansion while maintaining financial soundness. A reduction in the DRD would make expansion difficult for many companies and impossible for some financial institutions.

The new risk-based capital guidelines established by the Bank for International Settlements, and reflected in new Federal Reserve guidelines, will permit only a new form of preferred stock, i.e., non-cumulative, as tier one capital for banks on a global basis. Thus, the ability of U.S. banks and bankholding companies to raise this new form of preferred stock, or to exchange outstanding cumulative preferred, will be significantly impaired by the proposed DRD reduction. The cost to banks of issuing new preferred stock, or to exchange outstanding cumulative preferred, will be markedly higher. The impact on the financial markets will be significant. The ability of U.S. banks to compete in global markets will be seriously impacted.

By making equity financing less attractive, the proposal will reduce the breadth of the equity market's capitalization. The proposal to reduce the DRD has already had an adverse impact on equity markets, particularly reducing the value of preferred stocks and those common stocks with high dividend yields. This destabilization of the stock market is highly undesirable.

There are many sound, non-tax business reasons for one company to own shares in another. A company may experience a temporary excess of capital pending initiation of a major capital investment project. That capital can be made available to another firm during the interim. At other times, economies of scale or antitrust consideration may prevent companies from owning more than 20 percent of a firm, as in the case of oil pipelines.

We respectfully urge you to oppose any amendment offered on the Senate floor that would reduce the DRD.

Sincerely,

Alliance of American Insurers; Alliance for Capital Access; American Bankers Association; American Dental Association; American Federation of Small Business; American Gas Association; American Financial Services Association; American Insurance Association; Association of Oil Pipelines; and Bankers Association For Foreign Trade.

Edison Electric Institute; National Association of Independent Insurers; National Association of Mutual Insurance Cos.; National Association of Manufacturers; National Council of Savings Institutions; Securities Industry Association; U.S. Chamber of Commerce; U.S. League of Savings Institutions; AFG Industries, Inc.; and Alabama Power Co.

American Airlines, Inc.; American Bankers Insurance Group; American Continental Corp.; American Electric Power Co., Inc.; American General Corp.; ARCO; Arvin Industries, Inc.; Baltimore Gas & Electric Co.; Betz Laboratories; and Black and Decker Corp.

Carolina Power and Light Co.; Centerior Energy Corp.; Charter Medical Corp.; Colonial Pipeline Co.; Consolidated Freightways, Inc.; Consumers Power Co.; Dominion Resources, Inc.; Doskocil Companies, Inc.; Drexel Burnham Lambert Inc.; and Duchossois Industries, Inc.

Eastman Kodak Co.; Elf Aquitaine, Inc.; Enron Corp.; Exxon Corp.; First Florida Banks, Inc.; Flaherty & Crumrine; Forum Group, Inc.; Geico Corp.; General Accident Insurance; General Electric Co.; and General Public Utilities Corp.

Georgia Power Co.; Gulf Power Co.; Hertz Penske Truck Leasing, Inc.; Hounanian Enterprises, Inc.; Household International; Houston Industries, Inc.; Kaaz Holding Co., Inc.; Kansas City Power & Light Co.; Kansas Gas & Electric Co.; Kemper Group; and Kinder-Care, Inc.

Levitz Furniture Corp.; 3M Corp.; Mack Trucks Inc.; MDU Resources Group, Inc.; Media General, Inc.; MEPC American Properties Inc.; Merrill Lynch & Co., Inc., Mississippi Chemical Corp.; Mississippi Power Co.; Mobil Corp.; and Norfolk Southern Corp.

Northern States Power Co.; Otter Tail Power Co.; Pennsylvania Power & Light Co.; Philadelphia Electric Co.; Playtex, Inc.; Portland General Electric Co.; Potomac Electric Power Co.; PPG Industries, Inc.; Public Service Electric & Gas Co.; Puget Sound Power & Light Co.; and Ryder System, Inc.

San Diego Gas & Electric Co.; Savannah Electric & Power Co.; Savannah Food and Industries, Inc.; Shearson, Lehman & Hutton; Smith Barney, Harris Upham & Co., Inc.; Southern States Cooperative, Inc.; Spectrum Asset Management; The Cleveland Electric Illuminating Co.; The Empire District Electric Co.; The Montana Power Co.; and The Ohio Society of Certified Public Accountants.

The Readers Digest Association, Inc.; The Rockefeller Group; Toledo Edison Co.; Town & Country Jewelry; Transol USA, Inc.; Triangle Industries, Inc.; Tucson Electric Power Co.; Union Carbide Corp.; UST; Warnaco, Inc.; and Western Union Corp.

TAXPAYERS' BILL OF RIGHTS

Mr. HEFLIN. Mr. President, I rise today to repeat my support of the taxpayers' bill of rights.

Mr. President, as this bill has been considered by the Senate we have all heard horror stories about things that the Internal Revenue Service has done in its zeal to collect taxes: A woman in Pennsylvania had her bank accounts seized without notice because the revenue agent suspected that her boyfriend had put his money in her account. Although the revenue agent was wrong, it took months for this woman to get her money back. Or the case of the 9-year-old girl whose small savings account was seized because the IRS was trying to collect taxes it claimed were owed by her grandfather. The IRS gave the money back, but only because of the negative publicity that it received.

Congress gave the IRS broad powers to accomplish what it was created to do. But sometimes the IRS is too aggressive. Sometimes it goes too far. This bill will put some limits on what the IRS can do in order to stop some of these abuses. It will provide protection to taxpayers. But taxpayers don't need protection just from IRS abuses. Taxpayers also need protection in their everyday dealings with the IRS. Despite the attempts at tax reform, our tax laws remain extremely complicated. A taxpayer could get into trouble with the IRS by accident with no intention to break the law. And if such a mistake were made, the average taxpayer would have no idea what his or her rights might be. There are probably few things as frightening as finding out that the IRS is investigating your tax returns. Unfortunately, finding out that you are the subject of an investigation is about all you would find out from the IRS. In many cases, taxpayers do not have a clue why and how they ran afoul of the tax laws. The taxpayers' bill of rights attempts to change this situation.

Perhaps the most important feature of this bill is a requirement that the IRS give taxpayers an explanation of their rights the very first time the IRS contacts them about the collection or payment of any tax. This explanation must be in simple and nontechnical language so that a taxpayer can easily read and understand it. The explanation must describe the process that the taxpayer will be facing in his or her dealings with the IRS. It must explain how the taxpayer can appeal any decision made by the IRS. And, it must inform taxpayers what steps the IRS will take to collect any taxes it claims are owed.

When the IRS demands a payment from a taxpayer, the taxpayer usually has no idea how the IRS came up with the figure it claims is owed. The notice from the IRS often just states an amount due without much more. Under the Taxpayers' Bill of Rights, the IRS in the future must explain why the amounts are owed and itemize how much of the amount represents tax, how much is penalties, and how much is interest.

The bill also requires the IRS to allow a taxpayer to tape record any meetings the taxpayer has with the IRS. It requires the IRS to suspend an interview with a taxpayer if the taxpayer tells the interviewer that he or she wants to meet with an attorney, accountant, or other person qualified to represent the taxpayer before the IRS. In most instances, the taxpayer can send this representative to meet with the IRS instead of going himself.

Sometimes the IRS gives taxpayers the wrong advice. If the IRS made a mistake which was relied upon by a taxpayer, the taxpayer was simply out of luck and could even be liable for penalties as well any additional tax. The Taxpayers' Bill of Rights changes that result: In this legislation, if a taxpayer relied upon written advice that was wrong, the IRS cannot collect any penalties or additional tax which was the result of the taxpayer's reliance on the erroneous advice.

When a taxpayer faces the IRS, the taxpayer usually feels like he is all alone. I receive letters on a daily basis from taxpayers who are bewildered and frustrated by how they have been treated by the IRS. This bill gives them an advocate. It creates an ombudsman whose sole job is to monitor how the IRS is treating taxpayers. The ombudsman has the authority to order the IRS to release a taxpayer's property or stop any actions it is taking against the taxpayer if the ombudsman believes that the taxpayer would suffer a significant hardship as a result.

Many taxpayers who find themselves behind on their taxes sincerely desire to pay the Government this debt. Oftentimes the taxpayers are in bad economic shape. They simply cannot pay the debt in full, as the IRS demands. The Taxpayers' Bill of Rights authorizes the IRS to allow the taxpayer to pay this debt in installment payments.

Whenever the IRS purposes a new rule or regulation that affects business, it invariably results in a flood of letters to me from business people pointing out the devastating effect that this new rule or regulation will have on their business, which is usually a small business. In most cases, the new rule imposes an onerous new amount of paperwork and recordkeeping for which no clear purpose is apparent. In many cases, after it hears the hue and cry from these business people, the IRS changes its mind and abandons the rule or significantly modifies it. This bill tries to stop this process and eliminate senseless new rules before they are enacted. Under the Taxpayer's Bill of Rights, whenever the IRS comes up with a new rule or regulation, the IRS must submit a copy of it to the Administrator of the Small Business Administration for comment on the impact the regulation will have on small business.

Sometimes the IRS itself is wrong. If a taxpayer is wrong, the taxpayer can expect to be hit with penalties and interest for his mistake. But if the IRS iw wrong, about the best the taxpayer can hope for is an apology from some revenue agent. This bill tries to even things up for the taxpayer. If the IRS takes a position in a claim against a taxpayer that it cannot prove was substantially justified, the Taxpayers' Bill of Rights provides that the taxpayer can be reimbursed for some of the expenses that he or she incurred in defending against the IRS' position.

Mr. President, these are only some of the provisions which are intended to strengthen taxpayers' rights and restore their faith in the Internal Revenue Service. I would like to once again congratulate my fellow sponsors, Senators Pryor, Reid and Grassley, for their efforts in getting this bill to this point. I hope this measure may be passed by the entire Congress quickly.

JUSTICE FINALLY DONE ON AIRCRAFT TRANSITION RULE

Mr. BUMPERS. Mr. President, I have been working since September 22, 1986, to correct an injustice in the tax reform law.

Justice has been delayed, but in this tax technical corrections bill it has not been denied.

The injustice that caught my attention nearly 2 years ago is found in a transition rule slipped into the tax reform legislation at the very last minute in the conference on that legislation.

There were many transition rules slipped into the tax reform legislation, but this was among the most offensive. The rule said that a taxpayer could still claim an investment tax credit if he happened to purchase and take delivery before December 31, 1986, of a General Aviation Aircraft.

But, this rule didn't apply to every taxpayer. It applied only if the taxpayer purchased an aircraft which happened to have been manufactured in one of four explicitly named States: Kansas, Texas, Georgia, and Florida.

This transition rule didn't simply attempt to confer a benefit on taxpayers who happened to purchase General Aviation Aircraft. It didn't simply provide an incentive for these customers to purchase these aircraft before the end of that year. It didn't even simply provide an incentive to purchase aircraft manufactured in the four named States.

It went beyond these affirmative purposes and attempted to divert sales of the aircraft away from manufacturers not located in the four named States.

In fact, in my view, the attempt to hurt manufacturers in the other 46 States may have been the primary purpose of the transition rule.

The transition rule had a destructive and anticompetitive purpose. It attempted to hurt some companies, not simply help other companies. It attempted to confer a competitive advantage on certain companies at the expense of others.

The whole transition rule process is sordid enough but this type of rule is particularly egregious. This rule is offensive. It had no place in the tax reform legislation or in any other legislation.

Ever since this rule came to my attention, I have been fighting it. The bill before us today extends the benefits of the rule to customers of aircraft manufacturing companies located in all 50 States. The bill makes the transition rule generic.

I would have preferred to repeal the rule altogether, but making the rule generic is the next best option.

I wish we hadn't had to go through this fight. In fact, the inclusion of this rule in the tax reform bill is one of the problems which made it impossible for us to adopt a technical corrections resolution before the tax reform bill was sent to the President for his signature.

I would hope that the members of the Finance Committee will not soon again include a transition rule in a tax bill which is such a double-edged sword.

I appreciate the effort of the chairman of the Finance Committee, Senator Bentsen, and of the former chairman of the Committee, Bob Packwood, in correcting this injustice.

I ask unanimous consent that an outline of the legislative history of this issue be printed in the Record at this point.

There being no objection, the outline was ordered to be printed in the Record, as follows:

Legislative History of General Aviation Transition Rule

1. September 22, 1986, Senator Bumpers writes to Chairman Bob Packwood protesting "four State" general aviation transition rule.

2. September 25, 1986, House first passes H. Con. Res. 395, the technical corrections resolution, amending the aviation transition rule to include Arizona. (House Record at 26296.)

3. October 15, 1986, Senate twice attempts to consider H. Con. Res. 395. Senator Packwood announces that he will offer an amendment to make the general aviation transition rule generic (Senate Record at 31310). In response to an inquiry from Senator Metzenbaum, Senator Packwood announces that this change will be financed by applying the transition rule only to sales of aircraft purchased after August 16, 1986 (31400).

4. October 16, 1986, Senate first passes H. Con. Res. 395 after adopting Packwood amendment (applying transition rule to sales of aircraft after August 16, 1987) (Senate Record at 32346.) Senator Bumpers speaks on the amendment. (Senate Record at 33387.)

5. October 17, 1986, House rejects much of the Senate amendment to H. Con. Res. 395, including the amendment to the general aviation transition rule, sending resolution to Senate for second time.

6. October 17, 1986, Senate accepts the House amendments but insists on its own

amendments, including its amendment to the general aviation transition rule, sending resolution to the House for the second time. (Senate Record at 33383-33384, 33386.)

7. October 18, 1986, House again rejects Senate amendments to H. Con. Res. 395, sending the resolution back to the Senate but the Senate already had adjourned sine die.

8. October 18, 1986, tax reform law sent to President for his signature without corrections.

9. October 18, 1986, Senator Bumpers introduces S. 2954, a bill to retroactively repeal the general aviation transition rule. (Senate Record at 33840.)

10. June 10, 1987, Senator Bentsen introduces S. 1350, the technical corrections bill, including an amendment to make the general aviation transition rule generic (for all sales in 1986). (Senate Record at 15142.)

TAX INDEXATION FREEZE

Mr. BUMPERS. Mr. President, it is not too early to begin talking about next year's tax bill.

The Presidential campaign is focusing on taxes. Vice President BUSH says absolutely no to any tax increase and Governor Dukakis says he's keeping his option open.

I think it's only wise for any chief executive to keep his options at least partly open on the question of taxes. We are, after all, running unprecedented deficits. Raising additional revenue is an obvious option. Ruling it out means that we have almost no option but to consider cutting deeply into defense spending and key entitlement programs.

I am not here today to speak at length on the issue of whether or how much we should raise taxes. I am simply rising to bring to the attention of the Members of this body one option we might pursue if we do choose to raise taxes, specifically to freeze income tax indexation.

I have requested a study by the Joint Committee on Taxation on tax indexation and I want to make that study available here.

I will request that a copy of a letter of Mr. Ronald A. Pearlman, staff director of the joint committee, of July 7, 1988, with attachments be printed at the conclusion of my remarks.

There are many aspects of the Tax Code which are indexed for inflation, the tax brackets, including the phase out for the benefits of the 15 percent bracket, the standard deduction amount and the personal exemption amounts.

Freezing these three items for 1, 2, or 3 years generates a great deal of revenue, $40.5, $74.6, and $97.2 billion, respectively, over a 5-year period. This may well be too much revenue to raise and the economy may not be strong enough to raise such large amounts of additional revenue.

Just as important is the question of who would pay these additional taxes. The joint committee study presents a detailed chart showing the distributional effect. The distribution is progressive in terms of the increase in dollar tax liability but it is not progressive in terms of the percentage change in tax liability. This troubles me.

But, I do want to raise this issue as one possible option. There may be ways to limit the indexation freeze to create a more progressive distribution of the burden. The freeze might only apply to the 28 percent tax bracket, for example, or it might only freeze one of the tax items which are currently indexed. These options need to be researched.

Let me make one final point. Indexation of the tax system reduces revenue, which increases the deficit. Indexation of various spending programs increases spending, which increases the deficit. Indexation of the tax system and of spending programs both increase the deficit. They constitute a double-whammy on the deficit. We need to be aware of this impact and to focus on what it means for coming to grips with the deficit.

I ask unanimous consent that the letter to which I earlier referred be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, July 7, 1988.

Hon. DALE BUMPERS,
U.S. Senate, Washington, DC.

DEAR SENATOR BUMPERS: This is in response to your request for a revenue estimate and distributional effects for several options relating to delaying inflation adjustments for the tax brackets (including the dollar amount used for phaseout benefits of the 15% bracket), the standard deduction amounts, and the personal exemption amounts.

Specifically, you requested revenue and distributional effects of one-year, two-year, and three-year delays of inflation adjustments. Using recent forecasts for inflation from the Congressional Budget Office (CBO), we have estimated these options to have the following revenue effects:

[In billions of dollars]

	Fiscal years—						
	1989	1990	1991	1992	1993	1988–91	1988–93
Delay of inflation adjustments:							
1 yr	2.8	6.7	9.3	10.6	11.1	18.8	40.5
2 yr	2.8	10.0	17.2	21.3	23.3	30.0	74.6
3 yr	2.8	10.0	20.6	29.5	34.3	33.4	97.2

For each of these options, the enclosed tables provide the distributional effects as specified by Chuck Ludlam of the Small Business Committee staff.

I hope this information will be helpful to you. If we can be of any additional assistance, pleasee let me know.

Sincerely,

RONALD A. PEARLMAN.

Enclosures.

DISTRIBUTIONAL IMPACT OF DELAYING INDEXATION OF BRACKETS, STANDARD DEDUCTION, AND EXEMPTIONS

Income class (1988 dollars)	Change in average tax liability	Percentage change in tax liability
1 YEAR		
Calendar year 1989:		
0 to $10,000	15	(1)
$10,000 to $20,000	19	2.8
$20,000 to $30,000	40	2.2
$30,000 to $40,000	49	1.6
$40,000 to $50,000	122	2.7
$50,000 to $75,000	172	2.1
$75,000 to $100,000	189	1.4
$100,000 to $200,000	296	1.1
$200,000 and over	234	.2
Total	71	1.6
Calendar year 1990:		
0 to $10,000	30	(1)
$10,000 to $20,000	37	5.1
$20,000 to $30,000	61	3.2
$30,000 to $40,000	62	2.0
$40,000 to $50,000	129	2.7
$50,000 to $75,000	219	2.5
$75,000 to $100,000	246	1.7
$100,000 to $200,000	367	1.3
$200,000 and over	295	.2
Total	90	1.9
2 YEARS		
Calendar year 1990:		
0 to $10,000	44	(1)
$10,000 to $20,000	55	7.7
$20,000 to $30,000	90	5.2
$30,000 to $40,000	97	3.1
$40,000 to $50,000	244	5.1
$50,000 to $75,000	409	4.6
$75,000 to $100,000	475	3.3
$100,000 to $200,000	708	2.5
$200,000 and over	509	.4
Total	158	3.4
Calendar year 1991:		
0 to $10,000	66	(1)
$10,000 to $20,000	85	11.4
$20,000 to $30,000	146	7.5
$30,000 to $40,000	151	4.7
$40,000 to $50,000	323	6.5
$50,000 to $75,000	515	5.6
$75,000 to $100,000	581	3.9
$100,000 to $200,000	843	2.8
$200,000 and over	566	.4
Total	213	4.3
3 YEARS		
Calendar year 1989:		
0 to $10,000	79	(1)
$10,000 to $20,000	103	13.8
$20,000 to $30,000	186	9.5
$30,000 to $40,000	189	5.9
$40,000 to $50,000	451	9.1
$50,000 to $75,000	697	7.6
$75,000 to $100,000	810	5.4
$100,000 to $200,000	1,155	3.8
$200,000 and over	707	.5
Total	280	5.7
Calendar year 1992:		
0 to $10,000	101	(1)
$10,000 to $20,000	135	17.4
$20,000 to $30,000	235	11.6
$30,000 to $40,000	247	7.4
$40,000 to $50,000	545	10.5
$50,000 to $75,000	812	8.4
$75,000 to $100,000	943	5.9
$100,000 to $200,000	1,294	4.0
$200,000 and over	822	.5
Total	338	6.5

[1] The average tax liability in this class is negative. This proposal reduces the average refund.

Source: Joint Committee on Taxation, July 5, 1988.

REALISTIC OPTION ON CAPITAL GAINS TAXES

Mr. BUMPERS. Mr. President, this is an election year so it's probably inevitable we are postponing debate and action on the key issues.

This tax technical corrections legislation is a good example. By any measure this is a minor tax bill. It does not address the fundamental issues raised by the 1986 tax reform legislation, including capital gains taxes, the 33-percent recapture bracket, or the need for additional revenue to reduce the deficit.

We may not be ready to vote on these important issues, but it is not too early to begin the debate. We will be considering the 1989 tax bill before we know it.

Capital gains taxation is definitely an issue in the campaign because the Vice President has called for an across-the-board reduction in the tax rates on capital gains. His most controversial claim is that this reduction in tax rates would raise, not lose, revenue.

Governor Dukakis has not as yet fully stated his position on the capital gains issue, but I would assume he'll have something to say on the subject as the campaign proceeds.

Whichever candidate wins, it is clear that capital gains taxes will be a major issue in the debate on next year's tax bill.

I would like to take a few minutes now to discuss the Vice President's capital gains proposal and to compare it to a capital gains bill which I have introduced, S. 931. The differences between the Vice President's proposal, the so-called 15 percent solution, and S. 931 are substantial and significant.

CURRENT CAPITAL GAINS LAW

Under the tax reform law there is no differential in the tax rates which apply to ordinary income and capital gains income. The maximum tax rate on both is the same, 33 percent.

Last year during the transition to the new tax reform rate structure the maximum tax rate on capital gains was 28 percent, well below the maximum tax rate on ordinary income which last year's was 38.5 percent. Starting this January the tax rate on capital gains income was raised and the tax rate on ordinary income was lowered and the rates are now the same.

In 1986 the maximum tax rate on capital gains was 20 percent, also well below the then applicable maximum tax rate for ordinary income then in effect of 50 percent. There was a significant differential in rates, providing a strong incentive for capital gains investments.

Stating this in another way, in 1986 the maximum tax rate on capital gains income was 60 percent lower than the tax rate on ordinary income. Last year the maximum tax rate was 27 percent lower. This year there is no differential in the tax rates for ordinary income and capital gains income.

Just as significant, because there is no difference in the tax rates which apply to capital gains and ordinary income, there is, in effect, no longer any holding period for capital gains. The holding period had been reduced from 1 year to 6 months in 1984. The holding period was scheduled to revert to 1 year at the beginning of this year. For all intents and purposes the holding period now is zero because taxpayers gain no advantage in characterizing income as capital gains income.

Finally, prior to the tax reform law, the amount of any capital gains exclusion had been subject to the minimum tax, but it is no longer included as a preference item because there is no preferential treatment for capital gains.

TERMS OF CAPITAL GAINS PROPOSALS

The Vice President and I agree on one point about capital gains taxes. We agree that the repeal of the capital gains tax preference in the Tax Reform law was ill-considered. But that is where our agreement seems to end.

Let me take a minute to describe the Vice President's proposal and then my own proposal.

The Vice President's capital gains proposal is sweeping.

First, he has proposed that the maximum tax rate on capital gains income be reduced from 33 percent to 15 percent. This is a 55-percent reduction in the maximum tax rate. This makes the 25 percent "supply-side" tax cut in 1981 look modest by comparison.

Second, this dramatic tax break apparently would be available for the sale or exchange of any capital asset.

The term "capital asset" is a term of art in the tax law, but it includes virtually everything type of property you own and use for personal purposes or investment.

It includes corporate stock, commodities and futures contracts, shares in a partnership, a dwelling owned and occupied by you and your family, household furnishings, a car used for pleasure purposes and commuting, coin or stamp collections, gems and jewelry, gold, silver and any other metal.

It includes property used in a trade or business. An invention, goodwill, a franchise, trademark or trade name, livestock, and timber, domestic iron ore and coal may all be capital assets.

I have obtained a memorandum from the Congressional Research Service which outlines the range of assets which qualify as "capital assets" and it an expansive list. (Memorandum of Greg Esenwein, CRS, August 3, 1988.) When you review the list, in many cases it becomes difficult to justify providing preferential tax benefits. It is incumbent on any advocate for preferential tax treatment to explain why it is in the national interest to reduce the tax burden for taxpayers who make certain investments and I do not think that this is possible for investments in many of the assets which qualify as "capital assets."

Third, the Vice President has indicated that to qualify for capital gains tax treatment, the investment would have to be held for 1 year. On January 1, 1988, the holding period on capital gains reverted from 6 months to 1 year and the Vice President would not propose that the 6-month holding period previously in effect be restored.

The 1-year holding period is hardly enough to encourage the patient capital that American firms need to grow and prosper. It's better than a zero holding period, but it's hardly enough to encourage long-term, high risk investments in America's future.

Finally, it is not clear whether the Vice President intends for the alternative minimum tax to apply. The AMT would not apply unless the tax law is amended to include capital gains in the list of preference items. Indirect sources indicate that Bush would not apply the AMT to the new capital gains preference, but no decision on this issue apparently has been made.

This means that high income taxpayers would claim capital gains income and avoid paying their fair share in taxes. The minimum tax is one of the most important reforms of the tax reform law and the Vice President's proposal would undermine its application and effectiveness.

My capital gains bill, S. 931, proposes a much narrower capital gains tax preference, one that is targeted at high-risk, long-term investments in growth businesses.

First, I propose that the maximum tax rate on capital gains income be 21 percent. This represents a 36-percent reduction in the tax rates which apply to capital gains.

Second, this tax break would be available only for investments in corporate stock. It is not available for investments in other "capital assets."

Third, these investments in corporate stock must be direct investments in corporate stock, that is purchases of stock directly from the corporation as distinct from purchases of stock sold by another investor, trading in the secondary market.

Fourth, the stock must have been issued by a small business with less than $10 million in outstanding stock. I will discuss this limitation further in a minute.

Fifth, the stock which is purchased must be held for a minimum of four years.

And, finally, any gain on the stock is explicitly included as a preference item in the alternative minimum tax.

S. 931 is directed at the investments typically made by entrepreneurs and venture capitalists. These are risky, long-term investments in start-up ventures. These are the investments which entrepreneurs make when they start a new business. These are the investments which venture capitalists make when they back an entrepreneur with seed capital.

I made this point at some length when the Senate debated the amendment offered by Senator Armstrong to the Senate budget resolution this April 14. I argued then against indexing the basis for capital assets and in favor of a targeted capital gains exclusion. I emphasized then that capital gains should be for entrepreneurs. (133 Congressional Record S 3959-3960, April 14, 1988).

The Vice President's capital gains incentive is available for much less risky, much shorter term investments in a wide variety of assets which have nothing to do with growth or job creation or the competitiveness of U.S. industries.

Why should we encourage investments in vacation homes or antique cars? I see no public policy rationale for a capital gains tax preference for either type of investment.

S. 931 is fairer to middle-income taxpayers. It limits the benefits which wealthy taxpayers can reap from the preference and the Vice President's proposal does not.

The differences between the Vice President's proposal and my own are fundamental. They go to the question of what types of investments we should encourage. They concern the value of the incentive we should provide and who should receive the incentive. These differences are issues of policy, but they are also issues which go to our values and priorities.

COMPARISON OF REVENUE IMPACT

Any consideration of a capital gains tax preference must focus first on the potential impact of such a preference on government revenue. The merits of the issue are not open for serious debate if the revenue impact is severe.

THE VICE PRESIDENT'S PROPOSAL

Vice President Bush has asserted that his proposal "would not cost the Government money." Rather "it would gain additional revenue by stimulating growth." He states that this assertion is substantiated by the effect of the 1978 reduction in tax rates on capital gains (the Hansen-Steiger amendment) and by the research of Prof. Martin Feldstein and NBER researcher Lawrence Lindsey.

The Joint Committee on Taxation, however, has ruled in a response to an inquiry from Congressman Bill Archer that a 15-percent tax rate on capital gains would reduce Government revenue by $8.5 billion in 1990, $15 billion in 1991, and $17.1 billion in 1992. (Letter of David Brockway to Congressman Archer of November 8, 1987.) The total 3-year revenue loss is projected to be $40.6 billion.

Similarly, the Congressional Budget Office has stated that a 15-percent rate would probably reduce Government revenue by between $3.9 and $7.8 billion per year.

Finally, a recent Congressional Research Service report indicates that instituting a capital gains tax preference may have a negative impact on Government revenue in the long run even if it has a positive impact in the short term.

In January of 1987 the Treasury Department estimated that the increase in the capital gains tax rate in the tax reform legislation (from 20 percent to 28-33 percent) would increase Government revenue by $21.8 billion over 5 years. The Federal Government already has received a $10 to $15 billion revenue bonus at the end of 1986 when taxpayers rushed to sell assets to take advantage of the then-still-applicable 20-percent maximum capital gains tax rate.

All of these estimates are controversial. There are more recent studies by the Treasury Department which indicate that some of the methodology in its earlier studies are not appropriate. These recent studies have been attacked by critics of the capital gains exclusion.

I am not sure that the revenue loss estimates of the Joint Committee and Treasury Department are accurate. Indeed, I am not even sure that they are reasonable. But, I do know several things.

These estimates seem to have been prepared in good faith by professionals. There is broad agreement among the Government officials who are preparing estimates.

Most important, these estimates are not "static" estimates. In each case, they find that a reduction in capital gains tax rates does encourage investors in capital assets to sell their assets, generating taxable income. They do not find that this increase in asset sales—in tax parlence these sales are referred to as "realizations"—are as great as others would find. They find that the rate of realizations increases, but they do not find that the increased rate is enough to offset the loss in revenue due to a lower tax rate.

Whether or not one agrees with its estimates, it is clear that the joint committee would find that the Vice President's proposal would lose many billions of dollars in revenue, perhaps tens of billions of revenue, if enacted into law. The joint committee does not accept the arguments of Mr. Feldstein or Mr. Lindsey.

More interesting, the Treasury Department of the Reagan administration still does not agree with the Vice President's conclusion. As I have said, the Department is reviewing its position but it has not as yet changed its position.

There is good reason for all of us to be skeptical of any proposal which argues that a reduction in tax rates leads to an increase in revenue.

The 1981 "supply-side" tax cut also was supposed to have a minimal impact on revenues because it was supposed to stimulate economic activity, but the official estimate of its impact on revenue—an estimate contained in the President's own budget—is that it will reduce Government revenue by $258.7 billion this year alone.

Of course, whether or not one agrees with them, the revenue estimates of the joint committee are the only estimates used in the House and Senate and they alone determine whether the point-of-order under the Gramm-Rudman-Hollings law (as to whether a proposal is "deficit neutral") applies.

This means that any proposal to reduce capital gains tax rates to 15 percent would have to be paid for by an equal amount of additional revenue from some other source or an equal amount of reductions in spending. The final result must not increase the deficit and the joint committee's determinations on whether a proposal is deficit neutral are binding.

REVENUE IMPACT OF S. 931

The revenue estimates for the Vice President's proposal contrast sharply with those of S. 931. I have obtained an official revenue estimate from the joint committee on the revenue impact of S. 931. The joint committee finds that S. 931 would lose $24 million—that is million, not billion—in revenue in 1992, the first year after the 4-year holding period has run. Over a 3-year period it would lose $40 million. (Letter of Mr. David H. Brockway, September 18, 1987.)

This revenue estimate was so low that I asked the joint committee by how much the $10 million limitation in S. 931 could be raised (to apply the tax break to investments in larger businesses) while holding the revenue loss in 1992 to less than $500 million. The joint committee has told me that the $10 million limitation could be "removed altogether" and the revenue loss would be less than $500 million in 1992. The committee did not provide a specific revenue loss figure for the bill if the $10 million limitation is removed. (Letter of Mr. David H. Brockway, September 18, 1987.)

I have been consulting with representatives of the National Venture Capital Association and the National Small Business Investment Company Association to determine by how much to raise the $10 million limitation. The aim is to continue to target the capital gains break to smaller businesses because this is central to the concept of the bill. But, it is clear from the joint committee's revenue estimate that we could apply the tax break to businesses with $50 or $100 million in outstanding stock without exceeding the $500 million revenue loss figure. I am reviewing data now to determine where we should draw the line.

There is no discussion about reducing the maximum rate below 21 percent, to including trading of stock in the secondary market, to including non-stock investments, or to waiving the minimum tax. Each of these limitations is fundamental to the purpose and rationale of S. 931.

So, with the $10 million limitation, S. 931 it loses 1/1000th as much revenue as the Vice President's proposal—$40 million versus $40 billion. Without the $10 million limitation, S. 931 loses 1/80th as much revenue as the Vice President's proposal—$500 million versus $40 billion.

These revenue estimates on S. 931 show that the 21-percent maximum rate, the limitation to direct investments, the limitation to purchases of stock, the 4-year holding period and the application of the minimum tax are powerful constraints on the revenue loss for the bill.

They show that the 15 percent maximum rate, the absence of limitations on the type of investment, the 1-year holding period and the exemption from the minimum tax are extremely generous and open the floodgates to lose Government revenue.

In terms of the budget deficit, S. 931 is responsible and the Vice President's proposal is not.

I have suggested one way to finance the revenue loss which comes from enactment of S. 931. On September 30, 1987, I wrote to the members of the House Ways and Means and Senate Finance Committees stating that if the committee's raised income tax rates for the 1987 reconciliation bill, there could well be enough revenue generated to adopt S. 931. If income tax rates were raised, it is likely that the committees at least have retained the 33 percent maximum rate on capital gains. I suggested that the committees should move to lower capital gains tax rates along the lines suggested in S. 931.

Of course, the two committees chose not to raise income tax rates so they never faced the issue of how to adjust capital gains tax rates. Remember that there remains a separate capital gains tax rate schedule.

We did not debate this issue in the Senate when we debated the amendment of Senator KASSEBAUM. This amendment proposed to freeze most spending and to freeze tax rates at their 1987 "transition" levels. This freeze on tax rates would have preserved the differential in tax rates between capital gains and ordinary income. The Kassebaum amendment was defeated.

Next year we may again debate tax rates. The 33 percent recapture rate is an anomaly. High income individuals pay a top tax rate of 28 percent. Taxpayers with less income pay a top tax rate of 33 percent. In short, our tax system is regressive for high income individuals. This tax rate structure makes no sense. I am sure that we will debate this issue next year and we may decide to turn the 33 percent recapture.

EFFECT OF CAPITAL GAINS REPEAL

It is not possible as yet to determine precisely how the increase in the capital gains tax rates this year has affected capital investments. The evidence is not in as yet.

It also is not possible as yet to determine how the increase in capital gains this year has affected the ability of small businesses to obtain capital. Traditionally, small businesses have had more difficulty obtaining capital because investments in small businesses involve more risk and have less prospects for generating short-term income.

The tax reform law exacerbates this problem by reducing the tax penalty on ordinary income by reducing marginal tax rates. This fact, together with the elimination of the capital gains holding period, may well reduce the attractiveness to investors of long-term, growth-oriented, riskier investments, particularly those in startup small businesses. It may increase the attractiveness of short-term, income-oriented, safer investments. If this is true, the tax reform bill will hurt investments in small businesses, which need to reinvest all of their net income in the business to help it to grow and prosper.

Venture Magazine reported that "startups face trouble from venture capitalists, an imperiled SBIC program, and a higher capital gains tax." ("Desperate for Dollars," May 1988.) This article states that the problem arises from "simple arithmetic. "When venture capitalists can get a fairly safe 35 percent to 50 percent on a leveraged buyout, why accept a potential 50 percent on a startup that carries more risk?" One venture capitalist said that "venture capitalists aren't looking for seedlings, they're looking for 12-in. tree trunks."

WINDFALL VS. INCENTIVE

The capital gains tax is a "tax incentive." Its purpose is to induce or encourage taxpayers to engage in certain behavior which we in the Congress believe is in the national interest. We should only provide a tax incentive if taxpayers if we believe that providing the incentive will induce or encourage taxpayers to engage in that behavior and if we believe that taxpayers would not otherwise engage in that behavior.

A tax incentive merely creates a windfall if it rewards taxpayers for doing that which they would do without the incentive. Of course, some taxpayers already make investments in capital assets or in the stock of startup small businesses and their investments would now be rewarded with a tax subsidy. For these investors the capital gains tax preference confers a windfall and is not responsible for encouraging these taxpayers to make these investments.

It is clear that the Vice President's proposal would confer a much greater windfall on taxayers than would S. 931. There is no capital gains tax preference now and millions and millions of investors are buying capital assets and holding them for a year. There are very few taxpayers who invest in startup small businesses and hold the investment for 4 years. This is part of the reason why the revenue loss for S. 931 is so much less than for the "15 percent solution."

We should not give away tax subsidies unless taxpayers have to work for them, to do something that is riskier with their investment dollars. The Vice President's proposal does not set high enough standards for the quid pro quo for the subsidy. S. 931 does.

DIRECT INVESTMENTS VS. TRADING

"Capital formation" is the rallying cry for all those interested in providing tax incentives for investment.

S. 931 literally forms new capital in the sense that it applies only to the initial investments in new issues of stock issued by small companies. My bill puts new capital in the hands of entrepreneurs to use in founding or expanding a business. The capital is formed for the persons who need it, the entrepreneur.

S. 931 does not apply to the trading of a stock in the secondary market, which does not raise any additional capital for the company which issued the stock in the first place. Once a business has issued and sold its stock, it has obtained the capital it needs from the investors. No new capital is formed when stock is traded on the secondary market.

If trading of that stock increases the price of the stock, the business can obtain more capital when it issues additional stock. The business wants the stock price to rise so that it can raise more capital if it issues additional stock and so that an investor does not try to take over the company by buying a controlling share of the stock. But the immediate beneficiaries of stock trading in the secondary market are investors and brokerage houses, not the business whose stock is traded.

By providing a tax incentive only for direct investments in stock, S. 931 ensures that the business which issues the stock—and the entrepreneurs who run the business—should be able to obtain a higher price for the stock it issues. This means the business and the entrepreneurs will have more capital to work with in building the business.

This focus on direct investments may have a positive impact on initial public offerings of stock—and subsequent issues of stock by the businesses until the $10 million or other limitation comes into play. These initial public offerings are the riskiest undertakings for an entrepreneur, but going public is the only way many growth-oriented small businesses can raise the capital they need to grow.

S. 931 forms new capital and puts it in the hands of entrepreneurs. The Vice President's proposal forms no new capital and merely shifts it around among investors. My proposal rewards wise investments in smart entrepreneurs, while the Vice President's rewards speculation about the value of existing stock.

STOCK PURCHASES VS. OTHER INVESTMENTS

The old capital gains tax preference applied to many types of investments other than investments in corporate stock, including many investments which have nothing to do with competitiveness or other macroeconomic issues. It applied to investments in vintage cars, antiques, gold coins, paintings, and gems. It also applied to investments in real estate.

S. 931 applies only to investments in corporate stock because small businesses rely on the equity market to obtain patient capital. Most small businesses cannot afford to pay the carrying costs on debt. As a matter of public policy, we should encourage growth in the equity markets, not the debt markets. This public policy explains the elimination of the tax deduction for consumer interest.

S. 931 focuses on investments which will help America compete in international trade. There is no rationale for encouraging investments in collectibles. Similarly, there is little need to encourage additional investments in real estate. Investments in seed-capital for entrepreneurs is what is needed for America to be competitive.

REAL RISK OF INVESTMENT

S. 931 provides a tax break to investments in the stock of small businesses because there is real risk in these investments. Small businesses can and do fail. In fact, venture capitalists have a rule of thumb that only 1 or 2 of 10 envestments will pay off well in the long run.

Companies whose stock trades on the New York Stock Exchange rarely fail. They pay dividends regularly. The price of the stock may rise or fall, but an investor rarely risks losing everything he or she has invested.

Investors in the initial offering of stock take a particular risk because it is difficult to know how much the stock will sell for in the secondary market. The initial price of stock may bear little relationship to the value that other investors will place on that stock in the secondary market. The price of initial public offerings may rise or fall substantially the first day the stock is traded in the secondary market. In fact, there my be no secondary market for the stock because it is not possible to know how much the stock is worth.

Often investments in start-up companies are made before the company has manufactured or marketed any products. The investments provide research funds for the company to discover a new product or to begin manufacturing that product. At this point in the life of the company, it is very difficult to know how profitable the company will be and it may be many years before it turns any profit at all. Startup companies must reinvest their income in further research, manufacturing facilities or mass marketing. This may delay their ability to pay out dividends.

This is why there is a need for a tax incentive to encourage these investments. These investments do involve real and substantial risk. These are investments which investors are reluctant to make, but these are investments which must be made if we are to compete in international markets.

ENTREPRENEURS AND EMPLOYEES

S. 931 applies to stock purchases by any investor, including the entrepreneur who founds a company and employees who have stock purchase plans. It does not simply apply to outside investors who purchase the stock.

It is a relatively simple matter for an entrepreneur to issue stock to himself. It may be more difficult to determine the market value of that stock than it is to determine the value of stock sold to outside investors and the burden is on the taxpayer to substantiate his or her claims about the basis value of the stock.

For many small businesses, the value of the companies they found is their principal source of retirement savings.

FOUR YEAR HOLDING PERIOD

The 4-year holding period ensures that investors do not expect that the small businesses in which they invest will quickly generate income. S. 931 rewards investors who seek long-term growth, not short-term returns. It seeks to lengthen the time-horizon of both the companies which issue the stock and the investors who buy it.

This 4-year holding period is another element of the risk which is rewarded by S. 931. There is inherently less risk in a shorter term investment. The longer the taxpayer must hold the investment to gain the tax benefits, the greater are the risks which the taxpayer must take and the greater is the justification for the tax benefit.

The purpose of S. 931 is to encourage risk taking. The holding period involves risk, the emphasis on direct investment involves risk, and the limitation to the stock of small businesses involves risk.

ALTERNATIVE MINIMUM TAX

I have already said that S. 931 sets the maximum tax rate on capital gains at 21 percent and that the alternative minimum tax applies. These two provisions are directly related to one another.

The maximum tax rate of 21 percent on capital gains in S. 931 is the same as the tax rate under the minimum tax in the tax reform law. I considered setting a maximum tax rate of less than 21 percent, but it makes little sense to set the tax rate on capital gains lower than 21 percent if the minimum tax applies. If one sets a maximum tax rate on capital gains which is lower than 21 percent, the taxpayers who are subject to the minimum tax will still end up being taxed at the 21 percent rate under the minimum tax. It's a zero sum game for taxpayers who are subject to the minimum tax.

I have requested that the Joint Committee on Taxation to analyze the relationship between a capital gains preference and the minimum tax. In a letter of June 26, 1988, Mr. Ron Pearlman of the joint Committee has presented an exact formula which explains this relationship and in a letter of July 26 I have asked the Joint Committee to prepare an additional analysis of this issue.

No debate on the capital gains issue can avoid the minimum tax issue. It is inconceivable to me that Congress would restore a capital gains tax preference without applying the minimum tax. If I am correct in this judgment, it is hard to justify setting a maximum tax rate for capital gains of less than 21 percent.

PROGRESSIVITY AND FAIRNESS

The alternative minimum tax ensures that individuals cannot aggregate their tax preferences to reduce their marginal tax rate below 21 percent. This ensures that S. 931 will not undermine the progressivity and fairness of the tax system.

Many feel that the principal reason why the capital gains exclusion was repealed by the tax reform legislation was because a disproportionate amount of the benefits of the exclusion went to high-income individuals. When the Congress moved to drastically reduce tax rates, limiting the tax applicable to very high income individuals to 28 percent, it had no choice but to limit the tax reduction opportunities provided to these high income individuals by such tax preferences as the capital gains exclusion.

The elimination of the capital gains exclusion served this purpose and so did the adoption of the alternative minimum tax. The tax reform law did not eliminate all tax preferences. There are still ways for high income taxpayers to reduce their tax liability. The minimum tax seeks to ensure that we will never again have reports of multimillionaires paying no taxes.

S. 931 explicitly includes the tax benefits of the capital gains tax break as a preference item in the minimum tax to ensure that the bill does not adversely affect the progressivity of the tax system. S. 931 will not return us to the time when there were scandals about wealthy individuals avoiding paying any Federal income tax.

I have requested that the Joint Committee on Taxation to study this issue in some detail. (Letter of May 12, 1988.) I have specifically asked the committee to analyze the distribution of benefits from S. 931 and from the Vice President's proposal. I am sure that this study will find that the benefits conferred by S. 931 are much more evenly distributed and are not concentrated with the highest income taxpayers.

THE CAPITAL GAINS DEBATE

There are some who will oppose any capital gains tax no matter how targeted it may be. They will argue that the tax reform law should not be changed, particularly by restoring one of the principal tax preferences. They will argue that the beauty of the tax reform law is that it simplifies the Tax Code, eliminating distortions. They will argue that restoring any tax preferences would require raising the low tax rates, which would undo the principal benefit of the tax reform law.

I respect these arguments. They are arguments about principles. These arguments are made by some of the most responsible Members of the Congress. These are arguments which must be addressed by those of us who support restoring a capital gains tax preference.

S. 931 does recreate a capital gains tax break and that is controversial no matter what the limitations are in the proposal. The tax break I propose is limited and targeted and it may be much more palatable than the Vice President's proposal, but S. 931 does reopen the debate on capital gains and it may even reopen the debate on the tax reform law.

Many tax reform advocates long opposed the capital gains tax break and hailed its repeal. Statistics cited during the tax reform debate showed that the benefits of the capital gains tax break had gone largely to wealthy individuals. In addition, the 6-month holding period was indefensible.

It can be said that any move to recreate any tax break for capital gains undermines the tax reform legislation. S. 931 can be seen as a foot-in-the-door for a much broader proposal like that of the Vice President. Reform advocates may not think this to be wise.

The critics of the capital gains preference can ask why the Vice President would favor special tax treatment for investments in collectibles and real estate, why he favors a large differential in tax rates, why he favors the break for nondirect investments, why he favors a short holding period and why he favors exempting the gains from the minimum tax. And, most important, they will ask why he is so unconcerned about the revenue impact of an across-the-board capital gains tax preference.

S. 931 challenges the assumptions about capital gains by showing that there is a moderate, targeted, fiscally-responsible alternative to the old-style capital gains exclusion. The criticisms which can be made of the Vice-President's proposal do not apply to S. 931.

S. 931 focuses on entrepreneurs, employees of start-up businesses, and venture capitalists—not on take-over artists, arbitragers, and margin accounts. It focuses on investments in businesses that might actually fail, not on trading of I.B.M. stock. It provides capital to small businesses, which have been shown to be the principal source of new employment and innovation. It focuses on the future, not on the short-term. It would not adversely affect the progressivity of the tax system.

If there is any rationale for restoring a capital gains tax incentive, and I think there is, S. 931 is the approach we should take.

S. 931 is the only fiscally responsible capital gains proposal being considered in the Congress.

It offsets the bias toward low-risk, income-oriented investments in the Tax Reform legislation.

S. 931 gives a preference only to investments which have a bearing on the competitiveness of the country.

It literally forms new capital, rather than simply encouraging trading of existing capital.

And it is fair to the middle income taxpayer.

These features of S. 931 do not meet every argument which the defenders of the tax reform law may raise. They want no changes in the tax reform law. They view it as a holy document. They see a problem with any changes because they fear that this will lead to a flood of changes.

When the arguments turn to the merits of the issue, S. 931 is a capital gains proposal which makes sense. It takes the debate on capital gains back to the basics, long-term risk-taking.

I have great respect for the authors of the Tax Reform law. I did not agree with the repeal of the capital gains incentive, but I understand why it happened. I do not think that the tax reform law is perfect and cannot be improved. I look forward to debating S. 931 on the merits.

POLITICAL REALITY ON CAPITAL GAINS

I fear that the Vice President's proposal gives the opponents of a capital gains tax preference too many arguments.

His proposal is so lacking in focus, so indiscriminate, and so irresponsible in its potential revenue impact, it discredits our efforts to debate this issue.

Two years after we have completely abolished the capital gains preference is too soon for anyone to be arguing that we should completely reverse course. This is shortsighted and politically unrealistic. Congress does not often completely reverse itself on any issue and it rarely does one on an issue which was thoroughly debated the first time.

The Vice President has learned nothing from the tax reform debate. One would think that he did not support the President's tax reform initiative. He does not see any legitimacy in the criticisms which were raised about the old capital gains tax. He wants to return to the old capital gains tax preference, with no changes, no rethinking of the issues, and no new concepts.

The Vice President's proposal makes it easy for the opponents of the capital gains tax preference. In fact, I believe that the Vice President's proposal will delay the time when we will have a full-blown debate on the capital gains issue. It is too easy to defeat the Vice President's proposal on a point-of-order. It is too easy to ridicule it. It is too hard to explain why we are providing an incentive for investments in vacation homes and antique cars.

There are some who will be beguiled with the Vice President's proposal. It is both flashy and simple. It promises a return to the "good old days." It promises the combined benefits of the low tax reform rates and the old tax preferences. It promises that you can "have it all."

The politics of this issue may turn out to be quite strange. I would think that the representatives of the securities industry would oppose the Vice President's proposal because it restores the 1-year holding period. It prospers when investors trade stock, not when investors hold it. It fought for the 6-month holding period and it loves the zero holding period even more.

There are, however, investors who specialize in making long-term, high-risk investments, the venture capitalists. They know that the entrepreneurs they back cannot pay out any dividends. They know that some of these ventures fail. They know that the secondary market for their investments is weak. But, they take the risk because there can be tremendous rewards.

The natural constituency for S. 931 is the venture capital industry. In fashioning this bill I have worked closely with the National Venture Capital Association and the National Small Business Investment Company Association. These associations can understand the rationale for a long holding period and for rewarding high-risk investments.

In fact, I would argue that it is in the interest of the venture capitalist to oppose the Vice President's proposal. If the Vice President's proposal is adopted—which I think is quite unlikely—the primary beneficiary will be the securities industry, which specializes in shorter term, lower risk investments. The 1-year holding period will lead investors away from longer term, higher risk investments. It is even possible that the pool of venture capital investors may shrink. The Vice President's proposal may discourage longer term, higher risk investments.

The tax reform law did eliminate many tax preferences. It did deregulate the tax system. This means that whatever tax incentives are left are even more powerful. There aren't many tax incentives left and those which remain are all the more attractive. If the Vice President's proposal is adopted, it will be the dominant tax issues for all investments. And, it is not focused on the type of investments made by venture capitalists.

On the other hand, if S. 931 is adopted, it will provide a powerful incentive that is tailor made for venture capital investments. If it is adopted, the pool of venture capital may increase. There will be an incentive for longer term, higher risk investments and perhaps a slight disincentive for shorter term, lower risk investment.

Indeed, the Vice President's proposal and S. 931 may have opposite effects. One helps the securities industry and one helps the venture capital industry. It is clear to me that these two industries cannot agree on one approach to the capital gains issue. Their interests are inconsistent. That's just a statement of fact. And the sooner the venture capital industry realizes this fact, and takes the lead on the capital gains issue, the sooner we can amend the tax reform law.

I am proposing that we reform the old capital gains tax to meet the legitimate objections which were raised to it during the tax reform debate. S. 931 takes the debate on capital gains back to its roots. It avoids ideology, it avoids "supply side" magic, and it forces the opponents of the capital gains tax preference to debate real issues.

In any event, the revenue impact of the Vice President's proposal is so severe, it is quite unlikely that it can be pursued next year or at any time in the forseeable future. Next year we are facing a drastic and mandatory reduction in the deficit under the Gramm-Rudman-Hollings law. We may have to cut $50 or even $60 billion from the fiscal 1988 deficit. It is inconceivable that the Congress can seriously consider a proposal which is estimated to increase the deficit by tens of billions of dollars.

It will also be difficult to consider S. 931 next year. But, it will not be impossible to consider it. S. 931 loses revenue, but next year the Congress may well enact a significant tax increase. If that tax increase involves tinkering with tax rates, particularly the 33 percent recapture bracket, it is quite possible that Congress will balance this move by reducing the maximum capital gains tax rate to 28 percent or even reduce it along the lines suggested in S. 931. So, there is a plausible scenario for considering S. 931 next year and there is no plausible scenario for considering the Vice President's proposal.

For these reasons I must oppose the Vice President's proposal on capital gains. The Vice President's proposal is counterproductive to the goal of encouraging long-term, high-risk investments. It delays the day when we can focus on a reasonable, responsible and realistic capital gains proposal. It is not a realistic option in the current budget climate.

If our only choice is between the Vice President's proposal and nothing, I would have to prefer no change in the current law. And it is in the interest of the venture capital industry to take the same position.

But, that is not the choice. We can restore a capital gains preference which is fiscally responsible, which will generate economic growth and jobs, which complements the tax reform legislation, and which is tailor-made for the venture capital industry.

I am convinced that S. 931 is a solid, practical and reasonable proposal. It is, in fact, the only realistic option which has been proposed to restore the capital gains tax preference.

I ask unanimous consent that a table summarizing the differences between my capital gains proposal and that of the Vice President be printed at this point in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

COMPARISON OF CAPITAL GAINS PROPOSALS

	Vice President Bush	Senator Bumpers (S. 931)
Maximum tax rate	15 percent	21 percent.
Exclusion on gain	Unknown	25 percent.
Holding period	1 year	4 years—Favors long-term investments.
Investments covered	Any capital asset, including stock, real property and collectibles.	Stock of small business ($10 million paid-in-capital[1]).
Capital format	Covers secondary market trading.	Covers only direct investments in new stock issues.
Minimum tax apply	No	Yes, ensuring fairness.
Revenue loss	$40 billion over 3 yrs	$40 million over 3 years.[2]

[1] Limitation may be increased to $100 million in paid-in-capital.

[2] Revenue loss increases to $500 million per year if limitation on paid-in-capital is increased to $100 million.

Mr. MATSUNAGA. Mr. President, I rise in strong support of the Technical Corrections Act of 1988 (S. 2238) as reported by the Senate Finance Committee.

Mr. President, the Technical Corrections Act of 1988 is the product of a 2-year effort to make necessary changes and clarifications in the Federal Income Tax Code as a result of the passage of the Tax Reform Act of 1986 and other recently passed tax legislation. In this effort, the members of the Finance Committee have worked closely with the House Ways and Means Committee, the Joint Committee on Taxation, and the Treasury Department to accomplish a simple and worthwhile objective—to fulfill the intent of Congress.

As reported by the Finance Committee on July 26, 1988 titles I and II of the bill contain clerical, conforming, and clarifying amendments to provisions enacted by the Tax Reform Act of 1988 (P.L. 99-514) and other recently enacted tax legislation. Title III makes changes in the collection and exemption procedures for excise taxes on diesel and nongasoline aviation fuels. This title removes a major administrative burden borne by exempt users of such fuels by restoring the diesel fuel excise tax exemption for farmers and other off road users.

On September 8, 1988 the Finance Committee approved a committee amendment to the technical corrections measure. This committee amendment contains a number of noncontroversial low cost provisions as well as the extension of expired or expiring tax provisions. As a revenue offset for these provisions the committee has approved a number of loopholes closures which have been supported and endorsed by the Administration.

Mr. President, as the Senate deliberates on this measure, time is of the essence. For almost 2 years taxpayers have waited for the Congress to bring the Tax Code into conformity with congressional intent. The time is now for the Congress to act to restore a degree of certainty and clarity to our Federal Income Tax Code. I urge my colleagues to support S. 2238, the Technical Corrections Act of 1988, as reported by the Finance Committee.

Mr. RIEGLE. Mr. President, I would like to thank the distinguished Chairman of the Finance Committee, Senator BENTSEN, as well as Senator PACKWOOD and Senator BAUCUS for their bipartisan leadership at this highly political time, a time when tax matters are particularly sensitive. Their leadership has resulted in a clean bill that makes important technical corrections to the Tax Code as well as extends a number of expiring provisions. In the spirit of the 1986 Tax Reform Act, the bill closes additional loopholes and allows no net increase in taxes.

As the Senate sponsor of the legislation to extend the authority to issue mortgage revenue bonds [MRB's] and mortgage credit certificates [MCC's] through 1992, I am especially pleased that the authority has been extended free of the crippling targeting provisions approved by the House. Although I am disappointed that the program has only been extended through June of 1989, I recognize the revenue limitations to further extension. Nonetheless, I would hope that the 101st Congress will provide for a longer extension.

By continuing the Mortgage Revenue Bond Program, Congress has recognized that the American dream of homeownership is becoming increasingly difficult for many Americans. By allowing state and local housing finance agencies to make mortgage loans at below-market interest rates for first-time homebuyers who need assistance, this tax-exempt bond program has been a resounding success nationwide. Since the program began in the 1970s, MRB's have been used to finance the purchase of over 900,000 homes. In addition, states may exchange MRB authority for mortgage credit certificates which entitle eligible first-time homebuyers to a credit against Federal income taxes.

In my home State of Michigan, the State Housing Development Authority has shown that there are additional benefits to MRB's. These include the financing of home improvement loans, which many small localities in Michigan blend with Community Development Block Grants. In this way, 5,440 homeowners with average incomes of $7,550 per year have been able to afford repairs to their homes. Other indirect benefits common to MRB programs around the country include the many added jobs in construction and related trades.

The extension of the Employer Educational Assistance Program under the bill is an important step in assuring that the United States remains competitive in the global marketplace. This program has provided undergraduate and graduate educational assistance to workers so that they might be better prepared to meet the increasingly challenging and unstable demands of the workplace.

The bill also provides relief for our Nation's farmers and other off-highway users of diesel fuel by exempting them from tax on diesel fuel and liberalizing refund procedures. It continues the targeted jobs tax credit, which has offered hope, opportunity, and jobs to many disadvantaged individuals.

By expanding and extending the low-income housing credit, the Senate has recognized the need for this vital program. Likewise, through extension of the credit for research and development, the Senate has recognized the importance of commercial research and development to our country's competitiveness. With many of our public research dollars devoted to defense, it is imperative that private industry be supported in its efforts to remain at the cutting edge of technology in what has become a highly competitive global economy.

Mr. President, I believe that we should enact this modest yet important bill today in order to provide for needed technical corrections to the Tax Code and to extend expiring provisions. I commend Senator BENTSEN for his leadership in requiring a clean tax technical corrections bill that is revenue neutral.

MORTGAGE REVENUE BONDS

Mr. DODD. Mr. President, I am speaking today to highlight the technical corrections bill's importance to the future of affordable home ownership in the United States. Among the host of expiring provisions which this measure addresses is the extension of the mortgage revenue bond [MRB] sunset date.

This tax incentive, which expires at the end of this year, has allowed States across the Nation to provide low- and moderate-income first-time homebuyers with affordable mortgages during a time of unprecedented decline in home ownership. Statistics show an especially alarming reduction in the number of young, working families who traditionally were able to save for a home. This country is caught in the grasp of an affordability crisis in which real estate prices have reached an alltime high and exorbitant rents preclude the average citizen's ability to save for a house. The American Dream of home ownership has been removed from an increasingly large segment of our society.

MRB's have provided over 1,800,000 low- and moderate-income families with affordable financing for their first home. The national average household income of MRB beneficiaries is $26,000—precisely the economic group which needs this subsidy the most. However, the tax-exempt authority of the mortgage revenue bond terminates on December 31, 1988, eliminating yet another form of affordable housing assistance.

The Senate technical corrections bill extends the sunset date of the mortgage revenue bond to June 30, 1989. More importantly, it includes none of the severe restrictions that the Ways and Means bill adopted in its 2-year extension of the program. Although the term of the Finance Committee bill's extension is less, State housing finance agencies know that they will have a workable program into next year. The 2-year term passed by the other body is an extension only in name because its programmatic restrictions would shut down the first-time homebuyer program in many States.

I have introduced a bill, S. 2711, which would comprehensively address our Nation's housing needs. It places special attention on the States' preeminent role in providing housing and their need for tax-exempt bonds and tax incentives to stimulate private investment in low- and moderate-income housing. The measure also calls for a Tax and Housing Policy Coordinating Council which would coordinate tax policy and legislation with the administration's housing policy. It would also advise the President on the consistency between existing and proposed tax policy and housing policy, and comment on tax policy proposed by Congress or the administration. Congress' tax writing committees play a key role in shaping America's housing future. Their work to provide safe, sanitary, and affordable places to live must more closely reflect that of the housing subcommittees.

Mr. President, the Senate's expeditious passage of a clean extension of the mortgage revenue bond is essential to this program's future and to the future of affordable home ownership in our Nation. It would keep this valuable incentive for investment in low- and moderate-income housing alive during expected consideration of comprehensive housing legislation in the 101st Congess. I urge timely passage of the technical corrections bill with its expiring provisions package.

INSURANCE ACCOUNTING PROPOSAL

Mr. DODD. Mr. President, the other body's version of the tax legislation which we are considering contains a provision referred to as the insurance accounting proposal. This amendment is intended on a revenue neutral basis to eliminate the negative impacts on financial reporting which exist for property and casualty insurance companies as a result of the enactment of the discounting requirement in the Tax Reform Act of 1986. These negative effects can impact the ability to raise capital and reduce the capacity of the industry to provide insurance coverage. I would strongly encourage our conferees on the tax bill to accept the insurance accounting proposal in conference in a form which preserves its revenue neutrality and accomplishes the intent to eliminate the negative effects of discounting. The Tax Reform Act of 1986 was projected to increase property and casualty insurance revenues by $7.5 billion over a 5-year period. The current projections of the industry indicate that the industry will pay an additional $9 billion over a 3-year period. Notwithstanding this projected excess of revenue raised, the insurance accounting proposal is not designed to reduce total revenues nor is it designed to repeal the discounting requirements. Rather, through a technical amendment to the Internal Revenue Code, it is merely designed to eliminate the negative effects of discounting. I believe that the Insurance Accounting Group advancing this proposal should be commended for recognizing the fiscal constraints under which these types of problems must be solved. For these reasons, I would again strongly encourage our conferees on the tax bill to accept the insurance accounting proposal in conference in a form which accomplishes the goals of the Insurance Accounting Group while preserving the revenue neutrality of the proposal.

Mr. CONRAD. Mr. President, I rise in support of the pending measure making technical corrections in the 1986 and 1987 tax laws. The need to correct errors and to clarify a number of provisions of the new tax reform law was evident, and we should make sure such changes are enacted before the Congress adjourns.

I am particularly pleased that the Finance Committee has proposed solutions for the problems with the diesel tax, the heifer tax, and several other matters important to rural areas. Farmers and other users of diesel fuel for off-road purposes were faced with an needless and burdensome tax as a result of the 1987 reconciliation bill, which shifted the collection point for the diesel excise tax from the retailer to the refiner. Although still legally exempt from the tax on fuel purchased for off-road use, farmers were required under the 1987 law to pay the diesel tax at the pump and apply for a refund later.

Understandably, there was an immediate outcry from farmers and other exempt purchasers over the inconvenience this change would cause. Federal fuel excise taxes pay for our highways, and it has never been the intent of Congress to levy such taxes on fuel purchased for tractors and other farm vehicles. And as farmers struggled to cope with the potentially devastating effects of the drought this summer, there was naturally considerable resentment of the higher fuel bills and the prospect of cumbersome refund procedures. It made no sense to require people to pay a tax they don't owe, and I am relieved that both the House and Senate bills include this correction.

The Finance Committee's amendment also repeals the heifer tax provision of the 1986 tax law, which has caused substantial accounting problems for livestock producers. Requiring the application of uniform capitalization rules on preproductive expenditures meant that livestock farmers had to keep complicated records of the costs incurred for each animal. Farmers could not deduct these costs until the end of the preproductive period, unless they elected to use straight-line depreciation on all farm assets.

The 1986 provision was primarily intended to discourage agricultural tax shelters for business investors who had little or nothing to do with farming. This objective was largely accomplished, however, once the passive loss rules in the 1986 law took effect. Meanwhile, the heifer tax remains a serious hardship for livestock farmers. The House version of technical corrections offset the cost of repeal by revising certain depreciation rules affecting agricultural structures and equipment. I am pleased that the Finance Committee amendment adopts a similar approach.

Among other provisions of the committee amendment, I welcome the extension of authority for tax-exempt mortgage revenue bonds. North Dakota, like many other States, has relied on these bonds to finance a highly successful program to assist first-time home buyers. The committee proposes a 6-month extension of current law; I am hopeful that it will be possible to agree on a longer extension in conference.

I would like to specifically thank the distinguished chairman of the committee [Mr. BENTSEN] and my able colleagues from Oklahoma [Mr. BOREN] and Oregon [Mr. PACKWOOD] for their help with a provision that permits rural electric, telephone, and water cooperatives to repurchase government loans at a discount without risking adverse tax consequences. As part of Federal policy to encourage the sale of certain loan assets, the Agricultural Credit Act of 1987 gave borrowers of such loans the right of first refusal. However, because many of these cooperatives are 501(c)(12) organizations, they could have lost their tax-exempt status if they bought back their loans at a discounted rate and had the debt forgiveness counted as nonmember income. The proposed correction would eliminate this problem, and allow these transactions to go forward.

Other provisions of value to agricultural areas include a 1-year deferral of tax on income from livestock sales prompted by drought—which should mitigate some of the hardship involved. The committee amendment also clarifies that a special estate tax valuation will be available in cases where a surviving spouse continues to cash-rent the farm property to her children. The lower estate tax rules currently apply when such farm property is share-rented, and the correction appropriately recognizes that cash-rent arrangements involve a similar degree of financial risk.

I urge prompt action by the Senate on the technical corrections bill, to ensure that these important changes are made. I thank the Chair and yield the floor.

Mr. JOHNSTON. Mr. President, I strongly oppose section 761 of the Finance Committee amendment to S. 2238. This provision would bar the application of section 1910 of the Omnibus Trade Act unless the Secretaries of Agriculture, Energy, and the Treasury acting jointly certify that the domestic ethanol industry is not fully meeting domestic demand for ethyl alcohol and that the imported ethanol is necessary to maintain adequate supplies to consumers. Section 1910 of the Trade Act simply permits five companies to import up to 20 million gallons of ethanol apiece to the United States duty free.

Mr. President, the Finance Committee's explanatory statement lists section 761 as a noncontroversial low-cost item. I can assure you that this provision is far from noncontroversial. The battle over duty free imports of ethanol from the Caribbean and U.S. Virgin Islands has been going on at least since consideration of the Tax Reform Act of 1986. At that time, a provision that strongly limited duty free imports was included in the tax bill, despite the fact that: First, this is a trade issue, not a tax issue; and second, no hearings had been held to determine whether the provision had merit.

After much debate, five companies were granted limited grandfathers through 1988. Most of these companies have not yet begun to use their grandfathers; however, these companies are still going forward with their investments and simply wanted to have their grandfathers extended through 1989. The Trade Act granted this to them.

While on its face one could argue that section 761 does not take away these grandfathers, in effect it does because it creates uncertainty and delay. First, given the devastating drought that was experienced in the Midwest earlier this year, there is no doubt that the domestic industry will be unable to meet domestic ethanol demands. It was not able to meet demand in the coastal States before and this situation has been exacerbated by the drought.

Second, even if it is universally accepted that the domestic industry is unable to meet domestic demands, under section 761, duty free ethanol cannot enter the United States until the Secretaries of Agriculture, Energy, and the Treasury certify that the supply is needed in this country. The grandfathers in question expire at the end of 1989. It is feasible that one or more of these Secretaries could delay in certifying the need for the ethanol, thus denying the five companies the use of their grandfathers. Inasmuch as this is an election year, this is a very likely scenario. It will take time for the new administration to organize and get on with business. In the meantime, these grandfathers will be dying a slow death.

Last, what kind of incentive are these businesses being given to invest more money in their projects in the Caribbean and Virgin Islands when at any time the Secretaries may take away their grandfathers? Given the poor economic condition of the Caribbean and the devastation that was caused in some of these countries by Hurricane Gilbert, we should be looking for ways to help our friends, not hurt them.

Mr. President, these grandfathers only last through 1989. Congress has already spent way too much time debating this issue. I hope that this item will be dropped in conference and that these companies will be allowed to use their grandfathers in an unhampered manner through 1989.

Mr. PACKWOOD. Mr. President, could I ask the majority leader about the agenda tomorrow on the subject I mentioned—if we finish this bill tomorrow afternoon or evening, whether we would be in on Saturday. I think there is a possibility of finishing tomorrow and it would certainly encourage the chairman and myself in getting people to move along if they know they would not come in on Saturday if we finish tomorrow.

Mr. BYRD. That has a great deal of appeal to me also because we will have to be in certainly next week a while to do the drug bill. It would be a pleasant surprise if the Senate would be able to finish this bill, seeing what has happened this afternoon, all the time that was taken. Why not get a list of amendments by tomorrow morning and take a look at them?

Mr. PACKWOOD. What time does the leader want to start in the morning?

Mr. BYRD. I would like to come in at, say, 9:30 and start on the 1 hour under cloture at 10, set the vote for cloture at 11, and immediately after that vote, depending on the outcome, I will be in a better position to perhaps respond to the Senator's question just to know myself where we are.

Mr. PACKWOOD. I thank the leader.

Mr. BYRD. If the cloture motion were to be invoked, the Senate would be on the bill clotured until it is disposed of.

I take this opportunity to thank our two managers, Mr. BAUCUS and Mr. PACKWOOD, for the excellent leadership they are showing in the handling of this very difficult and complex bill. I hope we can get it over to the House and get a conference going, if there is one. I do not know what the House will do with it, whether they will elect to have a vote on it or send it to conference or what.

Mr. PACKWOOD. I have talked with the chairman of the Ways and Means Committee. He indicates he is ready to go to conference on Tuesday morning. I think this is the kind of bill that can either be conferenced quite quickly or it simply will not be conferenced. It is not a complicated bill. The differences are rather significant. The administration has a reasonably firm position on how they go on the veto. I do not think the conference will take more than a day or day and a half. Either we will settle it or it will fall apart.

Mr. BYRD. We can take a look at it in the morning. I certainly appreciate the Senator's encouraging and optimistic view of things to come in relation to this bill.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 15 minutes and that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

WORLDNET

Mr. HEFLIN Mr. President, today I rise to salute WORLDNET, one of our Government's premier diplomatic tools and the world's first live interactive television station. Unfortunately, due to language originating in the Senate Foreign Relations Committee, WORLDNET ceased operations on October 1, 1988.

Most of the people who live in this country do not know of WORLDNET or of its radio counterpart—the Voice of America. That's because the U.S. Information Agency, the USIA, which operates these programs, is prohibited from broadcasting in the United States.

But many others know WORLDNET. Five million households, primarily in Europe, receive the network on cable and millions of others see excerpts of WORLDNET interviews on their nightly news programs. These viewers alone would be enough to merit the continuation of WORLDNET, but it reaches many other people outside of Europe. Since WORLDNET's first broadcast in 1983, the people of Asia, Africa, Latin America, and the Middle East have joined the WORLDNET viewing audience.

The primary feature of WORLDNET is "Dialog," a show in which European journalists interview American officials on current topics of the day. I, myself, have appeared on WORLDNET and have found it to be a very stimulating, interactive experience. WORLDNET is performing a great service for the people of the world by supplying news and information that they might not otherwise receive. We in the United States often take for granted the news and information we see on television. Most other countries are not so fortunate.

WORLDNET's programming has extended beyond just news. In September 1986, WORLDNET linked together Nigerian officials with members of the House Select Committee on Hunger to discuss the problem of starvation. In December 1984, WORLDNET was able to link President Reagan and West German Chancellor Helmut Kohl with German and American space shuttle astronauts in orbit.

WORLDNET also broadcasts "America Today," a morning news magazine show, and special documentaries like "Let Poland Be Poland" which was viewed by 185 million people in some 50 countries. This is a phenomenal number of people from such varying cultural and economic backgrounds.

Mr. President, for over 5 years WORLDNET has been a success, making incredible progress each and every year it has been on the air.

Some of my colleagues object to the program's cost and have said that few people are watching. Many opponents base their objections on unrealistic and seemingly arbitrary viewer requirements. They also remain skeptical of the idea of sending television broadcasts to third World countries although these broadcasts can be one of the most valuable uses of this satellite system.

With these objections in mind, Congress mandated a study to measure WORLDNET audience viewership. Of course, I have no objection to such a survey as long it is not used to turn off the switch on WORLDNET.

The objections raised by some of my colleagues are shortsighted. They have set unrealistically inflated viewer goals and complained about the costs. WORLDNET, in fact, is a bargain, using only $37 million of the $820 million of the USIA budget.

Broadcasting to countries of the Third World is particularly important because there is very little competition. Regarding concerns raised over numbers of viewers, I can only remind my distinguished colleagues that this Congress has regularly required Voice of America to broadcast to countries popular with constituents at home whether or not the potential audience interest justified that particular expense. In my judgment the Voice of America has proved and is proving its worth.

In my judgment, congressional stipulations that WORLDNET audiences exceed 2 million people are unrealistic since no satellite-delivered program service in Europe even approaches an audience of 2 million adults daily. The top English language satellite station, Sky Channel, reaches only 1.3 million viewers with 24-hour entertainment programming. WORLDNET broadcasts for only three nonprime time hours to Europe and then shows mostly news and public affairs material.

WORLDNET has an average daily audience of 234,262 adults in Europe which, by comparison, far exceeds the 170,000 average daily United States viewers of C-Span which has twice the potential audience of WORLDNET.

Although the development of cable television in Europe lags well behind that of the United States, experts in the field expect phenomenal growth over the next decade. I want to emphasize to my distinguished colleagues that the United States appears to have a headstart in European audiences through cable televison. I ask you, why should we give up this advantage just before the burst of growth in European cable television in the next few years?

Mr. President, as I mentioned earlier, due to language originating in the Senate Foreign Relations Committee, WORLDNET ceased operations on October 1, 1988. In September, the House of Representatives passed S. 2365, the U.S. Information and Education Exchange Act, which includes a provision that would amend the Foreign Relations Authorization Act for fiscal years 1988 and 1989, concerning the WORLDNET language in Section 209.

I agree with the House modification and urge my colleagues to concur with the House by expanding the WORLDNET audience survey beyond Europe and providing for an extension of WORLDNET operations. I admit that there are problems with WORLDNET but this bill will provide solutions to these problems. We have too much invested in this program to throw it away. This legislation will allow us to fix the problems without sacrificing the program.

I urge my colleagues to support the House measure, thereby continuing WORLDNET operations.

Thank you Mr. President.

TRIBUTE TO TIM RUSSELL

Mr. HEFLIN. Mr. President, I am proud to rise today to pay tribute to my friend, Tim Russell of Foley, AL, who was recently elected as vice chairman of the National Association of Mutual Insurance Co. He has been very active in this organization and has formerly received both their service and merit awards.

Tim Russell is an ideal citizen, offering his services to the community where they can best be used. His distinguished record extends throughout his education, his civic activities, his military and professional experiences, and his insurance activities.

Tim graduated in the top of his class from Foley High School and the University of Alabama and remains active in the University of Alabama Alumni Association, serving as both the past president of the Baldwin County Chapter and the past national vice president. Tim continued his education by earning an MBA degree from the University of South Alabama and becoming a chartered property casualty underwriter.

Although Tim is a very busy man, he always has time to devote to civic activities. As in the rest of his life, Tim's accomplishments are far too numerous to list, but some demand attention. Few activities require as much time and receive as little attention as the serving as president of a civic organization. Tim is past president of at least four such organizations—the South Baldwin Chamber of Commerce, the South Baldwin United Way, the Foley Rotary Club, and the Foley Quarterback Club. He also serves as a board member for Riviera Utilities, the Foley Library Board, St. Benedict's School, Baldwin County United, and St. Margret's Church as well as acting as the Paul Harris Fellow for Rotary International.

During the Vietnam war, Tim served as a captain in the U.S. Army and was awarded the U.S. Army Commendation Medal. In the Army, as in all of his life, Tim distinguished himself. Perhaps his military success showed a hint of his future professional success.

Tim Russell currently serves as executive vice president of the Baldwin Mutual Insurance Co. and has served as executive vice president of the Gulf Coast Title Insurance Co., the president of Mobile Land Records, and the secretary-treasurer of Coastal Title, Inc. He is also on the board of directors of these four organizations as well as that of Title-Pro, Inc.

Mr. President, Tim Russell is a sharp businessman, a trusted and good friend. I again congratulate him on his election as national vice chairman of the National Association of Mutual Insurance Co. and wish him much continued success.

Thank you, Mr. President.

TRIBUTE TO H.E. MONROE, SR.

Mr. HEFLIN. Mr. President, I am proud to rise today in tribute to Mr. H.E. Monroe, Sr., who recently announced that he will retire as chairman of the Board of Commissioners of the Housing Authority of the City of Huntsville, AL.

Mr. Monroe has done a truly remarkable job on the Board of Commissioners during over 47 years of service. He was appointed to the original Board of Commissioners of the Housing Authority on August 14, 1941, and has served continuously since that date. The board has been guided by his able leadership and steady hand since he became chairman in December of 1972. When Mr. Monroe retires, he will hold a truly outstanding distinction. He will have served 48 years and become the second longest serving Housing Board Commissioner in the entire United States.

Mr. President, H.E. Monroe is one of Huntsville's most remarkable citizens and the city will show his influence for decades to come. His foresight and leadership have helped transform Huntsville from an agricultural town to a high tech town, from cotton to computers. He played a large role in transforming the downtown area into an efficient, attractive urban center 21 times as large as the downtown area in 1950. He endeavored to make the parking, traffic, and other urban systems progress with the rest of the town. His efforts have not been confined to business interests but extended to providing sufficient and adequate housing for Huntsville's indigent families and elderly citizens.

Mr. Monroe's influence also extends beyond his Housing Authority duties. He was an original member of the building authorities which organized, financed, and built the public library, the downtown parking garage, the Madison County Courthouse, the Municpal Building, and the Huntsville Hospital expansion. These buildings represent the most used and recognized building in Huntsville and have shaped the downtown area.

H.E. Monroe is not a one-sided man. He is a widely recognized authority on Huntsville history and a highly regarded businessman. He organized the Business Equipment Co. in 1923. This company later became the Monroe Business Equipment Co. and now ranks as one of north Alabama's largest office suppliers.

Mr. President, the Huntsville Housing Authority will sorely miss Mr. Monroe's expert guidance. He should be justly proud of all his accomplishments and of the growth he has fostered. I am indeed proud to congratulate H.E. Monroe for all that he has done and to thank him for his efforts.

Thank you Mr. President.

TRIBUTE TO THE ALABAMA SYMPHONY ORCHESTRA

Mr. HEFLIN. Mr. President, I am very proud to rise today to pay tribute to the Alabama Symphony Orchestra and congratulate them on their stunning performance at the Kennedy Center on Sunday. I was privileged to attend their brilliant performance and know they represented Alabama well in their first major engagement outside of the State.

The orchestra played to an enthusiastic audience, all of whom appreciated the energy and skill displayed by conductor Paul Polivnick and the members of the Alabama Symphony. Their performance of Vladimir Ashkenazy's arrangement of Mussorgsky's "Pictures at an Exhibition" far outshone their classification as a regional orchestra. Composer Russell Peck watched from the audience as Polivnick skillfully directed his "Peace Overture," which was composed for this orchestra. Khachaturian's piano concerto featured a brilliant solo by Lorin Hollander. The orchestra showed the quality of performances which they regularly provide to the citizens of Alabama.

Many people contributed to the efforts which brought this concert to Washington. The most obvious contributors are Paul Polivnick and the musicians who have devoted their lives to music and the enjoyment of others. Less obvious are the behind-the-scenes workers who endeavored to ensure that the concert would be a success. From the symphony promoters to the Secor Bank which helped sponsor the event, hundreds of people worked to assure that the performance would leave everyone with a favorable impression. I would especially like to mention Mr. and Mrs. Stephen P. Strickland and Mr. and Mrs. John W. Wilson, Jr., who served as co-chairs of the event and whose able leadership helped fill most of the seats and arrange the many events surrounding the performance.

Mr. President, I am very pleased that so many people in our Nation's Capital were able to experience one of Alabama's greatest cultural resources. I have watched the symphony's progress over the years and look forward to their continued development and improvement. I ask unanimous consent that a shining review of their performance be reprinted in the Congressional Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Washington Post, Oct. 4, 1988]

The Alabama, Flexing Its Muscle

(By Joseph McLellan)

The Alabama Symphony did everything right Sunday afternoon in its debut performance at the Kennedy Center. Based in Birmingham, the 55-year-old ensemble gives frequent performances elsewhere in Alabama and, after three seasons under conductor Paul Polivnick, seems to be leaving its regional status to claim national attention.

A Kennedy Center appearance is a logical step in that direction, and that step was taken firmly, gracefully and with a clear sense of purpose. There were empty seats in the Concert Hall; it's not easy for an unknown orchestra to attract audiences in a city where the Vienna Phillharmonic will be playing next month and most of the world's major orchestras are regular visitors. But the Alabamians made a solid, positive impression and will be welcome when they return.

The concert demonstrated the dramatic improvement of American orchestras in the past generation—not so much in Boston, Chicago, Philadelphia, etc., which had little room for improvement, but in humbler orchestras with smaller budgets. The process has been evident in the National Symphony for some time, and Polivnick and his colleagues showed that it has also been happening elsewhere.

Clearly, the improved training of young American musicians is a major factor. Equally important has been the end of the stupid prejudice against women players in one orchestra after another. The members of the Alabama Symphony are predominantly young, about 50 percent women and a fine collection of musicians. They gave a bright, precise, energetic and highly enjoyable performance.

Polivnick chose his program as thoughtfully as he conducted it. He blended novelty and familiarity by playing Mussorgsky's "Pictures at an Exhibition" in the orchestration of Valdimir Ashkenazy rather than the more familiar Ravel arrangement. The effect was something like seeing an old friend in new clothes. Ashkenazy changes the order of movements a bit, sometimes uses strings where Ravel uses winds, and vice versa, and in general makes it sound a bit more Russian—perhaps closer to what Mussorgsky might have done.

Lorin Hollander soloed brilliantly (after a bit of stiffiness at the beginning) in Khachaturian's Piano Concerto, which sounded inventive, folksy, colorful and a few minutes too long. Soprano Cynthia Burbage Smith substituted, wordlessly and prettily, for an Armenian folk instrument in the slow movement.

Paul Peck's "Peace" Overture, composed for this orchestra, had a wealth of invention, exemplary use of orchestral color and a good sense of climax in the tradition of romantic overtures.

TRIBUTE TO JOHN STALLWORTH

Mr. HEFLIN. Mr. President, I want to rise today to congratulate my good friend, John Stallworth, of Huntsville, AL, for his recent selection to the Alabama Sports Hall of Fame. I can think of no athlete more deserving of this recognition and honor than John Stallworth. He was achieved a level of success in each of his endeavors that most of us can only dream about.

I daresay, most of you have heard of John Stallworth and remember his spectacular career with the Pittsburgh Steelers. In college at Alabama A&M, however, football had to share time with his studies. John devoted himself to his studies and made the dean's list. He was also named to the "Who's Who Among Students in American Universities and Colleges." He graduated from Alabama A&M in 1974, earning a B.S. degree in management and later earned a M.S. in business administration with a concentration in finance. Although he devoted time to academic pursuits, his outstanding athletic ability still shone bright. He was selected to the all-conference teams from 1972 to 1974 and was the first Alabama A&M player to participate in the Senior Bowl. John's gridiron exploits are still seen in the A&M record books where he is recognized for having the most career receptions and the most receptions in one game. He was named the most outstanding athlete at A&M in 1974. The university was indeed fortunate to have a student-athlete of John Stallworth's caliber.

John Stallworth's professsional career spanned 14 years and he captured numerous records, perhaps the most important of which are his Super Bowl rings. These rings make an important statement about John Stallworth—he is a winner.

He was voted the most valuable player by his Steelers teammates in 1979 and 1984 and was named to the Steelers all-timer team in 1982. He is the 15th in the NFL in career receptions and 12th in the NFL in career receiving yards while leading his team in both categories. He also managed to lead the Steelers in career touchdown receptions with 63 and career 100-yard games with 25 while catching at least 1 pass in 67 consecutive games from 1977 until 1982. Despite the presence of other outstanding receivers like Lynn Swann, John also leads almost all Steeler postseason reception records.

Perhaps the best mark of John Stallworth's greatness lies in his Super Bowl performances. He holds the record for both the game and career highest average gain categories. He stands as the Super Bowl leader for the most touchdowns in both a game and in his career. The rest of his accomplishments are far too numerous to list but I feel the ones I have named show that John Stallworth is indeed a fine individual and a winner.

Once again, I would like to congratulate John on his selection to the Alabama Sports Hall of Fame. I look forward to his continued success.

TRIBUTE TO DANIEL C. BOONE, JR.

Mr. HEFLIN. Mr. President, it is my great pleasure to rise today in tribute to my good friend, Daniel C. Boone, Jr., of Huntsville, AL, who was recently named Alabama's "Oilman of the Year."

Dan Boone is president of D.C. Boone Oil, a company begun by his father in 1955. He has not been satisfied to rest on his laurels and survive off the good reputation obtained by his father. Dan was worked diligently to expand and improve his business. He has served brilliantly as the national brand chairman for Citgo, president of D & G, Inc., president of Mountainview Realty, and one of the board of directors of the Huntsville Country Club. In addition to these duties, he has recently served as president of the 250-member Alabama Oilman's Association.

As if these duties were not enough, Dan manages D.C. Boone Farms which consists of 1,115 acres of farmland and 270 head of Chi-Angus cattle. He has been one of the most influential and effective leaders the Alabama Oilman's Assocation has ever had. The association will be fortunate to elect in the future officers of Dan Boone's ability and integrity. I again congratulate him on his selecton as Alabama's "Oilman of the Year," and look forward to his continued success.

RECOGNIZING SENATOR DURENBERGER AS THE RENEWABLE FUELS ASSOCIATION'S ETHANOL LEGISLATOR OF THE YEAR

Mr. DOLE. Mr. President, as most Members know, Kansas enjoys the distinct honor of being the Nation's No. 1 wheat-producing State. Back in 1970 I began to explore the idea of making fuel alcohol from wheat and other grains. Today the ethanol industry has carved out an important niche in providing U.S. consumers with a quality product that is good for the environment and a good market for farmers, who realize that a growing ethanol industry is in their best interest.

Unfortunately, outside of a few agricultural publications, you do not read much about ethanol in the national press. But that may be changing. Ethanol and its allies are now starting to receive the long-overdue and favorable recognition that they so greatly deserve.

It is only fitting that the Renewable Fuels Association today recognized our colleague, Senator Dave Durenberger, for his years of hard work for the industry by awarding him its "Legislator of the Year" award. As a colleague of Dave's on the Senate Finance Committee, I have seen his handiwork. It would be hard to find another Member of the Senate whose record of accomplishment is stronger. He truly is a national leader on ethanol.

CONCLUSION

Mr. President, for the benefit of those who were not fortunate enough to attend today's award ceremony, I ask unanimous consent that a copy of Senator Durenberger's remarks to the Renewable Fuels Association this morning be inserted into the Record at this point.

There being no objection, the remarks were ordered to be printed in the Record, as follows:

Remarks by Senator Dave Durenberger—Ethanol Fuels: The Pollution Solution the Renewable Fuels Association

I have been in the Senate for just shy of 10 years now. The first big problem that came up when I got here in 1979 was the Iranian revolution and the resulting energy crisis in the United States. And one of the hottest new ideas in those days was gasohol. Back then, gasohol was almost a crusade for some.

As a member of the Senate Finance Committee I struggled for many long months in 1979 trying to design a windfall profit tax on decontrolled oil prices coupled with an alternative fuels program to make this Nation less dependent on imported energy. People put forward all kinds of energy options—windfarms—ocean thermal energy, fuel cells, magnetohydrodynamics, congeneration. We didn't lack for proposed solutions to the energy crisis.

But one of the few options which had any support back home was gasohol—fuel made from American corn. I bet many of you were part of those "back home" efforts. In Minnesota we had a group that went around the State holding press conferences with a backyard still as the main attraction . . . promising that it could produce fuel that would free a whole nation from gas lines. One member of the group would dress up as an Arab sheik—the robe and the headdress and the whole bit—a couple of State legislators would always show up—and after the news conference folks would ride around in a car fueled with 10 percent ethanol to prove that it worked.

We came back to Washington and made a lot of law. It was a real challenge to spend the $260 billion of projected revenue. But we did. All sorts of tax credits for storm windows and solar collectors and windmills, a synthetic fuels corporation for big industry, a national weatherization program for little industry, an energy bank, and so on. Most of that is gone now. And looking back on it, we should be glad that most of it is gone now.

But ethanol has survived the passing of the energy crisis. It's an important element in our national fuels market. And it has the potential to play a much larger role. The Government's commitment—at least the congressional commitment—to the industry and its promise remains strong.

Part of the reason that ethanol is still on the scene, while other alternatives have faded, is to be found in the environmental advantages of ethanol fuels. As a member of both the Finance Committee and the Environment Committee of the Senate, I have had an almost unique opportunity to watch—and play some role in shaping—the whole legislative program for ethanol fuels. Energy security and farm income are still important parts of the foundation for a national ethanol fuels program. But today there is a plank in our platform for ethanol that we never even thought of in 1979—protection of public health and a better environment.

The transition from energy security to environmental protection really began in 1983 and 1984 when we pressed the Environmental Protection Agency to complete the phasedown of lead in gasoline. Lead steals intelligence from our kids. EPA's study concluded that high-octane leaded gasoline has taken four points from the national intelligence quotient for a whole generation of Americans. Even OMB blessed the cost-benefit study. We got smart and got the lead out. It's the most important public health achievement of this decade.

We were able to convince the Government and the American public that a phasedown was possible in part because ethanol was available as an alternative octane enhancer. No one should underestimate the concern in the farm community for the loss of lead as a fuel component. In addition to enhancing octane, lead lubricates valves and prevents engine damage under the heavy-load conditions experienced by tractors and farm trucks. Concern in the farm community for the effects of a lead phasedown was to some extent mitigated by the role that ethanol was expected to play as an alternative octane booster. And the lead phasedown was accomplished.

And then we discovered carbon monoxide. Not us really, but the dozens of cities across the country which are not in compliance with the Federal carbon monoxide standard; 59 cities which are home to 72 million Americans experience carbon monoxide levels that endanger public health. They are so-called non-attainment cities subject to Federal sanctions for dirty air.

Carbon monoxide is a pollutant that comes almost entirely from mobile sources—not powerplants or big industry. The fuel in the car or truck doesn't burn completely. It's not converted to carbon dioxide and water vapor. It stops at carbon monoxide. The extra atom doesn't catch up to the combustion process because the engine is cold or the carburetor dirty or the fuel of poor quality. Poisoned air is the result.

One way to solve the problem—and a means more attractive to local officials than politically unpopular transportation control measures—is to get extra oxygen into the fuel. As you all know, and as we are trying to tell the public here, there is more oxygen in ethanol than in gasoline. In fact, it is the most oxygenated of all the available fuels. It naturally burns cleaner. EPA has said that using ethanol blends may reduce carbon monoxide emissions from automobiles by as much as 20 to 30 percent.

Non-attainment, the failure to meet ozone and carbon monoxide standards, is an issue which the Environment Committee took up at the beginning of the 100th Congress. We reported S. 1894, the Clean Air Standards Attainment Act, in November of last year. It is a comprehensive rewrite of the Clean Air Act which was intended to achieve healthy air for millions of Americans in the next few years. A principal element of the carbon monoxide attainment strategy in S. 1894 is a requirement that oxygenated fuels—that is principally ethanol blends—be used in all cities failing to meet the carbon monoxide standard.

This fall I asked your organization, the Renewable Fuels Association, to look at the provisions of S. 1894 and to determine what effect passing the bill would have on the ethanol industry. The analysis was included in a letter which I received on September 16. The numbers are just great:

Ethanol production would increase from 900 million gallons a year today to cover 2 billion gallons by 1995;

40 to 45 new ethanol production facilities would be built in rural America representing 30,000 new jobs and $2.5 billion of investment;

Grain utilization for ethanol production would increase from 350 million to 900 million bushels per year; and

Farm income would be up by $1.8 billion while the cost of federal farm programs would decline by $1 billion.

It's almost enough to make you say, "Hallelujah" for the devil that is carbon monoxide pollution.

I think we are about to take another step in our understanding of the environmental benefits of ethanol fuels. One response of the oil refining industry to the lead phasedown has been the use of more aromatic compounds—benzene, toluene and xylene—in motor fuels to increase octane. The aromatic content of motor fuels is up to 50 percent with further increases expected.

The problem is that these chemicals are serious air pollution problems. They are in the class of chemicals that we call air toxics. Benzene is a potent human carcinogen. Recently the South Coast Air Basin in California completed a study of toxic air pollutants in the Los Angeles area. They found that exposure to benzene—released to the air mostly from fuel sources—was a serious cancer threat. Over a lifetime 1 in every 1,000 persons living in Los Angeles County can be expected to get lung cancer as the result of benzene exposure. That's 222 lung cancer deaths a year in one county from that one pollutant alone. We're in the process of trading developmental retardation caused by lead for a benzene cancer epidemic.

Again, ethanol is the answer. It is not a toxic pollutant. There aren't negative health consequences from the emissions. It should be the high-performance fuel of choice. We'll need to look at the benzene question more closely when we take up Clean Air legislation in the next Congress.

I have a subscription to the New Republic magazine. It comes in the mail and I read it regularly. Last Spring the New Republic ran a very nasty little piece on the ethanol fuels industry. Their complaint went to the tax and tariff advantages that have been adopted over the years to encourage the use of ethanol fuels. They made the tax code sound like a welfare program for grain processors.

As I held that issue of the magazine in my hand and read that story, I couldn't help but think about the subsidy which the New Republic enjoys. We have a postal system in the United States with a graduated rate structure. There's first class and second class and right on down to fourth-class mail. All with different rates. And there are subsidies for books and magazines and newspapers sent through the mail at low cost.

When you send a letter to Aunt Minnie, you pay too much for the postage stamp. You are over-charged so the Postal Service can run a welfare program for the editors of New Republic magazine and their colleagues at other journals of public opinion. If New Republic had to pay first-class rates or anything like the full cost of delivering their magazine door-to-door, they wouldn't be in business.

I happen to think that the magazine subsidy is a good idea. I suppose we could have a nation where only the National Enquirer and other grocery store tabloids could make a go of it. But I don't think we would be a better nation as a result. So the postage subsidy for magazines and newspapers is a good subsidy.

And I suppose we could have a nation more dependent on dirtier fuels from foreign countries. We could take more and more of OPEC's oil, mix in some butane to run up the volatility, and some benzene to boost the octane, and put it on the market at a price lower than ethanol blends and other alternative fuels. The air we breathe would be a greater threat to our health. Our economy would be more hostage to foreign events. There would be fewer Americans working. Farm income would be lower. Farm subsidies higher. We could go that way.

But we wouldn't be a better nation as a result. Those are all the things I've been working against in my time in the Senate. The tax and tariff incentives for alternative fuels—and the incentives that we are going to put in the Clean Air Act next year—are good for America. They're good for our health . . . for our environment . . . for our security . . . and for our farmers. Even a magazine editor or two is likely to benefit from cleaner fuels in our future. Ethanol is to the motor fuels industry as the New Republic is to weekly journalism . . . a higher class of product that is a net benefit to the nation.

So, we've had a long partnership . . . you and I . . . and come a long way from the first days of the gasohol crusade. I'm going to be back in the Senate in January sponsoring Clean Air legislation that takes full advantage of the promise of ethanol fuels. And as always I and my colleagues in the Senate—like Max Baucus and Tom Daschle and others who have carried the message in committees and on the floor—will depend upon your expertise and your enthusiasm to get the legislative job done.

We didn't get a Clean Air bill this year. It's the third time this decade we have failed. The air is not getting any cleaner, though. The need for a new program is ever more urgent. We don't plan on trimming our sails. We want clean air . . . now. We're counting on your organization to be part of the coalition that brings a bill to the President's desk. And we're counting on your fuel to bring cleaner air to American cities.

Thanks for all of the times that we have joined together to make a difference for the better . . . and for the people of this nation.

FAA'S BANKRUPT POLICY AT O'HARE

Mr. DIXON. Mr. President, yesterday the Federal Aviation Administration announced new restrictions on air traffic at O'Hare Airport. I am delighted to see, may I say, the occupant of the chair, to whom all of this will be, as Yogi Berra so often said, "deja vu all over again." These restrictions demonstrate FAA's inability to competently manage our air traffic control system. Peak-hour landings will now be limited to between 80 and 83 per hour, Mr. President, a figure that is over 16 percent below the current limit.

The FAA is justifiably concerned about the number of controller mistakes at O'Hare. There have been 30 so far this year, far surpassing the 1986 record of 22. I find that record appalling. It is simply indefensible and it demonstrates the total bankruptcy of the way this administration is handling our air traffic control system.

The air traffic controllers went on strike and were fired in 1981. Incidentally, I supported firing them at that time, Mr. President, but it is now 1988, and yet O'Hare, 7 years later, the world's busiest airport, still has less than half of the fully trained controllers that it should have. It is the world's busiest airport with half of the fully trained controllers it should have.

I want to repeat that for my colleagues because it is so incredible, so absolutely incredible, that I almost cannot believe it myself. O'Hare has only 35 full-performance level journeymen controllers instead of the full strength level of 72. Along with many of my colleagues I called on the administration back in December 1981 to rehire some of the fired controllers after they worked out the various types of requirements that would be necessary to clear them for rehiring.

The administration refused taking the absolutely bizarre position that the fired controllers would be eligible to work in other Federal jobs but they could not even be considered for employment in the jobs the Federal Government spent literally hundreds of thousands of dollars to train them for.

Over the years the House and the Senate have continued to press, and the occupant of the chair, has pressed for hiring back some of the strikers, and is for enlarging and improving our controller work force.

We did this because it is clear that the FAA was and is mishandling the rebuilding of the air traffic control system. These latest restrictions at O'Hare make that clear. Mr. President, administration leaders have had 7 years and where are they after 7 years? They are nowhere. Their priority was maintaining their rigid ideological opposition to hiring back any fired controllers at any cost.

They seem much less concerned as to whether there is going to be a controller work force that is large enough and well trained enough to safely meet our air travel needs. When the mistakes get so numerous, and so serious as at O'Hare that even they can no longer ignore them, they respond with Band-Aids instead of the real care that is required. Unfortunately, we are the ones who pay the price for their failure. It is the American traveling public that suffers from their lack of attention to the real issues. O'Hare is the most critical airport in our entire air travel network and in the world. Restrictions at that airport affect not just Illinoians, Mr. President, but Americans all across this Nation of ours, and every Member of the Congress who flies across the country on a weekly, almost, basis and flies through O'Hare Airport.

I cosponsored legislation to take the management of our air traffic control system out of the hands of the Department of Transportation and to make it independent. FAA's announcement yesterday is a declaration of total bankruptcy, and admission that they are simply not up to the job of running a safe, efficient, amply staffed air traffic control system.

Congress ought to relieve them of their responsibility as soon as possible.

Mr. President, I hold in my hand the lead editorial in that great newspaper, the Chicago Tribune, of October 6. It is entitled "No More Delays on O'Hare Safety." I am not going to burden the Senate by reading this. In the interest of time—it is late in the evening, the Chair has been so nice to give his attention, the majority leader and others—I ask unanimous consent that this editorial be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Chicago Tribune, Oct. 6, 1988]

No More Delays on O'Hare Safety

O'Hare Airport and Atlanta's Hartsfield Airport have long been running neck-and-neck for the title of world's busiest. Last year they were also close to a tie in mistakes by air traffic controllers.

Their control towers are no longer tied. Everyone who has to fly in and out of O'Hare should quake with fear at that news.

Federal officials report that controllers at O'Hare have made almost five times as many errors this year as their counterparts in Atlanta.

More than six months ago, the National Transportation Safety Board demanded immediate corrective action in the O'Hare control tower. Mistakes that allowed planes to come dangerously close were occurring at such an alarming rate, said the board, that 1988 errors could well double the 1987 total.

The board was being optimistic. With almost three months left in the year, the number of errors already is more than twice as high as the 1987 total—29 near-collisions, compared with 12 all last year.

Twenty-nine times controllers have made mistakes that, but for sheer good fortune and extraordinary pilot skill, could have ended in fiery death.

And while all of you who don't have to use O'Hare on a particular day extend sympathy to those who do, save a few kind thoughts for the folks in the control tower. The danger at O'Hare is not their doing. Too many of the controllers are insufficiently trained and inadequately supervised. All of them are overworked. Last Friday, when there were two errors, 18 experienced controllers should have been on duty, assisted by a number of newer ones; instead, there were only a total of 14. The radar room was a "zoo," one of them told Gary Washburn, Tribune transportation writer.

Those same problems—overwork and underexperience—have plagued the O'Hare tower for so long, and the National Transportation Safety Board has been so strong and precise in its complaints, that it's a wonder the area's political, business and civic leaders aren't screaming in unison for change. O'Hare, after all, is one of this region's great assets, critically important to the continued growth of its economy. It's bad enough that its passengers have to suffer through interminable construction projects, traffic jams and delayed flights. They shouldn't also have to fear for their lives.

The safety board and the airlines have laid out specific corrective measures to the Federal Aviation Administration, the agency responsible for control tower operations. After insisting for a long time that things really weren't so bad, the FAA did provide a few more controllers. A year ago, O'Hare had only 87, although 114 were authorized. As of last month, it had 94. That's still far too few.

The FAA's assignment policy is an equally serious problem. Almost half of the weakest graduates of its controller training program wind up at the busiest control towers, presumably so their weaknesses can be covered up by their colleagues. Top graduates are likely to go to low-volume airports. In many cases, graduates can pick where they want to work.

Not all of the problem is the FAA's fault. Rigid federal rules forbid bonuses or merit increases to controllers with tougher assignments. And the Reagan administration simply hasn't given it enough money.

The next administration must free the FAA from those ridiculous pay rules and make sure it has adequate funds. But passengers shouldn't have to wait that long to be assured they'll survive the O'Hare experience. The control tower needs help, skilled help, and it needs it now.

Mr. DIXON. I say in conclusion I thank the Chair and other like-minded great Senators who have spent a lot of time on this issue for what they have done, and I suggest there is certainly more to be done. I want to ask this in conclusion:

Are we going to wait until one of these near misses turns out to be a crash and hundreds of lives are lost before we do something? You know, I think that is the message here. With these near misses, it is sheer luck and great pilot skill that has prevented any serious accidents to date. That cannot go on forever—22 last year, 30 this year, and I urge men like the occupant of the Chair who spent a considerable amount of time and energy in doing the responsible thing to continue to fight and provide their leadership. I know the people in New Jersey will send back the Senator to continue his great leadership in that good cause in this U.S. Senate to see to it that we do something about this urgent problem.

I yield the floor, Mr. President.

MESSAGES FROM THE HOUSE

At 10:25 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4174) to amend the Small Business Act and the Small Business Investment Act.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1417. An act to amend the United Nations Participation Act of 1945 to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by providing a civil action for recovery from persons engaging in torture, and for other purposes:

H.R. 3685. An act to amend title 31, United States Code, to increase from $25,000 to $40,000 the maximum amount that the United States may pay in settlement of a claim against the United States made by a member of the uniformed services or by an officer or employee of the Government;

H.R. 4140. An act to require an Office of Investigations within the Nuclear Regulatory Commission;

H.R. 4379. An act to amend the Immigration and Nationality Act to provide to aliens who are nationals of certain foreign states in crises authorization to remain temporarily in the United States;

H.R. 4480. An act to change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes;

H.R. 5115. An act to amend the Immigration and Nationality Act to revise the numerical limitation and preference system for admission of independent immigrants, and for other purposes; and

H.J. Res. 644. Joint resolution granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission.

ENROLLED BILL SIGNED

At 12:11 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 555. An act to regulate gaming on Indian lands.

The enrolled bill was subsequently signed by the President pro tempore (Mr. STENNIS).

At 4:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 2632. An act to provide for a Peace Corps training and educational benefits demonstration program;

H.R. 3515. An act to amend the Solid Waste Disposal Act to require the Administrator of the Environmental Protection Agency to promulgate regulations on the management of infectious waste;

H.R. 4844. An act to direct the Federal Aviation Administration to provide assistance to law enforcement agencies in their efforts with respect to drug trafficking interdiction, and for other purposes;

H.R. 4879. An act to amend the Depository Institution Management Interlocks Act to revise the manner in which the service of directors of depository institutions and depository holding companies are regulated, and for other purposes;

H.R. 4982. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products;

H.R. 5389. An act concerning disaster assistance for Bangladesh;

H.R. 5420. An act to authorize the lease of a specified naval repair ship to the Government of Pakistan;

H.R. 5423. An act to authorize continued storage of water at Abiquiu Dam in New Mexico; and

H.J. Res. 597. Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 303. A concurrent resolution commending humanitarian treatment of Southeast Asian refugees and urging further measures to ensure humanitarian treatment of the refugees;

H. Con. Res. 371. A concurrent resolution concerning the United States response to the atrocities reportedly carried out in Burundi in August; and

H. Con. Res. 381. A concurrent resolution expressing the sense of the Congress regarding United States goals with respect to Lebanon.

The message further announced that the House has passed the following joint resolution, without amendment:

H.J. Res. 364. Joint resolution to designate the week of October 2 through 8, 1988, as "National Paralysis Awareness Week".

The message also announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 149. A concurrent resolution expressing the sense of the Congress regarding the restoration of democracy to Haiti and on conditions for the resumption of United States assistance to that country.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3471) to establish the Veterans' Administration as an executive department.

The message also announced that the House has passed the bill (S. 2653) to establish a National Commission on the Thrift Industry; with an amendment, in which it requests the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 6:07 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following bills and joint resolutions:

S. 908. An act to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments;

S. 2800. An act to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission;

H.R. 4026. An act to authorize the Secretary of Agriculture to exchange certain National Forest System lands in the Targhee National Forest;

H.R. 4267. An act to authorize additional appropriations for the WEB Rural Water Development Project, SD, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and to rename certain facilities of the Central Valley Project, CA;

H.R. 4028. An act to designate the United States Post Office Building located at 1105 Moss Street in Lafayette, LA, as the "James Domengeaux Post Office Building";

H.R. 4433. An act to designate the United States Post Office Building in Jeannett, PA, as the "John Dent Post Office Building";

H.R. 4857. An act to amend the Job Training Partnership Act to make a technical change; and

H.J. Res. 602. Joint resolution in support of the restoration of a free and independent Cambodia, the withdrawal of Vietnamese forces, and the protection of the Cambodian people from a return to power by the genocidal Kymer Rouge.

The enrolled bills and joint resolution were subsequently signed by the Acting President pro tempore (Mr. WIRTH).

MEASURES REFERRED

The following bills, previously received from the House of Representatives for concurrence, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1510. An act to amend title 35, United States Code, and the National Aeronautics and Space Act of 1958, with respect to the use of inventions in outer space; to the Committee on the Judiciary.

H.R. 4939. An act to amend the Safe Drinking Water Act to control lead in drinking water; to the Committee on Environment and Public Works.

H.R. 4972. An act to authorize appropriations for the Patent and Trademark Office on the Department of Commerce, and for other purposes; to the Committee on the Judiciary.

The following bills and joint resolution were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1417. An act to amend the United Nations Participation Act of 1945 to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by providing a civil action for recovery from persons engaging in torture, and for other purposes; to the Committee on the Judiciary.

H.R. 2632. An act to provide for a Peace Corps training and educational benefits demonstration program; to the Committee on Foreign Relations.

H.J. Res. 597. Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes; to the Committee on Energy and Natural Resources.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 371. A concurrent resolution concerning the United States response to the atrocities reportedly carried out in Burundi in August; to the Committee on Foreign Relations.

H. Con. Res. 381. A concurrent resolution expressing the sense of the Congress regarding United States goals with respect to Lebanon; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4480. An act to change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes;

H.R. 4982. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products;

H.R. 5420. An act to authorize the lease of a specified naval repair ship to the Government of Pakistan.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, October 6, 1988 he had presented to the President of the United States the following enrolled bill:

S. 555. An act to regulate gaming on Indian land.

REPORTS OF COMMITTEES

The following reports of committees were submiteed:

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment.

S. 2869: A bill to authorize appropriations for the completion of certain walls of the Internal Revenue Service Building located in Washington, DC (Rept. No. 100-589).

By Mr. BIDEN, from the Committee on the Judiciary, with amendments:

S. 1867: A bill to amend title 28, United States Code, to make certain improvements with respect to the Federal court interpreter program, and for other purposes (Rept. No. 100-590).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GLENN, from the Committee on Governmental Affairs:

Eric H. Holder, Jr., of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for there term of fifteen years;

Mildred M. Edwards, of the District of Columbia, to be an Associate Judge of the Superior Court of the Distict of Columbia for the term of fifteen years;

John David Davenport, of Oklahoma, to be a Member of the Federal Retirement Thrift Investment Board for a term of three years;

Stephen E. Bell, of Virginia, to be a Member of the Federal Retirement Thrift Investment Board for a term of two years;

James H. Atkins, of Arkansas, to be a Member of the Federal Retirement Thrift Investment Board for a term of three years; and

Bert H. Mackie, of Oklahoma, to be a Governor of the United States Postal Service for the term of expiring December 8, 1989.

(The above nominations were reported with the recommendations that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HEINZ:

S. 2866. A bill to amend the Foreign Agents Registration Act of 1938 to strengthen the registration and enforcement requirements of that act; to the Committee on Foreign Relations.

By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. DURENBERGER, Mr. STAFFORD, Mr. BUMPERS, and Mr. GORE):

S. 2867. To establish national policies and support and encourage international agreements that implement energy and natural resource conservation strategies appropriate to preventing the overheating of the Earth's atmosphere, known as the "greenhouse effect"; to the Committee on Finance.

By Mr. HEFLIN:

S. 2868. A bill for the relief of Hoar Construction, Inc. of Birmingham, AL, to settle certain claims filed against the Small Business Administration; to the Committee on the Judiciary.

By Mr. BURDICK, from the Committee on Environment and Public Works:

S. 2869. A bill to authorize appropriations for the completion of certain walls of the Internal Revenue Service Building located in Washington, DC; placed on the calendar.

By Mr. HECHT:

S. 2870. A bill to delay for 1 year the implementation of the Medicare Catastrophic Coverage Act and provide for a study of the coverage and funding of such act; to the Committee on Finance.

By Mr. HEINZ:

S. 2871. A bill to amend the Surface Mining Control and Reclamation Act to provide that no reclamation fee is owed on surface coal mining activities involving culm bank material produced before August 3, 1977; to the Committee on Energy and Natural Resources.

By Mr. DANFORTH (for himself and Mr. BOND):

S. 2872. A bill to provide for the establishment of White Haven National Historic Site in the State of Missouri, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for Mr. BENTSEN (for himself and Mr. PACKWOOD)):

S. Con. Res. 154. A concurrent resolution to correct additional technical errors in the enrollment of the bill H.R. 1720; considered and agreed to.

By Mr. BYRD (for Mr. INOUYE):

S. Con Res. 155. A concurrent resolution correcting the enrollment of S. 136; considered and agreed to.

By Mr. BYRD (for Mr. INOUYE):

S. Con Res. 156. A concurrent resolution to correct the enrollment of S. 2723; considered and agreed to.

By Mr. BRADLEY (for himself, Mr. ROCKEFELLER, Mrs. KASSEBAUM, and Mr. LUGAR):

S. Con. Res. 157. A concurrent resolution to support further cooperation between the United States and Japan in the coordination of foreign economic assistance programs; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEINZ:

S. 2866. A bill to amend the Foreign Agents Registration Act of 1938 to strengthen the registration and enforcement requirements of that act; to the Committee on Foreign Relations.

REGISTRATION AND ENFORCEMENT REQUIREMENTS OF THE FOREIGN AGENTS REGISTRATION ACT

Mr. HEINZ. Mr. President, the debate we have had over the past 2 years on the Omnibus Trade Act raised an unexpected issue that many might find somewhat amusing, but which, on reflection, also should cause us a great deal of concern.

I am referring to the large amount of foreign lobbying on the bill, most notably with respect to the so-called Toshiba provisions. These sections of the bill, in case there is anyone left in the Senate who has not been paying attention the past year, create a strong program of prospective sanctions for foreign companies that violate Cocom export control rules and divert critical technology to the Soviet Union.

It is fair to say this part of the bill stemmed directly from the case that became public last year of just such a diversion. It involved Toshiba Machine Corp. and Kongsberg Trading Co. selling advanced milling machinery to the Soviet Union which has significantly enhanced that nation's ability to manufacture quiet submarines.

The foreign lobbying, however, concentrated not on the prospective sanction regime but on the retroactive sanctions on Toshiba Machine, Kongsberg Trading, and their parent corporations that the bill also imposed. These sanctions, which were substantially narrowed by the conferees, have stirred up a lot of people, both here and abroad for reasons of both high policy and narrow self-interest. One indicator of that is the amount of foreign money spent trying to limit the penalties.

When I first heard in the summer of 1987 that Toshiba Corp. has paid the law firm of Mudge, Rose, Guthrie, Alexander & Ferdon $1.3 million to represent it for 6 months in 1987, my reaction was at that rate Toshiba's legal fees may end up the biggest sanction they have to endure. It appears now that that figure was only small change. In its February filing, Mudge, Rose reported an additional $4.2 million from Toshiba for the next 6-month period, making a grand total of $5.5 million for a year's worth of work on a number of issues.

And that is not all. Kelly, Drye & Warren, which represents Tokyo Electric, a Toshiba subsidiary, reported nearly $57,000 for the 6 months ending last November 23. Dickstein, Shapiro & Moran reported $111,000 through December 7—an appropriate day to report. This is not a complete list by any means, and the process of compiling it has made evident some major flaws in the statute that requires the reporting, the Foreign Agents Registration Act.

That act was written in the 1930's primarily to deal with propaganda spread by Nazi agents operating in the United States. Its purpose was to help make the public aware of the source and financial backing behind information being given to the Government, Congress, and the public in order to influence their opinions.

Since that time, the political environment has changed—obviously—and the kinds of issues where foreign persons want to influence American opinion have changed. I would like to think that our political process and our media, perhaps aided by technological advances in communications and dissemination of information, have become more sophisticated over the years and can more easily recognize political propaganda when they see it.

The challenges we face now are primarily economic. Our open markets and open investment policy, as well as the huge trade deficit we have been running, have produced a huge increase in the foreign stake in our economy in the form of sales and profits dependent on imports into the United States and in the form of investment in our country. The actions our Government takes with respect to trade and economic regulation are of tremendous importance to foreign interests who maintain an active presence here.

Two articles that appeared earlier this year, one in Business Week and one by Pat Choate in the Washington Post, spell out these developments in much greater detail, particularly with respect to Japan. I ask unanimous consent that the two articles be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HEINZ. Mr. President, one of the phenomena I noticed during debate over the trade bill is the growing blurring of the line between "us" and "them" as U.S. companies are increasingly owned by foreign corporations, and U.S. corporations increasingly recalculate their public policy positions based on their assessment of their interests overseas.

Some farmers and agriculture industries, for example, have regularly opposed any U.S. retaliatory action abroad, regardless of its justification or merit, because of concerns that the foreign response might be counter-retaliation against U.S. agriculture exports. The effect of that position is to inhibit our Government in the legitimate use of its leverage and to make us hostage to other nations' threats; neither of which contributes to increasing market discipline and GATT discipline in the trading system.

As a further example, I would note in passing that the figures I mentioned above as reported lobbying expenditures do not include expenditures by American companies who have business relationships with Toshiba or Kongsberg, perceived those relationships as being threatened, and lobbied accordingly. Including those expenditures would probably more than double the amount.

In any event, Mr. President, all these trends suggest a variation on the well-known quotation from Pogo, "We have met the enemy, and he is us." Now it appears we have met the enemy, and he sounds like one of us, but we have no idea who he really is.

And that is where the Foreign Agents Registration Act comes in. It is supposed to tell us who is "us" and who is "them," not because one is worse than the other, but simply so the Government and the public can tell the difference and judge accordingly.

Foreign interests in this county do many useful things that serve our national interests. They have kept companies and jobs in existence that would otherwise have disappeared. They have brought technological improvements and capital infusions that have helped restore numerous industries to competitiveness. The Foreign Agents Registration Act has neither the intent nor the effect of discouraging those efforts. Rather it seeks simply to identify them.

The act is handicapped in that effort, however, by its failure to keep up with modern trends and economic complexities. In particular, I have identified four areas where improvements in the act would both improve compliance with the reporting requirements and make the reporting more accurate and reflective of current realities. Those improvements are embodied in legislation I am introducing today.

First, controlled subsidiaries. We should expand the requirement to file beyond agents of a "foreign principal". The act defines foreign principal as including:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The current definition appears to exclude agents of entities controlled by foreign principals that are organized, incorporated, created, and so forth, under the laws of the United States. This in turn relates to the question of what constitutes foreign control of an entity.

In discussions with the Justice Department and various private parties who operate under this statute, it appears that this is a murky area of the law. A number of agents of U.S. foreign-controlled entities do file and in fact are advised by the Justice Department that they are required to file. Others do not; some on their own initiative, others based on Justice Department advice.

It appears that Justice advice is based roughly on whether or not the U.S. entity is real and functioning as opposed to existing primarily or exclusively to represent the foreign entity. I understand Toyota U.S.A., for example, has been advised it does not have to file because it has substantial offices and employees in the United States, is engaged in real activities here, and arguably represents itself and its own interests more than those of its Japanese parent. This kind of test does not appear in the law or in regulations, and there does not appear to be a single firm set of criteria that are uniformly and universally applied.

Further, since the Justice Department has limited resources in this area, it generally focuses its enforcement of the act on responses to complaints it receives, a limitation which makes an ambiguous definition like this one effectively self-enforcing.

In my judgment, this is a standard that is too lax and which has the effect of exempting from the reach of the act many companies which are effectively controlled by and represent the interests of foreign corporations. Moreover, since this is essentially a reporting requirement, if we err, it ought to be on the side of more complete coverage.

That can best be accomplished by more clearly defining the term "control" to both eliminate the ambiguity of the current standard and to broaden the reach of the law. The bill I am introducing today does that by defining over 50 percent foreign ownership of a U.S. entity as control; between 20 percent and 50 percent as control subject to rebuttal evidence; and less than 20 percent as presumptively not controlling. In considering the middle category, the Justice Department would likely employ some of the criteria they presently use, if an alleged foreign principal chose to contest the classification.

Second, lawyers' exemption. Presently, the act exempts lawyers from the reporting requirements in certain circumstances:

> Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal.

What has evolved over the 40 years, Mr. President, is that, particularly in the trade area, much of the work of representation is carried on in the context of formal proceedings such as antidumping or countervailing duty investigations, section 301, 201 or 337 cases, and other procedures which are formalized in the trade laws. To exclude this kind of activity from reporting is a loophole of some significance, and in some cases is so broad as to swallow the rule.

The original exemption probably had judicial proceedings in mind, where the parties' counsel is a matter of public record, but that would not, in any event, include any disclosure of the sums being expended on behalf of the foreign principal, as registration under the Foreign Agents Registration Act would. In any event, the wording of exemption implies a construction far broader than simply judicial proceedings.

Third, standardized filing dates. The act presently requires an agent to file when he takes on the foreign client and begins performing reportable actions, and then requires him to file at regular 6-month intervals dating from the original filing. This leads to a different filing date for virtually every agent, with the result that the compilation of data has become very difficult. No matter when one examines the filings, there are always additional ones due imminently; and thus any data developed is immediately out of date. My bill retains the conditions for an initial filing but then requires everyone to fit into a January 15 and July 15 filing framework, thus maintaining the twice-a-year format but standardizing it to permit more timely and thorough review of the data.

Fourth, penalties and enforcement. While the act contains criminal penalties for willful violations, they are rarely used, in large part because intent is difficult to prove and the penalties, which include imprisonment, are severe. Adding a schedule of civil fines provides a more reasonable option that should encourage compliance. It would also help compliance with the act to give the Justice Department authority to summon individuals to appear, testify or produce records, common authority for agencies charged with enforcing laws that have a substantial disclosure component. Both of these proposals are discussed in a General Accounting Office study of the act that was completed in 1980. Unfortunately, no remedial action was taken at that time, but I believe the recommendations are as relevant now as they were then, and much more important. Mr. President, I ask that the text of that report also be printed in the Record following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HEINZ. Mr. President, I do not expect that either of these latter provisions would be frequently used. I do think, however, that we need to do more to convince the business community that this is an important statute taken seriously by Congress and the Government—one which we intend to be enforced. Giving the Justice Department this additional authority should help in that regard.

I suspect that the changes in our economy that I mentioned earlier mean, among other things, that we are heading into a period of greater friction with those of our trading partners seeking to maintain a high level of activity in this country. I do not object to that higher level of activity, and I have not generally been sympathetic to efforts to regulate it for its own sake. Disclosure, however, is another matter.

While I do not object to companies and their agents acting in their own self-interest and enriching our lawyers, consultants and public relations experts in the process, I do have some concerns that the public interest may be less extensively represented.

That was clearly the case in the fight over Toshiba sanctions. Estimates of the cost to the United States of repairing the damage caused by that diversion range from $8 billion to over $100 billion. While the truth is no doubt somewhere in between, it is certain that the cost is many times greater than all the fees being collected on this issue, and that it is the American taxpayers who will bear that burden for a long period of time. The public interest demands a strong program of sanctions to make sure this does not happen again, but that interest was overmatched by a collection of private interests, both foreign and domestic, who were determined that their short term business interests not be inconvenienced.

At one level, the message of the Toshiba sanctions fight is that up to a point, crime does pay. It pays U.S. lobbyists, and it pays the violators who made about $40 million of total illegal sales and probably spent less than $9 million to get away with it—so far. When all is said and done, I hope the sanctions will more than offset the profits and thereby send an important signal to future diverters. The lawyers and lobbyists, as always, will come away unscathed and with their pockets bulging.

The bill I am introducing today will not empty those pockets, but it will help us count how much is in them and what nation's currency they contain. By doing so, we will bring transparency to the governing and legislative processes, and we will be performing the important service of helping the Government, the Congress and the public determine who is "us" and who is "them," a critical first step in determining whether or not Pogo was right.

Mr. President, I ask unanimous consent that the text of the bill be printed at the point in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 2866

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1(c) of the Foreign Agents Registration Act of 1938 is amended by adding at the end thereof the following new sentence: "For purposes of clause (1), a foreign principal shall be considered to control a person in major part if the foreign principal holds 50 percent or more equitable ownership in such person or, subject to rebuttal evidence, if the foreign principal holds at least 20 percent but less than 50 percent equitable ownership in such person.".

(b) Section 2(b) of such Act is amended in the first sentence by striking out ", within thirty days" and all that follows through "preceding six month period" and inserting in lieu thereof "on January 15 and July 15 of each year file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth regarding the six-month periods ending the previous December 31, and June 30, respectively, or, if a lesser period, the period since the initial filing,".

(c) Subsection (g) of section 3 of such Act is repealed.

(d) Section 8 of such Act is amended by adding at the end thereto the following:

"(i)(1) Any person who is determined, after notice and opportunity for an administrative hearing—

"(A) to have failed to file a registration statement under section 2(a) or a supplement thereto under section 2(b),

"(B) to have omitted a material fact required to be stated therein, or

"(C) to have made a false statement with respect to such a material fact,

shall be required to pay a civil penalty in an amount not less than $2,000 or more than $5,000 for each violation committed. In determining the amount of the penalty, the Attorney General shall give due consideration to the nature and duration of the violation.

"(2)(A) In conducting investigations and hearings under paragraph (1), administrative law judges may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

"(B) In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and, upon application by the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as contempt thereto.".

JAPAN'S CLOUT IN THE UNITED STATES—IT'S TRANSLATING ECONOMIC MIGHT INTO INFLUENCE

A new wave of Japanese wealth is washing over America, and it has little to do with government bonds or corporate securities. The new currency is influence. As Japan increases its investment in the U.S., it is also becoming a full-fledged member of the American political, cultural, and intellectual debate in a way—and on a scale—that no other nation has achieved.

Japanese companies are spending heavily to shape the way Americans view them. They are pouring tens of millions of dollars into U.S. education, from Ivy League colleges to elementary schools in Kentucky. Museums, universities, public television stations, and think tanks are competing for—and getting—Japanese money. The Japanese are also wielding political power from the grass roots to the top echelons of Washington. The same words that describe Japan's economic strategy apply to what the Japanese call their "soft-side" activities: Systematic. Coordinated. Long-term.

There is nothing improper about it. America and most larger nations attempt to spread their ideas around the world. For Japan, though, the motive is primarily economic. As Japan's investments overflow from financial assets into real property such as plants and skyscrapers, the Japanese want more than just an open U.S. market for their exports—they want to protect their broad stake here. That means becoming more sophisticated in pulling America's political strings. "They've learned how to play us like a violin," says Lester C. Thurow, dean of the Sloan School of Management at Massachusetts Institute of Technology. "Japan's say in U.S. decision-making will rise as their investments go from passive to active."

Japan's newfound clout came of age this year when Toshiba Corp. defeated efforts to impose harsh sanctions on it in retaliation for a subsidiary's selling of restricted propeller technology to the Soviet Union. Japan's lobbyists also played a key role in stalling major trade bills in Washington and prevailed on other issues as well, including registration of foreign investments. At the state level, they obtained generous incentives to build plants while beating back legislation such as unitary taxes in 12 states.

STATUS QUO

But their effort goes beyond specific political objectives. Japan wants to help shape the American agenda and to reinforce a notion that America's economic problems are mainly homegrown. Most of all, Japan wants to maintain a political and economic status quo to prevent surprise from threatening its economic stake. "They're interested in creating an environment in which they can make money," says Bernard Karsh, director of the Center for East Asian Studies at the University of Illinois and a Japan-watcher for 30 years. "I see this as a major effort to come in and stay, to legitimate their presence."

Although the U.S. and Japan share important economic and security goals, they are also competitors. What is unique about Japan's position is that never before in modern history has an economic adversary wielded so much influence on a rival's home ground.

Overall, Business Week estimates that Japan's government, foundations, and companies will spend at least $310 million this year on soft-side activities, not including advertising. That's still small compared with Japan's direct U.S. foreign investment of at least $35 billion and exports of $85 billion a year. But it allows for an astonishing range of activities. Japanese companies are even coming up with much of the $1 million needed for Children's Television Workshop to film a program called Big Bird in Japan.

It's not all entertainment. For lawyers, public relations advisers, academics, economists, journalists, and political consultants, Japan's spending is a growth industry, far outstripping OPEC's influence-buying. For the American Enterprise Institute, the Brookings Institution, and other influential think tanks, Japanese money is becoming important. And universities from Massachusetts to California are providing a steady stream of research and information to Japan. "They're investing in the cutting edge of ideas," says Peter G. Peterson, chairman of the Blackstone Group, a Wall Street firm with major Japanese clients, who is also chairman of the Council on Foreign Relations and the Institute for International Economics. "They are getting much more sophisticated."

The Toshiba scandal had a lot to do with spurring Japan's drive for influence. The fear that Washington would impose harsh sanctions helped convince the Japanese that getting inside the American system was essential. That's not necessarily bad, since part of the Japanese effort is designed to improve the U.S. economy and society—if only to protect Japanese interests. "They don't want to see our society go down because we're their biggest customer," says Robert S. Ingersoll, a former ambassador to Japan who is also chairman of the Matsushita Foundation, which donates $1 million a year in the U.S.

WHOSE INTERESTS?

Critics argue that basic ethical questions are involved. They say Japan's wealth tempts some of the American elite to accept Japanese funds at the expense of defending broader U.S. interests. "It's a very touchy subject," says Robert C. Angel, who resigned as chief executive of the Japan Economic Institute of America (JEI), a Tokyo-funded think tank, in a dispute over editorial influence from Japan's Ministry of Foreign Affairs. "If you ask an individual if they are taking money from Japan, and if that influences their decisions, they may say 'no.' If you call them a liar, they can sue you."

In many cases, Japan is able to gain leverage from its business relationships with American companies. Major Wall Street firms such as Goldman, Sachs & Co. and Shearson Lehman Hutton Inc. have important Japanese shareholders, and it is only prudent for them to consider the impact of public pronouncements on their Japanese partners. Likewise, a host of U.S. manufacturers enjoy joint-venture or marketing agreements with the Japanese. As in the Toshiba case, they go to bat to defend their partners.

Peterson, an influential former Commerce Secretary, benefits from Nikko Securities Co.'s placement of $100 millon with his firm and from his role as investment banker for major Japanese purchases of U.S. companies, such as Sony Corp's acquisition of CBS Records Group. Peterson says these associations have no impact on his views or on his role as chairman of both the Council on Foreign Relations and Institute for International Economics. "I've been for open trade and open investment since the 1950s, at a time when it hurt my short-term interests," he says.

Many top-echelon Americans who have no financial links with Japan are members of what critics call the "Cherry Blossom Crowd"—people who befriend Japan because of special relationships and favors and for reasons of principle. Some critics argue that Japan's cultural diplomacy—sponsoring Japanese theater tours—also lulls Americans into complacency about Japan's economic challenges. All this leads Chalmers Johnson, a Japan expert at the University of California at San Diego, to conclude that "Japan has undue influence in the U.S."

COMPROMISED JUDGMENT

Some observers even argue that America's long-cherished exchange of ideas is endangered. Argues Pat Choate, Washington vice president for policy analysis at TRW Inc.: "In the marketplace of ideas, the Japanese seek people who will amplify their views and then they pour in money. They dominate the adviser corps." Most professionals who take grants from the Japanese say there are no strings attached. But a few disagree. "Everyone who gets money from Japan has to worry about not offending Japan," says Ronald A. Morse, formerly head of the Asia program at the Woodrow Wilson International Center for Scholars in Washington and now development officer at the Library of Congress.

Some Japanese attempts to influence America have run into trouble. Telejapan, a media company funded at least in part by Japanese businesses, set off a firestorm for financing a two-part documentary series called The Faces of Japan. The documentaries, one of which will be repeated this summer, appeared on hundreds of U.S. public television stations and presented a sugar-coated view of the Japanese. "The Faces of Japan was a whitewash," says Craig Smith, a Seattle consultant who monitors Japanese giving. Telejapan's U.S. partners maintain that the shows were balanced.

Similarly, the JEI was embarrassed when Angel quit. "The Ministry was taking heat every time we published something that was unfavorable," says Angel, who now teaches economics at the University of South Carolina. Since Angel's departure in 1984, JEI's publications have tempered their criticism of Japanese policies and actions. JEI executives say they operate independently of Japan's government.

"BIG SCALE"

Despite episodes such as these, "intercultural communications" as the Japanese call them, promise to be expanded. "When the momentum starts, it will be big-scale," says Taizo Watanabe, Japan's No. 2 diplomat in Washington. "These efforts are not only motivated by the need to avoid friction. We feel we are not fully understood."

Japanese companies spend an estimated $45 million a year on public relations—much of it for image-building. There are some 400,000 Japanese on assignment in the U.S., many of whom see it as their job to promote Japan's case. The effort is entirely different than OPEC's efforts to deal with the U.S. in the 1970s. "The Japanese have more wealth, and they have a huge pool of capable people to manage it," says Richard J. Whalen, chairman of a Washington public relations agency that represents several Japanese clients.

The Japanese also have well-establish U.S. listening posts, including consuls in 15 cities—Britain is second with 11—who monitor American attitudes for Tokyo. The government also manages the Japan Foundation, which spends $5 million a year in the U.S. on exchange programs, education, and libraries.

Japan's Ministry of International Trade & Industry (MITI) is also becoming a much more active player inside the U.S. In part, the ministry operates though the Japan External Trade Organization (JETRO), which once concentrated exclusively on promoting Japanese exports. Now a major JETRO focus is collecting information in Washington, wooing prominent journalists, and hosting elegant receptions at top-flight hotels. JETRO maintains offices in seven American cities.

Beneath these two governmental bodies is a bewildering array of private and quasi-private organizations, some of which enjoy a combination of Japanese and U.S. financing. There are Japan-America Societies in at least 20 cities and Japanese Chambers of Commerce in dozens more.

A key player in spreading Japan's message has been the U.S.-Japan Foundation. Right-wing philanthropist Ryoichi Sasakawa arranged for the Japanese Shipbuilding Industry Foundation to endow the New York-based U.S.-Japan Foundation with $44.5 million in the early 1980s. Chairman Stephen Bosworth, former U.S. ambassador to the Philippines, says the U.S.-Japan Foundation is an independent, American-run group, but the Japanese still play a major role. Sasakawa's son, for example, is on the board. The foundation gave $3 million in 1987 to education, exchange programs, and policy studies. Japan's funding of U.S. causes is "not nefarious," says Bosworth. "It's the normal way that nations attempt to shape our policies."

Is the U.S. influence in Japan as profound as Japan's is here? The U.S. has persuaded Japan to open its financial, telecommunications, and lately food markets. And the U.S. still has powerful tools, including access to its market and its military umbrella. But overall, the American effort is paltry and disorganized. One reason is a shortage of funds for U.S. government programs. The strong yen also means that U.S. spending goes only half as far as it would have three years ago.

NEW ERA

What's more, Japanese society simply isn't as open. "it's a new era for Japan," says Peter Grilli, director of the Japan Project at New York's public television station, WNET/Thirteen, who coordinates public TV's fund-raising from Japan. "The Japanese are operating here on a scale that no U.S. company does in Japan. We're not as adept or as sophisticated."

The lesson is that Japan's economic prowess, both in imports and investment, does not exist in a vacuum. As it makes itself felt in U.S. social and political agendas, it can have a subtle but important impact on the big policy questions facing the U.S. What is well-founded criticism and what is simply anti-Japanese? What constitutes protectionism? What is dumping? What are the effects of Japanese investment? On issues such as these, the Japanese are learning to shape the debate. And that will test the character and integrity of America's institutions far more than any wave of imports ever did.

When Japan's Lobbyists Talk, Washington Doesn't Just Listen

When one of lobbyist James H. Lake's Japanese clients has a problem, Lake knows what to do. He picks up the phone and arranges to break bread with his friend Clayton Yeutter, the U.S. Trade Representative. During a six-month period last year, Lake met or spoke with Yeutter or his deputies 12 times on behalf of Mitsubishi Electric Corp. Just one of Lake's several Japanese clients, Mitsubishi Electric paid more than $129,000 to his firm, Robinson. Lake, Lerer & Montgomery.

So it's not surprising that Democrats reacted with outrage when Lake, a top spokesman for President Reagan's 1980 and 1984 campaigns, signed on as a senior adviser for George Bush's Presidential effort while maintaining this relationship with the Japanese. "It is offensive and disgusting that Bush would take a man who continues to receive large fees" from Japanese companies, huffs United Auto Workers President Owen F. Bieber. Lake dismisses the concerns, saying: "It's a political season."

UNPARALLELED ACCESS

That's the way things are done in Washington these days. Armed with fistfuls of dollars and deeply concerned about anti-Japanese sentiment, Japanese companies, trade associations, and government agencies are smapping up lobbying talent, including many former Administration officials and former congressmen. High-ranking Democrats and Republicans alike have jumped at Tokyo's largesse. In the process, Japan has bought access unparalleled for a foreign power.

The Japanese are also quickly learning how to use that access to get their way. When Congress got down to writing a trade bill last year, a Japan-bashing mood on Capitol Hill seemed certain to produce tough, retaliatory legislation. But by the time the bill made it to President Reagan's desk, most of the provisions Tokyo found offensive had been stripped away or watered down.

Some of the credit goes to the lobbyists representing at least 155 Japanese interests—more than all Canadian and British interest combined. Pat Choate, vice-president of TRW Inc., who is writing a book on the subject, estimates that Washington representatives will receive a staggering $50 million from Japan this year, not counting millions spent for services other than lobbying—for advice, speeches, and background papers. Tokyo has hired some of the biggest names in town. In addition to Lake, these include former Democratic National Chairman Robert S. Strauss, former House Budget Committee Chairman James R. Jones (D-Okla.) and Stanton Anderson, a former White House aide and Deputy Assistant Secretary of State.

BIG-LEAGUE STAKES

Much of what Japan's lobbyists do is traditional door opening. For example, when Toyota Motor Corp. wanted U.S. approval for a controversial special trade zone in Kentucky where auto parts could be shipped duty-free, it turned to Republican Party Chairman Frank J. Fahrenkopf Jr., whose law firm has a Toyota contract. Fahrenkopf set up a meeting for Toyota executives with the late Commerce Secretary Malcolm Baldrige. Commerce later approved the zone.

Many of Japan's efforts involve beltway battles that are obscure to the average American but that carry high economic stakes. Senators Strom Thurmond (R-S.C.) and Frank H. Murkowski (R-Alaska) have questioned whether Japanese lobbyists—some of whom enjoy ties with top White House officials—blocked the promotion of Commerce Deputy Undersecretary J. Michael Farren to be undersecretary earlier this year. Farren, with several years of negotiating experience, had been tough on opening up Japan's multibillion-dollar construction market. After he found his promotion blocked, Farren resigned and the two governments quickly settled the dispute.

The Toshiba case is perhaps the single most dramatic example of how Japan deployed its political clout. When Toshiba Corp. faced congressional wrath last year over a subsidary's illegal sale of high-tech milling equipment to the Soviets, it enlisted Jones, former Representative Michael D. Barnes, GOP power lawyer Leonard Garment, former Deputy Trade Representative William Walker, and a host of others. These lobbyists spoke with then-Defense Secretary Caspar W. Weinberger as well as Secretary of State George Shultz and Commerce's Baldrige to discuss the issue. Toshiba's $3 million campaign paid off: House-Senate conferees watered down the sanctions in the final trade bill, which, despite President Reagan's veto, will probably be enacted this summer.

Representative John Bryant (D-Tex.) is clear about what happened on Capitol Hill. "Toshiba was able to purchase access to those who were writing the legislation," says Bryant, whose amendment requiring foreign investors to register was deleted from the final trade bill. "They won, but what they did was very offensive." Bryant's outrage rings a bit hollow on Capitol Hill, where deals and compromises brokered with lobbyists are a way of life. But the Japanese have become skilled at bringing pressure from the states on Washington. Toshiba was able to dodge the sanctions largely because its customers throughout the U.S. deluged their congressmen with warnings that a cutoff of Toshiba components would cripple them.

In fact, across the country, state and local political leaders are fighting to defend their Japanese investors. Governors made 36 visits to Japan in a single year, from mid-1986 to mid-1987, according to the National Governers Assn. Mayors, chamber of commerce presidents, and even rotary clubs have been invited on trips to Japan by Japanese companies and foundations.

From Los Angeles to Boston, networks of Japanese organizations are wooing state and regional political leaders. In Illinois, where Mitsubishi Corp. is opening a $650 million auto plant with Chrysler Corp., Mitsubishi executives became a driving force behind the month-long Festival of Japan. Working through the Chicago Japanese Chamber of Commerce and the Japan-America Society, in cooperation with the Japanese consul-general, they raised $1.2 million for the festival. The highlight of the event: a visit by Prime Minister Noboru Takeshita to meet Illinois Governor James R. Thompson and other luminaries.

LOCAL CONTACTS

In the Southeast, Japan's regional effort is assisted by former Georgia Governor George Busbee, a founder of the Japan/U.S. Southeast Assn., which groups top Japanese and Southeastern political and business leaders. When a Washington problem arises, these regional networks are in place to help Japan. Says TRW's Choate: "The Japanese government and Japanese companies are infinately more effective in lobbying in this town [than U.S. companies]."

Japan's lobbyists have also learned how to exploit Washington turf battles. They learn the positions of the various agencies, knowing that a decision often must reflect a consensus among several departments. For example, the knowledge that commerce was planning to propose a sanction could be relayed to another agency, such as Treasury, known to oppose the action. "Then they sit back and let the interagency process eat itself up," says a former Commerce trade negotiator.

Within the government, Japan's lobbyists often find they are on favorable ground because the Administration tends to place political or military interests above trade. When Prime Minister Takeshita made his first visit to Washington in January, talks between the U.S. and Japan over opening up Japan's construction market were floundering. The U.S. was threatening retaliation. Takeshita brought a new proposal to resolve the issue, but U.S. trade officials found it inadequate. Nevertheless, the State Dept. was determined to create a positive climate and applauded the Japanese proposal. "The State Dept. tends to lose sight of larger U.S. interests," says Alan Wolff, a former U.S. trade negotiator who now represents American semiconductor manufacturers.

The Defense Dept. has also become an important advocate for Japan within the government because of Tokyo's contributions of money and technology to U.S. defense efforts. One key Defense official, James E. Auer, even plans to leave the government in August to set up a center for the study of Japan at Vanderbilt University. At the same time that he has been negotiating with the Japanese government and defense companies on such sensitive issues as the new FSX jet fighter, he has been approaching Japanese companies for funding for his center. Vanderbilt says Auer has won pledges from two Japanese companies. Auer says the grants aren't final yet and that there is nothing inappropriate about his effort.

But such activities exemplify the increasing controversy surrounding Japanese influence-buying. Indeed, some believe the sharp increase in the Japanese presence in the capital could backfire. "The Japanese have far too many lobbyists in Washington," says one senior White House trade official. "They've grossly overdone their presence."

MINORITY VIEW

For their part, some Japanese officials wonder if they're really getting their money's worth. And Japan's diplomats are also warning of a backlash. "Lobbyists are not interested in Japan but in their own careers," says Taizo Watanabe, the No. 2 official at the Japanese embassy in Washington. "This kind of big spending on lobbyists has adverse effects."

That's a minority view, however. Most Washington observers believe deft representation of Japanese interests has helped prevent resentment of Japan's trading practices from coalescing into a policy that could hurt Japan. "The defect in Washington is not so much the presence of lobbyists [as] the absence of a coherent American policy," says Wolff. As long as the policy is confused, Japan's lobbyists won't have trouble finding work.

On the Campus: Fat Endowments and Growing Clout

Are American universities getting hooked on Japan's money? Consider:

Japanese Prime Ministers Noboru Takeshita and Yasuhiro Nakasone have received honorary doctorates from Columbia University and Johns Hopkins University, respectively. In both cases, the universities then received substantial endowments from Japanese sources.

At Massachusetts Institute of Technology, Japanese corporate giants such as Mitsubishi Corp. and Mitsui & Co. have endowed 16 chairs at roughly $1.5 million apiece and spend some $4 million a year for access to research.

In exchange for a $12 million donation, Hitachi Chemical Co. for 40 years will use two-thirds of the space in a University of California at Irvine biotech laboratory that opens next year.

BUILDING BRIDGES

Japanese corporations, scattering multimillion dollar grants to universities across the country, have emerged as by far the largest foreign source of university research funding. Much of Japan's spending is intended to foster goodwill. But Japan's attraction to U.S. universities is not purely philanthropic. The money, including an estimated $30 million in research contracts, is a modest investment to gain access to America's top minds. "Some Japanese support for research is predatory," says Chalmers Johnson, professor of international relations at the University of California at San Diego. "It is to buy research they can't get otherwise."

By pouring money into think tanks and universities Japan may also be blunting research critical of its economic practices. "It's very hard to find experts who are not on the Japanese payroll one way or another," says Peter C. White, president of the Southern Center for International Studies in Atlanta.

Universities and think tanks bristle at suggestions that Japanese money might affect their research. "To suggest there is anything evil, wicked, or sly is total bull—," says George R. Packard, dean of the Johns Hopkins School of Advanced International Studies. "We are not for sale."

Others insists that the source of money for academic research is unimportant because strict university codes prevent undue influence. "Our job is to take money that is not so clean and make it clean," says Hugh T. Patrick, director of Columbia University's Center on Japanese Economy & Business, which enjoys a $2 million endowment from Japanese financial institutions. "Once they give the money, they don't have any control."

But Japanese money may have more power than universities realize. There has been an explosive growth in Japanese studies, with 24,000 U.S. students involved in 1986, up from 13,000 in 1983. As U.S. funding for the field declines and the cost of doing research in Japan rises, universities are turning to Japan. "Everybody is tripping over each other [in Japan] looking for money," says Patricia Steinhoff, director of the Center for Japanese Studies at the University of Hawaii.

SKEWED DIALOGUE

The result? Professor Johnson estimates that 80% of the money for research on Japan now comes from Japanese sources. "The truth is that without the money from Japan, there wouldn't be any research," he says. Johnson adds that many Japanese-funded scholars are "ready quickly and easily to express Japan's official point of view." Clyde V. Prestowitz, former trade negotiator at the Commerce Dept., says this has impact in the policy arena. "Very often the discussion [on trade] is skewed because the Japanese position is less questioned or examined," he says. Example: the acceptance by many academics that it is the low quality of U.S. products, rather than Japanese barriers, that accounts for their poor sales in Japan.

The growing Japanese clout in Asian studies concerns some scholars outside the field. Lester C. Thurow, dean of the Sloan School of Management at MIT argues it is O.K. for the Japanese to fund research in technical or financial fields. "But suppose Russian centers were funded by the Russian government," Thurow says. "We would be worried about it, right?"

Japanese companies say they simply want to help Americans study more about Japan, and they point out that in many cases they were invited in after U.S. companies begged off. "There is an enormous amount of misunderstanding about Japan," says Toshio Mori, chairman of Nikko Securities Co.'s U.S. arm. Nikko is one of several companies that have set up programs to send 20 or more students from elite colleges to Japan on one-month trips.

A larger portion of Japan's university funding, however, goes to scientific research for more concrete returns. NEC Corp. Chairman Koji Kobayashi credits access to MIT research for much of NEC's success in computers. NEC has endowed two chairs at MIT, and it is one of more than 50 Japanese companies to pay up to $100,000 a year for membership in programs at schools such as MIT and Stanford University that offer prepublished papers and ready access to university laboratories.

EXCITEMENT

Larger donations, usually more than $500,000 win Japanese companies the right to send researchers to key university labs. Such researchers are assigned to MIT's Media Laboratory, which looks at exotic new applications for video, digital audio, and personal computers. "You couldn't pick a project that they haven't been excited about," says Timothy P. Brown, the Japanese-speaking director of sponsor relations at the Media Lab.

Japanese companies are beginning to play similar roles at universities across the country. In addition to the Irvine biotech lab, another Hitachi affiliate, Hitachi America, Ltd., has established a $1.2 million chair at Stanford and hopes to win the university's help in establishing a research program in the U.S. At the University of California at Berkeley, Japanese companies donated $4 million last year, much of it to build a computer laboratory. The companies hope to improve their ties with Berkeley's leading computer researchers. And Kobe Steel Ltd., which is trying to diversify, gave a $666,000 grant to North Carolina State University to establish a chair in materials science and engineering.

Some critics believe Japan's extraordinary ability to tap U.S. university research means that the huge investment the U.S. government is making in such fields as materials technology is incidentally helping Japanese industry. "They pick up research ideas that have a commercial application," asserts Kenneth A. Gabriel, a scientist at the U.S. Army Materials Technology Laboratory. The MIT response? If Japanese do a better job than Americans at exploiting MIT research, "shame on us," says Kenneth A. Smith, MIT vice-president for research.

WHOSE SONG

While it is more difficult to evaluate donations to the social sciences, the impact in those disciplines may be more far-reaching. Stephen S. Cohen, director of the Berkeley Roundtable research institute, notes that the Japanese may influence perspectives on Japan by using its funds to "determine which songs get played louder."

Much of Japan's research support goes to institutions, such as the Institute for International Economics in Washington, that focus primarily on macroeconomic factors such as savings and growth rates rather than on trade obstacles posed by Japanese cartels and distributors. Its conclusions often blame the trade problem on U.S. mismanagement. A 1985 study, for instance, that said an overvalued dollar, not protectionism, was responsible for Japan's trade surplus, was widely quoted by policy-makers opposing U.S. trade legislation. The institute receives about $280,000 of its $3.6 million annual budget from Japanese-supported sources, but director C. Fred Bergsten says the Japanese have not sought "one iota of influence."

There is also the danger of self-censorship by institutions hoping to obtain Japanese funding. "The dangers are insidious," says Robert B. Reich, political economist at Harvard University's Kennedy School of Government. "Researchers might shy away from questions that might be potentially embarrassing to Japan." Says Prestowitz in more graphic terms: "You shine your shoes because you anticipate he [the donor] would like your shoes shined, not because he tells you to shine your shoes."

Although Japanese companies never tell a university which professor should occupy a company-endowned chair, controversial scholars are often avoided. The Center for Strategic & International Studies in Washington, a way station for former government officials and academics aspiring to influence U.S. foreign policy, has a Japan chair, established with a $1 million endowment from Toyota Motor Co. "We aren't going to bend over backward to put a Japan-basher in the chair," admits John Yochelson, the center's vice-president.

ONE-WAY FLOW

Few blame Japanese donors for giving money to universities—or blame universities for accepting the money. In view of the decline of federal and state funding, universities must find funds somewhere. But some feel frustrated because the U.S. can do so little of the same in Japan. Since most scientific research in Japan takes place in private companies rather than universities, the findings are generally inaccessible to U.S. scientists.

Some academics are working at increasing the flow of information from Japan rather than closing off U.S. access. Richard J. Samuels, director of MIT's Japan Science & Technology Program, is taking advantage of MIT ties with Japanese corporations to send 20 students into Japan's laboratories. The program is financed by U.S. companies.

But such efforts amount to a trickle against the tidal wave in the other direction. Universities may have to be more aggressive in raising money from U.S. sources to balance their Japanese donors. And they should remember that the old American adage also applies to Japan: "There's no such thing as a free lunch."

JAPAN DIGS DEEP TO WIN THE HEARTS AND MINDS OF AMERICA

Marvin T. Runyon, the new president of Nissan Motor Manufacturing Corp. USA in Tennessee, didn't think much about it when he earmarked $100,000 of his first-year budget for charity. To Runyon, who had spent 37 years at Ford Motor Co., donating money was standard business procedure. But Nissan's president at the time, Takashi Ishihara, was stunned when he noticed the item in Runyon's 1981 plan. "You don't make money yet," Ishihara said. "How are you going to give it away?" Replied Runyon: "It's the American way." Eventually, Ishihara relented, and Nissan became a prominent donor.

As their presence in the U.S. swells, Japanese companies are realizing that American society expects a lot from Big Business. Donating money and time to charity is high on the list, and Japanese companies in the U.S. are mastering the art of giving with gusto. In cities throughout the U.S., Japanese managers are popping up on hospital boards and other community organizations. As federal agencies cut back their funding, public television stations, museums, universities, and think tanks are turning increasingly to Japan. Japanese companies will donate an estimated $140 million to these causes this year, up from $85 million last year, says Craig Smith, a Seattle-based consultant who tracks Japanese giving.

This growing philanthropic role is spurred both by altruism and self-interest. The Japanese increasingly feel they have a duty to be generous. But they also have discovered that giving helps protect their U.S. investments and improves the image of Japanese companies. "They're trying to point out that they are of value to American citizens, to counteract the negative impact their imports have had on American jobs," says former ambassador to Japan Robert S. Ingersoll, who chairs the Matsushita Foundation, which gives to American education, including a model school-reform effort in Louisville.

"HOW-TO" TIPS

Corporate Japan has been slow to realize the importance of philanthropy partly because its companies do not receive big tax deductions for contributions at home. But more broadly, Japan doesn't share the Western tradition of noblesse oblige. "The concept of private citizens working for the public cause is something new to us," says Yoshifumi Matsuda, a senior official at the Foreign Affairs Ministry. Japanese companies take care of workers with life-time employment and other benefits, and expect the government to care for the needy.

But in the U.S., frictions stemming from local plant controversies as well as broader disputes such as Washington's threatened retaliation against Toshiba Machine Co. have led the Japanese to adapt their style. They want to be known as "classy corporations, not just selling machines," says Norio Hirai, president of Hakuhodo Advertising America.

Thus "good corporate citizen" is the hot catchphrase on the lips of industry and government officials in Tokyo. More than 100 Japanese business leaders flocked to a Foreign Affairs Ministry symposium in March that offered tips on how to be socially responsible abroad. In April, Keidanren, the powerful Japan Federation of Economic Organizations, established a blue-ribbon Council for Better Investment in the U.S. to advise companies on ways to win American acceptance.

Japanese executives also realize that philanthropy provides a way to meet American movers and shakers. Nomura Securities Co., Japan's largest securities house, is using philanthropy to establish itself in Washington. Nomura contributes to the Brookings Institution, and Masaaki Kurokawa, chairman of Nomura's U.S. subsidiary, journeys frequently to the capital to take part in Brookings discussions. Nomura has endowed chairs at both Massachusetts Institute of Technology and New York University. It is cosponsoring a major show on Japanese culture at Washington's National Gallery in October, featuring the Japanese tea ceremony. Such activities and others like them help Nomura executives move in exclusive Washington social circles.

Likewise, giving can help defuse problems. U.S. minority groups were outraged by former Prime Minister Yasuhior Nakasone's derogatory 1986 remark about American blacks and Hispanics. But Japanese foundations and companies have stepped up their donations to the United Negro College Fund, the National Association for the Advancement of Colored People, Congress of Racial Equality, and other similar groups to put out the brushfire. Honda was recently the subject of a racial-discrimination suit over hiring practices in Ohio. The company settled the case by hiring some 370 blacks and women. Its image among blacks should also benefit from the activities of the American Honda Foundation. It has given $50,000 to Clara Hale's Hale House in Harlem, which cares for children born addicted to drugs, and has provided a scholarship at Duke University for minority, rural, and women students.

At the local level, Mazda Motor Manufacturing USA skillfully used giving to cope with fear and suspicion when it began building its plant in Flat Rock, Mich., in 1985. The company had won a 100% tax abatement for 12 years as part of a $120 million incentive package. But when the sewer and street repairs that were needed for the new plant began to strain Flat Rock's finances, criticism mounted—and the incumbent mayor lost an election.

HIGH MARKS

Mazda told the town it would donate $100,000 a year for the length of the tax concessions, and kicked in another $1 million for a sewer project. In the past two years, Mazda has also given $70,000 to United Way. A Japanese executive sits on a regional economic-development board. Another top manager is on the board of Wyandotte General Hospital and the Governor's Employability Task Force. Most striking is a bonus system for salaried employees that rewards participation in the Jaycees, church groups, and civic organizations. Overall, Mazda has won high marks for its efforts among volunteer and charity groups, and it has prevented political frictions from reaching a boiling point.

Getting the ball rolling isn't easy, however, "In an American company, you walk into the chief executive's office and expect him to make a decision." says Marty Walsh, a United Way staffer who helps local branches court Japanese managers. But these managers are stymied by their lack of autonomy. Requests for donations often must be referred to Tokyo. There, "the people who keep the purse strings are usually general managers of administrative affairs who know nothing about America," explains Mitsuya Goto, managing director of the Japan Center for International Exchange.

When New York's Metropolitan Museum of Art decided to build a new wing for its Japanese collection in 1984, it attempted to launch a U.S.-style fund-raising effort to raise $3 million from Japanese companies. "But we didn't get very far," observes museum official Barbara Ford. Eventually, the museum reached out to Japanese government and cultural agencies, as well as the Keidanren, to raise the funds from nearly 1,000 companies.

Los Angeles County Museum of Art officials also hit pay dirt in 1987 when they contacted Toshio Nagamura to help finance the $13-million Japanese Pavilion, Nagamura, 62, is chairman of California First Bank, a Bank of Tokyo Ltd. subsidiary, and the dean of Southern California's extensive network of Japanese executives. As president of the Japanese Chamber of Commerce of Southern California, he worked with the local consul general and the Japan Business Assn. to enlist a team of executives from 30 companies. Significantly, Nagamura was able to win backing from the Keidanren, which coordinates corporate giving back home.

As a result, $4 million poured into the museum in less than a year, and the Japanese Pavilion will open in September, 1988. Japanese business leaders gained by getting access to the region's top business and civic leaders. These experiences of group giving appear to have established a pattern. U.S. charities are beginning to realize that they have to develop new "networking" strategies to tap Japanese companies.

In coming years, Japan's role as philanthropist in the U.S. is destined to grow, perhaps even to explode. Clearly, the tracks needed to roll out major fund-raising drives and manage large projects have been laid down. American institutions are certain to benefit, and Corporate Japan should, too.

[From the Washington Post, June 19, 1988]

MONEY TALKS: HOW FOREIGN FIRMS BUY U.S. CLOUT

(By Pat Choate)

When senior statesman Elliot Richardson appeared on the national television program "It's Your Business" a couple of months ago, he was addressed throughout the show as "Mr. Ambassador." His comments on the many benefits of growing foreign investment in this country were accorded the respect due to one who had held three Cabinet posts and a score of other high-level government positions at home and abroad. Never mentioned throughout the program was the fact that Richardson is now representing other interests: those of the recently formed Association of Foreign Investors in America.

Richardson is only one among scores of former high-level government officials—including former Vice President Walter Mondale, 18 senior presidential aides, six senators, 10 congressmen and four top-level military officers—who have become spokespersons, advisers or lobbyists for foreign companies and their governments in recent years. James H. Lake, named last week as an unpaid adviser to the Bush campaign, for example, was already regarded as an especially effective representative for European and Japanese interests because of his close ties to U.S. Trade Representative Clayton Yeutter (to whom he provided advice on staffing and organization of the USTR office) and to earlier Reagan-Bush campaign.

The involvement of these former officials illustrates that, as foreign ownership of U.S. assets expands, foreign owners are seeking to protect their interests by deepening their involvement in our domestic politics. Aping their American competitors, they are lobbying, politicking and propagandizing on an unprecedented scale, and often much more effectively. As a result, America's trade and economic policies—a sure focus for debate at this week's economic summit—are often shaped as much by foreign companies and their governments as by U.S. interests.

This year, for example, 152 Japanese companies and government agencies have hired 113 firms for Washington representation. For this representation and grass-roots activities they will pay more than $100 million—more than the combined budgets of the U.S. Chamber of Commerce, the National Association of Manufacturers, The Business Roundtable, the Committee for Economic Development and the American Business Conference—the five most influential business organizations in Washington.

This kind of muscle can pay off. In this year's political battle over the trade bill, for example, a coalition of European, Canadian and Japanese lobbyists masterminded the defeat of a legislative proposal that would have enabled the federal government to monitor foreign investment in this nation—something other governments do as a matter of course. Similarly a coalition of European and developing nations overwhelmed efforts by American firms to close a major loophole in the dumping laws that permits the import of goods sold at below production cost once a third country incorporates them into another product.

No one doubts that foreign interests are entitled to representation in Washington. But one may raise questions about the nature and form of such representation:

Should former high-ranking U.S. officials—people who are privy to Washington's economic and trade strategies—be permitted to lobby for foreign economic rivals?

Should foreign corporations be permitted to operate PACs and become involved in the financing of American elections—as they now are to the extent of at least $2 million in the 1988 election cycle?

Has Congress become too susceptible to political pressures generated by grass roots propaganda campaigns sponsored by foreign corporations and their governments and can tighter lobbying and disclosure laws reduce this pressure?

How pervasive is foreign support of research and policy analysis on international economic issues by think tanks and scholars who generate the ideas for America's political candidates, elected officials and policymakers? Would expanded support for such research from U.S. foundations, businesses and government be desirable?

While growing foreign investment in the United States is partially documented, the escalating foreign efforts to shape America's trade and economic policies are virtually uncharted. One aspect of this influence is, however, indisputable: Foreign lobbying is well-staffed, well-organized and well-financed.

Canada, the next most active country after Japan, currently has 61 organizations representing its government and firms. Third in line are the British with 44 lobbying, public relations and law firms representing their interests in Washington. There are now almost 8,000 foreign agents registered with the Justice Department.

Not all would-be foreign agents are as blatant in their approach as former Commerce Department official Robert Watkins. Watkins was criticized by some U.S. firms and members of Congress as insufficiently tough in representing U.S. interests when he was in charge of efforts to open Japanese markets to U.S. auto parts in 1986 and 1987. Just as the negotiations were concluding last fall, Watkins sent a letter to Japanese auto parts manufacturers offering to organize and lead a lobbying association to represent their interests in this country.

Watkins is probably an extreme case. But the easy availability of many well-connected former U.S. government officials certainly increases the effectiveness of foreign lobbying. Since 1980, more than 100 former federal office-holders have joined the ranks of many others who once held important U.S. positions and now advise or speak for foreign companies and their governments. Former officials are unusually effective representatives: They have a special knowledge of the inside workings of U.S. trade, investment and related economic strategies. Moreover, like James Lake, they have privileged access to high-ranking friends, former colleagues and subordinates who still work within the government.

Ex-officials are also excellent public relations people. Their expertise is often sought out by the media through which they can advance positions by writing editorial pieces, appearing on television and commenting on trade matters. But when they do so, they are generally identified only as knowledgeable former government officials. Those who are required to file foreign-agent registrations with the Justice Department are supposed to attach a copy of their registration statement with any testimony they give before Congress. An informal check shows that fewer than 2 percent do.

Foreign interests also have the diplomatic edge in Washington. A key function for foreign ambassadors is opening political doors for their country's economic interests and, when necessary, escalating trade matters into national issues.

For most American companies, the only comparable political access comes from the direct involvement of the Chief Executive Officer. CEOs still have a certain cachet in Washington since the powerful, after all, are intrigued by the powerful. But only a handful of American CEOs are moved to translate this fascination into Washington influence. A recent A.T. Kearney Company survey of the CEOs of 150 manufacturing companies found that only a quarter of those surveyed even try to affect public policies.

Furthermore, as U.S. companies become more dependent upon foreign sources for financing, components and supplies, their willingness to complain about predatory foreign trade practices diminishes. Witness the cacaphony of conflicting responses when the U.S. finally moved to stop several years of illegal Japanese dumping of semiconductors upon which many American companies had, in the interim, become dependent (a practice of economic entrapment which U.S. robber barons understood and applied well in the 19th century.)

Just as foreign interests invest wisely and handsomely in direct lobbying, so too they invest strategically to shape public opinion to their advantage. More than 100 foreign companies, for example, have legally created their own Political Action Committees (PACs) by stimulating contributions from their American employees. Bruce Stokes reported in the National Journal that foreign-company PACs contributed more than $1.1 million in the 1985-86 election cycle. Federal Election Commission data indicate that these expenditures will rise considerably by the end of the current cycle.

In addition to lobbying and politicking, a growing number of foreign companies and their governments are propagandizing. The Japanese, moreover, are systematically integrating the three approaches into a carefully crafted grass-roots public relations campaign, the details of which have received almost no attention in the general press. Japan's campaign, like those of other nations, is designed to influence federal officials by going over their heads to U.S. voters, local officials and the press. It was begun in 1986 to deflect American criticism about the fairness of Japanese trade practices and to emphasize the benefits of Japanese investment in the United States. Its clear message: Criticism of Japanese protectionism threatens these benefits upon which America is increasingly dependent.

In late 1985, Akio Morita, chairman of the powerful Electronic Industries Association of Japan, laid out for the member companies how and why EIAJ must "seek direct contact with the American people . . . [and] make stronger efforts to convince local governments, leading to a concerted effort to have more impact on the federal government."

The EIAJ campaign is extraordinarily comprehensive. It includes: 1) staging debates and seminars in states and localities; 2) staging local events with local Japanese factories and plants; 3) publishing local newsletters and magazines; 4) exchanges with state universities and think-tanks; 5) contacting state economic development bureaus, local Chambers of Commerce and state offices of U.S. Senators and Representatives; 6) exchanges with local consumer organizations; seminars at the state level; 7) contacting local press representatives, and 8) introducing student exchange programs.

Japan's PR effort is also extraordinarily well-bankrolled. Craig Smith, editor of the "Corporate Philanthropy Report" estimates that between 1985 and 1986, contributions by Japanese companies to U.S. nonprofit organizations alone jumped from $50 million to $100 million.

Japanese publicists have also demonstrated a hair-trigger willingness to label criticism of Japanese protectionism as "Japan-bashing" and tough U.S. actions as "racism." In a remarkable outburst last April, for instance Hajime Tamura, Japan's powerful Minister of International Trade and Industry, urged a presidential veto of an American trade bill he deemed "racist."

Of course, Japan-bashing does occur; and some Americans are racist. But a large number of the accusations of Japan-bashing are nothing but cynical gambits served up to weaken legitimate American complaints and to avoid substantive action. Unfortunately, these ploys often succeed.

Another source of potential influence comes from the growing number of foreign corporations and their governments supporting the work of the policy institutes and scholars who supply elected officials and other policy makers with ideas. While the views of these institutes and scholars are genuinely held, significant foreign funding amplifies their particular perspectives and gives them a sharp competitive advantage in the idea marketplace.

A good example of this dynamic is the work of the Institute for International Economics, almost certainly the think tank with the greatest influence on trade policy thinking in Washington. It was created—and, until recently, principally financed—by money provided by the West German government through the German Marshall Fund of the United States. This support is now augmented with funds from Japan and U.S. donors.

From its inception, the Institute has been a strong advocate of laissez-faire trade policies. Its studies have minimized both contributions of foreign protectionism to America's trade deficit and the feasibility of reciprocal actions to reduce that protectionism.

A measure of the Institute's influence is the wide and quick acceptance of its estimates that Japanese protectionism contributes relatively little to the U.S.-Japan trade deficit. For example, in 1981 Institute scholars estimated that the Japanese barred only $2 billion of U.S. exports—an amount that, as author and former trade official Clyde Prestowitz has pointed out, could be accounted for by restrictions on sales of U.S. tobacco products alone. Commerce Department analysts, by contrast, calculated that the figure for 1982 was closer to $20 billion.

In early 1985, the Commerce Department compiled a short list of U.S. products, such as citrus and soda ash, excluded by Japanese protectionism and worth an estimated $17 billion—then equal to about half the U.S.-Japan trade deficit. Later that year, however, an Institute report made a startling, widely reported assertion: America's trade and economic practices were actually *more* protectionist than Japan's. The Institute concluded that Japanese protectionism contributed only $5 billion to $8 billion to the U.S.-Japan trade deficit—about 10 to 15 percent.

This 10-to-15-percent estimate has been quoted so often that its source is seldom cited any longer and its validity never questioned. Japanese negotiators use it as proof that their trade barriers are minimal. The administration has used it to oppose tough new provisions in the current trade bill against predatory practices including the controversial Gephardt amendment whose author, Rep. Dick Gephardt (D-Mo.), himself cited the Institute estimate. And yet ongoing work by scholars estimates that Japanese protectionism, in all its many forms, may now deflect an annual amount of U.S. exports roughly equal to the $50 billion-plus U.S.-Japan trade deficit.

As foreign investors increase their holdings in this country, it is understandable that they will make every effort to protect those interests. Far less understandable are the jaded attitudes of U.S. policymakers, politicians and public toward the conflicts of interest that can certainly arise when high government officials and advisers trade in their expertise for well-paid positions representing foreign interests.

The most important step toward curbing undue foreign interests is to eliminate the American overconsumption that has led to our reliance on foreign loans and foreign purchases of U.S. assets to balance our trade accounts. Beyond that we need stricter ethics laws, better enforcement of existing laws and—especially—a commitment by future administrations to set and enforce the highest standards of conduct for government officials.

Finally, it would be helpful if the media would more carefully identify the affiliations of former government officials who now serve as foreign agents or advisers, as well as those of independent experts. Perhaps few if any of these spokespersons and commentators are influenced in their opinions by the sources of their livelihoods, but certainly there can be no harm in giving readers and viewers all the information that might help them balance their judgment of what they read and hear.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, July 31, 1980.

To the Honorable Benjamin R. Civiletti, The Attorney General, and The Honorable Edmund S. Muskie, The Secretary of State.

Subject: Improvements Needed in the Administration of Foreign Agent Registration (ID-80-51)

We have reviewed the administration of the Foreign Agents Registration Act of 1938, as amended. The review was a follow-up to our 1974 report.[1]

Since 1974, the Department of Justice has made some improvements in its administration of the Act. For example, civil actions have been taken to register additional agents and to have their activities reported. However, the administration of the Act requires more attention since it is apparent that persons are acting as foreign agents without registering, registered agents are not fully disclosing their activities, and officials in the executive branch are often unaware of the Act's requirements. Thus, the Act's goal of providing the public with sufficient information on foreign agents and their activities is not being completely fulfilled.

We are therefore recommending that the Departments of Justice and State take the following steps to improve administration of the Act and to more fully achieve legislative intent.

The Attorney General should seek legislative authority to (1) give the Justice Department additional enforcement measures, such as administrative subpoena powers, and a schedule of civil fines for minor violations and increases in existing fines and (2) require written notification to the Justice Department of all exemption claims prior to any agent activity. He should also:

Survey the public users of the foreign agent files to determine their opinions on whether disclosure information is adequate and whether additional information might be useful.

Provide specific guidance to agents and agency personnel on their responsibilities under the Act and revise the registration and reporting forms to better reflect the requirements of the Act as well as the results of the user survey.

Establish a more permanent inspection capability with scheduled inspections for and emphasis on the more important type of agents.

The Secretary of State should resolve with the Attorney General who qualifies for diplomatic exemptions and, in the future, provide whatever assistance the Attorney General requests to effectively administer the Act.

Enclosure 1 discusses these subjects in detail and explains why we believe these actions are necessary.

We are sending copies of this report to the Chairman of the House Committee on Government Operations, Senate Committee on Governmental Affairs, House and Senate Committees on Appropriations and Committees on the Judiciary, House Committee on Foreign Affairs, and Senate Committee on Foreign Relations.

Section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We would appreciate receiving a copy of these statements.

J. K. FASICK,
Director.

ENCLOSURE I

IMPROVEMENTS NEEDED IN THE ADMINISTRATION OF FOREIGN AGENT REGISTRATION

The Foreign Agents Registration Act of 1938 was adopted to identify agents engaged in political activities, including the spreading of foreign propaganda, on behalf of foreign principals and to publicly report their activities and finances.

In the mid 1960s, congressional attention focused on the lawyer-lobbyist and public relations counsel whose objective was not to subvert or overthrow the U.S. Government but to influence its policies to a particular client's satisfaction. The 1966 amendments to the Act were designed to reflect this shift by placing emphasis on protecting the integrity of the Government's decisionmaking process and on disclosing the activities of foreign agents, including their contacts with executive branch officials. The Act is not intended to prohibit lobbying on behalf of foreign principals but to require their agents to register with and periodically report their activities to the Justice Department's Registration Unit.

REGISTRATION OF AGENTS

A foreign agent must submit specific statements and exhibits when he initially registers with the Unit and when new principals are acquired. Supplemental statements of the agent's activities and finances are required every 6 months thereafter. Separate reports are also required if the agent disseminates political propaganda. This information is available for public review at the Justice Department and copies are available upon request.

While the Act states that any person acting as an agent must register, it also provides certain exemptions to registration, such as for diplomatic, humanitarian, commercial, and legal activities. Unit officials stated the latter two exemptions are broadly written and have fostered differing interpretations. The burden of proof for using the exemption rests with the agent, and no approval by the Unit is required. Only if the agents have been identified by the Unit is their use of the exemption questioned.

Unit officials believe that, as a result of improperly claimed exemptions, general unawareness of the Act's requirements, and evasion of the Act, there are more active agents than the approximately 650 registered. Although the officials do not have evidence as to the number of unregistered agents, some believe the 650 figure may be only the "tip of the iceberg."

It is difficult to determine the number of unregistered agents. The Unit does not make scheduled reviews of executive agency records or periodic inquiries of agency officials about agent activities since additional staff would be needed for this purpose. Few agencies' personnel are aware of the Act and even fewer have data upon which a review could be performed. The means used by the Unit to identify unregistered agents include a review of media content to determine who might be acting for other countries, inspection of registered agents records, and tips provided from various sources.

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[1] Effectiveness of the Foreign Agents Registration Act of 1938, As Amended, And Its Administration by the Department of Justice, (D-177551, Mar. 13, 1975).

We discussed foreign agent registration with officials of various agencies and inquired whether they had any records available concerning agent contacts. The officials were with the Departments of State and Commerce, International Trade Commission (ITC), Securities and Exchange Commission, Office of the U.S. Trade Representative, and the military services. Since the agencies are not required to take any particular action, their awareness of the Act was limited or nonexistent, and only at ITC did we find any records which could be used for verification. We reviewed the seven completed fair trade practice cases for 1978 and 1979. In four of these cases, we found that 20 persons were involved who should have been registered, according to the Unit's criteria, but only one was. These agents made up about 20 percent of the witnesses in the cases.

Agents should be required to notify Justice in writing that they are claiming an exemption from registering. If agents had to notify Justice, it would provide the Unit with better information on who isn't registered that should be. Further, the agents would lose their first line of defense in evading registration.

ADEQUACY OF DISCLOSURE IN REPORTING

In our 1974 report to the Senate Foreign Relations Committee [1], we reported that only 30 percent of 222 supplemental statements we reviewed provided adequate disclosure. Since then, there has been some improvement but this continues to be a major deficiency.

According to Unit officials, the criteria for adequate disclosure are that the public should be able to review an agent's file and know which Government officials an agent has contacted for his principal, when the contact occurred, what was discussed, what position the agent presented, and the finances associated with these contacts. Agents are expected to provide this information semiannually in a 27-question supplemental statement of their activities and finances. Paralegal personnel in the Unit review these statements for adequate disclosure and repeat additional infomation from the agents are necessary.

We reviewed 299 supplemental statements of 163 agents to assess the adequacy of the information provided and found that only 83 agents, or 51 percent, were adequately reporting their activities. The lawyer-lobbyist group, the focal point of the 1966 amendments, had one of the lowest levels of adequate reporting, as shown below.

Agent type	Number of agents	Adequately reporting: Number	Adequately reporting: Percent
Tourist	23	19	83
Public relations	18	11	61
Trade centers	22	15	68
Lawyer-lobbyist	46	14	30
Embassy	44	21	48
Other	10	3	30
Total	163	83	51

We selected 19 cases, including 11 lawyer-lobbyist cases, for discussion with the paralegals. We considered, these cases to be the worst violations of the adequate disclosure criteria. Among the deficiencies we identified were conflicting statements about the agent's principal; no listing of contacts, activities, and/or finances; outstanding Unit requests for additional information; no cross-examinations of agents financial records; missing registration statements; unexplained travel and entertainment expenses; no statement of purpose of position or of relationship of the agent to other agents; reporting of useless information; and lateness in reporting activities.

In most of these cases, the paralegals were not enforcing their criteria. Their reasons for this included inexperience, overlooking an item during their review, or planning to correct the deficiencies during an inspection.

In our review of agents' files, we observed differences in both the styles and extensiveness of agent reporting. We noted that the questions on the forms are too general and as such, do not specifically address the disclosure criteria. Unit officials agreed in general with our observations but added that the questions related to specific sections of the Act. Forms, general regulations concerning the Act, and advice, if requested, are provided to the agent. However, no standardized guidance on specifically how and what to report is available to the agent or the paralegal who must review the forms.

We believe several changes can be made to improve the quality of disclosure in agent reporting, including (1) establishing standard disclosure criteria and enforcing compliance with the criteria, (2) revising the forms to request information that meets the criteria, (3) giving the agents specific guidance on the criteria and how information should be reported, (4) training the paralegals to review the statements, and (5) concentrating the review process on the lawyer-lobbyist group and other more important agents.

PUBLIC VIEW OF ADEQUATE DISCLOSURE

On of the Act's goals is to provide the public with adequate disclosure of foreign agent activities and finances. However, no determination has been made as to whether the public views the information as adequate.

We reviewed the files of 17 agents to determine who was using the files and whether their informaton needs were met by the files. The largest user of the files was the media, as shown below.

Type of file user	Number of requests Jan. 1, 1978 to Apr. 29, 1980 [1]	Percent
Media	103	44
Lawyers, generally agents	56	24
Students	23	10
Congress	3	1
Government agencies (GAO)	[2]3	1
Agents reviewing their own files	4	2
Other	44	19
Total	236	

[1] Write-in requests for file information not included.

While it is recorded who used the file, we found no information on whether or not the files provided satisfactory disclosure information to the public reviewer. A Unit official stated that no formal survey has been made of this question but that sometimes a reviewer will ask Unit personnel followup questions after seeing the files.

We believe the Unit should know the public's evaluation of the service being provided, especially if changes are to be made in the reporting criteria and format.

TIMELINESS OF AGENT REGISTRATION AND REPORTING

The Act requires that persons file registration forms within 10 days of becoming agents. In 1974, only 5 of the 122 forms we reviewed, or 4 percent, met this requirement. In 1980, we reviewed 79 forms, filed since the date of our 1974 report, and found that 18, or 23 percent, met the requirement. Of the remaining 61 cases, 22 were late by more than 90 days.

The situation was similar under Justice regulations which require agent reporting within 30 days of the end of the 6-month period. In 1974, 87 of the 222 forms we reviewed, or 39 percent, met the deadline. In 1980, only 120 of the 299 forms we reviewed, or 40 percent, met the deadline. The remaining 179 forms were late by an average of 15 days.

LACK OF INSPECTIONS

The Unit's inspection program has been dormant; agent's books and records had not been inspected for over a year until just the last few weeks. As a result, the Unit lost its primary means of assuring that registered agents were reporting all their activities and finances.

In our 1974 report, we recommended that Justice conduct more inspections. At most, 15 inspections had been made in the 2 years prior to that time. Subsequently, Unit lawyers with some FBI assistance made 93 inspections in 1974. For the most part, these were one day visits to tourist and information offices. Since then the number of inspections has steadily declined, as shown below.

Year	*Number of inspections*
1974	93
1975	46
1976	26
1977	34
1978	9
1979	8
1980	[1]1

[1] As of July 1, 1980.

Unit officials said the reduction in inspections after 1974 resulted from changes in who was being inspected, how they were inspected, and the Unit personnel conducting the inspection. Experience gained from inspections convinced Unit officials that the lawyer-lobbyist agents warranted more attention than the tourist and information offices. Subsequently, inspections were more detailed and lengthy and fewer were made. Unit officials believe the inspection process was improved, since the more important agents were being covered. Then the inspection program changed again in 1978.

In 1974, the inspection teams consisted of Unit lawyers and FBI agents. However, the low priority given the work by the FBI and courtroom demands on the lawyers caused the Unit to assign inspections to the paralegals in 1978. The Unit Investigator began training the paralegals, and 9 inspections, mostly of tourist operations, were made under his supervision. In mid-1978, the program was stopped when the Investigator was temporarily reassigned to another program for 6 months. The program was restarted in 1979 and 8 inspections were made before the Investigator was reassigned and the program was halted again. Since mid-1979 there were no inspections until just a few weeks ago.

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[1] Effectiveness of the Foreign Agents Registration Act of 1938, As Amended, And Its Administration by the Department of Justice (B-177551, Mar. 13, 1974).

Because the paralegals are not fully trained and lack experience inspecting lawyer-lobbyist agents, the Unit Chief requires the Investigator or a Unit lawyer to accompany the paralegals on any inspection of a lawyer-lobbyist. However, with all the lawyers tied up on court cases, the inspections stopped. A temporary solution of having the Deputy Chief accompany the paralegals on some inspections is now being used, with one inspection just completed.

The lack of inspections has also limited the paralegals' ability to improve reporting. Past inspections have been used to show the agent what information the Unit requires and how it should be reported as well as to answer the agents' questions on registration and reporting; thus inspections are viewed as being the best and easiest means for obtaining adequate disclosure.

We believe the Unit should have an inspection capability using either the paralegals or other staff, for making required inspections of the lawyer-lobbyist agents and other agents as necessary.

ENFORCEMENT OF THE ACT

Justice has increasingly used the Act's civil penalties to cause more foreign agents to register and report their activities. However, such actions have been limited by the availability of Unit lawyers to pursue violations.

In our 1974 report, we noted that the Act was considered a "compliance" rather than a "criminal" act, even though it provides criminal sanctions for willful violations. Further, the Unit attempted prosecution only in clear cases of recalcitrant noncompliance. As a result, the injunctive remedy authority had been used once between 1966 and 1974. Since then, the Department has increased the use of its own penalties to enforce the Act. According to a Unit official there were two civil actions, two grand jury actions, and four investigative matters in process. This is just below the average caseload the Unit has handled since 1974.

Although the level of enforcement activities has increased since 1974, Unit officials stated it could be much greater if staff were available. Civil proceedings are a complex and lengthy process and a lawyer often is involved with a case for a year or two. Because of the time required and the limited number of lawyers, the Unit can only prosecute a few cases. According to the Unit Chief, he could immediately double his civil caseload if lawyers were available.

Criminal prosecution has been used sparingly. According to Unit officials, successful prosecution is very difficult since willful intent to violate the Act is hard to prove. While one of the grand jury actions and one investigative matter may result in criminal prosecution, the Unit generally relies on civil remedies to enforce the Act.

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By Mr. CHAFEE (for himself, Mr. BAUCUS, Mr. DURENBERGER, Mr. STAFFORD, Mr. BUMPERS, and Mr. GORE):

S. 2867. A bill to establish national policies and support and encourage international agreements that implement energy and natural resource conservation strategies appropriate to preventing the overheating of the Earth's atmosphere, known as the "greenhouse effect"; referred to the Committee on Finance.

GLOBAL WARMING PREVENTION ACT

● Mr. CHAFEE. Mr. President, I am pleased to be introducing a major piece of legislation today to address the serious problem of global climate change and the greenhouse effect. The bill is entitled "The Global Greenhouse Warming Prevention Act of 1988." Joining me as original cosponsors of this bill are Senators BAUCUS, DURENBERGER, STAFFORD, BUMPERS, and GORE.

Companion legislation is being introduced today in the House by my good friend and colleague from Rhode Island, Congresswoman CLAUDINE SCHNEIDER, who is the prime architect of this bill. Joining her is a bipartisan list of some two dozen cosponsors led by Congressman GEORGE BROWN of California.

Obviously, in the waning days of this Congress, we are not looking to pass the bill this year. But we are trying to frame the debate for next year.

This is the third major greenhouse bill in the Senate. Much like those put together by Senators WIRTH and STAFFORD, S. 2667 the National Energy Policy Act of 1988 and S. 2666 the Global Envrionmental Protection Act of 1988, this bill sends a very loud, clear signal to the United States and, indeed, the world.

By introducing these bills, we are saying that we are prepared to deal with the greenhouse effect. For too long, destruction of the Earth's climate system has been treated as a distant threat or as a theoretical problem.

Finally, people are waking up to the fact that the problem is real and, whether we like it or not, we are going to have to deal with it. We are going to have to deal with it soon.

We have all heard the scientists' warnings that, if we continue down the current path, if we continue to pour carbon dioxide and chloroflurocarbons into the atmosphere at the current rate, we will see average global temperature increases of 3 to 9 degrees Farenheit in the next 40 to 60 years.

To put this in perspective, keep in mind that the global temperature has not risen by 3 degrees for more than 10,000 years. Now we are talking about larger changes in less than 60 years. Such rapid changes in such short time frames mean that we will not be able to rely on natural , or evolutionary responses.

As if that was not enough of a problem, it is important to realize that the greenhouse effect will not stop at a 9-degree increase. If we do not take strong steps such as those called for in this bill, we will reach the predicted doubling in carbon dioxide and keep on going. The phrase "global disaster" seems to sum things up pretty well.

The good news is that we have come a long way since I chaired my first hearings on this problem in June 1986. With the help of the press, dedicated scientists, and a host of interested professionals, we have managed to capture the attention of people all over the world.

Now it is time to put that grassroots support to work and start solving the problem. This bill shows that all is not gloom and doom. We can and must do more than simply wring our hands and wait for the inevitable.

Mr. President. The bill in its current form is over two hundred pages long so I will not ask that it be printed in the RECORD. Instead, I ask unanimous consent that an extensive summary of the bill and a list of groups endorsing this legislation be printed in the RECORD immediately following my statement.

Mr. President. The greenhouse effect and the uncontrolled, pollution-induced global climate change that is being predicted by some of the best scientific minds in the world is an issue that we have to deal with. Those of us in this body and similar chambers throughout the world must recognize the tremendous ramifications of our failure to act and start making the tough decisions.

There is no one solution or magic formula that we can adopt. Rather, solving this problem will take numerous small but significant steps at home and abroad. The task before us is an awe-inspiring challenge. As this bill notes, it is also a tremendous opportunity.

By fostering technological innovation in this country and then promoting the export of such new technologies to the rest of the world, particularly, the lesser developed countries, we have an opportunity to enhance our role in the global economy while, at the same time, taking a leadership role in the fight to preserve our fragile environment. That, Mr. President, is our challenge, our opportunity, and, indeed, our responsibility.

I look forward to working on this bill and other suggestions to solve the global climate change problem when we return to Washington in January. I thank my colleagues who have joined with me in sponsoring this bill and urge the rest of our colleagues to join us in our effort to make this world a better place for our children and grandchildren.

I ask that a summary of the bill and a list of organizations endorsing the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

SUMMARY OF GLOBAL WARMING PREVENTION ACT OF 1988

The key point about this bill is that it establishes a comprehensive least-cost energy planning process throughout the federal government, including all foreign aid programs supported by the U.S. The bottom line result of this approach is to create a win-win strategy for reducing global warming that reduces energy costs at the same time. Indeed, we could as well have referred to this bill as the "global competitiveness and U.S. productivity enhancement act" because it should help Americans eventually save several hundred billion dollars per year on their energy bills, create high-efficiency energy products for export, reduce foreign oil imports and the trade deficit, and reduce a range of other environmental pollutants in addition to greenhouse gases.

Repeated testimony before Congress indicates that energy efficiency has become one of America's largest sources of least-cost energy services. Over the past 15 years investments in improving the efficiency of America's stock of buildings, appliances, vehicles, industrial equipment, and other energy-consuming devices has cut energy consumption by one-third, carbon emissions by 40%, and the U.S. energy bill by a phenomenal $160 billion per year.

Success breeds success, and this is undeniably true about remaining opportunities for saving more money and cutting carbon emissions through additional efficiency improvements.

Detailed studies show that the U.S. economy could maintain robust economic growth while achieving between $160 billion to $200 billion per year in energy savings through continued investment in efficiency technologies that are two to five times cheaper than conventional fossil and nuclear resource options.

However, a variety of market imperfections and biases currently inhibit the timely capture of these low-cost energy options. In particular, public policymaking has failed to keep pace with these technological innovations and new commercial opportunities, nor have any public policy efforts been taken to deal with the threat of global warming. The proposed legislation sets out new, needed changes in federal policies that reduce a number of the key market barriers.

The energy savings—cumulatively amounting to trillions of dollars per decade worldwide—may offer one of the few sources of investment capital for undertaking additional steps to control greenhouse emissions. Other vital steps that need to be taken, and that are addressed in this legislation, include: rapid development of ecologically sustainable renewable energy resources; prevention of deforestation and promotion of reforestation internationally; eliminating stratospheric ozone-depleting chlorofluorocarbons (CFCs) and reducing other greenhouse gases (e.g., methane, nitrogen oxides); promoting family planning services to cope with high population growth, and development of adaptative measures for agriculture and other affected parts of the economy that will be impacted by changing climate patterns and sea level rise as the global warming takes its course.

The bill gives high priority to reinvigorating the nation's renewable energy R&D program, which has been reduced 75% over the past decade. According to DOE's Energy Research Advisory Board the U.S. reserves of renewable energy resources exceeds 80,000 quads—five to 10 times larger than the U.S. coal reserves. ERAB estimates that 80 quads could be economically extracted from this resource base (or 80% of the energy projected to be needed by 2010), if the nation maintains stable-level RD&D funding. This bill takes the advice seriously.

Natural gas can also play an important role as a bridging fuel, since it produces about half as much as CO_2 as coal. The U.S. currently has the world lead in high-efficiency gas turbines, developed over the past decade for the Air Force for cargo planes. They can be modified for use as powerplants. The bill promotes the demonstration of this aero-derivative technology, known as Intercooled Steam-Injected Gas Turbines (ISTIGs). They are 50% more efficient than conventional powerplants, and cost half as much as new coal or nuclear plants. Just using them to replace currently operating gas-fired power plants would save the nation half a million barrels of gas per day and $16 billion in net present value. Moreover, they represent an outstanding export product. An AID study found that they could be used to cost-effectively generate 50,000 megawatts of electricity in the 70 developing countries that grew sugar, using sugar cane wastes as the renewable fuel.

The U.S. consumes upwards one billion tons of coal, and provides half of all generated electricity. This legislation promotes research to reduce CO_2 emissions from coal, as well as tree-planting, which research shows to be one of the lowest cost ways of offsetting carbon emissions.

Key features of the bill include:

National Goals: 20-percent reduction of 1987 CO_2 emissions levels by 2005; Intl Global Agreement on the Atmosphere by 1992 setting a global goal of 20-percent reduction of 1987 CO_2 levels by 2005; periodic review of need and the opportunity to achieve further reductions beyond 2005.

TITLE I—NATIONAL LEAST-COST ENERGY PLAN

Changes the National Energy Policy Plan (NEPP) into the National Least-Cost Energy Policy (NLCEPP) and mandates the Dept. of Energy to prioritize policies in accordance with the least-cost options;

[Note: The least-cost language adopts the process Congress mandated in PL 96-501, the Pacific Northwest Electric Power Planning and Conservation Act of 1980].

The Plan shall also rank cost-effective energy-saving options that reduce energy use per unit of GNP by two, three, four, five, and six percent per year, and estimates of CO2 reductions resulting from each option;

A Two-year action plan for meeting the goals of the Least-Cost Plan.

TITLE II—ENERGY EFFICIENCY

3-year R&D authorization of a minimum of $868 million—$222 million in FY90, $296 million in FY91, and $350 million in FY92 (compared to $162 million in FY88, and still far below the FY79 level of $427.9);

[NOTE: Studies show that federal energy efficiency R&D has been an unparalleled success story—the investment returns on just seven of the most successful projects are sufficient to provide a 50 fold return on all taxpayer expenditures on efficiency R&D over the past 15 years]

Establishment of 10 research centers to achieve multiple improvements in energy-intensive industries—a minimum of $120 million for 3-year authorization;

Reduce federal building primary energy use per square foot by 25% by 1995, and 40% by 2000 from 1987 levels—a minimum of $1.1 billion for 3-year authorization to retrofit buildings;

[NOTE: Retrofit funds are estimated to pay back in 5 years, and will save taxpayers several billion dollars additional over the life of the improvements]

Establish Building Labeling and Information program, and direct primary and secondary federal lending institutions to loan for energy-saving improvements as standard operating procedure—$6 million for 3-year authorization;

Establish efficiency standards for incandescent and fluorescent lamps, and levels on efficiency of windows and window systems;

R&D initiative to reduce energy and stratospheric ozone depleting chemicals—a minimum of $30 million for 3-year authorization;

Expand DOE's Least-Cost Electric Utility Planning Initiative—a minimum of $30 million for 3-year authorization;

Implement a Least-Cost Gas Utility Planning Initiative—a minimum of $15 million for 3-year authorization;

Requires Dept. of Transportation to review and report on Least-Cost Transportation options, including mass transport options, and expansion of urban walkways and bikeways;

Directs Federal Energy Regulatory Commission to pursue rigorous Least-cost utility planning in interstate and intrastate power sales;

Includes "Qualifying Efficiency" in PURPA cogeneration and small power production purchases by utilities, as well as in any "competitive bidding" arrangements;

TITLE III—STATE ENERGY CONSERVATION PROGRAM

Provides 3-year authorization of $150 million for state energy conservation programs, and requires states to prepare comprehensive energy plans;

New Weatherization Research program to increase the energy savings to invetment ratio by 50% in the Low-Income Weatherization program;

Provides 3-year authorization for Low-Income Weatherization Program of $740 million—$200 million in FY90, $240 million in FY91, and $300 million in FY92 (compared to $161.4 million in FY89);

TITLE IV—VEHICLE ENERGY EFFICIENCY IMPROVEMENTS

Establishes new national vehicle energy efficiency performance standards based on percentage improvements for each manufacturer's vehicle fleet—anticipated to increase new light car mileage to 45 mpg and new light trucks to 35 mpg by 1999;

Steadily raises federal vehicle fleet average fuel economy, requiring federal fleet to achieve 45 mpg for light cars and 37 mpg for light trucks by 1999;

Steadily raises gas-guzzler tax on inefficienct light vehicles through 1999;

Provides tax rebates to consumers for purchase of fuel efficient vehicles—ranging from $250 if at least 15% more efficient than average model for each size class, to $2000 if more than 75% efficient;

TITLE V—SOLAR AND RENEWABLE RESOURCES

3-year authorization for R&D program of a minimum of $805 million—$200 million in FY90, $265 million in FY91, and $340 million in FY92 (compared to $111.6 million in FY89, but still far less than the FY79 level of $856.9 million);

Requires DOE to prepare report detailing long-term RD&D program and policy options to achieve a doubling, tripling, and quadrupling of national renewable energy use by 2015;

[Note: DOE studies note that renewable resources constitute one of America's largest energy reserves—over 80,000 quads per year, over five times America's coal reserves—and that 80 quads (or 80% of projected energy needs in 2010) could be economically extracted within 25 years by maintaining an adequate and stable funded R&D effort. R&D has been cut 75% over the past 8 years, and this bill gets the needed R&D back on track]

3-year authorization for district cooling demonstration ($3 million), and for research on integrating renewables with fuel cells ($15 million);

3-year authorization to continue efforts of the Committee on Renewable Energy, Commerce, and Trade (CORECT) to promote export of renewable technologies ($6.2 million);

TITLE VI—SOLAR HYDROGEN FUELS

5-year authorization of $100 million for R&D on production and use of renewable energy-generated hydrogen fuels—($10 million in FY90, $15 million in FY91, $20 million in FY92, $25 million in FY93, and $30 million in FY94);

5-year authorization of $100 million for R&D on hydrogen-fueled aircraft—(similar FY increments);

TITLE VII—NATURAL GAS AND COAL

4-year authorization of $200 million for cost-matching commercial demonstration of intercooled, steam-injected gas turbines for electrical generation, with units not exceeding 113 megawatts each—($50 million for each of FY90 to FY93);

[Note: the U.S. has the world lead on this technology development, and it could be one of the most competitive exports to developing countries, where it can also be used with renewable resources]

3-year authorization of $90 million for demonstration of natural gas for mass transit—($30 million for each of FY90 to FY92);

3-year authorization for research on preventing, reducing, recycling, or offsetting CO_2 emissions from coal combustion;

TITLE VIII—U.S. FOREST AND AGRICULTURE POLICIES

Requires report assessing the extent to which the nation's lands are being reforested, an evaluation of increasing the rate of reforestation and afforestation, and the impact of such measures on mitigating the global "greenhouse effect";

Requires National Academy of Sciences report on linkages between agricultural production and global climate change, and assessment of potential changes that could occur, and recommendation of sustainable management practices to minimize detrimental impacts;

5-year authorization of $100 million for the Agriculture Productivity Research Program, designed to help farms fix nitrogen and carbon and reduce dependence on fossil fuel inputs—($20 million for each of FY90 to FY94, compared to $3.9 in FY89)

3-year authorization of $39 million for development of an Integrated Farming RD&D program designed to promote ecologically sustainable production of cost-effective renewable fuels and other multiple economic outputs ($13 million for each of FY90 to FY92);

Mandates a comprehensive report on RD&D necessary to establish a National Farm Ethanol Program, and analysis of incentives necessary to stimulate production of ethanol feedstocks.

TITLE IX—DEVELOPMENT ASSISTANCE

Establishes a Bilateral Tropical Forestry and Agroforestry Program to slow deforestation, and promote reforestation, afforestation, and agroforestry;

[Note: The world's original forest area has declined by 20%, from about 5 to 4 billion hectares. Half the remaining forests are in developing countries, where 11 million hectares per year are being cleared, and reforestation rates are in most cases just a few percent of the deforestation rate]

Establishes Multilateral Tropical Forestry and Agroforestry Program to achieve similar goals;

[Note: Developing countries are losing 6 million hectares of cropland to desertification each year—roughly the same level over the next ten years that could grow tree crops sufficient to provide the energy necessary to double agriculture output in these countries]

Bans import of wood and wood products from countries failing to implement Tropical Forestry and Agroforestry Programs defined above;

Establishes a Bilateral Least-Cost Energy Program that assists aid-recipient countries to develop and implement national least-cost energy plans;

Establishes Least-Cost Transportation Policies to guide aid and loans to recipient countries;

Establishes Multilateral Least-Cost Energy Program that encourages all multi-development lending institutions to implement least-cost energy policies;

Promotes debt reduction for developing countries implementing environmental conservation measures;

TITLE X—INTERNATIONAL INITIATIVES

To convene an international meeting in the U.S. to encourage adoption of a binding multilateral global climate protection convention to reducing global carbon dioxide emissions 20% below 1987 levels by 2005, and further reductions beyond 2005 as deemed necessary by periodic review;

Adopt a binding multilateral agreement requiring reductions of not less than 30% in emissions of oxides of nitrogen over 1987 levels by 1998;

Adoption of additional control measures requiring the virtual elimination of CFC production identified in the Montreal protocol within five to seven years of enactment of this Act;

To convene an international meeting in the U.S. to encourage the exchange of information on energy efficiency and solar and renewable energy resources that are ecologically sustainable.

TITLE XI—WORLD POPULATION GROWTH

5-year authorization for family planning services of $2.78 billion, of which at least $300 million available for the United Nations Population Fund—($500 million in FY90, $540 million in FY91, and $580 million for each of FY92 through FY94, compared to $242 million in FY89 for international family planning services);

Initiate an international conference on population to examine policies necessary to achieve sustainable world population levels, and advance the scientific understanding of the interrelationship between population, resources, environment, and economic development.

Establish a National Commission on Population, Environment, and Natural Resources, comprised of the Chairman of the President's Council on Environmental Quality, the Director of OTA, and 3 other Presidential appointees.

3-year authorization of $45 million for Conference and Commission—($10 million in FY90, $15 million in FY91, and $20 million in FY92).

TITLE XII—RECYCLABLE MATERIALS

Establishes Office of Recycling Research and Information within the Dept. of Commerce to promote recyclable materials programs, and to report on the nation's progress in using recyclable materials;

[Note:] Studies show that if the U.S. increased its recycling rate 10 percent above the projected level by 1992 and 30 percent above the projected level by 2008 the nation could accumulate savings of $30 billion and 7 quads of energy;

Study of federal, state, and local government policies and practices in recycling government-generated wastes, and in procuring recyclable materials, and recommend changes in public policy to increase such efforts;

Pilot project on municipal waste and sewage sludge composting;

Study and scientific research regarding degradable materials and recycling, and identify potential incentives for facilitating development of new markets for recycled nondegradable materials;

Ban production or sale of certain designated nonrecyclable consumer goods.

ORGANIZATIONS ENDORSING THE GLOBAL WARMING PREVENTION ACT OF 1988

American Council for an Energy Efficient Economy.

American Public Power Association.

American Wind Energy Association.

Citizens/Labor Energy Coalition.

Clean Fuels Development Coalition.

Energy Conservation Coalition.

Environmental Action.

Environmental Defense Fund.

Environmental Policy Institute.

Institute for Transportation and Development Policy.

Mennonite Central Committee.

National Association of Regulatory Utility Commissioners' Committee on Energy Conservation.

National Association of State Utility Consumer Advocates.

National Aubudon Society.

Natural Resoruces Defense Council.

Renew America.

Sierra Club.

Solar Energy Industries Association.

Union of Concerned Scientists.

United Methodist Church, Board of Church and Society.

U.S. PIRG.

Worldwatch Institute.

Zero Population Growth.●

By Mr. HEFLIN:

S. 2868. A bill for the relief of Hoar Construction, Inc. of Birmingham, AL, to settle certain claims filed against the Small Business Administration; to the Committee on the Judiciary.

RELIEF OF HOAR CONSTRUCTION, INC.

● Mr. HEFLIN. Mr. President, I rise today to introduce legislation for the relief of a company from my home State of Alabama, Hoar Construction, Inc., of Birmingham, AL.

Mr. President, in the spring of 1985 Hoar Construction, Inc., contracted with Rayner Tile Co. for the tile work at the town center at Cobb Shopping Mall in Atlanta, GA. Hoar's contract with Rayner was conditional on Rayner providing performance and payment bonds acceptable to Hoar. The bonds provided by Integrity Insurance Co. were accepted because they carried a Small Business Administration guarantee.

In January 1986, 6 weeks before the mall grand opening, Rayner advised Hoar that they were going out of business and would not complete the job. The bonding surety, Integrity Insurance Co., refused to complete the job and stated that Hoar Construction, Inc., would have to sue. Hoar completed the tile work with other forces in order to make the mall opening, and to mitigate the damages.

Hoar then filed suit against Rayner and Integrity. On July 2, 1987, Hoar Construction, Inc., was awarded a judgment against Rayner for $381,135.53. Meanwhile Hoar had gone into receivership before the court date, so they were temporarily protected from the suit.

Mr. President, the dilemma is that the Small Business Administration, which guarantees the bond, will not pay 90 percent of the claim to Integrity because Integrity must first pay 100 percent of the claim to Hoar. As Integrity is in receivership, payment of 100 of the claim is not possible, thereby precluding the 90-percent reimbursement from the SBA.

Mr. President, Hoar Construction, Inc., would never have contracted with Rayner Tile Co. under a bond provided by Integrity Insurance Co. had the guarantee not stated that the SBA would guarantee indemnification up to $1,000,000.

The Small Business Administration says that this guarantee is not a guarantee if Integrity Insurance is in liquidation and cannot make payment to Hoar Construction.

Mr. President, the moneys involved in this case are substantial to Hoar Construction Co., and very important to the continuing operation of this small Alabama business.

Thus, Mr. President, I would like to introduce a bill today for the relief of Hoar Construction, Inc., of Birmingham, AL, to settle certain claims filed against the Small Business Administration.●

By Mr. HECHT:

S. 2870. A bill to delay for 1 year the implementation of the Medicare Catastrophic Coverage Act and provide for a study of the coverage and funding of such act; to the Committee on Finance.

FAIRNESS IN AMERICAN HEALTH CARE

● Mr. HECHT. Mr. President, I rise today to introduce "The Fairness in American Health Care Act," a bill which will address the concerns expressed by many retirees and other Americans with regard to the recently passed Medicare Catastrophic Illness Coverage Act of 1988.

This Monday, I met with representatives of a group of my constituents, Seniors Coalition Against the Catastrophic Act [SCACA], about the deficiencies of the Catastrophic Health Insurance Program. Roy Fehler and Daniel Hawley of SCACA articulately expressed to me the fatal flaws in the new law and the inordinate impact of this act on America's retirees. I have also received a large volume of mail and telephone calls from constituents expressing their concerns about provisions of the program.

Mr. President, the problem with this new law is that it tries to provide for the health care needs of a broad range of Americans, from AIDS victims to indigent mothers, but unfairly singles out retirees as the group who will pay the bills.

What America needs, Mr. President, is a catastrophic health care law which provides health care for all Americans of every age, without placing the entire financial burden of the program on those who can least afford it, America's retirees. Unfortunately, the Medicare Catastrophic Coverage Act, while necessary and well intentioned, falls short of its goal and does indeed place the entire funding burden on our retirees.

Mr. President, I recognize that this body did not set out to craft an act unfairly penalizing retirees and adding greatly to the difficulties of many who live on a fixed income, but that is what has occurred, and it must be reversed. In our zeal to address the mounting costs associated with catastrophic illness in this country, we passed what many of us knew to be a partially flawed bill in the hopes that certain provisions could be perfected as it was implemented.

But, Mr. President, few of us recognized the severe problems the bill would cause our Nation's retirees. Certainly this Senator did not, and I seek to correct the problems.

Mr. President, the legislation I am introducing today calls for a 1-year moratorium on the implementation of the Medicare Catastrophic Coverage Act, during which time a study by the Office of Management and Budget and the Department of Health and Human Services shall be conducted to provide information on the following:

The proportional distribution of the potential beneficiaries under the act in terms of age, income, and type of illness.

The distribution of the burden of funding for the program with regard to the age of those who will be financing the program.

Discrepancies between these two provisions.

Any inequities, deficiencies, or other problems involving types of illness, medication, or treatment covered under the act.

The overall long-term cost of the program, and any long-term deficiencies in funding under the act.

And, a list of solutions to correct any problems uncovered by the study.

When this process has been completed, Mr. President, a full report shall be submitted to Congress addressing the findings of the study. If the study shows that the flaws in the program cannot be repaired, the next step which must be taken is to call for a repeal of current law. I am optimistic, however, that a solution can and will be set forth and Congress will then act to correct this situation accordingly.

Mr. President, until we have answers to these questions, and solutions to the problems, we simply must not allow this act to be implemented and our retirees' futures placed at risk.●

By Mr. HEINZ:

S. 2871. A bill to amend the Surface Mining Control and Reclamation Act to provide that no reclamation fee is owed on surface coal mining activities involving culm bank material produced before August 3, 1977; to the Committee on Energy and Natural Resources.

RECLAMATION FEES ON COAL WASTE

● Mr. HEINZ. Mr. President, many States, like my own, are dotted with coal waste piles, the result of surface mining which took place decades in the past. These have been abandoned, and many pose a great threat to the health and safety of coal State residents.

Pennsylvanians have been severely injured when coal waste piles have given way underneath them. Other piles are leaching hazardous materials into ground water. To reclaim these piles will cost hundreds of millions of dollars in Pennsylvania alone.

There is a better way, Mr. President. Anthracite and bituminous culm piles contain approximately 70 percent waste material, and 30 percent recoverable energy resources. Remining these culm piles not only provides us with enhanced energy, but also reclaims the pile, which otherwise will pose a health hazard indefinitely.

There is, however, a major roadblock in the path of successful remining. If coal is removed from a waste pile, the operator must pay the abandoned mine land reclamation fee. This fee will ultimately have to support the far higher cost of reclaiming the waste pile. It is a vicious circle, and we ought to stop it. The legislation I am introducing today will waive the reclamation fee on remining of culm bank material produced before August 1977.

This legislation will help to reduce serious health hazards, and help to produce more energy. It is a commonsense bill which I hope that my colleagues will support.

I ask that the text of the legislation appear in the Record at this point.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2871

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That section 701(28)(A) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28)(A)) is amended by striking the semicolon and "and" at the end and inserting the following: ": *Provided further,* that such activities do not include activities involving culm bank materials produced before August 3, 1977.".●

By Mr. DANFORTH (for himself and Mr. BOND):

S. 2872. A bill to provide for the establishment of White Haven National Historic Site in the State of Missouri, and for other purposes; to the Committee on Energy and Natural Resources.

WHITE HAVEN NATIONAL HISTORIC SITE

● Mr. DANFORTH. Mr. President, today I am pleased to join with my colleague from Missouri, Senator BOND, in introducing legislation to establish the former St. Louis home of General and President Ulysses S. Grant and First Lady Julia Dent Grant as the White Haven National Historic Site. White Haven was the childhood home of Grant's wife, Julia. Grant moved to the White Haven farm in 1854 after resigning from the Army. From 1854 to 1860 he cleared 80 to 100 acres of land at the farm, built a house for his family, and farmed the land. Grant moved from White Haven in April 1860, and though he never returned to St. Louis permanently, he visited often, and for a time planned to return to White Haven.

The Missouri Department of Natural Resources has prepared a history of White Haven as part of its application to the National Register of Historic Places. I am submitting a copy of this history for the RECORD, and I ask unanimous consent that it be printed at the conclusion of my remarks.

The White Haven property currently consists of the 180-year-old main house and approximately 10 acres of land in southwest St. Louis County. The property is owned by St. Louis County, which has offered to give White Haven to the Department of the Interior for inclusion in the national park system. The National Park Service would like to add this property to the national park system, but congressional authorization is required.

The bill we are introducing today will give the Secretary of the Interior authority to accept the White Haven property and establish it as a national historic site. This legislation also authorizes the Secretary of the Interior to acquire, by donation or purchase with donated or appropriated funds, personal property directly associated with White Haven or General or Mrs. Grant for the purposes of the national historic site.

Mr. President, this legislation is extremely important for preserving the history of one of our country's great leaders. There are currently no units in the national park system that represent Grant's life, though nearly every other President is represented by at least one unit of the national park system. Because of the beneficence of St. Louis County, we now have the opportunity to bring this historic property into the national park system, and I hope that Congress will act quickly upon this legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WHITE HAVEN

White Haven is a property of slightly less than ten acres located in an unincorporated part of St. Louis County. It has an address at 9060 Whitehaven Drive and a secondary entrance on Grant Road. Structures on the property include the main house, former slave quarters, spring house and shed, and barn and a caretaker's house. In its heyday before the Civil War this property was the center of a farm or plantation consisting of four hundred to a thousand acres. The home was occupied successively by three families prominent in local history, the Longs, the Hunts and the Dents. Julia Dent became Mrs. Ulysses S. Grant, and White Haven has its primary significance through its important associations over a period of many years, with the eighteenth president of the United States.

EARLY HISTORY

In 1796, a certain Hugh Graham obtained a tract of land of eight hundred arpents (789.66 acres) on the Gravois Creek from the Spanish administration. On September 6, 1799 he acknowledged before Daniel Boone, Commandant of the District of Femme Osage, that he had deeded this property to Jacques Mackay in exchange for land on the Missouri River. Jacques Mackay was James Mackay (1759-1821 or 23), a Scotsman who had come to Missouri as early as 1795 and who had acted as deputy to the Spanish commandant, Zenon Trudeau. His grant was confirmed by the U.S. Board of Commissioners for the Louisiana Territory on December 12, 1808, as Survey 9, Township 44 North Range 6 East. By that date he had already sold a portion of the tract which straddled the creek to his brother-in-law, William L. Long.

The present west wing of the house built in the French vertical log fashion, must have been constructed to 1800, possibly to signify that the land was occupied. It may, however, have been built at a much earlier date, perhaps by an unknown French trapper as a way station along the Royal Road, now Gravois Road. In any case, it ranks as one of the oldest known buildings in the metropolitan area.

WILLIAM LINDSAY LONG

Captain John Long, a native of Virginia, was probably living in Philadelphia, the home port of his ship the "Dolphin," when his son, William Lindsay Long was born in 1789. In 1794, the family moved to Kentucky and from there in late 1796, to the Bonhomme district in northwestern St. Louis County. In 1807 the family moved to the vicinity of James Mackay's land grant, and the following year William Lindsay Long married Elizabeth Sappinton.

Elizabeth was one of the seventeen children of John Sappington, a Revolutionary War veteran who owned a Spanish grant just northwest of that of James Mackay. (The house of Thomas Sappington, elder brother of Elizabeth, is still standing on the original Sappington grant and is listeed in the National Register of Historic Places.) It was probably for her that William Lindsay Long built White Haven, using slave labor. Most of Long's eleven children were born at White Haven during their ten year residence there, including the second son, John Fenton Long (1816-1888). John Fenton Long became a trusted friend of U.S. Grant, and was the executor for the White Haven estate during Grant's presidency.

William L. Long was appointed Ensign in the 4th Company of the 1st Battalion of the 1st Regiment of the Missouri Infantry in December 1811, shortly before the outbreak of the War of 1812; he was recommissioned in 1813. His commander was Alexander McNair Missouri's first governor. Two of his wife's brothers were also officers in the 4th Company.

In 1818, Long sold White Haven and moved to Fenton, Missouri, a town which he laid out on land bought from Antoine Soulard (another prominent pioneer St. Lousian) and which he named for a Welsh ancestor. Fenton still exists, and is located on the south side of the Meramec River at the far end of Gravois Road, about four miles southwest of White Haven. Its low-lying position in relation to the river and its distance from the better-developed trade routes of the area inhibited its growth until well into the twentieth century. Unsuccessful as a city father, Long moved back to the Gravois Creek area in 1820 and built his third house which is still standing and was recently nominated to the National Register of Historic Places. He remained here as a slave-owning farmer until the cholera epidemic of 1849 claimed him and his wife within the space of a week.

THEODORE HUNT AND ANNE LUCAS HUNT

On January 28, 1818, Anne Lucas Hunt wrote in a letter: "Mr. Hunt has bought William Long's farm on the Gravois to which we intend to move the first of April." Theodore Hunt had come to St. Louis because of the fur trade, but he had stayed because of Anne Lucas, and he was moving to this farm twelve miles from downtown because of her. He was born between 1778 and 1780 in Trenton, New Jersey, where his father, Abraham Hunt, was a prominent merchant. In 1798 he entered the U.S. Navy as a midshipman, eventually attaining the rank of captain. In 1803 he was aboard the "Philadelphia" when she ran aground in the harbor of Tripoli; and, as a result, he was captured and held prisoner until June 1805 when America's undeclared war with Tripoli ended. He continued to serve in the Navy until 1811.

In 1808, while on leave from the Navy, he led a commercial voyage to Calcutta, and in 1812, he made a similar trip to Canton for John Jacob Astor. In 1813 he came to St. Louis, "widely traveled, urbane, and well educated." Due to his association with the Astor Fur Company, he may have had business here with his cousin Wilson Price Hunt (1783-1842) who had just returned from a four-year expedition to Oregon on Astor's behalf. On June 23, 1814, Theodore Hunt married Anne Lucas (born 1796), only daughter of Jean Baptiste Charles Lucas (1758-1842).

The elder Lucas had come to St. Louis from Normandy by way of Pittsburgh, Pennsylvania. He had represented Pennsylvania in the United States Congress from 1803. In 1805 he was appointed by President Jefferson to the Board of Commissioners for the Louisiana Territory and Judge for the Territory. He moved his family by flatboat to St. Louis that same year. He established a thriving legal practice in St. Louis, but he is most famous for his real estate acumen. He acquired, at modest prices, old farms that later became the heart of the central business district.

In September of 1817, the second of five Lucas sons, Charles (b.1792) was shot to death in a duel by Thomas Hart Benton. This event so affected his sister, (Mrs. Theodore Hunt) that she "made her father change her place of residence . . . for fear she might change to encounter Col. Benton in some of her walks." Thus the Hunts arrived at White Haven early in 1818. They remained at White Haven until 1820 when they moved to the large Lucas estates located northwest of St. Louis known as "Normandy" in honor of the family's French origin. Hunt continued to engage in a variety of business activities including a tanyard and a store. In 1824 he was made Recorder of Land Titles in Missouri, a position he held with distinction until early in Jackson's administration. He died in 1832, leaving three minor children.

Anne Lucas subsequently married her first husband's illustrious cousin, Wilson Price Hunt, and after his death devoted herself to the administration of her estates and those of her father, which she shared with her only surviving brother, James. She also became a philanthropist on a grand scale, donating nearly a million dollars to religious and humanitarian purposes, the main recipients being Catholic institutions. In the four years before her death in 1879, she distributed much of her own estate. She is buried in Calvary Cemetery in a Gothic chapel where she is portayed in a carving over the door with both her Hunt husbands.

Of all the Lucas and Hunt family houses in St. Louis City and County, White Haven is the only known surviver.

FREDERICK DENT

The next owner of White Haven was born in Maryland in 1787, the descendant of a family which had settled in that state before 1660. By the early 18th century, the Dents had acquired numerous "plantations" in Charles and Prince George's Counties, including Whitehaven at Mattawoman, the namesake of Frederick Dent's Missouri farm. Actually, he considered this country place to be his summer home, as he already had a house in town, from which he oversaw his law and business interests. He insisted on running his farm with slaves even though such a system was not profitable in Missouri, where it was in competition with free hired labor. Nevertheless, he enlarged his holdings by nearly three quarters of a section, bringing his total acreage up to somewhere between 600 and 1000 acres. He enjoyed the courtesy title of Colonel.

Like his predecessors at White Haven, Dent came to Missouri by stages. Sometime before 1814, he settled in Pittsburgh, where he married Ellen Gray Wrenshall, and there the first of their eight children (Jon), was born in 1816. The Dents came to St. Louis in 1818 where Frederick Tracy Dent was born in 1820, Lewis in 1823, and Julia in 1826. The last of their children were born at White Haven; Ellen in 1828, Mary in 1830 and Emily in 1836. Colonel Dent "loved to sit on the front porch in a rocking chair, smoking a long pipe and quoting the St. Louis Republican on politics." On the other hand Julia Dent recalled that her mother "hated the country and this place especially."

ULYSSES S. GRANT

Frederick T. Dent graduated from West Point in 1843. One of his classmates there was Ulysses Hiram Grant, mistakenly registered as Ulysses Simpson Grant, called "Sam" by his friends. Both men were first assigned to Jefferson Barracks, less than five miles from White Haven, and Grant was soon introduced to his friend's family, except for eldest daughter Julia, who was living in town with Colonel and Mrs. John O'Fallon, when Grant arrived.

Within a few months, however, the two young people met, and although Grant was reassigned to Louisiana in 1844, he returned to St. Louis to ask for Julia's hand in 1845 shortly before joining General Zachary Taylor in Texas. On August 22, 1848, during a two-month leave of absence at the conclusion of the Mexican War, Grant married Julia at the Dent townhouse at 4th and Cerre.

For the next six years the couple saw little of St. Louis as they moved to a number of military posts from New York to California. Julia did return to White Haven for the birth of the first of her four children, Federick Dent Grant, May 30, 1850. Then, in the summer of 1854, Grant resigned from the army and settled down with his in-laws at White Haven. The next years have been called ones of "privation, menial pursuits, ignominy, limited prospects, and despondence." At first he and Julia lived in the main house while Grant cleared the 80 to 100 acres about a mile to the north that Colinial Dent had given his daughter. By July of 1855. however, they were living in Wish-ton-Wish, the cottage belonging to Julia's brother, Louis, located about a half mile south of the main house.

In September of 1856 his family finally moved into their own house, a log house which he had built himself and named Hardscrabble. Julia's mother died the following January, and the Grants moved back to White Haven. Colonel Dent decided to move to his town house in the spring of 1858, so Grant leased Hardscrabble to another farmer and farmed Dent's 200 plowed acres. The 1857 crop had been poor, and Grant's fortunes were further adversely affected by the nationwide depression of these years and the severe freeze that occured on June 5, 1858. Later that summer young Frederick contracted typhoid, the slaves became ill and Grant himself contracted an "ague" which afflicted him alternately with chills and fever (malaria?). By the fall of the year he had to give up farming, and began to auction horses and implements and to rent the fields. In January, 1859, he began to work in town with a Dent cousin, Harry Boggs; he walked back and forth every weekend until March when Julia joined him. After a series of unsuccessful ventures, including a stab at politics, Grant finally admitted defeat, and in April of 1860 moved to Galena, Illinois.

Although Grant never again lived in St. Louis, he visited often, and for a time planned to return to White Haven. In 1866 he began to purchase various parts of the Dent property, which had been divided among other members of the family. He completed this consolidation in 1873, at the beginning of his second term as President. Colonel Dent died that year at the age of 87, while a guest in the White House. During this period, Grant built a barn that is still standing to house blooded horses, and surviving correspondence testifies to his continued interest in the property. The plan to return to the area was aborted, however, after the emergence of the Whiskey Ring scandal in 1874. That scheme to defraud the government was centered in St. Louis and as Grant himself was implicated, St. Louis was ruined as a place for retirement. In spite of this, the Grants retained their affection for White Haven. Specimen trees given them during their post-presidential world tour were sent back to White Haven, where a ginko from Japan and two lindens from Germany may still be seen.

The Grants settled in New York after his failure to win renomination to the Presidency in 1880. His business venture there, the firm of Grant and Ward, collapsed on May 6, 1884. Two days previously he had received a personal loan of $150,000.00 from William Henry Vanderbilt, which he had turned over to his partner in the business. This money was never recovered. Grant insisted on repaying this debt even though Vanderbilt offered a number of alternatives, and he ultimately turned over to him all of his and his wife's real property (with the exception of the New York house) as well as a great deal of memorabilia. White Haven was valued at $60,000,.00 in this transaction. A little more than a year later, on July 23, 1885, Grant died.

White Haven was associated with Ulysses S. Grant more intimately and over a longer period of time than any other house, including his house in Galena, Illinois, which is now a National Historic Landmark. Although he suffered from hard times at White Haven, it continued to represent to him his love for his wife Julia, which for both of them remained the most important constant in their lives.

LATER OWNERS

Grant signed a mortgage on 646 acres of the White Haven farm to William Henry Vanderbilt on May 17, 1884. The following April 15, General and Mrs. Grant signed a quit-claim for this property over to William J. Van Arsdale, Vanderbilt's agent. In 1888 this property was sold to Luther H. Conn, a bachelor real estate agent in St. Louis. Conn used the place as a summer house which he called "Grant Wood." He entertained General Frederick Dent Grant there in 1903. The same year he sold the southwestern 217 acres to Adolphus Busch, who used them to establish an elaborate estate which he called "Grant's Farm." Eventually after many vicissitudes, the Hardscrabble log house was moved to the Busch estate, thereby contributing to the confusion as to the historic identity of the two properties. In 1905 Conn sold the fifteen acres surrounding his country house to a development company, which planned to build an amusement park there, capitalizing on the associations of the place and its location immediately adjacent to the station of the Carondelet and Kirkwood Branch of the Missouri Pacific Railroad. White Haven was saved from this fate by Albert Wenzlick, another St. Louis realtor, who purchased the property in 1913 along with 105 adjacent acres. Like Conn before him, Wenzlick used the main house during the summer and entertained visiting antiquarians there. He also continued the process of subdivision which resulted in the eventual reduction of the property to its present 9.85 acres. Albert Wenzlick died in 1937, and in 1940 his son Delbert decided to make White Haven his permanent home. He had the house and adjacent buildings recorded by the Historic American Buildings Survey and then proceeded to make careful repairs and alterations as described by Section 7 above. Delbert Wenzlick died January 12, 1979.

The survey of Missouri's historic sites is based on the selection of sites as they relate to theme studies in Missouri history as outlined in "Missouri's State Historic Preservation Plan." White Haven is, therefore, being nominated to the National Register of Historic Places as an example of the themes of "Architecture," "Exploration/Settlement," "Politics/Government," and "Social/Humanitarian."●

● Mr. BOND. Mr. President, I am pleased to introduce legislation today with my colleagues from Missouri which will preserve President Grant's home, known as White Haven, in Grantwood Village, MO. It would authorize the Secretary of the Interior to accept the donation of White Haven by its current owner, St. Louis County, and designate it as a National Historic Site. The National Park Service would administer the property.

White Haven was the childhood home of President Grant's wife, Julia Dent Grant. Grant and his wife lived at White Haven from 1854 to 1860, farming the land and raising a family. Although they moved away in 1860, they maintained ownership of White Haven and visited it often. St. Louis County currently owns the property, which consists of 10 acres of land, the 180 year old main house and several smaller buildings.

This legislation deserves support for several reasons. First, Grant is the only President not represented in our National Park System. Every other President is represented by one or more sites of personal or historical significance to them. Given his place in our national history, it is important that this omission be corrected. Second, the State of Missouri and St. Louis County have shown a strong commitment to White Haven by funding the acquisition cost. They saved it from demolition in 1986 by purchasing it from a private group for $510,000. The only costs to the Federal Government would be modest amounts for staffing and maintenance. Finally, the National Park Service would like to add this historical property to our national park system but cannot do so without congressional approval.

The Missouri Department of Natural Resources has prepared a history of White Haven as part of its application to the National Register of Historic Places. I am submitting a copy for the RECORD, and ask unanimous consent that the bill be printed at the conclusion of my remarks.

Mr. President, this legislation would ensure the preservation of an important historical site and I urge my colleagues' support for it.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2872

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF WHITE HAVEN NATIONAL HISTORIC SITE.

In order to preserve in public ownership for the benefit and inspiration of all Americans the key property associated with the personal lives of General and President Ulysses S. Grant and First Lady Julia Dent Grant, knowledge of which is essential to understanding his meteoric rise to greatness as well as his heroic deeds and public service and her partnership in them, there is hereby established the White Haven National Historic Site near St. Louis, Missouri.

SEC. 2. ACQUISITION OF PROPERTY.

(a) REAL PROPERTY.—The Secretary of the Interior is authorized to acquire by donation the property and improvements thereon known as White Haven in the unincorporated portion of St. Louis County known as Grantwood Village within the area generally depicted on the map entitled "Boundary Map, White Haven National Historic Site," numbered WHHA-00, 000 and dated July, 1988. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(b) PERSONAL PROPERTY.—The Secretary is authorized to acquire by donation or purchase with donated or appropriated funds personal property directly associated with White Haven or General or Mrs. Grant for the purposes of the national historic site.

SEC. 3. ADMINISTRATION OF HISTORIC SITE.

The property acquired pursuant to the section 1 shall be administered by the Secretary of the Interior in accordance with Act of August 25, 1916 (39 Stat. 535), as amended and supplemented and the Act of August 21, 1935 (49 Stat. 666).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.●

ADDITIONAL COSPONSORS

S. 1489

At the request of Mr. MOYNIHAN, the names of the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Missouri [Mr. BOND] were added as cosponsors of S. 1489, a bill to amend section 67 of the Internal Revenue Code of 1986 to exempt certain publicly offered regulated investment companies from the disallowance of indirect deductions through pass-thru entities.

S. 1515

At the request of Mr. HEFLIN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1515, a bill to prohibit injunctive relief, or an award of damages, against a judicial officer for action taken in an official capacity.

S. 1817

At the request of Mr. KENNEDY, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 1817, a bill to amend the Internal Revenue Code of 1986 to provide that gross income of an individual shall not include income from U.S. savings bonds which are transferred to an educational institution as payment for tuition and fees.

S. 1848

At the request of Mr. KERRY, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1848, a bill to authorize a Minority Business Development Administration in the Department of Commerce.

S. 2199

At the request of Mr. CHAFEE, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 2199, a bill to amend the Land and Water Conservation Act and the National Historic Preservation Act, to establish the American Heritage Trust, for purposes of enhancing the protection of the Nation's natural, historical, cultural, and recreational heritage, and for other purposes.

S. 2367

At the request of Mr. LAUTENBERG, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2367, a bill to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

S. 2549

At the request of Mr. LAUTENBERG, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2549, a bill to promote highway traffic safety encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

S. 2666

At the request of Mr. BAUCUS, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 2666, a bill entitled the "Global Environmental Protection Act of 1988."

S. 2698

At the request of Mr. DODD, the names of the Senator from Tennessee [Mr. GORE], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 2698, a bill to provide Federal assistance to the National Board for Professional Teaching Standards.

S. 2709

At the request of Mr. SANFORD, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 2709, a bill to clarify the United States' obligation to observe occupational safety and health standards and to clarify the United States' responsibility for harm caused by negligence at any workplace owned by, operated by, or under contract with the United States.

S. 2730

At the request of Mr. Wilson, the name of the Senator from Minnesota [Mr. Boschwitz] was added as a cosponsor of S. 2730, a bill to increase the availability of quality affordable child care, and for other purposes.

S. 2796

At the request of Mr. Nunn, the name of the Senator from Minnesota [Mr. Durenberger] was added as a cosponsor of S. 2796, a bill to authorize funding for the Martin Luther King, Jr., Federal Holiday Commission.

S. 2805

At the request of Mr. Grassley, the name of the Senator from Minnesota [Mr. Durenberger] was added as a cosponsor of S. 2805, a bill to amend title VII of the Social Security Act to authorize appropriations for the Office of Rural Health Policy and to establish a National Advisory Committee on Rural Health, and for other purposes.

S. 2809

At the request of Mr. Wallop, the names of the Senator from Colorado [Mr. Armstrong], and the Senator from Wyoming [Mr. Simpson] were added as cosponsors of S. 2809, a bill to amend section 3 of the Act of June 14, 1926, as amended (43 U.S.C. 869-2), to authorize the issuance of patents with a limited reverter provision for lands devoted to solid waste disposal, and for other purposes.

S. 2856

At the request of Mr. Metzenbaum, the name of the Senator from Vermont [Mr. Stafford] was added as a cosponsor of S. 2856, a bill to amend the Age Discrimination in Employment Act of 1967 to provide a rule with respect to the waiver of rights under that Act without supervision, and for other purposes.

SENATE JOINT RESOLUTION 11

At the request of Mr. Thurmond, the name of the Senator from Wisconsin [Mr. Proxmire] was added as a cosponsor of Senate Joint Resolution 11, a joint resolution proposing an amendment to the Constitution relating to a Federal balanced budget.

SENATE JOINT RESOLUTION 348

At the request of Mr. Reid, the names of the Senator from Washington [Mr. Adams], the Senator from Texas [Mr. Bentsen], the Senator from Oklahoma [Mr. Boren], the Senator from North Dakota [Mr. Conrad], the Senator from New York [Mr. D'Amato], the Senator from Missouri [Mr. Danforth], the Senator from Connecticut [Mr. Dodd], the Senator from Nevada [Mr. Hecht], the Senator from Alabama [Mr. Heflin], the Senator from South Carolina [Mr. Hollings], and the Senator from Virginia [Mr. Warner] were added as cosponsors of Senate Joint Resolution 348, a joint resolution to designate the week of February 5, 1989, through February 11, 1989, as "National Burn Awareness Week."

SENATE JOINT RESOLUTION 352

At the request of Mr. Warner, the name of the Senator from Vermont [Mr. Leahy] was added as a cosponsor of Senate Joint Resolution 352, a joint resolution designating September 24, 1989, as "United States Marshals Bicentennial Day."

SENATE JOINT RESOLUTION 355

At the request of Mr. Heflin, the names of the Senator from Illinois [Mr. Simon], and the Senator from Wyoming [Mr. Simpson] were added as cosponsors of Senate Joint Resolution 355, a joint resolution designating October 7, 1988, as "National Teacher Appreciation Day."

SENATE JOINT RESOLUTION 357

At the request of Mr. Cranston, the name of the Senator from Colorado [Mr. Wirth] was added as a cosponsor of Senate Joint Resolution 357, a joint resolution designating the week beginning November 6, 1988, as "National Women Veterans Recognition Week."

SENATE JOINT RESOLUTION 358

At the request of Mr. Thurmond, the name of the Senator from Alaska [Mr. Stevens] was added as a cosponsor of Senate Joint Resolution 358, a joint resolution to authorize and request the President to issue a proclamation designating August 21, 1988 as "National Senior Citizens Day."

SENATE JOINT RESOLUTION 360

At the request of Mr. Bond, the name of the Senator from Montana [Mr. Melcher] was added as a cosponsor of Senate Joint Resolution 360, a joint resolution to designate February 12, 1989, as "World Marriage Day."

SENATE JOINT RESOLUTION 381

At the request of Mr. Bond, the names of the Senator from Michigan [Mr. Riegle], the Senator from Pennsylvania [Mr. Heinz], the Senator from Michigan [Mr. Levin], and the Senator from Kansas [Mr. Dole] were added as cosponsors of Senate Joint Resolution 381, a joint resolution to designate October 30, 1988, as "Fire Safety at Home Day—Change Your Clock, Change Your Battery."

SENATE CONCURRENT RESOLUTION 55

At the request of Mr. Moynihan, the names of the Senator from Virginia [Mr. Warner], the Senator from New Mexico [Mr. Domenici], and the Senator from Nevada [Mr. Reid] were added as cosponsors of Senate Concurrent Resolution 55, a concurrent resolution providing for participation by delegations of members of both Houses of Congress in ceremonies to be held in April 1989 in New York City marking the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the inauguration of President George Washington, and the proposal of the Bill of Rights as the first 10 amendments to the Constitution.

SENATE CONCURRENT RESOLUTION 127

At the request of Mr. Wilson, the names of the Senator from Wisconsin [Mr. Kasten], the Senator from North Carolina [Mr. Sanford], and the Senator from Nebraska [Mr. Karnes] were added as cosponsors of Senate Concurrent Resolution 127, a concurrent resolution expressing the sense of the Congress concerning support for Amateur Radio and Amateur Radio frequency allocations vital for Public Safety purposes.

SENATE RESOLUTION 73

At the request of Mr. Lautenberg, the name of the Senator from Kansas [Mrs. Kassebaum] was added as cosponsor of Senate Resolution 73, a resolution to refer S. 329 entitled "A bill for the relief of Dynamic Technology International, Inc., Lew Malank Associates, Star Design, Inc., Riverside Precision Machines, and certain other individuals" to the Chief Judge of the United States Claims Court for a report thereon.

SENATE RESOLUTION 463

At the request of Mr. Roth, the name of the Senator from Alabama [Mr. Heflin] was added as a cosponsor of Senate Resolution 463, a resolution expressing the sense of the Congress that Federal laws regarding the taxation of State and local government bonds should not be changed in order to increase revenue.

SENATE CONCURRENT RESOLUTION 154—CORRECTIONS IN THE ENROLLMENT OF THE BILL H.R. 1720

Mr. BYRD (for Mr. Bentsen) (for himself and Mr. Packwood) submitted the following concurrent resolution; which was considered and agreed to:

S. Con. Res. 154

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 1720) to revise the AFDC program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives, the Clerk of the House of Representatives shall make the following additional corrections:

(1) In the proposed subparagraph (B) of section 466(a)(8) of the Social Security Act (as added by section 101(b)(3) of the bill), redesignate clauses (i), (ii), and (iii) as clauses (ii), (iii), and (iv), respectively, and insert before the clause so redesignated as clause (ii) a new clause (with the quotation marks as shown) as follows:

"(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(2) In subparagraph (C)(i) of the proposed paragraph (10) of section 466(a) of the Social Security Act (as added by section 103(c) of the bill), strike "of a review" and insert "of any review of such order,".

(3) In section 103 of the bill, redesignate the second subsection (e) as subsection (f).

(4) In section 103(f) of the bill (as so redesignated by paragraph (3) of this concurrent resolution), strike "this section" and insert "subsections (a), (b), and (c)".

(5) In the proposed clause (D) of section 454(6) of the Social Security Act (as added by section 111(c)(2) of the bill), strike "(established under" and insert "(in accordance with".

(6) In subparagraph (C)(iii)(II) of the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill)—

(A) strike "of a child" and insert "for a child"; and

(B) strike "if the State" and insert "unless the State".

(7) In subparagraph (G)(i)(I) of the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill), strike "section 402(a)(7)" and insert "paragraph (7) of this subsection".

(8) In the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill), redesignate subparagraph (I) as subparagraph (H).

(9) In subsection (b) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill)—

(A) Strike "FAMILY SUPPORT PLAN" in the heading and insert "EMPLOYABILITY PLAN"; and

(B) strike "such participants" in the second sentence of paragraph (1)(B) and insert "such participant".

(10) At the end of subsection (d) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), add the following new paragraph (with quotation marks as shown):

"(3) Notwithstanding any other provision of this section, the Secretary shall permit up to 5 States to provide services under the program, on a voluntary or mandatory basis, to non-custodial parents who are unemployed and unable to meet their child support obligations. Any State providing services to non-custodial parents pursuant to this paragraph shall evaluate the provision of such services, giving particular attention to the extent to which the provision of such services to those parents is contributing to the achievement of the purpose of this part, and shall report the results of such evaluation to the Secretary.

(11) At the end of paragraph (3) of subsection (e) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), add the following new subparagraph (with quotation marks as shown):

"(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 402(a)(13)(A)(ii) (and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

(12) In paragraph (2) of subsection (g) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), strike "402(a)(19)(B)(i)(I)" and insert "402(a)(19)(B)(i)".

(13) In paragraph (1) of subsection (i) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), strike "without" in the second sentence and insert "(without)".

(14) In paragraph (3) of subsection (a) of the proposed section 483 of the Social Security Act (as added by section 201(b) of the bill), strike "subparagraph (B)" and insert "paragraph (2)".

(15) In subsection (d) of the proposed section 484 of the Social Security Act (as added by section 201(b) of the bill)—

(A) strike "subsection (b)" in paragraph (1) and insert "subsection (c)"; and

(B) strike "subsection (e)" in paragraph (2) and insert "subsection (f)".

(16) In subsection (c) of the proposed section 485 of the Social Security Act (as added by section 201(b) of the bill), strike "482(b)(1)" and insert "482(a)(1)".

(17) In paragraph (2) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), move subparagraphs (C) and (D) 5 ems to the left so that they are flush with the left-hand margin.

(18) In paragraph (3)(E) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), insert "and part F" after "402(a)(19)" in clause (i).

(19) In paragraph (4)(A)(i) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), insert "or another basic education program" after "(or equivalent)" in the last sentence.

(20) In paragraph (4)(B) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), strike "fiscal year 1997 or 1998" in clause (iv) and insert "each of the fiscal years 1997 and 1998".

(21) In clause (ii) of paragraph (4)(D) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill)—

(A) strike "limited" and insert "limited)"; and

(B) strike "then" and insert "that".

(22) In section 201(d) of the bill, strike "202(a)(4)" and insert "202(b)(4)".

(23) In paragraph (8) of the first subsection (b) of section 202 of the bill, strike "482(c)(2)," and insert "409(a)(19)(C),".

(24) In section 202 of the bill, redesignate the second subsection (b) as subsection (c); and in such subsection—

(A) strike "redesiognated" and insert "redesignated" in paragraph (5); and

(B) add at the end the following new paragraph: (6) Section 51(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking "section 414" and inserting "section 482(e)".

(25) In paragraph (1) of subsection (a) of the proposed section 487 of the Social Security Act (as added by section 203(b) of the bill), insert "of this Act" after "section 486".

(26) In section 204(b) of the bill—

(a) after "1995" in paragraph (2) insert "(except that subparagraph (A) of such section 403(1)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein)"; and

(B) add at the end the following new paragraph:

(3) Subsections (a), (c), and (d) of section 203 of this Act, and section 486 of the Social Security Act (as added by section 201(b) of this Act), shall become effective on the date of the enactment of this Act.

(27) In subparagraph (C)(i) of paragraph (1) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "reimburse" and insert "make payment for".

(28) In subparagraph (C)(i)(II) of paragraph (1) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "section 402(a)(8)(A)(iii)" and insert "subsection (a)(8)(A)(iii)".

(29) In subparagraph (B)(iii) of paragraph (3) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "day" and insert "child".

(30) In the proposed clause (ii) of section 402(g)(1)(A) of the Social Security Act (as added by section 302(a)(3) of the bill), strike "and section 417".

(31) In section 302 of the bill, amend subsection (c) (with quotation marks and last period as shown) to read as follows:

(c) LIMITATIONS ON ELIGIBILITY.—Section 402(g)(1)(A) of the Social Security Act (as added by section 301 of this Act and as amended by subsection (a)(3) of this section) is amended by adding after clause (ii) the following new clauses:

"(iii) A family shall only be eligible for child care provided under clause (ii) for a period of 12 months after the last month for which the family received aid to families with dependent children under this part.

"(iv) A family shall not be eligible for child care provided under clause (ii) unless the family received aid to families with dependent children in at least 3 of the 6 months immediately preceding the month in which the family became ineligible for such aid.

"(v) A family shall not be eligible for child care provided under clause (ii) unless the family includes a child who is (or, if needy, would be) a dependent child.

"(vi) A family shall not be eligible for child care provided under clause (ii) for any month beginning after the caretaker relative who is a member of the family has—

"(I) without good cause, terminated his or her employment; or

"(II) failed to cooperate with the State in establishing and enforcing his or her child support obligations.

"(vii) A family shall contribute to child care provided under clause (ii) in accordance with a sliding scale formula which shall be established by the State agency based on the family's ability to pay.".

(32) In section 302(e) of the bill, strike "January 1, 1993." and insert "September 30, 1997.".

(33) In the proposed section 1925 of the Social Security Act (as inserted by section 303(a) of the bill)—

(A) in subsection (a)(1), insert a comma after "income from";

(B) in subsection (a)(1), insert "or because of section 402(a)(8)(B)(ii)(II) (providing for a time-limited earned income disregard)" after "subsection (e))";

(C) in subsection (a)(2)(A), strike "(b)(2)(A)(i)" and insert "(b)(2)(B)(i)";

(D) in subsection (a)(4)(B), strike "or similar costs" and insert "and similar costs";

(E) in subsection (a)(4)(B), strike "a employer" and insert "an employer";

(F) in subsection (a)(4)(B)(i), insert "for the caretaker and the caretaker's family" after "extension of coverage under this subsection";

(G) in subsection (b)(1), strike "(2)(B)" and insert "(2)(B)(i)";

(H) in subsection (b)(2), indent clauses (i) and (ii) in each of subparagraphs (A) and (B) 2 additional ems;

(I) in subsection (b)(2)(A)(i), redesignate subclauses (i), (ii), and (iii) as subclauses (I), (II), and (III);

(J) in subsection (b)(2)(A)(ii), strike "premiums to be" and insert "premium";

(K) in subsection (b)(2)(B)(ii), strike "subsection (a)" and insert "this subsection";

(L) in subsection (b)(3)(A), strike "(2)(B)" the 3 places it appears and insert "(2)(B)(ii)";

(M) in subsection (b)(3)(A)(ii), strike "individual" and insert "family";

(N) in subsection (b)(3)(A)(iii)(III), strike "exceeds" and insert "exceed";

(O) in subsection (b)(4)(E)(i)(I), strike "or other" and insert "and other";

(P) in subsection (b)(5)(A), strike "exceeds" and insert "exceed"; and

(Q) in subsection (f), strike "of the Social Security Act".

(34) in subsection (a) of section 303 of the bill—

(A) insert "(1)" after "(a) IN GENERAL.—", and

(B) add at the end of such subsection a new paragraph (with the quotation marks and last period as shown) as follows:

(2) Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by section 303(e) of the Medicare catastrophic Coverage Act of 1988, is amended—

(A) by striking "and" at the end of paragraph (50),

(B) by striking the period at the end of paragraph (51) and inserting "; and", and

(C) by inserting after paragraph (51) the following new paragraph:

"(52) meet the requirements of section 1925 (relating to extension of eligibility for medical assistance).".

(35) In section 303(b)(1)(A) of the bill, strike the single closing quotation mark after "(B)" and insert double closing quotation marks.

(36) in the proposed subparagraph (B) added by section 303(b)(1)(C) of the bill, strike "of the Social Security Act".

(37) In subsection (b) of section 303 of the bill, amend paragraph (3) (with the quotation marks and last period as shown) to read as follows:

(3) Paragraph (37) of section 402(a) of such Act is amended to read as follows:

"(37) provide that if any family becomes ineligible to receive aid to families with dependent children because of hours of or income from employment of the caretaker relative or because of paragraph (8)(B)(ii)(II), having received such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under title XIX for an extended period or periods as provided in section 1925, and that the family will be appropriately notified of such extension (in the State agency's notice to the family of the termination of its eligibility for such aid) as required by section 1925(a)(2);".

(38) In subsection (f) of section 303 of the bill, amend paragraph (2) to read as follows:

(2)(A) The amendment made by subsection (b)(3) shall become effective on April 1, 1990.

(B) Effective September 30, 1998, the amendment made by subsection (b)(3) is repealed.

(C) Section 402(a)(37) of the Social Security Act, as in effect immediately before April 1, 1990, shall become effective on September 30, 1998.

(39) In subparagraph (C)(i) of the proposed paragraph (2) of section 407(b) of the Social Security Act (as added by section 401(b)(1)(C) of the bill), strike "subparagraph (D), such section, and" and insert "such section and".

(40) In paragraph (4)(A) of section 401(c) of the bill, insert "of this section" after "subsection (b)(1)(C)".

(41) In section 401(f)(3) of the bill, strike "at the end" and insert "immediately after paragraph (41)".

(42) In section 402(c) of the bill—

(A) insert "(1)" after "CREDIT.—";

(B) redesignate paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) add at the end a new paragraph as follows: (2)(A) Section 402(d) of such Act is repealed. (B) Section 402(a)(30) of such Act is amended by striking "subsection (d)" and inserting in lieu thereof "subsection (e)".

(43) In the proposed subsection (e) of section 403 of the Social Security Act (as added by section 606 of the bill), strike "402(a)(42), and 402(g)(1)(A)(i)," and insert "402(a)(43), and 402(g)(1)(A)".

(44) In subparagraph (C) of the proposed subsection (k), added by section 608(c) of the bill, strike "anethetist" and insert "anesthetist".

(45) In section 608(d)(5)(C) of the bill, strike "added" and insert "inserted".

(46) In section 608(d)(9)(B) of the bill, strike "for that individual" both places it appears and insert "to that individual".

(47) In section 608(d)(10)(A) of the bill, strike "as amended" and insert "as inserted".

(48) In section 608(d)(14)(D)(ii) of the bill, strike the comma at the end and insert "; and".

(49) In paragraph (14)(H)(ii) of section 608(d) of the bill—

(A) strike "subparagraph" and insert "subparagraphs";

(B) strike the double quotation marks and semicolon at the end of the subparagraph (B) added by such paragraph; and

(C) add after such subparagraphs (B) a new subparagraph (with the quotation marks and semicolon as shown) as follows:

"(C) The second sentence of subsection (h)(2) of such section is amended by inserting '(except in the case of qualified medicare beneficiaries, as defined in section 1905(p)(1))' after 'shall be applied' the second place it appears.";

(50) In section 608(d)(15)(A)(i) of the bill, insert "the first place it appears" before "and inserting".

(51) In section 608(d)(15)(B) of the bill, strike "as added" and insert "as amended".

(52) In section 608(d)(16)(A)(i) of the bill, strike "has a right" and insert "has right".

(53) In section 608(d)(16)(B)(i) of the bill, strike the comma at the end of subclause (III) and insert a semicolon.

(54) In section 608(d)(16)(B) of the bill, designate the clause following clause (vi) as clause (vii).

(55) In paragraph (16)(D) of section 608(d) of the bill, strike "303" and insert "303(g)".

(56) In section 608(d)(20)(B)(ii) of the bill, indent the subclause amended by such section 2 additional ems.

(57) In section 608(d)(22)(B) of the bill, insert "the first place it appears" before "and inserting".

(58) In section 608(d)(24)(B) of the bill, strike "inserted" and insert "added".

(59) In section 608(d)(26)(D) of the bill, strike "redesignated" and insert "designated".

(60) In section 608(d)(26)(J), strike "added" and insert "inserted".

(61) In section 608(d)(27)(A) of the bill, in the subparagraph (D) added in such section, strike the second of the periods following "such drugs" and insert a semicolon.

(62) In section 609(a) of the bill, redesignate the proposed subsection (1) as subsection (m).

(63) In section 609(b) of the bill—

(A) strike "12302(c)(1)" in paragraph (1) and insert "12301(c)(1)"; and

(B) amend paragraph (2) to read as follows:

(2) Paragraph (2) of section 12301(c) of such Act is amended by inserting "under title XIX" before ", and shall reduce payments".

SENATE CONCURRENT RESOLUTION 155—CORRECTING THE ENROLLMENT OF S. 136

Mr. BYRD (for Mr. INOUYE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 155

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 136) to improve the health status of Native Hawaiians, and for other purposes, the Secretary of the Senate shall make the following correction:

In section 2(6)(D), strike out "School of Medicine" after "University of Hawaii".

SENATE CONCURRENT RESOLUTION 156—CORRECTING THE ENROLLMENT OF S. 2723

Mr. BYRD (for Mr. INOUYE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 156

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the Act (S. 2723) to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes, the Secretary of the Senate shall make the following corrections:

In paragraph (2) of section 2(c) of such Act, strike out the second and third sentences thereof.

In subparagraph (A) of section 2(c)(3) of such Act, insert "from willing sellers" after "may acquire".

SENATE CONCURRENT RESOLUTION 157—RELATIVE TO ECONOMIC ASSISTANCE PROGRAMS BETWEEN THE UNITED STATES AND JAPAN

Mr. BRADLEY (for himself, Mr. ROCKEFELLER, Mrs. KASSEBAUM, and

Mr. LUGAR) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 157

Whereas the goals of United States foreign assistance policy include the alleviation of poverty; the promotion of conditions conducive to economic growth with equity; the encouragement of respect for individual civil and economic rights; the integration of developing countries into an open and equitable international economic system; and the enhancement of a peaceful and stable international community;

Whereas it is in the interests of both the United States and Japan to promote economic growth and political stability in the developing world;

Whereas the historic policy of the United States has been to encourage contributions from other bilateral donors and multilateral organizations in pursuit of these goals;

Whereas the recent Japanese commitment to double its economic assistance from $25,000,000,000 between 1983 and 1987 to $50,000,000,000 between 1988 and 1992 establishes Japan as one of the world's major aid donors;

Whereas it is recognized that donor coordination is a significant element in the effective planning and programming of economic assistance;

Whereas United States and Japanese foreign assistance officials have recently conducted successful and productive meetings on development assistance issues: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the President should direct the Secretary of State and the Administrator of the Agency for International Development to take steps to improve coordination between Japanese and American foreign economic assistance programs. Such steps should include—

(1) increasing the exchange of information on project and program plans throughout the respective budget cycles of each country;

(2) establishing regular coordination meetings between senior foreign assistance officials of each government;

(3) expanding consultations between United States and Japanese counterparts at the foreign assistance mission level, where appropriate, on specific country programs and projects; and

(4) broadening the number of jointly conducted foreign assistance projects.

Mr. BRADLEY. Mr. President, I send a resolution to the desk and ask that it be reported to the appropriate committee.

AMENDMENTS SUBMITTED

PARENTAL AND TEMPORARY MEDICAL LEAVE

NICKLES AMENDMENT NOS. 3430 THROUGH 3432

(Ordered to lie on the table.)

Mr. NICKLES submitted three amendments intended to be proposed by him to the bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes; as follows:

AMENDMENT NO. 3430

At the appropriate place add the following new section:

SEC. . POLITICAL ACTION COMMITTEES.

The provisions of this bill shall not become effective until the following is enacted into law: "Section 315(a)(2)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)(A)) is amended by striking out "$5,000" and inserting in lieu thereof "$1,000"."

AMENDMENT NO. 3431

At the appropriate place, insert the following new section:

SEC. . EXEMPTION FOR EMPLOYERS PROVIDING CERTAIN BENEFITS.

Notwithstanding any other provision of this Act or an amendment made by this Act, if an employer provides a benefit program that includes parental leave or other benefits that assist employees with family responsibility, such employer shall be exempt from this Act and the amendments made by this Act.

AMENDMENT NO. 3432

At the appropriate place insert the following new section.

SEC. . FINANCIAL IMPACT STATEMENT.

None of the provisions of this act shall become effective unless:

(a) The Committee on Labor and Human Resources requests that the General Accounting Office prepare a financial impact statement, as described in subsection (b) below, to accompany the conference report of this bill.

(b) The financial impact statement required by subsection (a) of this section shall state the extent to which enactment of this bill would result in increased costs to the private sector and State and local governments and shall include, at a minimum, a detailed assessment of the annual impact of the bill (projected annually over a five-year period from its effective date and expressed in monetary terms where appropriate) on—

(1) costs to consumers and business;

(2) national employment;

(3) the ability of United States industries to compete internationally;

(4) State and local governments, fiscally and otherwise, and;

(5) outlays by the Federal Government, including indirect costs it will incur as an employer, as compared to outlays for the same activity in the current fiscal year (as reported by the Congressional Budget Office); *Provided,* That the financial impact statement may consist of a brief summary assessment in lieu of the detailed assessment set forth above if preliminary analysis indicates that the aggregate effect on each of categories (1)-(4) above is less than one hundred million dollars.

DANFORTH AMENDMENT NOS. 3433 THROUGH 3435

(Ordered to lie on the table.)

Mr. DANFORTH submitted three amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

AMENDMENT NO. 3433

On page 6, line 16, before the period, insert the following: ", except that such term shall not include any public or private school district".

AMENDMENT NO. 3434

At the end, add the following:

SEC. . EXCLUSION OF SCHOOL DISTRICTS.

Notwithstanding section 102(4), the term "employer" shall not include any public or private school district.

AMENDMENT NO. 3435

In lieu of the matter proposed to be inserted, insert the following:

SEC. . EXCLUSION OF SCHOOL DISTRICTS.

Notwithstanding section 102(4), the term "employer" shall not include any public or private school district.

WILSON AMENDMENT NOS. 3436 AND 3437

(Ordered to lie on the table.)

Mr. WILSON submitted two amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

AMENDMENT NO. 3436

Strike out title V (relating to child care) and insert in lieu thereof the following new title:

TITLE VI.—CHILD CARE PROVISIONS

SEC. 601 SHORT TITLE.

This title may be cited as the "Kids in Day-Care Services Act of 1988".

SEC. 602. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) 26,400,000 children have mothers who are employed in full and part time jobs, and 8,200,000 of such children are under the age of 5;

(2) more than 50 percent of new entrants into the labor force between the years 1986 and 2000 will be women in their childbearing years;

(3) the rapid influx of mothers into the workforce has made child care a primary concern of American families;

(4) safe and affordable child care has become a major problem for many families, including families with low and modest incomes;

(5) compliance with established quality, accreditation, and licensing standards is critical to ensuring the health and safety of children in family-based and group child care settings;

(6) there is a shortage of both trained child care providers and child care training programs where individuals can obtain the training necessary to become such a provider;

(7) difficulties in obtaining affordable liability insurance discourages individuals and small business from providing child care;

(8) there are persons between the ages of 62 and 69 who, though qualified and interested in working as child care providers, decline to do so for fear that their social security benefits would be reduced;

(9) the current Child and Dependent Care Tax Credit under section 21 of the Internal Revenue Code of 1986, is not of maximum benefit to families of low and modest incomes;

(10) the creation of additional child care tax incentives is essential to meeting the needs of children from low and modest income families; and

(11) coordination of Federal child care programs will greatly enhance the provision of child care services.

(b) Purpose.—It is the purpose of this title to—

(1) provide assistance and flexibility to States to increase the availability of safe and affordable child care for working families;

(2) increase the access of families with low and modest incomes to affordable and quality child care;

(3) ensure the health and safety of children entrusted to child care providers;

(4) promote greater private sector involvement in the provision of child care; and

(5) remove barriers to the provision of child care.

Subtitle A—Dependent Care Planning and Development Program

SEC. 610. DEPENDENT CARE PLANNING AND DEVELOPMENT PROGRAM.

Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended—

(1) by inserting before the heading of section 2001 the following:

"Subtitle A—Social Services Grant Program"; and

(2) by adding at the end thereof the following new subtitle:

"Subtitle B—Dependent Care Planning and Development Program.

"SEC. 2010. DEFINITIONS.

"As used in this subtitle:

"(1) Consortium of small businesses.—The term "consortium of small businesses" means two or more small businesses.

"(2) Eligible entities.—The term "eligible entity" means—

"(A) a unit of State or local government;

"(B) a local education agency;

"(C) a nonprofit organization, which qualifies as a nonprofit organization under section 501(c) or 501(d) for the Internal Revenue Code of 1986;

"(D) a professional employee association;

"(E) a consortium of small businesses;

"(F) an institution of higher education;

"(G) a hospital or health care facility;

"(H) a family care provider; and

"(I) any public, private, or nonprofit entity that the State considers able and appropriate to carry out a project under this part.

"(3) Eligible families.—The term "eligible families" means families with one or more children who are under the age of 13 and whose family income does not exceed 100 percent of the State median income for a family of the same size;

"(4) Institution of higher education.—The term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)), as amended;

"(5) Local education agency.—The term "local education agency" has the same meaning given that term by section 198(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(10)), or any successor statute defining that term for the purposes of Federal assistance to elementary and secondary education;

"(6) Secretary.—The term "Secretary" means the Secretary of Health and Human Services;

"(7) Sliding fee schedule.—The term "sliding fee schedule" means a system of cost sharing between the State and a family based on the income and size of a family with very low income families having to pay no cost;

"(8) Small business.—The term "small business" means any business entity that employs less than 50 individuals.

"(9) State.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"SEC. 2011. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of making allotments to States to carry out the activities described in section 2014, there are authorized to be appropriated $410,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992.

"SEC. 2012. ALLOTMENTS.

"(a) Formula.—

"(1) In general.—The Secretary shall make an allotment to each State for each fiscal year, from amounts appropriated under section 2011 for such fiscal year, on the basis of a formula prescribed by the Secretary that is based equally—

"(A) on the population of each State as it compares to the population of all States; and

"(B) on the population of each State weighted by the relative per capita income of that State as such compares to the relative per capita income of all States.

"(2) Definition.—For purposes of this subsection, the term 'relative per capita income' means—

"(A) the quotient of the per capita income of the United States and the per capita income of the State; or

"(B) in the case of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Commonwealth of Puerto Rico, or the Virgin Islands, the quotient shall be considered to be 1.

"(b) Additional Allotment.—

"(1) Method of allotment.—Any amounts not allotted under subsection (a) shall be allotted among each of the States in proportion to the amount otherwise allotted to such States for such fiscal year under subsection (a).

"(2) Definition.—For the purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(3) Reductions.—

"(A) In general.—The amount that a State is entitled to receive under subsection (a) and under paragraph (1) shall be reduced to the extent that such amount exceeds the sum that the Secretary estimates will be used in such State to carry out a State plan approved by the Secretary under section 2015.

"(B) Reallotment.—The amount of such reduction shall be reallotted among those remaining States that have not been subject to a reduction under this paragraph in the same manner in which the original allotment was made.

"SEC. 2013. PAYMENTS UNDER ALLOTMENTS TO STATES.

"(a) In General.—The Secretary shall make payments from amounts appropriated for each fiscal year under section 2011, as provided by section 6503(a) of title 31, United States Code, to each State in an amount (not to exceed its allotment under section 2012 for such fiscal year) equal to the Federal share of the aggregate amount to be expended by the State under the State plan for such fiscal year.

"(b) Federal Share.—The Federal share for each fiscal year shall be 75 percent.

"(c) State Share.—The State share shall equal 100 percent minus the Federal share.

"(d) Carryover.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of that year shall remain available, for the next fiscal year, to the State for the purposes for which the payment to the State was made.

"SEC. 2014. STATE USE OF ALLOTMENTS.

"(a) Project Grants.—Amounts paid to a State under section 2013 shall be used by the State to make grants to eligible entities for projects described in subsection (b) that meet at least one of the purposes of the Kids in Day-Care Services Act of 1988.

"(b) Projects.—

"(1) Purpose.—A State may make a grant to an eligible entity—

"(A) for the provision of child care services through various programs, including a certificate or voucher program for eligible families;

"(B) for the expansion and operation of existing State child care programs, if such programs are consistent with the purposes of the Kids in Day-Care Services Act of 1988;

"(C) for the establishment or operation of community or neighborhood child care centers, including the renovation of public buildings for such purposes;

"(D) for the establishment or operation of after school child care programs;

"(E) for the establishment or operation of programs to recruit and train senior citizens to serve as child care providers;

"(F) for the establishment or operation of child care programs for children of migrant workers families;

"(G) to enable such entity to provide grants or loans to fund the start up costs of onsite child care offered by small business concerns;

"(H) for the establishment and operation of training programs for child care providers;

"(I) for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled; or

"(J) for any project consistent with the purposes of the Kids in Day-Care Services Act of 1988.

"(2) Limitations.—A State may not use amounts paid to the State under section 2013 to—

"(A) provide inpatient health care services or other such unrelated services, except temporary sick child care services as authorized under paragraph (1)(I);

"(B) make cash payments to intended recipients of services (other than pursuant to a certificate or voucher program to enable low income families to obtain adequate child care as authorized under paragraph (1)(A));

"(C) provide support to any project in which to provision of child care services is not based on a sliding fee schedule;

"(D) purchase major medical equipment (except as provided in paragraph (1)(I)); and

"(E) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(3) Waiver of limitations.—The Secretary may waive the limitations contained in paragraph (2) on the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this title.

"(c) Technical Assistance.—The Secretary, on the request of a State, shall provide technical assistance to the State in planning and operating activities to be carried out under this subtitle.

"(d) STATE ADMINISTRATION.—

"(1) LIMITATION OF EXPENDITURES.—No more than 7 percent of the total amount paid to a State under section 2013 for a fiscal year shall be used for administering the funds made available under such section. The State shall pay from non-Federal sources the remaining costs of administering such funds.

"(2) STATE RESPONSIBILITIES.—From the funds reserved by the State under paragraph (1) for the administration of the amounts paid to the State under section 2013, the State shall—

"(A) provide technical assistance to eligible entities participating in projects receiving assistance under this section;

"(B) conduct investigations of alleged child abuse in projects receiving assistance under this section;

"(C) coordinate projects receiving assistance under the Kids in Day-Care Services Act of 1988 with existing programs;

"(D) establish regular communications with registered, licensed, and accredited child care providers concerning regulatory standards, provider training opportunities, provider support groups, and nutrition assistance programs; and

"(E) establish a consumer education program designed to inform parents and the general public about regulatory standards, complaint procedures, and the importance of parental involvement in assuring quality child care.

"SEC. 2015. STATE PLAN.

"(a) STATE PLAN.—Not later than 12 months after the date of enactment of this subtitle, each State desiring to participate in the program authorized under this subtitle shall prepare and submit to the Secretary a State plan. Each such plan shall—

"(1) describe the State agency that will administer the programs authorized under this subtitle;

"(2) describe the authorized activities for which assistance is sought under this subtitle;

"(3) provide assurances that Federal funds under this subtitle for any fiscal year will be used to supplement, and to the extent practicable, to increase the level of funds, that would, in the absence of such Federal funds, be made available from non-Federal sources for the purpose described in section 2014 and in no case supplant such funds form non-Federal sources;

"(4) describe procedures that the State will use to require eligible providers to submit applications to the State in accordance with section 2017, and to approve such applications;

"(5) describe standards that the State has established pursuant to section 2016;

"(6) certify that the State will coordinate the provision of child care services made available with funds provided under this subtitle with other child care services provided in the State;

"(7) provide such fiscal control and accounting procedures as may be necessary—

"(A) to ensure the proper accounting of Federal funds paid to the State under this subtitle; and

"(B) to ensure the verification of reports required under this subtitle;

"(8) certify that the State will use the information contained in the report submitted to the Secretary pursuant to subsection (i) to regularly evaluate the impact of the distribution of funds received pursuant to section 2013 by the State on the quality and availability of child care services in the State; and

"(9) provide such additional assurances as the Secretary may reasonably require.

"(b) APPROVAL.—

"(1) TIME PERIOD.—Not later than 30 days after the receipt of a State plan under section 2018, the Secretary shall approve such plan if it meets the requirements of such subsection and this subtitle.

"(2) DISAPPROVAL.—In the case of a State plan that is not approved by the Secretary under this paragraph (1), the Secretary may withhold funds from such State until such time as the State plan meets the requirements of this subtitle.

"(3) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to a State, on request by the State, to ensure compliance with the provisions of this subtitle.

"SEC. 2016. STANDARDS.

"(a) ESTABLISHMENT.—To receive funds under this subtitle, a State shall establish standards for—

"(1) the accreditation and licensing of family-based and group child care providers;

"(2) inspection and certification of the providers referred to in paragraph (1) based on such standards; and

"(3) minimum competency requirements that child care providers must meet.

"(b) CONSULTATION.—In developing standards under paragraph (1), a State shall consult with child care providers, parents, community-based organizations, local government, social service agencies, religious organizations, educational institutions, business organizations, and labor and employee associations.

"SEC. 2017. APPLICATIONS FOR GRANTS BY ELIGIBLE PROVIDERS.

"(a) APPLICATION.—In order to receive a grant from a State under section 2014, an eligible entity shall submit an application to the State that—

"(1) describes the project for which assistance is sought;

"(2) contains assurances that the eligible provider will use funds furnished in accordance with the requirements of this subtitle;

"(3) provides assurances that—

"(A) an appropriate sliding fee schedule will be established in the case of any project in which child care services are furnished with assistance under this subtitle; and

"(B) such fee schedule will be based on the annual incomes of the participating families;

"(4) provides assurances that procedures will be established for parental involvement in the operation of a project receiving assistance under this subtitle;

"(5) provides assurances that the project will meet the standards established by the State under section 2016; and

"(6) includes any additional assurances that the State may reasonably require.

"(b) PRIORITY.—In making grants under this subtitle, a State shall give priority to applications from eligible providers that attempt to significantly expand or improve the provision of child care services to children of parents with low or modest incomes.

"(c) FUNDING REQUIREMENT.—An eligible entity receiving a grant under this section shall be required to fund at least 10 percent, but not more than 50 percent, of the project cost with non-Federal funds. The non-Federal funding may be in cash or in-kind based on fair market value.

"SEC. 2018. REPORTING REQUIREMENTS.

"(a) STATE REPORTS.—

"(1) IN GENERAL.—Not later than 12 months after a State receives funds under this subtitle, and at 12-month intervals thereafter, the chief executive officer of such State shall prepare and submit to the Secretary, in such form as the Secretary shall prescribe, a report describing the States' use of funds received under this subtitle.

"(2) REPORT REQUIREMENTS.—Reports submitted under paragraph (1) shall—

"(A) include a description of the programs, activities, and services supported or provided with the funds received under this subtitle;

"(B) include the number of children served by, the number of low-income families served by, and the Federal, State, local, and private costs incurred in, the programs, activities, and services supported or provided with the funds received under this subtitle;

"(C) include the number of individuals trained as child care providers and an examination of the impact of provider pay on the quality of child care and on provider and staff turnover in the State during the preceding year;

"(D) include the number of new child care programs established in part or in whole with funds provided this subtitle;

"(E) include any additional information that the chief executive officer of the State may consider appropriate; and

"(F) be made public in the State in a manner that will facilitate comment by persons desiring to do so.

"(b) REPORT TO CONGRESS.—Not later than 6 months after the receipt of State reports required under subsection (a), and at 12-month intervals thereafter, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report containing a summary of the information contained in the State reports submitted under subsection (a). Such summary shall include an analysis of those programs activities, and services supported or provided with the funds received by the States this subtitle that the Secretary considers particularly innovative and effective, and any additional information the Secretary considers appropriate.".

SEC. 611. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall become effective on the date that occurs 6 months after the date of enactment of this title.

Subtitle B—Child Care Liability Risk Reduction and Revolving Loan Fund

CHAPTER 1—LIABILITY RISK REDUCTION

SEC. 620. PURPOSE.

It is the purpose of this chapter—

(1) to increase the availability of child care by alleviating the serious difficulty faced by child care providers in obtaining affordable liability insurance; and

(2) to provide States with a sufficient capital base for liability insurance purposes that may be increased or maintained through mechanisms developed by the State.

SEC. 621. FORMATION OF CHILD CARE LIABILITY RISK RETENTION GROUP.

(a) ASSISTANCE IN FORMATION AND OPERATION OF GROUP.—Any State may assist in the establishment and operation of a child care liability risk retention group in the manner provided under this chapter.

(b) CHILD CARE LIABILITY RISK RETENTION GROUP DEFINED.—For purposes of this chapter, the "child care liability risk retention group" means any corporation (or other limited liability association)—

(1) whose members are child care providers licensed or accredited pursuant to State or local law or standards; and

(2) which otherwise satisfies the criteria for a risk retention group under section 2(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(4)).

SEC. 622. STATE APPLICATIONS.

(a) Applications.—To qualify for assistance under this chapter, a State shall submit an application to the Secretary of Health and Human Services, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require, including a State plan which meets the requirements of subsection (b) of this section.

(b) State Plans.—

(1) Lead agency.—The plan shall identify the lead agency that has been designated and that is to be responsible for the administration of funds provided under this chapter.

(2) Participants in risk retention group.—The plan shall provide that all participants in the child care liability risk retention group are child care providers who are licensed or accredited pursuant to State or local law or standards. In addition, the plan shall provide for maximum membership of family-based child care providers in the group.

(3) Use of funds.—The plan shall provide that the State shall use at least the amount allotted to the State in any fiscal year to establish or operate a child care liability risk retention group.

(4) Continuation of risk retention group.—The plan shall set forth provisions that specify how the child care liability risk retention group will continue to be financed after fiscal year 1991, including financing through contributions by the State or by members of such group.

SEC. 623. FEDERAL ENFORCEMENT.

(a) Review of Plans.—The Secretary of Health and Human Services shall review and approve State plans submitted in accordance with this chapter and shall monitor State compliance with the provisions of this chapter.

(b) Finding of Noncompliance.—If the Secretary of Health and Human Services, after reasonable notice to a State and opportunity for a hearing, finds—

(1) that there has been a failure to comply substantially with any provision or any requirements set forth in the State plan of that State; or

(2) that there is a failure to comply substantially with any applicable provision of this chapter,

the Secretary shall notify such State of the findings and of the fact that no further payments may be made to such State under this chapter until the Secretary is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

SEC. 624. AUTHORIZATION OF APPROPRIATION.

(a) Authorization of Appropriations.—To carry out the provisions of this chapter, there are authorized to be appropriated $110,000,000 for fiscal year 1989.

(b) Amounts To Remain Available.—The amounts appropriated pursuant to subsection (a) shall remain available for assistance to States for fiscal years 1989, 1990, and 1991 without limitation.

SEC. 625. RESERVATIONS FOR TERRITORIES AND ADMINISTRATIVE COSTS.

From the sums appropriated to carry out the provisions of this chapter for each fiscal year, the Secretary of Health and Human Services shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs; and

(2) 3 percent for the administrative costs of carrying out the provisions of this chapter.

SEC. 626. ALLOTMENTS TO STATES.

(a) In General.—From the remainder of the amounts appropriated under section 624, the Secretary of Health and Human Services shall make an allotment to each State not referred to in section 625 for each fiscal year in accordance with subsection (b).

(b) Allotment Formula.—

(1) In General.—The amount of each State's allotment under subsection (a) shall be equal to the product of—

(A) an amount equal to the sums appropriated to carry out the provisions of this chapter for each fiscal year minus the amount reserved pursuant to section 625 for such fiscal year; and

(B) the percentage described in paragraph (2).

(2) Percentage.—The percentage referred to in paragraph (1)(B) is a percentage equal to the quotient of—

(A) an amount equal to the population of each State as it compares to the population of all States; divided by

(B) an amount equal to the population of each State weighted by the relative per capita income of that State as such compares to the relative per capita income of all States.

(c) State Administrative Costs.—Of the amount allotted to a State pursuant to subsection (a), an amount not to exceed 7 percent shall be used by such State to provide for the administrative costs of carrying out such program.

SEC. 627. PAYMENTS.

(a) Entitlement.—Each State having a plan approved by the Secretary of Health and Human Services under this chapter shall be entitled to payments under this section for each fiscal year in an amount not to exceed its allotment under section 626, to be expended by the State under the plan for the fiscal year for which the grant is to be made.

(b) Method of Payments.—The Secretary of Health and Human Services may make payments to a State in installments, and in advance or, subject to the requirement of section 624, by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(c) Carryover.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of that year shall remain available, for the next fiscal year, to the State for the purposes for which the payment to the State was made.

CHAPTER 2—REVOLVING LOAN FUND

SEC. 630. PURPOSE; DEFINITIONS.

(a) Purpose.—It is the purpose of this chapter to—

(1) increase the availability of family-based child care by enabling family-based child care providers to meet accreditation or licensing standards; and

(2) provide States with a sufficient capital base to make loans that may be increased or maintained through mechanisms developed by the State.

(b) Definitions.—As used in this chapter:

(1) Secretary.—The term "Secretary" means the Secretary of Health and Human Services.

(2) State.—The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 631. STATE APPLICATIONS.

(a) Submission of Application.—

(1) Form of application.—To qualify for assistance under this chapter, a State shall submit an application to the Secretary, at such time, in such manner, and providing such information as the Secretary may require, including a plan which meets the requirements of paragraph (2).

(2) Qualifying for loan.—The State shall submit a plan that sets forth procedures and requirements whereby any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the Internal Revenue Code of 1986) in order to become a licensed or accredited family-based child care facility, pursuant to State or local law or standards, may obtain a loan from the State revolving loan fund (hereinafter called the "fund"). Such fund shall be administered by the State and shall provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, which is not in excess of $1,500.

(b) State Plan.—

(1) Establishment of fund.—The State shall provide in its plan, that such State has established a revolving loan fund, and has provided procedures whereby—

(A) moneys are transferred to such fund to provide capital for making loans;

(B) interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such fund are deposited into such fund;

(C) all loans, expenses, and payments pursuant to the operation of this chapter are paid from such fund;

(D) loans made from such fund are made to qualified applicants for capital improvements to be made so that such applicant may obtain a State or local accreditation or a license for a family-based child care facility; and

(E) the plan shall set forth provisions which specify how any such revolving loan fund will continue to be financed after fiscal year 1990, such as through contributions by the State or by some other entity.

(2) Qualifications.—Such plan shall also set forth procedures and guidelines to carry out the purposes of this chapter, including provisions that assure that only applicants who obtain a license or accreditation for a child care facility in accordance with the provisions of State or local law or standards, benefit from loans made available pursuant to the provisions of this chapter.

SEC. 632. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization of Appropriations.—To carry out the provisions of this chapter, there are authorized to be appropriated $25,000,000 for fiscal year 1989.

(b) Amounts to Remain Available.—The amounts appropriated pursuant to subsection (a) shall remain available for assistance to States for fiscal years 1989, 1990, and 1991 without limitation.

SEC. 633. RESERVATIONS FOR TERRITORIES AND ADMINISTRATIVE COSTS.

From the sums appropriated to carry out the provisions of this chapter in each fiscal year, the Secretary shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be alloted in accordance with their respective needs; and

(2) 3 percent for the administrative costs of carrying out the provisions of this chapter.

SEC. 634. ALLOTMENTS TO STATES.

(a) In General.—From the remainder of the amounts appropriated under section 632, the Secretary shall make an allotment to each State not referred to in section 633 for each fiscal year to enable the State to carry out the provisions of this chapter for such fiscal year.

(b) Allotment Formula.—

(1) In general.—The amount of each State's allotment under subsection (a) shall be equal to the product of—

(A) an amount equal to the sums appropriated to carry out the provisions of this chapter for each fiscal year minus the amounts reserved pursuant to section 633 for such fiscal year; and

(B) the percentage described in paragraph (2).

(2) Percentage.—The percentage referred to in paragraph (1)(B) is a percentage equal to the quotient of—

(A) an amount equal to the population of each State as it compares to the population of all States; divided by

(B) an amount equal to the population of each State weighted by the relative per capita income of that State as such compares to the relative per capita income of all States.

(c) State Administrative Costs.—Of the amount allotted to a State pursuant to subsection (a), an amount not to exceed 10 percent shall be used by such State to provide for the administrative costs of carrying out such program.

Subtitle C—Social Security Act Provision

SEC. 640. CHILD CARE EARNINGS EXCLUDED FROM WAGES AND SELF-EMPLOYMENT INCOME FOR EXCESS EARNINGS TEST.

(a) Wages.—Section 203 (f)(5)(c) of the Social Security Act (42 U.S.C. 403(f)(5)(c)) is amended—

(1) by striking out "or" at the end of clause (i),

(2) by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new clause:

"(iii) the amount of any payment made to an employee by an employer for child care services performed by such employee after the month in which such employee initially becomes entitled to insurance benefits under this title.".

(b) Self-Employment Income.—Section 203(f)(5)(D) of such Act (42 U.S.C. 403(f)(5)(D)) is amended—

(1) by striking out "or" at the end of clause (i),

(2) by adding "or" at the end of clause (ii),

(3) by inserting immediately after clause (ii) the following new clause:

"(iii) an individual who has become entitled to insurance benefits under this title, any income attributable to child care services performed after the month in which such individual becomes entitled to such benefits,", and

(4) by striking out "royalties or other income" and inserting in lieu thereof "royalties or income".

(c) Effective Date.—The amendments made by this section shall apply to wages or income earned after the date of the enactment of this title.

Subtitle D—Internal Revenue Code Provisions

SEC. 650. CREDIT FOR SMALL BUSINESSES PROVIDING QUALIFIED CHILD CARE FACILITIES.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. QUALIFIED SMALL BUSINESS-PROVIDED CHILD CARE FACILITY CREDIT.

"(a) In General.—For purposes of section 38, the qualified child care facility credit determined under this section for any taxable year is an amount equal to 25 percent of the qualified child care expenses for such taxable year.

"(b) Limitation.—The amount of the credit determined under subsection (a) for any taxable year shall not exceed $100,000.

"(c) Definitions.—For purposes of this section—

"(1) Qualified child care expenses.—The term 'qualified child care expenses' means any amount paid or incurred by a small business during the taxable year to acquire, construct, or otherwise establish a qualified child care facility and to operate such facility.

"(2) Qualified child care facility.—

"(A) In general.—The term 'qualified child care facility' means a facility—

"(i) operated by a small business for the care of enrollees, at least 30 percent of whom are dependents of employees of such small business,

"(ii) located on or near the business premises of such small business, and

"(iii) which is accredited or licensed to operate as a child care facility under applicable State and local laws and regulations.

"(B) Consortium of small businesses.—In the case of a facility operated by more than 1 small business, such facility shall be treated as a qualified child care facility of each small business with respect to which the requirements of subparagraph (A) are met separately.

"(3) Small business.—The term 'small business' means any person who employs less than 50 full-time employees in any 1 pay period.

"(d) Basis Adjustments.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) No Double Benefit.—No credit or deduction under any other provision of this chapter shall be allowed to a taxpayer for the taxable year for any expenditure with respect to which a credit is allowed under this section for such year.

"(f) Special Aggregation and Allocation Rules.—For purposes of this section—

"(1) Aggregation of expenditures.—

"(A) Controlled group of corporations.—In determining the amount of the credit under this section—

"(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such member shall be its proportionate share of the qualified child care expenses giving rise to the credit.

"(B) Common control.—Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

"(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such person shall be its proportionate share of the qualified child care expenses giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(2) Allocations.—

"(A) Allocation in case of consortium of small businesses.—In the case of a consortium of small businesses described in subsection (c)(2)(B) in jointly operating a qualified child care facility, the credit allowable by this section to each such small business shall be its proportionate share of the qualified child care expenses giving rise to the credit.

"(B) Pass-thru in the case of estates and trusts.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(C) Allocation in the case of partnerships.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(3) Controlled group of corporations.—The term 'controlled group of corporations' has the same meaning given to such term by section 1563(a), except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(g) Special Rule for Pass-Thru of Credit.—In the case of an individual who—

"(1) owns an interest in an unincorporated trade or business,

"(2) is a partner in a partnership,

"(3) is a beneficiary of an estate or trust, or

"(4) is a shareholder in an S corporation,

the amount allowable under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity.

"(h) Receipt of Child Care Project Grant.—A small business is not eligible for a credit under this section for a taxable year if such small business received a child care project grant pursuant to section 1934 of the Public Health Service Act during such taxable year.".

(b) Conforming Amendments.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (4),

(B) by striking out the period at the end of paragraph (5), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(6) the qualified child care facility credit determined under section 43.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 43. Qualified small business-provided child care facility credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

SEC. 651. CHILD AND DEPENDENT CARE CREDIT COMPLETELY PHASED OUT FOR ADJUSTED GROSS INCOMES ABOVE $93,500.

(a) IN GENERAL.—Paragraph (2) of section 21(a) of the Internal Revenue Code of 1986 (relating to expenses for household and dependent care services necessary for gainful employment) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term 'applicable percentage' means 30 percent reduced (but not below 0 percent) by the sum of—

"(A) 1 percentage point (but no more than a total of 10 percentage points) for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000, plus

"(B) 1 percentage point for each $1,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $65,000.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

SEC. 652. REFUNDABLE DEPENDENT CARE SERVICES TAX CREDIT.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended—

(1) by redesignating section 35 as section 36, and

(2) by redesignating section 21 as section 35.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 35(a) of the Internal Revenue Code of 1986 (relating to allowance of credit), as redesignated by subsection (a), is amended by striking out "chapter" and inserting in lieu thereof "subtitle".

(2) Section 129 of such Code (relating to dependent care assistance programs) is amended—

(A) by striking out "section 21(d)(2)" in subsection (b)(2) and inserting in lieu thereof "section 35(d)(2)", and

(B) by striking out "section 21(b)(2)" in subsection (e)(1) and inserting in lieu thereof "section 35(b)(2)".

(3) Subsection (e) of section 213 of such Code (relating to deduction for medical, dental, etc., expenses) is amended by striking out "section 21" and inserting in lieu thereof "section 35".

(4) Paragraph (4) of section 6201(a) of such Code (relating to assessment authority) is amended—

(A) by striking out "or section 32 (relating to earned income)" and inserting in lieu thereof ", section 32 (relating to earned income), or section 35 (relating to dependent care services credit)", and

(B) by striking out the caption and inserting in lieu thereof the following:

"(4) OVERSTATEMENT OF CERTAIN CREDITS.—".

(5) Section 6513 of such Code (relating to time return deemed filed and tax considered paid) is amended by adding at the end thereof the following new subsection:

"(f) TIME TAX IS CONSIDERED PAID FOR DEPENDENT CARE SERVICES CREDIT.—For purposes of section 6511, the taxpayer shall be considered as paying an amount of tax on the last day prescribed for payment of the tax (determined without regard to any extension of time and without regard to any election to pay the tax in installments) equal to so much of the credit allowed by section 35 (relating to dependent care services credit) as is treated under section 6401(b) as an overpayment of tax.".

(6) Subsection (d) of section 6611 of such Code is amended by striking out the caption and inserting in lieu thereof the following:

"(d) ADVANCE PAYMENT OF TAX, PAYMENT OF ESTIMATED TAX, CREDIT FOR INCOME TAX WITHHOLDING, AND DEPENDENT CARE SERVICES CREDIT.—".

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking out the item relating to section 21.

(2) The table of sections for subpart C of such part IV is amended by striking out the item relating to section 35 and inserting in lieu thereof the following new items:

"Sec. 35. Expenses for household and dependent care services necessary for gainful employment.

"Sec. 36. Overpayments of tax.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

SEC. 653. CHILDREN'S TAX CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by section 652, is further amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. CHILDREN'S TAX CREDIT.

"(a) GENERAL RULE.—In the case of an individual who maintains a household which includes as a member 1 or more qualifying children, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the child care expenses for each qualifying child for the taxable year.

"(b) LIMITATIONS.—

"(1) CHILD CARE EXPENSES.—The amount of child care expenses for each qualifying child incurred during any taxable year which may be taken into account under subsection (a) shall not exceed $750, and in no event shall a credit be taken for more than two qualifying children in any one year.

"(2) ADJUSTED GROSS INCOME OF TAXPAYER.—

"(A) IN GENERAL.—No credit shall be allowed under subsection (a) with respect to any taxpayer whose adjusted gross income for the taxable year exceeds the applicable amount.

"(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A), the applicable amount shall be determined in accordance with the following table:

"In the case of any taxable year beginning in:	The applicable amount is:
1989	$16,000
1990	17,000
1991	18,000
1992	19,000
1993	20,000.

"(c) QUALIFYING CHILD.—For purposes of this section, the term 'qualifying child' means any individual—

"(1) who is a dependent (as defined in section 152) of the taxpayer,

"(2) who is a child (as defined in section 151(c)(3)) of the taxpayer, and

"(3) who has not attained age 4 at the close of the calendar year in which the taxable year of the taxpayer begins.

"(d) CHILD CARE EXPENSES.—

"(1) IN GENERAL.—The term 'child care expenses' means amounts paid for the care of a qualifying child, but only if such amounts are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying children with respect to the taxpayer. Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying child stays overnight.

"(2) DEPENDENT CARE OUTSIDE THE TAXPAYERS HOUSEHOLD.—Child care expenses described in paragraph (1) that are incurred for services provided outside the taxpayer's household shall be taken into account only if such services comply with all applicable laws and regulations of a State or unit of local government.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) MAINTAINING HOUSEHOLD.—An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

"(3) MARITAL STATUS.—An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

"(4) CERTAIN MARRIED INDIVIDUALS LIVING APART.—If—

"(A) an individual who is married and who files a separate return—

"(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying child, and

"(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

"(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

"(5) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying child with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying child with respect to the noncustodial parent.

"(6) PAYMENTS TO RELATED INDIVIDUALS.—No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

"(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

"(B) who is a child of the taxpayer (within the meaning of section 151(c)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term 'taxable year' means the taxable year of the taxpayer in which the service is performed.

"(f) No Credit Allowed if Dependent Care Credit Allowed.—No credit shall be allowed under this section to a taxpayer for the taxable year if a credit is allowed to such taxpayer under section 35 for such year.".

(b) Clerical Amendment.—The table sections for subpart C of part IV of subchapter A of chapter 1 of such Code, as amended by section 652, is further amended by striking the item relating to section 36 and inserting in lieu thereof the following new items:

"Sec. 36. Children's tax credit.

"Sec. 37. Overpayments of tax.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

Subtitle E—Miscellaneous

SEC. 660. COMMUNITY SERVICES BLOCK GRANT ACT.

Section 674 of the Community Services Block Grant Act (42 U.S.C. 9903) is amended—

(1) in subsection (a)(1)(A), by inserting ", and makes the grants authorized under subsection (b)(3)" after "(b)(1)"; and

(2) in subsection (b), by adding at the end thereof the following new paragraph:

"(3) Of the amounts appropriated under section 672, the Secretary shall reserve $10,000,000 in each fiscal year to make grants to States that fund local child day care projects to enable such States to improve the provision of affordable and quality child care services within such State. To receive a grant under this paragraph, a State shall comply with the provisions of this Act.".

SEC. 661. CHILD CARE UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

Section 105(a)(8) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting "(A)" after "except that"; and

(2) by inserting before the semicolon the following: "(B) an additional amount of any assistance under this title may be used for child care, but in no case may more than 20 percent of the amount of assistance under this title be used for activities under this paragraph".

SEC. 662. FEDERAL EMPLOYEE CHILD CARE STUDY.

Not later than 90 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall conduct a study, and prepare and submit, to the appropriate Committees of Congress, a report concerning—

(1) the feasibility of offering child and adult day care as a benefit to Federal employees through health insurance plans under chapter 89 of title 5, United States Code;

(2) the ability of health insurance providers to subcontract the management of child and adult care facilities; and

(3) the approximate cost to the Federal Government, to Federal employees, and to health insurance providers of offering child and adult day care as a benefit of Federal employment.

SEC. 663. STUDY OF FEDERAL CHILD CARE EFFORTS.

(a) Study.—The Secretary of Health and Human Services, in conjunction with the heads of other relevant Federal agencies and departments, shall conduct a study of all child care programs and activities that receive assistance from the Federal Government.

(b) Report.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall prepare and submit, to the appropriate Committees of Congress, a report based on the study conducted under subsection (a), that shall include—

(1) the number of families served under child care programs in effect on the date of enactment of this title;

(2) recommendations by the Secretary to improve the operation of such programs; and

(3) a plan for the coordination of all Federal child care efforts.

SEC. 664. SENSE OF THE SENATE.

It is the sense of the Senate that States should be required to assist low and moderate income families in finding affordable and quality child care services.

Amendment No. 3437

In lieu of the matter proposed to be inserted, insert the following:

SEC. 602. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds that—

(1) 26,400,000 children have mothers who are employed in full and part time jobs, and 8,200,000 of such children are under the age of 5;

(2) more than 50 percent of new entrants into the labor force between the years 1986 and 2000 will be women in their childbearing years;

(3) the rapid influx of mothers into the workforce has made child care a primary concern of American families;

(4) safe and affordable child care has become a major problem for many families, including families with low and modest incomes;

(5) compliance with established quality, accreditation, and licensing standards is critical to ensuring the health and safety of children in family-based and group child care settings;

(6) there is a shortage of both trained child care providers and child care training programs where individuals can obtain the training necessary to become such a provider;

(7) difficulties in obtaining affordable liability insurance discourages individuals and small business from providing child care;

(8) there are persons between the ages of 62 and 69 who, though qualified and interested in working as child care providers, decline to do so for fear that their social security benefits would be reduced;

(9) the current Child and Dependent Care Tax Credit under section 21 of the Internal Revenue Code of 1986, is not of maximum benefit to families of low and modest incomes;

(10) the creation of additional child care tax incentives is essential to meeting the needs of children from low and modest income families; and

(11) coordination of Federal child care programs will greatly enhance the provision of child care services.

(b) Purpose.—It is the purpose of this title to—

(1) provide assistance and flexibility to States to increase the availability of safe and affordable child care for working families;

(2) increase the access of families with low and modest incomes to affordable and quality child care;

(3) ensure the health and safety of children entrusted to child care providers;

(4) promote greater private sector involvement in the provision of child care; and

(5) remove barriers to the provision of child care.

Subtitle A—Dependent Care Planning and Development Program

SEC. 610. DEPENDENT CARE PLANNING AND DEVELOPMENT PROGRAM.

Title XX of the Social Security Act (42 U.S.C. 1397 et seq.) is amended—

(1) by inserting before the heading of section 2001 the following:

"Subtitle A—Social Services Grant Program"; and

(2) by adding at the end thereof the following new subtitle:

"Subtitle B—Dependent Care Planning and Development Program.

"SEC. 2010. DEFINITIONS.

"As used in this subtitle:

"(1) Consortium of small businesses.—The term "consortium of small businesses" means two or more small businesses.

"(2) Eligible entities.—The term "eligible entity" means—

"(A) a unit of State or local government;

"(B) a local education agency;

"(C) a nonprofit organization, which qualifies as a nonprofit organization under section 501(c) or 501(d) for the Internal Revenue Code of 1986;

"(D) a professional employee association;

"(E) a consortium of small businesses;

"(F) an institution of higher education;

"(G) a hospital or health care facility;

"(H) a family care provider; and

"(I) any public, private, or nonprofit entity that the State considers able and appropriate to carry out a project under this part.

"(3) Eligible families.—The term "eligible families" means families with one or more children who are under the age of 13 and whose family income does not exceed 100 percent of the State median income for a family of the same size;

"(4) Institution of higher education.—The term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)), as amended;

"(5) Local education agency.—The term "local education agency" has the same meaning given that term by section 198(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(10)), or any successor statute defining that term for the purposes of Federal assistance to elementary and secondary education;

"(6) Secretary.—The term "Secretary" means the Secretary of Health and Human Services;

"(7) Sliding fee schedule.—The term "sliding fee schedule" means a system of cost sharing between the State and a family based on the income and size of a family with very low income families having to pay no cost;

"(8) Small business.—The term "small business" means any business entity that employs less than 50 individuals.

"(9) State.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"SEC. 2011. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of making allotments to States to carry out the activities described in section 2014, there are authorized to be appropriated $410,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992.

"SEC. 2012. ALLOTMENTS.

"(a) Formula.—

"(1) In general.—The Secretary shall make an allotment to each State for each fiscal year, from amounts appropriated under section 2011 for such fiscal year, on the basis of a formula prescribed by the Secretary that is based equally—

"(A) on the population of each State as it compares to the population of all States; and

"(B) on the population of each State weighted by the relative per capita income of that State as such compares to the relative per capita income of all States.

"(2) Definition.—For purposes of this subsection, the term 'relative per capita income' means—

"(A) the quotient of the per capita income of the United States and the per capita income of the State; or

"(B) in the case of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Commonwealth of Puerto Rico, or the Virgin Islands, the quotient shall be considered to be 1.

"(b) Additional Allotment.—

"(1) Method of allotment.—Any amounts not allotted under subsection (a) shall be allotted among each of the States in proportion to the amount otherwise allotted to such States for such fiscal year under subsection (a).

"(2) Definition.—For the purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(3) Reductions.—

"(A) In general.—The amount that a State is entitled to receive under subsection (a) and under paragraph (1) shall be reduced to the extent that such amount exceeds the sum that the Secretary estimates will be used in such State to carry out a State plan approved by the Secretary under section 2015.

"(B) Reallotment.—The amount of such reduction shall be reallotted among those remaining States that have not been subject to a reduction under this paragraph in the same manner in which the original allotment was made.

"SEC. 2013. PAYMENTS UNDER ALLOTMENTS TO STATES.

"(a) In General.—The Secretary shall make payments from amounts appropriated for each fiscal year under section 2011, as provided by section 6503(a) of title 31, United States Code, to each State in an amount (not to exceed its allotment under section 2012 for such fiscal year) equal to the Federal share of the aggregate amount to be expended by the State under the State plan for such fiscal year.

"(b) Federal Share.—The Federal share for each fiscal year shall be 75 percent.

"(c) State Share.—The State share shall equal 100 percent minus the Federal share.

"(d) Carryover.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of that year shall remain available, for the next fiscal year, to the State for the purposes for which the payment to the State was made.

"SEC. 2014. STATE USE OF ALLOTMENTS.

"(a) Project Grants.—Amounts paid to a State under section 2013 shall be used by the State to make grants to eligible entities for projects described in subsection (b) that meet at least one of the purposes of the Kids in Day-Care Services Act of 1988.

"(b) Projects.—

"(1) Purpose.—A State may make a grant to an eligible entity—

"(A) for the provision of child care services through various programs, including a certificate or voucher program for eligible families;

"(B) for the expansion and operation of existing State child care programs, if such programs are consistent with the purposes of the Kids in Day-Care Services Act of 1988;

"(C) for the establishment or operation of community or neighborhood child care centers, including the renovation of public buildings for such purposes;

"(D) for the establishment or operation of after school child care programs;

"(E) for the establishment or operation of programs to recruit and train senior citizens to serve as child care providers;

"(F) for the establishment or operation of child care programs for children of migrant workers families;

"(G) to enable such entity to provide grants or loans to fund the start up costs of onsite child care offered by small business concerns;

"(H) for the establishment and operation of training programs for child care providers;

"(I) for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled; or

"(J) for any project consistent with the purposes of the Kids in Day-Care Services Act of 1988.

"(2) Limitations.—A State may not use amounts paid to the State under section 2013 to—

"(A) provide inpatient health care services or other such unrelated services, except temporary sick child care services as authorized under paragraph (1)(I);

"(B) make cash payments to intended recipients of services (other than pursuant to a certificate or voucher program to enable low income families to obtain adequate child care as authorized under paragraph (1)(A));

"(C) provide support to any project in which to provision of child care services is not based on a sliding fee schedule;

"(D) purchase major medical equipment (except as provided in paragraph (1)(I)); and

"(E) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(3) Waiver of limitations.—The Secretary may waive the limitations contained in paragraph (2) on the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this title.

"(c) Technical Assistance.—The Secretary, on the request of a State, shall provide technical assistance to the State in planning and operating activities to be carried out under this subtitle.

"(d) State Administration.—

"(1) Limitation of expenditures.—No more than 7 percent of the total amount paid to a State under section 2013 for a fiscal year shall be used for administering the funds made available under such section. The State shall pay from non-Federal sources the remaining costs of administering such funds.

"(2) State responsibilities.—From the funds reserved by the State under paragraph (1) for the administration of the amounts paid to the State under section 2013, the State shall—

"(A) provide technical assistance to eligible entities participating in projects receiving assistance under this section;

"(B) conduct investigations of alleged child abuse in projects receiving assistance under this section;

"(C) coordinate projects receiving assistance under the Kids in Day-Care Services Act of 1988 with existing programs;

"(D) establish regular communications with registered, licensed, and accredited child care providers concerning regulatory standards, provider training opportunities, provider support groups, and nutrition assistance programs; and

"(E) establish a consumer education program designed to inform parents and the general public about regulatory standards, complaint procedures, and the importance of parental involvement in assuring quality child care.

"SEC. 2015. STATE PLAN.

"(a) State Plan.—Not later than 12 months after the date of enactment of this subtitle, each State desiring to participate in the program authorized under this subtitle shall prepare and submit to the Secretary a State plan. Each such plan shall—

"(1) describe the State agency that will administer the programs authorized under this subtitle;

"(2) describe the authorized activities for which assistance is sought under this subtitle;

"(3) provide assurances that Federal funds under this subtitle for any fiscal year will be used to supplement, and to the extent practicable, to increase the level of funds, that would, in the absence of such Federal funds, be made available from non-Federal sources for the purpose described in section 2014 and in no case supplant such funds form non-Federal sources;

"(4) describe procedures that the State will use to require eligible providers to submit applications to the State in accordance with section 2017, and to approve such applications;

"(5) describe standards that the State has established pursuant to section 2016;

"(6) certify that the State will coordinate the provision of child care services made available with funds provided under this subtitle with other child care services provided in the State;

"(7) provide such fiscal control and accounting procedures as may be necessary—

"(A) to ensure the proper accounting of Federal funds paid to the State under this subtitle; and

"(B) to ensure the verification of reports required under this subtitle;

"(8) certify that the State will use the information contained in the report submitted to the Secretary pursuant to subsection (i) to regularly evaluate the impact of the distribution of funds received pursuant to section 2013 by the State on the quality and availability of child care services in the State; and

"(9) provide such additional assurances as the Secretary may reasonably require.

"(b) Approval.—

"(1) Time period.—Not later than 30 days after the receipt of a State plan under section 2018, the Secretary shall approve such plan if it meets the requirements of such subsection and this subtitle.

"(2) Disapproval.—In the case of a State plan that is not approved by the Secretary under this paragraph (1), the Secretary may withhold funds from such State until such time as the State plan meets the requirements of this subtitle.

"(3) Technical assistance.—The Secretary shall provide technical assistance to a State, on request by the State, to ensure compliance with the provisions of this subtitle.

"SEC. 2016. STANDARDS.

"(a) Establishment.—To receive funds under this subtitle, a State shall establish standards for—

"(1) the accreditation and licensing of family-based and group child care providers;

"(2) inspection and certification of the providers referred to in paragraph (1) based on such standards; and

"(3) minimum competency requirements that child care providers must meet.

"(b) Consultation.—In developing standards under paragraph (1), a State shall consult with child care providers, parents, community-based organizations, local government, social service agencies, religious organizations, educational institutions, business organizations, and labor and employee associations.

"SEC. 2017. APPLICATIONS FOR GRANTS BY ELIGIBLE PROVIDERS.

"(a) Application.—In order to receive a grant from a State under section 2014, an eligible entity shall submit an application to the State that—

"(1) describes the project for which assistance is sought;

"(2) contains assurances that the eligible provider will use funds furnished in accordance with the requirements of this subtitle;

"(3) provides assurances that—

"(A) an appropriate sliding fee schedule will be established in the case of any project in which child care services are furnished with assistance under this subtitle; and

"(B) such fee schedule will be based on the annual incomes of the participating families;

"(4) provides assurances that procedures will be established for parental involvement in the operation of a project receiving assistance under this subtitle;

"(5) provides assurances that the project will meet the standards established by the State under section 2016; and

"(6) includes any additional assurances that the State may reasonably require.

"(b) Priority.—In making grants under this subtitle, a State shall give priority to applications from eligible providers that attempt to significantly expand or improve the provision of child care services to children of parents with low or modest incomes.

"(c) Funding Requirement.—An eligible entity receiving a grant under this section shall be required to fund at least 10 percent, but not more than 50 percent, of the project cost with non-Federal funds. The non-Federal funding may be in cash or in-kind based on fair market value.

"SEC. 2018. REPORTING REQUIREMENTS.

"(a) State Reports.—

"(1) In general.—Not later than 12 months after a State receives funds under this subtitle, and at 12-month intervals thereafter, the chief executive officer of such State shall prepare and submit to the Secretary, in such form as the Secretary shall prescribe, a report describing the States' use of funds received under this subtitle.

"(2) Report requirements.—Reports submitted under paragraph (1) shall—

"(A) include a description of the programs, activities, and services supported or provided with the funds received under this subtitle;

"(B) include the number of children served by, the number of low-income families served by, and the Federal, State, local, and private costs incurred in, the programs, activities, and services supported or provided with the funds received under this subtitle;

"(C) include the number of individuals trained as child care providers and an examination of the impact of provider pay on the quality of child care and on provider and staff turnover in the State during the preceding year;

"(D) include the number of new child care programs established in part or in whole with funds provided this subtitle;

"(E) include any additional information that the chief executive officer of the State may consider appropriate; and

"(F) be made public in the State in a manner that will facilitate comment by persons desiring to do so.

"(b) Report to Congress.—Not later than 6 months after the receipt of State reports required under subsection (a), and at 12-month intervals thereafter, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report containing a summary of the information contained in the State reports submitted under subsection (a). Such summary shall include an analysis of those programs activities, and services supported or provided with the funds received by the States this subtitle that the Secretary considers particularly innovative and effective, and any additional information the Secretary considers appropriate.".

SEC. 611. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall become effective on the date that occurs 6 months after the date of enactment of this title.

Subtitle B—Child Care Liability Risk Reduction and Revolving Loan Fund

CHAPTER 1—LIABILITY RISK REDUCTION

SEC. 620. PURPOSE.

It is the purpose of this chapter—

(1) to increase the availability of child care by alleviating the serious difficulty faced by child care providers in obtaining affordable liability insurance; and

(2) to provide States with a sufficient capital base for liability insurance purposes that may be increased or maintained through mechanisms developed by the State.

SEC. 621. FORMATION OF CHILD CARE LIABILITY RISK RETENTION GROUP.

(a) Assistance in Formation and Operation of Group.—Any State may assist in the establishment and operation of a child care liability risk retention group in the manner provided under this chapter.

(b) Child Care Liability Risk Retention Group Defined.—For purposes of this chapter, the "child care liability risk retention group" means any corporation (or other limited liability association)—

(1) whose members are child care providers licensed or accredited pursuant to State or local law or standards; and

(2) which otherwise satisfies the criteria for a risk retention group under section 2(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(4)).

SEC. 622. STATE APPLICATIONS.

(a) Applications.—To qualify for assistance under this chapter, a State shall submit an application to the Secretary of Health and Human Services, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require, including a State plan which meets the requirements of subsection (b) of this section.

(b) State Plans.—

(1) Lead agency.—The plan shall identify the lead agency that has been designated and that is to be responsible for the administration of funds provided under this chapter.

(2) Participants in risk retention group.—The plan shall provide that all participants in the child care liability risk retention group are child care providers who are licensed or accredited pursuant to State or local law or standards. In addition, the plan shall provide for maximum membership of family-based child care providers in the group.

(3) Use of funds.—The plan shall provide that the State shall use at least the amount allotted to the State in any fiscal year to establish or operate a child care liability risk retention group.

(4) Continuation of risk retention group.—The plan shall set forth provisions that specify how the child care liability risk retention group will continue to be financed after fiscal year 1991, including financing through contributions by the State or by members of such group.

SEC. 623. FEDERAL ENFORCEMENT.

(a) Review of Plans.—The Secretary of Health and Human Services shall review and approve State plans submitted in accordance with this chapter and shall monitor State compliance with the provisions of this chapter.

(b) Finding of Noncompliance.—If the Secretary of Health and Human Services, after reasonable notice to a State and opportunity for a hearing, finds—

(1) that there has been a failure to comply substantially with any provision or any requirements set forth in the State plan of that State; or

(2) that there is a failure to comply substantially with any applicable provision of this chapter,

the Secretary shall notify such State of the findings and of the fact that no further payments may be made to such State under this chapter until the Secretary is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

SEC. 624. AUTHORIZATION OF APPROPRIATION.

(a) Authorization of Appropriations.—To carry out the provisions of this chapter, there are authorized to be appropriated $110,000,000 for fiscal year 1989.

(b) Amounts To Remain Available.—The amounts appropriated pursuant to subsection (a) shall remain available for assistance to States for fiscal years 1989, 1990, and 1991 without limitation.

SEC. 625. RESERVATIONS FOR TERRITORIES AND ADMINISTRATIVE COSTS.

From the sums appropriated to carry out the provisions of this chapter for each fiscal year, the Secretary of Health and Human Services shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs; and

(2) 3 percent for the administrative costs of carrying out the provisions of this chapter.

SEC. 626. ALLOTMENTS TO STATES.

(a) In General.—From the remainder of the amounts appropriated under section 624, the Secretary of Health and Human Services shall make an allotment to each State not referred to in section 625 for each fiscal year in accordance with subsection (b).

(b) Allotment Formula.—

(1) In General.—The amount of each State's allotment under subsection (a) shall be equal to the product of—

(A) an amount equal to the sums appropriated to carry out the provisions of this chapter for each fiscal year minus the amount reserved pursuant to section 625 for such fiscal year; and

(B) the percentage described in paragraph (2).

(2) Percentage.—The percentage referred to in paragraph (1)(B) is a percentage equal to the quotient of—

(A) an amount equal to the population of each State as it compares to the population of all States; divided by

(B) an amount equal to the population of each State weighted by the relative per capita income of that State as such compares to the relative per capita income of all States.

(c) State Administrative Costs.—Of the amount allotted to a State pursuant to subsection (a), an amount not to exceed 7 percent shall be used by such State to provide for the administrative costs of carrying out such program.

SEC. 627. PAYMENTS.

(a) Entitlement.—Each State having a plan approved by the Secretary of Health and Human Services under this chapter shall be entitled to payments under this section for each fiscal year in an amount not to exceed its allotment under section 626, to be expended by the State under the plan for the fiscal year for which the grant is to be made.

(b) Method of Payments.—The Secretary of Health and Human Services may make payments to a State in installments, and in advance or, subject to the requirement of section 624, by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(c) Carryover.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of that year shall remain available, for the next fiscal year, to the State for the purposes for which the payment to the State was made.

CHAPTER 2—REVOLVING LOAN FUND

SEC. 630. PURPOSE; DEFINITIONS.

(a) Purpose.—It is the purpose of this chapter to—

(1) increase the availability of family-based child care by enabling family-based child care providers to meet accreditation or licensing standards; and

(2) provide States with a sufficient capital base to make loans that may be increased or maintained through mechanisms developed by the State.

(b) Definitions.—As used in this chapter:

(1) Secretary.—The term "Secretary" means the Secretary of Health and Human Services.

(2) State.—The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 631. STATE APPLICATIONS.

(a) Submission of Application.—

(1) Form of application.—To qualify for assistance under this chapter, a State shall submit an application to the Secretary, at such time, in such manner, and providing such information as the Secretary may require, including a plan which meets the requirements of paragraph (2).

(2) Qualifying for loan.—The State shall submit a plan that sets forth procedures and requirements whereby any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the Internal Revenue Code of 1986) in order to become a licensed or accredited family-based child care facility, pursuant to State or local law or standards, may obtain a loan from the State revolving loan fund (hereinafter called the "fund"). Such fund shall be administered by the State and shall provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, which is not in excess of $1,500.

(b) State Plan.—

(1) Establishment of fund.—The State shall provide in its plan, that such State has established a revolving loan fund, and has provided procedures whereby—

(A) moneys are transferred to such fund to provide capital for making loans;

(B) interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such fund are deposited into such fund;

(C) all loans, expenses, and payments pursuant to the operation of this chapter are paid from such fund;

(D) loans made from such fund are made to qualified applicants for capital improvements to be made so that such applicant may obtain a State or local accreditation or a license for a family-based child care facility; and

(E) the plan shall set forth provisions which specify how any such revolving loan fund will continue to be financed after fiscal year 1990, such as through contributions by the State or by some other entity.

(2) Qualifications.—Such plan shall also set forth procedures and guidelines to carry out the purposes of this chapter, including provisions that assure that only applicants who obtain a license or accreditation for a child care facility in accordance with the provisions of State or local law or standards, benefit from loans made available pursuant to the provisions of this chapter.

SEC. 632. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization of Appropriations.—To carry out the provisions of this chapter, there are authorized to be appropriated $25,000,000 for fiscal year 1989.

(b) Amounts to Remain Available.—The amounts appropriated pursuant to subsection (a) shall remain available for assistance to States for fiscal years 1989, 1990, and 1991 without limitation.

SEC. 633. RESERVATIONS FOR TERRITORIES AND ADMINISTRATIVE COSTS.

From the sums appropriated to carry out the provisions of this chapter in each fiscal year, the Secretary shall reserve—

(1) 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be alloted in accordance with their respective needs; and

(2) 3 percent for the administrative costs of carrying out the provisions of this chapter.

SEC. 634. ALLOTMENTS TO STATES.

(a) In General.—From the remainder of the amounts appropriated under section 632, the Secretary shall make an allotment to each State not referred to in section 633 for each fiscal year to enable the State to carry out the provisions of this chapter for such fiscal year.

(b) Allotment Formula.—

(1) In general.—The amount of each State's allotment under subsection (a) shall be equal to the product of—

(A) an amount equal to the sums appropriated to carry out the provisions of this chapter for each fiscal year minus the amounts reserved pursuant to section 633 for such fiscal year; and

(B) the percentage described in paragraph (2).

(2) Percentage.—The percentage referred to in paragraph (1)(B) is a percentage equal to the quotient of—

(A) an amount equal to the population of each State as it compares to the population of all States; divided by

(B) an amount equal to the population of each State weighted by the relative per capita income of that State as such compares to the relative per capita income of all States.

(c) State Administrative Costs.—Of the amount allotted to a State pursuant to subsection (a), an amount not to exceed 10 percent shall be used by such State to provide for the administrative costs of carrying out such program.

Subtitle C—Social Security Act Provision

SEC. 640. CHILD CARE EARNINGS EXCLUDED FROM WAGES AND SELF-EMPLOYMENT INCOME FOR EXCESS EARNINGS TEST.

(a) Wages.—Section 203 (f)(5)(c) of the Social Security Act (42 U.S.C. 403(f)(5)(c)) is amended—

(1) by striking out "or" at the end of clause (i),

(2) by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new clause:

"(iii) the amount of any payment made to an employee by an employer for child care services performed by such employee after the month in which such employee initially becomes entitled to insurance benefits under this title.".

(b) Self-Employment Income.—Section 203(f)(5)(D) of such Act (42 U.S.C. 403(f)(5)(D)) is amended—

(1) by striking out "or" at the end of clause (i),

(2) by adding "or" at the end of clause (ii),

(3) by inserting immediately after clause (ii) the following new clause:

"(iii) an individual who has become entitled to insurance benefits under this title, any income attributable to child care services performed after the month in which such individual becomes entitled to such benefits,", and

(4) by striking out "royalties or other income" and inserting in lieu thereof "royalties or income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wages or income earned after the date of the enactment of this title.

Subtitle D—Internal Revenue Code Provisions

SEC. 650. CREDIT FOR SMALL BUSINESSES PROVIDING QUALIFIED CHILD CARE FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. QUALIFIED SMALL BUSINESS-PROVIDED CHILD CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the qualified child care facility credit determined under this section for any taxable year is an amount equal to 25 percent of the qualified child care expenses for such taxable year.

"(b) LIMITATION.—The amount of the credit determined under subsection (a) for any taxable year shall not exceed $100,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CHILD CARE EXPENSES.—The term 'qualified child care expenses' means any amount paid or incurred by a small business during the taxable year to acquire, construct, or otherwise establish a qualified child care facility and to operate such facility.

"(2) QUALIFIED CHILD CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

"(i) operated by a small business for the care of enrollees, at least 30 percent of whom are dependents of employees of such small business,

"(ii) located on or near the business premises of such small business, and

"(iii) which is accredited or licensed to operate as a child care facility under applicable State and local laws and regulations.

"(B) CONSORTIUM OF SMALL BUSINESSES.—In the case of a facility operated by more than 1 small business, such facility shall be treated as a qualified child care facility of each small business with respect to which the requirements of subparagraph (A) are met separately.

"(3) SMALL BUSINESS.—The term 'small business' means any person who employs less than 50 full-time employees in any 1 pay period.

"(d) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) NO DOUBLE BENEFIT.—No credit or deduction under any other provision of this chapter shall be allowed to a taxpayer for the taxable year for any expenditure with respect to which a credit is allowed under this section for such year.

"(f) SPECIAL AGGREGATION AND ALLOCATION RULES.—For purposes of this section—

"(1) AGGREGATION OF EXPENDITURES.—

"(A) CONTROLLED GROUP OF CORPORATIONS.—In determining the amount of the credit under this section—

"(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such member shall be its proportionate share of the qualified child care expenses giving rise to the credit.

"(B) COMMON CONTROL.—Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

"(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such person shall be its proportionate share of the qualified child care expenses giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(2) ALLOCATIONS.—

"(A) ALLOCATION IN CASE OF CONSORTIUM OF SMALL BUSINESSES.—In the case of a consortium of small businesses described in subsection (c)(2)(B) in jointly operating a qualified child care facility, the credit allowable by this section to each such small business shall be its proportionate share of the qualified child care expenses giving rise to the credit.

"(B) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(C) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(3) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the same meaning given to such term by section 1563(a), except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(g) SPECIAL RULE FOR PASS-THRU OF CREDIT.—In the case of an individual who—

"(1) owns an interest in an unincorporated trade or business,

"(2) is a partner in a partnership,

"(3) is a beneficiary of an estate or trust, or

"(4) is a shareholder in an S corporation,

the amount allowable under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity.

"(h) RECEIPT OF CHILD CARE PROJECT GRANT.—A small business is not eligible for a credit under this section for a taxable year if such small business received a child care project grant pursuant to section 1934 of the Public Health Service Act during such taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (4),

(B) by striking out the period at the end of paragraph (5), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(6) the qualified child care facility credit determined under section 43.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 43. Qualified small business-provided child care facility credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

SEC. 651. CHILD AND DEPENDENT CARE CREDIT COMPLETELY PHASED OUT FOR ADJUSTED GROSS INCOMES ABOVE $93,500.

(a) IN GENERAL.—Paragraph (2) of section 21(a) of the Internal Revenue Code of 1986 (relating to expenses for household and dependent care services necessary for gainful employment) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term 'applicable percentage' means 30 percent reduced (but not below 0 percent) by the sum of—

"(A) 1 percentage point (but no more than a total of 10 percentage points) for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000, plus

"(B) 1 percentage point for each $1,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $65,000.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

SEC. 652. REFUNDABLE DEPENDENT CARE SERVICES TAX CREDIT.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended—

(1) by redesignating section 35 as section 36, and

(2) by redesignating section 21 as section 35.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 35(a) of the Internal Revenue Code of 1986 (relating to allowance of credit), as redesignated by subsection (a), is amended by striking out "chapter" and inserting in lieu thereof "subtitle".

(2) Section 129 of such Code (relating to dependent care assistance programs) is amended—

(A) by striking out "section 21(d)(2)" in subsection (b)(2) and inserting in lieu thereof "section 35(d)(2)", and

(B) by striking out "section 21(b)(2)" in subsection (e)(1) and inserting in lieu thereof "section 35(b)(2)".

(3) Subsection (e) of section 213 of such Code (relating to deduction for medical, dental, etc., expenses) is amended by striking out "section 21" and inserting in lieu thereof "section 35".

(4) Paragraph (4) of section 6201(a) of such Code (relating to assessment authority) is amended—

(A) by striking out "or section 32 (relating to earned income)" and inserting in lieu thereof ", section 32 (relating to earned income), or section 35 (relating to dependent care services credit)", and

(B) by striking out the caption and inserting in lieu thereof the following:

"(4) OVERSTATEMENT OF CERTAIN CREDITS.—".

(5) Section 6513 of such Code (relating to time return deemed filed and tax considered paid) is amended by adding at the end thereof the following new subsection:

"(f) Time Tax Is Considered Paid for Dependent Care Services Credit.—For purposes of section 6511, the taxpayer shall be considered as paying an amount of tax on the last day prescribed for payment of the tax (determined without regard to any extension of time and without regard to any election to pay the tax in installments) equal to so much of the credit allowed by section 35 (relating to dependent care services credit) as is treated under section 6401(b) as an overpayment of tax.".

(6) Subsection (d) of section 6611 of such Code is amended by striking out the caption and inserting in lieu thereof the following:

"(d) Advance Payment of Tax, Payment of Estimated Tax, Credit for Income Tax Withholding, and Dependent Care Services Credit.—".

(c) Clerical Amendments.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking out the item relating to section 21.

(2) The table of sections for subpart C of such part IV is amended by striking out the item relating to section 35 and inserting in lieu thereof the following new items:

"Sec. 35. Expenses for household and dependent care services necessary for gainful employment.

"Sec. 36. Overpayments of tax.".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

SEC. 653. CHILDREN'S TAX CREDIT.

(a) In General.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by section 652, is further amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. CHILDREN'S TAX CREDIT.

"(a) General Rule.—In the case of an individual who maintains a household which includes as a member 1 or more qualifying children, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the child care expenses for each qualifying child for the taxable year.

"(b) Limitations.—

"(1) Child care expenses.—The amount of child care expenses for each qualifying child incurred during any taxable year which may be taken into account under subsection (a) shall not exceed $750, and in no event shall a credit be taken for more than two qualifying children in any one year.

"(2) Adjusted gross income of taxpayer.—

"(A) In general.—No credit shall be allowed under subsection (a) with respect to any taxpayer whose adjusted gross income for the taxable year exceeds the applicable amount.

"(B) Applicable amount.—For purposes of subparagraph (A), the applicable amount shall be determined in accordance with the following table:

"In the case of any taxable year beginning in:	The applicable amount is:
1989	$16,000
1990	17,000
1991	18,000
1992	19,000
1993	20,000.

"(c) Qualifying Child.—For purposes of this section, the term 'qualifying child' means any individual—

"(1) who is a dependent (as defined in section 152) of the taxpayer,

"(2) who is a child (as defined in section 151(c)(3)) of the taxpayer, and

"(3) who has not attained age 4 at the close of the calendar year in which the taxable year of the taxpayer begins.

"(d) Child Care Expenses.—

"(1) In general.—The term 'child care expenses' means amounts paid for the care of a qualifying child, but only if such amounts are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying children with respect to the taxpayer. Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying child stays overnight.

"(2) Dependent care outside the taxpayers household.—Child care expenses described in paragraph (1) that are incurred for services provided outside the taxpayer's household shall be taken into account only if such services comply with all applicable laws and regulations of a State or unit of local government.

"(e) Special Rules.—For purposes of this section—

"(1) Maintaining household.—An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

"(2) Married couples must file joint return.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

"(3) Marital status.—An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

"(4) Certain married individuals living apart.—If—

"(A) an individual who is married and who files a separate return—

"(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying child, and

"(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

"(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

"(5) Special dependency test in case of divorced parents, etc.—If paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying child with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying child with respect to the noncustodial parent.

"(6) Payments to related individuals.—No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

"(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

"(B) who is a child of the taxpayer (within the meaning of section 151(c)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term 'taxable year' means the taxable year of the taxpayer in which the service is performed.

"(f) No Credit Allowed If Dependent Care Credit Allowed.—No credit shall be allowed under this section to a taxpayer for the taxable year if a credit is allowed to such taxpayer under section 35 for such year.".

(b) Clerical Amendment.—The table sections for subpart C of part IV of subchapter A of chapter 1 of such Code, as amended by section 652, is further amended by striking the item relating to section 36 and inserting in lieu thereof the following new items:

"Sec. 36. Children's tax credit.

"Sec. 37. Overpayments of tax.".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31 of the calendar year in which this title is enacted.

Subtitle E—Miscellaneous

SEC. 660. COMMUNITY SERVICES BLOCK GRANT ACT.

Section 674 of the Community Services Block Grant Act (42 U.S.C. 9903) is amended—

(1) in subsection (a)(1)(A), by inserting ", and makes the grants authorized under subsection (b)(3)" after "(b)(1)"; and

(2) in subsection (b), by adding at the end thereof the following new paragraph:

"(3) Of the amounts appropriated under section 672, the Secretary shall reserve $10,000,000 in each fiscal year to make grants to States that fund local child day care projects to enable such States to improve the provision of affordable and quality child care services within such State. To receive a grant under this paragraph, a State shall comply with the provisions of this Act.".

SEC. 661. CHILD CARE UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

Section 105(a)(8) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting "(A)" after "except that"; and

(2) by inserting before the semicolon the following: "(B) an additional amount of any assistance under this title may be used for child care, but in no case may more than 20 percent of the amount of assistance under this title be used for activities under this paragraph".

SEC. 662. FEDERAL EMPLOYEE CHILD CARE STUDY.

Not later than 90 days after the date of the enactment of this title, the Director of the Office of Personnel Management shall conduct a study, and prepare and submit, to the appropriate Committees of Congress, a report concerning—

(1) the feasibility of offering child and adult day care as a benefit to Federal employees through health insurance plans under chapter 89 of title 5, United States Code;

(2) the ability of health insurance providers to subcontract the management of child and adult care facilities; and

(3) the approximate cost to the Federal Government, to Federal employees, and to health insurance providers of offering child and adult day care as a benefit of Federal employment.

SEC. 663. STUDY OF FEDERAL CHILD CARE EFFORTS.

(a) STUDY.—The Secretary of Health and Human Services, in conjunction with the heads of other relevant Federal agencies and departments, shall conduct a study of all child care programs and activities that receive assistance from the Federal Government.

(b) REPORT.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall prepare and submit, to the appropriate Committees of Congress, a report based on the study conducted under subsection (a), that shall include—

(1) the number of families served under child care programs in effect on the date of enactment of this title;

(2) recommendations by the Secretary to improve the operation of such programs; and

(3) a plan for the coordination of all Federal child care efforts.

SEC. 664. SENSE OF THE SENATE.

It is the sense of the Senate that States should be required to assist low and moderate income families in finding affordable and quality child care services.

PRESSLER AMENDMENT NO. 3438

(Ordered to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill S. 2488, supra; as follows:

At the end of the bill, add the following new title:

TITLE VII—PAY OF MEMBERS OF CONGRESS

SEC. 701. PAY OF MEMBERS OF CONGRESS.

(a) SHORT TITLE.—This section may be cited as the "Congressional Pay Accountability Act of 1988".

(b) CONGRESSIONAL VOTE ON PRESIDENTIAL RECOMMENDATIONS TO INCREASE CONGRESSIONAL RATES OF PAY.—Section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended to read as follows:

"(i) EFFECTIVE DATE OF PRESIDENTIAL RECOMMENDATIONS; CONGRESSIONAL VOTE ON INCREASE IN CONGRESSIONAL RATES OF PAY.—(1)(A) Except for the recommendations relating to Members of Congress (which shall be subject to the provisions of paragraph (2)), the recommendations of the President which are transmitted to the Congress pursuant to subsection (h) of this section shall be effective as provided in subparagraph (B) of this paragraph, unless any such recommendation is disapproved by a joint resolution agreed to by the Congress not later than the last day of the 30-day period which begins on the date on which such recommendations are transmitted to the Congress.

"(B) The effective date of the rate or rates of pay which take effect for an office or position under subparagraph (A) of this paragraph shall be the first day of the first pay period which begins for such office or position after the end of the 32-day period described in such paragraph.

"(2)(A) The recommendations of the President relating to the rates of pay of Members of Congress which are transmitted to the Congress under subsection (h) of this section shall become effective only after the enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to issue of such recommendation to increase the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) For purposes of this paragraph the term "Members of Congress" includes all positions described under section 225(f)(A), except for the Vice President of the United States.".

(c) CONGRESSIONAL VOTE TO INCREASE CONGRESSIONAL RATES OF PAY WITH INCREASES IN THE GENERAL SCHEDULE.—Section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) is amended to read as follows:

"(2)(A) Any increase in the rates of pay of Members of Congress which corresponds to an increase in the rate of pay in the General Schedule under section 5305 of title 5, United States Code, in any fiscal year shall become effective only after enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of the increase in the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) If a joint resolution is enacted as provided under subparagraphs (A) and (B), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which such joint resolution is enacted, each annual rate of pay of Members of Congress shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such annual rate which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under section 5305) of the adjustment in the rates of pay under the General Schedule.".

(d) CONGRESSIONAL VOTE ON ANY INCREASE IN THE RATES OF PAY OF MEMBERS OF CONGRESS.—(1) Notwithstanding any other provision of law, any increase in the rates of pay of Members of Congress shall become effective only after the enactment of a joint resolution as provided in subsection (b).

(2) The joint resolution described under subsection (a) shall—

(A) relate only to the issue of the increase in the rates of pay of Members of Congress; and

(B) be recorded to reflect the vote of each Member of Congress thereon.

BOSCHWITZ AMENDMENT NOS. 3439 AND 3440

(Ordered to lie on the table.)

Mr. BOSCHWITZ submitted two amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

AMENDMENT No. 3439

At the end of the bill, add the following new title:

TITLE —DEPENDENT CARE SERVICES TAX CREDIT

SEC. . PHASE OUT OF CHILD CARE CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 21(a) of the Internal Revenue Code of 1986 (relating to expenses for household and dependent care services necessary for gainful employment) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term 'applicable percentage' means 30 percent reduced (but not below 0 percent) by the sum of—

"(A) 1 percentage point (but no more than a total of 10 percentage points) for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000, plus

"(B) either—

"(i) in the case of an individual who maintains a household which includes 1 qualifying individual (as defined under subsection (b)(1)(A)), 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $35,000, or

"(ii) in the case of an individual who maintains a household which includes 2 or more qualifying individuals (as defined under subsection (b)(1)(A)), 2 percentage points for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $45,000.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. . REFUNDABLE DEPENDENT CARE SERVICES TAX CREDIT.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended—

(1) by redesignating section 35 as section 36, and

(2) by redesignating section 21 as section 35.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 35(a) of the Internal Revenue Code of 1986 (relating to allowance of credit), as redesignated by subsection (a), is amended by striking out "chapter" and inserting in lieu thereof "subtitle".

(2) Section 129 of such Code (relating to dependent care assistance programs) is amended—

(A) by striking out "section 21(d)(2)" in subsection (b)(2) and inserting in lieu thereof "section 35(d)(2)", and

(B) by striking out "section 21(b)(2)" in subsection (e)(1) and inserting in lieu thereof "section 35(b)(2)".

AMENDMENT No. 3440

At the end of the bill, add the following new titles:

TITLE —CHILD CARE HOMES TAX CREDIT

SEC. . ALLOWANCE OF CREDIT FOR EXPENDITURES FOR CERTAIN CHILD CARE HOMES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. CHILD CARE HOME CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the child care home credit determined under this section for the taxable year is an amount equal to 20 percent of so much of the qualified child care home expenditures of the taxpayer for such taxable year as does not exceed $5,000.

"(b) PRIOR EXPENDITURES BY TAXPAYER ON SAME HOME TAKEN INTO ACCOUNT.—If for any prior year a credit was allowed to the taxpayer under this section with respect to any qualified child care home, subsection (a) shall be applied for the taxable year with respect to such qualified child care home by reducing the dollar amount contained in such subsection by the prior year expenditures taken into account under such subsection.

"(c) DEFINITIONS.—

"(1) QUALIFIED CHILD CARE HOME EXPENDITURES.—The term 'qualified child care home expenditures' means any expenditure made by the taxpayer as required by the State or local government to acquire, construct, rehabilitate, or expand a qualified child care home .

"(2) QUALIFIED CHILD CARE HOME.—The term 'qualified child care home' means a home—

"(A) operated by the taxpayer for the care of enrollees,

"(B) located in the principal residence of the taxpayer, and

"(C) which meets the requirements of all applicable laws and regulations of the State or local government where it is located.

"(d) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care home, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted from the nonallowance of the credit described under subsection (a).

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Year 1	100
Year 2	66⅔
Year 3	33⅓
Years 4 and thereafter	0.

"(B) For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care home is placed into service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the home as a qualified child care home.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a person's interest in a qualified child care home with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME CREDIT ALLOWANCE AND RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the home agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the home shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the home as a qualified child care home by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(f) TERMINATION.—This section shall not apply to expenditures made after December 31, 1993.".

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (4),

(B) by striking out the period at the end of paragraph (5), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(6) the child care home credit determined under section 43.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 43. Child care home credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

TITLE —EMPLOYER ON-SITE CHILD CARE FACILITY CREDIT

SEC. . ALLOWANCE OF CREDIT FOR EMPLOYER EXPENDITURES FOR CERTAIN ON-SITE CHILD CARE FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits), as amended by section 301(a), is further amended by adding at the end thereof the following new section:

"SEC. 44. EMPLOYER ON-SITE CHILD CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer on-site child care facility credit determined under this section for the taxable year is an amount equal to 25 percent of so much of the qualified on-site child care expenditures for such taxable year as does not exceed $400,000.

"(b) PRIOR EXPENDITURES BY TAXPAYER ON SAME FACILITY TAKEN INTO ACCOUNT.—If for any prior year a credit was allowed to the taxpayer under this section with respect to any qualified child care facility, subsection (a) shall be applied for the taxable year with respect to such qualified child care facility by reducing the dollar amount contained in such subsection by the prior year expenditures taken into account under such subsection.

"(c) DEFINITIONS.—

"(1) QUALIFIED ON-SITE CHILD CARE EXPENDITURES.—The term 'qualified on-site child care expenditures' means any expenditure made by an employer during the taxable year to acquire, construct, rehabilitate, or expand a qualified child care facility.

"(2) QUALIFIED CHILD CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

"(i) operated by an employer for the care of enrollees;

"(ii) available to dependents of employees of such employer,

"(iii) located on the premises such employer, and

"(iv) which meets the requirements of all applicable laws and regulations of the State or local government where it is located.

"(B) OFF-SITE NONPROFIT CHILD CARE FACILITIES.—With respect to a nonprofit child care facility, subparagraph (A) shall be applied without regard to clause (ii) and (iii) thereof.

"(d) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted from the nonallowance of the credit described under subsection (a).

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Year 1	100
Year 2	66⅔
Year 3	33⅓
Years 4 and thereafter	0.

"(B) For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed into service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified child care facility.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a person's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME CREDIT ALLOWANCE AND RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(f) SPECIAL AGGREGATION AND ALLOCATION RULES.—For purposes of this section—

"(1) AGGREGATION OF EXPENDITURES.—

"(A) CONTROLLED GROUP OF CORPORATIONS.—In determining the amount of the credit under this section—

"(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such member shall be its proportionate share of the qualified on-site child care expenses giving rise to the credit.

"(B) COMMON CONTROL.—Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

"(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such person shall be its proportionate share of the qualified on-site child care expenses giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(2) ALLOCATIONS.—

"(A) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly operating a qualified child care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site child care expenses giving rise to the credit.

"(B) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(C) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(3) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the same meaning given to such term by section 1563(a), except that—

"(A) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(g) SPECIAL RULE FOR PASS-THRU OF CREDIT.—In the case of an individual who—

"(1) owns an interest in an unincorporated trade or business,

"(2) is a partner in a partnership,

"(3) is a beneficiary of an estate or trust, or

"(4) is a shareholder in an S corporation,

the amount allowable under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity.

"(h) TERMINATION.—This section shall not apply to expenditures made after December 31, 1993.".

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986, as amended by section 301(b), is further amended—

(A) by striking out "plus" at the end of paragraph (5),

(B) by striking out the period at the end of paragraph (6), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(7) the employer on-site child care facility credit determined under section 44.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by section 301(b), is further amended by adding at the end thereof the following new item:

"Sec. 44. Employer on-site child care facility credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

DOLE AMENDMENT NO. 3441

Mr. DOLE submitted an amendment intended to be proposed by him to the bill S. 2488, supra; as follows:

At the appropriate place add the following:

None of the provisions of this Act shall become effective until the following is enacted.

SECTION 1. LIBERALIZATION OF EARNINGS TEST OVER THE PERIOD 1990-1994 FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

(a) IN GENERAL.—Effective with respect to taxable years ending after 1989, subparagraph (D) of section 203(f)(8) of the Social Security Act is amended to read as follows:

"(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved shall be increased by $3,000 in each taxable year over the exempt amount for the previous taxable year, beginning with any taxable year ending after 1989 and before 1991.".

(b) CONFORMING AMENDMENT.—The second sentence of section 223(d)(4) of such Act is amended by striking out "which is applicable to individuals described in subparagraph (D) thereof" and inserting in lieu thereof "which would be applicable to individuals who have attained retirement age (as defined in section 216(l)) without regard to any increase in such amount resulting from a law enacted in 1987".

SEC. 2. REPEAL OF EARNINGS TEST IN 1995 FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

Effective with respect to taxable years ending after 1994—

(1) clause (B) in the third sentence of section 203(f)(1) of the Social Security Act is amended by striking out "age seventy" and inserting in lieu thereof "retirement age (as defined in section 216(l))"; and

(2) section 203(f)(3) of such Act is amended—

(A) by striking out "33½ percent" and all that follows through "other individual" and inserting in lieu thereof "50 percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)", and

(B) by striking out "age 70" and inserting in lieu thereof "retirement age (as defined in section 216(l))".

SEC. 3. CONFORMING AND RELATED AMENDMENTS.

Effective with respect to taxable years ending after 1994—

(1) section 203(c)(1) of the Social Security Act is amended by striking out "is under the age of seventy" and inserting in lieu thereof "is under retirement age (as defined in section 216(l))";

(2) the last sentence of subsection (c) of section 203 of such Act is amended by striking out "nor shall any deduction" and all that follows and inserting in lieu thereof "nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.";

(2) paragraphs (1)(A) and (2) of section 203(d) of such Act are each amended by striking out "under the age of seventy" and inserting in lieu thereof "under retirement age (as defined in section 216(l))";

(3) section 203(f)(1) of such Act is amended by striking out clause (D) and inserting in lieu thereof the following: "(D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, or";

(4) subparagraph (D) of section 203(f)(5) of such Act is amended—

(A) by striking out "(D) In the case of" and all that follows down through "(ii) an individual" and inserting in lieu thereof the following:

"(D) An individual";

(B) by striking out "became entitled to such benefits" and all that follows and inserting in lieu thereof "became entitled to such benefits, there shall be excluded from gross income any such other income."; and

(C) by shifting such subparagraph as so amended to the left to the extent necessary to align its left margin with that of subparagraphs (A) through (C) of such section;

(5) section 203(f)(8)(A) of such Act is amended by striking out "the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable" and inserting in lieu thereof "the new exempt amount which is to be applicable";

(6) section 203(f)(8)(B) of such Act is amended—

(A) by striking out all that precedes clause (i) and inserting in lieu thereof the following:

"(B) The exempt amount which is applicable for each month of a particular taxable year shall be whichever of the following is the larger—";

(B) by striking out "corresponding" in clause (i); and

(C) by striking out "an exempt amount" in the matter following clause (ii) and inserting in lieu thereof "the exempt amount";

(7) section 203(f)(8)(D) of such Act (as amended by section 1(a) of this Act) is repealed;

(8) section 203(f)(9) of such Act is repealed;

(9) section 203(h)(1)(A) of such Act is amended by striking out "age 70" each place it appears and inserting in lieu thereof "retirement age (as defined in section 216(l))";

(10) section 203(j) of such Act is amended to read as follows:

"Attainment of Retirement Age

"(j) For purposes of this section—

"(1) an individual shall be considered as having attained retirement age (as defined in section 216(l)) during the entire month in which he attains such age; and

"(2) the term 'retirement age (as defined in section 216(l))', with respect to any individual entitled to monthly insurance benefits under section 202, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.";

(11) section 202(w)(2)(B)(ii) of such Act is amended—

(A) by striking out "either"; and

(B) by striking out "or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit"; and

(12) the second sentence of section 223(d)(4) of such Act (as amended by section 1(b) of this Act) is further amended by striking out "without regard to any increase in such amount resulting from a law enacted in 1987" and inserting in lieu thereof "but for the liberalization and repeal of the earnings test for such individuals in 1990".

SEC. 4. ACCELERATION OF 8 PERCENT DELAYED RETIREMENT CREDIT.

Effective with respect to taxable years ending after 1990, paragraph (6) of section 202(w) of the Social Security Act is amended—

(1) by striking out "2005" in subparagraph (C) and inserting in lieu thereof "1989"; and

(2) by striking out "2004" in subparagraph (D) and inserting in lieu thereof "1988".

TECHNICAL CORRECTIONS RELATIVE TO THE TAX REFORM ACT OF 1986

THURMOND (AND OTHERS) AMENDMENT NO. 3442

Mr. THURMOND (for himself, Mr. GRASSLEY, and Mr. HEFLIN) proposed an amendment to the bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes; as follows:

At the appropriate place, insert the following new section:

SEC. . EXEMPTION OF CERTAIN RELIGIOUS SCHOOLS FROM FEDERAL UNEMPLOYMENT TAX.

(a) IN GENERAL.—Section 3309(b)(1) of the 1986 Code (relating to exemption from unemployment tax) is amended by inserting before the semicolon at the end thereof the following: ", or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services performed after December 31, 1988.

PARENTAL AND TEMPORARY MEDICAL LEAVE

KENNEDY AMENDMENT NOS. 3443 THROUGH 3465

(Ordered to lie on the table.)

Mr. KENNEDY submitted 23 amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

AMENDMENT No. 3443

Strike all after "Sec." the first time it appears, and insert in lieu thereof: "0. No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted."

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3444

Strike all after "Sec." the first time it appears, and insert in lieu thereof: "0. No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3445

Strike all after "Sec." the first time it appears, and insert in lieu thereof: "0. No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3446

Strike all after "Sec." the first time it appears, and insert in lieu thereof: "0. No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3447

At the end of the bill, add the following:

TITLE : MINIMUM WAGE PROVISIONS

Sec. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3448

At the end of the bill, add the following:

TITLE : MINIMUM WAGE PROVISIONS

Sec. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgini Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3449

At the end of the bill, add the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT NO. 3450

At the end of the bill, add the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out

who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3451

At the appropriate place insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3452

At the appropriate place insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3453

At the end of the bill, add the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this sub-

section, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3454

At the end of the bill, add the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3455

At the appropriate place insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3456

In lieu of the matter to be proposed, insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this title—Minimum Wage provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3457

In lieu of the matter to be proposed, insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3458

In lieu of the matter to be proposed, insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than

$500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgini Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT NO. 3459

In lieu of the matter to be proposed, insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT NO. 3460

In lieu of the matter to be proposed, insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3461

Strike all after the first word and insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3462

Strike all after the first word and insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3463

Strike all after the first word and insert the following:

TITLE : MINIMUM WAGE PROVISIONS

Sec. . No provision of this bill shall be effective until the provisions of this Title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standard Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage

rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"B) The wage referred to in subparagraph (A) is a wage 85% of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT No. 3464

Strike all after the first word and insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation

periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

AMENDMENT NO. 3465

Strike all after the first word and insert the following:

TITLE : MINIMUM WAGE PROVISIONS

SEC. . No provision of this bill shall be effective until the provisions of this title—Minimum Wage Provisions—are enacted.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following "committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

The third sentence of section 3(m) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the period ending December 31, 1989, and (2) 50 percent of the applicable minimum wage rate after December 31, 1989,".

SEC. 6. Section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

Full-time Student Wage:

"(e)(1)(A) Any retail, service, agricultural or higher education employer, may, in lieu of the minimum wage prescribed by subparagraph B if such employee is a full-time student and the employer has mailed an application form to the Secretary which gives the employer's name and business address and certification that the employment of such students will not reduce full-time employment opportunities of persons other than those employed pursuant to this subsection.

"(B) The wage referred to in subparagraph (A) is a wage 85 percent of the wage prescribed in section 6, but at least $3.35 an hour.

(2) During any month in which full-time students are to be employed under this subsection, the number of students may not exceed 12 and the proportion of student hours of employment may not exceed one-tenth unless the Secretary has issued a certificate permitting a larger number or fraction. This limitation on number and hours shall not apply to any high school drop out who has returned to school full time. No individual student employed under this subsection may work, except during vacation periods, more than 20 hours per week. The Secretary may, pursuant to authority in 29 U.S.C. 214(b)(4), issue such a certificate upon finding that employment of such students will not create a substantial probability of reducing full-time employment opportunities of persons other than those employed pursuant to this subsection.

COCHRAN AMENDMENT NOS. 3466 AND 3467

(Ordered to lie on the table.)

Mr. COCHRAN submitted two amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commission on the American Family and Employment Act of 1988".

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Commission to be known as the Commission on the American Family and Employment (hereinafter in this Act referred to as the "Commission").

SEC. 3. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of—

(A) all existing and proposed policies relating to the benefits of employment provided to American workers whether such benefits are provided voluntarily by employers or required by law; and

(B) the potential costs, benefits, and impact on productivity of such policies on employers;

(2) include in the study conducted under paragraph (1), a review of all pending Congressional legislative proposals that are designed to require employers to provide workers with additional benefits, including legislation involving parental and medical leave and minimum health benefits;

(3) include in the study conducted under paragraph (1)—

(a) a review of all pending Congressional legislative proposals that are designed to require the provision of child care services, including—

(i) requiring Federal funding of child care providers;

(ii) the provision of incentives to employers to encourage such employers to provide child care benefits for their employees;

(iii) the provision of tax benefits to working parents for child care services; and

(iv) the provision of child tax credits or other tax benefits to families in which a parent may choose to stay at home to provide care for their children; and

(B) an analysis of the need for additional child care services, the potential costs of such services, the benefits to be derived from such services, and the impact proposals for such services would have on domestic productivity; and

(4) within 2 years after the date on which the Commission first meets, submit a report to Congress that outlines the findings of the Commission under paragraphs (1) through (3).

SEC. 303. MEMBERSHIP.

(a) Composition.—

(1) Appointments.—The Commission shall be composed of 13 voting members appointed not more than 60 days after the date of the enactment of this Act as follows:

(A) One Senator shall be appointed by the majority leader of the Senate, and one Senator shall be appointed by the minority leader of the Senate.

(B) One member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one member of the House of Representatives shall be appointed by the minority leader of the House of Representatives.

(C) Six members shall be appointed by the President, at least two of whom shall be representatives of private sector employers, including small business, and at least two shall be representatives of organized labor. Such members shall be appointed by virtue of demonstrated experience in relevant family, temporary disability, and labor-management issues.

(D) Three members shall be—

(i) the Secretary of Health and Human Services;

(ii) the Secretary of Labor; and

(iii) the Director of the Office of Personnel Management.

(b) Vacancies.—Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(c) Chairperson and Vice Chairperson.—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) Quorum.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) Pay.—Members of the Commission shall serve without compensation.

(b) Travel Expenses.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, while performing duties of the Commission.

SEC. 305. POWERS.

(a) Meetings.—The Commission shall first meet not more than 30 days after the date on which all members are appointed. The Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) Hearings and Sessions.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) Access to Information.—The Commission may secure directly from any Federal agency information necessary to enable the Commission to carry out this Act. On the request of the chairperson or vice chairperson of the Commission, the head of the agency shall furnish the information to the Commission.

(d) Executive Director.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out the duties of the Commission.

(e) Use of Services and Facilities.—On the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of the agency.

(f) Personnel From Other Agencies.—On the request of the Commission, the head of any Federal agency may detail any of the personnel of the agency to assist the Commission in carrying out the duties of the Commission.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the final report of the Commission to Congress.

Amendment No. 3467

At the appropriate place insert the following new section:

SEC. . CREDIT FOR EMPLOYERS PROVIDING QUALIFIED PARENTAL LEAVE.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. QUALIFIED EMPLOYER-PROVIDED PARENTAL LEAVE CREDIT.

"(a) In General.—For purposes of section 38, the amount of the qualified parental leave credit determined under this section for the taxable year shall be equal to 25 percent of 50 percent of the wages and other compensation paid to an employee by an employer while on qualified parental leave for a maximum of six calendar workweeks, not to exceed a total of $288 per employee, for such taxable year.

"(b) Definitions.—For purposes of this section—

"(1) Qualified parental leave.—The term 'qualified parental leave' means paid leave granted to an employee by an employer as the result of the birth of a son or daughter of the employee or as the result of the placement, for adoption, of a son or daughter with the employee. Such qualified parental leave includes only leave provided in addition to any leave provided or made available to an employee by an employer as of September 1, 1988.

"(2) Wages and other compensation.—The term 'wages and other compensation' has the meaning given to the term 'wages' by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

"(3) Employer.—The term 'employer'—

"(A) means any person engaged in commerce or in any industry or activity affecting commerce who employs 1 or more employees at any 1 worksite for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

"(B) includes—

"(i) any person who acts directly or indirectly in the interest of an employer to 1 or more employees; and

"(ii) any successor in interest of such an employer;

"(C) excludes any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

"(4) Employee.—

"(A) In general.—The term 'employee' means any individual who has been employed by an employer for at least—

"(i) 900 hours of service during the previous 12-month period; and

"(ii) 12 months."

(b) Conforming Amendments.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (4),

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(6) the qualified parental leave credit determined under section 43."

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 43. Qualified employer-provided parental leave credit."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

TECHNICAL CORRECTIONS RELATING TO TAX REFORM ACT OF 1986

KENNEDY (AND OTHERS) AMENDMENT NO. 3468

Mr. KENNEDY (for himself, Mr. Metzenbaum, and Mr. Dixon) proposed an amendment to the bill S. 2238, supra; as follows:

On page 1557, between lines 3 and 4, insert the following new subtitle:

Subtitle ——Education Savings

SEC. —. SHORT TITLE; STATEMENT OF PURPOSES.

(a) Short Title.—This subtitle may be cited as the "Education Savings Act of 1988".

(b) Purposes.—The purposes of this subtitle are—

(1) to encourage savings for higher education, and

(2) to encourage the sale of United States savings bonds.

SEC. —. EXCLUSION FROM GROSS INCOME OF INCOME FROM UNITED STATES SAVINGS BONDS USED TO PAY TUITION AND FEES.

(a) In General.—Part III of subchapter B of chapter 1 of the 1986 Code (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

"SEC. 135. INCOME FROM UNITED STATES SAVINGS BONDS TRANSFERRED TO PAY TUITION AND FEES.

"(a) General Rule.—If a taxpayer transfers a qualified United States savings bond to an eligible educational institution as payment for the higher education expenses of the taxpayer or the taxpayer's spouse or dependents, gross income shall not include the lesser of—

"(1) the amount which (but for this section) would be includible in gross income by reason of such transfer, or

"(2) the amount of such higher education expenses.

"(b) Phase-out of Exclusion.—

"(1) In general.—In the case of a taxpayer with an adjusted gross income of $60,000 or more for the taxable year, the amount excludable under subsection (a) shall be equal to the following percentage of such amount determined without regard to this subsection:

If the adjusted gross income is:	The percentage is:
$60,000 or greater but less than $70,000	67
$70,000 or greater but less than $80,000	34
$80,000 or more	0

"(2) Indexation of amounts.—In the case of taxable years beginning in any calendar year after 1988, each dollar amount under paragraph (1) shall be increased by the cost-of-living adjustment for such calendar year under section 1(f)(3).

"(3) Married individuals filing separately.—In the case of a married individual filing separately, paragraph (1) shall be applied by taking into account only one-half of each dollar amount contained therein.

"(4) Certain dependents.—In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, this subsection shall be applied to such individual by taking into account the adjusted gross income of the other taxpayer.

"(c) Qualified United States Savings Bond.—For purposes of this section, the term 'qualified United States savings bond' means a United States savings bond which—

"(1) is issued at discount under section 3105 of title 31, United States Code, and

"(2) is issued after the date of the enactment of this section.

"(d) Other Definitions.—For purposes of this section—

"(1) Higher education expenses.—The term 'higher education expenses' means tuition and required fees for the enrollment or attendance at an eligible educational institution.

"(2) Eligible educational institution.—The term 'eligible educational institution' means—

"(A) an institution of higher education; or

"(B) a vocational school.

"(3) Institution of higher education.—The term 'institution of higher education' means the institutions described in section 1201(a) or 481(a) of the Higher Education Act of 1965.

"(4) Vocational school.—The term 'vocational school' means an area vocational education school as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act which is in any State (as defined in section 521(27) of such Act).

"(5) Dependent.—The term 'dependent' means any child of the taxpayer with respect to whom a deduction is allowed under section 151 for the taxable year."

(b) Promotion of Public Awareness of Program.—The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this Act.

(c) Conforming Amendment.—The table of sections for part III of subchapter B of chapter 1 of the 1986 Code is amended by striking out the item relating to section 135 and by inserting after the item relating to section 134 the following new items:

"Sec. 135. Income from United States savings bonds transferred to pay tuition and fees.

"Sec. 136. Cross references to other acts."

(d) Effective Date.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act of United States savings bonds issued after such date.

SEC. —. TRANSFERABILITY OF UNITED STATES SAVINGS BONDS.

Section 3105 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) Nothing in subsection (c) shall restrict—

"(A) the transfer of a qualified United States bond to an eligible educational institution as payment for higher education expenses, or

"(B) the redemption of such bond by such institution.

"(2) For purposes of paragraph (1), any term used which is also used in section 135 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section."

SEC. —. MODIFICATION OF ADDITIONAL EXEMPTION FOR STUDENT DEPENDENTS.

(a) In General.—Clause (ii) of section 151(c)(1)(B) of the 1986 Code (relating to additional exemption for dependents) is amended by inserting "who has not attained the age of 24 at the close of such calendar year" before the period.

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1989.

DURENBERGER AMENDMENT NO. 3469

Mr. DURENBERGER proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS EXTENDED.

(a) In General.—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9339(e) of the Omnibus Budget Reconciliation Act of 1986 and section 4085(c) of the Omnibus Budget Reconciliation Act of 1987, is further amended by striking "January 1, 1989" and inserting in lieu thereof "January 1, 1990".

(b) Effective Date.—The amendment made by subsection (a) shall become effective upon the date of enactment of this Act.

SYMMS (AND McCLURE) AMENDMENT NO. 3470

Mr. SYMMs (for himself and Mr. McClure) proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following new section:

Sec. . The cities of Pocatello and Chubbock in Idaho shall be considered for designation as a single metropolitan statistical area by the Director of the Office of Management and Budget, effective October 1, 1989.

SYMMS AMENDMENT NO. 3471

Mr. SYMMS proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place, insert the following:

Sec. . (a) Section 933(b) of the Internal Revenue Code of 1986 (defining qualified export assets) is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon, and by adding at the end thereof the following new paragraph: "(10) obligations issued to the corporations which includes such corporation, but only to the extent of $7,500,000 of such obligations outstanding at each taxable year end.

(b) The amendment made by this section shall apply to any corporation which derived over 80 percent of its gross income from sales of agricultural pulses, as principal and not as a commission agent, in all of its taxable years ending before December 31, 1984, and the amendment shall apply to such corporation's taxable years beginning after December 31, 1979, and ending December 31, 1984.

PARENTAL AND EMERGENCY MEDICAL LEAVE

NICKLES AMENDMENT NOS. 3472 THROUGH 3477

(Ordered to lie on the table.)

Mr. NICKLES submitted six amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

Amendment No. 3472

In section 103(e)(2)(B), insert "written" before "notice".

In section 104(d)(1)(B), insert "written" before "notice".

Amendment No. 3473

In Section (103)(e)(2)(B), strike out the period and insert in lieu thereof a comma and the following: "and failure of the employee to provide such notice shall make such employee ineligible for reinstatement to the prior position of such employee.".

In Section (104)(d)(1)(B), strike out the period and insert in lieu thereof a comma and the following: "and failure of the employee to provide such notice shall make such employee ineligible for reinstatement to the prior position of such employee.".

Amendment No. 3474

At the end of section 103, add subsection:

(g) Notice and Use Of Leave.—

(1) In general.—An employee desiring to take leave under this section shall, where appropriate, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) Failure to provide notice or inappropriate use.—Failure by the employee to provide reasonable notice, or use of the leave period by the employee in a manner not intended under this title, shall result in—

(A) a loss of the employees reinstatement privileges; and

(B) the required reimbursement of the expenses incurred by the employer resulting from the employee's improper activity under this subsection, by the employee.

At the end of the section 104, add the following new subsection:

(e) Notice and Use of Leave.—

(1) In general.—An employee desiring to take leave under this section shall, where

appropriate, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) Failure to provide notice or inappropriate use.—Failure by the employee to provide reasonable notice, or use of the leave period by the employee if a manner not intended under this title, shall result in—

(A) a loss of the employees reinstatement privileges; and

(B) the required reimbursement of the expenses incurred by the employer resulting from the employee's improper activity under this subsection, by the employee.

Amendment No. 3475

In section 103(e)(2)(B), insert "timely," before "reasonable".

In section 103(e)(3), insert "timely," before "reasonable".

In section 104(d)(1)(A), insert "timely and" before "reasonable".

In section 104(d)(1)(B), insert "timely," before "reasonable".

In section 104(d)(2), insert "timely," before "reasonable".

Amendment No. 3476

Nothing in this Act shall become effective unless the following is enacted;

The definition of 'employee' shall include;

(C) an employee of either House of Congress or of the two Houses;

Amendment No. 3477

Nothing shall be effective in this Act until the following language is stricken from the bill,

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) os such section; and the following is inserted in its place;

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia);

"(B) an individual under clause (v) or (ix) of such section; and

"(C) an employee of either House of Congress or of the two Houses;

GRAMM AMENDMENT NOS. 3478 THROUGH 3481

(Ordered to lie on the table)

Mr. GRAMM submitted four amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

Amendment No. 3478

At the appropriate place, add the following: "Notwithstanding any other provision of this act, whenever the phrase 'prior notice' appears, it shall be deemed to mean 'written when reasonable and practicable 60 day notice.' "

Amendment No. 3479

On page 11, line 1, insert "written when reasonable and practicable" after "prior".

On page 13, line 8, insert "written when reasonable and practicable" after "prior".

On page 34, line 23, insert "written when reasonable and practicable" after "prior".

On page 36, line 12, insert "written when reasonable and practicable" after "prior".

At the appropriate place add the following: "Notwithstanding any other provision of this act, whenever the phrase 'prior notice' appears, it shall be deemed to mean 'written when reasonable and practicable notice.' "

Amendment No. 3480

At the appropriate place, insert the following new section:

SEC. 113. NATIONAL SECURITY EXEMPTION.

Nothing in this Act shall be construed to require an employer to grant leave to an employee under section 103 or 104 if—

(1) the employee is—

(A) an employee of a contractor to the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency; or

(B) an employee of an expert or consultant under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order); and

(2) the granting of such leave would pose a risk to the national security of the United States.

Amendment No. 3481

At the appropriate place, insert the following new subsection:

(c) Liability of Employees for Employee Benefits.—

(1) In general.—If an employee takes leave under section 103 and 104, is restored to the original or equivalent position by the employer, and terminates employment with the employer before the expiration of the 1-year period beginning on the date the employee was restored to the position, the employee shall be liable to the employer for an amount equal to the value of all compensation and employee benefits provided to the employee during the period of leave taken by the employee.

(2) Recovery.—An employer may recover the amount of liability imposed on an employee under paragraph (1) by deducting such amount from the wages of the employee or bringing an action against the employee in any Federal or State court of competent jurisdiction, or both such deduction and action.

At the appropriate place, insert the following new subsection:

"(b)(1) If an employee takes leave under section 6332 and 6333, is restored to the original or equivalent position by the employer, and terminates employment with the employer before the expiration of the 1-year period beginning on the date the employee was restored to the position, the employee shall be liable to the employer for an amount equal to the value of all compensation and employee benefits provided to the employee during the period of leave taken by the employee.

"(2) An employer may recover the amount of liability imposed on an employee under paragraph (1) by deducting such amount from the wages of the employee or bringing an action against the employee in any Federal or State court of competent jurisdiction, or both such deduction and action.

WALLOP AMENDMENT NOS. 3482 THROUGH 3484

(Ordered to lie on the table.)

Mr. WALLOP submitted three amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

Amendment No. 3482

At the end of section 103, add the following new subsection:

(g) Exemption for Cafeteria-Style Plans.—If an employer provides a cafeteria-style insurance benefit plan that includes the provision of parental leave, the employer shall be exempt from the provisions of this title

Amendment No. 3483

At the end of section 103, add the following new subsection:

(g) Exemption for Flexitime or Flexible Hour Plans—If an employer provides flexitime or flexible hour plans, the employer shall be exempt from the provisions of this title.

Amendment No. 3484

At the end of section 105, add the following new subsection:

(f) Proof of Custody.—An employer may require that an employee provide the employer with proof that the employee has legal custody of a stepchild prior to requesting parental leave to care for such stepchild.

SYMMS AMENDMENT NOS. 3485 THROUGH 3492

(Ordered to lie on the table.)

Mr. SYMMS submitted eight amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

Amendment No. 3485

After section 103, insert the following new subsection:

(g) Effect of Leave Taken by Foster Parents.—An employer may deny parental leave under this section to an employee for the care of a newly adopted child if such employee previously was granted parental leave to care for such child while such child was in the foster care of such employee.

Amendment No. 3486

Strike out section 104 and redesignate all subsequent sections (and all cross references thereto) accordingly.

Amendment No. 3487

In section 105, between subsections (c) and (d), insert the following new paragraph:

(3) Refusals.—An employer may deny leave to any employee who refuses to obtain a second medical opinion as required by the employer.

Amendment No. 3488

At the end of section 105, add the following new subsection:

(f) Proof of Custody.—An employer may require that an employee provide the employer with proof that the employee has legal custody of a stepchild prior to requesting parental leave to care for such stepchild.

Amendment No. 3489

After section 103, add the following new subsection:

(g) Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed 4 weeks.

After section 104, insert the following new subsection:

(e) Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed 4 weeks.

Amendment No. 3490

On section 105, subsection (d)(1), strike out "(1) In general.—".

Strike out section 105(d)(2).

Amendment No. 3491

After section 103, add the following new subsection:

(g) Able-Bodied Spouse at Home.—During any period in which an employee's able-bodied spouse is providing at-home care for a child, such employee shall not be eligible for parental leave under this section.

Amendment No. 3492

At the end of section 103, add the following new subsection:

(g) Limitation on Total Number of Employees Taking Leave.—An employer may deny leave to an employee under this section if more than 5 percent of the total workforce of the employer is absent on leave taken under this title.

At the end of section 104, add the following new subsection:

(e) Limitation on Total Number of Employees Taking Leave.—An employer may deny leave to an employee under this section if more than 5 percent of the total workforce of the employer is absent on leave taken under this title.

KASSEBAUM (AND STEVENS) AMENDMENT NO. 3493

(Ordered to lie on the table)

Mrs. KASSEBAUM (for herself and Mr. Stevens) proposed an amendment to the bill S. 2488, supra; as follows:

Strike out title I of the bill.

Title II of the bill is amended in section 201(a)—

(1) by amending the matter relating to section 6331(1) of title 5, United States Code, to read as follows:

"(1) employee means any employee as defined under section 2105 of this title who is employed by the Department of Labor; and"; and

(2) by amending the matter relating to section 6338 of title 5, United States Code, to read as follows:

"§ 6338. Regulations

"The Office of Personnel Management shall prescribe such rules and regulations necessary for the administration of this section, including rules and regulations concerning service of complaints, and copies of orders and records of proceedings.".

At the end of title II, add the following new subsections:

"(c) Repeal and Termination of Leave Program.—(1)(A) The provisions of subchapter III of chapter 63 of title 5, United States Code, are repealed effective on 3 years after the date of the enactment of this Act.

"(B) The part of the table of sections for chapter 63 of title 5, United States Code, relating to subchapter III is repealed effective on 3 years after the date of the enactment of this Act.

"(2) The Director of the Office of Personnel Management, in consultation with the Secretary of Labor, shall promulgate regulations for the orderly termination of any leave program implemented under the provisions of subchapter III of chapter 63 of title 5, United States Code, repealed pursuant to paragraph (1).

"(d) Study.—No later than 2 years after the date of the enactment of this Act, the Director of the Office of Personnel Management shall conduct a study on the Federal leave system and submit a report to both Houses of the Congress. Such study shall—

"(1) examine the administration of the leave system under chapter 63 of title 5, United States Code;

"(2) examine the effectiveness of leave policies in meeting the needs of Federal employees in regard to medical care of children and other family members, and parental leave for related child care;

"(3) estimate the costs to the Federal Government in implementing various parental leave programs;

"(4) compare parental leave programs in the private sector with the parental leave program for Federal employees;

"(5) evaluate the mandated leave program within the Department of Labor, including assessment of its costs, benefits, impact on productivity, extent of use of benefits, types of benefits used, and the number and nature of complaints filed; and

"(6) make recommendations for—

"(A) the most cost effective means to maximize parental leave benefits to meet the needs of Federal employees; and

"(B) a parental leave program which may serve as a model for similar programs in the private sector.".

Strike out title III of the bill.

In title IV of the bill, amend section 405 to read as follows:

"SEC. 405. EFFECTIVE DATE.

"The provision of title II and the amendments made by title II of this Act, shall take effect 6 months after the date of the enactment of this Act.".

Strike out the first title V of the bill relating to child pornography provisions.

Strike out the second title V of the bill relating to child care provisions.

DODD (AND OTHERS) AMENDMENT NOS. 3494 THROUGH 3497

(Ordered to lie on the table.)

Mr. DODD (for himself, Mr. Hatch, and Ms. Mikulski submitted four amendments intended to be proposed by them to the bill S. 2488, supra; as follows:

Strike out title V and insert in lieu thereof the following new title:

TITLE V—CHILD CARE PROVISIONS

Subtitle A—Federal Child Care Program

SEC. 501. SHORT TITLE.

This title may be cited as the "Act for Better Child Care Services of 1988".

SEC. 502. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the number of children living in homes where both parents work, or living in homes with a single parent who works, has increased dramatically over the last decade;

(2) the availability of quality child care is critical to the self-sufficiency and independence of millions of American families, including the growing number of mothers with young children who work out of economic necessity;

(3) high quality child care programs can strengthen our society by providing young children with the foundation on which to learn the basic skills necessary to be productive workers;

(4) the years from birth to age 6 are a critical period in the development of a young child;

(5) a significant number of parents do not have a real choice as they seek adequate child care for their young children because of limited incomes, insufficient State child care standards, and the inadequate supply of child care services in their community;

(6) high quality early childhood development programs provided during such period are cost effective because such programs can reduce the chances of juvenile delinquency and adolescent pregnancy and can improve the likelihood that children will finish high school and become employed;

(7) the number of quality child care arrangements falls far short of the number required for children in need of child care services;

(8) the rapid growth of participation in the labor force by mothers of children under the age of 1 has resulted in a critical shortage of quality child care arrangements for infants and toddlers;

(9) the lack of available child care services results in many preschool and school-age children being left without adequate supervision for significant parts of the day;

(10) many working parents who are unable to afford adequate child care services do not receive adequate financial assistance for such services from employers or public sources;

(11) because of the lack of affordable child care, a large number of parents are not able to work or to seek the training or education they need to become self sufficient;

(12) making adequate child care services available for parents who are employed, seeking employment, or seeking to develop employment skills promotes and strengthens the well-being of families and the national economy;

(13) the payment of the exceptionally low salaries to child care workers adversely affects the quality of child care services by making it difficult to retain qualified staff;

(14) several factors result in the shortage of quality child care options for children and parents, including—

(A) the inability of parents to pay for child care services;

(B) the lack of up-to-date information on child care services;

(C) the lack of training opportunities for staff in child care programs;

(D) the high rate of staff turnover in child care facilities; and

(E) the wide differences among the States in child care licensing and enforcement policies; and

(15) improved coordination of child care services will help to promote the most efficient use of child care resources.

(b) Purposes.—The purposes of this subtitle are—

(1) to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child care facility or arrangement;

(2) to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services;

(3) to provide assistance to families whose financial resources are not sufficient to

enable such families to pay the full cost of necessary child care services;

(4) to lessen the chances that children will be left to fend for themselves for significant parts of the day;

(5) to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services;

(6) to provide assistance to States to improve the quality of, and coordination among, child care programs;

(7) to increase the opportunities for attracting and retaining qualified staff in the field of child care to provide high quality child care services to children; and

(8) to strengthen the competitiveness of the United States by providing young children with a sound early childhood development experience.

SEC. 503. DEFINITIONS.

As used in this subtitle:

(1) Administrator.—The term "Administrator" means the Administrator of Child Care appointed under section 514(a).

(2) Caregiver.—The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

(3) Center-based child care provider.—The term "center-based child care provider" means a child care provider that provides child care services in a nonresidential facility.

(4) Child care certificate.—The term "child care certificate" means a certificate that is issued by the State to parents who may use such certificate only as payment for child care services for an eligible child and that provides to an eligible child care provider a right to reimbursement for such services at the same rate charged by that provider for comparable services to children whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(5) Community-based organization.—The term "community-based organization" has the meaning given such term by section 4(5) of the Job Training and Partnership Act (29 U.S.C. 1503(5)).

(6) Elementary school.—The term "elementary school" means a day or residential school that provides elementary education, as determined under State law.

(7) Eligible child.—The term "eligible child" means an individual—

(A) who is less than 16 years of age;

(B) whose family income does not exceed 100 percent of the State median income for a family of the same size; and

(C) who—

(i) resides with a parent or parents who are working, seeking employment, or enrolled in a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(8) Eligible child care provider.—The term "eligible child care provider" means a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(A) is licensed or regulated under State law;

(B) satisfies—

(i) the Federal requirements, except as provided in subparagraph (C); and

(ii) the State and local requirements;

applicable to the child care services it provides; and

(C) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards that are applicable to the child care services it provides.

(9) Family child care provider.—The term "family child care provider" means 1 individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in the private residence of such individual.

(10) Family support services.—The term "family support services" means services that assist parents by providing support in parenting and by linking parents with community resources and with other parents.

(11) Full-working-day.—The term "full-working-day" means at least 10 hours per day.

(12) Group home child care provider.—The term "group home child care provider" means 2 or more individuals who jointly provide child care services for fewer than 24 hours per day and in a private residence.

(13) Handicapping condition.—The term "handicapping condition" means any condition set forth in section 602(a)(1) of the Education of the Handicapped Act (20 U.S.C. 1401(a)(1)) or section 672(1) of the Education of the Handicapped Act (20 U.S.C. 1471(a)).

(14) Indian tribe.—The term "Indian tribe" has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

(15) Institution of higher education.—The term "institution of higher education" has the meaning given such term in section 481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)), except that with respect to a tribally controlled community college such term has the meaning given it in section 2(a)(5) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(5)).

(16) Lead agency.—The term "lead agency" means the agency designated under section 506(a).

(17) Local educational agency.—The term "local educational agency" has the meaning given that term in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(a)(10)).

(18) Parent.—The term "parent" includes a legal guardian or other person standing in loco parentis.

(19) School-age child care services.—The term "school-age child care services" means child care services that are—

"(A) provided during such times of the school day when regular instructional services are not in session; and

"(B) not intended as an extension of or replacement for the regular academic program, but are intended to provide an environment which enhances the social, emotional, and recreational development of children of school age;

(20) Secondary school.—The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(21) Secretary.—The term "Secretary" means the Secretary of Health and Human Services unless the context specifies otherwise.

(22) School facilities.—The term "school facilities" means classrooms and related facilities used to provide education.

(23) Sliding fee scale.—The term "sliding fee scale" means a system of cost sharing between the State and a family based on income and size of the family with the very low income families having to pay no cost.

(24) State.—The term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.

(25) Unit of general purpose local government.—The term "unit of general purpose local government" means any city, county, town, township, parish, village, a combination of such general purpose political subdivisions including those in two or more States, or other general purpose political subdivisions of a State.

(26) Tribal organization.—The term "tribal organization" has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

(27) Tribally controlled community college.—The term "tribally controlled community college" has the meaning given it in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—To carry out this subtitle, other than section 521, there are authorized to be appropriated $2,500,000,000 for the fiscal year 1990 and such sums as may be necessary in each of the fiscal years 1991 through 1994.

(b) Child Care Liability Risk Retention Group.—

(1) In general.—To carry out section 521, there are authorized to be appropriated $100,000,000 for fiscal year 1990.

(2) Amounts to remain available.—The amounts appropriated pursuant to paragraph (1) shall remain available for assistance to States for fiscal years 1990, 1991, and 1992 without limitation.

SEC. 505. AMOUNTS RESERVED; ALLOTMENTS.

(a) Amounts Reserved.—

(1) Territories and Possessions.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under section 504(a) in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau, to be allotted in accordance with their respective needs.

(2) Indians.—The Secretary shall reserve an amount, not less than 1.5 percent and not more than 3 percent of the amount appropriated under section 504(a) in each fiscal year, to carry out subsection (c) regarding Indian children.

(b) State Allotment.—

(1) General rule.—From the remainder of the sums appropriated under section 504(a) for each fiscal year, the Secretary shall allot to each State (excluding jurisdictions referred to in subsection (a)(1)) an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage bears to the sum of the corresponding products for all the States.

(2) YOUNG CHILD FACTOR.—The term "young child factor" means the ratio of the number of children in the State who are less than 5 years of age to the number of children in all the States who are less than 5 years of age.

(3) SCHOOL LUNCH FACTOR.—The term "school lunch factor" means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of children in all the States who are receiving free or reduced price lunches under such program.

(4) ALLOTMENT PERCENTAGE.—

(A) IN GENERAL.—The allotment percentage for a State is determined by dividing—

(i) the per capita income of all individuals in the United States; by

(ii) the per capita income of all individuals in the State.

(B) LIMITATIONS.—If a sum determined under subparagraph (A)—

(i) exceeds 1.2, then the allotment percentage of that State shall be considered to be 1.2; and

(ii) is less that 0.8, then the allotment percentage of the State shall be considered to be 0.8.

(C) PER CAPITA INCOME.—For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) PAYMENTS FOR THE BENEFIT OF INDIAN CHILDREN.—

(1) TRIBAL ORGANIZATIONS.—From the funds reserved under subsection (a)(2), the Secretary may, upon the application of a Indian tribe or tribal organization enter into a contract with, or make a grant to such Indian tribe or tribal organization for a period of 3 years, subject to satisfactory performance, to plan and carry out programs and activities that are consistent with this subtitle. Such contract or grant shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 655-657), that are relevant to such programs and activities.

(2) INDIAN RESERVATIONS.—In the case of an Indian tribe in a State other than the States of Oklahoma, Alaska, and California, such programs and activities shall be carried out on the Indian reservation for the benefit of Indian children.

(3) STANDARDS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall establish, through the application process, standards applicable to child care services provided under such programs and activities. For purposes of establishing such standards, the Secretary shall take into consideration—

(i) the codes, regulations, and cultural factors of the Indian tribe involved, as expressed by such tribe or the tribal organization that represents such tribe; and

(ii) the State licensing and regulatory requirements applicable to child care services provided in the State in which such program and activities are carried out.

(B) APPLICATION.—

(i) RULE.—Except as provided in clause (ii), after the Secretary establishes minimum child care standards under section 517(e)(2), such minimum standards shall apply with respect to child care services provided under such programs and activities.

(ii) WAIVERS AND MODIFICATIONS.—The Secretary may waive or modify, for a period not to exceed 4 years beginning on the date such minimum standards are established, any of such minimum standards that would limit the capacity of an Indian tribe or tribal organization to receive funds under this subtitle if the Secretary determines that there is a reasonable expectation that each of such standards requested to be waived will be met by the applicant by the end of the period for which the waiver is requested.

(4) AVAILABILITY OF STATE CHILD CARE SERVICES.—For the purpose of determining whether to approve an application for a contract or grant under this subsection, the Secretary shall take into consideration the availability of child care services provided in accordance with this subtitle by the State in which the applicant proposes to carry out a program to provide child care services.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed—

(A) to limit the eligibility of any individual to participate in any program carried out with assistance received under this subtitle by a State; or

(B) to modify any requirement imposed on a State by any provision of this subtitle.

(6) COORDINATION.—To the maximum extent practicable, the applicant for a grant or contract under this subsection and the State in which the applicant is located shall coordinate with each other their respective child care programs and activities, including child care programs and activities carried out with assistance received under this subtitle.

(d) DATA AND INFORMATION.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(e) REALLOTMENTS.—

(1) IN GENERAL.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 507(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) LIMITATIONS.—

(A) REDUCTION.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 507(d).

(B) REALLOTMENTS.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) AMOUNTS REALLOTTED.—For purposes of any other section of this subtitle, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

(f) DEFINITION.—For the purposes of this section, the term "State" means any of the several 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 506. LEAD AGENCY.

(a) DESIGNATION.—The chief executive officer of a State desiring to participate in the program authorized by this subtitle shall designate, in an application submitted to the Secretary under section 507(a), an appropriate State agency that meets the requirements of subsection (b) to act as the lead agency.

(b) REQUIREMENTS.—

(1) ADMINISTRATION OF FUNDS.—The lead agency shall have the capacity to administer the funds provided under this subtitle to support programs and services authorized under this subtitle and to oversee the plan submitted under section 507(b).

(2) COORDINATION.—The lead agency shall have the capacity to coordinate the services for which assistance is provided under this subtitle with the services of other State and local agencies involved in providing services to children.

(3) ESTABLISHMENT OF POLICIES.—The lead agency shall have the authority to establish policies and procedures for developing and implementing interagency agreements with other agencies of the State to carry out the purposes of this subtitle.

(c) DUTIES.—The lead agency shall—

(1) assess child care needs and resources in the State, and assess the effectiveness of existing child care services and services for which assistance is provided under this subtitle or under other laws, in meeting such needs;

(2) develop a plan designed to meet the need for child care services in the State for eligible children, including infants, preschool children, and school-age children, giving special attention to meeting the needs for services for low-income children, migrant children, children with a handicapping condition, foster children, children in need of protective services, children of adolescent parents who need child care to remain in school, and children with limited English-language proficiency;

(3) develop, in consultation with the State advisory committee on child care established under section 511, the State plan submitted to the Secretary under section 507(b);

(4) hold hearings, in cooperation with such State advisory committee on child care, annually in each region of the State in order to provide to the public an opportunity to comment on the provision of child care services in the State under the proposed State plan;

(5) assist the chief executive officer in making such periodic reports to the Secretary as the Secretary may by rule require;

(6) coordinate the provision of services under this subtitle with—

(A) other child care programs and services, and with educational programs, for which assistance is provided under any State, local, or other Federal law, including the State Dependent Care Development Grants Act (42 U.S.C. 9871 et seq.); and

(B) other appropriate services, including social, health, mental health, protective, and nutrition services, available to eligible children under other Federal, State, and local programs; and

(7) identify resource and referral programs for particular geographical areas in the State that meet the requirements of section 512.

SEC. 507. APPLICATION AND PLAN.

(a) Application.—To be eligible to receive assistance under this subtitle, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require by rule.

(b) Plan.—The application of a State submitted under subsection (a) shall include an assurance that the State will comply with the requirements of this subtitle and a State plan that is designed to be implemented during a 4-year period and that meets the requirements of subsection (c).

(c) Requirements of a Plan.—

(1) Lead agency.—The plan shall identify the lead agency designated in accordance with section 506(a).

(2) Advisory bodies.—The plan shall demonstrate that the State will establish in accordance with section 511 a State advisory committee on child care.

(3) Policies and procedures.—The plan shall set forth policies and procedures designed to ensure all of the following:

(A) That—

(i) all providers of child care services for which assistance is provided under this subtitle comply with all licensing and regulatory requirements (including registration requirements) applicable under State and local law; and

(ii) such requirements are imposed and enforced by the State uniformly on all child care providers that provide child care services under similar child care arrangements.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards or requirements on child care providers who provide services for which assistance is provided under this subtitle and who also receive State funds under any other law to provide child care services under a contract or other arrangement with the State.

(B) That procedures will be established to ensure that child care providers receiving assistance under this subtitle or under other publicly-assisted child care programs comply with the minimum child care standards established under section 517(e)(2) after the expiration of the 4-year period beginning on the date the Secretary establishes such standards, and comply with all applicable State and local licensing and regulatory requirements (including registration requirements).

(C) That the State will not—

(i) reduce the categories of child care providers licensed or regulated by the State on the date of enactment of this subtitle; or

(ii) reduce the level of standards applicable to child care services provided in the State and to the matters specified in sections 513(a) and 517(d), even if such standards exceed the minimum standards established under section 517(e)(2) by the Secretary unless the State, with the concurrence of the State advisory committee established under section 511, requests a waiver of this subparagraph and demonstrates, to the satisfaction of the Secretary, that the proposed reduction is necessary to increase access to and availability of eligible child care providers and will not jeopardize the health and safety of children.

(D) That funds received under this subtitle by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of child care services and related programs in the State, except that States may use existing expenditures in support of child care services to satisfy the State matching requirement under section 516(b) and may not use such expenditures to satisfy the matching requirements of any other Federal program.

(E) That for each fiscal year the State will use an amount not to exceed 8 percent of the amount of funds received under section 505 by the State for such fiscal year to administer the State plan.

(F) That the State will pay funds under this subtitle to eligible child care providers in a timely fashion to ensure the continuity of child care services to eligible children.

(G) That resource and referral agencies will be made available to families in all regions of the State.

(H) That each eligible child care provider who provides services for which assistance is provided under paragraph (4)—

(i) gives priority for provides services to children of families with very low income, taking into account family size;

(ii) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards except as provided in clause (iv);

(iii) if such eligible child care provider is regulated by a State educational agency that—

(I) administers any State law applicable to child care services;

(II) develops child care standards that meet or exceed the minimum standards established under section 517(e)(2) and the State licensing or regulatory requirements (including registration requirements); and

(III) enforces the standards described in subclause (II) that are developed by such agency, using policies and practices that meet or exceed the requirements specified in subparagraphs (A) through (K) of paragraph (11);

complies with the standards described in subclause (II) that are developed by such agency; and

(iv) complies with the State plan and the requirements of this subtitle.

(I) That child care services for which assistance is provided under paragraph (4) are available to children with a handicapping condition.

(J) That State regulations will be issued governing the provision of school-age child care services if the State does not already have such regulations.

(K) That child care providers in the State are encouraged to develop personnel policies that include compensated time for staff undergoing training required under this subtitle.

(L) Encourage the payment of adequate salaries and other compensation—

(i) to full and part-time staff of child care providers who provide child care services for which assistance is provided under paragraph (4);

(ii) to the extent practicable, to such staff in other major Federal and State child care programs; and

(iii) to other child care personnel, at the option of the State.

(M) That child care services for which assistance is provided under paragraph (4) are available for an adequate number of hours and days to serve the needs of parents of eligible children, including parents who work nontraditional hours.

(4) Child care services.—The plan shall provide that—

(A) subject to subparagraph (B), the State will use at least 70 percent of the amount allotted to the State in any fiscal year to provide child care services that meet the requirements of this subtitle to eligible children in the State on a sliding fee scale basis and using funding methods provided for in section 508(a)(1), with priority being given for services to children of families with very low family incomes, taking into consideration the size of the family; and

(B) the State will use at least 10 percent of the funds reserved for the purposes specified in subparagraph (A) in any fiscal year to provide for the extension of part-day programs as described in section 508(b).

(5) Activities to improve the quality of child care.—The plan shall provide that the State will use not more than 10 percent of the amount allotted to it in any fiscal year to do each of the following:

(A) Provide financial assistance, pursuant to procedures established under the State Dependent Care Development Grants Act (42 U.S.C. 9801 note), to private nonprofit organizations or public organizations (including units of general purpose local government) that meet the requirements of section 512 for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

(B) Improve the monitoring of compliance with, and enforcement of, the licensing and regulatory requirements (including registration requirements) of the State.

(C) Provide training, technical assistance, and scholarship assistance in accordance with the requirements of subsections (b), (c), and (d) of section 513.

(D) Ensure that adequate salaries and other compensation are paid to full- and part-time staff who provide child care services for which assistance is provided under paragraph (4).

(6) Activities to increase the availability of child care.—The plan shall provide that the State will use not more than 12 percent of the amount allotted to it in any fiscal year for any of the following activities:

(A) Making grants or low interest loans to family child care providers and nonprofit child care providers to help such providers pay the cost of—

(i) establishing child care programs; and

(ii) making renovations and improvements in existing facilities to be used to carry out such programs.

(B) Making grants or low-interest loans to child care providers to assist such providers in meeting Federal, State, and local child care standards, giving priority to providers receiving assistance under this subtitle or under other publicly assisted child care programs and which serve children of families that have very low incomes.

(C) Providing assistance for the establishment and operation of after school child care programs.

(D) Making grants or loans to fund the start up costs of employer sponsored child care programs.

(E) Providing assistance for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled.

(F) Providing assistance for the establishment and operation of child care programs for homeless children.

(G) Providing assistance to link child care programs with programs designed to assist the elderly.

(H)(i) Establishing and administering a revolving loan fund from which any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the

Internal Revenue Code of 1986) may obtain a loan in order to become a licensed family child care provider, pursuant to State and local law, and to comply with the minimum standards applicable to such providers as established under section 517(e)(2).

(ii) To permit the use of funds provided under this subtitle for the activity described in clause (i), the State shall set forth procedures and guidelines to carry out the purposes of such clause, including procedures—

(I) that provide assurances that only applicants who obtain a license for the operation of a child care facility in accordance with the provisions of State and local law and who will meet the minimum standards applicable to family child care services established under section 517(e)(2), benefit from loans made available pursuant to the provisions of clause (i);

(II) to assure that the revolving fund will be administered by the State and will provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, that is not in excess of $1,500;

(III) to assure that funds used to carry out the purpose of clause (i) are transferred to such fund to provide capital for making loans;

(IV) to assure that interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such funds are deposited into such fund;

(V) to assure that all loans, expenses, and payments pursuant to the operation of the revolving loan fund are paid from such fund;

(VI) to assure that loans made from such fund are made to qualified applicants to enable such applicants to make capital improvements so that such applicant may obtain a State or local family child care provider license and so that such applicant may meet the minimum standards applicable to such providers established under section 517(e)(2); and

(VII) that specify how such revolving loan fund will continue to be financed in subsequent years, such as through contributions by the State or by some other entity.

(I) Providing assistance for any other activity deemed by the State to be in accordance with the purposes of this paragraph.

(7) Distribution of funds.—The plan shall provide that funds will be distributed—

(A) to a variety of types of child care providers, including center-based child care providers, group home child care providers, and family child care providers; and

(B) equitably among child care providers to provide child care services in rural and urban areas.

(8) Reimbursements.—The plan shall provide that for child care services for which assistance is provided under this subtitle, an eligible child care provider shall have a right to reimbursement at the same rate charged by that provider for comparable services to children of comparable ages and special needs whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(9) Priority.—The plan shall provide that priority will be given, in distributing funds in the State, to child care providers that—

(A) in providing child care services assisted by such funds, will give priority to eligible children of families with very low income;

(B) to the maximum extent feasible, provide child care services to a reasonable mix of children, including children from different socioeconomic backgrounds and children with a handicapping condition;

(C) provide opportunities for parent involvement in all aspects of providing such services; and

(D) to the maximum extent feasible, offer family support services.

(10) Sliding fee scale.—The plan shall provide for the establishment of a sliding fee scale that requires cost sharing based on the services provided to and the income of the families (adjusted for family size) of eligible children who receive services for which assistance is provided under this subtitle.

(11) Parental involvement.—The plan shall establish procedures for parental involvement in State and local planning, monitoring, and evaluation of child care programs and services in the State.

(12) Enforcement of licensing and other regulatory requirements (including registration requirements).—The plan shall provide that the State, not later than 4 years after the date of enactment of this subtitle, shall have in effect enforcement policies and practices that will be applicable to all licensed or regulated child care providers (including child care providers required to register) in the State, including policies and practices that—

(A) require personnel who perform inspection functions with respect to licensed or regulated child care services to have or receive training in health and safety, child abuse prevention and detection, program management, and relevant law enforcement;

(B) to the maximum extent feasible, have personnel requirements to ensure that individuals who are hired as licensing inspectors are qualified to inspect and have inspection responsibility exclusively for children's services;

(C) require—

(i) personnel who perform inspection functions with respect to licensed or regulated child care services to make not less than 1 unannounced inspection of each center-based child care provider and each group home child care provider in the State annually; and

(ii) personnel who perform inspection functions with respect to licensed or regulated child care services to make unannounced inspections annually of not less than 20 percent of licensed and regulated family child care providers in the State;

(D) require licensed or regulated child care providers (including registered child care providers) in the State—

(i) to have written policies and program goals and to make a copy of such policies and goals available to parents; and

(ii) to provide parents with unlimited access to their children and to providers caring for their children, during normal hours of operation of such providers and whenever children of such parents are in the care of such providers;

(E) implement a procedure to address complaints that will provide a reasonable opportunity for a parent, or child care provider, that is adversely affected or aggrieved by a decision of the lead agency or any program assisted under this subtitle, to be heard by the State;

(F) prohibit the operator of a child care facility to take any action against an employee of such operator that would adversely affect the employment, or terms or conditions of employment, of such employee because such employee communicates a failure of such operator to comply with any applicable licensing or regulatory requirement;

(G) implement a consumer education program designed to inform parents and the general public about licensing requirements, complaint procedures, and policies and practices required by this paragraph;

(H) require a child care provider to post, on the premises where child care services are provided, the telephone number of the appropriate licensing or regulatory agency that parents may call regarding a failure of such provider to comply with any applicable licensing or regulatory requirement; and

(I) require the State to maintain a record of parental complaints and to make information regarding substantiated parental complaints available to the public on request.

(13) Data collection.—The plan shall provide for the establishment of procedures for data collection by the State designed to show—

(A) by race, sex, ethnic origin, handicapping condition, and family income, how the child care needs of families in the State are being fulfilled, including information on—

(i) the number of children being assisted with funds provided under this subtitle, and under other State and Federal child care and preschool programs;

(ii) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

(iii) the regional cost of child care; and

(iv) such other information as the Secretary considers necessary to establish how funds provided under this subtitle are being used;

(B) the extent to which the availability of child care has been increased; and

(C) how the purposes of this subtitle and the objectives of the State set forth in the State plan are being met, including efforts to improve the quality, availability, and accessibility of child care;

and shall provide that data collected by the State under this paragraph shall be submitted to the Secretary.

(d) Approval of Application.—The Secretary shall approve an application that satisfies the requirements of this section.

(e) Special Rule.—In carrying out the provisions of this section, the Secretary shall approve any application with respect to the activities described in the plan submitted under paragraph (5) of subsection (c), if the Secretary determines that the State is making reasonable progress in carrying out the activities which are described in subparagraphs (A) and (D) of paragraph (5).

SEC. 508. SPECIAL RULES FOR USE OF STATE ALLOTMENTS.

(a) Funding of Child Care Services.—

(1) In general.—The child care services referred to in section 507(c)(4) that are to be provided out of the allotment to a State, shall be provided—

(A) by contracts with or grants to eligible child care providers who agree to provide such services directly to eligible children;

(B) by grants to units of general purpose local government that agree to enter into contracts with eligible child care providers who agree to provide such services directly to eligible children; or

(C) by distributing child care certificates to parents of eligible children under such terms as the Secretary may prescribe to enable the recipients of such certificates to purchase child care services from eligible child care providers.

(2) Limitation on certificates.—Child care certificates authorized by paragraph

(1)(C) may be issued by a State only if a resource and referral program carried out by an organization that meets the requirements of section 512 is available to help parents locate child care services made available by eligible child care providers.

(3) No entitlement to contract or grant.—Nothing in this subtitle shall be construed to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit, or to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subtitle.

(b) Part-day Programs.—

(1) In general.—At least 10 percent of the funds available for activities under section 507(c)(4)(A) shall be used by the State to enable child care providers to extend the hours of operation of the part-day programs described in paragraph (2) to provide full-working-day child care services throughout the year, in order to meet the needs of parents of eligible children.

(2) Eligible programs.—As used in paragraph (1), the term "part-day programs" means—

(A) programs of schools and nonprofit child care providers (including community-based organizations) receiving State or local funds designated for preschool;

(B) programs established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) preschool programs for which assistance is provided under chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 et seq.); and

(D) preschool programs for children with a handicapping condition.

(c) Facilities.—

(1) New facilities.—No financial assistance provided under this subtitle shall be expended for the construction of a new facility.

(2) Existing facilities.—No financial assistance provided under this subtitle shall be expended to renovate or repair any facility unless—

(A) the child care provider that receives such financial assistance agrees—

(i) in the case of a grant, to repay to the Secretary or the State, as the case may be, the amount that bears the same ratio to the amount of such grant as the value of the renovation or repair, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle, bears to the original value of the renovation or repair; and

(ii) in the case of a loan, to repay immediately to the Secretary or the State, as the case may be, the principal amount of such loan outstanding and any interest accrued, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle;

if such provider does not provide child care services in such facility in accordance with this subtitle throughout the useful life of the renovation or repair; and

(B) if such provider is a sectarian agency or organization, the renovation or repair is necessary to bring such facility into compliance with health and safety requirements imposed by this subtitle.

SEC. 509. PLANNING GRANTS.

(a) In General.—A State desiring to participate in the programs authorized by this subtitle that cannot fully satisfy the requirements of the State plan under section 507(b) without financial assistance may, in the first year that the State participates in the programs, apply to the Secretary for a planning grant.

(b) Authorization.—The Secretary is authorized to make a planning grant to a State described in subsection (a) if the Secretary determines that—

(1) the grant would enable the State to fully satisfy the requirements of a State plan under section 507(b); and

(2) the State will apply, for the remainder of the allotment that the State is entitled to receive for such fiscal year.

(c) Amount of Grant.—A grant made to a State under this section shall not exceed 1 percent of the total allotment that the State would qualify to receive in the fiscal year involved if the State fully satisfied the requirements of section 507.

(d) Limitation on Administrative Costs.—A grant made under this section shall be considered to be expended for administrative costs by the State for purposes of determining the compliance by the State with the limitation on administrative costs imposed by section 507(c)(3)(E).

SEC. 510. CONTINUING ELIGIBILITY OF STATES.

A State shall be ineligible for assistance under this subtitle after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2) unless the State demonstrates to the satisfaction of the Secretary that—

(1) all child care providers required to be licensed and regulated in the State—

(A) are so licensed and regulated; and

(B) are subject to the enforcement provisions referred to in the State plan; and

(2) all such providers who are receiving assistance under this subtitle or under other publicly-assisted child care programs—

(A) satisfy the requirements of subparagraphs (A) and (B) of paragraph (1); and

(B) except as provided in section 517(f), satisfy the minimum child care standards established by the Secretary under section 517(e)(2) of this subtitle.

SEC. 511. STATE ADVISORY COMMITTEE ON CHILD CARE.

(a) Establishment.—The chief executive officer of a State participating in the program authorized by this subtitle shall—

(1) establish a State advisory committee on child care (hereinafter in this section referred to as the "committee") to assist the lead agency in carrying out the responsibilities of the lead agency under this subtitle; and

(2) appoint the members of the committee.

(b) Composition.—The State committee shall be composed of not fewer than 21 and not more than 30 members who shall include—

(1) at least 1 representative of the lead agency designated under section 506(a);

(2) 1 representative of each of—

(A) the State departments of—

(i) human resources or social services;

(ii) education;

(iii) economic development; and

(iv) health; and

(B) other State agencies having responsibility for the regulation, funding, or provision of child care services in the State;

(3) at least 1 representative of providers of different types of child care services, including caregivers and directors;

(4) at least 1 representative of early childhood development experts;

(5) at least 1 representative of school districts and teachers involved in the provision of child care services and preschool programs;

(6) at least 1 representative of resource and referral programs;

(7) 1 pediatrician;

(8) 1 representative of a citizen group concerned with child care;

(9) at least 1 representative of an organization representing child care employees;

(10) at least 1 representative of the Head Start agencies in the State;

(11) parents of children receiving, or in need of, child care services, including at least 2 parents whose children are receiving or are in need of subsidized child care services;

(12) 1 representative of specialists concerned with children who have a handicapping condition;

(13) 1 representative of individuals engaged in business;

(14) 1 representative of fire marshals and building inspectors;

(15) 1 representative of child protective services; and

(16) 1 representative of units of general purpose local government.

(c) Functions.—The committee shall—

(1) advise the lead agency on child care policies;

(2) provide the lead agency with information necessary to coordinate the provision of child care services in the State;

(3) otherwise assist the lead agency in carrying out the functions assigned to the lead agency under section 506(c);

(4) review and evaluate child services for which assistance is provided under this subtitle or under State law, in meeting the objectives of the State plan and the purposes of this subtitle;

(5) make recommendations on the development of State child care standards and policies;

(6) participate in the regional public hearings required under section 506(c)(5); and

(7) perform other functions to improve the quantity and quality of child care services in the State.

(d) Meetings and Hearings.—

(1) In general.—Not later than 30 days after the beginning of each fiscal year, the committee shall meet and establish the time, place, and manner of future meetings of the committee.

(2) Minimum number of hearings.—The committee shall have at least 2 public hearings each year at which the public shall be given an opportunity to express views concerning the administration and operation of the State plan.

(e) Use of Existing Committees.—To the extent that a State has established a broadly representative State advisory group, prior to the date of enactment of this subtitle, that is comparable to the advisory committee described in this section and focused exclusively on child care and early childhood development programs, such State shall be considered to be in compliance with subsections (a) through (c).

(f) Subcommittee on Licensing.—

(1) Composition.—The committee shall have a subcommittee on licensing (hereinafter in this section referred to as the "subcommittee") that shall be composed of the members appointed under paragraphs (2)(A)(iv), (3), (6), (7), (11), (14), and (15) of subsection (b).

(2) Functions.—The subcommittee shall review the law applicable to, and the licensing requirements and the policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 4-year period ending on the date of the establishment of the committee under subsection (a).

(g) Report.—

(1) In general.—Not later than 1 year after establishment of the committee under subsection (a), the committee shall prepare and submit to the chief executive officer of the State involved a report.

(2) Contents of report.—A report prepared under paragraph (1) shall contain—

(A) an analysis of information on child care services provided by center-based child care providers, group home child care providers, and family child care providers;

(B) a detailed statement of the findings and recommendations that result from the subcommittee review under subsection (f)(2), including a description of the current status of child care licensing, regulating, monitoring, and enforcement in the State;

(C) a detailed statement identifying and describing the deficiencies in the existing licensing, regulating, and monitoring programs of the State involved, including an assessment of the adequacy of staff to carry out such programs effectively, and recommendations to correct such deficiencies or to improve such programs; and

(D) comments on the minimum child care standards established by the Secretary under section 517(e)(2).

(3) Receipt of report by the chief executive officer of the State.—Not later than 60 days after receiving the report from the committee, the chief executive officer of the State shall transmit such report to the Secretary with—

(A) the comments of the chief executive officer of the State; and

(B) a plan for correcting deficiencies in, or improving the licensing, regulating, and monitoring, of the child care services and programs referred to in subsection (f)(2).

(h) Services and Personnel.—

(1) Authority.—The lead agency is authorized to provide the services of such personnel, and to contract for such other services as may be necessary, to enable the committee and the subcommittee to carry out their functions under this subtitle.

(2) Reimbursement.—Members of the committee shall be reimbursed, in accordance with standards established by the Secretary, for necessary expenses incurred by such members in carrying out the functions of the committee and the subcommittee.

(3) Sufficiency of funds.—The Secretary shall ensure that sufficient funds are made available, from funds available for the administration of the State plan, to the committee and the subcommittee to carry out the requirements of this section.

SEC. 512. RESOURCE AND REFERRAL PROGRAMS.

(a) Eligibility for Assistance.—Each State receiving funds under this subtitle shall, pursuant to section 507(c)(5)(A), make grants to or enter into contracts with private nonprofit organizations or public organizations (including units of general purpose local government), as resource and referral agencies to ensure that resource and referral services are available to families in all geographical areas in the State.

(b) Funding.—Organizations that receive assistance under subsection (a) shall carry out resource and referral programs—

(1) to identify all types of existing child care services, including services provided by individual family child care providers and by child care providers who provide child care services to children with a handicapping condition;

(2) to provide to interested parents information and referral regarding such services, including the availability of public funds to obtain such services;

(3) to provide or arrange for the provision of information, training, and technical assistance to existing and potential child care providers and to others (including businesses) concerned with the availability of child care services; and

(4) to provide information on the demand for and supply of child care services located in a community.

(c) Requirements.—To be eligible for assistance as a resource and referral agency under subsection (a), an organization shall—

(1) have or acquire a database of information on child care services in the State or in a particular geographical area that the organization continually updates, including child care services provided in centers, group home child care settings, nursery schools, and family child care settings;

(2) have the capability to provide resource and referral services in a particular geographical area;

(3) be able to provide parents with information to assist them in identifying quality child care services;

(4) to the maximum extent practicable, notify all eligible child care providers in such area of the functions it performs and solicit such providers to request to be listed to receive referrals made by such organization; and

(5) otherwise comply with regulations promulgated by the State in accordance with subsection (d).

(d) Limitation on Information.—In carrying out this section, an organization receiving assistance under subsection (a) as a resource and referral agency shall not provide information concerning any child care program or services which are not in compliance with the laws of the State and localities in which such services are provided.

SEC. 513. TRAINING AND TECHNICAL ASSISTANCE.

(a) Minimum Requirement.—A State receiving funds under this subtitle shall require, not later than 2 years after the date of the enactment of this subtitle, that all employed or self-employed individuals who provide licensed or regulated child care services (including registered child care services) in a State complete at least 40 hours of training over a 2-year period in areas appropriate to the provision of child care services, including training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the needs of special populations of children.

(b) Grants and Contracts for Training and Technical Assistance.—

(1) Grants and contracts.—The State shall make grants to, and enter into contracts with State agencies, units of general purpose local government, institutions of higher education, and nonprofit organizations (including resource and referral organizations, child care food program sponsors, and family child care associations, as appropriate) to develop and carry out child care training and technical assistance programs under which preservice and continuing inservice training is provided to eligible child care providers, including family child care providers, and the staff of such providers including teachers, administrative personnel, and staff of resource and referral programs involved in providing child care services in the State.

(2) Eligibility requirements for grants and contracts relating to training for family child care providers.—To be eligible to receive a grant or enter into a contract for a training and technical assistance program for family child care providers under paragraph (1), a nonprofit organization shall—

(A) recruit and train family child care providers, including providers with the capacity to provide night-time and emergency child care services;

(B) operate resource centers to make developmentally appropriate curriculum materials available to family child care providers;

(C) provide grants to family child care providers for the purchase of moderate cost equipment to be used to provide child care services; and

(D) operate a system of substitute caregivers.

(3) Eligibility requirements for grants and contracts relating to technical assistance.—To be eligible to receive a grant, or enter into a contract under subsection (b) to provide technical assistance, an agency, organization, or institution shall agree to furnish technical assistance to child care providers to assist such providers—

(A) in understanding and complying with local regulations and relevant tax and other policies;

(B) in meeting State licensing, regulatory, and other requirements (including registration) pertaining to family child care providers.

(c) Scholarship Assistance.—The State shall provide scholarship assistance to—

(1) individuals who seek a nationally recognized child development associate credential for center-based or family child care and whose income does not exceed the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) by more than 50 percent, in amounts sufficient to cover the costs involved in securing such credential; and

(2) caregivers who seek to obtain the training referred to in subsection (a) and whose income does not exceed such poverty line.

(d) Clearinghouse.—The State shall establish in the lead agency a clearinghouse to collect and disseminate training materials to resource and referral agencies and child care providers throughout the State.

SEC. 514. FEDERAL ADMINISTRATION OF CHILD CARE.

(a) Administrator of Child Care.—There is hereby established in the Department of Health and Human Services the position of Administrator of Child Care (hereinafter in this section referred to as the "Administrator"). The Secretary shall appoint an individual to serve as the Administrator at the pleasure of the Secretary.

(b) Duties.—The Administrator shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and coordinate such activities with similar activities of other Federal entities;

(2) annually collect and publish State child care standards, including periodic modifications to such standards;

(3) evaluate activities carried out with funds provided under this subtitle;

(4) act as a clearinghouse to collect and disseminate materials that relate to—

(A) the matters required by section 513(b)(1) to be addressed by training required by section 513 to be provided; and

(B) studies that relate to the salaries paid to individuals employed to provide child care services; and

(5) provide technical assistance to assist States to carry out this subtitle.

SEC. 515. FEDERAL ENFORCEMENT.

(a) Review of Compliance With State Plan.—The Secretary shall review and monitor State compliance with this subtitle and the plan approved under section 507(d) for the State.

(b) Noncompliance.—

(1) In general.—If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that—

(A) there has been a failure by the State to comply substantially with any provision or any requirements set forth in the plan approved under section 507(d) for the State; or

(B) in the operation of any program or project for which assistance is provided under this subtitle there is a failure by the State to comply substantially with any provision of this subtitle;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subtitle (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(2) Additional sanctions.—In the case of a finding of noncompliance made pursuant to this paragraph (1), the Secretary may, in addition to imposing the sanctions described in such paragraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subtitle, and disqualification from the receipt of financial assistance under this subtitle.

(3) Notice.—The notice required under paragraph (1) shall include a specific identification of any additional sanction being imposed under paragraph (2).

(c) Issuance of Rules.—The Secretary shall establish by rule procedures for—

(1) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subtitle; and

(2) imposing sanctions under this section.

SEC. 516. PAYMENTS.

(a) In General.—

(1) Amount of payment.—Each State that—

(A) has an application approved by the Secretary under section 507(d); and

(B) demonstrates to the satisfaction of the Secretary that it will provide from non-Federal sources the State share of the aggregate amount to be expended by the State under the State plan for the fiscal year for which it requests a grant;

shall receive a payment under this section for such fiscal year in an amount (not to exceed its allotment under section 505 for such fiscal year) equal to the Federal share of the aggregate amount to be expended by the State under the State plan for such fiscal year.

(2) Federal share.—

(A) In general.—Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 80 percent.

(B) Exception.—If a State makes the demonstration specified in section 510 throughout a fiscal year for which it requests a grant, then the Federal share shall be 85 percent.

(3) State share.—The State share equals 100 percent minus the Federal share.

(4) Limitation.—A State may not require any private provider of child care services that receives or seeks funds made available under this subtitle to contribute in cash or in kind to the State contribution required by this subsection.

(b) Method of Payment.—

(1) In general.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 507(c)(3)(F).

(c) Spending of Funds by State.—Payments to a State from the allotment under section 505 for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

SEC. 517. NATIONAL ADVISORY COMMITTEE ON CHILD CARE STANDARDS.

(a) Establishment.—

(1) In general.—In order to improve the quality of child care services, the Secretary shall establish, not later than 60 days after the date of the enactment of this subtitle, a National Advisory Committee on Child Care Standards (hereinafter in this section referred to as the "Committee"), the members of which shall be appointed from among representatives of—

(A) the chief executive officers of the several States;

(B) State legislatures;

(C) units of general purpose local governments;

(D) businesses;

(E) individuals responsible for regulating the insurance industry within the States;

(F) religious institutions

(G) different types of child care providers;

(H) persons who carry out resource and referral programs;

(I) child care, early childhood development, or early childhood education specialists;

(J) individuals who have expertise in pediatric health care, handicapping conditions, and related fields;

(K) organizations representing child care employees;

(L) individuals who have experience in the regulation of child care services; and

(M) parents who have been actively involved in community child care programs.

(2) Appointment of members.—The Committee shall be composed of 20 members of which—

(A) 4 members shall be appointed by the President;

(B) 4 members shall be appointed by the majority leader of the Senate;

(C) 4 members shall be appointed by the minority leader of the Senate;

(D) 4 members shall be appointed by the Speaker of the House of Representatives; and

(E) 4 members shall be appointed by the minority leader of the House of Representatives.

(3) Chairman.—The President shall appoint a chairman from among the members of the Committee.

(4) Vacancies.—A vacancy occurring on the Committee shall be filled in the same manner as that in which the original appointment was made.

(b) Personnel, Reimbursement, and Oversight.—

(1) Personnel.—The Secretary shall make available to the Committee office facilities, personnel who are familiar with child development and with developing and implementing regulatory requirements, technical assistance, and funds as are necessary to enable the Committee to carry out effectively its functions.

(2) Reimbursement.—

(A) Compensation.—Members of the Committee who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Committee or otherwise engaged in the business of the Committee (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(B) Expenses.—While away from their homes or regular places of business on the business of the Committee, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(3) Oversight.—The Secretary shall ensure that the Committee is established and operated in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Functions.—The Committee shall—

(1) review Federal policies with respect to child care services and such other data as the Committee may deem appropriate;

(2) not later than 180 days after the date on which a majority of the members of the Committee are first appointed, submit to the Secretary proposed minimum standards described in subsection (d) for child care services, taking into account the different needs of infants, toddlers, preschool and school-age children); and

(3) develop and make available to lead agencies, for distribution to resource and referral agencies in the State, model requirements for resource and referral agencies.

(d) Minimum Child Care Standards.—The proposed child care standards submitted pursuant to subsection (c)(2) shall be minimum standards and shall consist of only the following:

(1) Center-based child care services.—Such standards submitted with respect to child care services provided by center-based child care providers shall be limited to—

(A) group size limits in terms of the number of caregivers and the number and ages of children;

(B) the maximum appropriate child-staff ratios;

(C) qualifications and background of child care personnel;

(D) health and safety requirements for children and caregivers; and

(E) parental involvement in licensed and regulated child care services.

The standards described in subparagraphs (A) and (B) shall reflect the median standards for all States (using for States which apply separate standards to publicly-assisted programs the most comprehensive or stringent of such standards) as of the date of enactment of this subtitle.

(2) Family child care services.—Such standards submitted with respect to child care services provided by family child care providers shall be limited to—

(A) the maximum number of children for which child care services may be provided and the total number of infants for which child care services may be provided;

(B) the minimum age for caregivers; and

(C) health and safety requirements for children and caregivers.

(3) Group home child care services.—Such standards submitted with respect to child care services provided by group home child care providers shall be limited to the matters specified in paragraphs (1)(B) and (2).

(4) Limitation.—The Committee shall not submit any standard under subsection (c)(2) that is less or more rigorous than the least or most rigorous standard that exists in any of the States at the time of the submission of such recommendation.

(e) Consideration and Establishment of Standards.—

(1) Notice of proposed rulemaking.—Not later than 90 days after receiving the recommendations of the committee, the Secretary shall—

(A) publish in the Federal Register—

(i) a notice of proposed rulemaking concerning the minimum standards proposed under subsection (d) to the Secretary; and

(ii) such proposed minimum standards for public comment for a period of at least 60 days; and

(B) distribute such proposed minimum standards to each lead agency and each State subcommittee on licensing for comment.

(2) Establishment of minimum child care standards.—

(A) Issuance of rules.—The Secretary shall, in consultation with the committee—

(i) take into consideration any comments received by the Secretary with respect to the standards proposed under subsection (d); and

(ii) not later than 180 days after publication of such standards, shall issue rules establishing minimum child care standards for purposes of this subtitle. Such standards shall include the nutrition requirements issued, and revised from time to time, under section 17(g)(1) of the National School Lunch Act (42 U.S.C. 1766(g)(1)).

(B) Amending standards.—The Secretary may amend any standard first established under subparagraph (A), except that such standard may not be modified, by amendment or otherwise, to make such standard less comprehensive or less stringent than it is when first established.

(C) Extended period for comment.—If the Committee recommends a standard under subsection (c)(2) that no State has a requirement concerning, as of the time that such standard is recommended, the Secretary shall provide an additional 30 days during which States may submit comments concerning such standard.

(3) Additional comments.—The National Committee may submit to the Secretary and to the Congress such additional comments on the minimum child care standards established under paragraph (2) as the National Committee considers appropriate.

(f) Variances.—

(1) Time for compliance with Standards.—Not later than the end of the 4-year period referred to in section 510, States shall comply with the standards established under this section.

(2) Exception.—At the expiration of the 4-year period referred to in paragraph (1) the chief executive officer, in consultation with the State advisory committee, may submit a request to the Secretary for a 1 year variance from the requirements of one or more particular standards for one or more particular geographic areas of the State.

(3) Requirements.—A request for a variance under this subsection shall include—

(A) a statement by the chief executive officer of the State of the steps taken to implement the relevant standards in the relevant geographic areas in the State within the 4-year period;

(B) the specific reasons for the submission of the variance request; and

(C) a detailed plan that outlines the additional procedures and resources to be used to come into compliance with the standards at the end of the variance period.

(4) Period of variance.—A variance granted by the Secretary shall be for a 1-year period and may be renewed at the discretion of the Secretary for an additional 1-year period if requested by the State.

(g) Termination of Committee.—The National Committee shall cease to exist 90 days after the date the Secretary establishes minimum child care standards under subsection (e)(3).

SEC. 518. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

(a) Sectarian Purposes and Activities.—No financial assistance provided under this subtitle shall be expended for any sectarian purpose or activity, including sectarian worship and instruction.

(b) Tuition.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subtitle shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

SEC. 519. NONDISCRIMINATION.

(a) Federal Financial Assistance.—Any financial assistance provided under this subtitle, including a loan, grant, or child care certificate, shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the regulations issued thereunder.

(b) Religious Discrimination.—A child care provider may not discriminate against any child on the basis of religion in providing child care services in return for a fee paid, reimbursement received, or certificate redeemed, in whole or in part with financial assistance provided under this subtitle.

SEC. 520. PRESERVATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.

Nothing in this subtitle shall be construed or applied in any manner to infringe upon or usurp the moral and legal rights and responsibilities of parents or legal guardians.

SEC. 521. CHILD CARE LIABILITY RISK RETENTION GROUP.

(a) Purpose.—It is the purpose of this section—

(1) to increase the availability of child care by alleviating the serious difficulty faced by child care providers in obtaining affordable liability insurance; and

(2) to provide States with a sufficient capital base for liability insurance purposes that may be increased or maintained through mechanisms developed by the State.

(b) Formation of Child Care Liability Risk Retention Group.—

(1) Assistance in formation and operation of group.—Any State may assist in the establishment and operation of a child care liability risk retention group in the manner provided under this section.

(2) Child care liability risk retention group defined.—As used in this section, the term "child care liability risk retention group" means any corporation (or other limited liability association)—

(A) whose members are licensed child care providers pursuant to State and local law and who, after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 17(e)(2), complies with such minimum child care standards that are applicable to the child care services provided by such members; and

(B) which otherwise satisfies the criteria for a risk retention group under section 2(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(4)).

(c) State Applications.—

(1) Applications.—To qualify for assistance under this section, a State shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require, including information that meets the requirements of subsection (b) of this section.

(2) Content of state application.—

(A) Lead agency.—The application shall identify the lead agency that has been designated and that is to be responsible for the administration of funds provided under this section.

(B) Participants in risk retention group.—The application shall assure that all participants in the child care liability risk retention group are licensed child care providers pursuant to State and local law who, after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), comply with such standards that are applicable to the child care services they provide. In addition, the applicant shall provide for maximum membership of family-based child care providers in the group.

(C) Use of funds.—The application shall provide that the State shall use at least the amount allotted to the State in any fiscal year to establish or operate a child care liability risk retention group.

(D) Continuation of risk retention group.—The application shall contain provisions that specify how the child care liability risk retention group will continue to be financed after fiscal year 1992, including financing through contributions by the State or by members of such group.

(d) Federal Enforcement.—

(1) Review of applications.—The Secretary shall review and approve State applications submitted in accordance with this section and shall monitor State compliance with the provisions of this section.

(2) Finding of noncompliance.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds—

(A) that there has been a failure to comply substantially with any provision or any requirements set forth in the State application of that State; or

(B) that there is a failure to comply substantially with any applicable provision of this section, the Secretary shall notify such State of the findings and of the fact that no further payments may be made to such State under this section until the Secretary is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

(e) Allotment to States.—

(1) In general.—The Secretary shall make an allotment to each State from the sums appropriated to carry out the provisions of this section using the same allotment formula established under section 505.

(2) State administrative costs.—Of the amount allotted to a State pursuant to paragraph (1), an amount not to exceed 10 percent shall be used by such State to provide for the administrative costs of carrying out such program.

(f) Payments.—

(1) Entitlement.—Each State for which an application has been approved by the Secretary under this section shall be entitled to payments under this subsection for each fiscal year in an amount not to exceed its allotment under subsection (e) to be expended by the State in accordance with the terms of the application for the fiscal year for which the grant is to be made.

(2) Method of payments.—The Secretary may make payments to a State in installments, and in advance or, by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) State spending of payments.—Payments to a State from the allotment under subsection (e) for any fiscal year must be expended by the State in that fiscal year or in the succeeding fiscal year.

Subtitle B—Internal Revenue Code Provisions

SEC. 530. CREDIT FOR EMPLOYERS PROVIDING QUALIFIED CHILD CARE FACILITIES.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. QUALIFIED EMPLOYER-PROVIDED CHILD CARE FACILITY CREDIT.

"(a) In General.—For purposes of section 38, the qualified child care facility credit determined under this section for any taxable year is an amount equal to 25 percent of the qualified child care expenses for such taxable year.

"(b) Limitation.—The amount of the credit determined under subsection (a) for any taxable year shall not exceed $100,000.

"(c) Definitions.—For purposes of this section—

"(1) Qualified child care expenses.—The term 'qualified child care expenses' means any amount paid or incurred by an employer during the taxable year to acquire, construct, or otherwise establish a qualified child care facility.

"(2) Qualified child care facility.—

"(A) In general.—The term 'qualified child care facility' means a facility—

"(i) operated by an employer for the care of enrollees, at least 30 percent of whom are dependents of employees of such employer,

"(ii) located on or near the business premises of such employer, and

"(iii) which is accredited or licensed to operate as a child care facility under applicable State and local laws and regulations.

"(B) Multiple employers.—In the case of a facility operated by more than 1 employer, such facility shall be treated as a qualified child care facility of each employer with respect to which the requirements of subparagraph (A) are met separately.

"(d) Basis adjustments.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) Special Rules.—For purposes of this section—

"(1) Allocation in case of multiple employers.—In the case of employers to which subsection (c)(2)(B) applies, the amount of credit allocable to each such employer shall be its proportionate share of the qualified child care expenses giving rise to the credit.

"(2) Pass-thru in the case of estates and trusts.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) Allocation in the case of partnerships.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(4) Receipt of child care project grant.—An employer is not eligible for a credit under this section for a taxable year if he received a child care project grant pursuant to section 1934 of the Public Health Service Act during such taxable year.".

(b) Conforming Amendments.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (4),

(B) by striking out the period at the end of paragraph (5), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(6) the qualified child care facility credit determined under section 43."

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 43. Qualified employer-provided child care facility credit."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 531. CERTAIN EARNINGS FROM THE PROVISION OF CHILD CARE SERVICES ENTITLED TO LOWER RATE OF SELF-EMPLOYMENT TAX AND EXCLUSION FROM ESTIMATED TAXES AND WITHHOLDING.

(a) Self-Employment Taxes.—Section 1402 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(k) Special Rules and Rate of Tax for Income From Family-Based and In-Home Child Care Services.—For purposes of this chapter—

"(1) In general.—For purposes of this chapter, any earned income (as defined in section 911(d)(2)) derived from the provision of qualified family-based or in-home child care services shall be treated as gross income derived by an individual from a trade or business carried on by such individual, and the rate of tax imposed under subsections (a) and (b) of section 1401 on the self-employment income of such individual attributable to providing those services shall be equal to one-half of the rate determined without regard to this paragraph.

"(2) Qualified family-based or in-home child care services.—For purposes of this subsection—

"(A) In general.—The term 'qualified family-based or in-home child care services' means child care services provided to a child at a family-based or in-home child care facility.

"(B) Family-based child care facility.—The term 'family-based child care facility' means a facility—

"(i) which is located in (or on the site of) the principal residence of the taxpayer (within the meaning of section 1034),

"(ii) which is owned and operated by a self-employed individual (within the meaning of section 401(c)(1)), and

"(iii) which is accredited or licensed as a child care facility under applicable State and local laws and regulations.

"(C) In-home child care facility.—The term "in-home child care facility' means the principal residence (within the meaning of section 1034) of the child to whom child care services are being provided.".

(b) Amendment to Social Security Act.—Section 209 of the Social Security Act is amended by striking "or" at the end of subsection (r), by striking the period at the end of subsection (s) and inserting ", or", and by adding after subsection (s) the following new subsection:

"(t) Any payment to an individual for qualified family-based or in-home child care services (within the meaning of section 1402(k)(2) of the Internal Revenue Code of 1986).".

(c) Wage Withholding Not Required.—Section 3401(a) of the Internal Revenue Code of 1986 (defining wages) is amended by striking out "or" at the end of paragraph (19), by striking out the period at the end of paragraph (20) and inserting in lieu thereof ", or", and by adding after paragraph (20) the following new paragraph:

"(21) for qualified family-based or in-home child care services (within the meaning of section 1402(k)(2)).".

(d) Exemption From Estimated Tax.—Section 6654(e) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(4) Underpayment attributable to income from day care services.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment attributable to earned income (within the meaning of section 911(d)(2)) from the providing of qualified family-based or in-home child care services (within the meaning of section 1401(k)(2))."

(e) Effective Dates.—

(1) The amendments made by subsections (a) and (c) shall apply to taxable years beginning after December 31, 1988.

(2) The amendments made by subsection (b) shall apply to remuneration paid after December 31, 1988.

SEC. 532. INCREASE IN EARNED INCOME TAX CREDIT.

(a) Increase in Amount of Credit.—Subsections (a) and (b) of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) are amended to read as follows:

"(a) Allowance of Credit.—

"(1) In general.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the earned income for the taxable year as does not exceed $7,143.

"(2) Limitation.—The amount of the credit allowable to a taxpayer under this subsection for any taxable year shall not exceed the excess (if any) of—

"(A) the credit percentage of $7,143, over

"(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $8,000.

"(b) Percentages.—For purposes of subsection (a)—

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
"No or 1 qualifying child	14	10
"2 qualifying children	21	9.7
"3 or more qualifying children	28	9.8."

(b) Qualifying Child.—Subsection (c) of section 32 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) Qualifying child.—The term 'qualifying child' means any child (within the meaning of section 151(c)(3)) of the eligible individual if—

"(A) such individual is entitled to a deduction under section 151 for such child or would be so entitled but for paragraph (2) or (4) of section 152(e),

"(B) such child has not attained the age of 6 before the beginning of the taxable year,

"(C) such child has the same principal place of abode as such individual for more than one-half of the taxable year, and

"(D) the requirements of paragraph (1)(B) are met with respect to such child."

(c) Conforming Amendments.—

(1) Paragraph (2) of section 32(f) of such Code is amended by striking out "subsection (b)" each place it appears in subparagraphs (A) and (B) and inserting in lieu thereof "subsection (a)(2)".

(2) Paragraph (2) of section 31(i) of such Code is amended to read as follows:

"(2) Definitions, etc.—For purposes of paragraph (1)—

"(A) Applicable calendar year.—The term 'applicable calendar year' means 1989.

"(B) Dollar amounts.—The dollar amounts referred to in this subparagraph are—

"(i) the $7,143 amount contained in subsection (a), and

"(ii) the $8,000 amount contained in subsection (a)."

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

Amendment No. 3495

Strike out title V and insert in lieu thereof the following new title:

TITLE V—CHILD CARE PROVISIONS

Subtitle A—Federal Child Care Program

SEC. 501. SHORT TITLE.

This title may be cited as the "Act for Better Child Care Services of 1988".

SEC. 502. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the number of children living in homes where both parents work, or living in homes with a single parent who works, has increased dramatically over the last decade;

(2) the availability of quality child care is critical to the self-sufficiency and independence of millions of American families, including the growing number of mothers with young children who work out of economic necessity;

(3) high quality child care programs can strengthen our society by providing young children with the foundation on which to learn the basic skills necessary to be productive workers;

(4) the years from birth to age 6 are a critical period in the development of a young child;

(5) a significant number of parents do not have a real choice as they seek adequate child care for their young children because of limited incomes, insufficient State child care standards, and the inadequate supply of child care services in their community;

(6) high quality early childhood development programs provided during such period are cost effective because such programs can reduce the chances of juvenile delinquency and adolescent pregnancy and can improve the likelihood that children will finish high school and become employed;

(7) the number of quality child care arrangements falls far short of the number required for children in need of child care services;

(8) the rapid growth of participation in the labor force by mothers of children under the age of 1 has resulted in a critical shortage of quality child care arrangements for infants and toddlers;

(9) the lack of available child care services results in many preschool and school-age children being left without adequate supervision for significant parts of the day;

(10) many working parents who are unable to afford adequate child care services do not receive adequate financial assistance for such services from employers or public sources;

(11) because of the lack of affordable child care, a large number of parents are not able to work or to seek the training or education they need to become self sufficient;

(12) making adequate child care services available for parents who are employed, seeking employment, or seeking to develop employment skills promotes and strengthens the well-being of families and the national economy;

(13) the payment of the exceptionally low salaries to child care workers adversely affects the quality of child care services by making it difficult to retain qualified staff;

(14) several factors result in the shortage of quality child care options for children and parents, including—

(A) the inability of parents to pay for child care services;

(B) the lack of up-to-date information on child care services;

(C) the lack of training opportunities for staff in child care programs;

(D) the high rate of staff turnover in child care facilities; and

(E) the wide differences among the States in child care licensing and enforcement policies; and

(15) improved coordination of child care services will help to promote the most efficient use of child care resources.

(b) Purposes.—The purposes of this subtitle are—

(1) to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child care facility or arrangement;

(2) to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services;

(3) to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care services;

(4) to lessen the chances that children will be left to fend for themselves for significant parts of the day;

(5) to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services;

(6) to provide assistance to States to improve the quality of, and coordination among, child care programs;

(7) to increase the opportunities for attracting and retaining qualified staff in the field of child care to provide high quality child care services to children; and

(8) to strengthen the competitiveness of the United States by providing young children with a sound early childhood development experience.

SEC. 503. DEFINITIONS.

As used in this subtitle:

(1) Administrator.—The term "Administrator" means the Administrator of Child Care appointed under section 514(a).

(2) Caregiver.—The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

(3) Center-based child care provider.—The term "center-based child care provider" means a child care provider that provides child care services in a nonresidential facility.

(4) Child care certificate.—The term "child care certificate" means a certificate that is issued by the State to parents who may use such certificate only as payment for child care services for an eligible child and that provides to an eligible child care provider a right to reimbursement for such services at the same rate charged by that provider for comparable services to children whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(5) Community-based organization.—The term "community-based organization" has the meaning given such term by section 4(5) of the Job Training and Partnership Act (29 U.S.C. 1503(5)).

(6) Elementary school.—The term "elementary school" means a day or residential school that provides elementary education, as determined under State law.

(7) Eligible child.—The term "eligible child" means an individual—

(A) who is less than 16 years of age;

(B) whose family income does not exceed 100 percent of the State median income for a family of the same size; and

(C) who—

(i) resides with a parent or parents who are working, seeking employment, or enrolled in a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(8) Eligible child care provider.—The term "eligible child care provider" means a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(A) is licensed or regulated under State law;

(B) satisfies—

(i) the Federal requirements, except as provided in subparagraph (C); and

(ii) the State and local requirements; applicable to the child care services it provides; and

(C) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards that are applicable to the child care services it provides.

(9) Family child care provider.—The term "family child care provider" means 1 individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in the private residence of such individual.

(10) Family support services.—The term "family support services" means services that assist parents by providing support in parenting and by linking parents with community resources and with other parents.

(11) Full-working-day.—The term "full-working-day" means at least 10 hours per day.

(12) Group home child care provider.—The term "group home child care provider" means 2 or more individuals who jointly provide child care services for fewer than 24 hours per day and in a private residence.

(13) Handicapping condition.—The term "handicapping condition" means any condition set forth in section 602(a)(1) of the Education of the Handicapped Act (20 U.S.C. 1401(a)(1)) or section 672(1) of the Education of the Handicapped Act (20 U.S.C. 1471(a)).

(14) Indian tribe.—The term "Indian tribe" has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

(15) Institution of higher education.—The term "institution of higher education" has the meaning given such term in section 481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)), except that with respect to a tribally controlled community college such term has the meaning given it in section 2(a)(5) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(5)).

(16) Lead agency.—The term "lead agency" means the agency designated under section 506(a).

(17) Local educational agency.—The term "local educational agency" has the meaning given that term in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(a)(10)).

(18) Parent.—The term "parent" includes a legal guardian or other person standing in loco parentis.

(19) School-age child care services.—The term "school-age child care services" means child care services that are—

"(A) provided during such times of the school day when regular instructional services are not in session; and

"(B) not intended as an extension of or replacement for the regular academic program, but are intended to provide an environment which enhances the social, emotional, and recreational development of children of school age;

(20) Secondary school.—The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(21) Secretary.—The term "Secretary" means the Secretary of Health and Human Services unless the context specifies otherwise.

(22) School facilities.—The term "school facilities" means classrooms and related facilities used to provide education.

(23) Sliding fee scale.—The term "sliding fee scale" means a system of cost sharing between the State and a family based on income and size of the family with the very low income families having to pay no cost.

(24) State.—The term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.

(25) Unit of general purpose local government.—The term "unit of general purpose local government" means any city, county, town, township, parish, village, a combination of such general purpose political subdivisions including those in two or more States, or other general purpose political subdivisions of a State.

(26) Tribal organization.—The term "tribal organization" has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

(27) Tribally controlled community college.—The term "tribally controlled community college" has the meaning given it in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—To carry out this subtitle, other than section 521, there are authorized to be appropriated $2,500,000,000 for the fiscal year 1990 and such sums as may be necessary in each of the fiscal years 1991 through 1994.

(b) Child Care Liability Risk Retention Group.—

(1) In general.—To carry out section 521, there are authorized to be appropriated $100,000,000 for fiscal year 1990.

(2) Amounts to remain available.—The amounts appropriated pursuant to paragraph (1) shall remain available for assistance to States for fiscal years 1990, 1991, and 1992 without limitation.

SEC. 505. AMOUNTS RESERVED; ALLOTMENTS.

(a) Amounts Reserved.—

(1) Territories and Possessions.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under section 504(a) in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau, to be allotted in accordance with their respective needs.

(2) Indians.—The Secretary shall reserve an amount, not less than 1.5 percent and not more than 3 percent of the amount appropriated under section 504(a) in each fiscal year, to carry out subsection (c) regarding Indian children.

(b) State Allotment.—

(1) General rule.—From the remainder of the sums appropriated under section 504(a) for each fiscal year, the Secretary shall allot to each State (excluding jurisdictions referred to in subsection (a)(1)) an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage bears to the sum of the corresponding products for all the States.

(2) Young child factor.—The term "young child factor" means the ratio of the number of children in the State who are less than 5 years of age to the number of children in all the States who are less than 5 years of age.

(3) School lunch factor.—The term "school lunch factor" means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of children in all the States who are receiving free or reduced price lunches under such program.

(4) Allotment percentage.—

(A) In general.—The allotment percentage for a State is determined by dividing—

(i) the per capita income of all individuals in the United States; by

(ii) the per capita income of all individuals in the State.

(B) Limitations.—If a sum determined under subparagraph (A)—

(i) exceeds 1.2, then the allotment percentage of that State shall be considered to be 1.2; and

(ii) is less that 0.8, then the allotment percentage of the State shall be considered to be 0.8.

(C) Per capita income.—For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for the Benefit of Indian Children.—

(1) Tribal organizations.—From the funds reserved under subsection (a)(2), the Secretary may, upon the application of a Indian tribe or tribal organization enter into a contract with, or make a grant to such Indian tribe or tribal organization for a period of 3 years, subject to satisfactory performance, to plan and carry out programs and activities that are consistent with this subtitle. Such contract or grant shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 655-657), that are relevant to such programs and activities.

(2) Indian reservations.—In the case of an Indian tribe in a State other than the States of Oklahoma, Alaska, and California, such programs and activities shall be carried out on the Indian reservation for the benefit of Indian children.

(3) Standards.—

(A) In general.—Subject to subparagraph (B), the Secretary shall establish, through the application process, standards applicable to child care services provided under such programs and activities. For purposes of establishing such standards, the Secretary shall take into consideration—

(i) the codes, regulations, and cultural factors of the Indian tribe involved, as expressed by such tribe or the tribal organization that represents such tribe; and

(ii) the State licensing and regulatory requirements applicable to child care services provided in the State in which such program and activities are carried out.

(B) Application.—

(i) Rule.—Except as provided in clause (ii), after the Secretary establishes minimum child care standards under section 517(e)(2), such minimum standards shall apply with respect to child care services provided under such programs and activities.

(ii) Waivers and modifications.—The Secretary may waive or modify, for a period not to exceed 4 years beginning on the date such minimum standards are established, any of such minimum standards that would limit the capacity of an Indian tribe or tribal organization to receive funds under this subtitle if the Secretary determines that there is a reasonable expectation that each of such standards requested to be waived will be met by the applicant by the end of the period for which the waiver is requested.

(4) Availability of State child care services.—For the purpose of determining whether to approve an application for a contract or grant under this subsection, the Secretary shall take into consideration the availability of child care services provided in accordance with this subtitle by the State in which the applicant proposes to carry out a program to provide child care services.

(5) Rule of construction.—This subsection shall not be construed—

(A) to limit the eligibility of any individual to participate in any program carried out with assistance received under this subtitle by a State; or

(B) to modify any requirement imposed on a State by any provision of this subtitle.

(6) Coordination.—To the maximum extent practicable, the applicant for a grant or contract under this subsection and the State in which the applicant is located shall coordinate with each other their respective child care programs and activities, including child care programs and activities carried out with assistance received under this subtitle.

(d) Data and Information.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(e) Reallotments.—

(1) In general.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 507(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations.—

(A) Reduction.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 507(d).

(B) Reallotments.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted.—For purposes of any other section of this subtitle, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

(f) Definition.—For the purposes of this section, the term "State" means any of the several 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 506. LEAD AGENCY.

(a) Designation.—The chief executive officer of a State desiring to participate in the program authorized by this subtitle shall designate, in an application submitted to the Secretary under section 507(a), an appropriate State agency that meets the requirements of subsection (b) to act as the lead agency.

(b) Requirements.—

(1) Administration of funds.—The lead agency shall have the capacity to administer the funds provided under this subtitle to support programs and services authorized under this subtitle and to oversee the plan submitted under section 507(b).

(2) Coordination.—The lead agency shall have the capacity to coordinate the services for which assistance is provided under this subtitle with the services of other State and local agencies involved in providing services to children.

(3) Establishment of policies.—The lead agency shall have the authority to establish policies and procedures for developing and implementing interagency agreements with other agencies of the State to carry out the purposes of this subtitle.

(c) Duties.—The lead agency shall—

(1) assess child care needs and resources in the State, and assess the effectiveness of existing child care services and services for which assistance is provided under this subtitle or under other laws, in meeting such needs;

(2) develop a plan designed to meet the need for child care services in the State for eligible children, including infants, preschool children, and school-age children, giving special attention to meeting the needs for services for low-income children, migrant children, children with a handicapping condition, foster children, children in need of protective services, children of adolescent parents who need child care to remain in school, and children with limited English-language proficiency;

(3) develop, in consultation with the State advisory committee on child care established under section 511, the State plan submitted to the Secretary under section 507(b);

(4) hold hearings, in cooperation with such State advisory committee on child care, annually in each region of the State in order to provide to the public an opportunity to comment on the provision of child care services in the State under the proposed State plan;

(5) assist the chief executive officer in making such periodic reports to the Secretary as the Secretary may by rule require;

(6) coordinate the provision of services under this subtitle with—

(A) other child care programs and services, and with educational programs, for which assistance is provided under any State, local, or other Federal law, including the State Dependent Care Development Grants Act (42 U.S.C. 9871 et seq.); and

(B) other appropriate services, including social, health, mental health, protective, and nutrition services, available to eligible children under other Federal, State, and local programs; and

(7) identify resource and referral programs for particular geographical areas in the State that meet the requirements of section 512.

SEC. 507. APPLICATION AND PLAN.

(a) Application.—To be eligible to receive assistance under this subtitle, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require by rule.

(b) Plan.—The application of a State submitted under subsection (a) shall include an assurance that the State will comply with the requirements of this subtitle and a State plan that is designed to be implemented during a 4-year period and that meets the requirements of subsection (c).

(c) Requirements of a Plan.—

(1) Lead agency.—The plan shall identify the lead agency designated in accordance with section 506(a).

(2) Advisory bodies.—The plan shall demonstrate that the State will establish in accordance with section 511 a State advisory committee on child care.

(3) Policies and procedures.—The plan shall set forth policies and procedures designed to ensure all of the following:

(A) That—

(i) all providers of child care services for which assistance is provided under this subtitle comply with all licensing and regulatory requirements (including registration requirements) applicable under State and local law; and

(ii) such requirements are imposed and enforced by the State uniformly on all child care providers that provide child care services under similar child care arrangements.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards or requirements on child care providers who provide services for which assistance is provided under this subtitle and who also receive State funds under any other law to provide child care services under a contract or other arrangement with the State.

(B) That procedures will be established to ensure that child care providers receiving assistance under this subtitle or under other publicly-assisted child care programs comply with the minimum child care standards established under section 517(e)(2) after the expiration of the 4-year period beginning on the date the Secretary establishes such standards, and comply with all applicable State and local licensing and regulatory requirements (including registration requirements).

(C) That the State will not—

(i) reduce the categories of child care providers licensed or regulated by the State on the date of enactment of this subtitle; or

(ii) reduce the level of standards applicable to child care services provided in the State and to the matters specified in sections 513(a) and 517(d), even if such standards exceed the minimum standards established under section 517(e)(2) by the Secretary unless the State, with the concurrence of the State advisory committee established under section 511, requests a waiver of this subparagraph and demonstrates, to the satisfaction of the Secretary, that the proposed reduction is necessary to increase access to and availability of eligible child care providers and will not jeopardize the health and safety of children.

(D) That funds received under this subtitle by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of child care services and related programs in the State, except that States may use existing expenditures in support of child care services to satisfy the State matching requirement under section 516(b) and may not use such expenditures to satisfy the matching requirements of any other Federal program.

(E) That for each fiscal year the State will use an amount not to exceed 8 percent of the amount of funds received under section 505 by the State for such fiscal year to administer the State plan.

(F) That the State will pay funds under this subtitle to eligible child care providers in a timely fashion to ensure the continuity of child care services to eligible children.

(G) That resource and referral agencies will be made available to families in all regions of the State.

(H) That each eligible child care provider who provides services for which assistance is provided under paragraph (4)—

(i) gives priority for provider services to children of families with very low income, taking into account family size;

(ii) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards except as provided in clause (iv);

(iii) if such eligible child care provider is regulated by a State educational agency that—

(I) administers any State law applicable to child care services;

(II) develops child care standards that meet or exceed the minimum standards established under section 517(e)(2) and the State licensing or regulatory requirements (including registration requirements); and

(III) enforces the standards described in subclause (II) that are developed by such agency, using policies and practices that meet or exceed the requirements specified in subparagraphs (A) through (K) of paragraph (11);

complies with the standards described in subclause (II) that are developed by such agency; and

(iv) complies with the State plan and the requirements of this subtitle.

(I) That child care services for which assistance is provided under paragraph (4) are available to children with a handicapping condition.

(J) That State regulations will be issued governing the provision of school-age child care services if the State does not already have such regulations.

(K) That child care providers in the State are encouraged to develop personnel policies that include compensated time for staff undergoing training required under this subtitle.

(L) Encourage the payment of adequate salaries and other compensation—

(i) to full and part-time staff of child care providers who provide child care services for which assistance is provided under paragraph (4);

(ii) to the extent practicable, to such staff in other major Federal and State child care programs; and

(iii) to other child care personnel, at the option of the State.

(M) That child care services for which assistance is provided under paragraph (4) are available for an adequate number of hours and days to serve the needs of parents of eligible children, including parents who work nontraditional hours.

(4) CHILD CARE SERVICES.—The plan shall provide that—

(A) subject to subparagraph (B), the State will use at least 70 percent of the amount allotted to the State in any fiscal year to provide child care services that meet the requirements of this subtitle to eligible children in the State on a sliding fee scale basis and using funding methods provided for in section 508(a)(1), with priority being given for services to children of families with very low family incomes, taking into consideration the size of the family; and

(B) the State will use at least 10 percent of the funds reserved for the purposes specified in subparagraph (A) in any fiscal year to provide for the extension of part-day programs as described in section 508(b).

(5) ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.—The plan shall provide that the State will use not more than 10 percent of the amount allotted to it in any fiscal year to do each of the following:

(A) Provide financial assistance, pursuant to procedures established under the State Dependent Care Development Grants Act (42 U.S.C. 9801 note), to private nonprofit organizations or public organizations (including units of general purpose local government) that meet the requirements of section 512 for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

(B) Improve the monitoring of compliance with, and enforcement of, the licensing and regulatory requirements (including registration requirements) of the State.

(C) Provide training, technical assistance, and scholarship assistance in accordance with the requirements of subsections (b), (c), and (d) of section 513.

(D) Ensure that adequate salaries and other compensation are paid to full- and part-time staff who provide child care services for which assistance is provided under paragraph (4).

(6) ACTIVITIES TO INCREASE THE AVAILABILITY OF CHILD CARE.—The plan shall provide that the State will use not more than 12 percent of the amount allotted to it in any fiscal year for any of the following activities:

(A) Making grants or low interest loans to family child care providers and nonprofit child care providers to help such providers pay the cost of—

(i) establishing child care programs; and

(ii) making renovations and improvements in existing facilities to be used to carry out such programs.

(B) Making grants or low-interest loans to child care providers to assist such providers in meeting Federal, State, and local child care standards, giving priority to providers receiving assistance under this subtitle or under other publicly assisted child care programs and which serve children of families that have very low incomes.

(C) Providing assistance for the establishment and operation of after school child care programs.

(D) Making grants or loans to fund the start up costs of employer sponsored child care programs.

(E) Providing assistance for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled.

(F) Providing assistance for the establishment and operation of child care programs for homeless children.

(G) Providing assistance to link child care programs with programs designed to assist the elderly.

(H)(i) Establishing and administering a revolving loan fund from which any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the Internal Revenue Code of 1986) may obtain a loan in order to become a licensed family child care provider, pursuant to State and local law, and to comply with the minimum standards applicable to such providers as established under section 517(e)(2).

(ii) To permit the use of funds provided under this subtitle for the activity described in clause (i), the State shall set forth procedures and guidelines to carry out the purposes of such clause, including procedures—

(I) that provide assurances that only applicants who obtain a license for the operation of a child care facility in accordance with the provisions of State and local law and who will meet the minimum standards applicable to family child care services established under section 517(e)(2), benefit from loans made available pursuant to the provisions of clause (i);

(II) to assure that the revolving fund will be administered by the State and will provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, that is not in excess of $1,500;

(III) to assure that funds used to carry out the purpose of clause (i) are transferred to such fund to provide capital for making loans;

(IV) to assure that interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such funds are deposited into such fund;

(V) to assure that all loans, expenses, and payments pursuant to the operation of the revolving loan fund are paid from such fund;

(VI) to assure that loans made from such fund are made to qualified applicants to enable such applicants to make capital improvements so that such applicant may obtain a State or local family child care provider license and so that such applicant may meet the minimum standards applicable to such providers established under section 517(e)(2); and

(VII) that specify how such revolving loan fund will continue to be financed in subsequent years, such as through contributions by the State or by some other entity.

(I) Providing assistance for any other activity deemed by the State to be in accordance with the purposes of this paragraph.

(7) DISTRIBUTION OF FUNDS.—The plan shall provide that funds will be distributed—

(A) to a variety of types of child care providers, including center-based child care providers, group home child care providers, and family child care providers; and

(B) equitably among child care providers to provide child care services in rural and urban areas.

(8) REIMBURSEMENTS.—The plan shall provide that for child care services for which assistance is provided under this subtitle, an eligible child care provider shall have a right to reimbursement at the same rate charged by that provider for comparable services to children of comparable ages and special needs whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(9) PRIORITY.—The plan shall provide that priority will be given, in distributing funds in the State, to child care providers that—

(A) in providing child care services assisted by such funds, will give priority to eligible children of families with very low income;

(B) to the maximum extent feasible, provide child care services to a reasonable mix of children, including children from different socioeconomic backgrounds and children with a handicapping condition;

(C) provide opportunities for parent involvement in all aspects of providing such services; and

(D) to the maximum extent feasible, offer family support services.

(10) Sliding fee scale.—The plan shall provide for the establishment of a sliding fee scale that requires cost sharing based on the services provided to and the income of the families (adjusted for family size) of eligible children who receive services for which assistance is provided under this subtitle.

(11) Parental involvement.—The plan shall establish procedures for parental involvement in State and local planning, monitoring, and evaluation of child care programs and services in the State.

(12) Enforcement of licensing and other regulatory requirements (including registration requirements).—The plan shall provide that the State, not later than 4 years after the date of enactment of this subtitle, shall have in effect enforcement policies and practices that will be applicable to all licensed or regulated child care providers (including child care providers required to register) in the State, including policies and practices that—

(A) require personnel who perform inspection functions with respect to licensed or regulated child care services to have or receive training in health and safety, child abuse prevention and detection, program management, and relevant law enforcement;

(B) to the maximum extent feasible, have personnel requirements to ensure that individuals who are hired as licensing inspectors are qualified to inspect and have inspection responsibility exclusively for children's services;

(C) require—

(i) personnel who perform inspection functions with respect to licensed or regulated child care services to make not less than 1 unannounced inspection of each center-based child care provider and each group home child care provider in the State annually; and

(ii) personnel who perform inspection functions with respect to licensed or regulated child care services to make unannounced inspections annually of not less than 20 percent of licensed and regulated family child care providers in the State;

(D) require licensed or regulated child care providers (including registered child care providers) in the State—

(i) to have written policies and program goals and to make a copy of such policies and goals available to parents; and

(ii) to provide parents with unlimited access to their children and to providers caring for their children, during normal hours of operation of such providers and whenever children of such parents are in the care of such providers;

(E) implement a procedure to address complaints that will provide a reasonable opportunity for a parent, or child care provider, that is adversely affected or aggrieved by a decision of the lead agency or any program assisted under this subtitle, to be heard by the State;

(F) prohibit the operator of a child care facility to take any action against an employee of such operator that would adversely affect the employment, or terms or conditions of employment, of such employee because such employee communicates a failure of such operator to comply with any applicable licensing or regulatory requirement;

(G) implement a consumer education program designed to inform parents and the general public about licensing requirements, complaint procedures, and policies and practices required by this paragraph;

(H) require a child care provider to post, on the premises where child care services are provided, the telephone number of the appropriate licensing or regulatory agency that parents may call regarding a failure of such provider to comply with any applicable licensing or regulatory requirement; and

(I) require the State to maintain a record of parental complaints and to make information regarding substantiated parental complaints available to the public on request.

(13) Data collection.—The plan shall provide for the establishment of procedures for data collection by the State designed to show—

(A) by race, sex, ethnic origin, handicapping condition, and family income, how the child care needs of families in the State are being fulfilled, including information on—

(i) the number of children being assisted with funds provided under this subtitle, and under other State and Federal child care and preschool programs;

(ii) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

(iii) the regional cost of child care; and

(iv) such other information as the Secretary considers necessary to establish how funds provided under this subtitle are being used;

(B) the extent to which the availability of child care has been increased; and

(C) how the purposes of this subtitle and the objectives of the State set forth in the State plan are being met, including efforts to improve the quality, availability, and accessibility of child care;

and shall provide that data collected by the State under this paragraph shall be submitted to the Secretary.

(d) Approval of Application.—The Secretary shall approve an application that satisfies the requirements of this section.

(e) Special Rule.—In carrying out the provisions of this section, the Secretary shall approve any application with respect to the activities described in the plan submitted under paragraph (5) of subsection (c), if the Secretary determines that the State is making reasonable progress in carrying out the activities which are described in subparagraphs (A) and (D) of paragraph (5).

SEC. 508. SPECIAL RULES FOR USE OF STATE ALLOTMENTS.

(a) Funding of Child Care Services.—

(1) In general.—The child care services referred to in section 507(c)(4) that are to be provided out of the allotment to a State, shall be provided—

(A) by contracts with or grants to eligible child care providers who agree to provide such services directly to eligible children;

(B) by grants to units of general purpose local government that agree to enter into contracts with eligible child care providers who agree to provide such services directly to eligible children; or

(C) by distributing child care certificates to parents of eligible children under such terms as the Secretary may prescribe to enable the recipients of such certificates to purchase child care services from eligible child care providers.

(2) Limitation on certificates.—Child care certificates authorized by paragraph (1)(C) may be issued by a State only if a resource and referral program carried out by an organization that meets the requirements of section 512 is available to help parents locate child care services made available by eligible child care providers.

(3) No entitlement to contract or grant.—Nothing in this subtitle shall be construed to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit, or to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subtitle.

(b) Part-day Programs.—

(1) In general.—At least 10 percent of the funds available for activities under section 507(c)(4)(A) shall be used by the State to enable child care providers to extend the hours of operation of the part-day programs described in paragraph (2) to provide full-working-day child care services throughout the year, in order to meet the needs of parents of eligible children.

(2) Eligible programs.—As used in paragraph (1), the term "part-day programs" means—

(A) programs of schools and nonprofit child care providers (including community-based organizations) receiving State or local funds designated for preschool;

(B) programs established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) preschool programs for which assistance is provided under chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 et seq.); and

(D) preschool programs for children with a handicapping condition.

(c) Facilities.—

(1) New facilities.—No financial assistance provided under this subtitle shall be expended for the construction of a new facility.

(2) Existing facilities.—No financial assistance provided under this subtitle shall be expended to renovate or repair any facility unless—

(A) the child care provider that receives such financial assistance agrees—

(i) in the case of a grant, to repay to the Secretary or the State, as the case may be, the amount that bears the same ratio to the amount of such grant as the value of the renovation or repair, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle, bears to the original value of the renovation or repair; and

(ii) in the case of a loan, to repay immediately to the Secretary or the State, as the case may be, the principal amount of such loan outstanding and any interest accrued, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle;

if such provider does not provide child care services in such facility in accordance with this subtitle throughout the useful life of the renovation or repair; and

(B) if such provider is a sectarian agency or organization, the renovation or repair is necessary to bring such facility into compliance with health and safety requirements imposed by this subtitle.

SEC. 509. PLANNING GRANTS.

(a) In General.—A State desiring to participate in the programs authorized by this subtitle that cannot fully satisfy the requirements of the State plan under section 507(b) without financial assistance may, in the first year that the State participates in the programs, apply to the Secretary for a planning grant.

(b) Authorization.—The Secretary is authorized to make a planning grant to a

State described in subsection (a) if the Secretary determines that—

(1) the grant would enable the State to fully satisfy the requirements of a State plan under section 507(b); and

(2) the State will apply, for the remainder of the allotment that the State is entitled to receive for such fiscal year.

(c) AMOUNT OF GRANT.—A grant made to a State under this section shall not exceed 1 percent of the total allotment that the State would qualify to receive in the fiscal year involved if the State fully satisfied the requirements of section 507.

(d) LIMITATION ON ADMINISTRATIVE COSTS.—A grant made under this section shall be considered to be expended for administrative costs by the State for purposes of determining the compliance by the State with the limitation on administrative costs imposed by section 507(c)(3)(E).

SEC. 510. CONTINUING ELIGIBILITY OF STATES.

A State shall be ineligible for assistance under this subtitle after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2) unless the State demonstrates to the satisfaction of the Secretary that—

(1) all child care providers required to be licensed and regulated in the State—

(A) are so licensed and regulated; and

(B) are subject to the enforcement provisions referred to in the State plan; and

(2) all such providers who are receiving assistance under this subtitle or under other publicly-assisted child care programs—

(A) satisfy the requirements of subparagraphs (A) and (B) of paragraph (1); and

(B) except as provided in section 517(f), satisfy the minimum child care standards established by the Secretary under section 517(e)(2) of this subtitle.

SEC. 511. STATE ADVISORY COMMITTEE ON CHILD CARE.

(a) ESTABLISHMENT.—The chief executive officer of a State participating in the program authorized by this subtitle shall—

(1) establish a State advisory committee on child care (hereinafter in this section referred to as the "committee") to assist the lead agency in carrying out the responsibilities of the lead agency under this subtitle; and

(2) appoint the members of the committee.

(b) COMPOSITION.—The State committee shall be composed of not fewer than 21 and not more than 30 members who shall include—

(1) at least 1 representative of the lead agency designated under section 506(a);

(2) 1 representative of each of—

(A) the State departments of—

(i) human resources or social services;

(ii) education;

(iii) economic development; and

(iv) health; and

(B) other State agencies having responsibility for the regulation, funding, or provision of child care services in the State;

(3) at least 1 representative of providers of different types of child care services, including caregivers and directors;

(4) at least 1 representative of early childhood development experts;

(5) at least 1 representative of school districts and teachers involved in the provision of child care services and preschool programs;

(6) at least 1 representative of resource and referral programs;

(7) 1 pediatrician;

(8) 1 representative of a citizen group concerned with child care;

(9) at least 1 representative of an organization representing child care employees;

(10) at least 1 representative of the Head Start agencies in the State;

(11) parents of children receiving, or in need of, child care services, including at least 2 parents whose children are receiving or are in need of subsidized child care services;

(12) 1 representative of specialists concerned with children who have a handicapping condition;

(13) 1 representative of individuals engaged in business;

(14) 1 representative of fire marshals and building inspectors;

(15) 1 representative of child protective services; and

(16) 1 representative of units of general purpose local government.

(c) FUNCTIONS.—The committee shall—

(1) advise the lead agency on child care policies;

(2) provide the lead agency with information necessary to coordinate the provision of child care services in the State;

(3) otherwise assist the lead agency in carrying out the functions assigned to the lead agency under section 506(c);

(4) review and evaluate child services for which assistance is provided under this subtitle or under State law, in meeting the objectives of the State plan and the purposes of this subtitle;

(5) make recommendations on the development of State child care standards and policies;

(6) participate in the regional public hearings required under section 506(c)(5); and

(7) perform other functions to improve the quantity and quality of child care services in the State.

(d) MEETINGS AND HEARINGS.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each fiscal year, the committee shall meet and establish the time, place, and manner of future meetings of the committee.

(2) MINIMUM NUMBER OF HEARINGS.—The committee shall have at least 2 public hearings each year at which the public shall be given an opportunity to express views concerning the administration and operation of the State plan.

(e) USE OF EXISTING COMMITTEES.—To the extent that a State has established a broadly representative State advisory group, prior to the date of enactment of this subtitle, that is comparable to the advisory committee described in this section and focused exclusively on child care and early childhood development programs, such State shall be considered to be in compliance with subsections (a) through (c).

(f) SUBCOMMITTEE ON LICENSING.—

(1) COMPOSITION.—The committee shall have a subcommittee on licensing (hereinafter in this section referred to as the "subcommittee") that shall be composed of the members appointed under paragraphs (2)(A)(iv), (3), (6), (7), (11), (14), and (15) of subsection (b).

(2) FUNCTIONS.—The subcommittee shall review the law applicable to, and the licensing requirements and the policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 4-year period ending on the date of the establishment of the committee under subsection (a).

(g) REPORT.—

(1) IN GENERAL.—Not later than 1 year after establishment of the committee under subsection (a), the committee shall prepare and submit to the chief executive officer of the State involved a report.

(2) CONTENTS OF REPORT.—A report prepared under paragraph (1) shall contain—

(A) an analysis of information on child care services provided by center-based child care providers, group home child care providers, and family child care providers;

(B) a detailed statement of the findings and recommendations that result from the subcommittee review under subsection (f)(2), including a description of the current status of child care licensing, regulating, monitoring, and enforcement in the State;

(C) a detailed statement identifying and describing the deficiencies in the existing licensing, regulating, and monitoring programs of the State involved, including an assessment of the adequacy of staff to carry out such programs effectively, and recommendations to correct such deficiencies or to improve such programs; and

(D) comments on the minimum child care standards established by the Secretary under section 517(e)(2).

(3) RECEIPT OF REPORT BY THE CHIEF EXECUTIVE OFFICER OF THE STATE.—Not later than 60 days after receiving the report from the committee, the chief executive officer of the State shall transmit such report to the Secretary with—

(A) the comments of the chief executive officer of the State; and

(B) a plan for correcting deficiencies in, or improving the licensing, regulating, and monitoring, of the child care services and programs referred to in subsection (f)(2).

(h) SERVICES AND PERSONNEL.—

(1) AUTHORITY.—The lead agency is authorized to provide the services of such personnel, and to contract for such other services as may be necessary, to enable the committee and the subcommittee to carry out their functions under this subtitle.

(2) REIMBURSEMENT.—Members of the committee shall be reimbursed, in accordance with standards established by the Secretary, for necessary expenses incurred by such members in carrying out the functions of the committee and the subcommittee.

(3) SUFFICIENCY OF FUNDS.—The Secretary shall ensure that sufficient funds are made available, from funds available for the administration of the State plan, to the committee and the subcommittee to carry out the requirements of this section.

SEC. 512. RESOURCE AND REFERRAL PROGRAMS.

(a) ELIGIBILITY FOR ASSISTANCE.—Each State receiving funds under this subtitle shall, pursuant to section 507(c)(5)(A), make grants to or enter into contracts with private nonprofit organizations or public organizations (including units of general purpose local government), as resource and referral agencies to ensure that resource and referral services are available to families in all geographical areas in the State.

(b) FUNDING.—Organizations that receive assistance under subsection (a) shall carry out resource and referral programs—

(1) to identify all types of existing child care services, including services provided by individual family child care providers and by child care providers who provide child care services to children with a handicapping condition;

(2) to provide to interested parents information and referral regarding such services, including the availability of public funds to obtain such services;

(3) to provide or arrange for the provision of information, training, and technical assistance to existing and potential child care providers and to others (including businesses) concerned with the availability of child care services; and

(4) to provide information on the demand for and supply of child care services located in a community.

(c) Requirements.—To be eligible for assistance as a resource and referral agency under subsection (a), an organization shall—

(1) have or acquire a database of information on child care services in the State or in a particular geographical area that the organization continually updates, including child care services provided in centers, group home child care settings, nursery schools, and family child care settings;

(2) have the capability to provide resource and referral services in a particular geographical area;

(3) be able to provide parents with information to assist them in identifying quality child care services;

(4) to the maximum extent practicable, notify all eligible child care providers in such area of the functions it performs and solicit such providers to request to be listed to receive referrals made by such organization; and

(5) otherwise comply with regulations promulgated by the State in accordance with subsection (d).

(d) Limitation on Information.—In carrying out this section, an organization receiving assistance under subsection (a) as a resource and referral agency shall not provide information concerning any child care program or services which are not in compliance with the laws of the State and localities in which such services are provided.

SEC. 513. TRAINING AND TECHNICAL ASSISTANCE.

(a) Minimum Requirement.—A State receiving funds under this subtitle shall require, not later than 2 years after the date of the enactment of this subtitle, that all employed or self-employed individuals who provide licensed or regulated child care services (including registered child care services) in a State complete at least 40 hours of training over a 2-year period in areas appropriate to the provision of child care services, including training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the needs of special populations of children.

(b) Grants and Contracts for Training and Technical Assistance.—

(1) Grants and contracts.—The State shall make grants to, and enter into contracts with State agencies, units of general purpose local government, institutions of higher education, and nonprofit organizations (including resource and referral organizations, child care food program sponsors, and family child care associations, as appropriate) to develop and carry out child care training and technical assistance programs under which preservice and continuing inservice training is provided to eligible child care providers, including family child care providers, and the staff of such providers including teachers, administrative personnel, and staff of resource and referral programs involved in providing child care services in the State.

(2) Eligibility requirements for grants and contracts relating to training for family child care providers.—To be eligible to receive a grant or enter into a contract for a training and technical assistance program for family child care providers under paragraph (1), a nonprofit organization shall—

(A) recruit and train family child care providers, including providers with the capacity to provide night-time and emergency child care services;

(B) operate resource centers to make developmentally appropriate curriculum materials available to family child care providers;

(C) provide grants to family child care providers for the purchase of moderate cost equipment to be used to provide child care services; and

(D) operate a system of substitute caregivers.

(3) Eligibility requirements for grants and contracts relating to technical assistance.—To be eligible to receive a grant, or enter into a contract under subsection (b) to provide technical assistance, an agency, organization, or institution shall agree to furnish technical assistance to child care providers to assist such providers—

(A) in understanding and complying with local regulations and relevant tax and other policies;

(B) in meeting State licensing, regulatory, and other requirements (including registration) pertaining to family child care providers.

(c) Scholarship Assistance.—The State shall provide scholarship assistance to—

(1) individuals who seek a nationally recognized child development associate credential for center-based or family child care and whose income does not exceed the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) by more than 50 percent, in amounts sufficient to cover the costs involved in securing such credential; and

(2) caregivers who seek to obtain the training referred to in subsection (a) and whose income does not exceed such poverty line.

(d) Clearinghouse.—The State shall establish in the lead agency a clearinghouse to collect and disseminate training materials to resource and referral agencies and child care providers throughout the State.

SEC. 514. FEDERAL ADMINISTRATION OF CHILD CARE.

(a) Administrator of Child Care.—There is hereby established in the Department of Health and Human Services the position of Administrator of Child Care (hereinafter in this section referred to as the "Administrator"). The Secretary shall appoint an individual to serve as the Administrator at the pleasure of the Secretary.

(b) Duties.—The Administrator shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and coordinate such activities with similar activities of other Federal entities;

(2) annually collect and publish State child care standards, including periodic modifications to such standards;

(3) evaluate activities carried out with funds provided under this subtitle;

(4) act as a clearinghouse to collect and disseminate materials that relate to—

(A) the matters required by section 513(b)(1) to be addressed by training required by section 513 to be provided; and

(B) studies that relate to the salaries paid to individuals employed to provide child care services; and

(5) provide technical assistance to assist States to carry out this subtitle.

SEC. 515. FEDERAL ENFORCEMENT.

(a) Review of Compliance With State Plan.—The Secretary shall review and monitor State compliance with this subtitle and the plan approved under section 507(d) for the State.

(b) Noncompliance.—

(1) In general.—If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that—

(A) there has been a failure by the State to comply substantially with any provision or any requirements set forth in the plan approved under section 507(d) for the State; or

(B) in the operation of any program or project for which assistance is provided under this subtitle there is a failure by the State to comply substantially with any provision of this subtitle;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subtitle (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(2) Additional sanctions.—In the case of a finding of noncompliance made pursuant to this paragraph (1), the Secretary may, in addition to imposing the sanctions described in such paragraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subtitle, and disqualification from the receipt of financial assistance under this subtitle.

(3) Notice.—The notice required under paragraph (1) shall include a specific identification of any additional sanction being imposed under paragraph (2).

(c) Issuance of Rules.—The Secretary shall establish by rule procedures for—

(1) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subtitle; and

(2) imposing sanctions under this section.

SEC. 516. PAYMENTS.

(a) In General.—

(1) Amount of payment.—Each State that—

(A) has an application approved by the Secretary under section 507(d); and

(B) demonstrates to the satisfaction of the Secretary that it will provide from non-Federal sources the State share of the aggregate amount to be expended by the State under the State plan for the fiscal year for which it requests a grant;

shall receive a payment under this section for such fiscal year in an amount (not to exceed its allotment under section 505 for such fiscal year) equal to the Federal share of the aggregate amount to be expended by the State under the State plan for such fiscal year.

(2) Federal share.—

(A) In general.—Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 80 percent.

(B) Exception.—If a State makes the demonstration specified in section 510 throughout a fiscal year for which it requests a grant, then the Federal share shall be 85 percent.

(3) State share.—The State share equals 100 percent minus the Federal share.

(4) Limitation.—A State may not require any private provider of child care services that receives or seeks funds made available

under this subtitle to contribute in cash or in kind to the State contribution required by this subsection.

(b) Method of Payment.—

(1) In general.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 507(c)(3)(F).

(c) Spending of Funds by State.—Payments to a State from the allotment under section 505 for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

SEC. 517. NATIONAL ADVISORY COMMITTEE ON CHILD CARE STANDARDS.

(a) Establishment.—

(1) In general.—In order to improve the quality of child care services, the Secretary shall establish, not later than 60 days after the date of the enactment of this subtitle, a National Advisory Committee on Child Care Standards (hereinafter in this section referred to as the "Committee"), the members of which shall be appointed from among representatives of—

(A) the chief executive officers of the several States;

(B) State legislatures;

(C) units of general purpose local governments;

(D) businesses;

(E) individuals responsible for regulating the insurance industry within the States;

(F) religious institutions

(G) different types of child care providers;

(H) persons who carry out resource and referral programs;

(I) child care, early childhood development, or early childhood education specialists;

(J) individuals who have expertise in pediatric health care, handicapping conditions, and related fields;

(K) organizations representing child care employees;

(L) individuals who have experience in the regulation of child care services; and

(M) parents who have been actively involved in community child care programs.

(2) Appointment of members.—The Committee shall be composed of 20 members of which—

(A) 4 members shall be appointed by the President;

(B) 4 members shall be appointed by the majority leader of the Senate;

(C) 4 members shall be appointed by the minority leader of the Senate;

(D) 4 members shall be appointed by the Speaker of the House of Representatives; and

(E) 4 members shall be appointed by the minority leader of the House of Representatives.

(3) Chairman.—The President shall appoint a chairman from among the members of the Committee.

(4) Vacancies.—A vacancy occurring on the Committee shall be filled in the same manner as that in which the original appointment was made.

(b) Personnel, Reimbursement, and Oversight.—

(1) Personnel.—The Secretary shall make available to the Committee office facilities, personnel who are familiar with child development and with developing and implementing regulatory requirements, technical assistance, and funds as are necessary to enable the Committee to carry out effectively its functions.

(2) Reimbursement.—

(A) Compensation.—Members of the Committee who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Committee or otherwise engaged in the business of the Committee (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(B) Expenses.—While away from their homes or regular places of business on the business of the Committee, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(3) Oversight.—The Secretary shall ensure that the Committee is established and operated in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Functions.—The Committee shall—

(1) review Federal policies with respect to child care services and such other data as the Committee may deem appropriate;

(2) not later than 180 days after the date on which a majority of the members of the Committee are first appointed, submit to the Secretary proposed minimum standards described in subsection (d) for child care services, taking into account the different needs of infants, toddlers, preschool and school-age children); and

(3) develop and make available to lead agencies, for distribution to resource and referral agencies in the State, model requirements for resource and referral agencies.

(d) Minimum Child Care Standards.—The proposed child care standards submitted pursuant to subsection (c)(2) shall be minimum standards and shall consist of only the following:

(1) Center-based child care services.—Such standards submitted with respect to child care services provided by center-based child care providers shall be limited to—

(A) group size limits in terms of the number of caregivers and the number and ages of children;

(B) the maximum appropriate child-staff ratios;

(C) qualifications and background of child care personnel;

(D) health and safety requirements for children and caregivers; and

(E) parental involvement in licensed and regulated child care services.

The standards described in subparagraphs (A) and (B) shall reflect the median standards for all States (using for States which apply separate standards to publicly-assisted programs the most comprehensive or stringent of such standards) as of the date of enactment of this subtitle.

(2) Family child care services.—Such standards submitted with respect to child care services provided by family child care providers shall be limited to—

(A) the maximum number of children for which child care services may be provided and the total number of infants for which child care services may be provided;

(B) the minimum age for caregivers; and

(C) health and safety requirements for children and caregivers.

(3) Group home child care services.—Such standards submitted with respect to child care services provided by group home child care providers shall be limited to the matters specified in paragraphs (1)(B) and (2).

(4) Limitation.—The Committee shall not submit any standard under subsection (c)(2) that is less or more rigorous than the least or most rigorous standard that exists in any of the States at the time of the submission of such recommendation.

(e) Consideration and Establishment of Standards.—

(1) Notice of proposed rulemaking.—Not later than 90 days after receiving the recommendations of the committee, the Secretary shall—

(A) publish in the Federal Register—

(i) a notice of proposed rulemaking concerning the minimum standards proposed under subsection (d) to the Secretary; and

(ii) such proposed minimum standards for public comment for a period of at least 60 days; and

(B) distribute such proposed minimum standards to each lead agency and each State subcommittee on licensing for comment.

(2) Establishment of minimum child care standards.—

(A) Issuance of rules.—The Secretary shall, in consultation with the committee—

(i) take into consideration any comments received by the Secretary with respect to the standards proposed under subsection (d); and

(ii) not later than 180 days after publication of such standards, shall issue rules establishing minimum child care standards for purposes of this subtitle. Such standards shall include the nutrition requirements issued, and revised from time to time, under section 17(g)(1) of the National School Lunch Act (42 U.S.C. 1766(g)(1)).

(B) Amending standards.—The Secretary may amend any standard first established under subparagraph (A), except that such standard may not be modified, by amendment or otherwise, to make such standard less comprehensive or less stringent than it is when first established.

(C) Extended period for comment.—If the Committee recommends a standard under subsection (c)(2) that no State has a requirement concerning, as of the time that such standard is recommended, the Secretary shall provide an additional 30 days during which States may submit comments concerning such standard.

(3) Additional comments.—The National Committee may submit to the Secretary and to the Congress such additional comments on the minimum child care standards established under paragraph (2) as the National Committee considers appropriate.

(f) Variances.—

(1) Time for compliance with standards.—Not later than the end of the 4-year period referred to in section 510, States shall comply with the standards established under this section.

(2) Exception.—At the expiration of the 4-year period referred to in paragraph (1) the chief executive officer, in consultation with the State advisory committee, may submit a request to the Secretary for a 1 year variance from the requirements of one or more particular standards for one or more particular geographic areas of the State.

(3) Requirements.—A request for a variance under this subsection shall include—

(A) a statement by the chief executive officer of the State of the steps taken to implement the relevant standards in the relevant geographic areas in the State within the 4-year period;

(B) the specific reasons for the submission of the variance request; and

(C) a detailed plan that outlines the additional procedures and resources to be used to come into compliance with the standards at the end of the variance period.

(4) Period of variance.—A variance granted by the Secretary shall be for a 1-year period and may be renewed at the discretion of the Secretary for an additional 1-year period if requested by the State.

(g) Termination of Committee.—The National Committee shall cease to exist 90 days after the date the Secretary establishes minimum child care standards under subsection (e)(3).

SEC. 518. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

(a) Sectarian Purposes and Activities.—No financial assistance provided under this subtitle shall be expended for any sectarian purpose or activity, including sectarian worship and instruction.

(b) Tuition.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subtitle shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

SEC. 519. NONDISCRIMINATION.

(a) Federal Financial Assistance.—Any financial assistance provided under this subtitle, including a loan, grant, or child care certificate, shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the regulations issued thereunder.

(b) Religious Discrimination.—A child care provider may not discriminate against any child on the basis of religion in providing child care services in return for a fee paid, reimbursement received, or certificate redeemed, in whole or in part with financial assistance provided under this subtitle.

SEC. 520. PRESERVATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.

Nothing in this subtitle shall be construed or applied in any manner to infringe upon or usurp the moral and legal rights and responsibilities of parents or legal guardians.

SEC. 521. CHILD CARE LIABILITY RISK RETENTION GROUP.

(a) Purpose.—It is the purpose of this section—

(1) to increase the availability of child care by alleviating the serious difficulty faced by child care providers in obtaining affordable liability insurance; and

(2) to provide States with a sufficient capital base for liability insurance purposes that may be increased or maintained through mechanisms developed by the State.

(b) Formation of Child Care Liability Risk Retention Group.—

(1) Assistance in formation and operation of group.—Any State may assist in the establishment and operation of a child care liability risk retention group in the manner provided under this section.

(2) Child care liability risk retention group defined.—As used in this section, the term "child care liability risk retention group" means any corporation (or other limited liability association)—

(A) whose members are licensed child care providers pursuant to State and local law and who, after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 17(e)(2), complies with such minimum child care standards that are applicable to the child care services provided by such members; and

(B) which otherwise satisfies the criteria for a risk retention group under section 2(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(4)).

(c) State Applications.—

(1) Applications.—To qualify for assistance under this section, a State shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require, including information that meets the requirements of subsection (b) of this section.

(2) Content of state application.—

(A) Lead agency.—The application shall identify the lead agency that has been designated and that is to be responsible for the administration of funds provided under this section.

(B) Participants in risk retention group.—The application shall assure that all participants in the child care liability risk retention group are licensed child care providers pursuant to State and local law who, after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), comply with such standards that are applicable to the child care services they provide. In addition, the applicant shall provide for maximum membership of family-based child care providers in the group.

(C) Use of funds.—The application shall provide that the State shall use at least the amount allotted to the State in any fiscal year to establish or operate a child care liability risk retention group.

(D) Continuation of risk retention group.—The application shall contain provisions that specify how the child care liability risk retention group will continue to be financed after fiscal year 1992, including financing through contributions by the State or by members of such group.

(d) Federal Enforcement.—

(1) Review of applications.—The Secretary shall review and approve State applications submitted in accordance with this section and shall monitor State compliance with the provisions of this section.

(2) Finding of noncompliance.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds—

(A) that there has been a failure to comply substantially with any provision or any requirements set forth in the State application of that State; or

(B) that there is a failure to comply substantially with any applicable provision of this section,

the Secretary shall notify such State of the findings and of the fact that no further payments may be made to such State under this section until the Secretary is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

(e) Allotment to States.—

(1) In general.—The Secretary shall make an allotment to each State from the sums appropriated to carry out the provisions of this section using the same allotment formula established under section 505.

(2) State administrative costs.—Of the amount allotted to a State pursuant to paragraph (1), an amount not to exceed 10 percent shall be used by such State to provide for the administrative costs of carrying out such program.

(f) Payments.—

(1) Entitlement.—Each State for which an application has been approved by the Secretary under this section shall be entitled to payments under this subsection for each fiscal year in an amount not to exceed its allotment under subsection (e) to be expended by the State in accordance with the terms of the application for the fiscal year for which the grant is to be made.

(2) Method of payments.—The Secretary may make payments to a State in installments, and in advance or, by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) State spending of payments.—Payments to a State from the allotment under subsection (e) for any fiscal year must be expended by the State in that fiscal year or in the succeeding fiscal year.

Subtitle B—Internal Revenue Code Provisions

SEC. 530. INCREASE IN EARNED INCOME TAX CREDIT.

(a) Increase in Amount of Credit.—Subsections (a) and (b) of section 32 of the 1986 Code (relating to earned income tax credit) are amended to read as follows:

"(a) Allowance of Credit.—

"(1) In general.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the earned income for the taxable year as does not exceed $7,143.

"(2) Limitation.—The amount of the credit allowable to a taxpayer under this subsection for any taxable year shall not exceed the excess (if any) of—

"(A) the credit percentage of $7,143, over

"(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $8,000.

"(b) Percentages.—For purposes of subsection (a)—

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
"No or 1 qualifying child	14	10
"2 qualifying children	21	15
"3 or more qualifying children	28	20."

(b) Qualifying Child.—Subsection (c) of section 32 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) Qualifying child.—The term 'qualifying child' means any child (within the meaning of section 151(c)(3)) of the eligible individual if—

"(A) such individual is entitled to a deduction under section 151 for such child or would be so entitled but for paragraph (2) or (4) of section 152(e),

"(B) such child has the same principal place of abode as such individual for more than one-half of the taxable year, and

"(C) the requirements of paragraph (1)(B) are met with respect to such child."

(c) Conforming Amendments.—

(1) Paragraph (2) of section 32(f) of such Code is amended by striking out "subsection (b)" each place it appears in subparagraphs (A) and (B) and inserting in lieu thereof "subsection (a)(2)".

(2) Paragraph (2) of section 31(i) of such Code is amended to read as follows:

"(2) Definitions, etc.—For purposes of paragraph (1)—

"(A) Applicable calendar year.—The term 'applicable calendar year' means 1989.

"(B) Dollar amounts.—The dollar amounts referred to in this subparagraph are—

"(i) the "$7,143 amount contained in subsection (a), and

"(ii) the $8,000 amount contained in subsection (a)."

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

Amendment No. 3496

Strike out title V and insert in lieu thereof the following new title:

TITLE V—CHILD CARE PROVISIONS

Subtitle A—Federal Child Care Program

SEC. 501. SHORT TITLE.

This title may be cited as the "Act for Better Child Care Services of 1988".

SEC. 502. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the number of children living in homes where both parents work, or living in homes with a single parent who works, has increased dramatically over the last decade;

(2) the availability of quality child care is critical to the self-sufficiency and independence of millions of American families, including the growing number of mothers with young children who work out of economic necessity;

(3) high quality child care programs can strengthen our society by providing young children with the foundation on which to learn the basic skills necessary to be productive workers;

(4) the years from birth to age 6 are a critical period in the development of a young child;

(5) a significant number of parents do not have a real choice as they seek adequate child care for their young children because of limited incomes, insufficient State child care standards, and the inadequate supply of child care services in their community;

(6) high quality early childhood development programs provided during such period are cost effective because such programs can reduce the chances of juvenile delinquency and adolescent pregnancy and can improve the likelihood that children will finish high school and become employed;

(7) the number of quality child care arrangements falls far short of the number required for children in need of child care services;

(8) the rapid growth of participation in the labor force by mothers of children under the age of 1 has resulted in a critical shortage of quality child care arrangements for infants and toddlers;

(9) the lack of available child care services results in many preschool and school-age children being left without adequate supervision for significant parts of the day;

(10) many working parents who are unable to afford adequate child care services do not receive adequate financial assistance for such services from employers or public sources;

(11) because of the lack of affordable child care, a large number of parents are not able to work or to seek the training or education they need to become self sufficient;

(12) making adequate child care services available for parents who are employed, seeking employment, or seeking to develop employment skills promotes and strengthens the well-being of families and the national economy;

(13) the payment of the exceptionally low salaries to child care workers adversely affects the quality of child care services by making it difficult to retain qualified staff;

(14) several factors result in the shortage of quality child care options for children and parents, including—

(A) the inability of parents to pay for child care services;

(B) the lack of up-to-date information on child care services;

(C) the lack of training opportunities for staff in child care programs;

(D) the high rate of staff turnover in child care facilities; and

(E) the wide differences among the States in child care licensing and enforcement policies; and

(15) improved coordination of child care services will help to promote the most efficient use of child care resources.

(b) Purposes.—The purposes of this subtitle are—

(1) to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child care facility or arrangement;

(2) to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services;

(3) to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care services;

(4) to lessen the chances that children will be left to fend for themselves for significant parts of the day;

(5) to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services;

(6) to provide assistance to States to improve the quality of, and coordination among, child care programs;

(7) to increase the opportunities for attracting and retaining qualified staff in the field of child care to provide high quality child care services to children; and

(8) to strengthen the competitiveness of the United States by providing young children with a sound early childhood development experience.

SEC. 503. DEFINITIONS.

As used in this subtitle:

(1) Administrator.—The term "Administrator" means the Administrator of Child Care appointed under section 514(a).

(2) Caregiver.—The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

(3) Center-based child care provider.—The term "center-based child care provider" means a child care provider that provides child care services in a nonresidential facility.

(4) Child care certificate.—The term "child care certificate" means a certificate that is issued by the State to parents who may use such certificate only as payment for child care services for an eligible child and that provides to an eligible child care provider a right to reimbursement for such services at the same rate charged by that provider for comparable services to children whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(5) Community-based organization.—The term "community-based organization" has the meaning given such term by section 4(5) of the Job Training and Partnership Act (29 U.S.C. 1503(5)).

(6) Elementary school.—The term "elementary school" means a day or residential school that provides elementary education, as determined under State law.

(7) Eligible child.—The term "eligible child" means an individual—

(A) who is less than 16 years of age;

(B) whose family income does not exceed 100 percent of the State median income for a family of the same size; and

(C) who—

(i) resides with a parent or parents who are working, seeking employment, or enrolled in a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(8) Eligible child care provider.—The term "eligible child care provider" means a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(A) is licensed or regulated under State law;

(B) satisfies—

(i) the Federal requirements, except as provided in subparagraph (C); and

(ii) the State and local requirements;

applicable to the child care services it provides; and

(C) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards that are applicable to the child care services it provides.

(9) Family child care provider.—The term "family child care provider" means 1 individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in the private residence of such individual.

(10) Family support services.—The term "family support services" means services that assist parents by providing support in parenting and by linking parents with community resources and with other parents.

(11) Full-working-day.—The term "full-working-day" means at least 10 hours per day.

(12) Group home child care provider.—The term "group home child care provider" means 2 or more individuals who jointly provide child care services for fewer than 24 hours per day and in a private residence.

(13) Handicapping condition.—The term "handicapping condition" means any condition set forth in section 602(a)(1) of the Education of the Handicapped Act (20 U.S.C. 1401(a)(1)) or section 672(1) of the Education of the Handicapped Act (20 U.S.C. 1471(a)).

(14) Indian tribe.—The term "Indian tribe" has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

(15) Institution of higher education.—The term "institution of higher education" has the meaning given such term in section

481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)), except that with respect to a tribally controlled community college such term has the meaning given it in section 2(a)(5) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(5)).

(16) Lead agency.—The term "lead agency" means the agency designated under section 506(a).

(17) Local educational agency.—The term "local educational agency" has the meaning given that term in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(a)(10)).

(18) Parent.—The term "parent" includes a legal guardian or other person standing in loco parentis.

(19) School-age child care services.—The term "school-age child care services" means child care services that are—

"(A) provided during such times of the school day when regular instructional services are not in session; and

"(B) not intended as an extension of or replacement for the regular academic program, but are intended to provide an environment which enhances the social, emotional, and recreational development of children of school age;

(20) Secondary school.—The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(21) Secretary.—The term "Secretary" means the Secretary of Health and Human Services unless the context specifies otherwise.

(22) School facilities.—The term "school facilities" means classrooms and related facilities used to provide education.

(23) Sliding fee scale.—The term "sliding fee scale" means a system of cost sharing between the State and a family based on income and size of the family with the very low income families having to pay no cost.

(24) State.—The term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.

(25) Unit of general purpose local government.—The term "unit of general purpose local government" means any city, county, town, township, parish, village, a combination of such general purpose political subdivisions including those in two or more States, or other general purpose political subdivisions of a State.

(26) Tribal organization.—The term "tribal organization" has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

(27) Tribally controlled community college.—The term "tribally controlled community college" has the meaning given it in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—To carry out this subtitle, other than section 521, there are authorized to be appropriated $2,500,000,000 for the fiscal year 1990 and such sums as may be necessary in each of the fiscal years 1991 through 1994.

(b) Child Care Liability Risk Retention Group.—

(1) In general.—To carry out section 521, there are authorized to be appropriated $100,000,000 for fiscal year 1990.

(2) Amounts to remain available.—The amounts appropriated pursuant to paragraph (1) shall remain available for assistance to States for fiscal years 1990, 1991, and 1992 without limitation.

SEC. 505. AMOUNTS RESERVED; ALLOTMENTS.

(a) Amounts Reserved.—

(1) Territories and Possessions.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under section 504(a) in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau, to be allotted in accordance with their respective needs.

(2) Indians.—The Secretary shall reserve an amount, not less than 1.5 percent and not more than 3 percent of the amount appropriated under section 504(a) in each fiscal year, to carry out subsection (c) regarding Indian children.

(b) State Allotment.—

(1) General rule.—From the remainder of the sums appropriated under section 504(a) for each fiscal year, the Secretary shall allot to each State (excluding jurisdictions referred to in subsection (a)(1)) an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage bears to the sum of the corresponding products for all the States.

(2) Young child factor.—The term "young child factor" means the ratio of the number of children in the State who are less than 5 years of age to the number of children in all the States who are less than 5 years of age.

(3) School lunch factor.—The term "school lunch factor" means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of children in all the States who are receiving free or reduced price lunches under such program.

(4) Allotment percentage.—

(A) In general.—The allotment percentage for a State is determined by dividing—

(i) the per capita income of all individuals in the United States; by

(ii) the per capita income of all individuals in the State.

(B) Limitations.—If a sum determined under subparagraph (A)—

(i) exceeds 1.2, then the allotment percentage of that State shall be considered to be 1.2; and

(ii) is less that 0.8, then the allotment percentage of the State shall be considered to be 0.8.

(C) Per capita income.—For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for the Benefit of Indian Children.—

(1) Tribal organizations.—From the funds reserved under subsection (a)(2), the Secretary may, upon the application of a Indian tribe or tribal organization enter into a contract with, or make a grant to such Indian tribe or tribal organization for a period of 3 years, subject to satisfactory performance, to plan and carry out programs and activities that are consistent with this subtitle. Such contract or grant shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 655-657), that are relevant to such programs and activities.

(2) Indian reservations.—In the case of an Indian tribe in a State other than the States of Oklahoma, Alaska, and California, such programs and activities shall be carried out on the Indian reservation for the benefit of Indian children.

(3) Standards.—

(A) In general.—Subject to subparagraph (B), the Secretary shall establish, through the application process, standards applicable to child care services provided under such programs and activities. For purposes of establishing such standards, the Secretary shall take into consideration—

(i) the codes, regulations, and cultural factors of the Indian tribe involved, as expressed by such tribe or the tribal organization that represents such tribe; and

(ii) the State licensing and regulatory requirements applicable to child care services provided in the State in which such program and activities are carried out.

(B) Application.—

(i) Rule.—Except as provided in clause (ii), after the Secretary establishes minimum child care standards under section 517(e)(2), such minimum standards shall apply with respect to child care services provided under such programs and activities.

(ii) Waivers and modifications.—The Secretary may waive or modify, for a period not to exceed 4 years beginning on the date such minimum standards are established, any of such minimum standards that would limit the capacity of an Indian tribe or tribal organization to receive funds under this subtitle if the Secretary determines that there is a reasonable expectation that each of such standards requested to be waived will be met by the applicant by the end of the period for which the waiver is requested.

(4) Availability of state child care services.—For the purpose of determining whether to approve an application for a contract or grant under this subsection, the Secretary shall take into consideration the availability of child care services provided in accordance with this subtitle by the State in which the applicant proposes to carry out a program to provide child care services.

(5) Rule of construction.—This subsection shall not be construed—

(A) to limit the eligibility of any individual to participate in any program carried out with assistance received under this subtitle by a State; or

(B) to modify any requirement imposed on a State by any provision of this subtitle.

(6) Coordination.—To the maximum extent practicable, the applicant for a grant or contract under this subsection and the State in which the applicant is located shall coordinate with each other their respective child care programs and activities, including child care programs and activities carried out with assistance received under this subtitle.

(d) Data and Information.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(e) Reallotments.—

(1) In general.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 507(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations.—

(A) Reduction.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 507(d).

(B) Reallotments.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted.—For purposes of any other section of this subtitle, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

(f) Definition.—For the purposes of this section, the term "State" means any of the several 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 506. LEAD AGENCY.

(a) Designation.—The chief executive officer of a State desiring to participate in the program authorized by this subtitle shall designate, in an application submitted to the Secretary under section 507(a), an appropriate State agency that meets the requirements of subsection (b) to act as the lead agency.

(b) Requirements.—

(1) Administration of funds.—The lead agency shall have the capacity to administer the funds provided under this subtitle to support programs and services authorized under this subtitle and to oversee the plan submitted under section 507(b).

(2) Coordination.—The lead agency shall have the capacity to coordinate the services for which assistance is provided under this subtitle with the services of other State and local agencies involved in providing services to children.

(3) Establishment of policies.—The lead agency shall have the authority to establish policies and procedures for developing and implementing interagency agreements with other agencies of the State to carry out the purposes of this subtitle.

(c) Duties.—The lead agency shall—

(1) assess child care needs and resources in the State, and assess the effectiveness of existing child care services and services for which assistance is provided under this subtitle or under other laws, in meeting such needs;

(2) develop a plan designed to meet the need for child care services in the State for eligible children, including infants, preschool children, and school-age children, giving special attention to meeting the needs for services for low-income children, migrant children, children with a handicapping condition, foster children, children in need of protective services, children of adolescent parents who need child care to remain in school, and children with limited English-language proficiency;

(3) develop, in consultation with the State advisory committee on child care established under section 511, the State plan submitted to the Secretary under section 507(b);

(4) hold hearings, in cooperation with such State advisory committee on child care, annually in each region of the State in order to provide to the public an opportunity to comment on the provision of child care services in the State under the proposed State plan;

(5) assist the chief executive officer in making such periodic reports to the Secretary as the Secretary may by rule require;

(6) coordinate the provision of services under this subtitle with—

(A) other child care programs and services, and with educational programs, for which assistance is provided under any State, local, or other Federal law, including the State Dependent Care Development Grants Act (42 U.S.C. 9871 et seq.); and

(B) other appropriate services, including social, health, mental health, protective, and nutrition services, available to eligible children under other Federal, State, and local programs; and

(7) identify resource and referral programs for particular geographical areas in the State that meet the requirements of section 512.

SEC. 507. APPLICATION AND PLAN.

(a) Application.—To be eligible to receive assistance under this subtitle, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require by rule.

(b) Plan.—The application of a State submitted under subsection (a) shall include an assurance that the State will comply with the requirements of this subtitle and a State plan that is designed to be implemented during a 4-year period and that meets the requirements of subsection (c).

(c) Requirements of a Plan.—

(1) Lead agency.—The plan shall identify the lead agency designated in accordance with section 506(a).

(2) Advisory bodies.—The plan shall demonstrate that the State will establish in accordance with section 511 a State advisory committee on child care.

(3) Policies and procedures.—The plan shall set forth policies and procedures designed to ensure all of the following:

(A) That—

(i) all providers of child care services for which assistance is provided under this subtitle comply with all licensing and regulatory requirements (including registration requirements) applicable under State and local law; and

(ii) such requirements are imposed and enforced by the State uniformly on all child care providers that provide child care services under similar child care arrangements.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards or requirements on child care providers who provide services for which assistance is provided under this subtitle and who also receive State funds under any other law to provide child care services under a contract or other arrangement with the State.

(B) That procedures will be established to ensure that child care providers receiving assistance under this subtitle or under other publicly-assisted child care programs comply with the minimum child care standards established under section 517(e)(2) after the expiration of the 4-year period beginning on the date the Secretary establishes such standards, and comply with all applicable State and local licensing and regulatory requirements (including registration requirements).

(C) That the State will not—

(i) reduce the categories of child care providers licensed or regulated by the State on the date of enactment of this subtitle; or

(ii) reduce the level of standards applicable to child care services provided in the State and to the matters specified in sections 513(a) and 517(d), even if such standards exceed the minimum standards established under section 517(e)(2) by the Secretary unless the State, with the concurrence of the State advisory committee established under section 511, requests a waiver of this subparagraph and demonstrates, to the satisfaction of the Secretary, that the proposed reduction is necessary to increase access to and availability of eligible child care providers and will not jeopardize the health and safety of children.

(D) That funds received under this subtitle by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of child care services and related programs in the State, except that States may use existing expenditures in support of child care services to satisfy the State matching requirement under section 516(b) and may not use such expenditures to satisfy the matching requirements of any other Federal program.

(E) That for each fiscal year the State will use an amount not to exceed 8 percent of the amount of funds received under section 505 by the State for such fiscal year to administer the State plan.

(F) That the State will pay funds under this subtitle to eligible child care providers in a timely fashion to ensure the continuity of child care services to eligible children.

(G) That resource and referral agencies will be made available to families in all regions of the State.

(H) That each eligible child care provider who provides services for which assistance is provided under paragraph (4)—

(i) gives priority for provider services to children of families with very low income, taking into account family size;

(ii) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards except as provided in clause (iv);

(iii) if such eligible child care provider is regulated by a State educational agency that—

(I) administers any State law applicable to child care services;

(II) develops child care standards that meet or exceed the minimum standards established under section 517(e)(2) and the State licensing or regulatory requirements (including registration requirements); and

(III) enforces the standards described in subclause (II) that are developed by such agency, using policies and practices that meet or exceed the requirements specified in subparagraphs (A) through (K) of paragraph (11);

complies with the standards described in subclause (II) that are developed by such agency; and

(iv) complies with the State plan and the requirements of this subtitle.

(I) That child care services for which assistance is provided under paragraph (4) are available to children with a handicapping condition.

(J) That State regulations will be issued governing the provision of school-age child care services if the State does not already have such regulations.

(K) That child care providers in the State are encouraged to develop personnel policies that include compensated time for staff undergoing training required under this subtitle.

(L) Encourage the payment of adequate salaries and other compensation—

(i) to full and part-time staff of child care providers who provide child care services for which assistance is provided under paragraph (4);

(ii) to the extent practicable, to such staff in other major Federal and State child care programs; and

(iii) to other child care personnel, at the option of the State.

(M) That child care services for which assistance is provided under paragraph (4) are available for an adequate number of hours and days to serve the needs of parents of eligible children, including parents who work nontraditional hours.

(4) Child care services.—The plan shall provide that—

(A) subject to subparagraph (B), the State will use at least 70 percent of the amount allotted to the State in any fiscal year to provide child care services that meet the requirements of this subtitle to eligible children in the State on a sliding fee scale basis and using funding methods provided for in section 508(a)(1), with priority being given for services to children of families with very low family incomes, taking into consideration the size of the family; and

(B) the State will use at least 10 percent of the funds reserved for the purposes specified in subparagraph (A) in any fiscal year to provide for the extension of part-day programs as described in section 508(b).

(5) Activities to improve the quality of child care.—The plan shall provide that the State will use not more than 10 percent of the amount allotted to it in any fiscal year to do each of the following:

(A) Provide financial assistance, pursuant to procedures established under the State Dependent Care Development Grants Act (42 U.S.C. 9801 note), to private nonprofit organizations or public organizations (including units of general purpose local government) that meet the requirements of section 512 for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

(B) Improve the monitoring of compliance with, and enforcement of, the licensing and regulatory requirements (including registration requirements) of the State.

(C) Provide training, technical assistance, and scholarship assistance in accordance with the requirements of subsections (b), (c), and (d) of section 513.

(D) Ensure that adequate salaries and other compensation are paid to full- and part-time staff who provide child care services for which assistance is provided under paragraph (4).

(6) Activities to increase the availability of child care.—The plan shall provide that the State will use not more than 12 percent of the amount allotted to it in any fiscal year for any of the following activities:

(A) Making grants or low interest loans to family child care providers and nonprofit child care providers to help such providers pay the cost of—

(i) establishing child care programs; and

(ii) making renovations and improvements in existing facilities to be used to carry out such programs.

(B) Making grants or low-interest loans to child care providers to assist such providers in meeting Federal, State, and local child care standards, giving priority to providers receiving assistance under this subtitle or under other publicly assisted child care programs and which serve children of families that have very low incomes.

(C) Providing assistance for the establishment and operation of after school child care programs.

(D) Making grants or loans to fund the start-up costs of employer sponsored child care programs.

(E) Providing assistance for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled.

(F) Providing assistance for the establishment and operation of child care programs for homeless children.

(G) Providing assistance to link child care programs with programs designed to assist the elderly.

(H)(i) Establishing and administering a revolving loan fund from which any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the Internal Revenue Code of 1986) may obtain a loan in order to become a licensed family child care provider, pursuant to State and local law, and to comply with the minimum standards applicable to such providers as established under section 517(e)(2).

(ii) To permit the use of funds provided under this subtitle for the activity described in clause (i), the State shall set forth procedures and guidelines to carry out the purposes of such clause, including procedures—

(I) that provide assurances that only applicants who obtain a license for the operation of a child care facility in accordance with the provisions of State and local law and who will meet the minimum standards applicable to family child care services established under section 517(e)(2), benefit from loans made available pursuant to the provisions of clause (i);

(II) to assure that the revolving fund will be administered by the State and will provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, that is not in excess of $1,500;

(III) to assure that funds used to carry out the purpose of clause (i) are transferred to such fund to provide capital for making loans;

(IV) to assure that interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such funds are deposited into such fund;

(V) to assure that all loans, expenses, and payments pursuant to the operation of the revolving loan fund are paid from such fund;

(VI) to assure that loans made from such fund are made to qualified applicants to enable such applicants to make capital improvements so that such applicant may obtain a State or local family child care provider license and so that such applicant may meet the minimum standards applicable to such providers established under section 517(e)(2); and

(VII) that specify how such revolving loan fund will continue to be financed in subsequent years, such as through contributions by the State or by some other entity.

(I) Providing assistance for any other activity deemed by the State to be in accordance with the purposes of this paragraph.

(7) Distribution of funds.—The plan shall provide that funds will be distributed—

(A) to a variety of types of child care providers, including center-based child care providers, group home child care providers, and family child care providers; and

(B) equitably among child care providers to provide child care services in rural and urban areas.

(8) Reimbursements.—The plan shall provide that for child care services for which assistance is provided under this subtitle, an eligible child care provider shall have a right to reimbursement at the same rate charged by that provider for comparable services to children of comparable ages and special needs whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(9) Priority.—The plan shall provide that priority will be given, in distributing funds in the State, to child care providers that—

(A) in providing child care services assisted by such funds, will give priority to eligible children of families with very low income;

(B) to the maximum extent feasible, provide child care services to a reasonable mix of children, including children from different socioeconomic backgrounds and children with a handicapping condition;

(C) provide opportunities for parent involvement in all aspects of providing such services; and

(D) to the maximum extent feasible, offer family support services.

(10) Sliding fee scale.—The plan shall provide for the establishment of a sliding fee scale that requires cost sharing based on the services provided to and the income of the families (adjusted for family size) of eligible children who receive services for which assistance is provided under this subtitle.

(11) Parental involvement.—The plan shall establish procedures for parental involvement in State and local planning, monitoring, and evaluation of child care programs and services in the State.

(12) Enforcement of licensing and other regulatory requirements (including registration requirements).—The plan shall provide that the State, not later than 4 years after the date of enactment of this subtitle, shall have in effect enforcement policies and practices that will be applicable to all licensed or regulated child care providers (including child care providers required to register) in the State, including policies and practices that—

(A) require personnel who perform inspection functions with respect to licensed or regulated child care services to have or receive training in health and safety, child abuse prevention and detection, program management, and relevant law enforcement;

(B) to the maximum extent feasible, have personnel requirements to ensure that individuals who are hired as licensing inspectors are qualified to inspect and have inspection responsibility exclusively for children's services;

(C) require—

(i) personnel who perform inspection functions with respect to licensed or regulated child care services to make not less than 1 unannounced inspection of each center-based child care provider and each group home child care provider in the State annually; and

(ii) personnel who perform inspection functions with respect to licensed or regulated child care services to make unannounced inspections annually of not less than 20 percent of licensed and regulated family child care providers in the State;

(D) require licensed or regulated child care providers (including registered child care providers) in the State—

(i) to have written policies and program goals and to make a copy of such policies and goals available to parents; and

(ii) to provide parents with unlimited access to their children and to providers caring for their children, during normal hours of operation of such providers and whenever children of such parents are in the care of such providers;

(E) implement a procedure to address complaints that will provide a reasonable opportunity for a parent, or child care provider, that is adversely affected or aggrieved by a decision of the lead agency or any program assisted under this subtitle, to be heard by the State;

(F) prohibit the operator of a child care facility to take any action against an employee of such operator that would adversely affect the employment, or terms or conditions of employment, of such employee because such employee communicates a failure of such operator to comply with any applicable licensing or regulatory requirement;

(G) implement a consumer education program designed to inform parents and the general public about licensing requirements, complaint procedures, and policies and practices required by this paragraph;

(H) require a child care provider to post, on the premises where child care services are provided, the telephone number of the appropriate licensing or regulatory agency that parents may call regarding a failure of such provider to comply with any applicable licensing or regulatory requirement; and

(I) require the State to maintain a record of parental complaints and to make information regarding substantiated parental complaints available to the public on request.

(13) Data collection.—The plan shall provide for the establishment of procedures for data collection by the State designed to show—

(A) by race, sex, ethnic origin, handicapping condition, and family income, how the child care needs of families in the State are being fulfilled, including information on—

(i) the number of children being assisted with funds provided under this subtitle, and under other State and Federal child care and preschool programs;

(ii) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

(iii) the regional cost of child care; and

(iv) such other information as the Secretary considers necessary to establish how funds provided under this subtitle are being used;

(B) the extent to which the availability of child care has been increased; and

(C) how the purposes of this subtitle and the objectives of the State set forth in the State plan are being met, including efforts to improve the quality, availability, and accessibility of child care;

and shall provide that data collected by the State under this paragraph shall be submitted to the Secretary.

(d) Approval of Application.—The Secretary shall approve an application that satisfies the requirements of this section.

(e) Special Rule.—In carrying out the provisions of this section, the Secretary shall approve any application with respect to the activities described in the plan submitted under paragraph (5) of subsection (c), if the Secretary determines that the State is making reasonable progress in carrying out the activities which are described in subparagraphs (A) and (D) of paragraph (5).

SEC. 508. SPECIAL RULES FOR USE OF STATE ALLOTMENTS.

(a) Funding of Child Care Services.—

(1) In general.—The child care services referred to in section 507(c)(4) that are to be provided out of the allotment to a State, shall be provided—

(A) by contracts with or grants to eligible child care providers who agree to provide such services directly to eligible children;

(B) by grants to units of general purpose local government that agree to enter into contracts with eligible child care providers who agree to provide such services directly to eligible children; or

(C) by distributing child care certificates to parents of eligible children under such terms as the Secretary may prescribe to enable the recipients of such certificates to purchase child care services from eligible child care providers.

(2) Limitation on certificates.—Child care certificates authorized by paragraph (1)(C) may be issued by a State only if a resource and referral program carried out by an organization that meets the requirements of section 512 is available to help parents locate child care services made available by eligible child care providers.

(3) No entitlement to contract or grant.—Nothing in this subtitle shall be construed to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit, or to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subtitle.

(b) Part-day Programs.—

(1) In general.—At least 10 percent of the funds available for activities under section 507(c)(4)(A) shall be used by the State to enable child care providers to extend the hours of operation of the part-day programs described in paragraph (2) to provide full-working-day child care services throughout the year, in order to meet the needs of parents of eligible children.

(2) Eligible programs.—As used in paragraph (1), the term "part-day programs" means—

(A) programs of schools and nonprofit child care providers (including community-based organizations) receiving State or local funds designated for preschool;

(B) programs established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) preschool programs for which assistance is provided under chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 et seq.); and

(D) preschool programs for children with a handicapping condition.

(c) Facilities.—

(1) New facilities.—No financial assistance provided under this subtitle shall be expended for the construction of a new facility.

(2) Existing facilities.—No financial assistance provided under this subtitle shall be expended to renovate or repair any facility unless—

(A) the child care provider that receives such financial assistance agrees—

(i) in the case of a grant, to repay to the Secretary or the State, as the case may be, the amount that bears the same ratio to the amount of such grant as the value of the renovation or repair, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle, bears to the original value of the renovation or repair; and

(ii) in the case of a loan, to repay immediately to the Secretary or the State, as the case may be, the principal amount of such loan outstanding and any interest accrued, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle;

if such provider does not provide child care services in such facility in accordance with this subtitle throughout the useful life of the renovation or repair; and

(B) if such provider is a sectarian agency or organization, the renovation or repair is necessary to bring such facility into compliance with health and safety requirements imposed by this subtitle.

SEC. 509. PLANNING GRANTS.

(a) In General.—A State desiring to participate in the programs authorized by this subtitle that cannot fully satisfy the requirements of the State plan under section 507(b) without financial assistance may, in the first year that the State participates in the programs, apply to the Secretary for a planning grant.

(b) Authorization.—The Secretary is authorized to make a planning grant to a State described in subsection (a) if the Secretary determines that—

(1) the grant would enable the State to fully satisfy the requirements of a State plan under section 507(b); and

(2) the State will apply, for the remainder of the allotment that the State is entitled to receive for such fiscal year.

(c) Amount of Grant.—A grant made to a State under this section shall not exceed 1 percent of the total allotment that the State would qualify to receive in the fiscal year involved if the State fully satisfied the requirements of section 507.

(d) Limitation on Administrative Costs.—A grant made under this section shall be considered to be expended for administrative costs by the State for purposes of determining the compliance by the State with the limitation on administrative costs imposed by section 507(c)(3)(E).

SEC. 510. CONTINUING ELIGIBILITY OF STATES.

A State shall be ineligible for assistance under this subtitle after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2) unless the State demonstrates to the satisfaction of the Secretary that—

(1) all child care providers required to be licensed and regulated in the State—

(A) are so licensed and regulated; and

(B) are subject to the enforcement provisions referred to in the State plan; and

(2) all such providers who are receiving assistance under this subtitle or under other publicly-assisted child care programs—

(A) satisfy the requirements of subparagraphs (A) and (B) of paragraph (1); and

(B) except as provided in section 517(f), satisfy the minimum child care standards established by the Secretary under section 517(e)(2) of this subtitle.

SEC. 511. STATE ADVISORY COMMITTEE ON CHILD CARE.

(a) Establishment.—The chief executive officer of a State participating in the program authorized by this subtitle shall—

(1) establish a State advisory committee on child care (hereinafter in this section referred to as the "committee") to assist the lead agency in carrying out the responsibilities of the lead agency under this subtitle; and

(2) appoint the members of the committee.

(b) Composition.—The State committee shall be composed of not fewer than 21 and not more than 30 members who shall include—

(1) at least 1 representative of the lead agency designated under section 506(a);

(2) 1 representative of each of—

(A) the State departments of—

(i) human resources or social services;

(ii) education;

(iii) economic development; and

(iv) health; and

(B) other State agencies having responsibility for the regulation, funding, or provision of child care services in the State;

(3) at least 1 representative of providers of different types of child care services, including caregivers and directors;

(4) at least 1 representative of early childhood development experts;

(5) at least 1 representative of school districts and teachers involved in the provision of child care services and preschool programs;

(6) at least 1 representative of resource and referral programs;

(7) 1 pediatrician;

(8) 1 representative of a citizen group concerned with child care;

(9) at least 1 representative of an organization representing child care employees;

(10) at least 1 representative of the Head Start agencies in the State;

(11) parents of children receiving, or in need of, child care services, including at least 2 parents whose children are receiving or are in need of subsidized child care services;

(12) 1 representative of specialists concerned with children who have a handicapping condition;

(13) 1 representative of individuals engaged in business;

(14) 1 representative of fire marshals and building inspectors;

(15) 1 representative of child protective services; and

(16) 1 representative of units of general purpose local government.

(c) Functions.—The committee shall—

(1) advise the lead agency on child care policies;

(2) provide the lead agency with information necessary to coordinate the provision of child care services in the State;

(3) otherwise assist the lead agency in carrying out the functions assigned to the lead agency under section 506(c);

(4) review and evaluate child services for which assistance is provided under this subtitle or under State law, in meeting the objectives of the State plan and the purposes of this subtitle;

(5) make recommendations on the development of State child care standards and policies;

(6) participate in the regional public hearings required under section 506(c)(5); and

(7) perform other functions to improve the quantity and quality of child care services in the State.

(d) Meetings and Hearings.—

(1) In general.—Not later than 30 days after the beginning of each fiscal year, the committee shall meet and establish the time, place, and manner of future meetings of the committee.

(2) Minimum number of hearings.—The committee shall have at least 2 public hearings each year at which the public shall be given an opportunity to express views concerning the administration and operation of the State plan.

(e) Use of Existing Committees.—To the extent that a State has established a broadly representative State advisory group, prior to the date of enactment of this subtitle, that is comparable to the advisory committee described in this section and focused exclusively on child care and early childhood development programs, such State shall be considered to be in compliance with subsections (a) through (c).

(f) Subcommittee on Licensing.—

(1) Composition.—The committee shall have a subcommittee on licensing (hereinafter in this section referred to as the "subcommittee") that shall be composed of the members appointed under paragraphs (2)(A)(iv), (3), (6), (7), (11), (14), and (15) of subsection (b).

(2) Functions.—The subcommittee shall review the law applicable to, and the licensing requirements and the policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 4-year period ending on the date of the establishment of the committee under subsection (a).

(g) Report.—

(1) In general.—Not later than 1 year after establishment of the committee under subsection (a), the committee shall prepare and submit to the chief executive officer of the State involved a report.

(2) Contents of report.—A report prepared under paragraph (1) shall contain—

(A) an analysis of information on child care services provided by center-based child care providers, group home child care providers, and family child care providers;

(B) a detailed statement of the findings and recommendations that result from the subcommittee review under subsection (f)(2), including a description of the current status of child care licensing, regulating, monitoring, and enforcement in the State;

(C) a detailed statement identifying and describing the deficiencies in the existing licensing, regulating, and monitoring programs of the State involved, including an assessment of the adequacy of staff to carry out such programs effectively, and recommendations to correct such deficiencies or to improve such programs; and

(D) comments on the minimum child care standards established by the Secretary under section 517(e)(2).

(3) Receipt of report by the chief executive officer of the State.—Not later than 60 days after receiving the report from the committee, the chief executive officer of the State shall transmit such report to the Secretary with—

(A) the comments of the chief executive officer of the State; and

(B) a plan for correcting deficiencies in, or improving the licensing, regulating, and monitoring, of the child care services and programs referred to in subsection (f)(2).

(h) Services and Personnel.—

(1) Authority.—The lead agency is authorized to provide the services of such personnel, and to contract for such other services as may be necessary, to enable the committee and the subcommittee to carry out their functions under this subtitle.

(2) Reimbursement.—Members of the committee shall be reimbursed, in accordance with standards established by the Secretary, for necessary expenses incurred by such members in carrying out the functions of the committee and the subcommittee.

(3) Sufficiency of funds.—The Secretary shall ensure that sufficient funds are made available, from funds available for the administration of the State plan, to the committee and the subcommittee to carry out the requirements of this section.

SEC. 512. RESOURCE AND REFERRAL PROGRAMS.

(a) Eligibility for Assistance.—Each State receiving funds under this subtitle shall, pursuant to section 507(c)(5)(A), make grants to or enter into contracts with private nonprofit organizations or public organizations (including units of general purpose local government), as resource and referral agencies to ensure that resource and referral services are available to families in all geographical areas in the State.

(b) Funding.—Organizations that receive assistance under subsection (a) shall carry out resource and referral programs—

(1) to identify all types of existing child care services, including services provided by individual family child care providers and by child care providers who provide child care services to children with a handicapping condition;

(2) to provide to interested parents information and referral regarding such services, including the availability of public funds to obtain such services;

(3) to provide or arrange for the provision of information, training, and technical assistance to existing and potential child care providers and to others (including businesses) concerned with the availability of child care services; and

(4) to provide information on the demand for and supply of child care services located in a community.

(c) Requirements.—To be eligible for assistance as a resource and referral agency under subsection (a), an organization shall—

(1) have or acquire a database of information on child care services in the State or in a particular geographical area that the organization continually updates, including child care services provided in centers, group home child care settings, nursery schools, and family child care settings;

(2) have the capability to provide resource and referral services in a particular geographical area;

(3) be able to provide parents with information to assist them in identifying quality child care services;

(4) to the maximum extent practicable, notify all eligible child care providers in such area of the functions it performs and solicit such providers to request to be listed to receive referrals made by such organization; and

(5) otherwise comply with regulations promulgated by the State in accordance with subsection (d).

(d) Limitation on Information.—In carrying out this section, an organization receiving assistance under subsection (a) as a resource and referral agency shall not provide information concerning any child care program or services which are not in compliance with the laws of the State and localities in which such services are provided.

SEC. 513. TRAINING AND TECHNICAL ASSISTANCE.

(a) Minimum Requirement.—A State receiving funds under this subtitle shall require, not later than 2 years after the date of the enactment of this subtitle, that all employed or self-employed individuals who provide licensed or regulated child care services (including registered child care services) in a State complete at least 40 hours of training over a 2-year period in areas appropriate to the provision of child care services, including training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the needs of special populations of children.

(b) Grants and Contracts for Training and Technical Assistance.—

(1) Grants and contracts.—The State shall make grants to, and enter into contracts with State agencies, units of general purpose local government, institutions of higher education, and nonprofit organizations (including resource and referral organizations, child care food program sponsors, and family child care associations, as appropriate) to develop and carry out child care training and technical assistance programs under which preservice and continuing inservice training is provided to eligible child care providers, including family child care providers, and the staff of such providers including teachers, administrative personnel, and staff of resource and referral programs involved in providing child care services in the State.

(2) Eligibility requirements for grants and contracts relating to training for family child care providers.—To be eligible to receive a grant or enter into a contract for a training and technical assistance program for family child care providers under paragraph (1), a nonprofit organization shall—

(A) recruit and train family child care providers, including providers with the capacity to provide night-time and emergency child care services;

(B) operate resource centers to make developmentally appropriate curriculum materials available to family child care providers;

(C) provide grants to family child care providers for the purchase of moderate cost equipment to be used to provide child care services; and

(D) operate a system of substitute caregivers.

(3) Eligibility requirements for grants and contracts relating to technical assistance.—To be eligible to receive a grant, or enter into a contract under subsection (b) to provide technical assistance, an agency, organization, or institution shall agree to furnish technical assistance to child care providers to assist such providers—

(A) in understanding and complying with local regulations and relevant tax and other policies;

(B) in meeting State licensing, regulatory, and other requirements (including registration) pertaining to family child care providers.

(c) Scholarship Assistance.—The State shall provide scholarship assistance to—

(1) individuals who seek a nationally recognized child development associate credential for center-based or family child care and whose income does not exceed the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) by more than 50 percent, in amounts sufficient to cover the costs involved in securing such credential; and

(2) caregivers who seek to obtain the training referred to in subsection (a) and whose income does not exceed such poverty line.

(d) Clearinghouse.—The State shall establish in the lead agency a clearinghouse to collect and disseminate training materials to resource and referral agencies and child care providers throughout the State.

SEC. 514. FEDERAL ADMINISTRATION OF CHILD CARE.

(a) Administrator of Child Care.—There is hereby established in the Department of Health and Human Services the position of Administrator of Child Care (hereinafter in this section referred to as the "Administrator"). The Secretary shall appoint an individual to serve as the Administrator at the pleasure of the Secretary.

(b) Duties.—The Administrator shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and coordinate such activities with similar activities of other Federal entities;

(2) annually collect and publish State child care standards, including periodic modifications to such standards;

(3) evaluate activities carried out with funds provided under this subtitle;

(4) act as a clearinghouse to collect and disseminate materials that relate to—

(A) the matters required by section 513(b)(1) to be addressed by training required by section 513 to be provided; and

(B) studies that relate to the salaries paid to individuals employed to provide child care services; and

(5) provide technical assistance to assist States to carry out this subtitle.

SEC. 515. FEDERAL ENFORCEMENT.

(a) Review of Compliance With State Plan.—The Secretary shall review and monitor State compliance with this subtitle and the plan approved under section 507(d) for the State.

(b) Noncompliance.—

(1) In general.—If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that—

(A) there has been a failure by the State to comply substantially with any provision or any requirements set forth in the plan approved under section 507(d) for the State; or

(B) in the operation of any program or project for which assistance is provided under this subtitle there is a failure by the State to comply substantially with any provision of this subtitle;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subtitle (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(2) Additional sanctions.—In the case of a finding of noncompliance made pursuant to this paragraph (1), the Secretary may, in addition to imposing the sanctions described in such paragraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subtitle, and disqualification from the receipt of financial assistance under this subtitle.

(3) Notice.—The notice required under paragraph (1) shall include a specific identification of any additional sanction being imposed under paragraph (2).

(c) Issuance of Rules.—The Secretary shall establish by rule procedures for—

(1) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subtitle; and

(2) imposing sanctions under this section.

SEC. 516. PAYMENTS.

(a) In General.—

(1) Amount of payment.—Each State that—

(A) has an application approved by the Secretary under section 507(d); and

(B) demonstrates to the satisfaction of the Secretary that it will provide from non-Federal sources the State share of the aggregate amount to be expended by the State under the State plan for the fiscal year for which it requests a grant;

shall receive a payment under this section for such fiscal year in an amount (not to exceed its allotment under section 505 for such fiscal year) equal to the Federal share of the aggregate amount to be expended by the State under the State plan for such fiscal year.

(2) Federal share.—

(A) In general.—Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 80 percent.

(B) Exception.—If a State makes the demonstration specified in section 510 throughout a fiscal year for which it requests a grant, then the Federal share shall be 85 percent.

(3) State share.—The State share equals 100 percent minus the Federal share.

(4) Limitation.—A State may not require any private provider of child care services that receives or seeks funds made available under this subtitle to contribute in cash or in kind to the State contribution required by this subsection.

(b) Method of Payment.—

(1) In general.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 507(c)(3)(F).

(c) Spending of Funds by State.—Payments to a State from the allotment under section 505 for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

SEC. 517. NATIONAL ADVISORY COMMITTEE ON CHILD CARE STANDARDS.

(a) Establishment.—

(1) In general.—In order to improve the quality of child care services, the Secretary shall establish, not later than 60 days after the date of the enactment of this subtitle, a National Advisory Committee on Child Care Standards (hereinafter in this section referred to as the "Committee"), the members of which shall be appointed from among representatives of—

(A) the chief executive officers of the several States;

(B) State legislatures;

(C) units of general purpose local governments;

(D) businesses;

(E) individuals responsible for regulating the insurance industry within the States;

(F) religious institutions

(G) different types of child care providers;

(H) persons who carry out resource and referral programs;

(I) child care, early childhood development, or early childhood education specialists;

(J) individuals who have expertise in pediatric health care, handicapping conditions, and related fields;

(K) organizations representing child care employees;

(L) individuals who have experience in the regulation of child care services; and

(M) parents who have been actively involved in community child care programs.

(2) APPOINTMENT OF MEMBERS.—The Committee shall be composed of 20 members of which—

(A) 4 members shall be appointed by the President;

(B) 4 members shall be appointed by the majority leader of the Senate;

(C) 4 members shall be appointed by the minority leader of the Senate;

(D) 4 members shall be appointed by the Speaker of the House of Representatives; and

(E) 4 members shall be appointed by the minority leader of the House of Representatives.

(3) CHAIRMAN.—The President shall appoint a chairman from among the members of the Committee.

(4) VACANCIES.—A vacancy occurring on the Committee shall be filled in the same manner as that in which the original appointment was made.

(b) PERSONNEL, REIMBURSEMENT, AND OVERSIGHT.—

(1) PERSONNEL.—The Secretary shall make available to the Committee office facilities, personnel who are familiar with child development and with developing and implementing regulatory requirements, technical assistance, and funds as are necessary to enable the Committee to carry out effectively its functions.

(2) REIMBURSEMENT.—

(A) COMPENSATION.—Members of the Committee who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Committee or otherwise engaged in the business of the Committee (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(B) EXPENSES.—While away from their homes or regular places of business on the business of the Committee, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(3) OVERSIGHT.—The Secretary shall ensure that the Committee is established and operated in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

(c) FUNCTIONS.—The Committee shall—

(1) review Federal policies with respect to child care services and such other data as the Committee may deem appropriate;

(2) not later than 180 days after the date on which a majority of the members of the Committee are first appointed, submit to the Secretary proposed minimum standards described in subsection (d) for child care services, taking into account the different needs of infants, toddlers, preschool and school-age children); and

(3) develop and make available to lead agencies, for distribution to resource and referral agencies in the State, model requirements for resource and referral agencies.

(d) MINIMUM CHILD CARE STANDARDS.—The proposed child care standards submitted pursuant to subsection (c)(2) shall be minimum standards and shall consist of only the following:

(1) CENTER-BASED CHILD CARE SERVICES.—Such standards submitted with respect to child care services provided by center-based child care providers shall be limited to—

(A) group size limits in terms of the number of caregivers and the number and ages of children;

(B) the maximum appropriate child-staff ratios;

(C) qualifications and background of child care personnel;

(D) health and safety requirements for children and caregivers; and

(E) parental involvement in licensed and regulated child care services.

The standards described in subparagraphs (A) and (B) shall reflect the median standards for all States (using for States which apply separate standards to publicly-assisted programs the most comprehensive or stringent of such standards) as of the date of enactment of this subtitle.

(2) FAMILY CHILD CARE SERVICES.—Such standards submitted with respect to child care services provided by family child care providers shall be limited to—

(A) the maximum number of children for which child care services may be provided and the total number of infants for which child care services may be provided;

(B) the minimum age for caregivers; and

(C) health and safety requirements for children and caregivers.

(3) GROUP HOME CHILD CARE SERVICES.—Such standards submitted with respect to child care services provided by group home child care providers shall be limited to the matters specified in paragraphs (1)(B) and (2).

(4) LIMITATION.—The Committee shall not submit any standard under subsection (c)(2) that is less or more rigorous than the least or most rigorous standard that exists in any of the States at the time of the submission of such recommendation.

(e) CONSIDERATION AND ESTABLISHMENT OF STANDARDS.—

(1) NOTICE OF PROPOSED RULEMAKING.—Not later than 90 days after receiving the recommendations of the committee, the Secretary shall—

(A) publish in the Federal Register—

(i) a notice of proposed rulemaking concerning the minimum standards proposed under subsection (d) to the Secretary; and

(ii) such proposed minimum standards for public comment for a period of at least 60 days; and

(B) distribute such proposed minimum standards to each lead agency and each State subcommittee on licensing for comment.

(2) ESTABLISHMENT OF MINIMUM CHILD CARE STANDARDS.—

(A) ISSUANCE OF RULES.—The Secretary shall, in consultation with the committee—

(i) take into consideration any comments received by the Secretary with respect to the standards proposed under subsection (d); and

(ii) not later than 180 days after publication of such standards, shall issue rules establishing minimum child care standards for purposes of this subtitle. Such standards shall include the nutrition requirements issued, and revised from time to time, under section 17(g)(1) of the National School Lunch Act (42 U.S.C. 1766(g)(1)).

(B) AMENDING STANDARDS.—The Secretary may amend any standard first established under subparagraph (A), except that such standard may not be modified, by amendment or otherwise, to make such standard less comprehensive or less stringent than it is when first established.

(C) EXTENDED PERIOD FOR COMMENT.—If the Committee recommends a standard under subsection (c)(2) that no State has a requirement concerning, as of the time that such standard is recommended, the Secretary shall provide an additional 30 days during which States may submit comments concerning such standard.

(3) ADDITIONAL COMMENTS.—The National Committee may submit to the Secretary and to the Congress such additional comments on the minimum child care standards established under paragraph (2) as the National Committee considers appropriate.

(f) VARIANCES.—

(1) TIME FOR COMPLIANCE WITH STANDARDS.—Not later than the end of the 4-year period referred to in section 510, States shall comply with the standards established under this section.

(2) EXCEPTION.—At the expiration of the 4-year period referred to in paragraph (1) the chief executive officer, in consultation with the State advisory committee, may submit a request to the Secretary for a 1 year variance from the requirements of one or more particular standards for one or more particular geographic areas of the State.

(3) REQUIREMENTS.—A request for a variance under this subsection shall include—

(A) a statement by the chief executive officer of the State of the steps taken to implement the relevant standards in the relevant geographic areas in the State within the 4-year period;

(B) the specific reasons for the submission of the variance request; and

(C) a detailed plan that outlines the additional procedures and resources to be used to come into compliance with the standards at the end of the variance period.

(4) PERIOD OF VARIANCE.—A variance granted by the Secretary shall be for a 1-year period and may be renewed at the discretion of the Secretary for an additional 1-year period if requested by the State.

(g) TERMINATION OF COMMITTEE.—The National Committee shall cease to exist 90 days after the date the Secretary establishes minimum child care standards under subsection (e)(3).

SEC. 518. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

(a) SECTARIAN PURPOSES AND ACTIVITIES.—No financial assistance provided under this subtitle shall be expended for any sectarian purpose or activity, including sectarian worship and instruction.

(b) TUITION.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subtitle shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

SEC. 519. NONDISCRIMINATION.

(a) FEDERAL FINANCIAL ASSISTANCE.—Any financial assistance provided under this subtitle, including a loan, grant, or child care certificate, shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the regulations issued thereunder.

(b) RELIGIOUS DISCRIMINATION.—A child care provider may not discriminate against any child on the basis of religion in providing child care services in return for a fee paid, reimbursement received, or certificate redeemed, in whole or in part with financial assistance provided under this subtitle.

SEC. 520. PRESERVATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.

Nothing in this subtitle shall be construed or applied in any manner to infringe upon or usurp the moral and legal rights and responsibilities of parents or legal guardians.

SEC. 521. CHILD CARE LIABILITY RISK RETENTION GROUP.

(a) PURPOSE.—It is the purpose of this section—

(1) to increase the availability of child care by alleviating the serious difficulty faced by child care providers in obtaining affordable liability insurance; and

(2) to provide States with a sufficient capital base for liability insurance purposes that may be increased or maintained through mechanisms developed by the State.

(b) FORMATION OF CHILD CARE LIABILITY RISK RETENTION GROUP.—

(1) ASSISTANCE IN FORMATION AND OPERATION OF GROUP.—Any State may assist in the establishment and operation of a child care liability risk retention group in the manner provided under this section.

(2) CHILD CARE LIABILITY RISK RETENTION GROUP DEFINED.—As used in this section, the term "child care liability risk retention group" means any corporation (or other limited liability association)—

(A) whose members are licensed child care providers pursuant to State and local law and who, after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 17(e)(2), complies with such minimum child care standards that are applicable to the child care services provided by such members; and

(B) which otherwise satisfies the criteria for a risk retention group under section 2(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(4)).

(c) STATE APPLICATIONS.—

(1) APPLICATIONS.—To qualify for assistance under this section, a State shall submit an application to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require, including information that meets the requirements of subsection (b) of this section.

(2) CONTENT OF STATE APPLICATION.—

(A) LEAD AGENCY.—The application shall identify the lead agency that has been designated and that is to be responsible for the administration of funds provided under this section.

(B) PARTICIPANTS IN RISK RETENTION GROUP.—The application shall assure that all participants in the child care liability risk retention group are licensed child care providers pursuant to State and local law who, after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), comply with such standards that are applicable to the child care services they provide. In addition, the applicant shall provide for maximum membership of family-based child care providers in the group.

(C) USE OF FUNDS.—The application shall provide that the State shall use at least the amount allotted to the State in any fiscal year to establish or operate a child care liability risk retention group.

(D) CONTINUATION OF RISK RETENTION GROUP.—The application shall contain provisions that specify how the child care liability risk retention group will continue to be financed after fiscal year 1992, including financing through contributions by the State or by members of such group.

(d) FEDERAL ENFORCEMENT.—

(1) REVIEW OF APPLICATIONS.—The Secretary shall review and approve State applications submitted in accordance with this section and shall monitor State compliance with the provisions of this section.

(2) FINDING OF NONCOMPLIANCE.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds—

(A) that there has been a failure to comply substantially with any provision or any requirements set forth in the State application of that State; or

(B) that there is a failure to comply substantially with any applicable provision of this section,

the Secretary shall notify such State of the findings and of the fact that no further payments may be made to such State under this section until the Secretary is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

(e) ALLOTMENT TO STATES.—

(1) IN GENERAL.—The Secretary shall make an allotment to each State from the sums appropriated to carry out the provisions of this section using the same allotment formula established under section 505.

(2) STATE ADMINISTRATIVE COSTS.—Of the amount allotted to a State pursuant to paragraph (1), an amount not to exceed 10 percent shall be used by such State to provide for the administrative costs of carrying out such program.

(f) PAYMENTS.—

(1) ENTITLEMENT.—Each State for which an application has been approved by the Secretary under this section shall be entitled to payments under this subsection for each fiscal year in an amount not to exceed its allotment under subsection (e) to be expended by the State in accordance with the terms of the application for the fiscal year for which the grant is to be made.

(2) METHOD OF PAYMENTS.—The Secretary may make payments to a State in installments, and in advance or, by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(3) STATE SPENDING OF PAYMENTS.—Payments to a State from the allotment under subsection (e) for any fiscal year must be expended by the State in that fiscal year or in the succeeding fiscal year.

Subtitle B—Internal Revenue Code Provisions

SEC. 530. CREDIT FOR EMPLOYERS PROVIDING QUALIFIED CHILD CARE FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. QUALIFIED EMPLOYER-PROVIDED CHILD CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the qualified child care facility credit determined under this section for any taxable year is an amount equal to 25 percent of the qualified child care expenses for such taxable year.

"(b) LIMITATION.—The amount of the credit determined under subsection (a) for any taxable year shall not exceed $100,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CHILD CARE EXPENSES.—The term 'qualified child care expenses' means any amount paid or incurred by an employer during the taxable year to acquire, construct, or otherwise establish a qualified child care facility.

"(2) QUALIFIED CHILD CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

"(i) operated by an employer for the care of enrollees, at least 30 percent of whom are dependents of employees of such employer,

"(ii) located on or near the business premises of such employer, and

"(iii) which is accredited or licensed to operate as a child care facility under applicable State and local laws and regulations.

"(B) MULTIPLE EMPLOYERS.—In the case of a facility operated by more than 1 employer, such facility shall be treated as a qualified child care facility of each employer with respect to which the requirements of subparagraph (A) are met separately.

"(d) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) SPECIAL RULES.—For purposes of this section—

"(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of employers to which subsection (c)(2)(B) applies, the amount of credit allocable to each such employer shall be its proportionate share of the qualified child care expenses giving rise to the credit.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(4) RECEIPT OF CHILD CARE PROJECT GRANT.—An employer is not eligible for a credit under this section for a taxable year if he received a child care project grant pursuant to section 1934 of the Public Health Service Act during such taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (4),

(B) by striking out the period at the end of paragraph (5), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(6) the qualified child care facility credit determined under section 43."

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 43. Qualified employer-provided child care facility credit."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 531. CERTAIN EARNINGS FROM THE PROVISION OF CHILD CARE SERVICES ENTITLED TO LOWER RATE OF SELF-EMPLOYMENT TAX AND EXCLUSION FROM ESTIMATED TAXES AND WITHHOLDING.

(a) Self-Employment Taxes.—Section 1402 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(k) Special Rules and Rate of Tax for Income From Family-Based and In-Home Child Care Services.—For purposes of this chapter—

"(1) In general.—For purposes of this chapter, any earned income (as defined in section 911(d)(2)) derived from the provision of qualified family-based or in-home child care services shall be treated as gross income derived by an individual from a trade or business carried on by such individual, and the rate of tax imposed under subsections (a) and (b) of section 1401 on the self-employment income of such individual attributable to providing those services shall be equal to one-half of the rate determined without regard to this paragraph.

"(2) Qualified family-based or in-home child care services.—For purposes of this subsection—

"(A) In general.—The term 'qualified family-based or in-home child care services' means child care services provided to a child at a family-based or in-home child care facility.

"(B) Family-based child care facility.—The term 'family-based child care facility' means a facility—

"(i) which is located in (or on the site of) the principal residence of the taxpayer (within the meaning of section 1034),

"(ii) which is owned and operated by a self-employed individual (within the meaning of section 401(c)(1)), and

"(iii) which is accredited or licensed as a child care facility under applicable State and local laws and regulations.

"(C) In-home child care facility.—The term "in-home child care facility' means the principal residence (within the meaning of section 1034) of the child to whom child care services are being provided.".

(b) Amendment to Social Security Act.—Section 209 of the Social Security Act is amended by striking "or" at the end of subsection (r), by striking the period at the end of subsection (s) and inserting ", or", and by adding after subsection (s) the following new subsection:

"(t) Any payment to an individual for qualified family-based or in-home child care services (within the meaning of section 1402(k)(2) of the Internal Revenue Code of 1986).".

(c) Wage Withholding Not Required.—Section 3401(a) of the Internal Revenue Code of 1986 (defining wages) is amended by striking out "or" at the end of paragraph (19), by striking out the period at the end of paragraph (20) and inserting in lieu thereof ", or", and by adding after paragraph (20) the following new paragraph:

"(21) for qualified family-based or in-home child care services (within the meaning of section 1402(k)(2)).".

(d) Exemption From Estimated Tax.—Section 6654(e) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(4) Underpayment attributable to income from day care services.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment attributable to earned income (within the meaning of section 911(d)(2)) from the providing of qualified family-based or in-home child care services (within the meaning of section 1401(k)(2))."

(e) Effective Dates.—

(1) The amendments made by subsections (a) and (c) shall apply to taxable years beginning after December 31, 1988.

(2) The amendments made by subsection (b) shall apply to remuneration paid after December 31, 1988.

SEC. 532. INCREASE IN EARNED INCOME TAX CREDIT.

(a) Increase in Amount of Credit.—Subsections (a) and (b) of section 32 of the 1986 Code (relating to earned income tax credit) are amended to read as follows:

"(a) Allowance of Credit.—

"(1) In general.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the earned income for the taxable year as does not exceed $7,143.

"(2) Limitation.—The amount of the credit allowable to a taxpayer under this subsection for any taxable year shall not exceed the excess (if any) of—

"(A) the credit percentage of $7,143, over

"(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $8,000.

"(b) Percentages.—For purposes of subsection (a)—

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
"No or 1 qualifying child	14	10
"2 qualifying children	21	15
"3 or more qualifying children	28	20."

(b) Qualifying Child.—Subsection (c) of section 32 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) Qualifying child.—The term 'qualifying child' means any child (within the meaning of section 151(c)(3)) of the eligible individual if—

"(A) such individual is entitled to a deduction under section 151 for such child or would be so entitled but for paragraph (2) or (4) of section 152(e),

"(B) such child has the same principal place of abode as such individual for more than one-half of the taxable year, and

"(C) the requirements of paragraph (1)(B) are met with respect to such child."

(c) Conforming Amendments.—

(1) Paragraph (2) of section 32(f) of such Code is amended by striking out "subsection (b)" each place it appears in subparagraphs (A) and (B) and inserting in lieu thereof "subsection (a)(2)".

(2) Paragraph (2) of section 31(i) of such Code is amended to read as follows:

"(2) Definitions, etc.—For purposes of paragraph (1)—

"(A) Applicable calendar year.—The term 'applicable calendar year' means 1989.

"(B) Dollar amounts.—The dollar amounts referred to in this subparagraph are—

"(i) the $7,143 amount contained in subsection (a), and

"(ii) the $8,000 amount contained in subsection (a)."

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

Amendment No. 3497

Strike out title V and insert in lieu thereof the following new title:

TITLE V—CHILD CARE PROVISIONS

Subtitle A—Federal Child Care Program

SEC. 501. SHORT TITLE.

This title may be cited as the "Act for Better Child Care Services of 1988".

SEC. 502. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the number of children living in homes where both parents work, or living in homes with a single parent who works, has increased dramatically over the last decade;

(2) the availability of quality child care is critical to the self-sufficiency and independence of millions of American families, including the growing number of mothers with young children who work out of economic necessity;

(3) high quality child care programs can strengthen our society by providing young children with the foundation on which to learn the basic skills necessary to be productive workers;

(4) the years from birth to age 6 are a critical period in the development of a young child;

(5) a significant number of parents do not have a real choice as they seek adequate child care for their young children because of limited incomes, insufficient State child care standards, and the inadequate supply of child care services in their community;

(6) high quality early childhood development programs provided during such period are cost effective because such programs can reduce the chances of juvenile delinquency and adolescent pregnancy and can improve the likelihood that children will finish high school and become employed;

(7) the number of quality child care arrangements falls far short of the number required for children in need of child care services;

(8) the rapid growth of participation in the labor force by mothers of children under the age of 1 has resulted in a critical shortage of quality child care arrangements for infants and toddlers;

(9) the lack of available child care services results in many preschool and school-age children being left without adequate supervision for significant parts of the day;

(10) many working parents who are unable to afford adequate child care services do not receive adequate financial assistance for such services from employers or public sources;

(11) because of the lack of affordable child care, a large number of parents are not able to work or to seek the training or education they need to become self sufficient;

(12) making adequate child care services available for parents who are employed, seeking employment, or seeking to develop employment skills promotes and strength-

ens the well-being of families and the national economy;

(13) the payment of the exceptionally low salaries to child care workers adversely affects the quality of child care services by making it difficult to retain qualified staff;

(14) several factors result in the shortage of quality child care options for children and parents, including—

(A) the inability of parents to pay for child care services;

(B) the lack of up-to-date information on child care services;

(C) the lack of training opportunities for staff in child care programs;

(D) the high rate of staff turnover in child care facilities; and

(E) the wide differences among the States in child care licensing and enforcement policies; and

(15) improved coordination of child care services will help to promote the most efficient use of child care resources.

(b) Purposes.—The purposes of this subtitle are—

(1) to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child care facility or arrangement;

(2) to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services;

(3) to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care services;

(4) to lessen the chances that children will be left to fend for themselves for significant parts of the day;

(5) to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services;

(6) to provide assistance to States to improve the quality of, and coordination among, child care programs;

(7) to increase the opportunities for attracting and retaining qualified staff in the field of child care to provide high quality child care services to children; and

(8) to strengthen the competitiveness of the United States by providing young children with a sound early childhood development experience.

SEC. 503. DEFINITIONS.

As used in this subtitle:

(1) Administrator.—The term "Administrator" means the Administrator of Child Care appointed under section 514(a).

(2) Caregiver.—The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

(3) Center-based child care provider.—The term "center-based child care provider" means a child care provider that provides child care services in a nonresidential facility.

(4) Child care certificate.—The term "child care certificate" means a certificate that is issued by the State to parents who may use such certificate only as payment for child care services for an eligible child and that provides to an eligible child care provider a right to reimbursement for such services at the same rate charged by that provider for comparable services to children whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(5) Community-based organization.—The term "community-based organization" has the meaning given such term by section 4(5) of the Job Training and Partnership Act (29 U.S.C. 1503(5)).

(6) Elementary school.—The term "elementary school" means a day or residential school that provides elementary education, as determined under State law.

(7) Eligible child.—The term "eligible child" means an individual—

(A) who is less than 16 years of age;

(B) whose family income does not exceed 100 percent of the State median income for a family of the same size; and

(C) who—

(i) resides with a parent or parents who are working, seeking employment, or enrolled in a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(8) Eligible child care provider.—The term "eligible child care provider" means a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(A) is licensed or regulated under State law;

(B) satisfies—

(i) the Federal requirements, except as provided in subparagraph (C); and

(ii) the State and local requirements; applicable to the child care services it provides; and

(C) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards that are applicable to the child care services it provides.

(9) Family child care provider.—The term "family child care provider" means 1 individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in the private residence of such individual.

(10) Family support services.—The term "family support services" means services that assist parents by providing support in parenting and by linking parents with community resources and with other parents.

(11) Full-working-day.—The term "full-working-day" means at least 10 hours per day.

(12) Group home child care provider.—The term "group home child care provider" means 2 or more individuals who jointly provide child care services for fewer than 24 hours per day and in a private residence.

(13) Handicapping condition.—The term "handicapping condition" means any condition set forth in section 602(a)(1) of the Education of the Handicapped Act (20 U.S.C. 1401(a)(1)) or section 672(1) of the Education of the Handicapped Act (20 U.S.C. 1471(a)).

(14) Indian tribe.—The term "Indian tribe" has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

(15) Institution of higher education.—The term "institution of higher education" has the meaning given such term in section 481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)), except that with respect to a tribally controlled community college such term has the meaning given it in section 2(a)(5) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(5)).

(16) Lead agency.—The term "lead agency" means the agency designated under section 506(a).

(17) Local educational agency.—The term "local educational agency" has the meaning given that term in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(a)(10)).

(18) Parent.—The term "parent" includes a legal guardian or other person standing in loco parentis.

(19) School-age child care services.—The term "school-age child care services" means child care services that are—

"(A) provided during such times of the school day when regular instructional services are not in session; and

"(B) not intended as an extension of or replacement for the regular academic program, but are intended to provide an environment which enhances the social, emotional, and recreational development of children of school age;

(20) Secondary school.—The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(21) Secretary.—The term "Secretary" means the Secretary of Health and Human Services unless the context specifies otherwise.

(22) School facilities.—The term "school facilities" means classrooms and related facilities used to provide education.

(23) Sliding fee scale.—The term "sliding fee scale" means a system of cost sharing between the State and a family based on income and size of the family with the very low income families having to pay no cost.

(24) State.—The term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.

(25) Unit of general purpose local government.—The term "unit of general purpose local government" means any city, county, town, township, parish, village, a combination of such general purpose political subdivisions including those in two or more States, or other general purpose political subdivisions of a State.

(26) Tribal organization.—The term "tribal organization" has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

(27) Tribally controlled community college.—The term "tribally controlled community college" has the meaning given it in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—To carry out this subtitle, there are authorized to be appropriated $2,500,000,000 for the fiscal year 1990 and such sums as may be necessary in each of the fiscal years 1991 through 1994.

SEC. 505. AMOUNTS RESERVED; ALLOTMENTS.

(a) Amounts Reserved.—

(1) Territories and Possessions.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under section 504(a) in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau, to be allot-

ted in accordance with their respective needs.

(2) INDIANS.—The Secretary shall reserve an amount, not less than 1.5 percent and not more than 3 percent of the amount appropriated under section 504(a) in each fiscal year, to carry out subsection (c) regarding Indian children.

(b) STATE ALLOTMENT.—

(1) GENERAL RULE.—From the remainder of the sums appropriated under section 504(a) for each fiscal year, the Secretary shall allot to each State (excluding jurisdictions referred to in subsection (a)(1)) an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage bears to the sum of the corresponding products for all the States.

(2) YOUNG CHILD FACTOR.—The term "young child factor" means the ratio of the number of children in the State who are less than 5 years of age to the number of children in all the States who are less than 5 years of age.

(3) SCHOOL LUNCH FACTOR.—The term "school lunch factor" means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of children in all the States who are receiving free or reduced price lunches under such program.

(4) ALLOTMENT PERCENTAGE.—

(A) IN GENERAL.—The allotment percentage for a State is determined by dividing—

(i) the per capita income of all individuals in the United States; by

(ii) the per capita income of all individuals in the State.

(B) LIMITATIONS.—If a sum determined under subparagraph (A)—

(i) exceeds 1.2, then the allotment percentage of that State shall be considered to be 1.2; and

(ii) is less that 0.8, then the allotment percentage of the State shall be considered to be 0.8.

(C) PER CAPITA INCOME.—For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) PAYMENTS FOR THE BENEFIT OF INDIAN CHILDREN.—

(1) TRIBAL ORGANIZATIONS.—From the funds reserved under subsection (a)(2), the Secretary may, upon the application of a Indian tribe or tribal organization enter into a contract with, or make a grant to such Indian tribe or tribal organization for a period of 3 years, subject to satisfactory performance, to plan and carry out programs and activities that are consistent with this subtitle. Such contract or grant shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 655-657), that are relevant to such programs and activities.

(2) INDIAN RESERVATIONS.—In the case of an Indian tribe in a State other than the States of Oklahoma, Alaska, and California, such programs and activities shall be carried out on the Indian reservation for the benefit of Indian children.

(3) STANDARDS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall establish, through the application process, standards applicable to child care services provided under such programs and activities. For purposes of establishing such standards, the Secretary shall take into consideration—

(i) the codes, regulations, and cultural factors of the Indian tribe involved, as expressed by such tribe or the tribal organization that represents such tribe; and

(ii) the State licensing and regulatory requirements applicable to child care services provided in the State in which such program and activities are carried out.

(B) APPLICATION.—

(i) RULE.—Except as provided in clause (ii), after the Secretary establishes minimum child care standards under section 517(e)(2), such minimum standards shall apply with respect to child care services provided under such programs and activities.

(ii) WAIVERS AND MODIFICATIONS.—The Secretary may waive or modify, for a period not to exceed 4 years beginning on the date such minimum standards are established, any of such minimum standards that would limit the capacity of an Indian tribe or tribal organization to receive funds under this subtitle if the Secretary determines that there is a reasonable expectation that each of such standards requested to be waived will be met by the applicant by the end of the period for which the waiver is requested.

(4) AVAILABILITY OF STATE CHILD CARE SERVICES.—For the purpose of determining whether to approve an application for a contract or grant under this subsection, the Secretary shall take into consideration the availability of child care services provided in accordance with this subtitle by the State in which the applicant proposes to carry out a program to provide child care services.

(5) RULE OF CONSTRUCTION.—This subsection shall not be construed—

(A) to limit the eligibility of any individual to participate in any program carried out with assistance received under this subtitle by a State; or

(B) to modify any requirement imposed on a State by any provision of this subtitle.

(6) COORDINATION.—To the maximum extent practicable, the applicant for a grant or contract under this subsection and the State in which the applicant is located shall coordinate with each other their respective child care programs and activities, including child care programs and activities carried out with assistance received under this subtitle.

(d) DATA AND INFORMATION.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(e) REALLOTMENTS.—

(1) IN GENERAL.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 507(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) LIMITATIONS.—

(A) REDUCTION.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 507(d).

(B) REALLOTMENTS.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) AMOUNTS REALLOTTED.—For purposes of any other section of this subtitle, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

(f) DEFINITION.—For the purposes of this section, the term "State" means any of the several 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 506. LEAD AGENCY.

(a) DESIGNATION.—The chief executive officer of a State desiring to participate in the program authorized by this subtitle shall designate, in an application submitted to the Secretary under section 507(a), an appropriate State agency that meets the requirements of subsection (b) to act as the lead agency.

(b) REQUIREMENTS.—

(1) ADMINISTRATION OF FUNDS.—The lead agency shall have the capacity to administer the funds provided under this subtitle to support programs and services authorized under this subtitle and to oversee the plan submitted under section 507(b).

(2) COORDINATION.—The lead agency shall have the capacity to coordinate the services for which assistance is provided under this subtitle with the services of other State and local agencies involved in providing services to children.

(3) ESTABLISHMENT OF POLICIES.—The lead agency shall have the authority to establish policies and procedures for developing and implementing interagency agreements with other agencies of the State to carry out the purposes of this subtitle.

(c) DUTIES.—The lead agency shall—

(1) assess child care needs and resources in the State, and assess the effectiveness of existing child care services and services for which assistance is provided under this subtitle or under other laws, in meeting such needs;

(2) develop a plan designed to meet the need for child care services in the State for eligible children, including infants, preschool children, and school-age children, giving special attention to meeting the needs for services for low-income children, migrant children, children with a handicapping condition, foster children, children in need of protective services, children of adolescent parents who need child care to remain in school, and children with limited English-language proficiency;

(3) develop, in consultation with the State advisory committee on child care established under section 511, the State plan submitted to the Secretary under section 507(b);

(4) hold hearings, in cooperation with such State advisory committee on child care, annually in each region of the State in

order to provide to the public an opportunity to comment on the provision of child care services in the State under the proposed State plan;

(5) assist the chief executive officer in making such periodic reports to the Secretary as the Secretary may by rule require;

(6) coordinate the provision of services under this subtitle with—

(A) other child care programs and services, and with educational programs, for which assistance is provided under any State, local, or other Federal law, including the State Dependent Care Development Grants Act (42 U.S.C. 9871 et seq.); and

(B) other appropriate services, including social, health, mental health, protective, and nutrition services, available to eligible children under other Federal, State, and local programs; and

(7) identify resource and referral programs for particular geographical areas in the State that meet the requirements of section 512.

SEC. 507. APPLICATION AND PLAN.

(a) Application.—To be eligible to receive assistance under this subtitle, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require by rule.

(b) Plan.—The application of a State submitted under subsection (a) shall include an assurance that the State will comply with the requirements of this subtitle and a State plan that is designed to be implemented during a 4-year period and that meets the requirements of subsection (c).

(c) Requirements of a Plan.—

(1) Lead agency.—The plan shall identify the lead agency designated in accordance with section 506(a).

(2) Advisory bodies.—The plan shall demonstrate that the State will establish in accordance with section 511 a State advisory committee on child care.

(3) Policies and procedures.—The plan shall set forth policies and procedures designed to ensure all of the following:

(A) That—

(i) all providers of child care services for which assistance is provided under this subtitle comply with all licensing and regulatory requirements (including registration requirements) applicable under State and local law; and

(ii) such requirements are imposed and enforced by the State uniformly on all child care providers that provide child care services under similar child care arrangements.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards or requirements on child care providers who provide services for which assistance is provided under this subtitle and who also receive State funds under any other law to provide child care services under a contract or other arrangement with the State.

(B) That procedures will be established to ensure that child care providers receiving assistance under this subtitle or under other publicly-assisted child care programs comply with the minimum child care standards established under section 517(e)(2) after the expiration of the 4-year period beginning on the date the Secretary establishes such standards, and comply with all applicable State and local licensing and regulatory requirements (including registration requirements).

(C) That the State will not—

(i) reduce the categories of child care providers licensed or regulated by the State on the date of enactment of this subtitle; or

(ii) reduce the level of standards applicable to child care services provided in the State and to the matters specified in sections 513(a) and 517(d), even if such standards exceed the minimum standards established under section 517(e)(2) by the Secretary unless the State, with the concurrence of the State advisory committee established under section 511, requests a waiver of this subparagraph and demonstrates, to the satisfaction of the Secretary, that the proposed reduction is necessary to increase access to and availability of eligible child car providers and will not jeopardize the health and safety of children.

(D) That funds received under this subtitle by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of child care services and related programs in the State, except that States may use existing expenditures in support of child care services to satisfy the State matching requirement under section 516(b) and may not use such expenditures to satisfy the matching requirements of any other Federal program.

(E) That for each fiscal year the State will use an amount not to exceed 8 percent of the amount of funds received under section 505 by the State for such fiscal year to administer the State plan.

(F) That the State will pay funds under this subtitle to eligible child care providers in a timely fashion to ensure the continuity of child care services to eligible children.

(G) That resource and referral agencies will be made available to families in all regions of the State.

(H) That each eligible child care provider who provides services for which assistance is provided under paragraph (4)—

(i) gives priority for provides services to children of families with very low income, taking into account family size;

(ii) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards except as provided in clause (iv);

(iii) if such eligible child care provider is regulated by a State educational agency that—

(I) administers any State law applicable to child care services;

(II) develops child care standards that meet or exceed the minimum standards established under section 517(e)(2) and the State licensing or regulatory requirements (including registration requirements); and

(III) enforces the standards described in subclause (II) that are developed by such agency, using policies and practices that meet or exceed the requirements specified in subparagraphs (A) through (K) of paragraph (11);

complies with the standards described in subclause (II) that are developed by such agency; and

(iv) complies with the State plan and the requirements of this subtitle.

(I) That child care services for which assistance is provided under paragraph (4) are available to children with a handicapping condition.

(J) That State regulations will be issued governing the provision of school-age child care services if the State does not already have such regulations.

(K) That child care providers in the State are encouraged to develop personnel policies that include compensated time for staff undergoing training required under this subtitle.

(L) Encourage the payment of adequate salaries and other compensation—

(i) to full and part-time staff of child care providers who provide child care services for which assistance is provided under paragraph (4);

(ii) to the extent practicable, to such staff in other major Federal and State child care programs; and

(iii) to other child care personnel, at the option of the State.

(M) That child care services for which assistance is provided under paragraph (4) are available for an adequate number of hours and days to serve the needs of parents of eligible children, including parents who work nontraditional hours.

(4) Child care services.—The plan shall provide that—

(A) subject to subparagraph (B), the State will use at least 70 percent of the amount allotted to the State in any fiscal year to provide child care services that meet the requirements of this subtitle to eligible children in the State on a sliding fee scale basis and using funding methods provided for in section 508(a)(1), with priority being given for services to children of families with very low family incomes, taking into consideration the size of the family; and

(B) the State will use at least 10 percent of the funds reserved for the purposes specified in subparagraph (A) in any fiscal year to provide for the extension of part-day programs as described in section 508(b).

(5) Activities to improve the quality of child care.—The plan shall provide that the State will use not more than 10 percent of the amount allotted to it in any fiscal year to do each of the following:

(A) Provide financial assistance, pursuant to procedures established under the State Dependent Care Development Grants Act (42 U.S.C. 9801 note), to private nonprofit organizations or public organizations (including units of general purpose local government) that meet the requirements of section 512 for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

(B) Improve the monitoring of compliance with, and enforcement of, the licensing and regulatory requirements (including registration requirements) of the State.

(C) Provide training, technical assistance, and scholarship assistance in accordance with the requirements of subsections (b), (c), and (d) of section 513.

(D) Ensure that adequate salaries and other compensation are paid to full- and part-time staff who provide child care services for which assistance is provided under paragraph (4).

(6) Activities to increase the availability of child care.—The plan shall provide that the State will use not more than 12 percent of the amount allotted to it in any fiscal year for any of the following activities:

(A) Making grants or low interest loans to family child care providers and nonprofit child care providers to help such providers pay the cost of—

(i) establishing child care programs; and

(ii) making renovations and improvements in existing facilities to be used to carry out such programs.

(B) Making grants or low-interest loans to child care providers to assist such providers in meeting Federal, State, and local child care standards, giving priority to providers receiving assistance under this subtitle or under other publicly assisted child care programs and which serve children of families that have very low incomes.

(C) Providing assistance for the establishment and operation of after school child care programs.

(D) Making grants or loans to fund the start up costs of employer sponsored child care programs.

(E) Providing assistance for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled.

(F) Providing assistance for the establishment and operation of child care programs for homeless children.

(G) Providing assistance to link child care programs with programs designed to assist the elderly.

(H)(i) Establishing and administering a revolving loan fund from which any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the Internal Revenue Code of 1986) may obtain a loan in order to become a licensed family child care provider, pursuant to State and local law, and to comply with the minimum standards applicable to such providers as established under section 517(e)(2).

(ii) To permit the use of funds provided under this subtitle for the activity described in clause (i), the State shall set forth procedures and guidelines to carry out the purposes of such clause, including procedures—

(I) that provide assurances that only applicants who obtain a license for the operation of a child care facility in accordance with the provisions of State and local law and who will meet the minimum standards applicable to family child care services established under section 517(e)(2), benefit from loans made available pursuant to the provisions of clause (i);

(II) to assure that the revolving fund will be administered by the State and will provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, that is not in excess of $1,500;

(III) to assure that funds used to carry out the purpose of clause (i) are transferred to such fund to provide capital for making loans;

(IV) to assure that interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such funds are deposited into such fund;

(V) to assure that all loans, expenses, and payments pursuant to the operation of the revolving loan fund are paid from such fund;

(VI) to assure that loans made from such fund are made to qualified applicants to enable such applicants to make capital improvements so that such applicant may obtain a State or local family child care provider license and so that such applicant may meet the minimum standards applicable to such providers established under section 517(e)(2); and

(VII) that specify how such revolving loan fund will continue to be financed in subsequent years, such as through contributions by the State or by some other entity.

(I) Providing assistance for any other activity deemed by the State to be in accordance with the purposes of this paragraph.

(7) DISTRIBUTION OF FUNDS.—The plan shall provide that funds will be distributed—

(A) to a variety of types of child care providers, including center-based child care providers, group home child care providers, and family child care providers; and

(B) equitably among child care providers to provide child care services in rural and urban areas.

(8) REIMBURSEMENTS.—The plan shall provide that for child care services for which assistance is provided under this subtitle, an eligible child care provider shall have a right to reimbursement at the same rate charged by that provider for comparable services to children of comparable ages and special needs whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(9) PRIORITY.—The plan shall provide that priority will be given, in distributing funds in the State, to child care providers that—

(A) in providing child care services assisted by such funds, will give priority to eligible children of families with very low income;

(B) to the maximum extent feasible, provide child care services to a reasonable mix of children, including children from different socioeconomic backgrounds and children with a handicapping condition;

(C) provide opportunities for parent involvement in all aspects of providing such services; and

(D) to the maximum extent feasible, offer family support services.

(10) SLIDING FEE SCALE.—The plan shall provide for the establishment of a sliding fee scale that requires cost sharing based on the services provided to and the income of the families (adjusted for family size) of eligible children who receive services for which assistance is provided under this subtitle.

(11) PARENTAL INVOLVEMENT.—The plan shall establish procedures for parental involvement in State and local planning, monitoring, and evaluation of child care programs and services in the State.

(12) ENFORCEMENT OF LICENSING AND OTHER REGULATORY REQUIREMENTS (INCLUDING REGISTRATION REQUIREMENTS).—The plan shall provide that the State, not later than 4 years after the date of enactment of this subtitle, shall have in effect enforcement policies and practices that will be applicable to all licensed or regulated child care providers (including child care providers required to register) in the State, including policies and practices that—

(A) require personnel who perform inspection functions with respect to licensed or regulated child care services to have or receive training in health and safety, child abuse prevention and detection, program management, and relevant law enforcement;

(B) to the maximum extent feasible, have personnel requirements to ensure that individuals who are hired as licensing inspectors are qualified to inspect and have inspection responsibility exclusively for children's services;

(C) require—

(i) personnel who perform inspection functions with respect to licensed or regulated child care services to make not less than 1 unannounced inspection of each center-based child care provider and each group home child care provider in the State annually; and

(ii) personnel who perform inspection functions with respect to licensed or regulated child care services to make unannounced inspections annually of not less than 20 percent of licensed and regulated family child care providers in the State;

(D) require licensed or regulated child care providers (including registered child care providers) in the State—

(i) to have written policies and program goals and to make a copy of such policies and goals available to parents; and

(ii) to provide parents with unlimited access to their children and to providers caring for their children, during normal hours of operation of such providers and whenever children of such parents are in the care of such providers;

(E) implement a procedure to address complaints that will provide a reasonable opportunity for a parent, or child care provider, that is adversely affected or aggrieved by a decision of the lead agency or any program assisted under this subtitle, to be heard by the State;

(F) prohibit the operator of a child care facility to take any action against an employee of such operator that would adversely affect the employment, or terms or conditions of employment, of such employee because such employee communicates a failure of such operator to comply with any applicable licensing or regulatory requirement;

(G) implement a consumer education program designed to inform parents and the general public about licensing requirements, complaint procedures, and policies and practices required by this paragraph;

(H) require a child care provider to post, on the premises where child care services are provided, the telephone number of the appropriate licensing or regulatory agency that parents may call regarding a failure of such provider to comply with any applicable licensing or regulatory requirement; and

(I) require the State to maintain a record of parental complaints and to make information regarding substantiated parental complaints available to the public on request.

(13) DATA COLLECTION.—The plan shall provide for the establishment of procedures for data collection by the State designed to show—

(A) by race, sex, ethnic origin, handicapping condition, and family income, how the child care needs of families in the State are being fulfilled, including information on—

(i) the number of children being assisted with funds provided under this subtitle, and under other State and Federal child care and preschool programs;

(ii) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

(iii) the regional cost of child care; and

(iv) such other information as the Secretary considers necessary to establish how funds provided under this subtitle are being used;

(B) the extent to which the availability of child care has been increased; and

(C) how the purposes of this subtitle and the objectives of the State set forth in the State plan are being met, including efforts to improve the quality, availability, and accessibility of child care;

and shall provide that data collected by the State under this paragraph shall be submitted to the Secretary.

(d) APPROVAL OF APPLICATION.—The Secretary shall approve an application that satisfies the requirements of this section.

(e) SPECIAL RULE.—In carrying out the provisions of this section, the Secretary shall approve any application with respect to the activities described in the plan submitted under paragraph (5) of subsection (c), if the Secretary determines that the State is making reasonable progress in carrying out the activities which are described in subparagraphs (A) and (D) of paragraph (5).

SEC. 508. SPECIAL RULES FOR USE OF STATE ALLOTMENTS.

(a) Funding of Child Care Services.—

(1) In general.—The child care services referred to in section 507(c)(4) that are to be provided out of the allotment to a State, shall be provided—

(A) by contracts with or grants to eligible child care providers who agree to provide such services directly to eligible children;

(B) by grants to units of general purpose local government that agree to enter into contracts with eligible child care providers who agree to provide such services directly to eligible children; or

(C) by distributing child care certificates to parents of eligible children under such terms as the Secretary may prescribe to enable the recipients of such certificates to purchase child care services from eligible child care providers.

(2) Limitation on certificates.—Child care certificates authorized by paragraph (1)(C) may be issued by a State only if a resource and referral program carried out by an organization that meets the requirements of section 512 is available to help parents locate child care services made available by eligible child care providers.

(3) No entitlement to contract or grant.—Nothing in this subtitle shall be construed to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit, or to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subtitle.

(b) Part-day Programs.—

(1) In general.—At least 10 percent of the funds available for activities under section 507(c)(4)(A) shall be used by the State to enable child care providers to extend the hours of operation of the part-day programs described in paragraph (2) to provide full-working-day child care services throughout the year, in order to meet the needs of parents of eligible children.

(2) Eligible programs.—As used in paragraph (1), the term "part-day programs" means—

(A) programs of schools and nonprofit child care providers (including community-based organizations) receiving State or local funds designated for preschool;

(B) programs established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) preschool programs for which assistance is provided under chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 et seq.); and

(D) preschool programs for children with a handicapping condition.

(c) Facilities.—

(1) New facilities.—No financial assistance provided under this subtitle shall be expended for the construction of a new facility.

(2) Existing facilities.—No financial assistance provided under this subtitle shall be expended to renovate or repair any facility unless—

(A) the child care provider that receives such financial assistance agrees—

(i) in the case of a grant, to repay to the Secretary or the State, as the case may be, the amount that bears the same ratio to the amount of such grant as the value of the renovation or repair, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle, bears to the original value of the renovation or repair; and

(ii) in the case of a loan, to repay immediately to the Secretary or the State, as the case may be, the principal amount of such loan outstanding and any interest accrued, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle;

if such provider does not provide child care services in such facility in accordance with this subtitle throughout the useful life of the renovation or repair; and

(B) if such provider is a sectarian agency or organization, the renovation or repair is necessary to bring such facility into compliance with health and safety requirements imposed by this subtitle.

SEC. 509. PLANNING GRANTS.

(a) In General.—A State desiring to participate in the programs authorized by this subtitle that cannot fully satisfy the requirements of the State plan under section 507(b) without financial assistance may, in the first year that the State participates in the programs, apply to the Secretary for a planning grant.

(b) Authorization.—The Secretary is authorized to make a planning grant to a State described in subsection (a) if the Secretary determines that—

(1) the grant would enable the State to fully satisfy the requirements of a State plan under section 507(b); and

(2) the State will apply, for the remainder of the allotment that the State is entitled to receive for such fiscal year.

(c) Amount of Grant.—A grant made to a State under this section shall not exceed 1 percent of the total allotment that the State would qualify to receive in the fiscal year involved if the State fully satisfied the requirements of section 507.

(d) Limitation on Administrative Costs.—A grant made under this section shall be considered to be expended for administrative costs by the State for purposes of determining the compliance by the State with the limitation on administrative costs imposed by section 507(c)(3)(E).

SEC. 510. CONTINUING ELIGIBILITY OF STATES.

A State shall be ineligible for assistance under this subtitle after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2) unless the State demonstrates to the satisfaction of the Secretary that—

(1) all child care providers required to be licensed and regulated in the State—

(A) are so licensed and regulated; and

(B) are subject to the enforcement provisions referred to in the State plan; and

(2) all such providers who are receiving assistance under this subtitle or under other publicly-assisted child care programs—

(A) satisfy the requirements of subparagraphs (A) and (B) of paragraph (1); and

(B) except as provided in section 517(f), satisfy the minimum child care standards established by the Secretary under section 517(e)(2) of this subtitle.

SEC. 511. STATE ADVISORY COMMITTEE ON CHILD CARE.

(a) Establishment.—The chief executive officer of a State participating in the program authorized by this subtitle shall—

(1) establish a State advisory committee on child care (hereinafter in this section referred to as the "committee") to assist the lead agency in carrying out the responsibilities of the lead agency under this subtitle; and

(2) appoint the members of the committee.

(b) Composition.—The State committee shall be composed of not fewer than 21 and not more than 30 members who shall include—

(1) at least 1 representative of the lead agency designated under section 506(a);

(2) 1 representative of each of—

(A) the State departments of—

(i) human resources or social services;

(ii) education;

(iii) economic development; and

(iv) health; and

(B) other State agencies having responsibility for the regulation, funding, or provision of child care services in the State;

(3) at least 1 representative of providers of different types of child care services, including caregivers and directors;

(4) at least 1 representative of early childhood development experts;

(5) at least 1 representative of school districts and teachers involved in the provision of child care services and preschool programs;

(6) at least 1 representative of resource and referral programs;

(7) 1 pediatrician;

(8) 1 representative of a citizen group concerned with child care;

(9) at least 1 representative of an organization representing child care employees;

(10) at least 1 representative of the Head Start agencies in the State;

(11) parents of children receiving, or in need of, child care services, including at least 2 parents whose children are receiving or are in need of subsidized child care services;

(12) 1 representative of specialists concerned with children who have a handicapping condition;

(13) 1 representative of individuals engaged in business;

(14) 1 representative of fire marshals and building inspectors;

(15) 1 representative of child protective services; and

(16) 1 representative of units of general purpose local government.

(c) Functions.—The committee shall—

(1) advise the lead agency on child care policies;

(2) provide the lead agency with information necessary to coordinate the provision of child care services in the State;

(3) otherwise assist the lead agency in carrying out the functions assigned to the lead agency under section 506(c);

(4) review and evaluate child services for which assistance is provided under this subtitle or under State law, in meeting the objectives of the State plan and the purposes of this subtitle;

(5) make recommendations on the development of State child care standards and policies;

(6) participate in the regional public hearings required under section 506(c)(5); and

(7) perform other functions to improve the quantity and quality of child care services in the State.

(d) Meetings and Hearings.—

(1) In general.—Not later than 30 days after the beginning of each fiscal year, the committee shall meet and establish the time, place, and manner of future meetings of the committee.

(2) Minimum number of hearings.—The committee shall have at least 2 public hearings each year at which the public shall be given an opportunity to express views con-

cerning the administration and operation of the State plan.

(e) USE OF EXISTING COMMITTEES.—To the extent that a State has established a broadly representative State advisory group, prior to the date of enactment of this subtitle, that is comparable to the advisory committee described in this section and focused exclusively on child care and early childhood development programs, such State shall be considered to be in compliance with subsections (a) through (c).

(f) SUBCOMMITTEE ON LICENSING.—

(1) COMPOSITION.—The committee shall have a subcommittee on licensing (hereinafter in this section referred to as the "subcommittee") that shall be composed of the members appointed under paragraphs (2)(A)(iv), (3), (6), (7), (11), (14), and (15) of subsection (b).

(2) FUNCTIONS.—The subcommittee shall review the law applicable to, and the licensing requirements and the policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 4-year period ending on the date of the establishment of the committee under subsection (a).

(g) REPORT.—

(1) IN GENERAL.—Not later than 1 year after establishment of the committee under subsection (a), the committee shall prepare and submit to the chief executive officer of the State involved a report.

(2) CONTENTS OF REPORT.—A report prepared under paragraph (1) shall contain—

(A) an analysis of information on child care services provided by center-based child care providers, group home child care providers, and family child care providers;

(B) a detailed statement of the findings and recommendations that result from the subcommittee review under subsection (f)(2), including a description of the current status of child care licensing, regulating, monitoring, and enforcement in the State;

(C) a detailed statement identifying and describing the deficiencies in the existing licensing, regulating, and monitoring programs of the State involved, including an assessment of the adequacy of staff to carry out such programs effectively, and recommendations to correct such deficiencies or to improve such programs; and

(D) comments on the minimum child care standards established by the Secretary under section 517(e)(2).

(3) RECEIPT OF REPORT BY THE CHIEF EXECUTIVE OFFICER OF THE STATE.—Not later than 60 days after receiving the report from the committee, the chief executive officer of the State shall transmit such report to the Secretary with—

(A) the comments of the chief executive officer of the State; and

(B) a plan for correcting deficiencies in, or improving the licensing, regulating, and monitoring, of the child care services and programs referred to in subsection (f)(2).

(h) SERVICES AND PERSONNEL.—

(1) AUTHORITY.—The lead agency is authorized to provide the services of such personnel, and to contract for such other services as may be necessary, to enable the committee and the subcommittee to carry out their functions under this subtitle.

(2) REIMBURSEMENT.—Members of the committee shall be reimbursed, in accordance with standards established by the Secretary, for necessary expenses incurred by such members in carrying out the functions of the committee and the subcommittee.

(3) SUFFICIENCY OF FUNDS.—The Secretary shall ensure that sufficient funds are made available, from funds available for the administration of the State plan, to the committee and the subcommittee to carry out the requirements of this section.

SEC. 512. RESOURCE AND REFERRAL PROGRAMS.

(a) ELIGIBILITY FOR ASSISTANCE.—Each State receiving funds under this subtitle shall, pursuant to section 507(c)(5)(A), make grants to or enter into contracts with private nonprofit organizations or public organizations (including units of general purpose local government), as resource and referral agencies to ensure that resource and referral services are available to families in all geographical areas in the State.

(b) FUNDING.—Organizations that receive assistance under subsection (a) shall carry out resource and referral programs—

(1) to identify all types of existing child care services, including services provided by individual family child care providers and by child care providers who provide child care services to children with a handicapping condition;

(2) to provide to interested parents information and referral regarding such services, including the availability of public funds to obtain such services;

(3) to provide or arrange for the provision of information, training, and technical assistance to existing and potential child care providers and to others (including businesses) concerned with the availability of child care services; and

(4) to provide information on the demand for and supply of child care services located in a community.

(c) REQUIREMENTS.—To be eligible for assistance as a resource and referral agency under subsection (a), an organization shall—

(1) have or acquire a database of information on child care services in the State or in a particular geographical area that the organization continually updates, including child care services provided in centers, group home child care settings, nursery schools, and family child care settings;

(2) have the capability to provide resource and referral services in a particular geographical area;

(3) be able to provide parents with information to assist them in identifying quality child care services;

(4) to the maximum extent practicable, notify all eligible child care providers in such area of the functions it performs and solicit such providers to request to be listed to receive referrals made by such organization; and

(5) otherwise comply with regulations promulgated by the State in accordance with subsection (d).

(d) LIMITATION ON INFORMATION.—In carrying out this section, an organization receiving assistance under subsection (a) as a resource and referral agency shall not provide information concerning any child care program or services which are not in compliance with the laws of the State and localities in which such services are provided.

SEC. 513. TRAINING AND TECHNICAL ASSISTANCE.

(a) MINIMUM REQUIREMENT.—A State receiving funds under this subtitle shall require, not later than 2 years after the date of the enactment of this subtitle, that all employed or self-employed individuals who provide licensed or regulated child care services (including registered child care services) in a State complete at least 40 hours of training over a 2-year period in areas appropriate to the provision of child care services, including training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the needs of special populations of children.

(b) GRANTS AND CONTRACTS FOR TRAINING AND TECHNICAL ASSISTANCE.—

(1) GRANTS AND CONTRACTS.—The State shall make grants to, and enter into contracts with State agencies, units of general purpose local government, institutions of higher education, and nonprofit organizations (including resource and referral organizations, child care food program sponsors, and family child care associations, as appropriate) to develop and carry out child care training and technical assistance programs under which preservice and continuing inservice training is provided to eligible child care providers, including family child care providers, and the staff of such providers including teachers, administrative personnel, and staff of resource and referral programs involved in providing child care services in the State.

(2) ELIGIBILITY REQUIREMENTS FOR GRANTS AND CONTRACTS RELATING TO TRAINING FOR FAMILY CHILD CARE PROVIDERS.—To be eligible to receive a grant or enter into a contract for a training and technical assistance program for family child care providers under paragraph (1), a nonprofit organization shall—

(A) recruit and train family child care providers, including providers with the capacity to provide night-time and emergency child care services;

(B) operate resource centers to make developmentally appropriate curriculum materials available to family child care providers;

(C) provide grants to family child care providers for the purchase of moderate cost equipment to be used to provide child care services; and

(D) operate a system of substitute caregivers.

(3) ELIGIBILITY REQUIREMENTS FOR GRANTS AND CONTRACTS RELATING TO TECHNICAL ASSISTANCE.—To be eligible to receive a grant, or enter into a contract under subsection (b) to provide technical assistance, an agency, organization, or institution shall agree to furnish technical assistance to child care providers to assist such providers—

(A) in understanding and complying with local regulations and relevant tax and other policies;

(B) in meeting State licensing, regulatory, and other requirements (including registration) pertaining to family child care providers.

(c) SCHOLARSHIP ASSISTANCE.—The State shall provide scholarship assistance to—

(1) individuals who seek a nationally recognized child development associate credential for center-based or family child care and whose income does not exceed the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) by more than 50 percent, in amounts sufficient to cover the costs involved in securing such credential; and

(2) caregivers who seek to obtain the training referred to in subsection (a) and whose income does not exceed such poverty line.

(d) CLEARINGHOUSE.—The State shall establish in the lead agency a clearinghouse to collect and disseminate training materials to resource and referral agencies and child care providers throughout the State.

SEC. 514. FEDERAL ADMINISTRATION OF CHILD CARE.

(a) ADMINISTRATOR OF CHILD CARE.—There is hereby established in the Department of Health and Human Services the position of

Administrator of Child Care (hereinafter in this section referred to as the "Administrator"). The Secretary shall appoint an individual to serve as the Administrator at the pleasure of the Secretary.

(b) DUTIES.—The Administrator shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and coordinate such activities with similar activities of other Federal entities;

(2) annually collect and publish State child care standards, including periodic modifications to such standards;

(3) evaluate activities carried out with funds provided under this subtitle;

(4) act as a clearinghouse to collect and disseminate materials that relate to—

(A) the matters required by section 513(b)(1) to be addressed by training required by section 513 to be provided; and

(B) studies that relate to the salaries paid to individuals employed to provide child care services; and

(5) provide technical assistance to assist States to carry out this subtitle.

SEC. 515. FEDERAL ENFORCEMENT.

(a) REVIEW OF COMPLIANCE WITH STATE PLAN.—The Secretary shall review and monitor State compliance with this subtitle and the plan approved under section 507(d) for the State.

(b) NONCOMPLIANCE.—

(1) IN GENERAL.—If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that—

(A) there has been a failure by the State to comply substantially with any provision or any requirements set forth in the plan approved under section 507(d) for the State; or

(B) in the operation of any program or project for which assistance is provided under this subtitle there is a failure by the State to comply substantially with any provision of this subtitle;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subtitle (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(2) ADDITIONAL SANCTIONS.—In the case of a finding of noncompliance made pursuant to this paragraph (1), the Secretary may, in addition to imposing the sanctions described in such paragraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subtitle, and disqualification from the receipt of financial assistance under this subtitle.

(3) NOTICE.—The notice required under paragraph (1) shall include a specific identification of any additional sanction being imposed under paragraph (2).

(c) ISSUANCE OF RULES.—The Secretary shall establish by rule procedures for—

(1) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subtitle; and

(2) imposing sanctions under this section.

SEC. 516. PAYMENTS.

(a) IN GENERAL.—

(1) AMOUNT OF PAYMENT.—Each State that—

(A) has an application approved by the Secretary under section 507(d); and

(B) demonstrates to the satisfaction of the Secretary that it will provide from non-Federal sources the State share of the aggregate amount to be expended by the State under the State plan for the fiscal year for which it requests a grant;

shall receive a payment under this section for such fiscal year in an amount (not to exceed its allotment under section 505 for such fiscal year) equal to the Federal share of the aggregate amount to be expended by the State under the State plan for such fiscal year.

(2) FEDERAL SHARE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Federal share for each fiscal year shall be 80 percent.

(B) EXCEPTION.—If a State makes the demonstration specified in section 510 throughout a fiscal year for which it requests a grant, then the Federal share shall be 85 percent.

(3) STATE SHARE.—The State share equals 100 percent minus the Federal share.

(4) LIMITATION.—A State may not require any private provider of child care services that receives or seeks funds made available under this subtitle to contribute in cash or in kind to the State contribution required by this subsection.

(b) METHOD OF PAYMENT.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) LIMITATION.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 507(c)(3)(F).

(c) SPENDING OF FUNDS BY STATE.—Payments to a State from the allotment under section 505 for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

SEC. 517. NATIONAL ADVISORY COMMITTEE ON CHILD CARE STANDARDS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—In order to improve the quality of child care services, the Secretary shall establish, not later than 60 days after the date of the enactment of this subtitle, a National Advisory Committee on Child Care Standards (hereinafter in this section referred to as the "Committee"), the members of which shall be appointed from among representatives of—

(A) the chief executive officers of the several States;

(B) State legislatures;

(C) units of general purpose local governments;

(D) businesses;

(E) individuals responsible for regulating the insurance industry within the States;

(F) religious institutions

(G) different types of child care providers;

(H) persons who carry out resource and referral programs;

(I) child care, early childhood development, or early childhood education specialists;

(J) individuals who have expertise in pediatric health care, handicapping conditions, and related fields;

(K) organizations representing child care employees;

(L) individuals who have experience in the regulation of child care services; and

(M) parents who have been actively involved in community child care programs.

(2) APPOINTMENT OF MEMBERS.—The Committee shall be composed of 20 members of which—

(A) 4 members shall be appointed by the President;

(B) 4 members shall be appointed by the majority leader of the Senate;

(C) 4 members shall be appointed by the minority leader of the Senate;

(D) 4 members shall be appointed by the Speaker of the House of Representatives; and

(E) 4 members shall be appointed by the minority leader of the House of Representatives.

(3) CHAIRMAN.—The President shall appoint a chairman from among the members of the Committee.

(4) VACANCIES.—A vacancy occurring on the Committee shall be filled in the same manner as that in which the original appointment was made.

(b) PERSONNEL, REIMBURSEMENT, AND OVERSIGHT.—

(1) PERSONNEL.—The Secretary shall make available to the Committee office facilities, personnel who are familiar with child development and with developing and implementing regulatory requirements, technical assistance, and funds as are necessary to enable the Committee to carry out effectively its functions.

(2) REIMBURSEMENT.—

(A) COMPENSATION.—Members of the Committee who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Committee or otherwise engaged in the business of the Committee (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS-18 of the General Schedule established under section 5332 of title 5, United States Code.

(B) EXPENSES.—While away from their homes or regular places of business on the business of the Committee, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(3) OVERSIGHT.—The Secretary shall ensure that the Committee is established and operated in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

(c) FUNCTIONS.—The Committee shall—

(1) review Federal policies with respect to child care services and such other data as the Committee may deem appropriate;

(2) not later than 180 days after the date on which a majority of the members of the Committee are first appointed, submit to the Secretary proposed minimum standards described in subsection (d) for child care services, taking into account the different needs of infants, toddlers, preschool and school-age children); and

(3) develop and make available to lead agencies, for distribution to resource and referral agencies in the State, model requirements for resource and referral agencies.

(d) MINIMUM CHILD CARE STANDARDS.—The proposed child care standards submitted pursuant to subsection (c)(2) shall be minimum standards and shall consist of only the following:

(1) CENTER-BASED CHILD CARE SERVICES.—Such standards submitted with respect to child care services provided by center-based child care providers shall be limited to—

(A) group size limits in terms of the number of caregivers and the number and ages of children;

(B) the maximum appropriate child-staff ratios;

(C) qualifications and background of child care personnel;

(D) health and safety requirements for children and caregivers; and

(E) parental involvement in licensed and regulated child care services.

The standards described in subparagraphs (A) and (B) shall reflect the median standards for all States (using for States which apply separate standards to publicly-assisted programs the most comprehensive or stringent of such standards) as of the date of enactment of this subtitle.

(2) FAMILY CHILD CARE SERVICES.—Such standards submitted with respect to child care services provided by family child care providers shall be limited to—

(A) the maximum number of children for which child care services may be provided and the total number of infants for which child care services may be provided;

(B) the minimum age for caregivers; and

(C) health and safety requirements for children and caregivers.

(3) GROUP HOME CHILD CARE SERVICES.—Such standards submitted with respect to child care services provided by group home child care providers shall be limited to the matters specified in paragraphs (1)(B) and (2).

(4) LIMITATION.—The Committee shall not submit any standard under subsection (c)(2) that is less or more rigorous than the least or most rigorous standard that exists in any of the States at the time of the submission of such recommendation.

(e) CONSIDERATION AND ESTABLISHMENT OF STANDARDS.—

(1) NOTICE OF PROPOSED RULEMAKING.—Not later than 90 days after receiving the recommendations of the committee, the Secretary shall—

(A) publish in the Federal Register—

(i) a notice of proposed rulemaking concerning the minimum standards proposed under subsection (d) to the Secretary; and

(ii) such proposed minimum standards for public comment for a period of at least 60 days; and

(B) distribute such proposed minimum standards to each lead agency and each State subcommittee on licensing for comment.

(2) ESTABLISHMENT OF MINIMUM CHILD CARE STANDARDS.—

(A) ISSUANCE OF RULES.—The Secretary shall, in consultation with the committee—

(i) take into consideration any comments received by the Secretary with respect to the standards proposed under subsection (d); and

(ii) not later than 180 days after publication of such standards, shall issue rules establishing minimum child care standards for purposes of this subtitle. Such standards shall include the nutrition requirements issued, and revised from time to time, under section 17(g)(1) of the National School Lunch Act (42 U.S.C. 1766(g)(1)).

(B) AMENDING STANDARDS.—The Secretary may amend any standard first established under subparagraph (A), except that such standard may not be modified, by amendment or otherwise, to make such standard less comprehensive or less stringent than it is when first established.

(C) EXTENDED PERIOD FOR COMMENT.—If the Committee recommends a standard under subsection (c)(2) that no State has a requirement concerning, as of the time that such standard is recommended, the Secretary shall provide an additional 30 days during which States may submit comments concerning such standard.

(3) ADDITIONAL COMMENTS.—The National Committee may submit to the Secretary and to the Congress such additional comments on the minimum child care standards established under paragraph (2) as the National Committee considers appropriate.

(f) VARIANCES.—

(1) TIME FOR COMPLIANCE WITH STANDARDS.—Not later than the end of the 4-year period referred to in section 510, States shall comply with the standards established under this section.

(2) EXCEPTION.—At the expiration of the 4-year period referred to in paragraph (1) the chief executive officer, in consultation with the State advisory committee, may submit a request to the Secretary for a 1 year variance from the requirements of one or more particular standards for one or more particular geographic areas of the State.

(3) REQUIREMENTS.—A request for a variance under this subsection shall include—

(A) a statement by the chief executive officer of the State of the steps taken to implement the relevant standards in the relevant geographic areas in the State within the 4-year period;

(B) the specific reasons for the submission of the variance request; and

(C) a detailed plan that outlines the additional procedures and resources to be used to come into compliance with the standards at the end of the variance period.

(4) PERIOD OF VARIANCE.—A variance granted by the Secretary shall be for a 1-year period and may be renewed at the discretion of the Secretary for an additional 1-year period if requested by the State.

(g) TERMINATION OF COMMITTEE.—The National Committee shall cease to exist 90 days after the date the Secretary establishes minimum child care standards under subsection (e)(3).

SEC. 518. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

(a) SECTARIAN PURPOSES AND ACTIVITIES.—No financial assistance provided under this subtitle shall be expended for any sectarian purpose or activity, including sectarian worship and instruction.

(b) TUITION.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subtitle shall be expended for—

(1) any services provided to such students during the regular school day;

(2) any services for which such students receive academic credit toward graduation; or

(3) any instructional services which supplant or duplicate the academic program of any public or private school.

SEC. 519. NONDISCRIMINATION.

(a) FEDERAL FINANCIAL ASSISTANCE.—Any financial assistance provided under this subtitle, including a loan, grant, or child care certificate, shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the regulations issued thereunder.

(b) RELIGIOUS DISCRIMINATION.—A child care provider may not discriminate against any child on the basis of religion in providing child care services in return for a fee paid, reimbursement received, or certificate redeemed, in whole or in part with financial assistance provided under this subtitle.

SEC. 520. PRESERVATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.

Nothing in this subtitle shall be construed or applied in any manner to infringe upon or usurp the moral and legal rights and responsibilities of parents or legal guardians.

KASSEBAUM (AND STEVENS) AMENDMENT NO. 3498

(Ordered to lie on the table.)

Mrs. KASSEBAUM (for herself and Mr. STEVENS) submitted an amendment intended to be proposed by them to the bill S. 2488, supra; as follows:

AMENDMENT No. 3498

Title II of the bill is amended in section 201(a)—

(1) by amending the matter relating to section 6331(1) of title 5, United States Code, to read as follows:

"(1) employee means any employee as defined under section 2105 of this title who is employed by the Department of Labor; and"; and

(2) by amending the matter relating to section 6338 of title 5, United States Code, to read as follows:

"§ 6338. Regulations.

"The Office of Personnel Management shall prescribe such rules and regulations necessary for the administration of this section, including rule and regulations concerning service of complaints, and copies of orders and records of proceedings.".

At the end of title II, add the following new subsections:

"(c) REPEAL AND TERMINATION OF LEAVE PROGRAM.—(1)(A) The provisions of subchapter III of chapter 63 of title 5, United States Code, are repealed effective on 3 years after the date of the enactment of this Act.

"(B) The part of the table of sections for chapter 63 of title 5, United States Code, relating to subchapter III is repealed effective on 3 years after the date of the enactment of this Act.

"(2) The Director of the Office of Personnel Management, in consultation with the Secretary of Labor, shall promulgate regulations for the orderly termination of any leave program implemented under the provisions of subchapter III of chapter 63 of title 5, United States Code, repealed pursuant to paragraph (1).

"(d) STUDY.—No later than 2 years after the date of the enactment of this Act, the Director of the Office of Personnel Management shall conduct a study on the Federal leave system and submit a report to both Houses of the Congress. Such study shall—

"(1) examine the administration of the leave system under chapter 63 of title 5, United States Code;

"(2) examine the effectiveness of leave policies in meeting the needs of Federal employees in regard to medical care of children and other family members, and parental leave for related child care;

"(3) estimate the costs to the Federal Government in implementing various parental leave programs;

"(4) compare parental leave programs in the private sector with the parental leave program for Federal employees;

"(5) evaluate the mandated leave program within the Department of Labor, including assessment of its costs, benefits, impact on productivity, extent of use of benefits, types of benefits used, and the number and nature of complaints filed; and

"(6) make recommendations for—

"(A) the most cost effective means to maximize parental leave benefits to meet the needs of Federal employees; and

"(B) a parental leave program which may serve as a model for similar programs in the private sector.".

TECHNICAL CORRECTIONS RELATING TO TAX REFORM ACT OF 1986

HUMPHREY (AND OTHERS) AMENDMENT NO. 3499

Mr. HUMPHREY (for himself, Mr. Proxmire, Mr. Armstrong, Mr. Helms, Mr. Garn, Mr. Gramm, Mr. Hecht, Mr. McClure, Mr. Nickles, and Mr. Trible) proposed an amendment to the bill S. 2238, supra; as follows:

On page 1557, between lines 4 and 5, insert the following new section:

SEC. 434. DENIAL OF TAX-EXEMPT STATUS TO ORGANIZATIONS WHICH PERFORM OR PROVIDE FACILITIES FOR ABORTIONS.

(a) Denial of Tax-Exempt Status.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) Denial of Exemption for Organizations Which Perform or Provide Facilities for Abortions.—

"(1) In general.—An organization shall not be treated as described in subsection (a) for any taxable year if for such year such organization received more than 1 percent of its gross receipts from performing abortions or providing facilities for abortions.

"(2) Receipts from certain abortions excluded.—In determining gross receipts under paragraph (1), gross receipts from abortions performed when the life of the mother would be endangered if the fetus were carried to term shall not be considered.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

PARENTAL AND EMERGENCY MEDICAL LEAVE

KASSEBAUM (AND STEVENS) AMENDMENT NO. 3500

(Ordered to lie on the table.)

Mrs. KASSEBAUM (for herself and Mr. Stevens) submitted an amendment intended to be proposed by them to the bill S. 2488, supra; as follows:

Strike Title I.

KASSEBAUM AMENDMENT NOS. 3501 AND 3502

(Ordered to lie on the table.)

Mrs. KASSEBAUM submitted two amendments intended to be proposed by her to the bill S. 2488, supra; as follows:

Amendment No. 3501

In title IV, amend section 405 to read as follows:

"SEC. 405. EFFECTIVE DATE.

"The provision of title II and the amendments made by title II of this Act, shall take effect 6 months after the date of the enactment of this Act.".

Strike out the first title V of the bill relating to child pornography provisions.

Strike out the second title V of the bill relating to child care provisions.

Amendment No. 3502

Strike out title III of the bill.

DOMENICI AMENDMENT NO. 3503

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 2488, supra; as follows:

At the appropriate place add the following:

ECONOMIC AND FISCAL POLICY IMPACT STATEMENT

Sec. 1. The Comptroller General of the United States shall, to the extent practicable, prepare a statement of the economic and fiscal policy impact as described in sec (2) below to accompany each bill or resolution or conference report as reported to its House that contains a "major rule" that imposes costs on entities by requiring benefits be provided by other than the federal government.

Sec. 2. (a) This report shall identify the costs imposed and the benefits conferred, the beneficiaries as stated in the legislation, and the extent to which such benefits are available to the intended beneficiaries currently.

(b) This report shall estimate the cost of providing the benefits as identified in the bill and the costs that may result indirectly from meeting the mandated requirements. It shall also enumerate which groups and economic sectors will bear the cost and the extent to which the burden of such costs will shift among or between business, workers, federal government outlays, taxpayers and state and local governments in the fiscal year in which the provision becomes effective and in each of the 4 fiscal years following such fiscal year, together with the basis for such estimate.

(c) This report shall assess the impact of these "major rules" on:

(1) Employment;

(2) Wages and the distribution of wages among major income groups;

(3) American competitiveness, including to the extent practicable, productivity, unit labor costs, business profits, business investment, and exports and imports;

(4) Economic growth; and

(5) Inflation.

(d) The effect on state and local government costs or practices of the requirements, fiscal and otherwise, of the bill, resolution, or conference report;

(e) The equivalent cost if the benefit were being provided by the federal government directly through a self-financing tax;

(f) A comparison of the estimate of costs described in this section with any available estimates of costs made by the Congress or by any federal agency.

Sec. 3. The detailed assessment set forth above may be foregone and replaced by a brief report if preliminary analysis indicates that the aggregate cost to the economy of such "major rule" is less than $100 million annually or, if in the opinion of the Controller General, it does not constitute a "major rule" as defined in sec. 6.

Sec. 4. This economic and fiscal policy impact statement shall be available to the Senate at the time of consideration of such legislation and shall be included to the extent practicable in any report accompanying relevant legislation.

Sec. 5. It shall not be in order in either the House of Representatives or the Senate to consider on the floor any bill, resolution, conference report, or portion of conference report unless such report as defined in sec. (1) is available to the full Senate at the time of consideration. This section may be waived by a 3/5 vote.

Sec. 6. Definitions:

(a) "Major Rule" represents a change required by law in business, state and local government or other nonfederal entity operating practices that is likely to result in direct and indirect costs to the economy in excess of $100 million.

(b) "Benefits" are defined as a cash payment or other privilege not currently conferred which business or state and local governments or other nonfederal entities are obligated by law to provide.

Sec. 7. (a) Findings.—The Senate finds that:

(1) Whereas the costs of such "major rules" have the same economic impact as direct taxes imposed by the federal government; and

(2) whereas such "major rules" represent an extension of the fiscal policy of the country; and

(3) whereas such "major rules" may have significant economic impact when combined with the fiscal policy recommended in the budget plan of Congress; and

(4) whereas such "major rules" are likely to be considered with increasing frequency because of budget stringency;

(b) Sense of the Senate.—It is therefore the sense of the Senate that the budget resolution shall consider the impact of the costs of such "major rules" as part of the nation's fiscal policy and may include in the budget resolution a recommendation of the amount of such cost that may be permitted given the fiscal policy recommended in such resolution. It is further the sense of the Senate that the budget resolution may recommend the extent to which the fiscal policy of the nation should be altered to offset the impact of such costs on the economy.

SPECTER AMENDMENT NOS. 3504 THROUGH 3506

(Ordered to lie on the table.)

Mr. SPECTER submitted three amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

Amendment No. 3504

At the end of the committee substitute amendment add the following new sections:

Sec. . Notwithstanding Section 1460 of Title 18 of the United States Code as added by Section 526 of this Act, Section 1460 of Title 18 shall not constitute a violation of law for an adult merely to possess obscene material. It shall be illegal, as specified in

Section 526(a) of this Act, for anyone to possess obscene material with the intent to sell.

AMENDMENT No. 3505

At the end of the committee substitute amendment add the following new section:

SEC. . In any civil forfeiture action brought pursuant to Section 1470 of Title 18 of the United States Code as added by Section 527 of this Act, the defendant shall have a right to a trial by jury and the government shall have the burden of proof, beyond a reasonable doubt, that the article is obscene under the standards of the community in which the trial takes place.

SEC. . Notwithstanding Section 1471(c) of Title 18 of the United States Code as added by Section 528 of this Act in any civil action under this Section the government shall have the burden of proof, beyond a reasonable doubt, that the article is obscene under the standards of the community in which the trial takes place.

AMENDMENT No. 3506

At the end of the Committee Substitute add the following new section:

"SEC. . Notwithstanding Section 223(b)(2)(A)(i) of Title 47 as added by Section 524 of this Act, Section 223(b)(2)(A)(i) of Title 47 shall not apply to indecent communications to anyone eighteen years of age or older. It is a defense to a prosecution for indecent communication under this section that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation."

BOSCHWITZ AMENDMENT NOS. 3507 AND 3508

(Ordered to lie on the table.)

Mr. BOSCHWITZ submitted two amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

AMENDMENT No. 3507

To require the Secretary of Health and Human Services to certify that before any national regulations can be implemented that they will not have an adverse effect on child-care affordability or availability.

AMENDMENT No. 3508

Each State shall use some of its flexibility funds to establish Resource Lending Libraries.

TECHNICAL CORRECTIONS RELATING TO TAX REFORM ACT OF 1986

EXON AMENDMENT NO. 3509

Mr. EXON proposed an amendment to amendment No. 3499 proposed by Mr. HUMPHREY (and others) to the bill S. 2238, supra; as follows:

On page 2, strike lines, 11 through 16.

Paragraph (2) of section 501(n) of the Internal Revenue Code of 1986, as added by the amenment, is amended to read as follows:

"(2) RECEIPTS FROM CERTAIN ABORTIONS EXCLUDED.—In determining gross receipts under paragraph (1), gross receipts from abortions performed when—

"(A) the life of the mother would be endangered if the fetus were carried to term, or

"(B) the pregnancy is due to rape or incest and such rape or incest has been promptly reported to a law enforcement agency or public health service, shall not be considered.".

RUDMAN AMENDMENT NO. 3510

Mr. RUDMAN proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . INCREASE IN TAX ON CIGARETTES AND ALCOHOL.

(a) CIGARETTES—

RUDMAN (AND OTHERS) AMENDMENT NO. 3511

Mr. RUDMAN (for himself, Mr. BIDEN, Mr. D'AMATO, and Mr. CHILES) proposed an amendment to amendment No. 3510 proposed by Mr. RUDMAN to the bill S. 2238, supra; as follows:

At the end of the amendment, strike "CIGARETTES.—" and insert in lieu thereof the following:

( ) CIGARETTES.—

(1) RATE OF TAX.—Subsection (b) of section 5701 of the Internal Revenue Code of 1986 (relating to rate of tax on cigarettes) is amended—

(A) by striking "$8" in paragraph (1) and inserting in lieu thereof "$9"; and

(B) by striking "$16.80" in paragraph (2) and inserting in lieu thereof "$18.90".

(2) FLOOR STOCKS.—

(A) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before January 1, 1989, and held on such date for sale by any person, there shall be imposed the following taxes:

(i) SMALL CIGARETTES.—On cigarettes, weighing more than 3 pounds per thousand, $1 per thousand;

(ii) LARGE CIGARETTES. On cigarettes, weighing more than 3 pounds per thousands, $2.10 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, the length of each as one cigarette.

(B) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(i) LIABILITY FOR TAX.—A person holding cigarettes on January 1, 1989, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(ii) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 of the Internal Revenue Code of 1986 and shall be due and payable on February 16, 1989, in the same manner as the tax imposed under such section is payable with respect to cigarettes removed on January 1, 1989.

(C) CIGARETTE.—For purposes of this section, the term "cigarette" shall have the meaning given to such term by subsection (b) of section 5702 of the Internal Revenue Code of 1986.

(D) EXCEPTION FOR RETAIL STOCKS.—The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1989, at the place where intended to be sold at retail.

(E) FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (19 U.S.C. 81a et seq.) or any other provision of law—

(i) cigarettes—

(I) on which taxes imposed by Federal law are determined, or customs duties are liquidated, by a customs officer pursuant to a request made under the first proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1989, and

(II) which are entered into the customs territory of the United States on or after January 1, 1989, from a foreign trade zone, and

(ii) cigarettes which—

(I) are placed under the supervision of a customs officer pursuant to the provisions of the second proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1989, and

(II) are entered into the customs territory of the United States on or after January 1, 1989, from a foreign trade zone,

shall be subject to the tax imposed by paragraph (1) and such cigarettes shall, for purposes of paragraph (1), be treated as being held on January 1, 1989, for sale.

(b) DISTILLED SPIRITS.—

(1) IN GENERAL.—Paragraphs (1) and (3) of section 5001(a) of the Internal Revenue Code of 1986 (relating to rate of tax) are each amended by striking out "$12.50" and inserting in lieu thereof "$14.00".

(2) CONFORMING AMENDMENT.—Subsection (a) of section 5010 of such Code (relating to credit for wine content and for flavors content) is amended by striking "$12.50" both places it appears and inserting in lieu thereof "$14.00".

(c) WINES.—Subsection (b) of section 5041 of the Internal Revenue code of 1986 (relating to rates of tax) is amended—

(1) by striking out "17 cents" in paragraph (1) and inserting in lieu thereof "42 cents",

(2) by striking out "67 cents" in paragraph (2) and inserting in lieu thereof "92 cents",

(3) by striking out "$2.25" in paragraph (3) and inserting in lieu thereof "$2.50".

(4) by striking out "$3.40" in paragraph (4) and inserting in lieu thereof "$3.65", and

(5) by striking out "$2.40" in paragraph (5) and inserting in lieu thereof "$2.65".

(d) BEER.—Section 5051(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking out "$9" in paragraph (1) and inserting in lieu thereof "$11.80"; and

(2) by striking out "$7" in the caption and text of paragraph (2)(A) and inserting in lieu thereof "$9.80".

(e) FLOOR STOCKS ON DISTILLED SPIRITS, WINE, AND BEER.

(e) IMPOSITION OF TAX ON DISTILLED SPIRITS.—On articles manufactured in or imported into the United States which are taxable under section 5001(a) of the Internal Revenue Code of 1986, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) DISTILLED SPIRITS.—On distilled spirits, $1.50 per proof gallon.

(B) IMPORTED PERFUMES.—On imported perfumes described in section 5001(a)(3) of such Code, $1.50 per wine gallon.

(2) IMPOSITION OF TAX ON WINES.—On wines produced in or imported into the United States which are taxable under section 5041(a) of such Code, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) On still wines containing not more than 14 percent of alcohol by volume, 25 cents per wine gallon;

(B) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, 25 cents per wine gallon;

(C) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, 25 cents per wine gallon;

(D) On champagne and other sparkling wines, 25 cents per wine gallon; and

(E) On artificially carbonated wines, 25 cents per wine gallon.

(3) Imposition of tax on beer.—On beer brewed or produced in, or imported into, the United States which is taxable under section 5051(a) of such Code, removed before January 1, 1989, and held on such date for sale by any person there shall be imposed the following taxes:

(A) On beer described in section 5051(a)(1) of such Code, $2.80 per barrel.

(B) On beer described in section 5051(a)(2) of such Code, $2.80 per barrel.

(4) Liability for tax and method of payment.—

(A) Liability for tax.—A person holding distilled spirits, an article, wine, or beer on January 1, 1989, to which any tax imposed by paragraph (1), (2), or (3) applies shall be liable for such tax.

(B) Method of payment.—The taxes imposed by paragraphs (1), (2), and (3) shall be treated as taxes imposed under section 5001(a), 5041(a), and section 5051(a) of such Code, respectively, and—

(i) shall be paid in such manner as the Secretary shall by regulations prescribe, and

(ii) shall be paid as such date (not later than 6 months after the date of the enactment of this Act) as the Secretary shall by regulations prescribe.

(5) Exception for on-premises retail establishments.—To the extent provided in regulations prescribed by the Secretary, the taxes imposed by paragraphs (1), (2), and (3) shall not apply to distilled spirits, articles, wine, and beer held on January 1, 1989, on the premises of a retail establishment where alcoholic beverages are sold for consumption on the premises only.

(6) Definitions.—For purposes of this section—

(A) Distilled spirits.—The term "distilled spirits" has the meaning given to such term by section 5002(a)(8) of the Internal Revenue Code of 1986.

(B) Proof gallon.—The term "proof gallon" has the meaning given to such term by section 5002(a)(11) of such Code.

(C) Article.—The term "article" has the meaning given to such term by section 5002(a)(14) of such Code.

(D) Wine gallon.—The term "wine gallon" has the meaning given to such term by section 5041(c) of such Code.

(E) Beer.—The term "beer" has the meaning given to such term by section 5052(a) of such Code.

(F) Person.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(G) Secretary.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(f) Establishment of Drug-Free American Trust Fund.—Amounts equal to all additional revenues resulting from the provisions and amendments made by subsections (a), (b), (c), (d), and (e) of this section shall be deposited by the Secretary of the Treasury into a special fund of the United States Treasury, to be known as the "Drug-Free American Trust Fund", and shall remain available for making expenditures to carry out the purposes of the Omnibus Anti-Substance Abuse Act of 1988, as provided by appropriation Acts.

(g) Effective Dates.—

(1) Amendments.—The amendments made by subsections (a)(1), (b), (c), and (d) shall apply to cigarettes, distilled spirits, wine, and beer removed after December 31, 1988, and before January 1, 1991, but only if the Omnibus Anti-Substance Abuse Act of 1988 is enacted.

(2) Other provisions.—Subsections (a)(2), (e), and (f) shall take effect on the date of the enactment of this Act, but only if the Omnibus Anti-Substance Abuse Act of 1988 is enacted.

GRAMM (AND ARMSTRONG) AMENDMENT NO. 3512

Mr. GRAMM (for himself and Mr. Armstrong) proposed a motion to recommit the bill S. 2238 to the Committee on Finance with instructions that the committee report back forthwith with the reported amendment, in the nature of a substitute, modified, as amended by certain amendments, and a further amendment; as follows:

Mr. President, I move to recommit the bill to the Committee on Finance with instructions that it be reported back with the committee substitute as modified and as amended by amendments No. 3468, 3442, 3469 and with the following amendment:

"Notwithstanding any other provision of law, there are hereby transferred to the Attorney General, the Secretary of Health and Human Services, and the Secretary of Education for the purpose of carrying out programs under the Omnibus AntiSubstance Abuse Act of 1988, the following funds appropriated for fiscal year 1989—

(1) from the Economic Development Administration, $182,028,000;

(2) from the Legal Services Corporation, $58,555,000;

(3) from Amtrak, $584,000,000;

(4) from the Low-Income Energy Assistance Fund, $196,200,000; and

(5) from funds authorized for a 300,000 ton coal purchase in the Department of Defense stock fund, $21,900,000.

SIMON (AND OTHERS) AMENDMENT NO. 3513

(Ordered to lie on the table.)

Mr. SIMON (for himself, Mr. Dixon, Mr. Sanford, and Mr. Helms) submitted an amendment to the bill S. 2238, supra; as follows:

On page 1142, line 24, before the end period, insert ", or if the payor elects, to payments after December 31, 1986, in taxable years ending after such date".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, October 6, for a markup meeting on pending nominations in the committee as follows: James H. Atkins, Stephen E. Bell, John David Davenport, nominees for Federal Retirement Thrift Investment Board; and Bert H. Mackie, nominee for Governor of the U.S. Postal Service; and Eric Himpton Holder, Jr., and Mildred M. Edwards, nominees to be associate judge, Superior Court of the District of Columbia.

The PRESIDING OFFICER. Without objection, it is ordered.

SUBCOMMITTEE ON LABOR

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Labor, of the Committee on Labor and Human Resources, be authorized to meet during the session of the Senate on Thursday, October 6, 1988, to conduct an executive session on "The Performing Arts Labor Relations Amendments," S. 1346.

The PRESIDING OFFICER. Without objection, it is ordered.

FULL COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the full Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, October 6, to hold a hearing on test ban issues.

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON ARMED SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet jointly with the House Armed Services Committee on Thursday, October 6, 1988, in open/closed session to receive testimony on the restructuring of the Strategic Defense Initiative [SDI] Program.

The PRESIDING OFFICER. Without objection, it is ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, October 6, 1988, to hold a hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is ordered.

ADDITIONAL STATEMENTS

ADDITIONAL COSPONSOR—S. 2326

● Mr. McCAIN. Mr. President, I ask unanimous consent that my distinguished colleague from Alaska, Senator Murkowski, be added as a cosponsor of S. 2326, the Consumer Fraud Protection Act.

I welcome my distinguished colleague's participation in this effort to step up the fight against those who perpetrate fraudulent acts against the American consumer. I know that Senator Murkowski has long been concerned about the effects of consumer fraud on the people of his State, and American consumers in general.

While it does not look as though we are going to be able to get this legislation to the floor of the Senate for consideration before the end of the 100th Congress, I believe this legislation will be considered by this body next session. I look forward to my distinguished colleague's involvement in the fight against consumer fraud.●

GERMAN-AMERICAN DAY

● Mr. EXON. Mr. President, I am extremely proud to join my colleagues in cosponsoring Senate Joint Resolution 273, designating this day, October 6, 1988, as "German-American Day." It has been noted that America is a nation of many nations. Indeed, the foundation of our Nation's strength was laid by the experiences of those immigrants who came to our shores from throughout the world and found promise, opportunity and freedom in a challenging new land.

The contributions of those Americans of German descent runs constant throughout our history. German-Americans have brought to this country the influence of their native culture, arts and industry, undeniably enriching the fabric of our society. Today, we embrace the Federal Republic of Germany as one of our closest and most trusted allies. Throughout the United States, towns and cities, through the International Sister City Program, have formed a close bond with their German counterparts. Friendship between Americans and Germans grows daily. The physical expanse of the Atlantic Ocean is inconsequential—the link between the American and German people is carried in the collective heart of each nation.

I encourage not only my colleagues but all Americans to join in the reaffirmation of this important cultural tie to our Nation's past, present and future.●

GERMAN-AMERICAN DAY

● Mr. DeCONCINI. Mr. President, I rise today in commemoration of "German-American Day," the day we recognize the contributions of a fine group of citizens.

The legacy of German presence in our Nation dates back over 300 years. These first immigrants brought with them a tradition that continues to the present day. Currently we are enriched by the many million American citizens of German ancestry. The achievements and positive effects that these people bring to our country deserve praise and recognition.

Today, we benefit from these individuals in every aspect of our lives. Their cultural influence is felt clear across our great Nation. They further bind our country to West Germany and German-speaking nations. There is not a dimension of our country's internal or external affairs that does not benefit from the vital achievements of German-Americans. These contributions include religion, the arts, science, and industry.

October 6 marks "German-American Day," giving us the opportunity to acknowledge their contributions to our society. I encourage my colleagues to join me in paying to the many millions of German-Americans and their accomplishments on this day.●

IN HONOR OF THE REVEREND OSBORNE BUDD

● Mr. BRADLEY. Mr. President, the Reverend Osborne Budd, of St. Stephen's Episcopal Church in Waretown NJ, is celebrating his 50 years as priest of the church.

Since his ordination on November 30, 1938, Reverend Budd has served the people of his church and his community. From his first assignment as chaplain at the Wiltwyck School, to his work at God's Providence House, a settlement house in New York City, to his chaplaincy of the State Prison at Walkill, Reverend Budd has worked to draw his parishioners closer together.

For 27 years, Reverend Budd was rector of St. John's Episcopal Church in Tuckahoe, NY. After his retirement in 1973, he moved to Waretown, NJ, where he became associated with St. Stephen's Church, as nonstipendary assistant to the Reverend Cannon William H. Paul. Reverend Budd has continued his active leadership in the parish—particularly in his work with children. Though he has retired, he continues his involvement with his church and his community.

Mr. President, I commend Reverend Budd for a lifetime of service and I wish him a very happy and fulfilling retirement.●

INFORMED CONSENT: VERMONT

● Mr. HUMPHREY. Mr. President, today I would like to insert into the RECORD two letters sent to my office in support of my informed consent legislation, S. 272 and S. 273. Today's letters come from the State of Vermont.

The letters follow:

PERKINSVILLE, VT,
March 9, 1988.

DEAR SENATOR HUMPHREY: I am writing with respect to your informed consent bills for abortion. I sincerely hope this legislation passes. I regret very much having had an abortion ten years ago. At the time I had no knowledge of what the abortion really involved for the baby. I wasn't even thinking of it as a baby—but as a bunch of cells.

Perhaps if I had had the courage to ask the people at Planned Parenthood (where I found out I was pregnant) or the clinic (where I went for the abortion), about the actual development of the baby, they would have told me. Maybe I didn't ask because I was afraid of the answer, and if I heard that answer, I wouldn't have been able to go with the abortion. It seemed like the only option at the time.

I think it is imperative for doctors performing abortions and for clinics that encourage abortions to tell the truth about what is involved for the baby—and to refer to it as a baby, not a fetus. My heart was nearly broken again last night as I heard a description of what an abortion was like for a baby of the age mine was. It is tragic—for the babies, for parents, for us as a nation.

I remember signing a consent form, but I don't remember what was on it and no one went through all the different items on it. No one really said anything. Except when the abortion was over, they said they had to make sure that they "got all of it." It was at that time, for the first time when it was too late, that I started thinking about the fact that this was a real baby.

This was a very sad time for me. It was supposed to be a joyous time in the sense that I was no longer in a difficult situation, but my heart ached. On the following Mother's Day, I really felt the loss—it all came back to me.

My heart also aches when I hear of a girl or women thinking about abortion. I want them to know before they make the mistake that it isn't a harmless decision. It does have grave consequences, and that there are positive alternatives. I wish I had known about the support homes that will provide a place to live before and after birth. There are so many hungry people waiting for a baby to adopt. They want to give love and a home to a baby someone else can't support. How I wish I had done that.

So please share with your colleagues the importance of informed consent. Thank you for listening. God bless you in your efforts.

Sincerely,

GINNY FRANKLIN.

MONTPELIER, VT,
December 10, 1985.

DEAR MR. PRESIDENT: I wanted you to know that I appreciate all your efforts to curtail abortion in our United States. I support your ideals and your hard work in this area and know in my heart that it will make a difference to all Americans whether they are aware of it or not. Because, soon abortion is going to creep into every segment of our society and our trusted nation is decaying so rapidly that it is frightening and abortion is the headliner.

As the State Director of Women Exploited By Abortion in the State of Vermont, who has had an abortion, I'm a living testimony of the delusion which is being promulgated by our state and federal government because of the Supreme Court ruling all those years ago. No one has the authority or the right to take a life or to persuade someone to give up a life, under the guise that it is the "best" thing for all concerned. I think the unfortunate thing about this decision, is that it causes people to equate what is legal with what is right. How very sad.

Finally, I speak solely for myself but I now echo the sentiments of many Vermonters when I say thank you for what you are doing and God bless you and keep you. When you know you're doing what the Lord wants you to do, it really doesn't matter what everyone around you is saying, because He gives you the strength to carry on.

Sincerely yours,

VERA A. JONES,
State Director, WEBA.●

GERMAN-AMERICAN DAY

● Mr. **BOSCHWITZ.** Mr. President, I rise today to recognize and commemorate October 6 of each year as "German-American Day." I am proud to be an original cosponsor of the bill recognizing the many contributions that German-Americans have made in the United States.

German immigrants began to arrive in our country on October 6, 1683. They made up the largest population of immigrants in the United States during the late 19th and early 20th centuries. Americans of German ancestry now number more than 50 million. And my own State of Minnesota ranks 10th in the Nation with residents of German descent.

The United States is distinguished from other countries because of our immigrant heritage. Almost all of us are immigrants or their descendants. I firmly believe that our immigrants continue to energize the United States culturally and intellectually. They have been a key ingredient in fueling our economic expansion.

Today I rise to recognize the accomplishments of German-Americans who have contributed so much to American life and society. Our country would indeed have been much the poorer in so many areas of endeavor without their vital contributions. So I salute them and look forward to their continuing contributions to the growing well-being of America.●

COMMEMORATING GERMAN-AMERICAN DAY

● Mr. **DIXON.** Mr. President, I rise before you today because I believe it is most appropriate that we pay tribute to those many contributions made by German-Americans.

More than three centuries ago, the first Germans immigrated to the United States.

Today, there are more than 50 million Americans of German descent. In my own State of Illinois, there are 3.2 million citizens of German descent, comprising 27.2 percent of the population and I am proud to count myself among them. My mother was a Tebbenhoff and her mother before her was a Washausen! In my hometown area of southwestern Illinois Schwartz, Schmidt, and Mueller are the common surnames and the air is filled with the scent of brewer's yeast.

Long before Germans arrived on our shores, though, they had made enormous contributions to Western culture. German achievements in art, music, scholarship, science, industry, philosophy, and commerce have greatly enriched every aspect of our lives. German-Americans have risen to serve the highest offices in the land.

So, on German-American day, in the spirit of Oktoberfest, I offer a hearty prosit to German-Americans.●

GERMAN-AMERICAN DAY

● Mr. **LUGAR.** Mr. President, President Reagan has proclaimed October 6 as German-American Day. As my colleagues will recall, the Senate approved this commemorative legislation on July 26, with 60 cosponsors showing strong bipartisan support. This bill was subsequently passed by the House of Representatives and signed by President Reagan.

This will mark the 305th anniversary of the first German settlement in America at Philadelphia. This great Nation has been enriched and strengthened by the wide diversity of millions of German immigrants who have made countless contributions to the economic, political, social, and cultural life of America. I, therefore, call on all Americans to join with me in celebrating German-American Day.●

GERMAN-AMERICAN DAY

● Mr. **RIEGLE.** Mr. President, today we celebrate German-American Day. I was pleased to join my colleague from Indiana, Mr. LUGAR, in introducing Senate Joint Resolution 273, which designates October 6 as German-American Day. Unanimously adopted by both the House and the Senate, this resolution acknowledges the special historical and cultural contributions that German-Americans have made to our society.

Five years ago, on October 6, 1983, Americans marked the 300th anniversary of the arrival of the first German immigrants to the United States. In celebration of that anniversary, the President proclaimed it a day to honor the contributions made by German immigrants to the life and culture of the United States. Legislation which, for the past 2 years, I have been privileged to introduce with Senator LUGAR, has carried on that important tradition.

More than 300 years after the arrival of the first German immigrants to our shores, one in four Americans—or some 50 million of us—can claim German ancestry. In my own State of Michigan, the 1980 census indicates that some 2.5 million citizens are of German descent, and I am proud to count myself among them.

Since the first German settlers came to our shores, they have enriched America's literature, art, scholarship, science, industry, commerce, religion, philosophy, cuisine, and every other dimension of American life. German-Americans have distinguished themselves as one of the most industrious and prosperous communities in this country.

The Brooklyn Bridge, the science of pediatrics, and the symbols of the donkey and the elephant to denote the Democratic and Republican parties, were all the creations of German-Americans. As the United States evolved into the great Nation of today, these contributions stand as living symbols of the genius of German-Americans, from whom we have benefited so greatly.

We count among our most renowned leaders two famous German-Americans: The brave Revolutionary War General, Von Steuben, and the great World War II leader and later President, David "Ike" Eisenhower. To them, all Americans own a special debt of gratitude for guiding our Nation through some of its most difficult days.

The common heritage shared by Germans and Americans has created a unique bond between our peoples. The historic German appreciation for democratic freedoms, for the rule of law and for the importance of family, made it possible for early German settlers to overcome the cultural and language barriers they faced in America and to become assimilated into our society.

On October 8 of last year, in a speech marking German-American Day, Dr. Philipp Jenninger, President of the German Bundestag, made an eloquent statement before the 30th plenary sitting of the German Bundestag. Speaking of the close United States-German friendship, and of our shared commitment to preserving our common freedom, he said:

> * * * it is not so much our common security interests but, rather, our shared ideas of freedom, human dignity and democracy that are of decisive importance for the stability of our political relations. Americans and Germans may differ on individual issues but they agree on the essential issue, namely our commitment to freedom, and nowhere is this borne out more clearly than in Berlin [where U.S. troops are stationed].

Mr. President, today, on German-American Day, we celebrate that shared commitment to freedom, human dignity, and democracy and demonstrate our gratitude to the German-American citizens of this country for the countless ways in which they have, and continue to, enrich our Nation.●

GERMAN-AMERICAN DAY

● Mr. **WILSON.** Mr. President, it gives me great pleasure to join with my colleagues in heralding the celebration of German-American Day today. This is a time to pay tribute to the countless men and women who immigrated to America from Germany, bringing with them a remarkable national character and cultural heritage to weave into the fabric of our American society. We pay tribute today to the cherished traditions we have inherited from Germany and to the wealth of social, cultural, and economic contributions of our German-Americans which have enriched all Americans.

Today we remember with pride and admiration those first German immigrants whose courage and determination brought them to a new land in 1683. Here they formed, in partnership with immigrants from other countries, the backbone of a new nation, defining its unique character and charting its course to greatness. It is my privilege to salute this splendid legacy on the occasion of German-American Day.●

AMERICA NEEDS A COMPREHENSIVE LONG-TERM CARE PROGRAM

● Mr. RIEGLE. Mr. President, the United States currently lacks a comprehensive national policy to address the long-term care needs of our elderly and disabled citizens. I believe that enacting a workable system of long-term care should be a top priority of the 101st Congress.

Currently, public funding for long-term care is primarily limited to nursing home care. This is particularly disturbing considering that most people prefer home care to nursing home care when possible.

Most Government assistance for long-term care is financed through Medicaid, which is designed for low-income individuals. Medicaid is never available until the disabled individual is impoverished.

Private sector options are also limited. Long-term care insurance policies have restrictions such as prior hospitalization requirements and preexisting condition exclusions that reduce the amount of financial protection they offer. Only 1 to 2 percent of elderly have long-term care policies.

The system is clearly flawed when an individual has such limited options and must be poor or become poor to receive essential services.

We must move to protect our citizens against the high costs of long-term care. Nursing home care costs can average $22,000 a year and are by far the leading cause of catastrophic health care costs. The total costs of nursing home care alone were $38 billion in 1986. The high costs of long-term care underscores the need to carefully consider how best to meet our Nation's long-term care needs.

To understand the unique long-term care needs of Michigan, I sent a letter to close to 400 elderly leaders in Michigan discussing legislative proposals and soliciting their advice on the best approach. I have also learned a lot about the type of national long-term care system that is needed in this country from the seven hearings that I held in Michigan at which elderly individuals who have chronic health care needs testified.

I believe that this country needs a Federal policy on long-term care that provides a range of services to individuals, including institutional and community-based services. This system should be responsive to changes in an individual's condition. Ultimately, such a long-term care system should enable people to maintain their independence and quality of life.

The private and public sectors both have roles in providing for a comprehensive long-term care insurance system. In particular, the Federal Government should administer and regulate the program overall, in the least burdensome manner, to ensure quality of care. Because the current budget deficit prevents major new Government spending and the entire burden of costs cannot be placed on the individuals themselves, the private sector has an important role. Toward this end, the Federal Government can encourage the private sector to develop better insurance policies which citizens can afford.

In addition, we should give special consideration to low-income individuals having long-term care needs who cannot afford the costs of care. Receipt of long-term care should not be available only to those who can afford it.

Long-term care expenditures will be incurred by society anyway, whether or not the Government acts. The critical issue is whether these costs will largely be borne by the unfortunate few who end up in a nursing home or need home care or spread more broadly over the population.

As a member of the Subcommittee on Health, I will be working with the Finance Committee chairman to build a sound and equitable long-term health care system. We are in the first stages of this long overdue effort in developing solutions that will afford individuals real security.●

SAM FREEMAN

● Mr. WILSON. Mr. President, over the past weeks we have praised the accomplishments of Olympic champions. Today, I come before the Senate to honor another champion. Although, the gentleman I speak of has not won an Olympic medal, he has brought just as much pride to our Nation and his personal achievement deserves our highest admiration.

Sam Freeman, a 67-year old New York judge, has just completed a feat incomprehensible to most people. Today, Sam completed a solo 3,200-mile run across America. Running more than a marathon every day, Sam insisted on continuing despite 109-degree heat, freezing pouring rain, and swarming mosquitos; in less than optimal living conditions: living off all-you-can-eat buffets, and sleeping in a small suburban van. Through this kind of perserverance and determination, Sam has reminded all Americans that age alone does not limit a person's ability to remain healthy and fit.

Sam's venture, with a goal of getting at least one person in every State to change his or her lifestyle, received strong support and congratulations from groups like the American Association of Retired Persons [AARP] for inspiring many older Americans to remain active. Sam believes, and has proved through his own fine example, that physical fitness and exercise can improve the health and quality of life for many senior citizens.

As a member of the Senate Special Committee on Aging, I particularly appreciate Sam's message to older Americans and to other citizens who can take encouragement to begin a health and fitness program which will allow them to stay vital and strong throughout their lives.

I want to congratulate Sam on his heroic accomplishment, and I hope that he will continue in his efforts to break down age barriers and show millions of individuals that they need not give in to their own senses of limitation. His shining example illuminates the way for older Americans everywhere.●

LAWANA SCOVILLE

● Mr. McCONNELL. Mr. President, I marveled last week at the glorious launching of the space shuttle *Discovery*. Its safe return to Earth after 4 days of nearly flawless flight was inspiring to all of us. Our endeavors in space are attributable to the excellence of our scientific community. A constituent of mine, a schoolteacher named Lawana Scoville, exemplifies that commitment to scientific achievement. I am happy to report that the National Science Foundation recently recognized Lawana's commitment by honoring her with the 1988 Presidential award for excellence in Science Teaching.

In addition to the honor, Lawana will receive $5,000 to improve her science program at Laurel County High School where she has taught since 1976. Mr. President, I would like to insert into the RECORD an article that appeared in the Lexington Herald-Leader that further details her dedication to the teaching profession.

I hope that all of my colleagues in this body will take note of the praise she receives from her fellow educators and join me in congratulating this outstanding individual.

The article follows:

LAUREL SCIENCE TEACHER WINS PRESIDENTIAL AWARD FOR MOTIVATING STUDENTS

(By Kevin Nance)

At North Laurel Junior High School, Lawana Scoville teaches more than science. She teaches her students how to be scientists.

Under Mrs. Scoville, her students learn the classic scientific process; hypothesis, research, conclusion. It's methodical, but it produces results—like scores of prizes for her students in local science fairs and international expositions.

On Oct. 24, Mrs. Scoville will collect her own prize; the 1988 Presidential Award for Excellence in Science teaching.

The award, sponsored by the White House and the National Science Foundation, includes $5,000 to be spent by each of the 50 winners on their science programs from all 50 states.

"We're tickled to death," she said yesterday after receiving a letter on White House stationery from William Graham, President Reagan's science adviser.

Mrs. Scoville 37, and her husband John—also a teacher at North Laurel—will take an all-expenses-paid trip to Washington, DC., for several days beginning Oct. 24.

Dubbed Excellence in Teaching Week, it will include ceremonies, seminars and meetings with eminent scientists and the 49 award winners from the other states.

Two Jefferson County teachers, Nancy Daugherty and Tom Beard, were named the runner-up for the science award in Kentucky.

A teacher for 15 years, Mrs. Scoville has taught in Laurel County since 1976. She now teaches ninth-grade physical science and a special science research class at North Laurel, which opened in August near London. She also directs the local science fair.

"She's a very creative, innovative teacher," Howard said. "She goes the extra mile, even spending time with students after school."

In her research class, students work on widely varying projects. Recent topics include the mechanics of the learning process and the effect of ginseng on the immune system.

Mrs. Scoville said she was thinking of using the prize money to buy a computer with an advanced compact disc storage system for her class

"She's one of the best science teachers I've ever seen—a real hard worker and dedicated to the profession," said North Laurel principal Phyllis Durham. "The award is a big plus for the school. It's going to be a big encouragement for other people, too."●

TRIBUTE TO WHEELER BOYS CLUB

● Mr. LUGAR. Mr. President, I am pleased to have this opportunity to commend the Wheeler Boys Club in Indianapolis, IN for its outstanding performance in the recent All-American Roundball Tournament held in California, and the National Invitational Tournament held in Nevada.

The Wheeler Boys Club has a tradition of producing strong men that go on to become solid leaders, with academic and athletic achievements. This basketball team composed of boys 15 and under has captured the 1988 National Invitational Tournament Championship under the skillful direction of Coach Eddie Leavell. Members of this outstanding team included Andre Smith, who was named the most outstanding player, Keith Ford, James Franklin, Aaron Gilbert, Chris Harding, Ashley Landers, Kory Manning, Fred Maxey, Jermaine Ball, Kye Steffey, Albert Tate, Marc Thompson, and Laron Moore.

These competitions serve a great purpose: they cultivate the talents of our young people and help them develop into competent leaders of their generation.

I want to congratulate all the players and coaches who participated in these tournaments. I especially want to salute the Boys Clubs of Indianapolis for encouraging our youth to excel.●

THE ASBESTOS INFORMATION ACT OF 1988

● Mr. CHAFEE. Mr. President, today we are considering the House-passed version of a bill that Senators BAUCUS, STAFFORD, DURENBERGER, and I introduced on August 5 of this year, S. 2687, the Asbestos Information Act of 1988. This bill sets in place a mechanism that will speed the process of resolving legal disputes over the potential hazards associated with asbestos in buildings.

It is now widely recognized that asbestos-containing materials are present in thousands of buildings. Building owners face the difficult task of determining whether this situation presents a danger sufficient to require some form of abatement of these materials and, if so, whether to seek compensation from the manufacturers of them. Efforts to deal with the resulting cost allocations have been, and will continue to be, centered in the courts.

We have seen just the beginning of litigation relating to asbestos in buildings. While the claims are being processed through the legal system, the uncertainty of the outcome leaves hundreds of millions of dollars in both removal costs and legal costs hanging in the balance, with drastic impact on both building owners and manufacturers. The procedural wrangling over these cases also presents a drain on the resources of the legal system and on society as a whole.

The bill we are considering today is designed to assist the legal system and avoid a repetition of the nightmare of asbestos personal injury litigation. In that litigation, thousands of deserving claimants were denied compensation for many years by the avalanche of cases that clogged the courts and by the procedural maneuvering of the lawyers on both sides. The result was not only delay, but enrichment of lawyers rather than claimants.

This bill seeks to avoid or reduce some of the uncertainties of such litigation, without influencing the merits of the litigation, by providing information on asbestos products to EPA. These building materials are of distinct types—ceiling tile, plasters, pipe insulation, fire-proofing, and so forth—and they can be further identified through laboratory analysis. Building owners often do not know who manufactured the asbestos products in their buildings and without the manufacturers' product formulas, often cannot know, even if they have analyses of samples from their buildings. Thus, in order not to overlook a potentially responsible party, they often sue 40 or more defendants, even though only a few might actually have supplied the products in their building. For the others, the legal defense costs mount nonetheless.

Under this bill, the companies that manufactured asbestos building materials will be required to disclose formulas and descriptions of their product. These formulas and descriptions will then become a matter of public record.

The information that will be generated under this bill sets up a situation whereby building owners can match their asbestos material to the formulas and descriptions provided by manufacturers. This will enable the building owners to seek recovery for damages from a narrow group of suspects rather than from the universe of all manufacturers of asbestos building material.

Under this bill the identification process will be accelerated. The bill is designed to increase litigation efficiency without affecting the substantive issues in asbestos-in-building litigation.

In short, this bill will speed the process by which asbestos in buildings gets cleaned up and responsibility for the costs of such cleanup is decided. Having learned a valuable lesson from the asbestos personal injury litigation, this is an attempt to enable claimants to reach the merits of their claims more quickly. With the increase in certainty, building owners are more likely to get on with the necessary business of assuring a healthful environment for the occupants of their buildings.

Mr. President, I urge my colleagues to support passage of this bill and look forward to its becoming law.●

PIPELINE TO VIETNAM

● Mr. ARMSTRONG. Mr. President, recent information from Vietnam portrays a nation in chaos. In the 20 years since the United States pull-out in Vietnam, this Communist nation has not only failed to recover from the war, it has created an economic calamity. While other Asian rim countries have boomed, Vietnam has degenerated into one of the poorest nations on Earth. Vietnam's economy now ranks with such unfortunate nations as Ethiopia and Bangladesh.

Jeffrey Broder of the Orange County Register has written a comprehensive series of articles based on months of research. He describes the human tragedy of the people of Vietnam and how their relatives in this country have been sucked into this morass of failure. I ask to have these articles printed in the Congressional Record and strongly recommend their reading to all of my colleagues. These articles describe a human dilemma that is without precedent in the history of immigration to the United States.

According to Mr. Broder's information, the average Vietnamese earns $2 to $3 per week. Refugees from Vietnam earn more at minimum wage in 1 week in the United States than their relatives in vietnam earn in a year. For the first time since the war, Vietnam does not produce enough food for its 63 million people and famine is beginning in its northern Provinces, partly due to a transportation system in ruins. Inflation is out of control with the Dong now at 3,000 per dollar compared to 1,000 per dollar last January. It takes over 4 days labor to buy a tube of toothpaste. Power blackouts occur daily.

The abysmal failure of yet another Communist economy is no longer news in the world of today. It is a commonplace phenomenon. In country after country around the world, communism is not only failing to live up to the promise of its adherents, it is creating living nightmares of poverty and human rights abuse for all but the party elite. The real news from Vietnam today is that the only reliable source of hard currency and desperately needed consumer goods is coming from Vietnamese refugees in the United States in the form of aid to their stricken families still in vietnam.

Jeffrey Broder graphically describes the cruel dilemma that is faced by the refugees who managed to escape Vietnam. They must stand by and do nothing as their relatives in Vietnam suffer from a lack of the most rudimentary necessities, or break United States law to send them money and goods. They are put in position of helping the survivial of the repressive regime they risked their lives to escape by creating a pipeline of illegal supplies to their relatives.

I conducted a Senate hearing on this problem in June of 1984. I received testimony which indicated that the Communist government of Vietnam was orchestrating the illegal flow of currency from the United States into Vietnam of between $15 and $18 million per month. An insidious pattern of organized extortion of money from refugees had already emerged at that time. Because of the massive failure of the Communist economy, what Mr. Broder calls "The Pipeline to Vietnam" is still in full operation and includes an enormous flow of consumer goods which can be quickly traded on the black market.

It is a morally bankrupt country that must prey upon the humanitarian instincts of refugees from its own repression to obtain a supply of essential goods that the nation itself can no longer produce.

The situation the articles describe raises serious policy issues for the United States that should no longer be allowed to drift. What are the U.S. Government's responsibilities to protect its citizens from humanitarian blackmail? Why do we have embargo laws on the books that we choose not to enforce? Why should we allow a large infusion of goods and capital through this "Pipeline to Vietnam" when we get so little cooperation from Vietnam on the issue of POW/MIA's.

The refugees themselves have deep differences about what should be done, but there is one thing upon which we can all agree. The loss of freedom in Vietnam has spawned a tragedy that can no longer be ignored.

The articles follow:

[From the Orange County Register]

Pipeline to Vietnam—Refugees in Orange County Often Violate U.S. Trade Embargo by Shipping Parcels to Relatives Overseas

MILLIONS IN GOODS, CASH FLOW ABROAD

(By Jeffry Broder)

The US government, by ignoring its own trade embargo, has helped communist Vietnam bolster its near bankrupt economy through an unprecedented economic pipeline between Vietnamese refugees and their relatives back home.

Desperate to help impoverished relatives, refugees are sending $90 million to $200 million in currency and goods to Vietnam each year.

Much of it is in violation of the US trade embargo, which calls for an economic boycott of Vietnam. While only humanitarian gifts—usually food, clothing and medical supplies—are permitted, many illegal items, including machinery and agricultural supplies, also are sent by the refugees.

Faced with heavy debts, a shortage of consumer goods and few exports to trade on the world market, the Vietnamese government profits from the trade by corralling the goods in giant warehouses and taxing them as much as 80 percent of their value.

Week after week, hundreds of thousands of pounds of goods stuffed into shipping crates and cardboard boxes make their way from shops in Orange County's Little Saigon—and other Vietnamese business districts in the United States—to main distribution centers in Can Tho, Hanoi, Hue and Ho Chi Minh City, formerly Saigon.

The refugee-owned stores, located along a 1½ mile section of Bolsa Avenue in Westminster and Garden Grove, serve as outlets for the shipment of a cornucopia of goods that includes such illegal items as motorcycles, chain saws, generators, plows, tillers, water pumps and pesticide sprayers.

"I'm just amazed. It's a gigantic subterreanean economy," said Rep. Robert Dornan, R-Garden Grove, whose district encompasses Little Saigon.

"I never imagined that the Vietnamese would circumvent the embargo by sending outboard motors to Hanoi," he said.

"This is normalization at the trade level. It helps the government of Vietnam and thwarts our embargo. The next thing they're going to do is send a Hyundai from Garden Grove."

An estimated 85,000 of the 800,000 refugees in the United States live in Orange County. Little Saigon, the largest Vietnamese business district in the nation, is the major source of the pipeline. The remaining refugees in the United States are concentrated in Los Angeles, San Jose, New Orleans, Houston and Arlington, Va.

While many of the gifts sent by refugees are kept by the families who can pay the tax on them, others are appropriated by the government in lieu of the tax or sold on the black market, providing the upper levels of Vietnamese society with their only reliable source of American goods.

The US agencies charged with enforcing the embargo—the US Treasury Department, the US Commerce Department and the US Customs Service—say they are too short-staffed to monitor the trade, which equals one-quarter to one-half of Vietnam's imports from the non-communist world.

The critics of the Reagan Administration contend that the US government hopes to win in peace what it could not achieve through war—a Vietnamese government friendly to the United States.

Yen Do, editor of the Nguoi Viet newspaper in Westminister, said the US government has not enforced the embargo because it wants Vietnam to become dependent on US goods.

"The US wants Vietnam to become addicted," Do said, "That's why it allows the goods to go through."

William Cassidy, a Vietnamese-affairs specialist who has served as a consultant to the US Senate and Customs Service, said: "The United States government has two policies toward Vietnam. One is the policy they tell the American people, which is reflected in the embargo and the laws on the books. The second is the policy pursued in secret, which is reflected in the lack of enforcement."

But R. Richard Newcomb, director of the Treasury Department's Office of Foreign Assets Control, one of the agencies responsible for enforcing the embargo, maintained that his office is doing its job. However, he acknowledged that no one has ever been arrested or prosecuted for illegally shipping currency or goods to Vietnam.

The conflicting demands placed upon refugees by their families and the US and Vietnamese governments have created a cruel dilemma for them.

The refugees find themselves circumventing the law in their adopted homeland and nursing to health a communist government that once wanted them dead.

As Mai Cong, president of the Vietnamese Community Center of Orange County, put it: "We have to help. How can we relax over here if we know our family is suffering? How can we relax if we know our blood relatives are starving? Something has to be done."

The gift-sending also has splintered Vietnamese communities, drawing the wrath of the most conservative, most vehement anticommunists. They say Vietnam exploits the refugees and their families.

"They hold your relatives hostage so you keep on sending money," said Nam Dinh, a Garden Grove postal carrier who has been trying to get his wife and daughter out of Vietnam for more than six years. Dinh, 33, left Vietnam before his child was born. To support his family, he sends about one-fourth of his salary, $500 per month, back home.

"Almost every Vietnamese family in the United States sends gifts," said Professor Nguyen Manh Hung of the Indochina Institute at George Mason University in Fairfax, Va.

"Anybody with family members over there has to do it. Millions of people survive by receiving supplies from the outside."

Tuong Nguyen, executive director of the Vietnamese Community Center, said he and his wife support 10 households.

About every three months, Nguyen sends goods to his parents, five brothers and sisters; his wife sends packages to her parents and two brothers.

"We send soap, toothbrushes, material to make clothes, and household items," Nguyen said.

The gifts can provide money needed to survive or escape. Hoang Ha, a former counselor with the Vietnamese Community Center, said money earned from the sale of the three used motorcycles he sent to Vietnam in 1986 helped his son escape to Thailand.

He said he paid $2,200 for the motorcycles and that his family was able to sell them on the black market in Vietnam for the equivalent of $2,400.

Dr. Co Pham, president of the Vietnamese Chamber of Commerce in Orange County, said about 50 percent of the business in Little Saigon is connected to the pipeline between Orange County and Vietnam.

With 13 major shopping centers valued at more than $100 million, Little Saigon has grown from three Vietnamese-owned businesses in 1978 to more than 759 a decade later.

It serves as the US capital for the refugees and functions as the center for Vietnamese business and political and social activities in Southern California.

In his fabric store on a recent weekend, Lu Tran, a former South Vietnamese Army captain, looked at the irregularly shaped boxes being packed for Vietnam—some weighing as little as 15 pounds, some weighing more than 200—and said he doubts that Vietnam has a factory to produce cloth.

"Customers come here all the time saying their families need fabric to make dresses, shirts and pants," Tran said. "The country right now is completely broke. They have nothing. No industry. No business. No money.

"People write letters to their relatives saying they need things from America to survive."

Quach Nhut Danh, a Westminster pharmacist, prepares packages of prescription drugs, over-the-counter medication and vitamins for shipment to Vietnam that sell from $200 to $350.

The packages include aspirin, ampicillin, B-complex vitamins, Kaopectate, lasix, tetracycline and even birth-control pills and testosterone.

"I ship about 10,000 to 15,000 pounds per month," Danh said.

Telegram, travel and express mail services have been established between Orange County and Vietnam.

It also is possible to wire money to Vietnam and pay for goods on Bolsa Avenue in gold rather than cash.

The volume of trade between the Vietnamese refugees in the United States and their homeland is staggering.

The shipment of goods to Vietnam from the West Coast totals more than 50,000 pounds per week and from the entire United States more than 100,000 pounds per week, according to Joe Miller, western regional cargo manager for Air France.

Miller, interviewed in Ho Chi Minh City while attending a business conference, said Air France flies twice a week to Vietnam and that packages transported from the United States arrive within five days.

Louis de Rosa, a former Air France employee who started his own shipping agency, said the package trade, which began in 1978 with a few families, has grown into a $100 million per year business.

"If the United States lifted the embargo, the amount of shipments would quadruple," de Rosa said.

A US Senate subcommittee investigating clandestine currency transfers to Vietnam in 1984 estimated that the refugees send more than $200 million in money and goods to Vietnam each year.

Parcels sent by Vietnam in the United States last year through approved, legal channels totaled $90 million, according to a 1988 Commerce Department report to Congress.

The much larger Cuban community, estimated at 1.5 million, can take advantage of the same parcel provision. But it only sent to Cuba $6.3 million, one-fifteenth the amount of goods sent to Vietnam by the Vietnamese, the report said.

Contributions to Vietnam by US refugees also far exceed on a per-capita basis the contributions sent by American Jews to Israel, where no embargo exists.

The older, established Jewish community, which has a US population of 6 million, gave about $310 million to Israel; last year, according to the United Jewish Appeal, a fund-raising group representing major American-Jewish organizations.

"The overseas remittances are the major source of hard currency for Vietnam," said Douglas Pike, director of the Indochina Archive at the University of California, Berkeley, and author of five books on Vietnam. "The only other dollar-earner (Vietnam has) is coal shipped to Japan."

The embargo, as interpreted by the departments of Commerce and Treasury:

Prohibits US families from sending more than one parcel per week or $300 in cash every three months.

Prohibits the shipment of packages for resale in Vietnam.

Limits the combined value of goods in a single parcel to $400.

Permits only "humanitarian aid," generally defined as clothing, food and medicine.

Prohibits the booking of tours through professional travel agents.

Prohibits the shipment of goods from the United States to Vietnam through third-country intermediaries.

While many of the shipments meet the requirements, others do not.

Generators, for example, cost from about $400 to $700, and Honda motorcycles from $850 to $2,000 in Little Saigon. Despite the embargo, the items are sold openly in stores with price tags, including shipping cost, on display.

One store, AF Express International at 10512 Bolsa Ave., Westminster, sells Honda Dream II 100 CC motorcycles for $1,980; Honda Deluxe 70 CC motorcycles for $1,695; Yanmar 2,000-watt generators for $1,950; Yanmar water pumps for $1,295; and Kubota plows for $3,995.

The store advertises that it ships goods to Vietnam from the United States and Japan.

Another store, Sonex, at 9601 Bolsa Ave., Garden Grove, ships generators, ranging in price from $415 to $640, from the United States. It also ships motorcycles from Japan after orders are taken in Little Saigon.

Little Saigon store owners declined to answer questions about the embargo, saying the US government never has questioned what is being sent.

One merchant, who asked not to be identified, said businessmen know that the US trade embargo against Vietnam is being violated every day.

"How can a box that weighs 150 pounds have goods in it that cost less than $400? Just look at what's being sold," the store owner said. "You send a television over, a stereo cassette radio, a sewing machine, and you wrap it with clothes and fabric. The embargo's a joke. The federal government never checks."

Dennis Ngo, whose firm ships parcels to Vietnam, said the US Customs Service has never returned a package. "I don't think that they are serious," he said.

In Ho Chi Minh city, merchants in the black market said goods from the United States keep their stores stocked with the latest products, including television sets, cassette recorders, bicycles, sewing machines, pharmaceuticals, electric fans and clothing.

One proprietor, Tuan Minh Tung, the owner of a small electronics store dealing in blackmarket items, said US goods are more plentiful in Vietnam now than before the 1975 fall of Saigon.

While federal agencies acknowledge embargo violations, enforcement has been minimal.

"It's fair to say we have a finite number of people involved in export enforcement," said Andy Garlichs, branch chief of field operations for customs in Washington. "Vietnam's in its infancy. There is an effort beginning to regulate this."

The Customs Service has 200 agents and 75 inspectors to enforce nine US embargoes against foreign countries, including Cuba, Libya and Iran.

Garlichs said customs has been more interested in stopping the export of high technology and weapons to Iran and communist bloc countries than looking at trade violations involving Vietnam.

He said the Customs Service has just begun investigating travel agencies that book tours to Vietnam, although US-based tours for refugees, Vietnam veterans and other US residents have been going on for more than two years.

The Commerce Department which sets the embargo regulations, stretches the humanitarian-gift provision of the embargo to allow refugees to send whatever they want to Vietnam as long as individual packages do not cost more than $400.

"That might be bending the rules," said Catherine Jacobson, director of congressional affairs for the Commerce Department's Bureau of Export Enforcement. "But I just think with Vietnam, it (the embargo) is very ambiguous because we have so many Vietnamese here."

Jacobson, whose mother is Vietnamese, said there is "built-in flexibility" in the rules.

Until a year ago, the limit on parcels was $200. But responding to pressure from the Vietnamese community in 1986, Dornan intervened and lobbied the Commerce Department to double the limit.

"I believe this increase will help to maintain a vital lifeline between those in the United States who have freedom and those in communist nations who seek it," Dornan said at the time.

However, after recently visiting Little Saigon and looking at items being shipped to Vietnam, Dornan said the regulations need to be toughened.

"The pitch made to me was humanitarian," Dornan said. "The gifts were supposed to be small items used by families, not motorcycles and engines. I never envisioned the refugees sending chain saws, generators and motors that could be used by the military in Vietnam.

"When I went to Commerce and asked them to change the rules, I did it out of sympathy," Dornan said. "They (the Vietnamese) were plinking my heartstrings, and look what it turned into. They got a loophole with $200. And they got a bigger loophole with $400—from me, a conservative anti-communist."

While the United States puzzles over its policy toward Vietnam, Vietnam has done everything it can to encourage the gift-giving.

The Vietnamese government has established agencies to procure money and goods from Vietnamese in the United States and introduced a new investment code to spur investment from the West.

In Hanoi, officials said they would like to receive help from Vietnamese overseas, especially those with technical training and managerial expertise.

"We see a role for the overseas Vietnamese," said Tran Quang Co, Vietnam's deputy foreign minister. "We fully welcome any contribution by the overseas Vietnamese toward the fatherland. We encourage them to help their families."

Pham Chi Lan, director of the international-relations department of Vietnam's Chamber of Commerce and Industry in Hanoi, said many Vietnamese-owned companies have begun trading with Vietnam.

To get around the embargo, Lan said, US firms and Vietnamese from the United States have establised offices in Hong Kong, Singapore and the Philippines.

"We are in conflict with the policies of the US government," said Nyuyen Minb Cam, director of Cosevina, a Vietnamese government agency set up in 1987 to procure funds and goods from overseas. "The restrictions do not allow overseas Vietnamese to go through our channels."

But that does not stop Cosevina. When the agency was establised last year in Ho Chi Minh City, the government announced that it would have the following duties:

Organize overseas Vietnamese to send foreign currency, supplies and raw materials to their relatives in Vietnam.

Serve as the main agency for the signing of contracts with overseas business and service organizations.

Under Cam's direction, Vietnam last fall began a direct-mail advertising campaign to refugees in the United States, encouraging them to send money to relatives. Vietnamese citizens also have been asked to write overseas for aid.

At the State Department in Washington, Roberta Newell, the Vietnam desk officer, said the United States can do very little to stop Vietnam from encouraging refugees to break the embargo.

"We can't go in and complain. We don't have diplomatic relations with Vietnam," Newell said. "And as a sovereign nation, Vietnam's free to do whatever it wants."

Orange County's Vietnamese-language newspapers frequently print lists of items the Vietnamese government needs.

The lists are compiled from letters sent by relatives, newspaper editors said.

"People will get letters telling them what they need and what will sell in the black market," said Do, editor of the Nguoi Viet newspaper. "This year the big items were water pumps, engines and tillers. Last year it was medicine."

"Chain saws and motorcycles," Do said, "are good all the time."

The goods might help the communist regime, Do said, but they also serve as a lifeline for families.

On a bustling Saturday afternoon in Little Saigon, Tran leaned against the counter of his fabric shop, watching the cardboard boxes bound for Vietnam pile up in front of the store.

A Huntington Beach woman, the only one in her family to escape Vietnam after the fall of Saigon, stuffed a container of powdered milk and a large bag of dried mushrooms between layers of colorful cotton, silk and polyester cloth.

"I send packages to my mother, brothers and sisters in Saigon," said the 40-year-old woman, too fearful to allow her name to be used. "They depend on me. They are very poor, and I am the only one they have."

PROTEST: REFUGEES BITTER TOWARD HOMELAND WANT TIES SEVERED

(From Westminster)

Carrying signs that read "Stop Dealing With Hanoi," the protesters pressed toward the travel agency's door just as a Vietnamese woman went inside.

"Boycott Bolsa Travel Mart," they yelled. "Down with VC tours."

While several police officers stood guard outside, agency owner Gus Real cursed the demonstrators, calling the action un-American.

"This is a free country," said Real, who also operates a branch office in Vietnam's Ho Chi Minh City. "People should be able to travel wherever they want."

The protesters, many of whom risked their lives years ago by escaping communist Vietnam in small boats on the high seas, passionately disagreed.

"Denounce and isolate everyone who collaborates with the Viet Cong tours or financial schemes," their leaflets said in Vietnamese.

"Our goal is very simple. We don't want people going to Vietnam," said Dung Tran, one of the group's leaders. "Vietnam is short of dollars and is using tourism as a boost to get foreign currency. The communists want refugees to come so they can get their money."

Since April 30, the 13th anniversary of the fall of Saigon, groups of 15 to 100 people have gathered weekly outside the Bolsa Travelmart in Little Saigon, demanding an end to the tours.

They are part of a vocal group of refugees opposed to normalization of relations between the United States and Vietnam. Their ranks are filled with refugees who consider themselves victims of the communist regime.

The protesters, members of the Action Committee Against the Viet Cong Financial Scheme Abroad, want the US government to prosecute travel agenices that violate the US trade embargo against Vietnam.

Under terms of th embargo, travel agents are forbidden from booking tours to Vietnam, although they have been doing so for at least two years.

In a letter mailed in the spring to travel agents across the country, R. Richard Newcomb, director of the Treasury Department's Office of Foreign Assets Control, warned against booking the tours.

"The systematic dissemination of brochures or promotional materials concerning travel services . . . is a prohibited activity," Newcomb said. "This prohibition extends to hotel reservations, ground transportation, local tours and similar activities."

However, he acknowledged that no agency has been prosecuted for violating the embargo.

But Andy Garlichs, branch chief of field operations for the US Customs Service in Washington, said the Treasury Department and customs have initiated cases against travel agents involved with Vietnam. He declined to name them.

While some groups, such as the action committee, have engaged in peaceful protest, others have resorted to political violence.

On Memorial Day, four deliberately set fires occurred at two Los Angeles and two Orange County stores that send packages to Vietnam. Incendiary devices in packages exploded, causing more than $600,000 damage.

In August 1987, the publisher of a Garden Grove Vietnamese-language newspaper, Pham Tap Van, was killed when his office was fire bombed.

A clandestine anti-communist group, the Vietnamese Organization to Exterminate Communists and Restore the Nation, claimed credit for Van's death, saying he failed to heed warnings against the printing of advertisements for Canadian firms that transfer money to Vietnam.

The committee also claimed responsibility for the 1981 shooting death of San Francisco newspaper editor Duong Thong Lam and attacks on other Vietnamese the group labeled pro-communist.

Last month, Nguyen Tu A, the editor of the Viet Press in Westminster, received a letter from another group, threatening him because he traveled to Vietnam.

Tu A said the July 22 letter by a little-known anti-communist group called the Vietnam Redevelopment and Extermination Party labeled as traitors him and two other refugees who visited Vietnam, Nguyen Duy Quoc and Tuy Hoang.

"I think the threat is real," Tu A said. "It's terrible. They don't want people to go back to Vietnam."

Tu A, who has visited Vietnam twice this year, said he has armed himself and notified police, who have increased patrols around his house.

Westminster police Detective Mark Frank said the department is taking the threats seriously in light of the other attacks.

Acts of political violence have been condemned by Vietnamese community leaders in Orange County.

"The arsons tarnish the image of the Vietnamese in the United States," said Mai Cong, president of the Vietnamese Community Center of Orange County. "This is not the way Vietnamese should be acting."

Joe Tran, the head of an anticommunist resistance group in Orange County, said his organization opposes arson fires, bombings and other violent acts.

"The Vietnamese groups in the United States must obey American law," Tram said.

His sentiments were echoed by Diem Do, a spokesman for Action Committee Against the Viet Cong Financial Scheme Abroad, who said his group deplores violence.

He said his group targeted the Bolsa Travelmart but plans to extend the protest to other stores that book tours to Vietnam or ship heavy equipment and machinery there.

"The Vietnamese government desperately needs dollars, and they are trying to get money from Vietnamese overseas," Do said. "Their agricultural policies have failed and they need American equipment."

Do's group has circulated leaflets throughout Little Saigon urging people to refrain from sending cash and items used for industry or agriculture.

The group opposes refugee tours, Do said, because they are a source of foreign currency for Vietnam.

Real, of Bolsa Travelmart, said he stopped booking tours to Vietnam a few months ago. Instead, he said, he books tours to Bangkok with an optional extension to Vietnam.

"I changed my brochures in April," Real said. "I book the tours to Bangkok, and the people go independently to Vietnam. Once they are in Vietnam, they are on their own. Our tours end, as far as we're concerned, when the person arrives in Vietnam."

Victor Tran, the owner of Travelworld, has specialized in booking Vietnam tours for refugees from all over the United States. A two-week tour costs about $1,700 per person.

Tran said he neither promotes nor advertises the tours. He will, however, sell a travel package to Vietnam—including lodging, meals and transportation—to anyone who requests one.

In May, Tran's son, Michael, led a group of about 30 refugees from Los Angeles to Bangkok to Ho Chi Minh City. In typical tour-guide fashion, he collected passports from group members in Bangkok, took them to the Vietnamese Embassy and obtained visas for the group to enter Vietnam.

In Vietnam, Tran's brother met the group at Tan Son Nhut Airport and took them to a Ho Chi Minh City hotel. Young women who said they worked for Tran greeted the group with plastic Hawaiian leis and carried colorful signs that said, "Viettours."

"I didn't know that booking tours was not allowed," Tran said. "If that's true, I'll have to respect the law."

ENFORCEMENT: US ALLOWS CLANDESTINE TRADE TO CONTINUE

The US government agencies that enforce the trade embargo against Vietnam have been aware of refugees shipping illegal goods to Vietnam for at least five years, yet no one has been arrested or prosecuted.

While the embargo has stopped US corporations from investing in Vietnam, it has not stopped Vietnamese Americans from sending agricultural equipment, heavy machinery and consumer goods to their homeland.

Experts on Vietnam offer different explanations as to why the embargo has not been enforced, ranging from a belief that the United States is trying to court Vietnam to the opinion that federal agencies have neither the will nor the manpower to monitor violations.

"The Vietnamese embargo is an embargo that isn't there," said William L. Cassidy, a consultant on Southeast Asian affairs who has worked for the US Senate and US Customs Service.

By failing to enforce the embargo, Cassidy contends, the US State Department and some members of the National Security Council have permitted "Vietnam to gain an economic foothold in the United States . . . through a policy of benign neglect."

Cassidy, whose wife is a Vietnamese refugee, has spent the past five years examining the clandestine trade betweeen the United States and Vietnam, first as the director of a secret customs probe, then as a private consultant.

He said the United States has allowed Vietnam to manipulate refugees in the United States into providing economic assistance to the communist country and "establishing Orange County as Vietnam's own version of Hong Kong."

The economic pipeline that has developed between Orange County and Vietnam, Cassidy said, resembles the trade between communist China and Hong Kong, the free port that gave China access to foreign goods when its trade with other nations was restricted.

The policy is basd on the belief that if the United States allows the economic assistance to continue, Vietnam will account for missing US soldiers, remove troops from Cambodia and become friendlier with the West, a charge that US government officials deny.

Roberta Newell, the Vietnam desk officer at the State Department in Washington, said the United States wants to enforce the embargo, which calls for a total economic boycott of Vietnam.

She said refugees are allowed to send gifts to Vietnam and that the parcels, containing items usually considered humanitarian aid, are regulated by the Commerce Department.

The Commerce Department, however, admits it cannot control the gift-parcel trade, which ranges from $90 million to $200 million per year.

In a 1988 report to Congress, the Commerce Department acknowledged that refugees "abuse the gift-parcel provision" of the law.

Douglas Pike, director of the Indochina Archive at the University of California Berkeley, concurs.

Pike, who worked in Vietnam from 1960 to 1975 and is the author of five books about the country, said it is almost impossible for the US government to monitor individual shipments.

"What they're really concerned about is the shipping of hard stuff, computers, military technology. The other stuff, they're much more sanguine about," he said.

"The problem is, the law is on the books. And you can't say go ahead and break the law, but in fact that is what they are saying."

New Orleans Police Sgt. Jack Willoughby, a Vietnamese crime specialist who testified on the issue before the US Senate in 1984, said federal, state and local police agencies have been reluctant to pursue embargo violations because of the detailed, time-consuming nature of the work.

"We need a Vietnamese undercover agent, someone who could operate within the community," he said.

While enforcement has been minimal, some Vietnam experts point out that the embargo has stopped US companies from doing business with Vietnam—and that is the significance of the US action.

"The embargo is symbolic," said Nguyen Manh Hung, a political-science professor at the Indochina Institute at George Mason University in Fairfax, Va.

"There are a lot of loopholes that people can move goods through, but it keeps out the big investment that Vietnam needs."

Hung said the US could continue to pressure Vietnam to withdraw troops from Cambodia before lifting the embargo.

Professor Nguyen Tien Hung, who teaches economics at Howard University in Washington, DC, and is co-author of "The Palace File," a book about President Nixon's letters to former South Vietnamese President Thieu, called the impact of the refugee trade significant.

"Vietnam is one of the poorest countries in the world," the writer said. "The merchandise the refugees send back is put into production. And Vietnam needs the money they send because it's running out of hard currency."

The US government first became aware of the illegal trade between the United States and Vietnam during Project Victor, a secret customs investigation headed by Cassidy.

The investigation, a 10-month, nationwide examination of clandestine currency transfers to Vietnam, uncovered widespread embargo violations in Vietnamese communities across the United States, include Orange County, San Jose, Houston, New Orleans and Arlington, Va.

"The SRVN (Socialist Republic of Vietnam) government, employing a well-organized and efficient exploitation capability, is believed to be responsible for intimate involvement in the transfer of an estimated $15 million to $16 million per month from the United States to Vietnam, of which $7.5 million is moved through banks and $8 million to $9 million is moved through underground methods," a confidential Sept. 12, 1983, Project Victor memo said.

The underground methods involve couriers and freight forwarders who transfer large sums of money to Vietnam through Canada, France and Asia.

The couriers, the investigation found, often travel with as much as $50,000 in cash and gold. Recently, US Embassy officials in Bangkok confirmed that a Vietnamese-American was stopped in Ho Chi Minh City with 20 ounces of gold, which was selling for about $425 an ounce on US markets.

Custom officials in Washington have declined to discuss Project Victor, which was completed in February 1984. No prosecutions have resulted from the probe.

After the investigation, Cassidy became a consultant to the US Senate Subcommittee on Financial Institutions. Then he was appointed to the staff of Sen. William Armstrong, R-Colorado, who conducted a hearing for the subcommittee in June 1984.

The hearing looked at the illegal currency transfers to Vietnam and the trade that had developed between the United States and Vietnam.

Armstrong warned at the time that he had received information that the Vietnamese government was orchestrating appeals for funds in the United States, and he expressed concern that it would turn into a "systematic program of economic exploitation."

Five Vietnamese testified at the hearing that the government of Vietnam encouraged their relatives to send letters to them, asking for money and goods to be shipped to Vietnam.

"The communist cadre man ordered me to write to my brother to ask him to send money home when I was still in Vietnam," one witness said.

Said another: "My family and myself are victims of the communist regime. My wife has been told by the communist cadres: 'If you want to leave Vietnam under the official program, ask your husband to send money home. If you want to leave Vietnam * * * your husband must send money through the official government banks and you will be permitted to leave the country.'"

At the hearing's conclusion Armstrong introduced a bill that would prohibit anyone from exporting currency to Vietnam, but the bill never reached a vote on the Senate floor.

"There just wasn't widespread public awareness of the problem. That was true then; it's true now," said Armstrong's press secretary, David Jensen.

While the bill lingered in the Senate, a major case involving the illegal export of high technology to Vietnam surfaced in Orange County with the shooting death of Edward Lee Cooperman, a physics professor at California State University, Fullerton.

Cooperman, a close friend of Vietnamese government officials, headed the Foundation for Scientific Cooperation with Vietnam, a non-profit group of scholars and scientists who raise money and provide technical assistance to Vietnam. He was shot to death in his office Oct. 13, 1984.

Records discovered in Cooperman's office by Fullerton police reveal that the soft-spoken professor shipped to Vietnam hundreds of thousands of dollars worth of computer components and other high-tech equipment purchased from distributors in Orange County.

Like the refugees who send gift packages to Vietnam, Cooperman was able to take advantage of the humanitarian provisions of the law.

He used funds obtained by his organization, including a $575,000 grant from UNESCO the United Nations Educational, Scientific, & Cultural Organization, to buy equipment for Vietnam, claiming it qualified as humanitarian aid.

Cooperman made at least 12 trips to Vietnam and wrote checks for almost $1.5 million through the foundation to himself, political associates, colleagues, friends and suppliers of scientific and medical equipment from 1979 until his death, the records reveal.

After Cooperman's death, friends and associates said the professor bragged about the ease with which his organization, a registered charity, obtained export permits from the Commerce Department.

"I was aware of the materials he was shipping to Vietnam," said Morton Sobell, a convicted atomic-secrets spy who worked with Cooperman's foundation developing soil tests and hearing aids for Vietnam. "So were people in the government. I was amazed that the State Department and Commerce Department were allowing him to operate that easily. But I didn't look a gift horse in the mouth."

"Those were not the only agencies aware of what was being sent," added Sobell, during an interview after Cooperman's death. "The FBI and CIA were also aware. I'm sure of that."

Sobell was sentenced to 30 years in federal prison in 1951 for conspiracy to commit espionage with Julius and Ethel Rosenberg. He was paroled in 1969 after serving 18 years.

A 20-year-old student, Minh Van Lam, was found guilty in 1985 of involuntary manslaughter in Cooperman's death. The jury ruled that the shooting was accidental, although Cooperman's associates claimed it was political.

Cooperman's records were subpoenaed by the US Senate Permanent Subcommittee on Investigation. And at the time of his death, Cooperman was being investigated by the CIA, FBI, US Customs Service and the Commerce Department's Office of Export Enforcement, according to records and interviews with Cooperman's associates.

Cassidy served as a defense investigator for Lam's attorney, Alan May, a former Green Beret and White House aide during the Nixon administration.

After the Lam trial, Cassidy set up an office in Little Saigon specializing in Vietnamese criminal cases and community affairs.

Cassidy remains passionately committed to exposing embargo violations. He said he's motivated by memories of his friends, both American and Vietnamese, who died during the war.

"Some people will tell you that all this doesn't matter, that normalization is inevitable and that the issue is too confined to be of lasting interest to law enforcement," Cassidy said.

"That may be true. It is equally true that on a black wall in Washington, DC, there are the names of 58,000 men and women who might want you to give these issues more than passing attention, and there are a million more lives recorded at the bottom of the south China Sea who have no voice as long as you stay silent."

LIFELINE: FAMILY IN VIETNAM LIVES "FROM PACKAGE TO PACKAGE"

(From Ho Chi Minh City)

The casket stood a few feet from the coffee table where Tram Do Cam and his wife sipped tea. Cam looked at his father, sleeping in pajamas on a pallet near the window, and pointed to the wooden box.

He said his father bought it eight years ago for his 85th birthday. The presence of the coffin, he said, signifies that his father, 93, has lived a long life and is prepared for death.

"It's an old Buddhist tradition," Cam said. "It shows that a person is ready."

Cam, 54, knows as well as his father what it is like to live each day waiting for deliverance.

For Cam, life stopped 13 years ago when North Vietnamese troops conquered South Vietnam. The former Air Force major has been either in prison or confined to his neighborhood in Ho Chi Minh City since April 30, 1975.

As an officer of the defeated regime, he now lives under observation by block captains—neighbors who monitor his behavior and report his moves to the secret police.

"I hope you can understand my English," Cam said to a recent visitor. "I have not spoken English in 13 years. I have not had the occasion to."

Because of his military background, Cam, a soft-spoken former meterologist, has not been allowed to hold a job.

"I want to work. I am still a young man," Cam said.

Instead, he lives like an outcast; perpetually unemployed, waiting for permission to leave Vietnam.

Cam spends most of his time at home—with his father, four daughters and ailing wife—dependent on assistance from relatives in the United States.

His family is among the hundreds of thousands of Vietnamese who rely on the lifeline from the United States—monthly shipments of gift parcels, some weighing more than 200 pounds, containing money and goods from family and friends.

The list includes tens of thousands of former South Vietnamese soldiers and government officials placed in re-education camps. It also includes the estimated 600,000 Vietnamese who have applied to leave Vietnam through the Orderly Departure Program, and additional friends and relatives of the 800,000 refugees in the United States.

The Orderly Departure Program, which allows selected Vietnamese to leave on regularly scheduled airline flights, was set up by the United States and Vietnam after the exodus of boat people in the early 1980s.

The program's purpose is to provide safe transportation for Vietnamese wishing to leave the country. It has been used by the US and Vietnamese governments to unite families separated at the end of the war.

Cam's family applied to participate in the program in 1980 under the sponsorship of relatives in Orange County. But so far, they have not been chosen by the Vietnamese and US governments.

"We live from package to package," Cam said. "My wife even receives heart medication from the United States."

Cam said he is ashamed to be on assistance. Before the fall of Saigon, he earned a good salary and housed his family in officers' quarters near the resort city of Nha Trang.

Now, the seven-member family shares a small, two-bedroom house off a back alley in a tidy but poor neighborhood of Ho Chi Minh City. Their living room has meager furnishings—some chairs, a coffee table, a cabinet and the casket.

A 1986 calendar from Danh's Pharmacy, 9182-9186 Bolsa Ave. in Westminster, hangs on the wall.

To keep his mind occupied, Cam studies Chinese, writing bold characters on a blackboard, and practices Oriental medicine, including acupuncture, on his wife, Hong Tuyen, 51, who suffers from a heart condition.

Tuyen said she needs an operation to replace a heart valve, but that type of surgery is unavailable in Vietnam. She said she hopes one day to have the operation in the United States.

While the family keeps the gifts needed for day-to-day living, others, like television sets and radios, are sold for cash to buy food and other supplies.

With the average Vietnamese earning $2 to $3 per week, the sale of a $75 cassette radio can earn enough money, even with the high tax, to pay grocery bills for a month.

The packages that Cam receives are sent by American relatives, including Cam's brother-in-law, Tony Lam, secretary of the Vietnamese Lions Club and the first vice president of the Vietnamese Chamber of Commerce in Orange County.

The gifts are purchased in Orange County's Little Saigon by Lam, his father, brother and two sisters.

"If we didn't send the packages, they'd starve," said Lam, owner of a family restaurant in Garden Grove that specializes in the spicy crab and pork noodle soups of North Vietnam.

"We have to help them. We do it for humanitarian reasons," Lam said. "We in America who are so well off have to help our families in Vietnam who are so poor."

The Lams have organized a system in which one family member sends a parcel every other month.

Lam also has petitioned the offices of Rep. Robert Dornan, R-Garden Grove, and the US Orderly Departure Program to push for the release of his family.

The separation from Cam and his wife, who is Lam's sister, has been particularly hard for their 87-year-old father, Cat Lam, of Westminster.

The elder Lam, whose wife died five years ago, longs to see his daughter.

"I am an old man," he said. "I have lived a long life. But I have been separated from my daughter for 13 years. I would like to see her before I die."

BUSINESS IS BRISK ON BLACK MARKET

Business has never been so good for Luu Chi Cong, the owner of a small-appliance shop in the city's black market.

Cong, an affable man with a friendly smile, perches himself on top of an electric generator and points to a display shelf filled with stereo cassette radios.

The proprietor, who has been in business for 23 years, says it is easier to buy American products in Vietnam today than before 1975, the year the country fell to the communists.

As he talks, a deliveryman with packages piled in a motorized rickshaw drives by. Outside the store, which opens to the avenue and houses Cong's living quarters in back, women with scarlet-stained teeth chew betel nuts, and two Amerasian girls in tattered clothes walk by, begging dollars from US tourists.

American products are available throughout the black market, Cong said, even though the United States has imposed a trade embargo that prohibits goods from being sold in Vietnam.

"Before, there were less American products; now there are more," Cong said. "Why? Because Vietnamese from all over the United States send things here.

"It's easy to find anything you want," said Cong, whose store specializes in battery chargers, videotapes, generators, television sets and stereo cassette radios. Cong said he sells about 100 stereo cassette radios per month.

The price of the radios ranges from $100 to $125, depending on how well one bargains with Cong.

The country may be communist, but the dollar is the currency of choice. The black-market exchange rate of 3,000 Vietnamese dong per dollar is a little more than three times the official exchange rate of 900 dong per dollar.

A steady shipment of goods from the United States, especially from Orange County's Little Saigon, keeps merchants such as Cong stocked with the latest products, including Phillips and JVC remote-control color-television sets, Sony stereo cassette recorders, Singer sewing machines, Winston cigarettes, Shaeffer pens, Proctor Silex irons, Remington electric typewriters and Panasonic fans.

With its stores and kiosks on crowded, vendor-packed streets near the Saigon River, the black market offers visitors a chance to go on a high-tech shopping spree for trendy Western consumer goods in the middle of a steaming, tropical Third World country.

The pungent smell of durian, an Eastern fruit, wafts through the air as shoppers bargain for calculators, digital watches and walkman-style radios. The crowds move from store to store across the path of vendors hawking sugar-cane juice, squeezed fresh through a strainer and fresh-cut pineapple.

Women in black pajamas walk with loads of fruits and vegetables hanging from poles across their shoulders. Buddhist monks with shaved heads and long robes perch themselves by the side of the road, holding palms out in supplication.

The temperature soars and flies gather on meat left standing on long wooden tables. Merchants spoon out rice and other grains from open bags. Fruits and vegetables ripen in the intense sun.

As tourists saunter by, an Amerasian girl sells Johnny Walker Red, Orangeboom beer from Holland and Coca-Cola. Spicy food simmers in woks sitting on the sidewalks, and live chickens are laid out for sale in a semic-circle.

Videotapes, including Bruce Springsteen's "Tunnel of Love" and the Vietnam war move "Platoon," sell for 4,500 dong. Crowds of teen-agers, some wearing Levis, gather around the tape stands, talking about rock music and looking for the lastest hits.

At one kiosk, Aqua Fresh toothpaste sells for about $2 per tube, and a towel marked 10,000 dong has a $1.67 price tag from Wal Mart. One store sells three-pack containers of Wilson tennis balls that still bear stickers from Target.

Goods shipped from Orange County are everywhere. A box containing a Singer sewing machine is marked AA Minifabrics, 9232 Bolsa Avenue, Westminister, California. A Yanmar generator, still in its shipping crate, is marked Sonex, 9601 Bolas Avenue, Westminister, California.

Store owners say they have no problem obtaining a ready supply of merchandise from the United States, including consumer goods, and heavy machinery such as water pumps, motorcycles, electrical motors and chain saws.

The store owners receive the goods from relatives in the United States or from people who have received them as gifts.

The Vietnamese government places no restriction of the amount or type of goods sent from the United States as long as recipients in Vietnam pay import tax.

Nguyen Thanh Duc, a 36-year-old merchant in Ho Chi Minh City, sells Panasonic fans and other household products shipped from California.

Duc, who has been in business for 10 years, buys the fans from people who have received them as gifts and sells them for 500,000 dong.

"Vietnamese people send them to their families and they sell them to me," Duc said. The merchants, in turn, sell them to tourists and other Vietnamese.

The families sell the gifts, merchants say, to obtain quick cash. They are willing to sell products at a low price because they need the money to survive, the merchants say.

Black-market shoppers were reluctant to be interviewed, fearing the secret police.

Store clerk Kim Lien says many US products can be sold at a cheaper price in Vietnam than in the United States.

"A sewing machine that sells for $350 in the United States sells here for $150," Lien said. "It's cheaper because the machine comes into this country as a gift; the only cost for the Vietnamese is the tax."

Because the tax does not equal the wholesale cost, Lien said, the item can be sold for a low price. For that reason, many of her best customers are tourists.

As she spoke, a Soviet woman tried out a sewing machine.

"It'll be an easy sale," Lien said. "The Russians love Singer portables."

POSTWAR SENTIMENT: SOVIETS SCORNED

(By Jeffrey Brody)

The American professor was startled by what he heard. As he walked past some students sitting by a lake at the city zoo, a young man stared at him and two companions and yelled in Vietnamese: "Look at those stupid, ugly Russians."

The professor, who spoke Vietnamese, turned to the group and replied, "We're not stupid Russians, we're Americans."

"If you're Americans, please sit and stay," came the reply. "If you're Russians, go away."

A Vietnamese government guide accompanying the professor, Duane Hauch of Garden Grove, turned red-faced.

Hauch, who taught for five years in Saigon during the Vietnam War, accepted the invitation and found out, much to his surprise, that in the capital of Vietnam—a city bombed relentlessly by U.S. forces—Americans were better liked than Soviets.

Not only in Hanoi but throughout the country, Hauch said, US visitors were made to feel more welcome than their communist counterparts. The warmth the Vietnamese have for Americans is matched only by the hostility they have for the Soviets.

"My anti-communist friends might think I've been brainwashed at the Hanoi Hilton," Hauch said. "The truth is that the average person on the street, who has nothing to gain by being friendly, welcomed the Americans and scorned the Russians."

From Hanoi to Ho Chi Minh City, the Vietnamese greeted Americans with open arms and taunted the Soviets, yelling Lien Xo, the Vietnamese word for Russian, and using a slang expression, which translates as Americans without dollars, to describe them.

When Hauch and his group were mistaken for Soviets, they, too, were scorned. But once they let people know they were Americans, they were mobbed. "I feel like MacArthur. I have returned," said a former US Air Force sergeant, besieged by a group of children in Ho Chi Minh City.

"America, that's great. America, a number 1," people yelled with a thumbs-up gesture.

"I expected people in the South to like us but not in the North, the heart of the communist resistance," Hauch said. "But everywhere we went in Vietnam, we were treated like long-lost friends and the Russians like enemies from the war."

In Hanoi, for example, when Hauch asked a store clerk, who spoke English, why she had not learned Russian, the woman replied that it was not worth her while. "I don't have to learn Russian. They don't buy enough. Besides, English is the second language of Vietnam.

And the dollar, not the ruble, is coveted by Vietnamese. At hotels, restaurants, department stores and on the black market, Vietnamese were seen soliciting dollars—not rubles or their own currency, the dong.

"Nobody wants the ruble—it's worthless," said John Rife, a Hawaiian banking consultant touring Vietnam. "Even the cyclo (a bicycle-style rickshaw) drivers refuse to let customers pay with rubles."

Rife, who was manager of the Chase Manhattan Bank in Saigon from September 1970 to January 1973, said the Vietnamese want to trade with the United States and prefer western goods to those from the Soviet bloc.

In the black market, US products, not Soviet goods, line the shelves of stores where Americans, Soviets, Vietnamese and other foreign visitors shop.

Store owners said it is easier to find US goods in Vietnam today than before 1975, the year Saigon fell to the communists. None of these interviewed said they stocked Soviet goods, although they did say they sold US products, especially sewing machines, to Soviet visitors.

"Everybody knows that people in the West have things to make life comfortable," said one store owner. "The Russian people do not have things we need."

The antagonism that Vietnamese have toward the Soviets has caught the eye of communist party officials.

When questioned, a Vietnamese government official said he believes the Soviets act "too formal, too solemn and too cold."

"We in the government have asked ourselves why the Russians are so disliked," the official, who asked not to be identified, said. "We think it is because they are not very talkative. When they walk, they don't try to make contact with people. They just look straight down like mannequins."

The Soviets also appear to be treated like old colonialists, with special beaches, hotel rooms and privileges reserved for them. On an Air Vietnam flight from Hanoi to Ho Chi Minh City, a Soviet group occupied the front of the plane and Vietnamese and other tourists, the rear.

The friendliness bestowed upon Americans and the hostility toward Soviets was even evident at the Museum of American War Crimes in Ho Chi Minh City.

The Vietnamese greeted a group of Americans against the backdrop of photographs showing US soldiers torturing Viet Cong suspects.

But when a Soviet tour bus pulled up, the Vietnamese turned away.

DOCTORS: LETTERS LINK TWO PRACTICES THAT ARE WORLDS APART

(By Jeffrey Brody)

When Quynh Kieu and Mai Nguyen attended Saigon's Medical School in the early 1970s, the two women were inseparable. They took the same classes, studied together and chose the same specialty—pediatrics. They even dreamed about sharing a practice.

But Kieu fled to the United States at the end of the Vietnam War, while Nguyen remained behind with her parents and younger brothers.

Kieu, 38, now works in Fountain Valley, where she treats patients with an array of modern drugs and sophisticated equipment.

Nguyen, 40, practices medicine in an ill-equipped hospital in Ho Chi Minh City, without the high-tech help Kieu takes for granted, without the simplest tools of her profession—prescription drugs, antiseptic solutions, sterile dressings.

Living on opposite sides of the globe, in medical worlds centuries apart, they have fulfilled their dream of practicing together—out of necessity.

"For Mai, practicing medicine is so frustrating," Kieu said. "She has the knowledge, but her hands are tied. Vietnam has no drugs or medical supplies. The situation is terrible. She can't cure people.

"You have people dying of malaria. You have people dying of dengue hemorrhagic fever (a mosquito-transmitted virus). You have people dying of heart disease. Pneumonia. Infections. And other ailments that are easily cured in America," said Kieu, the daughter of a prominent attorney in Vietnam who was a longtime opponent of Ho Chi Minh. He died in 1970.

When Nguyen needs antibiotics or medical equipment unavailable in Vietnam, she writes to Keiu, who sends her the item from the United States.

Kieu, vice chairwoman of the Orange County-based Vietnamese Refugee Physicians Association, said almost every Vietnamese doctor in the United States has been asked to treat ill people in Vietnam.

The requests come from Vietnamese refugees who receive letters from ailing relatives or their physicians in Vietnam, describing symptoms and asking for drugs, sterile dressings, antiseptic lotions and ointments.

To meet the appeals for help from Vietnam, pharmacies in Orange County's Little Saigon have obtained California drug-wholesaler licenses allowing them to ship prescription drugs overseas.

Pharmacist Quach Nhut Danh of Danh's Pharmacy on Bolsa Avenue in Westminister said he ships 10,000 to 15,000 pounds of prescription drugs per month. He prepares the packages, worth about $200 to $350 each, and sends them directly to Vietnam from his pharmacy.

The packages include medications used to treat a variety of ailments: aspirin, ampicillin, bactrim, B-complex, erythromycin, fansidar, inderal, lasix, prednisone, quinine sulfate, silvadene cream, penicillin and zantac.

The pharmacist also ships allergy and arthritis medication, birth-control pills, cough medicine, first-aid supplies, blood-pressure testing kits and antibiotics for bacterial infections resistant to penicillin.

Medicines not needed by Vietnamese families can be sold on the black market for cash. Because of the shortage of prescription drugs, they command a black-market price several times their US value. A pill that might cost a few cents in the United States can sell for more than a dollar in Vietnam.

While children coming to Kieu with strep throat find their illness easily treated with penicillin, children coming to Nguyen with the same problem often lapse into rheumatic fever and die.

Rheumatic fever has all but disappeared in the United States; in Vietnam, it is a major killer of children.

"Many children have it and die before they reach 18," Nguyen said during a lunch interview at a restaurant in Ho Chi Minh City.

"There is a shortage of drugs in Vietnam, especially antibiotics."

Nguyen said children also die because of a shortage of food and vitamins.

"We have many cases of children going blind because of vitamin A deficiency. Milk right now is too expensive. We're seeing a lot of malnutrition in the hospital," Nguyen said.

Even with Kieu's help, the cures too often are elusive.

A child born earlier this year in Ho Chi Minh City with a heart-valve defect could have been saved by a routine operation in the United States, Kieu said.

Because his chances of leaving Vietnam were slim, Kieu tried to buy time by prescribing medication. She gave the prescriptions to the boy's uncle in Cypress. He filled the prescriptions at a pharmacy in Little Saigon and shipped them to Vietnam the family received the drugs in Ho Chi Minh City, but the boy died of an infection.

"If he had been born in the United States, chances are he would have lived," Kieu said.

As frustrating as it is to practice in Vietnam, where rats roam hospital halls and ants swarm on beds, Nguyen said she does her best to keep abreast of modern medicine, relying on Kieu for journals and manuals.

"If it were possible, I would like to go abroad and study pediatric cardiology," Nguyen said.

Nguyen said she misses her former classmate. Nguyen has two boys, ages 4 and 10; Kieu has three girls, ages 4, 6 and 8. The women know each other's children only through photographs.

Nguyen said she is grateful, for all that Kieu has done for her and the children of Vietnam and wishes she could return the favor.

At the end of a long interview, the opportunity arose. Nguyen recalled that when Kieu fled Vietnam in 1975, she left many possessions behind.

A few days after Kieu's escape, her mother, who remained in Vietnam, invited Nguyen to the house, telling her to take anything she wanted from Kieu's room.

Nguyen took a pair of silver rings.

Now, emotion in her voice, she held up her hand. "Take this ring," she said, pulling it from a delicate finger, "and return it to Quynh Kieu. Tell her I love her very much."

MAILGRAM: AD TOUTS FUND TRANSFERS USING INTERMEDIARY

(By Jeffrey Brody)

Vietnam is going after dollars with an advertising campaign that would make Madison Avenue proud.

Faced with a shortage of foreign currency, the Vietnamese government has begun a direct-mail effort to obtain money from Vietnamese living abroad, including those in the United States, where money transfers to Vietnam are prohibited by law.

Since October, Vietnamese refugees in the United States have received government-printed Mailgrams from relatives in Vietnam containing a plea to send money back home.

The campaign is part of Vietnam's effort to attract funds from overseas, according to Nguyen Minh Cam, director of Cosevina, the Vietnamese government agency that oversees the program.

"I think it (the advertising campaign) is proving itself successful," Cam said.

From October to March, about 40,000 Mailgrams were sent from Vietnam; half were returned with contributions totaling $200,000.

Cosevina prints the Mailgrams, distributes them free to Vietnamese and pays for postage, which costs 955 dong or half a week's salary. The Mailgrams include a small space for a personal message.

The advertisement, which takes up most of the Mailgram, touts a new system for the transfer of funds to Vietnam from elsewhere in Asia, Europe, the United States, Canada, New Zealand and Australia.

Under the system, Vietnamese living abroad are encouraged to deposit money at select banks within their host country, which wire the funds to Switzerland for transfer to Vietnam.

The Mailgram names the Wells Fargo International Banking Group in San Francisco, but a Wells Fargo spokesman said the bank declined to enter into an agreement with the Fortrade Finance Corp., Vietnam's Swiss agent.

"Although our name is on the back of the letter, we've never had anything to do with it," said Kim Kellog of Wells Fargo Bank's headquarters in San Francisco. "We just refer people who come in with the letter to Fortrade's offices in Canada or Switzerland."

She said Wells Fargo was approached by Fortrade but refused to get involved because the United States has no diplomatic relations with Vietnam.

Under US Treasury Department regulations, Vietnamese in the United States are permitted to send up to $300 every three months to Vietnam. However, no US bank is allowed to wire money directly to Vietnam. The money must be transferred through a third country, according to Treasury Department officials.

While the United States has a $300 ceiling, Vietnam does not; the Mailgram encourages Vietnamese to send as much money as possible.

The emigrees are promised that their relatives will receive the money within two weeks. The money is sent to the Intershop stores that Cosevina operates in Ho Chi Minh City, and the agency takes a 5 percent to 6 percent service cut, Cam said, although refugees in the United States say the Vietnamese government takes a much greater percentage.

Cosevina is able to charge such fees because currency transfers are strictly controlled by the Vietnamese government. Upon entering and leaving the country, a person must declare the amount of money in his possession and account for every dollar spent.

The only other way to take currency into the country is through illegal channels.

Some refugees use couriers to smuggle in money, but the system is risky. Couriers caught carrying money could be jailed and their money confiscated.

The cost for printing and mailing the advertisement was about $5,000, so the program was "highly profitable," Cam said. It will continue throughout the year. Additional Mailgrams will be distributed to Vietnamese when they pick up their money at the Cosevina office, Cam said.

The Mailgrams, he said, allow Vietnam to advertise throughout the world, even in countries where Vietnam does not have diplomatic relations.

ORIENT'S "PEARL" TRIES TO REGAIN ITS OLD LUSTER

(By Jeffrey Brody)

The old, bent-over woman begged for food outside the tourist hotel, hugging a child with sores on his face.

An American physician, visiting Vietnam for the first time, turned away in shock. "I can get used to the beggars," she said. "But looking at the children that are going to die just breaks my heart." Vietnam, once called the "Pearl of the Orient," is one of the poorest countries in Asia.

At a time when Thailand, Japan and other Asian nations aligned with the West are thriving, Vietnam remains a country of bicycles instead of automobiles, water buffalo instead of tractors, crumbling buildings instead of skyscrapers.

Thirteen years after the end of the Vietnam War, the country faces economic disaster and is reaching out to the West for help. The Vietnamese government already takes advantage of the economic pipeline between refugees in the United States and their relatives back home by heavily taxing goods and currency sent to Vietnam, and by encouraging Vietnamese Americans to break a US trade embargo instituted after the war.

The government, frustrated by years of Soviet-style planning and ready for a dose of American know-how, now plans to promote Vietnam as a tourist area and encourages refugees to modernize their homeland by setting up businesses and investing in large-scale agricultural and industrial projects.

"It is just unfair that so good a people, so peaceful a people as the Vietnamese have to suffer a long time," said Tran Quang Co, Vietnam's deputy foreign minister.

"The Vietnamese are not less intelligent, not less able than other Southeast Asians, but they still have the poorest country. It is very unfair."

The need is apparent everywhere in Vietnam.

The country lacks hard currency to buy imports and suffers from a shortage of consumer goods.

Industries have been idled for want of electricity, spare parts and raw materials.

In April, about 5,000 workers in Ho Chi Minh City lost jobs because of factory shutdowns.

Since the war, the standard of living has plummeted.

Vietnam's per capita income estimated at $100 to $150 per year, ranks with Ethiopia and Bangladesh.

Refugees who work for the minimum wage in California make more money in a week than their relatives in Vietnam earn in a year.

Even a pediatrician in Ho Chi Minh City earns the equivalent of 33 US cents per day.

For the first time since the war, Vietnam does not have enough food to feed its 63 million people. Rice production is down and famine has surfaced in northern provinces.

The country's road system, choked by overgrown vegetation and pulverized by bombs and mines, cannot transport surplus food in the south to the northern areas that need it most.

Inflation is so out of control that the black-market value of Vietnamese currency increased from 1,000 dong per dollar in January to 3,000 dong in April.

"If you come to Vietnam with the idea of seeing prosperous Vietnam, you've come at the wrong time," Xuan Oanh, vice chairman of the Vietnam-US Society, a friendship group formed during the war, told recent visitors to Hanoi.

"We have problems and we're not really optimistic. We're facing a situation in which millions are starving. We're in poverty. Not only poverty, but destitution as you say in America."

Oanh blames "ignorance on the part of the people and party leadership" for Vietnam's economic woes. "We have a real food shortage because of mistakes committed by local authorities."

Nguyen Xuan Oanh, the country's Harvard-trained economist who is a deputy in the state's National Assembly and the chairman of the Vietnam Economic Association, said Vietnam faces a "shortage of everything," from antibiotics to yard goods.

As if to illustrate his point, he lifted a pair of chopsticks in the restaurant where he sat. They were splintered at the end and marred by teeth marks. Even in Vietnam's best restaurants—in this case the ninth-floor terrace restaurant at the Doc Lap hotel, formerly known as the Caravel—chopsticks are recycled, the china is chipped and cracked and mineral water is served with rusty bottle caps.

Even when Vietnam has new products to offer, they cost far more than the average person can afford. A pack of cigarettes costs more than a week's wages, while a can of Saigon beer sells for $1. A tube of toothpaste costs $1.35, the equivalent of four days' wages for a doctor.

"I went into a department store in Ho Chi Minh City, and basic luggage, one piece, nothing fancy, cost $80. That's a half year's wages," said Joseph Cerquone, a senior consultant with the US Committee for Refugees in Washington. "I was amazed."

The central department store in Ho Chi Minh City, once the proud home of the country's first escalator, is dank and dirty. Its dark, cavernous halls look like a tomb for secondhand merchandise. A dusty turntable with a dented tone arm was among the few electronic components displayed for sale.

The building's air conditioner no longer works and the escalator had stopped.

An air of decay hovers over Ho Chi Minh City. Buildings crumble under a coat of black fungus that spreads like a virus in the steamy climate, thriving on the unpainted walls.

Power blackouts occur daily. At night, lights flicker in only a few buildings, and crowds cross the street in darkness, dodging cyclists and an occasional car.

Hoping to remove a huge barrier to economic recovery—a US trade embargo—the Vietnamese government has speeded up its timetable for the withdrawal of troops from Cambodia and is showing signs of willingness to account for American POWs and MIAs.

The United States has said it will not restore diplomatic relations with Vietnam or lift the embargo until both conditions are met.

Vietnam also adopted a new investment code in December 1987 to spur economic growth. The code, part of a series of economic reforms introduced in the past two years by Communist Party Leader Nguyen Van Linh, offers financial incentives to foreign investors, especially from the West.

And the country is trying to nurture a newborn tourist industry, hoping to become as famous for its sugar-white beaches as it was for its battlefields.

The government hopes to build seaside resorts at Nha Trang and Vung Tau.

"We see the potential for a large growth in tourism," said Pham Chi Lan, director of the international-relations department of Vietnam's Chamber of Commerce and Industry in Hanoi. "We're hoping to have joint ventures with foreigners to build hotels."

But those plans are part of a long-term strategy.

In the short term, the Vietnamese government is depending on Vietnamese refugees in the United States, who have prospered under capitalism while Vietnam has foundered under communism.

One tactic is to lure Vietnamese Americans back home with promises of preferential treatment, including tax breaks and tax deferrals, if they open businesses and invest in the country.

Another is to encourage them to violate the US trade embargo by sending to relatives in Vietnam money and goods, especially machinery, generators, water pumps and other items needed for industrial and agricultural growth.

The government benefits from the trade by levying huge taxes on the goods or taking them outright in lieu of taxes.

"We hope that all of our brothers overseas will come back here and contribute to the building of the country," said Nguyen Xuan Oanh, the economist who had counted David Rockefeller and John Kenneth Galbraith among friends.

"We have tremendous problems ahead, and I think our brothers from abroad can help us in this matter. We are very dearly waiting for them to come back."

A sparkling example of the expertise Vietnam needs, Oanh said, can be found in Orange County's Little Saigon. Having begun with three Vietnamese-owned businesses in 1978, the Vietnamese business district in Westminster and Garden Grove now includes 13 shopping centers with 750 stores valued at more than $100 million.

Despite the embargo, refugees have established business connections with Vietnam. Victor Tran, an Orange County travel agent, for example, employs his brother and other family members in Ho Chi Minh City as guides for tours he books to Vietnam.

In Orange County, tours for Vietnamese Americans leave every month from two Little Saigon travel agencies, even though the tours violate the embargo.

The tourist visits began at the end of 1986, when the Vietnamese government reached agreements with Air France and Philippine Airlines.

Brochures printed in Vietnamese and distributed in the United States invited refugees "to return to Saigon, the pearl of the Orient."

"You'll really be satisfied to have the chance to return to the homeland and be with your family in Vietnam," they said.

The brochures said Vietnamese may bring television sets, sewing machines, motorcycles, refrigerators, medicine and cassette players into Vietnam dutyfree.

In the past two years, 5,000 to 6,000 refugees have visited Vietnam, and some have begun talking with government officials about investing in their homeland, Oanh said.

One Santa Ana contractor, a refugee who asked not to be identified, has been repairing bridges and buildings in Vietnam.

The contractor said there is a need for skilled personnel to repair structures damaged in the war.

"There is a big demand for construction," said the contractor, who had just returned from a three-month visit to the country. "Vietnam is eager to exploit our expertise."

Lan, of Vietnam's Chamber of Commerce and Industry in Hanoi, said many Vietnamese-owned companies in other countries have begun trading with Vietnam.

She said Vietnamese in France, Germany and Italy—and even the United States—have established import-export businesses with relatives in Vietnam.

But Oanh said he has no illusion about a "flood of investment" coming from the West. The floodgates will not open until the United States lifts the embargo and restores diplomatic relations with Vietnam, Oanh said.

"A lot of the new investment policy is contingent on normalizing relations," Oanh said.

The economist said he hopes the United States "will act as a great nation toward small Vietnam."

"I think the time has come to let bygones be bygones and forget about what has been in the past," Oanh said. "I think the time has come for all of us to get together to bring this country back to prosperity."

Co, Vietnam's deputy foreign minister, said Vietnam is ready to restore diplomatic relations with the United States.

"It's time for us—Americans as well as Vietnamese—to heal the wounds of the war," Co said.

"To create difficulty toward a small and poor country like Vietnam is very easy. We have a popular saying in Vietnam that when you are hungry, a small piece of bread has the value of a ton of rice when your belly's full."

COSEVINA: CONDUIT KEEPS GOODS, MONEY FLOWING FROM THE UNITED STATES

(By Jeffrey Brody)

Sitting in his office in an old, French-style building on Nguyen Hue Boulevard across from the Rex Hotel and City Hall, Nguyen Minh Cam has one goal in mind: how to get US dollars and goods into Vietnam.

The former financial director of Ho Chi Minh City, Cam is the head of Cosevina, a Vietnamese corporation established in April 1987 to procure money and goods from Vietnamese living abroad.

"We are hungry for strong currency, which will allow us to import equipment and raw materials for production," Cam said through a translator.

"Cosevina has been created to deal with services related to Vietnamese abroad, to create a confidential place where overseas Vietnamese can send currency and parcels."

The stern-faced director, who joined the Viet Minh in 1945 and was educated at the Moscow School of Finance, is as committed to obtaining money from Vietnamese in the United States as he was to defeating them on the battlefield.

Symbols of his determination sit beside his desk: to his right, a stuffed Vietnamese tiger, ready to pounce; at his left, a stuffed Russian bear, claws in the air.

He said Vietnam will not be intimidated by a US embargo that prohibits much of the trade he is trying to encourage.

"We are in conflict with the policies of the US government," he said. "The restrictions do not allow overseas Vietnamese to go through our channels."

In 1987, Cosevina handled about $60 million in packages, most from the United States, Cam said.

To accomplish its goal, Cam's agency solicits gifts and funds from Vietnamese in the United States and operates five warehouses in Ho Chi Minh City, which serve as distribution centers for overseas parcels.

Similar government agencies handle overseas shipments destined for other locations in Vietnam.

One fenced-in warehouse the size of a football field on the outskirts of the city was jammed recently with Honda motorcycles and Vespa scooters, boxes of Philips and JVC television sets, Yanmar generators and Yamaha engines and other gifts from around the world. A JVC remote color television sent from West Germany was stacked near television sets from Orange County and Canada.

A Honda motorcycle, shipped by Huynh Kim Xoan of Huntington Beach to Huynh Thi Tuang of Ho Chi Minh City, has just arrived.

When Vietnamese pick up their gifts, the products are moved to a separate section of the warehouse. There customs inspectors examine them and collect the tax on every item. The tax varies but can be as high as 80 percent for luxury items.

Recipients can pay cash or barter items received from abroad to pay the levy. Sometimes black marketeers accompaning the recipients pay the tax and purchase the items for resale.

Some of the goods are sold at Intershops operated by Cosevina exclusively for foreign visitors in Ho Chi Minh City. The stores offer discounts on the items and a special exchange rate of 1,800 dong per dollar—twice the official exchange but less than the 3,000 dong per dollar offered on the black market.

The Intershop stores also serve as the distribution centers for money wired to residents of Ho Chi Minh City from abroad. The foreign banks send the money directly to the shops, which then notify the Vietnamese recipients. A sign in one shop shows the official exchange rate for dollars (900 dong per dollar), francs, marks and other currency.

Cosevina collects revenue for the Vietnamese government by charging a fee—which Cam said is 6 percent but refugees say is much higher—for money wired to Vietnam.

"The mission we want to fulfill here," Cam said, "is to play the role of a bridge between the overseas Vietnamese and their relatives, creating the tightest link possible. Our job combines the interest of families with the national interest."

The agency also encourages overseas Vietnamese to set up businesses in Vietnam.

The U.S. trade embargo, however, prohibits commerce with Vietnam and does not allow money to be sent there directly. It only permits the shipment of parcels valued at $400 or less.

In addition to violating the U.S. embargo, Cosevina also by passes it by contracting with Canadian firms that specialize in sending money and packages to Vietnam. Such firms often are used by Vietnamese in Orange County and the rest of the United States because Canada has no restrictions on the type or amount of goods that can be sent.

Two of the firms, the Montreal-based Laser Express and Vinamedic, advertise in Vietnamese-language newspapers in Orange County and Ho Chi Minh City.

Cam said funds and packages shipped from the United States, which has the largest and most sucessful emigre community, exceed that of France, which colonized Vietnam in the 19th century and has the second-largest emigre community.

To protect Vietnamese in the United States, Cam said, transactions are kept confidential. The names of senders are not released.

He described the aid as "humanitarian" and said the embargo discourages Vietnamese in the United States from helping their families.

Besides collecting money, Cosevina operates senior-citizen and housing programs paid for by Vietnamese refugees in countries other than the United States, Cam said.

Cam said he hopes the embargo will be lifted because then the contribution from Vietnamese in the United States would be "significantly higher." Cosevina, he said, wants to be the link between the United States and Vietnam.●

NATIONAL TEACHER APPRECIATION DAY

● Mr. D'AMATO. Mr. President, I rise today to lend my support to Senate Joint Resolution 355, introduced by my colleague from the State of Alabama. Senate Joint Resolution 355 would designate October 7, 1988, as "National Teacher Appreciation Day." I commend Senator HEFLIN for taking the lead in recognizing a part of American society that is too often forgotten.

Teachers play a tremendous role in the shaping of our children, and therefore our future. Everyone has a favorite teacher who taught them something special about life or about himself. Through his or her enthusiasm for a certain subject, a good teacher can interest an otherwise indifferent student. A special teacher can encourage a borderline student to complete his or her education and remain in school. I commend these successful teachers. Teachers should be recognized for all of their achievements, and National Teacher Appreciation Day would do just this.

Mr. President, I support "National Teacher Appreciation Day," and urge my colleagues to do the same.●

NATIONAL MILITARY FAMILIES RECOGNITION DAY

● Mr. D'AMATO. Mr. President, I rise today in support of Senate Joint Resolution 337, designating November 21, 1988, as "National Military Families Recognition Day." It is appropriate that this day falls within "National Family Week" of which I also support.

For all the sacrifices these families make, they deserve to be recognized. With one or more family members involved in the Armed Forces, the possibility of losing a loved one exists. Military families are frequently transferred to foreign countries, away from their friends and family.

The frequent moving between assignments can be inconvenient for family members: children must change schools and make new friends. Spouses, if employed, must constantly look for new jobs, and set up new homes every time they move.

I greatly appreciate the sacrifices our military families make. I salute these special families for their dedication to America.

I commend my distinguished colleague from the State of Mississippi in taking the lead in sponsoring this resolution, and I urge my colleagues to join us in cosponsoring National Military Families Recognition Day.●

"YOUTH 2000 WEEK"

● Mr. D'AMATO. Mr. President, I rise to lend my support to the joint resolution which designated the week of September 11-17, 1988, as "Youth 2000 Week." Youth 2000 begins a nationwide campaign which will continue until the year 2000. The campaign focuses upon those teenagers struggling to achieve a productive adulthood.

American youth is in trouble. Ten to 15 percent of our Nation's 16- and 19-year-olds are plagued with problems such as illiteracy, school dropout, unwanted teenage pregnancy, and alcohol and drug abuse. These problems are major roadblocks not only on the road to riches, but to a normal, productive adult citizenship.

Studies predict a decrease in unemployment in the future. Many jobs, however, will require some form of training beyond the high school level. With one out of eight 17-year-olds functionally illiterate, and 1 million adolescent girls pregnant each year, these teenagers will be unable to complete the necessary education to qualify for these jobs.

The aim of the Youth 2000 campaign is to involve all sectors of the population in helping our young future citizens. Parents are encouraged to increase communication with their children and involvement in their day-to-day activities and future plans. Teenagers can help peers in solving problems that they might have previously solved. The Federal Government can help too, but this is not enough. Different communities have different problems and resources available to solve them. Youth 2000 is aimed at increasing awareness on the local level. Communities need to define, address, and solve their specific problems.

My home State, the great State of New York, has demonstrated its commitment to Youth 2000. In conjunction with New York's Decade of the Child, Gov. Mario Cuomo issued a Youth 2000 Proclamation; Federal Youth 2000 funds have been allocated to Wayne County for Parents Anonymous Projects, (programs which mainly help teenage parents); SUNY Stony Brook and the town of Brentwood are sponsoring a program to help pregnant teenagers finish high school and even post-secondary training.

Mr. President, I am proud to cosponsor this resolution, and urge my colleagues to do the same. We must show our teenagers that we care. When they see that we care, they will also care about themselves. Without our children, we have no future.●

NATIONAL CHALLENGER CENTER DAY

● Mr. D'AMATO. Mr. President, I rise to lend my support in cosponsoring the resolution to designate January 28, 1989, as "National Challenger Center Day." This day is to keep alive the memories of those who lost their lives in the *Challenger* tragedy and focus attention on the constructive action that has developed since.

The Challenger Center was established by the families of the *Challenger* crew following the shuttle accident to function as a living memorial to the crew. While most memorials are built for viewing purposes only, Challenger Center is unique in that its purpose is to serve as an education center also.

The center is designed to further the education and knowledge of both students and teachers alike. It encourages students to study science, especially space-related topics. The center also helps teachers to teach science more effectively. Thus, the space center can certainly play a major role in the future of the U.S. space program.

A center has already opened in Houston, TX. Future centers are also planned as well as the center's national headquarters here in Washington, DC.

Mr. President, I cosponsored this legislation last year and I am proud to continue my support. The Challenger Center is an excellent way to continue the dreams and plans of the *Challenger* crew. We must not forget their sacrifices.●

GERMAN-AMERICAN DAY

● Mr. D'AMATO. Mr. President, I rise to speak on the occasion of German-American Day in recognition of the many achievements and contributions made by German-Americans to our society.

First, I want to commend all who joined with me in support of the distinguished senior Senator from Indiana, who introduced Senate Joint Resolution 273 to designate today as "German-American Day." This resolution, which became Public Law 100-392 on August 11, 1988, honors those who came to this country, sometimes under difficult conditions, wagering their lives, their families, and their honor on the future of our young democracy.

The first German immigrants, who were from the Rhineland, settled in Germantown, PA. Since then, the number of American citizens of German ancestry has grown to over 50 million, constituting the largest ethnic group in America today. New York City's German-American population stands at over 350,000, the highest of any city in the Nation.

Their achievements are to be found in all aspects of our culture, among them literature, art, science, religion, and commerce, and they fought and strove to preserve many of the ideals upon which our country is based. Indeed, without the training provided at Valley Forge by Baron von Steuben, the fledgling Continental Army may not have succeeded in winning our independence from Great Britain. Von Steuben, whose given name was Friedrich Wilhelm Ludolf Gerhard, Augustin, became a resident of New York after the Revolutionary War.

Freedom of the press was won by John Peter Zenger, a German immigrant who founded the New York Weekly Journal. The West might never have been conquered had it not been for German ingenuity in their invention of the Conestoga wagon.

The Studebakers, who invented the Conestoga, were spurred by the urgency of the Civil War to become the world's largest manufacturer of transportation, artillery, and ambulance wagons. John Augustus Roebling, a civil engineer from Muhlhausen, Germany, built the Brooklyn Bridge, a task which cost him his life. The bridge was hailed as the eighth wonder of the world when it opened in 1883.

German-born Thomas Nast became the Nation's leading political cartoonist in the late 1800's. He was a key figure in fighting political corruption, having helped smash the Tweed ring. He also established our current symbols of the Republican and Democratic Parties, the elephant and the donkey.

Today, West Germany is of great importance to the United States both as a NATO ally and as a trading partner. In 1987, West Germany ranked fifth among purchasers of United States exports, and third as an exporter to the United States, behind only to Japan and Canada. Total trade with the Federal Republic of Germany in 1987 was valued at $39.8 billion, third in the world. United States-West Germany political, economic, and security relationships continue to be based on close consultation and coordination at the highest levels, and cooperation on issues of mutual interest in international forums remains close.

In view of these facts it is with great pleasure that I join my colleagues in proclaiming October 6 as German-American Day, in recognition of their outstanding contributions to American society.●

GERMAN-AMERICAN DAY

● Mr. KASTEN. Mr. President, I rise today to pay tribute to the outstanding contribution made to our national life by German-Americans. Their stellar contribution shines with special brightness in my own home State of Wisconsin.

President John F. Kennedy rightly observed that America is a "nation of immigrants." Our national strength derives from the fact that we are not a nation founded on race or creed or dynasty—we are a nation founded instead on recognition of eternal truths, truths like liberty and natural God-given human rights.

For five centuries our country has been build up by men and women who have let these principles take fire in their hearts. They have left their homelands and their liveihood—but they have never left behind these principles.

Since the first Germans arrived in this country 305 years ago today, German-Americans have played an integral part in the building of our liberties and of our culture. Today, German-American Day, we pause to give them the recognition they earned by their sweat, toil, and love of country.

As a German-American myself, I have long respected and lived by the words of another German-American U.S. Senator who hailed from Wisconsin, the legendary statesman Carl Schurz: "Ideals are like stars: you will not succeed in touching them with your hands, but like the seafaring man on the desert of waters, you choose them as guides, and following them you reach your destiny."

Mr. President, it is that kind of idealism, an idealism made effective through hard work and perseverance, that has resulted in the German-American achievement in this country. It is that kind of idealism—and that achievement—that we honor today.●

RECOGNITION OF THE HONORABLE SHIRLEY CHISHOLM

● Mr. BENTSEN. Mr. President, I would like to pause to note that this weekend former Representative Shirley Chisholm is being honored for her outstanding contributions to this Nation. This year marks the 20th anniversary of Shirley Chisholm's election to the U.S. House of Representatives. It was the first time in our Nation's history that a black woman was elected to such a high office. In 1972, Shirley Chisholm was the first black woman candidate for the Democratic Presidential nomination. It is safe to say, Mr. President, that much of her public career can be characterized by firsts. She has been a pioneer, a fighter for the causes of the voiceless, and the champion for the underprivileged. During her seven terms in the House of Representatives, Shirley Chisholm fought for social justice in America; equal employment opportunity, economic parity for women and minorities, black colleges, compensatory education, Head Start, day care for the children of working mothers, and rights for the elderly. We are all in her debt.

The rewards of her labor and honors that she has won are too numerous to be listed here, but her triumphs have been good for America. When Shirley Chisholm campaigned for the Democratic nomination for the Presidency, knowing full well that her chances for success were minimal, she did so to call attention to the issues in which she believed so strongly. In making this sacrifice, Shirley Chisholm kept crucial issues at the forefront of the American conscience: women as strong and equal political figures, blacks as outstanding and patriotic political figures, the needs of the underprivileged, and much more. These things have been her legacy to all of us.

When Shirley Chisholm left office in 1982, a strong voice of the people retired from public office. Thankfully, it has not been silenced. Shirley Chisholm continues to teach the young people of our country that one voice can be heard; it can make a difference. For Shirley Chisholm is an example of the opportunities available in the United States. She is a living legend. We should use her example to move forward, united as a nation.●

ARMS RACE IN THE MIDDLE EAST

● Mr. DECONCINI. Mr. President, I rise to address last weeks' foreign operations conference report and specifically the arms proliferation-issue in the Middle East. We have seen over the past 10 years a huge increase in total expenditure on military arms in this region. This trend only promises to increase if we do not address the arms race and draw the line on selling our most advanced weapons into this region.

Total cumulative military expenditures for the Middle East reached an all-time high in spending between 1977 and 1988, with a sum totaling $450 billion. Moreover, $140.26 billion was spent on arms imports from other countries. This total accounts for an alarming trend in sales in Middle Eastern countries.

It can be shown from past experience that proliferation of weapons in any arena can become a dangerous and costly game. From experiences during the cold war and the arms buildup of the 1960's it can be seen that arms competition, if not dealt with properly, can turn into an unstemmable tide.

With regards to the passage of the foreign operations conference report, I supported an amendment in the bill which prohibited the transfer of Maverick G and D missiles to Kuwait. This amendment was originally incorporated into the bill. Last week, Chairman Inouye attempted to remove the provision and failed. This week, in a close and contentious vote, the provision was removed. I am interested not in blocking an arms package to one specific Middle Eastern country, but am instead eager to discuss the tidal wave of arms sales directed into this region of the world.

Many countries in the world today are attempting to exert their political independence and military power. Twenty years ago countries were politically allied. Today countries are making more and more decisions on their own. In addition, defense concerns are greater today than they have been in the past, and Middle Eastern countries are eager to expand their military capability. If we continue to allow the unrestricted sale of all arms into the region, the balance of power will shift in the region and peace will be threatened.

At present we are witnessing arms sales into the Middle East which are originating from at least ten different countries throughout the world. This is at a time when we are seeking a cease-fire between Iran and Iraq. These countries are receiving arms from every corner of the Earth, and the crucial fact is that if the United States does not take a leadership position in controlling this practice, we will soon see tragic consequences.

We have, in recent times, made great strides with the Soviet Union in decreasing arms proliferation, but the Soviet Union is no longer the main antagonist. Many Western European countries are selling weapons systems eagerly. Not merely weapons systems, the technology and means to construct them. France, in an effort to keep its arms market alive, has been selling numerous gulf nations arms and various weapons. Italy and Portugal sell these same countries tanks, casings, and various components needed to construct larger weapons.

Italy, approved limited arms sales to Iran after the United States embargo, including shipment of 27,000 fuses, 92 antiaircraft guns, and 10 naval guns. Even Britain recently sold $50 million in tank parts to Iran explaining that it was not connected to lethal systems. Britain has recently sold over 20 billion dollars worth of arms to Saudi Arabia. I have written to Prime Minister Thatcher about this and have received a reply.

To further enhance the problem The People's Republic of China has recently entered the arms arena. Selling anything from medium-range ballistic missiles to the small but lethal Silkworms, the Chinese are eager to make their share of the profits. Many other developing countries are active in the arms market as well. Brazil, North Korea, Indonesia, and Argentina are selling spare parts and copycat weapons—similar to those made in more established countries—for cut rate prices. Only by direct pressure from the United States will these countries be discouraged from these otherwise lucrative sales.

I implore my colleagues to consider the gravity of the situation. This sense of the Senate resolution, proposed by Senator SPECTER and myself, is a start in resisting the growth of arms in the Middle East. If we do not begin to take action now, tomorrow it will be too late. It is the United States who needs to set the example for the rest of the world. We will not be cavalier in our arms sales policies, and we should not let other countries infringe on our moral leadership.

HUNGARY NATIONAL DAY OF MOURNING

● Mr. SIMON. Mr. President, today is the Hungarian people's National Day of Mourning. This day in 1849, in the city of Arad in Hungary, many Hungarian patriots were executed by troops of the Imperial Austrian Army. In 1848, the Hungarian people had risen to defend the basic liberties they had just recently won, but less than a year later the Hungarian patriots were defeated and their newly won freedoms removed.

Another October day, some 107 years later in 1956, Hungarian patriots again took to the streets, this time against the leadership of the Hungarian Communist Party and the Soviet Union. Like the 1848-49 struggle, the 1956 uprising ended in suppression. After both incidents, many Hungarians made the long journey to the United States, where Hungarian-Americans have made important contributions in every walk of American life.

Mr. President, I ask that we all join in recognizing the bravery and resilience of the Hungarian people, and in commemorating their National Day of Mourning.●

GERMAN-AMERICAN DAY

● Mr. SIMON. Mr. President, today is German-American Day. I am proud of the many contributions made to our politics, our economy, our society, and our history by German-Americans.

German-American immigrants have played an important role in building the United States. Although Germans settled in all parts of the country, many settled in the Midwest. Their pioneering spirit has led to numerous German-American success stories, and their success over the years has served as an example to other new immigrants to our shores.

Mr. President, I ask my colleagues to join with me in commemorating German-American Day and in paying tribute to the many accomplishments and contributions of German-Americans.●

ON THE FRONTIER: RURAL MEDICINE, RURAL HEALTH

Mr. WALLOP. Mr. President, one of the anomalies of legislating Federal programs and Federal standards is that we create a broad brush which attempts to apply a blanket of uniformity to every State in our Nation. As the Senior Senator from the seventh largest State areawide and the smallest State based on population, I have a difficult time finding many resemblances to, for instance, Rhode Island, another small population State with an area about the same size as many counties in my State and a quick drive to Boston and New York City. The predilection by some in Congress to eliminate diversity may satisfy their agenda, but wrecks havoc in the States, which are, after all, the laboratories of democracy.

Fortunately, we have made some progress in preserving regional identities and establishing the principle that Federal requirements must be cognizant of the unique problems and circumstances of the individual States. For instance, when Congress enacted the Occupational Safety and Health Act in 1970, a provision was included to allow State programs. My State of Wyoming decided to utilize a State program rather than having the Feds run the program. Finally, 18 years later, the Department of Labor has given approval to our State plan. But, we do have a State program which is responsive to the needs of my State of Wyoming.

Other laws have provisions to protect the States from the heavy hand of the Federal Government. This is true for the welfare program, and was reaffirmed with the passage of the welfare reform bill last week which continues the Federal-State partnership in administering welfare programs. It is true of our education programs. We have a continuing battle to protect local school systems from Federal controls. But, the recently enacted elementary and secondary education amendments protects rather than erodes States and local education responsibilities. We also successfully preserved funding set-asides for small population States against the greedy inclinations of the large population States.

Health care is one policy area where we have been moderately successful in recognizing and responding to regional differences. For instance, in enacting a prospective payment system for Medicare reimbursement to hospitals, we have established a distinction between rural and urban hospitals. Our most recent decision has been to establish a rural rate differential, whereby rural hospitals would receive a higher annual update in their PPS rates than urban hospitals.

Through our rural hospitals in Wyoming have a shorter length of stay for patients than do urban hospitals in Eastern States, Wyoming hospitals face other problems. The hospitals are small in terms of bed count. They cannot enjoy the same economies of scale that apply to large, urban hospitals. Occupancy rates are low. We have difficulties attacting trained staff in some of our small communities. In short, anyone trying to provide health care in sparsely settled, wide open high plains States such as Wyoming have many unusual challenges not present in Boston, New York, or Washington.

In many respects we have a frontier situation. The reality was accurately presented in a recent article by Dr. William Close who now resides in Big Piney, WY. His article, which appeared in a recent edition of the AMA News, describes the rural practice of medicine as requiring doctors to be physicians in the fullest sense of the word. I would recommend this article to my colleagues and ask that it be printed in the RECORD at the conclusion of my remarks.

Recently, Senator GRASSLEY introduced legislation to ensure proper funding and legislative authorization for the Office of Rural Health Policy and the National Advisory Committee on Rural Health. It is important for both the Congress and the Department of Health and Human Services to receive expert advice on rural health care issues. This legislation is a major step toward providing this information. I am pleased to join as a cosponsor of this legislation, S. 2805.

The article follows:

REAL MEDICINE, AS PRACTICED IN THE "BOONIES"

(William T. Close, MD)

My wife Tine and I came to an isolated Rocky Mountain community, Big Piney, Wyo., in 1977. Big Piney was, at that time, in the county with the smallest population in the state with the smallest population in the United States. After 16 years of a high-profile job in an anxiety-provoking area of Africa, we wanted a place where we could get off the world quietly and happily, read, maybe write, and certainly be with our dogs and old horse in peace and tranquility.

During the process of settling in I went to the little clinic in Big Piney and told the nurse practitioner that I would be happy to come down from the ranch (30 miles away on a very primitive road) and help out a couple of mornings a week. Within a few months we were building a home near town, and the practice had developed into a 24-hour-a-day, seven-days-a-week proposition. To put it plainly, I was launched into a rural—very rural—practice in the Rocky Mountains.

When I was a pre-med student at Harvard I took a job as a volunteer night orderly at Massachusetts General Hospital in Boston in order to see if I really wanted to be a physician. Since being the village doc in Big Piney I have frequently suggested to medical students that they spend some time in preceptorships in the real boonies so that they could see what real medicine is all about.

In centers many MDs become technical or procedural physicians, or more recently "gatekeepers" caught between lawyers and corporate adminstrators. In rural practice they must be physicians in the fullest sense of the word.

We local medical doctors live with our patients—see them in cafes and the post office, in our homes and on the streets. We know each other, we live together and cry and laugh together. Last winter a pipe in our house froze and a welder came to unfreeze the pipe and get the water flowing again. In the spring the same welder needed my help to unplug his personal pipe so his own water could flow again.

Village practice is different from a practice in the city, or in the hospitals attached to our Halls of Wisdom—our university hospitals. Most of the time I know what my people fear and what they hope for. I've been with them in a mountain blizzard and the choking dust of a summer day behind the cattle and sheep. I've shared the loneliness of isolation and seen their stoic resignation to nature's forces, more apparent in the village than in the city. I've seen them cut and bleeding in barroom fights, or thrown from a horse on a mountain pass. I've been with them in their homes around a young mother's bed as she cradles her newborn, and around the old four-poster where Grandpa just died. We've been angry and sad, and happy and relieved together.

Most of our people don't expect to live forever. Some are ready to die—want to die—before death actually comes. Most dread the time when they can't do for themselves and think for themselves. They fear that their pain will not be controlled, and they dread some of our treatments that sometimes prolong the agony of living, but do little toward a peaceful death.

Dorothy had to wash and shave Jack this morning—a sign to him that the end is near. Jack asked me to come over to his place a little later. He wanted to know if there was anything else we could do. I sat on his bed, put my hand on his withered shoulder, and told him what he already knew. I repeated that I would keep away the pain and the vomiting and diarrhea. He knows I'll see him every day and more if he calls. He wept for a moment, then struggled into his pants and made his way to the kitchen table for a cup of tea. He was peaceful and dignified and his own man. He went back to his bed on his own power a few minutes later.

A patient and friend my own age died at home two months ago. He had oat cell cancer of his lung, metastacized throughout his body. He had received excellent care by a neurosurgeon in Salt Lake City who removed most of a metastatic lesion that had invaded his spinal cord. He had received radiation therapy and had started some chemotherapy. His center treatments were of short duration, done well and with compassion. But he wanted to come home and spend what time he had left in his cabin by a fishing stream in the mountains. We took good care of him. He died without pain, and peacefully. His family came in one at a time as I sat with him during his final hours. As he rolled on his side in a final agonal movement, his arm dropped over the side of the bed. His little old white-muzzled dog, BJ, crawled out from under the bed and licked his hand. Chuck was dead.

Today all of us involved in the care of people face gigantic challenges. One is the care of the elderly and dying.

When dealing with my own age group—those of us 60 and older—the real ethical question should be whether the use of advanced and expensive technology signficantly improves quality of life. The obvious answer to this question is that sometimes it does, and sometimes it doesn't. A more delicate question is what motivates those selling and performing high-tech procedures, especially if "some of the more expensive techniques and devices can only slightly improve a diagnosis, or marginally prolong life," to quote Lester Carl Thurow in the *New England Journal of Medicine.*

A practicing physician must often help a critically ill or terminal patient and the family decide between a horrendous procedure, with its implicit cost in suffering, money, and alienation in a strange and frightening setting, or an inevitable but peaceful death at home with "old fashioned' care by a physician, nurses, friends, and family.

The desires of the patient should, of course, be the priority factor in deciding whether a procedure should be done. Since there seems to be an increase in the number of surgeons and "high-tech" physicians competing for the patient, and since there is clearly competition among hospitals for "high-revenue" patients, or patients who are "procedural candidates," questions concerning motivation of the physicians and the hospital administration become critical.

Now we have bills in Congress for catastrophic care, bills that apparently may benefit only patients in hospitals. Forget the nursing home, and certainly forget home care.

Sometimes it seems to me that the inevitability of death is denied and that efforts to improve the quality of life of a terminal patient give way to high-revenue-producing efforts to prolong life. Our nursing homes are filled with miserable alienated people who represent the defeats of some of our technical victories.

I have had a full life—a wonderful life. I am blessed with a rather unique wife, five great children and four energetic grandchildren. We have six dogs, an oataholic horse, and a donkey whose bray could add to the French horn section of the Cleveland Symphony. I have faced many challenges, had many victories and some defeats. But at 64 I feel as full of enegry and hope as at any time in my life. Experience, I hope, has brought with it more humor, more listening and less talking, more compassion and less arrognance, more warmth and less heat.

We have been taught as physicians that death is defeat. Most of us, when we were young, bright-eyed, and bushy-tailed, fought death as a personal adversary in our efforts to keep patients alive. And that is fine. I hope that physicians taking care of my children and grandchildren will fight as hard as possible to keep them alive and happy. But I hope that as I reach that stage in life when quality of life is more imortant than how long I hang in there, my physician and family will act accordingly. Death is inevitable. Peaceful death, devoid of agony, occurring in a place of choice for me and my family and my four-legged friends, can come as a blessed relief. I would like to die like my friend Chuck. Only my dog will be on the bed instead of under it.●

ENDING THE COLD WAR

● Mr. PELL. Mr. President, as we reflect on the issues in this election campaign, it is especially important that we keep before us the over-arching foreign policy question of our time, and that is the United States relationship with the Soviet Union. This is the issue that has dominated our foreign policy for over 40 years. Our defense structure, our alliance system—the basic way we see and articulate our foreign policy—all have been focused on United States relations with the Soviet Union. It is no exaggeration to say that the cold war has been the dominant foreign policy issue of our generation.

It is therefore remarkable that our most distinguished scholars of Soviet affairs are reaching the conclusion that our generation has a chance to end the cold war with the Soviet Union. One such scholar is Richard H. Ullman, the David K.E. Bruce Professor of International Affairs at Princeton University. Professor Ullman has served in the past on the State Department's Policy Planning Council and as a member of the editorial board of the New York Times. He has written extensively on Soviet history: his first book remains the classic study of the American intervention in Russia in the aftermath of the Bolshevik Revolution and the First World War. The chair he holds is named for one of our most distinguished Ambassadors, David Bruce, one of the "wise men" responsible for guiding our foreign policy in the early years of the cold war following World War II.

Professor Ullman has written an Article for the current issue of Foreign Policy entitled "Ending the Cold War." Its opening sentence states:

> The next American president may have the opportunity to end the cold war with the Soviet Union, and it continues: If Reagan's successor does not seize this chance, it may be denied at least to his immediate successors as well. For previously there has not been, nor may there be soon again, a regime in Moscow capable of fundamentally realigning Soviet approaches to the world within and beyond its own borders in a manner that would give a U.S. President the confidence to proceed with a policy of far-reaching accommodation. The government of Mikhail Gorbachev may be such a Soviet regime.

A central thesis of the article is "that there is a relationship between Gorbachev's external and internal agendas," and that the West in general and the United States in particular can make a difference in influencing Gorbachev's ability to pursue policies and programs that can contribute to ending the cold war.

This is a theme that all of us need to consider as we reflect on the choices in this election campaign. For it will fall to the next President, and to the Congress working with him, to chart the course thay may enable us to change fundamentally the terms of our international relations.

I ask that Professor Ullman's article be printed at this point in the RECORD.

The article follows:

ENDING THE COLD WAR

(By Richard H. Ullman)

The next American president may have the opportunity to end the cold war with the Soviet Union. This opportunity was denied to his predecessors, even to Ronald Reagan, who began the process but will not have time in office to complete it. If Reagan's successor does not seize this chance, it may be denied at least to his immediate successors as well. For previously there has not been, nor may there be soon again, a regime in Moscow capable of fundamentally realigning Soviet approaches to the world within and beyond its own borders in a manner that would give a U.S. president the confidence to proceed with a policy of far-reaching accommodation.

The government of Mikhail Gorbachev may be such a Soviet regime. In the more than 3 years since Gorbachev came to power in March 1985, he has demonstrated that in crucial respects he would like to break sharply with the patterns of the past. Americans are often told these days, usually by self-proclaimed "realists," that the United States should seek neither to help nor to hinder Gorbachev, but only to further U.S. interests. But that is a slogan, not a guide to policy.

This essay argues that there is a relationship between Gorbachev's external and internal agendas: Success in foreign policy will strengthen his hand for the huge task of reforming Soviet society. This is fortunate for the West, because Gorbachev's reforms are likely to make the Soviet Union much easier for other countries to live with and because his foreign-policy goals are largely compatible with those of the West. Thus the United States has a strong interest in helping him to achieve his objectives. If he fails and falls from power, the ensuing regime is likely to be less devoted to the kinds of moderate policies the United States should promote.

To argue for supporting the survival in office of a particular Soviet leader might seem to contradict the basic diplomatic precept of avoiding dependence on another government's pursuit of policies that might change dramatically with a change of leadership. What is argued here, however, is not that the United States should depend on Gorbachev's good will, nor that it should become dependent upon particular Soviet policies. Rather, it should be emphasized that some Soviet policies accord much more with Western interests than do others and that Gorbachev seems more likely than previous Soviet leaders to pursue those policies.

Underlying this proposition is a series of others:

Gorbachev's attention is focused very much at home. That is true of most political leaders in most societies. But Gorbachev's frequent and impassioned indictments of the habits and practices of the regime he inherited, as well as his far-reaching agenda for domestic reform, seem to demonstrate his single-minded determination to subordinate foreign to domestic priorities.

For a leader with such a focus, foreign affairs distract from and divide energies needed in the domestic arena. The conduct of foreign affairs, especially the USSR's enormous military expenditures and its subsidies to client states like Cuba, drains significant economic resources.

Worse still for Gorbachev, foreign affairs are a potential source of his undoing. If those who oppose his domestic reforms can show that Gorbachev's policies have eroded the geopolitical position of the Soviet state and allowed its adversaries to make inroads that might threaten Soviet security, his days in office will be numbered.

Gorbachev's domestic imperative therefore gives rise to a strong need not merely for international tranquility but also for a formal structure that codifies that tranquility. Putting that structure in place—provided it is more substantial than the deténte of the early 1970s—will enhance his leverage in the Soviet internal debate. Perhaps this is why he has advanced so many arms control proposals over the last 2 years. Their sheer quantity has led some Western analysts to conclude that he is "not serious" because they overload the system. On the contrary, the sense left by his proposals seems to be, "If you don't like that one, try this one." This may not be normal diplomacy, but it indicates strongly held goals and a Sadat-like impatience with the rigidities of both the Soviet policymaking process and the international system.

Therefore, now is an opportune time for reaching agreements that will delimit the U.S.-Soviet rivalry and attenuate the hostility between the two powers. But this "window of opportunity" will not remain open indefinitely. Indeed, it is certainly possible for U.S. diplomacy to undermine Gorbachev is seen as having failed to improve the climate and the content of U.S.-Soviet relations, his successors will not be likely to redouble his efforts.

Under Gorbachev the Soviet Union is approaching something of a historic turning point. Provided the turn is made decisively, the USSR may become a substantially more amenable interlocutor in the international arena. Gorbachev's Soviet Union, unlike that of his predecessors, seems in significant ways to be becoming an "ordinary state." Gorbachev is thus making Western analysts and diplomats confront a question they have not had to face before: What does it mean for the international system if the Soviet Union is an ordinary state?

An ordinary state differs from the Soviet Union the West has known until now in at least three respects. First, it is secure in the internally perceived legitimacy of its domestic political system and its governing regime. Second, it derives few domestic benefits from propagating a view of the international system that emphasizes the presence of powerful, malevolent enemies. And third, its policies are not driven by a theory of history that posits an imperative for expansion through the reproduction of its own political system and ideology.

Perhaps the most important characteristic of an ordinary state is its legitimacy—that is, most of the people who reside within a government's geographic domain regard its power as legitimate and accept its decisions as rightful. Legitimacy is a troubling issue for regimes that owe their present hegemony to a past seizure of power and that have not adopted mechanisms such as genuinely democratic elections to show that they no longer hold power arbitrarily. It is especially troubling for regimes whose seizure of power was accompanied by a transcendental revolutionary rhetoric.

Western liberals often talk as though legitimacy is an either-or concept: A government either has it or it does not. But in the politics of most states, legitimacy is a continuum; it is a matter of more or less. It does not necessarily mean that those who rule have gained their power through competitive, open elections. Elections are usually a sufficient indicator of a regime's legitimacy, but they are not a necessary indicator.

It seems fairly clear that the vast majority of Soviet citizens do not regard as either arbitrary or capricious the processes that brought Gorbachev to the office of general secretary of the Communist party and by which he then was able to reconstitute the governing Politboro so that nearly all of its present members are his supporters. Perhaps even more important, the regime itself regards its own hold on power as legitimate. In contrast, the legitimacy of past Soviet leaders was distinctly shakier in both respects.

Gorbachev's four summit meetings with Reagan have surely enhanced substantially both his own legitimacy at home and that of his government abroad. He has demonstrated to his compatriots, as not even Leonid Brezhnev did, that he is a stateman able to dominate the global stage. And by virtue of Reagan's evident conversion, the Soviet regime can no longer be given the cold shoulder as the "evil empire." At least so long as Gorbachev remains at the helm, the USSR is a fitting interlocutor to the other superpower.

This is not to say that Gorbachev does not face enormous problems. The special Communist party conference in late June and early July 1988 demonstrated once again the widespread recognition throughout Soviet society of the rigidity, inefficiency, corruption, and bureaucratic highhandedness that had become pervasive by 1985. Yet it also provided renewed evidence that Gorbachev's efforts at perestroika, or "restructuring," of the Soviet economy and society to root out these vices may ultimately provoke a formidable backlash from those deprived of their privileges or made economically worse off. He may well have to content himself with taking two steps forward and one step back.

Moreover, violent conflict between Armenians and Azerbaijanis in winter 1988, though pitting members of these national groups against each other rather than against the dominant Russians, may indicate some of the limits to glasnost, or "openness." Greater openness can provide opportunities not only for the kinds of territorial claims and minority-bashing chauvinism displayed in the recent turmoil, but for objections to Russian hegemony as well. That would surely strengthen conservative demands to close the Pandora's box the reformers have opened. Whether Gorbachev could withstand such pressures would undoubtedly depend on how confident he was of public support.

Under Gorbachev the Soviet Union is approaching something of a historic turning point.

Soviet leaders seem to have felt insecure ever since the Bolsheviks seized power in November 1917. Initially their insecurity was well-founded: V. I. Lenin's new government found itself beset by hostile armies that were loyal to the deposed czar and augmented by the forces of foreign governments eager to extirpate the revolutionary virus before it could spread beyond Russia. After the regime consolidated its power, Joseph Stalin created enemies within the ruling circle by his ruthless maneuvering for power and within wider Soviet society by the brutality of his forced collectivization. But his intense paranoia magnified those enemies far beyond their real strength and led him to build up the organs of internal surveillance and repression to the point where they became a state within a state.

In the aftermath of World War II, Stalin's paranoia also led him to ensure that the states lying between the Soviet Union and a potentially hostile West were governed by regimes patterned after the USSR's and in most cases run by communist apparatchiks who owed their jobs to the presence of the Red Army. For Moscow those regimes quickly became both a symbol of security and a source of enormous anxiety. Like the dependent regime installed by the Red Army in Afghanistan in 1979, they had to be defended against internal enemies. And their internal policies had to be constrained lest they strayed too far from Soviet orthodoxy and thereby threatened it.

Soviet leaders came to understand that their legitimacy at home was held hostage to the legitimacy of the East European regimes. If Czechoslovakia's communist leaders could question their own right to monopolize power, as Alexander Dubcek and his colleagues did in 1968, would the same questions not arise among ordinary citizens, if not leaders, in the USSR? If the interests of Polish workers could be represented by a genuinely autonomous trade union movement, as Solidarity was in the early 1980s, why should Soviet workers not enjoy the same representation? For those in the Kremlin, at least until Gorbachev's arrival, safety lay in assuring that such questions were asked as infrequently as possible, even if providing that assurance required military intervention.

Gorbachev's regime may be the first since the forced creation of the "socialist community" secure enough in its own domestic standing not to feel threatened by questions about the legitimacy of regimes in Eastern Europe. He has not disavowed the Brezhnev Doctrine, which proclaimed Moscow's duty to intervene there to assure ideological conformity. But his statements evince a far-reaching tolerance for diversity in the socialist world, combined with insistence upon the principle of national sovereignty and nonintervention.

Here again, Gorbachev's reassessment is a matter of degree. He has not ruled out ordering Soviet forces to intervene in Eastern Europe. Indeed, there are circumstances in which he might do so. Those include a civil upheaval in which a Warsaw Pact government was confronted by a violent uprising it could not suppress alone or an East European government's withdrawal from the Warsaw Pact itself, as Imre Nagy attempted in Hungary in 1956.

It may seem paradoxical that just as Gorbachev is saying that Warsaw Pact leaders should follow their own political and economic courses, he also has initiated much greater consultations between himself and them. Yet Moscow's ability to tolerate divergence can grow by minimizing the likelihood of misunderstanding its allies' intentions and actions. The Kremlin has never liked surprises.

East European leaders describe their meetings with Gorbachev as involving genuine give and take, contrasting sharply with what they experienced under his predecessor. So long as domestic change in Eastern Europe appears peaceful, and so long as it does not threaten the formal structure of East-West alliance relationships, it seems likely that Gorbachev will accept substantial deviations from the East bloc's norms.

EXORCISING THE WESTERN THREAT

If so, Gorbachev has taken an important step toward making the Soviet Union an ordinary state. For Eastern Europe is a key not only to Soviet domestic politics but to much else in Soviet foreign policy as well. In the past the Soviet Union's domestic need to enforce conformity at home and among its allies has led it to maximize the Western threat. NATO political and military leaders often find incredible the way their forces are depicted in the Soviet and East European media. Such characterizations of Western power and intentions undoubtedly reflect as well the same kind of worst-case analysis Western military establishments habitually practice. But they also justify the forward stationing of Soviet units whose very presence serves to remind their Warsaw Pact colleagues of the limits of permissible change.

As those limits expand, Soviet leaders are likely to perceive a diminished need for a large-scale military presence in Eastern Europe. In a number of recent statements Gorbachev has emphasized—as Western governments long have done—the central importance of conventional arms reductions in European security. And he has acknowledged that there are asymmetries in the balance of conventional forces that favor the Warsaw Pact, just as there are some that favor NATO. These imbalances should be addressed, he has said, not by building up but by leveling down. And he has asserted that capitalism no longer needs to expand in order to survive. The implications are clear: The West is not 10 feet tall. Nor is it likely to attack.

Such statements represent a clear break with the past. But until now the Soviet Union has dragged its feet at talks on the reduction of conventional forces. Despite a decade and a half of talk, the negotiations on Mutual and Balanced Force Reductions have produced virtually nothing. The negotiators thus far have been unable to agree even upon which forces should be counted in establishing base lines from which reductions might take place. In some measure this disagreement has stemmed from past Soviet unwillingness to acknowledge the full size and to define publicly the roles of its garrisons in Eastern Europe. Gorbachev's willingness to acknowledge that asymmetries exist and his June 1988 proposal for a full, mutually verified exchange of data on all military forces between the Atlantic Ocean and the Ural Mountains should make it possible to cut through the impediments to productive negotiations.

The West should assume that Gorbachev means what he says when he calls both for equalizing the sizes of conventional forces in Europe at substantially lower levels and for restructuring them so as to emphasize defensive rather than offensive capabilities. Each side, he has said, should eliminate from its arsenals a large proportion of the weapons that most frighten the other. The West has singled out Warsaw Pact tanks, other armored vehicles, and artillery; the East NATO strike aircraft and short-range nuclear weapons.

Dealing with these points will be far from easy, for the systems that raise concern on one side lie at the heart of the other's longstanding military doctrine. Thus, for the West to be able to agree on a significant reduction of its attack aircraft, the Soviets would need not only to withdraw a large number of tanks, but also to scrap them and provide the West with a reliable means of verifying that they will not simply be replaced with others.

Such difficulties notwithstanding, the United States and its allies should recognize that recent Soviet declarations may hold out the possibility of a much safer military relationship between the two sides in the European area, where even a war fought with conventional weapons would be enormously destructive and where the chances of escalation across the nuclear threshold are currently the greatest.

Moreover, successful negotiations not only would reduce the dangers but also would lower the costs. European defense contingencies are the most powerful engines driving the arms acquisition process in the United States and the Soviet Union. The weapons systems that would be reduced or eliminated in moving toward forces configured largely for defensive operations would be those most dependent upon advanced technologies—and therefore the most expensive. Substantial reductions also would mean commensurate savings in military personnel, a major item in defense budgets.

In reinvigorating conventional arms control negotiations, the West should be mindful of these opportunities. It should also be mindful of the risks. If war starts, the current military confrontation in Europe might lead to enormous destruction, but this is precisely why the risks of war breaking out are universally acknowledged as low. To say the least, it would be shortsighted if arms reduction efforts were to leave either side with the perception that it could go to war with a greater chance for success or with lower risk than it has today.

Western governments are certainly aware that Gorbachev sees conventional arms reductions and changes in doctrines and deployments to emphasize defensive capabilities in part as steps toward a long-standing Soviet goal: the removal of all U.S. nuclear weapons from Europe. At the NATO summit meeting in March 1988 they adopted a posture that amounted to a blunt refusal even to contemplate negotiations with Moscow on short-range nuclear forces. But in fact, they should welcome as a policy objective this so-called third zero (the first two being the bans on intermediate-range missiles with ranges of, respectively, between 1,000 and 5,500 kilometers and between 500 and 1,000 kilometers). For any agreement to remove U.S. weapons would also remove the much more numerous Soviet weapons, just as the intermediate-range nuclear forces (INF) agreement has done. The affected weapons—for example, short-range missiles, nuclear artillery shells, and free-fall bombs for aircraft delivery—are among the most dangerous in the superpower arsenals because they might be released to the control of military commanders early in a war. For that very reason, and because their short range requires that they be located near the front, they also would be high-priority targets for pre-emptive attacks.

These same characteristics, some defense analysts argue, bolster deterrence. Whatever advantages the Soviets enjoy in conventional forces matter less, they claim, because of the likelihood that a successful attack will trigger a Western nuclear response. The Soviets presumably know that, and they themselves insist that any nuclear war might escalate far beyond the immediate battlefield—a prospect that gives both sides pause and thus enhances stability. Moreover, now that the INF will soon be scrapped, the only land-based missiles in Europe to "couple" the United States to its European allies are the short-range ones. Removing them would weaken the community of fate shared by America and Western Europe that results from the risk to U.S. nuclear weapons in Europe if war erupts.

Such arguments are grounds for proceeding with care in this kinds of far-reaching arms control negotiations Gorbachev has proposed. But they are not reasons for refusing to go down the road to which he points, a road that leads to a minimal role for nuclear weapons in international relations. The road need not, however, lead to another objective that the general secretary has embraced at least rhetorically: eliminating all nuclear weapons. That goal is not in the interest of either superpower.

At least so long as Gorbachev remains at the helm, the USSR is a fitting interlocutor to the other superpower.

As long as there is no overarching authority in the international system, states will want to retain some nucler weapons to deter the use of such weapons against themselves. However, the United States and the Soviet Union currently maintain nuclear stockpiles not merely for deterring nuclear wars but also for fighting them, a posture that places a premium on pre-emption. Thus nuclear weaponry is likely to be less effective in preventing escalation once a crisis explodes into war. To prevent the outbreak of war in the first place, the superpowers should instead move toward a greater reliance on a conventional balance at lower than current levels and on defense-oriented force structures. Deterring escalation across the nuclear threshold would be the role of the remaining nculear weapons.

These long-range "strategic" forces—land- and submarine-based missiles and bombers—constitute most of the superpowers' destructive power. Both governments have agreed in principle to reduce these forces by 50 per cent. In practice, however, the successful conclusion of the current Strategic Arms Reduction Talks (START) would result in smaller reductions, on the order of 30 per cent.[1] The more than 6,000 warheads left on each side would still number far beyond those needed if the criterion of minimum deterrence—that is, deterrence only of nuclear attacks—governed their development. strategic forces are now so accurate and flexible that they can strike virtually the same sets of targets that were the province of the now banned INF and even many of those now assigned to the short-range battlefield weapons. Thus, although some analysts argue that the elimination of intermediate- and short-range American nuclear weapons would weaken extended deterrence (the threat of a U.S. nuclear response to a Soviet conventional attack in Europe), the effect would not easily be discernible. And if the geographic location of American weapons would not greatly influence a president's decision to cross the nuclear threshold—an assumption that prudent Soviet planners must surely make—then extended deterrence would not be significantly weakened at all.

At the May 1988 Reagan-Gorbachev summit meeting in Moscow, Gorbachev reaffirmed the Soviet position that the United States will have to accept sharp limits on the testing and deployment of ballistic missile defenses before Moscow will agree to a 50 percent reduction of strategic nuclear forces. An effort to develop defenses of population centers would surely make any agreement on offensive strategic forces impossible. Moreover, the endless technological race needed to maintain such a defensive shield would threaten constantly to destablize the superpowers' nuclear relationship and intensify hostility between the two societies. It is unlikely that *glasnost*, nor perhaps even Gorbachev himself, could survive it.

Efforts to develop defenses only for offensive missile forces rather than for cities would also run at least some risk of having the same result, as neither side could be wholly certain that the other was not on the verge of some city-protecting breakthrough. The path to a stable nuclear relationship surely runs through arrangements that would leave undisturbed the perceived reality of their mutual hostage relationship, rather than through the illusion of defensive technical fixes.

Thus the incoming U.S. administration should abandon Reagan's vision of a city-protecting ballistic missile defense and announce that it will abide by a strict interpretation of the 1972 Antiballistic Missile (ABM) Treaty. It should do so not merely because the Strategic Defense Initiative might be a useful bargaining chip, but because a world with large-scale ABM defenses would be less safe. The next administration, however, should not agree to eliminate short-range nuclear weapons from Europe until the USSR agrees to cuts in conventional forces and changes in the ways they are deployed that eliminate its advantages—not only in raw numbers of troops and tanks but in geography as well.

The next administration's goals in the various arms control negotiations therefore should be to move both sides away from the confrontation of poised offensively oriented conventional forces that would exacerbate any military crisis between East and West in Europe and to do the same with nuclear weapons—to eliminate those weapons that in a crisis would most inivite pre-emptive attack. Such weapons include not only the short-range battlefield weapons, but also heavy, fixed-silo, multiple-warhead, land-based missiles like the remaining Soviet SS-18s (one-half of which are slated for elimination in START) and the American MXs. The long-term objective should be to denuclearize the relationship with Moscow—to rely on nuclear force deployments and doctrines that are consistent with the principle that nuclear weapons are truly unusable and exist only to deter their use by others.

REACHING THIRD WORLD AGREEMENT

The confidence and sense of common security that would flow from successful moves in arms control might enable the superpowers to make headway in another sphere: managing their present and potential conflicts in the Third World. In the past, their attempts to do so were framed so generally that they never came close to a definition of where their interests actually clashed. The result, codified in the agreement on the prevention of nuclear war signed in June 1973 by President Richard Nixon and Brezhnev, soon proved a source of disappointment and recrimination as each side tried to outmaneuver the other in the October Arab-Israeli war.

Perhaps because both countries have now fought and lost long, costly wars in the Third World—the United States in Vietnam, the Soviet Union in Afghanistan—the next U.S. administration may find it easier to reach a meaningful agreement with Moscow. Soviet leaders, ideologists, and scholars once looked optimistically to the Third World as a crucible for revolutions that would sweep aside the vestiges of imperialism and create a host of new socialist states, confirming that history was on Moscow's side. Today there is far greater realism. As Robert Legvold has put it, Gorbachev seems to find the Third World "a hopeless and tragic arena, not a region of hope and promise"—a context in which obstacles to genuine revolutionary transformation are great and the potential for superpower confrontation is high.[2] Such reflections are very much those of the leader of an ordinary state.

In Washington, too, fewer illusions remain about the chances for progress in much of the Third World. However, the Reagan administration combined that realization with an irrational and deep fear of Third World revolutions as threats to American security and challenges to America's geopolitical position—as witnessed by its long and tenacious war against the Sandinista government in Nicaragua. Its successor is likely to take a less paranoid view, which will enhance the possibility of a successful U.S.-Soviet dialogue on these troublesome issues.

That dialogue cannot succeed unless Americans realize that, even as an ordinary state, the USSR has interests in the Third World that will conflict with those of the

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[1] *See Jan Lodal, "An Arms Control Agenda," footnote 6, in this issue of* FOREIGN POLICY.

[2] *Robert Legvold and the Task Force on Soviet New Thinking,* Gorbachev's Foreign Policy: How Should the United States Respond? *Foreign Policy Association, Headline Series, no. 284 (Washington, D.C. 1988), 15-16.*

United States. These are more likely to be political than economic: Soviet economic involvement in the Third World is likely to continue to be fairly simple, confined mainly to buying and selling rather than to the complex kinds of transnational corporate activities that characterize the presence of the leading Western powers.

The political sphere will not be simple, however. Over time, the Soviet Union has built up a network of patron-client relationships, nearly all with regimes that in varying degrees are in conflict with the United States or its allies. Some, such as those in Angola, Cuba, Ethiopia, and Vietnam, are avowedly Marxist-Leninist in their ideology. Some of the others, such as Nicaragua's, lean toward Marxism. Still others—Libya's and Syria's are the prime examples—defy categorization.

Moscow cannot easily abandon those regimes, costly and distasteful as Moscow's assistance to some of them might be—Libyan leader Colonel Muammar el-Qaddafi, for example, cannot have many admirers in the Kremlin. Moscow continues to embrace them partly because the myth of their ever widening Third World revolution dies hard and partly out of fear that the United States will take advantage of a Soviet departure. The Soviet decision to withdraw from Afghanistan was welcome and remarkable, the product of a reappraisal of interests brought on by the prospect of an endless war fueled by U.S. aid to the Afghan resistance. Meanwhile, the Soviet Union seems to be reducing its involvement in other Third World conflicts, such as those in Indochina and southern Africa.

In a new U.S.-Soviet dialogue on the Third World, each side should first communicate to the other its sense of just how little real geopolitical advantage is likely to be gained there in the last decade of the 20th century. They should then work out specific ground rules, concerning both presence and intervention to give each one confidence that the other was not attempting to take unilateral advantage of a Third World conflict.

In any such effort the Middle East is likely to remain the least tractable problem. There the bonds that tie each superpower to its respective clients are the tightest. There the economic advantages of feeding an ongoing arms race are the greatest. Moreover, a multitude of willing sellers, not merely the superpowers, is ever ready to step in with armaments.

The United States has much to gain from treating the Soviet Union as an ordinary state in this situation. That means assuming, until proved wrong, that Soviet objectives are real and concrete rather than ideological and transcendental. It also means assuming that Moscow's primary aim is to assert its influence as a superpower whose participation is a prerequisite to any settlement rather than to humiliate Israel or to try forcibly to redraw the region's maps and thus risk war with the United States. On that basis Washington should attempt to involve Moscow in an effort to reach a Middle East settlement.

Working with the Soviets would be fruitless, however, if the American notion of an acceptable settlement were merely a modest adjustment to the status quo. Moscow's clients would need to come away controlling more territory, probably including most of the West Bank and the Gaza Strip, as some sort of Palestinian state. Washington's main clients, the Israelis, would need to come away with their security guaranteed by the two superpowers through international arrangements, such as the demilitarization of the new state. One result of the turmoil in the occupied territories since December 1987 might be that Israeli agreement to such a settlement may no longer be unthinkable.

In the economic realm, the next American administration should do what it can to assist Gorbachev and the Soviet economic reformers to remove the stifling network of controls and replace them with something resembling market incentives. Thus the United States should support the Soviet applications for observer status within the framework of the General Agreement on Tariffs and Trade and for some link with the International Monetary Fund, provided Moscow demonstrates that its efforts toward decontrol are serious and that it will extend *glasnost* to the international economic sphere by supplying detailed and reliable information relating to markets and production. The United States should lift the restrictions on U.S. trade and credits imposed by the Jackson-Vanik and Stevenson amendments to the Trade Act of 1974. These linked economic benefits to Soviet willingness to permit unfettered emigration, a linkage that turned out to be counterproductive. Although under Gorbachev the number of Jews and other minorities allowed to leave the USSR has again risen, the repeal of the economic restrictions should not be justified as an explicit reward.

Why should the United States help Gorbachev improve the Soviet economy? Is it not likely, as many Western conservatives have argued, that a prosperous bear is a more dangerous bear, perhaps able to enlarge its output of guns and play a more expansionist world role, while at the same time meeting the demands of a restive population for more butter?

Washington should attempt to involve Moscow in an effort to reach a Middle East settlement.

Clearly these questions raise serious concerns. Helping Gorbachev to reform the Soviet economy would not be risk free. But the risk of not doing so, and of possibly contributing to his ultimate failure, would very likely be greater. It is highly improbable that Gorbachev's program will result simply in a more productive and more efficient Soviet economy while other aspects of Soviet society are left untouched. In a policy as complex as the Soviet Union's, the economic and political spheres are tightly related. Liberalization in one is scarcely possible without liberalization in the other.

Decentralizing the economy would empower many more decision makers and provide them with the information they need to be autonomously effective. it would make it more difficult to siphon off large quantities of resources for military purposes. More important, decentralization would subject those aims to the scrutiny of myriad critical eyes. The result would most likley be continued and indeed, more widespread devaluation of the rewards to be gained from external expansion and a continued focus by the leadership on internal rather than external affairs.

If Gorbachev can make the Soviet economy more responsive to market forces, and, in particular, if he can make the millions of party and state bureaucrats more accountable for their actions, he will have done much to lighten the oppressive burdens that have characterized life under the Soviet system—and under the czarist empire that preceded it. Americans should wish his effort success. Not surprisingly, Soviet resistance to Gorbachev's ambitious domestic reforms seems to be coming from those same elements that are most suspicious of and hostile to the West. If he were to fail, his successor probably would come from their ranks.

In the economic realm, as in all spheres of interaction between the Soviet Union and the West, a clear distinction should be recognized between conciliatory measures aimed at reinforcing cooperative patterns of behavior and what some skeptical analysts have labeled "pre-emptive concessions." The rule should be that any U.S. concession to Moscow should itself be balanced by a Soviet concession; the net result should be—and should be seen as—in th West's interest.

So in economic relations Western governments and firms should not repeat the errors of the early 1970s, when competition for orders drove them to offer credit on terms that were in effect a subsidy to Soviet development. Concessionary terms should be offered only if Western societies receive commensurate benefits.

Further, not only should accounts balance, but they probably should balance within issue areas as well. That means economic concessions should be matched by economic benefits, not benefits in arms control or in human rights. Linkage—trading concessions across issue areas—is an attractive concept, but efforts to create linkage have often been poorly understood and have ended in bitterness in American domestic politics and between Moscow and Washington.

Eschewing the kind of linkage embodied in the legislated trade restrictions of the mid-1970s need not diminish attention to human rights in the Soviet Union. Western governments and nongovernmental organizations should continue to monitor the behavior of the Soviet regime and to speak out forcefully when it unjustifiably restricts expression or activities. Western organizations engaged in cooperative ventures should not hesitate to suspend them when their Soviet colleagues are constrained. In an era of *glasnost*, outside voices are likely to be more widely heard within Soviet society and, indeed, joined by internal voices. So long as outside criticism is put forward responsibly and not merely, and transparently, to score ideological points, it is likely to be more effective than ever.

Gorbachev has said repeatedly that he wants to loosen the restraints placed on Soviet citizens. He should be taken seriously and asked to account for Soviet actions that belie his words. Holding him to his self-proclaimed standards means, conversely, taking seriously the criticisms that he had other Soviet commentors make of the failings in Western societies. Both systems seek to provide a version of the good life for all their citizens. Nothing could be healthier than responsibly comparing the visions inherent in each system and the ways in which each has succeeded and failed.

This discussion began with the contention that the advent of Gorbachev might make it possible to negotiate an end to the cold war. Clearly the two superpowers' interests will still conflict. U.S.-Soviet relations will not be as protected from the possiblity of violence as are those of the Unted States with any of the Western industrial powers. It will be a long time before the network of relationships between the superpowers becomes even remotely as thick or as complex as those that link the United States with, say, Japan. That, among other reasons, is why the United States and the USSR should retain residual nuclear forces: Even small forces, so long as they are invulnerable, exert powerful and useful deterrent effects.

Ending the cold war instead would mean that both Washington and Moscow had normal expectations that most of their interactions should be mutually beneficial. That would be a sharp change from their past norm of superpower relations, in which both sides have assumed that their interactions are usually zero sum in nature: Moscow's gain is Washington's loss, and vice versa. Words like "interdependence" and "common security" appear frequently in Gorbachev's statements. They are part of what he calls Soviet "new thinking" about international politics, but to Western specialists they are familiar concepts. During the 1970s, when such terms actually influenced American policymaking, they had no resonance in Moscow. Now it should be a Western goal to give Gorbachev a chance to show that he knows what they mean in practice.

This tack does not mean that the West should avoid hard bargaining and firm action when necessary. Reagan has made much of his view that strength is the key to dealing successfully with the Soviet Union. Only by proceeding resolutely with the Carter administration's planned deployment of intermediate-range nuclear missiles in Europe, he says, was Moscow induced to accept his proposal that both countries get rid of them all. And only by shipping formidable quantities of weapons to the *mujabedeen* fighting Soviet occupation forces in Afghanistan did he convince Gorbachev of the necessity to withdraw them.

These are fair points. But Reagan might also have noted that both the attempt to change the nuclear balance in Europe by deploying SS-20 missiles—the Soviet move that led to NATO's INF response—and the Soviet invasion of Afghanistan were decisions taken during Brezhnev's leadership. Gorbachev might well have decided differently had he been in charge. In fact, he has severely criticized the conduct of Brezhnev's government. His most explicit criticisms have been leveled against its handling of domestic affairs, but he has made amply clear that they extend to foreign and defense policy as well. His speeches and his 1987 book *Perestroika* imply that both the SS-20 deployment and the invasion of Afghanistan were products of the "old thinking" he so deplores.

Tough Western responses—in one instance canceling any Soviet gains from the SS-20 deployment, in the other greatly raising the price of occupying Afghanistan—were necessary to persuade Gorbachev to pay the domestic price of reversing key decisions of his predecessors and risking the international embarrassment that is sometimes associated with concessions to the outside world. They will be necessary again in similar circumstances. But the West should be certain that the circumstances in question involve efforts by Moscow to change a significant set of existing arrangements in a way that would give it unilateral advantage. Such changes should be unacceptable—from both sides, not just from the USSR—in future superpower relations. The détente of the 1970s foundered because both governments' solemn professions of the principle of forgoing unilateral advantage ended up as mere lip service.

Gorbachev undoubtedly would be unhappy with the proposition that the success of his policies will go far toward making his country an ordinary state in world politics; yet that is the implication of his new thinking. The myth that the Soviet Union represents a new dawning for mankind and therefore must play a special global role is one that has sustained his predecessors and justified both internal repression and costly, largely unsuccessful foreign policies. Gorbachev and his closest colleagues appear to be much more realistic in their approach both to governing their own country and to relating to the world, but it is not easy for any society to put a formative myth behind it.

The West has everything to gain and nothing of substances to lose by taking these Soviet statements at face value. If Gorbachev falls, or if "new thinking" turns out to be merely new wrapping on old policies, the peoples of the Soviet Union and Eastern Europe will lose the most, for *glasnost* will not be likely to survive a return to a cold war like that of the early 1980s. The peoples of the Third World also will be the poorer, for they will continue to be stakes in a remilitarized East-West rivalry.

For the peoples of the West a continued cold war will mean most of all continued large military budgets and therefore a continuing drain on resources that their aging societies badly need for other purposes. To be sure, today's military budgets are certainly sustainable. Cold war is better than hot war, after all, and the structure of deterrence has made that dire outcome quite remote—at least for the superpowers and their principal allies, if not for their Third World clients. Some version of that structure of deterrence will remain so long as nation-states exists.

But Gorbachev now offers Reagan's successor the opportunity to maintain a deterrent relationship at a substanially lower cost than has been known. More important, because his stated goals seem compatible with the West's, he offers the real possibility that something resembling genuine cooperation rather than hostile and destructive competition may become the norm of superpower relations. To explore these possibilities, however, the new U.S. administration must base its approach to Moscow on the assumption that they exist. That in itself would be a significant departure from the patterns of the past.

THE AGONY OF BANGLADESH

● Mr. PELL. Mr. President, in recorded history few countries have suffered from natural disasters as much as Bangladesh has in its brief 17 years of nationhood. Over the past two decades Bangladesh has experienced cyclones, famine and, now, like some diluvian myth, massive flooding.

Perhaps 70 to 80 percent of the Wisconsin-sized land mass of Bangladesh is under water. However, the striking difference between Wisconsin and Bangladesh is the size in populations: Wisconsin has 4.8 million people, while 110 million squeeze into Bangladesh, at least 26 million of whom are now left homeless. Somewhere between 25 to 40 percent of all of its housing has been lost. Half or more of the rice crop has been destroyed. Although the official death count is 2,600, most medical and non-governmental observers believe the ultimate death toll will be in the tens of thousands. Now the looming threat is disease, reported cholera and dysentery cases are increasing at a rate conservatively estimated at 25,000 to 30,000 per day. If it cannot be held in check, an epidemic of near-unprecedented promotion may be this terrible flood's most sorrowful legacy.

Bangladesh, already a desperately poor country where one million children die of infectious and diarrheal disease each year, with average annual per capita income of $140 to $170 (among the world's lowest) and illiteracy rates of 70 to 80 percent (among the world's highest) has suffered a staggering blow to its rudimentary infrastructure. Except for make-shift boats, and a government fleet of 13 helicopters (old and mostly in ill-repair), most of Bangladesh's internal transportation system has been destroyed. Railroad lines, bridges, embankments and an estimated 2,200 miles of roads have been washed away in the rampaging waters.

The dimensions of this tragedy are beyond imagining and—ill-placed discussions among some elite theorists who talk of triage and basket cases to the contrary notwithstanding—the United States must do all it can to respond. People must not go hungry, children must not die from otherwise preventable infectious diseases, and a proud nation must be permitted an opportunity to rebuild and recover.

There is in this tragedy a manmade dimension that cannot be ignored. Much of Bangladesh is an alluvial plain barely 10 feet above sea level. It is, therefore, naturally vulnerable to periodic monsoon-caused flooding. In the last 20 years, however, man has changed the ecology of South Asia. Because of deforestation of more than half the highland forests of the Nepalese and Tibetan Himalayas, erosion has greatly accelerated. Over 1 billion tons of silt now flows from Nepal, China, and India into the 57 rivers that cross Bangladesh. One environmentalists has stated that Nepal's chief export is mud—and cascading down from the eroded mountain sides into impoverished Bangladesh. The results are a geometric increase in the flow of water and mud from the Ganges and Brahmaputra rivers into Bangladesh. In effect, Bangladesh has become South Asia's water basin. The chief cause is not natural but manmade. A staggering one-half of the forest cover of Nepal and Tibet has been lost in the last 20 years (trees cut down for fire wood, agricultural cultivation and housing). Loss of trees has led to massive erosion, mudslides, and the silting up of rivers whose flow is constricted, forcing the water into Bangladesh's low lying croplands. Unless dramatic intervention occurs to curb the deforestation, and launch the world's largest trees planting reforestation effort, it is virtually indisputable that this country-wide flood will not be Bangladesh's last.

Mr. President, in the midst of Bangladesh's agony, the international community must work toward a regional solution if we are to avert further tragedies. The time has come for India. China, Nepal, and Bangladesh to collaborate. If they are willing to cooperate they will find that the United States stands ready to assist. Meanwhile, I am proud to join Senators Kennedy, Helms, and Boschwitz in sponsoring S. 2860, a bill designed to facilitate badly needed U.S. disaster assistance.●

MAKE CONSTITUTIONAL LAW

● Mr. SIMON. Mr. President, one of the really thoughtful professors of constitutional law in this Nation, Paul Gewirtz of Yale Law School, recently wrote an article for the Hartford Courant.

It points out that where Congress acts with prudence and careful attention to the problems that the Constitution may present, the U.S. Supreme Court is going to give great weight to the actions of Congress.

It is a thesis I have not seen outlined elsewhere and is one worth noting by all of us in the House and Senate and by our staffs, as well as scholars around the Nation.

Mr. President, I ask to insert the article "Congress, as Well as Courts, Must Make Constitutional Law," into the Record.

The article follows:

[From the Hartford Courant, July 24, 1988]

Congress, as Well as Courts, Must Make Constitutional Law

(Paul Gewirtz)

Many have praised the U.S. Supreme Court's decision last month upholding the special prosecutor law, but the real credit belongs more to Congress than to the court itself.

The law was upheld because Congress did something that legislatures often fail to do. Rather than pass the buck to the courts, Congress carefully considered possible constitutional objections at the time it adopted the legislation. It wrote a balanced statute that took account of reasonable constitutional concerns and tried to minimize them.

In the end, the Supreme Court deferred to that effort. Its action illustrates the role legislatures can play in constitutional decision-making.

Congress' overriding concern, of course, was to address a sharply felt practical need—to create an independent prosecutorial office that avoided the conflict of interest of having executive-branch prosecutors investigate crimes possibly committed by top executive-branch officials.

But from the beginning, Congress heard arguments that principles of the separation of powers would be offended by having prosecutors appointed by the courts or by Congress, and then not removable by the President or attorney general. Such an approach, it was argued, would undermine legitimate executive-branch prerogatives and give inappropriate powers to other branches of government.

Aware of these issues, Congress held hearings that assessed the views of a broad range of constitutional law experts. The drafters of the legislation sought to address many of the constitutional concerns raised—when the law was passed and through subsequent refinements.

The statute does not create special prosecutors who are altogether independent. It preserves a role for the president and attorney general in both the appointment and possible removal of special prosecutors. In addition, it avoids an excessive role for the other branches of government.

Specifically:

The independent counsel is appointed by a court, but only if the attorney general first determines that there are "reasonable grounds to believe that further investigation is warranted."

A special panel of judges appoints the independent counsel, but the prosecutor's jurisdiction is based on the attorney general's initial investigation. The appointing judges are disqualified from sitting in any of the cases that the independent counsel actually brings—thereby protecting the integrity of the judicial branch.

The independent counsel retains a great measure of independence, but the executive branch retains some countercheck by having the power to fire the counsel for "good clause." A further counterbalancing check is built in, however, by providing for judicial review of any decision to fire.

Congress strictly limited its own role in appointing or removing independent counsels.

Taken together, these provisions give the special prosecutor the independence necessary to be a check on executive-branch lawlessness. But they also establish a broader interactive structure of checks and balances that promotes a measure of accountability and respects the prerogatives of each branch.

Critics of the law invoke "separation of powers." But our system of separation of powers was designed to preserve checks and balances in the political system. The structure of intersecting roles provided in the independent counsel legislation suggests that Congress was seeking to foster a system of checks and balances rather than subvert it.

That, at least, was what the Supreme Court concluded. Its opinion makes clear that the legislation was upheld precisely because it provided for interactive relationships among the branches and showed no sign of being a congressional power grab.

Had Congress not been so careful and balanced in attempting to avoid constitutional difficulties, the legislation might well have been struck down.

The complex role that legislatures play in evaluating constitutional questions is often overlooked. Like every government entity, Congress has the duty to assess the constitutionality of its actions, and to try to act consistently with constitutional requirements. It should not pass the buck to the courts, though it sometimes does. By facing constitutional issues itself, Congress can avoid problems and help shape the courts' analysis.

On the other hand, the courts cannot automatically defer to the judgment of Congress solely because it has considered carefully the constitutionality of its actions.

Sometimes Congress is wrong. Sometimes Congress' assessment of constitutional issues may be distorted because its own interests are at stake, or because it slights the rights of politically weak individuals or minorities. The courts have their own expertise—and unique detachment.

But where Congress considers a constitutional question seriously, and where Congress is not acting to aggrandize its own power or in disregard of minority interests, the courts will give substantial weight to its attempt to navigate the constitutional waters.

This is especially so in the separation of powers area, where the Constitution's language is vague and general. Here, the constitutionality of government action often turns on whether it addresses a strong practical need, if only because the Constitution is a charter of practical government.

Where the legislature is moved by those felt necessities and at the same time attempts to respond in a balanced manner to the underlying constitutional values at stake, the courts are not likely to stand in the way.●

AUTHORIZATION FOR CHANGE TO RULES AND PROCEDURE OF THE SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

● Mr. DeCONCINI. Mr. President, I would like to submit for the record the "Authorization for Changes to Rules and Procedure of the Special Committee on Investigations of the Select Committee on Indian Affairs." I request that the full changes in the Rules be printed at this point in the Record.

The material follows:

Authorization for Changes to Rules and Procedure of the Special Committee on Investigations of the Select Committee on Indian Affairs

Pursuant to Rule 9 of the Rules and Procedure of the Special Committee on Investigations of the Select Committee on Indian Affairs, the following changes to the Rules of the Special Committee are hereby approved:

6.1 *Deposition Notices.* Notices for the taking of depositions may be authorized by the Committee, the Chairman, Co-Chairman, or, in the event that a subpoena has been authorized pursuant to Rule 4, by the Chief Counsel. Such notices shall be issued by the Chairman, Co-Chairman, or the Chief Counsel. Such notices shall specify a time and place for examination, and the name of the staff member or members who will take the deposition. Unless otherwise specified, the deposition shall be in private. At the direction of the Chairman, Co-Chairman, or any member, a deposition may be taken by telephone. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear unless the party received a subpoena authorized pursuant to Rule 4.

6.6 *Written Interrogatories and Requests for Admissions.* Written interrogatories and requests for admission may be authorized and issued by the Chairman, Co-Chairman or any member designated by the Chairman, or Co-Chairman, and shall specify a date for filing an answer with the chief clerk. Written interrogatories and requests for admissions shall be answered under oath.

5.3 Unless the Committee determines otherwise, a witness who appears before the committee under a grant of immunity shall not be permitted to make a statement or testify except to respond directly to questions posed by Committee members or Committee staff.

The Special Committee directs that these changes be effective immediately and further directs that the Chief Counsel provide any witnesses who may be affected by the change in rules with a copy of them.

Dated: October 6, 1988.

DENNIS DECONCINI,
Chairman.
JOHN MCCAIN,
Cochairman.●

NATIONAL HISPANIC HERITAGE WEEK

● Mr. ARMSTRONG. Mr. President, I rise today to commend my colleagues for amending the joint resolution authorizing the President to proclaim annually the week including September 15 and 16 as National Hispanic Heritage Week to provide for the designation of National Hispanic Heritage Month. I am proud to join in cosponsoring this legislation, which will help focus attention on the importance of our Nation's Hispanic heritage. I am proud of the work of the U.S. Senate Republican Conference Task Force on Hispanic Affairs, of which I am a member. This task force was established in response to the Hispanic community's request for support on a broad range of issues and involvement in policy, appointment, and program concerns that directly affect Hispanic-Americans. I understand that the U.S. Hispanic population is young, fast growing, and mostly located in urban areas. Although these Americans live in every State in the country, Colorado has the ninth largest population, with an estimated 420,000 Hispanics. The community stands as a vast resource, whose potential has only begun to be tapped. In the year 2000, the Hispanic population is expected to have doubled, representing nearly one-third of this country's labor force, and its economic power will only continue to increase.

Although the median family income has risen and the poverty rate has dropped for all Hispanic families since 1982, education will be the most important factor in ensuring that Hispanics can look forward to a bright and prosperous future. Education has always been at the top of the list of concerns in surveys of the Hispanic community. There is little wonder why this is so. Hispanics are the most undereducated major U.S. population group, experiencing a cycle of undereducation that begins in the earliest grades. The effects of this undereducation have long been felt within the Hispanic community, as low educational attainment and literacy have limited the quality of jobs available to Hispanic adults, and have inhibited the ability of parents to help their children achieve equal opportunity.

Although Hispanic educational attainment levels have risen sharply over the last decade, they remain lower than those of non-Hispanics. As of 1987, only 50.9 percent of Hispanics 25 years of age and over had completed 4 years of high school or more, compared to 68.4 percent of blacks and 77.0 percent of whites. The dropout rate for Hispanics remains the highest for any major American subpopulation, estimated at 45 to 50 percent, and is over 70 percent in some large urban areas. Depending on the standard used, the Hispanic illiteracy rate is estimated as low as 11.9 percent and as high as 56 percent.

Much needs to be done to prepare Hispanics for the future. It is critical that we recognize and respond to this critical need. Illiteracy not only limits opportunities for citizens to lead full, productive lives, but also places a serious strain on our economy. A well-educated and trained work force and literate citizenry are essential for American stability and international competitiveness in the 21st century.

I hope this legislation will help focus the attention of parents, educators, and other decisionmakers on the fact that part of the economic success of the Hispanic community, depends upon our ability to provide an appropriate, high quality education to Hispanic children, youth, and adults. We must renew our strong commitment to this goal.●

HONORING 100TH ANNIVERSARY OF MISSOURI MILITARY ACADEMY

● Mr. DANFORTH. Mr. President, I am pleased to offer my heartfelt congratulations to the Missouri Military Academy, which this year celebrates the proud occasion of its centennial anniversary.

The Missouri Military Academy in Mexico, MO, has distinguished itself from its earliest days for excellence in the academic, ethical, spiritual, and physical education of young men in grades 4 through 12. Attesting to this fact, the U.S. Department of Education recently designated Missouri Military Academy is one of the Nation's 65 exemplary private schools.

More than 20,000 young men from every State, as well as from other nations, have graduated from this distinguished school to serve in all walks of life, in times of war and peace. Indeed, for 100 years, the administration, faculty, and cadets of the academy have brought honor to themselves, the institution, and our Nation and its values.

In closing, I again congratulate Missouri Military Academy and offer my best wishes for its centennial celebration. May the next 100 years bring to this school as much distinction as have the first, and to its graduates as sterling a record of accomplishment and service.●

A TRIBUTE TO SENATOR ROBERT T. STAFFORD

● Mr. THURMOND. Mr. President, I wish to join my colleagues today in paying tribute to Senator ROBERT T. STAFFORD, who will be retiring from his position as U.S. Senator at the close of this 100th session of Congress.

Senator STAFFORD has dedicated himself to public service, and has served the State of Vermont, as well as our country, in many capacities: as State's attorney, deputy attorney general, attorney general, Lieutenant Governor, and Governor of the State of Vermont, as well as a Member of the U.S. House of Representatives and U.S. Senator. Appointed to the Senate in 1971 to fill the vacancy created by the death of Senator Winston L. Prouty, Senator STAFFORD has served honorably as chairman of the Environment and Public Works Committee during the 97th, 98th, and 99th Congresses, and as chairman of the Education Subcommittee of the Labor and Human Resources Committee in the 99th Congress. During his term as chairman of the Education Subcommittee, Senator STAFFORD was instrumental in passing landmark legislation protecting the interests of the handicapped and ensuring the right of all Americans to a complete education.

Senator STAFFORD has made a valuable contribution to the furthering of education in America. One of his most significant achievements in this field is the reauthorization of the Vocational Education Act, which encourages States to pursue innovative, new vocational systems, rather than maintaining existing and outdated programs. In addition, Senator STAFFORD successfully sponsored the Higher Education Act, providing grants and loans to thousands of college students. In a recent show of appreciation for his significant efforts in education, Congress unanimously agreed to rename the Guaranteed Student Loan Program in honor of Senator STAFFORD.

In demonstrating his commitment to the underprivileged, Senator STAFFORD supported the "Education for All Handicapped Children Act of 1975," which is designed to provide equal educational opportunities for handicapped children. Additionally, the "Rehabilitation Act of 1973," which was sponsored by Senator STAFFORD, focuses on the training and the integration of the handicapped into the labor force. In his 17 years as a U.S. Senator, Senator STAFFORD has been a strong supporter for the equal rights of handicapped persons.

Senator STAFFORD is an impressive individual and an able Senator. Due to his consistent courtesy, he has been described as one of the last of the "old school Senators." In seeking to protect the rights of those elements of society which may not always be equipped to defend themselves in the face of opposition, such as handicapped children, Senator STAFFORD is the embodiment of compassion.

It has been an honor to serve with Senator STAFFORD in the U.S. Senate, as well as on the Labor and Human Resources Committee, and I wish to take this opportunity to thank the distinguished Senator from Vermont for his years of devoted service to his country, and to his State.●

CLOTURE MOTION VOTE

Mr. BYRD. Mr. President, this request has been cleared with the able Republican leader.

I ask unanimous consent that the vote on the cloture motion occur tomorrow at 11 o'clock with the mandatory quorum waived.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 AM PERIOD FOR MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until tomorrow morning at 9:30 o'clock; that following the two leaders or their designees under the standing order there be a period for morning business not to extend beyond 10 o'clock a.m., that Senators may be permitted to speak during that period for morning business for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, I ask unanimous consent that at the conclusion of morning business, or at 11 o'clock a.m., whichever is earlier, the Senate resume consideration then of a matter on which the cloture motion will occur, the profamily package, the substitute to the parental leave bill. The substitute, of course, contains parental leave, child care, and child pornography.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. BYRD. Mr. President, does any other Senator seek recognition? Seeing no Senator who wishes recognition, I move in accordance with the order previously entered that the Senate stand in recess until the hour of 9:30 a.m. tomorrow.

The motion was agreed to, and, the Senate, at 7:36 p.m., recessed until tomorrow, Friday, October 7, 1988, at 9:30 a.m.

HOUSE OF REPRESENTATIVES—*Thursday, October 6, 1988*

The House met at 10 a.m.

The Reverend Dr. E. Harold Jansen, Bishop, Metropolitan Synod, Evangelical Lutheran Church in America, Washington, DC, offered the following prayer:

Almighty God:

We bring before You this House of Representatives, deeply engrossed in the daily tasks of the life of this Nation.

Help them to maintain their perspective for justice and compassion, common sense and idealism, so that even though they seldom fail to be blamed for their mistakes or given credit for their successes, they may continue to provide for this Nation forward looking and prudent leadership.

Give them patience with the difficult task of insuring both law and liberty within this complicated and diverse American culture, and may they daily feel the great love and respect of this Nation for this House. And the great esteem which this institution of government has earned in modern history.

We commit this day to Your gracious will for us all, and especially pray for wisdom and insight for the Members of this body here assembled.

Through Christ our Lord. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. The Chair will ask the gentleman from Ohio [Mr. KASICH] to come forward and lead us in the Pledge of Allegiance.

Mr. KASICH. Mr. Speaker, will everybody please rise and join with me in saying the Pledge of Allegiance.

Mr. KASICH led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

THE REVEREND DR. E. HAROLD JANSEN

(Mr. PETRI asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. PETRI. Mr. Speaker, on behalf of my colleagues I am pleased to welcome our guest chaplain, the Reverend Dr. E. Harold Jansen, bishop of the Metropolitan Synod of the Evangelical Lutheran Church in America.

Bishop Jansen was trained as an engineer at the City College of New York, was graduated from Luther Seminary in St. Paul, MN, and is the recipient of numerous awards and honorary degrees.

With a background as a pastor known for his strong preaching and parish concern, Bishop Jansen was elected to be the first bishop of the Metropolitan Synod of the Evangelical Lutheran Church in America. As such, he has pastoral responsibility for parishes and clergy in the Washington, DC, area.

Bishop Jansen is a trusted spiritual leader in our community and I am delighted to welcome him to the House of Representatives and to thank him for his prayer.

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. GEPHARDT. Mr. Speaker, I offer a privileged resolution (H. Res. 575) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 575

Resolved, That the following Members be, and are hereby, elected to the following standing committees of the House of Representatives:

Committee on Public Works and Transportation, Jerry F. Costello, Illinois.

Committee on Merchant Marine and Fisheries, Stephen J. Solarz, New York.

Committee on Veterans' Affairs, Lewis F. Payne, Jr., Virginia.

The resolution was agreed to.

A motion to reconsider was laid on the table.

COMPARISON OF QUALIFICATIONS

(Ms. OAKAR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. OAKAR. Mr. Speaker, if anyone wonders why Senator BENTSEN and the American people were indignant when DAN QUAYLE compared his qualifications with the late, great President John F. Kennedy, let the record show that beyond President Kennedy's experience in Congress, when John Kennedy ran for President, he was already a World War II hero, a Pulitzer Prize winner, and an honors graduate of Harvard.

Need I say more?

TAX POLICY MUST BE CHANGED TO PROVIDE AFFORDABLE HOUSING

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. SCHULZE. Mr. Speaker, why is it that young Americans or low-income Americans, are finding it difficult, or impossible to find affordable housing? The answer should be clear to all: Tax incentives for building, owning, or renting affordable housing have been gutted. The repercussions are being felt throughout society and are demonstrated by the savings and loan crisis, by the plight of homeless Americans, and by drastic reduction in the building of low-income and multifamily housing.

Depreciation writeoffs have been cut back, reducing multifamily rental housing stock. Some in Congress have targeted home mortgage interest deductions, which indeed, were cut back last year. The IRS has administratively increased taxes on homebuilders by $1.5 billion. Finally, favorable capital gains treatment for real estate has been eliminated.

Mr. Speaker, our tax policy must be changed to enhance, not inhibit, the construction of housing for all Americans.

DEBATE WAS NOT EVEN CLOSE

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. Speaker, last night there was only one question the American people wanted to have answered, and that question is: Who can the American people trust to be a heartbeat away from the Presidency?

The answer is clearer and brighter than a thousand points of light. In whose hands should we place this awesome responsibility? Senator LLOYD BENTSEN. It was not even close.

Republican Senator BOB DOLE has said of DAN QUAYLE, and I quote, "the best qualified? I assume you could find better-qualified people." Republican Alexander Haig said of QUAYLE, "I am afraid people began to suspect that maybe GEORGE BUSH is either suffi-

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ciently unsure of himself or enough of an egomaniac that he could not stand class alongside of him, and that is not good."

That is putting it nicely. DAN QUAYLE is an issue in this campaign. There is a 1-in-3 chance that the Vice President will have to take over the job of President.

Last night's debate showed us the Bush league versus the major league. We cannot afford the Bush league.

THE 75TH ANNIVERSARY OF SHUBERT ALLEY

(Mr. GREEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GREEN. Mr. Speaker, I rise today to pay tribute to the Shubert Organization on the 75th anniversary of Shubert Alley and the Shubert and Booth Theaters. Those three Broadway institutions began the theater district in Manhattan as we know it today.

Long a fabled gathering spot for Broadway professionals and theatergoers alike, Shubert Alley runs from West 44th Street to West 45th Street and is the actual as well as symbolic center of the Broadway entertainment district. The Shubert Theater, a 1,400-seat, two balcony theater has been the home since 1975 to "A Chorus Line," the longest running show in the history of Broadway. The Booth Theater, an intimate 800-seat house is named after the famous 19th-century actor Edwin Booth. Both theaters were designed by the prominent theater architect, Henry B. Herts, with a "Venetian Renaissance" exterior. The stages of the two theaters are back to back.

The Shubert Organization, led by Chairman Gerald Schoenfeld and President Bernard Jacobs, has done much for Broadway and for the city of New York. The Shubert Organization led the effort to clean up Times Square. Before I came to Congress, as Regional Administrator of the Department of Housing and Urban Development I worked with the Shubert Organization on the tenant selection program for Manhattan Plaza, which incorporated its proposal that the project provide housing for theater people. When I came to Congress, we worked together to obtain an Economic Development Administration grant for the restoration of Town Hall, an important theater district landmark.

I join the many performers and stars who will be saluting the Shubert Organization today, October 6, starting at noon at the Shubert Theater in New York City.

A CHILI RELLENO AT A JELLO COOK-OFF: BANNED BY THE WALL STREET JOURNAL

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Mrs. SCHROEDER. Mr. Speaker, last month the Wall Street Journal ran a news story and an editorial critical of an overseas trip I made as chair of the House Armed Services Committee Burden Sharing Panel.

Despite repeated phone calls, the Journal refuses to publish my letter to the editor rebutting their charges.

The free marketplace of ideas is closed at the Wall Street Journal. Maybe we ought to call it the Wall Street Pravda.

The Journal finds plenty of space to print letters attacking Mike Dukakis and LLOYD BENTSEN. The Journal's editorial page ought to register with the FEC as a Bush Campaign Committee.

In my letter, I depicted their editorialists as "famished after 8 years defending corporate hijackers, military procurement racketeers, and Reagan scoundrels."

No wonder they are famished. They feed themselves monotonous, right-wing gruel day after day. My letter was about as welcome as a chili relleno at a Jello cook-off. Sometimes the facts are too hot to handle without mittens.

DEAR EDITOR: *Sacre bleu!* The chair of the House Armed Services Committee Burden Sharing Panel actually went to Germany, France, and Turkey to interview defense ministers on an issue that consumes upwards of sixty percent of the defense budget. ("Schroeder . . . ," September 8, 1988.)

The Wall Street Journal's ravening editorialists, famished after eight years defending corporate hijackers, military procurement racketeers, and Reagan scoundrels, finally worked up an appetite, sharpened their beaks, and pecked away. ("The Schroeder 242," September 14, 1988.)

The Journal's attempt to confect a junket out of the trip was belabored beyond belief. The Journal did not allege that the purpose of the trip was frivolous or that the activites during the trip were less than serious.

Nor was the trip a secret. Prior to departing, I issued a press release announcing the trip and explaining its purpose. Five months later, giving new meaning to the phrase "For Immediate Release," the Journal pounced on a scoop of its own confection.

The Journal declined to mention that the actual cost of the trip—the fuel costs—was about what it would have cost to travel commercially, and that for logistical and security reasons overseas transportation is customarily provided by the Air Force, which determines the aircraft suitable for the trip. Finally, the Journal incorrectly stated that solo trips were uncommon. In fact, the majority of committee trips this year were single-member.

Last month, the Burden Sharing Panel issued its report, summarizing thirteen hearings and two overseas trips. Our conclusion, in a nutsell, was that our allies must bear more of the cost of our common defense burdens.

"Many Americans," we found, "feel that we are competing 100 percent militarily with the Soviets and 100 percent economically with our defense allies." Our allies are able to afford better social programs for their own citizens and beat us in the world markets, while we run up record budget and trade deficits operating a world-wide police force. Who will pay for those deficits? Our children and our grandchildren—including the children and grandchildren of Journal subscribers.

We noted that while U.S. taxpayers pay for our allies' defense, European and Japanese banks provide the bulk of untied Western loans to Soviet bloc countries.

Our panel report urged that burdensharing be emphasized at all levels of interaction with allied governments.

Sincerely,

PAT SCHROEDER,
Chair, Burden Sharing Panel,
House Armed Services Committee.

□ 1015

WILL WE GET A DRUG BILL FROM THE SENATE?

(Mr. McCOLLUM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, the question that we most need to have answered this morning is where is the drug bill in the other body. Is there going to be a drug bill at all this year?

We passed a drug bill in this body just a couple of weeks ago after 3 weeks of solid debate. They have put a drug bill in, at least put one into the hopper over there a couple of days ago. It is yet to be scheduled for debate, and we are scheduled to go out and adjourn sine die here within a week or so.

Is there going to be a drug bill, and if there is going to be one, the other body has to move the drug bill. One House cannot do it alone. The President will not even see one if they do not act.

I think it is time we all called upon them to do something really tough. In fact, the question also is what kind of a drug bill, if they produce one, will they have. There is no user accountability provision in the one introduced over there. There is no exclusionary rule modifications in the one they produced over there.

Are we going to see that opportunity to vote on one again in this body from the other body, or are we all going to have to go home and explain to all of our constituents why the leadership and why the other body could not produce a drug bill on the other side. I question that, and I think we all ought to be asking the other body and the leadership over there where is the drug bill.

NATION SHOULD SAY A PRAYER IF QUAYLE EVER BECOMES PRESIDENT

(Mr. FROST asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, I had the privilege of being present last night at the Vice Presidential debate in Omaha, NE. The American public saw firsthand what we in Texas have known for years—that Senator Lloyd Bentsen is extraordinarily qualified to be President of the United States should something happen to our Chief Executive.

Lloyd Bentsen not only has a breadth of experience in terms of long service in Government but he has a full and complete command of the complex issues facing our Nation. The contrast with his opponent Dan Quayle was stark indeed. Senator Quayle did manage to complete the evening, but merely surviving a 90-minute debate is not enough to qualify anyone to serve as Vice President of the United States.

Mr. Speaker, Dan Quayle does not even belong on the same playing field with Lloyd Bentsen. There is no comparison between the two men.

At one point last night Senator Quayle said the first thing he would do, should he become President, would be to pray. Mr. Speaker, if Dan Quayle ever becomes President, the entire Nation should say a prayer.

TAX REFORM ACT OF 1986 SHOULD BE CORRECTED BEFORE CONGRESS ADJOURNS

(Mr. DONALD E. "BUZ" LUKENS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DONALD E. "BUZ" LUKENS. Mr. Speaker, this has been a very tough year for America's farmers. As if the drought was not enough, we added to their problems with several provisions of the Tax Reform Act of 1986. We owe it to our farmers to repair our mistakes with the technical corrections bill—and we should do it before we head home.

To adjourn without cleaning up our mess would be inexcusable. If we have time this week to consider a National Tropical Botanical Garden and to debate congressional participation in the Constitutional Bicentennial, then we certainly have time to help our farmers.

As the tax reform bill now stands, farmers are being asked to pay road taxes on the fuel they use in their tractors. The farmers may then declare a deduction later. Forcing farmers to carry the Government's debt for a year—especially this tough year—is enough to put many farmers out of business. Why should we withhold taxes from those we know should not and will never have to pay?

The Tax Reform Act of 1986 applies the uniform capitalization rules to farmers. This new law has caused American farmers a bureaucratic nightmare. We in Congress must learn that farming is not like other businesses. Determining the inputs in manufacturing a bar of soap is not the same as determining the inputs to produce an embryo in a cow.

We made this mistake and we should not leave without correcting it.

THE TRUTH ABOUT THE JOB TRAINING PARTNERSHIP ACT

(Mr. HAWKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. HAWKINS. Mr. Speaker, last night in the debate the Senator from Indiana claimed the authorship of the Job Training Partnership Act. I rise today to offer a resentment on behalf of the House for that statement, which was completely incorrect.

The Job Training Partnership Act actually originated in the House. The Senator from Indiana introduced his version thereafter. The title of the act was the title as it was given in the House.

The White House threatened to veto the bill up until the last minute of the Conference. It was only when Senator Hatch went to the White House to argue in its behalf that the White House relented.

From then on it became Reagan's program, even to the point of excluding Democrats from the signing ceremony.

I include for the Record the chronology of the act from the time it was first introduced on January 25, 1982, in the House, until it was signed on October 13, 1982. It was only after this incorrect statement by the Senator from Indiana that I rise in behalf of the truth.

The legislation history of the Job Training Partnership Act.

INTRODUCTION

H.R. 5320—Hawkins—Community Partnership for Employment and Training Act January 25, 1982.

S. 2036—Quayle, et al.—Training for Jobs Act February 2, 1982.

COMMITTEE ACTION

Joint hearings between House Subcommittee on Employment Opportunities (Hawkins) and Senate Subcommittee on Employment and Productivity (Quayle) March 15-18, 1982.

H.R. 5320. House Subcommittee markup April 1, 1982. (Name changed to Job Training Partnership Act.)

House Full Committee markup April 27, 1982.

S. 2036. Senate subcommittee markup April 22, 1982.

Senate Full Committee markup May 26, 1982.

FLOOR ACTION

S. 2036. Senate voted July 1, 1982.

House voted on Senate bill with House amendment on August 4, 1982.

CONFERENCE

Senate passed conference report on S. 2036 including adopting the House title, Job Training Partnership Act, on September 28, 1982.

House passed conference report on S. 2036 on October 1, 1982.

PUBLIC LAW

Public Law 97-300 signed by President Reagan on October 13, 1982.

CRIME IN THE NATION'S CAPITAL

(Mr. PARRIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PARRIS. Mr. Speaker, I rise this morning to remind my colleagues they have more than a constitutional and more than just a passing interest in the serious problems of crime in our Nation's Capital and of the sorry state of the criminal justice and corrections system in this city.

Our good friend and colleague, Mr. Coughlin from Pennsylvania, recently got a closer look at this problem than he ever expected to in his capacity as the ranking member of the D.C. Appropriations Subcommittee. The night before last, Mr. Coughlin who lives 3 to 4 blocks from the Capitol awoke in the night to find a burglar in his second story bathroom rifling through his wife's purse. Mr. Coughlin, summarily wrestled the intruder to the floor, and held him until the police arrived.

Last week after another of our colleagues, Mike Synar, from Oklahoma, returned from a morning jog he found a burglar inside his Capitol Hill home. In a similar show of heroism, Mike and an unidentified 17-year-old chased the thief down on foot and had him arrested.

While these two crooks obviously chose the wrong guys to mess with, there are hundreds of city residents every day whose stories do not have happy endings. We have got to get the crime situation in the Washington area under control—not only for the benefit of the general public but for the safety of ourselves and our families.

REPUBLICAN CHARADE

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILLIAMS. Mr. Speaker, for 12 years now America has been treated to a charade of national Republicans: Presidents, Vice Presidents, or Presidential or Vice-Presidential Republican candidates, a charade of them likening themselves to America's heroes, heroes of the Democratic Party. Franklin Roosevelt, Harry Truman, John Kennedy. The GOP not having any recent memorable statements, quote Democrat heroes and they do it all the time from the Oval Office and during debates from this floor. The Republican packaging merchants have for a dozen years been trying to convince American people that their candidates are heroes.

Remember when Jerry Ford was trying to be Harry Truman? The GOP has tried to convince people that Dutch Reagan is really Franklin Delano Roosevelt.

Last night DAN QUAYLE likened himself to John Fitzgerald Kennedy. These GOP candidates and Democratic heroes do not share the same dreams, have the same values, or vote the same way. Last night LLOYD BENTSEN stuffed that hypocrisy.

WHERE IS THE DRUG BILL?

(Mr. DAVIS of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, I wish to associate myself this morning with the prior remarks of Congressman MCCOLLUM; where is the drug bill that this House passed, a very good drug bill that incorporates a proposal I made some 18 months ago called PIER, punishment, interdiction, education, and rehabilitation. Almost all of this tough attitudes of punishment and education for our young and rehabilitating those addicted, and tough user accountability attacking both supply and demand and interdiction. It is all in there. Where is that bill? It is languishing, Mr. Speaker, in the other body, the victim of partisanship and the victim of ideology, of a liberal ideology that refuses to recognize the death penalty in that bill, the relaxation of exclusionary rule. Zero tolerance and removal of benefits from those who are drug users in society to attack that demand side.

Mr. Speaker, it is a great tragedy we are leaving here sometime, although I am not exactly sure when, Mr. Speaker, I am not sure you are sure when, but that drug bill, if it is not out, the other body will have to suffer the consequences for that, and if it becomes highly partisan, then the party in control of that body will also suffer those consequences.

THE VICE PRESIDENTIAL DEBATE

(Mrs. COLLINS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.

Mrs. COLLINS. Mr. Speaker, even as a Democrat, I was really disappointed with DAN QUAYLE last night when he was asked how he would run the country in the event of a tragedy and he had to assume the Presidency.

His response was that he would say a prayer for himself and the country and call a meeting.

Here again, DAN QUAYLE has shown his ineptitude. Obviously he has not the faintest idea of what this country needs. He spoke not of leadership, not of direction, not of programs, not of socioeconomic policy, not of foreign affairs, but said he would say a prayer.

Now I am a true believer in the power of prayer, but I know and Mr. QUAYLE needs to know that this country is standing in the need of more than prayer.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for one minute.)

Mr. MICHEL. Mr. Speaker, I asked for this time that I might inquire of the gentleman from Washington [Mr. FOLEY], the distinguished majority leader, the program as we have collectively organized it for this day, and possibly tomorrow, and then as I understand it, maybe later in the day after the gentleman from Washington and the Member from Illinois make some inquiries with respect to the other side of the Capitol we could together make something more definitive in the interest of facilitating the House and accommodating our Members.

Mr. FOLEY. Mr. Speaker, will the gentleman from Illinois yield?

Mr. MICHEL. Mr. Speaker, I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, we are considering today the conference report on H.R. 3471 to establish a Veterans' Administration as an executive department, following which we will take recorded votes on nine suspensions postponed from Tuesday and recorded votes on three suspensions postponed from yesterday. Following that we will consider 24 suspensions and that will conclude the business of the day. Any votes ordered on suspensions today, debated today, will be postponed until tomorrow.

We hope and expect that the House will be able to adjourn by 3 o'clock tomorrow, the usual time. There will not be a Saturday session and Members should be aware of that now for their planning. We will announce later in the day the schedule for next week but it is clear we will not be in on Monday, and further programs for next week will be announced later this afternoon.

Mr. WALKER. Mr. Speaker, will the gentleman from Illinois yield?

Mr. MICHEL. Mr. Speaker, I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I had a question; why are the commemorative bills being held hostage? We suggested perhaps they could be put on to the Suspension Calendar and taken up as a part of the regular processes around here. I think it has been demonstrated if a bill is noncontroversial we are allowing it to go. I am confused that Members' commemorative bills are held hostage.

Mr. FOLEY. Mr. Speaker, I am not aware of the reason for the decision and I will consult the chairman.

Mr. WALKER. Mr. Speaker, I think it would be helpful to go ahead and bring them out to the floor and take them up under the course of business.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Speaker, I spoke to Mr. MICHEL about this yesterday. I have 25 or 26. This always happens at the end of the session, bills of which most are commemorative, some have come over from the Senate side, the Post Office naming bills and so on, and we have been informed that the gentleman had a general proposition he would object to unanimous consent.

Since none of these bills have been reported out by the committee, the only way to properly get them to the floor is by unanimous consent, and if the gentleman would give us some assurance that if the Republican members of my committee approve these consents for the commemoratives that he would not object, over their objection, we could get them cleared up this afternoon.

□ 1030

Mr. MICHEL. Let me first respond——

Mr. FORD of Michigan. If the gentleman will yield further, I do not want the gentleman to pick and choose which ones he is going to do. We are trying to accommodate them as I showed the gentleman from Illinois yesterday. As a matter of fact, a little bit more than half of them are Republican sponsors. It has never been our policy to hold up one, when people get caught at the end of a session and are not, through no fault of their own, on time.

Mr. MICHEL. So that the membership might know, it is true that the gentleman did talk to me. The gentleman from Illinois' position has been in times past in order to keep these to some reasonable proportion in number of these commemoratives, that we follow the normal processes of having a majority of the Members, 218, signing onto the proposition as distinguished from having them come off the wall one after another without reasonable support, just for whatever reason.

Now admittedly, as I said yesterday, we get to the end of a session and accommodations have to be made and there has to be some compromise.

As the majority leader indicated, he was not aware of the significant problem we may have here. I was not either, frankly, until the gentleman from Pennsylvania asked me, but if that is a matter that has to be discussed, then we will have to talk about it. But I want to go back initially, again, to what we normally ought not to do during the course of a regular session and that is get away from that principle of 218 people signing onto a resolution.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding, because I think it is important, given the situation we are in, to have the kinds of limits that the gentleman from Illinois is talking about and I agree thoroughly with the gentleman. That is the reason why I suggested they ought to be put on the Suspension Calendar. In that way, the House has a chance to reflect on them. If some of them are ones that the Members do not want to go along with, the House has a chance to vote at that point. I do not see any need to get any votes on any of them, but in that way we are assured that the process works in its normal way. That is all I am suggesting. I had understood that is something that they are not willing to do.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

Mr. Speaker, let me reassure the gentleman from Pennsylvania and the gentleman from Illinois and the House that our practice when we waive the 218 signatures, the purpose of that rule is really to protect the House against embarrassing resolutions that someone for whatever reason in a moment of passion would introduce. We never bring one of those to the floor unless the majority and the minority members of the committee agree that it should be done that way. We have already in effect got unanimous consent from the party's responsibility on the committee. I want to reassure you that we do not decide, as the chairman of the committee and my subcommittee chairman do not decide which we will bring. It is done in consultation with the ranking member of the committee and the ranking member of the subcommittee. And we would not attempt to bring one up unless they agree that it should be brought up. That is the way we normally do it. I was under the impression, which the gentleman now seems to indicate is no longer true, that he had a kind of a blanket objection to any of these being considered on unanimous consent. And we cannot put them on suspension, Mr. WALKER, because they have not come from the committee. What we need is unanimous consent to discharge the committee from further consideration and then they are on the floor and the pass without a vote.

Mr. WALKER. I do not have a problem with discharging the committee. I do have a problem with bringing the bill up under unanimous consent. So if they are discharging the committee, that is fine, but then the bill still ought to be put on the Suspension Calendar so that the House has a chance to reflect on it here in the last days. If that is the process we use, fine, I do not have a problem with that.

Mr. FORD of Michigan. What I understand the gentleman is saying is that I should ask unanimous consent to discharge all these bills from the committee and then put them on the calendar?

Mr. WALKER. Sure.

Mr. FORD of Michigan. Well, we will be here another 2 weeks. I have got 26 already.

ORDER OF BUSINESS

The SPEAKER. Would the gentleman from Illinois [Mr. MICHEL] please permit the Chair to perform a bit of business that is pending before the House?

Mr. MICHEL. Certainly, Mr. Speaker.

The SPEAKER. then the Chair would return to the distinguished Republican leader.

RESIGNATION AS MEMBER AND APPOINTMENT AS MEMBER OF SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

The SPEAKER laid before the House the following resignation as a member of the Select Committee on Narcotics Abuse and Control:

HOUSE OF REPRESENTATIVES,
Washington, DC, October 5, 1988.

Hon. JIM WRIGHT,
Speaker of the House of Representatives, H-204, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I feel it is time to tender my resignation from the Select Committee on Narcotics Abuse and Control. Having served on this committee for six years, I feel it is time to allow another member to have the opportunity to serve on this fine panel. Therefore, I wish to submit my resignation effective today.

My thanks to you and Mr. Rangel for allowing me to be of service.

Sincerely,

DUNCAN HUNTER,
Member of Congress.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

The SPEAKER. Pursuant to section 303 of House Resolution 26, 100th Congress, the Chair appoints the gentleman from Oklahoma [Mr. INHOFE] to the Select Committee on Narcotics Abuse and Control to fill the existing vacancy thereon.

The Chair wishes to thank the gentleman from Illinois, the Republican leader and the Chair now recognizes the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. I thank the Speaker.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I think we ought to discuss this off the floor so that we can get it resolved. But the fact is when we suspend the rules there is no need for the committee to report it. That is what we are doing, we are suspending all the rules around here and you can put anything on the Suspension Calendar that you want.

Right now under the provisions that were passed the other day, all we have to do is give 1 hour's notice to do that. So it seems to me that it is possible to put all of this material on the Suspension Calendar and bring it out here and there is no reason for the Members to be concerned about it. That is all this gentleman is asking for.

Mr. FRANK. Mr. Speaker, will the gentleman from Illinois yield?

Mr. MICHEL. I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for yielding.

Mr. Speaker, I just wanted to make sure I was following things. I wonder if these are the same commemoratives that we are now being pressed to act on more quickly that we were being criticized in a special order a couple of months ago for acting on at all. I thought I remembered the special order in which this concern with commemoratives was being held up as a sign of frivolity. Would those be the same commemoratives that we are now being criticized for not passing quick enough?

Mr. FORD of Michigan. Mr. Speaker will the gentleman yield?

Mr. MICHEL. I yield to the genleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

Mr. Speaker, the problem arises without singling any of them out that people introduce the resolution with a date in mind that they want something done and then they get busy with other things. They get 40 or 50 signatures and the issue sort of lays there and suddenly it is time for us to finish our business and they realize that the date will come and go before next year when we will be back. This happens at the end of every Congress.

We have tried to accommodate Members who through no fault of their own are caught in this time warp.

One of the Members from that side indicated to me yesterday, and she is quite upset, that the organization that is interested in the resolution was doing something this Sunday. So if we do not do it until next week it is sort of an empty afterthought.

It is timely and important and it is no fault of the sponsors. In this case, I believe that there is a Senate resolution that accomplishes the same purpose which if we could do it, we could take by unanimous consent from the desk and pass without a vote and so on and it would be over. That is commonly done.

Mr. MICHEL. Mr. Speaker, I think it is quite appropriate for us probably in a private conversation between the Members to get some kind of agreement on where we want to go on the balance of the suspensions.

Mr. MRAZEK. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield briefly to the gentleman from New York.

Mr. MRAZEK. I thank the gentleman for yielding.

Mr. Speaker, since we have taken 15 minutes of debate time on this important issue to American taxpayers, I would like to say that although I have not had time during the session to actually develop my commemorative, I think it is important to commemorate the sacrifice of the Czechoslovakian war brides who were subjected to the marauding Soviet armies during World War II before they were rescued by Patton's 3d Army.

I would hope that there is no objection to my unanimous-consent request that that commemorative be included in the package.

Mr. MICHEL. The gentleman makes a good point.

Mr. Speaker, I yield back the balance of my time.

IN SUPPORT OF OPERATION RESCUE

(Mr. HOLLOWAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOLLOWAY. Mr. Speaker, I rise in support of the brave men and women who have participated in Operation Rescue's efforts to save the preborn. Many of them are saving children in Atlanta this week.

Some are not sure if they should support Operation Rescue because, although they believe we should defend the preborn, they also believe we should obey the law at all cost.

I would ask those who are wavering to look closely at American's history.

How can we question the principle of civil disobedience when we live in a nation which was birthed by it? I, for one, am glad we had more patriots than we had loyalists to the law of the land in the seventeen hundreds. Otherwise, we would have never had the Declaration of Independence.

I am also glad we had more patriots than we had loyalists to the law of the land during the Civil War and the civil rights movement. Otherwise black Americans would still be suffering from the denial of their just rights.

I have one question to ask those who believe in the rights of the preborn, yet are wavering in their support for civil disobedience. Should we obey the law, which was created by men, or justice, which was created by no man?

I, for one, stand in support of the American Revolution, the civil rights movement, and Operation Rescue.

What about you? Are you a loyalist or a patriot?

LAST NIGHT MIKE DUKAKIS AND LLOYD BENTSEN SHOWED THEY ARE ENTITLED TO BE ELECTED

(Mr. SMITH of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Florida. Mr. Speaker, it is a bit surprising this morning to note the lack of the defenders of wildlife getting up and defending the record of Mr. QUAYLE in last evening's performance. What is even more distressing is that no one is willing to come back and defend his record on the issues. This is what is important.

My colleagues on this side are talking about issues today, all different ones, none of them as they relate, however, to what was talked about last night.

Let us justify having a candidate for the Republican Vice Presidency who has the worst record, practically, in the Senate on the environment, who has the worst record, practically, in the Senate on veterans' issues, who has the worst record consistently over and over on the defense of programs that help people.

We hope that Americans were listening last night. There is no clearer line drawn than last evening between good candidates and poor candidates, between the right choice and the wrong choice to run this country.

Mike Dukakis and LLOYD BENTSEN, I believe last night, showed that they are entitled to be elected as President and Vice President of the United States.

LET US GET THE DRUG BILL PASSED

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, there are a lot of issues that are before the American people as we face this November. Perhaps chief among them is the drug problem. We have acted in the House on a major drug bill. There is a question whether or not the other body will act. I do not know why they have not acted thus far. I hope it is not because they are embarrassed over the positions of Michael Dukakis in the area of law enforcement.

We know he opposes the death penalty; we know he has vetoed mandatory prison sentences for drug dealers; we know he supports a program to let out first degree murderers who have been sentenced to life without possibility of parole, that is a program which lets them out for 48 hours unsupervised times at home or in some other State, wherever they want to go as long as they show up 48 hours later; we know that he does not support the House-passed version of an expansion of the exception to the exclusionary rule.

We hope that is not the reason why the other body is not acting on this bill. Let us take politics out of it. Let us get the drug bill passed so it will not be an issue in November.

A NEW OLYMPIC EVENT: STANDARD LOWERING

(Mr. FRANK asked and was given permission to address the House for 1 minute.)

Mr. FRANK. Mr. Speaker, we have got a new Olympic event, standard lowering.

The Republicans are becoming great at it.

We have a great oratorical Republican tradition set by Richard Nixon, you remember the great statement "I am not a crook." Well, the Republicans, in preparation for last night's debate decided that the standard of success for the Vice-Presidential candidate would be if he could successfully say to the American people, "I am not a fool." And I am prepared to concede that he did that. He did very little else.

The debate underlined the overwhelming disparity between the candidates and further called into question the judgment of a man who, having served himself in the Vice Presidency, would put into the nomination for Vice President a man who showed us what we saw last night from the Senator from Indiana.

The disparity in everything was very clear and we ought to remember that the election is not a golf tournament at the local club. The fact that a man might have played slightly better than his handicap does not help, because that kind of handicap is not what you need in a Vice President.

TWO HEARTBEATS AWAY FROM THE PRESIDENCY

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, we all keep referring to the Vice President as being one heartbeat away from the Presidency. Guess who is two heartbeats away from the Presidency? You are, Mr. Speaker. And I do not know that Dan Quayle has ever released top secret information that has gotten people, in the prison cells in Managua, beaten, Barney, and tortured, Steny. Beaten and tortured because of the release of classified information by the Speaker. I hope to God George Bush serves out 8 full years because then Danny will be more than qualified to run for President on his own. And I hope Dan Quayle—then serves out his 8 years so that we do not have a man sitting in the White House who releases secrets to Communist enemies.

And regarding John Kennedy, Mr. Speaker, when he was here, he was a playboy who spent much of his time going to movies on Pennsylvania Avenue.

□ 1045

SENATOR QUAYLE AS BUSH'S RUNNING MATE SEEN AS AN EMBARRASSMENT

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, first let me say that the last 1-minute was perhaps entertaining but completely irrelevant.

Mr. Speaker, I want to talk about Dan Quayle, Senator Quayle and Senator Bentsen. The difference between them last night was the difference between day and night, and Senator Quayle was the "night"—completely in the dark, completely.

Let us take the issue of trade. Senator Bentsen was articulate and talked about the trade bill. What did Senator Quayle have to say? Do the Members realize that he said producing Hondas and exporting them to Japan?

There are a few thousand that come from here, that go from here to Japan. How many go the other way? Three hundred thousand.

Some people have 12 years of experience while others have 1 year experience 12 times. That is Senator Quayle.

Mr. Speaker, he is an embarrassment to the Vice President, and by choosing Senator Quayle the Vice President has embarrassed the entire Nation.

HOPE EXPRESSED FOR A COMPREHENSIVE DRUG BILL

(Mr. ROWLAND of Connecticut asked and was given permission to address the House for 1 minute.)

Mr. ROWLAND of Connecticut. Mr. Speaker, today I urge our colleagues in the Senate to present a drug bill which will not be a watered-down package. I urge them not to overlook some major provisions we adopted in the House, provisions on which we worked long and hard to adopt which will send a strong message to the American people that we are truly trying to do something about the drug problem.

Mr. Speaker, I realize the time is short. That is all the more reason to present a comprehensive package. We do not want to sell ourselves short on such an issue of grave importance.

I urge my colleagues in the Senate to follow the example of the House on the death penalty, tougher fines, the exclusionary rule, and increased use of the military, especially the Coast Guard.

We must treat the drug problem in our country as the domestic and foreign policy crisis that it is.

Mr. Speaker, I urge our colleagues in the Senate to follow the House in taking a tough stand on this vital, crucial issue.

REINCARNATION OF "THE SECRET LIFE OF WALTER MITTY"

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, I had a funny dream last night about a new person they were talking about in the Presidential campaign. His name was Walter Mitty, and he was reminiscent of the character in the book and the movie.

Walter Mitty had a dream that he was a great environmentalist, but Walter Mitty had voted against EPA, cutting Superfund, and against taking asbestos out of the schools.

Then Walter Mitty had another dream. He dreamed that he was for Social Security, but Walter Mitty had in actuality voted to cut $40 million from Social Security.

Then he had a dream that he was a social activist and helped the poor and helped children. But Walter Mitty in actuality had voted against the Head Start Program, the School Lunch Program, and a bill to give people some warning that plant closings were taking place.

Finally, Walter Mitty had the greatest dream of all. He dreamed that he was John F. Kennedy, and that dream was more laughable than any.

Mr. Speaker, when I woke up in the morning, I thought of something. Could one of the three books that the Vice-Presidential candidate has read have been "The Secret Life of Walter Mitty"?

SENATE OBSTRUCTION OF PCB REFORM

(Mr. CLINGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLINGER. Mr. Speaker, earlier this year, the House unanimously approved the PCB Regulatory Improvements Act of 1988, a bill that would provide critical improvements in PCB regulations in time for the upcoming peak period of PCB disposal.

The bill now inexcusably sits on the shelf over in the Senate. After five investigative hearings, two committee reports, months and months of negotiation, and total consensus as to the need for PCB reform, the bill has been victimized by legislative shortsightedness.

The sad fact is, that there are Members of Congress who believe that closing the loopholes that have contributed to the illegal dumping of PCBs is not enough. Identifying PCB brokers who may have been involved in the abandonment of millions of pounds of toxic materials is not enough. Putting an end to the infiltration of criminal elements into the PCB business is not enough.

Instead, these members have called the PCB Regulatory Improvements Act antienvironment. They have argued that it is a utility bill.

Well, I would like someone to explain to me why this alleged antienvironment bill is supported by the environmental community? Why did the Natural Resources Defense Council write a letter expressing its strong support for it?

I would like someone to explain to me why this alleged utility bill has been endorsed by the General Accounting Office, whose investigators spent thousands of hours tracking down PCB dumpers, tracing PCB criminal elements, and developing recommendations to tighten PCB regulations.

And then I would like someone to explain to my constituents why this Congress refused to enact legislation that will almost immediately increase the level of safety in the handling, transportation and disposal of PCB's.

While our Senate colleagues debate whether PCB's should be moved to RCRA so that States will have greater authority to enforce cleanups, they continue to block legislation that will help eliminate the midnight dumpings that requires those cleanups.

Mr. Speaker, we need PCB reform now. We need to close the loopholes now. I urge my Senate colleagues to reconsider and to immediately approve the House-passed PCB Regulatory Improvements Act of 1988.

CONGRATULATIONS TO CANDIDATE QUAYLE ON LAST NIGHT'S TV EXCHANGE

(Mrs. SMITH of Nebraska asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SMITH of Nebraska. Mr. Speaker, I rise to commend Vice Presidential candidate DAN QUAYLE for his grace and poise under unrelenting attack last night in that nationally televised exchange—it was not a debate—with his opponent. For many Americans it was their first good, hard look at Senator QUAYLE undistorted by heavy handed network film editing.

I saw DAN QUAYLE as an able, serious, hardworking candidate who does not flinch under continuing personal attack, and I was sorry to hear an unwarranted personal attack on him last night, an attack that so obviously appeared programmed.

I was pleased to see Senator QUAYLE emphasize that he and Vice President BUSH will serve as a team. In contrast, Seantor BENTSEN and Governor Dukakis have such contrasting views on some of the most key issues that it raises questions in the voters' minds.

Mr. Speaker, I think this exchange revealed DAN QUAYLE is a candidate worthy of our respect and worthy of our votes.

A TRIBUTE TO KENTON J. COOPER

(Mr. HUBBARD asked and was given permission to address the House for 1 minute.)

Mr. HUBBARD. Mr. Speaker, Judge Kenton J. Cooper, a Kentucky Court of Appeals judge since 1976, died on September 3 in Russell County, KY, near his hometown of Jamestown, KY.

For many years my wife, Carol, and I have admired Judge Kenton Cooper. Judge Cooper was a very skilled, dedicated and compassionate city attorney, circuit judge and Kentucky Court of Appeals judge.

"He died suddenly. It is believed the cause was a heart attack," said his son, Howard Kent Cooper, a friend of mine who serves as Russell County attorney.

Judge Cooper was a graduate of the Jefferson School of Law, now the University of Louisville Law School. He established a law practice in Jamestown in 1952, and began a distinguished career in public service. In addition to serving as city attorney for many years, Judge Cooper was elected circuit judge for the 40th judicial district in 1969. He was elected to the Kentucky Court of Appeals in 1976 and was reelected in 1984.

My wife, Carol, and I extend to his lovely wife, Helen McKinley Cooper, sons Howard Kent Cooper and Don J. Cooper, and the five grandchildren of Judge Kenton J. Cooper our heartfelt sympathy upon his death.

LET OUR DRUG BILL GO

(Mr. BARTON of Texas asked and was given permission to address the House for 1 minute.)

Mr. BARTON of Texas. Mr. Speaker, I rise today to remind my colleagues of the good work this body did in passing a strong omnibus drug bill, H.R. 5210, on September 23. If we truly believe that illegal drugs are one of the most serious problems facing America, we must make this tough and effective drug bill a law before the 100th Congress adjourns.

Amendments accepted by an almost a 3-to-1 margin that put teeth into our Nation's drug laws need to be retained in the final version of the drug bill if and when it passes the Senate. Our Federal drug enforcement officers need the good faith exemption to exclusionary rule in obtaining evidence, our Federal judges and juries need the death penalty to deter and punish individuals convicted of drug-related homicides, and our Nation's users and abusers need to know that the Federal Government is serious about enforcing a zero tolerance drug policy.

Our colleagues in the other body must accept the strengthening provisions included in the House bill. If my colleagues are genuine in their bipartisan support of H.R. 5210, then we will not undue the good work put into this bill.

Mr. Speaker, to paraphrase the great Biblical leader Moses who asked the pharaohs to "Let our people go," I ask the U.S. Senate to "Let our drug bill go."

A CABINET POST FOR VETERANS' AFFAIRS

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. APPLEGATE. Mr. Speaker, today we are going to be voting on the conference report on H.R. 3471, which raises the level of the Veterans' Administration to a Cabinet post. This is a great bill. Cabinet level is one of great importance, and the Veterans' Administration represents some 28 million veterans.

Many people can take credit for this bill and for the fact that it is coming to the floor. Many can take discredit for not wanting it to come up.

Mr. Speaker, if we would take a look at the Senate record, we would find that 1 of the 11 Senators who voted against this bill was Senator DAN QUAYLE. If we need any further evidence, we can just take another look at the records. Jack Kennedy was a veteran.

DAN QUAYLE BASHING

(Mr. COATS asked and was given permission to address the House for 1 minute and to revises and extend his remarks.)

Mr. COATS. Mr. Speaker, none of us on the Republican side is really surprised that the liberal Democrats have orchestrated their spokespersons to apply the liberal spin to the Quayle-Bentsen debate last evening. "Let's bash our former colleague, DAN QUAYLE" appears to be the spin offered this morning by the liberal Democrats.

I suppose we should not blame them for taking this tack. The fact is they are desperately trying to divert attention from their Presidential candidate, Michael Dukakis, who not only is not playing well in Peoria but apparently is not even selling in his home State of Massachusetts.

Replying to the harshest attacks ever directed to a Vice-Presidential candidate, DAN QUAYLE repeatedly demonstrated his qualifications both to be Vice President and to assume the Presidency should that occasion ever arise. The Bush-Quayle ticket is winning the support of the American people, and the American people are rejecting the liberal philosophy and policies of Michael Dukakis.

Mr. Speaker, that is a tough fact for the liberals to swallow, so instead of defending Michael Dukakis, they are understandably trying to divert our attention by bashing DAN QUAYLE.

MEMBERS URGED TO VOTE AGAINST BILL TO SUSPEND PROPERTY TAXES ON INTERSTATE GAS PIPELINES

(Mr. FRENZEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, last night I, regrettably, was not able to be on the floor when the House considered under suspension H.R. 2953, a bill to permit U.S. district courts to enjoin or suspend certain ad valorem property taxes on interstate gas pipelines.

Whenever the House has a suspension bill on taxes that does not come out of the Committee on Ways and Means, that waves a little red flag; not because the committee is not competent, because it is; and not because it does not have jurisdiction, because it did.

The problem is that we are talking about constitutional matters which do not lend themselves to decisions in a few minutes of debate on the floor of the House in the dark of night. These weighty matters require closer examination.

I think this bill is inappropriately placed on the Suspension Calendar. We do not, or at least we did not on October 3, have a committee report on this very difficult subject. I am told that some interests which will be heavily impacted by H.R. 2953 were not invited by the hearing, and that the full committee did not even consider it.

Mr. Speaker, I suggest that the wisest course is to defeat the bill H.R. 2953 on suspension and give the House a chance to really have a more complete airing on the matter. The bill may be meritorious, but at this point, only one subcommittee has any information to make such a judgment.

Therefore, I shall vote "no."

A NEW DECISION IN CHILE

(Mr. WEISS asked and was given permission to address the House for 1 minute.)

(Mr. WEISS. Mr. Speaker, yesterday was a great day for the people of Chile and for all who believe in democracy everywhere.

After 15 years the people of Chile, by an overwhelming vote, have said no to the continuation of the brutal Pinochet dictatorship.

Congratulations are due as well to the Reagan administration, and especially United States Ambassador Harry Barnes, for their unflagging support of the right of the people of Chile to forge their own destiny.

Of course, democracy has not yet been secured in Chile. Under his handcrafted constitution, the rejected dictator continues to hold office for another 17 months. Together with the Reagan administration, we in Congress must now lend our weight for a quick return to full democracy in Chile.

MOUNTING DEFICITS REMAIN A MAJOR PROBLEM

(Mr. HEFLEY asked and was given permission to address the House for 1 minute.)

Mr. HEFLEY. Mr. Speaker, we have had a lot of discussion today about the drug problem, and indeed it is a problem. That is a problem we are trying to address, and we hope the Senate will get the bill back over to us. But there is another problem that we need to address also—and we are not addressing it in any kind of a meaningful way in this House—and that is the problem of the terrible deficits that we keep piling up.

□ 1100

Mr. Speaker, we spent a lot of time last Friday congratulating ourselves on what a great job we had done to get all those appropriations bills out, and we did do a great job, and that is a step. But there are two other measures hung up in committee that we need in order to be effective in solving this problem, and that is the line item veto that has 133 cosponsors and the balanced budget amendment that has 235 cosponsors on it. Our Speaker will not even let it come to the floor for us to consider it.

Mr. Speaker, it appears we are going to be here next week. We have time to do this. The Speaker has within his hands the power, the power to let us take something meaningful home to our constituents when we go home here in a week or two.

I ask the Speaker to release these bills and let them come to the floor.

WAITING FOR THE SENATE TO PASS THE OMNIBUS DRUG BILL

(Mr. SHAW asked and was given permission to address the House for 1 minute.)

Mr. SHAW. Mr. Speaker, last month this House had, I believe, its finest hour of the 100th Congress in working together in crafting a fair rule for an omnibus drug bill. We then in a very bipartisan way with open debate, and many votes were necessary, passed the amendments which made up the more controversial parts of that bill, and then we all came together as Democrats and Republicans, and we overwhelmingly passed that bill that the American people are demanding. Now we sit here waiting for the Senate to even begin debate on this important piece of legislation.

Mr. Speaker, in our haste to get out of Washington, and go home and campaign, let us not forget why we are here. We are here to do the will of the American people and pass the legislation they demand.

In this instance the people are right. America is crying out for a drug bill. Let us use every bit of influence that we have on both sides of the aisle to bring to bear what weight we can on the Senate and get together and pass this important bill.

IRAQI SANCTIONS: THE TIME IS NOW

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, sanctions against Iraq for bombing its own civilians with deadly poison gas are about to fall victim to the end of the year rush to adjourn. If this happens, none of us can go back to our districts and claim that we did anything to stop the use of chemical weapons.

This summer, using cyanide, mustard, and nerve gas, Iraq killed hundreds of Kurds and forced thousands to flee into neighboring Turkey. The world was rightly horrified.

The Senate took quick action by passing comprehensive sanctions. The House Foreign Affairs Committee rewrote a bill TOM LANTOS and I originally introduced which was identical to the Senate version. While less comprehensive, the foreign affairs bill received overwhelming support from the House.

Instead of conferencing, the Senate tried to attach another sanctions bill to the foreign aid appropriations. After bouncing back and forth between the House and Senate late Friday night, the sanctions were eventually left out.

What we are left with is complete abdication. This congressional inaction is unconscionable. Members of this body should call for immediate action on Iraqi sanctions and I do. Only then can we claim to have done anything to stop this scourge.

HOW ABOUT A DEBATE BETWEEN GOVERNOR DUKAKIS AND SENATOR BENTSEN?

(Mr. SUNDQUIST asked and was given permission to address the House and to revise and extend his remarks.)

Mr. SUNDQUIST. Mr. Speaker, the question last night that was answered seems to be the question that has been brought up by many Americans, and that was: Does Dukakis have the experience to be President? Mr. Speaker, I think he does not.

It was obvious that Senator BENTSEN was either unwilling or unable to defend Governor Dukakis on some of the issues that face this country. He refused to discuss and defend Dukakis' opposition to aid to the freedom fighters, or his opposition to gun control, or his willingness to add new taxes, or his opposition to the death penalty. Senator BENTSEN did not address those issues. He did not defend Governor Dukakis.

Mr. Speaker, perhaps Senator BENTSEN cannot, and perhaps we should suggest a new debate between BENTSEN and Dukakis.

REPUBLICANS AGREE WITH DEMOCRATS—LLOYD BENTSEN SHOULD BE THEIR PRESIDENTIAL CANDIDATE

(Mrs. MARTIN of Illinois asked and was given permission to address the House and to revise and extend her remarks.)

Mrs. MARTIN of Illinois. Mr. Speaker, I would just like to sort of lower the perhaps touchiness of both sides in regard to last night's debate. I am here to say to my colleagues that I think they both did fine. I think they were both scared to death, and I think all of us in this body can understand that. Being told that 100 million people are going to be watching and hearing your answers, Mr. Speaker, has got to be difficult.

They both did well for their parties and for their philosophies. That probably in the long run is not going to make much difference because we all know that regardless of party we vote for the top of the ticket.

Mr. Speaker, I am willing to say that they both made mistakes. My colleagues heard, and certainly he knows better, Bentsen say that he was going to reform the budget or cut the deficit by not supporting the Concorde. Really? We do not support the Concorde. That is not going to be much of a budget cut.

My colleagues heard Dan Quayle make a mistake; I think, if they would check back, he did.

The point is they both did well on other questions, but we are willing to stipulate to all the Democrats as Republicans that we agree with them. They would be better off if Bentsen was on the top of the ticket, and we can understand their support for that.

IF THE ECONOMY IS DOING SO GOOD, WHY IS ALL THIS HAPPENING?

(Mr. WATKINS asked and was given permission to address the House for 1 minute.)

Mr. WATKINS. Mr. Speaker, George Bush likes to brag about the economy. Yes, interest rates and inflation rates are down, but I think the American people need to ask the question: If the economy is so great, why have these economic policies produced the largest number of bankruptcies ever recorded in the history of this country? Why has his economic policy recorded the greatest number of farm foreclosures ever recorded in history?

Six hundred twenty thousand farmers have had to leave the farm. We have over $50 billion; we are going to have to bail out the savings and loans. More banks than ever have gone under than since the Great Depression.

Mr. Speaker, if this economy is doing so good, why is all this happening in America, in the heartland of America?

I do not think the American people are going to be fooled. I ask the American people to ask this question. Ask the question, "Why don't they accept the blame instead of pointing the finger at someone else?"

Mr. Speaker, they like to accept the fact that maybe a few good things have happened, but today we are hurting more than ever, and we are selling off America to all the foreigners around the world.

THE ABUSE OF 1-MINUTE SPEECHES

(Mr. MOLINARI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOLINARI. Mr. Speaker, I would like, as one Member of the House of Representatives, to express my disappointment and, yes, my outrage at what I consider the abuse of the 1-minute speeches on both sides of the aisle.

What we have seen this morning and we have seen in the past really amounts to blatant political commercials. That should not be the purpose of 1-minute speeches.

Mr. Speaker, 1-minute speeches should be to tell the Nation about some of the problems that we have in our districts, identify some legislation that we are offering and asking for support.

But, Mr. Speaker, what I have been seeing here in the last few days I do not think does us credit. Blatant political commercials, I think, should be done upstairs, and, if my colleagues want to go upstairs in the Press Gallery and do a political statement, they should do it, but not here on the House of Representatives floor where the people of this country are paying for what amounts to political commercials.

CONGRESSIONAL QUIZ

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, it is time for our morning congressional quiz. I would like to give you some names and see if my colleagues can identify these people and what they did in American history: Daniel Tompkins, George Dalls, Henry Wilson, Thomas Hendricks, Levi Morton.

Do not feel bad by being stumped. They are all former Vice Presidents of the United States. I doubt if anyone in the Chamber would really know that fact because in fact, if we look at the history of the United States, so many men who served in that office have been relegated to a footnote in history and are very obscure individuals. The reason, of course, is that they served when the office was largely ceremonial, did not involve very much activity or involvement.

Today, Mr. Speaker, it is a much different office. A Vice President who takes over the role of President literally has command of the largest Armed Forces in the world and the ability to change the world, perhaps to even destroy the world with his decisions.

Mr. Speaker, that is why the choice and selection of a candidate for Vice President is so important. It is also why the selection of Dan Quayle as a candidate for Vice President is such a poor reflection on George Bush's judgment and, in fact, is risky business for the Nation.

MEAN SPIRITS IN THE HOUSE TODAY

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, I was watching the floor proceedings in my office today, and I really sensed the mean spiritedness.

Both Senator Bentsen and Senator Quayle did a good job last night. Some of the people who are criticizing Senator Quayle have never had a difficult race, have never been in a debate, have a safe seat that they have never had challenged, and they do not know what it is to be in front of a TV camera.

Mr. Speaker, this body ought not to be mean spirited. We have differences; we should come together and solve our problems in a bipartisan way. But what we are doing today is trashing this House when my colleagues trash people who have been part of this House.

Mr. Speaker, in closing I want to commend both Senator Bentsen and Senator Quayle. Both are honest, decent, respectable individuals, and both did, I think, a very credible job last night.

Mr. Speaker, we, I think, should try to do an equally good job in this House.

STATE TAXATION OF INTERSTATE NATURAL GAS PIPELINE PROPERTY

(Mr. DORGAN of North Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORGAN of North Dakota. Mr. Speaker, we will have the opportunity to vote on H.R. 2953, a bill that gives special tax treatment to interstate natural gas pipelines. I oppose H.R. 2953 and I urge my colleagues to join me in voting "no." If this bill is enacted it will cost our counties and school districts millions of dollars in lost revenue by giving the interstate natural gas pipeline industry substantial tax breaks.

The gas pipelines are asking for special privileges that are not granted to other types of taxpayers, like homeowners, farmers, and small businesses. For instance, they want to bypass State administrative reviews and have their property decided by a Federal court judge, unlike other taxpayers who must challenge their property taxes at the State and local level. What this means is that the Federal courts will be in the business of tax appraisal. Property taxation is historically a State and local matter. As a former State tax commissioner, let me assure my colleagues that this is a blatant intrusion into State taxing authority.

The pipelines claim they are eligible for up to $67 million in annual tax savings. These are revenues used to fund our schools and essential community services. I believe that my colleagues are as concerned as I am about maintaining a stable economic base for our communities. This bill would jeopardize that stability.

There is increasing concern from local governments, educators, and taxpayer groups that this legislation is unwarranted. For example, the National Association of Counties opposes the bill. The American Farm Bureau which represents more than 3.6 million farm families opposes this bill. The national School Board Association which represents more than 95,000 school board members is also opposed.

In light of the pandora's box that this legislation will open, I urge my colleagues to oppose this bill.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 2032. An act to authorize the conveyance of the vessel, Lane Victory;

H.R. 2835. An act to direct the Secretary of Agriculture to release certain restrictions on a parcel of land located in Henderson, TN;

H.R. 4417. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1898, and for other purposes;

H.R. 4724. An act to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, MS;

H.R. 5186. An act to designate the Federal building and United States courthouse located at 109 South Highland, Jackson, TN, as the "Ed Jones Federal Building and United States Courthouse"; and

H.R. 5291. An act to provide the Secretary of the Air Force with authority to convey certain land.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 515. An act to provide for more detailed and uniform disclosure by credit and charge card issues with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card;

H.R. 2399. An act to provide for study and research on the decline in U.S. forest productivity and to determine the effects of atmoshpheric pollutants on forest evironments, and for other purposes;

H.R. 2628. An act to amend the National Traffic and Motor Vehicle Safety Act of 1986 respecting the importation of motor vehicles in anticipation of compliance with safety standards under such act;

H.R. 3048. An act to establish a national Federal program effort in close collaboration with the private sector to develop as rapidly as possible the applications of superconductivity to enhance the Nation's economic competitiveness and strategic wellbeing, and for other purposes;

H.R. 3757. An act to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of a medical or other emergency situation;

H.R. 4262. An act to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes; and

H.R. 4352. An act to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 515) "An act to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit card," disagreed to by the House agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PROXMIRE, Mr. DODD, and Mr. GRAMM to be the conferees on the part of the Senate.

The message also announced that the Senate insists on its amendment to the bill (H.R. 4352) "An Act to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes," disagreed to by the House agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints from the Committee on Banking, Housing, and Urban Affairs: Mr. CRANSTON, Mr. RIEGLE, Mr. SARBANES, Mr. D'AMATO, and Mr. HEINZ; from the Committee on Governmental Affairs: Mr. GLENN, Mr. CHILES, Mr. SASSER, Mr. STEVENS, and Mr. HEINZ; from the Committee on Veterans' Affairs: Mr. CRANSTON, Mr. MATSUNAGA, and Mr. MURKOWSKI; from the Committee on Labor and Human Resources: Mr. KENNEDY, Mr. HARKIN, Mr. ADAMS, Mr. HATCH, and Mr. STAFFORD; from the Committee on Finance: Mr. BENTSEN, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. PACKWOOD, and Mr. ARMSTRONG to be the conferees on the part of the Senate.

The message also announced, that the Senate disagrees to the amendments of the House to the bill (S. 2100) "An act to authorize the U.S. Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MOYNIHAN, Mr. BURDICK, Mr. BREAUX, Mr. STAFFORD, and Mr. SYMMS to be the conferees on the part of the Senate.

The message also announced, that the Senate disagrees to the amendments of the House to the bill (S. 2749) "An act to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes," agrees the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. NUNN, Mr. STENNIS, Mr. EXON, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. DIXON, Mr. GLENN, Mr. GORE, Mr. WIRTH, Mr. SHELBY, Mr. WARNER, Mr. THURMOND, Mr. HUMPHREY, Mr. COHEN, Mr. QUAYLE, Mr. WILSON, Mr. GRAMM, Mr. SYMMS, and Mr. MCCAIN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills, a joint resolution, and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 951. An Act entitled the "Federal Courts Study Act";

S. 1301. An Act to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literacy and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes;

S. 2408. An Act to transfer the Coast Guard cutter "INGHAM" to the Naval and Maritime Museum at Patriots Point, SC;

S. 2691. An act to extend eligibility for the Indian Claims Commission Export Witness Loan Fund, and for other purposes;

S. 2799. An act to designate the Federal Building to be constructed in Lakeland, FL, as the "Lawton Chiles, Jr., Federal Building";

S. 2838. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as additions to the Cheaha Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes;

S.J. Res. 192. Joint resolution to designate the month of October 1988, as "National AIDS Awareness and Prevention Month"; and

S. Con. Res. 153. Concurrent resolution correcting the enrollment of S. 659.

THINK ABOUT OUR WORK, NOT ABOUT LAST NIGHT'S DEBATE

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, rather than spending a lot of time focusing on the debate of last night or the debate to come down the road, I think that what this House needs to be concentrating on is what we need to do in order to get our business done in a way that the American people will approve of this Congress' work. The thing that we have got before us that we have got to get done is the drug bill, and it seems to me that we ought to be right now pressuring the other body, doing what we can in this House to assure that we get a tough drug bill on this floor and down to the President for signature before this Congress ends.

We have a whole series of things that are rolling through here that that are noncontroversial. Maybe there is some controversy about the drug bill, I do not know about it. It passed overwhelmingly; we need to act on it.

Mr. Speaker, I think it is a shame we are not going to be able to act on clean air, but I think it would be a tragedy if we leave here without ever acting on clean air and never acting on the tough drug bill that this House passed.

We need to think about our work.

THE BIOLOGICAL DEFENSE RESEARCH PROGRAM

(Mr. OWENS of Utah asked and was given permission to address the House for 1 minute and revise and extend his remarks.

Mr. OWENS of Utah. Mr. Speaker, I am today introducing a bill to require the Secretary of Defense to identify, on an annual basis, the biological agents that are being used in the Biological Defense Research Program. Under the terms of this legislation, a complete list will be published in the Federal Register at the end of each fiscal year.

The Biological Defense Research Program has been the subject of ongoing controversy and suspicion. Here in the United States, many scientists and concerned citizens have questioned both the objectives and safety of a rapidly growing Bio-Defense Program. Internationally, there is mounting fear that the United States may be moving toward producing biological weapons in violation of the 1972 Biological Weapons Convention.

The Department of Defense assures us that such fears are without foundation. But even Department of Defense witnesses, testifying at a hearing I conducted last May, have admitted that the Biological Research Program should be made more open in order to relieve suspicion. By providing an accessible list of the biological agents with which we are doing research, we will be taking an important first step toward encouraging that openness and restoring trust in our biological objectives.

THE "EXPERIENCE" DEBATE

(Mr. BAKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAKER. Mr. Speaker, it is amazing. Everyone seems to be so concerned about the experience of the Vice-Presidential candidates. Everyone seems to wonder if DAN QUAYLE really has the experience to be a good Vice President. Everyone wonders if LLOYD BENTSEN would really use his experience to put it away last night, but it was a surprising evening.

Mr. Speaker, Senator BENTSEN has trouble stating why he supports Contra aid and Governor Dukakis does not. The Senator had trouble stating why he supports the right to own a handgun and Governor Dukakis does not. The Senator had trouble stating why he supports capital punishment and Governor Dukakis does not.

In fact, Senator BENTSEN has a real problem. When does he tell Governor Dukakis he is wrong? Does he do it now or does he do it later? I would think a man of his integrity and experience would know what to do. Tell him now, LLOYD. Governor Dukakis needs the advantage of your experience.

□ 1115

LEADERSHIP IN THE PRESIDENCY

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and revise and extend her remarks.

Mrs. BENTLEY. Mr. Speaker, we have been hearing a great deal recently about the qualifications necessary to be President of the United States. Nobody seems sure what those qualifications are.

The reason is that the Presidency is unique. Five minutes in the position gives one more understanding of the pressures and responsibilities of the position than 20 years of speculation. Take Theodore Roosevelt. He went from Police Commissioner of New York to being thrust into the Presidency in literally a heartbeat. By everyone's agreement, Teddy was a great President.

The quality of leadership does not depend on experience, although that certainly helps. It is indefinable. Perhaps that is why we leave it to the people to decide who shall be President. On balance, we can say that of all of our 40 Presidents, they have done a great job. Perhaps that is why Mr. BUSH and Mr. QUAYLE are about to be elected. The people sense leadership capacity. If experience were the dominant factor, there would be no point in elections where a sitting President seeks reelection.

Congratulations to the debaters and let the people continue to pick their leaders.

MR. QUAYLE ON TRADE

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, let me remind the Vice-Presidential nominee QUAYLE that the United States is running a huge trade deficit with Japan, with the major part of that deficit in automotive trade.

Thus I was shocked and disappointed with Mr. QUAYLE's convoluted logic last night when he selected a Japanese automotive company to illustrate how America is the envy of the world. He picked Honda, a totally Japanese company operating in the United States as his example of what makes America great.

I was especially shocked since we here in Congress have been trying to get stubborn companies like Honda to act like other free market companies. Honda should allow fair bidding practices so United States parts companies can supply into their production, rather than for them to continue their protectionist buying policies when they only allow their own Japanese firms to supply into their production and keep United States companies out.

If Mr. QUAYLE wants to fight for America, why does he not fight for Chrysler, for Ford, for GM or the thousands of United States auto parts companies that are beating their heads up against the Japanese wall.

Mr. Speaker, let us keep America No. 1 by fighting for our own first.

□ 1119

announcement by the speaker pro tempore

The SPEAKER pro tempore. The Chair notes a disturbance in the Visitors' Gallery in contradiction to the laws and the rules of the House.

The doormen and the police will remove from the Gallery those persons participating in the disturbance.

NO ADJOURNMENT UNTIL DRUG BILL IS PASSED

(Mr. GINGRICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGRICH. Mr. Speaker, we have had a lot of talk today about the debates, but I think there is a much more important practical question facing every Member of the House. A few weeks ago we passed a very, very powerful bill to stop bills. We passed a bill that had the death penalty in it. We passed a bill to change the exclusionary rule. We passed a bill which had penalties on users. It was a major step toward a tough antidrug policy.

There is a great danger that unless we work hard that the ACLU and the Dukakis campaign will convince liberal Senators to stop this antidrug bill from passing.

I would hope that every Member would be committed not to adjourn until we have passed out of the Congress the kind of strong antidrug legislation which would make sure that we had a real impact on stopping our children from becoming drug addicts and stopping drug dealers from undermining America.

MR. QUAYLE OBVIOUSLY NO JACK KENNEDY

(Mr. RICHARDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDON. Mr. Speaker, the debate was about which man is ready to be President of the United States. It's called a Vice-Presidential debate but it's really the second Presidential debate. Judy Woodruf, the moderator, started by reminding the audience that there was almost a 50-50 chance that one of the two men would become President.

Quayle showed tonight that he can't handle a crises, as he flubbed the basic question four times. He lost his composure completely. He had one scripted answer that he repeated over and over. He repeated the phrase "experience and accomplishments" like a mantra. Check the verbatim repetition.

Quayle was asked four times why he should be President. The country watched as Quayle failed three times to answer the question. All he could do was repeat the same scripted answer. He simply wouldn't answer why he should be President and what he would do.

It took Quayle four attempts to say he would convene a Cabinet meeting.

Rather than dispel doubts, Quayle increased doubts because all he had was one, scripted and memorized response to the key question. He appeared to fold under pressure. Quayle was incapable and afraid of answering the single most important question of the debate.

After the nonanswering of the key question Quayle then became completely unraveled and gave an almost incoherent answer about arms for hostages.

Quayle proved he is totally out of touch with the concerns of working Americans and Americans who live in poverty. Brokaw asked Quayle whether he'd ever met with families and children living in poverty and how he explained his votes against child nutrition, immunization, he described them as "those people" and said they didn't ask him about those votes, they were glad "I took time out of my schedule to meet with them." Later he referred to the "health and welfare people."

When he was asked about violations of worker safety laws he immediately began to talk about business, not workers.

Bentsen won the debate because he showed that he won't need any on-the-job training to assume the Presidency should that need arise. He was self-assured, in control of the facts, and cool under pressure. He spoke forcefully about what we need to do to win the war on drugs. He talked about the future.

Bentsen reminded Quayle that he was no Jack Kennedy. Also put the lie to Republican prosperity: "If you let me write $200 billion in hot checks I'd show you the illusion of prosperity too." And the Republican policy on trade: "We're letting foreigners buy America on the cheap."

DEBATE EXPECTATIONS

(Mr. HOYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOYER. Mr. Speaker, we have had a number of 1-minute speeches today, in excess of 40 1-minute speeches.

On the other side we had, and I give a half to the gentlewoman from Illinois [Mrs. Martin] whether she was commenting on the debate or not—about 24½ on issues unrelated to the Vice Presidential race on the part of the party for Mr. Quayle, and 4½ who spoke to his performance.

Mr. Speaker, the expectations for Dan Quayle in yesterday's debate were purposely made very, very low. He met them.

The expectations for Lloyd Bentsen were very, very high, and he exceeded them.

What was important in yesterday's debate was that it reflected the first Presidential decision that each candidate was asked to make, and it was a reflection on what those candidates, if elected, will do in the future, the kind of quality, the kind of depth, the kind of experience, the kind of commitment, the kind of courage that those candidates we look for in the people they select.

Can there be any doubt that Lloyd Bentsen was the kind of American we want leading this country, along with Mike Dukakis?

CONFERENCE REPORT ON H.R. 3471, DEPARTMENT OF VETERANS AFFAIRS ACT

Mr. BROOKS. Mr. Speaker, I call up the conference report on the bill (H.R. 3471) to establish the Veterans' Administration as an executive department.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of October 3, 1988, at page H9359).

The SPEAKER pro tempore. The gentleman from Texas [Mr. Brooks] will be recognized for 30 minutes and the gentleman from New York [Mr. Horton] will be recognized for 30 minutes.

PARLIAMENTARY INQUIRIES

Mr. PORTER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. PORTER. Mr. Speaker, I understand that both the gentleman from Texas and the gentleman from New York are in favor of the conference report.

I oppose it, and under the rule I ask for 20 minutes.

Mr. SOLOMON. Mr. Speaker, a further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. SOLOMON. Mr. Speaker, I propound this question of parliamentary procedure, because the Veterans' Affairs Committee has a strong interest in this bill, the original legislation. If there is going to be a division other than the 30-30 between the chairman of the Government Operations Committee and the ranking member of the Government Operations Committee, I would request equal time for the gentleman from Mississippi [Mr. Montgomery], the chairman of the Veterans' Affairs Committee, and the ranking member, myself, if there is going to be a division further than that.

The SPEAKER pro tempore (Mr. Coelho). One Member can request one-third of the time if that Member is opposed to the conference report, and if the gentleman from New York [Mr. Horton], the ranking member, is not.

Is the gentleman from New York [Mr. Horton] opposed to the conference report?

Mr. HORTON. I am not opposed, Mr. Speaker.

The SPEAKER pro tempore. Is the gentleman from New York [Mr. Solomon] opposed to the conference report?

Mr. SOLOMON. I am not opposed, Mr. Speaker.

The SPEAKER pro tempore. Is the gentleman from Illinois [Mr. PORTER] opposed to the conference report?

Mr. PORTER. I am opposed, Mr. Speaker. I will not use the entire time, and I would be happy to relinquish what time I have left over.

The SPEAKER pro tempore. Is the gentleman from Illinois seeking for one-third of the time?

Mr. PORTER. I am, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will get one-third of the time, 20 minutes.

The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. PORTER], who is opposed to the bill, will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, with approval of this conference report, the Veterans' Administration will be elevated to Cabinet status. This new status should enable the department to better carry out its prescribed duties and should bring about better oversight of the administration of veterans' programs and benefits. The report provides a sound working organization for the new Department of Veterans' Affairs.

In addition to making the Veterans' Administration a Cabinet-level department and strengthening its organization, the report: First, provides 40 additional positions for its office of inspector general; second, provides certain employment restrictions to assure that experienced, career personnel occupy important administrative positions; and third, requires that Congress be notified not less than 30 days prior to certain reorganizations in field offices and in the central office.

Mr. Speaker, the report also contains a provision to authorize the establishment of a National Commission on Executive Organization, if the President determines by April 15 of next year that such an organization is in the national interest.

Mr. Speaker, this report is a good one and I urge all Members to support it.

Mr. HORTON. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, early this year the House Government Operations Committee reported H.R. 3471, a bill to create a Cabinet-level Department of Veterans' Affairs. This bill enjoyed, and this conference report enjoys, the support of the administration, the House Veterans' Affairs Committee, and the respective Senate committees.

The bill elevates the Veterans' Administration to Cabinet-level status. This is an important and worthwhile policy change that says to the millions of men and women who have worn the uniforms of our Armed Forces that we care. Policies affecting veterans will be heard at the highest level of our Government. A Secretary of Veterans Affairs, sitting with other Cabinet Secretaries, is the proper forum to formulate policy on, and provide direction to, issues affecting veterans.

I strongly support this bill and commend my chairman, the gentleman from Texas [Mr. BROOKS], for his leadership in moving this legislation.

I want also to commend the Veterans' Affairs Committee, the gentleman from Mississippi, Mr. MONTGOMERY, for his support and leadership in this major legislative effort.

Finally, Mr. Speaker, I want to publicly recognize my good friend and colleague from New York, and the ranking minority member of the Veterans' Affairs Committee, the gentleman from New York [Mr. SOLOMON], for his work. More than any other member, the gentleman from New York [Mr. SOLOMON] provided the force that has brought us to this point today. I am very grateful to him, for without his leadership and tireless efforts, I know we would not be here today.

Mr. Speaker, I urge my colleagues to support this conference report.

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Mr. PORTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support veterans. I have supported veterans. I perhaps have more veterans who reside in my district who were stationed at the end of their careers, for example, at the Great Lakes Naval Training Center or Fort Sheridan or the Glenview Naval Air Station than perhaps anyone else around the country. These are people who have given to our country in the time of its greatest need. We owe them more than we can ever repay them, and I stand with them wherever I possibly can.

But do we owe them the elevation to a Cabinet-level position of the Department of Veterans' Affairs at a time of huge Federal budgetary deficits? Mr. Speaker, I would remind the House that this administration came into office with a plan to eliminate two Cabinet-level positions of Government, two Departments. Neither one has been eliminated, and the administration, when this legislation passes, will leave having created another new Cabinet-level position, adding one instead of subtracting two.

Mr. Speaker, the arguments will be made that this does not cost more money. No, it is just moving it over to a different title and a different person to head it that has a title "Secretary of Veterans' Affairs" instead of Director of the Veterans' Administration, but the fact is that when it does move over it will, in fact, cost more money, that new Cabinet Secretary will have the ear of future Presidents, will have the chance to make the case for more spending in respect to veterans' matters to the President directly. It will be necessary for that new Department to have a physical plant that is equal to other Departments of Government; after all, it becomes a coequal Department of Government, and all of that will cost a great deal of money.

Mr. Speaker, this matter has been proposed for the last 13 years to the Congress of the United States, and here it is being considered and offered and passed at a time when we are bleeding with red ink from one budgetary deficit after another. It is a matter, Mr. Speaker, that is out of time. It may be the right thing to do to recognize veterans and elevate the Veterans' Administration to a Cabinet-level position, but it is not, Mr. Speaker, the right thing to do now.

It sends a terrible message to the young people of this country, who are going to pay in the future and pay and pay and pay, that we do not care about the cost, we will serve this interest and pass that cost along to them together with all the others we have passed along.

Mr. Speaker, in addition, I see the House supporting this legislation as an act of great hypocrisy, very frankly. When the matter was considered earlier this session on the House floor and we were voting on it, I heard one Member after the other say that, "This is a terrible, terrible thing to do," privately, of course, spoken among ourselves, "Why are we considering this at this time?" and "We should not be doing this." Over and over again I heard these remarks. Everyone knew in their hearts that this was the wrong thing to do at this time.

Mr. Speaker, then when the vote was taken and when we looked up on the board, the bill had been adopted overwhelmingly by over 400 votes with only 17 votes in the negative.

Why does Congress do things like that? We do it because of special interests, very frankly and honestly, and in no sense do I use that term as a perjorative. Veterans are a very worthwhile, very important and very powerful special interest in this country. Members are in craven fear of retribution at the polls, and Members are afraid to risk their wrath.

But, Mr. Speaker, the American people are looking for people of courage to govern, people of leadership, people of vision. Yes, the American people are seniors, they are union members, they are business men and women—members of the N.F.I.B. or the U.S. Chamber of Commerce, they are teachers and they are veterans, but first of all, they are Americans. First of all they understand that we cannot serve every special interest in our country without ever adding up the bottom line and the effect upon the Nation as a whole. They did not elect us to serve here in a way that alone responds positively to every group according to their wishes. No, they elected us to be here to be responsible for our country as a whole, for America's future, and for the bottom line.

Mr. Speaker, that bottom line is destroying the economic future of young people in our country. We are saddling them with unprecedented debt, $2.6 trillion and going up. What does that mean to a young person entering the work force in America today? It means $130,000, on average, of extra taxes that that young person is going to have to pay over his or her worker working lifetime just to carry the interest on $2.6 trillion of debt. That money is going to have to be taken in taxes before the Governments of the future can provide one cent for defense, one cent for transportation, one cent for agriculture and, yes, one cent for veterans. The more successful will pay $300,000 or $400,000 or $500,000, and it will bleed them all. But here we are, and we will pass this matter overwhelmingly, Mr. Speaker, creating a new department of Government at a time when we have done virtually nothing, nothing to solve the fiscal problems of our country.

It is said over and over again that we are making progress on the deficit. Do the Members know how we are making progress on the deficit? We are making progress on the deficit only because we have Social Security taxes being collected and deposited in the trust fund that are greater than the draws on that fund, and so it looks as if the overall Federal deficit is going down. And who is paying those taxes? Those same working people, many of them young Americans who are going to be paying and paying and paying in the future to carry this huge debt.

Mr. Speaker, it is time for courage. It is time to put hypocrisy behind us. It is time to take responsibility for our actions. It is time to act with statemanship and understanding of what we do to the future of our country and to the future of our children and grandchildren.

I support our veterans who have given so much for all of us.

It is not the veterans that I oppose. I would oppose this if it was any new department of government being created. I oppose it because it is out of time. It is our responsibility. It is violations of the bottom line once more and destructive of our responsibilities to the country as a whole. I cannot support it.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield 3½ minutes to the gentleman from Mississippi [Mr. MONTGOMERY], the distinguished chairman of the Committee on Veterans' Affairs, a man who has dedicated a great deal of time to veterans and particularly to this bill, along with this distinguished minority member, the gentleman from New York [Mr. SOLOMON]. They both have worked hard on this and are due a lot of credit. I must say there was not a day that passed that they did not mention it.

Mr. MONTGOMERY. Mr. Speaker, I thank the chairman of the Committee on Government Operations for his remarks, and it is true. We did worry him almost every day waiting on this bill to come to the floor.

Mr. Speaker, I totally support the conference agreement on H.R. 3471, and I was pleased to join with the distinguished chairman of the Committee on Government Operations, the gentleman from Texas [Mr. BROOKS], and the ranking minority member, the gentleman from New York [Mr. HORTON], and also the gentleman from New York [Mr. SOLOMON], in sponsoring this legislation.

Mr. Speaker, I certainly respect the gentleman from Illinois [Mr. PORTER] and it is rather surprising that he is opposed to this legislation. Some of his information is not exactly correct.

We have been told by the Congressional Budget Office that this is a low cost bill.

Mr. Speaker, the Veterans' Administration and its 240,000 people are already in place. We will have to change some signs on the buildings. Titles in some papers will have to be changed. There will be a few Assistant Secretaries added, but other than that, elevating the VA to Cabinet status is not going to be a heavy cost to the taxpayers of this country.

I might say that this should have been done 30 years ago. We should have done this before we created four other Cabinet departments in the last few years, so the only thing we are doing here is something that should have taken place years ago.

The Cabinet position, and I have heard the gentleman from Texas [Mr. BROOKS] say this, the Cabinet position will save money instead of having the Congress to deal directly with the Office of Management and Budget.

When the bill becomes law, we can deal with the Secretary who will have the ear of the President of the United States.

Mr. Speaker, right now we have to go through the back door of the White House. We are going to eliminate this by having a Cabinet-level position.

There is going to be a lot of cheering tonight if we can pass this bill. The old veterans across the country are going to be mighty proud of this, Mr. Speaker, and I hope the Members will support the conference agreement.

Thanks to Chairman BROOKS and Mr. HORTON, the Veterans' Administration will be elevated to Cabinet status early next year.

As many of our colleagues know, Chairman BROOKS and Mr. HORTON are combat veterans of World War II—Chairman BROOKS served in the Marine Corps and Mr. HORTON with the U.S. Army in North Africa and Italy. Both have been firm in their commitment to our Nation's veterans.

There are a few other Members of the House and Senate who deserve our thanks for their work on this bill.

JERRY SOLOMON, the very able ranking minority member of our committee, got things rolling when he introduced H.R. 1707 last year. I was pleased to join my distinguished colleague in sponsoring this legislation. He probably devoted more time to this legislation than anyone and I have supported him all the way. JERRY is a marine veteran, having served during the Korean war.

I appreciate the leadership of Members of the other body, especially the chairman of the Governmental Affairs Committee, Mr. GLENN, and the committee's ranking minority member, Mr. ROTH.

The distinguished senior Senator from South Carolina [Mr. THURMOND] has been the chief sponsor of this legislation for many years, and the bill has enjoyed the support of the distinguished chairman of the Senate Veterans' Affairs Committee, Mr. CRANSTON, and the ranking minority member of the committee, Mr. MURKOWSKI.

This is a great day for veterans. I'm sure they will begin their celebration tonight. Veterans have served their country well throughout our Nation's history and we owe them a debt of gratitude for their service. They have earned the right to be represented in the highest councils of the land.

Mr. Speaker, the other body made a number of changes to the House bill that we thought were inadvisable or not justified. One of these changes would have required a large increase in the staff of the Office of the Inspector General [OIG] of the Department of Veterans' Affairs. Frankly, we could find little justification for a change of this magnitude; the General Accounting Office [GAO] is reviewing the VA inspector general's operation at this time, but it has not reached any conclusion with respect to the staffing of that office. When our committee held oversight hearings on the VA Inspector General's Office last year, we asked the inspector general whether the office was appropriately staffed. The response was that an increase in employment levels "would enable the OIG to conduct more proactive investigations in major VA programs * * * further assess and monitor the VA Quality Assurance Program; perform more comprehensive audits of medical centers; regional offices, and major VA programs and functions; and stay current with the increasing investigation caseload. The OIG's most recent 5-year plan cited a need for 40 additional personnel to accommodate this workload." We shared this response with the other conferees, as well as our concern that there were more serious staffing shortages in the Department of Veterans Benefits and the Department of Medicine and Surgery, in an effort to persuade them to drop the provision increasing the staff of the Inspector General's Office.

Although we were partially successful, the bill does contain a provision requiring the President to include in the budget transmitted to Congress for fiscal year 1990 an estimate of the amount necessary to provide for a limited number of additional positions. Although the President must furnish information required by Congress, it should be clear that this does not change the President's constitutional mandate to recommend a budget as he shall find "necessary and expedient." It is for the Congress to decide whether additional funds should be appropriated to increase the staff of the IG, and I fully expect that if such an increase can be justified, the Congress will give every consideration to such a request if the President considers it "necessary and expedient."

With regard to other changes in the Senate bill, I don't think the changes will have any substantive effect on the way the new department will operate. Thus, although it is a matter within the jurisdiction of the Committee on Veterans' Affairs, we did not object to the minor amendment made by the bill in section 210(b) of title 38 which limits reorganizations in the VA to those proposed in the President's budget. The only change it makes in the existing law is to allow certain reorganizations at the VA's central office which do not affect a substantial number of persons to go forward with 30 days advance notice to the Congress. If the new Secretary abuses this authority, the Congress will act swiftly to restore the law to its former state. Similarly, the Committee on Veterans' Affairs continues to believe that the goal of meeting the needs of veterans requires the Veterans' Administration to operate a regional office in each State, and would view with strong disfavor any proposal to eliminate any of the existing regional offices.

The proposed organizational changes in the functions of the existing Department of Veterans Benefits and Department of Memorial Affairs are not included in the conference report at the insistence of the House conferees. We believe the proposed changes were not well thought out and reflected a poor understanding of the best way to accomplish the vital functions of the new department. The changes would have hamstrung the new secretary in terms of flexibility to organize the department, and were wholly inconsistent with the stated purpose to give the Secretary management discretion.

There are a number of other minor changes proposed by the other body to the House bill which were accepted in order to get this bill to the President. The fact that they were acceptable in the context of a conference on this bill should not be interpreted as an expression of approval by the Committee on Veterans' Affairs of their content. But, in the spirit of compromise, we are in agreement with the bill. In due time we will examine the effect of some of the changes to see whether they have adversely affected the provision of services and benefits to veterans, and will propose modification or elimination of those that interfere with the accomplishment of the new department's most vital function.

Mr. Speaker, there has been some belated concern expressed by officials of the VA that this bill would affect the existing manner used by the Veterans' Administration to investigate and adjudicate EEO complaints. I want to be clear that the functions which the bill assigns to the assistant secretaries are based on VA documents which describe the existing functions performed by various staff offices within the VA. We did not intend to divest the general counsel of its existing role in adjudicating EEO complaints.

Mr. Speaker, there is no question that the Secretary should be given maximum flexibility to organize the department and assign functions in a manner which is best suited to the accomplishment of the agency's mission. This bill does not require any change in the existing method of ensuring agency compliance with the laws providing equal employment opportunity.

In closing Mr. Speaker, let me say again how very grateful I am to the chairman and ranking minority member of the Government Operations Committee for their work.

In addition, I want to express our committee's appreciation to the committee's chief counsel, Bill Jones, and his staff, especially Rick Barnes and Cynthia Meadow, who worked closely with our committee staff in drafting the original bill and the conference agreement.

Mr. HORTON. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. SOLOMON], the ranking minority member of the Committee on Veteran's Affairs, and, as I said earlier, one of the principal sponsors of this bill. Without his effort, we would not be here.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from New York for yielding me this time.

Mr. Speaker, a bill elevating the Veterans' Administration to a Cabinet-level department has been introduced in every Congress for the past 25 years. Now, for the first time in history, this goal is within reach.

I wish to express my appreciation on behalf of our veterans, to Congressman BROOKS, chairman of the House Government Operations Committee for having the courage to move this historic legislation.

Also, I would thank my very good friend, the chairman of the House Veterans' Affairs Committee, SONNY MONTGOMERY, for his work on the bill. Without his strong support we would never have been able to obtain so many cosponsors on our bill.

My friend and colleague from New York, Mr. HORTON, the ranking member of the Government Operations Committee, should be commended as well for his contributions.

I also commend the fine work of Senator THURMOND for introducing the legislation in the Senate and who is responsible for much of the progress we have seen in the other body.

I am very pleased Senator GLENN, chairman of the Senate Governmental Affairs Committee, and ranking minority member Senator BILL ROTH, were so cooperative in processing the bill through their committee.

Mr. Speaker, I would be remiss if I failed to recognize the leadership role played by all of the veterans' service organizations in this effort. The American Legion, the Veterans of Foreign Wars, Disabled American Veterans, AMVETS, Paralyzed Veterans of America, Blinded Veterans Association, and many others have worked tirelessly in order to gain approval of this legislation. There has been united and overwhelming support.

Mr. Speaker, I wish to address for a moment the shameful editorials which have appeared in opposition to this measure. They have been inaccurate, inconsistent and insulting to our Nation's veterans.

The Washington Post's solution to curing the budget problems is to stop paying VA pension benefits to low-income, needy veterans. The Post instead would have them go to the county welfare office. Well, the U.S. Congress will never tolerate treating veterans' benefits as welfare.

The Washington Post also makes the claim that veterans who do not have service-connected disabilities are "piggybacking" on those who do. Just who are these men and women veterans? Well, I'll tell you who they are * * * they are the hundreds of thousands who stormed the beaches of Normandy and Iwo Jima, who fought on Pork Chop Hill in Korea and who patrolled the rivers and jungles of Vietnam.

And yet, because they were fortunate enough to return home without physical evidence of their sacrifices, the Post condemns them as piggybackers. The men and women who have served in our Armed Forces and who have risked their lives for our country deserve better.

When the VA was formed as a Federal agency in July 1930, there were 4.5 million veterans in the United States. Today, the veterans' population is over 27 million. In response to this increase, the size and responsibilities of the Veterans' Administration have grown substantially.

The time has come to elevate the Veterans' Administration to a Federal department. Programs administered by the VA touch virtually every family in America. Today, in addition to the over 27 million veterans, there are 51 million survivors and dependents.

Among Federal departments, only DOD has more employees. The VA operates the largest health-care system in the free world. The VA Home Loan Program is one of the largest housing endeavors in the country and the Montgomery GI Education Program interacts with virtually every college and university in America.

Although the size and importance of the VA justifies upgrading it to Cabinet level, there are even more compelling factors to consider. Benefits for veterans and their families have been earned through great pain and sacrifice, and oftentimes, by the loss of lives.

In recognition of the contributions to freedom made by the men and women who have served their country in uniform, Americans have placed a high priority on veterans. By authorizing Cabinet status for the Veterans' Administration, we would ensure that its chief executive officer fully participates in top level discussion and policymaking on issues having a direct effect on America's veterans.

Veterans should be represented in one department where all of their needs are given the highest priority, not divided up and lost in a crowd of other interests. How many times have we heard other department heads even say the word "veteran"? This is no move to increase the Federal bureaucracy, but simply to afford veterans the dignity and deference they deserve.

Mr. Speaker, I will simply conclude by saying what I have said hundreds of times on this issue, I've said it to countless Members of Congress, I've said it to veterans across the country, I've said it to President Ronald Reagan, and I intend to keep right on saying it until this bill is signed into law. America's veterans have earned the right to be heard at the highest level of the American Government.

We thank the chairman of the Committee on Veterans' Affairs, the gentleman from Mississippi [Mr. MONTGOMERY] for his untold work on this bill, not only from day 1 back on January 25, 1987, 2 years ago, when we first introduced this legislation, up until the day that we passed the bill on November 17, 1987, a year ago, up to today, an awful lot of work has gone into this from staff and everyone else.

Even over on the Senate side, JOHN GLENN, BILL ROTH, and certainly STROM THURMOND, our old friend, were extremely helpful in moving this historic legislation along.

Mr. Speaker, I just want to take a second just to state my resentment about the remarks of the gentleman from Illinois. He is one of the strong fiscal conservatives in this House. The National Taxpayers' Union rates him quite high over his lifetime of service in this House, but I would like to point out that my record by the National Taxpayers' Union rating me in the 92d percentile in this Congress, in the top 10 percent of the entire Congress, is a much higher rating than my good friend so I take a back seat to no one in fiscal conservation.

Why would a conservative like me be standing here supporting legislation like this? Because it is vital to the future of our veteran hospitals. Let me just tell the Members, we have serious problems in our Veterans' Administration hospital medical care delivery systems today. One of the reasons is because of an acronym called OMB.

I have for the last 3 months been conferring with OMB and with the White House and with everybody else trying to tell them about the emergency that we have in our hospitals today, our veterans' hospitals. We have today almost a $600 million shortfall in that medical care delivery system today, an average of about $4 million per hospital—172 hospitals. This shortfall came about because the Office of Management and Budget—and not the Veterans' Administration direct—represented the Veterans' Administration when the President's Cabinet met to develop the 1989 Federal budget.

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My point is this: If we had had a Department of Veteran's Affairs, and if we had had a Secretary of Veterans' Affairs sitting next to the President when Caspar Weinberger and now Frank Carlucci were in there fighting for their Defense budget to protect America, and when George Shultz was in there fighting for foreign aid, along with the Secretary of Education and the Secretary of HHS fighting for their fair share of the budget, the Veterans' Administration would have had an advocate present to fight for its fair share. That is why we have the shortfall today. That is why we desperately need a Department of Veterans' Affairs.

If we enact this legislation today, it will go a long way to guaranteeing that the veterans of this Nation in the future are going to be taken care of. That is all we are doing here today.

So I take exception to the remarks of the gentleman from Illinois. I think he is well meaning and sincere, but he is wrong. He is dead wrong and we ought to pass this legislation, put it on the President's desk, and speaking of the President, let us thank God for Ronald Reagan who is the first President to ever put his weight behind this legislation, and he deserves a vote of thanks from every veteran of this Nation.

I urge a unanimous vote.

Mr. PORTER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I think the gentleman from New York just made my point rather than his point. I said that it would push up the costs, and it will. I do not think there is any doubt about it.

And it is a high-priority cost to be pushed up, yes. But the difficulty with Congress is that we push up all of the priorities and never find any place to cut. We are unwilling to tax the American people any additional dollars, and we are unwilling to cut from any other high-priority or important interests, and we never add up the bottom line. That is going to be the problem with any new department.

It is not the veterans. The veterans are the most deserving among us, but we are going to have a bottom line that continues to grow because we do not have the courage to stop it.

Some day, some day soon, we are going to have to have that courage because there will be a crisis upon us that we simply cannot handle. So I say to the gentleman from New York [Mr. SOLOMON] yes, veterans are an important priority for our country. Yes, we should give them every possible consideration. But we darn well better find out how we are going to pay for it and have the courage to pay for it instead of simply adding more to the Federal deficit until our young people in this country are so weighted down that they cannot possibly have the economic opportunities that you and I have had, that our parents have had and that their parents have had and all Americans have had up to this point.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. ROWLAND].

Mr. ROWLAND of Georgia. Mr. Speaker, I rise in support of the conference agreement.

Mr. Speaker, from the very beginning of the debate over whether to establish the VA as a Cabinet-level agency, I have felt the opposition has viewed the issue from the wrong perspective.

The issue does not center around benefits.

What this effort is really all about is to establish a more efficient organization and system of management for the executive branch. If such Departments as Health and Human Services, Education, and Labor are included on the President's Cabinet, it does not make much sense to me to exclude the Veterans' Administration from this same level of planning.

Just like the Department of Health and Human Services, the VA provides health care services to a large segment of the American population. And like the Department of Education, the VA is helping many Americans obtain a higher education. And the Labor Department and the VA are alike in the administration of job training programs.

The principal difference is that the VA is bigger than these other agencies. It employes 240,000 people and has an annual budget approaching $28 billion. It administers the country's largest health care delivery system and its research program is second only to the National Institutes of Health. It is exceeded in overall size only by the Defense Department.

Mr. Speaker, many people look upon this proposal as a tribute to our veterans. That's one of the positive things about it. But as I view it, the principal reason to vote for H.R. 2371 is for good, efficient Government.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. APPLEGATE].

Mr. APPLEGATE. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to extend my thanks to the gentleman from Texas, Mr. JACK BROOKS, for the work that he did on this, as well as the gentleman from New York, Mr. FRANK HORTON. They were very courteous in allowing me to come before the committee to testify, as well as my good friend and chairman, the gentleman from Mississippi, Mr. SONNY MONTGOMERY, the gentleman from New York, Mr. JERRY SOLOMON, the gentleman from Arkansas, Mr. JOHN PAUL HAMMERSCHMIDT, and from the Senate side, my Senator, JOHN GLENN, and Senator BILL ROTH, for allowing this bill to come out and come before us to vote today.

Every veterans' organization, every one of them to a tee has made this a priority. The veterans have earned this dignity and this respect. They are the ones who allow us to even be here to even vote on this kind of a piece of legislation.

We as a free legislative body can do that because of the efforts and the sacrifices that our veterans perform. The Secretary of Defense supervises millions of soldiers, sailors, and marines. In the Oval Office with the President, he is able to sit. The Office of Management and Budget can do the same thing, that organization which controls the buck. Should not the Secretary of Veterans' Affairs, representing 28 million veterans with an expenditure of $27 billion, be able to sit as an equal, that individual who represents those same soldiers and sailors and marines following their service to the Nation, those very same veterans who came out after defending this Nation? Yes, of course, he should.

The skeptics, of course, will say that it is just another layer of bureaucracy and that there will be high costs. My good friend and colleague, the gentleman from Illinois [Mr. PORTER], said that it would entail high costs, and in this respect I think he is absolutely wrong. I think it will be minimal costs.

It is the right thing to do. He said it is not, but it is. But even if the cost was high, it is worth it. Let us be that thankful for what our veterans did for us.

Mr. HORTON. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Mr. Speaker, I rise in support of the conference report. It is the end of a long and hard struggle.

Mr. Speaker, I am pleased to have the opportunity today to address a cause which affects those who have so selflessly served this great Nation. As a veteran, I firmly believe we must lend our support to those who would sacrifice in the defense of their country.

At this time, Congress is considering legislation, H.R. 3471, which would elevate the Veterans' Administration from an agency to Cabinet-level status. I strongly support this action. I believe this proposal will give greater attention and recognition to the needs for our veterans. In addition, I believe this initiative will significantly improve the accountability of VA officers to the Congress, thus improving our service to the dedicated men and women who have served to secure and preserve peace and prosperity for all Americans.

In my judgment, this action is essential. Congress and the Federal Government simply must act to fulfill their end of the contract as the veterans have fulfilled theirs. Their commitment to the principles which formed the foundation upon which this Nation is built—namely, freedom and self determination—cannot be ignored. The sacrifices and dedication of these individuals is deserving of both the acknowledgment and benefits afforded by this initiative. I urge its passage.

Mr. HORTON. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

I am one who generally on this floor does a pretty good job watching how we spend the money, and I took a very close look at this particular proposal when it came before the Committee on Government Operations because I am concerned about adding departments to Government, too.

Let me tell Members what I figured out along the way. First of all I think we have to recognize we will not spend less money for veterans in the future but we will spend more. We have more veterans coming into the system that need more care. They will need more kinds of acute care. So the fact is that we as a society are going to spend more on veterans simply because the need is there.

So the question then becomes in this budgeting process how do we rationalize the extra spending that will come in? Do we rationalize it in the first cut, when OMB does the first work on the budget, and so on? The fact is the veterans have been left out because OMB is talking to the department. Does it happen in the second cut when the members of the Cabinet gather around the table? Well, no, at that point they all divvy it up, look at OMB's figure, divvy it up and decide the priorities.

Does it happen at the third cut, the veterans get realistic consideration? No, because the third cut, the proposal is being put together and sent to Capitol Hill, and by the third cut they decide their priorities and tell themselves that if they keep the veterans' amount down, below what they know is a realistic level, Congress will put the money back in, and they are right. It comes back up here in the hands of people like the gentleman from Mississippi [Mr. MONTGOMERY], and the gentleman from New York [Mr. SOLOMON], and they do what is right by the veterans. The Committee on Appropriations around here does what is right by the veterans, and so it becomes add-on over and above what the administration is requesting.

Now if you had a Secretary sitting at the Cabinet table that had a chance to identify what the real needs were on the first cut, had a chance to identify the real needs on the second cut, had a chance to identify what the real needs were on the third cut, when we get it up here we will have a far more rational package to deal with and be assured the amount of money we are sending to Capitol Hill, and real money and not add-on money.

What we are doing now is fooling ourselves with the budgets that are sent to Capitol Hill that we will undermine the veterans. I do not think that will ever take place. I think we will continue to spend more money in the future than we are spending now because of the need being there, and I think that it is foolhardy to believe that somehow keeping the veterans separate from the process, it decides where real resources should be allocated makes any sense.

Mr. PORTER. Mr. Speaker, will the gentleman from Pennsylvania yield?

Mr. WALKER. Mr. Speaker, I yield to the gentleman from Illinois.

Mr. PORTER. Mr. Speaker, I followed the gentleman correctly until it comes to the Congress from the new Cabinet-level decisions, the difficulty is, as the gentleman well knows, that we will add to it anyway. We always do, and very frankly, we will not have the courage to tax the people to pay for it.

Mr. WALKER. Mr. Speaker, let me say I do not think that it is necessarily the case. I think if you get realistic amounts of money set up for programs that the Committee on Appropriations around here will take a look at realistic amounts of money, but if we get amounts of money up here causing services to be cut back in hospitals, causing more doctors or less doctors to be hired at a time when there is more of a need, that does not make any sense. So the Committee on Appropriations is faced with that kind of decision, and I say it is not a rational decision, but the problem is the money they add on is, in fact, add-on money.

I would rather have a real rational approach taken initially so that we had a real budget up here that reflected real veterans' needs rather than a phoney budget that we then have to correct somewhere along the way. That is all we are doing because we are not adding personnel, we are not adding new buildings. They already have a big building down there. It is pretty nice, I assume they will keep it. All we are doing is trying to add rationality to the process. The conclusion I came to as somebody who takes a look at how Government operates, and in the Committee on Government Operations we came to the conclusion that this is not something that costs money, this is something that ultimately will save us some money in the increases that we know are to come.

Mr. PORTER. Mr. Speaker, I yield 30 seconds to myself.

I think the gentleman from Pennsylvania [Mr. WALKER] stated it correctly; he "rationalized" it beautifully.

Mr. HORTON. Mr. Speaker, how much time do we have remaining?

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from New York [Mr. HORTON] has 9 minutes remaining, the gentleman from Texas [Mr. BROOKS] has 12 minutes remaining, and the gentleman from Illinois [Mr. PORTER] has 11 minuties remaining.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. MURPHY], a distinguished member of the committee.

Mr. MURPHY. Mr. Speaker, I thank the chairman for yielding time to me and I would like to say I rise in support of this very important measure and I would assure my good friend, the gentleman from Illinois [Mr. PORTER], that all of us in this body, I do not know one Member of Congress who is not concerned with a rising national deficit.

I want to say that on this measure there is not 1 additional cent that this measure proposes to cost. What this measure does and has been very keenly weighed by two House committees, is that it will consolidate our veteran services into a department head. We have long waited, 30 to 40 years, for the veterans of this Nation to be recognized with a Cabinet-level department. A person who can carry the message of America's veterans into the White House, into the Halls of Congress, to properly advise us where the dollars can best be spent. There may be services that may have to be consolidated. We may have to curtail some. We may have to expand them, but at least at a Cabinet-level position there will be a responsible person to be held accountable, a person that can freely come into the Halls of Congress and freely go to the Cabinet-level discussions at the White House and carry the message of the needs of America's veterans to these two respective bodies, which set all the priorities of those needs.

I would urge all of my colleagues to join me in voting for the Cabinet-level position for American veterans, and I thank the gentleman from Texas for allowing me this time.

Mr. HORTON. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise today in strong support of the conference report on H.R. 3471, the Department of Veterans Affairs Act. I would like to commend all those involved, the gentleman from Texas and the chairman of the Government Operations Committee, Mr. BROOKS, the ranking members of that committee, my good friend from upstate New York, Mr. HORTON, the chairman of the Veterans' Affairs Committee whose dedictation and commitment to our veterans has made this day possible, Mr. MONTGOMERY, and his Republican counterpart, my fellow New Yorker, Mr. SOLOMON.

This day has been a long time in coming. The House voted almost a year ago to establish the Department of Veterans' Affairs to provide a just representation of almost one-third of the Nation's population, including the 27 million veterans, their dependents and survivors. They are an aging population whose needs will continue to increase. There are more veterans in need of medical care and nursing home care than ever before. At the same time medical personnel is scarce and VA hospitals are closing their doors. Our Vietnam-era veterans, although only in their middle years, are encountering realities not confronted by many of their earlier comrades, such as homelessness and unemployment, posttraumatic stress disorders, and an unprecedented number of medical conditions resulting from their exposure to agent orange. These men and women need somewhere to turn where their problems and difficulties will not be lost in the wind.

Creating the Department of Veterans' Affairs will not create a new bureaucracy. The VA is already larger than the Departments of State, Interior, Treasury, Commerce, Education, Energy, HUD, and Justice, and ranks second to only the Department of Defense in number of personnel. As many of my colleagues have expressed over and over again, this establishment of a new Cabinet-level department will not cost our taxpayers significant additional funds nor will it increase the Federal budget deficit. We are just changing the names on some of the doors. The department is there in place, the administrators are there in place. We are merely giving them a new title and making it possible for them to more effectively be able to fulfill their responsibilities. By appointing a Secretary of Veterans' Affairs, the President will have someone to consult with to learn the real needs of our veterans, and no longer will Congress be presented with a Presidential budget that undermines and depreciates our fiscal responsibility to these brave men and women.

This proposal has the endorsement of President Reagan, all the major veterans organizations, and the overwhelming majority of the population. Without further adieu, I ask my colleagues to join me in strong support of the conference report on the Department of Veterans Affairs Act.

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Mr. PORTER. Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. I thank the chairman for yielding.

Mr. Speaker, I congratulate the gentleman from Texas [Mr. BROOKS] and the gentleman from Mississippi [Mr. MONTGOMERY] for coming to the finalization of something that has been needed for quite a long time. I think the gentleman from New York [Mr. SOLOMON], on the other side, also deserves some accolades for this. It has been awhile and it is the right thing to do.

Let me give you the view of someone who represents an area of this country which has seen an enormous increase in the number of veterans which it has to service and at the same time has seen cuts in the amount of money available to the existing veterans.

The United States right now has a really quite poor system of tracking where these veterans live, because what has happened is over the last 10 years Florida has had its veterans population doubled but the amount of money flowing has been way below that amount. It has been inappropriate and incapable of meeting the needs. And because of the census tracking, we cannot catch up. We cannot prove, actually, what we can tell you orally that these veterans are here. We do not have the hospitals. They are being funded back in Newark and in Cincinnati and in New York, Detroit, where the veterans came from. We do not want to take money away from people. But we have got veterans who are literally without capability to be provided the kind of service that they need; service connected, 100 percent disabled veterans are losing benefits, they cannot get to the hospitals, they have lost the ability to collect the money that they had for travel until it was put back recently.

All of this is because of underfunding and the movement of veterans.

This Cabinet-level position, I believe, will ensure that when the administration, each year, now sends that budget request over it will be done with the actual needs in mind. This administration has for years sent over a budget request that was lower than what was needed.

And what are we talking about? We are not talking about some unique overfunding of people that we are giving some gratuitous help to, something that they are not entitled to. We are talking about men and women of this country who served their country and who are owed, owed by contract, that which we have failed to give them fully. This will ensure that they will get it. And I commend the gentlemen who worked so hard on this.

Mr. HORTON. Mr. Speaker, I yield 2 minutes to the gentlewoman from Maryland [Mrs. Bentley].

Mrs. BENTLEY. I thank the gentleman from New York for yielding.

Mr. Speaker, I rise in strong support of this conference report which would establish the Cabinet level Veterans' Administration. I want to commend the chairman of the Committee on Veterans' Affairs, the gentleman from Mississippi, Sonny Montgomery and the ranking minority member, the gentleman from New York, Mr. Solomon, and the chairman of the Committee on Government Operations, the gentleman from Texas, Mr. Brooks, and the ranking minority member on the committee, the gentleman from New York, Frank Horton, for all of their work in bringing this important legislation to this point.

We have, as already has been said here this morning, some 27 million veterans in the United States. They are getting older and they need the kind of care that they deserve. Full recognition through a Cabinet post is not something that we should just be handing out to them. They have earned this. They need such respect and they need the kind of recognition and care that will be available from a full Cabinet position. This is not adding money to the budget as has already been said here. We have in Maryland some 650,000 of these veterans. In my district alone we have some 70,000 so that I am very familiar with the plight of the veterans.

I want to say that the needs of the veterans should be first and foremost in the minds of the Members of Congress. I am certain that most—if not all—of the Members of Congress feel that veterans should be given every consideration.

A Cabinet level agency will help cut through the redtape so that the veterans' needs will be met much easier, and I want to say that we are indeed fortunate that we have had the veterans who have supported our country and fought for our freedom over the years as they have. Let's respond by voting yes on this conference report.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. Hefner].

Mr. HEFNER. Mr. Speaker, I rise in strong support of this conference report.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas, Mr. Jake Pickle, a man who just came back at 3 in the morning from a long trip; we are very proud of him here this morning.

Mr. PICKLE. I thank the gentleman for that observation. I thought he was going to make reference to the years of service which I gave to the country in the Solomon Islands. But I appreciate his remarks.

Mr. Speaker, as a veteran of World War II I think it is timely and appropriate that we pass this legislation. There are some 3,500 organizations across the country, and virtually all of them support this bill. They do not support it because they want more money for veterans programs, although that would be acceptable. But they support it because they think they should have someone on a Cabinet level to be concerned about their needs. I think that is appropriate. As I travel and visit with my veterans organizations in my district I understand that they think that they will be given individual attention if this measure becomes law.

I think that is appropriate.

Therefore, we ought to pass this bill with a vote and in doing so pay our respects to the gentleman from Mississippi [Mr. Montgomery] and the gentleman from Texas [Mr. Brooks] and the gentleman from New York [Mr. Horton] for giving us their leadership. It is time we show our veterans that we do care, and that we have not forgotten.

Mr. HORTON. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. Dornan].

Mr. DORNAN of California. Mr. Speaker, one of the great honors of serving in this body has been to serve with the colleagues who have seen the cauldron of hell called combat.

To hear Mr. Pickle, our great colleague from Texas, talk about the Solomon Islands conjures up images for me as a young boy lying on the floor of my living room or bedroom reading about Guadalcanal, Henderson Field; or learning about Joe Foss, and Bob Hanson who was a quadruple ace, Medal of Honor winner and dead before his parents were even notified.

It reminded me of the slot, the young men at Rendova like John Mitchell and John F. Kennedy in their PT boats. One of our colleagues lost a leg in the Herken forest. He said, "I was no hero. I just stepped on a land mine at the wrong time." No, he is a hero.

We have very few men in Congress who have combat experience. We are now an all-volunteer military which is working beautifully, working well. This is all the more reason to assure our veterans that they will have a representative sitting at the Cabinet table just an arm away from the President to represent their interests and the interests of the men and women who serve us today keeping the peace so that nobody else will have to see the hell on Earth that the diminishing number of combat veterans in this House and in the other body have seen.

I would hope that those of us who voted against an Energy Department and against an Education Department and I did, witness that President Reagan saw value in those two Cabinet offices and kept them on. He ran in 1980 saying he would disband them. He decided not to.

But I think certainly there were ways to have gotten around establishing those Cabinet positions and that veterans affairs and a veterans Cabinet officer is certainly as important as those two positions.

I would hope that we would have an overwhelmingly supportive vote for this. I understand and respect the arguments on the other side. But in a country that is now all-volunteer with almost 2 million men and an increasing number of women, dying at a rate higher than we lost in some of our early wars. We have lost 4,000 people dead in combat training since President Reagan took office. We lost 4,435 to establish this country over 200 years ago. It is a tough job those men and women have out there. When they become veterans they need a man or woman sitting on the President's Cabinet to represent their interests. God bless them and I thank them for all the excellent work that these gentlemen have done in putting this through.

Mr. BROOKS. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. Slattery].

Mr. SLATTERY. I thank the chairman for yielding.

Mr. Speaker, I rise in support of this legislation. As a member of the Committee on Veterans' Affairs who has been temporarily exiled to the Budget Committee, I would just observe that as far as I am concerned there is no reason why this department, as a secretarial-level department, should cost the taxpayers of this country any more than it currently does as an agency.

Let me just point out to my colleagues that when you look at the total budget of the Veterans' Administration today we are looking at something in the neighborhood of $27 billion. The size of this agency exceeds the budget of the State Department, the Interior Department, the Labor Department, the Commerce Department, the Education Department, the Transportation Department, the Energy Department, HUD, and Justice.

Now in addition to that, ladies and gentlemen, we have to realize that the Veterans' Administration today constitutes the largest health care delivery system in the world. It is employing 12,000 doctors and more than 30,000 nurses. And we all know that the cost of this program, and we all know that the number of veterans in this country that are going to be relying on this system, is dramatically increasing. The cost of meeting this health care is going to dramatically increase also.

As far as I am concerned, in the years ahead when we have to make the tough choices to get the budget deficit down, I want the Secretary of the Veterans' Administration sitting down at the Cabinet table with the President and the Secretaries of all these other agencies who are spending a lot less money to decide how it is as a nation we can spend the resources that we have in the years ahead.

So in closing, Mr. Speaker, I would just observe that there is no reason why this change should cost the taxpayers any money and I think that it is the kind of tribute that we should be giving to the veterans in this country.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

Mr. HORTON. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut [Mr. ROWLAND].

Mr. ROWLAND of Connecticut. Mr. Speaker, I think it is important to take a moment and reflect back on what has happened to the American veteran over the past 10 or 20 years. It is very unfortunate to note that the farther the American people and the farther we as a nation get away from conflict whether it is World War I, World War II, the Korean conflict or the Vietnam conflict, the easier it is for the American public to forget our commitment to our veterans. It is also unfortunate to note that this administration, and unfortunately many other administrations, has not been committed enough to our veterans and their benefits and programs. I can think of many instances over the last 4 years where our chairman, the gentleman from Mississippi [Mr. MONTGOMERY] and some members of the Committee on Veterans' Affairs had to work together to restore programs, to put money back in the budget, to maintain vital health care programs for our veterans.

Things have changed. Over 50 years ago in 1930 when the VA was started there were 4½ million veterans. Today, 1988, we have over 27 million veterans. One of the opponents of this proposal said, "What about our young people? What about the future?" Well, I would answer that by saying I am one of those young people, I am concerned about veterans. My colleagues, my friends and my peers are concerned about veterans.

We want to maintain that commitment. The time has come to stand up for a department with a $28 billion budget, a department that has the fifth largest budget in the entire Federal Government.

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Mr. Speaker, it is time that we have a representative in the White House, along with other Cabinet-level positions, to ensure that our Nation's veterans receive the quality care and assistance they deserve.

Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee [Mr. SUNDQUIST].

Mr. SUNDQUIST. Mr. Speaker, I rise in support of this legislation.

Mr. Speaker, I strongly support giving Cabinet-level status to the Veterans' Administration and urge my colleagues in this House to join me.

The freedoms we enjoy in this country, the right we have as free men and women to meet in this place and decide how our Nation ought to be governed. Those rights and freedoms have been purchased and guaranteed for us by those who have served in our Armed Forces.

We owe something to those men and women. Their concerns must be ours, and they must be heard at the highest levels of Government. The veterans deserve a place in the President's Cabinet.

Mr. ALEXANDER. I rise in support of this bill to raise veterans concerns and programs to Cabinet-level status.

American military veterans deserve to sit at the head table instead of the back row when budget and policy decisions are made. The interests, needs and problems of veterans should be of concern to all Americans.

By their service in our Nation's defense forces, these men and women have made great sacrifices to protect the freedom, security, and values of the United States.

More than 260,000 veterans live in Arkansas. Of these, more than 54,000 live in the district I have the honor of representing. Millions more live in other States across the Nation.

These veterans make important contributions to and enrich their communities, States, and the Nation as a whole.

Many of these veterans, and their organizations, have told me that this legislation is very important to them. I am proud to be a cosponsor of this bill.

Raising veterans affairs to Cabinet-level status will help focus attention on the Nation's debt to the men and women.

Doing this should help remind all Americans of the contributions our veterans have made and that members of our military services continue to make. The work they have done and do to ensure that all Americans live free and continue to enjoy the rights and privileges our Constitution has guaranteed us for 200 years.

I hope that this Congress will complete action on this bill that the President will promptly sign it into law.

Mr. LAGOMARSINO. Mr. Speaker, I rise today in strong support of the conference report on H.R. 3471, a bill to establish the Veterans' Administration as an executive department.

As a cosponsor of H.R. 3471, I feel there are a number of significant reasons why the Veterans' Administration should be elevated to Cabinet-level status. The VA serves almost one-third of the Nation's population through our veterans, their dependents, and survivors. It is second in size only to the Department of Defense in the number of personnel. There are over 244,000 people employed, making it larger than the Departments of State, Interior, Treasury, Commerce, Education, Energy, HUD, or Justice. The Veterans' Administration has one of the largest health care delivery systems in the free world, as well as one of the largest life insurance programs. Most of all, the Veterans' Administration represents the concerns and needs of the brave men and women who selflessly served our country, preserving our freedoms and our liberties.

With Veterans' Day just around the corner, and as the 100th Congress draws to a close, I feel there is no more fitting way to honor our veterans than to pass this important legislation and raise the Veterans' Administration to Cabinet-level status. I urge my colleagues to join me in strong support of H.R. 3471.

Mr. MATSUI. Mr. Speaker, today the Members of this body were given the opportunity to thank our veterans and accord upon them the respect and recognition which they so richly deserve. With today's vote in favor of establishing a Cabinet-level Department of Veterans' Affairs, we have ensured the right of all veterans to have a voice at the highest levels of government.

I do not feel there is enough we can do for the veterans of our great Nation. These courageous men and women have given to their country the very best gift they had to offer, themselves. By sacrificing their time, their skills, and too often, their lives, these individuals have made our Nation stronger and safer. We owe these citizens a great debt of gratitude. That our veterans before today did not have a representative who could express their views directly to the President is an insult to all those who have defended their country. That is why today's vote gives me such a particular sense of pride. The veterans of our country deserve the very best we as a nation have to give. With the passing of this legislation, we are on the road to doing just that.

Mr. Speaker, I want to commend the efforts of every Member of the House of Representatives who worked for the passage of this legislation. I also salute the labors of SONNY MONTGOMERY and GERALD SOLOMON; without their leadership and tireless energies this day would not have been possible. And finally, I would like to thank all of our Nation's veterans for their sacrifices, their pains, and their victories. Surely, without the courageous efforts of these brave Americans, our country would not be the great Nation that it is today.

Mr. BEILENSON. Mr. Speaker, I would like to express my strong opposition to elevating the Veterans' Administration [VA] to a Cabinet-level department.

Cabinet posts should be reserved for heads of departments who formulate policy in areas that need the President's attention. The VA is indeed a large and important agency, but its function is to administer benefits. As a Government entity, the VA does not have a role even remotely comparable to that of the State or Treasury Departments. Many of us believe that there are already too many Cabinet-level departments; adding another one that exists solely to serve one segment of our population only trivializes department status.

Furthermore, at a time when our Nation's financial predicament demands that we restrain the growth of the Federal Government, creating a new department for veterans—or for any interest group—is exactly what we should not be doing. By giving the veterans lobby more access to the President and thus strengthening their political hand, we will be helping them promote new benefits for veterans and reinforce resistance to reforms in existing programs that are needed to control Federal spending.

But the most troublesome aspect of creating a Federal department for veterans is that it opens the door to what will become politically irresistible demands for Cabinet-level status for other groups. Considering the political clout that older Americans have, how will we be able to turn down demands for a Department of Aging? Or, considering the current popularity of day care and other family issues, how will we be able to refuse a Department of Children? Every interest group will want its own Cabinet-level department to prove its importance. And, as that happens, the size and reach of the Federal Government will grow.

Mr. Speaker, we owe our deepest gratitude to the men and women who have defended our Nation, often at great personal sacrifice. But it's wrong to try to honor them by giving them their own Cabinet-level department, and it sets a bad precedent. I urge my colleagues to reject this legislation.

Mr. PORTER. Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON H.R. 4585, EDUCATION PRIORITIES FOR RESEARCH AND CONSTRUCTION

Mr. WILLIAMS submitted the following conference report and statement on the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991.

CONFERENCE REPORT (H. REPT. 100-1062)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 1 with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 1, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Education Priorities for Research and Construction".

TITLE I—TAFT INSTITUTE

And the Senate agree to same.

That the House recede from its disagreement to the amendment of the Senate numbered 2 with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 2, insert the following:

SEC. 101. TAFT INSTITUTE.

Section

And the Senate agree to same.

That the House recede from its disagreement to the amendment of the Senate numbered 3 with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 3, insert the following:

TITLE II—CONSTITUTIONAL BICENTENNIAL EDUCATION PROGRAM

SEC. 201. TEACHER TRAINING AMENDMENT.

Section 501(c)(1) of the Arts, Humanities, and Museums Amendments of the 1985 is amended—

(1) by striking out "$5,000,000 for each of the fiscal years 1987 and 1988," and inserting in lieu thereof "$8,000,000 for each of the fiscal years"; and

(2) by inserting before the period at the end thereof a comma and the following: "of which at least $3,000,000 in each fiscal year shall be reserved for elementary and secondary teacher training and retraining programs in history, geography, and other related disciplines in the social sciences and humanities designed to enhance understanding of the Constitution.

TITLE III—LIBRARY AND EDUCATION RESOURCE AUTHORIZATIONS

SEC. 301. WASHINGTON LIBRARY CONSORTIUM.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized to provide financial assistance, in accordance with the provisions of this section, to the Washington Library Consortium for the purpose of constructing and equipping a facility in Prince George's County, Maryland, that would link by computer eight university libraries (located at American University, Georgetown University, George Washington University, Catholic University, George Mason University, Gallaudet University, Marymount University, and the University of the District of Columbia) and provide central storage for the rare books of the participating institutions of higher education.

(b) APPLICATION.—No financial assistance may be made under this section unless an application is submitted to the Secretary of Education at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $7,500,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

(2) If funds are made available for this section from funds appropriated pursuant to title VII of the Higher Education Act of 1965, sections 701(b), 721(b), and 721(c) of such title shall not apply.

SEC. 302. VERMONT HIGHER EDUCATION COUNCIL.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized to provide financial assistance, in acordance with the provisions of this section, to the Vermont Higher Education Council located in Hyde Park, Vermont, for development activities for faculty at institutions of higher education which are members of the Vermont Higher Education Council designed to address and overcome professional isolation experienced by such faculty members.

(b) APPLICATION REQUIRED.—No financial asssistance may be made under this section unless an application is submitted to the Secretary of Education at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 303. HEALTH AND HUMAN RESOURCES CENTER AUTHORIZED.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized, in accordance with the provisions of this section, to provide financial assistance to Voorhees College, located in Denmark, South Carolina, to pay the cost of construction and related costs for a Health and Human Resources Center at Voorhees College.

(b) APPLICATION REQUIRED.—No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $4,500,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 304. UNIVERSITY OF MISSISSIPPI LAW LIBRARY.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized to provide financial assistance, in accordance with the provisions of this section, to the University of Mississippi Law School for the renovation and completion of the library facilities of the University of Mississippi Law School at Oxford, Mississippi.

(b) APPLICATION REQUIRED.—No financial assistance may be made under this section unless an application is submitted to the Archivist at such time, in such manner, and containing or accompanied by such information as the Archivist may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,200,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 305. INTERNATIONAL CENTER ON TRADE, DIPLOMACY, AND DEVELOPMENT.

(a) AUTHORIZATION OF FINANCIAL ASSISTANCE.—The Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to Saint Joseph's University located in Philadelphia, Pennsylvania, to pay the Federal share of the cost of construction and related costs for an international center on trade, diplomacy, and development—

(1) to be used as a national research and training resource in the areas of trade, finance, and international business and diplomacy development;

(2) to act as a forum for exchange of information among government leaders and policymakers; and

(3) to provide training to political and corporate participants in the conduct of international trade.

(b) LIMITATION.—No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated $5,000,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 306. LOYOLA MARYMOUNT UNIVERSITY.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized to provide financial assistance to the Loyola Marymount University of Los Angeles, California, to provide for the construction and operation of a center for international business studies to improve the effectiveness of education and training for international economic competitiveness.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $5,000,000 for fiscal year 1990 and such sums as may be necessary for fiscal year 1991 to carry out this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 307. SETON HALL UNIVERSITY LAW CENTER.

(a) AUTHORITY OF THE SECRETARY.—The Secretary of Education shall make such grants to establish a clinical law center at Seton Hall University in Newark, New Jersey in accordance with all of the terms, conditions, and requirements set forth for such a center in Public Law 99-88 (99 Stat. 305) and the Secretary of Education is authorized to receive, review, and certify for payment applications for such grants. Not more than $1,000,000 of such grants shall be devoted to facilities.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated sums as may be necessary not to exceed $5,000,000 to carry out the provisions of this section. Funds aprropriated pursuant to this subsection shall remain available until expended.

SEC. 308. MAUREEN AND MIKE MANSFIELD LIBRARY.

(a) AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.—The Secretary of Education is authorized to provide funds to the Maureen and Mike Mansfield Library at the University of Montana in order to enable that library to acquire and process library materials to bolster all areas of the library's collection. In addition, the Secretary is authorized to provide funds to initiate the Maureen and Mike Mansfield endowment at the Mansfield Library.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $400,000 to carry out the provisions of this subsection. Funds appropriated pursuant to this subsection shall remain available until expended.

SEC. 309. MAUREEN AND MIKE MANSFIED CENTER FOR INTERNATIONAL BUSINESS.

(a) GENERAL AUTHORITY.—The Secretary of Education shall use the funds appropriated by Public Law 100-346 for section 6261 of the Omnibus Trade and Competitiveness Act of 1988 to provide financial assistance to the Maureen and Mike Mansfied Center at the University of Montana, to establish and operate a center for international business under section 612 of the Higher Education Act of 1965.

(b) FUNDS TO REMAIN AVAILABLE.—Funds made available pursuant to subsection (a) shall remain available until expended.

SEC. 310. CLAUDE AND MILDRED PEPPER SCHOLARSHIP PROGRAM.

There are authorized to be appropriated $500,000 for fiscal year 1989 and such sums as may be necessary for fiscal years 1990 and 1991, for the Claude and Mildred Pepper Scholarship Program, to be administered by the Washington Workshops Foundation of the District of Columbia.

SEC. 311. BIOTECHNOLOGY AND BIOSCIENCE RESEARCH.

(a) AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.—The Secretary of Education is authorized, in accordance with the provisions of this section, to provide financial assistance to pay for the cost of construction and related costs for a Biotechnology Research Center serving the midwestern States and a bioscience research laboratory serving the pacific northwest. The purpose of such centers shall be to serve as catalysts for attracting research activity and industrial activity to those regions of the country.

(b) LOCATION OF CENTERS.—For the purposes of subsection (a)—

(1) the Biotechnology Research Center shall be located at the University of Kansas in Lawrence, Kansas, and

(2) the bioscience research laboratory shall be located at Montana State University in Bozeman, Montana.

(c) APPLICATION FOR ASSISTANCE.—No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompanied by such information as the Secretary of Education may reasonably require.

(d) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated—

(A) $6,500,000 for the biotechnology research center described in subsection (b)(1); and

(B) $5,000,000 for the bio-science research laboratory described in subsection (b)(2).

(2) Funds appropriated pursuant to this section shall remain available until expended.

SEC. 312. EDUCATIONAL TELECOMMUNICATIONS MODEL DEMONSTRATION NETWORK AUTHORIZED.

(a) ASSISTANCE AUTHORIZED.—The Secretary of Education is authorized, in accordance with the provisions of this section, to provide financial assistance to the Massachusetts Corporation for Educational Telecommunications located in Boston, Massachusetts, to pay part of the cost of the design of, construction of, and equipment for model educational telecommunications network and technology resource centers.

(b) APPLICATION.—No financial assistance may be made under this section unless an application is made to the Secretary, at such time, in such manner, and containing such information as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1989, such sums as may be necessary of fiscal year 1990 and fiscal year 1991, to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 313. ROCKY MOUNTAIN STATES PARTNERSHIP FOR EDUCATIONAL TELECOMMUNICATIONS.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized, in accordance with the provisions of this section, to provide financial assistance to the Rocky Mountain States Partnership for Educational Telecommunications, a Utah nonproft corporation, located in Salt Lake City, Utah, to pay the development costs of a distance-learning network to serve the State of Oregon, Colorado, Wyoming, Nevada, and Utah.

(b) APPLICATION REQUIRED.—No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated up to $3,500,000 to carry out the provisions of this section. Funds appropriated under this section shall remain available until expended.

SEC. 314. WESTERN STAR SCHOOLS PARTNERSHIP.

(a) GENERAL AUTHORITY.—The Secretary of Education is authorized, in accordance with the provisions of this section, to provide financial assistance to the Western Star Schools Partnership to pay the development costs of a distance-learning network to serve the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands. The grant recipient for the partnership shall be the Northwest Regional Educational Laboratory, an Oregon nonprofit organization located in Portland, Oregon.

(b) APPLICATION REQUIRED.—No financial assistance may be made under this section unless an application is made at such time, in such manner, and containing or accompained by such information, as the Secretary may reasonable require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated up to $3,500,000 to carry out the provisions of this section. Funds appropriated under this section shall remain available until expended.

TITLE IV—HIGHER EDUCATION PROVISIONS

SEC. 401. CRITICAL LANGUAGES AND AREA STUDIES.

Title VI of the Higher Education Act of 1965 is amended—

(1) by redesignating part C as part D;

(2) by redesignating section 621 and 622 as sections 631 and 632, respectively; and

(3) by inserting after part B the following:

"PART C—GRANTS TO CONSORTIA FOR CRITICAL LANGUAGES AND AREA STUDIES

"PROGRAM AUTHORIZED

"SEC. 621. (a) The Secretary is authorized, in accordance with the provisions of this part, to make grants to eligible consortiums to operate critical languages and area studies programs and develop, construct, and acquire educational equipment, materials and facilities, develop teacher training programs, texts curriculum and other activities designed to improve and expand the instruc-

tion of foreign languages at secondary and elementary schools across the Nation.

"(b) A demonstration grant made to an eligible critical languages and area studies partnership under this title may not exceed $10,000,000 in any single fiscal year.

ELIGIBLE CONSORTIUMS

"Sec. 622. (a) In order to be eligible for demonstration grants under this title, an eligible consortium shall consist of—

"(1) a not-for-profit corporation with extensive experience in administrating both cultural exchange programs and language and culture training programs in the United States and abroad; and

"(2) public or private (or both) secondary and elementary schools committed to providing quality language and area studies programs to their students and students in the surrounding area.

"(b) The Critical Language and Area Studies Consortium, Inc., shall receive funds sufficient to carry out the purpose of this part."

AUTHORIZATION OF APPROPRIATIONS

"Sec. 623. There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1990 and 1991 to carry out the purposes of this part.".

SEC. 402. WORK-STUDY REALLOTMENT.

Section 442(e)(2) of the Higher Education Act of 1965 is amended—

(1) by inserting "(A)" after "(2)";

(2) by striking "section 447(c)" in the last sentence and inserting "section 442(c)";

(3) by redesignating such last sentence as subparagraph (C); and

(4) by inserting before such subparagraph the following new subparagraph:

"(B) The Secretary shall reallot not to exceed 1 percent of the amount available pursuant to paragraph (1) to eligible institutions which participated in the program under this part in fiscal year 1985, and have since fiscal year 1985 required all full-time resident students, regardless of income or financial need, to participate in a student work program. For such eligible institutions, the reallotted award is the amount, if any, by which the amount computed under paragraph (2)(A) of subsection (c) exceeds the sum of the amount required to be allocated to such institution under subsections (a), (b), and (c).".

SEC. 403. CLARIFICATION OF ELIGIBILITY.

(a) Clarification of Eligibility.—(1) Kentucky Polytechnic Institute of Louisville, Kentucky (including any branch or extension thereof), is declared to be an eligible institution holding a valid program participation agreement for purposes of title IV of the Higher Education Act of 1965 and is declared to have been an eligible institution holding a valid program participation agreement continuously since August 29, 1984.

(2) The transfer of ownership of Kentucky Polytechnic Institute to Res-Care Development Company, Inc., effective December 31, 1986, is declared to have occurred in compliance with the Higher Education Act of 1965 and the regulations promulgated thereunder and to have no effect on the eligibility of Kentucky Polytechnic Institute (including any branch or extension thereof) to participate in the student financial assistance programs provided under title IV of the Higher Education Act of 1965 or the validity of Kentucky Polytechnic Institute's program participation agreement.

(b) Relief for Students.—For purposes of title IV of the Higher Education Act of 1965, each student in attendance at the Kentucky Polytechnic Institute of Louisville, Kentucky (including any branch or extension thereof), receiving a federally insured loan or Pell Grant for the academic years 1984-1985, 1985-1986, 1986-1987, or 1987-1988 pursuant to such title IV shall be deemed to be in attendance at an eligible institution holding a valid program participation agreement for that academic year.

And the Senate agree to the same.

William D. Ford,
Joseph M. Gaydos,
Pat Williams,
Major R. Owens,
Charles A. Hayes,
Carl C. Perkins,
James M. Jeffords,
Managers on the Part of the House.

Edward M. Kennedy,
Claiborne Pell,
Spark Matsunaga,
Barbara A. Mikulski,
Orrin G. Hatch,
Robert T. Stafford,
Strom Thurmond,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 4585 to extend the authorization of the Taft Institute, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate adopted the House bill H.R. 4585 with amendments on July 27, 1988.

The House disagreed with the Senate amendments and requested a conference on August 10, 1988.

The Senate insisted on its amendments and agreed to a request for a conference on September 7, 1988.

On October 4, the House and Senate conferees met and agreed to the following:

House Bill

The House Bill reauthorizes the Taft Institute through Fiscal Year 1991.

Senate Bill

The Senate Bill contains this provision and adds the following amendments:

Section 201. Authorize an additional $3 million for the Constitutional Bicentennial education program.

Section 301. Authorize $7.5 million for the Washington Library Consortium.

Section 302. Authorize $1 million for the Vermont Higher Education Council.

Section 303. Authorize $4.5 million for Voorhees College in Denmark, South Carolina.

Section 304. Authorize $2.2 million for the University of Mississippi Law School Library.

Section 401. Sense of the Senate on the need to restore the authorization of the Internal Revenue Service Tax Offset program for Student loans.

The House recedes to the Senate Bill as amended.

The Conferees agree to accept the following amendments in conference:

Section 305. Authorize $5,000,000 for the construction and related costs of an international center on trade, finance, and international business and diplomacy at St. Joseph's University in Philadelphia, Pennsylvania.

Section 306. Authorize $5,000,000 in Fiscal Year 1990 and such sums in Fiscal Year 1991 for construction and operation of the Center for International Business Studies at Loyola Marymount University in Los Angeles, California.

Section 307. Authorize $5,000,000 to establish a clinical law center at Seton Hall University in Newark, New Jersey.

Section 308. Authorize $400,000 for the purchase and processing of library materials and to initiate the Mike and Maureen Mansfield Endowment at the Mike and Maureen Mansfield Library at the University of Montana in Missoula, MT.

Section 309. Authorize $750,000 for the Maureen and Mike Mansfield Center for International Business, in Missoula, MT. These funds were provided in the Labor HHS appropriations conference report. This center is authorized generally under section 6261 of the Trade Bill.

Section 310. Authorize $500,000 for Fiscal Year 1989 and such sums in 1990 and 1991, for the Claude and Mildred Pepper Scholarship Program to be administered by the Washington Workshops Foundation in Washington, D.C.

Section 311. Authorize $6.5 million for a Biotechnology Research Center at the University of Kansas, Lawrence, KS and $5 million for a Bio-Science Research Laboratory at Montana State University, Bozeman, MT.

Section 312. Authorize $10 million for Fiscal Year 1989 and such sums in Fiscal Years 1990 and 1991 for the Massachusetts Corporation for Educational Telecommunications.

Section 313. Authorize $3.5 million for the Rocky Mountain States Partnership for Educational Telecommunications.

Section 314. $3.5 million for the Western Star Schools Partnership.

Section 401. Authorize the Secretary to make grants to consortium to operate critical language and area studies programs. This amendment has a such sums authorization for fiscal years 1990-91.

Section 402. Amend the college work study program to give priority for the first 25% of reallocated monies to institutions with community service-learning program next 1% of reallocated funds would go to institutions that require all students to work as a part of their general course requirements. Any remaining funds would be distributed according to current law.

Section 403. Clarify the eligibility of Kentucky Polytechnic Institute of Louisville, KY for the purposes of receiving Title IV aid since August 29, 1984. This amendment requires no authorization of appropriations, and has no cost.

The Conferees agree to eliminate from the bill the Sense of the Senate resolution regarding the Internal Revenue Service Tax Offset program.

William D. Ford,
Joseph M. Gaydos,
Pat Williams,
Major R. Owens,
Charles A. Hayes,
Carl C. Perkins,
James M. Jeffords,
Managers on the Part of the House.

Edward M. Kennedy,
Claiborne Pell,
Spark Matsunaga,
Barbara A. Mikulski,
Orrin G. Hatch,
Robert T. Stafford,
Strom Thurmond,
Managers on the Part of the Senate.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed on Tuesday, October 4, and Wednesday, October 5, 1988, in the order in which that motion was entertained.

Votes will be taken in the following order:

H.R. 5389, by the yeas and nays;

S.J. Res. 364, by the yeas and nays;

H. Res. 570, by the yeas and nays;

H. Con. Res. 371, by the yeas and nays;

H.R. 5420, by the yeas and nays;

S. Con. Res. 149, by the yeas and nays;

S. 2653, by the yeas and nays;

H.R. 4844, by the yeas and nays;

H.R. 3515, by the yeas and nays;

H.J. Res. 597, by the yeas and nays;

S. 2350, by the yeas and nays; and

H.R. 2953, by the yeas and nays.

The Chair will announce that pursuant to House Resolution 563 the list of suspensions scheduled to be debated today is available in the Cloakrooms for the information of the Members.

BANGLADESH DISASTER ASSISTANCE ACT OF 1988

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5389, as amended.

The Clerk read the title of the bill.

AUTHORIZING REDUCTION OF VOTING TIME ON SUCCEEDING VOTES TO 2 MINUTES

Mr. MURTHA. Mr. Speaker, I ask unanimous consent that after the first 15-minute vote, the succeeding votes, for today only, be reduced to 2 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. The Chair will announce that 2 bells will be rung to indicate the 2-minute vote after the first 15-minute vote.

The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and pass the bill, H.R. 5389, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there was—yeas 417, nays 0, not voting 14, as follows:

[Roll No. 430]

YEAS—417

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—0

NOT VOTING—14

Boulter
Chapman
Dowdy
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Skaggs
Taylor

□ 1236

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MURTHA). Pursuant to the unanimous-consent request earlier today, the Chair announces he will reduce to a minimum of 2 minutes the period of time within which a vote by electronic device may be taken on the remaining 11 motions to suspend the rules.

NATIONAL PARALYSIS AWARENESS WEEK

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate joint resolution (S.J. Res. 364).

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. DYMALLY] that the House suspend the rules and pass the Senate joint resolution (S.J. Res. 364) on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 413, nays 1, not voting 17, as follows:

[Roll No. 431]

YEAS—413

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—1

Barton

NOT VOTING—17

Boulter
Chapman
Dowdy
Gray (IL)
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Savage
Solarz
Swindall
Taylor

□ 1243

Mr. PASHAYAN changed his vote from "no" to "yes."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONGRATULATING UNITED NATIONS PEACEKEEPING FORCES FOR BEING AWARDED 1988 NOBEL PEACE PRIZE

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the resolution (H. Res. 570).

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and agree to the resolution (H. Res. 570) on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 406, nays 0, answered "present" 7, not voting 18, as follows:

[Roll No. 432]

YEAS—406

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lipinski
Lloyd
Lowery (CA)
Lowry (WA)
Luken, Thomas
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)

Mineta
Moakley
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

ANSWERED "PRESENT"—7

Burton
Hyde
Lightfoot
Livingston
Lujan
Smith, Denny (OR)
Walker

NOT VOTING—18

Boulter
Chapman
Coughlin
Dowdy
Gray (IL)
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Lukens, Donald
Mack
MacKay
Molinari
Ray
Taylor

□ 1247

Mr. SKEEN changed his vote from "nay" to "yea."

Mr. LUJAN changed his vote from "yea" to "present."

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONCERNING UNITED STATES RESPONSE TO ATROCITIES REPORTEDLY CARRIED OUT IN BURUNDI

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution House Concurrent Resolution 371, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and agree to the concurrent resolution (H. Con. Res. 371), as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 415, nays 0, not voting 16, as follows:

[Roll No. 433]

YEAS—415

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NOT VOTING—16

Boulter
Chapman
Coyne
Derrick
Dowdy
Frank
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Taylor

□ 1251

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING LEASE OF A SPECIFIED NAVAL REPAIR SHIP TO THE GOVERNMENT OF PAKISTAN

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5420, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. Fascell] that the House suspend the rules and pass the bill, H.R. 5420, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were —yeas 415, nays 0, not voting 16, as follows:

[Roll No. 434]

YEAS—415

Ackerman
Akaka
Alexander
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NOT VOTING—16

Anderson
Boulter
Chapman
Dowdy
Ford (MI)
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Tallon
Taylor

□ 1254

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "An act to authorize the lease of a specified naval repair ship to the Government of Pakistan and the transfer of a specified floating drydock and a medium yard tug to the Republican of the Philippines." A motion to reconsider was laid on the table.

SENSE OF CONGRESS WITH RESPECT TO RESTORATION OF DEMOCRACY IN HAITI AND CONDITIONS FOR RESUMPTION OF ASSISTANCE TO THAT COUNTRY

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and concurring in the Senate concurrent resolution (S. Con. Res. 149).

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. Fascell] that the House suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 149) on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 415, nays 0, not voting 16, as follows:

[Roll No. 435]

YEAS—415

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger

Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—0

NOT VOTING—16

Boulter
Chapman
Dowdy
Edwards (CA)
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
McDade
Rangel
Taylor

□ 1257

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1300

ESTABLISHING NATIONAL COMMISSION ON THE THRIFT INDUSTRY

The SPEAKER pro tempore (Mr. MURTHA). The unfinished business is the question of suspending the rules and passing the Senate bill, S. 2653, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the Senate bill, S. 2653, as amended, on which the yeas and nays are ordered.

This is a 2-minute vote.

The vote was taken by electronic device, and there were—yeas 395, nays 21, not voting 15, as follows:

[Roll No. 436]

YEAS—395

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (OR)
Snowe
Solarz
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)

NAYS—21

Burton
Bustamante
Craig
Crane
DeLay
Dreier
Frank
Glickman
Nielson
Perkins
Petri
Sensenbrenner
Slattery
Smith, Robert (NH)
Solomon
Stump
Vento
Visclosky
Walker
Weber
Young (AK)

NOT VOTING—15

Boulter
Chapman
Dowdy
Goodling
Gregg
Guarini
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Taylor

□ 1302

Mr. DREIER of California changed his vote from "yea" to "nay."

Mr. COBLE and Mr. McEWEN changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the Senate bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FEDERAL AVIATION ADMINISTRATION DRUG ENFORCEMENT ASSISTANCE ACT OF 1988

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4844, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. ANDERSON] that the House suspend the rules and pass the bill, H.R. 4844, as amended, on which the yeas and nays are ordered.

This is a 2-minute vote.

The vote was taken by electronic device, and there were—yeas 413, nays 1, not voting 17, as follows:

[Roll No. 437]

YEAS—413

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Baker
Ballenger
Barnard
Bartlett
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—1

Badham

NOT VOTING—17

Barton
Bentley
Boulter
Chapman
Dowdy
Goodling
Gregg
Hammerschmidt
Jacobs
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Taylor

□ 1305

Mrs. SMITH of Nebraska and Mr. RAY changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BADHAM. Mr. Speaker, on the rollcall on H.R. 4844, the FAA Drug Enforcement Assistance Act of 1988, I inadvertently voted "no." I was unable to change my vote "aye." Had I been able to change my vote, I would have voted "aye.'

MEDICAL WASTE TRACKING ACT OF 1988

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3515, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. THOMAS A. LUKEN] that the House suspend the rules and pass the bill, H.R. 3515, as amended, on which the yeas and nays are ordered.

This is a 2-minute vote.

The vote was taken by electronic device, and there were—yeas 390, nays 28, not voting 13, as follows:

[Roll No. 438]

YEAS—390

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Barton
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers

Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crockett
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
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Smith, Robert (OR)
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Chapman
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Hammerschmidt
Jones (TN)
Kemp
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Messrs. ORTIZ, McMILLAN of North Carolina, and CHAPPELL changed their vote from "yea" to "nay."

Mr. KASICH changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

HOUSE JOINT RESOLUTION 597, THE PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

Mr. DE LUGO. Mr. Speaker, House Joint Resolution 597 would authorize the President to put a compact of free association with the Pacific Trust Territory Islands of Palau into effect subject to a number of conditions.

The President would be able to exercise this authority after: First, the compact is approved by the people of Palau; and second, several additional agreements have been entered into. Primarily, these agreements would provide Palau with assistance that it needs and that its leaders have requested to tackle serious problems.

This legislation is fully supported by the administration; but it is not the resolution initially requested by the President.

Although the Senate and the Committee on Foreign Affairs approved resolutions very similar to the one proposed by the President, 64 Members of both parties joined me in sponsoring House Joint Resolution 597 as an alternative.

Over the past year and a half, an intensive investigation of problems faced by Palau has been conducted by the Subcommittee on Insular and International Affairs, which I am privileged to chair. This investigation has convinced us that the compact should—and can—only take effect if the conditions specified in this legislation are met.

This is also the view of Palau's leaders. They have united for the first time in favor of the compact if it is approved by the United States subject to the fundamental provisions of this legislation.

The United States has already enacted two laws supporting the compact as negotiated. Palauans have, however, failed to approve it in six referenda in spite of these inducements to them to approve it.

Palau's leaders believe that the only real chance of their people approving the compact is if it is approved by this legislation. This is because the provisions of this resolution address reasons why Palau's people have failed to approve the compact in the past.

This new unity in Palau on the compact may not be able to survive very long. It may break apart for political or other reasons and opposition to the compact may block approval again if the United States does not take advantage of Palau's clear support of this resolution now.

It is noteworthy that the strongest supporters of this resolution in Palau include leaders who were compact critics as well as those who were compact supporters in the past. Now, longtime compact supporters are among those most vocal in saying that they could not support the compact again without the provisions of this legislation. And certainly, former critics of the compact would not support the compact later without the effective changes to it that this resolution would make.

This may be difficult for the negotiators of the compact to accept as is but it is fact.

In addition, our consciences will only let us support compact legislation that includes the fundamental provisions of this resolution. This is because it would address responsibilities ignored for too long. It would take actions that must be taken, given what we know about problems in Palau.

Because of these realities, the administration—and bipartisan leaders of the Foreign Affairs Committee—agreed to support House Joint Resolution 597 with minor modifications that we have made.

We hope that the Members will recognize that this resolution offers the only real chance of getting the Palau compact into effect and that the need for its provisions is undeniable.

We also hope that they will understand that, although the effective changes to the compact that this resolution would bring about are essential, they are also relatively minor when put into the perspective of the importance of this legislation.

We hope further that they will not be misled into believing that these provisions are the result of a self-serving scheme by Palauans to force the United States to better the deal agreed to previously. Neither should they think that this is a reckless plan to try to buy the approval that has eluded the compact in the past.

Others and I have proposed these provisions in a genuine effort to meet basic unmet United States responsibilities in Palau. We have proposed them, it is the right thing to do.

Finally, we hope that Members will agree that the differences between the free association that this legislation would make possible with Palau and the free association established with the Federated States of Micronesia and the Marshall Islands are insignificant—but warranted.

If this last best hope of Palau's approval of the compact is somehow frustrated, a wiser approach than to approve the compact as negotiated would be for new administrations and Congresses in both the United States and Palau to reconsider Palau's political development next year. This is because the compromises made thus far in modifying the fundamental provisions of House Joint Resolution 597 are as extensive as can be responsibly made.

A number of the resolution's sponsors and I will not be able to compromise away the fundamental provisions of this legislation simply for the sake of reaching a final agreement on the legislation. It would be better to have no legislation at all than legislation that would effectively doom the compact and would not provide the essential assistance this resolution would provide.

There are two issues that some may want to raise about this legislation.

GUARANTEE OF ASSISTANCE

One issue is whether the additional financial assistance that this legislation would provide Palau should be provided on the same basis as almost all of the other financial assistance the compact would provide: that is whether the additional assistance should be provided on a guaranteed basis or not.

The sponsors of this legislation and Palau's united leadership compromised on this point by reducing the initially proposed guarantee of about $30 million to just over $9 million. But we also agreed with Palau's leaders: It would be better to forget this legislation—and the compact itself—than to reduce this commitment further.

The needs this assistance would address are undeniable:

A new hospital in the only one of the original six districts of the trust territory without a decent medical facility;

Prevention and treatment of narcotics and other substance abuse in islands where heroin, unknown 6 years ago, has been used by a percentage of the population several times the rate of usage in the United States;

Attacking public corruption that is so serious that Palau's first President may have been assassinated and Palau's second President may have committed suicide because of it;

A way out of a debt for power facilities so onerous that it threatens the quality of life of every man, woman, and child for as long as anyone can imagine; and

Replacement of prison facilities that can best be described as inhuman.

I know that the Senators interested in this bill are sensitive to these problems. One proposed about the same amount of help for Palau to get a decent hospital a couple of years ago as would be provided by this legislation. Another proposed the help that might have prevented the overwhelming power facilities debt from being incurred if had been approved by the Senate Appropriations Committee before—rather than after—Palau incurred the debt.

I agree that it would be preferable if the assistance in this bill were provided through other legislation. Unfortunately, it has not been.

Suggesting a willingness to provide this assistance through other legislation but does not through this resolution sounds disingenuous to Palauans. Having waited too long for this assistance already, they will not accept such excuses. They should not have to.

They have been disappointed too often in the past. As important as the compact is, they would rather wait until this essential assistance is provided to approve the compact rather than to approve it and take the chance that someone's promise of this assistance being provided later will materialize.

POWERPLANT DEBT

The other issue is whether the United States should adjust the flow of compact funds to help Palau with its crippling power facilities debt. This debt is approximately $46 million at present—about double Palau's annual budget. It is increasing with each passing day.

Palau's late President and the resolutions approved by the Senate and the Foreign Affairs Committee would have let Palau pay this debt off using some $56.3 million in compact funds. Those resolutions provided Palau with no special help to pay the debt. House Joint Resolution 597 would enable Palau to pay the debt off using only $32 million in compact funds. This resolution would make a savings of over $24 million possible by accelerating the payment to Palau of compact funds for energy development.

There are several reasons why the United States should help Palau to pay off this debt.

One reason is need. Unless the United States helps Palau with this problem, a substantial amount of all of the compact assistance Palau can expect to receive from the United States for the next 15 years may have to go to pay off this debt. This would result in financial disaster for Palau and probably contribute to instability there.

It had been proposed that the legislation should simply provide for the capital projects and energy development funds Palau would receive under the compact to be used to pay this debt. The practical consequence of this proposal is that Palau would have to use most of its capital projects and the energy development funds to pay off the debt. Palau would be left with little for other priority needs.

I am aware that there is a theory that these funds would be protected because of two provisions in the proposal. One would provide that the funds may only be spent pursuant to the islands' development plan. The other would require local government approval for spending these funds. But this protection would not be effective in a real world situation.

Palau's creditors could probably force Palau to pay what they demanded by seeking to attach any assets or interfering with any financial transactions outside of the islands. Palau could be forced to accede to creditor demands.

Another reason that the United States has an obligation to help Palau with this debt is that it was incurred in part because of a failure of the United States to meet its trusteeship responsibilities.

Palau entered into the debt in 1983. This was 36 years after the trusteeship began; but Palauans still had no reliable source of power. After years of vain efforts to convince the United States to help them develop an adequate source of electricity, Palauans fell victim to an offer that sounded too good to be true * * * and was.

It is true that Congress appropriated $4.5 million for power facilities for Palau the same year. But the appropriations—dwarfed in amount beside the $27.5 million principal of the amount loaned—was only reported by the Senate Appropriations Committee after the power facilities deal had been signed.

Yet another reason that the United States has an obligation to help Palau with this debt is that the actions of some Federal officials made it possible. The U.S. compact negotiator sent a cable which assured the banks which guaranteed the debt that it could be paid with compact funds that are even now still unappropriated. It is clear that this assurance approved by the Interior Department Assistant Secretary responsible for the insular areas, made the deal possible.

These and other actions were taken in spite of the clear warning of other Interior Department officials that the facilities would not pay for themselves, as promised by the project's promoter.

A further reason that the United States has an obligation to help Palau with this debt is that it was incurred under highly questionable circumstances at a time when the United States was fully responsible for the actions of Palau's government.

Preliminary General Accounting Office estimates are that the facilities are worth less than the $27.5 million principal cost. The GAO has also identified about $1 million in payments to individuals by the contractor from the funds that Palau borrowed to pay for the facilities. [GAO] has found no justification for these payments. Two hundred thousand dollars was paid to the late President of Palau, Lazarus Salii, a key figure in arranging the deal while he was Palau's compact and trade negotiator, he obtained the pledge from the United States compact negotiator, Ambassador Fred Zeder, to the guarantor banks that compact funds could be used to pay for the facilities.

Salii did this after meeting with the banks that knew the facilities would not pay for themselves. He did this without telling Palau's Congress that they had been misled by the promoters of the facilities into believing that the project would be self-financing.

Salii's brother, who was the speaker of the Palau House of Delegates at the time and was also a key figure in the deal, was paid $250,000.

Salii's deputy compact negotiator was paid $175,000.

A close political ally was paid $50,000.

The list of identified payments goes on. It includes questionable payments to and for and contracts with former Federal officials. There are also hundreds of thousands of dollars of unidentified payments.

The Interior Department cannot be blamed for the payments, of course, even though it must bear much of the blame for this deal because of its failure to act and exercise any responsibility in Palau.

The Interior Department cannot, however, be excused from failing to develop adequate power facilities or excused from failing to even look into the payments.

Reports of the payments were first published by the San Jose Mercury-News and have been carried by newspapers around the world. Chairman UDALL and I furnished details about them to administration officials and to Members same time ago.

A final reason why the United States should help Palau to pay its power facilities debt is that a solution to this problem is essential for getting the compact into effect. Palauans know that they will not be able to survive economically if the negotiated compact funding is open to being taken to pay the debt.

Palau's leaders have been united in believing that the compact should not come into effect if the negotiated flow of compact funds unprotected from the debt. They have objected from the start to the proposal that would leave substantial amounts of compact funds vulnerable to attachment to pay the debt.

The only official who ever really took the opposite position was the late President of Palau, who was implicated in the questionable purchase of the power facilities and was prepared to agree to pay the banks an estimated $56.3 million.

Legislation that does not protect compact funding from the debt *or* that does not provide for a manageable solution to the debt will stand little chance of leading to a compact. Palauans would probably fail to approve the compact a seventh time if it were to be implemented under such legislation * * * if they even bothered to vote on it at all.

PALAU IS UNIQUE

Palau separated from the other parts of Micronesia because it wanted to govern itself and wanted its own relationship with the United States. Its needs are uniquely its own. It should not now be bound by someone's idea of model "free association."

When the compact with the Federated States and the Marshalls was approved, Members of the Committee on Interior and Insular Affairs insisted upon adding provisions intended to address the unique needs of those states. The law made substantial additions to the negotiated compact for those islands. Some provisions of the relationship even differed between the Federated States and the Marshalls, because of the unique needs for each of them.

It has always been the practice—and it makes sense—in legislating insular political development to act on the individual situation of the specific insular area involved. The Federal Government has a slightly different relationship with each of the three U.S. territories and both of the two U.S. commonwealths, for example.

This flexible approach to individual circumstances should also apply to the new relationships of free association being created with the Federated States, the Marshalls, and Palau.

I do not say this to suggest that the free association with Palau that this resolution would make possible varies in any noteworthy sense from the free association established with the Federated States and the Marshalls. Instead, I say it to explain that we should not be bound in approving a compact with Palau by every detail of the compact with other former entities of the Trust Territory of the Pacific Islands.

AGREEMENT

The relatively slight—but essential—additions to the Palau compact in this resolution do not bother the other Micronesian States. Some of their leaders support this legislation * * * if only for the purpose of finally resolving the status of the trust territory. They are no more jealous of what this resolution would provide Palau for its unique needs than Palau is of the assistance the other states were granted for their unique needs.

The Association of Pacific Island Legislatures has endorsed this resolution. Legislators from throughout the Pacific have said it addresses needs that are apparent in Palau.

STATESMEN

Fortunately, leaders of the other body on this issue in the past, been that Chamber's best friends of Palau and the other insular areas. Senate Committee on Energy and Natural Resources Chairman J. BENNETT JOHNSTON, JR., and ranking Republican JAMES McCLURE are legislators of great wisdom as well as special dedication to the powerless peoples of our Caribbean and Pacific islands.

I am confident that they, along with other leaders on insular issues, such as Senator DANIEL INOUYE, will appreciate the greater good of agreeing to the compromises so painstakingly worked out on this legislation with consideration of views expressed by their staff.

Their statesmanship on this legislation should be added to that of administration officials like Under Secretary of State Edward Derwinski, Deputy Secretary John Whitehead, and Secretary of the Interior Donald Paul Hodel. The courageous and good judgment of these administration policymakers in revising previous administration positions should make approval of the Palau compact a real possibility at last.

Members of the Foreign Affairs Committee have also been statesmen on this issue. The effort and flexibility of Chairman DANTE FASCELL, ranking Republican BILL BROOMFIELD, subcommittee chairman STEVE SOLARZ, subcommittee ranking Republican JIM LEACH, and Representative DOUG BEREUTER, for example, have made substantial contributions to this legislation.

Members of the Interior and Insular Affairs Committee minority, particularly ranking Republican DON YOUNG, Insular and International Affairs Subcommittee ranking Republican BOB LAGOMARSINO, and Delegate BEN BLAZ of Palau's neighboring island of Guam, have also played key roles.

No one, though, has been of greater help to me in developing this legislation than Interior and Insular Affairs Committee Chairman MO UDALL. His courageous dedication to issues related to Palau has only been approached by the support of ranking Democrat GEORGE MILLER. Also of great help has been our colleague SAM GEJDENSON.

Thanks also are due our former colleague, John Seiberling. As my predecessor chairman of the subcomittee with jurisdiction over Palau, he was responsible for guiding the 1986 Palau Compact legislation through Congress. Since then, he has provided us with advice and assistance on this lelgislatio.

The cooperation I have gotten from other members of the Insular and International Affairs Subcommittee, particularly in dedicating almost all of the subcommittee's efforts for over a year now to the substantial challenges of Palau, has also made a noteworthy contribution to this legislation. Congressman JAMES CLARKE, JOHN LEWIS, BRUCE VENTO, BUDDY DARDEN, JAIME FUSTER, and our former colleague, Fofo Sunia, have been very helpful.

The leadership on this resolution of its other cosponsors has also been important.

I want to recognize the contributions of Representatives DANNY AKAKA, DOUG BARNARD, CHARLES BENNETT, HOWARD BERMAN, SHERWOOD BOEHLERT, DAVE BONIOR, DOUG BOSCO, GEORGE BROWN, ALBERT BUSTAMANTE, CARDISS COLLINS, JOHN CONYERS, LARRY CRAIG, PETER DeFAZIO, RON DELLUMS, BUTLER DERRICK, NORM DICKS, JULIAN DIXON, BYRON DORGAN, DON EDWARDS, MIKE ESPY, VIC FAZIO, BILL FORD, HENRY GONZALEZ, KEN GRAY, BILL GRAY, CHARLES HAYES, MARCY KAPTUR, BOB KASTENMEIER, DALE KILDEE, RICK LEHMAN, MICKEY LELAND, MEL LEVINE, MANNY LUJAN, BOB MATSUI, JOE McDADE, MATT McHUGH, BOB MRAZEK, AUSTIN MURPHY, MARY ROSE OAKAR, MAJOR OWENS, WAYNE OWENS, CHIP PASHAYAN, NANCY PELOSI, BILL RICHARDSON, MARTY SABO, TOM SAWYER, GERRY SIKORSKI, AL SWIFT, ESTEBAN TORRES, BOB TRAXLER, PETER VISCLOSKY, and BARBARA VUCANOVICH, as well as our former colleague, MARIO BIAGGI.

KEY STAFF

No legislative undertaking of this sort can be accomplished without good staff work. And I have had the best. The dedication and caring of the staff, both majority and minority, who have put nearly 2 years of work into this delicate issue, reflect the exceptional commitment that we had come to expect in Congress. I want to thank all of them.

I want to particularly commend Jeffrey Farrow, my subcommittee staff director, for his expansive knowledge of territorial affairs and his understanding of the intricate, many sided negotiations that brought this legislation to fruition. Jeff worked day and night on this, whether it was weekday, weekend or holiday. We were in constant communication and I relied on him to explore every nuance of the issue. Jeff never faltered. Despite the ups and down, Jeff's commitment was always total.

Gail Mukaihata of my subcommittee staff put in exceptionally long hours on this subject, traveled to Palau to represent the committee during the difficult days following the death of the late President of Palau, and earned the admiration of all the people of Palau. Pat Krause made invaluable contributions, offering her first-hand understanding of recent events throughout the Pacific and the inspiration of her love for all the people of that region. Norma Gilbert and Alison Hightower also provided their reliable assistance in our effort.

I also want to thank Roy Jones for his concern and wisdom on this matter; Lee McElvain, whom I turned to time and again for valuable legal and procedural advice; and the other staff members of the committee who spent countless hours working behind the scene—in particular, Linda Stevens.

Dan Beard, staff director of the Subcommittee on Water Resources, and Stan Sloss, of the Subcommittee on National Parks also helped us all the way.

Just as the members worked in a bipartisan spirit on this matter, all the committee staff dedicated themselves to its success. I want to commend Rick Agnew and Dan Kish, from the minority side, for their solid support. They were with us all the way. Manase Mansur of the Subcommittee also made important contributions to the process.

Tom Dunmire, that dedicated veteran of the Pacific, also deserves special mention here. Tom disrupted his well-earned travels in order to lend a hand in a tense period when Palau was in turmoil and I needed him to go there to represent the subcommittee. He not only went, but also stayed on, offering wise advice and gaining the confidence of everyone in Palau to help avert a crisis. He went to Palau twice for the committee and counseled us in Washington as well.

Without all these staff members, and their unquestioned dedication to the good of Palau and the good of their country, we could not have reached this point today.

PHIL BURTON

Finally, I want to thank the vivid memory of my good friend, our late colleague, Phil Burton, who is looking on us and smiling today. I can quite truthfully tell you that if I had not studied the legislative process under Phil Burton, I would not have been able to pull it off.

PALAU'S LEADERS

No one will be more responsible than several leaders of Palau if this legislation enables problems worsened by years of United States neglect to be addressed. Chief among these leaders are the president of the senate, Joshua Koshiba, and the speaker of the house of delegates, Santos Olikong. They have shown unequaled courage, dedication, integrity, and judgment in fighting for interests of their people.

Palau's new President, Thomas Remengesau, has provided a great service to his people by his courageous support of this legislation. With the assistance of his able chief of staff, Noriwo Ubedei, he has restored confidence in Palau's government.

Leaders of Palau's judicial branch, including Supreme Court Chief Justice Memoru Nakamura and Associate Justice Robert Hefner, have made major contributions to Palau's political development by their courage and wise handling of compact litigation.

And then there were the other members of the Palau Congress who came to Washington in September as a unified delegation to work out this compromise. This included, from the house of delegates, Vice Speaker Shiro Kyota; and Delegates Laurentino Ulechong; Ignacio Anastacio; Takeshi Kintol; Thomas Patris; and Mariano Carlos; and from the Senate, Vice President Haruo Esang, and Senators Lucius Malsol, and Tommy Remengesau, Jr.

AUTHORITY IN PALAU

Our Nation got its first authority in Palau in some of the bloodiest battles of World War Two. The United States has been fully responsible for the islands since it entered into an agreement with the United Nations Security Council in 1947 for the trusteeship administration of the former Japanese-administered islands of Micronesia.

The trusteeship agreement gave the United States full powers in the Trust Territory of the Pacific Islands in an arrangement approved by the joint resolution on July 18, 1947.

This responsibility was delegated to the President by the act of June 30, 1954. Pursuant to law, it is redelegated by executive order to the Secretary of the Interior.

The Secretary has authorized a locally determined government of Palau to exercise the authority vested in the Department of the Interior. Of course, this delegation has not absolved the Department of its full responsibility for the governing of Palau.

Palau's government was established according to a constitution approved in 1980. The intent at that time was that Palau would exercise powers of local self-government with the Interior Department continuing to exercise national responsibilities.

This intent changed within a couple of years. A desire to save money and avoid difficult situations, as well as a misplaced confidence that the compact was always just about to come into effect, led to an abdication of the exercise of Federal responsibilities in Palau.

Oversight of Palau became so lax that the Interior Department did not even keep one person there. When the subcommittee began its investigation, the Interior officials specifically responsible for Palau didn't even know what was going on in the islands.

A number of the most serious problems now faced by Palau resulted from this neglect. The problems require that the United States take the actions that this resolution would require so that our Nation's long-ignored trusteeship obligations can be met.

THE PALAU COMPACT

The compact itself would provide Palau with self-governing authority in all matters other than those affecting security. The United States would retain full military rights in Palau.

U.S. rights include the authority to deny military access to any other country in perpetuity. They also include the requirement that Palau make land designated by the U.S. available for military bases for 50 years.

These base rights figure into almost any scenario for alternatives to our important bases in the Philippines, which are just 500 miles from Palau. In combination with bases in Guam and base rights in the Northern Mariana Islands, these rights are a factor in the current negotiations with the Philippines for further use of the Philippine bases.

The compact would also provide Palau with substantial assistance over 15 years. A State Department estimate of the current value of the financial assistance is $460 million adjusted for inflation. This does not include the value of Federal programs and technical assistance which will be provided.

Another benefit of the compact is that it will grant the 15,000 Palauans the right to enter and work in the United States.

OTHER AREAS

Palau is the only part of the Trust Territory of the Pacific Islands which has not determined its future political status. The Northern Mariana Islands entered into a commonwealth union with the United States through a covenant approved by Public Law 94-241. A compact to establish free association between the United States and the Federated States of Micronesia and the Marshall Islands was approved by Public Law 99-239.

TRUSTEESHIP TERMINATION

Implementation of this compact will, therefore, enable the trusteeship agreement to be finally terminated.

Termination will also mean the end of the U.N. trusteeship system since this is the last trusteeship of the 11 that the United Nations established.

U.S. INTERESTS

U.S. interests in the compact are substantial and should be clear from what I have just outlined. The interests of the three principal agencies involved are, in sum, as follows:

Defense Department interests relate to Palau's potential role in a fallback position from the Philippines and assuring U.S. military control over a substantial expense of the western Pacific.

State Department interests include ending the embarrassment of the United States being the last trust territory administrator and obtaining international approval of the termination of the trusteeship for all of the territory.

Interior Department interests involve relief from the discomfort of still being fully legally responsible for a Palau that it stopped guiding several years ago and a Palau that has developed very serious problems during these years.

THIRD COMPACT LAW

If this resolution is enacted, it will be the third law regarding the compact.

The first passed at the end of 1985 was an "approval in principle" of the compact. It was added to the resolution which approved the compact with the Federated States of Micronesia and the Marshall Islands.

Public Law 99-239 approved the compact with the Federated States and the Marshalls because those parts of the trust territory had approved the compact. That law wasn't a real approval of the compact with Palau because Palau hadn't approved the compact—despite two public votes on it.

These votes resulted in majority support for the compact but did not approve it by the 75 percent majority required by Palau's constitution. The constitution requires 75 percent approval because the compact would grant the United States nuclear rights the constitution otherwise prohibits.

Members of the Interior and Insular Affairs Committee were concerned in 1985 that the approval in principle might be mischievous, particularly since the issues had not been thoroughly reviewed. But we agreed to it with the administration, the Senate, and the Foreign Affairs Committee to show our willingness for the United States to enter into free association with Palau.

In early 1986, the President asked Congress for a real approval of the compact with Palau asserting that a third public vote had approved it. The compact had not received 75 percent support; but the administration claimed that a slight rewording of the United States nuclear rights in the compact avoided the 75 percent approval requirement.

The Senate and the Foreign Affairs Committee agreed to the President's request. But members of our committee doubted that the President was right about Palau's approval.

Our doubts were proven well-placed by a ruling of Palau's Supreme Court. It held that Palau had not approved the compact.

PALAU DIDN'T APPROVE

Well, Palau didn't approve the compact in the fourth public vote on it. But the administration declined to follow Chairman UDALL's advice and try to resolve the problems which had prevented Palau's approval.

I led a visit to Palau shortly after the fourth vote in Palau on the compact. I said then that if Palau approved the compact in a fifth public vote, the subcommittee would address the problems which had prevented approval afterwards.

I said that we would consider these problems after approval because of the administration's opposition to doing so beforehand and because of the plans for a fifth vote.

HEARING

That fifth public vote didn't result in Palau's approval. So, the subcommittee conducted a hearing in July of last year to see what plans there were for further consideratiion of the compact and addressing Palau's problems.

There was a lot said in that hearing about Palau's problems by Compact critics, including Palauan House Speaker Olikong. Because of assurances by both United States and Palauan administration officials that the charges were groundless and politically motivated, we really didn't believe most of what we were told, however. But we did promise to look into the allegations of corruption, drug trafficking, and political intimidation.

Palau's serious needs became clear at the time of that hearing, though. Two-thirds of the Government work force had been laid off, meals at the hospital were canceled, and power and water service had been curtailed by then President Salii.

Amazingly, the Interior Department had no plans to deal with the problems. Officials made it clear at the hearing that they didn't intend to develop any either. Even worse, officials didn't even really know what the problems were.

The reason for the cutbacks was supposedly a lack of funds. Lack of money was a problem; but Salii also wanted to make clear to his people that the compact would be the solution to Palau's continuing financial problems.

An originator of the free association concept, he hoped that the crisis would justify a controversial move to amend Palau's constitution to eliminate the 75 percent approval requirement.

Substantial—and we know now illegal—pressure was used to get the constitutional amendment referendum scheduled.

A committee of furloughed workers, including persons close to Salii, was formed to campaign for approval of the compact in a sixth referendum.

They led a march of 500 persons on the Congress of Palau and established a round-the-clock encampment, with 150–200 persons present at all times.

"Anticompact legislators were intimidated into supporting legislation to call the referendum." There were a number of incidents before the legislation was approved.

The furloughed workers' committee wrote leaders of States which had not supported the compact saying that measures would be taken to phase the States out of legal existence and urge that funding be cut off to them.

Arson was committed at a governor's home and the home of a legislator who challenged the compact's approval.

The home of the House of Delegates spokesman was burned down after a speech critical of the compact.

A legislator was threatened to his face with physical violence. Other legislators were threatened in writing or in phone calls.

The chairman of the furloughed workers' committee demanded $2,000 be paid by a legislator who challenged the compact. (The money was paid after the legislator received several threatening calls.)

The cars of a legislator and a lawyer challenging the compact were damaged.

A legislator was forcibly taken from his home.

A public vote was held to approve the constitutional amendment. Then a sixth public vote was held on the compact. Both resulted in majority votes. President Salii then claimed that the compact had been approved, even though the approval fell short of the 75 percent requirement.

A lawsuit challenging the approval was withdrawn when Palau's President and its highest ranking chief reached an agreement on one of the main reasons for opposition to the compact: the requirement for Palau to make land available to the United States for military purposes.

Compact critics were afraid that land would be taken without an owner's consent and without fair compensation. Palau's President pledged that this would not happen.

I was happy when President Salii told me in August 1987 that the agreement had ended the controversy. I thought then that we would be able to act on this matter. But it did not settle the matter.

But the agreement did not settle the controversy. The lawsuit was refiled by traditional women leaders of the islands within a couple of days.

These leaders disagreed that the compact had been constitutionally approved. They also thought that the President's agreement was an inadequate assurance of protection for landowner's rights because international law would bind Palau to make the land available to the United States and Palau didn't have the resources to pay for it.

The reaction to the suit was even more serious—and violent—pressure on compact challengers. Finally, after shootings, a bombing, a murder, and direct threats to the plaintiffs, the lawsuit was withdrawn.

Pallau's President told me that the plaintiffs withdrew it for the good of Palau. But the judge, the courageous Robert Hefner, in the case said that it appeared that intimidation through the use of violence was the reason.

I then directed the staff to find out the truth. What they found initially, as well as what they found when investigating the truth of allegations at the July 1987 hearing, convinced Chairman UDALL and our colleague, GEORGE MILLER, to join me in asking the General Accounting Office for a major investigation of the compact approval process and other problems in Palau.

This intimidation included the following, among many other acts, in addition to the violence I mentioned.

A notice from the furloughed workers was attached to the government checks of persons challenging the compact. It said that a failure to support the compact "may result in an adverse action against you!"

Certain furloughed workers were organized to individually warn and threaten compact challengers with whom they had a close relationship.

The homes of lawsuit plaintiffs were besieged by furloughed workers.

These acts built upon a sad record of excessive efforts to obtain compact approval.

President Salii himself wrote a state governor challenging the compact that "it has been recommended to me that one basis for distribution of compact funds should be the stand of each state or governors on the compact."

GAO investigators found that Government employees were permitted to campaign for approval of the compact and allowed to use government equipment to do so; but that similar opportunities were not provided compact challengers. Actions favoring compact supporters appear to have violated Palau's personnel system regulations.

Reprisals were taken against employees who were compact challengers. Salii's Minister of Social Services wrote agency heads that "it is expected for all personnel to vigorously campaign for the compact. Any personnel under your supervision who chooses to campaign otherwise shall be reported to me at once.

Schools were closed weeks before one of the votes on the compact. Teachers were instructed to campaign for compact approval. Students were bused to pro-compact rallies.

The government radio station and newsletter (the only radio station and print media in the islands) publicized procompact information and denied access to compact challengers. Compact opponents eventually stopped submitting radio announcements because they were not aired.

Although President Salii told GAO investigators that the Government had not given the furloughed workers for support their efforts, investigators found that Salii had given the group's chairman $10,000 and the group Government vehicles to use. A number of persons allege that food was given as well.

The furloughed workers committee operated out of the President's office and was led by several persons very close to President Salii.

One of the committee's leaders was a Salii's assistant, Joel Toribiong. He was later convicted of a charge stemming from the shooting into the home of House of Delegates Speaker Olikong * * * while the Speaker and his family were at home.

The shooting and other acts of violence against compact challengers were preceded by a speech by Toribiong repeatedly broadcast by the government radio station. It threatened that any steps necessary would be taken against individuals who were in the way of the compact's approval.

One of the men convicted with Toribiong was a Salii agency director. The other was an employee of the power plant (noteworthy since the power was mysteriously cut off immediately prior to the shootings and other violent incidents).

The secretary of the furloughed workers committee was a Salii public relations aide. He later stabbed an associate of a governor regarded as a compact approval challenger.

After the furlough, the committee formed a political party to support Salii and the compact with the public relations assistance of the government news media.

The International Commission of Jurists [ICJ] and the American Association for the ICJ sent a mission to Palau in January 1988. It's purpose was to investigate "an apparent threat to the rule of law, to the judiciary, and the independence of the legal profession".

The team consisted of the chairman of the executive committee of the ICJ; a former chief judge of the U.S. Sixth Circuit; and the president of the New South Wales, Australia Supreme Court.

The team found that:

> "There was a substantial breakdown of the legislative and judicial processes;"
>
> There was an illegal and improper interference with the independence of the judiciary";
>
> "Palauan citizens were prevented by acts of intimidation and violence from continuing properly filed suits challenging the . . . compact";
>
> "Palauan legislators . . . were forced by threats of violence . . . to vote affirmatively on legislation authorizing . . . the compact"; and
>
> "Elements of the government of Palau were involved in bringing unacceptable pressure on the court.

The Commission recommended that:

> The Trusteeship should not be terminated until the constitutional processes of Palau have been exhausted" and
>
> These processes of constitutionality must finally be determined by the Supreme Court of Palau.

We—and others—took the position that the committee would not approve compact implementation legislation until compact challengers were allowed to exercise their constitutional rights to challenge the compact's approval.

The President, however, accepted the President of Palau's assertion that the compact had been approved by Palau. In November of last year, once again he asked Congress to approve the compact.

The Senate and the Foreign Affairs Committee voted to authorize the compact to be put into effect. But members of the Interior and Insular Affairs Committee once again doubted that the President was right about Palau's approval of the compact the condition agreed upon in 1986 for a final United States approval.

Chairman UDALL and I were also concerned about what the subcommittee's investigation was turning up about problems in Palau. We decided that we must insist that there be assurance that these problems be addressed as the United States relinquished its governing responsibilities in the islands.

A majority of Palau's Congress also took this position so did governors of the states with a majority of Palau's population.

PROBLEMS IN PALAU

One of these problems is high-level corruption. The investigation found a number of questionable situations in addition to the most troublesome, the one in which about $1 million in unsubstantiated payments were made to Palauan and other officials by the British company that built the islands' overpriced, new power facilities.

Palau's President Salii was also a party to a number of other questionable contracts, many of which involved allegations of payoffs or special favors.

Palau has some good laws on its books to attack corruption. But Palau's special prosecutor law was being frustrated and its public auditor law was not really being implemented.

Yet another of Palau's problems is the crippling debt created by the shady power facilities deal. As I have noted, a Federal court ruled in August that Palau owes a now estimated $46 million for facilities. The debt is twice Palau's annual budget debt and the value of the plant. GAO tells us that other deals—many of them questionable—push Palau's total debt to near $100 million.

Another of Palau's problems is drug trafficking. The DEA and the World Health Organization said last year that hundreds of Palauans had used heroin, which first appeared in Palau over 5 years ago.

The Governor of Guam said recently that 41 of 63 heroin arrests in his territory last year were Palau-related. Marijuana is Palau's largest cash crop.

Still other problems related to trusteeship responsibilities surfaced that the United States clearly has not met. They imperil the chances Palau would have for facing the future.

Palau's hospital is in abysmal condition. Even though the Interior Department hasn't provided Palau with enough assistance to build a decent new hospital, it has let Palau accumulate millions of dollars of debts for essential medical care for its people from U.S. hospitals.

Palau's jail is in even worse condition than its hospital. It has been declared unfit by the courts.

COMMITTEE OFFER

Our insistence that the legal challenge to Palau's supposed approval of the compact be reinstated if the former plaintiffs wished to do so resulted in a refiling of the suit. Our doubts about whether Palau had really approved the compact were then proven well-placed once again by an initial Palau Supreme Court ruling that the compact had not been approved.

The problems I have outlined and others were the real reasons that Palau had failed to approve the compact. So, Chairman UDALL and I offered the Administration a deal: We would support legislation to authorize the compact to be put into effect (when it was clear that it had been approved by Palau) *if* the Administration would support assurances in the legislation that these problems would be addressed.

We developed this legislation, the resolution we are considering today, in consultation with Palau's 18 other Members joined Chairman UDALL and me in introducing it in June.

FUNDAMENTAL PROVISIONS

At the hearings, Chairman UDALL and I reiterated our position that the committee would only report legislation that included the fundamental provisions of H.J. Res. 597.

There are two reasons we have taken this position.

One is that it would be a futile exercise to pass legislation that does not inlcude these provisions. As I have explained, Palauan leaders believe that their people will only approve the compact if the implementing legislation includes the fundamental provisions of House Joint Resolution 597.

The other reason is that our consciences won't allow us to ignore the very serious problems we have found in Palau and the pleas of the majority of Palauans for the help they need to tackle them.

In spite of this, some administration officials opposed our resolution in the hearings. One of their excuses was that they could not support something Palau's President opposed.

PRESSURE ON SALII

As the summer wore on the pressure mounted on President Salii.

There was a final Supreme Court ruling that Palau had not approved the compact as he had claimed.

The Federal court ruling that Palau owed a now-estimated $46 million for the power facilities made clear that he knew at the time the deal was made that the facilities would not be self-financing as had been claimed. This was particularly embarrasing in light of his involvement in the deal and the $200,000 he took.

Salii's Vice President and his Minister of State broke with him to support House Joint Resolution 597. They questioned why anyone would not want to commit to enforcing Palau's own special prosecutor and public auditor laws.

Finally—and tragically—President Salii took his own life in late August.

UNITY IN PALAU

In the wake of his death, Palau's leaders unified for the first time on the compact. They said that they would support it if it was authorized by the United States as set forth in House Joint Resolution 597 and that the compact could not be approved by Palau without this U.S. legislation.

They sent a unified delegation to Washington to lobby for passage of this resolution. The delegation met with staff of the Interior and Insular Affairs, Foreign Affairs, and the Senate Energy and Natural Resources Committees as well as the administration. The purpose of the meetings was to see if others could support this resolution if some compromises we could live with were made to it.

AMENDMENT

These meetings led to a meeting between 10 members of the Interior and Insular Affairs Committee and the Foreign Affairs Committee which agreed upon an amended version of the resolution. The amendment preserves the fundamental provisions of the resolution upon which we have insisted; but it also represents substantial compromises.

We agreed to seek quick passage of it on the understanding that it represented a bottom-line House position and assuming that the administration would support it.

Last week, we received word, through a letter from the Deputy Secretary of State Whitehead, that the administration had decided to endorse the amendment with one exception.

This was a section based on a proposal by a member of the Foreign Affairs Committee that would have limited Palau's use of compact funds to $3 million per year to satisfy the $46 million debt for power facilities.

Not only did the administration oppose this provision but Palau and the banks to which the money is owed did as well * * * Palau because they believed it would allow Palau to pay too little over a 15-year period.

I, too, had reservations about this provision.

COMPROMISE

The objections stimulated discussions between representatives of the banks and Palau on an alternative. These discussions have framed a $32 million settlement of the debt.

The banks had been ably represented for some time by former Senator Charles Mathias, former Reagan Administration Office of Management and Budget Associate Director Randall Davis, and Walter Surrey.

Palau had just taken on new counsel in the matter, who astounded all concerned by a quick mastery of the intricate problems involved and a very creative approach to solving them. This team was headed by Stuart Eizenstat, who had been President Carter's chief domestic policy adviser. It also included Michael Chanin, a former Carter White House aide, and Clyde Spillenger.

They initiated a solution to this problem for Palau, the United States, and the banks involved which could bring about approval of the compact in a way that all parties should be able to accept.

Together, they and the banks' representatives have worked it out with leaders of the Interior and Insular Affairs and Foreign Affairs Committees and with the Reagan administration.

We now have a legislative package to authorize the Palau compact to be implemented which we support, which the leaders of Palau support on a united basis for the first time, and that bipartisan leaders of the Foreign Affairs Committee have agreed to support.

In developing this compromise, we have kept in mind the concerns expressed by the Senate committee staff. We hope that their Members will find that it is a compromise that they too can support.

I hope that our action today on this resolution will lead to its enactment. As I have indicated we have compromised on it as far as we can.

I hope that our action today on this resolution will lead to its enactment. As I have indicated, we have compromised on it as far as we can.

We believe that this legislation shows our willingness to compromise, yet it still offers real solutions to the problems in Palau that I briefly mentioned today and that I have outlined before in the CONGRESSIONAL RECORD on March 23 (page E 799), March 31 (page E 963), May 5 (page E 1413), May 9 (page E 1446), and May 24 (page E 1690) of this year.

And so you will see, I have not been alone in voicing these concerns. Over the past year, I have been joined by our colleagues, Chairmen UDALL and MILLER who have also placed remarks in the CONGRESSIONAL RECORD on March 22 (page E 748), March 24 (page E 821), August 9 (page E 2678), and May 17 (page E 1571).

Now, let me outline what the resolution would do as well as other reasons for it.

SECTION 1

Section 1 of the resolution would be its short title: the Palau Compact of Free Association Implementation Act.

SECTION 2

Section 2 would authorize the compact to be put into effect: First, if it is approved by a 75 percent vote in Palau—or a lesser percentage if Palau's constitution is amended to lower the requirement; and second, 30 days after the President has notified the Committees on Interior and Insular Affairs and Foreign Affairs of the House and the Committee on Energy and Natural Resources of the Senate of his intent to implement the compact.

The first condition in this provision is consistent with the decision of Palau's Supreme Court that Palau had not approved the compact.

Under section 16 of the resolution, implementation cannot occur until the agreements required by the resolution have been signed and have been reviewed by Congress for 30 days.

Because of the provisions of section 6, I would think that Palau would not want to approve the compact until after it has reached the settlement with the banks which have a $46 million judgment against it that is provided for in section 6.

SECTION 3

Section 3(a) would require the Secretary of the Interior to assist Palau in developing regulations for spending compact assistance.

Auditors have had a difficult time in determining whether Federal assistance to Palau has been spent properly because of accounting practices. These practices can deny Palauans the full value of compact assistance, if they are not improved.

Palauan officials have wanted assistance to improve their financial procedures. But they have had a difficult time in obtaining this assistance from the Department of the Interior.

Section 3(b) would authorize the President to negotiate an agreement with Palau in consultation with the Congress providing that Palau will develop plans to implement U.S. audit recommendations, or in the alternative, that Palau inform the United States of its objections to implementing recommendations. Notification would have to be made within 120 days of when the recommendations are made. This provision would also require the Secretary of the Interior to provide Palau with assistance to implement U.S. audit recommendations.

The consultation with the Congress which would be required by this section and the other provisions of the resolution requiring such agreements is intended to respect the prerogatives of the President. It is also intended, though, to ensure that a serious effort is made by the Executive to try to avoid entry into agreements which contradict the will of the Congress.

The term "consultation" would not require constant contacts between agreement negotiators and Members. It would, however, require good faith efforts to clear major issues prior to agreement on them.

Contacts should be made with the staffs of the three committees of the Congress with jurisdiction over this legislation regarding the substance of the agreements. These contacts should be made before, during (to the extent feasible), and after negotiations. Committee observation of important negotiations should be possible.

Auditors have been frustrated that Palau has not implemented many audit recommendations that have been made in the past. Because of this and other reasons—including safety considerations—the Interior Department Inspector General some time ago stopped even bothering to audit in Palau.

When the subcommittee investigated, it found a large number of unimplemented audit recommendations. It was only with the pressure of the subcommittee's investigation that the late President of Palau was stimulated to agree to implement the outstanding recommendations.

According to GAO investigators, Palau's future financial stability will be affected not only by the debts it has incurred and the financial commitments it has already made, but also by its ability to manage the funds it will receive from the United States upon compact implementation.

GAO investigators have found numerous financial management weaknesses including:

Palau consistently has been unable to comply with the terms of Federal assistance and has only made nominal efforts to try to comply;

Palauan procedures for expending Federal assistance will not ensure that compact funds will be used as intended;

Numerous instances of noncompetitive and unfunded purchases;

The Compact does not provide for resolution of audit recommendations; and

Palau lacks adequate tax and utility revenue assessment and collection systems.

SECTION 4

Section 4(a) would authorize the President to negotiate an agreement with Palau in consultation with the Congress providing that the United States will provide Palau with assistance for enforcement of its narcotics and other laws and prevention and treatment of narcotics and other substance abuse.

I have already outlined Palau's drug problems. Diverse Palauan officials have identified certain government officials as being involved with the trafficking.

Section 4(b) would require the agreement to specifically describe the technical assistance, training, and equipment to be provided for law enforcement.

Public Law 99-658 applied to Palau the provisions of Public Law 99-239 which required a law enforcement assistance agreement with the Marshall Islands. These provisions intended—but not required—that the agreement would specify the assistance to be provided.

This intent was agreed to by Members because administration officials contended when the provisions were being drafted that they could not identify the specific law enforcement assistance which could be provided.

Unfortunately, the agreement does little more than restate the framework for providing law enforcement assistance that was contained in the law itself. The agreement does not include the specific commitments of assistance that Congress intended to have included.

Members did not object to the agreements with the Marshalls because the law did not specifically require commitments of assistance and because there was not a strong feeling that specific commitments were needed in the case of the Marshalls.

However, some Members did object when the administration submitted a 'framework' agreement for Palau; this is because of the more immediate and greater need for commitments of specific law enforcement assistance in Palau's case.

The Palau law enforcement agreement was disappointing because the administration's negotiators had been notified that specific commitments would be insisted upon in Palau's case and because Palauan leaders had tried to have such commitments included in the agreement.

The lack of these commitments was a problem because of the very clear need for United States law enforcement assistance to Palau and because Palau's many requests for law enforcement assistance had been ignored by administration officials in the Departments of Interior, State, and Justice in recent years.

Chairman UDALL and I introduced legislation to disapprove the proposed law enforcement agreement. We did not, however, seek action on that legislation because we believed that the deficiency would more effectively be dealt with in this resolution.

We are confident that this section will now make the administration determine the specific law enforcement assistance that will be provided Palau—in addition to that required by other provisions of this section. We recognize that the administration will not be able to anticipate all assistance that will be needed in the future. However, we expect some specifics before the compact is implemented.

Section 4(c) would require the agreement to provide Palau with specific financial assistance for narcotics and other law enforcement and for prevention and treatment of narcotics and other substance abuse. At least $400,000 would be required to be provided Palau each year in years 2 through 6 of free association for this purpose.

These funds would be able to be spent according to a plan developed by Palau and approved by the Secretary of Interior, in consultation with the Attorney General and the Secretaries of Health and Human Services, State, and Education. The requirement for Federal approval would be included to ensure that funds are planned to be spent effectively. It would not enable agencies to prevent spending of this assistance for reasons not consistent with the intent of this legislation.

Section 4(d) would authorize grants to Palau of $400,000 per year for the first 15 years of the compact for the purposes of the agreement required by this section. The limiting of the guarantee of these funds to the five years covered by section 4(c) and the reduction of the originally intended amount of $500,000 was agreed to in the compromise on this legislation.

Section 4(e) would require the agreement to provide that Palau authorizes U.S. law enforcement officers to investigate in Palau in cooperation with Palauan law enforcement agencies. This authority would only apply to those Federal laws which apply in Palau under the compact or the United States laws approving it.

This provision is included for two reasons.

One is that Palau would have to act at the time to effectate the authority for United States law enforcement officers to investigate in Palau that is contained in the existing law enforcement agreement.

The other reason is that the administration has not investigated several matters that should have been investigated in Palau in recent years. Officials have blamed this on a purported belief that there is not the necessary authority to investigate—even though the United States has full authority to enforce laws in Palau.

SECTION 5

Section 5(a) would authorize the President to negotiate an agreement with Palau in consultation with the Congress providing that the United States will assist Palau in implementing its public auditor and special prosecutor laws and that Palau will implement those laws at least as long as the United States provides this assistance.

Palau's constitution establishes the post of public auditor but the position has not been filled for over a year and the office is underfunded. The last public auditor was directed to investigate Salii political opponents and, I am told, was threatened with physical harm.

The islands enacted a law to establish a special prosecutor's office in 1985. But the position has never been filled and the office has not been set up.

President Salii had nominated two persons for the post. One was rejected because he was found to have accepted payment from the government for work he did not do. The other was rejected because of his connections to furloughed Government workers implicated in the intimidation of compact critics.

Section 5(b) would require that the agreement provide that Palau agrees to spend not less than $100,000 annually each for the auditor and prosecutor offices. This spending would be in addition to the assistance this section would require the United States to provide for the offices. It would have to continue for at least the first 5 years of free association. Five years of free association because this is the period of time that U.S. assistance for the offices would be guaranteed—although it would be authorized for the first 15 years of the compact.

Palauan leaders have agreed to make the commitment of funds required by this provision.

The assurances that this section would provide the auditor and prosecutor are essential for ensuring that these offices will be able to carry out their responsibilities on an independent basis.

Section 5(c) would require the agreement to provide that the United States will provide technical assistance to the public auditor and special prosecutor on a nonreimbursable basis.

To ensure that requests for such assistance cannot be blocked for political reasons, this assistance would be able to be requested by the auditor or prosecutor as well as by the Government of Palau itself.

At a minimum, the technical assistance that the United States must provide will include the service of an auditor or accountant for the office of public auditor and the services of an attorney or investigator for the office of special prosecutor.

These professionals would ensure that the offices have the expertise needed to fulfill their mandates. Palauan officials have already said such help is needed, asked, in vain, for it in the past.

The intent is to ensure that the Federal agencies do whatever is needed to cooperate with investigations of these Palauan authorities. This may include providing personnel, equipment, or other resources. It may include collaborative or complementary investigations.

Section 5(d) would require the agreement provide Palau with at least $300,000 annually for the public auditor and special prosecutor offices for at least the first 5 years of free association; $100,000 of these amounts would be required to be spent annually on each office. The additional $100,000 per year would be required to be divided between the two offices by Palau.

When combined with the at least $100,000 annually that this section would require that Palau commit to providing, this provision would ensure that each has a budget that Palauan officials agree is needed for effective operation.

Section 5(f) would require the President to take action in the event that Palau does not maintain public auditor and special prosecutor offices as it would commit to under this section.

The President would initially have to take the conference and dispute resolution steps outlined in the compact. These involve: the two governments conferring; referral to arbitration if the dispute is not resolved within 90 days: naming of 3 arbitrators within a total of 45 days; and an arbitration decision within 30 days, unless a longer period is mutually agreed to.

The President would have to take further actions if Palau did not implement its public auditor and special prosecutor laws after an arbitration panel determined that it was not doing so. For 180 days, he would have the latitude to determine what actions should be taken to obtain compliance by Palau.

If he still has been unsuccessful in obtaining compliance after this period, the President would be required to either withhold funds or suspend the guarantee of assistance this legislation and the compact would provide Palau.

Suspending the guarantee would not necessarily prevent funding from being provided. But it would prevent Palau from having the recourse to the United States to provide guaranteed funds that the compact would provide.

We agree with the leaders of Palau who say that these procedures are essential for ensuring that the public auditor and special prosecutor laws are faithfully executed and for ensuring that the auditor and prosecutor laws are faithfully executed and the problems they are intended to address are thoroughly investigated.

Let me just outline some examples of the matters which should be investigated in Palau.

In October 1987, President Salii entered into a contract with a company formed by his counsel and an assistant attorney general granting the company the exclusive right to produce and sell coins and medals for Palau.

These same officials were also awarded a noncompetitive contract by Salii to plan a new capital for Palau and lease it back to the government. This agreement was made in spite of the fact that a government commission had been established to plan the capital. The United States has provided the government $3 million for a new capital in Palau.

In both cases, the contract was approved by the assistant attorney general who was a founder of the company.

Secret Service and Palauan officials have reported that counterfeit United States currency produced in the Philippines has been circulated in Palau. When an agent of the United States Secret Service went to Palau to investigate, he was told by the then attorney general that this was a local matter and that it had been taken care of already.

When Senate President Koshiba asked Trust Territory High Commissioner Janet McCoy to have allegations regarding the circulation of counterfeit money in Palau investigated—including by the Filipino maid of the then attorney general—the matter was referred back to the attorney general.

An associate of a governor considered a Salii political opponent and challenger of the compact was charged with substituting counterfeit currency for valid currency in connection with the distribution of funds for education on the compact.

It was later shown in court that the governor's associate had been framed. The framed man was also later stabbed by a Salii public relations aide.

Four of Palau's sixteen state governments have entered into contracts with Japanese firms for road and water projects at a total cost of about $26 million. A fifth state has negotiated a similar contract.

The states, which are primarily funded by the national government, lack the funds to pay for the project. The national government provided a total of just $2.1 million to all 16 states in fiscal year 1986.

In January 1986, President Salii signed a conditional guarantee for one of the debts. It totals about $8 million—based on current yen/dollar exchange rates—and is for a project that has already been completed. The contractor has said he is waiting for the compact to take effect to seek payment.

Between April and August 1986, Salii signed conditional guarantees for the three other projects which have a total cost of about $18 million.

President Salii cut through governmental redtape to award a foreign business permit to Gary S. Camm in March 1987, so Camm could set up an air charter business.

Government officials also ordered rockets and other weapons from Camm, who is suspected by the State Department of being an arms and drug trafficker and has communicated that to Palau.

Less than a month after Salii approved Camm's permit, Camm was arrested in the Philippines for alleged drug and arms trafficking. Under police questioning, he reportedly admitted being in the Philippines as a "hitman out on a mission to kill a group of foreign nationals."

Officers of a California company that had obtained rights to mine in one of Palau's states said they were told by President Salii's counsel that they would only be able to obtain the required foreign investor's license if they gave—with no compensation—part ownership in their venture to another company.

A message to the California company from the other company stated that "The President's Office has advised us that you must negotiate a transfer of our interests. * * * Sanctions against your company have been delayed * * * pending negotiations with our company." According to the message, the President's Office was to receive a copy.

Again these are just some of the matters in Palau which need to be investigated. They are typical of other incidents or allegations of questionable activity that our investigation has turned up. There are, however, by no means a comprehensive list of these matters.

GAO investigators have found that Palau's Attorney General's office has initiated no investigations in response to the allegations of improper use of funds and misconduct by government officials that it has received.

GAO investigators also found that a former attorney general himself was paid by companies to prepare their applications for government business permits while serving as attorney general. He used government resources to do this.

GAO investigators have concluded that Palau needs a special prosecutor independent of the attorney general to respond to allegations of government misconduct and misuse of funds.

SECTION 6

Section 6 would amend section 104(e) of Public Law 99-658, the act which approved the compact subject to the condition that another law be enacted to approve its effectiveness.

The existing law sought to apply the immunity from suits in United States courts that Palau would have under the compact to litigation against Palau for payment for power facilities constructed by a now defunct British firm, International Power Systems Company (IPSECO).

A Federal district court has found that the law did not immunize Palau from the debt action and that Palau owes a now estimated $46 million for the facilities to the banks that guaranteed the loan for the purchase.

This provision would repeal the apparently unconstitutional retroactive application of immunity as the President has requested. It would also, however, prevent the use of compact or other U.S. assistance to satisfy the debt with two exceptions.

One exception is that Palau would be authorized to use compact funds for capital improvements and for energy needs (the energy funds that are other than the one-quarter of reserved for areas not served by the IPSECO plant) to pay the debt.

Compact section 212(b) provides that Palau will receive $36 million, adjusted for inflation, for capital improvements at the beginning of free association. This amount is now estimated to be about $46 million.

Compact section 211(b) provides that Palau will receive $2 million per year, adjusted for inflation, in years 2 through 15 of free association for energy needs. This amount, is estimated to be about $27 million, not including the one-quarter of the funds reserved for the energy needs of areas not served by the IPSECO plant, is estimated to be about $27 million.

The other exception would apply if Palau and the banks finalize a preliminary settlement of the $46 million debt for $32 million. In this event, all of the energy funds that Palau is to receive under the compact would be provided Palau at the beginning of fiscal year 1990. Palau could use $28 million of these "accelerated" energy funds and $4 million of the capital improvements funds to satisfy the debt.

The acceleration would provide Palau with an estimated $37 million for energy needs in fiscal year 1990. The approximately $9 million difference between this amount and the $28 million which would be used for the IPSECO plant debt would have to be used to meet other energy needs.

The first exception is essentially the provision approved by the other body and the Foreign Affairs Committee. It was supported by the administration, the banks, and the late President Salii, who took apparently unjustified $200,000 from IPSECO.

Salii was prepared to commit Palau to pay the banks an estimated $56.3 million of compact funds. But it was so widely opposed in Palau that it could have prevented the compact's approval.

Palau's House of Delegates adopted a resolution opposing the provision immediately after learning that the Foreign Affairs Committee have approved it. Palau's Senate President said that his chamber was prepared to do likewise.

The sponsors of House Joint Resolution 597 also opposed this proposal because it would eat up most of the capital improvements and energy funds Palau would receive under the compact. The $46 million IPSECO debt is only half of the capital improvements debts which appears to have been run up for Palau under U.S. trusteeship administration.

Even with this debt Palau still has tremendous capital improvements and energy needs. Much of the islands are still unelectrified in this day and age, the hospital is in abysmal condition, and so forth.

In addition to today's needs for basic infrastructure, Palau will have more needs in the future years of free association. It cannot afford the proposal to simply allow Palau to use its capital improvement and energy funds to pay the IPSECO debt.

House Joint Resolution 597 initially proposed a Federal loan to Palau so that it could pay off the IPSECO debt for a negotiated amount within range of the plant's value. Because the administration objected to a loan, interested members of the Interior and Insular Affairs Committee agreed to an alternative based on the proposal of a member of the Foreign Affairs Committee. It would have limited the amount of energy and capital improvement funds that Palau could have used to pay the debt to $3 million annually, unless Palau decided it wanted to use more.

This alternative was also opposed by the administration, the banks involved and Palau. The banks were opposed because they felt that the $45 million they would receive over 15 years was too little; they are said to have wanted an estimated $62 million if the payout were to be over 15 years. Palau was opposed because it said it could not afford to pay $3 million more per year.

The provision in the substitute was developed as an alternative.

It is certainly a compromise because the first way it provides that Palau could use compact funds to pay the debt—through the capital improvement and energy funds—still concerns us.

It is the intent of this part of the compromise that these funds could only be used to pay the debt if Palau desires to use them and makes such a decision local law.

Because of the large amounts of compact assistance that this exception would make available to pay the debt, we would not expect Palau to approve the compact unless the settlement anticipated in the exception were finalized.

Palau's leaders have already told us that they would not call a vote until such a settlement were final. I would urge them not to take the risk of approving the compact without this settlement.

To do so, would be to jeopardize the much larger amounts of compact funds that might have to be used to pay the debt.

The settlement provided for by this section is the best solution to this difficult problem that has been devised so far and it is fair.

The banks would forgo well over $14 million in principal and interest by the time that they are paid.

Palau would give up what may be meritorious legal challenges to the fairness of the IPSECO deal which have not been raised to date in the litigation on the debt. President Salii did not have Palau's lawyers raise these arguments, particularly those related to issues of fraud.

The acceleration would not increase the total amount of money that Palau is guaranteed to receive under the compact. But it would allow Palau to use a lot less compact money to settle the debt than would the proposal approved by the Senate and the Foreign Affairs Committee. It would enable Palau to devote the substantial amounts saved to its other substantial needs.

Palau would wind up paying for the IPSECO plant; but it would only pay an amount that appears to be about what a fair price for it would have been, adjusted for inflation between the time of the loan and the time of repayment.

SECTION 7

Section 7 would authorize the President to negotiate an agreement with Palau in consultation with the Congress under which Palau would agree to submit information what was omitted from its development plan to the United States.

A plan is required by the compact and the law which conditionally approved it. The primary purpose of the required submission is to ensure that the United States agrees with how Palau intends to spend compact assistance.

The plan which was submitted by President Salii and accepted by the administration did not, however, meet the requirements of the law.

An administration task force identified three deficiencies in the plan. First, was that it did not cover the first 5 years of the compact. The second was that it did not list the public sector projects to be financed with United States assistance in priority order. The third was that it did not specifically describe the private sector projects to be financed with United States assistance.

To this list, we would add a fourth deficiency: it does not outline how existing capital improvement debts—nearing $100 million between Palau's central and State governments—would be paid.

The administration decided to approve the plan last year in spite of its deficiencies. This was because the Salii administration that the omitted information would be provided to the United States.

This information still has not been received, however. Further, we have learned that Palauan congressional approval of the plan was obtained through pressure and was not thorough.

Chairman UDALL and I had introduced legislation to require submission of this required information. Our purpose was to point out the plan's deficiencies. We did not seek action on this legislation, however, because we believed that it would be more effective to address this problem through this resolution.

SECTION 8

Section 8(a) would require the United States to provide Palau with the amount up to $5 million for medical facilities that is marked by Palau. These funds would have to be provided in fiscal year 1990. This provision would also require approval of Palau's plans for a new hospital by the Secretary of the Interior, in consultation with the Secretary of Health and Human Services.

The current hospital is far from decent and probably cannot be made adequate for any reasonable amount. Palau wants to build a new hospital to replace it. Palau is the only one of what had been six districts of the trust territory without a new hospital.

Most of the existing hospital building was not designed to serve as a hospital. It's poor quality construction defies maintenance. There is almost no functional plumbing and the electrical wiring is unsafe. The roof leaks and the windows are inoperable.

There is practically no diagnostic or therapeutic equipment and all laboratory tests must be done manually.

Palau's estimates for the new hospital exceed $20 million. The Interior Department, by contrast, believes that an adequate facility can be developed for $10 million.

The Congress has already appropriated $10 million for the hospital. But proof that the amount is not enough is suggested by the fact that Palau has not used this money. If $10 million were adequate, Palau certainly would have built the hospital it so desperately needs.

The Interior Department bases its contention that $10 million is adequate by asserting that it is the approximate value of the hospital built in the Marshalls.

The subcommittee staff has inspected the Marshalls hospital and has advised us that it would not meet Palau's needs. The Marshalls hospital is prefabricated construction that will not stand the test of time in Palau.

The Interior Department's position is reminiscent of the position it has taken so many other times when the issue of funding an insular area medical facilities has come up. Interior has only wanted to fund low-cost facilities, not the kind of hospital that citizens of the States enjoy and expect.

I had to face this approach in the case of the islands I am privileged to represent. In each such case, the Congress has decided that insular residents deserve medical facilities we would be willing to have our own loved ones in if the need arose.

The sponsors of House Joint Resolution 597 has been willing to provide Palau with the amount of additional money needed for a new hospital estimated at the time the resolution was introduced: $9.3 million. Because this funding was opposed by the administration and some Members, we have compromised with them.

The failure of United States trusteeship administration to develop decent medical facilities—and other basic infrastructure—has been a reason that some Palauans have opposed the compact in the past. It has also required Palau to send an inordinate number of people off-island for medical care.

Palau's local government has been forced to bear the cost of these medical referrals. Because the expenses have exceeded local revenues, it currently owes an estimated $1.6 million for essential medical treatment.

The financial burdens of medical referral costs are so great that Palau is now requiring the ill person to pay it $2,000 to be sent off-island for essential treatment.

Medical debts incurred while the United States administered the trusteeshiip have also been a serious problem for the Federated States, which owes some $4 million for this purpose, and the Marshalls, which owes $2 million for it.

One of the tragedies of U.S. administration of the trusteeship in recent years is that adequate medical service and health insurance were not developed. It is unfortunate that the governments of Micronesia themselves have been forced to try to pay for medical treatment for their people in the United States.

In addition to financial burdens, the debts raise the specter of medical treatment being denied. This situation would be deplorable and mean that the United States was not living up to its specific trusteeship obligation to ensure decent medical care for the people of the territory.

Because these debts were incurred during a time of United States responsibility and because United States inaction was responsible for them, the law which approved the compact with the Federated States and the Marshalls directed that the United States provide those insular areas with the amounts needed to pay medical referral debts incurred before September 1, 1985. The law which conditionally approved the compact with Palau applied this provision to Palau as well.

These laws did not, however, guarantee that medical referral funding would be provided and it has not been. Further, since the compact was not implemented with the Marshalls until October 21, 1986, and was not implemented with the Federated States until November 3, 1986, and since the compact with Palau is still not implemented, there is a gap between the intended coverage of the existing law and the time when United States trusteeship responsibilities are relinquished.

Section 8(b) would, therefore, require the United States to settle the still outstanding medical referral debts of the Federated States, the Marshalls, and Palau to both public and private institutions. These dates would have to be settled through the respective effective dates of the compacts. This provision would enable the United States to settle these debts by the payment of funds to the governments or the creditors, or through interagency transactions in the case of debts owed to Federal hospitals.

The essential requirement of this provision is that the approximately $7.5 million in outstanding debts—or whatever shall owed if it is actually another amount—must finally be paid. The sad legacy of the trusteeship medical referral program must finally be brought to an end.

SECTION 9

The compact with the Federated States and the Marshalls and the law which approved it provided for the United States to audit spending of all United States assistance. This provision was applied to Palau.

Both the executive branch and the General Accounting Office were given audit responsibilities. The intent of existing law was that GAO would audit compact assistance on a regular basis.

GAO, however, has passed on the annual audit responsibilities to the Interior Department inspector general. That office has allowed them to be exercised by a contractor selected by the governments of the freely associated states.

This arrangement does not ensure that Federal interests are served by the auditors. Although arrangements between the State Department and the freely associated states are said to require Federal certification of the privately conducted audits, a statutory assignment would provide greater assurance that the audits will be closely examined to protect Federal interest.

Section 9, therefore, would require the President to certify that the audits of compact assistance conducted by executive branch agencies meet the requirements of the law. The intent of this requirement is to ensure that a Federal official is fully responsible for determining whether compact assistance has been spent properly. Administration officials suggested that the President was the appropriate official.

SECTION 10

One of the most important reasons for the opposition which has prevented Palau's approval of the compact in the six referenda on it to date are concerns related to the use of land in Palau by the United States military.

As I have noted, Palau would be required to make land designated by the United States available for United States military use under the compact unless it can provide acceptable alternatives.

In all probability, any land needed would be privately held. Palau's constitution requires the local government to pay fair value for any such land acquired; but no provision has been made in the compact to help Palau acquire private property. The compact only provides $5.5 million for the impact of United States use of land.

Compact critics have been concerned that Palau's Government would not have the resources to meet this constitutional requirement. Palau's Supreme Court has identified this conflict as possibly being the biggest conflict between the compact and Palau's constitution.

Expressed United States military interest in land in Palau has primarily related to land for training exercises. Additionally, relatively small areas are designated for use in a subsidiary agreement to the compact.

But because Palau clearly figures into most scenarios for alternatives to the important United States naval and air bases in the Philippines, there is concern in Palau that much larger areas of the islands might be used in the future. Administration officials coyly say that there are no present plans to develop bases in Palau.

The island of Babelthaup is the most probable location for potential United States interest in the future. Although it is Palau's largest island, it is only sparsely populated at present.

Fighting during World War II caused some islanders to move away from Babelthaup. Because of this, there are conflicting claims about ownership of property there. Some compact critics are afraid that these claims would be overlooked by Palau's Government in meeting United States land demands under the compact.

Members of the Interior and Insular Affairs Committee believed that these concerns needed to be squarely faced when the legislation conditionally approving the compact was being considered in 1986. But opposition from the administration and some other Members led to inadequate provisions to address these concerns in the 1986 law.

The one provision of House Joint Resolution 597 that Palau's united leadership believes needs to be strengthened is the section regarding this matter. The substitute includes language that we worked out with their representatives as well as representatives of the administration and the Foreign Affairs Committee.

Section 10(a) would recognize that the Government of Palau will be bound by its constitution to provide fair payment for private land that the United States might require Palau to provide if for military purposes under the compact.

Section 10(b) would require the President to enter into agreements with Palau regarding financial assistance to that Government if Palau determines that it does not have the funds it needs to acquire land for United States military use under the compact.

Section 10(c) would require the financial assistance that the United States would provide Palau under subsection (b) to be based on independently verified appraisals of land value, other actual costs, or other indications of fair value.

Section 10(d) would authorize the President to extend the 60-day period that Palau has to make land available to the United States under the compact. When read in conjunction with other provisions of this section, this is intended to provide Palau with whatever time whatsoever it needs to obtain land for United States military use.

The provisions of this section should provide assurance to the people of Palau that in authorizing the compact to be implemented, the United States intends that their land will not be taken or used unless they receive fair compensation for it.

SECTION 11

Section 11 would require the United States to provide Palau with $800,000 to renovate or replace its jail.

This facility is in deplorable condition and is severely overcrowded. According to the General Accounting Office investigators, 1 year ago the jail had more than four times the number of prisoners it was meant to house. It was declared unfit by a court in 1983.

Plans for a replacement facility are estimated to cost between $1.4 and $1.6 million. Half of this cost is a small amount to pay to help improve law enforcement in Palau.

SECTION 12

When the legislation to approve the compact with the Federated States and the Marshalls was being considered, administration officials wanted the Department of State to have primary responsibility for freely associated state matters. Department of the Interior officials, however, privately asked that their Department continue to have major responsibility for the areas that it been fully responsible for under the trusteeship.

The compromise reached at that time provided responsibility for both Departments. The State Department was to have responsibility for contacts between the executives of the United States and the freely associated states. The Interior Department was to have responsibility for all U.S. financial and program assistance to the freely associated states.

Since the compacts with the Federated States, the Marshalls, and Palau guaranteed to provide the freely associated states about $3 billion over a 15-year period, the Interior Department's role was intended to be a significant one.

It was intended that the Interior Department station personnel in the freely associated states to provide, coordinate, and oversee the technical, financial, and program assistance that they would receive under free association.

Because of the State Department's responsibilities, Interior's field personnel were to be part of teams headed by the U.S. representatives to the freely associated states, who would be State Department employees.

The State Department has assumed its role in the freely associated states with vigor; but the Interior Department has not met its responsibilities. Even the Defense Department has acted to fulfill its responsibilities more diligently than the Interior Department.

The State Department has, for example, set up offices and assigned personnel to each of the two existing freely associated states and has already assigned personnel and set up an office in Palau. The Defense Department has also assigned personnel.

But there is no full-time Interior Department officer to provide assistance in Palau, where the Interior Department has full governing responsibilities. And, there are no Interior Department personnel in the Federated States or the Marshalls.

The State Department has also set up an aggressive interagency office on freely associated state affairs. Headed by a State Department officer, it is intended to have Deputy Directors from the Interior and Defense Departments. Only the Defense Department has assigned a Deputy Director, however.

The lack of an Interior Department representative in Palau is particularly bothersome because the Secretary of the Interior promised the subcommittee many months ago that such an official would be assigned. Also irksome because funds have been appropriated for this purpose.

The Interior Department now only makes an occasional effort to carry out responsibilities in Palau through visiting personnel. It plans to do no more than this in the federated states and the Marshalls.

Interior officials try to suggest that relatively minor differences between Members of this House and Members of the other body are the reason that the Interior Department has not deployed assistance personnel in Micronesia. But these differences are minor and are easily resolvable. They do not justify a failure to act year in and year out.

The Interior Department's failures to act in this area have forced the State Department to carry out a number of the Interior's responsibilities in Palau and the freely associated states.

Interior's policy on the matter is penny-wise and pound-foolish. Assigning personnel to implement the compacts would cost an infinitesimal sum in comparison to the large sums the compact would convey.

More important is that Interior's policy denies the peoples of the freely associated states assistance to which they are entitled under the compact acts.

More important is that Interior's policy provides justification for stripping the Interior Department of the responsibilities it retained in the freely associated states. It raises the question of whether there is justification for an Office of Territorial and International Affairs staffed as it is in the Interior Department.

To ensure that congressional intent is carried out in providing and coordinating Compact Act assistance, section 12 would require the Interior Department to assign at least one professional in Palau and another professional to serve both in the Federated States and the Marshalls. This is a compromise from at least one professional per freely associated states proposal that we have insisted upon heretofore.

The intent is that these officers—hopefully augmented by other staff if needed—would be individuals that would have the capability to provide the assistance intended by the Compact Act. This means that they should be able to provide technical assistance and other agency program personnel who can be rotated in and out of the freely associated states, according to need.

Overseers of local governments and middlemen are not needed in the freely associated states. But persons knowledgeable about Federal programs, economic development, financial management and professionals who possess other skills useful to the freely associated states are needed.

This section includes an authorization for such sums as may be necessary to underwrite the costs of these personnel assignments. This is so the Interior Department will not use lack of funds as an excuse for not fulfilling the mandate of this provision.

SECTION 13

One of the primary responsibilities of the United States under the trusteeship agreement is the political development of Micronesia. This is the area in which the Interior Department may fairly be said to have lived up to its responsibilities.

Political development includes decisions by the peoples of Micronesia on their future political status. Consistent with this, section 13 would require the Secretary of the Interior to provide Palau with the amount of funds needed for a seventh referendum on the compact and other appropriate costs to the change in the political relationship between the United States and Palau.

Up to $200,000 would be authorized. This amount is based on our estimates of the cost of a referendum and other necessary, expenses, including the costs to Palau of United States deliberations on the compact. These latter costs would include, for example, the participation of Palauan officials in meetings with United States officials, including hearings. They would also include the costs of unbiased public education on the effective changes to the compact which would be made by this legislation.

It had been the practice of the Interior Department to provide assistance to underwrite the costs of compact consideration. But, in recent years departmental officials have tried to make Palau assume these costs. The Interior Department has used funds Palau was to receive for other needs to underwrite political education costs. The intent of this provision is that Interior provide Palau with funds in addition to those to be provided for trusteeship administration.

SECTION 14

Section 14 would require the President to negotiate an agreement with Palau to provide for the assistance to be provided Palau under sections 8 for medical facilities and medical referral debts, 11 for detention facilities, put in space and 13 for a compact referendum and other costs. The agreement would have to be negotiated in consultation with Congress.

The purposes of this agreement are to provide further assurance that the assistance promised by this legislation will be provided and to detail how it will be provided. Reasonable requirements that would not contradict congressional intent could be included in the agreement.

SECTION 15

Section 15 would authorize Palau to spend assistance provided it by the United States for 1 year in a subsequent year. It parallels a provision of the compact with the Federated States and the Marshalls that was inexplicably omitted from the compact with Palau.

This flexibility is intended to ensure that Palau does not lose the use of United States assistance because of a failure to expend it in any particular year.

This section would also apply the compact's guarantee most of the assistance it promises will actually be provided to $9.3 million of the additional assistance that this resolution would provide Palau.

The guarantee in section 236 of the compact provides that Palau may try to enforce the guarantee in the United States Court of Claims. If applies to most of the estimated $460 million, adjusted for inflation, to be provided Palau under the compact.

The additional $9.3 million to be guaranteed Palau by virtue of this provision of the legislation includes: $2 million for narcotics and other substance abuse prevention and treatment and for narcotics and other law enforcement; $1.5 million for the offices of public auditor and special prosecutor; $5 million for medical facilities; and $800,000 for detention facilities.

These amounts were reduced from the approximately $30 million proposed in the introduced resolution in a compromise with the administration and other members. They are reduced as much as they can responsibly be reduced. They are reduced as much as can be agreed to by both Palau's leaders and us.

As little as $300,000 of these amounts would have to be provided Palau in fiscal year 1989. The required payments of the $9.3 million would be made over the first 6 years of free association.

We cannot accept the proposition advanced by some that although they could agree to the several hundreds of millions of dollars of guaranteed assistance initially proposed by the administration, they could not agree to the less than $10 million addition.

SECTION 16

Section 16 provides that the authority that the President would be granted under section 2 to implement the compact will not take effect until 30 days after the Congress has the opportunity to review the agreements that the President would be required to conclude with Palau under this resolution.

The agreements involved are on: Palau's response to United States audit recommendations; law endorsement assistance and cooperation; on implementing Palau's public auditor and special prosecutor laws; Palau's development plan; and on assistance for medical facilities and debts, detention facilities and compact approval costs. This 30-day review required for these agreements is intended to give the Congress the time to ensure that the agreements are consistent with the intent of this resolution. It would enable Congress to take action if any requirements of this legislation were not being met by the President.

This section would also not permit any subsequently agreed upon changes to the agreements to take effect until 30 days after they have been submitted to Congress. This will provide assurance that Congress has time to act if subsequent agreements are made that would in any way change the requirements of this legislation.

Finally, this section would require congressional approval for any change to the agreement entered into under to the compact which would require the United States to construct a 53-mile road on Babelthaup Island.

United States negotiators probably agreed to this commitment because of military interest in Babelthaup. It is also, however, critical to the social and economic development of Palau's largest island.

In spite of this requirement that the United States build the road, the late President Salii entered into a questionable contract with a private company to build a 22-mile segment of the road.

According to the former assistant attorney general of Palau who handled bidding for the contract, the contractor was selected before the bidding was completed. When the assistant attorney general told Salii's counsel that he had found this out, he said he was told that "the company has financially secured its position with the President."

After this former assistant attorney general told a U.S. Trust Territory official what he had found, he was ordered by Salii not to provide any further information to Federal officials.

According to the GAO, Salii may have violated Palau's Constitution by entering into the contract because Palau's Congress did not authorize it. The contract may also violate Palauan law because repayment with local funding may be required.

According to the original contract, the contractor was to be paid one of two ways. One is to be paid $30 million by the United States pursuant to its compact obligation to build the road. The other was to be paid $27 million by Palau if the United States did not pay for it.

An administration official has acknowledged that the cost of the contract Salii entered into is too high and that there are serious questions relating to the circumstances surrounding the contract.

The official has also suggested that the United States might cash out its obligation to build the 53-mile road by agreeing with Palau to pay it a dollar amount for road construction. The amount would probably be insufficient for building the 53 miles of road, however.

We do not necessarily disagree with this possible proposal. However, we believe that because Congress is approving a compact which requires a 53-mile road, Congress should have to agree if the requirement is to be changed.

If a proposal to provide Palau with funds in lieu of a road acceptable to Palau is made, we will consider it expeditiously and sympathetically.

SECTION 17

Section 17 would amend Public Law 99-658—the law which approved the compact on the condition that the United States enact another law approving the compact—to delay the phasedown of Federal programs that would be discontinued under free association. The delay would be from fiscal year 1987 to the first fiscal year after the compact is implemented. This amendment is consistent with the intent of the original law.

The phasedown was supposed to have provided that 75 percent of funding of Federal programs would be discontinued under the compact in the first year of free association, 50 percent in the second year, and 25 percent in the third year. Current law provides that the 3-year phasedown begin in fiscal year 1987 because that law anticipated that compact approval would have occurred by that time.

The phasedown would enable Palau to adjust to the discontinuation of the program assistance involved. The Government of Palau has relied upon some of it to a great degree and will need time to substitute local resources for it.

In concluding, Mr. Speaker, I would like to urge Members to vote to approve the substitute and thank my colleagues again for their cooperation and support in developing it. I would also like to reiterate our strong conviction that this legislation is essential for meeting United States responsibilities in Palau and for obtaining the approval that has eluded the compact to date.

PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

The **SPEAKER** pro tempore (Mr. GRAY of Illinois). The unfinished business is the question of suspending the rules and passing the joint resolution (H.J. Res. 597), as amended.

The Clerk read the title of the joint resolution.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from the Virgin Islands [Mr. DE LUGO] that the House suspend the rules and pass the joint resolution (H.J. Res. 597), as amended, on which the yeas and nays are ordered.

This is a 2-minute vote.

The vote was taken by electronic device, and there were—yeas 406, nays 11, not voting 14, as follows:

[Roll No. 439]

YEAS—406

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Konnyu
Kostmayer
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark

Stenholm
Stokes
Stratton
Studds
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—11

Ballenger
Edwards (OK)
Henry
Hopkins
Kolbe
Kyl
Nielson
Sensenbrenner
Smith, Robert (NH)
Stump
Walker

NOT VOTING—14

Bonior
Boulter
Chapman
Dowdy
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leland
Lewis (CA)
Lott
Mack
MacKay
Taylor

□ 1316

Mr. WEBER, Mr. SCHUMER, and Mrs. KENNELLY changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the joint resolution, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1315

CLARIFYING THE INVESTIGATORY POWERS OF THE U.S. CONGRESS

The SPEAKER pro tempore. (Mr. Gray of Illinois). The unfinished business is the question of suspending the rules and passing the Senate bill, S. 2350, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. Rodino] that the House suspend the rules and pass the Senate bill, S. 2350, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 245, nays 172, not voting 14, as follows:

[Roll No. 440]

YEAS—245

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Bartlett
Bates
Beilenson
Bennett
Bereuter
Berman
Bilbray
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Campbell
Cardin
Carper
Carr
Clarke
Clay
Clement
Coelho
Coleman (TX)
Collins
Conte
Conyers
Cooper
Costello
Coyne
Crockett
Darden
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gordon
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Hochbrueckner
Hoyer
Hubbard
Huckaby
Hughes
Jacobs
Jeffords
Jenkins
Jones (NC)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leach (IA)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowry (WA)
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Moody
Morella
Morrison (CT)
Mrazek
Murphy
Nagle
Natcher
Neal
Nelson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price
Pursell
Rahall
Rangel
Richardson
Robinson
Rodino
Roe
Rose
Rostenkowski
Roukema
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Scheuer
Schneider
Schroeder
Schumer
Sharp
Shays
Sikorski
Sisisky
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Snowe
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Studds
Swift
Synar
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Williams
Wise
Wolpe
Wyden
Yates
Yatron

NAYS—172

Archer
Armey
Badham
Baker
Ballenger
Barton
Bateman
Bentley
Bevill
Bilirakis
Bliley
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Byron
Callahan
Chandler
Chappell
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Dyson
Edwards (OK)
Emerson
Fields
Ford (MI)
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Gunderson
Hall (TX)
Hansen
Harris
Hastert
Hefley
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hunter
Hutto
Hyde
Inhofe
Ireland
Johnson (CT)
Johnson (SD)
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Lent
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lowery (CA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McCrery
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Montgomery
Moorhead
Morrison (WA)
Murtha
Myers
Nichols
Nielson
Oxley
Packard
Parris
Pashayan
Patterson
Petri
Porter
Quillen
Ravenel
Ray
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Rogers
Roth
Rowland (CT)
Saxton
Schaefer
Schuette
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Skeen
Skelton
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Solomon
Spence
Stangeland
Stenholm
Stratton
Stump
Sundquist
Sweeney
Swindall
Tallon
Tauke
Thomas (CA)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Whitten
Wilson
Wolf
Wortley
Wylie
Young (AK)
Young (FL)

NOT VOTING—14

Boulter
Chapman
Dowdy
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leath (TX)
Leland
Lewis (CA)
Lott
Mack
MacKay
Taylor

□ 1323

Messrs. GOODLING, QUILLEN, PACKARD, BUNNING, DANNEMEYER, HOUGHTON and RAY, Mrs. PATTERSON, Messrs. SWEENEY, RIDGE, LOWRY of California, SKELTON, STRATTON, HARRIS, and CHANDLER, Mrs. MEYERS of Kansas, and Messrs. JOHNSON of South Dakota, BEVILL and NICHOLS changed their vote from "yea" to "nay."

Messrs. MARTINEZ, DORGAN of North Dakota, ROYBAL, BARTLETT, and SHAYS changed their vote from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

RESTRAINT OF CERTAIN STATE TAXES ON INTERSTATE GAS TRANSMISSION PROPERTY

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 2953, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. Hughes] that the House suspend the rules and pass the bill, H.R. 2953, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 219, nays 197, answered "present" 1, not voting 14, as follows:

[Roll No. 441]

YEAS—219

Ackerman
Akaka
Annunzio
Archer
Armey
Aspin
Atkins
Barnard
Barton
Bennett
Bilirakis
Bliley
Boehlert
Boland
Bonior
Borski
Boucher
Brennan
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Buechner
Bunning
Campbell
Cardin
Carper
Chappell
Clinger
Coats
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Costello
Coughlin
Courter
Coyne
Crane
Dannemeyer
Davis (IL)
Davis (MI)
DeLay
Dingell
Donnelly
Durbin
Dwyer
Early
Evans
Fascell
Fawell
Fields
Fish
Flake
Florio
Foglietta
Ford (TN)
Frank
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Goodling
Gradison
Grant
Gray (IL)
Green
Guarini
Gunderson
Hamilton
Hastert
Hayes (IL)
Hefley
Hefner
Henry
Hiler
Hochbrueckner
Hopkins
Horton
Houghton
Hubbard
Hughes
Hutto
Hyde
Ireland
Jacobs
Jeffords
Johnson (CT)
Jones (NC)
Jontz
Kanjorski
Kastenmeier
Kennedy
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Latta
Leach (IA)
Lehman (FL)
Levin (MI)
Lewis (FL)
Lipinski
Lungren
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Mavroules
Mazzoli
McCloskey
McCollum
McDade
McGrath
McHugh
McMillen (MD)
Mfume
Mica
Michel
Miller (OH)
Moakley
Molinari
Mollohan
Moody
Moorhead
Morella
Morrison (CT)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Nelson
Nowak
Obey
Owens (NY)
Owens (UT)
Parris
Pepper
Petri
Porter
Pursell
Rahall
Rangel
Ravenel
Richardson
Ridge
Rinaldo
Ritter
Rodino
Roe
Rogers
Rostenkowski
Roth
Roukema
Rowland (CT)
Russo
Saiki
Savage
Saxton
Scheuer
Schneider
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shuster
Sisisky
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith (TX)
Smith, Robert (NH)
Snowe
Solarz
Solomon
St Germain
Staggers
Stangeland
Stratton
Studds
Stump
Sweeney
Torricelli
Traxler
Udall
Upton
Vander Jagt
Visclosky
Vucanovich
Walgren
Walker
Weiss
Weldon
Wheat
Wilson
Wise
Wolf
Wolpe
Wortley
Wylie
Yates
Yatron
Young (FL)

NAYS—197

Alexander
Anderson
Andrews
Anthony
Applegate
AuCoin
Badham
Baker
Ballenger
Bartlett
Bateman
Bates
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Boggs
Bonker
Bosco
Boxer
Brown (CO)
Burton
Bustamante
Byron
Callahan
Carr
Chandler
Cheney
Clarke
Clay
Clement
Coble
Coelho
Cooper
Craig
Crockett
Darden
Daub
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dickinson
Dicks
Dixon
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Dymally
Dyson
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Fazio
Feighan
Flippo
Foley
Ford (MI)
Frenzel
Frost
Gallegly
Gingrich
Glickman
Gonzalez
Gordon
Grandy
Gray (PA)
Hall (OH)
Hall (TX)
Hansen
Harris
Hatcher
Hawkins
Hayes (LA)
Herger
Hertel
Holloway
Hoyer
Huckaby
Hunter
Inhofe
Jenkins
Johnson (SD)
Kaptur
Kasich
Kennelly
Kolbe
Konnyu
Kyl
Lagomarsino
Lantos
Lehman (CA)
Lent
Levine (CA)
Lewis (GA)
Lightfoot
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Marlenee
Martinez
Matsui
McCandless
McCrery
McCurdy
McEwen
McMillan (NC)
Meyers
Miller (CA)
Miller (WA)
Mineta
Montgomery
Morrison (WA)
Neal
Nichols
Nielson
Oakar
Oberstar
Olin
Ortiz
Oxley
Packard
Panetta
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Perkins
Pickett
Pickle
Price
Quillen
Ray
Regula
Rhodes
Roberts
Robinson
Rose
Rowland (GA)
Roybal
Sabo
Sawyer
Schaefer
Schroeder
Shays
Shumway
Sikorski
Skaggs
Skeen
Skelton
Slattery
Smith (NE)
Smith, Denny (OR)
Smith, Robert (OR)
Spence
Spratt
Stallings
Stark
Stenholm
Stokes
Sundquist
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Towns
Traficant
Valentine
Vento
Volkmer
Watkins
Waxman
Weber
Whittaker
Whitten
Williams
Wyden
Young (AK)

ANSWERED "PRESENT"—1

DioGuardi

NOT VOTING—14

Boulter
Chapman
Dowdy
Gregg
Hammerschmidt
Jones (TN)
Kemp
Leath (TX)
Leland
Lewis (CA)
Lott
Mack
MacKay
Taylor

□ 1329

Mrs. BOXER, Messrs, WEBER, SKAGGS, ALEXANDER, BILBRAY, and Ms. PELOSI, and Messrs. DYMALLY, VALENTINE, and QUILLEN changed their vote from "yea" to "nay."

Messrs. DAVIS of Illinois, MOLINARI, SCHUETTE, SHUSTER, ST GERMAIN, FAWELL, WOLPE, STUMP, TRAXLER, and UPTON changed their vote from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I take this time to inquire of the distinguished majority leader if we can have the Members informed as to how we will proceed for the balance of this day and tomorrow, hopefully not, to follow our original schedule of getting out of here at a good hour tomorrow. It is my understanding we have now had rollcalls or disposed of all those suspensions for which there were rollcalls required and now we are back to square 1 again with the balance, I guess, of the suspensions originally scheduled, is that not correct?

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the distinguished majority leader, the gentleman from Washington [Mr. FOLEY].

Mr. FOLEY. I thank the gentleman for yielding.

Mr. Speaker, yes, that is correct.

We will have somewhere in the vicinity of 20 suspensions debated this afternoon and we will postpone until tomorrow any votes ordered on those suspensions today. The House will meet tomorrow at 10 a.m. and will adjourn by 3 p.m. On Monday, October 10, Columbus Day, the House will not be in sesion. On Tuesday, October 11, the House will meet in pro forma session. On Wednesday, the House will meet at noon and at 10 a.m. on all other days we will consider suspensions, conference reports, and other business leading, we hope, to the end of the session. But it is not possible for me to inform the House at this time because of reasons I previously stated, the dependence of the House schedule at this point on actions in the other body; or whether the end of the session can be expected by the end of next week, Friday or whether it will be necessary to go into the weekend next week.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, can we get some clarification about which bills have been pulled off the public schedule? I understand that the FSLIC bill listed as No. 7 on the schedule we were distributed may not be pulled, is that correct?

Mr. FOLEY. Not be considered under suspension; it will probably be considered under a rule.

Mr. WALKER. OK. Further, I understand that the bills that were coming out of the Committee on Science, Space, and Technology, Nos. 14 and 15 on the schedule, have been put over until tomorrow, is that correct, they will not be taken up today?

Mr. FOLEY. We have not made that decision yet. We are not taking up the conference report on Capital Ownership Development Reform Act but we have not made any decision yet with respect to the items the gentleman mentioned. It is possible we will do so.

Mr. WALKER. I understand that reports are still being filed on those and that they would not be eligible to come up until the reports have been filed. That is not information the gentleman has.

Mr. FOLEY. Yes; I think that is an example of what the gentleman says, that suspensions still have procedure, despite the fact they do waive all rules. We still have procedures.

Mr. WALKER. I understand and I am trying to follow that too. It is just helpful for us to know what it is we are going to take up. Is the FSLIC bill rule going to come up today yet?

Mr. FOLEY. No, the rule has not been granted.

Mr. WALKER. So that will be next week.

Mr. FOLEY. I assume that will be next week.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Georgia.

Mr. GINGRICH. Mr. Speaker, I want to ask two questions of our distinguished majority leader.

First, I was a little confused as I understood the gentleman. We were going to take up about 20 suspensions today. Then vote on those suspensions that are necessary tomorrow. Could the gentleman enlighten us briefly as to what else will be on the calendar for tomorrow?

Mr. FOLEY. Well, we may consider other suspensions. They are in order under the rule adopted previously during the week. And it is possible we could consider conference reports. They can be brought up at any time. I do not have an announcement to make at this time.

Mr. GINGRICH. If I might comment, if the leader will yield further, just comment for a second from this perspective: it would seem to me there are no suspensions, as important as all these suspensions are, there are no suspensions so vital that they could not be voted on Wednesday. I simply wonder it it would not be possible for the House to be allowed to work its will without votes, postponing all votes until next Wednesday and allowing those of our colleagues who have some desire to go home to have an opportunity to have to, in a rational way, spend 4 or 5 days at home rather than staying here to vote on a handful of suspensions tomorrow which could easily be postponed. I would be glad to yield back.

Mr. FOLEY. If the gentleman would continue to yield, I would like to respond. If we could have an assurance that there would be no matters brought up tomorrow if we reach such a conclusion and that there will be a pledge from both sides that no procedural or other votes will occur, we would consider the possibility of a pro forma session tommorrow, but we cannot adjourn over until next Wednesday without a concurrent resolution of the Senate under the Constitution.

Mr. FRANK. Will the gentleman yield?

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from Illinois [Mr. MICHEL] is in charge of the time.

Mr. MICHEL. I would be happy to yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for yielding.

Mr. Speaker, I was sorry to hear my friend from Georgia say that none of the suspensions tomorrow were that important because one of the ones that I hope was going to come up was the revolving door bill, the amendment to the Ethics Act that I know is not the favorite bill of everyone here, but it is something I think we ought to address. And we have a situation where the Senate has passed a bill that I do not think we want to accept because it is a very, I think, differently drafted one and one that goes far beyond what is reasonable. I think we have a bipartisanly supported bill which is reasonable and I would like to have our horse in the field. So if we were to not act at all, as the gentleman suggested—we were delayed because we had trouble getting a quorum because one of the Members asked for his right to do a 3-day session. But I worry about that one. That is one of the ones that I would suggest is worth waiting around for. Maybe if there is not going to be a rollcall because it is bipartisanly supported, we would not lose on that, but I worry about that.

Mr. GINGRICH. If the leader would yield of a moment, could the gentleman from Massachusetts inform us has the committee filed a report on that?

Mr. FRANK. I believe the committee report was filed, yes. What happened was the bill——

Mr. GINGRICH. Our side says, according to our staffer, it has not been filed.

Mr. FOLEY. If the gentleman will yield, I am advised that the bill has not been filed by the committee yet at this time.

Mr. GINGRICH. I realize it is urgent, but it would be useful for all of the Members of the House to have an opportunity to read things that are this important and this vital.

Mr. FRANK. I appreciate that. If the gentleman would yield, although those who are really interested in reading it, action on the bill was completed 1 week ago, 1 week and 1 day ago. I believe that Members who were really concerned about it, the bill was unchanged as of 1 day 1 week ago yesterday, it was around, and we were then asked to wait for the 3 days and then we had a quorum problem on Friday, but yes, the bill has been available. I do not think there is any problem with people not being able to read it.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Minnesota.

Mr. FRENZEL. I thank the gentleman for yielding.

Mr. Speaker, I am very interested in reading that bill. I sure think the House ought to have a chance to do so before we plunge into the debate. We just defeated a bill on suspension because Members did not know what it did. It was a difficult constitutional concept.

If the gentleman is going to bring out a bill without a committee report and without a chance for the House to read it, I will tell the gentleman he is going to lose the bill.

Mr. FRANK. If the gentleman will yield further, let the record be clear, very clear we are trying to move on the ethics bill. If Members on the other side want to threaten to kill the bill, they can do that. Then people will understand where it is.

The point I am making is this is a bill that has been dealt with in a bipartisan way all along, that the Committee on the Judiciary completed work on it 8 days ago. It was no secret to anyone. Unfortunately, we could not get a quorum, a bipartisan problem, not getting a quorum. There is no effort to sneak any bill through.

If the gentleman is really interested in this bill it has been around for a long time.

Now I am sorry to hear that the report was not filed. We did have a Member ask for the additional 3 days, as I said. But if the gentleman—I think it is a little inappropriate for them to be suggesting we are trying to sneak something through here. This is bipartisanly agreed-on bill. It has been around for 8 days. It is a bill that deals with the ethics in government act. I did not realize so many people on the Republican side thought there was some terrible problem with the bill.

Mr. GINGRICH. If the gentleman will yield one more time, let me go back to what I said earlier: On our side in response to the very fine statement of the majority leader yesterday, we are trying to work out opportunities to make it easier to tone down some of the tension, to have people be able to go all the way to the west coast without having to exhaust themselves. We are concerned about all of our friends on a bipartisan basis.

So we think it is possible to work out an agreement to have no votes tomorrow. That does not mean that we would not request some on some suspensions, but if the other side would agree to suspend them and to vote on them on Wednesday, then Members could go home later on today. It just strikes us it is a little—and I come from Atlanta, I can get home easily—but for those on the west coast, it is a little foolish to require us to stay here.

Mr. MICHEL. Let me first inquire of my friend, the distinguished majority leader, if he has had sufficient time now to counsel with his contemporaries to respond to any of these suggestions?

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the distinguished majority leader.

Mr. FOLEY. Mr. Speaker, I say to the gentleman that we have discussed the matter and we are willing to consider this approach on the public undertaking of the Republican leader that there will be no matters brought to the attention of the House from the other side that might require a vote, procedural or otherwise. And if we can have that assurance, letting Members leave today, it is something that we would be willing to consider. But we do have a problem.

Obviously, if Members are told that there is no business scheduled tomorrow and Members accordingly leave and then there are matters presented to the House with no Members here to consider them, this is something we would be concerned about.

Mr. MICHEL. Let me simply respond to the gentleman—I guess things are not all that predictable around here from time to time—but from this gentleman's point of view, I would see no reason why if we took up the suspensions, as many as the gentleman originally planned for, that if all we would really be doing in a meaningful way were to vote on a couple of suspensions that may or may not be ordered, and quite frankly it might be such a condition where none would be ordered for tomorrow, then I think some of our Members would feel like "Boy, why didn't we anticipate that and get out of here Thursday night if we need not be here?"

So I think if the gentleman from Pennsylvania and the gentleman from Georgia on my side for whom I also have to be responsible would give us assurances here in public view that there is nothing devious planned on their part to stray from the schedule why——

Mr. WALKER. Mr. Speaker, that may be directed at me, Mr. Leader.

Mr. Leader you know the only thing I know of on the schedule at the present time that might require a vote off the suspension schedule is the FADA bill. If FSLIC is being pulled and there is the potential that the two science and technology bills are going to be pulled, one of those was controversial, the only thing I know of on the schedule that we are going to take up later on today that is controversial and might require a vote is the so-called FADA bill. If that was pulled there would be no need to vote tomorrow, period. If we are going to go through with that then there is no reason why that vote could not be rolled over until Wednesday. That is fine. I would have no problem with that.

Mr. MICHEL. Mr. Speaker, let me yield again to the distinguished majority leader.

Mr. FOLEY. Mr. Speaker, will the distinguished Republican leader yield to me for some unanimous-consent requests?

Mr. MICHEL. I am happy to yield.

AUTHORIZING POSTPONEMENT OF VOTES ON SUSPENSIONS DEBATED TODAY UNTIL WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that any votes ordered on suspensions debated today be postponed until Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

ADJOURNMENT TO TUESDAY, OCTOBER 11, 1988

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow it adjourn to meet at noon on Tuesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

HOUR OF MEETING ON WEDNESDAY, OCTOBER 12, 1988

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Tuesday next it adjourn to meet on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

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Mr. MICHEL. Mr. Speaker, reclaiming my time, I yield briefly to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to move over into a question about next week on a substantive matter that will be affected by the process. The other body has been considering for some time packaging a rather omnibus piece of legislation that would include four or five bills of the most major proportion that have never been considered on the House floor, and if that were to be done—and I hope it is not—it would include child care, parental aid, minimum wage, pornography legislation, and perhaps others.

I wonder if the leadership on the other side has made any kind of an initial determination as to how they would bring that omnibus legislation out on the floor so Members would have a chance to fully offer amendments and debate and vote on the individual items as well as participate in the amendment process.

Mr. FOLEY. Mr. Speaker, if the gentleman will yield to me, that matter has not been disposed of in the other body, and until it is and there is some indication that the bill is coming in the form the gentleman has described, we have not considered what action will be taken here.

Mr. MICHEL. Mr. Speaker, I might make the observation, however, that my conversations with some folks on the other side of the Capitol would indicate to me that a cloture vote would not succeed, in which case the question would then for all practical purposes be rather moot, because that would in a sense kill that package of amendments, and then maybe we could get down to the two remaining things that we have to take care of here: Finalizing something on drug legislation and the technical amendments to the tax bill.

Mr. FRANK. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Speaker, I thank the gentleman for yielding.

I would have felt a little better if the gentleman would have included the ethics in the list of things we have to do. I will yield to the bipartisan desire to put this off a few days if I understand correctly that we are going to be able to do this on Wednesday.

Mr. FOLEY. Mr. Speaker, I will say to the gentleman that it will be my intention to give the gentleman's legislation priority consideration on Wednesday.

Mr. MICHEL. Mr. Speaker, there is one question I think we need to have cleared up, and that is relating to the gentleman's unanimous consent request that had to do with suspensions considered today upon which there might be votes ordered. Would that request also apply to those suspensions that might be considered and debated tomorrow?

Mr. FOLEY. Mr. Speaker, if the gentleman will yield, we are at the process, I hope, of deciding that there would be no session tomorrow except a pro forma session, and if we have the gentleman's assurance that I assumed we had, that would be the case.

Mr. MICHEL. Mr. Speaker, I think the minority made it quite clear from the demonstration of several of the Members who might otherwise do other things that the majority leader can have the assurance on this side that we can meet the kind of schedule the gentleman proposes.

Mr. FOLEY. In that case, Mr. Speaker, I will announce to the House that the House will be in pro forma session tomorrow and will meet again at noon on Wednesday.

Mr. MICHEL. Mr. Speaker, if I may, I wish to reclaim my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The Chair will make the request that the majority leader clarify his statement.

Mr. FOLEY. Mr. Speaker, I meant to say that the House will meet in pro forma session tomorrow and Tuesday, and Members should be advised that the House will meet at noon on Wednesday next to consider legislation, with votes expected.

Mr. MICHEL. Mr. Speaker, I thank the distinguished majority leader.

Mr. Speaker, I yield to the distinguished gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have been talking with the minority members of my committee and with subcommittee chairmen, and the offer that I extended a little while ago still goes. I think we could probably dispose of a number of matters that are of concern to Members very quickly this afternoon with unanimous consent requests.

I am perfectly willing to repeat here what I said before, that if the Republican member of the committee has an objection to any one of them, it will not be offered. I will give them complete veto power over the list that I have, but it has to be a member of my committee that has the veto power. If we have the understanding that they have the authority to accept or reject them, I am sure we could dispose of them. There are a number of them that Members on the other side indicate to me they would like to have considered before this weekend. There will be no opportunity to take them up again until late next week.

Mr. MICHEL. Mr. Speaker, let me simply respond to the gentleman and say that what we agreed to before the gentleman was recognized and yielded to by the gentleman from Illinois is all fair and square. Now the gentleman is posing a question that raises a new element, and in view of the conversations and dialogs and colloquys that had taken place earlier in the day, we understand that the gentleman from Pennsylvania preferred, within his rights, certainly, to request that items come out here under suspension of the rules rather than by unanimous consent.

If the gentleman wants to insist on the prerogative which is his to maintain that position, he is, of course, perfectly within his rights. But what we agreed to before has been the agreement, and, quite frankly, even if there are others here that would require programming for the Suspension Calendar, that could be done within an hour's notice.

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield, what happened before was that I offered to do exactly what I am offering to do now. The response of the gentleman from Pennsylvania was: "No." I said, "I will give unanimous consent to discharge your committee," but then we could put all these items, some 26 or 27 items, on the calendar so that we build up the logjam for potential votes. I said, "I don't think we want to delay concluding the business of the House with matters that normally are handled in a routine fashion."

I stand ready, willing and able to do that this afternoon. If we cannot do it this afternoon, the first time that we will be able to return to it is possibly next Wednesday, more probably next Thursday or Friday, and to those Members who have time-sensitive resolutions I just have to say that I apologize that we are not able to work out an understanding.

Mr. Speaker, I thank the gentleman for yielding.

Mr. MICHEL. Mr. Speaker, I think I will yield back the balance of my time, but first let me say this: Next week when we are back here on Wednesday and we have business scheduled, there is going to be some fluff time waiting on the other body if they demonstrate no more inclination to work more speedily than they have, and it may very well be that we could revisit that issue at that time.

Mr. Speaker, I yield back the balance of my time.

PERSONAL EXPLANATION

(Mr. LOWRY of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOWRY of Washington. Mr. Speaker, on Monday, Tuesday, and Wednesday of this week I was unavoidably detained and I missed 53 votes, which I believe is probably more votes than I missed in 9½ years in Congress.

Mr. Speaker, had I been present, I would have voted in the following manner.

ON MONDAY, OCTOBER 3

H.R. 2642, to implement the settlement of the Colorado Ute Indian water rights, I would have voted "yea" on rollcall 376.

House Resolution 562, authorizing the use of depositions in connection with an impeachment inquiry of the Committee on the Judiciary, I would have voted "yea" on rollcall 377.

H.R. 5288, providing an improved system of review of decisions of the Veterans' Administration with respect to claims for veterans' benefits, I would have voted "yea" on rollcall 378.

H.R. 5408, making a correction in the Education and Training for a Competitive America Act of 1988, I would have voted "yea" on rollcall 379.

Agreeing to Senate amendment to H.R. 4857 making a technical change in the Job Training Partnership Act, I would have voted "yea" on rollcall 380.

Agreeing to Senate amendment to House Concurrent Resolution 351, to correct errors in S. 328, requiring the Federal Government to pay interest on overdue payments, I would have voted "yea" on rollcall 381.

Agreeing to the amendment to S. 469 to ensure privacy, integrity, and verification of data disclosed for computer matching and to establish Data Integrity Boards within Federal agencies, I would have voted "yea" on rollcall 382.

H.R. 5052 to transfer control of the GAO building, I would have voted "yea" on rollcall 383.

H.R. 5291, to give the Secretary of the Air Force authority to convey certain lands, I would have voted "yea" on rollcall 384.

H.R. 5050, women's small business ownership, I would have voted "yea" on rollcall 385.

S. 437, to permit prepayment of loans made to State and local development companies, I would have voted "yea" on rollcall 386.

ON TUESDAY, OCTOBER 4

On approving the journal, I would have voted "yea" on rollcall 387.

House Resolution 388, giving the Speaker suspension authority, I would have voted "yea" on rollcall 388.

H.R. 4758, to increase death benefits for dependents of public safety officers, I would have voted "yea" on rollcall 389.

H.R. 3914, to establish a commission to investigate racially motivated violence, I would have voted "yea" on rollcall 390.

H.R. 5164, to review detention of certain Mariel Cubans, I would have voted "yea" on rollcall 391.

H.R. 5537, municipal bankruptcy amendments, I would have voted "yea" on rollcall 392.

H.R. 5348, intellectual property licenses in bankruptcy, I would have voted "yea" on rollcall 393.

H.R. 5280, to mint coins commemorating the Congress' bicentennial, I would have voted "yea" on rollcall 394.

Senate Concurrent Resolution 137, to provide for use of the Rotunda to honor President Kennedy, I would have voted "yea" on rollcall 395.

House Resolution 558, to provide for fair employment practices in the House, I would have voted "yea" on rollcall 396.

S. 508, to strengthen protection for whistleblowers, I would have voted "yea" on rollcall 397.

H.R. 5199, to enforce agricultural quarantine, I would have voted "yea" on rollcall 398.

House Concurrent Resolution 115, providing congressional participation in the Constitution Bicentennial, I would have voted "yea" on rollcall 399.

H.R. 4712, reauthorization of the Office of Government Ethics, I would have voted "yea" on rollcall 400.

H.R. 5430, to amend the Marine Sanctuaries Act with regard to ocean dumping, I would have voted "yea" on rollcall 401.

H.R. 4210, to reauthorize NOAA maritime programs, I would have voted "yea" on rollcall 402.

H.R. 4211, reauthorizing the National Ocean Pollution Planning Act, I would have voted "yea" on rollcall 403.

ON TUESDAY, OCTOBER 4

Disagreeing to the Senate amendment to H.R. 4919, the governing international fishery agreement between the United States and the Soviet Union, I would have voted "yea" on rollcall 404.

H.R. 5315, extending the Congressional Award Program, I would have voted "yea" on rollcall 405.

H.R. 5318, egg research, I would have voted "yea" on rollcall 406.

H.R. 4724, Mississippi land release, I would have voted "yea" on rollcall 407.

House Resolution 564, providing for concurrence with the Senate amendment on grain standards, I would have voted "yea" on rollcall 408.

Agreeing to the Senate amendment to H.R. 2596, to improve Federal management of lands on Admiralty Island, AK, I would have voted "yea" on rollcall 409.

S. 2723, regarding Hoopa Valley and Turok tribal lands, I would have voted "yea" on rollcall 410.

S. 2800, amending the Nuclear Waste Policy Act of 1982, I would have voted "yea" on rollcall 411.

S. 1236, amended, to reauthorize housing relocation under the Navajo-Hopi Relocation Program, I would have voted "yea" on rollcall 412.

House Concurrent Resolution 331, amended, to acknowledge the contribution of the Iriquois Confederacy to the development of the U.S. Constitution, I would have voted "yea" on rollcall 413.

H.R. 5203, to declare that certain lands be held in trust for the Quinault Indian Nation, I would have voted "yea" on rollcall 414.

Agreeing to the Senate amendment to H.R. 4012, settling water rights claims in Arizona, I would have voted "yea" on rollcall 415.

House Resolution 565, disagreeing to the Senate amendment and providing for a conference on the Indian Health Care Improvement Act, I would have voted "yea" on rollcall 416.

House Resolution 566, agreeing, with an amendment, to the Senate amendment to West Virginia river conservation and returning the measure to the Senate, I would have voted "yea" on rollcall 417.

Agreeing to the Senate amendment to H.R. 4028, concerning Targhee Forest lands, I would have voted "yea" on rollcall 418.

Agreeing to the Senate amendment to H.R. 4354, concerning the Winding Stair Mountain Recreation and Wilderness Area in Oklahoma, I would have voted "yea" on rollcall 419.

Agreeing to Senate amendments to the House amendments to S. 2057, establishing the Coast Heritage Trail in New Jersey, I would have voted "yea" on rollcall 420.

S. 1047, approving the Northern Marianas Islands Covenant, I would have voted "yea" on rollcall 421.

Agreeing to Senate amendments to H.R. 4267, the WEB Rural Water Development Project, I would have voted "yea" on rollcall 422.

House Resolution 567, agreeing with amendments to a Senate amendment to H.R. 2772, concerning South Dakota rural water projects, disagreeing with other Senate amendments to the measure, and returning it to the Senate, I would have voted "yea" on rollcall 423.

S. 795, amended, to settle water rights claims in San Diego County, CA, I would have voted "yea" on rollcall 424.

On rollcall 425, a call of the House, I would like to have voted "present," but I could not be here.

On rollcall 426, to override the President's veto of H.R. 1154, the Textile and Apparel Trade Act, I would have voted "no."

ON WEDNESDAY, OCTOBER 5

House Resolution 568, the rule providing for consideration of H.R. 5410, Foreign Ownership Disclosure, I would have voted "yea" on rollcall 427.

H.R. 5410, Foreign Ownership Disclosure, I would have voted "no" on rollcall 428.

Agreeing to the conference report on S. 908, the Inspector General Act amendments, I would have voted "yea" on rollcall 429.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, and the order of the House today, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Wednesday, October 12, 1988.

GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4982) to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products, as amended.

The Clerk read as follows:

H.R. 4982

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND REFERENCE TO ACT.

(a) SHORT TITLE.—This Act may be cited as the "Generic Animal Drug and Patent Term Restoration Act".

(b) REFERENCE.—

(1) Whenever in title I (other than in section 106(b)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

(2) Whenever in title II an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 35 of the United States Code.

TITLE I—NEW ANIMAL DRUG APPLICATIONS

SEC. 101. ABBREVIATED NEW ANIMAL DRUG APPLICATIONS.

SEC. 101. (a) GENERAL RULE.—Section 512(b) (21 U.S.C. 360b) is amended—

(1) by inserting "(1)" after "(b)",

(2) by redesignating clauses (1) through (8) as clauses (A) through (H), respectively, and

(3) by adding at the end the following:

"(2) Any person may file with the Secretary an abbreviated application for the approval of a new animal drug. An abbreviated application shall contain the information required by subsection (n).".

(b) APPLICATION REQUIREMENTS.—Section 512 is amended by striking out subsection (n) and inserting in lieu thereof the following:

"(n)(1) An abbreviated application for a new animal drug shall contain—

"(A)(i) except as provided in clause (ii), information to show that the conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) prescribed, recommended, or suggested in the labeling proposed for the new animal drug have been previously approved for a new animal drug listed under paragraph (4) (hereinafter in this subsection referred to as an 'approved new animal drug'), and

"(ii) information to show that the withdrawal period at which residues of the new animal drug will be consistent with the tolerances established for the approved new animal drug is the same as the withdrawal period previously established for the approved new animal drug or, if the withdrawal period is proposed to be different, information showing that the residues of the new animal drug at the proposed different withdrawal period will be consistent with the tolerances established for the approved new animal drug;

"(B)(i) information to show that the active ingredients of the new animal drug

are the same as those of the approved new animal drug, and

"(ii) if the approved new animal drug has more than one active ingredient, and if one of the active ingredients of the new animal drug is different from one of the active ingredients of the approved new animal drug and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show that the other active ingredients of the new animal drug are the same as the active ingredients of the approved new animal drug,

"(II) information to show either that the different active ingredient is an active ingredient of another approved new animal drug or of an animal drug which does not meet the requirements of section 201(w), and

"(III) such other information respecting the different active ingredients as the Secretary may require;

"(C)(i) if the approved new animal drug is permitted to be used with one or more animal drugs in animal feed, information to show that the proposed uses of the new animal drug with other animal drugs in animal feed are the same as the uses of the approved new animal drug, and

"(ii) if the approved new animal drug is permitted to be used with one or more other animal drugs in animal feed, and one of the other animal drugs proposed for use with the new animal drug in animal feed is different from one of the other animal drugs permitted to be used in animal feed with the approved new animal drug, and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show either that the different animal drug proposed for use with the approved new animal drug in animal feed is an approved new animal drug permitted to be used in animal feed or does not meet the requirements of section 201(w) when used with another animal drug in animal feed,

"(II) information to show that other animal drugs proposed for use with the new animal drug in animal feed are the same as the other animal drugs permitted to be used with the approved new animal drug, and

"(III) such other information respecting the different animal drug or combination with respect to which the petition was filed as the Secretary may require,

"(D) information to show that the route of administration, the dosage form, and the strength of the new animal drug are the same as those of the approved new animal drug or, if the route of administration, the dosage form, or the strength of the new animal drug is different and the application is filed pursuant to the approval of a petition filed under paragraph (3), such information respecting the route of administration, dosage form, or strength with respect to which the petition was filed as the Secretary may require;

"(E) information to show that the new animal drug is bioequivalent to the approved new animal drug, except that if the application is filed pursuant to the approval of a petition filed under paragraph (3) for the purposes described in subparagraph (B) or (C), information to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

"(F) information to show that the labeling proposed for the new animal drug is the same as the labeling approved for the approved new animal drug except for changes required because of differences approved under a petition filed under paragraph (3), because of a different withdrawal period, or because the new animal drug and the approved new animal drug are produced or distributed by different manufacturers;

"(G) the items specified in clauses (B) through (F) of subsection (b)(1);

"(H) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the approved new animal drug or which claims a use for such approved new animal drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under subsection (b)(1) or (c)(3)—

"(i) that such patent information has not been filed,

"(ii) that such patent has expired,

"(iii) of the date on which such patent will expire, or

"(iv) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new animal drug for which the application is filed; and

"(I) if with respect to the approved new animal drug information was filed under subsection (b)(1) or (c)(3) for a method of use patent which does not claim a use for which the applicant is seeking approval of an application under subsection (c)(2), a statement that the method of use patent does not claim such a use.

The Secretary may not require that an abbreviated application contain information in addition to that required by subparagraphs (A) through (H).

"(2)(A) An applicant who makes a certification described in paragraph (1)(G)(iv) shall include in the application a statement that the applicant will give the notice required by subparagraph (B) to—

"(i) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

"(ii) the holder of the approved application under subsection (c)(1) for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

"(B) The notice referred to in subparagraph (A) shall state that an application, which contains data from bioequivalence studies, has been filed under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of such drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

"(C) If an application is amended to include a certification described in paragraph (1)(G)(iv), the notice required by subparagraph (B) shall be given when the amended application is filed.

"(3) If a person wants to submit an abbreviated application for a new animal drug—

"(A) whose active ingredients, route of administration, dosage form, or strength differ from that of an approved new animal drug, or

"(B) whose use with other animal drugs in animal feed differs from that of an approved new animal drug,

such person shall submit a petition to the Secretary seeking permission to file such an application. The Secretary shall approve a petition for a new animal drug unless the Secretary finds that—

"(A) investigations must be conducted to show the safety and effectiveness, in animals to be treated with the drug, of the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which differ from the approved new animal drug, or

"(B) investigations must be conducted to show the safety for human consumption of any residues in food resulting from the proposed active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed for the new animal drug which is different from the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug.

The Secretary shall approve or disapprove a petition submitted under this paragraph within 90 days of the date the petition is submitted.

"(4)(A)(i) Within 60 days of the date of the enactment of this subsection, the Secretary shall publish and make available to the public a list in alphabetical order of the official and proprietary name of each new animal drug which has been approved for safety and effectiveness before the date of the enactment of this subsection.

"(ii) Every 30 days after the publication of the first list under clause (i) the Secretary shall revise the list to include each new animal drug which has been approved for safety and effectiveness under subsection (c) during the 30 day period.

"(iii) When patent information submitted under subsection (b)(1) or (c)(3) respecting a new animal drug included on the list is to be published by the Secretary, the Secretary shall, in revisions made under clause (ii), include such information for such drug.

"(B) A new animal drug approved for safety and effectiveness before the date of the enactment of this subsection or approved for safety and effectiveness under subsection (c) shall, for purposes of this subsection, be considered to have been published under subparagraph (A) on the date of its approval or the date of enactment, whichever is later.

"(C) If the approval of a new animal drug was withdrawn or suspended under subsection (c)(2)(G) or for grounds described in subsection (e) or if the Secretary determines that a drug has been withdrawn from sale for safety or effectiveness reasons, it may not be published in the list under subparagraph (A) or, if the withdrawal or suspension occurred after its publication in such list, it shall be immediately removed from such list—

"(i) for the same period as the withdrawal or suspension under subsection (c)(2)(G) or (e), or

"(ii) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

A notice of the removal shall be published in the Federal Register.

"(5) If an application contains the information required by clauses (A), (G), and (H) of subsection (b)(1) and such information—

"(A) is relied on by the applicant for the approval of the application, and

"(B) is not information derived either from investigations, studies, or tests conducted by or for the applicant or for which the applicant had obtained a right of reference or use from the person by or for whom the investigations, studies, or tests were conducted,

such application shall be considered to be an application filed under subsection (b)(2).

"(o) For purposes of this section, the term 'patent' means a patent issued by the Patent and Trademark Office of the Department of Commerce.".

(c) APPLICATION APPROVAL.—Section 512(c) is amended (1) by inserting "(1)" after "(c)", by redesignating clauses (1) and (2) as clauses (A) and (B), and by adding at the end the following:

"(2)(A) Subject to subparagraph (C), the Secretary shall approve an abbreviated application for a drug unless the Secretary finds—

"(i) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity;

"(ii) the conditions of use prescribed, recommended, or suggested in the proposed labeling are not reasonably certain to be followed in practice or, except as provided in subparagraph (B), information submitted with the application is insufficient to show that each of the proposed conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) have been previously approved for the approved new animal drug referred to in the application;

"(iii) information submitted with the application is insufficient to show that the active ingredients are the same as those of the approved new animal drug referred to in the application;

"(iv)(I) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug referred to in the application, information submitted in the application is insufficient to show that the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as that of the approved new animal drug, or

"(II) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is different from that of the approved new animal drug referred to in the application, no petition to file an application for the drug with the different active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed was approved under subsection (n)(3);

"(v) if the application was filed pursuant to the approval of a petition under subsection (n)(3), the application did not contain the information required by the Secretary respecting the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which is not the same;

"(vi) information submitted in the application is insufficient to show that the drug is bioequivalent to the approved new animal drug referred to in the application, or if the application is filed under a petition approved pursuant to subsection (n)(3), information submitted in the application is insufficient to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

"(vii) information submitted in the application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the approved new animal drug referred to in the application except for changes required because of differences approved under a petition filed under subsection (n)(3), because of a different withdrawal period, or because the drug and the approved new animal drug are produced or distributed by different manufacturers;

"(viii) information submitted in the application or any other information available to the Secretary shows that (I) the inactive ingredients of the drug are unsafe for use under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug, (II) the composition of the drug is unsafe under such conditions because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included, or (III) in the case of a drug for food producing animals, the inactive ingredients of the drug or its composition may be unsafe with respect to human food safety;

"(ix) the approval under subsection (b)(1) of the approved new animal drug referred to in the application filed under subsection (b)(2) has been withdrawn or suspended for grounds described in paragraph (1) of subsection (e), the Secretary has published a notice of a hearing to withdraw approval of the approved new animal drug for such grounds, the approval under this paragraph of the new animal drug for which the application under subsection (b)(2) was filed has been withdrawn or suspended under subparagraph (G) for such grounds, or the Secretary has determined that the approved new animal drug has been withdrawn from sale for safety or effectiveness reasons;

"(x) the application does not meet any other requirement of subsection (n); or

"(xi) the application contains an untrue statement of material fact.

"(B) If the Secretary finds that a new animal drug for which an application is submitted under subsection (b)(2) is bioequivalent to the approved new animal drug referred to in such application and that residues of the new animal drug are consistent with the tolerances established for such approved new animal drug but at a withdrawal period which is different than the withdrawal period approved for such approved new animal drug, the Secretary may establish, on the basis of information submitted, such different withdrawal period as the withdrawal period for the new animal drug for purposes of the approval of such application for such drug.

"(C) Within 180 days of the initial receipt of an application under subsection (b)(2) or within such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall approve or disapprove the application.

"(D) The approval of an application filed under subsection (b)(2) shall be made effective on the last applicable date determined under the following:

"(i) If the applicant only made a certification described in clause (i) or (ii) of subsection (n)(1)(G) or in both such clauses, the approval may be made effective immediately.

"(ii) If the applicant made a certification described in clause (iii) of subsection (n)(1)(G), the approval may be made effective on the date certified under clause (iii).

"(iii) If the applicant made a certification described in clause (iv) of subsection (n)(1)(G), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of 45 days from the date the notice provided under subsection (n)(2)(B)(i) is received. If such an action is brought before the expiration of such days, the approval shall be made effective upon the expiration of the 30 month period beginning on the date of the receipt of the notice provided under subsection (n)(2)(B) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that if before the expiration of such period—

"(I) the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of the court decision,

"(II) the court decides that such patent has been infringed, the approval shall be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, United States Code, or

"(III) the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of 45 days from the date the notice made under subsection (n)(2)(B) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent. Any action brought under section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

"(iv) If the application contains a certification described in clause (iv) of subsection (n)(1)(G) and is for a drug for which a previous application has been filed under this subsection containing such a certification, the application shall be made effective not earlier than 180 days after—

"(I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or

"(II) the date of a decision of a court in an action described in subclause (III) holding the patent which is the subject of the certification to be invalid or not infringed,

whichever is earlier.

"(E) If the Secretary decides to disapprove an application, the Secretary shall give the applicant notice of an opportunity for a hearing before the Secretary on the question of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within 30 days after such notice, such hearing shall commence not more than 90 days after the expiration of such 30 days unless the Secretary and the applicant otherwise agree. Any *such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within 90 days after the date fixed by the Secretary for filing final briefs.*

"(F)(i) If an application submitted under subsection (b)(1) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b)(1), is approved after the date of the enactment of this paragraph, no application may be submitted under subsection (b)(2) which refers to the drug for which the subsection (b)(1) application was submitted before the expiration of 5 years from the date of the approval of the application under subsection (b)(1), except that such an application may be submitted under subsection (b)(2) after the expiration of 4 years from the date of the approval of the subsection (b)(1) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (n)(1)(G). The approval of such an application shall be made effective in accordance with subparagraph (B) except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the 30 month period referred to in subparagraph (C)(iii) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

"(ii) If an application submitted under subsection (b)(1) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under such subsection, is approved after the date of enactment of this paragraph and if such application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under subsection (b)(2) for the conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of 3 years from the date of the approval of the application under subsection (b)(1) for such drug.

"(iii) If a supplement to an application approved under subsection (b)(1) is approved after the date of enactment of this paragraph and the supplement contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under subsection (b)(2) for a change approved in the supplement effective before the expiration of 3 years from the date of the approval of the supplement.

"(iv) An applicant under subsection (b)(1) who comes within the provisions of clause (i) of this subparagraph as a result of an application which seeks approval for a use solely in non-food producing animals, may elect, within 10 days of receiving such approval, to waive clause (i) of this subparagraph, in which event the limitation on approval of applications submitted under subsection (b)(2) set forth in clause (ii) of this subparagraph shall be applicable to the subsection (b)(1) application.

"(v) If an application (including any supplement to a new animal drug application) submitted under subsection (b)(1) for a new animal drug for a food-producing animal use, which includes an active ingredient (including any ester or salt of the active ingredient) which has been the subject of a waiver under subparagraph (B)(iv) is approved after the date of enactment of this paragraph, and if the application contains reports of clinical or field investigations or human food safety studies (other than bioequivalence or residue studies) essential to the new approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application (including any supplement to such application) submitted under subsection (b)(2) for the new conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of five years from the date of approval of the application under subsection (b)(1) for such drug. The provisions of this paragraph shall apply only to the first approval for a food-producing animal use for the same applicant after the waiver under subparagraph (B)(iv).

"(G) If an approved application submitted under subsection (b)(2) for a new animal drug refers to a drug the approval of which was withdrawn or suspended for grounds described in paragraph (1) or (2) of subsection (e) or was withdrawn or suspended under this subparagraph or which, as determined by the Secretary, has been withdrawn from sale for safety or effectiveness reasons, the approval of the drug under this paragraph shall be withdrawn or suspended—

"(i) for the same period as the withdrawal or suspension under subsection (e) or this subparagraph, or

"(ii) if the approved new animal drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

"(H) For purposes of this paragraph:

"(i) The term 'bioequivalence' means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a new animal drug and becomes available at the site of drug action.

"(ii) A new animal drug shall be considered to be bioequivalent to the approved new animal drug referred to in its application under subsection (n) if—

"(I) the rate and extent of absorption of the drug do not show a significant difference from the rate and extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses;

"(II) the extent of absorption of the drug does not show a significant difference from the extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses and the difference from the approved new animal drug in the rate of absorption of the drug is intentional, is reflected in its proposed labeling, is not essential to the attainment of effective drug concentrations in use, and is considered scientifically insignificant for the drug in attaining the intended purposes of its use and preserving human food safety; or

"(III) in any case in which the Secretary determines that the measurement of the rate and extent of absorption or excretion of the new animal drug in biological fluids is inappropriate or impractical, an appropriate acute pharmacological effects test or other test of the new animal drug and, when deemed scientifically necessary, of the approved new animal drug referred to in the application in the species to be tested or in an appropriate animal model does not show a significant difference between the new animal drug and such approved new animal drug when administered at the same dose under similar experimental conditions.

If the approved new animal drug referred to in the application for a new animal drug under subsection (n) is approved for use in more than one animal species, the bioequivalency information described in subclause (I), (II), and (III) shall be obtained for one species, or if the Secretary deems appropriate based on scientific principles, shall be obtained for more than one species. The Secretary may prescribe the dose to be used in determining bioequivalency under subclause (I), (II), or (III). To assure that the residues of the new animal drug will be consistent with the established tolerances for the approved new animal drug referred to in the application under subsection (b)(2) upon the expiration of the withdrawal period contained in the application for the new animal drug, the Secretary shall require bioequivalency data or residue depletion studies of the new animal drug or such other data or studies as the Secretary considers appropriate based on scientific principles. If the Secretary requires one or more residue studies under the preceding sentence, the Secretary may not require that the assay methodology used to determine the withdrawal period of the new animal drug be more rigorous than the methodology used to determine the withdrawal period for the approved new animal drug referred to in the application. If such studies are required and if the approved new animal drug, referred to in the application for the new animal drug for which such studies are required, is approved for use in more than one animal species, such studies shall be conducted for one species, or if the Secretary deems appropriate based on scientific principles, shall be conducted for more than one species.".

SEC. 102. PATENT INFORMATION.

(a) SECTION 512(b).— Section 512(b)(1) of such Act is amended by adding at the end the following: "The applicant shall file with the application the patent number and the expiration date of any patent which claims the new animal drug for which the applicant filed the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, the applicant shall amend the application to include the information required by the preceding sentence. Upon approval of the application, the Secretary shall publish information submitted under the two preceding sentences.".

(b) OTHER SECTIONS.—

(1) Section 512(c) is amended by adding at the end the following:

“(3) If the patent information described in subsection (b)(1) could not be filed with the submission of an application under subsection (b)(1) because the application was filed before the patent information was required under subsection (b)(1) or a patent was issued after the application was approved under such subsection, the holder of an approved application shall file with the Secretary the patent number and the expiration date of any patent which claims the new animal drug for which the application was filed or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If the holder of an approved application could not file patent information under subsection (b)(1) because it was not required at the time the application was approved, the holder shall file such information under this subsection not later than 30 days after the date of the enactment of this sentence, and if the holder of an approved application could not file patent information under subsection (b)(1) because no patent had been issued when an application was filed or approved, the holder shall file such information under this subsection not later than 30 days after the date the patent involved is issued. Upon the submission of patent information under this subsection, the Secretary shall publish it.”.

(2) The first sentence of section 512(d)(1) is amended by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively, and by inserting after subparagraph (F) the following:

“(G) the application failed to contain the patent information prescribed by subsection (b)(1);”.

(3) The second sentence of section 512(d)(1) is amended by striking out “(H)” and inserting in lieu thereof “(G)”.

(4) The first sentence of section 512(e)(1) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following:

“(D) the patent information prescribed by subsection (c)(3) was not filed within 30 days after the receipt of written notice from the Secretary specifying the failure to file such information;”.

SEC. 103. REGULATIONS.

(a) General Rule.—The Secretary of Health and Human Services shall promulgate, in accordance with the notice and comment requirements of section 553 of title 5, United States Code, such regulations as may be necessary for the administration of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended by sections 101 through 103 of this title, within one year of the date of enactment of this Act.

(b) Transition.—During the period beginning 60 days after the date of enactment of this Act and ending on the date regulations promulgated under subsection (a) take effect, abbreviated new animal drug applications may be submitted in accordance with the provisions of section 314.55 and part 320 of title 21 of the Code of Federal Regulations and shall be considered as suitable for any drug which has been approved for safety and effectiveness under section 512(c) of the Federal Food, Drug, and Cosmetic Act before the date of enactment of this Act. If any such provision of section 314.55 or part 320 is inconsistent with the requirements of section 512 of the Federal Food, Drug, and Cosmetic Act (as amended by this title), the Secretary shall consider the application under the applicable requirements of section 512 (as so amended).

SEC. 104. SAFETY AND EFFECTIVENESS DATA.

Section 512 (as amended by section 101(b) of this Act) is amended by adding at the end the following:

“(p)(1) Safety and effectiveness data and information which has been submitted in an application filed under subsection (b)(1) for a drug and which has not previously been disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

“(A) if no work is being or will be undertaken to have the application approved,

“(B) if the Secretary has determined that the application is not approvable and all legal appeals have been exhausted,

“(C) if approval of the application under subsection (c) is withdrawn and all legal appeals have been exhausted,

“(D) if the Secretary has determined that such drug is not a new drug, or

“(E) upon the effective date of the approval of the first application filed under subsection (b)(2) which refers to such drug or upon the date upon which the approval of an application filed under subsection (b)(2) which refers to such drug could be made effective if such an application had been filed.

“(2) Any request for data and information pursuant to paragraph (1) shall include a verified statement by the person making the request that any data or information received under such paragraph shall not be disclosed by such person to any other person—

“(A) for the purpose of, or as part of a plan, scheme, or device for, obtaining the right to make, use, or market, or making, using, or marketing, outside the United States, the drug identified in the application filed under subsection (b)(1), and

“(B) without obtaining from any person to whom the data and information are disclosed an identical verified statement, a copy of which is to be provided by such person to the Secretary, which meets the requirements of this paragraph.

SEC. 105. VETERINARY PRESCRIPTION DRUGS.

Section 503 (21 U.S.C. 353) is amended by adding at the end thereof the following new subsection:

“(c)(1)(A) A drug intended for use by animals other than man which—

“(i) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary for its use, is not safe for animal use except under the professional supervision of a licensed veterinarian, or

“(ii) is limited by an approved application under subsection (b) of section 512 to use under the professional supervision of a licensed veterinarian,

shall be dispensed only by or upon the lawful written or oral order of a licensed veterinarian in the course of the veterinarian’s professional practice.

“(B) For purposes of subparagraph (A), an order is lawful if the order—

“(i) is a prescription or other order authorized by law,

“(ii) is, if an oral order, promptly reduced to writing by the person lawfully filling the order, and filed by that person, and

“(iii) is refilled only if authorized in the original order or in a subsequent oral order promptly reduced to writing by the person lawfully filling the order, and filed by that person.

“(C) The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

“(2) Any drug when dispensed in accordance with paragraph (1) of this subsection—

“(A) shall be exempt from the requirements of section 502, except subsections (a), (g), (h), (i)(2), (i)(3), and (p) of such section, and

“(B) shall be exempt from the packaging requirements of subsections (g), (h), and (p) of such section, if—

“(i) when dispensed by a licensed veterinarian, the drug bears a label containing the name and address of the practitioner and any directions for use and cautionary statements specified by the practitioner, or

“(ii) when dispensed by filling the lawful order of a licensed veterinarian, the drug bears a label containing the name and address of the dispenser, the serial number and date of the order or of its filling, the name of the licensed veterinarian, and the directions for use and cautionary statements, if any, contained in such order.

The preceding sentence shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

“(3) The Secretary may by regulation exempt drugs for animals other than man subject to section 512 from the requirements of paragraph (1) when such requirements are not necessary for the protection of the public health.

“(4) A drug which is subject to paragraph (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement ‘Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.’. A drug to which paragraph (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the statement specified in the preceding sentence.”.

SEC. 106. DRUGS PRIMARILY MANUFACTURED USING BIOTECHNOLOGY.

Notwithstanding section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act, the Secretary of Health and Human Services may not approve an abbreviated application submitted under such section for a new animal drug which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques.

SEC. 107. CONFORMING AMENDMENTS.

(a) Batch Certification.—

(1) Section 201(w) (21 U.S.C. 321(w) is amended by striking out “; or” at the end of paragraph (2) and inserting in lieu thereof a period and by striking out paragraph (3).

(2) Section 512(a)(1) (21 U.S.C. 360b(a)(1)) is amended by inserting “and” at the end of subparagraph (A), by striking out “, and” at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(b) Title 28.—Section 2201(b) of title 28, United States Code, is amended by inserting “or 512” after “505”.

SEC. 108. EFFECTIVE DATE.

The Secretary of Health and Human Services may not make an approval of an application submitted under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)(2)) effective before January 1, 1991.

TITLE II—PATENT TERMS

SEC. 201. EXTENSION OF PATENT TERM.

(a) Section 156(a)(5).—Section 156(a)(5) is amended—

(1) by inserting "or (C)" after "subparagraph (B)" in subparagraph (A),

(2) by striking out "or" at the end of subparagraph (A), and

(3) by striking out the period at the end of subparagraph (B) and inserting "; or" and the following:

"(C) for purposes of subparagraph (A), in the case of a patent which—

"(i) claims a new animal drug or a veterinary biological product which (I) is not covered by the claims in any other patent which has been extended, and (II) has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and

"(ii) was not extended on the basis of the regulatory review period for use in non-food-producing animals,

the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.".

(b) Section 156(b).—Section 156(b) is amended to read as follows:

"(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the term of the patent is extended—

"(1) in the case of a patent which claims a product, be limited to any use approved for the product—

"(A) before the expiration of the term of the patent—

"(i) under the provision of law under which the applicable regulatory review occurred, or

"(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

"(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based;

"(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for the product—

"(A) before the expiration of the term of the patent—

"(i) under any provision of law under which an applicable regulatory review occurred, and

"(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

"(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based; and

"(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make—

"(A) the approved product, or

"(B) the product if it has been subject to a regulatory review period described in paragraphs (1), (4), or (5) of subsection (g).

As used in this subsection, the term 'product' includes an approved product.".

(c) Section 156(c)(2).—Section 156(c)(2) is amended by striking out "and (3)(B)(i)" and inserting in lieu thereof "(3)(B)(i), (4)(B)(i), and (5)(B)(i)".

(d) Section 156(d)(1)(C).—Section 156(d)(1)(C) is amended by inserting "or the Secretary of Agriculture" after "Services".

(e) Section 156(d)(2)(A).—Section 156(d)(2)(A) is amended to read as follows:

"(2)(A) Within 60 days of the submittal of an application for extension of the term of a patent under paragraph (1), the Commissioner shall notify—

"(i) the Secretary of Agriculture if the patent claims a drug product or a method of using or manufacturing a drug product and the drug product is subject to the Virus-Serum-Toxin Act, and

"(ii) the Secretary of Health and Human Services if the patent claims any other drug product, a medical device, or a food additive or color additive or a method of using or manufacturing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act,

of the extension application and shall submit to the Secretary who is so notified a copy of the application. Not later than 30 days after the receipt of an application from the Commissioner, the Secretary receiving the application shall review the dates contained in the application pursuant to paragraph (1)(C) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.".

(f) Section 156(d)(2)(B).—Section 156(d)(2)(B) is amended to read as follows:

"(B)(i) If a petition is submitted to the Secretary making the determination under subparagraph (A), not later than 180 days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period, the Secretary making the determination shall, in accordance with regulations promulgated by such Secretary, determine if the applicant acted with due diligence during the applicable regulatory review period. The Secretary making the determination shall make such determination not later than 90 days after the receipt of such a petition. For a drug product, device, or additive subject to the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, the Secretary may not delegate the authority to make the determination prescribed by this clause to an office below the Office of the Commissioner of Food and Drugs. For a product subject to the Virus-Serum-Toxin Act, the Secretary of Agriculture may not delegate the authority to make the determination prescribed by this clause to an office below the office of the Assistant Secretary for Marketing and Inspection Services.

"(ii) The Secretary making a determination under clause (i) shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination together with the factual and legal basis for such determination. Any interested person may request, within the 60-day period beginning on the publication of a determination, the Secretary making the determination to hold an informal hearing on the determination. If such a request is made within such period, such Secretary shall hold such hearing not later than 30 days after the date of the request, or at the request of the person making the request, not later than 60 days after such date. The Secretary who is holding the hearing shall provide notice of the hearing to the owner of the patent involved and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within 30 days after the completion of the hearing, such Secretary shall affirm or revise the determination which was the subject of the hearing and shall notify the Commissioner of any revision of the determination and shall publish any such revision in the Federal Register.".

(g) Section 156(f).—Section 156(f) is amended—

(1) by striking out "human" in paragraph (1)(A) and by amending paragraph (2) to read as follows:

"(2) The term 'drug product' means the active ingredient of—

"(A) a new drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cometic Act and the Public Health Service Act), or

"(B) a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act, and the Virus-Serum-Toxin Act) which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques,

including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.",

(2) by amending subparagraphs (B) and (C) of paragraph (4) to read as follows:

"(B) Any reference to section 503, 505, 507, 512, or 515 is a reference to section 503, 505, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act.

"(C) Any reference to the Virus-Serum-Toxin Act is a reference to the Act of March 4, 1913 (21 U.S.C. 151–158).", and

(3) by adding at the end the following:

"(7) The term 'date of enactment' as used in this section means September 24, 1984, for a human drug product, a medical device, food additive, or color additive.

"(8) The term 'date of enactment' as used in this section means the date of enactment of the Generic Animal Drug and Patent Term Restoration Act for an animal drug or a veterinary biological product.".

(h) Section 156(g).—

(1) Paragraph (1) of section 156(g) is amended—

(A) in subparagraph (A), by striking out "human drug product" and inserting in lieu thereof "new drug, antibiotic drug, or human biological product",

(B) in subparagraph (B)—

(i) by striking out "human drug product" in the matter before clause (i) and inserting in lieu thereof "new drug, antibiotic drug, or human biological product", and

(ii) by striking out "human drug product" in clauses (i) and (ii) and inserting in lieu thereof "product".

(2) Paragraph (1)(A) of section 156(g) is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (6)".

(3) Paragraphs (2)(A) and (3)(A) are each amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (6)".

(4) Section 156(g) is amended by redesignating paragraph (4) as paragraph (6) and by inserting after paragraph (3) the following:

"(4)(A) In the case of a product which is a new animal drug, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

"(B) The regulatory review period for a new animal drug product is the sum of—

"(i) the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of

section 512 became effective for the approved new animal drug product and ending on the date an application was initially submitted for such animal drug product under section 512, and

"(ii) the period beginning on the date the application was initially submitted for the approved animal drug product under subsection (b) of section 512 and ending on the date such application was approved under such section.

"(5)(A) In the case of a product which is a veterinary biological product, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

"(B) The regulatory period for a veterinary biological product is the sum of—

"(i) the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act, and

"(ii) the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.".

(5) Paragraph (6) (as so redesignated) of section 156(g) is amended—

(A) by striking out "paragraph (1)(B) was submitted" in subparagraph (B)(i) and inserting in lieu thereof "paragraph (1)(B) or (4)(B) was submitted and no request for the authority described in paragraph (5)(B) was submitted",

(B) by striking out "paragraph (2)" in subparagraph (B)(ii) and inserting in lieu thereof "paragraph (2)(B) or (4)(B)", and

(C) in subparagraph (C), by inserting before the period the following: "or in the case of an approved product which is a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act), three years".

(i) SECTION 271(e).—

(1) Section 271(e)(1) is amended—

(A) by inserting before the last close parenthesis the following: "which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques", and

(B) by inserting before the period the following: "or veterinary biological products".

(2) Section 271(e)(2) is amended to read as follows:

"(2) It shall be an act of infringement to submit—

"(A) an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, or

"(B) an application under section 512 of such Act or under the Act of March 4, 1913 (21 U.S.C. 151-158) for a drug or veterinary biological product which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques and which is claimed in a patent or the use of which is claimed in a patent,

if the purpose of such submission is to obtain approval under such Act to engage in the commercial manufacture, use, or sale of a drug or veterinary biological product claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.".

(3) Section 271(e)(4) is amended by inserting "or veterinary biological product" after "drug" each place it occurs.

The SPEAKER pro tempore. Is a second demanded?

Mr. TAUKE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Ohio [Mr. TAUKE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before the House is H.R. 4982, the Generic Animal Drug and Patent Term Restoration Act. The bill, as amended, has been reported by both the Energy and Commerce and Judiciary Committees with large bipartisan majorities.

The bill is also supported by all the major interest groups that have worked on the bill: brand and generic animal drug companies, biotechnology companies, farmers, veterinarians and a wide variety of companion animal organizations.

An identical bill has been introduced in the Senate with bipartisan support and passage is expected.

In 1984, when Congress considered and passed the generic human drug bill, the Drug Price Competition and Patent Term Restoration Act, we discussed whether a similar provision was appropriate in the animal drug area. The Food and Drug Administration told us that it was. Unfortunately, due to the complexities of the human drug bill, we did not include animal drugs. H.R. 4982 picks up where the 98th Congress left off.

H.R. 4982 has two major provisions. First, the bill creates an expedited approval system for generic copies of post-1962 brand name animal drugs. Second, the bill provides for the extension of the 17-year patents covering animal drugs. Up to 5 years of the time lost due to Government review could be added back to the patent, so that brand name animal drug companies would be assured of additional market time to recoup their investments.

H.R. 4982 has one rather unusual provision. The bill excludes biotechnology-derived animal drugs from all parts of the bill. These animal drugs would not be eligible for copying by generic animal drug companies under title I and their patents would not be eligible for extension under title II.

This exclusion was requested by the biotechnology industry so that they could present their concerns about the inadequacy of their patents to the Judiciary Committees. They believe that the patents available to biotechnology-derived drugs do not provide the same kind of market protection as is available to traditional, chemically derived drugs.

The biotechnology industry has assured me that their sole reason in seeking this exemption is to have a period of time to make their concerns known to the Congress. I believe this is an appropriate way to proceed.

This is a good bill that has strong bipartisan support. I urge all Members to support it.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a farm State representative, I am pleased that the House is considering H.R. 4982, the Generic Animal Drug and Patent Term Restoration Act, today. This much-needed measure will make safe and effective animal generic drugs more widely available. At the same time, it will provide incentives for the development of new animal drugs. Both farmers and consumers will benefit from lower livestock production costs and from the development of new animal drugs.

Four years ago the Drug Price Competition and Patent Term Restoration Act was signed into law. This legislation hastened the FDA approval process for generic human drugs while at the same time providing incentives for pioneer manufacturers to continue new drug research and development. I strongly believe that the legislation before us, H.R. 4982, is needed to provide similar incentives for animal drugs.

Finding the appropriate balance between the promotion of generic competition and incentives for the development of new animal drugs is a more difficult task in the animal drug industry than in the human drug industry for several reasons. First, human drugs must be shown to be safe and effective in one species—man. Drugs used in livestock production must be shown to be safe and effective in one or more species of animal and safe for humans. This adds significantly to the complexity, time, and cost of bringing new animal drugs to the market.

Second, pricing for animal drugs is far more sensitive to "return on the dollar" considerations than is pricing for human drugs. Farmers must weigh the cost-benefit ratio in decisions about new animal drugs. When it comes to our own and our loved ones' health, this is usually not the case. We may grumble to our Congressmen about high drug prices, but health benefits far outweigh price considerations.

I believe we have found this balance in H.R. 4982. The measure is supported by major farm groups, including the American Farm Bureau Federation and the Grange, by the American Veterinary Medical Association, by the Humane Society and other organizations concerned with animal protection and health, by the generic drug industry, by the industrial biotechnology association, and by major research-oriented pioneer drug companies.

H.R. 4982 has two main features:

First, it establishes an expedited approval system for generic copies of brand name drugs with expired patents; and

Second, it provides for the extension of patents covering animal drugs equal to a portion of the time the drug was undergoing testing by the sponsoring company and under review by the food and drug administration.

I ask my colleagues for their support for this measure. I believe it reflects the appropriate balance between stimulating generic competition and providing incentives for the development of new animal drugs.

Finally, I want to take this opportunity to thank my colleagues, Mr. WAXMAN, Mr. KASTENMEIER, and Mr. MOORHEAD for their leadership in developing and perfecting the legislation before us today, and I wish to recognize the hard work their staffs have devoted to refining this measure.

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Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Mr. Speaker, today we have before us a measure that was reported without amendment, and without dissent, by the Committee on Energy and Commerce. The bill was reported with amendments by the Committee on the Judiciary on September 27, 1988. This bill is virtually identical to a law passed by Congress in 1984 with respect to human drugs; it creates a system for the approval of generic animal drugs—approved by the Food and Drug Administration after 1962—and permits patent holders to obtain an extension of patent term to compensate for time lost on the market as a result of the Federal regulatory approval process.

The bill has the support of virtually the entire agriculture community—National Milk Producers Federation, American Farm Bureau Federation, National Grange, National Farmers Organization, National Farmers Union—organizations representing American pet owners—including the Humane Society of the United States, Animal Protection Institute, American Society for the Prevention of Cruelty to Animals, Friends of Animals—the generic drug industry—including the Generic Pharmaceutical Industry Association and the Coalition for a Just Animal Drug Law—and a majority of the research intensive animal drug industry—including Lilly, Pfizer, Merck and Upjohn.

The bill before us, H.R. 4982, by Mr. TAUKE, Mr. WAXMAN and myself, is a carefully balanced measure. Its major feature is to substantially benefit the consumers of animal drugs—pet owners and farmers. By enacting this bill we will provide millions of Americans realistic price competition that has been absent for far too long. The bill also affords a measure of fairness to the companies who enact in research and development by giving them the same opportunity for patent term extension that is available with respect to human drug patents.

The Committee on the Judiciary adopted several amendments. The Kastenmeier amendment, had four basic features:

Delays the effective date of parts of title I of the bill.[1]

Modifies the period of time available for patent term restoration for animal drugs that fall in between the old law and the new law.[2]

Takes into account a minor problem that could occur in the event that a single patent covers a product that is useful for both human and animal use.[3]

Several minor and technical amendments suggested by either the Food and Drug Administration or the Patent and Trademark Office.

The committee also adopted an amendment by Mr. MOORHEAD to exclude biotechnology from the bill. Several of the changes made by the Committee on the Judiciary take into account—where appropriate—the legitimate difference between the human and animal drug industry.

BACKGROUND

The animal drug industry is a $2 billion per year market, divided into two related equal parts for the treatment of companion animals and farm animals. Pet owners and farmers spend a considerable sum on the purchase of animal drugs. The availability of generic substitutes would serve to reduce the price of those drugs subject to generic competition.

Currently the FDA will only act to approve generic animal drugs for drugs approved before 1968, or when the generic applicant has submitted the same test data as the brand name company. About half of the animal drugs on the market have generic substitutes available.

Under current Federal law the creator of a new animal drug must obtain approval from the Food and Drug Administration before selling that drug. This approval process is separate and apart from the question of patentability. This approval process—albeit similar to that applicable to human drugs—differs from the usual FDA approval in several respects. Because the drugs used on food producing animals can find their way into food there is a requirement that the safety of animal drugs be tested insofar as human health is concerned. Various studies and industry estimates have shown that the period of regulatory approval process can delay the marketing of an animal drug for a period of up to 5 years—occasionally even longer.

Congress has previously recognized the need to compensate patent holders for the marketing time lost as a result of the Federal regulatory approval process. In 1984—after 5 years of legislative effort—the Congress enacted a set of rules to govern the granting of patent term extension for human drugs. For a variety of political reasons not germane where animal drugs were not included.

I hope that my colleagues will support this measure.

Mr. TAUKE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Speaker, I rise in support of H.R. 4982. I would like to commend the gentleman from Wisconsin [Mr. KASTENMEIER] for his effort in bringing this bill before the House and, also, the gentleman from Iowa [Mr. TAUKE] and the gentleman from California [Mr. WAXMAN] for their hard work and leadership in crafting this legislation.

This bill attempts to strike a fair balance between benefiting research companies through patent term extension and benefiting generic companies by creating an abbreviated regulatory approval process. As this bill was introduced, I believe it was especially unfair to those in the biotechnology industry who are developing new animal drugs. If we want the biotech industry to develop new products to prevent, treat, and diagnose animal diseases we cannot remove the incentive for innovators to work on these projects. For this reason the Judiciary Committee decided to exempt the biotech industry from the application of this bill. An additional amendment was added by the gentleman from Wisconsin [Mr. KASTENMEIER] that further brought the bill into a more balanced treatment of the research companies.

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[1] Under the amendment, the Food and Drug Administration would have until January 1, 1990 to secure the necessary personnel to administrate this new generic animal drug approval process. In addition, by that date they will be required to promulgate the necessary guidelines and regulations for that process. Also the amendment permits applications for approval of generic animal drugs at any time after January 1, 1990. the FDA can then use the year 1990 to review these applications, but may not approve the use of such a generic until January 1, 1991.

[2] Under the amendment, animal drugs that have already begun testing for safety and efficacy but which have not yet been approved by the FDA will be eiligible for up to three years of patent term extension.

[3] Under the amendment, a patent holder would be able to receive equitable treatment for the patent term extension so as to cover both approved uses.

I believe now we have a bill that has a fairer balance between promoting generic competition on the one hand and ensuring that research drug firms continue to have the necessary incentives to develop new drugs. I urge the adoption of H.R. 4982.

Mr. WAXMAN. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I thank the gentleman from California [Mr. WAXMAN], the chairman, for yielding me this time, and I also thank the gentleman from Wisconsin [Mr. KASTENMEIER] for the work he and the Committee on the Judiciary have done on this legislation, and also to the ranking minority Member in regard to this legislation.

Mr. Speaker, as I recently stated before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the goal of reducing the price farmers and ranchers now pay for the drugs while at the same time providing an equitable return on the investment to companies which undertake pioneering research in animal health is very plausible.

This legislation before us today is certainly not everything to everybody but it now represents the best legislative product that could be achieved given the current political environment.

H.R. 4982 has been reviewed and considered by two committees of the House, as we have heard reported today. However, it was not referred to the Committee on Agriculture although as chairman of the House Agriculture Subcommittee on Livestock, Dairy, and Poultry and an actual livestock producer myself, I feel there are several concerns which need to be fully considered and studied by our subcommittee as well as the other subcommittees of more jurisdiction.

As I mentioned earlier, the bill has a good purpose—to make generic animal drugs available to livestock and poultry producers at hopefully lower cost. Furthermore, it is modeled after a similar bill dealing with human pharmaceuticals which passed in 1984. However, I question whether H.R. 4982 recognizes and takes into account the much smaller markets for animal drugs versus human drugs plus the extensive testing required in each of the species of farm and pet animals. The net result of these factors is that it takes much longer for a company to recover its research and development investment from an animal health product than it does from a human pharmaceutical, especially for those products manufactured for minor disease and species use.

Regretfully, many major organizations representing the livestock producers of this country have not indicated their support or opposition regarding the legislation as currently drafted. Moreover, I've been informed that they are somewhat leery of modifying the current system when there are legitimate concerns about the economic incentives required to maintain or expand pioneering research and innovation.

In other words, many in the livestock industry are asking the question, "Would the legislation cause some of the animal health products on which we depend to be withdrawn from the market and/or discourage research and development on animal health products for some species or diseases?" In recognizing that sales of animal health products in this country are but 10 percent of the sales of human pharmaceuticals coupled with the fact that the cost of bringing an animal health product to market can cost almost the same as the investment required to develop and market a human drug—I believe these are legitimte concerns.

In the recognition of time, Mr. Speaker, I will conclude my remarks by saying that the U.S. livestock industry should exhibit complete willingness to support the concept embodied in H.R. 4982—the lowering of costs of animal health products to producers. However, I firmly believe a better indication of the actual benefits or risks need to be examined and evaluated by all interested parties.

Mr. Speaker, I would ask if the gentleman from California would respond to a question from me.

If the concerns that we have outlined both today and in the Committee that I mentioned on the judiciary, recognizing the work that he and his staff have done with the Committee on Agriculture staff, if in fact these concerns should prove to be valid in the next year, or 2 or 3, would it be his intention and that of his committee to revisit this issue and to look at those concerns should they be valid?

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. Mr. Speaker, I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, we have the oversight jurisdiction, and I think it would be most appropriate for us to continue to look at how this bill is functioning and, if there are problems, as the gentleman from Texas [Mr. STENHOLM] fears there may be, we will certainly monitor carefully and see what legislative solutions would be appropriate to deal with those problems.

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIR. While the issue I think the gentleman from Texas [Mr. STENHOLM] has raised is essentially regulatory, having to do with the FDA, I will say from a patent standpoint that we are prepared to look at this bill certainly in about 2 years' time. We will certainly want to review the exclusion of the biotech industry, for example, and other aspects. Certainly what the gentleman has raised should be a suitable subject for inquiry both from a patent term extension standpoint as well as a regulatory standpoint.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The time of the gentleman from Texas [Mr. STENHOLM] has expired.

Mr. WAXMAN. Mr. Speaker, I yield 30 seconds to the gentleman from Texas.

Mr. STENHOLM. Mr. Speaker, in light of those assurances and also a tremendous amount of work that has gone in with our staffs and individually working on this, I now will say that I support this legislation in the current form and would hope that all of my colleagues would join in passing it today.

Mr. TAUKE. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Iowa.

Mr. TAUKE. Mr. Speaker, I just want to assure the gentleman from Texas [Mr. STENHOLM] that, if the election turns out as we anticipate and we control the chairmanships of those subcommittees, we will be happy to have oversight hearings, also.

Mr. FISH. Mr. Speaker; I rise in support of H.R. 4982.

I would like to commend the gentleman from Wisconsin [Mr. KASTENMEIER] and the gentleman from California [Mr. MOORHEAD] for substantially improving this legislation. I would also like to commend the Committee on Energy and Commerce especially the gentleman from Iowa [Mr. TAUKE] for all the work he did in bringing this bill to the floor. The purpose of H.R. 4982 is to create in the animal drug industry the same conditions for generic drugs and patent term restoration as Congress did in the human drug industry in 1984.

Products that require FDA premarket approval, like animal drugs, often entail high development costs. In addition, animal drug innovators typically lose 5 to 7 years of patent protection because of FDA's scientific testing requirements and regulatory review. The bill would restore a maximum of 5 years to the lost patent term. While this FDA approval process is essential to confirming the safety and effectiveness of animal drugs, it can have the effect of reducing incentives to develop new animal drugs. H.R. 4982 will go a long way in restoring these important incentives. I urge support for the bill.

Mr. TAUKE. Mr. Speaker, I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of my time.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from California [Mr. Waxman] that the House suspend the rules and pass the bill, H.R. 4982, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

FEDERAL ASSET DISPOSITION ASSOCIATION DISSOLUTION ACT

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4646) to require the Federal Savings and Loan Insurance Corporation to revoke the charter of the Federal Asset Disposition Association and reform the process for liquidating assets of failed thrift institutions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4646

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Federal Asset Disposition Association Dissolution Act".

SEC. 2. AMENDMENTS TO SECTION 406 OF THE NATIONAL HOUSING ACT.

(a) Clarification of Purpose for Establishing New Associations in Connection With Liquidations.—Section 406(a)(2) of the National Housing Act (12 U.S.C. 1729(a)(2)) is amended by inserting before the period the following: ", except that any such association shall operate as an issuer of savings accounts and a lender and investor under section 5 of the Home Owners' Loan Act of 1933 and not as an institution having the special purpose of managing or disposing of assets acquired from insured institutions in default".

(b) Clarification of FSLIC's Authority to Assign Liquidation Functions.—Section 406(b) of the National Housing Act (12 U.S.C. 1729(b)) is amended by adding at the end thereof the following new paragraphs:

"(5) New federal associations not authorized to engage in liquidation functions.—No provision of this section, including paragraph (1)(A)(iv) of this subsection, may be construed as authorizing the Corporation to organize a new Federal association without account liabilities or lending operations for the purpose of managing or disposing of any assets—

"(A) of an insured institution for which the Corporation has been appointed receiver; or

"(B) acquired by the Corporation pursuant to any transaction under subsection (f).

"(6) Delegation of liquidation functions to FSLIC's regional offices.—No provision of this section may be construed as prohibiting the Corporation from delegating to the appropriate regional office of the Corporation any authority to manage or to dispose of any asset described in paragraph (5), including any authority to enter into contracts, in accordance with the requirements and procedures of title III of the Federal Property and Administrative Services Act of 1949, with persons in the private sector for such activities.".

SEC. 3. TERMINATION OF FADA.

(a) No New Activity Authorized for FADA.—After the date of the enactment of this Act—

(1) the Federal Asset Disposition Association may not enter into any contract with any person or any agency, department, or instrumentality of the Federal Government or of any State;

(2) the Federal Savings and Loan Insurance Corporation may not permit the Federal Asset Disposition Association to acquire the right to manage or to dispose of any asset—

(A) of any insured institution (as defined in section 401(a) of the National Housing Act) for which the Corporation has been appointed receiver; or

(B) acquired by the Corporation pursuant to any transaction under section 406(f) of the National Housing Act; and

(3) with respect to any contracts between the Federal Asset Disposition Association and any other person, the Federal Savings and Loan Insurance Corporation shall—

(A) require the Federal Asset Disposition Association to assign all such Association's rights under such contract to the Corporation, including the right to oversee the performance of such person under the terms of such contract; and

(B) assume all obligations of the Association under such contract.

(b) Termination of all Other Rights, Obligations, and Functions of FADA; Revocation of Charter.—Before the end of the 60-day period beginning on the date of the enactment of this Act, the Federal Savings and Loan Insurance Corporation shall—

(1) with respect to any asset described in subsection (a)(2)—

(A) revoke any assignment by the Corporation to the Federal Asset Disposition Association of any right to manage or to dispose of such asset; and

(B) assume direct control of the management or disposition of such asset, succeed to the Federal Asset Disposition Association's contractual position with respect to any such asset, or cause the person under contract with such Association to reassume control of the management or disposition of such asset;

(2) liquidate the assets of, and assume the liabilities of, the Federal Asset Disposition Association; and

(3) revoke the charter of the Federal Asset Disposition Association.

(c) Prohibition on Severance Pay in Excess of Civil Service Amounts.—The Federal Savings and Loan Insurance Corporation may not take any action pursuant to subsection (a) or (b) of this section or under any other provision of law, and may not permit the Federal Asset Disposition Association to take any action, which would result in the payment of any amount by the Corporation or Association to any officer, employee, or agent of the Association as severance pay in excess of the amount of severance pay to which such person would be entitled under section 5595 of title 5, United States Code, if the salary of such officer, employee, or agent, on an annual basis, was equal to the annual rate of basic pay payable for grade GS-18 of the General Schedule at the time such payment is made.

(d) No Authority for FSLIC to Sell FADA as a Going Concern.—The Federal Savings and Loan Insurance Corporation may not take any action pursuant to subsection (a) or (b) or under any other provision of law which results in the sale of the Federal Asset Disposition Association as a going concern or the reconstitution of such Association as a private corporation.

(e) Act May Not be Construed as Ratifying FSLIC's Authority to Establish FADA or any Authority of FADA to Act on Behalf of FSLIC.—No provision of this Act or any amendment made by this Act to any other provision of law may be construed as providing—

(1) any recognition or ratification by the Congress of any authority of the Federal Savings and Loan Insurance Corporation to charter the Federal Asset Disposition Association under title IV of the National Housing Act (as in effect on the day before the date of the enactment of this Act);

(2) any ratification or approval by the Congress of any action or determination of such Corporation in connection with such Association, including any determination with regard to—

(A) the lawful basis for any contract between the Corporation and the Association; or

(B) the liability, or the lack of liability, of any officer or employee of the Corporation or the Association for any amount expended by the Corporation or the Association pursuant to such charter or any such contract; or

(3) any recognition or ratification by the Congress of any authority of the Association under the charter granted by the Corporation to enter into any contract in connection with the management or disposition of any assets on behalf of the Corporation.

SEC. 4. FSLIC REPORT ON DISSOLUTION AND RECEIVERSHIP.

(a) Report Required.—Before the end of the 5-month period beginning on the date of the enactment of this Act, the Federal Savings and Loan Insurance Corporation shall prepare a report describing—

(1) the manner in which the dissolution of the Federal Asset Disposition Association was implemented;

(2) the results of such dissolution; and

(3) the Corporation's actions as the receiver of such Association.

(b) Contents of Report.—The report prepared by the Federal Savings and Loan Insurance Corporation under subsection (a) shall contain—

(1) a description of the problems encountered in implementing the dissolution of the Federal Asset Disposition Association and acting as receiver for such Association;

(2) a complete disclosure of the type and the amounts of the costs incurred by the Corporation in connection with such dissolution and receivership;

(3) a complete disclosure of the extent to which the Corporation was required to assume any liabilities of such Association in connection with the Corporation's receivership;

(4) a complete disclosure of the manner in which the Corporation disposed of any liability of such Association under—

(A) any personal service contract between the Association and any director, officer, or employee of the Association;

(B) any personal service contract between the Association and any independent contractor, consultant, agent, or counsel employed by such Association; and

(C) any other contract between the Association and any other person;

(5) a complete disclosure of the extent to which the Corporation is obtaining the services of persons in the private sector, under competitive contract procedures, for managing and disposing of assets—

(A) of any insured institution (as defined in section 401(a) of the National Housing Act) for which the Corporation has been appointed receiver; or

(B) acquired by the Corporation pursuant to any transaction under section 406(f) of the National Housing Act;

(6) a complete disclosure of the number and the place of employment of employees of the Corporation who are involved in managing and disposing of such assets and the pay structure applicable with respect to such employees; and

(7) an identification of any provision contained in any Federal law, or any regulation prescribed under any Federal law, which is adversely affecting the efficiency or productivity of the Corporation in managing or disposing of such assets.

(c) SUBMISSION TO HOUSE AND SENATE BANKING COMMITTEES.—The report prepared by the Federal Savings and Loan Insurance Corporation under subsection (a) shall be submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the period described in such subsection, together with such recommendations for legislation as the Corporation determines to be appropriate to improve the efficiency or productivity of the Corporation in managing or disposing of assets.

SEC. 5. ACTION REQUIRED TO ENSURE FULL COMPLIANCE BY FSLIC WITH COMPETITIVE PROCUREMENT REQUIREMENTS.

The Federal Savings and Loan Insurance Corporation shall take such action as may be necessary to ensure that the Corporation and all officers and employees of the Corporation maintain full compliance with the requirements of section 303 of the Federal Property and Administrative Services Act of 1949.

SEC. 6. STATEMENT OF LIQUIDATION POLICY.

Section 406(b) of the National Housing Act (12 U.S.C. 1729(b)) is amended by inserting after paragraph (6) (as added by section 2(b) of this Act) the following new paragraph:

"(7) LIQUIDATION POLICY.—The authority to liquidate assets shall be exercised by the Corporation in a manner which—

"(A) minimizes the cost to the Corporation in liquidating such assets;

"(B) maximizes the return which the Corporation realizes on the assets; and

"(C) encourages the use of services of persons in the private sector in managing and disposing of such assets to the maximum extent possible.".

SEC. 7. PROVISIONS APPLICABLE TO FSLIC EMPLOYEES.

(a) LIMITATION ON CONTRACT EMPLOYEES.—The Federal Savings and Loan Insurance Corporation shall take such action as may be necessary to ensure that no individuals are employed by the Corporation under personal service contracts except to the extent that any such employment—

(1) does not exceed 60 days in any 1-year period; or

(2) is determined, by the Corporation, to be necessary because of the existence of unusual circumstances which do not allow the position involved to be filled by an employee in the civil service (as defined in section 2101(1) of title 5, United States Code).

(b) CERTAIN STAFFING DETERMINATIONS NOT SUBJECT TO OUTSIDE CONTROL.—

(1) IN GENERAL.—The number of asset liquidation employees of the Federal Savings and Loan Insurance Corporation shall not be subject to any limitation imposed by any officer of the executive branch of the Federal Government who is not an officer of the Corporation.

(2) STATUTORY LIMIT.—The number of asset liquidation employees employed at any time by the Federal Savings and Loan Insurance Corporation shall not exceed an amount equal to the sum of—

(A) the number of individuals who were employed by the Corporation, directly or under personal service contracts, on May 18, 1988, for the purpose of managing or disposing of assets; and

(B) 200.

(c) IMPROVED EMPLOYMENT GRADE STRUCTURE REQUIRED.—Notwithstanding any other law or any regulation, the Federal Savings and Loan Insurance Corporation shall, in consultation with the Director of the Office of Personnel Management, take such action as may be necessary to establish a grade structure for asset liquidation employees which is comparable to the grade structure for employees of the Federal Deposit Insurance Corporation who manage or dispose of assets—

(1) of insured banks (as defined in section 3(h) of the Federal Deposit Insurance Act) for which such Corporation has been appointed receiver; or

(2) acquired by such Corporation pursuant to any transaction under section 13(c) of the Federal Deposit Insurance Act.

(d) ASSET LIQUIDATION EMPLOYEES DEFINED.—For purposes of subsections (b) and (c), the term "asset liquidation employees" means officers and employees of the Federal Savings and Loan Insurance Corporation who are involved in carrying out the Corporation's duty to manage or dispose of assets.

SEC. 8. GOVERNMENTWIDE ASSET MANAGEMENT AND DISPOSITION STUDY.

(a) IN GENERAL.—The Board of Governors of the Federal Reserve Board, the Secretary of the Treasury, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the board of trustees of the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration Board, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Administrator of Veterans' Affairs, and the Administrator of General Services shall—

(1) designate representatives of the respective agencies, departments, and Federal instrumentalities to conduct a multiagency study, together with the representatives of the private sector appointed under subsection (b), on asset management and disposition by the Federal Government, including a study of options for reducing duplication, overlap, and inconsistency among Federal agencies and instrumentalities and for making better use of private sector resources in managing and disposing of assets; and

(2) before the end of the 1-year period beginning on the date of the enactment of this Act, submit a report to the Congress on the results of the study, including any supplementary or dissenting views and any recommendations for legislation which may be determined to be necessary or appropriate.

(b) PRIVATE SECTOR REPRESENTATIVES.—

(1) APPOINTMENT.—In addition to the representatives of the agencies, departments, and other instrumentalities of the United States who are designated under subsection (a)(1) to conduct the multiagency study pursuant to such subsection, the President shall appoint 5 individuals to serve with such representatives in conducting such study from among individuals who—

(A) are not officers or employees of any government; and

(B) are especially qualified to serve by reason of their education, training, or experience in managing and liquidating assets.

(2) TERM.—Each individual appointed under paragraph (1) shall serve until the study required under subsection (a)(1) is completed and the report required under subsection (a)(2) is submitted.

(3) VACANCY.—Any vacancy in any position established under paragraph (1) shall be filled in the manner in which the original appointment was made.

(4) BASIC PAY.—Individuals appointed under paragraph (1) shall each be entitled to receive the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the multiagency study group established under subsection (a).

The SPEAKER pro tempore. Is a second demanded?

Mr. WYLIE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. ST GERMAIN] will be recognized for 20 minutes and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. ST GERMAIN].

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4646 gives the House a rare opportunity—a chance to eliminate a wasteful, costly, unresponsive bureaucracy.

Mr. Speaker, the Federal Asset Disposition Association—created by edict and whim of the Federal Home Loan Bank Board—is an experiment that has produced little other than big salaries, big expense accounts, and results that are practically invisible.

The Banking, Finance and Urban Affairs Committee, on a bipartisan 42-to-8 vote, reported out H.R. 4646 which abolishes the FADA bureaucracy. The House, I hope, will deliver a similar margin for H.R. 4646 and against waste and inefficiency today.

FADA was organized on the theory that it would be useful in selling the masive inventory of assets recovered from failed savings and loan associations. The recovery from these assets are moneys that belong to FSLIC—a governmental entity.

Under H.R. 4646, FSLIC would be given control—without FADA as middleman—and it could contract on a case-by-case basis where necessary to obtain outside or additional expertise. FSLIC has carried out a liquidation function since its beginning and it is clearly equipped to oversee the disposition of these assets.

The General Accounting Office, in a draft report soon to be officially released, also concludes that FADA's functions are nonessential and that FSLIC can carry out the necessary duties. The report states:

> We found no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. Such functions could be done by a combination of other private sector asset management firms, receivership employees, and FSLIC headquarters and regional employees.

The GAO findings essentially ratify the conclusions of the Banking Committee's long investigation of FADA. The Banking Committee's investigation, conducted over a 15-month period, clearly established the need to abolish FADA and to return a more sane and sound approach to handling the government's assets.

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Mr. Speaker, the entire committee has participated in the oversight efforts of FADA. Special mention, however, should go to the hard work and to the persistence of our colleague, the gentleman from Pennsylvania [Mr. KANJORSKI], and our colleague, the gentleman from Maryland [Mr. MCMILLEN] who have done so much to keep this issue in the forefront.

Mr. Speaker, again I hope the House will cast an overwhelming vote to eliminate an unneeded, a wasteful and unnecessarily expensive bureaucracy.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I oppose passage of H.R. 4646 and urge my colleagues to vote against this bill. Passage of this bill would be a very unwise move, particularly at this time. And, in any event, this is not the kind of a bill that should be brought to the House floor with the very limited debate time available under Suspension of the Rules. This bill deserves and merits full-fledged consideration by the House.

FADA was chartered in late 1985. Like any new business, start-up problems were evident. Salaries were too high and productivity was not as good as expected. But let us look at why FADA was created. It was needed to ease the burden on FSLIC. Most of the assets that FADA has assumed are among the most difficult to sell. FADA's task was difficult from the start. While exorbitant salaries are not justified, certainly competitive salaries were needed to attract qualified individuals into this field.

FADA is now under new leadership and its performance has improved dramatically. The fact are as follows:

FADA is making a profit now, $3.7 million in the first 8 months of 1988.

Gerald Carmen the president of CEO has cut salaries and staff has been reduced from 400 to 356.

Carmen has consolidated offices which will save over $1 million a year.

FADA provided to the FSLIC approximately $356 million from property sales, loan payoffs, asset restructures, and settlements in the first nine months of 1988.

FADA's total asset dispositions since receiving its first assets in 1986 now total $935 million and are expected to top $1 billion by the end of this year.

With all of this taking place, one must wonder what still motivates those who want to abolish this agency.

My position is that we ought to be doing what is best for the FSLIC. Does it really make sense to fold FADA within 60 days? Does it make sense to put 2,500 assets worth $4 billion back into the FSLIC, allowing them to hire only 200 employees to continue FADA's job? I don't think it is a wise move at this time, particularly when this Congress is concerned with the progress and pace of shutting down insolvent institutions.

A constituent of mine, Don Shackleford, chairman of Ohio State Savings Bank, is now heading a task force to evaluate future options for FADA. I know Don Shackleford very well—he is among the best and the brightest in this industry and runs one of Ohio's most successful S&L's. While his task force has not yet reached a conclusion, he believes that at some point FADA should be completely privatized—and that at the very least the process will take 1 year to complete. That certainly is an option that ought to be explored.

Under this bill, however, as amended by the committee, FADA could not be sold to the private sector. The bottom line is that the Home Loan Bank Board won't even have available what could be the least costly option of dissolving FADA.

There is no need for unwise haste in this decision. It's implications could cost the FSLIC hundreds of millions of dollars, as the CBO stated in its letter of August 4 to the Banking Committee, and I quote:

> The proposal to abolish the Federal Asset Disposition Association [FADA] is likely to create temporary delays in resolving claims from receiverships, thus reducing income to the Federal Savings and Loan Insurance Corporation [FSLIC] by perhaps hundreds of millions of dollars in 1989. We would not expect this loss of collections to have a budget impact, because the FSLIC would have spent this income. Rather, the agency would have fewer resources to handle case resolutions until an orderly transition to new asset management is in place.

Again, I oppose this bill and I will vote against this bill today—and hope that the Congress can consider this issue with a greater concern for the health of the FSLIC, the industry, and the taxpayer!

Mr. ST GERMAIN. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania [Mr. KANJORSKI].

Mr. KANJORSKI. Mr. Speaker, today we consider one of the first pieces of legislation to do away with a Federal agency, certainly since I have been in Congress, and from talking to my fellow colleagues, in any of their memory.

The opposition from the minority of our committee to this legislation is most astounding. Let me correct some of the things that the minority has said.

First of all, there was a preliminary evaluation that it might cost money to dissolve FADA, but the most recent and final Congressional Budget Office estimate indicates there is no way of telling what it would cost, or what it would save, to do away with this agency.

Let us correct another thing so our colleagues know the truth. We are not proposing putting anymore assets into FSLIC than FSLIC already has. FSLIC already has title to the $4 billion in assets that are presently being managed by FADA.

Let us ask the question what FADA is and why is there a fight to keep FADA alive? FADA is a federally constructed and owned corporation that by its own motion, and with the acquiescence of the Federal Home Loan Bank Board, has thought of itself as an independent agency for the sole purpose of avoiding Government salary caps and personnel hiring rules, conflict-of-interest, and ethics laws, Government procurement laws, Hatch Act prohibitions on political activity, Government travel and expense account laws and regulations, Freedom of Information Act requirements, and Government in the Sunshine Act requirements.

The GAO, on the other hand, says FADA's creation was illegal, that FADA is a Government agency, its employees should be considered Government employees, and it should be complying with all the laws I just mentioned.

Exposé's on FADA's activities have now been done by CBS news, the Washington Post, and "20/20", as well as by the GAO and several congressional committees. What did they find? They found that its chief executive officer, although employed by a wholly owned corporation of a government agency, was paying herself more than three times what the Secretary of the Treasury was being paid and 75 percent more than the President of the United States was being paid. FADA had gone amuck by paying more than 20 officials in excess of what the Secretary of the Treasury was paid.

Now, I have met in the past with Mr. Wall and I have met in the past with Ambassador Carmen in an attempt to see this agency straightened out. Has it straightened out? No.

The sad truth is that this year FADA is disposing of assets slower than it did in 1987.

The fact of the matter is that FADA is a disaster. What is happening now? May I remind my colleagues on the other side, FSLIC is a disaster now too. Just yesterday before the Senate Budget Committee, Danny Wall, the Chairman of the Federal Home Loan Bank Board, acquiesced that it will now cost this Government more than $50 billion to bail out the savings and loan industry, and just a year ago when he asked for FADA to have more time to reorganize, he was estimating the cost of the FSLIC bailout at no more than $10 to $15 billion.

Talking to accountants today, if you use a cash basis, the real estimation on the bail-out of FSLIC would be about $75 to $100 billion, not $10 or $15 or even $50 billion. FADA represents the disease, the cancer within that organization, the failure to administer well for the interests of the taxpayer, the people, or the savings and loan industry.

FADA is a disaster. It is a rape about to occur. Why? Because efforts to delay the passage of this bill are intended for one purpose, to give FADA and its leadership the opportunity to spin it off and sell it to the private sector. And why? Because FADA has negotiated with FSLIC the most self-serving contract that any government corporation has ever made with another government corporation. It is a contract which literally guarantees FADA profits in the future as long as FADA's contract remains in place.

I submit that if we as a Congress fail to dissolve FADA now and put some constraints on the Bank Board, by the time we get back to the 101st Congress in the next session, the administration and the Home Loan Bank Board will have sold FADA and its lucrative contract to a private institution. They will have sold it not with the intention of privatization, because FADA costs more than any private organization that now sells Federal assets. It will be sold off for the sole purpose of raping the American taxpayers and the savings and loan industry again.

The FADA problem first came to my attention more than 18 months ago as a result of conversations with executives from savings and loan associations in my district. They could not see why their funds should be used not only to bail out savings and loan institutions failing in this country but also to bail out organizations like FADA.

I urge my colleagues to study the fact sheet on FADA's sordid history. I urge my colleagues to take this opportunity to end a wasteful governmental entity.

Fifteen Reasons To Vote for H.R. 4646 Dissolving the Federal Asset Disposition Association an Unnecessary, Expensive, and Mismanaged Agency

H.R. 4646 was supported by a 42 to 8 majority of the House Banking Committee, including a majority of both parties.

FADA has not been turned around. FADA currently manages about $4 billion in assets. In the first eight months of this year it only disposed of $284 million in assets, or $426 million on an annualized basis. Last year FADA disposed of over $500 million in assets. FADA is thus disposing of fewer assets in 1988 than it did in 1987. At the current rate it will take FADA a decade to dispose of the assets it is currently managing.

FADA's new profitability is fundamentally the result of an accounting slight of hand. FSLIC decided to pay FADA millions in disputed billings, and renegotiated FADA's contract in such a way that FADA is virtually guaranteed a profit. Private sector firms are not being offered the generous side contracts that FADA has with FSLIC.

FADA and the Bank Board have announced their intention to sell FADA (or FADA's contract) to unknown parties outside the government. If FADA is sold, its new "profits" will go to someone outside the government, and not to FSLIC which badly needs the funds.

It will not cost millions to abolish FADA. CBO's final budget estimate on the FADA title of H.R. 5094 concludes, ". . . it is not possible to estimate the budget impact, if any, of this proposal at this time. . . . we cannot estimate the total long-term cost or savings from abolishing FADA." (emphasis added).

FADA is not the most cost-effective way to provide asset management services. A recent GAO survey asked the managers of five FSLIC receiverships to estimate their additional management costs if they had to perform the services FADA now provides them. The GAO concluded, "The estimates provided by the managing officers were all lower—considerably lower—than the FADA fees billed during the period and also lower than the costs incurred by FADA during the period."

GAO's study of FADA for the Senate Banking Committee also concluded, "we found that FADA was illegally established as a federally chartered savings and loan association. . . . we found no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. Such functions could be done by a combination of other private sector asset management firms, receivership employees, and FSLIC headquarters and regional employees."

The GAO has advised us that the legislation we consider today will address the problems raised in its September 6, 1988 opinion on FADA's legal status.

Contrary to FADA's claim that it needs its unique structure to attract and retain qualified asset management personnel, the GAO found that FADA and FSLIC receivership employees had similar overall qualifications. The GAO also found that the receivership employees had lower salaries than the FADA employees.

FADA claims it is not a federal agency and that its employees are not federal employees. The GAO says FADA is a federal agency and its employees are federal employees. Among the many laws FADA is trying to exempt itself from are:

Government salary caps and personnel hiring rules, conflict-of-interest and ethics laws, Government procurement laws, Hatch Act prohibitions on political activity, Government travel and expense laws and regulations, Freedom of Information Act requirements, and Government in the Sunshine Act requirements.

FDIC Chairman William Seidman told the Banking Committee, "I was asked about the set-up for FADA at the time it was proposed and I told them I didn't think it was a good idea or necessary and would slow the process. And I gather a few others now agree with that."

Witnesses from the American Bankers Association and the Independent Bankers Association of America both told the Banking Committee that they favor abolishing FADA. The ABA said, "termination is appropriate," the IBAA said, "the demise of FADA would be applauded." A witness from the National Council of Savings Institutions said that in his personal opinion FADA had not been effective in his home state of Texas.

FADA's importance to FSLIC is clearly called into question by the fact that despite the burgeoning number of failed and failing thrifts FSLIC has not assigned FADA any new assets to manage this year.

FADA is attempting to mount a poison pill defense by approving an $8 million "golden parachute" for its employees if our legislation is approved. This is much more generous than the severance pay government employees usually receive and it is a perfect example of why FADA should not be allowed to operate above the laws which apply to other government agencies. H.R. 4646 prevents FADA from making severance payments greater than the government usually pays.

FADA employees are not indispensable or irreplaceable. Since January 1st 80 employees have already been terminated including 12 vice-presidents. There are a large number of qualified unemployed individuals in the south-west. H.R. 4646 also provides a transition period, the use of short-term temporary employees (who could be FADA employees) to complete specific projects, and for 200 additional FSLIC employees (who could be FADA employees) to deal with the long range problem. H.R. 4646 also provides a better pay scale for FSLIC asset management personnel and directs FSLIC to report to the Congress if it needs additional personnel or any other changes in the law.

Mr. WYLIE. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. WORTLEY].

Mr. WORTLEY. Mr. Speaker, I rise to object to this bill which is designed to dissolve the Federal Asset Disposition Association [FADA], which was chartered by the Federal Home Loan Bank Board just 3 years ago.

It is true that until recently, until a new Chief Executive Officer, Gerald Carmen, took control, FADA was not operating at a profitable and efficient level. Recently, however, FADA has shown a profit. And how many Government agencies are there that show a profit? I believe that FADA has just begun to turn the corner to fulfill its purpose which is to sell off distressed assets from failed thrifts with the help of experts in the private sector.

The role which FADA plays is very unusual, and it is very important. It is one which cannot be easily assumed by other existing organizations. FADA is composed of over 300 real estate professionals who specialize in disposing of unique troubled assets. We face some serious disposition problems which require the expertise of a highly trained expert from the real estate profession. We are not talking about selling off one- or two-bedroom Cape Cods here, but rather the "odd lot" from which it is very difficult to recover money.

It is fair to question the livelihood of FADA, but in doing so, we ought to consider its present status. It is important to note that FADA has disposed of over $935 million of distressed assets, and will exceed $1 billion before year's end.

It posted its first profit ever in the first quarter of this year, and followed up by producing a profit in each subsequent quarter. The net profit for 1988 will exceed $4 million, which is an amazing improvement on FADA's record. I would not call that a disaster. FADA should not be disrupted until we can better evaluate the still improving situation.

We also need to be aware of the fine leadership provided since the end of February of this year. Not only has Mr. Carmen been able to collect hundreds of millions of dollars for FSLIC, but he has taken drastic steps to ensure efficiency. For example, he has disposed of considerable excess office space and has slashed FADA's payroll by over $2 million. In addition, Mr. Carmen earns far less than the previous CEO of FADA.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield?

Mr. WORTLEY. I yield to the distinguished chairman.

Mr. ST GERMAIN. Mr. Speaker, he said he disposed of hundreds of millions of dollars of assets?

My information is that since its inception FADA has disposed of a little under $800 million in assets, much of which has been restructuring of loans that have to be restructured again, and some of it was the pay-off of loans by the original borrowers.

I think if we would find the real numbers, if we could ever get anything out of the Home Loan Bank Board and FADA, we are probably talking over the whole period of time of maybe $200 or $300 million of assets disposed of.

Mr. WORTLEY. Mr. Speaker, I respectfully disagree with my chairman. According to the figures, FADA has disposed of $935 million. That is, $935 million more than FSLIC had beforehand.

Mr. Speaker, it is quite obvious that the new leadership at FADA has taken fundamental steps to transfer FADA from an inefficient organization to one which will help recover some of the massive losses of the thrift industry. It would be premature to abolish this organization just at the time when it is beginning to fulfill its mandate. We all want to find easy ways to cut the spending side of the budget, but abolishing FADA will not save money this year and will keep it from performing its very needed services.

Mr. Speaker, I urge my colleagues to thoroughly examine the recent improvements at FADA, to keep a watchful eye on FADA in upcoming weeks, and then, after several months, revisit the status of FADA. I sincerely believe that FADA will continue to show profits and that the results will speak for themselves. However, if it becomes increasingly clear that FADA is not improving, then we should consider additional action.

Mr. KANJORSKI. Mr. Speaker, will the gentleman yield?

Mr. WORTLEY. I yield to the gentleman from Pennsylvania.

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Mr. KANJORSKI. Mr. Speaker, will the gentleman be willing to tell the Congress what we have spent on FADA for its operation in the last 3 years to dispose of that $800 million or $900 million, or would the gentleman agree with me that we have spent in the neighborhood of $120 million, and that is more than 14 percent of the assets, most of which were renegotiated, not sold?

Mr. St GERMAIN. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. McMillen].

Mr. McMILLEN of Maryland. Mr. Speaker, I would like to thank and commend the chairman, the gentleman from Rhode Island [Mr. St Germain], and the gentleman from Pennsylvania [Mr. Kanjorski], and the staff of the Committee on Banking for their hard work and diligent effort in bringing H.R. 4646 to the floor of the House. I might remind the House that a bipartisan majority of our colleagues on the Committee on Banking cosponsored H.R. 4646, and 2 days ago the full committee voted and reported this bill by a vote of 42 to 8.

The gentleman from Pennsylvania [Mr. Kanjorski] and I introduced H.R. 4646 to correct a problem of waste and inefficiency involving the disposal of billions of dollars worth of savings and loan real estate and other assets. This legislation would abolish the Federal Assets Disposition Association, an agency created in 1985 to dispose of the assets of crippled savings and loan firms. Within 60 days of the revocation of FADA's charter, FSLIC would assume the responsibility for disposing of FADA's assets.

FADA's critics, and there are many, including the General Accounting Office, both congressional Banking Committees, the American Bankers' Association, and the Independent Bankers' Association of America, point to a number of problems. Recently, for example, the GAO reported that FADA was illegally constituted as a federally chartered savings and loan association, and GAO also noted the absence of compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. According to GAO, FSLIC could do the same work for less money through a combination of private-sector, receivership, and FSLIC employees.

It is particularly disconcerting that FADA's employees are exempt from governmental salary, ethics, and conflict-of-interest requirements. FADA has claimed it is not a Federal agency, but the GAO reported that it is a Federal agency and its employees should not be exempt from such rules and regulations.

FADA's performance and effectiveness have been abysmal. FADA's management has demonstrated an interest and a skill in engaging in partisan political activities, in providing itself larger salaries and better benefits than those provided even to the Secretary of the Treasury. Indeed, Ambassador Gerald Carmen, the President of FADA, earns approximately $150,000 per year, which is nearly twice the ceiling for Federal executives. Mr. Carmen has said that he would not have accepted this position unless he was exempted from the Hatch Act and other Federal regulations curtailing political activity.

FADA's management has not been able to turn around this agency. In fact, FADA has been disposing of assets, its main function, at a slower rate this year than it did last year.

FADA argued its dissolution would be expensive and counterproductive. However, I might remind the House that the biggest cost to terminating that agency would have been the cost of an $8 million golden parachute established by FADA's management.

This legislation will prevent the payment of any severance payments benefits that are more generous than those provided to other Federal employees. It would be inappropriate to provide Federal employees with such handsome severance payments, and it is especially inappropriate now when FSLIC is attempting to deal with the most severe crisis in our financial industry since the Great Depression.

Mr. Speaker, I urge my colleagues to support H.R. 4646. This is a step for increased accountability and a move against waste and mismanagement.

Mr. WYLIE. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I rise in strong opposition to this legislation to abolish in a 60-day period of time the organization known as FADA.

I can tell the Members, as one who has been involved from the beginning in some of the difficulties in the Southwest, it is that this abolition of this organization would provide no improvements in either the process or the result. We have heard it here said today that somehow this organization called FADA, a federally chartered disposition organization, is somehow the problem. I can tell my colleagues that FADA is not the problem. The problem is vast amounts of REO, real estate that has been foreclosed, loans without clear title of otherwise income producing properties which are not producing income.

The solution is to find those organizations of which FADA is one that will manage that real estate back to income production and sell it back into the private section. FADA, in essence, does that. FADA has been chartered to manage some assets for FSLIC. It manages those assets by contract under the same way that other organizations manage other assets for FSLIC. Let me repeat the FADA does not have all of FLSIC's assets to manage. It is one of several, some private and some internal FSLIC, to manage those assets. FADA has been chartered, indeed, to manage the toughest of the REO assets for FSLIC's. Some 95 percent of all the assets FADA is managing came to FADA without clear title. In spite of that, FADA today, at least in the Dallas office, which I am very acquainted with, and contains some 35 percent of all of the assets nationwide of FADA, FADA in spite of that today is doing its job. It is well managed. There is a total absence of controversy about FADA today anywhere except on the floor of Congress.

Where does the controversy come from? The controversy, as we heard a minute ago, comes from the fact of a year ago the CEO was controversial, and at least in the view of the gentleman from Pennsylvania, was overpaid. In spite of those handicaps, FADA has disposed of about 1 billion dollars' worth of assets. They are a professional organization of several hundred employees who are doing their job, doing a job that must be done.

Mr. Speaker, let me make one other point, that this job has to be done by somebody. The orderly disposition, obtaining of clear title, managing the assets, and sale of income-producing property has to be done by someone. If all we do today is to require, mandate a reorganization of one of the agencies that is managing those assets, all we have done is equivalent classic example, the equivalent of rearranging the furniture on the deck of the *Titanic*, and the goal is to stop the ship from sinking.

Perhaps if we had it to do over again, perhaps FADA should not have been organized in precisely this way, but we have it today.

A reorganization today will not solve any problems. It will slow the process. It will cause less real estate to be sold into the private sector, less income to be produced, and fewer clear titles to obtain at a close of hundreds of millions of dollars with no foreseeable benefit, and not a single square foot of real estate will be sold by abolishing FADA.

Mr. KANJORSKI. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I am happy to yield to the gentleman from Pennsylvania.

Mr. KANJORSKI. Mr. Speaker, will the gentlemen agree with me that the General Accounting Office and Dr. Harold Seidman of the Johns Hopkins Center for the Study of American Government have both determined that FADA is illegally structured, unconstitutionally structured.

Mr. BARTLETT. Mr. Speaker, I would not agree. I appreciate the gentleman's statement, if he has a statement, but not a question. The question has to be: What possible benefit to solving the problem does abolishing an agency that is helping to solve the problem accomplish? None at all. Would the gentleman answer that? I will yield to the gentleman to answer that question. What happens as a result of abolishing FADA? Does a square foot of real estate get sold any faster?

Mr. KANJORSKI. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. Mr. Speaker, I am happy to yield to the gentleman from Pennsylvania.

Mr. KANJORSKI. Mr. Speaker, we found, and the General Accounting Office found, every method of handling real estate presently in use by FSLIC's receiverships and FSLIC itself is cheaper and more efficient than using this organization.

Mr. BARTLETT. The gentleman is simply not correct. The fact is that FADA is working; it is working professionally; it is managing properly. I would not have organized it the way it has been organized, and I think it is generally agreed that organizational structure in retrospect is not the way it should have been done but to reorganize it today simply slows the process down and does not help anything. It simply costs money and time, and we have neither.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I am happy to yield to the gentleman.

The SPEAKER pro tempore (Mr. PANETTA). The time of the gentleman from Texas [Mr. BARTLETT] has expired.

Mr. ST GERMAIN. Mr. Speaker, I yield 30 seconds to the gentleman from Texas.

Will the gentleman continue to yield?

Mr. BARTLETT. I am happy to continue to yield to the gentleman.

Mr. ST GERMAIN. Mr. Speaker, an analysis that was prepared at nine of FSLIC's own receiverships showed that if these receiverships were allowed to terminate FADA's services and deal with asset-management firms directly with additional staff hired, they could have saved FSLIC at least $10 million in 1988 alone, and in a draft report to the Senate, the GAO confirms the fact that estimates provided by FSLIC managing offices, and they know their business, were all lower, considerably lower, than the fees billed and the cost incurred by FADA, so not only would we continue to dispose of the assets, but we would not have to be paying for the exorbitant fees that we are paying to FADA.

The SPEAKER pro tempore. The time of the gentleman from Texas has again expired.

Mr. WYLIE. Mr. Speaker, I yield 1½ additional minutes to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, first, the study cited is a dated study. The fact is today FADA is managing its business in a professional way, is disposing of real estate, is clearing up title, and that is being done today. FADA is doing its job. It is a job that needs to be done. The only benefit to abolishing this, and I guess I cannot think of a benefit to abolishing FADA. The only benefit is perhaps to clear up a controversy that is a year old and has already been dispensed with.

The fact of the matter is that FADA is doing a job that needs to be done. The cost of abolishing FADA is both time and money.

Listen to this: There are some several hundred employees, 300 or more, who today are managing contracts, litigation, they have contracts in the process to sell property, to reorganize property, and to clear up title. If we abolish that in 60 days, then it requires months, perhaps years, to transfer the organizational structure of some very complicated transactions, and we have simply slowed the process down with no benefit.

Mr. KANJORSKI. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. Mr. Speaker, I am happy to yield to the gentleman from Pennsylvania.

Mr. KANJORSKI. Mr. Speaker, I quote to the gentleman from the Chairman of the Federal Deposit Insurance Corporation, Mr. William Seidman, in his testimony before our Committee on Banking: "I was asked about the setup of FADA at the time it was proposed, and I told them I did not think it was a good idea or necessary and would slow the process." That is what the Chairman of the Federal Deposit Insurance Corporation said.

Mr. BARTLETT. Mr. Speaker, I understand what he said as far as what should have happened in the past, but what we have today is a crisis of income-producing property that does not produce income. FADA is today producing income on that property, clearing up title, and if we stop, then we have just simply begun to reorganize, reorganize, or to rearrange the deck furniture when, in fact, the ship is sinking, and we need to get on with the task of stopping the ship from sinking.

Mr. ST GERMAIN. Mr. Speaker, I yield myself 1 minute, and I will be back again. I would like to state that the report that I read from GAO is so current that it has not been released yet, and, in fact, I notice that this draft is restricted to official use, and I just found out from staff that I am now allowed to utilize this, but in that report they make very clear the conclusion that, "We found no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. Such functions could be done by a combination of other private-sector management firms, receivership employees and FSLIC headquarters and regional employees."

From a cost standpoint, the study found that FADA cost about the same as receivership costs and found that FADA cost the same or was lower than the cost of private-sector asset-management costs.

Mr. WYLIE. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. Bartlett].

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding me this time.

First, the report that the gentleman from Pennsylvania was reading from, and I do not have a copy of it, but as I heard him read it, it said and it referred to a recommendation that FADA should not have been organized that way; second, in the response from the Federal Home Loan Bank Board to the head of the GAO, it does have some interesting responses to that including, and just sort of leading off on page 2 of the letter, "Many of the concens raised in the report have already been recognized," in a letter dated October 5, 1988, and the report says, "The Home Loan Bank Board by its own admissions fails to consider the substantial changes that have taken place since the beginning of this year with regard to the FSLIC-FADA relationship and FADA's improvement in the asset-management and disposition area."

There were problems. The problems have now been corrected. We would make more problems if we simply reorganized when we have major contract disputes, and income-producing property not producing income that does need to be disposed of and handled. FADA is doing that.

Mr. ST GERMAIN. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. Florio].

Mr. FLORIO. Mr. Speaker, I want to compliment the chairman of the Banking Committee, Mr. St Germain and Banking Committee members Mr. Kanjorski, Mr. Neal, and Mr. McMillen for the work they and their staff have done in regard to FADA.

During the last 16 months I have conducted an investigation of FADA and the revelations have been appalling. The Banking Committee has been carefully overseeing FADA's activities also, and I am pleased they have reached the same conclusion I have—it's time to abolish this agency. I think all of you will be amazed by the litany of ills associated with this agency. Let me just go over a few of them in headline form.

Mr. Speaker, there is debate whether FADA is a Federal agency or a private agency. It seems that FADA's leaders would have you believe that it is a private agency—with no need to heed the restraints placed by law on a Federal agency and its employees.

The General Accounting Office has just completed a study determining that FADA is a Federal agency. There is no question that FADA's sole stockholder, the Federal Savings and Loan Insurance Corporation is a Federal agency.

Losses of $1 million per month in 1987, the same year that FADA admitted that its employees had wrongly used a 110-foot yacht in its portfolio for personal purposes. After the agency's initial denials of the improper use, checks with drawbridge tenders in South Florida indicated that the boat had passed through their gates when it was supposed to have been tied up in port. Later, FADA admitted the improper use.

Complaints by dozens of realtors about FADA policies, personnel, arrogance and improper business practices led to a Congressional review, conducted by the GAO, of FADA. The GAO found FADA was unnecessary and that its job could be done less expensively and more efficiently by FSLIC.

Federal Home Loan Bank Board investigative reports revealed that the former president of FADA had close ties to one member of the executive search team that ultimately hired her for her $250,000 a year job. And evidence suggests that the same friend's search firm was later awarded a $650,000 contract by FADA.

A criminal referral from the GAO to the Department of Justice concerning a FADA land transaction in which a Florida developer first defaulted property to FSLIC, then bought it back from FADA for one third the original price.

An $8 million "golden parachute" put into place by the FADA Board of Directors to make sure that FADA workers get 4 months severance pay should Congress eliminate the agency. I have been told that there is an inside joke in FADA that the employees hope to be abolished to collect the four months free vacation.

A current dispute between FADA and the Congress regarding travel documents of senior FADA employees. After initially being told that FADA would be happy to cooperate with Congress and provide the requested material, now we have been told to come to FADA's office to review them without permission to copy even one.

Mr. Speaker, this list is longer than my time allows and I must stop. This agency, entity, or whatever it is called must go. It is a fraud being perpetrated on the American people. It is the laughing stock of the real estate industry. And if it is earning money at all it is because of a new contract that is so lucrative that it recalls the Teapot Dome scandal.

The bottom line is that the taxpayers of the United States cannot afford to put up with this embarrassment any longer. Vote to eliminate the agency.

□ 1445

Mr. ST GERMAIN. Mr. Speaker, I yield 1 additional minute to the gentleman from Maryland [Mr. McMillen].

Mr. McMILLEN of Maryland. Mr. Speaker, the irony of this debate is that we are listing a long list of people and agencies who have endorsed the abolishment of this agency, the GAO, the American Bankers Association, the independent bankers, the FDIC chairman, and the list goes on.

My question is, other than Danny Wall and Ambassador Carmen, who wants to keep FADA going? What authoritative source wants to keep FADA going? I think it is very ironic that the majority here is supporting the private sector doing a better job in this area.

Quite honestly, the bottom line in my opinion is this agency is knee deep in politics and needs a quick abolishment.

Mr. ST GERMAIN. Mr. Speaker, I yield myself 1 minute and 30 seconds.

Mr. Speaker, I would say to the Members of the House that, as the gentleman from Maryland [Mr. McMillen], just stated, the only one actually pleading for the continued existence of FADA is the Home Loan Bank Board. And the Home Loan Bank Board performed some internal studies where they think FADA is doing a great job.

By golly, if we look at the performance of the Home Loan Bank Board and their numbers and their calculations and their projections, ladies and gentlemen, no one, no one in the history of the Congress has been so far off the mark, so far off the mark.

Where did we go? We went from $10 billion to $15 billion for the cost of bailing out S&L's that are troubled to $45 to $50 billion and, therefore, are we going to take the word of the Home Loan Bank Board when they say they are the only ones, the voice crying in the wilderness, the only ones who maintain the FADA is cost effective. Everyone else, including the General Accounting Office, that we always rely upon, states that it is a boondoggle, it is costly, it is ineffective, it is inefficient, and FSLIC, if allowed to take over the assets themselves, can manage this much better and where necessary hire outside contract employees and firms to do the job at a savings to the taxpayers and to the FSLIC fund.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding time to me.

We retreated to discussion with the gentleman from New Jersey about waste, fraud, and abuse, and I do not know about the waste, fraud and abuse and there may be problems all over the place. I do know there has been real abuse in the legislative process to bring this bill to the floor.

We have a bill here, once again, which they are so unsure about what they have to tell CBO to go back and revise and extend their opinion about this bill so that they get the opinion that they want to bring it on to the floor.

I would not, under the rules of the House, be able to use the word "lie" in this case, but the fact is we come awfully close because on August 4, CBO told the committee that this bill could cost hundreds of millions of dollars, and then we turn around on September 26, and guess what? CBO comes up with another letter in which they say it is not possible to estimate the budget impact.

One has to guess between August 4 and September 26 that the majority decided that the first opinion that this thing would cost hundreds of millions of dollars probably was not something they wanted to bring to the floor, and therefore, what they did was just have CBO develop some different facts. They muscle CBO to develop the facts they want. This is not untypical. We had the case on the minimum wage bill and education and labor and now the Committee on Banking has done the same thing.

As President Reagan said the other night in New Orleans, facts are stubborn things. The fact is that CBO was probably right in the first place. We have here an agency that earned profits of about, net profit of $4 million in 1988. They are, in fact, moving into the private sector with loans or situations that need to be changed. Hundreds of millions of dollars. I suggest the abuse of the process is what we ought to focus on.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to myself.

The letter, the August letter from CBO was a response to the cost of the major banking bill that was reported from the Committee on Banking.

The FADA abolition legislation is one of the titles of that bill. In a hurried manner, CBO came up with that initial reply, and where did they get their numbers? They got them from the Home Loan Bank Board and from FADA. Certainly they will get those kinds of numbers.

However, when asked to take a look, themselves, independently of FSLIC and FADA, then they found that they could not estimate the budget impact in any way. The reason being, abolish FADA and we will save money, my colleagues, we will save money.

Mr. WYLIE. Mr. Speaker, I yield 30 seconds to the gentleman from Texas [Mr. Bartlett].

Mr. BARTLETT. Mr. Speaker, I want to make sure we clear up what GAO did and it did not say. I have a draft of the GAO report in front of me and one cannot characterize the GAO as recommending abolishment or anything. What it said, the strongest thing, "we found no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. Such functions could be done by a combination of other private sector asset management firms, receivership employees, and FSLIC headquarters and regional employees."

That is true in the absence of an emergency. In the absence of an emergency, perhaps we should reorganize. But there is an emergency which requires action on the substance of billions of dollars of REO.

Mr. WYLIE. Mr. Speaker, I yield 30 seconds to the gentleman from Wisconsin [Mr. Roth].

Mr. ROTH. Mr. Speaker, I thank the gentleman from Ohio for yielding to me.

If we set up FADA today we probably would not set it up as in November 1985. There have been problems, clearly, but some corrections have been made. For example, how much will it cost us now to do away with FADA? If we do away with FADA we will reestablish FADA within FSLIC. To do away with FADA we have 309 employees left in FADA. What kind of severance pay do these people get?

The information we have here is that the administrative costs for abandoning FADA will be somewhere between $5 and $12 million. Is this money we will pour down a rat hole, giving all kinds of severance pay, all kinds of administrative costs and establish, reset the same agency within FSLIC? It does not make sense. Sure there have been problems, but does that mean we are throwing out the baby with the bath water? We need to carefully consider the provisions of the bill before voting on it.

Mr. WYLIE. Mr. Speaker, how much time remains?

The SPEAKER pro tempore (Mr. Panetta). The gentleman from Ohio has 1 minute remaining.

[Mr. WYLIE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. ST GERMAIN. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from Rhode Island has 2 minutes remaining.

Mr. ST GERMAIN. Mr. Speaker, the bill before us eliminates the golden parachutes and the severance pay of 4 months. Let me repeat one more time, the only people asking Members of Congress to continue the existence of FADA is FADA and the Home Loan Bank Board, and frankly, I think the credibility of the Home Loan Bank Board today is at the lowest ebb in history.

Once again, the GAO made recommendations, ladies and gentlemen, for them to say what they said is unheard of, and that is because they probably had to hold their noses it was so bad. They said in conclusion "We found no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC."

Let FSLIC, the experts, do the things they have been doing for years. Listen to what Bill Seidman of the FDIC said, do away with FADA, save the taxpayers money and let us dispose of the assets in the best way possible and most profitable way possible for the U.S. Government and for the taxpayer and for the FSLIC fund.

Mr. ANNUNZIO. Mr. Speaker, I strongly support H.R. 4646, legislation to dissolve the Federal Asset Disposition Association. In the simplest possible terms—FADA has failed.

Although there have been some primarily cosmetic changes in the operations of FADA in recent months, no agency was so flawed that there was no way that it could be successful.

From the beginning, FADA was designed to be a first class project. It was intended to attract highly talented personnel and was willing to pay whatever costs were necessary to get them. Setting up FADA outside of FSLIC was viewed as a way of attracting the best, whatever the cost.

The first employee hired by FADA was its president and chief executive officer, Rosalyn B. Payne. She was hired from more than 100 other candidates because of her expertise and background in the real estate field. Her expertise did not come cheap. Her salary was set at $250,000; $50,000 more than the President of the United States himself is paid.

To provide FADA with necessary capital, the FSLIC invested $25 million into the corporation and provided for a $50 million guaranteed line of credit with the Federal Home Loan Bank of Topeka. Ms. Payne apparently thought this was sufficient capital. Upon being appointed President of FADA, she indicated that "not all of the line of credit would necessarily be drawn down." Unfortunately, Ms. Payne did not live up to her advanced billings. Indeed, she did not even live up to her own predictions.

For example, upon her appointment she stated that the aim of the agency "will be to break even." Rather than breaking even, FADA had a net operating loss of $3.5 million in 1986.

Upon her appointment, Ms. Payne envisioned "a small core group of very smart real estate people" for her staff. At the end of March, FADA had a staff of 209 employees. The staff has continued to grow, FADA now has 350 employees and expects to have a staff of 400 by year end. Those employees close to Ms. Payne did well financially. In 1986, for example, the top 17 officers of FADA were paid a total of $2.1 million in salary and $200,000 in bonuses. These 17 top employees received two-thirds of the $3.4 million in salaries paid to FADA employees in 1986.

No one would begrudge these employees a single cent of their wages if FADA was performing as it was intended. Unfortunately, it hasn't.

As of June 30 last year, FADA had sold only 45 assets valued at a mere $89 million. This represents only 3 percent of the $3 billion in assets placed in its control.

The poor performance cannot be blamed on market conditions where the assets are located or the adoption of the wrong marketing strategy by FADA. In fact, FADA has no strategy to sell these properties. Whereas its marketing efforts consist of a few mimeographed typewritten sheets of property listings, FSLIC has slick color brochures and videotaped tours of the properties available under its liquidation program. Glasnost makes it easier to get information out of the Kremlin than out of FADA.

In 1986, one of my constituents contacted me concerning the liquidation of assets by FADA. Over a period of 7 months, and despite numerous letters and telephone calls from myself, my staff, and the constituent, the constituent could not get a meeting with anyone from FADA. One would think that a corporation charged with selling assets would be willing to meet with someone who might help further that goal. As a result of this bitter experience, I no longer waste my constituents' time by referring them to FADA. They have a better chance of contacting Greta Garbo than FADA.

Ms. Payne thought she could run, but she couldn't hide from the facts. The facts make it clear that under her management FADA's operations were a fiasco. Rather than increasing FSLIC liquidity, it has drained money from FSLIC. Rather than disposing of properties more efficiently than FSLIC, it has done worse. Rather than streamlining the disposition process and cutting redtape, it has discouraged purchasers.

Mr. Speaker, last October 15, I called for the resignation of Rosalyn Payne. Shortly thereafter, the FADA board of directors relieved her of her duties. Rosalyn Payne is gone, but her legacy lives on. Today we can end that legacy by closing FADA.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the bill, H.R. 4646, as amended.

The question was taken.

Mr. WYLIE. Mr. Speaker, on that I demand the yeas and nays.

PARLIAMENTARY INQUIRY

Mr. BARTLETT. Mr. Speaker, I have a parliamentary inquiry.

The **SPEAKER** pro tempore (Mr. PANETTA). The gentleman will state it.

Mr. BARTLETT. Mr. Speaker, would it be in order to ask for a division of the House at this time?

The **SPEAKER** pro tempore. It is in order.

Mr. BARTLETT. Mr. Speaker, if one asked for a division of the House at some time, would one still be entitled to ask for the yeas and nays?

The **SPEAKER** pro tempore. The gentleman is correct.

Mr. BARTLETT. Mr. Speaker, would that be at a subsequent time?

The **SPEAKER** pro tempore. The gentleman is correct.

The question was taken; and on division (demanded by Mr. BARTLETT) there were—ayes 6, noes 8.

Mr. ST GERMAIN. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The **SPEAKER** pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

□ 1500

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 515, FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1987

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that the managers have until midnight tonight to file the conference report on the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card.

The **SPEAKER** pro tempore (Mr. PANETTA). Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

MANAGEMENT INTERLOCKS REVISION ACT OF 1988

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4879) to amend the Depository Institution Management Interlocks Act to revise the manner in which the service of directors of depository institutions and depository holding companies are regulated, and for other purposes.

The Clerk read as follows:

H.R. 4879

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Management Interlocks Revision Act of 1988".

SEC. 2. AFFILIATION THRESHOLD.

Section 202(3)(B) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(3)(B)) is amended by striking "50 per centum" each place such term appears and inserting in lieu thereof "25 percent".

SEC. 3. EXCLUSION OF CERTAIN ADVISORY AND HONORARY DIRECTORS.

Section 202(4) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(4)) is amended by striking out "(including an advisory or honorary director)" and inserting in lieu thereof "(including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000)".

SEC. 4. EXCEPTION FOR FAILED OR FAILING INSTITUTIONS WHICH ARE ACQUIRED.

Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended by adding at the end thereof the following new paragraph:

"(7) A depository institution or a depository holding company which—

"(A) is closed or is in danger of closing, as determined by the appropriate Federal depository institutions regulatory agency in accordance with regulations prescribed by such agency; and

"(B) is acquired by another depository institution or depository holding company, during the 5-year period beginning on the date of the acquisition of the depository institution or depository holding company described in subparagraph (A).".

SEC. 5. LIMITED EXCEPTION FOR DIVERSIFIED SAVINGS AND LOAN HOLDING COMPANIES.

(a) EXCEPTION ESTABLISHED.—Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended by inserting after paragraph (7) (as added by section 4 of this Act) the following new paragraph:

"(8)(A) A diversified savings and loan holding company (as defined in section

408(a)(1)(F) of the National Housing Act) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—

"(i) notice of the proposed dual service is given by such diversified savings and loan holding company to—

"(I) the appropriate Federal depository institutions regulatory agency for such company; and

"(II) the appropriate Federal depository institutions regulatory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director,

not less than 60 days, before such dual service is proposed to begin; and

"(ii) the proposed dual service is not disapproved by any such appropriate Federal depository institutions regulatory agency before the end of such 60-day period.

"(B) Any appropriate Federal depository institutions regulatory agency may disapprove, under subparagraph (A)(ii), a notice of proposed dual service by any individual if such agency finds that—

"(i) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of competion in financial services in any part of the United States;

"(ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

"(iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

"(C) Any appropriate Federal depository institutions regulatory agency may, at any time after the end of the 60-day period referred to in subparagraph (A), require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstances occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.".

(b) APPROPRIATE FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCY DEFINED.—

(1) IN GENERAL.—Section 202 of the Depository Institution Management Interlocks Act (12 U.S.C. 3202) is amended—

(A) by adding at the end thereof the following new paragraph:

"(6) the term 'appropriate Federal depository institutions regulatory agency' means, with respect to any depository institution or depository holding company, the agency referred to in section 209 in connection with such institution or company.";

(B) by striking out "and" at the end of paragraph (4); and

(C) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and".

(2) CONFORMING AMENDMENT.—Section 206(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3205(a)) is amended by striking out "banking agency (as set forth in section 209)" and inserting in lieu thereof "depository institutions regulatory agency".

SEC. 6. EXTENSION OF GRANDFATHER CLAUSE

Subsections (a) and (b) of section 206 of the Depository Institution Management Interlocks Act (12 U.S.C. 3205) are each amended by striking "ten years" and inserting in lieu thereof "15 years".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Rhode Island [Mr. ST GERMAIN] will be recognized for 20 minutes and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 mintues.

The Chair recognizes the gentleman from Rhode Island [Mr. ST GERMAIN].

(Mr. ST GERMAIN asked and was given permission to revise and extend his remarks.)

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on H.R. 4879, the bill presently under consideration.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Management Interlocks Revision Act of 1988 is an imposing title that belies a simple intent. That intent is to prevent disruption of existing director arrangements that were grandfathered for 10 years under the 1978 Interlocks Act and to allow flexibility in the future where otherwise sound management arrangements would be compromised or prevented by the requirements of the act.

Briefly, the act extends grandfathering arrangements of the 1978 legislation for another 5 years. In addition it exempts certain advisory and honorary directors from the prohibitions of the act where the depository institution involved has total assets of less that $100 million. This eased the compliance burden of smaller institutions where qualified directors are not always readily available.

Perhaps most importantly, the act provides for the acquisition of a failed or failing institution where such institution is acquired by another depository holding company. The exception is limited to 5 years from the date of acquisition.

Finally, the legislation provides a very limited exception for diversified savings and loan holding companies. A director of an unaffiliated depository institution or holding company may also serve as a director of the diversified holding company but not as director of the holding company's subsidiary depository institution. Federal regulators must receive notice of the arrangement and they have the right to object to any such arrangement.

I urge my colleagues to support this legislation. During the past 10 years, no abuses have occurred relating to the grandfather arrangements yet the disruption that would occur if the provisions expired would be significant for those so affected.

Many companies, such as insurance firms, have tried to diversify their financial service activities through the acquisition of institutions. They need their experienced directors to oversee these activities. Where there is the slightest danger of anticompetitive behavior, the regulators have a veto.

The bill was reported out of the Committee on Banking, Finance and Urban Affairs by unanimous voice vote on October 4, 1988. It is supported by all the bank and savings and loan regulatory agencies and the Department of the Treasury. I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to join my colleagues in expressing support for the Management Interlocks Revision Act of 1988. As the sponsor of H.R. 4879, I am particularly pleased that the House is now considering this legislation.

H.R. 4879 makes five basic changes to the Interlocks Management Act of 1978:

First, it changes the definition of control from 50 percent to 25 percent to parallel the standard definition of control used in other provisions of law affecting financial institutions;

Second, in depository institutions with assets of $100 million and less, interlocks involving advisory and honorary directors will be permitted;

Third, interlocks as a result of an acquisition of a failed or failing institution will be allowed to continue for a period of 5 years after the acquisition;

Fourth, using standards and procedures to the Change in Control Act, regulators would review proposed director interlocks between diversified S&L holding companies and have 60 days in which to approve or disapprove the dual service;

Finally, pre-1978 interlocks which were grandfathered under the 1978 Interlocks Act and are set to expire next month, would be grandfathered for an additional 5 years.

I believe that H.R. 4879 makes necessary changes to the 1978 Interlocks Act in a manner that will update the law to provide for changes in the economy and the regulatory environment. I am pleased that this legislation achieves this goal while at the same time ensuring that the important statutory policies to prevent abusive and anticompetitive interlocks remain intact.

H.R. 4879 is very important for community banks which often experience difficulty in finding and retaining qualified directors due to a number of economic and liability issues. Competent directors are the foundation of a bank's survival and profitability, and I believe that this legislation provides the necessary flexibility in this area.

Also, potential buyers of savings and loans are often discouraged from investing in failed S&L's because of the imposition of undue regulatory burdens. H.R. 4879 allows for certain interindustry interlocks which have insignificant anticompetitive effects in order to encourage investment in the troubled thrift industry.

Finally, the legislation takes into account the unique situations of financial institutions located in rural areas, and it provides these institutions with the flexibility to utilize dual directorships. Because of the benefits H.R. 4879 provides to rural institutions, I am pleased to note that this legislation enjoys the support and cosponsorship of the distinguished Republican Whip Mr. Lott of Mississippi as well as many other Members who represent rural districts.

Mr. Speaker, I urge the passage of H.R. 4879, the Management Interlocks Revision Act of 1988.

Mr. ANNUNZIO. Mr. Speaker, I support H.R. 4879, and in fact I am a cosponsor of the legislation. This legislation is identical to section 801(e) in H.R. 5094 as ordered reported by the Committee on Banking on July 28. Identical language appears as section 206(e) in S. 1886 as passed by the Senate on March 30.

When the Depository Institution Management Interlocks Act was enacted on November 10, 1978, it grandfathered for a period of 10 years prescribed officer and director interlocks then in existence between financial institutions. The legislation would extend the opportunity to serve for affected individuals for an additional 5 years beyond the November 10, 1988, expiration date set under existing law.

Considering the difficulties which presently confront many institutions within the depository institutions industry, this is a poor time to force experienced and valued directors to choose between service on the boards of different institutions within the same market area. The bill presented would avoid this problem, which is particularly apparent within smaller communities with a limited number of financial service providers and a limited pool of experienced and capable individuals suitable for such directorships.

Mr. WYLIE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island [Mr. St Germain] that the House suspend the rules and pass the bill, H.R. 4879.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

AUTHORIZING CONTINUED STORAGE OF WATER AT ABIQUIU DAM, NM

Mr. ANDERSON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5423) to authorize continued storage of water at Abiquiu Dam in New Mexico.

The Clerk read as follows:

H.R. 5423

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WATER STORAGE.

Notwithstanding any other provision of law, the Secretary of the Army, acting through the Chief of Engineers, is authorized to store 200,000 acre-feet of Rio Grande system water at Abiquiu Dam, New Mexico, in lieu of the water storage authorized by section 5 of Public Law 97-140, to the extent that contracting entities under section 5 of Public Law 97-140 no longer require such storage. The Secretary is authorized further to acquire lands adjacent to Abiquiu Dam on which the Secretary holds easements as of the date of enactment of this Act if such access at Abiquiu Dam. The Secretary is further directed to report to Congress as soon as possible with recommendations on additional easements that may be required to assure implementation of this Act.

SEC. 2. LIMITATION.

The authorization to store water and to acquire lands under section 1 is subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California [Mr. Anderson] will be recognized for 20 minutes and the gentleman from Minnesota [Mr. Stangeland] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Anderson].

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring to the floor the bill H.R. 5423, a bill to authorize continued storage of water at Abiquiu Dam in New Mexico.

The bill authorizes the Secretary of the Army to store 200,000 acre-feet of Rio Grande system water at Abiquiu Dam in lieu of water storage authorized by section 5 of Public Law 97-140, if entities contracting for that storage no longer require it. The Secretary is also authorized to obtain any adjacent lands necessary for the storage and recreational access. The authorization to store this water is subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission, thereby assuring no upset of the current water allocation system in the Southwest.

Abiquiu Dam is located on the Rio Chama, about 30 miles upstream from its confluence with the Rio Grande, and is one of the country's highest earthfill dams. It detains snowmelt and rainfall from 2,146 square miles of mountainous watershed. Total storage capacity is 1,212,000 acre-feet.

This bill is one-half of a compromise developed by affected New Mexico interests. This bill will allow for a pool to be maintained behind the dam. The other part of the agreement will result in the Senate passing legislation to declare a portion of the Rio Chama as a wild and scenic river, thereby protecting the river for current and future uses and allowing continued use of the lake behind Abiquiu Dam.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. STANGELAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5423 which would authorize storage of 200,000 acre-feet of Rio Grande system water at Abiquiu Dam, on the Rio Chama in New Mexico. The storage is in lieu of water previously authorized to be stored at Abiquiu from a Bureau of Reclamation project in a nearby basin. H.R. 5423 also authorizes the Secretary of the Army to acquire any real property that may be needed to allow recreational access at Abiquiu. The provision is a necessary part to an overall plan for the protection of the Rio Chama in New Mexico while ensuring an adequate supply of current and future water supplies. The enactment of this provision is not intended to interfere with any authorized project purposes to provide flood control to the area.

Mr. Speaker, I commend the gentleman from New Mexico [Mr. Richardson] for his efforts in devloping this excellent compromise between those who wish to protect the Rio Chama as a wild and scenic river and those who wish to preserve adequate water supplies for a very arid part of the United States.

I also want to express my thanks to the senior Senator from New Mexico who has been an active participant in the crafting of this bill. FInally, I want to commend the leadership of the Committee on Public Works and Transportation, in particular Chairman Anderson, as well as the leadership of the Interior Committee for their prompt attention to this matter.

Mr. Speaker, I reserve the balance of my time.

Mr. ANDERSON. Mr. Speaker, I yield 3 minutes to the gentleman from New Mexico [Mr. Richardson].

Mr. RICHARDSON. Mr. Speaker, I thank my two colleagues, the gentleman from California [Mr. Anderson] and the gentleman from Minnesota [Mr. STANGELAND]. They have made a very strong case for passage of this legislation.

Mr. Speaker, I rise in support of H.R. 5423, a bill to authorize the storage of water at Abiquiu Dam in my congressional district in New Mexico. Abiquiu Dam is on the Rio Chama River in my congressional district in New Mexico. H.R. 5423 is intended to preserve Abiquiu Lake, the reservoir behind Abiquiu Dam that is an important recreation resource for nothern New Mexico.

Pursuant to section 5 of Public Law 97-140, the Army Corps of Engineers stores 200,000 acre-feet of water for the city of Albuquerque at Abiquiu Dam. The 200,000 acre-feet pool forms Abiquiu Lake. The lake is a prime recreation spot for boaters. This resource will disappear—the lake will be drained—when Albuquerque uses the water it has stored which forms the lake.

H.R. 5423 will preserve this resource by authorizing the Army Corps to store up to 200,000 acre-feet of water at Abiquiu to replace the water lost when Albuquerque removes its water. This will allow a lake to exist at Abiquiu for future generations. In keeping with the present law on the use and allocation of Rio Grande water, the bill makes this new authorization for water storage subject to the provisions of the Rio Grande Compact and the resolutions of the Rio Grande Compact Commission.

Finally, H.R. 5423 authorizes the Army Corps to acquire lands adjacent to Abiquiu Dam on which the corps holds easements if such acquisition is necessary to assure proper recreational access at Abiquiu Dam.

I want to thank the chairman of the Public Works Committee and the minority for their support.

Mr. Speaker, H.R. 5423 is not controversial. It is supported by the two Senators from New Mexico. It is a perfect complement to H.R. 1839, passed by the House last year, which designates the section of the Rio Chama above Abiquiu Lake as a wild and scenic river. While that bill preserves the wild river, H.R. 5423 preserves the lake for flat water recreation by providing for water storage after the presently stored water is taken. I urge my colleagues to support H.R. 5423.

Mr. STANGELAND. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ANDERSON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. ANDERSON] that the House suspend the rules and pass the bill, H.R. 5423.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5423, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GRAY of Illinois). The Chair desires to make an announcement.

Pursuant to House Resolution 563, the Chair has provided both Cloakrooms in the Chamber with a list of eight additional suspensions that will be brought up today following the regularly scheduled suspensions. The Chair wanted to give notice to Members to that effect.

VOLUNTARY EDUCATION PROGRAM STUDY ACT

Mr. MICA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2632) to provide for a Peace Corps training and educational benefits demonstration program, as amended.

The Clerk read as follows:

H.R. 2632

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Voluntary Education Program Study Act".

SEC. 2. FEASIBILITY STUDY.

(a) REQUIREMENT FOR STUDY.—The Director of the Peace Corps shall conduct a study to determine the feasibility of establishing a Peace Corps training and educational benefits program.

(b) TYPE OF PROGRAM TO BE CONSIDERED.—The study conducted pursuant to subsection (a) shall specifically consider whether a training and educational benefits program having the following characteristics would be feasible:

(1) ELIGIBILITY.—Students at an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965) would be eligible to participate in the program if—

(A) they have completed at least 2 years of study at an institution of higher education,

(B) they enter into an agreement with the Director of the Peace Corps to serve at least 2 years as a member of the Peace Corps, and

(C) they are selected pursuant to a competitive process.

(2) SELECTION CRITERIA.—Participating students would be selected competitively based on uniform criteria, giving special consideration to traditionally underserved groups of students and to students who will specialize in courses of instruction for which there is a special need in the Peace Corps.

(3) TRAINING PROGRAM.—The Director of the Peace Corps would carry out a training program for participating students while they are completing their course of study.

(4) EDUCATIONAL BENEFITS.—Each participating student would receive educational benefits equal to tuition, room and board, books and fees, and other necessary costs of attendance at the institution of higher education at which the student is enrolled.

(c) CONSULTATION WITH THE SECRETARY OF EDUCATION.—In carrying out the study required by subsection (a), the Director of the Peace Corps shall consult with the Secretary of Education with respect to the educational benefits which could be provided under a training and education program.

(d) ISSUES TO BE CONSIDERED.—Among the issues to be considered pursuant to subsection (a), shall be the following:

(1) Is the establishment of a Peace Corps training and education program desirable?

(2) What objectives would such a program seek to achieve?

(3) Would the program contribute to the achievement of the purposes of the Peace Corps, as set forth in section 2 of the Peace Corps Act?

(4) What would be the budgetary requirments for such a program? What would be the budgetary implications of establishing such a program?

(5) Should the Secretary of Education have a role in administering such a program?

SEC. 3. REPORT TO THE CONGRESS.

Upon completion of the study required by section 2, the Director of the Peace Corps shall report the results of that study to the Congress, together with such recommendations as the Director considers appropriate with respect to the establishment of a Peace Corps training and educational benefits program.

The SPEAKER pro tempore. Is a second demanded?

Mr. GILMAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. MICA] will be recognized for 20 minutes and the gentleman from New York [Mr. GILMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2632, as amended, legislation which calls for a study of a proposed program to provide educational benefits for Peace Corps volunteers, the so-called Peace Corps ROTC bill.

Because there are many questions as well as potential benefits to such a proposal, this legislation requires the Director of the Peace Corps, in consultation with the Secretary of Education, to consider the feasibility of the proposal and to report back to the Congress.

Advocates of the creation of a Peace Corps education program maintain that establishment of a scholarship program for Peace Corps volunteers would help the Peace Corps to recruit more qualified volunteers to meet its goal of 10,000 volunteers by 1992, would help in the recruitment of minority volunteers, would attract individuals with scarce skills, such as forestry and health, and would encourage universities to expand their international curriculums. At the same time, the hearing conducted by the Committee on Foreign Affairs on this proposal raised a number of questions about how such a program would be implemented and about what the budgetary implications of a Peace Corps scholarship program would be. For this reason, the legislation before us asks the Director of the Peace Corps to prepare a report on the feasibility of the idea.

This legislation continues the tradition of strong bipartisan support which exists for the Peace Corps. Without committing us to any new programs, it would provide us with information to assure that if such a scholarship program were established, it would help the Peace Corps to meet the goals set forth in the Peace Corps Act: To assist developing countries meet their need for trained personnel, and to promote better understanding between the American people and the people of developing countries.

I urge my colleagues to join me in supporting H.R. 2632, as amended.

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Mr. GILMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to rise in support of H.R. 2632, a bill to provide for a demonstration Peace Corps training program. Our committee has historically been a strong supporter of the Peace Corps. The body of Peace Corps volunteers has proven to be one of our most effective means of promoting good will between our great Nation and the many less developed nations throughout the world. This measure will enhance the training for our Peace Corps volunteers.

Mr. Speaker, I would like to take this opportunity to commend the gentlelady from Maryland, Mrs. CONNIE MORELLA, for her outstanding work on this bill.

Accordingly, I strongly urge the adoption of this important bill.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. MORELLA], the sponsor of this bill.

Mrs. MORELLA. Mr. Speaker, I thank the gentleman from New York for yielding time to me, and I want to thank the floor manager of the bill, the gentleman from Florida [Mr. MICA], for bringing this bill to the floor.

Mr. Speaker, I want to thank Mr. FASCELL for his leadership and effort in bringing this legislation to the floor. I also appreciate the support of Mr. BROOMFIELD, the ranking member, and the Committee on Foreign Affairs.

Mr. Speaker, at the September 1986 memorial service at Arlington National Cemetery held to honor Peace Corps volunteers who died in service, Father Theodore Hesburgh of Notre Dame suggested that students should have the opportunity to train for peace—as they do for war—in service to their country.

The Reserve Officer Training Corps program serves as a model for such a proposal. Tens of thousands of outstanding high school graduates compete for ROTC scholarships. The most qualified applicants are chosen, provided with excellent educations with all expenses paid, and at graduation are sworn into the armed services. Many have called ROTC a "good bargain for both parties and our country; this program would not be a replacement for ROTC, but a "parallel choice."

Instead of a course in military science each semester, Peace Corps volunteer candidates would study the language, culture, history, economics and politics of the area of the world in which they would serve. They would also concentrate their studies on their chosen specialty—agriculture, forestry, economic development, and so on. During the summer, they could gain practical experience by working with the poor in economically disadvantaged areas of the United States. By graduation, these students would have shown the dedication and commitment required of Peace Corps volunteers, and they would be well prepared for the challenge of the work which awaited them.

H.R. 2632 would establish a feasibility study of such a Peace Corps proposal. I am convinced that such a study would confirm the benefits of this proposal. Enactment of this program would help "to institutionalize the Peace Corps and set it firmly into American life." It would bolster the corps with volunteers much better trained and prepared than present volunteers, who normally have only three months of preparation. It would address what Father Hesburgh called "one great lack so often voiced about universities and American students today: the provincialism of students, the lack of international concerns, the dearth of Americans who can speak both the main and esoteric languages of the world."

Mr. Speaker, there is no question that the Peace Corps is committed to reflecting the diversity of the American people in its own ranks of goodwill ambassadors to the world. Yet the corps has encountered much difficulty in attracting minorities to its ranks. For example, although blacks comprise about 12 percent of our population, only about 120 of today's nearly 6,300 Peace Corps volunteers, or about 2 percent, are black.

At a March 1987 conference at Stanford University of senior Peace Corps staff and presidents of diverse, but historically black, colleges, the presidents noted that the idea of service is an essential thread in the fabric of black American life. But they also acknowledged that it is particularly difficult psychologically for students who may be the first in their families to go to college, and financially for students who may be economically disadvantaged, to surrender their first few years of real earning power. A report developed by the Peace Corps Office of Congressional Relations states that "it was found that often black students carried heavy financial debts and upon graduation found Peace Corps service impractical." The college presidents suggested that the vision foreseen in the legislation which we are considering today would be an incentive in attracting blacks and other minorities to the corps. The Peace Corps has indicated that establishment of a Peace Corps ROTC-style program could attract as many as 200 students per year. If only one of four of those students were black, the number of black volunteers would grow by nearly 50 percent in the first year alone. And this would help increase the low percentage of blacks among foreign service officers and AID personnel, for whom the Peace Corps is a noted supplier.

The training program which this legislation would eventually lead to would also help the Peace Corps to recruit students with an expertise in such "scarce skill" areas as forestry, crop extension, and animal husbandry. These skills, for which there is great demand in Peace Corps countries, are in short supply on American campuses. It is well-known that the Peace Corps today has a surplus of applicants with "generalist" degrees in fields such as history and political science. It is less well-known that the Peace Corps does not come close to satisfying host countries' requests for volunteers possessing "scarce skills." In the last fiscal year, the Peace Corps was lacking 35 forestry specialists, 121 crop extension specialists, 29 specialists in husbandry of large animals, 62 specialists in health and nutrition extension, and 50 specialists in early childhood and primary education. And yet even these numbers mask the real shortfall, for we know that host countries often do not ask for all the specialists that are needed in a certain field, but instead revise the number downward so as to more closely approximate that which they feel the corps is able to provide.

Mr. Speaker, this legislation will initiate an idea whose time has come. The bill is cosponsored by a diverse group of Members of this body, Democrat and Republican, liberal and conservative. It is supported by Peace Corps Director Loret Ruppe, whose able leadership has helped to revitalize the corps, and she and her staff have provided much insight and assistance in developing this legislation. The bill has received editorial acclaim from the media, and it is supported by the National Council of Returned Peace Corps Volunteers and many peace groups around the country. I have received calls and letters from Americans in nearly every one of the fifty States expressing their support and interest in this legislation. Already some schools have foregone a feasibility study and are working with the Peace Corps to implement the ideas embodied in this legislation. Today, thousands of students across the Nation compete for ROTC scholarships. This legislation intends only to establish a study of the feasibility of creating a program that would enable our best and brightest to compete for scholarships for peace as well.

The United States spends approximately $500 million for ROTC, training our young people for war. Surely we can afford, and it is in our interest, to examine the feasibility of spending 1 percent of that sum to train our young people to work for peace in service to their country. I urge a "yes" vote on H.R. 2632.

Mr. MICA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gray of Illinois). The Chair recognizes the gentleman from New York [Mr. Gilman].

PARLIAMENTARY INQUIRY

Mr. MICA. Mr. Speaker, I have a parliamentary inquiry on a point of parliamentary procedure.

The SPEAKER pro tempore. The gentleman will state it.

Mr. MICA. Mr. Speaker, I have just yielded back my time, and I understand now that a Member has just arrived and is requesting time.

The SPEAKER pro tempore. Without objection, the gentleman's time will be reinstated.

There was no objection.

The SPEAKER pro tempore. The Chair will first recognize the gentleman from New York [Mr. Gilman].

Mr. GILMAN. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from California [Mr. Dornan], a senior member of our Committee on Foreign Affairs.

Mr. DORNAN of California. Mr. Speaker, I want to thank all the Members involved with this excellent piece of legislation, and I hope we get a unanimous vote on it.

I would like to have my colleagues indulge me for 1 second. On the next two suspensions that will be coming up, I am a chief principal sponsor or cosponsor, and I have to go to one of those one-in-a-year meetings right now that I cannot miss. So I will have to have my statements read or submitted at the beginning of these other amendments.

I support this amendment, and I support the next two that are coming up. I hope my colleagues will protect my interest. One of them is on Romania, where the suffering of the people is beyond belief. The other one is on Lebanon, a well-crafted bipartisam amendment to encourage the peace process, to congratulate those responsible for the election, and to mention our hostages and our great Marine, Lt. Col. William R. Higgins, who is a Nobel Peace Prize winner along with all the other U.S. peacekeeping forces.

Mr. GILMAN. Mr. Speaker, I am pleased to yield such time as he may consume to the senior member of our Committee on Foreign Affairs, the gentleman from Illinois [Mr. Hyde].

Mr. HYDE. Mr. Speaker, I rise in support of this excellent bill introduced by the gentlewoman from Maryland [Mrs. Morella].

I think the Peace Corps is one of the useful agencies of our Government. Many years ago I was unimpressed with the concept, but when I visited Africa and I saw the work done by these young people and by some not-so-young people, I found they were selfless, helpful, compassionate, great ambassadors for our country. I think anything that can assist young people and elderly people and middle-aged people, for that matter, is to be commended. Serving in the Peace Corps is a great idea, and training and educational benefits that can be offered to them makes an awful lot of sense.

So this is a fine initiative of the gentlewoman from Maryland [Mrs. Morella]. I understand we will have a demonstration project to see how this works, and I wish it Godspeed. I think it is a great idea.

Let me benignly dissent from the gentlewoman's comment that the ROTC trains young people for war. Actually in a very real sense, they are trained for peace, too. A strong military establishment keeps the peace. It has kept us from war for well over 40 years, and I would like to think that the ROTC trains people for peace, although in a different way than the Peace Corps accomplishes the goal.

Mrs. MORELLA. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I am happy to yield to the gentlewoman from Maryland.

Mrs. MORELLA. Mr. Speaker, I want to concede that point to the gentleman. Indeed, the ROTC does help to preserve our peace.

Mr. HYDE. Mr. Speaker, I thank the gentlewoman.

Mr. BROOMFIELD. Mr. Speaker, several months ago the Foreign Affairs Committee heard the eloquent testimony of the gentlelady from Maryland, Mrs. Connie Morella. She came before us with a proposal for what I believe would be an important demonstration program.

It would provide the appropriate training and educational benefits to college students who agree to serve for 2 years in the Peace Corps. I am delighted that the House will today take action on this bill.

Our distinguished committee chairman, the gentleman from Florida, has amended the bill with a proposed feasibility study of this training and educational benefits program.

The study will provide Congress and the Administration with a useful assessment of the prospects for establishing such a program.

We are all interested in any efforts that will have the effect of strengthening the Peace Corps, and I will look forward with great interest to the conclusions reached in the study.

The Foreign Affairs Committee has traditionally been a strong supporter of the Peace Corps. Our Peace Corps volunteers have proven to be stalwart ambassadors of good will. The experience they have brought back from their service in other countries strengthens and enriches our own Nation. And I would like to think that the best form of foreign assistance we can give any nation is the hands-on, cheerful assistance that so many American volunteers, young and old, have offered to millions of our neighbors throughout the world.

I urge the House to adopt the bill.

Mr. GILMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MICA. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. Mfume].

Mr. MFUME. Mr. Speaker, I thank the gentleman very much for yielding time to me.

Mr. Speaker, first let me commend my colleague, the gentlewoman from Maryland for introducing this legislation. Mr. Speaker, as a cosponsor of H.R. 2632, I rise in strong support of its passage. H.R. 2632 would establish a Peace Corps Preparatory Program, similar to the military's ROTC Program, designed to adequately and thoroughly prepare future Peace Corps volunteers for service in their assigned country.

H.R. 2632 will go a long way to address a serious concern of mine within the 27-year-old Peace Corps Program, and this is the problem of attracting minorities within the Peace Corps. Many minority students too often find the Peace Corps "unattractive" because they have had to take out considerable loans to complete their education. If this bill is passed into law, the Peace Corps could increase minority participation "by nearly 50 percent in just 1 year." Since a substantial number of A.I.D. and Foreign Service personnel are drawn from the Peace Corps, minority representation in both of these organizations would be increased substantially.

Additionally, H.R. 2632 would greatly assist the Peace Corps to provide host countries with volunteers who possess the "scarce skills" that many of these underdeveloped nations so desperately need. Previously, the Peace Corps has had a surplus of general category recruits in fields such as history and political science. With the passage of this legislation, more health and nutrition specialists, agriculturalists, foresters, and so forth can be transferred to assist the host nation's indigenous population.

In closing, I encourage all of my colleagues to support H.R. 2632 and strengthen America's commitment to the peace and development.

Mr. FASCELL. Mr. Speaker, I rise today in support of H.R. 2632, as amended, legislation to require the Director of the Peace Corps to study and report to the Congress on the feasibility of providing educational and training benefits for Peace Corps volunteers.

When the Committee on Foreign Affairs considered this legislation as originally introduced, it reviewed the potential benefits to the proposal and raised several serious questions about how such a scholarship program could be implemented. In order to address these various concerns, the committee approved and ordered reported a substitute which requires a feasibility study of this program to be conducted by the Director of the Peace Corps in consultation with the Secretary of Education. This study will explore how such a program could be structured to best meet the objectives of minority recruitment, the need for specialized volunteers in areas such as forestry and health, and expanded international curriculums at U.S. universities. The study will also review budgetary implications and issues concerning how the program would be implemented.

The continued strength and viability of the Peace Corps is a goal which many of us share. Passage of this legislation today help us to use limited resources effectively so that Peace Corps volunteers can be best prepared to assist the people of more than 60 developing countries around the world.

I urge my colleagues to join in supporting H.R. 2632, as amended.

Mr. JEFFORDS. Mr. Speaker, I wish to commend the gentlewoman from Maryland [Mrs. MORELLA], for introducing this legislation and shepherding it to the House floor. As my colleagues know, this legislation calls for reviewing the possibility of establishing a Peace Corps training and educational benefits program similiar to the successful ROTC Program. Such a program could offer students an opportunity to further their educational studies and acquire some financial assistance in exchange for 2 years of service in the Peace Corps after graduation.

U.S. foreign policy has, of late, placed a strong emphasis upon military assistance and macroeconomic reforms at the expense of grassroots development assistance. The Peace Corps is one of the few organizations that can respond directly to the basic human needs still unmet in so many nations. It has proven to be one of our best methods of effecting real and lasting change, while conveying a positive image of America.

I am proud of Vermont's strong record of participation in the Peace Corps. Despite our small population, Vermont ranked 36 of the 50 States in the number of volunteers serving in 1987. Vermont's Norwich University, the Nation's oldest private military college, was the first institution in the country to provide a 2-year curriculum designed to prepare students to serve their country in the Peace Corps.

Participation in the Peace Corps has fallen in recent years from its all-time high of over 15,000 volunteers to only a third of that number last year. Yet the global need for development assistance is perhaps greater today than it was in the mid-1960's. The escalating costs of higher education are leaving students deeper in debt upon graduation, thereby limiting their ability to go into volunteer service, and very few college courses provide students with the skills needed to qualify for the Peace Corps. Enactment of a student training program would help students prepare for Peace Corps service and would lighten the financial burdens of those students who are willing to commit to 2 years of volunteer service in the Peace Corps.

I highly commend Mrs. MORELLA for her work on this legislation, and I urge all my colleagues to support its passage.

□ 1530

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MICA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Florida [Mr. MICA] that the House suspend the rules and pass the bill, H.R. 2632, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended was passed.

The title of the bill was amended so as to read: "An act to require the Director of the Peace Corps to study the feasibility of establishing a Peace Corps training and education benefits program."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

SENSE OF CONGRESS REGARDING LEBANON

Mr. MICA. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 381) expressing the sense of the Congress regarding United States goals with respect to Lebanon, as amended.

The Clerk read as follows:

H. CON. RES. 381

Whereas Lebanon has traditionally been a pluralistic society with a western-oriented and democratic political system, and Lebanon continues to be an essential element in the geopolitical stability of the region;

Whereas a democratic government is essential to preserving Lebanon's freedom, sovereignty, unity, and independence;

Whereas the protracted conflict within Lebanon undermines economic prosperity and threatens the territorial integrity of that sovereign nation;

Whereas reconciliation among the Lebanese is difficult in the present situation and without the withdrawal of all foreign military and paramilitary forces from Lebanon;

Whereas the presence of foreign military and paramilitary forces and the continued domination of the militias, taken together, promote paralysis of the Government of Lebanon and divisions within the armed forces;

Whereas the American hostages still remain in captivity in Lebanon, a situation which cries out for a strong Lebanese Government which could take action to obtain their release;

Whereas encouraging a reorganization of the relationship between Lebanon and Syria remains an essential element for long-term stability in the region;

Whereas a political and economic reconstruction of Lebanon is integral to reinforcing the current constitutional democracy; and

Whereas with significant progress toward constitutional reform and national reconciliation in Lebanon, the United States can commit itself to an overall assistance program that enables Lebanon to recover its economic expansion and address the major social problems stemming from displacement, destruction, poverty, and all the consequences of a protracted conflict: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the United States should—

(1) encourage all parties in Lebanon to support the constitutional mandate to elect a new president without delay, within the framework of national self determination;

(2) support actions which promote the unity of Lebanon; and

(3) endorse strengthened national sovereignty for Lebanon.

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. MICA] will be recognized for 20 minutes and the gentleman from Michigan [Mr.

Broomfield] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. Mica].

Mr. MICA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Concurrent Resolution 381, as amended, expressing the sense of Congress regarding United States goals with respect to Lebanon. At the outset, I want to commend the gentleman from California [Mr. Dornan], and the gentlelady from Ohio [Ms. Oakar] for their leadership in bringing this resolution before the House today.

Mr. Speaker, House Concurrent Resolution 381, as amended, details some important policy objectives which must be an important part of our policy toward Lebanon if that country is to be able to emerge from the tragic chaos, violence and human suffering that has reigned for too many years. It urges the administration to encourage all parties in Lebanon to support efforts mandated by the Lebanese constitution to elect a new president, and calls for efforts to strengthen Lebanon's unity and national sovereignty.

Recent events in Lebanon raise the spectre of two separate governments, each claiming to be legitimate, and each unable to extend its control beyond factions friendly to it. Unless all parties, including the United States, do everything they can to make the compromises necessary to produce a legitimate consensus government, a new round of violence seems certain. House Concurrent Resolution 381, as amended, is therefore an important policy statement outlining our objectives with respect to Lebanon and hopefully spurring action toward a just and lasting settlement of the divisive conflict in that nation, which once was a thriving democracy and center of trade and commerce.

It is easy to just throw up our hands and condemn Lebanon to a continuing human tragedy. This resolution helps us to reject that option and demonstates our continuing interest in bringing about a much different and brighter future for Lebanon. I urge the adoption of the resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to express my strong support to the resolution introduced by my colleague, Mr. Dornan. He was ably assisted in the drafting of this document by my colleagues on the Foreign Affairs Committee, Mr. Hamilton and Mr. Gilman. They have produced a thoughtful resolution which proposes several steps the United States Government should take to help bring about a peaceful solution to the continuing turmoil in Lebanon.

Anyone who visited Beirut just 15 years ago or so will remember what a great and graceful international city it was. Beirut was a city that served not only as an important economic center for Europe and the Middle East, but also as a center of Western cultural and political institutions and ideas.

This resolution recognizes that the best way to recapture Lebanon's character is through the rebuilding of the democratic political institutions that served it so well in the past.

Continued conflict in Lebanon threatens not only its role as a great economic and cultural center, but its very existence as a sovereign nation.

Clearly, the presence of foreign military and paramilitary forces serves only to fan the flames of conflict and undermine the operations of democratic institutions in Lebanon.

Americans have been made fully aware of just how chaotic things have become in Lebanon by frequent press reports on the condition of the hostages who still remain captive in that nation. The fact that the safety of the hostage released on Monday could not be guaranteed until he reached Damascus is symptomatic of the problems that persist in Lebanon.

Lebanon's problems are both political and economic. This resolution speaks to both issues. It also recognizes that Lebanon's economic deterioration will continue so long as nothing is done to strengthen the political system.

As the resolution proposes, the United States Government should do all it can to ensure that the Lebanese have the opportunity to select a new president without delay. And it also urges the United States to support all those actions which will restore Lebanon's status as a free, independent, sovereign, and prosperous nation.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Gilman], one of the cosponsors.

Mr. GILMAN. Mr. Speaker, I thank the gentleman from Michigan for yielding time to me.

Mr. Speaker, I rise in support of House Concurrent Resolution 381 expressing the sense of the Congress regarding the state of affairs in Lebanon, the need to resolve the constitutional crisis there, and the objectives of United States policy toward that nation.

I would like to commend our colleagues: our distinguished subcommittee chairman, the gentleman from Indiana [Mr. Hamilton], the gentleman from California [Mr. Dornan], the gentlelady from Ohio [Ms. Oakar], and the gentleman from West Virginia [Mr. Rahall]. This resolution is the result of their combined efforts.

Mr. Speaker, the end to the Lebanese civil war, and the maintenance of Lebanon's freedom and territorial integrity are clearly in the interest of our Nation. This resolution addresses each of these points.

This resolution also stresses the need for the early conclusion of Presidential elections in Lebanon, as well as the current constitutional crisis in that country. The continuation of this crisis can only result in further damage to Lebanon and its people, and to future prospects of a Lebanese Republic.

Mr. Speaker, accordingly, I strongly urge the unanimous passage of House Concurrent Resolution 381.

Mr. MICA. Mr. Speaker, I have no further requests for time.

Mr. BROOMFIELD. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. Hyde].

Mr. HYDE. Mr. Speaker, I simply want to associate myself with the remarks of the gentleman from Michigan [Mr. Broomfield], and the gentleman from New York [Mr. Gilman], and the gentleman from Florida [Mr. Mica], and also to commend the gentleman from West Virginia [Mr. Rahall] who joined with the gentlewoman from Ohio [Ms. Oakar] and the gentleman from Indiana [Mr. Hamilton] and, of course, the gentleman from California [Mr. Dornan], the chief sponsor in this very important resolution which calls to our mind the tragedy of Lebanon.

Mr. Speaker, Lebanon is a country that once was a jewel on the Mediterranean and now is a crossroads of tragedy occupied by several factions and powers, and the people have as much desire, and certainly entitlement, to sovereignty and self-government as any other people in the world. We hope that our country will ever be mindful of what it can do to assist in the unity, and free elections and ultimately restoration of sovereignty to that land.

Mr. Speaker, many Americans are of Lebanese ancestry, and they bleed for their homeland, and it is a place of great importance to us and to that part of the world.

So, I commend the sponsors for bringing this to our attention, and I urge passage of this important resolution.

Ms. OAKAR, Mr. Speaker, until 1975, Lebanon was renowned in the community of nations for its role as the financial and trade center of the Middle East. Lebanon's unique economic and social structure made it a model of coexistence in a troubled region of the world.

The democratically elected Government of Lebanon was essential to fostering that tradition of peaceful prosperity. The maintenance of democratically elected government is equally essential in preserving Lebanon's freedom, sovereignty, unity, and independence today.

But in the last few weeks, our sister democracy has moved to the brink of a constitutional crisis.

The Government of Lebanon has been deadlocked for a month, unable to hold elections for a new President.

In this atmosphere of deadlock and drawn lines, the future of Lebanon is deteriorating virtually by the hour.

Mr. Speaker, it is essential for the United States to act. We must use our influence to urge all parties in Lebanon to resolve this constitutional crisis together, quickly and peacefully.

It has long been our policy that Lebanon's unity, freedom, sovereignty, and independence must be preserved. With this concurrent resolution, we would reiterate that commitment at this critical hour.

This is not a perfect resolution. It is, like so much else about the Middle East, a product of arduous negotiations.

I would have preferred a resolution focused on the critical need to carry out the constitutional mandate to elect a new President in free elections by the Lebanese people, without external constraint.

But I urge the passage of this resolution. It is essential that we go on record swiftly in support of the constitutional democracy of Lebanon. This resolution will put the Congress on record encouraging all parties in Lebanon to support the constitutional democracy. We strengthen our commitment to national sovereignty for Lebanon, and we support actions which promote the unity of Lebanon.

That is why I introduced the original resolution emphasizing our support for Lebanon's will to carry out the elections without delay. I was proud that Congressman Nick Joe Rahall, and Senator George Mitchell, as the only other Lebanese-American Members of this Congress, joined with us in leading this effort. We were pleased to have the help of the gentleman from California, Bob Dornan, who has long worked for peace in this troubled region of the world and certainly Chairman Lee Hamilton and his fine subcommittee.

The depth of our commitment to that democratic principle is manifest: Within hours we had substantial bipartisan support here in the House. Members of the majority and minority of the Foreign Affairs Committee, prominent Members of Arab, Jewish, and Christian descent joined together to support our bill. And the Senate leadership—also in a bipartisan fashion—took up our language to reinforce America's national commitment to Lebanon's democratic elections.

American support for peace through democracy must not waiver. House Concurrent Resolution 381 sends a clear message that the United States remains committed to Lebanon's survival as a democratic nation.

Only by preserving a democratic government can Lebanon hope to rebuild to prosperity. It is, therefore, essential that the United States prominently reaffirm it's commitment to a reconstruction of Lebanon that reinforces the constitutional democracy. The people of Lebanon want peace, and, are committed to this promise.

And when all is said and done that is the most critical aspect.

Mr. DORNAN of California. Mr. Speaker, I have long been concerned that in the wake of the terrorist bombing of our Marine headquarters in October 1983 in which 241 American soldiers died, that American resolve in Lebanon would be permanently weakened. The subsequent bombing of the American Embassy in Beirut and the prolonged tragedy of American hostages held by Iranian-sponsored terrorists has had the cumulative effect of making both the executive and legislative branches of our Government gun shy about further American involvement in Lebanon. In short, my colleagues, I feel that the United States has been disengaged diplomatically, militarily, and in matters of foreign assistance in Lebanon for the last 3 years.

With this in mind, I drafted a resolution, which we are considering here today, with the objective of reestablishing and reaffirming United States goals with respect to Lebanon. Although, I feel that there is a general underlying and unspoken consensus about American goals in Lebanon, they have not been clearly articulated or presented in any coherent format. I think it is especially important now to reaffirm our commitment to Lebanon in the wake of recent electoral events which have left the Government of Lebanon fractured and divided.

Gentlemen, the situation in Lebanon today is grave. It is critical then, that we articulate our support for

First, an unrestricted Presidential election

Second, the withdrawal of all foreign military forces; and

Third, assistance in the political and economic reconstruction of Lebanon.

My resolution makes all of these points Mr. Speaker and more. I also call for a reorganization of the Lebanese relationship with Syria. But perhaps more importantly, I believe that the United States should be prepared to commit itself to an overall assistance program which enables Lebanon to recover economically, and promotes solutions to major social problems stemming from massive displacement brought on by years of civil war and occupation by foreign powers.

Mr. RAHALL. Mr. Speaker, I rise today to urge my colleagues to adopt this resolution addressing the constitutional crisis in Lebanon. While the war of words continues and the finger pointing goes on, the people of Lebanon are without a President. They are living under military rule, and there seems to be no clear solution to the crisis.

Quite simply, what my colleagues and I are attempting in this resolution is to let the people of Lebanon know that the United States Congress stands behind Lebanon and seeks to bring to reality constitutionally-mandated, free presidential elections. That is what we seek.

My colleague, Ms. Oakar and I, originally introduced a resolution focusing squarely on the constitutional crisis, and urging free elections to be held. My friend on the other side of the aisle, Mr. Dornan of California whom I commend for his interest in Lebanon, sought a broader approach, and this resolution is a blend of the two.

It is our intent to focus on what can be done to foster these elections, to let the Lebanese people know that the United States has not forgotten them. For too long, United States policy on Lebanon has been whipped back and forth. This administration has been burned in Lebanon. But the United States simply cannot give up. Lebanon is a democratic western-styled nation that desires the friendship of the United States. We cannot turn our backs on them in their hour of need.

I want to take this opportunity to commend my colleague, Ms. Oakar for her diligence and hard work on this resolution. She is dedicated to peace in Lebanon, and pursuing United States goals in that region. I must also thank the distinguished chairman of the Foreign Affairs Middle East Subcommittee, Lee Hamilton for his advice, guidance, and dedication to helping the Lebanese people and many thanks to the many cosponsors of our original resolution. I also thank my colleague from California, Mr. Dornan, for his help in keeping the issue of Lebanon before this institution.

I urge adoption of the resolution to let the Lebanese people know we have not forgotten them. That the United States Congress is squarely behind Lebanon territorial sovereignty, unity, and most importantly the right to hold Presidential elections.

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. MICA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. Mica] that the House suspend the rules and agree to the concurrent resolution (H. Con. Res. 381) as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The title of the concurrent resolution was amended so as to read: "Concurrent Resolution expressing the sense of the Congress regarding the state of affairs in Lebanon, the necessity of resolving the constitutional crisis in Lebanon, and United States goals with respect to Lebanon."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Concurrent Resolution 381, the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CONFERENCE REPORT ON H.R. 515

Mr. ST GERMAIN submitted the following conference report and statement on the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to any information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card:

CONFERENCE REPORT (H. REPT. 100-1069)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to any information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Credit and Charge Card Disclosure Act of 1988".

SEC. 2. CREDIT AND CHARGE CARD DISCLOSURE REQUIREMENTS.

(a) Disclosure in Connection With Credit Card and Charge Card Applications and Solicitations.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof the following new subsections:

"(c) Disclosure in Credit and Charge Card Applications and Solicitations.—

"(1) Direct mail applications and solicitations.—

"(A) Information in tabular format.—Any application to open a credit card account for any person under an open end consumer credit plan, or a solicitation to open such an account without requiring an application, that is mailed to consumers shall disclose the following information, subject to subsection (e) and section 122(c):

"(i) Annual percentage rates.—

"(I) Each annual percentage rate applicable to extensions of credit under such credit plan.

"(II) Where an extension of credit is subject to a variable rate, the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing, and how the rate is determined.

"(III) Where more than one rate applies, the range of balances to which each rate applies.

"(ii) Annual and other fees.—

"(I) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

"(II) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding.

"(III) Any transaction charge imposed in connection with use of the card to purchase goods or services.

"(iii) Grace period.—

"(I) The date by which or the period within which any credit extended under such credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated.

"(II) If the length of such 'grace period' varies, the card issuer may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

"(iv) Balance calculation method.—

"(I) The name of the balance calculation method used in determining the balance on which the finance charge is computed if the method used has been defined by the Board, or a detailed explanation of the balance calculation method used if the method has not been so defined.

"(II) In prescribing regulations to carry out this clause, the Board shall define and name not more than the 5 balance calculation methods determined by the Board to be the most commonly used methods.

"(B) Other information.—In addition to the information required to be disclosed under subparagraph (A), each application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f):

"(i) Cash advance fee.—Any fee imposed for an extension of credit in the form of cash.

"(ii) Late fee.—Any fee imposed for a late payment.

"(iii) Over-the-limit fee.—Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

"(2) Telephone solicitations.—

"(A) In general.—In any telephone solicitation to open a credit card account for any person under an open end consumer credit plan, the person making the solicitation shall orally disclose the information described in paragraph (1)(A).

"(B) Exception.—Subparagraph (A) shall not apply to any telephone solicitation if—

"(i) the credit card issuer—

"(I) does not impose any fee described in paragraph (1)(A)(ii)(I); or

"(II) does not impose any fee in connection with telephone solicitations unless the consumer signifies acceptance by using the card;

"(ii) the card issuer discloses clearly and conspicuously in writing the information described in paragraph (1) within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and

"(iii) the card issuer discloses clearly and conspicuously that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card.

"(3) Applications and solicitations by other means.—

"(A) In general.—Any application to open a credit card account for any person under an open end consumer credit plan, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall meet the disclosure requirements of subparagraph (B), (C), or (D).

"(B) Specific information.—An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation contains—

"(i) the information—

"(I) described in paragraph (1)(A) in the form required under section 122(c) of this chapter, subject to subsection (e), and

"(II) described in paragraph (1)(B) in a clear and conspicuous form, subject to subsections (e) and (f);

"(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

"(I) the information is accurate as of the date the application or solicitation was printed;

"(II) the information contained in the application or solicitation is subject to change after such date; and

"(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

"(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

"(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

"(C) General information without any specific term.—An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation—

"(i) contains a statement, in a conspicuous and prominent location on the application or solicitation, that—

"(I) there are costs associated with the use of credit cards; and

"(II) the applicant may contact the creditor to request disclosure of specific information of such costs by calling a toll free telephone number or by writing to an address, specified in the application;

"(ii) contains a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number and a mailing address at which the applicant may contact the creditor to obtain such information; and

"(iii) does not contain any of the items described in paragraph (1).

"(D) Applications or solicitations containing subsection (a) disclosures.—An application or solicitation meets the requirement of this subparagraph if it contains, or is accompanied by—

"(i) the disclosures required by paragraphs (1) through (6) of subsection (a);

"(ii) the disclosures required by subparagraphs (A) and (B) of paragraph (1) of this subsection included clearly and conspicuously (except that the provisions of section 122(c) shall not apply); and

"(iii) a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided.

"(E) Prompt response to information requests.—Upon receipt of a request for any of the information referred to in subparagraph (B), (C), or (D), the card issuer or the agent of such issuer shall promptly disclose all of the information described in paragraph (1).

"(4) Charge card applications and solicitations.—

"(A) In general.—Any application or solicitation to open a charge card account shall disclose clearly and conspicuously the fol-

lowing information in the form required by section 122(c) of this chapter, subject to subsection (e):

"(i) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of the charge card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

"(ii) Any transaction charge imposed in connection with use of the card to purchase goods or services.

"(iii) A statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement rendered for such charge card account.

"(B) OTHER INFORMATION.—In addition to the information required to be disclosed under subparagraph (A), each written application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f):

"(i) CASH ADVANCE FEE.—Any fee imposed for an extension of credit in the form of cash.

"(ii) LATE FEE.—Any fee imposed for a late payment.

"(iii) OVER-THE-LIMIT FEE.—Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

"(C) APPLICATIONS AND SOLICITATIONS BY OTHER MEANS.—Any application to open a charge card account, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall contain—

"(i) the information—

"(I) described in subparagraph (A) in the form required under section 122(c) of this chapter, subject to subsection (e), and

"(II) described in subparagraph (B) in a clear and conspicuous form, subject to subsections (e) and (f);

"(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

"(I) the information is accurate as of the date the application or solicitation was printed;

"(II) the information contained in the application or solicitation is subject to change after such date; and

"(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

"(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

"(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

"(D) ISSUERS OF CHARGE CARDS WHICH PROVIDE ACCESS TO OPEN END CONSUMER CREDIT PLANS.—If a charge card permits the card holder to receive an extension of credit under an open end consumer credit plan, which is not maintained by the charge card issuer, the charge card issuer may provide the information described in subparagraphs (A) and (B) in the form required by such subparagraphs in lieu of the information required to be provided under paragraph (1), (2), or (3) with respect to any credit extended under such plan, if the charge card issuer discloses clearly and conspicuously to the consumer in the application or solicitation that—

"(i) the charge card issuer will make an independent decision as to whether to issue the card;

"(ii) the charge card may arrive before the decision is made with respect to an extension of credit under an open end consumer credit plan; and

"(iii) approval by the charge card issuer does not constitute approval by the issuer of the extension of credit.

The information required to be disclosed under paragraph (1) shall be provided to the charge card holder by the creditor which maintains such open end consumer credit plan before the first extension of credit under such plan.

"(E) CHARGE CARD DEFINED.—For the purposes of this subsection, the term 'charge card' means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.

"(5) REGULATORY AUTHORITY OF THE BOARD.—The Board may, by regulation, require the disclosure of information in addition to that otherwise required by this subsection or subsection (d), and modify any disclosure of information required by this subsection or subsection (d), in any application to open a credit card account for any person under an open end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection.

"(d) DISCLOSURE PRIOR TO RENEWAL.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a card issuer that imposes any fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) shall transmit to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of—

"(A) the date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;

"(B) the information described in subsection (c)(1)(A) or (c)(4)(A) that would apply if the account were renewed, subject to subsection (e); and

"(C) the method by which the consumer may terminate continued credit availability under the account.

"(2) SPECIAL RULE FOR CERTAIN DISCLOSURES.—

"(A) IN GENERAL.—The disclosures required by this subsection may be provided—

"(i) prior to posting a fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) to the account, or

"(ii) with the periodic billing statement first disclosing that the fee has been posted to the account.

"(B) LIMITATION ON USE OF SPECIAL RULE.—Disclosures may be provided under subparagraph (A) only if—

"(i) the consumer is given a 30-day period to avoid payment of the fee or to have the fee recredited to the account in any case where the consumer does not wish to continue the availability of the credit; and

"(ii) the consumer is permitted to use the card during such period without incurring an obligation to pay such fee.

"(3) SHORT-TERM RENEWALS.—The Board may by regulation provide for fewer disclosures than are required by paragraph (1) in the case of an account which is renewable for a period of less than 6 months.

"(e) OTHER RULES FOR DISCLOSURES UNDER SUBSECTIONS (c) AND (d).—

"(1) FEES DETERMINED ON THE BASIS OF A PERCENTAGE.—If the amount of any fee required to be disclosed under subsection (c) or (d) is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied shall be disclosed in lieu of the amount of such fee.

"(2) DISCLOSURE ONLY OF FEES ACTUALLY IMPOSED.—If a credit or charge card issuer does not impose any fee required to be disclosed under any provision of subsection (c) or (d), such provision shall not apply with respect to such issuer.

"(f) DISCLOSURE OF RANGE OF CERTAIN FEES WHICH VARY BY STATE ALLOWED.—If the amount of any fee required to be disclosed by a credit or charge card issuer under paragraph (1)(B), (3)(B)(i)(II), (4)(B), or (4)(C)(i)(II) of subsection (c) varies from State to State, the card issuer may disclose the range of such fees for purposes of subsection (c) in lieu of the amount for each applicable State, if such disclosure includes a statement that the amount of such fee varies from State to State.".

(b) CERTAIN INFORMATION REQUIRED TO BE DISCLOSED IN TABULAR FORM.—Section 122 of the Truth in Lending Act (15 U.S.C. 1632) is amended—

(1) in the third sentence of subsection (a), by striking out "Regulations" and inserting in lieu thereof "Except as provided in subsection (c), regulations"; and

(2) by adding at the end thereof the following new subsection:

"(c) TABULAR FORMAT REQUIRED FOR CERTAIN DISCLOSURES UNDER SECTION 127(c).—

"(1) IN GENERAL.—The information described in paragraphs (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) of section 127(c) shall be—

"(A) disclosed in the form and manner which the Board shall prescribe by regulations; and

"(B) placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

"(2) TABULAR FORMAT.—

"(A) FORM OF TABLE TO BE PRESCRIBED.—In the regulations prescribed under paragraph (1)(A) of this subsection, the Board shall require that the disclosure of such information shall, to the extent the Board determines to be practicable and appropriate, be in the form of a table which—

"(i) contains clear and concise headings for each item of such information; and

"(ii) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

"(B) BOARD DISCRETION IN PRESCRIBING ORDER AND WORDING OF TABLE.—In prescribing the form of the table under subparagraph (A), the Board may—

"(i) list the items required to be included in the table in a different order than the order in which such items are set forth in paragraph (1)(A) or (4)(A) of section 127(c); and

"(ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 127(c) if such terminology conveys substantially the same meaning.

"(C) GRACE PERIOD.—Either the heading or the statement under the heading which relates to the time period referred to in section 127(c)(1)(A)(iii) shall contain the term 'grace period'.".

SEC. 3. CIVIL LIABILITY.

Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640) is amended—

(1) by striking out "in section 127" in the third sentence and inserting in lieu thereof "in subsections (a) and (b) of section 127"; and

(2) by inserting after the third sentence the following: "In connection with the disclosures referred to in subsection (c) or (d) of section 127, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 127(c)(1)(A)(ii)(I) or section 127(c)(4)(A)(i) or who uses the credit card or charge card.".

SEC. 4. COORDINATION WITH OTHER LAWS.

Section 111 of the Truth in Lending Act (15 U.S.C. 1610) is amended—

(1) in subsection (a)(1), by striking out "Chapters 1, 2, and 3" and inserting in lieu thereof "Except as provided in subsection (e), chapters 1, 2, and 3"; and

(2) by adding at the end thereof the following new subsection:

"(e) CERTAIN CREDIT AND CHARGE CARD APPLICATION AND SOLICITATION DISCLOSURE PROVISIONS.—The provisions of subsection (c) of section 122 and subsections (c), (d), (e), and (f) of section 127 shall supersede any provision of the law of any State relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 127(c) or any renewal notice which is subject to the requirements of section 127(d), except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections.".

SEC. 5. REPORTING TO THE BOARD OF GOVERNORS.

Section 136 of the Truth in Lending Act (15 U.S.C. 1646) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by inserting after subsection (a) the following new subsection:

"(b) CREDIT CARD PRICE AND AVAILABILITY INFORMATION.—

"(1) COLLECTION REQUIRED.—The Board shall collect, on a semiannual basis, credit card price and availability information, including the information required to be disclosed under section 127(c) of this chapter, from a broad sample of financial institutions which offer credit card services.

"(2) SAMPLE REQUIREMENTS.—The broad sample of financial institutions required under paragraph (1) shall include—

"(A) the 25 largest issuers of credit cards; and

"(B) not less than 125 additional financial institutions selected by the Board in a manner that ensures—

"(i) an equitable geographical distribution within the sample; and

"(ii) the representation of a wide spectrum of institutions within the sample.

"(3) REPORT OF INFORMATION FROM SAMPLE.—Each financial institution in the broad sample established pursuant to paragraph (2) shall report the information to the Board in accordance with such regulations or orders as the Board may prescribe.

"(4) PUBLIC AVAILABILITY OF COLLECTED INFORMATION, REPORT TO CONGRESS.—The Board shall—

"(A) make the information collected pursuant to this subsection available to the public upon request; and

"(B) report such information semiannually to Congress."; and

(3) by striking out "subsection (a)" in subsection (c), as redesignated, and inserting in lieu thereof "subsections (a) and (b)".

SEC. 6. INSURANCE PROVIDED IN CONNECTION WITH CERTAIN OPEN END CREDIT CARD PLANS.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by inserting after subsection (f) (as added by section 2(a) of this Act) the following new subsection:

"(g) INSURANCE IN CONNECTION WITH CERTAIN OPEN END CREDIT CARD PLANS.—

"(1) CHANGE IN INSURANCE CARRIER.—Whenever a card issuer that offers any guarantee or insurance for repayment of all or part of the outstanding balance of an open end credit card plan proposes to change the person providing that guarantee or insurance, the card issuer shall send each insured consumer written notice of the proposed change not less than 30 days prior to the change, including notice of any increase in the rate or substantial decrease in coverage or service which will result from such change. Such notice may be included on or with the monthly statement provided to the consumer prior to the month in which the proposed change would take effect.

"(2) NOTICE OF NEW INSURANCE COVERAGE.—In any case in which a proposed change described in paragraph (1) occurs, the insured consumer shall be given the name and address of the new guarantor or insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged.

"(3) RIGHT TO DISCONTINUE GUARANTEE OR INSURANCE.—The notices required under paragraphs (1) and (2) shall each include a statement that the consumer has the option to discontinue the insurance or guarantee.

"(4) NO PREEMPTION OF STATE LAW.—No provision of this subsection shall be construed as superseding any provision of State law which is applicable to the regulation of insurance.

"(5) BOARD DEFINITION OF SUBSTANTIAL DECREASE IN COVERAGE OR SERVICE.—The Board shall define, in regulations, what constitutes a 'substantial decrease in coverage or service' for purposes of paragraph (1).".

SEC. 7. EFFECTIVE DATE.

Any regulation required to be prescribed by the Board under the amendments made by section 2 shall—

(1) take effect not later than the end of the 150-day period beginning on the date of the enactment of this Act; and

(2) apply only with respect to applications, solicitations, and other material distributed after the end of the 150-day period beginning after the end of the period referred to in paragraph (1), except that—

(A) in the case of applications and solicitations subject to paragraph (3) or (4)(C) of section 127(c) of the Truth in Lending Act (as added by section 2), such period shall be 240 days; and

(B) any card issuer may, at its option, comply with the requirements of the amendments made by this Act prior to the applicable effective date, in which case the amendments made by this Act shall be fully applicable to such card issuer.

SEC. 8. REPORTS TO THE CONGRESS.

Not later than 1 year after the regulations prescribed under section 7 of this Act become effective and annually thereafter, the Board of Governors of the Federal Reserve System shall transmit to the Congress a report containing an assessment by the Board of the profitability of credit card operations of depository institutions, including an analysis of any impact of the amendments made by this Act on such profitability.

And the Senate agree to the same.

FERNAND J. ST GERMAIN,
HENRY B. GONZALEZ,
NANCY PELOSI,
DOUG BARNARD, Jr.,
CHARLES SCHUMER,
CHALMERS P. WYLIE,
NORMAN SHUMWAY,
JOHN HILER,
TOM RIDGE,
Managers on the Part of the House.

WILLIAM PROXMIRE,
CHRISTOPHER J. DODD,
PHIL GRAMM,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SECTION 1. SHORT TITLE

The House bill and the Senate amendment contained similar short titles.

The Senate recedes to the House. The short title shall be the "Fair Credit and Charge Card Disclosure Act of 1988."

SECTION 2. CREDIT CARD AND CHARGE CARD DISCLOSURE REQUIREMENTS

Both the House bill and the Senate amendment amend section 127 of the Truth in Lending Act (15 U.S.C. 1637) to require new disclosures in connection with applications and solicitations for all credit cards (including bank and retail store cards), and for charge cards, such as the American Express card, that do not permit the consumer to roll over any balances. Both the House bill and Senate amendment required disclosure of the three basic terms on credit card applications and solicitations (the annual percentage rate; any annual, periodic or memership fee; and the grace period). In addition, the Senate amendment required disclosure of the name of the balance calculation method and any transaction charge for the use of the card to purchase goods or services.

The House recedes to the Senate with amendments as described below, which the Senate accepts.

The House accepts the Senate requirement for the disclosure of the balance calculation method and transaction charges. The amendments also require the disclosure of four additional terms, subject to certain special disclosure rules.

More specifically, the credit card portion is divided into separate provisions for mailed applications and solicitations, telephone solicitations, and other forms of applications and solicitations. For purpose of this new section (127(c)), a "solicitation" is an opportunity to open a credit card account without requiring the completion of a written application.

The requirements do not apply to personal financial statements or general purpose applications unless the forms, or any materials accompanying them, indicate that they can be used to apply for a credit or charge card account. Card issuers may provide the required disclosures either on or with the application or solicitations. Also, the requirements do not apply to general media advertisements which do not include applications or solicitations through which a person may apply for an account. If a card issuer includes an applications or solicitation as part of an advertisement and, as a result, discloses the information required by section 127(c), the inclusion of this information shall not "trigger" the requirement to make additional disclosures under section 143.

DISCLOSURE IN CREDIT AND CHARGE CARD APPLICATIONS AND SOLICITATIONS

Direct mail applications and solicitations

Section 127(c)(1)(A) requires six credit card terms to be disclosed, subject to subsection 127(e) and in the form required under section 122(c), on or with all applications and solicitations to open a credit card account that are mailed to consumers:

Each annual percentage rate (APR);

Any annual, periodic or membership fee for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle;

Any minimum finance charge;

Any transaction charge for use of the card to purchase goods or services;

The grace period; and

The name of the balance calculation method (subject to certain rules).

Specifically, the card issuer must disclose the annual percentage rate or rates applicable to extensions of credit under the credit card plan. Where more than one such rate applies, the card issuer must also disclose the balance or range of balances to which each rate applies.

Where such an extension of credit is subject to a variable rate, the card issuer must disclose the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing, and how the rate is determined. For example, a card issuer can satisfy the requirement of disclosing how the rate is determined by identifying the index and the margin or spread above the index. For purposes of any variable rate disclosure, the annual percentage rate disclosed shall be deemed to be the rate in effect at the time of the mailing so long as it was in effect at any time within 30 days before the mailing. Thus, a change in the index resulting in a change in the APR within 30 days before the mailing would not invalidate the disclosure.

The second required disclosure is of the annual fee or other periodic or membership fee imposed for the issuance or availability of a credit card. This provision requires the disclosure of any such fee, including any account maintenance fee or any other charge imposed based on the fact that the account has activity or doesn't have activity.

The third required disclosure is of any minimum or fixed finance charge. This provision requires the disclosure of any minimum finance charge imposed for any period during which any outstanding extension of credit is subject to a finance charge. This would occur where the amount of such finance charge is greater than the finance charge that would otherwise be imposed for such period under the applicable annual percentage rate.

The fourth required disclosure is of any transaction charge imposed in connection with the use of the card to purchase goods or services. This provision would, for example, require the disclosure of any fee assessed on consumers for each use of the card to purchase of goods or services. This provision does not require the card issuer to disclose any other charge for the use of the credit card, such as a charge when the account is used to obtain a cash advance or a check initiated advance.

Fifth, the card issuer must disclose the date by which or the period within which any credit extended under the credit card plan for the purchase of goods or services must be repaid to avoid incurring a finance charge. If the creditor does not offer such a "grace period", the creditor must clearly disclose that fact. If the length of such grace period varies, the card issuer may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

Sixth, the card issuer must identify the balance calculation method used in determining the balance resulting from the purchase of goods or services on which the finance charge is computed. If the balance calculation method is one of up to five methods identified by the Federal Reserve Board (the "Board"), the card issuer need only disclose the name of the method. If, however the method used by the card issuer has not been so identified by the Board, the card issuer must include an explanation of the balance calculation method. In promulgating regulations under this provision, the Board will identify the most commonly used methods. The methods identified by the Board shall be general or generic balance calculation methods, rather than particular variations of these general methods, so long as the variations do not have a significant impact on the consumer's finance charge. In carrying out this provision, the Board will identify methods that will encompass those being used by the vast majority of card issuers.

For the purposes of this subsection, including the Board's determination, the "balance calculation method" means the method of determining the balance against which one or more periodic rates are applied to determine the finance charge on credit extended for the purchase of goods or services and does not include any other charges that may be imposed in connection with the account unless such charges are included in the balance against which the periodic rate or rates are applied.

Section 127(c)(1)(B) requires three additional credit card terms, subject to subsections 127(e) and (f), to be disclosed clearly and conspicuously on or with all applications and solicitations to open a credit card account that are mailed to consumers:

Any fee imposed for an extension of credit in the form of cash;

Any fee imposed for a late payment; and

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended under the account.

Telephone solicitations

The House bill and the Senate amendment both contained specific provisions with respect to telephone solicitations. The House recedes to the Senate with an amendment that contains provisions from both the House bill and the Senate amendment.

Section 127(c)(2) establishes the disclosure requirements for telephone solicitations. At the time of any such solicitation, the card issuer must disclose the same six terms, to the extent applicable, that are required to be disclosed in the context of mailed applications or solicitations under section 127(c)(1)(A). This section permits an alternative disclosure method for telephone solicitations where the card issuer does not impose an annual fee or other fee described in paragraph (e)(1)(A)(ii)(I), or does not impose such a fee unless the consumer signifies acceptance by using the card. In either such case the issuer must disclose in writing the required terms within 30 days after the consumer who qualifies for the account requests the card, but in no event later than with the card. The card issuer must also explain clearly and conspicuously in such disclosure notice that the consumer is not obligated to accept the card or account and that the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card. The consumer will not be liable for fraudulent use of the card before the card is accepted by the consumer.

Applications and solicitations by other means

The House bill and the Senate amendment both establish disclosure requirements for credit card applications or solicitations that are made available to the public or contained in catalogs, magazines, or other publications (direct mail applications and solicitations are covered by subsection (c)(1), not by this subsection). The House recedes to the Senate with an amendment that includes provisions from the House bill and the Senate amendment.

Under section 127(c)(3), a card issuer must satisfy the requirements of this section in one of three ways. First, the card issuer can disclose the items required to be disclosed for direct mail applications and solicitations (in the form required for such disclosures), on or with the applications or solicitations, and indicate (1) that the disclosures are accurate as of the date they were printed; (2) the date of printing (disclosure of the month and year is sufficient to fulfill this requirement); (3) that the terms are subject to change after such date; and (4) that the applicant should contact the creditor for any changes in the information disclosed. As is the case with subsection 127(c)(1), if the account is subject to a variable rate, the rate shall be deemed to be the rate in effect at the time of printing so long as it was in effect within 30 days before the date of printing. The card issuer must also provide clearly and conspicuoulsy a toll free telephone number to call (for calls made from an area code other than that used by the card issuer) or an address to write for further information. If the card issuer elects to provide an address rather than a toll free telephone number, the card issuer may also provide a regular telephone number (rather than a toll-free telephone number) together with the mailing address at which the consumer may contact the card issuer to obtain the required information. In either case, the card issuer or the agent of the card issuer must promptly respond to a consumer request for the current information required to be disclosed under paragraph (1).

Second, the card issuer can provide a statement, in a conspicuous and prominent location on the application or solicitation, that there are costs associated with the use of credit cards and that the applicant may contact the creditor to request the disclosure of specific information of such costs by calling a toll free telephone number or by writing to an address specified on the application or solicitation. The card issuer must provide both a toll free telephone number (for calls made from an area code other than that used by the card issuer) and a mailing address at which the applicant may contact the creditor to obtain the required information. The card issuer may not use this option if the card issuer includes on the application or solicitation any of the terms described in paragraph (1). This restriction is designed to prevent card issuers from touting its more attractive provisions without disclosing all the cost elements required to be disclosed under paragraph (1), some of which may be far less favorable to the consumer. The card issuer using this option must promptly respond to a consumer request for the information by disclosing all of the current information described in paragraph (1).

Third, the card issuer can satisfy the requirements of section 127(c)(3) by including on or with the application or solicitation the disclosure required to be disclosed under paragraphs (1) through (6) of section 127(a) (the comprehensive disclosure requirements that card issuers presently are required to disclose before a credit card account is opened, but not with the initial application or solicitation), so long as the required disclosures under paragraph (1) (A) and (B) of section 127(c) are provided clearly and conspicuously. This provision does not require any of these items to be disclosed in a tabular format. The card issuer must also provide a toll free telephone number or a mailing address at which the applicant may contact the card issuer to obtain any changes in the required information. As with the other two options, the card issuer must promptly respond to a consumer request for the information by disclosing all of the current information described in paragraph (c)(1).

Charge card applications and solicitations

Both the House bill and the Senate amendment set forth special rules for charge card applications and solicitations. The House recedes to the Senate amendment regarding charge card disclosures with an amendment requiring the disclosure of certain additional ancillary fees.

The term "charge card" is defined to mean "a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge." Because, by definition, the balance on these cards is due and payable upon receipt and cannot be rolled over from month to month, this provision establishes special rules for charge cards. Paragraph (4)(A) requires three disclosures for any charge card application or solicitation, subject to subsection (e) and in the form required in section 122(c)—the annual, periodic or membership fee for the issuance of a charge card (including any account maintenance fee or other activity or inactivity charge); any transaction charge for use of the charge card to purchase goods or services; and a statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement. As is the case with credit card disclosures, the charge card information must be disclosed in the form required under section 122(c).

Paragraph (4)(B) requires charge card issuers to disclose clearly and conspicuously, in each written application or solicitation, the following information, subject to subsections 127 (e) and (f):

Any cash advance fee;

Any fee imposed for a late payment; and

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended under the charge card account.

The reference to written applications or solicitations has the effect of limiting the requirement of disclosing these ancillary fees to mailed materials and those made available to the public. Thus, charge card issuers would not have to disclose these items in telephone solicitations. This distinction parallels the requirements for credit card issuers.

Paragraph (4)(C) establishes a similar disclosure requirement for charge card issuers who make applications or solicitations available to the public or include them in catalogs, magazines or other publications as is provided for credit card issuers in option 1 in section 127(c)(3)(B).

Paragraph (4)(D) addresses charge cards which provide access to open end consumer credit plans. In these situations, where the card issuer and the person extending the credit are different persons, the provisions permit the charge card issuer to disclose only the elements required under paragraphs (4)(A) and (4)(B), if such issuer discloses clearly and conspicuously to the consumer that the charge card issuer will make an independent decision as to whether to issue the card, that the card may arrive before the decision is made with respect to the extension of credit, and that approval by the charge card issuer does not constitute approval by the issuer of the extension of credit. The full information about the costs associated with the line of credit must be disclosed by the creditor that extends such line before the first extension of credit. These disclosures will enable the consumer to make an intelligent choice between such a charge card and credit card that offers a line of credit.

Regulatory authority of the board

Paragraph (5), "Regulatory Authority of Board," permits the Board, by regulation, to add or modify any information required to be disclosed on any application or solicitation to open a credit or charge card account. The Board may take such action if the Board determines that the action is necessary to carry out the purposes of, or to prevent evasions of, any paragraph of section 127(c) or 127(d). This provision was included to assure an ongoing federal oversight role, in light of the fact that section 4 of the bill preempts all state credit card disclosure laws. Thus, for example, the Board could consider requiring additional disclosures—as may be required in the Wisconsin and Illinois laws (the only two state laws that may require more disclosures than this Act)—if it finds that disclosure of any of these items is necessary to carry out the purposes of, or to prevent evasions of, any paragraph of this subsection.

Disclosure prior to renewal

The House bill and the Senate amendment were similar. The House recedes to the Senate.

Subsection (d) requires card issuers that impose annual fees or any other fee described in subsection 127(c)(1)(A)(ii)(I), either upon the opening of an account or upon renewal and imposition of a new periodic fee, to transmit certain basic cost information to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account.

The renewal date is the date the fee is payable to preserve continued availability and not necessarily the date on which the credit or charge card expires. The notice must disclose clearly and conspicuously (1) the date by which, the month by which, or the billing period at the close of which the account will expire if not renewed; (2) the information described in subsection 127(c)(1)(A) that would apply if the account were renewed; and (3) the manner in which the consumer may terminate continued credit availability under the account.

The subsection makes it clear that the notice may be provided either prior to posting the fee to the account, or with the periodic billing statement first disclosing that the fee has been posted to the account, so long as the consumer is given at least a 30-day period to avoid payment of the fee, or to have the fee recredited to the account, in any case where the consumer does not wish to continue the availability of credit. If the card issuer elects to provide the disclosures with the periodic billing statement, such information may be presented either on the statement itself or with the statement. Regardless of the method of notice selected by the issuer, the information (including disclosure of the consumer's right to avoid payment of the fee or have it recredited to the account) must be disclosed to the consumer in writing in a clear and conspicuous form. In addition, the creditor may preprint certain of the information on the back of the billing statement if the disclosures are made clearly and conspicuously and if the disclosures on the front of the statement include a clear reference to such information.

This subsection also permits the Board, by regulation, to provide for fewer disclosures where the account is renewable more frequently than every 6 months. This provision is designed to ease the burden on card issuers in such circumstances, but the Board shall require, at a minimum, disclosure of the periodic fee and of any term that had changed since the last disclosure.

Other rules for disclosures under subsections (c) and (d)

Subsection 127(e) applies special rules for disclosures under subsections 127 (c) and (d). First, paragraph (e)(1), "Fees Determined on the Basis of a Percentage," provides that if the amount of any fee required to be disclosed under subsection (c) or (d) is determined on the basis of a percentage of another amount, the card issuer shall disclose the percentage used in making the determination and shall identify the amount against which the percentage is applied. The information required under this subsection would be disclosed in lieu of the amount of such fee. An example of such a fee would be where a card issuer imposes an annual fee based on a percentage of the credit line. This provision would permit the issuer to state the percentage rather than the dollar amount of the fee. Although paragraph (e)(1) is limited to disclosures under subsections (c) and (d) of section 127, there is no intention to affect the existing ability under subsection 127 (a) and (b) to disclose terms as percentages.

Second, paragraph (e)(2), "Disclosure Only of Fees Actually Imposed," provides that if a credit card or charge card issuer does not impose any fee required to be disclosed under subsection (c) or (d), such provision shall not apply to that card issuer. Thus, a card issuer need not disclose the fact that the issuer does not impose any one of the terms, other than the grace period, required to be disclosed under subsection (c) or (d). As is the case with paragraph (e)(1), although paragraph (e)(2) is limited to disclosures under subsections (c) and (d) of section 127, there is no intention to affect the existing ability under subsections 127 (a) and (b) to disclose terms "to the extent applicable" as provided under the existing Act.

Disclosure of range of certain fees which vary by State allowed

Subsection (f), "Disclosure of Range of Fees Which Vary by State Allowed," provides that if any fee required to be disclosed under subsection (c)(1)(B) or (c)(4)(B) (the subsections requiring disclosure of ancillary fees) varies from State to State, the credit card or charge card issuer may disclose the range of such fees for purposes of such subsection (c), in lieu of disclosing the amount of the fee for each applicable State. If the card issuer discloses a fee as a range, the card issuer must include a statement that the amount of such fee varies from State to State. This option applies only to subsections (c)(1)(B) and (c)(4)(B).

Certain Information required to be disclosed in tabular format

The House bill required its disclosures to be made in a tabular format. The Senate amendment required its disclosures to be made clearly and conspicuously.

The Senate recedes to the House with an amendment restricting the tabular format requirement to disclosures associated with proper use of the card.

Thus, section 2(b) of the bill amends section 122 of the Truth in Lending Act (15 U.S.C. 1632) by adding a new subsection (c). This subsection provides that disclosure of the annual percentage rate, annual fee, grace period, and other terms required to be disclosed under sections 127(c) (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) shall be disclosed in the form and manner which the Board shall prescribe by regulations. In addition, the disclosures must be placed in a conspicuous and prominent location on or with the written application, solicitation or other document with respect to which the disclosure is required.

This section also mandates the Board to require that the above enumerated disclosures, to the extent it determines practicable and appropriate, be disclosed in the form of a table. The table must contain clear and concise headings for each item of information, and must provide a clear and concise disclosure for each item of information required to be disclosed. A creditor is not precluded from providing additional information with the disclosures required to be provided in the table, but such additional information must be presented outside the table required by this section.

In prescribing the form of the table in its regulations, the Board is given discretion in determining its precise form as it relates to the order and wording employed, provided that the terminology used conveys substantially the same meaning as that employed in section 127(c). The term "grace period" must be used in the disclosures relating to subsection 127(c)(1)(A)(iii).

This format requirement does not apply to the other terms required to be disclosed for credit cards under section 127(c)(1)(B) or for charge cards under section 127(c)(4)(B).

SECTION 3. CIVIL LIABILITY

The House bill applied existing Truth in Lending penalties to violations of this Act. The Senate amendment narrowed civil liability somewhat.

The House recedes to the Senate.

Section 3 restricts civil liability under this Act to consumers who actually obtain a credit or charge card and who either pay a fee described in section 127(c)(1)(A)(ii)(I) or 127(c)(4)(A)(i) or who use such card. The effect of this provision is to limit those eligible for penalties for misstatements in applications and solicitations to people who actually pay for or use the credit charge card.

SECTION 4. COORDINATION WITH OTHER LAWS

The House bill preempted the provisions of all state laws with respect to the disclosures mandated under its bill. The Senate amendment had a similar preemption provision, except that it gave states that had previously enacted disclosure laws two years to reenact their statutes.

The Senate recedes to the House.

Thus, section 4 amends section 111 of the Truth in Lending Act (15 U.S.C. 1610) so that, with the exception described below, the provisions of sections 127(c) through 127(f) supersede any provision of the law of any State or local authority relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 127(c) or any renewal notice which is subject to the requirements of section 127(d). Moreover, since the same forms are often used for both consumer and business applications, State law cannot impose different or additional disclosure requirements in connection with consumer credit or charge card applications even if those same applications can also be used to apply for business accounts.

This section applies to State credit and charge card disclosure laws, not to general disclosure statutes such as State retail installment sales acts and State plain language statutes. Nor does this section affect other State consumer laws regarding credit cards or charge cards, such as a State statute requiring banks in that State to offer a grace period.

Moreover, this section does not affect any State law enacted or used to enforce the requirements of section 127(c) through (f). For example, this section does not apply to the use of State mini-Federal Trade Commission statutes to address unfair or deceptive acts or practices. Therefore, nothing contained in this section shall be construed to prevent a federal, state or local agency which enforces an unfair and deceptive acts or practices statute from requiring or obtaining the requirements of a specific disclosure beyond those specified in Section 127(c) in the settlement or adjudication of a specific case or cases. Thus, any State may employ or establish laws for the purpose of enforcing the Federal disclosure requirements.

SECTION 5. REPORTING TO THE BOARD OF GOVERNORS

The House bill contained no provision requiring card issuers to report to the Board. The Senate amendment required card issuers to report to the Board semiannually on their costs.

The House recedes to the Senate with an amendments to reduce the number of issuers that have to report to the Board.

Section 5 requires the Board to collect, on a semiannual basis, credit card price and availability information, including the information required to be disclosed under section 127(c), from a broad sample of financial institutions which offer credit card services. The Board is required to collect information from the 25 largest issuers of credit cards and at least 125 additional financial institutions. The Board is required to select the other financial institutions in a manner to ensure both an equitable geographical distribution within the sample and the representation of a wide spectrum of institutions. The Board is obligated to make the information available to the public on request and to report such information semiannually to the Congress.

SECTION 6. INSURANCE PROVIDED IN CONNECTION WITH CERTAIN OPEN END CREDIT CARD PLANS.

The House bill contained no provision with respect to credit card balance insurance. The Senate amendment contained a comprehensive provision which, among other things, required reenrollment by insured with the new insurer when the new insurance was not at least equivalent to the old coverage.

The House recedes to the Senate with an amendment that narrows the scope of the Senate provision.

This section amends section 127 of the Truth in Lending Act to add a subsection (g). Section 127(g)(1) provides that whenever a card issuer that offers any guarantee or insurance for repayment of the outstanding balance on an open credit card plan (typically, this guarantee or insurance would afford complete or partial coverage for the payment of credit card balance in case of death, disability or involuntary unemployment) proposes to change the person providing the guarantee or insurance, the card issuer shall notify in writing each insured cardholder of the proposed change in insurer not less than 30 days prior to the change. Paragraph (1) also requires notice of any increase in the rate or substantial decrease in coverage or service which will result from such change (the Board is directed to define in regulations in an unambiguous fashion what constitutes "a substantial decrease in coverage or service"). Furthermore, such notice may be included on or with the monthly statement provided to the insured consumer prior to the month in which the proposed change would take effect.

Paragraph (2) provides that the insured consumer shall be given the name and address of the new insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged.

Section 6 contains two additional provisions. The first requires notices to the consumers to include a statement that the consumer has the option to discontinue the insurance. In addition, section 6 states that "(n)o provision of this subsection will be construed as superseding any provision of State law which is applicable to the regulation of insurance."

SECTION 7. EFFECTIVE DATE

Both the House bill and the Senate amendment contained effective date provisions for the legislation.

The Senate recedes to the House.

Under this section, the Board must issue regulations implementing the disclosure requirements of section 2 within 150 days of the date of enactment. The regulations would go into effect 150 days after they are issued by the Board; provided that for applications and solicitations subject to section 127(c)(3), the regulations would go into effect 240 days after the regulations are issued by the Board. The time periods in this section supersede the general requirements of section 105(d) of the Truth in Lending Act.

This section also provides that any card issuer, at its option, may comply with the provisions of the legislation after enactment, but prior to the applicable effective dates, in which case the provisions of this legislation shall be fully applicable to such card issuer.

SECTION 8. REPORTS TO CONGRESS

The House bill did not require the Board to make any reports to the Congress. The Senate amendment required the Board to make three reports.

The House recedes with an amendment that requires the Board to report on only one subject.

Section 8 requires the Board to transmit to the Congress, within one year after the regulations become effective and annually thereafter, a report assessing the profitability of the credit card operations of depository institutions, including an analysis of the impact of the provisions of this Act.

FERNAND J. ST GERMAIN,
HENRY B. GONZALEZ,
NANCY PELOSI,
DOUG BARNARD, Jr.,
CHARLES SCHUMER,
CHALMERS P. WYLIE,
NORMAN SHUMWAY,
JOHN HILER,
TOM RIDGE,
Managers on the Part of the House.

WILLIAM PROXMIRE,
CHRISTOPHER J. DODD,
PHIL GRAMM,
Managers on the Part of the Senate.

COMMENDING HUMANITARIAN TREATMENT OF SOUTHEAST ASIAN REFUGEES

Mr. MICA. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 303) commending humanitarian treatment of Southeast Asian refugees and urging further measures to ensure humanitarian treatment of the refugees, as amended.

The Clerk read as follows:

H. CON. RES. 303

Whereas the Government of Thailand, the Government of Malaysia, the Government of Hong Kong, the Government of the Philippines, and the Government of Indonesia have long histories of humanitarian treatment of refugees, which have saved thousands of lives over the past 12 years;

Whereas in late January 1988, the Government of Thailand initiated a policy of interdiction, refusing to allow boats with refugees to enter the territorial waters of Thailand and turning the boats back to sea;

Whereas the Government of Malaysia has announced plans to shut down, in April 1989, the Pulau-Bidong camp with 12,629 asylum-seekers;

Whereas the continuation of the policy of interdiction in Thailand and the announced plans to close the Pulau-Bidong camp in Malaysia could result in severe hardship and weaken the concept of first asylum;

Whereas the Government of Thailand, the Government of Hong Kong, the Government of Malaysia, the Government of the Philippines, and the Government of Indonesia have difficult national and international security concerns that they must consider;

Whereas the emigration and resettlement programs of many Western countries have become increasingly difficult to maintain in the past several years;

Whereas the President, the Department of State, and the relevant senior interagency group have recognized the current refugee problem and have taken measures to rectify it; and

Whereas the continued movement of refugees out of Southeast Asia is a direct result of the policies and actions of the governments of countries in Indochina, which include the illegal occupation of Cambodia by the Government of Vietnam: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) commends the Government of Thailand, the Government of Hong Kong, the Government of Malaysia, the Government of the Philippines, and the Government of Indonesia for their history of humanitarian treatment of refugees;

(2) urges the Government of Thailand to reinstitute its humane and generous former policy of first asylum, officially end its policy of interdiction of arriving refugee boats, and take the appropriate steps at the local level to ensure that the policy of first asylum is implemented;

(3) urges the United States and other Western nations to maintain their generous policy of resettlement to alleviate the burdens of countries in the region;

(4) urges the Government of Hong Kong and the governments of the member countries of the Association of Southeast Asian Nations (ASEAN) to maintain their generous policies of first asylum;

(5) commends the Government of Hong Kong for agreeing to set up a screening process to identify internationally acceptable refugees jointly with the United Nations High Commission for Refugees;

(6) commends the President for his decision in fiscal year 1988 to increase the overall number of refugees to be admitted to the United States, in the face of an increase in refugees emigrating from the Soviet Union, rather than decrease the number of refugees from Southeast Asia;

(7) commends the President for proposing for fiscal year 1989 a generous admission policy which reflects the special issues involved in refugee policy in Southeast Asia, including the need for a much expanded Orderly Departure Program for refugees wishing to depart from Vietnam and a renewed effort on the part of the United States to alleviate the strain presently felt by first asylum nations in the region;

(8) urges the Department of State to continue working with the governments of the member countries of the Association of Southeast Asian Nations, the Government of Hong Kong, the Government of Australia, the Government of New Zealand, the Government of Canada, and other governments to find ways to meet the security concerns of the governments of the region while responding to the humanitarian needs of Southeast Asian refugees seeking first asylum and resettlement;

(9) urges the President and the Department of State to make every effort to admit the full number of Southeast Asian refugees that is fixed, in consultation with the Congress, each year;

(10) urges the Government of Vietnam to issue exit permits to Vietnamese individuals who have letters of introduction from the United States or are former reeducation camp members and to expand the Orderly Departure Program to stem the massive movement of refugees out of Vietnam;

(11) urges the Government of Vietnam to cease immediately its occupation of Cambodia;

(12) urges the governments of countries of Indochina to cease their policies of economic political, and social repression against their people, which cause the continued movement of refugees out of those countries; and

(13) urges the United States to participate actively with the United Nations High Commissioner for Refugees and the governments of the member countries of the Association of Southeast Asian Nations in preparations for the convening of a new international conference on Indochinese refugees which seeks to adopt a comprehensive program of action to deal with the Vietnamese boat people problem in all its aspects, taking into account the concerns of all interested parties.

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. MICA] will be recognized for 20 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of House Concurrent Resolution 303, a resolution that commends the governments of the Association of South East Asian Nations [ASEAN] and Hong Kong for their past humane treatment of refugees and urges these nations to continue to protect the lives and human rights of those forced to flee Vietnam, Laos, and Cambodia.

Thirteen years after the end of the war, citizens of Vietnam, Laos, and Cambodia must, unfortunately, still flee government repression. The Communist governments of Indochina continue to persecute people because of their political or religious beliefs, their past associations with the United States, or their rejection of Marxist dogmas. Their families face severe discrimination, they are denied employment, access to education, or even exit visas.

Equally tragic is the pain and suffering of separated Indochinese American families. Not a week goes by that someone doesn't contact my office to ask me to intercede with Hanoi so that their wife, or their child, or their ailing parents can obtain permission to rejoin them in the United States.

Vietnam, Laos, and Cambodia could end the repressive policies that fuel the flow of refugees and boat people. By moderating their policies they could end the tragic suffering of refugees at sea who watch their children drown, see their wives kidnaped by pirates, or are forced to barbarous acts of cannibalism to survive the perilous journey to freedom.

The resolution before us today urges Thailand, Malaysia, Indonesia, Singapore, the Philippines and Hong Kong, which traditionally have granted temporary safe haven to Indochinese refugees, to maintain such generous policies. These nation's usual humane and civilized treatment of refugees is in striking contrast to the deplorable human rights policies of the governments of Indochina.

Congress recognizes the limited resources and legitimate security concerns of our friends in Southeast Asia. This resolution urges our Government to continue to work closely with the United Nations High Commissioner for Refugees and the other resettlement nations to ensure that bona fide refugees will be able to find a safe haven and, where necessary, resettlement so that countries receiving refugees are not overburdened.

When the House enacted the State Department authorization last year, we noted that we should consider calling a new international conference on refugees. This resolution urges the administration to actively participate with the UNHCR and the ASEAN nations in the important preparatory work now under way for that conference. Without adequate and careful preparations such a conference could meet the fate of the Evian conference, 50 years ago, which tragically failed to a save a single refugee from Nazi persecution.

Today, we commend the President for his action earlier this year which increased the United States refugee program to permit the admission of an additional 15,000 refugees from the Soviet Union. We also commend the President for proposing higher refugee admissions in 1989 to aid those forced to flee repression, whether from Cuba or Nicaragua, the Soviet Union or Romania, Vietnam, or Iran.

Refugees are people willing to risk everything for a chance to live in freedom. And I am proud that Americans have been willing to do our fair share and more to help such desperate people. Today in passing this resolution we thank Hong Kong and ASEAN for what they have done in the past, and we call on all our friends and allies to continue to do everything that they can to protect the lives and human rights of all refugees.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wish to thank the distinguished chairman of the Foreign Affairs Committee and the members of the Asian and Pacific Affairs Subcommittee for bringing this resolution before the House today, and to congratulate our colleague, Congressman FRANK WOLF, for pursuing this important issue.

There was a time when the fate of the Southeast Asian refugees was a matter of great concern for everyone. But in recent years, we seem to have lost the sense of urgency about their plight. Yet, in many respects, the problem has become more dire.

Over the past 12 years, Thailand, Malaysia, Hong Kong, the Philippines, and Indonesia have provided first asylum to refugees. But in recent years, many Western countries have made it more difficult for these refugees to immigrate. As a result, refugee centers are becoming overcrowded, and the hospitality and patience of our friends and allies in the Far East are being sorely tested. Thailand has already announced a policy of interdiction and Malaysia may possibly close one of its refugee camps.

The President and the administration have recognized the continuing seriousness of this problem and are working to rectify it. But, the long-term solution lies with the countries of Indochina. Specifically, as long as Cambodia is illegally occupied by the Government of Vietnam, there will be no real solution to this terrible refugee problem.

House Concurrent Resolution 303, before us today recognizes the contribution of Thailand, Hong Kong, Malaysia, the Philippines, and Indonesia in saving the lives of thousands of refugees who sought first asylum in those countries, and urges those nations to continue this important effort.

It commends the President for last year increasing the overall number of refugees admitted to the United States in response to an unanticipated increase in emigration from the Soviet Union. It further commends the President for proposing a generous refugee admission policy for the new fiscal year.

This resolution also speaks to the serious problems of security, resource allocation, and resettlement faced by those countries which are providing first asylum to the thousands of refugees. It also pinpoints the most important cause of the refugee problem—the continuing repression by some governments of Indochina.

Mr. Speaker, this is an important resolution addressing a serious issue, and I urge its passage.

Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia [Mr. WOLF], the principal sponsor of the resolution.

Mr. WOLF. Mr. Speaker, I rise today in support of House Concurrent Resolution 303, commending humanitarian treatment of Southeast Asian refugees and urging further measures to ensure humanitarian treatment of the refugees. As the sponsor of this resolution, I want to thank the leadership of the Foreign Affairs Committee, Chairman FASCELL, ranking Representative Mr. BROOMFIELD, Mr. LEACH, Mr. SOLARZ, Mr. ATKINS, and others for their support in moving this legislation to the floor in time for consideration.

I am confident that a spirit of cooperation exists among the parties involved in seeking to alleviate the problems involving Vietnamese refugees. This legislation commends those countries which have long histories of humanitarian treatment of refugees, and urges a reinstituting of the policy of first asylum in Thailand, which is one of those countries with a record of humanitarian treatment. This resolution also commends the President for decisions in consultation with Congress in both the past and present fiscal years to increase the number of Vietnamese refugees allowed to enter the United States, and urges efforts by the United States to further assist first asylum nations with problems related to first asylum.

While the aforementioned steps are commendable, and further ones necessary, I would emphasize the need to address the fundamental problems—economic, social and political repression—which cause citizens of the Government of Vietnam to flee.

We urge Vietnam to allow freer emigration of its citizens who wish to leave legally, and to cooperate fully in allowing the Orderly Departure Program to operate efficiently. In so doing, the number of people trying to flee Vietnam outside the legal process would decline. However, there will continue to be clandestine departures from Vietnam, Laos, and Cambodia by people who rightfully fear persecution. We must do everything we can under the present policy to care for and resettle these people.

The United States has seen a tireless effort by its Southeast Asian refugees to become active and productive members of our society. And for that, they, too, should be commended.

Mr. Speaker, I again want to thank the committee, the chairman and the gentleman from Michigan [Mr. BROOMFIELD] and pay particular appreciation to two members of our staff, Randy Tift and Scott Flipse, who worked very hard on this issue.

Mr. BROOMFIELD. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in support of House Concurrent Resolution 303 commending the humanitarian treatment of Southeast Asian refugees and urging further action to ensure humanitarian treatment of the refugees and I commend the sponsor of this bill, the gentleman from Virginia, Mr. WOLF for bringing this measure to the floor at this time.

The Governments of Hong Kong, the Philippines, Indonesia, Thailand, and Malaysia have long and illustrious histories of humanitarian treatment of refugees. Their acceptance of refugees into the confines of their borders has saved countless thousands of lives over the past 12 years. Recently, however, domestic and international security concerns have caused these nations to take measures which will further impede the plight of these peoples.

In January 1988, the Government of Thailand initiated a policy of interdiction, refusing to allow boats with refugees to enter territorial waters of Thailand. In April 1989, the Palau-Bidong camp in Malaysia will be closed, as well, leaving 12,629 refugees seeking asylum.

Mr. Speaker, in view of the positive role these Southeast Asian nations have played in ameliorating the refugee problem in the past, and recognizing the added hardships these peoples will suffer if these nations continue to impose sanctions on refugees, I strongly urge the passage of this resolution.

Mr. BROOMFIELD. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HYDE], a member of the Committee on Foreign Affairs.

Mr. HYDE. Mr. Speaker, I thank the gentleman from Michigan for yielding this time to me.

Mr. Speaker, I am particularly supportive of this resolution of the gentleman from Virginia [Mr. WOLF] who has made it a special concern of his to attend to the plight of the refugees in Southeast Asia. They have somehow fallen off the moral radar screen for too many people for 13 years now since night fell on Indochina and thousands and thousands of people found that giving peace a chance did not give them much of a chance at life, certainly at liberty, or the pursuit of happiness.

I in my own mind cannot forget April 25, 1975, when our last helicopters took off from the roof of the Embassy at Saigon, soon to become Ho Chi Minh City, as we gave peace a chance, and thousands and thousands of refugees who then were citizens of Indochina, citizens of Vietnam, watched as our helicopters pulled off and soon they became inmates in reeducation camps or they drowned at the bottom of the South China Sea after becoming boat people or they fled to Thailand or they fled to Malaysia, where for 13 years some of them are still languishing.

It is a blot on the conscience of the world and this refugee problem is a world problem. It ought not to be imposed upon Thailand and Malaysia and some of the other countries who have been generous in accepting them alone. It is a world problem, but it is something we have to watch, we have to pay attention to, we have to support, we have to assist and we have to never forget that these are human beings entitled to dignity, and somehow, somewhere, to live not as refugees or as people hunted, but as people who are entitled to live a decent life and enjoy some small measure of freedom.

Mr. Speaker, I salute the countries that have accepted them with open arms. I urge other countries, such as Australia, New Zealand, and others who have the room to accept these people to do so with open arms.

I think the gentleman from Virginia [Mr. WOLF] again deserves immense credit. I am happy to join him in watching and praying for the refugees of Southeast Asia.

Mr. MICA. Mr. Speaker, before I yield back the balance of my time I just would like to say this, that the thought occurred to me just as I am sitting here, these last four or five suspensions are most likely the last time that I will have an opportunity to speak on this floor as a Member, ending 20 years of service working for a Member and as a Member.

I will just say to my colleagues on the Foreign Affairs Committee on both sides of the aisle, it has been a tremendous experience. You have been magnificent to work with. I commend each and every one of you, the staffs and all the Members in this body. My colleagues, it has been wonderful and I look forward to seeing you on the other side.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. MICA. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Well, Mr. Speaker, it is mutual, the respect and admiration that all of us on the minority side have for the gentleman. He has been a great Member. I have enjoyed the 20 years the gentleman has been in Congress and a member of the Foreign Affairs Committee. His contribution to our country has been immense, and as I say, his friendship and interest in bipartisan foreign policy has meant a great deal to this Member.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. MICA. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding to me.

It is with a great deal of pleasure that I rise at this moment. We did not recognize that this would be the last opportunity that the distinguished subcommittee chairman would be addressing our body.

Mr. MICA. Neither did I.

Mr. GILMAN. We have all valued his service to our committee and his friendship and his willingness to work cooperatively on both sides of the aisle to fashion important legislation that would benefit our own Nation. We will long miss his service to our Foreign Affairs Committee. We hope to see him in other areas where his services will be useful to our Nation.

We hope, too, when they finally reconstruct that Embassy in Moscow that the MICA name will be remembered for all his good work.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. MICA. I am happy to yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding to me.

I want to join my colleagues in congratulating and commiserating with the gentleman from Florida. The only consolation that I think I would take here, were I in his shoes, is that I am going back to such a beautiful part of the country; but the gentleman has made a difference. He has made the Foreign Affairs Committee better. He has made genuine contributions to the work of the committee, and for that I think he deserves lasting commendation. He will be missed, but I am sure we will see him from time to time.

Mr. SOLARZ. Mr. Speaker, This resolution, introduced by our colleague from across the aisle and the Potomac, the gentleman from Virginia, is an opportunity for us to express our appreciation to Thailand, Malaysia, Indonesia, the Philippines, Singapore, and Hong Kong for their past humane assistance to refugees. It also gives us an opportunity to address the serious political, economic, and religious persecution and repressive policies of the Governments of Vietnam, Laos, and Cambodia which force thousands of their citizens to risk death in search of freedom.

Our friends in the region are experiencing new problems because of the 100-percent increase in the outflow of Vietnamese boat refugees over the last year. Hong Kong, the most severly affected, has seen a 500-percent increase in fiscal 1988—18,000 Vietnamese refugees as compared with 3,000 refugees in 1987.

This increase in arrivals, while small compared to 1979 and 1980, has produced a serious backlash, and increased ethnic and racial hostility toward the refugees. To justify the hostile reactions, some have cleverly sought to label all the new boat people as economic migrants, even though the vast majority of these Vietnamese, according to the UNHCR, can demonstrate serious persecution.

Unfortunately, political repression, human rights abuses, and oppressive conditions in Vietnam, Laos, and Cambodia continue to force people to flee in search of freedom and an end to persecution.

There are over 48,000 Vietnamese boat refugees in the ASEAN nations and Hong Kong. Another 100,000 Laotian, Cambodian, and Vietnamese "foot" refugees are in Thailand.

Thailand also shelters 300,000 displaced Cambodians, who cannot return to their homeland until Vietnam withdraws its army of occupation from Cambodia and a negotiated political settlement is achieved that would prevent the return of the murderous Khmer Rouge to power in Phnom Penh.

Today's resolution calls on the administration to get involved with the UNHCR and the countries of first asylum to plan and carefully prepare for a new international conference on refugees that would develop measures to ensure the humane treatment of those seeking asylum and ensure the eventual resettlement by the international community of those who cannot return to their homelands.

President Carter helped ensure a successful Geneva Refugee Conference in 1979 because approaches and remedies were agreed on before the Conference began. If this conference is not also carefully planned, it could tragically replicate the fate of earlier refugee conferences in Evian and Bermuda that tragically failed to save the life of even one refugee who sought to flee Hitler's plan to exterminate the Jews and rid Europe of all those the Nazis viewed as undesirable.

Unfortunately, because of the sudden increase in boat people this year, hundreds of refugees in small boats have been denied the chance to land in the region; tragically many drowned as they were returned to the open seas.

Hmong and other highland Laotian refugees closely allied with the United States during the war have also suffered. Some of them, the very men who rescued our downed pilots from Laos, have sadly been denied admission to Thailand, even though that nation operates an effective refugee screening process.

Thailand's traditionally humane treatment of refugees has been strained by its status as a frontline state. Hundreds of its border residents have been shelled, and threatened by hostile attacks from Laotian, Vietnamese, or PRK forces. The presence of over 400,000 refugees and displaced persons, 13 years after the end of the war in Vietnam, has strained even that nation's humane traditions.

This resolution urges Thailand, a close ally and friend of the United States, and our other friends in the region to restore and maintain humane policies that permit those fleeing persecution to find temporary asylum and safety. It also calls on the U.N. High Commission for Refugees and the rest of the international community to provide sufficient resources and resettlement opportunities to ensure, that these countries in Southeast Asia which have opened their doors to so many thousands of desperate people, are not overwhelmed.

Some nations have implemented screening of all arrivals, yet such screening can only be supported if it is done in conjunction with the UNHCR and follows international guidelines and is operated in a fair and inclusive manner, so that all those seeking to be screened can obtain access to this process and not merely those who can afford to pay bribes.

Some nations are seeking involuntary repatriation agreements with Vietnam for those they deem not to be refugees, yet such agreements should only be considered when there are guarantees that those returned will not be subjected to further persecution or punishment.

This resolution correctly commends the President for increasing refugee admission targets for 1988 and 1989 to accommodate the increasing number of refugees able to leave the Soviet Union, Eastern Europe, the Near East and Indochina.

I urge my colleagues to support the resolution.

Mr. SOLARZ. Mr. Speaker, I rise in support of House Concurrent Resolution 303, introduced by our colleague, the gentleman from Virginia, Mr. WOLF. The passage of this resolution gives us an opportunity to express our appreciation to Thailand, Malaysia, Indonesia, the Philippines, Singapore, and Hong Kong for their past human assistance to refugees from Indochina. Given the serious political, economic, and religious persecution still occurring in Vietnam, Laos, and Cambodia, thousands of their citizens are forced to flee their homelands in search of freedom.

The countries of Southeast Asia which have traditionally opened their doors to these refugees have been greatly affected by the 100 percent increase in this year's outflow of Vietnamese boat refugees. Hong Kong, one of the smallest geographically, has been the most severly affected with a 500 percent increase in the number of Vietnamese boat refugees seeking shelter, from 3,000 in 1987 to 18,000 in 1988.

Unfortunately, because of the sudden increase in boat people this year, hundreds of refugees in small boats have been denied the chance to land in the region; tragically many drowned as they were returned to the open seas. Others have been forced to return to Vietnam.

While the overall number of Vietnameses refugees seeking asylum is small compared to the flood tides of 1979 and 1980, these 48,000 new arrivals have, nevertheless, caused serious political problems, particularly in Hong Kong, Malaysia, and Thailand. These nations are still hardpressed to provide for the needs of their own citizens. Weary of receiving and assisting refugees, some local officials have sought to portray all the boat people as economic migrants ineligible for assistance or asylum, and as a threat to the well being of their own citizens. Thus Malaysia decided to close its main refugee camp and threatens to deny asylum next year to any newcomers. Yet, United Nations High Commission for Refugees officials maintain that the vast majority of the Vietnmese they have been permitted to interview have similar backgrounds, experiences, and fear of persecution if returned, as those who fled Vietnam in the past.

The Governments of Vietnam, Laos, and Cambodia are unfortunately still characterized by political repression, serious human rights abuses, harsh and arbitrary legal systems, oppressive economic and social policies and severely restricted legal emigration. Such policies practically guarantee that some of their citizens will seek any means to leave their countries for a chance to live in freedom or to join their loved one's abroad.

Thailand is the principal country of first asylum in the region. It shelters some 100,000 Laotian, Cambodian, and Vietnamese "foot" refugees as well as 15,000 boat people and another 300,000 displaced Cambodians. These displaced Cambodians fear a return to their homeland until Vietnam withdraws its forces and a negotiated settlement of the Cambodian conflict can be achieved that will prevent the return of the murderous Khmer Rouge to power in Phnom Penh. The presence of over 400,000 refugees and displaced persons, 13 years after the end of the war in Vietnam, puts a strain even in this nation's great Buddhist humanitarian traditions.

Thailand's willingness to humanely shelter additional refugees has also been affected by its heavy burdens and as a frontline state. Hundreds of its soldiers and even its civilian border residents have been shelled, killed by Vietnamese landings, and threatened by attacks from hostile Laotian, Vietnamese, or PRK forces.

Hmong and other highland Laotian refugees closely allied with the United States during the war have suffered, as Thailand has sought to limit its hospitality to refugees. Some of these would-be refugees were the families of the men who rescued our downed pilots from Laos. These hill tribes were denied admission to Thailand, even though that nation operates an effective UNHCR assisted refugee screening process.

But screening programs can only be supported if they are done in conjunction with the UNHCR and follow international law and conventions. These programs should be operated in a fair and inclusive manner, so that all those seeking to be screened can obtain access to this process, and not merely a random group, or those who offer bribes. Repatriation of refugees can be supported only where we have the assurances people will not be subjected to harsh punishment and further persecution.

Today's resolution urges Thailand, a close ally and friend of the United States, and Malaysia, Indonesia, Singapore, the Philippines, and Hong Kong to fully restore and maintain humane first asylum policies that offer assistance to all those fleeing persecution. The resolution calls upon our Nation, other resettlement countries, and the UNHCR to work together to provide assistance and resettlement opportunities to refugees unable to return to their homelands, so that countries of first asylum are not overburdened.

The Congress also calls on the administration to get involved with the UNHCR, Hong Kong and the ASEAN countries to carefully prepare for a new international conference on refugees. This conference will seek to develop measures to ensure the humane treatment of refugees seeking asylum and to discourage the flight of those who are not refugees. The conference must also work to ensure the eventual resettlement by the international community of those refugees from Indochina who are unable to return to their homelands.

Nine years ago another President, Jimmy Carter, helped to ensure a successful Geneva Refugee Conference because he worked with other responsible members of the international community to see that approaches and remedies were agreed to before the conference met. If this ASEAN initiated refugee conference is not also carefully planned and coordinated, it could join the ranks of tragic failures, such as the international conferences in Evian and Bermuda, which miserably failed to come to the assistance of those desperately trying to flee the Nazi Holocaust.

The Congress commends the President for humanely increasing refugee admission targets for 1988 and 1989 to accommodate the increasing number of refugees able to leave the Soviet Union, Eastern Europe, the Near East and Indochina. Refugees admitted to the United States have traditionally proven themselves to be genuine assets to our society, with a deep respect and love for our democratic traditions, our heritage of freedom and responsibility.

Mr. Speaker, I urge my colleagues to support the adoption of the resolution.

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. MICA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. MICA] that the House suspend the rules and agree to the concurrent resolution (H. Con. Res. 303), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Concurrent Resolution 303, the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CONDEMNING SYSTEMATIC VIOLATION OF HUMAN RIGHTS BY GOVERNMENT OF ROMANIA

Mr. YATRON. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 505) condemning the systematic violation of international recognized human rights by the Government of Romania, as amended.

The Clerk read as follows:

H. RES. 505

Whereas in recent years the Congress has received a substantial body of evidence on a persistent pattern of severe human rights violations in the Socialist Republic of Romania;

Whereas among these violations is the denial of the right of free emigration;

Whereas the Romanian Government continues to deny ethnic minorities, among them 2.5 million Hungarians, Germans, Serbs, Croatians, Saxons, and Ukranians, the basic right of preserving their unique cultural heritage and native language, and the opportunity for their children to be educated in their mother tongue;

Whereas the Romanian Government continues to interfere with freedom of religion, harassing, intimidating, and arresting religious believers for as little as the possession of Bibles, and destroying places of worship;

Whereas the Congress in recent years has repeatedly condemned the Romanian Government for these human rights violations and urged it to observe the international standards of human rights;

Whereas in 1987 both Houses of Congress approved, by substantial margins, the suspension of nondiscriminatory tariff treatment for the products of Romania (commonly referred to as most-favored-nation or MFN status) as a response to human rights violations by the government of that country;

Whereas the products of Romania ceased to be eligible for nondiscriminatory tariff treatment on July 3, 1988, as a result of a decision by the President;

Whereas Romania's human rights policies have not shown the slightest improvement even after last year's congressional action, and the Department of State has determined in its Country Report on Human Rights Practices for 1987 that "(t)he poor human rights picture in Romania in 1987 showed no improvement" and "its human rights abuses remained pervasive";

Whereas Romania is continuing its forced rural collectivisation program pursuant to which traditional villages will be destroyed and the inhabitants removed to make way for government-owned agricultural-industrial complexes; and

Whereas this program, if implemented, would eradicate a substantial part of the traditional settlement pattern folk architecture, and way of life of the Romanian people and Hungarians and other minorities and would force the displaced population into government-owned, standardized colonies: Now, therefore, be it

Resolved, That the House of Representatives—

(1) condemns the continued practice of the Romanian Government of systematically violating a whole range of internationally recognized human rights which that Government has committed itself to observe;

(2) strongly protests the planned program of wholesale destruction of traditional settlements in violation of the human rights, minority cultural rights, and property rights of their inhabitants;

(3) urges the Romanian Government to revise its human rights policies and institute meaningful institutional reforms in compliance with international agreements that are binding Romania, including the Helsinki Final Act of the Conference on Security and Cooperation in Europe and the Universal Declaration of Human Rights;

(4) calls on the President and the Secretary of State to continue to call these human rights violations to the attention of Romanian officials and demand meaningful reforms; and

(5) urges the President not to consider providing any special benefit for Romania until the implementation of a thorough reform in the human rights practices of the Government of Romania.

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 505, as amended, condemns the systematic violation of internationally recognized human rights by the Government of Romania. It strongly protests the planned program of destruction of traditional settlements in violation of the human rights, minority cultural rights, and property rights of Romanian inhabitants. This legislation urges the Romanian Government to change its human rights policies, and to adhere to the Helsinki Final Act. House Resolution 505, as amended, also calls on the President and the Secretary of State to demand reforms from the Romanians, and asks that no special benefit be given to this Government until it observes the rights of its citizenry.

The Romanian Government is, and has been for a number of years, one of the most repressive regimes in the world. This East bloc country restricts all fundamental freedoms, and ignores virtually every international standard regarding human rights, including the Helsinki Accords to which it is a signatory. The Subcommittee on Human Rights and International organizations has held several hearings on Romania during the past 5 years, and the picture never changes—it is always horrible.

For years, we have grappled with the issue of how we could persuade the Romanians to bring a halt to this oppression. The Romanians would lobby Congress around the time most favored nation trade status was to be renewed, and assurances were made of great improvements. At least now we have been spared the farce that the Romanian Government tried to perpetrate when attempting to secure MFN.

Romanian citizens cannot speak freely, they cannot assemble openly, and they cannot worship as they choose. Jews living in Romania, and other Romanian citizens who want to emigrate, cannot escape. The Hungarian minority is being robbed of its culture, and Hungarian children cannot learn to speak their own language. Germans, Serbs, Croatians, Saxons, and Ukrainians also suffer from forced cultural deprivation in Romania.

One of the most effective ways of combating gross violations of human rights is exposing the violator and calling attention to the victims. I commend the Gentleman from California, Mr. DORNAN, and all of the other original sponsors, of House Resolution 505, for recognizing the millions of Romanians who cannot escape from suffering and injustice. Our advocacy may be their only hope.

I urge my colleagues to support this very necessary measure.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the resolution of the gentleman from California [Mr. DORNAN] and the gentleman from Virginia [Mr. WOLF] and commend them for their leadership on this vital issue.

The resolution before us is long overdue. Now is the time to do something about the egregious and systematic violation of human rights in Romania today.

This is an age of growing sensitivity to the issue of human rights—not only in the free world but to some degree in the Communist bloc as well. In the face of this trend, the Government of Romania continues to violate basic freedoms and does so openly, almost defiantly. Now is the time for our Government to urge the Romanian Government to revise its human rights policies. That Government should institute meaningful reforms in compliance with international human rights agreements. It is time for our President to call these offensive human rights violations to the attention of the highest levels of the Romanian Government.

I urge my colleagues to join me in supporting this commendable resolution.

Mr. Speaker, I yield such time as he may consume to one of the sponsors of this legislation, the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I want to thank the committee for moving this and the gentleman from Michigan [Mr. BROOMFIELD], the gentleman from Pennsylvania [Mr. YATRON] and the others.

Mr. Speaker, I rise in support of this resolution condemning the violation of internationally recognized human rights by the Government of Romania.

I congratulate the gentleman from California [Mr. DORNAN] on his work on this resolution.

The Romanian Government of Nicolae Ceausescu has smashed thousands of buildings, including 24 churches and historic structures in Bucharest alone. The Government plans to destroy some 7,000 villages and regroup their populations into just over 500 so-called agro-industrial centers. All this in the name of the policy of so-called modernization has been carried out at the expense of countless families who have been displaced.

Just yesterday even Secretary General Gorbachev criticized the Romanian Government for what they have done. So I commend the committee for what they have done and commend them for moving this.

I want to commend the gentleman from California [Mr. DORNAN] for sponsoring this resolution, and urge its passage.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of my time to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I am pleased to rise in support of House Resolution 505 condemning the systematic violation of human rights by the Government of Romania.

I want to commend the distinguished chairman of our Foreign Affairs Subcommittee on Human Rights, the gentleman from Pennsylvania [Mr. YATRON] and the gentleman from California [Mr. DORNAN], along with the gentleman from Virginia [Mr. WOLF] for bringing the measure to the floor at this time.

Mr. Speaker, in recent years the pattern of human rights violations in Romania has shown no sign of improvement. While the Romanian Constitution provides for freedom of speech, assembly, and freedom of the press, these freedoms may not be utilized against the Socialist order, or the workers' interests. The vigorous use of these limitations, coupled with steady harassment by the security forces have stifled the formation of any opposition or dissident groups which might question party policy.

The Hungarian ethnic minority in Transylvania continues to contend with President Ceaucescu's policies designed to promote assimilation. Forced collectivization in rural areas encourages the destruction of traditional villages to make way for government-owned agricultural-industrial complexes.

Mr. Speaker, in the interest of basic human dignity, it is important that we adopt House Resolution 505 condemning the violation of human rights by the Government of Romania.

Mrs. MORELLA. Mr. Speaker, I am pleased to join my colleagues in support of this resolution, and I commend the gentleman from Virginia [Mr. WOLF] for his special commitment to the cause of human rights in Romania, a country dominated by perhaps the most Stalinist government in Eastern Europe.

Mr. Speaker, Romania's human rights standards continue to decline. In recent years, Mr. Ceaucescu's regime has increased its repression of that country's minority groups, particularly of ethnic Hungarians. Moreover, the Government has begun to implement a villagization scheme which will deprive them of their land. It is sad indeed that a country once regarded with the potential of becoming a regional breadbasket has instead, under a brutal Communist dictatorship, become perhaps the Eastern bloc's biggest basket case economy.

I join my colleagues in urging the Romanian Government to revise its human rights policies to comply with the internationally recognized human rights standards contained in the helsinki accords and the Universal Declaration of Human Rights. I hope that the President will carefully consider the extension of any special benefits to Romania until such time as that country has undertaken meaningful reform of its human rights policies.

Mr. FASCELL. Mr. Speaker, I rise in support of House Resolution 505, as amended, condemning the systematic violation of human rights by the Government of Romania. I would like to commend my colleagues Mr. LANTOS and Mr. DORNAN for their leadership and constant attention to this issue.

I think it is fair to say that the human rights situation in Romania today is without a doubt the worst in the Warsaw Pact countries. In recent months the Congress and specifically the Committee of Foreign Affairs as well as the Commission on Security and Cooperation in Europe have received amply evidence which points to a persistent pattern of severe human rights violations in that country.

The Romanian Government continues to deny the right of free emigration. It continues to interfere with the freedom of religion, and is now preparing to embark upon a new resettlement program designed to tear apart entire ethnic minority communities in Romania, particularly Hungarian and ethnic German settlements. Under this system, Romania will destroy thousands of traditional Hungarian and German villages to make way for Government-owned agricultural-industrial complexes. Such a program, if fully implemented, would eradicate a substantial part of the traditional culture and folkways of the Hungarian and German minorities.

The U.S. Congress is not alone in condemning these practices. Parliamentarians from the Federal Republic of Germany, from Austria, from Switzerland, and even in an unprecedented step, from Hungary have registered their opposition to these moves by the Romanian authorities.

Added to all these problems is the growing impoverishment of the Romanian people as a direct result of the wilfull policy of the regime of President Nicolae Ceausescu. In the last few months, while the Romanian people go hungry and without basic energy resources such as heat and electricity, the entire central and historic part of the capital city of Bucharest is being torn apart while an enormous new presidential complex is being erected in the honor of Mr. Ceausescu.

The human rights situation in Romania has become so bad that even the Soviet Union has not been able to refrain from criticism. Just today, there are newspaper reports that Soviet President and Party Leader Mikhail Gorbachev during a meeting with President Ceausescu in Moscow, directly referred to human rights violations in Romania and strongly urged an amelioration of the situation.

In view of the unprecedented situation in Romania, I strongly urge all Members to support House Resolution 505, as amended. This bill condemns the planned program of wholesale destruction of traditional Hungarian and German settlements, urges the Romanian Government to institute meaningful institutional reforms in compliance with the Helsinki Final Act and other international human rights documents, and calls on the President and the Secretary of State to continue to call these violations to the attention of Romanian officials and to demand meaningful reforms. Hopefully the growing worldwide condemnation of its practices will force the Romanian authorities to dramatically alter their current practices.

Mr. HALL of Ohio. Mr. Speaker, I rise in support of House Resolution 505, the resolution condemning the systematic violation of internationally recognized human rights by the Government of Romania. I am pleased to be a cosponsor of this legislation.

I have been following developments in Romania since 1985, when I traveled to Romania with the gentleman from New Jersey [Mr. SMITH] and the gentleman from Virginia [Mr. WOLF]. During that trip, we observed firsthand the repression of the Ceausescu government. In particular, we were struck by the efforts of that regime to harass and persecute the Christian community. We also observed the deprivations suffered by the Romanian people as a result of the Ceausescu government's stringent economic policies, and we saw the discrimination against ethnic minorities, especially the Hungarian minority.

After we returned from our visit, we sought to engage in a dialog with the Ceausescu government for improvements in human rights. Our efforts were unsuccessful, and the repression continued.

We joined with colleagues in the other body to develop bipartisan, bicameral initiatives to call attention to the human rights violations of the Romanian Government. One of these initiatives was legislation to suspend for 6 months most-favored-nation [MFN] trade status for Romania. Both the House and Senate adopted by large margins our amendments to suspend temporarily MFN for Romania until human rights conditions improved. However, our efforts were superseded by a decision of the Ceausescu government itself not to seek a continuation of MFN trade benefits. At the time this action occurred, it was increasingly evident that both the Congress and the administration were moving toward a unified rejection of MFN for Romania.

Over the past year, events in Romania have continued to deteriorate. Romania remains untouched by the reform movements occurring in other Eastern bloc nations. A recent article in Time magazine noted this by using the title "Where Glasnost Is Still a Dirty Word" to describe Romania.

In addition to the ongoing repression of the Christian churches, recent months have witnessed the implementation of a Ceausescu scheme to raze well over 7,000 of the nation's 13,000 villages by the end of the century. Villagers would be removed to agro-industrial centers.

First, the Ceausescu government started to bulldoze churches and synagogues. Now they are in the process of bulldozing thousands of villages.

This social engineering has the greatest impact on the cultural identity of Romania's 2.5 million ethnic Hungarians. The folk culture rooted in village life is being obliterated, and along with it, the ethnic traditions and values of many of Romania's citizens of Hungarian descent. This action has been described as a form of cultural genocide.

Since the beginning of this year, some 12,000 ethnic Hungarians have fled to Hungary from Romania. It has been a truly amazing and unprecedented spectacle: citizens from one Eastern bloc nation fleeing to another in search of more liberty.

The Summer Olympics provided a global image of Romania embodied by graceful and talented young female gymnasts. Yet this image masks the reality of the nation they represented. For most Romanians, the reality is food shortages, lack of heat and light, curtailment of religious freedom, harassment by the secret police, destruction of ethnic identities, difficulties in seeking to emigrate, and the ever-present Ceausescu cult of personality.

In the face of the hardships and sufferings of the Romanian people, the United States must make clear to the world its firm opposition to the actions and policies of the Ceausescu government. I commend the Committee on Foreign Affairs for bringing this resolution to the House floor. I urge all my colleagues to vote in favor of House Resolution 505 so that the House can go on record in strong support of basic human rights for all the people of Romania. We must let the Romanian people know that we stand in solidarity with them in their struggle for basic liberties.

Mr. FEIGHAN. Mr. Speaker, I rise in strong support of House Resolution 505, which condemns the systematic violation of human rights by the Government of Romania. I'd also like to take this opportunity to commend my colleagues, Representatives ROBERT DORNAN and TOM LANTOS, for their work on this legislation and for their tireless leadership in this Congress on human rights.

As my colleagues in the Congress are well aware, the human rights situation in Romania is appalling. As Secretary of State George Shultz testified in hearings earlier this year, Romania has possibly the worst human rights record in Eastern Europe. During the past 5 years, Nicolae Ceausescu has destroyed more than 40,000 homes, churches, and monuments in Bucharest in order to build a government palace, civic center and boulevards. Hunger has become widespread throughout Romania. Each person is allowed only two pounds of meat each month, and often even these meager rations are not available. The electricity rationed for an apartment only allows its occupants to boil a kettle of water twice a day.

More recently, the Romanian Government has accelerated its plans to demolish over half of Romania's villages in the countryside, where nearly half of Romania's population lives. Villagers are being forced to leave their individual homes and farms and move into Government-owned agro-industrial centers, concrete apartment blocks with communal kitchens and communal bathrooms. Reportedly, villagers have received eviction notices, ordering them to tear down their homes or pay the Romanian Government to do it. Already, villagers have begun to disappear. Ethnic Hungarians who live in the northwestern region of Romania have been especially hard hit. Conditions are so bad that 12,000 ethnic Hungarian refugees have fled Romania to neighboring Hungary since January.

As a Western diplomat in Bucharest was quoted as saying, "Ceausescu is going around the bend, and he is taking his country with him." I urge my colleagues in this Congress to work hard to see that Ceausescu is not, in fact, allowed to drag his people down even further. It's critical that the United States Government use every opportunity to protest these cruel policies and to demand that they be stopped. I urge my colleagues in the House to support House Resolution 505.

Mr. LANTOS. Mr. Speaker, I rise in strong support of House Resolution 505 which condemns the systematic violation of internationally recognized human rights by the Government of Romania. I would first like to pay tribute to my Republican colleague from California, Mr. DORNAN, for sponsoring this important piece of legislation.

Mr. Speaker, human rights violations in Romania have reached an alarming level. A clear and unequivocal indication of how bad things have become is the fact that even the government of neighboring Communist Hungary has criticized the Romanian Government in public. In one of the more unusual twists, Hungary raised the issue of Romania's treatment of its large minority population of Hungarians, Germans, Ukrainians, Jews, and others at the Vienna conference which has been reviewing compliance with agreements made at the 1975 Conference on Security and Cooperation in Europe. In its criticism of Romanian practice, Hungary was joined by a number of Western countries including the United States.

The lastest lunacy that President Nicolae Ceausescu is inflicting upon the unfortunate and long-suffering Romanian people of all ethnic backgrounds is his scheme to reorganize the Romanian countryside. Our legislation today protests the planned program of wholesale destruction of traditional settlements in violation of the human rights, the minority cultural rights, and the property rights of the inhabitants.

If the government program is carried out, it will lead to the destruction of some 7,000 traditional villages—centuries-old villages with historic architecture and traditional ethnic and cultural patterns. These traditional settlements would be replaced with 500 agro-industrial centers. Instead of the richness of the traditions of multinational cultures, Mr. Ceausescu will give his people the monotonous and drab sterility of uniformity. This plan is clearly intended to destroy and eliminate the ethnic and cultural identity of Romania's Hungarian, German, Ukrainian, Jewish, and other ethnic minorities.

Mr. Speaker, it is essential that we in this House make known our revulsion, our condemnation of the outrageous human rights practices of the Government of Romania. Our legislation calls upon the Secretary of State to continue to call these human rights violations to the attention of Romanian officials and demand meaningful reforms. Our bill urges that the President not approve any special benefit for Romania until improvements are made in the human rights practices of Romania.

The human rights which we are asking Romania to observe are those human rights which the Romanian Government under President Ceausescu accepted in international conferences and international agreements. These are elemental and fundamental rights—the right of emigration, the rights of the national minorities, and freedom of religion.

Mr. Speaker, I strongly urge my colleagues to support this legislation.

Mr. DORNAN of California. Mr. Speaker, House Resolution 505 is an effort to express the deep concern of the House about Romanian Head of State President Ceausescu and his announced plans to accelerate the destruction of 7,000 of 13,000 traditional villages to make way for government-owned agricultural-industrial complexes. We believe that this action particularly targets the Hungarian minority in Transylvania.

The Romanian Government's plan anticipates the destruction of monuments, historical buildings, and cemeteries that have stood for generations and are important cultural symbols for the Hungarian ethnic minority. Furthermore, the Ceausescu regime envisions the destruction of churches and schools where Hungarian is spoken. Execution of this plan would eliminate the vibrant culture of the Hungarian minority which has been nurtured in these villages for 11 centuries. To date some 30,000 Romanian citizens have fled that country and sought refuge in neighboring Hungary over the past year. For Romania, this is an exodus of unprecedented magnitude and is indicative of the heightened repression.

It is important to note the level of bipartisan support which existed in the past in the United States Congress for human rights reform in Romania. Section 1205 of the State Department authorization bill denounced the policies of the Romanian Government which restricts human rights and the fundamental freedoms of the Hungarian minority. It is worth noting that the manager's language for this legislation states that the Romanian Government is "pursuing a policy of denationalization toward Hungarians and people of other nationalities in Transylvania by measures approximating ethnocide." My resolution (H. Res. 505) is an extension of that previous effort to expose the systematic human rights violations of the Romanian government.

Suspension of most favored nation status to the Government of Romania by the administration was appropriate. But today, Mr. Speaker, our conviction is even stronger that vast improvements in emigration, and religious and minority rights in Romania must occur before any reconsideration of MFN is given. House Resolution 505 reinforces that point.

I would like to thank all of my colleagues who were cosponsors of this resolution, but especially my friends on the Executive Committee of the Human Rights, Mr. LANTOS and Mr. PORTER. Their efforts on behalf of House Resolution 505 were tireless and they deserve a good deal of credit.

Please vote "aye" for respect for human rights in Romania. Vote "aye" on House Resolution 505.

Mr. SMITH of New Jersey. Mr. Speaker, as an original cosponsor of this legislation introduced by my colleague, BOB DORNAN, I urge all Members to support this timely statement of outrage at the Ceausescu regime and concern for the peoples of Romania. The resolution will send a strong message of condemnation against Romanian Dictator Nicolae Ceausescu's forced rural collectivization program, and his flagrant and continual abuse of basic human rights. The demolition plan is only the latest of Romania's actions against its own citizens—whether they be German, Hungarian, Jewish, Romanian, or Serbian.

As Secretary of State Shultz described the regime, Romania has possibly the worst human rights record among the Eastern bloc nations. Romania's most-favored-nation trade status with the United States expired on July 3 following repeated congressional condemnation of the regime and their internal policies. Mr. Speaker, I am encouraged that U.S. criticism of Ceausescu has been joined openly by official and unofficial voices in the West, and significantly, in the East.

Politicians in West Germany are now calling for the European Economic Community to impose sanctions on Bucharest. Last month, West German Foreign Minister Hans-Dietrich Genscher made official demands calling for an end to the demolition of the thousands of villages in Romania. Hungarian officials, including Politburo Member Imre Pozsgay, have publicly denounced Ceausescu's collectivization plan and called the demolitions idiotic.

Mr. Speaker, even citizens in other East bloc nations have organized unprecedented protests in solidarity with the citizens of Romania. Several thousand Poles signed an appeal on behalf of the villagers, and outrage against the razing of the villages has appeared in newspapers in Yugoslavia. In June approximately 50,000 demonstrated in Budapest, Hungary, against the destruction of family homes, village churches and cemeteries, and the uprooting of families, and their neighbors.

Mr. Speaker, in approving the resolution before us, we join in this worldwide protest. President Ceausescu must realize that we will continue our defense of the helpless thousands living under his repressive regime. We have repeatedly protested the bulldozing of churches which was part of his urbanization project, now we extend our protest to his bulldozing of villages, homesteads, rural churches and synagogues—the ancient traditions and inheritance of thousands of families.

□ 1600

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and agree to the resolution (H. Res. 505), as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

UPGRADING OF THREE POSITIONS ON THE CAPITOL POLICE FOR DUTY UNDER THE HOUSE OF REPRESENTATIVES

Mr. PANETTA. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 541) providing for upgrading of three positions on the Capitol Police for duty under the House of Representatives.

The Clerk read as follows:

H. RES. 541

Resolved, That (a) there are established one additional position of captain, one additional position of lieutenant, and one additional position of sergeant on the Capitol Police, each for duty under the House of Representatives.

(b) Each appointment to a position under subsection (a) shall be made—

(1) by the Capitol Police Board, with prior approval of the Committee on House Administration; and

(2) without regard to political affiliation and solely on the basis of fitness to perform the duties of the position.

SEC. 2. Three positions of private on the Capitol Police for duty under the House of Representatives are abolished.

SEC. 3. Until otherwise provided by law, there shall be paid out of the contingent fund of the House of Representatives such sums as may be necessary to carry out this resolution.

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from California [Mr. PANETTA] will be recognized for 20 minutes and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. PANETTA].

(Mr. PANETTA asked and was given permission to revise and extend his remarks.)

GENERAL LEAVE

Mr. PANETTA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Res. 541, the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. PANETTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me thank the gentleman from North Carolina [Mr. JONES] for allowing us to proceed at this time.

Mr. Speaker, this resolution is the result of a request from the House Sergeant-at-Arms Jack Russ for changes in the U.S. Capitol Police Technical Security Section.

This unit was created within the U.S. Capitol Police Force after the bombing of the U.S. Capitol in 1971. Officers in this unit receive specialized training related to the recognition, rendering safe, and disposal of hazardous devices. Prior to the creation of this unit the Congress had to rely on the U.S. Army or the Metropolitan Police to conduct all investigations related to suspicious items.

Also in the seventies congressional leaders became concerned about the threat of electronic eavesdropping and looked at the option of providing countermeasures for the Congress. Initially various agencies who had countermeasure capabilities performed the services, but the Capitol Police eventually assumed full responsibility for providing electronic countermeasure services for the House and Senate.

Over the past 2 years the responsibilities of the Technical Security Division have increased dramatically. The training required to keep abreast of advancing technology has become more extensive and complex.

The House Administration Committee has determined that the officers performing these duties are not being properly recognized for their performance. Their pay is not equivalent to their civilian counterparts. They have no established career paths and they must be transferred out of the unit in order to be promoted. If these factors are left unchanged they will undermine the competence of the unit's professional capabilities and general productivity.

To improve the long-term prospects for keeping talented personnel in this office the House Administration Committee approved the restructuring of the Technical Security Division by creating positions for a captain, lieutenant, and sergeant. Three private positions are eliminated from the Capitol Police in this same package. The cost of this proposal is $29,000 per year.

The committee believes that this change will create a career path for these highly trained individuals, ensuring that they will stay with the Technical Security Division. It will prevent the waste of valuable training and provide the incentive for officers to continually improve their level of knowledge and skill. The recognition given those in the division will result in the creation of a more cohesive unit with increased morale and productivity, thereby ensuring the continued high level of professional service to the U.S. Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 541 and wish to associate myself with the remarks of our subcommittee chairman, my colleague and friend, Mr. PANETTA.

Mr. Speaker, we have no objection to this resolution and beleive it will improve the efficiency and continuity of our Capitol Hill Police. The minority supports the bill and urges its adoption.

I would add only Mr. Speaker, that Mr. PANETTA will doubtlessly by leaving his chairmanship at the conclusion of this Congress to face other challenges and responsibilities within that obstacle course we call the House Budget Committee. I want to take this opportunity to wish him well and more important, to thank him for his leadership and contributions to our subcommittee. He has, in fact, labored long and hard and effectively within the trenches upon necessary, important but unrecognized issues and problems. And, he has done so with bipartisan spirit and as a consequence our help.

Mr. Speaker, to our chairman, LEON, while we did not choose our agenda or the road taken, thanks for the memories. May the waters you attempt to walk on as the head of the Budget Committee be as clear as the bay next to Carmel and may your countenance be always that of a determined but happy Pebble Beach sea otter as you help us make our way to the shore of fiscal integrity.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. PANETTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I cannot engage in the same kind of eloquence as my good friend from Kansas other than to thank him for the support and cooperation he has provided. It has truly been a great pleasure to work with him in some very interesting legislative endeavors, and I appreciate his cooperation, and I appreciate, more importantly, his friendship.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. PANETTA] that the House suspend the rules and agree to the resolution (H. Res. 541).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

SHIP MORTGAGE ACT CODIFICATION

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3105) to reise, consolidate, and enact certain laws related to maritime commercial instruments and lines and public vessels and goods as chapters 313 and 315 of title 46, United States Code, "Shipping", as amended.

The Clerk read as follows:

H.R. 3105

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 101. VESSEL IDENTIFICATION SYSTEM.

(a) CHAPTER 125, TITLE 46.—(1) Title 46, United States Code, is amended by adding the following new chapter 125 after chapter 123:

"CHAPTER 125—VESSEL IDENTIFICATION SYSTEM

"Sec.

"12501. Establishment of a vessel identification system.

"12502. Identification numbers, signal letters, and markings.

"12503. Information available to the system.

"12504. Information available from the system.

"12505. Fees.

"12506. Delegation of authority.

"12507. Penalties.

"§ 12501. Establishment of a vessel identification system

"(a) The Secretary of Transportation shall establish a vessel identification system to make available information under section 12503 of this title for use by the public for law enforcement and other purposes relating to—

"(1) the ownership of documented vessels;

"(2) the ownership of vessels numbered under chapter 123 of this title; and

"(3) the ownership of vessels titled under the law of a State.

"(b) The vessel identification system shall include information prescribed by the Secretary including—

"(1) identifying a vessel;

"(2) identifying the owner of the vessel;

"(3) identifying the State in which it is titled or numbered;

"(4) indicating whether the vessel is numbered or titled, or both;

"(5) if titled in a State, indicating where evidence of a lien or other security interest may be found against the vessel in that State; and

"(6) information assisting law enforcement officials.

"(c) The Secretary may maintain information under this chapter in connection with any other information system maintained by the Secretary.

"§ 12502. Identification numbers, signal letters, and markings

"(a) For the identification of a vessel of the United States, the Secretary of Transportation—

"(1) shall maintain a unique numbering system and assign a number to each vessel of the United States;

"(2) may maintain a system of signal letters for a documented vessel;

"(3) shall record a name selected by the owner of a documented vessel approved by the Secretary as the vessel's name of record; and

"(4) may establish other identification markings.

"(b) The manufacturer or owner of a vessel shall affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other markings the Secretary may require.

"(c) Once a number is assigned under this section, it may not be used by another vessel.

"(d) Once a documented vessel's name is established, the name may not be changed without the approval of the Secretary.

"(e) A person may not tamper with or falsify a number or other marking required under this section.

"§ 12503. Information available to the system

"(a) Except as provided in subsections (b) and (c) of this section, a State or a State's delegee approved by the Secretary may make information available to the Secretary of Transportation if, in a manner and form prescribed by the Secretary, the State—

"(1) identifies the vessel;

"(2) identifies the owner of the vessel;

"(3) identifies the State in which it is titled or numbered;

"(4) indicates whether the vessel is numbered or titled, or both;

"(5) if titled in a State, indicates where evidence of a lien or other security interest may be found against the vessel in that State;

"(6) includes information to assist law enforcement; and

"(7) includes other information agreed to by the Secretary and the State.

"(b) Except as provided in subsection (c) of this section, the Secretary also may accept information under conditions and in a manner and form prescribed by the Secretary.

"(c) The Secretary shall—

"(1) retain information on a vessel with a preferred mortgage under section 31322(d) of this title that is no longer titled in a State making information available to the Secretary under this chapter until the mortgage is discharged or the vessel is sold; and

"(2) accept information under section 31321(g) of this title only if that information cannot be provided to a State.

"§12504. Information available from the system

"For law enforcement or other purposes and under conditions prescribed by the Secretary, the Secretary—

"(1) shall make available information in the vessel identification system to a State making information available under section 12503(a) of this title; and

"(2) may make available information in the vessel identification system to others.

"§12505. Fees

"(a) The Secretary of Transportation may charge a fee under section 9701 of title 31 for providing information to or requesting information from the vessel identification system, except to—

"(1) an agency; or

"(2) a State making information available to the Secretary of Transportation under section 12503(a) of this title.

"(b) The Secretary may collect an annual fee of not more than $1.00 from the owner of each vessel of the United States under section 9701 of title 31 for the vessel identification system. However, the collection of that fee may be delayed under conditions prescribed by the Secretary.

"(c) The Secretary may employ any agency, State, or person to collect the fee established under subsection (b) of this section.

"(d) If a State is employed to collect a fee under subsection (c) of this section, the State may retain one-half of the amounts collected. A State shall transfer one-half of the amounts collected under subsection (b) of this section to the Secretary.

"(e) The Secretary shall deposit amounts transferred or collected under this section in the general fund of the Treasury as proprietary receipts of the Secretary and ascribed to the vessel identification system.

"(f) The amounts retained by a State under this section may be used to make information available to the Secretary and to pay incremental administrative costs.

"§12506. Delegation of authority

"The Secretary of Transportation may delegate to an agency, a State, or a qualified person the authority to—

"(1) establish and maintain the vessel identification system; and

"(2) charge fees under section 12505 of this title to a person making information available to or requesting information from the vessel identification system.

"§12507. Penalties

"(a) A person shall be fined under title 18, imprisoned for not more than two years, or both, if the person with the intent to defraud—

"(1) provides false information to the Secretary or a State issuing authority regarding the identification of a vessel under this chapter; or

"(2) tampers with, removes, or falsifies the unique vessel identification number assigned to a vessel under section 12502 of this title.

"(b) A person is liable to the United States Government for a civil penalty of not more than $10,000 if the person—

"(1) provides false information to the Secretary or a state issuing authority regarding the identification of a vessel under this chapter;

"(2) violates section 12502 of this title; or

"(3) fails to comply with regulations prescribed by the Secretary under section 12505 of this title.

"(c) A vessel involved in a violation of this chapter, or regulation under this chapter, and its equipment, may be seized by, and forfeited to, the Government.

"(d) If a person, not an individual, is involved in a violation of this chapter, the president or chief executive of the person also is subject to any penalty provided under this section.

(b) The title analysis at the beginning of subtitle II of title 46, United States Code, is amended by adding after item 123 in part H:

"125. Vessel Identification System............ 12501".

SEC. 102. CHAPTERS 301 AND 313 OF TITLE 46.—

(1) Certain general and permanent laws of the United States, related to definitions and maritime commercial instruments and liens, are revised, consolidated, and enacted by paragraph (3) of this subsection as subtitle III of title 46, United States Code, "Shipping".

(2) The title analysis at the beginning of title 46, United States Code, is amended to read as follows:

"Subtitle	Sec.
"I. GENERAL	101
"II. VESSELS AND SEAMEN	2101
"III. MARITIME LIABILITY	30101
"[BALANCE OF TITLE RESERVED]"	

(3) Title 46, United States Code, is amended by adding at the end of the following new subtitle:

"SUBTITLE III—MARITIME LIABILITY

"Chapter	Sec.
"301. GENERAL	30101
"[CHAPTERS 303-311—RESERVED]	
"313. COMMERCIAL INSTRUMENTS AND MARITIME LIENS	31301
"[CHAPTER 315—RESERVED]	

"CHAPTER 301—GENERAL

"Sec.

"30101. Definitions.

"§ 30101. Definitions

"In this subtitle—

"(1) 'documented vessel' means a vessel documented under chapter 121 of this title.

"(2) 'foreign vessel' means a vessel of foreign registry or operated under the authority of a foreign country.

"(3) 'public vessel' means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country.

"(4) 'recreational vessel' means a vessel—

"(A) operated primarily for pleasure; or

"(B) leased, rented, or demise chartered to another for the latter's pleasure.

"(5) 'seaman' means a master or a crewmember of a vessel in operation.

"(6) 'State' means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

"(7) 'State vessel' means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State.

"(8) 'United States', when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

"(9) 'vessel of the United States' means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

"[CHAPTERS 303-311—RESERVED]

"CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

"SUBCHAPTER I—GENERAL

"Sec.
"31301. Definitions.
"31302. Availability of instruments, copies, and information.
"31303. Certain civil actions not authorized.
"31304. Liability for noncompliance.
"31305. Waiver of lien rights.
"31306. Declaration of citizenship.
"31307. State statutes superseded.
"31308. Secretary of Commerce or Transportation as mortgagee.
"31309. General civil penalty.

"SUBCHAPTER II—COMMERCIAL INSTRUMENTS

"31321. Filing, recording, and discharge.
"31322. Preferred mortgages.
"31323. Disclosing and incurring obligations before executing preferred mortgages.
"31324. Retention and examination of mortgages and documents of vessels covered by preferred mortgages.
"31325. Preferred mortgage liens and enforcement.
"31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims.
"31327. Forfeiture of mortgagee interest.
"31328. Limitations on parties serving as trustees of mortgaged vessel interests.
"31329. Court sales of documented vessels.
"31330. Penalties.

"SUBCHAPTER III—MARITIME LIENS

"31341. Persons presumed to have authority to procure necessaries.
"31342. Establishing maritime liens.
"31343. Recording and discharging liens on preferred mortgage vessels.

"SUBCHAPTER I—GENERAL

"§ 31301. Definitions

"In this chapter—

"(1) 'acknowledge' means making—

"(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

"(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961.

"(2) 'district court' means—

"(A) a district court of the United States (as defined in section 451 of title 28);

"(B) the District Court of Guam;

"(C) the District Court of the Virgin Islands;

"(D) the District Court for the Northern Mariana Islands;

"(E) the High Court of American Samoa; and

"(F) any other court of original jurisdiction of a territory or possession of the United States.

"(3) 'mortgagee' means—

"(A) a person to whom property is mortgaged; or

"(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement.

"(4) 'necessaries' includes repairs, supplies, towage, and the use of a dry dock or marine railway.

"(5) 'preferred maritime lien' means a maritime lien on a vessel—

"(A) arising before a preferred mortgage was filed under section 31321 of this title;

"(B) for damage arising out of maritime tort;

"(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

"(D) for wages of the crew of the vessel;

"(E) for general average; or

"(F) for salvage, including contact salvage.

"(6) 'preferred mortgage'—

"(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

"(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

"§ 31302. Availability of instruments, copies, and information

"The Secretary of Transportation shall—

"(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

"(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

"(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

"§ 31303. Certain civil actions not authorized

"If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

"§ 31304. Liability for noncompliance

"(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

"(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

"§ 31305. Waiver of lien rights

"This chapter does not prevent a mortgagee or other lien holder waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

"§ 31306. Declaration of citizenship

"(a) When an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

"(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

"(c) An instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

"(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

"§ 31307. State statutes superseded

"This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

"§ 31308. Secretary of Commerce or Transportation as mortgagee

"When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241 et seq.), subject to section 362(b) of title 11.

"§ 31309. General civil penalty

"Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.

"SUBCHAPTER II—COMMERCIAL INSTRUMENTS

"§ 31321. Filing, recording, and discharge

"(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

"(A) the grantor, mortgagor, or assignor;

"(B) the heir or devisee of the grantor, mortgagor, or assignor; and

"(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

"(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

"(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

"(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

"(1) identify the vessel;

"(2) state the name and address of each party to the instrument;

"(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

"(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

"(5) state the interest sold, conveyed, mortgaged, or assigned; and

"(6) be signed and acknowledged.

"(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel that has not yet been documented, and the Secretary decides that the vessel cannot be documented by an applicant—

"(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each party whose name and address is stated on the instrument filed for recording; and

"(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

"(A) may terminate the filing; and

"(B) may return the instrument filed without recording it under subsection (d) of this section.

"(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

"(e) The Secretary shall—

"(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

"(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

"(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

"(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

"(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

"§31322. Preferred mortgages

"(a)(1) A preferred mortgage is a mortgage, whenever made, that—

"(A) includes the whole of a vessel;

"(B) is filed in substantial compliance with section 31321 of this title;

"(C)(i) covers a documented vessel; or

"(ii) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

"(D) has as the mortgagee—

"(i) a State;

"(ii) the United States Government;

"(iii) a federally insured depository institution, unless disapproved by the Secretary;

"(iv) an individual who is a citizen of the United States;

"(v) a person qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); or

"(vi) a person approved by the Secretary of Transportation.

"(2) Paragraph (1)(D) of this subsection does not apply to a vessel operated only as a fishing vessel, fish processing vessel, or a fish tender vessel (as defined in section 2101 of this title) or to a vessel operated only for pleasure.

"(b) A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.

"(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

"(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

"(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

"(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

"(d)(1) A mortgage or instrument representing financing of a vessel under State law that is made under applicable State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

"(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

"(B) information on the vessel covered by the mortgage or instrument is made available to the Secretary under chapter 125 of this title.

"(2) This subsection applies to mortgages or instruments covering vessels titled in a State after—

"(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

"(B) the State begins making information available to the Secretary under chapter 125 of this title.

"(3) A preferred mortgage under this subsection continues to be a preferred mortgage if the vessel is no longer titled in the title state.

"(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed,—

"(1) the validity of the preferred mortgage covering the vessel to be titled in the state is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

"(2) the validity of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

"§31323. Disclosing and incurring obligations before executing preferred mortgages

"(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

"(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

"(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title.

"(2) wages for the crew of the vessel.

"(3) general average.

"(4) salvage, including contract salvage.

"(c) On conviction of a mortgagor under section 31330(a)(1) (A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

"§31324. Retention and examination of mortgages of vessels covered by preferred mortgages

"(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

"(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

"§31325. Preferred mortgage liens and enforcement

"(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

"(b) On default of any term of the preferred mortgage, the mortgagee may enforce the preferred mortgage lien in—

"(1) a civil action in rem for a documented vessel or a vessel to be documented under chapter 121 of this title;

"(2) a civil action in personam in admiralty against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness; and

"(3) a civil action against the mortgagor, comaker, or guarantor for the amount of the outstanding indebtedness secured by the mortgaged vessel or any deficiency in full payment of that indebtedness.

"(c) The district courts have original jurisdiction of a civil action brought under subsection (b) of this section. However, for documented vessels or vessels to be documented under chapter 121 of this title, this jurisdiction is exclusive of the courts of the states for a civil action under subsection (b)(1) of this section.

"(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

"(A) the master or individual in charge of the vessel;

"(B) any person that recorded under section 31343 (a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and

"(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

"(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

"(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

"(e) In a civil action brought under subsection (b)(1) of this section—

"(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

"(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

"§ 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims

"(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

"(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

"(1) the preferred mortgage lien has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

"(2) for a foreign vessel, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

"§ 31327. Forfeiture of mortgagee interest

"The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

"§ 31328. Limitations on parties serving as trustees of mortgaged vessel interests

"(a) Without the approval of the Secretary of Transportation, an instrument or evidence of indebtedness secured by a mortgage of a documented vessel to a trustee may not be issued, assigned, or transferred to, or held in trust for, a person not qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), unless the trustee—

"(1) is a State;

"(2) is the United States Government;

"(3) is a person approved by the Secretary and qualifying as a citizen of the United States under that section 2; or

"(4) has been approved by the Secretary.

"(b) The Secretary shall approve a trustee under subsection (a) (3) or (4) of this section if the trustee—

"(1) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

"(2) is authorized under those laws to exercise corporate trust powers;

"(3) is subject to supervision or examination by an official of the United States Government or a State;

"(4) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

"(5) if the trustee is to be approved under subsection (a)(4) of this section, meets any other requirements prescribed by the Secretary.

"(c) If the trustee at any time does not satisfy the qualifications of subsection (b) of this section, the Secretary shall disapprove the trustee.

"(d) Except as provided in subsection (a) of this section, a right under a mortgage of a documented vessel may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322 of this title only with the approval of the Secretary.

"(e) The vessel may be operated by the trustee only with the approval of the Secretary.

"(f) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this section is void.

"§ 31329. Court sales of documented vessels

"(a) A documented vessel may be sold by order of a district court only to—

"(1) a person eligible to own a documented vessel under section 12102 of this title; or

"(2) a mortgagee of that vessel.

"(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

"(1) the vessel must be held by the mortgagee for resale;

"(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

"(3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

"(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

"(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

"(e) A sale of a vessel contrary to this section is void.

"§ 31330. Penalties

"(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

"(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

"(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

"(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

"(D) with intent to defraud, does not comply with section 31321 (f) or (g) of this title.

"(2) A mortgagor is liable to the United States Government for a civil penalty of not more than $10,000 if the mortgagor—

"(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

"(B) incurs a contractual obligation in violation of section 31323(b) of this title;

"(C) files with the Secretary a mortgage made not in good faith; or

"(D) does not comply with section 31321 (f) or (g) or with section 31322(d)(3)(A) of this title.

"(b)(1) A person that knowingly violates section 31328 or 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

"(2) A person violating section 31328 or 31329 of this title is liable to the Government for a civil penalty of not more than $25,000.

"(3) A vessel involved in a violation under section 31328 or 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

"(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

"SUBCHAPTER III—MARITIME LIENS

"§ 31341. Persons presumed to have authority to procure necessaries

"(a) The following persons are presumed to have authority to procure necessaries for a vessel:

"(1) the owner.

"(2) the master.

"(3) A person entrusted with the management of the vessel at the port of supply.

"(4) an officer or agent appointed by—

"(A) the owner;

"(B) a charterer;

"(C) an owner pro hac vice; or

"(D) an agreed buyer in possession of the vessel.

"(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

"§ 31342. Establishing maritime liens

"A person providing necessaries to a vessel (except a public vessel) on the order of a person listed in section 31341 of this title or a person authorized by the owner—

"(1) has a maritime lien on the vessel;

"(2) may bring a civil action in rem to enforce the lien; and

"(3) is not required to allege or prove in the action that credit was given to the vessel.

"§ 31343. Recording and discharging liens on preferred mortgage vessels

"(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel covered by a preferred mortgage filed or recorded under this chapter may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

"(1) state the nature of the lien;

"(2) state the date the lien was established;

"(3) state the amount of the lien;

"(4) state the name and address of the person; and

"(5) be signed and acknowledged.

"(b) The Secretary shall record a notice complying with subsection (a) of this section.

"(c) On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

"(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the state in which the vessel is titled.

"[CHAPTER 315—RESERVED]".

SEC. 103(a) SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION.—

(1) Section 12111 of title 46, United States Code, is amended—

"(A) by striking the catchline and substituting the following:

"§ 12111. Surrender and invalidation of certificates of documentation"; and

"(B) by striking subsection (b) and substituting the following:

"(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

"(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

"(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

"(B) sections 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

"(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

"(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

"(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

"(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.".

(b) Item 12111 in the analysis of chapter 121 of title 46, United States Code, is amended to read as follows:

"12111. Surrender and invalidation of certificates of documentation.".

SEC. 104 MISCELLANEOUS AND CONFORMING PROVISIONS.—(a) Title 46, United States Code, is amended as follows:

(a) In section 2101(46), strike the period at the end and add "or titled under the law of a State.".

(2) In section 2110, strike "the licensing of masters, mates, pilots, and engineers, and the documentation of vessels," and substitute "and the licensing of masters, mates, pilots, and engineers,".

(3) In sections 12102(b), 12103(a), 12105(c), 12110(a), 12112 (a), (b), and (c), 12117, 12119, and 12120, insert "of Transportation" after "Secretary" the first time it appears.

(4) Section 12102 is amended by adding at the end the following:

"(c) A vessel titled in a State is eligible for documentation only if the State certificate of title is surrendered.".

(5) Section 12103(c)(1) is amended to read as follows:

"(1) identify and describe the vessel;".

(b) Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) is amended—

(1) in the first paragraph, insert "(a)" after "SEC. 9.";

(2) in the second paragraph, insert "(b)" before "Every vessel"; and

(3) amend from the beginning of the third through fifth paragraphs to read as follows:

"(c) Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and 31328 of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

"(1) sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of this title) or in a vessel operated only for pleasure) owned by a citizen of the United States; or

"(2) place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.

"(d)(1) Any charter, sale, transfer, or mortgage of a vessel, or interest or control in that vessel, contrary to this section is void.

"(2) A person that knowingly charters, sells, transfers, or mortgages a vessel, or interest or control in that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

"(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

"(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

"(B) a person knowingly charters, sells, transfers, or mortgages a vessel, or interest or control in that vessel, contrary to this section.".

(c) The first sentence of section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242), is amended by striking "or under construction" and substituting "a documented vessel, or a vessel under construction".

(d) Section 1101(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(a)), is amended to read as follows:

"(a) The term 'mortgage' includes—

"(1) a preferred mortgage as defined in section 31301 of title 46, United State Code; and

"(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code;".

(e)(1) Before January 1, 1992, the annual fee under section 12505 of title 46, United States Code (as enacted by section 101 of this Act), is $1.00.

(2) To establish, centralize, and computerize records and other information maintained under chapters 121, 125, and 313 of title 46, United States Code, from the effective date of this Act through September 30, 1993, the Secretary of Transportation shall spend (out of amounts appropriated for the Department of Transportation under an appropriations law) not less than an amount that is equal to the amounts estimated to be—

(A) collected under section 9701 of title 31, United States Code, for fees paid for services and things of value provided under chapter 313 of title 46, United States Code, (as enacted by section 101 of this Act) and for documenting vessels under chapter 121 of title 46; and

(B) transferred to or collected by the Secretary under chapter 125 of title 46, United States Code (as enacted by section 101 of this Act).

(f) Chapter 313 of title 46 (enacted by section 702 of this Act), United States Code, does not affect the rules of law in existence on June 5, 1920, about—

(1) the right to proceed against a vessel for advances;

(2) laches in enforcing liens on a vessel;

(3) the right to proceed in personam;

(4) the rank of preferred maritime liens among themselves; and

(5) priorities between maritime liens and mortgages (except preferred mortgages) on documented vessels.

(g) Section 12502(a)(1) of title 46, United States Code (as enacted by section 101 of this Act), applies to a vessel of the United States that does not have a unique number as prescribed by the Secretary of Transportation under that section until the earlier of the following:

(1) the next time the vessel is documented, numbered, or titled.

(2) January 1, 1995.

(h) Nothing in this section requires the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment to carry out chapter 125 of title 46, United States Code (as enacted by section 101 of this Act), except to the extent that appropriations are made available in an appropriations law for the Department of Transportation.

SEC. 105 LEGISLATIVE PURPOSE AND CONSTRUCTION.—

(a) A reference to a law replaced by section 102 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this Act.

(b) An order, rule, or regulation in effect under a law replaced by section 102 of this Act continues in effect under the corresponding provision of this Act until repealed, amended, or superseded.

(3) An action taken or an offense committed under a law replaced by section 102 of this Act is deemed to have been taken or committed under the corresponding provision of Act.

(4) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by section 102 of this Act.

(5) If a provision of this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

SEC. 106 REPEALS.—

(a) The repeal of a law by this Act may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The following laws are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act:

(1) sections 9(4th par.) 40, and 42 of the Shipping Act, 1916 (46 App. U.S.C. 808(4th par.), 838, 840).

(2) section 30 of the Merchant Marine Act, 1920 (46 App. U.S.C. 911-984).

(3) the Act of February 16, 1925 (46 App. U.S.C. 1011-1014).

(4) Reorganization Plan No. 1 of 1967 (46 App. U.S.C. 961 (note)).

(5) Sections 12109(c), 12113, 12114, 12115, 12116, 12118, and 12121 of title 46, United States Code.

SEC. 107 EFFECTIVE DATES.—

(a) This Act and amendments made by this Act take effect on January 1, 1989. However, sections 31321 and 31322 of title 46 (enacted by section 102 of this Act), United States Code (as sections 31321 and 32322 apply to vessels for which an application for documentation has been filed), take effect on January 1, 1990.

(b) An instrument filed before January 1, 1989, but not recorded before that date, is deemed to comply with section 31321 of title 46, United States Code, if it is in substantial compliance with the provisions in that section that had corresponding requirements under the law on December 31, 1988. However, the mortgage may not become a preferred mortgage until the vessel is documented.

(c) This Act and the amendments made by this Act do not affect the validity of any instrument filed or recorded before January 1, 1989 if there was a corresponding requirement under the law on December 31, 1988.

(d) An instrument filed or recorded before January 1, 1989 is deemed to comply with any new requirement under chapter 313 of title 46, United States Code (as enacted by section 102 of this Act), affecting the validity of that instrument.

(e) Section 102 of this Act and amendments made by that section do not affect any civil action filed before January 1, 1989.

(f) The Secretary of Transportation shall establish the vessel identification system required under chapter 125 of title 46, United States Code (as enacted by section 101 of this Act) before January 1, 1994.

Sec. 201 (a) Coastwise and Fisheries Documentation.—Notwithstanding sections 12106-12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) ALEUTIAN TRAWLER, United States official number 236979;

(2) ENCORE, United States official number 545162;

(3) FAIR TIDE, United States official number 644363;

(4) FREEDOM, United States official number 569163;

(5) PAVLOF, United States official number 597532;

(6) SUVA, United States official number 225008;

(7) RA, United States official number 655181;

(8) TE DE II, United States official number 572205;

(9) FRE-N-EZE, United States official number 659826;

(10) BETA LYRA, United States official number 679226;

(11) POLAR ICE, United States official number 604676;

(12) COMPASS ROSE III, United States official number 559647;

(13) SCOTCH 'N WATER, United States official number 264090;

(14) ERSA, United States official number 229511;

(15) GILBERT, United States official number 230568, with a restriction that this vessel may engage in the coastwise trade of the United States only for the purpose of moving barges filled with seafood waste and wastewater to designated ocean disposal sites from Port Canaveral, Florida;

(16) MARY L, United States official number 275311;

(17) ZB-6, United States official number 505317;

(18) KUT N OUT, hull identification number BERL1087M-80A-385-80 and Florida registration number FL7665FG;

(19) FOXY LADY III, United States official number 299818; and

(20) GIPSY, United States official number 903276.

(b) Fisheries Documentation.—Notwithstanding sections 508 and 510(g) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158, 1160(g)), and United States Department of Transportation Contract Numbered MA-6772 (IFB PD-X-945) and amendments thereto, the Secretary of Transportation is authorized to allow, and the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for, the vessel M/V OCEAN TEMPEST (ex HORSESHOE SPLICE), United States official number 248773, to acquire, purchase, processs, and transport fish and fish products in the fisheries of the United States: Provided, That if the vessel is scrapped, it shall not be scrapped other than in the domestic market without the prior approval of the Secretary of Transportation.

Sec 202. Repeal of Obsolete Laws.—The following laws related to shipping are repealed:

(1) The paragraph immediately before the heading "UNITED STATES VETERANS' BUREAU" in the first section of the Independent Offices Act, 1928 (46 App. U.S.C. 810a).

(2) The Act of July 3, 1926 (46 App. U.S.C. 817a).

(3) Sections 3 and 4 of the Act of July 7, 1960 (46 App. U.S.C. 817b, 817c).

(4) Sections 2, 4, 5, 16, 22, and 23 of the Merchant Marine Act, 1920 (46 App. U.S.C. 862-864, 874, 878, 879).

(5) Section 2 of the Act of March 4, 1927 (46 App. U.S.C. 870a).

(6) The Act of April 16, 1934 (46 App. U.S.C. 870b-870d).

(7) Section 2 of the Act of April 24, 1944 (46 App. U.S.C. 1128e-1).

(8) Sections 203, 401-404, 716, 903, 904, 907, 1001-1005, and 1010-1012 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1113, 1141-1144, 1206, 1243, 1246, 1251-1255, 1260-1262).

(9) The first section and sections 2 and 3 of the Act of February 6, 1941 (46 App. U.S.C. 1119a, 1119b, 1214).

(10) The Act of June 12, 1960 (46 App. U.S.C. 1401-1413).

(11) Section 7 of the Maritime Act of 1981 (46 App. U.S.C. 1606).

(12) Section 1988 of Public Law 99-514.

The SPEAKER pro tempore. Is a second demanded?

Mrs. BENTLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. Jones] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. Bentley] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. Jones].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of H.R. 3105, as amended, a bill to revise, consolidate, and enact certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46, United States Code, "Shipping," and for other purposes, as ordered reported by the Committee on Merchant Marine and Fisheries.

H.R. 3105 codifies the Ship Mortgage Act, 1920 and makes a number of substantive changes that will make vessel financing and mortgage recordation processes easier and more in keeping with modern practices. These changes include:

First, eliminating the requirement that a mortgage be endorsed on the vessel's documents.

Second, allowing mortgages to be filed for vessels for which an application for documentation has been submitted.

Third, eliminating the requirement that an affidavit of good faith be filed with the record of the mortgage.

Fourth, allowing mortgages to be paid off in foreign currency and allows revolving credit loans where advances and repayments are made, with the amount outstanding under the obligation at any one time limited to a certain amount.

Fifth, primarily for recreational vessels, making it easier to file a vessel mortgage for a vessel for which an application for documentation has been submitted, but not yet documented.

Sixth, allowing the Coast Guard to charge a small fee based on the cost of providing the service for recording instruments and documenting vessels.

Seventh, granting coastwise trading and fisheries privileges to a number of vessels that are not qualified for those trades.

And eighth, repealing several obsolete laws in title 46, United States Code, identified by the Department of Transportation as being susperseded, omitted, or expired.

As chairman of the Committee on Merchant Marine and Fisheries and the author of H.R. 3105, I would like to thank my distinguished colleague on the committee from Michigan, Mr. Davis, for all his work on this legislation, especially for adding the provisions that create the vessel information system.

The changes made by H.R. 3105 will revolutionize vessel financing by bringing the law up to date with modern financing practices. These changes are the result of extensive work with the administration and representatives of the Maritime Law Association and the American Bar Association.

A few changes to H.R. 3105 have been made to make this system useful for law enforcement. Most importantly, this bill establishes a vessel information system that will provide Federal and State agencies information on the ownership of a vessel, regardless of whether it is titled in a State or documented with the Coast Guard. Currently, it takes a great deal of time to determine who in fact owns a vessel. The Coast Guard's records are on paper and not centralized. It often takes the Coast Guard days to obtain ownership information from a State. This system will eliminate these problems by establishing a computer network of information on vessels titled, numbered, or documented. However, for this to work, the Federal documentation and mortgage recordation systems must be changed so they can be centralized and computerized.

A few changes to the text of H.R. 3105, as ordered reported, have been made.

Section 31301(3) has been changed to clarify that any trustee may be a mortgagee if they are so designated in the trust agreement. This change has been made to allow a trustee, other than a Westhampton trustee, to be a mortgagee in a case where a trust is established for financing syndication purposes, such as for the issuance of bonds. In these cases the trustee is not acting for a foreign holder of indebtedness; therefore the creation of a Westhampton trust is not necessary. Since anyone may be a mortgagee for fishing, fish processing, and fish tender vessels, and vessels operated only for pleasure, the creation of Westhampton trusts are not necessary for these vessels. Similarly, when a trust is created for non-Westhampton purposes, anyone can be the trustee mortgagee since under section 31322(a)(2) there are no restrictions on who can be a mortgagee for these vessels.

Section 31305 has been changed to clarify that the chapter does not prevent a mortgagee or other lien holder from waiving by contract his right to a lien, or the priority of that lien.

Section 31321 has been changed to clarify that a mortgage can be made at any time. However, it must be filed with the Secretary to be valid against third parties. This eliminates the need for a fictional simultaneous closing and filing.

This section also requires the filing of a discharge certificate for a vessel with a preferred mortgage that was titled in a State, but is now in a nontitle State.

Section 31322 has been changed to provide an incentive for States to join the vessel information system and to implement a uniform titling system. This incentive is a grant of preferred status to vessels titled in a State joining the vessel information system that has an approved titling system. In prescribing the standards for this uniform titling system, it is expected that the Secretary will use standards similar to those drafted by the National Association of State Boating Law Administrators and that the prescribed standards will require a title to be surrendered to the titling State when the vessel is retitled in another State or when the vessel is documented with the Secretary. This will prevent fraud and will allow the public with know where to check for the vessels's lien records.

Section 31322 also has been changed to clarify that when a vessel covered by a preferred mortgage, that includes more than one vessel or property that is not a vessel, is sold by order of a district court, and there is not a separate discharge included in the mortgage, then the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness, and an allocation of mortgage indebtedness for purposes of a separate discharge may not be made.

Under section 31322(a)(2) a vessel operated only for pleasure is exempt from any restrictions on who can be a mortgagee. This standard is the same as used for the documentation of a recreational vessel under section 12109 of title 46. It is intended that vessels that have a recreational vessel license, or combined fisheries and recreational license, fall under this exemption. However, if the vessel has a coastwise license, Great Lakes license, or registry combined with a recreational license, the vessel would not fall under this exemption.

Section 31325 has been changed to clarify that district courts have original jurisdiction for a civil action brought to enforce a preferred mortgage on a vessel titled in a State.

Section 31329 has been changed to clarify that a foreign mortgagee for a fishing vessel, fish processing vessel, or fish tender vessel, or a vessel operated only for pleasure may bid in at the court sale of the vessel. However, if the foreign mortgagee buys the vessel at the court sale then the mortgagee must hold the vessel for resale and meet the other restrictions under subsection (b). A sale of any vessel under section 31328 is not subject to the restrictions under section 9 of the Shipping Act, 1916 since section 9 only applies to a vessel sold by a person, not a court or the U.S. marshal.

Mr. Speaker, I believe that the adoption of H.R. 3105 will help identify and track the ownership of vessels used in the drug trade. Just as significantly, it will ease many of the restrictions on financing U.S. vessels and will help build up our merchant marine. Mortgagee restrictions have been eased in most cases and totally lifted in others, trustee qualifications have been eased, revolving credit term loans have been made easier, participation agreements to syndicate loans can be made without restriction, and Federal agency approval for financing has been eliminated for some vessels. These represent a major step forward in promoting the construction and documentation of vessels under the U.S. flag, and is supported by the administration.

These provisions have actually been approved by the House already as part of H.R. 5210, the omnibus drug bill, but the committee recommends that the House pass them again today separately.

Mr. Speaker, I strongly support H.R. 3105, and I urge its adoption.

SECTION-BY-SECTION ANALYSIS OF H.R. 3105, AS AMENDED

Section 101 of this bill adds a new chapter 125 to title 46, United States Code, to establish a vessel identification system for vessels of the United States. Section 102 contains a codification of the Ship Mortgage Act, 1920 (46 App. U.S.C. 911-984). A previous version of this codification was recently reported by the Merchant Marine and Fisheries Committee in H.R. 3105 (H. Rept. 100-918). Previous versions of the remaining sections of this bill were also reported by the Mechant Marine and Fisheries Committee in H.R. 3105. This analysis supplements the House Merchant Marine and Fisheries Committee report on H.R. 3105 to the extent that this bill differs from the bill as reported by the Committee. The language in the report relates directly to corresponding provisions within this bill.

SECTION 101. VESSEL IDENTIFICATION SYSTEM

Section 101 of H.R. 3105, as amended, adds a new chapter 125 to title 46, United States Code, to establish a vessel identification system for all vessels of the United States. This would include vessels documented under chapter 121 of title 46, numbered under chapter 123 of that title, or titled under the law of a State. This new chapter consists of new sections 12501-12507 as follows:

Section 12501. Establishment of a vessel identification system

Subsection (a) of section 12501 requires the Secretary of Transportation to establish a system of information concerning vessels of the United States for law enforcement and other purposes. The Secretary is required to make available information from the system relating to the ownership of vessels documented under chapter 121 of title 46, numbered under chapter 123 of that title, and titled under the law of a State. The information is available under section 12503 for use by the public, similarly under the Ship Mortgage Act, 1920.

Subsection (b) lists the vessel identification information which is required to be maintained by the Secretary. The Secretary has the authority to prescribe other information to be maintained in addition to the items listed. For example, the Secretary may identify vessels issued fisheries permits by the Department of Commerce. The Secretary may also monitor transactions involving vessels that require approval by the Secretary under section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) before interest or control in the vessel may be transferred to a noncitizen.

Subsection (c) clarifies that the Secretary has the flexibility to maintain this system in connection with any other information system maintained by the Secretary, including the Federal Aviation Administration system containing aircraft ownership information. This would also permit the Secretary to combine various systems and data bases maintained by the Secretary such as documentation and numbering of vessels, and safety, casualty, and law enforcement statistics.

Section 12502. Identification numbers, signal letters, and markings

Subsection (a) of this section requires the Secretary to maintain a unique numbering system for vessels of the United States. The Secretary may use existing vessel numbering systems such as the hull identification number for this purpose, but must ensure that no two existing vessels of the United States have the same number. The Secretary should consider and propose the use of a 17-digit number to implement this requirement. This subsection also requires the Secretary to maintain a system of signal letters and to record vessel names for documented vessels. The Secretary is authorized to establish other vessel identification markings for vessels of the United States, such as hailing ports.

Subsections (b), (c), (d), and (e) contain other requirements and restrictions concerning vessel identification markings.

This section consolidates the requirements of sections 12114, 12115, 12116, and 12118 of title 46. For this reason, section 106 of this bill repeals those sections.

Section 12503. Information available to the system

Subsection (a) of section 12503 allows a State or approved State delegee to make vessel identification information available to the Secretary. Participation in the system is voluntary on the part of a State. A benefit to boat purchasers and financiers in States with approved titling systems participating in this system is that vessel mortgages or financing instruments made in those States are deemed to be preferred mortgages under chapter 313 of title 46, United States Code (as codified and enacted by this Act).

Under subsection (a), the Secretary may prescribe the manner and form in which the information is made available by the States. In this regard, the Committee intends that the Secretary employ the most efficient, up-to-date computer technology in maintaining information made available from the States to avoid duplication of effort in maintaining information and to reduce the costs of the system. In addition to the vessel identification information made available by States under paragraphs (1)-(6), the Secretary and a State may agree that the State make available other information. For example, the purpose for which a vessel is routinely used would be valuable information for the system.

The Committee intends that most of the information in the system will become available directly and exclusively from the States to the greatest extent possible. However, under subsection (b), the Secretary may accept information from others under conditions and in a manner and form prescribed by the Secretary. Thus, if the Secretary discovers a valuable and reliable source of data that can be conveniently made available to the system, the Secretary can approve it.

Under paragraph (c)(1), the Secretary must maintain information on a State-titled vessel with a preferred mortgage that moves to a nonparticipating, nontitle State, until the mortgage is discharged or the vessel is sold. Under paragraph (c)(2), the Secretary must accept information submitted under section 31321 of title 46 (as enacted by this Act) concerning a discharge of a preferred mortgage on a vessel title under State law. This would be necessary if the vessel moves to a nonparticipating State, and information on that vessel would not be provided to the system by that State. This subsection will allow the Secretary to keep the vessel information system current on these matters and purge files no longer required to be maintained.

Section 12504. Information available from the system

This section requires that the Secretary make available information maintained in the vessel identification system to a State participating in the system for law enforcement or other purposes. The Secretary may make available information in the system to others, under conditions the Secretary may prescribe. At first, the Secretary may elect to deal only with the States. However, the Committee firmly expects that information will be made available through computer terminals in satellite offices or direct computer access by modem. In this manner, boating organizations or financial or documentation services could retrieve data without paper transactions for a fee.

Section 12505. Fees.

This section contains the authority for the Secretary to charge a fee under the user charge law, 31 U.S.C. 9701, for providing information to or requesting information from the vessel identification system. Fees may not be charged under this subsection to an agency or a State that is participating in the vessel identification system maintained by the Secretary.

Under subsection (b) of this section, the Secretary may collect an annual fee of not more than $1.00 from the owner of a vessel of the United States under 31 U.S.C. 9701 for the vessel identification system. Since vessel owners will benefit from the vessel identification system, such as from documentation of ownership data and stolen vessel tracking, this fee is designed as a maintenance charge to owners for this service. The collection of the annual fee may be delayed by the Secretary, and an agency, State, or person may be employed to collect the fee under subsection (c). The Committee expects that the Secretary will make agreements with States to collect this fee at the time of vessel registrations. The term of these registrations varies from one to three years as permitted by chapter 123 of title 46.

Under subsection (d) of this section, if a State is employed to collect the fee, the State may retain one-half of the amounts collected, and must transfer the remainder to the Secretary. The amounts retained by a State may be used to cover the costs of making vessel identification information available to the Secretary. This includes upgrading or establishing titling systems as well as making improvements and other changes to vessel numbering systems to make information available. Because States are allowed to make improvements to their vessel titling and numbering systems with the amounts retained under this section, the costs of those programs may decrease. This could result in a corresponding decrease in State numbering fees and offset vessel identification system fees paid by vessel owners.

Section 12506. Delegation of authority

This section allows the Secretary to delegate the authority to establish and maintain the vessel identification system to an agency, a State, or a qualified person. The Secretary may also delegate the authority to charge fees under section 12505 for requesting information from or making information available to the vessel identification system.

Section 12507. Penalties

This section establishes criminal and civil penalties for certain violations of chapter 125 of title 46 (as enacted by this Act).

SECTION 102. SHIP MORTGAGE ACT CODIFICATION

Section 102 of this bill adds a new subtitle III to title 46, which contains a codification of the Ship Mortgage Act, 1920 and other related provisions. A previous version of this codification and the remaining sections of the bill were recently reported by the Merchant Marine and Fisheries Committee in H.R. 3105 (H. Rept. 100-918). The significant additions or changes by this provision to the version of H.R. 3105 reported by the Merchant Marine and Fisheries Committee are explained as follows:

Section 30101. Vessel of the United States definition

Paragraph (9) of this section amends the definition of "vessel of United States" to include vessels titled under the law of a State.

§ 31305: Waiver of Lien Rights

Section 31305 has been changed to clarify that the chapter does not prevent a mortgage or other lien holder from waiving by contract the right to a lien, or the priority of that lien.

Section 31321. Filing, recording, and discharge

Section 31321 has been changed to clarify that a mortgage, whenever made, must be filed to be valid against third parties. This clarification allows mortgage closings to occur previous to filing of an instrument, and to eliminate the need for a fictional simultaneous closing and filing.

Subsection (g) clarifies that if an application for documentation is filed for a vessel covered by a preferred mortgage under section 31322(d) (as enacted by this Act), the preferred mortgage must be filed with the Secretary at the same time the application for documentation is filed to be valid against third parties. If the preferred mortgage is filed with the Secretary at the time the documentation application is filed, it is valid from the time it became a preferred mortgage under section 31322(d).

When a State preferred mortgage under 31322(d) is finally discharged, subsection (h) of this section requires the mortgagee to provide upon request to the Secretary or a State, whichever is more appropriate, an acknowledged certificate of discharge of indebtedness. This is necessary when a vessel in the system moves from a participating titling State and is not retitled in another participating State. In this case, there is no way to update the status of the indebtedness through the original titling State. The Secretary is required to accept this information to be maintained in the vessel identification system under section 12503(c) of title 46 (as enacted by this Act).

Section 31322. Preferred mortgages

Under section 31322(a)(2) a "vessel operated only for pleasure" is exempt from any restrictions on who can be a mortgagee. This standard is the same as used for the documentation of a recreational vessel under section 12109 of title 46. The Committee intends that vessels that have a recreational vessel license, or combined fisheries and recreational license, fall under this exemption. However, if the vessel has a Coastwise License, Great Lakes License, or Registry combined with a Recreational License, the vessel would not fall under this exemption.

Under subsection (c)(2), if a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in rem, and there is not a separate discharge, then the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness, and an allocation of mortgage indebtedness for purposes of a separate discharge may not be made. This change is made to eliminate the formula that did not work and to allow the vessel to be sold free and clear, regardless of the amount of the sale.

Under subsection (d) of section 31322, a mortgage or other instrument representing financing of a vessel under State law that is made under applicable State law and covers the whole of a vessel titled in a State is seemed to be a preferred mortgage if two conditions are fulfilled. The first condition is that the Secretary must certify that the State in which the vessel is titled has a titling system that complies with the Secretary's vessel titling guidelines established under section 13106(b)(8) of title 46. Congress mandated the promulgation of these guidelines in the Recreational Boating Safety Act of 1986, Public Law 99-626. The second condition is that the State in which the vessel is titled must make information available to the Secretary for the vessel identification system established under chapter 125 of title 46 (as enacted by this Act) on the vessel covered by the mortgage or other instrument. This status only applies to vessels titled in the State after those two conditions are met. The phrase "instrument representing financing of a vessel under State law" is used in addition to "mortgage" because State laws do not always use the term mortgage when referring to financing. It is intended, however, that the financing covered by this phrase would be the same as that covered by the concept of a mortgage under other Federal law.

Paragraph (2) of subsection (d) clarifies that mortgages or other financing instruments may obtain preferred status under subsection (d) if they cover vessels titled in a State after the Secretary certifies the compliance of the State's titling system, and the State begins making vessel identification information available to the Secretary. Preferred mortgage status can only be attained when these two conditions are in effect. Mortgages or financing instruments made prior to that are not preferred and, if these two conditions cease to exist, new mortgages or forecasting instruments made after that time cannot attain preferred status.

The law of the titling State controls the making of the preferred mortgage or financing instrument under this subsection. No additional Federal recording requirements may be imposed for the mortgage or instrument to obtain preferred status under this subsection.

Paragraph (3) of this subsection ensures that a preferred mortgage under this subsection retains that status if the vessel covered by the mortgage later relinquishes its title. If the vessel is subsequently documented, the continuing validity of the mortgage is determined by section 31321(g) (as enacted by this Act).

Subsection (e) of section 31322 clarifies the validity of preferred mortgages made under subsection (d). In the case of a state titled vessel covered by a preferred mortgage for which a new titling application is filed, the validity of the mortgage is governed by the law of the titling state in which the mortgage became preferred. In the case of a documented vessel covered by a preferred mortgage for which an application for a state title is filed, or a state titled vessel covered by a preferred mortgage for which an application for documentation is filed, the validity of the preferred mortgage is governed by section 31322(a) of title 46 (as enacted by this Act).

Information on vessels with preferred mortgages made under State law will be available to creditors from the vessel identification system under chapter 125 of title 46 (as enacted by this Act).

Section 31325. Enforcement of preferred mortgages

Subsection (c) of this section clarifies that the district courts have original jurisdiction for a civil action under subsection (b) of this section, and exclusive jurisdiction in the case of vessels documented or to be documented under chapter 121 of title 46.

Section 31329. Court sales of documented vessels

Under section 31329(d) a vessel may be operated by the trustee only with the approval of the Secretary. Under current law a vessel may be documented by a trust if all of the members of the trust are citizens of the United States. If the trust buying the vessel at the court sale includes foreign investors, the vessel cannot be documented. The Committee intends in this section that the vessel will only be "operated" in a maintenance manner, but not in a commercial service.

Section 31330. Penalties

Subsection (a) of this section adds criminal and civil penalties for a preferred mortgagor's failure to carry out certain requirements under chapter 313 of title 46 (as enacted by this Act).

Section 31343. Recording liens on preferred vessels

Subsection (d) of this section requires a person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) to record and discharge the lien as provided by the law of the State in which the vessel is titled.

SECTION 103. SURRENDER AND INVALIDATION OF DOCUMENTS

Section 12111(c)(3) is changed to prohibit the approval of the surrendering of a certificate of documentation for any vessel with a mortgage filed or recorded with the Secretary, not just a vessel with a preferred mortgage.

SECTION 104. MISCELLANEOUS AND CONFORMING PROVISIONS

Subsection (a)(1) of this subsection amends the definition of "vessel of the United States" to include vessels titled under the law of a State.

Subsection (a)(2) amends section 2110 of title 46, United States Code, to move the prohibition against charging fees for vessel documentation. This amendment does not direct the Secretary to charge fees for documentation of vessels, but would allow the Secretary to establish documentation fees under the user charge statute, 31 U.S.C. 9701. The Committee is aware of the depressed conditions that exist in many sectors of the merchant vessel industry, and directs the Secretary to adhere strictly to the requirements of the user charge statute in establishing documentation fees to ensure that they are fair and reasonable.

Subsection (a)(3) clarifies that the Secretary of Transportation has responsibility for the vessel documentation function, and ensures that the responsibility remains with the Secretary if the Coast Guard operates as a service in the Navy in time of war or when the President directs. Thus, the interrelated vessel identification, documentation, and mortgage recordation functions are all performed by the same authority.

Subsection (a)(4) amends section 12102 of title 46 to require that before a state titled vessel may be documented under chapter 121 of title 46, the title for that vessel must be surrendered.

Subsection (a)(5) amends section 12103(c)(1) to delete the requirement that a vessel's certificate of documentation contains the name and home port of the vessel, and to allow the Secretary to prescribe the manner of identifying and describing a vessel in the vessel's certificate of documentation.

Under subsection (b) of this section, the Committee intends that the addition of "control of a documented vessel" to section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) means the ability of a person to control the operations of that vessel. In corporations, this is most often through voting stock. However, this section should not limit transfers or sales of classes of stock in which the investor has no voting rights or other indicia of control directed towards the operation of the corporation of the vessel. The status of nonvoting stockholders is very similar to the status of limited partners under section 12102 of title 46, where the public interest is in general partners of documented vessels, not limited partners that merely provide financing for the venture. Nonvoting stocks that are convertible to voting stocks may be considered voting stocks for purposes of "control" from the date they are purchased if they are automatically coverted. However, if the convertible stocks are converted at the discretion of the stockholder, then the stock should be considered voting stock at the time it is converted. For example, if the holder of the convertible stock is not a citizen, and the conversion of that stock would place the operational control of the vessel in noncitizens, then, under the new penalty, that conversion would be void.

Fishing vessels, fish processing vessels, fish tender vessels, and vessels operated only for pleasure are exempted from section 9 of the Shipping Act, 1916, as amended by this subsection. The exemption only applies to vessels that are exclusively dedicated to one or a combination of those four purposes. The Committee does not intend that this amendment exempt those vessels from any other requirement of law, including U.S.-citizenship ownership requirements of the Commercial Fishing Industry Vessel Anti-Reflagging Act, Public Law 100-239.

Subsection (b) also adds a new penalty by voiding any charter, sale, transfer, or mortgage of a vessel, or interest in or control of that vessel, that is contrary to this section. The Committee believes this will allow continued U.S. control over vessels that have a national defense use, without scaring off investment in the U.S. fleet by legitimate investors by threatening a loss of their investment.

Subsection (e)(1) of this section sets the annual fee under section 12505 of title 46 (as enacted by this Act) at $1.00 for the vessel identification system in the three years 1989 through 1991. After this time, the fees must be established through regulations prescribed by the Secretary under 31 U.S.C. 9701, the general user charge statute, but cannot exceed $1.00 per vessel of the United States.

Subsection (e)(2) directs the Secretary to spend not less than an amount equal to the fees collected or estimated to be collected under this section to establish, centralize, and computerize records and other information maintained under chapters 121, 125, and 313 of title 46 (as enacted by this Act).

Subsection (g) ensures that the requirements of section 12502(a)(1) of title 46 (as enacted by this Act) concerning identification numbers, signal letters, and markings do not apply to a vessel without a unique number until the vessel is next documented, numbered, or titled or January 1, 1995, whichever is earlier.

Subsection (h) clarifies that the Coast Guard is not required to utilize personnel or equipment to carry out chapter 125 of title 46 (as enacted by this Act) concerning the vessel identification system, except to the extent funds are appropriated.

SECTION 106. REPEALS

Subsection (b)(5) of this section repeals section 12113 of title 46 and removes the requirement that the Secretary document vessels and record instruments through ports of documentation. The repeal of this section will allow the Secretary to consolidate and centralize these functions and avoid duplication of effort in the vessel documentation system.

This subsection also repeals section 12109(c) of title 46, which authorizes fees for recreational vessel licenses, because the repeal of the prohibition against charging fees for documentation under section 2110 of title 46 will allow the Secretary to charge for all documentation services under 31 U.S.C. 9701, the general user charge statute.

Sections 12114, 12115, 12116, and 12118 of title 46 are repealed by this subsection and partially consolidated under section 12503 of title 46 (as enacted by this Act).

The regulatory authority for the Secretary in section 12121 of title 46 is repealed as unnecessary because of the authority in section 2103 of title 46.

SECTION 107. EFFECTIVE DATES

This section has been changed to clarify three points:

First, under subsection (b), an instrument filed before January 1, 1989, that is not recorded, is deemed to comply with section 31321 of title 46 (as enacted by this Act) if it is in substantial compliance with the provisions in that section that had corresponding requirements when it was filed. It is not required to meet the additional new requirements under that section.

Second, under subsection (c), this section does not affect the validity of an instrument filed or recorded before January 1, 1989, if there was a corresponding requirement under the law on December 31, 1988. For example, under the old law an instrument had to include an affidavit of good faith and have the amount of the mortgage endorsed on the vessel's certificate of documentation. Both of these requirements have been eliminated, and there is no corresponding provision in the new chapter 313. Therefore, under this provision an instrument cannot be ruled invalid because it does not have a complete affidavit of good faith or because the endorsement is not on the document.

Third, under subsection (d), an instrument filed or recorded before January 1, 1989, is deemed to comply with any new requirement under chapter 313 affecting the validity of the instrument. For example, under the old law an instrument did not have to include the address of the parties. This paragraph clarifies that these are valid instruments even though they do not comply with this new requirement.

An additional subsection (f) has been added to this subsection to require the vessel identification system under chapter 125 of title 46 (as enacted by this Act) to be established before January 1, 1994.

SECTION 201. COASTWISE AND FISHERIES DOCUMENTATION

Subsection (a)(16) would allow the tug MARY L, United States official number 275311, to engage in the coastwise trade. This vessel was built in the United States but, due to an administrative oversight, the vessel was erroneously transferred to a U.S. citizen company whose President was a Dutch Canadian. Although the transfer was voided, to remove any uncertainty concerning the chain of title, special legislation granting coastwise privileges is being enacted. The vessel will be used to assist in construction projects in Alaska.

Subsection (a)(17) would allow the barge ZB-6, United States official number 505317, to engage in the coastwise trade. It was part of the same transaction that resulted in the MARY L being transferred to a U.S. citizen company whose President was a Dutch Canadian. Like the transaction with the MARY L, it, too, was voided, but in order to remove uncertainties in the chain of title, special legislation is being enacted. The barge will be used to assist in construction projects in Alaska

Subsection (a)(18) would permit the vessel KUT N OUT, hull identification number BERL1087M-80A-385-80 and Florida registration number FL7665FG, to engage in the coastwise trade. This 38' Bertram is U.S.-built but was registered in the Bahamas. Since the vessel was owned by foreign interests at one time, it cannot now engage in the coastwise trade without legislative relief. The vessel is intended to be used as a charter fishing vessel.

Subsection (a)(19) would permit the vessel FOXY LADY III, United States official number 299818, to engage in the coastwise and Great Lakes trades. This 33' Hatteras vessel is U.S.-built but was owned by a noncitizen at one time. The vessel is intended to be used as a charter fishing vessel on the Great Lakes.

Subsection (a)(20) would permit the vessel GIPSY, United States official number 903276, to engage in the coastwise trade if the vessel meets applicable Coast Guard inspection requirements.

Mr. Speaker, I reserve the balance of my time.

Mrs. BENTLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly support this bill, which recently passed the House as part of the omnibus drug bill. It represents the work of the gentleman from North Carolina [Mr. JONES], the distinguished chairman of the Committee on Merchant Marine and Fisheries, and the gentleman from Michigan [Mr. DAVIS], the distinguished ranking minority member, and also the efforts of many groups including the National Marine Bankers' Association, the Maritime Law Association, the American Bar Association, and the administration.

The vessel identification system established in this bill will allow law enforcement officers for the first time to identify the owners of all commercial and recreational vessels in the country. This system is based on a bill which was introduced last year, H.R. 3298.

This system will aid in tracking interstate movement of stolen boats and allow boat purchasers to obtain complete information on a boat before they buy it.

The Ship Mortgage Act codification in this bill modernizes the financing procedures for commercial vessels and will encourage investment in U.S.-flag ships.

Mr. Speaker, I urge my colleagues to vote in favor of H.R. 3105.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 3105 and urge its adoption by the House.

H.R. 3105 was passed unanimously by the House Merchant Marine and Fisheries Committee. Its purpose is to consolidate the various maritime laws dealing with ship mortgages.

Title II of the bill also includes a number of documentation exemptions for vessels that need special help from the Congress. I want to call particular attention to subsection 201(B) of H.R. 3105 which provides assistance to the vessel *Ocean Tempest*. The *Ocean Tempest* is a U.S.-built vessel owned by a U.S. company in Kodiak, AK. In 1972 it was sold from the defense reserve fleet to a scrap company and in 1974 resold to an offshore oil exploration company. At that time, the Maritime Administration placed a restriction on the vessel's documentation stating that it could not be used to transport passengers or cargo. Last year the *Ocean Tempest* was purchased by All Alaska Seafood Co. in Kodiak as a replacement vessel for another fish processor that had run aground. Unfortunately, the new owners were unaware of the contract restriction. This bill will lift that contract restriction so that the *Ocean Tempest* can join other Alaskan vessels in fully developing the rich bottomfish resources off Alaska.

Mr. Speaker, this is a noncontroversial bill and I believe it deserves adoption by the House.

Mr. DAVIS of Michigan. Mr. Speaker, I am pleased to have this opportunity to speak in support of the provisions in H.R. 3105 that establish a system to identify the owners of all U.S. vessels. These provisions represents the efforts of many groups including the National Marine Bankers Association, the Maritime Law Association, the American Bar Association, and the administration. I appreciate the continuing support for this system contributed by these groups and their hard work to refine it. This system will primarily benefit law enforcement officials, but others, including State boating officials, and commercial and recreational vessel owners, insurers, national boating organizations, and financiers will benefit from the system.

The vessel identification system in this provision will, for the first time, provide a way to identify the owners of all commercial and recreational vessels in this country. Since the late 1970's, the Merchant Marine and Fisheries Committee, of which I am the ranking minority member, has received testimony on the need to clearly and easily establish the owners and identities of vessels. Thousands of vessels are stolen annually in this country, and law enforcement officials have no way to identify the true owners of those vessels and to effectively track the interstate movements of those vessels. The Federal Aviation Administration currently maintains a system to identify the owners of aircraft, and the recently passed omnibus drug bill contains provisions reported by the Public Works and Transportation Committee to strengthen that system. I understand that many of the problems associated with identifying the ownership of aircraft also exist with regard to vessels, and should be alleviated by the vessel identification system. Earlier this Congress I introduced a bill, H.R. 3298, to address many of these problems.

This vessel identification system is required to be established by the Secretary of Transportation. The Secretary may require that the Coast Guard carry out this program, but this is not required by the provision. This system should be established in the most cost-efficient manner and combined, if possible, with other information systems the Secretary currently maintains. The system of information the Secretary maintains on documented vessels would be an appropriate information system to combine with the vessel information system, because the identification information maintained by the Secretary on documented vessels is part of the overall system of identification information for all vessels of the United States. Another reason to combine these systems is that the fees charged by the Secretary under the Ship Mortgage Act, 1920, as amended by this provision, may be sufficient to modernize the vessel information system maintained by the Secretary under that act, and also to offset the costs of establishing the vessel information system under this provision.

States are encouraged to participate in the system by making ownership information available on vessels in their States to the Secretary of Transportation. Participation is voluntary on the part of States, but as a benefit to vessel owners and financiers, vessel mortgages filed in participating States with approved titling systems will be given preferred status currently available to federally recorded vessel mortgages. In addition, if a State is employed by the Secretary to collect the $1 per vessel fee authorized by this provision, the State may retain half of the amounts collected to provide vessel identification information to the Secretary. This purpose would include making updates and improvements to State vessel titling and numbering schemes to more effectively provide information to the Secretary. Total fees paid by boaters may stay the same or actually decrease, because States will reap the efficiency of making certain improvements to their numbering systems with these funds. I believe that these inducements will encourage a broad participation in the vessel identification system by the States.

H.R. 3105 includes a revised version of a codification of the Ship Mortgage Act, 1920, recently reported by the Merchant Marine and Fisheries Committee (H. Rept. 100-918). It contains procedures to support the preferred status for State perfected mortgages or financing instruments, and many other provisions to complement the new vessel identification system. For these reasons, it is an important part of the overall vessel identification system.

The codification recognizes the prevalence of revolving credit loans in modern financing and allows their use in vessel financing. It eliminates a number of useless formalities such as requiring that a mortgage be endorsed on a vessel's document or the needless requirement that the Coast Guard be notified when a partial payment is made on a mortgage.

With respect to encouraging the financing of vessels, the codification establishes a nationwide indexing system which will allow a preferred ship mortgage to be valid from the date of filing. This will eliminate the current 8-month wait before a mortgage actually grants the security interest important to consumers and banks. While it will take some time to get this program operating, I am convinced that the new system will be a vast improvement over current labor intensive and time-consuming procedures in use today. Again, modern computer technology can easily handle these tasks. I want to commend those I mentioned earlier who have worked so closely with the committee and have been such a help in the development of this important piece of legislation. I also want to thank WALTER JONES, the distinguished chairman of the Merchant Marine and Fisheries Committee, for his hard work and leadership in introducing and developing the Ship Mortgage Act codification and also for his strong support of the vessel identification system. I also want to thank the chairman's staff for their hard work and dedication in developing this bill.

I urge my colleagues to support this provision.

Mrs. BENTLEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the bill, H.R. 3105, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to revise, consolidate, and enact certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46, United States Code, 'Shipping', and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3105, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

COMMISSION ON MERCHANT MARINE AND DEFENSE EXTENSION ACT OF 1988

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5452) to extend the Commission on Merchant Marine and Defense.

The Clerk read as follows:

H.R. 5452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commission on Merchant Marine and Defense Extension Act of 1988."

SEC. 2. EXTENSIONS.

Section 1536 of Public Law 98-525 is amended—

(1) By adding at the end of subsection (g), a new sentence as follows: "In addition to any reports submitted under this subsection, the Commission shall draft and submit to the Congress within the first 90 days of the 101st Congress, without prior review or approval by any official of the executive branch (other than the members and staff of the Commission), legislation necessary to implement the recommendations of the Commission; and shall prepare no later than December 5, 1989 a summary final report of the commission's findings, facts and conclusions."

(2) Strike subsection (h) and in lieu thereof insert the following:

(h) "The Commission shall cease to exist 90 days after the date on which the final report of the Commission under subsection (g) is submitted to the President and the Congress."

(3) Subsection (i) of such section is amended by striking out the first sentence and inserting in lieu thereof the following new sentence: "There is authorized to be appropriated for fiscal years 1985, 1986, 1987, 1988 and 1989 a total of $2,500,000 to carry out this section."

(b) The second sentence of subsection (i) is amended by striking out "36" and inserting in lieu thereof "48."

(c) Subsection (i) is further amended by adding at the end the following new sentence: "The Secretary of Defense shall, no later than November 1, 1988, reprogram $1,000,000 in unexpended funds appropriated to the Department of Defense for the use of the Commission further to this authorization."

The SPEAKER pro tempore. Is a second demanded?

Mrs. BENTLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. BENTLEY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5452, a bill that would extend the life of the Commission on Merchant Marine and Defense for 1 year and also make clear that it is within the scope of their authority to submit draft legislation to the Congress.

When the Commission was first conceived and as enacted in 1984, the goal was to examine the role of the Merchant Marine as part of the defense establishment, determine the adequacy of both shipbuilding and ship operation in respect to defense requirements, and, if inadequate, to make recommendations to the Congress to overcome any and all deficiencies. The urgency of the issue dictated the creation of an expert body, drawn from all sectors of the maritime and defense industries as well as Government, that would conduct their analysis and make recommendations dispassionately and objectively.

The Commission has comported itself in complete accordance with the congressional mandate, and will issue its final report in December of this year. The recommendations they make are clear and support the suspicion we have all had that our sealift capability and shipbuilding and ship repair capacity are both well below tolerable levels. Given the demands that would be made on these activities in the event of even a regional conflict, let alone a general war. What would round out the work of the Commission is specific legislation to implement their recommendations.

This legislation would enable the Commission to accomplish the goals set out by Congress, and will make an invaluable contribution to the defense of our Nation at a minimal cost.

I'd like to remind my colleagues. That while we enacted this legislation in 1984, the Commission did not, because of administration dawdling, convene until December 1986. The timetables set forth in the enabling legislation contemplated a 2-year period—the 100th Congress' term and the last 2 years of this administration, to work with the recommendations of the Commission. Unfortunately, we have come down to the wire through no fault of the Commission that has adhered to every time constraint imposed on it, and we owe it to ourselves and the security of this Nation to give the Commission the opportunity, by way of a very limited extension, to give us a final product.

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Mrs. BENTLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is essential that we extend the life and the mandate of the nonpartisan Commission on Merchant Marine and Defense if our country is to make progress in addressing and solving its growing maritime problem.

I am proud to join with the distinguished gentleman from North Carolina [Mr. JONES] and the gentleman from Florida [Mr. BENNETT] in helping to accomplish that goal by extending the Commission's life for 1 year and by giving it additional tasks.

As Chairman JONES has already pointed out, although the legislation for the Commission was passed in December, 1984, the Commission did not begin functioning until December, 1986.

The Commission has already done superlative work in identifying the threat to the national strategy and the national security by the continuing and growing shortage in strategic sealift and shipyard capability.

Unfortunately, however, neither the administration nor the Congress has yet acted to address the problem decisively and effectively.

We must do so, and the Commission can play a vital role in that effort.

First, Mr. Speaker, a new President will take office in January, and a new administration will be put in place.

By extending the Commission, we will give the new President the opportunity to have members of his team join with the other members of the Commission to examine what has been done and to look ahead as the new administration formulates its policy.

Second, action will require legislation.

I believe, and the gentleman from Florida believes, that the Commission can best assist by drafting legislation, based on its work and recommendations.

If it is to draft legislation, however, it must continue to exist and it must have the resources to do the job.

The bill requires that the Commission—which will then have representation from the new administration—draft and submit legislation to the new Congress within 90 days.

We in the Congress can then consider the proposed legislation, seek the Commission's explanations of it and can ask the Commission to reconsider, redraft, or to explore new alternatives.

Third, the Commission has by its hard work and responsible approach to the problem, established credibility as an impartial but effective body.

We need its continued expertise, both the Commissioners themselves and their staff, not only in increasing our understanding of the sealift problem and seeking solutions to it, but also in providing expert testimony and an informed sounding board for proposals and ideas.

Our work, and the administration's work, will not be completed quickly or easily; we will want and need the Commission's continued existence and support.

The Commission has already had more effect than most of its predecessors, but if we do not extend its life so that it can work with a new administration and a new Congress, both the momentum that it has generated and the knowledge that it has accumulated will be lost and sooner or later, we will have to start over again with a new Commission.

By that time, however, our maritime situation will have grown far worse, and our national security will be even more in peril.

Finally, we can continue the Commission at little cost, but with great benefit.

The staff and infrastructure are in place. The Commission's efforts, and the small amount of funding required to support them, will go for product, not for logistics.

Not only will it produce draft legislation for us to consider, but in a final report next December, it can alert us to its progress, to the evolving nature of the problem, and to the prospects for the future.

We will need and value its views on all of those subjects.

Mr. Speaker, our Nation's maritime posture and policy present a truly difficult problem and will require that both the Administration and the Congress make hard choices.

The Commission has already assisted us greatly in making progress, and it can assist us much more during the coming year.

I am honored to join with the distinguished and esteemed Gentleman from North Carolina [Mr. JONES] the chairman of the House Merchant Marine and Fisheries Committee, and the gentleman from Florida [Mr. BENNETT] to extend the Commission on Merchant Marine and Defense for an additional year.

I urge my colleagues to vote "aye" on H.R. 5452.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JONES of North Carolina. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the bill, H.R. 5452.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

FOREST WILDFIRE EMERGENCY PAY EQUITY ACT OF 1988

Mr. ACKERMAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1911) to amend title V, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies.

The Clerk read as follows:

S. 1911

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Forest Wildfire Emergency Pay Equity Act of 1988".

SEC. 2. Section 5547 of title 5, United States Code, is amended to read as follows:

"§ 5547. Limitation on premium pay

"(a) An employee may be paid premium pay under sections 542, 5545 (a), (b), and (c), and 5546 (a) and (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15. The first sentence of this subsection shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

"(b)(1) The provisions of subsection (a) shall not apply to the pay of any forest firefighter for any pay period in which such firefighter is assigned to work on, or in support of, forest wildfire emergencies.

"(2) Notwithstanding the provisions of paragraph (1), no forest firefighter employee may be paid premium pay to the extent that the aggregate rate of pay of such employee for the aggregate of all pay periods in any calendar year exceeds the maximum rate for GS-15 as provided under the General Schedule pursuant to subchapter III of chapter 53 of title 5, United States Code.

"(3) For purposes of this subsection, the term—

"(A) 'forest firefighter' means any employee of the Department of Agriculture or the Department of the Interior who is assigned to work on, or in support of, forest wildfire emergencies; and

"(B) 'in support of' means duties performed during a temporary assignment to work on a wildland fire suppression for which the salary costs of employees shall be paid from funds provided to the Forest Service, Bureau of Land Management, National Park Service, United States Fish and Wildlife Service or the Bureau of Indian Affairs for fire fighting.".

The **SPEAKER** pro tempore. Is a second demanded?

Mrs. MORELLA. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from New York [Mr. ACKERMAN] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. MORELLA] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. ACKERMAN].

GENERAL LEAVE

Mr. ACKERMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material, on the Senate bill presently under consideration.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. ACKERMAN. Mr. Speaker, I yield myslef such time as I may consume.

Mr. Speaker, S. 1911, the Forest Wildfire Emergency Pay Equity Act of 1988, amends section 5547 of title V, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies.

Under current law most Federal employees have their pay capped at the maximum rate of a GS-15 for any single pay period. This cap is a particular burden for Federal employees who fight forest fires. Because fighting forest fires is a 24-hour a day battle often lasting for months at a time, forest firefighters often exceed this cap and are forced to work for free.

In fact, in 1986, employees of the Forest Service contributed 8,340 hours of uncompensated overtime.

Congress has already addressed this problem for the short-term. The Department of Interior Appropriations Bill for fiscal year 1989 (Public Law 100-446) removed the overtime cap for forest fire fighters for the current fiscal year.

Mr. Speaker, forest fires are a recurring problem. So Congress should act to remove the cap permanently and that is what S. 1911 does.

Mr. Speaker, I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. MORELLA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge support of S. 1911, legislation to amend title V of the United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies.

This bill would provide full compensation to personnel who are assigned to toil against forest wildfire emergencies. Current law caps overtime pay for firefighters at a GS-15 level for any given pay period, even though that worker may have worked a 20-hour day. The continuing resolution pertaining to the Department of Health and Human Service appropriation lifted the overtime pay cap for fiscal year 1988 but S. 1911 removes the cap permanently. However, the firefighter cannot receive more than the maximum rate for the GS-15 level annually even though he or she may receive more than a GS-15 during some pay periods.

Each summer, there are emergencies, particularly in the West, where our Federal firefighters put their lives in jeopardy to contain and suppress devastating fires. Clearly, these men and women must be adequately compensated for their time, expertise and dedication.

The cost estimate for S. 1911 could be between $100,000 and $200,000 in most years, but could go up to $1.5 million when dry weather and fires increase firefighting activity, such as this year.

Again, Mr. Speaker, I urge support of S. 1911 for the benefit of these Federal Employees and for our citizens.

Mr. LEHMAN of California. Mr. Speaker, as my colleagues well know, forest fires raged in the West for the past two fire seasons, burning millions of acres of public and private land. Total losses in timber, property, grazing lands, watershed, habitat, and recreation are still uncalculated.

In California alone, 218,000 acres burned this year. Last year, over 873,000 acres burned. The 18th Congressional District experienced a loss of 140,000 acres and 18 families lost their homes. Were it not for the dedication and commitment of thousands of men and women who battled these blazes, the losses suffered would have been far greater.

Although the blazes and the heroic efforts of the firefighters were well publicized, one fact remains relatively unknown; due to a misguided provision of current Federal law, many of the Federal firefighters who worked day and night to battle the fires went unpaid for some of their overtime hours.

Under title 5 of the United States Code, regardless of how many hours a Federal employee works, his or her pay is capped at the maximum rate for a GS-15 employee. In 1987 alone, over 1,400 Federal firefighters hit the pay ceiling. Rather than walk off the fire lines, these Federal fire fighters continued to work, serving in a volunteer capacity alongside firefighters from the State, County, and local levels who continued to receive full compensation for their time.

Mr. Speaker, fires do not burn according to convenient Government pay schedules. It is time to correct this gross pay injustice. I urge final approval of S. 911 which, if enacted, would remove the cap on Federal firefighters' pay and allow our firefighters assigned to life-threatening wildfire situations to receive compensation for every hour they work.

Mr. DEFAZIO. Mr. Speaker, I would like to thank Chairman FORD and Chairman ACKERMAN for their support in making timely consideration of this important issue of pay equity possible.

To the men and women who risk their lives each year protecting our forests, property, and lives, we owe a debt of gratitude. Literally, a debt.

As Chairman ACKERMAN stated, under current law, Federal firefighters are prohibited from earning more than the maximum level of a GS–15 for any biweekly period, regardless of how many hours they work. Yet, year after year, these brave and dedicated individuals have been faithful to work whatever hours necessary to bring these fires under control.

Federal fire crews often work alongside State and local employees who are not subject to such pay restrictions. In many cases, when a State firefighter exceeds a standard 72 hour work shift, they automatically receive compensation for an additional 24 overtime hours whether they work all those hours or not.

The Forest Service employs rotation system designed to prevent employees from reaching the pay cap and to ensure their safety by limiting the number of consecutive days they can work. However, during peak fire months employees are occasionally called upon to work beyond normal overtime hours, even though under current law, they cannot be paid for those hours.

The severity of this year's fire season required a dispatch of an unprecendented 40,000 firefighters and fire personnel. Thousands of these individuals spent up to 4 and 6 weeks at some fire sites compared with the Forest Service's normal 21 day assignment.

Recognizing the unique position of these brave men and women, Congress authorized removing the pay cap in both the fiscal year 1988 continuing resolution and the fiscal year 1989 Interior Appropriation bill. S. 1911 will make that authorization permanent.

Mr. Speaker, I had the opportunity to visit a fire site last year where I met several firefighters who had gone beyond the pay cap. Yet, these weary and discouraged men and women continued to work in the heat, smoke, and dust to supress the fire. That's what prompted me to introduce, H.R. 4695, a companion bill to S. 1911. These bills make possible the fair treatment for all the brave men and women who protect America's wildlands through their long hours of hard and hazardous work.

Mr. Speaker, again, I thank Mr. FORD and Mr. ACKERMAN for bringing this bill to the floor for consideration. I urge my colleagues to support S. 1911 which will permanently rectify this unjust situation and shows our support for our Federal firefighters.

Mr. SHUMWAY. Mr. Speaker, today I rise in strong support of S. 1911, the Forest Wildfire Emergency Pay Equity Act of 1988. As we are all aware, this and last year's fire seasons have proven to be two of the most prolific on record. While complete figures have yet to be compiled form the fires in Yellowstone National Park and other Western States, we may be certain that the damage to our national parks, forest lands and other public and private property would have been far worse if it were not for the determination, hard work, and long hours of our Federal firefighters.

These dedicated men and women risked their lives to protect our citizens, forests, and wildlife. For some firefighters, it was necessary to work around the clock under perilous conditions to combat the fires. Many of these individuals are Federal employees, GS level 7 and above with exempt status, covered by title 5 U.S.C. section 5547. Pursuant to title 5, section 5547, an employee may be paid premium pay only to the extent that the payment does not result in his or her aggregate rate of pay for a single pay period to exceed the maximum rate of a GS–15. As a result, many Federal firefighters have forfeited pay for many overtime hours worked. It is my strong belief that these workers should be compensated accordingly. Like their nonexempt Federal counterparts, as well as State and local firefighters with whom they work side by side, these Federal firefighters should be paid fairly for hours worked.

During last year's devastating fire season, my home State of California endured its worst fires in decades. Ove 870,000 acres of forest lands were destroyed by fire in California with the damage amounting to $46.8 million on State lands alone. Better than 1,400 Federal firefighters reached the pay ceiling last year with aggregate pay loss totaling approximately $700,000 according to the Forest Service. Last year, a bipartisan group of my colleagues and I were able to secure richly deserved back pay for these affected Federal employees via the appropriations process. Now it is time permanently correct this unequity. Therefore I respectfully urge my colleagues to support S. 1911.

Mrs. MORELLA. Mr. Speaker, I yield back the balance of my time.

Mr. ACKERMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. ACKERMAN] that the House suspend the rules and pass the Senate bill, S. 1911.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

COMPENSATION FOR CERTAIN FEDERAL POLICE

Mr. ACKERMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5319) relating to compensation for members of the U.S. Park Police and members of the U.S. Secret Service Uniformed Division, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RATES OF BASIC PAY.

(a) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—

(1) IN GENERAL.—Subchapter VII of chapter 53 of title 5, United States Code, is amended by adding at the end the following:

"§ 5376. United States Park Police; United States Secret Service Uniformed Division

"(a) Subject to subsection (b), the annual rates of basic pay of members of the United States Park Police and members of the United States Secret Service Uniformed Division shall be fixed in accordance with the following schedule of rates:

SCHEDULE FOR THE UNIFORMED DIVISION OF THE SECRET SERVICE AND THE UNITED STATES PARK POLICE

Class and title	Service Step				
	1	2	3	4	5
Class 1: Officer/Private	23,487	24,661	25,894	27,189	28,548
Class 3: Detective	29,360	30,828	32,370	33,988	35,688
Class 4: Sergeant	31,897	33,492	35,167	36,925	38,771
Class 5: Lieutenant	36,868	38,711	40,677	42,679	44,813
Class 7: Captain	43,668	45,852	48,144	50,522	
Class 8: Major/Inspector	50,613	53,144	55,801	58,591	
Class 9: Deputy chief	59,389	62,358	65,476	68,750	
Class 10: Chief/Assistant chief	70,412	73,932	77,629		
	6	7	8	9	
Class 1: Officer/Private.	29,976	31,474	33,048	34,700	
Class 3: Detective	37,472	39,346			
Class 4: Sergeant	40,710				
Class 5: Lieutenant					
Class 7: Captain					
Class 8: Major/Inspector					
Class 9: Deputy chief					

SCHEDULE FOR THE UNIFORMED DIVISION OF THE SECRET SERVICE AND THE UNITED STATES PARK POLICE—Continued

Class and title	Service Step				
	1	2	3	4	5
Class 10: Chief/Assistant chief					

"(b)(1)(A) The Secretary of the Interior shall—

"(i) conduct annual surveys comparing the minimum rates of basic pay for entry-level positions within the United States Park Police force with the minimum rates of basic pay for similar positions in police departments described in subparagraph (B); and

"(ii) effective as of the beginning of the first applicable pay period commencing on or after October 1 of the applicable year—

"(I) increase the minimum rates of basic pay for entry-level positions within the United States Park Police force by such amounts as may be necessary to ensure that such minimum rates are comparable to the minimum rates payable for similar positions in police departments described in subparagraph (B); and

"(II) make corresponding increases in all step rates of each pay range applicable to entry-level positions within the United States Park Police force and all step rates of every other pay range applicable to positions within the United States Park Police force.

"(B)(i) Annual surveys under this paragraph shall be conducted with respect to those police departments within the areas described in clause (ii) which the Secretary of the Interior determines are of sufficient size so as to permit meaningful comparisons under this paragraph.

"(ii) The areas under this clause are—

"(I) the Washington, D.C.-Maryland-Virginia Metropolitan Statistical Area;

"(II) the New York-Northern New Jersey-Long Island, New York-New Jersey-Connecticut Consolidated Metropolitan Statistical Area; and

"(III) the San Francisco-Oakland-San Jose, California Consolidated Metropolitan Statistical Area;

as defined by the Office of Management and Budget as of the date of the enactment of this section.

"(2)(A) The Secretary of the Treasury shall—

"(i) conduct annual surveys comparing the minimum rates of basic pay for entry-level positions within the United States Secret Service Uniformed Division with the minimum rates of basic pay for similar positions in police departments described in subparagraph (B); and

"(ii) effective as of the beginning of the first applicable pay period commencing on or after October 1 of the applicable year—

"(I) increase the minimum rates of basic pay for entry-level positions within the United States Secret Service Uniformed Division by such amounts as may be necessary to ensure that such minimum rates are comparable to the minimum rates payable for similar positions in police departments described in subparagraph (B); and

"(II) make corresponding increases in all step rates of each pay range applicable to entry-level positions within the United States Secret Service Uniformed Division and all step rates of every other pay range applicable to positions within the United States Secret Service Uniformed Division.

"(B)(i) Annual surveys under this paragraph shall be conducted with respect to those police departments within the area described in clause (ii) which the Secretary of the Treasury determines are of sufficient size so as to permit meaningful comparisons under this paragraph.

"(ii) The area under this clause is the Washington, D.C.-Maryland-Virginia Metropolitan Statistical Area, as defined by the Office of Management and Budget as of the date of the enactment of this section.

"(3) The rates of pay that take effect under this subsection shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith, all prior rates or adjustments which took effect under this section or prior provisions of law with respect to the United States Park Police or the United States Secret Service Uniformed Division, as the case may be.

"(4) The rates of pay that take effect under this subsection shall be printed in the Federal Register and the Code of Federal Regulations.

"(c) The Secretary of the Interior, in carrying out subsection (b)(1), and the Secretary of the Treasury, in carrying out subsection (b)(2), shall provide for meetings with and give thorough consideration to the views and recommendations of appropriate employee organizations representing substantial numbers of members of the United States Park Police and the United States Secret Service Uniformed Division, respectively, with regard to—

"(1) the coverage of the respective annual surveys to be conducted by each such Secretary under subsection (b);

"(2) the process by which the comparisons required under subsection (b) shall be made; and

"(3) any increases to be made in rates of pay based on any such annual survey.

"(d) Pay may not be paid, by reason of any provision of this section, at a rate in excess of the rate of basic pay for level V of the Executive Schedule.".

(2) Table of sections.—The table of sections for chapter 53 of title 5, United States Code, is amended by adding after the item relating to section 5375 the following:

"5376. United States Park Police; United States Secret Service Uniformed Division.".

(b) Conforming Amendment.—Section 501 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-416) is amended by striking subsections (b) and (c) and inserting in lieu thereof the following:

"(b) Any reference in any law to the salary schedule in section 101 of this Act with respect to officers and members of the United States Park Police force or to officers and members of the United States Secret Service Uniformed Division shall be considered to be a reference to the schedule under subsection (a) of section 5376 of title 5, United States Code, as adjusted in accordance with applicable provisions of subsection (b) of such section.".

(c) Effective Date; Transition Provisions.

(1) Conversion to new pay schedule.—

(A) In general.—Effective for pay periods beginning on or after October 1, 1988, the Secretary of the Interior shall fix the rate of basic pay for individuals who are officers or members of the United States Park Police as of September 30, 1988, and the Secretary of the Treasury shall fix the rate of basic pay for individuals who are officers or members of the United States Secret Service Uniformed Division as of September 30, 1988, in accordance with the following:

(i) If the officer or member is receiving a rate of basic pay which is less than the minimum rate of the appropriate class under section 5376(a) of title 5, United States Code, as added by this Act, such officer's or member's basic pay shall be increased to that minimum rate.

(ii) If the officer or member is receiving a rate of basic pay which is equal to a rate of the appropriate class under section 5376(a) of title 5, United States Code, as added by this Act, such officer or member shall receive basic pay at that rate under such section 5376(a).

(iii) If the officer or member is receiving a rate of basic pay which is between two rates of the appropriate class under section 5376(a) of title 5, United States Code, as added by this Act, such officer or member shall receive basic pay at the higher of the two rates under such section 5376(a).

(iv) If the officer or member is receiving a rate of basic pay which is in excess of the maximum rate of the appropriate class under section 5376(a) of title 5, United States Code, as added by this Act, such officer or member shall continue to receive basic pay without change in rate until—

(I) such officer or member leaves that position, or

(II) such officer or member is entitled to receive basic pay at a higher rate,

but, when any such position becomes vacant, the rate of basic pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

For the purpose of this paragraph, the term "basic pay" does not include premium pay or any form of additional compensation (such as for service longevity or for bomb disposal duty or duty as a helicopter pilot or technician).

(B) Conversion not to be considered a transfer or promotion.—The conversion of positions and individuals to appropriate classes of the pay schedule under section 5376(a) of title 5, United States Code, as added by this Act, and the initial adjustment of rates of basic pay of those positions and individuals, in accordance with subparagraph (A), shall not be considered to be transfers or promotions within the meaning of section 304 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-413).

(C) Credit for earned increases.—Each officer or member whose position is to be converted to the pay schedule under section 5376(a) of title 5, United States Code, as added by this Act, in accordance with subparagraph (A), and who, prior to the adjustment under such subparagraph, has earned, but has not been credited with, an increase in such officer's or member's rate of basic pay or other form of compensation (including additional compensation for service longevity), shall be afforded such increase before such officer's or member's rate of basic pay is adjusted under that subparagraph.

(D) Savings provision.—Each officer or member whose position is converted to the pay schedule under section 5376(a) of title 5, United States Code, as added by this Act, in accordance with subparagraph (A), shall be granted credit, for purposes of such officer's or member's first step increase under such pay schedule for all satisfactory service performed by such officer or member since such officer's or member's last increase in basic pay prior to the adjustment of such officer's or member's rate of basic pay under that subparagraph.

(2) Annual surveys.—

(A) Initial adjustment to be made for fiscal year 1990.—Pay adjustments pursuant to the surveys conducted by the Secretary of the Interior and the Secretary of the Treasury under section 5376 of title 5, United States Code, as added by this Act, shall be made beginning with applicable pay periods commencing on or after October 1, 1989.

(B) Savings provision.—Nothing in this section, nor in any of the amendments made by this section, shall have the effect of preventing officers or members of the United States Park Police or of the United States Secret Service Uniformed Division from receiving any pay adjustment which would become effective during the fiscal year beginning on October 1, 1988, pursuant to section 501 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-416), as in effect on the day before the date of the enactment of this Act.

SEC. 2. SERVICE STEP ADJUSTMENTS.

(a) In General.—Section 303 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-412) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in subsection (a), by striking "Each" and inserting in lieu thereof "Except as provided in subsection (b), each"; and

(3) by inserting after subsection (a) the following:

"(b) Each officer and member of the United States Park Police and each officer and member of the United States Secret Service Uniformed Division who has not reached the maximum rate of pay for the class in which his position is placed shall, if he has a current performance rating of 'satisfactory' or better, be advanced in pay successively to the next higher rate within such class at the beginning of the next pay period following the completion of 52 calendar weeks of active service in his service step.".

(b) Effective Date; Transition Rule.—

(1) Effective date.—The amendments made by this section shall be effective in fiscal years beginning after the date of the enactment of this Act.

(2) Transition rule.—In the case of an officer or member of the United States Park Police or of the United States Secret Service Uniformed Division who, as of the date on which the amendments made by this section become effective, has performed service creditable towards a service step adjustment under section 303 of the District of Columbia Police and Firemen's Salary Act of 1958 (as in effect immediately before the effective date of such amendments), the first service step adjustment for such officer or member under such section (as amended by this section) shall be made in accordance with the following:

(A) Creditability of prior service.—The officer or member shall be granted credit under this paragraph for any service performed by such officer or member before such date which would otherwise have been creditable towards a service step adjustment under such section 303 if this section had not been enacted.

(B) Minimum number of weeks required.—If, as of the effective date of the amendments made by this section, the officer or member has not reached the maximum rate of pay for his class, such officer or member shall, in lieu of the number of weeks which would otherwise have been required if this section had not been enacted, be eligible for his first service step adjustment under such section 303 (as amended)—

(i) at the beginning of the first pay period beginning after such effective date, if the officer or member has, as of such effective date, completed at least 52 calendar weeks of active service in his service step; or

(ii) if the officer or member has not yet completed at least 52 calendar weeks of active service in his service step as of such effective date, at the beginning of the first pay period beginning after such officer or member completes at least 52 calendar weeks of active service.

For the purpose of this subparagraph, the term "calendar week of active service" has the meaning given such term by section 303(c) of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-413(c)), as amended by this section.

SEC. 3. ADDITIONAL COMPENSATION FOR TECHNICIANS.

(a) In General.—Section 302(b) of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4-411(b)) is amended by adding at the end the following new sentence: "In applying this subsection in the case of an officer or member of the United States Park Police or the United States Secret Service Uniformed Division, the additional compensation authorized by this subsection shall be deemed to be $1,500 per annum.".

(b) Effective Date.—The amendment made by this section shall be effective in fiscal years beginning after the date of the enactment of this Act.

SEC. 4. PREMIUM PAY.

(a) Premium Pay for Night Duty and Sunday Work.—The first section of the Act entitled "An Act to provide a five-day week for officers and members of the Metropolitan Police force, the United States Park Police force and the White House Police force", approved August 15, 1950, as amended (D.C. Code, sec. 4-1104) is amended—

(1) by redesignating subsection (h) as subsection (j); and

(2) by inserting after subsection (g) the following new subsections:

"(h)(1) An officer or member of the United States Park Police force or the United States Secret Service Uniformed Division is entitled to be compensated for nightwork, excluding any rollcall time, at such officer's or member's rate of basic compensation plus premium pay amounting to 4 percent of that basic rate.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, for the purpose of this subsection, 'nightwork' has the meaning given it in the first sentence of section 5545(a) of title 5, United States Code.

"(B) The authorizing official for the United States Park Police force or the United States Secret Service Uniformed Division may exercise the same authority as is provided for under section 5545(b) of title 5, United States Code.

"(i)(1) An officer or member of the United States Park Police force or the United States Secret Service Uniformed Division who performs work during such officer's or member's basic workday which is not overtime work, and any part of which is performed on Sunday, is entitled to be compensated for that entire period of work (excluding any rollcall time) at such officer's or member's rate of basic compensation plus premium pay at a rate equal to 25 percent of that basic rate.

"(2) Premium pay under this subsection is in addition to premium pay which may be due for the same work under subsection (h) of this section, providing premium pay for nightwork.".

(b) Effective Date.—The amendments made by this section shall be effective in fiscal years beginning after the date of the enactment of this section.

SEC. 5. COMPLIANCE WITH BUDGET ACT.

Any spending authority provided for in this Act shall be available only to the extent of available appropriations.

The SPEAKER pro tempore. Is a second demanded?

Mrs. MORELLA. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. Ackerman] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. Morella] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. Ackerman].

Mr. ACKERMAN. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5319, the bill presently being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. ACKERMAN. Mr. Speaker, H.R. 5319 is a bill to adjust the salary and benefits of the officers and members of the Uniformed Division of the Secret Service and the U.S. Park Police in order to keep their salaries comparable with other police departments.

H.R. 5319 establishes a new pay schedule for the officers and members of the Uniformed Division of the Secret Service and the U.S. Park Police. It also requires the Secretary of the Treasury and the Secretary of the Interior to conduct annual wage surveys and to adjust the pay of officers and members of both groups on the basis of these surveys.

H.R. 5319 also provides annual step increases for satisfactory performance, premium pay for night and Sunday work, and an increase in the pay allowance for technicians.

Mr. Speaker, I want to thank all the members of the subcommittee for cosponsoring this legislation and I especially want to thank the ranking Republican, the gentleman from Indiana, who lent his support to this issue early in the process.

Mr. Speaker, I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. MORELLA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as an original cosponsor of H.R. 5319, I urge the House to support this legislation relating to compensation for members of the U.S. Park Police and members of the U.S. Secret Service Uniformed Division.

This bill is the combination of H.R. 2943 and H.R. 2944 which was brought together by the chairman of the Subcommittee on Compensation and Employee Benefits, after exhaustive hearings. I want to take the opportunity to commend the gentleman from New York [Mr. ACKERMAN] who has worked diligently to bring this legislation to the floor in order to grant a pay increase for the members of the Park Police and the U.S. Secret Service Uniformed Division.

H.R. 5319 provides for a system for pay increases that do not exist at present; it does not impede any pay raise which these employees expect in January. The bill also provides for a yearly within grade increase and special pay premium pay for night and Sunday work.

This measure provides that annual pay increases for the Park Police would be based on Washington, DC, Maryland, Virginia metropolitan statistical area; the greater New York, northern New Jersey, Long Island; New York, New Jersey, Connecticut consolidated metropolitan statistical area and the San Francisco, Oakland, San Jose, CA, consolidated metropolitan statistical area police departments; the USSS Uniformed Divison would be based on Washington, DC, Maryland and Virginia metropolitan statistical area police pay.

Mr. Speaker, we have been losing our Federal police personnel to local jurisdictions. The average amount spent to train each officer is $15,000. We need to note that each trainee is given their salary while in training, so the actual amount spent is about $38,000. To keep salaries low, after spending thousands of dollars in training police officers, just to lose them to a local police department does not make any business sense at all.

Mr. Speaker, all Members may not be familiar with the range of service offered by these two police organizations. By statute, they have the same powers as the District of Columbia police, lately they have had to take on additional duties to counter the drug traffic that has permeated our country. They have been on the front line of fire in the areas where they are stationed.

The Federal police are unique in regards to the law enforcement authority granted to them. By statute they have and perform the same powers and duties as the metropolitan police of the District of Columbia. In addition, U.S. Park Police officers have been granted peace officer status by those States where park police are permanently assigned, and officers assigned to New York and San Francisco are commissioned as deputy U.S. marshals. Furthermore, the U.S. Park Police are authorized to enforce Federal laws in all Federal areas within the environs of Washington, DC.

Police services are provided to other governmental entities such as the Department of State, Department of Agriculture, Department of Treasury, National Aeronautics and Space Administration [NASA], and the District of Columbia Government. Officers are assigned to the Drug Enforcement Agency task forces including the mass transportation detail—interdiction of narcotics—at the regional airports. These police provide assistance to the U.S. marshal's service in their witness security and protective services program and to the Federal Emergency Management Agency.

In addition to their regular police duties, police escort the President of the United States and other dignitaries, provide Presidential police protection while the President is at Camp David, and maintain helicopters which in addition to patrol work are staffed with paramedics for emergency assistance to those in need in the Greater Washington metropolitan area. Routinely they are called upon to ensure law and order for large planned demonstrations—civil disobedience—and special events—Marine Corps Marathon, 4th of July Celebration, Folk Life Festival, and so forth.

Briefly, Mr. Speaker, the intent of H.R. 5319 is to adjust the salary of the U.S. Park Police and the U.S. Secret Service Uniformed Division so that these Federal law enforcement officers will receive remuneration which is commensurate with their expanded duties. They must be paid at a rate which is competitive with their counterpart in local jurisdictions who perform similar duties. To offer a competitive salary is important, Mr. Speaker, in order that the Federal Government can recruit and retain the highest quality candidate. I urge passage of this bill.

Mr. MYERS of Indiana. Mr. Speaker, I commend the gentleman from New York [Mr. ACKERMAN] for his leadership on H.R. 5319. This legislation is a result of hearings conducted last May by the Subcommittee on Compensation and Employee Benefits on which I serve as the ranking Republican member.

Testimony presented at the hearing clearly demonstrated that U.S. Park Police and Secret Service Uniformed Division officers were not receiving comparable compensation as compared to other local police departments in the Washington, DC, area.

The Secret Service Uniformed Division and the Park Police are highly trained professional law enforcement agencies whose members receive their training at the Federal Law Enforcement Academy in Georgia. However, unlike any police department in the Nation the Secret Service and Park Police have law enforcement duties that are considered unusual. In fact, it would be rather difficult to compare these two police groups with any other police department in the United States because of their unique responsibilities.

The Secret Service Uniformed Division's primary responsibility is to guard the White House, the President of the United States, and the foreign missions located in the Washington area. Like Secret Service agents, the Uniformed Division also travels with the President to provide greater security.

The U.S. Park Police is what many might call a full service police agency with jurisdiction in Washington, DC, Virginia, Maryland, New York, and California. The 600-man Park Police have a mounted horse patrol whose members are seen frequently patrolling on the mall, a well respected drug interdiction unit, a SWAT team, and bomb sniffing dogs. I doubt that anyone will ever forget the heroic efforts of a U.S. Park Police helicopter crew which saved the lives of five people in a daring rescue during the Air Florida crash into the icy Potomac River several years ago.

I strongly believe that pay for Federal officers should be ranked among the highest in the area. We must establish the benchmark for Federal police officers' pay and not constantly play catchup with pay levels of local departments.

I further urge my colleagues to support H.R. 5319 and hope that the other body will consider this proposal before the adjournment of this Congress.

Mr. PASHAYAN. Mr. Speaker, I am pleased to support H.R. 5319, a bill to adjust the salary and other benefits for the U.S. Park Police and the Secret Service Uniform Division. I should like to thank my colleagues Congressman JOHN MYERS, the ranking minority member of the Subcommittee on Compensation and Employee Benefits, and Congressman GARY ACKERMAN, the chairman of the subcommittee, for their work and leadership on this legislation. I should also like to thank Congresswoman Connie Morella and Congressman Mickey Leland for their help in bringing this legislation to the floor.

H.R. 5319 is the result of a compromise worked out between all the members of the subcommittee, as well as the U.S. Park Police and the Secret Service Uniformed Division. This legislation is long overdue; we need to assure that these two elite Federal police forces are adequately compensated to maintain a high level of integrity and efficiency that the citizens of the United States have come to expect over the years. It is necessary to reform the salary and benefit structure so that these two police agencies are comparable with other departments. They must be able to attract and retain highly qualified police officers.

Due to the unique and critical nature of the duties of the Park Police, who come under the Department of the Interior National Park Service, and the Secret Service Uniformed Division, who come under the Department of the Treasury, it is essential that we maintain the highest level of law enforcement.

The U.S. Secret Service Uniformed Division was established in 1922 as the White House Police. The primary function of this force is protection of the President and the Vice President and their immediate families. In addition, their duties include the protection of diplomats while at diplomatic missions located in the Washington, DC, area. In the protection of the President and others this elite group uses specialized units such as bomb-detection dogs, and antisniper units.

The U.S. Park Police are an urban police force established in 1791, the oldest police force in the United States. Their primary purpose is to investigate, apprehend, and detain persons suspected of criminal activity against the United States. They are to patrol national park areas in the Nation's Capital and the surrounding counties of Maryland and Virginia, as well as certain Federal park areas in New York and California. In addition the Park Police have concurrent jurisdiction with the metropolitan police of the District of Columbia. The Park Police are responsible for escorting the President and the other dignitaries throughout the Washington metropolitan area. They maintain two patrol-medivac helicopter units, and are often called upon to assure law and order for large planned demonstrations. The Park Police were responsible for the heroic Potomac River rescue of the survivors of the Air Florida disaster in January 1982.

Mr. Speaker, I urge all my colleagues to support this needed legislation.

Mrs. MORELLA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ACKERMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. Ackerman] that the House suspend the rules and pass the bill, H.R. 5319, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

IMMIGRATION TECHNICAL CORRECTIONS ACT OF 1988

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2479) to amend the Immigration and Nationality Act to make technical corrections in immigration-related laws.

The Clerk read as follows:

S. 2479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; SHORT REFERENCES TO ACTS.

(a) Short Title.—This Act may be cited as the "Immigration Technical Corrections Act of 1988".

(b) Abbreviated References Used in Act.—In this Act:

(1) The term "IRCA" refers to the Immigration Reform and Control Act of 1986 (Public Law 99-603).

(2) The term "DOJAA" refers to the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99-500).

(3) The term "IMFA" refers to the Immigration Marriage Fraud Amendments of 1986 (Public Law 99-639).

(4) The term "INAA" refers to the Immigration and Nationality Act Amendments of 1986 (Public Law 99-653).

SEC. 2. CORRECTIONS RELATING TO THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (PUBLIC LAW 99-603).

(a) Section 101 of IRCA.—

(1) Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a), added by section 101(a) of IRCA, is amended as follows:

(A) In the third sentence of subsection (b)(1)(A), strike "such sentence" and insert "the first sentence of this paragraph" and strike "such a document" and insert "such another document".

(B) In subsection (d)(3)(D), strike "REQUIRING TWO YEARS NOTICE AND CONGRESSIONAL REVIEW" and insert "DEFINED".

(C) In subsection (e)—

(i) in paragraphs (1) and (3), insert "or (g)(1)" after "subsection (a)" each place it appears,

(ii) in paragraph (3), strike "or (5)" each place it appears and insert ", (5), or (6)",

(iii) redesignate paragraphs (6) through (8) as paragraphs (7) through (9), respectively, and

(iv) insert after paragraph (5) the following new paragraph:

"(6) Order for prohibited indemnity bonds.—With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).".

(D) In subsection (e)(4)(A), strike "subparagraph" each place it appears in clauses (ii) and (iii) and insert "paragraph".

(E) In subsection (g)(2), insert "under subsection (e)" after "administrative hearing".

(F) In subsection (i)(3)(B)(iii)—

(i) strike "a order" and insert "an order", and

(ii) strike "paragraph (1)(A)" and insert "subsection (a)(1)(A)".

(G) In subsection (j)(1), strike "Act" and insert "section" and strike "of the United States".

(H) In subsection (j)(2), strike "that section" and insert "this section".

(2) Section 101(b)(2) of IRCA is amended by inserting before the period the following: "; except that if the provisions of section 274A of the Immigration and Nationality Act are terminated as of a date under subsection (l) of such section, then such amendments shall no longer apply as of such date".

(b) Section 102 of IRCA.—Section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b), added by section 102(a) of IRCA, is amended—

(1) in subsection (a)(1), by inserting ", as defined in section 274A(h)(3)" after "unauthorized alien";

(2) in subsection (e)(3), by striking "said";

(3) in subsection (g)(2)(A), by striking "that that" and inserting "that";

(4) in subsection (g)(2)(B)(ii), by striking "274(b)(5)" and inserting "274A(b)(5)";

(5) in subsection (g)(3), by striking "has not engaged or" and inserting "has not engaged and"; and

(6) in subsection (h), by striking "Attorneys' " and inserting "Attorney's".

(c) Section 103 of IRCA.—Section 103(a)(4) of IRCA is amended by inserting "not more than" immediately before "$2,000".

(d) Section 112 of IRCA.—

(1) Section 274(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)), as amended by section 112(a) of IRCA, is amended—

(A) by striking "this subsection" and inserting "this paragraph", and

(B) by inserting "or" after "Code,".

(2) Section 112(b) of IRCA is amended—

(A) in paragraph (5)—

(i) by striking "Federal Maritime Commission" and inserting "Maritime Administration", and

(ii) by inserting "(40 U.S.C. 484(i))" after "1949"; and

(B) in paragraph (8)—

(i) by inserting "(A)" after "(8)", and

(ii) by adding at the end the following new subparagraph:

"(B) by striking out 'was not entitled to enter, or reside within, the United States' in paragraph (5)(C) and inserting in lieu thereof 'had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law', and".

(e) Section 116 of IRCA.—Section 116 of IRCA is amended—

(1) by inserting ", as amended by section 1751(d) of the Anti-Drug Abuse Act of 1986," after "1357)", and

(2) by redesignating the subsection added by such section as subsection (e).

(f) Section 117 of IRCA.—(1) Section 245(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1255(c)(2)), as amended by section 117 of IRCA, is amended—

(A) by inserting "or (I)" after "101(a)(27)(H)",

(B) by inserting "or" after "no fault of his own",

(C) by striking "not in legal" and inserting "in unlawful", and

(D) by striking "legal status" and inserting "lawful status".

(2) The amendments made by paragraph (1) and by section 117 of IRCA shall apply to applications for adjustment of status filed on or after November 6, 1986.

(g) Section 121 of IRCA.—Section 484 of the Higher Education Act of 1965 (20 U.S.C.

1091), as amended by section 121(a)(3) of IRCA, is amended—

(1) by redesignating the subsections (c) through (e) added by section 121(a)(3) of IRCA as subsections (h) through (j), respectively;

(2) by inserting the following headings after the subsection designation of each such redesignated subsection:

(A) subsection (h): "IMMIGRATION STATUS VERIFICATION REQUIRED.—";

(B) subsection (i): "LIMITATIONS OF ENFORCEMENT ACTIONS AGAINST INSTITUTIONS.—"; and

(C) subsection (j): "VALIDITY OF LOAN GUARANTEES FOR LOAN PAYMENTS MADE BEFORE IMMIGRATION STATUS VERIFICATION COMPLETED.—";

(3) in subsection (i), as so redesignated, by striking "(c)(4)(A)(ii)", "(c)(4)(B)(ii)", and "(c)(5)(B)" in paragraphs (2), (3), and (4), respectively, and inserting "(h)(4)(A)(ii)", "(h)(4)(B)(ii)", and "(h)(5)(B)", respectively; and

(4) in subsection (j), as so redesignated—

(A) by striking "subsection (c)" both places it appears and inserting "subsection (h)", and

(B) by striking "date of" and inserting "date".

(h) SECTION 201 OF IRCA.—

(1) Section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a), as added by section 201 of IRCA, is amended—

(A) in subsection (a)(1)(B), by striking "18-month" and inserting "12-month";

(B) in subsection (b)(1)(D)(ii)—

(i) by inserting "OR DEVELOPMENTALLY DISABLED" after "ELDERLY" in the heading, and

(ii) by inserting "or who is developmentally disabled" after "65 years of age or older";

(C) in subsection (c)(1), by amending the second sentence to read as follows: "As used in this section, the term 'qualified designated entity' means an organization or person designated under paragraph (2).";

(D) in the first sentence of subsection (c)(5)—

(i) in subparagraph (A), by inserting "or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986" after "paragraph (6)"; and

(ii) by striking the period at the end and inserting a semicolon and the following:

"except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code."; and

(E) in subsection (d)(2)(B)(ii)—

(i) in subclause (II), by striking "by an alien other than" and all that follows through "subsection (a)"; and

(ii) by adding at the end the following: "Subclause (II) (prohibiting the waiver of section 212(a)(15)) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).".

(2) The first sentence of section 201(c)(2) of IRCA is amended by striking "annuity" and inserting "pay and annuity".

(i) SECTION 202 OF IRCA.—Section 202(a)(2) of IRCA is amended by inserting before the semicolon the following: "and the Attorney General may, in his discretion, waive the grounds for exclusion specified in paragraph (19) of such section".

(j) SECTION 203 OF IRCA.—Section 203(a) of IRCA is amended—

(1) by striking "and" at the end of paragraph (1),

(2) by redesignating paragraph (2) as paragraph (3), and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) by inserting 'under section 212(a)(33) or' after 'inadmissible', and".

(k) SECTION 204 OF IRCA.—Section 204 of IRCA is amended as follows:

(1) In subsection (a)(2)(D), strike "for that year" the second place it appears.

(2) In subsection (b)(2), strike "the succeeding fiscal year" and insert "any succeeding fiscal year (before fiscal year 1995)".

(3) In subsection (b)(3), strike "(1)(A)" and insert "(1)".

(4) In subsection (b)(4), strike "any of the following fiscal years" and insert "a fiscal year".

(5) In subsection (c)(1)(B), strike "under section 245A(a) of such Act".

(6) In subsection (c)(2)(B), insert ", subject to subparagraph (C)," after "shall".

(7) In subsection (c)(3)(A), strike "section 245A(a) of".

(8) In subsection (e)(1)(A)(ii), strike the first comma.

(9) In subsection (f)(2), inserting "of" before "public health".

(10) In subsection (j)(4)—

(A) by inserting "210, 210A, or" before "245A", and

(B) by inserting "first" before "granted such status".

(l) SECTION 301 OF IRCA.—(1) Section 301(b) of IRCA is amended by striking "section 216" and inserting "section 218".

(2) Section 301(c) of IRCA is amended—

(A) by striking "by adding after section 215" and inserting "by adding at the end", and

(B) by striking "Sec. 216." and inserting "Sec. 218.".

(3) Section 216(c)(4) of the Immigration and Nationality Act (as added by section 301(c) of IRCA) is amended by striking "accomodations" each place it appears and inserting "accommodations".

(4) Subsections (d), (e), and (f) of section 301 of IRCA are amended by striking "216" and inserting "218".

(5) Section 301(g) of IRCA is amended—

(A) by striking "after the item relating to section 215" and inserting "at the end of the items relating to chapter 2 of title II", and

(B) by striking "Sec. 216." and inserting "Sec. 218.".

(m) SECTION 302 OF IRCA.—Section 210(g) of the Immigration and Nationality Act (8 U.S.C. 1160(g)), added by section 302 of IRCA, is amended by striking "(b)(3)" and inserting "(a)(5)".

(n) SECTION 303 OF IRCA.—(1) Section 210A(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1161(a)(8)), as added by section 303(a) of IRCA, is amended by striking "OVER-SUPPLY" in the heading and inserting "OVERSUPPLY".

(2) Section 241(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(20)), added by section 303(b)(3) of IRCA, is amended by striking "who becomes".

(3) Section 303 of IRCA is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(o) SECTION 312 OF IRCA.—(1) Section 101(a)(27)(I) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(I)), as added by section 312(a) of IRCA, is amended—

(A) by striking "the date this subparagraph is enacted" each place it appears and inserting "the date of the enactment of the Immigration Technical Corrections Act of 1987", and

(B) by striking "applies for admission" each place it appears and inserting "applies for a visa or adjustment of status".

(2) Only for purposes of section 101(a)(27)(I) of the Immigration and Nationality Act, an alien who is or was an officer or employee of an international organization (or is the unmarried son or daughter or surviving spouse of such an officer or employee or former officer or employee) is considered to be residing and physically present in the United States during a period in which the alien is residing in the United States but is absent from the United States because of the officer's or employee's need to conduct official business on behalf of the organization or because of customary leave, but only if during the period of the absence the officer or employee continues to have a duty station in the United States and, in the case of such an unmarried son or daughter, the son or daughter is not enrolled in a school outside the United States.

(p) SECTION 313 OF IRCA.—(1) Section 313(a) of IRCA is amended by striking ", as amended by section 301(c), is further amended by adding after section 216" and inserting "is amended by inserting after section 215".

(2) Section 217(a) of the Immigration and Nationality Act (8 U.S.C. 1187(a)), as added by section 313(a) of IRCA, is amended by striking "hereafter" and inserting "hereinafter".

(3) Section 313(c) of IRCA is amended—

(A) by striking ", as amended by section 312(b), is further" and inserting "is", and

(B) by striking "(4)" and "(5)" and inserting "(3)" and "(4)", respectively.

(4) Section 313(e) of IRCA is amended by striking "216" and inserting "215".

(q) SECTION 315 OF IRCA.—Section 315 of IRCA is amended—

(1) in subsection (b)—

(A) by striking "244(b)" and all that follows through "(3)" and inserting "244 (8 U.S.C. 1254) is amended—

"(1) in subsection (b), by inserting '(1)' after '(b)' and by adding at the end of subsection (b) the following new paragraph:

" '(2)"; and

(B) by striking the period at the end and inserting "; and" and the following:

"(2) in subsection (c), by striking '(1)' in paragraph (1) and by striking all that follows the first sentence of paragraph (1)."; and

(2) by adding at the end the following new subsection:

"(e) The amendment made by subsection (b)(1) shall apply to applications submitted under section 244 of the Immigration and Nationality Act before, on, or after the date of the enactment of this Act; but shall not apply to aliens removed from the United States before the date of the enactment of this Act.".

(r) SECTION 601 OF IRCA.—Section 601(d)(1) of IRCA is amended by adding at the end the following sentence: "Not more than 1 percent of the amounts appropriated for the Commission may be used, at the sole discretion of the Chairman, for official entertainment.".

(s) EFFECTIVE DATE.—The amendments made by this section shall be effective as if they were included in the enactment of the Immigration Reform and Control Act of 1986.

SEC. 3. PUBLIC LAW 99-396.

Effective as if included in the enactment of Public Law 99-396:

(1) Section 14 of such Act is amended—

(A) by inserting closing quotation marks and a period at the end of the paragraph designated (3),

(B) by striking quotation marks before "(b)" and before "(c)", and

(C) by striking the closing quotation marks and period that follows "Senate.".

(2) Section 15 of such Act is amended by inserting after "is amended" the following: "by striking out 'and' at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof '; and', and".

SEC. 4. DEPARTMENT OF JUSTICE APPORPRIATION ACT, 1987 (PUBLIC LAW 99-500).

(a) Section 205 of DOJAA.—

(1) Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as amended by section 205 of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99-500), is amended as follows:

(A) In subsection (f)(3), strike "1954" and insert "1986".

(B) In subsection (g), strike "section 1353(a) of this title" and insert "the Act of March 2, 1931, 46 Stat. 1467 (8 U.S.C. 1353b)".

(C) In subsection (h)—

(i) in paragraph (1)(A), strike "Treasury of the United States" and all the follows through "Such account" and insert "Treasury of the United States, to remain available until expended. Such account",

(ii) in paragraph (1)(A), strike "Account.'" and insert "Account'.",

(iii) in paragraph (1)(B), strike "fines, penalties, liquidated damages or expenses" and insert "civil fines or penalties",

(iv) in paragraph (1)(B), insert after "this title" the following: "and all liquidated damages and expenses collected pursuant to this Act",

(v) in paragraph (1)(B), strike "'Immigration User Fee Account.'" and insert "Immigration User Fee Account."; and

(vi) in paragraph (2)(A), strike the colon and insert "in—" and insert "and" at the end of clause (iv).

(D) In subsection (i), insert after "(i)" the following: "Reimbursement.—".

(E) Strike subsection (l).

(2) Section 205 of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99-500) is amended—

(A) by inserting "(a)" after "Sec. 205.", and

(B) by adding at the end the following new subsection:

"(b)(1) The amendments made by subsection (a) shall apply with respect to immigration inspection services rendered after November 30, 1986.

"(2) Fees may be charged under section 286(d) of the Immigration and Nationality Act only with respect to immigration inspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1986.".

(b) Section 206 of DOJAA.—Section 206 of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99-500) is amended—

(1) by inserting "(a)" after "Sec. 206.",

(2) by inserting "of the Immigration and Nationality Act" after "232",

(3) by inserting "of such Act" after "233", and

(4) by adding at the end the following new subsection:

"(b)(1) The item in the table of contents of the Immigration and Nationality Act relating to section 233 is repealed.

"(2) Section 237(b) of the Immigration and Nationality Act (8 U.S.C. 1227(b)) is amended by striking 'or section 233 of this title' and 'or of section 233 of this title'.".

(c) Effective Date.—The amendments made by subsections (a) and (b) shall be effective as if they were included in the enactment of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of Public Law 99-500).

(d) Clarification of Duplicate Enactment.—Effective as of the date of the enactment of Public Law 99-591, sections 205 and 206 of the Department of Justice Appropriation Act, 1987 (as contained in section 101(b) of such Public Law), which were also contained in identical form in section 101(b) of Public Law 99-500, are repealed.

SEC. 5. NARCOTICS TRAFFICKERS DEPORTATION ACT (PUBLIC LAW 99-570).

The subsection (d) of section 287 of the Immigration and Nationality Act (8 U.S.C. 1357), added by section 1751(d) of Public Law 99-570, is amended by amending the matter following paragraph (2) to read as follows:

"(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.".

SEC. 6. REFUGEE ASSISTANCE EXTENSION ACT OF 1986 (PUBLIC LAW 99-605).

(a) Section 2.—Section 414(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1524(a)(1)), as amended by section 2(b)(1) of the Refugee Assistance Extension Act of 1986, is amended by striking "through (5)" and inserting "through (4)".

(b) Section 13.—The paragraph designated as "(g)" in section 412 of the Immigration and Nationality Act (8 U.S.C. 1522), as amended by section 13 of the Refugee Assistance Extension Act of 1986, is amended—

(1) by redesignating such paragraph as paragraph (5);

(2) by striking "all appropriate Federal, State, and county officials referred to in section 13 of this Act" and inserting "all other appropriate Federal officials and all appropriate State and county officials referred to in paragraph (2)";

(3) by striking "such persons defined in subsection (f)(1)" and inserting "Cuban nationals described in paragraph (1)"; and

(4) by striking "hereafter authorized by this section" and inserting "authorized to carry out this subsection".

(c) Effective Date.—The amendments made by this section shall be effective as if they were included in the enactment of the Refugee Assistance Extension Act of 1986.

SEC. 7. IMMIGRATION MARRIAGE FRAUD AMENDMENTS OF 1986 (PUBLIC LAW 99-639).

(a) Section 2 of IMFA.—Section 2 of the Immigration Marriage Fraud Amendments of 1986 is amended—

(1) in subsection (a), by striking "adding at the end" and inserting "inserting after section 215", and

(2) in subsection (c)(3)(A) of the section added by subsection (a), by striking "90-days" and inserting "90 day".

(b) Section 3(b) of IMFA.—Section 3(b) of IMFA is amended by striking all that follows "is amended" and inserting the following: "by adding at the end the following: 'The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) (relating to an alien fiancee or fiance or the minor child of such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).'.".

(c) Section 6 of IMFA.—Section 6 of IMFA is amended—

(1) in subsection (a), by striking "1152(a)" and inserting "1182(a)";

(2) in subsection (b)—

(A) by striking "subsection (a)" and inserting "this section", and

(B) by redesignating the subsection as subsection (c); and

(3) by inserting after subsection (a) the following new subsection:

"(b) Conforming Amendment.—Section 212(i) of such Act (8 U.S.C. 1182(i)) is amended by inserting 'or other benefit under this Act' after 'United States,'.".

(d) Effective Date.—The amendments made by this section shall be effective as if they were included in the enactment of the Immigration Marriage Fraud Amendments of 1986.

SEC. 8. IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1986 (PUBLIC LAW 99-653).

(a) First Section of INAA.—The first section of the Immigration and Nationality Act Amendments of 1986 is amended—

(1) by inserting "(a)" after "That", and

(2) by adding at the end the following new subsection:

"(b) Except as otherwise specifically provided, whenever in this Act a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Immigration and Nationality Act.".

(b) Section 3 of INAA.—Section 3 of INAA is repealed.

(c) Section 4 of INAA.—Section 4 of the INAA is amended by inserting "and" immediately before "(4) an alien born".

(d) Section 5 of INAA.—Section 5 of INAA is amended—

(1) by redesignating paragraphs (a) through (c) as paragraphs (1) through (3), and

(2) by redesignating paragraph (d) as subsection (b).

(e) Section 6 of INAA.—Section 6 of the INAA is amended—

(1) by striking the period before paragraph (b) and inserting ", and",

(2) by striking "(e)" before "Except".

(f) Section 7 of INAA.—Section 7 of the INAA is amended by adding at the end the following:

"(d)(1) Section 286(a) (8 U.S.C. 1356(a)) is amended by striking '238(c)' and inserting '238(b)'.

"(2) Section 212(d)(4) (8 U.S.C. 1182(d)(4)) is amended by striking '238(d)' and inserting '238(c)'.".

(g) Section 8 of INAA.—Section 8 of INAA is amended by striking "Section" and inserting "The text of section".

(h) Section 9 of INAA.—Section 9 of INAA is amended to read as follows:

"Sec. 9. Section 262 (8 U.S.C. 1302) is amended by adding at the end the following new subsection:

" '(c) The Attorney General may, in his discretion and on the basis of reciprocity pursuant to such regulations as he may prescribe, waive the requirement of fingerprinting specified in subsection (a) and (b) in the case of any nonimmigrant.'.".

(i) Section 10 of INAA.—Section 10 of INAA is amended by striking "(a)" before "The".

(j) Section 11 of INAA.—Section 11 of INAA is amended—

(1) by striking "Sections (1) and (2)" and inserting "(a) The first section and section 2",

(2) by striking "section 25(a)" and inserting "subsection (a) of section 25", and

(3) by adding at the end the following:

"(b) Section 221(a)(1) (8 U.S.C. 1201(a)(1)) is amended—

"(1) by striking 'the quota' and inserting 'numerical limitation under section 202',

"(2) by striking 'such quota' and inserting 'such limitation', and

"(3) by striking 'immigration classification' and inserting 'immigrant classification'.".

(k) Section 13 of INAA.—Section 13 of INAA is amended by striking the dash and all that follows through the end and inserting the following: "to read as follows:

" '(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of paragraph (2) of section 308, shall apply as of the date of birth to a person born out of wedlock if—

" '(1) a blood relationship between the person and the father is established by clear and convincing evidence,

" '(2) the father had the nationality of the United States at the time of the person's birth,

" '(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

" '(4) while the person is under the age of 18 years—

" '(A) the person is legitimated under the law of the person's residence or domicile,

" '(B) the father acknowledges paternity of the person in writing under oath, or

" '(C) the paternity of the person is established by adjudication of a competent court.'.".

(l) Sections 14, 15, and 16 of INAA.—Sections 14, 15, and 16 of INAA are repealed.

(m) Section 18 of INAA.—Section 18 of INAA is amended—

(1) in paragraph (a), by striking the colon inserted by such paragraph,

(2) in paragraph (d), by striking "(a)" and "(b)" (inserted by such paragraph) and inserting "(A)" and "(B)", respectively, instead, and

(3) by inserting "and" at the end of paragraph (e).

(n) Section 19 of INAA.—Section 19 of INAA is amended to read as follows:

"Sec. 19. Section 349 (8 U.S.C. 1481) is further amended—

"(1) by striking subsection (b), and

"(2) in subsection (c)—

"(A) by striking 'Except as otherwise provided in subsection (b), any' and inserting 'Any', and

"(B) by redesignating such subsection as subsection (b).".

(o) Section 20 of INAA.—Section 20 of INAA is amended by striking "paragraph" and inserting "paragraphs".

(p) Section 21 of INAA.—Section 21 of INAA is amended to read as follows:

"Sec. 21. Section 1709 of the Revised Statutes of the United States, as amended by the Act of July 12, 1940 (54 Stat. 758; 22 U.S.C. 4195) is amended, in the paragraph designated 'Second.', by striking ', article by article,'.".

(q) Section 22 of INAA.—Section 22 of INAA is amended—

(1) by striking "is amended" and all that follows through "(b)(1)" and inserting the following: "is amended by adding at the end the following new subsection:

" '(c)(1)", and

(2) by indenting by two ems the left margins of subparagraphs (A) through (C) of the paragraph (2) added by such section.

(r) Effective Dates.—INAA is further amended by adding at the end the following new section:

"EFFECTIVE DATES

"Sec. 23. (a) The amendments made by sections 2, 4, and 7 apply to visas issued, and admissions occurring, on or after November 14, 1986.

"(b) The amendments made by sections 5, 6, 8, 9, and 10 apply to applications for immigrant visas made, and visas issued, on or after November 14, 1986.

"(c) The amendment made by section 11 take effect on November 14, 1986.

"(d) The amendment made by section 12 shall apply to persons born on or after November 14, 1986.

"(e)(1) Except as provided in paragraph (2)(B), the new section 309(a) (as defined in paragraph (4)(A)) shall apply to persons who have not attained 18 years of age as of the date of the enactment of this Act.

"(2) The old section 309(a) shall apply—

"(A) to any individual who has attained 18 years of age as of the date of the enactment of this Act, and

"(B) any individual with respect to whom paternity was established by legitimation before such date.

"(3) An individual who is at least 15 years of age, but under 18 years of age, as of the date of the enactment of this Act, may elect to have the old section 309(a) apply to the individual instead of the new section 309(a).

"(4) In this subsection:

"(A) The term 'new section 309(a)' means section 309(a) of the Immigration and Nationality Act, as amended by section 13 of this Act and as in effect after the date of the enactment of this Act.

"(B) The term 'old section 309(a)' means section 309(a) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.

"(f) The amendment made by section 17 shall not apply to individuals who have taken up permanent residence outside the United States before November 14, 1986.

"(g) The amendments made by sections 18, 19, and 20 shall apply to actions taken before, on, or after November 14, 1986.

"(h) The amendment made by section 21 shall apply to individuals who die on or after November 14, 1986.".

SEC. 9. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended—

(1) in subsection (a)(15)(J), by striking "Secretary of State" and inserting "Director of the United States Information Agency",

(2) by striking the second sentence of subsection (a)(38), and

(3) by striking subsection (d).

(b) Section 102(2) of such Act (8 U.S.C. 1102(2)) is amended by striking "documentation" and inserting "documentation".

(c) Section 103 of such Act (8 U.S.C. 1103) is amended—

(1) in subsection (a)—

(A) by striking "intructions" and inserting "instructions", and

(B) by amending the fourth sentence to read as follows: "He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service."; and

(2) in subsection (b), by striking ", and shall receive compensation at the rate of $17,500 per annum".

(d) Section 104 of such Act (8 U.S.C. 1104) is amended by striking "SECURITY AND" in the heading, and the item in the table of contents relating to section 104 is amended by striking "Security and".

(e) Section 106(a) of such Act (8 U.S.C. 1105a) is amended—

(1) in the matter before paragraph (1), by striking "the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.)" and inserting "chapter 158 of title 28, United States Code", and

(2) in paragraph (1), by striking "or from the effective date of this section, whichever is the later".

(f) Section 202 of such Act (8 U.S.C. 1152) is amended—

(1) in subsection (c), by striking "section 202(a)" and inserting "subsection (a)", and

(2) in subsection (e), by striking "section 202" and inserting "this section".

(g) Section 204 of such Act (8 U.S.C. 1154) is amended—

(1) in subsection (c), by striking "a nonquota" and inserting "an immediate relative", and

(2) in subsection (g)(3)(A), by striking "(C)(i) of paragraph 2" and inserting "(C)(ii) of paragraph (2)".

(h) Section 207(c)(1) of such Act (8 U.S.C. 1182) is amended by striking "otherwide" and inserting "otherwise".

(i) Section 212 of such Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(32), by striking "Commissioner of Education" and "Secretary of Health, Education, and Welfare" and inserting "Secretary of Education" and "Secretary of Health and Human Services", respectively;

(2) in subsection (e)—

(A) by striking "Secretary of State" the first place it appears and inserting "Director of the United States Information Agency", and

(B) by striking "Secretary of State" each subsequent place it appears and inserting "Director";

(3) in subsection (g), by striking "Surgeon General of the United States Public Health Service" each place it appears and inserting "Secretary of Health and Human Services"; and

(4) in subsection (h), by striking "paragraphs" and inserting "paragraph".

(j) Section 222(a) of such Act (8 U.S.C. 1202(a)) is amended by striking "whether or not be intends" and inserting "whether or not he intends".

(k) Section 234 of such Act (8 U.S.C. 1224) is amended by striking "Surgeon General of the United States Public Health Service" each place it appears and inserting "Secretary of Health and Human Services".

(l) Section 237(b)(5) of such Act (8 U.S.C. 1227(b)(5)) is amended by striking "to ke kept" and inserting "to be kept".

(m) Section 241(a)(17) of such Act (8 U.S.C. 1251(a)(17)) is amended by striking "amendment thereof; the Trading" and inserting "amendment, thereof, known as the Trading".

(n) Section 242(e) of such Act (8 U.S.C. 1252(e)) is amended by striking "or from the date of the enactment of the Subversive Activities Control Act of 1950, whichever is the later,".

(o) Section 265 of such Act (8 U.S.C. 1305) is amended by inserting above the text the following heading:

"NOTICES OF CHANGE OF ADDRESS".

(p) Section 283 of such Act (8 U.S.C. 1353) is amended by striking "the Act of August 2, 1946 (60 Stat. 806; 5 U.S.C., sec. 73b-1)" and inserting "subchapter II of chapter 57 of title 5, United States Code".

(q) Section 290(c) of such Act (8 U.S.C. 1360(c)) is amended by striking "Federal Security Administrator" and "The Administrator" and inserting "Secretary of Health and Human Services" and "The Secretary", respectively.

(r) Section 309 of such Act (8 U.S.C. 1409) is amended—

(1) in subsection (b)—

(A) by striking "prior to the effective date of this Act" and inserting "before December 24, 1952", and

(B) by striking "before or after the effective date of this Act and" and inserting "at any time"; and

(2) in subsection (c), by striking "on or after the effective date of this Act" and inserting "after December 23, 1952".

(s) Section 310 of such Act (8 U.S.C. 1421) is amended by striking subsection (e).

(t) Section 311 of such Act (8 U.S.C. 1422) is amended by striking the last sentence.

(u) Section 313(a)(2)(D) of such Act (8 U.S.C. 1424(a)(2)(D)) is amended by striking "totalitarian party or" and inserting "totalitarian party of".

(v) Section 315(b) of such Act (8 U.S.C. 1426(b)) is amended by striking "National Military Establishment" and inserting "Department of Defense".

(w) Section 320(b) of such Act (8 U.S.C. 1431(b)) is amended by striking "(a)(1)" and inserting "(a)".

(x) Section 324(a)(4) of such Act (8 U.S.C. 1435(a)(4)) is amended by striking "and the witnesses have" and inserting "has".

(y) Section 329 of such Act (8 U.S.C. 1440) is amended by striking subsection (d).

(z) Section 330 of such Act (8 U.S.C. 1441) is amended by striking subsection (b), paragraphs (2) and (3) of subsection (a), and "(a)(1)".

(aa) Section 335(d) of such Act (8 U.S.C. 1446(d)) is amended by striking "approve" in the fourth sentence and inserting "approves".

(bb) Section 335(f)(2) of such Act (8 U.S.C. 1446(f)(2)) is amended by striking ", except that" and all that follows through "date of such transfer".

(cc) Section 336 of such Act (8 U.S.C. 1447) is amended by striking "AND WITNESSES" in the heading.

(dd) Section 340 of such Act (8 U.S.C. 1451) is amended—

(1) in subsection (c), by striking "the effective date of this Act" and inserting "December 24, 1952",

(2) by striking subsection (e), and

(3) by redesignating subsections (f) through (j) as subsections (e) through (i), respectively.

(ee) Section 343 of such Act (8 U.S.C. 1454) is amended—

(1) by striking subsection (a), and

(2) by redesignating subsections (b) through (e) as subsections (a) through (d), respectively.

(ff) Section 344(a) of such Act (8 U.S.C. 1455(a)) is amended by striking "title V of the Independent Offices Appropriation Act, 1952 (65 Stat. 290)" and inserting "section 9701 of title 31, United States Code".

(gg) Section 348 of such Act (8 U.S.C. 1459) is amended—

(1) by striking subsection (a), and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(hh) Section 349(a) of such Act (8 U.S.C. 1481(a)) is amended by striking "From and after the effective date of this Act a" and inserting "A".

(ii) Section 357 of such Act (8 U.S.C. 1489) is amended by striking "upon the effective date of this title" and inserting "before December 25, 1952".

(jj) Section 413 of such Act (8 U.S.C. 1523) is amended—

(1) by striking subsections (b), (c), and (d), and

(2) in subsection (a)—

(A) in subparagraphs (D) and (E) of paragraph (2), by redesignating clauses (i) and (ii) as clauses (A) and (B), respectively,

(B) in paragraph (2), by redesignating subparagraphs (A) through (H) as paragraphs (1) through (8), respectively,

(C) by redesignating paragraph (2) as subsection (b), and

(D) in paragraph (1), by striking "(a)(1)" and inserting "(a)".

(kk) Section 13(b) of the Act of September 11, 1957 (8 U.S.C. 1255b(b)) is amended by striking "of" after "as of the date".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kentucky [Mr. MAZZOLI] will be recognized for 20 minutes and the gentleman from Georgia [Mr. SWINDALL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, over the years, as various bills concerning immigration have been enacted into law, the Office of Legislative Counsel, along with the Judiciary Committee Staffs of the House and Senate, have compiled a list of the grammatical errors, technical flaws, and inadvertent oversights in those laws.

S. 2479 is a comprehensive collection of corrections to these technical errors. There are 37 pages worth. This is not surprising, considering that S. 2479 is the first immigration technical corrections bill brought before this body within recent memory.

S. 2479, which was sponsored by Senators KENNEDY, SIMPSON, BIDEN, and THURMOND, passed the Senate on June 7 of this year.

Mr. Speaker, our immigration laws are complicated enough without typographical errors and incorrect cross-references. S. 2479 will go a long way toward correcting these problems so that the law will be more accessible to counsel, lawmakers, judges, and the public alike.

Mr. Speaker, the only comprehensive compilation our Government has published of the immigration and nationality laws of our country is contained in the 7th edition of the Immigration and Nationality Act published for the House Judiciary Committee in 1980. Over 10,000 copies of this edition have been distributed upon request to people all over the United States by the committee.

This 1980 edition is now, and understandably out of date, and needs to be revised. Legislative counsel informs us, with good reason, that publishing a new edition would be pointless without making the necessary technical corrections. Thus, S. 2479 is specially necessary and timely.

Mr. Speaker, since the Senate passed S. 2479 on June 7, my subcommittee has resisted resolutely appending substantive amendments to this bill. Consequently, the bill before the House today is purely technical.

I would note for the benefit of my colleagues that the text of this bill was presented to the Departments of Justice, State, HHS, and Labor for comment. The observations and suggestions of these Departments have been incorporated into the final legislative language of S. 2479

Mr. Speaker, S. 2479, the bill before us, is both a helpful measure and noncontroversial. It would correct many mistakes and oversights in immigration law and it would make immigration laws more accessible and understandable. Finally, it would make possible a new, updated, and long-overdue edition of the compiled immigration and nationality law.

I urge my colleagues to support the bill so that U.S. immigration laws are as clear, concise, accessible, and free from error as possible.

□ 1630

Mr. Speaker, I reserve the balance of my time.

Mr. SWINDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill. The legislation that is before us today is a noncontroversial bill. It passed the Senate on June 7 of this year. The bill is a package of technical corrections to the Immigration Nationality Act.

The legislation corrects incorrect citations, misspellings, and other clerical errors found in the act. No substantive changes are included in the bill. Although this is only a technical corrections bill, certain errors have had substantive impact on the implementation of the code. This bill hopefully will clear up any ambiguity caused by drafting errors and prevent future controversy caused by these errors.

Mr. Speaker, I yield back the balance of my time.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the Senate bill, S. 2479.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on S. 2479, the Senate bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

ESTABLISHING PROCEDURES FOR REVIEW OF TRIBAL CONTRIBUTIONS AND BYLAWS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 2677) to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987).

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

TITLE I. INDIAN REORGANIZATION ACT AMENDMENTS

SEC. 101. Section 16 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476) is amended to read as follows:

"SEC. 16. (a) Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—

"(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and

"(2) approved by the Secretary pursuant to subsection (d) of this section.

"(b) Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) for the adoption of a constitution or bylaws.

"(c)(1) The Secretary shall call and hold an election as required by subsection (a)—

"(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or

"(B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

"(2) During the time periods established by paragraph (1), the Secretary shall—

"(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and

"(B) review the final draft of the constitution and bylaws, or amendments thereto to determine if any provision therein is contrary to applicable laws.

"(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable laws.

"(d)(1) If an election called under subsection (a) results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution and bylaws or any amendments are contrary to applicable laws.

"(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

"(e) In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of the Management and Budget and the Congress.".

SEC. 102. For the purpose of this Act, the term—

(1) "applicable laws" means any treaty, Executive order or Act of Congress or any final decision of the Federal courts which are applicable to the tribe, and any other laws which are applicable to the tribe pursuant to an Act of Congress or by any final decision of the Federal courts;

(2) "appropriate tribal request" means receipt in the Area Office of the Bureau of Indian Affairs having administrative jurisdiction over the requesting tribe, of a duly enacted tribal resolution requesting a Secretarial election as well as a copy of the proposed tribal constitution and bylaws, amendment, or revocation action;

(3) "Secretary" means the Secretary of the Interior.

SEC. 103. Nothing in this Act is intended to amend, revoke, or affect any tribal constitution, bylaw, or amendment ratified and approved prior to this Act.

TITLE II. MISCELLANEOUS AMENDMENTS TO EXISITNG LAWS

SEC. 201. Subsection (b) of section 3 of the Old Age Assistance Claims Settlement Act (98 Stat. 2317; 25 U.S.C. 2302(b)) is amended to read as follows:

"(b) No payment shall be made to a person under subsection (a) with respect to any unauthorized disbursement from the trust estate of a deceased Indian if—

"(1) the total amount of unauthorized disbursements from such trust estate was less than $50; or

"(2) the payment (not including interest) would be less than $10.".

SEC. 202. Section 4(b) of the Act of September 9, 1988 (Public Law 100-425) entitled "An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes" is amended by striking out "4" in the first column of the description of the 38th tract of land listed in that subsection and inserting in lieu thereof "2".

SEC. 203. Notwithstanding any other provision of law, the plan dated July 7, 1988, that was submitted by the Assistant Secretary of the Interior for Indian Affairs to the Congress pursuant to the Indian Tribal Judgment Funds Use or Distribution Act, 87 Stat. 466, as amended (25 U.S.C. 1401 et seq.) for the division and use of the judgment funds awarded the Choctaw and Chickasaw Indians in Docket Numbered 387-85L of the United States Claims Court shall take effect upon enactment of this Act: Provided, That in the case of the Chickasaw portion of the plan, instead of the action by the tribal governing body or of the Chickasaw, electorate, the Plan shall be deemed to require the proposal of a budget in accordance with the tribe's governing documents, subject to the approval of the Secretary of the Interior.

SEC. 204. Section 4 of Public Law 99-283 (100 Stat. 404) is amended by striking out all that precedes paragraph (1) and inserting in lieu thereof the following:

"SEC. 4. The balance of the income derived by the Secretary of the Interior from the interests in the land described in section 1 that was transferred to the Treasury of the United States as miscellaneous receipts shall be transferred from the General Fund of the Treasury of the United States to, and held in trust by, the Secretary of the Interior for use as follows:".

SEC. 205. Paragraph (1) of section 2(c) of Public Law 96-135 (25 U.S.C. 472a(c)(1)) is amended by striking out "an employee" and inserting in lieu thereof "an applicant or employee".

SEC. 206. Section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47) is amended by striking out "products" and inserting in lieu thereof "products (including, but not limited to printing, notwithstanding any other law)".

SEC. 207. Subsection (c) of section 518 of the Federal Water Pollution Control Act is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92-203.".

SEC. 208. (a) Subsection (h) of section 4 of the Indian Self-Determination and Education Assistance Act as amended by section 103 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended—

(1) by striking out "by tribal organization" and inserting in lieu thereof "by a tribal organization"; and

(2) by striking out "a tribal organization or a tribal governing body" and inserting in lieu thereof "a tribal organization or the tribal organization's Indian tribe for purposes of section 102(a) of this Act".

(b) Subsection (j) of section 4 of the Indian Self-Determination and Education Assistance Act as amended by section 103 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended—

(1) by striking out "Secretary for the planning" and inserting in lieu thereof "the Secretary for the planning"; and

(2) by stiking out "no contract" and inserting in lieu thereof "except as provided the last proviso in section 105(a) of this Act, no contract".

SEC. 209. Subsection (e) of section 5 of the Indian Self-Determination and Education Assistance Act as amended by section 104(b) of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended by striking out "to tribes" and inserting in lieu thereof "to each tribe".

SEC. 210. Subsection (c)(2) of section 102 of the Indian Self-Determination and Education Assistance Act as amended by section 201 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended by striking out "section 1425 of title 25, United States Code" and inserting in lieu thereof "section 3 of the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451 et seq.)".

SEC. 211. Section 109 of the Indian Self-Determination and Education Assistance Act is amended by striking out "after providing notice and hearing to such tribal organization" and inserting in lieu thereof "after providing notice and hearing on the record to such tribal organization" and by striking out "in such cases, he shall hold a hearing within ten days thereof" and inserting in lieu thereof "in such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve.".

SEC. 212. (a) Subsection (a) of section 110 of the Indian Self-Determination and Education Assistance Act as amended by section 201 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended by striking out "over civil action" and inserting in lieu thereof "over any civil action".

(b) Subsection (b) of section 100 of the Indian Self-Determination and Education Assistance Act as amended by section 201 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended by striking out "an Indian tribe" and inserting in lieu thereof "tribal organization" and by striking out "such tribe" and inserting in lieu thereof "such tribal organization".

(c) Subsection (c) of section 110 of the Indian Self-Determination and Education Assistance Act as amended by section 201 of the Indian Self-Determination and Education Assistance Act Amendments of 1988 is further amended to read as follows:

"(c) The Equal Access to Justice Act (Public Law 96-481, Act of October 1, 1980; 92 Stat. 2325, as amended), section 504 of title 5, United States Code, and section 2412 of title 28, United States Code shall apply to administrative appeals pending on or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by tribal organizations regarding self-determination contracts.".

SEC. 213. Subsection (c) of the Act of August 31, 1964 (Public Law 88-540; 78 Stat. 747, 25 U.S.C. 608(c)) is amended to read as follows:

"(c) Lands and interests in lands acquired by the Secretary pursuant to section (a)(1) of this Act and for the benefit of the Yakima Indian Nation pursuant to section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465) shall be held in trust by the United States for the benefit of the Yakima Indian Nation.".

SEC. 214. Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465) is amended by striking out "this Act" and inserting in lieu thereof "this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.)".

SEC. 215. Section 816 of the Native American Programs Act of 1974 is amended by striking out "the preceding fiscal year" in subsection (c)(2) and inserting in lieu thereof "fiscal year 1987".

SEC. 216. Subsection (b) of section 5 of Public Law 86-339 (73 Stat. 604; 25 U.S.C. 955) is amended by adding the following new sentence at the end thereof:

"A payment and the income derived therefrom heretofore or hereafter made to an allottee as compensation for the acquisition of part or all of the allottee's allotment for a public purpose is—

"(1) deemed a cash payment in lieu of an allotment for purposes of this subsection;

"(2) deemed a right under subsection (a) of this section; and

"(3) subject to the Act of March 2, 1931, ch. 374, 46 Stat. 1471 (25 U.S.C. 409a) and the undesignated provision added to the Act of February 8, 1887, ch. 119, by the Act of June 21, 1906, ch. 3504, 34 Stat. 327 (25 U.S.C. 410).".

SEC. 217. The Secretary of the Interior shall pay to the Tiospa Zina Tribal School from lapsed balances of funds appropriated for the Bureau of Indian Affairs for fiscal year 1987 the amount that the Director of the Office of Indian Education Programs of the Bureau determines that the School should have received that year for start-up costs.

SEC. 218. Subsection (a)(1) of section 2 of Public Law 94-204 (89 Stat. 1148), as amended by section 1411(a) of Public Law 96-487 (94 Stat. 2497), is amended by inserting in the first paragraph after "resources of lands" and before "withdrawn" the following: ", including wildlife proceeds received between the date of withdrawal and the date of conveyance from harvests on lands conveyed pursuant to the Act,".

TITLE III. TO TRANSFER OWNERSHIP OF CERTAIN LANDS HELD IN TRUST FOR THE BLACKFEET TRIBE, AND FOR OTHER PURPOSES

SEC. 301. (a) As compensation for and in settlement of all claims arising as the result of alleged errors in the Secretary of the Interior's approval of purported conveyances of land involved in the will of Garret White (also known as Many Whitehorse), upon certification by the Secretary of the Interior that the conditions precedent in subsection (c) have been met, the Secretary of the Treasury is directed to pay as a settlement under 1304 (a)(1) of title 31, United States Code, not to exceed the following sums:

(1) $50,000.00 to John Benedict Renville of the Blackfeet Indian Reservation;

(2) $58,500.00 to be held in trust by the Secretary of the Interior for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana;

(3) $127,000.00 to Mary Lois Peterson Munoz of Cut Bank; Montana; and

(4) $165,535.00, to the Secretary of the Interior to be held in trust for John Benedict Renville, less attorney fees paid to the attorney for John Benedict Renville as provided in this title.

(b) The payment and acceptance of such compensation shall be in full satisfaction of all claims that the receiving party has against the United States or any employee or officer thereof, and against any other party, in connection with the purported sale of some five hundred and forty acres of trust land involved in the will of Garret White to the Blackfeet Tribe approved October 28, 1946, the purported exchange of some two hundred and eighty acres of the land by the Tribe for other land, and the purported acquisition of the two hundred and eighty acres by Mary Lois Peterson Munoz.

(c) Each of the following is a condition precedent to any payment under subsection (a) of this Act:

(1) Each of the parties shall execute such releases, conveyances, or other documents as the Secretary of the Interior determines are necessary to carry out this Act by settling the claims and transferring interests in and clearing titles to the land involved. The execution of such documents on behalf of the Blackfeet Tribe is hereby authorized and is deemed approved under Resolution 250-87 of the Blackfeet Tribal Business Council and such documents may be executed by the Chairman. The Secretary of the Interior may approve and execute on behalf of the United States such documents as are necessary to carry out this Act.

(2) The Blackfeet Tribe shall transfer its interests in the remaining approximately two hundred and forty acres of land acquired by the Tribe on October 28, 1946, to the Secretary of the Interior who shall take the interests in trust for John Benedict Renville.

(3) Mary Lois Peterson Munoz shall transfer to the Secretary of the Interior all of her interests in the approximately two hundred and eighty acres of land which had been acquired by the Blackfeet Tribe on October 28, 1946, to the Secretary of the Interior who shall take the interests in trust for John Benedict Renville.

(4) A final order has been entered in the civil action entitled John Benedict Renville v. Blackfeet Tribe of Indians, et al., No. CV-84-41-6F, in the United States District Court for the District of Montana dismissing with prejudice all claims, crossclaims, counterclaims, third-party claims, and all other claims arising out of such civil action.

(d) The land and the interests therein acquired in trust by the Secretary of the Interior under this Title shall be subject to the laws that would apply if the sale of October 28, 1946, had not taken place.

(e) The amounts paid under subsection (a) of this Title to John Benedict Renville are subject to section 7 of the Act of October 19, 1973 (87 Stat. 468; 25 U.S.C. 1407), as amended.

(f) The amounts paid under subsection (a) of this Act to Mary Lois Peterson Munoz shall be considered as funds for condemnation proceedings as provided for in section 1033 of the Internal Revenue Code.

(g) No part of any amount paid under this Act in excess of 10 percent of such amount, including the value of the land returned, shall be paid or delivered to, or received by, any agent or attorney on account of services rendered John Benedict Renville in connection with any claim settled under this Act and the same shall be unlawful, any contract to the contrary notwithstanding. Violation of this subsection shall be a misdemeanor punishable by a fine of no more than $1,000,000.

(h) The Secretary of the Interior shall cause to be made an appraisal of the value *of the lands described in subsection (b) as of the date of enactment of this Act; and the sums paid to the Blackfeet Tribe and Mary Lois Peterson Munoz under subsection (a) of this Act shall not exceed such appraisal values, plus a reasonable attorney's fee, not to exceed 10 percent of such award, any contract to the contrary notwithstanding. Violation of this subsection shall be a misdemeanor punishable by a fine of no more than $1,000,000.*

TITLE IV. COLUMBIA RIVER TREATY FISHING ACCESS SITES

SEC. 401. (a) All Federal lands within the area described on maps numbered H.R. 2677 sheets 1 through 12, dated September 21, 1988 and on file in the offices of the Secretary of the Interior, the Secretary of the Army and the Columbia River Gorge Commission shall, on and after the date of enactment of this Act, be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Nation.

(b) Notwithstanding any other provision of law, the Secretary of the Army shall—

(1) identify and acquire additional lands adjacent to the Bonneville Pool from willing sellers until such time that at least six sites have been acquired adjacent to the Bonneville Pool for the purpose of providing access and ancillary fishing facilities for the members of the Indian tribes referred to in subsection (a); and

(2) improve the lands referred to in subsections (a) and paragraph (1) of subsection (b) and maintain such lands until such time as the lands are transferred to the Department of the Interior for the purpose of maintaining the sites. Such improvements shall include, but not be limited to, camping and park facilities to the same standards as those provided in the National Park System; all weather access roads and boat ramps; docks; sanitation; fish cleaning, curing, and ancillary fishing facilities; electrical and sewage facilities; and landscaping; and

(3) make improvements at existing sites, including but not limited to dredging at the site at Wind River, Washington, and constructing a boat ramp on or near the site at Cascade Locks, Oregon.

(c) The Secretary of the Army shall treat the costs of implementation of paragraphs (2) and (3) of subsection (b) as project costs of the Army Corps of Engineers Columbia River projects, and such costs shall be allocated in accordance with existing principles of allocating Columbia River project costs. Funds heretofore and hereafter appropriated to the Secretary of the Army for maintenance and development of Columbia River projects may be used to defray the costs of accomplishing the purposes of this Act.

(d) There is hereby authorized to be appropriated a sum not to exceed $2,000,000 to implement the purposes of subsection (b)(1).

(e) The Secretary of the Interior shall be vested with the right of first refusal, after consultation with the Indian entities in subsection (a), to accept any lands adjacent to the Columbia River within the Bonneville, Dalles, and John Day Pools now owned or subsequently acquired by any Federal agency and declared to be excess lands or otherwise offered for sale or lease by such Federal agency, and upon such acceptance, such Federal agency shall transfer such lands to the Secretary for the purpose of Indian treaty fishing: Provided, however, That total acreage of sites provided under this section adjacent to the Bonneville Pool of the Columbia River not exceed 360 acres.

(f) Nothing in this Act shall be construed as repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or Executive Order pertaining to any Indian tribe, band, or community.

TITLE V. POTAWATOMI JUDGMENT FUNDS

SEC. 501. That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of the judgment awarded to the Wisconsin Band of Potawatomi in docket 28 of the United States Claims Court (including all interest and investment income accrued thereon) shall be used and distributed as provided in this title.

SEC. 502. (a) The funds appropriated with respect to the judgment awarded the Wisconsin Band of Potawatomi in docket 28 of the United States Claims Court (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, are allocated as follows:

(1) 141/451 of such funds are allocated to the Hannahville Indian Community, and

(2) 310/451 of such funds shall be allocated to the Forest County Potawatomi.

(b)(1) The funds allocated to each Indian tribe under subsection (a), and any interest and investment income accrued on such funds, are hereby declared to be held in trust by the United States for the benefit of such Indian tribe and shall be invested by the Secretary of the Interior for the benefit of such Indian tribe.

(2) The funds held in trust by the United States under paragraph (1) for the benefit of an Indian tribe shall be available to the governing body of such Indian tribe, on a budgetary basis and subject to the approval of the Secretary of the Interior, for tribal, social, and economic development programs for such Indian tribe.

SEC. 503. None of the funds held in trust by the United States under this title (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds made available under this title for programs or for distributions under any programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which any household or individual would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program.

TITLE VI. POTAWATOMI TRUST LANDS

SEC. 601. (a) All rights, title, and interests of the United States in the surface and mineral estate of approximately 11,300 acres of land located in Forest County and Oconto County, Wisconsin, that was acquired by the United States by reason of section 24 of the Act of June 30, 1913 (38 Stat. 102), including any improvements on such land, are hereby declared to be held by the United States in trust for the benefit and use of the Forest County Potawatomi Community of Wisconsin and such land is hereby declared to be the reservation of the Forest County Potawatomi Community of Wisconsin.

(b) All rights, title, and interests of the United States in the surface and mineral estate of approximately 3,359 acres of land located in Menominee County, Michigan, that was acquired by the United States by reason of section 24 of the Act of June 30, 1913 (38 Stat. 102), including any improvements on such land, are hereby declared to be held by the United States in trust for the benefit and use of the Hannahville Indian Community of Michigan, and such land is hereby declared to be the reservation of the Hannahville Indian Community of Michigan.

SEC. 602. The Secretary of the Interior shall publish in the Federal Register a detailed description of the lands referred to in this title.

SEC. 603. Nothing in this title shall deprive any person (other than the United States) of any lease, right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the surface or mineral estate of any land referred to in section 1 on the day before the date of enactment of this Act.

TITLE VII. SOUTHERN CALIFORNIA INDIAN LAND TRANSFER

SEC. 701. SHORT TITLE.

This title may be cited as the "Southern California Indian Land Transfer Act".

SEC. 702. LANDS HELD IN TRUST FOR VARIOUS GROUPS AND BANDS OF MISSION INDIANS.

(a) IN GENERAL.—Subject to section 3, all right, title, and interest of the United States in and to the lands described in subsection (b) in connection with each band or group of Mission Indians listed in the table contained in such subsection (including all improvements on such land and appurtenances to such land) are hereby declared—

(1) to be held in trust by the United States for the benefit of such band or group listed in such table, and

(2) to be part of the reservation listed in connection with each such band or group in such table.

(b) LAND DESCRIBED.—

(1) The lands referred to in subsection (a) are the lands which are described in paragraph (2) and are adjacent to the reservation of a band or group of Mission Indians, as listed in the following table and generally described as "Lands identified in the Proposed So. California Indian Land Transfer Act" and depicted on the map entitled "Southern California Indian Land Transfer Act Map," May 1988:

Band or group of Mission Indians	*Approximate Acreage*	*Reservation*
Barona Group of Capitan Grande Band.	*722.86*	*Barona Ranch*
Cahuilla Band	*611.88*	*Cahuilla*
Campo Band	*470.28*	*Campo*
La Jolla Band	*355.51*	*La Jolla*
La Posta	*84.20*	*La Posta*
Mesa Grande Band	*800.00*	*Mesa Grande*
Morongo Band	*107.00*	*Morongo*
Pala Band	*415.00*	*Pala*
Pechanga Band	*302.64*	*Pechanga*
Rincon Band	*320.00*	*Rincon*
Soboba	*880.00*	*Soboba*

(2) The lands described in this paragraph are as follows:

(A) Lands with respect to the Barona Group of Capitan Grande Band:

T. 14S., R. 1E., SBM
Section 13, NE¼, N½SE¼;
T. 14S., R. 2E., SBM

Section 7, Lots 5, 6, 10, 11, 12, 21 and 22, E½NE¼, NE¼SW¼, SE¼;

Section 18, Lot 1, W½NE¼, NE¼NW¼;

(B) Lands with respect to the Cahuilla Band:

T. 8S., R. 2E., SBM

Section 11, Lots 5 thru 8, 11, and 12;

Section 12, Lots 17 thru 19;

T. 8S., R. 3E., SBM

Section 7, Lots 8 thru 15;

Section 8, Lots 7, 8, and 12;

(C) Lands with respect to the Campo Band:

T. 17S., R. 6E., SBM

Section 17, S½NE¼, SE¼;

Section 35, Lots 3, 5, and 7, N½S½;

Section 36, Lots 6 and 9;

(D) Lands with respect to the La Jolla Band:

T. 11S., R. 1E., SBM

Section 2, Lots 1 thru 4, S½NW¼;

Section 3, Lots 1 thru 3;

(E) Lands with respect to the La Posta Band:

T. 17S., R. 6E., SBM

Section 6, Lots 6 thru 8, SW¼NW¼;

(F) Lands with respect to the Mesa Grande Band:

T. 12S., R. 2E., SBM

Section 23, NE¼, N½SE¼, E½NW¼;

Section 24, NW¼NW¼, S½NW¼, NW¼SW¼, S½SW¼;

Section 25, E½NW¼, W½NE¼, W½SE¼;

(G) Lands with respect to the Morongo Band:

T. 3S., R. 1E., SBM

Section 34, S½NW¼NW¼;

T. 3S., R. 2E., SBM

Section 20, Lot 10;

Section 32, W½NW¼NE¼, N½SE¼NW¼, SW¼SE¼NW¼;

(H) Lands with respect to the Pala Band:

T. 9S., R. 2W., SBM

Section 13, SW¼SW¼ (excepting the patented portions of MS 6452 and MS 6848 and excepting those portions of public land not contiguous to the Indian Reservation);

Section 14, W½W½ (excepting the patented portion of MS 6458), SE¼SE¼ (excepting the patented portion of MS 6452 and excepting those portions of public land not contiguous to the Indian Reservation);

Section 15, NE¼NE¼, S½NE¼, E½W½, SE¼ (excepting the patented portions of MS 4886, MS 4926, and MS 6458);

(I) Lands with respect to the Pechanga Band:

T. 8S., R. 2W., SBM

Section 23, Lots 4 and 5, S½SW¼, SE¼;

(J) Lands with respect to the Rincon Band:

T. 10S., R. 1W., SBM

Section 28, SE¼, E½SW¼;

Section 33, N½NE¼;

(K) Lands with respect to the Soboba Band:

T. 4S., R. 1E., SBM

Section 20, SE¼SW¼;

Section 33, S½;

Section 34, W½NE¼, W½, W½SE¼, SE¼SE¼.

SEC. 703. EXISTING RIGHTS PRESERVED; RIGHT OF CERTAIN CURRENT LESSEES TO PURCHASE; MISCELLANEOUS PROVISIONS.

(a) EXISTING RIGHTS PRESERVED.—The declarations contained in section 702 shall not affect—

(1) any right or interest of any person in any land described in such section under any legal right-of-way, mining claim, or grazing permit in effect on the day before the date of the enactment of this Act, or

(2) any other right, title, or interest which such person may have in such land on such day.

(b) RIGHT OF HOLDER OF GRAZING PERMIT TO PURCHASE LANDS.—

(1) IN GENERAL.—Any person who holds a valid grazing permit and lease (as such term is defined in section 103(p) of the Federal Land Policy and Management Act of 1976) with respect to any land described in section 702 shall have the right to purchase such land before the end of the 1-year period beginning on the date of the enactment of this title for the fair market value of such land (determined as of the date of purchase) on such terms and conditions as the Secretary of the Interior may prescribe. The declarations in section 702 relating to the trust and reservation status of such land shall take effect subject to the right of purchase established under this paragraph.

(2) NOTICE BY SECRETARY REQUIRED.—Before the end of the 30-day period beginning on the date of the enactment of this Act, the Secretary of the Interior shall notify each person referred to in paragraph (1) of the right of purchase established under such paragraph.

(3) PROCEEDS OF SALE TO BE HELD IN TRUST FOR INDIANS.—In the case of any sale of land under paragraph (1), the proceeds of such sale shall be held in trust by the Secretary of the Interior for the benefit of the band or group of Mission Indians for whose benefit such land is held after the date of the enactment of this Act and before such sale. The net income on the amount held in trust by such Secretary shall be available for use or obligation by such band or group in such manner and for such purposes as the Secretary may approve.

(c) PROCEEDS FROM RENTS AND ROYALTIES TRANSFERRED TO INDIANS.—Amounts which accrue to the United States after the date of the enactment of this Act from sales, bonuses, royalties, and rentals relating to any land described in section 702 shall be available for use or obligation, in such manner and for such purposes as the Secretary may approve, by the band or group of Mission Indians for whose benefit such land is held after the date of the enactment of this Act.

(d) ADDITIONS TO RESERVATIONS SUBJECT TO LAWS GOVERNING EXISTING RESERVATIONS.—Any lands which are held in trust for the benefit of any band or group of Indians pursuant to this title shall be subject to the laws of the United States relating to Indian land in the same manner and to the same extent as the lands comprising the reservation of such group or band on the day before the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona [Mr. UDALL] wil be recognized for 20 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2677 was introduced in the House by my colleague from Arizona, Mr. RHODES. As introduced and passed by the House, the bill provided some guidelines to the Secretary of the Interior in the scheduling and approval of tribal elections to ratify tribal constitutions and amendments thereto.

The bill came back from the Senate with an amedment. The Senate amendment included some matter not totally germane to the bill as originally passed by the House. However, these amendments have been thoroughly reviewed by both sides of the aisle and we have found no objections to such amendments.

Section 401 of these amendments concerns the transfer to certain Indian tribes of fishing access sites located on the Columbia River. I want to emphasize that the term "all Federal lands" is not intended to include any units of the National Wildlife Refuge System.

I, therefore, urge my colleagues to vote for the passage of this bill as amended by the Senate.

Mr. Speaker, title I of the bill as passed by the Senate makes minor revisions of the Indian reorganization amendments contained in the House passed bill. I want to emphasize that nothing in this bill is intended to alter or change any principles of Federal common law concerning application of State law to Indian tribes. Unless authorized by an act of Congress, State law is not applicable to Indian tribes if such application of State law would infringe on the right of Indians to be governed by their own laws. Nothing in this act is intended to change such principle of law.

Title II of the bill makes miscellaneous amendments to existing laws, most of which are essentially of a technical nature. Some of the amendments clarify the intent of recently passed amendments to the Indian Self-Determination Act. For instance, section 209 of the bill amends section 109 of the Indian Self-Determination Act to underscore the right of an Indian tribe to receive a due process hearing under the Administration Procedures Act when the Bureau of Indian Affairs or the Indian Health Service rescinds a contract under the act. The amendment should be construed to extend such hearing rights to any appeal pending on or filed after the date of enactment of the Indian Self-Determination Act Amendments of 1988.

Title III provides the compensation and settlement of all claims arising as the result of an alleged error in the Secretary of the Interior's approval of certain land conveyances contained in the will of one Garrett White also known as Many White Horse. Set forth below is a summary of the major provisions of the settlement:

The Blackfeet Tribe shall transfer all of its interest in about 240 acres to the Secretary of the Interior to be held in trust for the benefit of John Benedict Renville. Many Lois Peterson

Munoz shall transfer all her interest in about 280 acres to the Secretary of the Interior to be held in trust for John Benedict Renville.

Furthermore, upon the completion of certain other requirements, the Secretary of the Treasury shall pay $50,000 to John Benedict Renville, $58,500 to the Blackfeet Tribe, $127,000 to Mary Lois Peterson Munoz and another $165,535 less attorney fees to John Benedict Renville.

Title IV of the bill provides additional fishing sites on the Columbia River for the Warm Springs, Yakima, Umatilla, and Nez Perce Tribes.

Back in the 1930's when the U.S. Army Corps of Engineers constructed the massive Bonneville Dam across the Columbia River, the corps pledged to the neighboring Indian tribes with treaty fishing rights on the river to provide about 400 acres of new fishing sites adjacent to the newly created Bonneville Pool in lieu of the many Indian fishing sites inundated by that pool.

To date, the corps has provided only 40 acres of these sites, and while acknowledging as early as 1973 that additional acreage is still due to the tribes, the corps asserts that new legislative authority is required to enable them to move toward satisfaction of that pledge. Title IV provides that authority.

Section 401(a) will provide approximately 58 acres at 23 various sites as additional Indian fishing sites. These sites, on both the Oregon and Washington sides of the Columbia River, are all currently owned by the U.S. Army Corps of Engineers, and many are already being used by Indian treaty fisherman for access to the river. As stated earlier, it is not the intent of this section to include any units of the National Wildlife Refuge System in the definition of the term "Federal land."

To my knowledge, there are seven such sites in Oregon, consisting of about 13.25 acres; 16 such sites are located in the State of Washington and consists of about 45 acres.

Subsection (b)(1) provides that in addition to the sites selected pursuant to subsection (a), the corps is authorize to acquire from willing sellers at least six new sites adjacent to the Bonneville Pool.

In addition to the amendments referred above, the Senate has also included an amendment authorizing the distribution of funds awarded by the Court of Claims to the Wisconsin Bank Potawatomi in Docket 28.

Another amendment transfer about 11,300 of land located in Forest and Oconto Counties, WI, to the Forest County Potawatomi community of Wisconsin and 3,359 acres of land located in Menominee County, MI, to the Hannahville Indian Community of Michigan. These lands were originally acquired in 1913 by the United States with funds which were actually owed by the United States to these tribes. The lands are currently owned by the United States.

Another amendment provides for the transfer of about 5,100 acres of Federal land in San Diego County, CA, to 11 bands of Mission Indians. This land consists of some isolated tracts currently administered by the Bureau of Land Management.

Mr. Speaker, I reserve the balance of my time.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as sponsor of H.R. 2677, I rise in support of the motion to concur in the Senate amendment. This bill would establish procedures to review tribal constitutions and bylaws pursuant to the Indian Reorganization Act of 1934. This bill is consistent with the mandates of the Federal courts. It directs the Secretary of the Interior to hold ratifying elections.

The House passed this bill on the consent calendar on December 7, 1987. The Senate passed the bill on September 30, 1988, with a series of noncontroversial amendments to Indian law.

The administration has no objection to the bill and I urge my colleagues to support it and pass it.

Mr. Speaker, I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma [Mr. WATKINS].

Mr. WATKINS. I thank the chairman for yielding.

Mr. Speaker, I ask for this time to enter into a colloquy with the gentleman from Arizona, the chairman of the Committee on Interior and Insular Affairs, Mr. UDALL, concerning this legislation.

Mr. Speaker, as our esteemed chairman knows, many times the Congress has in the past enacted laws which, because of the peculiar circumstances of the Oklahoma statehood statute, have been interpreted as not applying to native Americans living in Oklahoma. In that framework, title I of H.R. 2677 would amend section 16 of the Indian Reorganization Act insofar as it relates to the Secretary of the Interior's approval of tribal constitutions. As the gentleman knows, the Oklahoma Indian Welfare Act recognizes the right of Oklahoma Indian tribes to organize for their common welfare and adopt constitutions and bylaws. The act also refers to the Indian Reorganization Act by stating that such Oklahoma Tribes shall enjoy any other rights or privileges secured to Indian tribes under the Indian Reorganization Act. In view of these facts, I would inquire of the gentleman from Arizona whether the provisions of this legislation also govern the Secretary of the Interior in reviewing the Constitutions of Oklahoma tribes who are subject to the Oklahoma Indian Welfare Act.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. WATKINS. I yield to the chairman.

Mr. UDALL. I thank the gentleman for yielding.

Mr. Speaker, yes, that is my understanding. The problems being addressed by this bill are not only limited to Indian tribes organized under the Indian Reorganization Act. It is our intention that the Secretary of the Interior shall apply the criteria set out in title I of this legislation when acting on the Constitutions of tribes that come under the Oklahoma Indian Welfare Act.

Mr. WATKINS. I thank the gentleman for his clarification about the intent of this legislation.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There is no objection.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 2677. Title I of this legislation passed this body earlier this year in nearly the same form as it is before us today. Differences over the standards by which the Secretary may decline to take action have been resolved. Title II contains several amendments considered by the House authorizing committees and passed by the Senate. Two of these amendments are of particular importance in my State.

Section 207 of this bill is similar to H.R. 4834, legislation which I introduced to authorize Alaska Native villages and certain Oklahoma Indian tribes to be eligible for waste treatment grants under the Clean Water Act.

Enactment of this section will allow the necessary waste treatment planning to be done in rural Alaska for years to come.

The amendment would correct a technical error made in the last reauthorization of the Clean Water Act in which Alaska Native villages were inadvertently omitted from authorization for grants under the act. Previously, both Alaska villages and former reservations in Oklahoma were eligible for treatment as Indian tribes. Passage of this legislation will correct the error and help to meet the waste treatment needs of these remote communities.

Further, section 217 of this bill will provide for a clarification of Federal escrow laws pertaining to funds received while lands were being transferred to Alaska Native corporations pursuant to the Alaska Native Claims Settlement Act. The amendment provides that receipt of proceeds from the sale of wildlife resources is included within the resource categories intended to be deposited into the Alaska Native Escrow Fund.

In July, the Senate added language to the Interior Department's appropriations bill that was intended to resolve ambiguity over the longstanding Pribilof Island Alaska Native escrow account claim. Conferees on that measure chose to substitute detailed report language resolving that ambiguity. Despite their efforts, the claim remains unresolved.

As originally enacted on January 2, 1976, the Alaska Native escrow law provided authority for the Government to divert to an escrow account its receipts derived from resources of lands that would pass to natives under the Alaska Native Claims Settlement Act [ANCSA]. During the protracted period between the ANCSA withdrawals in 1971 and conveyance, the Government had authority to continue its various revenue generating activities on lands that had been withdrawn for native selection. The Government was not trespassing at that point—it still owned the land which was in the process of being conveyed to the relevant native corporation. The Government had authority to collect these receipts under such programs as the Mineral Leasing Act, the Fur Seal Act, and the laws regarding timber sales in the national forests. Congress determined that keeping the proceeds was unfair to Alaska Natives, since the Government had received its part of the ANCSA settlement bargain effective December 18, 1971. In fact, if the Government could have kept the proceeds from withdrawn lands prior to conveyance, it would have had a considerable economic incentive to further slow the conveyance process. So, the escrow account statutes were enacted to direct the proceeds to the native corporation that ultimately received the withdrawn lands.

Much of the land withdrawn for native selection and conveyance had been withdrawn previously for mineral entry, wildlife protection, forests, et cetera. Congress directed the Government to retain in Federal ownership within ANCSA withdrawals only the smallest practicable tracts necessary for its various purposes. The native escrow statutes provide that revenues from lands not so retained would be escrowed. Various Federal agencies over the years have opposed this "section 3(e)" limitation on their interests. But in a variety of contexts over the years, the Department and Congress have consistently refused to permit the agencies to limit native property rights arising outside the section 3(e) boundaries. True, in native conveyances, Federal agencies often retained easements or other access rights over nonsection 3(e) lands conveyed, but that is irrelevant to the operation of the escrow laws, which deal with the period prior to conveyances. Moreover, in cases such as the Pribilofs, timber sales, or the Kenai gas field, resources were taken, extracted or severed, a wholly different activity than an access right or easement.

The escrow fund amendment contained in this legislation definitively states that, regardless of any residual access or management rights it may have held, reserved or retained pursuant to the Fur Seal Act of 1966, as amended, prior to or subsequent to conveyance of lands to the two Pribilof Village Corporations, the Government did not have authority prior to or subsequent to conveyance to take seals from lands conveyed to the Pribilof Native Village Corporation pursuant to ANCSA without escrowing the proceeds derived from the harvested seals. As enunciated in the Statement of Managers for the fiscal year 1989 Interior appropriations bill: "The proceeds received by the Federal Government from its sale of pelts taken from native corporation lands shall be the measure of the principal amount placed in escrow and then distributed." H.R. Rep. No. 100-862, 100th Cong., 2d Sess. 80 (1988). It is not just trespass damages which are covered by the escrow statutes. The escrow statutes supersede any rights held by the Government under the Fur Seal Act to "wildlife proceeds * * * from harvests on lands conveyed pursuant to the act." In this case, of course, the "act" refers to the Alaska Native Claims Settlement Act.

The amendment statutorily resolves in the affirmative any possible question as to whether wildlife proceeds are included under the escrow statutes. At a minimum, for the purposes of the escrow statutes, wildlife harvested on lands later conveyed to native corporations pursuant to ANCSA is quite simply a resource of land, whether it spends time in its life cycle in the air, water, or ground.

Finally, the amendment clarifies any possible ambiguity with regard to the time period within which proceeds received are to be escrowed and distributed to the native corporations. The escrow statutes in general provide that the appropriate recipients are to be distributed proceeds derived by the Government between the date of withdrawal—December 18, 1971, in most cases—and the date of conveyance of ANCSA lands. Because there might be a time lag between the date a resource was taken and the date the Government received the proceeds from the sale thereof, an ambiguity may exist. The applicable rules of statutory construction and interpretation, as set forth in the Statement of Managers, DOI escrow account precedent, and the plain meaning of the statutes are all consistent: Proceeds received during the withdrawal-to-conveyance period are to be escrowed and distributed.

The language in the amendment attached to H.R. 2677 confirms that position and mandates payments of proceeds received in that period. Therefore, some of the escrow fund proceeds properly due to the Pribilof Village Corporations were derived from seals harvested immediately prior to the passage of ANCSA on lands later conveyed to the corporations pursuant to the act, at the same time proceeds received after conveyance from seals harvested immediately before conveyance are not subject to escrow.

I am informed by the Secretary of the Interior that the Government's maximum liability in this claim could exceed $18 million. By virtue of this legislation, the Government's exposure should not exceed $10 million. However, statutory interest will continue to accrue, and could push the claim back over $100 million if the parties and the Department of the Interior do not act with dispatch. The claim—both principal and interest—is to be paid out of the claims and judgment fund pursuant to Public Law 99-396.

This amendment marks the third congressional action in the last 4 months to dispose of this claim. With statutory interest increasing daily, there is no remaining basis for the Department to deny certifying the claim.

Mr. UDALL. Mr. Speaker, I yield back the balance of my time.

Mr. RHODES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 2677.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the bill was concurred in.

A motion to reconsider was laid on the table.

DISAGREEING TO SENATE AMENDMENT TO H.R. 3621, SOUTHERN CALIFORNIA INDIAN LAND TRANSFER ACT AND REQUESTING A CONFERENCE WITH THE SENATE THEREON

Mr. UDALL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 576) to take from the Speaker's table the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be a part of the reservation with which they are contiguous, with a Senate amendment thereto, and request a conference with the Senate thereon.

The Clerk read as follows:

H. RES. 576

Resolved, Upon adoption of this resolution, the House of Representatives shall be considered to have taken from the Speaker's table the bill, H.R. 3621, to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be a part of the reservation with which they are contiguous, with a Senate amendment thereto, to have disagreed to the Senate amendment, and to have asked for a conference with the Senate.

The SPEAKER pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona [Mr. UDALL] will be recognized for 20 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3621, introduced by Mr. DUNCAN HUNTER, of California, already passed the House and is coming back from the Senate with a new title II.

As originally passed by the House, the bill provided for the transfer of some 5,100 acres of Federal land in San Diego County to 11 bands of Mission Indians. This land consists of some isolated tracts currently administered by the Bureau of Land Management.

In addition to providing for the transfer of these 5,100 acres of land, the Senate added a title II which would establish an Indian Development Finance Corporation. This would be a federally chartered Corporation owned by both the Federal Government and the Indian tribes. The Corporation would provide financial development assistance for Indian business enterprises through a combination of equity assistance, direct loans, and loan guarantees.

The Corporation would be governed by a Board of Directors appointed by the President and confirmed by the Senate.

Mr. Speaker, economic conditions on Indian reservations are still deplorable and one of the reasons is the lack of access to investment capital. This bill provides an innovative approach toward resolution of this problem.

This bill is very similar to legislation which was introduced in the House by my colleague, Mr. RICHARDSON from New Mexico and on which hearings were held by the House Interior Committee. I urge passage of this resolution calling for a conference on this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have no objection to the motion to disagree to the Senate amendment contained in H.R. 3621, the Southern California Indian Land Transfer Act, and to go to conference.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in the support of the motion to disagree in the Senate amendments to H.R. 3621, the Southern California Indian Land Transfer Act, and to go to conference.

The Senate added a new title which authorizes a new Indian Finance Development Corporation to assist tribes, Alaska Natives, and Indian-owned businesses. With unemployment in the 50 percent range it is a commendable idea. However, we have several technical disagreements which we need to work out, including the eligibility of Alaska Native-owned business to participate in the programs of the Corporation.

Therefore, I urge my colleagues to support the motion to disagree with the Senate amendments and insist on a conference on H.R. 3621.

Mr. RHODES. Mr. Speaker, I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and agree to the resolution (H. Res. 576).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

AGREEING TO THE SENATE AMENDMENT TO H.R. 3408, INCREASING AUTHORIZATION FOR COLORADO RIVER STORAGE PROJECT, WITH AMENDMENTS

Mr. MILLER of California. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 577) to take from the Speaker's table the bill (H.R. 3408) to increase the amounts authorized for the Colorado River storage project, and concur in the Senate amendment with amendments.

The Clerk read as follows:

H. RES. 577

Resolved, Upon the adoption of this resolution, the House of Representatives shall be considered to have taken from the Speaker's table the bill H.R. 3408, to increase the amounts authorized for the Colorado River Storage Project, with the Senate amendment thereto and to have agreed to the Senate amendment with an amendment as follows:

The House amendment to the Senate amendment:

Immediately after the text of the amendment, insert the following:

SEC. 5. BOUNDARY CHANGE FOR JOHN MUIR NATIONAL HISTORIC SITE, CALIFORNIA.

(a) MAP; LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire (by donation, purchase with donated or appropriated funds, or exchange) lands and interests in land within the area generally depicted on the map entitled 'Boundary Map, John Muir National Historic Site' numbered 426-80, 015A and dated June 1988. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. Lands and interests in lands, within the boundaries of such area which are owned by the State of California or any political subdivision thereof, may be acquired only by donation or exchange. The Secretary of the Interior shall acquire only such interests in the John Muir grave site (as depicted on the map referred to in this subsection) as may be necessary to preserve the site in its present undeveloped condition and to provide all maintenance of the site by the Secretary of the Interior.

(b) INCLUSION WITHIN HISTORIC SITE.—The lands and interests in lands within the boundaries of the area depicted on the map referred to in subsection (a) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

(c) AUTHORIZATION OF APPROPRIATIONS.—For purpose of acquiring the lands and interests in lands within the area depicted on the map referred to in subsection (a), there are authorized to be appropriated such sums as may be necessary.

(d) COOPERATIVE AGREEMENT.—The Secretary of the Interior, acting through the Director of the National Park Service, is authorized to enter into a cooperative agreement with the East Bay Regional District of Oakland, California, for the operation and maintenance by such District of trails on lands within the John Muir National Historic Site.

SEC. 6. MISSOURI RIVER STREAMBANK STABILIZATION.

Section 3(a)(22) of the Wild and Scenic River Act of 1968, as amended (16 U.S.C. 1274(a)(22)), is further amended by inserting prior to the semi-colon at the end of subsection (A), the following: ": *Provided*, That no cost-sharing by local entities shall be required by the Secretary for streambank stabilization structures constructed under authority of this subsection".

SEC. 7. YOSEMITE NATIONAL PARK.

Notwithstanding any other provision of law, no Federal lands may be used for the expansion of the capacity of any reservoir which is located within the boundaries of Yosemite National Park unless Congress enacts specific statutory authorization after the date of the enactment of this Act for such expansion.

Amend the title so as to read: "To authorize additional appropriations for the Central Utah Project, to implement a settlement with the Strawberry Water Users, to expand the John Muir Historic Site, to prohibit the expansion of any reservoir within the boundaries of Yosemite National Park, and for other purposes.".

Amendent: Page 3, after line 2 insert:

SEC. 4. STRAWBERRY VALLEY LAND COMPENSATION AND EXCHANGE.

(a) PURPOSES.—The purposes of this section are—

(1) to modify the boundary of the Uinta National Forest to include certain Strawberry Valley Project lands currently administered by the Bureau of Reclamation, in order to provide more efficient management for public benefit;

(2) to transfer certain lands, and to compensate the Association for the loss of certain contractual surface rights and interests; and

(3) to provide for rehabilitation of certain of those lands to be administered by the Forest Service for public benefit.

(b) DEFINITIONS.—For the purposes of this Section—

(1) the term "Association" means the Strawberry Water Users Association,

(2) the term "Secretary" means the Secretary of the Interior, and

(3) the term "Project Lands" means approximately 56,870 acres of Strawberry Valley Project Lands and includes 95 acres to be transferred to the Association, 25,990 acres of recreation lands associated with the Bonneville Unit of the Central Utah Project, and 30,785 acres of remaining Strawberry Valley Project Lands.

(c) BOUNDARY MODIFICATION OF UINTA NATIONAL FOREST.—

(1) The exterior boundary of the Uinta National Forest shall be modified to include 56,775 acres of the original 56,870 acres of Strawberry Valley Project lands as generally depicted on a map entitled "Boundary Modification, Uinta National Forest", and

dated May 1988. The effective date of such modification shall be the date upon which administrative jurisdiction is transferred to the Secretary of Agriculture in accordance with subsection (e)(1)(B). Those lands encompassed by the modified boundary include 25,990 acres of recreation lands associated with the Bonneville Unit of the Central Utah Project and 30,785 acres of remaining Project Lands. Such lands shall be administered by the Forest Service in accordance with applicable laws except that the 25,990 acres shall continue to be managed by the Forest Service as recreation lands in accordance with the purposes set forth in the Memorandum of Agreement between the Department of the Interior, Bureau of Reclamation, Upper Colorado Region, and the U.S. Forest Service (Contract No. 2-08-40-L3016), dated February 2, 1982.

(2) A map depicting the modified boundary of the Uinta National Forest shall be on file and available for public inspection in the office of the Chief of the Forest Service and appropriate field offices and the House Interior and Insular Affairs Committee and the Senate Energy and Natural Resources Committee.

(d) VALID EXISTING RIGHTS.—

(1) Notwithstanding any other provision of this section, the administration by the Forest Service of the lands described in subsection (c) shall not—

(A) affect or interfere with the authority of the Bureau of Reclamation to construct, operate, maintain, replace, or improve, as necessary, project facilities and access thereto associated with the Strawberry Valley Reclamation Project and Bonneville Unit of the Central Utah Project; or

(B) diminish any other authorized uses of the lands for water resource and power development under Federal law.

(2) The Association shall relinquish all of its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of the Project Lands in accordance with subsection (e)(2). Notwithstanding any other provision of this section, all other contractual rights and interests of the Association in the Strawberry Valley Reclamation Project shall remain unchanged. The Association shall be exempt from fees or charges for licenses or permits, other than grazing fees, for project related facilities on Project Lands.

(e) STRAWBERRY VALLEY LAND TRANSFERS, AND OTHER CONSIDERATIONS.—

(1)(A) The Secretary is hereby authorized and directed to convey to the Association 95 acres in fee title of Project Lands, together with all improvements, as shown on a plat appended to the map referred to in subsection (c)(1). This action is consistent with the intent of the Act of April 4, 1910 (chapter 140, 36 Stat. 269).

(B) Within 15 days of payment of compensation to the Association in accordance with subsection (e)(2), the Secretary shall transfer administrative jurisdiction to the Secretary of Agriculture over the 30,785 acres of remaining Project Lands and the 25,990 acres of recreation lands. Management of the surface shall be subject to applicable law.

(C) Nothwithstanding any other provision of this section, the Association shall retain its contractual rights to issue oil, gas, coal and mineral leases, excluding sand and gravel, on the Project Lands. The authority of the Association to issue such leases and to utilize revenues therefrom as set forth in Interior Solicitor's Opinion M-36863 dated August 8, 1972 (79 I.D. 513) is hereby confirmed. All such revenues shall be used and applied to Strawberry Valley Reclamation Project purposes.

(2) COMPENSATION.—There is authorized to be appropriated under Section 8, of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620g), $15,000,000 as compensation to the Association which shall be available only for such compensation and must be used for Strawberry Valley Reclamation Project purposes. Of the amounts appropriated hereafter under Section 8 of such Act, the first $15,000,000 shall be paid to the Association. Upon receipt of such compensation, the Association shall relinquish all of its contractual surface rights and interests, including sand and gravel, in the 56,775 acres of Project Lands.

(3) OTHER CONSIDERATIONS.—The Association shall be entitled to retain the first right of refusal to grazing privileges on the 30,785 acres of remaining Project Lands, and if permitted under the grazing rehabilitation plan pursuant to subsection (f), on the 25,990 acres of recreational lands.

(f) REHABILITATION OF LANDS.—The Forest Service shall, in coordination with the State of Utah and other appropriate agencies begin long-term rehabilitation of Project Lands. Such rehabilitation shall be five years in duration and shall permit continued grazing uses consistent with such rehabilitation. There is authorized to be appropriated under Section 8 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620g), $3,000,000 which shall be available only for such rehabilitation. The Association shall be held harmless for any costs associated with rehabilitation.

(g) INTERIM RECREATIONAL MANAGEMENT BY FOREST SERVICE.—Until administrative jurisdiction of the 25,990 acres of recreation lands is transferred to the Secretary of Agriculture in accordance with subsection (e)(1)(B), the Congress authorizes and directs the Secretary of Agriculture to expend National Forest System appropriated funds in lieu of Department of Interior, Bureau of Reclamation funds to manage the 25,990 acres of recreation lands for the Strawberry Reservoir adjacent to the Uinta National Forest in Utah. Such expenditures shall be in accordance with the provisions of the Memorandum of Agreement (Contract No. 2-07-40-L3016) dated February 2, 1982.

(h) LAND EXCHANGE.—

(1) AUTHORIZATION.—The Secretary of Agriculture may exchange or sell the National Forest system lands, including any administrative sites and improvements thereon, described in subsection (h)(2). Disposal or exchange of these properties is intended to facilitate the acquisition of administrative sites and offices together with improvements thereon at either Provo, Utah County, Utah or near Heber City, Wasatch County, Utah, as specified by the Secretary of Agriculture. If the sale option is exercised, moneys collected shall be held in a special account intended for this purpose and are hereby authorized for expenditure without further appropriation.

(2) LANDS.—The lands referred to in subsection (h)(1) are those lands which are depicted on a plat, entitled Heber City, Utah, dated April 17, 1978, and May 7, 1978. The plat shall be on file and available for public inspection in the office of the Chief of the Forest Service and appropriate field offices.

(3) REQUIREMENT OF EQUAL VALUE.—If the lands are exchanged, the values, as determined by the Secretary of Agriculture, of the lands and building to be exchanged under this section shall be equal, or if not equal, shall be equalized by the payment of money to the grantor or the Secretary of Agriculture as the circumstances require so long as the payment does not exceed 25 percent of the total value of the land (including any improvements thereon) transferred out of Federal ownership. The Secretary of Agriculture shall make every reasonable effort to keep any such payment to the minimum amount necessary to equalize the values involved.

The SPEAKER pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. MILLER] will be recognized for 20 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MILLER].

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their marks on House Resolution 577, the resolution presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3408 would authorize an interim increase of approximately $45 million in the authorized cost ceiling of the Colorado River storage project to allow construction of certain features of this project to continue for 1 year. The House passed this bill on September 13, 1988 by voice vote.

On September 30, the Senate amended the bill by adding a provision dealing with the management of lands surrounding the Strawberry Reservoir in Utah. This amendment will transfer to the U.S. Forest Service ownership and management of the surface rights to certain lands now owned by the Strawberry Water Users Association. The association will receive $15 million in compensation. After the lands are transferred, the Forest Service will begin a long-term program to rehabilitate the lands, at a cost not to exceed $3 million.

It was our intent that this provision be included in the more comprehensive bill to reauthorize the Colorado River storage project which will be considered by the committee early next year. However, in the interests of securing an interim cost ceiling increase for the project, we are willing to accept the language offered by the Senate.

The amendment at the desk would add three provisions to H.R. 3408.

The first amendment would authorize the expansion of the John Muir National Historic Site, California.

The second amendment would waive certain requirements to facilitate streambank stabilization along certain reaches of the Missouri River. This provision is under the jurisdiction of the Committee on Public Works and Transportation, and was included in S. 640, which passed the House last year.

Finally, the third amendment would prohibit the expansion of any reservoir within Yosemite National Park, CA. This provision was included in H.R. 1173.

Mr. Speaker, these are worthy amendments which have previously passed the House. I urge their adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. RHODES. Mr. Speaker, I yield 1 minute to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise to support H.R. 3408, the bill to increase the amounts authorized for the Colorado River storage project. This is an interim bill which will permit construction to continue on the Bonneville Unit of the Central Utah Project. The CUP was designed to capture Utah's share of the Colorado River under the Colorado River compact. The CUP is absolutely essential to the future of Utah and my district. Without water Utah would return to desert. I therefore support 3408. But there is another reason I strongly support this bill.

Soldier Creek Dam is also a feature of the CUP constructed to expand the Strawberry Resevoir capacity for the Bonneville Unit. A continuing problem has been the management of Strawberry project lands which has been under the Bureau of Reclamation with contractual rights for grazing, mineral exploration, timber and other uses vested in the Strawberry Water User's Association.

Unfortunately, these lands have not been managed well. Last May I introduce H.R. 4705 to change the management to the Department of Interior's Forest Service. This was done after many months of negotiation between the BOR, the State of Utah, Strawberry Water Users and environmental groups. The agreement they arrived at was truly a win-win-win approach. The Bureau of Reclamation will transfer administrative jurisdiction to the U.S. Forest Service upon settlement of the water users' contractual rights. By having a professional land manager over the Strawberry lands we expect that the scenic, recreational and other values will be greatly enhanced. Moreover, mitigation for much of the damage caused by CUP construction will be accomplished. These provisions were attached in the other body by Senator JAKE GARN. I commend him for his heroic efforts toward obtaining the agreement of the parties and this step in healing a scar on the landscape of my district.

Mr. RHODES. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. I thank the gentleman from Arizona for yielding.

Mr. Speaker, I very much appreciate the cooperation and assistance from the distinguished gentleman from California [Mr. MILLER], the distinguished chairman of the committee, the gentleman from Arizona [Mr. UDALL], and the distinguished member of the committee, the gentleman from Arizona [Mr. RHODES], in providing for the previously passed legislation relating to Missouri River banks stabilization project.

I have discussed this addition to the legislation with the White House and they have advised me they have no objection to House passage of this amendment to H.R. 3408.

Mr. Speaker, I rise today in strong support of this proposed legislative action.

In particular Mr. Speaker, I would like to thank the Interior Committee, specifically the chairman and ranking members of the Water and Power Subcommittee, for their leadership and willingness to include language in this bill that concerns the Missouri recreation project. I would also like to commend both the majority and the minority staffs for the help which they have given to me.

The MoRec River language included in this bill is a simple, technical amendment to the Wild and Scenic Rivers Act which will fulfill a commitment the Federal Government made nearly 10 years ago to maintain the integrity of this last remaining unchannelized stretch of the Missouri River below the Missouri mainstem dams.

The purpose of the amendment is to clarify the original intention of Congress with regard to the sharing of the costs of bank stabilization structures which are identified as part of the Missouri National Recreation River project.

In 1978, Congress designated a 59-mile boundary of the Missouri River between the Gavins Point Dam near Yankton, SD, and Ponca, NE, as a recreation river under the Wild and Scenic Rivers Act. This 59-mile stretch of the Missouri River is unique because it is the last remaining stretch of the river which has not been either dammed, or channelized for navigation.

While the MoRec River project contemplates wildlife mitigation projects and recreation sites along the river, one of the immediate and primary purposes of this project is to arrest the significant stream bank erosion caused by the irregular release of water from Gavins Point Dam.

This extraordinary erosion is caused by Federal action—the irregular and occasionallly very large water releases from the Gavins Point Dam. This is sufficient reason for the Federal Government to bear the cost of the extraordinary erosion damage its facility causes. It is not a proper burden for affected property owners, or local or State governments.

A unique—and that is the correct term—feature of the MoRec River project is that it combines the efforts and planning capabilities of the Department of the Interior and the Army Corps of Engineers. However, the unique fact that two Federal agencies are involved in this project has compounded the problems of implementing it.

A key feature of the original legislation authorizing the MoRec River project is that Congress recognized that bank stabilization was an important and necessary part of preserving the scenic beauty and recreational aspects of this scretch of the Missouri River.

However, when Congress in 1986 passed the Water Policy Resources Act (Public Law 99-662), it inadvertently did not make an exception for either recreation-designated rivers, or this unique project.

When that benefit accrues to private or local interests, it is certainly justifiable to require local beneficiaries, be they State, public or private, to share the cost of bank stabilization structures.

However, when Congress chooses to designate a particular river, or a portion thereof, a recreational river under the Wild and Scenic Rivers Act, then it is the Nation's interest and responsibility to preserve it.

The provision in H.R. 3408 does not change the original authorization of the Missouri Recreation River project, nor does it modify any existing cost-sharing requirements on the part of locals for bank stabilization projects which the Corps of Engineers is authorized to build. This provision does, however, eliminate the contradiction over cost-sharing on bank stabilization structures designated in the Missouri Recreation River project which arose following the passage of Public Law 99-662 in 1986.

Again, I would like to thank the distinguished Water and Power Subcommittee chairman, Mr. MILLER, and the distinguished minority member from Arizona, Mr. RHODES, and their staff for their unflinching support for this project.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3408, a bill to increase the Colorado River Storage Project Cost Authorization ceiling and for other purposes.

The House in early September passed this bill granting a $45 increase in order to allow for continued construction of the municipal and industrial [M&I] water supply features of the central Utah project during 1990. The Senate increased the House authorization by $18 million to allow for the acquisition and rehabilitation of approximatley 57,000 acres. Those lands would be added to the Uintah National Forest.

The central Utah project is essential to Utah and its economic future. However, there are also regional concerns that need to be addressed before granting the authorization necessary to complete all features of the project. I understand the regional water and power users are meeting regularly and progress is being made but, I wish to emphasize again that completion of this project is dependent on resolving in a manner satisfactory to the seven Colorado River Basin States the regional water and power issues that are related to this project.

In addition, the Senate passed bill has been modified to:

Expand the John Muir National Historic Site;

Waive cost-sharing requirements regarding the stabilization of the streambank on a portion of the Missouri River in Nebraska; and

Prohibits the expansion of any reservoirs in Yosemite National Park.

All of those provisions were incorporated in various bills passed earlier by this body.

I would like to commend the Utah delegation and the regional water and power interests for their efforts to work out an acceptable financing scheme for future consideration by Congress.

I urge my colleagues to support this interim cost ceiling increase.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. **MILLER** of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and agree to the resolution, H. Res. 577.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

SIPSEY WILD AND SCENIC RIVER AND ALABAMA ADDITION ACT OF 1988

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5395) to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as conditions to the Cheaha Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sipsey Wild and Scenic River and Alabama Addition Act of 1988."

TITLE I—WILD AND SCENIC RIVER DESIGNATION

SEC. 101. DESIGNATION

Section 3(a) of the Wild and Scenic River Act (82 Stat. 906, as amended; 16 U.S.C. 1274(a)) is amended by adding the following new paragraph:

"( )(A) SIPSEY FORK OF THE WEST FORK, ALABAMA.—Segments of the Sipsey Fork and several tributaries; to be administered by the Secretary of Agriculture in the classifications indicated, as follows:

"(1) Sipsey Fork from the confluence of Sandy Creek upstream to Forest Highway 26, as a scenic river; and

"(2) Sipsey Fork from Forest Highway 26 upstream to its origin at the confluence of Thompson Creek and Hubbard Creek, as a wild river; and

"(3) Hubbard Creek from its confluence with Thompson Creek upstream to Forest Road 210, as a wild river; and

"(4) Thompson Creek from its confluence with Hubbard Creek upstream to its origin in section 4, township 8 south, range 9 west, as a wild river; and

"(5) Tedford Creek from its confluence with Thompson Creek upstream to section 17, township 8 south, range 9 west, as a wild river; and

"(6) Mattox Creek from its confluence with Thompon Creek upstream to section 36 of township 7 south, range 9 west, as a wild river; and

"(7) Borden Creek from its confluence with the Sipsey Fork upstream to Forest Road 208, as a wild river; and

"(8) Borden Creek from Forest Road 208 upstream to its confluence with Montgomery Creek, as a scenic river; and

"(9) Montgomery Creek from its confluence with Borden Creek upstream to the southwest quarter of the southwest quarter of section 36, township 7 south, range 8 west, as a scenic river; and

"(10) Flannigan Creek from its confluence with Borden Creek upstream to Forest Road 208, as a wild river; and

"(11) Flannigan Creek from Forest Road 208 upstream to section 4, township 8 south, range 8 west, as a scenic river; and

"(12) Brazeil Creek from its confluence with Borden Creek upstream to section 12, township 8 south, range 9 west, as a wild river; and

"(13) Hogood Creek from its confluence with Braziel Creek upstream to the confluence with an unnamed tributary in section 7, township 8 south, range 8 west, as a wild river.

"(B) A map entitled "Sipsey Fork of the West Fork Wild and Scenic River", generally depicting the Sipsey Fork and the tributaries, shall be on file and remain available for public inspections in the office of the Chief of the Forest Service, Department of Agriculture.".

SEC. 102. STUDY.

The Secretary of Agriculture shall conduct a study to determine the feasibility of constructing a dam to establish a substantial lake, suitable for all types of recreational uses, to be located in the northeast portion of the Bankhead National Forest.

SEC. 103. LEWIS SMITH LAKE.

The Secretary is authorized and directed to monitor the waters flowing towards and into Lewis Smith Lake to take actions, including preventative maintenance, necessary to prevent any national forest management activities from causing injurious water quality.

TITLE II—WILDERNESS DESIGNATION

SEC. 201. DESIGNATION AND ADMINISTRATION.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890), the following National Forest System lands in the State of Alabama, comprising approximately thirteen thousand nine hundred and seventy acres, as generally depicted on maps appropriately referenced and on file in the Office of the Chief of the Forest Service, Department of Agriculture, are hereby designated as wilderness, and, therefore, as components of the National Wilderness Preservation System:

(1) certain lands in the William B. Bankhead National forest which comprise approximately thirteen thousand two hundred and sixty acres as generally depicted on a map entitled "Sipsey Wilderness Additions-Proposed", dated September 1988, and which are hereby incorporated in and shall be deemed to be part of the Sipsey Wilderness;

(2) certain lands in the Talladega National Forest which comprise approximately seven hundred ten acres as generally depicted on a map entitled "Cheaha Wilderness Additions-Proposed", dated June 1988, and which are hereby incorporated in and shall be deemed to be a part of the Cheaha Wilderness.

(b) ADMINISTRATION.—Subject to valid existing rights, wilderness designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964: *Provided,* That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(c) FIRE, INSECT, AND DISEASE CONTROL.—Consisent with section 4(d)(1) of the Wilderness Act of 1964 (P.L. 93-622), and the U.S. Forest Service policy, the Secretary of Agriculture may take such measures as may be necessary in the control of fire, insects (including the Southern Pine Beetle), and diseases within the Sipsey Wilderness, and Sipsey Wilderness additions, including any areas within the designated boundaries of the Wild and Scenic Rivers, subject to conditions as the Secretary deems desirable: *Provided,* That such measures in the Secretary's judgment are deemed necessary to protect threatened resources on Federal, State or private adjacent lands. Within five years from the date of enactment of this Act, or sooner for good cause in the judgment of the Secretary, the Secretary shall evaluate the dangers and potential dangers created by the Southern Pine Beetle and other insects in the Bankhead National Forest and adjacent State and private lands. If his evaluation of such dangers and potential dangers justifies a review of present U.S. Forest Service policy regarding such insects, then he shall review such policy for the Sipsey Wilderness additions, including any areas within designated boundaries of Wild and Scenic Rivers, and adjacent federal lands relative to the control of such insects. Thereafter, he shall monitor the dangers and potential dangers of such insects and such policy, closely.

(d) HIKING AND HORSE TRAILS.—The Secretary of Agriculture, at his discretion, shall convert existing roads within the Sipsey Wilderness Addition into suitable hiking or horse trails.

SEC. 202. FINDINGS AND DETERMINATIONS.

(a) FINDINGS.—The Congress finds that—

(1) The Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) The Congress has made its own review and examination of National Forest System roadless areas in Alabama and of the environmental impacts associated with alternative allocations of such areas.

(b) DETERMINATIONS.—On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Alabama, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Alabama; and

(2) with respect to the National Forest System lands in the State of Alabama which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II) and those lands referred to in subsection (d), that review and evaluation or reference shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revision of the plan, but shall review the wilderness option when the plans are revised, which revision will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary finds that conditions in a unit have significantly changed;

(3) areas in the State of Alabama reviewed in such final environmental statement, or referenced in subsection (d), and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976: *Provided*, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Alabama are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alabama for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) LIMITATION.—As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

(d) APPLICABILITY OF SECTION 202.—The provisions of this section shall also apply to National Forest System roadless lands in the State of Alabama which are less than five thousand acres in size.

SEC. 203. MAPS AND LEGAL DESCRIPTIONS.

As soon as practicable after enactment of this Act, the maps and legal descriptions of the Sipsey Wilderness and the Cheaha Wilderness, as modified by section 201(a), shall be filed with the Committees on Agriculture and Interior and Insular Affairs of the House of Representatives and the Committees on Energy and Natural Resources and Agriculture, Nutrition, and Forestry of the Senate, and such maps and legal descriptions shall have the same force and effect as if included in this Act: *Provided, however*, That corrections of clerical and typographical errors in such legal descriptions and maps may be made.

The SPEAKER pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5395, the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5395, introduced by our colleague from Alabama, Mr. FLIPPO, would designate national forest wilderness additions in the State of Alabama. It would add 13,260 acres to the Sipsey Wilderness in the William B. Bankhead National Forest and 710 acres in the Talladega National Forest. Furthermore, it designates segments of the Sipsey Fork of the West Fork River as part of the Wild and Scenic Rivers System.

This proposal has been carefully analyzed by three previous Congresses during which several hearings were held. In each Congress, the bill failed to pass because of disagreements over language dealing with control of the southern pine beetle inside the Sipsey Wilderness. This bill contains compromise language agreed to by the Alabama delegation which solves the conflict. It would allow the control of fire, insects, and diseases inside the wilderness as long as such measures are consistent with section 4(d)1 of the Wilderness Act.

Mr. Speaker, this bill is the result of years of hard negotiations and we now have an agreement that everyone can support. I want to thank Mr. VOLKMER and Mr. DE LA GARZA of the Agriculture Committee for working so closely with us to develop this agreement. I urge my colleagues to pass this bill.

Mr. Speaker, I reserve the balance of my time.

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Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have no objection to this legislation. We support passage of the bill as proposed by the chairman of the subcommittee.

Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Speaker, I rise in support of H.R. 5395, a bill to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Cheaha Wilderness, and for other purposes.

Mr. Speaker, H.R. 5395 was reviewed by the Subcommittee on Forests, Family Farms, and Energy of the Committee on Agriculture and was subsequently considered by the subcommittee and full committee. The bill, as reported by the Committee on Agriculture, included amendments to eliminate a proposed water project in the Bankhead National Forest, to modify provisions related to controlling water quality in Lewis Smith Lake, and to limit activities which might have an adverse effect on the quality of the Sipsey Wilderness area. These provisions, and a clarifying amendment affecting the role of the Forest Service with regard to preventing conditions causing damage to water quality in Lewis Smith Lake, are incorporated in H.R. 5395.

Mr. Speaker, this bill results from years of negotiations between members of the Alabama delegation. I commend our colleagues, the Honorable RONNIE FLIPPO, and Senator HOWELL HEFLIN, for their efforts to strike a compromise and bring this measure before us today.

I urge the Members of the House to support H.R. 5395.

Mr. VENTO. Mr. Speaker, I yield such time as he may consume to the prime sponsor of this legislation, the gentleman from Alabama [Mr. Flippo].

Mr. FLIPPO. Mr. Speaker, I rise in strong support of H.R. 5395, the Sipsey Wilderness Additions Act of 1988.

This bill would expand the Sipsey Wilderness located within the William F. Bankhead National Forest in my congressional district and designate about 60 miles of the Sipsey River system as a wild or scenic river. H.R. 5395 would also add 710 acres to the existing Cheaha Wilderness area.

Mr. Speaker, the Sipsey Wilderness was created by the Eastern Wilderness Act in 1974. The 1974 law designated 12,000 of the 179,924 acres in the Bankhead National forest as the Sipsey Wilderness. H.R. 5395 would more than double the size of the Sipsey.

The RARE II study identified seven roadless areas encompassing 30,658 acres in the Bankhead National Forest. All seven areas are located in Lawrence County in my congressional district or immediately adjacent to my district in Winston County. The Forest Service recommended that approximately 7,173 of the total RARE II lands be designated as wilderness with the rest set aside for further planning. Others in my State recommended a larger wilderness set aside.

Thus, the stage was set for a debate and discussions extending over 6 years. Every interested party has been provided ample opportunity over the past 6 years to be heard, to make their case, to offer opposing views. Environmentalists, harvesters of the publicly-owned timber, residents of the affected area, public officials, officials of the Forest Service here in Washington and in Alabama and the general public have been invited and joined in the extensive public debates and hearings.

Mr. Speaker, I want to extend my thanks and appreciation to the chairman of the Subcommittee on National Parks and Public Lands [Mr. Vento] and the ranking minority member [Mr. Marlenee] and the chairman of the Subcommittee on Forests, Family Farms and Energy [Mr. Volkmer] and the ranking minority member [Mr. Morrison] for their help and assistance over the years. These two subcommittees have held six separate public hearings over the past 6 years on this legislation. The members of these two subcommittees have been very generous and gracious in providing a forum to discuss and debate the Sipsey Wilderness bills. On behalf of the people of my State, I want to thank each member of these two subcommittees for their patience, understanding and support.

As a result of all this work and debate, the bill under consideration here today, H.R. 5395, represents a compromise fully supported by the entire congressional delegation from Alabama and all the interested parties in the State. An identical bill has been introduced in the Senate and passed by that body. I know of no opposition to this bill in my State or anywhere else. The two leading newspapers in Alabama recently endorsed the compromise. I would like to include copies of these editorials as part of the record at this point.

Mr. Speaker, the Sipsey Wilderness Additions Act of 1988 would preserve and protect a unique and beautiful portion of the Bankhead National Forest for the use and enjoyment of future generations. I urge my colleagues to vote for this bill.

[From the Birmingham News, September 30, 1988]

Sipsey Wilderness

After six years of foot-dragging and controversy, Alabamians have finally agreed on a compromise plan to expand the Sipsey Wilderness area in the Bankhead National Forest.

The U.S. House of Representatives and Senate should move quickly to approve it before this session of Congress adjourns.

Expansion of the Sipsey, a uniquely canyoned, beautifully natural area of the Bankhead, should never have taken so long or been so controversial. It was endorsed by almost every top elected official in the state when first proposed. It would cost taxpayers nothing because the land already belongs to them.

The national forest area made part of a wilderness could still be used by hikers, hunters and fishermen. It would just be protected from timbering.

The result, as the director of field operations for the Wilderness Society in Washington said, would be "one of the finest protected areas in the entire South."

U.S. Rep. Ronnie Flippo, in whose district the proposed expansion lies, guided three separate Sipsey bills to passage in the House, in 1982, 1983 and 1986. Each time they died for lack of support from either Alabama's U.S. senators, who paid more attention to the objections of local loggers.

Late Tuesday, Rep. Flippo and Sen. Howell Heflin introduced identical bills that could finally push the project through.

Under the compromise, 13,260 acres would be added to the existing 12,726-acre wilderness. The bill also would preserve 5,085 acres of the West Fork Sipsey River by giving it National Wild and Scenic River designation.

The bill also would add 710 acres to the 6,780-acre Cheaha Wilderness Area in the Talladega National Forest.

It's a good plan. It will help preserve a piece of Alabama's natural landscape for future generations.

The biggest hurdle to its passage now is time. Congress will adjourn in mid-October and, in the House, the two committees that would have to review the bill have already held their last scheduled meetings.

Rep. Flippo thinks there is a chance those committees could hold unscheduled sessions. We hope he is right. If not, he and Sen. Heflin ought to make the Sipsey expansion one of the first items of business taken up when the next session gets under way.

[From the Huntsville Times, Sept. 29, 1988]

A Wilderness Compromise

For more than six years, U.S. Rep. Ronnie Flippo, D-Florence, has struggled to persuade Congress to expand the Sipsey Wilderness Area in the Bankhead National Forest.

For six years, Flippo has failed—but not in the House of Representatives. U.S. Sen. Howell Heflin has been unwilling to sponsor the legislation in the Senate, rendering moot the House's overwhelming approval.

Now, in the waning days of the 100th Congress, the two men have worked out a compromise, and the biggest threat to the Sipsey expansion is the shortening congressional calendar.

The plan calls for the existing 12,700-acre wilderness to be expanded by 13,260 acres. In addition, another 5,085 would receive de facto wilderness protection under the Wild and Scenic Rivers Act.

This is scaled down somewhat from the 28,000 acres Flippo sought to add to the Sipsey beginning in 1982. The original plan encountered opposition from the U.S. Forest Service and Winston County loggers, as well as from Heflin.

In the compromise, Heflin succeeded in making sure the proposed legislation provided the Forest Service with the authority to control pine-beetle infestation, even though most of the land in question is covered in hardwoods. Heflin also wanted a dam constructed elsewhere in the Bankhead Forest, but a House subcommittee Wednesday refused to go along, calling for a study instead.

Even if the expansion doesn't make it through the Congress by mid-October, it should have little trouble passing next year. The difference of opinion between Flippo and Heflin was not the major obstacle—it was the only obstacle.

The existing and proposed Sipsey wilderness protects a unique, self-contained ecosystem. The rugged Sipsey area of the Bankhead National Forest is home to almost 150 kinds of birds and innumerable other species of wildlife, some of which are found nowhere else in Alabama.

Wilderness designation forbids any commercial or disruptive uses of the land. Agriculture is banned in wilderness areas. So are cars, trucks and all-terrain vehicles. And so is logging, the principal economic activity in America's national forests.

But the impact of the Sipsey expansion on the logging industry should be minimal. The proposed expansion of the wilderness represents only about 8 percent of the total land in the Bankhead National Forest. If the compromise expansion passes both houses, 85 percent of the 180,000-acre Bankhead Forest will still be open to logging.

What is permitted in a wilderness? Hunting and fishing, in accordance with state game laws; hiking, birdwatching, photography, nature study, picnicking—in short, any non-destructive activity that doesn't require a machine.

America's protected wilderness lands are the last remnants of the great wilderness that covered the continent when the European settlers came. Some western states have massive tracts designated as wilderness. Others, such as Alabama, have precious little public land to begin with and, hence, only small wilderness tracts.

Once land is developed, its wilderness value is lost forever. That's why the Sipsey expansion, which may be Alabama's last chance at wilderness acreage, is so important.

Through the compromise worked out between Ronnie Flippo and Howell Heflin, we have a chance to leave future generations an irreplaceable piece of our natural heritage. That's truly public service.

Mr. VENTO. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. Erdreich].

Mr. ERDREICH: Mr. Speaker, I rise in support of this Alabama wilderness bill, and commend my colleague from Alabama who has been so tenacious on the issue of wilderness expansion in our State. My colleague, the sponsor of this bill, has three times, with my strong support, shepherded a wilderness bill through the House, only to see it die in the other body. Now that body has acted first, and there is a good chance that Alabamians will see parts of the oldest and most scenic woodlands in our State preserved for future generations to enjoy.

The additional protections that this bill will give to the Sipsey River itself, and 18,340 acres in the Bankhead National Forest, are widely supported in Alabama. In my own area, the Birmingham News and Post-Herald newspapers, plus local governments and other citizens groups, have supported an even larger expansion than this bill provides, but we all endorse this compromise and urge its passage.

The wilderness will be created north of my district, but even in the middle of the State, my area will benefit directly. In addition to the wilderness area our children and grandchildren will enjoy, the Wild and Scenic River designation will also help protect the source of water for the city of Birmingham. It is thus a very important legacy for all the citizens of the State.

The State of Alabama has a smaller percentage of Federal, public land than any State surrounding it, only 3.46 percent. This is less than the national average. And even though the bill we are now considering does not add additional Federal land, Alabama citizens will benefit from the additional protections this bill will provide, and we are certainly grateful to my colleague from north Alabama who has worked so hard to bring this bill to enactment.

Mr. VENTO. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. Harris].

Mr. HARRIS. Mr. Speaker, I also wish to rise and express my strong support for this bill, and I also wish to acknowledge my appreciation for the hard work that the gentleman from Alabama [Mr. Flippo] has done in getting this legislation to this point. I also express my thanks to my committee chairman, the gentleman from Texas [Mr. de la Garza] and my subcommittee chairman, the gentleman from Missouri [Mr. Volkmer]. I thank them for the expeditious way the hearings were granted and held on this legislation.

Also the gentleman from Minnesota [Mr. Vento] is to be commended for the work he and his committee has done.

Mr. Speaker, I ask my colleagues to support this legislation. It is needed, and the timing is perfect.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think the gentleman from Alabama [Mr. Flippo] does deserve a great deal of credit for this legislation. He has been tenacious, as has been indicated, and this is a worthy proposal. I recommend it.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gray of Illinois). The question is on the motion offered by the gentleman from Minnesota [Mr. Vento] that the House suspend the rules and pass the bill, H.R. 5395, as amended.

The question was taken (and two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CONCURRING IN SENATE AMENDMENT TO H.R. 990, DEALING WITH A LAND TRANSFER NEAR OCOTILLO, CA, WITH AN AMENDMENT

Mr. VENTO. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 578) to take from the Speaker's table the bill (H.R. 990) to direct the Secretary of the Interior to convey a certain parcel of land located near Ocotillo, CA, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read as follows:

H. Res. 578

Resolved, upon adoption of this resolution, the House of Representatives shall be considered to have taken from the Speaker's table the bill H.R. 990, to direct the Secretary of the Interior to convey a certain parcel of land located near Ocotillo, California, with the Senate amendment thereto and to have agreed to the Senate amendment with an amendment as follows:

The House amendment to the Senate amendment: In lieu of the matter proposed to be inserted, insert the following:

"(d) This Act may be cited as the Imperial Valley College Barker Museum Land Transfer Act of 1988.".

The SPEAKER pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. Vento] will be recognized for 20 minutes and the gentleman from Arizona [Mr. Rhodes] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Vento].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 578 is really the same as H.R. 990, which is a bill by the gentleman from California [Mr. Hunter] dealing with transfer of a parcel of Federal lands near the town of Ocotillo.

As introduced, the bill was identical to one which the House passed in the last Congress but which died in the Senate. In this Congress, it was passed by the House on March 10, 1987.

As passed by the House, the bill provided for transfer of about 23 acres to the Imperial Valley Community College for purposes of establishing a public museum. This is without controversy and passed without opposition.

Last year, however, the Senate amended the bill to add an unrelated provision that would have amended the California Wilderness Act of 1984 so as to delete certain lands in the Eldorado National Forest from a further planning area established by that Act.

Because this Senate amendment had never been discussed on this side of the Capitol, no action has been taken on it pending a review of its rationale. Since the Senate action, it has become evident that the Senate amendment is extremely controversial. We have heard from a considerable number of opponents. We have also reviewed the records of the development of the California Wilderness Act in our committee, and have determined that the lands that would be affected by the Senate amendment were intentionally included in the further planning area by the House.

Therefore, we are not prepared to agree to the Senate amendment. However, in the interests of allowing the Imperial Valley College to go forward with its plans, by authorizing the transfer of the lands covered by the original House-passed bill, we are asking the House to return the bill to the Senate in its original form, so that the Senate will have an opportunity to complete action on it and send it on to the President.

Mr. Speaker, I reserve the balance of my time.

Mr. **RHODES**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, again we have no objection to this legislation. We support its passage as proposed by the chairman of the subcommittee.

Mr. Speaker, I reserve the balance of my time.

Mr. **VENTO**. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. **RHODES**. Mr. Speaker, it appears that I have no requests for time either, and I yield back the balance of my time.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. Vento] that the House suspend the rules and agree to the resolution (H. Res. 578).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

FURTHER MESSSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 154. Concurrent Resolution to correct additional technical errors in the enrollment of the bill H.R. 1720.

MOTOR CARRIER SAFETY AND REGULATORY REFORM ACT OF 1988

Mr. **ANDERSON**. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5321) to amend the Motor Carrier Safety Act of 1984 to eliminate application of the commercial zone exemption to commerical motor vehicle safety regulations, and for the purposes, as amended.

The Clerk read as follows:

H.R. 5321

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Motor Carrier Safety and Regulatory Reform Act of 1988".

(b) Table of Contents.—

Section 1. Short title; table of contents.

TITLE I—MOTOR CARRIER SAFETY

Sec. 101. Commercial zone exemption.
Sec. 102. Extension of motor carrier safety regulations to motor private carriers of passengers.
Sec. 103. Hours of service.
Sec. 104. Improved compliance with hours of service regulations.
Sec. 105. Biometric identification system.
Sec. 106. Emergency flares.
Sec. 107. Report on improved brake systems for commercial motor vehicles.
Sec. 108. Speed control devices.
Sec. 109. Extension of review and preemption time periods.
Sec. 110. Maintenance and inspection of brake systems.
Sec. 111. Definitions.

TITLE II—MOTOR CARRIER REGULATORY REFORM AMENDMENTS

Sec. 201. Certificates of registration for certain foreign persons.
Sec. 202. Insurance for foreign motor carriers.
Sec. 203. Monitoring and reporting of certain cost savings.
Sec. 204. Freight forwarder liability technical amendments.

TITLE I—MOTOR CARRIER SAFETY

SEC. 101. COMMERCIAL ZONE EXEMPTION.

(a) General Rule.—Section 206 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 2505 App.) is amended by striking out subsection (h) and inserting in lieu thereof the following:

"(h) Commercial Zone Exemption.—

"(1) General rule.—The Secretary may not—

"(A) exempt any person or commercial motor vehicle from complying with any regulation pertaining to commercial motor vehicle safety, or

"(B) waive application of any such regulation with respect to any person or commercial motor vehicle,

solely on account that the operations of such person or vehicle are entirely in a municipality or commercial zone thereof.

"(2) Grandfather clause.—

"(A) General rule.—If any person was authorized to operate in the United States throughout the 1-year period ending on the date of the enactment of the Motor Carrier Safety and Regulatory Reform Act of 1988 a commercial motor vehicle in a municipality or commercial zone thereof and if such person is otherwise qualified to operate such a vehicle, such person may operate such a vehicle entirely in a municipality or commercial zone thereof notwithstanding paragraph (1), notwithstanding any Federal minimum age requirement for operation of such a vehicle, and notwithstanding any medical or physical condition of such person.

"(B) Definition of medical or physical condition.—For purposes of this paragraph, the term 'medical or physical condition' means a medical or physical condition of a person—

"(i) which would prevent such person from operating a commercial motor vehicle under the commercial motor vehicle safety regulations contained in title 49 of the Code of Federal Regulations,

"(ii) with existed on July 1, 1988,

"(iii) which has not substantially worsened, and

"(iv) which does not involve alcohol or drug abuse.

"(3) Limitation on statutory construction.—Nothing in this subsection shall be construed as having any effect on any State commercial motor vehicle safety law pertaining to intrastate commerce.".

(b) Delayed Application.—

(1) Foreign carriers.—Notwithstanding section 206(h)(1) of the Motor Carrier Safety Act of 1984 or any other provision of Federal law, the Secretary shall not apply, for a period of 2 years beginning on the date of the enactment of this Act, part 393 of title 49 of the Code of Federal Regulations to any foreign motor carrier or foreign motor private carrier (as such terms are defined, or will be defined on January 1, 1990, in section 10530 of title 49, United States Code) if—

(A) such carrier is or will be required to obtain a certificate of registration under such section 10530 for operation of a commercial motor vehicle in a municipality or commercial zone thereof which encompasses a border between the United States and a contiguous foreign country;

(B) the State in which such municipality or commercial zone is located has in effect a law or regulation pertaining to commercial motor vehicle safety which applies to such carrier; and

(C) such State has adopted and is enforcing the North American Uniform Driver Vehicle Inspection Procedures established by the Commercial Vehicle Safety Alliance.

(2) Report.—Within 18 months after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the need to continue in effect the delay in application of part 393 of title 49 of the Code of Federal Regulations provided by the Secretary under paragraph (1) together with recommendations on the extent to which foreign motor carriers and foreign motor private carriers may or should be required to comply with all or any of the requirements contained in such part 393.

(c) Savings Clause.—The amendment made by subsection (a) shall not be construed as having any effect on the enactment of subsection (d) of section 3102 of title 49, United States Code, which subsection (d) was added to such section by section 206(h) of the Motor Carrier Safety Act of 1984 on October 30, 1984.

SEC. 102. EXTENSION OF MOTOR CARRIER SAFETY REGULATIONS TO MOTOR PRIVATE CARRIERS OF PASSENGERS.

(a) Deadline.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall issue a final rule extending coverage of the Federal motor carrier safety regulations to motor private carriers of passengers operating in interstate commerce.

(b) Education and Enforcement Program.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall develop and implement an education and enforcement program which will inform all motor private carriers of passengers that they must comply with the Federal motor carrier safety regulations when operating in interstate commerce and which will include all enforcement action necessary to ensure compliance with such requirement.

SEC. 103. HOURS OF SERVICE.

(a) Study.—The Secretary shall conduct a study of the hours of service regulations pertaining to operators of commercial motor vehicles as in effect under title 49 of the Code of Federal Regulations on the date of the enactment of this Act. The purpose of such study shall be to determine if there is any relationship among (1) such regulations, (2) operator fatigue, and (3) the frequency of serious accidents involving such vehicles.

(b) Report.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the results of the study conducted under this section together with such recommendations (including legislative recommendations) for modifying the regulations referred to in subsection (a) as the Secretary determines appropriate taking into account the results of such study.

SEC. 104. IMPROVED COMPLIANCE WITH HOURS OF SERVICE REGULATIONS.

(a) Rulemaking Proceeding.—Not later than 3 months after the date of the enactment of this Act, the Secretary shall initiate a rulemaking proceeding on the need to adopt methods for improving safety with respect to compliance by operators of commercial motor vehicles with hours of service regulations of the Department of Transportation, including the use of onboard monitoring devices on commercial motor vehicles to record speed, driving time, and other information. Such proceeding shall be completed within 1 year after the date of the enactment of this Act.

(b) Recommendations.—If the Secretary determines as a result of a proceeding conducted under this section that permitting onboard monitoring devices on commercial motor vehicles would significantly contribute to compliance with hours of service regulations of the Department of Transportation and to commercial motor vehicle safety, the Secretary, not later than 30 months after the date of the enactment of this Act, shall submit to Congress a report containing recommendations (including legislative recommendations) of the Secretary on whether or not to make the use of such monitoring devices mandatory with respect to commercial motor vehicle operations.

(c) Limitation on the Use of Monitoring Devices.—Any rule which the Secretary issues regarding the use of onboard monitoring devices on commercial motor vehicles shall ensure that such devices are not used for the purpose of harassment of operators of such vehicles but for the purpose of monitoring the productivity of such operators.

SEC. 105. BIOMETRIC IDENTIFICATION SYSTEM.

(a) Regulations.—Not later than December 31, 1990, the Secretary shall issue regulations establishing, for purposes of sections 12007 and 12009 of the Commercial Motor Vehicle Safety Act of 1986, minimum uniform standards for a biometric identification system to ensure identification of operators of commercial motor vehicles.

(b) Pilot Demonstration Project.—To carry out a pilot project to demonstrate the use of biometric identification systems for ensuring identification of operators of commercial motor vehicles, the Secretary may use not to exceed in each of fiscal years 1989 and 1990—

(1) $500,000 from the funds made available to carry out section 402 of the Surface Transportation Assistance Act of 1982; and

(2) $1,000,000 from the funds made available to carry out section 12010 of the Commercial Motor Vehicle Safety Act of 1986.

SEC. 106. EMERGENCY FLARES.

Not later than 60 days after the date of the enactment of this Act, the Secretary shall initiate a rulemaking proceeding for the purposes of determining the appropriate use, as emergency warning devices for commercial motor vehicles, of fusees as an alternative or supplement to bidirectional emergency reflective triangles. The Secretary shall complete such rulemaking proceeding by October 31, 1989.

SEC. 107. REPORT ON IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

Not later than June 30, 1991, the Secretary shall submit to Congress a report on whether or not commercial motor vehicles operating on any Federal-aid highway system should be equipped with improved brakes and brake systems in order to enhance the safe operation of such vehicles. Such report shall include the results of any field testing conducted by the Department of Transportation on brakes and brakes systems for commercial motor vehicles and any action which has been or will be taken as a result of such field testing.

SEC. 108. SPEED CONTROL DEVICES.

(a) Study.—The Secretary shall conduct a study on whether or not devices which control the speed of commercial motor vehicles enhance safe operation of such vehicles.

(b) Report.—Not later than 30 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under this section together with recommendations of the Secretary on whether or not to make the use of speed control devices mandatory for commercial motor vehicles.

SEC. 109. EXTENSION OF REVIEW AND PREEMPTION TIME PERIODS.

Section 208(h) of the Motor Carrier Safety Act of 1984 (49 U.S.C. App. 2507(h)) is amended by adding at the end thereof the following new sentences: "Upon request of a State which has under consideration adoption of regulations which may be in effect and enforced under this section, the Secretary shall extend such 60-month period with respect to the State for such additional period as the State requests but not to exceed 24 months. With respect to any State, the aggregate amount of extensions under this subsection with respect to such 60-month period may not exceed 24 months.".

SEC. 110. MAINTENANCE AND INSPECTION OF BRAKE SYSTEMS.

The Motor Carrier Safety Act of 1984 (49 U.S.C. App. 2501-2520) is amended by adding at the end thereof the following new section:

"SEC. 231. MAINTENANCE AND INSPECTION OF BRAKE SYSTEMS.

"(a) Initiation of Rulemaking Proceeding.—Not later than 60 days after the date of the enactment of this section, the Secretary shall initiate a rulemaking proceeding for the purpose of adopting improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees.

"(b) Regulations.—Not later than December 31, 1990, the Secretary shall issue regulations for the purpose of adopting improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are properly maintained and inspected by appropriate employees. At a minimum, such regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting such brakes and brake systems.".

SEC. 111. DEFINITIONS.

For purposes of this Act—

(1) Commercial motor vehicle, employee, and regulation.—The terms "commercial motor vehicle", "employee", and "regulation" have the meaning such terms have under section 204 of the Motor Carrier Safety Act of 1984.

(2) Secretary.—The term "Secretary" means the Secretary of Transportation.

TITLE II—MOTOR CARRIER REGULATORY REFORM AMENDMENTS

SEC. 201. CERTIFICATES OF REGISTRATION FOR CERTAIN FOREIGN PERSONS.

(a) Definitions.—

(1) Elimination of registrable period definition.—Paragraph (1) of section 10530(a) of title 49, United States Code, is repealed.

(2) Foreign motor carrier.—Paragraph (2) of such section is amended to read as follows:

"(2) 'foreign motor carrier' means a person (including a motor carrier of property but excluding a motor private carrier)—

"(A)(i) which is domiciled in a contiguous foreign country; or

"(ii) which is owned or controlled by persons of a contiguous foreign country and is not domiciled in the United States; and

"(B) in the case of a person which is not a motor carrier of property, which provides interstate transportation of property (including exempt items) by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).".

(3) Foreign motor private carrier.—Paragraph (3) of such section is amended to read as follows:

"(3) 'foreign motor private carrier' means a person (including a motor private carrier but excluding a motor carrier of property)—

"(A)(i) which is domiciled in a contiguous foreign country; or

"(ii) which is owned or controlled by persons of a contiguous foreign country and is not domiciled in the United States; and

"(B) in the case of a person which is not a motor private carrier, which provides interstate transportation of property (including exempt items) by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).".

(b) Certification Requirement.—

(1) For foreign motor carriers.—Subsection (b) of section 10530 of such title is amended by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(b) Certification Requirement.—

"(1) For foreign motor carriers.—Except as provided in this section and sections 10922 and 10923, no foreign motor carrier may provide interstate transportation of property (including exempt items) by motor vehicle unless the Commission has issued to such person a certificate of registration under this section, or a certificate or permit under subchapter II of chapter 109, authorizing such person to provide such transportation.".

(2) Conforming amendments for foreign motor private carriers—Such subsection is further amended—

(A) in paragraph (2)—

(i) by inserting "For foreign motor carriers.—" before "Except";

(ii) by inserting "by motor vehicle" after "items)";

(iii) by striking out "in any registrable year"; and

(iv) by striking out "in such year"; and

(B) by indenting paragraph (2) and aligning such paragraph with paragraph (1), as amended by paragraph (1) of this subsection.

(c) Issuance of Certificates.—Subsection (c) of such section is amended—

(1) by striking out "exempt items in any registrable year" and inserting in lieu thereof "property (including exempt items) by motor vehicle"; and

(2) by striking out "in any registrable year, if" and inserting in lieu thereof "by motor vehicle, if"; and

(3) in paragraph (2) by striking out "ending before the first day of such registrable year".

(d) Application.—Subsection (d) of such section is amended by inserting "by motor vehicle" before the period at the end of the first sentence.

(e) Fitness Requirement.—Subsection (e)(2) of such section is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) under section 30 of the Motor Carrier Act of 1980, and

"(B) under the laws of the States in which the carrier is operating,

to the extent applicable.".

(f) Identification.—

(1) In vehicle.—Subsection (g) of such section is amended by striking out paragraph (1) and inserting in lieu thereof the following:

"(g) Identification.—

"(1) In vehicle.—Any motor vehicle which is used by a foreign motor carrier or by a foreign motor private carrier to provide interstate transportation of property (including exempt items) by motor vehicle under a certificate issued under this section or section 10922 or under a permit issued under section 10923 shall have a copy of such certificate or permit, as the case may be, in such motor vehicle at any time such vehicle is being used to provide such transportation.".

(2) Conforming amendments.—Such subsection is further amended—

(A) in paragraph (2) by inserting "Denial of entry.—" before "The Commission" and by striking out "certificate of registration" and inserting in lieu thereof "certificate or permit"; and

(B) by indenting paragraph (2) and aligning such paragraph with paragraph (1), as amended by paragraph (1) of this subsection.

(g) Moratorium.—

(1) General prohibition.—Section 10922(l)(1) of title 49, United States Code, is amended by striking out "motor carrier of property or motor private carrier" and inserting in lieu thereof "foreign motor carrier or foreign motor private carrier".

(2) General authority to issue certificates of registration.—Section 10922(l)(2)(B)(i) of such title is amended by striking out "motor carriers of property and motor private carriers" each place it appears and inserting in lieu thereof "foreign motor carriers and foreign motor private carriers".

(3) Foreign motor carriers.—Section 10922(l)(2)(B)(ii) of such title is amended—

(A) by striking out "motor carrier of property" each place it appears and inserting in lieu thereof "foreign motor carrier"; and

(B) by striking out "exempt items" and inserting in lieu thereof "property (including exempt items) by motor vehicle".

(4) Foreign motor private carriers.—Section 10922(l)(2)(B)(iii) of such title is amended—

(A) by inserting "foreign" before "motor private" each place it appears; and

(B) by inserting "by motor vehicle" after "items)".

(5) Hybrid foreign motor carriers.—Section 10922(l)(2)(B)(iv) is amended—

(A) by striking out "motor carrier of property" and inserting in lieu thereof "foreign motor carrier"; and

(B) by striking out "exempt items" and inserting in lieu thereof "property (including exempt items) by motor vehicle".

(6) Hybrid foreign motor private carriers.—Section 10922(l)(2)(B)(v) is amended—

(A) by inserting "foreign" before "motor private"; and

(B) by inserting "by motor vehicle" after "items)".

(7) Definitions.—Section 10922(l)(2)(B)(vi) of such title is amended by inserting ", 'foreign motor carrier', 'foreign motor private carrier'," before "and".

(h) Security.—

(1) General rule.—Section 10927(a)(1) of such title is amended by striking out the first sentence and inserting in lieu thereof the following new sentence: "The Commission may issue a certificate under section 10922 or 10530 or a permit under 10923 only if the carrier (including a motor private carrier and a foreign motor private carrier) applying for such certificate files with the Commission a bond, insurance policy, or other type of security approved by the Commission, in an amount not less than such amount as the Secretary of Transportation prescribes pursuant to, or as is required by, section 30 of the Motor Carrier Act of 1980, section 18 of the Bus Regulatory Reform Act of 1982, and the laws of the State or States in which the carrier is operating, to the extent applicable.".

(2) Foreign transportation.—Section 10927(a)(2) of such title is amended by striking out "(as such term is defined under section 10530(a)(3) of this title)" and inserting in lieu thereof "and foreign motor carrier (as defined under section 10530(a))".

(i) General Enforcement Authority.—Section 11701 of such title is amended—

(1) in subsection (a) by inserting "foreign motor carrier or foreign" before "motor private carrier"; and

(2) in subsection (b) by striking out "motor carrier or motor private carrier" and inserting in lieu thereof "foreign motor carrier or foreign motor private carrier".

(j) Civil Actions.—Section 11702 of such title is amended—

(1) in subsection (a)(4) by striking out "motor carrier or motor private carrier" and inserting in lieu thereof "foreign motor carrier or foreign motor private carrier"; and

(2) in subsection (b)(1) by striking out "or broker" and inserting in lieu thereof ", foreign motor carrier (as defined under section 10530(a)), foreign motor private carrier (as defined under section 10530(a)), or broker".

(k) Effective Date.—The amendments made by this section shall take effect January 1, 1990.

SEC. 202. INSURANCE FOR FOREIGN MOTOR CARRIERS.

Section 30 of the Motor Carrier Act of 1980 is amended by redesignating subsection (g) (and any reference thereto) as subsection (h) and inserting after subsection (f) the following new subsection:

"(g) Insurance for Foreign Motor Carriers.—The Secretary of Transportation may issue regulations which permit foreign motor carriers and foreign motor private carriers (as such terms are defined under section 10530 of title 49, United States Code) providing transportation of property under a certificate of registration issued under such section to meet the minimum levels of financial responsibility established by or under this section only during periods in which such carriers are providing transportation of property in the United States.".

SEC. 203. MONITORING AND REPORTING OF CERTAIN COST SAVINGS.

Section 10732(b) of title 49, United States Code, relating to food and grocery transportation, is amended by striking out the second and third sentences.

SEC. 204. FREIGHT FORWARDER LIABILITY TECHNICAL AMENDMENTS.

(a) Exemption From Liability.—Section 11707(c)(1) of title 49, United States Code, is amended by inserting "and freight forwarder" after "common carrier".

(b) Statute of Limitations.—Section 11707(e) of such title is amended—

(1) by inserting "or freight forwarder" after "carrier" each place it appears; and

(2) in paragraph (2) by inserting "or freight forwarder's" after "carrier's".

The SPEAKER pro tempore. Is a second demanded?

Mr. CLINGER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered?

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Anderson] will be recognized for 20 minutes and the gentleman from Pennsylvania [Mr. Clinger] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Anderson].

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, by way of background, in September 1987, the Subcommittee on Surface Transportation held hearings on safety issues related to the truck and bus industry. H.R. 5321 is designed to address some of the problems identified at those hearings, as well as to address others that have surfaced over the past year. H.R. 5321 was unanimously reported by the Committee on Public Works and Transportation on September 27 of this year, and its passage today will substantially contribute to increased safety on our Nation's highways.

The measure before you differs only slightly from the version reported by the committee. In particular, the amended bill addresses the unique nature of our foreign commerce with Mexico. I would like to thank my dear friends Congressmen de la Garza and Coleman for working with the committee on these provisions of the bill to ensure that this commerce continues.

H.R. 5321 closes a loophole in Federal motor carrier safety regulations by eliminating the commercial zone exemption waiving these regulations. The commercial zone exemption was created administratively, and the Department of Transportation now proposes to eliminate it administratively. H.R. 5321 statutorily prohibits the Department from ever reestablishing the commercial zone exemption so that all interstate bus and truck operations occurring within zone will be subject to Federal motor carrier safety regulations.

The bill provides a grandfather clause which allows those operators who do not meet Federal minimum age, physical and medical requirements to continue to drive in a commercial zone if they have a clean driving record and have lawfully driven in the United States for at least 1 year prior to this bill's enactment, so long as any existing physical or medical condition does not substantially worsen. Since these zones generally include heavily congested roadways with high volumes of traffic, the application of safety regulations should improve highway safety within the zones. The bill also extends Federal motor carrier safety regulations to private bus operators as originally intended in the 1984 act.

H.R. 5321 accommodates the unique circumstances surrounding the operation of foreign motor carriers in border commercial zones. Certain foreign made vehicles operating in these zones may not meet all of the parts and accessaries standards contained in Federal safety regulations, but still qualify as road worthy vehicles. The bill provides for the delayed application of safety regulations which do not affect the road worthiness of a vehicle for a period of 2 years. By the end of this period the Secretary of Transportation will have determined whether foreign motor carriers should be subject to all of these regulations in the future.

H.R. 5321 also provides that all foreign motor carriers must have a certificate of registration in order to operate into the commercial zones along the border beginning January 1, 1990. This provision will ensure that safety standards and insurance requirements will be met by foreign carriers operating in the United States, although the bill does make provisions for trip insurance in accordance with DOT regulations.

H.R. 5321 incorporates provisions addressing several other safety issues including the use of onboard computers in lieu of logbooks on trucks and buses, a study of current hours-of-service regulations to determine if any relationship exists between driver fatigue and serious accidents, and an examination of the use of emergency flares.

The bill also requires the department of transportation to adhere to its announced schedule for the implementation of a biometric identification requirement for the issuance of a commercial driver's license. Without a biologically unique identifier, the commercial driver's license program cannot achieve its stated goal—eliminating unsafe drivers from our highways.

I would like to especially thank Mr. HAMMERSCHMIDT, the distinguished ranking Republican member of the committee, as well as the distinguished ranking Republican member of the Subcommittee on Surface Transportation, Mr. SHUSTER, for their outstanding efforts in drafting this legislation. I know that they join with me in feeling proud that these efforts will result in increased safety on our Nation's highways.

Mr. CLINGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5321, the Truck and Bus Safety and Regulatory Reform Act of 1988. I wish to thank the chairman of the Public Works and Transportation Committee, Mr. ANDERSON, and the ranking minority member of the Surface Transportation Subcommittee, Mr. SHUSTER, for their leadership on this bill through committee and to House passage on the floor today.

Truck and bus safety has been an issue of ongoing concern to this committee. The committee has championed many pieces of important safety legislation addressing this concern over the past decade, most notably, enactment of the commercial driver's license in 1986.

The fatality rate for every 100 million motor carrier miles traveled continues to decline, but 5,000 Americans are still killed in heavy truck and bus accidents each year. The bill before us addresses some motor carrier safety problems that contribute to this toll, and will result increased safety for all highway users.

The bill addresses repeal of the commercial zone exemption for safety, compliance with hours of service regulations, use of onboard recorders, use of a biometric identifier with the commercial driver's license and improved standards for brake inspectors.

I commend the chairman and Mr. SHUSTER for moving this important piece of legislation. Committee, I fully support your efforts and urge my colleagues to vote favorably on the legislation.

□ 1700

Mr. ANDERSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I rise in support this legislation and to inquire of the chairman about his amendment regarding brakes and brake systems. It is my understanding, Mr. Speaker, that the amendment incorporates the provisions of H.R. 5379 which provided for a study and a report to Congress regarding brakes and brakes systems for commercial vehicles. It does not require a rulemaking. Is that correct?

Mr. ANDERSON. Mr. Speaker, if the gentleman will yield, the gentleman is correct.

Mr. THOMAS A. LUKEN. Mr. Speaker, I thank the gentleman. We have worked closely on this matter. As he knows our committee has been in correspondence with the Speaker regarding rulemaking provisions in S. 861 as passed by the Senate, and I am pleased that the bill being returned to the Senate does not address this rulemaking issue. I know that the chairman will keep us informed of any efforts by the Senate to reintroduce this controversial issue. I thank the gentleman. At this point, I insert the following correspondence:

COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, October 4, 1988.

Hon. BROCK ADAMS,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR BROCK: I understand that you want to include rulemaking provisions relative to antilock brake systems for heavy duty trucks on H.R. 5321 as reported by the House Committee on Public Works and Transportation. I further understand that your staff has developed an alternative proposal which I have not yet seen, but which reportedly also involves a rulemaking.

Enclosed is a letter I recently sent to the Speaker concerning this matter. My views have not changed. The Committee would have to object to any bill that included such rulemaking provisions.

H.R. 5321, as reported, by Chairman Anderson's Committee does not include these provisions and is not a concern to this Committee. However, Chairman Anderson knows that if that bill was changed to include such rulemaking, I would have to oppose consideration in the House. I do not want to do that because I believe the remainder of the bill is important.

Additionally, I believe from a safety standpoint it is premature to require such a rulemaking or to specify when one might be started. I understand that the National Highway Traffic Safety Administration (NHTSA) has initiated an antilock brake test fleet study. I am told that the first of 200 tractors equipped with antilock brake systems (ABS) as part of NHTSA's two-year fleet tests are being delivered this month. Reportedly, all major U.S. tractor manufacturers, five antilock system suppliers and thirteen truck fleets are participating in the test to evaluate the reliability of ABS in actual fleet operation. Plans for the test, including agreements among carriers, suppliers, etc. have been made by NHTSA. I understand that the contractor to oversee the testing program and collect and analyze the data has been selected. It is Southwest Research Institute of San Antonio, Texas. That firm will manage the $2,000,000 antilock brake fleet test program. It is expected that the field evaluation will be completed in early 1991. The final analysis of the data resulting from the test should be available in 3-6 months after the close of the field study. That is an important study. We should not prejudge it and possibly end up with a new lawsuit as occurred in the 1970s. Further, NHTSA has ample authority to issue a new standard under existing law.

I, however, appreciate your kindness in having your staff talk to my staff about this matter.

With best wishes.

Sincerely,

JOHN D. DINGELL,
Chairman.

COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, September 6, 1988.
Hon. JIM WRIGHT,
The Speaker, House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: This letter supplements my earlier letters to you concerning referral of the Senate-passed bill, S. 861, the Truck and Bus Safety Act of 1987. This letter is necessitated by a letter of August 11, 1988 to you from the Committee on Public Works and Transportation requesting sole referral of the bill to that Committee. I respectfully request that you not accede to that suggestion and that you refer the bill jointly to that Committee and this Committee.

As to the Public Works' claims about jurisdiction growing out of the 1974 House reforms, I have not, as yet, taken the time to explore all of the 1974 reform history. However, I point out that historically since 1986 safety regulation of all new motor vehicles has been conducted by the National Highway Traffic Safety Administration under the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act. Amendments to those laws have been referred solely to this Committee pursuant to Rule X, clause (1)(h) both before and after those reforms.

Also the 1974 reforms did not transfer complete jurisdiction over trucks or the trucking industry to the Public Works Committee. This Committee, for example, continues to have sole jurisdiction over the regulation of emissions, energy, theft, and fuel economy relative to all vehicles, including trucks, under various laws. Of course, this Committee also has sole jurisdiction over the securities and communication laws which also impact transportation and the trucking industry. I believe that the concept of "transportation" as envisioned by the Public Works Committee has its limitations when it comes to these other matters not within the jurisdiction of that Committee.

I might add that since 1975, amendments to the 1966 law and the Cost Savings Act have not, contrary to the suggestions of the Public Works Committee, related solely to passenger cars.

As to the Public Works Committee's second argument, I agree that S. 861 is a free-standing law and not an amendment to any existing law. I also agree that the provisions could have been added to any law under that Committee's jurisdiction, but that did not occur. If, however, amendments of the type set forth in S. 861 had been added to the Motor Carrier Act, this Committee would also have requested referral. Indeed, as the enclosed letter of October 9, 1984 indicates, that occurred in 1984 in regard to S. 2217 and S. 2174. As the letter indicates, the Public Works Committee cooperated with our Committee in dealing with "our concerns" and "removing any jurisdictional problems," while reviewing our participation in any conferences.

That ultimately resulted in enactment of that legislation as the Motor Carrier Safety Act with a provision worked out between our Committees stating that nothing in that Act "confers authority on the Secretary to regulate the manufacture of commercial motor vehicles for any purpose, including fuel economy, safety, or emission control." (see U.S.C. 2519(b)).

Finally, I do not agree that section 4 of S. 861 merely requires initiation of a rulemaking. (However, even if it does, that limited rulemaking requirement still affects matters within this Committee's jurisdiction). Indeed, section 4(d) specifically refers to the promulgation of a rule. Of course, as a general proposition, under the Administrative Procedures Act an agency head always has the option to terminate a rulemaking before promulgation. However, that is unusual at best.

Section 4 is a major provision applicable to newly manufactured trucks, including tractor trailers, cement mixers, fire engines, dump trucks, heavy vans, construction equipment trash trucks, and buses. Because it is conceivable that it could also apply to existing vehicles, our Committees share jurisdiction over those provisions. However, I believe such application is likely to be infeasible for many older vehicles for technical, practical, and economic reasons. It thus could be read as a matter solely under our jurisdiction.

Incidentally, I should also point out that NHTSA promulgated a similar brake rule under the 1966 law for new vehicles. The rule was challenged in *Paccar* v. *National Highway Traffic Safety Administration*, 573 F2d 652, *cert denied*, 439 U.S. 862 (1978). The court upheld NHTSA's authority to promulgate the applicable standard. However, the court said:

"There is much in the Standard that has long been needed for highway safety, and it is undisputed that the antilock device, when perfected, will advance that goal. We are also aware that some manufacturers have expended a great deal of time, energy, and money over the last six years, in attempting to produce vehicles to comply, and that they have, to a large degree, been successful. However, the comprehensive data before us indicate that there is a strong probability that the performance of a substantial number of vehicles whose braking systems have been altered to include "overpowered" front axles and antilock devices has created a potentially more hazardous highway situation than existed before the Standard became operative. Therefore, until such time as NHTSA develops evidence that the new braking systems required by the Standard do not create the possibility of greater danger to the public, those parts of the Standard requiring heavier axles and the antilock device should be suspended. The evidence indicates that this can be accomplished if we hold, as we do, that the stopping distance requirements from 60 m.p.h. are invalid. The agency may, of course, continue to propose new standards, including the promulgation of new stopping distance requirements to replace those here invalidated. We hold only that more provocative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation."

The 1966 law provides ample authority for a new rulemaking without a new and independent statute or requirement. I understand that NHTSA is in the process of developing a revised standard under present law which this Committee, in its oversight capacity is examining. Clearly, this Committee does not want to see an important rulemaking establishing a revised safety standard for new trucks be successfully challenged again because the rulemaking is conducted outside the scope of the 1966 law.

I stress that legislation affecting the manufacture of new motor vehicles of any kind is solely within the jurisdiction of this Committee.

My comments apply also to H.R. 2923 which should also have been referred to this Committee. I respectfully request sequential referral of that bill.

I again respectfully urge joint referral of S. 861 rather than keeping the bill at the Speaker's desk. I would expect to work closely with the Public Works Committee just as our Committees did in 1984 to resolve our concerns. Similarly, if that Committee seeks to go to conference with the Senate on S. 861, by joining another House bill, this Committee respectfully requests representation on conference regarding these matters.

With best wishes.

Sincerely,

JOHN D. DINGELL,
Chairman.

COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, October 9, 1984.
Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I want to express my appreciation to you for the cooperation our Committee has received in connection with the provisions of S. 2217, the Tandem Truck Safety Act of 1984. The bill as passed by the Senate included a number of provisions that were a part of S. 2174 which affected matters within the jurisdiction of the Committee on Energy and Commerce, particularly matters relating to the establishment of standards, regulations, or rules concerning safety, fuel economy and emissions in the manufacture of motor vehicles.

As a result of discussions with you and your staff, a number of changes have been made in S. 2217 to remove our concerns including changes in two sections entitled "Heavy Truck Study" and "Truck Occupant Protection." Those changes should be helpful in removing any jurisdictional problems that we may have with this legislation.

It is my hope, which I know you share, that the Senate will accept the bill with these amendments and avoid the necessity of a conference. However, it is my understanding that, if the Senate insists on a conference on this bill, you would join with me in ensuring that Members of our Committee would also be conferees.

With best wishes.

Sincerely,

JOHN D. DINGELL,
Chairman.

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION,
Washington, DC, August 11, 1988.
Hon. JIM WRIGHT,
The Speaker, House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I am writing on behalf of the Committee on Public Works and Transportation to respectfully request that the bill S. 861, the Truck and Bus Safety Act of 1987, be referred solely to our Committee. This bill is currently being held at the Speaker's desk pending resolution of a jurisdictional dispute between the Public Works Committee and the Committee on Energy and Commerce.

Briefly stated, our position is as follows: (1) the Public Works Committee has exclusive jurisdiction over the regulation of the trucking industry, including safety matters related to the manufacture of new trucks; and (2) even if one assumes, for the sake of argument, that the Commerce Committee has jurisdiction over safety matters related to the manufacture of new trucks, S. 861 should nevertheless be referred solely to the Public Works Committee since it deals predominantly with matters within the jurisdiction of the Public Works Committee and does not address Federal Motor Vehicle Safety Standards issued under the National Traffic and Motor Vehicle Safety Act of 1966.

(1) The Committee on Public Works and Transportation has exclusive jurisdiction over the regulation of the trucking industry, including safety matters related to the manufacture of new trucks.

The Public Works Committee has jurisdiction over (a) transportation, including civil aviation except railroads, railroad labor and pensions; (b) roads and the safety thereof; and (c) related transportation regulatory agencies, except the Interstate Commerce Commission as it relates to railroads, Federal Railroad Administration, and Amtrak. (House Rule X, clause 1(p)(10), (11) and (13)). The jurisdiction over transportation and related regulatory agencies was transferred to the Committee by the Committee Reform Amendments of 1974. Much of this transportation jurisdiction came from the Committee on Interstate and Foreign Commerce.

The intent of the Committee Reform Amendments of 1974, as reported by the Select Committee on Committees, was to consolidate all transportation jurisdiction in the Public Works Committee so that it "will have an institutional focus capable of integrating national and regional transportation policies". (H. Rept. 93-916 Part 1.) The Hansen Amendment in the nature of a substitute, which was ultimately adopted by the House, retained this approach except that jurisdiction over railroads was left in the Commerce Committee.

The fact that all jurisdiction over transportation (except railroads) was transferred to the Public Works Committee was well understood at the time the Hansen Amendment was adopted. In fact, Representative Kuykendall, a member of the Committee on Interstate and Foreign Commerce, offered an amendment to the Hansen Amendment which would have had the effect of allowing the Commerce Committee to retain jurisdiction over civil aeronautics and the regulation of interstate and foreign transportation. In describing his amendment, which was defeated by a vote of 239-172, Mr. Kuykendall stated: "The Bolling committee totally removes transportation from Interstate Commerce. The Hansen amendment takes railroads only and returns them to the Committee on Interstate and Foreign Commerce . . ." (emphasis added). Thus, it was clear, even to the members of the Commerce Committee, that jurisdiction over all transportation except railroads was being transferred to the Public Works Committee.

In its letters to you of January 6, 1988, and August 3, 1988, the Commerce Committee takes the position that it has jurisdiction over the regulation of the trucking industry as it relates to safety matters in the manufacture of new trucks. This argument flies in the face of the actual language and intent of the Committee Reform Amendments of 1974. It has been long recognized that the Public Works Committee has jurisdiction to ensure commercial motor vehicles are safely equipped and maintained. This jurisdiction was most recently exercised in the Motor Carrier Safety Act of 1984, in which the Secretary of Transportation was directed to establish minimum Federal Safety standards for, among other things, equipping and maintaining trucks and buses. If we accept the argument of the Commerce Committee, then we are setting up a situation where there is a strong potential for conflict between legislative approaches developed by the two committees. This would be totally contrary to the intent of the 1974 Amendments to have an "institutional focus capable of integrating national . . . transportation policies".

In analyzing the jurisdictional claim of the Commerce Committee, it is just as important to look at what the Committee Reform Amendments did not say as what they did say. The Committee Reform Amendments do not contain any language indicating that anything less than complete jurisdiction over the trucking industry was transferred to the Public Works Committee. There are no exclusions, except with respect to railroads. If Congress had intended for some jurisdiction over the trucking industry to be retained in the Commerce Committee, I am confident that it would have clearly stated this in the Committee Reform Amendments, just as it did for railroads.

Additional light can be shed on this question by looking at the issue of civil aeronautics. Like jurisdiction over the trucking industry, jurisdiction over civil aeronautics was transferred from the Commerce Committee to the Public Works Committee by the Committee Reform Amendments of 1974. Since that time, the Public Works Committee has had jurisdiction over all matters related to civil aviation, including safety matters related to the manufacture of new aircraft. To my knowledge, this jurisdiction has never been questioned. It is the position of the Public Works Committee that when it received jurisdiction over the trucking industry in 1974 it received jurisdiction identical to what it received with respect to civil aeronautics—jurisdiction over all matters related to the industry, including safety matters related to the manufacture of new vehicles. To treat our jurisdiction over the trucking industry different from our jurisdiction over civil aviation is, at the least, inconsistent.

2. Even if we assume, for the sake of argument, that the Energy and Commerce Committee has jurisdiction over safety matters related to the manufacture of new trucks, S. 861 should nevertheless be referred solely to the Committee on Public Works and Transportation.

The safety of trucks is primarily regulated under the Interstate Commerce Act, the Motor Carrier Safety Act of 1984, and the National Traffic and Motor Vehicle Safety Act of 1966.

Under the Interstate Commerce Act, the Secretary of Transportation is authorized to regulate the "safety of . . . equipment of . . . a motor carrier." (49 U.S.C. 3102). Pursuant to this authority, the Federal Highway Administration has promulgated regulations establishing requirements and specifications for equipment on trucks, including brakes and brake performance. (49 C.F.R. Part 393). The Motor Carrier Safety Act of 1984 (Pub.L. 98-554) directed the Secretary to issue regulations establishing minimum Federal safety standards for commercial motor vehicle safety, including standards to ensure that "commercial motor vehicles are safely . . . equipped . . ." (Sec. 206).

Since 1975, legislation of this type has consistently been referred to and handled by the Public Works Committee. There are numerous examples, including H.R. 986 (1975), H.R. 4791 (1979), and S.1390 (1980). Thus, how trucks must be equipped is a matter solely within jurisdiction of the Public Works Committee.

The National Traffic and Motor Vehicle Safety Act of 1966 authorizes the Secretary of Transportation to establish Federal motor vehicle safety standards for the manufacture of new motor vehicles, including trucks. The basic Act was enacted in 1966 with significant amendments in 1972 and 1974. There have been some amendments since 1975 but they applied principally to passenger vehicles.

As discussed previously, our position is that the Public Works Committee has exclusive jurisdiction over safety matters related to the manufacture of new vehicles. However, even if we assume for the sake of argument that the Commerce Committee has some jurisdiction over safety matters related to new trucks, S. 861 should nevertheless be solely referred to the Public Works Committee.

The Commerce Committee has requested a joint referral of S. 861 on the basis of the following language in section 4:

"(b) The Secretary shall transmit to Congress not later than September 30, 1988, a report on the need to adopt methods for improving braking performance standards for trucks and truck trailers, including in such report an examination of available information and data on antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing.

"(c) Not later than October 31, 1988, each of the appropriate authorizing committees of the Congress shall conduct an oversight hearing to obtain public testimony on the report required under subsection (b) of this section.

"(d) The Secretary shall initiate rulemaking proceedings not later than December 1, 1988. Such rulemaking proceedings shall concern the need to adopt methods for improving braking performance standards for trucks and truck trailers and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to promulgate as a result of such proceedings regarding improved braking performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceedings required by this subsection not later than September 30, 1989."

These subsections neither amend the National Traffic and Motor Vehicle Safety Act of 1966 nor require the Secretary to conduct a rulemaking under such Act. These provisions could just as easily be implemented under the Secretary's safety authority under the Interstate Commerce Act or the Motor Carrier Safety Act of 1984, both of which are clearly within the exclusive jurisdiction of the Public Works Committee. Thus, even if we assume that the Commerce Committee has some jurisdiction over safety matters related to the manufacture of new trucks, S. 861 should be referred solely to the Public Works Committee, since the pertinent provisions of section 4 do not necessarily require any action on the part of the Secretary under the National Traffic and Motor Vehicle Safety Act.

Moreover, even if you decide that the pertinent portions of section 4 fall within the jurisdiction of the Commerce Committee, we still believe S. 861 should be solely referred to the Public Works Committee. Sections 2 and 3 are the heart of the bill. They make a major change in the regulation of motor carriers. The Secretary of Transportation would be required to eliminate the safety exemption for motor carriers and drivers operating wholly within the commercial zone of a municipality. This will substantially change the regulation of the motor carrier industry. Subsections 4 (b), (c) and (d) on the other hand, simply require the Secretary to initiate a rulemaking and make a report to Congress; it does not necessarily require that any final rule be promulgated. Therefore, when looking at the entire bill, an initial referral solely to the Public Works Committee is justified, even assuming that the pertinent provisions in section 4 fall within the jurisdiction of the Commerce Committee.

Our claim for a sole referral of S. 861 is buttressed by the fact that H.R. 2923, which is virtually identical to S. 861, was referred solely to the Public Works Committee.

3. One final point. The August 3rd letter of the Commerce Committee states in part: "Their [Public Works Committee] jurisdiction over trucks does not extend to safety matters related to the manufacture of new trucks." We strongly disagree with this statement. Even if you conclude that the Commerce Committee has jurisdiction over safety matters related to the manufacture of new trucks, we believe that we also have jurisdiction over this matter as a result of our jurisdiction over "transportation" and "related transportation regulatory agencies." Thus, at the very least, your decision should reflect that the Public Works Committee has jurisdiction over all of section 4. Moreover, such a decision would be consistent with the traditional referral policy for legislation that directs the Secretary of Transportation to establish minimum Federal safety standards for commercial motor vehicles (trucks) to ensure that such vehicles are safely maintained, equipped, loaded, and operated.

For the foregoing reasons, on behalf of the Committee on Public Works and Transportation I respectfully request that the bill S. 861 be solely referred to our committee for consideration.

With best wishes,

Sincerely,

Glenn Anderson,
Chairman.

Committee on Energy and Commerce,
Washington, DC, January 6, 1988.

Hon. Jim Wright,
Speaker, House of Representatives, Washington, DC.

Dear Mr. Speaker: Two bills, S. 747 and S. 861, are pending on the Senate Calendar. I understand that the bills may be merged on the Senate floor. If those bills pass the Senate individually, I respectfully request the joint referral to this Committee and the Committee on Public Works and Transportation of S. 861 and sequential referral, at least, of S. 747. If they are merged, I request joint referral of the merged bill.

S. 861 includes provisions in section 4 calling for regulations and studies for performance standards for trucks. Legislation of this kind relates to standards for new vehicles and it is within the jurisdiction of this Committee. Indeed, the Senate Committee's report (S. Rept. 100-267), includes a letter from the Department of Transportation showing that the provision would "accelerate" activities of the National Highway Traffic Safety Administration (NHTSA) in this area. That agency currently develops and promulgates Federal motor vehicle safety standards to be imposed on motor vehicles when manufactured. Such matters are within the sole jurisdiction of this Committee.

S. 747 would establish a Motor Carrier Administration within the Department of Transportation. In addition the bill directs the new agency to exercise functions, powers, and duties of the Secretary of Transportation relating to motor carriers as prescribed by the Secretary. This general provision includes an exception making it clear that the Secretary cannot give to this new agency "authority to promulgate motor vehicle safety standards applicable to the manufacture of trucks and buses, which authority shall remain" in NHTSA. In addition, section 3 of the bill would direct the Secretary of Transportation to review the activities of the Interstate Commerce Commission which directly affect transportation by motor carriers and report to Congress.

So long as the exception is continued, the bill does not otherwise affect the activities of NHTSA or the manufacture of motor vehicles, and the provisions of section 3 are not expanded to cover other ICC activities within the jurisdiction of this Committee that could "affect" motor carriers, this Committee will undoubtedly have no concerns about the bill. But these are matters within our jurisdiction and thus a referral is appropriate.

I am providing a copy of this letter to Chairman Howard so he is aware of our concerns.

With best wishes.

Sincerely,

John D. Dingell,
Chairman.

Mr. ANDERSON. Mr. Speaker, I thank the gentleman from Ohio [Mr. Thomas A. Luken] for his good remarks.

Mr. CLINGER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ANDERSON. Mr. Speaker, I yield 1 minute to the gentleman from Maryland [Mr. Hoyer].

Mr. HOYER. Mr. Speaker, I want to commend the chairman, Glenn Anderson for his distinguished leadership on this critically important safety issue and for the strong support of the ranking member and other members of the House Public Works Committee.

H.R. 5321 among other accomplishments closes a loophole in the law referred to as the "commercial zone exemption." Commercial zones are areas which surround our major cities, and the exemption allows trucks within these zones to operate without meeting Federal safety laws and regulations.

Mr. Speaker, last year, I introduced legislation after a terrible tragedy in my district claimed the lives of two 17-year-old girls and seriously injured a third. The brakes on a dump truck failed on an incline, causing the truck to roll backward and crush the car carrying the three girls who were on their way home from St. Vincent Pallotti High School.

The dump truck, registered in Virginia, had not been inspected for 3 years. The driver was using an expired District of Columbia permit and the truck was in deplorable safety condition.

Despite the horrendous condition of this truck, the commercial zone exemption prevented the Federal Government or the State of Maryland from enforcing Federal safety standards.

There is no question that this loophole in the law encourages unscrupulous motor carriers to continue to use substandard trucks, which could not meet Federal safety standards for interstate commerce, within commercial zones.

There is also no question that the heaviest traffic volumes occurs within these commercial zones. According to the Maryland Department of Transportation, over one-half of all collisions involving heavy truck and buses occur within a commercial zone.

Thus, current law actually encourages the use of the most unsafe trucks in the heaviest travel areas. There is no question that each day this loophole exists, more lives are placed in jeopardy. In 1987, over 186 accidents involving trucks occurred on the Maryland portion of the Capital Beltway alone. Clearly, action is in order.

Mr. Speaker, I cannot say that if this law were in place, Jeannine Everhart and Gloria Graham of Pallotti High School, would be alive today. But I can say that this law will make it harder for unsafe trucks to stay on the road. And with every unsafe truck that is pulled off the road under this law, my hope is that another similar tragedy will be averted.

Mr. Speaker, I commend the chairman for his sensitivity to this problem and for his willingness to move this legislation this Congress. And I am sure that the Everhart and Graham families take some small solace in this one spark of light which has arisen from that dark tragedy of November 17, 1986. I thank the chairman and committee for their action on this bill and urge the House to speedily adopt H.R. 5321.

Mr. ANDERSON. Mr. Speaker, I thank the gentleman from Maryland [Mr. Hoyer] for the diligent work that he put in on this issue.

Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. de la Garza].

Mr. de la GARZA. Mr. Speaker, I thank the distinguished gentleman from California [Mr. Anderson] for yielding this time to me.

Mr. Speaker, I very much appreciate his cooperation and that of the staff in working with us in trying to address an issue that impacted on the border with Mexico.

I join in the comments of the distinguished gentleman from Maryland [Mr. Hoyer] that it is not our intention, and we commend the gentleman from California [Mr. Anderson] for insisting that safety standards be enforced and that we do everything that we can, that we possibly can, to see that all of our vehicles are safe.

Mr. Speaker, we had a special need on the border, and we appreciate the gentleman for accommodating us, but our pledge to him is that we will do everything that we can to insure that safety standards are met, that safe vehicles go on the roads and that our need for special assistance is not to the safety factor, but rather to some peculiar situations on the border in relation to Mexico. But we commend him. I appreciate his concern and his assistance to us, and we will work with him to see that every vehicle, to the extent possible, is safe that travels our highways.

Mr. ANDERSON. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. Coleman].

Mr. COLEMAN of Texas. Mr. Speaker, I rise in support of this bill, the Motor Carrier Safety Act amendments. I particularly want to express my thanks to the gentleman from California for his willingness to work with me and with other Members concerned in particular with the foreign motor carrier safety provisions. The chairman and his staff, as well as the minority staff of the Surface Transportation Subcommittee, have been patient in working with me to clarify the effect of this bill on commerce in the Southwest.

This is an important piece of legislation and a carefully crafted one. Mr. Speaker, I hope that the other body moves rapidly to accept H.R. 5321 as amended by the Public Works Committee and I yield back the balance of my time.

Mr. ANDERSON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Anderson] that the House suspend the rules and pass the bill, H.R. 5321, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CORRECTING THE ENROLLMENT OF S. 659, AGRICULTURAL AID AND TRADE MISSIONS ACT

Mr. de la GARZA. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 153) to correct the enrollment of the Senate bill (S. 659), an Act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

The Clerk read as follows:

S. Con. Res. 153

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 659), an Act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 2(ff)(1)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 101), strike out "it must" and insert "must".

(2) In section 4(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "such date" and insert in lieu thereof "such effective date".

(3) In section 4(f)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "(f)(1)" and insert in lieu thereof "(e)(1)".

(4) In section 4(k)(5)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 102(a) and as designated by section 801(q)(2)), strike out "of such funds" and insert in lieu thereof "from such fund".

(5) In section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 201), strike out "(d)(4) or (e)(5)(A)" and insert in lieu thereof "(c)(4) or (d)(5)(A)".

(6) Section 302(a) is amended to read as follows:

"(a) In General.—Section 9(a) (7 U.S.C. 136g(a)) is amended—

"(1) in the first sentence—

"(A) by inserting '(1)' before 'For',

"(B) by inserting after 'employees' the following: 'of the Environmental Protection Agency or of any State',

"(C) by striking out 'at reasonable times,' and inserting in lieu thereof the following: 'at reasonable times (A)', and

"(D) by inserting before the period at the end the following: ', (B) any place where there is being held any pesticide the registration of which has been suspened or canceled for the purpose of determining compliance with section 19'; and

"(2) in the second sentence, by inserting '(2)' before 'Before.' ".

"((7) In section 12(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 603(2)(A))—

(A) strike out "4, 5, 7, 8, or 19" in clause (i) and insert in lieu thereof "5, 7, 8, 11, or 19", and

(B) strike out ""4, 5, 6, 7, 8 or 19" in clause (ii) and insert thereof "5, 6, 7, 8, 11, or 19".

(8) In section 14(b)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 604), strike out "that" each place it occurs and insert in lieu thereof "who".

(9) In section 19(f)(1)(B)(iv) of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by section 403), strike out "the Resource Conservation and Recovery Act of 1976" and insert in lieu thereof "the Solid Waste Disposal Act".

(10) In section 31 of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 701), strike out "sections" and insert in lieu thereof "section".

((11) In the amendment to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act made by section 801(b)(6)(D), insert a comma before "That".

(12) In section 801(b)—

(A) amend paragraph (2) to read as follows:

"(2) in subsection (c)(1)(D)(i)—

"(A) by striking out 'With' and inserting in lieu thereof 'with', and

"(B) by striking out ': *Provided*, That' and inserting in lieu thereof ', except that'; ",

(B) amend paragraph (3) to read as follows:

"(3) in subsection (c)(1)(D)(ii), by striking out 'subparagraph (D)(i) of this paragraph' and inserting in lieu thereof 'clause (i)';", and

(C) amend paragraph (4) to read as follows:

"(4) in subsection (c)(1)(D)(iii), by striking out 'subparagraphs (D)(i) and (D)(ii) of this paragraph' and inserting in lieu thereof 'clauses (i) and (ii)';".

(13) In section 801(b), redesignate paragraphs (8), (9), and (10) as paragraphs (7), (8), and (9), respectively.

(14) In section 801(q)(1), strike out "(B) Conforming amendments.—" and insert in lieu thereof "(D)".

(15) In the table of contents of the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by section 802)—

(A) in the item relating to section 6(f), strike out "(3) Existing stocks." and "(4) Additional information.",

(B) in the item relating to section 18, insert "and State" and "Federal",

(C) in the item relating to section 19—

(i) insert "(3) Solid Waste Disposal Act." at the end of the item relating to subsection (f),

(ii) amend the items relating to subsections (g) and (h) to read as follows:

"(g) Pesticide container study.
"(1) Study.
"(2) Report.
"(h) Relationship to Solid Waste Disposal Act.",

(D) amend the item relating to section 21 to read as follows:

"Sec. 21. Solicitation of comments; notice of public hearings.
"(a) Secretary of Agriculture.
"(b) Views.
"(c) Notice.",

(E) amend the item relating to section 24 to read as follows:

"Sec. 24. Authority of States.
"(a) In general.
"(b) Uniformity.
"(c) Additional uses.", and

(F) amend the items relating to sections 26 and 27 to read as follows:

"Sec. 26. State primary enforcement responsibility.
"(a) In general.
"(b) Special rules.
"(c) Administrator.
"Sec. 27. Failure by the State to assure enforcement of State pesticide use regulations.
"(a) Referral.
"(b) Notice.
"(c) Construction.".

The SPEAKER pro tempore. Is a second demanded?

Mr. ROBERTS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, somewhere in its passage from the House to the Senate to the Bureau of Engraving to the Government Printing Office some cross-reference were missed or misnumbered, and this resolution authorizes the Clerk of the Senate to make the appropriate corrections. It changes no part of the bill at all.

Mr. Speaker, I appreciate the Members approving this resolution.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of Senate Concurrent Resolution 153. Members should know that this is truly a technical bill that involves corrections as mentioned by the distinguished gentleman from Texas [Mr. DE LA GARZA]. It conforms to the Federal Insecticide, Fungicide and Rodenticide Act passed in this body on the Suspension Calendar several weeks ago, the same legislation that was passed in the Senate.

Mr. Speaker, I urge passage of this resolution, and I wish to thank the chairman for his leadership, his diligence and his bipartisan patience not only in regard to FIFRA, but in all matters before the committee, whether they be crop related or scenic in nature.

Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and concur in the Senate concurrent resolution 153.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

A TRIBUTE TO THE HONORABLE CHARLES WHITLEY

(Mr. DE LA GARZA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DE LA GARZA. Mr. Speaker, I would like to inform the House that the next item of business is a resolution that deals with pollution and involves the forests of the United States, and I would like to mention at this time that our distinguished former colleague, Mr. Charles Whitley of North Carolina, was the initial author of this legislation in the past Congress. Unfortunately we could not finalize the legislation. We do hope now that we might be able to move this legislation as a tribute to our distinguished colleague, Charles Whitley, who upon his retirement nonetheless has continued his interest in the forests of this great country of ours and in insisting that every effort be made to have the forests and the ecosystem as such clean and that we might do everything possible through the Department of Agriculture, through the Forest Service, in order that we might help in cleaning up the air in the forests and the lands of the United States.

FOREST ECOSYSTEMS AND ATMOSPHERIC POLLUTION RESEARCH ACT OF 1988

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 2399) to provide for study and research on the decline in U.S. forest productivity and to determine the effects of atmospheric pollutants on forest environments, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE

This Act may be cited as the "Forest Ecosystems and Atmospheric Pollution Research Act of 1988".

SEC. 2. FINDINGS.

Congress finds that—

(1) the health and productivity of forests in certain regions of the United States are declining;

(2) there is a special concern about the decline of certain hardwood species, particularly sugar maples and oaks, in the eastern United States and the effects of atmospheric pollutants on the health and productivity of these forests;

(3) declines in the productivity of certain commercially important Southern pine species have been measured;

(4) existing research indicates that atmospheric pollution, including ozone, acidic deposition, and heavy metals, may contribute to this decline;

(5) there is an urgent need to expand and better coordinate existing Federal, State, and private research, including research by private industry, to determine the cause of changes in the health and productivity of domestic forest ecosystems and to monitor and evaluate the effects of atmospheric pollutants on such ecosystems; and

(6) such research and monitoring should not impede efforts to control atmospheric pollutants.

SEC. 3. ESTABLISHMENT OF RESEARCH PROGRAM.

Section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1642) is amended by adding at the end the folowing.

"(c)(1) The Secretary, acting through the United States Forest Service, shall establish not later than 180 days after the date of the enactment of this subsection a 10-year program (hereinafter in this subsection referred to as the 'Program') to—

"(A) increase the frequency of forest inventories in matters that relate to atmospheric pollution and conduct such surveys as are necessary to monitor long-term trends in the health and productivity of domestic forest ecosystems;

"(B) determine the scope of the decline in the health and productivity of domestic forest ecosystems;

"(C) accelerate and expand existing research efforts (including basic forest ecosystem research) to evaluate the effects of atmospheric pollutants on forest ecosystems and their role in the decline in domestic forest health and productivity;

"(D) study the relationship between atmospheric pollution and other climatological, chemical, physical, and biological factors that may affect the health and productivity of domestic forest ecosystems;

"(E) develop recommendations for solving or mitigating problems related to the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems;

"(F) foster cooperation among Federal, State, and private researchers and encourage the exchange of scientific information on the effects of atmospheric pollutants on forest ecosystems among the United States, Canada, European nations, and other nations;

"(G) support the long-term funding of research programs and related efforts to determine the causes of declines in the health and productivity of domestic forest ecosystems and the effects of atmospheric pollutants on the health and productivity of domestic forest ecosystems; and

"(H) enlarge the Eastern Hardwood Cooperative by devoting additional resources to field analysis of the response of hardwood species to atmospheric pollution, and other factors that may affect the health and productivity of these ecosystems.

"(2) The Secretary shall establish a committee to advise the Secretary in developing and carrying out the Program, which shall be composed of scientists with training and experience in various disciplines, including atmospheric, ecological, and biological sciences. Such scientists shall be selected from among individuals who are actively performing research for Federal or State agencies or for private industries, institutions, or organizations.

"(3) The Secretary shall coordinate the Program with existing research efforts of Federal and State agencies and private industries, institutions, or organizations.

"(4) The Secretary shall submit to the President and to Congress the following reports:

"(A) Not less than 30 days before establishing the Program, the Secretary shall submit an initial program report—

"(i) discussing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) outlining the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems;

"(iii) describing the Program; and

"(iv) estimating the cost of implementing the Program for each fiscal year of its duration.

"(B) Not later than January 15, 1990, and January 15 of each year thereafter, during which the Program is in operation following the year in which the initial program report is submitted, the Secretary shall submit an annual report—

"(i) updating information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) updating the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems, including efforts conducted under the Program;

"(iii) recommending additional research and monitoring efforts to be undertaken under the Program to determine the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems; and

"(iv) recommending methods for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

"(C) Not later than 10 years after the date on which the initial program report is submitted, the Secretary shall submit a final report—

"(i) reviewing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

"(ii) reviewing the nature and findings of all research and monitoring efforts conducted under the Program and any other relevant research and monitoring efforts related to the effects of atmospheric pollution on forest ecosystems; and

"(iii) making final recommendations for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.".

The SPEAKER pro tempore. Is a second demanded?

Mr. MORRISON of Washington. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes and the gentleman from Washington [Mr. MORRISON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to support H.R. 2399, as amended, a bill to establish a research program, under the auspices of the USDA Forest Service, to study the effects of atmospheric pollution on forest ecosystems.

H.R. 2399, as amended, would establish a 10-year research program to study the effects of air pollutants on forest ecosystems. It would permit researchers to conduct needed research on the effects of other air pollutants, in addition to acid rain, on the health of the Nation's forestlands. Currently, the Forest Service's research program has been hindered by its narrow focus on acid rain and has thus far failed to provide the information needed to guide policymakers in dealing with the problem of air pollutant effects on forests.

The bill would make the Forest Service the lead agency to develop this research program, aided by a committee of scientific experts in the field. In addition, the bill would require that the Forest Service generate a series of reports on the research program, including an initial report that spells out the kinds of research to be done and an estimate of the funds needed to do it. Annual research reports and a final report will also be provided to keep the Congress informed of the kinds of research being conducted and what they are learning as a result.

Mr. Speaker, H.R. 2399 passed the House earlier this year by an overwhelming majority. The bill was amended by the Senate to provide for additional resources to be invested in assessing the impacts of atmospheric pollutants on hardwood forests. Given recent concerns for the decline of sugar maples in New England and the failing health of other tree species in the east which are suspected of being affected by air pollutants, I believe that this is a useful amendment.

H.R. 2399 is a tribute to the concerns for the health of the Nation's forests that were first raised by our colleague and former House Member, Charlie Whitley, who, with the Honorable SID MORRISON, introduced a similar bill in the 99th Congress. Their concern for protecting the health of the Nation's forests led me to introduce H.R. 2399 earlier this year. I am pleased to bring this bill to the floor for the House to consider today.

Mr. Speaker, H.R. 2399, as amended, establishes an important research program in the USDA Forest Service. I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MORRISON of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I agree with our distinguished chairman, the gentleman from Texas [Mr. DE LA GARZA] that this measure has been passed by the House of Representatives on several occasions. It is the effort of the Committee on Agriculture and our Subcommittee on Forests, Family Farms, and Energy to recognize the fact that atmospheric pollution is cutting into the productivity of our forests.

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This is to develop and implement a 10-year program so that we really know what we are talking about as we search for a solution to this dilemma that we face. The measure as it comes back to us is appropriate and I urge its passage.

Mr. MORRISON of Washington. Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 2399.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed concurrent resolutions of the following titles, in which the concurrence of the House is requested:

S. Con. Res. 155. Concurrent resolution correcting the enrollment of S. 136, and

S. Con. Res. 156. Concurrent resolution to correct the enrollment of S. 2723.

CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5471) to amend the Public Health Service Act to revise the authority for the regulation of clinical laboratories.

The Clerk read as follows:

H.R. 5471

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Clinical Laboratory Improvement Amendments of 1988".

SEC. 2. REVISION OF AUTHORITY.

Section 353 of the Public Health Service Act (42 U.S.C. 263a) is amended to read as follows:

"CERTIFICATION OF LABORATORIES

"SEC. 353. (a) DEFINITION.—As used in this section, the term 'laboratory' or 'clinical laboratory' means a facility for the biological, microbiologial, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

"(b) Certificate Requirement.—No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a certificate issued by the Secretary under this section applicable to the category of examinations or procedures which includes such examination or procedure.

"(c) Issuance and Renewal of Certificates.—

"(1) In General.—The Secretary may issue or renew a certificate for a laboratory only if the laboratory meets the requirements of subsection (d).

"(2) Term.—A certificate issued under this section shall be valid for a period of 2 years or such shorter period as the Secretary may establish.

"(d) Requirements for Certificates.—

"(1) In general.—A laboratory may be issued a certificate or have its certificate renewed if—

'(A) the laboratory submits (or if the laboratory is accredited under subsection (e), the accreditation body which accredited the laboratory submits), the accreditation body which accredited the laboratory submits) an application—

"(i) in such form and manner as the Secretary shall prescribe,

"(ii) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory including—

"(I) the number and types of laboratory examinations and other procedures performed,

"(II) the methodologies for laboratory examinations and other procedures employed, and

"(III) the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

"(iii) that contains such other information as the Secretary may require to determine compliance with this section, and

the laboratory agrees to provide to the Secretary (or if the laboratory is accredited, to the accreditation body which accredited it) a description of any change in the information submitted under clause (ii) not later than 6 months after the change was put into effect,

"(B) the laboratory provides the Secretary—

"(i) with satisfactory assurances that the laboratory will be operated in accordance with standards issued by the Secretary under subsection (f), or

"(ii) with proof of accreditation under subsection (e),

"(C) the laboratory agrees to permit inspections by the Secretary under subsection (g),

"(D) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may reasonably require, and

"(E) the laboratory agrees to treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business.

"(2) Requirements for certificates of waiver.—

"(A) In general.—A laboratory which only performs laboratory examinations and procedures described in paragraph (3) shall be issued a certificate of waiver or have its certificate of waiver renewed if—

"(i) the laboratory submits an application—

"(I) in such form and manner as the Secretary shall prescribe,

"(II) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory, including the number and types of laboratory examinations and other procedures performed, the methodologies for laboratory examinations and other procedures employed, and the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

"(III) that contains such other information as the Secretary may reasonably require to determine compliance with this section, and

"(ii) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may require.

"(B) Changes.—If a laboratory makes changes in the examinations and other procedures performed by it only with respect to examinations and procedures which are described in paragraph (3), the laboratory shall report such changes to the Secretary not later than 6 months after the change has been put into effect. If a laboratory proposes to make changes in the examinations and procedures performed by it such that the laboratory will perform an examination or procedure not described in paragraph (3), the laboratory shall report such change to the Secretary before the change takes effect.

"(C) Effect.—Subsections (f) and (g) shall not apply to a laboratory to which has been issued a certificate of waiver.

"(3) Examinations and procedures.—The examinations and procedures identified in paragraph (2) are simple laboratory examinations and procedures which, as determined by the Secretary, have an insignificant risk of an erroneous result, including those which—

"(A) have been approved by the Food and Drug Administration for home use,

"(B) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or

"(C) the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.

"(4) Definition.—As used in this section, the term 'certificate' includes a certification of waiver issued under paragraph (2).

"(e) Accreditation.—

"(1) In general.—A laboratory may be accredited for purposes of obtaining a certificate if the laboratory—

"(A) meets the standards of an approved accreditation body, and

"(B) authorizes the accreditation body to submit to the Secretary (or such State agency as the Secretary may designate) such records or other information as the Secretary may require.

"(2) Approval of accreditation bodies.—

(A) In general.—The Secretary may approve a private nonprofit organization to be an accreditation body for the accreditation of laboratories if—

"(i) using inspectors qualified to evaluate the methodologies used by the laboratories in performing laboratory examinations and other procedures, the accreditation body agrees to inspect a laboratory for purposes of accreditation with such frequency as determined by the Secretary,

"(ii) the standards applied by the body in determining whether or not to accredit a laboratory are equal to or more stringent than the standards issued by the Secretary under subsection (f),

"(iii) there is adequate provision for assuring that the standards of the accreditation body continue to be met by the laboratory,

"(iv) in case of any laboratory accredited by the body which has had its accreditation denied, suspended, withdrawn, or revoked or which has had any other action taken against it by the accrediting body, the accrediting body agrees to submit to the Secretary the name of such laboratory within 30 days of the action taken,

"(v) the accreditation body agrees to notify the Secretary at least 30 days before it changes its standards, and

"(vi) if the accreditation body has its approval withdrawn by the Secretary, the body agrees to notify each laboratory accredited by the body of the withdrawal within 10 days of the withdrawal.

"(B) Criteria and procedures.—The Secretary shall promulgate criteria and procedures for approving an accreditation body and for withdrawing such approval if the Secretary determines that the accreditation body does not meet the requirements of subparagraph (A).

"(C) Effect of withdrawal of approval.—If the Secretary withdraws the approval of an accreditation body under subparagraph (B), the certificate of any laboratory accredited by the body shall continue in effect for 60 days after the laboratory receives notification of the withdrawal of the approval, except that the Secretary may extend such time period for a laboratory if it determines that the laboratory submitted an application for accreditation or a certificate in a timely manner after receipt of the notification of the withdrawal of approval. If an accreditation body withdraws or revokes the accreditation of a laboratory, the certification of the laboratory shall continue in effect—

"(i) for 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or

"(ii) until the effective date of any action taken by the Secretary under subsection (i).

"(d) Evaluations.—The Secretary shall evaluate annually the performance of each approved accreditation body by—

"(i) inspecting under subsection (g) a sufficient number of the laboratories accredited by such body to allow a reasonable estimate of the performance of such body, and

"(ii) such other means as the Secretary determines appropriate.

"(3) Report.—The Secretary shall annually prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that describes the results of the evaluation conducted under paragraph (2)(D).

"(f) Standards.—

"(1) In general.—The Secretary shall issue standards to assure consistent performance by laboratories issued a certificate under this section of valid and reliable laboratory examinations and other procedures. Such standards shall require each laboratory issued a certificate under this section—

"(A) to maintain a quality assurance and quality control program adequate and appropriate for the validity and reliability of the laboratory examinations and other procedures of the laboratory and to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results, "(B) to maintain records, equipment, and facilities necessary for the proper and effective operation of the laboratory,

"(C) in performing and carrying out its laboratory examinations and other procedures, to use only personnel meeting such qualifications as the Secretary may establish for the direction, supervision, and performance of examinations and procedures within the laboratory, which qualifications shall take into consideration competency, training, experience, job performance, and education and which qualification shall, as appropriate, be different on the basis of the type of examinations and procedures being performed by the laboratory and the risks and consequences of erroneous results associated with such examinations and procedures,

"(D) to qualify under a proficiency testing program meeting the standards established by the Secretary under paragraph (3), and

"(E) to meet such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable laboratory examinations and procedures.

"(2) Considerations.—In developing the standards to be issued under paragraph (1), the Secretary shall, within the flexibility provided under subparagraphs (A) through (E) of paragraph (1), take into consideration—

"(A) the examinations and procedure performed and the methodologies employed,

"(B) the degree of independent judgment invovled,

"(C) the amount of interpretation involved,

"(D) the difficulty of the calculations involved,

"(E) the calibration and quality control requirements of the instruments used,

"(F) the type of training required to operate the instruments used in the methodology, and

"(G) such other factors as the Secretary considers relevant.

"(3) Proficiency testing program.—

(A) In general.—The Secretary shall establish standards for the proficiency testing programs for laboratories issued a certificate under this section which are conducted by the Secretary, conducted by an organization approved under subparagraph (C), or conducted by an approved accrediting body. The standards shall require that a laboratory issued a certificate under this section be tested for each examination and procedure conducted within a category of examinations or procedures for which it has received a certificate, except for examinations and procedures for which the Secretary has determined that a proficiency test cannot reasonably be developed. The testing shall be conducted on a quarterly basis, except where the Secretary determines for technical and scientific reasons that a particular examination or procedure may be tested less frequently (but not less often than twice per year).

"(b) Criteria.—The standards established under subparagraph (A) shall include uniform criteria for acceptable performance under a proficiency testing program, based on the available technology and the clinical relevance of the laboratory examination or other procedure subject to such program. The criteria shall be established for all examinations and procedures and shall be uniform for each examination and procedure. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory has performed acceptably for a particular quarter and acceptably for a particular examination or procedure or category of examination or procedure over a period of successive quarters.

"(C) Approved proficiency testing programs.—For the purpose of administering proficiency testing programs which meet the standards established under subparagraph (A), the Secretary shall approve a proficiency testing program offered by a private nonprofit organization or a State if the program meets the standards established under subparagraph (A) and the organization or State provides technical assistance to laboratories seeking to qualify under the program. The Secretary shall evaluate each program approved under this subparagraph annually to determine if the program continues to meet the standards established under subparagraph (A) and shall withdraw the approval of any program that no longer meets such standards.

"(D) On-site testing.—The Secretary shall perform, or shall direct a program approved under subparagraph (C) to perform, onsite proficiency testing to assure compliance with the requirements of subsection (d)(5). The Secretary shall perform, on an onsite or other basis, proficiency testing to evalaute the performance of a proficiency testing program approved under subparagraph (C) and to assure quality performance by a laboratory.

"(E) Training, technical assistance, and enhanced proficiency testing.—The Secretary may, in lieu of or in addition to actions authorized under subsection (h), (i), or (j), require any laboratory which fails to perform acceptably on an individual examination and procedure or a category of examination and procedures—

"(i) to undertake training and to obtain the necessary technical assistance to meet the requirements of the proficiency testing program,

"(ii) to enroll in a program of enhanced proficiency testing, or

"(iii) to undertake any combination of the training, technical assistance, or testing described in clauses (i) and (ii).

"(F) Testing results.—The Secretary shall establish a system to make the results of the proficiency testing programs subject to the standards established by the Secretary under subparagraph (A) available, on a reasonable basis, upon request of any person. The Secretary shall include with results made available under this subparagraph such explanatory information as may be appropriate to assist in the interpretation of such results.

"(4) National standards for quality assurance in cytology services.—

"(A) Establishment.—The Secretary shall establish national standards for quality assurance in cytology services designed to assure consistent performance by laboratories of valid and reliable cytological services.

"(B) Standards.—The standards established under subparagraph (A) shall include—

"(i) the maximum number of cytology slides that any individual may screen in a 24-hour period,

"(ii) requirements that a clinical laboratory maintain a record of (I) the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory, and (II) the number of hours devoted during each 24-hour period to screening cytology slides by such individual,

"(iii) criteria for requiring rescreening of cytological preparations, such as (I) random rescreening of cytology specimens determined to be in the benign category, (II) focused rescreening of such preparations in high risk groups, and (III) for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available,

"(iv) periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions,

"(v) procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides,

"(vi) requirements that all cytological screening be done on the premises of a laboratory that is certified under this section,

"(vii) requirements for the retention of cytology slides by laboratories for such periods of time as the Secretary considers appropriate, and

"(viii) standards requiring periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

"(g) Inspections.—

"(1) In general.—The Secretary may, on an announced or unannounced basis, enter and inspect, during regular hours of operation, laboratories which have been issued a certificate under this section. In conducting such inspections the Secretary shall have access to all facilities, equipment, materials, records, and information that the Secretary determines have a bearing on whether the laboratory is being operated in accordance with this section. As part of such an inspection the Secretary may copy any such material or require to it be submitted to the Secretary. An inspection under this paragraph may be made only upon presenting identification to the owner, operator, or agent in charge of the laboratory being inspected.

"(2) Compliance with requirements and standards.—The Secretary shall conduct inspections of laboratories under paragraph (1) to determine their compliance with the requirements of subsection (d) and the standards issued under subsection (f). Inspections of laboratories not accredited under subsection (e) shall be conducted on a biennial basis or with such other frequency as the Secretary determines to be necessary to assure compliance with such requirements and standards. Inspections of laboratories accredited under subsection (e) shall be conducted on such basis as the Secretary determines is necessary to assure compliance with such requirements and standards.

"(h) Intermediate Sanctions.—

"(1) In general.—If the Secretary determines that a laboratory which has been issued a certificate under this section no longer substantially meets the requirements for the issuance of a certificate, the Secretary may impose intermediate sanctions in lieu of the actions authorized by subsection (i).

"(2) Types of sanctions.—The intermediate sanctions which may be imposed under paragraph (1) shall consist of—

"(A) directed plans of correction,

"(B) civil money penalties in an amount not to exceed $10,000 for each violation listed in subsection (i)(1) of for each day of substantial noncompliance with the requirements of this section, "(C) payment for the costs of onsite monitoring, or

"(D) any combination of the actions described in subparagraph (A), (B), and (C).

"(3) Procedures.—The Secretary shall develop and implement procedures with respect to when and how each of the intermediate sanctions is to be imposed under paragraph (1). Such procedures shall provide for notice to the laboratory and a reasonable opportunity to respond to the proposed sanction and appropriate procedures for appealing determinations relating to the imposition of intermediate sanctions.

"(i) Suspension, Revocation, and Limitation.—

"(i) In general.—Except as provided in paragraph (2), the certificate of a laboratory issued under this section may be suspended, revoked, or limited if the Secretary finds, after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that such owner or operator or any employee of the laboratory—

"(A) has been guilty of misrepresentation in obtaining the certificate,

"(B) has performed or represented the laboratory as entitled to perform a laboratory examination or other procedure which is not within a category of laboratory examinations or other procedures authorized in the certificate,

"(C) has failed to comply with the requirements of subsection (d) or the standards prescribed by the Secretary under subsection (f),

"(D) has failed to comply with reasonable requests of the Secretary for—

"(i) any information or materials, or

"(ii) work on materials, that the Secretary concludes is necessary to determine the laboratory's continued eligibility for its certificate or continued compliance with the Secretary's standards under subsection (f),

"(E) has refused a reasonable request of the Secretary, or any Federal officer or employee duly designated by the Secretary, for permission to inspect the laboratory and its operations and pertinent records during the hours the laboratory is in operation,

"(F) has violated or aided and abetted in the violation of any provisions of this section or of any regulation promulgated thereunder, or

"(G) has not complied with an intermediate sanction imposed under subsection (h).

"(2) Action before a hearing.—If the Secretary determines that—

"(A) the failure of a laboratory to comply with the standards of the Secretary under subsection (f) presents an imminent and serious risk to human health, or

"(B) a laboratory has engaged in an action described in subparagraph (D) or (E) of paragraph (1),

the Secretary may suspend or limit the certificate of the laboratory before holding a hearing under paragraph (1) regarding such failure or refusal. The opportunity for a hearing shall be provided no later than 60 days from the effective date of the suspension or limitation. A suspension or limitation under this paragraph shall stay in effect until the decision of the Secretary made after the hearing under paragraph (1).

"(3) Ineligibility to own or operate laboratories after revocation.—No person who has owned or operated a laboratory which has had its certificate revoked may, within 2 years of the revocation of the certificate, own or operate a laboratory for which a certificate has been issued under this section. The certificate of a laboratory which has been excluded from participation under the medicare program under title XVII of the Social Security Act because of actions relating to the quality of the laboratory shall be suspended for the period the laboratory is so excluded.

"(4) Improper referrals.—Any laboratory that the Secretary determines intentionally refers its proficiency testing samples to another laboratory for analysis shall have its certificate revoked for at least one year and shall be subject to appropriate fines and penalties as provided for in subsection (h).

"(j) Injunctions.—Whenever the Secretary has reason to believe that continuation of any activity by a laboratory would constitute a significant hazard to the public health the Secretary may bring suit in the district court of the United States for the district in which such laboratory is situated to enjoin continuation of such activity. Upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order under this subsection shall be granted without bond by such court.

"(k) Judicial Review.—

"(1) Petition.—Any laboratory which has had an intermediate sanction imposed under subsection (h) or has had its certificate suspended, revoked, or limited under subsection (i) may, at any time within 60 days after the date the action of the Secretary under subsection (i) or (h) becomes final, file a petition with the United States court of appeals for the circuit wherein the laboratory has its principal place of business for judicial review of such action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary for that purpose. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28, United States Code.

"(2) Additional evidence.—If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal of such additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file such modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of his original action, with the return of such additional evidence.

"(3) Judgment of court.—Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set it aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

"(4) Finality of judgment.—The judgment of the court affirming or setting aside, in whole or in part, any such action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(1) Sanctions.—Any person who intentionally violates any requirement of this section or any regulation promulgated thereunder shall be imprisoned for not more than one year or fined under title 18, United States Code or both, except that if the conviction is for a second subsequent violation of such a requirement such person shall be imprisoned for not more than 3 years or fined in accordance with title 18, United States Code or both.

"(m) Fees.—

"(1) Certificates fees.—The Secretary shall require payment of fees for the issuance and renewal of certificates, except that the Secretary shall only require a nominal fee for the issuance and renewal of certificates of waiver.

"(2) Additional fees.—The Secretary shall require the payment of fees for inspections of laboratories which are not accredited and for the cost of performing proficiency testing on laboratories which do not participate in proficiency testing programs approved under subsection (f)(3)(C).

"(3) Criteria.—

"(A) Fees under paragraph (1).—Fees imposed under paragraph (1) shall be sufficient to cover the general costs of administering this section, including evaluating and monitoring proficiency testing programs approved under subsection (f) and accrediting bodies and implementing and monitoring compliance with the requirements of this section.

"(B) Fees under paragraph (2).—Fees imposed under paragraph (2) shall be sufficient to cover the cost of the Secretary in carrying out the inspections and proficiency testing described in paragraph (2).

"(C) Fees imposed under paragraphs (1) and (2).—Fees imposed under paragraphs (1) and (2) shall vary by group classification of laboratory, based, on such considerations as the Secretary determines are relevant, which may include the dollar volume and scope of the testing being performed by the laboratories.

"(n) Information.—On April 1, 1990 and annually thereafter the Secretary shall compile and make available to physicians and the general public information, based on the previous calendar year, which the Secretary determines is useful in evaluating the performance of a laboratory, including—

"(1) a list of laboratories which have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks,

"(2) a list of laboratories—

"(A) which have had their certificates revoked, suspended, or limited under subsection (i), or

"(B) which have been the subject of a sanction under subsection (l), together with a statement of the reasons for the revocation, suspension, limitations, or sanction,

"(3) a list of laboratories subject to intermediate sanctions under subsection (h) together with a statement of the reasons for the sanctions,

"(4) a list of laboratories whose accreditation has been withdrawn or revoked together with a statement of the reasons for the withdrawal or revocation,

"(5) a list of laboratories against which the Secretary has taken action under subsection (j) together with a statement of the reasons for such action, and

"(6) a list of laboratories which have been excluded from participation under title XVIII or XIX of the Social Security Act.

The information to be compiled under paragraphs (1) through (6) shall be information for the calendar year preceding the date the information is to be made available to the public and shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraphs.

"(o) DELEGATION.—In carrying out this section, the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or nonprofit private organization, and may pay therefor in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

"(p) STATE LAWS.—

"(1) Except as provided in paragraph (2), nothing in this section shall be construed as affecting the power of any State to enact and enforce laws relating to the matters covered by this section to the extent that such laws are not inconsistent with this section or with the regulations issued under this section.

"(2) If a State enacts laws relating to matters covered by this section which provide for requirements equal to or more stringent than the requirements of this section or than the regulations issued under this section, the Secretary may exempt clinical laboratories in that State from compliance with this section.".

"(q) CONSULTATIONS.—In carrying out this section, the Secretary shall consult with appropriate private organizations and public agencies.

SEC. 3. EFFECTIVE DATE.

Subsections (g)(1), (h), (i), (j), (k), (l), and (m) of section 353 of the Public Health Service Act, as amended by section 101, shall take effect January 1, 1989, except that any reference in such subsections to the standards established under subsection (f) shall be considered a reference to the standards established under subsection (d) of such section 353, as in effect on December 31, 1988. During the period beginning January 1, 1989, and ending December 31, 1989, subsections (a) through (d) and subsection (i) through (l) of such section 353 as in effect on December 31, 1988, shall continue to apply to clinical laboratories. The remaining subsections of such section 353, as so amended, shall take effect January 1, 1990, except that subsections (f)(1)(C) and (g)(2) shall take effect July 1, 1991, with respect to laboratories which were not subject to the requirements of such section 353 as in effect on December 31, 1988.

SEC. 4. STUDIES.

(a) STUDIES.—The Secretary of Health and Human Services, acting through the Public Health Service, shall conduct studies of—

(1) the validity, reliability, and accuracy of proficiency testing of clinical laboratories under section 353 of the Public Health Service Act (as amended by section 2 of this Act),

(2) the correlation between established standards for personnel employed in clinical laboratories and the accuracy and reliability of the results of the tests performed by the laboratories which are subject to such standards,

(3) the correlation between internal quality assurance and quality control programs for clinical laboratories and the accuracy and reliability of the results of the tests performed by the laboratories,

(4) the extent and nature of problems in the diagnosis and treatment of patients caused by inaccurate laboratory test results, and

(5) the effect on laboratory test accuracy of errors in each of the components of the clinical testing process, including the communication between the attending physician and the clinical laboratory which is to conduct the tests, the selection of the tests to be performed, the limits applicable to the tests selected, the acquisition of the material to be tested, the transportation of the material to the laboratory, the storage of the material by the laboratory, the analysis of the material by the laboratory, and the reporting of the results by the laboratory.

(b) REPORT.—Not later than May 1, 1990, the Secretary shall report to the Congress the results of the studies conducted under subsection (a).

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on H.R. 5471, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill.

I want to commend the chairman of the committee, the gentleman from Michigan [Mr. DINGELL], for his leadership in sponsoring this bill and bringing it to fruition. I also want to commend: the ranking member of the subcommittee, the gentleman from Illinois [Mr. MADIGAN], for cosponsoring and making valuable improvements in the bill; our colleague on the subcommittee, the gentleman from Oregon [Mr. WYDEN], whose own bill and strong interest contributed significantly to this one: and the Members of the other body—particularly Mr. ADAMS and Ms. MIKULSKI—whose strong support and cooperation were essential to the successful resolution of the issues involved in this important bill.

This bill is based on H.R. 5150 which passed the House on September 14, 1988. It represents a consensus arrived at with the Senate Labor and Human Resources Committee. It has been introduced as a clean bill to permit expeditious consideration by both Houses in the final days of the session.

Many of the provisions of this bill are identical to those in H.R. 5150. Other provisions have been modified, some only for the purpose of making technical changes.

To the extent that this bill draws on provisions of H.R. 5150, the committee report (100-899) and other legislative history of that bill, will, of course, be part of the legislative history of this bill.

This bill does include certain language not contained in H.R. 5150. Section 353(d) which enumerates requirements for obtaining a certificate has been expanded to include a second form of certificate; namely, a certificate of waiver. Section 353(d)(2) directs the Secretary to issue a certificate of waiver to laboratories meeting certain enumerated requirements and criteria. As the bill makes clear, the waiver would exempt a qualifying laboratory from the standards and inspection requirements of the bill. All other sections of the bill, including the sanction provisions, would apply to such laboratories. It is intended that upon issuing a certificate of waiver to a laboratory, the Secretary will exercise his authority to assure that such a laboratory not go beyond scope of testing permitted by the certificate of waiver.

This bill also contains a provision relating to fees which differs slightly from that contained in H.R. 5150. The provision in this bill is identical to the H.R. 5150 provision in that it requires that fees be set at levels necessary to recover the total cost of carrying out section 353 of the Public Health Service Act. The new provision simply clarifies the criteria that are to be used in establishing the fees.

The bill would add a clarification with regard to the Secretary's authority in dealing with laboratories that fail the required proficiency testing (section (f)(3)) of the bill. The original bill authorized the Secretary to require such a lab to undergo training and technical assistance, in lieu of more severe sanctions such as suspension of the lab's certificate. This bill makes another tool available to the Secretary in this situation—namely, enhanced, or more extensive, proficiency testing.

Passage of this legislation presents us with a rare opportunity to improve our health care system at virtually no cost to the taxpayer. Fewer inaccurate tests means fewer unnecessary tests and lower costs. Even more important we offer patients renewed confidence in the system of medical testing and can eliminate some of the gross human suffering that false laboratory results have caused.

I urge my colleagues to support this bill. The legislation that is before us today is good medicine for the American health care system. It is a consensus bill and its passage here will clear the way for enactment of a measure that will allow patients to once again put their faith in our system of medical testing.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to speak in support of H.R. 5471, the Clinical Laboratory Improvement Amendments of 1988. The bill before us represents an agreement between the members of the House Energy and Commerce Committee and the Senate Labor and Human Resources Committee. This bill would establish minimum certification standards that would apply to virtually all laboratories, and the majority of physician office laboratories as well.

One benefit of this legislation will be to unify the regulation of clinical labs by implementing a uniform standard. The bill also provides for the regulation of physician office laboratories which are currently exempt from Federal regulation. It is estimated that the volume of physician office-based testing is growing at 16 percent per year and that approximately half of all tests occur in physician labs. Also, some laboratories have exhibited problems, especially in cytology procedures, such as Pap smears. Evidence before the Energy and Commerce Committee indicated that false and negative Pap smears have resulted in undiagnosed cervical cancer in many women. Clearly, one goal of this bill is to require the development of appropriate standards for cytology to eliminate such problems.

H.R. 5471 requires all clinical laboratories to apply for certification either directly to the Secretary or through a private accrediting body. The laboratory must meet minimum standards set by the Secretary that govern virtually all aspects of quality control and it must maintain its certificate through periodic inspections and proficiency testing.

I am pleased to report that a major concern that has been voiced about this legislation has been resolved. The bill now includes a provision that gives the Secretary the flexibility to reduce the burden upon physicians who perform only simple tests. The bill permits such physicians to request a waiver of certification from the Secretary.

Finally, it is important to note that this program allows and promotes the role of private accrediting bodies so that the certification process may remain in the private sector.

Strong evidence has been presented to suggest that it is time for the uniform regulation of all clinical laboratories. I am pleased to support this bill, and I urge my colleagues to join me in voting for this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I thank the chairman of the subcommittee, the gentleman from California [Mr. WAXMAN] for all the effort that he and the staff have put into this and, of course, the chairman, the gentleman from Michigan [Mr. DINGELL], through his oversight hearings I think has built a record that was absolutely essential to develop this legislation. It has been a pleasure to work with the gentleman from Michigan [Mr. DINGELL] on this bill.

The fact of the matter is, Mr. Speaker, too many medical labs in this country are making too many mistakes and too many citizens are being hurt as a result.

The present system for regulating medical labs is dangerously inadequate and haphazard. The fact is that thousands of Americans have millions of medical tests performed on them in labs that are subject to no Government oversight or any regulation whatsoever.

It is my view that this gross lack of accountability has produced frightening results and a totally unacceptable level of inaccuracy.

The value of this legislation is that for the first time all medical labs will be brought in to a comprehensive regulatory approach so that we can have some degree of oversight and some degree of accountability.

I think it is particularly important that under our legislation physician office labs will be incorporated into this program.

This is the fastest growing area of medical testing. It has been estimated that physician office lab testing is growing at more than 16 percent a year. In our hearings we heard documented very serious problems in terms of the standards and requirements for these labs.

We also heard the General Accounting Office advise us that a very small fraction of the States have any regulation at all of the physician office labs. As we inquired into the degree of mistakes that we heard about, mention was made that we do not know a whole lot about the mistakes because tragically some of the mistakes are in the grave.

So I think it is high time that we move to a new system. This legislation in particular includes certification of all labs for each type of test performed.

I do want to take note of one special point. Mention was made of it by the gentleman from Illinois [Mr. MADIGAN]. I think when we started this debate, it was the view that all lab tests should be treated equally, because the concern for the patient and the concern for the consumer is what is the degree of accuracy? What the patients and the consumers in this country are talking about is not just the question of whether one test is a little bit simpler than another. What they are concerned about is accuracy, because even with simple tests if they are done inaccurately, there can be great harm done to the patients.

Now, in the final legislation with the certificate program, we have moved away to some extent from the idea that all labs should be treated equally.

I do feel, though, that the new language that has been included and has been part of the compromise effort with the minority and with our colleagues in the other body, the new language does spell out protections that are necessary to assure that patients are not harmed by erroneous or inaccurate results.

When it is all said and done, that is what this body wants to do. That has been the point of our bipartisan effort to try to move this legislation.

I am very pleased that as a result of this bill, for the first time in this country all medical labs will be subjected to certain basic standards. There will be a system for accountability and for oversight.

I want to tell my colleagues again, the chairman, the gentleman from California [Mr. WAXMAN] and the gentleman from Michigan [Mr. DINGELL] in particular how much I appreciated the chance to work closely with them in the Oversight Committee on our hearings, and also I thank the gentleman from Illinois [Mr. MADIGAN]. It has been a pleasure to work with him on this and so many issues.

Mr. DINGELL. Mr. Speaker, I rise in strong support of H.R. 5441, the Clinical Laboratory Improvement Amendments of 1988. I would like to thank Messrs. WAXMAN and MADIGAN, the chairman and ranking minority member of the Health and Environment Subcommittee, Mr. WYDEN, an important contributor to this legislation, and our colleagues in the Senate, Senators MIKULSKI and ADAMS, sponsors of similar legislation in the Senate. Finally, thanks are also due to Senators COHEN and LEVIN for their invaluable investigatory and legislative work.

This bill is based on H.R. 5150 which passed the House on September 14, 1988. It represents a consensus arrived at with the Senate Labor and Human Resources Committee. It has been introduced as a clean bill to permit expeditious consideration by both Houses in the final days of the session.

Many of the provisions of this bill are identical to those in H.R. 5150. Other provisions have been modified, some only for the purpose of making technical changes.

To the extent that this bill draws on provisions of H.R. 5150, the committee report (100–899) and other legislative history of that bill, will, of course, be part of the legislative history of this bill.

This bill does include certain language not contained in H.R. 5150. Section 353(d) which enumerates requirements for obtaining a certificate has been expanded to include a second form of certificate, namely a certificate of waiver. Section 353(d)(2) directs the Secretary to issue a certificate of waiver to laboratories meeting certain enumerated requirements and criteria. As the bill makes clear, the waiver would exempt a qualifying laboratory from the bill, including the sanction provisions, would apply to such laboratories. It is intended that upon issuing a certificate of waiver to a laboratory, the Secretary will exercise his authority to assure that such a laboratory not go beyond scope of testing permitted by the certificate of waiver.

The certificate of waiver provision will serve to limit the regulatory burden on laboratories which only perform certain simple tests. At the same time, this provision will allow the Secretary to remain apprised of the scope and volume of testing being performed in other settings and assure compliance with the act.

The provision directs the Secretary to determine those simple examinations and procedures that have an insignificant risk of an erroneous result, for the purpose of establishing the tests appropriately qualifying a laboratory for a potential certificate of waiver. It is the intent of the Congress in employing this language that the Secretary base all determinations about whether individual tests have an insignificant risk of an erroneous result on both probability and or an erroneous result and clinical relevance of an erroneous result. Specifically, a finding of insignificance would first be based on a determination that a test was inherently so simple that the probability of obtaining an inaccurate result, irrespective of how the test was performed, would be so small as to be without meaning. Next, the Secretary would need to consider clinical relevance by determining that the effect of an inaccurate result on a particular examination or procedure would have no consequences for a patient.

The bill provides three examples of types of examinations and procedures which might meet the insignificant standard addressed above. They include examinations and procedures: (a) approved for home use by the Food and Drug Administration, (b) employing methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or (c) those which the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.

It is the intent of the Congress that the Secretary, in determining that any examination or procedure—including one in any of these categories—should be subject to the certificate of waiver, would first have to satisfy the insignificant standard addressed above. Finally, it is the intent of the Congress that the Secretary will base each determination that a particular examination or procedure be subject to the certificate of waiver on avilable data.

This bill also contains a provision relating to fees which differs slightly from that contained in H.R. 5150. The provision in this bill is identical to the H.R. 5150 provision in that it requires that fees be set at levels necessary to recover the total cost of carrying out section 353 of the Public Health Service Act. The new provision simply clarifies the criteria that are to be used in establishing the fees.

The bill would add a clarification with regard to the Secretary's authority in dealing with laboratories that fail the required proficiency testing—section (f)(3)—of the bill. The original bill authorized the Secretary to require such a lab to undergo training and technical assistance, in lieu of more severe sanctions such as suspension of the lab's certificate. This bill makes another tool available to the Secretary in this situation; namely, enhanced, or more extensive, proficiency testing.

I wish to make it clear that, in the preponderance of cases in which laboratories fail to perform acceptably in a proficiency testing program, it is our expectation that the Secretary will require the laboratory to undertake training, technical assistance, and enhanced proficiency testing, and will not suspend or limit the laboratory. Because neither the state of the art of laboratory testing, nor the state of the art of proficiency testing, is perfect, we cannot expect perfection from a laboratory on each proficiency test each time it is administered. This is why the bill instructs the Secretary to establish reasonable standards for a passing grade on proficiency testing, both for each session of testing and for testing over successive sessions.

I also want to be clear, however, that the Secretary is not precluded from taking stronger action based on a laboratory's failure on proficiency testing. If the Secretary concluded that the laboratory's performance was so egregious as to indicate further testing of patients would represent an imminent and serious risk to their health, he could limit the certificate, or could suspend it in whole or part, if circumstances warranted, and provide the laboratory with a full hearing within 60 days of taking such action. He could also terminate the certificate only after notice and hearing. This procedure is consistent with our efforts in developing this bill to protect the health of patients and to make proficiency testing, which measures actual test results, the central element in determining a laboratory's competence.

In the 22 years since Congress first passed the Clincial Laboratory Improvement Act, our Nation's health care system has changed dramatically. This change is graphically illustrated in the growth of the medical testing industry. Unfortunately, the law has not kept pace with these changes. The consensus bill before us today will bring the regulatory system into the 1980's and beyond.

Unchanged from H.R. 5150 are the basic aims of this legislation and the means for carrying them out:

Laboratories which heretofore operated with limited or no Federal oversight would now be subject to quality standards. No question will remain about the obligation of health maintenance organizations, ambulatory surgery centers, skilled nursing facilities or others to meet the same standards as independent laboratories doing similar tests. Patients can soon take comfort in knowing that physicians' offices and other previously unregulated laboratories would now have to meet quality standards.

In addition, the bill clarifies and strengthens those standards. It replaces a confused and unworkable proficiency testing policy with a coherent program designed to improve the quality of testing done on virtually every test. Good science is fused with a rational enforcement mechanism to monitor the performance of laboratories, to help those in need of assistance and to penalize those requiring or deserving punishment.

The bill responds to atrocious abuses in the area of PAP smear screening by requiring strict standards to assure high quality testing. No woman should suffer or die from cervical cancer because of sloppy testing practices that lead to false negative results. This legislation will finally force laboratories to take seriously a matter of life and death.

The absence of useful information about laboratory quality has slowed improved accuracy and reliability of testing. This legislation attempts to fill that vacuum by; First, requiring that useful data on laboratory performance be disseminated to physicians and to the public; second, commissioning studies on the links between laboratory quality, regulation and patient health; and third, and compiling and analyzing data on proficiency testing.

The bill greatly strengthens a weak and limited enforcement mechanism. The ability to obtain injunctive relief against a laboratory whose operations pose a threat to public health is bolstered. A range of intermediate sanctions are introduced which would allow a laboratory to continue operating while it corrects deficiencies which do not significantly threaten patient health. Finally, the criminal provisions of current law are strengthened and clarified.

The bill strengthens the relationship between private accrediting bodies and the Federal Government. It first clarifies the obligations of such entities and then reinforces the link between Federal and private oversight. No longer will the Federal Government be able to abdicate its ultimate responsibiity to enforce the law.

In sum, the legislation strikes a balance. It protects the public health by bringing every laboratory under Federal regulation. At the same time, it recognizes that different kinds of testing may require different standards and it vests the Secretary of Health and Human Services with substantial flexibility. The flexibility in standards and in enforcement are accompanied by new authority to enforce the law with vigor.

Obviously any regulations issued by the Department would need to conform to the requirements of congressionally passed legislation. It is our intention that final efforts at regulatory reform emanating from the Department will capture both the spirit and letter of this legislation.

Passage of this legislation presents us with a rare opportunity to improve our health care system at virtually no cost to the taxpayer. Fewer inaccurate tests means fewer unecessary tests and lower costs. Even more important we offer patients renewed confidence in the system of medical testing and can eliminate some of the gross human suffering that false laboratory results have caused.

I urge my colleagues to support this bill. The legislation that is before us today is good medicine for the American health care system. It is a consensus bill and its passage here will clear the way for enactment of a measure that will allow patients to once again put their faith in our system of medical testing.

I urge my colleagues to join me in supporting H.R. 5471, the Clinical Laboratory Improvement Amendments of 1988.

Mr. MADIGAN. Mr. Speaker, I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the bill, H.R. 5471.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 3361, NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ACT

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3361) to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The Speaker will appoint conferees when he returns to the chair.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain requests for 1-minute speeches.

□ 1730

IT IS TIME TO TAKE POLITICS OUT OF SOCIAL SECURITY

(Mr. McCANDLESS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCANDLESS. Mr. Speaker, I would like to begin by reading from an article that appeared in the September 21 edition of the Los Angeles Times. The article is entitled, "Cuts in Social Security, Medicare to be Urged."

> The Democratic head of a bipartisan commission on the Federal budget said Tuesday that he expects to recommend that the next President cut Social Security, Medicare, and defense spending to bring the Government's budget deficit under control.

The article goes on to describe how Robert Strauss, the former chairman of the Democratic National Committee, "stunned" his audience with a recommendation of cutting Social Security benefits to reduce the deficit.

I reject Mr. Strauss' suggestion outright.

At issue is the relationship between Social Security and the overall Federal budget. Social Security is unique among Federal programs because it is funded by its own tax on employees and employers. Because of the way it is funded, for years Social Security was not a part of the Federal budget. It was considered to be "off-budget," meaning that Social Security receipts and benefit payments were not included in the Federal budget process. Consequently, there was no temptation to use the Social Security trust funds for anything other than Social Security benefits. And that is the way it should be.

In 1967, President Johnson moved to put Social Security "on-budget" and make it a part of the overall Federal budget as a way of hiding the increasing costs of the Great Society programs and the Vietnam war. In the 99th Congress, I introduced legislation to restore Social Security to its original status as an "off-budget" program. Part of that legislation was incorporated into the Gramm-Rudman balanced budget law, and Social Security was officially taken "off-budget." However, for purposes of calculating the deficit, Social Security receipts and payments are still considered to be "on-budget."

Because it is funded by its own tax, decisions about Social Security should be made on the basis of the condition of the trust funds, not the Federal budget as a whole. For that reason, I have introduced legislation, H.R. 5341, to restore Social Security to its "off-budget" status entirely. It is deceptive to try to hide the deficit behind the Social Security surplus. I am opposed to cutting Social Security in order to make the deficit look smaller. Mr. Strauss is wrong. Social Security funds should not be used for anything other than the payment of benefits.

In the meantime, it is important to reassure our retirees that Social Security is safe and it is sound. Mr. Strauss was only voicing his opinion. I do not share his opinion, nor does the vast majority of those in Congress. There is no proposal before Congress to cut Social Security, nor is it likely that such a plan will even be introduced. Even if it were, it would not pass.

Social Security is vital to our retirees. It is irresponsible for Mr. Strauss and others to make statements and voice opinions that cause our senior citizens to worry about their next month's check. It is time to take the politics out of Social Security, and to separate Social Security from the overall Federal budget once and for all. I invite my colleages to cosponsor H.R. 5341.

CORRECTING ADDITIONAL TECHNICAL ERRORS IN THE ENROLLMENT OF THE BILL, H.R. 1720 FAMILY WELFARE REFORM ACT OF 1987

Mr. DOWNEY of New York. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 154) to correct additional technical errors in the enrollment of the bill H.R. 1720.

The Clerk read as follows:

S. CON. RES. 154

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 1720) to revise the AFDC program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives, the Clerk of the House of Representatives shall make the following additional corrections:

(1) In the proposed subparagraph (B) of section 466(a)(8) of the Social Security Act (as added by section 101(b)(3) of the bill), redesignate clauses (i), (ii), and (iii) as clauses (ii), (iii), and (iv), respectively, and insert before the clause so redesignated as clause (ii) a new clause (with the quotation marks as shown) as follows:

"(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(2) In subparagraph (C)(i) of the proposed paragraph (10) of section 466(a) of the Social Security Act (as added by section 103(c) of the bill), strike "of a review" and insert "of any review of such order,".

(3) In section 103 of the bill, redesignate the second subsection (e) as subsection (f).

(4) In section 103(f) of the bill (as so redesignated by paragraph (3) of this concurrent resolution), strike "this section" and insert "subsections (a), (b), and (c)".

(5) In the proposed clause (D) of section 454(6) of the Social Security Act (as added by section 111(c)(2) of the bill), strike "(established under" and insert "(in accordance with".

(6) In subparagraph (C)(iii)(II) of the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill)—

(A) strike "of a child" and insert "for a child"; and

(B) strike "if the State" and insert "unless the State".

(7) In subparagraph (G)(i)(I) of the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of

the bill), strike "section 402(a)(7)" and insert "'paragraph (7) of this subsection".

(8) In the proposed section 402(a)(19) of the Social Security Act (as amended by section 201(a) of the bill), redesignate subparagraph (I) as subparagraph (H).

(9) In subsection (b) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill)—

(A) strike "FAMILY SUPPORT PLAN" in the heading and insert "EMPLOYABILITY PLAN"; and

(B) strike "such participants" in the second sentence of paragraph (1)(B) and insert "such participant".

(10) At the end of subsection (d) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), add the following new paragraph (with quotation marks as shown):

"(3) Notwithstanding any other provision of this section, the Secretary shall permit up to 5 States to provide services under the program, on a voluntary or mandatory basis, to non-custodial parents who are unemployed and unable to meet their child support obligations. Any State providing services to non-custodial parents pursuant to this paragraph shall evaluate the provision of such services, giving particular attention to the extent to which the provision of such services to those parents is contributing to the achievement of the purpose of this part, and shall report the results of such evaluation to the Secretary.

(11) At the end of paragraph (3) of subsection (e) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), add the following new subparagraph (with quotation marks as shown):

"(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 402(a)(13)(A)(ii) (and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individuals's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

(12) In paragraph (2) of subsection (g) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), strike "402(a)(19)(B)(i)(I)" and insert "402(a)(19)(B)(i)".

(13) In paragraph (1) of subsection (i) of the proposed section 482 of the Social Security Act (as added by section 201(b) of the bill), strike "without" in the second sentence and insert "(without".

(14) In paragraph (3) of subsection (a) of the proposed section 483 of the Social Security Act (as added by section 201(b) of the bill), strike "subparagraph (B)" and insert "paragraph (2)".

(15) In subsection (d) of the proposed section 484 of the Social Security Act (as added by section 201(b) of the bill)—

(A) strike "subsection (b)" in paragraph (1) and insert "subsection (c)"; and

(B) strike "subsection (e)" in paragraph (2) and insert "subsection (f)".

(16) In subsection (c) of the proposed section 485 of the Social Security Act (as added by section 201(b) of the bill), strike "482(b)(1)" and insert "482(a)(1)".

(17) In paragraph (2) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), move subparagraphs (C) and (D) 5 ems to the left so that they are flush with the left-hand margin.

(18) In paragraph (3)(E) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), insert "and part F" after "402(a)(19)" in clause (i).

(19) In paragraph (4)(A)(i) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), insert "or another basic education program" after "(or equivalent)" in the last sentence.

(20) In paragraph (4)(B) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill), strike "fiscal year 1997 or 1998" in clause (iv) and insert "each of the fiscal years 1997 and 1998".

(21) In clause (ii) of paragraph (4)(D) of the proposed subsection (1) of section 403 of the Social Security Act (as added by section 201(c)(2) of the bill)—

(A) strike "limited" and insert "limited)"; and

(B) strike "than" and insert "that".

(22) In section 201(d) of the bill, strike "202(a)(4)" and insert "202(b)(4)".

(23) In paragraph (8) of the first subsection (b) of section 202 of the bill, strike "482(c)(2)," and insert "409(a)(19)(C),".

(24) In section 202 of the bill, redesignate the second subsection (b) as subsection (c); and in such subsection—

(A) strike "redesiognated" and insert "redesignated" in paragraph (5); and

(B) add at the end the following new paragraph:

(6) Section 51(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking "section 414" and inserting "section 482(e)".

(25) In paragraph (1) of subsection (a) of the proposed section 487 of the Social Security Act (as added by section 203(b) of the bill), insert "of this Act" after "section 486".

(26) In section 204(b) of the bill—

(A) after "1995" in paragraph (2) insert "except that subparagraph (A) of such section 403(1)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein)"; and

(B) add at the end the following new paragraph:

(3) Subsection (a), (c), and (d) of section 203 of this Act, and section 486 of the Social Security Act (as added by section 201(b) of this Act), shall become effective on the date of the enactment of this Act.

(27) In subparagraph (C)(i) of paragraph (1) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "reimburse" and insert "make payment for".

(28) In subparagraph (C)(i)(II) of paragraph (1) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "section 402(a)(8)(A)(iii)" and insert "subsection (a)(8)(A)(iii)".

(29) In subparagraph (B)(iii) of paragraph (3) of the proposed section 402(g) of the Social Security Act (as added by section 301 of the bill), strike "day" and insert "child".

(30) In the proposed clause (ii) of section 402(g)(1)(A) of the Social Security Act (as added by section 302(a)(3) of the bill), strike "and section 417".

(31) In section 302 of the bill, amend subsection (c) (with quotation marks and last period as shown) to read as follows:

(c) LIMITATIONS ON ELIGIBILITY.—Section 402(g)(1)(A) of the Social Security Act (as added by section 301 of this Act and as amended by subsection (a)(3) of this section) is amended by adding after clause (ii) the new clauses:

"(iii) A family shall only be eligible for child care provided under clause (ii) for a period of 12 months after the last month for which the family received aid to families with dependent children under this part.

"(iv) A family shall not be eligible for child care provided under clause (ii) unless the family received aid to families with dependent children in at least 3 of the 6 months immediately preceding the month in which the family became ineligible for such aid.

"(v) A family shall not be eligible for child care provided under clause (ii) unless the family includes a child who is (or, if needy, would be) a dependent child.

"(vi) A family shall not be eligible for child care provided under clause (ii) for any month beginning after the caretaker relative who is a member of the family has—

"(I) without good cause, terminated his or her employment; or

"(II) failed to cooperate with the State in establishing and enforcing his or her child support obligations.

"(vii) A family shall contribute to child care provided under clause (ii) in accordance with a sliding scale formula which shall be established by the State agency based on the family's ability to pay.".

(32) In section 302(e) of the bill, strike "January 1, 1993." and insert "September 30, 1997.".

(33) In the proposed section 1925 of the Social Security Act (as inserted by section 303(a) of the bill)—

(A) in subsection (a)(1), insert a comma after "income from";

(B) in subsection (a)(1), insert "or because of section 402(a)(8)(B)(ii)(II) (providing for a time-limited earned income disregard)" after "subsection (e))";

(C) in subsection (a)(2)(A), strike "(b)(2)(A)(i)" and insert "(b)(2)(B)(i)";

(D) in subsection (a)(4)(B), strike "or similar costs" and insert "and similar costs";

(E) in subsection (a)(4)(B), strike "a employer" and insert "an employer";

(F) in subsection (a)(4)(B)(i), insert "for the caretaker and the caretaker's family" after "extension of coverage under this subsection";

(G) in subsection (b)(1), strike "(2)(B)" and insert "(2)(B)(i)";

(H) in subsection (b)(2), indent clauses (i) and (ii) in each of subparagraphs (A) and (B) 2 additional ems;

(I) in subsection (b)(2)(A)(i), redesignate subclauses (i), (ii), and (iii) as subclauses (I), (II), and (III);

(J) in subsection (b)(2)(A)(ii), strike "premiums to be" and insert "premium";

(K) in subsection (b)(2)(B)(ii), strike "subsection (a)" and insert "this subsection";

(L) in subsection (b)(3)(A), strike "(2)(B)" the 3 places it appears and insert "(2)(B)(ii)";

(M) in subsection (b)(3)(A)(ii), strike "individuals" and insert "family";

(N) in subsection (b)(3)(A)(iii)(III), strike "exceeds" and insert "exceed";

(O) in subsection (b)(4)(E)(i)(I), strike "or other" and insert "and other";

(P) in subsection (b)(5)(A), strike "exceeds" and insert "exceed"; and

(Q) in subsection (f), strike "of the Social Security Act".

(34) In subsection (a) of section 303 of the bill—

(A) insert "(1)" after "(a) In General.—", and

(B) add at the end of such subsection a new paragraph (with the quotation marks and last period as shown) as follows:

(2) Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by section 303(e) of the Medicare Catastrophic Coverage Act of 1988, is amended—

(A) by striking "and" at the end of paragraph (50),

(B) by striking the period at the end of paragraph (51) and inserting "; and"; and", and

(C) by inserting after paragraph (51) the following new paragraph:

"(52) meet the requirements of section 1925 (relating to extension of eligibility for medical assistance).".

(35) In section 303(b)(1)(A) of the bill, strike the single closing quotation mark after "(B)" and insert double closing quotation marks.

(36) In the proposed subparagraph (B) added by section 303(b)(1)(C) of the bill, strike "of the Social Security Act".

(37) In subsection (b) of section 303 of the bill, amend paragraph (3) (with the quotation marks and last period as shown) to read as follows:

(3) Paragraph (37) of section 402(a) of such Act is amended to read as follows:

"(37) provide that if any family becomes ineligible to receive aid to families with dependent children because of hours of or income from employement of the caretake relative or because of paragraph (8)(B)(ii)(II), having received such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under title XIX for an extended period or periods as provided in section 1925, and that the family will be appropriately notified of such extention (in the State agency's notice to the family of the termination of its eligibility for such aid) as required by section 1925(a)(2);".

(38) In subsection (f) of section 303 of the bill, amend paragraph (2) to read as follows:

(2)(A) The amendment made by subsection (b)(3) shall become effective on April 1, 1990.

(B) Effective September 30, 1998, the amendment made by subsection (b)(3) is repealed.

(C) Section 402(a)(37) of the Social Security Act, as in effect immediately before April 1, 1990, shall become effective on September 30, 1998.

(39) In subparagraph (C)(i) of the proposed paragraph (2) of section 407(b) of the Social Security Act (as added by section 401(b)(1)(C) of the bill), strike "subparagraph (D), such section, and" and insert "such section and".

(40) In paragraph (4)(A) of section 401(c) of the bill, insert "of this section" after "subsection (b)(1)(C)".

(41) In section 401(f)(3) of the bill, strike "the end" an insert "immediately after paragraph (41)".

(42) In section 402(c) of the bill—

(A) insert "(1)" after "Credit.—";

(B) redesignate paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) add at the end new paragraph as follows: (2)(A) Section 402(d) of such Act is repealed.

(B) Section 402(a)(30) of such Act is amended by striking "subsection (d)" and inserting in lieu thereof "subsection (e)".

(43) In the proposed subsection (e) of section 403 of the Social Security Act (as added by section 606 of the bill), strike "402(a)(42), and 402(g)(1)(A)(i)," and insert "402(a)(43), and 402(g)(1)(A)".

(44) In subparagraph (C) of the proposed subsection (k), added by section 608(c) of the bill, strike "anethetist" and insert "anesthetist".

(45) In section 608(d)(5)(C) of the bill, strike "added" and insert "inserted".

(46) In section 608(d)(9)(B) of the bill, strike "for that individual" both places it appears and insert "to that individual".

(47) In section 608(d)(10)(A) of the bill, strike "as amended" and insert "as inserted".

(48) In section 608(d)(14)(D)(ii) of the bill, strike the comma at the end and insert "; and".

(49) In paragraph (14)(H)(ii) of section 608(d) of the bill—

(A) strike "subparagraph" and insert "subparagraphs";

(B) strike the double quotation marks and semicolon at the end of the subparagraph (B) added by such paragraph; and

(C) add after such subparagraph (B) a new subparagraph (with the quotation marks and semicolon as shown) as follows:

"(C) The second sentence of subsection (h)(2) of such section is amended by inserting '(except in the case of qualified medicare beneficiaries, as defined in section 1905(p)(1))' after 'shall be applied' the second place it appears.";

(50) In section 608(d)(15)(A)(i) of the bill, insert "the first place it appears" before "and inserting".

(51) In section 608(d)(15)(B) of the bill, strike "as added" and insert "as amended".

(52) In section 608(d)(16)(A)(i) of the bill, strike "has a right" and insert "has right".

(53) In section 608(d)(16)(B)(i) of the bill, strike the comma at the end of subclause (III) and insert a semicolon.

(54) In section 608(d)(16)(B) of the bill, designate the clause following clause (vi) as clause (vii).

(55) In paragraph (16)(D) of section 608(d) of the bill, strike "303" and insert "303(g)".

(56) In section 608(d)(20)(B)(ii) of the bill, indent the subclause amended by such section 2 additional ems.

(57) In section 608(d)(22)(B) of the bill, insert "the first place it appears" before "and inserting".

(58) In section 608(d)(24)(B) of the bill, strike "inserted" and insert "added".

(59) In section 608(d)(26)(D) of the bill, strike "redesignated" and insert "designated".

(60) In section 608(d)(26)(J), strike "added" and insert "inserted".

(61) In section 608(d)(27)(A) of the bill, in the subparagraph (D) added in such section, strike the second of the periods following "such drugs" and insert a semicolon.

(62) In section 609(a) of the bill, redesignate the proposed subsection (1) as subsection (m).

(63) In section 609(b) of the bill—

(A) strike "12302(c)(1)" in paragraph (1) and insert "12301(c)(1)"; and

(B) amend paragraph (2) to read as follows: (2) Paragraph (2) of section 12301(c) of such Act is amended by inserting "under title XIX" before ", and shall reduce payments".

The SPEAKER pro tempore. Is a second demanded?

Mr. FRENZEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. Downey] will be recognized for 20 minutes and the gentleman from Minnesota [Mr. Frenzel] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. Downey].

Mr. DOWNEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate Congressional Resolution 154 is a simple resolution which makes additional technical corrections in the enrollment of H.R. 1720, the Family Support Act of 1988. This resolution corrects drafting errors and makes technical and clerical corrections to the conference report adopted last week. Adoption of this resolution will assure that the enrolled bill accurately reflects the decisions made by the conferees. I want to assure all Members that the provisions of this resolution are not controversial and have bipartisan support.

Mr. Speaker, I reserve the balance of my time.

Mr. FRENZEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the minority on the Committee on Ways and Means agrees with the description of the distinguished chairman of the subcommittee which processed this family welfare bill which is commonly known as welfare reform.

Senate Concurrent Resolution 154 is a group of 64 technical corrections in a very complicated bill which was passed by overwhelming majorities in both the House and the Senate. The changes are, in fact, technical. My only point of disagreement with my distinguished friend, the gentleman from New York, is that it is not a simple bill or we would not have made the initial mistakes when we put the bill together, but I think Members can be assured that these are necessary and technical corrections.

The minority urges that the bill be promptly passed.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. RODINO. Mr. Speaker, I want to thank the gentlemen from New York for arranging this special order in tribute to my good friend and colleague Sam Stratton who is retiring at the end of this Congress.

Sam Stratton has devoted his life to public service. He served his nation with distinction and honor during World War II as a naval officer and he was twice awarded the Bronze Star Medal. After the war, Sam entered politics and was elected to the Schenectady City Council before becoming mayor in 1956.

SAM has served the people of New York's 23d Congressional District with distinction and honor. First and foremost, he has worked for his constituents and he has been an effective representative of their interests and concerns.

For the past 30 years here in the Congress, SAM has had a distinguished career and his voice has been heard in many important debates over a broad range of issues. SAM'S contributions have been particularly signficant in the area of defense. As a member of the Armed Services Committee and the chairman of the Subcommittee on Procurement and Military Nuclear Systems, he has been a tireless advocate of a strong defense and effective procurement practices. His insight and expertise have earned him the respect of his colleagues.

It is particularly fitting that we are paying tribute to SAM STRATTON as we begin the annual celebration of Columbus Day. Although I have worked with SAM on many issues over the past 30 years, I especially remember his effective and invaluable support as a cosponsor of the legislation I introduced to make Columbus Day a national holiday. SAM recognized that this was not simply a day to honor Columbus, but that it was also an opportunity to recognize the spirit of Columbus in reaching out to new horizons and vistas which is the spirit of America. With SAM'S help, the dream of Columbus Day as a national holiday finally became a reality.

Mr. Speaker, SAM STRATTON'S influence and impact goes far beyond the list of his achievements. He upheld the finest traditions of public service and he was never afraid to fight for what he believed in. During our time together in the Congress, SAM STRATTON has commanded my respect and admiration as an outstanding legislator and a good friend. I want to wish SAM a very happy and healthy retirement.

Mr. SMITH of Iowa. Mr. Speaker, I want to thank the gentleman from New York [Mr. HORTON], for arranging the special order to honor our friend and colleague, SAM STRATTON, who is retiring from the House this year after 30 years of exemplary service. SAM came to the House at the same time I did and I have enjoyed his friendship and watched with interest his extraordinary career as a Member of Congress.

In the time I have been in Congress, I have seen Members of many talents and SAM STRATTON is one of the most talented and versatile. In his time, he has excelled as a scholar, a military leader, a linquist, a city councilman and mayor, a broadcaster and television personality, a professor and a topflight Congressman. There is one thing about SAM that everybody in this Chamber knows.

You never have any doubts about where he stands; he makes his position plain and forthright. SAM is, of course, best known for his leadership on Armed Services and his total dedication to our Nation's national security. He is the third ranking member of the House Armed Services Committee and chairman of the important Procurement and Military Nuclear Systems Subcommittee.

His impressive military background has served him well in his armed services post. He was an officer in the Navy in the Pacific on the staff of General MacArthur and was recalled to duty in the Korean war. In his World War II career, he learned the Japanese language and his skill in interrogating Japanese prisoners led to his elevation to a top post on General MacArthur's staff in Manila. He interviewed many high-ranking Japanese officers after the surrender, including General Yamashita in connection with the general's war crimes trial.

However illustrious SAM'S military career was, his political career was no less outstanding. He had the ability to get elected against whatever odds and, when elected, to deliver the highest level of public service to his constituents and to the Nation. He was redistricted to a new district five times. In each case, he simply accepted the new territory and won its constituents by the same hard work and solid campaigning that got him to Congress in the first place.

SAM has been respected and honored by Presidents and other top leaders of both parties. In the 96th Congress he was appointed by Speaker O'Neill as an observer to the SALT II negotiations in Geneva and the mutual and balanced force reduction talks in Vienna. He was nominated by President Reagan in 1982 to serve as a representative member of the U.S. delegation to the second special session of the U.N. General Assembly on disarmament.

SAM strongly opposed the decision to send U.S. Marines to Lebanon in 1983 as a part of a peacekeeping force, a position that seemed prophetic when the bombing occurred in Beirut that killed 241 marines.

SAM will be long remembered and sorely missed. We wish SAM and Joan and their family the best in the years of retirement. They have earned it.

Mr. HUTTO. Mr. Speaker, it has been my honor and privilege to serve with our colleague, SAM STRATTON, on the House Armed Services Committee, for the last 9 years. During this period of time, I have come to respect and admire Mr. STRATTON, as a champion of our national defense and someone who is fully committed to the ideals that we hold dear in America. SAM STRATTON is a person who does his homework, and this is quite evident when one observes his activity with the Armed Services Committee. SAM STRATTON understands the need of national security, and he stands tall as a true American patriot. His many years of service to our Nation will be sorely missed by his constituents as well as all of us here in the House of Representatives.

Although I did not have the opportunity to serve on the Subcommittee on Procurement and Military Nuclear Systems, which he chaired, and since I was not on any of the other subcommittees with SAM, I was always fascinated in our full committee meetings when SAM STRATTON spoke. I am sure that the witnesses who appeared before our committee stood in trepidation as it came time to be questioned by Mr. STRATTON. SAM could be as tough as anyone, and he wasn't easily satisfied if he did not get the proper answers to his queries.

With his retirement and the loss of two of our other senior Members on the House Armed Services Committee, we will be missing a great deal of expertise that has been invaluable to our Nation's defense. But, after these many years as a public official, I can understand SAM'S desire to retire and perhaps get a little rest from the heavy burden of responsibility that he has assumed in many capacities over the years.

I join with my other colleagues in wishing SAM STRATTON and his family much happiness in the years ahead and may God bless SAM for the fine work he has done for the United States of America.

Mr. YATRON. Mr. Speaker, I stand before you toay to pay tribute to a man who has served his country for the last 30 years with unquestioned devotion and ability. His name is SAM STRATTON. As you know, SAM will be retiring from the House of Representatives at the end of the 100th Congress.

As a member of the Armed Services Committee, SAM has established himself as a leading authority on defense issues. In addition, he has demonstrated his ability, over and over again, to take charge on an issue and see it through until the end.

While SAM has served his country well in the House, he has also served the needs of the 23d District of New York with dedication and dignity. I know that his constituents will miss his hard work and good efforts on their behalf.

I feel privileged to have served with SAM STRATTON in this body and will miss his leadership and presence. I congratulate him on his distingushed career and wish him continued success and happiness in the future.

Mr. MAZZOLI. Mr. Speaker, I would like to join with my colleagues in paying tribute to SAM STRATTON, of New York's 23d Congressional District, who is retiring at the end of the 100th Congress after 30 years of service in the House of Representatives.

Throughout his career in the House, SAM has been recognized as a leader on defense issues. As a senior member of the Armed Services Committee he has played a prominent role in the development of new weapons systems and the formulation of our nation's defense policies. He has been a formidable advocate for the strengthening of the military services.

SAM'S own military experience, tempered by his active service in two wars, equipped him as a Member of Congress with a knowledge and insight of military affairs that cannot be easily replaced. And, he has earned the respect of his colleagues and constituents alike.

I hope that SAM will continue to give the Congress and the Nation the benefit of his wisdom and counsel on the critically important national security and arms control issues that face us.

I wish SAM much health and happiness in retirement.

Mr. DOWNEY of New York. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. DOWNEY] that the House suspend the rules and concur in the Senate concurrent resolution, Senate Concurrent Resolution 154.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

VACATION OF SPECIAL ORDER

Mr. McCANDLESS. Mr. Speaker, I ask unanimous consent to vacate my 5-minute special order previously requested for this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

TRIBUTE TO THE HONORABLE SAMUEL S. STRATTON

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, this evening the senior member of the New York delegation, the gentleman from New York [Mr. Horton], will have a special order for our dear and beloved friend, Sam Stratton, of Schnectady, NY, who is planning to retire and not run for another term of Congress.

Mr. Speaker, I was elected in 1958 and came into the Congress in 1959 with Sam Stratton. In fact, there are two of our class who are retiring this year and not seeking reelection, Sam Stratton and Del Latta of Ohio.

Sam was a young professor, and I believe it was RPI up there; he was a professor, and I was a young lawyer in Pittsfield, MA, right over the mountain, so we had a great deal in common when we came here, both young whippersnappers, and we came down here to Washington on a cold January day in 1959.

Mr. Speaker, we were going to change the world, however, I might tell the gentleman from New York that in those days it was a little different than now; we did not take the floor of the House the first year that we came here. We came here, we sat and we listened; we listened to our elders and we bided our time before we ever took the floor of the House or filed a bill.

Today one can become a subcommittee chairman if they are on the Democratic side the day they are elected to Congress. We are all chiefs today and no Indians. In those days we were all Indians and very few chiefs.

Sam and I worked together. We bided our time. We worked hard, and finally he got on the Committee on Armed Services. I was very, very fortunate. I got on the Committee on Appropriations my first year by accident and served 30 years on that committee, and he served a very illustrious time on the Committee on Armed Services.

Sam and I did not always agree on the issues. He took a little different point of view than I did on defense, but we both had something in common. We both believed in a very strong defense posture for the United States, and we were both very patriotic young people when we came in, and are still very patriotic young people after 30 years in the Congress.

Mr. Speaker, I want to wish Sam and his lovely wife and family the very best in the years ahead as he retires from a very arduous and very active life here in the U.S. Congress.

Sam has been a good Congressman in those 30 years here. He has always done his homework. He knows the issues well. He is not a gadfly like a lot of our Members here. He picks and chooses his topics, and when Sam Stratton comes to the floor of the House to speak on an issue, he is well-prepared, and his colleagues and friends listen to him.

□ 1745

GENERAL LEAVE

Mr. HORTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order tonight.

The SPEAKER pro tempore (Mr. Gray of Illinois). Is there objection to the request of the gentleman from New York?

There was no objection.

ANNOUNCEMENT BY CHAIRMAN OF THE COMMITTEE ON RULES REGARDING CONSIDERATION OF H.R. 5432, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION AMENDMENTS OF 1988

Mr. PEPPER. Mr. Speaker, I have an important announcement regarding the consideration of H.R. 5432, Federal Savings and Loan Insurance Recapitalization Amendments of 1988. This legislation is vitally needed to deal with the fiscal crisis confronting the savings and loan industry. It increases the amount of outstanding obligations of the financing corporation and imposes a limitation on the amount of outstanding promissory notes.

The Rules Committee is distributing a "Dear Colleague" requesting that Members who wish to amend H.R. 5432 as reported out by the House Banking Committee should submit 35 copies of their amendments to the Rules Committee in room H-312 by noon on Tuesday, October 11, 1988. We are taking this action due to the nature of the legislation, the need to ensure its passage, and because of the time constraints present in the waning days of a session. I hope Members understand the need for this procedure and will cooperate with the Rules Committee in getting this legislation to the floor of the House.

TERRITORIAL SEA AND CONTIGUOUS ZONE EXTENSION ACT OF 1988

Mr. LOWRY of Washington. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5069) to establish a 12-mile territorial sea and a 24-mile contiguous zone, to establish the National Oceans Policy Commission, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5069

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Territorial Sea and Contiguous Zone Extension Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the manner in which the oceans are used affects the national security, transportation needs, economy, food resources, energy and raw materials needs, international leadership, and quality of the environment of the United States;

(2) it is in the interest of the United States to have a 12-nautical mile territorial sea and a 24-nautical mile contiguous zone for purposes of protecting national security, enforcing United States laws on vessels operating off the coast of the United States, and conforming United States laws with principles of customary international law;

(3) to effectively accomplish such purposes it is necessary to establish an orderly framework and schedule for examining existing laws to determine whether changes need to be made in existing laws to effectively implement a 12-nautical mile territorial sea and a 24-nautical mile contiguous zone; and

(4) the possible extension of the legal rights and interests of the States and the authority of Federal agencies beyond the geographic limits in which such rights, interests, and authorities currently exist are issues which deserve careful and orderly consideration.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) for purposes of international law, foreign affairs, law enforcement, and national security—

(A) to extend the territorial sea of the United States to 12 nautical miles; and

(B) to extend the contiguous zone of the United States to 24 nautical miles; and

(2) to establish a commission to conduct a comprehensive examination of existing laws and propose changes in existing law and such other recommendations as may be desirable to effectively implement such extension of the territorial sea and the contiguous zone.

TITLE I—EXTENSION OF TERRITORIAL SEA AND CONTIGUOUS ZONE

SEC. 101. EXTENSION OF TERRITORIAL SEA.

(a) Extension.—Upon issuance of a proclamation, the territorial sea of the United States consists of—

(1) the ocean waters adjacent to the baseline of the United States (as such baseline is established in accordance with international law) to a seaward extent that is a line, every point of which is located on the seaward side of such baseline at a distance of 12 nautical miles from the nearest point of the baseline;

(2) the seabed and subsoil located below such waters; and

(3) the airspace above such waters.

(b) Effect.—The sovereignty of the United States exists in accordance with international law over all areas that are part of the territorial sea of the United States.

(c) Authority of States to Manage Fishery Resources.—Any extension of the territorial sea to 12 nautical miles by a proclamation issued by the President shall not affect the authority of States to manage fishery resources, as such authority existed prior to the extension.

SEC. 102. EXTENSION OF CONTIGUOUS ZONE.

(a) Extension.—Upon issuance of a Presidential proclamation, the contiguous zone of the United States consists of the zone of ocean waters contiguous to the territorial sea of the United States (as extended by this Act) and extending 24 nautical miles seaward from the baseline from which the seaward extent of the territorial sea is measured.

(b) Effect.—The United States has authority to conduct activities in the contiguous zone of the United States to the extent necessary—

(1) to prevent infringement of the customs, fiscal, immigration, and sanitary laws and regulations of the United States in the territory of the United States, including such infringement in the territorial sea of the United States; and

(2) to punish infringement of such laws and regulations committed in the territory of the United States, including such an infringement committed in the territorial sea of the United States.

(c) Conforming Amendments.—(1) Subsection (j) of section 401 of the Tariff Act of 1930 (19 U.S.C. 1401(j)) is amended by striking "within four leagues of the coast of the United States" and inserting "within 24 nautical miles of the baseline of the United States".

(2) Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. 191), is amended—

(A) by striking "territorial waters" each place that term appears and inserting "territorial sea"; and

(B) in subsection (b) by striking "and all territory and water" and all that follows through the end of the sentence and inserting a period.

(3) Section 1 of title XIII of the Act of June 15, 1917 (50 U.S.C. 195), is amended to read as follows:

"Section 1. As used in this Act—

"(1) the term 'United States' means all territory and waters, continental or insular, subject to the jurisdiction of the United States; and

"(2) the terms 'territorial sea' and 'territorial waters of the United States' each mean all waters within 12 nautical miles of the baseline of the United States (as such baseline is established in accordance with international law).".

SEC. 103. EFFECT ON OTHER LAWS.

(a) Domestic Law.—Except as provided in section 102(c) or in any law enacted after the effective date of this title, the legal rights, interests, jurisdiction, and authority of States, of the Commonwealth of Puerto Rico, of the Commonwealth of the Northern Mariana Islands, and of the territories and possessions of the United States, and the statutory and regulatory authorities of Federal agencies, are not extended by the extension, by this Act or by a proclamation issued by the President, of the territorial sea to 12 nautical miles or of the contiguous zone to 24 nautical miles.

(b) International Law.—Nothing in this Act shall impair—

(1) the right of innocent passage through the territorial sea of the United States or the right of transit passage through international straits; or

(2) the determination, in accordance with international law and equitable principles, of any maritime boundary with a foreign nation or foreign jurisdiction.

SEC. 104. EFFECTIVE DATE.

This title shall be effective on the date of the enactment of this Act.

TITLE II—ESTABLISHMENT OF A TERRITORIAL SEA COMMISSION

SEC. 201. ESTABLISHMENT OF COMMISSION.

(a) In General.—There is established a commission to be known as the Territorial Sea Commission (hereinafter referred to in this Act as the "Commission").

(b) Number of Members.—The Commission shall consist of not less than 9 and not more than 15 members appointed by the President in accordance with this section not later than March 10, 1989.

(c) Member Qualifications.—The President may appoint as a member of the Commission any person having knowledge and experience in oceans and coastal issues, including such matters as management of living and nonliving marine resources, marine science, and marine transportation.

(d) State and Federal Representation.—In appointing persons to serve as members of the Commission, the President shall ensure that the number of members appointed from among persons representing the interests of States is equal to the number of members appointed from among persons representing the interests of the Federal Government.

(e) Vacancies.—Members of the Commission shall be appointed to serve until the Commission terminates under section 209. In the event of a vacancy, a new member shall be appointed in the same manner in which the original appointment was made.

(f) Meeting of Commission.—The Chairman or a majority of the members may call a meeting of the Commission.

SEC. 202. ADVISORS TO COMMISSION.

The Commission shall have 8 congressional advisors who shall advise the Commission in the formulation of findings and recommendations. Four of the advisors shall be Members of the Senate selected by the Majority and Minority Leader and 4 of the advisors shall be Members of the House of Representatives selected by the Speaker and the Minority Leader. Each congressional advisor must have knowledge appropriate to the concerns of the Commission. Not more than 2 of the congressional advisors from each House may be members of the same political party.

SEC. 203. FUNCTIONS OF COMMISSION.

(a) In General.—The Commission shall review United States statutes and make such legislative and other recommendations as may be necessary and desirable to implement the 12-nautical mile territorial sea and 24-nautical mile contiguous zone of the United States. Such recommendations shall—

(1) include any modifications in existing United States policies, laws, regulations, and practices necessary to develop efficient long-range programs for domestic implementation of the 12-nautical mile territorial sea and 24-nautical mile contiguous zone; and

(2) consider any other aspects of related policies, laws, regulations, and practices of the United States considered necessary by the Commission in carrying out its duties pursuant to this subsection.

(b) Development of Recommendations.—In developing recommendations under subsection (a), the Commission shall—

(1) review existing laws for the purpose of proposing specific legislation to amend those laws to effectively implement the 12-nautical mile territorial sea and 24-nautical mile contiguous zone of the United States; and

(2) engage in any other preparatory work the Commission considers to be necessary to carry out its duties pursuant to this section.

SEC. 204. POWERS OF COMMISSION.

(a) Obtaining Information.—The Commission may secure directly from any department or agency of the United States any information it considers necessary to carry out its functions under this Act. Each department or agency shall cooperate with the Commission and, to the extent permitted by law, furnish information to the Commission upon request of the Chairman.

(b) Use of Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(c) Administrative Support.—The General Services Administration shall provide to the Commission on a reimbursable basis the administrative support services that the Commission may request.

(d) Contract Authority.—The Commission may enter into contracts with Federal and State agencies, private firms, institutions, and individuals to assist the Commission in carrying out its duties. The Commission may purchase and contract without regard to sections 303 of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253), section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416), and section 8 of the Small Business Act (15 U.S.C. 637), pertaining to competition and publication requirements, and may arrange for printing without regard to the provisions of title 44, United States Code. The contracting authority of the Commission under this Act is effective only to the extent that appropriations are available for contracting purposes.

SEC. 205. ADMINISTRATIVE PROVISIONS.

(a) Detail of Personnel.—Upon request of the Commission, the head of any Federal agency shall detail any of the personnel of the agency to the Commission to assist the Commission in carrying out its functions under this Act. To the extent feasible, such detail shall be on a reimbursable basis.

(b) Volunteer Services.—The Commission may accept and use the services of volunteers serving without compensation, and to reimburse volunteers for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(c) Conduct of Meetings.—(1) All meetings of the Commission shall be open to the public, except when the Chairman or a majority of the members of the Commission determine that the meeting or any portion of it may be closed to the public. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before it.

(2) All open meetings of the Commission shall be preceded by timely public notice in the Federal Register of the time, place, and subject of the meeting.

(3) Minutes of each meeting of the Commission shall be kept and shall contain a record of the people present, a description of the discussion that occurred, and copies of all statements filed. Subject to section 552 of title 5, United States Code, the minutes and records of all meetings and other documents that were made available to or prepared for the Commission shall be available for public inspection and copying at a single location in the offices of the Commission.

SEC. 206. DIRECTOR AND STAFF OF COMMISSION.

(a) Director.—The Commission shall have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay for GS-18 of the General Schedule. The Director shall be knowledgeable in administrative management and oceans law and policy.

(b) Staff.—Subject to such rules as may be prescribed by the Commission, the Director may hire staff for the Commission and shall fix appropriate compensation. The hiring and compensation of the Director and staff under this section may occur without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 207. COMPENSATION OF MEMBERS.

(a) In General.—Except as provided in subsection (b), members of the Commission shall be paid at a rate not to exceed the basic pay for a GS-18 of the General Schedule for each day, including traveltime, during which such members are engaged in the actual performance of the Commission duties.

(b) Exception.—A member of the Commission who is an officer or employee of the United States may not receive pay for service on the Commission, but shall be reimbursed from funds authorized by this Act for travel expenses, including per diem in lieu of subsistence as may be authorized by law for persons in Government service employed intermittently.

SEC. 208. COMMISSION REPORT.

Not later than 1 year after the Commission first meets, the Commission shall submit simultaneously to the President and to each House of the Congress a detailed final report regarding the recommendations developed by the Commission under section 203.

SEC. 209. TERMINATION OF COMMISSION.

The Commission shall cease to exist 30 days after the date of the submission of its final report under section 208.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $1,500,000 to carry out this title, to remain available until expended.

SEC. 211. EFFECTIVE DATE.

This title shall be effective on the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUMWAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Washington [Mr. Lowry] will be recognized for 20 minutes and the gentleman from California [Mr. Shumway] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington [Mr. Lowry].

Mr. LOWRY of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I introduced this legislation to extend the territorial sea of the United States from 3 miles to 12 miles, and to extend the contiguous zone from its current 12 miles to 24 miles. This legislation would assert U.S. jurisdiction out to these new boundaries, for international purposes, only.

This legislation would also establish a specific procedure and schedule for analyzing and making recommendations to the Congress and the Administration with respect to whether these extensions of jurisdiction should apply to domestic law, and specifically, which statutes, if any, should be amended to reflect these changes. The legislation is important from a national security perspective. The opaqueness of the oceans is an important attribute which diminishes the detectability of submarines and therefore, is a significant factor as part of our nuclear deterrent. By moving our territorial sea from 3 miles to 12 miles, the ability of Soviet ships to monitor and detect the movement of United States submarines is lessened. The Department of Defense strongly supports this change in the geographical extent of the territorial sea. In this regard, I believe that this legislation is extremely important.

In addition, H.R. 5069 would bring the U.S. position, with respect to the territorial sea and the contiguous zone, into conformance with: First, customary international law; and second, the convention on the Law of the Sea. Although the United States is not a party to the Convention on the Law of the Sea, and I believe that the next administration should reconsider the United States position with respect to the Convention, there are currently only 12 nations which continue to recognize a 3-mile territorial sea as compared to a 12-mile territorial sea. Very recently, the United Kingdom has also extended their territorial sea out to 12 miles. Frankly, from an international law perspective, it just makes good sense to move at this time to establish a 12-mile territorial sea and a 24-mile contiguous zone consistent with customary international law.

Finally, extending the contiguous zone from 12 to 24 nautical miles would enhance our Nation's ability to intercept and board vessels which may be carrying contraband or drugs off our Nation's coast. With a 24-mile contiguous zone, the Coast Guard would be able to board a foreign-flag vessel out to 24 miles, without seeking the consent of the foreign-flag nation, which is currently required beyond 12 miles. This would clearly enhance our Nation's drug enforcement authority.

H.R. 5069 would make very clear that this new assertion of U.S. jurisdiction would only apply for international purposes. The legislation would establish a specific process and schedule for developing recommendations to the administration and the Congress with respect to whether any domestic statutes should be amended to reflect appropriate changes in the State-Federal relationship. In other words, the status quo with respect to domestic law would be maintained for a 1-year period, during which there would be an orderly process and systematic analysis within which specific recommendations for any necessary and appropriate changes to domestic law would be developed.

The administration is considering whether to issue a Presidential proclamation to extend both the territorial sea and the contiguous zone in a similar manner. The rationale for this extension from both the perspectives of national security and enforcement authority is sound, and I have no quarrel with the substance of what is being considered. What I am concerned with is the high degree of uncertainty which would result from simply a Presidential proclamation, because of the very unclear impact such a proclamation would have on domestic law, and specifically, the State-Federal relationship in the 3- to 12-mile zone which is borne out in a legal opinion issued by the Department of Justice on Tuesday of this week.

This legislation represents an important step in our Nation's development and wise use of ocean and coastal resources. I believe that this approach for asserting a broader territorial sea and contiguous zone is sound from both international law and domestic law perspectives. I would urge the administration to adopt this type of approach rather than pursuing the notion of a Presidential proclamation, which I believe would create a chaotic atmosphere with respect to the status of the State-Federal relationship beyond 3 miles.

In closing, I urge my colleagues to support this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, many Members of this body have perhaps had the experience I have had visiting one of our naval bases, such as Pearl Harbor, and recognizing just a little bit more than 3 miles off the coast of the State of Hawaii in this particular case, Russian trawlers anchored there, observing all of the comings and goings of the U.S. Naval Fleet, and it has been bothersome to me that they can do that because we have recognized that 3-mile zone, whereas we cannot do that because they have different zones. So I think this bill is very much in order. It is a change that we need to make in our law, and I appreciate the chairman of the committee and his willingness to work with me in developing the appropriate language to bring out this change. In fact, until just a few minutes ago we were still discussing it, but I think we now have arrived at an agreement and that agreement entailed the change in the bill that will allow the Presidential proclamation process to go forward, which I think lawyers that have been advising us indicated is necessary, and with that change I am very pleased and very happy to support this bill because I think it is necessary for national security reasons and also necessary to clarify that there is no extension of domestic or Federal laws.

There may be some concerns with a Coast Guard provision, and I would like to reserve the right to work with the chairman to make the changes as they may be necessary next week, but on the balance we do have a bill that we can support.

This bill will also make clear that the proclamation will not affect the rights and obligations of State, U.S. Territories, or Federal agencies under domestic law; for example, the definition of the term "coastal zone" under the Coastal Zone Management Act remains the same, with a seaward limit of 3 miles from the shore.

Again I appreciate the chairman and his willingness to work out acceptable language in this bill.

Mr. Chairman, I urge it be passed by the House.

Mr. Speaker, I yield back the balance of my time.

Mr. LOWRY of Washington. Mr. Speaker, I rise only to compliment the ranking minority Member, the gentleman from California [Mr. Shumway] on his efforts on this and the many other pieces of legislation we have worked on in our subcommittee, and I concur with his statement just made and I look forward to continuing to work with him and work out the fine points of this important legislation.

I urge passage of this legislation, and I yield back the balance of my time.

Mr. DAVIS of Michigan. Mr. Speaker, we should be reminded that even if this bill does not pass the House and the Senate, President Reagan will be declaring a 12-mile territorial sea and a 24-mile contiguous zone this fall. Therefore, Members of both Houses can look forward to a decade or so of wrestling with the important and contentious questions involved in allocating responsibilities in this new area off our shores.

It must be made very clear that no domestic law such as the Submerged Lands Act, the Outer Continental Shelf Lands Act, or the Coastal Zone Management Act is altered by this bill with the exception of the specific changes made in section 102(c). However, the changes are not necessarily required and certainly should not be construed as preventing review of those provisions at any time in the future. The declaration of an extended territorial sea and contiguous zone is an international action. For our citizens and coastal States very little will change. Any shifts in State/Federal duties will be made by the U.S. Congress, perhaps upon the recommendations of the Territorial Sea Commission established under title II of this bill.

I am submitting for the Record the summary and conclusion portions of the Department of Justice legal analysis of October 4, 1988, which discusses the constitutional issues raised by this bill.

U.S. Department of Justice,
Office of Legal Counsel,
Washington, DC, October 4, 1988.

Memorandum for Abraham D. Safafer, legal adviser, Department of State.

Re Regal Issues Raised by the Proposed Presidential Proclamation to Extend the Territorial Sea.

INTRODUCTION AND SUMMARY

This responds to the requests, made by your Office and an inter-agency working group, for analysis of the constitutional and statutory questions raised by a proposed presidential proclamation to extend the territorial sea of the United States from its present breadth of three miles to twelve miles.[1] In particular, we have been asked to address the following questions: First, does the President have the authority to declare, by presidential proclamation, the proposed extension? Second, assuming the President does have the authority, what effect would such a proclamation have on domestic legislation, such as the Coastal Zone Management Act? Third, can the President limit the effect the proclamation will have on domestic legislation? We have also been asked to comment on H.R. 5069, a bill that would extend the territorial sea by legislation.

We conclude that the President can extend the territorial sea from three to twelve miles by proclamation. While the most legally secure method of doing so would be by entering into a treaty with other nations on this issue, we believe that the President may extend the territorial sea by virtue of his constitutional role as the representative of the United States in foreign relations. The President's foreign relations authority under the Constitution clearly permits his unilateral assertion on behalf of the United States of jurisdiction over the territorial sea. Whether the President may individually assert sovereignty over the territorial sea is open to some question, although on the basis of several long-settled, historical examples of Presidents unilaterally claiming territory in this fashion, we believe that he may. Finally, we conclude that while Congress may establish state boundaries, there is serious question whether it has constitutional authority either to assert jurisdiction over an expanded territorial sea for international law purposes or to assert sovereignty over it.

With respect to the statutory issues, we believe that the better view is that the expansion of the territorial sea will not extend the coverage of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451-1464, the statute that has been identified to us by the inter-agency working group as being of special concern. It must be acknowledged, however, that the effect of the proclamation on the CZMA is not entirely free from doubt and that the effect of the expansion on other federal statutes raises complex questions. We therefore recommend that the President seek legislation stating that federal statutes that rely upon the concept of the territorial sea are not affected by the President's proclamation extending the territorial sea from three miles to twelve miles. For your convenience, we include draft legislation to achieve this objective as an Appendix to this memorandum.

CONCLUSION

We believe that the President may make an extended jurisdictional claim to the territorial sea from three to twelve miles by proclamation. We also find venerable historical evidence supporting the view that the President's constitutional role as the representative of the United States in foreign relations empowers him to extend the territorial sea and assert sovereignty over it, although most such claims in our nation's history have been executed by treaty. It is more doubtful, however, that Congress, acting alone, may extend the territorial sea beyond the present boundary for international purposes.

The domestic effect of the extension of the territorial sea on federal statutes that refer to the territorial sea must be determined by examining Congress' intent in passing each relevant statute. We have concluded that the better view is that the expansion of the territorial sea will not extend the coverage of the Coastal Zone Management Act, the statute which was identified to us as presenting special concern. However, we recognize that the effect of the proclamation on the CZMA and numerous other federal statutes will continue to be uncertain until final judicial resolution. We therefore recommend that the President seek legislation providing that no federal statute is affected by the President's proclamation to extend the breadth of the territorial sea from three miles to twelve miles.

Please let us know if we can be of further assistance.

Douglas W. Kmiac,
Acting Assistant Attorney General,
Office of Legal Counsel.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington [Mr. Lowry] that the House suspend the rules and pass the bill, H.R. 5069, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to extend the territorial sea and the contiguous zone of the United States, to establish the Territorial Sea Commission, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LOWRY of Washington. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5069, the bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

TRUTH IN LEGISLATING RESOLUTION

(Mr. STENHOLM asked and was given permission to address the House for 1 minute, and to revise and extend his remarks, and include extraneous matter.)

Mr. STENHOLM. Mr. Speaker, first let me say that after last night, never have I been more proud as a member of the Texas delegation than I was to see the results of the performance of the senior Senator from my State.

Mr. Speaker, after some months of discussions and much work on refining language, I am pleased to introduce today, with over 20 of my colleagues, a House resolution adding a truth in legislating amendment to the Rules of the House.

This past year, many of our constituents and the press, understandably, have expressed outrage over legislation they perceived as containing hidden, individualized, tax and spending benefits. Skepticism about Congress has grown from without and frustration from within over surprises in complex, hurried, omnibus bills. While a budget summit and committee discipline have helped avoid similar recurrences in recent months, this respite has been the exception, rather than the rule.

In response, our amendment would provide for reasonable disclosure regarding legislative provisions that confer spending or tax benefits on a few, specially, targeted beneficiaries. The text and a summary of our amendment are offered for the RECORD.

Introduction at this time allows us to prepare this issue for the debate now beginning over rules changes for the 101st Congress.

EXPLANATION OF TRUTH IN LEGISLATING AMENDMENT TO THE RULES OF THE HOUSE

(BY CHARLES W. STENHOLM)

Purpose: To increase the confidence of the public—and of House Members—in the House as an open and democratic institution by ensuring that any legislating which could be inferred—fairly or unfairly—to benefit unusually narrow interests be conducted openly and "in the sunlight" of adequate disclosure.

The problem: A public uproar followed as the press and some Members identified numerous provisions in the 1986 Tax Reform Act, 1987 Reconciliation bill, and 1987 Continuing Resolution that they felt benefitted "special interests," "privileged" narrow interests, and other Members' special constituencies. While some of the wrangling has been simple politics, the outrage communicated to many Members by constituents and the press has been genuine and understandable.

Congress has the constitutional responsibility to provide for the general welfare of the nation. This frequently and justifiably involves funding a project or conferring a tax benefit that affects an individual or a limited class of beneficiaries. However, the more this process is shrouded in obscure language or inserted outside the regular, public view of committee or floor processes, the more the public will view Congress cynically and assume that the legislative process is of, by, and for the privileged few.

The solution: The correct response to this situation should be measured, not an overreaction. It should take into account the legitimate ends that narrowly-drawn provisions can and do serve. It should prevent abuse, without creating undue obstacles to lawmaking. It should provide certainty to Members and the public, without being legalistic.

The solution is simple, adequate, and routine public disclosure of who benefits and how, when beneficial legislative provisions are narrowly drawn. In short, the public's confidence in Congress—and Members' comfortableness with the legislative process—will be most enhanced when the public sees we have nothing to hide.

SUMMARY OF TRUTH IN LEGISLATIVE AMENDMENT

Amends Rule X, Clause 4, of the Rules of the House of Representatives.

Triggered when a provision of spending or tax legislation directly benefits ten or fewer beneficiaries.

When triggered, would require the name of each beneficiary, the cost of the provision, and the Member(s) sponsoring or Administration agency/officer requesting the provision, to be disclosed in the committee report accompanying the legislation (or joint explanatory statement accompanying a conference report).

Disclosure is required in *plain and understandable language.*

Any legislation not complying with these requirements would be subject to a *point of order,* which may be waived only upon a separate vote directed solely to that subject.

Provisions directly benefitting an agency or instrumentality of the federal government would be exempt.

OTHER COMMENTS

This proposal is the result of painstaking drafting and review and discussion with a variety of Members. It is not accusatory or punitive but, in response to public and Member sentiment, sets up a simple standard for operating above board.

The definition of a "beneficiary" is sufficiently broad to avoid loopholes, while the standard for disclosure is modest and the federal government exemption would prevent burdensome or repetitive reporting. For example, an appropriation to the Urban Development Action Grant program would not trigger Truth in Legislating disclosure. However, a legislative provision earmarking UDAG funds for projects in one city would be disclosed. Such a provision might trigger the addition of no more than a single line in a committee report.

The fedreal government exemption recognizes that Congress is supposed to be in the business of funding the government, such funding tends to be sufficiently identifiable, and such provisions are extremely numerous.

All that is sought is for someone to be on record and responsible when an unusually small, limited class receives a financial benefit via legislation. In fact, it is easy to imagine many instances when Members would want to take credit for securing funding for a local project or a tax break for a worthy, local undertaking.

The goal is improving public and Member confidence in the House. The means is merely accountability and openness.

H. RES. 580

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be cited as the "Truth in Legislating Resolution".

SEC. 2. IDENTITY, SPONSOR, AND COST OF CERTAIN PROVISIONS REQUIRED TO BE REPORTED.

Clause 4 of rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following:

"(j)(1) Except as provided by subparagraph (2), the report or joint explanatory statement accompanying each bill or joint resolution of a public character reported by a committee or committee of conference shall contain, in plain and understandable language—

"(A) an identification of each provision (if any) of the bill or joint resolution which benefits only 10 or fewer beneficiaries in any one of the following categories: persons, corporation, partnerships, institutions, organizations, transactions, events, items of property, projects, civil subdivisions within one or more States, or issuances of bonds;

"(B) the name of each beneficiary of such provision;

"(C) the name of any Member or Members who sponsored the inclusion of each such provision and an indication of each such provision requested by any agency, instrumentality, or officer of the United States; and

"(D) an estimate by the Congressional Budget Office or the Joint Committee on Taxation, whichever is appropriate, of the costs which would be incurred in carrying out such provision or any loss of revenues resulting from such provision for the fiscal year for which costs or loss in revenues, as the case may be, first occurs and each of the next 5 fiscal years.

"(2)(A) Subparagraph (1) shall not apply with respect to any provision of a bill or of a conference report on a bill or joint resolution if the beneficiary of such provision is the United States or any agency or instrumentality thereof.

"(B) Subparagraph (1)(D) shall not apply with respect to any provision of a bill or joint resolution or of a conference report on a bill or joint resolution if the costs which would be incurred in carrying out such provision or any loss in revenues resulting from such provision are identified clearly in the report or joint explanatory statement accompanying such bill or joint resolution.

"(3) It shall not be in order to consider any such bill or joint resolution in the House if the report or joint explanatory statement of the committee or committee of conference which reported that bill or joint resolution does not comply with subparagraph (1). The requirements of subparagraph (1) may be waived only upon a separate vote directed solely to that subject.".

SEC. 3. EFFECTIVE DATE.

The amendment made by section 2 shall apply to bills and joint resolutions reported after the date of the adoption of this resolution.

ABOLISH THE ELECTORAL COLLEGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas [Mr. GLICKMAN] is recognized for 5 minutes.

Mr. GLICKMAN. Mr. Speaker, yesterday I introduced a joint resolution proposing a constitutional amendment to provide for the direct election of the President of the United States by the people. The electoral college is an anachronism, and it is time to recognize that the world has changed dramatically since the framers of the Constitution produced this compromise system. The voters of this country do not need to be second guessed in their choice of a President.

Not all Americans are aware that they do not vote for a President on Election Day; they vote for electors. In all States but Maine, the slate of electors pledges to vote for the candidate who wins the popular vote. No matter how small the margin of victory, the winner takes all of the electors. On the Monday following the second Wednesday in December the electoral college meets and elects the President.

There are several reasons that this system does not make sense in 1988. The electoral college was a compromise between the delegates at the constitutional convention who favored direct election by the people and those who favored election by the Congress. Those who favored election by the Congress felt that the people were unqualified to make a wise and informed choice of a leader for a new and fragile democracy. Perhaps in 18th century America, where communication was poor and citizens did not have access to information to make a wise choice, there were valid arguments for election by the Congress. However, television has revolutionized everyone's access to information. Whether you live in an urban or rural area you can see and hear the candidates almost daily for months, if not years, before the election. Indeed, it is difficult to avoid the barrage of a Presidential campaign. Americans can make an informed choice.

There are other problems that have always existed. Small States have greater relative influence because they are guaranteed at least three electors, regardless of population. Large State skew the popular vote by giving a candidate with a 1 percent victory 100 percent of their electors. The result is that a candidate who wins the popular vote could lose in the electoral college. If neither candidate receives a majority of the electoral votes, then the House of Representatives decides the election and each State delegation gets just one vote. Again, this further distorts the vote of the people, and could create a domestic crisis of significant proportion.

I believe it is time to let the American people elect their President. As a member of the House Judiciary Committee, I intend to pursue this issue in the next Congress. I should note that my colleague JACK BROOKS of Texas, who likely will be the next chairman of the House Judiciary Committee, introduced a similar resolution earlier in this Congress. It is my belief that a majority of my colleagues, as well as a majority of the American people, strongly support this change.

QUALITY HEALTH CARE FOR POOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina [Mr. ROSE] is recognized for 5 minutes.

Mr. ROSE. Mr. Speaker, Providing quality health care to the poor, the uninsured and those unable to pay for adequate medical care is a concern increasing in national importance. Our health care system has become one of enviable sophistication. Yet, despite such gains as new life-saving technology, greater numbers of Americans continue to fall through gaps and cannot access affordable care.

We in North Carolina, as in several other States, have taken steps to broaden availability of health care to those in need. The general assembly has passed legislation extending Medicaid services to as many as 100,000 additional individuals, including the working poor, pregnant women, and young adults. Such measures mark a good beginning, but much remains to be done.

Recently, the Journal of the American Medical Association published an article discussing many of the obstacles to delivery of care. These include cost containment measures restricting eligibility requirements for Medicaid; the escalating costs of liability insurance forcing physicians to limit care to the poor; the population density in rural areas which often cannot support physician practices, as well as lower DRG reimbursement rates in rural areas for the same services.

AMA President Dr. James E. Davis outlines these problems and several proposed strategies for meeting the health care needs of the poor. Some solutions suggest the involvement of private sector entities, working with Federal policymakers and physician groups to see that a plan for provision of care to the needy is administered properly. Lack of accessible and affordable health care for many Americans will continue to be a problem unless agreement can be reached on methods to overcome these obstacles. I hope my colleagues will consider these ideas carefully as Congress addresses this important issue in the near future.

NATIONAL INITIATIVES FOR CARE OF THE MEDICALLY NEEDY

The provision of medical care to the underserved, the underprivileged, and the financially needy is a compelling concern of medicine, perhaps the most perplexing problem that confronts the medical profession today.[1] The need to ensure access to care for all those in need has been exacerbated by the economy, a competitive health care environment, and an escalating national debt. The potential bankruptcy of the Medicare Hospital Trust Fund, with commensurate cuts in reimbursement for services, has contributed to the increasing number of people who cannot obtain preventive and acute care services. This is in an era in which American medicine sets the standard for health care in the world.[2] Organized medicine is meeting this challenge to provide care for the medically poor.

HISTORICAL PERSPECTIVES

Historically, care of the poor was the responsibility of charitable institutions. Early in this century the report by Flexner,[3] commissioned by the American Medical Association (AMA), irrevocably changed medical education. Medical schools were established in universities; care of the poor was provided in the mainstream of educational activities under the attentive and watchful supervision of highly trained physicians.[4] Today, public hospitals such as Grady Memorial in Atlanta and Cook County in Chicago serve the disadvantaged in a teaching environment that provides for those who are financially independent as well as for those who are poor.[5]

After World War II, as a result of the concern and coordinated efforts of physicians, the Hill-Burton Act was passed.

This legislation enabled hospitals to be built in areas of want; it created incentives to provide medical care to underserved populations by canceling or reducing loans made to hospitals when they provided such care. In the 1960s, physicians joined legislators and concerned taxpayers to create a series of programs to enhance the health status of poor populations.[6] These enterprises were highly successful in increasing access to care and in improving the health of the nation.[7]

A system of public hospitals that provide care to the needy was already in place by the time Medicare and Medicaid amendments (Titles XVIII and XIX) to the Social Security Act occurred in 1965.[8] In the same year, the Office of Economic Opportunity funded community health centers. Their purpose was to provide comprehensive services to all. The Migrant Health Act of 1970 founded the National Service Corps, for which physicians and other health care workers were recruited. In 1972, the Corps established a scholarship program for medical students and others who were willing to work in underserved areas. The Indian Health Service and the Veterans Administration also provided for the poor as well as others in their targeted groups. Public health clinics (starting as early as 1912 with the Children's Bureau) were granted authority by federal legislation for the provision of specific services. According to Fitzhugh,[7] although these services were philosophically linked to prevention and promotion of health under the rubric of primary care, the system provided categorical services rather than comprehensive care. The result was that at the beginning of the 1980's care to the poor was fragmented into several systems that had little communication, yet all claimed to provide comprehensive services. Importanly, the national programs gave the impression that only the federal government was responsible for, and could afford to care for the poor. This perception discouraged state and local initiatives. Today, the attitude that federal control and funding are the only answers to ensure access to services for all Americans persists and is referred to as "the commitment of the government to provide health care for all."[9]

Access to medical care is evaluated by several parameters, including the difficulties encountered in obtaining services, rates of service used, and health indexes such as material and infant mortality rates.[9] There is no doubt that the plurality of systems sponsored by the federal government increased access by the poor to medical care,[10] Increased use of medical services, and improved the health of the population.

The effect of insurance on obtaining physician services is an important determinant of access to care.[11] The National Medical Care Expenditure Survey (1977) found that uninsured low-income people made 47% fewer physician visits than their counterparts who had insurance.[11] Advances in medical science and the programs of the postwar era decreased overall infant mortality rates to 13 deaths per 1000 live births by 1980.[12] However, the black infant mortality rate was 21 deaths per 1000 live births. Blacks are proportionately more likely to be poor than are nonblacks, and the health of the poor is known to be worse than that of the general population. Poor blacks and Hispanics are still less likely than whites to have a private physician, and they have fewer preventive services. Of particular concern is the gap between high- and low-income groups who receive prenatal care; 96% of high-income mothers have access to prenatal care compared with 65% of low-income mothers.[10] Moreover, there is a vicious circle of being poor and unable to obtain medical care to restore or preserve health that is necessary for improving financial status.

CURRENT SITUATION

The 1980's have produced a revolutionary change in the financing of health care in part because the problems of the system were compelling.[13] In the 1970's services had been overused, with open-ended reimbursement of services by third-party payers. Inadequate evaluation of new technologies, excess hospital beds, and cost shifting of expenses for the poor to those who paid for their care contributed to the escalation of health care expenditures. The national deficit was increasing. Economically, the country was stagnating and could not maintain the rising inflation in health care that contrasted sharply with the sluggish economic growth. It was projected that the Medicare Hospital Trust Fund would be near bankruptcy by the year 2000 and that two thirds of the total federal budget would be spent on entitlement programs by 2010. Federal and state cutbacks occurred simultaneously with the economic recession of the early 1980's. Other reasons for the changes in financing the system of medical care include the loss of faith in federal authority and professional norms to guide and manage the system.

Cost-containment measures implemented during the past decade are impeding the access of the poor to medical services. The gap is widening between those with financial access to care and those who are denied care or who deny themselves care. The number of people without access to medical service coverage has increased; in 1985 46% of the nation's poor were eligible for Medicaid compared with 70% in the mid-1970s.[10] The total number of persons without health insurance is estimated to be 33 million, an increase from about 29 million in 1979.[14] The medically poor are not necessarily unemployed: the employed are often without insurance, especially if working part-time or if employed by small firms unable to bear the financial burden of providing benefits.[15] The medically needy consist of the underinsured, the high-risk uninsurables (often elderly), and the noninsured.

Health policy, driven by a need for cost containment at both the federal and state levels, disenfranchises the poor by the reduction of eligibility requirements for Medicaid. Reimbursement by Medicaid is about 25% below that by Medicare for the same diagnoses. Medicare has precipitated the prospective payment system of fixed billing and also has produced complicated benefit limitations. More and more it is necessary for the medically needy to depend on public hospitals to fill their urgent needs. Private hospitals, struggling to maintain a profit margin, are increasingly unable to shift costs, a mechanism that is in effect a "hidden tax" on those able to pay. These costs were used to support care for the poor.

Most primary care physicians participate in state Medicaid programs.[16] More than 80% of pediatricians provide care to poor children through Medicaid.[17] These children are less healthy than children who are not poor and represent 20% to 25% of all American children younger than 18. The recent growth in the number of physicians has improved access to quality medical care in rural areas,[18] however, other factors counterbalance the availability of physicians, compromising their ability to provide for the poor. The recession has afflicted rural areas harshly and has contributed to an exodus of the population into the cities. Population density in rural environments may not be able to support physician practices and is a deterrent to access for medical care. Reimbursement for diagnosis related groups is less for the same diagnoses when care is received in rural hospitals, adding to the problems of many physicians who struggle to maintain country practices.

The rising costs of liability insurance are forcing many physicians to limit the proportion of their practice provided to the poor. This is especially a problem in the provision of prenatal care, as insurance rates for the practice of obstetrics have become untenably high, denying access to rich and poor alike. Providing obstetrical care for the economically deprived has always been a problem, and the need is increasing.[19] This will adversely affect one of the essential measures of the nation's health: infant mortality rates.

SOLUTIONS

Physicians have an inherent, basic responsibility for the health requirements of the needy. Individually, we must be involved in providing care; collectively, we must ensure that it is provided throughout the nation.

Physicians not only have the responsibility but also the expertise to see that a plan for provision of care to the needy is done properly, that quality is retained, and the costs are contained. Our federation of medical organizations must accept the responsibility of coordinating our individual, regional, and national efforts to maximize efficiency and effectiveness. The alternative of abrogating this responsibility to federal regulation and control is unacceptable, though federal participation and cooperation is essential.

Some leaders in the field of health policy advocate changes in the reimbursement regulations of Medicare and Medicaid. Essentially, the suggested changes would simplify regulations while retaining flexibility of participation. In some cases, reimbursement levels would increase to encourage physicians, particularly those in rural areas, to retain larger numbers of the poor in their practices. They also would ensure physician cooperation and new financial models using capitation case-management in preferred provider arrangements.[16] Other methods for increasing physician involvement with the poor were suggested by Kasper[19] as a system for increasing preventive aspects of primary care services.

Much is already being done. Many states and municipalities have begun their own programs to care for the needy,[20][21] aided by state legislation and/or private funds. These programs hold common characteristics. Legislation is used to authorize and codify the programs, and they offer comprehensive primary care—care that includes ambulatory preventive services. These programs also attempt to provide standardized eligiblity criteria for participation. By the end of 1987, twenty-four states had expanded Medicaid to include more children and pregnant women in an unusually rapid response to federal legislation that permitted such changes. In my own state of North Carolina, the General Assembly passed legislation extending Medicaid to some 24,000 to 100,000 more individuals, especially the working poor, pregnant women, and 19- to 20-year-old individuals. Various strategies to use and expand collaboration by the public and private sectors have been used. In Hawaii, legislation to mandate health insurance for all was enacted; similar legislation to extend employee benefits after job termination is already law at the federal level. It has been suggested that insurance premiums subsidized by public funds according to income should be considered. Taxing insurance premiums and net hospital revenues is proposed as a source of financing.

Federal strategies to ensure catastrophic illness coverage for all Americans have been proposed. Restructuring Medicare to create immediate eligibility for the disabled and payment for extended care and home services is yet another approach. A state insurance pool created through taxing hospitals, insurance companies, and employers who do not provide benefits is a system or rewards and chastisements intended to create incentives for participation.

INITIATIVES OF THE AMA

The AMA has been keenly aware of and responsive to the requirements of the medically indigent. To address their needs, AMA policy calls for the following actions:

1. Legislation in each state to establish (*a*) an all-payer health insurance risk-pool to protect the medically uninsurable and those who cannot afford individual coverage but could buy coverage at group rates (23 million people); (*b*) publicly funded vouchers on a sliding scale to help low-income persons—those who cannot afford the premium (12 million people)—to pay the premium for poor coverage; and (*c*) a state indigent care fund, financed from general revenues, to pay providers in proportion to the amount of uncompensated care rendered to those few people who remain unprotected.

2. Changes in federal legislation that (*a*) allow the employer a business expense deduction for health insurance only if it is purchased from a carrier participating in a state risk-pool or, for self-insured plans, if the employer participates in the pool; (*b*) require the continuation of employer-paid insurance for up to four months following employment; and (*c*) allow a separate tax deduction for individuals paying 100% of the premium for risk-poor or comparable coverage.

3. Support for (*a*) increased formation of Multiple Employer Trusts to facilitate more small employers providing adequate coverage and (*b*)— feasibility studies of providing tax-supported subsidies to small employers to assist them in purchasing adequate coverage.

The AMA is committed to doing everything possible to ensure that all Americans have adequate protection against acute health care expenses, including catastrophic expense. Consequently, going beyond its specific proposals for the uninsured, it has recommended that coverage provided in employer-offered plans, in state risk-pools for both the uninsured and the underinsured, and in its own proposal for elderly health care financing meet three broad standards:

1. The plan would have to provide coverage for (*a*) physicians services, including diagnostic, therapeutic, rehabilitative, and preventive services, including immunizations; (*b*) emergency care, including emergency and outpatient diagnostic and treatment services, including ambulance services and treatment for alcoholism; (*c*) hospital care, including bed, board, and nursing care; drugs, oxygen, blood, biologicals, supplies, appliances, and equipment; operating and recovery room; intensive, coronary, and other special care; diagnostic services; and physical, occupational, and speech therapy; (*d*) skilled nursing home care, including bed, board, and skilled nursing care; physical, occupational, and speech therapy; and drugs, biologicals, and supplies or equipment used in the facility; and (*e*) home health services provided by a certified home health agency by order of a physician, including nursing care; physical, occupational, and speech therapy; medical supplies and appliances; rental of durable medical equipment; and oxygen, blood, and biologicals.

2. The plan would have to limit enrollee cost sharing for covered expenses to a per person limit of 10% of the national median family income rounded to the nearest $100. In 1984, that limit would have been $2600. The cost-sharing limit could be reached through varying combinations of deductibles and coinsurance, depending on the needs and desires of prospective purchasers (and premium cost would vary accordingly).

3. There would be no maximum limit—either lifetime or per episode—on the amount paid by the plan for covered expenses once the cost-sharing limit is reached.

The AMA is very interested in the Minimum Health Benefits for All Workers Act of 1987 (S 1265), as introduced by Senator Edward Kennedy in May 1987. The AMA supports the intent of this bill to make health insurance coverage available to about 25 million of the approximately 35 million Americans who currently lack such coverage. However, the Association is concerned about the potential cost on small businesses of mandating health benefits coverage and about the potential of giving Congress the power to regulate all aspects of health insurance by preempting state laws that govern health insurance.

The AMA believes that there are better alternatives to address the problems of access to health care and uncompensated care, as detailed above. We also believe that employers should be encouraged to provide health insurance plans with adequate benefits by allowing these premiums to be deductible only if the employer furnishes such an adequate plan. Will the AMA initiatives be adequate to address this need? We remain vigilant in monitoring, studying, and evaluating changes in the care of the medically indigent. We will be eager to bring forward further initiatives if the need for them develops.

PHYSICIAN PARTICIPATION

Physicians readily accept their inherent responsibility to provide for all in our society who are in need of medical care. Physicians throughout history have provided this care, and they continue to do so. With the diminution of public clinics staffed by volunteer physicians and the recent drastic changes in both our systems of provision of health care and of financing it, the charitable nature of these services is less evident.

A recent survey indicated that 76.8% of physicians in fee-for-service practices provided some free or reduced-fee care. Providing this care resulted in a 9.1% average reduction in the potential revenues of these physicians. Additionally, 6.3% of physicians' total practice billings during this period was never collected.[22] Most physicians today are convinced that there is need for us to extend such services and to have the public understand the charitable nature of them, as we are truly both public and service oriented.

Physicians collectively have clearly documented this dedication to providing care for the needy, regardless of compensation. In 1985 the AMA House of Delegates recognized that the refusal of emergency care to patients based only on ability to pay is unacceptable medical practice.[23] At the June 1987 meeting of the House of Delegates the AMA again urged all physicians to share in the care of indigent patients.[24]

The range of specific areas of need, as viewed by the House of Delegates, also is impressive. Its recommended use of National Health Service Corps physicians in underserved areas,[16] [17] its strong advocacy for the health and welfare of children (especially the long-term consequences of high-level poverty among children), its concern about access to and quality of rural care, and its support for the development of community clinics and the use of advanced communication systems to link rural and urban facilities [18] are commendable examples of the dedication of physicians to serve the needy. The manner in which physicians identified need and relieved it during the recession of the mid-1980s was impressive. This was especially true when large groups of individuals, such as the automobile workers in Michigan, were severely affected. There, physicians on their own initiative at the local, county, and state levels planned, organized, and provided medical services to those in need. It is only fair, and necessary, that the American public recognize the dedication and good works of American physicians who provide health services to our needy wherever and whenever the need develops.

It is the duty of society in general, and physicians in particular, to ensure adequate health and medical care for those in need. The needy are not only the poor but also those who become medically indigent when illness or injury strikes. The number is likely to increase due to changes in financing health care and the obsession of government and many industries to indiscriminately cut benefits to reduce costs, frequently at great sacrifice of quality of care. Our inability as a nation to solve our professional liability insurance problems also portends more needy in the future.

The physicians of this country individually and collectively, particularly through the AMA, are taking extensive and effective action. A clear understanding of the extent and severity of this problem on the part of officials at all levels of government, especially our elected decision makers, is essential.

This is an invaluable opportunity for the private and public sectors of our country to form a true partnership to seek creative solutions to these problems. Nothing less than a mustering of all our human and financial resources can find solutions that will allow every American to have access to our exemplary health care system when he or she is in need.

The physicians of this country pledge their total support and cooperation in seeking this goal.—James E. Davis, MD.

FOOTNOTES

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DANNEMEYER] is recognized for 5 minutes.

[Mr. DANNEMEYER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

MISSISSIPPI NATIONAL GUARD UNIT DRAWS PRAISE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 5 minutes.

Mr. MONTGOMERY. Mr. Speaker, Assistant Secretary of Defense for Reserve Affairs, Stephen Duncan, was recently in West Germany and Norway to observe National Guard and Reserve exercises. In a letter to me, the assistant secretary had especially kind words for the 2d Support Command, 30th Medical Group from Mississippi. This Guard unit, and others like it, showed they were ready and able to handle the missions assigned to them as part of our total force policy.

I wanted to share Assistant Secretary Duncan's letter with my colleagues.

The letter follows:

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, September 30, 1988.
Hon. G.V. MONTGOMERY,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Recently, I traveled to West Germany to observe firsthand the performance of our Army National Guard and Reserve forces in Exercise "Reforger '88". I later traveled to Norway to observe Navy and Marine Corps Reserve participation in Exercise "Teamwork '88". The performance of all of our Reserve forces was magnificent!

While I was in Germany, I received a first class briefing and tour of the 2d Support Command, 30th Medical Group, Mississippi National Guard. Most of the people in the Mississippi National Guard unit had never participated in an exercise as large as "Reforger '88", but you could not tell that from their performance. After arriving from the United States they quickly set up a field hospital and they were fully prepared to treat battle casualties had we been engaged in an actual conflict.

We have every right to be proud of the performance of the National Guard and Reserve forces who participated in both exercises. We still have difficult challenges to meet, but the performance of these Guardsmen and Reservists was very strong evidence of the success of our Total Force Policy.

Please accept my thanks once again for all of your continuing effort on behalf of our National Guard and Reserve forces.

Your very truly,
STEPHEN M. DUNCAN.

A GOLDEN OPPORTUNITY FOR THE MINT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr Speaker, the U.S. Mint sold 1.79 million ounces of American Eagle gold bullion coins in 1986. In 1987, a decline in sales showed that there were major problems with the program. The sales total of 1.25 million ounces was enhanced greatly by sales of 311,500 ounces during October and November, when the stock market crash increased the desirability of investing in gold bullion.

Sales figures for 1988 indicate another disastrous year for the American Eagle. During the first three quarters of this year, the Mint has sold only 423,500 ounces of gold bullion. In order to match last year's figures, the Mint will have to double the sales of the first 9 months of 1988 during the last 3 months.

With the current price of an ounce of gold down below $400 for the first time in quite a while, the Mint has an opportunity to make some progress toward equaling last year's sales figures. An all-out effort will have to be made, but the opportunity is there for the taking.

I have frequently made reference to the illigal and unprofitable use of a cartel of distributors in the sale of American Eagle coins. Interested buyers, both wholesale and retail, may not buy coins directly from the Mint. Instead, they must buy through a selected group of international distributors.

The logic of choosing foreign banks as distributors over American banks escapes me. Wouldn't a Canadian bank prefer to sell Canadian Maple Leaf bullions coins rather than American Eagle bullion coins? A similar question may be asked of other foreign banks included in this cartel—what is their motivation to push for the sale of American Eagle coins over any other coins? Judging by the sale figures, the cartel members feel there is none.

The Mint's use of their cartel of distributors disregards the language of the Gold Bullion Coin Act as it was enacted by Congress. The law states that the coins are to be sold to the public. Selling the coins to the public through the cartel does not comply with the law. It is my firm belief that the Mint should comply with the law, and if it did, bullion coin sales would increase dramatically.

The sales figures speak for themselves. The American Eagle bullion coin program is not thriving. The Mint has a unique opportunity at this time to take advantage of the decreasing price of gold to push for the sale of these coins. A lot of catching up needs to be done to meet last year's sales figures, as disappointing as they were. The Mint's credibility in choosing to use the cartel depends on it.

Gold is currently at its lowest price in nineteen months. The distributors should be able to market American Eagle coins to investors with an ease not known since the early days of the program when the coins virtually sold themselves. Pershaps the coins could be marketed as gifts as we approach the holidays. With the Olympics just over, and the Presidential elections this fall, these patriotic gifts could greatly enhance smaller sales of the coins, a source which has not yet been tapped by the cartel.

This is a chance for the Mint to prove that its cartel is effective in selling American Eagle bullion coins. For many months now, we have been hearing the excuse that the gold market is slow. The price of gold has remained high. Can the cartel meet the challenge? Will it be able to even come close to matching last year's disappointing sales figures? This is the true test of whether the Mint can justify its illegal use of the cartel for distributing the American Eagle coins. It is a golden opportunity to save a failing program. If the Mint fails the test, it should concede that the cartel is part of the problem and should open up the purchasing process.

LEGISLATION TO PREVENT CREDIT DISCRIMINATION ON BASIS OF MILITARY RANK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. PANETTA] is recognized for 5 minutes.

Mr. PANETTA. Mr. Speaker, I am introducing legislation today which would amend the Equal Credit Opportunity Act to ban discrimination by lenders against members of the armed services on the basis of military rank.

It has been brought to my attention that some lenders will not even consider granting credit to members of the armed services below a certain rank. This is obviously unfair. While rank certainly provides some indication of income, it does not necessarily provide a picture of total income, it provides no indication of other resources, and it also does not provide a credit history. Yet some lenders apparently take the view that if an individual has not achieved a certain rank, he or she simply is not likely to be a good credit risk.

Mr. Speaker, this not only makes no sense but also represents an insult to the members of our armed services and their families. And I do not believe it should be allowed.

My bill would simply add military rank or grade to the list of bases upon which credit discrimination is not permitted. As with potential borrowers in other jobs, this measure would not prevent a lender from considering the individual's income, nor would it prevent a lender from considering how long the individual had held a particular job. It would simply prevent lenders from denying credit, or a chance for credit, on the basis of rank alone.

Mr. Speaker, those who volunteer to serve in our Armed Forces make many sacrifices, which frequently include a significant financial burden. Surely, discrimination by lenders should not be added to their problems. I hope my colleagues will join me in sponsoring this bill so that we can eliminate this problem.

Following is the text of my bill:

H.R. 5482

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON DISCRIMINATION BY CREDITORS ON THE BASIS OF THE GRADE OF AN APPLICANT WHO IS A MEMBER OF THE ARMED FORCES.

Section 701(a) of the Consumer Credit Protection Act (15 U.S.C. 1691(a)) is amended—

(1) by redesignating paragraph (3) as paragraph (4);

(2) in paragraph (2), by striking out "or" the second place such term appears; and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) on the basis of the grade of an applicant who is a member of the Armed Forces; or".

CONSULTATION ON THE REFUGEE ADMISSIONS PROGRAM FOR FY 1989

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. RODINO] is recognized for 5 minutes.

Mr. RODINO. Mr. Speaker, the Refugee Act of 1980 (Public Law 96-212) requires the President to consult with Congress prior to the beginning of each fiscal year with regard to his proposals for refugee admissions for the coming year.

The following White House memorandum dated September 12, 1988, to Secretary of State George P. Shultz and U.S. Coordinator for Refugee Affairs Jonathan Moore sets forth the President's proposal for the United States refugee admission program for fiscal year 1989. This proposal formed the basis for the consultation with the House and Senate Committees on the Judiciary.

THE WHITE HOUSE,
Washington, September 12, 1988.

Memorandum for the Honorable George P. Shultz, The Secretary of State, the Honorable Jonathan Moore, U.S. Coordinator for Refugee Affairs.

Subject: Fiscal year 1989 Refugee Admissions Consultations.

In accordance with Section 207(b) of the Immigration and Nationality Act (INA), you are authorized to consult with the appropriate committees of the Congress concerning refugee admissions and related matters as follows:

The authorization of up to 94,000 refugee and Amerasian immigrant admissions during FY 1989. Of this ceiling, 90,000 admissions would be funded, in whole or in part, with federal funding and would be allocated by specific regions as follows: 2,000 for Africa; 28,000 for East Asia/First Asylum; 25,000 for East Asia/Orderly Departure Program; 24,500 for Eastern Europe and the Soviet Union; 3,500 for Latin America and the Caribbean; and 7,000 for the Near East and South Asia. The remaining 4,000 admissions numbers would be authorized to be used in any region to the extent that private funding was available and no additional federal costs would be generated.

The utilization of the 90,000 federally-funded admissions numbers shall be limited by such public and private funds as shall be available to the Department of State and the Department of Health and Human Services for refugee and Amerasian admission in FY 1989. Within the total federally-funded ceiling of 90,000, up to 84,000 would be fully funded and up to 6,000 would be funded partially by the government and partially by the private sector. The Committee will be advised by the United States Coordinator for Refugee Affairs, after appropriate interagency review, of how admissions will be managed within the approved ceiling and regional allocations once FY 1989 appropriations of the Department of State and the Department of Health and Human Services have been enacted.

The authorization of an additional 5,000 refugee admissions numbers to be made available for the adjustment to permanent resident status of refugees who have been granted asylum in the United States.

The designation, pursuant to Section 101(a)(42) of the INA, of the following as persons who, if they otherwise qualify for admission as refugees, may be considered refugees under the INA even though they are still within their country of nationality or habitual residence;

Persons in Vietnam and Laos with past or present ties to the United States, persons who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and their accompanying family members;

Present and former political prisoners, persons in imminent danger of loss of life, and their accompanying family members in countries of Latin America and the Caribbean; and

Persons in the Soviet Union.

On September 15, 1988, the Committee on the Judiciary held a hearing on the President's proposal. Witnesses for the administration were U.S. Coordinator for Refugee Affairs Ambassador Jonathan Moore; Robert Funseth, Senior Deputy Director, Office of Refugee Programs, Department of State; Bill F. Gee, Director, Office of Refugee Resettlement, Department of Health and Human Services and Richard E. Norton, Associate Commissioner for Examinations, Immigration and Naturalization Service, Department of Justice.

The report to the Congress mandated by the Refugee Act on the "Proposed Refugee Admissions for 1989" was submitted by the U.S. Coordinator for Refugee Affairs for the Members' information prior to the consultation. The report contains the following chart of estimated costs for the program proposed by the President:

Estimated costs of refugee movement to and resettlement in the United States—fiscal year 1989

Agency	*Millions*
Department of State, Bureau for Refugee Programs:	
Refugee Processing Services	$34.0
Language/Orientation Programs Overseas	15.5
Transportation	47.5
Rec. and Placement	43.0
Subtotal	[1] 140.0
Department of Health and Human Services, Office of Refugee Resettlement:	
Cash and Medical Assistance/State Administration	261.8
Social Services	64.9
Targeted Assistance	34.1
Preventive Health	5.8
Matching Grant Program	15.8
Subtotal	[2] 382.4
Other HHS:	
Aid to Families with Dependent Children	70.0
Medicaid	40.9
Supplemental Security Income	13.8
Subtotal	124.7
Grant total	647.1

[1] The $140.0 million figure is the earmark for refugee and Amerasian immigrant admissions in the Senate bill. The Senate/House Conference fiscal year 1989 Foreign Assistance Appropriations had not occurred at the time this report was printed. In addition, it is expected that there will be available to the Department of State in fiscal year 1989 some funds appropriated by Public Law 100-393, the fiscal year 1989 dire emergency supplemental.

[2] $382.4 million figure for Health and Human Services is the Senate/House Conference amount for fiscal year 1989 Refugee and Entrant Assistance Appropriations, reduced by the "Gramm-Rudman-Hollings" percentage of 1.2 percent.

The following chart shows the comparison between the fiscal year 1988 refugee allocation and admissions program and the present proposal by the President for fiscal year 1989 under consideration:

COMPARISON—U.S. REFUGEE FISCAL YEAR 1988 ALLOCATION AND ADMISSION TO FISCAL YEAR 1989 PRESIDENT'S PROPOSAL

	Fiscal year 1988		Fiscal year 1989
	Allocation	Estimated admissions	
East Asia 1st Asylum	29,500	28,000	28,000
ODP (including Amerasians)	8,500	7,000	25,000
Eastern Europe-Soviet Union	30,000	27,000	24,500
Near East/South Asia	9,000	8,500	7,000
Latin America and Caribbean	3,500	2,800	3,500
Africa	3,000	1,500	2,000
Total	83,500	74,800	90,000
Unallocated/unfunded	4,000	650	4,000
Program totals	87,500	75,450	94,000

The Secretary of State, in order to justify the President's refugee proposal for fiscal year 1989, informed the committee of the various regional situations which led to the establishment of the allocations of the aggregate worldwide ceiling for refugees and Amerasian immigrant admissions of 94,000. The President expects that there will be 84,000 full-funded admissions, some 6,000 others to be partically funded by the Government sector financing.

EAST ASIA—FIRST ASYLUM

There are over 145,000 refugees in first asylum camps in Southeast Asia and Hong Kong. An 115 percent increase in boat arrivals from Vietnam between July 1987 and July 1988 prompted first asylum nations to adopt harsh measures to deter a greater flow.

The fiscal year 1989 proposed level of 28,000 admissions ceiling is in response to an effort to reduce the current high number of refugees in camps and to encourage ASEAN countries to continue a first asylum policy for the humane reception and treatment of refugees.

EAST ASIA—ORDERLY DEPARTURE PROGRAM [ODP]

The proposed level for the Orderly Departure Program of 25,000 under the East Asia allocation includes 13,000 refugees and 12,000 Amerasian immigrants.

This program historically has provided a safe, legal alternative to surreptitious boat departures from Vietnam. It is expected that this program will continue at an increased level so that all types of risks can be eliminated in this emigration.

The proposed ODP level also provides for admissions for several thousand former education camp internees and accompanying relatives, a program which the U.S. Government has supported for a number of years.

Amerasians are being admitted to the United States under the Amerasian immigrant legislation passed by Congress in December 1987 (Public Law 100-204).

EAST EUROPE AND SOVIET UNION

The President proposes in fiscal year 1989 a total of 24,500 admissions to be allocated to East Europe and the Soviet Union. Due to a relaxation by the Soviet Union on restrictions on emigration, there has been a dramatic rise in exit permits issued to Soviet Jews and Armenians, and hence a greater need for refugee numbers for resettlement in the United States has been generated. The numbers proposed by the President for fiscal year 1989 foresees the continuation of the present more humane Soviet emigration policy.

Also, during the past year, flows of Eastern European asylum seekers to Western Europe have increased considerably from Poland, Hungary and Czechoslovakia. This, too, has occurred because of liberalized travel policies adopted by the various Eastern bloc countries.

The level of 24,500 admissions proposed is considered by the President to be adequate for the United States to continue its commitment to freedom of emigration from the Soviet Union and allow for a sufficient number of admissions of Eastern European refugees from European first asylum countries who are of special humanitarian concern to the United States.

NEAR EAST AND SOUTH ASIA

The fiscal year 1989 proposed level of 7,000 admissions from this region will allow for the continuation of the U.S. program to resettle Afghans, Iranians, Iraqi and other Near Eastern refugees, which include a large number of religious minorities, such as Baha'is, Jews, Christians and Zoroastrians. The President recognizes that the proposal is 2,000 below the level of last year's program and observes that under this allocation there will not be sufficient numbers available to decrease the long waiting period for approved refugees from in this region.

The committee addresses this latter shortfall in its letter to the President which followed the completion of the consultation and is contained in this submission.

LATIN AMERICA AND THE CARIBBEAN

The fiscal year 1989 proposed ceiling for refugees from this region is 3,500 which will be used mainly to provide U.S. resettlement for Cuban political prisoners and families under the Bilateral Migration Agreement with Cuba. Also, it includes Cuban ex-political prisoners located in third countries who have not been granted permanent resettlement opportunities and certain Central American refugees who have close ties to the United States.

AFRICA

The fiscal year 1989 proposed admissions ceiling for African refugees for fiscal year 1989 is 2,000. Most of these refugees will be Ethiopians with first asylum status in Sudan. Another group foreseen to be resettled will be refugees fleeing the troubles in southern Africa. In addition, it is contemplated that there will be other African refugees processed on a case-by-case basis.

It should be noted that the recent establishment of an Immigration and Naturalization Service [INS] Office in Nairobi, Kenya, will provide more accessibility to eligible refugees making resettlement applications.

The letter to the President which follows also comments on the allocations for this region.

On September 21, 1988, the Secretary of State met in a private meeting with the consultative members of the Committee on the Judiciary, Congressmen HAMILTON FISH, JR., ROMANO L. MAZZOLI, PATRICK SWINDALL, and myself to complete the second and concluding stage of the consultation process mandated by the Refugee Act of 1980.

After consideration of the relevant prepared reports by the Department of State and the U.S. Coordinator, the statement by the Secretary of State and the testimony furnished by the witnesses at the hearing, the following letter from the consultative members was sent to the President:

COMMITTEE ON THE JUDICIARY,
Washington, DC, September 26, 1988.

Hon. RONALD REAGAN,
The President, The White House,
Washington, DC.

DEAR MR. PRESIDENT: The Committee on the Judiciary has completed the consultative process mandated by the Refugee Act of 1980 with regard to your proposed refugee admissions ceilings and allocations for FY 1989.

We interpose no objection to the numbers and allocations as proposed.

We are deeply concerned, however, that the ceilings proposed for the Soviet Union and Eastern Europe, Africa and the Near East may not be sufficient to meet the resettlement needs of refugees in these regions.

Therefore, the Committee wishes to be kept advised on a monthly basis as to the implementation of the FY 1989 admissions program in order to assess whether more refugee numbers are needed at any time.

If additional numbers are required, we request that you initiate emergency consultation without delay. We would expect that any such request would be accompanied by a realistic budget plan for providing sufficient resources to fund the additional numbers.

The Committee also believes the requirement, contained in pending legislation, that the Administration provide the Judiciary Committees with a June 1 annual preview of admissions levels would promote better coordination between the budgetary and consultative processes and accordingly recommends this approach be followed in FY 1990.

The Committee is further interested in receiving written notification and details regarding the use of the 4000 unallocated/unfunded numbers before any such program is implemented.

Since there is now extended use of the Attorney General's humanitarian parole authority for certain non-refugee aliens, the Committee requests detailed information on the utilization of group parole for persons who do not qualify for refugee status.

The numbers for refugees from the Soviet Union and the other Eastern European countries are not broken out in the monthly statistical report which is currently submitted to the Committee. We request that the regional statistics for the Soviet Union and Eastern Europe contain a breakdown of the allocation of refugee numbers to Soviet Jews, Armenians and other Eastern Europeans.

We sincerely thank Secretary Shultz, Ambassador Moore and the other representatives of the Executive Branch for their cooperation and assistance during the refugee consultation process.

With best regards.

Sincerely,
HAMILTON FISH, Jr.,
Ranking Minority Member.
PATRICK L. SWINDALL,
Ranking Minority Member, Subcommittee on Immigration, Refugees, and International Law.
PETER W. RODINO, Jr.,
Chairman.
ROMANO L. MAZZOLI,
Chairman, Subcommittee on Immigration, Refugees, and International Law.

As a result of the consultation between the Congress and the President, the following Presidential Determination No. 89-2 was issued on October 5, 1988:

[Memorandum for the U.S. Coordinator for Refugee Affairs]

THE WHITE HOUSE,
Washington, October 5, 1988.

Presidential Determination No. 89-2

Subject: Determination of FY 1989 Refugee Admissions Numbers and Authorization of In-County Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act.

In accordance with Section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

a. The admission of up to 94,000 refugees to the United States during FY 1989 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1989 with federal refugee resettlement assistance under the Amerasian admissions program, as provided in paragraph (b) below.

Four thousand of these admissions numbers shall be set aside for private sector admissions initiatives. The admission of refugees using these 4,000 numbers shall be contingent upon the availability of private sector funding sufficient to cover the essential and reasonable costs of such admissions (so that no federal program funds shall be expended for such admissions).

b. The 90,000 refugee admissions numbers for which federal funding may be used shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this Determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia Orderly Departure Program shall be reduced by one for each person admitted to the United States during FY 1989 with federal refugee resettlement assistance under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Section 101(e) of Public Law

100-202 (Amerasians and their family members):

Africa	2,000
East Asia, First Asylum	28,000
East Asia, Orderly Departure Program	25,000
Eastern Europe/Soviet Union	24,500
Latin America/Caribbean	3,500
Near East/South Asia	7,000

Utilization of the 90,000 federally funded admissions numbers shall be limited by such public and private funds as shall be available to the Department of State and the Department of Health and Human Services for refugee and Amerasian admissions in FY 1989. You are hereby authorized and directed to advise the Judiciary Committees of the Congress of the intended allocation of numbers within the above regional ceilings in light of the availability of federal funding sufficient for up to 84,000 fully funded refugee and Amerasian admissions.

Unused admissions numbers allocated to a particular region within the 90,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such reallocation.

The 4,000 privately funded admissions may be used for refugees of special humanitarian concern to the United States in any region of the world at any time during the fiscal year. You are hereby authorized and directed to notify the Judiciary Committees of the Congress in advance of the intended use of these numbers.

c. An additional 5,000 refugee admissions numbers shall be made available during FY 1989 for the adjustment to permanent resident status under Section 209(b) of the Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under Section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with Section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), I also specify, after appropriate consultation with the Congress, that the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States while still within their countries of nationality or habitual residence:

a. Persons in Vietnam and Laos who have past or present ties to the United States or who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and their accompanying family members.

b. Present and former political prisoners and persons in imminent danger of loss of life in countries of Latin America and the Caribbean, and their accompanying family members.

c. Persons in the Soviet Union.

You are hereby authorized and directed to report this Determination to the Congress immediately and to publish it in the *Federal Register.*

RONALD REAGAN.

COMMITTEE ACTION ON H.R. 5432, THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION AMENDMENTS OF 1988

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island [Mr. ST GERMAIN] is recognized for 5 minutes.

Mr. ST GERMAIN. Mr. Speaker, yesterday, October 5, 1988, the Committee on Banking, Finance and Urban Affairs ordered reported H.R. 5432, the Federal Savings and Loan Insurance Corporation Recapitalization Amendments of 1988, as amended. This afternoon the chairman of the Committee on Rules, Chairman PEPPER, announced that amendments to H.R. 5432 submitted for consideration of the Rules Committee should refer to the text of the legislation as placed in the RECORD in this special order. In furtherance of the announcement of Chairman PEPPER, I commend to the attention of the Members H.R. 5432 as ordered reported by the Committee on Banking, Finance and Urban Affairs.

H.R. 5432

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Amendments of 1988".

SEC. 2. FICO OBLIGATIONS.

(a) INCREASE IN LIMITATION ON OUTSTANDING OBLIGATIONS OF FICO.—Section 21(e)(1)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441(e)(1)(B)) is amended by striking out "$10,825,000,000" and inserting in lieu thereof "$15,825,000,000".

(b) REPEAL OF ANNUAL LIMITATION ON NET NEW BORROWING AFTER 1ST YEAR.—Section 21(e)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441(e)(2)) is amended to read as follows:

"(2) LIMITATION ON ANNUAL BORROWING DURING 1ST YEAR.—Net new borrowing by the Financing Corporation shall not exceed an amount equal to $3,750,000,000 in the 1-year period beginning on the date of the enactment of the Federal Savings and Loan Recapitalization Act of 1987.".

SEC. 3. LIMITATION ON FSLIC AUTHORITY TO ISSUE PROMISSORY NOTES.

Section 406(f) of the National Housing Act (12 U.S.C. 1729(f)) is amended by adding at the end thereof the following new paragraph:

"(7) LIMITATION ON OUTSTANDING PROMISSORY NOTES ISSUED BY FSLIC.—The aggregate outstanding balance on promissory notes issued by the Corporation under this subsection or any other provision of this section shall not exceed the lesser of—

"(A) the sum of the cash flow projections of the Federal Home Loan Bank Board from—

"(i) the sale of capital certificates and stock under section 402(b)(1);

"(ii) the insurance premiums assessed under subsections (b) and (c) of section 404; and

"(iii) receivership assets; or

"(B) $20,000,000,000."

SEC. 4 SENSE OF THE CONGRESS.

It is the sense of the Congress that, in providing assistance through the Federal Savings and Loan Insurance Corporation to resolve cases involving failed or failing thrift institutions, the Federal Home Loan Bank Board should rely primarily on raising funds through the Financing Corporation as a mechanism for providing such assistance rather than relying on other forms of assistance which the Federal Savings and Loan Insurance Corporation is authorized to provide, such as issuing promissory notes or providing guarantees.

SEC. 5. INFORMATION REQUIRED TO BE PROVIDED TO CONGRESS.

Section 406 of the National Housing Act (12 U.S.C. 1729) is amended by adding at the end thereof the following new subsection:

"(g) DISCLOSURE OF CERTAIN INFORMATION TO CONGRESS REQUIRED.—

"(1) IN GENERAL.—The Corporation, the Federal Home Loan Bank Board, and all related entities of such Board shall provide the following information to the Congress in a timely fashion:

"(A) Any contract, merger, or acquisition agreement or other document setting forth the terms and conditions of such transaction.

"(B) Any agreement concerning any exemption or forbearance from regulatory standards which, directly or indirectly, forms a part of any transaction in which assistance is provided pursuant to subsection (f) of this section.

"(C) Any agreement concerning capital loss coverage, yield subsidies, or other asset guarantees on assets of an insured institution described in subsection (f)(2)(B) of this section, including a detailed explanation of the assumptions made by the Corporation in arriving at an estimate of the present value cost of such coverage, subsidy, or guarantee.

"(D) Any determination made by the Corporation of the cost of liquidating any insured institution (including the cost of paying the insured accounts in such institution) as required by subsection (f)(4)(A), including a detailed explanation of the assumptions underlying such determination.

"(E) Any estimate made by the Corporation of the total cost to the Corporation of any transaction in which assistance is provided pursuant to subsection (f) of this section, including a detailed explanation of the assumptions underlying such determination.

"(2) INFORMATION REQUIRED TO BE PROVIDED TO HOUSE BANKING COMMITTEE WITHIN 15 DAYS.—In the case of each transaction by the Corporation in which assistance is provided pursuant to subsection (f) of this section, the information required to be submitted under paragraph (1) of this subsection shall be submitted to the chairman and the ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives before the end of the 15-day period beginning on the date such transaction is entered into.".

SEC. 6. REPORT TO CONGRESS REQUIRED.

Not later than February 1, 1989, the Federal Home Loan Bank Board shall submit to the Congress a report containing the following information:

(1) The revised estimate of the Federal Home Loan Bank Board of the total cost to resolve the current and anticipated inventory of troubled thrift institutions and a detailed explanation of the assumptions underlying such estimate.

(2) The revised estimate of the Federal Home Loan Bank Board of the total income projected to be received by the Federal Savings and Loan Insurance Corporation from the regular assessment imposed under section 404(b) of the National Housing Act, the special assessment imposed under section 404(c) of such Act, and other sources over the relevant time period.

(3) A detailed assessment of potential alternative sources of additional funds to facilitate the assistance activities of the Federal Savings and Loan Insurance Corporation other than any income taken into ac-

count by the Board in the estimate required under paragraph (2).

SEC. 7. REQUIRED CAPITAL LEVELS IN ASSISTANCE TRANSACTIONS.

Section 406(f)(4) of the National Housing Act (12 U.S.C. 1729(f)(4)) is amended by adding at the end thereof the following new subparagraph:

"(C) Required minimum capital for resulting institutions.

(i) In general.—No assistance shall be provided under paragraph (2) or (3) of this subsection unless the insured institution which results from the merger, consolidation, or acquisition for which such assistance is provided has qualified tangible capital assets of not less than 1 percent of total assets.

(ii) Qualified tangible assets.—For purposes of this subparagraph, the term 'qualified tangible assets'—

"(I) means the net worth of any insured institution as determined by generally accepted accounting principles, taking into account only cash and assets which are readily convertible into cash at the stated value of such assets, minus goodwill, other intangible assets, and reserves; and

"(II) does not include any capital contributed directly or indirectly by the Corporation.".

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. Hoyer] is recognized for 5 minutes.

Mr. HOYER. Mr. Speaker, this region, and indeed this Nation, can be extremely proud that the Washington Metropolitan Area Transit Authority [WMATA], operator of America's subway, has been awarded the transit industry's highest honor, the Public Transportation System Outstanding Achievement Award for 1988. This award, given annually to the North American transit system that has demonstrated extraordinary achievement in all aspects of public transit operation, maintenance and safety is being presented this week to WMATA at the American Public Transit Association's [APTA] Annual Meeting.

Congress was a full partner in the creation of WMATA, beginning in 1952 when Congress passed the National Capital Planning Act mandating that plans be developed to facilitate the movement of people and goods throughout the region. In 1967, the Washington Metropolitan Area Transit Authority, in a unique Federal/local partnership, was created by Congress to build and operate a premier subway system worthy of the Nation's Capital. Every Congress since has recognized and confirmed the Federal commitment to the Metrorail and Metrobus system.

The APTA award recognizes that WMATA's success is attributable to exceptional management and sound operating practices, a strong commitment to safety, clear dedication of the hard-working WMATA employees throughout the region that make the trains and buses run reliably, and the vision of the Congress and the Federal Government in the 1950's in seeing the enormous need for a public transportation system to serve the metropolitan area. The WMATA Board Chair, councilwoman H.M. Mason and the members of the WMATA Board, as well as Metro's general manager, Mrs. Carmen E. Turner deserve to be recognized for their fine leadership and management of the Transit Authority.

With approximately 8,000 employees and an operating budget of $500 million, WMATA operates 660 railcars on 70 miles of track serving 64 stations. The 1,500 vehicle bus fleet logs approximately 50 million miles annually serving 13,000 bus stops in Maryland, Virginia, and the District of Columbia. Combined bus and rail ridership increased again in fiscal year 1988 to a record 236 million trips.

The Nation's Capital attracts visitors from all corners of the world. Many of the tourists, diplomats, and business people that come to Washington know that the best way to get around the region is to take Metrorail and Metrobus. These visitors are part of the almost 1 million passenger trips taken daily on Washington Metro vehicles, making WMATA the second largest rail transit operator in the United States and the fifth largest bus operator. Passengers are attracted to both the rail and bus systems by WMATA's reliability, safety, and cleanliness, a sure-fire formula for success.

Metro was designed to be aesthetically compatible with the history and symbolism of the Nation's Capital. Architects sought simplicity, durability, and a sense of timelessness that would serve future generations, as well as today's riders. With almost two-thirds of the system built, Metrorail construction continues on another 19.5 miles and plans call for a 103-mile system when Metrorail is completed.

As more of the system is built, additional railcars will be required to meet the demand for service to new areas and new riders. When WMATA specified its original railcars, they did so with vision. The cars were meant to serve future as well as present needs; the latest technology was incorporated and future innovations were anticipated. Metro is currently working on refining specifications for the next generation of railcars with an eye toward even greater efficiency, safety, and dependability.

A quality assurance program was introduced at the authority to keep WMATA's fleet of railcars and buses operating at maximum efficiency and reliability. This program was cited by APTA for its dramatic achievements in improving performance.

Clearly, improving the quality of the ride on a bus fleet, whose average age is 10 years, is a serious challenge to the ingenuity and hard work of WMATA's bus team. Creative ideas from WMATA's bus service department have saved money for the authority, while enhancing the performance of the 1,500 buses in the fleet.

Metro's design and operations have won much acclaim over the past 20 years, including the honor bestowed this week by APTA. We in Congress, the region, and the Nation can be proud that we have created a mass transportation system that is worthy of our Nation's Capital. The fact that more passengers are riding Metrorail and Metrobus each day is a testament to the success of the system and the dedicated people who provide reliable service each day.

I join with my colleagues Mr. McMillen, Mr. Wolf, Mrs. Morella, Mr. Fauntroy, and Mr. Parris in congratulating WMATA on receiving this most prestigious award from its peers in the transit industry. A recognition of achievement by one's peers is the highest compliment of all.

SUZIE McCONNELL, OLYMPIAN ATHLETE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. Coyne] is recognized for 5 minutes.

Mr. COYNE. Mr. Speaker, of all the memorable moments during the Seoul Olympics—the moments when young athletes proved themselves to be the best of the best—none were more memorable for Pittsburghers than when the American women's basketball team took the gold medal. That is because of a point guard on the team named Suzie McConnell.

Suzie is one of us. She lives at 658 Dunster Street in Brookline, a home like other homes in the neighborhood. She graduated from Seton-LaSalle High School and Penn State, and she plans to student teach in January. As her brother Tim told the Pittsburgh Press, "Suzie, with all the exposure, is a normal kid. You'd never know about the gold medal. She doesn't like to talk about herself."

All that is true. But Suzie McConnell is also very special—she is an Olympian athlete. When Suzie arrived back in Pittsburgh, Rene Portland, who was her coach at Penn State, recalled, "She was an Olympian when she came to us. We talked about this moment at the end of her freshman year. This moment has been a long time in coming."

Probably no one but Suzie McConnell will ever know just how much effort and sacrifice and tenacity it took to get to that final victorious game in Seoul. And probably only she will ever know just how important it was to have the love and support of her family, her friends, her coaches, and her teammates in all the years leading up to that game.

But all of us know that Suzie is a world-class athlete. She has our affection and congratulations.

ORDER OF BUSINESS

Mr. ALEXANDER. Mr. Speaker, I ask unanimous consent, in deference to our friend and colleague, the gentleman from New York [Mr. Stratton], who is being honored this evening by a special order, that I be granted permission to exchange with the gentleman from New York [Mr. Horton], who has a special order for the purpose of honoring the gentleman from New York [Mr. Stratton], of course on the condition that the gentleman from New York would yield to me to participate in his special order.

The SPEAKER pro tempore (Mr. Lehman of California). Is there objection to the request of the gentleman from Arkansas?

There was no objection.

□ 1800

TRIBUTE TO THE HONORABLE SAMUEL S. STRATTON

The SPEAKER pro tempore. (Mr. Lehman of California). Under a previous order of the House, the gentleman from New York [Mr. Horton] will be recognized for 60 minutes.

Mr. HORTON. Mr. Speaker, I certainly appreciate the gentleman from Arkansas [Mr. Alexander] yielding to me at this point.

Mr. Speaker, tonight, I rise to share with our colleagues my thoughts on the retirement of my good friend, the dean of the New York congressional delegation, Samuel S. Stratton. Congressman Stratton has served in this body with distinction for 30 years.

It is really hard to sum up in a few words my respect for Sam Stratton. Over my 26 years in the House, he has been a true friend and confidant. Even though we are from different parties, Sam never let that stand in the way of our relationship.

As the dean of the New York Republican delegation, I have had the privilege of working closely with Sam. As dean and chairman of the 36-member delegation which includes our two distinguished Senators, Sam has treated all Members with respect. This spirit of bipartisanship has set the tone for some very productive delegation meetings. The fairness which he has displayed as chairman is a true reflection of his leadership traits. Sam would have displayed these qualities if he had been elected committee chairman, or even Speaker. In any office, Sam would have ruled fairly.

Many House Members know Sam Stratton as one of the senior Democrats on the Committee on Armed Services. His extensive military career and his ability to master the intricacies of defense issues have made Sam a leader in national security matters. He earned his chairmanship of the Subcomittee on Procurement and Military Nuclear Systems because of his leadership skills, military background, and command of the facts.

In recent years, Sam Stratton has been chosen for special assignments by both the President and the Speaker. During the 96th Congress, Speaker Tip O'Neill appointed Sam as an observer to the SALT II negotiations in Geneva and to the mutual and balanced force reduction talks in Vienna. In 1982, President Reagan nominated Sam to serve as a representative member of the U.S. delegation to the second special session of the U.N. General Assembly on disarmament. These appointments show that both men have recognized Sam Stratton to be an asset to arms control negotiations.

Among his many legislative accomplishments, a few stand out. Through his position on the Armed Services Committee, Sam chaired the investigation of the My Lai massacre and ensured that justice was served through its results. He also lead the fight to maintain the American troop commitment to South Korea during the late 1970's. Sam was also an early proponent of admitting women to the U.S. Service Academies. He saw this goal realized in 1975.

Sam has good reason to call all of New York his home. After his birth in Yonkers, he grew up in Rochester and Schenectady. He later attended the University of Rochester where he earned his bachelor's degree. He settled in Schenectady near the end of his long and distinguished naval career. During his tenure in the House, Sam has represented all or part of 13 counties across upstate New York. At one time, his district stretched 200 miles from Penn Yan to Amsterdam. He has twice successfully fought efforts to unseat him after redistricting. His political longevity is a testament to his constituents feelings for Sam.

For those who only know Sam Stratton as a senior Member of the 100th Congress, I would like to mention some of his early achievements. June 26, 1942, marked the start of Sam's naval career when he was commissioned an ensign in the Naval Reserves. A little over a year later, he completed the course at the Japanese Language School. This training proved useful as he was assigned to the Intelligence Section of the 6th Army. Sam participated in several landings in the South Pacific. His skill at interrogating Japanese prisoners propelled him to a top post on Gen. Douglas MacArthur's staff in Manila by July of 1945. During the next few months, Sam interrogated many high ranking officers. Sam's interviews with Gen. Tomoyuki Yamashita played an instrumental role in the general's war crimes trial.

For his efforts during the war, Sam was decorated with the Bronze Star on two occasions. During the Korean conflict, Lieutenant Commander Stratton was both a student and an instructor at the Naval Intelligence School over in Anacostia. Sam remained in the reserves until his retirement in 1976 at the rank of captain.

Sam started his civilian public service career as a member of the Schenectady City Council in 1950. The city elected him mayor in 1955 and then sent him to Washington 3 years later. He worked as a radio and television announcer and newscaster to supplement his income when he worked in city hall. As an extension of these talents, he played the role of Sagebrush Sam, a harmonica-playing cowboy on a children's television show in Albany.

Mr. Speaker, we are here tonight to pay tribute to one of this body's most distinguished Members. Be it as a military man, local official, broadcaster, television personality, educator, or Member of Congress, Sam Stratton has excelled in every task. The House will be sure to miss him next year, I know I will. My wife Nancy and I wish Joan and Sam a pleasant and healthy retirement.

Mr. Speaker, I note that the gentleman from New York [Mr. Stratton] has come onto the floor and some of the Members are here to say their good wishes to Sam.

I yield to the gentleman from California [Mr. Shumway].

Mr. SHUMWAY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I appreciate the gentleman's taking this special order to honor one of our esteemed colleagues who is retiring. I perhaps have a very unusual reason for feeling a closeness to Sam Stratton and I will certainly miss his presence here in this Chamber, because I arrived here 10 years ago with a knowledge of Japanese language. I found to my great surprise that among Members of this body very few are able to converse in that language with the exception of Sam Stratton.

So when I realized that he had studied Japanese and could converse quite well, we have formed a friendship over the years and have conducted much of the conversation in that friendship in Japanese.

Now that Sam is leaving I am going to have to look far and wide to find a replacement conversationalist and for that reason I will really miss Sam Stratton.

I have really enjoyed his presence here in this Chamber.

A second reason that Sam Stratton has been one on the other side of the aisle who is extremely dedicated to national security. His posture on defense issues and his support of the idea of peace through strength, as we have debated these issues here on the House floor has certainly not gone unnoticed and unappreciated. There are many of us on this side of the aisle who have looked to Sam Stratton for leadership on these issues and have found it in every case.

I really appreciate that. I appreciate also his priorities, his leadership in that regard and again for that reason he will be very much missed by not just me in this case but all of us who have the privilege of serving in this body.

So, Sam, I would like to wish you well and tell you that many of us will be thinking of you.

So I bid the gentleman O-genki de sayonara.

Mr. HORTON. I thank the gentleman from California for his kind remarks and I am very happy he closed his remarks in Japanese.

Mr. Speaker, I yield to the gentleman from New York [Mr. McHugh], a member of the Committee on Appropriations, and a member of our delegation and a good friend of Sam's.

Mr. HcHUGH. I thank the gentleman for taking this special order so that we can pay tribute to our dear friend and colleague, Sam Stratton. It is no exaggeration to say that in New York State Sam long ago became a political legend. I think that is especially true in upstate New York. Those of us who are Democrats in upstate New York owe Sam a special debt of gratitude because for many, many years it was impossible for a Democrat to be elected to Congress from the ancestral Republican territory in upstate New York. But that all changed with Sam Stratton, because he brought to his campaigning and more especially to his service in Congress a really unique blend of dedication and commitment to his constituents as well as a real service in Washington as a Representative.

Sam was able to convince people who for all of their lives never voted for a Democrat to at least split their ticket in his case. That has meant a great deal to those of us who have come after him.

It is a tribute, of course, to Sam's extraordinary qualities of representation, but it is also a tribute to his constituents who recognize the kind of dedication that he brought to electoral politics and to service as a Representative in the halls of Congress.

It is also safe to say that today we have a certain degree of skepticism among many people in our country about politics in government. But that cannot be said of people who have been represented by Sam Stratton, because he has brought the kind of personal attention and responsiveness to this constituents in his communities which really restore and enlarge the respect that people have for politics and government. And that is a service not just to Demorcats but a service to the political process and to the institution of the Congress which it is hard to underestimate.

Sam has brought those same qualities of course to his service here, particularly on the Committee on Armed Services.

Presidents of both parties, going back to President Eisenhower, have looked to Sam Stratton for advice and counsel and support in areas relating to—and issues relating to defense of this country. He is a person who has as much if not more expertise on defense as anyone in the Congress in either the House or the Senate.

We have not always agreed on defense issues, but Sam has always had our respect and our admiration and his contribution to the Committee on Armed Services and to this House on defense issues are unmatched.

So it is with mixed feelings that we say "goodby" to Sam and wish him and Joan, his wife, and his children Debbie and Kevin and their families the very best.

Sam has earned our admiration and respect and has earned the retirement which he is now embarking on.

I am sure that he embarks upon it with mixed feelings as we do, but we certainly want to wish him all of the happiness in the years ahead and we look forward to seeing him many, many time here. We undoubtedly will continue to look to him for advice and counsel on those issues where he has been such a power and such a leader in this Congress.

Mr. HORTON. I thank the gentleman for his very beautiful remarks about a very good friend, Sam Stratton.

Mr. Speaker, I yield to the gentleman from New York, a member of the Committee on Armed Services, Mr. Martin.

Mr. MARTIN of New York. I thank the gentleman from New York [Mr. Horton] our new dean when Sam does leave the Congress, for taking out this special order.

You know, scheduling in the House of Representatives is a little bit different from scheduling everywhere else. People who would like to be here this evening to pay tribute to Sam Stratton, if they could all be here, the people that he has served with in so many wonderful capacities, if they could all be here the hall would not be nearly big enough.

I am privileged to be here to pay tribute to somebody who stands very, very high, on a pedestal. I was Sam's constituent for 3 years. They never did get the opportunity to get me to register as a Democrat when I was in Albany going to law school. But although many of Sam's supporters were there to give me the opportunity, I remained true. I was born a Republican. Congressman Stratton will probably die one.

It was very tempting though. The esteem in which he was held by everybody in the community in Albany where I live was awesome, to say the least.

I guess the question comes down to, when you salute someone for their years of service, I guess you reflect back on basic values: How do you judge a man? It is what man does for his fellow man.

Sam Stratton, when you look at his career, his service in the Navy, his service in local government and his service here in Congress for 30 years, what more could you ask of any American to do and provide the example that Sam Stratton has provided to many people, of which I am one?

I have the opportunity from time to time, when they let us out of here, to go to the schools in my congressional district and talk to them about what it means for a period of time to serve in public life, and I try to point out that acid test is: When it is all said and done and they add up the scorecard, when the question is asked "Did you make a difference? Was it for the better?," everyone who Sam Stratton has touched has to believe, has to understand that he made a big, big difference around here and, yes, it was for the better.

For some people national defense is a matter of fact. We read the polls and we try to determine "Should we be strong today? Should it be détente today? Should it be 'Apologize for America Day' "?

Sam has been as constant as anything could be since he arrived here understanding that defense and defending this great Nation is the most important thing and the first order of business of National Government.

I recall when I arrived here as a freshman, a Republican, I did not have an office. The people who were going to be on my staff were opening mail over in the Rayburn cafeteria and they would divvy up the mail, I would get my input and they would rush home and type it up on their little typewriters, come in and mail it out the next day.

I got a call from Sam Stratton, the dean, a Democrat from New York who said, "I understand you don't have an office." I said, "That is correct, sir." He said, "You are wrong. Get over here." And I came over and Sam Stratton gave me his annex, not just to Dave Martin. He gave those 516,000 people I represented an opportunity to be corresponded with.

Would everybody in this Chamber have done that? I do not know. But Sam Stratton did.

And I appreciate it. And every time Sam calls the office, as he does from time to time, he is revered there. The call comes in, someone picks it up and they come rushing into my office to say, "Congressman Stratton is on the phone," I suppose in the same tone that you would say "The Japanese bombed Pearl Harbor again." Because they knew it was important if Sam Stratton was calling me.

And, Sam, when he leaves here, my dear friend, I want him to pick up that phone and call. And, if my people send me back here again and the call comes in, I guarantee you it will be revered just as much in January as it is here in October.

God bless you, sir, and thank yor for what you have done for this country.

I thank the gentleman for yielding me this time.

Mr. HORTON. I thank the gentleman for his wonderful remarks.

Mr Speaker, I yield to the gentleman from Virginia [Mr. Olin].

Mr. OLIN. I thank the gentleman for yielding.

I appreciate very much the gentleman having this special order and letting me and others say something nice about SAM STRATTON.

I had a little different early experience with Sam than probably most anybody else in this Congress. Right after World War II in 1947 I arrived in Schenectady, NY, a young engineer, just got out of the Signal Corps and I joined the General Electric Co. SAM at that time had come back from his duty and he came to town, as I recall, and he had a temporary job at Union College teaching. He was filling the role of somebody who was on a sabbatical. He really did not have a permanent job.

By 1948 I was successful in getting into one of Tom Dewey's veteran housing projects called the Frank Street Housing project. I did not know SAM at the time.

But one day shortly after we moved in there my wife said, "I was out walking the baby this afternoon and I met the nicest lady. Her name is Joan Stratton. She was wheeling her baby around. You know, she made sort of a strange request. She said her husband was interested in politics and in fact he was thinking about running for the city council, getting ready to have a permanent job. She said, "Would you consider passing out literature for him over on the other side of Schenectady?'" And Phyllis said "I will check with my husband."

We talked about it and we decided "Sure, why not."

So we spent a couple of weeks beating the doors down for SAM, passing out literature, talking to people. We got acquainted with him. It turned out he lived not too far from us in that housing project. At that time that was one of those projects that veterans lived in. There was no other place to live in. Looking back it was not too bad. We paid $38 a month for a one or two bedroom place in barracks type building. We got all the utilities paid. I think we were probably as well off at that time with that money, even though we did not get paid much, as we are today.

At any rate, SAM ran for city council. He won. I do not know all of the details here and I might get this a little bit wrong. But I think he ran again and then he got so well known, he was already becoming Mr. Democrat in Schenectady. Then he decided to run for mayor. He became moyor, he won that one.

□ 1815

Mr. Speaker, I am not sure whether he won one or two terms. There might have been two. He was a reformer. He has a fresh viewpoint. He succeeded.

I might appologize to the other side here. There have been some rather stodgy fellows there, but he was not stody, and people began to notice him, and finally he decided that he would run for Congress, and I think it must have been 1957-58. That is when he got here, 1958. Well, I was still there at the time, and the Republican Party did not like the idea SAM being in office. He won that job of course, too, and there was a series of gerrymanderings that were worked out.

I can recall the one that was the most impressive, when we gave him the hotdog district, and they created a brand new district for SAM that ran from Amsterdam, NY, all the way over past Rochester. As I recall, it was something like 200 miles long and maybe 20 or 30 miles wide, and he did not live in any part of the district. He did not know anything about anybody there. People though, "Well, that's the end of Sam."

But, my gosh, he used the same technique on those people that he used on his original constituents, and by his strength of personality, his knowledge of what was going on, his just nice nature and hard work, which actually surprised him, and he won that hotdog district, and I think there were probably several moves after that.

Then they tried to team him up with another Democrat, and he won the battle, and he is still here, as my colleagues know.

Mr. Speaker, I left Schenectady in 1963. General Electric moved me out Erie, PA, and I sort of lost track of SAM, although I knew he was still in office. I ended up down in Roanoke, VA, and, after I retired from GE, the opportunity came along, and I came up here, and, when I was running for office, my first term, running for the first term, we had a little training session. I came up and looked up SAM. Well, my gosh, we had not seen each other for a long, long time. This was then 35 years after I first passed out those brochures for him. He had become practically the Dean of the Committee on Armed Services, and by that time he was making a huge contribution. I came up here as a rather old-timer, but a freshman, and he showed me around. He helped me find some sources of campaign funds, and, after I got elected, he has helped me every since, and I became very well acquainted with the kind of contributions that he has made here.

Mr. Speaker, I cannot elaborate as well as others, but there is no question that he has been one of the principal Members in Congress with regard to keeping our Armed Forces strong, and ready and properly equipped. And he has made that his principal life work in Congress.

Mr. Speaker, he has made a huge contribution to our Nation, and he is going to be honored for that probably forever.

And the people of Schenectady love him. They continue to reelect him. He could probably continue to be reelected as long he wanted to, but it is nice that he is planning to take a little time off.

Mr. Speaker, I can remember the old times, probably not as vividly as the gentleman from New York [Mr. STRATTON] can, but they were great. He has been a friend that I will never forget. He was my ideal in politics from an early age. He got me started and got me here in a way.

I say to the gentleman from New York, "I thank you for that, and I just wish you, and Joan and the kids a very fine life from here on, whatever you plan to do, and thank you very much."

Mr. HORTON. Mr. Speaker, I thank the gentleman very much for his personal remarks about SAM STRATTON.

I now yield to gentleman from Syracuse, New York, who has also decided not to run again, the gentleman, Mr. WORTLEY.

Mr. WORTLEY. Mr. Speaker, I thank the gentleman from Rochester, NY.

Mr. Speaker, I have not looked forward to this evening because I think it is always tough to say farewell to a friend and a colleague, especially a very special colleague.

I have known SAM STRATTON for over 20 years, But I have known him for a much longer period than that. I will never forget SAM STRATTON as long as I live because he is a special person, and the legend of SAM STRATTON probably started the day he was born, but for many of us the legend began when he entered his political career.

Mr. Speaker, I first met him in that old submarine district that was just referred to which he had that was about 20 miles wide and 200 miles long. SAM traveled that in an old wagon, and he would stop in every weekly newspaper along the road. He would go and visit the editor, and then he would sit down and write his own press release, and the fellow I knew was Walter Grunfeld down in Marathon, NY, and that is where our paths first crossed. The gentleman from New York [Mr. MCHUGH] will enjoy this because the first time I met SAM STRATTON was one night in Walter Grunfeld's kitchen when Walter invited many of the intellectualy elite up from Cornell University, which has just down the road. We had a great evening, a little libation, and a considerable lot of discussion, talked about peace, and military strengthening and resolve to defend freedom. SAM STRATTON took them all on. He did have the help of my wife because she was staunch one working in his corner, too. Of course, we all know who prevailed. SAM did, and he got his points across, and I knew that night that he was my kind of guy.

Then when he came to the Congress I often turned to him for some advice, and I remember one particular time we had one of those interminable debates that went on the floor under

Armed Services, and the question was whether we could create the rank of Commadore Admiral. It seemed that our Commadores, first flag officers, were a little upset that they did not have the title of admiral. They thought all of their counterparts in the other Navys of the world have that title, and they thought they should have it. The debate went on for ages, and I went over to Sam, and I said, "Sam, I don't really understand this whole thing. How do you think I ought to vote?"

Sam said, "George, let me tell you. If the rank of Commadore was good enough for Perry, it ought to be good enough for these guys."

Mr. Speaker, that is Sam Stratton at his best. Sam is a man for our times. He is a man of conviction. He is a man of honor, and believe me, a man of great, great courage. He is a gentleman and a patriot.

Farewell, my dear friend, and god bless you. We are all going to miss you.

Mr. HORTON. Mr. Speaker, I thank the gentleman from New York [Mr. Wortley] very much for his remarks.

I now yield to the gentleman from Arkansas [Mr. Alexander].

Mr. ALEXANDER. Mr. Speaker, I am glad to assist in any way I can to make sure that Sam Stratton gets on to his reception. He might even invite me to come along with him.

Mr. HORTON. Mr. Speaker, if the gentleman will yield, the reception he is talking about is the reception that is being given tonight at the Botanic Gardens in honor of Sam Stratton sponsored by the friends of the Defense Industry, but it is chaired by our Speaker, Jim Wright, and by the Republican leader, Bob Michel. So, it is a very auspicious occasion tonight that Sam is being honored.

As a matter of fact, they are all gathered down there now while we are talking I am sure.

Mr. ALEXANDER. That must be where everybody is, so I will make my remarks very brief.

Mr. Speaker, I have known Sam for about 20 years, but we have not served on a committee together, we have not traveled together, and I do not suppose we know each other very well. But we have had a very friendly relationship, and I have benefited from his being here because I have always valued his knowledge and his advice, and I have always listened to his remarks on matters especially pertaining to defense and the architectural wonders of the west front, and I recall.

Mr. Speaker, we did meet one time in Manila over in the Philippines about 8 years ago, and I learned of his service there with former General MacArthur who is one of the most famous Arkansans to ever come from my State. I sense that I have gleaned from his experience a great deal of knowledge and information about politics of the Pacific Rim which is a dynamic, growing area to which all of the world's money seems to be flowing. Sam's advice and information about the Pacific has been very valuable to us.

Mr. Speaker, I hope that the gentleman from New York [Mr. Stratton] will come back often and meet with us back in the Cloakroom and other places to continue to be our adviser on that subject because most of us have a poverty of information in that part of the world, having had little opportunity to travel there and to learn about that region. It is the region of the future and one that we need to know about.

I say to the gentleman from New York [Mr. Stratton], I thank you for the contributions you've made in that regard and the general good guide that you have been during your years of service here in the halls of the House.

Mr. Speaker, I expect it is kind of unusual sitting there listening to people that you have seen all these years finally getting up and saying something nice. Normally we do not get that until we leave. I hope along the way that we have been sufficiently nice to him, that this is not a surprise to him, but good luck, and Godspeed. I hope to see him soon.

Mr. HORTON. I thank the gentleman from Arkansas [Mr. Alexander] very much for his remarks.

I now yield to the gentleman from New York [Mr. Solomon], the ranking member of the Committee on Veterans' Affairs who had a tremendous victory today when we passed the legislation to create a new Department of Veterans' Affairs.

Mr. SOLOMON. Mr. Speaker, next January I'm almost going to feel like an orphan, because Sam Stratton has been like a congressional father to me.

Sam, I'm going to miss you. I'm going to miss our plane trips back to Albany. I'm going to miss your wisdom. I'm going to miss your expertise in defense matters. I'm going to miss your unfailing good nature.

And this great country is going to miss you, Sam. It's gotten used to you over these nearly 50 years, ever since you were a staffer for Congressman Tom Elliott, ever since you were a decorated naval officer on the staff of another hero of mine, Douglas MacArthur, ever since you were a Schenectady city councilman and mayor, and ever since they first elected you to Congress 30 years ago, with my help as a young man who believed in you even then.

Sam, your generation is making room for a younger generation, a generation born after the war, and which may not know how necessary vigilance is to avoiding war. You were formed, as a young man, by the very real prospect that Hitler might conquer Great Britain, and threaten Western civilization as you knew it. You learned a long time ago how dangerous it is to base national defense on the good will of your enemies and on wishful thinking.

But your preoccupation with national security never meant that you would neglect either your constituents or your colleagues. I'd dare say that your constituent services and personal warmth have been even bigger factors than your defense expertise in the 3-1 margins you have been elected by since the late 1960's.

I'll never forget your help on such mutual interests as the Veterans Hospital in Albany, or the Watervliet Arsenal, the General Electric Co. and hundreds of other issues vital to our mutual constituancies.

That's why I hope you don't mind if I call you up every now and then for a little dose of that wisdom and expertise. Sam, enjoy a well-deserved retirement, but don't go too far from the phone. I'm sure I'm not the only Member who's going to think about you every day.

Mr. Speaker, I thank the gentleman from New York for all that he has done for America for 50 years, and, yes, my colleagues know Douglas MacArthur remembered Sam Stratton, and Mrs. Douglas MacArthur still today, who still comes up for every summer and vacation in Saratoga, and she still knows about that Congressman next door over in Albany and Schenectady, and she asks for him, and I just want him to know that we are going to miss him so much. I am going to miss the plane rides back and forth, but I do not want the gentleman to think he is getting away because I can assure him that all his expertise and his knowledge that a still neophyte like me who has only been here for 10 years is gong to call on him every chance we get to help us.

I say to the gentleman from New York [Mr. Stratton], thank you very much for everything you've done. God bless you. We love you.

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Mr. HORTON. Mr. Speaker, I thank the gentleman, and I yield to the gentlewoman from Maryland [Mrs. Byron].

Mrs. BYRON. Mr. Speaker, let me just say that 30 years seems like a long time for some of us, and yet 30 years is not very long. When I think I have been here 10 years, it does not seem long at all.

Sam was a teacher. How many of us has he taught? How slowly and with what difficulty he has taken the time and the patience to explain the complex issues that we have had before us on the Armed Services Committee, issues of arms control, issues of disarmament.

SAM has in his little finger a wealth of information that if I am here for 20 more years I will never begin to achieve, and yet SAM has had the patience diligently to make sure that those of us who are on the Armed Services Committee, the new members, understand the seriousness of the issues that are before us.

SAM has made the decision to hang up his voting card, but SAM is not going far away. He is already worried about what is going to happen next year on some arms control issues. He is already planning how he can be involved in the process of making this a safer country.

You know, we are all here by the political process. We are all politicians. Politics changes from time to time. They have a new buzz word today and that is the litmus test, do we have to wrap ourselves in the flag to prove that we are Americans.

I do not think anybody would ever question SAM's love of his country. I doubt very seriously if there is another Member of this body who has as much love, respect and admiration for his country. He only wants the very best for the country.

He has fought with some of us and he will fight with us again to make sure that we understand what is the very best for our country.

We have heard a lot of Members talk about SAM and his influence with the Japanese and his language capabilities with the Japanese, and yet it is not only the Japanese that he understands so well. How many times have I heard SAM in his wonderful French accent stand and sing the Marseillaise.

So SAM and Joan have chosen to leave this body, but not to leave us and leave our hearts.

I am very proud to say that they are constituents of mine. They have chosen to live in my congressional district.

So now as you put your card back in your wallet, we are not going to say "sayonara." We are not going to say bon voyage. We are not going to say, SAM, it has been a great pleasure to work with you and this country is so much richer for having you give 30 years in this body to make sure that we understand what is right and wrong.

Mr. HORTON. Mr. Speaker, I thank the gentlewoman for her very moving remarks.

Mr. Speaker, I yield to another gentlewoman from Maryland [Mrs. BENTLEY].

Mrs. BENTLEY. Mr. Speaker, I thank the gentleman for yielding to me.

I was only a sophomore, which means I have not been around very long and I have not been on the Armed Services Committee, so I did not have the opportunity to associate with SAM on that committee; however, because the defense industry is so very important to my district in Maryland, I learned very early on that SAM STRATTON was the leader in regard to defense legislation, someone who could be counted on for advice on all military and veterans affairs, a gentleman and a scholar.

I want to say simply, thank you, SAM STRATTON, for your helping hand, not only to neophytes like myself, but also for what you have done for America.

Mr. HORTON. Mr. Speaker, I thank the gentlewoman very much.

Mr. Speaker, I yield to the gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Speaker, I thank the gentleman for yielding to me.

I have been very moved and touched hearing all these marvelous remarks about SAM, all of them tinged with affection and respect, but also a little sadness that when the 101st Congress convenes, SAM STRATTON will no longer be here playing that towering role of wisdom, insight, knowledge and love of country that he has played, yes, for just about 48 years that I know of. That is a remarkable statistic, but SAM first joined Government service in 1940 when he signed on as an aid to Congressman Tom Eliot of Massachusetts.

Imagine, 48 years of Government service.

I first met SAM 45 years ago in 1943 when we both served in the Naval Intelligence Japanese Language School in Boulder, CO. I have been a friend and admirer of SAM STRATTON ever since then. That is a long time to cherish a friendship.

SAM has not only developed into a formidable scholar, a formidable expert on military subjects of all kinds, especially subjects within the purview of the Subcommittee on Procurement and Military Nuclear Systems that he has chaired of the Committee on Armed Services, but SAM acted out his role in real life.

You know, there are some among us whom we have heard from recently who are very tough on defense, who are very strong on defense, but when push came to shove in their own lives, they showed no great zest for serving their country in the front lines, no great zest for combat or getting within thousands of miles of combat, but SAM served his country in two wars, World War II and the Korean war, as a naval officer, and he picked up two Bronze Stars on the way.

So SAM combines the scholar, the expert, with an exemplary example of personal courage, personal commitment, personal willingness to put his money where his mouth was in defense of his country. He offered it all.

I am grateful to SAM, along with all the rest of us, for his formidable intellectual contribution to our country and his magnificent showing of personal courage, personal valor, above and beyond the call of duty in combat when the times and the conditions and the needs of his country called upon him.

For that we love you, we respect you, we revere you, SAM.

(Mr. SCHEUER addressed the House in Japanese.)

Mr. HORTON. Mr. Speaker, I thank the gentleman for his very moving tribute.

Mr. Speaker, I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding to me. That is a very difficult act to follow.

Mr. Speaker, I am pleased to join with my colleague from New York [Mr. HORTON] in paying tribute to the dean of our New York congressional delegation, the Honorable SAMUEL S. STRATTON, who is preparing to leave our Chamber for a well-earned retirement.

I thank our colleague from New York [Mr. HORTON] for his thoughtfulness in reserving the time for this special order.

Throughout his illustrious career, SAM STRATTON has been dedicated to serving the people of his district. This commitment has been duly recognized by those he served, as revealed by the fact that they have rallied behind him and overwhelmingly reelected him 14 times. This recognition stretches far beyond the boundaries of his district, reaching out beyond New York State throughout other States and other nations. SAM has been an outstanding leader in his post as the dean of our New York congressional delegation, and he has become an integral, leading part of the House Armed Services Committee.

Perhaps the greatest tribute that can be paid to SAM STRATTON is to recount the fact that, in his earliest years in the House, the State legislature continually and repeatedly redrew his district lines in hopes of replacing him with a Member of the opposition. Those redistrictings became more and more bizarre. However, the State legislature—and, may I point out Mr. Speaker that this was years before my own service in the New York State Legislature—was unsuccessful in removing this outstanding lawmaker from office. Americans of both parties learned early that SAM STRATTON is a rare resource that should not and would not be lost to our Congress.

When SAM STRATTON first came to Congress, he brought a wealth of talent with him. An assistant to former Congressman Thomas H. Eliot, SAM left the Hill to serve in the Navy during both World War II and Korea—one of the few Members who is a veteran of both conflicts. SAM served in the State Department between those two conflicts. After his return from Korea, he became a radio and TV news commentator in his home town of Schenectady. He was soon elected a member of the Schenectady City Council and served as mayor from 1956 to 1958, when he was elected to the first of his 15 terms in Congress.

Sam's first race in 1958 was an uphill battle, and was the first of many uphill battles that he vigorously waged and won. For the past 30 years, he has not stopped fighting for what he believes in and for what he believes to be good for our country.

Mr. Speaker, I am honored to stand here with my colleagues in honoring Samuel S. Stratton, a man who personifies the best qualities of dedication, loyalty, and courage in the face of challenges. I am proud to have been afforded the opportunity to work with Sam and, more importantly, to be able to call him a friend.

We are going to miss Sam in this Chamber, in our N.Y. delegation, and in his work for our Nation's defense. However, we realize that Sam's retirement is richly deserved. We wish Sam and Joan good health and happiness in the years ahead.

Mr. HORTON. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I yield to the gentleman from Georgia [Mr. Ray].

Mr. RAY. Mr. Speaker, I want to thank the gentleman from New York [Mr. Horton] for giving me this opportunity to honor my friend and my chairman.

Sam Nunn and I would say to the gentleman from New York, Mr. Stratton, that these people that surround you, your colleagues from New York State, Mr. Horton among others, do you a great amount of credit and you do them a lot of credit, too. I am grateful to be here tonight.

Let me say to the gentleman from New York, Mr. Horton, that I am not one of those who has known Sam Stratton for a great number of years, such as many of his friends have testified to. In fact, I never heard the name Sam Stratton until I came to Washington on November 7, 1972 with Senator Sam Nunn to serve the unexpired term as his Administrative Assistant for Richard Russell, but after Senator Nunn took office I was summoned down to Midville, GA, on December 27 by the former chairman of the House Armed Services Committee, Carl Vinson, who wanted to give me some instruction on how to run Senator Nunn's office, who by the way is his great nephew. Congressman Vinson has, of course, passed on, but he served in the Congress for 50 years and many of those years as chairman of the Armed Services Committee.

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He told me, among other things, to be sure that Senator Nunn lived across the river in Maryland so he would not have to cross the bridges in traffic and to put snow tires on his car, and he said, "What I want you to really do if you are going to be his administrative assistant is go and find out about this fellow on the House side on the committee named Sam Stratton, and be sure that Sam Stratton looks after Sam Nunn and teaches him how to be a good member of the Senate Armed Services Committee."

I took that advice, but I was a little bit frightened. I had heard so much about the magnitude of this giant on the House side that I weaved my way into his office through his administrative assistant, Roger Mott, for 2 or 3 years without Congressman Stratton knowing who I was, and we ferried stuff to Sam Nunn out of his office.

I credit Sam Nunn being the giant and stature that he is in the Senate today, some of the patterns that he followed, as from Mr. Stratton.

I was almost always impressed with the messages that came to the Senate from the House that always, if it dealt with Armed Services, had Sam Stratton's name involved in it. I am grateful to have then later on in 1982 been elected to begin office in the Congress in 1983, and there again I went to Sam Stratton. He helped me. I am sure I would not be on the Committee on Armed Services today if it had not been for Sam Stratton.

He also saw that I got on his defense subcommittee, and I think that is the premier committee, Mr. Stratton, in the House of Representatives.

He also did something else. He appointed an Arms Control Commission that year and put Congresswoman Beverly Byron in charge of it, and the only freshman he put on there was me. That gave me my thrust and my start. I think I have come a long way, but some of my colleagues might not. I credit any success that I might have had on that committee to Sam Stratton, and I am grateful to have served that time with him.

I think that he is making a timely exit. All of us have to move out at some time, and he moves out at a time when he can be very meaningful to the future and some of the people that he has worked for and meant so much for and some of the institutions. One that always comes to my mind is Syracuse University. Most people do not realize that some $10 to $13 million a year that went to Syracuse was the absolute direct result of Sam Stratton, and in my opinion, some of his heaviest work in the future ought to be for Syracuse University. They ought to be sure he does not get away.

I want to thank the gentleman from New York [Mr. Horton], thank you so much for being able to stand here and support my good friend and wish him well—Sam Stratton. I am now going to be going down to his reception, and I hope he will be there soon.

MR. HORTON. Mr. Speaker, I thank the gentleman for that experience. I know many of us were not aware of the gentleman's relationship with Sam, and that is one of the intriguing things that has been occurring this afternoon is to hear from different people how they first met Sam. That is a very interesting story about a former Member of the House who was here when I was here and who was chairman of the Committee on Armed Services, who is revered by all who ever knew him. As a matter of fact, there is an aircraft carrier named the Vinson, named after him, and he was there for all of it except when it was actually commissioned. I happened to be there when it was commissioned, but he was a great Member of Congress, and for the gentleman to compare Sam with him, I think, is a beautiful thing.

Mr. RAY. Mr. Speaker, I might add one other thing. Two or three other people who gave me a lot of advice in my early first year as a Congressman was Russ Blambert, former chief of staff of the Committee on Armed Services, who said to lean on Sam, "He will treat you right," and later on Frank Slapchek became a dear friend, and he said, "Listen, Sam Stratton is the man you want to listen to in the House of Representatives." Of course, John Ford, who is in the committee today, gave me some good advice along that line.

Mr. HORTON. I now yield to the gentleman from New York [Mr. Manton].

Mr. MANTON. Mr. Speaker, I am honored to join with my colleagues in paying tribute to our close friend and colleague, Sam Stratton, who is the dean of the New York delegation. Sam is retiring after a remarkable and distinguished 30 years of service in the House. Although Sam is leaving this body, I am certain he will continue to be an advocate for a strong national defense, a competent and compassionate government, and an economic policy that protects the working family.

Much of Sam's political career has been a fight against the prevailing political odds. Sam was first elected to the House in 1958. He was the first Democrat to represent the Schenectady-Amsterdam Congressional District in Congress in more than 40 years. When the Republicans were determined to defeat Sam through redistricting, he simply moved to another district and won a seat that no Democrat had held during the 20th century. Sam once again survived redistricting in 1970, and since that time has represented New York's 23d District.

As a member of the House Armed Services Committee, Sam has been a consistent and tireless voice for a strong and effective national defense. As chairman of the Subcommittee on Procurement, he has worked to reform the Pentagon's procurement system. Sam was also an early critic of President Reagan's decision to send U.S. Marines to Lebanon in 1983 as part of a peacekeeping force. If the administration had only heeded Sam's wise advice, the tragic bombing in Beirut that killed 241 brave marines might have been avoided. After the bombing, Sam led a successful fight to remove our troops from Lebanon.

Sam, in his capacity as the dean of the New York delegation, also has used his position on the Armed Services Committee to protect jobs, defense contracts, and military installations in New York. He fought to save the contract for the T-46 Air Force training aircraft produced on Long Island. He was also a strong supporter for the establishment of a Navy homeport in Staten Island and worked diligently for the revitalization of Fort Drum in upstate New York. I am proud to say that I supported Sam in every one of these efforts.

Sam was also a key advocate for the restoration of the west front of the Capitol. For several years, Sam fought for the funding necessary to refurbish the Capitol's deteriorating west front. I know Sam was deeply proud when the scaffolding was removed and the work of the west front was completed. The millions of Americans who travel to Washington to enjoy the splendor and beauty of our capitol building have Sam Stratton to thank. He was a major player in preserving an important American landmark.

Mr. Speaker, we should all thank Sam Stratton for his years of service in the House. Sam has left an indelible mark on this institution. He has never been reluctant to forcefully speak out on issues of importance to him. The popularity of the cause was never Sam's barometer. Instead, he always chose to follow his principles.

Mr. Speaker, I know all my colleagues join me in wishing Sam Stratton our very best wishes as he retires from the House. I know he leaves this body with his head held high and a deep sense of satisfaction in his heart.

Mr. HORTON. Mr. Speaker, I thank the gentleman from New York for his very moving remarks.

I yield to the gentleman from California [Mr. Hunter], a member of the Committee on Armed Services.

Mr. HUNTER. Mr. Speaker, I thank my friend, the gentleman from New York, for taking out this time and for his leadership in this special order for this very special person, Sam Stratton, who is the only gentleman for whom I would dress up in a gas mask and a chemical warfare outfit and stand on the floor of the House of Representatives while he made a speech telling us why we needed to have a strong binary chemical weapons system in this country. Having made that display and worn that gas mask, I had several colleagues request that I keep the mask on during subsequent sessions. I did not oblige them, but I did that because Sam Stratton is a guy who has constantly been on the right side of the issue, and he is a guy whose instincts have always, in my estimation, been correct.

If we look back in history at Mr. Chamberlain and Mr. Churchill and their respective political positions prior to World War II, we realize that they were both highly intelligent people. Mr. Chamberlain was every bit as intelligent as Winston Churchill, but he did not have the right instincts. Winston Churchill had the right instincts. He did not trust that man named Adolf Hitler, and he did not trust the Nazis, and Mr. Chamberlain unfortunately did, and because of that, a great tragedy befell the world.

I look at Sam Stratton as a guy who, on national defense, has always had the right instincts, and I heard several times during this special order other Members commending Sam for the refurbishing, for the effort he made to refurbish the capital of the United States. In a very real sense, Sam Stratton has provided for the refurbishing of many capitals around the world with that quality of freedom because the strength of the United States has helped us to maintain not only our freedom but the freedom of many, many allies, and for that we are very grateful.

Let me tell the Members that Sam and I have not always seen eye to eye. I recall a trip we made to Lebanon, because we were very concerned about our Marines, and I remember, and I think this should really be a tribute to the Committee on Armed Services, too, because I remember a lot of senior members of the Committee on Armed Services getting on a fairly uncomfortable plane with no windows, and we had other things to do, and I came along as one of the Junior members. We flew out to Lebanon in some pretty inconvenient conditions, because we were concerned, and Sam Stratton was concerned as a leader about the security and safety of our people out there. I saw real dedication to duty, a real sense of duty that emanates from that Committee on Armed Services that I think is unique in politics.

Mr. Speaker, those leaders, many of whom served their country as Sam so nobly did in World War II, it was a real, real pleasure and a real privilege to be with Sam on that trip.

I have to tell the Members that I wanted to investigate a few other things, and I told the commander of the particular ship we were staying on after we had been down there that I wanted to take a chopper back and check some other things out the next day. Sam told me that I was not going to be taking that chopper back and that I was going to be returning with the Codel, so shortly thereafter and, in fact, after Sam instructed me of that, I found that the pilots of the ship were not disposed to take me back to Beirut, and I ended up, because I think I was as hard-headed as I am, staying there anyway, and letting the Codel go back, and then I borrowed a Master Charge from the commander of the 6th Fleet, Ed Martin, and Master Charged my way back to the United States after a couple of days. Ed Martin wrote me a wonderful letter a few weeks later after I had sent him the money back and reminded me that I had shortchanged him $80.

Nevertheless, when I got back, Sam received me warmly, and we continued to work on issues in that wonderful, wonderful committee upon which really the work of all of our committees rests, because without that national security, without a strong America, we cannot discharge the other duties that we have to the American people.

Let me just conclude and thank again the gentleman from New York [Mr. Horton] for giving us this time, by saying that when I think of Sam Stratton, I think of three books that were written by the great Jim Webb, our former Secretary of the Navy, and a highly decorated Marine in Vietnam. He wrote three books really about Vietnam, but really about America. They were entitled "Fields of Fire," "A Sense of Honor," and "A Country Such as This," and I think of Sam Stratton when I think of those three titles, because here was a man who embarked on those fields of fire in World War II, and much has been said about his service to the Nation and his great abilities in World War II. He always handled himself in that Committee on Armed Services and on this House floor in difficult debates with a real sense of honor, a real sense of the importance of keeping America strong even in the face of overwhelming opposition and without regard to the politics of the debate.

I think only in a country such as this, being a member of a delegation from San Diego, CA, 3,000 miles away from Sam's great district in New York, only in a country such as this could a great leader like Sam Stratton and a new Congressman like Duncan Hunter, coming from San Diego, get together in that wonderful Committee on Armed Services and work to keep America strong.

When I think of the words "peace through strength," I always think of Sam Stratton, and I thank the gentleman from New York [Mr. Horton] for allowing me to share this.

Mr. HORTON. That is a very nice tribute to SAM, and I am sure he appreciates it. SAM, I know we are imposing on you. There is a reception going on, but we have one more speaker. He is one of the highly regarded members of our delegation, a member of the Committee on Ways and Means, and one that I know you have a great deal of admiration for, and I would like to now yield to the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. Mr. Speaker, let me thank our new dean for being here to take out this special order for our friend who has been referred to in the past as SAGEBRUSH SAM. I did not know he was called SAGEBRUSH SAM until I read about him and found out that before he attained leadership in public life he used to be a sports announcer.

Mr. HORTON. If I had known that and if you had known that, we would have had him singing and playing at the New York State festival. The gentleman from New York [Mr. RANGEL] and I cochaired the New York State festival.

Mr. RANGEL. We certainly could not do it unless we had the leadership of SAM, who recognized that New York had to reach out, and that is exactly what I wanted to talk about, my dear friend and colleague from New York, that being the dean of our delegation means a little more than just being a senior Member, SAM.

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It means somebody that has gained the respect of a delegation that has liberals and conservatives, that has doves and hawks that represent urban communities and rural communities and where more or less almost every one of us has some kind of an Indian chief running for election, running for mayor, running for Senate, running for Governor, and yet in his own way of leadership the gentleman from New York [Mr. STRATTON] was able to bring that glue that has been so important and so missing in our delegation, to have us be one of the most effective delegations that we have in this Congress.

The gentleman has been able to take Republicans and Democrats and have the Members work together as a team, and it really did not make any difference how much different our constituency was, that all of us who are a little stronger, a little more effective because we knew he bound us together in a group that felt we had to stick together. It was in the best interest of the people of the State of New York and indeed the people of this great Nation.

SAM, it is hard to say so long because you have not been just a great leader but have been a great colleague and a great friend, so that I know that as long as the gentleman has us around and there are things to be done, that SAM STRATTON will be there to make certain that that job is done.

I would like to take the time out on behalf of our delegation to thank your lovely wife, Joan, for not only sticking with you, but in sharing you not only with the Congress and not only with the Committee on Armed Services but with the Members of your delegation. I would like to thank your children for allowing you to provide that leadership many times when they wanted to be with you, and I want to thank your staff for keeping all of this together, to allow the gentleman to be able to leave here as indeed one of the historic leaders of this U.S. Congress, and at the same time there has been no problem that the gentleman has been patient and understanding, that whether it was just a Member's ego or pride or something that was important to their district, maybe it was a dear colleague, maybe it was writing someone in the administration, but you always presented it with the same type of importance as though it were someone from your district. So I want to thank the gentleman on behalf of the delegation, but more importantly, your family and your staff on behalf of the Congress. What the gentleman has done is set a very high standard for all Members, but has allowed Members to leave here knowing that we can reach that, we can attain that if we work hard at it and give our profession an honorable name, which it deserves, because SAGEBRUSH SAM was the one who led our delegation together for so long.

Thank you, SAM, and thank you, Joan.

Mr. HORTON. Mr. Speaker, I want to thank the gentleman from New York [Mr. RANGEL] for his wise remarks and very sincere remarks about our leader.

I would like to conclude this special order by saying on behalf of all our colleagues, God bless you, SAM and Joan, and your family.

Mr. ASPIN. Mr. Speaker, for three decades, SAM STRATTON has represented Schenectady in the House. They have been a long and a fruitful three decades. On the Armed Services Committee on which SAM has served so ably, those decades have stretched from the height of the cold war, through Vietnam and détente to the onset of the Gorbachev era.

SAM has made many contributions over those years to New York State and to the Schenectady and Albany areas. But I take special note of his service on the Armed Services Committee since that is where we have worked together—and sparred periodically—over the years.

SAM'S contributions are most visible simply by noting that he has served as a subcommittee chairman for 22 years—all the way back to 1967 when he became chairman of the Special Subcommittee on Anti-Submarine Warfare. Since then, he has served successively as chairman of the Compensation Subcommittee, the Investigations Subcommittee, and—since 1981—the Procurement Subcommittee.

But SAM'S involvement in defense matters long predates his election to Congress. He worked as an aide on military issues for Congressman Thomas Eliot of Massachusetts in 1940 and 1941. He was here when this body debated whether to institute the draft in 1940. And he was here as a senior leader when we debated whether to shift to an All-Volunteer Force.

World War II saw him in uniform serving on the staff of General MacArthur as an intelligence officer. And he was back in uniform for service in the Korean war.

His experiences in World War II formed SAM'S outlook just as the Vietnam experience formed the views of a later generation. His experience gave him a firm commitment to national defense and a commitment that we should never again find ourselves training with wooden rifles, as we did in 1940.

But SAM has never been a reflex supporter of Pentagon positions. I recall his long effort to force the services to open the academies to women. That infuriated more generals and admirals than anything the most hard-nosed Pentagon critic could do. It took years. But SAM eventually won that battle. He was never thanked by anyone in the Pentagon—but he will be thanked by generations of cadets and midshipmen yet to come.

I think SAM'S longest battle was probably the one to save the West Front of the Capitol. He took on our own institutional leaders in the House on that one. And he won again. Perhaps the restored West Front we see today is the ideal monument to SAM'S persistence and skill.

SAM has always been willing to battle the powers that be, and that is the quality I have most admired in SAM over the years. That combativeness dates back long before I first met SAM. I don't really know when it began. But politically, it showed up in 1949 when he ran as a reform Democrat against the machine in Schenectady. His skill and persistence then enabled him to win office with such stunning majorities as 125 votes in a city council race in 1953 and 282 votes for the mayorship in 1955—to his reelection by 3-to-1 majorities in recent years.

For the last decade, SAM has chaired the Procurement Subcommittee—a job that is often thankless since it requires the chairman to say "no" to so many Members seeking favors for their own districts. These last 7 years of the Reagan era have been particularly challenging because the subcommittee has had to cut so much off the inflated budget requests in order to meet the targets set by the Budget Resolution. We have had to take well over $50 billion out of the procurement requests in recent years. I am certain that no other subcommittee chairman in the entire history of the republic has had to cut back a presidential budget request by anything approaching the volume SAM has had to deal with. It was a challenge, and certainly not a pleasant one for SAM. But he came through each year—year after year—meeting the budget mark.

Over the years, SAM has developed a reputation for crustiness. Having had some of the crust drop on my lapels. I can say that the reputation is well deserved. His crustiness, his iconoclasm, his firmness on behalf of the causes he truly believes in are a product of the battles he led in the 1940's and 1950's to reform a crustaceous Democratic Party in his part of the country.

And, in this year of somewhat turgid political campaigning, I think it is important to understand where SAM comes from. He retires as a senior statesman with almost a third of a century's service in the House. But he departs with the same attitudes and mannerisms that brought him here. He came here as a reformer—as a man ready, willing, and able to challenge the establishment, unwilling to accept received wisdom, and prepared to fight for a cause that he perceived to be right even if unpopular.

That has been SAM's strength over the years. That is what brought him here. And that is what I shall remember in years to come as his efforts on the Armed Services Committee continue to reverberate around the committee hearing chamber.

Mr. LENT. Mr. Speaker, I join with my colleagues in paying tribute to a respected colleague and very dear friend, Congressman SAM STRATTON. SAM is retiring after 30 years in Congress and I welcome this opportunity to recognize his many laudable achievements.

Throughout his distinguished career in Congress, SAM's commitment to a strong defense has gone a long way toward ensuring the safety and security of our nation. During his tenure as a Member of the House of Representatives, SAM worked tirelessly to promote peace though strength.

A senior member of the House Armed Services Committee, SAM's patriotism and commitment to the protection of democracy has earned him the deep respect and admiration of his colleagues and the gratitude of a nation. And as the chairman of that Committee's Procurement and Military Nuclear Systems Subcommittee SAM's expertise and leadership in defense matters will be sorely missed.

During World War II SAM was highly decorated for his valor and bravery. SAM witnessed firsthand the devastation of war and this experience served only to strengthen his commitment to peace. He did not want America to ever experience the horror and destruction he saw while serving in World War II. This country has much to thank SAM STRATTON for—the courage of his convictions have helped to ensure a strong, effective defense system that will advance a lasting world peace.

SAM has also worked hard to promote the vitality of business and industry in New York State. Indeed, the fact that New York State is one of the largest defense contracting States in the country is due in large part to SAM'S tenacity and effectiveness as a Representative from the 23d Congressional District.

SAM'S good works and idealism will not be diminished by his retirement. His efforts to improve our world and the courage of his convictions will endure. I join my colleagues in wishing SAM all the best in his well-earned retirement.

Mr. HOUGHTON. Mr. Speaker, SAM STRATTON will be missed. I guess you could say that about anybody, but SAM is special. You see, this is a man who has served this country of ours really for all of his adult life. Many of us "do our thing" for our country, but few can match SAM'S contribution.

SAM fought in World War II. He was a hero pure and simple. He joined the House in 1958, and here he has also been a hero. He has gathered in awards in his time and has given not a few. He has received honorary degrees. His name is listed on many House bills, legislation aimed at helping all citizens as well as those of his district.

But of course this isn't what most of us consider when we think about SAM STRATTON. We think of a decent man, a loyal man, an intelligent associate—someone about whom we'd say "yes we served with SAM. He is the finest there is."

SAM, we're going to miss you. And you know what—so is this country.

Mr. BENNETT. Mr. Speaker, I do not know that in my 40 years in Congress I have ever been associated with any one who knew about National Defense and worked harder to see that our defense objectives are achieved than SAM STRATTON.

Since I have had the pleasure of sitting next to him on the House Armed Services Committee for decades now, the loss will be a personal one, as well as an institutional one, to me. I will miss his presence there on the committee and in the Hall of Congress working for a strong national defense, but I know that whatever he may do in his retirement he will continue his fight for the security of our country; something we all hope to achieve in the fullest degree and which he has done much to secure; all that his very able powers allowed him to do.

SAM is bright, able, and dedicated. It is particularly important at this time of his leaving Congress, that we congratulate him on the excellence of his service. He will be greatly missed.

Mr. DOWNEY of New York. Mr. Speaker, I would like to take this opportunity to pay my respects to my friend and colleague, the dean of the New York delegation, the Hon. SAMUEL S. STRATTON.

I have known SAM since I first came to this House in 1975, and indeed I served with him on the Armed Services Committee, where I learned first hand of his stalwart commitment to a strong national defense.

Sam first came to Congress to work for Congressman Thomas Eliot in 1940 and from the outset he has identified himself with military issues, but he has also served his constituents well in upstate New York since he was first elected in 1958. Since that time he has been continually re-elected.

Mr. Speaker, I know that you share my keen sense of loss, knowing that SAM will be retiring at the end of this historic, 100th Congress. I join my colleagues in the New York delegation in wishing him well.

Mr. GREEN. Mr. Speaker. It is my distinct honor to pay tribute to a colleague from New York and dean of the New York delegation, SAM STRATTON on the occasion of his retirement.

It has been a pleasure working with SAM. Mr. STRATTON has always been a man who has voted with his heart and by his conscience, even if a majority in his party went the other way.

Mr. STRATTON is one of the strongest men I know, and I will always admire the fighter in him. When SAM believed in an issue, he struck with it wholeheartedly and was often the sole person in support of otherwise unpopular legislation.

SAM STRATTON has had an undying faith in this country since he first entered public service in 1950 in Schenectady and thoughout his term as mayor of that city. He proved this in such trying times as the post-Vietnam period in the early seventies, and again in the early eighties when U.S. troops were killed in Lebanon.

SAM was able to communicate with the Reagan administration because of similar policies with regard to military procurement and defense. His work on the House Armed Services Committee has helped to instill a strong defense in this country which has, in turn, strengthened the reputation of the United States as a leading world power.

As chairman of the Armed Services Subcomittee on Procurement and Military Nuclear Systems, Mr. STRATTON has gained a reputation for himself as an ardent advocate of increased defense spending and new weapons systems. He has consistently opposed proposals that he sees as weakening or posing threats to the strong defense that he has played such a leading role in helping to build.

On behalf of myself and my wife, Pat, I would like to wish SAM and Joan Stratton a happy and healthy retirement.

Mr. FISH. Mr. Speaker, I rise tonight to pay tribute to a longtime friend and colleague, SAM STRATTON. Since I came to the Congress in 1968, SAM has been a guiding force and an outstanding legislator. As dean and chairman of the New York delegation, he has skillfully orchestrated the delegation into bipartisan support on behalf of our State. I am a great admirer of his talents.

In 1970, a special reapportionment in New York State had me running into Otsego County and part of Montgomery County. Both areas had previously been represented by SAM, and as I traveled through these counties, the affection and admiration for this man quickly became apparent. I remember farmers recalling SAM's early morning trips in their milkwagons, and longtime Republicans speaking without hesitation about his tremendous accomplishments.

SAM has been an outstanding member of the House Armed Services Committee, establishing himself as a leading congressional spokesman on defense matters. This is reflected in President Reagan's appointment of SAM in 1982 as a member of the U.S. Delegation to the second special session of the U.N. General Assembly on Disarmament.

The 23d Congressional District is fortunate to have had such a talented representative in Washington. His service to his constituents, the State of New York, and this country will never be forgotten.

Good luck my friend, and thank you.

Mr. MONTGOMERY. Mr. Speaker, I commend Mr. HORTON and Mr. RANGEL for taking this time, and I join them in paying tribute to our colleague from New York, SAM STRATTON.

SAM is one of my closest friends in the Congress. I have enjoyed working with him on the House Armed Services Committee. He has been at work for the people of his district for 30 years and has served them well. They will miss his outstanding service, and so will we.

SAM has been a city councilman, mayor, lecturer, and television commentator. He had a distinguished war record as a veteran of both World War II and Korea. He brought that experience in the military and in public service to the Congress in 1958, and has been one of this body's most effective legislators ever since.

As chairman of the Armed Services' Procurement Subcommittee, SAM has had a strong hand in helping rebuild this country's military forces. He was always right there, speaking out on the need for a strong defense.

I found SAM to be especially helpful in making sure the National Guard and Reserve received the proper funding. The Defense Department never asked for enough to adequately fund the needs of our National Guard and Reserve units, but I knew we could count on SAM to take care of our Reserve components.

SAM STRATTON is a great American. He has been a leader in this Congress and we will miss him. I wish him the very best.

Mr. STENHOLM. Mr. Speaker, I am honored to rise and join in this tribute to my friend and fellow colleague, Mr. SAM STRATTON. I came to Congress with the class of 1978, and during my 10 years here, I have come to know and greatly admire SAM. He is a good man who will be sorely missed in this Chamber.

I am saddened by his retirement because this House is losing a true gentleman and talented leader. But I am happy for SAM and his family. He has worked hard for the past 30 years ably representing the 23d District of New York. After such a distinguished career, he has earned and now deserves time to himself, his children, and grandchildren.

I feel honored to have had an opportunity to work with SAM STRATTON. As a fellow member of the Conservative Democratic Forum, I worked with him on many issues. I could always rely on SAM to let me know how he felt. He is a man of his word. I knew when he was casting a vote, he was voting his conscience. I never questioned what he did. I knew that he always had the best interest of America in his heart.

SAM STRATTON has always had a real determination to serve his constituents and this country. He first exhibited that duty and devotion early in his life when he served in the Navy with General MacArthur during World War II. He was twice cited with the Bronze Star. His knowledge and experience in defense matters gave him the tools and understanding to do a tremendous job on the House Armed Service. His expertise on that panel has been invaluable.

Our Nation and this body have been fortunate to have SAM for the past three decades. SAM, I wish for you good health and all the best in your next endeavors.

Mr. LAFALCE. I rise to recognize any pay tribute to my dear friend and devoted public servant, Representative SAM STRATTON, of New York's 23d District.

Sam has led a life of distinction, demonstrating greatness in all his endeavors. At Haverford College, he was elected to Phi Beta Kappa. In addition to earning masters degrees at Haverford and Harvard University, he received honorary doctorates from Hartwick, the College of St. Rose, and Union College. During World War II, where he served as a naval intelligence officer on the staff of General MacArthur, he was twice awarded the Bronze Star.

SAM STRATTON has never taken the easy road in life. After completing his military duty, he chose to embark on a career of public service. In 1949 he was elected to the Schenectady City Council, and he became mayor of Schenectady in 1955. In 1958, he won his first congressional seat. The victory was considered quite a phenomenon, as SAM was the first Democrat elected from his district since 1916, and the only Democrat in the entire upstate New York House delegation outside Albany and Buffalo. Always an energetic campaigner, SAM beat the odds in races made tough by redistricting, and he has been reelected a total of 15 times.

During his 30-year tenure in the House, he has earned the respect of constituents at home as well as colleagues in Washington, who effectionately call him the dean of the New York delegation. He has had the courage to stand by his convictions, often taking difficult stands and advocating causes he considered critical in public policy decisions. He fought successfully to open the doors of military academies to women. His voice proved effective in insuring that the historic integrity of the U.S. Capitol's west front was preserved.

As chairman of the House Armed Services Subcommittee on Procurement and Military Nuclear System, SAM is recognized as a leading spokesman on defense issues. In 1982 he was one of five Representatives nominated by President Reagan to attend the second special session of the U.N. General Assembly on Disarmament. In the 96th Congress he was appointed by Speaker O'Neill as an observer to the SALT II negotiations in Geneva and to the Mutual and Balanced Force Reduction Talks in Vienna.

I offer a hearty congratulations to SAM for his outstanding achievements in years past and wish him only the best in the years to come.

Mr. RINALDO. Mr. Speaker, it is with mixed emotions that I join my colleagues in honoring our good friend SAM STRATTON as he prepares to leave this body after 30 years of service.

SAM has been a good friend during our years in the House together. For the past several years, he has been a guest speaker at my annual Military Academy Luncheon for my Academy appointees. As an expert on defense he was able to give these future officers an excellent idea of what to expect in their military careers. I am very grateful to Sam for his participation in these luncheon seminars.

As a member of the House Armed Services Committee, SAM has made a valuable contribution to our national security and has been a strong supporter of our men and women in military service.

For the past 30 years SAM has served the country and the people of New York's 23d District with distinction and has earned the respect and admiration of his colleagues from both sides of the aisle. He will be sorely missed by all of us, but he has worked hard and certainly deserves the opportunity for a quieter life.

SAM, you have my best wishes for every happiness in the years ahead and the good health to enjoy the leisure time pursuits which public service does not permit.

Mr. NOWAK. Mr. Speaker, I am delighted to join my colleagues in this tribute to our highly esteemed colleague—the dean of the New York State delegation to this body—SAM STRATTON of Schenectady.

The impending departure of a senior Member of the House, especially one of the stature of a SAM STRATTON, can only be greeted by a mixture of emotions.

There is joy, or course, in the knowledge that he will be beginning a well-deserved retirement from this House where he has served for 30 years, a distinguished career that followed nearly another decade of local government service as a city councilman and mayor.

Simultaneously, there arises sadness at the realization that this House, this Nation, the Empire State, and its 23d Congressional District will no longer be served on a day-to-day basis by this influential veteran legislator.,

Certainly his expertise on defense issues will be missed on the Committee on Armed Services, where he has chaired an important subcommittee.

During his tenure as chairman of the New York delegation, SAM STRATTON through his leadership has helped nurture a bipartisan, unified approach when issues arose of special significance to our State. That continued delegation unity is an important part of the legacy SAM STRATTON has bequeathed his fellow citizens of the Empire State.

So, I join this salute to a gentleman and patriot who has set an outstanding example of quality Government service.

Mr. GARCIA. Mr. Speaker, I would like to take this opportunity to offer my sincere thanks and unyielding appreciation for a colleague who will be retiring from our halls upon the completion of his present term. As dean and chairman of the New York State delegation and a 30-year Representative of the Albany area, Congressman SAM STRATTON's career in Washington has been a marked demonstration of proficiency and accomplishment.

As a veteran of World War II and the staff of General MacArthur in the South Pacific, Congressman STRATTON was twice awarded the Bronze Star Medal. Elected to Congress in 1958, he is now serving his 15th consecutive term in his fifth different district.

Generally regarded as a leading congressional spokesman on all defense matters, SAM is the third ranking member of the House Armed Services Committee [HASC] and chairman of the Procurement and Military Nuclear Systems Subcommittee. His outstanding efforts at HASC led to legislation providing for the admission of women to the service academies and the investigation of the My Lai massacre that led to the reduction in rank of two generals.

Although SAM and I have rarely voted the same way on defense matters, I do realize the importance of conservative advocates of a strong national defense policy and I respect their views and opinions. As a representative of the South Bronx in New York City however, I realize, as do representatives from other similar districts from around the Nation, that we have the responsibility to set different priorities.

It does not go unrecognized, however, that Sam has been in full support of numerous human rights issues, most notably, the Dr. Martin Luther King Jr. National Holiday initiative, an issue to which many conservatives are unjustifiably branded as insensitive. I commend Congressman STRATTON and all the assistance I received from him during our fight for the designation of the MLK birthday.

In closing, I would like to express my sincere gratitude and respect for a man who has devoted a career to public life. The experience and leadership that he gave to the New York delegation and House of Representatives will be sorely missed. God Bless you and your family.

Mr. UDALL. Mr. Speaker, SAM STRATTON is retiring from this House at the conclusion of the 100th Congress, ending 30 distinguished years of service, and I'm going to miss him.

SAM is one of those legislators who is tenacious on the issues, and who was at the same time always willing to take another look when situations changed.

SAM especially leaves his mark on the Department of Defense. He devoted much of his service to an efficient, cost-effective defense, and we all are indebted for his efforts.

I join our colleagues in wishing SAM and his family well.

Mr. NICHOLS. Mr. Speaker, I would like to join with my fellow Members of Congress in honoring one of our most distinguished colleagues, Congressman SAMUEL S. STRATTON of the state of New York. After almost 30 years of serving his constituency of upstate New York, SAM has decided to retire. And I can assure you that his presence will be sorely missed in the Halls of Congress.

Congressman STRATTON and I have become good friends over the years most likely due to the fact that we both serve on the House Armed Services Committee and have a keen interest in the well-being of our national defense. Through the years he has been a strong supporter of our military and has believed that the best way to achieve a lasting peace is by having a strong defense.

Through his 34 years of service in the Naval Reserve, SAM STRATTON obtained a firsthand look at our military. Having started out in the Navy as a young and newly commissioned ensign, SAM STRATTON proudly served his nation in the uniformed services in World War II and was called to active duty once again during the Korean conflict. He was decorated twice with the Bronze Star for heroism and meritorious achievement in the heat of battle. His efforts and dedication were also duly recognized for upon retirement, he had achieved the rank of captain.

SAM STRATTON brought his appreciation of military service with him to Congress. Over the years it has been my privilege to be with him on any number of armed services trips and his knowledge of international affairs has been extremely helpful. No where has this been more evident than his knowledge of the Far East. He has mastered the Japanese language and is very familiar with the affairs facing the people of that part of the world.

Congressman STRATTON's presence on the committee will be missed very much. His advocacy of a strong defense policy is reflected by the conservative voting philosophy he has possessed over his many years in Congress.

So, Mr. Speaker, allow me to take this occasion to wish Congressman SAM STRATTON and his family the very best. It is our hope that he may enjoy the pleasant retirement that he so richly deserves.

Mr. HUGHES. Mr. Speaker, I rise to join in tribute to the dean of the New York delegation, our good friend and colleague, SAM STRATTON. I want to thank the gentlemen from New York, [Mr. HORTON and Mr. RANGEL], for organizing this bipartisan testimonial to one of the most respected Members of this body.

For three decades, SAM STRATTON has served the people of upstate New York, and his Nation, with honor and distinction. His record of naval service in world war II and the Korean war, his duty on the staff of Gen. Douglas MacArthur, his years of work in local government in his home town of Schenectady—these are the hallmarks of a man devoted to his country and his community.

As one of the ranking members of the Committee on Armed Services, and as chairman of the Procurement and Military Nuclear Systems Subcommittee, SAM STRATTON has come to be widely known as a leader in defense policy issues. His tenure in the Congress has been marked by a resolute commitment to strengthen and improve the readiness of our defense forces.

Mr. Speaker, for 30 years, from the depths of the cold war to the promise of glasnost, SAM STRATTON has been a central figure in shaping America's response to events in a dangerous world. We are a stronger Nation as a result of his dedication, and I know I speak for all of us when I say that this House will sorely miss his expertise and his wisdom.

Mr. ANNUNZIO. Mr. Speaker, I rise to join with my colleagues in the House of Representatives in paying tribute to the Honorable SAMUEL S. STRATTON, who is retiring after 30 years of distinguished service as a Member of Congress.

SAM STRATTON has dedicated his life to public service, and served our country with devotion during World War II and the Korean war. He was on the staff of Gen. Douglas MacArthur as a combat intelligence officer, and was twice awarded the Bronze Star. He returned to active duty during the Korean war, and retired from the service with the rank of captain.

Before coming to Congress, SAM STRATTON served on the city council of the city of Schenectady from 1950 through 1956, and was mayor of the city from 1956 through 1959.

Elected to the 86th Congress in 1958, SAM STRATTON has conscientiously represented his constituents from the 23rd Congressional District of New York. He is highly respected by his colleagues for his knowledge and expertise on defense matters, and has compiled an exemplary record of achievement on the House Armed Services Committee, as the chairman of the Subcommittee on Procurement and Military Nuclear Systems, and as a member of the Subcommittee on Investigations and the Defense Policy Panel.

SAM STRATTON is a fine legislator, and a Congressman of outstanding ability, who has provided dedicated service to his constituents and to our Nation during the 15 terms he has served in the House of Representatives. He will be missed by all of us in Congress who have had the opportunity to work with him.

I extend to SAM STRATTON my best wishes for abundant good health and continued success in all of his future endeavors.

Mr. CRANE. Mr. Speaker, few of us will be remembered by what we have done in this Chamber as long as our friend and colleague, SAM STRATTON, who is retiring in January after three decades of service in this House of Representatives.

SAM STRATTON's work here will long be recorded because he has played such a leading role for 30 years in fighting for a strong military to protect this Nation. His has been the credo of our first President, "To be prepared for war is one of the most effectual means of preserving peace."

And, like our first President, SAM STRATTON knew war. He served on the staff of Gen. Douglas MacArthur in Australia, New Guinea, and landed with the general in the Philippines. He also saw service in the Korean war. His tours of duty as a U.S. naval officer permitted him to view the devastation war can create.

The lesson stayed with him. As he himself noted some years ago, he has opposed nuclear war and devoted most of his adult life to finding the best and most effective way to prevent such a disaster.

His insight reaped huge rewards for the strong defense this Nation now boasts. He did not let politics stand in his path. He supported the strong defense policies of President Reagan and other Republican chief executives going back to the administration of President Eisenhower, just as he supported Democratic Presidents who sought to keep the United States free from the intimidations of those who do not relish peace.

And as hard as he fought for a strong defense, he fought against those who did not comprehend our needs and would have weakened our defense posture.

The United States is fortunate, indeed, that SAM STRATTON served her so well in war and in peace.

Mr. SCHULZE. Mr. Speaker, I rise today to pay tribute to my colleague, SAM STRATTON of New York, on the occasion of his impending retirement. He will be sorely missed by those in Congress who have had the opportunity of knowing, and working with, this distinguished American.

SAM began his public service career early in life. He first served as secretary to former Congressman Thomas H. Eliot of Massachusetts. He then moved on to the position of Deputy Secretary General of the Far Eastern Commission. In 1950 SAM began his long career of service to the citizens of Schenectady, NY, first as a member of the city council, and then as the city's mayor.

Twice during SAM'S career he was called on to actively serve his country through the U.S. Naval Reserve. In 1942 he served on the staff of Gen. Douglas MacArthur as a combat intelligence and Japanese language officer, during which he was twice awarded the Bronze Star. He was recalled to active duty during the Korean emergency, and is currently serving as an admiral in the Naval Reserve.

SAM was first elected to Congress in 1958 and has proudly served his New York constituency for 15 consecutive terms and through five different congressional districts. Through his position on the Armed Services Committee, where he currently serves as third ranking member, and his position as chairman of the Committee's Procurement and Military Nuclear Systems Subcommittee, SAM has proven himself time and again as a leading congressional spokesman on defense matters. In recognizing SAM'S prowess, President Reagan appointed him as a member of the U.S. delegation to the second special session of the United Nations General Assembly on Disarmament. SAM'S leadership and intelligence have also been recognized by his congressional colleagues from the State of New York, who have chosen him to serve as dean and chairman of the State's congressional delegation.

All of Congress will surely miss the expertise and diligence of SAM STRATTON. I would like to join my colleagues in bidding SAM farewell and wishing him future happiness and success.

Mr. BADHAM. Mr. Speaker, it is my privilege today to participate in this special order that the New York delegation is holding for my good friend SAM STRATTON. We, of course, have served together on the Armed Services Committee and the Procurement Subcommittee for quite some time now.

In fact, he is the chairman of procurement and I am now the ranking minority member. On some subcommittees, you might never hear the minority saying something nice about the chairman. But, quite frankly, there are so many good things to say about SAM that I don't really know where to start. But I think the very fact that all of his colleagues, both Democrat and Republican, are willing to praise and commend SAM really speaks for itself.

I, too, am leaving Congress following the conclusion of this session, and some of my best memories will be of SAM'S good humor and leadership. Perhaps one of his greatest assets is his ability to rise above politics and look at issues more objectively than many of us. Certainly, the entire Congress is going to miss that. But on a personal level, we are all going to miss him, too.

SAM, I'm proud to speak for all of the minority members of the Procurement Subcommittee and also for our outstanding staff when I say that we send you our best wishes and wish you the best of luck as you depart from this great body. Thank you, Mr. Speaker, and thank you, SAM.

THE JAPANESE GAME PLAN IS REVEALED

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Mayland [Mrs. BENTLEY] is recognized for 60 minutes

Mrs. BENTLEY. Mr. Speaker, in recent months, I have been reading from Marvin Wolf's book "The Japanese Conspiracy" on how the Japanese have targeted American industry, aiming at its destruction.

Last week I brought to your attention an article about a movement in Japan to rewrite the history of World War II, that the Japanese were not the aggressors, even though they bombed Pearl Harbor on December 7, 1941.

At the end of my remarks I asked—"A movement to rewrite the history of World War II—then I wonder about all our agreements with Japan."

I didn't need to wonder very long.

Today's Journal of Commerce carried a story by Keith Rockwell on how Toshiba Machine Co. is working to avoid the sanctions against Toshiba, which were passed in the trade bill. Remember, Toshiba sold our sensitive milling machines to Russia, after signing an agreement with DOD not to pass on our technology.

Senator JAKE GARN, who authored the sanctions legislation accused Toshiba of "trying to beat the deadline after committing an incredible crime against the American people."

He said, "When they continue to do their level-best to get around our laws—when they clearly understand the reason behind those laws—I begin to question whether the sanctions posed should not be strengthened."

The Senator also accused "Toshiba Machine of setting up a subsidiary in Canada for the purpose of selling to the United States market." He warned that "Toshiba Machine sales to the United States from any location would violate the U.S. sanctions."

Another example of how they violate agreements or find their way around them was brought out last week in discussions trying to solve the problems of United States-Japan trade.

In these discussions, Bob Galvin, the Chief Executive Officer of Motorola Corp. told a story to a congressional luncheon group which answers my question about how the Japanese have been mentally rewriting agreements.

Mr. Galvin, a highly respected business executive in the United States, told of traveling with another successful wealthy American businessman. Galvin's acquaintance asked what he thought of the American going into a joint venture with the Japanese. Thinking it would be in Japan, Galvan told him it could be a tough venture.

It turned out the joint venture would be in the United States. After the United States had negotiated the recent beef agreement with Japan the Japanese approached the American to go into business—the beef business. The Japanese would own the cattle and the American businessman would own the land.

Bob Galvin, the tough Chief Executive Officer, promptly warned the businessman, "You are letting the Japanese sell beef to the Japanese, it should be American beef being sold to Japan."

This story certainly shows they are finding a way around the beef agreement before the ink was dry. I have also heared they bought a beef processing plant in the Northwest.

Oh yes, we are told the Japanese are opening up their markets, but how is that going to profit America in trade if the Japanese proceed to march to their own drummer.

Clearly the beef negotiations were not conducted for the Japanese to sell beef from the American market back to Japan. Many people believe such actions are all in the past. But this happened this year—and there is more, it isn't just in beef.

I want to tell you more about what is going on in 1988. We need to understand the pattern of how they operate. This next story, some may want to dismiss as a small outfit, it doesn't make steel or some such glamorous item—but it is important simply because it is an American business—and it clearly shows what Marvin Wolf has been pointing out in "The Japanese Conspiracy."

The following story brought a shout of dismay from me. It is not only questionable ethics, but the film business is vital for our defense and for our economy.

I received a letter from A&I Laboratory, one of the best, if not the best commerical laboratory in the country. Located in Hollywood, CA, the lab is owned by David R. Alexander and a Japanese-American, Mamoru James Ishihara.

They wrote me because they are not quite certain what to do—and they have reached the limit of their ability to fight a powerful big Japanese corporation.

A&I is a professional film processing laboratory serving the professional photography community in Los Angeles. About 4 years ago, representatives of the Fuji Photo Film U.S.A. Corp. visited the A&I facility. Fuji manufactures film.

"They were seeking to better understand the professional photography market and improve their film products. Fuji requested advice and consultation from A&I," the letter read:

ALEXANDER & ISHIHARA COLOR LABORATORY,
Hollywood, CA, April 5, 1988.

MR. BERNIE YASUNAGA,
President, Fuji Photo Film U.S.A., Inc., Elmsford, NY.

DEAR MR. YASUNAGA: A stranger knocks at your door telling you he is hungry. That seems true enough so you invite him in. You share your food with him. He eats ravenously, appreciatively. He bows in gratitude. You tell him how glad you are to share with him, as he continues to bow. Enjoying his company, you relax with him. Later, after he has left, you discover that he has stolen your pots and pans.

Like the stranger, Fuji come to our professional E-6 laboratory five years ago praising our quality and asking for help in learning about its films in relation to the American market. Opening our doors to this stranger, we invited him in and shared the food of our knowledge and experience with him. Time and again he returned asking new

> questions, seeking advice, chemical samples, tests, analyses. He even requested that we allow technicians from his home to study film exiting our dryers. We gladly complied with all requests because A&I believed the requests were only in the interest of improving film quality. He humbly thanked us continually for our help. It seemed fair enough that he only asked but never gave. When the time came, we reasoned, he would share.
>
> Only through rumors, the truth of which, when confronted, he admitted, did we learn that this stranger will soon open a competitive professional laboratory two blocks from us. Obviously, while eating our food and enjoying our hospitality he was eyeing our pots and pans. Now that his belly is full his true character is revealed.
>
> With the help of A&I and other professional labs, as acknowledged by your top local people, Fuji now makes a great E-6 product for the American market. Furthermore, the American professional lab industry has been generously instrumental in spreading goodwill for Fuji and Fuji products among professional photographers. The owners of these laboratories reasonably believed they would service the Fuji film they helped create, never thinking that their assistance would be turned against them.
>
> We are puzzled by Fuji's apparent deception and betrayal of its friends. It is possible, Mr. Yasunaga, that you are not aware of this situation, in which case, we would hope that you'll take appropriate action. If that is not your response, however, Mr. Yasunaga, then we would appreciate it if you would share the food of your knowledge and experience with us by answering the following question:
>
> Is there no place in business for ethics and morality?
>
> ALEXANDER & ISHIHARA
> COLOR LABORATORY,
> MAMORU JAMES ISHIHARA.
> DAVID R. ALEXANDER.

Being typically American in trying to help someone, A&I opened its doors to the Japanese firm. Fuji continually asked questions about test film, the chemistry, and other questions A&I usually did not share with other film people.

Finally, Fuji asked to have technicians study the film coming out of the drying cabinets of the film processors so they could study the characteristics of the processed film before it is handled.

A&I helped Fuji, and A&I also knew that Fuji had similar arrangements with other labs. All actually thought Fuji was sincere in trying to do a better job.

In 1988 the picture changed. Rumors began flying that Fuji was opening up a professional laboratory nearby. Fuji representatives admitted plans for the lab had been underway for some time. In fact Fuji also planned other labs around the United States of America.

A&I protested to Fuji, as did other labs from around the country. The response was that Fuji, who claims it is just for research, opened a lab just two doors away from A&I. In addition, Fuji solicited personnel from other labs in the area to staff its processing center.

When questioned about its intentions on opening a lab, Fuji responded to A&I by stating "we no longer feel that we can impose on your generosity and kindness. * * *"

This lab is being called a research and information facility to serve the industry.

Apparently, other laboratories in the country don't believe this explanation of Fuji's. I would like to give you a sample of some of the letters A&I has received:

Jim Moss, owner of Total Color, Inc., Dallas, TX, wrote "We are shocked and confused that Fuji would turn our consideration against us by starting a professional lab in Hollywood, CA."

Arsenio Lopez, owner of The New Lab, accurately framed the issue. He wrote:

> The professional lab business is extremely competitive. In the past, we have freely answered your manufacturer's representatives' questions about our operation.
>
> This has included samples of our chemistry and detailed information about film tests that we ran and paid for out of our own pockets.
>
> In addition, we assisted your top technical people with Fuji research and development and even gave your company the names of some of our most valued clients.
>
> If we had known of Fuji's plans to open a lab, we certainly would not have supplied this information.

And, Tommy Morgeson, president of Dallas Photolab said:

> I cannot understand why a film and chemical manufacturer would want to go into direct competition with those who have been so helpful and cooperative over the past few years.
>
> No matter how you try to cover up your lab as a test facility, the fact will remain that you are in competition with the professional photolab industry.

This is an old story with American business. The rules of the game are worked out only for us to find out they have been changed unilaterally.

I think the letter written to Mr. Bernie Yasunaga, president of Fuji Photo Film U.S.A. by the owners of Alexander & Ishihara Color Laboratory eloquently sums up what is happening to American businesses.

I would like to read it for you:

The managing director of Fuji Photo Film Co., Ltd. of Japan responded to Mr. Ishihara that:

> In doing business in various countries throughout the world in various manners, we always see to it that our marketing in each country follows the order of local business practice as far as possible.

As an American, I would like to believe there is a sense of ethics and your word being good in business. If the Fuji attitude is representative of Japanese business, then they are making a mistake.

There is still a sense of ethics and morality in American business. Anyone who operates without his word being good is quickly recognized and shunned. This is so outrageous—it is one more example of not playing by the rules.

I hope that when Americans purchase film, they think Kodak, Ansco or any other rather than Fuji because of this dishonor.

This is one more example of why we in the United States must be more alert of what is happening to American business and American industry.

We would like to think that America will always be the place where one's word is one's bond, but it won't be with such an invasion.

1915

THE DECLINE OF TRADITIONAL STANDARDS OF DISCOURSE IN THE HOUSE OF REPRESENTATIVES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas [Mr. ALEXANDER] is recognized for 60 minutes.

Mr. ALEXANDER. Mr. Speaker, as I was walking through the Halls of Congress through what we designate as Statuary Hall a few hours ago, I noticed the statue there likening the late Will Rogers. I was reminded of the story that when Will Rogers was designated, being a resident at the time of the State of Oklahoma, and he was asked if he would consent to the erection of a statue in his likeness in the Halls of Congress, he said he would not object as long as the statue faced the center door so he could keep his eye on Members of Congress.

Today the statue of the late humorist originally from Arkansas and later from Oklahoma indeed faces this center door. Will Rogers' wry homespun visage eternally keeps his eye on me and all Members of Congress.

Will Rogers' satire about Congress and American politics was in the greatest tradition of fair comment on our American institutions of Government. While Rogers poked fun at Members of Congress and both political parties, he never did so in a defamatory, derogatory or demeaning sense. He often made light of the Democrats' disorganized campaigns and tendency to engage in the fratricidal quarrels, observing in his classic, and I quote, "I am not a member of any organized party. I'm a Democrat." I often use that quotation at some of our caucus meetings out in Arkansas. It gives them a lift and laugh. And in a couple of his lesser known remarks, he said:

> Always excitement at a Democratic gathering. There is always something that will stir up an argument even if they all agree . . . You've got to be an optimist to be a Democrat, and you've got to be a humorist to stay one.

Lest our friends on the other side of the aisle should feel left out, Will

Rogers had a few words to say for them. He barbed once, and I quote:

> Republicans take care of the big money, and big money takes care of them . . . It takes nerve to be a Democrat, but is takes money to be a Republician.

Will Rogers had comments for all people in politics.

Yet, Rogers never abandoned the standards of civility and respect that have historically been accepted by the mainstream of the American political life. In fact, in his down-home way he occasionally complimented the same politicians who were the targets of his satire:

> I joke about Congressmen, because at heart I really like the rascals. They are all right. If one wants to do right, our political system is so arranged that he can do it. Mighty few retire rich, so there must be a lot more honesty about them than we give 'em credit.

The tradition of seeing the humorous side of politics and sometimes poking fun at the powerful is a vital and valid part of representative government. It is only in authoritarian regimes, and we point to the communism of today as the example of authoritarian regimes, that we find the sycophantic deference to political leaders that stifles dissent and free debate. In studying the history of many countries afflicted with authoritarian totalitarian traditions, you find public discourse oscillating between two extremes: A silence born of fear of reprisals from the state, we have seen recent examples of that in Chile; and then the pent-up outbursts of extreme vituperation and personal attacks when one faction senses weakness on the part of the regime. Neither of those extremes has been the traditional standard of conduct in America and certainly not a tradition in the Hall of the House of Representatives.

For in this country, while Congress has always been fair game for criticism and we deserve much of it, there has also been an underlying current of respect for it as an institution. People criticize members but revere the institution of Congress as an integral part of this great democracy that makes America free. After all, many of the great men and women in American history have served in Congress: James Madison, John Quincy Adams, Henry Clay, and Abraham Lincoln; and in the modern era, Hugo Black, Harry S. Truman, Hattie Caraway the first woman elected to the United States Senate and J. William Fulbright, and other distinguished leaders walked these Halls. No fair observer would deny that these public servants upheld the highest standards of conduct.

In the 20th century a faction of extremists on the radical right departed from the traditions of comity, substantive discourse and respect that form the basis for debate in the U.S. Congress. I believe that most would agree that the most serious assault on our institutions took place back in the 1950's, when the late Senator Joe McCarthy escalated his tirades against communism to the point that anyone who dared disagree with him was vilified as a Communist traitor. His witch-hunts silenced valid dissent in many cases, smeared the reputations of many conscientious citizens, and left scars, deep scars, upon our national dialog concerning U.S. foreign policy that haunts us today, many years after McCarthy had departed the national scene.

In that era, the defenders of this institution's standards eventually triumphed over the McCarthyite crusade to drag its traditions through the mire of personal innuendo and character assassination. The late Joe McCarthy was censured by the U.S. Senate and even those who had originally applauded his communications and condemnations of "communists in government" recognized that although he had draped his arguments in the American flag, his career was fundamentally at odds with the values of American democracy.

□ 1930

Sadly, Mr. Speaker, in recent years we have begun to witness a revival of efforts to overthrow the tradition of standards of discourse in the Congress. The Members who have subscribed to the tenets of the so-called Conservative Opportunity Society clearly view the history of this institution's traditions in little regard. Indeed, the gentleman from Georgia [Mr. GINGRICH] wrote in his book outlining the goals of the movement that he intended to tear down this House and apparently rebuild it in his own image.

And, Mr. Speaker, let the RECORD show that today I sent this letter to the gentleman from Georgia [Mr. GINGRICH] advising him of this special order and inviting him to appear here to debate and to discuss the matters which I intend to present to this body.

To put the matter mildly, the gentleman from Georgia [Mr. GINGRICH] has not honored this body's traditions when he makes attacks upon the honesty, the integrity, and the patriotism of Democratic Members. In one of his condemnations of a Member of the other body he said, and I quote, "The Democrats are so out of touch with reality and have lost all sense of common decency to such a degree, that they were seriously considering giving EDWARD KENNEDY the Judiciary Committee."

Any investigation that proves politically damaging to his cause is immediately denigrated. I quote him. "The Iran-Contra hearings are essentially a left-wing lynch mob attempting to undo a 49-state mandate for Ronald Reagan," he said, end quote.

Lest anyone fail to get the point, he condemned the entire membership of the political party that disagrees with his world view. "The modern Democratic Party," he says, "is a left-wing, big labor boss, appease the Soviets, retreat everywhere, raise taxes, build a bigger welfare state, European socialist party. That's what it really is," he says.

After asking a rhetorical question, "Why does the left control the House," Mr. GINGRICH explained that big labor, big city machines, gerrymandering of seats, vote theft and fraud, he says, "supposedly enable Democrats to control the House."

And finally, and I continue to quote, "Because, when it gets really close, and it is really hard, they just steal the seats."

He has stated that, "The House is a corrupt institution. The Ethics Committee," he says, "is a joke. It is a whitewash machine designed to protect incumbents from effective scrutiny."

Mr. Speaker, I served as a member of the Ethics Committee for 4 years, and I knew no such "whitewash" committee to exist. I would suggest that while substantive criticism of this body's shortcomings is legitimate, that criticism should not be escalated to a blanket condemnation of the House of Representatives as a "corrupt institution."

Moreover, the gentleman from Georgia has requested investigations of our distinguished and honorable Speaker, JIM WRIGHT, for various and sundry allegations. If he feels that the Ethics Committee is such a joke and a whitewash machine, why then does he continually ask for these investigations?

He himself has acknowledged that some of his earlier accusations against Mr. WRIGHT were just based upon opinions and not facts. In fact, the gentleman from Georgia [Mr. GINGRICH] stated to the New York Times that two of his charges against the Speaker had been included in his complaints solely, and I quote, "out of curiosity," and I quote, "I don't expect them to be actionable items."

While it is perfectly legitimate to criticize roundly the political institutions and the political positions of other Members, it is not appropriate, nor becoming a Member of Congress, to make personal attacks on other Members.

I recall a few years ago standing over here on the opposite side of the Chamber talking to the gentleman from California, Mr. HOLLIFIELD, who was then chairman of the Committee on Government Operations on which I served, and he said, and he was commenting about his retirement, that during his number of years here; I think almost 30, they never heard a personal attack by one Member against another Member of Congress.

But the gentleman from Georgia [Mr. GINGRICH] once said in 1985 that our distinguished former Speaker, Tip O'Neill, JIM WRIGHT and our present majority leader, TOM FOLEY, "are a trio of muggers, and I'm out to stop muggers," he says. "That's why they don't like me. They're out to dominate by thuggery."

Regarding our distinguished Speaker, JIM WRIGHT, he said, "We currently have the least ethical Speaker of the 20th century."

Now, my colleagues, I would like to point to exhibit No. 2, which is a letter from the Council of Inter-American Security calling upon the Committee on Standards of Official Conduct to expand its investigation to include JIM WRIGHT and look into his, in their words, "questionable foreign policy dealings."

I point to excerpts from this letter which I will include at the conclusion of my remarks in their entirety.

It says, "The good news: Speaker JIM WRIGHT is finally being investigated by the House Ethics Committee," and then in bold print, "The bad news: He is not," repeat, "not," it says, "being investigated for his pro-Communist activities on behalf of the Sandinista regime in Nicaragua, but you could help change this. Please read this letter and help us put a stop to WRIGHT's anti-Reagan, anti-American activities on behalf of the Marxist dictators in Nicaragua. Now why are they doing this?"

One has got to go over here to page 4, and it says, "They're doing this because they're asking for $279,000."

Here it is: $279,000.

"You can send part of your money to pay for that."

Now down here in the body of the letter on page 1 it says, and I quote, "And thanks in large part to the efforts of the council in conjunction with the conservative stalwart, NEWT GINGRICH, Republican of Georgia in the House an investigation is now under way of WRIGHT's questionable past, his financial dealings and his back-room cronyism," it goes on to say.

On page 4 it says that, "We're already running full-page ads in WRIGHT's district in the Fort Worth Star-Telegram and in the Hearst Mid-City News."

Now I have here a copy, a reproduction of one of those ads, and I would like to show it to my colleagues. This is how all this works together.

"You have a Member of Congress working in concert with a rightwing organization that is trying to exploit mail order techniques in order to earn money, to earn money now, not in order to defend the Nation, or the flag, or to advance the cause of democracy, but to make money. That's what they're doing it for, and here is how far they will go."

It says, "Who does he speak for," and it has a picture of our Speaker, JIM WRIGHT, and opposite that a picture of Daniel Ortega from Nicaragua.

It says, "Who does he speak for," and it goes on to say down here, "For the Communists. He doesn't speak for you. He speaks for the Communists."

And, if my colleagues read further, it goes on to explain that "Texas used to be a place where people believed in freedom. No red-blooded Texan would have helped a Marxist tyranny."

Do my colleagues believe that?

And it says, "JIM WRIGHT seems to think that friendship with the Sandinistas is more important than backing President Reagan's anti-Communist policies in Central America."

Then it asks the $64 question, "Why are we running this ad?"

Then it goes on to say that "We're nonpartisan." It does not say that they are nonprofit. They are running the ad to raise $279,000 from unsuspecting, honest, decent Americans that are alarmed by this type of red-baiting that I have demonstrated here to the American people.

Now in May of this year—I am tired of looking at this; I am going to turn it around. I am afraid that it will disgust the Members of Congress to look at it.

In May of this year in an interview with the Wall Street Journal, he referred to Speaker WRIGHT and the rest of the leadership and said, "These people are sick. They are destructive of the values we believe in. They are so consumed by their own power—now get this—by a Mussolini-like ego, that their willingness to run over normal human beings and to destroy honest institutions is unending." While he may explain away these attacks on the grounds that they were not delivered on the House floor, I think such statements could play a serious part in the decline of the House's traditions in comity and serious political debate.

Yet, Mr. GINGRICH certainly does not refrain from making attacks on the House floor. At one point in House debate in 1984, Congressman WRIGHT said, "I do not think the gentleman wants to suggest that any of us is giving aid and comfort to the enemies of the United States," whereupon Mr. GINGRICH replied, "Certainly not knowingly."

Saying that, yes, "You're giving aid and comfort to the enemy, but you don't have sense enough to understand it," not only accusing, challenging, the patriotism of our Speaker, but also challenging his intelligence.

In another House debate in 1985, Mr. GINGRICH referred to a proposal regarding Central American policy put forth by my distinguished colleague, LEE HAMILTON of Indiana, and our former colleague, Mike Barnes, saying, "I suddenly thought to myself, and I said, and maybe it was too strong, I said if you voted for this kind of provision you could wear an 'I despise America' button." High-minded, intellectual, in the traditions of the House. Mr. HAMILTON and Mr. Barnes are two of the most knowledgeable and temperate observers of Central American policy in the country, and their integrity is unassailable. Once again, analogies to Senator McCarthy come to mind.

It would seem that the gentleman from Georgia has become the self-appointed arbiter of the content of debate in the House. In the last 2 years alone, he has risen more than a dozen times to deliver impassioned speeches lamenting the alleged sins of his colleagues.

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He has singled out at least 17 Members by name for condemnation. While he has thus busied himself sitting in stern judgment on so many of his fellow Members, he has displayed a poverty of interest in legislation, which is presumably what he entered Congress to enact.

I did a little research and it says in the Congressional Quarterly's recent volume, "Politics in America: The 100th Congress," the authors concluded that "After four terms, it is hard to think of one significant piece of legislation he, Mr. GINGRICH, has helped enact."

In examining the slender list of legislative issues in which the gentlemen has chosen to interest himself, one would wonder how many people in Georgia or anywhere else feel that the following issues have anything to do with the serious problems confronting our Nation in the 1980's: for example, he has supported tax incentives for families buying computers, and the gentlemen has the distinction of having drafted a plan for the government of Americans in space and the eventual statehood of space communities. In this case, this is an idea that literally came out of "outer space."

I would not presume to decide for the gentleman's constituents what issues they ought to be most interested in; but I would hazard a guess that the average Georgian, like the average Arkansan, does not lie awake nights worrying about the problems attending eventual statehood in outer space, but they do worry about economic development, the budget deficits, U.S. competitiveness in world markets, agriculture, peace, health care, Social Security, and the myriad other issues that people deal with in their everyday lives.

When Mr. GINGRICH has come closer to home, he has questioned a revered program that has been viewed as a success ever since the administration of President Franklin Delano Roosevelt founded it half a century ago: Social Security. He proposed abolishing Social Security and replacing it with a mandatory system of individual retirement accounts. Such a policy would break the covenant we have made with the senior citizens of America who built this country; it would renege on a fundamental commitment this Government has made to provide a safety net for its older citizens. It is appropriate to disagree sharply with the substance of a Member's position on this issue, just as it is Mr. GINGRICH's right to proposed such a scheme, bizarre as it may seem to many of us who have supported Social Security throughout our careers and who have commended the program as a shining example of Government being the solution to critical economic and social problems of senior citizens.

Nonetheless, that is substance, and it is proper for the gentleman from Georgia to challenge that program.

Unfortunately, Mr. Speaker, the gentleman from Georgia has not found his legislative initiatives to create a government for Americans in space or his initiative replacing Social Security with IRA's to be so popular in this House that we would even debate it.

If he had, I would have been delighted to debate him on those issues. Instead, I think it is important to note that he has spent much more time declaring his colleagues guilty of ominous ethical failings by his standards.

The gentleman has certainly succeeded in one respect: he has attracted enormous publicity. Few Members have their names in the newspaper more often. As he once said, "Think of me as a backbencher who used to work very hard trying to figure out how can I articulate something in a flashy enough way so the press can pick it up. Now all of a sudden I have this microphone, and when I yell it comes across like a painful noise because the system is not geared to carry me." But if the gentleman from Georgia has succeeded in the realm of publicity, even Members of his own party have doubts about his impact in the realm of substance; as our distinguished colleague, Senator ROBERT DOLE, has said, "His agenda is in getting attention so he has to go after large targets. He's making a lot of noise, but I haven't seen any impact."

This is somewhat reminiscent of the story that I once heard about the legendary "Sockless" Johnson, a former Member of Congress from Kansas. Poor old Johnson did not attract attention to his work in the Congress, so one day by accident he appeared on the House floor without any socks. Suddenly, he became recognized as "Sockless" Johnson. He was suddenly a celebrity. The difference, unfortunately, is that the attention Mr. GINGRICH attracts is a serious matter, while "Sockless" publicity-seeking—whatever it was, was harmless.

A recent example of Mr. GINGRICH's attacks upon his colleagues occurred in September of this year, when he issued a news release naming 17 Members who should be investigated by that "whitewash machine," the Ethics Committee. It is curious that the Ethics Committee is a "joke" in his words, and a "whitewash machine" when the gentleman from Georgia disagrees with its actions, while it becomes a powerful watchdog over House rules when he agrees with its actions or when he wishes it to accept one of his proposals for an "investigation."

The September 2 release pontificated that "The entrenched nature of House membership and the monopoly of power which Democrats have had in the House since 1954 make it obvious why there are so many cases of House Democratic corruption. Just like the corrupt big city machines, we now have a corrupt House machine, and it is the nature of machines to abuse power." This release is so clearly partisan in nature in condemning the alleged "Democratic corruption" that it more properly should have been issued as a campaign release, rather than as an official release, putting the official imprimatur of the House office upon it. But much more importantly, it should never have been issued at all, because it is a sweeping and erroneous attack upon many hard-working, conscientious Members, including the gentleman from Arkansas.

Mr. GINGRICH jumbles together a couple of legitimate cases of transgressions by one or two Members, and then proceeds to list a large number of allegations against other Members, packaging them neatly in the same news release. The great majority of the allegations, by Mr. GINGRICH's own admission, consist of nothing other than critical newspaper articles or requests from Common Cause. As the release reads, "The list of allegations include Members who have been indicted, exposed by newspapers, or whose investigation has been asked for by Common Cause." I have nothing against those representatives of the fourth estate who are dedicated and responsible, but I would be so bold as to venture the premise that if having been condemned or criticized by the newspapers were to become the standard by which Members' ethical standards are to be judged, no Member of this body would be left free of "ethical violations."

And while there may be dedicated people working for Common Cause, I was unaware that it had jurisdiction to undertake ethical investigations of Members of Congress.

Under the new procedure that the gentleman from Georgia apparently would have us follow, ethics investigations would begin with requests from Common Cause or with newspaper exposés, then a news release from Mr. GINGRICH would determine which accusations would require an investigation, and finally, the Ethics Committee would rule on the merits of the release, except in cases in which it appears to disagree with Mr. GINGRICH, when the committee suddenly becomes a "joke." This is the type of proposal that led the beloved humorist Will Rogers, to whom I have already referred, to say, "There is no credit to being a comedian, when you have the whole government working for you. All you have to do is report the facts." It seems like old Will Rogers is looking down on us tonight.

Mr. Speaker, Members of Congress are not accountable to Mr. GINGRICH. What he thinks is irrelevant. We are accountable, first of all, to our constituents who elect us and to whom we are directly accountable; then to the democratic fundamentals of the rule of law, representative government, and separation of powers; and ultimately to our own conscience.

Recalling the Biblical injunction that he who is without sin should cast the first stone, I would ask if the gentleman from Georgia's record is so immaculate that he can judge the rest of us. I make no accusation against my colleague from Georgia, and I would not assume that he is guilty of the financial and legal corruption that he so freely accuses his Democratic colleagues of. Although currently, there has been a complaint filed by a Georgia Democratic Party official alleging that Mr. GINGRICH used congressional town meetings to campaign for reelection, the Ethics Committee has not acted upon the request, and I think the gentleman is entitled to the same presumption of innocence that all of us enjoy in America.

There have been other "allegations" concerning the gentleman, in newspapers and elsewhere, but none of them necessarily have any foundation, and as far as I know none of them ever will. More importantly, his constituents, and not I, should be the ones responsible for judging the merits, or lack thereof, of those allegations. I make no personal criticism of the gentleman from Georgia, and my differences with him are focused on his methods and his attacks upon individuals and upon this institution and its traditions. That is the cause which I address this evening.

Mr. GINGRICH's fondness for sermonizing about the shortcomings of his brethren is unavoidably an issue for me, however, because over the years the gentleman has done me the honor of singling me out for many of his most striking attacks.

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To date, I have ignored his attacks in my belief that it would distract from attention to the issues that I was here to address. However, this evening I am breaking my silence, in an effort to generate some discussion on two important issues: Central American policy and the dire need to establish a national energy policy in America.

Admittedly, the gentleman's efforts have occasionally slowed my substantive agenda, but they have not blocked me. Even his criticism of my highly successful trip to Brazil in 1985 did not deter me; we have now witnessed Congress' passage of the Alternative Motor Fuels Act of 1988, which may be the most meaningful achievement of the 100th Congress, and the President is expected to sign it into law very soon. That act is the first step toward the development of a national energy policy, and with the help of my colleagues, the gentleman from Indiana [Mr. SHARP), the gentleman from West Virginia [Mr. WISE], the gentleman from California [Mr. MOORHEAD], and others we labored long and hard for its passage. It is a substantive issue deserving of the debate and attention of the Members of this institution.

One of Mr. GINGRICH's favorite subjects, one which he used in his September 2 release and on innumerable other occasions as the basis for saying I had engaged in his words in improper behavior, is my leadership of a 1985 delegation to Brazil to study alcohol fuels. But even a State Department cable praised that trip as "productive, busy and successful." He stated that I was "the only member on board" a U.S. Air Force airplane, conveniently neglecting to mention that there were three senior Reagan administration officials who were in attendance, including Langhorne Motley, former Assistant Secretary of State for Inter-American Affairs and former Ambassador to Brazil; Dan Denning, Deputy Assistant Secretary of Defense for Research and Development; and Dan Beckman, Deputy Director of the Office of Alcohol Fuels in the U.S. Department of Energy. In addition, in attendance was Prof. Dwight Talburt, director of the Biomass Research Center at the University of Arkansas in Fayetteville and one of the country's leading experts in the field of alternative fuels. An official State Department communique after that journey pronounced it a success. It was clearly a distinguished delegation on a substantive mission to study Brazil's success in fashioning a national energy policy for the future, utilizing alcohol fuels.

If this country could follow Brazil's example, we could create a new market for farmers utilizing about 8 billion bushels more of grain, lower the farm program costs by about $6 billion to $10 billion, reduce dependence on foreign oil, clean the air and reduce the greenhouse effect, and strengthen America's energy security. The State Department communique from the United States Embassy in Brazil to the State Department in Washington, in fact, stated that

> Congressman Alexander's visit to Sao Paulo was exceptionally useful in several important respects. The Congressman impressed all of his Brazilian interlocutors—who included numerous senior leaders of Sao Paulo's business and scientific establishments—with his interest in and knowledge about the technological and research issues on alternative energy, the high level of expertise of his accompanying staff, his interest in being helpful with developing exchanges and most importantly with his interest in U.S.-Brazil trade issues.

The August 1985 State Department cable concluded that the visit was "productive, busy and successful."

Ever since that productive visit, I have labored long and hard on the subject of developing alternative sources of energy. As I said 2 minutes ago, just in the few days before the Congress adjourns, I hope I will have the satisfaction of seeing the culmination of one of the fruits of those labors for expanding the use of alcohol fuels, when the Congress passed the Alternative Vehicle Motor Fuels Act of 1988, which I cosponsored, and it is signed into law by the President. In the statement accompanying the conference report, the bill contained the following language, asking the Interagency Commission on Alternative Motor Fuels established by the act to "coordinate federal agency efforts to develop a national alternative motor fuels policy including all federal alternative transportation fuel initiatives. The conferees intend that as part of its coordination efforts, the commission ensure the following issues be studied: * * * Alternative motor fuels policies in other nations with special emphasis on the alcohol fuel program in Brazil, and the extent to which those policies may serve as models for a national alternative motor fuels policy in the United States."

I would be happy to debate the gentleman from Georgia concerning the need for a national energy policy and the need to study the example of Brazil as providing useful lessons in the energy field. Over the past few years, I have made almost as many speeches on the House floor concerning energy issues as the gentleman from Georgia has made finding fault in the alleged failings of his colleagues. The gentleman has been so enamored of this subject, in fact, that he and several of his colleagues published a book, entitled "A House of Ill Repute." They are referring to the House of Representatives, in which several of my colleagues and I are singled out for attacks; once again, my work to focus on subjects that are of substantive interest to us, in my case, a national energy policy and the lessons that we can learn from Brazil in providing guidance as an example of an energy policy for the future.

I have chosen to spend my time reading reports on energy policy, the budget deficits, peace plans in Central America, so I must confess that I have not read "A House of Ill Repute." I would not personally attack any Member anyway, but the gentleman has been so belligerent that it generated a response from the largest newspaper in Arkansas, the Arkansas Gazette, and I would like to insert that editorial at this point in the RECORD.

AN AUTHOR OF ILL REPUTE

The vanity press is a big business these days, now that there are more people writing books than reading them. Is there anybody who doesn't have a vanity press volume or two around the house, given by a literary friend or relative?

Ten conservative Republican House members have joined the fun, ponying up $500 each to publish a book they've written censuring their Democratic colleagues. Perhaps we should say "allegedly written," because we suspect that the congressmen no more wrote the chapters attributed to them than they write the speech they deliver or the newsletters they send out. This, then, is a new development in the vanity-publishing business. Most vanity-press customers pay to see their own words in print. Only the sinfully rich and profligate will pay to see somebody else's words passed off as their own.

The book is cleverly titled "A House of Ill Repute," in case anyone wants to rush out and snatch up a copy. (We don't know how many will be published, but we're confident supply will exceed demand.) Of course, it's not the entire House the authors criticize, only the Democratic side of it. Objectivity is not valued in a partisan work such as this. Nor accuracy.

We note that one of the authors is Representative Newt Gingrich of Georgia. Speaking of ill repute . . . Gingrich is a prominent member, perhaps first among equals, of a group that has come to be known as "the war wimps." These are public officials and opinion-molders who are now loudly hawkish but were of a more peaceful bent in their draft-age days, managing to avoid military service during the Vietnam war because of student deferments or physical complaints. In Gingrich's case, he kept his head down in college until the shooting was over, earning three degrees. Asked about his seeming reluctance to kill Communists personally, he has said that the "the bigger battle" was in Congress.

The war wimps are a farily sizeable group, including Gingrich's fellow House members Trent Lott of Mississippi and Vin Weber of Minnesota, and columnists Pat Buchanan and George Will (like Gingrich, young Will thirsted for knowledge, not blood). And we seem to have stumbled across a pattern here—all these fellows are Republicans. A scholar such as Representative Gingrich should research this further. Might be a book in it.

The gentleman from Georgia should know better than this, for he is an intelligent and well-educated man. Southerners are noted for their good manners, but I believe that our reputation for charm and courtliness may become a little frayed and tattered in the South if the gentleman keeps writing these books and issuing these press releases.

I have complimented the gentleman as a well-educated Member. In fact, his thirst for knowledge was so insatiable that he has earned three academic degrees. I make no criticism of the gentleman for pursuing his education during the era of the Vietnam war. He has said that rather than fighting in Vietnam and serving in the military to defend our Nation and its honor, that he was preparing himself in those years for in his words "the bigger battle" in Congress in the furture. I do not for a moment criticize him personally for making that choice. However, I wish that he would not insinuate that those who disagree with his belligerent anti-Communist stance in Central America and elsewhere are somehow lacking in patriotism and support our great country, as he did in his reference to the "I despise America" button to which I referred a minute ago concerning the positions of Mr. Barnes and Mr. Hamilton.

It would be perfectly acceptable for the gentleman from Georgia to write books and deliver lengthy speeches concerning public issues. And if the gentleman wishes to give frequent speeches on the House floor, he is perfectly within his rights to do so, even though such speeches occupy considerable space in the Congressional Record. Yet, when I attempted to exercise the same right and devote space in the Record to an issue which the gentlemen would undoubtedly agree is of vital importance to America—the Contra aid debate—I was criticized.

I am referring in this instance to my insertion of the Congressional Research Service's compendium of the legislative history of the Boland Amendment into the Congressional Record on June 15, 1987. My action was commended by knowledgable Members of Congress, journalists, constitutional law scholars, and citizens who simply wanted to know about the facts of the Contra aid debate.

For example, my distinguished colleague, Mr. Hamilton, chairman of the Select Committee To Investigate Covert Arms Transactions with Iran, wrote me a letter praising the insertion on June 30, 1987, observing,

> Your excellent compilation was both timely and useful. I know of no other publicly available source of complete, primary information on the Boland amendment. It will be helpful to the committee as we complete our hearings and draft our final report. It should be invaluable to those who need more detailed information to follow the hearings carefully.

My colleague, the gentlewoman from Colorado, Patricia Schroeder, also complimented the compilation, saying "this document belongs in every library, in every schoolroom, every newsroom and every living room in the United States."

Similarly, Prof. Rodney Smolla, constitutional law scholar at the University of Arkansas Law School, wrote to commend the "effort in getting the legislative history of the Boland amendment placed in the Congressional Record." Professor Smolla said the compilation would promote "an informed and intelligent debate over one of the most important policy and constitutional issues of the decade. Your action was a credit in our State."

Mr. Speaker, while some of the press reports were critical of the compilation, the Washington Post, the Jonesboro (Ark.) Sun and many other newspapers were complimentary of my initiative. I ask that the letters of Mr. Hamilton and Professor Smolla be included at this point in the Record, along with a Jonesboro Sun news article of July 9, 1987, and the Washington Post editorial of June 18, 1987, "The Right Stuff."

As the Post observed in its editorial,

> "We think it's as wise an expenditure of funds on the Congressional Record as we've heard of in some time. The volume will be an invaluable source book in the angry debate over the genesis and development of United States-Nicaragua policy, a debate that could surely profit from the introduction of more facts and better history. It will go to libraries and other institutions all over the country that subscribe to the Congressional Record and be available for purchase in individual copies for $1.25.

Mr. Speaker, my purpose in mentioning these supportive statements concerning the Boland amendment is not to grind my own ax, but simply to make the point that many knowledgeable observers agreed that this information should be disseminated throughout the country. This was a freedom of information initiative, and since both sides of the debate were treated equally in the CRS compendium, the views of my colleague from Georgia were also represented. This was clearly a beneficial use of the Record.

Again, debate is in order, and I would be pleased to debate my colleague from Georgia on the substance of Central American policy, on the development of a National Energy Policy, or any of the other major issues confronting our beloved country today but I sincerely believe that the tirades and tantrums and personal attacks on other Members of this institution are unbecoming the conduct of a Member of Congress.

I believe that our leaders are to be characterized in words other than "thugs," as the gentleman from Georgia has referred to the House leadership, who should be compared to Mussolini, in his words; whether I or any other individual Member engaged in "corrupt" behavior, in his words, or whether this entire great institution that we serve is "corrupt," is a matter of judgment for the people who elect us. We must all see the House with its faults, those of us who serve here, but a reasonable respect for this body as an institution is a prerequisite for civil, rational debate.

In supporting the effort to promote rational discussion and the enlightenment of the citizens of our country, we should follow the counsel of some of our forefathers. Thomas Jefferson is one who wrote,

> I know of no safe depository of the ultimate powers of the society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion.

Mr. Speaker, the vast majority of Members from both sides of the aisle maintain a relatively high level of debate in this day and time. I am confident that the spirit of freedom of expression that is the foundation of democracy will continue to be the dominant voice in our discourse in the House of Representatives, but we must remember that era in our history three decades ago when McCarthyism launched the meanest attack on American values we have ever seen; surely we have no desire to return to that age when rational discussion of this country's response to the threat of communism was so seriously undermined and, instead of helping to enlighten, many politicians only distorted the people's ability to understand the issues confronting the Nation.

As Douglas Cater wrote in "The Fourth Branch of Government,"

> McCarthyism's greatest threat was not to individual liberty or even to the orderly conduct of government. It corrupted the power to communicate which is indispensable to men living in a civilized society.

As Will Rogers might have said,

> How can we confront the great issues of the day and help inform the American public if we are acting like fleas looking for a dog to bite?

We do not want this body to be relegated to a cabal of name-callers or a multitude of mudslingers. I am not discouraged by the effort to distract the public by injecting innuendo and verbal brickbats into the House's debate—I will continue to promote a rational discussion of the issues, and I ultimately trust in the common sense of the American people to insist upon the traditional values that have sustained this House of Representatives throughout its history. We would do well to remember the warning of Justice Brandeis: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

I insert the following material for the Record:

CONGRESS OF THE
UNITED STATES OF AMERICA,
October 6, 1988.

Hon. NEWT GINGRICH,
U.S. Representative, U.S. House of Representatives, Washington, DC.

DEAR NEWT: Under previous orders of the House, I have been granted a Special Order for today, October 6, 1988.

Inasmuch as I intend to discuss proper standards of comity in debate, you may wish to be present. I will also discuss the need for a National Energy Policy and other issues concerning which you might wish to engage in debate. At the conclusion of my remarks, I would be pleased to yield to you.

Sincerely,

BILL ALEXANDER,
Member of Congress.

WRIGHT IS WRONG IN CENTRAL AMERICA

Council for Inter-American Security calls on House Ethics Committee to expand its investigation of Jim Wright and look into his questionable foreign policy dealings.

The good news: Speaker Jim Wright is finally being investigated by the House Ethics Committee.

The bad news: He is not—repeat NOT—being investigated for his pro-Communist activities on behalf of the Sandinista regime in Nicaragua.

But you can help change that! Please read this letter and help us put a stop to Wright's anti-Reagan, anti-American activities on behalf of the Marxist dictators in Nicaragua.

DEAR COUNCIL MEMBER: Please sign—and return to me today—your enclosed Investigation Request.

By doing so, you can help me stop the House Ethics Committee from whitewashing Jim Wright's scandalous involvement with Nicaragua's Marxist dictatorship!

More than a year ago, Jim Wright first stepped outside the law in dealing with these Communists, in the opinion of some of his colleagues in Congress.

Ever since, he has continued a series of vicious attacks on both President Reagan and the President's efforts to aid the anti-Communist Freedom Fighters in Nicaragua.

"As a supporter of the Council for Inter-American Security, you already know we were the first citizens' group to expose the Speaker of the House in front of his colleagues and the American public!"

And thanks in large part to the efforts of the Council, in conjunction with conservative stalwart Newt Gingrich (R-GA) in the House, an investigation is now under way of Wright's questionable past, his financial dealings, and his back-room cronyism.

But the House Ethics Committee, which is controlled by the Democrats, says it has absolutely no intention of examining Wright's irresponsible and dangerous meddling in the affairs of Central America!

That's because Jim Wright's friends on the committee see nothing wrong with his "soft-on-Communism" approach, or his pro-appeasement attitude and efforts to undermine both President Reagan and the Freedom Fighters.

They are wrong in my opinion. Wright should be investigated for usurping and obstructing the President's power to conduct foreign policy.

Here are the facts:

The Logan Act prohibits individual American citizens from conducting negotiations with a foreign power.

Yet that's just what Jim Wright has done! He has opened direct negotiations and maintained direct contact with the brutal Nicaraguan Communists.

He advises Communist Dictator Ortega on the best ways to sell his lies about "Peace" to the American people.

He actually met with Ortega behind closed doors, in a secret meeting that even the State Department was kept out of.

Then he and Ortega emerged smiling and laughing.

Wright even announced his support for the Communists' latest scheme to force the Freedom Fighters to surrender.

President Reagan was outraged.

That's because the Constitution gives power over foreign policy to the President—not the Speaker of the House.

And that's why members of Congress have called for Wright to be investigated specifically for his dangerous meddling in Central America.

Congressmen Gingrich and Bob Walker (R-PA) have tried to get the House to act on this—you may have seen them if you get the C-SPAN cable channel.

But their offices tell us that they need public pressure to get the House to move against Wright in this specific area.

That's why I need you to sign and return the enclosed Investigation Request to the House Ethics Committee (which as I mentioned is already looking into Wright's other questionable dealings).

The Council is taking the lead in this because we are now the largest national security organization in the country. If we can bring considerable grass-roots pressure to bear, the Ethics Committee will have to expand the scope of their Jim Wright investigation.

We're already running full-page ads in Wright's district—in the Fort Worth Star-Telegram and in the The Hurst Mid-Cities News—to make sure his constituents know that he is aiding and abetting the Nicaraguan Communists.

We also ran our "Who Does He Speak For?" ad in Atlanta during the Democrat Convention.

And the latest surveys in Wright's district show that voters who know what's going on are two to one against his position—yet too many other people are still unaware of Wright's meddling.

"Unless we act today, Wright's powerful leftist friends here in Washington will continue to block any attempts to expand the Wright investigation to include his meddling in Central America.

"I know you won't let this chance to stop Jim Wright get away from us."

I know as one of the Council's most valued supporters you'll take action today.

Otherwise, Jim Wright's Congressional cronies will simply cover-up this dangerous abuse of power * * * and allow Jim Wright to continue his efforts to undermine the anti-Communist Freedom Fighters and force America to abandon them.

Other leftist Democrat members of Congress are also close friends and supporters of the Nicaraguan Communist government.

They've sabotaged our efforts to supply the Freedom Fighters with military and humanitarian aid . . .

* * * yet they say nothing about the $2.5 billion in war materials the Soviet-Bloc has shipped to Nicaragua's dictators—including helicopter gunships, fighter jets, and heavily-armored tanks!

These left-wing Congressmen have aided and abetted America's enemies by denying the Freedom Fighters aid to continue their fight against the Soviet-backed Communist regime.

And no one in a leadership position has done more to help the Communists than Speaker of the House Jim Wright.

First, in 1984 Wright was the lead signer of the infamous "Dear Commandante" letter.

This letter signed by 10 left-wing U.S. Congressmen pledges support to Nicaraguan Communist Dictator Ortega in his war against the Freedom Fighters.

Then, last year, Wright allowed George Crockett, a proven supporter of Communist front groups, to assume the chair of the House Western Hemisphere Affairs Sub-Committee—the committee in charge of safeguarding U.S. borders from Communist attack.

When Council suppporters called Wright to complain about Crockett's appointment, Wright's office rudely hung up on many of them. And despite continued pressure from outraged Americans, Crockett remains in this key position.

In other words, Wright thinks he's immune from America's laws.

But, you and I can let him know that we're on to him. And that we disapprove of illegal activities and violations of the Constitution's separation of power * * *

To stop Jim Wright, I need two things from you today:

(1) Sign the enclosed Investigation Request to the House Ethics Committee and return it to me today.

(2) Along with your Investigation Request, send the Council your most generous contribution—right now we are trying to raise $279,000.

We need these funds to distribute these petitions to other supporters and grass-roots activists all across America, and to continue running our ads exposing Jim Wright.

I'm asking our members to send signed Requests back to me so that I can count them before they're delivered.

Them we'll call a press conference, announce the latest count of these signed petitions, and deliver them publicly to the Ethics Committee.

With your help, we'll stop Wright before it's too late and he forces a complete abandonment of the Freedom Fighters in Central America.

Please let me hear from you today.

Sincerely,

L. FRANCIS BOUCHEY,
President.

P.S.—The Ethics Committee has already hired a special counsel to look into Wright's activities, and in an election year, Congress is especially sensitive to voter outrage. So let's make our voices heard!

Help us stop Jim Wright from interfering with America's foreign policy and selling out Central America to the Communists . . . Sign and return your Investigation Request and contribution today!

WRIGHT IS WRONG IN CENTRAL AMERICA

Council for Inter-American Security calls on House Ethics Committee to expand its investigation of Jim Wright and look into his questionable Foreign Policy Dealings.

Yes. I want to stop Jim Wright and his fellow leftists from undermining the power of the President and abandoning the Freedom Fighters to the Soviet-backed Nicaraguan Communist regime.

Enclosed is my signed Investigation Request, calling on the House Ethics Committee to expand its efforts and look into Jim Wright's dangerous meddling in American foreign policy.

To help in the Council's $279,000 campaign to expose Wright's activities to more Americans nationwide, I'm enclosing: $25___ $50___ $___(Other)

Mr. ___, please make your check payable to the Council for Inter-American Security. Contributions are not deductible for Federal income tax purposes, but thank you for your continued loyalty and financial support.

INVESTIGATION REQUEST TO THE HOUSE ETHICS COMMITTEE

You have already hired a special counsel to look into questionable financial and political dealings by Speaker of the House Jim Wright (D-TX).

I believe there is good reason to expand this investigation: The Logan Act forbids invididual American citizens from making deals with foreign powers. The Constitution of the United States gives power over foreign affairs to the President of the United States—not to the Speaker of the House of Representatives.

Therefore, I don't think Speaker Wright should be allowed to break our laws by aiding and abetting the Soviet-backed Nicaraguan Communist regime headed by Daniel Ortega.

I hereby demand an immediate expansion of your investigation to include Wright's private dealings with the Nicaraguan Communists.

[Fort Worth (TX) Star-Telegram, Jan. 27, 1988]

Who Does He Speak for—Appeasement Will Not Work With the Communists Any Better Than It Worked With the Nazis

Just months before the Nazi war machine smashed across Poland and began W.W. II, Neville Chamberlain thought he had appeased Adolf Hitler. . .

Today Jim Wright believes in appeasing another Dictator—Moscow-backed Daniel Ortega of Nicaragua.

And while Ortega doesn't have the war machine that Hitler had he most definitely presents a threat to peace and security in Central America, Mexico and the U.S.

He has established a full-fledged Marxist regime within a few hundred miles of Texas. This worker's paradise comes complete with a massive secret police force, thousands of political prisoners, state controlled media and a population enslaved by tyranny and force.

Ortega can and will destabilize the fragile Democracies in Central America by sponsoring Communist guerilla movements and terrorism. . .

And he has allowed his country to become a second Cuba complete with the largest army in Central America and a $2 billion arsenal of Soviet weaponry. . .

Still, Jim Wright is using his powerful position as Speaker of the House to appease the Communist leadership of Nicaragua.

THEY MUST BE LAUGHING ALL THE WAY FROM MOSCOW TO MANAGUA

When Ortega needed help pushing his version of the Central American "peace plan" Jim Wright was there.

Even though the Ortega plan dooms the Nicaraguan Freedom Fighters, Wright put his power and influence behind it.

When Ortega came to Washington it was Wright who opened doors for him and gave him the credibility he needed. . .

(Yes, that's the same Jim Wright who tried to arrange for Soviet leader Gorbachev to address a joint session of Congress.

In 1984 Jim Wright signed the infamous "Dear Commandante" letter to Daniel Ortega; along with 9 other liberal Congressmen he complimented the dictator on recently announced "elections"—elections that proved a sham by the standards of any democratic nation.)

The Marxist rulers of Nicaragua and their Soviet backers must chuckle at the help they get from Jim Wright.

Texas used to be a place where people believed in Freedom and no red-blooded Texan would have helped a Marxist tyranny.

Most Texans, and for that matter most Americans, don't like the idea of another Cuba just 600 miles south of Houston.

Yet Jim Wright seems to think friendship with the Sandinistas is more important than backing President Reagan's anti-Communist policies in Central America.

WHY ARE WE RUNNING THIS AD?

"We" are the Council for Inter-American Security, America's leading non-partisan watchdog on Latin American security issues since 1976.

We have led the grass-roots fight in support of President Reagan's policy of aiding the Freedom Fighters in Nicaragua.

And for over a year we've watched Jim Wright work to stop the President's efforts to aid the anti-Communist Freedom Fighters.

If you support the anti-Communist Freedom Fighters in Nicaragua, here's how you can help:

CALL JIM WRIGHT TODAY!

Call Jim Wright's office in Fort Worth, Texas at (817) 334-3212 and tell him to vote FOR aid to the Freedom Fighters.

And if you can, help pay for more ads like this one by sending a contribution to:

The Council for Inter-American Security, 122 C Street NW. Suite 330, P.O. Box 5430, Washington, DC.

(This advertisement was paid for with donations from private individuals who care about the future of our nation and the threat that Communism poses to Latin America and the United States.)

University of Arkansas
School of Law,
Fayetteville, AR, June 22, 1987

Congressman Bill Alexander,
Cannon House Office Building,
Washington, DC.

Dear Congressman Alexander: I am writing to commend you for your effort in getting the legislative history of the Boland Amendment placed in the Congressional Record.

The criticism you have received in some quarters based on the printing cost is utterly frivolous. It is a small price to pay for facilitating an informed and intelligent debate over one of the most important policy and constitutional issues of the decade. After the administration's dismal record of spending our resources to disinform the Congress and the public, it is remarkable that you would be criticized for merely making accessible the principal components of the public record upon which the Boland Amendment was based. Your action was a credit in our state.

Sincerely,

Rodney A. Smolla,
Professor of Law.

[From the New York Times, June 17, 1987]

Boland, in Print

It is not exactly light summer reading. But the price is right, and the topic could hardly be hotter.

The Congressional Record that arrived in offices on Capitol Hill and around Washington yesterday morning contains a 500-page compilation of all public Congressional debate on the Boland Amendment, the law that restricted United States financing for the Nicaraguan rebels. President Reagan says the law's strictures did not apply to the White House.

But Representative Bill Alexander, the Arkansas Democrat who inserted the material into the Record, says the only way the public and Congress itself will ever be able to judge what was intended—and hence what may or may not have been illegal—is to examine the legislative history.

"I was watching the hearings, and it became apparent to me that the President's position is going to turn on the question of Congressional intent," Mr. Alexander said. "So I asked the Library of Congress to pull the material together in order to raise the issue for public consumption, so people can determine if the President's defense is credible."

"You'd be surprised," he added, "at the number of Republicans who have come up to me and said how revealing some of this is."

The Government Printing Office sells the Congressional Record to the public at $1.25 a copy.

[From the Washington Post, June 18, 1987]

The Right Stuff

There has been quite a flap over Rep. William V. Alexander's enterprise in causing the hefty legislative history of the Boland Amendment to be exhumed by the Library of Congress and printed in full in the Congressional Record of this past Monday, June 15. The resulting volume, although it is quite portable and handy, contains over 400 pages of Bolandiana. It was estimated the other day to have cost the government $197,000 to produce—an assertion that generated much talk of wantonness and profligacy on the part of the Arkansas Democrat, Mr. Alexander, who set the project in motion.

The $197,000 estimate is said by some to be high and likely to be recalculated downward. But even if the original figure holds, we think it's as wise an expenditure of funds on the Congressional Record as we've heard of in some time. The volume will be an invaluable source book in the angry debate over the genesis and development of U.S. Nicaragua policy, a debate that could surely profit from the introduction of more facts and better history. It will go to libraries and other institutions all over the country that subscribe to the Congressional Record and be available for purchase in individual copies for $1.25.

Those among us who look in on the Congressional Record on a daily basis will know that this will probably be among the most serious and public-business-oriented editions of the venerable journal they will ever see. The Congressional Record, into which legislators can put just about anything and frequently do, on some days resembles a literary version of the Islip garbage barge, an anthology of trivia, claptrap, and—above all—self-promoting, parochial drivel which does the legislator who inserts it some political good somewhere at public expense. If Monday's volume cost the taxpayers too much in the opinion of some of these legislators, they should have no trouble making up the funds by cutting down on the high proportion of junk with which they normally like to fill the Record's pages.

[From the Jonesboro (AR) Sun, July 9, 1987.]

ALEXANDER DRAWS PRAISE FOR ACTION

Congressman Bill Alexander has won praise from Arkansas and from members of Congress as well for his insertion of the debates on the Boland Amendment into the Congressional Record of June 15.

The chairman of the Iran-Contra Committee, Lee Hamilton of Indiana, told Alexander in a letter "your excellent compilation was both timely and useful. A spokesman for House Speaker Jim Wright of Texas said the compilation of all the debate on the Boland Amendment, which barred U.S. aid to the Contras in Nicaragua, is "a very useful document" because it places "on every library shelf" where scholars, jurists and private citizens may examine the record of the debate, made available to them at a very minimal cost.

"I know of no other publicly available source of complete, primary information on the Boland Amendment," Hamilton said. "It will be helpful to the Committee as we complete our hearings and draft our final report. It should be invaluable to those who need more detailed information to follow the hearings carefully. I compliment you for your contribution." Hamilton's committee this week is questioning former National Security Council aide Oliver North, who is testifying regarding the diversion of profits from the sale of arms to Iran to the Contras.

In Arkansas, the compilation has received editorial support from a number of newspapers in the First Congressional District, and received the endorsements of a number of citizens including Rodney A. Smolla, a distinguished constitutional law professor and author from the University of Arkansas at Fayetteville.

"I am writing to commend you for your effort in getting the legislative history of the Boland Amendment placed in the Congressional Record," Smolla said. The will promote "an informed and intelligent debate over one of the most important policy and constitutional issues of the decade. Your action was a credit in our state."

While Alexander said he is devoting great amounts of time and energy to issues concerning farmers, jobs, senior citizens and veterans, he said he thought the man in the street deserves a shot at judging for himself whether President Reagan was right to say the Boland law did not apply to him.

Congresswoman Patricia Schroeder of Colorado said "this document belongs in every library, in every schoolroom, every newsroom and every living room in the United States. Bill Alexander did a public service."

Alexander said the initial cost estimate of the printing had been inflated. The inaccurate estimate was partly based on the erroneous notion that there would be large typesetting costs; however, the material was electronically retrieved from previously printed material and there were no typsetting costs. The actual added printing costs were $10,400, Alexander said. There were also man-hour costs involved, arrived at by fixed, annual estimate operating costs prorated over an entire year. The Government Printing Office has said it would have been working anyway during the time the agency printed the collection. Finally, Alexander said, there were man-hour costs and photocopying costs that will be saved by the Library of Congress because of the Boland collection's printing in the Congressional Record. The Library of Congress had been running up extensive costs in granting individual requests for information about the Boland Amendment from people throughout the country, Alexander said.

A spokesman for House Speaker Wright said that "the cost (of compiling the collection) which hit the papers was not the true cost, but very vastly inflated . . . that's a key point.

Plus, the spokesman said, the "very useful document" can represent a savings for the Library of Congress over filling individual requests for information about the Boland debate. It is important to note, said Alexander, the those costs were generated not by Alexander but by citizen requests from across the country. The information sent out through the Library of Congress to constituents of members of Congress was free.

The Congressional Record is sent to libraries and other institutions all over the country. In addition, copies have been sent to newspapers, libraries and other locations in some 40 towns and all 24 counties in the First Congressional District.

☐ 2015

THE DECLINE OF TRADITIONAL STANDARDS OF DISCOURSE IN THE HOUSE

The SPEAKER pro tempore (Mr. ALEXANDER). Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 10 minutes.

Mr. GONZALEZ. Mr. Speaker, because I have been diligently listening to the very efficient and very eloquent and pertinent remarks of the gentleman, my esteemed colleague from Arkansas has just made. They are long overdue. The gentleman from Arkansas might say for the RECORD, and as my colleagues I am sure well know, represents the First District in Arkansas. He has served, even though very young, with great distinction in the House. He has served as a head of delegations, for example, in 1980. Though very youthful in his experience as a Congressman, he was appointed by the then President, as a Presidential delegate to Nicaragua at a very critical time following the successful resolution of the so-called Sandinistas.

He also later was on the Speaker's committee to Lebanon, as well as on the committee to Grenada, the congressional committee to Grenada in the aftermath of the Reagan mandated invasion of that island.

This should, I think, emphasize the importance of my colleagues making sure that they will search diligently the pages of the CONGRESSIONAL RECORD of today's proceedings after it has been printed, in order to very carefully mark and ingest the wisdom and the measured approach that the gentleman from Arkansas has taken in confronting what I consider to be the most dangerous incursion to the stability and to the well being and the preservation of the integrity of this body that I, as one, have seen or experienced in the almost 27 years I have been privileged to serve in this body.

I will advise my distinguished and honored colleague from Arkansas that with repect to the quite outrageous conduct of the gentleman from Georgia, in particular, that one of the basic rules set forth by one of the men in the last century who wrote perhaps the most definitive text and books on parliamentary procedure, that the fundamental rule is that the lawmaker must himself obey the laws.

Our laws are the rules. The rules of the House as incorporating those initially set forth by Thomas Jefferson, Jefferson's Manual. The reason for those rules is that in a multiple body, such as ours, and by way of parentheses in my human endeavor experience, any time more than one human being gets together with another he must have or they must have some basic rule of understanding as to conduct. If the gentleman from Georgia in the initial stages, as I then suggested to the Speaker of the House had been taken into account for violating the fundamental rules of this House, I can assure the gentlemam I do not think it would have been necessary for him to have expended his time and energy diverting that precious and most blessed mind of his and talent to these rather negative endeavors of pointing out the wrongful incursions on the part of one Member improperly into the prerogatives, the honor, the dignity and the self-respect of the others.

I might say this, that I learned, never once intending to be involved in politics, long before I did, that whether in politics or not, there are fundamental rules of human conduct that especially in a body such as this, and I might say again by way of explanation that I have been greatly privileged in this great country of ours to serve on all the basic legislative levels that we enjoy in our country. First on the legislative body, the city council of the city of San Antonio, my nature home town; then 5 years in the great State Senate in the State of Texas; and for the past 26 years and 8 months in the U.S. House of Representatives.

That when one, the gentleman from Georgia [Mr. GINGRICH] has done, unsheathes the sword in the midst of deliberations with his colleagues, that he must recall and must be reminded that it is a two-edged sword, that as he swings one way to try to cut his opponent or his colleague, it will inevitably and unerringly and assuredly swing back and cut his own self.

The gentleman from Arkansas has performed a service, I am sure, as distasteful as it must be. One, and especially the gentleman from Arkansas has so many other things that weigh heavily on our minds in the waning hours of the 100th Congress that I can very well sense the frustration and the anguish involved, and yet I for one want to be the first to thank my distinguished colleague, the gentleman from Arkansas [Mr. Alexander] for performing this great and overdue service.

The fact remains that the Anglo-American parliamentary, our representative tradition, is unique and inextricably linked to the type of society and type of democratic participatory way of doing things that sets us apart.

In less or more beknighted countries and jurisdictions that have attempted to incrust in their societal structures our approach, a parliamentary representative government, we read constantly of the breakdown of the confusion, of the assaults, both verbal as well as physical on one Member on the other, and this is where we would deteriorate if we followed to a logical close the course of conduct that so unfortunately and so inexplainably to me has been the option that our colleague from Georgia, Mr. Gingrich, has chosen and opted to follow.

I had a mild exchange or colloquy with what I consider to be, as the gentleman from Arkansas so well pointed out, an illustrious Member, Mr. Gingrich, from Georgia, a man that has a lot of college education, several degrees, himself a college professor. How, if this is a standard of conduct, that our better educated Members of the Congress can give us, what then can we expect from the lesser educated populace, that we have been selected to try to represent?

Should we not then be the leaders and set the pace? Certainly with this kind of conduct it is not good.

A while ago when I said we unsheathe the sword in a multiple body, it is a two-edged sword. We must never forget that, and to illustrate it at this point, the gentleman from Georgia, if he has what he calls upon all other Members to have, which is honor, honesty and integrity, then he will do something about his colleague from Georgia, Mr. Swindall, who the newspapers reported just day before yesterday was pathetically imploring the Justice Department of the United States to go on ahead and file charges on him and bring to trial the accusations that have been raised against him before the elections.

I say that why has Mr. Gingrich not gone to the ethics committee in the case of Mr. Swindall?

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Martin of New York) to revise and extend their remarks and include extraneous material:)

Mr. Parris, for 5 minutes, today.

Mr. Burton of Indiana, for 5 minutes, today and 5 minutes on October 12.

Mr. Bliley, for 60 minutes, on October 12.

Mr. Dannemeyer, for 5 minutes, today.

Mr. Weber, for 60 minutes, on October 12 and October 13.

Mr. Dornan of California, for 60 minutes, on October 14.

Mr. Walker, for 60 minutes, on October 12 and October 13.

Mr. Gingrich, for 60 minutes, on October 12, and 13.

Mr. Horton, for 60 minutes, on October 12 and 13.

(The following Members (at the request of Mr. McHugh) to revise and extend their remarks and include extraneous material:)

Mr. Rodino, for 5 minutes, today.

Mr. Glickman, for 5 minutes, today.

Mr. Rose, for 5 minutes, today.

Mr. Montgomery, for 5 minutes, today.

Mr. Annunzio, for 5 minutes, today.

Mr. Panetta, for 5 minutes, today.

Mr. St Germain, for 5 minutes, today.

Mr. Hoyer, for 5 minutes, today.

Mr. Gray of Illinois, for 60 minutes, on October 12 and 13.

Mr. Gonzalez, for 60 minutes, on October 7 and October 11.

Mr. Coyne, for 5 minutes, today.

Mr. Torricelli, for 60 minutes, on October 12.

Mr. Glickman, for 5 minutes, on October 7.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. Gonzalez, for 10 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Martin of New York) and to include extraneous matter:)

Mr. Hefley.

Mr. Solomon in four instances.

Mrs. Bentley.

Ms. Snowe.

Mr. Grandy.

Mr. Clinger.

Mr. Dornan of California.

Mr. Buechner.

Mr. DioGuardi.

Mr. Schulze.

Mr. McCandless.

Mrs. Roukema in two instances.

Mr. Houghton.

Mr. Gilman in three instances.

Mr. Coleman of Missouri in two instances.

Mr. Goodling.

Mr. Gekas in two instances.

Mr. Shumway.

Mr. Dreier of California.

Mr. Donald E. Lukens.

Mr. Jeffords.

Mr. Davis of Illinois in two instances.

(The following Members (at the request of Mr. McHugh) and to include extraneous matter:)

Mr. Frank.

Mr. Lehman of California.

Mr. Berman.

Mr. Smith of Florida.

Mr. Applegate.

Mr. Fazio.

Ms. Pelosi.

Mr. Panetta.

Mr. Dyson.

Mrs. Kennelly.

Mr. Penny.

Mr. Roybal.

Ms. Slaughter of New York.

Mr. Florio in four instances.

Mr. Martinez.

Mr. Dowdy of Mississippi.

Mr. Visclosky.

Mr. Mazzoli in two instances.

Mr. Fascell.

Mr. Coleman of Texas.

Mr. Slattery.

Mr. Atkins.

Mr. Sawyer.

Mr. Vento.

Mr. Jenkins.

Mr. Flake.

Mr. Levine of California.

Mr. Kostmayer.

Mr. Rangel in two instances.

Mr. Miller of California.

Mr. Clay.

Mr. Dellums.

Mr. Hawkins.

Mr. Harris.

Mr. Dorgan of North Dakota.

SENATE BILLS AND JOINT RESOLUTION REFERRED

Bills and a joint resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 951. An act entitled the "Federal Courts Study Act", to the Committee on the Judiciary.

S. 2408. An act to transfer the Coast Guard cutter *Ingham* to the Naval and Maritime Museum at Patriots Point, South Carolina; to the Committee on Merchant Marine and Fisheries.

S. 2691. An act to extend eligibility for the Indian Claims Commission Expert Witness Loan Fund and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2799. An act to designate the Federal Building to be constructed in Lakeland, FL, as the "Lawton Chiles, Jr., Federal Building"; to the Committee on Public Works and Transportation.

S.J. Res. 192. Joint resolution to designate the month of October 1988, as "National AIDS Awareness and Prevention Month"; to the Committees on Post Office and Civil Service and the Judiciary.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 4028. An act to authorize the Secretary of Agriculture to exchange certain National Forest System lands in the Targhee National Forest;

H.R. 4267. An act to authorize additional appropriations for the WEB Rural Water Development Project, South Dakota, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and to rename certain facilities of the Central Valley Project, CA;

H.R. 4276. An act to designate the United States Post Office Building located at 1105 Moss Street in Lafayette, Louisiana, as the "James Domengeaux Post Office Building";

H.R. 4433. An act to designate the United States Post Office Building in Jeannette, PA as the "John Dent Post Office Building";

H.R. 4857. An act to amend the Job Training Partnership Act to make a technical change; and

H.J. Res. 602. Joint resolution in support of the restoration of a free and independent Cambodia, the withdrawal of Vietnamese forces, and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 555. An act to regulate gaming on Indian lands,

S. 908. An act to amend the Inspector General Act of 1978 to establish Offices of inspector general in certain departments, and for other purposes; and

S. 2800. An act to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of the Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 28 minutes p.m.) the House adjourned until tomorrow, Friday, October 7, 1988, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4428. A letter from the Deputy Secretary of Defense, transmitting a report of a violation of the Anti-Deficiency Act which occurred in the Department of the Army, pursuant to 31 U.S.C. 1351; to the Committee on Appropriations.

4429. A letter from the Assistant Secretary of Defense (Production and Logistics), transmitting a report on the operations of the National Defense Stockpile during the period October 1987 through March 1988, pursuant to 50 U.S.C. 98h-2(b); to the Committee on Armed Services.

4430. A letter from the Auditor, District of Columbia, transmitting a copy of the report entitled, "Annual Report on D.C. Depository Activities For FY 1987", pursuant to D.C. Code section 47-117(d); to the Committee on the District of Columbia.

4431. A letter from the Auditor, District of Columbia, transmitting a report entitled, "Review of Purchase of Real Property Located at 1222 V Street, SE.", pursuant to D.C. Code section 47-117(d); to the Committee on the District of Columbia.

4432. A letter from the Acting Secretary of Education, transmitting a copy of final regulations for the Bilingual Education Program and the Emergency Immigrant Education Program, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

4433. A letter from the Acting Administrator, General Services Administration, transmitting a report summarizing and analyzing executive agencies' reports showing the amount of personal property furnished to non-Federal recipients, pursuant to 40 U.S.C. 483(e); to the Committee on Government Operations.

4434. A letter from the Records Officer, United States Postal Service, transmitting a notice of a computer matching system of records between the Postal Service and the Public Health Service, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4435. A letter from the Assistant Secretary for Land and Mineral Management, Department of the Interior, transmitting the 1987 annual report describing royalty management and collection activities under the Federal Oil & Gas Royalty Management Act of 1982, pursuant to 30 U.S.C. 1752(a); to the Committee on Interior and Insular Affairs.

4436. A letter from the Clerk, D.C. Circuit, U.S. Court of Appeals, transmitting a copy of Allan Gerson's letter dated September 7, 1988 and its attachment, dated October 21, 1985, filed as part to the appendix to the report of independent counsel James C. McKay in re Nofziger, Edwin Meese III, Div. No. 87-1, being released by the Division for the Appointment of Special Counsels; to the Committee on the Judiciary.

4437. A letter from the Secretary of Transportation, transmitting the national airway system annual report, fiscal year 1987, pursuant to 49 U.S.C. app. 2203(b)(2); to the Committee on Public Works and Transportation.

4438. A letter from the Acting Administrator, General Services Administration, transmitting an informational copy of a lease prospectus for the U.S. Coast Guard in Martinsburg, WV, pursuant to 40 U.S.C. 606(a); to the Committee on Public Works and Transportation.

4439. A letter from the Administrator, National Aeronautics and Space Administration, transmitting a report outlining the planned funding levels in the agency's current fiscal year 1988 operating plan which exceed amounts authorized, pursuant to Public Law 100-147, section 104(2); to the Committee on Science, Space, and Technology.

4440. A letter from the Secretary of Health and Human Services, transmitting a report on the use by States in fiscal year 1987 of moneys made available for independent living initiatives, pursuant to 42 U.S.C. 477(g)(2); to the Committee on Ways and Means.

4441. A letter from the Acting Chairman, U.S. International Trade Commission, transmitting the third annual report on the impact of the Caribbean Basin Economic Recovery Act on U.S. industries and consumers, pursuant to 19 U.S.C. 2704; to the Committee on Ways and Means.

4442. A letter from the Secretary of the Interior, transmitting a report addressing conflicts between oil and gas rights and the Prado flood control basin project, pursuant to Public Law 99-662, title IV (100 Stat. 4113); jointly, to the Committees on Public Works and Transportation and Interior and Insular Affairs.

4443. A letter from the Secretary of Energy, transmitting a comprehensive report on the ninth project negotiated under the Department's Clean Coal Technology Demonstration Program entitled, "Advanced Slagging Combustor Utility Demonstration Project", proposed by TRW, Inc., pursuant to Public Law 99-190; jointly, to the Committees on Appropriations, Energy and Commerce, and Science, Space, and Technology.

REPORT OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 3785. A bill to amend the Solid Waste Disposal Act to clarify provisions concerning the application of certain requirements and sanctions to Federal facilities; with an amendment (Rept. 100-1060). Referred to the Committee of the Whole House on the State of the Union.

Mr. ROE: Committee on Science, Space, and Technology. S. 2470. An act to promote energy conservation and technology competitiveness in the American steel and aluminum industries, with an amendment (Rept. 100-1061). Referred to the Committee of the Whole House on the State of the Union.

Mr. WILLIAMS: Committee of Conference. Conference report on H.R. 4585 (Rept. 100-1062). Ordered to be printed.

Mr. BROOKS: Committee on Government Operations. Report on the National Drug Policy Board: fighting the war without a battle plan (Rept. No. 100-1063). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on implementation, by IRS, of a Document Matching Program for income paid to business taxpayers should produce billions of additional dollars of tax revenue (Rept. 100-1064). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on problems with the SEC's enforcement of U.S. securities laws in cases involving suspicious trades originating from abroad (Rept. 100-1065). Referred to the Committee of the Whole House on the State of the Union.

Mr. ANDERSON: Committee on Public Works and Transportation. H.R. 3807. A bill to require the Secretary of Commerce to study local financing practices for public works projects, and to provide more lenient treatment for small issuers of tax-exempt bonds with respect to the arbitrage rebate rules and the private activity bond rules; (Report. 100-1066, Pt. 1). Ordered to be printed.

Mr. ROE: Committee on Science, Space, and Technology. S. 1081. An act to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan; with amendments (Rept. 100-1067, Pt. 1). Ordered to be printed.

Mr. FRANK: Committee on the Judiciary. H.R. 5043. A bill to amend section 207 of title 18, United States Code, relating to restrictions on post-employment activities; with an amendment (Rept. 100-1068). Referred to the Committee of the Whole House on the State of the Union.

Mr. ST GERMAIN: Committee of conference. Conference report on H.R. 515; (Rept. 100-1069). Ordered to be printed.

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of Rule X the following action was taken by the Speaker:

H.R. 4164. The Committee on Agriculture discharged from further consideration of H.R. 4164. H.R. 4164 referred to the Committee of the Whole House on the State of the Union. Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DINGELL (for himself, Mr. Waxman, Mr. Wyden, and Mr. Madigan):

H.R. 5471. A bill to amend the Public Health Service Act to revise the authority for the regulation of clinical laboratories; to the Committee on Energy and Commerce.

By Mr. DeLAY:

H.R. 5472. A bill to require competitive contractual practices in the Department of Defense, and for other purposes; jointly, to the Committees on Education and Labor and Armed Services.

By Mr. GOODLING (for himself and Mr. Ford of Michigan):

H.R. 5473. A bill to amend title 5, United States Code, to allow for coverage under the health benefits program of unmarried dependent children between ages 22 and 23 if they are full-time students; to the Committee on Post Office and Civil Service.

By Mr. GREEN:

H.R. 5474. A bill to amend the country of origin marking law requiring that imported manhole rings or frames, covers, and assemblies thereof be marked on the top surface; to the Committee on Ways and Means.

By Mr. ROYBAL:

H.R. 5475. A bill to amend the Social Security Act to provide coverage of, and direct reimbursement for, services of nurse practitioners and clinical nurse specialists, certified registered nurse anesthetists, and nurse-midwives under the Medicare and Medicaid Programs; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. HEFLEY:

H.R. 5476. A bill to terminate the Urban Development Action Grant Program; to the Committee on Banking, Finance and Urban Affairs.

By Mr. HEFLEY:

H.R. 5477. A bill to abolish the Economic Development Administration; to the Committee on Public Works and Transportation.

By Mr. HUNTER:

H.R. 5478. A bill to amend the Controlled Substances Act to make the maximum penalty for distributing or manufacturing a controlled substance in or near a park or recreational facility commensurate with the maximum penalty for distributing or manufacturing a controlled substance in or near a school; jointly, to the Committees on Energy and Commerce and the Judiciary.

By Mrs. KENNELLY (for herself, Mr. Donnelly, Mr. Matsui, Ms. Pelosi, Mr. Gibbons, Ms. Kaptur, Ms. Slaughter of New York, Mr. Chandler, Mrs. Collins, Mrs. Boxer, Mrs. Vucanovich, Mr. Gejdenson, Mrs. Morella, Mr. Morrison of Connecticut, Mr. Dorgan of North Dakota, Mr. McGrath, Mrs. Schroeder, Mr. Guarini, Mrs. Saiki, Mr. Russo, and Mr. Flake):

H.R. 5479. A bill to amend title XVIII of the Social Security Act to provide payment for screening mammography in the same amounts as is provided as for similar mammography; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. LaFALCE:

H.R. 5480. A bill to make certain changes in the procedures under which the compensation of Members of Congress is determined, to provide for the payment of per diem for certain living expenses of Members of Congress—in lieu of the tax deduction—to prohibit Members of Congress from receiving honoraria, and for other purposes; jointly, to the Committees on House Administration, Post Office and Civil Service, and Ways and Means.

By Mr. OWENS of Utah:

H.R. 5481. A bill to require the Secretary of Defense to disclose all biological agents used in—or the subject of—research, development, testing, or evaluation which is conducted under the Biological Defense Research Program; to the Committee on Armed Services.

By Mr. PANETTA:

H.R. 5482. A bill to amend the Equal Credit Opportunity Act to prohibit discrimination by creditors against members of the Armed Forces; to the Committee on Banking, Finance and Urban Affairs.

H.R. 5483. A bill to provide for certain minimum requirements relating to the addressing of mail which is intended for general distribution to persons on rural routes, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. SCHULZE (for himself, Mrs. Boggs, Mr. Murtha, and Mr. Anthony):

H.R. 5484. A bill to amend the Internal Revenue Code of 1986 to provide a fixed rate of interest on the postponed estate tax attributable to a reversionary or remainder interest in property included in the estate; to the Committee on Ways and Means.

By Mr. SHUMWAY (for himself and Mr. Davis of Michigan):

H.R. 5485. A bill to provide for the extended territorial sea and contiguous zone; jointly, to the Committee on Foreign Affairs, Merchant Marine and Fisheries, and the Judiciary.

By Ms. SNOWE (for herself and Mr. Gunderson):

H.R. 5486. A bill to authorize the Secretary of Education to establish a program to make grants to local public library systems to establish demonstration projects using older adult volunteers to provide intergenerational library literacy programs to children during afterschool hours; to the Committee on Education and Labor.

By Mr. SYNAR:

H.R. 5487. A bill to require any conservator of a Federal association and the Federal Savings and Loan Insurance Corporation, in such Corporation's capacity as conservator, receiver, or custodian of any insured institution, to provide notice to any depositor in such institution whose deposits exceed the insured amount that such depositor has uninsured deposits; to the Committee on Banking, Finance and Urban Affairs.

By Mr. TORRICELLI:

H.R. 5488. A bill to establish the William C. Redfield Export Award; to the Committee on Foreign Affairs.

By Mr. VENTO (for himself, Mr. Wylie, Mr. Gonzalez, Mr. Traxler, Mr. Green, Mr. Rostenkowski, Mr. Bereuter, Mr. Morrison of Connecticut, Mr. Wortley, Mr. Kleczka, Mr. Sabo, Mr. Leach of Iowa, Mr. Matsui, Mr. Fazio, Mr. Mfume, and Mr. Kennedy):

H.R. 5489. A bill to amend the Neighborhood Reinvestment Corporation Act to authorize appropriations for the Neighborhood Reinvestment Corporation for fiscal years 1990 through 1994 to permit the corporation to continue to effectively preserve and increase the availability of affordable housing for low- and moderate-income families; to the Committee on Banking, Finance and Urban Affairs.

By Mr. BEREUTER:

H. Con. Res. 387. Concurrent resolution to support further cooperation between the United States and Japan in the coordination of foreign economic assistance programs; to the Committee on Foreign Affairs.

By Mr. GEPHARDT:

H. Res. 575. Resolution designating membership on certain standing committees of the House; considered and agreed to.

By Mr. UDALL:

H. Res. 576. Resolution to disagree to the amendment of the Senate to H.R. 3621 and request a conference; considered and agreed to.

By Mr. MILLER of California:

H. Res. 577. Resolution to concur in the amendment of the Senate to H.R. 3408, with an amendment; considered and agreed to.

By Mr. VENTO:

H. Res. 578. Resolution to concur in the Senate amendment to H.R. 990, with an amendment; considered and agreed to.

By Mr. FORD of Tennessee:

H. Res. 579. Resolution expressing the sense of the House of Representatives with respect to the protection provided by the Clayton Act and the Robinson-Patman Antidiscrimination Act against price discrimination by wholesale suppliers of products; to the Committee on the Judiciary.

By Mr. STENHOLM (for himself, Mr. Bartlett, Mr. Bates, Mr. Bennett, Mr. Brown of Colorado, Mr. Campbell, Mr. Carper, Mr. DioGuardi, Mr. Fawell, Mr. Florio, Mr. Hamilton, Mr. Harris, Mr. Huckaby, Mr. Johnson of South Dakota, Mr. Leath of Texas, Mr. Marlenee, Mr. McCollum, Mr. Olin, Mr. Payne, Mr. Penny, Mrs. Patterson, Mr. Ray, Mr. Robinson, Mr. Saxton, Mr. Sharp, Mr. Skaggs, Mr. Skelton, Mr. Slattery, Mr. Stallings, Mr. Synar, Mr. Valentine, and Mr. Volkmer):

H. Res. 580. Resolution to amend the Rules of the House of Representatives to require committees to include in committee reports, and conference committees to include in joint explanatory statements, the identity, sponsor, and cost of each provision of a reported bill or conference report which benefits 10 or fewer beneficiaries; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ST GERMAIN:

H.R. 5490. A bill for the relief of William J. Guadagni; to the Committee on Armed Services.

By Mr. GREEN:

H.R. 5491. A bill to provide the Court of Claims with jurisdiction to hear, determine, and render judgment upon any claim for back pay by Beatrice Braude against the United States; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 898: Mr. Hochbrueckner.

H.R. 1028: Mr. Coughlin, Mr. Espy, Mr. Clement, Mr. Houghton, Mr. Callahan, Mr. Jones of North Carolina, Mr. Bonior of Michigan, Mr. Molinari, Mr. Stangeland, Mr. Ireland, Mr. Bateman, Mr. Mazzoli, and Mr. Carr.

H.R. 1437: Mr. Parris.

H.R. 2669: Mr. DeWine.

H.R. 2697: Mr. Petri.

H.R. 3944: Mr. Spence.

H.R. 4277: Mr. Murphy, Mr. Blaz, and Mr. Manton.

H.R. 4302: Mr. McGrath and Mr. Chappell.

H.R. 4472: Mr. Frenzel.

H.R. 4695: Mr. Panetta, Mr. Waxman, Mr. Campbell, Mr. Beilenson, Mr. Martinez, Mr. Coelho, Mr. Dellums, Mr. Bosco, Mr. Levine of California, Mr. Morrison of Connecticut, Ms. Kaptur, Mr. Edwards of California, and Mr. Jontz.

H.R. 4708: Mrs. Roukema.

H.R. 4803: Mr. Ireland, Mr. Gray of Illinois, and Mr. Johnson of South Dakota.

H.R. 4856: Mr. Markey, Mr. Bonior of Michigan, Mr. Frank, Mr. Horton, and Mr. Fazio.

H.R. 4991: Mr. Ackerman, Mr. Blaz, Mr. Coats, Mr. Dornan of California, Mr. Durbin, Mr. Dymally, Mr. Glickman, Mr. Hammerschmidt, Mr. Lewis of California, Mr. MacKay, Mr. Pashayan, Mr. Price of North Carolina, Mr. Rahall, Mr. Solomon, Mr. Sundquist, Mrs. Vucanovich, and Mr. Hefley.

H.R. 4992: Mrs. Bentley.

H.R. 5043: Mr. Florio.

H.R. 5177: Mr. Beilenson and Mr. Henry.

H.R. 5212: Mr. Costello and Mr. Rangel.

H.R. 5259: Mr. Payne, Mr. Stangeland, Mr. Davis of Michigan, Mr. Gunderson, and Mr. Grandy.

H.R. 5271: Mr. Scheuer.

H.R. 5278: Mr. Lipinski, Mr. McGrath, Mr. Owens of New York, and Mr. Weiss.

H.R. 5298: Mr. Payne, Mr. Stangeland, Mr. Davis of Michigan, Mr. Gunderson, and Mr. Grandy.

H.R. 5319: Mr. McMillen of Maryland, Mr. McDade, and Mr. Broomfield.

H.R. 5338: Mr. Porter, Ms. Slaughter of New York, and Mr. Wolpe.

H.R. 5351: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5352: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5353: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5354: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5355: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5356: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5357: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5358: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5359: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5360: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5361: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5362: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5363: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5364: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5365: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5366: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5374: Mr. Badham, Mrs. Saiki, Mr. Skeen, and Mr. Walker.

H.R. 5376: Mr. Lightfoot, Mr. Coleman of Missouri, Mr. Brown of Colorado, and Mrs. Bentley.

H.R. 5396: Mr. Smith of Florida, Mr. Rowland of Connecticut, Mr. Florio, Mr. Denny Smith, Mr. Weber, Mr. Shays, Mr. Torricelli, Mr. Garcia, Mr. Clarke, Mr. Owens of Utah, Mr. Yatron, Mr. Waxman, Mr. Glickman, Mr. Gejdenson, Mr. Donald E. Lukens, Mrs. Meyers of Kansas, Mr. Hyde, Mr. Edwards of Oklahoma, Mr. Bereuter, and Mr. DeWine.

H.R. 5400: Mr. Gray of Illinois.

H.R. 5452: Mr. Dicks and Mr. Fields.

H.R. 5460: Ms. Snowe and Mr. LaFalce.

H.R. 5462: Mr. Gonzalez.

H.J. Res. 501: Mr. Espy, Mr. Hammerschmidt, Mr. Borski, Mr. DeFazio, Mr. Gilman, Mr. Traxler, Mr. Miller of California, Mr. Chapman, Mr. Brooks, Mr. Kanjorski, Mr. Sabo, Mr. Lowery of California, Mr. Boland, Mrs. Boggs, Mr. Andrews, Mr. Clarke, Mr. Jacobs, Mr. Chappell, Mr. Bennett, and Mr. Lungren.

H.J. Res. 515: Mr. Campbell, Mr. Mineta, Mr. Jacobs, Mr. Carr, Mr. Wylie, Mr. Levine of California, Mr. Weiss, Mrs. Morella, Mr. Guarini, Mr. Hamilton, Mr. Robert F. Smith, Mr. Jontz, Mr. Vander Jagt, Mr. Coughlin, Mr. Hoyer, and Mr. Regula.

H.J. Res. 526: Mr. Hansen, Mr. Green, Mr. Wortley, and Mr. Hunter.

H.J. Res. 546: Mr. Ackerman, Mr. Annunzio, Mr. Bartlett, Mr. Bennett, Mr. Bevill, Mr. Brown of California, Mr. Bryant, Mrs. Boxer, Mr. Bustamante, Mr. Callahan, Mr. Carr, Mr. Chapman, Mr. Coelho, Mr. Cooper, Mr. DeFazio, Mr. DeWine, Mr. Dowdy of Mississippi, Mr. Dymally, Mr. Dyson, Mr. Espy, Mr. Fauntroy, Mr. Fazio, Mr. Feighan, Mr. Flippo, Mr. Frank, Mr. Frenzel, Mr. Frost, Mr. Goodling, Mr. Gray of Illinois, Mr. Green, Mr. Harris, Mr. Hastert, Mr. Hertel, Mr. Horton, Mr. Ireland, Mr. Jones of Tennessee, Mr. Kastenmeier, Mr. Kleczka, Mr. Lagomarsino, Mr. Lehman of Florida, Mr. Lehman of California, Mr. Mack, Mr. Martinez, Mr. Moakley, Mr. Mrazek, Mr. Murphy, Mr. Owens of New York, Mr. Oxley, Ms. Pelosi, Mr. Petri, Mr. Richardson, Mr. Rodino, Mr. Roe, Mr. Sabo, Mr. Stratton, Mr. Swindall, Mr. Tauzin, Mr. Thomas of Georgia, Mr. Vento, Mr. Waxman, Mr. Wilson, Mr. Wolf, Mr. Wolpe, Mr. Wyden, Mr. Wylie, and Mr. Gingrich.

H.J. Res. 557: Mr. Hoyer, Mr. Smith of Iowa, Mr. Bilirakis, Mr. Pashayan, Mr. Panetta, and Mr. Jones of Tennessee.

H.J. Res. 564: Mr. Weldon.

H.J. Res. 565: Mr. Dellums, Mr. Berman, Mr. Morrison of Connecticut, and Mr. Oxley.

H.J. Res. 566: Mr. Sundquist.

H.J. Res. 595: Mr. Clay, Mr. Yatron, Mr. Roth, Mr. Mack, Mr. MacKay, Mr. Martin of New York, Mr. Wise, Mr. Carper, Mr. Clinger, Mr. de la Garza, Mr. McMillen of Maryland, Mr. Ackerman, Mr. Flippo, Mr. Erdreich, Mr. Borski, Mr. Lantos, Mr. Coleman of Missouri, Mr. Jontz, Mr. Frost, Mr. Kanjorski, Mr. Kildee, Mr. Kostmayer, Mr. Guarini, Mr. Garcia, Mr. Akaka, Mr. Bruce, Mr. Andrews, Mr. Lewis of California, Mr. Dowdy of Mississippi, Mr. Dingell, Mr. Kastenmeier, and Mr. Gray of Illinois.

H.J. Res. 627: Mr. Fazio, Mr. Bonior of Michigan, Mr. Applegate, Mr. Bunning, Mrs. Collins, Mr. Dixon, and Mr. Jontz.

H.J. Res. 642: Mr. Edwards of Oklahoma and Mr. Livingston.

H.J. Res. 651: Mr. Lipinski, Mr. Kasich, Mr. Kolbe, Mr. Mack, Mr. Manton, Mr. Coelho, Mr. Rangel, Mr. Evans, Mr. Thomas A. Luken, Mr. McDade, Mr. Flippo, Mr. Levine of California, Mr. Moody, Mr. Murphy, Mr. Nelson of Florida, Mr. Lungren, Mr. Hammerschmidt, Mr. Goodling, Mr. Moakley, Mr. Parris, Mr. Ravenel, Mr. Rhodes, Mr. Roberts, Mr. Savage, Mr. Skeen, Mr. Skelton, Mr. Solarz, Mr. Spence, Mr. Spratt, Mr. Scheuer, Mr. Traficant, Mr. Traxler, Mr. Tallon, Mr. Udall, Mr. Valentine, Mr. Tauzin, and Mr. Walgren.

H.J. Res. 660: Mr. Dymally, Mr. Derrick, Mr. Owens of New York, Mr. Anthony, Mr. Espy, Mr. Bonker, Mr. Hoyer, Mr. Conte, Mr. Robert F. Smith, Mr. Dornan of California, Mr. Lujan, Mr. Valentine, and Mr. Gonzalez.

H.J. Res. 667: Mr. Frost, Mr. Levin of Michigan, Mrs. Boxer, and Mr. Lehman of California.

H.J. Res. 669: Mr. Gibbons, Mr. DioGuardi, Mr. Dixon, Mr. Bates, Mr. McGrath, Mr. Bartlett, Mr. DeFazio, Mr. Lewis of Georgia, Mr. Morrison of Connecticut, Mr. Moakley, Mr. Hayes of Louisiana, Mr. Fuster, Mr. Bryant, Mr. Bilirakis, Mr. Hughes, Mr. Russo, Mr. Kolter, Mr. Panetta, Mr. Sikorski, Mr. Gunderson, Mr. Robinson, Mr. Stangeland, Mr. Thomas of Georgia, Mr. Ackerman, Mr. Burton of Indiana, Mr. Weldon, Mr. Weber, Mrs. Boxer, Mr. Hansen, Mr. Hall of Ohio, Mr. Clay, Mr. Daub, Mr. Fazio, Mr. Gray of Illinois, Mr. Hawkins, Mr. Hammerschmidt, Mr.

JENKINS, Mr. FOLEY, Mr. McCLOSKEY, Mr. PRICE of North Carolina, Mr. SAWYER, Mr. STRATTON, Mr. GEKAS, Mr. AKAKA, Mr. SKAGGS, Mr. INHOFE, Mr. DORNAN of California, Mr. BOUCHER, and Mr. ROWLAND of Connecticut.

H. Con. Res. 355: Mr. FROST and Mrs. BENTLEY.

H. Con. Res. 365: Mr. DENNY SMITH, Mr. LEVIN of Michigan, Mr. EVANS, and Mr. DAVIS of Michigan.

H. Con. Res. 366: Mr. BEVILL.

H. Con. Res. 380: Mr. DARDEN, Mr. CAMPBELL, Mr. BOEHLERT, and Mr. ATKINS.

H. Con. Res. 385: Mr. TOWNS and Mr. LEVINE of California.

H. Res. 439: Mr. TAUKE.

H. Res. 516: Mr. BUSTAMANTE.

H. Res. 527: Mr. HUGHES.

H. Res. 546: Ms. PELOSI, Mr. LEWIS of Florida, Mr. CHENEY, Mr. OBEY, Mr. VOLKMER, Mr. WISE, Mr. McCOLLUM, Mr. HATCHER, Mr. EMERSON, Mr. RHODES, Mr. PENNY, and Mr. BAKER.

EXTENSIONS OF REMARKS

A CRITICAL AVIATION AGENDA FOR THE NEXT ADMINISTRATION

HON. DENNY SMITH

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. DENNY SMITH. Mr. Speaker, this week 14 different national aviation associations combined their considerable expertise, knowledge, and judgment to issue a joint position paper entitled "A Critical Aviation Agenda for the Next Administration." This paper has been provided to both the Bush and Dukakis Presidential campaigns.

As cochairman of the Congressional Aviation Forum, I am today submitting the paper for the record here in the House. I believe the paper succinctly outlines the actions necessary by the new administration "to address the needs of a neglected aviation infrastructure," and I encourage my colleagues to read the document.

A Critical Aviation Agenda for the Next Administration

THE AVIATION CHALLENGE

One of the major challenges facing the new Administration is to revive the nation's airport/airway system, which is suffering from congestion and neglect. Our aviation industry is absolutely essential to our nation's public interest and economic vitality. To achieve and maintain the highest levels of safety and efficiency, the time for action is now.

Airline delays are symptomatic of a national problem. The explosive growth in air travel following airline deregulation has been muffled by the government's failure to upgrade and modernize our aviation infrastructure to meet the demand. Billions have been amassed through aviation user fees to finance the required modernization and expansion, yet the Administration and the Congress have allowed a multi-billion dollar surplus to accumulate while aviation has suffered. This threatens key elements of our economy:

The aviation industry—which directly employs over 800,000 people, is an essential ingredient in our nation's international competitive position, and is a leading developer of new technologies;

The aerospace industry—that contributed a $15 billion surplus to partially offset our nation's enormous trade deficit in 1987;

Domestic airlines—which employ 500,000 people in a $50 billion per year industry;

General aviation and commuter airlines—which face the threat of restricted access to key airports as they provide air service to hundreds of smaller communities; and

The traveling public—which numbered 450 million passengers in 1987 and should double by the year 2000.

ISSUES AND SOLUTIONS

Time and again, highly credible groups, including the President's Aviation Safety Commission and the Office of Technology Assessment, have concluded that the major problems confronting aviation are an inadequate infrastructure—including growing airport and airway capacity limitations—and the government's failure to resolve these limitations in a timely way. The authorizing and tax-writing committees in the Congress have provided the authority and the tax revenues to do the job, but other committees have not approved full spending. Moreover, the Administration's reluctance to use all of the dedicated user fees for their intended purpose—out of deference to the national deficit—has been a major factor. Finally, the ability of the FAA to make decisions and carry out its responsibilities has been frustrated and delayed by bureaucratic wrangling. The new Administration *must* coordinate its resources to meet this challenge. The question is—how?

Revitalize and streamline the FAA

This is our nation's aviation action agency. Its ability to do its job has been severely hampered by organizational and operational constraints. What does it need?

Assign an administrator for a multi-year fixed term to ensure a continuity of effort and the completion of long-term projects. He must be given authority and control commensurate with his substantial responsibilities.

Ensure that the FAA's Congressional budget request is adequate to meet system needs and is consistent with past commitments to aviation taxpayers to use—and not hoard—their user fees.

Consider and implement human resource management and compensation enhancements to meet the mobility and high-technology needs of its personnel system.

Streamline procurement system policies and procedures to meet both short and long-term acquisition requirements.

Expand airport capacity

Airport capacity has not kept pace with the rapid growth of air travel. Billions of dollars in documented airport improvement requests lay unfunded in the FAA. The result has been congestion, travel delays and, as alleged by some, growing safety concerns among air travelers. What can be done?

Seek full spending of authorized trust fund monies for airport development and enhancement where needed and justified.

Provide additional runways and taxiways as required.

Explore expanded joint civil/military use of selected military airfields and public use of surplus fields.

Consider a federal approach to the aircraft noise issue that balances local community needs with the need for a national air transportation system.

Devote additional resources to research and development (R & D) efforts and current technology applications in search of airport capacity enhancements.

Modernize the air traffic control system

The FAA has pursued implementation of the National Airspace System Plan (NASP) since its publication in 1982. Frustrated by contractor delays compounded by underfunding, and suffocated by well-intended bureaucratic oversight, FAA progress has not kept pace with expectations. Progress—not excuses—is what is required:

Acclerate implementation of the NASP, with particular attention to advanced automation and collision avoidance systems.

Increase R & D efforts for the next generation air traffic control system.

Develop and apply advanced simulation models in search of better, safer ways to control air traffic.

Consider additional priority issues

Other vital functions require attention:

Increased staffing in such areas as full performance controllers and skilled maintenance technicians;

Research into human factors and aircraft accidents;

Improved collection and dissemination of adverse weather and critical flight information to the pilot.

Improved controller and pilot training and certification; and

More navigational aids at smaller airports.

CONCLUSION

The new Administration has both the opportunity and the responsibility to address the needs of a neglected aviation infrastructure. A national aviation policy should be established. Significant advances in safety, service, competitiveness and technology will reward a responsible leadership. This nation simply cannot accept complacency. The entire aviation community stands ready to work with the new Administration to accomplish these vital objectives.

Submitted by: Aerospace Industries Association, Air Line Pilots Association, Air Traffic Control Association, Air Transport Association of America, Aircraft Owners and Pilots Association, Airport Operators Council International, American Association of Airport Executives, Experimental Aircraft Association, General Aviation Manufacturers Association, Helicopter Association International, National Air Transportation Association, National Aeronautic Association, National Business Aircraft Association, and Regional Airline Association.

"SMART START": THE COMMUNITY COLLABORATIVE FOR EARLY CHILDHOOD DEVELOPMENT ACT OF 1988

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. FLORIO. Mr. Speaker, I am pleased to introduce legislation that will promote early childhood education by establishing a national education program for prekindergarten children. This bill is designed to give children a "Smart Start" in their path to knowledge, to education and to training. By providing funds to the States to set up Smart Start Programs, this legislation will help develop programs that will guarantee that we are reaching children

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

early enough in their development and working to make sure that they are provided with the educational opportunities that will help them become productive members of their society.

Studies show that children who participated in early education programs were far more likely to graduate from high school, twice as likely to be literate, and twice as likely to be employed than children of similar backgrounds who have not had the benefit of early intervention. Studies show that these youngsters who participated in prekindergarten programs also have a much lower arrest and juvenile delinquency record, half of the rate of teenage pregnancy, and are half as likely to depend on welfare assistance.

Despite these shining statistics, only one-third of poor children are now participating in ealry childhood programs. Only two out of five 3- and 4-year-olds are enrolled in child care programs that also have an educational component. The poorer the family, the less likely that family will have children enrolled in these types of programs.

There is a growing need for child care in this country and I have been pleased to join as a cosponsor of the act for better children child-care legislation. By 1995, two-thirds of children under 6 will have mothers who work outside the home. As a strong supporter of the ABC legislation, I also feel that there is a need for combining child care with education. Smart Start is an important complement to the ABC legislation.

The smart start bill I am introducing today is the companion to legislation offered in the Senate by Senator KENNEDY. I commend his intiative in this effort and am pleased to join him. One of the key advantages to this bill is the fact that the Smart Start Program would build on existing programs such as Head Start. The difference is that Smart Start will expand these efforts and guarantee that all prekindergarten children—rich or poor—will have equal access to these early intervention programs.

The Smart Start legislation would provide grants to the States and localities to set up early education programs for prekindergarten children. The programs would run for the full workday and the full calendar year in order to serve the child care needs of parents. Minimum standards for the programs would include small class sizes and the staff-child ratios, as well as staff that have been trained in early childhood education.

While the Federal Government would provide initial funding for this program, a cost share would also be required from recipient States. The Federal Government would put up 70 percent of the cost for the first year, 60 percent for the second year, and 50 percent of the third year. The programs themselves would be available to any pre-school-aged children and parents whose incomes were 115 percent below the poverty line could enroll their children for free. Half of the slots in each program would be reserved for these children. All others would be required to pay a sliding scale fee, based on their income.

Smart Start is supported by a number of education organizations including the National PTA, the National Education Association, the American Federation of Teachers, the National Governors' Association, the Child Welfare League of America, KidsPac, the National Association of State Boards of Education, the National School Boards Association, the NAACP, and the National Council of La Raza, to name a few.

While the 100th Congress winds to a close, I am introducing the House companion of the Smart Start bill today to set the stage for debate about this important issue in the next program. It is important that, while we seek to provide our children with adequate daycare facilities, we also start them on the path to learning early. Clearly, the benefits to our society of early education are too many to pass up. It's time we got smart, and helped our children get a smart start in life.

THE NATIONAL YOUTH SPORTS PROGRAM

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. RANGEL. Mr. Speaker, at a time when we hear daily about athletes abusing drugs, I am proud to be able to bring to the attention of the Members of the House of Representatives and the public subtitle D of title II—National Youth Sports Program of H.R. 5210, the Omnibus Drug Initiative Act of 1988.

H.R. 5210 authorizes to be appropriated $15 million for fiscal year 1989, $17 million for fiscal year 1990 and $20 million for fiscal year 1991 for the National Youth Sports Program. The bill provides that the Secretary of Health and Human Services may make grants to eligible entities to carry out a national youth sports program providing disadvantaged youth with medical and nutrition services, exposure to college and university campuses, sports instruction and competition in settings that provide high quality facilities and supervision, and related educational and counseling services.

Grantees would have to provide to the Secretary assurances that not less than 90 percent of the youth who participate in each activity for which such grant will be expended to carry out the program established will be from families with an income not exceeding the poverty line, and the entity will provide a non-Federal contribution that equals or exceeds the amount of such grant. In contrast to the current program which is only carried on during the summer months, under H.R. 5210 the program would be expanded to cover the entire year.

Required activities under the National Youth Sports Program would include access to facilities and resources of all the institutions of higher education at which such activities are carried out, and an initial medical examination and followup referral or treatment, without charge, while children participate in any of such activities in the 90-day period beginning on June 1. In addition, children in the program would have to receive at least one nutritious meal per day, without charge, high quality instruction in a variety of sports by college, high school, and junior high school coaches and teachers, and enrichment instruction and information on matters relating to the well-being of youth, such as drug and alcohol abuse prevention, educational and career opportunities, health and nutrition study practices, and job responsibilities.

Mr. Speaker, I am particularly pleased that in selecting among applications submitted the Secretary is directed to give special emphasis to applicants that proposed to carry out activities relating to drug abuse education and prevention. The Secretary is also directed to give priority to applicants that propose to carry out such activities in or near geographical areas in which drug abuse and related problems are concentrated.

The Secretary may approve the use of the grant to train in the most advanced and effective methods of drug abuse education and prevention the staff that will carry out such activities and to provide quality technical assistance to develop and implement drug education and prevention activities. Other permissible purposes of the grant are to develop, implement, or operate a drug education and prevention program at sites where the applicant carries out sports activities, to involve in drug education and prevention activities the parents of children who participate in the National Youth Sports Program, and to develop and provide antidrug abuse educational materials, including videotapes and booklets relating to medical and nutrition services, exposure to college and university campuses, sports instruction and competition in settings that provide high quality facilities and supervision, and related educational and counseling services.

Mr. Speaker, this provision reaffirms Congress' realization that reaction, combined with education, is one of the strongest defenses our Nation has in the war against drugs. Self-confidence, self-esteem, and self-worth are among the numerable benefits for disadvantaged and high risk youth who participate in organized recreation and sports activities. Many experts agree that high self-esteem is a critical factor in our Nation's youth deciding not to use drugs.

The expanded National Youth Sports Program proposed in this bill will permit greater participation by schools and communities in the fight and freedom from drugs. It will offer more opportunities for both the mental and physical development of youth into responsible drug-free adults. H.R. 5210 anticipates the continued involvement of colleges and universities in the National Youth Sports Program and that public park and recreation systems will be eligible, active, and full participants in the expanded effort to improve the health and welfare of the Nation's youth through this initiative.

GLOBAL WARMING PREVENTION ACT

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Miss SCHNEIDER. Mr. Speaker, today I and my colleague Representative GEORGE BROWN are joined by over two dozen of our Republican and Democrat colleagues in introducing the Global Warming Prevention Act, comprehensive legislation dealing with the "greenhouse effect" resulting from rising atmospheric levels of carbon dioxide, nitrous oxide, methane, and other infrared-trapping gas emissions.

We have witnessed an unusual number of disasters in recent months, including: The crop-destroying drought that devastated many of America's farms; raging forest fires that spread uncontrollably through our commercial timber and pristine wilderness areas; Hurricanes Gilbert and Helene that ravaged the Caribbean and our southeastern shores; the record heat wave that gripped the Nation and intensified the unhealthy effects of urban pollution; and the tragic flooding of Bangladesh that left disease and starvation in its wake.

Scientists lack adequate data to say whether these costly incidents were triggered by the global warming trend. But the scientific community is united in warning us that in the future such disasters will occur with increasing frequency if the rise in greenhouse gas emissions goes unchecked.

Clearly more basic research on the greenhouse effect is paramount if science is to be able to better predict the many consequences from rising levels of greenhouse gases. Yet, we already know that massive economic dislocations are in store if business as usual continues. America's breadbasket is at risk of becoming a permanently drought-stricken region. Many of our coastal cities, and those cities around the world that collectively house half the world's population, are at risk of being inundated from rising sea levels that would occur if the polar ice caps melt. Erratic weather patterns could produce dramatic reduction in rain and snowfall jeopardizing the reliability of hydrodams, irrigation systems, and even river transport, as was experienced on the Mississippi River this past year.

As I speak, many of the world's noted biologists and ecologists are addressing a World Wildlife Fund Conference in the Nation's Capital on the consequences of the global warming on the world's plants and animals species. The rapid climate changes that may occur—a global temperature increase of between 3 and 8 degrees fahrenheit within the next several generations—may exceed the survival capacity of many species, or their ability to migrate to more hospitable habitats. Species extinction, already an extremely serious global problem, is likely to accelerate as the greenhouse effect worsens.

Such dire consequences have led several of the world's prestigious scientific bodies, including the World Meteorological Union, the International Council of Scientific Unions, and the International Union for the Conservation of Nature and Natural Resources, to call for steps to pevent a worsening of the global warming trend. Minimum reductions of 20 percent from current carbon dioxide emissions levels within the next 15 years was the recommendation issued at the recent Toronto International Conference on Climate Change.

The legislation I and my colleagues are introducing today takes this advice very seriously. We firmly believe that timeless adage, an ounce of prevention is worth a pound of cure. At the same time, we are quite aware from the considerable congressional testimony that has been provided in recent years, that the available options for reducing greenhouse gases such as carbon dioxide can vary in cost by tenfold or more. This makes it imperative that the strategy the Federal Government undertakes in formulating global warming prevention policies avoid imposing needless and wasteful expenditures on the Nation's taxpayers and ratepayers.

I believe our legislation lays out just such a strategy. The guiding principle of this bill is to implement a Federal-wide, least-cost planning process, especially for the energy sector, which produces roughly half the total greenhouse gas emissions.

The bottom line result of this approach is to engender, as much as is possible, a positive sum strategy that cuts greenhouse gas emissions while cutting energy costs at the same time. Indeed, based on the available evidence of what the least-cost energy approach offers, we could as well have referred to this bill as the "global competitiveness and U.S. productivity enhancement act." The several dozen policy measures detailed in this legislation should: help consumers eventually save several hundred billion dollars per year on their energy bills; create high-efficiency, energy-generating and energy-consuming products and services for export; reduce foreign oil imports and the trade deficit; and, reduce a range of other environmental pollutants in addition to greenhouse gases.

This is the repeated message in testimony delivered by numerous expert witnesses before Congress, who have detailed the preeminent role that energy efficiency has come to play in our economy. Energy efficiency improvements, which flow from scientific advancements and technological innovations that enable more energy services to be delivered with less energy input, have become the key source of least-cost energy services.

It is a too little appreciated fact that over the past 15 years investments in improving the efficiency of America's stock of buildings, appliances, vehicles, industrial equipment, and other energy-consuming devices has cut energy consumption by one-third, carbon emissions by 40 percent, and the U.S. energy bill by a phenomenal $160 billion per year.

Success breeds success, and this is undeniably true about remaining opportunities for saving more money and cutting carbon and nitrogen oxide emissions through additional efficiency improvements.

Detailed Government and private studies show that the U.S. economy could maintain robust economic growth while achieving between $160 billion per year in energy savings through continued investment in efficiency technologies. These investment opportunities are on average two to five times cheaper than conventional fossil and nuclear resource options. Declining levels of greenhouse gas emissions is a derivative, cost-free benefit of the efficiency improvements.

Let me illustrate with one example: lighting. Lighting, and the associated air-conditioning needed to remove the heat generated by lights, consumes the equivalent of half of all coal burned by utilities. Yet, a rich variety of highly efficient lighting products now make it possible to deliver the same lighting amenities while consuming half to three-fourths less electricity. These more efficient lighting products would not only cut carbon emissions by millions of tons annually, but reduce energy bills by billions of dollars annually.

However, a variety of market imperfections and biases currently inhibit the timely capture of these low-cost energy options. In particular, public policymaking has failed to keep pace with these technological innovations and new commercial opportunities, nor have any public policy efforts been taken to deal with the threat of global warming. The proposed legislation sets out new, needed changes in Federal policies that reduce a number of the key market barriers.

Again, let me illustrate with another example: vehicles. The current efficiency of the Nation's more than 100 million light cars and trucks averages less than 20 miles per gallon (mpg). These vehicles consume over 7 million barrels of oil per day, emit their weight per year in carbon emissions, and are responsible for roughly one-third of U.S. greenhouse emissions. Fuel economy standards have raised new vehicle fleet average to roughly 27 mpg, nearly twice the level of the fleet average when the standards were enacted in the mid-1970's. The standards have cut carbon emissions by millions of tons per year, while accumulating net energy savings for consumers of $180 billion as of 1987.

Unfortunately, since less than a fifth of total driving cost is fuel, consumers have little incentive to purchase vehicles much more efficient than 30 to 35 mpg. This remains the case even at fuel prices two to four times the U.S. pump price, as found in most European nations. Yet, at least seven manufacturers have already tested cost-effective, high-performance prototype cars getting 67 to 121 mpg, while maintaining crashworthiness, emissions controls, acceleration, and other amenities.

Obviously, from a societal and global perspective, these highly efficient vehicles would greatly reduce greenhouse gases—and vulnerable foreign oil imports and our triple-digit trade deficit. There are policy actions that are available to overcome this market failure. This legislation includes three such measures: new, and greatly improved, vehicle energy efficiency performance standards; tax rebates of up to $2,000 per car as an incentive for consumers to purchase more efficient vehicles; and, an increase in the current gas guzzler tax on very inefficient vehicles. These three measures are certain to raise the U.S. vehicle fleet efficiency average to 45 mpg for light vehicles and 35 mpg for light trucks by 1999. This will result in preventing the combustion of 8 billion barrels of oil over the next 30 years above and beyond the 6 billion barrels that will be saved with no additional inducements.

The auto improvements will save consumers tens of billions of dollars at the gas pump, prevent the release of over 1 billion tons of carbon into the atmosphere, improve urban air quality, and continue to save an additional 500 million barrels of oil each year. It is also noteworthy that these modest improvements exceed the combined oil resources that could be extracted from the Pacific coast, Alaska, the Arctic Refuge, and the Atlantic coast. This by no means exhausts the cost-effective efficiency improvements that are available; an additional 8 billion barrels could be saved by achieving light car/truck levels of 60/45 mpg.

Efficiency is not a panacea to the global warming problem, but represents the most important step this and other nations can take in reducing greenhouse gases in a cost-minimizing manner, while at the same time spurring economic productivity.

The energy savings may offer one of the few sources of investment capital for undertaking additional steps to control greenhouse emissions. The recently released international study by the highly respected End Use Global Energy Project, "Energy for a Sustainable World," found that it is cost-effective to continue the 2 to 3 percent per year improvement in energy efficiency for several decades to come. Energy savings could eventually exceed a staggering $5 trillion per decade!

Milking this cash cow is imperative, given the equally staggering debt and deficits that the United States and many other countries face. Without these relatively easy savings, it may well be impossible to finance the billions of dollars of additional research and steps that must be undertaken.

Other vital steps that need to be taken, and that are addressed in this legislation, include: Rapid development of ecologically sustainable renewable energy resources; prevention of deforestation and promotion of reforestation internationally; eliminating stratospheric ozone-depleting chlorofluorocarbons (CFC's) and reducing other greenhouse gases (for example, methane, nitrogen oxides); promoting universal family planning services to cope with high population growth; and development of adaptative measures for agriculture and other affected parts of the economy that will be impacted by changing climate patterns and sea level rise as the global warming takes its course.

The Global Warming Prevention Act gives high priority to reinvigorating the Nation's energy efficiency and renewable energy R&D programs, which have been reduced 50 percent and 75 percent, respectively, over the past decade. Research and development of these two nongreenhouse energy options, receive a mere $160 million and $110 million, respectively, of the U.S. Department of Energy's [DOE] roughly $15 billion yearly budget.

These low funding levels are unfathomable, given the fact that the Federal energy efficiency R&D program has been a spectacular success. If just seven of its most impressive results had to justify every tax dollar ever expended on energy efficiency R&D, the taxpayers would still realize a $50 return on each dollar! Yet, according to the American Institute of Physics, which pioneered work done on this energy option, this Nation has just scratched the surface of what remains to be achieved. Our legislation reflects this safe advice.

In the case of renewables, which include solar, biomass, hydro, wind, and geothermal resources, the United States has barely tapped its massive reserves, although renewables currently contribute close to 10 percent of the Nation's total energy needs, 50 percent more than nuclear power, which currently receives five times more Federal R&D funds than renewable resources.

According to DOE's Energy Research Advisory Board [ERAB] the U.S. reserves of renewable energy resources exceed 80,000 quads. This is one thousand times the current total U.S. energy consumption, and 5 to 10 times larger than U.S. coal reserves. ERAB estimates that 80 quads could be economically extracted from this resource base—or 75 percent of the energy projected to be needed by 2010, if the National maintained stable-level R&D funding. This bill takes that advice seriously.

Much of America's garbage wastes represent an untapped renewable resource. This legislation proposes to alleviate a nagging national problem of waste disposal, by including policy measures for spurring greater reliance on recyclable materials. Studies have shown that if the United States increased its recycling rate 10 percent above the projected level by 1992 and 30 percent above the projected level by 2008, the Nation could accumulate savings of $30 billion and seven quads of energy.

Natural gas can also play an important role as a bridging fuel, since it produces roughly half as much CO_2 as coal. The United States currently has the world lead in high-efficiency gas turbines, researched and developed over the past decade for the Air Force for cargo planes. They can be modified for use as highly efficient powerplants.

The bill promotes the demonstration of this aero-derivative technology, known as Intercooled Steam-Injected Gas Turbines [ISTIG's]. They are 50 percent more efficient than conventional powerplants, and cost half as much as new coal or nuclear plants. Studies have shown that just using them to replace currently operating gas-fired powerplants would save the Nation half a million barrels of gas per day and $16 billion in net present value.

Equally important, this technology represents an outstanding export product. An Agency for International Development [AID] study found that this aircraft-derived gas turbine could be used to cost-effectively meet the steam-processing needs of the sugar cane factories located in 70 developing countries, while also cogenerating an estimated 50,000 megawatts of electricity. This is equal to one-fourth of all electricity currently generated in these countries. Most importantly, the turbines can use sugar cane wastes and renewably cultivated tree crops and other biomass as fuel, instead of depending on the next "least-cost" fuel, imported coal. Fuelwood plantations also fit nicely with greenhouse prevention, since trees serve a double function as carbon reservoirs.

In addition to reducing carbon emissions through efficiency improvements, greater reliance on renewable resources, and the use of natural gas as a bridging fuel, further steps can be taken to offset current emissions from coal combustion. The United States extracts over 900 million tons of coal per year, and coal generates over half of U.S. electricity. The legislation before us promotes research to reduce CO_2 emissions from coal. It also promotes urban tree-planting, which research shows to be one of the lowest cost options available for offsetting carbon emissions.

The Global Warming Prevention Act addresses other aspects of the greenhouse problem besides fossil fuel combustion. Forest destruction, according to scientific estimates, contribute 10 to 20 percent of the annual loading of carbon into the atmosphere. The world's original forest area has declined by 20 percent. Half the remaining forests are in developing countries, where 11 million hectares or the size of Pennsylvania, are being destroyed each year. Reforestation is occurring at a miserably slow rate—just a few percent in Africa, 10 percent in Latin America, and about 25 percent throughout Asia.

Developing countries are also losing 6 million hectares of cropland to decertification each year. This is roughly the same area each year that in 10 years time could grow tree crops sufficient to provide the energy necessary to double agriculture output. According to the Food and Agriculture Organization, a doubling of output is imperative to feed and clothe the hundreds of millions of new births projected in these countries by the end of this century.

This legislation calls for the establishment of bilateral and multilateral Tropical Forestry and Agroforestry Programs. Well-crafted programs, learning from and avoiding the many mistakes of past projects and assisting widespread replication of the outstanding successes, could greatly spur the food, timber, and energy needs of developing countries in a low-cost and ecologically sustainable manner.

There are a formidable set of problems that currently drive deforestation, but the long-term societal cost of this destruction demands our immediate attention and sustained leadership. Such steps make good sense, not only for slowing the global warming peril, or for reducing the rate of species extinction that is coupled to tropical forest loss, but to help eradicate famine and poverty and transform aid-dependent developing countries into prosperous trading partners.

Finally, I would like to recall the findings of a 1981 DOE report on "Energy and Air Quality," that a significant increase in atmospheric CO_2 "is expected to be caused by world-wide increases in population which will increase energy use and speed deforestation, limiting the control of CO_2 by natural processes." As the World Bank recently reiterated, unchecked population growth threatens to overwhelm even the best of development assistance programs. The World Bank and other international organizations have repeatedly stated the imperative of achieving population stabilization through the provision of universal family planning services. Achieving this goal in a reasonable time frame could stabilize world population at several billion fewer births. The impact on global warming could be as great as the other efforts noted above.

This legislation proposes several policy measures regarding population stabilization, including: establishment of a National Commission on Population, Environment, and Natural Resources; the convening of an international conference on population to examine policies necessary to achieve sustainable world population levels; and, support for the goal of noncoercive, universal family planning services through increased Federal funding for these programs.

As can be seen from my statement, I believe we must act expeditiously and comprehensively to slow the greenhouse warming, and that we can do so in a cost-minimizing manner that bodes well for alleviating a variety of other pressing national concerns and global problems.

SALUTE TO JAMES SADDORIS, PRESIDENT OF THE AMERICAN DENTAL ASSOCIATION

HON. JAMES M. INHOFE

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. INHOFE. Mr. Speaker, I'd like to take a minute to share with you my admiration for one of the most respected citizens in my hometown of Tulsa—Dr. James A. Saddoris.

Dr. Saddoris is president of the American Dental Association. He is one of the fine dentists in Tulsa. But he is more than that. He's an example of commitment and of excellence that all of us can admire.

Dr. Saddoris is a person who is highly successful as a dentist.

But, in the way he has chosen to live his life, he has broadened the definition of success to go beyond personal gain * * * beyond his chosen field * * * to encompass the good of humanity.

Dr. Saddoris is a person who cares. He cares about people and about his profession. He cares about Tulsa, about Oklahoma, about America, and about the whole world.

Dr. Saddoris cares about values and ethics—and he demonstrates them in everything he does, every single day. "Service above all" is his motto, and he means it.

These are the values that will move forward both his profession, and health care in America.

Dr. Saddoris is deeply committed to education and research. That commitment was recognized this year by the University of Detroit, which awarded him the honorary doctor of humane letters degree.

When Dr. Saddoris addressed the university's dental school commencement, he told his audience that they should: "Learn to Live, and Live to Learn." I can think of no better way to describe Jim Saddoris' own attitude toward life.

Dr. Saddoris has taught on the faculty of Oral Roberts University School of Dentistry; Served on the editorial board of the journal Dental Economics; and has contributed many thought-provoking and inspiring articles and speeches.

He is a role model for others in his profession, having served as a trustee of the American Dental Association and as chairman of the Association's Council of Federal Dental Services.

For a decade, he served in the ADA's house of delegates. He is also a former president of the Oklahoma Dental Association and received its "Man of the Year" award in 1982.

He has served on the Dental Advisory Committee of Oklahoma Blue Cross-Blue Shield and was a member of the council on long-range planning of the academy of General Dentistry.

He has been a delegate to an international dental organization as well—the Federation Dentaire Internationale.

A graduate of Baylor University College of Dentistry, Dr. Saddoris has also been active in philanthropy.

He is vice president of the American Fund for Dental Health and a director of the National Foundation of Dentistry for the Handicapped.

Dr. Saddoris is a model as a leader, as a thinker, as a professional, and as an American. And that's why I'm so proud to honor him today.

THE MEDICAL WASTE TRACKING ACT OF 1988

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. FAWELL. Mr. Speaker, yesterday the House considered H.R. 3515, the "Medical Waste Tracking Act of 1988." I share my distinguished colleague of Ohio's [Mr. LUKEN] support for legislative initiatives to combat the dumping of medical wastes in our oceans and lakes. It is clear to me that Congress must take the lead in ensuring the public health and safety of our coastal waters and Great Lakes. We are very familiar with the incidents of last summer that forced beaches all along the east coast to close at one time or other.

Nonetheless, I am concerned about some of the questions H.R. 3515 raises. I will not object to the bill, but merely want to highlight some concerns about this legislation which have been brought to my attention.

One major concern is that the bill fails to distinguish between medical waste and infectious waste. There is a clear and distinct difference between these two terms. Although these differences are sometimes difficult to understand, they are central to identifying appropriate waste management practices.

Another concern is that the EPA, the agency administering the 2-year medical waste-tracking demonstration program, is not required to consult with the Centers for Disease or NIH regarding my definitions of medical or infectious waste. These agencies are best prepared to assist in the problems raised by the unclear definitions in this bill.

Again, while I will not object to the passage of this bill, I want to make clear for the record some of the concerns we should have in approving this demonstration program.

WALTER LASKOWSKI: A MOST DISTINGUISHED INDIVIDUAL

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TRAXLER. Mr. Speaker, I rise to pay tribute to a most distinguished individual, Walter Laskowski, who held his family close to his heart, and committed his life to serving the working men and women of the Saginaw Valley through his pioneering efforts in organized labor.

I would like to take this opportunity to share with my colleagues some information about Walter Laskowski and his service to the community of Bay City.

Despite the desperate times and seemingly hopeless circumstances surrounding his working conditions, and the meager wages he and his coworkers earned, Walter Laskowski was a man who fought for and won a life of dignity. In 1936, as a worker in Bay City's Chevy plant, he earned 40 cents per hour, while the women in his plant made only 28 cents per hour. These men and women had no health insurance, vacation pay, no benefits of any kind; indeed, they had very little hope. But in March 1937, led by the vision and courage of Walter Laskowski, the first sit-down strike, a 4-hour demonstration of solidarity was staged which literally paralyzed the Chevy plant. Realizing their strength for the first time, 1,000 people in that plant joined the UAW that day. One thousand people, led by the banner of hope named Walter Laskowski began to live with dignity that day, and 1,000 people were just the beginning of the legacy he was destined to leave.

Persistence and courage were strong traits in his character. In the 1930's, when 75 percent of the work force was Polish, he would organize his fellow laborers in their native language, much to the chagrin of his employers, who neither understood nor tolerated this use of the Polish tongue. His persistence led to the establishment of UAW Local 362, which grew from 200 members prior to the first sit-down strike at Bay City's Chevy plant to 1,200 after the event. Because of his early persistence and achievements, he was elected chairman of the bargaining committee in 1939, and reelected to that post every successive year, until his early retirement in 1971. He is also remembered by Ambassador Leonard Woodcock, former president of the UAW, for his bold efforts in successfully organizing the General Motors diesel facility, and he was well acquainted with high ranking union officials in Michigan and throughout the Midwest.

In addition to his contributions to the labor community, Walter Laskowski remained a loyal and committed husband and father. His wife, Eugenia, and their six chilren, Terry, Alan, Clara, Tom, Walter (Jack) Jr., and Germain remember him with respect and honor. His vibrant presence is greatly missed.

His contributions to the Democratic Party, and his lifelong commitment to St. Stan's Catholic Church are just two more examples of his dedication to the principles in which he believed.

It is truly fitting that a pavilion is being dedicated in his name on Monday, October 10. A strong and basic structure in the community, the pavilion is reminiscent of his strength and the very basic principles for which he lived. It will shelter union members today, just as his efforts offered relief to those desperate workers caught in the storms of injustice so long ago. We cannot and should not forget the light he, and those early labor pioneers like him, gave to the dark times of the 1930's. The integrity, courage, the sense of destiny he truly possessed are needed today, perhaps more now than in the 1930's.

We salute you, Walter Laskowski, and we will not forget the paths you helped forge for your fellow workers and the strides you secured which continue to benefit laborers today.

GERMAN-AMERICAN DAY

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. KANJORSKI. Mr. Speaker, as you know, Mr. Speaker, tomorrow we celebrate German-American Day, a day set aside to reaffirm the friendship shared between our two nations, and pause to pay tribute to the many contributions Americans of German ancestry have made to our great country. Since the time that the first German settlers landed on our shores in the late 17th century, individuals of German descent have grown to number some 49 million Americans. As a member of the Congressional Study Group on Germany, I wish to invite all my colleagues to join in celebrating the friendship and alliance shared between our two nations.

German-Americans have contributed in many ways to the richness of our Nation and to the intellect and spirit of our citizenry. From the Prussian Gen. Friedrich von Steuben, who helped us gain our independence from Great Britain in the Revolutionary War, to physicist Albert Einstein and philosopher Herbert Marcuse, German-Americans have helped make our Nation a world leader. We owe much to these people, who came from Germany for a stake in the American dream. Through hard work, they realized their dreams—and ours. They showed us that through industry, genius, and determination, we can successfully build a better tomorrow for all people of the world.

While we have not always agreed historically, the friendship enjoyed by our two nations has never been greater than it is today. Together, we have devoted our efforts to worldwide economic growth and stability, and have worked together as NATO allies in establishing a democratic and peaceful political climate throughout the world. Chancellor Helmut Kohl of the Federal Republic of Germany recently visited Washington to reaffirm this friendship, and tomorrow Members of Congress will be meeting with members of the German Bundestag to celebrate our alliance, and look ahead to the future.

Mr. Speaker, I am proud to have been a cosponsor of House Joint Resolution 180, the bill that established October 6, 1988, as German-American Day. The relationship we have established between our two nations, and the contribution made to our country by those of German descent, is too important for us to overlook.

A SALUTE TO MILTON L. DREWER, JR.

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. WOLF. Mr. Speaker, on October 22, 1988, Milton L. Drewer, Jr., will be honored by receiving the Founders Award, presented by the Northern Virginia Community Foundation [NVCF] at its annual dinner.

My colleague, Representative STAN PARRIS of Virginia, joins me today in applauding the accomplishments of Milt Drewer and in saluting the Northern Virginia Community Foundation for its outstanding achievements which have benefited all citizens in northern Virginia. NVCF is a nonprofit organization established in 1978 by a number of citizens from northern Virginia. The foundation is a community endowment whose funds are used to support the arts, education, health care, youth oriented programs, and civic improvements for the benefit of citizens living and working in northern Virginia.

The Founders Award is NVCF's most prestigious award and is presented annually for outstanding community service and dedicatioon to the betterment of northern Virginia and to promote awareness of the significance of individual action in improving the quality of life for all persons in the community.

This year's recipient, Milton L. Drewer, Jr., has been active in community activities for several decades. He has more than 24 years of executive banking experience and currently serves as chairman and chief executive officer of the First American Metro Corp. and chairman and chief executive officer of First American Bank of Virginia.

A graduate of Randolph-Macon College with a degree in economics, government, and history, Milt Drewer holds a master's degree in school administration from the University of Virginia and attended the Virginia-Maryland Bank Management School at the University of Virginia. He is a member of the Omicron Delta Kappa Honorary Leadership Fraternity and holds an honorary doctor of laws degree from Marymount University.

He served in the U.S. Army during World War II, achieving the rank of first lieutenant. He was football coach and athletic director at the College of William and Mary from 1957 to 1963.

Milt Drewer's contributions to northern Virginia and the Commonwealth of Virginia are numerous. He serves on the board of directors of the Washington Airports Task Force and is a member of the board of trustees of both Randolph-Macon College and the Virginia Foundation of Independent Colleges. He is also a member of the Government Relations Council of the American Bankers Association, the George Mason Institute Industrial Policy Board and the advisory board of the George Mason Foundation for the Arts.

He has also served with distinction in past years in a variety of community activities. He is a former member of the board of directors of Virginia Power and Dominion Resources, and also was a member of the board and chairman of the Finance Committee of the Arlington Hospital.

A former chairman of the Crusade Committee for the Virginia division of the American Cancer Society, Milt Drewer also has served on the board of visitors of the College of William and Mary, is past president of both the Virginia Bankers Association and the Virginia State Chamber of Commerce and the Washington Golf and Country Club.

Milt Drewer's professional and public activities spanning several decades epitomize the best in community service and reflect the Northern Virginia Community Foundation's mission of helping to better the community and strengthen ongoing community needs in areas such as civic improvement, education, health, the arts, and youth programs.

Milton L. Drewer, Jr. has contributed enormously to the betterment of northern Virginia and on behalf of Congressman PARRIS and myself, we offer our congratulations to him on receiving the NVCF Founder's Award and our appreciation for his outstanding community service.

TRIBUTE TO MRS. EDNA BANOV

HON. ARTHUR RAVENEL, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. RAVENEL. Mr. Speaker, I would like to take this opportunity to recognize one of my constituents, Mrs. Edna Banov, who recently celebrated her 80th birthday. Mrs. Banov was joined on this special day by her family and friends who each wrote an original poem for her. I am proud to present one such poem written by Mrs. Faye Appel Rones that truly shows the beauty of Mrs. Banov and of her love and devotion to her family, friends, and community.

From baby, toddler, pre-teen, teenager, girlfriend, wife, mother, adviser, confidant, companion, participant, leader, actress, writer, grandmother, great-grandmother, walker, talker, caring person. From our friend Edna we can all take a lesson.

With love and admiration on your 80th birthday, Faye Appel Rones.

SAM DAVIS: A TRUE AMERICAN HERO

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. GORDON. Mr. Speaker, 125 years ago, this Nation was in the midst of the most horrible, wrenching experience it has ever endured. The United States, bitterly divided, was fighting the bloodiest and most destructive war in our history.

Half a million Union and Confederate soldiers died in that conflict, and a large part of my home State was laid waste. There were many heroes on both sides, and, I imagine, plenty of villians to go around. But one of the great ironies of the Civil War is that everyone on both sides was an American. More than any regional, cultural or racial divisions, they all shared a system of ideas and ideals that are what being an American is all about.

That is what I want to talk about today.

One of the half million was a young man from the county where my family has lived for six generations—Rutherford County, TN. But this young man, Sam Davis, was not killed on the battlefield. He died far behind the lines, where he chose to meet his maker because he refused to betray his honor.

Sam Davis was a member of an outfit assigned to scout Union positions as the Federal Army in 1863 advanced through middle Tennessee and approached Chattanooga. His last mission involved meeting a Confederate spy and taking information on Union activities and plans to the Confederate General Bragg.

But soldiers from a Kansas brigade captured Sam Davis, the incriminating papers were found, and he was accused of being a spy. He was offered his freedom in exchange for the name of the person who had given him the information, but Sam Davis refused, even that person had also been captured and for a time shared the same jail cell. In retaliation, Sam Davis was hanged.

Sam Davis fought for what some in this House of Representatives may consider the wrong side. But whatever one thinks about the Civil War, the ideals shown by Sam Davis when he took his fatal stand 125 years ago can only be respected and admired.

Ideals like patriotism, loyalty to family and friends, honor, and integrity cross all regional lines. They also cross all political party lines, a fact that needs to be remembered more than ever in the heat of the battles of this year's political campaigns.

One hundred and twenty-five years ago we were hopelessly divided. Yet we emerged stronger and more united as a nation, able to take our place as the leader of the world. I believe the spirit embodied in Sam Davis is an American spirit that, in the long run, drew us back together and still binds us as a people.

Honor, integrity and loyalty cannot be measured in a won-loss column. No one can put a dollar value on them. But that does not make them worthless, it only makes them more precious, and unfortunately more rare.

This son of the South exhibited the precious ideals that are what being a patriotic American is all about.

H.R. 925, MEDICAL LEAVE ACT

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Ms. OAKAR. Mr. Speaker, one of the important issues facing us is the question of family and medical leave. The following is an important statement:

American Association of
University Women,
Washington, DC, September 26, 1988.

Dear Representative: I am writing on behalf of the 150,000 members of the American Association of University Women (AAUW) to urge you to support the Family and Medical Leave Act, H.R. 925. A House vote is imminent.

AAUW, a nationwide organization of college-educated women, is fully committed to working towards the establishment of a national family leave policy and supports the modified version of HR 925, the Family and Medical Leave Act.

The bipartisan compromise of the Family and Medical Leave Act establishes a minimum labor standard for unpaid family and medical leave while recognizing the concerns of business. It would enable employees to take ten weeks of unpaid family leave over a two year period and up to fifteen weeks of medical leave over one year. The bill would initially exempt employers with fewer than fifty employees and after three years would exempt employers with fewer than thirty five employees.

Today, women make up over 44 percent of the labor force; eighty percent of those women are likely to become pregnant during their working lives. Over half of those women who work while pregnant are back at work within a year of childbirth. The long-held view that most new mothers leave the work force to stay at home until their children begin school is no longer true. Because of this nation's commitment to families, a minimum leave policy is necessary to help them balance their work and family responsibilities.

The United States is in the mist of a demographic revolution that is altering the workforce and the American family. The Family and Medical Leave Act is a positive and practical response to this revolution. I urge you to support this important compromise.

Sincerely,

Sarah Harder,
President.

GENERALISSIMO CHIANG KAI-SHEK'S 102D BIRTHDAY

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. YATRON. Mr. Speaker, October 31 marks the 102 birthday of the late president of the Republic of China, Generalissimo Chiang Kai-shek. It is important to take a few moments to acknowledge the many contributions President Chian made, not only to the Republic of China, but to the world as well.

Dr. Nathan K. Mao, a respected academic, noted authority on Taiwan, and a professor at Shippensburg University in my State of Pennsylvania, has authored an excellent article providing an overview of the many achievements of President Chiang Kai-shek. Dr. Mao's piece outlines the triumphs of President Chiang, the leader, and reveals many interesting facets of Chiang as an individual.

Although Dr. Mao's article was first entered in the Congressional Record on September 26, 1986, in commemmoration of the Generalissimo's centennial birthday, it is still most relevant and serves as a reminder of the greatness of President Chiang. I once again want to submit Dr. Mao's fine work so we may all benefit from his research and appreciate Chiang Kai-shek's accomplishments.

A Grateful Nation Remembers Chian Kai-shek

(By Nathan K. Mao)

Time magazine featured Generalissimo and Mme. Chiang Kai-shek as "Man and Wife of the Year" in 1937, highlighting America's admiration and support for China's war against Japan. At that time, China fought Japan without any foreign assistance. Japan had 4,480,000 ground troops, 2,700 first-line war planes and 1,900,000 tons of warships in active service. China, on the other hand, had a poorly equipped army of 1,700,000 men, 350 planes and 59,000 tons of various vessels.

Chinese losses were high, but China, under the command of CKS, refused to surrender. Invoking churchillian eloquence, CKS proclaimed, to the world: "We shall fight to the last dying man; this is a war of national survival. We shall win the ultimate struggle. It's a war between right and wrong."

CKS was right. After eight years and 2 million casualties on the Chinese side. Japan surrendered to China on August 10, 1945. That evening, CKS wrote in his diary of his appreciation of Psalms 9: "I will praise thee, O Lord, with my whole heart . . . when mine enemies are turned back, they shall fall and perish at they presence. For thou has maintained my right and my cause."

Filled with God's love, CKS was grateful that the war was over and that peace would come to Asia. He sought no vengeance and he asked of no reparations from Japan. Instead he accorded the Japanese magnanimity.

Magnanimity was manifiested in CKS's efforts to repatriate to Japan the 2.8 million Japanese soldiers and civilians in China and in CKS's insistence to Roosevelt that Japan be allowed to keep its status for the emperor, knowing as he did of Japan's reverence for the emperor. Thus CKS allowed Japan to quickly recover from the wounds of the war and emerged as the post-war power that it is today.

CKS's Christian spirit of forgiveness and love, so evident in his treatment of the Japanese after the war, guided him for the rest of his life until his passing on April 5, 1975.

Dr. Fredrick Chien, a personal interpreter to CKS, remembers the late president and Mme. Chiang Kai-shek as devout Christians. CKS built a small chapel near his residence where he prayed alone and often with the Mme. CKS, studied the Bible every morning, worshipped regularly, and gave his assistance to all Christian causes, the result being the phenomenal growth of Christian churches in Taiwan today.

Besides Christianity, another factor that dominated CKS's life was his total dedication to establishing a strong China. At the time of his birth in Fenghua, Chekiang province on October 31, 1887, China was one of the weakest countries in the world, with foreign powers enjoying enormous economic privileges and concessions in China. To put a quick end to the Manchu government was the aspiration of every Chinese man and woman.

CKS joined Dr. Sun Yat-Sen in overthrowing the Manchus in the 1911 revolution, after having been taught Confucian classics and conduct by his widowed mother. She told him many a time that he must put the interests of China well above any personal considerations.

As a filial son. CKS never forgot his mother's instruction. After Dr. Sun's death in

1925, CKS began the first step of national unification by setting out to eliminate all the warlords that were scavenging China. In 1928 he united China for the first time in the century.

Meanwhile CKS realized that the threat to the welfare of China lay in Chinese communism, "the disease of the heart." He led several anit-Communist eradication campaigns in the 1920's and 1930's. His efforts were less than fruitful due to Japan's invasion of China starting with its occupation of Manchuria in 1931 and ending with its defeat in 1945.

CKS, however, was successful in expelling foreign powers which had dominated China since the Opium War of the 1840's. CKS persuaded the United States, Great Britain and other Western powers to give up their unequal treaties with China in the 1940's. And at the Cairo Conference in 1943, CKS obtained pledges from the Allies for the return of Taiwan and Pescadores to China after the war.

In fact, CKS achieved international acclaim for China. He himself was asked to be the Supreme Commander of the China Theatre by Roosevelt, while his country, The Republic of China, was one of the Five Great Powers after the war.

After Japan's surrender in 1945, CKS looked forward to implementing Dr. Sun Yat-sen's Three Principles of Nationalism, Democracy and Social Welfare. But CKS was denied that opportunity with the Communists' occupation of the mainland in 1949.

It was in Taiwan that CKS got the opportunity to architect the modern nation that he and Dr. Sun had envisioned. By introducing land reform, capital formation, industrial development, universalization of education, and direct democratic processes. CKS gave birth to modern Taiwan, which had been ravished by Japanese colonial rule. By 1975 Taiwan enjoyed the second highest living standard in Asia and was a model of economic success for developing countries in the world.

When CKS passed away in April 1975, a million ordinary men and women mourned him, lining the funeral route from downtown Taipei to Tzuhu, his temporary resting place in the suburbs. One weeping solder, kneeling along the funeral route, refused to get up. "I followed the late president from Canton to Nanking, to Chungking, to Nanking and then to Taiwan. He was my father, my whole family. Now he's gone, what's left of life?" Others remembered him as modern China itself, his life mirroring all the traumatic changes of twentieth century China. The late President Chiang Ching-kuo remembered him best: "Father was a great time in his time and decisive force in the modern development of the country and the people."

Indeed, eleven years after CKS's passing, CKS has been proven as the decisive force. Today Taiwan is an economic giant, being the 5th largest trading partner of the United States; it enjoys a per capita income of more than US $5,500.00, the highest ever in Chinese history. Its private enterprise system is the envy of the world and has worked so well that Mainland China is anxious to imitate.

Toi Chiang Kai-shek, a Christian Confucian nationalist, the Chinese people are indebted. He freed them from the Manchus, the warlords, the Japanese and foreign imperialists. By transforming an impoverished island into a beacon of freedom and an economic giant, all within the time of a generation, he showed the world and especially Mainland China the right way of establishing a strong nation.

A nation of the people, by the people, and for the people—the dream of man—is now in existence in the Republic of China of Taiwan.

CANADA LURES FORMER UNITED STATES AIR TRAFFIC CONTROLLERS

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. CLAY. Mr. Speaker, an article in the Washington Post last week indicates that Canada has begun a campaign to lure some of America's most valuable workers, our highly trained air traffic controllers.

In 1981, my colleagues will recall that President Reagan unwisely fired 11,400 air controllers because of PATCO walkout. The President made what I consider a serious mistake which has resulted in public concern over air safety. The number of full performance level controllers employed by the FAA has declined 32 percent, from 13,205 in 1981 to fewer than 9,000 today.

The House attempted to deal with this issue to provide a higher degree of air safety by providing for the rehiring of certain former air traffic controllers in passing H.R. 3396 last March. Unfortunately, the Senate has not yet acted on this legislation and I doubt it will in the final days of this session.

Canada may now beat the United States to the punch by offering thousands of former controllers lucrative jobs thereby depriving our country of this experienced source of manpower. The Post reports that these controllers are being offered 5-year contracts in which the Canadian Government has promised to pay their travel and relocation costs, provide them free hotel accommodations, meals, and a salary of about $500 a week while they are being retrained. The Canadians are about to take advantage of the United States failure to rehire these air traffic controllers while we sit idly by Canada's gain will surely be America's loss.

The Post article follows:

[From the Washington Post, Sept. 29, 1988]

CANADA SEEKS TO RECRUIT JOBLESS U.S. CONTROLLERS

TORONTO, Sept. 28—Faced with a severe shortage of air traffic controllers, the Canadian government has launched a campaign to lure unemployed American controllers who were fired in 1981 by President Reagan.

They are being offered lucrative benefit packages that include amenities not available to Canadians, and normal immigration procedures and requirements for security investigations have been waived by the Canadian Cabinet.

The initiative touched off a small tempest in the House of Commons yesterday, with opposition Liberal Party critic George S. Baker complaining that "it's obvious from this free trade means a free raid on our jobs."

Deputy Prime Minister Don Mazankowski responded that demand for controllers exceeds the number of those available in Canada. The number of flights landing and taking off at Toronto's Pearson Airport alone, he said, has swelled in recent years to an annual rate of about 600,000.

In its U.S. recruitment drive, Canadian officials went to the Professional Air Traffic Controllers Organization (PATCO) for a list of 2,000 of the 12,000 workers fired by Reagan who are still not working. Each of them received letters this week offering five-year contracts.

The government promised to pay travel and relocation costs and to provide free hotel accommodations, meals and a salary of abut $500 a week while they are being retrained.

REPUBLIC OF CHINA'S 77TH NATIONAL DAY

HON. MIKE ESPY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ESPY. Mr. Speaker, in celebration of the Republic of China on Taiwan's 77th National Day, I wish to share with my colleagues an article written by Dr. Nathan K. Mao of Shippensburg University in Pennsylvania, entitled "The Greatness of Taiwan." His article is a review of the historic struggle of this island nation, and highlights the economic prowess proudly displayed by its people.

Dr. Mao makes reference to what he sees as the "misguided attitudes" of American business and the American people as consumers of Taiwan products. When I was in Taipei in April 1987, I was witness to the industriousness of this cash rich nation. It's people are not yet accustomed to the consumer role. I believe we must be more aggressive in our sales abroad. The great State of Mississippi has not opened a Mississippi office in Taipei with a fulltime representative. I believe this will prove valuable and profitable for my State.

Mr. Speaker, I wish to include for the RECORD at this point Dr. Mao's article:

THE GREATNESS OF TAIWAN

(By Nathan Mao, Ph.D.)

As the world spotlight focuses on Seoul and the Summer Olympics and sweeps the Pacific Basin area in its ceaseless search for "news," Taiwan, the tiny, crowded (population: 20 million) island republic dwarfed in size by all the Asian nations, may end up the real winner in the competition for media attention by virtue of its swaggering manufacturing and financial prowess and the drastic reforms taking place there. Indeed, the Republic of China in the years to come may outdo, and outlast, everyone save Japan as its economy reaps the benefits of better trade balances and as social improvements kick in. Taiwan in the 1990's appears fully prepared to replace Honk Kong as a financial center and major money power.

Question: How did Taiwan, given its size and origins, assume such enormous importance in a world dominated by giants—physical and population giants?

The quality of her leaders, past and present, is one solid reason. The Republic's newly-appointed ambassador to the United States Ding Mou-shih, has been alternately foreign minister, ambassador (to Rwanda, Zaire and South Korea) and representative to the U.N. General Assembly and has spent his entire career in the foreign service. K.T. Li, the architect of much of Taiwan's policy in the 1960's is still very powerful and capable. The list could go on: Dr. Lien Chan, current foreign minister; Dr. Fredrick Chien, economic council chairman—of great standing and influence; and certainly President Lee Ten-hui, who has rallied support nationwide in an amazingly short time.

Another reason for Taiwan's current world-beater status has undoubtedly been the resourcefulness and energy of her people. The Republic of China was founded in 1911 by Dr. Sun Yat-sen after a prolonged attempt to eliminate the entrenched and increasingly impotent Manchu dynasty that had begun shortly after China's defeat in the Opium War. The long decline in power and effectiveness of the Manchus was due to foreign incursions, internal breakdowns and near-continuous uprisings around the country. With the final overthrow of three centuries of Manchu rule in 1911, the republic disorder of such magnitude that no one could have foreseen China's future—many now doubt though at the time that it had no future. There was civil war from the 20's to 1949, as well as the trauma of Japanese invasion in 1937.

But Sun Yat-sen's 3 Principles of Government—Nationhood, Democracy, and Social Welfare—were firmly established in theory if not in fact, and when 2 million refugees landed on Taiwan in 1949 after losing the mainland to the Communists, social and political cohesiveness quickly established themselves. Today Taiwan is crunching out numbers like these:

It is now the 11th largest world trader, and is set to enter the top 10 by 1992;

Its pre-capita GNO is some US $6000;

Its annual growth rate has been running at over 9% for decades;

It was host to nearly 1 million tourists in 1987;

It has foreign exchange reserves totaling US $75 billion, 2nd only to West Germany; and

It has the world's 2nd highest population density (No. 1 Bangladesh) but a mammoth labor shortage.

Domestically, the Republic has changed drastically, especially in the last four years. Government power is being de-centralized, restrictions on rival political parties, on demonstrations and on the press have been eliminated; there are no more foreign exchange controls, mainland visits are allowed, many more civic associations are forming, and education is being expanded. There is even a "reverse brain drain" in effect, as top professors and researchers are being lured back from overseas posts.

All this staggering growth and prosperity have brought problems, of course, some old, many new. Red, mainland China still looms large over the thoughts and actions of the Taiwanese—unpredictable, threatening. Rapid urbanization is clogging the cities and emptying the farms and rural areas. Pollution is a now a major concern, and is the cause of continual demonstrations, some violent. Serious as they are, these problems are viewed as largely transitory, related to the country's breakneck social development; in effect, 40 years of bottled-up problems are now gushing out all at once all over the place—industry-labor relations, internationalized trade, a threatened environment.

What does all this change and turmoil mean for U.S. relations, and for U.S. perceptions of Taiwan? It's not uncommon to encounter myopic and outworn ideas about the Republic, namely:

A picturesque, mountainous island, lush, poor, agrarian and without proper diplomatic status in the world;

A producer of cheap, low-quality goods and shoddy clones of Western products; and

An alien, far-away culture with arcane and mostly self-serving trade policies.

And there is the problem of misguided attitudes among U.S. business execs, whose companies—and the United States as a whole—would certainly profit by increased trade to Taiwan. They seem to suffer from indifference or uneasiness about dealing with so foreign (i.e., compared to Europe) a place. Also, Asians are seen as a "threat," operating illegally, cutting prices, enacting complex regulations, tariffs, and restrictions. Or, lastly, they are treated as simply "inferior," unsuitable for reponsibilities or relationships above a certain level.

The result? Defensive attitudes, protectionism, dismal trade imbalances—Taiwan's surplus with America is currently $1 billion monthly—missed opportunities, hardened attitudes, and loss of business and marketing exposure to others—South Korea, for example.

The prospects for trade with Taiwan, notwithstanding the current U.S. mind-set, are still superb. "Send us your salespeople; sell us your goods," a visiting Congressman was told by a Taiwanese banker. Investment in the U.S. is also practicable—each Taiwan citizen is allowed to bring out up to US $5 million a year, for example, and the huge popularity of local branches of Pizza Hut, MacDonald's, and others is only one sign of the Taiwanese rage for things American.

So: Taiwan has a market for U.S. goods and U.S. investment, an enterprising, hardworking citizenry that want to be friends with America, and a greatly liberalized political, economic and social system that, under the stewardship of President Lee, will continue to produce spectacular returns for any well-placed investment, be it academic, financial, or political. The Republic of China in these late 1980's is assured of continued statute as a trading partner, as a strategic ally, and as a proponent of democratic ideals.

DEDICATION OF THE NEONATAL INTENSIVE CARE UNIT AT THE CHILDREN'S HOSPITAL NATIONAL MEDICAL CENTER

HON. J. ROY ROWLAND

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ROWLAND of Georgia. Mr. Speaker, I would like to take this opportunity to share with my colleagues the dedication of the new neonatal intensive care unit at one of Washington, DC's finest medical institutions, the Children's Hospital National Medical Center. The neonatal intensive care unit at Children's Hospital National Medical Center, with its committed staff and state-of-the-art medical technology, promises to play a leading role in the District of Columbia's efforts to overcome its standing as the city with the highest infant mortality rate in the country.

With 40 beds and more than 100 neonatal staff nurses caring for over 600 patients annually, the nursery at Children's Hospital National Medical Center is a preeminent model for the Nation in several aspects of neonatal care. The high-technology unit treats low-birthweight infants, those with congenital abnormalities, genetic disorders or other critical problems. Moreover, this innovative nursery was designed with more than machinery in mind—there is a strong emphasis on nurturing and on the overall human development of the infant. As such, the nursery incorporates a parent waiting room, a communications center, a parent training room, and a warm decor that replaces the traumatic atmosphere usually associated with a neonatal intensive care unit.

One of the most unique and remarkable features of the unit is the extra corporeal membrane oxygenation [ECMO] treatment program, a revolutionary therapy that saves the lives of newborn infants who suffer from acute respiratory distress. Since Children's Hospital National Medical Center first pioneered the ECMO program in 1984, the lives of more than 150 children have been saved. Whereas 5 years ago, 80 percent of the infants treated for ECMO at the Children's Hospital National Medical Center died, today less than 20 percent of these children will die.

As a regional referral center, the neonatal intensive care unit serves a broad patient base. The care unit treats sick children from the entire National Capital area as well as newborns transported to the hospital from States across the Nation. Moreover, the impact of this prototypical neonatal intensive unit is indeed national. Among ECMO programs, for example, Children's Hospital National Medical Center is a national leader in setting standards and in the teaching and training of ECMO specialists from around the country.

In working toward the elimination of infant mortality, the neonatal intensive care unit at Children's Hospital National Medical Center directly addressed the concerns raised in a report recently released by the National Commission to Prevent Infant Mortality. I had the distinguished honor of serving on this commission as vice chairman, and I applaud its exhaustive findings and thoughtful recommendations to the Congress.

The Commission's report states that 40,000 American infants die each year before their first birthday. Most Americans are further shocked to learn that the United States, with the most advanced health care system in the world, currently ranks 19th among developed nations in saving the lives of babies. These statistics are even more alarming when it is realized that infant mortality is no longer a health problem. With at least half of the deaths now considered preventable, infant mortality is more of a social problem with health consequences. The fact is that we have the knowledge and the ability to halt the senseless deaths of thousands of American infants—what is needed is more comprehensive neonatal programs such as the one now in place at Children's Hospital National Medical Center.

Mr. Speaker, I hope my colleagues in the House will join me today in recognizing the impressive neonatal intensive care unit newly dedicated at Children's Hospital National Medical Center. I further would like to applaud the outstanding care that the entire staff of Children's Hospital National Medical Center continues to give every day to our children who suffer from a number of illnesses and diseases. I encourage all of you to visit the Children's Hospital National Medical Center and observe this extraordinary team at work.

TRIBUTE TO EDGAR G. KILBY

HON. BRUCE A. MORRISON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. MORRISON of Connecticut. Mr. Speaker, I rise today to pay tribute to Edgar G. Kilby, who for the past 2 years has served with great distinction as chairman of the board for the American Association of Homes for the Aging [AAHA], a national organization of not-for-profit health, housing and community service agencies for the elderly.

Ed Kilby has enjoyed a distinguished career. After 20 years of active service with the U.S. Air Force, Ed retired in February 1971 to join the Masonic Charity Foundation of Connecticut, where he served as executive director of its Masonic Home and Hospital. Today, he serves as the foundation president and chief executive officer.

In his role of chairman of the American Association of Homes for the Aging, Ed Kilby has indeed left his mark. In addition to overseeing the growth of AAHA, his tenure has seen a significant change in governance for the association. These changes have resulted in a more efficient policymaking process which has allowed AAHA to respond more adequately to its members and, ultimately, to the elderly they serve. Additionally, Ed Kilby has been a driving force behind AAHA's efforts to develop responsive systems for financing and delivering long-term care services for older persons. Ed Kilby brought dynamic leadership that established a process of strategic and long-range planning to determine the future direction of the association in service to the elderly.

Mr. Kilby is an accomplished health care administrator. He received his bachelor of science degree from the Texas College of Arts and Industries and earned a masters of hospital administration from Washington Universtiy in St. Louis. In addition to his work with the Masonic Charity Foundation, Ed has devoted a great deal of time representing his profession as an active member of university, government, and other health care organizations. He has served as a lecturer and preceptor for Health Services Administration at both Yale University and the Washington University School of Medicine, and has been a member of numerous national commissions and committees. Among other things, he was a valued member of the State of Connecticut Governor's Advisory Board on Long-Term Care and is a fellow in both the American College of Health Care Administrators and the American College of Health Care Executives.

In his more than 30 years of professional service, Ed Kilby has devoted the full measure of his energies to building a stronger and more responsive health care system in this country. His leadership ability and expertise have had a profound impact on his colleagues, his residents and their families. Ed Kilby's career is marked by a deep commmitment, unswerving dedication, and a sincere generosity to the people he served. His unselfish efforts and caring spirit have touched the lives of thousands of individuals.

It is my distinct honor and pleasure to ask my colleagues to join me and the American Association of Homes for the Aging in saluting Mr. Edgar Kilby. I am proud that he is a member of my community.

DR. WILLIAM E. POWERS AWARDED ASTRO GOLD MEDAL

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. LEVIN of Michigan. Mr. Speaker, this coming Tuesday, in New Orleans, a very special event will take place. Dr. William E. Powers, chief of the Gershenson Radiation Oncology Center in Harper-Grace Hospitals of the Detroit Medical Center, and chairman of the Department of Radiation Oncology of Wayne State University School of Medicine, will be awarded the prestigious Gold Medal by the American Society of Therapeutic Radiology and Oncology [ASTRO]. Dr. Powers is the first Michigan radiation oncologist to receive the Gold Medal.

The ASTRO Gold Medal is awarded each year to the radiation oncologist whose contributions and service in this field have been judged outstanding by his peers. Radiation oncology offers hope to millions of cancer patients and their loved ones. Dr. Powers has been in the forefront of this critical and expanding area of treatment.

Dr. Powers research has demonstrated the existence of radiation resistant cells and the biological basis of preoperative radiation therapy. He helped create computer assisted treatment planning and designed Cerrobend blocking which is widely used today to help shield normal tissues during treatment and thus allow higher doses of irradiation. Most recently, he has been active in the design and construction of the superconducting cyclotron at Michigan State University, which will be installed at the Gershenson Radiation Oncology Center in Harper Hospital of the Detroit Medical Center.

Michigan is privileged to have the benefit of the talents and energy of Dr. Powers. He came to our State in 1978 from the Washington University School of Medicine in St. Louis, where he was director of the division of radiation oncology at the Mallinckrodt Institute of Radiology.

He has served as president of ASTRO, been active in the American Radium Society and the Radiological Society of North America. He is a trustee of the American Board of Radiology and was chairman of the Committee for Radiation Oncology Studies. He has participated in the American College of Radiology and Extramural Radiation Oncology branch at the National Cancer Institute.

He has served under two U.S. Presidents as a member of the National Cancer Advisory Board. In 1984, he was appointed by Governor Blanchard to serve on the Michigan Radiation Advisory Committee.

Dr. Powers' dedication to training and education has enriched the field with the many highly qualified oncologists who have completed the rigorous program at Wayne State. He has helped make the oncology department at that great institution into a nationally recognized center of excellence.

Dr. Powers lives with his wife Linnea in Detroit. They have five children and four grandchildren.

I congratulate Dr. Powers on his achievements. The ASTRO Gold Medal is well deserved.

MEDICAL WASTE TRACKING

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. GALLO. Mr. Speaker, this week, we took a giant step toward the protection of our ocean environment by bringing legislation banning ocean dumping of sewage sludge to a final vote in the House.

The legislation we are now considering addresses the other critical issue that we face when we talk about the protection of our shoreline from pollution.

As a cosponsor of H.R. 3515 and an original cosponsor of the legislation that would create a Federal tracking program legislatively (H.R. 3478), I am committed to timely congressional action.

As one of my distinguished colleagues has observed, the eyes of the Nation are upon us today. We have a responsibility to ourselves, to our children and to their children to stop this dangerous dumping and to protect our valuable shoreline as a natural resource that will renew itself, if we will allow it to do so.

I believe that this legislation is a major step forward in our continuing fight to require stricter requirements for the safe disposal of all medical wastes. Ending legal dumping and prosecuting illegal dumpers are equally essential elements in our efforts to protect the New Jersey shore.

It is crystal clear to me that we must monitor the disposal of this material at every step of the process in the way we monitor the disposal of hazardous waste in New Jersey—by requiring a manifest system for disposal of hazardous waste.

Because it can be more difficult to trace illegally dumped medical waste than it is to find the source of a hazardous chemical discharge, I believe we must require some form of identification markings on commonly used items such as vials and syringes which would assist in the tracking process if these items are disposed of illegally and found in places where they don't belong.

Even with cradle-to-grave waste disposal monitoring, there is the potential for abusers to get away, unless we can identify these materials item by item when they are found.

I believe that strict cradle-to-grave monitoring of all solid waste produced by medical facilities and laboratories should include a labeling system that will further ensure that illegal dumpers will be caught.

In support of our mutual goal—a cleaner and safer environment along our shoreline—I would like to see actions speak louder than words. We have had thousands of words on this problem, now we need to work together to solve this problem once and for all.

This legislation has been carefully crafted to provide for that action and I urge my colleagues to support this bill and make it easier to find and prosecute the midnight dumpers who threaten our shoreline.

RAYMOND W. VANGIESEN, AN EDUCATOR OF UNCOMMON EXCELLENCE

HON. GEORGE C. WORTLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. WORTLEY. Mr. Speaker, we Americans are noted for our propensity to equate better with newer, especially when we are younger.

When we are younger, we are more often disposed to believe that a new car is better than an older car, that a new suit or dress is better than older garb, that a new idea is better than an old idea.

When we grow older, we are less disposed to automatically accept the concept that newer is better. When we are older, we are more prone to exaggerate how good things were in the old days.

While human perceptions change with age and experience, certain things are unchangeable. The quality of excellence is unchangeable. Excellence, in terms of human performance, remains constant.

In the 27th Congressional District of New York State, a constituent of mine, epitomizes the qualities of uncommon excellence. With signal pride, Mr. Speaker, I draw the attention of our colleagues to Mr. Raymond W. VanGiesen.

At Hobart College in Geneva, NY, Ray VanGiesen learned to play the game of lacrosse. His aptitude for this demanding sport won him the captaincy of the varsity squad and All-American recognition in 1930 and 1931.

After graduation from Hobart, Ray VanGiesen took a job as a science teacher at the high school in Fayetteville, NY. In addition to performing his academic duties, he coached hockey, football and, of course, lacrosse. He was promoted to principal of the school in 1937, to district principal in 1951.

When the Fayettville school district merged with the Manlius school district, Mr. VanGiesen became the Fayetteville-Manlius superintendent. At the time that he was honored on his 80th birthday in 1986, Mr. VanGiesen recalled that the school district grew 10-fold—from 600 to 6,000 pupils in only 8 years—and added a new building every 2 years during his stewardship.

After Mr. VanGiesen retired from the superintendent's post in 1961, he continued to make contributions in the educational community. He served as an admissions counselor for the Central City Business Institute, and he immersed himself in the Dollars for Scholarship fund drive. Since his graduation from Hobart College, he has been an active alumus and he has been the agent for his class during the past 18 years. He is a founding member of the Fayetteville Lions Club and he served as the club's secretary-treasurer for 13 years.

This coming Sunday, the president of Hobart and William Smith College, Mr. Carroll W. Brewster—acting in behalf of the college and its alumni association—will present Mr. VanGiesen with the college's prestigious Medal of Excellence for bringing honor and distinction to his alma mater. The presentation will take place at the Wellwood Middle School building where, years ago, Mr. VanGiesen faithfully nurtured the educational opportunities of thousands of students from kindergarten through high school.

Mr. Speaker, I am honored to bring Mr. Raymond W. VanGiesen, a man of all seasons, a legend in our community, and a man of uncommon excellence, to the attention of the Congress.

CONTRACTING OUT APPEALS REFORM ACT OF 1988

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SIKORSKI. Mr. Speaker, today I am introducing the Contracting Out Appeals Reform Act of 1988. This legislation amends the Competition in Contracting Act of 1984 to permit the Comptroller General to review and decide protests of Federal Government employees relating to contracting out to private employers, certain functions previously performed by Federal employees. This bill also mandates Federal employee participation during the preparation and development of the performance work statement and the management efficiency study which are documents relied upon in determining the property of converting an activity to the private sector.

This legislation, the companion bill to the Contracting Out Appeals Reform Act of 1988, introduced by Senator PRYOR on April 28, 1988, provides Federal employees the same appeal rights currently available to unsuccessful private contractors. The legislation I am introducing today also requires the agency head or officer responsible for determining contracting out decisions to consult with civilian employees affected by that determination at least monthly during the development of the work performance statement and the management efficiency study.

Currently, Federal employees directly affected by employment conversions are not consulted during the decisionmaking process. Their exclusion from the process makes little sense. Instead of ignoring these Federal employees, management should take advantage of the expertise and experience within their own agencies before agreeing to reinvent the wheel.

Although this administration believes that the taxpayers of this country benefit from the conversion of public sector functions to private employers, the facts do not support this belief. Numerous general accounting reports written throughout this administration have questioned the cost effectiveness and quality of job performance resulting from employment conversions conducted pursuant to the A-76 Budget Circular.

The current regulations governing contracting out decisions protect neither the taxpayer's interests nor the interests of hard-working Federal employees. This legislation is an attempt to bring fairness to the decisionmaking process by providing an opportunity for oversight not only by the private contractor, but also by our Federal employees.

I hope that my colleagues will join in support of this proposal.

Mr. Speaker, I insert the text of this bill to be printed with my statement.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Contracting Out Appeals Reform Act of 1988".

SEC. 2. ABILITY OF FEDERAL EMPLOYEES TO USE GAO PROCUREMENT PROTEST SYSTEM TO PROTEST CONVERSION TO CONTRACTOR PERFORMANCE OF FEDERAL GOVERNMENT FUNCTIONS.

(a) DEFINITION OF "PROTEST".—Section 3551(1) of title 31, United States Code, is amended to read as follows:

"(1) 'protest'—

"(A) means a written objection by an interested party to a solicitation by a Federal agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract; and

"(B) in the case of a contract awarded or proposed to be awarded for the purpose of converting to contractor performance any commercial activity performed by employees of the Federal Government, may include an objection that a relevant performance work statement is inaccurate or incomplete;".

(b) DEFINITION OF "INTERESTED PARTY".—Section 3551(2) of title 31, United States Code, is amended to read as follows:

"(2) 'interested party', with respect to a contract or proposed contract described in paragraph (1), means—

"(A) an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

"(B) in the case of a contract awarded or proposed to be awarded for the purpose of converting to contractor performance any commercial activity performed by employees of the Federal Government—

"(i) any labor organization accorded, under section 7111 of title 5, exclusive recognition to represent an appropriate unit (determined under section 7112 of such title) that includes employees affected by such conversion; or

"(ii) if no labor organization has been accorded such exclusive recognition, any representative of a majority of such employees, determined as provided in regulations issued by the Comptroller General;".

(c) DEFINITION OF "REGULATION".—Section 3551 of title 31, United States Code, is amended—

(1) by striking the period at the end of paragraph (3) and inserting "; and"; and

(2) by adding at the end the following new paragraph:

"(4) 'regulation' includes Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy) and any other order or directive issued by the President, the Director of the Office of Management and Budget, or the head of a Federal agency (including the Department of Defense) that sets out requirements for converting to contractor performance any commercial activity performed by employees of the Federal Government.".

(d) Effective Date.—The amendments made by this section shall take effect with respect to contract solicitations issued on or after the date of the enactment of this Act.

SEC. 3. JUDICIAL REVIEW OF DECISIONS ON PROCUREMENT PROTESTS BY COMPTROLLER GENERAL.

(a) In General.—Section 3554 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(f) Judicial Review.—Notwithstanding section 701(a)(2) of title 5, decisions of the Comptroller General under this subchapter are subject to judicial review under the provisions of chapter 7 of such title.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect with respect to decisions of the Comptroller General under subchapter V of chapter 35 of title 31, United States Code, on or after the date of the enactment of this Act.

SEC. 4. CONSULTATION REQUIREMENTS FOR HEADS OF AGENCIES RESPONSIBLE FOR DETERMINING WHETHER TO COVERT TO CONTRACTOR PERFORMANCE COMMERCIAL ACTIVITIES OF SUCH AGENCIES.

(a) In General.—Each officer or employee of an agency of the Federal Government responsible for determining under Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy) whether to convert to contractor performance any commercial activities of such agency—

(1) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with employees of such agency who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(2) may consult with such employees on other matters relating to that determination.

(b) Consultation With Union Representatives.—(1) In the case of employee represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, consultation with representatives of that labor organization shall satisfy the consultation requirement in subsection (a).

(2) In the case of employees other than employees referred to in paragraph (1), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(c) Regulations.—The Director of the Office of Personnel Management shall prescribe regulations to carry out subsections (a) and (b). These regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to subsection (b)(2) for purposes of consultation required by subsection (a).

(d) Effective Date.—The provisions of subsections (a) and (b) shall take effect 6 months after the date of the enactment of this Act.

H.R. 4844, FAA DRUG ENFORCEMENT ASSISTANCE ACT OF 1988

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 4844, the FAA Drug Enforcement Assistance Act of 1988 and to command the gentleman from California, Mr. ANDERSON, for his good work in bringing this measure to the floor.

Mr. Speaker, it is imperative that we bring the FAA into the war against drugs. Hundreds of tons of illicit narcotics are smuggled into our country each year by air. This legislation allows the FAA to work with drug law enforcement authorities in promulgating regulations for aircraft registration, airman's certification, and fuel system alterations. These new regulations will help catch drug traffickers. Violators would have their airplanes seized and forfeited.

It is also important that in this legislation there is a mechanism—user fees—to pay for any costs which might be entailed in the efforts. Accordingly, I urge my colleagues to support this measure which will be of great help in our struggle against illicit narcotics.

TRIBUTE TO THE REVEREND MONSIGNOR JOSEPH A. KRISPINSKY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today in order to pay tribute to the Reverend Monsignor Joseph A. Krispinsky, who is an outstanding citizen of my 17th Congressional District of Ohio. I would like to take this opportunity to share with you some information on this kind man whose 65th anniversary of ordination will take place on October 9, 1988.

The Reverend Monsignor Joseph Aloysius Krispinsky was born August 11, 1900, Lowellville, OH, to Andrew Krispinsky and Mary Bodnovich. He has four brothers, the Reverend John W. Krispinsky who celebrated his 70th ordination anniversary on September 14, Stanley, Theodore, and Jerome, and two sisters, Sister Mary Dominic, OSC and Amelia Andrisek.

He attended St. Cyril and St. Methodius Elementary School, Youngstown, OH, studied high school and 2 years of college at St. Procopius College, Lisle, IL, philosophy at St. Bernard's Seminary, Rochester, NY, and theology at St. Mary's Seminary, Cleveland, OH.

Ordained to the priesthood October 14, 1923, at St. John's Cathedral Chapel, by the Most Reverend Joseph Schrembs. The Monsignor offered his first solemn mass at St. Cyril and St. Methodius Church, Youngstown, OH, on Sunday, October 21, 1923.

Following ordination, he served as assistant pastor at St. Clement's Church, Lakewood, OH, St. Mary's, Warren, OH, St. Ladisla's, Cleveland, OH. He was appointed to his first pastorate October 1, 1927, to Sacred Heart Church, Canton, OH. Then, after serving as pastor at Holy Trinity, Struthers, for over 7 years, and Holy Trinity, Lorain, he came to Warren, OH, February 27, 1941, to be pastor of St. Cyril and St. Methodius Church.

During his pastorate a new church was dedicated, May 20, 1950, and a new school, convent and auditorium, in 1960.

Monsignor retired on November 16, 1973, and since has lived in his own home at Louisville, OH, where he has his own chapel, where he has daily Mass. He has been helping out with Sunday Mass at Sacred Heart of Mary Church, Louisville, OH, and during the week when needed at St. Paul's Canton and St. Benedict's Canton, OH.

This day is celebrated in gratitude to Almighty God most of all and in appreciation of the splendid cooperation of the people of the parish. In honoring Monsignor Krispinsky today, tribute is also paid to Christ's Holy Priesthood as preserved by the Roman Catholic Church from Apostolic times up until today, almost 2,000 years.

The Dignity of Domestic Prelate with the title of Right Reverend Monsignor was conferred upon him by His Holiness, Pope John XXIII, on March 10, 1961, in recognition of his distinguished service of the Church and her Apostolate.

While on active duty as a pastor, Monsignor was involved in many facets of community service, besides the demanding duties of his parish. He was on five Diocesan Commissions, dean of Trumbull County for 13 years, served on seven civic boards, Faithful Friar of the Knights of Columbus Fourth Degree, and spiritual director of the Jednota, the First Catholic Stovak Union of which he is a member for 79 years.

Presently he serves as chaplain to the Knights of Columbus, Louisville, OH, Council 2530, for the past 12 years, Faithful Friar of Canton Assembly of Fourth Degree Knights of Columbus, and chaplain of the Stark County Knights of Columbus Chapter involving eight Knights of Columbus Councils. He has been a member of Kiwanis for over 42 years, now at Belden Village Kiwanis.

Monsignor would like to use this appeal to the Blessed Virgin Mary on this occasion: Mother of mercy and love, Blessed Mother of the Redeemer and Mother of the Church, unworthy though I be, I turn to you in confidence and love. You stood by your Son as he hung dying on the Cross. Stand by me a poor sinner and by all the priests who are offering Mass today.

Mr. Speaker, I consider it both an honor and a privilege to represent such a fine human being.

NUCLEAR POWERPLANT STANDARDIZATION ACT OF 1988

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. CLEMENT. Mr. Speaker, today I am introducing legislation that would amend the Atomic Energy Act of 1954 to encourage the development and use of standardized plant designs and to improve the nuclear licensing and regulatory process.

Standardization, accompanied by licensing reform, is the most important step that can be taken to ensure the continued growth of U.S. nuclear energy. Nuclear energy already supplies the Nation with nearly 20 percent of its electricity, replacing 680 million barrels of imported oil a year.

The electric utility industry is expected to turn sharply toward greater dependence on oil electric generation. In fact, oil imports for electric generation could rise by 1 million barrels per day by 1990 and 3 million barrels per day by 1995. I feel that it is bad policy to increase our dependence on imported oil from unstable and volatile regions of the world. But, unfortunately, current regulatory and legal constraints have discouraged the construction of additional nuclear powerplants, forcing utilities to turn back to oil and natural gas in order to meet our insatiable appetite for low-cost electricity.

I believe that we must once again look to nuclear energy as an alternative to oil. And, in particular, I believe that standardization would sharply improve the economics of nuclear power plants. Standardization could reduce the capital cost of a nuclear plant by 55 percent, making nuclear energy competitive with oil facilities at oil prices as low as $9 per barrel.

Standarized nuclear power plants will operate more safely and efficiently than current plants. Standardized plants are safer because of the rapid improvements in training, plant operation and maintenance made possible by sharing common experience with similar plants. That would be a big change from the current situation, where virtually each nuclear plant is significantly different from all other plants. One of the problems associated with the Tennessee Valley Authority's nuclear program was that complexity associated with training, maintenance and operation. As a former member of the TVA Board of Directors, I feel that if standardized plants were available 20 years ago, some of TVA's problems with its nuclear program could have been prevented.

Continued growth of nuclear energy is vital to U.S. energy independence and economic stability. By offsetting oil imports, nuclear power contributes directly to lower inflation and an improved U.S. trade balance. In fact, oil imports account for the largest item in our bloated trade deficit: $50 billion per year. Standardization would enable the United States to cut oil imports and cut our trade deficit.

At present, licensing requirements make new nuclear plants uneconomical. The current two-stage licensing process in the Atomic Energy Act of 1954 was drawn almost verbatim from the Federal Communications Act of 1934, which was the basis for the licensing of radio stations. I believe that it is high time that the United States has a licensing process for nuclear plants that was designed for nuclear plants, not radio stations.

The legislation I introduced would require a final determination by the Nuclear Regulatory Commission that construction and operation of a preapproved standardized design provides reasonable assurance of adequate public health and safety. Utilities proposing a standardized plant would receive a combined construction and operating license. This new licensing process would ensure rigorous commitments to quality assurance programs, adherence to construction schedules, and avoidance of custom plants.

This new licensing process would also boost public participation, since hearings would be held on complete designs before construction. Currently, public hearings are held either before plant design is complete or after the plant is already constructed. Clearly, hearings at either of these stages is not effective, since plant designs are either unknown or unchangeable. In order to improve public participation, hearings should be held after design is complete, but before construction. In that way, design changes can be made, if necessary.

The United States must reexamine its policies on nuclear power. Now is the time. The severe drought this past summer forced us to consider ways to prevent further ozone depletion, global warming and to address the greenhouse effect. Significantly, even opponents of nuclear power have acknowledged a linkage, stating that we need to invest in research and development of new nuclear energy technologies. There is an emerging consensus that there is no way to separate energy policy from global climatic change and the greenhouse effect.

I should like to inform my colleagues that I intend to reintroduce this bill next year and push for its passage. I hope that my colleagues will support me in this effort.

For your information, the text of the Nuclear Powerplant Standardization Act of 1988 follows:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nuclear Powerplant Standardization Act of 1988".

SEC. 2. FINDINGS.

Congress finds that—

(1) the opportunity for meaningful public participation in the siting and licensing of nuclear powerplants should be assured;

(2) the use of standardized designs will facilitate the licensing and construction of nuclear powerplants and enhance the public health and safety;

(3) the regulatory process should provide greater stability in the licensing process for nuclear powerplants based on standardized designs in a manner consistent with protection of the public health and safety and the common defense and security; and

(4) consistent with the paramount responsibility of the Nuclear Regulatory Commission to protect the public health and safety, and recognizing that the elimination of all risk is an unattainable goal for any energy source, it is appropriate and in the public interest for the Nuclear Regulatory Commission to consider the economic consequences of its regulatory practices, including the cost of safety requirements.

SEC. 3. APPROVAL OF STANDARDIZED DESIGNS AND FACILITY SITES.

(a) APPROVAL OF STANDARDIZED DESIGNS AND FACILITY SITES.—The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding after section 192 the following new section:

"SEC. 193. APPROVAL OF STANDARDIZED DESIGNS AND FACILITY SITES.

"a. DESIGN APPROVAL.—The Nucler Regulatory Commission (hereafter in this section referred to as the 'Commission') shall establish procedures and standards for the approval of standardized designs for production or utilization facilities or discrete subsystems of such facilities. Such procedures shall provide an opportunity for a public hearing in accordance with section 189, prior to issuance of a design approval.

"b. SITE APPROVAL.—

"(1) IN GENERAL.—The Commission shall establish procedures and standards for the approval of sites for one or more production or utilization facilities based upon a standardized design approved under subsection (a).

"(2) SITE APPROVAL MAY PRECEDE LICENSE APPLICATION.—Such procedures and standards shall allow for the approval of a site before an application to license a production or utilization facility on such site has been filed.

"(3) HEARINGS.—Such procedures shall provide an opportunity for a public hearing, in accordance with section 189, prior to issuance of a site permit.

"c. DEFINITION.—As used in this section, the term 'standardized design' means a design for a production or utilization facility or a discrete subsystem of such a facility—

"(1) that the Commission determines to be sufficiently detailed and complete to be referenced in a license application under section 185; and

"(2) that is usable for a multiple number of units or at a multiple number of sites.".

(b) TABLE OF CONTENTS.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 prec.) is amended by adding at the end of the items relating to chapter 16 the following new item:

"Sec. 193. Approval of standardized designs and facility sites.".

SEC. 4. MODIFICATION OF FINAL DETERMINATIONS.

(a) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) (as previously amended by section 3(a) of this Act) is further amended by adding after section 193 the following new section:

"SEC. 194. MODIFICATION OF FINAL DETERMINATIONS.

"The Nuclear Regulatory Commission (hereafter in this section referred to as the 'Commission') may not modify a final determination on an issue that has been considered and decided in any proceeding for the issuance of a design approval under section 193a., a site approval under section 193b., or a combined construction permit and operating license under section 185, unless the Commission determines, based on significant new information, that a modification is required to protect the public health and safety or the common defense and security.".

(b) TABLE OF CONTENTS.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 prec.) (as previously amended by section 3(b) of this Act) is further amended by adding at the end of the items relating to chapter 16 the following new item:

"Sec. 194. Modification of final determinations.".

SEC. 5. COMBINED CONSTRUCTION PERMIT AND OPERATING LICENSE.

(a) COMBINED CONSTRUCTION PERMIT AND OPERATING LICENSE.—Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended to read as follows:

"SEC. 185. COMBINED CONSTRUCTION PERMIT AND OPERATING LICENSE.

"a. ISSUANCE.—The Nuclear Regulatory Commission (hereafter in this section referred to as the 'Commission') may issue a combined construction permit and operating license for a production or utilization facility based on a standardized design approved under section 193a. if the Commission determines that—

"(1) the application for such license contains sufficient information to support the issuance of such a license; and

"(2) there is reasonable assurance that the facility will be constructed and operated in conformity with the provisions of this Act and the rules and regulations of the Commission.

"b. TERMS.—In order to provide reasonable assurance that a facility issued a license under this section will be constructed and operated in accordance with the terms of such license, the Commission shall specify in any such license—

"(1) the inspections, tests, and analyses which shall be performed on such facility and the standards for passing such inspections, tests, and analyses; and

"(2) the emergency preparedness requirements that shall apply to such facility and the standards for meeting such requirements.

"c. OBJECTION TO OPERATION.—

"(1) IN GENERAL.—Not later than 60 days prior to commencement of operation of a facility issued a license under this section, the Commission shall publish in the Federal Register a notice of intended operation. Any person whose interest may be affected by the operation of the facility may, within 30 days of publication of such notice, file a written objection to operation on the grounds that the facility does not comply with the terms of its license.

"(2) REQUEST FOR HEARING.—If such objection is accompanied by a request for a hearing, the Commission shall determine whether good cause exists for the objection and whether the hearing should precede commencement of facility operation in order to provide reasonable assurance of the protection of the public health and safety or common defense and security.".

"(b) TABLE OF CONTENTS.—The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 prec.) (as previously amended by sections 3(b) and 4(b) of this Act) is further amended by striking the item relating to section 185 and inserting the following:

"Sec. 185. Combined Construction Permit and Operating License.".

SPEECH OF PRESIDENT RONALD REAGAN FOR THE CORNERSTONE LAYING OF THE HOLOCAUST MEMORIAL MUSEUM

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. LANTOS. Mr. Speaker, today at a most moving ceremony on the Mall in our Nation's Capital, the cornerstone was laid for the U.S. Holocaust Memorial Museum. The honored guests included Interior Secretary Donald Hodel, Deputy Secretary of State John Whitehead, and other leading officials of the administration, many of our distinguished colleagues from this House and from the Senate, former Chief Justice Warren Berger, members of the diplomatic corps, religious leaders from many denominations, and distinguished Americans from all walks of life.

The principal speaker on this solemn occasion was President Ronald Reagan. Mr. Speaker, I ask unanimous consent to place his moving address in the record.

REMARKS BY THE PRESIDENT AT CORNERSTONE-LAYING CEREMONY FOR HOLOCAUST MEMORIAL MUSEUM

The President: Thank you very much. Ladies and gentlemen, good morning. We gather here today, as we have been so eloquently told, here for a solemn, profound, saddening, and yet triumphant occasion. It's an occasion that commemorates all we have lost, the irreplaceable humanity whose monstrous end will ever testify to the hellish depths of human evil.

But it's an occasion that commemorates something else as well. It commemorates the seriousness of our intention—as human beings, as Americans, and, in the case of many here today, as Jews—to keep the memory of the six million fresh and enduring.

We who did not go their way owe them this: We must make sure that their deaths have posthumous meaning. We must make sure that from now until the end of days all humankind stares this evil in the face, that all humankind knows what this evil looks like and how it came to be. And when we truly know it for what it was, then and only then can we be sure that it will never come again.

Some people say evil of this degree is incomprehensible. They say we will never understand it. Some people even say that the word "evil" is insufficient to describe the Holocaust—and instead they use terms like mad, crazy, insane. I think they are wrong. What we saw there, at Treblinka and Belsen and Auschwitz and Dachau, was the image of the Inferno. That may have been the ultimate purpose of those who made the Holocaust—a grotesque effort to hurl the Earth into the very pit of the serpent.

I believe the Holocaust is comprehensible. Indeed, we must comprehend it. We have no choice; the future of mankind depends upon it. And that's what we are here for—to lay the cornerstone for the United States Holocaust Memorial Museum, which will help us understand and make it impossible for us to forget.

The Holocaust Memorial Council is committed to this purpose. It is composed of Republicans and Democrats and Independents who understand that partisanship has no place here. There are Jews who serve on it, and Catholics, and Protestants, who understand that religious divisions have no place here. It is composed of those who came through the flames of the Holocaust and those who did not, for we've required no rules for membership except an unyielding commitment to our mission to keep the memory alive.

To fulfill that mission, the museum will study the history of the Holocaust, provide an invaluable resource for researchers, and bring together in one place the greatest array of information and knowledge on this necessary subject.

It will examine the nature and meaning of the continuing course that is anti-Semitism. I think all of us here are aware of those, even among our own countrymen, who have dedicated themselves to the disgusting task of minimizing or even denying the truth of the Holocaust. This act of intellectual genocide must not go unchallenged, and those who advance these views must be held up to the scorn and wrath of all good and thinking people in this nation and across the world.

And yet just as we must challenge it here at home, so too we must challenge anti-Semitism abroad. We know that in certain nations, an infamous and fraudulent document called "The Protocols of the Elders of Zion" is still being distributed and in some cases taught in school. This, the most profoundly cynical piece of anti-Semitic filth ever produced, is full of libels toward the Jewish people, particularly the horrifying "blood libel." We must send the message out to all the world—a blood libel against the Jewish people is a blood libel against all humankind, and no decent person will stand for it. (Applause.)

We know that the United Nations, whose peacekeepers were honored only last week for their service to the world, has yet to repeal its infamous resolution equating Zionism and racism. We know where such intellectual infamy can lead. The world has learned that when the truth is turned on its head, holocausts become possible.

And there are the subtler forms of anti-Semitism. There is the anti-Semitism that seeks to deny Jews their independent identity. In these days of glasnost, we hear talk about liberalizing attitudes toward Judaism in the Soviet Union. But it is still true that a Jew must have courage to rise and say with pride, "Yes, I am a Jew, I wish to study Hebrew, and I wish to emigrate to the homeland of my people." Those who speak those words know what follows them—the despair of waiting for permission to do that which is a basic human right—to go where they will when they choose.

There are still tens of thousands—maybe even hundreds of thousands—of Soviet Jews who wait to leave the Soviet Union so that they may live free as Jews. And here, as we lay this cornerstone and vow that the Jewish people will never stand alone against tyranny, I want to ask the Soviet leaders a question. Where are those exit visas? Where are they? (Applause.)

And you and I and all Americans of good will are united in the challenge I propose to the Soviet leaders today. I say, let these people go. (Applause.)

The Jews of silence, Elie Wiesel called them two decades ago, but they're silent no more. They are obeying what the great theologian, Emil Fackenheim, called the 614th Commandment, the Commandment of Auschwitz. And that commandment is this: "Let there be Jews." That commandment is dear to the hearts of all. The Jewish people were on this Earth at the time of the pyramids. Those structures are still standing, and the Jews are still here. We must make sure that when the tall towers of our greatest cities have crumbled to dust in the turnings of time, the Jewish people will still be on this Earth—(applause)—to cast their blessings and remind all of us that this world and the people who live upon it have a history and, yes, even a destiny.

This week we celebrate one of the worst anniversaries of this century. Last Friday, 50 years ago, the European nations met in Munich and accommodated the expansionist designs of Adolf Hilter. Prime Minister Neville Chamberlain returned to Britain and proclaimed that he had brought "peace for our time." And 11 months later the Nazi tanks rolled into Poland and the war began. With the invasion of Poland the West awoke, may God be thanked, but at what—and the Nazis were finally defeated. But at what cost? At what cost?

Even to think about the cost makes sleep impossible. Had the West awakened to the meaning of Hilter, would those dead be with us today?

Would there even be a need for this museum?

It's a question without an answer. But we must never allow ourselves to have to ask that question again. American troops who liberated the concentration camps saw things no human eyes should ever see. But if we in America remain strong—if we hold fast and true to the conviction that, yes, there are things worth fighting for, there are things worth dying for, and we will heed the call if we must—humans will never suffer so, nor will others be called upon to save them from such suffering.

Before I go, I'd like to tell those of you who do not know it already about a song that was sung in the camps. It was a Yiddish song, and like many of the camp ballads, it was not about the hunger and the torture and the dying, but about the coming of the Messiah. "What will happen," the song asks, "when the Messiah comes?" And the answer is: "When the Messiah comes, we'll have a banquet."

And the banquet the song describes is no ordinary repast. For at that Messianic banquet, the guests will eat of the creature called the Leviathan, and will drink the finest and sweetest wines. And they will sit and watch while Miriam the prophetess dances for their entertainment. And then they will sit and listen as King David plays songs for them on his harp. And they will sit and listen to a lecture given by the wisest of men, King Solomon. And they will sit and study the Torah with Moses.

I hope you will forgive me if I say that I believe those who perished in the Holocaust have, after long suffering, attended that banquet. I cannot imagine our Lord would deny their request. We here will inscribe their names in human memory, and pray that God may bless us all. (Applause.)

ARMED SERVICES AND DEFENSE APPROPRIATIONS: GOOD JOB!

HON. J. J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. PICKLE. Mr. Speaker, I commend the outstanding efforts of our colleagues on the Defense Committees.

Included in the Defense bills brought before us last week and signed by the President is full-funding for the second year of operation for Sematech, the semiconducting manufacturing technology consortium established in 1987.

Sematech is indeed a pioneering effort. It represents the first Government-industry research partnership. The Government acknowledged the importance of maintaining domestic production capabilities of silicon chips and went to work with the semiconductor industry to develop a strategy for regaining momentum and overtaking our rivals in the race for supremacy in this vital area of technology.

Sematech is a national priority. It's success or failure will depend upon our combined efforts and strong commitment to recapturing America's leadership position in advanced electronics. New production techniques generated by Sematech will flow into every district in the country, and will enhance manufacturing technology all over the Nation.

I am proud to be a part of the strong congressional team supporting the creation of Sematech and full-funding for the 5-year program, and I want to take this opportunity to thank my colleagues—and the many staffers—who have worked tirelessly in support of Sematech. I look forward to another exciting and successful year.

NATIONAL PARALYSIS AWARENESS WEEK

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SMITH of Florida. Mr. Speaker, I am pleased that the House passed Senate Joint Resolution 364, designating the week of October 2, 1988, as "National Paralysis Awareness Week."

National Paralysis Awareness Week offers our Nation the opportunity to learn more about the devastating affliction of paralysis. Paralysis is not restricted to victims of spinal cord injury, as often thought. Victims of stroke, head injury, Parkinson's disease, and Alzheimer's disease all face the threat of paralysis. In fact, statistics reveal that over 500,000 people are currently afflicted with paralysis and an additional 12,000 people become paralyzed each year.

There is hope, however. Projects such as the Miami Project to Cure Paralysis, located at the University of Miami School of Medicine, are at the forefront of our fight against this dreaded affliction. Established in 1985 by my good friend, Nick Buoniconti, the NFL former All-Pro Linebacker for the Miami Dolphins, the Miami Project has already developed an international reputation as a premier paralysis research center and is on the verge of scientific breakthroughs once thought far out of reach.

It is imperative that the public becomes well-informed on this subject and realizes the need for increased funding for the Miami Project to Cure Paralysis as well as other projects throughout the country. I urge the President to quickly sign this resolution into law.

THE GOLDEN JUBILEE OF SISTER JEANNETTE QUINN

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. MURTHA. Mr. Speaker, on Sunday, October 23 St. Andrew's Church in Johnstown will hold a very special holy Mass and dinner to commemorate the Golden Jubilee of Sister Jeannette Quinn who has spent 50 years teaching in Pennsylvania and nearly 25 of those years at St. Andrew's in Johnstown.

Sister Jeannette Quinn entered the convent in 1935, made her first vows in 1939, and made final profession in 1942. She went on to receive a B.S. from Mount Mercy, a master's from Duquesne, and was certified in special education by Cardinal Stritch College.

During her career, she has taught all elementary grades and special education classes. She was a principal for 17 years.

It is easier to calculate the miles to the Moon than it is to calculate how many young lives Sister Jeannette Quinn has positively influenced during her many years of education. To work with young people, to help them grow intellectually and morally, to help shape their personal outlooks during these critical years is a challenge taken and enjoyed only by very special people. Certainly against that measure the career of Sister Jeannette Quinn has been an outstanding one. It is my pleasure to make these comments recognizing her outstanding contributions to education, to our community, and to our Nation.

THE NOBEL PEACE PRIZE: UN PEACEKEEPING FORCES?

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. BEREUTER. Mr. Speaker, an Omaha World Herald editorial on September 29 questioned whether the U.N. Peacekeeping Forces were clearly the most deserving recipient for this year's Peace Prize given the historic and dramatic arms limitations negotiated by President Reagan and Secretary General Gorbachev. I recommend this editorial to my colleagues.

The U.S.-Soviet arms limitation agreement and the environment of reason and good will it created for other agreements in the future has altered historic East-West tensions. It leave open the possibility of an unprecedented period of peace and prosperity in the world. The rapprochement between the two superpowers raises our hopes for the world of the twentieth century. President Reagan and Secretary General Gorbazchev deserved the Nobel Peace Prize.

NOBEL PANEL'S CHOICE ODD

The Nobel Committee found an odd way to get out of giving the 1988 Nobel Peace Prize to President Reagan and Soviet General Secretary Mikhail Gorbachev. The Reagan-Gorbachev option was a natural. Instead, the committee strained and gave the award to the U.N. peacekeeping forces.

Those troops have undoubtedly contributed to the cause of peace in the past 12 months. But they did what they did under orders that their governments issued as part of the responsibilities that come with U.N. membership. The kindest thing that can be said about the committee's decision is that is was shortsighted. The peacekeeping forces' contributions scarcely rank with the reduction in U.S.-Soviet tensions that Reagan and Gorbachev brought about.

Hints came from Oslo that the committee ruled out a Nobel Peace Prize for Reagan because it might help George Bush in the November election. If reluctance to make a political statement played a part in the committee's decision, it would be one of the first times. The committee displayed no such reluctance when it awarded the peace prize to Lech Walesa. Or Desmond Tutu. Or Costa Rican President Oscar Arias. Of course none of them was a conservative U.S. president.

The Nobel Peace Prize has not been given to an American president since 1919, when Woodrow Wilson won it. If any U.S president in modern times deservedit, it is Reagan, who, with Gorbachev, made the first signficant cutback it nuclear arms in the atomic age.

Through the INF agreement, the two leaders eliminated an entire class of highly destructive intermediate-range nuclear missiles in Europe and set the stage for futher cooperation on a wide variety of issues. If that wasn't enough to win over the committee in Norway, it's hard to imagine what would be enough.

IN HONOR OF RICKS LECO

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. FRANK. Mr. Speaker, inadequate housing, in part as a result of the policies pursued by this administration for the past 8 years, continues to be one of the most serious problems facing our Nation. It is particularly difficult for people in the Northwest, where a combination of factors have driven house prices far beyond what working people and middle-income people can reasonably be expected to pay.

One of those people who has fought hardest, most creatively, and with great integrity and commitment to ovecome this crisis is Richard Leco of North Attleboro, MA. Rick Leco has been a leader in the effort to produce affordable housing for Americans in a variety of ways. As a citizen, as an extremely effective and creative director of the North Attleboro Public Housing Authority, and in his current position as administrative assistant to the Board of Selectmen in North Attleboro, Rick Leco has shown an imaginative and courageous approach to housing which is rare at any level of government.

For this reason, I was delighted but not surprised when he was named the 1988 Member of the Year for the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials. I was even more pleased when he was named 1988 Member of the Year for the New England Chapter of NAHRO, and I was particularly pleased that last week, on September 28, he was named one of the National NAHRO Members of the Year. The award was presented to Mr. Leco by Apolonio Flores, a senior vice president of NAHRO who serves as executive director of the San Antonio Housing Authority. Since San Antonio is represented with great commitment and unparalleled service to housing by the Chairman of the Subcommittee on Housing, our colleague from Texas, Mr. GONZALEZ, the choice of Apolonio Flores as presenter seem to me especially appropriate. I have been proud of the opportunity I've had to work on behalf of housing for those in need under the leadership of the gentleman from Texas, and it therefore seemed to me a nice bit of serendipity that one of his constituents would give one of mine this extremely well-deserved award in recognition of Rick Leco's great efforts on behalf of housing.

PATRICK GRACE: GIVING A FACE TO AIDS

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. STUDDS. Mr. Speaker, occasionally—more often than not in times of crisis—we come across someone who speaks eloquently to and makes us deeply proud of our common humanity. The tragedy of AIDS is such a crisis; and Patrick J. Grace is such a person. I would like to share with my colleagues the following article about Patrick from the Cape Codder, September 27, 1988.

[From the Cape Codder, Sept. 27, 1988]

PATRICK GRACE: GIVING A FACE TO AIDS

(By Judy Finn)

Patrick Grace, who has lived in Provincetown for the past two years, was first diagnosed with AIDS-related complex (ARC) in July, 1987, at the age of 29. He had worked with AIDS support groups since the early 1980s and, at the time of his diagnosis, was an active volunteer with the Provincetown AIDS Support Group.

"I was tired, depressed, losing weight, and apathetic about life in general. I was petrified of what might be going on inside me. I knew all the signs. I knew all the words, and I had used most of them. What I was able to do for others—counsel, comfort and educate—I could not do for myself."

By September of last year, Mr. Grace had developed both Kaposi's sarcoma and pneumocystis carinii pneumonia. In other words, full-blown AIDS.

"According to the Centers for Disease Control, the average life expectancy for a PWA (person with AIDS) is 22 months after diagnosis," he says. "As well as I am feeling, and as much as I believe that I will be a 'long-term survivor,' there's still an echo of '10 months to go' in my mind."

Born an "Army brat" in Germany, Mr. Grace lived most of his life in Tucson, Arizona. After the first local deaths caused by AIDS shook that city's gay community in 1983 and '84, Mr. Grace became involved with an AIDS support group. Shortly after moving to Provincetown, he joined the Provincetown AIDS Support Group to offer whatever counsel and comfort he could.

Now he is a client of the group.

Of all the frustrations Mr. Grace endures, a sense of powerlessness and alienation dominates. Because of this, he has become active in getting his story told—to give a face to AIDS. He began by writing a column, "Living With AIDS," in a weekly gay publication, *Next*, which is circulated throughout New England. In it he is able to vent some of his frustrations as well as make his disease more open, less fearsome.

He speaks out publicly on his battle with AIDS when he can, as during The Mass Act Out vigil last February in Boston, and during the Gay and Lesbian Civil Rights demonstration in June. But he is most enthusiastic about his appearances around the Cape with a group known as Visual AIDS Plus One (the "one" having ARC), because it's important to eliminate the misinformation, the stigma and discrimination associated with AIDS.

"I know, for me, it's very important when, publicly, I can say, 'I'm a person with AIDS.' That helps me rid my own life of that stigma, that discrimination.

"The transformation that occurs in the audience is phenomenal. You can feel it and you can see it. That's not to say everyone loves us; at the end of the presentation a lot of people still bolt for the door. But for the most part you can just sense the change in the room.

"It also helps me, that these people will then have someone in their lives who has AIDS. Maybe they'll think of my face when they watch the news and hear these statistics. I think that helps to end the hysteria."

Mr. Grace laments the forces which now control his life, such as the medical community and bureaucracies which are so slow to dispense medications he believes could extend his life, and the drug companies which set such high prices on what may be life-saving medications. ("Why has there been a 400 per cent increase in the cost of pentamidine within the past year?" he asks.) Instead of allowing himself to feel victimized by circumstance, Mr. Grace protests with letters to the drug companies about their prices, and to elected officials who he believes should act faster and more responsibly.

"These things (letters of protest) by themselves may not amount to much, but they do give me the knowledge that I am part of the political process. These actions do help me feel a bit more empowered.

"We have been sick and dying since 1981, and our government—the government which represents us, the government we vote for, the government we support with our tax dollars, the government we fight for in wars—is murderously silent."

The only person in the Reagan Administration Mr. Grace respects is Surgeon General Everret Koop, who sent AIDS information to every household in the country, despite reservations by the administration. "Surgeon General Koop is a hero of mine," he says.

"My grandparents were foreigners, immigrants coming to a land of hope and promise. A land of freedom. My father was a colonel in the Army. Much of my young 'military brat' life was spent on Army posts. Every day at 5 pm, our entire world would stop and stand at attention while the flag was lowered. I was a Cub Scout and a Boy Scout. I have voted in every election since I was 18. I can be as corny and mushy as John Wayne when it comes to believing in what America means. . . (but) too many Americans are falling through the cracks."

These days, Patrick Grace is often too tired to do anything. He can no longer work. He has had three bouts with pneumocystis pneumonia, along with Kaposi's sarcoma, and recently he had to use a cane because of nerve damage in his foot, also related to the disease. He lives on the $460 a month he's alloted for his disability, plus $10 a month in food stamps. Medicaid pays for the small doses of AZT he receives and, more recently, his aerosol pentamadine treatments.

"Quite simply I would rather be sick than tired. I have always prided myself on being an active person. I used to run 80 miles a week and marathons on weekends. I used to swim each morning and then bicycle to work. In the desert southwest I worked with the National Park Service. Part of my job had me backpacking on trails throughout the Sonoran Desert. Those times are no more. If I can walk to both the Post Office and the Provincetown AIDS Support Group offices in the same day, then I consider myself thoughly exercised. And I usually have to pay for that exercise later.

"I used to pride myself on being in charge. I used to have 'game plans' and goals set for next week, next month, next year. Forward thinking for me now consists of daydreaming about tomorrow. It's been a difficult transition—from budding corporate yuppie to welfare recipient; from being in charge of my life to now feeling powerless; from being a healthy, physically active person to being a person who's had to slow down, a person with reduced and limited energy.

"Sometimes I miss the old me. I miss my briefcase, my neckties, my office, my desk. I miss my health club. I miss Friday happy hours with the office gang. I miss those things and the simple ability to assume that I would live to the ripe old age of 75. Such an assumption!

". . . I also sometimes question whether I would even have AIDS if my government had initiated and implemented an effective AIDS strategy back in 1981."

Mr. Grace's parents and teenage brothers live in Connecticut, and they have been supportive and loving. After his most recent episode of pneumonia in August, he spent time recuperating at home. In his column he wrote:

"My mom is drill sergeant—'rest, eat, medicate'—and a good friend. By the end of next week she and I will have seen every available Bette Davis video."

There have been bad moments, such as friends backing off after his diagnosis. "Maybe they don't want to feel as close to me because they think I'm going to die soon. That's been hard."

But the toughest thing, for him, has been losing friends to the disease. "I've lost an incredible number of people in my life and, damn it, I'm only 30 years old. I've buried too many friends and it's tricky sometimes for me to be able to step back and say, 'I'm going to mourn this loss, but life goes on.' "

In his column, he expanded on this thought:

"Friends have explained the concept of 'grief-overload.' I thought of friends who no longer read obituaries, who no longer attend memorial services. It made sense. It's hard enough for me when I think of my own sense of loss and mourning. It becomes overwhelming to me when I think of the sense of loss my family and friends may be anticipating I need to hold it together."

Mr Grace says he dreads seeing the Names Project Memorial Quilt when he takes part in the gay and lesbian civil rights in Washington over Columbus Day weekend. The quilt, which contains panels of people who have died of AIDS, could almost fill a football field a year ago, and it represented only about 13 percent of AIDS-related deaths at the time. It was in Boston last June, and its presence has a devastating effect on many people who see it and hear the names called off. For people with AIDS it is overwhelming.

Mr. Grace describes his reaction to seeing the quilt last June by simply saying, "We all had to be alone."

For the Washington march, the quilt will be returned to the Capitol Mall, "this time stretching from the Washington Monument all the way to the Capitol Building," Patrick Grace declares. "And the quilting continues. . . ."

ELECTRIC BOAT STRIKE

HON. FERNAND J. ST GERMAIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ST GERMAIN. Mr. Speaker, I would like to state, for the record, my strong objections to the remarks attributed to Rear Adm. John S. Claman, supervisor of shipbuilding for the U.S. Navy. His comments appeared in the September 16, 1988, issue of The Day, which is published in New London, CT.

The substance of these quotes are contained in the first paragraph of this headline article wherein Admiral Claman has stated that the 2,400 salaried employees and 1,000 union strikebreakers at the Electric Boat Shipyard are doing a better job building nuclear submarines than the Metal Trades Council did before going on strike July 1.

As a representative of many employees of the Electric Boat Shipyard and its Quonset Point facility in North Kingstown, RI, I would like to disassociate myself from these misguided comments. How is it possible for 3,400 employees to substitute for the 10,000 MTC union employees and continue to produce quality vessels? It is clear that Admiral Claman has little understanding of the role of the labor movement in building and maintaining a free and democratic society here and throughout the world. His judgment in expressing these sentiments as a representative of the U.S. Navy is not clear. I feel that this is a blatant effort of the Department of Defense officials to inject the Government in the middle of important labor negotiations. Admiral Claman's statement was not well received by this member and future statments from the leaders of our DOD community should be cautiously considered during the tenuous times surrounding a labor dispute.

TRIBUTE TO THE HONORABLE SHIRLEY CHISHOLM

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. STOKES. Mr. Speaker, on Saturday, October 8, 1988, the National Political Congress of Black Women will salute Shirley Chisholm on the occasion of the 20th anniversary of her election to Congress. I would like to take this opportunity to express my sincere appreciatioin and respect for my good friend and former collegue, the first black woman elected to the this body, Shirley Chisholm.

Shirley and I entered Congress together in 1969, both of us committed to helping the poor, the uneducated, the unemployed; and to giving a voice to those who were not being heard. Shirley maintained this commitment throughout her political career, whether in the Congress, or during her run for the Presidency in 1972. Upon her retirement from Congress in 1982, Shirley became a professor at Mount Holyoke College, where her commitment to improving the status of women and minorities in American society has never waned. A teacher by profession, Shirley encouraged her students to be as creative and independent thinking as she was in Congress. Shirley has also been lecturing to groups of women and minorities all over the country, urging them to fight against the discrimination in opportunity that still exists in America.

It has been my privilege, Mr. Speaker, to work alongside Shirley Chisholm for 13 years in Congress, and to call her my friend for the last 20 years. By virtue of her strength, determination, and stubborn refusal to compromise on matters of principle, she has been a model for all of us to follow. By her continued concern and advocacy for the causes of the less-privileged, often forgotten segments of American society, she continues to challenge us to improve the human condition. A compassionate, intelligent, courageous, and hard-working woman, Shirley Chisholm still continues, to "fight the good fight."

I congratulate Shirley on the 20th anniversary of her election to Congress, and say to her that, although she may no longer be present in this body, her voice can still be heard in these halls, and it carries with it the cries and whispers of those who would not be heard but through her.

A BETTER COURSE ON IRAQ

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. DORGAN. Mr. Speaker, as an opponent of chemical weapons and a supporter of nonproliferation agreements, I rise to deplore the hideous use of chemical gas by Iraqi military forces against the Kurds. Without question, Iraq's use of chemical weapons is a gross violation of international law. This violation warrants the full condemnation of the international community.

While the United States should join the world in condemning Iraq, it should not unilaterally embrace a set of sanctions. Doing so may harm our own Nation more than Iraq.

Unlike the case with South Africa, the United States has not received any persuasive signals from allied nations that they, too, contemplate sanctions against Iraq. This go-it-alone posture leaves us vulnerable to the possibility that other nations—even our allies—will fill the trade gaps that we leave open. Just as with the Soviet grain embargo, we may now find competitors rushing in to take over American grain export markets which may close as a result of sanctions legislation.

The net effect, then, would be to harm the United States and its farmers, but leave the Iraqi Government unscathed.

Rather than a unilateral effort, we ought to join forces with allied nations in seeking universal action against Iraq by the United Nations.

And having turned to that forum, we ought to train our attention on Iran as well. The latter's indiscriminate use of terrorism against civilians and unprovoked attacks on the high seas against neutral shipping is no less an assault against humanity. Both Iran and Iraq have won world opprobrium with their respective missile attacks against cities in the other country, leaving hundreds of civilian casualties.

My point is that unilateral sanctions don't work and may even backfire. A second point is we should direct our energy toward multilateral actions, especially through the United Nations. My third suggestion is that we address the international violations of both Iran and Iraq.

Failing these courses, any unilateral action should exempt food and medicine, as we have done in the case of South Africa. If we judge that we must speak out without any exemptions, then the very least we should do is to compensate our farmers and domestic producers for the loss of markets due to unilateral diplomacy.

ILLITERACY

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ANDREWS. Mr. Speaker, at a press conference held this morning, the Congressional Sunbelt Caucus, which I chair, and the Sunbelt Institute, a nonprofit research organization, released a report that focuses on one of the most important issues facing this Nation, and in particular the Sunbelt region. That issue is illiteracy. The problem of illiteracy in our society is indeed one of the most troubling and important issues we need to address. It is both a very personal obstacle that millions of American citizens must face every day, and a serious problem for the economic well-being of this country.

The Congressional Sunbelt Caucus, a bipartisan coalition of 122 Members of Congress from 16 Southern and Southwestern States, working in conjunction with the Sunbelt Institute, is dedicated to examining national issues, such as illiteracy, from a regional perspective and addressing these issues through progressive action and by strengthening the partnership between the Federal Government and the States of our region. I applaud the efforts of my distinguished colleagues, and Sunbelt Caucus Members, David Price of North Carolina and Hal Rogers of Kentucky, for their work in bringing forth the study, "Meeting the Economic Challenge of the 1990's: Work Force Literacy in the South."

This report, is a significant first step toward addressing the problems of illiteracy in the South, including my home State of Texas. U.S. Department of Education figures indicate that only 64 out of every 100 young people that entered high school in Texas in 1982 received their diploma in 1986. A 1987 report of the Texas Literacy Council ranks Texas as having the third highest rate of illiteracy in the Nation. The Texas Department of Commerce reports that Texas adults without high school diplomas can expect to earn 42 percent less lifetime earnings than those that graduate, and that 60 percent of the adults with incomes below the poverty level did not finish high school.

In addition to the burden illiteracy places on the individual, these high rates of illiteracy place an economic and fiscal burden on my home State. In 1986, 63 percent of Texas AFDC payments were made to individuals who had not completed high school, and compared to a national average of 60, 90 percent of the inmates in the crowded Texas prisons last year were high school dropouts.

These situations are not surprising, many generations have known that education is one of the keys to personal growth and prosperity, but since the costs of illiteracy on society continue to increase, it has become increasingly clear that the Federal Government must play a more significant role in combating this problem. It is important for us to recognize the critical link that exists between literacy and employment—literacy ensures that an individual has the necessary reading and communication skills he or she needs to adapt to a changing workplace. Adaptability is important because many studies indicate that the vast majority of jobs created between now and the year 2000 will require more education and more training.

If the future work force is not literate, is not adaptable, the economic health of this Nation will suffer, and we will have an even more difficult time competing with the other industrialized nations of the world. I am hopeful that the release of this report, as a call for action, and as a collection of the efforts currently underway in the South will help further the efforts of the public and private sector by stimulating thought and discussion on this important issue.

TRIBUTE TO THE ORDER OF THE SONS OF ITALY IN AMERICA

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today in order to pay tribute to an organization which means a great deal to me, the Order of the Sons of Italy in America.

As an American of Italian descent, I recognize the importance of brotherhood with those of like ancestry. The Sons of Italy is a fraternal society for American men and women of Italian ancestry. This important organization works to keep alive the rich cultural heritage of the Italian people. It has helped to enrich the diversified culture of Italian-Americans through educational, charitable, social, civic, and philanthropic activities. The Sons of Italy also founded the Commission for Social Justice, the antidefamation arm of the Italian movement and maintains statistics on Italian-American demography.

The Sons of Italy organization has done a remarkable job of recognizing and developing the interests of those of Italian heritage in the United States. I would particularly like to pay tribute to Lodge No. 2539 of Youngstown for the outstanding work which they continue to do to advance the cause of Italian-Americans in my 17th Congressional District. Mr. Speaker, it is both an honor and a privilege to represent and be a part of such a wonderful group of caring people.

REMEMBER THE TRAIL OF TEARS

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. PORTER. Mr. Speaker, this year marks the 150th anniversary of one of the darkest episodes in American history. Our treatment of native Americans has ranged from fair to dismal, but no incident stands out as shamefully as the forced relocation of the Cherokee nation from their ancestral homeland in North Carolina and Georgia to the barren prairies of Oklahoma, the so called Trail of Tears.

In the spring of 1837 and continuing through the fall of 1838, the Cherokee Indians in the Southeast were herded together into makeshift prisons then led on an arduous forced march covering 1,800 miles and taking as long as 200 days. Twenty-five percent of the estimated 16,000 Cherokees who were forced to make the trek died from starvation, exposure and broken spirits. Their way of life, which was based in the coniferous forests of the Piedmont was all but destroyed by this relocation to the unfamiliar flatlands of the West.

Fear of war with the Cherokees was the official reason for the Trail of Tears policy, but discovery of gold on their lands in the mid-1830's and greed was the real impetus for the genocide.

We must not let the memory of the wrong done to the Cherokee people fade, for if it does, with it fades our conviction that such a travesty will never be repeated. On this 150th anniversary of the Trail of Tears, I call on all Americans to remember the wrong done to the Cherokee people and reaffirm our support for human rights and the right of self-determination both at home and abroad.

S. 1081, THE NATIONAL NUTRITION MONITORING ACT

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mrs. MORELLA. Mr. Speaker, I rise in strong support of S. 1081, the National Nutrition Monitoring Act. As a cosponsor of this bill, I was pleased to support the legislation when it was approved by the Committee on Science, Space, and Technology, on which I serve. The legislation is the result of 8 years of work in Congress and enjoys the support of a broad bipartisan coalition.

The bill would create a comprehensive national nutrition surveillance system in the United States, thereby improving our efforts to meet the nutritional needs of high risk groups, such as low-income children and the elderly. It focuses assistance to States and localities in their nutrition data collection, thus giving them the resources necessary to best address local priorities. To date, our nutrition surveillance efforts have been fragmented, and have not provided the guidance necessary to most effectively determine the nutrition needs of our population.

Mr. Speaker, I urge my colleagues to join me in voting for this important legislation which will assist us in addressing nutritional deficiencies in our Nation.

A TRIBUTE TO THE DEDICATION OF LOCOMOTIVE 1225

HON. BILL SCHUETTE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SCHUETTE. Mr. Speaker, I would like to bring to the attention of my colleagues in the House a historic event taking place in the village of Chesaning, MI. On October 8, 1988, the Shiawassee Valley Railroad Co. will begin operating tourist rail excursions over the St. Charles line of the Tuscola and Saginaw Bay Railway Co. The first train will leave Chesaning for St. Charles on October 8, at 9:30 a.m. from the autumn festival and folk art show. Upon returning to Chesaning, there will be a dedication of the newly restored No. 1225 locomotive.

The people of Owosso, Chesaning, and St. Charles have strived many years to bring about the restoration of this important railroad that links their communities. Now, October 8, 1988, will mark the return of rail passenger service to Owosso, Chesaning and St. Charles after an absence of several decades.

Locomotive No. 1225, which was originally built in 1941 for Michigan's Pere Marquette Railway, will be used for these excursions. From 1941 to 1952, this engine hauled fast freight trains between Detroit and Chicago, and between Toledo and Saginaw. When the locomotive was given to Michigan State University in 1957, a group of students began the long, expensive process of restoring the old train. Seventeen years later, almost entirely with volunteer labor and private contributions, Locomotive No. 1225 will be the first passenger train to travel in the area in nearly 40 years.

Mr. Speaker, I hope my colleagues in the House today will join me in paying tribute to this memorable event. The railroad was once the backbone of our country, playing an essential role in our early growth. The people of St. Charles, Chesaning and Owosso should be proud for restoring the 1225 locomotive and the rail coaches that will travel the newly built tracks. Their community spirit and dedication to such a worthy cause should be an inspiration to all Americans.

SAN DIEGO'S COLUMBUS DAY CELEBRATION

HON. JIM BATES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. BATES. Mr. Speaker, when that courageous Italian navigator, Christopher Columbus, discovered America almost 500 years ago, little did he know how much attention would be paid to that accomplishment every October in San Diego County. And for the fun and excitement of that parade, all of us have the United Italian-American Association to thank. Association members have given of their time, talent, money and enthusiasm far above and beyond the call of duty for the preservation of an important tradition for the entire community.

This year the theme of the celebration is "A Musical Salute to Youth" and we are honored to have California actor Paul Picerni as its Grand Marshal. Officers of the UIAA put in long hours on this event and they include: President Bill Labozzetta, Vice President Ben Montalto, Treasurer Lou Petrella, and Secretary Mary Jo Esposito. Board members of the UIAA who have also contributed to the great success of the parade include: Phil Battaglia, Parade chairman; Mary Jo Esposito, Parade coordinator; and Assistants Larry and Jean Fanucchi, Joe Puleo, John Curiale, Jim and Barbara Adamo, and Agnes Tarantino.

A special word of thanks and congratulations is due for a very special award recipient this year, Mr. William Labozzetta, who is San Diego's Italian-American of the Year for 1988. For Bill, it is an honor richly deserved, as his friends and family could well attest. Bill has exemplified the selflessness and hard work of so many Italian-Americans who have contributed most generously to this great Nation of ours. As usual I am proud to be joining you for the annual dinner and look forward to seeing new and familiar faces on this very extremely special evening for San Diego.

WILLIAM "BILL" CLAY: REPRESENTING THE WORKING CLASS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. RANGEL. Mr. Speaker, it gives me great pleasure to pay tribute to one of the Nation's longest serving black Congressman, BILL CLAY, as he approaches his 20th anniversary representing Missouri's First Congressional District. In 1969, BILL became the first black to represent Missouri in the U.S. Congress. Now, almost 20 years later, BILL has emerged as a tireless leader in the fight to address the needs of the working class. As chairman of the Subcommittee on Labor Management Relations, he has championed raising the minimum wage. As a member of the Education and Labor Committee, he worked to make higher education accessible to all, regardless of their ability to pay. To that end, he founded the William L. Clay Scholarship and Research Fund, a nonprofit organization that was established to provide funds for college education to those who were unable to pay. His support of parental leave and child care is well known.

BILL CLAY has spent his 20 years in Congress working to improve the quality of life for both his constituents and the vast majority of Americans who work for a living. His dedication to representing their needs and voicing their concerns has made him a role model for the rest of us. I feel honored to have witnessed most of BILL CLAY'S first 20 years in the Congress and I hope I'm around to witness another 20 years of service in the U.S. Congress by this distinguished public servant. Congratulations, BILL.

CHILD HEALTH DAY

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. MILLER of California. Mr. Speaker, Monday of this week was National Child Health Day. In previous years, the White House acknowledged this day by sending up balloons and issuing proclamations, demonstrating the extent of their involvement in protecting and nurturing children's health.

There would have been much to celebrate on Child Health Day if we had kept up the pace of improvement in child health that this Nation enjoyed up until the last decade. For the better part of this century, we moved children from sickness to health, from malnourishment to sustenance, from destitution to survival.

But we have seen a dramatic reversal in just 8 years. More children are increasingly at risk because this administration abdicated all responsibility with heartless budget cuts and inhumane rhetoric. Congress managed to salvage some health programs because they wisely recognized the cost-savings inherent in such policies, but the damage has been done.

More and more children are beginning life in poor health and facing living conditions that guarantee continued crises. Almost 3 million more children live in poverty; growing numbers of families with children are homeless or live in inadequate or unsafe housing; and more children than ever before are at risk of abuse or neglect.

Few indicators of a nation's health are more important than infant mortality. But after years of reducing infant deaths and low birthweight—a leading determinant of neonatal death and lifelong disability—our progress has come to a virtual halt in the 1980's. We know that early, comprehensive prenatal care can make a dramatic difference. But every year since 1979, fewer than one in four pregnant women received a prenatal care visit in the very critical first 3 months of pregnancy.

And today, the frightening reality is that more of us are unprotected by health insurance than ever before. Children are especially vulnerable. Of the 37 million Americans without any health insurance, one-third—11 million—are children. Almost 87 percent of uninsured children live in families with one or more employed adults. This scenario is likely to worsen as new entrants into the work force find that available jobs are in the traditionally low-wage, low-benefit service sector.

For the poorest children, public health insurance programs fail to provide adequate, if any, coverage. Medicaid still protects less than one-half of all children under age 13 who live in poverty. For low-income families, even the cost of routine medical care or care for a minor illness or surgery can be catastrophic.

U.S. leadership in the vaccination of the Nation's children is also floundering. Most startling is the erosion of the immunization status of the Nation's youngest children. For each of the seven target childhood diseases, immunization rates for children age 2 years fell between 1980 and 1985.

The greatest tragedy is that we know how to save children's lives and protect their health. We know that for every dollar invested in prenatal care for high risk women, more than $3 is saved; that for every dollar spent on the Childhood Immunization program the Government saves $10 in medical costs; and that the Women, Infants, and Children's Feeding Program, which still serves fewer than half of all eligible women and children, saves $3 for every dollar invested.

All of us must assume the responsibility for making children's health a national priority once again. Governor Mike Dukakis has already shown leadership by putting forth his "Healthy Family" proposal to guarantee health coverage for all working families, and his "Healthy Start" program to ensure universal access to prenatal care and for immunizations to protect all children from childhood illnesses. Child Health Day implores us to ask once again, where is the administration and where is George Bush?

NATIONAL ARAB-AMERICAN DAY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TRAFICANT. Mr. Speaker, today, I rise in support of House Joint Resolution 638, legislation I sponsored to designate December 15, 1988, as "National Arab-American Day." The Arab immigrants first started to arrive to the United States in 1875. From that time on, they strove diligently to contribute to the culture and economic growth of this great country. Yet, many of us today do not recognize the Arab people for all that they truly are.

The term "Arab" does not represent a religion, because its composure contains many religions. It is not a nationality, but made up of many nations whose identity is everchanging. The Arab culture is rich in history and tradition. It is a culture which exists despite geographic, political, and religious barriers.

Despite this, there seems to be a stigma today that goes along with being an Arab-American. There is an unfair stereotype that these citizens must live with regardless of their endless contributions to society. Congress should take positive action to dispel any negative stereotypes about Arab-Americans that may persist. That is why I feel that we must pass this most necessary legislation.

The Arab-Americans have worked hard through the years and were willing to assimilate many of their customs in order to be viable citizens. They were so intent on becoming good Americans, they put aside their eastern roots. It is time to remember those roots. America is a nation of many cultures. We must never forget what cultural ingredients are mixed in our great melting pot. We must never forget the Arab-Americans who strove, and still strive today for our Nation's prosperity.

Mr. Speaker, for these reasons, I urge all of my colleagues to support this important legislation.

SELFLESS EFFORTS OF THE NORTHERN OHIO PATROLMAN'S BENEVOLENT ASSOCIATION

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. FEIGHAN. Mr. Speaker, I would like to call attention to the selfless efforts of the Northern Ohio Patrolmen's Benevolent Association [NOPBA] on behalf of the needy.

With hunger growing more and more acute among our people, the NOPBA is making a difference and showing that Americans still care deeply about the less fortunate.

This is the 16th year that NOPBA members—under the leadership of Peter and Helen Lawer—have been actively involved in food programs. Their participation began with some Christmas and Easter cheer: Food baskets gave hundreds something to smile about during the holidays. The NOPBA continues to appeal to countless businesses for these contributions, which it puts in the hands of needy Ohioans all over the State.

In addition to the food baskets, the association is offering free dinners at its annual Day of Hunger on December 3. The many inquiries they have received about this year's dinner are revealing and troubling. Who's calling? Individuals who can't get jobs and families that can't make ends meet.

Through their publication, Police Beat, the NOPBA continues to keep its membership aware of the plight of the needy. This magazine—which is superbly edited and written—is read religiously by many families.

It is my sincere hope that more of our people will become active in the crucial campaign to combat hunger. That means teaching our kids to give and to show compassion all year round—not just during the holidays. They also must be taught to respect human dignity for all.

I know personnally the deep commitment of the NOPBA to the needy. Let me take this opportunity to applaud the association for stressing this growing tragedy. I am honored to know many of their distinguished members and am ready to help in any way I can.

CAREERS IN SCIENCE AND TECHNOLOGY

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. CLINGER. Mr. Speaker, the rural youth of today are an important resource for the future growth of the United States. These young people will help maintain the principles that are needed for a strong America.

But in order to continually challenge these young people, we need to provide them with contemporary role models and career orientation, allowing them to reach their full potential.

Encouraging rural youth to consider careers in science and technology, a project partially funded by the Center for Rural Pennsylvania, is one way of addressing this problem. This project develops a kindred relationship between rural youth and solid role models by providing one-on-one career counseling in science and technology. The project's goal is to encourage rural youth to remain actively involved in math and science during high school to enhance their career opportunities.

This program could not have come at a better time. A recent report released by the National Assessment of Educational Progress [NAEP] shows that the performance of American students in science is distressingly low and that "a majority of 17-year-olds are poorly equipped for informed citizenship and productive performance in the workplace, let alone postsecondary studies in science."

Those who volunteer their time to this program and similar programs do the nation a great service and should be commended. Their willingness to work with these young people helps our country and our future.

TRIBUTE TO THOMAS M. McNIFF

HON. JACK BUECHNER

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. BUECHNER. Mr. Speaker, I rise today to honor 20 years of public service donated by Thomas M. McNiff to the St. Louis area as Bonhomme Township Republican Committeeman. During those exactly 20 years, from August 2, 1968, to August 2, 1988, Tom McNiff made a difference in the creation of American public policy by encouraging and nurturing the success of Republican candidates and Republican values in his corner of the State of Missouri.

From his first days in Kirkwood, MO, in 1940, Tom has been a highly respected and highly successful figure, not only in his service to Bonhomme Township, but also in his tenure as St. Louis County's director of security and director of safety, and in his tenure as St. Louis constable for the fourth magistrate district. Tom has played an important role as not only a dependable advocate of the Republican cause, as not only, a guardian of the survival of grassroots electoral politics, but as an inspirational example of the involved citizen: the kind of citizen who makes every election a vital exercise of democratic freedoms, the kind of citizen who serves the public interest by protecting the private rights of basic law and order, the kind of citizen who gives his days and nights and weekends to an idea greater than himself. It is that citizen and that idea, Mr. Speaker, that I rise in unwavering support to pay tribute.

This record of service now stands to Tom's successors as a model for the years to come, years as crucial to the continuing development of our Nation and our communities as the years that came before. Let us pause to remember the importance of the challenges of civic duty, great and small, and remember the dedication of a Tom McNiff and its importance to the continued vitality of our oldest and finest traditions.

FEDERAL POLICY NEEDED FOR MEDICAL WASTE MANAGEMENT

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. LEWIS of Florida. Mr. Speaker, my colleague, Mr. ROE of New Jersey and I have introduced legislation today that requires the Environmental Protection Agency to conduct research on the management of infectious medical wastes. This bill in response to the conclusions reached by the Office of Technology Assessment in the report "Issues in Medical Waste Management."

The report, which Mr. ROE and I requested over 1 year ago, was released today. It is the best nationwide assessment of the problems associated with the management of infectious medical waste.

The memories of children playing with vials of AIDS infected wastes in Indianapolis, a mile-long garbage slick containing needles and syringes along the shore of New Jersey, and hospital wastes being found on beaches from the Northeast to the gulf coast are all too recent.

The consequences of this mismanagement are a potentially significant risk to humans and the loss of millions of tourism dollars in affected States. The OTA report states that the extent of infectious medical waste pollution nationwide and the risk to human health are not known. EPA has the Federal authority to regulate medical waste disposal, but has refused to issue regulations or conduct scientific research on the issue.

The legislation that we have introduced will require the Administrator of the EPA to begin a long-term research program to determine the extent of the problem and the health risks involved, as well as assess potential disposal technologies.

The report states that "* * * the need for research should not be taken as a suggestion for postponing consideration of adopting a comprehensive regulatory program to address medical waste management. In fact, research efforts should be a part of a regulatory program." Therefore, it is important that this legislation be included in any comprehensive legislative efforts to form a coherent Federal policy for medical waste management.

I urge my colleagues to support this important legislation.

A SALUTE TO CHARLES E. JAMES III

HON. ROBERT E. WISE, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. WISE. Mr. Speaker, I rise today to recognize Mr. Charles H. James III, my constituent and recipient of this years Minority Supplier/Distributor Award.

Mr. James is the president and chief operating officer of C.H. James & Co., a small but remarkably successful firm.

The history of the firm is a truly extraordinary one. Established 105 years ago, by a black American, it has survived the depression and every other challenge and crisis of the last century, to reach the position it has today—one of our leading distributors of canned and frozen fruit and vegetables.

The business continues to expand. C.H. James & Co. was the first enterprise to secure a sizable government contract through the West Virginia Regional Contracting Assistance Center.

I salute the James family, their ingenuity, and I congratulate Charles James III on receiving this prestigious award.

PERSONAL EXPLANATION

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. DONNELLY. Mr. Speaker, over the past 2 days, there have been votes on several pieces of legislation, most of which have been ordered under suspension of the rules. I regret very much missing these votes; however, due to the death of a close personal friend in my district, I felt that my presence was necessary in Massachusetts.

PIONEER VALLEY SYMPHONY CELEBRATES ITS 50TH ANNIVERSARY

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. CONTE. Mr. Speaker, later this month the Pioneer Valley Symphony in Greenfield, MA, will celebrate its 50th anniversary. As the Congressman representing western Massachusetts, I want to recognize and congratulate the symphony's remarkable success.

In the spring of 1939, Harold Leslie and Dr. Herman Livingstone held a rehearsal for what, later that year, would become The Pioneer Valley Symphony. Since those first days in the western Massachusetts Electric Auditorium, the symphony has worked toward maintaining a regular season of concerts, featuring a number of reknowned soloists including Jean Casadesus, Claude Monteux, Rudolph Serkin, Leonard Rose, Bernard Greenhouse, and Julius Baker among others.

As music director for the past 32 years, Dr, Nathan Gottschalk has overseen a rapid rise, both in prestige and in cultural influence for the symphony, that today reaches throughout the Pioneer Valley and beyond. Today, the Pioneer Valley Symphony enjoys the distinction of being one of the oldest surviving community orchestras in the Nation. Numbering close to 100, musicians are drawn from across Massachusetts and into southern Vermont. In addition, the PVS features a chorus which performs once or twice each season. Now in its 26th year, the chorus is made up solely of community residents.

In honor of this golden anniversary, the PVRS plans to kick off the season with a gala pops program on October 15. Subsequently, a series of five orchestral concerts and one choral performance are scheduled, including an appearance by Rudolph Serkin on the 1st of April.

I am honored today, Mr. Speaker, to pay tribute to this organization, in honor, not only of its established tradition of quality cultural programming, but for the living example it provides as the end product of real community initiative.

TRIBUTE TO FORMER CONGRESSWOMAN, THE HONORABLE SHIRLEY CHISHOLM

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. DYMALLY. Mr. Speaker, it is with great admiration and pride that I rise today, as chairman of the Congressional Black Caucus, to pay tribute to former Congresswoman, the Honorable Shirley Chisholm. I am pleased to announce that this Saturday evening, October 8, the National Political Congress of Black Women will host a special event in honor of Ms. Chisholm as 1988 marks the 20th anniversary of her election to Congress as the first black woman to serve in the U.S. House of Representatives.

Many of you may still remember the very sad moment back in 1982 when Ms. Chisholm retired from Congress. Indeed, she has been sorely missed, yet her legacy remains alive and well throughout the Halls of Capitol Hill. As our Nation's first black Congresswoman, she has paved the way for social change. Today, she remains at the heartbeat of coalition policies. Her compasssion and endurance has empowered her to as a bold and successful leader of our poor, the disenchanted, and the disillusioned. As the daughter of a Guyanese immigrant, she has prided herself in discipline and a commitment to causes she believes in and continues to fight for. Early on, she carried the flag on a number of issues such as child care, legal services for the poor, education for the handicapped, a fair and decent minimum wage, and women's rights.

Throughout her illustrious career in public service, she has symbolized dedication, tenacity, sincerity, and integrity to the hearts and minds of so many in this country. Mr. Speaker, I stand before you today, with a great personal sense of admiration and respect for this gentle woman who, despite all odds, has proven herself to be an assertive fighter and a champion of causes for the dispossessed and underprivileged. Ms. Chisholm has never ceased in her effort to help others. Today, she continues in the struggle as a mentor, a teacher, a lecturer, organizer, and leader—always out there in her ability to speak her heart and mind. Most importantly, Mr. Speaker, Shirley Chisholm is someone who has never "gone along to get along." In the era of conformity, Shirley Chisholm fits no mold, no pattern. She has an indominable spirit that had endeared her and made her a powerful and respectable force to recon with, not only to her colleagues, but to the people across this Nation. Mr. Speaker, I stand before my colleagues today and ask them to join me in this very special moment so that we may extend our appreciation for her immeasurable contributions to society. Thank you.

80th ANNIVERSARY OF THE COLUMBUS SOCIETY

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ATKINS. Mr. Speaker, I am pleased and honored to rise and inform my distinguished colleagues of the 80th Anniversary of the Columbus Society located in Framingham, MA.

On December 27, 1908, a small group of men of Italian descent met in the Coburnville section of Framingham. According to their historical record, the purpose of the meeting was to form a society where men of Italian-American descent could meet socially and where problems could be resolved. While the initial organization was comprised of men who could trace their ancestry on their male parent's side back to Italy, the membership has for decades been open to persons interested in participating in the group's social and community activities. These activities include providing sickness and death benefits for members and their families, providing guidance and instruction for the members and participating in various town parades.

The guiding principles of the Columbus Society are "For Country, For Humanity, For Progress, and For Equality." Certainly in the 80 years since it's inception, the members of the Society have furthered these principles for the betterment of us all. Their roster of members has included some of this State's most prominent citizens of Italian-American descent. The Society is a credit to my community and to our country and I am pleased to have had this opportunity to congratulate them on their anniversary.

ARMS CONTROL OPPORTUNITIES

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. FASCELL. Mr. Speaker, as we approach the end of the Reagan administration, we recognize the arms control benefits of the signed and ratified INF Treaty and note the progress made at the more significant strategic arms reductions talks.

While the administration must continue to work for progress at the Geneva Arms Control Talks, it regrettably appears that a START agreement will not be completed by the end of this year. While difficult questions dealing with the relationship between an offensive strategic agreement, space defenses, and the ABM Treaty remain, there are many important issues that have been agreed to by both superpowers that should be accepted by the next administration.

As for the partial test ban treaties, there still is time for the administration to submit the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty for final Senate advise and consent this year. Similar efforts are also possible for a comprehensive chemical weapons usage and production ban as underscored by the President's call for an international chemical weapons conference last week at the United Nations.

In another area dealing with nuclear testing, my fear is that the administration has recently made a policy change which is cause for concern. The administration has apparently concluded that there is "no direct technical linkage" between reductions in strategic nuclear arsenals and limitations on nuclear weapons tests. The administration had previously pledged to Secretary-General Gorbachev and to the Congress that following the agreement of "effective verification measures" to the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, both sides would then pursue step-by-step nuclear testing limitations leading to the ultimate objective of the complete cessation of nuclear testing as part of a nuclear reductions process. Now the administration appears to be telling us that its policy is to continue—maybe even increase—nuclear testing, even if strategic reductions are achieved. This strikes me as backwards logic: How do we bring an end to the nuclear arms race if we don't reduce our arsenals and reduce, if not eliminate, nuclear testing? Continued nuclear testing contributes to modernization and this fuels the arms race. I sincerely hope that this administration will re-think its policy and I urge the next administration to embrace an arms control-oriented approach to its nuclear testing policy and to embark on negotiations for a comprehensive nuclear test ban agreement.

As part of the Foreign Affairs Committee's ongoing oversight of the Geneva Arms Control Talks, I am providing a status report on the Geneva Talks. The last such summary appeared in the CONGRESSIONAL RECORD of March 3, 1988, page E522.

At the May 29–June 1, 1988 Moscow summit, the two sides signed an accord to notify each other in advance of each other's ballistic missile test launches. Reports indicate that in the remaining days of the Reagan administration, the United States is pushing for a similar-type agreement to limit the encryption, or encoding of electronic missile-testing data.

At the September 22–23, 1988 Shultz-Shevardnadze ministerials, the Soviets proposed a plan to ban the testing and deployment of ballistic missiles with more than a specified number of warheads until a strategic arms treaty is completed. Both sides would adhere to warhead limits included in the joint statement of the December Washington Summit. (For example, in the United States: MX: 10 warheads; Trident II: 8 warheads; Poseidon: 10 warheads, etc. In the Soviet Union: SS-18: 10 warheads; SS-24: 10 warheads; SS-25: 1 warhead, etc.)

Details on this proposal are sketchy at best, especially given the lack of detail provided by the Soviets on this matter at the ministerials.

At the same ministerials, the administration also pressed for dismantlement of the Krasnoyarsk radar as they did at the recently-concluded ABM Treaty Review Conference.

The Soviets have offered to convert the radar into a joint space-tracking research center. This was rejected by the administration for the obvious reason that once completed, U.S. personnel could be ousted from the site and the Soviets would be free to potentially operate the radar in a manner prohibited by the ABM Treaty. At the Review Conference, the Soviets reportedly also proposed to dismantle the radar's transmitter, thereby reducing the radar's capability. The United States, however, has been unable to come up with a technical fix that would reduce the radar's capability and that would eliminate the Soviet's long lead time advantage. It is my hope that the administration will pursue a resolution of the Krasnoyarsk radar concern with the Soviet Union.

On another issue, the United States is continuing to press the Soviets to accept a count of 10 air-launched cruise missiles [ALCM's] per strategic bomber. This is less than the number of ALCM's that our bombers can carry. If the Soviets would accept this, it is reported that the United States would agree to correspondingly undercount the number of Soviet ALCM's on their strategic bombers.

As part of such an ALCM package, the United States might agree to include ALCM's with a lesser range. The U.S. position on the table has been to only include ALCM's with a range greater than 1,500 km., while the Soviets have proposed to include all ALCM's with a range greater than 600 km.

A more detailed review of the Geneva Arms Control Talks appears below.

In the strategic area, the United States and the Soviet Union have agreed on:

1. 50 percent reduction in strategic arms carried out in 7 years;
2. a ceiling of 6000 warheads;
3. a ceiling of 4900 ICBM's and SLBM's;
4. a 50 percent cut in Soviet heavy ICBM's, from 3080 warheads on 308 SS-18s, to 1540 warheads on 154 SS-18s; and
5. a ceiling of 1600 strategic nuclear delivery vehicles.

Of the agreed-upon ceiling of 4900 ICBM's and SLBM's, the United States is proposing that no more than 3300 can be on ICBM's. This is a way of addressing the Soviet reliance on ICBM's. (Of the 3300, the U.S. proposes that no more than half—1650 warheads—can be on ICBM's that are not silo-based, i.e. mobile, or are heavy, or which possess more than 6 warheads—this would include the Soviet SS-18 and SS-24 and the U.S. MX.) The Soviets have countered with a proposal calling for a ceiling of no more than 3300 on SLBM's as a way of addressing the U.S. reliance on SLBM's.

Areas of agreement dealing with air-launched cruise missiles [ALCM's] include:

All currently existing long-range air-to-surface cruise missiles will be considered to be nuclear-armed.

Future conventionally-armed long-range air-to-surface cruise missiles will be distinguishable from nuclear-armed long-range air-to-surface cruise missiles.

Heavy bombers equipped for nuclear-armed long-range air-to-surface cruise missiles will be distinguishable from other heavy bombers.

Any long-range air-to-surface cruise missile which has been tested and deployed with a nuclear variant—including all existing such missiles—may be carried only by a heavy bomber equipped for nuclear-armed long-range air-to-surface cruise missiles.

Heavy bombers not equipped for nuclear-armed long-range air-to-surface missiles, that is, those equipped only for nuclear gravity bombs and SRAM's, will count as 1 delivery vehicle against the 1600 limit and 1 warhead against the 6000 limit.

Heavy bombers equipped for nuclear-armed long-range air-to-surface cruise missiles will count as 1 delivery vehicle against the 1600 limit and an agreed number of warheads against the 6000 limit.

The number of ALCM's counted in START will be determined by multiplying the number of heavy bombers of each type equipped to carry nuclear-armed long-range air-to-surface cruise missiles by the number of warheads attributed to that type.

The sides may convert, through agreed procedures, heavy bombers equipped with nuclear-armed cruise missiles to heavy bombers equipped only for nuclear gravity bombs and SRAM's, as well as to heavy bombers equipped for non-nuclear arms.

The sides may convert a limited number of nuclear-armed heavy bombers, using agreed procedures, to reconnaissance aircraft, jamming aircraft or tanker aircraft. These aircraft will not count against the 1600 or 6000 limits.

Questions remain concerning distinguishing future conventionally-armed cruise missiles from nuclear-armed cruise missiles; the role of onsite inspections in verifying the constraints on heavy bombers equipped for ALCM's; and how a START agreement should deal with heavy bombers that are converted for non-nuclear purposes such as reconnaissance or delivery of conventional weapons.

In the area of sea-launched cruise missiles [SLCM's], general agreement was reached at the December 1987 Washington summit calling for a mutually acceptable solution to the question of limiting the deployment of long-range nuclear-armed SLCM's. Limitations on SLCM's would not be part of the 6000 warhead and 1600 launcher limits.

There was one reference to SLCM's in the Joint Reagan-Gorbachev Summit of May 29–June 1: "The sides also discussed the question of limiting long-range, nuclear-armed SLCM's."

The Soviet Union has had a proposal on the table calling for a ceiling of 400 nuclear-armed SLCM's (with a range greater than 600 km.) on two classes of submarines and on one class of surface ships. The Soviets had also tabled an additional limit of 600 conventional SLCM's on two classes of submarines and on one class of surface ships. The United States remains opposed to limiting conventional SLCM's indicating that the Soviet approach would undermine the United States policy of neither confirming nor denying the presence of nuclear weapons at any particular location.

Under discussion in Geneva is the Soviet plan for verifying constraints on nuclear-armed cruise missiles. The plan would reportedly allow United States and Soviet inspectors unprecedented access to each other's bomber bases, strategic naval ports and military ships, as well as permit permanently stationed teams of United States and Soviet inspectors outside the factories of each other's country where cruise missiles are produced, where their warheads are installed and where the weapons are loaded onto submarines and other ships.

As for mobile missiles, the United States position is to ban them unless agreement can be reached on provisions which would provide for effective verification and strict numerical limits on the number of nuclear weapons carried by such missiles.

Areas of United States-Soviet agreement for road-mobile ICBM's include the following:

The missiles and launchers would be confined to small restricted areas and would be limited in size to an agreed area. Each restricted area would be limited to no more than the number of missiles on launchers specified for that restricted area.

Within each restricted area, the number of structures unique to mobile ICBM launchers would be limited to no more than the number of missiles on launchers specified for that restricted area.

Each side would have an agreed number of opportunities to request the other to carry out measures at the restricted areas to enhance observation by national technical means (NTM). The other side would be required to grant such requests.

Missiles and launchers would be allowed to depart restricted areas for routine movements, for example, movements for training, maintenance and testing. Such movements would be subject to prior notification and would involve no more than an agreed percentage of the total mobile ICBM force at any one time.

Exercises and operational dispersal of mobile ICBM's and launchers from the restricted areas would be permitted under certain circumstances. Notification would be required after a dispersal began, and upon return of a dispersal force to restricted areas there would be provisions for enhanced NTM measures and/or onsite inspection.

Non-deployed ICBM's of types that had been deployed in road-mobile launchers, and road-mobile launchers that did not contain ICBM's, would be restricted to facilities listed in the MOU or in transit between permitted facilities.

Non-deployed ICBM's would be limited in number, and except for an agreed number of missiles, would have to be stored at least an agreed distance from any restricted area and from any facility at which road-mobile ICBM launchers were stored.

For rail-mobile ICBM's, both sides have agreed that:

The missiles and their launchers would be confined to a limited number of rail garrisons, specified in the MOU. Each rail garrison would contain a limited number of missiles and launchers.

Within each garrison, the number of unique shelters for trains would be limited to no more than the number of trains specified for that garrison. No shelter would be capable of holding more cars than the number on a standard train.

Each garrison would have no more than a specified number of rail entrances/exits.

Missiles and launchers would be allowed to depart rail garrisons for routine movements and dispersals, subject to notification requirements and limitations comparable to those for departure of road-mobile ICBM's from restricted areas.

Non-deployed rail-mobile missiles would be limited in a manner similar to that for the comparable road mobile items.

The sides would have the right to implement continuous perimeter portal monitoring at agreed production facilities.

Questions remain concerning:

What should be the size of the restricted areas and rail garrisons in which mobile ICBM's will be used?

What production facilities associated with mobile ICBM forces should be continuously monitored using perimeter/portal systems if mobile ICBM's as a class are permitted?

Should the characteristics of mobile ICBM's be further restricted if mobile ICBM's as a class are permitted (e.g, should we prohibit liquid fueled mobile ICBM's)?

Should there be further restrictions on non-deployed road-mobile launchers?

Should dedicated mobile resupply vehicles for mobile ICBM's be permitted?

Should tags be placed on all accountable stages of mobile missiles and on their launchers if mobile missiles are permitted?

What should be the specific measures designed to address the problem of ensuring that there are no "covert" mobile ICBM's or launchers?

What should be the "suspect site inspection" regime associated with mobile ICBM's if they are permitted?

As for new heavy ICBM's, the United States position on the table is to ban production, flight testing and modernization of new and existing heavy ICBM's. The Soviets have agreed to ban development, testing and deployment of new heavy missiles, but they want to permit production, flight testing and modernization of existing heavy missiles.

Both sides agree in principle that the verification provisions of a START Treaty should, at a minimum, include: exchange of data both before and after the reductions take place; onsite inspection to verify data exchange and to observe elimination of weapons; continuous onsite monitoring of the perimeter and portals of critical production facilities; and short-notice inspection of sites where treaty-limited systems are located both during and after the reduction period and sites at which a party considers that covert production, storage, repair or deployment may be occurring. United States and Soviet differences over the details of the agreed principles are significant.

Turning now to the Defense and Space talks, both sides reaffirmed at the May 29–June 1 summit, their commitment to continued negotiations to achieve a separate agreement concerning the ABM Treaty building on the language of the December Washington summit statement. In that statement, both sides agreed to observe the ABM Treaty, as signed in 1972, while conducting research, development and testing as required and permitted by the ABM Treaty, for a specified period of time. This scenario leaves many questions unanswered, not the least of which is: which interpretation of the ABM Treaty will govern the nonwithdrawal period from the treaty?

The current Soviet position on the table calls for a mutual commitment not to withdraw from the ABM Treaty for 10 years. Another Soviet proposal would require both sides to agree on a list of space-based devices which would not be allowed to be put into space if they exceeded certain performance parameters.

Discussion at the May–June summit and in Geneva has focused attention on the United States proposal that no restrictions should be placed on sensors in space. The administration view is that sensor technology is becoming so advanced that our mutual security is enhanced by permitting unrestricted use of sensors in space. Some are concerned, however, that these sensors will be used in contravention of the traditional interpretation of the ABM Treaty, that is; as a prohibited space-based radar component of an ABM system.

It is the general view of the administration that if the Soviets were to delink an agreement on SDI from an agreement on strategic reductions, the United States would be prepared to do so as well. At this point the Soviet position makes an agreement on strategic reductions contingent upon resolution of SDI. The United States had also tabled the position that an agreement on SDI is contingent upon entry into force of a 50-percent strategic reductions agreement.

Both the United States and the Soviets agree that there should be intensive discussions on strategic stability not later than 3 years before the end of the nonwithdrawal period.

The United States proposes that if both sides have not agreed otherwise, each side will be free to decide its course of action at the end of the nonwithdrawal period. Either party will be free to choose to deploy strategic missile defenses that are beyond limitations in the ABM Treaty upon giving the other party 6 months' written notice of its intention to do so.

The Soviet Union proposes that if both sides have not agreed on what to do at the end of the nonwithdrawal period, each side shall determine for itself its further actions with respect to the ABM Treaty and the START Treaty, subject to compliance with the relevant procedures of these treaties. The START Treaty would cease to be in force if either party violates the ABM Treaty or this agreement.

Both sides have discussed ways to ensure predictability in the development of the United States-Soviet strategic relationship to reduce the risk of nuclear war.

For the United States this would involve an annual exchange of data on planned strategic defense activities, reciprocal briefings on respective strategic defense activities, reciprocal visits to associated research facilities, and reciprocal observation of strategic defense tests.

For the Soviets, this would involve an exchange of information to clarify ambiguous situations, an exchange of data regarding certain devices which are scheduled to be put in space, inspections of certain sites and facilities which give rise to concerns regarding compliance with the ABM Treaty, and resolution of compliance questions in the Standing Consultative Commission.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. AL SWIFT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SWIFT. Mr. Speaker, today I and eight other members of the Committee on Energy and Commerce are introducing a bill we call, with some irony, the Clean Air Act Amendments of 1988. This bill is the culmination of 10 months of work by the nine of us—the so-called Group of Nine. We are introducing it today, notwithstanding the fact that it is quite obvious that clean air legislation will again this session fail to move through Congress.

There are several reasons we are doing this at this late date. First, we believe that what we have developed is a solid piece of legislation that did get more rational discussion of the clean air issues than Congress has seen in several years. We think everyone should see its details in final form.

Second, we think that what is contained in our bill offers many options and opportunities for consideration when Congress tackles this issue next year.

And, finally, we believe that this legislation suggests the middle ground where we can make real gains in the quality of clean and healthy air while avoiding a devastating negative impact on the economy of any region or any industry. It is important for Americans to know that such balanced proposals exist and that both sides in this old clean air battle ultimately rejected reasonable advancement on this health issue.

A little history of the development of this bill may be of some value. Last December, shortly after the Congress adopted the Mitchell-Conte clean air extension, nine of us who serve on the Energy and Commerce Committee had a meeting. We decided that we would try to help build the foundation for a compromise that would enable Congress to deal with this divisive issue. It was clear to us that the wounds from previous clean air battles were still painful, and we believed that we might be able to help bridge the differences between the principals.

We soon learned that the only real tool we had was substance. Therefore, we decided to put together a proposal that emphasized substance.

Interestingly, both industry and environmentalists seem convinced that we were highly motivated by political considerations. The truth is that politics has had almost no impact on our proposal. The reason is simple: we wanted to see where decisions that were made on the basis of substance, not on old positions long held and long defended, might lead. They lead us to this bill. However, both sides of this contentious issue believe that we allowed politics to drive us too far in the direction of their respective adversaries. That's a human and understandable reaction. For them to believe otherwise would force both sides to rethink positions they have set deeply in concrete. But the fact is politics played an inconsequential role in the development of this bill.

I don't mean to suggest that our bill represents the only right way to do things or the only way to approach the matter. That would be presumptuous and absurd. Reasonable people may disagree with our conclusions about what makes for the best public policy. Indeed, among the nine of us, there were differences of opinion that had to be worked out. The bill would look somewhat different if each wrote his own version. That's not the point. The point is that we were not limited by recent history, past battles and old animosities. Instead, we are introducing today, what we believe to be a solid piece of legislation that, if it were passed, would achieve two goals: Cleaner air and a cost-effective method of achieving it.

In fact, according to an analysis of various bills that was recently performed for EPA, the Group of Nine bill was rated the least costly bill—even less costly than the administration's proposed policies—while leading to more emission reductions than any other House bill—reductions almost equal to those of the bill adopted by the Senate Environmental Committee.

That is an achievement we think the American public approves and one that is possible if the various parties to this struggle are willing to entertain positions other than those that have held them in deadlock for years.

We have held off on introduction of a bill until now because, up until a few days ago, we had hoped that the time had come when Congress would finally reauthorize the Clean Air Act. We had hoped that our draft bill would serve as a useful vehicle for negotiations leading to a compromise bill. We thought that might better be achieved if the legislation were not officially introduced.

It is clear now that sufficient time does not remain in this Congress for a compromise bill to be negotiated and brought to the floor so there is no longer reason to withhold introduction.

But why has there been no progress on clean air this year, even with sanctions facing many of our great cities? That is the big question.

To me the answer is clear. It is because of outside pressure from extremists. The extremists on both sides of the clean air issue have killed the chances of Congress dealing with this issue which has been crying out for resolution. The extremists have frustrated the ability of Congress to do what it wants to do—to pass a clean air bill. The extremists outside of Congress have created a political climate in industries, within regions of the country and among interest groups and that put many Members of Congress in positions at home that makes compromise virtually impossible for them.

"Extremist" has become a harsh word in our political lexicon. Let me define what I am saying. There are those who demand no action. That is certainly extreme. There are those who will take nothing but what they proposed. That is extreme. There are those who preach that any divergence from what they define as the right solution to this problem is "selling out." That is extreme. And there are those who would kill in its bassinent any idea they did not birth, and that is a great number of things, but it is certainly extreme.

And those extremists have names. I am tempted to say them. But suffice it to note that some utilities refuse to come to the table to try to work out a solution. They hide behind their ratepayers. They continue to argue that acid rain is not a problem and that all the answers will appear once the NAPAP study is completed.

That's baloney and they know it. They're just stonewalling the issue as long as they can, saying that they are defending the ratepayer's pocketbook but showing no concern for their lungs.

Other extremists hide in a coalition of businesses and industries that travel the country, telling editorial boards and local business groups that they can't afford clean air legislation. And they have been in the forefront of a massive effort, taking place over the last 2 weeks, to kill any real chances of Congress passing a bill this year. Never mind that the vast majority of the public, as well as the vast majority of Members of Congress, want such legislation.

And more extremists hide in an equal and opposite coalition of environmental groups. They too have worked hard in recent days to kill the chances of a clean air bill coming to the floor this year. Along with the others I've mentioned, they have systematically organized opposition to clean air compromises that offered the only real chance of progress.

In fact, while denouncing those whom they claim were trying to put together back room deals, they tried to secretly advance a proposal that would have resulted in passage of a bill that would reduce acid rain, but would take no action on urban smog—delaying indefinitely any relief for the millions of Americans who breathe unhealthy air.

While asserting they "will not compromise the health of the American people" they have taken positions that ensure that nothing whatever will be done this year to improve the health of Americans.

No progress for them; only perfection. They resolutely stand against getting half a loaf for a starving man. Let him starve until they can obtain the whole loaf for him.

Have they never heard of tomorrow? Have they never heard that there are no final victories or final defeats around here? Don't they know they always have the opportunity to perfect in the future whatever improvements can be secured today?

All of these extremists are responsible for the fact that Americans will continue to breathe dirty air next year, the year after, and who knows how many years after that.

What frustrates me even more is that I have met with individual members of each of these groups and have found many in all camps to be sincerely interested and willing to work out a bill. There are reasonable voices among both industry groups and environmentalists. Those voices do not advocate capitulation to their adversaries. They each stand strongly for their positions. However, they have shown a desire and a willingness to try to find new ways to accomplish their goals—new ways that might help break the decade-long deadlock on clean air legislation.

But they have obviously been overcome by their hard-line colleagues. The extremists may take pleasure in the fact that they have won another round—the chances for legislation in the 100th Congress are apparently gone. We can only hope that the extremists will eventually lose the war.

But, in the meantime, Americans will continue to breathe dirty air. That does not appear to disturb the extremists on either side of the issue. They seem content to continue what has become their war. Their egos are on the line. Their line in the dust must be honored.

It disturbs me, and I believe that it will disturb a growing number of Americans, that the intransigence of the extremists may continue to prevent us from passing a clean air bill.

I hope I am wrong. I hope that the reasonable voices in the environmental movement and the caring voices in business and industry will assert themselves during the next Congress. Without abandoning principle or goals, all groups can work out a balanced way to assure all Americans something that they should take for granted—clean air to breath.

Anyone who has prevented that goal from being achieved in this Congress should not be proud of themselves. Their conscience should plague them and their sleep should be very troubled.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SYNAR, Mr. Speaker, regrettably, the 100th Congress will not enact clear air legislation. By failing to enact such legislation, we are again failing to provide the American public with basic assurances that our lives will be healthier, our environment cleaner and our future more secure. Mr. Speaker, the consequences of our inaction are clear. Global temperatures are on the rise. Urban smog is at an all-time high. The quality of our natural resources—our lakes, streams, and forests—continues to deteriorate. Toxic air pollutants, one of our most pressing public health concerns, remain largely uncontrolled.

Yes; we have made progress in the war against air pollution. Yet our progress pales in comparison to the problems we continue to face and those which we will leave to our children. Certainly resolution of these problems is complex and difficult. Few issues affect the lives of so many people and the livelihoods of so many industries. Effective solutions will cost industries and consumers billions of dollars and, in some cases, require dramatic changes in our current lifestyles. The choices we face are difficult, contentious, and divisive. And so we have chosen not to act.

Some interests argue that the costs of action are too high, the burdens on industry too great and the benefits too uncertain. Other interests prefer inaction to any action which falls short of their views of appropriate action. And as we leave the 100th Congress, with many of us again frustrated by our inaction, there is a tendency to point accusatory fingers at the stridency of special interests unwilling to compromise their convictions on how best to battle these complex problems of air pollution. I do not agree with such an assessment. Special interests are paid to represent their interests and they will continue to do so vigorously. We in Congress are paid to stand above the varied interests of a few and stand for the interests of all. We have failed in this responsibility.

The health and welfare of the American public are not well served by inaction. The quality and protection of our environment are not well served by inaction. The prospect and promise for stable economic growth are not well served by inaction. No one really benefits from inaction. We have merely increased public health and environmental risks and increased the costs of future pollution controls. As the environmental stakes become higher and the costs of cleanup become greater, the divisiveness among special interests will widen and their stridency will increase.

While I am discouraged by the continued inability of this institution to recognize these consequences of inaction, I remain confident that the American public will continue to demand action and that Congress will soon respond. And so today I join with my colleagues in the Group of Nine in introducing legislation that I believe offers a reasonable, responsive, and effective first step toward the control and reduction of air pollution. Certainly, we recognize it is only a first step. We do not pretend it is the only or best solution. Indeed each of us—each representing different constituencies and interests—have compromised some of our views and moderated some of our positions in an effort to reach agreement, come to terms with the need for action and forestall the consequences of inaction. And while this legislation represents the work of only nine Members of Congress, I believe it also represents the progress that can be achieved and the consensus that can be built if we are truly committed to resolving our differences and reducing air pollution. In the 101st Congress our commitment to clean air will not lessen, it will be strengthened. I am *confident* that in a short time Congress will indeed stand above the interests of a few, stand for the interests of all and reauthorize the Clean Air Act.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. PHILIP R. SHARP

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SHARP. Mr. Speaker, last year, on December 31, over 60 cities and counties in the United States were officially declared unhealthy. They had failed to meet the health-based standards of the Clean Air Act for ground level ozone and carbon monoxide.

The air we breathe in Indianapolis, in Lake and Porter Counties and in the Indiana suburbs of Louisville was judged not clean—and, moreover, was judged a health risk for infants, the elderly, athletes, and those with breathing difficulties such as asthma.

This judgment was made because these areas, and many others across the country, failed to comply with standards set in the Clean Air Act. This country has been largely successful in complying with other provisions of that law. We have made substantial progress in protecting the health of our citizens from many other pollutants. But, in many parts of the country, we have failed miserably in the case of ozone and carbon monoxide.

Last December, when the deadline came, Congress decided to grant extensions to those areas not in compliance with the standards and to try to pass new laws aimed at finally achieving enough cleanup to meet these standards.

We did not reach compliance because ozone—which is more like a chemical soup than a single pollutant—proved more difficult to find and control than many had first thought. Most areas have invested a lot of planning and programs in trying to solve this problem; they have simply failed.

Some of us in the Congress wanted to take a look at why areas failed to meet the standard, despite good faith efforts and large expenditures of public and private funds. The result of that examination is the proposal we are introducing here today—a proposal researched by nine Members of Congress and examined and refined over a period of almost 10 months.

This proposal, which is designed to replace current law, will result in the achievement of the goal of healthier air for our citizens. It can do this at a lower cost than either current law or other proposals before the Congress, and it can do it within a reasonable timeframe.

There are a few important matters to note.

The problems of ozone and carbon monoxide are very difficult to solve. Doing so will take time and will be very expensive. No easy targets exist which can bear the full burden of correcting this problem. Ozone comes from industrial processes and the tailpipes of automobiles, to be sure, but it also comes from paint cans and hair spray and deodorants. Ozone comes from the lines painted on the roads we drive on and also the fumes you see when you refuel your automobile.

Solving this problem is expensive. Removing ozone-causing emissions from the air means reducing what are called volatile organic compounds—VOCS. This means installing technologies to trap these compounds before they are released into the air or actually removing them from processes either through ingredient substitution or product reformulations. The costs to industry and consumers have already been, and will continue to be, very significant. Some programs will touch our lives directly, such as the imposition of mandatory programs of vehicle inspection to see that automobile emissions systems are properly functioning. Other means of compliance will fall on industry and consumers won't be aware of the tremendous effort it will take to achieve healthy air.

Despite the problems, however, the goal is worthy—the promise of clean, healthy air is worth the substantial costs.

Some have praised this proposal for its realistic deadlines and aggressive Federal program to get areas started towards attainment. Others criticize it as too moderate, risking a delay in the achievement of the goal.

There was an opportunity to enact this legislation this year. Earlier versions of this proposal were released in March and June. The group of Members responsible for this proposal have consistently supported legislating on clean air in this session of Congress. We have lobbied our colleagues, have written articles for the Washington Post, and have committed large blocks of time to learning about these problems and trying to design workable solutions.

In the end, advocates at polar ends of the issue prevented action this year. Some concerned environmentalists wanted more action sooner, but there is insufficient support in Congress for their position. Many in industry fear the high costs of compliance, and want fewer legal requirements. That position is insufficient to protect the public health. Together, they essentially made it impossible to move legislation.

Nevertheless, as the congressional session draws to a close it is easy for opponents of action to stop progress—and that is what has happened. The Senate announced yesterday, October 4, that the effort to enact the Clean Air reauthorization in this Congress is over. That precluded successful action by the House of Representatives.

The purpose of the introduction of this bill, near the end of the congressional session is to provide additional opportunities for Members and the public to examine the proposal, to talk with its nine authors and to prepare for the inevitable need to confront this issue early in the next Congress. We are disappointed that the Congress did not complete action on this issue this year—but we stand ready to move quickly in the next Congress.

We must act if we are to guarantee every American the right to breathe clean air.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. DENNIS E. ECKART

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. ECKART. Mr. Speaker, almost a year ago a group of moderate Democrats who serve on the Energy and Commerce Committee began a determined effort to break the impasse that had developed around the rewrite of the Clean Air Act.

Our group, dubbed by our colleagues and the media as the "Group of Nine," put in hundreds of hours of staff time and scores of members' meetings that brought together everybody from the Sierra Club to the National Association of Manufacturers, from the State and local air program administrators to the big three auto manufacturers. Everyone had their day in court.

The result of this monumental undertaking is the legislative product we introduce today. It is a good, solid bill. Those of us who worked on this legislation and most of those who came before our group to present their views operated in good faith. Special commendation should go to Congressman AL SWIFT of Washington who, with infinite patience, skill, and humor, led this disparate group of Members through an arduous, but worthwhile, legislative endeavor.

On the other side of the Hill, the valiant efforts of Senator GEORGE MITCHELL of Maine deserve particular note. I have been personally impressed with the Senator's efforts to forge a coalition to pass a badly needed clean air bill in the 100th Congress. He, too, was faced with an uphill battle.

But the battle appears to be lost as we enter the waning days of the 100th Congress with little remaining hope for the enactment of legislation this year.

At the start of this process, the Group of Nine believed—and we still believe—that the Clean Air Act needs revamping. We have been frustrated time and again to see this important environmental and health issue used as a political ping pong ball.

It is our hope that this year's experience will be viewed in a positive, rather than a negative, light. We will have failed only if we ignore the progress made in the 100th Congress and do not continue the effort in the 101st.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. W.J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. TAUZIN. Mr. Speaker, today I am joining eight of my colleagues on the Energy and Commerce Committee in introducing a solution to a critical environmental problem—ozone pollution.

Ozone pollution has been shown to cause immediate, short-term changes in lung function and increases respiratory symptoms, and has been suspected of playing a role in the long-term development of chronic lung diseases. However, existing data are just beginning to shed light on questions about the possible long-term effects of ozone exposure.

When Congress enacted the Clean Air Act it enacted it with the goal of "protecting and enhancing the quality of the Nation's air resources". Of the six criteria pollutants for which standards have been established under the act, we have been least successful in our efforts to attain the standard for ozone. Instead of meeting the goal of the Clean Air Act, Congress has continually postponed it. We have continually convinced ourselves that the deadlines for attainment were unachievable.

With less than a week left in this Congress, it is apparent now that we will once again postpone the protection and enhancement of the quality of the Nation's air. The fingers will be pointed and the accusations will be made as to who is the most to blame for the failure to enact a bill this year. Compromise has become a dirty word in the consideration of strengthening our clean air law, and as a result we are stuck with the existing law which has failed to accomplish the goal.

The bill that we are introducing today is the product of a year of meetings and negotiations with industry groups, environmental groups, regulators, scientists, researchers, other Members of Congress, and among the nine of us. It is certaintly not the end all and be all to the ozone pollution problem. But it is a means to accomplish the goal and to achieve the reductions in ozone pollution necessary to bring into attainment those cities with unhealthy air. This bill is a compromise—nine Members representing nine very different regions of the country agreed on it and hoped that others would join us. Sadly, that has not occurred and we will adjourn next week leaving many cities to face economic sanctions for nonattainment—economic sanctions that will not clean up the air.

I hope that the introduction of this bill signals the beginning instead of the end, and that we return next year to work expeditiously to enact a strong, balanced approach to attacking our ozone problem.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. JIM SLATTERY

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SLATTERY. Mr. Speaker, it is with a great sense of pride and satisfaction that I join my Group of Nine colleagues in introducing legislation which can move this country toward attainment of the Clean Air Act ozone and carbon monoxide standards

Attainment of these health-based standards has been an illusive goal of the Clean Air Act for the past 18 years. Today this country has approximately 100 urban areas which cannot meet one or both of the standards. While a great deal of progress has been made in the past, our efforts have proven greatly deficient in tackling a problem whose dimensions we have only recently begun to appreciate.

Starting from a fresh slate, our group, with varying backgrounds and philosophies, undertook to understand the deficiencies of the past which have undermined the best intentions of the Clean Air Act. Based on countless hours of discussion with experts in the field, we came to appreciate the many complex and simple facts which have doomed attainment of the standards from the beginning.

We learned that States have been unable to develop effective State implementation plans because they lack a complete inventory of the sources of emissions in an area which cause nonattainment.

We learned that States have had limited financial resources upon which to expand their knowledge base.

We learned that reasonably available control technologies have not been uniformly applied in all nonattainment areas as the act requires.

We learned that there were few major sources of emissions left to control and, subsequently, that any proposal we developed would be very expensive.

And, most important, we learned that the health effects of both short- and long-term exposure to ozone or carbon monoxide are detrimental.

These are just some of the facts which led to the development of the proposal we introduce today—an achievement some never thought possible. Our deep-seated desire to move the country toward attainment by breaking the historic stalemate on this issue, has proved sufficient motivation to achieve our initial goal of developing a proposal we could all stand behind as being reasonable, effective, and legitimate.

It is a proposal which will provide our States with a complete inventory of emission sources in nonattainment areas, an essential tool if effective State implementation plans are to be developed.

It is a proposal which establishes national control measures which will complement the effectiveness of localized emission control activities.

It is a proposal which provides sufficient time for States to develop plans, implement those plans, and realize attainment.

It is a proposal which assures that should an area fail to attain the standard(s) within a prescribed period of time, despite good faith efforts, automatic and additional controls will be implemented.

It is a proposal which establishes new authority to address the unique substantive and procedural problems experienced in multi-State nonattainment areas.

It is a proposal which contains meaningful enforcement authority for EPA to use against recalcitrant States and emissions sources.

It is a proposal which requires an area which has attained the standards to develop two successive maintenance plans which will keep the area in attainment for at least 20 years.

It is a proposal which embodies the hard choices which must be made if this country is to realize the goals of the Clean Air Act.

It is a proposal which can appeal to the various factions involved in the clean air debate.

The Group of Nine's initial goal of developing an effective consensus proposal is hallmarked today through the introduction of this proposal. Unfortunately, our ultimate goal of enactment, at this late hour, has eluded us.

That is not to imply, though, that our efforts have been in vain. I believe the Group of Nine has done more to enhance the integrity of discussion between the individuals involved in this debate than any other action which has taken place on the subject of clean air.

For each of us, amending the Clean Air Act has been a formidable and divisive issue since coming to Congress. It has been an issue where compromise on behalf of the public's interest has been a dirty word. However, the Group of Nine finds stalemate a dirty word in the clean air debate—where the public's interest continues to be sacrificed.

It must be understood that the existing regulatory ability of the Environmental Protection Agency to move our cities toward attainment is extremely limited. Congress must accept its responsibility to make the hard choices and pass clean air legislation.

I urge my colleagues, and the multitude of special interests involved in this debate, to ask whether it is really in the best interests of the American people to maintain the status quo.

If you are honest, I believe you will find the answer is no.

Hopefully through the introduction of this proposal, we will keep the clean air discussion open, and we will assume the challenge before us.

THE CLEAN AIR ACT AMENDMENT OF 1988

HON. JIM COOPER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. COOPER. Mr. Speaker, as a member of the so-called Group of Nine, I have helped formulate the ozone reduction proposal that we are introducing today. It does not contain every proposal that I would have liked to have included and it contains several that I would have omitted, but I am proud of the overall product for several reasons.

First, the Group of Nine represents a new way for the Energy and Commerce Committee to do business, by supplementing the normal subcommittee system. This system has broken down in the last several years on Clear Air Act issues. The problem has not just been a deadlock of competing interests; it has also been an overload of congressional work schedules, an overload that makes it extremely difficult for the average Member of Congress to go delve deeply into complex, scientific issues. Therefore, I see the efforts of the G-9 members and staff as a very hopeful sign that Congress can adjust to the demands of the technical age by making informed decisions on the complex issues of the day. I hope that the G-9 model can be used by other committees to achieve reasonable compromise where compromise has proven hard to find.

Second, the work product of the Group of Nine reflects general principles that advance the clear air debate. Instead of focusing that debate on the tiresome exchange between clean air and dirty air advocates, it moves the debate to the cost of clean air controls. Almost every American wants clear air, and congressional debate should reflect that. The only question is how much we are willing to pay for it.

The G-9 bill tries to minimize the cost and maximize the fairness of its proposals by asking everyone and every industry to do a little bit to reduce harmful hydrocarbon and carbon monoxide emissions. In most cases it gives them flexibility as to the way that they choose to make those reductions. Washington's EPA provides guidance where that is helpful and cost effective, but it is the State and local interests that must choose the means of reduction. While I would have preferred a little less in the way of Federal prescription, I do believe our bill retains sufficient flexibility to encourage State, local, and industry innovation. Everyone is asked to sacrifice a little bit, in the way that suits them best, so that all residents of nonattainment areas can breathe better air.

I have been very active personally in developing legislation on the acid rain issue, and my bill, H.R. 5211, uses similar principles to reduce acid rain. It focuses on encouraging cost effective ways to reduce emissions on a time schedule that ensures balanced cost markets and reasonable rates for consumers. I regret that time and other factors prevented the Group of Nine from finalizing their own acid rain proposal, but preliminary discussions indicated that the group was moving very much in the direction of my bill.

It is a shame that Congress appears to be unable to amend the Clean Air Act this year. The Group of Nine has tried to bring the differing parties together for a compromise, as have numerous other parties both within and outside of Congress. I want to thank the Center for Clear Air Policy in particular for its pioneering efforts in charting a middle group on acid rain.

It is a shame to leave out major cities technically in nonattainment, with the threat of sanctions over their heads. But I'm encouraged that the interest in moving acid rain legislation this year is likely to be the engine pulling Clear Air Act reform through next year. When this happens—early, I hope, in the 101st Congress—then the Group of Nine ozone proposal will be ready, as will the Cooper bill on acid rain. Perhaps then compromise can be achieved when it has eluded us in the past.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. TERRY L. BRUCE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. BRUCE. Mr. Speaker, today I am joining with eight of my colleagues, together the so-called Group of Nine, in introducing legislation which aims to bring our Nation's cities into compliance with the Clean Air health-based standards for ozone and carbon monoxide. Most of America's large cities failed to meet those legally required smog levels by the December 31, 1987 deadline set by Congress in the seventies. This legislation would set a new policy for these cities to follow which we hope is realistic and effective.

The public has good reason to ask why these standards were not met by the 1987 deadline. First, some control measures required by law have not been put into place while others, while implemented, were not as effective as anticipated. Second, States in submitting their air quality plans to the U.S. Environmental Protection Agency for approval, often underestimated their actual level of population in an effort to avoid the tough choices needed to improve air quality. Third, air quality plans were often based on imperfect scientific understanding on the formation of urban smog which led to deficient efforts at control. Fourth, the U.S. Environmental Protection Agency's oversight of the Nation's air quality program has not been as effective as it should have been.

In reviewing the history of the Clean Air Act we must first recognize the progress that has been made to put in perspective the work which remains to be done. According to the U.S. Department of Commerce this Nation spends $33 billion on air pollution control each year. Since 1977, we have made progress in reducing air pollution. Ozone, or smog, has been reduced by 21 percent; lead has been cut by 87 percent; sulphur dioxide, which comes from coal combustion and contributes to acid rain, has been cut by 37 percent while coal use has increased by 78 percent; carbon monoxide has been cut by 32 percent; nitrogen oxide has been reduced by 14 percent and particulates by 23 percent. This is an impressive accomplishment. Environmental groups should be proud that their determined advocacy brought results. Industry deserves credit for achieving reductions which many thought would be impossible or too expensive. By any measure the air is cleaner today in America's cities. However, the fact remains that health-based air quality standards are not being met. We must do more.

This legislation reflects several determinations about efforts to improve air quality. First, we must establish requirements to apply to areas which have not yet attained Clean Air Act standards. Second, these areas need additional time to reach the standards. Third, the Federal Government must regulate certain emission sources which cannot be effectively regulated at the State or local level. Fourth, we must improve the ability of the Federal Government, the States, local officials and citizens to enforce the provisions of the Clean Air Act.

This legislation acknowledges that the failure of America's cities to attain air quality standards is a long-term problem which will take more than a decade to solve in some areas and that emission reductions from many different sources will be needed to reach our air quality goals. We recognize that better planning and information gathering is needed for many areas to reach their air quality goals—that requires time. However, in exchange for that additional time we require control measures which are readily available now to be put into place.

We set out last December to draft legislation which would break the impasse which has for so long prevented House consideration of amendments to the Clean Air Act. We think that we have come very close to striking the balances that will ultimately allow legislation to move forward. We opened the door to enacting legislation in this Congress with this proposal on urban smog. Unfortunately, that door has been closed with the defeat of the legislative attempts of Senator BYRD, Senator MITCHELL, and Senator SIMPSON by those who would still prefer to make unattainable demands rather than get on with the job of cleaning up the environment.

The introduction of this legislation marks several achievements. First, in crafting a proposal, we have discarded unrealistic and polarizing positions and embraced measures and procedures which are feasible. Our goal is not to stake out a position but to enact legislation which will improve air quality. For 7 years we have watched air quality deteriorate while interests in Washington chose rhetoric over results. This document rejects that shameful approach to an issue about which the American people care deeply.

Second, by meeting with environmental organizations, industry groups, and air quality control experts we have brought to the table exactly those interests which have been unable to agree on legislation in the past. In the last year we have seen real concessions made by all sides. I am especially pleased that our efforts led to frank and earnest negotiations beween Chairman DINGELL of the Energy and Commerce Committee and Chairman WAXMAN of the Subcommittee on Health and Environment in an effort to resolve their long held differences on this issue. I am confident that their efforts this year have greatly reduced the distance we must travel toward our goal next Congress.

Third, by introducing this legislation now we are giving the public an opportunity to review our thinking to date. We have strived to keep this process as open as practicable. We have again and again revised this document to reflect the comments of interested parties. It is time to hold steady what has been a moving target and allow a thorough analysis of the proposal. I am certain that there will be further comments and suggestions for new legislative language and I believe we must consider them the next year as the 101st Congress resumes work on the Clean Air Act.

In closing, I would like to refer back to the progress we have made since the Clean Air Act's inception in 1970. We have identified and put in place most of the relatively inexpensive pollution control measures. We have spent 20 percent of the money to solve 80 percent of the problem. Now we are looking at spending 80 percent of the money to solve 20 percent of the problem. With this proposal we have tried to carefully weigh the cost of further clean-up measures with their economic costs. Additional air quality improvements, and the attendant benefits, are going to cost all of us money.

I am confident about the prospects for enacting tough new air quality standards in the next Congress. In addition, the efforts already in place will continue to bring air quality benefits. It is unfortunate that those of us who wished to see legislation enacted this year were stymied at the last moment by those who cannot bear to compromise in the interest of progress. I thank my friends in the Group of Nine and look forward to working with my colleagues and the next President in the 101st Congress.

THE CLEAN AIR ACT AMENDMENTS OF 1988

HON. RICK BOUCHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. BOUCHER. Mr. Speaker, today, I am pleased to join with my colleagues on the House Energy and Commerce Committee in introducing what is the culmination of a year's efforts to craft a responsible approach to the clean air issue. Although it appears that our efforts to reauthorize the Federal Clean Air Act will fall short this year, I am hopeful that the introduction of this legislation will provide momentum for the next Congress to act in a timely fashion on this pressing issue. I believe that this bill offers a balanced solution to a complex problem. I want to commend my colleagues with whom I am pleased to serve as a cosponsor of this measure for their dedicated efforts over the past year.

BEYOND "THE TONGUE-TIED AMERICAN"

HON. MATTHEW G. MARTINEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MARTINEZ. Mr. Speaker, knowledge of the world's cultures and languages is increasingly essential for our Nation. During this Congress we have taken important steps toward improving language education. We need to do more. Prof. Daniele Rodamar is an assistant professor of French at American University and has been a faculty member at Kalamazoo College and the University of Michigan. In "Learning Languages", she examines some important issues in language education. I commend to my colleagues the following article:

LEARNING LANGUAGE: EMERGING ISSUES IN INSTRUCTION, TECHNOLOGY, AND LANGUAGE INFRASTRUCTURE

(By Daniele Rodamar)

Language has become a path to many kinds of knowledge. More and more corporate executives, farmers, secretaries, police, bond dealers, forest rangers, and engineers find that foreign languages help them do their jobs. As a result of technological change and the rapidly evolving global economy, America's language classrooms are increasingly serving as bridges to other disciplines and sectors.

This is forcing changes in the way we teach foreign languages, literatures and cultures. The mangled "gentleman's German (or Spanish, or Chinese, or . . .)" that was adequate for most American graduates a generation ago is no longer good enough to meet daily needs. Today, the language skills adequate to read great books, and write postcards and telegrams must be strengthened with the conversational skills necessary for satellite teleconferences, international strategy sessions on supersonic flights, and brunch in Brussels.

Language instruction has faced challenges before. But area studies, critical languages, and language laboratory programs that resulted from earlier waves of reform left traditional language programs largely untouched. Today's instructional challenges are more fundamental.

A start has been made in dealing with the emerging issues. The 1979 report of the President's Commission on Foreign Languages and International Studies, "Strength Through Wisdom: A Critique of U.S. Capability" redefined a national role for language. Previously the major rationale for inclusion of languages in the general curriculum had been allowing us to define our "Western" roots and providing a point of comparison. Strength pointed out that language has become a tool in the struggle for economic prosperity, military security, and quality of life. By changing the framework in which language learning was considered, the report helped forge an alliance between teachers of international studies, language teachers, and the larger public and private sectors.

There are more recent signs of change: more Americans are studying foreign languages. A study by the Modern Language Association reported that in 1986 over a million Americans were registered in foreign language courses in America's colleges and universities, an increase of 3.9% from 1983. This doesn't include courses at specialized schools like Berlitz and cultural organizations like Alliance Francaise. Interest in European languages is complimented by rapidly increasing enrollment in Asian language courses. If numbers were enough, then America would be well on its way to moving beyond "the tongue-tied American".

There have been policy victories. Congress recently passed legislation to reduce our nation's trade deficit that contains major provisions for foreign languages and interdisciplinary international centers; the Elementary-Secondary Education Amendments establishes teacher award and modern language programs; the Secretary of Education designs the ideal elementary and high school curricula, making foreign languages an integral part of both; 31 states reinstate foreign language requirements. Professional associations, such as the Joint National Committee on Languages and the M.L.A. helped create the momentum for these programs.

Despite these successes, funding remains inadequate, there are severe shortages of qualified language teachers, and support for pre- and in-service education is limited. Articulation remains a problem, elementary school programs are only just starting, and cooperation across disciplines and sectors, particularly with business, needs to be strengthened. Modern educational technologies are in limbo, and the language infrastructure necessary to sustain language skills outside the classroom is missing in action. What can be done?

ASSESSMENT AND ACCOUNTABILITY

Our nation's college and university students routinely meet their schools' language requirements, but graduates frequently fail to meet the standards required to succeed outside the classroom. Most postsecondary schools expect students to become proficient in a new language in two years. No other country expects students to become proficient in a language in so short a time. The "no go" Chevy "NOVA" and President Carter's "lust" for the Polish people were not simple blunders in translation—they are symptoms of a larger problem with our nation's language education. Many students end up with "survival language skills," able to speak simple sentences like "How much does this cost?" But Americans want to do more than survive—they want to succeed. To raise the level of second language competency to the level needed to succeed in the 1990s, several steps are needed.

First, we need better information on student achievement. Monitoring outcomes is vital in ensuring that students get what they pay for—and in helping to contain pressures for language teachers to lower standards to protect enrollment. The National Assessment of Educational Progress (NAEP) monitors elementary and secondary student achievement in selected areas of achievement. Creating a NAEP for periodic assessments of language education would spotlight levels of student achievement in K-12. Assessments of post-secondary students would help deter the creation of Russian majors who can't speak Russian. A national longitudinal study of language learning and retention (perhaps as part of an expansion of the U.S. Department of Education's "High School and Beyond" longitudinal study) would provide information for effective policy.

Second, the skills of future language teachers must be raised. Teachers with inadequate language skills sabotage language instruction by creating new generations of students who suffer the drugery without learning the language. This failure—whether or not it gets a passing grade—in time creates new generations of language teachers who don't know the language and undermines public support for language education.

Proficiency testing for students and teachers is a vital element in raising standards. Simple-minded use of tests is a danger. Limitations of the testing instrument and the need to combine the results in a multimethod assessment of proficiency must be kept in clear view. Nevertheless, such assessments help teachers resist pressures to pass students whatever their performance and help maintain accountability in education. The Federal government has assessed language proficiency levels for over 30 years, and the Strength report called for a national assessment system. The National Board for Professional Teaching Standards which has emerged from the Carnegie Forum report can help raise standards in language education. Rather than encouraging heavy-handed governmental regulation, professional organizations and institutions of higher education should lead in introducing assessment of foreign language proficiency of faculty and students.

Third, foreign language instructors need to spend significant periods throughout their careers refreshing their skills. Postsecondary programs should provide time abroad for all language education faculty. Programs, such as the Rockefeller Foreign Language Fellowships of High School Teachers, already provide study abroad to increase faculty skills. However, current programs are grossly inadequate. Individual institutions cannot afford to do this alone: corporate, foundation, and alumni support need to be mobilized. Federal policy should strengthen incentives for language educators to hone their language skills. The Federal tax reform of 1986 severely curtailed the tax deductability of educational travel. The language and international studies community should work vigorously to have educational travel for language and international studies instructors restored.

International exchange of instructors is a relatively low-cost way of upgrading the skills of instructors who go abroad while refreshing the skills of those on campus. The Fulbright scholar program provides university and postdoctoral research grants for U.S. faculty and professionals; the Fulbright Scholar In Residence program allows American colleges to invite scholars from abroad to teach courses, consult on interdisciplinary programs, help develop new courses and to serve as resource persons. America needs to increase the rate of exchange, and should expand exchanges to include more elementary and secondary school instructors. Other nations may be able to provide policy models in this area. For example, France and Britain exchange nationals to teach their respective languages in each other's secondary schools.

Finally, language and cultural resources on our nation's campuses should be used more efficiently. The large number of foreign students on our campuses provide a rich—but largely untapped—resource to strengthen and enrich language education.

INVESTING IN AMERICA'S LANGUAGE RESOURCES

America should develop its diversity of second languages to transform international challenges into opportunities. Too often we are wasting America's language resources by forcing children to forget a language in kindergarten and to learn it in high school (or beyond). Younger students tend to attain higher levels of proficiency in a second language than those who learn a second language as adults. (And research clearly shows that this does not come at the expense of learning in other areas.) As Cambell and Lindholm point out, a 5-year-old Korean-American student entering kindergarten from an ethnic neighborhood will have acquired proficiency in the native language of his parents and grandparents. If that child enters an English immersion program he may never acquire the syntatic and discursal rules that are normally not attained until late childhood. And there will not be the semantic networks that reflect experience and knowledge in the many domains in which a 5-year-old has never participated. That child can easily build proficiency in English while retaining proficiency in his or her native tongue. In contrast, if a university student were to take foreign language courses for 5 hours a week, for 30 weeks of each year for 4 years of his undergraduate career, he would have received only 600 hours of instruction and would be fortunate if his proficiency were rated in the 2/2+ range. On the other hand, the hypothetical five year old would be rated, with the limitations suggested, within the 3+/4 level on the same scale.

For this reason, early is better. Unlike transitional or immersion courses, "two-way" developmental programs allow both native English speakers and speakers of another tongue to build proficiency in both languages. This enhances instructor effectiveness because it allows students to teach each other while the teacher guides and fine-tunes language learning. The U.S. Department of Education currently funds just two developmental Programs—accounting for 00.25 percent of bilingual instructional funds. It is essential that elementary and secondary language education be strengthened through two-way and other programs. Improved articulation of elementary through postsecondary language programs is essential if these gains in language learning are to be cumulative.

In sum, Americans who speak second languages are a potent and largely untapped resource that can enrich and strengthen America. Our nation should seek to benefit from these skills.

LANGUAGE LEARNING AND TECHNOLOGY

There is no technological quick-fix in language learning. Technology is a tool, not a solution. But technology allows language to be put in context and used. Personal computers, VCRs, satellite dishes and other emerging technologies should be transforming language instruction and international studies. But too often it is not. In many colleges education technology means little more than a language laboratory that students are supposed to occasionally visit for drill-and-kill practice.

Drill is a vital part of learning a language—but so are contextualized higher order skills. Educational "power tools" offer the potential to put students directly into a foreign language context. For example, Hawaii's TELECLASS pilot program matches schools in the program with foreign schools learning English. Language is then taught through actual interaction between students in these countries using several different media, including slide and tape shows, video presentations, telephone conversations, television, electronic mail, etc. (depending on the availability of such resources in each school). Such programs create a language classroom without walls, and can serve as an element in a larger plan, providing new motivation and opportunities to practice language skills in real-life situations.

This task is not as simple as it seems at first blush. Foreign language publications are often expensive, hard to order, and slow to arrive. Differing national broadcast standards, relatively small markets, inefficient international diffusion, and copyright laws make it expensive and difficult to obtain an adequate library of film and broadcast materials. Sky-high rates for use of telecommunications satellites make courses such as the joint Tufts-Moscow State University course unthinkable for schools of more modest means.

Every language student should have easy and affordable access to a wide variety of language materials to build and retain language skills. Money is needed—whether from private or public sources—to pay for the books, magazines, video tapes and other instructional materials. At the Federal level, much can be done. Libraries should be assisted in building collections of foreign language materials. Encouragement of common international standards should be encouraged where possible—and educational institutions should be assisted in procuring "translation devices" for video tapes and other materials where national technical standards differ. Copyright protections should encourage affordable access to language education materials, including video cassettes and computer programs. A separate satellite for educational broadcasts could be provided to provide affordable access to international broadcasts and for interactive instruction such as that in the Tufts-Moscow State program. Alternatively, existing programs, such as the Star Schools educational telecommunications program, should be strengthened to provide increased access for foreign language instruction from both domestic and international sources.

In sum, educational technologies have a tremendous potential for improving language education, making language education less of a place and more of an activity. But in technology access is often spelled M-O-N-E-Y. If we are to have excellence in language education, it is vital that the public and private sector work to ensure adequate and timely access to these resources for all students.

LANGUAGE: USE IT OR LOSE IT

Two or even four years of language instruction are not enough. Proficiency in a second language requires continuing practice. Studies of second language learning indicate that it may take eight or more years for limited English proficient students to reach grade level norms for native speakers in language achievement as measured by standardized tests. The task for a student seeking to learn a language in another linguistic environment is even more difficult. As in sports or music, language skills can be developed and honed only through constant practice. Foreign publications, broadcasts, and human contact are often scarce on campus and unavailable off-campus. For too many Americans there is no playing field.

Individual institutions and professional educational associations can play a vital role in developing America's "language infrastructure". Universities should increasingly work with "non-traditional" students to provide opportunities to hone the language skills they build as undergraduates. Large language organizations, like M.L.A., can make maintenance of foreign language skills part of their mission by providing services and programming. Alliances of educational institutions with the public and private sector can develop news and quality foreign language programming. The proliferation of foreign language broadcasting over the last decade will soon be augmented by the increased programming options of cable, satellite and interactive broadcast technologies. National and international agencies should help develop common technological standards, cut red tape, and help assure funding so that all will have access to foreign language materials.

There are many opportunities for creative work here. For example, libraries and language programs regularly note the high cost and difficulty of obtaining foreign language publications. A "Books for Language Arts and Technological Studies" program that utilizes Public Law 480 Food for Peace funds, Military Assistance Program funds, and other foreign debt to procure language and foreign cultural education materials could both help manage problems of excessive international debt while strengthening American education. There are precedents. For example, a few years ago part of Egypt's debt to the U.S. was converted to establish an endowment for the American University in Cairo.

CONCLUSION

"The limits of my language are the limits of my world" as Wittgenstein said. Learning new languages pushes back the limits, provide paths to travel and turn threats to opportunities. The study of a nation's language often reveals the values of a foreign culture more tellingly than a dozen weighty treaties. Investing in America's language resources is essential to transform global challenges into opportunities. By working together on campus, in the community, and across America, language education can help meet this challenge.

DUKAKIS ON THE PLEDGE

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SOLOMON. Mr. Speaker, we have witnessed much discussion of the veto of the Pledge of Allegiance bill by Gov. Michael Dukakis of Massachusetts. This issue measures one's view on the importance of symbols, words, and actions in identifying one's commitment to one's country and how that commitment should be demonstrated. Michael Dukakis claimed that he was only following the law. The facts state something different.

I would like to call the attention of my colleagues to a recent column by noted educator Dr. Howard Hurwitz entitled "Dukakis' Anti-Pledge Stance Based on Misreading the Law" which appeared in the September 6, 1988, issue of the New York City Tribune. This column presents another side of the question.

[From the New York City Tribune, Sept. 6, 1988]

DUKAKIS' ANTI-PLEDGE STANCE BASED ON MISREADING OF LAW

(By Howard Hurwitz)

You might think that saluting the flag and reciting the Pledge of Allegiance would be so traditional in our schools that it could never be an issue in a presidential campaign. The fact that it is an issue tells us that tradition has been trashed on so many fronts that the flag is merely another casualty in a social revolution given to gutting traditional values.

It is a fact that Michael Dukakis, the Democratic candidate for president, when he was governor of Massachusetts in 1977, vetoed a bill that required the Bay State's schoolchildren to pledge allegiance to the flag of the United States each day.

The legislature happily overrode the veto and the requirement continues on the books. It is not, however, enforced by the State Department of Education.

Now that Dukakis is under attack by Bush for vetoing the pledge requirement, Dukakis is explaining the circumstances that led him to veto the pledge bill. He states that when the bill came before him, he sought the advice of the State Supreme Court. The very fact that he sought the court's advice suggests a state of mind shaped by the American Civil Liberties Union (ACLU) which Dukakis joined decades ago and continues to support. The ACLU has fought against the pledge requirement in every state where it is a requirement.

The Massachusetts court, unlike the U.S. Supreme Court, gives advisory opinions and a majority of the court advised that if teachers were required to lead the Pledge of Allegiance in class their First Amendment rights would be violated. Since the advice fit nicely into Dukakis' frame of mind, he vetoed the bill and even now justifies that veto.

Even sadder than Dukakis' reliance on the state court's advice is his citing of the U.S. Supreme Court as holding the pledge requirement to be unconstitutional. This is grossly misleading and Dukakis' statement that any first-year law student knows the pledge requirement to be unconstitutional indicates that he knows nothing about first-year law students and that he is willfully misconstruing the position taken by the U.S. Supreme Court in *West Virginia State Board of Education* v. *Barnette*, 1943.

The High Court was not disposed in World War II to scuttle patriotism on any account and it did not see Barnett's refusal to take the oath as undermining loyalty to our government in time of war. The case involved a group of Jehovah's Witnesses, who claimed that saluting the flag was equivalent to worshipping an image contrary to a fundamental of their belief, which was in line with the biblical admonition that "Thou shalt not make unto thee any graven image of anything in heaven above or in the earth beneath; thou shalt not bow down to them nor serve them."

Three years earlier, in 1940, the Supreme Court had decided in *Minersville School District* v. *Gobitis*, also involving Jehovah's Witnesses, that the flag salute could be required. The decision that being required to participate in the flag ceremony was not a deprivation of religious freedom was widely criticized. Other similar cases moved up from the lower courts and the High Court took the opportunity of changing its mind.

In the Barnette case that Dukakis reads wrongly, the Supreme Court by a 6-to-3 margin reversed itself and ruled that the refusal of the Jehovah's Witnesses to pledge the flag did not interfere with the rights of others to participate. It held that the pledge invaded the individual's "sphere of intellect and spirit" which is protected by the First Amendment. Thus, religious belief in this case was protected against state action that included exclusion of students from school until they complied with the requirement that they pledge allegiance to the flag of the United States.

The flag remains a symbol of patriotism and to the extent that school children are discouraged from pledging allegiance we are undermining patriotism. Republicans highlighted the pledge at their mid August convention. Democrats downplayed the flag to the extent of changing its colors to pastel shades that advisers held were more pleasing to the eye on television.

Dukakis would like voters to forget his stand on the requirement that school children pledge allegiance to the flag. Bush is not weak on the law, as Dukakis asserts, he is right on target.

TRIBUTE TO FATHER LAZER SHELDIJA

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DIOGUARDI. Mr. Speaker, on Thursday, September 22 the parishioners of the Holy Rosary Church in the Bronx, NY—the community of the Eastchester road section of the Bronx—and peace-seeking people the world over lost a great friend when Father Lazer Sheldija was savagely beaten and strangled to death in his home. I rise today to pay tribute to his life.

Father Sheldija was born into poverty in Albania on January 15, 1928. When he was just a boy he joined a seminary in Albania, but the Communists took over the country and closed the seminaries and churches.

The Father taught for awhile and then undaunted, went to Yugoslavia where he fulfilled his dream of studying for the priesthood. He was finally ordained on August 21, 1960.

After serving as a missionary in Brazil and then going to California, Father Sheldija came to the Bronx in 1973 where there was already a large number of fellow Albanian exiles. He eventually came to the Eastchester road section of the Bronx where the Albanian community purchased property with the hope of building a church of their own. The late Cardinal Cooke approved this plan and the parish was to be named "The Church of Saints Peter and Paul for the Albanians."

The Father's masses at the Holy Rosary Church were conducted in Albanian and often attracted over 200 people for Sunday mass. This all ended tragically on September 22.

At his two funeral masses 700 Albanians came to pray. John Cardinal O'Connor called for forgiveness and reconciliation in the light of the violence that ended Father Sheldija's life. The local pastor, Father Francis X. Toner eulogized Father Sheldija, comparing his death to that of Christ on the Cross and urged the Albanian community to follow what would certainly have been Father Sheldija's last wish, "Forgive them for they know not what they do." Mr. Speaker, these are not happy times for the Albanian community. The seminaries and churches in Albania are still closed, clergymen are still being murdered and, now, Father Sheldija, a ray of hope for Albanians in America is dead.

SILENT PERIL OF RADON GAS

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mrs. ROUKEMA. Mr. Speaker, last month, the Environmental Protection Agency [EPA] and the U.S. Public Health Service urged all homeowners in the Nation to test their homes for exposure to radon gas. Today the House will follow the Senate in passing legislation, H.R. 2837, to help States control the health threat posed by radon gas. As an original cosponsor of this legislation, I am pleased that we in the legislative branch are doing our part to deal with this deadly problem by devising solutions to assist States in radon mitigation.

Radon may be a new word for some, but in my district, we have been aware of this dangerous substance for several years now. Indeed, many of my constituents live along the "Reading Prong," a geological formation which stretches from Reading, PA, through my district in northwest New Jersey, to New York State. The Reading Prong is believed to contain some of the highest levels of radon gas in the Nation.

I call radon the silent peril because it is invisible, odorless, and naturally occurring. While radon in the open air is harmless, when the gas accumulates in enclosed spaces, for example in the basements of homes, it can cause lung cancer after prolonged exposure. New studies show that radon is the second leading cause of lung cancer—after smoking. It should be stressed that radon is believed to be responsible for 20,000 lung deaths annually.

This legislation authorizes EPA to provide technical assistance and grants to States for radon monitoring, assessment, and mitigation. An important provision of the bill requires the EPA to conduct a survey of radon exposure in school buildings across the country and to report back to Congress with its findings. The bill also stresses the importance of radon testing and remediation, even in a home or building which meets the current EPA standard or "action level" of 4 picocurries (pCi) per liter of air. It should be noted that a person exposed to radon gas for only 1 day in a building which meets the current standard has, in effect, smoked eight cigarettes. Clearly, the committee was correct in its determination that this "action level" is flawed and that, in itself, it poses a significant health risk. EPA should immediately strengthen the standard.

It is my hope that the House and Senate may be able to complete final action on this legislation and send a measure to the President's desk this year. The longer we wait to take action, the more lives we may lose to the "silent peril."

TRIBUTE TO BARBARA JEAN PENNY

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to Ms. Barbara Jean Penny, who was honored by the San Fernando Valley Bar Association for her dedicated service as president. Although Barbara is retiring as president, she will continue her long record of involvement with the association.

Barbara Jean Penny is an accomplished attorney and administrator. She has been an active member of the San Fernando Bar Association for over 10 years and also maintains a private practice specializing in family law and probate in Van Nuys, CA. Ms. Penny has always expressed strength, leadership, and the highest integrity in all her professional endeavors.

Ms. Penny has positively affected the lives of many throughout her years with the bar association. She is a strong supporter of many programs which have been of benefit not only to lawyers and the courts, but to the citizens of the San Fernando Valley as well. The Judge Pro Tempore Program, of which she is past chair, and the Family Law Court Mediator Service, in the local court system particularly, have benefited significantly from her influence and contributions. She is also a past chair of the Judge Pro Tempore Program.

Ms. Penny was one of the founders of the Valley Legal Assistance Foundation and its Family Law Center. This organization provides pro bono services to the indigent of our community in the area of family law, specifically in situations of spousal abuse and problems of family support. Most recently, Ms. Penny was one of the founders of the Inn of Court Program, established by the bar association in 1987 for the purpose of teaching advocacy skills and fostering professional ethics and standards. By recognizing and providing for the special legal needs of the San Fernando Valley Community, Barbara Penny has been instrumental in the struggle for social justice and equality for all humanity.

Throughout her career as a lawyer, Ms. Penny has always shown a willingness to give freely of her time to help organizations or causes important to her community. In addition to being president of the San Fernando Valley Bar Association and her law practice, Ms. Penny has also lectured in the San Fernando Valley law seminars, the Los Angeles County Bar Association law colloquium, and for the San Fernando Valley Legal Secretaries Association. She has also participated in community outreach groups, discussing legal issues with women, and is currently on a committee through the conciliation court, revising some of their procedures with regard to handling domestic violence cases.

It is my distinct honor and pleasure to ask my colleagues to join me in saluting Barbara J. Penny. I am proud to have her as a member of my community.

THEATER SURVIVES IN LOWELL

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. ATKINS. Mr. Speaker, my colleagues have heard me speak before about the miraculous recovery of Lowell, MA, the largest city in my district. I am proud to have followed in the footsteps of my predecessors Paul Tsongas and Jim Shannon in making sure that Lowell—once a rundown mill city—has prospered through continued Federal support of the only national urban historical park, the centerpiece of the city.

That park has not only spurred business development and renewed civic pride in Lowell, it has had side benefits for the cultural life of the city and the entire Merrimack Valley as well.

One example is the Merrimack Repertory Theater, the largest resident theater in northern Massachusetts, which is now celebrating its 10th anniversary season.

From its first production, "The Passion of Dracula" in 1979, to the coming season's productions of Shakespeare, Dickens, and Pinter, the MRT has given the Merrimack Valley both popular and avant garde entertainment, both classical drama and new musicals.

Under the artistic leadership of Dan Schay, the MRT has become a shining jewel in the crown of Lowell's redevelopment.

RABBI ALBERT L. LEWIS BECOMES PRESIDENT OF RABBINICAL ASSEMBLY

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FLORIO. Mr. Speaker, it is with great pride that I now turn the attention of my colleagues to one of my constitutents, Rabbi Albert Lewis of Haddon Heights, N.J., who has recently risen to the presidency of the Rabbinical Assembly, the international organization of conservative rabbis. Rabbi Lewis was installed July 29 at a ceremony in Jerusalem.

Over the years Rabbi Lewis has built an impressive record of service to his synagogue in Haddon Heights as well as the Rabbinical Assembly, having held several offices in that organization. Rabbi Lewis' life is an outstanding example of dedication to faith and community, and I am proud to count him among my constituents. I congratulate him on his new position and wish him continued wisdom and insight as he occupies the office of president.

Temple Beth Shalom, the synagogue Rabbi Lewis has served for over 40 years, has profited greatly by his skills as a leader and a teacher. His many achievements have been described in a press release by his synagogue on the occasion of his installation as president, and I wish to include them in this RECORD.

RABBI ALBERT LEWIS TO LEAD RABBINICAL ASSEMBLY

HADDON HEIGHTS.—Dr. Albert Lewis, Senior Rabbi of Temple Beth Shalom, Haddon Heights/Cherry Hill, N.J. will become President of the Rabbinical Assembly, the international organization of Conservative Rabbis, on July 29. Commemorating Israel's 40th anniversary, the ceremony will take place in Jerusalem.

Following the official installation by Rabbi Ismar Schorsh, Chancellor of the Jewish Theological Seminary, Israeli Prime Minister Yitzchak Shamir will address the Assembly. The event will begin at 8:00 p.m. at the Laromme Hotel.

Rabbit Lewis, who was born in New York City at the end of World War I, graduated from the Jewish Theological Seminary, the rabbinical school of the Conservative Movement, in 1948. A former faculty member at the Seminary in the Department of Homiletics, he also served as National Chairman of the Youth Commission for four years, and led the first Youth Pilgrimage to Israel in 1956.

He has served the Rabbinical Assembly in the past as treasurer and secretary, and is the organization's current vice-president. The 87 year old Assembly has over 1200 members throughout North and South America, Europe, the Orient, and Israel.

Rabbi Lewis began his tenure at Temple Beth Sholom soon after his ordination 40 years ago. The synagogue he helped establish in Haddon Heights prospered under his guidance, growing from a small suburban congregation to 830 families who will soon dedicate a new religious and educational complex on Kresson and Cropwell Roads in Cherry Hill, NJ.

A gifted scholar and teacher, Rabbi Lewis emphasized education at Temple Beth Sholom, and initiated exceptional adult and youth programs which he later turned over to other professional and lay leaders. He remains the most popular lecturer in the synagogue's award winning Adult Enrichment Program, and his innovative and animnated Shabbat morning discussions with the congregation are emulated by students and colleagues alike.

In addition to his congregational duties, Rabbi Lewis has served the community as President of the Tri-County Board of Rabbis and is currently a senior clergyman in the Haddon Heights association of religious leaders, an organization which fosters inter-religious communication and good will.

In 1987, at its 16th Biennial Convention, he was elected a delegate to the World Council of Synagogues (WCS). Established in 1957, the WCS is the international arm of the Conservative Movement.

Immediately following his installation as President of the Assembly, he will lead members of his congregation on a tour of Israel, a custom he initiated at Temple Beth Sholom in 1960 as a part of the Adult Enrichment Program. The bi-annual tours often include stops at points of Jewish interest worldwide, such as the USSR, Hungary, Turkey, Italy, Greece, Jordan, and Egypt.

Rabbi Lewis is married to Sarah Einhorn Lewis, daughter of Rabbi Aaron Einhorn. They have three children, Rabbi Sholom Lewis of Marietta, GA, Orah Lewis Lipsky of Jerusalem, and Gilah Lewis Seitz of Cherry Hill.

Rabbi Sholom Lewis is married to Haddonfield, NJ native, Shelly Kramer Lewis, and the couple have two children, Jill and David. Orah Lewis Lipsky and her husband, Shimon Lipsky, are the parents of Ron, Eli, and Rinah Tziporah. Gilah Lewis Seitz, a member of the faculty of Temple Beth Sholom Religious School, and her husband, Brian Seitz, are expecting their first child.

STRONG SUPPORT FOR H.R. 925—FAMILY AND MEDICAL LEAVE ACT

HON. BARBARA B. KENNELLY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mrs. KENNELLY. Mr. Speaker, it's been said more than once that our Nation is strongly pro-family. But I've always said that actions speak louder than words. We can talk all we want about legislation which is pro-family, when in reality, we've passed little legislation which will make a difference. This year we have several major pro-family bills. We have completed welfare reform and the House has passed the pay equity study. But you and I know that simply because we were successful in these endeavors, that the good work should not stop here.

H.R. 925, the Family and Medical Leave Act is one bill that must not be left behind. The compromise arrived at is supported by a wide variety of groups. In fact, I am submitting for the RECORD a letter of strong support from the Amalgamated Transit Union. I hope we will take notice of letters of support such as this and act quickly on this pro-family legislation.

AMALGAMATED TRANSIT UNION,
Washington, DC, September 20, 1988.

DEAR REPRESENTATIVE: On behalf of the 165,000 members of the Amalgamated Transit Union, I am writing to express our strong support for H.R. 925, the Family and Medical Leave Act of 1988.

This bill is a critical first step in assuring a minimum level of job protection for workers who decide to have a family, or who are suddenly faced with their own, their child's or parent's urgent health concerns. This measure, therefore, offers continued employment opportunities for employees who might otherwise be forced to leave jobs.

This is not a radical bill, but a measure designed to insure that the millions of workers that lack these protections receive the same basic job security assurances now provided by almost every other industrialized country.

In the transit industry, women constitute a significant percentage of the work force, occupying administrative, clerical, maintenance and operator positions. For them, their male co-workers and their families, two incomes have become necessary to support a reasonable standard of living.

We strongly believe this measure is necessary to provide a minimum level of job protections for workers in both the private and public sector. In our view the costs of such work guarantees will more than offset the benefits of maintaining dedicated and well trained employees in the work force.

We urge you to support this legislation and work actively for its passage.

Sincerely,

JIM LA SALA,
International President.

WAIT ON AID TO HAITI

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DORNAN of North Dakota. Mr. Speaker, yesterday the House debated Senate Concurrent Resolution 149, which sets conditions for the resumption of United States aid to Haiti. As we move to a vote on the resolution, I want to add my support to this measure.

The resolution reasserts the solidarity of the United States with the people of Haiti. No people in our hemisphere has endured as much as the long-suffering Haitians. It is not without reason that some of us have questioned the wisdom of withholding aid to our poorest Caribbean neighbors.

However, it looks like that policy is beginning to bear fruit. After the brutal disruption of democratic elections and the dismissal of civillian leadership, the military regime of Gen. Henri Namphy received a clear message from the U.S. Congress: "Don't expect a renewal of economic aid until you clean up your act."

Since then, Haiti has experienced yet another military coup with its ensuing purges of the military ranks. Only this time, under the leadership of Gen. Prosper Avril, Haiti may be taking the first steps back to democratic rule. Although it is too early to tell, it appears that the removal of notorious drug king-pin Col. Jean-Claude Paul and the efforts to curb the nefarious Tons-ton Macoute thugs signal hope for the people of Haiti. General Avril deserves commendation for these moves.

At this time, we do not yet know whether these encouraging changes portend new, free and open elections and a return to genuine democracy in Haiti. For this reason, Congress should stay its present course and insist that Haiti experience bona fide elections and the return of civilian, democratic rule before the United States economic aid. At the same time, I would urge the administration to work with Congress on aiding a future Haitian election.

It is to the credit of the people of Haiti that such a prospect is even on the horizon. It's also a tribute to its democratic leaders, who are now having some opportunity to return from exile and concealment. I include at this point an editorial from the New York Times, which lauds the people of Haiti for their perserverance in the cause of freedom and self-government.

HOPE REBORN IN HAITI

Thanks largely to their own persistence, Haitians now have their best chance at real democracy in more than three decades. Cynical outsiders claimed Haiti was too poor and too-long misgoverned for there to be any realistc chance of that. But Haiti's democrats—strengthened by the refusal of countries like the U.S. to assist the military regime—never gave up. Now Washington can begin to think about resuming aid.

The new President and unlikely instrument of democratic revival is Gen. Prosper Avril, longtime crony of the deposed Duvalier dictatorship. For years, he was part of that family's intrigues, repression and pillage. So odious had his name become that protesters drove him from the junta that succeeded Jean-Claude Duvalier in 1986.

But General Avril is also intelligent and respected by his troops in a way that his predecessor, Gen. Henri Namphy, was not. More important, he rules in tandem with the noncommissioned officers who threw out most of the old army chiefs. The uprising inspired against brutal or corrupt police commanders, politicians and factory managers set a vivid example. It is likely to hold General Avril, for a while at least, to a democratic course.

If anyone has good reason to be skeptical of General Avril, it is Haiti's democratic politicians who bore the brunt of General Namphy's decision to abort last November's elections. But they seem hopeful. That means Washington, which suspended most aid after the election day massacre, can start thinking about conditions for renewing it. Haiti needs money badly, and General Avril seems canny enough to understand that his own prospects depend in part on getting it.

His carefully conducted purge of Col. Jean-Claude Paul, indicted in the U.S. for drug conspiracy, seems to signal a willingness to go beyond oratory and take concrete steps against Haiti's rotten old order. So do his moves against notorious Tontons Macoute thugs, and his refusal to shelter these gangsters from popular vengeance. Mob retribution is never edifying, but neither was the Namphy regime's tolerance of terrorists.

Washington's next moves will have to depend on a full restoration of civil order, clear steps toward constitutionalism and a reasonable electoral timetable. Those are now realistic hopes, thanks to the stubbornness of Haiti's people, and the refusal of Haiti's friends to settle for less.

GERMAN-AMERICAN DAY, 1988

HON. E. THOMAS COLEMAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. COLEMAN of Missouri. President Reagan has issued the following proclamation declaring today German-American Day. I place it into the record in recognition of this significant event.

GERMAN-AMERICAN DAY, 1988

By the President of the United States of America

A PROCLAMATION

Three hundred and five years ago, 13 families from the city of Krefeld on the Rhine River landed near Philadelphia. In the 3 centuries since then, more than seven million other Germans have followed them to America in search of freedom and a more prosperous future for themselves and their children. Today nearly one in every four of us can trace our ancestry to German forebears. These facts, and our recognition of everything that Americans of German descent have achieved for our Nation, give all of us ample cause to celebrate on German-American Day, 1988.

Our national character and way of life have been deeply influenced by Americans of German heritage. They have made an indelible imprint on the life, culture, progress, and prosperity of the United States in areas such as the arts, scholarship, religion, commerce and industry, science and engineering, government, sports, and entertainment. This is why Benjamin Franklin observed long years ago, "America cultivates best what Germany brought forth . . . ."

Today, German-American bonds of international friendship are stronger than ever. As partners in the NATO Alliance, the United States and the Federal Republic of Germany work side by side to maintain peace and freedom. Allied unity and resolve made possible the successful conclusion of the U.S.-U.S.S.R. INF Treaty. As two of the world's great trading nations, the United States and the Federal Republic of Germany share a common, deep-seated commitment to an open and expanding world economy. The personal ties between our nations now extend beyond immigration to include lively foreign exchange programs, booming tourism in both directions, and the presence in the Federal Republic of Germany of American military personnel and their dependents. Our mutual resolve in the common defense of Western liberty is exemplified by the great city of Berlin and its brave residents.

Chancellor Kohl's visit to Washington earlier this year visibly reaffirmed the priority our governments have long assigned to preserving and fostering German-American relations. Common traditions, shared convictions, and mutual interests commit us to strengthening cooperation at every level to meet the challenges of the future. The recently completed German-American Friendship Garden, which will be dedicated on the Mall in our Nation's Capital this autumn, symbolizes the close and friendly relations between the Federal Republic of Germany and the United States. It also reminds us of the need to cultivate our special ties so they might further prosper.

The Congress, by Public Law 100-392, has designated October 6, 1988, as "German-American Day" and authorized and requested the President to issue a proclamation in observance of that day.

Now, therefore, I, Ronald Reagan, President of the United States of America, do hereby proclaim October 6, 1988, as German-American Day. I urge all Americans to learn more about the contributions of German immigrants to the life and culture of the United States and to observe this day with appropriate ceremonies and activities.

In witness whereof, I have hereunto set my hand this twenty-third day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

RONALD REAGAN.

ALFRED UNIVERSITY AND FREDONIA STATE COLLEGE RANKED AMONG THE BEST

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. HOUGHTON. Mr. Speaker, this week U.S. News and World Report disclosed a rather well-kept secret—one which many of us living in the Southern Tier of New York have known for years.

The secret is this—two of our distinguished institutions of higher learning—Alfred University and Fredonia State College—two extraordinary centers of academic excellence—have just been cited as top-ranked schools in a special report on "America's Best Colleges" in the magazine's October 3 edition.

This remarkable recognition is long overdue for those of us who know the faculty, administrators, and the students of these institutions. Top rate people. Always striving to be better.

Fredonia's unique areas of study—gene technology and sound recording technology, along with a strong faculty and excellent student body—clearly make it a now-recognized rising star.

And at Alfred University, where a third of this country's ceramic engineers have been graduated, exciting advances in new science are being made, specifically in the field of superconductivity. Again, top rated people. Blazing new trails.

Mr. Speaker, in these times when we question both our basic educational system and our technical commitment, it is reassuring to see excellence recognized—and right in our own backyard.

Alfred University, Fredonia State College, I salute you.

INTRODUCTION OF LEGISLATION TO PROVIDE FOR THE EXTENDED TERRITORIAL SEA AND CONTIGUOUS ZONE

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SHUMWAY. Mr. Speaker, I am introducing legislation today to implement an expected Presidential proclamation to extend the U.S. Territorial Sea and Contiguous Zone to 12 and 24 miles, respectively. This legislation is being introduced by request from the administration.

From Thomas Jefferson, who as Secretary of State proclaimed the first U.S. Territorial Sea, to President Truman, who proclaimed U.S. jurisdiction over the Continental Shelf, to President Reagan, who recently proclaimed U.S. control over the 200-mile Exclusive Economic Zone, the executive branch has historically exercised its constitutional prerogatives in these matters. In turn, the Congress has acted to affirm and implement such Presidential actions. This bill preserves this historically accepted constitutional practice.

This bill will also make clear that the proclamation does not affect the rights or obligations of States, U.S. territories, or Federal agencies under domestic law. Therefore, for example, the definition of the term "coastal zone" under the Coastal Zone Management Act remains the same, with a seaward limit of 3 miles from the shore.

MEMBERS' SALARY, PER DIEM AND HONORARIA ACT OF 1988

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. LAFALCE. Mr. Speaker, today I am introducing a bill that addresses several difficult and controversial issues concerning Members, pay, business expenses, and outside income. The legislation deals with congressional salaries, Members' business expenses, and honoraria income. I believe the proposed legislation addresses these compensation issues in a way that is fair and reasonable, and that takes into account the widely different circumstances of individual Members.

Specifically, the bill I propose would do the following:

First, section 1 amends the Federal Salary Act to provide that the Quadrennial Pay Commission's recommendations, or the President's recommendations, whichever are lower, shall take effect automatically and would not be subject to a vote of disapproval by the Congress.

Second, section 2 amends the Legislative Reorganization Act to provide that a Member may elect to receive a lower rate of pay by so notifying the payroll disbursing official before the end of the first full pay period following any increased entitlement. The election would remain in effect until the end of the Congress.

This section also provides that the election of lower rates of pay by Members shall not affect any comparisons between staff pay levels and Members' pay levels, for purposes of adjusting staff pay, by specifying that such comparisons shall be based on the Members' pay rates established by law.

Third, section 3 authorizes Members to receive a per diem for their living expenses away from home in Washington, DC, or in their district, depending on where they declare their tax home. The total annual per diem would be limited, in the case of Washington, DC, to the lesser of 180 days or the number of days Congress is in session; in the case of the congressional district, total per diem would be limited to the lesser of 180 days or the number of days spent in the district.

Members would be required to certify in writing that the necessary requirements were met to receive per diem for any day. The amount of the per diem would be equal to the applicable Federal Government rate.

The amounts received as per diem would not be treated as income or remuneration for tax purposes. Thus, there would be no tax consequences whatever.

The per diem authorization would not apply to Members who represent the District of Columbia or adjoining jurisdictions and whose tax home is within 50 miles of Washington, DC.

Fourth, section 4 repeals the allowable $3,000 deduction for Members' living expenses in Washington, DC, and expressly prohibits any such deductions for living expenses in Washington, DC, or the congressional district. Unreimbursed travel expenses incurred elsewhere in connection with congressional business would be tax deductible.

Fifth, section 5 prohibits acceptance of honoraria, effective on the first day of the first Congress after the date of enactment. Under current law, any honorarium paid by or on behalf of a Member to a charitable organization is deemed not to be accepted by the Member. The total prohibition on acceptance of honoraria would not affect this statutory exception for honoraria donated to charity.

Mr. Speaker, I believe my bill will help to achieve a permanent solution to the highly controversial compensation issues that confront us so often. Frequently, these issues are dealt with secretly or through parliamentary maneuvers that result in intense public criticism and further erosion of the integrity of this institution. This bill would end the spectacle of voting on one's own pay raise in a highly charged political atmosphere, would prevent demagoguery by Members, would recognize individual family circumstances by giving Members the option to receive a per diem for their official expenses either in Washington or in their district, and would prohibit honoraria income altogether, except when given to charity.

TRIBUTE TO AMERICAN PHYSICAL SOCIETY FELLOWSHIP PROGRAM

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. BENNETT. Mr. Speaker, I rise to express my thanks to the American Physical Society for its Congressional Science Fellowship Program. Every year this program sends one or two first-rate scientists to Congress to assist the Members on a wide range of science policy issues and to learn how the legislative process works.

I had one of these science fellows on my staff this year. He is Dr. Joseph Romm, who has a Ph.D. in physics from the Massachusetts Institute of Technology. Dr. Romm provided invaluable scientific assistance on a variety of important projects, including a special report on the strategic defense initiative prepared for the Democratic caucus of the House of Representatives and a study, "Improving our Conventional Forces," for the bipartisan congressional military reform caucus.

In previous years, American Physical Society Fellows have served with Senators and on congressional committees.

The Congress needs scientific knowledge to make the best decisions. The American Physical Society has done the country a great service with its Science Fellowship Program. I hope it will continue this program, and I urge my colleagues to make use of this important resource.

INTERNATIONAL EVENT IN SELINSGROVE, PA NETS A WORLD RECORD

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. GEKAS. Mr. Speaker, I would like to call to the attention of my colleagues in the U.S. House of Representatives a community effort in my district that not only raised money for a worthwhile cause but also set a world record which will be published in the Guiness Book of Records.

On April 30, 1988, more than 10,000 people ventured to Selinsgrove, PA to help build a 4.55-mile banana split, breaking the previous record of 4.39-miles. These volunteers sliced 27,000 bananas, scooped 2,500 gallons of ice cream and poured more than 400 gallons of topping as the finishing touch. All in an effort to regain the record they once held in 1982, but had been broken 1 year later, in 1983

The community group who headed the effort, the Selinsgrove Projects Inc., directed by Kevin Clark, the Main Street manager, raised nearly $2,000 for the revitalization and expansion of the business district.

This tasty occasion was truly an international event. While attending this vast banana split construction, I met Miss Melanie Gowar, a Rotary foreign exchange student from South Africa who finds her home northwest of Johannesburg. In a later discussion with Melanie, she told me her parents, Mr. and Mrs. Graham Gowar, saw the banana split on television in South Africa.

I invite my colleagues in the U.S. House of Representatives to join me in congratulating the thousands of volunteers responsible for this festive accomplishment. I also wish those volunteers much luck in retaining their title to this sweet victory.

PERSONAL EXPLANATION

HON. JACK DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DAVIS of Illinois. Mr. Speaker, on Friday, September 23, the grave illness of my infant grandson forced me to return to my district and I missed two votes in the afternoon.

Were I able to be present, I would have voted "yea" in rollcall No. 343, Congressman McCOLLUM's motion to recommit H.R. 5142, the AIDS Federal Policy Act, to the House Committee on Energy and Commerce. Under this motion, the committee would have been instructed to add an amendment to the bill insisting that States receiving Federal grants require that physicians and counselors notify the spouses of individuals found to have the AIDS virus.

Also, in rollcall No. 344, I would have voted "yea" on the final passage of H.R. 5142, the AIDS Federal Policy Act.

HOUSE OF REPRESENTATIVES—*Friday, October 7, 1988*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, we pray that when we test our lives and try to measure the extent of our contribution, may we receive a sense of peace knowing that we have sought to live in respect toward each other—recognizing that we seek all truth but are limited by our own perceptions and horizons. Encourage us to be patient with people, to see others with a broader perspective, to honor and respect each other as fellow human beings who all share Your gifts of life and love. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. The Chair will ask the gentleman from Illinois [Mr. HAYES] if he would please come forward and lead us in the Pledge of Allegiance.

Mr. HAYES of Illinois led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

TECHNICAL CORRECTIONS BILL MUST BE PASSED BEFORE ADJOURNMENT

(Mr. COMBEST asked and was given permission to address the House for 1 minute.)

Mr. COMBEST. Mr. Speaker, several weeks ago the House acted on and passed the technical corrections bill. In that legislation are two very significant parts for agriculture and for industry. One is the repeal of the heifer tax, the other is the repeal of the diesel fuel tax.

The other body is now considering that action. I know that everyone is anxious to get home in the next several days, when Congress will adjourn, but I would encourage Members to work diligently to try to finish that action prior to the time that the House would adjourn for the 100th Congress. These are two areas which need to be dealt with very severely having significant impact on agriculture and industry.

Mr. Speaker, again, I would encourage my colleagues to push for passage of that legislation prior to adjournment.

APPOINTMENT OF CONFEREES ON H.R. 3361, NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ACT

The SPEAKER. The Chair appoints the following conferees on the bill (H.R. 3361), to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders: Messrs. DINGELL, WAXMAN, WYDEN, LENT, and MADIGAN.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 1807, CAPITAL OWNERSHIP DEVELOPMENT REFORM ACT OF 1987

Mr. OLIN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 1807) to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes.

This request has been cleared with the minority.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT, TUESDAY, OCTOBER 11, 1988, TO FILE CONFERENCE REPORT ON H.R. 3361, NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ACT

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight, Tuesday, October 11, 1988, to file a conference report on the bill (H.R. 3361) to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

DUKAKIS: AN "ALSO-NOT" KENNEDY

(Mr. LEACH of Iowa asked and was given permission to address the House for 1 minute.)

Mr. LEACH of Iowa. Mr. Speaker, if it is fair for the Democratic Vice-Presidential candidate to suggest in the debate the other night that DAN QUAYLE is no Jack Kennedy, it is certainly fair for Republicans to point out that neither is Michael Dukakis.

On the issues, after all, the differences are profound.

John Kennedy stood for a strong national defense; he warned in 1960 of an impending missile gap. Michael Dukakis, on the other hand, opposes strategic force modernization. He couldn't symbolize more that chest-beating liberal disinclination to lead.

John Kennedy stood for preserving our environment; Michael Dukakis continues to ignore the sludge engulfing Boston harbor.

John Kennedy stood for stimulating growth in the economy through tax cuts; Michael Dukakis supports the opposite: the false promise that higher taxes and higher spending create more jobs.

It appears that in the 25 years since the tragedy of our generation—the assassination of John Fitzgerald Kennedy—the Democratic Party has lost its soul, and its way. The McGovernized party of Michael Dukakis simply bears little resemblance to the party of Jack Kennedy.

REPUBLICAN VICE PRESIDENTIAL CANDIDATE'S RECORD ON THE ENVIRONMENT

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, during Wednesday night's Vice-Presidential debate, the Republican Vice-Presidential candidate said he prides himself on his strong environmental record, much to the surprise of those of us in the Congress who profess to be environmentalists.

I daresay that some of the environmentalists around here would argue that the Vice-Presidential candidate's environmental record may be strong to the point of being malodorous. In fact, it smells to high heaven.

Mr. Speaker, the League of Conservation Voters, which is one of the Nation's most highly respected environmental groups, released their congres-

☐ **This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.**

Matter set in this typeface **indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.**

sional ratings last night, and the Republican Vice-Presidential candidate received a rating of 20 out of 100 percent.

I know that the Republican Vice-Presidential candidate is somewhat defensive about his academic record, but even he would admit that 20 out of 100 is a failing grade by anybody's standards. He has the audacity to talk about the perils of harbor pollution when he himself voted twice against the Clean Water Act.

The GOP Vice-Presidential nominee has voted against pesticide controls, the toxic waste Superfund, and health and safety issues concerning nuclear waste disposal.

The Republican Vice-Presidential candidate said in the debate that the GOP ticket would deal with the acid rain problem. I hope they do not deal with it as he did in 1987, when they refused to support a move to bring to the Senate floor a comprehensive acid rain bill.

Mr. Speaker, in view of the Republican Vice-Presidential candidate's attitude on acid rain, it is probably a good thing that he took a walk in the woods, as he stated in the debate that he had done. It is a good thing he had that walk in the woods, because if he attains the high office for which he is shooting, before long there may not be any woods left.

I suggest that the Republican Vice-Presidential candidate is not an environmentalist, but a destroyer of our forests and a supporter of efforts that endanger and degrade our fragile environment.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS of New York addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

AVIATION AGENDA SHOULD BE CONSIDERED BY NEXT ADMINISTRATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas [Mr. GLICKMAN] is recognized for 5 minutes.

Mr. GLICKMAN. Mr. Speaker, on behalf of Representative DENNY SMITH and myself, I would like to call your attention to a document put together by a coalition of 14 major national aviation associations. The document, entitled "A Critical Aviation Agenda for the Next Administration," was presented to Vice President BUSH and Governor Dukakis.

As cochairman of the Congressional Aviation Forum, we feel that it is imperative that a constructive and active dialog about aviation needs be established with the next administration. The agenda which I would like to have inserted in the RECORD, outlines some very key issues affecting the future of aviation. I would encourage my colleagues to take a look at this important document. I hope it will spark the kind of debate which will strengthen this vital link and important sector of our economy.

A CRITICAL AVIATION AGENDA FOR THE NEXT ADMINISTRATION

THE AVIATION CHALLENGE

One of the major challenges facing the new Administration is to revive the nation's airport/airway system, which is suffering from congestion and neglect. Our aviation industry is absolutely essential to our nation's public interest and economic vitality. To achieve and maintain the highest levels of safety and efficiency, the time for action is now.

Airline delays are symptomatic of a national problem. The explosive growth in air travel following airline deregulation has been muffled by the government's failure to upgrade and modernize our aviation infrastructure to meet the demand. Billions have been amassed through aviation user fees to finance the required modernization and expansion, yet the Administration and the Congress have allowed a multi-billion dollar surplus to accumulate while aviation has suffered. This threatens key elements of our economy:

The aviation industry which directly employs over 800,000 people, is an essential ingredient in our nation's international competitive position, and is a leading developer of new technologies;

The aerospace industry that contributed a $15 billion surplus to partially offset our nation's enormous trade deficit in 1987;

Domestic airlines which employ 500,000 people in a $50 billion per year industry;

General aviation and commuter airlines which face the threat of restricted access to key airports as they provide air service to hundreds of smaller communities; and

The traveling public which number 450 million passengers in 1987 and should double by the year 2000.

ISSUES AND SOLUTIONS

Time and again, highly credible groups, including the President's Aviation Safety Commission and the Office of Technology Assessment, have concluded that the major problems confronting aviation are an inadequate infrastructure—including growing airport and airway capacity limitations—and the government's failure to resolve these limitations in a timely way. The authorizing and tax-writing committees in the Congress have provided the authority and the tax revenues to do the job, but other committees in the Congress have provided the authority and the tax revenues to do the job, but other committees have not approved full spending. Moreover, the Administration's reluctance to use all of the dedicated user fees for their intended purpose—out of deference to the national deficit—has been a major factor. Finally, the ability of the FAA to make decisions and carry out its responsibilities has been frustrated and delayed by bureaucratic wrangling. The new Administration must coordinate its resources to meet this challenge. The question is—how?

Revitalize and Streamline the FAA

This is our nation's aviation action agency. Its ability to do its job has been severely hampered by organizational and operational constraints. What does it need?

Assign an administrator for a multi-year fixed term to ensure a continuity of effort and the completion of long-term projects. He must be given authority and control commensurate with his substantial responsibilities.

Ensure that the FAA's Congressional budget request is adequate to meet system needs and is consistent with past commitments to aviation taxpayers to use—and not hoard—their user fees.

Consider and implement human resource management and compensation enhancements to meet the mobility and high-technology needs of its personnel system.

Streamline procurement system policies and procedures to meet both short and long-term acquisition requirements.

Expand Airport Capacity

Airport capacity has not kept pace with the rapid growth of air travel. Billions of dollars in documented airport improvement requests lay unfunded in the FAA. The result has been congestion, travel delays and, as alleged by some, growing safety concerns among air travelers. What can be done?

Seek full spending of authorized trust fund monies for airport development and enhancement where needed and justified.

Provide additional runways and taxiways as required.

Explore expanded joint civil/military use of selected military airfields and public use of surplus fields.

Consider a federal approach to the aircraft noise issue that balances local community needs with the need for a national air transportation system.

Devote additional resources to research and development (R&D) efforts and current technology applications in search of airport capacity enhancements.

Modernize the Air Traffic Control System

The FAA has pursued implementation of the National Airspace System Plan (NASP) since its publication in 1982. Frustrated by contractor delays compounded by underfunding, and suffocated by well-intended bureaucratic oversight, FAA progress has not kept pace with expectations. Progress—not excuses—is what is required:

Accelerate implementation of the NASP, with particular attention to advanced automation and collision avoidance systems.

Increase R&D efforts for the next generation air traffic control system.

Develop and apply advanced simulation models in search of better, safer ways to control air traffic.

Consider Additional Priority Issues

Other vital functions require attention:

Increased staffing in such areas as full performance controllers and skilled maintenance technicians;

Research into human factors and aircraft accidents;

Improved collection and dissemination of adverse weather and critical flight information to the pilot;

Improved controller and pilot training and certification; and

More navigational aids at smaller airports.

CONCLUSION

The new Administration has both the opportunity and the responsibility to address the needs of a neglected aviation infrastructure. A national aviation policy should be established. Significant advances in safety, service, competitiveness and technology will reward a responsible leadership. This nation simply cannot accept complacency. The entire aviation community stands ready to work with the new Adminstration to accomplish these vital objectives.

Submitted by: Aerospace Industries Association, Air Line Pilots Association, Air Traffic Control Association, Air Transport Association of America, Aircraft Owners and Pilots Association, Airport Operators Council International, American Association of Airport Executives, Experimental Aircraft Association, General Aviation Manufacturers Association, Helicopter Association International, National Air Transportation Association, National Aeronautic Association, National Business Aircraft Association, and Regional Airline Association.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore (Mr. HAYES of Illinois). Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, since my advent to the Congress, this great privilege of representing the 20th Congressional District of the State of Texas almost 27 years ago, in fact, 26 years, 11 months, and some 20 days ago, I have been assigned to what at that time was the committee known as the Banking and Currency Committee, one of the historic original committees dating back to the inception of the first Congresses, and it was actually a very desired assignment, even though, of the three of us being sworn in for the second session of the 87th Congress, I was the only one assigned to a major standing committee, and I was delighted that the then ranking member from Texas, the great, great American, the great Wright Patman, requested that I be assigned to that committee.

The truth of the matter is that there was a lot of political pressure, and it had developed during the course of the campaign for this seat in 1961, that unless I was assigned to the Committee on Armed Services, that there could be no proper representation of the 20th District, this simply being because the 20th District is a site of some of the most important defense outposts in our national defense system, and because my native city of San Antonio has been a historic defense outpost since its foundation, since it was founded and all through history.

Mr. Speaker, I had had the great privilege of serving in the basic legislative bodies of the local city council of the city and then the State Senate, that great institution, the most honored office that I have been privileged and elected to serve in, second to none, even service in the Congress. The Texas State Senate is one of those glorious bodies of tradition in the Anglo-American system of parliamentary government, and it is the highest point in my own soul of service, and it was of inestimable benefit for me by the time I came to the U.S. Congress.

I knew that notwithstanding not being assigned to any committee, that under this great system of representative government and parliamentary or congressional system, which is imitated on the State level by our State constitutions, that it is really up to the Member, no matter what committee they are appointed to, and, of course, there were great dismal prophecies about how I would fall on my face, et cetera, et cetera, and lo and behold, I am proud to say to my colleagues that of all of the former members of the Texas State Senate who later have been elected to serve in the Congress, I am the only one who received a unanimous resolution from that great body memorializing Congress about what a great fellow they were getting up here.

□ 1015

So that the point I am making is that in these 27 years of service I could have belonged to the Committee on Armed Services, I could have belonged to the Committee on Appropriations, I could have belonged to the Committee on Ways and Means, I could have belonged to the Committee on Rules, but I opted to stay with the Committee on Banking because the fundamental reason that I gave to constituents after I came up and was assigned to the Committee on Banking, that no matter how hard we worked, and no matter how much we defended properly not only the local but the national defense interests that if we had no currency of any worth, if the dollar was not worth anything, if in the old words it was not worth a continental, then what kind of defense system could we have in competition with those who, whether hostile or not, could some day have some kind of a confrontation and well financed and well advanced because of that financing and the technology that is so indispensable today if we are going to be in the forefront of things?

I said I will be working diligently, as I did when I was chairman of the State Senate Banking Committee in the State of Texas in order to preserve the integrity, the value of the credit, and the symbol of that credit, which is our currency in our dollar, as no man, and that I have attempted to do. Naturally, one is one of 435 Members. Therefore one's activities usually are seldom reported and even there, seldom, except in our own districts and in our own districts the old proverb can be changed around and say that no Member of Congress is a prophet, even in his own district, but from the advent of my service on the then Committee on Banking and Finance, which today is known as the Committee on Banking, Finance and Urban Affairs, and it had at the time I came up a membership of 13 members. That was the exact and still the exact number of membership of the Texas State Senate.

The range, the scope, the panorama of jurisdiction and activity on this one committee exceeded ten thousandfold all of the total jurisdictional matters that we would have in the State Senate. So we have no limitation as Members of the United States House of Representatives no matter to what committee we are assigned, as to what we want to participate in. Where do we want to raise our voice and register our vote, because the experience and the beauty of our system is that if one is right and if one has any kind of minimal efficiency in presenting what is right, if one can survive, one will eventually be heard so that in the course of this service I can proudly say that I came up to legislate, I did not come up to pick fights with any Member, but neither did I come up to be insulted or demeaned or shortchanged because it was not I that was being shortchanged but the constituency that I represent that would be shortchanged, so that I will not duck a fight if it is thrust, but neither do I seek a fight because there is no time for it, so I came up here not to jockey, not to politic up here for position or power or chairmanship of this, that or the other, but neither do I sit by and let me be shortchanged if something in accordance with the rules and precedents and customs of the House is my entitlement.

If the chairman is anything as such, fine, so that about 8 years at my venture I was offered the chairmanship of the Subcommittee on International Finance, the name that the subcommittee was known. Today there is a difference. There are two different subcommittees that have been made out of that one subcommittee, and for 10 years I had the honor as serving as chairman of the International Finance Subcommittee. It also coincided with the dramatic, with the chaotic advent of the breakdown of the arrangement that had been set up as the result of the Bretton Woods agreements in 1944 as the war was winding up, and as they were finally pinned down by the time the war did, and as far as the hot shooting phase of it ended.

The point I want to make today is that it was obvious that our country was beginning to enter a period of extreme danger in which if it lost the battle on the international money tables, the loss in the battlefields would inevitably follow. That is exactly what has happened in Southeast Asia, and that is exactly what we are confronted with now in an awesome and in what I think is an unacceptable way, especially the way this administration has addressed this problem and concern, and it was obvious that just a few years later in 1966 the handwriting was not only on the wall, we had a whole movie of what was obviously the most serious challenge to our national and international hegemony and influence and power that we have had in the Nation's history.

It is amazing to me that today we should be back where the Revolutionary heroes were when they were fighting the old mercantile system, where the colonial power of Great Britain or England handled the colonies as they would some waif or some guardianship. The colonies could not manufacture anything even though they had all of the goods and the products. They had the fiber, they had the material, they had the capability, but they were not allowed by the great mother country of manufacture. All they could do would be to ship the goods from the Earth and the product and the materials to England where they would be processed and then sent back to the colonies at a steep price.

This was the underlying economic struggle for economic freedom. Today, ironically, we are back in the old mercantile system. The United States as of 5 years ago is no longer a producing country. It is now an importing country. For the last 2 years we have even imported more food than we have exported. This is astounding, unbelievable and what is more important, instead of the stacks of smoke from the factories producing steel, the products derived from steel and the other processes of manufacture and production, they 0 are now known as the Rust Belt. Our so-called balance of international accounts was unable to show a positive account, in the black, because of up until some 5 or 6 years ago our agriculture producing sector was the food basket of the world. Today that is no longer true and we have disaster, both man made and God made in agriculture, the Farm Belt, the wheat growing, the grain producing areas of our country.

The recent drought has just capped the catastrophy that the faulty leadership of this Nation, both in the executive branch and in the Congress had led us to and where we are now.

The truth of the matter is that there were voices, mine included, and mine particularly. I am on record. I am not saying something now in retrospect. Wisdom and hindsight is always greater. I am saying what some of us foresaw and spoke and warned about and are on record. That is fine, but what is demoralizing is that when we have offered instead of just being voices crying out despair or doom and gloom, as the President says, we have said this is the cause. This is the result. This is what we may start doing now because the problem is not a simplistic one, the solutions cannot be simplistic. If one does not know where one is coming from, how can we know where we are headed to? If one refuses to admit to the sources of the problem, how can we reasonably find the happy solutions to it? So that in today's New York Times, a very distinguished economic writer, an economist I guess in his own right, Mr. Leonard Silk, who has a column in the New York Times entitled "The Economic Scene," has one entitled "Buying America on the Cheap."

What surprises me is that this distinguished, outspoken voice who has been present at all of the intervals, especially within the last decade, would write an article today saying this week's takeover bid of $5.23 billion by Grand Metropolitan, the food, drink, and retailing group based in Britain, for Pillsbury, the American company that sells Burger King hamburgers, Haagen Dazs ice cream, and the Green Giant, and other food, dramatizes the drive of foreign investment to acquire a bigger stake in the American economy. Then he goes on and says, "This is the first time I have seen any admission of it because these have all been defenders of the so-called free trade," which the President has just successfully vetoed, perhaps too late, too little measure, that the Congress passed, but at least in my opinion that reflects an awakening of the American conscience as reflected in the Congress. The President vetoed it in the name of free trade and because of the fear of retaliation and the like, but here is what Mr. Silk says in the third paragraph, pointing out first, "As the figures, the statistics show that in the second quarter of this year, from $39.9 billion last year and $11.5 billions years ago, we now have an annual rate of $53.4 billion of direct investment, foreign investment in the United States," but then he says in the third paragraph, "Those are just the figures we can see. That is not the total picture."

□ 1030

He says and I quote, "But these figures understate the total dollar value of foreign acquisitions of American companies since many are financed with dollars raised right here in the American capital market."

Now this today is the result of what we had been trying to bring down to the level of our citizens' consciousness.

We were saying, at least I was on June 19, 1966—and anybody who wants to check the record will find it, both in the record of the hearings of the proceedings of the Banking and Finance Committee of that day—that our standard of living, our labor force was imperiled, that interest rates which have been at the heart of the rise and fall of empires all through known mankind's history, could not be left to the dictum of banking forces that had an interest of a selfish nature, or a self-seeking nature, let us put it that way. And it was on that day in 1966 that the prime interest rate was jacked up 1 whole percent point overnight.

Now that had never happened even during the height of the Civil War, if we could correlate the environment during the Civil War to 1966.

Now I am talking about 22 years ago, and as I said earlier, if one could survive one will eventually be redeemed if one is right. But what good does it do to be right if our country is suffering great damage and our citizens are being impacted adversely in the most important of all, that is our economic freedom, unless we can do something about it now?

So we can read further down and Mr. Leonard Silk says, "But real economic forces will be more important than political rhetoric," and he refers to the political rhetoric as if that is something separate and apart from economic rhetoric.

Everything is political, certainly every other country in the world considers it political. We still indulge in the fantasy that somehow or other if you are successful in business and you have a big bank account and a fat checkbook that you can be a good politician, you can be a good Governor.

Of course, the wiser peoples who have had thousands of years of experience such as the British and the Europeans, know that that is not so and particularly in Great Britain we have the acceptance of those individuals such as Winston Churchill that, by attribute, by inclination and desire, are going to be in the public matter and they are given their place and they are given their respect. So the words, "professional politician" in Great Britain are not one of an opprobrium, or a pejorative phrase, it is one of honor. The greatest honor Winston Churchill said was to be called a "professional politican." Not so in our country.

So here we have this distinguished economist saying "But the real economic force," as separated from the political rhetoric, in the United States will be the twin budget and trade deficits and their control and reduction thereby.

I am really aghast that such a brillian mind, after finally reciting the travail, statistically, should think that here is a simplistic. Well, of course, but does Mr. Silk bother to tell us why do we have this monstrous debt? Never in the history of any government or combination of governments has the debt reached $2 trillion. Under President Reagan's Presidency, the debt ceiling has been increased 14 times. And this is what we call Reagan prosperity? Where was Mr. Silk? I never saw any discussion about the connection then with the exponential increase in this debt.

But it is more complicated than that. Debt cannot necessarily be bad. Debt, capably managed, can even be good in terms of moderate corporate experience. There is not any major corporation in the world or in the United States structured similar to the government that does not proceed along the lines of deficit spending.

AT&T, for example, before or since—and this is what used to shock, especially, my friends over from the left when I would point out that they were worried about the Government and the employees of the Government—well, even at the height of employment under Federal level, which 15 years ago was 1 million more than it is today, even though we have more population and more demands from the Federal level—I used to point out that if we took the Defense Department out and all its employees, that AT&T had more employees than the Federal Government. Nobody wants to look at it from that perspective. It is easier to damn big government. It is easy to say, "Solve the domestic debt" and then he says, "Oh, also the international debt."

Well, that is great, wonderful, and of course we should do that. But how do we propose to do it if we do not want to admit what caused it? Why should we have ended up, why should President Reagan's administration be the first since 1914 to make the United States a debtor nation instead of a creditor nation?

I have pointed out in presentations here on the floor before that during both world wars, World War I and World War II, the only creditor nation was the United States of America. It was our credit that won the war, nothing else. Sure, many Americans died, but had it not been for that credit, the allies would not have lasted 1 year. And what happened after World War I? Pretty much the same thing as is happening after World War II; Uncle Sam became Uncle Sap. And that is what they used to call him in the thirties.

Oh, but the agitation then was the war debts and the reparations demanded of a prostrate and conquered Germany. And through the agility, the ability, the superior experience of these older nesters, not only from Germany but from France and England, they managed to shift everything to old Uncle Sam. And the United States of America was able, except that we had the concomitant of the so-called world depression. We see in the history books the date October 1929, but the truth of the matter is—and I recall it vividly, I am old enough where I can remember, and maybe I was sensitive enough even as a child which I was then, some 11 years old—and I remember nobody back home thought anything had happened, and just like last October 19, everybody was saying, "Now, well, you know we read in the paper where the stock market had a big bust, but so what? Everything seems to be doing fine. Everything is hunky-dory."

Well, that is what they said in 1929. It was not until 1932 that the full impact and the significance of those shifts, they are glacier like in their movements when we are talking about these financial economic transformations worldwide. They are not transforming, as we have today, instantaneous electronic communication, anymore than in the thirties we had telegraphic, and very little radio, and certainly no television. It was not even heard of, not even dreamed of in the thirties.

So that when we start digging in or those of us who recall, we learned. And then being placed in the position of exposure to the thinking, the writing of all of our fellow citizens in the world, from Japan to west Europe, and even to the countries that since 1946—when Winston Churchill's speech in Missouri on the Iron Curtain which I have always deplored because it gives a false perception of ourselves and of the world, for which we have paid very heavily in blood and treasure.

The point is that it is fine to say that if we can solve the domestic deficit which, incidentally, we have had no leadership on either in the White House or in the Congress, the so-called grammbo legislation as I call it, the Gramm-Rudman-Hollings was so patently and obviously unworkable and a delusion, and it took just a matter of a few weeks after its passage that the Supreme Court knocked out 50 percent of it.

But it was obvious that even from a legislative budgetary standpoint, it was not about to function. It was an illusion, it was a delusion.

Why should this tremendous exponential increase in our debt structure happen within a decade? That is, within the 8-year term of President Reagan? Why did it not happen with President Carter? As defamed as poor old President Carter has been, the record surely shows that he had no monstrous deficit, certainly no unmanageable deficit.

As I started to say awhile ago, all the vast corportions travel on deficit spending. AT&T issues bonds that it borrows, but as long as AT&T is in the business, it is getting customers, it is installing telephones, its company budget is balanced, its economy is balanced.

If our country has borrowed money, as it has during the wars, but the citizens are working and they are paying taxes, the corporations are manufacturing and producing goods and selling goods and earning profits, they will pay taxes and will afford revenues to the Treasury. Then you have a managed economy. The economy is in balance. You can manage the debt.

But since 1979—and any of my colleagues who want to look it up, though I doubt seriously anyone is that much bothered—you will see in August I took this floor and warned that for the first time all of the factors were in that equation that had not been in since 1932. I pointed out that in the private sector that the famous rule of thumb of the great central bankers and the big real internationalist bankers, the so-called Bank for International Settlements in Basel, Switzerland, they are the real money boys.

□ 1045

Let us never forget that, as I think our leaders have, and I think our newly installed Secretary of the Treasury found it out when he went to Europe, to Berlin, recently. The newspapers for the first time reported that there were angry words spoken. Well, it was too late. There was nothing we could do. Whether we get angry or not, they have got the ball and the bat, which our private and public leaders suffered them to gain through the years, despite the warnings of some of us.

In 1979 I took this floor, and I pointed out that the famous rule of thumb is 22 to 1; that is, these international bankers say that whenever the capitalization structure of a financial institution is 22 to 1, the ratio of debt as to assets, it is gone, forget it. I took all of the national statistics from the Federal Reserve Board, their annual report figures and their other statistical accounts, which I do not think anybody in the Congress, even the staffs, bother to look at, and I came to the conclusion that it was dangerous. I warned that as of that year, 1979, considering the overhang of debt that our banks had, the leading banks in the country, in their totality, if we totalled the sum of the assets in the capitalization structure and then totalled the debt, it exceeded 22 to 1, and that we were entering dangerous shoals and seas.

Well, I did not expect anybody to listen, but I wanted to be on record. I wanted to get copies of that record and send them to the chairman of the committee, the Banking Committee, and to my colleagues. I did that, mostly to see if we could get the chairman to call a hearing to discuss the matter. But, no, it was August and minds were somewhere else.

However, the very next day I had a phone call from the then Chairman of the Federal Reserve Board, Arthur Burns, who wanted to know if I could join him for breakfast the following morning at his place over in the Chairman's hideaway in the Federal Reserve building, because he had read my remarks and wanted to talk to me.

I had breakfast with that distinguished gentleman, and I will say that it was a great honor. But when I walked out of that breakfast, I was more concerned than ever. And I have been very concerned since then, with today's dismal news and with these takeovers and mergers and with these mastodons eating each other up. So it is no surprise and it is no bother, other than I continue to cry over the fate of our little citizens who end up taking the whiplash, because always in these great transformations, whether they are going from a deflated to an inflated economy or from an inflated economy to a deflated economy, it is the little guy who suffers, and it is the strong and the powerful and the rich who benefit. They can take care of themselves; they are going to weather the storm.

The proof of that is in our former distinguished leader, a former Secretary of the Treasury, former Governor, former Secretary of the Navy, a great Texan, John Connally, who is bankrupt. What a powerful man John Connally has been. The Earth shook. All the bankers, along with all the oil men and gas men in Texas, ruled the world. I was in the Texas State Senate at the time. There was not any bill that could come through that Senate that has anything to do with taxation that was not written in the plush offices of the oil and gas lobby in Austin, TX. They ran the show. But a few of us who were nothing but spokesmen for a senatorial district were able sometimes to savor our victories against this array of powerful $250,000-a-year paid lawyers and lobbyists—and remember that was back in 1957—up in those plush offices who were writing the legislation.

I am saying that it is no comfort for me to go back over this, other than to say that in that conversation and breakfast the Chairman said to me:

> You know, the staff has picked out your remarks. I have given them careful reading. I agree with you, this is a problem, and last month at the bankers' national convention in Honolulu I warned them, and they almost ran me out of the room.

I said:

> But Mr. Chairman, you can do something about it.

He said:

> I don't know what I can do. It's a private banking system.

I said:

> This is what the Federal Reserve Board is. You are not a Federal agency. You are a system of the private commercial bankers. Now, the Congress has given you power in section 14(b) to control how much allocation of credit you can allow those bankers to loan out to such things as speculative ventures and such things as your overhang, which has grown.

And I referred to the fact that the principal banks in New York alone had gone from $3 billion to $47 billion in less than 1½ years in their loans to so-called Third World countries. As chairman of the International Finance Committee, I was intimately acquainted with their economic and financial structure, and I knew, as I know now, that they could never pay it back. And they are not. It is frightening.

The powerful Chairman said to me:

> Yes, I know, but I can't do it.

I said:

> If I was worried when I spoke yesterday, I'll tell you one thing, Mr. Chairman, I'm awfully worried now. If you say you can't do anything, I don't know.

But I felt there was some hope that maybe the common sense of the most powerful men of finance would show itself, that one would think they would know what they were doing. Well, I should have known better.

Ever since my advent into politics, which I had never intended, I have discovered that sometimes one's reputation or one's image does not bear up to the substance and the reality, and I remember with what awe many of these great leaders, these great State leaders, all of a sudden revealed to me feet of clay. I came to the Congress, and the Banking Committee had two meetings during that entire first year. That is the difference in the tempo between that time and today. The great Secretary of Treasury for John Kennedy, Dillon, appeared before us one time that year to point out that maybe sometime in the future something would have to be done about the silver transaction tax.

At that time very few of the lowly new members were even heard, but I asked the Secretary a question. Chairman Patman allowed me to speak; even though he was not really the chairman, he was actually running the committee, and he allowed me to ask one question. My question was this: "Isn't it true that the silver transaction tax was enacted during the war in order to curb speculation?"

He said, "Oh, yes, it is a wartime tax. It has no bearing today."

I started to say something, but I was cut off. But I could not help but think, well, if this was a wartime tax for the purposes then and today conditions are different, then why is he saying that there is such a crisis in silver and blaming it on the fact that the demands on industry for silver were so great that they imperiled the ability of the Treasury to have a silver stock for our fractional output of our coinage?

At that time, I remind my colleagues, we had silver in almost every single one of our coins. In fact, we had a high content of silver.

But Secretary Dillon, the great expert, came back as a matter of fact in 1963 and he then demanded the repeal of the transaction tax. He got it, although I did not vote for it.

I then said, "Mr. Secretary, if you repeal this, how long will it be before you will have to demonetize, that is, take the silver out?"

"Oh," he said, "not in the foreseeable future."

Exactly 2 years to the month, he came in later and demanded that we demonetize our coinage.

There is an old saying that when the Treasury has no gold, it prints paper. The difference today is that the Government does not do the printing; it is the Federal Reserve Board that prints our money, produces our coins and our money in terms of the Constitution.

I would ask any of my colleagues to pull out their dollar bills, or whatever, and look at the top of them and see what they say. I will ask them if every one of them does not say, "Federal Reserve Note." When I came to the Congress, only 1 out of about every 10 of the bills I had in my pocket were Federal Reserve Notes; the other 9 were U.S. Treasury Notes. Now, there is a vast difference, and there is a most important reason for that change.

The Congress has, since 1952, going back during the Eisenhower term of office, very blithely gone along with a rider on a bill that changed the way we, the American people, produce our own money. For every dollar bill any American has in his pocket, he is paying interest for that to the Federal Reserve Board. But the Federal Reserve Board is not a Government entity. It will not even subject itself to an audit on the part of the General Accounting Office. Some of us have had bills in for 24 years to bring about an audit of the Federal Reserve Board, and it has resisted that so adamantly that one would think we were insulting their mothers.

So then what do we have? We have the most awesome power in the history of mankind in any country, in any clime, in any time in the history of mankind, unaccountable to anybody except to itself. It does not account to the Congress because it says, if we do, we lose our independence, and you don't want the politicians handling your money, do you?

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Well, that is exactly what Thomas Jefferson, even Alexander Hamilton, who today would be considered the conservative of the day, were always arraying against. They were inveighing against that in the First and Second Continental Congresses because everybody has to have a banker; political organizations, clubs, what have you. So, when it came around to that and the First Continental Congress needed some funds, they want to have a banker, the private bankers wanted to accommodate them. But they wanted to charge their idea of interest, and Thomas Jefferson inveighed so severely that, if I were to quote my colleagues today the references that Thomas Jefferson made to bankers, they would think they came from anticapitalists, or Communists, or Socialist lips.

But the reason was simple. They knew that whoever controlled the allocation of credit of a society controlled that society, and so what did they do? They then chartered the Bank of North America in Philadelphia, and they set the interest at 6 percent period.

Why could Franklin Roosevelt have waged the war? We are not waging a world war, even though we are a garrison state, believe it or not, even though we are on a war footing. Any time we have a $315 billion so-called defense budget, that is a war budget. And that means the American people are being taxed for that.

So, if we have turned over the judgment-making decisions as to how the credit of this Nation is allocated and to whom, should we be shocked today, as Mr. Silk seems to be, that we have such monstrous things as the Hunt brothers foolishly in their egotism, these billionaires from Texas strutting as a result of the wealth that they found underneath the surface that should belong to the people of Texas? And the profits thereof should have gone first and foremost to the people of Texas. And they were going to go and try to corner the silver market. We are going to have these dumb multimillionaire or billionaires go to the silver marketeers in London and outclass them? Well, they got took to the cleaners. But that is fine, if it were the bunch losing their money, but it took over 30 billion dollars' worth of bank resource allocation of credit.

This is why I introduced a resolution of impeachment, even though I know that the Constitution says Federal officials. And, if I say that the Federal Reserve Board is not a Federal entity, which I maintain it really is not; it is a creature of the private commercial bank system, but today controlled by seven, no more than eight, of the biggest banks of our country. They are the ones calling the shots.

Now, if they saw fit to allocate that amount of banking credit to the Hunt brothers for this speculative purpose and it ended up in the loss to the banks; that is why I introduced an impeachment resolution, because the Chairman, Paul Volker, in a secret meeting that did not turn out to be so secret with the then chairman of the First City National Bank, now known as City Corps in Florida, to see how the Feds could get that bank off the hook with the Hunt brothers because that is who they met with, Bunker Nelson Hunt and the brother, and Mr. Volker, had a nice tete-a-tete, and they thought it was private and all, and of course we had loss, as you have everytime you have these takeovers that Mr. Silk denounces, but even they, in having abdicated, and breached faith with the American people and in effect sold out the American people, to what avail has it been?

No longer can the Federal Reserve Board of the United States control interest rates because now they are dependent on these external forces outside our shores from London to Tokyo. It used to be that the No. 1 bank in the world was in New York. Today it is in Tokyo.

In 1979, when I was speaking out against their foolish incursions and to these overhangs, the Arab money was what they thought they were recycling, and it was the Arab so-called bankers that were in primacy. Today the biggest American bank is about No. 23 worldwide. The Federal Reserve Board can no longer control. It can do what it has done.

I had every one, except this last one, of the Federal Reserve Board chairmen, and that is about seven or eight of them, and every one of them would come before a committee and say, "We have no control over interest rates. Why it's you guys. If you won't be profligate, if the Congress won't go on a spending spree, that's the best way to control interest rates, but we have no control over interest rates."

And I would say, "Mr. Chairman, are you telling me that interest rates are an act of God because the budget showed a surplus? It was no deficit there a year or two."

And they have acted all along as if interest rates until the last few years—oh, no, all of a sudden, yes, they can. The so-called monetarists and all of that, they can control by the money supply that the Fed allows.

But who creates the money? The Congress? No, the bankers. The Congress is not printing the money. The Government is not printing the money. It is the Federal Reserve Board, and that is the private banking system, accountable to nobody. They do not have to come and account to the President who appoints members of the Board. They are appointed for long terms. And then on top of that, they have entrusted the so-called open market committee.

Mr. Speaker, the open market committee is not opened. It is a secret group that meets in secret. You might find out later on.

Now have we reached a point of saying that there is a human institution outside of the papacy that is infallible? It commits no sins? It commits no mistakes? Well, this is what the Congresses have accepted with the Federal Reserve because it would be shocking to try to do anything to remind the Federal Reserve Board that it is a creature of the Congress.

Mr. Speaker, it was the Federal Reserve Board Act of 1913 that gave rise to the birth of the Federal Reserve Board. But everybody acts as if it were heaven sent. In the words of John Adams referring to George Washington, "If we think we have nasty things among politicians and tamperings today, you ought to read history, and old John Adams said, "There's that tall Virginian. He thinks that he should be elected like the ancient Hebrews used to elect their kings, by their height, the tallest, but also he thinks he's heaven sent, booted, spurred and ready to ride on the hapless backs of mankind."

Well, that is a good description of what the Federal Reserve Board thinks because they are accountable to nobody. I was the one that brought out what was obviously the greatest 0 scandal to leak, and that was the fact that there had been a leak from the open market committee which resulted in improper earnings to two of the big banks of New York. I was the one that forced the Chairman—well, I cannot say I forced him. He finally came around and called the chairman in, and he said, "Well, we'll have an in-house investigation."

Mr. Speaker, it took a whole year of prodding before we finally had a report. I printed that report in this RECORD a few years ago, and that report said, yes, but it was a mistake. It leaked out mistakenly.

I pointed out that it had been a deliberate leak by a member of that open market committee who came from Philadelphia unfortunately. The gentleman in question went to Philadelphia and died before the investigation was over with, but that was it. It was packed up.

But whom did the Federal Reserve Board get as a lawyer to head that in-house looking into? The lawyer for one of the banks that profitted, so naturally they were not going to find any criminal culpability or intent.

It was a mistake, but it proved beyond any paraventure of doubt that there is no such thing as an infallible human institution. If we have no accountability, we have corruption. And that is true in any phase of the government, ours included. If we do not account to our electorate, we, too, will become corrupt just as surely as I am here standing before you.

Mr. Speaker, I insert the following article:

[From the New York Times, Oct. 7, 1988]

BUYING AMERICA "ON THE CHEAP"

(By Leonard Silk)

This week's takeover bid of $5.23 billion by Grand Metropolitan, the food, drink and retailing group based in Britain, for Pillsbury, the American company that sells Burger King hamburgers, Häagen-Dazs ice cream and Green Giant and other food brands, dramatizes the drive of foreign investors to acquire a bigger stake in the American economy.

Foreign direct investment in the United States rose to an annual rate of $53.4 billion in the second quarter of this year from $39.9 billion last year and $11.5 billion five years ago, according to the calculations of James J. O'Leary, economic consultant to the United States Trust Company, drawing on data from the Federal Reserve and the Commerce Department.

But those figures understate the total dollar value of foreign acquisitions of American companies, since many are financed with dollars raised right here in the American capital market, which does not affect the balance of international payments. Roger Kubarych, manager of Henry Kaufman & Company, estimates that foreign mergers and acquisitions, however financed, rank at an annual rate of $75 billion in the first half of this year and will constitute about one-fourth of total merger and acquisition activity in this country in 1988.

Is this good or bad for the United States? The issue is moving up on the political agenda. In Wednesday night's debate between the Vice Presidential candidates, Senator Lloyd Bentsen, discussing the national debt, said: "So we go out and we try to sell our securities every week, and hope that foreigners will buy them, and they do buy them. But every time they do, we lose some of our independence for the future. Now they've turned around and they've bought 10 percent of the manufacturing base of this country. They bought 20 percent of the banks. They own 46 percent of the commerical real estate in Los Angeles. They're buying America on the cheap."

And Senator Dan Quayle, later in the debate, responded that "you have got to see why we are a debtor and what is attracting the foreign investment into our country today, whether it's Japanese or others." He said he would rather have foreigners investing here than going elsewhere, because that created American jobs here. "Do you realize that today we are producing Hondas and exporting Hondas to Japan," he added. "We are the envy of the world."

Why are foreign takeovers of American concerns on the rise? The most common explanation in business and financial circles is the one suggested by Senator Bentsen: that with the dollar so low against foreign currencies, and so many dollars in foreigners' hands because of the United States budget and trade deficits, foreigners can buy up American companies at bargain-basement prices.

But the cheap-dollar explanation is simplistic. For while the dollar, even with its recent strengthening, enables foreigners to buy American corporations at low prices relative to assets priced in foreign currencies, the future stream of profits issuing from those acquired American assets will also be acquired in the form of cheap American dollars, yielding low returns when expressed in foreign currencies. Hence, foreigners appear to be gambling that, down the road, the dollar will come back and investments made "on the cheap" will pay off in appreciated dollars. That could be a risky gamble; many economists, including the advisers of the Presidential candidates, expect the dollar to go lower rather than higher to reduce the trade deficit.

Gregg A. Jarrell, professor of economics and finance at the William E. Simon Graduate School of Business Administration of the University of Rochester, contends that many foreign investors do not realize how much of an exchange rate gamble they are taking but regard the cheap dollar as an extra inducement for a strategic move into the huge, growing and politically stable United States market. Indeed, foreign investors often talk in a way that lends support to the position taken by Senator Quayle: that they are coming to take advantage of real economic opportunities offered by the United States—still "the envy of the world"—though many remain critical of the nation's current fiscal policies and growing foreign debt.

Nevertheless, Professor Jarrell notes that many foreigners believe they now have "an unprecedented opportunity" to buy into America, thanks to the relaxed Reagan antitrust policy and "laissez-faire" attitude on business takeovers.

But real economic forces will be far more important than political rhetoric to the takeover trend. If the United States acts decisively to correct its "twin" budget and trade deficits, the net inflow of foreign capital will contract. That need not mean a diminution of foreign direct investment in the United States, but only of total capital inflow.

Foreigners would be likely to continue to shift from Government securities and other debt instruments to real investment in producing assets in this country. Their "gamble" would pay off if the dollar strengthens and American dollar profits, denominated in foreign currencies, rise even further. By contrast, careless American policies could breed a widespread economic catastrophe and a breakdown of foreign investment.

Thus, expectations of greater American fiscal responsibility and continued openness to trade and capital movements would spur still greater direct foreign investment in this country. It would also mean greater American direct investment abroad; despite the weak dollar, American investment abroad has kept rising. The integration of the world economy would be strengthened, and growth and stability fostered.

CONFERENCE REPORT ON H.R. 1807

Mr. LAFALCE submitted the following conference report and statement of the bill (H.R. 1807) to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes:

CONFERENCE REPORT (H. REPT. 100-1070)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1807) to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Business Opportunity Development Reform Act of 1988".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

Sec. 101. Findings and purposes.

TITLE II—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

Sec. 201. Program admission.
Sec. 202. Time limitations.
Sec. 203. Grandfathering.
Sec. 204. Business development objectives.
Sec. 205. Business plans.
Sec. 206. Eligibility reviews.
Sec. 207. Eligibility of native Hawaiians.
Sec. 208. Termination and graduation standards.
Sec. 209. Economic disadvantage.

TITLE III—BUSINESS DEVELOPMENT

Sec. 301. Stages of program participation.
Sec. 302. Loans.
Sec. 303. Contractual assistance.
Sec. 304. Subcontracting assistance.

TITLE IV—IMPROVED MANAGEMENT AND PROGRAM INTEGRITY

Sec. 401. Political appointees.
Sec. 402. Prohibited actions and employee responsibilities.
Sec. 403. Politically motivated activities.
Sec. 404. Reports by program participants.
Sec. 405. False representations.
Sec. 406. Congressionally requested investigations.
Sec. 407. Contract performance.
Sec. 408. Data collection.
Sec. 409. Due process rights.
Sec. 410. Employee training and evaluation.

TITLE V—CONTRACT PLANNING; GOAL SETTING AND REVIEWS

Sec. 501. Planning 8(a) contract activity.
Sec. 502. Annual contracting goals.
Sec. 503. Presidential report on contracting goals.
Sec. 504. General Accounting Office report.
Sec. 505. Commission on minority business development.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

Sec. 601. Relationship with other procurement programs.
Sec. 602. Indian tribe exemption.
Sec. 603. Directors of small and disadvantaged business utilization.

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

PART A—SHORT TITLE AND FINDINGS

Sec. 701. Short title.
Sec. 702. Findings.

PART B—DEMONSTRATION PROGRAM

Sec. 711. Small Business Competitiveness Demonstration Program.
Sec. 712. Enhanced small business participation goals.
Sec. 713. Procurements procedures.
Sec. 714. Reporting.
Sec. 715. Test plan and policy direction.
Sec. 716. Report to Congress.
Sec. 717. Designated industry groups.
Sec. 718. Definitions.

PART C—PROGRAMS RELATING TO SPECIFIC INDUSTRIES

Sec. 721. Alternative program for clothing and textiles.
Sec. 722. Expanding small business participating in dredging.

PART D—AMENDMENTS TO THE SMALL BUSINESS ACT

Sec. 731. Technical amendment.
Sec. 732. Repealer.

PART E—OTHER AMENDMENTS
Sec. 741. Segmentation of industry category.
Sec. 742. Definition of architectural and engineering services.
TITLE VIII—AUTHORIZATIONS, EFFECTIVE DATES, AND MISCELLANEOUS MATTERS
Sec. 801. Regulations.
Sec. 802. Authorizations.
Sec. 803. Effective dates.

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration, unless otherwise indicated;

(3) the term "disadvantaged owners" means those individuals upon whom eligibility is based for participation in the Program and the award of subcontracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(4) the term "minority owned businesses" means business concerns that are at least 51 percent owned and controlled by one or more individuals who belong to those groups described or identified pursuant to section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(1)(C));

(5) the term "Program" means the Small Business and Capital Ownership Development Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10));

(6) the term "Program Participant" means a small business concern participating in the Program; and

(7) the term "Program Participation Term" means the fixed period of time assigned to a Program Participant pursuant to section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i) prior to the date of enactment of this Act.

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to section 8(a) of the Small Business Act remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream;

(2) although some progress has resulted from the Program, it has generally failed to meet its objectives, which remain as valid now as when the Program was initiated;

(3) too few concerns that have exited the Program have been prepared to compete successfully in the open marketplace on competitive procurements, and many concerns have developed an unhealthy dependency on sole-source contracts by the time they are required to leave the Program;

(4) the application and certification process for admitting new participants to the Program is inordinately lengthy and burdensome;

(5) the Administration has often not efficiently and equitably administered and managed the Program in a manner that provided clear lines of responsibility for implementing and monitoring many of the administrative duties under the Program;

(6) the Administration and some program participants have given insufficient attention and support to the business development goals of the Program and instead have focused almost entirely on the size of contract awards or the number of firms certified to participate in the Program;

(7) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of disadvantaged businesses participating in the Program;

(8) contract support as well as business development expenses have been misused both by the Administration and Program participants and have not been equitably distributed pursuant to objective criteria;

(9) The wide-spread perception of undue political influence in the operation and administration of the Program has significantly contributed to the Program's poor image and has deterred utilization of the Program by socially and economically disadvantaged concerns and by Federal procuring agencies; and

(10) it is imperative that increased competition and other substantial reforms be accomplished in the Program in order to promote the Congressionally mandated business development objectives and purposes.

(b) PURPOSES.—The purposes of this Act therefore are to—

(1) affirm that the Capital Ownership Development Program and the section 8(a) authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

(2) affirm that the measure of success of the Capital Ownership Develpment Program, and the section 8(a) authority, shall be the number of competitive firms that exit the program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

(3) ensure that program benefits accure to individuals who are both socially and economically disadvantaged

(4) increase the number of small businesses owned and controlled by such individuals from which the United States may purchase equipment, products and services, including construction work; and

(5) ensure integrity, competence and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses.

TITLE II—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

SEC. 201. PROGRAM ADMISSION.

(a) ELIGIBILITY OF PARTICIPANTS.—Section 7(j)(11) of the Small Business Act * * * is amended by striking out "(11)" and inserting in lieu thereof "(11)(A)" and by adding the following new subparagraphs:

"(B) Except as provided in section 602 of the Business Opportunity Development Reform Act of 1988 any individual upon whom eligibility is based pursuant to section 8(a)(4), shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

"(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

"(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(1). In the event of such a transfer, the conern, is not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

"(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to such Associate Administrator. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

"(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to:

"(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

"(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

"(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

"(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

"(v) make a request for the initiation of termination or graduation proceedings, as appropriate, with the Associate Administrator for Minority Small Business and Capital Ownership Development;

"(vi) decide protests from applicants that have been denied program admission;

"(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

"(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (H) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

"(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

"(i) the government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or "(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program participants providing the same or similar items or services.

"(H) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

"(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

"(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

"(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.".

(b) Outreach.—Section 8(a)(10) (15 U.S.C. * * *) of the Small Business Act is amended by adding at the end thereof the following: "Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.".

SEC. 202. TIME LIMITATIONS.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding the following new paragraph:

"(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

"(A) no more than four years may be spent in the developmental stage of Program Participation; and

"(B) no more than five years may be spent in the transitional stage of Program Participation.".

SEC. 1203. GRANDFATHERING.

Section 7(j)(10) of the Small Business Act (15 U.S.C. * * *) is amended by adding the following new subparagraph:

"(D)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

"(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

"(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

"(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.".

SEC. 204. BUSINESS DEVELOPMENT OBJECTIVES.

(a) Program Purposes.—(1) Section 2(c)(2)(B) of the Small Business Act (15 U.S.C. 631(c)(2)(B) is amended to read as follows:

"(B) It is therefore the purpose of the programs authorized by section 7(j) of this Act to—

"(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

"(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.".

(2) Section 2(e)(2) (15 U.S.C. * * *) of the Act is amended to read as follows:

"(2) It is therefore the purpose of section 8(a) to—

"(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

"(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and mangement assistance as may be necessary; and

"(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.".

(b) Technical Amendment.—Section 2(c)(2)(A)(v) of the Act is amended by striking "sole source".

SEC. 205. BUSINESS PLANS.

(a) In General.—Section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) is amended to read as follows:

"(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which sets forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).".

(b) Contents of Plan.—Section 7(j)(10) of such Act is further amended—

(1) by striking subparagraph (C),

(2) by redesignating subparagraph (D) (as added by section 203 of this Act) as subparagraph (C), and

(3) by adding after subparagraph (C), as redesignated, the following new subparagraph:

"(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the "plan") as described in clause (ii) of this subparagraph for review by the business opportunity specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

"(ii) The plans submitted under this subparagraph shall include the following:

"(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

"(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede small business concerns from receiving contracts other than those awarded under section 8(a).

"(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

"(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

"(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

"(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I).

"(iv) Each Program Participant shall annually forecast its needs for contact awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

"(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of * * *,

"(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

"(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

"(IV) such other information as may be requested by the business opportunity specialist to provide effective business development assistance to the Program Participant.".

SEC. 206. ELIGIBILITY REVIEWS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is further amended by adding at the end thereof the following new subparagraph:

"(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended or terminated pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

"(ii) Except as provided under section 602 of the Business Opportunity Development Reform Act of 1988, no award shall be made pursuant to section 8(a) to other than a small business concern;"

SEC. 207. ELIGIBILITY OF NATIVE HAWAIIANS.

(a). In General.—Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding the following new paragraph:

"(15) For purposes of this subsection, the term 'Native Hawaiian organizations' means any community service organization serving Native Hawaiians in the State of Hawaii which—

"(A) is a not-for-profit organization chartered by the State of Hawaii,

"(B) is controlled by Native Hawaiians, and

"(C) whose business activities will principally benefit such Native Hawaiians.".

(b) Technical Amendment.—Section 2(e)(1)(C) of such Act (15 U.S.C. 631(e)(2)(C)) is amended by inserting "Native Hawaiian Organizations" after "Asian Pacific Americans,".

(c) Clarification of Definition of "Socially and Economically Disadvantaged Small Business Concern".—Paragraph (4) of section 8(a) of such Act (15 U.S.C. 637(a)(4)) is amended to read as follows:

"(4)(A) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern which meets the requirements of subparagraph (B) and—

"(i) which is at least 51 per centum owned by—

"(I) one or more socially and economically disadvantaged individuals,

"(II) an economically disadvantaged Indians tribe,

"(III) an economically disadvantaged Native Hawaiian organization,

or

"(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by—

"(I) one or more socially and economically disadvantaged individuals,

"(II) an economically disadvantaged Indian tribe, or

"(III) an economically disadvantaged Native Hawaiian organization.

"(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

"(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

"(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II)) or subparagraph (A)(ii)(II), or

"(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).".

SEC. 208. TERMINATION AND GRADUATION STANDARDS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), is further amended by adding at the end thereof the following new subparagraphs:

"(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

"(i) voluntarily elects not to continue participation;

"(ii) participates in the program for a period in excess of the time limits prescribed by paragraph (15);

"(iii) is terminated pursuant to a termination proceeding conducted in accordance with the provisions of section 8(a)(9); or

"(iv) is graduated pursuant to a graduation proceeding conducted in accordance with the provisions of section 8(a)(9).

"(F) For the purposes of sections 7(i) and 8(a) the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance provided pursuant to this paragraph or section 8(a) prior to the graduation of the participating small business concern pursuant to subparagraph (H) or the expiration of the maximum program participation * * * prescribed by paragraph (15). An action for termination shall be based upon good cause, including—

"(i) the failure by such concern to maintain its eligibility for Program participation;

"(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);

"(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

"(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

"(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

"(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

"(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

"(H) For the purposes of sections 7(j) and 8(a) the term 'graduated' or 'graduation' means that the program participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).".

SEC. 209. ECONOMIC DISADVANTAGE

(a) Economic Disadvantage.—Section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) is amended—

(1) by striking out "(6)" and inserting in lieu thereof "(6)(A)", and

(2) by adding at the end the following new subparagraphs:

"(B) Each Program Participant shall annually submit to the Administration—

"(i) a personal financial statement for each disadvantaged owner;

"(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

"(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

"(C)(i) Whenever, on the basis of informatin provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

"(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(H) subject to the right to a hearing as provided for under paragraph (9).

"(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

"(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

"(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

"(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

"(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

"(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

"(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.".

(b) Certification.—Section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)(A)) as amended by section 207 is amended * * *

"(C) Each program participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control."

TITLE III—BUSINESS DEVELOPMENT

SEC. 301. STAGES OF PROGRAM PARTICIPATION.

(a) In General.—Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended by adding at the end thereof the following new paragraph:

"(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a development stage; and a transitional stage.

"(B) The developmental stage of program participation shall be designed to assist the concern to overcome its economic disadvantage by providing such assistance as may be necessasry and appropriate to access its markets and to strengthen its financial and managerial skills.

"(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.".

(b) Developmental Stage of Developmental Participation.—Such section is further amended by adding at the end thereof the following new paragraph:

"(13) Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stage of program participation specified in subparagraph 12:

"(A) Contract support pursuant to section 8(a).

"(B) Financial assistance pursuant to section 7(a)(20).

"(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled 'An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

"(D) A maximum of five exemptions from the requirements of the Act entitled 'An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works', approved August 24, 1935 (49 Stat. 793), which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

"(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

"(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

"(iii) the contract to which it pertains does not exceed $3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1992.

"(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such financial assistance may be made without regard to section 18(a), shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments. For purposes of this subparagraph the term 'training provider' shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act (29 U.S.C. 1501 et seq.). The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

"(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

"(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

"(iii) no more than $2,500 shall be made available for any one employee or potential employee;

"(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

"(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

"(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

"(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

"(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the program and for one year thereafter.

"(G) Training assistance whereby the administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

"(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

"(I) Transitional management business planning training and technical assistance.

"(J) Program Participants in the developmental stage or Program participation shall be eligible for the assistance proviced by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(c) Transitional Stage of Program Participation.—Such section further amended by adding at the end the following new paragraph:

"(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

SEC. 302. LOANS.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end thereof the following new paragraph:

"(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under sections subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that—

"(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

"(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

"(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

"(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

"(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

"(ii) Subject to the provisions of clause (i) in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

"(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

"(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

"(I) No immediate particpation may be purchased unless it is shown that a deferred participation is not available.

"(II) No direct financing may be made unless it is shown that a participation is unavailable.

"(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

"(i) that is subordinated by its terms to all other borrowings of the issuer;

"(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

"(iii) the term of which is not more than twenty-five years; and

"(iv) the principal on which amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable notless often than annually.".

SEC. 303. CONTRACTUAL ASSISTANCE.

(a) Competitive Business Mix.—Section 7(j)(10) of the Small Business Act (15 U.S.C. 363(j)(10)), is further amended by adding at the end thereof the following new subparagraph:

"(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as 'business activity targets.'). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets;

"(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii).

"(iii) The regulations referred to in clause (ii) shall:

"(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business acitivity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

"(II) require a Program Participant to attain its business activity targets;

"(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

"(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9)."

(b) Competitive Thresholds.—Section 8(a)(1) of the Act (15 U.S.C. 637(a)(1)) is amended by adding at the end thereof the following new subparagraph:

"(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible program participants if—

"(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

"(II) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

"(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.".

(c) Contract Matching.—Section 8(a) of the Act (15 U.S.C. 637(a)), is further amended by adding at the end thereof the following new paragraph:

"(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

"(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

"(ii) the award of such contract would be consistent with the Program Participant's business plan; and

"(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

"(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.".

(d) Contract Selection Appeals and Documentation.—Section 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)(1)(A)) is amended by inserting after the sentence ending "the Administrator." the following: "Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head *shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement.”.*

(e) FAIR MARKET PRICE.—Section 8(a)(3) of the Act (15 U.S.C. 637(a)(3)) is amended to read as follows:

“(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

“(B)(i) For purposes of paragraph (1) a ‘fair market price’ shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

“(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

“(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

“(C) An agency offering a procument requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency’s estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

“(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency’s estimate of the fair market price for such contract pursuant to paragraph (1)(A)”.

(f) OPTIONS.—(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval.

(2) Within sixty days after the date of enactment of this Act, the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection.

(5) The Administration shall, to the maximum extent practicable minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a)).

(g) STANDARD INDUSTRIAL CLASSIFICATION CODE LIMITATIONS.—Section 8(sa)(7) of the Act (15 U.S.C. 637(a)(7)) is amended by—

(1) inserting “(A)” after “(7)”; and

(2) adding the following new subparagraph:

“(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.”.

(h) NON-MANUFACTURER RULE.—Section 8(a) of the Act (15 U.S.C. 637(a)) is further amended by adding the following new paragraph:

“(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15 solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

“(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

“(i) be primarily engaged in the wholesale or retail trade;

“(ii) be a regular dealer, as defined pursuant to section 35(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and

“(iii) represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market.”

SEC. 304. SUBCONTRACTING ASSISTANCE.

(a) ENCOURAGING COMPLIANCE.—Section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)) is amended by adding at the end thereof the following new subparagraph:

“(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

“(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer’s final decision regarding the impositon of damages and the amount thereof. The final decision of a contracting officer regarding the contractor’s obligation to pay such damages, or the amounts thereof, shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

“(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

“(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

“(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

“(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.”.

(b) LIQUIDATED DAMAGES CLAUSE.—The contract clause required by section 8(d)(4)(F) of the Small Business Act (as added by subsection (a)) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

TITLE IV—IMPROVED MANAGEMENT AND PROGRAM INTEGRITY

SEC. 401. STATUS OF THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.

(a) IN GENERAL.—In Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended by inserting immediately after “Associate Administrator for Minority Small Business and Capital Ownership Development” the following: “who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee”.

(b) CAREER POSITION.—The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Act shall be a career reserved position.

SEC. 402. PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding at the end thereof the following new paragraph:

“(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant certified during such person’s term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(a)(20).

“(B) The activities and transactions prohibited by subparagraph (A) include—

“(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other own-

ership interest or the right to acquire any such interest;

"(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

"(iii) the receipt of any other benefit or right that may be an incident of ownership.

"(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

"(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and

(V) such other employees as the Administrator may deem appropriate.

"(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

"(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812)."

SEC. 403. POLITICALLY MOTIVATED ACTIVITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end the following:

"(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicitated or directed.

"(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, imposed by the Administrator, which may consist of separation from service, reduction in grade, suspension, or reprimand.

"(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

"(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.".

SEC. 404. REPORTS BY PROGRAM PARTICIPANTS.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding at the end thereof the following new paragraph:

"(20)(A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semi-annually report to their assigned business opportunity specialist the following:

"(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

"(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

"(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

"(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered 'good cause' for the initiation of a termination proceeding pursuant to section 7(j)(10)(F)."

SEC. 405. FALSE REPRESENTATIONS.

(a) Penalty for Misrepresentation.—Section 16(d) of the Small Business Act (15 U.S.C. 645(d)) is amended to read as follows:

"(d)(1) Whoever misrepresents the status of any concern or person as a 'small business concern' or 'small business concern owned and controlled by socially and economically disadvantaged individuals', in order to obtain for oneself or another any—

"(A) prime contract to be awarded pursuant to section 9 or 15;

"(B) subcontract to be awarded pursuant to section 8(a);

"(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

"(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall be subject to the penalities and remedies described in paragraph (2).

"(2) Any person who violates paragraph (1) shall—

"(A) be punished by a fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;

"(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);

"(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

"(D) be ineligible for participation in any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.".

(b) Misrepresentation of Section 7 Compliance.—Section 16 of the Small Business Act (15 U.S.C. 645) is amended by adding at the end thereof the following new subsection:

"(f) Whoever falsely certifies past compliance with the requirements of section 7(j)(10)(I) of this Act shall be subject to the penalties prescribed in subsection (d).".

SEC. 406. CONGRESSIONALLY REQUESTED INVESTIGATIONS.

(e) Inspector General Investigations.—Section 10(e) of the Small Business Act (15 U.S.C. 639(e)) is amended by—

(1) inserting "and the Inspector General of the Administration" immediately after "Administration", and

(2) adding the following new paragraph:

"(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 7(j) or 8(a). Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing of the disposition of the matter by such office.".

SEC. 407. CONTRACT PERFORMANCE.

Section 8(a)) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding the following new paragraph:

"(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

"(B) The Administrator may, as a matter of discretion and on a nondelegable basis, waive the requirements of subparagraph (A) if requested to do so prior to the actual relinquishment of ownership or control. In addition to the requirement of the preceding sentence, a waiver may be given only if any of the following conditions exist:

"(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

"(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

"(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

"(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

"(iv) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

"(I) such concern has exited the Capital Ownership Development Program;

"(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

"(III) the disadvantaged owners will maintain control of daily business operations.

"(C) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

"(D) Nothwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.".

SEC. 408. DATA COLLECTION.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding the following new paragraph:

"(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

"(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

"(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at $50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

"(ii) A description and estimate of the benefits and costs that have accrued to the economy and the government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

"(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

"(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

"(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

"(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

"(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

"(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.".

SEC. 409. DUE PROCESS RIGHTS.

Paragraph (9) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(9)) is amended to read as follows:

"(9)(A) Subject to the provisions of subparagraph (E), the Administrator, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

"(B) The actions referred to in subparagraph (A) are—

"(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

"(ii) a termination pursuant to section 7(j)(10)(F);

"(iii) a graduation pursuant to section 7(j)(10)(H);

"(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

"(C) The Administrator's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

"(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

"(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

"(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

"(ii) is untimely filed;

"(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

"(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

"(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.".

SEC. 410. EMPLOYEE TRAINING AND EVALUATION.

(a) TRAINING REQUIREMENTS FOR BUSINESS SPECIALISTS.—(1) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) and to assist Program Participants.

(2) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of the Small Business Act, as amended by this Act.

(b) PILOT PROGRAM.—(1) Within 180 days after the effective date of this subsection the Administrator shall designate three regions of the Administration to conduct a pilot program pursuant to the provisions of this subsection. The designated regions shall contain approximately 30 percentum of the total number of Program Participants as of the time of designation.

(2) A Business Opportunity Specialist employed in a Region designated pursuant to paragraph (1), in addition to other assigned duties and responsibilities, shall—

(A) conduct contract negotiations on behalf of the Administration for contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) when performance will be rendered by one or more firms in such Specialist's assigned portfolio;

(B) facilitate and otherwise assist such firms in negotiating for the receipt of contracts to be let pursuant to such section.

(3) The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform the negotiations required pursuant to paragraph (2).

(4) To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist employed in a region designated pursuant to paragraph (1) affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) are achieving competitiveness and furthering the business development purposes of the program.

(5) The Administration shall establish personnel positions for Business Opportunity Specialists employed in the regions designated pursuant to paragraph (1) that are classified at a grade level of the General Schedule that are sufficient, in the opinion of the Administration, to attract and retain highly qualified personnel.

(c) REPORT AND PILOT PROGRAM TERMINATION.—(1) Within 120 days after the termination of the pilot program conducted pursuant to subsection (b), the Administration shall issue a report to the Committees on Small Business of the Senate and of the House of Representatives on the effectiveness of the pilot. Such report shall contain such recommendations for administrative or legislative change as may be appropriate.

(2) The pilot program conducted pursuant to subsection (a) shall be terminated three years after the date on which Committees on Small Business of the Senate and of the House of Representatives receive written notification from the Administrator that the pilot is in full operation in each of the three designated pilot regions.

TITLE V—CONTRACT PLANNING; GOAL SETTING AND REVIEWS

SEC. 501. PLANNING SECTION 8(a) CONTRACT ACTIVITY.

Section 8(a)(12) of the Small Business Act (15 U.S.C. 637(a)(12)) is amended to read as follows:

"(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

"(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

"(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

"(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

"(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

"(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

"(iv) The activity responsible for the award and administration of the contract.

"(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

"(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

"(ii) the Administrator.

"(E) The information reported pursuant to (D) may be limited to classes of items and services for which there are substantial annual purchases.

"(F) Such forecasts shall be available to small business concerns.".

SEC. 502. ANNUAL CONTRACTING GOALS.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended—

(1) by striking out "The head" and inserting in lieu thereof "(2) The head";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and

(3) by adding at the beginning the following new paragraph:

"(1) The President shall annually establish government-wide goals for procurement contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. The government-wide goal for participation by small business concerns shall be established at not less than 20 percent of the total value of all prime contract awards for each fiscal year. The government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts let by such agency. The Administration and the administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual government-wide prime contract goal established by the President pursuant to this paragraph.".

SEC. 503. PRESIDENTIAL REPORT ON CONTRACTING GOALS.

Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended—

(1) by striking out "(h)" and inserting in lieu thereof "(h)(1)",

(2) by striking out the last sentence of subsection (h)(1), and,

(3) by adding at the end thereof the following new paragraph:

"(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph and shall submit them to the President. The Administration's submission to the President shall include the following:

"(A) The Government-wide goals for participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged and the performance in attaining such goals.

"(B) The goals in effect for each agency and the agency's performance in attaining such goals.

"(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

"(D) The number and dollar value of contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals through—

"(i) non-competitive negotiation,

"(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

"(iii) competition restricted to small business concerns, and

"(iv) unrestricted competitions,

for each agency and on a Government wide basis.

"(E) The number and dollar value of subcontracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

"(F) The number and dollar value of prime contracts and subcontracts awarded to women-owned small business enterprises.

"(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631 b(a)).".

SEC. 504. GENERAL ACCOUNTING OFFICE REPORT.

(a) IN GENERAL—(1) The Comptroller General of the United States shall conduct a review of the operation of the Minority Small Business and Capital Ownership Development Program authorized by section 7(j)(10) (15 U.S.C. 636(j)(10)) and the contract assistance provided pursuant to section 8(a) (15 U.S.C. 637(a)) of the Small Business Act commencing within 180 days of the enactment of this Act and concluding on September 30, 1991.

(2) The review shall report on the implementation of the provisions of this Act by the Small Business Administration and the various executive departments and agencies providing contracting opportunities to the Program. In addition to such other matters as the Comptroller General may chose to include, the review shall report on the implementation of the Act's provisions relating to—

(A) the certification of Program Participants by the Administration;

(B) the development and maintenance of business development plans required by this Act;

(C) the amount and types of business management and technical assistance provided to program participants, including transition management assistance, and the criteria by which the effectiveness of such assistance is measured by the Administration;

(D) the type and amount of financial assistance provided through the programs authorized by the Small Business Act and the Small Business Investment Act of 1958;

(E) Program Participants' dependence on contracts awarded noncompetitively under the authority of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and the rate of increase in the percentage of competitively awarded contracts in the firms' business mix as Program Participants approach graduation;

(F) the competitive award of contracts within the Program, determining the number, dollar value, and source selection method used for the various contract opportunities required to be awarded competitively and those for which competition was discretionary;

(G) the noncompetitive award of contracts to Program Participants; the effect on the distribution of Program awards among individual Program Participants; and Program Participants located in each of the several States; and the Administration's use of the authority to direct contracts to Program Participants in the interest of maintaining equitable contract distributions;

(H) delay in the award of contracts flowing from protests, either of a prospective awardee's continued Program eligibility or

the conduct of a competition restricted to Program Participants:

(I) limitations on the transfer of contracts awarded to a Program Participant incident to transferring ownership and control of the business;

(J) reporting by Program Participants concerning the use of consultants and other non-employees to assistant in obtaining Federal contracts; and

(K) data collection and data management by the Administration relating to the Program.

(3) The Comptroller General shall prepare a report summarizing the findings of the review described in paragraph (2), and make such recommendations for the improved implementation of this Act as may be appropriate. The report shall be transmitted to the Committees on Small Business of the Senate and House of Representatives by February 1, 1992.

SEC. 505. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

(a) Establishment.—There is established a Commission to be known as the "Commission on Minority Business Development" (hereinafter in this title referred to as the "Commission").

(b) Duties.—(1) The Commission shall—

(A) review and conduct an assessment of the operations of all Federal programs intended to promote and foster the development of minority owned businesses to ascertain whether the purposes and objectives of such program are being realized. Such review and assessment shall include, among other things, an evaluation of the issues described in this subsection

(B) review and assess the overall effectiveness of the Small Business and Capital Ownership Development Program established pursuant to 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) including—

(i) the procedure whereby the Administration certifies concerns pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)), including, the average time for the processing of applications, the criteria for program admission, and the geographic and industrial distribution of new program entrants;

(ii) the developmental assistance provided under the Small Business Act to such concerns and whether such assistance has been of benefit to program participants and whether modifications, additions, or deletions to such assistance should be provided to further the purposes of the program; such evaluation shall also include an analysis of whether program benefits, including contract awards, have been equitably distributed among all program participants and whether all regions of the Nation have benefitted from the program in proportion to their respective numbers of minority owned businesses;

(iii) the system established by this Act for competing contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and whether improved methods could be used, consistent with the purposes of the program, to better impact competitive skills, prevent program abuse, and promote the equitable distribution of awards;

(iv) the appropriate maximum term for program participation; such evaluation shall take into account relevant industry data, the developmental cycles of particular industries, and the financial, managerial and technological needs of such concerns to become competitive; a study shall be conducted relating to the fixed program term allowed under statute and the advisability of adopting alternative terms based on Standard Industrial Classification Codes or other economic indices;

(v) the data collection system maintained by the Administration to gather information relative to the program and whether such system is producing reliable data needed for effective management and control of the program;

(vi) various techniques that may be used to increase the participation rate of Federal agencies (as defined pursuant to section 224 of Public Law 95-507) in the program, to further the compliance of contractors with section 8(d) of the Small Business Act (15 U.S.C. 637(d)), and to properly coordinate the program with the operations of other Federal programs and activities designed to assist small business concerns owned and controlled by the socially and economically disadvantaged; and

(vii) the laws and regulatory procedures designed to protect against program abuse and if additional safeguards are necessary to protect the integrity of the program;

(C) review and assess the programs described in subparagraph (B) and whether the congressional purposes for such programs are being achieved in a manner that is consistent with the intent of other programs established under Federal law to promote the development of small business concerns; and

(D) review and assess—

(i) the policies and procedures of major procurement agencies with respect to setting goals by contractors (and subcontractors) under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(ii) the performance of a sample of contractors (and subcontractors) in attaining the goals established in their subcontracting plans and in making greater use of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(iii) the extend to which liquidated damages have been assessed under subcontracting plans and whether the inclusion of a liquidated damage clause furthers the purposes of the subcontracting program; and

(iv) the special circumstances of contractors providing commercial products.

(2)(A) Based upon its review, the Commission shall issue an interim report and a final report to the Congress and to the President.

(B) The interim report shall be issued by December 31, 1990, and shall detail the methodology pursued to evaluate each issue described in subparagraphs (A) and (B) of paragraph (1). The Commission shall also indicate those changes in law or regulation, if any, that should be considered immediately in order to protect the integrity of the Program and further the legitimate interests of Program Participants.

(C) The final report shall be issued within 1 year after the interim report and shall contain detailed findings, conclusions, and recommendations for such changes in law or regulations as may be necessary to further the growth and development of minority businesses. Such findings, conclusions, and recommendations shall be stated for each issue described under each such subparagraph.

(c) Membership.—(1) The Commission shall be composed of fourteen members to be selected as follows:

(A)(i) The Administrator of the Small Business Administration, or a designee of the Administrator.

(ii) The Under Secretary of Defense for Acquisition.

(iii) The Secretary of Commerce (or such Secretary's Deputy).

(iv) The Secretary of Transportation (or such Secretary's Deputy).

(B) Two member shall be representatives of trade or business associations whose membership are primarily small business concerns owned and controlled by socially and economically disadvantaged individuals.

(C) Four members shall be chief executive officers, or individuals of similar position, from major domestic corporations two of which shall be minority businesses;

(D) Four members shall be from leading educational institutions in business administration and management, two of which shall be from historically Black colleges or universities and minority institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.).

(2) Appointments under subparagraphs (B), (C), and (D) of paragraph (1) shall be made by the President. No more than one half of the members appointed under each such subparagraph shall be of the same political party. No appointed member shall be an officer or employee of the Federal Government nor of the Congress.

(3) Members appointed under such subparagraphs shall be appointed for the term of the Commission except if any such appointee becomes an officier or employee of the Federal Government or of the Congress, such individual may continue as a member of the Commission for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(4) A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(5) Members of the Commission shall serve without pay for such membership, except members of the Commisison shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Commission, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(6)(A) Four members of the Commission shall constitute a quorum for the receipt of testimony and other evidence.

(B) A majority of the Commission shall constitute a quorum for the approval of a report submitted pursuant to paragraph 2.

(C) The Commission shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

(7) The Chairperson and vice Chairperson of the Commission shall be designated by the President and term of office for such Chairperson and Vice Chairperson shall be at the descretion of the President.

(d) Director and Staff.—(1)(A) The Commission shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(B) The Director and staff of the Commission may be appointed without regard to section 531(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without

regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(3) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

(e) Powers.—(1) The Commission may, for, the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Commission considers appropriate. The Commission may administer oaths or affirmations for the receipt of such testimony.

(f) Any member or person within the employ of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) Except as otherwise prohibited by law, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Commission, the head of such department or agency shall promptly furnish such information to the Commission.

(4) The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(5) The Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request. In addition, the Administrator shall, as appropriate, provide to the Commission, upon request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

(f) Termination.—The Commission shall cease to exist on the date that it transmits its final report to the Congress and to the President.

(g) Authorization.—There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until the Commission is terminated. New spending authority or authority to enter contracts as authorized in the section shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

(h) Repeals.—Subparagraph (A) of section 7(j)(3) of the Small Business Act (15 U.S.C. 636(j)(3)(A)) is repealed.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

SEC. 601. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m) of the Small Business Act (15 U.S.C. 644(m)) is amended to read as follows:

"(m)(1) Each agency subject to the requirements of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note) shall, when implementing such requirements—

"(A) establish policies and procedure that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

"(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

"(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

"(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

"(B) report to their immediate supervisors all instances of noncompliance with such requirement; and

"(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1207 of the National Defense Authorization Act of Fiscal Year 1987 (10 U.S.C. 3201 note)."

SEC. 602. INDIAN TRIBE EXEMPTIONS.

(a) Competitive Thresholds.—Section 8(a)(16) of the Small Business Act as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 9(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)).

(b) Joint Ventures.—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)); and

(2) such Program Participant:

(A) owns 51 percentum or more of such joint venture;

(B) is located on the reservation of such tribe;

(C) performs most of its activities on such reservation; and

(D) employs members of such tribes for at least 50 percentum of its total workforce.

(c) Limitations.—A Program Participant, as a party to a joint venture shall receive no more than two contracts due solely to the provisions of subsection (b).

(d) Eligibility of More Than One Concern.—The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this section 7(j)(10) and section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)) if—

(1) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(2) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(a) Sunset.—Subsection (b) shall cease to be effective after September 30, 1991.

SEC. 603. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.

Section 15(k) of the Small Business Act is amended by—

(1) amending paragraph (3) to read as follows:

(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary's designee;";

(2) striking "and" at the end of paragraph (7);

(3) striking the period at the end of paragraph (8) and inserting in lieu thereof ", and"; and

(4) adding at the end thereof the following new paragraph:

"(9) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), or section 8(a) of this Act or section 1207 of Public Law 99-661. Such recommendations shall be made with due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.".

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Part A—Short Title Findings

SEC. 701. SHORT TITLE.

This title may be cited as the "Small Business Competitiveness Demonstration Program Act of 1988".

SEC. 702. FINDINGS.

The Congress finds that—

(1) many small business concerns have repeatedly demonstrated their ability to fulfill a broad range of Government requirements for products, services (including research, development, technical, and professional services), and construction, through the Federal procurement process;

(2) various Congressional mandated reforms to the Federal procurement process, including the Competition in Contracting Act of 1984, the Defense Procurement Reform Act of 1984, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, were designed to eliminate obstacles to competition and thereby to broaden small business participation; and

(3) traditional agency efforts to implement the mandate for small business participation in a fair proportion of Federal procurements as required by section 15(a) of the Small Business Act have resulted in—

(A) a concentration of procurement contract awards in a limited number of industry categories, often dominated by small business concerns, through the use of set-asides, for the purpose of assuring the attainment of the agency's overall small business contracting goals; and

(B) inadequate efforts to expand small business participation in agency procurements of products or services which have historically demonstrated low rates of small business participation despite substantial potential for expanded small business participation.

Part B—Demonstration Program

SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) Establishment.—There is established a Small Business Competitiveness Demonstra-

tion Program (hereafter referred to as "the Program") pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413) to provide for the testing of innovative procurement methods and procedures. The Administrator of Federal Procurement Policy shall designate the Administrator of the Small Business Administration as the executive agent responsible for conducting the test.

(b) PURPOSES.—The purposes of the Program are to demonstrate whether—

(1) the competitive capabilities of small business firms in certain industry categories will enable them to successfully compete on an unrestricted basis for Federal contracting opportunities,

(2) the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration, can expand small business participation in Federal contracting opportunities which have been historically low, despite adequate numbers of qualified small business contractors in the economy, and

(3) expanded use of full and open competition, as specified by the Competition in Contracting Act of 1984 (10 U.S.C. 2302(3) and 41 U.S.C. 403(7)), adversely affects small business participation in certain industry categories, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

(c) PROGRAM TERM.—The Program shall be conducted over a period of 4 years, beginning on January 1, 1989, and ending on December 31, 1992.

(d) APPLICATION.—The Program shall apply to contract solicitations for the procurement of services in industry groups designated in section 717.

SEC. 712. ENHANCED SMALL BUSINESS PARTICIPATION GOALS.

(a) ENHANCED GOALS FOR DESIGNATED INDUSTRY GROUPS.—Each participating agency shall establish an annual small business participation goal that is 40 percent of the dollar value of the contract awards for each of the designated industry groups. In attaining its small business participation goal for contract awards for each of the designated industry groups, each participating agency shall make a good faith effort to assure that emerging small business concerns are awarded not less than 15 percent of the dollar value of the contract awards for each of the designated industry groups.

(b) SPECIAL ASSISTANCE FOR EMERGENCY SMALL BUSINESS CONCERNS.—

(1) SMALL BUSINESS RESERVE.—During the term of the Program, all contract opportunities in the industry groups designated in section 718 shall be reserved for exclusive competition among emerging small business concerns in accordance with the competition standard specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)), if the estimated award value of the contract is equal to or less than the greater of:

(A) $25,000, or

(B) such larger dollar amount established pursuant to paragraph (2).

(2) ADJUSTMENTS TO THE SMALL BUSINESS RESERVE.—If the goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry category is determined not to have been attained, upon the review of award data conducted in accordance with subsection (d)(1) of this section, the Administrator for Federal Procurement Policy, to ensure attainment of such goal, shall prescribe, on a semiannual basis, appropriate adjustments to the dollar threshold for contract opportunities in such designated industry category below which competition shall be conducted exclusively among emerging small business concerns.

(3) SMALL BUSINESS SMALL PURCHASE RESERVE.—The requirements of this subsection dealing with the reserve amount shall apply notwithstanding the amount specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)).

(4) EXCLUSION OF MODIFICATIONS TO EXISTING CONTRACTS ABOVE THE SMALL PURCHASE THRESHOLD.—Any modification or follow-on award to a contract having an initial award value in excess of $25,000 shall not be subject to the limitations on competition required by this subsection.

(c) TARGETING INDUSTRY CATEGORIES WITH LIMITED SMALL BUSINESS PARTICIPATION.—(1) Concurrent with the term of the Small Business Competitiveness Demonstration Program, the head of each participating agency shall implement a program to expand small business participation in the agency's acquisition of selected products and services in 10 industry categories which have historically demonstrated low rates of small business participation. The products and services to be targeted for the small business participation expansion program and the special goals for such program, shall be developed in conjunction with the Administrator of the Small Business Administration, and shall be subject to the requirements of section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

(2) The products or services selected for the small business participation expansion program shall be drawn from industry categories that:

(A) are the recipients of substantial purchases by the Federal Government;

(B) have less than 10 percent of such annual purchases made from small business concerns; and

(C) have significant amount of small business productive capacity that have not been utilized by the Government.

(3) In developing its small business participation expansion program, each participating agency shall:

(A) prepare, and furnish to the Administration, a detailed, time-phased strategy (with incremental numerical goals):

(B) encourage and promote joint ventures, teaming agreements and other similar arrangements, which permit small business concerns to effectively compete for contract solicitations for which an individual small business concern would lack the requisite capacity or capability needed to establish responsibility for the award of a contract.

(d) MONITORING AGENCY PERFORMANCE.—

(1) Participating agencies shall monitor the attainment of their small business participation goals on a quarterly basis. The initial review by each participating agency shall be completed not later than June 30, 1989, based on the data for the period January 1 through March 31, 1989. Thereafter, each review shall be based on the aggregate of contract award data from the 4 quarters preceding the date of the review for which data is available.

(2) All awards to small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) shall be counted toward attainment of the goals specified in subsection (a) of this section.

(3) Modifications to a participating agency's solicitation practices, pursuant to section 713(b), shall be made at the beginning of the quarter following each review, if the rate of small business participation is less than 40 percent of the contract awards.

SEC. 713. PROCUREMENT PROCEDURES.

(a) FULL AND OPEN COMPETITION.—Except as provided in subsections (b) and (c), each contract opportunity with an anticipated value of $25,000 or more for the procurement of services from firms in the designated industry groups (unless set aside pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 1207 of the National Defense Authorization Act for Fiscal Year 1987) shall be solicited on an unrestricted basis during the term of the Program, if the participating agency has attained its small business participation goal pursuant to section 712(e). Any regulatory requirements which are inconsistent with this provision shall be waived.

(b) RESTRICTED COMPETITION.—If a participating agency has failed to attain its small business participation goal under section 712(a), subsequent contracting opportunities, which in excess of the reserve thresholds specified pursuant to section 712(b) shall be solicited through a competition restricted to eligible small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) to the extent necessary for such agency to attain its goal. Such modifications in the participating agency's solicitation practices shall be made as soon as practicable, but not later than the beginning of the quarter following completion of the review made pursuant to section 712(d) indicating that changes to solicitation practices are required. Such participating agency shall comply with the requirements of subsection (a) upon determining that its contract awards to small business concerns meet the required goals.

(c) RELATIONSHIP WITH THE COMPETITION IN CONTRACTNG ACT OF 1984.—Subsections (a) and (b) shall not be construed to supersede the application of the Competition in Contracting Act of 1984 (98 Stat. 1175).

SEC. 714. REPORTING.

(a) AWARDS OF $25,000 OR LESS.—During the term of the Small Business Competitiveness Demonstration Program, each award of $25,000 or less made by a participating agency for the procurement of a service in any of the designated industry categories shall be reported to the Federal Procurement Data Center in the same manner as if the purchase were in excess of $25,000.

(b) SUBCONTRACTING ACTIVITY.—The Administrator for Federal Procurement Policy shall devise and implement, during the term of the Program, a simplified system to test the collection, reporting, and monitoring of data on subcontract awards to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals for—

(1) services in each of the designated industry groups; and

(2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(c).

(c) SIZE OF SMALL BUSINESS CONCERNS.—During the term of the Program, each participating agency shall collect data pertaining to the size of the small business concern receiving any award for the procurement of—

(1) services in each of the designated industry groups; and

(2) products or services from industry categories selected for participation in the

small business participation expansion program, pursuant to section 712(d).

SEC. 715. TEST PLAN AND POLICY DIRECTION.

(a) TEST PLAN.—The Administrator for Federal Procurement Policy may further specify the manner and conduct of the test activites required by this title through a test plan issued pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).

(b) POLICY DIRECTION.—The Administrator for Federal Procurement Policy, in cooperation with the Administrator of the Small Business Administration, shall issue a policy directive (which shall be binding on all participating agencies) to ensure consistent government-wide implementation of this title in the Federal Acquisition Regulation, Title 48 of the Code of Federal Regulations, issued pursuant to the Office of Federal Procurement Policy Act.

SEC. 716. REPORT TO CONGRESS.

(a) IN GENERAL.—Within 180 days after fiscal year 1991 data is available from the Federal Procurement Data Center, the Administrator for Federal Procurement Policy shall report the results of the Small Business Competitiveness Demonstration Program to the Committees on Small Business of the Senate and House of Representatives, to the Committee on Governmental Affairs of the Senate, and to the Committee on Government Operations of the House of Representatives. The views of the Administrator of the Small Business Administration shall be included in the report.

(b) ANALYSIS OF PROGRAM.—The report shall include a section prepared by the Administrator of the Small Business Administration specifying the results of the intensive goaling and management program conducted to expand small business participation in agency acquisitions of selected products and services.

(c) RECOMMENDATIONS.—To the extent the results of the Program demonstrate sufficiently high small business participation based on unrestricted contract competition in the designated industry groups, the report shall include recommendations (if appropriate) for changes in legislation or modifications of procurement regulations aimed at increasing reliance on unrestricted competition if high rates of small business participation in the Federal procurement market can be maintained.

SEC. 717. DESIGNATED INDUSTRY GROUPS.

(a) IN GENERAL.—For the purposes of participation in this Program, the designated industry groups are—

(1) construction (excluding dredging);

(2) refuse systems and related services;

(3) architectural and engineering services (including surveying and mapping); and

(4) nonnuclear ship repair.

(b) CONSTRUCTION.—Construction shall include contract awards assigned one of the standard industrial classification codes that comprise—

(1) Major Group 15 (Building Construction—General Contractors and Operative Builders),

(2) Major Group 16 (Construction Other Than Building Construction—General Contractors and dredging), and

(3) Major Group 17 (Construction—Special Trade Contractors).

(c) REFUSE.—Refuse systems and related services shall include contract awards assigned to standard industrial classification code 4212 or 4953.

(d) ARCHITECTURAL AND ENGINEERING.—Architectural and engineering services (including surveying and mapping) shall include contract awards assigned to standard industrial classification code 7389 (if identified as pertaining to mapping services), 8711, 8712, or 8713.

(e) ALTERNATIVE DATA.—In the event that standard industrial classification codes are not assigned to individual contract awards reported to the Federal Procurement Data Center by January 1, 1989, the Program may be conducted on the basis of the product and service codes used to report data pertaining to such contract awards, related to the maximum practicable extent to the standard industrial classification code for the service being provided by the contractor.

SEC. 718. DEFINITIONS.

(a) DESIGNATED INDUSTRY GROUPS.—"Designated industry groups" means the groups specified in section 717 for participation in the Small Business Competitiveness Demonstration Program.

(b) EMERGING SMALL BUSINESS CONCERN.—"Emerging small business concern" means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(c) PARTICIPATING AGENCY.—"Participating agency" shall have the same meaning as the term "executive agency" in section (4)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)). The Administrator for Federal Procurement Policy is authorized to specify as part of the Program test plan the list of executive agencies designated to participate in the Program, which shall include:

(1) the Department of Agriculture,

(2) the Department of Defense (with the Department of the Army, the Department of the Navy, the Department of the Air Force, and the defense agencies reporting separately),

(3) the Department of Energy,

(4) the Department of Health and Human Services,

(5) the Department of Transportation,

(6) the Environmental Protection Agency,

(7) the General Services Administration (the Public Building Service reporting separately),

(8) the National Aeronautics and Space Administration, and

(9) the Veterans Administration.

The Administrator for Federal Procurement Policy is authorized to require any participating agencies to report separately in any manner deemed appropriate to enhance the attainment of the test activities authorized by this title.

(d) SMALL BUSINESS PARTICIPATION.—"Small business participation" shall include the aggregate dollar value of every procurement contract award made to a small business concern, without regard to whether such award was based on restricted or unrestricted competition, or was made on a sole source basis.

(e) STANDARD INDUSTRIAL CLASSIFICATION CODE.—"Standard industrial classification code" means a four digit code assigned to an industry category in the Standard Industrial Classification Manual published by the Office of Management and Budget in effect on the date of enactment of this Act.

PART C—ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES

SEC. 721. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.

(a) ESTABLISHMENT.—Subject to the requirements of subsection (b), of the total dollar amount of contracts for each standard industrial classification codes for clothing and textiles awarded by the Defense Logistics Agency for each of the fiscal years 1989, 1990, and 1991:

(1) To the maximum extent practicable, 50 percent shall not be restricted by the size status of the competing business concerns

(2) To the maximum extent practicable, 50 percent shall be made available for award pursuant to—

(A) Section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(B) Section 1207 of the National Defense Authorization Act for Fiscal Year 1987); and

(C) Section 15(a) of the Small Busness Act (15 U.S.C. 644(a)), if the criteria for such awards are met pursuant to Part 19.5 (Set-Asides for Small Business) of Title 48, Code of Federal Regulations, as in effect on September 1, 1988.

(b) COMPUTATION.—In order to calculate the percent limitation established pursuant to subsection (a), the Department may establish, after consultation with the Small Business Administration, major groupings of standard industrial classification codes that are closely related and apply such limitations to such groupings.

SEC. 722. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.

(a) ESTABLISHMENT.—During Fiscal Years 1989, 1990, 1991, and 1992, the Secretary of the Army (hereafter in this section referred to as the "Secretary") shall conduct a program to expand the participation of small business concerns and emerging small business concerns in contracting opportunities for dredging.

(b) ENHANCED GOALS.—Of the total dollar value of contracts for dredging, the Department of the Army (hereafter in this section referred to as the "Department") shall make every reasonable effort to award to small business concerns:

(1) 20 percent during fiscal year 1989, including 5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(2) 25 percent during fiscal year 1990, including 7.5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(3) 30 percent during fiscal year 1991, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns; and

(4) 30 percent during fiscal year 1992, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns.

Subcontract awards may be counted towards the attainment of such goals, provided that there is available a system for the collection of data relating to the award of subcontracts under dredging contracts awarded by the Department.

(d) CONTRACT AWARD PROCEDURES.—(1) Except as provided in paragraph (2) and (3), the Department shall solicit and award contracts for dredging through full and open competition in conformity with section 2304 of title 10, United States Code, Section 15 of the Small Business Act (15 U.S.C. 644), and the implementing procurement regulations promulgated in conformity with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405). Nothing herein shall impair the award of contracts pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or Section 1207 of the National Defense Authorization Act for Fiscal Year 1987.

(2) Contracting opportunities for dredging shall be reserved for competition among emerging small business concerns if their es-

timated award value is below an amount to be specified by the Administrator for Federal Procurement Policy (hereafter in this section referred to as the "Administrator"), upon the recommendation of the Secretary. Such reserve amount shall be established by the Administrator at the start of the program at a level which can reasonably be expected to result in the Department attaining the applicable participation goal for emerging small business concerns. Such reserve threshold shall be reviewed by the Secretary and adjusted by the Administrator to the extent necessary on a semiannual basis beginning after the end of the second quarter of fiscal year 1989 on the basis of the aggregate of contract awards for the four fiscal year quarters preceeding the date of the review.

(3) The Secretary shall restrict for competition among all eligible small business concerns such additional contracting opportunities for dredging in such numbers and at such estimated award values as can reasonably be expected to result in the Department attaining the applicable participation goal for small business concerns generally.

(c) ACQUISITION STRATEGIES TO FOSTER SMALL BUSINESS PARTICIPATION.-(1) In attaining the goals for participation by small business concerns and emerging small business concerns, the Secretary is encouraged to:

(A) specify contract requirements and contractual terms and conditions that are conducive to competition by small business concerns and emerging small business concerns, consistent with the mission or program requirements of the Department;

(B) joint ventures, teaming agreements, and other similar arrangements, which permit small business concerns to effectively compete for contract opportunities for which an individual firm would lack the requisite capacity or capability needed to establish responsibility for the award of a contract; and

(C) subcontracting through plans negotiated and enforced pursuant to Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or solicitation requirements specifying minimum percentages of subcontracting for the purpose of determining the responsiveness of an offer.

(2) During the term of the program, data shall be collected pertaining to the actual size of the firm receiving an award as a small business concern or an emerging small business concern.

(d) SIZE STANDARD.—For the purposes of the program established by subsection (a), the size standard pertaining to standard industrial classification code 1629 (Dredging and Surface Cleanup Activities) in effect on October 1, 1988 shall remain in effect until September 30, 1990.

(e) REPORTS.—

(1) The Secretary shall furnish a report to the Committee on Small Business of the Senate and House of Representatives, the Administrator of the Small Business Administration, and the Administrator for Federal Procurement Policy within 120 days after September 30, 1992.

(2) Interim reports shall be submitted annually within 90 days after the close of each of the fiscal years 1989, 1990, and 1991. The Secretary may include recommendations regarding adjustments to the Department's participation goals for small business concerns and emerging small business concerns and to the applicable size standard, if the Secretary determines that such goals cannot reasonably be attained from the pool of firms meeting the current size standard.

(c) REPORT.—The Secretary of Defense shall issue reports to the Congress on the operations of the program established pursuant to this section. Such reports shall detail the effects of the program on the mobilization base and on small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Interim reports shall be submitted every six months during the term of the program to the Committees on Armed Services and Small Business of House of Representatives and the Senate.

PART D—AMENDMENTS TO THE SMALL BUSINESS ACT

SEC. 731. TECHNICAL AMENDMENT.

Section 809(a)(2) of Title VIII, Division A of Public Law 100-180 (101 Stat. 1130, December 4, 1987) is amended by striking out "October 1, 1988" and inserting in lieu thereof "October 1, 1989."

SEC. 732. REPEALER.

Paragraphs (2) through (5) of subsection 3(a) of the Small Business Act (15 U.S.C. 632(a)(2)-(5)) are repealed. Any numerical size standard that pertains to any of the designated industry groups, and that is in effect on September 30, 1988, shall remain in effect for the duration of the Program.

PART E—OTHER AMENDMENTS

SEC. 741. SEGMENTATION OF INDUSTRY CATEGORY.

The Small Business Administration, pursuant to the authority of Section 15(a) of the Small Business Act (15 U.S.C. 644(a)), shall segment the industry category of shipbuilding and ship repair, as follows:

(1) nuclear shipbuilding and repair;

(2) non-nuclear shipbuilding; and

(3) non-nuclear ship repair, which shall be further segmented by, at least, East Coast and West Coast facilities.

SEC. 742. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Section 901 of the Federal Property and Administrative Services Act (40 U.S.C. 541) is amended by striking out paragraph (3) and inserting the following:

"(3) The term 'architectural and engineering services' means—

"(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

"(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

"(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.".

TITLE VIII—AUTHORIZATIONS, EFFECTIVE DATES, AND MISCELLANEOUS MATTERS

SEC. 801. REGULATIONS.

The Small Business Administration shall—

(1) within 60 days after the date of enactment of this Act conduct meetings of present and potential participants in the program established by section 7(j)(10) of the Small Business Act, as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act;

(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

(3) within two hundred and ten days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act.

SEC. 802. AUTHORIZATIONS.

(a) BUSINESS OPPORTUNITY SPECIALISTS.—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of $3,500,000 to provide for the employment, salaries and expenses of 70 additional Business Opportunity Specialists to carry out the duties described in sections 201 and 410 of this Act.

(b) TRAINING OF BUSINESS OPPORTUNITY SPECIALISTS.—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of $500,000 to conduct the training and obtain the qualifications for Business Opportunity Specialists described in section 410.

(c) TRADITIONAL PROCUREMENT CENTER REPRESENTATIVES.—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of $735,000 to employ 15 additional Procurement Center Representatives.

(d) BUSINESS LOANS.—There is hereby authorized to be appropriated to the Business Loan and Investment Fund, established under section 4(c)(1) of the Small Business Act (15 U.S.C. 633(a)(1)), the sum of $10,000,000 each year for fiscal years 1989 and 1990 for both direct and guaranteed loans made pursuant to section 7 (a)(20) of the Small Business Act, as added by section 302 of this Act.

(e) JOB TRAINING.—There is hereby authorized to be appropriated the sum of $2,000,000 for fiscal year 1990 for the job training program established by section 7(j)(13)(E) of the Small Business Act (15 U.S.C. 636(j)(13)(E)), as added by section 301(b) of this Act.

(f) LIMITATION.—(1) Any new credit authority or authority to enter contracts provided for in this Act is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(2) No funds are authorized to be appropriated in subsequent appropriation Acts to the Administration for the purpose of making grants of financial assistance under the so called "Business Development Expense" program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)).

SEC. 803 EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, the following provisions (and the amendments made by such provisions) shall take effect on the date of the enactment of this Act:

(1) Section 1 and 2.

(2) Sections 101.

(3) Sections 202, 203, 204, 206, and 207.

(4) Sections 301(a) and 303(d), and (e), and (f).

(5) Sections 405, 406, 408, and 410.

(6) Sections 504 and 505.

(7) Sections 601 and 603.

(8) Titles VII and VIII.

(9) Sections 7(j)(13)(G) and 7(j)(13)(I) of the Small Business Act (as added by section 301(b)).

(b) Special Rules.—(i) Except as otherwise provided, the following sections (and the amendments made by such sections) shall take effect on June 1, 1989:

(A) Sections 201, 205, and 208.

(B) Sections 301(b), 301(c), 303(a), 303(c), 303(g), 303(h), and 304.

(C) Sections 401, 402, 403, 404, and 409.

(D) Section 602.

(2) Section 407 shall take effect with respect to contracts entered into on or after June 1, 1989.

(3) The following sections (and the amendments made by such sections) shall take effect on October 1, 1989:

(A) Sections 209

(B) Sections 302 and 303(b).

(C) Section 501, 502, and 503.

(D) Section 7(j)(13)(E) of the Small Business Act (as added by section 301(b) of this Act).

And the Senate agree to the same.

John J. LaFalce,
Neal Smith,
Nick Mavroules,
Ike Skelton,
Charles A. Hayes,
John Conyers,
Esteban E. Torres,
Joseph M. McDade,
Silvio O. Conte,
Bill Broomfield,
Dean Gallo,

Additional conferees on titles VI and VII:

Les Aspin,
Dave McCurdy,
Wm. L. Dickinson,
Jack Brooks,
Gerald D. Kleczka,
Frank Horton,

Managers on the Part of the House.

Dale Bumpers,
Carl Levin,
Alan J. Dixon,
John F. Kerry,
Lowell P. Weicker, Jr.,
Rudy Boschwitz,
Warren B. Rudman,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1807) to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS

The House and Senate conferees agree that the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to Section 8(a) of the Small Business Act remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals through the Federal procurement process and for bringing such concerns into the nation's economic mainstream. While the program has made some progress, the conferees find it has often failed to meet many of its objectives, particularly in aiding concerns to adequately develop their businesses to be able to survive in the competitive marketplace.

The conferees also find the following key areas of inadequacy in the program's operation:

(a) Concerns have developed an unhealthy dependence on sole-source contracts by the time they are required to leave the program;

(b) The certification process for admitting new concerns is too lengthy;

(c) The Small Business Administration has often not efficiently and equitably administered and managed the program;

(d) The wide-spread perception of undue political influence in the operation and administration of the program has significantly contributed to the program's poor image, and fraud and abuse have plagued its smooth operation; and

(e) Many Federal procuring agencies have failed to offer the necessary amount of contract support to promote diversification and growth of disadvantaged businesses participating in the program.

The conferees find it imperative that substantial reforms be implemented as provided in H.R. 1807 if the program is to accomplish its Congressionally mandated business development objectives and purposes.

PURPOSES

The House and Senate conferees affirm that the purposes of H.R. 1807 shall be to ensure that the Capital Ownership Development Program and the Section 8(a) authority be used exclusively for business development purposes to help small businesses owned and controlled by socially and economically disadvantaged individuals to compete on an equal basis in the mainstream of the American economy. In so doing, the goals of the program shall be to increase the number of competitive firms that exit the program by providing both meaningful business development services and fair and equitable distribution of Federal contracting opportunities to such firms while discouraging unreasonable reliance on Section 8(a) contracts.

One measure of success of the Capital Ownership Development Program and the 8(a) authority shall be the increase in the number of competitive small businesses owned and controlled by such individuals from which the United States may purchase articles, equipment, supplies, services, materials, and construction work.

TITLE II—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

SEC. 201 PROGRAM ADMISSION

The House bill provided that individuals could use their eligibility only once for the 8(a) program, that once a concern has exited the program it cannot be readmitted, that if the disadvantaged owners sell the 8(a) business to other disadvantaged owners, the new owners' term of participation would only be the remainder of time unused by the original owners. The House bill also provided that 8(a) applications be processed within 90 days and that SBA designate a 60-cay period each year for receiving applications. Applicants would be given written notification of receipt of a complete application or of the absence of required materials. SBA would be required to solicit 8(a) applications from firms in areas of high unemployment and should give priority consideration to applicants from businesses in industries that were underrepresented in the program.

The Senate amendment established a separate Division of Minority Small Business Certification within the Office of Minority Small Business and Capital Ownership Development in the central office of the Administration, with an office of the division established in SBA regional offices. The division would receive, review and make recommendations to the Associate Administrator on applications for certification. The division would also review the continued eligibility of program participants, initiate requests for termination proceedings and decide protests of firms' status as businesses owned and controlled by socially and economically disadvantaged persons under other federal programs. The SBA is required to notify the applicant in writing within 15 days whether the application is complete. Approval or denial of applications must be provided by the Associate Administrator within 90 days of receipt of a completed application. SBA is prohibited from denying applications solely based on a determination that contract support is unavailable. If the application is denied, the applicant must be notified in writing of the specific reasons for the denial and of its right to appeal the decision to the SBA Office of Hearings and Appeals.

The conferees agree to set a 90-day limit on certification decisions. SBA shall notify an applicant within 15 days of the receipt of a complete application or of the materials missing from the application package. The conference agreement establishes a Division of Certification and Eligibility, headed by a director, with an office of the division in each regional office. The function of the division will be to receive, review, evaluate and make recommendations to the Associate Administrator on applications for certification to the 8(a) program; review the financial statements of program participants to determine their continued eligibility for the program; review and decide protests of a firm's status as a socially and economically disadvantaged concern under the 8(a) program or under the subcontracting program under section 8(d) of the Small Business Act or other federal programs which refer to section 8(d) for a definition of program eligibility, such as the Department of Defense section 1207 program first authorized by Public Law 99-661.

The division is also responsible for implementing an outreach program based on policies developed by the Associate Administrator. The conference substitute requires the Director of the division to conduct a review each year before the end of the fiscal year of the geographic and industrial distribution of new entrants and current program participants, and to report to the Associate Administrator by the end of the fiscal year on the estimated growth and additional resources needed for the subsequent fiscal year. Based on this information or other available data, the Associate Administrator shall issue directives for the year which establish priorities for soliciting new applicants and for processing applications as may be necessary to achieve an equitable geographic and industrial distribution of firms that reflects the industrial categories of federal purchasing.

The conferees agree that program admission should not be denied simply because the Division determines that contract opportunities have not been identified by the applicant. Frequently, new firms are able to attract contracts to the program. The conferees do recognize, however, that firms may not be certified for the program if the federal government has not in the past and is not likely in the future to purchase the product or service of the applicant, or if the government does not purchase sufficient amounts of the product or service to support the developmental needs of firms already in the program that provide the same or similar products or services.

The conferees also intend that SBA will begin an outreach program to attract firms from states that have been under represented in the 8(a) program, particularly from areas and states which have significant minority populations, and are plagued by high unemployment, under employment, or are labor-surplus areas.

SEC. 202. TIME LIMITATIONS

The House bill established a program participation term of nine years from the date of a firm's certification into the program.

The Senate amendment established a program participation term of eight years from the date of the firm's first 8(a) contract.

The Senate recedes to the House to establish a nine-year participation term from the date of the firm's certification with the first four years being designated the business development stage and the last five years the transitional stage. Firms presently in the program four years or less shall be in the developmental stage; firms that are in the program five or more years shall be in the transitional stage.

SEC. 203. GRANDFATHERING

The House bill allowed a current 8(a) firm, as of the date of enactment, to remain in the program for the longer of (1) nine years minus the number of years since the award of its first 8(a) contract, or (2) its original fixed program participation term and any extension of such term. Notwithstanding these maximum year limitations, firms may be graduated or terminated at any time.

The Senate amendment provided that firms in the program as of June 1, 1988, or the date of enactment, whichever is earlier, would be allowed to continue in the program for the longer of (1) eight years less the number of years since the award of the firm's first contract under the 8(a) program, or (2) the unexpired portion of the firm's current fixed program participation term. The Senate bill specifically noted that these transition provisions do not create eligibility for firms that have been graduated prior to June 1, have been terminated or had been otherwise deemed ineligible to receive program assistance.

The conference substitute allows firms due to graduate as of September 1, 1988, to continue in the program for the longer of (1) nine years from the award of the firm's first contract under the 8(a) program or (2) the firm's original fixed program participation term (including any extension thereof) assigned before the effective date of this provision plus eighteen months. The conferees agree to this extension of time for program participants in lieu of other provisions of both bills which were designed to provide firms a transition from the 8(a) program to the competitive market. These other provisions include allowing graduating firms to exceed the SBA size standard by 25% for purposes of the DOD Section 1207 program, and allowing graduated firms to bid on their prior 8(a) contracts for one contracting cycle through a restricted competition. Both of these provisions were deleted by the conference substitute.

SEC. 204. BUSINESS DEVELOPMENT OBJECTIVES

The House Bill would amend Section 2(c)(2)(B) of the Small Business Act to state that the purpose of Section 7(j) and Section 8(a) is to promote the business development of small firms owned and controlled by socially and economically disadvantaged individuals. This provision is intended to ensure that these programs are clearly understood as business development programs and not merely vehicles for obtaining "sole-source" government contracts.

SEC. 205 BUSINESS PLANS

The House bill required each 8(a) firm to develop a comprehensive business plan with specific business targets, objectives and goals designed to result in such firm becoming a competitive small business. Each Program Participant would be required to estimate the dollar amount of 8(a) contract support it needed for each year of program participation and to include that amount in its business plan.

The Senate amendment required a Program Participant to submit promptly after certification a business plan which would chart the firm's development for its years in the program. The plan would be developed with assistance from SBA with certain elements specified. The business plan would be reviewed annually by the Program Participant and the SMB Business Opportunity Specialist assigned to work with the Program Participant and required to conform to the competitive business requirements set out in section 401 of the Senate bill. The bill also required that program participants prepare forecasts of their contract needs for the program.

The conferees agree to the Senate proposal. The conference substitute clarifies that the business plan submitted for the program may be a revision or elaboration of a preliminary plan that is required as a part of the application process. The conferees expect that each program participant will develop a plan in conjunction with SBA that is designed for the program. The conferees agree that the business plan should also contain the amount of contract support that the firm expects to receive in the program and that the competitive business targets should be set in accordance with section 303 of the conference report.

SEC. 206 ELIGIBILITY REVIEWS

The Senate bill established an expedited protest procedure for a contract officer or other interested parties to challenge the eligibility of a program participant as a concern owned and controlled by socially and economically disadvantaged individuals. The bill also required the SBA to evaluate a program participant's current eligibility whenever it received specific and credible information that the concern is not eligible to participate in the 8(a) program. It prohibited the suspension of the concern from participation in the program until a termination proceeding is actually initiated.

The House bill contained no similar provision.

The conference agreement does not contain the eligibility protest procedures contained in the Senate bill. The conferees agree that SBA is required to evaluate a program participant's continued eligibility for the program upon the receipt of specific credible information that the participant is no longer eligible. The conferees clarify the Senate provision that the program participant's eligibility to receive contract awards under Section 8(a) may only be suspended pursuant to debarment and suspension regulations in the Federal Acquisition Regulation. The conferees also restate that, with the exception of approved joint ventures with tribally owned businesss as authorized under this Act, a firm must be a small business in order to be eligible to receive a contract award under section 8(a).

SEC. 207 ELIGIBILITY OF NATIVE HAWAIIAN ORGANIZATIONS

The Senate amendment contained a provision which included Native Hawaiian Community Organizations under the definition of an Indian tribe for purposes of being eligible for 8(a) program certification.

The House bill contained no similar provision.

The conference substitute agrees with the Senate provision making qualified businesses owned and controlled by Native Hawaiian Organizations eligibile for the section 8(a) program but does not define these organizations as Indian tribes.

SEC. 208 TERMINATION AND GRADUATION STANDARDS

The House bill specified four ways to exit the program: (1) the firm voluntarily elects not to participate; (2) the firm has reached its maximum 9-year time limit; (3) the firm is terminated pursuant to a termination proceeding; or (4) the firm is graduated based on successful completion of the program. The bill defined "termination" as the total denial or suspension of assistance and specified that a termination action must be based upon "good cause". The bill gave examples of what might be considred good cause.

The Senate bill established the conditions for graduation and termination for "good cause" of participants from the program, and set forth examples of what constitute "good cause" for termination. The bill also set forth a specific timetable for initiation of termination proceedings, providing notice to the program participant and beginning a termination hearing.

The conferees agree to the House provision codifying the four conditions for a participant to leave the program and the House definitions of graduation and termination. The conferees agree that terminations shall be based on "good cause" and include the examples from the Senate bill, as follows: (1) the concern fails to meet the eligibility standards of the program, such as no longer being owned and controlled by socially and economically disadvantaged individuals; (2) the cocern fails to engage in business practices which will promote its competitiveness such as a demonstrated pattern of unjustified delinquent performance or termination for default on section 8(a) contracts; (3) a demonstrated pattern of delinquency regarding required submissions or responses to the SBA; (4) a willful violation of SBA rules or regulations; (5) debarment of the program participant under Federal Acquisition Regulation; or (6) conviction of the concern's disadvantaged owners of any offense indicating a lack of business integrity or conviction of the officers of the concern if the disadvantaged owners aided, abetted or conspired with the convicted officers.

SEC. 209 ECONOMIC DISADVANTAGE

The Senate bill contained a provision requiring that: ownership of an 8(a) company by a socially and economically disadvantaged individual be unconditional; the Administration set a threshold test of net worth for determining economic disadvantage; 8(a) firms certify their eligibility for the program on an annual basis; and firms that are determined to have overcome their economic disadvantage be graduated from the 8(a) program.

The House bill contained no similar provision.

The House recedes with an amendment. The amendment:

(1) Retains the requirement that ownership of an 8(a) firm be unconditional and requires Program Participants to certify to such ownership on an annual basis;

(2) Requires that business assets and primary personal residences be excluded from any calculation of personal net worth;

(3) Retains the requirement that firms and their owners who are determined to have overcome their economic disadvantage must be graduated from the 8(a) program; and

(4) Adds the requirement that individuals who have engaged in unduly excessive withdrawals of assets from an 8(a) firm be terminated from the program or subject to other appropriate action.

1. Unconditional ownership

The conference amendment retains the Senate language on unconditional ownership. As explained in the Senate report, this language is not intended to preclude the owner or owners of a Program Participant from pledging stock to obtain financing for the firm in an arms-length transaction with a legitimate financing institution. The conference amendment requires the disadvantaged owners of Program Participants to certify annually that they continue to meet the ownership and control requirements of Section 8(a)(4).

2. Personal net worth threshold

The conferees delete the Senate requirement that Program Participants certify their economic disadvantage status on an annual basis.

The conferees are aware that the Administration has already taken steps to establish a threshold of net personal worth for the purpose of program admission. However, the conferees are concerned that the threshold established by the Administration includes the value of an applicant's business assets and primary personal residence in such individual's personal net worth.

Because of rapidly escalating real estate values and the wide disparity of real estate prices around the country, the conferees believe that the inclusion of the value of a primary personal residence in calculations of net worth may lead to inequitable treatment of home-owners in some areas. With regard to business assets, the conferees believe that the value of such assets are more properly considered in the context of the firm's ability to compete, and not as an element of personal net worth.

For this reason, the conference amendment requires that the Administration exclude the value of business assets and individual equity in a primary personal residence from calculations of personal net worth. At the same time, the conferees direct the Administration to take appropriate steps to ensure that these exclusions are not subject to abuse. Although the value of business assets and primary personal residence are not to be considered as an element of personal net worth, the conferees anticipate that the Administration will consider whether such business assets and residence give an individual access to capital or loans such that he or she should not be considered to be impaired in his or her ability to compete.

3. Economic disadvantage after program admission

The language agreed to by the conferees requires each 8(a) firm to submit to the Administration, on an annual basis, a personal financial statement for each disadvantaged owner upon whom eligibility is based, a record of all payments made from the firm to its disadvantaged owners or to any person or entity affiliated with such owners, and such other information as the Administration may deem necessary to determine whether the firm and its owners remain economically disadvantaged. Quarterly business financial statements required elsewhere in the Act should also be considered for this purpose.

On the basis of this information, the Administration is required to make a preliminary determination whether there is reason to believe that the firm and its owners may no longer be economically disadvantaged. The conferees agree that reasons to believe that an 8(a) firm and its owners are no longer economically disadvantaged may include, but are not limited to: demonstrated access of the firm and/or its owners to a substantial new source of capital or loans, an unusually large amount of funds withdrawn from the firm by its owners, or an unusually high personal net worth of such owners.

Whenever the Administration makes a preliminary determination that there is reason to believe that an 8(a) firm and its owners may no longer be economically disadvantaged the Administration is required to conduct a complete review to determine whether the firm and its owners in fact continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In the course of any such review, the 8(a) firm and its owners shall be afforded an opportunity to submit such materials as they believe may be relevant to the review.

The conferees understand that this review will consider the firm's ability to compete and to access capital and loans in light of its balance sheet, its 8(a) and non-8(a) sales, the assets of its owners, and other similar factors—but will not turn on one factor, such as the personal net worth of the firm's owners. In comparing the 8(a) firm to others in the same business area, the conferees anticipate that the Administration will consider other small firms in a similar business, but should avoid comparisons between 8(a) firms and large businesses whenever possible. If limitations on available data require a comparison of an 8(a) firm with large businesses, the conferees anticipate that the Administration will adjust such data, as appropriate to account for the size of the firms considered.

If the Administration determines, pursuant to such a review, that an 8(a) firm and its owners are no longer economically disadvantaged, the Administration is required to graduate the firm, subject to the right to a hearing as provided for under Section 8(a) of the Act. The conferees understand that any determination under this provision that a firm and its owners are no longer economically disadvantaged is for the purpose of the Sections 8(a) and 7(j) programs only, and is not conclusive for the purpose of determining economic disadvantage status for other federal assistance programs. The conferees further understand that any final determination (after a review) that an 8(a) firm and its owners remain economically disadvantaged shall be conclusive for the year to which it applies, unless the Administration receives credible information that the data upon which the determination was made were materially false or incomplete.

4. Excessive withdrawals

On the basis of information provided by each program participant, the Administration is required to make a preliminary determination whether there is reason to believe that an unduly excessive amount of assets may have been withdrawn from the firm. Reasons to believe that unduly excessive withdrawals have been made may include, but are not limited to: an unusually large payment to a firm's owners or to any affiliated person or entity, or unusually rapid growth in the personal net worth of a firm's owners.

Whenever the Administration makes a preliminary determination that there is reason to believe that the amount of funds withdrawn from an 8(a) firm for the personal benefit of its owners or any affiliated person or entity may have been unduly excessive, the Administration is required to conduct a complete review to determine whether such withdrawal of funds was detrimental to the achievement of the business plan, objectives and goals of the firm. In the course of any such review, the 8(a) firm and its owners shall be afforded an opportunity to submit such materials as they believe may be relevant to the review.

This determination should be made on the basis of the financial strength of the firm and the fair market value of any product or services rendered to the firm by the owners or affiliated persons or entities. The conferees do not intend for this provision to be interpreted as a "salary cap" on payments that may be paid for services rendered to an 8(a) firm by its owners. If the Administration determines that detrimental withdrawals have been made, the Administration is required to initiate termination proceedings pursuant to Section 7(j)(10)(F), subject to the right to a hearing as provided for under Section 8(a) of the Act, or to require repayment of the excessive withdrawals and such other steps as the Administration may deem necessary to ensure the protection of the firm.

TITLE III—BUSINESS DEVELOPMENT

SECTION 301. STAGES OF PROGRAM PARTICIPATION

The House bill divided the nine-year program participation term into three stages as follows: a developmental stage lasting no more than four years; a transitional stage lasting no more than three years; and a mainstreaming stage lasting no more than two years. A concern would be eligible for a broad range of business development assistance depending on its stage of participation. Firms in the developmental stage would be qualified to receive: (1) 8(a) contracts; (2) two exemptions from the "contingent agreement" prohibition under the Walsh-Healy

Act; (3) two exemptions from the bonding requirements of the Miller Act, provided that certain conditions are met; (4) the transfer of technology or surplus property owned by the United States; and (5) financial assistance to train employees if certain conditions are satisfied. Firms in the transitional stage could receive: (1) 8(a) contracts, (2) technology and surplus property transfers; (3) direct loans or loan guarantees under a new program established for 8(a) firms in lieu of Business Development Expense (BDE); and (4) a limited antitrust exemption for joint ventures. The new loan program would have been established with a separate revolving fund. Firms in the mainstreaming stage of development could receive: (1) 8(a) contracts; (2) technology and surplus property transfers; (3) financial assistance; and (4) any other management and technical assistance the Administration deemed appropriate.

The Senate bill did not establish similar stages of program participation. The Senate bill created a bid and proposal cost fund, in lieu of BDE, to help firms defray the cost of competing for commercial and government contracts. The Senate bill also directed SBA to expand the management assistance provided to firms by developing initiatives in two specific areas: the first a training program which focused on contract administration problems and other issues unique to federal contracts; the other focused on providing training to program participants in developing transitional business plans that would enhance the firms' abilities to operate successfully after graduation.

The conferees generally agree to the House provisions authorizing the types of business assistance that firms may receive. The conference substitute deletes the authority to approve joint ventures, except for tribally owned businesses. Moreover, the tribal business joint venture provision has no antitrust implications. The conferees also reject the Senate proposal to create a competitive bid and proposal cost fund. The financial assistance to train employees of 8(a) firms, proposed by the House, is authorized for $2 million for fiscal year 1990.

The conference substitute establishes two stages of program participation: the developmental stage, which shall last no more than four years; and the transitional stage, which shall last for no more than five years. Firms in the developmental stage are qualified to receive: (1) 8(a) contracts; (2) financial assistance under the new loan program established in lieu of BDE; (3) two exemptions to the Walsh-Healy Act as provided in the House bill (the authority to grant these waivers expires on October 1, 1992); (4) five exemptions from the surety bonding requirements of the Miller Act on 8(a) contracts; (5) financial assistance to train employees, subject to the authorization mentioned previously; (6) the transfer of technology and surplus property owned by the United States; and (7) training to prepare the concern to compete successfully once they leave the program. Exemptions from the Miller Act are conditioned on the establishment of direct disbursement arrangements by the procuring agencies and SBA so as to ensure that suppliers of materials and labor will receive funds due to them.

Firms in the transitional stage may receive the same type of assistance, except for the surety bond waivers, the exemptions to Walsh-Healy and the employee training grants. Firms in the transitional stage should also receive transition management training and technical assistance. The conferees note the success of recent transition management seminars which the agency has conducted on a pilot basis for graduating firms, and the Administration is encouraged to continue and expand such services to Program Participants.

Finally, the conferees encourage procuring agencies to develop programs which provide joint ventures, leader-follower arrangements and teaming arrangements between program participants in the transition stage and other firms, all within the framework of existing law.

SECTION 302. LOANS

The House bill authorized a new loan program for 8(a) firms in lieu of BDE grants. Loans could be either direct or guaranteed. The maximum guarantee percentage would have been 85% and the maximum loan amount would have been limited to $500,000. The maximum term would have been 25 years. The proceeds of the loan could be used to acquire "hard assets" such as plant equipment or working capital for manufacturing facilities. A new revolving fund would be established and BDE funds not previously committed would be transferred into the fund.

The Senate bill created a direct loan program for 8(a) firms for generally the same purposes. The Senate provision would allow a 2% interest rate subsidy below the interest rate charged by SBA on Economic Opportunity Loans. The program would have been a part of the Business Loan and Investment Fund at SBA. BDE would be specifically eliminated. The loan program would be authorized at $10 million for each of fiscal year 1989-1991.

The conference substitute establishes a new loan program for 8(a) firms. The conferees agreed to the House provisions, except that the program will not operate from a separate revolving fund. It will be administered by the Finance and Investment division of SBA as is the case with all other loan programs in the agency. This will require close working relationships between the Associate Administrators for Finance and Investment and for Minority Small Business Capital Ownership and Development. The conferees also increased the maximum loan amount available to a particular business from $500,000 in the House bill to $750,000 to be consistent with the increase in SBA loan limits recently enacted.

SECTION 303. CONTRACTUAL ASSISTANCE

(a) Competitive business mix

The House bill directed the SBA to assure that 8(a) firms do not develop an unreasonable reliance on sole-sourced contracts under the program. It required each concern, along with SBA, to take appropriate actions to reach a goal of 35 percent non-8(a) sales by the end of a firm's fifth year in the program and 75 percent by the end of the ninth year. Those goals could, in SBA's discretion, have been modified for firms in the program for more than three years as of the effective date of the provision.

The Senate amendment established numerical benchmarks for competitive business activity that a firm must attain beginning in the fifth year of program participation and increasing in each subsequent year in order to be eligible for continued noncompetitive or sole-sourced awards under the program. The maximum percentages of the firm's new noncompetitive awards could not exceed:

70 percent at the end of its fifth year in the program;

50 percent at the end of its seventh year; and

a goal of 25 percent at the end of its final year.

Firms would have been required to certify prior to receiving an 8(a) sole-source award that they complied with these provisions. The bill allowed the Administrator to waive the requirements if a firm came within five percent of the specified percentages, demonstrated a reasonable expectation of receiving adequate competitive awards to bring it into compliance and, demonstrated that the denial of additional noncompetitive 8(a) contracts would cause severe economic hardship jeopardizing the firm's future ability to meet subsequent mix requirements.

The conference substitute directs SBA to develop rules requiring that during the developmental stage of program participation firms should make maximum efforts to obtain business outside the program. For example, the conferees expect that established, on-going firms which enter the program would make every effort to maintain their existing business base and use 8(a) as a resource to strengthen the firm.

The substitute amendment further requires that for firms in the transitional stage of program participation which begins in year five and ends in year nine, the Administration would develop a rule which establishes targets of business activity that firms must attain. The purpose of this provision is to assure that firms graduating from the program are able to survive in the competitive arena with new skills gained while in the program. The conferees concluded that SBA could establish appropriate competitive targets for program participants after a full and open regulatory process, and that this flexibile approach was more workable than the specification of particular targets in statute. Moreover, the targets established by SBA shall be targets for business outside of the program that firms must attain and does not include those awards that firms receive after competitions restricted to the 8(a) program.

The conferees intend that the Administration establish a fair and equitable system of targets for competitive business which are reasonably achievable and consistent with the goal of long-term viability or program firms. The conferees elected not to establish fixed percentages in statute, as was proposed in the Senate bill, but it is contemplated that rules promulgated by the Administration shall establish definite targets which are reasonably achievable and which will help to ensure the viability of 8(a) firms upon completion of the program. The difficulty experienced by 8(a) firms in making the transition to a fully competitive business environment is amply demonstrated in both House and Senate reports on H.R. 1807 and S. 1993. The conferees intend that the targets established by rule should generally require firms in the fifth and sixth years to show 25% of revenues from sources other than 8(a) contracts, while in the seventh and eighth years such business revenues should move toward 50%. In the final year of participation, firms should strive to achieve at least three-fourths of their business revenues from sources other than 8(a) contracts so as to minimize economic hardship and dislocation upon graduation from the program.

For firms which fail to achieve the business targets, the Administration is authorized and directed to implement such remedial actions as may be appropriate, including reductions in sole-source contracting, to ensure that firms complete the program with optimum prospects for success in a competitive buisness environment. The Administration should consider a full range of options to encourage firms to achieve the competitive business targets. These might include conditioning the award of future sole-source contracts or business development assistance on the firm's taking specified steps, such as changes in marketing or financing strategies. In establishing this rule, the Administration shall solicit public comments, including comments from federal agencies, and small business trade associations, as well as affected firms.

For firms participating in the program on the date of enactment, the rules established under this section shall include appropriate provisions to ensure that those firms with more than five years of their terms remaining are required to meet the competitive targets, while those with less than five years of their terms remaining are not unduly penalized.

(b) Competitive thresholds

The House bill required competition among all responsible 8(a) firms if there was a reasonable expectation that at least two such concerns would submit offers at fair market prices and the proposed award would likely exceed $2 million (including options) for manufacturing, construction, services or retail, and $1 million (including options) in all other cases.

The Senate amendment contained a similar provision except that the threshold amount for all contracts was set at $5 million. The Senate amendment also provided the Associate Administrator for Minority Small Business and Capital Ownership Development with the discretion to approve an agency request to conduct a competition for a contracting opportunty below the $5 million threshold.

The conference substitute adopts a competitive threshold of $5 million, including options, for contracts under standard industrial classification codes for manufacturing and $3 million, including options, for all other contracts. The conferees also agree to the Senate provision allowing the Associate Administrator discretion to approve competitions below the thresholds. The conference agreement clarifies that this authority should be used primarily in areas where technical competitions are appropriate or when a large number of contractors exist, such as routine construction projects. The conferees intend that competitions on contracts below the threshold amounts will be used in limited instances.

Competitions in the program shall be conducted by the procuring agencies. The agencies in conjuction with SBA should develop an expedited and efficient procedure for notifying eligible program participants of contract oportunities that will be competed as well as an expedited review and evaluation process for selecting the successful firm. Competitions need not stress price as the dominant factor, but may be based primarily on technical evaluations or other nonprice related factors. The conferees intend that the competitions under this program be representative of competitions which are the normal practice in the relevant industries. The conferees also intend that SBA use information indicating weaknesses in a firm's ability to compete for contracts in the program as the basis for directing business assistance to the firm to help overcome its weaknesses.

The conferees further intend that contracts in the final stages of negotiation, as to effective date of this provision, should be excluded from the competition requirement. For these purposes such negotiations should only include those where SBA has accepted the requirement for the program and a proposal containing price has been submitted to the buying agency.

Competitions below the threshold should be approved for each solicitation. In determining whether to approve such a request, the Associate Administrator may consider among other factors the following: the contract is in an industrial classification for which program participants' competitive skills may be enhanced because competition is the normal process for making awards in the commercial and federal marketplace (for example, construction where sealed bidding is the usual method for selecting contractors); and, whether the requesting agency has made and will continue to make available a significant number of its contracts to the program on a non competitive basis. The conferees would urge the Associate Administrator to deny such a request on a contract opportunity previously offered on a noncompetitive basis if he concludes the request is based on the agency and the firm being unable to reach an agreement on fair market price.

(c) Contract matching

The House bill provided that if an 8(a) requirement is offered to SBA and the buying agency nominates an awardee, or if an 8(a) firm causes the requirement to be offered to SBA, that concern should generally receive that award if—(1) it is a responsible contractor; (2) the award would be in accord with the targets, objectives and goals of its approved business plan; and (3) the award would not exceed the amounts that would trigger a competitive 8(a) award. It also required SBA to equitably allocate contract requirements when there is no nominated 8(a) concern or when there is no concern that caused the buying agency to offer the requirement to SBA.

The Senate amendment authorized the head of each region of the MSB/COD program as the official to select the Program Participant for award of the "subcontract", i.e., the source selection official. The actual subcontract award would have been made by other Administration employees appropriately warranted to make contract awards. If the contracting opportunity was a "national buy", the source selection official would have been designated by the Administrator. The Senate amendment generally agreed that contracts should be awarded to the firm nominated by the procuring agency or the firm which induced the agency to offer the award. However, the Senate provision allowed SBA to override this preference based on considerations of equitable geographic distribution of contracts to regions which had received few awards.

The conferees agree to the Senate provision with an amendment clarifying that SBA shall award noncompetitive contracts to the firm identified by the procuring agency if the firm is responsible, and the award of the contract is consistent with its business plan and does not exceed the competitive business targets established under this act. The conferees also expect SBA to make sole source awards which will result in an equitable geographic distribution of contracts in the program.

(d) Contract selection appeals

The House bill provided additional authority for the Small Business Administration to appeal to the appropriate agency head a contracting officer's negative decision regarding the selection of a procurement for award under the 8(a) program and also provided that a contracting officer must include documentation in the contract file whenever the buying agency fails to successfully conclude negotiations with an 8(a) firm and when the agency refuses SBA's request that a particular contract be awarded under 8(a).

The Senate amendment contained a similar provision which codified the regulations specifying the timeframe for the Administrator to appeal an agency's decision not to offer a contracting opportunity for the 8(a) program. The amendment specified five days for SBA to file its appeal and 15 days for the agency to respond to the SBA appeal. During the pendancy of the agency's consideration of SBA's appeal, the procurement action on the contract is suspended.

The conferees agree to the Senate provision with an amendment which clarifies that the contracting officer's adverse decision which may be appealed includes the failure of the 8(a) firm and the contracting officer to agree to the terms and conditions of the proposed noncompetitive contract. The conferees further agree that suspension of the contract action should occur pending consideration of SBA's appeal unless the contracting officer states in writing that delaying the action will adversely affect public interests. The conferees also agree that if the Secretary or agency head denies SBA's appeal, the reasons for the denial or finding that the firm was incapable to perform should be made a part of the contract file.

(e) Fair market price

The House bill contained a provision requiring an 8(a) firm selected by SBA to negotiate for a sole-source contract to participate, when practicable, in contract negotiations. It also required that a "fair market price" for the award of an 8(a) contract be based on "reasonable costs under normal competitive conditions". The House bill set out a procedures or conditions to be followed by a procuring agency to establish a fair market price, authorized SBA to request and receive information and data used to establish the fair market estimate and created a statutory right for an 8(a) firm to receive a detailed written statement of the method used to establish the fair market price estimate. If the firm believed the methodology used violated the statutory guidelines, the concern can appeal to SBA who in turn may appeal to the head of the agency. Contract action is to be suspended unless the contracting officer determines that award must be made to protect the public interest.

The Senate amendment did not contain a similar provision.

The Senate recedes to the House with an amendment. The conferees agree generally with the House provisions except they do not agree that the 8(a) concern should be entitled to direct access to a written statement of the procuring agency's methodology used to establish its fair market price estimate. Instead the conferees agree that the Administration may request the agency's basis for its estimate and exercise its existing appeal rights regarding the procuring agency's estimate of the fair market price. Under no circumstances should the Administration disclose such confidential business information.

(f) Options and paperwork reduction

The House bill required the Administration and the appropriate Federal agency to make substantial and sustained efforts to negotiate prices on all unpriced options contained in 8(a) contracts within 60 days of the date of enactment of this Act. Federal agencies would be precluded from filling such requirements from other sources during the 60-day period with rare exception. The Administration is required to give appropriate notice to business concerns and government agencies affected by this provision.

The Senate amendment contained no similar provision.

The Senate recedes to the House with an additional amendment which directs the Administration to make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act and submitted to the Administration for approval. The conferees note that under current policy and practice, SBA delegates the administration of (a) contracts to the procuring agency. Under such circumstances the exercise of options, extensions or modifications of 8(a) contracts may not need specific SBA approval but may be decided by the procuring agency. Further, the conferees agree that the Administration is to make substantial and sustained efforts to reduce paperwork burdens on program participants.

(g) Standard Industrial Classification Code limitations

The House bill would amend Section 8(a)(7) of the Small Business Act to limit the Administration's authority to restrict a program participant from receiving contracts in Standard Industrialization Classification Codes that are logical progressions of its business and that are in areas where the firm has the potential for success.

The Senate amendment contained no similar provision.

The conference substitute contains the House provision.

(h) Non-manufacturer rule

The House bill would amend Section 8(a)(18) of the Small Business Act to permit a small business or a disadvantaged small business to furnish the product of a large business under a small business set-aside contract or an 8(a) contract, if the small firm is a regular dealer and there are no small business manufacturers of the product in the federal market, thus repealing the so-called "non-manufacturer" rule.

The Senate amendment had no similar provision.

The conference substitute contains the House provision.

SEC. 304. SUBCONTRACTING ASSISTANCE

The House bill provided that subcontracting plans required under section 8(d) of the Small Business Act include a provision providing for liquidated damages in the event that a prime contractor fails to make good faith efforts to comply with its plan.

The Senate amendment contained a similar provision. In addition to requiring inclusion of a clause providing for liquidated damages, it also required that the liquidated damages clause be developed through regulations, that the prime contractor be given an opportunity to demonstrate its good faith efforts to comply with the plan, and clarified the right to a hearing on the contracting officer's determination and the amount of liquidated damges.

The conference substitute contains the Senate language. The conferees stress that the subcontracting goals set in the subcontracting plan should be tailored to the individual contract and the amount of available subcontracting. The goals should not be set based on an agency-wide goal, neither should an agency accept goals which are substantially less than goals set out in prior plans submitted for contracts for similar requirements. The conferees intend that contracting agencies ensure that the prime contractor does not establish unrealistically low goals.

TITLE IV—IMPROVED MANAGEMENT AND PROGRAM INTEGRITY

SEC. 401. POLITICAL APPOINTEES

The conference agreement, in conformity with both the House bill and the Senate amendment, prohibits political appointments to the position of Associate Administrator for Minority Small Business and Capital Ownership Development by providing that the post shall be filled by a career civil servant in the competitve service or the Senior Executive Service.

SEC. 402. PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES

The House bill prohibited any SBA employee from buying, selling or receiving any ownership interest in an 8(a) firm, entering into any agreement to obtain any interest in an 8(a) firm, or receiving any benefit that is an incident of ownership in any 8(a) firm while employed by SBA or for two years thereafter. The penalty established could be for as much as treble the amount of gain that could have been realized from the prohibited action.

The Senate amendment contained similar prohibitions, but limited the prohibition to one year after employment, limited the prohibition to employees substantially involved in decisionmaking affecting 8(a) firms, did not apply the prohibition to publicly traded stock, and did not preclude obtaining such an interest through inheritance.

The conference agreement provides for the two-year limitation contained in the House bill and deletes the Senate exemption for publicly traded stock. Further, the conference agreement requires certain designated employees, including Regional Administrators, District Directors and contract specialists, to certify their compliance with this section in writing, and provides for civil penalties for any employee who violates these prohibitions, in addition to any other legal remedy or sanction.

SEC. 403. POLITICALLY MOTIVATED ACTIVITIES

The House bill prohibited any action to be taken or threatened by any SBA employee regarding the program that is based on political activity or affiliation. Further, it required any such activity to be reported to the Inspector General by any SBA employee whose participation was solicited, and provided that violation of this provision by the Administrator or the Deputy Administrator would result in mandatory separation from service.

The Senate amendment contained similar provisions, but deleted the special penalties for the Administrator or Deputy Administrator.

The conference substitute contains the Senate provision.

SEC. 404. REPORTS BY PROGRAM PARTICIPANTS

H.R. 1807 provided for quarterly reports from all Program Participants to the Associate Administrator for MSB/COD on the names and compensation paid to all persons, not employed by the firm, that assisted the firm in obtaining federal contracts. Further, the Associate Administrator must report any suspicious activity to the Inspector General, and also supply the House and Senate Committees on Small Business with the names of all firms failing to submit such reports within thirty days of their due date.

The Senate amendment provided for similar reports to be filed by program firms annually and deleted the provisions requiring reporting by the Associate Administrator to the Inspector General and to the Congressional committees.

The conference substitute requires semiannual reporting by Program Participants of fees paid to consultants, agents, attorneys and lobbyists in order to limit the potential for abuse as occurred in the Wedtech case. Reports which furnish a reasonable basis for suspicion of improper activity should be brought to the attention of the Inspector General. Further, willful failure to submit such a report may be grounds for initiation of a termination proceeding for the firm.

SEC. 405. FALSE REPRESENTATIONS

H.R. 1807 provided for increased criminal penalties for "front companies", i.e., a firm or individual who misrepresents his status in order to obtain participation in the 8(a) program. The House bill increased the penalties from not more than $50,000 and five years to not more than $500,000 and ten years.

The Senate amendment provided for an increased fine of not more than $100,000 and made such misrepresentations subject to the Program Fraud Civil Remedies Act of 1986, as well as suspension and debarment procedures of part 9.4 of the Federal Acquisition Regulations and ineligibility for participation in programs authorized by Sections 8(a), 8(d), 9 and 15 of the Small Business Act for as much as three years.

The conferees recommend that the Senate recede to the House with respect to criminal penalties and that the House recede to the Senate with respect to the civil sanctions. Further, the bar on participation in small business programs is broadened to include any program authorized by the Small Business Act of 1953 or the Small Business Investment Act of 1958.

SEC. 406. CONGRESSIONALLY REQUESTED INVESTIGATIONS

The House bill contained language allowing the House and Senate Committees on Small Business to request investigations to be performed by the Inspector General of the Administration, and requiring the Inspector General to respond to requests for such investigations within 15 days. Further, the Inspector General would be required to keep the Committee informed of the progress of investigations and furnish written reports at the conclusion.

The Senate amendment contained no similar provisions.

Out of deference to the Inspector General's independent status in law, the conference substitute provides simply that the Inspector General should respond to Committee requests for investigations, stating his intentions, within 30 days. The House provision for the Inspector General to keep the Committee posted on his progress is deleted.

SEC. 407. CONTRACT PERFORMANCE

The House bill required all 8(a) contracts, including options, to be performed by the concern that initially received the contract. If the disadvantaged owners upon whom eligibility was based relinquish or agree to relinquish ownership, the contract must be terminated for the convenience of the government. The Administrator, on a non-delegable basis, could approve the sale of a concern based on special circumstances relating to hardship to the disadvantaged owner and if failure to provide a waiver would threaten the public interest, or if it was necessary for the owners to temporarily transfer partial ownership in order to raise equity capital.

The Senate amendment contained a similar provision. It required that a Program Participant awarded an 8(a) contract shall complete the performance of the contract. To restrict the transfer of 8(a) contracts to firms outside the program the Senate amendment required that an 8(a) contract be terminated if the Program Participant transfers the contract to another firm during the initial year of performance, unless certain exceptions were met. No termination of the contract was required if the transfer took place during the performance of an option or a contract modification. Similar to the House provision, terminations would have been for the convenience of the government.

The conferees acknowledge that Program Participants and program graduates, especially, may have very legitimate needs to raise capital in order to expand and grow. Selling equity interest in the business may be necessary to attract additional capital or to hire talented personnel to make the firm more competitive. The conferees are concerned, however, that contract opportunities provided to develop small minority businesses not be transferred to firms outside of the program.

The conference substitute includes the language of the House provision with an amendment. The conferees agree that contracts transferred to other than Program Participants shall be terminated for the convenience of the government subject to certain exceptions. The SBA Administrator may waive this requirement if prior to the transfer any of following conditions exist: (1) it is necessary for the owners to temporarily relinquish control in order to raise equity capital; (2) the head of the procuring agency certifies that termination of the contract would impair the mission of the agency; (3) the contract is transfered to another qualified Program Participant; (4) the individuals upon whom 8(a) certification is based are no longer able to control the business because of death or illness; or (5) it is necessary for the disadvantaged owners to sell voting stock in order to raise capital so long as the firm has left the program, the qualified disadvantaged owners will retain the largest outstanding block of stock and will control and operate the business.

The conference substitute further clarifies the requirement that a firm performing an 8(a) contract shall notify the Administration immediately of any agreement to transfer ownership of the business. Finally, the conferees believe that SBA should not discourage investments in 8(a) firms by Minority Enterprise Small Business Investment Companies (MESBICs) or other institutional investment companies by treating options, warrants or other potential ownership interests as though they were exercised in determining the ownership and control of the firm. Thus, the conferees direct SBA to treat options or other future ownership interest held by section 301(d) investment companies in the same manner as such interests are treated for the disadvantaged owners.

SEC. 408. DATA COLLECTION

The House bill would amend Section 7(j)(17) of the Small Business Act to require the Administration to develop a systematic data collection process for the 8(a) program and report to Congress annually, beginning FY 1989, on a number of areas including:

(a) the average personal net worth of 8(a) business owners, and the breakdown of individual net worths by $50,000 increments;

(b) the costs and benefits accruing to the economy and the government as a result of the operations of 8(a) firms;

(c) a listing and evaluation of firms that have exited the program during the immediately preceding three fiscal years, including the number still operating, the number that failed and reasons for such failure and the number that sold out to nondisadvantaged owners;

(d) a listing of 8(a) participants by state and by region, race or ethnicity and gender of the owner; the dollar value of the 8(a) and non-8(a) contracts received, and a description and estimate of the value of all developmental assistance received;

(e) the total dollar value of 8(a) contracts and options awarded and the percentage of total sales that is comprised of 8(a) contracts for each firm in each year of program participation;

(f) a description of resources and program authorities required to service the 8(a) portfolio over the succeeding two years; and

(g) the total dollar value of contracts and options classified by four digit SIC Code.

The Senate amendment contained a similar provision but required a less specific system of reporting.

The conference substitute contains the House provision with minor technical and clarifying amendments.

SEC. 409 DUE PROCESS RIGHTS

The House bill provided for due process to be accorded to program firms by mandating an on-the-record hearing prior to termination, graduation or denial of waiver allowing transfer of ownership without terminating 8(a) contracts. It provided for SBA's actions to be subject to the "arbitrary and capricious" standard of review.

The Senate amendment entitled an applicant to the program to a hearing on the record after denial of certification or prior to termination. It further specified that such hearings should begin within 90 days of receipt of notice of intent to terminate.

The conference substitute provides for the Senate to recede with an amendment providing for a hearing on the record for a firm denied admission to the program. Further, such hearings are to be conducted in accordance with the Administrative Procedures Act, and the hearing officer to whom the grievance is assigned is specifically empowered to dismiss requests for hearings which do not allege facts or circumstances which, if true, would warrant reversal or modification of the agency action. The conferees intend that such proceedings be conducted promptly as well as fairly. Insofar as possible, hearings should be conducted and decisions rendered within 90 days from filing. The parties may, in all circumstances, choose to waive the right to a hearing on the record, and testimony may be submitted by sworn affidavit or deposition. Further, the administration's proposed action shall be sustained unless arbitrary, capricious or contrary to law.

SEC. 410. EMPLOYEE TRAINING AND EVALUATION

The House bill and Senate amendment contained similar provisions regarding the Business Opportunity Specialist (BOS) in terms of training requirements, duties, and assuring that a sufficient number of BOSs be assigned to each SBA field office to adequately service the business development needs of all program participants. The House bill further required the BOSs to facilitate and assist portfolio firms in contract negotiations and that BOSs be evaluated, in part, on the effectiveness of their assistance in the development of assigned firms. The Senate bill contained no similar provisions.

The conferees agree that the Administration shall assign an adequate number of Business Opportunity Specialists to each field office and recommend that each BOS be assigned no more than 20 portfolio firms, on average, and that personnel be hired and/or transferred to attain an equitable distribution or to maintain such ratio. Comprehensive and periodic training shall also be provided each BOS to sufficiently carry out the duties and responsibilities of Sections 7(j) and 8(a) of the Small Business Act. To the extent practicable, the performance appraisal of each BOS should reflect how well assigned portfolio firms are achieving competitiveness and other business development goals of the program.

The conferees further agree to authorize the Administrator to establish in three regions of the Administration a pilot program in which the BOS conducts or facilitates contract negotiations to assist portfolio firms in their receipt of 8(a) contracts as provided in the statute. Where necessary, the Administration shall provide training of BOSs to perform and qualify for such duties. Upon termination of the pilot program, the Administration shall submit to House and Senate Small Business Committees a report of its effectiveness with recommendations for administrative or legislative changes in the program.

TITLE V—CONTRACT PLANNING; GOAL SETTING AND REVIEWS

SEC. 501. PLANNING 8(a) CONTRACT ACTIVITY

The House bill contained a provision requiring the Associate Administrator for MSB/COD to submit annual estimates to each procuring agency participating in the program of the amounts of both sole-source and competitive 8(a) contracts needed to sustain the program.

The Senate amendment provided for each executive branch agency with procurement activity greater than $50 million to prepare annual forecasts of expected contracting opportunities for small business and those suitable for the 8(a) program. The forecast would, to the extent practicable, contain the dollar value of the contract opportunities, the anticipated time for the contract, and the procuring activity responsible for awarding the contract.

The conference substitute provides for each program participant to annually submit a capability statement to SBA indicating the firm's abilities to perform various types of government contracts. Such statements shall be used by SBA to match firms with appropriate contracting opportunities and to make procuring activities, which shall receive these statements from SBA, more aware of the capabilities of 8(a) firms.

The conference substitute also contains the forecasting provision for executive agencies contained in the Senate amendment, including the requirement that such forecasts be made available to both the Administrator and the director of the Office of Small and Disadvantaged Business Utilization for such agency, as well as to small business concerns.

SEC. 502. ANNUAL CONTRACTING GOALS

The Senate amendment contained language requiring the President to establish annual procurement goals of 20% for small business concerns for fiscal years 1989 through 1993; 25% for 1994 and beyond, and 5% for small disadvantaged business for fiscal years 1989 to 1997, and 10% for 1998 and beyond.

The House bill contained no similar provision.

The conference substitute requires the President to annually establish government-wide small business procurement goals and government-wide procurement goals for small businesses owned and controlled by socially and economically disadvantaged individuals. The goal for small business is established at not less than 20% of the value of all prime contracts, while the small disadvantaged business goal shall be not less than 5% of the value of all prime contracts. This action is consistent with the Department of Defense 5% goal for small disadvantaged businesses and broadens that goal to government-wide procurement activity. Further, each procuring agency is required to establish a similar goal consistent with its mission, and such goals shall not be less than the government-wide goal established by the President.

SEC. 503. PRESIDENTIAL REPORT ON CONTRACTING GOALS

The Senate amendment to H.R. 1807 requires SBA to compile and analyze annual reports from procuring agencies as to their success in attaining government-wide goals for small and small disadvantaged business.

The House bill contained no similar provision.

The conference substitute included the Senate provision, but broadens the report to include the dollar value of subcontracts awarded to small business and small disadvantaged business, as well as the dollar value of prime contracts and subcontracts awarded to women-owned businesses. Further, the President is required to include the SBA analysis in his annual report to Congress on the state of small business.

SEC. 504. GENERAL ACCOUNTING OFFICE REPORT

The House bill provided for an annual report by the General Accounting Office on operation of the 8(a) and 7(j) programs.

The Senate amendment contained no similar provision.

The conference substitute provides for a one-time, comprehensive review of both the management assistance provided under Section 7(j) and contract assistance provided under Section 8(a). This review is to be commenced within 180 days of enactment and concluded by September 30, 1991, with a report to be filed with both House and Senate Small Business Committees not later than February 1, 1992.

The Comptroller General is directed to review, *inter alia*, a detailed list of problems which the hearing records of both Committees show to have plagued the program historically, as well as a number of issues which are raised by provisions in this Act.

SEC. 505. COMMISSION ON MINORITY BUSINESS DEVELOPMENT

The Senate amendment provided for the SBA Administrator to appoint an interagency task force which would study the issue of whether a firm's term in the program might more appropriately be set on the basis of the firm's Standard Industrial Classification Code and, thus varied from one industry to the next based on the development cycles of the various industries. The task force was to submit a report with legislative recommendations not later than April 15, 1990.

The Senate amendment also contained a provision, which was offered by the Chairman as a floor amendment, making Congressional findings to the effect that 8(a) contract awards have been heavily skewed toward a few states with the majority of states receiving relatively few contracts, particularly when measured in dollar value. The amendment directed SBA to study the geographic distribution of 8(a) contracts for fiscal years 1983 through 1987 and to submit a report, within one year, with recommendations for changes in law to effect a more equitable distribution of contracts to states having significant minority business populations.

The House bill did not contain language relative to either of these studies, but did require SBA to make sustained efforts to solicit applications for certification from businesses located in areas of high unemployment or labor surplus areas.

Further, the House bill contained a requirement for a review by the General Accounting Office of the implementation of competitive thresholds for 8(a) contacting and providing that threshold would be repealed if the Comptroller General finds that they have had an adverse impact on the program and Congress enacts a joint resolution to that effect.

The Senate amendment contained no language relative to the study by GAO of competitive thresholds.

In lieu of all of the above provisions, the conference substitute provides for the establishment of a Commission on Minority Business Development with a broad mandate to study the efficacy of all federal programs intended to promote minority business development. The Commission is directed to review the overall effectiveness of the SBA Minority Small Business and Capital Ownership Development program as authorized by sections 7(j) and 8(a) of the Small Business Act. The Commission will examine issues related to program admissions and the distribution of entrants by geography and industrial classification. The study should examine whether the range of firms entering the program is well suited to government procurement needs, whether SBA or other agencies could take steps to broaden the base of 8(a) contractors, and whether the range of firms entering the program is compatible with opportunities for commercial success after graduation.

The Commission is directed to study the quality of management assistance which has been provided to program firms and whether this assistance has been equitably distributed among program firms. Further, the Commission should determine whether various states and regions have benefitted from the program in proportion to their numbers of minority-owned firms and, if not, what steps might be taken to increase the numbers of minority government contractors, both in this program and otherwise, in areas of the country where minority business development has lagged.

The Commission's study should assess the methods used to improve the competitive skills of program firms and determine whether better approaches are available, such as federal programs including Small Business Development Centers or the Minority Business Development Agency, or through the private sector. The Commission should examine the effectiveness of these programs in meeting the needs of disadvantaged businesses.

The Commission should study the issue of appropriate program terms for the 8(a) program and make recommendations if it determines that a fair and manageable system could be established whereby SBA might vary the program term of participants based on the developmental needs of various industries or other factors. In so doing, the Commission should examine problems attendant to the previous administrative system of Fixed Programs Participation Terms, which was repealed by this Act, and whether safeguards could be developed which would prevent arbitrary treatment of firms.

The Commission will examine the Administration's data collection system for this program and determine whether it is adequate for effective management and control.

The substitute amendment directs the Commission to carefully examine various approaches which might be used to increase minority business participation in federal procurement, including the use of set-asides or limited competitions, price differentials, aggressive outreach programs and any other techniques the Commission deems worthy of examination. In so doing, the Commission shall determine whether present policies and safeguards are adequate to ensure that the benefits of such programs flow to those who are truly socially and economically disadvantaged, and whether such programs have a substantial adverse impact on non-disadvantaged small government contractors.

In all circumstances, the Commission shall liberally construe its mandate to make recommendations to Congress for policy changes which will further the development of minority-owned business across the Nation.

The substitute amendment requires the Commission to issue an interim report not later than December 31, 1990, with recommendations for any immediate changes in law or regulation necessary to protect the legitimate interests of program participants, with a final report containing detailed findings and recommendations on the full range of issues within one year of the interim report.

The Commission is to be composed of 14 members, including the Administrator or his designee, the Under Secretary of Defense for Acquisition, and the Secretary or Deputy Secretary of the Departments of Commerce and Transportation, with the remaining members representing business trade associations, business and educational institutions. Appointments to the Commission shall be made by the President, with no more than half of the appointed members being of the same political party. Commissioners shall be reimbursed for expenses, but shall serve without pay. The Chairman is authorized to appoint an executive director and four other staff.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

SEC. 601. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS

The House bill would amend Section 15(m) of the Small Business Act to require the Department of Defense to establish policies and procedures to insure against reductions in small business set-asides and 8(a) contracts when implementing Section 1207. Procurement center representatives would also be required to monitor compliance with this provision, report non-compliance, and work toward increasing the percentages and dollar value of contracts for each program.

Under the House provision, a firm participating in the Section 1207 program would be permitted to exceed its size standard by up to 25 percent for an award under the program.

The Senate amendment contained a similar provision except it would not allow small disadvantaged businesses participating in the Section 1207 program to exceed SBA size standards otherwise applicable to small business.

The conference substitute contains the Senate provision. The conferees intend that implementation of Section 1207 not adversely affect long-standing programs such as Section 8(a) or Section 15 small business set-asides. The provision for a 125% waiver of the size standard, however, was deleted in favor of other provisons of this Act allowing an extension of time in the 8(a) program for current participants.

SEC. 602. INDIAN TRIBE EXEMPTION

The House bill contained a provision exempting concerns owned by socially and economically disadvantaged Indian tribes from the requirement that contracts above a certain dollar value be solicited through competition among 8(a) firms.

The Senate amendment did not provide the exemption of tribally owned businesses from program competition, but contained a provision repealing the so-called "once in a lifetime" rule with respect to tribally owned business. Thus, an Indian tribe might operate more than one 8(a) concern so long as it is not in the same industry and the individuals controlling the firms do not manage more than two such concerns.

The conference substitute provides for the Senate to recede to the House with respect to the exemption of tribally owned businesses from the requirement for competition among 8(a) firms. The House recedes to the Senate with respect to repeal of the "once in a lifetime" rule.

Further, the conference agreement authorizes 8(a) contracts to be awarded to joint ventures between qualified tribally owned businesses and large businesses. The conferees, while going to great lengths to improve economic opportunities for Native Americans who continue to suffer extraordinarily high unemployment and poverty levels, remain concerned that sole-source contracting not be used for the benefit of non-disadvantaged business. Thus, the substitute contains tight controls on such joint ventures designed to ensure that the benefits of such contracts flow primarily to members of Indian tribes residing on reservations.

SEC. 603. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION (SADBU)

The House bill would amend Section 15(k) of the Small Business Act to allow the Small and Disadvantaged Business Utilization officers to make recommendations to contracting officers regarding whether a contract should be awarded as a small business set-aside, an 8(a) contract, or a Section 1207 award. Failure of the contracting officer to follow the recommendation must be documented. All SADBU's are to report to the head of the agency or to the deputy of such agency head.

The Senate amendment contained no similar provision.

The Senate recedes to the House with an amendment requiring the Department of Defense Small and Disadvantaged Business Utilization officer to report directly to the Secretary of Defense or the designee of the Secretary.

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Part A—Short Title and Findings

SEC. 701. SHORT TITLE

The Senate Amendment contained a provision establishing the citation of Title VII as the "Small Business Competitiveness Demonstration Program Act of 1988".

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision.

SEC. 702. FINDINGS

The Senate Amendment contained a provision enunciating a series of Congressional findings relating to the participation of small business concerns in the Federal procurement process. It recognized that small business concerns have repeatedly demonstrated their ability to provide through effective contract performance, a broad range of the products and services (including research, development, technical and professional services, and construction) required by all agencies of Government. The central Congressional finding is that traditional agency efforts to assure small business participation in a fair proportion of Federal procurements, as required by the Small Business Act, have resulted in a concentration of contract awards in a limited number of industry categories, naturally dominated by small business concerns, through the use of set-asides. While this has helped assure attainment of the agency's overall small business contracting goals, it also resulted in inadequate efforts to expand small business participation in agency procurements which have historically demonstrated low rates of small business participation, but for which there is substantial potential for expended small business participation.

The House did not contain a similar provision.

The Conference Substitute includes the Senate provision.

Part B—Demonstration Program

SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

The Senate Amendment contained a provision establishing a Small Business Competitiveness Demonstration Program (hereafter referred to as "the Program"), to be conducted under the direction of the Administrator for Federal Procurement Policy under his authority to test innovative procurement methods and procedures. The Administrator of the Small Business Administration is made responsible for the actual conduct of the test.

The provision specifies the purposes of the Program, which are to determine: (1) how well small business concerns do in unrestricted competitions for contracting opportunities in industry categories in which a full range of small firms predominate; (2) whether targeted goaling techniques, intensely managed by the procuring agencies under close SBA supervision, can expand small business participation in contracting opportunities for products or services in which small business participation has been historically low, despite the presence of substantial numbers of small firms in the general economy; and (3) whether the expanded use of full and open competition will adversely affect small business participation in designated industry categories. The program will be conducted over a four-year period, beginning on January 1, 1989, and ending on December 31, 1992. The Program is a pilot test program only applicable to the following three designated industry groups (as defined in Section 717): construction (excluding dredging); refuse systems and related services; and architectural and engineering services (including surveying and mapping).

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision, adding one additional designated industry group, namely, non-nuclear ship repair.

SEC. 712. ENHANCED SMALL BUSINESS PARTICIPATION GOALS

The Senate Amendment contained a provision requiring each participating agency, as defined in a subsequent provision, to establish a special small business participation goal to be applied to its contracting activity falling within the three designated industry groups. The special goal prescribed in the provision was 30%, which represents twice the percentage of small business participation in Fiscal Year 1987, for all Federal contracts with an award value of $25,000 or more (that is, above the "small purchase" threshold).

The participating agencies would be required to review the attainment of the goals every six months during the term of the test program. The first review is to be based upon the data for the period January 1 through March 31, 1989, and is to be completed by June 30, 1989. Subsequent reviews were to be made on the basis of the aggregate contract award data for the four quarters preceding the date of the review, except that the review to be completed by December 31, 1989, was to be based on the three quarters of available data (January 1 through September 30, 1989). The provision also specifies that the agencies participating in the test Program would count all of their contract awards of $25,000 or more made to any small business concern (including disadvantaged small business concerns) in determining whether the special goals established for the three designated industry groups had been met.

The Senate provision made available the remedial tool of small business set-asides if the small business participation rate was found to be less than 30% (based on four quarters of contract award data under the test) or 25% (if only partial data under the test is available). The Senate provision also specified when the participating agencies were to make the changes to their contracting practices.

Subsection (c) of the Senate provision required the participating agencies to implement a concurrent program to expand small business participation in their procurements for selected products and services from six industry categories which have historically low rates of small business participation. The products or services to be included in the small business participation expansion program called for in this subsection are to be subject to special goals and intensive management efforts. The targeted procurement opportunities are to be selected by the participating agencies in close coordination with the SBA.

The House bill had no similar provision.

The House recedes with an amendment.

The conferees modified the Senate provision to provide additional protections to small business government contractors during the term of the Program. Special attention is given to emerging small business concerns. An emerging small business concern is defined in a subsequent provision of the Conference substitute as a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a particular contracting opportunity.

Enhanced small business goals and special attention to emerging small business concerns

First, the special small business participation goal was increased from 30 percent to 40 percent. Next, the participating agencies were directed to make a good faith effort, while seeking to attain their 40 percent goal for small business concerns, to assure that emerging small business concerns are awarded not less than 15 percent of the dollar value of contract awards for each of the designated industry groups. The conferees note that, unlike the 40 percent goal for small business concerns generally, this goal-within-a-goal for emerging small business concerns is not tied to a requirement for the imposition of any specific remedial actions by the participating agencies if the 15 percent goal is not attained.

To provide still additional protection to emerging small business concerns during the term of the Program, all contracting opportunities in the designated industry categories with an award value of $25,000 or less, so-called "small purchases", are reserved for exclusive competition among emerging small business concerns. The dollar value of the threshold for this reserve is to be increased above $25,000 by the Administrator of the Office of Federal Procurement Policy (OFPP), if emerging small business concerns are not winning 15 percent of the total dollar value of the contracting opportunities in a designated industry category. The increased threshold should be set at a level at which there is a reasonable expectation that the goal will subsequently be met. The conferees note that unlike the small business small purchase reserve established under Section 15(j) of the Small Business Act, this reserve is not conditioned on the use of "small purchase techniques" by the buying activity; any competitive source selection method may be used. The Conference Substitute also includes another provision intended to make clear that modifications or follow-on awards to a contract having an initial award value in excess of $25,000 (or any higher threshold mandated by the OFPP Administrator) are not subject to being reserved for emerging small business concerns notwithstanding that their dollar value may be within the threshold. The reserve applies only to new awards within the threshold. This is the current practice with regard to small business reserve under Section 15(j).

In urging the participating agencies to achieve the 15 percent goal for awards to emerging small business concerns, the conferees do not intend to alter the Department of Defense's program for the use of multi-year fixed-price indefinite quantity contracts for the acquisition of construction services, including repair and alteration. This program is known as Job Order Contracting in the Army and SABER (Simplified Acquisition of Base Engineering Requirements) in the Air Force. Such contracts should continue to be subject to full and open competition. However, due to the nature of the contract opportunities included in this program, any business concern, other than a small business concern which is awarded a contract under that program, should be required to subcontract no less than 20 percent of its contract efforts to small businesses.

Monitoring agency performance

The Conference Substitute requires each participating agency to review its attainment of the goals for each designated industry group on a quarterly basis rather than semi-annually. The first review is to be based upon the data for the period January 1, 1989, through March 31, 1989, and is to be completed by June 30, 1989. Thereafter, each quarterly review is to be made on the basis of the aggregate contract award data for the four fiscal quarters preceding the date of the review, except that the review to be completed by December 31, 1989, will only be based on the three fiscal quarters of available data since the beginning of the Program on January 1 through September 30, 1989. The Conference Substitute also specifies that the participating agencies will count all of their contract awards made to any small business concern (including disadvantaged small business concerns) in determining whether the special goals established for the three designated industry groups are being met.

The Conference Substitute specifies that changes in contracting practices, that is, the use of set-asides to the extent needed to attain the specified goals, will be made at the beginning of the next fiscal year quarter after the completion of a review calling for an adjustment. The conferees recognize that this affords less time to the participating agencies to provide direction to their contracting activities regarding the actions to be taken, but the more timely availability of needed remedial measures was considered essential for the protection of small business concerns.

Targeting industry categories with limited small business participation

The Conference Substitute expands upon the provision in the Senate bill designed to increase small business participation in industry categories which have historically enjoyed low rates of small business participation. The number of industry categories to be targeted have been expanded from six to ten. Criteria for selecting the industry categories have been included along with guidance relating to the intensive management efforts and goaling to be employed by the participating agencies.

SEC. 713. PROCUREMENT PROCEDURES

The Senate Amendment contained a provision requiring the agencies participating in the Small Business Competitiveness Demonstration Program to offer contracting opportunities (above the $25,000 small purchase threshold) in the designated industry groups on an unrestricted basis so long as small business participation does not fall below the specified goal. Essentially, the remedial tool of small business set-asides was not to be routinely used unless needed to maintain the 30% small business participation rate. If the goal was not being met within the SIC codes which comprise the designated industry groups, the participating agencies were authorized to institute set-asides under the authority of Section 15(a) of the Small Business Act with respect to procurements only for the services which comprise the designated industry groups that have failed to attain their small business participation goal. The set-asides would be used, to the extent deemed necessary by the participating agency, until the small business participation goal was once again being attained. The provision specifically preserved unchanged the various authorities to set-aside contracting opportunities to assist disadvantaged small business concerns, including Section 8(a) of the Small Business Act and Section 2107 of Public Law 99-661, the "National Defense Authorization Act for Fiscal Year 1987."

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision with certain conforming changes.

The conferees note that the Program contemplates that solicitation issued on or after January 1, 1989 for contracting opportunities within the designated industry groups will be solicited on an unrestricted basis, with the exception of those opportunities reserved for emerging small business concerns, that is, those with an estimated threshold ($25,000), or such higher threshold establishment by the Administrator for Federal Procurement Policy pursuant to Section 812(b).

SEC. 714. REPORTING

The Senate Amendment contains a provision (Sec. 714) requiring the OFPP Administrator to devise and implement a simplified system to test the collection, reporting, and monitoring of data about awards of subcontractors to small business concerns and disadvantaged small business concerns. The provision outlines the scope of the reporting system to be devised and tested.

The House bill did not contain a similar provision.

The House recedes with an amendment.

The confereees modified the provision by adding data collection requirements relating to procurements below the small purchase threshold ($25,000) and the actual size of a small business concern. In addition, the subcontract data collection test was modified to provide additional latitude to OFPP in formulating and conducting the test and to reflect some recommendations made by conferees representing the Committee on Government Operations.

The conferees deleted the Senate provision specifying the scope of the reporting system (Sec. 714(b)). The OFPP Administrator was accorded greater latitute in formulating the test proposal in recognition of the potential paperwork burdens on the vendor community and the procuring agencies. Nonetheless, the conferees expect the test proposal, even if limited to only a small number of buying activities or products and services to effectively capture the full range of participation by small business concerns and disadvantaged small business concerns at all tiers. It should be noted that the Conference Substitute provides statutory authorization to encompass products and services other than those furnished by firms in the designated industry categories in the subcontract reporting test program. In response to the suggestions of the representatives of the Committee on Government Operations, the conferees direct that the test program collect data on the full range of entities eligible for participation in the so-called Section 1207 Program and consider direct reporting to participating agencies by the subcontractors at all tiers. As the official with Government-wide responsibility for the Federal Procurement Data System, it is expected that the OFPP Administrator will issue the appropriate directives and test implementation guidance to the various procuring agencies participating in the subcontract reporting test program.

The conferees note that OFPP may need additional time to formulate the testing of expanded subcontractor data collection and coordinate its implementation with the various participating agencies. To provide such necessary planning and coordination time, the subcontract reporting test program may be scheduled to commence with the beginning of Fiscal Year 1990.0

SEC. 715. TEST PLAN AND POLICY DIRECTION

The Senate Amendment contains a provision authorizing the OFPP Administrator to issue a test plan to prescribe additional detail concerning the conduct of the various tests and activities authorized by the "Small Business Competitiveness Demonstration Program Act of 1988." It is expected that the OFPP Administrator would coordinate any proposed test plan with the Administrator of the Small Business Administration and as appropriate with the Departmental secretaries or heads of the participating agencies. An opportunity for public comment on the proposed test plan was also contemplated.

The House bill did not contain a similar provision.

The House recedes with an amendment.

The Conference Substitute incorporates the Senate provision and adds an additional subsection regarding the OFPP Administrator's responsibility to issue a policy directive to ensure consistent government-wide implementation of all elements of the "Small Business Competitiveness Demonstration Program Act of 1988" through the Federal Acquisition Regulation.

The conferees note that the Administrator for Federal Procurement Policy will have less than three months to formulate the necessary test plan and policy directive, and effect appropriate coordination with the participating agencies and the vendor community.

SEC. 716. REPORT TO CONGRESS

The Senate Amendment contains a provision requiring submission of a report to the Senate and House Committees on Small Business, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations. The report is to include: (a) the results of the Small Business Competitiveness Demonstration Program; (b) the results of the intensive goaling and management program conducted to expand small business participation in procurements for products or services which historically displayed low small business participation; and (c) recommendations, if appropriate, for changes in legislation or modifications to procurement regulations.

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision.

SEC. 717. DESIGNATED INDUSTRY GROUPS

This section specifies the following industry groups are designated for participation in the Program: construction (excluding dredging); refuse systems and related services; and architectural and engineering services (including surveying and mapping). The provision goes on to specify the standard industrial classification (SIC) codes included in each of the designated industry groups. The requirements of the Program, including monitoring of contract awards, measuring attainment of small business participation goals, and modifications to contract solicitation practices to attain such goals, shall be undertaken on the basis of these individual SIC codes. The provision permits the Program to be conducted using existing product and services code data in the Federal Procurement Data System (FPDS), in the event that SIC code data on contract awards is not available from the FPDS by the Program start date.

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision, with the addition of "nonnuclear ship repair" as the fourth designated industry group for participation in the Program.

The conferees note that in seeking to achieve the overall small business participation rate of 40 percent and the 15 percent participation rate for emerging small business concerns in the designated industry categories consistent efforts shall be made to achieve these goals evenly across all of the standard industrial classification (SIC) codes that comprise a designated industry group. Firms within individual SIC codes should not be disproportionately burdened. The Administrator for Federal Procurement Policy should closely monitor any implementational problems flowing from Program management on the basis of individual SIC code data.

SEC. 718. DEFINITIONS

The Senate Amendment contained a provision establishing a series of definitions applicable to the "Small Business Competitiveness Demonstration Program Act of 1988", including "designated industry groups", "participating agency", "small business participation", and "standard industrial classification code".

The House bill did not contain a similar provision.

The House recedes with an amendment.

The Conference Substitute adds a definition of "emerging small business concern" and modifies the definition of "participating agency".

The Small Business Competitiveness Demonstration Program has been modified to provide special attention and special protections to emerging small business concerns. The Conference Substitute consequently includes a definition of an "emerging small business concern" as a small business concern whose size standard is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code (SIC) assigned to a particular contracting opportunity.

Refuse systems and related services

The conference agreement provides that the industry group designated "Refuge systems and related services" shall include certain contract awards assigned to SIC Codes 4212 and 4953. The conferees intend the Demonstration Program to test small firms' competitiveness generally in government procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse and waste materials that do not require the operation of the disposal facility by the contractor, and for the transportation only of refuse or waste material. Examples of the type of contracts to be included in the demonstration program are the regular collection and disposal at a publicly or privately operated landfill of residential and nonhazardous commercial solid waste material, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities and operations and garbage processing and recycling activities. Examples of the type of contract activities not intended to be included in the Demonstration Program are contracts for the operation of dumps, landfills, sludge disposal sites, sea disposal operations, incinerators, the collection and disposal of acid, radioactive, or other hazardous waste materials. For this latter class of contract opportunities, the participating agencies are encouraged to promote joint ventures, teaming agreements and other similar arrangements to permit small business concerns to compete effectively for such contract opportunities for which such concerns by themselves would lack the requisite capacity or capability to establish responsibility for award of the contract.

Participating agency

The conferees also modified the definition of "participating agency", potentially extending the reach of the Small Business Competitiveness Demonstration Program to a Government-wide basis. The Conference Substitute defines "participating agency" as an "executive agency", as defined by Section 4(1) of the Office of Federal Procurement Policy Act, in recognition of the general principle that procurement regulations, policies, and procedures should have government-wide application. However, recognizing that the Demonstration Program is merely a test program being conducted under the authority of Section 15(a) of the Office of Federal Procurement Policy Act, the conferees maintained the OFPP Administrator's authority to designate a more limited list of participating agencies, but specified the inclusion of the major procuring agencies. This core list is centered on the "big eight" agencies, whose procurement activities account for nearly 97 percent of the contract dollars expended by the Federal Government. Additional Departments and agencies were included on the basis that their procurement activities provide a substantial number of contracting opportunities for firms in the designated industry groups.

The conferees do not intend to alter the objective of the Senate Amendment which seeks to assure clear visibility of the contracting activities by components of certain departments and agencies, which are subject to the Demonstration Program. For example, the Demonstration Program's data collection, review and presentation procedures should provide clear visibility of the contract award activities of the Military Services and the Defense Agencies. Similarly, these data management activities should provide visibility regarding the procurement activities of the various commands responsible for procuring services provided by firms in the designated industry groups. For example, separate presentation of the contract award activities of the Naval Facilities Engineering Command, Army Corps of Engineers (for both military and civil works), and their Air Force counterpart should be possible.

Part C—Program Relating to Specific Industries

SEC. 721. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES

Clothing and textiles

The conferees agreed to an alternative program for clothing and textiles due to the unique nature of the procurement process for such items in the Department of Defense. In the other test program industries, purchases are made by various agency procuring activities. With respect the DOD purchases of clothing and textiles, virtually all purchases are made by the Defense Logistics Agency (DLA). Thus, it is possible to set up an alternative test program through a limitation on the percentage of contract awards by dollar value. As with the remainder of the test program, the purpose is to ensure that a certain portion of the annual purchases are available for competition not limited to businesses of a certain size. Due to the large number of Standard Industrial Classification (SIC) codes, it was deemed appropriate to allow DLA to group related SIC codes together for purposes of determining whether the criteria of this section are met. These groupings should reflect the nature of the clothing and textile industry.

SEC. 722. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING

The Senate Amendment included dredging in the Small Business Competitiveness Demonstration Program.

The House bill had no similar provision.

The Conference Substitute eliminates dredging from the Demonstration Program and establishes a separate program to expand small business participation in the Federal market for dredging services.

Specifically, the Conference Substitute includes a separate provision which establishes a 20% participation goal for small business for fiscal year 1989, with increasing small business participation goals in fiscal years 1990 and 1991. Further, the Administrator of the Office of Federal Procurement Policy is directed to immediately set a new reserve threshold for emerging small business concerns, as defined in section 718(b), to ensure their participation rate is not less than 5 percent of the federal contract market for dredging, with increasing participation goals for emerging small business concerns in fiscal years 1990 through 1991.

The conferees are concerned that the small business share of contract awards for dredging was only 10.2 percent of the total during fiscal year 1987, a substantial decrease from previous years. The Conference Substitute contemplates a concerted and sustained effort by the Department of the Army to increase small business participation in this procurement market, with respect to both so-called "maintenance dredging" and "new start construction dredging". Data should be collected regarding participation in each of these categories of dredging work. Particular efforts should be made to increase the participation of emerging small business concerns and disadvantaged small business concerns within the dredging industry through the award of prime contracts and subcontracts.

The success of the program to expand small business participation in Federal contracting opportunities for dredging is to be measured against a series of ambitious goals for participation by small business concerns and emerging small business concerns. For the first year of the program, a 20 percent overall small business participation goal is established, with a 5 percent reserve for emerging small business concerns. In the second year of the program, fiscal year 1990, the overall goal for small business concerns is increased to 25 percent, while the reserve for emerging small business concerns is increased to 7.5 percent. In fiscal years 1991 and 1992, the overall small business participation goal is set at 30 percent and the reserve for competition among emerging small business concerns is increased to 10 percent. Subcontract awards for services that are within the standard industrial classification code for dredging may be counted towards achieving the goals for participation by small business concerns and emerging small business concerns.

The conferees wish to make special note that the program for the expansion of small business participation in the contracting opportunities for dredging established by this section does not impair existing statutory authorities to restrict contracting opportunities to disadvantaged small business concerns under the so-called Section 1207 Program within the Department of Defense or any awards made pursuant to Section 8(a) of the Small Business Act. Since the firms eligible for these programs can be classified as small business concerns or emerging small business concerns, awards under the Section 1207 Program or under the authority of Section 8(a) may be counted towards attainment of the special goals prescribed by this section.

The conferees intend that the OFPP Administrator, upon the recommendation of the Secretary, will immediately calculate a dollar threshold for reserving contracting opportunities for exclusive competition among emerging small business concerns, such that the aggregate award of contracts at or below the threshold can reasonably be expected to result in the attainment of the specified participation goals for such firms, and to reserve such opportunities for competition among such firms. This reserve threshold is to be reviewed semiannually. The conferees fully intend that in all other respects requirements for the solicitation and standards for the award of contracts under restricted competition shall apply in conformity with existing law and implementing procurement regulations.

In addition to the use of the reserve and competitions restricted to all eligible small business concerns, the provision urges the Secretary to make use of other available acquisition techniques which will facilitate the participation of small business concerns and emerging small business concerns in unrestricted competitions. In particular, the conferees note the potential of teaming arrangements and joint venturing to make small firms more competitive for large requirements. The importance of maximizing subcontracting opportunities is also emphasized.

The conferees note that the size standard for dredging was recently increased from $9.5 million in average annual revenues to $13.5 million. This section provides that this change will remain in place for not less than two years in order to determine the effectiveness of the change. At the conclusion of that period, this size standard is to be reviewed by the Administration if the Department has been unable to attain its goals under the existing size standard.

The Conference Substitute directs the Secretary to report, within 30 days of the end of each fiscal year, to the Committees on Small Business of the House of Representatives and the Senate and to the Administrator of the Small Business Administration, on the Army's progress in attainment of the goals and reserves contained in this section. This report shall contain the Secretary's views and recommendations with respect to the program, including any needed regulatory or statutory changes. These recommendations should include the Secretary's views as to the Department's ability to attain its specified goals under the existing size standard, and whether the participation goals or the size standard should be adjusted. A final report shall be submitted not later than 120 days after September 30, 1992.

Part D—Amendments to the Small Business Act

SEC. 731. TECHNICAL AMENDMENT

The Senate Amendment contained a provision amending Section 15(g) of the Small Business Act relating to establishing annual goals for participation by small business concerns and disadvantaged small business concerns. Under this proposed Small Business Act amendment, procuring agencies would not include "small purchase" awards (procurements of $25,000 or less). Under Section 15(j) of the Act, small purchases are reserved for exclusive competition among small business concerns. The provision modifies an amendment made to Section 15(g) of the Small Business Act by Section 921(d) of the FY 1987 DOD Authorization Act.

The House bill did not contain a similar provision.

The Senate recedes with an amendment.

The conferees note that prior to October 1, 1988, the Federal Procurement Data System did not provide accurate reporting of small purchase contract awards to small businesses and small disadvantaged businesses below the "small purchase" threshold (presently $25,000). The summary data report regarding such contract awards did not differentiate between actual "small purchase" awards and modifications (valued at $25,000 or less) to existing contracts with an award value in excess of $25,000. For example, a $23,000 modification to a $2.5 million contract was previously reported as a "small purchase" action. Changes to the reporting requirements for actions under $25,000, which went into effect on October 1, 1988, will permit the differentiation of "small purchase" awards and modification to existing contracts that happen to have be valued at less than $25,000. The Conference Substitute delays the application of the Small Business Act's goaling requirements under Section 15(g) to small purchase until October 1, 1991 to provide adequate time for the collection of sufficient historical data to permit meaningful goaling regarding small purchase contracting opportunities.

The conferees recommend that the Administrator for Federal Procurement Policy carefully consider modifying the Federal Procurement Data System reporting requirements to provide for the submission of an report of a modification valued at less than $25,000 on an individual transaction basis (using Standard Form 279) rather than a summary basis (using Standard Form 281), if the modification is to a contract with an award value in excess of $25,000. Such a reporting change would enhance the clarity of the data being presented to the Congress through the Federal Procurement Data System and provide greater visibility on the frequency of contract modifications.

SEC. 732. REPEALER

The Senate Amendment contained a provision repealing the amendments made to Section 3(a) of the Small Business Act by Subsections 921(f) and 921(h) of the FY 1987 DOD Authorization Act, which would require drastic reductions in size standards for certain small business concerns. The Senate provision also preserves for the duration of the Small Business Competitiveness Demonstration Program the size standards for the Program's designated industry groups (except that pertaining to dredging), in effect on September 30, 1988.

The House bill did not contain a similar provision.

The House recedes with an amendment.

The Conference Substitute deletes the exclusion of the size standard applicable to Standard Industrial Classification Code 1629 (Dredging and Surface Cleanup Activities). The exclusion was included to permit the conclusion of a rulemaking by SBA increasing the size standard from $9.5 million to $13.5 million. The revised size standard was published as a final rule in August 1988.

Part E—Other Amendments

SEC. 741. SEGMENTATION OF INDUSTRY CATEGORY

The Conference Substitute contains a provision which directs that the standard industrial classification code for shipbuilding and shop repair be segmented into: nuclear shipbuilding and repair; non-nuclear shipbuilding; and non-nuclear ship repair. Nonnuclear ship repair is to be further segmented to facilities located on the East Coast and facilities located on the West Coast of the United States.

SEC. 742. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES

The Senate Amendment contained a provision clarifying the definition of "architectural and engineering services". It seeks to recognize the realities of current professional practices and offers a more precise definition that will avoid confusion among the Federal agencies in determining when to acquire these professional services in accordance with the requirements of Title IX (Public Buildings—Selection of Architect-Engineers) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

The House bill did not contain a similar provision.

The Conference Substitute includes the Senate provision.

The Conferees agree that the definition does not impair an agency's discretion to decide whether construction manager services should be performed by an architect-engineer firm or a construction contractor. If any agency determines the work to a substantial or dominant extent involves architectural-engineering services then the selection procedures prescribed by Title IX of the Federal Property and Administrative Services Act (40 U.S.C. 471 et seq.) shall apply. Conversely, if the agency determines that the services involved should be performed by a construction contractor, other competitive source selection procedures should be employed.

John J. LaFalce,
Neal Smith,
Nick Mavroules,
Ike Skelton,
Charles A. Hayes,
John Conyers,
Esteban E. Torres,
Joseph M. McDade,
Silvio O. Conte,
Bill Broomfield,
Dean Gallo,

Additional conferees on titles VI and VII:

Les Aspin,
Dave McCurdy,
Wm. L. Dickinson,
Jack Brooks,
Gerald D. Kleczka,
Frank Horton,

Managers on the Part of the House.

Dale Bumpers,
Carl Levin,
Alan J. Dixon,
John F. Kerry,
Lowell P. Weicker, Jr.,
Rudy Boschwitz,
Warren B. Rudman,

Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Combest) to revise and extend their remarks and include extraneous material:)

Mr. Parris, for 5 minutes, on October 11 and 12.

(The following Members (at the request of Mr. Gonzalez) to revise and extend their remarks and include extraneous material:)

Mr. Annunzio, for 5 minutes, today.

Mr. Glickman, for 5 minutes, today.

Mr. Frank, for 60 minutes, on October 11.

Mr. Frank, for 60 minutes, on October 12.

Mr. Frank, for 60 minutes, on October 13.

Mr. Frank, for 60 minutes, on October 14.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Member (at the request of Mr. Combest) and to include extraneous matter:)

Mr. Horton.

(The following Members (at the request of Mr. Gonzalez) and to include extraneous matter:)

Mr. Conyers.

Mr. Traficant.

Mr. Kanjorski in eight instances.

Mr. Kastenmeier.

Mr. Atkins.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2032. An act to authorize the conveyance of the vessel, *Lane Victory;*

H.R. 2596. An act to improve Federal management of lands on Admiralty Island, AK:

H.R. 2835. An act to direct the Secretary of Agriculture to release certain restrictions on a parcel of land located in Henderson, TN;

H.R. 4102. An act to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, AZ, and for other purposes;

H.R. 4188. An act to designate the U.S. courthouse located at 445 Broadway in Albany, NY, as the "James T. Foley United States Courthouse";

H.R. 4354. An act to designate certain National Forest System lands in the State of Oklahoma for inclusion in the National Wilderness Preservation System, create the Winding Stair Mountain National Recreation and Wilderness Area, and for other purposes;

H.R. 4365. An act to designate the Sunderland National Salmon Station located in Sunderland, MA, as the "Richard Cronin National Salmon Station";

H.R. 4529. An act extending permission for the President's Commission on White House Fellows to accept certain donations; and

H.R. 5291. An act to provide the Secretary of the Air Force with authority to convey certain land.

SENATE ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to enrolled bills and joint resolution of the Senate of the following titles:

S. 496. An act to amend title 5 of the United States Code, to ensure privacy, integrity, and verification of data disclosed for computer matching, to establish Data Integrity Board within Federal agencies, and for other purposes;

S. 945. An act to authorize the Secretary of Health and Human Services to make grants for demonstration projects for foster care and residential care of infants and young children abandoned in hospitals, and for other purposes;

S. 1626. An act to keep secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the Bankruptcy Code; and

S.J. Res. 364. Joint resolution to designate the week of October 2 through October 8, 1988, as "National Paralysis Awareness Week."

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; (at 11 o'clock and 12 minutes a.m.), under its previous order, the House adjourned until Tuesday, October 11, 1988, at 12 noon.0

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4444. A letter from the General Counsel, Office of the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting a report of the grants of suspension of deportation of certain aliens, pursuant to 8 U.S.C. 1254(c); to the Committee on the Judiciary.

4445. A letter from the Special Counsel, U.S. Merit Systems Protection Board, transmitting a copy of a report of the Secretary of the Interior setting forth findings and conclusions of his investigation into allegations of violations of law and regulation by a former official of the Bureau of Indian Affairs, Juneau, AL, pursuant to 5 U.S.C. 1206(b)(5)(A); to the Committee on Post Office and Civil Service.

4446. A letter from the Secretary of Energy, transmitting a comprehensive report of the eighth project negotiated under the Department of Energy [DOE] Clean Coal Technology Demonstration Program entitled "Nucia CFB Demonstration Project," pursuant to Public Law 99-190; jointly, to the Committee on Appropriations; Energy and Commerce; and Space, Science, and Technology.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LaFALCE: Committee of conference. H.R. 1807 conference report (Rept. 100-070). Ordered to be printed.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of Rule X the following action was taken by the Speaker:

H.R. 3392 was Referred to the Committees on Banking, Finance and Urban Affairs and Ways and Means extended for a period ending not later than October 28, 1988.

H.R. 5132 was Referred to the Committees on Armed Services and the Judiciary extended for a period ending not later than October 12, 1988.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ROYBAL:

H.R. 5492. A bill to amend the Social Security Act and the Public Health Service Act to contain health care costs, maintain quality, and ensure access to necessary health care services for Americans in rural areas; jointly, to the Committee on Ways and Means and Energy and Commerce.

By Mr. GARCIA (for himself and Mr. SCHUMER):

H.R. 5493. A bill to direct the Secretary of the Treasury to represent the United States in negotiations with the other member countries of the Organization for Economic Cooperation and Development to establish multilateral standards for entering into and reporting financial transactions with the Soviet Union, and to direct the Secretary of State and the Secretary of Defense to hold discussions with the member governments of the North Atlantic Treaty Organization on the security implications of conducting financial transactions with the Soviet Union; to the Committee on Banking, Finance and Urban Affairs.

By Mr. WHEAT (for himself and Mr. SKELTON):

H.R. 5494. A bill to provide for the addition of certain parcels to the Harry S. Truman National Historic Site in the State of Missouri; to the Committee on Interior and Insular Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. HORTON introduced a bill (H.R. 5495) to clear certain impediments to the licensing of a vessel for employment in the coastwise trade and fisheries of the United States; which was referred to the Committee on Merchant Marine and Fisheries.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 4277: Mr. VANDER JAGT and Mr. APPLEGATE.

H.R. 4991: Mr. MORRISON of Connecticut, Mr. PURSELL, Mr. TORRICELLI, and Mr. WOLPE.

H.J. Res. 526: Mr. LUNGREN.

H.J. Res. 661: Mr. NIELSON of Utah and Mr. YATRON.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

236. By the SPEAKER: Petition of Ambassador of the Federal Republic of Germany, Washington, DC, relative to German-American Day 1988; to the Committee on Foreign Affairs.

237. Also, petition of council of the city of New York City Hall, New York, NY, relative to the firefighters of the Yellowstone National Park calamitous fire; to the Committee on Interior and Insular Affairs.

SENATE—*Friday, October 7, 1988*

(Legislative day of Thursday, October 6, 1988)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

" * * Not by might, nor by power, but by My Spirit," saith the Lord of hosts.*— Zechariah 4:6.

Almighty God, all wise, all powerful, everywhere present at once. Thank Thee for the word of the Prophet Zechariah that reminds us when we reach our limitations, however strong or wise or powerful we be, your inexhaustable resources are available instantly.

Make us wise to draw upon these resources when we have reached our extremity to control ourselves or our situation.

Infuse Thy servants, the Senators, who struggle with great and cosmic issues, to discover Thy nearness, Thy love, Thine infinite sufficiency.

In the name of Him who is incarnate love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STENNIS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 7, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. DASCHLE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

RESERVATION OF LEADERS' TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of both leaders be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

WHY THE UNITED STATES GAINS FROM INTERNATIONAL ECONOMIC COMPETITION

Mr. PROXMIRE. Mr. President, many of us fall into the trap of assuming that this America, of which all of us are so proud, is in a constant competition with other nations of the world. We measure our success of failure by whether or not we lead or lag other nations in economic growth, in income, in standard of living, in real wages, in the level of inflation as well as in foreign trade balance. Why do we do it? Maybe it's because of our conditioning in a sports environment. Many Americans' sense of self-worth actually hinges to a significant degree on how well their home town major league baseball or football or basketball team is doing. We not only see this in our children. We feel it in ourselves. Other teams are our rivals. Somehow, if our home team, say, the Milwaukee Brewers, wins—they beat the Boston Red Sox—that makes us feel we are a little superior to the Massachusetts crowd. In our better moments, we know this is a ridiculous, childish fantasy. But many of us are more subject to that fantasy than we realize.

What is worse, we carry that hometown competition syndrome over into our attitude in international relations. We tend to view economic gains by the Japanese, the Germans, and others as some kind of threat to our preeminence as the economic leader of the free world. This is a ridiculously childish reaction. We should recognize it as such. What really happens when other nations prosper? Do we lose? The fact is that we gain as a nation, as individual human beings. We gain in hard dollars and cents. This is specially hard for us to accept because since the end of World War II, the United States has been the preeminent economic power in the world by a huge margin. We still are. Think of it. The United States economy produces about twice as much as either of our only two genuine world economic rivals: the Soviet economy and the Japanese economy. Neither the Soviets nor the Japanese pose any threat to overtake this country economically. The Soviets are bogged down in a stagnant economy. Annual testimony before the Joint Economic Committee by the CIA and the DIA has consistently agreed that the Soviet economy in the past 3 or 4 years has consistently grown at a slower pace than the United States. The Russians are far behind now and they're losing ground. They are not gaining.

The Japanese, on the other hand, are indeed gaining. But they have a very, very long way to go to overtake the United States. And they face limitations that make it literally impossible for the Japanese to develop an economy that is bigger and produces more than ours. Here's why. First, Japan has less than half the United States population. Second, Japan's territory is a small fraction of the territory of the United States. Japan is deficient in virtually every critical raw material. It must import its food. It must import virtually all its raw material. Its recent growth has relied primarily on a huge increase in exports, and its primary export markets have been the United States and Europe. That puts any substantial growth by the Japanese heavily dependent on growth by free Europe and especially the United States. As we grow, Japan grows. As our economies recede, so does the Japanese. Obviously, the Japanese have made enormous progress since their total devastation in World War II. Possibly their per capita income could move and even stay marginally ahead of ours. But theirs is a far smaller country in population. Their resources are far, far less.

So, Mr. President, the fact is that there is no real economic threat to the United States as the No. 1 world economy. There is a far more important principle to recognize here. It is that the United States isn't hurt or threatened by the economic progress of the Japanese; we are helped. As the Japanese become more affluent, so do we. As the Japanese economy becomes more efficient and productive, so does

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

ours. We buy lower cost, higher quality products from them. In fact, if Japanese products are not lower cost and higher quality, the Japanese can't sell their products to us. Are we hurt by buying products the Japanese produce that cost less and are superior? Doesn't the Japanese trade advantage mean the Japanese workers are taking American jobs? Doesn't this diminish American jobs? Doesn't it reduce the production and profit of American firms? These adverse consequences do occur for a time and up to a point. But not for long and not very much. As the United States buys more and more from the Japanese and sell less and less to the Japanese, the value of the Japanese yen rises. The value of the American dollar falls. Here is an automatic adjustment swifter and surer than any American tariff increase or any new access for American products in Japanese markets. The process can be and is easily accelerated by the cooperation of the Japanese and the American governments. Here is precisely what has happened in the past 18 months. The dollar has dropped precipitously with relation to the yen. Result: Japanese goods cost a great deal more in this country. American goods cost much less in Japan. The shift in the flow of goods between our two countries takes time, but it is beginning to move in our favor. It will continue.

Meanwhile, we have learned greatly from the efficiency the Japanese have instilled into their economy. We can obviously learn much more. We can also profit substantially from the dramatic progress the Japanese have made from their powerful work ethic and educational ethic. The Japanese learned the lesson of America's marvelous economic efficiency in the years since World War II. They learned it well, but not too well for our good. Now it's our turn to learn in detail how they have improved on our economy. We Americans can benefit greatly from Japanese success. Our economy can move much more surely and much faster, if we recognize the Japanese are our friends, in a sense, our teammates, not our rivals, not the New York Mets versus the Los Angeles Dodgers.

A NEW CLEAN AIR ACT

Mr. PROXMIRE. Mr. President, I wish to call attention to a remarkable and moving speech by the distinguished Senator from Maine [Mr. Mitchell] on the subject of acid rain. He acknowledged that despite years of hard work by many Senators, there would be no clean air legislation this year.

Senator Mitchell is a real expert in this area and has contributed as much as or probably more than any other U.S. Senator. He has worked hard on this and deserves great credit for his work. I hope the speech he gave the other day will be read by all Senators.

George Mitchell deserves the admiration of all Senators for the effort he put in to reaching a compromise. Along with him, I had hoped that this would finally be the year when we broke our deadlock on acid rain. Unfortunately, extreme voices on both sides of the issue prevented resolution of a very serious problem which plagues my State and many others.

Mr. President, I won't be here the next time the Senate debates this important topic. But I've learned a few things from my experience with acid rain bills that will apply no matter who holds my seat. All groups with an interest in clean air must put all their cards on the table and do it early in the next Congress. No more stonewalling and hoping the bill goes away. No more refusing reasonable compromises and demanding the kind of perfection life seldom provides. Without this attitude change, we will never have effective clean air legislation.

Mr. President, in some ways the people of Wisconsin are in a unique position regarding acid rain control. Unlike other States, we have already acted against the pollutants which cause acid rain. In face, under Wisconsin's Pioneering Program, emissions of sulfur dioxide from both factories and powerplants will be cut by about 50 percent from 1980 levels by 1993, almost a decade before these cuts would have been required under the latest version of the committee bill.

These reductions will cost relatively little to Wisconsin consumers, while greatly improving air quality, and were passed without the wrenching debate that usually accompanies congressional efforts.

Yet, the same sensible techniques which Wisconsin used for providing cleaner air were unacceptable to many of those interests most involved in Federal acid rain negotiations.

Why did we fail to reach a solution to clean air this year? The answer is relatively simple: high costs and failure to compromise.

First, costs. Senator Mitchell rightly pointed out Tuesday that the American people absorb enormous costs from dirty air. Whether it's health problems, destroyed fisheries, reduced crop yields, materials damage or other harm to our quality of life, air pollution costs us and costs us big. But as my friend and colleague Senator Simpson noted on Tuesday, the cost of addressing acid rain is also enormous if control requirements are unnecessarily rigid and inflexible.

Senators Simpson, Humphrey, and I introduced an acid rain bill at the beginning of this session designed to reduce sulfur dioxide emissions by 10 million tons, at the lowest possible cost to consumers and industry. We received vital assistance with the bill from the Alliance for Acid Rain Control, a bipartisan group which includes some of the most environmentally progressive Governors in the Nation. Like Senator Mitchell, the Alliance and I have been scoffed at by some environmental groups for our concern with costs. But costs do matter.

Environmental responsibility and economic responsibility must go hand in hand. Cheaper and more flexible solutions make good political sense. To ignore costs guarantees political stalemate.

The sulfur dioxide emission reduction contained in my acid rain bill would have cost consumers less than $2 billion a year. That's less than one-fifth as much as the most inflexible bill introduced in the Senate during this Congress, yet both bills contained almost the same environmental benefits.

Now for the other big issue: compromise. In the last few months, Senator Byrd, Senator Simpson, Senator Mitchell and I have been involved in actively seeking a compromise acid rain bill. These efforts brought us closer to floor action than ever before. Yet, many groups, both pro and anti acid rain control, have criticized all attempts at compromise. This attitude makes no sense. Without compromise there can be no bill; criticizing compromise is irresponsible.

In my view, we were within a couple of amendments of a workable deal which could have carried on the floor when we ran out of time. These amendments would have had no real effect on the level of emissions reductions required, but both the United Mine Workers Union and some environmental groups refused to budge from their inflexible positions which were both more costly and of little additional environmental benefit. Their all or nothing position ensured disaster.

I urge my colleagues who act on the Clean Air Act next year to consider: imposing a statewide average emission rate or statewide tonnage reduction requirement instead of plant-by plant requirements; reducing the amount of mandatory scrubbing; and, reducing the level of subsidy needed to pay for that scrubbing. These changes together could produce the kind of nationwide coalition the issue demands without the polarizing interregional rivalries that sank this year's legislation.

We made some progress this year. I hope all Senators involved next year will heed Senator Mitchell's words and be less "rigid and unyielding." As my good friend and former Wisconsin Governor Tony Earl is fond of asking: "Are we interested in posing for 'holy pictures,' or are we trying to get something done?"

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NICARAGUA

Mr. McCAIN. Mr. President, this morning I rise to address an issue that I think is of utmost importance and seems to be neglected if not consciously perhaps because of the rush of legislative business that we are now encountering in our desire to recess for the upcoming election.

I specifically am referring to the events that have taken place in the last few days in Nicaragua.

It seems to have escaped the notice of the major media outlets that there has been a major and sweeping set of laws passed by the puppet assembly in Nicaragua that grants President Daniel Ortega sweeping powers to make arrests, to silence news media, to ban the receipt of any official United States aid as being described as crimes against the internal and external security of the state and indeed is a furtherance of the continued oppression and repression of the Nicaraguan people.

What will happen as a result of this?

Probably our exalted Nobel Peace Prizewinner Oscar Arias will write a letter, another letter condemning the Sandinistas for their failure to adhere to his plan and then the response, as it has been, to his other letters will be total silence.

What is happening in Nicaragua today is an outrage and an insult to the standards of decency, the standards of human rights that we expect to be observed throughout the world, and is a gross and total violation of the Arias peace plan, is a total gross and violent abrogation of the promises that the Sandinista government made when they came to power in 1979.

The new emergency law is now in effect immediately after it was approved by the assembly in which the Sandinistas have a 61-seat majority.

The opposition Social Christian Party decried the law, and I quote as "an unrestrained concentration of extraordinary powers" that will render Ortega an "absolute dictator."

President Ortega and the Sandinistas can declare a state of emergency that permits the government to temporarily confiscate privately owned businesses and vehicles. It empowers the executive to suspend broadcast and print media and communications services "when necessary to maintain public order."

It also gives the government sweeping powers of arrest and preventive detention of individuals deemed "dangerous persons" and requires all individuals traveling in war zones to carry identification documents.

Meanwhile, the External Cooperation Ministry announced a ban on "all cash or in-kind assistance connected with funds approved by the U.S. Government," including humanitarian aid for victims of the 7-year civil war.

Mr. President, this is a clear and logical circumstance and succession of events that are a direct result of the statements made by the Speaker of the House that the United States CIA was providing moneys to fund demonstrations which would then provoke the Sandinista government.

I think that the Speaker of the House owes us an explanation as to why his statements are not directly connected with the actions of the Sandinista Communist government.

Mr. President, there is a perception around that the United States is abandoning the resistance fighters in Nicaragua.

I am announcing my intention at this time to see if it is possible to get together a coalition of Senators to try to get some kind of assistance for the resistance fighters before this body leaves to go out on our election recess.

Do I have optimism that we can succeed in passing some kind of assistance to those brave people? No, I do not. I have some optimism that we could pass it through this body. I do not through the House of Representatives.

I feel, however, that we owe these people the efforts of many of us so that they will know there are at least some Americans who are not ready to watch them fall under the entire oppression and disgraceful behaior of the Communist Sandinista government which is indeed keeping old women, eldery people, crippled and sick people in prisons under the most onerous conditions and are behaving in a fashion which I think is an insult to all of us who cherish freedom and democracy throughout the world.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TAXPAYERS' BILL OF RIGHTS

Mr. REID. Mr. President, the legislation that will be before us later today—that is the technical amendments bill—contains numerous provisions, any one of which my colleagues may cite to justify a no vote. But if any Senators are considering a negative vote, I urge them to look carefully at this legislation. A careful look will reveal that it contains the provisions of the taxpayers' bill of rights, a bill supported by 72 Senators and 223 Members of the House of Representatives; a bill this Nation's taxpayers have demanded for decades; a bill that has received the scrutiny of the Finance Committee for almost 2 years now; and a bill we must pass into law this year if we are ever going to allow the American taxpayers to be on an equal footing with the tax collector.

There have been bills to protect taxpayers almost as long as there has been a Tax Code. Sensational hearings exposing incredible IRS behavior have been held and some Members of Congress have even gone to jail allegedly over the issue. Certainly public sentiment has always been strong for such legislation. But there has never been a bill previously that has gotten the public and bipartisan, congressional attention this legislation has received.

But this version of the taxpayers' bill of rights, that is in this technical corrections bill is on the verge of approval in the Senate because of really only one thing, and that is timing. The initial speech I gave on the Senate floor was for the need for a taxpayers' bill of rights. I did not know that day that Senator DAVID PRYOR, of Arkansas, would be presiding over the Senate and at that time lend his considerable efforts to support this legislation. Neither did I know that Senator GRASSLEY, of Iowa, an advocate of legislation like this for many years, would at the same time throw his support behind my efforts.

My good friend, Senator DAVID PRYOR, chairman of the Senate Finance Subcommittee on Oversight of the IRS, put his energy, prestige, and time behind this bill. He held three hearings on the need for this legislation. During the three hearings held in April and June 1987, solid, compelling evidence of the need for this legislation was collected and the bill received national media attention. By far the most compelling testimony came from current—I repeat—current IRS employees who risked their jobs to tell their stories. They produced memos from district office directors demanding that criminal referral, seizure, and levy quotas be met. They told how they were under pressure to seize even when they felt it was illegal. And one agent from Los Angeles told of how his boss had a sign on the door that said "Seizure Fever, Catch It". These agents made a compelling case for the taxpayers' bill of rights.

After the hearings, a strong, bipartisan coalition led by Senators PRYOR, GRASSLEY, and me, emerged determined to see the bill become law. This coalition, combined with the public outpouring of support for the taxpayers' bill of rights, enabled an improved version of the bill to be reintroduced with 50 cosponsors, a heretofore unheard of level of support for this type of legislation. It also made the legislation acceptable to the Finance Committee which included it in its version of the Omnibus Budget Reconciliation Act. Thus, in October 1987 it looked as though the bill would become law.

This hope was quickly dashed, because the budget summit agreement required a scaled-down budget reconciliation bill that did not include the taxpayer's bill of rights. What in October looked like it would breeze through Congress, by December looked dead in the water.

Much as Senator PRYOR had become the bill's champion in 1987, Finance Committee Chairman LLOYD BENTSEN took up the mantle in 1988. To his credit, he saw that the taxpayer's bill of rights was well crafted, thoughtful legislation. It had Senate support, it had House support, it had the support of the American people and it then had his support.

Not only did he support the bill, but his committee marked it up! In mid-March of this year, a revenue neutral taxpayers' bill of rights was considered by the Senate Finance Committee and approved by a unanimous vote. Chairman BENTSEN's timing was almost perfect and under his leadership the bill moved to the Senate floor.

Today it is back on the floor as part of the Technical Corrections Act—the only tax vehicle this year. If my colleagues want a taxpayers' bill of rights, and 72 Senators have indicated they do, then they must support the committee amendment.

The taxpayer's bill of rights is part of the committee amendment and on the verge of passage for several good reasons. First, it is a good bill that the American people are demanding. Just look through the mail that each of us has received and I am sure you will find literally hundreds of letters in support of this legislation.

Just this past month, Senator PRYOR wrote an article in Reader's Digest. That publication has a circulation of some 35 million. That has stimulated additional letters to each of us. There are grassroot letters, not postcards, not form letters generated by multimillion-dollar lobbying organizations.

Second, it has enjoyed bipartisan support from the beginning. Senator GRASSLEY has supported this legislation from the very, very beginning and has stuck with us every step of the way. Even Vice President BUSH made passage of this legislation part of his announcement speech for the Presidency of the United States.

Three, the Finance Committee supports the bill. First Senator PRYOR and then Chairman BENTSEN endorsed this legislation. It is safe to say, without their support, this legislation would have gone the way of previous measures of this type.

Fourth, it is supported by interest groups from every political persuasion. The ACLU, the Chamber of Commerce, the National Taxpayers' Union, and the American Institute of Certified Public Accountants all support this legislation.

I have a list of groups who support the taxpayers' bill of rights and ask unanimous consent it be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

GROUPS THAT SUPPORT THE OMNIBUS TAXPAYERS' BILL OF RIGHTS ACT

National Federation of Independent Businesses.
National Taxpayers Union.
U.S. Chamber of Commerce.
Small Business Legislative Council (see attachment).
Food Marketing Institute.
Prudential Insurance Company of America.
Beneficial Life Insurance Company.
Anchor National Life Insurance Company.
Anchor National Financial Services Inc.
Kanawha Insurance Company.
Munich American Reassurance Company.
Fidelity Security Life Insurance Company.
Farm Bureau Life Insurance Company of West Des Moines, Iowa.
Employers Mutual Companies.
Hawaiian Life.
The State Life Insurance Company of Indianapolis.
Safeco.
Aetna Life and Casualty.
Equitable.
The New England.
Woodmen Accident and Life Company.
National Association of Brick Distributors.
American Fidelity Assurance Company.
Security General Life Insurance Company.
Conseco Inc.
Federated Insurance.
Colonial Life and Accident Insurance Company.
Western National Life Insurance Company.
Bankers National Life Insurance.
Lincoln American Life Insurance.
Lincoln Income Life Insurance Company.
American Institute of Certified Public Accountants.
New York State Society of Certified Public Accountants.
Heritage Foundation.
American Civil Liberties Union.
Free the Eagle.
National Small Business United.
Christian Freedom Letter.
National Society of Public Accountants.
National Association of Enrolled Agents.

SMALL BUSINESS LEGISLATIVE COUNCIL

(Members of the Small Business Legislative Council)

Alliance of Independent Store Owners and Professionals.
American Association of Nurserymen.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Dental Trade Association.
American Electronics Association.
American Machine Tool Distributors Association.
American Society of Travel Agents, Inc.
American Sod Producers Association.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
Architectural Precast Association.
Associated Landscape Contractors of America.
Association of Physical Fitness Centers.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Warehouse Distributors Association.
Building Service Contractors Association International.
Business Advertising Council.
Chicago Gift Show Inc.
Christian Booksellers Association.
Dental Dealers of America, Inc.
Direct Selling Association.
Electronic Representatives Association.
Florists' Transworld Delivery Association.
Helicopter Association International.
Independent Bakers Association.
Independent Bankers Association of America.
Independent Insurance Agents of America, Inc.
Independent Medical Distributors Association.
Independent Sewing Machine Dealers Association.
International Association of Refrigerated Warehouses.
International Bottled Water Association.
International Communications Industries Association.
International Franchise Association.
International Reciprocal Trade Association.
Jewelers of America.
Latin American Manufacturers Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Mechanical Contractors Association of America, Inc.
Menswear Retailers of America.
National Association for the Self-Employed.
National Association of Aircraft and Communication Suppliers.
National Association of Brick Distributors.
National Association of Catalog Showroom Merchandisers.
National Association of Chemical Distributors.
National Association of Development Companies.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Manufacturing Opticians.
National Association of Minority Contractors.
National Association of Personnel Consultants.

National Association of Plumbing-Heating-Cooling Contractors.
National Association of Realtors.
National Association of Retail Druggists.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Association of Truck Stop Operators.
National Association of Women Business Owners.
National Candy Wholesalers Association.
National Chimney Sweep Guild.
National Coffee Service Association.
National Council for Industrial Innovation.
National Electrical Contractors Association.
National Fastener Distributors Association.
National Grocers Association.
National Independent Dairy-Foods Association.
National Moving and Storage Association.
National Office Products Association.
National Parking Association.
National Precast Concrete Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Venture Capital Association.
Opticians Association of America.
Petroleum Marketers Association.
Printing Industries of America, Inc.
Retail Floorcovering Institute.
Small Business Council of America, Inc.
Smaller Manufacturers Council.
Society of American Florists.
Specialty Advertising Association International.
United Bus Owner of America.
Web Sling Association

Mr. REID. Mr. President, this group is very, very broad. It includes public accountants, certified public accountants, insurance companies, on and on with people who support this legislation. I think it goes without saying that it is a unique marriage to have the American Civil Liberties Union and the American Chamber of Commerce joining together for any legislation, but they have for this legislation.

In short, there is almost no opposition to the taxpayers' bill of rights. In fact, the only opposition we have been able to garner has come from the IRS itself.

The taxpayers' bill of rights contains many provisions to provide a level playing field for taxpayers. The most important of these provisions are:

First, the provision allowing taxpayers to have duly authorized representatives. Most taxpayers are unfamiliar with the code, their tax liabilities and are afraid of the IRS. Representation of taxpayers, therefore, is crucial to maintain voluntary compliance and protect the rights of taxpayers. This provision has always been intended to preserve the right of a taypayer to representation, a right that until late in 1986 was not in question.

Second, the authority of the taxpayer ombudsman to issue a taxpayer assistance order. I have been told by many practitioners that they feel this is the single most important provision of the bill. It allows the ombudsman to suspend actions under certain circumstances. This authority will provide a cooling-off period that may enable disputes to be resolved in a more favorable environment.

Third, it prevents the evaluation of IRS employees based on production goals and quotas. From my experience, most trouble people have with the IRS stems from their involvement with agents who are under tremendous pressure to make levies, seizures and criminal referrals. The IRS says there have been no quotas for many years. But testimony from IRS agents and internal IRS documents show that quotas are still relied upon heavily. The focus of the IRS should be on the quality of service, not on any artificial quotas. This provision will give IRS agents, most of whom I believe are trying to do what is right, a law to provide them with the authority to resist quotas.

Fourth, the requirement that all tax due notices or deficiency notices contain a description of the basis for the tax, interest, additions to the tax and penalties. If taxpayers were given an explanation as to the tax they owe and why they owe it, much time and money will be saved in resolving disputes and collecting tax liabilities.

Fifth, standards for installment sale agreements. The IRS could do wonders for its image by keeping to simple agreements it makes. If the Internal Revenue Service would live up to the agreements that they make with taxpayers, their life would be much easier and certainly taxpayers' lives would and their image would be improved significantly. If a taxpayer enters into an agreement to pay taxes in installments, they ought to be sure the agreement will be abided by, just as the IRS expects taxpayers to keep their end of the agreement.

While there are many other important provisions, these are the ones I believe will have the biggest impact on taxpayers and their representatives. By formalizing some procedures, spelling out the obligations of both taxpayers and the IRS, compliance will be made easier and increase.

The taxpayers bill of rights will not eliminate the IRS. Neither will it make administration of the code more difficult. The bill currently before the Senate has always had as its goal the reform of a feared and powerful, but necessary, Federal agency. I hope the sum of this bill's parts is greater than its whole, and I submit that it is. This bill should be more than just a legal mechanism to force the IRS to be courteous. Rather the bill is intended to give congressional sanction to an attitude of service, not confrontation. In the long run, everyone benefits from this attitude. The Government collects more revenue and taxpayers will not view the IRS, and the Federal Government, as the enemy.

Finally, I have mentioned over and over again the key role of Senator PRYOR. Without his diligence, without his tenacity, this bill would not be in the position that it is in today.

I also, of course, again commend Senator GRASSLEY for the rule he has played in making the taxpayer's bill of rights a part of this Technical Corrections Act.

Staff has also played an important part in shaping this legislation. In particular, I applaud the hard work Jeff Trinca, Norm Richter, Steve Williams, and Kolan Davis. They have dedicated much of their time and efforts during this past 2 years to this legislation.

Mr. President, finally, I urge my colleagues to support the taxpayers' bill of rights by voting for the committee amendment and for final passage of the Technical Corrections Act.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I suggest that morning business be closed and if Senators wish to speak on matters other than the matter on which cloture has been invoked, they can ask unanimous consent to speak out of order.

The ACTING PRESIDENT pro tempore. Is there objection? Hearing none, it is so ordered.

SHELDON COLEMAN: AN OUTDOORS MAN FOR ALL SEASONS

Mr. DOLE. Mr. President, upon his death, I issued a statement describing Sheldon Coleman as "a Kansas giant." More needs to be said about this remarkable American. There are very few Americans who have led such a full life and contributed so much. The great outdoors is a better place, because he was an active sportsman and conservationist for all of his life. As Sheldon said, "I think anybody that goes outdoors gets closer to nature and is a better person because they've been there." The products his company manufactured improved experiences for countless other outdoor enthusiasts.

A BUSINESS GENIUS

Coleman turned around his family's business from the verge of bankruptcy during the Great Depression into a multinational Fortune 500 corporation which is now a household word. We all associate him with the lamp that bears his name. In fact, during World War II, there was a code word to distinguish between Germans and Americans. The password was "Coleman" and the response was "lamp." Americans knew automatically to associate lamp with Coleman, but the Germans couldn't figure it out.

Few men of his background are able to say that they began their careers in their father's company at the bottom and worked their way up. Sheldon did. He always knew he wanted to run his father's business someday, and he would carry demonstration lamps for his father on sales trips. At 16, he went to work at the factory because of the demand for Coleman lamps during World War I. After completing a degree in mechanical engineering from Cornell in 1925, he began work at Coleman's Canadian plant in Toronto, where he was hired as a machinist by his father, W.C. Coleman. He stayed in that position for 2 years until he could operate every machine in the place.

Upon his return to Wichita in 1928, he worked his way up in the company, taking turns in the design, management, and sales departments. His positive presence was felt wherever he went. It was when he moved into the management and sales division that the Sheldon Coleman era of the company began and his legendary business acumen was put to good use. Sheldon was responsible for diversifying Coleman Co. during the depths of the Great Depression. At this time, it went into the heating business and continued to grow over the years. Sheldon became president of the company in 1951 and was named chairman following his father's death in 1957.

THE OUTDOORS MAN

Sheldon Coleman's love of the outdoors began at age 5 when he went on a family vacation to Colorado. At age 13, he had climbed the 14,000 Long's Peak using only his hands and feet. He learned to live alone on a mountain for days and acted as a guide to groups wanting to climb the peak.

It is Sheldon Coleman the sportsman who will perhaps best be remembered. He loved hunting, fishing and tennis. In fact, his passion for the outdoors led the company in the direction of becoming one of the world's largest manufacturers of related products, built for practical use, such as a cooler with a raccoon-proof latch, sleeping bag, tent, fold-up stove, water jug, and the now-famous green lantern.

Regardless of where he was or what he was doing, Sheldon Coleman's enthusiasm for life was tremendous. He was a great storyteller, as his 14 grandchildren and 5 great grandchildren well know. His friends will never forget his generosity and competitiveness. In fact, Sheldon Coleman was one of those rare human beings who leave a great imprint and a lot of inspiration in both their professional and personal lives. His hunting boots will be hard to fill, and we shall miss him very much.

SHELDON COLEMAN

Mrs. KASSEBAUM. Mr. President, I am pleased to join Senator DOLE in paying tribute to the contributions made by Sheldon Coleman during his long and productive life. Mr. Coleman, chairman of the board of the Coleman Co., died in Wichita last month at the age of 86.

His success in the business world is well known by outdoor enthusiasts throughout the world. From the Sunday family picnic to a major excursion, no outing is complete without at least one Coleman product. The outstanding reputation and success of the Coleman Co. has long been a source of pride for the entire State of Kansas.

The leadership demonstrated by Sheldon Coleman in bringing the Coleman Co. from the verge of bankruptcy to the Fortune 500 was not limited to his business endeavors. He was a leader in the Wichita community and cared deeply about its welfare. He was a leader in the area of conservation, demonstrating a true love of nature and its wonders.

Sheldon Coleman's enthusiasm and commitment to quality of his products, the quality of community life, and the quality of our environment will be sorely missed.

On September 23, the Wichita Eagle-Beacon published a series of articles which portray the many facets of Sheldon Coleman's life. I ask unanimous consent that these articles be printed in the RECORD following my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

SHELDON COLEMAN—1901-1988

(He transformed a gas lantern company into the largest maker of outdoor products in the world)

(By Stan Finger)

Sheldon Coleman, who earned worldwide acclaim as an industrialist, conservationist and sportsman while transforming the Coleman Co. into the world's largest manufacturer of outdoor products, died late Wednesday at HCA Wesley Medical Center. He was 86.

Coleman, who had been battling lupus for more than two years and had been hospitalized with pneumonia for the past three weeks, died at 11:15 p.m. Wednesday at the medical center.

"We will miss him immeasurably," said his son, Sheldon C. Coleman, who became company president in 1987 and succeeded his father as chief executive officer last February. "Yet he will always be with us."

Coleman took the family business from the verge of failure during the Great Depression to a multinational Fortune 500 corporation that is a household name in the United States and much of the world.

"In the Battle of the Bulge in World War II, they had a code word to see who was German and who was American," said Craig Miner, professor of history at Wichita State University. "The password was 'Coleman' and the response was 'lamp.' Americans knew automatically to associate lamp with Coleman . . . but no German could figure that out."

Friends and associates in business and politics praised Coleman on Thursday. They pictured him as a storyteller, an avid fisherman and hunter and one who brought gusto to everything he did.

"A Kansas giant" is how Sen. Bob Dole described him.

"He loved relating his experiences," said Larry Jones, a former president of the company, who knew Coleman for about 50 years. "But what was interesting about Sheldon is that, looking back over it, he would tell stories of the past, like in the Depression, to satisfy the curiosity of someone. But it was a short story, and not told with particular enthusiasm.

"But if you would ask him about tomorrow or the next year or the next Coleman product, he would talk about it with so much enthusiasm. He was always leaning into the future. He had a saying—'Don't let life put you back on your heels. Lean into it.' And that's what he did, clear up to the end."

Coleman took his company to greatness by combining his love for the outdoors with an intense devotion to business, associates and those who knew him said.

"The Coleman Co., that was pretty much his life," said Dwane Wallace, who built Cessna Aircraft Co. into a dominant force in general aviation and served on the Coleman board of directors for more than 30 years. "He was the greatest salesman I ever met."

Coleman spoke of his love of the outdoors in a 1986 interview with the Eagle-Beacon after he was appointed by President Reagan to the President's Commission on Americans Outdoors. He also served on the president's Outdoor Recreation Policy Review Group.

"I think anybody that goes outdoors gets closer to nature and is a better person because they've been there," he said. "And I think every person that's been out there would say the same thing. * * * They feel better about themselves, they feel better about other people. They feel better about their country.

"It simply improves the quality of their life. Now that to me is something very wonderful to do for people, if you can improve the quality of their life."

Coleman is one of only two people to be given the prestigious Mountain of Jade award from the Outdoor Writers Association of America. The other recipient is Jimmy Carter.

"He received it at the time he was president," Coleman said "so I think I'm in very good company, even if he is a Democrat."

Coleman was born Nov. 15, 1901, only months after his father, W.C. Coleman, brought to Wichita the Hydro-Carbon Light Co., a little business he'd started the year before hoping to earn enough money to finish his last year of law school at the University of Kansas.

Coleman's given name was Robert, but he hated that name so much he went by his middle name—Sheldon—which was the maiden name of his mother, Fanny.

He traced his love of the outdoors to age 5, when he and his family vacationed in Estes Park, Colo.

By age 13, Coleman had mastered 14,000-foot Long's Peak—using only his hands and feet. Learning to live alone on a mountain for days, he guided groups wanting to climb the peak.

One day, when he was 15, a group he was leading up the mountain was caught in the "most violent electrical storm that I have ever been in," he said in the 1986 interview.

"Lightning was landing all the way around us," he said. "There were flashes between rocks. At times we could feel the shock in our bodies, the lightning was landing so near us. I was sure we weren't going to live through it."

Coleman called it the most terrifying experience in a lifetime of experiences.

"And I wasn't brave a bit. I was just huddled against a rock and prayin'," he recalled, laughing.

Coleman knew early in his youth that he wanted to run his father's business some day, according to company histories. He toted demonstration lamps for his father on sales outings. At 16, he was at work in the factory as demand for Coleman lanterns soared during World War I.

A 1920 graduate of Wichita High School, he attended Ottawa University for a year before enrolling at Cornell University.

Coleman spent one summer working as a canoe trip guide in Canada, and once figured he had paddled more than 5,000 miles in canoes.

"On canoe trips, you get a long ways from civilization, sometimes very deep into backcountry and wouldn't see anybody for maybe two weeks," he said. "There is something very serene and beautiful about a canoe. It's a quiet craft."

Coleman began work at Coleman's Canadian plant in Toronto after completing a degree in mechanical engineering from Cornell in 1925. He was treated "just like a man hired off the street. I spent the next two years in the shops learning to operate every machine in the place."

Coleman returned to Wichita in 1928 and worked his way up through the company, through design, management and sales posts. Whatever his position, Coleman attacked it with gusto.

"He had a lasting enthusiasm for everything that he was involved in," said Dick Harrison, chairman of the board of the Fleming Cos. in Oklahoma City. "It was always quite remarkable to me that a man of his age, and a man who has been there for so long, maintained the degree of enthusiasm for everything that was involved in the company that he did. And it was an infectious enthusiasm."

That enthusiasm saved the company.

W.C. Coleman had invested heavily in outside ventures that were wiped out by the stock market crash in 1929. Creditors began demanding money the company didn't have.

"To put it mildly, the fortunes of the Coleman Co. were in disarray," said Herb Ebendorf, the company historian.

Night after night, Sheldon Coleman worked with local accountants Robert Foulston and Elmer Fox to find out how deeply in debt the family was. Coleman refused to let the family declare bankruptcy and talked the creditors into giving him time to pay off the debts.

"That is when he came of age," Sheldon's brother Clarence "Bud" Coleman confided recently.

Working with Clarence, who had just graduated from the University of Kansas, Sheldon developed the oil space heater and gas floor furnace, innovations that—along with the Coleman lantern—carried the company through the Depression.

During the 1940s, the Coleman Co. contributed to the war effort by developing a camp stove that GIs carried into combat. Legendary columnist Ernie Pyle once ranked the stove with the Jeep as the most important products developed for the war.

Coleman was elected executive vice president of the company in 1940, and became president in 1951. That year was a big one for Coleman for other reasons as well.

Coleman played in a high-stakes bridge game on Valentine's Day that year, and won handily. But the losing duo—which included a striking woman named Galey—demanded a rematch.

They were married within a matter of months. It was the second marriage for both. Coleman's first marriage, to Georgia Cleveland, which produced two daughters, ended in divorce.

"There's no question, no question at all, but that Galey has given me the happiest 34 years of my life," Coleman said in 1986. "She's not only smart, she's not only charming, she not only has a fine social presence, but she's fun and exciting to live with."

Coleman was named chairman of the company after his father's death in 1957. Company officials said Thursday the board of directors would meet soon to select his replacement.

Coleman's awards and appointments include a Presidential Private Sector Initiate Commendation, given to him by Vice President George Bush. Coleman was inducted into the National Sporting Goods Hall of Fame in 1981 and the National Recreational Vehicle/Manufactured Housing Hall of Fame a year later.

He was vice chairman of the American National Red Cross following World War II and a 1948 delegate to the International Red Cross meeting in Stockholm, Sweden. He was named Conservationist of the Year by the Rod & Gun Editors of Metropolitan New York, and received an honorary doctor of humanities degree from Ottawa University.

Coleman is survived by his wife, Galey; brother, Clarence; son, Sheldon C.; two daughters, Virginia and Carolyn; two stepsons, Phil and Tom Dater; a step-daughter, Emilie Dater Rowe; 14 grandchildren and five great grandchildren.

A memorial has been established with Coleman Charitable Trust, P.O. Box 1762, Wichita, Kan. 67201.

OUTDOOR LOVER ALSO ENJOYED LIFE

(By George Stanley)

"The best place to test products," Sheldon Coleman once said, "is along a trout stream."

Coleman's passion for the outdoors helped him succeed in building the world's largest manufacturer of outing products, according to longtime fishing and hunting partners.

You can't walk into a campsite in America today without finding an array of Coleman products, such as a cooler with a raccoon-proof latch, fold-up cookstove, canoe, sleeping bag, water jug, tent and the ubiquitous green lantern.

An avid outdoorsman all his life, Coleman hunted quail in Kansas, ducks in Utah, doves in Texas. He frequently visited favorite fly-fishing streams in Colorado, Montana, Alaska, Canada and Iceland.

As a youth, he guided mountain climbers in Colorado and survived the most frightening experience of his life—building against a rock and saying prayers as lighting crashed around him. By his own reckoning he paddled through 5,000 miles of wilderness water, sometimes crashing Coleman canoes into rocks to see how they held up.

Montana flytier John Bailey, son of fishing legend Dan Bailey, met Coleman decades ago when guiding a product-testing trip. One night, Coleman's tent frosted up on the inside; the moisture from the sleeping men failed to escape through the fabric. Coleman cut the tent from the company's line.

"His enthusiasm was always so tremendous," Bailey said. "It didn't matter if he was quail hunting in British Columbia—he had such an enjoyment of life that whatever he was doing was the greatest."

Coleman's earliest outdoor memory had a mystical quality. Only 5 years old, he was sitting on a boulder outside the family cottage in Colorado. "I'd look up at those stars and I'd wonder where we all came from and I'd smell the pines and feel that mountain air swinging by. . . . Ever since I can remember, I've fallen dead in love with the outdoors," he said in an interview two years ago.

The love affair lasted until his death Wednesday at 86.

He had planned to make a fishing trip to Alaska in July, but canceled when he didn't feel up to it.

He managed to try the bass fishing in Texas last May, catching a 7-pound largemouth with his fly rod.

"Even after his eyesight got very poor, he was a tremendous fisherman," Bailey said. "I'd tell him to put the fly in a certain place, describe it in shades that he could see and he could always cast it right there."

Coleman helped millions of Americans enjoy the outdoors.

Two months ago, he became one of a few people ever recognized as an Honorary Park Ranger by the National Park Service. He was saluted for both his longstanding support of the park system and for funding a pilot program at Ohio's Cuyahoga National Park, in which inner-city youths from Cleveland and Akron are introduced to backpacking and other outdoor pursuits.

In the past few years, he served on the President's Commission on Americans Outdoors, the President's Take Pride in America Campaign and the Interior Department's Protect Our Wetlands and Duck Resources task force.

"His knowledge and commitment were tapped often by President Reagan and by his secretaries of the Interior—both Jim Watt and I," said Interior Secretary Donald Hodel. "He leaves a great legacy of recreation opportunities for this and future generations of Americans."

In 1986, Coleman became the second individual to receive the Mountain of Jade Award from the Outdoor Writers Association of America. Normally the award is given to organizations that "preserve, perpetuate or improve the quality of America's outdoors and add to the enjoyment of all outdoor people." The only other individual so honored was President Jimmy Carter in 1977.

A charter member of Wichita's Ducks Unlimited chapter, Coleman continued giving the wetland conservation organization an annual sponsor payment of $200, even after he became a Life Sponsor 10 years ago by donating $10,000.

A gentleman in the field, Coleman enjoyed friendly competition, said Texas businessman Paul Leonard. Coleman and Leonard met in 1969 on a creek bank in Alaska while casting for rainbow trout.

"I'll never forget one year we had a contest over in Iceland," while fly fishing for a salmon, Leonard said. "We are tied going into the last morning—he had 33 for the week. I had 33. In the last hole, I caught two and he caught one. It nearly killed him, but he was a good sport."

Coleman was always asking Leonard for critiques of his products. "I've never known anybody that was more quality conscious, nor anyone that was a more constant salesman," Leonard said. "That's the reason his company's been successful. He had such an interest in building good merchandise."

Coleman's love for his work kept him coming to the office daily until the past six months.

Wichita's Tennis Community Mourns the Loss of Patron, Fan

(By Mal Elliot)

As a player, patron and fan, there was hardly a facet of the sport of tennis in Wichita in which Sheldon Coleman was not involved.

"We try to recognize him each year at the Virginia Slims tournament because he is Mr. Tennis in Wichita," said Mervyn Webster, head tennis professional at Crestview Country Club.

Coleman was a major sponsor of the $100,000 Virginia Slims of Kansas tennis tournament, which Webster directs.

A former state tennis champion for Wichita High School in 1919-20, Coleman made his influence felt in local tournaments and support groups all of his life. He played tennis into his 80s.

In an interview on his influence on the game, Coleman once said he didn't do all that much. "I was just the first olive out of the bottle," he said.

His support helped Wichita State University Coach Stan Kardatzke create the first collegiate indoor tournament in 1978, which was named in honor of Coleman and staged for five years at the Wichita Racquet Club, a facility in which he was an original investor.

Kardatzke credited Coleman with helping build WSU into a nationally ranked tennis team in the 1970s.

He was a former sponsor of the Mid-Continent Invitational tournament, the state's largest amateur tournament staged each year at Riverside Park, a tennis complex which his influence also helped create.

"He helped promote many of the tennis clubs in town and he helped recruit some of the pros," said Kardatzke. "He has been a marvelous support for the tennis community. We have lost a good friend."

Rex Coad, pro-manager of the Racquet Club, coached the WSU team for nine years until resigning in August.

"He was always interested in the players and who we played," said Coad. "Until his health failed, he regularly attended the tennis matches."

A Hunter's Favorite Story

(Sheldon Coleman tape-recorded this version of his favorite hunting story. It was edited by Jim Reid, a Coleman Co. employee and former reporter for The Wichita Eagle-Beacon)

Certain days always stand out because the weather is beautiful, your dogs are working superbly and you're shooting well.

When you put that combination together with a natural love of the out of doors and the camaraderie of a good friend, it becomes one of those golden days that you remember forever.

I had such an experience hunting with Neil Murney of Wichita. Neil is one of the best wingshots in Kansas and has won skeet championships several times. He has the same passion for good dogwork and bob-white quail that I do.

We were hunting on a large ranch in the Flint Hills east of Wichita. It was a sunny but brisk late fall morning and weather conditions seemed perfect for our dogs to scent birds. The pointers were frisky and sharp. There was plenty of water for them in the clear streams and they seemed to welcome this day afield as much as Neil and I did. We were all in high spirits.

Now I'm not as good a shot as Neil Murney is. At that time I had good eyesight and I could shoot a round of skeet in the 90s—okay, low 90s. Neil could run a hundred straight sometimes.

We decided to take turns shooting. The quail were plentiful that fall and almost immediately we were into birds. Coveys singles and pairs, they all flew hard and wide. Neil got his first one and so did I.

We were tied three-three or four-four after taking turns and decided to step up side by side behind the dogs to shoot a covey rise. The birds roared out of a sumac thicket, fanning out in all directions, and we shot together, almost simultaneously. We each dropped our bird and the dogs came running back seemingly in unison on their retrievers. It was marvelous.

Well, this went on the whole morning. No misses, no second shots. We were tied at six-all—the limit was eight birds per man—and I remember wondering: 'By golly, how am I going to beat this guy?"

This was great fun and great sport, but it was also spirited competition between two old friends. Neither one of us were saying a word about it, though. Of course we both knew what was going on, and we were both rather intense about it and keeping track, but it was unspoken at the time.

Neil went one up on me. It was like a basketball game but I was the one that was always catching up just to get to the tie-breaker.

I got my seventh bird, which tied us again at seven-all with only one more bird apiece to take for a day's limit.

Gosh, that was fun. The dogs had been working so magnificently. We had fine points, usually with a back, and we had taken a variety of shots on coveys and singles. The birds seemed to be flying especially fast and there was something unusual but special about the sunlight that made everything sparkle. It was one of those days when all the details remain vivid. I can picture in my mind's eye almost every feather on the bobs, see the dogs' tails cracking, and see the breeze swaying the bluestem grass. We were really congratulating ourselves on our good fortune to be having such a fine day.

Well, do you know what happened? Neil got his eighth bird and I missed mine.

It wasn't a letdown really because I think that was one of the few times in my life that I was able to hit seven straight. The funny thing was, and maybe I imagined this, but I'll swear my favorite pointer turned around when I missed that last bird and looked at me in disgust. He looked at me as though I had let him down, deprived him of his chance to retrieve. I could tell he was not happy with me for missing.

Maybe I was a little disappointed too, but I still remember feeling great because not only had the dogwork and hunting been so exceptional, but the companionship and good-natured competition had been so wonderful.

Well, we called it a day, went back to the vehicle by the creek, broke out a bottle of our favorite chardonnay and had a leisurely field lunch. It was delightful sitting there drinking a little wine, telling each other lies about our accomplishments of the past and gazing across the rolling grasslands.

Friends Recall His Generosity, Competitiveness

(By Forrest Gossett and Steve Painter)

Friends recall Sheldon Coleman as a shrewd businessman, avid outdoorsman and political conservative who passionately pursued each interest. There were no halfway measures for Coleman, they said.

Whether he was fishing in Canada or fighting compulsory union membership, Coleman was willing to press his battles to the limit, say friends and business associates.

Dick Smith, 55, was one of Coleman's closest friends in later years. They played tennis, went fishing and attended President Reagan's second inaugural in January 1985.

He recalled Coleman as the most competitive person he knew.

"As late as February, we were together in Florida where he was fishing at age 86 and it was just Sheldon and me and a guide," said Smith. "His eyes had gotten pretty bad but he could sure still throw the lure and he caught the most fish. The three of us were fishing pretty hard and he also on the same trip got on a sailboat and went sailing with us."

Jack Hinkle, chairman of Union National Bank, is one of the charter members of Wichita's Metropolitan Baptist Church, as was Coleman. They were both quail hunters and they frequently went hunting with Coleman's younger brother, Clarence "Bud" Coleman.

"He was the best. He was a pro," said Hinkle. "The Colemans had these hellish legs and they'd walk you to death. He and Bud both. I'd have a hard time keeping up with them."

They were also on the building committee of Metropolitan.

"He was just a great Christian, and one hell of a businessman," he said. "They'd need something at the church. 'He'd call up and say, I'll give them $10,000 and Jack will give $5,000.'"

Jack wouldn't know about that until church officials thanked him for his generous donation.

Coleman is widely credited with helping launch the Wichita Jazz Festival, particularly because of his generous financial donations.

However, the avid outdoorsman and businessman needed some prodding from his wife, Galey, to become culturally oriented.

"Galey was a big jazz fan, so they contributed to the jazz festival, sat in the front row, even though Sheldon wasn't known as a jazz lover," said Ted Blankenship, editor of Kansas Business News and a founder of the festival.

"They also treated the musicians to a party at their place each year. It kinda helped to make the festivals a little more festive. It was just part of the three-day celebration, a party out at their house."

But despite Galey's best efforts, friends said Coleman's first love remained the outdoors.

"I think Galey was the one who would drag him to affairs, somewhat unwillingly," said Harry Litwin, a longtime Wichita businessman and family friend.

"I asked him one time, within the past two or three years, what his interests were, hoping he would include some ideas about performing arts . . . He said definitely his interests were in outdoor sports and outdoor activities."

Chuck Henry was a Coleman executive from 1958 to 1980. When he retired he was senior vice president, in charge of Coleman's air conditioning and heating division.

He said Coleman forced executives to know everything about their products, whether or not they worked and what improvements were needed.

"We used to go to Colorado and we'd go out and stay for week," said Henry. "We'd use a bunch of products. He was tolerant of mistakes, but he was also always demanding that it be improved or redesigned.

"He believed in field testing a product before you put it on the market. If you were going to design a new furnace or a Coleman jug, you had to test it out and be sure you had the right product. He believed in research and development."

Mary Koch, widow of the late Wichita industrialist Fred Koch, the man who founded what is now Koch Industries, has long shared a love of the outdoors with the Colemans.

Fred Koch and Coleman used to hunt and fish together and after Fred's death in 1967, Mary Koch joined the Colemans on many trips to Mexico, Canada and Pennsylvania.

"They were so kind to always take me on their trips," she said. "He was just so personable. You always enjoyed having him walk into a room."

Mr. Conservation—A Better America Is Coleman Legacy

Kansans and Americans from coast to coast aren't the only ones who mourn Sheldon Coleman's passing. So do the deer, bear, raccoons and other wild critters—including his beloved bobwhite quail—that Mr. Coleman spent a lifetime admiring and protecting and getting other people to admire and protect.

He was one of the conservation giants of this century, a stature that was recognized around campfires in the West—where a Coleman lantern might be hanging from a nearby tree—and government offices along the Potomac alike. He was one of the moving forces behind the President's Commission on Americans Outdoors, to which President Reagan appointed him in 1985. The products his company manufactured helped make the wilderness experience an enjoyable one for countless thousands.

Like his fellow conservationist and friend Laurance Rockefeller, Mr. Coleman demonstrated that persons of power and privilege can use those attributes to better the life of the common person far into the future. Mr. Coleman placed his good name behind many other efforts besides conservation. He served as vice chairman of the American Red Cross board of governors, a member of the American Stock Exchange board of governors, and a member of the Boy Scouts of America's national council.

The financial success of the Coleman Co. is testimony to Sheldon Coleman's business acumen. Hired by his father, W.C. Coleman, as a machinist, he started work at the firm "just like a man hired off the street," he once told a reporter. He remained in that job for two years, he said, until he "could operate every machine in the place and know how it ticked."

When he moved into the management and sales structure, the Sheldon Coleman era of the company began. The younger Coleman was responsible for the company's diversifying in the depths of the Great Depression, when it entered the heating business. It thus started a period of dramatic growth that was to continue, with some interruptions, until today. Sales went from $6 million in 1940 to more than $300 million in 1980.

The bottom line of Sheldon Coleman's life wasn't sales, however. It was a love of life that knew no bounds, an infectious love that affected his employees and friends and people who might never have met him before. He was the quintessential American, and we just hope God hasn't thrown away the mold.

A Man Who Stuck to His Beliefs—Associates Say Coleman Wasn't a Union Buster

(By Forrest S. Gossett)

Sheldon Coleman was a leader in one of the State's most bitter political battles during the 1950s, a battle that resulted in a State constitutional amendment outlawing compulsory union membership.

Kansas voters passed the so-called Right to Work amendment in 1958, but that did not end Coleman's fight with organized labor.

It was a battle that led to charges of being a "union buster" and would lead to labor problems at some Coleman plants across the Nation, but Coleman, say associates, believed that forcing employees to join unions was unfair.

"Only the most narrow-minded union partisans would call him a union buster," said Reed Larson, president of the National Right to Work Committee. "He didn't mind standing up for what he believed in and . . . I know the company withstood very costly strikes across the country."

The most bitter strike took place in Wichita in 1971.

Coleman and the International Union of Allied and Technical Workers of the U.S. and Canada engaged in a long and bitter strike in May 1971 over wages and benefits that led to some violence, police action and arrests.

The fight brought the protagonists into court to exchange charges of harassment, and vandalism and unfair labor practices being filed with the National Labor Relations Board. The strikers drew widespread support from other unions, who called a nationwide boycott of Coleman products.

Many striking workers were fired by the company, and new workers were hired to replace them, effectively breaking the strike. Picket lines were withdrawn in late August of that year, and many fired employees asked for their jobs back.

Eventually, an election was conducted and the workers—many of whom had been hired to replace striking workers—voted down union representation. Coleman workers have not had union representation since that strike.

Bob Love, chairman of the Love Box Co. in Wichita who helped lead the right-to-work fight in Kansas, said that Coleman always stuck to his beliefs. "He was very principled on that matter. He simply did not believe in forcing people to join a union."

THE COLEMAN CO: A CHRONOLOGY

1901—Hydro-Carbon Light Co., forerunner of The Coleman Co., moved by founder W.C. Coleman to Wichita from Kingfisher, Okla.

Nov. 15, 1901—Sheldon Coleman, son of W.C. Coleman, born in Fort Worth.

1905—Coleman Arc Lamps light the first night football game. The winning team is Fairmount College, now Wichita State University.

1914—Coleman gas lantern developed.

1920—Sheldon Coleman graduates from Wichita High School. He'll attend Ottawa University.

1920s—Gas stove developed, used as camp stove and as hot plate and range for kitchens.

1925—Coleman graduates from Cornell University, joins production department of the Coleman Co.'s first international operation in Canada.

1928—Coleman returns to headquarters in Wichita.

1930s—In face of dwindling markets, Coleman reorganizes company finances and, by 1932, the company's crisis is over.

1940s—Coleman Co. produces goods for every branch of the armed forces.

October 1940—Coleman becomes chief executive officer and executive vice president.

1950—Sales hit a high of $34 million.

1951—Coleman becomes president of the company.

November 1957—Coleman becomes chairman of the board.

1960s—The Coleman Co. diversifies with a range of camping products.

1971—Strike at the Wichita plants lasts 88 days.

1981—Company goes public. Coleman inducted into the National Sporting Goods Hall of Fame.

1982—Coleman inducted into the National Recreational Vehicle/Manufactured Housing Hall of Fame.

1984—Coleman shares the Wichita Chamber of Commerce Uncommon Citizen Award with his brother, Clarence.

1985—Coleman named to the President's Commission on Americans Outdoors.

1987—Coleman relinquishes position as president to son Sheldon C. Coleman.

1988—Coleman relinquishes position as chief executive officer to son.

Company's Leader Cared About Them, Workers Say

(By Ellen Dyer)

The workers who make the famous Coleman lanterns and stoves remembered Sheldon Coleman Thursday as a man who boosted their morale through his enthusiasm, talked with them on his visits to the factory floor and cared about them.

"I met him a couple of times," said J.W. Johnson above the whir and clank of machinery that fills the air at Coleman's downtown plant at 250 N. St. Francis. "He was one of the people who would come down and talk to the employees . . . there are a lot who just come down and just look."

Johnson, a propane lantern assembler and 17-year Coleman veteran, said Coleman tried to find ways to keep employees on the job even when times were tough. "He found a way to keep people working . . . Coleman hardly ever lays off," Johnson said.

Over at another lantern assembly area, Margie Howell, wearing safety glasses and an "It Pays To Work Safe" button attached to her blue denim apron, said she had met Coleman on his trips through the plant and he was, she said, a "happy and cheerful" man.

It seemed to Howell that Coleman was a man who "really cared about his company and the people that worked for him."

Pausing in her job on the camper stove line, Lois Erne said, "Even if our hands were dirty, he'd shake hands with us." And Coleman was "always interested in a product and how it was running."

Erne remembers chatting once with Coleman about the merits of the single burner camper stoves she helps produce and also uses on her camping trips. The 17-year Coleman employee happens to think the little stove is a good one, but "I'm sure he would have listened" if she'd had complaints.

Said Erne, "I loved to hear him talk. He always praised the people . . . he seemed to boost our morale when he'd come down. He made us feel important."

"I think he used most of his products . . . he knew whether they worked or not," Erne said.

Workers knew Sheldon Coleman was ailing and were told Thursday morning of his death, said Gary Schulte, lantern department manager. Schulte said workers absorbed the news "with deep sadness."

"We all feel like we are part of the Coleman family," said Schulte. Coleman's death, he said, means "losing a friend."

The American flag was flying at half-staff over the company headquarters Thursday, and the offices and factories are closed today.

DEATH BRINGS HEAVY STOCK SPECULATION

(By Frank Garofalo)

Sheldon Coleman's death sent speculators on a binge of buying Coleman Co. stock Thursday, boosting the price $3.12½ to 39.12½.

Wall Street investors traded 197,900 shares—far above normal—of the company's common stock on speculation that the death of the patriarch of the company would trigger the sale or an attempted takeover of the company, New York securities analysts said. Coleman stock, traded on the New York Stock Exchange, had closed Wednesday at $36.

The Coleman Co. would not comment on the Wall Street speculation.

"I think this is a natural, knee-jerk speculative reaction by Wall Street that something may happen—a sale or takeover or restructuring, which is a catchall word," said Fred Anschel, a Dean Witter analyst who follows Coleman.

Harold Vogel, a Merrill Lynch analyst, said when a company founder or longtime company head dies, it increases the likelihood of a takeover or change in ownership.

"Wall Street typically responds in this fashion. It's not unusual," he said.

Vogel also said that Coleman's earnings have been on a "stong uptrend" because of a good economic environment, which also would have influenced speculative buying of the stock.

Responding to the Wall Street activity, the company said, "The only reason that the company knows for the sharp increase in trading volume and price . . . is speculation resulting from the announcement of the death of our chairman.

"There will be no changes in the company's management nor to its plans and objectives as a result of the death of Sheldon Coleman, the chairman."

The company had no further statement.

Is an unfriendly takeover possible?

Dean Witter's Anschel said he thought it would be highly unlikely that such a move would succeed because 30 percent or more of the company's 7,018,833 outstanding shares is closely held by persons friendly to the company.

According to the company's May 17 proxy report to shareholders, 27.6 percent of the outstanding shares were held by company officers and directors, including 18 percent held directly by the late chairman. Another 1.7 percent is held in trusts he established for the benefit of his wife and son.

Sheldon C. Coleman, the late chairman's son who heads the company as president and chief executive officer, directly held 29,900 shares, less than .5 percent. Five family members who are directors and the trusts listed in the proxy held a total of 25.83 percent of outstanding shares.

Close to half of the stock is owned by institutions, such as banks, mutual funds, insurance companies and pension funds, Anschel said. The largest institutional shareholder holds between 2 percent and 3 percent of the stock.

"Enough of an interest is in friendly hands that any unfriendly approach would not be easy," said Anschel.

SALUTE TO MAJORITY LEADER ROBERT C. BYRD

Mr. NICKLES. Mr. President, I would like to take this opportunity to salute our distinguished majority leader, ROBERT C. BYRD. In his 30 years of service to this body, Senator BYRD has unselfishly and unfailingly given himself to the welfare of the individual Members and the Senate as a whole. Those of us in the Senate understand the commitments of time and energy that must be made for the success of the Senate, Government, and our Nation. Senator BYRD embodies this ideal.

He has a deep love and respect for the institution of the Senate. He does not take lightly any unfounded criticism of this body which was established by our founders to deliberate the complex issues of our day. He views the Senate as a cornerstone of our freedom which has been described as the crucible of public thought.

As majority leader, he recognizes the importance of each Member's voice in Senate procedure. He has worked diligently and respectfully with the Republican leadership. Senator BYRD recognizes the will of the majority but works to preserve the rights of the minority.

Throughout his career as majority leader, Senator BYRD has consistently shown concern about the Senate's stature. This is an institution with unique rules and rituals and no one understands or reveres the qualities of this uncommon body like my friend from West Virginia. His greatest strength as a leader has been his limitless knowledge of the rules and his patience to share them with newcomers to the Senate.

Leadership is difficult among a body where every Member has substantial authority but Senator BYRD's love of the institution and respect for the rules have served to preserve a necessary balance. Although he will step down as majority leader after this session, I am confident my distinguished colleague from West Virginia will continue to display his talents and experience as he takes on his new role in the Senate.

BICENTENNIAL MINUTE

NOVEMBER 4, 1924: REELECTION OF SENATOR THOMAS DU PONT

Mr. DOLE. Mr. President, 64 years ago, on November 4, 1924, the State of Delaware reelected Republican Senator Thomas C. Du Pont. This made Du Pont the first person, since the 1913 consitutional provision for direct election of Senators, to be reelected to the Senate after having previously served and been defeated.

Du Pont, a Wilmington businessman, had been appointed in 1921 to fill a Senate vacancy. The following year, Democratic candidate Thomas Bayard defeated Du Pont in a special election by only 60 votes. Du Pont ran again that year for the full term, this time losing by only 325 votes. He ran once more in 1924. On that occasion he won by over 16,000 votes, or 59 percent of the total.

Since Senator Du Pont's time, 13 other defeated Senators were subsequently reelected. The list includes such colorful Members as Thomas P. Gore, the blind Senator from Oklahoma; James Hamilton Lewis of Illinois, the Senate's first party whip; and Iowa's Guy Gillette, who was regularly cited as the "best dressed Senator."

The record for sheer persistence was clearly established by Kentucky's John Sherman Cooper. He was first elected in 1946 to fill a vacant seat in the Senate, then defeated when he ran in 1948. In 1952 he was elected to fill another vacancy, and defeated when he ran again in 1954. Once more, in 1956, he won election to fill yet another vacancy, but this time it stuck. The voters continued to send John Sherman Cooper to the Senate until he retired in 1973.

The most recent case of a defeated Senator being reelected was our colleague HOWARD METZENBAUM, who was appointed to the Senate in 1974, but defeated by JOHN GLENN in the Democratic primary that same year. Two years later, Senator METZENBAUM returned by winning election to Ohio's other Senate seat. And this year, in the State of Washington, former Senator Slade Gorton seeks to follow the precedent set by Thomas Du Pont back in 1924.

PHILIPPINE FOREIGN MINISTER RESPONDS

Mr. DOLE. Mr. President, several days ago, I inserted in the RECORD an op-ed written for the Washington Post by former U.N. Ambassador, Jeane Kirkpatrick, on the subject of the Philippine bases. The op-ed was critical—in my view, accurately so—of some of the actions of the Philippine Government in the bases negotiation.

Philippine Foreign Minister Manglapus has now written an op-ed for the Post, answering the Kirpatrick column. Philippine Ambassador Pelaez has asked if I would insert the Foreign Minister's piece in the RECORD, too, in order to provide readers both sides of the issue. In fairness, I am happy to comply with the Ambassador's request, and I ask unanimous consent that the op-ed be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 21, 1988]

BLAMING THE PHILIPPINES

(By Raul S. Manglapus)

At a moment when chances have brightened for a settlement of the various issues in the current five-year review of U.S.-Philippine military bases, Jeane Kirpatrick's op-ed [Sept. 19] is particularly ill-timed. It also shows a lack of information.

It was the United States, not the Philippines, that suggested in 1979 that every five years there shall "be begun and completed a complete and thorough review and assessment of the agreement including its objectives, its provisions, its duration and the manner of implementation, to assure that the agreement continues to serve the mutual benefit of both parties."

I am not in Washington now "to work with Congress on the mini-Marshall Plan immediately following a stormy session with U.S. Ambassador Nicholas Platt." It was during a most cordial session of our panel talks that Ambassador Platt suggested, when he learned of my going to the U.N. General Assembly, that I come to Washington to talk to U.S. leaders about the bases.

When Secretary of State George Shultz came to Manila last June, he and I agreed that the "hard components" (cash and commodities) of the U.S.-Philippine proposals for compensation were not far apart from each other. We both agreed that both sides would explore "creative" ways of raising the compensation to the level President Aquino would find acceptable and useful if she should opt affirmatively for the continuance of our military relationship and therefore needed an impressive package with which to overcome anticipated domestic opposition.

Kirkpatrick perpetuates the condescension that the United States is in the Philippines only to protect the Philippines and therefore it is ungrateful of the Filipinos to demand better terms (even if it is the United States that originally suggested the periodic review).

U.S. experts and policy makers say otherwise. The U.S. Congressional Research Service says that "a major mission requirement for the bases is to guarantee access to the major passages between the Pacific and the Indian Ocean and protection of Japan's Sea Lines of Communication (SLOCs)."

The studies in this respect stress "American and Japanese interests in the Persian Gulf" and only "to a lesser extent" locations in Southeast Asia and the Indian Ocean. "This specifically involves protection of Japan's SLOCs to its major sources of energy and other vital raw materials: the Middle East, Indonesia, and Australia," the report continues.

Out of these requirements emerges the global significance of the bases for U.S. strategy. Secretary Shultz, after speaking of the role of the bases in Philippine defense, stressed (in a speech in July) the "large strategic involvement of the Philippines," which "is global in nature."

Assistant Secretary of State for East Asian and Pacific Affairs Gaston Sigur speaks in Senate testimony of U.S. security commitments to Korea, Japan, Thailand and important national interests in the Persian Gulf, for all of which "the geostrategic location of the Philippines is unsurpassed."

In contrast, the mission requirements for U.S. bases in other locations are relatively modest. Yet, the conditions of each of the basing agreements in these instances are far more favorable to the host countries than those in the Philippine Agreement, including questions of criminal jurisdiction over offending U.S. servicemen, ownership of improvements, status of forces and compensation.

While those host countries were paid compensation by the United States from the very inception of the military facilities, the facilities in the Philippines went without compensation for 33 years after the 1947 Military Bases Agreement was signed. And when at last compensation was allowed in 1980, it was considerably less in absolute as well as relative terms than that given other host countries, considering the much farther-ranging responsibilities assigned to the Philippine facilities in U.S. global strategy.

The compensation of $100 million in 1980 and $180 million in 1985 is even less impressive when placed beside the more than $5 billion given annually to Israel and Egypt, which host no bases but which are expected not to war on each other and to keep the peace in the Middle East—a somewhat more vague mission than the precise transoceanic and transcontinental reach of Clark and Subic.

U.S. experts have also estimated the cost of replacing Subic and Clark. When one such expert suggests that the replacement "might require four to six additional navy battle groups which would cost upwards from $60 billion" (Congressional Research Service, 1986), that is called a scientific study. But when a Filipino cites the study, it is called brinkmanship.

At the conclusion of her piece, Jeane Kirkpatrick, perhaps unwittingly, proves a point that President Aquino has been seeking to make without much success. At the ASEAN summit last December the president reminded her fellow heads of government that "the Philippine factor is said to have contributed to the securing of air space and sea lanes that are vital to the continued economic stability and growth of our neighbors in Southeast Asia, East Asia and the Pacific."

It was a diplomatically disguised invitation for all to join in the political responsibility for U.S. bases and rescue the Philippines from the divisive and polarizing domestic issue of being the lone bases host in Southeast Asia. Nobody paid heed. Now Jeane Kirkpatrick is suggesting exactly the same thing. Bully for her.

But if it doesn't work—who is ungrateful? Not our country, which hosts the bases and, unlike the many U.S. allies in Western Europe and Northeast Asia, exposes itself alone in our region for the global strategy of the United States.

MISCELLANEOUS INTERNATIONAL AFFAIRS AUTHORIZATION ACT OF 1988

Mr. WILSON. Mr. President, last Friday the Senate passed S. 2757, the Miscellaneous International Affairs Authorization Act of 1988, and during its consideration, I had intended to engage the managers in a colloquy regarding section 301 of title III of the bill, the au pair provision. However, in order to meet the herculean task of passing all appropriations bills before the 12 o'clock fiscal deadline Friday night, I agreed to postpone this discussion until today.

Let me underscore that this delay should not be misinterpreted. It in no way lessens the importance of these remarks.

Mr. President, the committee language within S. 2757 to which I have referred reiterates congressional intent with respect to participation in the au pair program that all qualified applicants should be allowed to compete on an equal basis. I am pleased that the committee has chosen to clarify this point on page 9 of the report accompanying S. 2757, as I am aware of at least one fine California organization which has expressed an interest in becoming a sponsor under the program.

There has been some concern expressed, however, that while the agency may be directed to allow all qualified organizations to participate, there is no assurance that new applications would be processed expeditiously. I would inquire of my colleague from Rhode Island, Senator PELL, as to what his thoughts may be on this matter.

Mr. PELL. I thank my colleague from California, Senator WILSON, for his interest in this particular provision of S. 2757.

He is correct in his assessment of the committee language in that Congress does not intend to preclude any qualified organizations from participation within the Au Pair Cultural Exchange Program. In addition, I would indicate that the committee expects the agency to process all applications submitted in a timely manner and to administer the program in a similar fashion.

Mr. CRANSTON. Mr. President, if the distinguished chairman of the Foreign Relations Committee would yield, I would like to thank him for his clarification of this matter. I, like my colleague from California, have also been contacted by a California Organization which would like to become a program sponsor, and I know that his clarification will assist them in this endeavor.

Mr. HELMS. Mr. President, I have supported, and continue to support, the program addressed by the au pair provision. The program has offered thousands of American families, and thousands of foreign visitors, a wonderful cultural experience, with no cost to the U.S. Government. It represents the fine tradition of U.S. private initiatives, and the generosity of American families who are willing to open their homes to folks from other parts of the world.

I understand that the program has attracted some attention which lead to the provision's being to be included within S. 2757. However, Mr. President, we should be mindful that it is a young program, almost a pilot program; and the sponsoring organizations already have begun efforts to assure that this cultural experience will be available to an even wider segment of the American population by raising funds to underwrite some or all of the costs of the program for many families that could otherwise not afford them, and to assure that the program will apply not only to urban areas, but to all parts of our country, in communities of all sizes. I understand that this will be a sustained and vigorous effort, Mr. President, and that it will significantly broaden the appeal of the program by making it available to many families who could not otherwise participate.

In view of that, Mr. President, I was pleased to support the passage of the provision.

Mr. WILSON. I thank my colleagues for their remarks.

TRIBUTE TO OVIBDC

Mr. ROCKEFELLER. Mr. President, I would like to pay tribute to a West Virginia nonprofit corporation that has played a critical role in the economic development of the Wheeling, WV, area. Ohio Valley Industrial and Business Development Corp. [OVIBDC], has been extremely instrumental in improving the economy of the Greater Wheeling area through the initiation of new incentive programs to encourage business development.

OVIBDC recently announced that this year has been the most successful year in its history. The organization has completed more projects this past year than ever before. OVIBDC also reached an impressive milestone with the completion of its 100th project. These 100 projects represent millions of dollars in investments and thousands of jobs for West Virginians. I am extremely proud of their record of excellent management and innovation.

Recently, I have had the opportunity to work directly with OVIBDC on the financing of their latest project, the Ohio County Technology Center—a research and high technology oriented business incubator. Through securing an Economic Development Administration grant, OVIBDC will move forward on construction of this unique and innovative facility that will create in excess of a hundred jobs.

Local economic development is the key to insuring that our cities, such as Wheeling, which have traditionally depended on heavy industries, not only maintain that industrial base, but also diversify and create jobs in the high technology, tourism and service industries. OVIBDC is to be commended on its accomplishments in this task, and I am proud to pay tribute to such a dynamic, successful organization.

Mr. President, I would like to express admiration and appreciation for an outstanding West Virginia businessman. Charles H. James III recently received the 1988 National Minority Supplier/Distributor Firm of the Year Award.

Charles H. James III, owner of the C.H. James & Co. of Charleston, WV, is to be commended for his dedication and hard work. Mr. James has taken the company which was founded in 1883 by his great-grandfather, and turned it into a very successful food distribution business.

Mr. James was selected from among several nominees to receive the award. His selection is truly a tremendous accomplishment, particularly given the fact that the C.H. James & Co. only began their Federal procurement efforts a short 2 years ago. In this brief period of time, the company has won several nationwide distribution contracts from the Veterans' Administration and the U.S. Department of Agriculture. This is a truly outstanding accomplishment and a testimony to the remarkable performance of the company.

I would like to congratulate Mr. James on his award. His hard work, dedication, and commitment to minority business development earned him the award given by the U.S. Department of Commerce. He is truly an outstanding West Virginian.

CELEBRATION OF GERMAN-AMERICAN HERITAGE

Mr. HOLLINGS. Mr. President, as a cosponsor of Senate Joint Resolution 273 designating the sixth day of October "German-American Day," I am proud to rise today to salute the nearly 50 million American citizens who trace their heritage back to Germany. Of course, Fritz Hollings is one of those 50 million, and I, too, cherish my roots in the land of Martin Luther, Ludwig Beethoven, and J.S. Bach.

In the three centuries since the first Germans arrived in America, their habits of creativity, industry, and scholarship have contributed immeasurably to our Nation. America's culture and cuisine, our music and our language are all greatly enriched by German borrowings. And, by the same token, our German heritage has contributed to the United States' special relationship with the Federal Republic of Germany—a nation whose economic achievement and domestic tradition we respect enormously.

Mr. President, I applaud Senators LUGAR and RIEGLE for taking the lead in establishing German-American Day, which Americans will henceforth celebrate each year on this date. German-Americans have contributed so much. This special day is a fitting and richly earned salute.

A TRIBUTE TO THE DISTINGUISHED RETIRING SENATOR FROM FLORIDA, LAWTON CHILES

(Men of merit are sought after: the undeserver may sleep when the man of action is called on.—Henry IV)

Mr. INOUYE. Mr. President, I rise in tribute to the distinguished Member from Florida, LAWTON CHILES, who has decided to retire from the U.S. Senate at the end of the 100th Congress. Those of us who have worked closely with LAWTON over the years, view his decision with profound regret. For not only will the Senate lose one of its most amicable and admired leaders, but the country will be losing one of the most capable, hard-working Members ever to take up the banner of public service.

As chairman of the powerful Budget Committee, LAWTON has demonstrated an unusual mastery of the intricate budget process. He has impressed his colleagues with his agile intellect and his handy ability to manipulate the annual deluge of fiscal detail with artful precision. His clear and decisive thinking has guided our deliberations over spending priorities with the same informed judgment he has shown in the other areas of his Senate work. Recently, LAWTON displayed his formidable skills in easing the drastic changes wrought by the Gramm-Rudman-Hollings Deficit Reduction Act and in ensuring the fair implementation of the budget summit agreement reached between Congress and the President last November.

When LAWTON CHILES departs the Senate, he will leave behind a legacy of accomplishment and selfless devotion. It is a reputation which he has held ever since his election in 1970. Shortly after his arrival in Washington, he embarked upon a reform of the appropriations process which led, eventually, to the enactment of the Budget Act of 1974. This act remains the cornerstone of the appropriations process and a reflection of the open government principals espoused by LAWTON CHILES throughout his public career. For the first time in its history, Congress is required to set caps on its overall spending before it starts approving individual spending bills. Those of us who labored through the cumbersome appropriations process before this change, can attest to the positive difference it has made in our ability to forecast overall spending needs.

Over the years LAWTON has tried to strengthen the overall effectiveness of the Budget Act by closing loopholes and enforcing spending limits. In 1980, he took aim at the runaway budgeting practices of the Nation's agriculture programs. He worked to curb unregulated spending, tighten controls on farming subsidies, and increase funding for basic research. Later, he was the prime sponsor of the Federal Paperwork Reduction Act and of sunset legislation designed to terminate Government agencies after a certain period of time unless they are reauthorized. Long before President Reagan began his crusade to reduce the size of Government, LAWTON CHILES recognized its importance. He understands that before Congress can ask the American people to make personal sacrifices in the name of fiscal austerity, the Federal Government must get its own house in order.

Above all, LAWTON will be remembered as a true populist—a men who advocated openness in Government and acted upon that commitment. During his first Senate campaign in 1970, LAWTON, still a relatively unknown state politician, walked the length of Florida determined to bring his candidacy to the people. For 92 days he put one foot in front of the other. He battled dogs, snakes, and blisters. He covered 1,003 miles and ate a hundred or so chicken, fish, and possum dinners before reaching the Florida Keys. The Florida newspaper has remarked that he took comfort in the small pleasures—skinny-dipping in a forest pond, a cold soft drink from a young soldier, strangers offering him a place to prop up dog-tired feet while he talked and listened. The man the people nicknamed, "WALKIN' LAWTON," did listen, and listened hard.

It was at LAWTON's initiative that the public was admitted to Senate committee meetings that historically were closed to outsiders. He brought a new meaning to the words, "open government," by insisting that money not be a barrier to public participation in the political process. During his reelection in 1976, LAWTON refused to accept any campaign contribution over $10. In 1982, when he limited contributions to $100, he also refused to accept donations from political action committees. He insisted that this was necessary to avoid the appearance of partiality. LAWTON has never forgotten the average citizen and his deep suspicion in the ways of big Government. The Senator from Florida has tried to calm this fear by supporting legislative measures which are sensitive to the needs of local communities while at the same time fiscally responsible. LAWTON will be remembered by his colleagues and constituents as the Senator who supported efforts to step up the fight against drug smuggling, worked to combat food stamp fraud, and sought assistance for Mariel Boatlift refugees and aid for the reconstruction of Liberty City after the riots.

The impact LAWTON CHILES has made on the U.S. Senate has been as much a result of his professional conduct, as any single piece of legislation he has authored. He has set a standard of personal integrity and honesty which all admire. LAWTON is a man of action and a man of compassion—a Senator whose family values and fundamental human concerns transcend party affiliation. His work in the U.S. Senate long will be remembered for the respect it engendered in the institutions of Government and for the honest way in which it was carried out.

A TRIBUTE TO SENATOR WILLIAM PROXMIRE

Mr. THURMOND. Mr. President, Senator WILLIAM PROXMIRE has announced that at the close of this 100th session of Congress, he will not be seeking reelection to the U.S. Senate. Accordingly, I would like to take this opportunity to express my appreciation of his many years of service in the U.S. Senate.

Senator PROXMIRE has accomplished many things in his career. He earned his undergraduate degree from Yale University in 1938, and was awarded a master's degree in business administration cum laude from Harvard Business School in 1940. In addition to these achievements, he also has a master's degree from Harvard in public education.

WILLIAM PROXMIRE has been involved in politics since his election to the Wisconsin State Assembly in 1950. In 1957, he was elected to the U.S. Senate in a special election to fill the seat left vacant by the death of Senator Joseph McCarthy. The following year, Senator PROXMIRE was elected to his first full term, and has been consistently reelected since that time.

Senator PROXMIRE acts as a strong voice in the Senate to curb Government spending. The Golden Fleece Award, given monthly by Senator PROXMIRE to a Government agency which exhibits unnecessary and wasteful spending, has become a hallmark of the Proxmire era. Senator PROXMIRE first instituted the award in 1976, and has been a loyal fiscal watchdog for the American taxpayers. According to the National Taxpayers' Union, Senator PROXMIRE held the best record in the Senate during the last 3 years for restraining the growth of Federal spending.

As chairman of the Senate Banking, Housing, and Urban Affairs Committee, Senator PROXMIRE plays a formative role in the development of national policy. In addition, Senator PROXMIRE serves ably as a member of the Appropriations Committee and of the Congressional Joint Economic Committee. In his role as chairman of the Senate Banking Committee, he has sponsored such legislation as the Financial Modernization Act, which allows commercial banks to operate in the investment securities field.

Senator PROXMIRE is responsible for other important pieces of legislation. For instance, he coauthored the Foreign Corrupt Practices Act, which outlawed the bribery of foreign officials by American companies abroad. Through his career and his many legislative achievements, Senator PROXMIRE has maintained a standard of integrity for the American people and for himself.

During his 31 years as a U.S. Senator, Senator PROXMIRE has fulfilled his obligations with a sense of responsibility and duty. In fact, Senator PROXMIRE set the longest unbroken record in the history of the Senate for responding to rollcall votes. Since April 1966, he has not missed a single rollcall vote. His dedication to the Senate, and to the people of Wisconsin is remarkable.

It has been an honor to serve in the U.S. Senate with the distinguished Senator from Wisconsin, and I wish him the best in all future endeavors.

A TRIBUTE TO SENATOR LAWTON CHILES

Mr. THURMOND. Mr. President, the distinguished Senator from Florida, Senator LAWTON CHILES, has announced that, at the adjournment of the 100th Congress, he will be retiring from his position in the U.S. Senate. Senator CHILES has been a loyal and dedicated Member of this body for 18 years, and, accordingly, I would like to take this time today to honor him for the contributions he has made to the institution of the Senate and to the United States.

Senator CHILES has led a life devoted to public service. He is an exemplary product of the Florida education system, having obtained his undergraduate degree from the University of Florida in 1952, and then graduating from the university's law school in 1955. Senator CHILES entered the Florida House of Representatives in 1959, and thus launched his political career. In 1967, he was elected to the Florida Senate. Running against stiff incumbent competition, Senator CHILES was elected to the U.S. Senate in 1971. During this campaign, he gained national attention by literally walking across the entire State to meet with the voters.

Senator CHILES has made a significant contribution to the war against drugs. At his initiative, the Senate Investigations Committee conducted probes of organized crime and drug activities in Florida which laid the groundwork for action by Congress. In particular, the Anti-Drug Abuse Act of 1986, sponsored by Senator Chiles as a member of the Drug Task Force, defined stricter penalties against drug smugglers and dealers, especially those convicted of selling narcotics to minors.

As chairman of the Senate Budget Committee, Senator Chiles has been an advocate of controlling Federal spending. He helped to author the Congressional Budget Control Act, setting new limits on the budget and pushing for deficit-cutting programs. Senator Chiles has also been a capable member of the Senate Appropriations Committee, Aging Committee, and the Governmental Affairs Committee.

In particular, it is important to note the worthy efforts by Senator Chiles to protect his home State and its natural resources. The 574,000-acre big Cypress National Preserve was established in 1974 under a law introduced by Senator Chiles. It now serves as a central location for the famous Florida Everglades.

It has been an honor to serve in the Congress with Senator Chiles. I thank the Senator from Florida for his dedication to the U.S. Senate, and I wish him the best for the future.

BICENTENNIAL MINUTE

SEPTEMBER 30, 1788: FIRST SENATORS ELECTED

Mr. DOLE. Mr. President, 200 years ago, on September 30, 1788, the first two Members of the U.S. Senate were elected. The Pennsylvania State Assembly, under the newly ratified U.S. Constitution, chose Robert Morris and William MacLay.

Planning for Senate elections began in earnest after June 21, 1788, when New Hampshire's ratification of the Constitution provided the necessary margin to put that charter into effect. When New York ratified the following month, the existing Congress under the Articles of Confederation set to work on an election ordinance, which it issued in mid-September. The ordinance provided that Presidential electors would be chosen, within the States that had ratified the Constitution, on the first Wednesday in January 1789. The electors would convene in their respective States on the first Wednesday in February to cast their ballots for President and Vice President. Finally, the new Congress would meet to count the electoral ballots on the first Wednesday in March—March 4, 1789.

A half-dozen prominent Pennsylvanians were mentioned as candidates for the two Senate seats in the 6 months preceding the legislature's action. On September 29, a large contingent of assembly members adjourned to a nearby tavern and agreed to support Morris and MacLay, whom the assembly elected the following day. The unsuccessful contenders then shifted their attention to the forthcoming popular elections for Pennsylvania's eight seats in the House of Representatives.

Both Morris and MacLay had worked actively for the adoption of the Constitution. A Philadelphia merchant and signer of the Declaration of Independence, Morris had served as the Nation's Superintendent of Finance from 1781 to 1784. Well regarded within the State, MacLay provided a Western and agrarian balance to Morris who identified clearly with Philadelphia's eastern and commercial orientation. MacLay and Morris thus became the first of the 1,782 persons chosen to serve in the U.S. Senate during its first two centuries.

A TRIBUTE TO AMBASSADOR HARRY BARNES

Mr. KENNEDY. Mr. President, the Chilean people spoke clearly and firmly on October 5 when they voted for a return to democracy after 15 years of military dictatorship. That they did so in the face of overwhelming propaganda from the military government and despite that government's enormous advantage in resources is a tribute to the Chilean's people courage, determination, and commitment to democracy.

The Government of Chile also deserves credit for conducting a fair vote and a fair count, and for quickly acknowledging the validity of the outcome. Its actions on October 5 will do much to assure a safe and sure transition to democracy and a stable future for all Chile.

I also want to commend the military of Chile for its public commitment to abide by the results of the plebiscite, to comply with the Constitution, and to support the holding of free and fair national elections as required by that Constitution. I would hope that those elections can take place as soon as they can be reasonably arranged so as to speed Chile's final transition to democracy.

There is another individual who deserves credit for this historic step by the people of Chile.

All Americans can be proud of the role played by the American Ambassador to Chile, one of our most distinguished professional diplomats, Ambassador Harry Barnes. Since his arrival in Santiago 3 years ago, he has been an eloquent champion for the cause of human rights and a steadfast voice for the restoration of democracy in that country.

During his tour in Chile and throughout his entire career as an American diplomat, Ambassador Barnes has represented that which is best about America. As one American and as one Senator, I want to pay special tribute to him, not only for his extraordinary skill as a diplomat, but also for his personal courage, his professionalism, his patience in time of great testing and trouble, and for his faith in our country's own best values.

As I think of Harry Barnes, I cannot help but remark that all America still mourns the loss of another great American diplomat, Ambassador Arnie Raphel, who recently died in Pakistan. Ambassador Raphel's tragic loss serves to remind us of the great vulnerability of our diplomats who serve our Nation abroad. Harry Barnes and Arnie Raphel come from the same tradition, and they have served America and American ideals well. The American people are grateful for their service.

I ask unanimous consent that a profile of Ambassador Barnes from the New York Times be included at this point in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the New York Times, Oct. 4, 1988]

As Chile Prepares To Vote, U.S. Envoy Is Praised

(By Shirley Christian)

Santiago, Chile, Oct. 3.—Among the items hanging in the office of Harry G. Barnes Jr. is a newspaper cartoon that shows him knocking in vain on the doors of Chile's fortress-like presidential palace.

"Closed," the cartoon says. "No Service. Don't Insist."

It reflects what most people attuned to Chilean politics have concluded: that Mr. Barnes's three years here as the Ambassador of the United States have been a test of wills between him and Gen. Augusto Pinochet in which the general has had the visible upper hand.

But when General Pinochet faces the voters Wednesday in a presidential plebiscite, it will be under circumstances in which opponents think they have a fair chance of defeating him. And part of the reason, people in both the pro- and anti-Pinochet camps say, is the hand of Harry Barnes.

THE PRESSURES PAID OFF

Mr. Barnes is credited with helping to make possible, through continual United States pressure, the relatively free campaign environment and reasonable assurance of an honest proceeding.

In the plebiscite, designed at General Pinochet's direction as part of a slow transition to democracy, people will vote yes or no to give him eight more years in power, after which he would call open elections. If he fails to get a majority on Wednesday, he is supposed to call free elections at the end of next year.

Mr. Barnes, who will end both his assignment here and his 38-year diplomatic career in November, indicated in an interview that he will leave happier if General Pinochet is defeated in the plebiscite.

"I look forward to coming back in March 1990, when the first democratically elected President would be inaugurated if the 'No' wins, rather than having to wait until 1997," the 62-year-old Ambassador said.

'GREAT AUDACITY' NOTED

"At this point, I think the 'No' will win, if the process doesn't get interrupted," he continued. "That opens the way to free elections. Our whole approach has been to promote a rapid return to democracy, so it would be a nice way to leave, knowing that step had been taken."

In a country where influence by foreigners in internal affairs has always been a sensitive issue, no one wants to praise a United States Ambassador openly. But privately many say he has been an effective advocate of American policy, despite his limited access to the President.

"He is acting out a policy very clearly decided by the United States Government, and he has done it with great audacity," an opposition leader said. "In conversations with us he expressed very critical opinions about the opposition for our inability during such a long time to produce a viable alternative to the Pinochet regime, for our inability to get behind one candidate of our own."

He added that the Ambassador had been "very discreet" in not expressing his own views on specifics of how Chile's democratic transition should occur.

A politician from a party supporting General Pinochet said the Ambassador's public pressures on the Government had helped "to obtain a better ambiance" for the voting.

But he said that General Pinochet and his closest colleagues had "hidden power" from the Ambassador.

"Pinochet was a master with Barnes," the politician said. "He kept the doors closed to him. I think he saw him about four times. Why? Because Pinochet wanted to send a clear messages to Washington. He was saying, 'I'm not going to be a crying Marcos on the telephone asking if I have the support of the United States.'"

AMBASSADOR SINCE 1985

Mr. Barnes was named Ambassador to Chile in November 1985, at a time when the Reagan Administration was frustrated by its seeming inability to influence General Pinochet toward liberalization or to persuade him to plan a democratic transition.

A former Congressional staff member in Washington familiar with the selection said that when Elliott Abrams was named Assistant Secretary of State for Inter-American Affairs in April 1985 he had "looked around for a world-class ambassador to handle a difficult situation."

Mr. Barnes was then completing a three-and-a-half-year posting as Ambassador to India. He had been director general of the Foreign Service from 1977 to 1981 and Ambassador to Rumania, and had held lower-level posts in Bombay, Prague, Moscow and Katmandu, but he had never worked in South America.

Mr. Barnes said that even before his appointment the Reagan Administration had begun to get "a sense of what a difficult customer Pinochet is and that it is hard to make much of a dent."

He said he came with the feeling that both Congress and the Administration thought "we ought to be clearer about what was important to us in Chile." He said that narrowed down to wanting an early return to democracy and respect for human rights.

A CONSENSUS ON POLICY

While emphasizing contacts with politicians ranging from center-right to center-left—excluding the Communists and the most radical Socialist faction—Mr. Barnes has also sought to keep communications open with the business community and with military leaders other than General Pinochet.

Two former Congressional staff members in Washington, one Republican and one Democrat, praised Ambassador Barnes as having been able to find consensus on Chile policy between the two parties and between Congress and the Administration.

He also weathered criticism from a leading conservative voice in the Senate, Jesse Helms, Republican of North Carolina. Visiting Chile in July 1986, shortly after two young demonstrators were set ablaze by army troops, Senator Helms publicly attacked the Ambassador for attending the funeral of one of the victims, Rodrigo Rojas de Negri, a resident of the United States. Members of the Communist Party and other extreme leftist groups turned the funeral into a political event.

Ambassador Barnes, who along with his wife, Betsy, and other diplomats at the funeral was overcome by tear gas, said he had felt "shock and horror" at the killing and thought that "if the United States was trying to be clear about our concern for human rights the death had to be protested."

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

PARENTAL AND TEMPORARY MEDICAL LEAVE

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

The Senate resumed consideration of the bill.

Mr. PACKWOOD. Mr. President, I am going to vote against cloture today at 11 o'clock in the parental leave/pornography/ABC/child care bill. And without any misgivings.

Some people say I am going to vote against cloture but I have grave misgivings. In this case I do not. I support the parental leave bill. I am a cosponsor with Senator Dodd of that bill. The Oregon legislature has passed a bill very similar to it and it is going to work out fine in Oregon. But I think it a grave mistake to have tied the ABC bill, the day care bill to this in the hopes of pulling up the ABC bill by the bootstraps of the parental leave bill.

Here are my misgivings about the ABC bill. One, its attempt to impose national standards, national day care ratios, national education standards, on every day care provider in this country that receives any Federal funds. I think it is utterly absolutely wrong. We make a terrible mistake in this country when we think we know what ought to be done everyplace in this country and we are going to impose a Federal mandate on everybody.

The classic example of that here was public housing when, 30 and 40 years ago, we knew the answer to public housing. We knew the answer was high rise, downtown public housing—10-story, 15-story, 20-story apartments, public housing.

We knew if a person had a decent roof over their head in the center of the city someplace that would be the end of the crime problem and the end of all the other problems we face in this country. What we got were 10-, and 15-, and 20-, and 25-story slums, centers of drugs, centers of violence. We made a terrible mistake and we imposed it on every city in this country.

Then, come 30 years later, 40 years later, and we realize the mistake we have made. We now say the answer is we are going to put these houses out in the suburbs, scatter housing, 5 and 6 units here, 10 and 15 units there, 20 and 30 here, hither and about, scatter them around in the community. That may be a good idea. It may not. I personally think it is a better idea than the downtown high rise apartments, but the important thing is to remember that we should not decide in Washington, DC, what may or may not be good for Fargo or Butte or Portland or New York City. They may not be the same thing.

That is my objection to the mandated—and that is what they are going to be—Federal day-care standards in the ABC bill. I support day care. I have a bill of my own that is tax credits. Vice President Bush has another one with a slight variation. There are dozens of day-care bills that have been introduced.

A day-care bill is going to pass the next Congress in one form or another. I hope a parental leave bill passes the next Congress in one form or another. I hoped it would pass this Congress but it is not going to with this ABC bill attached to it.

We have not got the wisdom in Washington, DC, to decide how day-care centers ought to be structured in every town from 500 to 5 million in this country.

Second, the National Association of Governors is extremely opposed to the imposition of the Federal standards. I might read from a letter of July 25, 1988, to Senator Dodd from Gov. Bill Clinton, Gov. Thomas Kean, and Gov. Micahel Castle, the chairmen on the Committee of Human Resources on this subject. They say:

> The establishment of national standards continues to concern us. While we recognize the need for well developed child care standards, the regulation of child care has been and should remain a State responsibility. We do not believe that the standards should be mandated by the Federal Government. We suggest that a national commission with full State representation develop model

child care standards toward which the States can move at a pace that reflects their individual conditions.

Second, there is a tremendous antireligious animus in the bill. In the bill itself is the following section:

> Sectarian purposes and activities. No financial assistance provided under this act shall be expended for any sectarian purpose or activity including sectarian worship or instruction.

Mr. President, if we were using tax credits, it is very clear a parent could send their child to a religious day-care center and the parent could take the tax credit. There is no question about that.

There is some question as to whether or not, if you have a voucher system, and this bill suggests that States could have vouchers. They do not have to. They can give out the money straight to day-care centers if they want. There is some question as to whether or not, if you have a voucher system, it is constitutional. I am not here to argue whether it is or not. What I am intrigued with is this bill says if, by chance the voucher system might be constitutional, then we are by statutory language going to make sure that no voucher can be used for a child that happens to be in a day-care center that is religious.

Mr. President, about one-third of the day care in this country takes place in churches, or religious institutions. And at a time when we are complaining that there is a shortage of day-care spots or, as the professionals call them slots in this country, to say to all of those who happen to have their child in a religious day-care center, "You are out," is unfair, unnecessary, and antireligious.

Here I might quote the statement of the National Association of Evangelicals. This is Forrest Montgomery, counsel for the office of public affairs for the National Association of Evangelicals testifying before the Finance Committee:

> We oppose the Dodd-Kildee bill. The ABC approach, frankly, we were stunned by the antireligious provisions in the ABC bill as introduced. The June 28, 1988, substitute changed the language, but the meaning remains essentially the same: No religious day-care centers need apply. Churches run about one-third of the child-care centers. It makes little sense if there is a child-care crisis to fail to help them on the same basis as their secular counterparts and it makes no sense to discriminate against parents with religious convictions who entrust their children to church child care.

That antireligious animus exists in this bill and I cannot support it so long as it is there.

Lastly, I suppose I was struck by a meeting I had with the principal representative of the Children's Defense Fund who is really the genesis of this bill and they have done extraordinary work in attempting to put it together. Marion Wright Edelman was in my office lobbying me very heavily and especially on the national standards. I have a high regard for her. She is a good lobbyist. But I said to her, and this is one of those things where, on occasion, you can get your hand bitten when you make an offer and you can get the wrong answer. But I said to her "Miss Edelman, I will make you a deal. I am terribly opposed to these national standards." Because she asked me if I would attempt to kill the bill if the national standards were in it. I said "I will make you a deal. Let's just put it up to a vote on the national standards on the Senate floor and if I lose, and if you keep the National standards in the bill, I will not make any effort to stop the bill. If, on the other hand, you will agree that if the national standards are lost, you will make no effort to kill the bill."

She said, "No. The national standards are the core of the bill and without the standards, they do not want the bill."

That is what bothers me, Mr. President. This is the nose in the tent. The proponents of this bill would take the ABC bill with a nickel's appropriation if they could get their nose in the tent on the Federal standards. And then they would worry about expanding the nickel to $5 and $50 and then $500 million and then $5 billion over the next 2 or 3 or 5 or 10 years.

The States in this country are intelligent. The leadership in the States is by and large intelligent. They understand that there are different problems between Newport, OR, and Newport Beach, CA. And what you may need in a rural town of 4,000 or 5,000 with an average income of $8,000 or $9,000 is different than what you may need in a city of 500,000 with an average income of $15,000.

So, so long as those standards are in the bill an so long as that religious animus is in the bill, I will not support it.

I am terribly disappointed it has been attached to the parental leave bill which I do support. But until they are separate, I cannot support this package and I will vote against cloture when we vote.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I seek unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without object. it is so ordered.

(The remarks of Mr. CONRAD pertaining to the introduction of legislation are located in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF PROCEDURE

Mr. McCLURE. Mr. President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. For how long, Mr. President?

Mr. McCLURE. About 6 minutes.

Mr. BYRD. Mr. President, I will not object to this one instance, but we need to get on the matter on which the cloture motion has been entered. Senator COCHRAN is here and he is ready to speak on that matter. He has been patiently waiting. I will not object to this one.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I thank the distinguished majority leader for not objecting. I had spoken to Senator COCHRAN and he was awaiting the arrival of another Senator before he spoke. I would not have done so otherwise.

Mr. BYRD. I know Mr. COCHRAN has been patiently waiting. We had a discussion, and I had indicated to him that if that other Senator was not on the floor when Senator CONRAD finished his speech, Mr. COCHRAN should feel perfectly free to go ahead, and he should.

Mr. McCLURE. I thank the Senator from Mississippi also for suggesting that I might go ahead of him at this time because he was on the floor before I arrived.

NPR 1985 DEFERRAL DECISION

Mr. McCLURE. Mr. President, I have been following closely the events at the Savannah River plant and the recent hearings that have looked into safety issues there. I want to make absolutely clear that my purpose is not to jeer nor to attack either the SRP or the Department of Energy. I watch, unfortunately, because I see predictions that I made years ago become reality.

I take no pride in being prophetic. Our need for new nuclear material production capacity was so shockingly obvious, even in the mid-1970's, that I could not understand why others did not see it. Since the days of the Ford administration, I have called on our Energy and Defense Departments to seek funding for replacement production reactors.

I was not totally surprised that for so long I spoke to deaf ears. Forecasters are frequently viewed with deep skepticism. But I have watched with dismay as the years passed and the production reactors that supply our Nation's nuclear materials aged accordingly. I am very aware that all things wear out, especially machines and equipment; the harder they are worked, the more quickly they must be replaced. This is such an obvious fact of life.

But no one else would agree. And the response was a phrase I have learned to dread: "There are no known life-limiting problems with the Savannah River reactors." Nor could I point to any specific, reported or documented problems. To all appearances, all five reactors ran safely for 25, 30 and 35 years.

Therefore, it was with great relief that I heard then-Secretary of Energy Hodel in 1983 announce the plans for a new production reactor. I was pleased, not only for my State, but for my Nation. Then, in 1985, the NPR decision was deferred, with the use of those, by now well-worn words: "There are no known, life-limiting problems at the Savannah River reactors."

The problems at the production reactors illuminated by the National Academy of Sciences review in 1987 did nothing to diminish the shining safety and operating record at the SRP. And, when a panel was established to determine the technology for new production capacity, it was swayed by this same apparently excellent record.

But at the hearing before the House and Senate Governmental Affairs Committee on Friday, September 30, we learned that record had a few blemishes—about 30 significant ones. Fuel bundles, fuel rods, source rods have all melted in one or another of the reactors over the past 28 years, there have been several large leaks that contaminated workers, and each reactor has had from 9 to 12 forced outages every year. Three or four per year is the average for commercial reactors.

This is alarming, but what is even more alarming is that this information was known by the Savannah River plant contractor, Dupont, which notified the DOE field office in South Carolina. A Dupont memo from the 1985 lists these 30 significant incidents in detail. However, the information was not relayed to the Secretary of Energy or his deputies at DOE headquarters.

Mr. President, the 1985 date of the NPR deferral and the 1985 list of significant events at Savannah River cannot be coincidental. Therefore, the question I have to ask the Department of Energy regarding the information that the memo contained is "If it had been known in headquarters, would the decision to build the NPR have been deferred?"

It seems quite clear to me that there was a decision in DOE's South Carolina field office to hide the serious safety problems at Savannah River in 1985. I can draw only one conclusion from the disappearnace of this memo at that critical time. If it had reached the Secretary of Energy, the decision to defer the NPR would have been seen as obviously the wrong decision and the decision would not have prevailed. Indeed, there would have been known and documented problems at the SRP and with the heavy water technology. I would even go so far as to suppose that we would be breaking ground right now on a new production reactor. And it would not be at Savannah River.

I am convinced that this successful attempt to hide the problems at the Savannah River plant was not for national security reasons. And it has had the absolute opposite effect. Any one of the major incidents could have gone out of control and shut any or all of these reactors down, depending on the problem. It is just such incidents at Savannah River that have brought us perilously close to a crisis in our tritium supply. Indeed, our national security could be harmed by this cover-up action of the DOE management at the Savannah River plant.

Our defense complex is seriously threatened by the safety problems at the Savannah River plant. If we are so blind as to proceed with only one reactor to replace all three Savannah River reactors, I predict that our descendants may well have reason to hold us responsible for bringing them to the treacherous brink of unilateral disarmament.

Mr. President, I sincerely hope this particular prophecy will not prove true.

Mr. President, I ask unanimous consent that the October 5, 1988 New York Times article, titled "Ex-Nuclear Aides Deny Being Told of Plant Mishaps," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EX-NUCLEAR AIDES DENY BEING TOLD OF PLANT MISHAPS

(By Keith Schneider)

WASHINGTON, October 4.—Top officials of the defunct Atomic Energy Commission said today that they were never informed of serious reactor accidents at the Savannah River Plant. They suggested the incidents had been kept secret by local managers because of national security concerns about publicizing America's problems producing atomic weapons.

Other officials who served with the Atomic Energy Commission and one of its successors, the Nuclear Regulatory Commission, said the accidents at the nuclear weapon plant might have been kept secret to prevent public alarm over the construction of nuclear reactors for civilian energy needs.

Whatever the possible motivation for managers of the nuclear weapon plants in withholding such sensitive information, the former agency officials maintained that they should have been kept informed. "Our rules and regulations called for any significant accident to be brought to the commission's attention," Dr. Glen T. Seaborg, chairman of the Atomic Energy Commission from 1961 to 1971, said in an interview.

HID ACCIDENTS FROM SOVIETS

Dr. Seaborg said that he and other top nuclear officials did not receive reports on a number of reactor accidents that occurred at the Federal Government's nuclear weapon plant near Aiken, S.C., in the 1960's and the early 1970's. Those accidents were among 30 summarized in a 19-page memorandum written in 1985 that became public last Friday.

He and two other former commissioners of the Atomic Energy Commission said they believed that managers at the Government's nuclear weapon plants might have kept the accidents secret for fear that the Soviet Union might learn about the severe problems the United States was experiencing in manufacturing fuel for nuclear warheads.

Peter A. Bradford, chairman of the New York Public Service Commission who was a member of the Nuclear Regulatory Commission from 1977 to 1982, said that disclosure could have seriously undermined public confidence in the safety of nuclear power and set back the nascent civilian program. At the time of the fuel meltdown in 1970, only 19 nuclear power plants were licensed to operate and 53 were under construction, according to the Nuclear Regulatory Commission. Today there are 110 civil reactors that are licensed to operate.

James B. Schlesinger Jr., who was chairman of the Atomic Commission from 1971 to 1974, declined to comment.

The comments by Dr. Seaborg and the other former Atomic Energy Commission officials are significant because they illustrate the extent to which managers of the Government's atomic weapon program might have withheld vital information from officials in Washington. The 76-year-old Dr. Seaborg, who won the Nobel Prize for chemistry in 1951, said he would have remembered receiving reports about the accidents because of their significance.

He said that the melting of a fuel assembly in one reactor at Savannah River in December 1970 would have been only the third time that such an accident had occurred at an American nuclear facility.

The first known instance of melted fuel occurred in January 1961 when a reactor explosion at the Idaho National Engineering Laboratory, which is a Government weapon production plant near Idaho Falls, killed three employees. The second documented instance of such an accident occurred in 1966 at the Fermi I civilian nuclear power plant in Detroit. At that time a piece of plating broke free from the reactor, blocking the flow of reactor coolants and causing the fuel to melt: The damage took four years to repair.

Nine years after the melting of fuel at the Savannah River Plant, in 1979, a similar accident occurred at one of two reactors at the Three Mile Island nuclear power plant near Harrisburg, Pa. That plant is still not operating.

I WOULD HAVE REMEMBERED

"If there was a melting of fuel at Savannah River, I would have remembered it," said Dr. Seaborg, who is now the chairman of the Lawrence Hall of Science, a science teaching center at the University of California at Berkeley. "And I can say with confidence is that, had we known about it, the information would have made available to the public because that was our policy."

Two other commissioners who served with Dr. Seaborg, Clarence Larson and James T. Ramey, confirmed today that they were never informed of the fuel meltdown or other serious accidents at the Savannah River Plant.

"I do not recall any accident at Savannah River this significant," said Clarence E. Larson, 79, who served on the Atomic Energy Commission from 1969 to 1974. "Anything that significant should have been brought to the commission's attention. The melting of fuel is something all reactors were designed to prevent. This is very serious."

"I have no recollection of an incident like that," said Mr. Ramey, 73, who served on the Atomic Energy Commission from 1962 to 1973. "I'm surprised to learn of it because anything of any significance would be brought to the commission's attention."

The Savannah River Plant, a collection of reactors and processing plants spread across a 300-square-mile reservation near Aiken, is the only facility that now produces plutonium and tritium, the vital elements needed to manufacture nuclear warheads. For many years after it began operations in 1952, the plant was regarded as a showcase of atomic technology and proof that nuclear materials could be handled safely. The E.I. du Pont Nemours & Company built the plant and has managed it for the Govenment ever since.

Next April 1, Du Pont is turning over control of the plant to the Westinghouse Electric Corp., which will be paid $6.7 billion by the Government through 1994.

Last Friday two Congressional committees revealed a memorandum, written in August 1985 by a Du Pont scientist to his superiors, that summarized 30 "reactor incidents of greatest significance." The incidents, which include dangerous power surges in one reactor that thoroughly contaminated a processing room in another reactor, numerous operating procedure errors in starting up all five reactors, and leak of cooling water, are considered by physicists and nuclear experts as among the most serious ever documented at a nuclear facility in the United States.

KEPT SECRET FOR 31 YEARS

On Monday the Department of Energy said the Atomic Energy Commission, which existed from 1947 to 1975, was responsible for keeping the accidents secret from the public for as long as 31 years. Today, the chairman and two members who served on the Atomic Energy Commission at the time the accidents occurred, confirmed that they had also been kept in the dark.

"Had it become known that we were experiencing this kind of trouble, an adversary would have regarded that as useful information," Dr. Seaborg said. "There is no longer that kind of concern. We don't feel as threatened as we did about a potential adversary."

"That was a hangover from the war and the rather intense situation of cold war that immediately followed the war," Dr. Seaborg added. "This has gradually dissipated to the point where keeping accidents like these secret does not even sound reasonable anymore."

Mr. Bradford was one of several former nuclear regulatory officials who suggested today that there were domestic political concerns that might also have played a role in keeping the accidents secret. Mr. Bradford and other former officials explained that the Atomic Energy Commission, which managed the weapon plants and regulated the civilian nuclear program, was eagerly promoting the development of nuclear energy in the 1960s and 1970s. The agency frequently cited the weapon production facilities as proof that nuclear reactors could be operated safely.

"The civilian nuclear energy industry was just getting off the ground," said Mr. Bradford, who served on the Nuclear Regulatory Commission, the agency that licenses and regulates nuclear power plants, in the 1970s. "Previous to the 1980 accident at Savannah River there was only one serious accident of the same kind in Detroit. That accident caused very real apprehension. The public was getting concerned about these facilities and there were only a few of them then. The last thing the Atomic Energy Commission would have wanted was extensive publicity about problems at the defense facilities."

But today, Dr. Seaborg, Mr. Ramey, and Mr. Larson said that they did not believe that concern about the civilian industry would have influenced field managers who kept the accidents secret from them.

"Weapons production was a different side of the agency," Dr. Seaborg said. "Their concern would have been national security, not the civilian industry."

PARENTAL AND TEMPORARY MEDICAL LEAVE

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, we are going to vote at 11 this morning on a cloture petition to bring to an end the debate on legislation now before the Senate providing mandatory benefits in the form of paternal leave. There is a child care bill that has been attached to that legislation along with a child pornography bill. These matters will be the subject of that cloture vote.

I urge Senators to vote against cloture, I am hoping that we will have an opportunity to consider more carefully the alternatives to this legislation rather than having to accept the bill as it is now framed without any real opportunity to modify it.

We are at the end of a legislative session. We have had some discussion of the alternatives to the Labor Committee's recommendation, but I do not think we have had an opportunity to analyze them sufficiently before enacting the Labor Committee's proposal.

One of the reasons I have this opinion is that employers around the country are voluntarily providing an increasing number of fringe benefits to attract and retain a productive work force. Employer contributions to all-voluntary benefits as a fraction of total compensation increased at an average annual rate of over 12 percent between 1960 and 1983. That trend for voluntary benefit availability in the workplace continues at an increased pace. These benefits include not only parental leave but health and life insurance, pensions, profit sharing, vacations, educational assistance, and many other benefits. None of these benefits is federally mandated. In fact, the only benefits required by Federal law are unemployment insurance, workers compensation, and Social Security. In addition to these benefits, more and more companies are providing extended maternity, paternity, and family leave to their employees.

To give you an example of some of the packages that are available in different sectors of the economy, I have assembled responses to a survey of businesses conducted by my staff and others. These benefit packages are voluntarily provided to meet the individual and changing needs of employees.

A nursing home in Rhode Island with a predominantly female staff has for the past 11 years offered maternity leave as well as leave for various other reasons. In addition, the employer pays the tuition and provides books and onsite evening classes for employees. An extra benefit for employees is a day care facility.

A food services company in Virginia credits its benefits package with helping to attract an excellent team of employees. The company offers onsite exercise facilities, 8 weeks of unpaid maternity leave, a health plan, and employee discounts.

A small chemical company in Ohio responds to its employees' needs by offering a complete medical and dental benefit program. Since the average age of its employees is the mid-1930's, they offer well baby care, orthodontia, short-term disability benefits of 26 weeks, as well as paid and unpaid leaves of absence.

An electric power company in the South has a liberal policy of parental leave and disability leave, including provisions for paid leave. These benefits are available to both male and female employees.

A small manufacturer in my home State of Mississippi writes that its employees, approximately 140 in number, have access to a benefit package which includes 2 weeks' paid vacation yearly, 9 paid holidays, 6 paid personal days, a profit-sharing plan, a company-provided health-accident-life insurance policy, and membership in a company-affiliated credit union.

Another small plant in my State provides employees with 4 hours per month paid sick leave, employee health insurance with major medical, 7 paid holidays and a fully-paid health trust plan with a local hospital.

A sanitation services firm in Michigan writes that it voluntarily provides the following benefits to its employees: medical and dental insurance, tuition, paid vacation, unpaid leave, paid sick leave, maternity leave, a pension plan, life insurance and disability insurance.

An office furniture manufacturer in Michigan gives employees the option of selecting from among several benefits the employer furnishes. Child care is among the benefits offered.

A grocery service in Kansas, that employs approximately 150 people, voluntarily offers its employees company-paid hospital and major medical coverage, life insurance, dental insurance, sick pay, up to 4 weeks paid vacation, profit sharing, educational assistance, and Christmas bonuses up to 5 percent of annual income. The president of this firm writes that not once—in 30 years—has an employee ever asked for additional time off for "parenting" beyond the normal sick pay provisions they receive.

A Chicago instruments manufacturer currently offers flextime, health coverage, sick pay and vacation. This company also allows employees to participate in decisions affecting company policy, such as working hours and extra holidays.

An Illinois leisure and recreational center voluntarily provides a wide range of benefits to its employees—medical care (hospitalization, medical, prescription, et cetera), dental care (including orthodontic coverage), a pension plan, savings plan, life insurance, disability insurance, paid vacations, paid holidays, paid sick leave (including maternity), tuition reimbursement, a scholarship program for children of employers, educational grants for members of a deceased employee's family, paid jury leave, paid emergency and personal leave, and discounts on company products, company matching gifts to employee-designated educational institutions and charitable organizations.

A mechanical and electrical contractor in Georgia with more than 50 employees, in addition to paid vacations and group health insurance, offers parental leave. The length of leave is worked out on an individual basis.

In Tacoma, WA, a distributor of building supplies with 35 employees provides 100 percent premium-paid medical, dental and vision coverage, despite the fact the company experienced a 30-percent increase in premium costs this year. The company also has a generous family and medical leave policy which includes up to 3 months of maternity leave. Recently the company provided 100 percent paid leave to an employee who had to take off several weeks to care for a sick child. The employee's job was protected.

Mr. President, there are other examples included in the survey taken among employers around the country showing the wide variety of benefit plans being made available today, voluntarily and with no Federal mandate, no Federal requirement. The plans are designed to suit the needs of the employees of these individual businesses in these regions, in these States, in these towns and localities. And they are developed on the basis of negotiations between the employer and the employee, some on an individual basis.

This way of developing employee benefits is in my judgment, preferable to having a group here in the Congress making those decisions for every employer and every employee, no matter how small the business, no matter what meets the individual needs of the employee. In my judgment, it is not appropriate for us to decide here what benefits ought to be mandated.

Mr. President, other interesting findings have been made by industries in their own reviews of employee benefits throughout their industries.

The Paperboard Packaging Council which represents manufacturing companies that convert paperboard into folding cartons principally used for packaging consumer products, and which employ more than 38,000 people reports that the following benefits are typical in the industry: 26 weeks paid sick leave, 11 paid holidays, 1 week paid vacation—after 1 year or less of employment—and 4 weeks paid vacation, after 15 years of employment. In addition to these benefits, more than 85 percent of employees have employer-paid life insurance averaging $13,000, and health care or major medical insurance which, for workers in more than 75 percent of the plants, is paid for by the employer.

The National Retail Hardware Association, which represents some 44,000 units nationwide, recently conducted a survey of some 884 stores throughout the country and determined the following regarding employee benefits.

Major medical: 71.8 percent of stores offer major medical (77 percent pay 100 percent), 49.8 percent provide spouse coverage (71.4 percent pay 100 percent of the cost).

Dental coverage: 15.4 percent provide dental plans (76.3 percent pay 100 percent).

Eye care: 2.9 percent provide eye care plans (89.7 percent pay 100 percent).

Disability insurance: 28 percent provide disability coverage (80 percent pay 100 percent).

Life insurance: 50.7 percent provide life insurance coverage (81.1 percent pay 100 percent).

Paid sick days: 58.1 percent provide paid sick leave—5 days is the average number offered, with 10 percent offering more than 10 days.

Paid holidays: 81.3 percent pay for 6 to 10 holidays.

Vacations: 81.1 percent offer 1 to 10 days paid vacation after 1 year of service.

Merchandise discounts: 97.2 percent provide merchandise discounts.

A survey by the Food Marketing Institute, an association of wholesale and retail food distributors operating more than 10,000 stores and employing over 1 million people, found that 88 percent of employers offering maternity benefits provided paid leave for full-time workers and that the average paid leave of those surveyed is 14 weeks with an additional 17 weeks of unpaid leave.

A survey by the National Federation of Independent Business of 20,000 firms indicated 72 percent of small firms allow time off for the birth, adoption, or serious illness of a child. Of the 16.3 percent not allowing time off, more than half were from firms with fewer than five employees.

The American Society of Personnel Administrators' survey of 357 companies representing all sectors of the private economy found that 80 percent of the women who are absent from work because of pregnancy related disability receive partial or full pay. In addition, 90 percent of the companies surveyed allow parents time off to care for sick children.

A survey of the concerned alliance of responsible employers of over 1,300 retailers, wholesale-distributors, small manufacturers, and restaurant owners revealed the following leave policies: 83 percent provide sick leave, 71 percent provide leave without pay, 91 percent provide vacations, and 60 percent provide maternity leave. Of those providing maternity leave, 70 percent provide additional leave without pay for new parents; 90 percent of the firms surveyed provide health insurance, 80 percent provide life insurance, and 58 percent provide prescription drug benefits.

A National Federation of Independent Business field survey of 20,000 firms indicates that 72 percent of small firms allow time off for the birth, adoption, or serious illness of a child. Of the 16.3 percent that did not allow time off, more than half were firms with fewer than five employers.

The Employee Benefits Research Institute and the American Society of Personnel Administration report that 89 percent of medium and large firms provide health coverage, and 65 percent of small firms provide health coverage. In 1986, 96 percent of the full-time employees working for medium and large firms participated in optional life insurance plans; 87 percent of workers' life insurance coverage was fully paid by employers. Almost half of the employees participated in disability insurance. All employees received paid vacation leave, 99 percent received paid holiday leave, and more than 60 percent received paid pregnancy disability leave.

Mr. President, I have placed at the back of the Chamber a chart indicating the total amount spent since 1929 by employers voluntarily for benefits for employees. These are traditional fringe benefits.

I have in my hand a smaller version of the larger chart in the back of the room. In the first year on the chart, 1929, we know everyone who was working was lucky to have a job and a paycheck. A fringe benefit might have been a pat on the back if you did a good job or an occasional "atta boy," but that was about the extent of it.

In that year, $1.5 billion was spent by employers for employee benefits. In 1955 that amount had grown to only $36 billion; in 1968, $68 million; by 1973, a trend was setting in for larger, more valuable benefits for employees, and $190 billion was spent; by 1986, the last year for which figures are available, an astounding $742 billion was being paid to American employees by U.S. businesses voluntarily for benefits in addition to wages and salaries.

The accelerating movement in America today is to provide more and more valuable benefits. What worries me is that a Senate decision to mandate a specific benefit would be an unusual departure from current law, a departure which could stop that trend. An employer might say, "Wait, if the Government is going to start mandating benefits and deciding which benefits I have to provide, whether my employees want them or not, then we had better wait and see what Congress is going to do next year rather than develop new and more responsive benefits on our own." This could have a chilling effect on the trend taking place in America today.

Mr. President, I hope Senators will look at what is happening, and ask themselves whether this bill is really needed, or whether we should encourage the providing of increased voluntary benefits through tax incentives, the alternative I recommending to the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. BYRD. Mr. President, the order was, I believe, for the two leaders to control the time. How much time do I have left?

The PRESIDING OFFICER. There is no order to that effect.

CONTROL OF TIME

Mr. BYRD. I ask unanimous consent that the two leaders control the time, evenly divided.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, how much time does the distinguished Senator need?

Mr. DODD. I would need, I say to my distinguished leader, about 15 minutes.

Mr. BYRD. We only have about 22 minutes left. And the other side has——

Mr. COCHRAN. Mr. President, I have consumed about 10 or 15 minutes of the argument time. I assume, to be fair, that the other side should have a like amount of time. If we could divide whatever time is remaining among those who would like to speak, that is one way to solve it I think, if that would be agreeable to the leader. That would be satisfactory to this side.

Mr. BYRD. I think that is a very helpful suggestion. We could charge 15 minutes to the distinguished Senator from Mississippi.

I yield 15 minutes.

Mr. DODD. I thank the distinguished leader.

Mr. BYRD. I yield 10 minutes to the Senator from Connecticut, and 5 minutes to the distinguished Senator from Massachusetts.

So I yield 10 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. There are 10 minutes yielded to the Senator from Connecticut to be followed by 5 minutes yielded to the Senator from Massachusetts.

Mr. NICKLES. Mr. President, will the majority leader yield?

I was wondering about the remainder of time. I have been over here about 25 minutes, and I would like to have a few minutes to speak on this issue as well.

Mr. COCHRAN. Mr. President, with the time that will be available to this Senator, I yield that to the Senator from Oklahoma.

Mr. BYRD. Would that still allow a vote at 11?

The PRESIDING OFFICER. The understanding of the Chair was the Senator from Mississippi was allocated 15 minutes, and 15 minutes was allocated to the Senator from Connecticut and the Senator from Massachusetts, and the remainder of the time to be 6 minutes to be divided equally between the majority and minority leaders.

Mr. BYRD. Very well.

Mr. NICKLES. Just reserving the right to object, that leaves this side with 3 minutes. That does not seem to be quite equitable.

Mr. BYRD. It seems to me like that is equitable.

Mr. NICKLES. How about the proposal that that side have 15 minutes and this side have 5 minutes? How about that proposal of the 20 minutes?

Mr. BYRD. I do not know. The Republican leader may want time. We had an hour. Senators who should have been here to speak on this were not here. The Senator from Mississippi was here.

Mr. NICKLES. This Senator was here 20 after.

The PRESIDING OFFICER. The Chair notes that a vote has been ordered for 12 o'clock, and the time being used now is charged against that time.

Mr. DODD. Mr. President, I express my very sincere and deep gratitude to the distinguished majority leader for his tireless efforts over the past week and a half. The fact that at the moment we are where we are is due in no small measure to his efforts.

I would not want the record to be complete without expressing my gratitude to him for his efforts and for the efforts of his staff to make it possible to bring this matter before the Senate.

I also thank my chairman, the distinguished Senator from Massachusetts, who has also been tireless in his efforts to see that this profamily package came through our committee process, that hearings were conducted, making sure that all sides were represented in those hearings, to listen to the points of view in favor of and opposed to this profamily package, and for his tireless efforts over the past 2 weeks in countless meetings off the floor with opponents and supporters, and bringing us to this moment.

Also, I say to my good friend from Mississippi, the ranking minority member of the committee, that while he and I are dear friends, I could not let pass the statements that have been made regarding the benefit packages.

There are a number of States that have an active parental-leave policy. A number of employers have an active parental-leave policy. We cannot find a single example in any State or with any employer where any benefit was lost because a State or an employer adopted a parental-leave package or proposal.

There is not a single collective-bargaining agreement we have been able to find over 2 years of examination where benefits have been lost because an employer and a labor union have negotiated a parental-leave policy.

So the notion that other benefits suffer if you adopt parental leave is not supported by a shred of evidence in any State, in any business, or in any collective bargaining agreement.

Mr. President, in a few minutes, the Senate will be voting to invoke cloture on the most far-reaching legislation for children and families in decades—parental leave, child care, and child pornography.

Mr. President, this legislation should already be passed and on the President's desk. Yet, despite volumes of profamily rhetoric from Members of Congress and the Presidential candidates, this package is stalled—stalled by parliamentary maneuvering; stalled in a filibuster by silence. Nine days of stalling, Mr. President, 9 days of total inertia.

The message is clear: Never in the history of American politics has there been a constituency so popular—but with so little political clout—as the American family.

On one side of this debate we have the Washington business lobby—powerful, wealthy, influential. On the other side we have groups representing American children, American families, and ordinary working people. Certainly not as wealthy or influential, but with the power of an important and timely idea—that parents ought to be able to have jobs and their families, too.

To whom are we responsible here? On what do we base our vote? If the answer is the American family, we will win this vote and this package will be enacted this year. If the answer is the Washington business lobby, we will not only lose this vote; we may never see this legislation put in place.

But, Mr. President, no matter how hard we wish for adjournment, no matter how much we want to go home to campaign, no matter how tightly we shut our eyes, the American family—the children of this Nation—simply will not go away.

Ozzie and Harriet, June and Ward Cleaver, they are gone forever. Only one in 10 American families has dad at work while mom stays home with the kids. Instead we have 29 million two-earner families with 25 million children; almost 8 million single parent families with an equal number of children. Two out of every three women in the work force today are either the sole providers for their children or have husbands who earn less than $15,000 a year. And by 1995, two-thirds of all preschools children will have mothers working full time. We can run, Mr. President, but we can't hide.

The first part of this package is parental and medical leave—legislation introduced two years ago. Seven hearings across the Nation; a bipartisan group of 28 cosponsors; and over 150 national organizations endorsing its enactment.

The idea is simple, the cost is small. Ten weeks of unpaid leave for the birth, adoption or serious illness of a child. Ten weeks of unpaid leave if an employee is incapacitated by a serious illness and cannot work. Job security for the events in life which can cripple a family's economic security by removing the breadwinner from the labor force.

What is the cost of this bill, Mr. President? Well, it does not, cost the Federal Government one red cent. And the cost to American business is less than $147 million each year; $2.67 per covered worker; less than a penny a day. Ninety-five percent of all businesses are exempt and some of those covered already offer similar plans. A penny a day for job security during a family crisis, Mr. President, a penny a day.

Let's look at the arguments made on both sides of this legislation. The business lobby says Government shouldn't mandate this benefit; the American Academy of Pediatrics says parental leave helps make sick kids well, faster. The business lobby says this issue should be left to the marketplace; the Nation's Catholic bishops say this bill can help prevention the destruction of unborn human life. The business lobby says this measure will increase the cost of doing business; employers which provide parental leave on their own say it actually saves money—in reduced turnover, absenteeism, and hiring and training costs.

As Yogi Berra used to say, "This is deja vu all over again. Over the last 50 years, in times of national consensus, when the Government has stepped in to ensure a minimum floor of protection and human decency for American workers, we have heard the same "Chicken Little" arguments from the business lobby that we hear today. In 1924, one employer group testified that "the passage of this amendment would be a calamity to our Nation." That amendment was this Nation's first child labor law.

In 1970, the Conference of American Small Business Organizations testified on the Occupational Health and Safety Act. "The only successful safety that program is one done on a voluntary basis and not through legislation. That is why so many of us believe that persuasion of individuals rather than legislative mandatory acts is the key to the solution." Mr. President, imagine where the workers of this Nation would be today were it not for our health and safety laws.

During hearings on the Pregnancy Discrimination Act of 1977, the Chamber of Commerce testified that:

> "Employers having a large proportion of female employees would face such a substantial increase in expenditures that such plans might be dropped. The high cost of the benefit would either reduced other benefits or result in an increase in total benefit cost."

Ironically, Mr. President, the chamber was back before Congress in 1986 testifying on the real effect of the statute it had vilified only 9 years before. The chamber concluded "It is a fair and appropriate policy which the chamber supports."

Mr. President, each time we have put fair labor standards in place, the business lobby has told us the sky is falling. And yet, I think most Americans agree these laws have not only made us a more decent and humane nation but have made us stronger economically as well. Five years from now, when this parental leave policy is in place throughout the Nation, we too will be wondering what all the fuss was about in 1988.

The second part of the package before us deals with child care. Child care—you remember, Mr. President—the subject of countless campaign speeches and newsletters; the only issue in Congress so important to the Nation that 150 pieces of legislation have been introduced to address the problem.

Well, here's our chance. This is a bipartisan proposal which Senator HATCH, Senator MIKULSKI and I have spent dozens of hours crafting; a bill subject to countless hours of hearings; a bill supported by over 150 national children's, family, and religious organizations.

Based on the ABC bill introduced a year ago, this measure is designed to provide real solutions for real family problems; to create a comprehensive child care infrastructure which the Federal Government helps to create but which is nurtured and expanded by the States, local governments, and the power of parental choice.

This bill provides the seed—the spark—for this national partnership through a three-pronged approach. First, it will make child care more affordable by targeting three out of four dollars directly to low-income and working families for child care services. Parents will choose the best type of care for their own children, be it center-based, family day care, school-based care, or care in a church or synagogue. This bill will also make child care more available through a system of grants and loans, recruitment and training, and resource and referral, so that States can increase the number and variety of child care services. Finally, it will increase the quality of care through minimum health and safety standards, provider training, and consumer education.

What do the critics say? Well, they say this would all cost a lot of money were the bill fully funded. That is one thing they're right about—good child care is expensive. But how much do we pay each year—in welfare costs, in lost productivity, in children's injuries—because parents lack access to good quality, affordable child care programs? Much more than this legislation will ever cost us, Mr. President, much more.

We just enacted the first major welfare reform since the system was first created 50 years ago; legislation which pledges to place welfare mothers in education and training leading to productive employment. But what a cruel hoax that promise would be were these mothers to find good jobs—only to lose them later for lack of child care services.

The drug bill. That must—do business on everyone's short list. But what good is crop eradication, supply interdiction, and stiff penalties for pushers, if we ignore the fundamental problems which create the demand for drugs in the first place. Every bit of research we have shows that family stability, infant-parent bonding, and early childhood education are the best weapons we have for the preemptive strike against drug abuse before it starts.

The hard-pressed American family. Children, the key to our future strength and prosperity. Lots and lots of talk, Mr. President, but so far, precious little action. We have the chance now to make a real difference in people's lives, to turn rhetoric into action, to do what's right for the American family and this Nation. Let's not let this opportunity pass us by.

Mr. President, I hope this morning that we can muster the necessary votes to give us cloture.

We have resolved the child pornography statute. That passed 97 to 0. Senator HATCH, Senator MIKULSKI, Senator KENNEDY, and I have worked out the child care proposal. That is also part of this.

I am willing to look at amendments on the parental leave policy. I do not think we need much time to resolve those differences, but there have been days of inertia and 9 days of stalling. GEORGE BUSH yesterday announced his child care package, all the things he was going to do in child nutrition, child care, all these other wonderful ideas.

Here we have been 2 years working on this legislation. I know drugs are important. I know taxes are important. But I think dealing with the working families of this country, trying to provide humane and decent legislation which will protect them is important as well, and I hope we will invoke cloture and then resolve the differences in this legislation and do something meaningful for the American family before we adjourn.

The PRESIDING OFFICER. The Senator from Massachusetts who was previously recognized has 3 minutes and 37 seconds remaining.

Mr. KENNEDY. Mr. President, I, too, want to join in expressing appreciation to the majority leader for scheduling these measures and for the support that he has given to these measures over the period of these last 5 weeks, and I also want to join again in commending the Senator from Connecticut, Senator DODD, for the excellent work that he has done in bringing these measures before the Senate of the United States during the past discussion of the last 9 days and previously.

Mr. President, the measure now that we are going to consider today is really about whether we are going to free American workers from fear. The agenda that we tried to put before the U.S. Senate from our Human Resources Committee was first of all on health benefits. Thirty-eight million Americans have no coverage, 24 million Americans who are working, 24 million Americans who every day that they go to work have to wonder in the back of their mind whether their child will be sick, whether their house mortgage can be paid, whether they are going to really be sentenced to financial ruin from some kind of illness that strikes them out of the blue.

But we were effectively filibustered before we ever got to consider that here in the Senate.

Then we tried to engage a response in the Senate on the questions of the minimum wage. The fear that families that are working, whether they are going to be able to put food on the table, clothe their children, whether they are going to be able to pay the rent, but again, the business lobbyists and the Chamber of Commerce said no.

Now, we are addressing these other two issues, one that addresses the concern that families have when they go to work to try to provide for their families, the concern that they have for their children that may be left at home or in some turn-key apartment, whether they know whether that child is going to be safe, and every day they are relieved when they come home and they find that that child is safe, the fear of concern for those children.

And finally, the agony that takes place in this country every day of a person that is working and has a sick child. The choice that they have to make between their job and seeing that sick child.

We hear about the billions of dollars that are going to be expended. The cost of that program is 1 penny a day.

So, Mr. President, this is about family issues, the most basic and fundamental issues. We hear a great deal of discussion in the national Presidential campaign about family issues. This is it. We may not get the votes for cloture on this.

I thank those Members of our party and the handful across the aisle who have supported our efforts every step along the way, and I give assurance to the Senate that if we are not going to be successful today, these issues will be back again. The votes will be taken on these issues.

I would hope that the American people, in the remaining days of this campaign, when they are making judgments and choices and when they are considering the qualifications and the priorities, they are going to place these family issues in their top priority and make their judgment on the basis of where we stand today.

The PRESIDING OFFICER. The Senator from Mississippi controls 3 minutes and the majority leader controls 3 minutes.

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I yield my 3 minutes to the distinguished Senator from Oklahoma [Mr. NICKLES].

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, first I wish to congratulate and compliment my friend and colleague from Mississippi, Senator COCHRAN. I listened to his speech today. I have listened to his speech last week as well. And he has made several very good strong supporting arguments against parental leave. I compliment him. I would qualify that, and I would say against mandating parental leave.

I think those people who have tried to say, well, those who are opposing this legislation are against parental leave or against maternal leave are totally wrong. I would say that they are thinking about the elections, that they are trying to influence election, not trying to be so much profamily.

I happen to consider myself profamily. I happen to consider myself very much in favor of maternal leave, but I am very much opposed to mandated parental leave, and there is a big difference.

The benefits that the proponents are trying to mandate are not provided for as far as I know by any corporation in this country, not one. And I say that and it kind of surprises people because we are talking about mandated parental leave. We are talking about mandated leave for the fathers as well as the mothers. That means the father, yes, you could have 10 weeks off if your wife has a baby. That is not in many contracts. I doubt that it is in any contract.

The reason is that employees have not asked for it. If they asked for it, it would be in the contracts.

Let us think about that. I asked several of the major corporations. I said, "Do you provide 10 weeks off for a male employee whose wife just had a baby? And in most all cases, no.

If they do offer time off, they offer vacation time. They offer disability time, most of which is paid in many cases, but they do not offer a blank 10 weeks because an employee's spouse had a baby. But yet we are getting ready to mandate this on every single business in America with over 50 employees.

Not only would we mandate it in this legislation, we mandate it with significant penalties. I think we have heard little about the penalties, but people need to look at the legislation.

There are attorney's fees and subpoena powers, and there is the penalties that go up to three times wages, plus attorney's fees.

This would be a very expensive bill. And again I just wonder. I look at letters and I have talked to lots of employers that offer great benefits, fantastic benefits, a whole variety of benefits. They happen to offer flexibility so that if they have an employee whose spouse is ill or who has an ill son or daughter or parent, they give them the flexibility as well to have some time off.

Let us not take away that flexibility from American employers.

Mr. President, I hope that we will vote against cloture.

The PRESIDING OFFICER. The majority leader controls 3 minutes.

Mr. DECONCINI. Mr. President, would the leader consider yielding me a minute of that 3 minutes?

Mr. BYRD. Yes.

Mr. DECONCINI. I thank the leader.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise today to address what I perceive is a fundamental inequity and grave threat to our Nation's economic and social health. Before I address the compelling need and benefits of this most important legislation, I must take time to commend the most able Senator from the State of Connecticut, Chairman DODD, for his relentless efforts on behalf of our Nation's children and families.

My friend, Senator DODD, knows well that I have been with him from day 1, appeared at the first hearing, and encouraged many of my colleagues to support the original as well as compromise bill. The Senator also knows I will be unyielding in my support of the Parental and Temporary Medical Leave Act no matter how long it takes to pass this bill. But, I am afraid that we may not get to vote on the parental leave bill this year. The Republican opposition has made it clear that whatever compromises are made, this body will block any attempt to get a nonprocedural vote before we adjourn for the election. However, Senator DODD has not been defeated yet, and no matter what happens in the next few days, he has achieved a monumental victory. Senator DODD has succeeded not only in raising this issue on the floor of the Senate, but more importantly, he has succeeded in exposing the charade perpetrated by the Republican candidate for President and his media image makers upon American families.

I also commend Senator DODD for his adroit management of the bill throughout these last few days. He has faced this highly controversial issue head on and deftly managed the bill through the Maginot Line thrown up in front of him by the well financed lobbying effort arrayed against his bill. And in the face of this last minute blitzkrieg assault upon the bill, he has not yielded 1 inch of ground.

Instead of retreating from Goliath, he has taken the offensive. By the addition of the Thurmond-Biden-DeConcini child protection and obscenity enforcement amendment and the Dodd-Hatch better child care services amendment, the Senator from Connecticut, with the assistance of the Senator from West Virginia, has transformed the Parental and Temporary Medical Leave Act into what I would now refer to as "the American Family Security Act of 1980." And so, the Senator from Connecticut has stood his ground and strengthened the support for the parental leave bill by adding other profamily, prochild bills. For his courage and strength of character, Senator DODD deserves the praise of all Senators.

I am glad that I have helped him in a small way. However, the full credit is his. If it were not for Senator DODD's persistence, along with the able majority leader, Senator BYRD, we would not have had the opportunity to debate this issue before the American public.

Before I address the parental leave provisions of this profamily package, I would like to discuss the third, but no less important part of the package, the Dodd-Hatch better child care services compromise amendment. I do not need to address the Thurmond-Biden-DeConcini antichild pornography compromise since I have already spoken to that issue earlier in the debate on this bill.

I am extremely pleased that the Senator from Utah and the Senator from Connecticut were able to reach a good compromise that mixes the best aspects of the bills each introduced earlier this session. I commend them for their effort. I was a cosponsor of both bills, and had encouraged them to do just that. I would have liked them to include an employer tax credit, as I proposed last year, to improve the availability of child care, but I understand the jurisdictional problems associated with my provision.

Mr. President, time was when a typical family could be defined this way, dad works and mom stays at home with the children. Today that stereotype fits less than 1 in 10 families. Today two-income families are the rule rather than the exception. The simple truth is that American mothers are not working because they want to work. The truth is they are working to provide their children with the basic necessities. Mom is working not because dad's income is not enough to pay for Billy's books, which it is not. Mom is working not because dad's income is not enough to pay for Sally's college tuition, which it is not. Mom's working because dad's income cannot pay the mortgage and pay for Billy's glasses to read those books and to pay for Sally's shoes so she can attend college.

The number of working mothers with children continues to grow rapidly. Today, there are over 24 million children under the age of 13 whose mothers are working, and this figure is expected to swell to 30 million in the next 5 years. More importantly, many families are without fathers to contribute to their financial well-being. As Senator DODD has clearly pointed out earlier in this debate, there are 8.7 million mothers who are the sole providers for over 16 million children. At the same time, the modern American family cannot find nor can it afford the cost of quality child care.

These facts are very troubling by themselves, but regrettably they are but the tip of the iceberg. I note for the RECORD a few other statistics my colleagues should consider before we again vote on cloture.

In 1985, 57.5 percent of American children had mothers in the labor force.

As many as 7 million children under age 13 are left alone during some part of the day.

Two-thirds of working women are either the sole provider for their children or have husbands who earn less than $10,000 per year, and one-half of working women have husbands who earn less than $20,000 per year.

Mr. President, the lack of available and affordable, safe child care is having a devastating impact on the well-being of American families and on the productivity of our work force.

I believe the overwhelming vote to invoke cloture on the motion to recommit the parental leave bill reflects the long overdue consensus that the Federal Government must assume a strong child care services partnership with State and local governments, community groups and religious organizations.

Working parents in Arizona will tell you finding good care they can afford is difficult, if not impossible. They cannot accept any more delays or excuses in enacting legislation to address our child care crisis.

Kent Krauss from Phoenix's Business Journal sums up the issue as we in Arizona see it.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See Exhibit 1)

Mr. DECONCINI. Mr. President, I believe the debate on this bill has drifted away from its primary purpose: to assure families have an opportunity to respond to the needs of a new born or a seriously ill child. That is where we should be directing our attention, nothing more and nothing less. And I do not believe anyone in this body has heard anything different from their constituency. I recently had a group of construction contractors come into my office to advise me to vote against this bill. I asked them point blank, what was their objection to unpaid leave to care for a new born or very sick child. These contractors, each fathers, did not have any—not one. Each one of them stated that they were good family men, and understood they could not ask any of their employees to ignore their family needs when they themselves would not.

These contractors are not the only people who care for the children in our society. A recent survey indicated that registered voters nationally favor parental leave by nearly 2-to-1. Still another poll shows that "Reagan Democrats" in the southern and industrial States favor parental leave by a whopping 87 to 10 percent.

Today, our Nation, the greatest industrial power in the history of the world, most regrettably is the only major industrialized nation without a national parental leave policy. In the face of over 70 years of overwhelming international support and the best medical advice by thousands upon thousands of pediatricians, America remains in the dark ages of family and labor policy.

Throughout this Congress, my colleagues and constituents have heard me repeat the findings of the best medical minds in America on the value of parental bonding. Time after time, I have emphasized the first weeks of life are the most critical periods of physical and emotional development of any child. My colleagues know that. The American people, each one, can also recall their grade school health courses that relayed this most basic medical fact. And what have we done in the face of this overwhelming evidence? Mr. President, I sadly report our Government has ignored it.

You do not have to believe me. I am only a father. But you cannot avoid the harsh criticism of our Nation's foremost medical authorities about the failure of America's to implement parental leave. "We're the least committed nation to families and children that I can think of," Dr. T. Berry Brazelton, the renowned pediatrician and Harvard Medical School professor, declared when we began the parental leave effort last year.

While we debate, our society and economy is slowly, but surely being crippled by the human tragedy and extraordinary costs occasioned by such inattention. This Nation must immediately question whether it is in our best interests to jeopardize the mental and physical development of the children who will be our future leaders. I think we know the answer to the question, but will this Nation and this body have the wisdon to act upon it. I sincerely hope so.

Mr. President, I believe the raucous debate has also neglected to fully develop the importance of the parental leave bill to the over 1 million children in America that suffer with serious chronic illnesses. From this Senator's perspective, this provision of the parental leave bill is just as important, if not more so, than the new infant leave aspects of the bill. The lack of discussion on it is probably due to the fact that no Member objects to it. I have not heard anyone speak against it. Even if someone does object, I doubt they would openly speak against this section. In case any of my colleagues do oppose this section, I would take just a moment to tell those colleagues about the hidden tragedy of catastrophic proportions that now confronts over a million American families.

Mr. President, before we end this day, four to six children will die from childhood cancer in America. Before the sun rises tomorrow, another 15 to 20 parents will be told their child has some form of cancer and will face up to 3 years of treatment with only a 50-percent chance of survival.

For some families, the serious illness of a child will consume a lifetime of savings. For the families of a child with spine bifida, one study has demonstrated they could face medical bills in excess of $30,000 over the first year. And the tragedy does not stop there. Each child afflicted with spina bifida will have an estimated one operation per year for 5 years during his or her early years of life. Let me assure you I am not talking about a rare occurrence; the 3,000 to 12,000 infants each year are born with spina bifida—a condition where the spine is literally a spine split in two—even with the best medical treatment, 1 in 5 will not survive the first year of life.

For the parents of children stricken with cystic fibrosis, the most cruel disease known to mankind, those odds would be welcomed. about 1,500 to 2,000 children are diagnosed with this always fatal disease each year. Victims usually die early in adulthood, essentially through infection and through suffocation on their own lung secretions. Before they die, they run about a 30-percent chance each year of hospitalization at a cost of $14,000 to $30,000 for only a little over 3 weeks of treatment.

Now, I do not believe for a moment that there more than a handful of employers that would not allow unpaid leave to a parent with a seriously or terminally ill child. But they do exist. Quite frankly, I cannot imagine that employers that deny that compassion to their employees could stay in business very long, but some, I am told, are able to keep their doors open.

I am sure each of my colleagues heard Senator DODD recall at the outset of this debate the story of that young father from Rhode Island who was fired for taking 6 days of unpaid leave to be at the hospital with his 7-year-old son who is dying of leukemia. And we all also heard about the security guard from California who was fired for taking unpaid leave to care for his sick infant son while his wife was disabled by diabetes and complications in childbirth.

Now I could also talk about the millions of dollars each year in unemployment and public assistance costs that these misers inflict upon the American taxpayer by such unscrupulous business practices, but that is not the true purpose of this section. This section was written solely to establish a clear, unequivocal national policy that seriously ill children deserve to live the remainder of their lives without the risk that their parents will lose their jobs or have the family's medical insurance terminated for merely following the medical advice of their child's doctor. This section only allows a father or mother less than 10 weeks unpaid leave out of 2 years of employment, even if their child's physician believes they must take a greater amount of leave.

Mr. President, I am most appreciative of Senator DODD's willingness to compromise with respect to the concerns of small business. I believe we were able to address nearly all the concerns of small businesses. I am certain that Senator BUMPERS' amendment will assure that the smallest of small businesses will not be affected by the bill. In fact, more than 95 percent of all businesses will be exempted under this bipartisan compromise bill. I should note here that this amendment should not be construed as anti-small business. It merely indicates Congress recognizes that all small businesses are not alike and we are conscious of the extreme importance of small business to our economy.

On behalf of small business owners, I would also like to point out for the record that the most recent studies on parental leave show small businesses are just as likely, about one in three, to provide parental leave to their employees as large businesses. I believe that more and more of them will come to provide them leave even though they are not covered under this legislation. I am a small businessman myself, and my family business does provide paid parental leave. However, I appreciate that not every small business can afford to do what we do, and should not be compelled to provide leave, paid or unpaid.

Although I wholeheartedly support all of the concepts embodied in this bill, I want to make it perfectly clear, for reasons I need not discuss at this time, that I believe there should be room for more compromise with respect to the temporary medical leave portion of the bill. I have a proposal of my own that I will offer if I need to in order to save this bill from the same fate as the minimum wage bill. I hope that I will not witness the demise of the best aspects of this bill because all the parties are not willing to take greater steps to address both the family and employer concerns in this area.

The simple fact is that women are becoming more and more a part of the work force. At the same time, women are becoming more and more integral to the businesses where they are employed. More than 70 percent of all working women are of childbearing age and, according to one estimate, more than 90 percent of them are likely to become pregnant during their working lives.

America can ill afford to ignore the child care crisis and assume that families and children will be able to survive with the present patchwork system of child care. We need to take off our blindfolds to insure that we prepare, in the best way we can, the children of today to be productive citizens of our country's tomorrow.

Finally, Mr. President, I am hopeful that when the dust settles and the rhetoric subsides here in the final days of this session, we all can celebrate Senator DODD's victory and that of working men and women and their children. If by misfortune we cannot reach an accord, we shall be back again. Regardless of when it happens, I can only hope for my friend from Connecticut that history will note his vital contribution to the advancement of America's national family policy into the 21st century.

EXHIBIT 1

QUALITY CHILD CARE IS EVERYONE'S CONCERN

(By Kent Krauss)

Given the huge federal budget deficit, now is not the most propitious time to introduce large new federal programs. But the Act for Better Child Care Service, a comprehensive child care bill that was expected to be introduced late last week as The Business Journal went to press, deserves serious consideration despite its cost.

The bill, which is co-sponsored by Arizona Sen. Dennis DeConcini, was expected to be introduced to Congress by Democratic Sen. Christopher Dodd of Connecticut, Republican Sen. John Chafee of Rhode Island, and Democratic Rep. Dale Kildee of Michigan. If the bill becomes law, it would authorize $2.5 billion for fiscal year 1989 to greatly expand child-care options for families. That's out of a total budget that will exceed $1 trillion

Among other things, the bill would help low- and moderate-income families pay for child care, expand training opportunities for child care, expand parental access to resource and referral programs, furnish new resources to strengthen family day care, increase the supply of care providers and improve the protections for all children in child care.

The act would give states money to make available child-care financial aid to families with up to 115 percent of a state's median income, adjusted for family size. Parents in school or training programs also would be eligible for assistance.

Each state could design their own program, providing assistance through contracts with care providers or certificates given to parents.

Ensuring adequate child care should not be an issue that pits Republicans against Democrats or liberals vs. conservatives. It is less a matter of fiscal concern than of human concern, of establishing national priorities.

Congress must examine both the cost of the proposed program and the costs of doing nothing. The latter may not be measured as directly in dollars and cents, but in terms of wasted lives and opportunities, the inability of many well-intentioned people to break out of the cycle of poverty and the health and well-being of America's children—our future.

Ultimately, failure to provide adequate care and guidance to children costs taxpayers, too, in the form of lower federal tax revenues, funds for prisons and for other social programs.

Many conservatives are against abortion, and I am not questioning the sincerity of that position. But the concern for life should not end at birth; they also should be concerned about providing each child with the opportunity to become all that he or she can be.

Responsive government should respond to changing social needs, and without a doubt, family patterns have changed to the point where quality child care should become a high priority.

Working couples, often by necessity, have become the rule rather than the exception. And sometimes that means both young children and latchkey kids pay a price.

Rather than hiding behind fiscal arguments, Congress should re-examine its spending priorities and put the emphasis on caring. A national program to improve the quality, affordability and availability of child care would be a good place to start.

Business, too, should care, for reasons that include dollars and cents. That's because the quality of child care can directly affect the productivity and turnover rates of employees.

CHILD CARE COMPROMISE

Mr. HATCH. Mr. President, as my colleagues know, I have been working on comprehensive child care legislation for several years. I had reached the conclusion while I was still chairman of the Labor and Human Resources Committee based on the testimony we received at several hearings that Federal leadership is needed on this issue. Not a few people, however, have expressed surprise at my advocacy for Federal child care legislation.

Indeed, some have asked how a Republican could support a new Federal program. It is too bad that these people make the mistake of assuming that Republicans are necessarily against domestic initiatives. We are really much more thoughtful than that. And, we are equally concerned with child care in this country, as the number of Republican-sponsored child care bills will attest. Just in the Senate, 28 of my colleagues on this side of the aisle have sponsored or cosponsored legislation to address the child care issue. In the House, 100 Republican Members have signed on to child care legislation.

If I may digress for a moment, let me take this opportunity to compliment the sponsor of the House companion to the Child Care Services Improvement Act, Representative NANCY JOHNSON of Connecticut. She has worked hard on the child care issue for many years and is an acknowledged expert in this area. She has provided me with a lot of good advice and has worked hard to promote our joint legislative effort. I hope we can continue our bicameral partnership on issues involving child care.

Now, however, we on this side of the aisle have been accused of supporting such legislation only because it is an election year. Well, Mr. President, the fact that this is an election year may be the reason the parental leave bill was called up in the first place, and it may be the reason Senator BYRD made his motion to recommit the bill with instructions to add the child care provisions, but it is not the reason Republicans are interested in child care.

First, Republicans do not ignore reality. We try to face up to a situation and address it head on. We have studied the labor force statistics and projections. We know that three-fifths of the new entrants to the work force will be women and that over half of all children under age 6 will have working mothers. We know that there are millions of latchkey children returning from school to empty homes this very afternoon. We also know that two-thirds of those women who work do so because they need to for economic reasons. They are single, widowed, divorced, or have husbands who earn less than $20,000 per year. We also know that as the supply of skilled labor shrinks, there will be a tremendous need for women to enter the labor force in order for American industry to remain productive and competitive.

Second, we have always championed self-sufficiency. We have sponsored and supported bipartisan programs designed to provide the job training and education necessary for the recipients of public assistance to shake off the welfare monkey and achieve the satisfaction of economic independence, It has always been our goal that every American should be able to stand proudly on his or her own two feet. Today, however, the lack of adequate, affordable child care is one of the biggest barriers to self-sufficiency.

One of the constituents, a single mother of four, has been working double shifts in order to provide for her children without Government aid. But she has been reported three times to the Utah Child Protective Services bureau for child neglect because her daughters are latchkey children. The eldest daughter, only 10 years old, cares for her three sisters, age 8, 7, and 4. When asked by State investigators why she left her children unsupervised, she explained that "it was a choice between a babysitter or food. I chose food." Of course, a third alternative was welfare, but this brave woman wanted her daughters to have the self-respect and dignity that come from economic independence as well as an understanding that it takes hard work to achieve.

Third, we share the concern that children need proper care. We are not ignorant to the fact that many parents in our society today, like my constituent from Utah of whom I have just spoken, are forced to leave their children in unacceptable circumstances. There are risks in leaving children alone or in unsafe environments that every parent shudders to contemplate. The sponsors of this legislation are not alone in caring about children and their safety, development, or education.

We know there is a real need for child care. We know there are low-income and low middle-income families which cannot afford adequate care. We know there are shortages of certain kinds of care and that in some areas of the country the options for care are limited if they even exist.

There is no lack of resolve on this side of the aisle to deal with this reality. We agree on the problem, and we agree that Federal legislation is desirable. The difference of opinion, as I see it, Mr. President, is on the content of the legislation.

Personally, I have stated many times the reasons why I opposed S. 1885, the ABC bill, not only in its original form but also in the form in which it was reported by the Labor and Human Resources Committee to the full Senate. In brief, I was concerned that the bill emphasized direct subsidies at the expense of encouraging community initiatives to deal with specific local problems with access and availability. I was concerned that the ABC bill was many times too prescriptive, leaving little flexibility for State or local entities to administer programs or to implement innovative policies. I was concerned with the establishment of absolute Federal standards which could hamstring State and local efforts as well as drive up the cost of care for parents.

I still think my own bill, the Child Care Services Improvement Act, in which I was joined by 15 Senators representing both sides of the aisle, is a well-balanced approach to this problem of child care. Other measures, all slightly different in substance and approach, were introduced as well. Each of these, as Senator WILSON pointed out in his remarks the other day, has merit.

But there are two ways to do things here in the U.S. Senate. One way is to dig in recalcitrantly, and the other is to compromise. On the issue of child care, I sincerely believe compromise is called for.

The Labor Committee's markup of the ABC bill was swift and amicable. On the basis that we would negotiate in good faith on a bipartisan compromise bill those of us on the minority side agreed not to offer any amendments during the markup, and the bill was reported on a voice vote. Since then, I have been actively engaged in discussions with Senators DODD and MIKULSKI in an effort to reach a consensus child care bill.

However, before I go further, let me clarify a couple of points that have become muddled in the last couple of days since the majority leader made his motion to link the parental leave bill with child care.

No. 1, our negotiations centered on child care. There was never an agreement on parental leave. I have always thought parental leave is a desirable benefit and would encourage employers to adopt a leave policy which accommodates the needs of families. But, I believe a Federal mandate actually has the opposite effect. It locks employers, employees, and employee associations into a very specific policy when a variation of the policy, or a different kind of benefit may be more appropriate or more popular.

No. 2, I want to clear up for the record the fact that the amendment offered last Friday by Senator BYRD to his motion to recommit the parental leave bill—and which is now pending as the committee substitute—does not reflect the complete agreement reached between Senator DODD and myself. There were several absolutely critical provisions omitted from the Byrd amendment including an extension of the earned income tax credit for families with young children and the liability insurance risk retention pool. There were other modifications to the ABC bill on which we agreed that were not contained in the draft bill used by Senator BYRD as the basis for his first and second degree amendments.

No. 3, as much as I would like to think that all my colleagues look to me for advice and wisdom, I never believed that every colleague on my side of the aisle would sanction this compromise. There are 46 of us on the minority side, and we are all independent thinkers. If you do not believe me, just ask the distinguished minority leader—for whom, by the way, I have the utmost respect and admiration. He does an excellent job leading the troops—even considering that this is not the Army, and we are not obligated to take orders. The fact is that every Senator is entitled to make up his or her own mind about the merit of this bill, or this particular compromise. Needless to say, I hope Senators will look at the child care provisions carefully and decide that they are provisions worthy of a yes vote.

The compromise version of the ABC bill we have agreed upon includes elements of the Child Care Services Improvement Act as well as a young child tax relief component patterned after separate bills introduced in the House and Senate. This provision of the bill will provide a significant increase in the EITC refundable credit for low-income families with young children.

We have incorporated provisions which provide States with the flexibility to develop their own programs as well as to assist low- and lower middle-income families with the cost of care. We have greatly streamlined the ABC bill's requirements of provider training, training for inspectors, reimbursement of providers, resource and referral programs, and other areas. We have added a liability risk retention pool. On the all-important issue of standards, we agree that minimum standards to ensure the health and safety of our children are desirable, and the discussion centered around whether standards should be promulgated by States or by the Federal Government. The compromise would permit the establishment of Federal standards, but with the ability for States to obtain variances and to reduce standards currently higher than Federal minimums if doing so would improve availability of care without compromising health and safety. It would also change the membership and appointment process for the national committee charged with making recommendations for standards in order to make it more fair and better balanced. It would also set some limitations on the standards which could be recommended by the committee.

In short, we have done a lot of work, and I certainly want to thank my colleagues on the Labor Commiteee, Senators DODD and MIKULSKI, for their commitment to developing a bill that could not only help American families but also have a chance of passing with support from both sides of the aisle.

For this reason, I very much regret that child care—an issue on which there is broad, bipartisan agreement to act positively—has apparently been taken up at this time and in this manner as a way to force the issue prior to the election. No Senator, Republican or Democrat, should be placed in a take-it-or-leave-it situation. Senators have a right to consider the compromise and offer amendments and whether I support a proposed amendment or not, I will vote to ensure the right of a Senator to offer it by voting against cloture. This bill is too important to sacrifice on the alter of partisan politics and too important not to have a full debate in what is supposed to be the most deliberative body in the world.

Mr. ROCKEFELLER. Mr. President, as a cosponsor and strong supporter of the three bills before us today—Parental and Medical Leave Act, the Act for Better Child Care, and the Child Protection and Obscenity Enforcement Act—I am pleased that we finally have the opportunity to fully consider these measures that will help working parents and protect their children.

I believe it is altogether fitting and proper that these three bills be considered jointly. The pornography and ABC amendments, as well as the underlying parental leave measure are all strongly pro-family, and, most importantly, pro-children.

Newborn children need their parents in their first few months of life—which the parental leave bill would help accomplish. Older children, likewise, need to be assured safe, dependable, and quality care while their parents are at work, and the ABC bill seeks to accomplish this. Finally, children of all ages need to be protected from being victimized by the child pornography industry—the goal of the Child Protection and Obscenity Enforcement Act.

The parental leave and ABC bills recognize that—whether we like it or not—working women, and specifically working mothers, are a reality in today's economy, where few parents have a meaningful choice between working and staying at home. The fact is that most parents work out of economic necessity.

Mandating 10 weeks of parental leave makes an important statement: that this Nation is dedicated to preserving the traditional family structure by making it easier for working couples to start families without having to face the economic nightmare of losing half their income.

Personally, I do not understand or agree with the arguments that mandated leave will impose an enormous financial burden on businesses. In the first place, small businesses of 50 or fewer employees would be exempt from having to provide such leave. This means that only 5 percent of employers, and only 40 percent of our Nation's work force, would be covered. More to the point, however, is that this leave would be unpaid, with no cost to the employer except continuing the employee's health benefits. Studies have shown that this cost would be minimal—only $3.19 per covered worker annually.

Mr. President, opponents of parental leave like to portray this proposal as "yuppie" welfare, suggesting that only couples with a substantial income would be able to take advantage of 10 weeks of unpaid leave. To that I say, "Look at the alternative families face currently." If a working pregnant woman must take extended leave from her job, she faces the unpleasant, but likely, prospect of having no job to return to at all. Though this bill provides unpaid leave, it at least guarantees her there will be a job with the same income waiting for her on her return.

Opponents also argue that many businesses simply could not operate faced with the possibility of a portion of their work force being out on extended maternity leave. They would either have to hire temporary help or, worse yet, would simply be unable to cover those areas left unattended by the employee on leave.

Again, I suggest we look at what happens currently in these situations. Some try to work out mutually satisfactory arrangement with their employees—and this new legislation would not preclude employers from continuing this practice, within the scope of the new law. Still others are faced with hiring temporaries, which is what they claim they will have to do anyway under the parental leave bill. Others, however, will choose to permanently replace the employee.

It seems to me, Mr. President, that this final alternative is more costly and less convenient to employers than simply providing 10 weeks of unpaid leave. When you consider the cost, the time, and the effort involved in seeking, hiring, and training new help, would it not be less expensive and much more efficient for the employer to hold the job open for the trained and experienced worker for a few weeks?

Finally, opponents of parental leave claim that a newly mandated benefit of this nature will hurt America's ability to compete in the world marketplace. Mr. President, no one has been more obsessed with, and more deeply concerned about, America's competitiveness than I have. But the simple fact of the matter is that all the industrialized nations of the West—with the one exception of South Africa—have a mandated parental leave benefit for their workers. As Senator DODD has said, this is the distinguished company we keep. All of our Western competitors provide parental leave, and nearly all of these are paid leave, not the unpaid leave that we're talking about today.

Mr. President, what this issue boils down to is fairness. Fairness for low- and middle-income families who do not have the financial luxury of being able to survive on just one income. The fairness of job protection for working women. Fairness in terms of not forcing couples to choose between making ends meet and starting a family. And fairness to children who need to be protected at the start.

Likewise, Mr. President, I am cosponsoring—and urge my colleagues to support—S. 1885, the Act for Better Child Care, which has been attached as an amendment to the parental leave bill.

The lack of safe and affordable child care in this country forces too many Americans to settle for inadequate arrangements that neither meet their needs nor protect their children. These realities are not lost on the people of West Virginia. Almost any working parent in the State will tell you that their child care choices are limited by cost, supply, and uneven quality.

My constituents know that our child care crisis was a long time coming. They know that it will take substantial public commitment to address the problem adequately and comprehensively. They also know that "quick fix" tax credit proposals, when not a supplement to a more long-term child care policy, will only sell our children short. Fourteen of West Virginia's 55 counties do not have a day care center, and 20 more counties have only one day care center. This country needs a comprehensive child care policy that would begin to address this very crucial shortage of child day care centers in West Virginia.

Currently, 31 percent of all mothers in West Virginia with children under the age of 6 are in the work force and 46 percent of all mothers in West Virginia with children between the ages of 6 and 17 are in the work force. These statistics reflect economic reality in West Virginia. I would like to reemphasize what my senior colleague from West Virginia, Senator BYRD, said this morning. These women are working to put food on the table for their families—not to buy expensive cars.

A recent editorial from Fairmont's Times-West Virginian raises one of the many problems with a children's tax credit approach, and I ask that the editorial be printed in the RECORD.

First, tax credits simply do not provide sufficient assistance to allow most parents to make the choice between working and staying at home. Providing $400 a year in tax credits to low-income parents as proposed by my colleague Senator WALLOP or even $1,000 a year as suggested by Vice President BUSH would hardly allow a single mother, for example, the choice to stay at home with her child. Similarly, it would provide her with few choices among child care arrangements that now cost $3,000 a year or more.

In addition, most of the tax credit bills currently proposed limit assistance to a small group of families, usually those without any child care expenses at all. Many families currently struggling to meet their child care expenses would actually be harmed by Mr. WALLOP's proposal while its benefits would be directed to families with stay-at-home spouses—families more likely to be upper income.

Most importantly, tax credits do nothing to protect the health and safety of children like the ABC bill would.

The ABC bill remains the best, most sensible, and most comprehensive solution to our current child care crisis. It would expand the number of child care choices available and affordable to parents, and it would set minimal health and safety protections for children receiving child care services.

I do not think the ABC bill and tax credits are mutually exclusive. I do think it might be beneficial if we were to develop at a later time some form of income support through the tax system for families with children as a supplement to the ABC bill. Until then, I urge all my colleagues to join me in working to enact the ABC bill before we adjourn.

Lastly, I wholeheartedly support and have cosponsored the child protection and obscenity enforcement amendment. As a father of four, I am extremely concerned over the findings and conclusions contained in the report by the Attorney General's Commission on Pornography. Senator THURMOND's amendment is a far reaching measure to strengthen the existing laws we have to protect children.

Mr. President, many of my colleagues have complained to the majority leader that the hour is late in the 100th Congress and that, now that the appropriations bills are behind us, we should adjourn and go home. I understand their concern, but I believe the matters before us in the form of this package are extremely important to the majority of Americans and deserve our immediate attention. I, therefore, urge my colleagues to support this package for the good of our Nation's children and families.

Mr. BIDEN. Mr. President, I am a cosponsor of the Act for Better Child Care. It is an important step toward remedying the serious shortage of affordable, high-quality child care.

The tremendous unmet need for affordable child care rises out of simple, undeniable demographic facts. In 1950, 35 perecent of all women aged 25-34 were in the labor force. Today, over 70 percent of the women aged 25-34 work. In 1950, 12 percent of women with children under age six worked. Today 57 percent of such mothers work. As a result of this trend, over 10 million preschool children have mothers in the workforce. In addition, this need will only become greater in the years to come—by 1995, there will be 15 million preschool children with mothers in the work force.

Unfortunately, there is nowhere near enough adequate affordable child care available to care for these many children. Child care is extremely expensive in the United States today, costing an average of $3,000 a year or more. Many parents are forced to leave their children in care situations with which they are not fully comfortable, and others resort to desperate, jerry-rigged half measures. A recent story in the New York Times chronicles the sad fact that thousands of children are regularly left in libraries across America. While libraries are wonderful places for children under the right circumstances, very few of them are equipped or designed to provide full-scale child care.

This national shortage has been replicated in the State of Delaware. More than 49 percent of Delaware mothers with children under 6 years old are now working. About 120,000 Delaware workers, more than one-third of the State's labor force, rely on child care. Unfortunately, only 13,000 licensed slots for 75,000 children. Once again, this unmet need is likely to grow in the near future—by 1995, the number of Delaware children in child care is expected to double.

Mr. President, this shortage of affordable child care represents a serious threat to our children and to our economic future. First, all parents will agree that it is dangerous and unfair to children to leave them to care for themselves. In several tragic cases, young children left to themselves were hurt and even killed in easily preventable accidents. Older, "latchkey" children are also at risk, though from different perils. Unattended latchkey children are more likely than children in after-care programs to become involved in drugs or, in the case of young girls, to become teenage mothers.

These tragic outcomes are all preventable. Many studies have shown that quality child care can give children the sound foundation they need to be successful students and productive adults.

We can and must do better for our children. They are not "somebody else's" children, they're our children, and we have a deep rooted moral obligation to care for them.

This problem goes beyond moral outrage, however, for even the most coldhearted among us must admit that there is a threatening economic dimension to our failure to adequately care for our children. Today's children must provide the human capital to meet the challenge of foreign competition, and they must pay for the massive retirement costs of the baby boom generation.

The shortage of affordable care harms our Nation and our economy in a second way, however—it also harms the parents. A large number of women either do not work or limit their hours of work because they cannot afford or cannot find adequate child care for their children. As we all recognized in passing the welfare reform bill last week, this situation forces mothers to forsake the job market and economic independence.

This shortage also harms those parents who find some child care, but not trustworthy care. A number of surveys indicate that parents who are dissatisfied with their child care situation are more likely to be frequently absent and unproductive. In the House hearings on the ABC bill, Sarah Harder, the president of the American Association of University Women, testified that "in a study of 5,000 workers at five Midwestern corporations, 58 percent of the women and 33 percent of the men with young children felt their child care concerns affected their work adversely."

Mr. President, the Act for Better Child Care would be a good first step to alleviate this intolerable situation. It provides a substantial sum of money to the States to help low- and middle-income families afford child care. It also requires States to match 20 percent of these Federal funds. In Delaware, for example, the ABC bill would help over 2,000 children receive full or part-time child care.

While this bill is certainly not perfect, some of the attacks that have been launched against it are completely unjustified. Some of its critics have mischaracterized the bill as a Federal intrusion until it sounds as though the bill will seize every child in America and send them to Washington, DC, each day, to be indoctrinated in huge Federal centers by faceless, grey bureaucrats.

In fact, of course, the bill does nothing of the sort. It provides grants to States, and the States are free to fund child care in several different ways as they see fit. The bill simply places some basic minimum safety and quality standards on the child care that is provided, to ensure that Federal money is not given to bad programs. The Federal Government already insists on such basic requirements for children in Defense Department child care facilities.

In addition, the bill ensures that lower- and middle-class parents will have a much broader array of day care options than they now have. While some critics imply that all children will be herded into massive Government-run centers, the bill ensures that funds will be directed to parents, who may then choose the sort of care that they wish for their own children. That can include day care provided by centers operated by churches, schools, community organizations, employers or for-profit agencies, or even care provided by neighborhood family day care providers. The bill does not require that parents use institutional care.

The ABC bill should only be seen as one step, however, among many we should take to improve the quality and availability of child care. We should also encourage employers to provide on-site child care for parent-employees, so that employees can be close to their children. Employees who are physically close to their children are happier and more productive, and, more importantly, the children feel closer to their parents. Only 11 percent of employers provide some kind of child-care service or benefit for workers, and I believe that we should encourage more employers to do the same. I have proposed that we provide a tax credit of 10 percent for corporate expenditures for providing child care facilites at worksites, and I will continue to pursue this strategy in the next session.

Mr. MITCHELL. Mr. President, I support the Dodd-Hatch compromise child care legislation.

While in 1950 only 18 percent of mothers were in the labor force, today over 60 percent of mothers work outside the home.

Future estimates by the Census Bureau indicate that the proportion of children under 6 with working mothers is expected to reach two-thirds by 1995. For school-age children, two-thirds of whom currently have mothers in the labor force, the number is expected to rise to over three-fourths in the next 10 years.

And yet, despite the increasing number of parents in the work force, the number of child care homes and facilities has not kept pace.

In 1986, a survey of each State's licensing office reported a total supply of 62,989 child care centers, with a total capacity of about 2.1 million children; 165,276 family day care homes with a total capacity of 434,603 children.

What this indicates is that there are roughly 2.5 million child care slots in licensed facilities throughout the Nation and some 36.2 million children with either both or their sole parent working—10.5 million children under age 6.

The compromise we are voting on today helps close the gap between poverty and employment. It is not the sole answer to prevent poverty, or to guarantee employment. But it will aid in alleviating one of the greatest burdens most families face—finding and maintaining quality affordable child care.

For most families today, child care is almost as expensive as housing, and for an increasing number of families, the amount of money spent on child care actually exceeds the amount of money spent on housing.

Last year, I sent a survey to 220 child care providers throughout Maine. Based on the responses to that survey, the average cost of child care in Maine per month per child is $289—$3,468 per year. In the Portland area alone, the average cost of child care per month per child is $372—$4,473 per year. While nearly all the facilities that have some subsidy available—either Federal, State, local, or some other source—are operating at capacity, only 57 percent of those facilities not offering any kind of subsidy are at capacity. And, interestingly enough, of the half-day only facilities responding to the survey, only one-third were operating at capacity.

What is clear to me is that there is a shortage of affordable child care. And, that part-time child care does not meet the need of many families.

The Dodd-Hatch compromise will increase the availability of child care by encouraging States to increase the number and variety of child care services.

The compromise package allocates 100 percent of the funds under the bill to the States. With the grants in hand, the States would make individual decisions concerning how the funds would be spent.

There are some general guidelines, but within those guidelines are many choices. Seventy percent of the funds must be spent on subsidies for child care. But States have the option of providing those funds directly to child care providers to subsidize child care for low- and moderate-income families, to units of local government that agree to enter into contracts with child care providers, or by distributing child care certificates to parents of eligible children.

Twenty percent of the funds are to be spent on quality and supply areas such as grants and loans to child care providers to establish and improve facilities, to meet State and local standards, to start employer-sponsored child care programs, for capital improvements, for resource and referral centers, for improving the monitoring and enforcement of licensing requirements, for providing training, or technical services, or to extend the hours of operation of part-time programs to full time.

I do not think anyone would disagree that States have a wide array of choices. Now, some of those choices I have reservations about. I have consistently been skeptical of vouchers. I am opposed to the use of vouchers in education and I am not convinced they work with low-income housing.

However, there is no mandate in this bill to force States to enter into the child care voucher business. And, if a State chooses to use vouchers, those vouchers can only be spent for child care that meets State and local standards.

At Senator HATCH's recommendation, the compromise specifically makes clear that this is not a new entitlement program. Neither child care providers nor recipients of child care certificates are "entitled" to any contract, grant, or benefit. States make the decisions concerning whether or not they will use a voucher system.

While I have reservations, I am willing to see if this voucher system works within the confines of this compromise.

Unfortunately, one area that was not addressed in the compromise, where I believe we should make some changes, was in the use of the dependent care tax credit. Under current law, the credit is worth 30 percent of expenses up to $2,400—($720)—for one child and up to $4,800—($1,440)—for two children. Use of the credit is reduced by 1 percentage point for each $2,000 so that for those with incomes above $28,000, the credit is limited to 20 percent of expenses. The congressional Joint Tax Committee has estimated use of the credit will cost $4.3 billion this year.

But, many people who claim the credit do not depend on it for employment.

I would like to phase out the use of the credit for high-income families. And, with the savings, I would like to see the size of the credit increased for low- and middle-income families—those who truly depend on funds for child care in order to maintain employment.

Since there is little time left in this session of Congress, I hope we can examine the allocation of the credit next year.

Two basic facts are generally recognized about the importance of child care. The first is that child care assistance is essential if low- and moderate-income mothers are to participate in the work force. And, the second fact is that high-quality child care can help provide children with the foundation needed to do well in school and become productive adults.

It is time we treated child care as a serious issue, not a photo opportunity. We have a good package before us, and I hope it is adopted.

Mr. SPECTER. Mr. President, I am voting in favor of cloture because, after considering many factors, I believe that the Senate should stay in session, limit debate, and deal with the important issues involved in parental leave, child pornography, and day care.

There is general agreement that these family issues are important and should receive our attention. Vice President BUSH has spoken in favor of day care. Senator THURMOND has brought forth the amendment in the nature of a comprehensive bill against child pornography. I cosponsored, along with Senator DODD, the introduction of the parental leave bill in early 1987.

Last Friday and this past Monday, I urged the majority leader to abandon a series of procedural motions so that the Senate could get on with the business of considering the parental leave bill and the amendment which added the bill on child pornography. It seemed to me most unwise to recommit the bill and add day care, because the procedural complexities would take up a great deal of time and there were so many complex issues which had to be resolved on day care.

Senator DOLE, the Republican leader, urged Republican Members to vote in favor of cloture on the motion to recommit; and I ultimately did so for reasons which I specified in the CONGRESSIONAL RECORD when that vote was recorded.

As we vote today, we are 1 week beyond the originally announced target date, September 30, to conclude the work of the 100th Congress. We have important work to finish, including the drug bill and the technical corrections bill. Notwithstanding the many pressures for concluding this session, it seems to me that our fundamental duty is to address the issues on parental leave and child pornography and day care. Obviously, there are significant issues to be debated and modifications made. But whatever the ultimate outcome, whether it be passage or amendment or defeat, I believe we owe it to the American people to finish our work on these important issues.

On the parental leave bill, additional consideration is necessary on the concern that mandated leave would negatively impact businesses, particularly small businesses. Initial legislative proposals have been modified to reduce the period of parental leave from 26 weeks to 10 weeks. Modifications were also made limiting the coverage to employers who employ 50 or more employees at any 1 work site, in contrast to the earlier proposal for 15 employees. These and other issues remain to be considered, amended, and voted upon before the Senate is ready for final action on a parental leave bill.

On the child pornography bill, I have expressed concern on the constitutionality of several provisions of the bill which I believe require amendment.

On the day care bill there is a major concern on the provisions related to vouchers to provide child care assistance. There is additional concern that, although the bill has provisions barring religious discrimination against children receiving care, there is not a stated protection against religious discrimination for persons seeking employment at sectarian-sponsored child care programs.

I firmly believe that it is most unfortunate for the American people that we in the Senate have not already taken up these issues. In the course of the past 2 weeks, there has been ample time to do so, but so much time has been dissipated with quorum calls and recesses.

Last Friday, I had a colloquy with the distinguished majority leader on these and related subjects. On this past Monday, for approximately 30 minutes, I spoke again to these issues in the presence of the distinguished majority leader who was on the floor. On Friday and Monday last, I stated that politics and the 1988 presidential election were controlling the calendar and the debate rather than the welfare of the American people on the issue of parental leave, child pornography, and day care.

Notwithstanding what I consider to be the ill-advised procedures and processes to date, my ultimate judgment is that the Senate should stay in session to resolve these issues within a limited timeframe for debate. If we work at it, there is sufficient time to address these issues and to let the Senate work its will so that these important matters may be discussed, voted upon, and resolved in the national interest.

Mr. BYRD. How much time remains?

The PRESIDING OFFICER. One minute and 11 seconds.

Mr. BYRD. Mr. President, I urge the Senator to vote for cloture. This may be the last chance. The train is about to leave the station.

I yield back the remainder of my time.

The PRESIDING OFFICER. The balance of time has been yielded.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the cloture vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee substitute for the bill S. 2488, a bill to grant employees parental and temporary medical leave under certain circumstances and for other purposes.

Senators Brock Adams, John Kerry, Wyche Fowler, Jr., Carl Levin, Spark Matsunaga, Howard M. Metzenbaum, Jeff Bingaman, Claiborne Pell, Tom Daschle, Edward M. Kennedy, Alan Cranston, George J. Mitchell, Frank Lautenberg, Christopher Dodd, Barbara A. Mikulski, and Jay Rockefeller.

Mr. BYRD. Mr. President, I ask that the clerk announce the names of the Senators as they vote.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the committee substitute for the bill S. 2488, a bill to grant employees parental and temporary medical leave under certain circumstances, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

The PRESIDING OFFICER (Ms. MIKULSKI). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 50, nays 46, as follows:

YEAS—50

Adams
Baucus
Biden
Bingaman
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Conrad
Cranston
Daschle
DeConcini
Dodd
Durenberger
Ford
Fowler
Glenn
Gore
Graham
Harkin
Hollings
Inouye
Johnston
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Metzenbaum
Mikulski
Mitchell
Moynihan
Pell
Proxmire
Pryor
Reid
Riegle
Rockefeller
Sanford
Sarbanes
Sasser
Simon
Specter
Stafford
Stennis
Weicker
Wirth

NAYS—46

Armstrong
Bond
Boren
Boschwitz
Breaux
Cochran
Cohen
D'Amato
Danforth
Dixon
Dole
Domenici
Evans
Exon
Garn
Gramm
Grassley
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Humphrey
Kassebaum
Kasten
Lugar
McCain
McClure
McConnell
Melcher
Murkowski
Nickles
Nunn
Packwood
Pressler
Roth
Rudman
Shelby
Simpson
Stevens
Symms
Thurmond
Trible
Warner
Wilson

NOT VOTING—4

Bentsen
Karnes
Quayle
Wallop

The PRESIDING OFFICER. On this vote, the yeas are 50, the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. DOLE. Madam President, I move to reconsider the vote by which the motion was rejected.

Mr. GRAMM. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The distinguished majority leader. Will the majority leader withhold? The Senate is not in order. The majority leader wishes to advise us of the next order of business. Will Senators please clear the floor.

ORDER OF PROCEDURE

Mr. BYRD. Madam President, I wish to thank the five Republican Senators who voted for cloture. I am saddened by the fact that cloture was not invoked because I had hoped we would have been able to add this bill to the already impressive achievements of this historic 100th Congress. I would like to have added a comprehensive package of legislation that would substantially improve the quality of life for families all across America.

America's families need this package. They need to have their burdens eased during critical periods of childbirth, adoption, and family medical crisis. They need the peace of mind that job security will offer them in these times. They need the parental legislation. They need access to child care nationwide, a child care that they must have in order to leave the home and earn a living for their loved one. They need quality child care so that they will have the peace of mind that comes from knowing that the child will be taken care of, in surroundings that are safe and good for that child.

Mr. President, we have heard for quite some time that everybody in this Chamber supports child care legislation and everybody wants to do something for the American family.

Today we had that chance, but we did not succeed. The American family is running harder just to stay above water. It takes two wage earners to keep today's family afloat. That means that families need a helping hand; they need a safe place for their children to go while they work; they need policies that allow them to attend to sick youngsters without fear of a pink slip for their efforts; and they need help to protect their children from the horrors of child pornography.

Today, they have heard the minority say no. They got lip service but no helping hand. I must acknowledge to my friends on the other side of the aisle that their filibuster was successful. They have won today, and America's families have lost.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The distinguished Republican leader.

Mr. DOLE. Madam President, I am not certain that that indicates we will not have additional cloture votes on this measure or not.

Mr. BYRD. Madam President, I will be happy to respond to that. I do not plan to have another cloture vote on this matter.

Mr. DOLE. Madam President, I want to congratulate all Senators, those on both sides of this issue. I think we have to go back to the first cloture vote, which was 85 to 6, to understand the broad support for the concept of parental leave, child care, and antipornography—85 to 6. So there was not a reluctance on the part of anyone that I know, except a few, to even consider this legislation because it has been described as profamily and in a sense it is.

But we have a greater profamily bill waiting to be considered, and that is the drug bill. It is tearing down families, it is destroying families. It seems to some of us that notwithstanding the efforts of the majority leader to speed along the calendar, if we had invoked cloture today, we would have been on this bill for some time, a week or so. So we now want to move on to a profamily bill that affects the rich and the poor, the black, the white, the brown, the people in the cities, the people on the farms. Drugs, in effect, are destroying children and causing death and destruction.

I hope that we have a bipartisan core package what will permit us to do that.

Second, the issue of parental leave and child care—I have a child care bill pending. That has not been discussed. Many Members have child care bills pending. Many do not like Federal standards, and I want to thank the eight Democrats who voted with us today because I think their resistance is to Federal standards, the Federal Government telling us what we must do for child care.

So there are a lot of issues that have not been addressed. There has not been a filibuster. We have been on other matters. We have been on the tax bill. If it is President Bush or President Dukakis, child care is part of the national debate. Parental leave is part of the national debate. Each have different ideas, and it seems to me we ought to give the President-elect an opportunity to come to the Congress, come to all of us, Republicans and Democrats alike, and lay out his plan for child care, parental leave, antipornography, whatever.

So it seems to me there is a broad consensus in that body to address these problems—85 to 6. But there is also a recognition in a 50 to 46 vote, and this is only on cloture—had this been an up or down vote on this bill, it might not have passed at all.

So what we have done in effect is say slow down, this is not an urgent measure that has to be passed in the waning days of the Congress. The House has already gone home for all practical purposes. They are coming back next Wednesday, and they may go home again if we are still here. They have nothing to do.

So I think we have acted prudently in indicating we are not opposed to many of the ideas that have been talked about by the Senator from Connecticut and others on this floor. Senator HATCH, the Senator from Utah, has a bill; the Senator from Mississippi has a bill; the Senator from Oregon has a bill. Many were cosponsors of this legislation.

I would say we need now to move quickly—I know the majority leader agrees—to get the tax bill done today, and I want to say on that note, I want to urge colleagues on this side, those particularly coming around to me saying why can we not go home, to not talk so long. Some of those who urge me every day, "We want to go home," are the ones who want to talk on the Senate floor.

I hope we can get time agreements on the tax bill, 20 minutes, 30 minutes. Having gone through the list myself last night, there are really about 10 amendments that are going to require, in my view, much debate.

It seems to me we ought to be able to dispose of all the amendments to the technical corrections bill by early afternoon or early evening.

So I would urge my colleagues on this side, if you must offer an amendment, if you feel compelled, cannot sleep unless you do it, try to get a time agreement. Do it in 10 or 15 or 20 minutes, because this bill has to go to conference. I would certainly, at the appropriate time, be willing to join with the majority leader in tabling amendments that are costly that may delay this bill. It took 4½ hours on one amendment yesterday. The amendment got 33 votes. So we want to complete action, and I hope if we do that today the majority leader would indicate we might not be in session on tomorrow, but I am willing on this side, working with Senator PACKWOOD, to try to restrain, first of all, the number of amendments that are offered, and, second, to try to restrain the time we use when the amendment is offered.

So I thank my colleagues for their support in at least delaying this issue until next year, and I hope now that we conclude the two important issues remaining, drugs and technical corrections, plus some other things that we can agree upon by unanimous consent.

I thank the majority leader.

Mr. BYRD. Madam President, I thank my friend.

> The moving finger writes; and, having writ, moves on; nor all your piety nor wit shall lure it back to cancel half a line, nor all your tears wash out a word of it.

The record is written. Let the people judge. We spent the time that we spent on this bill because it is important to American families.

The distinguished Republican leader indicated from the very beginning—he was candid in doing so and I respect him for that—that he was opposed to cloture on this measure. He urged his colleagues to vote against cloture. He said he hoped they would continue to vote against cloture, and they did. I salute the distinguished Republican leader for being able to hold his people in line. But five of those Senators had the courage and the stamina and the vision to stand up and vote for the families of America today.

The distinguished Republican leader has said time and time again, why not get on with the drug bill. My friend knows the only drug bill we could have gone on with was the House bill. He also knows that his working group, a very excellent working group of Senators, and the majority's working group were laboriously trying to come up with a bipartisan package to submit to this Senate that the joint leadership could support, and that working group did that. That bill was not introduced until this past Monday.

That is what we were waiting on. So we could not have gone on with the drug bill. If we had chosen to go ahead with the House bill before the bipartisan package had been developed, we would have been asking our bipartisan working group to act in vain. That is what we were waiting on.

Now, let me make the distinguished Republican leader a proposition. He wants to go home. Republican Senators want to go home. I will make this proposition. Finish this tax bill today, and then let us get an agreement to act on the core drug bill without amendments. That is a bipartisan package. Democrats have supported it; Republicans have supported it. The Republican leader supports it. He joined with me in cosponsoring it.

Now, let us pass that bill. If we pass the bill, no amendments—we have 70 amendments to that bill on this side, and the Republicans have several amendments. Now, our people over here say they will not offer their amendments if the Republicans will not offer theirs. Now, let us see where Senators stand. Let us see where the Republican leader stands. He joined with me in introducing that bill. I hope he will join with me in urging that these people over here who have 70 amendments forget it and those Senators over there who have amendments forget it.

Let us pass the core drug bill, send it to the House, pass the tax bill today, and we will not be in on Saturday. We will let the House act on the conferences. It can be done. It is not too late. We have plenty of time to pass those bills if we can all restrain ourselves from offering amendments, some of which will be killer amendments.

Let me hear the Republican leader's response to that proposal. I yield for that purpose.

Mr. DOLE. I thank the majority leader.

I think that is an indication of progress. What we had hoped to do was limit the number of amendments on the drug bill. We are not saying you cannot offer amendments to the tax bill. I hear that some amendments are totally politically motivated by some on that side. But it seems to me we could limit it—say, each have a half a dozen. We would pick out six. Because it was never the intention to say the core package was going to be final. In fact, at least I have said on this floor—and I am not certain if the majority leader may have made suggestions—that, well, we get a core package and, of course, it is always open to amendment.

There are issues like the exclusionary rule and habeas corpus and civil penalties that we feel strongly about. The Senator from Oregon [Mr. HATFIELD] does not like the death penalty. He wants an amendment to make it life imprisonment. Others disagree with him on this side. That is one of the six amendments.

We have pretty much agreed on this side we would only offer six if the Members on the other side would only offer six. That is certainly much better than 70. I think we have 47 on this side. That is 117 amendments.

But I would be happy to work with the majority leader. I assume if we could work out a good bill, the House might take it. I know they are sensitive about some of the issues that I have mentioned. We would be willing to put in, if some people are worried about the constitutionality, as we did in the Gramm-Rudman-Hollings provision, expedited procedure, and let the Court test its constitutionality. That would take care of questions about the exclusionary rule and civil penalties and some of these areas where maybe good lawyers on both sides have questions about their constitutionality. We are prepared to offer that amendment. The provision would not become effective until the Supreme Court had ruled on its constitutionality.

So perhaps we can bridge some of those gaps. I know the Senator from New Hampshire—I am going to yield the floor, and we might recognize him—has been the leader on our side working, as the majority leader said, with Members on that side, Senator NUNN, Senator MOYNIHAN, and Senator D'AMATO and others. We have had good cooperation.

Whether we can agree there will be no amendments, I am not certain, but I bet we could limit it to half a dozen apiece.

Mr. BYRD. Madam President, the minority leader talks about the exclusionary rule. I favor the expansion of the exclusionary rule, but let us do that on some other piece of legislation. The minority leader says let us wait until next year to do the profamily package. Let us wait until next year to get into these nettlesome, very difficult issues that some Senators on the other side want to call up on this drug bill. I have heard this business about "Let's get out; let's go; let's go home: we need to get out here."

Here is an opportunity. If Senators really want to get out of here, if they really want to pass a drug bill, if they really want to pass a tax bill, I have offered them the opportunity now.

Yes, I know there are six amendments or seven on the other side. You call up that exclusionary rule amendment and some of the other amendments, and we are going to have some pretty long debates. Then colleagues on this side of the aisle will unleash their own amendments. It seems to me that that scenario is not in the interest of getting action on this drug bill and not in the interest of going home. Going home seems to be so important, and it is important. But it is not a matter of going home. It is going out for the election. I am a candidate, too. I hope I will be reelected, notwithstanding the efforts of the Republican Senatorial Campaign Committee to make that difficult. But I am ready to go out when we finish our work. There is no better politicking than to stay on the job and do the people's work.

Now, here is an opportunity to get the people's work done and get out for the election. So I am ready to say no amendments on the drug bill, let us pass the core drug bill and let these complex, thorny, difficult issues wait until next year. We are going to have to wait until next year on the pro forma family package. Why not wait until next year on some of these other matters that will keep us here if we start down that road.

Mr. DOLE. Madam President, we do not want to foreclose anything. A lot of things can be worked out in—I will not say "this place"—the Senate. We can work out many things in the Senate, and I think we may be able to work out something on this.

But the one thing that has been suggested is to have a time agreement on half a dozen amendments, up or down, 1 hour each. We could finish it in a day. I know if we get into the exclusionary rule it would be difficult to get a time agreement. But at least we have come a long way because we have worked on a nonpartisan, bipartisan basis. We spent 7 or 8 legislative days on the textile bill. I was for it. I do not think that was ever viewed as a piece of legislation that had a broad impact. We spent several days on what is referred to as a profamily package, Government family package—not a State package, but Federal Government rules and regulations for the families. We spent some time on that.

So we would like to spend at least a couple of days on the drug bill. But I would say to the majority leader, as he knows, we are prepared to sit down with our core group and the core group on the other side, and maybe the two of us could hammer out something this afternoon while the rest are arguing about the tax bill.

Mr. BYRD. Madam President, so all Senators may know what the schedule is as I see it at the moment, I have had some inquiries as to whether or not the Senate will be in on Saturday. I believe I had an inquiry from the distinguished Senator from Oregon last night, Senator PACKWOOD, as to whether or not we might be able to finish the tax bill today. Let me say as to whether or not we are out on Saturday, if the Senate does not finish the tax bill today, the Senate will be in on Saturday unless we can get an agreement that will see us finish this tax bill on Tuesday. That is just how easy it is to determine whether or not we will be in on Saturday.

Madam President, in the interest of getting a good drug bill, one that is bipartisan, one on which there has been much time spent and on which have been expended the talents of some of the most talented people in this Senate on both sides, in the interest of getting that bill and getting it over to the House—the House is going to be back in on Wednesday. We can be out for a 3-day weekend. We have Columbus Day off. We are not going to be here on Monday. I already said that a good many weeks ago. Let us pass this drug bill. Let the Senate work it out on both sides, pass it, and send it over to the House. Let them deal with it then, and we will mark a little time on Tuesday and Wednesday while they are doing the work on those two bills. We will get out of here next week, possibly by Thursday. It could even be by Wednesday, but that would be expecting a little too much.

So there it is. I hope the Senators will ponder it. I make the offer in good faith so we can all go home and feel that we have done our work here, and have done it well.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. Madam President, let me just comment generally on the statement of the majority leader so that everybody understands the state of play on this drug bill because there have been some understandings of a general nature reached between those of us who have been working on it, and I would like to say to the majority leader, if I could have his attention just for a moment, and explain to him what I think has developed.

I do not see Senators NUNN and MOYNIHAN on the floor, but I think what I will state here categorically and factually they would agree with. This core group representing not only Senators MOYNIHAN and NUNN, but many others on that side of the aisle, Senators WILSON, GRAMM, and D'AMATO, and many others on this side of the aisle, have been negotiating for many weeks on a core bill.

But I must tell the distinguished majority leader with no fear of rebuttal from anywhere that underlying the entire negotiation was a presumption that there would be a series of relevant amendments limited maybe to five or six on each side, that would have to be offered by our side and by the Democratic side if there could be an agreement on the core bill.

What we had to do obviously was to come up with a bill in which everybody could agree with a major component recognizing, to use Senator KENNEDY's phrase, that there were many "hot buttons" on both sides, and that nobody on either side in most cases would agree to a core bill unless we could have these amendments.

On this side, I can tell the distinguished majority leader that after being asked to do so by our leader, we have in fact gotten down to about six or seven amendments with maybe one Senator who has some concerns about some AIDS-related amendments. But other than that our membership agrees basically on six relevant amendments. I use the word "relevant" because the germaneness test here, as the leader knows better than I, does not necessarily mean relevant. Let me say they all pertain to drug use, drug abuse, demand reduction, and criminal law enforcement as it relates to drug enforcement. We are prepared to do that. I know that there are some on both sides who would like to offer amendments that are not only not germane but not relevant. We have managed to, I think, control that on this side.

So it just seems to this Senator, and I want to make it clear to the distinguished majority leader, that I do not see how we can agree to a vote on the core bill when the underlying presumption for the last 3 months has been we would agree on a core bill so long as both sides could legitimately offer a limited number of amendments that were relevant to the bill.

I just wanted to give the leader that history because although I only had one or two things to do in the last 3 to 4 months, the leader has had literally hundreds of things to do. I have attended every meeting. Every part of this task force had incredible cooperation from Senators NUNN, and MOYNIHAN, and I think we can, if we lay this bill down and have some agreement amongst the leadership to table irrelevant amendments, have a core drug bill with some of the amendments on both sides adopted.

But that is the situation and the stance we are in. I felt it only fair to tell the leader what I have told our own leader on a number of occasions.

Mr. BYRD. Mr. President, the very able Senator from New Hampshire has contributed greatly to this effort, and there has been a presumption of course, but I do not know what the six amendments are that have been agreed upon on the other side. I understand that they include the expansion of the exclusionary rule that I am for. I may not be for it on this bill, but I want the bill. I do not want to kill the bill. But if the Senator would care to state what the others are, which might help us all to know, I think, and I am not revealing any secrets when I say that there is going to be considerable debate on one or more of those six amendments. Again, I say I do not know all of them, but in the interest of getting a drug bill that is a good drug bill, my suggestion is we do the core bill, send it over to the House, and let us see what happens.

Mr. KERRY. Will the distinguished leader yield?

Mr. BYRD. Yes. I yield.

Mr. KERRY. I would like to say in behalf of one of those who has participated not in the small inner group on a day-to-day basis but in a larger group, and as one of those who was part of the initial Democratic task force that then came together, I have an amendment. It is germane. It is relevant. I would like to see it debated on the floor. I think it would strengthen this bill.

I think it is important to the effort to increase our ability to fight a drug war. But I am willing to forgo that amendment in the interest of getting a bill. I am also opposed to the death penalty. That has been a very controversial issue on the floor of the Senate for years. I will vote for this bill, this drug bill, even though it has the death penalty in it. And the reason I will do that is because in the words of the distinguished Senator from New Hampshire yesterday, all of us who have put energy into the bill understand this bill is the first time we have really laid out a structure for doing something about this problem. As the distinguished Senator from New Hampshire said yesterday, the core bill as it now stands is an extraordinary bill with major efforts, with respect to prison construction, law enforcement enhancement, stricter penalties, all across the board—treatment, education.

This is a major effort. I think what we have here is a moment in the working of the structure of the Senate where earlier presumptions may have to be shifted. We all did have presumptions, and the presumptions were that we were going to make some changes. But I think that those of us who had those presumptions ought to stand back and question whether or not a basic structure of this bill is not such that it is worth passing and seizing this moment, rather than taking the risk that we are not going to have any bill at all, that we are going to lose this moment.

I urge my colleagues who have been part of this process and have worked on it to think about seizing the offer of the majority leader and making the most of this moment.

There is no question that somebody who feels strongly about the exclusionary rule or about habeas corpus can say that that will strengthen the bill and wants it, just as I feel that my amendment concerning money laundering will strengthen it.

I think the moment for making a new set of presumptions may be here, and I urge strongly that the Senate think about seizing that moment and do something in a bipartisan fashion that will serve our mutual efforts in fighting this drug war.

Mr. BYRD. I thank my friend. I think his contribution has been very worthwhile to this colloquy.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT AMENDMENTS

Mr. BYRD. Madam President, in order that we might get on with the tax bill, I wonder if we could agree to the appointment of conferees on another measure. I understand that there is no objection to proceeding.

Madam President, on behalf of Mr. BURDICK, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2030.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the bill (S. 2030) entitled "An Act to amend the Marine Protection, Research, and Sanctuaries Act", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees:

From the Committee on Merchant Marine and Fisheries: Mr. Jones of North Carolina, Mr. Studds, Mr. Lowry of Washington, Mr. Hughes, Mr. Carper, Mr. Manton, Mr. Davis of Michigan, Mr. Lent, Ms. Schneider, and Mr. Saxton.

From the Committee on Public Works and Transportation: Mr. Anderson, Mr. Roe, Mr. Mineta, Mr. Oberstar, Mr. Nowak, Mr. Towns, Mr. Hammerschmidt, Mr. Stangeland, Mr. Molinari, and Mr. Gallo.

Mr. BYRD. Madam President, I move that the Senate disagree to the House amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Messrs. MOYNIHAN, BURDICK, MITCHELL, LAUTENBERG, CHAFEE, STAFFORD, and PRESSLER conferees on the part of the Senate.

Mr. BYRD. Madam President, I yield the floor.

I hope the managers of the tax bill will proceed.

PARENTAL AND TEMPORARY MEDICAL LEAVE BILL RETURNED TO CALENDAR

Mr. PRYOR. Madam President, a parliamentary inquiry: Is the technical corrections bill pending before the Senate? I am a little uncertain.

The PRESIDING OFFICER. The parental leave bill is the present business.

Mr. BYRD. I ask unanimous consent that the parental leave bill be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

TECHNICAL CORRECTIONS ACT OF 1988

Mr. BYRD. Madam President, may we have the clerk state the matter before the Senate?

The PRESIDING OFFICER. The clerk will report the business before the Senate.

The legislative clerk read as follows:

A bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

The Senate resumed consideration of the bill.

Mr. PRYOR. Madam President, today I rise in strong support of the pending technical corrections bill before the Senate.

First, I should like to thank Chairman BENTSEN, who shepherded this very complex and far-reaching piece of legislation through the Finance Committee, and Senators BAUCUS and PACKWOOD for their very astute and able handling in the managing of this legislation on the floor of the Senate.

All too often, we bring a bill or an amendment to the floor of the Senate not fully realizing or appreciating the hundreds of hours of intense preparation and negotiations of the many dedicated and knowledgeable staff people who make legislation become a reality. I salute today those members of the personal and committee staffs who have lived with the issue of the technical corrections bill for the past 2 years.

The technical corrections bill is finally before the U.S. Senate. This is the issue we will be voting on, hopefully, sometime today or tonight or tomorrow, or no later than Tuesday.

Very few of our colleagues probably realize that one-third, or 72 pages, of the technical corrections bill is dedicated to the American taxpayer. Seventy-two pages of the technical corrections committee amendment is, in fact, that piece of legislation that we now call the Taxpayers' Bill of Rights.

This particular piece of legislation has been in the developmental stage for almost 2 years. We have worked very cautiously and very hard, and I hope in a committed fashion, with all the players, so to speak, including the accountants, the CPA's, the American Bar Association, and, yes, we have even worked with the Internal Revenue Service in the final preparation and the drafting of this new set of rules and standards for the American taxpayers.

The Taxpayers' Bill of Rights is not a simple statement or a meaningless resolution that the taxpayer needs more protection against the abusive methods of the Internal Revenue Service. It is not a simple sense-of-the-Senate resolution. The taxpayers' bill of rights, however, is the most comprehensive statutory change in the Internal Revenue Service Code in the last 30 years about what the taxpayer can and cannot do in paying taxes and what the Internal Revenue Service can and cannot do in the collection of those taxes.

We are today making a major and substantial change in the fundmental relationship between the taxpayer and the tax collector. From the notice of audit and the actual interview between the taxpayer and the agents of the Internal Revenue Service to the final issue of seizure and collection of certain assets, this legislation grants to the American taxpayer certain basic rights.

The Commissioner of Revenue, who is a most splendid individual, Mr. Larry Gibbs, has testified on more than one occasion before our Oversight Subcommittee of the Internal Revenue Service.

He has maintained throughout this debate during these last 2 years that these changes, changing the relationship between the Internal Revenue Service and the American taxpayer, should come not through legislation but through internal processes.

We do not think that is the proper way to go, especially realizing that most IRS Commissioners remain in that particular position for less than 2 years. After the Commissioner leaves, the same IRS bureaucracy remains.

We have seen the basic rights of the American taxpayer eroded over the past three decades by court decisions, regulations, and legislation.

We think the time is now to restore some of those basic safeguards that the taxpayer deserves. The "Taxpayers' Bill of Rights" will ensure that every American taxpayer knows their rights and also their obligations. This law will protect those rights and will protect the taxpayer from the abuses of sometimes overzealous IRS agents. This law will make a clear statement that those abuses will no longer be tolerated.

Madam President, I strongly believe that the "Taxpayers' Bill of Rights" will make a better, more careful, more thorough and certainly a much more respected Internal Revenue Service than we have today.

In fact, just a few weeks ago, a young Internal Revenue Service agent came up and asked me if I were Senator PRYOR from Arkansas. I said "That is correct." He said "I am one IRS employee who strongly supports the Taxpayers' Bill of Rights." I was taken aback. I asked him why he supported the "Taxpayers' Bill of Rights." He said, "I believe that your Taxpayers' Bill of Rights will make a better Internal Revenue Service."

The oppressive power and the awesome resources of the Federal Government versus the individual taxpayer can break the confidence and even break the back and the will of many taxpayers. We must have in our tax system today a system that protects those fundamental rights for the American taxpayer.

Madam President, some weeks back a present IRS official let down her guard on a radio talk show and confirmed the belief that many American taxpayers have about the IRS. She said, and I quote, "Taxpayers are not protected by the Constitution."

The reason, I believe, for this unguarded admission is that under the present tax system taxpayers are presumed to be guilty.

(Mr. WIRTH assumed the Chair.)

Mr. PRYOR. Mr. President, in a society that places the highest priority on due process rights, why are the taxpayers of America today afforded fewer rights than a criminal defendant? Obviously, there is no easy answer. Perhaps it comes from our distant past when the power to collect and levy taxes was an unconditional and divine right of a king and the failure to pay was a crime against the king himself.

There are extraordinary examples of the abuses that we have uncovered and brought before the public, one recently occurred in Colorado and was reported in the Rocky Mountain News.

It seems that an Internal Revenue agent hired two independent appraisers to value his house. Both appraisers came up with almost identical appraisals of the agent's house. The IRS agent apparently felt his house was considerably more valuable than either of the appraisers believed. During the course of one of the appraisals of the IRS agent's home, the agent went so far as directly asking the appraiser if he had ever been audited by the IRS before. After attempting unsuccessfully to sue the appraisers separately in court, the IRS agent initiated a mass audit against all appraisers in his district, including the two who had committed the heinous crime of under valuing his house.

Under present law the two appraisers would not have had any recourse against the IRS for the unlawful actions of the agent. The law presumes that the actions of the IRS are legal, correct, and unappealable. In the Taxpayers' Bill of Rights we would change this. Taxpayers under the Taxpayers' Bill of Rights would be able to recover damages for unreasonable actions by IRS agents.

In a second episode, seven or eight revenue officers raided a day-care center in the State of Michigan, which owed $14,000 in back taxes. The revenue officers placed the children, ranging in age from 18 months to 10 years, in two separate rooms. The IRS agents also placed tables at the doors leading to the rooms and parents who owed money to the day-care center were asked either to pay the IRS or to sign promissory notes before picking up their children.

This is unbelievable, but it is a true story about the abuses of the Internal Revenue Service.

The list of horror stories that we have been able to come up with numbers not only in the hundreds but perhaps in the thousands. The time before us is short. The instances of abuse and heavyhandedness, and insensitivity has been well documented by the IRS Oversight Subcommittee, and I will not take the Senate's time with a long list of these horror stories.

Mr. President, the IRS obviously performs a necessary function, the collection of our Nation's revenues. With these revenues that we collect, we provide for our defense, we find cures for dreadful diseases, we build our roads and highways, and provide many of the other things which make this the best and the freest land in the world.

As Supreme Court Justice Oliver Wendell Holmes wrote, "Taxes are the price we pay to live in a civilized society."

But I believe the present tax system, as 72 of our colleagues believed, tilts too heavily in favor of the Internal Revenue Service. I also believe that the taxpayers' bill of rights would correct the balance of fairness in favor of the American taxpayer, and it will do so without hindering the IRS' ability to collect lawfully owed taxes.

The passage of the taxpapers' bill of rights will send, I think, a very clear message to our country and to all taxpayers, small and large, that taxpayers do in fact have certain basic due process rights, and the Internal Revenue Service is going to honor those rights.

Mr. President, before I conclude, I would like to say a special word of thanks to Senator MAX BAUCUS of Montana who is one of the comanagers of the technical corrections bill today. Senator BAUCUS has been a long champion, even in his days in the House of Representatives for a taxpayers' bill of rights.

Senator BAUCUS and his staff have been most instrumental in working with myself and my staff in shaping a great portion of the language of the taxpayers' bill of rights, especially that section dealing with the recovery of professional fees and costs.

I would like to personally thank my friend from Montana, Senator BAUCUS, who for years has been a champion of this cause.

Also, I thank Senator CARL LEVIN of Michigan who in 1980 held a series of hearings about the abuses of the Internal Revenue Service against the small and average taxpayer. During these hearings we heard about the awesome power the IRS uses to abuse taxpayers and to close down businesses unnecessarily.

Let me also, Mr. President, thank Senator HARRY REID of Nevada who became the first cosponsor along with myself on the taxpayers' bill of rights.

Senator HARRY REID, in his very first speech on the floor of the Senate, very early in 1987, rose from his desk to my left and spoke eloquently about the need for a taxpayers' bill of rights and giving to the American taxpayer the basic and fundamental due process rights that we accord to the criminal defendant.

And, too, Mr. President, let me thank Senator GRASSLEY, of Iowa, who became the third cosponsor of the taxpayers' bill of rights. Senators GRASSLEY, REID, and others have been invited to participate in all of the Finance Committee hearings with regard to the development of the taxpayers' bill of rights.

Mr. President, the taxpayers' bill of rights might not be on the floor of the U.S. Senate today without the able, unselfish, and committed dedication of a young man who I am proud works for me. His name is Jeff Trinca. There were literally thousands of hours that Jeff Trinca spent in working with the Joint Committee on Taxation, in working with the Finance Committee, and in working with the many, many staff members of the U.S. Senate to draft the taxpayers' bill of rights. He has been very patient and he has been very understanding, and I think that he is owed a debt of gratitude.

To the 72 cosponsors of the taxpayers' bill of rights, we have come a long way together. Hopefully, we will soon see it become the law of the land.

Mr. President, I have received some 10,000 letters from across America. Most of those are individual horror stories of the treatment received at the hands of the IRS. There is a great fear of the Internal Revenue Service.

One letter writer—I believe I mentioned this on the floor some weeks ago, Mr. President—one letter to my office said, "Dear Senator PRYOR: I strongly support the taxpayers' bill of rights. And please add my name to the list of supporters." Signed, "Anonymous."

People fear the Internal Revenue Service. They do not want their name in the IRS computer. And today, we hope that the taxpayers' bill of rights will help to eliminate some of that fear and to level the playing field between the taxpayer and the tax collector.

Mr. President, in all of those thousands of letters that I have received the one person who has not written to me is Lee Iaccoca. He does not know about the taxpayers' bill of rights. Lee Iaccoca probably does not need the taxpayers' bill of rights. He probably has 200 CPA's and tax lawyers and tax accountants to make certain that he not only does not violate the law but to make certain that he takes advantages of the law that we have passed.

I have not even received from my home State, Mr. President, a letter from Sam Walton. Sam Walton is the richest man in America. Sam does not even know about the taxpayers' bill of rights. He probably does not care about the taxpayers' bill of rights. Because, Mr. President, I know for a fact Sam Walton has more CPA's and he has more tax lawyers than we have U.S. Senators.

But the taxpayers' bill of rights is basically for that small business, that mom and pop drugstore down on the corner, that someday might get behind a little bit with their taxes or might make a mistake or might say that "I want to go into the Internal Revenue Service and admit a mistake that I just found." The bill makes certain that the little guy is not penalized unnecessary.

Mr. President, it has been a grand experience working these 2 years with the various groups that have endorsed the taxpayers' bill of rights. I think Senator Reid this morning put some of these in the Record, but I am going to add some more. Some of the groups endorsing the taxpayers' bill of rights: the National Federation of Independent Businesses, that is NFIB; the National Taxpayer Union; the U.S. Chamber of Commerce, and—listen to this one; listen who else, along with all these conservative groups, has endorsed the taxpayers' bill of rights; maybe I should whisper it—the ACLU. In addition to many others, many insurance companies, many small business groups such as the Small Business Legislative Council and the Small Business United. Mr. President, I ask unanimous consent that the support groups for the taxpayers' bill of rights be printed in the Record.

There being no objection, the list was ordered to be printed in the Record, as follows:

GROUPS THAT SUPPORT S. 2223, THE OMNIBUS TAXPAYERS' BILL OF RIGHTS ACT

National Federation of Independent Businesses.
National Taxpayer Union.
U.S. Chamber of Commerce.
American Civil Liberties Union.
Small Business Legislative Council.
Small Business United.
Food Marketing Institute.
Prudential Insurance Company of America.
Beneficial Life Insurance Company.
Anchor National Life Insurance Company.
Anchor National Financial Services Inc.
Kanawha Insurance Company.
Munich American Reassurance Company.
Fidelity Security Life Insurance Company.
Farm Bureau Life Insurance Company of West Des Moines, Iowa.
Employers Mutual Companies.
Hawaiian Life.
The State Line Insurance Company of Indianapolis.
Safeco.
Aetna Life and Casualty.
Equitable.
The New England.
Woodmen Accident and Life Company.
National Association of Brick Distributors.
American Fidelity Assurance Company.
Security General Life Insurance Company.
Conseco Inc.
Federated Insurance.
Colonial Life and Accident Insurance Company.
Western National Life Insurance Company.
Bankers National Life Insurance.
Lincoln American Life Insurance.
Lincoln Income Life Insurance Company.
Jewelers of America.
Latin American Manufacturers Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Mechanical Contractors Association of America, Inc.
Menswear Retailers of America.
National Association for the Self-Employed.
National Association of Aircraft and Communication Suppliers.
National Association of Brick Distributors.
National Association of Catalog Showroom Merchandisers.
National Association of Chemical Distributors.
National Association of Development Companies.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Manufacturing Opticians.
National Association of Minority Contractors.
National Association of Personnel Consultants.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Realtors.
National Association of Retail Druggists.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Association of Truck Stop Operators.
National Association of Women Business Owners.
National Candy Wholesalers Association.
National Chimney Sweep Guild.
National Coffee Service Association.
National Council for Industrial Innovation.
National Electrical Contractors Association.
National Fastener Distributors Association.
National Grocers Association.
National Independent Dairy-Foods Association.
National Moving and Storage Association.
National Office Products Association.
National Parking Association.
National Precast Concrete Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Venture Capital Association.
Opticians Association of America.
Petroleum Marketers Association.
Printing Industries of America, Inc.
Retail Floorcovering Institute.
Small Business Council of America, Inc.
Small Manufacturers Council.
Society of American Florists.
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Independent Sewing Machine Dealers Association.
International Association of Refrigerated Warehouses.
International Bottled Water Association.
International Communications Industries Association.
International Franchise Association.
International Reciprocal Trade Association.

Mr. PRYOR. Mr. President, also our staff has prepared what I think to be an extremely accurate and, I think, a very constructive staff summary of what the taxpayers' bill rights does and what it does not do. For the benefit of my colleagues and especially the 72 cosponsors of this legislation, I ask unanimous consent, Mr. President, to have this staff summary printed in the Record so that they may advise their constituents and fellow taxpayers what the taxpayers' bill of rights does and does not do.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

I. AUDITS, INTERVIEWS, AND POWERS OF ATTORNEY

A. Regulations on reasonable time and place for interviews.—Section 7605 of the Internal Revenue Code of 1986 ("IRC") requires the IRS to select a reasonable time and place to conduct examination interviews. The IRS has not yet issued regulations elaborating on this provision. Section 102 of the TBR requires the IRS to publish regulations establishing standards in this area. The report of the Committee on Finance accompanying S. 2223 ("committee report") provides three important examples of unreasonable interview situations. First, it is generally not reasonable for the IRS to require a taxpayer to attend an examination at an IRS office other than the office located closest to the taxpayer's home. Second, it is not reasonable for the IRS to audit a taxpayer at his place of business if the business is so small that doing so essentially requires the taxpayer to close the business. Finally, it is not reasonable to subject an IRS agent to possible physical dangers. Additional guidance in this area would reduce much of the tensions that can arise between IRS personnel and taxpayers.

B. Recording examination interviews.—There are no statutory provisions governing the audio recording of IRS interviews. Recording practices and policies vary from district to district. Section 102 of the TBR would permit the taxpayer to make an audio recording at his own expense, provided the taxpayer gives advanced notice to the IRS. The bill also allows IRS employees to record interviews, provided the taxpayer receives prior notice and is supplied a copy or a transcript of the recording upon the taxpayer's request and at the taxpayer's expense. The bill attempts to make IRS interview practices consistent.

C. Explanation of rights.—Before an initial interview takes place, the IRS will usually send to the taxpayer written materials which explain the examination process. Section 101 of the TBR would require IRS employees prior to the initial interview to explain to the taxpayer the audit process and the taxpayer's rights during that process. The IRS may fulfill this requirement by providing the taxpayer with a written statement containing this information a short time before the interview commences. The explanation, whether written or oral, must inform the taxpayer of his right to suspend the interview to consult with a qualified representative. The purpose of this provision is to enable the taxpayer to participate in audit interviews in an informed manner.

D. Power of Attorney.—Under current administrative practice, a power of attorney may be executed in favor of a person eligible to practice before the IRS. Generally, the IRS permits the holder of the power of attorney to represent the taxpayer during all stages of the administrative process. Practitioners, however, complain that the IRS's position with respect to powers of attorney is unclear. The IRS recently announced a requirement that all taxpayers be present at the initial interview. Shortly thereafter, the IRS retreated from this position. Practitioners also claim that IRS employees will often ignore a power of attorney and attempt to make direct contact with the taxpayer.

Section 102 of the TBR would require the IRS to honor powers of attorney. The bill also prevents the IRS from requiring the taxpayer to accompany his representative to an interview absent an administrative summons. Finally, the bill allows an IRS employee to contact directly a taxpayer if the employee "believes" that the representative is responsible for unreasonable delay or hindrance. This provision has caused some controversy. Some claim that the use of the word "believes" in the statute will have the effect of overruling the present administrative review process for revoking powers of attorney. This, however, is not the intent of the drafters of the TBR. The statute merely states that an IRS employee "may notify the taxpayer directly" that the IRS employee "believes such representative is responsible for unreasonable delay or hindrance." This provision should in no way change or modify the present review process for revoking powers of attorney.

II. COLLECTION ACTIONS

A. Notice.—Present law requires the IRS to provide the taxpayer with written notice of its intent to levy at least 10 days before it collects by levy the tax owned. Section 111 of the TBR would extend to 30 days the period from the date of notice to the date of collection. The bill retains the present law exception which waives the notice requirement and waiting period if the IRS finds that the collection of the tax is in jeopardy.

The 10 day waiting period under present law is misleading and unreasonable. As a general rule, the taxpayer is given less than 10 days notice because there is a several day delay before the taxpayer actually receives the notice. Furthermore, a taxpayer who may have legitimate questions about the notice or who may wish to resolve the amount in dispute too often is unable to make telephone or written contact with the IRS within this unreasonably short period. Extension of the waiting period to 30 days would prevent unnecessary and unjustified seizures of property.

Consistent with the intent of the legislation to inform taxpayers of their rights, Section 111 would also require the notice preceding levy to describe the following: the relevant statutory provisions and procedures relating to levy and sale; the administrative appeals available to the taxpayer and the appeals procedure with respect to levy and sale; the alternatives available to the taxpayer which could prevent levy on property, including installment agreements; and the statutory provisions and procedures relating to redemption of property and release of a lien on property.

B. Property subject to levy.—Fuel, provisions, furniture, and personal household effects with an aggregate value of $1,500 or less are exempt from levy under current law. Also exempt under current law are books, tools, and machinery necessary for the taxpayer's trade or business with an aggregate value of $1,000 or less. Section 111 of the TBR would index both exemptions through 1990 to offset cost of living increases.

Section 111 would also exempt from levy the taxpayer's principal residence and any tangible personal property essential to carrying on the taxpayer's trade or business. Levy is permitted, however, if the collection of tax is in jeopardy or an IRS district director or assistant director personally approves the levy of the property in writing. Critics argue that this proposal would merely add an additional layer of administrative review. Given the serious consequences of such levies, however, the proposed review procedures are quite reasonable to curtail irreparable abuses of discretion by collection personnel.

Section 111 would disallow uneconomical levies. Thus, no levy could be made on any property if the estimated expenses of the levy and sale would be greater than the property's fair market value. This provision would restrict the IRS's ability to make punative seizures of property that have no economic value to the government. It would allow for the continuation of legitimate, taxpaying businesses.

Absent jeopardy, Section 111 would prohibit the IRS from levying on the taxpayer's property on any day on which the taxpayer is required to appear in response to a summons. The proposal would encourage taxpayers to honor summons by eliminating the taxpayer's fear of wrongful levy on the day that the taxpayer is required to appear before the IRS.

Section 111 would not allow any bank to surrender any deposits unti 21 days after service of levy by the IRS. The bank may release the funds before the 21 days expire if the IRS removes the levy. Unfortunately, erroneous bank account levies are not uncommon. Taxpayers who have had their accounts mistakenly levied suffer substantial losses of time and money to resolve these errors. The 21 day escrow period would afford the taxpayer a reasonable opportunity to correct mistakes before substantial harm has occurred.

C. Levy on wages.—Section 111 of the TBR would increase the per week exemption for wages from $75 plus $25 for each dependent to 1/52 of the amount of the taxpayer's standard deduction plus personal exemptions allowable during the year of levy. This proposal reflects cost of living increases.

D. Release of levy.—Section 111 of the TBR would require the IRS to release a levy under the following circumstances: (1) if the liability for which the levy was made is satisfied or becomes unenforceable because of lapse time; (2) if the release of the levy will facilitate the collection of the liability; (3) if the taxpayer enters into an installment agreement for the payment of the liability; (4) if the IRS determines that the levy is creating an economic hardship due to the taxpayer's financial condition; or (5) if the fair market value of the property exceeds the liability and releasing the levy on a part of the property could be made without hindering the IRS's ability to collect the liability.

E. Taxpayer assistance orders.—Taxpayers who find that their tax administration problems are not being resolved through normal administrative procedures may seek help through the IRS's Problem Resolution Program (PRP). The Taxpayer Ombudsman, the IRS official who administers the PRP, is authorized to assist taxpayers' efforts in dealing with bureaucratic red tape.

Section 104 of the TBR would increase the Ombudsman's powers by authorizing the Ombudsman to issue "taxpayer assistance orders." The orders, which would have the effect of an administrative injunction, could be issued if the taxpayer is suffering or about to suffer from significant hardship as a result of the manner in which the IRS is administering the internal revenue laws. For example, the Ombudsman could issue a taxpayer assistance order requiring the IRS to take corrective measures, such as releasing improperly seized property. Taxpayer assistance orders would provide the taxpayer with an inexpensive and quick means of resolving many types of disputes and would enhance the fairness of the tax system.

The IRS has recently responded to this proposal by granting its Problem Resolution Officers the authority to issue "taxpayer assistance actions." This is a positive measure, but absent legislation, effective implementation is questionable.

F. Administrative appeal of liens.—Under present law, there is no administrative appeals procedure once a tax deficiency case reaches the collection stage. Section 113 of the TBR would establish an administrative appeals procedure which would allow taxpayers to obtain a review of a filing of a notice of lien. The appeals procedure is intended to be used to correct erroneous filings, not to contest the underlying deficiency. If the IRS determines that the filing of the notice of any lien was unjustified, the IRS would be required under the bill to immediately issue a certificate indicating that the lien was released and that the filing of the lien was erroneous.

The erroneous filings of liens are not uncommon. Unfortunately, the consequences can be severe. The imposition of a lien can literally destroy a taxpayer's credit rating and reputation and seriously inhibit business and personal affairs. The proposal to provide administrative appeals of liens can significantly minimize these consequences.

G. Review of jeopardy levy and assessment procedures.—If the IRS determines that the collection of a taxpayer's liability is in jeopardy, the IRS has the option to avoid the normal collection process by evoking jeopardy assessment and levy procedures. Currently, only jeopardy assessments are subject to administrative review and judicial review by Federal district courts. Section 112 of the TBR would extend these review procedures to jeopardy levies. It would also provide the Tax Court with concurrent jurisdiction to review jeopardy assessments and levies under certain circumstances. These modest changes would help curtail abuse of these powerful tools.

III. TAX COURT CHANGES

A. Jurisdiction to restrain certain premature assessments.—Under present law, the IRS is prevented from assessing and collecting a deficiency until after it issues a statutory deficiency notice and the time period within which the taxpayer can file a Tax Court petition to challenge the notice has passed. If the taxpayer challenges the notice in Tax Court, the IRS may not assess and collect the deficiency until the Tax Court's decision becomes final. The taxpayer may challenge the IRS if it attempts to make a premature assessment or collection of tax. Currently, only the Federal district courts have jurisdiction to restrain IRS assessments and collections.

Section 131 of the TBR would provide the Tax Court with concurrent jurisdiction to restrain the assessment and collection of any tax that is the subject of a timely filed petition pending before the Tax Court. Thus, the taxpayer would no longer be required to seek relief in a second forum when the taxpayer has already previously invoked the jurisdiction of the Tax Court. This is sensible because the Tax Court already has jurisdiction over the substantive tax matter and, arguably, greater understanding of the underlying issues at hand.

B. Jurisdiction to enforce overpayment determinations.—Under present law, the Tax Court has jurisdiction to determine that the taxpayer has made an overpayment and is entitled to a refund. However, if the IRS fails to refund the overpayment determined by the Tax Court, the taxpayer must seek relief in either a Federal district court or the U.S. Claims Court.

Section 132 of the TBR would provide the Tax Court with jurisdiction to order a refund of the overpayment, plus interest, if the IRS fails to make the refund within 120 days after the Tax Court's decision becomes final. This would eliminate the taxpayer's need to file a second action in another forum and thereby save the taxpayer both time and money.

C. Jurisdiction to review certain sales of seized property.—If the IRS makes a jeopardy assessment and the taxpayer fails to pay the tax upon notice and demand, a lien arises in favor of the United States upon all property belonging to the taxpayer. The IRS has the immediate right to seize the taxpayer's property. As a general rule, the IRS is prevented from selling seized property pending a decision by the Tax Court. The IRS may sell seized property while a Tax Court proceeding is pending only if (1) the taxpayer consents to the sale, (2) the IRS determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds, or (3) the property is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense. Under present law, if the taxpayer wishes to contest an IRS determination to sell seized property, his only recourse is to file suit in a Federal district court. No forum exists for the IRS to request judicial review of the determination to sell the seized property.

Section 133 of the TBR would correct this problem by granting the Tax Court jurisdiction to review the IRS's determination to sell seized property pending a deficiency proceeding before the court. The bill allows both the taxpayer and the IRS to request such review by motion.

D. Jurisdiction to redetermine interest on deficiencies.—After a decision by the Tax Court, the IRS assesses the entire amount redetermined as the deficiency by the Tax Court, plus interest calculated at the statutory rate. If the taxpayer wishes to challenge the IRS's interest calculations, he must invoke the jurisdiction of either a Federal district court or the U.S. Claims Court.

Section 134 of the TBR would give the Tax Court jurisdiction to reopen a case to redetermine the interest assessed on a deficiency. The taxpayer must make his motion to reopen the case within one year from the date the Tax Court decision becomes final. The bill also requires the taxpayer to pay the entire deficiency and interest determined by the IRS before challenging the interest computation. The proposal would eliminate the need for taxpayers to seek relief in a court that did not consider the underlying issues of the case. The prerequisite that the taxpayer first pay the deficiency and interest should prevent the filing of frivolous suits only to delay payment of the liability.

E. Refund jurisdiction.—Under current law, when a taxpayer receives a statutory notice of deficiency, he may either petition the Tax Court within 90 days or pay the deficiency and file a claim for refund. If the IRS rejects the claim, the taxpayer may bring an action for refund in a Federal district court or in the U.S. Claims Court, but not the Tax Court. A taxpayer may also file a claim for refund not connected with a deficiency. If the IRS rejects the claim, the taxpayer may seek a refund in a Federal district court or the U.S. Claims Court.

Section 136 or the TBR would grant the Tax Court jurisdiction over refund actions against the IRS only if there is already a pending deficiency action in the Tax Court and if the issue in the refund action is related by subject matter to the deficiency action, or if the result in either of the two actions will affect the amount in controversy in the related action.

Additionally, this proposal would allow the Tax Court to delay proceedings for 180 days upon a showing by the Secretary of the Treasury that the taxpayer's return for the period in question was not audited.

Finally, a taxpayer would continue to have the option of filing a suit for refund in the appropriate Federal district court or in the U.S. Claims Court.

IV. SUITS AGAINST IRS

A. Bivens.—Presently, the only avenue open for taxpayers to recover losses sustained from wrongful actions by the IRS is a cause of action against IRS employees under *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971). This landmark decision established that "injury to a constitutionally protected interest by federal officials is a compensable injury within the general federal question jurisdiction of the federal courts." *Keese* v. *United States,* 632 F. Supp. 85 (S.D. Tex. 1985) (Explaining Bivens).

In *Cameron* v. *IRS,* 773 F.2d 126, 128 (7th Cir. 1985), the court found that although the IRS has been given the broad power to levy and collect taxes, individual IRS agents are not beyond the reach of Bivens actions by taxpayers. "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes." *G.M. Leasing Corp.* v. *United States,* 429 U.S. 338 (1976). Moreover, the "Fifth Amendment protects taxpayers' substantive right to be free of abusive tax collection practices." *Bothke* v. *Fluor Engineers & Constructors,* 834 F.2d 804, 814. The courts have created a clear cause of action for injured taxpayers. Unfortunately, in reality, very few taxpayers have recovered damages from IRS employees under the Bivens precedent.

The courts have rarely ruled in favor of taxpayer-plaintiffs, except in cases of shocking constitutional infringements. "A Bivens claim does not extend to every tort by a federal agent acting under federal authority." *Rodriguez* v. *United States,* 629 F.Supp. 333 (N.D. Ill. 1986). Therefore, taxpayers who file suit against government employees to recover ordinary tort damages are not likely to prevail under present law.

The courts cite two reasons for not expanding Bivens. First, "permitting damage suits against government officials can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." *Anderson* v. *Creighton,* 107 S.Ct. 3034 (1987). Second, expanding the Bivens remedy would interfere with the effective functioning of the government by opening up a flood of lawsuits. *Cameron* v. *United States,* 773 F.2d 126 (7th Cir. 1985).

IRS employees rely on two key defenses in Bivens actions. First, case law has established that a damage remedy for violation of a constitutional right will not be created when Congress has already created explicit remedies. Cameron, 773 F.2d at 126. For example, one court held that IRS agents cannot be held personally liable in a civil damage suit when an action could be brought against the United States under IRS Section 7426(a)(1). That section provides a limited remedy when the IRS levies and sells property that does not belong to the taxpayer. *Lojeske* v. *Boandl*, 788 F.2d 196 (3rd Cir. 1986).

Second, IRS employees have very successfully asserted the immunity defense. In *Harlow* v. *Fitzgerald*, 457 U.S. 800, 307 (1982), the court held that absolute immunity is available to "officials whose special functions or constitutional status requires complete protection from suit." Another court held that IRS employees are absolutely immune from civil liability for damages resulting from their decisions to initiate or continue proceedings such as audits and assessments that are subject to later IRS adjudication. *White* v. *Commissioner of IRS* 537 F.Supp. 679 (D.C.Colo.,1982). Furthermore, IRS employees have qualified immunity for performing discretionary functions, provided that their conduct does not violate clearly established statutory or constitutional rights that a reasonable person should know. *Harlow* v. *Fitzgerald*, 457 U.S. 800, 807 (1981). As indicated earlier, the IRS's internal manual does not confer statutory rights. Because most due process guidelines for taxpayers arise from the manual, most claims against IRS agents will be precluded.

The TBR creates two exceptions to the general sovereign immunity rule. The bill allows causes of action for damages resulting from the IRS's failure to release liens and from damages resulting from unreasonable IRS actions.

B. Damages for failure to remove lien.—Under present law, a taxpayer does not have a statutory right to bring an action for damages sustained from the IRS's failure to remove a lien. Section 122 of the TBR would allow taxpayers to recover damages if an IRS employee knowingly or negligently fails to release a lien as required by law. Taxpayers may recover the costs of the action and an amount equal to the greater of (1) the actual, direct economic damages sustained by the taxpayer which, but for the actions of the IRS, would not have been sustained, or (2) $100 per day for each day the failure continues (up to $1,000), beginning ten days after the taxpayer provides written notice to the IRS of the failure to release the lien.

C. Damages for unreasonable IRS actions.—A taxpayer that is harmed by unreasonable IRS actions does not have a specific right to recover damages from the IRS under present law. Section 123 of the TBR would provide such taxpayers a civil cause of action against the IRS for damages if, during the determination or collection of any federal tax, an IRS officer or employee carelessly, recklessly, or intentionally disregards any federal law or regulation promulgated under the IRC. Damages would be denied if the taxpayer is found to be contributorily negligent.

V. RECOVERY OF PROFESSIONAL FEES

A. IRC section 7430.—Under present law, IRC Section 7430 allows the prevailing party in a tax case in any federal court to recover reasonable litigation costs, including attorney fees, expenses of expert witnesses, and court costs. Attorney fees are limited to $75 per hour, unless the court determines that a higher rate is justified. In order to be awarded litigation costs, the taxpayer must be the prevailing party and must establish that the position of the government was not substantially justified. Additionally, the taxpayer must substantially prevail with respect to the amount in controversy or with respect to the most significant issues in the case.

The point in the proceeding in which it is determined whether the position of the government was substantially justified occurs when the government takes a position in a civil proceeding or when an IRS district counsel takes a position administratively. In a Tax Court proceeding, this point does not arise until the government files an answer to the taxpayer's petition. It is also at this point that recoverable litigation costs begin to accrue. In effect, the government may drop unreasonable claims up until the point it files its answer in Tax Court, thereby avoiding payment of fees and costs that the taxpayer may incur defending against such claims. The taxpayer who accrues immense legal and accounting costs defending against unreasonable positions taken by the government is left in an unfortunate position.

B. Proposal to allow recovery of administrative costs and fees.—Section 121 of the TBR uses the present IRC Section 7430 as its base. Therefore, it is likely that much of the case law established under that code section will remain applicable if Section 121 is enacted. The most profound change the bill proposed is the ability of the taxpayer to recover reasonable administrative costs, which as a general rule, are not now recoverable. The bill defines reasonable administrative costs as (1) any administrative fees or similar charges imposed by the IRS, (2) reasonable expenses of expert witnesses, (3) the reasonable cost of any study, analysis, engineering report, test or project that is necessary for preparation of the taxpayer's case, and (4) reasonable fees paid or incurred for services of a qualified representative of the taxpayer in connection with administrative action.

Recoverable administrative costs begin to accrue after the earlier of (1) the date of the first notice of proposed deficiency that allows the taxpayer the opportunity for administrative review in the IRS Office of Appeals (usually the 30-day notice), or (2) the date of the statutory notice of deficiency (90-day notice).

Whether the position of the government was substantially justified is determined as of the later of (1) the date of the first letter of proposed deficiency (usually the 30-day notice), or (2) the date by which the taxpayer presents to IRS examination or Service Center personnel the relevant legal arguments with respect to the action.

The bill would also shift to the government the burden of establishing that the IRS's position was substantially justified. Once the taxpayer substantially prevails in the dispute, the government must then establish that its position was substantially justified in order to prevent the taxpayer from recovering costs.

The bill would also grant the IRS the authority to settle claims for administrative and litigation costs. The IRS's decision to grant or deny an award of costs could be appealed to the Tax Court under the small case procedures. The bill assumes that most taxpayers will utilize the Tax Court small case office and that expansion of this office to accommodate additional cases may be necessary.

Mr. PRYOR. Mr. President, I deeply appreciate the Senator from Montana and the Senator from Oregon allowing me to speak. I express my gratitude to them. I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BAUCUS. Mr. President, if I might just speak for 2 minutes and then I will yield to the Senator from Oklahoma.

Mr. President, Americans should know the amount of time and effort the Senator from Arkansas [Mr. PRYOR] has dedicated to formulating a good, solid position for helping protect American taxpayers.

Many Senators introduce bills. Their staffs study the issue. They hold hearings and have a fairly good working knowledge of the issues they are working on.

Senator PRYOR has done much more than that. Senator PRYOR has spent literally hours, weeks, and months working on developing a responsible way to help better protect the American taxpayers in the negotiations that they might have with the Internal Revenue Service. He has personally spent time with the IRS in asking questions, like an investigative reporter, to find out what they do and do not do. He has personally spent countless hours talking to taxpayers, finding out what did happen and what did not happen. He has personally spent countless hours talking with Members of the Senate and House and others trying to form a very solid, responsible bill.

The Senator is also correct in mentioning Senator GRASSLEY, from Iowa, and Senator LEVIN, from Michigan, the other two Senators who have devoted much time and attention to bring more fairness, essentially, to the IRS collection process and assessment process in negotiating with taxpayers in order to help better assure taxpayers that they have a better deal.

I see Senator LEVINE on the floor. As I mentioned, he, too, has been working very hard.

But Americans should know how diligently and how responsibly the Senator from Arkansas, the Senator from Michigan, and the Senator from Iowa, Mr. GRASSLEY, have worked to put together what I think is an excelent package. They should be commended.

Mr. NICKLES. Mr. President, I join in the accolades to Senator PRYOR. I compliment him for his fine work. I am proud to be a cosponsor of the taxpayer's bill of rights and, as he mentioned, 72 Members of the Senate are, as well. I compliment him for his efforts.

Mr. LEVIN. Mr. President, will my friend from Oklahoma yield so I may join in his colloquy?

Mr. NICKLES. I am happy to yield.

Mr. LEVIN. Mr. President, let me add my commendation to the Senator from Arkansas. Senator PRYOR's work on the taxpayers' bill of rights has been nothing less than Herculean. As a result of this taxpayer's bill of rights, there are going to be a lot fewer abuses of the taxpayers of this country.

This is truly a taxpayers' bill of rights for the little guy, to give him some protection and give her some protection against the most intrusive and powerful agency in the United States—the IRS.

It has been a long, long haul. Senator PRYOR has carried this load in recent years in an extraordinary way. We are all in debt to him, to Senator GRASSLEY, and other members of the Finance Committee and cosponsors of this bill. More importantly, American taxpayers are all in their debt. I congratulate Senator PRYOR on that effort.

In 1980 the Subcommittee on the Oversight of Government Management, which I chair, looked into the impact of IRS collection practices on small businesses. Our investigation was in response to complaints from small businesses and IRS officers themselves regarding the IRS's arbitary and capricious use of its lien, levy, and seizure authority to collect delinquent taxes. The subcommittee found that the IRS often used excessive and harsh enforcement actions against small businesses with little or no consideration of alternative collection methods. IRS officers testified that they were pressured to use these severe methods even when the use of less severe alternatives would have resulted in a more effective recovery of the tax delinquency. As a result of the findings of this investigation, I, along with Senator COHEN, introduced S. 1832, a bill with many provisions similar to those contained in the legislation we are considering today and designed to protect the rights of taxpayers.

While it is important that the IRS be given powerful enforcement capabilities—it is equally vital that these capabilities be used fairly. The abuse of this authority strikes at the heart of our sense of due process and ethical conduct. Obviously the Government must try to collect all the taxes it is owed, but it is self-defeating given the voluntary nature of our tax system, to lose the respect and support of the taxpayers by the over zealous and unjustified use of liens, levies, and seizures.

One of the witnesses at our hearing in 1980 was Maurice Bishop, the owner of a pest control business in Benton Harbor, MI. He was all too familiar with the IRS gone awry. Mr. Bishop testified that the IRS wasn't interested in his timely efforts to pay off a debt of $40,000 through a reasonable installment program. The IRS chose, rather, to place liens on property worth approximately $300,000 to collect a debt of $40,000. At one point in his testimony Mr. Bishop said, "They—the IRS—never really gave me the impression they wanted to collect the money. They wanted me out of business."

Even after Mr. Bishop managed to pay off half of the debt, the liens remained, despite his continued efforts to work out a payment plan. At the time of the hearing, this taxpayer had managed to pay off the total amount of the debt owed to the IRS in spite of the odds against him. Yet, Mr. Bishop was still waiting to learn if the liens had been lifted. This treatment of a taxpayer willing to make a valid effort to repay a debt is inexcusable but, unfortunately, not that unusual.

Since our subcommittee investigation 8 years ago, I and many of my colleagues have continued to seek and support legislation to provide basic protections to the taxpaying public. Senators PRYOR and GRASSLEY, through their service on the Senate Finance Committee, have led that effort. We have made some progress. The IRS is now required to release liens within 30 days once the tax liability has been paid. Also, taxpayers must now be notified prior to any levy on his or her assets.

However, there is still much to be done. The IRS has continued in its irresponsible use of lien, levy, and seizure powers since our hearing in 1980. Between fiscal 1981 and fiscal 1986, IRS levies increased 110 percent, during that same period seizures increased 154 percent.

At the same time, we have given increased emphasis to our tax collection effort in light of the enormous budget deficits we have faced. For example, we have directed IRS to hire over 2,000 additional auditors. This increased emphasis on tax collection heightens the need for legislation which will ensure that the tax collection efforts we support will be conducted in a fair and equitable manner.

I am very pleased that the Senate is considering today the taxpayer bill of rights. The version contained in this bill reflects the careful deliberations on the Senate Finance Committee as well as those of us who have been involved in this issue for so long. I have had the privilege of working very closely with Senator PRYOR in his efforts to develop this legislation and bring it before the full Senate. I am pleased that the legislation we are considering today contains several provisions very similar to bills I have introduced in previous Congresses. Again, I commend him on his work and on his dedication to this issue.

I think my friend from Oklahoma.

AMENDMENT NO. 3580

(Purpose: To eliminate the reporting requirements under the now-repealed crude oil windfall profit tax for crude oil removed between January 1, 1988, and August 22, 1988, for which there is no windfall profit tax liability and for which there have been no windfall profit tax withheld)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. NICKLES), for himself, Mr. BOREN, Mr. GRAMM, Mr. WALLOP, and Mr. BINGAMAN proposes an amendment numbered 3580.

Mr. NICKLES. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add at the end of title II, section 207, add the following new section:

SEC. 208. AMENDMENTS RELATED TO CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980.

The reporting requirements of section 4997 of former Chapter 45 of Subtitle D of the Internal Revenue Code of 1986, and the related regulations thereunder, are repealed: *Provided*, That this repeal is effective only for crude oil removed after December 31, 1987, for which no tax is due or withheld under former Chapter 45 of Subtitle D of the Internal Revenue Code of 1986.

Mr. NICKLES. Mr. President, the amendment I am offering on behalf of myself and my colleagues, Senators BOREN, GRAMM, WALLOP, and BINGAMAN, would add a new section to title II, amendments related to tax provisions in other legislation. The amendment would repeal a section in the Crude Oil Windfall Tax Act of 1980 that grants authority to the Secretary of the Treasury to require reports from windfall profit taxpayers with respect to oil produced in 1988 for which no windfall tax is due.

The windfall profit tax was repealed effective August 23, 1988, when President Reagan signed the trade bill. I thank my colleagues who supported repeal of this unfair tax in July 1986, when I offered the repeal amendment, and again in July 1987, when the amendment was offered by Senator DAVID BOREN, Senator PHIL GRAMM, myself, and others.

The windfall tax has drained approximately $80 billion from the domestic oil industry since 1980. However, with the precipitous drop in oil prices in 1986 and again since fall of last year, domestic crude oil prices have rarely risen above the tier 1—old oil—threshold price of $19 to $20 that would trigger a windfall tax liability. In fact, with the exception of a few cases in the summer of 1987, virtually no domestic producer has owed any windfall profit tax on crude oil produced since the first quarter of 1986.

Despite the fact that the IRS has had no collections of windfall profit tax in over a year, the regulations still require that hundreds of thousands of forms be filed to the IRS. Particularly burdensome is the requirement file IRS Form 6248, the Annual Information Return of Windfall Profit Tax. According to industry estimates, the cost of filing and processing the windfall profit tax forms exceed $100 million for the oil and natural gas industry and $15 million for the U.S. Government.

Since no tax has been due for the last year, it is illogical and unfair to impose the enormous paperwork burden on the crude oil purchasers of filing this form and copying each of the working interest and royalty owners in each of the hundreds of thousands of crude oil producing properties in the United States. Moreover, the IRS could certainly better use its $15 million in other areas of taxpayer compliance or services.

The purpose of the amendment I offer today is to repeal the requirement that taxpayers file forms for crude oil removed during 1988. The amendment, however, is limited. The appropriate forms would still be required if the taxpayer for any reason owes windfall tax with respect to oil produced from January 1, 1988, through August 22, 1988, the last effective day of the tax.

In addition, the amendment would not eliminate the forms for individuals who have withheld windfall profit tax payments during 1988 or for individuals who need to file to obtain refunds of windfall profit tax withholdings.

Mr. BOREN. Mr. President, I am pleased to join with my colleague, Senator Don Nickles, in cosponsoring this amendment to relieve oil and gas operators from the reporting requirements of the windfall profit tax for 1988.

Because of low oil prices, the tax has not been collected and represents a burden for the oil industry as well as the Government. Although my amendment to repeal the windfall profit tax became effective this August, the filing requirements are still in effect for January-August. Now that the tax has been completely repealed, it is a ridiculous waste of resources to continue the reporting requirements for the year.

I sent a letter to Treasury Secretary Nicholas Brady which showed that the costs of reporting requirements to be over $100 million for the industry and $15 million for the Federal Government annually.

This waste of money was one of the main reasons a majority of my colleagues in the Senate and the trade bill conference committee agreed to my repeal amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, the amendment has been cleared and is acceptable to this side.

The PRESIDING OFFICER. Is there further discussion?

Mr. BAUCUS. Mr. President, likewise on this side. It is a technical correction. We accept it.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3580) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3581

(Purpose: To improve the efficiency of the Federal classifiation system and to promote equitable pay practices within the Federal Government, and for other purposes)

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. Cranston], for himself, Mr. Evans, and Mr. Durenberger, proposes an amendment numbered 3581.

Mr. CRANSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

"Sec. . (a) Short Title.—This section may be cited as the "Federal Employee Compensation Equity Study Commission Act of 1988.".

AMENDMENT NO. 3582 TO AMENDMENT 3581

(Purpose: To improve the efficiency of the Federal classification system and to promote equitable pay practices within the Federal Government, and for other purposes)

Mr. EVANS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. Evans], for himself, Mr. Cranston, and Mr. Durenberger, proposes an amendment numbered 3582 to amendment 3581.

Mr. EVANS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending amendment, insert the following:

"(b) Definitions.—For purposes of this section—

"(1) the term "position" means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

"(2) the term "Commission" means the Commission on Compensation established by subsection (c);

"(3) the term "Director" means the Director of the Office of Personnel Management;

"(4) the term "employee" means an individual to whom chapter 51 of subchapter IV of chapter 53 of such title applies;

"(5) the term "labor organization" shall have the meaning given such term by section 7103(a)(4) of such title;

"(6) the term "economic analysis" means a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity, and

"(7) the term "objective job evaluation analysis" means a quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved."

"(c) Establishment.—There is established a commission to be known as the Commission on Compensation Equity.

"(d) Study.—(1) To determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to subsection (i), for—

"(A) the conduct of a study of classification, grading, and pay-setting processes within and between the position-classification system under chapter 51 of such title and the job-grading system under subchapter IV of chapter 53 of such title, using standard objective job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed, and

"(B) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

"(2) For the purposes of this subsection, the term "executive agency" shall have the meaning given such term by section 105 of title 5, United States Code.

"(e) Report.—(1) Not later than eighteen months after the effective date of this section, the Commission shall transmit to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Services the report required by subsection (d) and shall provide a copy of this report to the Director.

"(2) The report shall include—

"(A) the Commission's findings resulting from the study; and

"(B) the Commission's recommendations, consistent with the proviso of section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) (as added by section 3 of the Equal Pay Act of 1963), for such administrative or legislative actions, or both, as it considers appropriate (including any recommendations for modification of the provisions of subsection (h)).

"(3) Not later than ninety days after the Commission submits its report to the appropriate Committees of the Congress pursuant to paragraph (1), the Director shall submit to such Committees and the Commission a report which shall include a detailed response to each of the findings and recommendations of the Commission.

"(4) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to paragraph (3), the Commission shall submit to such Committees any additional comments that the Commission deems appropriate in resposne to the Director's report.

"(5) The consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this section with respect to such study shall be considered to be of an advisory nature only.

"(f) Appointment of Commission.—(1)(A) The Commission shall be composed of nine members as follows:

"(i) Two appointed by the President of the United States.

"(ii) One appointed by the majority leader of the Senate.

"(iii) One appointed by the minority leader of the Senate.

"(iv) One appointed by the Speaker of the House of Representatives.

"(v) One appointed by the minority leader of the House of Representatives.

"(vi) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individuals occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

"(B) Members of the Commission may not be members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

"(2) All appointments under paragraph (1) shall be made not later than sixty days after the effective date of this section.

"(g) Administrative Provisions.—(1)(A) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice Chairman from among its members. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

"(B) The Commission shall adopt such rules and regulations as it considers necessary to establish its procedures and to govern the manner of its operations, its organization, and its personnel.

"(C) Five members of the Commission shall constitute a quorum.

"(D) Any vacancy in the commission shall not affect its powers except to satisfy the quorum requirements in subparagraph (C). Such vacancy shall be filled in the manner in which the original appointment was made.

"(3) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

"(4)(A) The Commission may appoint, terminate, and subject to subparagraph (B), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil service laws, the provisions of title 5, United States Code, or any other law relating to the number, classification, or compensation of employees. The Commission also may procure temporary and intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

"(B) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS-18 under section 5332 of title 5, United States Code.

"(C) Service of an individual as a member of the Commission or as an employee of the Commission shall not be considered service in an appropriate or elective position in the United States Government for the purposes of section 8344 and 8468 of title 5, United States Code.

"(4) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel and transportation expenses in the same manner as provided for under subchapter I of chapter 57 of title 5, United States Code.

"(5)(A) The Commission or any member authorized by the Commission may, for the purposes of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements, with or without consideration or bond, and take such other actions as the Commission considers advisable, to the extent that amounts provided pursuant to subsection (k) are available. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

"(B) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government such information, suggestions, estimates, and statistics as the Commission considers necessary to carry out this section. Each such officer, department, agency, establishment or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

"(C) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

"(D) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comments, or review before submitting such report, recommendation, or other matter to Congress or Committees of Congress.

"(6) Upon request of the Commission, the head of any federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

"(7) The Commission shall meet from time to time, as its members consider appropriate.

"(h) Termination.—Ninety days after the date the Commission submits its comments pursuant to subsection (e)(4), the Commission shall cease to exist.

"(i) Consultant.—The Commission shall—

"(A) develop the specifications for the study required under subsection (d) in the form of a request for proposals; and

"(B) solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences a list of consultants who on the basis of the specifications developed under subparagraph (A) and the objectivity, extensive knowledge and technical expertise of such consultants in the matters to be studied pursuant to this section, are appropriate to conduct the study.

"(2) The Comptroller General of the United States and the Congressional Office of Technological Assessment shall provide the lists to the Commission within sixty days after the date of such solicitation pursuant to paragraph (1).

"(3) From among the consultants on the lists provided pursuant to paragraph (1), the Commission shall select one consultant to conduct such study.

"(j) Construction.—(1) Except as provided in paragraph (2), nothing in this Act may be construed to limited or expand any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.

"(2) None of the findings, report, or other material resulting from the study conducted by the Commission may be used or entered into evidence as part of any civil action brought under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)), or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.

"(k) Funding.—(1) Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1989 and 1990, an amount not to exceed $3,000,000 shall be made available to pay the expenses of the Commission and shall remain available for such purpose until September 30, 1991.

"(2) The Commission, by majority vote, shall determine the necessary expenses of the Commission and notify the Director of the Office of Personnel Management.

"(l) Effective Date.—This section shall take effect on October 1, 1988.".

Mr. EVANS. Mr. President, this is an amendment which deals with a study which we are asking be conducted by the Federal Government of its own pay system for Federal civil service employees.

It is the culmination of almost 5 years of effort on my part, on the part of Senator CRANSTON of California, and on the part of 44 cosponsor of this legislation. I think it is important to distinguish what this proposal does and what it does not do, because there is some confusion on the part of some of our colleagues.

I do extend my gratitude to the Senator from Utah, Senator HATCH, who has worked very closely with us, who authored an important amendment to this proposition which is incorporated into the amendment I have sent to the desk.

With that, Mr. President, let me attempt to explain in as clear terms as I can, what we are attempting to do and why I believe it is so important for this Congress to act upon it. The proposal calls for a comprehensive study of the Federal classification system, one that has not been formally studied in a comprehensive way since its inception in 1923.

Mr. President, let me just repeat that. The formal study of the Federal pay classification system has not been done since 1923.

I believe this study is long overdue. It is necessary to ensure that all who work in the Federal service are compensated fairly and in appropriate consideration of other pay, and in appropriate consideration of the outside market.

Mr. President, this study is long overdue. The most important reason is that a review of this magnitude never has been done before. The system we have built over the years is overly complex, many of its series and classifications are antiquated and its pay criteria often bears no logical relationship to the abilities of the job incumbent. Let me share with you a prime example. Last year, OPM proposed to eliminate one pay factor for senior level managers that had been with the system since its inception. This factor allowed managers to be paid more by virtue of the number of staff they had under them. OPM concluded that this factor should be eliminated—it was costly and it had little to do with the managerial ability of the job incumbent. But it stayed in our classification system for 61 years.

Other shortcomings in the Federal classification system have resulted in unfair treatment of certain occupations. Most experts agree that factors used to rate jobs do not correspond closely to the characteristics of the contemporary labor force. The modern work force is increasingly concentrated in technical and service jobs that did not exist when the systems were first developed. Adaption to new technology is another factor not adequately accounted for in the current classification methodology. The downgrading of Federal word processors is yet another classic example. When OPM reaudited jobs of clericals using word processing equipment the job classification was lowered. Word processors were informed that because the end product of their work was a typed manuscript, the job series would rate out at a GS-4 instead of a GS-6. This decision was made contrary to the fact that jobs have become much more technical complicated, demanding, and productive. These examples to which I have alluded illustrate precisely the type of problems that we will get at in the course of the proposed study. Such an internal review will result not only in a fairer system, but one which is more cost-effective and efficient.

This nation's progress in the area of equal employment opportunity has always been met with resistance. Historically, Congress has successfully eradicated obsolete and archaic notions in a step-by-step progression. There is not a more appropriate step Congress can now take in this continuum which began centuries ago than to initiate a comprehensive study of federal wage-setting practices.

The public policy concern underlying this study is the same as it was in 1938 when Congress passed the Fair Labor Standards Act. It is the same as it was in 1963 when the Equal Pay Act became law and it is the same as it was when title VII of the Civil Rights Act was passed in 1964. The only thing new about the problem we are addressing today is that we call it pay equity.

S. 552 is the product of years of bipartisan collaboration, hardwork and compromise. It is a responsible approach to a very real and pervasive problem that exists in Federal classification practices. At the beginning of the 99th Congress, Senator Cranston and I introduced S. 519 calling for a study of Federal pay practices. During a number of hearings on that measure, this subcommittee received testimony from both advocates and adversaries of that proposal. Senator CRANSTON and I took an active interest in those hearings. We reviewed the comments and criticisms, we asked GAO to do follow-up research on some of these points and then we sat down and redrafted the legislation to reflect the concerns that were made. Our efforts at every step were bipartisan—as I strongly believe they should be. Some of those opposing this issue have suggested the notion of pay equity is politically motivated or partisan in nature. Mr. President, there is nothing partisan or political about unfairness. It is intolerable in whatever form it exists and it is our responsibility on both sides of the aisle to eradicate it from Federal pay practices.

In this spirit of bipartisanship, Senators CRANSTON, STEVENS, House leaders and I requested GAO to provide us with the necessary structure and methodology appropriate for studying the Federal classification system. GAO's recommendations have provided the foundation for S. 552.

Let me outline the major revisions we have made to the legislation. The scope of the study will cover Federal employees in the wage grade system and general schedule. The purpose of the study will be to assess whether the classification system is living up to its own enumerated objectives. I refer specifically to subsection (d) of the amendment. This provision has been rewritten to make it clear that we are only concerned about the merit system principles of title V of the U.S. Code. We do not wish to implicate title VII of the Civil Rights Act within the scope of this study, which is a fair criticism of the previous bill. I do not believe it is either desirable or necessary to reference title VII as part of the scope of the study. The implementation of title 5 objectives should result not only in equal pay for different work which is valued equally in terms of difficulty, responsibility and qualification requirements, but, proportionate pay for work that differs in value. Under subsection (d), the study would examine whether the Federal pay system is achieving these statutorily required results.

Another legitimate concern was expressed over the study's methodology. GAO addressed this question and recommended that two means be used because they were best suited to studying the Federal classification system. They are job evaluation, on the one hand, and economic analysis on the other. S. 552 or this amendment requires that both these methods be employed.

So we not only will look internally at the relationship of one job to another in the Federal system, but also look externally to see how the marketplace affects what we do in our own pay system.

Economic analysis can be valid in exposing some of the abnormalities and distortions present in the external marketplace which may account for some of the wage differential between occupations. The internal alignments, however, can better be done by using job-content analysis.

Let me briefly comment on job evaluation since it has been subject to much criticism by pay equity opponents, most of which I find unpersuasive. These adversaries would lead you to believe that job evaluation is some new and strange device, untried and untested. Well, it is hardly that. Job evaluation was born in the private sector.

I first learned of it in detail from the private sector and, in fact, it was from the Weyerhaeuser Co. and the Boeing Co., two of the best of our enterprises in the State of Washington.

It is not surprising that many companies have incorporated the concept of pay equity within the job evaluation systems and find it easily done.

Some skeptics suggest that job evaluation is also subjective; therefore, inherently unreliable. This characterization, I believe, is misleading at best. GAO found that job content analysis could be used responsibly and effectively as a measuring stick of the relative worth of jobs. It went on to make some constructive suggestions on how this method could be used most fairly. For example, periodic review and updating of job descriptions to ensure accuracy and the use of weighting schemes which do not simply replicate existing wage hierarchies were just a few of the many recommendations from the GAO to improve the use of job evaluation.

Mr. President, let me make something very clear. There has been a continuing concern that the Federal Government might somehow be bound irreversibly to the results of this study. I do understand this concern, but I do not believe the Federal Government could be held liable for discrimination under existing law merely by conducting a study of its own classification system. No Federal court in the country has allowed a plaintiff to establish a prime facie case of discrimination on the results of an employer study alone. The requirements of our civil rights statutes are clear: there must be a showing of intentional action by an employer to discriminate against his employees. The courts have received study results, along with a plethora of other data, as evidence of discriminatory intent. Alone, however, such results are not conclusive of such intent, but we do want to make the purpose of this study clear, though. That is why we have inserted language in subsection (e) stating explicitly that the results of the study are advisory in nature only.

Senator HATCH had an important and I think good addition to that to make it even more explicit that the results of this study, as it says in his amendment included in this proposal, none of the findings, reports or other material resulting from the study conducted by the Commission may be used or entered into evidence as part of any civil action brought under title VII of the Civil Rights Act of 1964, section 161 of the Fair Labor Standards Act of 1938 or any other provision of law relating to discrimination on the basis of race, sex, religion, national origin, handicap or age.

I think that is a very clear and important addition. It ensures that this is advisory in nature and cannot be used in any court of law to require action by Congress or by an administration.

A similar concern has been raised that rectifying any discrimination in the Federal classification system will cost an exorbitant amount of money. It is important to remember that we are convening a study to seek facts, not prejudge results. I do not know what the results of this study will bring. We are not starting with any conclusions.

We are trying to ascertain whether there is a problem after 62 years of building a pay system. That is the first and critical step. If, however, misclassifications are found, backpay is not an available remedy under existing law. The Supreme Court in United States against Testan held that there is no entitlement to a backpay for a period of wrongful classification under title 5.

Mr. President, the Federal Government is virtually unique among all of the employers in this Nation. It has twice as many job classifications as the biggest corporations in the United States as well as many broader, more disparate kinds of job classifications than most companies or enterprises devoted to much narrower products and services. I believe the Federal Government has a chance to initiate, a chance to lead. Either we will or we will leave the field to States, localities, and companies who already have begun the task. It is clear that States, cities, and the private sector will continue to address the issue and our continued inaction may leave us with no other alternative than to react and this will put the Federal Government at a competitive disadvantage to other employers who provide the cutting edge.

Mr. President, almost 40 States of the Nation have begun this process; 32 States of the Nation have already finished the kind of study we are now proposing; more than half of the States of the Nation have acted on behalf of their own employees as a result of those studies.

I think that kind of leadership from the States, which is also symptomatic of hundreds and hundreds of counties and cities throughout this country, means that it is time for us to act.

Let me close, Mr. President, by saying simply this: Good information for Congress and the administration is essential for all of us to make appropriate decisions. Fairness should never be feared. Ultimately, an appropriate, modern, fair classification system leads to employee satisfaction, it leads to better productivity, it leads to a more responsive Federal bureaucracy. Mr. President, is that not what we all seek?

I yield the floor.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I ask unanimous consent first to add Senator DECONCINI as a cosponsor of the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, I am pleased to join with the Senator from Washington [Mr. EVANS] in offering this amendment which would provide for a study of the Federal wage and classification system to determine whether female and minority employees of the Federal Government are being paid on a fair and equitable basis. The amendment contains the text of S. 552, legislation which was favorably reported by the Governmental Affairs Committee on March 16 of this year, 6 months ago. This is a bipartisan measure which has been sponsored by 43 Senators, representing both sides of the aisle. Despite the repeated efforts of the chairman of the Governmental Affairs Committee, the distinguished Senator from Ohio, Senator GLENN, who has been a longtime and steadfast supporter of pay equity, floor consideration of this measure has been blocked by a handful of Members who have fought to prevent the Senate from voting on it.

Mr. President, this legislation calls for a study—let me repeat—only a study of the Federal wage system to determine if the existing policies of title V of the United States Code relating to fair and equitable pay for Federal employees regardless of sex or race are being met. The legislation has been carefully designed to follow the recommendations made by the General Accounting Office on how such a study should be conducted. GAO, in an exhaustive report issued on March 1, 1985, entitled "Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems" outlined the methodologies which should be used to determine accurately and effectively whether wage discrimination against minority and female employees exists in the Federal pay and classification system.

Mr. President, I want to emphasize that GAO recommended that the study include both a job content analysis and an economic analysis. The job content analysis—the so-called comparable worth analysis—looks at the jobs themselves—the difficulty, working conditions, and responsibilities associated with the job. An economic analysis attempts to measure and explain wage differentials between men and women using characteristics of individuals, occupations and the workplace. As the GAO explained, such an analysis could indicate the extent to which factors such as education, work experience, and occupation account for wage differences by sex and race in Federal Government employment.

The GAO concluded that the "use of both approaches can provide a clearer understanding of how Federal wages are set and would be less susceptible to charges that important explanatory variables have been ignored."

Mr. President, the Senator from Washington and I heartily agree with the GAO recommendation that both approaches be utilized.

We want to full and a fair examination of the Federal system and analysis of all of the factors which may contribute to the wage gap. This legislation is designed to do that.

Mr. President, the Federal wage system has not been examined for sex bias since it was created in 1923. Today's wage system is based upon a system created 65 years ago. The world of work and the role of women in particular in the work force has changed dramatically since then. A study of the kind mandated by S. 552 is long overdue.

Mr. President, the opponents of this legislation have made numerous false and misleading statements about the measure. They have alleged it would expose the Federal Government to massive back wage claims by unhappy employees, despite the fact that the legislation explicitly provides the study is advisory in nature only and the legal division of GAO has issued an opinion making it clear that any misclassification of Federal jobs found by its study would not give rise to back pay awards under applicable Supreme Court decisions.

Opponents have alleged falsely the legislation would affect private employers. The legislation, however, explicitly provides the study will be focused solely on determining whether the existing policies of title V which govern Federal employees are being satisfied.

These and other issues are thoroughly addressed and disposed of in the Governmental Affairs Committee report accompanying S. 552.

Mr. President, women who work for the Federal Government, on the average, earn $21,000 while the average salary for men is $30,000. We ought to find out why. That is what this amendment is intended to do.

The Federal Government is way behind State and local governments in this area. A survey that GAO completed in 1986 indicated that the vast majority of States had conducted or were conducting some type of pay-equity study or data-gathering process. Numerous local governments have done so as well. Many have begun implementing pay equity policies, based upon the results of those studies.

We must stop closing our eyes on that need to undertake this type of self-examination of the Federal work force.

I urge adoption of the amendment.

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I know the distinguished Senator from Washington feels very strongly about this issue. My opposition to his amendment in no way detracts from my respect for him and the work he has done in the last 6 years in the Senate.

The problems with this bill are twofold. One, it puts the Government in the position of subjectively deciding what someone's job is worth and denying the fact that the worth of jobs is determined by the law of supply and demand.

Before we get into the philosophy of the text of the amendment, I think we ought to talk a little about practical politics.

The Senator from Montana, who is very ably managing this bill, has momentum behind the bill because of the heifer tax and the diesel fuel tax which are very important all across America. Every State has cattle production. There is a great deal of support from every region in the country to fix what is considered to be an inequity as a result of the 1986 Tax Reform Act. The diesel fuel tax also impacts all off-road users of diesel fuel by requiring them to pay 15 cents a gallon tax upon its purchase and they may not get the tax back until they file their tax return. That was imposed in the 1987 so-called Budget Reconciliation Act.

What happens is that a farmer or off-road logger, a contractor, someone who is using large amounts of diesel fuel, is required to pay the diesel tax and they cannot get the money back until they have filed their income tax return.

The Senator from Colorado, who is the occupant of the chair, knows well we have lots of farmers in Colorado and in Idaho and other areas who do not have profits when they file their income tax returns but they have had to pay their diesel fuel tax.

That is what this bill is supposed to fix. That is the train moving the Technical Corrections Act—the diesel fuel tax and the heifer tax, both issues I support and most Senators in the Chamber support because it is a matter of equity and fairness in our Tax Code.

I know how strongly the Senator from Washington feels about this, but I think what has to be recognized is that the administration will be here after Senate and House Members leave. This bill will pass, and we will adjourn. If this amendment is attached to it, OMB—and I just talked with Joe Wright, the Acting Director of OMB—would recommend a veto. We do not know whether the President will veto it or not. But I think there are a lot of Senators who would be very upset if they were telling their constituents they corrected the heifer tax and the diesel fuel tax and lo and behold find out they attached an amendment to the bill which has had consistent philosophical opposition from the administration, based on sound free enterprise principles, and President Reagan decided to take the recommendation of OMB and veto the bill.

I think all Senators should be aware this amendment is veto bait for a bill which most Senators would like to pass. This is not new opposition. This is not something that just happened today. For example, on April 14, in a statement of administration policy, the administration said:

> The administration strongly supports the principle of equal pay for equal work as embodied in the current law. The administration supports the full enforcement of current law and rejects attempts to undermine that principle.
>
> The S. 552 study to determine the existence of discrimination in Federal pay practices however is not based on the clear standards under title 5, United States Code, the Equal Pay Act, or title 7 of the Civil Rights Act of 1964. It instead uses flawed methodologies with undefined and biased criteria for a study of differentials in pay between dissimilar Federal Government positions held predominantly by females or male employees, or disproportionately by any ethnic group or race. The composition of the mandated study commission designed by the bill to judge the results of the study would predispose the results. The administration accordingly opposes the enactment, and if it were to reach the President's desk, his senior advisers would recommend it be vetoed.

I know there have been some changes made and some talk that somehow this bill would not have the impact in the court system that the bill I just quoted from would. However, I want to advise my colleagues that OMB would recommend a veto of the tax bill if the pending amendment is adopted.

Senator HELMS and myself, Senator McCLURE, Senator HUMPHREY, Senator NICKLES, and Senator THURMOND distributed a "Dear Colleague" letter, dated October 4, 1988.

I call attention of the Senators to that letter. It has been distributed to many of the Senators' offices.

I want to make a few points that are in the letter, and read a little bit of the letter to indicate why I believe the administration correctly would still recommend a veto of this bill if the amendment is attached.

It points out that the proponents of this amendment say that recent modifications of S. 552 supposedly would ensure that no Federal judge would admit the comparable worth study required by the bill into evidence of a suit for pay.

First, we question whether the proposed amendment can provide such absolute assurances about the use of the study as evidence in a court proceeding. Second, and more importantly, the amendment does not alter the flawed economic theory. I want to repeat that, Mr. President—the flawed economic theory underlying the comparable work study, nor does it change the stacked nature of the Commission overseeing the study.

Our distinguished colleagues, Senator HATCH and Senator EVANS, say that the bill, will measure each Federal job classification by an objective analysis of the job requirements as many industries do today. Among the many discredited elements of the comparable worth concept underlying the bill, perhaps none is more fraudulent than the bill's description of job evaluations as objective. Every reputable job evaluation expert would tell you there is no such thing as an objective job evaluation. They are all highly subjective.

The most accurate method, I might add, Mr. President, of job evaluation is the response in the marketplace of free people working through free institutions. That is the best, fairest, most equitable method known to man. It has been proven time and time again that the marketplace plays no favorites, is not discriminatory, and that the marketplace will provide jobs for the most qualified people available. It will pay enough money to hire enough people to get the work done.

This is spelled out in detail to our colleagues in the June 21, 1988, "Dear Colleague" letter from Senators RUDMAN, HUMPHREY, NICKLES, HECHT, HATCH, complete with the opinion of several experts. I cannot improve on the words of those distinguished Senators.

I want to read that to my colleagues. Comparable worth job evaluations are an inherently subjective technique which simply cannot prove or disprove the existence of discrimination. The only objective measure of the job value, the Senators said, are the market wage levels set by the forces of supply and demand.

That is how you determine job values in the most fair and equitable fashion. This study runs against the grain of the basic tenets and principles on which America has become the strongest economic and viable economy in the world. And job evaluation in the comparable worth theory rejects the market wage levels as a legitimate evaluation factor.

I don't believe that is something that this Senate should support. In fact we should resoundingly support a motion to table this amendment. I trust that opportunity will yet come. I understand a motion to table will be made by the distinguished manager of the bill.

Why should we jeopardize an important Technical Corrections Act that carries in it two very important measures that are important to producers of agriculture, construction, logging industry, mining industry—all across this country? Why should we jeopardize that to put something in the bill that runs absolutely counter to the basic philosophy of free enterprise, profit and loss system, supply and demand? Those principles have made America the greatest place on Earth to work, to live, to invest, to save, and to provide the opportunities that we enjoy.

I know what the distinguished Senator from Washington State is saying. But I disagree with the basic thesis behind this bill.

Mr. President, I do not think there is too much more, and I see Senator HELMS and Senator NICKLES are on the floor. I might just add we heard from many, many people on this issue. I think it would be a mistake to put it on the bill based on the thesis and the principle and the philosophy behind the amendment.

I would oppose it on its own merits but certainly some Senators might be more sympathetic to it than this Senator is. However, adding the amendment to this bill flies in the face of a President who enjoys more popularity as he is leaving office than any President in my memory. That President is opposed to this amendment.

So I think we are asking to get a bill vetoed, which would be a great disappointment to many, many millions of Americans. It is unnecessary in my view that this happen.

Just one last point: That is the thesis that it is just a study, and the results of the study would be advisory in nature only. The National Committee on Pay Equity and other proponents of S. 552 are very straightforward about their goal of achieving a pay adjustment based on the comparable worth study because the study will be directed by a commission whose majority favors comparable worth. It is likely to recommend a pay adjustment.

I say we will have the special interest groups out there using this study to lobby for unnecessary and expensive increases in the Federal payroll. Those special interest groups are against the principles of the marketplace, reject the idea of supply and demand, and run absolutely against the grain of everything that makes America such a strong economy.

Mr. President, I urge my colleagues to consider these issues; and even if they may be for this amendment, I hope they will vote to table it when the motion is made, so that they would not jeopardize the Technical Corrections Act, which is so important to many millions of Americans.

I yield the floor.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Washington.

Mr. EVANS. Mr. President, I listened carefully to the distinguished Senator from Idaho, and I hope he will listen just as carefully to me.

First, he suggests that this is a flawed economic theory. There is no economic theory involved. This is meant to be a straightforward, comprehensive study of the Federal classification system. It is to look at trying to measure jobs one against the other for internal alignment.

It also, in the heart of the amendment, calls for the use of market analysis to measure against the external market, precisely what the Senator suggests is the way in which all jobs are set.

However, the marketplace is not necessarily perfect, and there are jobs for which it is hard to measure against the marketplace.

In a job classification as broadly based as the Federal Government, there are in many cases no easy comparisons to make with the outside marketplace. I say to the Senator from Idaho that there is one classification not within the Federal civil service, but important members of the Federal branch, for whom there is no easy marketplace, and that is the pay for sitting Members of the U.S. Senate. If the marketplace were just the measure and the old concepts of the marketplace being an employer trying to pay as little as possible and an employee trying to gain as much as possible, and where they come together represents the essence of pay, I suggest to my colleague from Idaho that if you left it merely to the marketplace to pay the Senators of the United States, we probably would be somewhere around $20,000, more or less, and there would be plenty of people outside willing to work for that pay. The Senator knows that is a ludicrous suggestion, that that is the way we should pay Members of the Senate.

We have for some years had a Presidential commission examining the pay of senior officers of the Federal Government—Congressmen, members of the Supreme Court, the Federal judiciary, and others. How can they do it? There is no external marketplace to look at. They do it by examining the responsibilities of the job, trying to get some measure of what is appropriate in terms of pay. I do not think that is entirely subjective. I think, in fact, it is pretty objective, trying to say what the job is worth and measuring it against the marketplace. The two are taken into consideration, and when the two are taken into consideration, the recommendations evolve.

I say to the Senator from Idaho that I know from my own experience over many years that virtually every major corporation in the country uses essentially a job classification analysis, because they often have the difficulty of trying to make sure they are aligning the various jobs within their company in an appropriate way, always keeping in mind the necessity to respond to the external marketplace.

Mr. PACKWOOD. Mr. President, will the Senator yield?

Mr. EVANS. I yield.

Mr. PACKWOOD. I am confused. As the Senator knows, I am very receptive to this amendmeht. I am confused about how he says this is determined.

Does the company make an internal assessment, absent the marketplace, as to what they think inside the job is worth? How does it work?

Mr. EVANS. I am suggesting that a company would establish a job classification system. They will analyze the various jobs and responsibilities, particularly at the upper levels, where it is sometimes difficult to exactly equate the jobs themselves unless they use some kind of analysis internally to try to establish that internal alignment.

The way it works in detail is that for every job we do not pick a specific salary. You pick a range of salaries, but they do relate to one another. Then you turn to the external marketplace and recognize in some cases that you will have to pay at the upper end of the range and in other cases at the lower end, if the incumbent does not have as much experience.

Mr. PACKWOOD. I do not understand.

Let us say you are measuring what janitors are worth versus what secretaries are worth versus what CPA's are worth, and you conclude that janitors are worth $8 to $10 an hour, but you discover that in the marketplace you can get them for $6 an hour. Is that a factor in determining the worth in the company, or do you figure the worth first and then go outside to see what you can get them for? Is the marketplace a factor in what the job is worth?

Mr. EVANS. The two go in parallel. When you come to the hiring and determination of the incumbent who fills the job, the reverse is also true.

A few years ago, for example, computer programmers were in short supply; and even though you said here is essentially where they fit in an internal job classification system, whether in the public or the private sector, we recognize that for market reasons we have to pay them at the upper end of that range rather than the lower end. That is understandable and appropriate. It is an element that is used even by governments like the State of Washington or others, when you have to go out in the marketplace and ensure that you can hire people to fill various jobs.

However, that does not mean that you just ignore the kinds of internal alignments. You have to veer over it occasionally to respond to the marketplace.

Almost every private corporation—certainly most State and local governments—has long since opted for the kind of system that tries to measure these internal job classifications, many of which are not even duplicated or replicated outside of the particular governmental unit.

Mr. PACKWOOD. What is wrong with just letting the market determine what you pay for a job, so long as you do not discriminate among minorities or men and women in the placement in that job?

Mr. EVANS. That assumes, of course, in the first place, that the marketplace is perfect.

Let me give an example of what has happened in the past frequently in my State and other municipal governments.

The outside, so-called, marketplace in the construction industry has been a marketplace—and I know something of this from my own personal history, because I used to negotiate labor contracts in the construction industry years ago—those construction industry contracts were negotiated between the contractors on the one hand and the construction unions on the other. Neither one of them paid the wages. Neither one paid the wage, in reality. The construction companies, of course, technically paid the wage, but it was the owner of the enterprise wanting the building built, or a government wanting the building built, that actually paid the freight. It is a marketplace that is tilted. We have the marketplace wanting to keep going, and in the labor negotiations, their interests are not to have a strike but in continuing to work.

They are not going to pay those wages, at least not for any extended period, because the new contracts will be paid for by the owner. So what have we seen over the period of years? We have seen the growth of those wages until a construction laborer now in our area of the country is paid $16 an hour, for a laborer who is not experienced.

Now when you apply that to the corresponding unit of Government, this becomes the marketplace. But here is a really big difference between construction workers who are working seasonally who may not know from day to day whether they are going to come back the next day for a job that is involved with the problems of weather as opposed to those who work in the governmental system who have a salary rather than a daily wage who have much greater security, but in doing so that wage has been set far beyond the appropriate levels because they are simply responding to a marketplace which is not a measure of a true market.

Mr. PACKWOOD. What has happened in the last 10 years, unless I am mistaken, the construction industry has gone from 2-to-1 union to 2-to-1 nonunion. Another contractor comes and says, "I will pay electrician $12 an hour and make a bid and bid lower than another employer." You still have a market bid on that basis.

Mr. EVANS. It depends on where you are talking about. When you get into the major metropolitan areas of the Nation that still is not true to an extended degree.

But if we follow the marketplace accurately for our Federal employees leaving aside all of the kinds of classification or study that we are talking about, if we just follow the marketplace and went up along with those on the outside, we would have had far greater pay raises over the past 7 or 8 years in the Federal service than we do now because those pay raises, as I remember, 2 or 3 years ago were zero, and generally they have done no better than keep up with inflation, and that has not been the pattern in the marketplace.

Mr. SYMMS. Mr. President, will the Senator yield for a question?

Mr. EVANS. I am happy to yield.

Mr. SYMMS. I have been listening intently to the distinguished Senator's argument and I want to talk about this question of subjectivity and objectivity.

Speaking of Senate pay in my exploratory conversations with my fellow Idahoans about senatorial pay, so far I have only found two people in Idaho who think U.S. Senators are worth what they get paid, and one is JIM MCCLURE and the other is STEVE SYMMS in my State.

So I agree with the Senator, but still we manage to have plenty of opposition at least certainly in my case of highly qualified opposition to what the pay is. So I think that is there.

Mr. EVANS. I just suggest to the Senator that if the marketplace we really to determine it and you open it up and say candidates can run and get paid what they are willing to stand for, and somebody stands for the Senate and says "I will be willing to work for $20,000."

Mr. SYMMS. He might do it for nothing.

Mr. EVANS. He might do it for nothing. Is that an appropriate way to set the pay for the Senate? I do not think so.

Mr. SYMMS. It is not.

I want to get back to subjectivity versus objectivity, and I want to quote from the record about the arbitrary record and ask the Senator to comment on this proposition. This is what actually happened.

In three States where they do have comparable worth agendas, in Minnesota a registered nurse, a chemist, and a social worker all have equal values and would be paid the same. However, in Iowa the study finds that the nurse if worth 19 percent more than the social worker who in turn is worth 11 percent more than the chemist. While the chemist also receives the lowest point score of the three positions in Vermont, the social worker and nurse reverse rankings. The social worker is valued at about 10 percent more than the nurse who is worth 10 percent more than the chemist.

My question is to the Senator what is objective about that?

Mr. EVANS. First, what you have to do is try to analyze the job classification you are talking about. There very well could be job classifications which have different descriptions and you obviously would have to look at each one of those individual cases and see what was the description of the job and the job content to begin with to know whether they in fact were exactly equal in each of those States. They may well not have been.

Mr. SYMMS. But it appears to me, though, the ultimate test of what the job is worth is what you have to pay to hire a chemist. It is not what somebody says on a study. Is that not correct?

Mr. EVANS. That is one piece of it. But it is also important for the well-being of a company, a city, or a country for that matter, to have appropriate internal alignments because if they do not, you will run into extraordinary problems within your own work force, and this calls for precisely that, looking at internal alignment while at the same time in this study recognizing, and I tried to emphasize that, that half of this study's focus is on the external marketplace. That is an integral part of this. So you have two parts of any company or in this case of the Federal Government, look at internal alignments trying to assure that your internal alignments make sense and you can create as a result a work force that is more satisfied and more productive and better than it is today, but at the same time also look externally to see how that is reflected in the external marketplace.

For instance, we probably in the Federal Government ought to consider the differentials that should exist originally but we do not. I mean, you say you are a GS-something, that is a GS-something in rural Arkansas and the GS the same thing in metropolitan New York. That is way off the marketplace in one or the other of those two circumstances.

But it misses what this is all about which is to look at the internal alignment. You can look at the internal alignments at any level of pay.

Mr. SYMMS. Mr. President, proponents of this comparable worth measure point to recently added language which seeks to exclude "the findings, report, or other material resulting from the study conducted by the commission" from any discrimination lawsuit. I understand the Department of Justice is looking at this language to see if, in fact, Congress can properly exclude a specific piece of evidence like this from a discrimination suit.

But even as the Department of Justice reviews this question, they have made quite plain, as has the Office of Personnel Management, that this bill remains completely unacceptable to them. They have always noted that comparable worth lawsuits have failed in virtually every case in which they have been concerned about the misuse of these studies in a lawsuit against the Federal Government, that has never been the basic thrust of their opposition. Indeed, in the Department of Justice's March 22, 1988 letter to each of us, the Department details all of the flaws in this bill. And the Department notes that the flaws studies contained in S. 552 will be used as the basis of subsequent legislation 2 or 3 years from now, seeking to implement pay raises to take care of the so-called pay gaps between entirely different jobs. Indeed, my distinguished colleague, Senator EVANS, told us 2 weeks ago that once the study is undertaken, Congress itself can come in and close so-called unfair pay gaps. Yet, those pay raises will not cure discrimination because the studies in this bill cannot find pay discrimination.

The Department of Justice, in a letter to Senator HELMS in response to his inquiry about S. 552 with this new language regarding the exclusion of the study from evidence in a lawsuit, restated the Department of Justice's opposition to this bill even with the new language. The Department noted that even if its review indicates the bill can keep the study out of a lawsuit, the flawed study will be used as the basis for legislation seeking pay increases. This is in an October 5, 1988 letter from Thomas M. Boyd, acting assistant attorney general for legislative affairs to Senator HELMS.

Now, for those of my colleagues who think the language regarding use of the studies in lawsuits is some cure-all for this bill, let me pose a number of questions.

Does this new language, and the bill as it is before us, change in any way the comparable worth methodology of the bill? The answer is, no. This bill still calls for a so-called objective job evaluation analysis of different jobs selected because they are held predominantly by females or disproportionately held by minorities. Mr. President, there is no such thing as an objective job evaluation. Reputable job evaluation experts tell us so. As Alvin O. Bellak, general partner in Hay Associates, perhaps the leading job evaluation firm in the country, said: "Neither Hay nor anyone else can prove the inherent validity of any method of job evaluation. * * *" "Comparable Worth: A Practitioner's View", "In Comparable Worth: Issue for the 80's," A Consultation of the U.S. Commission on Civil Rights (1984), Vol. 1 at P. 77.

Next, does the new language change the ecomonic analysis required by S. 552? The answer, again, is no. Economic analysis is suppose to determine the nondiscriminatory reasons why two different jobs are being paid differently. But economic analysis are incapable of identifying all of nondiscriminatory factors that explain differences in pay—factors such as motivation for example. That is why in free market economies you don't have a master board of Government bureaucrats of third party experts setting wages. Reputable experts, economists and others, tell us that these statistical techniques simply are not sophisticated enough to identify all nondiscriminatory reasons for pay differences. These studies will always show a residual, an unexplained pay gap. Comparable worth proponents have already told us that any such gap should be closed on the theory that it is discriminatory, even though it cannot be proven that it is any such thing. The gap is simply unexplained and may be due to nondiscriminatory factors that no one can measure in such a study.

Does the new language to S. 552 alter in any way the purpose of the bill? The answer, again, is no. The bill still retains as a principal purpose the determination of whether Federal pay is "Not based on considerations of sex, race or national origin"—section 4(a) of the bill—that is, to uncover pay discrimination. This remains the case even though these studies cannot uncover pay discrimination.

Does the new language unstack the stacked commission that oversees the studies and will make the recommendations and findings based on the study? The answer, again, is no. The President gets to name two members of the commission and both leaders of the Senate and House name one apiece. Even assuming all of the Republican appointees are sensible enough to reject the comparable worth concept, our friends across the aisle have endorsed the underlying notion of this bill and their appointees can be counted to label unexplained pay gaps as discrimination. So far, then, at least two members will follow the comparable worth line on this. The other three appointees are made by the Director of Personnel Management, but, the Director must appoint one designee from each of the three labor unions representing the largest number of persons in the Federal work force to be studied. Does any one doubt that they are going to vote to raise Federal pay? When those three appointees are added to at least the two appointeees by our friends across the aisle, the speaker of the House and the majority leader of the Senate, how do you think that study will come out? S. 552 does not cure this bias.

Of course, regardless of who sits on the commission, the studies themselves are a complete waste of time.

Mr. President, this bill embodies comparable worth and all of its flaws. Once these studies are undertaken, as Senator EVANS said on the floor during consideration of the minimum wage bill, when the studies show pay differences that will be labeled inequities, the Congress can then go in and fix them. Mr. President, those pay differences will not reflect discrimination because these studies cannot show discrimination. We should save ourselves the headache of having to address a major Federal pay raise bill 2 or 3 years from now by continuing to reject the measure before us. The Senate has not seen fit to pass this legislation in 6 years and now is not the time to embark on a whole new theory of pay discrimination in the closing hours of this session.

We already have laws on the books, such as the Equal Pay Act and Title VII of the 1964 Civil Rights Act, which ban pay discrimination in Federal jobs. I support those laws—we do not need new, discredited theories like comparable worth, masquerading under attractive but false labels like pay equity, to pay Federal employees fairly.

Mr. DECONCINI. Mr. President, will the Senator from Washington yield for a question?

Mr. EVANS. Yes.

Mr. DECONCINI. I want the Senator to know I happen to be a cosponsor of this underlying bill he offers here, S. 552, and I believe what he wants to do is show that we have laws that are based sometimes on things that do not get scrutinized as close as they are when we are on the floor.

I indicate to the Senator from Washington that I do not support his legislation, but I wonder if he would turn to page 21 line 20 where it makes reference of having jurisdiction over the appropriations subcommittee that funds the Office of Personnel Management. This wording disturbs me because it is in essence, as I read it, and I would like the opinion of the Senator from Washington if he cares to give it, it really kind of makes it an entitlement. I do not want to hamper the funding at all, but I sure would like to find the money and come to the Appropriations Committee with a reprogramming and let us approve it so we can make a judgment instead of just taking it out of the hide of the Office of Personnel Management.

If the Senator agrees with my observation which means it is appropriations as well as authorization, I wonder if he could comment on this first. If he does agree I have another one.

Mr. EVANS. Obviously with the problems we are operating under in the Senate today under Gramm-Rudman and the budgetary controls, if you just had an appropriation, then you have to go someplace else and find the necessary money. That is No. 1.

No. 2, I think this is an important kind of function just to do a responsible analytical job within the Office of Personnel Management.

Mr. DECONCINI. Yes. If the Senator will yield, I agree with the deduction.

Mr. EVANS. It was done that way.

Mr. DECONCINI. We have to set some priority. I do not mind that.

I wonder if the Senator would have any objections if we authorize that OPM would have to find the money and then come forward as any other agency has to do for appropriations reprogramming.

Mr. EVANS. I have some proposed language in front of me.

Mr. DECONCINI. That is the language.

Mr. EVANS. That is the language that the Senator suggests.

Mr. DECONCINI. Yes, it is.

Mr. EVANS. If I might read it, it says at the end of the funding section of the amendment, add the following: "Provided, that before any provisions of this bill are executed, a specific amount of funds must be reviewed and recommended by the Appropriations Committee."

This Senator would have no problem with that. I think that it is appropriate. The reason we had the wording in there that we did was to avoid the problem of excess money.

AMENDMENT NO. 3582, AS MODIFIED

Mr. EVANS. We have not asked for the yeas and nays yet. I believe I have a right to modify my amendment, and I would so do in line with the proposal of the Senator from Arizona.

The PRESIDING OFFICER. The Senator has the right to modify the amendment.

The amendment, as modified, is as follows:

At the end of the pending amendment, insert the following:

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term "position" means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

"(2) the term "Commission" means the Commission on compensation established by subsection (c);

"(3) the term "Director" means the Director of the Office of Personnel Management;

"(4) the term "employee" means an individual to whom chapter 51 or subchapter IV of chapter 53 of such title applies;

"(5) the term "labor organization" shall have the meaning given such term by section 7103(a)(4) of such title;

"(6) the term "economic analysis" means a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity, and

"(7) the term "objective job evaluation analysis" means a quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved."

"(c) Establishment.—There is established a commission to be known as the Commission on Compensation Equity.

"(d) STUDY.—(1) To determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to subsection (i), for—

"(A) the conduct of a study of classification, grading, and pay-setting processes within and between the position-classification system under chapter 51 of such title and the job-grading system under subchapter IV of chapter 53 of such title, using standard objective job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed, and

"(B) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

"(2) For the purposes of this subsection, the term "executive agency" shall have the meaning given such term by section 105 of title 5, United States Code.

"(e) REPORT.—(1) Not later than eighteen months after the effective date of this section, the Commission shall transmit to the Senate Commission on Governmental Affairs and the House Committee on Post Office and Civil Services the report required by subsection (d) and shall provide a copy of this report to the Director.

"(2) The report shall include—

"(A) the Commission's findings resulting from the study; and

"(B) the Commission's recommendations, consistent with the proviso of section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) (as added by section 3 of the Equal Pay Act of 1963), for such administrative or legislative actions, or both, as it considers appropriate (including any recommendations for modification of the provisions of subsection (h)).

"(3) Not later than ninety days after the Commission submits its report to the appropriate Committees of the Congress pursuant to paragraph (1), the Director shall submit to such Committees and the Commission a report which shall include a detailed response to each of the findings and recommendations of the Commission.

"(4) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to paragraph (3), the Commission shall submit to such Committees any additional comments that the Commission deems appropriate in response to the Director's report.

"(5) The consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this section with respect to such study shall be considered to be of an advisory nature only.

"(f) APPOINTMENT OF COMMISSION.—(1)(A) The Commission shall be composed of nine members as follows:

"(i) Two appointed by the President of the United States.

"(ii) One appointed by the majority leader of the Senate.

"(iii) One appointed by the minority leader of the Senate.

"(iv) One appointed by the Speaker of the House of Representatives.

"(v) One appointed by the minority leader of the House of Representatives.

"(vi) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individual occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

"(B) Members of the Commission may not be members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

"(2) All appointments under paragraph (1) shall be made not later than sixty days after the effective date of this section.

"(g) ADMINISTRATIVE PROVISIONS.—(1)(A) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice Chairman from among its members. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

"(B) The Commission shall adopt such rules and regulations as it considers necessary to establish its procedures, and to govern the manner of its operations, its organization, and its personnel.

"(C) Five members of the Commission shall constitute a quorum.

"(D) Any vacancy in the Commission shall not affect its powers except to satisfy the quorum requirements in subparagraph (C). Such vacancy shall be filled in the manner in which the original appointment was made.

"(3) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

"(4)(A) The Commission may appoint, terminate, and subject to subparagraph (B), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil service laws, the provisions of title 5, United States Code, or any other law relating to the number, classification, or compensation of employees. The Commission also may procure temporary and intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

"(B) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS-18 under section 5332 of title 5, United States Code.

"(C) Service of an individual as a member of the Commission or as an employee of the Commission shall not be considered service in an appointive or elective position in the United States Government for the purposes of section 8344 and 8468 of title 5, United States Code.

"(4) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel and transportation expenses in the same manner as provided for under subchapter I of chapter 47 of title 5, United States Code.

"(5)(A) The Commission or any member authorized by the Commission may, for the purposes of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements, with or without consideration or bond, and take such other actions as the Commission considers advisable, to the extent that amounts provided pursuant to subsection (k) are available. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

"(B) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government such information, suggestions, estimates, and statistics as the Commission considers necessary to carry out this section. Each such officer, department, agency, establishment of instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

"(C) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

"(D) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comment, or review before submitting such report, recommendation, or other matter to Congress or Committees of Congress.

"(6) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

"(7) The Commission shall meet from time to time, as its members consider appropriate.

"(h) Termination.—Ninety days after the date the Commission submits its comments pursuant to subsection (e)(4), the Commission shall cease to exist.

"(i) CONSULTANT.—The Commission shall—

'(A) develop the specifications for the study required under subsection (d) in the form of a request for proposals; and

"(B) solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences a list of consultants who on the basis of the specifications developed under subparagraph (A) and the objectivity, extensive knowledge and technical expertise of such consultants in the matters to be studied pursuant to this section, are appropriate to conduct the study.

"(2) The Comptroller General of the United states and the Congressional Office of Technological Assessment shall provide the lists to the Commission within sixty days after the date of such solicitation pursuant to paragraph (1).

"(3) From among the consultants on the lists provided pursuant to paragraph (1), the Commission shall select one consultant to conduct such study.

"(j) CONSTRUCTION.—Except as provided in paragraph (2), nothing in this Act may be construed to limit or expand any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap or age.

"(2) None of the findings, report, or other material resulting from the study conducted by the Commission may be used or entered into evidence as part of any civil action brought under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)), or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.

"(k) FUNDING.—(1) Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1989 and 1990, an amount not to exceed $3,000,000 shall be made available to pay the expenses of the Commission and shall remain available for such purpose until September 30, 1991.

"(2) The Commission, by majority vote, shall determine the necessary expenses of the Commission and notify the Director of the Office of Personnel Management: At the end of the "funding" section of the amendment, add the following *"Provided,* That before any provisions of this bill are executed, a specific amount of funds must be reviewed and recommended by the Appropriations Committees of the House and Senate.

"(1) EFFECTIVE DATE.—This section shall take effect on October 1, 1988.".

Mr. DECONCINI. I thank the Senator from Washington. I appreciate that very much, because this bill that you have here is important. It really is. I just want to protect the integrity of the appropriations process. As you explained, this amendment does not say that they cannot do it or restricts them from doing it, it only says they have to do it in a normal way.

I thank the Senator.

Mr. EVANS. I think that is a good suggestion. I am glad the Senator from Arizona suggested it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I rise in support of the pending amendment which provides for an independent study. And I stress that word "study." That is all it is. It does not go any further than that.

I do not want anyone to think that this is requiring great action that is going to impinge on the budget or anything else. This is an independent study of the Federal wage structure.

In the course of this study, the job classification system and the pay-setting processes of the Federal Government would be methodically examined in order to determine whether Federal wages reflect biases on the basis of sex, race, or national origin, something we certainly should know.

The proposed amendment is identical to legislation reported out of the Governmental Affairs Committee last year. That was Senate bill 552. As reported by the committee, the proposed study—"study," I emphasize that again—was designed to implement the recommendations of the General Accounting Office—which issued a comprehensive report in 1985 on the best way to conduct a pay equity study—as fully as possible.

Now, I do not know how we could really oppose a study of learning more about what the situation is, so we will know how to cope with it. Do we just not want to know what the facts are around a situation like this? Are we so afraid we will learn something bad that we are going to oppose even learning more about it?

As I will point out in a few minutes here, it has been so many years since we even looked at this thing adequately. And to not even want to know the facts, to me, just flies in the face of what open debate in the Senate and the House of Representatives is all about.

When we find that we run up against a stone wall, then we want more information. So we ask GAO to study it. Then we call for a regular study commission of some kind if we think that is warranted. And I think it is certainly warranted in this case.

Now, I normally prefer that committee-reported bills be taken up as freestanding pieces of legislation. S. 552 should have come to the floor and been taken up on its own. But we have been unable to negotiate a time agreement with the other side of the aisle on this particular measure.

Consequently, action on the bill has not been scheduled. I regret this has been the case. No one disputes the existence of the wage gap between men and women in the Federal work force. We just do not know why it is there. Did it just historically develop that way? Perhaps it did. Should we correct it? Perhaps we should. But do we know that now? No. We want to have a study so we know exactly what we are doing when we make recommendations. We just do not know why that difference is there. We do not know what factors contribute to it and we do not know if any gender-based discrimination exists.

Now, the House has passed legislation to study this wage gap in each of the last two Congresses, but no bill has reached the Senate floor. It passed over in the House. I will give full credit to my colleague from Ohio, Congresswoman MARY ROSE OAKAR, who did such an outstanding job on it. She saw the problem, had been familiar with it, and tried to get information on it and did get a lot of information. She addressed this problem and wanted to get detailed enough information on it so perhaps we could take some action, if warranted. We do not know that yet. But, if warranted, we wanted to have some facts to back it up. She took action on that and it is to her everlasting credit. And three times this has passed over in the House—three times under her guidance and her expert leadership over there—and yet we have been unable to pass it here.

It was largely through her efforts over there that I was interested in this. I knew the work that she had done on it, so, in my first year as chairman of the Governmental Affairs Committee, I considered it a mark of progress when the committee ordered this legislation reported in November of 1987.

I recognize that some of my colleagues are inclined to cast a suspicious eye on the study called for by this amendment—a study, and that is it. For some years now, the current administration has charged that it is impossible to conduct an unbiased study of whether the Government's current pay practices are biased. And I just reject that out of hand. I do not think that it is impossible to conduct an unbiased study of anything, including this.

The fact is that the job evaluation methodology required by this proposed study is not some hare-brained cracked idea; scheme of some sort inapplicable to the real world. According to the GAO, such analysis has been used extensively in this country for many years by both private and public employers. Indeed, use of one kind of job evaluation technique or another is effectively mandated by chapter 51 of Title 5 of the U.S. Code. According to that statute, civil service jobs are to be classified according to, "The duties and responsibilities of the position and the qualifications required by the duties and responsibilities."

The problem is that the Federal job classification system has not been thoroughly examined for systematic bias since 1923, the year of its creation. In 1923, the act was put into place and has not been looked at since then. And, we are afraid to look at it for some reason or other and put a study together that would look at how the thing has worked or if it has worked and if we have changed in our country enough that we should look at these things again. 1923 was the last time it was thoroughly examined.

The general schedule of wages for Federal employees was designed in 1949. Now, that is 39 years ago, if my arithmetic is correct here on the spur of the moment, 39 years ago since the general schedule of wages for Federal employees was designed. It was designed in 1949 in such a way to preserve both the pay and the job relationships which were established in the 1923 Classification Act.

So, as recommended by the GAO, the proposed study would use both job content analysis and economic analysis as study methodology in order to provide a comprehensive, reasonably balanced view of the pay equity issue. These study approaches complement each other. They are not conflicting. They complement each other and both should be considered in any consideration of wages.

The former focuses on the characteristics of the job, that is the content analysis, on the characteristic of the job such as the amount of effort and skills the job requires as well as working conditions and job responsibilities. The latter approach emphasizes the attributes of the employee, such as seniority, productivity, education and work experience, as well as traditional market factors, such as geographic location and supply and demand.

This brings me to the charge that market factors are given short-shrift by this study—that the study itself is anathema to the free market, apple pie and everything that makes America a good and great country. Nothing could be further from the truth than that. I do not agree with those who feel that just doing a study itself—to get the facts—biases this thing one way or another. That does not make any sense at all.

The design of the proposed study, contrary to what some people believe, is intentionally sensitive to market forces. The economic analysis uses traditional market considerations. But market factors would also be accounted for in the job content analysis. As the GAO pointed out in its report, most job evaluation systems incorporated factor weights based on what the market pays for a given job content characteristic. This proposed study does not ignore labor market forces. Quite the contrary, its aim is to understand them more fully so we can be more fair in what we do. That is the purpose of this study.

Let me add this. I know that some people are concerned about shortages, let us say about nurses. Well, nurses have been traditionally paid lower than maybe pay equity would say they should be paid. And some of the people that are concerned about this, are arguing on the other side of this, are those that are particularly concerned about a situation in the military.

Well, let me address the situation in the military for just a moment here. It does not digress much from the subject we have in hand and in fact I think there are some facts we should consider on this.

We have in the military what we call a total force concept. We have allocated a lot of these jobs in the military to the Reserves and to the National Guard. We have one area, the area of medical combat support; medical support in case we go war. We have assigned 80 percent of that job to the Reserves.

Right now, as of the time that we are speaking here, right now, what is our situation if we went to war? Well, we would have some medical forces within the military itself right now. But immediately upon starting war, the Reserves would be called up and 80 percent of the military then would be dependent upon the Reserves.

What is our status? I can tell you what it is. Of that 80 percent we are 71 percent short of doctors, we are 66 percent short of nurses. Translate that into actual numbers in the military? We are 7,000 doctors short; we are 31,000 nurses short, 31,000 short.

If I am going into combat I can guarantee you I want someone there to plug me up and take care of me if I get hit. And all we are doing with this is saying let us study, in the Goverment—not necessarily the military in combat—but let us see why are we so short of nurses. Is pay a factor? Why are we short of doctors? Why are we 7,000 doctors short in the Reserves? Those who are interested in the military should be interested in that and some pay equity such as this.

Can we alter this? Can we get more of our young people to go into nurse's training or get more young people to sign up as doctors? Do we need Government help? Do we need pay equity? Do we need something that says the traditional female jobs of which we are going to be short if we go into combat need to be looked at, need to be studied, and we need to take some action?

Well, let us not stop a study that even looks into something like that, that even inquires into why we are suffering such huge shortages in certain fields. What can possibly be the danger of looking into the reasons why we have that kind of shortage?

Yet that is what the opponents of this would do. They are so afraid that we somehow will upset traditional, the very traditional pay scales that have given us the shortages that I just mentioned. What is wrong with studying them? I see nothing wrong with that whatsoever.

So, study methodology aside, fears have been expressed that the proposed study is not just a study. It is some big, insidious plot or something. I do not quite know why it is so bad just to study something; to get information; or to try to find out why we have shortages in some of these jobs that have been traditionally female in the part of our population from which they draw.

The proposal that this study is not just a study and the Federal Government will be liable for lawsuits, for instance, that has even been brought up. That the Government will be liable for lawsuits if neither the Congress nor the President act on the Pay Equity Study Commission's recommendations. Or if we reject those recommendations wholesale.

I just think that that is one of the more ridiculous objections to this I have heard. We have studies all the time. We have studies of business, of industry. And when those studies are given to us for information if we do not immediately react to every part of that study because of whatever other information we have, we are certainly not liable to lawsuits because we do not pass what the study says we should do. We reject many of those recommendations wholesale. We do not even consider them.

So, this would be one bit of information from this study to show what the true situation is. And that is all it would do.

Recent court decisions do not substantiate that kind of concern, that we would be open to all sorts of lawsuits. In AFSCME versus the State of Washington, the Ninth Circuit Court of Appeals rejected the assertion that once a State commissions a pay equity study, it must implement the findings. In ANA versus Illinois, the district court rejected the argument that failure to implement the recommendations of a pay equity study was evidence of discrimination. In addition, the Supreme Court has ruled—United States versus Testan—that Federal employees are not entitled to back pay for periods of wrongful classification.

Mr. President, at a time when retention and recruitment problems are being experienced at all levels of the Government—from the secretarial pool to high technology management—it is important that we ensure the Federal pay system is fair and equitable. Clearly, this would be in our self-interest. Last month, the President's pay agent reported that Federal civilian pay is now—on average—26 percent behind the private sector. As chairman of the committee with jurisdiction over Federal civilian pay, I can tell you that we are going to need to undertake an extensive review of the Federal wage structure, even in these tight budgetary times.

Mr. President, we have a budget that is $1 trillion. And then we make what are, I think, very false economies in Government. We say we will try and keep the Federal work force, but hire it on the cheap as much as we can. We will get those that are not the best qualified to administer a trillion-dollar budget and get the maximum bang per buck out of every dollar of the taxpayers' money spent.

We do not want cheap labor to administer and then wonder why we have problems in Government when we do that. Right now the civil service is 26 percent behind their comparable job positions in the private sector; 26 percent behind. I just wonder how many people watching or listening today or how many people in the gallery here or even on the floor, if they were 26 percent behind their counterparts would just continue, and say well, that is OK, I am so proud to work for the Government, or so on?

Or how many new people, that is the important thing, how many new, young, bright people that we want to get into the Government? We want to get them into civil service. We want the best civil service, not just one that can passably get by and somehow shuffle the papers. We want the best so we can squeeze every dollar's worth out of that trillion-dollar budget that we can possibly get.

Mr. President, I think the data gained from this proposed study might be helpful in making some progress on Federal pay reform and that is what this is all about. It is a study, and nothing but a study. We know how to judge one study against another, but I see nothing wrong with having that kind of a study.

So I urge my colleagues to support this important piece of legislation and I certainly hope we will be permitted to have a vote on it today.

I yield the floor.

The **PRESIDING OFFICER**. The Senator from New Hampshire.

Mr. **HUMPHREY**. Mr. President, the majority leader has made it clear it was his desire, if not his intent, to produce a tax corrections bill before we go home for the weekend, not to adjourn, but just to go home for the weekend. I would like to go home. I have not seen my family all week. They are expecting me tomorrow. I would like one of those Massachusetts furloughs for the weekend. I have not even committed any crimes. All I want to do is go home and see my family. Not any capital crimes, anyway.

The point is that if we load down this bill with all manner of extraneous matters, some of it intended to produce political results and some not, it is possible this bill is going to be vetoed. Indeed, the President in a statement of administrative policy, April 14, said he would veto S. 552, which is the amendment now pending before us. And I am told from White House contacts that the President's advisers are prepared to urge a veto of this bill if the pending amendment is attached.

So, if we are going to get into the business, now—even after the majority leader has stated his intent to produce a tax bill—still, after that announcement we are going to load down this bill with all manner of extraneous legislation, then maybe we ought to offer S. 277.

I might just be willing to offer S. 277, which is the death penalty bill that has been around here for a long time and which deserves some action.

I know other Senators have other amendments. If we are going to join in a free for all, then let us all have our crack at it.

Mr. SYMMS. Will the Senator yield for a question?

Mr. HUMPHREY. Yes.

Mr. SYMMS. Was the Senator from New Hampshire aware of the fact that OMB and OPM are recommending a veto of this bill, which has the diesel fuel tax and heifer tax corrections in it, if this amendment is attached?

Mr. HUMPHREY. I must admit I was not aware of that. It is important for Senators to know.

Mr. SYMMS. It is the fact. So Senators need know if they adopt this major amendment to this tax bill, they are asking to have the tax bill vetoed. They need to understand that. They need to understand it clearly, understand it correctly.

I thank the Senator for yielding.

Mr. HUMPHREY. Well, Mr. President, after what I said about the desire to go home, I think it is incumbent upon me to be brief and so I will with respect to the pending amendment.

The proponents say it is just a study. How many times have we heard those silent words?

How many times have we heard those silent words, "Just a study?" Many times. What particularly worries this Senator about this "just a study" is the manner by which the study would be produced.

I think we are unlikely to get an objective study if, indeed, it is even theoretically possible, and I question that, to get an objective study. Even the Senator from Ohio admitted it is impossible—I think the point he was trying to make—to have a perfectly objective study. I do not think you can get a reasonably objective study.

On this question of comparable worth, it is impossible to have an objective study apart from the signals of the marketplace.

Let me go back to this phrase, "just a study." How is this "just a study" to be produced? It is to be produced by a consultant. And how will this consultant be selected, this unknown, unnamed consultant? It will be selected by a commission set up by this bill. Who is going to be the commission? Members. How will those members be chosen? Well, the President will choose one-third and the leadership of both Houses of Congress will choose one-third, and if that is as far as the proposal went, then you would have some reasonable balance on that commission.

But one-third plus one-third equals two-thirds, and who is going to fill the other one-third of the seats on this commission? Why, none other than the labor unions who represent the Federal employees who stand to benefit by what is likely to come out of this study, if the study produces the same kind of nonsensical results which other similar studies have produced.

The commission is stacked. We know that the Democrats who are appointed by the Democrats in both Houses are going to want to produce a study that will be pleasing to their constituency among whom the Federal employees are a great many. So if you take the Democrats and you take the unions, you have a stacked commission, and they are going to choose the kind of consultant who will produce the kind of report they want. You are going to get a reprt that will be presented as just a study, an objective which has been produced by a commission which is stacked right from the start. This is a ripoff; it is a waste of money. It is ludicrous to suggest that we are proceeding in some balanced, objective fashion.

How should we set pay? We should set pay the same way the private sector sets pay, by the forces of supply and demand. If we are having problems securing nurses, let us say, then it is obvious we need to pay more. If we are having trouble securing a certain kind of electronic technician, then it is obvious we need to pay more. Those are the kinds of singals we need to pay attention to, not some theory by some academic theorists, someone who does not deal with the real world in a practical sense.

Mr. President, there have been other studies of this kind that have been criticized as subjective. There are many experts who claim that we cannot have an objective study of this kind; it is just impossible.

For example, Treiman and Hartmann, editors of the major study, "Women, Work and Wages: Equal Pay for Jobs of Equal Value," have stated as follows:

> We do not believe that the value—or worth—of jobs can be determined by scientific methods.

Well, of course not. Anyway, continuing with their commentary:

> In our judgment, no universal standard of job worth exists, both because any definition of "real worth" of jobs is in part a matter of values and because, even for a particular definition, problems of measurement are likely.

Don Schwab, professor of business and industrial relations at the University of Wisconsin, stated:

> It must be recognized that job evaluation is not an objective system that can be operated without a great deal of human judgment * * * it is an inherently subjective technique.

The fallacy that you can by some mathematical or scientific means assign value and worth to positions job by job by job, the fallacy is further demonstrated by the sharp discrepancies in the evaluation of the same jobs revealed by different evaluation studies.

For example, this Wisconsin job evaluation system rated practical nurses as 50 percent more valuable than electricians. How in the world they could ever come up with a figure like that is a mystery to this Senator, but, nonetheless, they rated the value of practical nurses as 50 percent greater than electricians. While a Minnesota study, apart from Wisconsin's, rated the nurses 21 percent less valuable than electricians. Are we going to say that the Minnesota study was sexist or biased? No doubt those involved in those studies did their level best, but the assignment was impossible and the results are laughable.

One found that nurses are worth 50 percent more than electricians, and the other right in the next State found that nurses were worth 21 percent less than electricians. So there you have a vivid demonstration of the subjectivity of such studies.

If you combine the subjectivities, the inherent subjectivities of such studies with the stacked situation you will have on this commission, which will select a consultant, you can pretty safely predict a disaster for the American taxpayers.

The present system may not be perfect and certainly this Senator is open to reasonable and objective ways to improve it, but assigning consultants picked by a stacked panel the job of mathematically or somehow divining which job is more valuable than another is preposterous, and I think Senators ought to defeat this amendment, with all due respect to our friend from Washington, whose good intention no one questions.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment my friend from New Hampshire for his statement. I will keep my statement very brief due to the request of Senator Baucus, who I think will move to table this amendment shortly.

I hope we can move on with the technical corrections bill. I would like to see the technical corrections bill become law. There are a lot of things that we heard Senator Pryor talk about, for example, the taxpayers' bill of rights. Seventy-two of us are cosponsors of that amendment. We would like to see that happen. Removal of the payment of the diesel tax: I think a lot of us would like to see that happen this year. We want to see it now. It should have happened before it became effective last April. The heifer tax has been mentioned. There are a lot of good provisions.

I compliment the managers of the bill, Senator Packwood and Senator Baucus, for the leadership they have provided in this bill. It is a technical corrections bill. However, if we put this study on, comparable worth study, pay equity study, whatever you want to call it, it is no longer a technical corrections bill. My guess is it would be vetoed by the President. I think there has been too much work already gone into this bill to allow that to happen. I hope it does not.

I look at the letters from the Office of Personnel Management and also the Department of Justice in a very strong opposition to this amendment. So, therefore, I just urge my colleagues, if you want to see the technical corrections bill become law, we will vote to table the Cranston-Evans amendment that is before us today.

A couple of comments concerning the issue. I have heard a lot of things. I have heard, "Well, it is only a study and cannot do much harm."

One, I believe the study would be used. I doubt that we are going to spend $3 million, create a commission, have them make a study and then ignore it, and so this study is going to make recommendations to Congress. As a matter of fact, I was reading the 11-page amendment and it said, yes, it will report back within so many days to Congress on the inequities of pay.

We already have statutes that mandate by law equal pay for equal work. That statute should be enforced. I for one would be very upset if I found out we discriminated on pay because of anyone's sex, race, religion or for whatever other reason that is covered under the present title VII of the Civil Rights Act.

This bill, as the Senator from New Hampshire mentioned, puts together a nine-member commission, so-called stacked commission as he has gone through. Yes, it would be. One-third of the members will be comprised of leadership of Federal employee unions. They have a vested interest. They want to make more money. I think the study would be used to do that.

How much would it cost? The Federal pay right now is $80 billion a year.

I am sure this study is going to point out some perceived inequities, and I say perceived because it is in the eye of the beholder. It is subjective. It is saying we have studied this and we found this group of employees or this class is making less than another class. That is an inequitable situation. We recommend it be changed over a period of 1 or 2 years.

It is going to cost money. If they say this group is underpaid and this group is overpaid, I cannot remember in my dealings in the private sector ever successfully really reducing wages and that has not happened at the Federal Government level that I am aware of, so you would have a lot of pressure to bring wages up. You would see some movement in the upward direction, not in the downward direction.

So it would be expensive. I do not know what groups would be where according to that study, but I am quite positive if you had another study you would have a different group and different inequities and they would have to be adjusted accordingly. That is what the recommendations to Congress would be. I doubt Congress would ignore that. This bill provides, if I am correct—yes—an amount not to exceed $3 million to pay for the expense of this commission. So I doubt we would just totally ignore the recommendations. And so we get into this subjective idea that this Commission at this point in time takes a snapshot of the employees and says we think there are some inequities so we need to solve them. I am sure, if we had another Commission, they would find a comparable problem 6 months from now or maybe a year from now.

Again, I get into this idea of being subjective. I have heard the comment made by a couple people that the marketplace is not perfect so we are going to have this Commission make it better. The marketplace is not perfect, but my guess is that it would do a lot better job than this Commission. This Commission would be setting up recommendations, again based on a snapshot of employment, and they would be saying this category is worth this amount, this category is worth that amount, very much in deference or in distinction or in contrast to the marketplace. I think that would be a mistake.

Again, Mr. President, I want to see the technical corrections bill become law. If it is going to become law, this bill is going to have to move forward very rapidly and the President is going to have to sign it. I believe, if this amendment is attached, the President will not sign it.

Mr. NICKLES. Mr. President, I will read a couple of comments from a letter of the Office of Personnel Management dated October 6, 1988. It says:

> Finally, one general comment must be made about the comparable worth approach. To many of the proponents of H.R. 387, this bill represents not an end in and of itself, but the first step in extending the principles of comparable worth to the economy at large. As such, it is a very dangerous first step. Comparable worth is an inherently flawed concept which assumes wages can be set primarily based on the intrinsic worth of a job to an employer or to society. But such a concept has no meaning; there is no effective way of determining wages in isolation from supply and demand factors. Further, by depreciating marketplace factors and individual merit, comparable worth guarantees higher labor costs without any compensating improvements in productivity; results in a lower rate of job creation and increased levels of unemployment; harms our ability to compete in the international economy; and false signals to those making occupational choices; and severely retards—and possibly reverses—the historic flow of women out of traditional occupations into a wide variety of non-traditional fields.

Now I will read two of the highlights from a Department of Justice letter dated October 7, 1988. It says:

> The Department of Justice (DOJ) and the Office of Personnel Management remain strongly opposed to this measure, even if so amended.

In one section it says:

> The bill still requires that wholly different jobs are selected for study according to the gender, race, or ethnicity of their occupants.
>
> The bill still requires an "objective" job evaluation analysis of wholly different jobs. Yet, there is *no* such thing as an "objective" job evaluation:

Mr. President, it is not my intention to delay the Senate. I will read one final paragraph. It says:

> The study will still be used in 2 or 3 years, as the basis for subsequent legislation to "remedy" alleged discriminatory pay gaps which, in fact, cannot be shown to be discriminatory. The federal payroll is well over $8 billion. A comparable worth pay increase will be far more costly than any such increase in any state payroll.
>
> Current laws such as Equal Pay Act and Title VII of the Civil Rights Act of 1964 already forbid federal pay discrimination. S. 522 still does nothing to help enforce those laws and will waste taxpayer money now, and is calculated to cost billions of taxpayer dollars in the future.

Mr. President, if these two letters have not been entered into the Record, I ask unanimous consent that a letter from the Office of Personnel Management and a letter from the U.S. Department of Justice stating their opposition to this legislation be printed in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, October 6, 1988.
Hon. ROBERT C. BYRD,
Majority Leader of the Senate, Washington, DC.

DEAR MR. MAJORITY LEADER: We understand that the Senate may soon consider H.R. 378, the "Federal Equitable Pay Practices Act of 1988." Should this bill reach the President's desk, the Office of Personnel Management would recommend that he veto it. We would like to reiterate the reasons for our strong opposition to the bill.

First, and perhaps most important, is the fact that this bill is fundamentally a comparable worth bill. While H.R. 387's "statement of purpose" claims the intent is to ensure that the Government is complying with existing non-discrimination laws, its methodology indicates a very different intent. Both "job content" analysis and "economic" analysis are to be employed to determine the extent of wage discrimination—methods which have been used previously by State governments in laying the foundation for comparable worth implementation. The fundamental dilemma is that neither method has the capability to identify or prove discrimination. Specifically:

"In regard to the job content analysis, various systems could be developed by highly regarded job evaluation experts, none of which might be materially better than our current system and each of which would produce very different results. In fact, a comparison of pay equity studies conducted by State governments shows they have rated similar jobs quite differently. Thus, one firm might find female-dominated jobs in the Federal Government were underpaid while a second found them to be overpaid. With the highly subjective process of job evaluation, arriving at an "objective" determination of job worth is simply not feasible.

"In regard to the economic analysis, similar studies performed on economy-wide data have shown that about one-quarter to three-quarters of the female/male earnings gap can be accounted for using quantifiable human capital variables (e.g., years of education, years of work experience, job tenure); however, the "residual" or unexplained gap cannot be labeled discrimination—it is simply a measure of our inability to identify and measure all conceivable factors.

"In fact, some of the most important variables—motivation, ambition, career expectations, job preferences, willingness to relocate, etc.—cannot be adequately factored out of a comparison by any reasonable statistical methodology. Manipulating wage rates on the basis of such analyses is therefore, likely to be both inefficient and unjust."

Thus, as we see it, H.R. 387 purports to accomplish objectives it simply cannot accomplish through the methodologies employed.

Second, the composition of the Commission on Equitable Pay Practices is not balanced, but rather heavily weighted to ensure a majority supportive of comparable worth concepts. This would serve to exacerbate the problems of bias discussed above.

Third, the bill appears not to recognize that the Government's current classification and pay system already places heavy emphasis on internal "equity" considerations for wage determination at too great an expense to labor market and performance factors. Such an unbalanced approach has produced serious resource allocation inefficiencies in Government. In other words, we have been unable to meet fully the basic criterion of a properly functioning pay system: having the ability to attract, retain, and motivate capable employees through the payment of wages reflecting marketplace rates, meeting this criterion cannot be accomplished by rigid reliance on a comparable worth-type system. True pay equity will result from a system which gives due regard to the principle of internal equity, while placing much greater emphasis on external equity with the market, and performance equity among employees.

Finally, the general comment must be made about the comparable worth approach. To many of the proponents of H.R. 387, this bill represents not an end in and of itself, but the first step in extending the principles of comparable worth to the economy at large. As such, it is a very dangerous first step. Comparable worth is an inherently flawed concept which assumes wages can be set primarily based on the intrinsic worth of a job to an employer or to society. But such a concept has no meaning; there is no effective way of determining wages in isolation from supply and demand factors. Further, by depreciating marketplace factors and individual merit, comparable worth guarantees higher labor costs without any compensating improvements in productivity; results in a lower rate of job creation and increased levels of unemployment; harms our ability to compete in the international economy; and sends false signals to those making occupational choices; and severely retards—and possibly reverses—the historic flow of women out of traditional occupations into a wide variety of non-traditional fields.

In closing, I would emphasize that the Reagan Administration strongly supports equal pay for equal work and is unalterably opposed to pay discrimination based on sex, race, or ethnicity. The Federal Government's commitment to equal pay for equal work and to equal employment opportunity is amply demonstrated by the facts set out in our recent study. We believe the Government deserves high grades for its uncompromising adherence to these principles. This is borne out by the dramatic occupational mobility achieved by women over the past decade—testimony to our very open personnel system.

H.R. 387 should be strongly opposed by those who favor true pay equity. The time is ripe for fundamental pay reform which is sensitive to the dynamics of our free-enterprise system, fair to individual employees, and mindful of our obligations to the American taxpayer to deliver Government services efficiently and responsively.

The Office of Management and Budget advises that there is no objection to the submission of this report, and that enactment of H.R. 387 would not be in accord with the program of the President.

Sincerely,

CONSTANCE HORNER,
Director.

S. 552 (Comparable Worth)—Still Unacceptable

We expect language to be added to S. 552 stating that the study and findings developed pursuant to the bill cannot be used in any discrimination lawsuit. The Department of Justice (DOJ) and the Office of Personnel Management remain strongly opposed to this measure, even if so amended.

Even if this language can successfully prevent every federal Judge from entering this study into evidence, this does not change all of the other fatal flaws in the bill:

The comparable worth methodology of the study is unchanged.

The principal purpose of the bill remains the uncovering of pay discrimination (Section 4(a)). Yet, the bill's mandated study cannot fulfill this purpose.

The bill still requires that wholly different jobs are selected for study according to the gender, race, or ethnicity of their occupants.

This bill still requires an "objective" job evaluation analysis of wholly different jobs. Yet, there is no such thing as an "objective" job evaluation.

The bill still requires an "economic analysis" to ascertain all of the nondiscriminatory reasons why two wholly different jobs "rated" as comparable are not paid the same. Yet, no economic analysis can measure all of the nondiscriminatory reasons, such as motivation, for the difference in pay between two different jobs. Proponents of this measure will label the unexplained pay gaps as discriminatory and inequitable.

The Commission overseeing the study and making findings and recommendations is still stacked in favor of advocates of comparable worth pay raises, including three members designated by unions which the Director of OPM must appoint. (The President picks two, and both Leaders of each House pick one—the two Democratic appointees, combined with the three union representatives, will create a 5-4 majority).

The study will still be used, in 2 or 3 years, as the basis for subsequent legislation to "remedy" alleged discriminatory pay gaps which, in fact, cannot be shown to be discriminatory. The federal payroll is well over $80 billion. A comparable worth pay increase will be far more costly than any such increase in any state payroll.

Current laws such as the Equal Pay Act and title VII of the Civil Rights Act of 1964 already forbid federal pay discrimination. S. 522 still does nothing to help enforce those laws and will waste taxpayer money now, and is calculated to cost billions of taxpayer dollars in the future.

DOJ's March 22, 1988 letter to all Senators sets forth in more detail the flaws in this measure.

Mr. NICKLES. Mr. President, I urge my colleagues to vote in favor of the motion to table the pending amendment.

The PRESIDING OFFICER. The Senator from Oklahoma yields the floor.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I will be brief. First, let me send a modification to the desk on my amendment which would strike out "two" and insert "four" in terms of the Presidential appointees. If some are concerned about that, let us lay that to rest in terms of an argument against this bill. It would be clearly a Presidential commission.

The PRESIDING OFFICER. The Senator has a right to modify the amendment.

The further modification is as follows:

In section (f)(A)(i) of the pending amendment, strike out "two" and insert in lieu thereof "four".

Mr. EVANS. Mr. President, I have heard over the number of years that I have been in the Senate so many times the statement that this agency or that agency or some other agency will recommend a veto, and that is always an interesting argument against a piece of legislation when the real arguments against or for a piece of legislation ought to be on the merits as we see them in this Congress.

The President has his own way of doing things, and he can make his own decisions, and then we have a chance to look at it after the President does make a decision. I do not really believe that if this were to pass and be placed in front of the President, he would veto it. So we may have a difference of opinion.

As to the argument that this is somehow an inherently flawed concept, there is in effect no way to do this in isolation with the marketplace, in the first place this clearly does not do it in isolation with the marketplace. It is in conjunction with the marketplace as is clearly stated in the amendment.

Second, if it is inherently flawed, there are hundreds of cities and counties and thousands of corporations and more than half the States of this Nation that have embarked on what is claimed by some to be an inherently flawed concept, and I do not think they do anything like that.

Mr. President, let me read very briefly from the past history of the House of Representatives because this is so clearly, in listening to the arguments I have heard this afternoon, one generation removed from the same arguments which were used in 1963 when the equal pay for equal work amendment came before the Congress, one which everyone now stands up and says they support. Let me read the testimony given by the U.S. Chamber of Commerce, and it is repeated—I will not read all of them—by representative of the Illinois Manufacturers Association, by the National Association of Manufacturers, by Representative George MacKinnon, Democrat of Minnesota, and by others. But let me read this byplay, this exchange between Mr. Miller and Representative Edith Green.

Remember, this is talking about equal pay for equal work, which all of my colleagues know and suggest we want to uphold. "The legislation does not permit us to hire the best people for the job. There are some physiological differences which cause absenteeism more and then, of course, there is the question of performance. Employers are willing to hire women at $50 to $100 a month less than a salary pay to a man in the equivalent position. This evidently is the salary differential that places a monetary value on those handicapped as developed in the marketplace.

"If, however, the employer is not permitted to evaluate these handicaps and must pay an equal salary, as I pointed out, then it is not worthwhile to hire a woman."

That is from the U.S. Chamber of Commerce just a generation ago.

I find some of the arguments used this afternoon just about as enlightened.

Representative Green then responded, "And no woman has the chance of being a leader in your plant?

"Mr. Miller: I have yet to see a woman in a manufacturing establishment who has yet to rise to the top in a manufacturing job. It is because men in general like to be supervised by men rather than women in factory jobs. If this additional cost in employing women—that is to pay them equal pay for equal work—is not taken into consideration; the net effect of equal pay legislation will be to limit the job opportunities for women since it will cost more to employ women than men. Obviously, an employer to survive in a competitive market must look to his total employment costs and not simply to individual wage rates."

Mr. President, that is exactly where we are today. The descendants of that representative from the U.S. Chamber of Commerce still are arguing the same old antiquated arguments. This is an opportunity, perhaps the only time we will get in this Congress, to really vote on an issue that is of excruciating importance to those who work for the Federal service, and I might add to those many women who work in the Federal service.

There are some who suggest that the President would veto this legislation. I understand the desire of the managers of this bill to move ahead on the tax technical corrections. I say to them, I say to this Senate, and I say to the opposition who are so certain the President might veto that I am perfectly willing to enter into a short time agreement, in fact no time agreement at all because we have already argued the bill, to remove this from the tax technical and put it up as a separate piece of legislation, vote on it, see whether there are votes, and send it to the House.

If there is really the belief that the President will veto this legislation, let us find out.

I am perfectly willing to make that offer, and if we can get that, it would make it simple to take a vote on this issue, to take it separately, and to put the bill as a separate bill in front of this body for a vote and remove it from the tax technical.

I ask the managers of the bill what their response to that might be.

Mr. PACKWOOD. Mr. President, misgivings, I will have to tell the principal sponsor that I will support the motion to table on this. I would be happy to enter into a unanimous consent, but I am quite sure Senator BAUCUS and I are not the two to make that decision, and there will probably be an objection.

I felt in 1984 when we were debating the Civil Rights Restoration Act that I had to move to table against the wishes of the principal Republican sponsor in the last 3 or 4 days. We could not win, and we could not break the filibuster. It was 4 years before we got the bill. I am convinced today talking to enough opponents about the substance of this amendment that, if it is not tabled, we are not going to have a tax technical corrections bill period.

Therefore, while I would be willing to enter into a unanimous consent, and the Senator from Washington wants to propound it, I will certainly not object. I will support the motion to table albeit reluctantly. But I will support the motion to table.

Mr. EVANS. Mr. President, I can only say that I have worked on this——

Mr. BAUCUS. Mr. President, will the Senator from Washington yield?

Mr. EVANS. I am happy to yield.

Mr. BAUCUS. The Senator from Montana is in the exact same position as the Senator from Oregon. I would very much like to enter into a unanimous-consent agreement along the lines indicated, but again I doubt that every Member of the Senate would agree to that agreement. So if the Senator from Washington can work out a way where we can reach that agreement with the Senate, that might be a way out of this. But it is my guess, it is my strong supposition that will not occur.

Unfortunately, we are therefore in the position, at least the managers of the bill are in the position of shortly, reluctantly moving to table the underlying amendment so we can get on with this bill.

Mr. EVANS. I say to the managers of the bill that it is pretty difficult to make a unanimous consent right now. Presumably some would object although I do not know why, if they are so certain of the ultimate destination of this piece of legislation that would give us a chance to vote on the piece of legislation on its merits which it deserves. It deserves to have that.

There are going to be a lot of people in this Senate who have had an opportunity to vote on an issue which is of such extraordinary importance, particularly to the women of this country. I am not talking about people who are on the radical fringe or anything. The people who are supporting this legislation include the business and professional women, the American Association of University Women, and a lot of very good and fine organizations. They deserve a vote on the merits on this proposition.

I am not quite sure how we get it, if there is obstinance on the part of a few to even give a vote on the merits.

Mr. President, I would propose that we make a unanimous-consent request that we have an opportunity to vote on this proposal as it now stands as a separate piece of legislation, it would be S. 552, as amended, and to have a time agreement of 15 minutes on a side to finalize any arguments, allow it to be voted on as a separate piece of legislation, and in that fashion give us a vote. I propose that as a unanimous consent request.

The PRESIDING OFFICER. You have heard the unanimous-consent request. Is there objection?

Mr. BYRD. Mr. President, there is an objection. The bill is on the calendar. There are no objections on taking that bill up right now, passing it by unanimous consent. The objections are on the side of the aisle of the Senator who has proposed the request. Obviously, we cannot start running the Senate like this, scheduling matters that the distinguished Senator has proposed. He desires to get this measure passed and has worked long and hard on it.

I am for it. But I cannot accede to this request. If the Senator can remove the objections on that side of the aisle, I will call this bill up right now and we will pass it in 3 seconds.

I object to this request.

Mr. EVANS. I thank the majority leader.

I recognize what he says is precisely the case, that there are offers from the other side of the aisle and have been on more than one occasion to assist in bringing this bill to a vote. The objections are on this side of the aisle, and I am sorry for that because I think this legislation deserves a vote on its merits before this Congress adjourns.

Mr. President, with that objection, and before there is a tabling motion, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be recinded.

The PRESIDING OFFICER (Mr. REID). Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I have two cost-free amendments I would like to offer.

Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside so that I might offer two amendments.

Mr. SYMMS. Mr. President, reserving the right to object, these are noncontroversial amendments that will be accepted; is that right?

Mr. BAUCUS. The Senator is correct.

Mr. SYMMS. Then the pending business will be to come back to the current pending amendment.

Mr. BAUCUS. That is the intention of my unanimous-consent request; the Senator is correct.

Mr. SYMMS. That would be part of the request?

Mr. BAUCUS. Yes.

Mr. President, I ask unanimous consent that the pending underlying amendment be temporarily laid aside so I may offer two amendments on behalf of Senator INOUYE from Hawaii and after adoption of the amendments we return immediately to the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3583

(Purpose: To provide new rules for the calculation of relative values in the operations of petroleum refineries in a foreign trade zone)

AMENDMENT NO. 3584

(Purpose: To amend title XVIII of the Social Security Act to permit direct payment under the Medicare Program for services of registered nurses as assistants at surgery)

Mr. BAUCUS. Mr. President, I send two amendments to the desk on behalf of Mr. INOUYE and ask for their immediate consideration.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. BAUCUS), for Mr. INOUYE proposes an amendment numbered 8583 and an amendment numbered 3584.

Mr. BAUCUS. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT No. 3583

At the end of the bill, add the following:

SEC. . FOREIGN TRADE ZONES.

Section 3 of the Act of June 18, 1934 (48 Stat. 999, chapter 590; 19 U.S.C. 81c) is amended by adding at the end thereof the following new subsection:

"(d) In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenues.".

AMENDMENT No. 3584

On page 1622, after line 16, add the following new subtitle:

Subtitle D—Medicare

SEC. 631. DIRECT PAYMENT FOR SERVICES OF PHYSICIAN-EMPLOYED REGISTERED NURSES AS ASSISTANTS AT SURGERY.

(a) SERVICES COVERED.—Section 1861(s)(2)(K)(i) of the Social Security Act (42 U.S.C. 1395x(s)(2) (K)(i)) is amended by striking "as an assistant at surgery and which the physician assistant" and inserting "or by a physician assistant or physician-employed registered nurse as an assistant at surgery and which the physician assistant or registered nurse".

(b) PAYMENT AMOUNT.—Section 1842(b)(12)(A) of such Act (42 U.S.C. 1395u(b)(12)(A)) is amended by inserting "or registered nurse" after "physician assistant".

(c) PAYMENT TO EMPLOYER.—Section 1842(b)(6)(C) of such Act (42 U.S.C. 1395u(b)(6)(C)) is amended by inserting "or registered nurse" after "physician assistant".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after April 1, 1989, and before April 1, 1992, and shall apply only to services furnished by a registered nurse who is employed by a physician as of October 1, 1988.

(c) BUDGET NEUTRALITY.—The amendments made by this section shall only take effect if the Secretary issues regulations which will ensure that this provision is implemented in a budget neutral manner.

The Secretary of Health and Human Services shall promulgate such regulations prior to April 1, 1989.

Mr. BAUCUS. Mr. President, these are two cost-free amendments that I am offering on behalf of the Senator from Hawaii, Mr. INOUYE.

Mr. President, the first amendment is a technical modification to the accounting rules for foreign trade zones. The amendment assures that the imports of crude oil will qualify for trade zone benefits in the same manner as other imports.

This amendment, as I have indicated earlier, has been cleared by both sides, and I urge adoption.

The second amendment is designed to remedy an inequity in the Medicare laws. The amendment merely permits direct reimbursement for the costs of nurse assistants at surgery; current law only allows reimbursement for physician assistants.

This amendment, too, has been cleared on both sides, and I urge adoption of both amendments.

Mr. INOUYE. Mr. President, amendment No. 3583 corrects a technical problem in the administration of foreign trade zones. Current law dictates that companies shall calculate the relative value of their products at that time that they are separated from the whole. This law worked well with durable goods where one can physically observe the manufacturing process and count its by-products. In recent years, however, oil refineries have begun to operate in foreign trade zones. The distillation of crude presents a unique challenge in that the process is masked from view and involves liquids which change volume and weight. As such, current law has impeded the efforts of the Customs Service and refiners alike to develop accounting methods which account for the relative value of petroleum products and assess duties accordingly.

Mr. President, my amendment was worked out by all affected refiners in conjunction with the Customs Service. It is supported by the National Association of Foreign Trade Zones and petroleum companies operating or seeking to operate in zones. The amendment redefines the time of separation for oil refineries as the entire manufacturing process. This technical correction obviates the need to determine exactly when and where in the pipeline crude becomes another product. Rather, it allows refiners and the Customs Service to assess relative value at the end of the process, when actual quantities of kerosene, diesel oil, gasoline, et cetera, can be measured with certainty. I have been advised by the Customs Service that my amendment is revenue neutral and will protect the flow of duties to the Treasury.

Mr. President, I commend this amendment to my colleagues and ask for their support. I also wish to thank the managers of the bill for their assistance in adopting this needed change to the Foreign Trade Zone law.

Mr. President, amendment number 3584 will rectify an inequity in the Medicare law which I am confident that my colleagues on the Finance Committee never intended. Under the current law, Medicare does provide for the direct reimbursement of physicians assistants who assist at surgery, but does not provide for coverage of the same services when performed by a registered nurse. The amendment merely provides the surgeon with the flexibility to work closely with either type practitioner that he or she desires. Essentially, part B Medicare payments would become available for the services of nurses as first assistants in surgery. I would point out, Mr. President, that under current law it is absolutely necessary that a surgical assistant be present during surgery for obvious reasons. I understand that the Congressional Budget Office has scored my provision as having no cost. Mr. President, I have also recommended a delayed implementation date of April 1, 1989, to ensure that the provision is, in fact, implemented in a budget neutral manner and further, I have incorporated a sunset provision after 3 years in order that the Finance Committee can make sure that this change has no unintended consequences on nurse-hospital employment relationships.

NURSES AS FIRST ASSISTANTS AT SURGERY

Mr. DURENBERGER. Mr. President, I rise today in support of the amendment offered by my distinguished colleague from Hawaii to give physicians the option to bill directly under part B of Medicare for the services of registered nurses [RN's] who serve as assistants at surgery. This amendment will correct the current disparity between registered nurses who serve as assistants at surgery and physician assistants [PA's] who serve in the same role.

Mr. President, 2 years ago we provided direct Medicare reimbursement to the employer of a PA who serves as an assistant at surgery. This provision provided employers with valuable flexibility and choice in determining billing practices. However, it has subsequently limited the flexibility of those employers who wish to use RN's in this capacity by creating a financial disincentive for this use. It is this bias that this amendment will correct.

This amendment will ensure a fair, that is, neutral payment system, so that employers are free to make the choice between nurses and physician assistants on the basis of quality, economy, and effectiveness.

I have received many letters from surgeons in Minnesota expressing their desire to use registered nurses in this important role. They tell me that the nurses' intimate knowledge of patient care gives them a unique perspective that no other health care practitioner has, and this added dimension is invaluable in the operating suite.

One of the chief causes of the current nursing crisis is that too often registered nurses are not well utilized. Under current management practices, these professionals with increasingly sophisticated education and technical training are often required to perform many nonclinical tasks, which inhibit their ability to provide high quality, cost-effective patient care. In the process, resources are wasted and nurses have low levels of job satisfaction.

To solve these problems, I believe new approaches are needed—approaches that recognize the unique knowledge and skills that professional nurses bring to patient care. Mr. President, this amendment will do that. By providing this flexibility and choice to employers, we will also provide support for an important career progression opportunity for registered nurses.

We in the Congress know from the past that quick fixes to nursing shortages have only served to create long-term problems. Our challenge, then, is to find solutions not only for the present, but also for future generations. This amendment is one of those solutions, and I urge my colleagues to join me in supporting it.

Mr. HELMS. Mr. President, I am confident that the distinguished manager of the bill has cleared this with Senator PACKWOOD.

Mr. BAUCUS. If the Senator will hold just 1 minute so I can confirm that.

Mr. HELMS. Very well.

Mr. BAUCUS. The answer is the amendments have been cleared.

The PRESIDING OFFICER. Is there further debate on the amendments?

The question is on agreeing to the amendments numbered 3583 and 3584.

The amendments (No. 3583 and No. 3584) were agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3582, AS FURTHER MODIFIED, TO AMENDMENT NO. 3581

Mr. HELMS. Mr. President, let me quote to the Senate an editorial from the New Republic, a publication with which I am sure all Senators are familiar.

> Equal pay for work of comparable worth is a superficially appealing idea that would create nightmares of regulation and litigation and put the government in the business of deciding what every job in America is "worth." You don't have to be an unthinking worshipper of the free market to shudder at this prospect. From a progressive point of view, why should the government be enforcing hierarchies of compensation, declaring that someone's education makes her "worth" more than someone else's brute strength? Greater opportunities for women in all occupations are already raising the price traditional employers of women must pay to retain their services. Breaking up rigid hierarchies that distort the market (between doctor and nurse, executive and secretary) is a better way to hasten the pace than inventing new hierarchies to enforce.

Anybody who understands the economic system of this country, which has catapulted America in 200 years to supremacy in this world, is bound to agree with the editorial. And that is why, among other reasons, I earnestly oppose the amendment of the distinguished Senator from Washington, who is my friend and whom I regret to see leave this Senate.

If enacted, this amendment would set the stage for imposing on Federal pay-setting practices the unsound and discredited concept of comparable worth. Furthermore, it could cost hundreds of millions of dollars out of the

American taxpayers' pockets without proof that disparity in salaries is a result of discrimination.

Mr. President, men and women are paid the same wage for the same work. That is the law now. Satutory exceptions exist for legitimate pay differences based on factors such as seniority or merit. Equal pay for equal work is not—is not, I repeat—at issue in this debate.

Mr. President, the comparable worth theory is something quite different. It requires comparing the worth of two entirely different jobs—for example, a nurse to a truckdriver—one held predominantly by females and the other held predominantly by males, and measuring their worth according to supposedly objective criteria to determine sex discrimination. If sex discrimination accounts for the pay gap, the gap must be closed under the comparable worth theory.

Mr. President, proponents suggest that this amendment does not utilize the comparable worth theory. I am aware of their position. I do not agree with it, but I am aware of it. Regardless of how you try to disguise it or conceal it, this bill represents an ill-conceived comparable worth concept.

Mr. President, let's look at the amendment: Section (d) states that the study will "determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the U.S. Government" is not only "in accordance with sections 5101 and 5341 of title 5, United States Code" but also "not based on considerations of sex, race, or national origin. * * *" Section (d) further states that the study must focus on those "positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented * * *" Section (d)(4)).

The study, Mr. President, must utilize a supposedly "objective" job evaluation analysis of different Federal jobs. The Federal jobs will be selected not only on the basis of the sex or gender of their occupants, but also, on the basis of their race and ethnicity.

The study must then use an "economic analysis" in order to determine if, and to what extent, pay differences between different jobs are in fact, attributable to factors other than sex, race, or ethnicity.

I am always troubled by the use of the word "objective" in a piece of legislation. It always turns out that the proponent is objective and the opponent is subjective. How do you reach objectivity in a matter of this sort? That is the crux of the problem. You are in a mare's nest the moment you walk into that thicket. And I am unwilling to turn that responsibility over to the Federal bureaucracy or a commission which is loaded, by the way, to start with.

In any case, in summary, the amendment requires the study to compare predominantly female jobs with purportedly "comparable" jobs held predominantly by males, with similar analyses based on race and national origin; then the study must determine if pay gaps exist between such jobs; and, if pay gaps exist, determine the reasons for such gaps.

The wisdom of Solomon would not solve this problem. The judgments that Solomon had to make were peanuts compared to the problems that exist in this proposition.

It is well established, Mr. President, that neither the job evaluation analysis nor the economic analysis required by this amendment is capable of determining whether such discrimination is occurring. Contrary to the bill's inaccurate labeling—call it false labeling, if you wish—experts in the field acknowledge there is no such thing as an objective job evaluation analysis. And anybody who has ever run a business—and I have—knows that that is so. All such analyses are subjective, and different job evaluation analyses of the same set of jobs can—and do—yield different results.

Experts have acknowledged this very point, Mr. President, and they have done it over and over again. For example, Alvin O. Bellak, general partner in Hay Associates, one of the Nation's leading job evaluation firms, has stated: "* * * neither Hay nor anyone else can prove the inherent validity of any method of job evaluation * * *."

Prof. Herbert R. Northrup, director of the industrial research unit at Wharton School of the University of Pennsylvania, one of our most distinguished business schools, agrees. He has stated that "Whether a formal or informal [job evaluation] method is used, a good deal of subjectivity is involved in the process." And, of course, it is. In fact, Mr. Bellak, referring to his firm's own job evaluation method, acknowledged: "But could we prove, to a legal certainty, that job *x* is inherently, absolutely, unequivocally worth as much as job *y*? The answer is 'No.' "

Furthermore, the economic analysis called for in the amendment is unworkable. The amendment defines economic analysis as:

> A method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity * * * (section (b)(6)).

Can you just picture a Federal bureaucracy trying to wade through that one?

No economic analysis is sophisticated enough to account for all of the nondiscriminatory factors that affect pay. There are certain factors which the experts call "unobservables" which cannot be measured through the economic analysis required by this amendment. Motivation and effort are examples of such factors. As a result of these "unobservables," economic analyses have an unexplainable residual when accounting for pay differences between two allegedly "comparable" jobs. The residual is just that—unexplained—and not a showing of discrimination.

Mr. President, I do not want to consume the time of the Senate. So, in a moment I shall yield the floor so that we can set aside this amendment and proceed to other matters. I assume that unanimous consent has been agreed to in advance. And I reserve the right to continue my discourse on this subject at some length, depending on the disposition of this amendment. But, in the meantime, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I would like to speak on the amendment pending before the U.S. Congress. I would like to speak in support of that amendment.

I would also, in speaking in support of it, like to express my dismay and frustration over the fact that the U.S. Senate was forced to withdraw from its consideration and return to the calendar the consideration of parental leave and also of day care and also of legislation that would have protected our children against children's pornography.

Mr. President, the reason I say those things is because it has been my experience, both as a social worker, a Congresswoman, and now as a U.S. Senator, that which we explicitly state in our values we implicitly deny in our public policies, our public practices, and certainly in our legislation.

We say in this country that all people are created equal. But then we do not want to pay them equal pay for equal or comparable work. That is why I support the Dan Evans-Alan Cranston-Mary Rose Oakar pay equity legislation.

Mr. President, we say that our most valuable resource is our children, and then we should protect our children. But then we will not come up with children's pornography legislation to protect them from the smut dealers.

We say that we need to care for our children, but then, as more and more women move to the marketplace, we do not have the child care that is adequate, safe, competent, and available.

Mr. President, it deeply disturbs me that every time we build a new big development project in my hometown of Baltimore or regional growth centers, every developer is worried about parking lot slots, but I do not hear one word about day-care slots.

Mr. President, I think we ought to care as much about day-care slots as we do about parking lot slots. Maybe America ought to start having a love affair with its children, rather than with its cars.

Mr. President, we say that we care for our sick. And then there is a family where they are faced with the fact that their child might have leukemia, or a brain tumor. And then mom takes time off. First, she uses up her vacation. Then she uses up any special leave. She wants to be there for the chemotherapy, to comfort that child. And all she asks is the opportunity to be able to get her job back after the time that she takes time off, unpaid leave.

But, oh no, Mr. President, we are told that we cannot afford mandated maternity and medical leave. Well, Mr. President, I think that is outrageous. I think that is absolutely outrageous in this United States of America.

We are 12 years from the year 2000. A new century is coming. A new economy is being born. This country cannot move forward without the work of women.

Women have always worked in this country. They plowed the fields, they worked in sweatshops and on Cannery Row and now we are lawyers or word processors. America cannot move without us. But America ought to start moving with us instead of against us.

So, Mr. President, I cannot tell you how hot I feel about this. I feel very strongly. I feel very passionately.

I came to this 100th Congress as the only Democratic woman ever elected to the U.S. Senate in her own right. I have an historic status, and a status that I take very seriously. And I stand before you in behalf of 50 percent of our population, 120 million women, and I say: we ought to get what we deserve in this country.

Mr. President, I yield back my time. I hope my colleagues have taken the time to listen to this and start practicing what they preach.

(Disturbance in the Visitors' Galleries)

The PRESIDING OFFICER. The galleries will refrain from clapping or any noise. If they do not refrain from doing that, the Sergeant at Arms will be instructed to remove them from the galleries.

The Senator from Montana.

Mr. BAUCUS. Mr. President, we are in the position of trying to negotiate agreements between, on the one hand, Senator Evans, from Washington, and Senator Cranston, from California, and other Senators, to see if there is a way the pending amendment, the pay equity study, can be taken up separately, that is apart from the bill.

In an attempt to do so, it is the intention of the managers to, at the appropriate moment, ask unanimous consent to temporarily lay aside the pending underlying amendment so that the Senate can turn its attention to other amendments to the technical corrections bill.

At this point I hope that other Senators will quickly come to the floor so they can offer these amendments and we can, therefore, move more expeditiously and quickly toward a successful conclusion of this bill.

I do not know whether those negotiations have been successful. I hope they are successful. We are at this point endeavoring to let those negotiators work something out.

I ask Senators to come to the floor so they can offer amendments to the technical corrections bill.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3585

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator from California is advised there is an amendment now pending.

Mr. CRANSTON. I ask unanimous consent that it be in order to present this amendment.

The PRESIDING OFFICER. There is a unanimous consent request that the amendment pending be set aside. Is there objection? Hearing no objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mr. Cranston] proposes an amendment numbered 3585.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, insert the following new section:

Sec. . Section 527(f) of the Internal Revenue Code is amended by adding the following subsection:

(4). For purposes of this subsection (f), the term "exempt function" shall not include the function of influencing or attempting to influence the selection, nomination or appointment of any individual to any Federal, State or local non-elective public office.

Mr. CRANSTON. Mr. President, this amendment to section 527(f) of the Internal Revenue Code. This is a short amendment and a simple amendment. This amendment would allow nonprofit organizations to continue to participate in the debate over the nomination and appointment of nonelective public officials.

This amendment is necessary, Mr. President, because in February the Internal Revenue Service came out with a memorandum stating that activities of tax-exempt organizations seeking to influence nominations and appointments are taxable under section 527. When this ruling was issued, the IRS provided an extended period for public comment and wrote: "The Congress will have an opportunity to review the policy of the law in this area and decide if a change is appropriate."

Well, Mr. President, I believe a change is appropriate—and necessary. And I am joined in this opinion by many of my colleagues on both sides of the aisle.

This is an issue which effects organizations across the ideological spectrum. The change in policy this amendment accomplishes has been endorsed by groups as diverse as the AFL-CIO and the Heritage Foundation.

I ask unanimous consent that a letter on this issue to James Baker from seven members of the Finance Committee be printed in the Record following my remarks, as well as letters of support from the Heritage Foundation and the Alliance for Justice.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, as Senators, it is our obligation to advise and consent on the nominations the President makes. In order to carry out that duty, we often call upon organizations to offer their views. If the IRS decision is maintained, this valuable source of information could be lost. No matter what position a Senator takes on a particular nomination or appointment, I think all of my colleagues will agree that these outside opinions are beneficial to us in the course of our deliberations.

While the IRS is given broad discretion to interpret the code, I do not believe there is anything in the legislative history of section 527 indicating Congress intended it to limit participation in the nomination and appointment of nonelected officials. In fact, I believe a strong argument can be made that the legislative history shows that

Congress intended this provision to tax nonprofits only if they involved themselves in campaigns for elective office. Nonetheless, the IRS has taken the position it has and we, therefore, must act now to prevent this interpretation of the law to be implemented. I urge my colleagues to support those amendments so that we can make our decisions based on all the information available.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, May 20, 1988.

Hon. JAMES A. BAKER III,
Secretary, Department of the Treasury, Washington, DC.

DEAR MR. SECRETARY: We understand that the Internal Revenue Service is contemplating the issuance of an announcement that efforts by tax-exempt organizations to influence the selection and nomination of persons for executive and judicial appointments are taxable political activity under section 527 of the Code.

As Senators, charged under the Constitution with granting or withholding consent to Presidential nominations for executive branch and judicial appointments, we often call upon such organizations to provide us with their views. We would, therefore, be very concerned about any changes in the enforcement of the law which makes it more difficult or more costly for groups to provide such assistance.

Because of the importance of this matter, we urge you to proceed in a way which insures full input from groups which would be affected by the changes as well as from the Congress. When you have reached a final judgment about what current law seems to require, we request that you inform the Congress so that we can consider whether the law should be changed before any new procedures are put into effect.

In the interim, so that neither the First Amendment rights of those who seek to influence our decisions on nominations nor the ability of individual Senators to seek advice is interfered with, we ask that you make clear that any new rules will apply prospectively from the date on which they are issued.

We appreciate your consideration of these views and request that you have a member of your staff consult with our staffs as you move forward on this important matter.

Sincerely,

BILL BRADLEY.
DANIEL PATRICK MOYNIHAN.
JOHN D. ROCKEFELLER.
DONALD W. RIEGLE, JR.
MAX BAUCUS.
JOHN C. DANFORTH.
GEORGE J. MITCHELL.

ALLIANCE FOR JUSTICE,
Washington, DC, August 25, 1988.

Hon. LLOYD BENTSEN,
Chairman, Senate Finance Committee, Washington, DC.

DEAR SENATOR BENTSEN: On behalf of the members of the Alliance for Justice, I am asking your support for a proposed amendment to Section 527(f) of the Internal Revenue Code. The amendment would add the following subsection:

(4). For purposes of this section, the term "exempt function" shall not include the function of influencing or attempting to influence the nomination or appointment of an individual to any Federal, State or local non-elective public office.

In January, 1988, the Internal Revenue Service released General Counsel Memorandum 39694 which would impose a tax pursuant to Section 527(f) on activities to influence appointments and nominations to non-elective public offices. This interpretation of Section 527(f) has aroused a great deal of concern among exempt organizations. It would have a significant negative impact on legitimate, constitutionally protected activities of nonprofits groups, particularly with regard to the serious administrative burden it could impose.

Additionally, the Internal Revenue Service leaves many questions unanswered, such as the scope of actitivies which may be taxable. For instance, Section 527(f) sets forth certain rules which govern an organization's efforts to influence a nomination before a legislative body. Sections 501(c)(3), 501(h), and 4911 provide another set of standards governing what constitutes lobbying. Abiding by different definitions would create confusion for nonprofits, requiring them to undertake a whole new level of record-keeping to be in compliance with 507(f).

Further, a number of practical issues are raised by the GCM's interpretation of Section 527(f). The Service, for instance, says exempt groups may establish Separate Segregated Funds (SSF's) which may be used to avoid the tax. Nonprofits are not accustomed to setting up these funds and will be unable to afford the costs and administrative burdens associated with establishing and maintaining a SSF.

Consequently, the Alliance believes that unless the amendment is supported, many tax-exempt organizations will be forced to curtail many legitimate activities rather than increase the risks and expenses entailed in establishing a SSF. Thank you for taking our view into account. We would be pleased to answer any questions you may have.

Sincerely,

NAN ARON,
Executive Director.

THE HERITAGE FOUNDATION,
Washington, DC, August 9, 1988.

Hon. LLOYD BENTSEN,
Chairman, Senate Finance Committee, Washington, DC.

DEAR MR. CHAIRMAN: I am writing with respect to a proposal by the Internal Revenue Service to change the interpretation of Section 527 of the Internal Revenue Code, to include activities in connection with nominations to appointive offices.

A great many charities and other nonprofit groups participate in the nomination process at all levels of government. It does not appear that there is any useful purpose to be served by subjecting such activity to taxation as an "exempt activity." It is clearly not "political activity" in the normal sense of that term, and should not be subject to tax. The fact that a 501(c)(3) organization can escape the tax by setting up a "separate segregated account" is not a reason to make the change; rather, it is a convincing argument that this kind of activity was never supposed to be considered an "exempt activity."

This is not a partisan matter. I am in contact with a number of organizations from all sectors of the political and policy spectrum, and we are united in our opposition to the IRS proposal, and hope that Congress will act preemptively to sidetrack the ruling. Please support an amendment to the IRS Code preserving a free exchange of ideas with respect to nominees to federal, State, and local office.

With every good wish,

Sincerely,

GORDON S. JONES,
Vice President for Government Relations.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BAUCUS addressed the Chair.

Mr. BAUCUS Mr. President, this amendment has been cleared on both sides. It is a good amendment. I think that tax-exempt organizations should be allowed to comment on nonelected officials. It has balance. It is reasonable. It is fair. I think the IRS interpretation should be corrected. I urge its adoption.

Mr. PACKWOOD. Mr. President, we have no objection on this side and hope the Senate would immediately adopt the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment (No. 3585) was agreed to.

Mr. CRANSTON. I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I would like to address the managing Members about an amendment. I would like to propose setting aside the Evans amendment and proceeding with an amendment that I have discussed with the managers, and I make such a unanimous-consent request.

The PRESIDING OFFICER. Is there objection? Hearing none, that will be the order.

Mr. DECONCINI. Mr. President, I thank my friend from Montana.

AMENDMENT NO. 3586

(Purpose: To express the sense of the Senate regarding tax-exempt financing of residential rental projects by not-for-profit organizations)

Mr. DECONCINI. Mr. President, I send an amendment to the desk on behalf of Senators WILSON, D'AMATO, FORD, SHELBY, DODD, HEFLIN, DIXON, and MCCONNELL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI), for himself, Mr. WILSON, Mr. D'AMATO, Mr. FORD, Mr. SHELBY, Mr. DODD, Mr. HEFLIN, Mr. DIXON, and Mr. MCCONNELL, proposes an amendment numbered 3586.

Mr. DECONCINI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . SENSE OF THE SENATE REGARDING TAX-EXEMPT FINANCING OF RESIDENTIAL RENTAL PROJECTS BY NOT-FOR-PROFIT ORGANIZATIONS.

(a) Findings.—The Senate finds that—

(1) section 367 of H.R. 4333, the Miscellaneous Revenue Act of 1988, as passed by the House of Representatives, would extend the existing restrictions that apply to the use of tax-exempt bonds by for-profit developers financing residential rental properties (section 142 of the Internal Revenue Code of 1986) to 501(c)(3) organizations building housing with tax-exempt bonds;

(2) it is inappropriate, without further study, to apply existing restrictions on the use of tax-exempt bonds by for-profit developers financing residential rental housing to charitable entities building housing for the poor, homeless, frail elderly, and other groups with special needs; and

(3) the Senate bill, S. 2238, the Technical Corrections Act of 1988, contains no similar provision.

(b) Sense of the Senate.—It is the sense of the Senate that—

(1) further restrictions on the use of tax-exempt bonds by 501(c)(3) organizations should not be considered by the Congress until public hearings on the use of tax-exempt bonds by not-for-profit organizations have been conducted;

(2) section 367 of H.R. 4333 would dramatically curtail—

(A) activities of not-for-profit organizations serving the needs of low-income families, frail elderly, and physically and mentally disabled individuals, and

(B) other worthwhile endeavors of such organizations; and

(3) the Senate conferees to the conference committee on H.R. 4333 should oppose and reject section 367 and any similar new restrictions on the use of tax-exempt bonds by 501(c)(3) organizations building residential rental properties.

Mr. DeCONCINI. Mr. President, this amendment expresses the sense of the Senate that the Senate conferees on S. 2238, the Technical Corrections Act of 1988, should not accept section 367 of the House tax bill.

Section 367 is an ill-conceived provision that was not considered in congressional hearings, was not debated publicly during the Ways and Means markup, and was not the subject of a GAO or Treasury study. But this little known provision will effectively end the ability of nonprofit organizations to utilize low-cost tax-exempt bonds to build homeless shelters, low-income housing, life care facilities for the aged, and in some cases housing for hospital workers.

Section 367 states that nonprofit organizations that build rental housing for any purpose with tax-exempt bonds must comply with the same restrictions that currently apply to private developers using tax-exempt bonds to build rental housing. That sounds simple enough. However, nonprofit organizations are not the same as private developers. They serve very special constituencies such as the homeless, the aged, and the physically and mentally disabled. By definition they do not make a profit, whereas private developers do make a profit.

The restrictions, on private developers using tax-exempt bonds to build rental housing, do not work for nonprofit organizations. For instance, a private developer can only use the proceeds of tax-exempt bonds to build rental housing and related facilities such as kitchens or bathrooms. Applying this restriction to non-profit organizations means that a homeless shelter cannot be built with space for counseling facilities with the proceeds of tax-exempt bonds. I believe each of us would agree that a homeless shelter should have room for counseling facilities.

In another example, the restrictions on the use of tax-exempt bonds to build housing would prohibit construction of communal eating facilities. Most life care facilities housing senior citizens have communal eating facilities. This requires the residents to come together three times a day, which allows the staff to physically see the residents. If a tenant misses a meal, then the staff knows to check to see if everything is okay. The restrictions that section 367 place on nonprofit organizations would not permit communal eating facilities to be financed and built from the proceeds of tax-exempt bonds.

To the best of my knowledge, there is no evidence of a nonprofit organization using tax-exempt bonds in an abusive way. To add such onerous restrictions without sufficient study is unwarranted.

Mr. President, I am pleased that the Finance Committee has the foresight not to include section 367 in the bill before us today. I think it would make sense for the House and Senate to hold hearings to study the role of nonprofit organizations that use tax-exempt bonds, if somebody believes there is some abuse, and I do not know of any.

However, we should no further burden these organizations when they are the only game in town. I do not have to remind anyone that the Federal Governments budget for housing programs has gone from $30 billion to $8 billion in the last 8 years. Nonprofit organizations are making up for the lack of Federal commitment to specialized housing.

The President of the United States has always contended the private sector, nonprofit groups, nongovernment groups have to be more involved with the housing and other efforts to help the less fortunate in this country. Here the House Ways and Means Committee has turned the other way. I urge my colleagues to support the sense-of-the-Senate amendment. I urge its adoption. Though it is only a sense-of-the-Senate amendment, I will be asking for a rollcall vote so that it is clear how strongly this body believes about this particular section begin not accepted in the conference committee.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I rise to strongly support the sense-of-the-Senate amendment which has been proposed by my good friend and colleague from Arizona, Mr. DeConcini. It makes sense and it is important that this body go on record saying that we are not going to prohibit or restrict the redevelopment of 100,000 units of desperately needed housing in the city of New York over the next 10 years, and that is exactly what 367 does.

Mr. President, this action is mindless. My God, had there been anybody who looked into the ramifications or cared enough, you could not have passed this piece of junk. It is garbage. But it really plays mischief with housing for poor people.

Imagine saying that in the construction of a shelter for homeless people you cannot have counseling facilities. These people need counseling desperately, psychiatric evaluation, counseling for those who have drug and alcohol problems, counseling for so many problems. I cannot really believe it.

Mr. President, what is section 367? This provision simply states that nonprofits that build rental housing for any purpose with tax-exempt bonds must comply with the same restrictions that currently apply to private developers using tax-exempt bonds to build rental housing. Well Mr. President, that sounds simple enough. The problem is that nonprofits are not private developers. They serve very special constituencies such as the homeless, the aged, and the physically and mentally disabled. By definition they do not make profit whereas private developers do.

It makes no sense to treat nonprofits like for-profit developers. For instance, a private developer can only use the proceeds of tax-exempt bonds to build rental housing and related facilities such as kitchens or bathrooms. Applying this restriction to nonprofits means that a homeless shelter cannot be built with space for counseling facilities from the proceeds of tax-exempt bonds. But it makes sense for a homeless shelter to have room for counseling facilities, does it not?

Section 367 was not the subject of hearings or a study by GAO. It was included in the House bill to pay for expanded business deductibility of meals for employees working on ships and oil rigs. The resolution before us simply states that the Senate conferees reject section 367 and hold hearings next year.

Section 367 jeopardizes New York City's 10-year plan to rehabilitate 100,000 units of abandoned housing.

The city uses a portion of their quarterly general obligation issues to fund nonprofits rehabilitating these empty abandoned buildings. Under the private developer rules, if the nonprofits fail to meet the strict targeting and compliance requirements for the life on the bonds, then the bonds are retroactively taxable. This means that New York City's ongoing financings through GO's is threatened. The city's credit rating would be jeopardized. In the end, New York City will just cancel its 10-year housing plan all because of section 367.

The private developer rules require bond-financed buildings to comply with the targeting requirements for the life of the bonds, or at least 15 years. Well, I know of one example of a proposed bond-financed homeless shelter in Westchester County, NY, that would be operated by a nonprofit, but will have bonds outstanding only for 10 year. Section 367 now jeopardizes this worthwhile financing just because the bonds are outstanding for 10 years and not 15 years.

In another example, a number of nonprofit hospital financings have been jeopardized because of section 367. For instance, Sloan Kettering Hospital, world renowned cancer institution, and Harlem North General Community Hospital plan to build housing for their staffs. Because of economies of scale, the hospitals were going to build more units than needed and open up some of the units to the public. Section 367 would require either all or none of the units to be made public. If even one unit is open to the public, then the entire building must be made public. Section 367 would force these financings to be canceled.

To the best of my knowledge, there is not one example of a nonprofit using tax-exempt bonds in an abusive way. The House has no evidence of such abuses. To add these onerous restrictions in such a cavalier way without sufficient study is just plain wrong. I am pleased that the bill before us does not include provisions similar to section 367.

I applaud my colleague for standing up and offering this amendment.

I ask for the yeas and nays as my friend was about to do.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DECONCINI. Mr. President, I ask unanimous consent that Senator DURENBERGER be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILSON. Mr. President, I rise as an original cosponsor of this sense of the Senate amendment to put a halt to a hastily agreed upon ill-conceived House provision that threatens the ability of not-for-profit organizations to provide housing and residential care facilities for the elderly, and others in need.

What the House bill does is extend the existing restrictions that apply to the use of tax-exempt bonds by for-profit developers to not-for-profit organizations building housing with tax-exempt bonds. The House provision assumes that all for-profit and not-for-profit endeavors are similar and therefore should be treated the same. It makes no sense to treat not-for-profits like for-profit developers.

After all, nonprofits serve very special constituencies such as the homeless, the aged, and the physically and mentally disabled. By definition, they do not make profit whereas private developers do.

Mr. President, as the House report indicates, there may be instances of abuse where front organizations are set up for the single purpose of securing tax-exempt bonds and then developer remains as the project operator. The House, I think is correct in wanting to address and eliminate abuse. However, this is a classic example of "throwing the baby out with the bathwater" because it erroneously assumes that all not-for-profit organizations are engaged in wrongdoings. The charitable and public spirited activities of not-for-profit organizations are well known to Senators.

It may be helpful to Senators if I give a little background on how the House provision came about. Senators may be aware that this provision was only added in the closing moments of the Ways and Means Committee markup as a revenue offset to pay for an expanded business deduction for companies providing meals to employees on commercial vessels or offshore oil rigs.

What is section 367 of the House bill? This provision states that not-for-profit organizations that build rental housing for any purpose with tax-exempt bonds must comply with the same restrictions that currently apply to private developers using tax-exempt bonds to build rental housing.

Well, Mr. President, that sounds simple enough but the problem is that nonprofits are not private developers.

It makes no sense to treat nonprofits like not-for-profit developers. For instance, a private developer can only use the proceeds of tax-exempt bonds to build rental housing and related facilities such as kitchens or bathrooms. Applying these restrictions to not-for-profits means that a homeless shelter cannot be built with space for counseling facilities using the proceeds of tax-exempt bonds. I think it makes sense for a homeless shelter to have counseling facilities.

Or another example: The restrictions on the use of tax-exempt bonds to build housing would prohibit construction of communal eating facilities. Most residential care facilities want senior citizens to eat collectively. This brings the residents together three times a day, allowing the staff to physically see the residents and know that they are healthy. This daily interaction also provides a substantial social benefit for the residents. But, again, it appears section 367 of the House bill would not allow communal eating facilities to be financed and built from the proceeds of these bonds.

To the best of my knowledge, there are no examples of not-for-profits using tax-exempt bonds in an abusive way. We should not jump head-long and add new, onerous restrictions until such time as there is sufficient study.

In all fairness, Mr. President, I am not sure House Members were aware of this provision's potentially debilitating effect until after the fact. Since then, several Members in both the House and the Senate have come out in opposition to the provision, believing it to be a hasty action taken without the benefit of an appropriate review.

Among those groups opposed to the House provision are: Catholic Charities USA, the Evangelical Lutheran Church in America, the Association of Local Housing Finance Agencies, and the American Association of Homes for the Aging.

Let me be clear that in offering this resolution, I am not in any way trying to suggest that I have a technical solution at hand. I would submit that any solution is probably more substantive than technical in nature and should have the full benefit of hearings and interaction with the not-for-profits engaged in these activities and perhaps even the IRS, who is responsible for the issuance of a charitable status. But, again, this is not the case. There have been no hearings.

The problem is that I am not sure anyone has focused in on the real impact this will have on retirement communities, elderly housing or other types of shelters for the physically and mentally frail. Not-for-profit charitable organizations have urged the Senate's attention to this issue because they fear it would devastate their charitable pursuit of providing shelter and care to the elderly. And while their efforts would be hampered, we must look to the bottom line. And that is how are we going to provide shelter and elderly care facilities if this financing tool is unavailable? In these times of housing shortages and knowing that a greater proportion of our population is and will continue to be comprised of the elderly, it is unwise policy to limit these housing and care opportunities without knowing that it is the correct action.

In California, there is an acute shortage of licensed long-term care beds. About 8 percent of California's elderly are in some type of institution. In particular, California's residential care facilities are home to about 3 percent of this population, caring for the frail elderly who cannot function sufficiently independently to live on their own. The average age of resident's is 84 years—for the most part widows and widowers.

These facilities, which are licensed and eligible for tax-exempt financing through the California health facilities financing authority, provide a desperately needed service for the elderly and the infirm. Owned and operated by charitable organizations, they were built using lower cost tax-exempt bonds. The House provision jeopardizes their activities—and it jeopardizes California's seniors.

Let me underline my desire to eliminate abuse of the tax laws. I don't think there is a Senator present here today who would not work to that end. It is our duty to act but not without careful study and deliberations that only hearing and careful review can provide.

Because a similar provision is not included in the Senate bill, the matter is subject to reconciliation in conference. But, without some direction from the full Senate, the Senate conferees would be in a more difficult position to oppose the House provision given the overwhelming House vote. This sense of the Senate resolution gives our conferees the needed muscle, directing them to oppose the House provision until such time as the matter can be adequately studied and reviewed.

Before yielding, Mr. President, I ask unanimous consent that letters I have received from the American Association of Homes for the Aging, Catholic Charities USA, Evangelical Lutheran Church in America, and the California Health Facilities Financing Authority be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN ASSOCIATION OF
HOMES FOR THE AGING,
Washington, DC, September 30, 1988.

Hon. PETE WILSON,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR WILSON: The American Association of Homes for the Aging [AAHA] is concerned about a provision included in the Miscellaneous Revenue Act of 1988 (H.R. 4333), recently passed in the House of Representatives. Section 367 of this Technical Corrections Bill would severely restrict the ability of nonprofit sponsors of housing for the elderly to utilize tax-exempt bonds. The bill would impose strict targeting restrictions which would require all nonprofit sponsors who use tax-exempt bonds to set aside a portion of the units for the very low-income resident. While the concept appears logical, without governmental subsidies, it would be extremely difficult to make such a commitment when one considers that specialized housing for older persons frequently includes meals and other personal care services. Additionally, the targeted median income figures in some parts of the country, especially small towns and rural areas, are often so low that it is difficult to attract the target population that the amendment seeks to address.

It is our understanding that the Tax Technical Corrections Bill pending in the Senate will, in all likelihood, not include this onerous provision. Thus, the restricted use of tax-exempt bonds will undoubtedly be an issue for the Conference Committee to resolve.

AAHA is a national organization which represents over 3,300 providers of specialized housing, health care, and community services for the elderly. All of our members are nonprofit, and the vast majority are church sponsored and/or religious affiliated. Our members view the services and housing they provide to the elderly as part of their mission and not as a profit-making business. The tax-exempt bonds enable them to obtain favorable interest rates, which in turn, result in lower monthly charges to residents. As a result, they are able to serve residents who might not otherwise afford specialized housing and personal care services. Without the tax-exempt bonds, specialized housing for the low to moderate income older person will diminish.

The restrictions in H.R. 4333 relative to 501(c)3 tax-exempt bonds are particularly onerous to those retirement communities which are in the developmental stage or in the process of closing on a bond issue. The feasibility studies, financial projections, marketing, etc., would essentially be worthless if the target population changed dramatically. Essentially, these projects would have to be abandoned. In addition, the restriction would in effect eliminate the possibility of using tax-exempt bonds to refinance existing retirement communities to lower the debt service. On refinancings, the targeting restrictions would necessitate displacement of existing residents with those that meet the income criteria.

On behalf of our members who serve over 500,000 older persons a day, we respectfully request that you intervene on our beliefs. At minimum, provisions in the House version for the Technical Corrections Bill relative to tax-exempt bonds should be delayed until hearings can be held to determine their impact on the development of senior retirement housing. Anything you can do to communicate the adverse consequences of this provision during the House and Senate conference would be greatly appreciated.

Thank you for your time and help on this very important issue.

Sincerely,

MICHAEL F. RODGERS,
Senior Vice President.

CATHOLIC CHARITIES USA,
Washington, DC, September 21, 1988.

Hon. PETE WILSON,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR WILSON: We write to you to express concern about a provision which has been included in the House of Representative's Miscellaneous Revenue Act of 1988 (H.R. 4333). Section 367 of the House technical corrections bill would extend to nonprofits that utilize tax-exempt bonds to finance low and moderate income rental housing the existing restrictions that apply to for-profit developers financing multi-family units.

As you are aware, the ability of non-profits to continue to finance low-moderate rental housing units, continuing care facilities for the frail elderly, mentally retarded and physically disabled, and in some cases long term shelter for the homeless and AIDS patients would be at great risk. Within the Catholic Charities community a $30 million project involving three low-income housing sites and one senior housing facility was halted on advice from bond counsel as a result of the House provison.

We are pleased that such a provision is not included in the Senate Technical Corrections bill (S. 2238). We also understand that you are taking the lead along with Senator DeConcini on a Sense of the Senate Resolution to S. 2238 which calls for further study of this issue and urges the Senate conferees to reject and oppose Section 367 of H.R. 4333. We applaud your efforts and hope the resolution gains full support of the Senate.

In these times of such extreme housing shortages, it is poor policy to impose restrictions on charitable organizations as they play a vital role in providing housing for the less fortunate. 501 (c) (3)'s are charitable, non-profit entities which should not be treated as for-profit developers as they would be under the House provision which would curtail this housing for little return in federal revenues.

We thank you for your support in urging that the provision be deleted when the 1988 technical corrections legislation reaches conference between the two chambers.

Sincerely,

MATHEW AHMANN,
Associate Director for Governmental Relations.

EVANGELICAL LUTHERAN CHURCH
IN AMERICA,
Washington, DC, September 21, 1988.

Hon. PETE WILSON,
U.S. Senate, Senate Hart Building, Washington, DC.

DEAR SENATOR WILSON: I write to you concerning the issue of tax-exempt bond financing and its impact on not-for-profit 501(c)(3) organizations, reflected in Section 367 of H.R. 4333. The Miscellaneous Revenue Act of 1988 (otherwise known as The Donnelly Amendment). This technical amendment would require tax-exempt bonds issued by non-profit organizations to comply with the stringent income limitations already in effect for private purpose, multi-family bonds.

The Evangelical Lutheran Church in America, through its system of social ministry organizations, has a nationwide non-profit system of nursing homes, hospitals, long-term care and life-care facilities, transitional and group homes. Many of these entities have utilized tax-exempt bonds to construct, rehabilitate, or maintain their facilities. However, at this time, attorneys which serve our organizations have placed any new projects which utilize this financing on hold while they await a positive resolution of this issue.

The stringent restrictions that this amendment would impose stands to severely limit or eliminate the ability of our agencies to provide services to people who are elderly or who have special healthcare needs. The Lutheran social ministry organizations often provide care beyond the basic needs of housing and healthcare. Often provided are counseling services, physical therapy, adult day care, programs for the developmentally disabled and other programs for people with special needs.

There has not been an opportunity for public comment of this amendment; Section 367 of H.R. 4333 has not been the subject of hearings in the House or the Senate. No evidence has been publicly disclosed to warrant adding new restrictions on 501(c)(3) organizations using low-cost bonds. In light of the fact that non-profit organizations are engaged in charitable activities, they should not have the same restrictions placed on them which occurs related to for-profit entities.

Senator Wilson, I met with your tax specialist who had a clear understanding of how this measure would negatively impact many people throughout the country. In response to this issue, I would ask you to encourage the chairman of the Senate Finance Committee to remove this amendment from consideration in H.R. 4333.

Thank you for consideration of this issue.

Very truly yours,
Sarah Payne Naylor,
Assistant Director, Lutheran Office for Governmental Affairs.

California Health Facilities Financing Authority,
Sacramento, CA, August 5, 1988.

Re: Technical Correction Act.

Hon. Pete Wilson,
Hart Building, Washington, DC.

Dear Senator Wilson: The Donnelly 501(c)(3) housing amendment (Section 367 of the Ways and Means Committee bill) would require nonprofit organizations (under Code Section 145) providing such services as residential care facilities for the elderly or disabled (Residential Care Facilities) to additionally be subject to requirements of a qualified residential rental project (under Code Section 142).

Residential Care Facilities and residential rental projects currently governed by Code Section 142 are entirely different entities. Residential Care Facilities are operated on a not-for-profit basis and provide a variety of medical care as part of the monthly fee. Residential rental projects are owned by for-profit entities and charge a rental fee entirely for use of the real property. Other major characteristics include:

RESIDENTIAL CARE FACILITIES

(1) Provide the best and lowest cost method of caring for the frail elderly and mentally or physically disabled persons.

(2) Prices set at break even point in the long term and have no relation to area income and rental charges.

(3) On average, one half of monthly fee is for custodial and medical care, including 24 hour supervision, health monitoring, medical treatments and meal preparation.

(4) Residents generally are spending their savings and have less income each year.

(5) Already have a built-in subsidy of the "younger" elderly paying part of the costs for the "older" elderly who have exhausted their savings but are not forced out by the nonprofit organization.

(6) Licensed by state health care or social services agencies.

(7) Are not considered housing projects by lenders because of the large health care component of the monthly charge, thus making financing more difficult.

RESIDENTIAL RENTAL PROJECTS

(1) Set prices in order to make a profit, based on area income and rental charges.

(2) Responsibility is maintenance of dwelling only, not mental or physical well being of residents.

(3) No medical services provided.

(4) Residents earn wages which are expected to increase over time.

(5) No licensing requirements or regulation by state or local authorities.

(6) Are considered housing projects by lenders and have associated financing options available.

Subjecting Residential Care Facilities to the requirements of residential rental projects, in addition to the restrictions already in place for issuance of 501(c)(3) bonds, would cause these facilities to become unfeasible and unnecessarily force residents to higher cost Skilled Nursing Facilities, where available. Also, social benefit requirements, such as low income provisions, for the receipt of tax exempt financing are already being realized with Residential Care Facilities.

Please cause to exclude facilities owned by Section 501(c)(3) organizations from the Donnelly housing amendment on the basis of the existing requirements under Code Section 145 and the total differences between these organizations and those providing residential rental projects.

Sincerely,
Barbara Gordon Smith,
Executive Director.

Mr. BAUCUS. Mr. President, I am heartened to see this resolution offered by the Senator from Arizona. The Senators are correct, both the Senator from New York and the Senator from Arizona. Their arguments explain why this provision is not in the Senate bill.

This resolution will help strengthen the position of the Senate conferees. I believe the provision now in the House bill is an unwise provision; that is, section 367 of the House bill is unwise.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Arizona. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. Bentsen], the Senator from Georgia [Mr. Fowler], and the Senator from Illinois [Mr. Simon] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. Bond], the Senator from Mississippi [Mr. Cochran], the Senator from Missouri [Mr. Danforth], the Senator from Nebraska [Mr. Karnes], the Senator from Arizona [Mr. McCain], the Senator from Indiana [Mr. Quayle], the Senator from Wyoming [Mr. Wallop], the Senator from Connecticut [Mr. Weicker], and the Senator from California [Mr. Wilson], are necessarily absent.

I further announce that, if present and voting, the Senator from Missouri [Mr. Bond], the Senator from Wyoming [Mr. Wallop], the Senator from Connecticut [Mr. Weicker], and the Senator from California [Mr. Wilson], would each vote "yea."

The PRESIDING OFFICER (Mr. Levin). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 356 Leg.]

YEAS—88

Adams
Armstrong
Baucus
Biden
Bingaman
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Conrad
Cranston
D'Amato
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Evans
Exon
Ford
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Wirth

NAYS—0

NOT VOTING—12

Bentsen
Bond
Cochran
Danforth
Fowler
Karnes
McCain
Quayle
Simon
Wallop
Weicker
Wilson

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I take the floor now to inquire as to what the situation is on the number of amendments that are still out. I wonder if I could inquire of the two managers.

Mr. BAUCUS. Mr. President, the managers hope that we can complete this bill if not tonight, certainly in 1 more day.

We are preparing a list of amendments on this side of about 30 to 40 amendments, most of which can be dealt with very quickly, very expeditiously, and many of them accepted or included in a package.

I expect that we could get the unanimous-consent agreement listing these amendments as well as the amendments on the other side today. If we could get that agreement today, we could move very expeditiously in getting this bill passed. But we have about 30 amendments at this time, and I think if we could get a U.C. listing those amendments and no further amendments to be called up, that would greatly aid our progress.

Mr. BYRD. Do we have both sides? Do we have all the amendments listed?

Mr. PACKWOOD. I am not sure we have all our amendments. I had all the amendments we had. I think there are more amendments than I had when I started this morning.

Mr. BYRD. Very well.

Let us see that if within 30 minutes or an hour we can get this list completed on both sides and take a look at that list and see if we can get an agreement enumerating the amendments and an agreement that would preclude any other amendments.

Mr. ARMSTRONG. Mr. President, will the majority leader yield for a question?

Mr. BYRD. Yes.

Mr. ARMSTRONG. As one of those interested in the list and has looked at the various iterations of the list, I would like to propound this question: When we look at the list of the amendments, I gather it is the desire of the managers, which I share, to preclude second-degree amendments to those amendments. It is very difficult for us to agree to such an agreement if we do not know the content of the amendment. So as staff gathers up a list I hope they gather up enough information so we will know the meaning of the items that are listed or at least it be brought out and the terms we are talking about, the number of amendments that have been filed and information of that kind.

Mr. BYRD. The able Senator makes a sensible and sound proposal. I hope that we will be able to identify the amendments and let us see where we go from there, because obviously we cannot agree to precluding all other amendments unless we know what is contained in the amendments that are listed.

So could we redouble our efforts in the next little while?

Is there an amendment we could have called up now?

If we could get an amendment up and if it requires a rollcall vote, then after that rollcall vote we would hopefully have the information that we want keeping in mind the very sound suggestions made by the distinguished Senator from Colorado [Mr. Armstrong].

Mr. President, could we get a 30-minute time agreement on this amendment?

Would the distinguished Senator indicate what his amendment is?

Mr. D'AMATO. This amendment, I believe, could be debated and voted on within a half hour.

Mr. BYRD. What is it?

Mr. D'AMATO. It provides fringe benefits up to $38 a month for mass transit use for buses for mass transportation and offsets that by imposing a gas-guzzler fee, increasing that on basically foreign imported cars and there are three American cars within that group.

Mr. BYRD. Would the manager want to agree to a 30-minute time limitation?

Mr. SYMMS. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. SYMMS. What is the parliamentary situation now? Is the comparable worth amendment the pending business?

The PRESIDING OFFICER. The Senator from Idaho is correct. There are two pending amendments, the first-degree and second-degree amendments.

Mr. SYMMS. Mr. President, it is my understanding there is going to be a tabling motion on that. I would suggest we move on with that and maybe we could settle some of the other issues while we vote on that motion.

Mr. BYRD. Mr. President, would it be agreeable to setting aside the pending amendments so that Mr. D'Amato can proceed to call up his amendment?

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. BYRD. Yes.

Mr. HUMPHREY. When are we going to dispose of the pending business?

Mr. BAUCUS. Mr. President, if I may respond to the Senator from New Hampshire. During the last hour, approximately, Senators Evans and Cranston, the primary sponsors of the pay equity amendment, are attempting to negotiate. It is my understanding there could be a separate vote on the pay equity study so that the vote would not occur on the technical corrections bill. Those Senators are still attempting to negotiate that solution.

If, however, they are unable to negotiate that solution, then there will soon be a time that this Senator will move to table the underlying amendment. But, for the time being, those Senators are attempting to reach a resolution.

Mr. HUMPHREY. If the Senator will yield further, I understand that is the situation. The question is, What is the deadline? How long is this process going to be accommodated?

It is my impression—and I am not authorized to speak for others, obviously—but it is my impression that no such agreement has been put together or is likely to be put together.

Mr. PACKWOOD. Let me ask, is there any harm, while one of our colleagues is trying to put it together, of setting it aside and going to Senator D'Amato's amendment, who is ready to go and ready to accept a time limit? Do I understand that correctly, I ask the Senator from New York, a time limit on his amendment?

Mr. D'AMATO. That is correct.

Mr. HUMPHREY. That is the process in which we have been engaged now for I guess an hour or two. I am just trying to get some understanding. Obviously, the Senator has a right to object to setting aside the amendment further. I do not want to do so without understanding the situation.

My question is: At what point are we going to say enough and deal with the pending business?

Mr. SYMMS. Will the majority leader yield?

Mr. BYRD. Let me respond to the Senator and then I will be happy to yield.

The pay equity amendment is before the Senate and there is also a pay equity bill on the calendar. That pay equity bill on the calendar has been cleared on this side of the aisle. There is no objection to taking the bill up itself, passing it by unanimous consent. There are objections on that side.

The distinguished Senator from Washington [Mr. Evans] is seeking to remove those objections on that side of the aisle. If they can be removed, we will take down the amendment, I will call the bill up and get unanimous consent to do it in 2 minutes and that will dispose of that amendment and the bill that is on the calendar.

Meanwhile, we are hoping we could set the pending amendment aside just a little longer to allow Mr. Evans to continue his efforts and let Mr. D'Amato, in the meantime, call up his amendment so that the Senate can be making some progress on this bill rather than just turning its wheels as it is now doing.

Mr. HUMPHREY. If I might respond briefly. I understand the situation and I thank the majority leader for the explanation.

Very candidly, I am on the other side of the issue. And while I will not object to setting it aside one more time, frankly, it is not to the advantage of those on the same side of the issue as the Senator from New Hampshire to allow this process to go on forever. Because, frankly, there is some arm twisting going on and it is just not to our advantage.

So I will not object in this instance, but I want to say for the record that this Senator is very strongly disposed to object the next time such a request will be made.

Mr. BYRD. Mr. President, I thank the distinguished Senator. And, looking at it from his viewpoint, as he has indicated, he wants to see a showdown on the amendment but he is willing one more time to set it aside. I thank him for that.

Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

Mr. SYMMS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, on that reservation, I do not want to interfere with the process, either. I share many of the same views of the Senator from New Hampshire. But I want to make it clear, while all Senators are here on the floor, that it is my intention not to go on ad infinitum this afternoon without objecting.

The second thing I would say is that officials at the highest levels of the administration will be recommending a veto of this bill that carries a heifer tax and the diesel fuel tax if the amendment is adopted. So I think we are making a big mistake to do it.

The rights of the Senator from Washington State are going to be protected. If a tabling motion is made and the amendment is tabled, he still has the bill pending on the legislative calendar, which could be called up by unanimous consent.

So there is no way, I think, for us to have some illusion that permission is going to be granted to call up that free-standing bill by consent.

I hate to be at crossed-swords with my dear colleague from my neighboring State, but it is an issue that some of us feel very strongly about. I think we need to make that very clear to the rest of the Senate.

Mr. RIEGLE. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, am I to understand that the amendment by Senator D'Amato is also included here? And, if so, I would have to object to a time agreement on that amendment. I would not be able to agree to a time agreement.

Mr. BYRD. Mr. President, I withdraw the request.

Mr. PACKWOOD. We are not on the D'Amato amendment. He is going to propose a time request.

Mr. SYMMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. If the pending amendment is set aside, at any time any Senator calls for regular order does it become the business before the Senate?

The PRESIDING OFFICER. The Senator is correct.

Mr. SYMMS. I thank the Chair.

AMENDMENT NO. 3582

Mr. EVANS. Mr. President, let me just speak to the Senate and see if we can arrive—speaking particularly to the majority leader—at a way to get out of the impasse that I suppose I have helped us get into.

I have spoken to the Senate enough to let them know my feelings and my passionate feelings on this subject. I am aware at the moment that there is no chance of gaining unanimous consent which would be necessary for us to carry this issue forward.

But, Mr. President, we have a second-degree amendment now in front of us. Before I yield the floor, it will be my intent to move to table that second-degree amendment.

It will also be my opportunity to urge my colleagues to vote against that tabling motion and to give this body a chance to see where people stand on this issue.

If we succeed in not tabling the amendment, I will immediately be prepared to move that we table the underlying amendment and be willing to take that with a voice vote so that it would remove this particular issue from the docket.

Mr. President, I——

Mr. CRANSTON. Will the Senator yield for a question?

Mr. EVANS. Yes, I will be delighted to yield.

Mr. CRANSTON. I want to make sure we all understand what is being proposed. Is it the Senator's intention to move to table the pay equity amendment but to ask all Senators who favor the pay equity study to vote against tabling with the understanding that if we prevail, the Senator will then make a motion to table the underlying amendment and be willing to do that in a voice vote which would eliminate this issue from the tax measure?

Mr. EVANS. That is correct. The Senator is correct.

Mr. THURMOND. Mr. President, a recent study undertaken to evaluate the concept of "comparable worth" by the U.S. Office of Personnel Management [OPM] found that pay differentials are diminishing between men and women throughout the work force and among occupational groups. Women working in the Federal Government have made significant progress in upward mobility and now comprise a larger proportion of each occupational category than they did a decade ago.

While many of the lower paying Federal job levels continue to be predominately held by women, it is evident that increasing numbers of women have taken advantage of favorable promotion opportunities to move rapidly into higher salary level positions. Within the Federal Government's professional and administrative occupational categories, a substantial amount of women have attained positions that were formerly dominated by men.

Mr. President, dramatic changes are taking place in the American work force. As more women enter the labor market, having higher career expectations, as well as greater attachment to the labor force, male and female pay disparities are expected to narrow.

President Reagan assessed "comparable worth" in his 1988 Legislative and Administrative Message to Congress. The President observed that the objective of "comparable worth" proposals is not to provide equal pay for equal work. On the contrary, "comparable worth" pay standards:

> Seek to determine the worth of completely different jobs and then empower government panels to assign "fair" and "comparable" wages. Proposals that would establish panels of "experts" to determine how much workers can earn would create the kind of planned economy that has stifled economic growth in other parts of the world.

The "comparable worth" concept is based on establishing pay levels based on the subjective evaluation of the worth of different jobs. This concept focuses on "internal equity" among jobs, while disregarding market wage rates and merit considerations. Such an approach results in a system that overpays some employees and underpays others. A system that is based on internal consistency, while being closed to outside influences and employee performance considerations, cannot improve upon the present system of promotion and pay for Federal workers.

Mr. President, existing Federal laws forbid discrimination in pay to employees of the Federal Government. The Equal Pay Act of 1963 requires that male and female workers receive equal pay for equal work. Also, title VII of the Civil Rights Act of 1964 prohibits employers from intentionally depressing the earnings of women on the basis of sex and prohibits pay discrimination on the basis of race or national origin, as well as provides for equal pay for equal work. These statutes provide forceful avenues of recourse for eradicating pay discrimination in the workplace. Under the Reagan administration these statutes have been enforced.

Much of the difference in pay between women and men in the Federal Government can be accounted for by variants in the education, experience, and seniority levels of the workers. There has been much progress made in narrowing the pay differential between men and women in the Federal work force in the past decade without the interference of a Federal Employee Equity Study Commission.

Mr. President, it has been argued that this measure would simply provide for a study. However, this legislation extends in scope much farther than the authorization of a mere study. It seeks to legitimize a flawed economic theory that would diminish the effective administration of our Federal work force. I do not support such a move and I urge my colleagues to oppose this amendment.

(By request of Mr. Dole, the following statement was ordered to be printed in the Record:)

● Mr. KARNES. Mr. President, Senator Evans is proposing an amendment to the technical tax corrections bill to set aside funds for a Federal employee compensation equity study. According to its proponents, this study purports to determine whether pay distinctions in the Federal work force are based appropriately on differences in work or on discrimination. The methodology they propose, however, reveals a very different intent.

Let us not fool ourselves or try to fool anybody else: what the Senator really proposes is to mandate an expensive comparable worth study, not just an analysis of Federal pay practices. The study is clearly calculated to lead to a particular set of findings and conclusions. One has only to read the language governing the study to see that. The clear purpose of this amendment is to lay the foundation for changes in Federal pay practices either by subsequent litigation or legislation raising Federal salaries or both. The ultimate goal is to change the entire system by which compensation is determined in the private sector. The consequences could be expensive and far-reaching for both the Federal Treasury and the American economy and, in my opinion, disastrous to the very group of employees this study is supposed to benefit.

The proposed study would employ job content analysis and economic analysis to determine the extent of wage discrimination. These methods have been used previously by several States in laying the foundation for implementing comparable worth. The problem is that neither method can positively identify or prove or disprove discrimination.

Objective job evaluation techniques do not exist; arriving at an objective determination of job worth is not feasible. Under comparable worth, different job categories are compared and point values are assigned to particular positions according to the nature and difficulty of the work involved. But is it possible to determine objectively the relative value of, say, a secretary versus a truck driver or a nurse versus a mine safety inspector? Questions concerning such factors as experience and training, talent, environment, physical and intellectual ability and effort, and the relative merits of different positions are highly subjective. Such determinations do not lend themselves to the kind of bureaucratic analysis called for in the proposed study. Moreover, such considerations should not be left out because they are not capable of statistical methodology.

Similarly, no economic analysis can properly be used to explain all of the nondiscriminatory reasons for a pay gap between two different job categories. There are important variables like motivation, ambition, career goals, job preferences, and willingness to relocate which must also be considered in discussing wage determinations and differences.

I simply reject the notion that all jobs have intrinsic measurable value, and all salaries should be based solely on bureaucratically determined values rather than market considerations. I do not want some Government body having the power to make such important determinations and ranking jobs in some job rating system for the purpose of setting pay levels or second-guessing the decisions of management.

The study which this amendment would fund cannot show pay discrimination or what jobs are objectively worth. I do not doubt that such a study can show that wage gaps do exist between different jobs held predominantly by women and minorities as compared to jobs held predominantly by men and nonminorities and that such gaps cannot be fully explained. That does not mean that discrimination exists, but merely that economic analysis techniques are not sophisticated enough to measure all of the nondiscriminatory factors that together explain why different jobs are paid differently.

The amendment also proposes to set set up a nine-member Commission on Compensation Equity whose members are to have "extensive knowledge and technical expertise in the major areas of the Commission's consideration and study." The Commission is supposed to develop the specifications for the study in the form of a request for proposals, choose a qualified consultant to conduct the study with economic and job evaluation analytic methodology, and them submit its findings and recommendations to the Congress.

Does anyone seriously suggest what the Commission will say about the wage gaps that the study identifies? The President gets to name two members and the Republican leaders in the House and Senate pick one each for a total of four from the GOP side. The Democratic leaders of both Houses each pick one member, and then the Director of OPM selects a person designated from each of the three largest Federal employee unions—all of which are solidly behind this proposal. That means that we shall have a Commission stacked at least 5-to-4 in favor of comparable worth. The notion that this Commission will be objective is itself a facade. We can expect the study's findings to be that there is invidious discrimination in Federal pay practices.

The costs of this proposal goes far beyond the $3 million appropriated for it. When the States of Washington lost its comparable worth case in the district court, the estimates were that in back pay and future pay raises alone, the State would lose from $800 million to $1 billion. That was in a case in which only comparisons between jobs held by men and women had been made. The Federal work force is much larger than Washington State's. This proposal includes two additional categories by which wage gaps are to be measured—minority and ethnic—in comparison to nonminority jobs. The potential costs of closing the allegedly discriminatory gap which will be found as a result of this Federal pay study are enormous. Unless some jobs are eliminated, therefore, the study will result in major additional personnel costs for the Federal Government. Such tremendous costs and the impact they will have on the deficit cannot be overlooked.

We complain, rightly, about the Federal budget deficit and wasteful Government spending. We wring our hands and talk of ways to reduce spending. Some favor cuts in this or that program, and some favor raising taxes. It is a major preoccupation of this and every Congress, and rightly so.

But why should we take a step down the rocky road which will cost us billions of taxpayer dollars to fulfill a theory which is so widely discredited and is so full of obvious flaws? Why take $3 million and divert it into such a study when OPM could be utilizing those funds for conducting a more serious examination of the Federal Government's compensation system? I can sure think of a lot more pressing items and programs of greater urgency and greater long-range value that we could appropriate this money for.

Mr. President, I would like to quote at this time from a letter from Constance Horner, Director of the Office of Personnel Management, to our distinguished minority leader commenting on this proposed study, which was contained in legislation, S. 552.

> To many of the proponents of S. 552 this represents not an end in and of itself, but a significant step in extending the principles of comparable worth to the economy at large. As such, it is a very dangerous step. Comparable worth is an inherently flawed concept which assumes wages can be set primarily based on the intrinsic worth of a job to an employer or to society. But such a concept has no meaning; there is no effective way of determining wages in isolation from supply and demand factors. Further, by depreciating marketplace factors and individual merit, comparable worth guarantees higher labor costs without any compensating improvements in productivity; ensures a lower rate of job creation and increased levels of unemployment; harms our ability to compete in the international costs without any compensating improvements in productivity; ensures a lower rate of job creation and increased levels of unemployment; harms our ability to compete in the international economy; sends false signals to those making occupational choices; and severely retards—and possibly reverses—the historic flow of women out of traditional occupations into a wide variety of non-traditional fields.

Mr. President, let me add that I am opposed unalterably and unequivocally to wage-based discrimination in the workplace. I support vigorous enforcement of the Equal Pay Act of 1963 and title VII of the Civil Rights Act of 1964 which guarantee equal pay for equal work, regardless of sex, race, age, or other personal characteristics.

Comparable worth, however, is not the same thing nor does it embrace the same principle as equal pay for equal work. The point is that there already exist powerful weapons for eradicating wage discrimination wherever it is found to exist. If an employer—the Federal Government or a private businessman—has violated the prohibitions against wage discrimination back pay and wage adjustments can and should be ordered. We do not need an expensive study to redress such grievances. The goal of equal employment is to create job mobility for all people, enabling them to gain access to all types of jobs. Vigorous enforcement of existing laws will help to realize this goal. Comparable worth contributes nothing to attainment of this noble end.●

Mr. DURENBERGER. Mr. President, I rise today in support of an amendment offered by my distinguished colleague from Washington that will establish a national commission to study the problem of wage discrimination in the Federal Government.

By law, women have rights equal to men. In reality, however, women continue to receive lower wages and are most often in jobs which are lower salaried because they are considered "women's jobs." As a strong supporter of the Equal Rights Amendment, and equal rights for all citizens, I feel strongly that women must be paid equally for equal work.

Mr. President, we all know that wage discrimination on the basis of sex does exist in our workforce. While the number of women graduating from college and professional schools is almost equal to the number of men, women continue to occupy occupations traditionally labeled female and at the lower end of the pay scale. For both men and women, income increases with higher levels of educational attainment. However, the median income of full-time year-round women workers with 4 years of college was $24,482 in 1986 while men with 4 years of college earned $36,665. Studies are now beginning to present some of the underlying causes of salary and pay differentials for women. But no solutions to the problems of pay equity can be found unless we fully understand the issue's complexities. That is why I believe it is so important that we pass this amendment today.

Mr. President, in 1981 I authored the Economic Equity Act [EEA] to end economic discrimination against women. Since the EEA was first introduced, many important parts of that legislation have become law; including, changes in the Federal farm credit regulations, day care tax credits, estate tax reforms, and tougher child support enforcement requirements. Another provision of the EEA is a pay equity study. I believe it is again time to move forward in getting all of the EEA signed into law by authorizing a study of the Federal pay system to get a clearer understanding of the roots of discrimination in our Federal workforce and to evaluate possible solutions to correct this injustice. I urge my colleagues to support passage of the Evans amendment.

Mrs. KASSEBAUM. Mr. President, I will support the amendment of Senator Evans calling for a study of pay practices within the Federal Government. The goal of this study is to assure that these practices are not discriminatory on the basis of sex, race, or national origin.

I am supporting this amendment because I think it is worthwhile to take a systematic look at the factors which go into the establishment of Federal pay scales. It is troubling to me that, on the whole, women do not fare as well as men when it comes to salary levels. This study speaks to a deep concern of women throughout the country that their contributions to the labor forces are not being appropriately recognized and rewarded.

This concern is not limited to the Federal work force, but the Federal Government offers a good vantage point from which to explore the disparities which exist. Moreover, in a system as large and diverse as the Federal Government, it is important to review pay practices to assure they are appropriate for modern times and modern jobs.

As Senator Evans has noted, the purpose of this study is to seek facts and not prejudge results. When the study is completed, Congress will have the opportunity to weigh the validity and propriety of any recommendations which are made.

With this in mind, I want to comment on the relationship between this amendment and the "comparable worth" concept. My support of this amendment should not be construed as an endorsement of this concept. As I have noted on several occasions, I do not believe it is feasible or desirable to establish pay rates on the basis of some estimation of the intrinsic value of a job. Such estimations are inherently subjective and ignore the importance of the market forces of supply and demand in distributing workers among available jobs.

It seems to me that the real point of this study is to assess where we are in terms of giving all Federal workers a fair evaluation and to see that the Federal pay system is able to adapt to the challenges of a competitive work environment. As such, it is one part of an equation for improving the status of women in the Federal workforce.

In closing, I would like to commend Senator Evans for the work he has done and the commitment he has demonstrated in shaping this proposal as it has evolved over the years. His presence as a voice of moderation and common sense in this body will be sorely missed as he leaves the Senate at the end of this Congress.

Mr. EVANS. I will shortly make my motion, but, Mr. President, indulge me for just a few moments. I am deeply sorry that the few in the Senate who would refuse us a vote on the merits of this issue have chosen to do so. It is an important issue. It will come back. It will be in front of this Senate and this Congress next year and the year after and until there is a recognition of some of the inequities which have crept into public pay which has been recognized by most States of the Union, by hundreds of cities and counties. And we, as we do too often, become the very last bastion in opposition to change.

Mr. President, the experience of those who have engaged in these kinds of studies has been useful, worthwhile, and successful. I was struck once by the testimony of the mayor of Colorado Springs. No liberal, he. Chairman of the Chamber of Commerce, longtime businessman. But he helped initiate, along with his city council, this kind of study to try to determine what was right for Colorado Springs and the people who work for that city and for the citizens of that city.

The end result of that analysis, which is very close to the same kind of analysis we are suggesting, was not costly for the city or for the taxpayers. It produced workers who were happier, workers who ended up being more productive, worker who stayed on the job longer so you did not have to retrain and retrain new people as they came on board. And, as he said after a couple of years of experience: Is not what we are after as public officials to have our agencies of government work efficiently, effectively, and happily?

To that, Mr. President, I would say yes; yes; and yes.

Some day and some way this Congress will recognize that it is just as important for the Federal service as it was for the city of Colorado Springs. It is terribly important for us to give them the opportunity. It will not happen during this Congress. But I am confident it will happen, just as a generation ago we finally came to the point, in spite of the opposition, the blind opposition of some, to equal pay for equal work which now is upheld by virtually everyone. But at that time the same kind of opposition to equal pay for equal work was echoed stridently in this Chamber and the other Chamber and those who represented some of the business organizations of that day.

Mr. President, it is with great sorrow that I will move to table. I will not have the opportunity in the next Congress to carry this fight on, at least from inside the Senate Chambers. But I am confident there will be others here who will carry it on with increased vigor until we do what we should do and that is to get information through a study so that we know better how to act.

The opposition to a study is simply blind opposition to knowledge. It is saying we would rather vote without knowing what we are doing instead of getting information to base our vote on.

With that, Mr. President, I shall say no more and I will probably not have an opportunity to say very much more during the remainder of this session of Congress.

With that——

Mr. SYMMS. Will the Senator yield for a brief statement?

Mr. EVANS. I will yield for a brief statement.

Mr. SYMMS. I say to my colleague I understand what he is trying to do and what Senator Cranston has offered here. But the problem with your proposition is that that allows the decision on this issue to be masked in some kind of vote that means nothing.

If we are going to vote on this issue, I would urge the Senator to move to table the underlying amendment so it is settled. Because I can assure the Senator that if the Senator wins on his tabling motion, or loses, then we will have to vote on the next tabling motion. So we will know where the Senate stands on the issue.

The vote we are about to take will means absolutely mothing on where the Senate stands on the issue.

Mr. EVANS. I doubt that those who have opposed this issue are going to vote for a tabling motion—or against a tabling motion, and put themselves on record in opposition to their own beliefs.

I thought this was a body where we were elected and came in order to express our opinions, to debate issues and to vote on the merits of issues. How afraid are we? What kind of Senators are we, if all we do is hide behind procedural motions?

Afraid to speak out on issues, afraid to have our voice and vote counted on issues.

Mr. President, I think this will be viewed as a vote on the merits of the issues. There are lots of the people out in the country watching and listening. They will know. They will know, based on vote, where people stand.

With that, Mr. President, I move to table the second-degree amendment now in front of us and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I believe we are ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment in the second degree of the Senator from Washington. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. Adams], the Senator from Texas [Mr. Bentsen], the Senator from Florida [Mr. Chiles], the Senator from Arizona [Mr. DeConcini], the Senator from Georgia [Mr. Nunn], the Senator from North Carolina [Mr. Sanford], the Senator from Illinois [Mr. Simon] are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona [Mr. DeConcini] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. Bond], the Senator from Mississippi [Mr. Cochran], the Senator from Missouri [Mr. Danforth], the Senator from Nebraska [Mr. Karnes], the Senator from Indiana [Mr. Quayle], the Senator from Wyoming [Mr. Wallop], and the Senator from California [Mr. Wilson] are necessarily absent.

The PRESIDING OFFICER (Mr. Harkin). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 14, nays 72, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—14

Armstrong
Garn
Gramm
Helms
Hollings
Humphrey
McCain
McClure
Nickles
Roth
Rudman
Stennis
Symms
Thurmond

NAYS—72

Baucus
Biden
Bingaman
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Cohen
Conrad
Cranston
D'Amato
Daschle
Dixon
Dodd
Dole
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Glenn
Gore
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stevens
Trible
Warner
Weicker
Wirth

NOT VOTING—14

Adams
Bentsen
Bond
Chiles
Cochran
Danforth
DeConcini
Karnes
Nunn
Quayle
Sanford
Simon
Wallop
Wilson

So the motion to lay on the table was rejected.

Mr. CRANSTON. Mr. President, I withdraw the underlying amendment.

I support the amendment, but in the interest of moving the tax bill forward after this vote, I withdraw the amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw the amendment.

The amendment (No. 3581) was withdrawn.

Mr. BYRD. Mr. President, may I have the attention of Senators?

The PRESIDING OFFICER. The Senate will be in order, so that the majority leader can be heard.

The Chair is attempting to recognize the majority leader to make an announcement. Will the Senate please be in order?

The majority leader.

Mr. BYRD. Mr. President, I inquire of the distinguished Republican leader as to the possibility of achieving an agreement on the remaining amendments.

Mr. PACKWOOD. I think both the Republican and Democratic sides have seen each other's lists. They total 100 or so.

Mr. ARMSTRONG. I have not seen them. I want to see them.

Mr. PACKWOOD. All right. Come over and take a look at them.

Mr. ARMSTRONG. I want a copy to look at it on my own.

Mr. BAUCUS. On the Democratic side, we have 45 amendments.

Mr. BUMPERS. Mr. President, some of us in the hinterlands would like to hear this conversation.

Mr. BAUCUS. There are 45 amendments on the Democratic side, approximately 13 of which are put together in a package which we will accept, leaving about 32 amendments, which will not take much time. I think we could quite easily dispose of these and those on the Republican side in approximately 1 day's time.

Mr. BYRD. May I ask the manager of the bill. He has indicated there are 45 amendments on our side, 13 of which would be in a package which the managers can accept.

Are those 13 amendments that would be in the package identified?

Mr. BAUCUS. They are included in this list but not specifically identified as such, yes.

Mr. BYRD. Could we get an identification of those 13 amendments?

Mr. BAUCUS. The 13 would include first the rental car depreciation amendment of Senator Boren; possible depreciation of lives of trees and vines by Senator Chiles, pistachio uniform capitalization, Senator DeConcini; Netherlands Antilles finance of technical ratio. That is Senator Dixon.

Mr. BYRD. All right.

Mr. BAUCUS. And there are others.

Mr. BYRD. Those amendments can be identified.

Now, we have 45 amendments on this side, 13 which would be in a package. I assume the package could be voted on en bloc.

Mr. BAUCUS. That is the intention.

Mr. BYRD. And on the other side of the aisle, how many amendments are there?

Mr. DOLE. Eleven amendments.

Mr. BYRD. Eleven amendments.

Mr. DOLE. In a package.

Mr. PACKWOOD. All right.

Mr. President, we have 57 amendments of which 11 will be added to the package that Senator Baucus made reference to out of the 57.

Mr. BYRD. How many?

Mr. PACKWOOD. Eleven will be added to the package of the 13 that he talked about and will be in one package.

Mr. BYRD. Which would make 24.

Mr. PACKWOOD. It would be 46.

Mr. BYRD. Twenty-four in the package.

Mr. PACKWOOD. Twenty-four in the package.

Mr. BYRD. Leaving how many on the other side?

Mr. PACKWOOD. Leaving 46 on our side.

And how many on the other side?

Mr. BAUCUS. Approximately 32 on our side.

Mr. BYRD. All right. There are 78 amendments that would be outside of the package.

Mr. PACKWOOD. That is correct.

Mr. BYRD. And how many inside the package?

Mr. PACKWOOD. Twenty-four.

Mr. BYRD. Twenty-four.

There will have to be some identification of the amendments. I would hope that we could get an agreement that would complete the action on the bill at 6 o'clock, say, Tuesday next. It is obvious we cannot complete the work tonight. If we do not complete the work tonight, we have to work tomorrow unless we get the agreement that sees us completing the action on the bill sometime next week, hopefully Tuesday.

If the managers can identify the amendments appropriately so that Senators will know what they are agreeing to and then if we could get an agreement that would provide for a closing time for a vote on Tuesday.

Mr. BAUCUS. Mr. President, we have the list.

Mr. DIXON. Mr. President, I wonder if the distinguished majority leader would permit me to say to him that I have one other amendment other than the one agreed to. I would be delighted to have 10 minutes evenly divided just to give the Senate an opportunity to vote on a question. My amendment is cosponsored by, I think, 39 other Senators. All I want is a vote, and 10 minutes will be plenty of time for me. I bet there are a lot of like-minded Senators who would like to get out of here who would be willing to pretty brief time limits.

Mr. BYRD. Which amendment is the Senator's amendment?

Mr. DIXON. Other than the Netherlands Antilles amendment, which has been accepted by the managers, I have another amendment there with respect to a matter in which the railroads and, believe it or not, the railroad unions are all in agreement, so you have management and unions agreeing.

I expect that will get a good many votes. I do not think it requires a long speech.

I would think that members here, all of us, want to get home and Senators might be willing to do something reasonable like that.

I wonder if the majority leader would want to see if we could get unanimous consent for a very brief time limit of 10 minutes for each amendment or something?

Mr. BYRD. Senators have to know what the amendments are. I do not think we want to buy a pig in the poke.

So I will list the amendments or perhaps the distinguished manager can. He has the list. I wonder if we could go through the amendments that are on the list so that all Senators will know what the amendments are and then we will be in a better position to know whether or not we can agree.

Mr. ARMSTRONG. Mr. President, will the Senator yield for just a moment before we begin that process?

Mr. BYRD. Yes.

Mr. ARMSTRONG. On our side we have sent the two lists out to be xeroxed. The consensus at least of some of us over here is that if we could take the next amendment that in 15 or 20 minutes we would be ready to do it.

Mr. BYRD. Very well.

Mr. ARMSTRONG. It would be more expeditious in that way.

We just want to xerox and read off what they are.

Mr. BYRD. Mr. President, I like the suggestion.

I yield the floor.

Mr. BAUCUS. Mr. President, we are not in a position of accepting any amendment that someone may wish to offer. That means we could dispose of it and not have to contend with it later.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 3587

(Purpose: To exclude from gross income employer subsidies for mass transit and van pooling and to increase the gas guzzler tax)

Mr. D'AMATO. Mr. Presdient, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'Amato], for himself, Mr. Moynihan, Mr. DeConcini, Mr. Armstrong, Mr. Wilson, Mr. Cranston, Mr. Dodd, Mr. Warner, Mr. Adams, Mr. Specter, and Ms. Mikulski, proposes an amendment numbered 3587.

Mr. D'AMATO. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert:

SECTION 1. EXCLUSION FROM GROSS INCOME OF EMPLOYER SUBSIDIES FOR MASS TRANSIT AND VAN POOLING: INCREASE IN GAS GUZZLER TAX.

(a) Exclusion of Certain Employer Transit Subsidies.—

(1) In general.—Paragraph (4) of section 132(h) of the Internal Revenue Code of 1986 (relating to special rule for parking) is amended to read as follows:

"(4) Working condition fringe includes certain transportation subsidies.—

"(A) In general.—For purposes of this section, the term 'working condition fringe' includes—

"(i) parking provided to an employee on or near the business premises of the employer, and

"(ii) qualified transportation provided by the employer between the employee's residence and place of employment.

"(B) Limitation.—Subparagraph (A)(ii) shall only apply to that portion of the qualified transportation provided during any calendar month as does not exceed $38

"(C) Qualified transportation.—For purposes of this paragraph, the term 'qualified transportation' means—

"(i) transportation provided by the employer (whether by payment or reimbursement) on buses, trains, or subways but only is such transportation—

"(I) is available to the general public, and

"(II) is scheduled and along regular routes, and

"(ii) transportion furnished in a commuter highway vehicle (as defined in section 46(c)(6)(B) without regard to clause (iii) or (v) thereof) operated by or for the employer.

Transportation provided to a highly compensated employee shall not be treated as qualified transportation unless the requirements of paragraph (1) are met.".

(2) Effective date.—The amendment made by this subsection shall apply to transportation provided after the date of the enactment of this Act, in taxable years ending after such date.

(b) Increase in Gas Guzzler Tax.—

(1) In general.—Section 4064(a) of the Internal Revenue Code of 1986 (relating to gas guzzlers tax) is amended by adding at the end thereof the following new paragraph:

"(8) In the case of a 1989 or later model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The rate is:
At least 22.5	$0
At least 21.5 but less than 22.5	1,000
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700.".

(2) CONFORMING AMENDMENT.—Paragraph (7) of section 4064(a) of such Code is amended by striking out "or later" and inserting in lieu thereof ", 1987, or 1988".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to sales after November 1, 1988.

Mr. D'AMATO. Mr. President, I offer this amendment on behalf of myself, Senators **MOYNIHAN**, **DECONCINI**, **ARMSTRONG**, **WILSON**, **CRANSTON**, **DODD**, **WARNER**, **ADAMS**, **SPECTER**, and **MIKULSKI**.

This amendment proposes to expand the very limited tax-free fringe benefit as it relates to those commuters, those people who use mass transportation, to go to work.

Mr. President, the justice of this I think is rather apparent. At the present time we permit an employer to provide up to $15 per month for those people who use bus, rail, vanpool, mass transportation methods, to come to work. If the employer pays $1 more, then the employee loses all those benefits. They all become taxable. It is one incredible inequity. It does not make sense.

Mr. President, when one stops to think that those people who use the most costly means of transportation, particularly in our larger metropolitan areas, those people, who have the greatest means and ability to pay, have an incredible Government subsidy that all of us are paying for. And I am talking about our corporate executives. I am talking about those people who commute to the inner-core cities. I am talking about those people who pay up to $400 a month for a parking spot.

We, the taxpayers of America, subsidize that. Corporate America and companies are allowed to give that as a benefit and that is not treated as income to those people.

But the little secretary who uses the bus or who uses the van or who comes in on a daily basis on that commute, that railway system—and I am talking about those in my State, the Long Island Railroad, 199,000-plus commuters a day come in at an average cost of about $160 a month; then, those who take the subway to get to their place, another $80 a month—they can get the lordly sum of $15 a month. That is all that employer is allowed to give them, because anything more than that is treated as income.

By the same token, a person who comes in in his limousine, in his Aston Martin, has that limousine paid for, has that chauffeur paid for, is able to park his vehicle in the most costly spots in America, $400 a month for an automobile, and we are paying for it, the taxpayers. This bill seeks a little equity.

By the way, what we are doing is simply raising that level from $15 a month up to $38 a month. It does not seem too much to me.

I want to tell you something. If we want to talk about fairness, let us think about those working people, the working poor, the people who are just about making it. Let us give them an opportunity at something.

We say, let the employer pay up to $38 a month. And how do we do it? I will go into some detail.

We do it by expanding the gas-guzzler tax, the tax that is placed on those cars that achieve less than 22.5 miles per gallon. And, by the way, they are making a comeback, an incredible comeback. The environmental solutions to the problems that we face will be very much rooted in attempting to get people out of their automobile. This legislation encourages people to use mass transportation. It makes economic sense.

And for those people who are concerned about what we will be doing as it relates to the automobiles affected, well, we are talking about the Aston Martin that sells for $168,000. We will be doubling that tax from $3,850 to $7,700. The Rolls Royce sells for $199,500.

The only American cars involved—and there are several—is the Cadillac Allante, which sells for $57,000, a two-seater. The present tax is $1,300. It will go to $2,600.

And there is the Gran Fury Plymouth, the Chrysler Newport, and the Dodge Diplomat. I have been informed that all of them are scheduled to be phased out.

Increased use of mass transit and of fuel-efficient cars will help us attain the elusive goal of clean air. Upon the recent expiration of the Clean Air Act, nearly 100 metropolitan areas failed to meet clean air standards. Car pollution is the main reason in most areas.

This summer we experienced record high levels of smog in our cities. Nationally, 1988 peak concentration levels for ozone have exceeded 1987 levels by 77 percent. In New York City, for example, there were 27 days of unhealthful air between the months of May and August. In 1987, there were 19.2 unhealthy days.

But gas guzzlers—cars that get less than 22.5 miles per gallon—are making a comeback. According to a recent article in the Washington Post, EPA's new list of gas guzzlers shows more models than ever falling into the gas-guzzler category. This trend must be reversed if we are to reduce dangerously high ozone and carbon monoxide levels.

Under current law, an employer can provide only $15 per month of tax-free mass transit subsidy to an employee. If the fringe benefits exceed $15 per month, then the entire subsidy becomes taxable income for the employee.

Workers in my home State shoulder an enormous financial burden when they commute into New York City. For example, the 276,000 commuters using the Long Island Railroad pay an average of $140 a month—that is $1,680 a year.

In addition, it seems unfair that parking is a tax free benefit while mass transit subsidies are not. The Tax Code allows an employer to subsidize 100 percent of an employee's parking costs tax-free. Mr. President, in our major cities, that's tantamount to subsidizing pollution.

The average cost for parking in New York City is $192 per month. Approximately 102,000 people drive into the central business district each weekday. The city estimates that 43 percent of these drivers receive tax-free employer-provided parking subsidies. Of these drivers, 16 to 25 percent say they would switch to mass transit if they were given a subsidy. That would mean up to 25,500 fewer cars on the road.

Mr. President, the tax laws clearly discourage the use of mass transit and discriminate against its users. The partner in a law firm who drives to work and parks in the most expensive parking place in America can recover his parking costs tax-free. But the secretary who commutes by train, bus, or subway probably receives no subsidy at all.

My amendment would establish a tax-free $38 per month employer-provided fringe benefit to reimburse train, bus, subway, and vanpooling costs. If the employer were to provide more than $38, then only the amount over $38 would be taxable income.

My amendment would require that employers comply with nondiscrimination rules to ensure that a fringe benefit is offered to all employees—not just the senior executives. These nondiscrimination rules do not apply to employer-provided parking subsidies.

Mr. President, the Joint Committee on Taxation has estimated that this proposal would cost the Treasury $309 million over 5 years. To offset this, we propose to double the gas-guzzler tax that is paid on the purchase of certain low-mileage new cars. Doubling the gas-guzzler tax would yield $318 million over 5 years. This tax is based on a sliding scale ranging from $500 to $3,850 for cars that get less than 22.5 miles per gallon.

Cars that trigger the gas-guzzler tax for model year 1989 are nearly all very expensive luxury cars. With the exception of three cars, these cars range from $32,400 to $199,500. It is clear that buyers of these cars can afford to pay the increased tax. Four-wheel drive vehicles, off-road vehicles, recreational vehicles, emergency and law enforcement vehicles are exempt.

Now, some of you may have received a list of cars from the National Automobile Dealers Association showing moderately priced cars that come close to incurring the gas-guzzler tax. Let me emphasize that only 4 of the 37 cars listed currently trigger the tax. The list assumes additional regulatory factors that presently—and may not ever apply.

At the conclusion of my remarks, I will provide a chart showing the cars that trigger this tax, their mileage, purchase price, and tax owed.

Mr. President, over a period of years my senior colleague from New York, Senator MOYNIHAN, has fought long and hard to increase mass transit fringe benefits. He joins me along with others who believe that the use of mass transit should be encouraged.

Mr. President, I ask unanimous consent that a list of the cars that incur the gas-guzzler tax and the article from the Washington Post be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 23, 1988]

GAS GUZZLERS ON THE ROAD TO COMEBACK, EPA SAYS

The gas guzzlers are making a comeback.

The Environmental Protection Agency's annual survey of auto gasoline mileage, released yesterday, shows that more models than ever paying the special gas-guzzler tax on fuel-hungry cars, most of them expensive European luxury models.

In the luxury gas-guzzler category for the first time are two cars bearing American nameplates, the Cadillac Allante and the Chrysler TC by Maserati. Both have heavy Italian input—the Cadillac's body and more than half the car by value is imported from Italy and the Chrysler is assembled in Italy using many U.S.-supplied components.

The Allante and the TC are not the first U.S. cars to pay the gas-guzzler tax, which must be paid on cars that travel less than 22.5 miles per gallon. Back on the list are Chrysler Corp.'s venerable Chrysler Fifth Avenue and its nearly identical siblings, the Dodge Diplomat and the Plymouth Fury.

Many analysts have noted buyer indifference to fuel economy in recent years of stale or declining gasoline prices. The new models, though, reflect an increasing concern with high performance.

"If you have a car in your lineup that does not live up to its performance image, you're in more trouble today than if you have an official gas-guzzler," said Ed Miller, an editor at Ward's Automotive Publications.

Clarence Ditlow, director of the center for Auto Safety in Washington, an advocacy group that has frequently opposed relaxation of government fuel standards, said: "We are going in the wrong direction. We ought to be headed the other way and making gas sippers."

The tax, enacted in 1975, is a minimum of $500 for cars that do not meet the requirements.

For example, GM's Allante, a $50,000-plus two-seater, got an announced 16 miles per gallon in the city and 24 mpg on the highway last year and was not taxed. It fell to 15 miles per gallon highway, 23 city this year with a large engine. Buyers will have to pay $650 more.

Although there are more gas guzzlers on this year's list, according to Ward's Automotive Research, they still represent less than 10 percent of all cars sold in the United States. Overall, the fuel economy of new cars sold in the United States is 28 miles per gallon, about the same as 1987.

Topping the fuel efficiency list again this year was the Geo Metro at 53 miles per gallon in the city and 58 on the highway. Geo is the new name from General Motors Corp. for the various imports of its Chevrolet Division. The Metro, built by GM's Suzuki Motors affiliate, was sold in previous years as the Chevrolet Sprint.

Manufacturer	Model	Combined miles per gallon	List price	Tax as percent of price	Dollar value of tax	Doubled tax as percent of price	Dollar value of doubled tax
Aston Martin	Volante	9	168,000	2.3	3,850	4.6	7,700
Do.	Lagonda	9	185,000	2.1	3,850	4.2	7,700
Ferrari	Testarosa	11	177,500	2.2	3,850	4.3	7,700
Rolls Royce	Bentley Eight/Mulsan s	11	105,500	3.6	3,850	7.2	7,700
Do	Silver Spirit/Silver Spur	11	126,000	3.0	3,850	6.0	7,700
Do	Corniche II	11	[1] 199,500	2.0	3,850	4.0	7,700
Do	Bentley-Continental	11	199,000	2.0	3,850	4.0	7,700
Do	Bentley Turbo R	11	145,000	2.6	3,850	5.2	7,700
BMW	M6	13	60,000	5.3	3,200	10.6	6,400
BMW	IL 735 manual	14	58,000	4.7	2,700	9.4	5,400
Jaguar	XJ/S convertible	14	56,450	4.8	2,700	9.6	5,400
Do	XJS coupe	14	47,950	5.6	2,700	11.3	5,400
Mercedes Benz	SL 560	15	63,000	3.6	2,250	7.2	4,500
Do	SEC 560	15	78,000	2.9	2,250	5.8	4,500
Do	SEL 560	15	71,000	3.2	2,250	6.4	4,500
Ferrari	GTS 328/GTB	15	79,000	2.8	2,250	5.7	4,500
Do	Mondale 3.2/Cabriole	15	86,000	2.6	2,250	5.2	4,500
Porsche	Carrera 911	15	51,800	4.3	2,250	8.7	4,500
Mercedes Benz	SEL 420	16	60,000	3.1	2,250	6.2	3,700
Maserati	228	16	52,000	3.6	1,850	7.1	3,700
Porsche	Turbo 911	16	68,000	2.7	1,850	5.4	3,700
BMW	CSI 635	17	50,000	3.0	1,850	6.0	3,000
BMW	I 535 auto	17	45,000	3.3	1,500	6.6	3,000
BMW	IL 735 auto	17	58,000	2.6	1,500	5.2	3,000
Maserati	Spider	17	39,000	3.8	1,500	7.7	3,000
Do	430	17	44,000	3.4	1,500	6.8	3,000
Porsche	S4 928	17	72,000	2.1	1,500	4.2	3,000
Maserati	225	17	33,000	4.5	1,500	9.1	3,000
Cadillac	Allante	18	57,183	2.3	1,300	4.5	2,600
Plymouth	Gran Fury	18	12,490	10.4	1,300	20.8	2,600
Chrysler	Newport/Fifth Ave.	18	18,000	7.2	1,300	14.4	2,600
Dodge	Diplomat	18	12,490	10.4	1,300	20.8	2,600
Volvo	760	18	32,400	4.0	1,300	8.0	2,600
BMW	I 535 manual	18	45,000	2.9	1,300	5.8	2,600
Mercedes Benz	SEL 300	18	54,000	2.4	1,300	4.8	2,600
Do	SE 300	18	50,000	2.6	1,300	5.2	2,600
Chrysler	TC by Maserati	19	33,526	3.1	1,050	6.3	2,100
Mercedes Benz	TE 300	19	49,500	2.1	1,050	4.2	2,100

[1] Revised listing, Sept. 28, 1988. Includes Rolls Royce models.

Mr. D'AMATO. I know that a number of my colleagues wish to speak to this issue. I am going to put a few more details in after they have an opportunity to say something.

But I wish to tell you something. I think it is absolutely unfair that we have a system that says if you have that big limousine and you can spend $400 a month to have somebody chauffeur you into the city, that your employer can pay for all of it and not one penny of that is treated as income. But if you come in on the subway or you come in on the bus, that your employer can only pay up to $15 a month and that anything over that is taxable. It does not make sense. When we look at the levels of pollution in our cities which are staggering, we should not be subsidizing them.

Mr. NICKLES. Will the Senator yield for a question?

Mr. D'AMATO. Certainly.

Mr. NICKLES. I am not that familiar with the gas guzzler tax. Does the gas guzzler tax apply to a Lincoln Continental? If it does, I just wonder how much it is?

Mr. D'AMATO. The Lincoln Continental is not one of those gas guzzlers. I am saying the only cars, American made cars that are included are the Chrysler Newport/Fifth Avenue, which we understand is going to be discontinued; the Dodge Diplomat, and the Gran Fury Plymouth.

Mr. NICKLES. How much is the gas guzzler tax, say, for the Plymouth that was mentioned?

Mr. D'AMATO. The Plymouth, I believe, is $1,300. That goes up to $2,600. That is due to be phased out. They are not going to be producing it anymore.

Mr. NICKLES. So this is double the gas guzzler tax?

Mr. D'AMATO. That is right. In order to pay for this fringe benefit, it doubles the gas guzzler tax.

Mr. NICKLES. I am not that familiar with these kinds of cars. How many of those care that have the tax were made last year?

Mr. D'AMATO. Well, as I indicated to you, we have the Gran Fury, the Chrysler Newport, the Dodge Diplomat, and the Cadillac Allante. Out of those four, three of them will be discontinued, their lines, and only the Cadillac will continue.

Mr. NICKLES. And the tax on the Cadillac?

Mr. D'AMATO. And the tax on that Cadillac is $1,300.

Mr. NICKLES. And it will go to $2,600?

Mr. D'AMATO. And it will go to $2,600.

Mr. NICKLES. And what about a Mercedes? Is there a gas guzzler tax on a Mercedes?

Mr. D'AMATO. Yes. Mercedes pays $1,850—the Mercedes Benz sells for $60,000—and it will go to $3,700.

Of course, there is the Maserati, the Ferrari, the Jaguar, and the BMW.

When you are paying up to $200,000 for a car, I do not think that the doubling of the tax for those cars—and what is the price of some of those cars? The Rolls Royce, $199,500; the Aston Martin, $168,000. Doubling that gas guzzler tax—that is why we initially put that in, to encourage conservation, et cetera—I think it makes sense.

Not to mention the fact that just about every major metropolitan area and community, communities in your State, in my State, right across the board, are not going to be in compliance with the Environmental Protection Act as it relates to the ozone, as it relates to carbon monoxide.

We have an incredible problem on our hands. I think that, coupled with the equity issue—I am about to take that on, but I think as some point in time the Finance Committee should look at this.

I do not understand how we allow somebody who can least afford it to be placed in a situation where they do not get a fringe benefit, for example, for travel to work, where those who are most able to afford can drive their car in, pay $200, $300, up to $400 a month and have the American taxpayer foot that bill as a deduction. His business can pay for that. He does not treat it as income.

But if you come in on the bus—and you have a lot of people coming in on the buses in different communities, use the mass transit system here in Washington—why, you do not get a deduction.

Mr. NICKLES. Will the Senator yield for one more question?

Thinking of a more rural State, in my State we do not have a mass transit system. We do have buses.

Mr. D'AMATO. That would be eligible, buses.

Mr. NICKLES. So that individual could deduct how much?

Mr. D'AMATO. Up to $38. Under this provision, up to $38 would not be taxable. And if the boss, for example, said, "Look, it costs you $60 a month to take the bus. I want to give you $60 a month," then they would only pay taxes on that amount over $38, which would be the $22.

At the present time, if he were to do that, they would have to pay income taxes on the entire $60 a month.

Mr. NICKLES. But right now, if your provision passes, if you just have "Joe Lunchbucket" that is working someplace in, say, Idaho and he drives his car to work, does he get to deduct part of that expense for going to work?

Mr. D'AMATO. At the present time he does. The person, once again, who is allowed that deduction—and it is generally not "Joe Blow," it is generally salesmen, and so forth.

But if you have "Mr. Corporate Executive" at the top end who drives in and pays for his parking space $200 or $300 or $400, his company is allowed to pick that up for him to park his car there to get to work.

Mr. NICKLES. I understand that. But, as far as regular commuting expenses?

Mr. D'AMATO. They do not permit that. Regular commuting is not permitted as a course, and we do not affect that.

Mr. SYMMS. Will the Senator yield for a question?

Mr. D'AMATO. Yes.

Mr. SYMMS. How much of the cost of the ticket of the people, for example, riding on the Long Island train, 168,000 people, how much of that is already subsidized by the taxpayers? If they pay $40 a month, how much is it costing in operating subsidies?

Mr. D'AMATO. In operating subsidies? I can get that number for my colleague, but it is less than 10 percent? Much less than 10 percent as it relates to all of mass transit. As it relates to the Long Island Railroad, I would think it would be about in the area of 5 to 6 percent.

I am going to ask one of my staffers if they would get that number. It is about 5 percent. You are talking about Federal dollars.

But, I might say, we do not really want to get into that kind of debate, I do not think. Because if we are going to get into dollars to subsidize transportation, then we get into dollars which taxpayers are paying for the roads, dollars which are being paid for other kinds of things. I do not think that is really relevant.

Mr. SYMMS. If the Senator will yield further, just so there is not any misunderstanding, if John Smith, who is, say, working in Keuterville, ID, in a sawmill and he drives 30 miles, 40 miles round trip every day from Tamarack, and he drives in a four-wheel drive pickup that is a gas guzzler, because of inclement weather in the winter and so forth, he is paying all that out of his pocket; is that not correct? There is no subsidy.

Mr. D'AMATO. No subsidy.

Mr. SYMMS. As far as the road, he pays 9 cents a gallon for the roads.

Mr. D'AMATO. No subsidy for the person who takes his vehicle into work, that is correct.

Mr. SYMMS. Can the Senator expand this amendment to include him?

Mr. D'AMATO. I would love to do that, but I think that is something we can ask the full committee to undertake a full review of. I do not think there are the dollars here to do that. I think it is legitimate.

Mr. SYMMS. I thank my good friend.

The PRESIDING OFFICER. The Senator from New York still has the floor.

Mr. D'AMATO. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I am pleased to rise as the principle cosponsor of the D'Amato/DeConcini amendment to increase the allowed nontaxable fringe benefit for mass transit and van pooling. For too long our Tax Code has discouraged the use of mass transit, and in light of our environmental situation, this is nonsense.

Nearly 100 metropolitan areas in this country failed to meet clean air standards. Car pollution is the main reason for this failure. The clearest response to this problem is to encourage the use of mass transit, including van pools. Yet our Tax Code is structured so that parking fringe benefits are nontaxable while mass transit and van pool fringe benefits are nontaxable only to the extent that they do not exceed $15 a month. The D'Amato/DeConcini amendment seeks to increase that to $60 a month.

In 1950 there were less than 50 million cars on the world's roads, 85 percent of those in North America. Now, only one generation later, the worldwide figure is approaching 350 million. In the Phoenix metropolitan area it is estimated that 88.5 percent of the carbon monoxide polluting the air is emitted from on-road vehicles. The problem will not be solved by the amendment offered by my good friend from New York and myself, but we can improve the situation.

Because of the constraints imposed by the budget process, we are forced to find a revenue offset for this proposal. I believe that the offset found by Senator D'AMATO is inspired. It seems only appropriate that those cars that are least environmentally sound in terms of consuming a new renewable resource, oil, should pay the price for this amendment.

Let me tell my colleagues about some of the cars who will pay that price. There is the Aston Martin Loganda with a list price of $185,000 and with a rating of 9 miles per gallon. Or there is the Ferrari Testarosa at 11 miles per gallon costing $177,500. There is also the most economical Ferrari GTS 328/GTB selling for $79,000 getting 15 miles per gallon. The list goes on and it is full of Maseratis, Rolls Royces, and Jaguars. For the average working American struggling to make ends meet and having to pay taxes on their passes to ride the bus, this amendment seems ultimately fair.

I urge my colleague to join with us and support fairness for the American worker.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. I thank the Chair. I rise to indicate that I strongly oppose the amendment and am joined by many others in opposition to the amendment.

The Treasury Department opposes boosting the gas guzzler tax, which puts the Reagan administration on record on that issue.

The people who are in the business of manufacturing and selling cars in this country are very strongly against it. And there is an impact here that potentially goes way beyond what the Senator from New York, my good friend, has indicated.

The problem here, if we raise this gas guzzler tax, does not just relate to the miles per gallon measurements and performance of cars today. We are also considering environmental requirements to be imposed on cars in the future. In fact, we have had a bill, the Clean Air Act, under development here that just recently was taken down that would require cars to add additional equipment that would bring them into reach of the gas guzzler tax.

The question was posed by the Senator from Oklahoma about whether we are talking about cars or vehicles owned by people in normal circumstances, not luxury cars, just everyday vehicles. We face the very real prospect, because of the likelihood of changes in clean air requirements, that the additional equipment that is going to be mandated at some point to go on vehicles will drive down the miles per gallon that is achieved and therefore take a whole set of vehicles over the threshold and subject them to a tax.

A lot of people that are driving pickup trucks, driving jeeps, driving large-sized station wagons for large families, even vans that fall into that category, are going to face the prospect of paying this tax.

Mr. D'AMATO. Will the Senator yield?

Mr. RIEGLE. Not at this point. I will, when I finish. I will be happy to yield to my friend when I finish, but I have waited some time to get the floor and I listened with great interest to what he said here. I want to put some facts on the record on the other side.

I also think that it is very bad practice for us, this late in the session, to attempt to write a very complex tax provision into a technical corrections tax bill. The reason that we are here on the floor is to deal with a very narrow set of issues having to do with perfecting some of the errors and omissions in the last major tax bill. That is the purpose of this technical corrections bill. That is why it is called a technical corrections bill, to try to fix technical faults that were in the original legislation.

What the Senator from New York is doing here, and what certain other amendments are attempting to do, is to introduce brand new issues that are very complex, to which lengthy time ought to be devoted to discuss them, discuss all the implications. We ought to have full-scale hearing records available to us if we are going to consider in a serious way making a major policy change, which is what the Senator from New York is proposing. To make a major policy change on a technical corrections bill just does not make sense.

It does not make sense. I say this without disrespect to him, for this amendment, or any one of a host of amendments that might be raised that really fall way outside the bounds of why we are here, interferes with our attempt to try to make only technical corrections with the tax bill. Certainly if we are going to broaden that out even marginally, we should deal with the issues that have come through on the bill as it has come out of committee.

But to go afield now into major changes in tax law that have all other kinds of implications, really, this is not the right setting, it is not the right time. At an appropriate point, when I finish my remarks and others have had their fair chance to speak, it will be my intention to move to table the amendment of the Senator.

I would also just indicate that if that motion to table does not succeed, then it leaves me with the only recourse that I have and that is to conduct the debate at length that we would normally have in a committee hearing, to lay this thing out in the detail that is required if we are going to actually make a decision up or down on the merits. I hope that does not happen. But if it comes to that, I have no choice under the circumstances.

But I want to again come back to the point I was making a moment ago and that is that we are not just talking about the cars that are presently on that so-called gas guzzler list with the low miles per gallon performance to which the tax now applies. The fact is we came very close to passing clean air legislation. Negotiations have gone on for some time.

I have a letter here, for instance, from the Automobile Dealers Association. They write on behalf of the 20,000 domestic and foreign auto dealers in the country. They point out that the pending changes in the environmental laws and regulations that I just made reference to, as they have been described and as they have been designed, would bring up to 27 percent, up to 27 percent of all domestic automobiles under the tax.

That is the direction that this would take us. We cannot close our eyes to the implications of the need for additional equipment that is likely to be mandated, that is going to be necessitated by clean air standards, and is going to have the consequences of decreasing miles per gallon performance.

The engineers will tell you there is a tradeoff for those things. Those are the kinds of considerations that have to be taken into account before we make some wholesale change in the law without considering those kinds of implications. I think that is one of the reasons why the Treasury Department does not support this proposal that has been put forward here.

It has been estimated that the changes in the pollution control devices could end up cutting fuel efficiency by an average of 10 percent. That is a very major cut.

We may find at some point that we are going to have to do that because we may decide that the clean air consideration count for more than the question of fuel economy. But if we are going to do that, then we are going to move a whole class of vehicles and vehicle owners over into the tax area here with this special tax. I think that is something that we would want to consider at great length.

I do not think that this is something we want to do here at 5 o'clock in the evening on a Friday as we are finishing the session of Congress working on a technical corrections bill dealing with tax issues.

I do not think that is the time to do it. I have other material that has been generated by the automobile manufacturers of the country. They indicate that an increase in the tax of the kind that is being proposed here could have an effect, when taken in combination with these very likely changes in emission control requirements that could end up causing a surcharge of about 7 percent spread across all cars produced in the country because of the need to make massive adjustments across a broad number of product lines. They have given us an estimate that they could see it in the end reducing sales of U.S. cars by as much as 3 percent. A 3-percent cut, by the way, would convert to about 300,000 cars.

I know others wish to speak. I want to say one other thing, if I may. As a member of the Senate Banking Committee, with the Senator from New York, I have a great interest in mass transportation. I am with him on the issue of trying to figure out how we can do more to strengthen our mass transportation system in the country, to make it efficient, to make it more readily available, to try to provide greater financial strength so that we can offer mass transportation options to more people so that commuters can find that they have a way economically to get to and from work each day and for other purposes.

So I am entirely open to that, and I am willing to work with the Senator from New York on the Senate Banking Committee in the future to see what we can do to strengthen mass transit. We normally work together on that issue. But to come in here at the 11th hour with a tax that is going to be applied on vehicles and try to add that to a technical corrections bill is just not appropriate. It is not fair; it is not sound; it is not a way to make good national policy; and it is just not something this Senator can agree to. With that, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, once in a while when we get a bill around here that has tremendous emotional appeal—and this is one of them—here is a chance to take sides on behalf of the subway riders and the van poolers and the people who are riding the bus and pay for it by the guys who are driving around in the Maseratis and Rolls Royces. So there is a real emotional appeal.

Fortunately, this amendment is also sustained by a very strong logical foundation. This is a very good idea, in my opinion. I congratulate the Senator from New York for advancing this theory. I am glad to be a cosponsor of it.

You might wonder, why would a Senator from Colorado want to do something at the expense of drivers to help subway riders out? Because I guess it is a known fact that out our way we do not have a lot of subways. The reason is very simple, because this amendment will also be of help to van pooling and buses, and if there is one thing that is absolutely clear in places like Denver and Phoenix, and all over the Mountain States where air pollution is a growing menace, is that some way or another we need to encourage people to ride to work together, whether that is in a van pool or whether it is in a bus or whether at some time in the future it may be by some more elegant form of mass transit, like a monorail or light rail or train.

This amendment is not a tiny step but a modest, substantial step toward encouraging through our Tax Code the use of mass transportation and pays for it neatly. It pays for it in a way that internalizes the cost of the pollution on those vehicles which most heavily contribute to it.

In a generic way, and I do not want to get off too far afield here, but in a generic way, that is the way we ought to solve these problems of pollution, which internalizes the cost of cleaning it up so that those who want to drive a big gas-guzzling car and can afford to do so pay the freight for cleaning it up.

The same principle applies in strip mining. The people who want to use coal ought to pay the cost of cleaning up the strip mine when it is done, and so on through other forms of environmental pollution. The Senator from New York is correct, in my opinion. I urge the adoption of the amendment.

I want to respond briefly to two points made by the Senator from Michigan. First of all, nobody who drives a four-wheel drive vehicle or anybody who drives a jeep or a pickup truck or anything has anything to fear under this amendment because they are simply not affected by it. They are not affected by the present gas-guzzlers' tax, and they are not affected in the Senator's amendment.

Finally, I note with interest, but not too much persuasion, that the Treasury Department is opposed to this. Of course the Treasury Department is opposed to this. The Treasury Department is, almost without exception, always opposed to any change in the Tax Code which they have not initiated. I do not say this as a matter of criticism or a jest but simply as a statement of fact.

On one occasion in the Finance Committee, I asked the Treasury Department's opinion on a pending proposal, and they said they were against it and testified with some eloquence for the reason the proposed change should not be made. Just as a matter of historical interest, I went back over a period of several years, all of the years of the current administration to find out on how many occasions the Treasury had been in favor of any tax change, large or small, up to that date—this is a year or 2 ago—proposed by anybody other than the Treasury.

The number of occasions when that happened could be counted on the fingers of one hand. That is their job to be against proposed changes, to be the devil's advocate.

It so happened the particular change which was under consideration when this thought crossed my mind was a change I had proposed. It so happened I was changing a provision which I had originally introduced to reverse an action taken earlier by Congress. When I proposed the change in the first place, Treasury was against it. When I wanted to change it back to the way it was in the first place, they again testified against it.

My guess is if the Senator's amendment is adopted and somebody comes along and wants to change it back to the way it is now, they will be against the further change just as they are against this change today. I do not say that to criticize. Actually, Treasury should come in here and tell us all the reasons why the status quo deserves to be maintained on every amendment because we need to hear that. But I say to my friends in the Senate, after we have heard all those arguments in this case, we ought to go ahead and adopt the amendment.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, the distinguished Senator from Colorado reminds me of the opening scene in Duck Soup in which Groucho, having become president of a college, sings a little song in which he says, "Your proposition may be good, but let one thing be understood: I'm agin it."

That is the position of the Department of the Treasury on any new tax proposal. Having agreed with him with respect to the Finance Committee, Mr. President, I rise as a cosponsor to plead with the Senators to consider, if this measure does not go forward, what their cities are facing. And now I speak as a member of the Committee on Environment and Public Works.

Mr. President, we have a Clean Air Act in this country, and it has standards for circumambient air, as the term is, that sort of bubbles over a metropolitan area.

In May of this year, the Environmental Protection Agency listed over 100 areas in the country, including

Chicago, Denver, St. Louis, Cleveland, Atlanta, New York, Los Angeles, that failed either the carbon monoxide standards or the ozone standards or both.

In that setting, the law, as it now stands, is going to commence to prohibit the construction of new industrial facilities. This has already happened in Los Angeles, in the metropolitan area, and other areas as well.

A similar ban is in effect in Kentucky, the suburbs of Cincinnati, certain areas of Illinois; St. Cloud, MN; Albuquerque, NM; and others. In New York City, which is probably representative, 90 percent of the carbon monoxide and 50 percent of the ozone in the air is traced to automotive combustion.

Now, Mr. President, the Senator from New York, my distinguished colleague and friend, has made a simple point. The Tax Code now encourages behavior which the environmental laws will soon begin penalizing. The Tax Code provides unlimited tax-free treatment for employer provided parking. The value of this parking can run from $200 to $400 a month in some cities. But the Code permits only $15 a month in tax-free treatment for mass transit benefits provided by an employer. The disparity is dramatic. The policy encourages automobile use and fossil fuel combustion. The results show in the EPA measurements of air quality across the country.

As we begin to find the Federal Government prohibiting the construction of industrial facilities and office building facilities in these cities, we will ask ourselves have we not encouraged through the Tax Code precisely what we penalize through the environmental laws? Is that coherent public policy?

Mr. President, it is not. I hope the Senate will realize the elemental sense of this amendment. I hope they will hear the Senator from Colorado, who is quite right; anything not thought up in Treasury is never supported by them. And in the year's time, if we do not do this, we will be back and back, and in the end we either will do this or we will abandon the clean air standards which we began to establish in the 1970's and which have had such a wholly beneficent effect upon our people and our society as a whole.

Mr. President, I understand fully well how my friend from Michigan might feel, but I hope the Senators might consider what is coming to their regions in the way of EPA sanctions if we do not act.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from New York.

Mr. D'AMATO. Mr. President, I do not think that continuing the debate, given my colleague's position—he is going to move to table—serves any useful purpose, but I would like the record to reflect that Jeeps and four-wheel-drive vehicles will not be affected. They fall outside the purview of this legislation. Pickup trucks fall outside of the purview of this legislation. In 26 United States Code, section 4064 it says automobiles less than or over 6,000 pounds are outside this and it does not apply to nonpassenger vehicles. So that is just not accurate. They have not been covered heretofore and they would not be covered with this legislation in any event. Only those vehicles that fall under the section now will be covered.

We are not imposing a new tax. We are saying that those who are paying this and those who fall outside of the 22.5 mile-per-gallon requirement under that legislation—we are not changing and saying more people will be covered, different people are covered, we are expanding the list. We are saying those who fall outside now will pay more. We are not expanding the numbers, the group.

Now, who are they? I have them. If there are some we missed, I would like to know. Aston Martin, Ferrari, Rolls Royce, BMW, Jaguar, Mercedes Benz, Porsche, Maserati, Volvo, one Cadillac, Cadillac Allante; Plymouth Gran Fury, they are going to discontinue it; Chrysler Newport Fifth Avenue, they are going to discontinue it; Dodge Diplomat, they are going to discontinue it.

We have an opportunity to say to the little guy we are going to let the employer give him a fringe benefit if he uses the bus and mass transportation up to $38, and we are going to pay for it. We have a way to pay for it, a way that begins to address the environmental problems of every major city in the country. It is going to be one heck of a thing when we come to the time we are going to shut down buildings in our major cities. That is what you are coming to. It makes sense. It does not make sense to say we will pay $400 a month for a guy to park his automobile, but as it relates to the little guy who uses mass transportation, the Long Island Railroad, the bus, the carpool, van, his boss cannot give him that opportunity.

I respect those who are concerned that this may increase unemployment. It is simply not true. It is not so. If somebody is going to pay $168,000 for an Aston Martin, if it is $3,800 more in additional taxes, that is not going to make the difference. But it will make the difference as it relates to surveys. Comprehensive surveys say anywhere from 16 to 27 percent of the drivers say, if they get tax-free employer subsidies as it relates to using transportation, they will use mass transportation. That would mean 25,000 fewer cars going into the city of New York. I would suggest to you that you will find that in many of our major urban areas, Chicago, Philadelphia, Pittsburgh, Los Angeles, you would find the same kind of situation.

I yield the floor.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I want to address one point before accommodating anybody else who wants to speak and I will make the motion to table the amendment.

I referenced earlier a listing of vehicles that are very close now to the 22.5 mile-per-gallon threshold. I would like to list some of them because my point is prospective. My point is that if we move in this direction without recognizing what the clean air requirements are likely to be in the next year or 2, the impact to cross-connect with this fuel economy standard, we are not facing reality.

These are some of the vehicles we are talking about. We are talking about the Chevrolet Caprice, both sedans and station wagons. I mentioned station wagons before. They sell at an average price of $23,840; the Pontiac Grand Am, six-cylinder model, listing at $11,313; the Oldsmobile Calais—I am just now talking General Motors products—six-cylinder lists at $12,063; the Buick LeSabre, both the sedan and the wagon, listing at $16,510; the Buick Electra, the sedan and again the station wagon model, the Buick Skylark, the six-cylinder model listing at a price of $11,723. We are not talking about high-priced cars as cars today sell for. We are not talking about the cars that are up in the $50,000, $100,000 and above range, which are the examples that were cited in terms of these very exotic foreign cars that get the very low mileage per gallon.

We are talking about a very real threat to cars that are right on the threshold—and station wagons in the categories I am talking about.

In terms of the Ford line, their all-wheel drive Tempo and Topaz listing for $10,500 is in that category. Their 3.8 litre Taurus sedan listing at $12,500 is in that category, and there are another 15 that I could name just within the Ford Motor Co. range. I will just mention in the Chrysler line, the 3 litre Eagle Premier LX listing at $12,474 which also falls into this category.

We are talking about a whole range of vehicles bought by working families, and the notion that if we are going to go ahead and move in this direction, that somehow in the future we are going to exempt trucks, in which many people commute to work, or we are going to exempt Jeeps or off-road vehicles, many of which are used for driving on a more regular basis than just weekend use or recreational use, or that we are going to exempt in the future—I am talking prospectively—vans or other kinds of vehicles that also are not known for high mileage. We have to think of the implications of this connection to tougher and tougher emissions standards having to do with that side of the engineering performance of a vehicle.

And so you are going to see as a tradeoff to the tougher and tougher standards as they relate to emissions from cars, a tradeoff with lower miles per gallon. I wish that were not so. But we are trapped with that kind of relationship. So that is exactly what I am talking about. If we start down this road throwing together these amendments at the last minute in this way, we are going to walk right into those kinds of implications, and people ought to know it. That is why we do not formally do things this way. We go through the committee process. We go through hearings. Everyone has a chance to be heard. We make a considered judgment. The committee brings it to the floor, and if somebody wants to make an amendment that is germane to the committee bill, then so be it. That is not what we see here.

What we see is an effort to come in at the tail end of the technical corrections bill and try to write a major piece of law that has differing consequences as we go down the road and has very material consequences for working families, other kinds of vehicles not on the list, and domestic producers.

That means jobs in America. Before we are going to do something here that is going to have a major job impact in this country, I think we ought to understand it. We ought to understand it fully. That does not mean I am not for mass transit. I am for mass transit. I fight for mass transit along with the Senator from New York. But you cannot come in here at the last minute with a proposal as sweeping as this one and try to solve one problem by creating another. It just does not make sense. I want to move to table. I am prepared to do so now if the Senator is agreeable.

Mr. D'AMATO. If the Senator will yield for the purposes to add cosponsors, I ask unanimous consent that Senators MURKOWSKI and DURENBERGER be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, I rise in support of the amendment being offered by the distinguished Senator from New York Mr. D'AMATO. This amendment corrects an inequity contained in the 1988 Tax Reform Act that encourages the use of private vehicles over mass transit. It would extend to employees who take advantage of ridesharing, van-pooling or mass transit similar tax-free benefits that are presently enjoyed by employees who drive to work and receive employer-provided parking.

Under current law, employers are allowed to give workers up to $15 a month toward mass transit costs which the employee receives tax-free. However, if more than $15 is given, then the entire exemption is lost. In contrast, employees who drive to work and receive employer-provided parking are completely exempt from taxation.

The amendment being offered would raise the ceiling so that employees who rideshare, van pool or use mass transit could receive $38 a month in employer-provided subsidy tax-free.

Mr. President, transportation sources account for over half of our air pollution nationwide. At a time when more than 100 metropolitan areas around the country do not meet Federal air quality standards—this amendment makes sense. It also makes sense in terms of reducing traffic congestion and conserving energy. We should not have a bias built into the Tax Code that discourages forms of public transportation.

It is estimated that the increase in the ceiling will cost $400 million over 5 years. In order to be revenue-neutral, the amendment would double the gas-guzzler tax.

The gas guzzler tax is based on the EPA mileage rating of each car. The tax applies only to passenger vehicles, not trucks, jeeps, or vans. It is imposed on the sale by the manufacturer of each automobile that does not meet established fuel efficiency standards. The gas guzzler tax, since it was enacted in 1978 has never been levied against a domestic model car—instead it has applied to new, expensive foreign model cars which are designed for luxury and performance with little or no attention to fuel efficiency. Cars like the Lamborghini Countach that gets only 8.8 miles per gallon but costs over $130,000 and the Aston Martin Volante Lagonda that guzzles gas at the rate of 11 miles per gallon.

Mr. President, we need laws that encourage people to use mass transit and other forms of more efficient transportation to help solve our traffic congestion, energy and air quality problems. The amendment we are considering now does just that. It corrects a provision in current law which not only does not encourage the use of mass transit but instead promotes the further use of single occupant automobiles. I hope that all of my colleagues will support the adoption of this amendment.

Mr. WARNER. Mr. President, in many communities across the country, transportation has become the No. 1 local issue. Continued economic growth in the form of new houses, offices, and shops has not been complemented by the necessary transportation infrastructure. As a consequence there has been increasing traffic, automobile accidents and a loss of economic productivity in the regions affected.

Here in the Washington area, for example, trips by car have become more and more frustrating. In Northern Virginia our streets are jammed with cars and trucks beginning at dawn, with no relief until late morning. This same grueling process is repeated each evening.

Mr. President, further road construction is one solution. However, the cost to build and expand the transportation infrastructure in urban and suburban communities is extremely expensive and often extremely difficult. One alternative to addressing this national concern is to encourage the use of car pools and mass transit.

The amendment offered by the Senator from New York is a fine example of how the Federal Government can work with State and local governments and the private sector to encourage the use of the already established and funded mass transit and organized van pools.

A provision of the Tax Reform Act of 1986 which gives employers the opportunity to provide their employees a $15-a-month tax-exempt benefit to commute, using mass transit or car pools. This proposal will expand this well-thought-out program to more accurately reflect the actual cost of commuting in urban and suburban areas throughout the Nation.

Right here in Washington, DC, 36 percent of all trips made to work use the established mass transit system. And I understand that ridership continues to increase while the costs of mass transit services has remained relatively stable.

Since passage of the Tax Reform Act 2 years ago, the Washington Area Metropolitan Transit Authority has implemented a program with private industry to encourage use of this exemption. At this time, it is my understanding over 8,000 employees from 90 different businesses thoughout the Washington area have worked together to implement this plan. That's 8,000 fewer cars on our region's roads. A $15 mass transit benefit is insufficient in this or any other city, and barely covers the average commuting costs for the first 5 days of each month.

This city is no different than hundreds of others across the Nation when it comes to mass transit. Every time mass transit is used in lieu of adding to congestion on our roadways, State and local governments are relieved from having to pay for more asphalt and rights-of-way.

We all know that budget constraints have forced Congress to make tough choices about spending. Past Congresses have studied the facts and figures, and made the choice of encouraging and implementing mass transit and van pooling as an alternative to the more traditional one passenger vehicles—including support for the Metrorail here in the Washington, DC area.

Increasing this exemption will help encourage wider use of mass transit. This proposal allows private industry to make a significant contribution to helping State and local governments to address traffic congestion and some of its attendants environmental and safety problems.

Mr. D'AMATO. I have no objection to moving forward with the motion to table.

Mr. RIEGLE. Mr. President, seeing no one else wishing to speak, I now move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Michigan to lay on the table the amendment of the Senator from New York.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Texas [Mr. BENTSEN], the Senator from Delaware [Mr. BIDEN], the Senator from Arizona [Mr. DECONCINI], the Senator from Massachusetts [Mr. KERRY], the Senator from Georgia [Mr. NUNN], and the Senator from Illinois [Mr. SIMON], are necessarily absent.

I further announce that the Senator from Hawaii [Mr. INOUYE], is absent on official business.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI], would vote "nay."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Mississippi [Mr. COCHRAN], the Senator from Missouri [Mr. DANFORTH], the Senator from Washington [Mr. EVANS], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON], are necessarily absent.

On this vote, the Senator from Wyoming [Mr. WALLOP] is paired with the Senator from California [Mr. WILSON].

If present and voting, the Senator from Wyoming would vote "yea" and the Senator from California would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 43, nays 41, as follows:

[Rollcall Vote No. 358 Leg.]

YEAS—43

Baucus
Bingaman
Boren
Boschwitz
Breaux
Bumpers
Burdick
Byrd
Chiles
Conrad
Daschle
Dixon
Dodd
Exon
Ford
Glenn
Gore
Graham
Gramm
Hecht
Heflin
Helms
Hollings
Humphrey
Johnston
Levin
Lugar
Matsunaga
McConnell
Melcher
Nickles
Packwood
Proxmire
Pryor
Riegle
Rockefeller
Roth
Sanford
Sasser
Shelby
Stafford
Stennis
Symms

NAYS—41

Armstrong
Bradley
Chafee
Cohen
Cranston
D'Amato
Dole
Domenici
Durenberger
Fowler
Garn
Grassley
Harkin
Hatch
Hatfield
Heinz
Kassebaum
Kasten
Kennedy
Lautenberg
Leahy
McCain
McClure
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Pell
Pressler
Reid
Rudman
Sarbanes
Simpson
Specter
Stevens
Thurmond
Trible
Warner
Weicker
Wirth

NOT VOTING—16

Adams
Bentsen
Biden
Bond
Cochran
Danforth
DeConcini
Evans
Inouye
Karnes
Kerry
Nunn
Quayle
Simon
Wallop
Wilson

So the motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3606

(Purpose: To repeal the restrictions on abortion that are contained in the fiscal year 1989 District of Columbia appropriations Act)

Mr. BRADLEY. Mr. President, I sent an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 3606.

Mr. BRADLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . DISTRICT OF COLUMBIA APPROPRIATIONS.

AMENDMENT NO. 3607 TO AMENDMENT NO. 3606

(Purpose: To repeal the restrictions on abortion that are contained in the fiscal year 1989 District of Columbia appropriations Act)

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. CRANSTON] proposes an amendment numbered 3607 to amendment numbered 3606.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending amendment, add the following:

Section 117 of the Act entitled "An Act Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part ending September 30, 1989, and for other purposes" (Public Law 100-462) is amended to read as follows:

"SEC. 117. The provisions of section 117 of the District of Columbia Appropriations Act, 1988 (Public Law 100-202; 101 Stat. 1329-99) shall apply with regard to Federal funds provided in this Act.".

Mr. CRANSTON. Mr. President, if I could have the attention of Senators for just a moment.

The PRESIDING OFFICER. If we can please have order in the Chamber so the Senate can proceed with its business, the Senator from California may proceed.

Mr. CRANSTON. Mr. President, if I may explain very briefly the situation this amendment produces, it will not take much of the Senate's time. It will not provoke a difficult issue. But it does relate to the D.C. abortion matter that has been involved in discussions on the Senate floor for sometime now and relates to an action that we took in this body not too many days ago preempting the right of the District of Columbia in regard to abortion.

At the end of my statement I will move to table the amendment that we have offered so we can have, as we had on pay equity, a vote to evidence the will of this body on this matter, but after that we will withdraw the amendment so that we will not be confronted by difficulties to tie up the tax bill on this measure.

Mr. President, the amendment that is before you now is quite simple. It repeals those provisions of Public Law 100-462, the fiscal year 1989 appropriations bill for the District of Columbia.

We limit the authority of what we did a few days ago, limit the authority of the government of the District of Columbia to utilize its own non-Federal funds to pay for abortions for needy women.

We would instead by our amendment provide the same restrictions on funding of abortions with Federal funds that have been attached to the D.C. appropriations bill in the past.

Those restrictions are as follows: No Federal funds can be used for abortion except where the life of the mother would be endangered or medical procedures necessary for rape or incest victims where promptly reported by a law enforcement agency or public health agency or for termination of an ectopic pregnancy which is a life-threatening condition.

In other words, the amendment that Senator BRADLEY and I in effect have offered would restore the status quo that existed up until Friday night last week, when the Senate receded to the House on the fiscal 1989 bill by a one-vote margin, a one-vote margin that I believe did not reflect the true views of this body.

That "status quo" gave the government of the District of Columbia that same right they formerly had enjoyed by every other State or locality in the Nation, the right to make non-Federal funds available to pay for abortions for needy women. The legislation enacted on Saturday stripped the District of Columbia of that power and singled out the residents of the District of Columbia to be the only citizens in this Nation who have been denied, by an act of Congress, the right to have this decision made by their own elected officials.

Mr. President, the situation that confronted the Senate on Friday evening was extraordinary. Those pressures led to a reversal of a policy postion that the Senate had previously adopted by very wide margins. In July of this year, the Senate rejected the House provisions by a vote of 51 to 34; in 1987, we rejected it by a margin of 60 to 39.

This amendment that we have now offered would allow us, without the pressures that existed last week, to reestablish the Senate's position on this matter, even though we know we cannot make that position law at the present time.

Mr. President, I do not think that we need to have a long debate on this issue and there will not be a debate on this issue. A matter that has been debated over and over again.

Cutting off financial assistance to needy women in the District of Columbia to pay for the costs of abortions will not bring an end to abortions in the District of Columbia. It will simply drive poor women into later and more dangerous abortions or into the hands of those willing to provide cut-rate services.

Mr. President, I recognize that abortion is a deeply divisive issue, and there are strongly held views on all sides of this aisle and on all sides of this issue. That does not, however, justify subjecting thousands of poor women who happen to live in the District of Columbia to discriminatory treatment. The fact that residents of the District of Columbia have no congressional representation makes this unequal treatment even more unfair.

I want to repeat now before I close that we are in the same difficult procedural position that faced us on pay equity. I presume that some of the same Senators who prevented us from getting an up-and-down vote on pay equity would prevent us from getting an up-and-down vote on this amendment by talking, delaying until it had to be taken down to move the tax corrections measure.

It has been alleged also that adoption of this amendment will kill the tax technical corrections bill. That certainly is not a result that any of us favor.

I also recognize the position of the House on this issue and that prospects are against enactment of our amendment in any case at this time.

At the same time, I do think it is important that the Senate make clear its position on this issue and make clear that last Friday's vote does not reflect the view of this body.

So in order to expedite business but in order to give us an opportunity to go on record on this matter, I am going to move to table the second-degree amendment I have just offered but, a on pay equity, I urge a "no" vote on my tabling motion, the same "no" vote that we attained on the tabling motion of Senator EVANS on pay equity.

Immediately after this vote, if the measure is not tabled, we will remove the first-degree amendment and thus remove this issue from the tax bill and then we can go on to other matters that will allow Senators this procedure to clarify their positions and to make plain, I trust, the position of the Senate without jeopardizing the tax bill.

I, therefore, move to table the amendment that I have offered.

Mr. NICKLES. Will the Senator withhold just for a few minutes?

Mr. CRANSTON. I will withhold without losing my right to proceed with my tabling motion, and without losing my right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. NICKLES. I thank the Senator.

Mr. President, I wish to thank the Senator from California for his statement that he would withdraw the amendment if the motion to table is not successful, because I happen to agree with the Senator from California that if this amendment was adopted that he would in fact kill this bill. So I appreciate the Senator's statement.

I understand that he wants a vote on this issue. I might tell my colleague that we have had a vote on this issue. We have had a couple of votes on this issue. Actualy, we had one Friday night. The Senator is correct, maybe some Senators voted one way or another so we would finish the D.C. appropriations bill for the year. We have had a vote on this issue almost evey year.

So the votes are there. If anyone wants to use the votes for political purposes on abortion, that is certainly available. We have had votes and we will have many more, I am sure.

A couple of points concerning the substance of the issue. My good friend, the Senator from California, says, "Well, we don't want to tell D.C. how to use their funds."

But the facts are that D.C. receives substantial Federal funds which justifies our involvement. As a matter of fact, this is the only city in the Nation that receives a Federal payment of approximately $536 million.

It also receives an additional $500 million in additional Government grants and reimbursements. So it receives over $1 billion, and certainly for a city of its size, that is rather unusual. And the money is fungible. If we do not put on some restriction, such as the language that was agreed to by the House and the Senate last week, what we would have is basically a continued policy of abortion on demand.

I think that is reprehensible. Certainly, in our Nation's capital, we should be setting an example. I do not know if many of our colleagues are aware of it, but in our Nation's Capital we actually have 1½ abortions performed for every live birth. I will repeat that. It is kind of a staggering statistic, but it shows you what has actually happened which denigrated in our Nation's Capital. But we have 1½ abortions performed for every single live birth in our Nation's Capital. That bothers this Senator.

It is a direct result of a lot of things—maybe a moral decline. It actually happens that half of the people that have had abortions paid for by taxpayers' dollars, they are not having their first abortion, they are actually having their second or third. And that is the troubling thing. It seems as if a lot of people are using abortions as another method of birth control. And that is also troubling.

So, again, this issue has been debated. It is not my intention to elaborate on it any longer. We have already debated it and voted on it. I do not believe we are going to change any votes in the Senate. I would be surprised if we did.

Again, I am pleased that the Senator has announced that he would withdraw his amendment at the conclusion of the motion to table. So I urge my colleagues to support the motion to table. We have in our Nation's Captial right now—we have read a lot about it in the last couple of days—approximately 3,500 abortions performed with taxpayers' dollars in our Nation's Capital. We have a chance to change that. We have a chance to save lives.

So I hope that we will stay with the language that we fought for in the D.C. appropriations bill. Incidentally, I will *tell* my colleagues that we fought over this language, the conferees. And I see my friends, Senator GRASSLEY and Senator REID and others. We fought over this language for literally months. I do not really want to have it reopened tonight and I will work to see that we do not.

Again, I urge my colleagues to vote to table Senator CRANSTON's motion.

Mr. CRANSTON. Mr. President, I will just take one moment to repeat that the Senate has voted on this matter twice in recent times by a good margin voting to substain the position that the District of Columbia women should be treated like other women on the matter of using funds for abortion. The vote was 51 to 34 sustaining the position that I represent in July of this year. It was 60 to 39 representing the position that I represent in 1987.

The issue is, should the District of Columbia be allowed to determine how it shall use its funds or should we dictate to them in a way that is not applied in any other part of the country?

Mr. President, I now move to table my amendment, urging Senators to vote against it, but repeating that we will then withdraw the issue so it will not bog down the tax bill.

Mr. President, I move to table the second-degree amendment now pending. I ask for the yeas and nays.

THE PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 3607. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSON. I announced that the Senator from Washington [Mr. ADAMS], the Senator from Texas [Mr. BENTSEN], the Senator from Delware [Mr. BIDEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Arizona [Mr. DECONCINI], the Senator from Massachusetts [Mr. KERRY], the Senator from Georgia [Mr. NUNN], the Senator from Illinois [Mr. SIMON], are necessarily absent.

I further announce that the Senator from Hawii [Mr. INOUYE], is absent on official business.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Mississippi [Mr. COCHRAN], the Senator from Missouri [Mr. DANFORTH], the Senator from Washington [Mr. Evans], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON], are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 40, nays 43, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—40

Armstrong
Boren
Boschwitz
Breaux
Conrad
D'Amato
Dixon
Dole
Domenici
Durenberger
Exon
Ford
Garn
Gramm
Grassley
Hatch
Hatfield
Hecht
Heflin
Helms
Humphrey
Johnston
Kasten
Lugar
McCain
McClure
McConnell
Melcher
Murkowski
Nickles
Pressler
Proxmire
Reid
Shelby
Stennis
Stevens
Symms
Thurmond
Trible
Warner

NAYS—43

Baucus
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Cranston
Daschle
Dodd
Fowler
Glenn
Gore
Graham
Harkin
Heinz
Hollings
Kassebaum
Kennedy
Lautenberg
Leahy
Levin
Matsunaga
Metzenbaum
Mikulski
Mitchell
Moynihan
Packwood
Pell
Pryor
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Simpson
Specter
Stafford
Weicker
Wirth

NOT VOTING—17

Adams
Bentsen
Biden
Bingaman
Bond
Cochran
Danforth
DeConcini
Evans
Inouye
Karnes
Kerry
Nunn
Quayle
Simon
Wallop
Wilson

So the motion to lay on the table amendment No. 3607 was rejected.

Mr. BRADLEY. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw his amendment. The amendment is withdrawn.

The amendment was withdrawn.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I have the Republican list and the Democratic list of amendments. There are over 100 amendments on these lists and more coming in all the time. The managers and the two leaders have looked over the list, and we have added the names of all Senators, as far as I know, who have up to this point asked that their amendments be added to the list. I think we have had cloakroom requests inquiring about amendments.

The only way we are going to get action completed on this bill is to cut off the list right now, not add any more amendments. This list is crazy——

[Laughter.] Nuts and getting crazier all the time. There are some good amendments on here. I am sure that every Senator who has an amendment listed has good reasons to want to add his amendment to this bill, but I thought it was a technical corrections amendments bill. There are quite a number of amendments to this bill on the list that have nothing to do with taxes. They are nontax amendments and I am sure that there are those amendments that are germane that probably would not fall into the category of being technical corrections amendments.

So I think we ought to settle down and get our senses about us. We are just prolonging the agony for all of us.

With all due respect to the approach, and I do not say this in denigration of those who have done it, this approach of calling up an amendment, offering a second-degree amendment to it and moving to table the second-degree amendment and saying, "If it is not tabled, I will pull everything down." What does that accomplish? That is all right if we were in the middle of the summer. That is the same as offering a sense-of-the-Senate amendment. It means absolutely nothing. This gets all Senators on record for a vote, and we have gone over and over and over getting ourselves on record on that amendment and others.

It just does not make sense. Here we are trying to complete action on a very important bill, technical corrections amendments, and we are here playing games. I say that not in a pejorative sense, but out of what I hope is common sense. We just cannot go on like that. If we want a bill, let us work to get one; if we do not, I will just take it down.

We have 100 amendments. They are on these lists. I send to the desk those lists, and I ask unanimous consent that these lists of amendments constitute the sole amendments that may be called up to this bill. No more amendments may be added.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. The two managers have the official lists, and I am not asking for a time for a vote because I know of at least one amendment on there that I seriously doubt would ever get this bill passed.

I am not asking at this time for a final hour for a vote so that we still, at least up to now, and if the request is agreed to, we will not be locked in on any particular amendment, but at least we will shut off the flow of requests to add to the list.

I ask unanimous consent that the list constitute all of the amendments that may be called up on this bill.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Reserving the right to object, and I shall not object, I want Members on this side to know this list had been scrubbed by the manager on this side, his staff, my staff, the leader's staff, the manager's staff on the other side, Senator BAUCUS. We believe it covers every amendment we are aware of. We had one just dropped in on Iraq sanctions.

I think all the amendments anybody thought of or anybody's staff has thought of are included in these lists. I would say, the majority leader is absolutely correct and I get the indication from the majority leader—he has not said so definitely, and I think it is going to be up to us to show discipline here—to stay in late, late tonight and all day tomorrow.

Now, how badly do you want these amendments? We are going to be here next year. This is a typical tax bill. Everybody cleans out their desk and the wastebasket and says, "I will put it on the tax bill."

It seems to me we should get consent on this list and then in the next hour ask our colleagues how many on each side are willing to drop some of these ludicrous amendments. We have Iraq sanctions, satellites, contra aid, several others that have nothing to do with the Finance Committee.

I would hope that members of the Finance Committee would agree, all of us on the Finance Committee, to table every nontax amendment. There are 20 of us on that committee, and if 20 of us will stand up here and say we are going to table every amendment we might discourage some of this.

I am on that committee. I am willing to do that. I am certain the managers are. There are some amendments we might like, but we have reached a point, as we do in tax bills, if somebody does not take the bull by the horns, we are never going to finish. The majority leader is precisely correct. I just hope that following, if consent is granted, we can have about an hour before the majority leader makes any final decision on tomorrow, to go to our colleagues to try to convince them to save those great amendments for another day.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

Mr. McCLURE. Mr. President, reserving the right to object, and I do not intend to object, I just want assurance from the managers of the bill that the two lists that have now been submitted to the desk are essentially the two lists that many of us examined about an hour ago.

Mr. PACKWOOD. They are essentially the lists except for other additions that might be put on the lists, further amendments.

Mr. McCLURE. I am worried about that because I think a number of us took some time to go through the lists to find out whether there were items that would make it impossible for us to agree.

Mr. PACKWOOD. There is no time agreement on this.

Mr. McCLURE. All right.

Mr. PACKWOOD. There is no agreement. Whoever has an amendment can offer it anyway, so there is no loss.

Mr. McCLURE. I understand. I thank the Senator.

Several Senators addressed the Chair.

Mr. BAUCUS. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, reserving the right to object—and I certainly hope I will not object—I would like to clarify the observations made by my distinguished leader.

If he were to garner the 20 votes of the Finance Committee against the Senator, that would make a difference.

Mr. DOLE. I have not seen the Senator's amendment.

Mr. WARNER. I understand that. I am wondering if we could have a gentleman and gentlewoman's understanding that the leadership might consult with the proponents of that amendment before that rather heavy, guillotine treatment were to be "doled out" should I say.

Mr. DOLE. This could be a battlefield right in here.

Mr. WARNER. This could be a battlefield right in here, and I want to see this important piece of legislation go forward, but if my distinguished leader and the distinguished majority leader would just give me the assurance, say they would provide me with an audience of a minute or two prior to——

Mr. DOLE. It is all right with Bob.

Mr. PACKWOOD. Done. Guaranteed.

Mr. WARNER. Mr. President, I hear statements from the leadership, from the managers of the bill that each Senator is guaranteed a moment or two of audience.

Mr. DOLE. A moment of silence.

Mr. WARNER. I thank my distinguished colleages.

Mr. EXON. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The majority leader's consent request is still before us.

Mr. BYRD. Let me add one thing to the request. I add the provision that second-degree amendments may be in order if they are germane and relevant to the first-degree amendments.

Mr. WARNER. Mr. President, reserving the right to object—and I shall not object—could the leader clarify that? The second-degree amendment is to be germane to the underlying amendment.

Mr. BYRD. Yes, germane and relevant.

Mr. WARNER. I want to make sure they did not have to be germane to the bill.

Mr. WARNER. I thank the Senator.

Mr. BYRD. Yes.

The PRESIDING OFFICER. The Senator from Nebraska has registered a reservation.

Mr. EXON. Reserving the right to object, and I shall not, I want to take a moment to salute the statements that have just been made by the majority and minority leaders. If it is possible, I would like to ask, is it possible to include in the unanimous-consent request something about one's tabling of one's own motion? I think we have some standards to uphold around here. I voted for this body to go on television. I hope that not too many people around the United States are watching to see Senators make a motion, then table it, and then withdraw the underlying motion. It seems to me that puts this body in a very bad light.

I hope that, if possible, we at least could include in the unanimous-consent request a gentlemen's agreement that on this technical corrections bill, which I think is very important and should go forward, we would try our best to be good stewards of what this body stands for and to stop these shenanigans.

There is no person in this body who feels more strongly about abortion than I do, but to see it wracked back and forth on almost every issue which comes before this body is absolutely ridiculous, as important as that measure is.

If it is possible for the leader to ask for a gentlemen's agreement that for the rest of the discussion on the technical corrections bill none of us would move to table our own motions or ask other Senators to do it for us, we could probably speed things along.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request before us?

Mr. BYRD. Mr. President, I add to the request that upon the finalization of the enumerated amendments it be in order to call up the House bill, strike all after the enacting clause, insert in lieu thereof the Senate bill as amended, if amended.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. And that the Senate then proceed to an immediate vote on the House bill as amended by the committee substitute.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE addressed the Chair.

Mr. GORE. Reserving the right to object.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, there is one amendment as far as any second-degree amendments that I have a problem with and that is the amendment by the distinguished Senator from Michigan, Mr. RIEGLE, concerning the Medicare effective date. I have a letter from Senator LUGAR on that matter and I could not agree to that part of the request on second-degree amendments.

Mr. RIEGLE. Maybe we can talk about that a second.

Mr. DOLE. I wonder if we could just agree on the list first.

Mr. BAUCUS. Mr. President, there is one other amendment which did not make it on the list.

Mr. BYRD. Did the leader get an answer?

Mr. RIEGLE. I will accede to the minority leader's request on the item he has just raised.

Mr. DOLE. Does that mean the Senator will drop the amendment?

Mr. RIEGLE. Yes.

Mr. BAUCUS. Mr. President, there is one other amendment by the Senator from Michigan [Mr. RIEGLE] dealing with Michigan savings bond provisions which did not make it on to the list and should be on the list.

The PRESIDING OFFICER. It is understood that the amendment of the Senator from Michigan is added to the list. Is there objection?

Mr. GORE. Reserving the right to object—and I shall not object—I do want to briefly serve notice that one of the amendments on the list relating to fair marketing practices for the owners of satellite dishes has been on the Senate Calendar for almost a year. I am willing to accept a time limitation of 15 minutes to a side or 10 minutes to a side. I simply want to assure my colleagues I have no intention of tabling my own amendment or dragging out the process and am willing to accept a very short time limitation, but I do intend to bring up the amendment and ask the Senate to vote on that amendment.

There are between 2 and 3 million Americans who are affected by this. They have been waiting for a long time for justice. This is the only opportunity to have a vote on this matter in the session. As I say, 10 minutes on a side will be sufficient for me.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. Is there objection?

The Senator from Montana.

Mr. BAUCUS. One other qualification, Mr. President, and that is in this list of amendments it should be understood, too, that revenue offsets are also in order to pay for the revenue lost by the amendments.

Mr. BYRD. I add that to the request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators. It is clearly understood that the only amendments that are in order are those amendments that were at the desk, or on the list at 20 minutes until 7 p.m. today; that only amendments that are germane and relevant to the underlying amendments are in order; and that upon the conclusion of action on these amendments—this does not mean that everybody has to call up their amendment—it is in order then for the Senate to call up the House bill without further debate or amendment, and that all after the enacting clause be stricken; that the Senate bill, as amended, if amended, be inserted in lieu of the text that is stricken and without further debate or motion or amendment the Senate go to third reading on the House bill and without further debate, action of any kind, or motion, the Senate act on final passage on the House bill, that no time be in order on the motion to reconsider.

Mr. DOLE addressed the Chair.

Mr. BYRD. That is the understanding. The agreement is already gotten. So an objection would come too late. That is the understanding. Is that the understanding of the Republican leader and the two managers?

Mr. DOLE. As long as it was not expanded in the explanation.

Mr. BYRD. It was not my intention to do that.

Mr. DOLE. I know that was not the intent. But we have some who are calling in.

There is no problem.

Let us say a cloture was invoked on this bill. Would not germane amendments still not be qualified?

Mr. BYRD. I do not think cloture will get us there any faster but it might. We might have to resort to cloture.

I ask unanimous consent that if cloture is invoked the cloture rule prevail over the time agreement.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GORE addressed the chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. I send an amendment to the desk.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader retains the floor.

Mr. GORE. I withdraw and withhold.

Mr. BYRD. Mr. President, I thank all Senators for acceding to the request.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. I wonder if the majority leader will agree, that say between now and 7:30 I might have an opportunity to look with the manager on this side to make certain all Members who are on the list really want to offer these amendments. It may be that at the same time the same effort can be made on the other side. If we are able to shrink this list by say 70 percent between now and 7:30, maybe we could avoid being here tomorrow.

Mr. ARMSTRONG. Mr. President, will the Republican leader yield to me? If there are 100 amendments more or less on the list, I believe that at least 16 of them are amendments that I have proposed. While we are still here, let me just say I do not have any intention of calling up most of those amendments. In fact, I have three kinds of amendments on that list, tax technicals, which I understand the managers are prepared to take; I have some extenders which are analogous to some other proposals that are around here, and if others get those kind of amendments on the bill, I am going to offer mine.

Then I have some major policy issues involving Contra aid, Social Security, and some other things, worthy measures which have absolutely no business on this bill, but which I will offer if other amendments of that character are adopted.

So let me just say to the Republican leader that if we can back some others off, I am prepared to back off, I believe, on 12 or 13 of the 16 amendments on the list, and do not need to call up or speak on the others because I think they are going to be packaged up with the others.

I encourage all Senators to do the same. I am a member of the Finance Committee. I think we need a technical corrections bill, and we ought to all agree to back off on a lot of these amendments which do not relate to the Tax Code.

Let me also say, however, that one of the reasons why this happens is because we have not had an opportunity to offer some of these amendments. As we think about next year's program, maybe we can facilitate some of these early in the year so we would not find ourselves in the same boat at the beginning of the next session.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader retains the floor.

Mr. BYRD. Perhaps I can help Senators come to that conclusion. I will offer a cloture motion shortly, and the Senate will be in tomorrow. This would mean that the cloture vote would occur on Tuesday. And if Senators want to avoid being in tomorrow, they might show a very keen interest by coming to the two managers and asking that their amendments be stricken from the list.

Incidentally, cloture will prevail regardless of the unanimous-consent agreement, if the Senate invokes the cloture so we will have a cloture vote on Tuesday, and we will be in tomorrow. And we will stay in a while tonight. We will stay in long enough to find out how many Senators want to strike those amendments from the list. If enough of them strike those from the list, we will not be in tomorrow—if "enough," and if then we can get a time agreement that will see us finish this bill on Tuesday; if not Tuesday, then on Wednesday.

But there are certain amendments on this list that have to be taken off the list before we reach any time agreement on the final vote.

I thank all Senators.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. Just for one other question, would it be possible to get to vote on cloture this evening?

Mr. BYRD. That suits me all right. We will offer the cloture motion.

I ask unanimous consent that the vote on cloture occur at 9 o'clock this evening.

Mr. GORE. Reserving the right to object, I ask the majority leader if the vote on cloture took place at 9 o'clock this evening then many amendments would be stricken from consideration. Is that correct?

Mr. BYRD. Some would.

Mr. GORE. I would be constrained to—I shall not do so at this time but let me just say that the amendment in which I am interested does not have to take a lot of time. I am prepared to accept a limitation of 10 minutes on a side, or alternatively I am prepared to accept the unanimous-consent agreement that will bring it up from the calendar to the floor as a freestanding bill, 10 minutes on a side, and a freestanding measure.

I have been involved in negotiations to try to resolve the matter, negotiations that broke down when the other side was no longer interested in discussing a compromise. This is a matter which has been before the Senate on several occasions. As I said earlier, it has been on the calendar for almost a year, and it is a measure that has intense interest out in the country.

So I would be constrained to object under the rule to any vote on cloture prior to the time that I have an opportunity to present this amendment, and have just the barest minimum of debate on the merits of the proposal.

Mr. BUMPERS. Mr. President, will the leader yield?

Mr. BYRD. Yes.

Mr. BUMPERS. I must reluctantly say that I am constrained to object. We have what we consider to be a very important amendment on this bill. So I will object if the amendment would fall on the cloture vote this evening.

Mr. BYRD. Mr. President, I will not offer the cloture motion until tomorrow. So Senators will have an opportunity to offer the amendments that have been enumerated. Otherwise, they would not have any way to call up any amendment. I will wait until tomorrow to offer the cloture motion.

I do not think there is any doubt but that the Senate is going to be in tomorrow. I suggest we go until about 9 o'clock and go out since we are going to have to be in tomorrow anyhow.

Mr. CHAFEE. Mr. President, may I ask the leader a question?

Mr. BYRD. Yes.

Mr. CHAFEE. He said the amendments had been on the list. Do they also have to be at the desk? If they are on the list, they are all right?

Mr. BYRD. If we invoke cloture, the amendments have to be at the desk under the cloture rule. I will not offer that cloture motion until tomorrow, or I can offer it this evening if we can get an agreement to vote on it tomorrow, say at noon, or whatever, so as to give time to get included in the request a provision that would allow Senators to offer their amendments at the desk so that they would qualify under the cloture vote.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I first want to thank all Senators who are cooperating to put together this consent agreement, at least as far as we are at this point; that is, listing amendments. I must remind Senators that we have to find some way to dispose of some of the nongermane amendments that are still in this list.

If we do not limit the amendments on this list, we are not going to have a technical corrections bill. We are not going to have a bill that includes the higher education savings bond provision, which is important; the diesel tax; the educational assistance extender, and others. There is a whole host of provisions in this bill that will not see the light of day if we go down the road of adopting these amendments or if we do not take some of these amendments off the list tonight. We can be in tonight, Tuesday, and Wednesday, and still be discussing these amendments. If we go to conference with each of the amendments I have described, that is additional baggage to this bill—the nongermane amendments—that is additional baggage that reduces the possibility that we are going to have a bill.

So I remind Senators that, as important as some of these amendments may seem to be—the ones on the list—the provisions of this bill are probably more important to more Americans. I encourage Members to keep their eye on the ball—that is, the technical corrections bill—because I think we will all agree that this is more important at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

TECHNICAL CORRECTIONS ACT OF 1988

AMENDMENT NO. 3609

(Purpose: To assure fair marketing practices for certain encrypted satellite communications)

Mr. GORE. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. GORE) proposes an amendment numbered 3609.

Mr. GORE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. BOSCHWITZ. I object.

The PRESIDING OFFICER. Objection is heard. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. GORE. Mr. President, I ask unanimous consent that I be allowed to explain the amendment, in lieu of the clerk continuing to read it in its entirety.

Mr. BOSCHWITZ. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to read the amendment.

The assistant legislative clerk read the amendment as follows:

At the end of the bill, add the following:

TITLE X—COMMUNICATIONS

SEC. 1001. SHORT TITLE.—This title may be cited as the "Satellite Television Fair Marketing Act".

SEC. 1002. FAIR MARKETING OF CERTAIN SATELLITE COMMUNICATIONS.—

(a) Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmission of the same program.

"(2) No person shall encrypt or continue to encrypt satellite-delivered Armed Forces Radio and Television Service Programming, unless such encryption is required under multinational trade agreements.

"(3) Any person who encrypts any satellite delivered programming for private viewing shall—

"(A) make such programming available for private viewing by home satellite antenna users;

"(B) when making such programming available through any other person, establish reasonable financial and character criteria under which distributors may qualify to distribute such programming to home satellite antenna users and not discriminate in price, terms, or conditions among different distributors offering similar distribution services to the consumer; and

"(C) conduct such encrypt in accordance with uniform standards for encryption of such programming approved by the Commission.

"(4) Standards approved by the Commission pursuant to paragraph (3)(C) of this subsection shall be designed as far as possible to provide the public interest benefits of a universal encryption system which permits decryption at the television subscriber and a home satellite antenna user.

"(5) The provisions of paragraph (3)(C) of this subsection shall not take effect until the Commission has completed a rulemaking on the standards required under this subsection.

"(6) Any person aggrieved by any violation of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction. Such court may—

"(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain such violations; and

"(B) direct the recovery of full costs to a prevailing plaintiff, including awarding reasonable attorney fees, actual damanges for all violations in a sum of not more than $500,000 as the court considers just.

"(7) As used in this subsection, the term—

"(A) 'satellite delivered programming' means video programming transmitted by a domestic communications satellite intended for reception by cable television system subscribers; and

"(B) 'reasonable financial and character criteria' means commonly prudent business standards designed to facilitate payment to the programmer and maintenance of the business reputation of the programmer, and which are calculated to facilitate the existence of multiple noncable distributors.".

SEC. 1003. FEDERAL TRADE COMMISSION INVESTIGATION INTO PROGRAM MARKETING PRACTICES.—

(a) The Federal Trade Commission shall conduct and complete an investigation within 120 days following the effective date of this section into the pricing and distribution terms and practices of persons selling satellite television programming to home satellite antenna owners to determine whether the market for such programming is developing competitively.

(b) Should the Federal Trade Commission determine, after such investigation, that this market is not developing competitively, it is empowered to establish any remedies which it deems necessary to produce adequate competition for such programming.

SEC. 1004. AVAILABILITY OF NETWORK PROGRAMMING TO RURAL AREAS.—The Federal Communications Commission shall initiate a rulemaking to facilitate, to the maximum possible extent, the provision of network broadcasting signals to persons living outside the available broadcast area of local licensees. In undertaking such rulemaking, the Commission shall take into consideration the following:

(1) the extent to which individuals in rural areas are unable to receive broadcast television transmissions;

(2) the extent to which existing Federal rules have prevented the ability of local broadcast entities from providing signals to such persons living outside areas designated as Grade B countours by the Commission;

(3) the potential for serving these persons, and others who cannot receive such transmissions, using home antennas to receive satellite delivered network programming which might be otherwise encrypted to prevent private reception; and

(4) methods by which network programmers may protect certain portions of satellite-transmitted signals not intended for public viewing, while providing unencrypted signals to those persons living outside Grade B countours as defined by the Commission.

SEC. 1005. EFFECTIVE DATE.—The foregoing provisions of this title shall take effect upon the expiration of the 30-day period following the date of its enactment.

Mr. GORE addressed the Chair.

Mr. HELMS. Mr. President, may we have order? It is difficult to hear.

The PRESIDING OFFICER (Mr. SHELBY). Senators will take their seats.

Mr. GORE. Mr. President, I thank my colleague from North Carolina for his courtesy in asking for order.

This amendment is identical to S. 889, the Satellite Television Fair Marketing Act, which was overwhemingly reported by the Commerce Committee last November.

I am pleased to note that in addition to the strong committee vote last year, S. 889 has 24 bipartisn cosponsors.

It is not the wish of this Senator or of any of the cosponsors of this legislation to amend the bill currently on the floor—that is not our primary intention—or any other bill. I would gladly accept a time agreement, as I said earlier, this week or next, to have a short debate on this measure as a stand-alone bill or as an amendment to some other piece of legislation on which we can get a time agreement, as a way to avoid this particular route to consideration by the Senate. For several months, we have sought a way to bring the bill up under routine business in the normal fashion, with a time agreement. But, as evidenced by objections to the bill even being considered without being read in full, there does appear to be opposition to even bringing the bill to the floor.

So, Mr. President, we have been left with no choice but to seek the amendment route to bring this issue to a vote and to give the more than 2 million disenfranchised, mostly rural, Americans, who rely on satellite dishes as a way of participating in the communications revolution, a fair deal.

Last year the Commerce Committee held yet another hearing which clearly showed that the marketplace for satellite television programming was and remains severely distorted by the collusive relationship between programmers and the major cable companies which controlled the fate of the programmer.

We learned that the families who have invested several thousand hard-earned dollars in a backyard satellite dish are being denied access to competitive program packages because all noncable distributors are being shut out.

We learned that premium program services had no intention of allowing noncable distributors to provide competitive services to dish owners, and the key word here, Mr. President, is "competitive." The basic programmers were simply scared to death of the large cable MSO as they are called, multisystem operator, to offer noncable distributors a fair deal.

Now, more than a year later, little has changed. We will hear in this debate of a so-called breakthrough in the form of a minor agreement between a few programmers and a single distributor. Opponents of this amendment may tell us that this deal is evidence that the marketplace is working fine, thank you.

Mr. President, I stand here today as one who has followed this marketplace very closely over the past 5 years, one who has watched up close as the industry leading programmer first refused to allow dish owners to purchase their services. We watched as the dominant status quo powers in this industry sought to shut down a competing technology even though it was a technology which serves mostly rural families that those same cable companies refuse to serve.

We have seen families spend thousands of dollars on a home satellite dish, then only to be forced to buy a $400 device, a descrambler, before they can even consider purchasing programming.

That is fine. That is water under the dam. But now these families have no assurance that the equipment they purchase will even to able to receive future programming.

We have these families faced with the loss of even our tax-supported broadcasting services.

Mr. President, the marketplace was not working 4 years ago, and we had to pass legislation to make it legal for these 2 million rural families to even own a satellite dish. The taxpayers saw their money spent to develop the technology of putting satellites in orbit to develop the capacity to even have satellite television broadcasting, and then they were told it was illegal for them to even collect the electronic signal that fell on their yard as a result of that taxpayer investment.

This marketplace was not working 3 years ago when programmers announced that they would scramble their services. It was not working 2 years ago when the Senate came within a few votes of passing legislation similar to S. 889, and many of our collegues said let us give this industry a chance to correct itself. And it was not working last year when the Senate Commerce Committee held hearings and found severe distortions and anticompetitive behavior and overwhelmingly passed this legislation.

Mr. President, this marketplace is not working today. And why not? The cold, hard fact is we have dominant forces in an industry that is highly integrated economically, integrated vertically and horizontally. It is dominated by forces who simply refuse to allow competitive access by 2 million rural families to program services that other Americans receive and enjoy. Why else would only 20 percent of home dish owners have subscribed to such services? You know, economists have a rule of thumb which they can use to assess the degree of competition which takes place in a given industry, and when you have no more than 20 percent market penetration, only 20 percent of those potential customers who might buy a service are actually buying it, then that is a clear indication that something is terribly, terribly wrong in this marketplace.

Eighty percent have chosen not to participate because the prices are not competitive.

Let me give you an analogy, Mr. President, to explain exactly what has been going on here. If the owners of movie theaters controlled access by the videotape rental stores to movies, then if the movie theater owners had that much power they might come to the conclusion that no movies ought to be rented for people to watch on their home VCR's at prices below the ticket price to get into a movie theater.

Obviously, they do not have that kind of control. Those marketplaces are different and as a result the price to rent a movie in the form of a videotape is a tiny fraction of the price you pay for a ticket to get into the movie theater.

The marketplace is different because in order to watch a tape at home you have to purchase the equipment yourself, you have to drive to the store and get the tape, and bring it back home and then when you are through watching it you have to drive to the store again and take it back and drive back home.

It is the consumer making the capital investment and the price of watching the product is, therefore, much lower.

That is very similar to the situation that we have with satellite dishes. If you are hooked into a cable television system, the owners of that cable company have made the capital investment. You pay virtually nothing. You bought your television set but you have not bought the means by which that program is distributed. The cable company has put the line into the ground. They have put the poles up along the side of the road.

Now if by contrast you have a satellite dish, you have made the capital investment. You have spent thousands of dollars, and the distribution costs are yours.

So why is it that the price for watching that program on a satellite dish is usually much higher for a satellite dish owner than it is for someone who is hooked into a cable television company? The answer is very simple.

The cable television industry almost totally controls the premium programmers like HBO, Showtime, Cinemax, and ESPN; 95 percent of their revenue comes from cable companies and most of them are literally owned by companies that are either cable companies or conglomerates that have large cable interests, and so they have imposed this unwritten rule that the price has to remain high.

The opponents of this amendment say that we should not act because the marketplace is changing. It is changing all right. It is getting worse. It is getting less competitive, more controlled by the programmer cable relationships that dominate this industry.

Routinely, we learn of another program service gobbled up by a large cable multisystem operator.

Last year it was Turner taken over by a consortium of multisystem operators. Then Tempo was bought up by TCI, one of the largest cable companies.

The last vestiges of entrepreneurial independence in this industry, the independence that might be counted on to compete for the home dish market is simply drying up.

So the marketplace is moving but moving in the wrong direction. The net effect will be further stifling of competition for home dish owners who are seeking reasonable choices.

What makes cable flatout opposition to a fair deal for dish owners so outrageous is that cable itself still enjoys the protective legislation which enabled it to grow as a fledgling technology only 12 years ago. Many of the same arguments that the cable industry used in that effort to grow are now valid and precisely applicable to home dish distribution. And yet cable and the programmers it controls steadfastly refuse to compromise, refuse to accept measures that have the sole intent of providing for competition.

We are not calling for Government regulation. We are calling for competition. Let the marketplace work.

The effect of this legislation is very simple and very clear. It says that if you are a programmer like HBO and you are providing your programs to customers around this country by means of cable operators and if you offer it for sale for distribution over satellite dishes, you cannot discriminate against distributors merely on the basis of the fact that that distributor is not a cable television operator. Because that is what they are doing now.

They are saying nobody can distribute the signal except a cable television company, the only exception being the REA agreement which affects such a tiny, small portion of the people who are now denied access, an agreement which is grossly inadequate to solve this problem.

Mr. WARNER. At some point, will the Senator yield?

Mr. GORE. I will yield for a question.

Mr. WARNER. At some point when it is convenient.

Mr. GORE. I will be glad to do that. Let me just finish my statement, which I am close to doing.

Mr. WARNER. I am in support of his amendment.

Mr. GORE. It helps me to know that. I appreciate that.

In 1976, the cable industry came to the Congress to obtain mandated access to local and distant television signals and demanded that the local signals be free and that the rates paid for distant signals be tightly regulated in their favor.

In 1975, cable came to the Congress to demand that they be granted mandated access to telephone and power poles and that the fees they paid to these utilities be tightly regulated in their favor.

I thought a lot of these arguments made sense because they promoted a better marketplace and competition.

Mr. President, cable sought a mandated competitive advantage to allow its industry to prosper. And now, as the fledgling home satellite industry seeks an extremely small opening—infinitely smaller than cable itself has enjoyed—the home dish owner is being shut out in an abusive way.

S. 889 is, therefore, a modest effort to provide competition. The fundamental thrust of this bill is to create competition for home dish owners by discouraging discrimination against noncable distributors.

Briefly, what is in the bill and what makes up the amendment that is now pending is as follows: The measure first requires that home dish owners at least be able to buy satellite television programming that is made available to cable operators. I hope this provision is noncontroversial. Who among us would deny access to the 2 million rural families who have purchased home dishes?

Next, the amendment requires that programmers who allow cable distributors to sell to home dish owners must establish distribution criteria of their own choosing and not discriminate among distributors who met their own criteria because a potential distributor is not a cable television company. In other words, we prevent them from entering into a situation where they deal only with themselves. Let us have competition.

The amendment also requires that the Public Broadcasting System keep a single clean feed available for home dish reception and that the Armed Forces Radio and Television Service—again taxpayer supported—not scramble its signal unless for some reason its contracts require scrambling, and we deal with specific exceptions where that is involved.

The amendment also requires the FCC to do more to extend network programming into highly rural areas where families cannot receive over the air signals. The amendment requires the FCC to continue to monitor the price and availability of decoder equipment, and it requires the FTC to investigate anticompetitive activity in this industry.

The amendment has the strong support of home satellite dish owners, retailers, distributors and those noncable companies seeking to serve dish owners with programming. I hope our colleagues will support the amendment, because 2 million rural families deserve a fair deal.

The Senator from Arkansas, Senator BUMPERS, and the Senator from Kentucky, Senator FORD, have been particularly helpful and instrumental every step of the way in seeking fairness for the satellite dish owners. I thank all of the cosponsors.

I am happy to yield at this time to the Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague. I will pose a question, but first I ask to be made a cosponsor of the Senator's legislation.

Mr. GORE. I ask unanimous consent that the Senator be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, the geography of our great Nation nestles the State of Tennessee right up into the bosom of Virginia. As I look at the Appalachian mountains, those ridges come down through my State and go right on into Tennessee. My good friend, as have other Senators in the Appalachia districts, make many visits to see our constituents. And as we observe the falling light of the fall, less and less daylight descends into those hollows and into those valleys.

As I rise in support of my friend from Tennessee, I think of the people down in those hollows, where shortly the daylight will be gone because the ridges are such that perhaps maybe an hour or 2 a day the sun's rays reach the bottom of those hollows.

Then after the fall comes the winter and the snow. And, Mr. President, the snow will seal off those hollows and the only real communication many of those people have is the telephone, if the lines do not go down. But the basic communication is that satellite dish, pointed right up to the heavens, bringing down their connection with the outside world.

An then the snow begins to disperse and the spring comes and the floods follow—the Senator from Tennessee many times has gone to visit those districts, as have the others, when the floodwaters simply engulf the hollow and once again sever the communications.

Mr. President, the cable owners have been in to see me, and I am going to lose political support. But I am willing to lose it for those people up in the hollow, let us call it Possum Hollow, because we have got to keep their lifelines of information flowing.

I suggest to all Senators who have those mountain districts to pause and reflect very carefully about those folks so dependent on this communication. And I ask the Senator a simple question: Have I made a correct statement of fact?

Mr. GORE. The Senator from Virginia has not only made a correct statement, but a very eloquent statement. For those Senators who may not have hills and hollows and constituents in the circumstances so eloquently described by my colleague from Virginia, it may be difficult to understand the full depth of emotion and the sense of injustice that is abroad in the land because of what has been happening.

This situation must be rectified, and I ask my colleagues to support the amendment. I thank the Senator from Virginia.

Mr. WARNER. Mr. President, if I could put a second question to my good friend.

Mr. GORE. I yield for that purpose.

Mr. WARNER. I have been strongly in favor, ever since I have been privileged to serve in the Senate, of ways to inject more competition. And it appears to me that the Senator's amendment, while not perfect in every way, will bring about and foster more competition. Is the Senator from Virginia correct in that statement?

Mr. GORE. The Senator from Virginia is once again entirely correct. The mechanism embodied in this amendment intended to serve as a remedy for the injustice we have just described is a competitive mechanism. It says to the large conglomerates that control cable television and HBO and Showtime and the other premium services, it says to them: "If you are selling to the owners of satellite dishes, if you are selling to distributors who then market your product to the owners of satellite dishes, you cannot have a buddy-buddy arrangement that denies access to anybody except a cable television company. You have to allow competition."

I firmly believe that if the antitrust laws were firmly enforced, the arrangements now existing in this industry would have been ruled illegal, per se, illegal, a long time ago.

But we are not seeking Federal regulations. We are not seeking the establishment of rates. We are not trying to come up with any dollar figure that we label as fair or unfair.

All we are saying is let us have competition. And so the Senator is exactly correct.

Mr. WARNER. Mr. President, I thank my friend.

Several Senators addressed the Chair.

Mr. WARNER. Let me address my last question and then I will be happy to yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee retains the floor.

Mr. GORE. I yield for another question.

Mr. WARNER. I thank the Senator. I will be brief because I see other Senators standing, like my good friend from Kentucky, who has many a possum hollow and many folks living up in there totally dependent on this. Their lifestyles are simple. They cannot drive to the movies as we do. They cannot drive to the nightclubs. They cannot do many things.

But they accept that lifestyle and we are fortunate they do because these people till the small quantities of soil, mine the mines, lumber the timber, and so many things which are essential to our economy and accept this rigorous lifestyle.

And part of that lifestyle is the communications which we will provide by virtue of this amendment, which I hope will prevail.

Has the Senator from Virginia made a correct statement of fact?

Mr. GORE. Once again, the Senator from Virginia has made a correct and eloquent statement, and I thank him once more.

Mr. PRESSLER. Would my colleague yield for a question?

Mr. GORE. I am happy to yield to my colleague from South Dakota for a question.

Mr. PRESSLER. Mr. President, I am a cosponsor of this legislation and a proud cosponsor. I would ask my colleague if he recalls that during committee consideration of this legislation I offered an amendment to protect the smaller cable companies from the discriminatory practice of volume discounting?

Volume discounting is the method used by the big cable companies to squeeze out the smaller cable companies.

We had the president of HBO before the Commerce, Science, and Transportation Committee and he said he did not know exactly what HBO's rates were or how they were determined.

I asked if any of his staff knew. He had about 8 or 10 staff members there and none of them knew what the rates were.

It seems very strange to me that neither the president of HBO nor his staff knew what their rates were or how they were discounted for different size companies.

The fact is there is not competition. There is a monopoly here. I withdrew my amendment because there was an offer by the big companies to negotiate with the small ones but that has not been done. The truth of the matter is that their promise has been broken and we need some legislation.

I feel very strongly about this, coming from South Dakota, a land of mountains, plains, and great distances. Many of our people depend on satellites for television programming. I think the time has come to legislate, as much as I dislike legislating on the matter.

We had lengthy hearings on this. We have not gotten the cooperation of the big cable companies, even on volume discounting for the smaller companies.

Does my colleague recall that discussion we had, when HBO promised to treat the smaller operators better? In fact they have not done so. To date the promise has not materialized. They have not negotiated. They have not gone forward.

Mr. GORE. Let me say to my colleague from South Dakota I remember very well the diligence with which the Senator from South Dakota attempted to address that problem. I remember the promises from the cable industry that they would use their good faith efforts to try to resolve the problems through negotiations.

I sympathize with the situation of the Senator in which I find myself as well, having heard promises from the cable industry and having seen those promises broken.

Let me say that on this very day the Senator from Ohio, Senator METZENBAUM, released a study of the cable industry and let me read from it. This is the Antitrust Subcommittee.

> The survey conducted by the Antitrust Subcommittee staff showed that programming is not being made available to allow other technologies to effectively compete with cable. The staff surveyed cable programmers, wireless cable operators, private cable operators and distributors of programming to home satellites dish owners.

This industry serves a very valuable function in our society. There are many wonderful people who are a part of this industry. But they have become so powerful that they no longer have the kind of attitude they had when they were coming as a fledgling young industry to this body and saying: We need access to the marketplace. We want to be able to compete.

Now, they have it to themselves and they are not responding to the good efforts of the Senator from South Dakota to protect those less powerful within the industry. They are not responding to efforts by many of us.

I compliment the Senator from South Dakota for his championing of satellite dish owners as well. For many years, you have been very sympathetic to their plight.

So, yes, I say in response to the question of the Senator, I remember it clearly and my recollection is the same as the Senators.

Mr. PRESSLER. I would like to ask a second question.

The PRESIDING OFFICER. Will the Senator yield?

Mr. GORE. I yield for a question.

Mr. PRESSLER. The recent contracts entered into with the National Rule Telecommunications Cooperative are encouraging, but do not in themselves remove the need for this legislation. These contracts are with one entity only and, as I understand, impose higher program charges than cable television companies pay for the same program.

So the underlying problem still remains. That is the vertical integration in the cable industry between programmers and operators. As long as that integration exists, this legislation is needed.

What we have is a monopoly which is taking advantage of the small cable companies in this case. That is part of the problem that this legislation addresses.

Some say that this legislation is not needed, that this can be worked out. But you have giant programmers charging little companies higher rates and they have no choice. The big customers get their programming cheaper. That is exactly what antitrust legislation is supposed to prevent.

That is anticompetitive and it is exactly the reason that Congress must take strong action if that sort of activity goes on.

Have I stated this matter correctly?

Mr. GORE. The Senator has stated it correctly. Let me elaborate by saying this. The Senate of the United States is intended, under the Constitution, to be a place where the little people who cannot find remedies anywhere else in this Government will have their voice heard. And there are more than 2 million rural Americans who have been suffering a continuing injustice and they are going to have their voices heard on the floor of this Senate.

I have much else to say about the Rural Electric Cooperative arrangement and the restrictions and limitations and the problems that prevent that from being anything even remotely resembling a remedy for the injustice that these rural Americans are experiencing. But in response to the question of the Senator, he has stated it correctly.

My colleague, the Senator from Kentucky, if he wishes me to yield for a question, I shall be glad to do so.

Mr. McCONNELL. I was going to seek recognition for a very brief statement in support.

Mr. GORE. That is fine.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. GORE. Mr. President, I will shortly yield the floor but before doing so let me say one more time that, while I am going to speak for these 2 million plus Americans who are suffering this injustice, I and they are prepared to accept the judgment of this body. Let us have a vote. Let us have a vote. Whichever way it goes, that will be the outcome of this measure.

Our intention is not to delay in any way, shape, form, or fashion. And if any opponent of this measure wishes to propose a time agreement, however short—I know I have taken time in introducing the amendment. And surely they would want at least that much time to present the arguments against it.

But whatever time agreement opponents of this amendment wish to propose, I stand willing to accept. Any agreement which allows this measure to be brought up as a freestanding bill and voted on before the end of this historic 100th Congress, I stand willing to agree to that kind of offer.

But these voices will be heard and they deserve to have this measure voted on and this is the only way that we can get a vote on this measure.

So with that, I thank my colleagues for their indulgence and I yield the floor.

Mr. HOLLINGS. Mr. President, I support S. 889, the Satellite Fair Marketing Act of 1987, which is intended to ensure that scrambled video programming is available to satellite dish owners. The legislation requires any person who scrambles a satellite signal that is available to cable customers: First, to sell that programming to home dish owners; and second, if other parties are used to distribute the programming, to establish reasonable business standards under which people can become distributors of such programming and to not discriminate among distributors who meet those standards. The bill also requires PBS to always send a clean, unscrambled feed that will be accessible to home dish owners and prohibits the scrambling of satellite signals of Armed Forces Radio and Television Services except where required by contract.

As part of the Cable Communications Act of 1984 (Public Law 98-549), the Congress included language—section 705—that permits, under certain conditions, the reception for private viewing of unscrambled cable programs delivered via satellite. Whether scrambled programming can be received is not addressed in this language, and the reception of such programming continues to be left to the discretion of the programmer. In addition, this law did not permit access to television network programming that comes by satellite.

Soon after this law was enacted, programmers, seeing a growing number of people getting their product for free, began to scramble their signals. On January 15, 1986, HBO became the first programmer to scramble its two offerings, HBO and Cinemax. Since then Showtime/The Movie Channel, CNN, and a host of other services have scrambled their signals.

There is not doubt that the advent of scrambling has had a significant effect on the estimated 1.5 to 2 million home dish owners. Each of these owners paid about $2,000 to $4,000 for a dish, and most were not told at the time of sale that access to programs could be legally restricted. These people are now faced with spending an extra $400 for a descrambler and must pay for many of the programs they want.

Most dish owners have now reconciled themselves to paying for scrambled programming. There remains a question as to whether the market for programming and for the descrambling hardware has yet to become fully competitive. This results in higher prices and lack of choice. In addition, many dish owners continue to seek access to television network signals. It is these problems that S. 889 is designed to address.

Congress has tried to ensure that the American public does have access to a certain level of video programming. Congressional concern has been particularly acute when it comes to people living in rural areas. Since we have scrambling, our concern is that if programming is made available to the dish owners, it should be done fairly and competitively. That is the objective of S. 889.

Many dish owners are concerned because they have seen a public broadcasting satellite feed scrambled. These people argue that since this service is funded in part by the Federal Government, this service should never be scrambled. The authors of S. 889 include a provision requiring the Public Broadcasting Service to always provide one unscrambled feed accessible to dish owners, thus ensuring that dish owners always have access to PBS programming.

I support this legislation and urge my colleagues to support it.

Mr. INOUYE. Mr. President, I rise today to oppose the amendment offered by the distinguished Senator from Tennessee, Mr. GORE. There is simply no need for the legislation he is proposing.

On most counts, Mr. GORE has succeeded in obtaining the major provisions contained in S. 889:

First, dish owners already have access to scrambled signals throughout the United States.

Second, there are between 75 and 100 unscrambled signals available to satellite dish owners who do not wish to subscribe to scrambled signals.

Third, third parties are packaging and distributing programming to dish owners, as was shown most recently by the agreement between the national Rural Telecommunications Cooperative and five major programmers, including Disney, Nickelodeon, and HBO.

Fourth, the average cost of premium programming such as "Showtime" is less for dish owners than it is for cable TV subscribers.

Fifth, PBS has agreed to maintain one clear satellite feed of its programming at all times in all areas of our country. At Senator GORE's request, we also mandated such a clear feed in S. 2114, the CPB rauthorization bill.

Sixth, the Federal Communications Commission, the National Telecommunications and Information Administration, and the Federal Trade Commission have all concluded that the marketplace is working, that there are no unfair trade practices in the pricing and distribution of satellite television programming, and that legislation is not warranted at this time.

With such successes, Mr. President, I do not understand why we should pursue this amendment. The cable industry has heeded the warnings implicit in Senator GORE's bill, and the market has responded to his message. S. 889 highlighted some of the early concerns in the satellite television market, and they are being resolved. There is thus no need for the Senate to create a new, unprecedented private right of access to cable programming, nor should we clog our courts with litigation over what constitutes unfair business practices in third party packaging of cable programming.

The Senator's message has been heard. I think it is time to declare victory and move on. I thus urge my colleagues to join me in tabling the Gore amendment.

Before doing so, Mr. President, I ask unanimous consent that a more complete statement of my reasons for opposing this amendment be printed in the RECORD. It is based on the minority report which I filed with Senator STEVENS on December 21, 1987.

I also ask unanimous consent that the Federal Trade Commission's letter of June 24 to the distinguished chairman of the Commerce Committee, Senator HOLLINGS, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR INOUYE

Despite the efforts of the authors to make positive changes, S. 889, the Satellite Television Fair Marketing Act, is bad legislation. It is based on circumstantial, anecdotal, and unproven claims, and it fashions all conceived and expensive remedies. It should be rejected especially in light of the recent deal between a handful of cable programmers and the National Rural Telecommunications Cooperative. While this deal has limitations, it demonstrates that the market is working. The government should not intervene.

The television receive-only [TVRO] satellite disk market was created by a decision of the Federal Communications Commission [FCC] about ten years ago. The Commission permitted persons to own these dishes but without any guarantee that reception would be protected from interference. These TVRO owners, moreover, still had to comply with the illegal interception language in the Communications Act (section 705) and the copyright laws, as well as other pertinent federal, state and local laws, such as zoning requirements.

With this decision and the lowering of TVRO prices, this market burgeoned, and today there are about two million TVRO owners. During this growth period, the questions of illegal interception and copyright remained, and in 1984, the Congress, in the Cable Telecommunications Act, passed a new section 705 that permitted the reception of unscrambled satellite programming under certain conditions. The rationale for this law was that programmers should only be able to control products where they make the effort—by scrambling—to do so.

Soon after this law was passed, programmers either began to scramble or announce their intention to do so. They could no longer afford to give their product away to such a large market without harming their basic business. At the same time, TVRO sales were escalating. The difficulty was that many TVRO sellers were not telling buyers that scrambling was coming and that they were not entitled under law to receive such programming. A 1987 survey in Satellite Orbit magazine showed that over one-half the TVRO owners said they were not so informed. When these TVRO buyers were eventually informed, they were not surprisingly angry, but not at the sellers who misrepresented the product. Rather, they were angry at the programmers who had a perfect right to scramble in order to protect their product. It is this situation that the Congress has been called upon to address.

There are also other related issues before the Congress. The proponents of S. 889 argue that the programmers and cable companies are engaged in anti-competitive acts. If such acts have occurred, I would be greatly troubled and would be the first to urge governmental action. But, as I will discuss below, there is no proof of such acts.

THE RIGHT OF ACCESS

S. 889 gives TVRO owners a right of access to cable programming delivered via satellite. The authors of this legislation compare this to the compulsory copyright license that permits cable operators to import broadcast signals at certain rates. In other words, the proponents argue that cable operators have a governmental-given right to retransmit and air broadcast signals, and TVRO owners should be able to do likewise with cable programming delivered via satellite.

This analogy has basic defects. Broadcast signals are shown for free, without restriction. The local broadcaster has no intent to control its signal. In fact, because it is advertiser driven, the larger the audience the better. In contrast, cable programming delivered via satellite is a wholesale product for use by cable systems. There is a definite intent in this case to limit the audience. The more appropriate analogy would be to television network signals sent for use by affiliates or other efforts to wholesale programming. It is important to note that in the case of television network signals, this legislation does not provide for a right of access.

A second concern with the provision of a right of access is that it applies to programming delivered for use by cable systems and not to programming sent via satellite for other uses. The sole exception to this policy is for public broadcasting and that is based on its government support. The authors' rationale for not applying this policy to television network programming is the need to protect local television affiliates. However, this bill does not provide people living outside of local affiliates' broadcast areas with a right of access to television network programming. It only requires the FCC to look into this matter. As for all other current and potential uses of satellites to deliver programming, the bill is silent. But what happens if the movie industry decides to send its films via satellite rather than ship copies to each theater? What about new technologies, such as direct broadcast satellites, and their programming?

The authors' limited and somewhat arbitrary viewpoint in determining what programming TVRO owners should have a right to view leads to a fundamental problem with this bill. Just because a signal goes via satellite, the authors permit a right of access. However, what if programmers choose to send their product via microwave or optic fiber cable? Should we give people a right to access these signals too? At one time, programming was sent by these media, and there are plans to resurrect them. The Bell Telephone Companies are now considering an optic fiber system and may have it in place in two years. Where will TVRO owners be in such an event?

To construct policy based on the type of transmission media used makes little sense. Voice, data, and even video transmissions sent through telephone circuits may go by landlines, terrestrial microwave routes, or satellites; yet, we have never constructed a different right of access policy for these transmissions depending upon the medium used. While some may argue that telephone transmissions are intended to be private, this misses the point. After all cable programmers could then use the telephone circuits—even over satellites—and the right of access policy would not apply.

This legislation rests on a distinction without a difference. It bases its policy of a right of access on a transient market phenomena—that is, cable programmers' predominant use of satellite delivery—and not on what makes most sense over time. In doing so, it skews the marketplace by providing an incentive for cable programmers, and only these programmers, to use other transmission media.

RIGHT TO BECOME A DISTRIBUTOR

The heart of S. 889 is the so-called third party distribution provision. This provision requires programmers who distribute through a second party to establish reasonable criteria for all other persons (third parties) to become distributors and not to discriminate between distributors. The rationale for this provision is that no cable programmer currently uses a non-cable related distributor and that this results in higher prices and a lack of program packages. The authors believe that by forcing programmers to employ new distributors, these problems will evaporate.

As stated earlier, there is a basic problem with the evidence used to support this provision. Just because programmers distribute either themselves or only through cable operators does not mean that a competitive marketplace does not exist. The evidence, in fact, is to the contrary.

Program packages are available, and the prices paid by TVRO owners are the same as, if not less than, those paid by cable subscribers. For example, the average monthly price paid by cable subscribers for a premium movie service is $10.31. A TVRO owner paying an annual fee can obtain this type of service for $9.72/month (HBO). If the TVRO owner does not wish to pay annually and chooses two premium movie services (HBO and Cinemax), the price is $19.95/month or $9.98/month/service. If a TVRO owner wishes to subscribe to basic cable programming services, a package of ten services can be purchased for $10.95/month, 14 percent less than the average monthly price paid by cable subscribers.

It should be noted that cable subscribers must first subscribe to basic services before being able to buy premium services. TVRO owers face no such requirement. In addition, there are over 75 program signals that are unscrambled and that TVRO owners can receive free of charge.

As for programming packages, they are available from a number of sources, including HBO, Showtime, Netlink USA, Skycable, and Rural TV; and, now there is an agreement for the National Rural Telecommunications Cooperative to distribute cable programming. Thus, there is no evidence that TVRO owners do not have program choices or pay a higher price. The evidence presented by the bill's authors that cable programmers and cable operators continue to control the offering of these services is not only not surprising—it is an accepted business practice—but also of circumstantial merit. There is no hard evidence that anticompetitive practices have occurred. Under the antitrust laws, such practices are not per se violations, and evidence of harm must be produced. A similar burden should lie here. To impose the drastic remedy employed in S. 889 is simply not warranted.

In addition to lacking support, the third party distributor provision will result in numerous problems. First, it will foster endless litigation. Imagine a person seeking to become a distributor being rejected because the programmer claims to already have a reasonable number of distributors or because the programmer is unsure of the person's financial or charter qualifications. Court is an obvious next stop, particularly in light of the liquidated damages provision of up to $500,000. To determine what are "reasonable financial and character criteria" and what is "discrimination" will take many years and many lawsuits. It is likely that these matters will still be unsettled when the provision terminates in five years. We all know that the provision terminates in five years. We all know that the laws we enact end up in court from time to time, but to create laws that are so prone to court challenge is something we should avoid. It demonstrates that the law is vague and the remedy uncertain.

Second, while the objective of the authors is to create new program packages, the result may likely be just the opposite. Rather than permitting their programming to be used in packages where they lack control, programmers may decide to sell only directly. Packagers with whom programmers may want to deal will then be unable to market this programming. While some might argue that programmers will not take this route, the decision for a programmer to market directly is not a remote possibility. Many do so today.

Finally, the authors want to create competition to distribution by cable operators, but the third party provision will, in fact, strengthen the hand of cable operators who want to become distributors of certain programming. While cable operators now distribute some programming to the TVRO market, programmers have the ability to withhold their product. With S. 889, programmers will lose this ability. Moreover, since cable operators are now distributing programming to the TVRO market, they will have headstart over new distributors. This advantage coupled with the financial resources of certain large cable operators may well result in these operators dominating the TVRO market, which runs counter to the intent of the third party provision.

CONCLUSION

There may come a day when we need to legislate in the area of TVRO's. I supported the Congress' efforts to do so in the Cable Telecommunications Act of 1984. I would again support Congressional intervention if, for instance, there was greater proof of anticompetitive conduct. That, however, is not the case here.

To reinforce the lack of foundation for this legislation, let me cite the recent letter from the Federal Trade Commission. At the Commerce Committee's request, the FTC recently examined the TVRO market to determine if government intervention was required. It concluded:

"Based on our review and analysis of the information described above, we have found no reason to suspect that the industry is developing anticompetitively or that access by home satellite dish owners to satellite decoding equipment has been unreasonable denied."

It is clear that this legislation is not required at this time, and I urge my colleagues to vote against it.

FEDERAL TRADE COMMISSION,
Washington, DC.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of February 22, 1988, requesting that the Commission study the pricing and distribution of satellite television programming to home satellite antenna owners. The study was requested to determine whether the market for such programming is developing competitively and the extent to which access to satellite television programming may be unreasonably denied by the price or availability of satellite television decoding equipment.

In order to respond to your request, we have reviewed information developed by the Federal Communications Commission, by the Antitrust Division of the Department of Justice, by the National Telecommunications and Information Administration of the Department of Commerce ("NTIA") and by the Commission in connection with nonpublic investigations as well as additional publicly available material. The FCC, in connection with an extensive inquiry into home satellite dish access to satellite television signals, analyzed the price and availability of video decoders and discussed whether cable system operators may have market power over program originators.[1] The Antitrust Division recently completed a nonpublic investigation of several features of video programming distribution, including the "availability of * * * programming to earth-station dish owners"[2] and of alleged collusion among programmers and distributors. The NTIA's recent report addresses, among other things, implications of increasing vertical integration of cable system operators into programming.[3] The Commission's staff have investigated alleged anticompetitive conduct in connection with media blackouts, the sale of music video programs and football broadcasting rights and have reviewed proposed mergers and acquisitions involving firms engaged in various aspects of the video programming and cable television industry.

We have relied on these extensive public and nonpublic sources of information and have applied competition analysis to the available facts in preparing this response. A new, independent investigation of the industry was not initiated, in view of the availability and thoroughness of these recent studies and in consideration of the commitment of resources and time that such an investigation would require. Based on our review and analysis of the information described above, we have found no reason to suspect that the industry is developing anticompetitively or that access by home satellite dish owners to satellite decoding equipment has been unreasonably denied.

I. DECODING EQUIPMENT

In its Report on S. 889,[4] the Committee noted its concern about the high price and limited availability of decoders for home satellite dishes ("HSD"). The FCC considered the price and availability of decoding equipment in its 1988 study and concluded that the shortage of signal decoders has been alleviated. FCC Report at 3-4. The patent holder for the decoder that has become the industry standard has licensed a second firm to manufacture modules for the decoder and has expanded substantially its own stand-alone decoder manufacturing capacity, more than doubling its shipments between March and September 1987. We agree with the FCC's assessment that the patent holder has substantial economic incentives to respond to the demand for stand-alone decoders by increasing production. FCC Report at 3.

The price for stand-alone decoders is likely to fall as production increases and supply comes into balance with demand. In addition, the demand for stand-alone decoders may decline as integrated receiver decoders ("IRD"), satellite receivers with built-in decoding capacity, become available. A number of firms have been licensed to produce IRDs, using the modules produced by the patent holder and its licensee.

Stand-alone decoders have been sold at a suggested resale price of $395, although some distributors that sell decoders and HSDs as a package have in effect sold decoders for less than the suggested price. Suggested resale prices are not prohibited by the Sherman Act or the Federal Trade Commission Act, nor is it unlawful for a manufacturer independently to decide that it will sell only to retailers that observe the suggested price. *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919); *See also Russell Stover Candies, Inc.* v. *FTC*, 718 F.2d 286 (8th Cir. 1983). In these circumstances, we cannot conclude that unlawful collusion has raised the price of decoders to supracompetitive levels or has constrained the supply of decoders.

II. PROGRAM DISTRIBUTION

The Committee also is concerned whether the market for selling satellite television programming to HSD owners is developing competitively. To respond to this question, we considered the possibility of anticompetitive conduct by a single, vertically integrated programmer-cable company and the possibility of coercion by one or more cable companies of unrelated programmers.[5]

In its December 1987 Report, the Committee noted its concern that vertically integrated cable operators-programmers may have incentives to discriminate against home dish owners, that "cable programmers may withold or price non-competitively their programming to the home satellite dish market.[6] The Committee said that "programmers are not permitting their programs to be sold by unaffiliated parties," creating a climate in which "dish owners are beholden to cable operators and programmers and thus pay higher prices and have less choice."[7]

Theoretically, a vertically integrated programmer-cable operator could, by contraining the availability of its programs or pricing them artificially high, foreclose HSD reception as a means of obtaining video programming and thus pressure HSD owners into becoming cable customers.[8] A programmer would be unable unilaterally to sustain such an arrangement unless its video product was uniquely desirable to consumers, because of the ability of HSD owners to switch to alternative programming. Because of the number of alternative satellite, cable and over-the-air programming and television services and their different degrees of appeal to different viewers, we believe it is unlikely that any single programmer has sufficient market power with respect to HSD owners to accomplish such a result.

For example, HBO and Cinemax, two of the most popular satellite movie services, and 615 cable systems, which serve 3.6 million subscribers, are affiliated through their common ownership by Time Inc. Nevertheless, HSD owners could avoid any attempt to coerce them to forgo HBO (or Cinemax) in favor of an affiliated cable service by turning to an alternative movie service, such as Showtime or The Movie Channel (both of which are owned by another cable operator, Viacom) or SelecTV (which is not affiliated with a cable operator), or HSD owners could substitute movie cassette rentals for any satellite movie service.

New entry can also provide alternatives for HSD owners and constrain the ability of a single programmer to raise prices. In recent years, a number of firms have entered rapidly to produce new programs, to acquire previously exhibited programming[9] and to distribute this programming via satellite.[10] For these reasons, the Commission believes that vertical integration between programmers and cable companies is unlikely to restrain competition in the program distribution market.[11]

We also considered the possibility that cable operators might be exercising market power with respect to unrelated programmers, causing programmers to keep prices unreasonably high and discouraging consumers from buying HSDs to access video programming. This issue also was addressed by the FCC. After analyzing several reasons why HSD prices might legitimately be higher than cable rates, the FCC concluded that although the cable market power hypothesis could not be conclusively rejected, "no specific persuasive evidence of [cable] market power has come to our attention in this investigation." FCC Report at 8.

In our view, adverse effects on HSD owners resulting from coercion of programmers could arise only in very narrow circumstances. To effectively foreclose distribution of programs to the HSD market, a cable operator would have to coerce enough suppliers of desirable programs to discourage viewers from buying HSDs. If a large number of program suppliers could not be coerced, HSD owners could avoid the scheme by turning to substitute services. The Antitrust Division recently investigated allegations of coercion by cable operators of programmers and closed the investigation without enforcement action. It is unlikely that one or more cable operators could successfully coerce a sufficient number of programmers to cause adverse effects without such activity coming to the attention of the law enforcement agencies.

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[1] Federal Communications Commission, Inquiry Into the Scrambling of Satellite Television Signals and Access to Those Signals by Owners of Home Satellite Dish Antennas, Second report, Gen. Docket No. 86-336 (March 11, 1988) (hereafter "FCC Report"). The FCC Inquiry was initiated in 1986 in response to a congressional request. *See* FCC Notice of Inquiry, 51 Fed. Reg. 30,267 (Aug. 25, 1986). A copy of the FCC Report is enclosed for convenient reference.

[2] Satellite Scrambling: Hearing on H.R. 1885 Before the Subcomm. On Telecommunications and Finance of the House Comm. on Energy and Commerce, 100th Cong., 1st Sess. 17-18 (1987) (Statement of Charles F. Rule, Acting Assistance Attorney General, Antitrust Division).

[3] National Telecommunications and Information Administration, Department of Commerce, "Video Program Distribution and Cable Television: Current Policy Issues and Recommendations" (June 1988) ("NTIA Study"). The NTIA Study was directed by the agency's charter and follows a 1974 study by NTIA's predecessor.

[4] Senate Comm. on Commerce, Science and Transportation, Report on Satellite Television Fair Marketing Act To Accompany S. 889, S. Rep. 272, 100th Cong., 1st Sess. 2 (1987).

[5] The possibility of collusion among programmers or distributors (including cable systems) was investigated by the Antitrust Division of the Department of Justice, which closed its nonpublic investigation in March 1988 without criminal or civil enforcement action. We have not replicated the Division's investigation but have relied on their recent investigation to conclude that no further investigation of collusion is warranted at this time.

[6] S. Rep. No. 272 at 7.

[7] *Id.* at 8.

[8] This conduct presumably would be directed against HSD owners living in areas served by the programmer's cable affiliates, because of the lack of incentive to attempt to coerce HSD owners in areas that are not served by cable.

[9] Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation*, Vol. I at 393-94 & Vol. II at 558-68 (FCC 1980).

[10] In 1982, there were 40 nationally distributed satellite programming services. National Cable Television Association, "Satellite Services Report" (1982). By March 1988, the number increased to 68. National Cable Television Association, "National Cable Network Directory" (March/April 1988).

[11] The NTIA Study examined the benefits and potential for anticompetitive behavior by cable firms vertically integrated into programming production and supply. NTIA concluded that "cable's ability to support new and different cable-specific program sources and networks is a benefit from vertical intergration that, at present, outweighs the potential harms from the trend." NTIA also said that although no government action is warranted at this time, "the FCC and Congress should be prepared to intervene to ensure that communications policies are not undermined by practices which may not yet rise to the level of antitrust violations." NTIA Study at 127.

Based on the information described above, we have found no reason to conclude that consumers are being unreasonably denied access to decoding equipment or that the program distribution market is developing anticompetitively. The Commission will, of course, continue to monitor this industry and to investigate specific allegations of anticompetitive behavior. We will be pleased to respond to any additional inquiries that you or the Committee may have.

By direction of the Commission.[12]

BENJAMIN I. BERMAN,
Acting Secretary.

Mr. INOUYE. Mr. President, I have been advised that if this motion to table is not made and carried, we will be in for a long session this evening. However, before making this motion to table, I gather that there are several Senators who wish to speak against the amendment, so I will withhold my motion to table.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, briefly, I want to commend the distinguished Senator from Tennessee for his amendment. I, like he, have had a number of town meetings around my State over the years, in excess of 200. In listening to the people who come out to these town meetings, interestingly enough, the most often heard complaint is on this issue. Not the Federal deficit, not getting along with the Soviet Union, not even farm issues, but the scrambling question.

The Senator from Tennessee is right on the mark. We are sorry that this amendment has to be offered, but it is necessary. I want to commend him for his effort.

Mr. President, today I rise in wholehearted support of Senator GORE's amendment to the tax technical corrections bill. As a cosponsor of S. 889, the Satellite Television Fair Marketing Act, I am pleased that this important legislation has been offered. In my State alone, there are approximately 36,000 satellite dish owners.

I have visited every county and held town meetings across the entire Commonwealth of Kentucky during the past 3 years. The question I was most frequently asked was "What is going to be done about scrambling?" Many rural Kentuckians who will never be hooked up to cable and have purchased expensive dishes are concerned that they will be denied access by scrambling or that the cost of the monthly service fee will be prohibitive, thereby rendering their investment worthless.

As I see it, the problem is no longer the issue of scrambling; most dish owners recognize the right of programmers to scramble their signals. They are resigned to the fact that they must purchase a decoder and are willing to pay a monthly charge as long as the fee is reasonable and fair. In my opinion, that is where the problem exists. Current market constraints are preventing the delivery of competitively priced programming.

The American Home Satellite Association estimates that the typical home satellite owner, TVRO, pays 158 percent more in annual costs to receive the same satellite programming than a cable consumer does. Also, the average basic cable network charges TVRO customers nearly 55 percent more for the same service they provide cable customers.

I believe that this legislation is eminently fair and is not a knee jerk reaction to a problem. While some individuals feel that this represents overregulation of the satellite television marketplace, it simply represents a good-faith attempt to ensure that home dish owners receive fair and equitable pricing of programming. It is important to note this amendment still allows programmers to have total flexibility in protecting their product by using any reasonable restrictions and strengthens the penalties for illegal piracy of programming by those who, manufacture, distribute, or sell unauthorized decoder equipment. Certainly, these are very reasonable provisions.

Initially, I did not cosponsor S. 889, the Satellite Television Fair Marketing Act, because I wanted to see if programmers would follow through in allowing third parties to distribute their signals to rural dish owners. I recognize that program packages are now available, but I think everyone agrees that more can be done. For this reason, I now strongly support this legislation and urge my Senate colleagues to also support passage of this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I live in two places in the United States, in the State of South Dakota and Washington, DC, and in neither place can I get cable TV. One place is a farm home which does not have cable. The other is three blocks from the Capitol of this great country where I cannot get cable TV. Indeed, I cannot even get wireless cable in Washington because the Library of Congress blocks the signal. Indeed, it will be another year and a half before my section of Washington, DC, is wired for cable.

So, believe it or not, I am a U.S. Senator living on Fourth Street SE., Washington, DC, in what I think is an expensive house. My wife does not necessarily think so, but I do, and I cannot get cable TV.

If I want to put up a dish, I have to go through a long procedure with the District of Columbia government, and there will be objections to putting up a dish in the historical neighborhood in which we live. So I literally am culturally deprived. I would just like to share that with my colleagues.

In my case, that may not matter, but it does matter across the country. We are developing two cultures. The inner cities, the rural areas, and small cities do not have the cable and educational programming available that the suburbs and wealthier areas have.

What the big companies want to serve are the wealthy suburbs, the big markets. If somebody does not fall within that, he is in trouble.

Recently I wrote a Law Review article about the need for universal telephone and telecommunications services. Indeed, it has been one of our Nation's goals since the 1930's to have a nationwide system of communications.

The amendment of my friend from Tennessee ensures that we have such a nationwide system of communications so people can see what is going on in Congress. They would get cultural and educational television; they would get entertainment, and so forth. The big cable companies and HBO have been abusers of the system, preventing this from occurring.

I come from a small State, a thinly populated State, and I have made a decision to be a constituent-oriented Senator and look after that State. But this is not just a parochial interest because there are places in upstate New York, places in California, places in every State that are similarly situated.

Consider the rancher. He has no way of getting a signal except through a dish. If he has to pay the same rates as small cable companies, then he is being discriminated against. Consider someone who lives in the mountains in western South Dakota or even someone who lives in my hometown, in the most populous county in South Dakota. They cannot get cable TV and they cannot get wireless cable either. We are working with the REA's to develop wireless cable where there are not high mountains. That will bring a few channels, but not many. These people are being denied the cultural, educational and entertainment advantages of cable TV.

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[12] Commissioner Strenio dissents from the Commission's conclusion that "there is no reason to suspect" that the market for satellite programming to home satellite antenna owners is developing anticompetitively. He thinks it is at least premature to make such a pronouncement on the basis of the material cited in this letter.

I do not know if a lot of people in our urban areas and suburban areas realize how important this bill is. But even those companies that get the signals and can distribute them in South Dakota pay a higher rate because they are small.

The big cable companies and HBO discriminate in price against the small companies, and they do it in a number of very sophisticated ways. They refused to answer our questions before the Commerce, Science, and Transportation Committee. I think my fellow members of that committee will agree. I asked the president of HBO what his rates are and how they are arrived at. He said he did not know. He did not pay attention to that kind of detail. I asked him, "Do you have anybody in the room who knows?" He had 8 or 10 employees there. I had them stand up that day. They stood up. None of them knew what the rates were or how they were figured out.

It is a mystery to me how the top executives of a great company like that can not know. We would literally have to issue a subpoena in order to get that information, I discovered.

So I offered an amendment to treat the small cable companies fairly. Then I was told that the large programmers were going to negotiate with the small companies and that changes would be made.

Now time has passed and no changes have been made. So this Senator is very upset.

Mr. President, in conclusion, I believe that it is very proper that we put this amendment on this bill. Some will say we should table this because it does not belong on this bill, it belongs elsewhere. My friend from Tennessee offered to bring it up as a freestanding measure and take 10 minutes, but he was not allowed to.

So now we are attaching it to a bill that I would rather not attach it to. But the fact is that this is our only chance. The session is coming to a close.

People can say, "Well, bring it up next year." Next year we will be told the same thing, and another year will pass.

So I think we have to make a decision. If there is an agreement to allow us next week to spend 10 minutes of debate and 15 minutes for a vote, a total of 25 minutes to bring this up as a freestanding measure, I would vote to table it now.

If we could come into session a half hour early next week and dispose of this on a rollcall vote on the substance, I would be very happy.

I hope that those who are in the viewing audience across the country understand that the Senate of the United States operates under rules where we cannot just bring up anything for a freestanding vote unless there is consent. We have sought that consent. We have not receive it. That is the reason we are attaching it to this bill.

Mr. President, I ask unanimous consent to submit for the Record an exchange of editorials on the volume discounting issue which appeared in Multichannel News in January of this year.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Multichannels News, Jan. 11, 1988]

SEN. PRESSLER AND VOLUME DISCOUNTS

(By Thomas P. Southwick)

Denver.—The national debt continues to mount by a hundred billion here and a hundred billion there. An arms-reduction treaty with the Soviet Union awaits ratification. And President Reagan's third nominee to the Supreme Court cools his heels in the Capitol waiting for a confirmation vote.

One would think the United States Senate would have plenty of weighty issues to occupy its time.

But Sen. Larry Pressler evidently has decided that these matters can wait while the world's greatest deliberative body decides the issue of volume discounts for cable system operators. He has promised to offer an amendment in the next few weeks that would sharply limit the volume discounts the largest MSOs receive for programming.

These volume discounts, opponents of the practice argue, go far beyond what a programmer saves by signing a single contract with a large company. When the largest MSOs use their economic clout to force steep cuts in programming rates, they are able to achieve economic leverage that allows them to gobble up smaller companies, leading to further concentration of power in an industry that is being labeled an unregulated monopoly.

But the smaller cable operators who are leading the charge for the Pressler amendment should stop and think about whether an act of Congress is really the best way to achieve what they want.

Whatever the outcome of the vote, the battle will divide the cable industry and force it to use up valuable political chits on an intraindustry battle. It will weaken cable's power to wage political war against such common enemies as the broadcasters and the telephone companies.

And there is no assurance that limiting volume discounts would curb the merger trend. Larger MSOs also enjoy better borrowing power and economies of scale that are at least as important in spurring mergers as are volume discounts.

If the Pressler amendment is passed and the merger wave continues, the Senate might be persuaded to revisit the issue and take other actions that are not so palatable to the smaller operators. Sen. Pressler's amendment could open a Pandora's box of regulatory horrors.

That is particularly true because the smaller operators have a variety of other weapons at their disposal in their fight against volume discounts.

They can give strong support to the National Cable Television Cooperative, which has brought together the smaller operators in an effort to give them better leverage with suppliers. They can press their case during contract negotiations and ultimately can decline to carry selected services.

Finally, the smaller cable operators can sue under existing antitrust laws if they can demonstrate that the volume discounts are being used to force them out of business or otherwise restrain competition.

The smaller cable operators have some legitimate complaints about the current system of volume discounts. If the introduction of the Pressler amendment serves as a shot across the bows to the biggest MSOs and programming services, persuading them to take another look at the matter and deal with it in house, it might have served a useful purpose.

The issue of volume discounts needs to be debated. It needs to be resolved. But the U.S. Senate is not the best place to do it.

[From the Multichannel News, Jan. 18, 1988]

VOLUME DISCOUNTS: A VIEW FROM THE SENATE

(By Larry Pressler)

Washington.—I am pleased to have the opportunity to reply to Thomas Southwick's editorial (Jan. 11) citicizing my "volume discounting" amendment. It is important to begin by clarifying what the amendment would do, and what it wouldn't do. It would not prohibit volume discounting. Rather, it simply requires that the discounts be based on legitimate business savings (e.g., billing efficiencies). Already the standard in the sale of commodities, this is hardly a new concept.

I agree entirely with much of last week's editorial: "The smaller cable operators have some legitimate complaints about the current system of volume discounts." This problem should be dealt with "in house." "The issue of volume discounts needs to be debated. It needs to be resolved. But the U.S. Senate is not the pest place to do it."

If the "legitimate complaints" of the small cable operators would be dealt with "in house," I would withdraw the amendment tomorrow. I would much rather see the cable industry deal with this issue in house. But the small operators have been trying to do that for years, and the abuses continue. Barring a change of heart within the industry, legislation is their only realistic alternative.

Last week's editorial mentioned a "variety of weapons" at the disposal of the smaller cable operators but listed only two options. The first is the power of the National Cable Television Cooperative (NCTC). The second is in the courts. Neither of these is really feasible as a solution to the problem.

The NCTC was formed to give smaller cable operators group leverage with programming suppliers. This was an "in house" attempt to seek equitable pricing through strength. Not only did the major programmers refuse to deal with the NCTC, but in some instances those involved in NCTC have been threatened with being cutoff entirely—an issue to be addressed later should these threats become reality. The point is that the smaller operators have attempted to address this inequity, only to be chastised for their efforts. Smaller cable operators in many cases are still paying over twice as much for the same programming as do the giant MSOs.

Theoretically, a law suit could be successful. But it is not a very realistic option from a practical standpoint. Besides being very costly and time-consuming, neither of which the small operators can afford, the law in this area is extremely vague. Existing law differentiates between "commodities," which cannot be priced in an unjustifiably discriminatory manner, and "services," which are not covered by the law. Is programming a commodity or a service? A decision would be based on confused terminology and ambiguous definitions rather than legal policy. Since this is a relatively new technological area which is not addressed clearly by existing law, the obvious solution is to clarify the law as it applies to cable programming. My amendment would do that.

It is understandable that small operators would support my amendment, and that the large MSOs are opposed to it. The hugely disproportionate discounts which the large MSOs currently receive when purchasing programming are in effect subsidized by the smaller operators through higher prices. This leads to higher prices for the small operator' subscribers, and ultimately the elimination of the small competitors from the industry. Many have already fallen victim to this programming price squeeze. That the smaller operators should be asked to unite behind their big brother MSOs on this issue, as last week's editorial suggests, strikes me as rather peculiar. It is much like a school bully asking his daily victims for help when he is threatened from outside his domain.

This amendment would prohibit unfair discrimination in such areas as price, terms and conditions among cable television distributors. It does not require equal pricing. It allows for price variables that can be cost justified and are consistent with legal and market concepts long established regarding wholesale distribution. In short, it provides for fair pricing.

My amendment did not create this issue. It has been building for some time. It is indeed sad that this issue cannot be resolved "in house," but obviously that approach has not worked. That leaves the U.S. Senate as, if not best place, perhaps the only place to do it.●

Mr. WIRTH. I thank the Chair. I appreciate the Chair's recognizing me at this point.

Mr. President, like the Senator from Tennessee, I bring to this issue a long history in the other body. I had the privilege of chairing the Subcommittee on Telecommunications on the other side for 6 years and was on that side the primary author of the Cable Act of 1984, which has really led to the explosion of so much of the cable industry and its accessibility to just about everybody in the country today.

The Senator from Tennessee was involved in that subcommittee. We have worked in these vineyards together for a long time, and I think have agreed on most issues. I think the Senator from Tennessee has done a great service by keeping the cable industry's feet to the fire on the issue of the access of cable television to everybody in rural America.

I think we have done that and done that very well. I think, in fact, we have done it so well that it really is not necessary for us to legislate on this to further regulate the cable industry. Rather, what we should be doing is to allow the marketplace, which has worked very well in the 3 short years of the cable industry, to continue to work.

In my remarks, Mr. President, I am going to outline where we have had problems with access of cable programming to Americans in rural areas and where in fact the pressure from the Senator from Tennessee, the pressure from many of us on the subcommittee, the pressure from many in this body has in fact led to that marketplace increasing its efficiency and working as well as it does today.

Mr. President, the debate over the sale and distribution of scrambled television programming to rural backyard dishowners has often been intense over these last years. At times, however, the debate has strayed off course and focused on single narrow issues to such an extent that the overall dimensions of the issue have been overshadowed. This debate should properly center on the ability of individual backyard dishowners to access satellite programming at fair prices. That is the fundamental issue in front of us: Do Americans in rural areas have access to satellite programming at fair prices. I would argue that in fact they do and that in fact in many cases the prices available are lower than those available to people on the fixed cable systems that wire so many of our cities today.

The needs and interests, as has been pointed out in this debate so far, of the consumer should be paramount and it is our responsibility to sort out the question, do we have to regulate or can the marketplace work.

Unfortunately, the marketplace has not always worked and I will outline that but pointing out where we are going is not the direction of the legislation as suggested by the Senator from Tennessee.

It is appropriate to begin consideration of this issue by noting some of the most important facts about which I think there has been very little dispute. First, the home satellite dishowners now have access to every scrambled cable program network and the more than 75 unscrambled video channels transmitted by satellite.

Second, as I noted, as reported by the Senate Commerce Committee this last year, the prices paid by satellite dishowners for the scrambled cable services are comparable to the prices paid by cable television customers for the same programming. Even the most recent analysis done by the Senate Commerce Committee outlines that in fact that price equity is there.

Third, each of the more than 75 unscrambled video channels is free of charge to backyard dishowners.

Fourth, home dishowners can purchase most scrambled programming directly from the cable networks without the involvement of middlemen and additional transaction costs. In many cases all it takes is a toll-free telephone number to order the service. A 1-800 call for millions of Americans and they can order the service.

Fifth, a competitive distribution system with as many as 16 different program packages has developed in the marketplace. Contrary to earlier allegations that this is a monopoly controlled by the cable industry alone, it is important to know that seven of these packages have absolutely no ownership affiliation with any segment of the cable industry. In fact, Mr. President, the packager with the widest array of cable networks is the National Rural Telecommunications Cooperative, NRTC, an affiliate of the National Rural Electric Cooperative Association, REA.

As many of my colleagues know, this REA affiliate has been offering a broad package of services all year and have recently signed program distribution agreements with six major cable television networks.

With the addition of Home Box Office, Cinemax, the Disney Channel, Nickelodeon, Netlink USA, and the Nashville network, the REA subsidiary is now the largest single source of programming in the backyard dish market.

Now, the argument is made that that does not mean anything. Good Lord, all of us in rural America know how enormously important the REA's are and the REA system in fact has access to well over half of the backyard satellite dishes, access to over half. So to suggest that this is not a very significant breakthrough is simply not the case.

It used to be that the REA was one of the strongest advocates of legislation. They used to say that it was important for us to have legislation in order to resolve the question of backyard satellite dish access to programming, but they have changed their tune. As the NRTC stated in a press statement a few weeks ago, finalizing these contracts—and these are the contracts of major importance—when NRTC had finalized those contracts they said, "This is a significant breakthrough in third-party packaging. The NRTC now looks forward to shifting its attention from legislative efforts to concentrating on marketing this package to rural America."

Those are the REA's and all of us remember that they were in town advocating legislation a long time ago. That is no longer the case. This very important set of contracts was set up for them and now there is third-party packaging and a very significant third-party packaging indeed.

I ask unanimous consent at this point to place in the RECORD, if I might, Mr. President, communications from the National Rural Telecommunications Cooperative.

There being no objection, the material was ordered to be printed in the Record, as follows:

National Rural
Telecommunications Cooperative,
Washington, DC, June 30, 1988.

The NRTC today concluded program distribution agreements with six cable satellite networks. The programming services include HBO/Cinemax, The Disney Channel, Nickelodeon, Netlink USA, and The Nashville Network.

Finalizing these contracts is a significant breakthrough for third party packaging. With the execution of these contracts, and others the NRTC already holds, we believe the way is clear for us to serve the needs of rural satellite dish owners. This is what the market has been waiting for.

We would like to thank all the members of Congress, particularly Senators Tim Wirth and Al Gore and Representative Billy Tauzin, programming networks and others who have made this day possible. The NRTC now looks forward to shifting its attention from legislative efforts to concentrating on marketing this package to rural America.

National Rural
Telecommunications Cooperative,
Washington, DC, July 1, 1988.

NRTC Signs Major Programming Contracts

The National Rural Telecommunications Cooperative (NRTC) signed programming agreements last night making it the first third-party program packager to establish long-term contractual relationships with major programming services.

Those programming services include:

HBO/Cinemax.
The Disney Channel.
Nickelodeon.
Netlink USA (six Denver stations).
The Nashville Network.

The final agreements between NRTC and the programmers were the result of a two-day negotiating session held in the Washington, D.C. offices of Sen. Tim Wirth.

NRTC's Chief Executive Officer Bob Phillips said he was happy to have concluded the contract negotiations which had stretched out over many months. "Certainly this is a positive event in the evolution of the home dish market," he said. "It's one that will change the way home dish owners are served and we believe it will give the entire industry a boost.

"We are indebted to our congressional friends for their help in bringing about these break-through contracts," Phillips said. "Senator Tim Wirth, in particular, was instrumental in bringing the parties together.

"Senator Albert Gore, Jr. and Congressman Billy Tauzin were also critical to these contracts," he added. "Their tireless work on behalf of America's dish owners and their success in moving the important Gore-Tauzin Satellite Television Fair Marketing Act helped make these contracts a reality. Numerous other congressional friends were instrumental as well in this critical step towards market fairness and stability in the home dish market."

The legislation sponsored by Rep. Tauzin, H.R. 1885, was approved yesterday by the House Subcommittee on Telecommunications and Finance. Phillips thanked Chairman Edward Markey and the members of the subcommittee for their support of the legislation to ensure the development of a competitive marketplace.

Phillips said that NRTC's focus must now turn to developing programming services that make sense to rural dish owners and benefit a battered satellite dish industry.

HBO/Cinemax, The Disney Channel, Nickelodeon, Netlink USA, and The Nashville Network join the following programming services included in NRTC's "Rural TV" program package:

CNN/Headline News.
ESPN.
CBN Cable Network.
Prime Time 24 network programming.
WWOR, New York; WSBK, Boston; KTLA, L.A.
The Nostalgia Channel.
The Travel Channel (promo value only).
USA Network.
Superstation TBS.
WGN, Chi.; WPIX, New York; KTVT, Dallas.
SelecTV.
Home Sports Entertainment.
The Learning Channel.
The Country Music Channel.

NRTC is the Washington, D.C.-based rural satellite services organization owned and controlled by more than 500 rural electric and rural telephone systems located in 45 states. It currently markets a programming service, called "Rural TV," for rural satellite dish owners through these member utility systems. It was formed in August 1986 for the purposes of developing satellite system capability in consumer applications and programming, for advancing educational services to rural residents, and for business applications over bi-directional sattelite systems.

Mr. WIRTH. Mr. President, I agree with the rural cooperatives that these contracts represent another very important breakthrough in third-party distribution. With these rural satellite dish owners now have another source from which to obtain programming for these six cable television networks. These agreements, however, also help to show us the shifting nature of the backyard dish debate.

When the Congress enacted the Cable Communications Policy Act of 1984, it also adopted a compromise which resolved the major issue and then confronting backyard satellite dish owners on whether or not their use of a dish to watch television over satellite was legal or theft.

The Senator from Tennesse, Mr. Gore, and I were Members of that body at that time and both of us were deeply involved in shaping this compromise. We resolved the issue quite clearly, and the legal uncertainty was lifted for more than a million Americans who owned backyard satellite dishes. For the first time people owning backyard satellite dishes could legally pick up the signal.

At the same time we recognized that cable networks needed to control the distribution of their programming in order to compete effectively. Accordingly, that same Cable Act of 1984 expressly reserved the right of cable networks to protect systems by encoding or scrambling them, and made it illegal to descramble these signals without authorization.

In Janaury 1986, the first cable network scrambled. Since then the debate over scrambling has been a series of concerns raised by some in the dish community followed by proposed legislative solutions all involving the imposition of Government regulations.

The satellite dish community brought forward many legitimate concerns as I noted earlier. In each case, however, legislation was not needed. The marketplace found a solution first. Let me recount the history of how the marketplace has worked.

First, when HBO initially scrambled its signal, the concern of the dish industry and dish owners was that HBO and other cable networks would refuse to sell to backyard dishes. Legislation was introduced in both Houses of Congress to impose a moratorium became irrelevant when each cable network scrambled, and not only annonced its intent to serve backyard dishes but it pursued subscriptions vigorously, a fact that the marketplace worked.

The effect was the concern that programming networks would employ different technologies to scramble and force dish owners to buy separate decoders for each service they decided to purchase. The dish industry came to Congress and sought legislation to establish a uniform technology. Again, however, the marketplace responded first.

Each cable programming service that has scrambled or even plans to scramble uses the Video II Cipher technolgy. A single unit descrambles all the cable programming networks a dish owner might buy. So it would have been very ill-advised for us to legislate then as it is now.

Next the concern was that cable programming would be too expensive for dish owners because these networks would offer better deals to cable subscribers. The dish industries sought price regulation, but the marketplace responded first. Today, all scrambled programming is available to home dish owners at prices equivalent to those charge cable subscribers for the same programming and in some cases the retail dish price is actually lower. Later, I will put figures on that in the Record as well, Mr. President.

Next, the concern was that scrambled cable programs would not only be made available on an all or parts basis, it would not be offered as a part of the package of programming as it is provided to cable subscribers. Some in the dish industry again came and called for legislation to allow most anyone to create and market packages of programming. But again, the marketplace responded.

Today there are 16 different entities offering program packages and the number is growing even today.

More recently, the concern has been that there are different distributors in the marketplace who do not have ownership affiliation with the cable industry. Here again, the marketplace is working.

Seven, the 16 program packagers have no affilitaion with either cable programmers or cable operators. This is not a cable monopoly. As I noted earlier, Mr. President, the distributor in the marketplace with the widest array of programming services is the National Rural Telecommunications Cooperative associated with the REA.

Mr. President, I share the frustration that some of my colleagues have felt over the pace of which this market has evolved. I wish it could be faster at times, but after all, let us remember this industry is only 3 years old. It is only 3 years old, and it is still growing up very, very rapidly, and learning how to respond to the demands and the needs of everybody in rural America.

It seems to me that just as we have seen in example after example where problems have arisen in this industry pressure has been put on, the issue was raised, it was brought forward, and that marketplace has responded to the demands of the marketplace, and thank goodness we have not regulated it.

Thank goodness we have not legislated in that area. We have seen this explosion of programming services, and we have seen more and more programming and information available to Americans in rural areas.

This brings me to two further very important points. First, the amendment before us would not benefit dish consumers. Instead, this legislation if enacted could very well lead to higher prices for dish owners by placing the unnecessary middlemen in the distribution chain. Instead of being able to go directly to the backyard, from the backyard satelite dish owner to the programming dialing 1-800, a whole variety of new middlement would be required in the legislation.

Second, the satellite dish industry has rebounded in recent months and appears to be robust. Some were complaining that the industry was sliding downhill. This is not the case today. the industry is robust and selling more today than it has in the past.

Mr. President, the provision of cable programming to rural America is as we all know a very important issue. Certainly, in the State of Colorado with the mountainous terrain that we have and with the vast number of backyard satellite dish owners I am very aware of the needs, requirements, the essential nature of bakyard satellite dishes, and access to good programming.

But I believe that programming is in fact there. We should turn down this amendment, and we should be vigilent in monitoring this new and evolving markets as we have been in the past to make sure that it continues to serve the interests of our rural citizens, without a cumbersome legislation and regulatory approach.

I remain strongly committed to working to ensure that this happens as we have done in the past. For we find the consumer interests needs to be protected. We should ask if we can do that without a very broad sweeping piece of legislation. We can do it as we have in the past solving one problem after another.

Let me make a final note, if I might, Mr. President, of the copyright bill which is coming over here, the Kastenmeier-Synar bill, and I believe it is now at the desk. This has in it a number of further provisions that are going to protect the backyard satellite dish industry. Let me give you some examples.

This bill which we will soon be voting on, and I believe we are going to pass, provides automatic license to backyard satellite dishes to pull down over-the-air signal. That means anybody with the backyard satellite dish has the automatic right to pull down over-the-air broadcasting, the network broadcasting, public broadcasting, or whatever it may be. This gives even further access to people with the backyard satellite dishes.

There are also two further provisions, one on piracy and one on an FCC study—two provisions offered by Congressman Tauzin of Louisiana, who has been very active in this issue. One is an increase in penalties for piracy which makes sure people will be able to have their decoder and backyard satellite dish without the threat of the proliferation of a lot of new protection, and a lot of new technology; and finally, the FCC is instructed to do a study on the inscription standard to make sure that the de facto standard that we now have is working.

Mr. President, we should turn down this amendment. This began with the evolution of the backyard dish market, a new industry, legalized in 1984. At that time, the compromise was reached to make sure that cable programmers would scramble programming that they had to make available to everybody, and the dish people would pay reasonable rates. They could scramble, they had to make it available to everyone, and to get descrambled programming the dish owners agreed to pay a reasonable price.

The question before us is: Has this deal been lived up to? I believe it very clearly has. We do not have a monopoly situation.

Mr. President, I would like to include in the Record at this point a very clear description of all of the available services, some cable-owned, some not cable-owned, available to people who own backyard satellite dishes.

There being no objection, the material was ordered to be printed in the Record, as follows:

Summary of Available Program Packages

PROGRAMMER PACKAGES AND PRICES

Showtime:

Two premium services plus 13 basic services: $22.95/month ($20/month on an annual basis).

One premium service plus 13 basic services: $17.95/month ($16/month on an annual basis).

13 basic services: $10.95/month ($10/month on an annual basis).

HBO:

HBO plus Cinemax: $19.95/month for each ($14.96/month for each on an annual basis). $7.48 per channel per month on an annual basis when both are purchased.

Flex-Pak (CNN/Headline News ESPN, USA, CBN): $25/yr for first service; $12/yr for each additional service ($1 per month per service).

One premium plus five basic services: $14.80/month.

Two premium plus five basic services: $20.95/month.

Tempo (Superstation TBS, WWOR, USA Network, CBN Cable Network, KTLA, WSBK): $69.95/year for all six services; $19.95/year for TBS; $10/year all other channels, a la carte.

Netlink (CNN, CBN, Headline News, USA Network, Superstation TBS, American Movie Classics, ESPN, KRMA, KWGN, KDVR): $10.50/month.

Basic package plus HBO plus Cinemax: $20.50/month.

Basic package plus Showtime plus The Movie Channel: $21.50/month.

Basic plus HBO, Cinemax, Showtime, and The Movie Channel: $35.45/month.

Basic plus HBO, Cinemax, Showtime: $30.45/month.

Basic plus The Disney Channel: $19.45/month.

Satellite Broadcast Network "PrimeTime 24" (one station from each of the three commercial networks): $49.95/year; $90/two years; $130/three years.

United Video; the "Superstar Connection" (Six independent cable superstations): $72/year; $150/three years.

PROGRAMMER/MANUFACTURER COMBINATIONS

GI "Panorama" (WPIX, KTVT, WWOR, WGN plus CNN/Headline News: One year free to buyers of a GI IRD.

Drake (SelecTV or PrimeTime 24): 3 months free with purchase of a Drake IRD.

THIRD PARTY PACKAGERS

National Rural Telecommunications Cooperative:

Basic Tier (14 basic services—CNN/Headline News, CBN, ESPN, USA Network, WGN, WPIX, KTVT, Hit Video, Nostalgia, Country Music TV, The Learning Channel, Home Sports Entertainment, and The Travel Channel): $9.95/month (suggested retail).

Basic Tier plus PrimeTime 24: $13.95/month (suggested retail).

SelecTV: $8.95/month.

Superstation TBS: $19.00/year.

Starion (Amway).

SelecTV: $26.85/quarterly; $95.40/year.

SelecTV plus CBN, Superstation TBS, KTVT, WGN and WPIX: $165.00/year.

THIRD PARTY CLEARINGHOUSES

Satellite Source:

Ten basic services (WWOR, WPIX, WGN, KTVT, CNN/Headline, News, ESPN, USA, CBN, WTBS): $118.68/year ($9.89/month on annual basis).

Ten basic services plus HBO and Cinemax: $269/year ($22.42/month on annual basis).

Consumer Satellite Systems (National Programming Service/Sky Cable):

Eleven basic services CNN/Headline News, ESPN, USA, TBS, WGN, WPIX, KTVT, WWOR, KTLA and WSBK: $138.00/year; ($11.50/month on annual basis).

Eleven basic services plus SelecTV: $218.00/year ($18.17/month on annual basis).

NRTC "Rural TV" Programming Package

BASIC CHANNELS

Basic Package: CNN, Headline News, ESPN, USA, Nickelodeon, CBN, WGN, WPIX, KTVT, Lifetime, The Weather Channel, The Nashville Network, The Nostalgia Channel [1], The Learning Channel [1], Country Music TV [1], The Travel Channel [1].

Basic Plus (with Netlink): Netlink includes: KUSA (ABC—Denver), KMGH (CBS—Denver), KCNC (NBC—Denver), KRMA (PBS—Denver), KDVR (Independent—Denver), KWGN (Independent—Denver).

PREMIUM CHANNELS

HBO, Cinemax, The Disney Channel, Select TV, Starion Premiere Cinema.

TIER CHANNELS

Netlink—a la carte (6 channels listed above).

Skyline Silver (WWOR—New York, WSBK—Boston and KTLA—Los Angeles).

Primetime 24 (WABC—New York, WXIA—Atlanta and WBBM—Chicago).

Superstation WTS—Atlanta.

Home Sports Entertainment (regional availability).

Mr. WIRTH. There is not a monopoly situation, Mr. President, and second, programming is supplied at reasonable competitive rates. That is also made available in the material that I have made available in the Record.

Mr. President, I hope my colleagues recognize that this is an important industry, one in which the marketplace has worked, one in which we should not legislate any further, and we should let that marketplace work as robustly and as well as it has in the 3 years of this industry's life.

Mr. President, I yield the floor.

Mr. GORE. Mr. President, I have such great respect for my colleague from Colorado that I want to preface my comments by again noting that. I have enjoyed working with him over the years, first in the other body and now here. He is a great Senator, and the affection I express is very genuine.

Let me address some of the statements he has made.

First of all, the language used, I think, is important, because from words thoughts flow. The Senator from Colorado uses the phrase "cable television programming." Cable programming.

The cable industry has come to feel that this is indeed their programming, which they intend to control and mete out to other potential communications markets according to their own terms. They see it as a source of programming which they do not want to have available in an unrestricted form to a competing technology. I refer to it as premium programming. I do not see it as inherently cable in nature.

Going back to the example I used earlier, if the owners of movie theaters found some way to economically control the supply of movies and then began to feel some competition from videotape rental stores, they might get together and say to themselves: "Fewer people are coming to the movies because they are renting tapes and watching them at home. How can we slow down this trend?"

If they controlled the supply of movies, they might give directions to the people who made the movies to restrict the access by videotape rental stores and require them to charge at least as much as the price to get into a movie theater. They would see it as a movie theater programming. They would see it as theirs to control.

That is how the cable industry sees premium programming—HBO, Showtime. It is theirs, they think, and they resent the idea that a rural dish owner would have the audacity to ask for competition in the providing or sale of that movie to the dish owner.

Mr. PRESSLER. Mr. President, will the Senator yield for a question on that point?

Mr. GORE. I yield, only because I do not want to be the one running the clock.

Mr. PRESSLER. If my friend recalls the day we had the hearing, we had HBO before the Commerce, Science, and Transportation Committee, asking them about their rate structure. They were arrogant. They did not wish to respond. They treated us as a group of pests, almost, asking them about their rate structure. They told us they did not know what it was and sort of brushed off the whole question.

I thought that was one of the most arrogant examples of testimony before a U.S. Senate committee I have ever witnessed. That summed the whole thing up, so far as I was concerned.

Has there been any improvement since that time in the behavior of HBO or the cable industry?

Mr. GORE. No. In fact, the competitive situation has become worse.

One day after the committee passed the legislation, in an agreement with the rural electric co-op entity, the NRTC, as it is called, under restrictions, they cannot sell programming to any dish owner who does not live in an electric co-op service area. That means that 85 percent of American families are not covered by this agreement. The vast majority of current and potential dish owners will not have access to that package.

Second, in the case of many of the program services, NRTC will be forced to pay wholesale prices that are 5 to 10 times higher than cable companies pay for exactly the same product.

It is again an example of their meting out what they regard as their programming.

This time, in response to more political pressure, the committee passed the bill, and so they come up with this crumb for 15 percent of the families, with many wholesale rates 5 to 10 times higher than what is charged to cable companies.

It is interesting to note that my colleague the Senator from Colorado was describing the history of the issue, and I do not wish to go into all that, but he talked about cable legislation. The Congress of the United States passed something called a compulsory license, which says that the U.S. Government, with the force of law, requires local signals over the air to be available free for cable television companies. It gives the cable television companies the legal right—not negotiated, but the legal right—to take them for free and then resell them.

Well, we did that in order to give access to the cable television industry to those program services in local markets. We even give them the right to get distant signals in some circumstances. This same industry, which asked for that access, is now clamping down because they see the premium programming as theirs, for them to control.

Now, these other packages: Many of them are selling just basic services or reselling at wholesale rates which are fixed, again, at levels much higher than the wholesale levels charged to cable entities.

Another point: The phrase "Government regulation" was used, requiring middlemen. No satellite dish owner would be required to deal with any middleman. They could go directly to the premium programmer if the premium programmer wants to sell the product. They could go to the cable company if they want to continue selling through the cable company, as is the case today. But they would have the benefits of competition, and that is what this country is about. When the marketplace is not working, let us try to inject a little more competition.

I have no idea what the correct rates ought to be, and the Government has no business saying what the rates ought to be. But when you have a monopoly situation, when these two industries—the premium programmers and the powerful cable television industry—are are so intertwined and believe the programs to be theirs, when they exercise power in an abusive way and tell these dishowners that they cannot have the benefits of competition, then it is time for this body to act.

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[1] Not yet scrambled.

We have tried to get action here. The cable industry does not want to see action.

Now I am hopeful we will have an opportunity to vote and if the distinguished chairman of the subcommitee wishes a time agreement again I am available. If the distinguished chairman wishes to make a tabling motion that vote ought to be seen as the vote on this issue and Senators who have received a flood of mail, bags and bags of mail being brought into their offices from people who know how unjust this situation is ought to understand clearly that that is the vote that these 2 million Americans are waiting for. Many of them have no other way to see these proceedings than on their satellite dish. And they ought to know that that is the vote.

I do not see under these circumstances with limited time available—again I have no desire whatsoever to delay—I do not see a tabling motion as an unfriendly motion in the sense that it is procedural. It is an opportunity to have a vote but the vote will be recorded.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I rise today to address this proposed amendment by the distinguished Senator from Tennessee. We have had a lot of interest from my State of Kansas on this legislation. Hundreds of individuals from all over the country have called and written in favor of this bill. I commend those individuals who are carrying on a real grassroots effort to deal with the issues S. 889 addresses.

Mr. President, I am very sympathetic with the issue of satellite scrambling. There is apparently a lot of interest in dealing with this issue. Senators from both sides of the isle are certainly anxious to resolve this situation. I am hopeful we will address this sometime in the near future.

However, Mr. President, this is a tax bill. Let's not mislead the people who want this bill that we are doing anything positive. Senator Gore deserves a vote on this bill as a free standing bill. I may end up supporting this on the appropriate vehicle. But let's be frank. I have no illusion that this will survive in the conference committee.

Let's vote on this bill, that is certainly worthy of the full Senate's consideration, at the appropriate time. The American people want this tax technical corrections bill passed. It is important to discuss and vote on this measure at the appropriate time.

Mr. BAUCUS. Mr. President, the Senator from Kansas is absolutely correct. This is a tax bill. This is a technical corrections bill. This is a bill that will only see the light of day if the bill is not weighted down with lots of excess baggage.

The Senator from Montana comes from a State where there are many dish owners. Our State flower is the bitterroot.

In the last 2 or 3 years most Montanans think we have a new State flower; it is a satellite dish.

Montanans have more satellites per capita than any other State in the Union.

I am sympathetic with the bill being offered by the Senator from Tennessee, very sympathetic.

The fact is the Senator from Tennessee is a folk hero in Montana. I get many, many letters to support the Gore bill, bushels of mail.

But the fact is, as the Senator from Kansas said, this amendment is not going to be enacted this year, certainly not on this bill, on this technical corrections bill.

Even though our new folk hero is the Senator from Tennessee, even though many Montanans are satellite dish owners, they probably would rather see the diesel fuel provisions enacted, the heifer tax provisions enacted rather than have a symbolic vote here, a Pyrrhic victory in favor of the satellite bill.

So I encourage Senators to remember that, when we have this tabling vote, and I hope we have the tabling vote soon, that the tabling vote is really a vote on whether or not we are going to have a technical corrections bill. That is what the tabling vote is all about. It is not on the merits of the satellite bill. It is whether or not we are going to have a technical corrections bill.

Even though I am sympathetic with the merits of the bill offered by the Senator from Tennessee, I am primarily concerned with the real victory, diesel fuel, heifer tax, and the like rather than a Pyrrhic victory; therefore, I will support the motion to table when it is offered.

Mr. GORE. Mr. President, will the Senator yield?

Mr. BAUCUS. I yield.

Mr. GORE. The Gore-Bumpers-Ford bill has a companion measure with tremendous support in the other body, with conferences in the other body interested in the same goals embodied in this amendment. While I respect the statements just made by my distinguished colleague, I would again urge all Senators to regard this vote as the key vote on whether or not there will be justice for satellite dish owners in the 100th Congress.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Mr. President, I will be very brief. I just wanted to respond to a few of the comments that were made earlier by my good friend and old colleague, Senator Gore. We have worked together on this, as he pointed out, and he has done a great service, I think, in doing exactly what we should be doing, and that is putting a great deal of pressure on them and make sure that this marketplace only 3 years old moves very rapidly.

To respond, first of all, just on the procedural issue, we are going to talk about what is going on in the other body, that it would get reported out of the committee, but it has not gone to the floor. The only items that went to the floor are the two that I referred to earlier, the piracy provision and the FCC. The House has decided not to do this.

One of the issues that was raised in discussion earlier is who owns this programming. And the idea, it seems to me, is that we will make the programming own the programming and we should not be reaching in there and telling people what they can do with their programming.

I find that absolutely extraordinary.

The fact is we do not say to the Ford Motor Co., "You can make Fords but we are going to tell you who can sell those Fords." We do not say to Maytag, "You can make refrigerators, but we are going to tell you who can sell those refrigerators."

That, it seems to me, is an enormous reaching in of us to be able to say to HBO or whoever who can do this. What they have done on their own——

Mr. GORE. Mr. President, will the Senator yield for a question?

Mr. WIRTH. I will in a minute.

What they have done on their own is, one, make these available to people on a 1-800 number. You just call 1-800 and get hooked up.

Second, they have developed all kinds of pooling activities as the ones I mentioned, most notably the ones done through the REA.

It is their programming and they are the ones who ought to be able to say who sells it. They are making it available. The evidence on that is incontrovertible and we should not be moving into that, telling them who can and who cannot sell or distribute their programming.

It seems to me that is an abridgement of everything that we have a sense of in terms of property.

Third, I would say that one of the interesting offshoots of what is going on in this competitive marketplace is in fact the backyard satellite dish industry itself is setting up its own distribution network, not one; there are two of those set up by the backyard satellite dish industry itself.

They are moving into this marketplace. They are understanding the dynamics of this. They are moving out very well indeed.

Fourth, the point was made earlier that programming is available to people with backyard satellite dishes sometimes 10 times more expensive, for people in the rural areas are getting ripped off.

Let me just cite a few figutes put together by the Satellite Broadcasting & Communications Association, that association of backyard satellite dish producers. The average price of basic cable service, when the Senator from South Dakota has that available to him in the District—I hope we do, too—or in South Dakota, the average price of basic cable service to those people living in urban areas is $13.25 a month and the premium service, such as "Showtime," is $23.49 a month. Similar rates in an urban area are $13.25 a month and $23.49 a month for premium services.

What happens in rural areas? As the Satellite Broadcasting & Communications Association itself pointed out, these same services are available to the satellite dish owners in rural America for as little as $10 a month, as opposed to the average $13.25 for urban consumers, and the cost of a basic service package plus a premium network such as "Showtime" is available for as little as $16 a month. And those prices in rural America, through the packaging that we have made available through this marketplace, become increasingly competitive and there will be lower and lower prices.

The need for us to regulate, the need for us to reach in, is certainly not necessary. I hope that this legislation, which I think falls under the category of an idea that sounds good if you say it fast enough, that this legislation will not be accepted and that we will vote to table the legislation offered by the Senator from Tennessee.

Mr. GORE. Will the Senator yield for a question?

Mr. WIRTH. I am happy to yield to the Senator.

Mr. GORE. The Senator said that those who make the programming ought to be able to control the programming. What I am saying is that there should be a competitive marketplace when the programming is sold.

But, building on the Senator's principle, let me ask him this question: Guided by that principle, would you repeal the law which takes that right away from broadcast television stations? Should broadcast television stations have the right to control their programming to the extent that they could refuse, as many would like to refuse, to allow cable companies to include their signal in a package for sale? They get it free under the law and then they sell it as part of a package. I would support that.

But it would seem to violate the principle the Senator enunciated a moment ago. I am wondering how the Senator would reconcile this legislation which requires access for the cable industry with opposition to a measure designed to stimulate competition for home dish owners.

Mr. WIRTH. As the Senator well knows, the issue of over-the-air broadcasting is significantly different because of the use of the public spectrum and it is regulated and managed in a very different way. One example of how it is managed in a different way is going to be reflected in the Kastenmeier-Synar legislation in which the right of a backyard satellite dish owner to pick up programming that is paid for, in effect, by the commercials and so on or by public broadcasting, the right to pick up over-the-air broadcasting is going to be made very clear and in principle in that legislation. So that problem is also going to be resolved.

It is a different kind of situation because you are dealing with a cable system which is not using the public spectrum and over-the-air broadcasting which is. And they are dealt with in a very different way.

Mr. GORE. Let me ask the Senator another question. I differ with a part of his response. I shall not take the Senate's time to spell out all of those differences. Let me ask a followup question.

What is it about the spectrum used by television stations that broadcasts a signal picked up by a cable company for free, a company that then resells it for profit? That spectrum is somehow public. And yet the spectrum that is used to send a signal from a satellite down to the surface of the Earth, a program that has commercials, many of them have commercials, as well, why is that part of the spectrum private? They are public airwaves, also. The very technology was developed with taxpayers' funds. Why is one public and the other private, exclusive domain of the cable industry?

Mr. WIRTH. Well, as the Senator well knows, the cable systems pay a compulsory license fee to the individual who develops that programming. That has been part of the fabric of this for a long period of time. That compulsory license pool is paid out so that the broadcaster pays his share, the cable person pays his share, and those funds go back to the owner of that programming. The owner of that programming gets reimbursed.

We do not say to the owner of that programming: "Give it away." We do not say to the owner of that programming, as was suggested earlier, if they are programming, "Whose is it?"

What we do is that it is made available in a variety of ways in which people are reimbursed. If you develop "All in the Family," if you are the National Football League, you get reimbursed. There is no such thing as a free lunch. Ultimately, people are paying for that programming. There is no free lunch.

What we want to do is make available to those people as many ways of arriving at finding and buying that programming as possible.

Now, if there were only one source of cable programming to the backyard satellite dish owner, then the Senator might have an argument. The Senator might suggest there is a monopoly situation. But we are not there. There are all kinds of programmer packages available, all kinds of them, and more all the time.

I cited earlier the development of the REA package. The development of the REA package is yet another example of the development of a more and more competitive marketplace. As more and more packages of programming are available, the prices, as in any marketplace, are going to go down. And rather than regulate that marketplace, let us let it work. It is working now. Prices are going down, and more and more offerings are available.

That is the issue in front of us. Is there a monopoly? The answer is no. Is packaging for backyard satellite dish owners unfairly priced? The answer to that is no. That is what this issue is about.

Mr. GORE. Will the Senator yield for one further moment?

Mr. WIRTH. I am happy to yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Chair must remind Senators that the question should be posed to the other Senator through the Chair so that we kind of keep order, though we have not been doing too bad so far, but so that we would try to keep the rules of the Senate in proper perspective for the rest of the evening.

Mr. GORE. Mr. President, I appreciate the Senator from Colorado yielding for this further question.

There is a difference between distant signals and local broadcast signals. I will, at the conclusion of this debate, ask unanimous consent to put a more detailed response to each of these measures into the RECORD.

Mr. PRESSLER. Will my colleague yield?

Mr. GORE. I do not have the time.

I will just conclude this question by stating as a premise, first, that there is a big difference in the way this body has granted the cable television industry access to programming sent through the public airwaves and the reluctance of the body, up until now—we do not know how this vote will come out—reluctance of this body up until now to grant access to dish owners to programming on competitive terms.

Now, am I correct in assuming that the Senator from Colorado disagrees with the premise of that question?

Mr. WIRTH. Well, I probably do, but I was not quite sure I understood the whole of the question, so we can leave that one and do it later.

Mr. PRESSLER. Will my colleague yield for a question?

Mr. WIRTH. I am happy to yield.

The PRESIDING OFFICER. I ask the Senator to come through the Chair in the proper procedure of the Senate.

Mr. PRESSLER. Mr. President, will the Senator yield for question?

Mr. WIRTH. I am happy to yield to the Senator from South Dakota for the purpose of a question.

Mr. PRESSLER. Mr. President, I wish to ask my colleague about his analysis of the REA agreement. Now, that was only entered into a day after the hearing. It is my strongest feeling that that agreement would never have been entered into if it were not for the pressure put on HBO and the big cable companies in that hearing.

It is my further assessment that the cost of this programming, if left unfettered, would rise extremely high in farm areas, small cities, ranches, and for people who have cabins in the Black Hills. So we are depriving a whole group of people of entertainment, culture, and information.

Now, I happen to live in two places and in neither place can I get cable TV, either by virtue of traditional cable or wireless cable. One is just a few blocks from here. The other is on a farm in South Dakota.

But when cable becomes available there, the prices are probably going to be very high, based on the pattern.

So, would my colleague not agree that that REA agreement probably would not have come about were it not for the pressure of a congressional hearing and, furthermore, that we need legislation to bring more pressure?

Mr. WIRTH. If I may have the floor, Mr. President, I was one of the architects of pooling the REA's together with the programmers. That was an idea that I had 3 or 4 years ago when this issue first came up and was raised very ably by the now Senator from Tennessee.

I proposed that what we ought to do is to get the REA's, who have this great distribution network in rural areas, together with the programmers, and we were slowly and surely inching the two together and I guess I was acting as a broker to get this to happen.

The legislation then was introduced by the Senator from Tennessee and I think that, along with other questions that have been raised, unquestionably added pressure and momentum to getting a marketplace solution rather than a regulatory solution to the problem. And that happened and that has happened and I think it has been remarkably successful. Great numbers of people have signed up with REA.

The fact is the REA was originally supporting this solution and they are now saying let us forget a legislative solution and go on to the marketplace.

In answer to the Senator's second question about price, earlier I put into the RECORD a very extensive summary of the available programming packages and their costs. As I pointed out earlier, I think that points out with this increasing competition in rural areas that competition is driving prices down. Without that competition, with a monopoly, I think the Senator might be correct, that there would be an upward push on prices because there would be monopoly control. But that does not exist.

People in rural America can now dial 1-800, dial overriding packaging services, go to the REA. They have a whole variety of ways to get packaging and those are competitive in nature and competitive in price.

Mr. President, I have used up more than my share of the time and I yield the floor.

The PRESIDING OFFICER (Mr. GLENN). The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I will speak just briefly because I have already expressed myself on this issue. I would like to submit for the RECORD, a historical overview of the volume discounting situation prepared by the National Cable Television Cooperative in 1986. HBO's discounting practices have not changed since then. As a matter of fact, the small companies have had to band together in an attempt to make their complaints heard about the way they are treated.

There is a difference in what they pay. They are exploited. They are charged more. They are given less information about what is available. They have been mistreated by HBO and the big cable companies.

I ask unanimous consent to have this information printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE NATIONAL CABLE TELEVISION COOPERATIVE, INC. AND HOME BOX OFFICE, INC.

When the Home Box Office [HBO] service, wholly-owned division of Time Inc., first went up on the satellite in late 1975, the cable television industry was a quite different business than it is today.

A decade ago, cable television was primarily a creature of rural America, bringing a handful of television signals to communities through the use of a "community antenna". Most cable systems were owned by small companies and individuals. While multiple system operators [MSO's] like Telecommunications, Inc. [TCI] and American Television & Communications, Inc. [ATC] existed, not even the largest MSO controlled more than a few percentage points of the national marketplace.

With few exceptions, cable television [CATV] was not yet successful in the larger cities. In these pre-satellite days, none of today's exciting channels such as HBO, Showtime, Disney, C-Span, CNN or ESPN were yet available. Since the cable operator's challenge in the larger cities was to provide programming not available over the air, big-city CATV would have to wait until satellite-delivered, "made for cable" programming.

It took HBO over five years (from 1975 to 1980) to achieve its first million satellite-delivered pay TV subscribers. HBO's sister service, Cinemax (also wholly-owned by Time Inc.), passed its first-million subscriber mark in but a year and a half. By the end of HBO's first decade (which began in 1972 with terrestrial microwave delivery), HBO had acquired over eleven million subscribers.

The introduction of satellite-delivered pay television in late 1975 was followed fifteen months later by Ted Turner's superstation WTBS. Many other pay and "basic" services have since followed, and today more than two dozen high-quality pay and basic services are available.

With satellite-delivered services, operators would now provide the city-dweller with services unlike those he could get for "free" by normal over-the-air transmission from ABC, CBS and NBC. Larger and larger cities were wired for cable. MSOs who formerly owned only a selection of smaller communities now bid for and built cable systems in the nation's largest cities.

Most cable systems carrying the first HBO satellite feeds in 1975 and 1976 signed three-year contracts (Affiliation Agreements) which authorized them to provide the HBO service to their subscribers.

HBO's first round of three-year contracts with MSOs and independent cable operators for the carriage of the HBO network came up for renewal in 1979 and 1980. HBO's major competitor, Showtime, went up on the satellite in 1978, fully 2½ years behind HBO's lead. HOB's regional operations and New York-based national account group personnel provided formidable competitors to Showtime's national challenge. In 1978 and 1979, *HBO sales personnel made many details with MSOs in an attempt to secure "universal* distribution" for the HBO product. Advance volume discounts were offered to the MOS's, in return for promises to launch HBO in all of their systems, in effect freezing out the competition. (In the days prior to 1979, cable systems—if they carried pay TV at all—carried only one channel. Multi-Pay did not begin in earnest until late 1978 and early 1979 with the simultaneous launch of both HBO and Showtime in Thibodaux, Louisiana.)

By the time this second round of affiliation agreements came up for renewal in 1981-82, the MOS's had gotten a taste of just how good these "universal distribution" deals could be. Many MOS's extracted further, and much deeper, "volume" discounts from both HBO and Showtime. Playing one service against the other, many MSO personnel used their leverage to receive deep wholesale discounts, free program guides, free satellite receiving dishes and receiving equipment, advertising and/or marketing funds and other incentives.

The independent cable operator, with one or a small handful of small systems, continued to launch pay TV and the basic services in his systems as he could afford to do so. As prices of satellite dishes continued to drop in the late 1970's and early 1980's, cable-delivered pay television was introduced into ever-smaller communities. While the service was the same, the prices the independent operator paid to HBO were much higher than those paid by the large MSO. Wholesale ratecards for HBO, Cinemax, Showtime and The Movie Channel were dominated by the use of the volume discount. The larger you were, the less you paid.

The independent operator became the only one paying "list" price.

Volume discounts of 20% to 30% and more became common for the larger MSO's, with the largest MSO's paying but half the wholesale prices charged the independent operator. [In fairness, an attempt was made by HBO to institute so-called "performance" discounts for small operators. If 40% of a cable operator's basic subscribers took HBO, he received a 2% discount; if 60% took HBO, he got 4% off; and if 80% took HBO, he got a 6% rate reduction. In the days when a cable system offered only one pay service, it was possible to achieve these penetrations. But, once multi-pay took hold, it was the rare system that could achieve and hold even 40% pay/basic penetration with one service. Even the best of cases, these 6% performance discounts were miniscule when compared to the double-digit volume discounts available to the larger MSOs.]

The larger MSO's now enjoy considerable advantage over their country cousins. Many MSO's have signed ten-year affiliation agreements with HBO, providing them with rate protection, continued volume discounts and other incentives. The small town operator, and his subscribers, are forced to pay both higher retail and wholesale prices for the same products as the big-city MSO.

Just one example will suffice. In southwestern South Dakota, the cable operator in the community of Wall, SD offers HBO to his subscribers at $8.00 per month, in additin to the basic cable charge. The "list price" for HBO at wholesale, when sold at retail for $8.00, is $5.10 per HBO subscriber per month. What does TCI and ATC pay? What are the effects, then, of this policy of deep volume discounts to the large MSO's? There are two, and they are related:

First, the subscribers of smaller systems owned by major MSOs often pay higher retail rates than similar systems owned by independent operators. This apparent contradiction exists even though the margin of profit is higher to the MSO than the independent, because most MSO's are following aggressive campaigns to acquire other cable systems, and use their smaller, rural cable systems as "cash cows" to spin off funds to be used in their acquisition efforts.

Secondly, the independent operator is effectively blocked from further growth by the effects of the wholesale rate disparities previsly discussed. A cable system's market value is generally fixed by determining the cash flow it generates and computing a price based on a multiple of the cash flow available. [In the cable industry, cash flow is defined as gross revenues minus operating expenses, but before taxes, amortization, depreciation and debt service.]

A well-built, 38- or 36-channel cable system with more than 1,000 basic subscribers (equal to a town with 3,000 or 4,000 population), can bring 10 to 11 times cash flow if it were put on the market. Since operating expenses include wholesale charges paid out for pay and basic programming, it becomes obvious that a major MSO can pay much more to buy a particular system than can the independent operator. In fact, a major MSO can pay 12, 15 or even 17 times cash flow because of the lower costs of programming it enjoys.

[We will include one example of these disparities in action, as Exhibit "A"; a letter from Co-Op member Tom Gleason, Jr.]

This "uneven playing field" means that the consolidating now taking place within the cable industry into ever larger and larger MSO's is artifically affected—and, in fact, induced—by the disparity in wholesale rates between what the large MSO pays for HBO and the "list prices" charged the independent operator.

The industry's largest MSO, TCI, now has upwards of eight million basic subscribers in it's holdings, which represents at least 20% of the industry, and perhaps nearly 25% when its partial holdings are taken into consideration. [In cable, unlike the broadcast radio and television fields, the FCC does not require an MSO to disclose partial ownerships in other cable properties, nor does the FCC limit the number of systems or number of subscribers that can be owned or controlled by one MSO.]

There is currently an inquiry under way by the FCC to further investigate whether there should be limits on an MSO's growth and influence. The National Cable Television Cooperative strongly urges the implementation of rules governing the upper limits of size and influence of cable MSO's, just as are now in place upon the owners of broadcast radio and television properties.

Recently, the U.S. Department of Justice ruled against a proposed merger between TWA and Ozark Airlines. The merger was denied, not because there would be a national dominance by the resulting airline, but because their combination would control a majority of flights originating and passing through Lambert Field in St. Louis, Missouri.

The consolidation that is taking place in cable television today is not a result of natural marketplace forces, but is a result of unnatural and artificial influences, fueled by these wholesale rate disparities.

If the current consolidation is allowed to continue unchecked, a few MSO's will control the vast majority of subscribers by decade's end. The Cooperative's arguments are not directed against bigness per se, but against the benefits of bigness as they occur with regard to wholesale rate advantages enjoyed by big MSO's.

Sooner or later, Congress, the Justice Department and/or the FCC will be moved to act. Unfortunately, a great number of independent cable operators may by then already be forced out of the business, leaving only the huge MSO's and hundreds of tiny, rural cable systems in their wake. [Because of the rural nature of many small-town systems, they are of limited interest to major MSO's. Major MSO's like to acquire systems that are conveniently and geographically colocated to their operational "hubs".] Rural cable—and their independent operators—will be left to fend for themselves at the unequal combat of wholesale programming charges.

The question should be not whether to act, but when. It is entirely likely that, because of the pressure and publicity brought to light on the plight of the rural private satellite dish owner, the private TVRO owner may end up paying less at retail for his satellite-delivered HBO than the wholesale rate paid by the independent cable operator in the nearby community. National discussions and solutions now being sought on behalf of fairness should include the independent cable system operator and his rural and small-town subscribers.

The National Cable Television Cooperative is only attempting to do for the independent cable operator what the larger MSO's already do for themselves. While the Cooperative has enjoyed some limited success in negotiating "MSO rates" for hardware and equipment, it has been singularly unsuccessful in achieving national programming agreements for the volume discounts that would be offered to a single MSO of our combined size.

Home Box Office, Inc., and its flagship service, the HBO network, is the linchpin to this dilemma. Many representatives of other basic and pay services have remarked to Co-Op representatives that, "* * * they saw no reason to do a deal with the Co-Op as long as HBO hasn't * * *" Since HBO has little to gain (most of our members already offer HBO and Cinemax to their customers) and more to lose, it is difficult to foresee a peaceful, marketplace resolution to this rate disparity issue.

Throughout negotiations with HBO from July through October of 1985, the Cooperative's approach has been: "Hold us to the same standards that you require of MSO's of our size, in return for which you grant them deep volume discounts. Give us an opportunity to meet those same standards, and, if we do so in a reasonable and business-like manner, treat us the same with respect to rates and other incentives."

HBO has steadfastly refused to deal with the Cooperative. They have criticized us for not being literally owned by one entity, as though a Co-Op could in fact be a single company like a "real" MSO. They've required single-point billing, even though most MSO's do not write a single check each month to HBO or other pay and basic services.

They have structured other hurdles so high we can't jump them, such as their requirement of the Co-Op that we provide joint and several liability for payment, which would make our smallest member (with less than 250 subscribers) liable for the bills of our largest member, who has nearly 300,000 subscribers.

We are willing to meet defensible, business-like requirements in order to both earn and achieve the deep volume discounts available to the large MSOs. To date, we've been effectively frozen out of this possibility, and we feel that the Senate Commerce Subcommittee is an appropriate forum within which to ask HBO's Chairman, Mr. Michael Fuchs, the questions we have not been able to get HBO to answer:

(1) "Why has HBO steadfastly refused to offer the same wholesale rates to members of the National Cable Television Cooperative that they now offer to MSO's of the same comparative size?"

(2) "What genuine economies of scale, if any, justify the great disparities in wholesale prices between what you charge Co-Op members and an MSO of their size?"

Should HBO decide to conclude an MSO-level national agreement with the National Cable Television Cooperative, the big winner will be the cable subscriber of small-town America. The foregoing comments represent our opinions, and we respectfully submit them to you for your consideration.

GALAXY COMMUNICATIONS
SYSTEMS, INC.,
Sikeston, MO, July 17, 1986.
MR. MIKE PANDZIK,
Overland Park, KS.

DEAR MIKE: Furthering our conversation concerning acquisition of systems by small MSOs where larger MSOs are also involved in the acquisition. In 1985 we attempted to purchase the Ashland City, Tennessee cable system from some local people. We, at the time, owned the systems in Dickson and Dickson County, Tennessee, which is the adjacent county. From an operational standpoint, it fit us very, very well. We offered to purchase the system at approximately $1,000 per subscriber because we felt there was a large upside possibility for sales growth and we used our programming costs for cash flow projections.

The owners accepted our offer. Less than two weeks prior to our closing, a much larger MSO stepped in and paid in excess of $1,200 per sub for the system.

In later discussions with the particular operator, we found that their programming costs are significantly less than ours and, therefore, they could support the additional $200 per sub by their excess cash flow.

A more current example is Vincennes, Indiana. The system is owned by a local university. We own and operate several small systems in the same geographic area. The asking price is $17,500,000. Using our operational costs we have determined that the system is worth 10 to 12 million. That is based on 11 to 12 times current cash flow.

TCI offered to purchase the system for the asking price immediately upon its availability on the market and their significantly lower programming costs made it impossible for us to compete to acquire this system.

The point of this is that with our programming costs, we are totally priced out of the acquisition market when faced with competition from a major MSO.

Sincerely,

TOMMY L. GLEASON, Jr.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I am proud to offer my strong support for this amendment, which is S. 889 in substance, or Calendar Order No. 516. That bill, as we all know, is the Satellite Security and Fair Marketing Act of 1987.

Mr. President, this legislation is the product of more than 32 months of review, analysis, and marketplace observation. It amends section 705 of the Communications Act, and is absolutely necessary to ensure that a fully competitive market develops in the direct satellite broadcast market.

Mr. President, as I testified before the Senate Commerce Committee in July 1987, the market for scrambled satellite television programming is both confusing and unfair. Under present law, it will continue to be unfair if not confusing.

You will hear arguments that there is vigorous competition in this market. But if you look at the firms which are now competing, you will see a few large, dominant cable companies exercising a stranglehold on the direct satellite broadcast market.

The present market reflects a distortion by dominant forces, active manipulation of the supply of programming and hardware, and an attempt to exert market power inconsistent with the power interest. The result is consumer dissatisfaction and erratic supply and demand.

Rural television consumers are limited in what they receive, while their city cousins take total viewing for granted. Rural folks have two legitimate demands: First, assured access to satellite-delivered cable programming, and second, a fair and reasonable price. Rural consumers do not want freebies, preferences, or subsidies. They simply want the benefits that reasonable and very minimal Government regulation would provide. This amendment provides those assurances.

In the nearly 4 years that we have been working on this issue, opponents of this legislation have argued that fair conditions for satellite-delivered programming would "evolve." Well, Mr. President, I hope that is not the same kind of "evolution" on views and policy which some of the Presidential candidates have been talking about, because I fear that only takes us one step forward and two steps back.

Opponents have also promised that if the market did not change, they would support a bill that allows for a truly competitive market.

So I challenge the opposition to state where they are today. If the market has changed for the better, please show us, because I think it's only gotten worse.

I continue to receive daily calls from dissatisfied consumers.

I continue to see evidence of active market manipulation.

I continue to find a concentration of industry.

I continue to find a lack of competition.

Mr. President, the time has come for the Senate to adopt this legislation, so let us review the facts.

First, there are over 1,900,000 dishes in this country, and well over 1.3 million in rural areas. There are over 35,000 in Arkansas alone. But consider this—of the very limited number of packaged programs available to these 1.3 million rural dish owners, every one is either offered by a large cable company or a programmer. There is no independent distribution of cable programming to rural dish owners. Every effort to forge an independent package of scrambled programming for the rural consumer has been stonewalled. Without effective competition, prices for scrambled programming will remain far above the reasonable price that would be available in a competitive market.

Second, satellite antenna sales have failed to adequately recover from the consumer fright that was inevitable when scrambling first began on January 1, 1985. We have hundreds of jobs in this industry in Arkansas, and that includes manufacturers and retailers. Of the 22 satellite dish manufacturers that were in my State just 3 years ago, I can count the ones that are left on the fingers of my right hand. And those manufacturers are hanging on by a thread.

Third, the question of availability of decoders has not been resolved. Consumers in my State tell me they cannot get a decoder from their local dish retailer. Retailers tell me they cannot get them from distributors. As I mentioned, there are close to 2 million dishes in this country, yet less than 200,000 decoders have been sold and authorized. There are also serious questions of decoder distribution policy. My understanding from consumers and dish retailers is that decoders are available if one purchases programming from a cable company, but when dish retailers try to obtain them, they are unavailable.

So these are the lingering problems that can only be adequately remedied by passage of this amendment.

In summary, this measure accomplishes two objectives which are critical to a stable, fair, and competitive cable television market: First, it establishes a right of access to scrambled programming under competitive market conditions that rural satellite television antenna owners should have under section 705 of the Cable Communications Act of 1984, and second, it takes an essential first step toward allowing a truly competitive market for scrambled television signals to flourish.

Mr. President, as we all know, the scrambling that began in 1985 changed the rules of the game. The Cable Communications Act of 1984 lacks sufficient statutory directives for the marketing of scrambled cable television programming. This is the fundamental flaw that has led to the problems of establishing a marketing structure for encrypted programming. The market structure that has developed is restricted, and it benefits the chosen while locking out the many.

This amendment provides an essential statutory right of access to scrambled television programming and establishes the conditions necessary for a competitive market. It also addresses a gaping hole in the Communications Act and corrects the market distortions that are at the heart of this issue.

Consumers want and need this bill.

Mr. President, the Senator from Tennessee has explained the guts, nuts, and bolts of this legislation. I will not prolong Senate action any further—except to reiterate that this legislation is absolutely necessary to correct a fundamental inadequacy of the Cable Communications Policy Act of

1984. This issue, unlike other problems with the act, cannot wait. And will not go away.

Consumers have had enough.

Would-be competitors to the dominant interests have suffered enough.

I urge the Senate to adopt this amendment and to begin the process of acknowledging and protecting the rights of satellite television antenna owners.

If I may take just a few more seconds to say, if everything that the Senator from Colorado said was according to my mail and the history of this legislation I would vote with him. But when you have 2 million satellites in this country, virtually every one of them in rural areas, and there are only 200,000 decoders in use which will unscramble all the scrambling that is being done, I submit to you the proof is in the pudding.

Who in this body can argue that the people of my State, who have tens of thousands of these television dishes, who will argue that they are writing to me, telling me they cannot get programming when the marketplace is working?

The marketplace is not working. Three years ago the distinguished Senator from Arizona, whom we all revere, Senator Goldwater of the Commerce Committee and chairman of the Appropriations Subcommittee said: Now, Senator, you make a very good point. There is not any competition now. But if you will just give the marketplace time, those decoders, we all know decoders are only worth $166. Sure they are selling them for $400 now, but they tell me that within a year they will be down to $166, and everybody will be able to afford them and the marketplace will be working and so on and so on.

Mr. President, I have been involved in this fight for 4 long years, 4 years, and for 4 years I have heard precisely the same arguments that were made by the Senator from Colorado and my people in Arkansas still write me on a daily basis.

We had 25 dish manufacturers in my State. We now have five and they are hanging on by their thumbs and they cannot even buy decoders.

You have got to have some kind of a political influence with the manufacturer to get a decoder. I can tell you the retailers out there are not getting them. The cable companies are.

This is just another case where rural America takes it you know where. For 4 years we have fought this, long, lonely battle on behalf of admittedly not very many people out of 240 million, but it is one I am proud to associate with and it is one that someday, someday, maybe we will win. Maybe tonight.

Mr. President, I yield the floor.

Mr. GORE. Will the Senator yield for a question?

Mr. BUMPERS. I will be happy to yield.

Mr. GORE. I wonder, Mr. President, if the Senator is aware that the distinguished former Senator from Arizona, who was chairman of the subcommittee at that time and who did oppose this legislation, subsequently directed a letter to the Senator saying that after having the experience and seeing the situation as it exists, he sees it differently now and his exact words, as I recall them from the letter were "now may be the time to act."

I thank the Senator for yielding for that question.

Mr. HELMS. Mr. President, I want Senators to understand what they are voting on here. This amendment will have the effect of promoting and certainly condoning the distribution of pornographic and indecent material.

This legislation could also require programmers such as Disney and Christian Broadcast Network to allow their programming to be packaged with "X" rated programs. In the event this amendment is not tabled, I will be obliged to offer a second degree amendment to address these problems.

The proponents of the Gore amendment feel that the marketplace for satellite services for home dishowners is not competitive. They contend that there are not enough independent distributors of programming services to satellite dish owners.

Mr. President, the Gore amendment proposes to create more distributors for programming services like Playboy and HBO. The Gore amendment contends that if a programmer uses distributors to sell to dish owners, then that programmer must sell his programming to any other third-party distributor or middleman who comes along. Programmers can set so called financial and character criteria for the distributor to meet.

Furthermore, the legislation prohibits the programmer from discriminating among distributors, which could mean that programmers would be forced to sell to each distributor at the same wholesale rate. The proponents contend that all this will increase competition and reduce prices.

Mr. President, requiring programmers to sell to more middlemen creates two intolerable problems.

First, by requiring programmers who carry "X" and "R" rated programs to distribute it through every third-party distributor who meets the threshold criteria, this legislation implicitly—and, I think, explicitly—puts the Government stamp of approval on pornographic and indecent television programs. It promotes pornography because it helps more middlemen get in the business of packaging satellite services.

Therefore, Mr. President, middlemen will have a federally protected right to force programmers like Playboy or EXXXtasy to sell to them. Furthermore, these middlemen will be able to get the programming at the lowest price because programmers can't discriminate between cable and third-party distributors.

Mr. President, it is not easy to predict how much this amendment will in fact increase distribution of "X" and "R" material, but at the very least it gives the appearance of the Federal Government's facilitating its distribution.

This Senator feels that the Federal Government should be discouraging pornography instead of promoting or condoning it.

Here are some examples of the type of programs that the Government will be helping to promote if this legislation passes. There are program networks carried on satellite called American EXXXtasy and Tuxxedo. These services are nothing but an endless stream of back-to-back, hard core pornographic movies with titles like "Blue EXstasy," "Strange Bedfellows," "Pink 'n' Pretty," and "Dear Nanny."

Mr. President, there are also cable services, such as HBO, Cinemax, Showtime, and the Movie Channel, that make huge profits by selling "R"-rated movies filled with nudity, drug use, sodomy, and the lord only knows what else.

I cannot believe that the Senate wants to be responsible for increasing the number of people selling sleaze to American families.

The only solution to this problem is to exempt from the mandate of this legislation, those programmers who sell "X" and "R" rated material. That is what my second degree amendment will do, if the underlying Gore amendment is not tabled.

Frankly, Mr. President, I am not comfortable with exempting the programmers who carry pornographic and indecent programs while retaining the requirement for those that don't. But if the Federal Government is going to promote anything, it should be the family-oriented programs, not pornography.

The second problem with this legislation, is that it could allow middlemen to package Playboy with wholesome family programming services such as either the Christian Broadcasting Network or the Disney Channel without the latter's consent.

Mr. President, programmers like Disney or Christian Broadcast Network currently have the freedom to distribute their programming as they see fit. They are free to tell a third-party packager, "I don't want to sell my program service to you because your package includes "X" rated programs and I don't want to be associated with that trash." Senator Gore's amendment would effectively prohibit Disney and CBN from refusing to do business with a distributor in that situation because they would be afraid of being sued.

Sure, the legislation says a programmer shall "establish reasonable financial and character criteria" for middlemen to meet. But this is very ambiguous. I guarantee that if Disney refuses to sell its programming to a third-party distributor, the latter will sue Disney saying that the refusal was based on unreasonable criteria. The affair will wind up in court where Disney would face up to $500,000 in fines. In the meantime, Disney could wind up being packaged with Playboy against their will.

Consider this excerpt from the testimony of the Christian Broadcasting Network before the House Subcommittee on Telecommunications and Finance:

> We object to legislated guidelines forcing us into distribution agreements. We have a considerable investment in our image and position in the programming environment. The family programming position that CBN occupies is unique and demands responsible treatment. We must reserve the right to set our own criteria in selecting distributors.

My amendment, if I am forced to offer it, will clarify that programming services such as CBN and the Disney Channel will not be forced to sell their product to middlemen who also distribute "X" or "R" rated programs.

If anyone doubts how serious a problem pornographic and indecent material is for our society, I commend to them an excellent book, "Raising PG Kids in an X-Rated Society," authored by the wife of the distinguished Senator from Tennessee [Mr. GORE]. Mrs. Gore was right on target when she said:

> The dilemma for society is how to preserve personal and family values in a nation of diverse tastes. * * * The freedom we enjoy rests on a foundation of individual liberty and shared moral values. * * * People of all political persuasions—conservatives, moderates, and liberals alike—need to dedicate themselves once again to preserving the moral foundation of our society.

Tipper Gore was entirely correct.

I should mention that my amendment will not deprive consumers who want to buy these movies of the opportunity to do so. Home dish owners can still get these services directly from the programmer. There are also packages available—where the programmer has sold his programming voluntarily to the middleman, instead of being forced to sell it as this legislation would require.

If I am forced to submit my second-degree amendment I hope Senators will support it, and thereby make clear that the Senate does not intend to approve Federal legislation to help promote pornography, let alone require its distribution under any circumstance.

Mr. LEVIN. Mr. President, the issue of providing programming services for satellite television dish owners is a complex one. It is necessary to look at the equities affecting with both those who receive their programming from a satellite television dish, or from cable.

Both of these viewers have equities. The satellite television dish owners have made a significant investment in their equipment. Cable viewers pay through their monthly fees to the local cable companies. Both viewers pay an additional amount for premium programming, which are chiefly movies. The Senate Commerce Committee report on S. 889 clearly states that:

> The evidence presented at the hearing demonstrated that scrambled signals of cable programming are being made available to dish owners at prices comparable to those being charged cable subscribers.

Given these comparable prices, the issue then becomes a question of whether the Federal Government should act to change the market in a way that will allow the satellite television dish owners to receive programming at prices that might go below those that are paid by the cable viewer. It cannot be denied that satellite television dish owners have made a substantial investment in their equipment. By the same token, the cable viewer pays the local cable company a monthly fee to be connected to the cable and receive programming. This monthly fee, when added up over the number of years that the cable viewer subscribes to cable television can be compared to the investment that the satellite television dish owner has made.

Government intervention in this market might be justified if there were not comparable equities between satellite television dish owners and cable viewers. The committee report states that the prices for programming are comparable, and it appears that the satellite dish owners's investment is matched over time by the monthly fees that the cable viewer pays. Because of these equities, the government should not be forcing someone to allow the sale of their programming at prices that could result in an unfair advantage which would alter these comparable equities.

Both dish owners and cable viewers have equities. The equities are not so weighted in the cable viewers direction that we should take the unprecedented step of dictating from Washington who must be allowed to sell programming.

Mr. MITCHELL. Mr. President, in the 100th Congress, I am pleased to have joined Senator FORD, Senator GORE, and Senator BUMPERS as a cosponsor of S. 889, the Satellite Television Fair Marketing Act.

I also was a cosponsor of S. 2290 in the 99th Congress, which similarly would have required the Federal Communications Commission [FCC] to establish uniform standards for the scrambling of satellite-transmitted television programming, as well as establishing a reasonable price standard.

I also voted on October 2, 1986, in support of an amendment to the fiscal year 1987 continuing resolution which reflected another version of this legislation. However, the amendment was defeated at that time on the ground that it was nongermane.

Today's amendment is as necessary as earlier legislative drafts and efforts—and I am as committed to S. 889 as much as I ever was. Since 1986, when scrambling began, nothing has changed that would change my mind on the vital need for this legislation.

Congress needs to act to protect the rights of satellite dish television viewers. This issue is critically important to Maine and the rest of rural America, and to our sense of community as a nation.

Approximately 20 percent of American families live in rural areas which depend on satellite television. In Maine, many communities lie beyond the range of broadcast television signals, and are not served by local cable systems. For them, satellite transmissions are the only link to television news, entertainment, and the mainstream of national events.

Satellite dish viewers confront access costs which are not fully comparable to broadcast or cable viewers. There is the up-front cost, in thousands of dollars, of a satellite receiving dish, combined with annual costs of wear and repair that often are in hundreds of dollars. Add to that the cost of decoding devices; plus, the monthly charge for individual program channels or program packages.

Satellite dish owners face equipment investment costs which other television viewers do not. They also do not have the same kind of broad, ready access to scrambled programming. Yet according to the American Home Satellite Association, satellite dish owners pay between 15 percent and 55 percent more for descrambled access to the same basic and premium program channels provided to cable customers.

No one challenges the right of the cable industry to retain ownership of their television programs. However, I share the concern of satellite dish-owners that access to scrambled television signals should be available at a reasonable cost to anyone who wants it.

Like millions of satellite dish owners in other rural areas of the United States, Maine citizens have expressed concern about not enough decoding devices being readily available to meet demand; the prospect of different channels using different scrambling codes, requiring different decoder devices; and the prospect of significantly higher monthly charges for different channels than those afforded to cable subscribers.

Reflecting the provisions of S. 889, today's amendment would go a long way toward meeting these concerns. It would require the FCC to issue uniform standards for scrambling.

The Federal Trade Commission [FTC] would be required to investigate program pricing and distribution, and to make sure that the satellite television programming market is developing competitively.

The cable industry would need to allow for the sale of decoding devices by noncable distributors. Cable programmers would not be allowed to discriminate among different distributors offering similar distribution services.

The FCC also would need to begin rulemaking to facilitate "to the maximum possible extent" the provision of broadcast network television to remote rural areas.

At the same time, the legislation would provide for criminal penalties for persons who interfere with satellite transmissions.

Some have argued that this legislation is unnecessary. Cable companies argue that decode programming packages are today being sold at prices which are competitive with charges to cable viewers. Much attention also has been given to a recent decision by cable programmers to allow decoded programming distribution through the National Rural Telecommunications Cooperative, a noncable company. Opponents of this legislation argue that the marketplace seems to be working. Except that many industry observers question whether the marketplace is working well enough; or whether it would be working at all, without the pressure of imminent legislation.

Whatever positive developments are occurring in program pricing and distribution for satellite television viewers, positive trends still must be encouraged and reinforced.

That is what this amendment would do. It would reinforce the marketplace, and provide important protections as the market continues to develop.

The legislation mandates the kind of FCC and FTC investigations and actions which are necessary to monitor that market development. If it turns out that continued regulation is indeed unnecessary, then the legislation also provides for a "sunset" of certain requirements after 5 years.

The legislation involves complex issues of law, economics, and technology. However, the letters which I have received from Maine satellite dish owners reflect a simple plea: for equal access and fairness. The law must protect equally the rights of broadcasting networks, cable programmers, and the viewing public.

That is all that this amendment seeks to do. It is balanced legislation. It preserves the right of cable programmers to scramble signals and charge for viewing, while at the same time promoting fairness and broad access in the satellite programming market.

The law also must enhance vital communication links that unify us as a nation. Television programs which are available in Boston, Atlanta, Chicago, or Los Angeles, must be equally available in remote parts of Maine, Kentucky, Texas, Oregon, or Iowa.

The legislation serves this purpose. It preserves a competitive marketplace; balance legitimate interests; and will help bring us all closer together.

Mr. HARKIN. Mr. President, as we all know, the end of the legislative session confronts Senators with a number of difficult decisions. As is the case on this amendment, Senators are forced to offer clearly nongermaine amendments in order to bring their legislation to the floor. Each Senator must weigh the importance of the amendment against the threat it poses to the eventual passage of the underlying legislation.

This technical corrections bill is an extremely important one to my constituents in Iowa. The provisions repealing the heifer tax and the diesel tax are strongly supported and needed by many, many Iowa farmers.

The Gore amendment regarding satellite television is also an issue of interest to many Iowans. But while I have not posed the question as such, I expect that the heifer tax and diesel tax, which affect the very livelihood of rural Iowans, are more important to Iowa farmers than is the Gore amendment.

It is unfortunate that Senator GORE was not able to bring S. 889 to the Senate floor as a freestanding bill. I know he made every effort to do so. However, that fact does not lessen the reality that this amendment threatens the enactment of the technical corrections bill.

Accordingly, I do not find myself able to support the amendment of my colleague from Tennessee at this time. I hope, and expect, that he will continue to pursue this legislation in the next Congress, for his efforts have helped to increase competition in what is a decidedly uncompetitive marketplace. And I would like to take this opportunity to put the Nation's programming and cable industries on notice that, unless progress in increasing competition continues, I will find myself compelled to support legislation of the type offered here this evening.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I move to table the amendment.

Mr. BUMPERS. Mr. President, I ask for the yeas and nays on the motion to lay on the table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate?

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, may we proceed with the rollcall?

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Hawaii to lay on the table the amendment of the Senator from Tennessee [Mr. GORE], amendment No. 3609.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Delaware [Mr. BIDEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Arizona [Mr. DECONCINI], the Senator from Massachusets [Mr. KERRY], the Senator from Georgia [Mr. NUNN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Illinois [Mr. SIMON] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia [Mr. ROCKEFELLER] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Mississippi [Mr. COCHRAN], the Senator from Missouri [Mr. DANFORTH], the Senator from Washington [Mr. EVANS], the Senator from Texas [Mr. GRAMM], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. WALLOP], the Senator from Connecticut [Mr. WEICKER], the Senator from California [Mr. WILSON], and the Senator from Minnesota [Mr. DURENBERGER] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "yea."

The PRESIDING OFFICER (Mr. GLENN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 36, as follows:

[Rollcall Vote No. 360 Leg.]

YEAS—43

Armstrong
Baucus
Boren
Boschwitz
Chafee
Cranston
D'Amato
Dixon
Dodd
Dole
Fowler
Garn
Glenn
Harkin
Hatch
Hatfield
Hecht
Heinz
Helms
Inouye
Kassebaum
Kennedy
Levin
Lugar
Matsunaga
McCain
McClure
Mikulski
Moynihan
Murkowski
Nickles
Packwood
Pell
Reid
Riegle
Rudman
Sarbanes
Simpson
Stafford
Stevens
Symms
Thurmond
Wirth

NAYS—36

Adams
Bradley
Breaux
Bumpers
Burdick
Byrd
Chiles
Cohen
Conrad
Daschle
Domenici
Exon
Ford
Gore
Graham
Grassley
Heflin
Hollings
Johnston
Kasten
Lautenberg
Leahy
McConnell
Melcher
Metzenbaum
Mitchell
Pressler
Proxmire
Pryor
Roth
Sanford
Sasser
Shelby
Specter
Trible
Warner

NOT VOTING—21

Bentsen
Biden
Bingaman
Bond
Cochran
Danforth
DeConcini
Durenberger
Evans
Gramm
Humphrey
Karnes
Kerry
Nunn
Quayle
Rockefeller
Simon
Stennis
Wallop
Weicker
Wilson

So the motion to lay on the table amendment (No. 3609) was agreed to.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Virginia.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I send an amendment to the desk.

Mr. WIRTH. If the Senator will yield, I would like to move to reconsider the vote.

The PRESIDING OFFICER. Will the Senator yield to the Senator for that purpose?

Mr. WARNER. Mr. President, I am glad to yield under those circumstances.

Mr. WIRTH. Mr. President, I move to reconsider the vote by which the motion was ageed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3622

Mr. WARNER. Mr. President, I send an amendment to the desk and ask it be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3622.

Mr. WARNER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Manassas National Battlefield Park Addition of 1988".

SEC. 2. ADDITION TO MANASSAS NATIONAL BATTLEFIELD PARK.

(a) The Secretary of the Interior ("Secretary") is authorized and directed to acquire not to exceed 80 acres of land, or interest therein, except for existing utility easements, which he determines to be historically significant, including but not limited to the headquarters of General Lee on Stuarts Hill, within the area depicted on the map entitled "Manassas National Battlefield Park Addition, 1988" and dated September 14, 1988, as "area A" by purchase with appropriated or donated funds or by donation. "Area A" is generally that area which lies within a line which commences at the southeast corner of the intersection of U.S. Route 29 and State Route 705 and runs south 1200 feet along State Route 705, then east 1925 feet generally parallel to U.S. Route 29, then north 1000 feet until it reaches a point which is 200 feet south of U.S. Route 29, then east parallel to U.S. Route 29 until the boundary of the property subject to Prince William County Zoning File 86-61, then generally north along the boundary of said property, then generally west along the southern boundary of U.S. Route 29 until terminating at the southeast corner of the intersection of U.S. Route 29 and State Route 705. Lands or interests therein owned by the State of Virginia or any unit of local government thereof may be acquired by donation only.

(b) Upon the acquisition of the lands referred to in subsection (a), the Secretary shall modify the boundaries of the Manassas National Battlefield Park to include such lands and shall thereafter administer such lands as a part of such Park: *Provided*, That the Secretary shall permit (1) vehicular access across such lands at not to exceed two locations off Route 29 which are approved by the Commonwealth of Virginia and Prince William County, (2) the continued operation of any existing utilities and storm drains (including, but not limited to, electric, telephone, gas, or water and sewer) and (3) any future utility easements, including easements for electric, gas, telephone, and water and sewer, as may be required and approved by appropriate State and local governmental entities, subject to such reasonable terms and conditions as he deems appropriate: *Provided*, That development and maintenance of such access and use, including, but not limited to rehabilitation of the sites and any buffers or screening, shall be at no cost to the Federal government including the provision of either above or below ground pedestrian access as the Secretary may determine to be appropriate across the access roads and Route 29.

(c) Not later than 6 months after the date of acquisition of the lands referred to in this section, the Secretary shall publish in the Federal Register a detailed description and map depicting the boundaries of the Park as enlarged. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

SEC. 3. PROHIBITION OF MALL

(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act, there is hereby vested in the United States all right, title, and interest in and to a developmental easement over the area depicted on the map referenced in section 2 as "area B", which easement will allow the construction of: (1) no more than 2,910,000 square feet of non-residential uses, of which no more than a total of 120,000 square feet in the aggregate shall be retail use; (2) no more than 560 residential dwellings; and (3) no structure which exceeds 45 feet in height.

(b) The United States shall pay just compensation to the owners of any property taken pursuant to this section and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to the taking of such property. Payment shall be in the amount of the agreed negotiated value of such property or the valuation of such property awarded by judgment, and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304.

(c) In the absence of a negotiated settlement, or an action by the owner, within 1 year after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary may initiate a proceeding at anytime seeking a determination of just compensation with respect to the taking of such property interest.

SEC. 4. TRANSPORTATION

(a) STUDY.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary"), in consultation and consensus with the Commonwealth of Virginia, the Federal Highway Administration, and Prince Wiliam County, shall conduct a study regarding the relocation of highways (known as routes 29 and 234) in, and in the vicinity of the Manassas National Battlefield Park (hereinafter in this section referred to as the "park"). The study shall include an assessment of the available alternatives, together with cost estimates and recommendations regarding preferred options. The study shall specifically consider and develop plans for the closing of those public highways (known as routes 29 and 234) that transect the park and shall include analysis of the timing and method of such closures and of means to provide alternative routes for traffic now transecting the park. The Secretary shall provide for extensive public involvement in the preparation of the study.

(b) DETERMINATION.—Within 1 year after the enactment of this Act, the Secretary shall complete the study under subsection (a). The study shall determine when and how the highways (known as routes 29 and 234) should be closed.

(c) ASSISTANCE.—The Secretary shall provide funds to the appropriate construction agency for the construction and improvement of the highways to be used for the rerouting of traffic now utilizing highways (known as routes 29 and 234) to be closed pursuant to subsection (b) if the construction and improvement of such alternatives are deemed by the Secretary to be in the interest in protecting the integrity of the park. Not more than 75 percent of the costs of such construction and improvement shall be provided by the Secretary and at least 25 percent shall be provided by State or local governments from any source other than Federal funds. Such construction and improvement shall be approved by the Secretary of Transportation.

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary not to exceed $30,000,000 to prepare the study required by subsection (a) and to provide the funding described in subsection (c).

SEC 5. AUTHORIZATION OF APPROPRIATIONS

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. The Secretary is further authorized to use any unobligated balances heretofore appropriated to agencies of the Department of the Interior, notwithstanding any provision of law making such funds available, for the acquisition of the lands referred to in section 2 of the Act: Provided, that no monies may be used from the Land and Water Conservation Fund except those appropriated for the purposes of this Act.

SEC. 6. MISCELLANEOUS PROVISIONS

Notwithstanding the provisions set forth in Section 329 of the Act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1989, or in any other Act, no restrictions or prohibitions shall be in effect with respect to the planning, design, construction or approval of: (1) an interchange or any other highway facility providing access to or from Interstate 66 (I-66) between the existing United States Route 29 interchange at Gainesville (I-66 exit numbered 10) and the existing Route 234 interchange (I-66 exit numbered 11); (2) an interchange or any other highway facility providing access to or from United States Route 29 between the existing I-66 interchange at Gainesville (I-66 exit numbered 10) and the existing Route 234 intersection; and (3) an interchange or any other highway facility that provides access to or from adjacent properties and the proposed Route 234 Bypass between I-66 and United States Route 29.

Mr. WARNER. Mr. President, I will try to be as brief as I can.

Mr. BYRD. Mr. President, will the Senator yield without losing his right to the floor?

Mr. WARNER. Mr. President, I will be glad to yield under those circumstances to the leadership.

Mr. BYRD. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The majority leader is recognized. Could we have order in the Senate, please.

Mr. BYRD. Mr. President, first of all, I compliment and thank the managers and Republican leader and Senators on both sides who have worked to reduce the number of amendments on the list. They are down now to 17 amendments on this side and 12 amendments on the other side. So it has been reduced from over 100 amendments to now where it is down to 29 amendments.

I wonder if we could go on for just a little while and then get an agreement hopefully to close up the shop for tomorrow and have a final vote at an agreed upon time on Tuesday.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. I wonder if we could get a 30-minute time agreement on the pending amendment.

Mr. WARNER. Mr. President, the amendment of the Senator from Virginia would require, say, 40 minutes.

Excuse me, Mr. President. I retract that. I would say that I could present my case in 12 minutes. I see the distinguished Senator from Arkansas and he is not noted for brevity, but I put him to the challenge that he could equal and perhaps exceed my arguments in less than 12 minutes.

Mr. BUMPERS. The Senator is precisely right. I am not noted for brevity and tonight will be no exception.

Mr. WARNER. Mr. President, I say to my distinguished colleague in all seriousness, the leadership is endeavoring to move the bill. Our colleagues have been patient throughout the day. I am open to suggestions as to what we might do to condense this matter, yet fairly present it.

Mr. BUMPERS. Mr. President, if the Senator from Virginia will yield, I would be willing to enter into a time agreement. I do not think it is necessary. I do not think it is going to take all that long. The Senator is going to offer his amendment, which is at variance with one the Energy and Natural Resources Committee reported out. At some time then I will offer a substitute to his. But the debate will be the same on both.

There are some Senators who have asked me for time to speak, and I am reluctant to enter into a time agreement. But I hope we could conclude this whole thing very expeditiously. There are some things that need to be said. This is an extremely important amendment. Senators here have not heard the debate. You are talking about our national heritage, the ground of one of the most important battles—as one historian said, the most important battle of the Civil War—which was the most important event in our history. So I do not want to be crowded, but certainly I understand everybody wants to get home.

Mr. President, if I could have the attention of the leader, is it not his intention to come in tomorrow?

Mr. BYRD. Mr. President, I beg the Senator's pardon.

Mr. BUMPERS. I say, is it not the intention of the leader now to have a Saturday session?

Mr. BYRD. That is a matter that still remains to be decided, may I say to the distinguished Senator. I want to see what the remaining amendments are, and see if we can get an agreement that would provide for a vote on final passage at a certain hour on Tuesday. If we can do that it would not be my plan to come in tomorrow.

However, I want to be sure. There is an amendment on here that would perhaps require some considerable debate which might preclude a final hour for a vote at this time.

Mr. BUMPERS. Mr. President, if I may just say to our distinguished majority leader and the Senator from Virginia, I think we would be well served if we start grinding. I do not think it is going to take long, but I am most reluctant to enter into a time agreement.

Mr. DOLE. Will the majority leader yield for one more question before he leaves the floor?

Mr. BYRD. Yes.

Mr. DOLE. It seems to me if we are going to have a protracted debate, if that is what we are going to have, maybe we ought to have it. The rest of us can go home. We can either vote tomorrow morning or Tuesday morning. We have been working at least 2 hours, and we are down to 100 and some amendments—25 or 26. If we completed 70 amendments during the last amendment, I think probably half of these amendments are not going to take very long. I do not know why we should all stay here an hour or 2. It is probably a very important amendment, and does not belong on this bill. It is not in the Finance Committee. It is not a tax amendment. It is going to be junked as soon as it gets into conference. Maybe it is important enough that we all stay here and listen to it.

It seems to me we ought to make some agreement vote on this amendment tomorrow morning or say we have had our last vote tonight, vote on this in the morning or Tuesday morning. I think we have done a great deal of good work tonight. I want to compliment the managers. I would hate to stay here another hour and a half just to vote on this amendment tonight.

Mr. WARNER. Mr. President, if I might reply to my distinguished leader, I recognize the need to accommodate our colleagues. Let me say in all seriousness while we have joked about this subject, it is a very, very serious one, not only to my State but the historians across America and throughout the world. I feel that I have a proposition which is a reasonable compromise. My good friend from Arkansas, and I respect his judgment, feels that the entire tract of land, some 540 acres, must be included in this park.

So, I would think, and I say to my good friend from Arkansas and I hope he will join me, whatever the leadership may decide—I hope that debate will take place not under circumstances where we announced tonight there will be no more votes knowing full well that our colleagues have every right to disperse—staff likewise would disperse—and then be confronted with a vote sometime on Tuesday morning not having had the opportunity to try and inform you on, A, the seriousness of this problem, and the differences between the position of the Senator from Virginia and the position of the Senator from Arkansas.

So I am perfectly amenable to whatever the leadership desires to accommodate the Senate as a whole. But I must say in all candor I would hope that this particular issue would not be relegated to one as I have seen others whereby the Senate is dismissed tonight for all intents and purposes together with their staffs.

Mr. President, I have not yielded but I assume my colleague from Arkansas has some comment.

Mr. BUMPERS. Mr. President, if I may——

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. If I may repeat what I have already said, debate will be through here momentarily. I have never believed that the U.S. Senate as a body ought to go home while two Senators debate a very important amendment. You may not listen even if you are here, but I would strenuously object to debating this matter tonight, with everybody going home, allowing the Senator from Virginia and me to have a private dialog.

This is not for our benefit. We know precisely how we stand on this. We have talked about it for endless hours. So I am going to object to that. I hope we can get the Senator's amendment debated and my amendment debated. It should not take very long. As I said, the debate would be the same on both amendments, and we will vote and go home. We can do that very expeditiously if we quit talking and get on with the amendment.

Mr. DOMENICI addressed the Chair.

Mr. WARNER. Mr. President, I think the Senator from Virginia has the floor. But I am perfectly willing to yield to my colleague for purposes of a question.

Mr. DOMENICI. I appreciate that.

I do not intend to take but just a moment. Let me suggest—and I am not so sure I am right, I just want to ask my friend from Virginia: When was it that we last acquired and authorized the acquisition of land for this preservation park that the Senator is referring to here tonight? How many years ago?

Mr. WARNER. Mr. President, in 1980, the Senator from Virginia together with others—my distinguished colleague, Mr. TRIBLE, was then in the House, and has been active on this issue. But at that time the Congress acquired 1,500 acres to enlarge the Manassas Battlefield Park.

Mr. DOMENICI. Let me suggest to my good friend——

Mr. WARNER. If I might finish.

Mr. DOMENICI. The Senator is going to point the 1,500 acres out to us; is that correct?

Mr. WARNER. That is correct, Mr. President. The 1,500 acres is more or less in green. But I hasten to point out part of this green represents the land in 1980 added to the park. The Congress authorized the total of 1,500 acres, but in the ensuing 7 years, only 800 of the 700 have been acquired with moneys appropriated. The 700 acres still remain to be acquired. That point I think rests heavily in favor of the position of the Senator from Virginia that at this time the subject land in controversy, roughly 540 acres, only be subdivided such that 80 additional acres——

Mr. SYMMS. Mr. President, could we have order, please?

The PRESIDING OFFICER (Mr. GORE). The Senator is correct. The Senators conversing will please retire to the Cloakroom. The Senate will suspend. The Senate will come to order. Senators will please cease audible conversations. Senators to the left of the Chair will please cease conversations or retire to the Cloakroom, and Senators in the rear of the Chamber.

The Senator from Virginia.

Mr. LEAHY. Mr. President, will the Senator from Virginia yield for 30 seconds?

Mr. WARNER. Mr. President, I yield to the distinguished Senator from Vermont provided I not lose the floor. But I am yielding to the Senator from New Mexico.

Mr. LEAHY. I apologize to the Senator from New Mexico, but the Senator from Arkansas made a very good point about announcing there will be a vote on the next day and everybody takes off. I might suggest the Senator from Arkansas and the Senator from Virginia propose that we vote on the matter in 20 minutes. I guarantee if the time is equally divided everybody would sit here and listen to the debate.

Mr. WARNER. Mr. President, as we say in the Navy, that is above my pay grade. I will have to leave that to the judgment of the leadership here. I say they are working the issue. Therefore, Mr. President, if it is agreeable, I will presume to continue.

Mr. DOMENICI. Will the Senator from Virginia just answer one question? I am fully aware of his interest, and I am far from away. I am from New Mexico. I just want to ask one question.

Mr. WARNER. If I may just address the——

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. WARNER. For purposes of clarification, it would be the intention of the Senator from Virginia to present his amendment. But in any such time as the leadership or other Senators desire to intervene for the purposes of addressing the pending bill, I would be happy to yield the floor.

But now I yield to the Senator from New Mexico for a question.

Mr. DOMENICI. Let me say to the U.S. Senate, I am from New Mexico. Clearly, we have a completely different historical perspective, and we have a different culture. We were not involved in the Civil War. I respect the history of the entire South, and clearly of the State of Virginia. But I want to make just one point by way of a question.

I ask my friend from Virginia how he might explain to the Senate this particular question: In 1980, the U.S. Congress decided to acquire what was needed to preserve this battlefield and it did not include the land that we are now being asked to acquire in behalf of the U.S. Government. My understanding is that we did not ask that this land be acquired because we thought we had acquired what was needed to preserve what was historic; and we said to Virginia and the county within which this land lies: "You decide how to use this land." It turns out that instead of using this land for houses—private, individual houses—somebody applies to use it for business purposes.

I would like to know, from the standpoint of the Federal Government, the U.S. Government, how do we preserve a battlefield by letting houses be built on it, owned by individuals? How do we do that, but we do not preserve the battlefield if they build a shopping center on it? That is really the question. I do not understand that.

Mr. WARNER. Mr. President, if I may give a little background and history: The Senator from New Mexico pointed out that it was 1980 when Congress addressed this issue. The Senator is correct: At that time the land which is the subject of the controversy was not included. It was not included for several reasons.

One, the competing interests—namely, the county, the historians, the Federal Government, the taxpayers, the potential developers, and others—reached a compromise as best they could and agreed that they would accede to the request to have 1,500 acres incorporated into the existing park, of which 800 are now annexed to the park, are a viable part of the functioning park, and 700 still remain to be annexed.

The subject tract was left out for the reason that the county of Prince William put forward a very persuasive argument. It is one of the fastest-growing counties in the United States of America. Some 15,000 people each year are currently going there to provide homes. They need to improve their tax base.

This piece of property was recognized, yes, as having historical significance. But, given the fact that the Brawner tract, right across the road, had greater historical significance, and we cannot get everything, we decided to essentially take the Brawner tract and other pieces here and forgo the opportunity to take this tract.

At that time, it was generally understood that this park would be developed in such a way as to minimally impact upon the ability of individuals to historically interpret the park.

Mr. DOMENICI. Which park?

Mr. WARNER. This is the park here.

Mr. DOMENICI. Not the park on the land we are acquiring? There is no park there?

Mr. WARNER. The park is now in green, either in existence, in terms of acquired with appropriated funds, or about to be acquired, some portion.

This was left out because it was very expensive at that time; some $6 million to $8 million was the generally appraised value. The county needed it. It was the heart of the future development of the commercial area and the residential area. They desperately needed it for a tax base, so a compromise was reached: We will leave this out, but with the understanding that it would be developed in such a manner as to minimally interfere with the historic interpretation of the existing park.

Essentially, that is the position of the Senator from Virginia: That we need acquire only 80 of the 540 acres to be put into the tract, leaving the balance to be developed much in the way it was informally agreed upon by the county, the historians, the then owners, and others—namely, residential and a mix of what they call light commercial.

That proposition moved along quite well for a number of years, until such time as the current owners, acting very properly and legally within a framework of laws—Federal, State, and county regulations—decided to incorporate a major shopping mall on a promontory known as Stuart's Hill. It was on this historic piece of ground that General Lee had his headquarters during the critical periods of the second battle of Manassas.

Mr. SYMMS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order, and those having audible conversations will please retire from the Chamber.

Mr. WARNER. That decision by the owners, again quite properly within the framework of zoning, of State and Federal laws, was what triggered a national group of individuals to come in and again focus attention on the historic value of this piece of land.

Mr. DOMENICI. What was the name of the hill?

Mr. WARNER. Stuart's Hill.

Mr. DOMENICI. What was going to be built on Stuart's Hill before they decided to go commercial?

The PRESIDING OFFICER. Senators will please address the Chair, in accordance with the rules.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. WARNER. I yield.

Mr. DOMENICI. What was going to be built on Stuart's Hill, under the earlier plan?

Mr. WARNER. As originally proposed, a major shopping mall.

Mr. DOMENICI. No—under the earlier plan, the one to which the Senator has been alluding.

Mr. WARNER. It was never fully decided, but what we would call light commercial and a mix of dwellings, houses, perhaps apartments and other things.

Mr. DOMENICI. Maybe I am missing the point, but what would we preserve under that kind of use, where we would use if for light commercial, that we will not preserve under the land use plan proposed by the current developers? I am having difficulty understanding how you preserve something in private ownership with a light commercial, you preserve a historic park, but if you build a shopping center, you do not preserve it. It seems to me that the park is gone. If those who are in this national consortium decide to build houses or a shopping mall or light commercial, the land is gone.

Mr. WARNER. The Senator brings up a very valid point. My colleague from Arkansas takes basically that position, that the entire tract should remain untouched.

As a compromise, 80 acres is a reasonable amount of land to be taken. It is of major historical significance, and the balance of it can be developed in such a manner as to minimally detract from the total of the park.

Let me run through a very interesting chart. This is the chart, the whole general area of the Manassas Battlefield, and right here is the tract under consideration.

Let us look at the first day of the second battle. The red represents units of the Confederacy that moved in, and the blue units represent the Union forces, and you can see the number that were beginning to assemble. This is the subject tract.

The second day——

Mr. DOMENICI. Mr. President, will the Senator yield for a further question?

Mr. WARNER. If I might finish this.

Mr. DOMENICI. I promise I will ask you no more to yield the floor.

Mr. WARNER. I am having difficulty retaining a trend of thought. Suppose I do this for 2 minutes, and then I yield to you for a question.

Mr. DOMENICI. Let me ask you——

Mr. WARNER. You are persistent.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. DOMENICI. Might I say this——

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. WARNER. Mr. President, I yield to my friend.

Mr. DOMENICI. I am very pleased that you have a different plan from the one the committee reported, and you have just told us about it, and you want to acquire 80 acres. If we acquire the 80 acres, are we also, as a national government, going to tell the county and the State in which this land lies how the remainder will be used?

If the answer is "yes," how much is it going to cost us for the diminished value of the land that we are ordering as a national park, that it be used differently from the manner the owner thinks he has a right to do? How much are we going to have to pay for that?

Mr. WARNER. Mr. President, the Senator is correct.

Under the amendment of the Senator from Virginia, the balance of the 540 acres would be under a legislative taking of easement which would preclude the construction of a major shopping mall but provide for the land to be developed much in accordance with the original plans.

It is impossible, I say to the Senate, to estimate that cost. But I can tell you it is far less than requiring the Federal Government to get the entire tract which will soon be addressed by my colleague from Arkansas.

Estimates on acquiring the entire tract range from anywhere from $50 million, I have seen as high as $100 million.

But if I were to make a ballpark estimate today, I would think taking off 80 acres either by option or by gift, and the developers are anxious to negotiate with the Secretary of the Interior and possibly could be giving to the Federal Government significant portions of the 80 acres, that will be far less than the estimated cost of taking the entire 540.

Mr. DOMENICI. I thank the Senator.

Mr. WARNER. I thank the Senator from New Mexico.

If I may return, this is the first day of the second battle. By the second day, we had very significant numbers of troops and positions. I wish to point out that these military units of both sides were in an area around the park far greater than the park.

The point I wish to make is that Prince William County was utilized in the second battle of Manassas in a very large portion of the county and, last, the final day of the battle. You see this is the tract of land right here, basically right here. The dark is the existing park, and you see these positions of troops for miles and miles and miles in every direction.

It just is impossible, even if we so desired, to acquire all the historic significant land connected with the second battle of Manassas. That is why I think the most that we can do is to subdivide this tract in such a way as to take that position which historians for the Park Service believe are essential to the interpretation of the existing part and leave the balance to be developed, developed in a manner which was basically understood in 1980 when the Congress acted, namely, residential and light commercial, allow that to go forward.

Now we are faced with this issue not because of legislation that I put in nor my distinguished colleague, Mr. TRIBLE, but we are faced with a bill from the House with 307 votes asking the United States to perform a legislative taking, a very unique procedure. I am advised by the elders on the Committee on Energy, Senator MCCLURE, and others, only once before have we witnessed a legislative taking, and that the Senator will soon speak to it, I hope, the Redlands of California which is now anticipated to cost the taxpayers a billion dollars.

Mr. McCLURE. Mr. President, will the Senator yield briefly on this point?

Mr. WARNER. Yes.

Mr. McCLURE. The current expenditures together with principal and interest accrued on the unexpended but authorized, and I should not say authorized, the lands that have been taken and have not yet been paid for, is $1.4 billion.

Mr. WARNER. Mr. President, I would gladly share the time, now that we do have the attention of the Senate, with my distinguished colleague from Arkansas.

There are other elements of my legislation which provide for some $30 million just to authorize funds for the acquisition of whatever land is necessary and the improvement of a road system to service this park. That was a point that was stressed by my distinguished colleague, Mr. TRIBLE. He incorporated that very important part in this bill. And there are other sections of my legislation dealing with studies and a repeal of a provision which was adopted by the House which froze off the ability of the county to realistically develop an existing road system to the south of the area in controversy.

Those are basically technical matters, and I am not certain that the time of the Senate should be drawn to those matters certainly at this moment.

I would urge, recognizing the time, that my distinguished colleague from Arkansas perhaps might wish to seek recognition to send forth his amendment and allow the Senate to compare the proposals between the Senator from Virginia and the Senator from Arkansas.

One very important difference: The President speaking through the Secretary of the Interior has said unequivocally that he will veto the House bill which will soon be addressed by the Senator from Arkansas and which bill was basically adopted by the Energy Committee on a narrow two-margin vote, my recollection, over my amendment.

I have a letter from the Secretary of the Interior advising the Senate with respect to my amendment:

> THE SECRETARY OF THE INTERIOR,
> *Washington, October 7, 1988.*
>
> Hon. JOHN W. WARNER,
> *U.S. Senate,*
> *Washington, DC.*
>
> DEAR SENATOR WARNER: Per our discussions over the past few days, I have reviewed and can support your amendment titled "The Manassas National Battlefield Park Addition of 1988."
>
> We feel that it is a good compromise. It represents a good-faith effort to resolve the contentious issues that have arisen over the past several months.
>
> I will be happy to work with you to obtain Administration approval of your compromise in addition to passage by Congress.
>
> You are to be personally commended for your perseverance and dedication in seeking to provide the proper protection to the Manassas Battlefield.
>
> Sincerely,
>
> DON HODEL.

Mr. President, in conclusion we have before us a bill from the House of Representatives with 307 yea votes. It requires the legislative taking of the entire 540 acres and annexes to the park.

As much as a Virginia Senator would like to see this park enlarged by this very important piece of land, I have to be realistic. I have taken into consideration the Federal taxpayers, our fiscal situation, the right of developers, owners of tracts of land who are complying with Federal and State law and have every right to do what they have proposed, the historic community, the right of the county to improve its roads, the right of the county to try and designate through zoning to increase their tax base.

There are many interests to be taken into consideration. As much as I would like to see this entire tract go to Virginia I think we have to give consideration to others and reach a compromise, a compromise which I have every reason to believe will be accepted by the administration in sharp contract to the House bill which faces certain veto.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, is the Senator from Virginia's amendment at the desk?

The PRESIDING OFFICER. It is. The amendment of the Senator from Virginia is pending.

AMENDMENT NO. 3623, A SUBSTITUTE TO AMENDMENT NO. 3622

Mr. BUMPERS. Mr. President, I send an amendment to the desk in the nature of a substitute.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 3623 as a substitute to the Warner Amendment 3622.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend the Warner amendment by striking the amendment in its entirety and inserting the following:

At the appropriate place in the bill add the following language:

SECTION . Nothing in this Act shall become effective until Congress enacts the following:

SECTION . SHORT TITLE.

This Title may be cited as the "Manassas National Battlefield Park Amendments of 1988".

TITLE —

SEC. . ADDITION TO MANASSAS NATIONAL BATTLEFIELD PARK.

The first section of the Act entitled "An Act to preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battle of Manassas, and for other purposes", approved April 17, 1954 (16 U.S.C. 429b), is amended—

(1) by inserting "(a)" after "That"; and

(2) by adding at the end thereof the following:

"(b)(1) In addition to subsection (a), the boundaries of the park shall include the area, comprising approximately 600 acres, which is south of U.S. 29, north of Interstate Route 66, east of Route 705, and west of Route 622. Such area shall hereafter in this Act be referred to as the 'Addition'.

"(2)(A) Notwithstanding any other provision of law, effective on the date of enactment of the Manassas National Battlefield Park Amendments of 1988, there is hereby vested in the United States all right, title, and interest in and to, and the right to immediate possession of, all the real property within the Addition.

"(B) The United States shall pay just compensation to the owners of any property taken pursuant to this paragraph and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to the taking of such property. Payment shall be in the amount of the agreed negotiated value of such property or the valuation of such property awarded by judgment and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304. Such payment shall include interest on the value of such property which shall be compounded quarterly and computed at the rate applicable for the period involved, as determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities from the date of enactment of the Manassas National Battlefield Park Amendments of 1988 to the last day of the month preceding the date on which payment is made.

"(C) In the absence of a negotiated settlement, or an action by the owner, within 1 year after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary may initiate a proceeding at any time seeking in a court of competent jurisdiction a determination of just compensation with respect to the taking of such property.

"(3) Not later than 6 months after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary shall publish in the Federal Register a detailed description and map depicting the boundaries of the Addition. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

"(c) The Secretary shall not allow any unauthorized use of the Addition after the enactment of the Manassas National Battlefield Park Amendments of 1988, except that the Secretary may permit the orderly termination of all operations on the Addition and the removal of equipment, facilitates, and personal property from the Addition."

SEC. . VISUAL PROTECTION.

Section 2(a) of the Act entitled "An Act to preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battle of Manassas, and for other purposes", approved April 17, 1954 (16 U.S.C. 429b-1), is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following:

"(2) The Secretary shall cooperate with the Commonwealth of Virginia, the political subdivisions thereof, and other parties as designated by the Commonwealth or its political subdivisions in order to promote and achieve scenic preservation of views from within the park through zoning and such other means as the parties determine feasible.".

SEC. . HIGHWAY RELOCATION.

(a) STUDY.—The Secretary of the Interior (hereafter in this section referred to as the "Secretary"), in consultation and consensus with the Commonwealth of Virginia, the Federal Highway Administration, and Prince William County, shall conduct a study regarding the relocation of highways (known as routes 29 and 234) in, and in the vicinity of, the Manassas National Battlefield Park (hereinafter in this section referred to as the "park"). The study shall include an assessment of the available alternatives, together with cost estimates and recommendations regarding preferred options. The study shall specifically consider and develop plans for the closing of those public highways (known as routes 29 and 234) that transect the park and shall include analysis of the timing and method of such closures and of means to provide alternative routes for traffic now transecting the park. The Secretary shall provide for extensive public involvement in the preparation of the study.

(b) DETERMINATION.—Within 1 year after the enactment of this Act, the Secretary shall complete the study under subsection (a). The study shall determine when and how the highways (known as routes 29 and 234) should be closed.

(c) ASSISTANCE.—The Secretary shall provide funds to the appropriate construction agency for the construction and improvement of the highways to be used for the rerouting of traffic now utilizing highways (known as routes 29 and 234) to be closed pursuant to subsection (b) if the construction and improvement of such alternatives are deemed by the Secretary to be in the interest in protecting the integrity of the park. Not more than 75 percent of the costs of such construction and inprovement shall be provided by the Secretary and at least 25 percent shall be provided by State or local governments from any source other than Federal funds. Such construction and improvement shall be approved by the Secretary of Transportation.

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary not to exceed $30,000,000 to prepare the study required by subsection (a) and to provide the funding described in subsection (c).

Mr. BUMPERS. Mr. President, first of all, I want to say to my colleagues that this bill was voted out by the House 308 to 97, an overwhelming vote in the U.S. House of Representatives, and if my amendment is put on this bill I promise you the House will recede to the Senate. It is that simple.

We considered the House bill in the Energy Committee and it passed 11 to 8.

Now, Mr. President, you cannot really appreciate this debate unless you hear a little bit of the history of the Second Battle of Manassas.

I have two maps here. Just to start, the First Battle of Manassas took place mostly in the eastern part of this tract here. The second battle took place mostly in the western area.

If you can see from where you are seated, the William Center tract which is the 542-acre tract in controversy here is right here. This is Highway 66. This is Lee Highway.

Now, Stonewall Jackson and General Lee had just completed the 7-day battle of what is called the Battle of the Peninsula.

And this is when Geneal Lee became noted as a very great tactician. He had a great victory in that 7-day war. He started moving north after he pushed the Union back from Richmond. And he had to go north because the importance of this battle was that if they ever were going to get France and England in on the Confederate side they were going to have to win a battle on northern soil. And Lee understood that.

After the Battle of the Peninsula was over, he sent Jackson on one of the most daring operations in the history of the war. Believe it or not, in about 10 days, Jackson and about 12,000 men made a great big circle around Pope's army—which was before Richmond, in a sort of retreat—sent Jackson around behind them and Jackson came to Manassas. And there he found a lot of stored goods. He found shoes which the Confederates were desperate for. He found food, he found ammunition, he found rifles.

He took them all and went back around Pope's army, and Pope, who by that time realized what was happening, chased him and tried to catch him and never could. And Jackson got back and linked up with Lee.

So the Confederates came to Manassas because they knew that John Pope's army was going to be there. And Abraham Lincoln had ordered General McClellan to link up with Pope. If McClellan had in fact linked up with Pope, which happily for the Confederates he never did, they would have had Lee outnumbered 2 to 1, but he never made it.

So Lee sent Stonewall Jackson out first to confront Pope. He came from the west through the mountains in a place where there was a pass called Thoroughfare Gap. A big mistake on the part of the Union. If the Union had sent as many as 10,000 or 20,000 men to Thoroughfare Gap, Jackson could not have gotten through. It was a very defensible pass. But they did not and, with just a light skirmish, Jackson brought his army through that gap. And he came over here and deployed his troops right along here.

Now, bear in mind this is the William Center tract. Here was the end of Jackson—actually, the first day Jackson got there, on August 28, 1962, he deployed right here. And he engaged in a battle which I will come back to in just a moment.

But, in any event, this is where he came on the afternoon of the 28th.

Longstreet and Lee came through that same Thoroughfare Gap 30 hours later almost unmolested. And Lee then established his headquarters right here. This is called Stuart's Hill. It was named for Jeb Stuart after the war. But if you go down here and look at it you could see that Lee had a beautiful view of this entire battleground. He could see Jackson's headquarters up here. But he established headquarters there and here is the significance of this tract.

Longstreet deployed his men. He came in—let me go back just a moment. Immediately after Jackson got to this place, he engaged an army there and had a short battle there with a general named King, a Union general. They fought for about 2 hours on the afternoon of August 28 and it ended in a stalemate. Night fell. All the battles ended in the Civil War when night fell.

So that took place on what we call the Brawner Farm. That is a tract that we bought in 1980 when I was chairman of the same subcommittee I am chairman of now.

That afternoon, late, Longstreet and Lee got there and Longstreet deployed his entire 25,000-man army. Now bear in mind, Jackson had 30,000 men deployed the second day on August 29, he moved up here and deployed his troops in an old—well, actually, it was an unfinished railroad bed. By then they did not march out shoulder to shoulder. They found out that was suicidal. So Jackson very astutely deployed his troops in this old railroad bed right up here. And they were in a horizontal position.

But the interesting thing about this whole thing is, Longstreet came in that night, the night of the 28th, and deployed his troops from here, from about right here, he linked up with Jackson, deployed his troops all the way to Brawner Farm, all the way across this tract of land, this 542 acres, and just a few yards south of what is now Highway 66.

So here is Lee's headquarters. Here is Cundiffe House, which was a big Confederate hospital, and there was another hospital over here, which, incidentally, the developer who bought this tract in 1986 has already demolished.

So on the morning of the 29th, when Jackson woke up, he saw all these Union troops of John Pope's in front of him and the war began.

It was quite a battle. They fought all day long. At one point, the Confederates ran out of ammunition and started throwing rocks at the Union troops. And so it was a rather inconclusive battle.

On the 29th, the battle started all over again. But here is an interesting thing about this whole battle, one of the most interesting parts of the battle. Pope had very wisely kept two divisions in reserve, about right here and right here on the map. And on the 28th, when Jackson was really giving Pope more than he could take, they asked Longstreet to attack on Pope's left. In other words, they asked Longstreet to come up here and hit Pope from the left. Longstreet did not want to do it.

And then Pope got word two or three times—incidentally, Pope did not know that Longstreet was there. And the interesting thing about it, Pope was told constantly time and again for 48 hours that Longstreet was here in some strength. His scouts did not know that he had 30,000 troops, but they thought he was there in some strength because one of the first things he did was to do a sort of what they call a forced reconnaissance. He sent out a couple of brigades to see what the strength of the Union was right here. And this occurred on the William Center tract, bear in mind. He sent out a couple of brigades just to test them out. And he found out that the Union was there in strength. He pulled those brigades back and deployed all 30,000 of his men in woods.

Those woods are still there. You go down there right now and you will see where Longstreet had his men deployed behind all those trees down there.

Pope did not know he was there. Fitz-John Porter, a Union general who was deployed about right here, sent word to him that Longstreet was there in force and he said he did not believe it.

Scouts came in and told him that Longstreet was here. He would not believe it.

Nobody knows. James McPherson, the best Civil War historian in America today, says that is just one of the enigmas of the war. Nobody knows why John Pope refused to believe that Longstreet was there.

But the second day, on August 30—I take that back. It was the afternoon of August 29, Pope sent word to Fitz-John Porter, to the Union general who was stationed along in here just in front of these two reserve divisions. He said, "We have got this thing going pretty good right now. We want you to take your troops and come here and hit Jackson on his right."

Fitz-John Porter sent back word: "I can't do that because, in order to do that, I have got to go right in front of Longstreet's army." And Pope sent word back, "You're dreaming. There is no army. I'm commanding you to attack."

And Fitz-John Porter disobeyed that order. And he was cashiered, court-martialed, after the Civil War was over for having disobeyed that order.

It turns out that he was right. It would have been suicidal for him to go across this tract right in front of Longstreet, and he refused to do it.

On the afternoon of the 30th—I am going to shorten this down. There is a lot more. I will shorten this down and close this battle down.

On the afternoon of the 30th of August 1862, Jackson began to get the best of Pope and Lee, who was watching the battle here, from his headquarters and realized that he had Pope on the ropes, sent word to Longstreet to attack Pope's left.

The first thing Longstreet did was to get 20 cannons, line them up about right here on the Brawner Farm and delivered what they called in the Civil War history an enfilade, that is, a barrage against the flank of your enemy. And it was grapeshot, and it was devastating, and the Union troops begin to break.

At that time Lee sent word to Longstreet to attack in full force and, believe it or not, even on that day when all messages went by courier and by horse, Longstreet pulled out from the William Center tract, developed his first opposition on the William Center tract, but he attacked within 20 minutes after Lee issued the order.

By this time, the die was cast. Longstreet began to roll up the left flank of John Pope. The Union troops began to retreat in disorder. But those two reserve divisions that I mentioned to you a moment ago, blocked Longstreet just long enough for Pope's army to escape. They went up this way, came back down here to Highway 29 and headed back to the defenses of Washington.

If it had not been for those two divisions, incidentallly, that had been held in reserve and held Longstreet and Jackson both up just long enough for that army to escape, the Confederates would have destroyed the entire 65,000- to 75,000-man army.

Sixteen thousand men in about 48 hours either lost their lives or were wounded in this battle. It was perhaps the third bloodiest battle of the war.

Lee, after he won this, thought France and England would recognize the confederate States. But they were not quite ready. They said you have not won a battle on northern soil.

So Lee took his troops to Antietam. The battle of Antietam began 2 weeks later on September 15. And, incidentally the battle of Antietam was the bloodiest battle of the war.

That was one that really was strategically was a defeat. Antietam was strategically a defeat. Tactically, between Lee and McClellan, it was a draw.

If McClellan had ever joined up with Pope, of course, they would have won at Manassas. But as you know McClellan would not fight. He always estimated Lee's strength at at least twice, three times what it was in order not to have to engage him in battle.

Well, let me just close this down by saying you can tell I feel very strongly about this whole thing. I have studied Civil War history ever since I was—well, my father was sort of a Civil War historian and he got me interested in it and I have studied it ever since. So, I find that we made a mistake. We just made a mistake in 1980. We should have bought the William Center tract.

Mr. JOHNSTON. Would the Senator yield for a question?

Mr. BUMPERS. Yes.

Mr. JOHNSTON. And I think this is really the central question. You talk about the escape of Pope's troops. Am I correct that, as we speak, that bulldozers are poised to, in effect, attack this tract of which you speak?

Mr. BUMPERS. Senator, you took my closing line. Colleagues, it is now or never. This is not something you get a second chance at. The bulldozers are down there now and they are working in that part of the tract.

When I found out that a shopping mall was going to be built precisely, precisely, on Lee's headquarters, I have to say I was offended.

I am not antigrowth. I am not against development. I am just in favor of saving our heritage.

I consider the Civil War easily the most momentous thing that has ever happened in this republic's history. And James McPherson, the eminent historian, tells me that this is probably the most important battle of the Civil War. And then he tells me where all this happened.

You know, Professor McPherson gave me all of this information. He told me how these battles occurred; who was where and so on. He can tell you anything you want to know. It is fascinating to be around him. And he is the one that told me that the amendment of the Senator from Virginia has no historical significance.

And let me say at this point, Senator WARNER has been a perfect gentleman. I have never dealt with a Senator in this body in my 14 years here that I had better cooperation with. We addressed this thing. We have different viewpoints. The Senator had his and I had mine.

But I hosted a luncheon for James—Dr. McPherson, professor at Princeton, about a week ago and Senator WARNER very graciously came by and presented his proposal to Dr. McPherson.

Dr. McPherson said: "Senator, there is just no historical significance to that amendment. It does not really make any sense".

He was not uncharitable or unkind about it. He just made that point.

There is a second thing that really troubles me about the Warner amendment. And soon you are going to have a chance to vote on my amendment. If you vote it up or down, if you vote for it, that is fine. That will be the end of it. If you do not, you will have a chance to vote on his. This is how simple it is.

But the other thing about the amendment of Senator WARNER that really troubles me is this taking of only an easement. It is unique. I wish we did not have to do it. But if we pass my amendment and the President signs this bill, we take the entire tract that day. And there will be no development. None.

If we do not take it and we go with him, the amendment of Senator WARNER provides for about 519 homes, 2.9 million square feet of commercial space, and 120,000 square feet of retail space. As a matter of fact the only thing it prohibits is a mall.

So that means that all of this area will be just like it is over at Gettysburg, which is a national tragedy. If you have been to Gettysburg you know what I am talking about. We cannot buy all this land around this park I would like to buy. I would like to buy some of this Stoney Ridge land here where Jackson came onto this battle. But we cannot do all of these things.

The parks need $3 billion for land acquisition. Some of it will wait and some of it will not. But there is one thing about this issue. Of all the things in this country right now that will not wait much more than another day, it is the William Center tract.

Senator WARNER's amendment says we are taking an easement over all but the little strip of land right here across Stuart's Hill; we are going to acquire that 80 acres and develop the rest. The only prohibition is that he cannot build a mall.

If we take this land under this bill, the Hazel-Peterson Development Co. will then go to court and seek damages for whatever they can get. Now, the Hazel-Petersons people bought this tract of land in January 1986, about 2 years and 9 months ago, for less than $10 million.

It is on the tax books at this very moment assessed for $13.5 million. And I am telling you I hear all these figures, $50 million, $75 million, $100 million, $150 million.

Secretary Hodel started out at $40 million. He went to $75 million. The other day I notice he is up to $100 million.

I am going to tell you I am a trial lawyer, and I tried a lot of condemnation cases. And sometimes juries do have a tendency to run away. But if you present to the jury that 2 years 9 months ago this 542-acre tract cost $9.5 million and that it is on the tax books for $13 million, they would have to take a leave of their senses to give $100 million, would they not?

But my point is this. The argument they are going to make in both cases is the property value they are losing by not being able to put that mall on this property. So the argument is going to be the same for the easement on 460 acres as it is for taking the entire 542 acres. And I suspect, I suspect that a jury will give them almost as much for all of this easement that he is talking about, as they would for the whole 542 acres.

I told you about these hospitals. They are our Confederate troops buried on this property around the hospitals. Dr. McPherson says there is just no question about that.

Well, I could go on and on but I want to just simply say that, for myself, I believe strongly in our heritage and I think our children ought to know where these battlefields are and what was involved in them. I do not want to go out there 10 years from now with my grandson and tell him about the Second Battle of Manassas. He says: "Well, grandpa, wasn't General Lee in control of this war here? Didn't he command the Confederate troops?"

"Yes, he did."

"Well, where was he?"

"He is up there where that shopping mall is."

I can see a big granite monument inside that mall's hallway right now: General Lee stood on this spot.

If you really cherish our heritage as I do, and you believe that history is very important for our children, you will vote for my amendment. I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I thank my colleague for his kind remarks. Indeed, it has been a memorable joy in my 10 years in the Senate unsurpassed in working with this fine gentleman from Arkansas. No matter how this body resolves this issue, his contribution to this controversy will long be remembered, not only by the Members of the Senate, but across this Nation. But I must at this time ask my good colleague several questions.

What happens if the President vetoes your proposal? And he has represented in writing that he intends to do so, the reason being that there are 354 national parks and sites across America and there are several billion dollars of park acquisitions already authorized over the last decade by the Congress of the United States in each of your States waiting to be annexed to your parks and sites. The President is opposed to leapfrogging this acquisition over each of yours, particularly when the Congress has been so generous in the last 8 years to add, 1,500 acres to this park, bringing it up to over 4,000 acres.

It is difficult for the Senator from Virginia to argue against further parkland for his State, but I do so because of the many interests. I say to my good friend, you are asking the Senate to follow you in a Pickett's Charge to the President's veto.

Mr. BUMPERS. If I may respond to that, I respond in two or three ways. First, in order to veto this, he is going to have to veto the technical corrections bill. I do not believe he is prepared to do that.

Second, there are between 1.5 and 2.5 million people in this country who are what we call Civil War buffs. I can tell you, they are going to flood that White House with a million telegrams—"Mr. President, please don't do this"—and that is going to take its toll. We are just about 32 days away from that big day.

Finally, if he vetoes it, we lose that 542-acre tract, but the chances of the Hazel-Peterson Co. doing anything—they have to sign a contract with somebody to occupy the mall, they have to do a lot of things, the chances of them doing that before we come back here in January—they may tear up the southern end of this property here, but they are not likely to get to that north 80 acres of yours.

So I say we lose nothing if the President chooses to veto it, and if we decide to come back here in January and pass your amendment, that land will still be there. But you vote against my amendment, you can bet that the bulldozer is going to have that land scraped off good by the time we come back.

Mr. WARNER. Mr. President, as we speak, there are some 20 houses already erected on one part of this plot. Let me ask another question, and this is historical. You brought up the fact that Union Gen. Fitz-John Porter, together with McDowell, had some 15,000 troops come and support him; am I not correct?

Mr. BUMPERS. Say it again. I am sorry.

Mr. WARNER. Do you recall your argument that Union generals Fitz-John Porter and McDowell had some 15,000 troops under their command

and they were ordered by Pope to join him; is that not correct, you mentioned that?

Mr. BUMPERS. They were ordered by Pope. Fitz-John Porter was along here——

Mr. WARNER. Just answer the question.

Mr. BUMPERS. He was ordered by Pope.

Mr. WARNER. To join him; is that correct?

Mr. BUMPERS. To what?

Mr. WARNER. To join him.

Mr. BUMPERS. Fitz-John Porter was ordered by Pope to attack Jackson's right flank. He said he could not do it because Longstreet was positioned right here.

Mr. WARNER. Here is the basic difference between the two, I say to my colleagues of the Senate. This is a chart prepared by services using the historical data from one John Hennison who is still in the service of the U.S. Park Service, and he is now historian for the New York region, but he for many years was a historian at Manassas Battlefield Park. Based on his information, this chart has been prepared.

You are quite correct, the failure of Fitz-John Porter to respond to Pope's order ended in his court martial, and it took him a lifetime to get that court martial reversed.

Mr. BUMPERS. Twenty years.

Mr. WARNER. But where we differ is that my historian indicates that his troops were well below the park, some several miles down in this area. This is where the critical decision was made not to follow Pope's order, and that is the decision that was the turning point to allow the Confederacy to prevail.

Had he followed that order, there might have been a different outcome to the battle. I say to my good friend, this site down here is the turning point of the Second Battle of Manassas, was distant from the park down here in Prince William County. To me, that land where he first encountered the troops of Longstreet and turned back, that is more historical than the William site, say, Stuart's Hill. And this is the land that ought to be preserved.

I could go all through this area and show you other spots where the two armies engaged in battle and critical decisions were made. We could go on and on through the years and come back year after year and try and take more pieces of this land to add to this park with just as persuasive arguments as you are making tonight, but we cannot do that.

You said let us just decide this tonight and then the developers could not possibly build a mall by February or March, and the Senator is correct, but is that being fair to people who are acting under the framework of laws that we have passed allowing them to go forward in the private enterprise system? Is that fair to a county government struggling to establish a tax base and keep up with an influx of 15,000 each year?

We are not being fair to other interests, and that is why I stepped out and, believe me, if there was ever a no-winner case, this is it. For every one letter I might get saying you are doing the right thing, I am getting 100 saying you are doing the wrong thing—the developers, the county, the historians, the residents.

Why, down in my county, Fauquier County, they are so fearful of development, they want me to build a Great Wall of China down here to stop all the development from coming out.

There is no simple answer and that is why I lay before you tonight the only proposition that is ever going to become law, the only proposition that will ever preserve but a small part of this land.

I did not establish the 80-acre figure. The historians of the Park Service established that 80-acre figure. The historians of the Park Service established that 80 acres as bringing into the park those critical portions needed for future interpretation of the existing over 4,000 acres, thereby saving the American taxpayer as much as possible in this; thereby recognizing the rights of the country to provide for its own citizens with a tax base; thereby recognizing the rights of an individual who owns property to utilize that property within the existing framework of the law.

So I say to my good friend, this has not been an easy case for either of us, and now we are asking our colleagues to leapfrog over all of the billions of dollars of authorized acquisitions affecting your individual States and give me 80 in contrast to my dear friend from Arkansas who wants the entire 540.

He once said, "Well, you cannot subdivide this into 80 or 100 or anything else," but I say to him the history of this park has been assembled by bits and pieces, depending on the priority of the history. I point out this critical part of history down here in which those two Union generals did not follow their orders and the battle turned in favor of the Confederacy.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas has the floor.

Mr. BUMPERS. Last things first. We are not leapfrogging anybody because our amendment provides for the money to be paid out of the judgments fund permanent appropriation, not the land and water conservation fund. Not one single Senator is going to be deprived of any money that is scheduled or will be scheduled for land acquisition in his State.

As my colleagues know, all park money comes out of the land and water conservation fund, and it is a very small amount. We used to put $600, $700 million a year in. Since President Reagan, the amount for national park lands has gone down to $49 million. That is why we crafted my amendment to take it from another source rather than the land and water conservation fund.

Next, I want to say that I had a luncheon the other day, as I mentioned, with Dr. McPherson, and I had nine Senators there. Some Senators were on the floor. I may stand corrected and perhaps Dr. McPherson will stand corrected, but he told us, that Fitz-John Porter was never more than 2 miles in front of Longstreet.

He was not way down here, as the Senator's map would indicate, according to Dr. McPherson. But I do not think that is really all that relevant. One of the things that Dr. McPherson. said that makes this William Center tract right here so valuable and so historically important is the fact that Fitz-John Porter refused to come up here and attack Jackson in front of Longstreet. That was one of his very precise points.

I want to tell my colleagues just one other thing. The Warner amendment provides that there is hereby vested in the United States all right, title, and interest to a developmental easement over everything in this tract except 80 acres.

He does not take the 80 acres. He just authorizes and directs the Secretary of Interior to acquire it some day. My amendment makes it. We take it literally tonight if you take my amendment and we stop that development right now.

His amendment provides that we are taking an easement which will allow the construction of no more than almost 3 million square feet of nonresidential uses, of which no more than a total of 120,000 square feet in the aggregate shall be retail use, no more than 560 residential dwelings and no structure in excess of 45 feet high.

Now, what that means is that General Lee, who was in his headquarters up here—incidentally, one of the greatest parts of Battle Cry of Freedom is a Confederate Private's description of how General Stuart and Stonewall Jackson constantly rode into General Les's headquarters. As a matter of fact, Dr. McPherson told us they had several headquarters in the vicinity and they were in and out of Stuarts Hill constantly. But he said Lee had a perfect view of almost the entire battlefield and, as I said in my opening statement, could even see Stonwall Jackson's tent over here, could watch the battle going on, could watch Longstreet's deployment, could see Fitz-John Porter's army. If the Warner amendment is passed and you go up to Stuart's Hill where Robert E. Lee stood with his binoculars directing this campaign minute by minute, you will see nothing but roofs of houses and retail shops and you destroy the entire reason for this taking.

I yield the floor, Mr. President.

Mr. McCLURE addressed the Chair.

The ACTING PRESIDENT pro tempore (Mr. DASCHLE). The Senator from Idaho.

Mr. McCLURE. Mr. President, I do not want to get involved in this debate to refight the battle of Manassas. We have had a great history lesson tonight and a tactical maneuver description par excellence and it is certainly something that is intriguing to all of us and I expect for many stirs our emotions in very positive ways.

But I do rise in opposition to the amendment offered by the Senator from Arkansas, which is the text of H.R. 4526. I do so even though I truly appreciate the concern of those advocating the legislative taking of the Williams Center Tract and the extraordinary efforts of those striving to protect the integrity of Manassas Battlefield Park.

With this in mind, we need to closely examine the issue, the merits, and proposals for protection of important historic sites adjacent to park boundaries but only within the context of the priorities of the entire park system and the limitations of the budget.

With the possible exception of Pea Ridge National Battlefield in Arkansas, there is not a single battlefield free from development pressures. We are not just talking about Manassas, we are talking about what is going to happen to every one of the other elements of the National Park System where battlefields are involved. Mr. President, according to the National Park Service historian, G.S. Communications, Inc., a cable franchise in Frederick, MD, proposes construction of a 160-foot microwave reception and transmission tower on Red Hill, less than 1 mile from Bloody Lane, the center of the Antietam Battlefield. That is going to be on the agenda next. This is the site of the bloodiest day of fighting in the Civil War, as was referred to earlier in the debate. According to Park Service sources, if constructed, this tower will be visible from every part of the battlefield and will mar the integrity of the historic landscape at Antietam.

Does it sound familiar in the context of this debate?

A 100-foot microwave tower threatens the Bolivar Heights battlefield associated with Maj. Gen. T.S. "Stonewall" Jackson's siege and capture of Harpers Ferry, September 13-15, 1862, the site of the largest surrender of U.S.-led troops until April 1942, when the "Battling Bastards of Bataan" laid down their arms. Again, according to the Park Service historian, such a structure, atop Bolivar Heights, within 5 feet—I repeat 5 feet—of the park boundary will impair not only the battlefield but also much of the skyline above historic Harpers Ferry.

Sound familiar in the comtext of this debate?

Fredericksburg and Spotsylvania National Military Park's greatest need is to establish a legislated boundary, as land immediately adjacent to the park is scheduled or development. The same case can be made for Richmond National Battlefield where U.S. Grant threw the cream of his veteran army against Lee in a frontal assault against strong entrenchments around Cold Harbor. Within several hours, more than 7,000 of Grant's men were cut down, without the faintest chance of any success. The lands surrounding the small park acreage retain their historic pastoral character, but with Richmond's rapid urban growth, it will be only a matter of time before these rolling hills and plateaus become a prime target for development.

Many other Civil War areas are in proximity to urban areas. They likewise suffer from varying pressures and, in some cases, from visual impacts of construction and development. Demands for widened or increased transportation or utility corridors affect Kennesaw Mountain National Battlefield Park in Georgia. Urban pressure is evident at Vicksburg, Chickamauga/Chattanooga, and Stones River. The list is overwhelming. In addition, there are environmentally or historically important undeveloped lands within and adjacent to national parks, monuments and a myriad of historic sites which are higher on the priority list of the National Park Service for acquisition. As much as we may want to, this country simply cannot afford to purchase and protect all of the lands which surround all of our units of the National Park System.

Acquiring the William Center tract now, ahead of other far more important properties already on the existing acquisition list for the Nation, is unfair and makes the establishment or priorities for Park Service land acquisition by the Congress meaningless.

More importantly, in 1980 Congress enacted legislation which expanded the boundary of the Manassas National Battlefield Park. That legislation was intended to set the final boundaries of that park, and according to the record on that legislation the hope was expressed that the boundary issue was resolved once and for all. The people of Prince William County could then plan their own private lives and economic futures and to continue to develop their community.

Now you are being asked to renounce that finality. Congress simply cannot keep revisiting these boundary disputes if local governments and private property owners are to have any sense of certainty and predictability with respect to the legal status of their property.

The 542-acre William's tract at Manassas, which is being legislatively taken by this act, is not historically integral to the Battle of Manassas. Congress could have included this tract in the 1980 legislation at a cost of less than $10 million, but did not. Current cost estimates had been reported to run from $10 to $100 million prior to the committee hearing. However, testimony was given that property values for nearby lands have been valued between $17 and $17.50 per square foot. At that figure, the 542 acres could reach $413 million.

The issue of just how much this acquisition will cost will not be known until well after enactment. We have received sufficient information, however, to question even the limited figure of $60 million, the amount OMB has stated it will initially assign to this legislative taking. Prince William County has recently informed us that it would expect to be compensated for the cost of relocating the existing 240-foot electric powerlines easement which contains both a 500 KV and a 115 KV line on towers. That is there now. The county will also insist on compensation for the contractural commitments which were part of the rezoning, which include $2 million in cash for an interchange and a recreational complex, as well as the dedication of land for a fire station and additional turn lanes at the Route 234/Route 29 intersection. The county also provided data on recent sales which indicate that between August 1987, and May 1988, the cost of land zoned for nonresidential purposes increased from $2.71 per square foot to $7.66 per square foot in the area. I remind you that is precisely the period of time since the purchase of the William tract by the current developers, and it is likely the information that would be presented to the board on valuation if there is a legislative taking. Assuming a figure of $7.50 per square foot, the 393 acres zoned for nonresidential purposes will alone cost over $125 million.

Mr. President, I ask unanimous consent that the letter and attachments from Prince William County be placed in the RECORD at this point of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COUNTY OF PRINCE WILLIAM,
Prince William, VA, September 13, 1988.

Hon. DALE BUMPERS,
U.S. Senate, Washington, DC.

DEAR SENATOR BUMPERS: Thank you for the opportunity to testify before the Public Lands Subcommittee last Thursday. At that hearing, you and Senator Trible requested recent sales data for the William Center area. That information is included below.

We make no inference as to the value of the William Center tract based on this data. We also make no claim of completeness or of rigorous comparability between these recorded sales and the potential market value of the William Center. We will make a determination of taxable value on or before January 1, 1989 as part of our normal assessment process. You may wish to consider an independent appraisal of this property.

PRIOR CONSIDERATIONS

In line with you inquires on the potential value of the William Center, we believe that five additional sets of facts may be worthy of your consideration. These will influence, and likely increase, the ultimate cost of acquiring the William Center.

Significant development activity is presently occurring at the site. Site plans have been approved on both the residential and nonresidential portions of the project. These actions can significantly affect market values.

The William Center tract is divided into four separate parcels with three different owners. Generally speaking, smaller parcels have higher unit costs.

The William Center tract contains a 240 foot electric powerline easement. The easement currently contains a 500 KV and 115 KV line on steel and wood.

RESIDENTIAL SALES

(1) Tax map number: 136-1-19 and 20; deed date: 2/88; consideration: $1,302,420; size: 7.9732 acre; unit price: 3.74 sq. ft.; zoning: R-10.

(2) Tax map number: 136-2-58; deed date: 1/88; consideration: $1,799,000; size: 13.7199 acre; unit price: 3.00 sq. ft.; zoning: RT.

(3) Tax map number: 123-1-6H; deed date: 9/87; consideration: $1,254,000; size: 15.1696 acre; unit price: 1.82 sq. ft.; zoning: RT.

(4) Tax map number: 124-1-53; deed date: 7/87; consideration: $1,130,500; size: 11.4254 acre; unit price: 2.27 sq. ft.; zoning: RT.

NONRESIDENTIAL SALES

(5) Tax map number: 123-1-5; deed date: 5/88; consideration: $2,776,205; size: 8.31315 acre; unit price: 7.66 sq. ft.; zoning: B-1.

(6) Tax map number: 132-1-9B; deed date: 4/88; consideration: $864,780; size: 3.3088 acre; unit price: 5.99 sq. ft.; zoning: B-1.

(7) Tax map number: 123-1-18; deed date: 3/88; Consideration: $2,298,000; size: 11.95938 acre; unit price: 4.41 sq. ft.; zoning B-1.

(8) Tax map number: 127-1-75; deed date: 2/88; Consideration: $2,700,000; size: 8.67143 acre; unit price: 7.14 sq. ft.; zoning B-1 & M-1.

(9) Tax map number: 127-1-108; deed date: 1/88; Consideration: $1,090,980; size: 4.17443; unit price: 6.00 sq. ft.; zoning B-1.

(10) Tax map number: 127-1-71; deed date: 8/87; Consideration: $201,036; size: 74,178 sq. ft.; unit price: 2.71 sq. ft.; zoning B-1.

CONCLUSION

The above recent sales reflect the rapid appreciation of property values in the I-66 corridor. Their applicablility to the William Center is a qualitative judgement involving considerations of roadway access, water and sewer availability, plan approval, and a variety of other factors. These considerations will significantly affect the final value of the William Center tract.

The recent sales data reflect residential prices ranging from $1.82 to $3.74 per square foot, and non-residential prices ranging from $2.71 to $7.66 per square foot. However, there are no recent sales of large tracts of land (150 acres or more) which are equivalently zoned and located in the I-66 corridor. Generally speaking, smaller parcels have higher unit costs.

I would caution against drawing simplistic conclusions from the above data. Property values are difficult to estimate at any time, and especially in a speculative real estate climate.

Thank you once again for the opportunity to testify on H.R. 4526. Please contact us if we can provide any additional information.

Very truly yours,

KATHLEEN K. SEEFELDT.

Mr. McCLURE. Mr. President, whether the larger acreage decreases the value, or the level of development increases it, remains to be seen. What is inescapable, however, is that this will not be an acquisition for spare change. If the amount is sufficient to put the fiscal year 1989 budget over the Budget Act requirements so as to trigger a $10 billion sequester, this will be the most expensive shopping mall Federal agencies ever acquired.

I want to go back to that for just a moment lest anybody believe that since it comes out of the Claims and Judgments Act do not worry about your priorities, it will do nothing to your State or the parks in your State. Stop and think for a moment. If indeed this triggers a $10 billion sequester, remember the pain we had when we had a $2.5 billion sequester once before, now we have a sequester four times as large because of this action, and we will feel pain, my friends. It will not be a detached judgment or reflection that you will have at that time, as everything you are concerned about happens to programs that are important to you will be affected by the sequester action.

By this action, we are signaling other landowners at other sites that the way to obtain Federal funds is to destroy, or threaten to destroy, resources which the Federal Government has authorized for acquisition but which have not filtered to the top of the annual appropriations process; or, as in the case of Manassas, resources which are not even within the boundaries of an established park.

The developer of the William Center, Hazel-Peterson Co., has already agreed to preserve the most important areas of historical importance on the William Center tract and to wholly eliminate any serious visual impact of the project on the Battlefield Park. The Government's purchase of the William Center tract is, therefore, not necessary to insure preservation of the park's integrity.

According to the National Park Service the real No. 1 threat to the Battlefield Park is the existing and ever increasing automobile traffic that transits the park on State routes 29 and 234. Removing this traffic by closing the State roads and returning them to their Civil War gravel status is by far the most important element in preserving the integrity of the park. The Park Service has a very reasonable plan to accomplish this objective without the expense of taking the William Center tract.

It appears the Senate is really being requested to act as a national local zoning board. It is important for the Senate to understand that based upon the testimony of the September 8 committee hearing, it is now clear that the shopping mall was at all times a use permitted by the mixed use zoning of the tract; that the county at all times wanted intensive commercial use of the tract; that the developer never represented that it would not include a shopping mall in its plans; and when the developer decided to adopt a mall in its plans he notified the county and the public in a forthright and timely manner. Prior to the formal, specific announcement of the mall, there was little opposition to the development package involving the 600-acre tract. Simply put this is a local issue which should be resolved at local levels of government.

In conclusion, I believe this legislative taking is literally one which this Nation cannot afford. The last legislative taking recommended by the Energy and Natural Resources Committee and approved by Congress occurred in 1978 when the Congress enacted the bill to expand the boundaries of Redwoods National Park. The committee had been informed that the cost of acquisition would be $349 million. That legislative taking was triggered by the actions by one timber company. While the final bills have not yet been paid, the total cost, including payments to date, now exceeds $1.4 billion.

Stop and think for a moment what it is you are doing to the U.S. Treasury, to the budget deficit of this country, and to sequester possibilities when you look at the possibility of unleashing anything that approaches the kind of cost escalation we saw over the previous legislative taking that we authorized 10 years ago which has not yet been liquidated.

The Appropriations Committee has the unenviable task of sorting through all the requests for funding from the land and water conservation fund. Nothing is more difficult than telling a colleague that he or she cannot be accommodated this year even though we fully concur with the importance of the particular request. This year, there were over 1,700 such requests from other Members of the Senate and House of Representatives. Apparently the Committee on Energy and Natural Resources believes it is not only more important than the other requests the Appropriations Committee received, but also more important than the ones which the Senate and House did agree to fund when we approved the fiscal year 1989 Interior appropriations measure. Those sites will suffer from the sequester we may trigger with this measure—the developer of the William's tract will not.

Mr. President, let me read just one short passage from the letter that I received dated October 6 from the county of Prince William with respect to this tract because I think aside from the cost figures which it includes, this is significant to the debate this evening.

> The William Center tract is virtually inaccessible from the existing Park. The William Center is separated from the Brawner Farm by a four-lane divided highway, and from the remainder of the Park by a private twenty year old subdivision.

That is hardly the picture we have been given of the integral nature of this tract of land to the integrity of the park. And they made just this one further statement that I wish to repeat.

> Very few Park visitors will make a separate trip to this site. In the main, people visit battlefield parks to see where battles were fought. No battles were fought on the William Center site.

Perhaps the most significant battle of the entire Manassas Battlefield with respect to the Williams Center tract is that being fought now, not the ones that were not fought there 125 years ago.

I yield the floor.

The ACTING PRESIDENT pro tempore. Is there further debate?

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The majority leader.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, the number now of amendments has been reduced to 18 on this side, 14 on the other side. There are no new amendments beyond the list of 100 that have previously been agreed to.

I ask unanimous consent that the revised list be agreed to—they have been gone over by the managers, by the Republican leader, and by Senators on both sides—and I ask that no amendments not germane and relevant be in order, other than the amendments listed.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that there be a final vote on this bill at 12 noon on Wednesday.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. Mr. President, the reason I used the hour and the day of 12 noon on Wednesday is that on Tuesday some Senators may be a little late in getting back after the 3-day weekend.

Furthermore, if we cannot get a time agreement on the individual amendments, it could be that some Senators, at the agreed-upon hour on Tuesday, would find that all the time is used up and they would have no time.

As we have just seen on the amendment that is before the Senate, we have had a considerable length of time—and I am not denigrating the time that was given—but I am just trying to be sure that Senators are going to be fairly treated.

Mr. PACKWOOD. I wonder if the majority leader might suggest 30 minutes on each amendment. I do not think most will take that much time. If we had a half-hour on an amendment, I think we could make it by 8 o'clock Tuesday night.

Mr. BYRD. All right.

I ask unanimous consent that time on any amendment be limited to 30 minutes, to be equally divided in accordance with the usual form, and that time on any debatable motion or point of order, if submitted to the Senate, be limited likewise.

Mr. DOLE. I call attention to the fact that that can be done on all amendments except the Bradley amendment and the Helms amendment.

Mr. BAUCUS. That is correct. Senator Bradley asked for an hour on two amendments—on each of two amendments.

Mr. McCLURE. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. McCLURE. I think that under the previous unanimous-consent agreement, it was understood that amendments in the second degree that were relevant to the underlying amendment be in order. I believe that was included in the current request.

Mr. BYRD. Yes. I said all amendments.

Mr. McCLURE. The time limit on an amendment would not exclude time to consider a relevant, germane, second-degree amendment?

Mr. BYRD. No.

Mr. WARNER addressed the Chair.

The ACTING PRESIDENT pro tempore. The majority leader has the floor.

Mr. BYRD. Mr. President, I am going to hold the floor until I get this agreement.

Mr. CHAFEE. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. CHAFEE. If the vote on this technical corrections bill is on Wednesday at 11, then where does that put us? We go to conference, I do not know how soon. That is going to carry us into the next week, possibly, is it?

Mr. BYRD. Mr. President, the request has not been granted yet, and I have been prevailed upon by several Senators to make the closing hour on Tuesday.

Mr. CHAFEE. I would hope so.

Mr. BYRD. I just want to be sure that Senators want to go out of here with no hard feelings Tuesday night, saying that they were somehow or other cheated of their time.

The ACTING PRESIDENT pro tempore. The Chair informs the Senators that there was a unanimous-consent request that was agreed upon which set 12 noon on Wednesday as the day and time. Now the request is whether or not there shall be 30 minutes per amendment.

Mr. BYRD. I am going to try to revise the order for Wednesday, if we can do so, without prejudicing Senators.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. METZENBAUM. I want to be certain I understand.

If we arrive at the hour of noon on Wednesday, or Tuesday, whatever the time may be, do I correctly understand that any amendment that is part of this list can still be called up for a vote, without the right to have debate?

Mr. BYRD. That is correct. Unanimous consent orders of this nature still allow Senators to call up the amendment at the hour agreed upon for a final vote, but without debate.

ORDER FOR TIME FOR VOTE

Mr. BYRD. Mr. President, I ask unanimous consent that the hour for the final vote be at 8 p.m. Tuesday rather than 12 noon on Wednesday and that paragraph 4 of rule XII be waived.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, this is with the understanding that the previous order with respect to the action on the House bill and the substitution of the Senate text therefor will remain as ordered.

The ACTING PRESIDENT pro tempore. That is the Chair's understanding.

TIME LIMITATION AGREEMENTS

Mr. BYRD. Mr. President, with the exception of the amendments by Senators BRADLEY and STEVENS, I ask unanimous consent that there be a time limitation on any of the other enumerated amendments of not to exceed 30 minutes to be equally divided in accordance with the usual form.

Mr. FORD. Mr. President, reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. FORD. Could the distinguished majority leader tell me what the Bradley amendment might be?

Mr. PACKWOOD. One is the earned income tax credit and the other is on the extenders. They are not tobacco amendments.

Mr. BAUCUS. It repeals the extenders.

Mr. FORD. I have no objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I think Senator BRADLEY would like an hour on each of two amendments. That should be clear.

Mr. PACKWOOD. Yes; that is correct.

Mr. BYRD. Mr. President, I ask unanimous consent that the time on each of two amendments by Mr. BRADLEY be 1 hour equally divided in accordance with the usual form.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The test of the agreement reads as follows:

Ordered, That during the further consideration of S. 2238, a bill to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes, the following amendments be the only amendments in order:

Armstrong—Ethanol splash blending.

Armstrong—Change 1986 Act transition rule to transfer bond authority from Colorado Association of School Boards to Colorado Municipal League.

Armstrong—Cafeteria plan anti-discrimination test.

Armstrong—Exempt housing cooperatives from the General Utilities tax on liquidations.

Baucus/Packwood—Perfecting amendment.

Baucus/Packwood—Clean-up amendment.

Bingaman—Joint bond pools.

Boren—Rental car depreciation.

Bradley—Increase earned income tax credit.

Bradley—Second degree amendment to the Helms amendment relating to tobacco.

Bradley—Strike extender.

Bumpers—Manassas Battlefield.

Byrd—Strike provisions to leave clean bill.

Chafee—Sense of the Senate on people with developmental disabilities.

Danforth/Durenberger—Give Treasury regulatory authority to decide when charitable appraisals of gifts are unnecessary.

Daschle—Drought relief payments.

Domenici—Exempt small wine producers from $500 occup. tax.

Dole—Overrule a U.S. Supreme Court case (the "Jewett" case) dealing with disclaimers of inheritances.

Dole—Allow private sector Social Security trustees to serve until replaced.

Dole—Second degree income averaging.

Evans—Correct GATT violation caused by different superfund tax rate for imported vs. domestic oil.

Ford—Cigarette tax study.

Graham—Exempt taxpayers who pay interest on installment obligations they hold from minimum tax under adjusted current earnings; UBTI reporting when exempt entity owns a partnership interest.

Gramm—Allow a loan to an ESOP to be taken over by a new leader and still qualify for a 50% interest exclusion.

Grassley—Rural health bill.

Harkin—Section 89 carve-out for 3 years.

Hatch—Adoption expenses.

Heinz—Allow the State of Pennsylvania to keep a tax on bank stock which was ruled unconstitutional because it was an indirect tax on U.S. government securities.

Heinz/Riegle—Medicare effective date.

Helms—Delete the tobacco study from the Finance Committee amendment.

Helms—Adoption expenses.

Kasten—Repeal accumulated earnings tax.

Matsunaga/Pryor—Capitalization of storage and handling costs.

McClure—Extend placed in service date for a 1980 transtition rule where the delay is caused by the government—hydroelectric plant.

Melcher—Income averaging for farmers.

Melcher—Use CPI-U, not CPI-W, for computing COLAS.

Metzenbaum—Treat day care workers as independent contractors.

Metzenbaum—Bermuda, offshore insurance.

Murkowski—Collect only one Harbor Maintenance Use Fee on cargo that is reloaded onto another boat in port.

Murkowski/Stevens—Provide more transition relief for Alaska Native Corporations.

Pell—Iraq sanctions.

Riegle—Michigan bond program.

Sanford—Pension spin-off rules for bridge banks.

Simpson—Exempt from the minimum tax Olin Corporation's charitable donation of a Winchester rifle collection to the Buffalo Bill Museum.

Stevens/Murkowski—Provide more transition relief for Alaska Native Corporations.

Stevens—Provide more generous early retirement pension rules for firemen and policemen.

Stevens—Exempt pension reversions ordered by a court before July 27, 1988 from 60 percent excise tax in the Committee amendment.

Stevens—Allow Medicare reimbursement for airfare of a companion of a patient from a remote location to a hospital.

Wilson—Allow exclusion for sale of principal residence for disabled elderly.

Ordered further, That any second degree amendment to the Pell Iraqi sanctions amendment must deal only with Iraqi sanctions.

Ordered further, That second degree amendments be in order if germane and relevant to the underlying first degree amendment.

Ordered further, That upon the disposition of the enumerated amendmens, the Senate call up the House bill without further debate, amendment, or action of any kind, that all after the enacting clause be stricken, that the Senate bill as amended, if amended, be inserted in lieu thereof, that without further debate, amendment or action of any kind, the House bill be taken to third reading, and that without further debate, or action of any kind, the Senate proceed to vote on final passage of the House bill, as amended, if amended.

Ordered further, That there be no time for debate on a motion to reconsider.

Ordered further, That time for debate on any amendment (except two Bradley amendments, on each of which there shall be 1 hour, equally divided and contolled) be limited to not to exceed 30 minutes, to be equally divided and controlled in the usual form.

Ordered further, That time for debate on any debatable motion, appeal, or point of order which is submitted to the Senate be limited to 30 minutes, to be equally divided and controlled in the usual form.

Ordered further, That the Senate vote on final passage of the bill at 8:00 p.m. on Tuesday, Oct. 11, 1988.

Mr. BYRD. Mr. President, I thank all Senators and I thank the Republican leader and the two managers.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. Mr. President, it is the intention of the leader to go out following the action today and not come back until Tuesday, and I would suggest that we come in as early as 9 o'clock.

Mr. DOLE. Mr. President, will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. If we should come in at 9 o'clock it is fine with me. To accommodate some of the Members on both sides coming from a little longer distance, I wonder if we might maybe either have amendments we can take early in the morning or maybe pile up a vote or two until about noon.

Mr. BYRD. Yes; that is a good proposal. So, there will be no rollcall votes before noon.

Mr. DOLE. I thank the Senator.

Mr. BYRD. Keeping in mind that at 8 o'clock Tuesday night all amendments that are on the revised list that have not been disposed of may still be called up by Senators and there can be a vote thereon or in relation to without further debate.

ORDER FOR RECESS UNTIL 9 A.M. TUESDAY, OCTOBER 11, 1988

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 o'clock on Tuesday morning next.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I wonder whether we could have an agreement that prior to the hour of 10 o'clock there be no amendments accepted by the managers of the bill to accommodate some of us trying to get in. I think I take a 7:30 plane out of Cleveland. I would like to know what is being accepted. I wonder if we could be protected until 10 a.m. in the morning with the understanding that we start at 9 a.m. in the morning.

We start at 9 and not take any amendments until 10 o'clock.

Mr. PACKWOOD. That is all right. We can stack them up.

Mr. DOLE. All right.

TECHNICAL CORRECTIONS ACT OF 1988

The Senate continued with the consideration of the bill.

Mr. BYRD. Now, Mr. President, could we have an understanding as to how soon the vote may occur on the pending amendment?

Mr. BUMPERS. Mr. President, if the leader will yield for that purpose, as far as I know, and I cannot speak for Senator WARNER. Senator TRIBLE wants 2 or 3 minutes and then as far as I know we are prepared to vote unless Senator WARNER wanted to say something else.

Mr. WARNER. Mr. President, that is correct.

At this time the Senator from Virginia would like to ask for the yeas and nays on the underlying amendment.

Mr. BYRD. Mr. President, I yield for that purpose.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BUMPERS. Mr. President, I ask for the yeas and nays of my amendment.

Mr. BYRD. Mr. President, I yield for that purpose.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, can we get an agreement now on these amendments 5 minutes to Mr. BUMPERS?

Mr. BUMPERS. I am talking about 5 minutes total, as far I am concerned.

Mr. BYRD. Five minutes to Mr. TRIBLE, 5 minutes to Mr. WARNER.

Mr. BUMPERS. I will take 5, too.

Mr. BYRD. Five minutes to Mr. BUMPERS.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, I would also like to say that obviously there is the right of the Senator from Virginia to move to table the amendment by the Senator from Arkansas, but I think in the spirit of chivalry of the War Between the States that I shall not do that, and I urge other Senators to forebear and allow my distinguished colleague to have an up or down vote.

Mr. BYRD. Mr. President, I ask unanimous consent that the remaining time on these amendments be limited to 15 minutes under the control of the three Senators who have previously been recognized.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I yield 5 minutes to the Senator from Virginia.

The ACTING PRESIDENT pro tempore. The Senator from Virginia has his own 5 minutes.

The Senator from Virginia.

Mr. TRIBLE. Mr. President, if I may have the attention of my colleagues.

The ACTING PRESIDENT pro tempore. The Senate will be in order.

Mr. TRIBLE. At the outset, I applaud the leadership of my friend and colleague, JOHN WARNER. For over a decade now he has been in the forefront of the efforts to preserve and protect this historic Manassas Battlefield, and he puts before us tonight a very thoughtful proposition.

It has much to commend it. It speaks to some finality of this question, and clearly in the interests of all parties, the private landowners and developers, the county, its citizens, and those who wish to preserve this battlefield we have to finally resolve this question, put it behind us.

Second, it recognizes the huge cost of acquiring the entire tract of land at issue here. When you look at comparable land transactions in the area, you have to acknowledge that this entire tract of land will cost $50 million or more, a substantial sum of money. To the extent that we take less than the whole, it will cost something less than $50 million plus.

Finally, the Warner proposition addresses the principal problem facing this battlefield and park, and that is the intrusion of thousands and thousands of vehicles on Routes 29 and 234.

That problem is addressed here by authorizing funds to create a bypass to remove that intrusion, that vehicular traffic.

But I have concerns. First is the matter of cost. The Warner proposal in my judgment is less costly than the taking of the entire tract. My colleague's proposal would take 80 acres instead of 542 acres. However, it would take the most valuable property, those lands along the Route 29 corridor, and by limiting the use of the remaining property it would adversely affect the value of that property and so after everything is said and done we would come out with much less in terms of real estate and yet I am concerned that we will pay almost as much money.

Second, I must confess that I am deeply troubled by the Federal Government taking part of this property, leaving the balance in the hands of private owners but then mandating what they can do with that property.

I am too much of a Virginian to think that is a proper way of approaching the problem. If the Federal Government is going to take the property, let us take it, but let us not take part and then limit the use of the remainder held by the landowners here.

Finally, in my view, Mr. President, after taking a very careful view of the land, considering the historical dimensions of this question, I am not convinced this property is susceptible to division, either in economic terms or in the historic terms.

If this land does have value, then all of the land has value and lasting significance, and it ought to be taken. If it does not, then we ought to yield to local government and to the rights of the private landowners and let them do with this property as they will.

For those reasons, I, Mr. President, will vote for the Bumpers amendment. I will vote against the proposal of my colleague from Virginia. I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. WARNER. Mr. President, I thank my good friend and colleague, Mr. TRIBLE. First, I appreciate his candor throughout this long debate tonight and the many weeks that preceded it.

But I say in all deference to him that if we take the Williams tract—and basically this pointer is along Route 66—I say to my colleagues, how soon is it before we come back to take these other tracts of land which, in the judgment of respected historians, are just as valuable? Each time we push the border of this park or any other park, we come up against land, certainly with this park, that has historical value which in the judgment of some is greater than what we have taken.

He touched on the note of finality, and I think that is so important. I stressed it earlier.

The citizens of the county are entitled to finality. The ones that run the county govenment, people who own property, not only the Williams tract, but other tracts around which have historical significance, are entitled to some finality. We thought we achieved that in 1980, but we did not. The Federal taxpayers are entitled to some finality.

Indeed, I daresay if you vote—and I say this with all due respect—for the Bumpers proposal, you will be hearing from your constituents with respect to your national parks, 334 of them all across the United States, in which there is a backlog of some several billions of dollars of authorized acquisitions for those parks.

But I say to my good friend from Virginia, what do we tell our fellow Virginians after this careful deliberation by the Senate if the Bumpers proposal were to carry and the President of the United States vetoes it? How do we explain that we have basically left this situation just as it is tonight until the Congress returns in late January or February? Do you think that the drumbeat across this Nation, which brought this issue to this Chamber with a vote in the House of 307 individuals, is going to fade away?

No, my good friends, I say the bugle will sound once again and we will be back here as soon as we return, but with a more serious situation of this land having progressed in some degree in development, with a far more expensive bill laid before the Senate.

There is much to say about finality. But I extend to my distinguished colleague the opportunity on my time or whatever balance that he has left to answer the question, what do we tell our Virginians, what do we tell Americans, if the President, who has said that he would veto the House bill, the Bumpers proposal, goes forward?

The ACTING PRESIDENT pro tempore. The junior Senator from Virginia's time has expired. The Senator from Virginia has 1 minute 35 seconds remaining.

Mr. TRIBLE. If the Senator will yield, I will respond very briefly.

Mr. WARNER. Yes.

Mr. TRIBLE. I think, after everything is said and done, we have to do what we individually feel is right in terms of this property. It is my judgment that it does have special significance, it is of national value, and that we ought to preserve it. So each of us will do what we feel is right tonight. None of us can shape events that will follow. And, after it is all said and done, that is what we owe our constituents.

Mr. WARNER. Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator has 50 seconds remaining.

Mr. BUMPERS. Mr. President, I want to just make one observation. This is a tough vote, a tough vote for all of us. If the stakes were not so high and our heritage so valuable, I would not be here tonight. I hate to ask some Senators to vote on this.

But I am telling you, this is hallowed ground and the thing that made Robert E. Lee a brilliant general was his daring, his willingness to take a chance and do the unpredictable and do the tough and not worry about the odds. I would recommend that philosophy tonight to my colleagues.

When has anybody in this Chamber ever heard anybody say, "I wish we had not set that land aside. I wish we had not made that wilderness"? Have you ever heard anybody in New York say, "What were those Indians thinking about when they set aside Central Park"? Or, on Boston, "Why did those people set the Common aside"? You have never heard it and you never will.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 3 minutes and 50 seconds remaining.

Mr. BUMPERS. Mr. President, I will just remind Senators of something a great English philospher said, and I wish all 100 Senators were here to hear this and who have heard this debate about this precious ground we are talking about tonight. He said, "There is nothing more utterly impossible than undoing that which has already been done." And unless we act boldly and bravely tonight, the damage will occur and you and 1,000 horses can never undo it.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. WARNER. Mr. President, I simply say I draw on one word: predictable. It is clearly predictable that if the Senate adopts my amendment, it will become law. I have here the assurances of the Secretary of the Interior. You, likewise, have the assurance of the Secretary of the Interior that your proposition will be vetoed and all will be lost.

Under my proposal, you will be able to take your grandchildren to Stuart's Hill and visit the site on which Lee stood and directed this famous battle. Under your proposal, by the time the Senate returns, I dare say Stuart's Hill will be cleared of those trees and well under way towards development, and all will be lost.

I thank my distinguished colleague for his many courtesies. I thank the Senate for the careful consideration they have given this measure, and I thank my good friend the junior Senator from Virginia

The PRESIDING OFFICER. The Senators's time has expired.

The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will just take 30 seconds to say that the President has promised vetoes before—Big Cypress, the oil drilling moratorium. And he signed those measures. If you believe he is going to veto the technical corrections bill, with all those things in there affecting millions of people, then we have a disagreement about whether he is going to veto this bill or not. I do not think he will veto it. I think in the final analysis the President will have a national park historian come in and explain to him, as I have done my very best to explain to this body tonight, the great historical significance not just of the Second Battle of Manassas but of this particular tract and the role it played in that battle.

So I ask you to join me and be able to be proud when you talk to your grandchildren one of these days about why we saved a piece of property.

I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, will the Senators yield me the minute he has remaining?

Mr. BUMPERS. I just yielded my time back.

Mr. DOMENICI. Mr. President, how much time does the Senator have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes remaining.

Mr. DOMENICI. I ask unanimous consent that I have 1 minute of his remaining time.

The ACTING PRESIDENT pro tempore. Is there objection? Hearing none, so ordered.

Mr. DOMENICI. Mr. President, let me tell the Senate what is going to happen. We are going to either buy part of the land under the Senators from Virginia's amendment, or all the land under the Senator from Arkansas' amendment, and we are all going to say we made a great preservation act tonight. And do you know what we are going to do? We are going to spend anywhere from $50 to $150 million to pay a developer, the very same person who is going to go right across the street and build the exact same shopping center. We will have conserved nothing. We will have paid a developer so he can move right across the street. He has told us he is. He has testified that is what he is going to do.

We are absolutely insane. With a budget that is bankrupt, a group of Americans come running in to Congress and say, "Please carry out our zoning laws. We do not want the county let this person do. Will you please buy a piece of land?"

We are going to buy it, and he is moving right across the street and build a shopping center with all the same problems that have been discussed on the floor of the Senate.

Now, I love history, I love the South and the Civil War relics, but this is absolutely crazy. And we are going to do it anyway.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. BUMPERS. Mr. President, I ask unanimous consent that I may be granted 30 seconds to respond to that.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, the Senator is recognized for 30 seconds.

Mr. BUMPERS. First of all, if this were across the street from the Alamo, I daresay I do not believe Senator would feel the same way.

Second, I want to say I will be happy to tell my children, if the mall was built right over here where the Hazel Peterson Development Co. has bought a one-fourth interest through, I am going to tell my grandchildren: If it had not been for your grandfather and the U.S. Senate in a late-night session one night, that thing would be sitting right on top of where General Lee's headquarters was.

I yield back my time.

The ACTING PRESIDENT pro tempore. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Arkansas [Mr. BUMPERS], No. 3623.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Delaware [Mr.

BIDEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Arizona [Mr. DECONCINI], the Senator from Massachusetts [Mr. KERRY], the Senator from Georgia [Mr. NUNN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from Mississippi [Mr. COCHRAN], the Senator from Missouri [Mr. DANFORTH], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Washington [Mr. EVANS], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. QUAYLE], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Vermont [Mr. STAFFORD], the Senator from Wyoming [Mr. WALLOP], the Senator from Connecticut [Mr. WEICKER], and the Senator from California [Mr. WILSON] are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 25, as follows:

[Rollcall Vote No. 361 Leg.]

YEAS—50

Adams
Baucus
Boren
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cranston
D'Amato
Daschle
Dixon
Dodd
Ford
Fowler
Glenn
Gore
Graham
Harkin
Heflin
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Lautenberg
Leahy
Levin
Matsunaga
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Packwood
Pell
Proxmire
Pryor
Reid
Riegle
Sanford
Sarbanes
Sasser
Shelby
Simpson
Trible
Wirth

NAYS—25

Armstrong
Boschwitz
Cohen
Conrad
Dole
Domenici
Exon
Garn
Grassley
Hatch
Hatfield
Hecht
Heinz
Lugar
McCain
McClure
Murkowski
Nickles
Pressler
Roth
Specter
Stevens
Symms
Thurmond
Warner

NOT VOTING—25

Bentsen
Biden
Bingaman
Bond
Bradley
Cochran
Danforth
DeConcini
Durenberger
Evans
Gramm
Helms
Humphrey
Karnes
Kerry
Nunn
Quayle
Rockefeller
Rudman
Simon
Stafford
Stennis
Wallop
Weicker
Wilson

So the amendment (No. 3623) was agreed to.

Mr. BUMPERS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

VOTE VITIATED

Mr. WARNER. Mr. President, I ask unanimous consent to vitiate the rollcall vote on the underlying amendment.

The ACTING PRESIDENT pro tempore. Is there objection? Hearing none, it is so ordered.

The question is on agreeing to the amendment, as amended.

The amendment (No. 3622), as amended, was agreed to.

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. BYRD. Mr. President, I think we better let everybody go home. There is about 45 minutes of wrapup that the Republican leader and I have to do yet. Some of those measures have to be done tonight.

Mr. DOLE. Will the majority leader yield before everybody leaves? I wonder, on Tuesday, if that first vote might come following the policy luncheon rather than at noon.

Mr. BYRD. That is all right with me unless we run into a situation where before we can proceed with another amendment a Senator objects to laying his amendment aside. Then we are stuck. I will certainly work with the Republican leader to do everything I can to stack votes until 2 o'clock.

Mr. STEVENS. Mr. President, reserving the right to object to the majority leader's request, I would like to lay down an amendment so it will be the first amendment to be debated Tuesday morning. It is one on the list.

Mr. PACKWOOD. Is this the one that does not have any time limit?

Mr. STEVENS. That is right.

Mr. PACKWOOD. Could the Senator accept a time limit tonight so we could have some idea——

Mr. STEVENS. I will be happy to discuss that Tuesday morning.

Mr. PELL addressed the Chair.

Mr. BYRD. Mr. President, I still have the floor.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. BYRD. Mr. President, what is the problem with letting the Senator lay an amendment down tonight? He does not expect to debate it.

Mr. STEVENS. I just want to be able to call it up Tuesday morning. I will be happy to discuss it then. I think it will be worked out at that time.

Mr. BAUCUS. Mr. President, if I might, the slight problem is if there is no time agreement on the amendment of the Senator from Alaska, if it takes a long time, that is going to preclude other Senators from spending time on their amendments. I think it is important, to accommodate other Senators, that we have some kind of time agreement on the Senator's amendment at this point. Otherwise, I would feel constrained to urge the leader to go out tonight so that we take care of this problem on Tuesday.

Mr. STEVENS. Mr. President, unless I am wrong—I could be corrected—it is a Senator's right to introduce an amendment while we are still on this bill and the majority leader is about ready to take us off this bill. I am prepared to try to work it out with the managers of the bill.

I might state the reason I objected to having a time agreement on this was that I understood this was part of the overall so-called package, and that was my understanding right at the time when I did not object to the majority leader's request to have the unanimous consent that dealt with going to the House bill and third reading and eliminating all potential delay on the bill prior to the passage of the bill. I am more than willing to discuss it, but I think I have got to protect my rights now as I did not protect them previously.

Mr. BYRD. Mr. President, the Senator has a right to call up his amendment. If we do let him do it tonight, he can get recognition Tuesday morning and call it up. Had the Senator known that he was not going to be allowed to lay his amendment down, I suppose we would not have gotten the agreement.

Mr. STEVENS. That is precisely correct, I might say.

AMENDMENT NO. 3624

Mr. STEVENS. Mr. President, I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The majority leader controls the time.

Mr. BYRD. Mr. President, I have the floor, but I will yield for that purpose.

Mr. STEVENS. I thank my friend.

The ACTING PRESIDENT pro tempore. Is there an objection to the majority leader's request?

The Chair hears none, and it is so ordered.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment offered by the Senator from Alaska.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 3624.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 1027, between lines 17 and 18, insert:

(9) Section 415(b)(2)(F) of the 1986 Code is amended—

(A) by striking out "and tax exempt organizations" in the heading of subparagraph (F) and inserting in lieu thereof ", tax exempt organizations and certain employer/employee trusts pursuant to collective bargaining agreements.";

(B) by inserting "qualified plans pursuant to collective bargaining agreements" after "under this subtitle," in subparagraph (F);

(C) by adding at the end of subparagraph (F) the following new sentence: "For the purposes of this subparagraph, the term 'qualified plans pursuant to collective bargaining agreements' means a plan maintained pursuant to one or more collective bargaining agreements ratified before March 1, 1986 or the successor to such a plan that provides for a normal retirement age of 45 or less and for increases in benefits for each year after age 45 during which a plan participant does not retire that exceed the annual actuarial reductions applied to such participants who elect retirement prior to age 45."

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. BYRD. Mr. President, I yield to the distinguished chairman of the Foreign Relations Committee.

Mr. PELL. I would ask the managers of the bill the status of the amendment that Senators were on notice that I was going to offer in connection with Iraqi sanctions. My understanding is that it did not get into the approved list although we all thought it was on the list and I would propose to rectify that.

Mr. BAUCUS. Mr. President, if the Senator will yield, the Senator from Rhode Island is correct. His amendment was inadvertently dropped from the second-to-the-last list to the very last list. We could either attempt to add it to the list tonight or have the assurances that we can get unanimous consent to take up the Senator's amendment on Tuesday, whatever the wish of the leader might be. It is true that the amendment was on the second-to-the-last list and was inadvertently dropped from the final list.

Mr. PACKWOOD. I can verify that is true. We saw the list that was given to us. It was not there and we, I guess, just thought it was not going to go forward.

Mr. BYRD. Mr. President, I have one question. The agreement has been completed. I have no problem with this except under the order no amendments not germane or relevant to an amendment——

Mr. PACKWOOD. That were not on the list.

Mr. BYRD [continuing]. Can be offered. Now, my question is with reference to a South Africa sanctions amendment. I do not know whether—this order will allow amendments to come in, two amendments, as long as those amendments are germane and relevant. Now, if a South Africa sanctions amendment can be so crafted that it could come in under that order, I am not so sure——

Mr. PACKWOOD. It can be made an Iraqi amendment is what the Senator suggests.

Mr. BYRD. Yes.

Mr. BAUCUS. I further suggest we ask there be no amendment to the Pell amendment.

Mr. BYRD. I ask unanimous consent that no amendment to the Pell amendment be in order.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. PELL. No amendment dealing with Iraq.

Mr. McCAIN. Mr. President, reserving the right to object, I have an amendment related to the Pell amendment on Iraq. I just had a conversation with the distinguished chairman of the Foreign Relations Committee about some negotiations concerning this amendment, so I cannot agree to no second-degree amendments to the Pell amendment.

Mr. PELL. All that we are discussing now is as to whether it is in order to bring the amendment up. It is not a question of approving it or not. It was inadvertently left off the list so neither the Senator's amendment nor mine can come up without unanimous consent.

Mr. PACKWOOD. I wonder if we might solve it this way. It was an honest mistake that the Senator's amendment was not on the list. We thought it probably had been taken off the list because when we got the list, it was not there. The Senator from Arizona has some questions. My hunch is Senators can work it out. I think we could do this Tuesday. If there is a problem, we cannot agree tonight. My hunch is this is not going to be seriously controversial and we could complete it Tuesday morning.

Mr. BYRD. Mr. President, I ask unanimous consent that only amendments that deal strictly with Iraqi sanctions be in order to the Pell amendment.

The ACTING PRESIDENT pro tempore. Is there an objection? The Chair hears none, and it is so ordered.

Mr. PELL. I thank the majority leader.

Mr. BYRD. Mr. President, I thank all Senators.

Mr. DOLE. So it is on the list.

Mr. PACKWOOD. It is on the list.

Mr. BYRD. It is on the list.

Mr. President, there will be no more rollcall votes. I hope all Senators will have a safe and enjoyable 3-day weekend.

Mr. PRESSLER. Mr. President, last evening I joined 59 of my colleagues in voting to table a proposed amendment (No. 3510) to the technical corrections bill offered by the distinguished Senator from New Hampshire [Mr. RUDMAN]. The purpose of the Rudman amendment was to increase the tax on cigarettes, distilled spirits, wines, and beer, and to appropriate the resulting revenues to fund the proposed Omnibus Anti-Substance Abuse Act of 1988.

Mr. President, I fully support the basic objective of my distinguished friend and colleague from New Hampshire. Little, if any, purpose is served by authorizing new weapons and resources to be used in the war on illicit drug-trafficking and drug-abuse and not providing adequate funds for waging the war. Despite budget constraints and this Senator's aversion for any increase in taxes, we simply must find the funds.

We, however, are debating the technical corrections bill that by agreement is designed not to raise revenues. The distinguished majority manager of the bill unequivocally states the Rudman amendment is a "killer amendment" and there will be no bill if the amendment passes. Mr. President, this bill is most important for the people of my home State of South Dakota. For example, it saves farmers and ranchers from having to pay, and then at year-end apply for a refund, of the diesel fuel tax. It extends the mortgage revenue bond program through June 30, 1989. It repeals the uniform capitalization rules for livestock—the so-called heifer tax. It incorporates the taxpayer bill of rights. There is another vehicle for antidrug funding to which the distinguished minority leader has referred. I believe we must await action on that legislation and not agree to an amendment that could kill the tax corrections bill.

Mr. DOMENICI Mr. President, I wish to say a few words about the Technical Corrections Act, a few words that describe the importance of this bill to the people of New Mexico.

S. 2238 continues in the spirit of H.R. 3838, a bill that is the first step in the reformation of our tax structure into one of neutrality and fairness. This is a clean bill that makes minimal changes—only those that are necessary to correct the mistakes and unintended consequences of the Tax Reform Act.

First and foremost, New Mexican artists, writers, sculptors, and photographers will benefit from the provision in this bill that repeals the uniform capitalization rules, a change that allows them to deduct their expenses in the year those expenses are incurred.

This bill returns the law to the way it was prior to 1986, and lifts a huge accounting burden off the backs of the artistic community, I applaud that.

Mr. President, Santa Fe is the third largest art market in the United States, behind only New York City and Los Angeles. Any artist, writer, or photographer will tell you how the 1986 Tax Act imposed a nearly impossible burden. To comply with the 1986 act, Congress forced these individuals to become part-time accountants, keeping meticulous records replete with detail.

Let me explain how it works under the 1986 Tax Code: Only after a work begins to generate income in a given year can the artists or writer deduct a percentage of the expenses to create that work, expenses that may have occurred years before. And then the percentage of deduction is based on an estimate of how much income the work will generate, and for how long.

This paperwork and crystal ball forecasting does little more than to give the Internal Revenue Service a whole host of subjective assumptions, ones that can later be challenged in an audit.

I was reminded recently by the son of the late author Zane Gray that the Internal Revenue Service has tried in the past to require writers to capitalize their expenses in this manner.

In 1931, Zane Gray was audited by what was then the Bureau of the Internal Revenue. Subsequent to the audit, Mr. Gray was required to capitalize his expenses over—are you ready for this?—28 years, the first term of the copyright.

Mr. Gray spent the following year in court fighting this "uniform capitalization rule." According to the records of the proceedings, he spent more money in legal fees than he earned writing that year.

But he won. He won with the same argument we are making here today, that the work of the artist or writer is different from that of a manufacturer, which makes the far more burdensome on the artist or writer.

The uniform capitalization rule wasn't fair to artists then, and it isn't fair now.

During the 66 days of hearings on the Tax Reform Act, the issue of tax treatment on the artistic community was never raised, discussed, or evaluated in any way. Artists and writers and photographers were included under the uniform capitalization rules as an afterthought, in footnote to the conference report on the bill.

I commend Senators MOYNIHAN and BRADLEY for helping our country's writers. Last year they offered an amendment to the budget reconciliation bill that would have exempted authors from the uniform capitalization rules. Unfortunately, this provision was not included as part of that bill, but their continued efforts have been most appreciated by the writers in my State, as well as, those across the Nation.

Mr. President, S. 2238 will also help fullfill the American dream of home ownership by extending the mortgage revenue bond program.

State and local governments have issued tax exempt bonds to finance home ownership for more than a decade. This is a program that has worked well. However, unless we change the law, the Federal Government will no longer treat interest on these bonds as tax exempt after the end of this year.

I have supported this program each time it was set to expire—1980, 1984, and 1986 and I will continue to do so, although I would prefer making it permanent. Such an effective program is too valuable to jeopardize. It seems to me we need this first-time home buyer program now, more than ever.

Housing affordability is a problem in our country. A recent study conducted by researchers at Harvard University found that since 1980 there has been an increase in the number of Americans who cannot afford to make that first home purchase. When we take into account the current budget constraints, our choices for housing programs are limited.

In this time of increasing home prices, with increases in interest rates, I commend my colleagues for working to fulfill the dreams of Americans who want to own a home.

I truly believe in this program, and I thank my colleagues on the Finance Committee for including it in the technical corrections bill.

I am also pleased that S. 2238 extends the targeted jobs tax credit for another year. I have long supported this important program. It provides employers with special benefits for hiring persons in certain hard-to-place groups of potential workers. These are groups needing an extra helping hand in order to be considered for employment, groups whose unemployment rates are traditionally well above the national average.

These include persons who might be called street kids as well as economic disadvantaged Vietnam veterans, former convicts, reformed drug addicts, and others who need a second chance. Making it more attractive to give them a job is a big step in the right direction.

Mr. President, the good economic conditions of the Reagan years makes it easier for almost everyone to find a job. The targeted jobs tax credit helps extend that opportunity to all.

The Senate bill also makes a technical correction that is crucial to certain hospitals in my State.

Several communities in New Mexico currently face a rural health care crisis. These communities do not have the tax base, nor do they have other means for financing needed hospital equipment. Yet their citizens live miles away from urban hospitals.

The Tax Reform Act included a grandfather provision that would allow the New Mexico Hospital Equipment Loan Council, which is a tax-exempt blind pool in my State, to proceed with a bond issue that would help 20 hospitals in New Mexico.

Blind pools, which are a financing mechanism available to building projects that are too small to issue bonds on their own, are the only way for the rural hospitals in my State to cope with the current situation.

Since extensive changes were made in the way blind pools were treated in tax reform, several technical corrections were needed to cover all of the grandfathered pools. I would like to thank the chairman for recognizing the need for prompt attention.

As a result of the Senate Finance Committee's action, the New Mexico Hospital Equipment Loan Council can resume its role in providing financing capital equipment and improvements at low cost for the hospitals in need in New Mexico.

The technical corrections bill restores fairness to the farmers of this country. The Tax Reform Act of 1986 and the Budget Reconciliation Act of 1987 have created an accounting nightmare for farmers and ranchers.

Mr. President, I voted for the Tax Reform Act of 1986. I support the simplication of our Tax Code. However, these two provisions run counter to this goal.

The first of these changes is commonly referred to as the "heifer tax." As part of the new tax laws, cattlemen must capitalize their costs of raising replacement heifers, rather than deducting expenses as they are incurred, as they did under previous tax law.

This rule leaves America's ranchers with an unfair choice. They can pay higher taxes now, or they can suffer a loss in cash-flow because of the slower depreciation schedule on their assets. We should not force them to make this decision.

The National Cattlemen's Association estimates that this new provision could increase taxes for ranchers by as much as $50 to $100 for each animal placed back in the herd.

S. 2238 corrects a problem that was created by the Budget Reconciliation Act passed last year. Under previous law, farmers were exempt from paying 15-cent-per-gallon excise tax on diesel that was used for farming purposes.

They still are exempt, but now the Government requires them to pay this tax at the time they purchase the fuel. Then, at the end of the year they can apply for a refund.

All this paperwork to retrieve tax payments they never owed in the first place. I commend my colleagues for correcting this error in the law.

The people of New Mexico thank the Finance Committee for its understanding of this problem, and your help.

Mr. President, I believe this is a sound bill, and I urge its passage by the Senate.

Mr. WILSON. Mr. President, I want to commend the members of the Finance Committee for reporting to the Senate a tax bill that solves several tax problems which require immediate attention.

Unfortunately, there is one amendment missing—an amendment that would treat California and Arizona pistachio growers like all other fruit and nut tree growers.

My home State of California is the largest producer of pistachios in the United States.

It is a relatively new crop—the first commercial harvest did not take place until 1976, and only consisted of 1.5 million pounds.

This year, that amount is expected to reach 80 million pounds.

There are approximately 500 pistachio growers in California.

Their work and pioneering spirit have taken an old world crop and made it even better.

U.S. pistachios are recognized around the world for their unsurpassed quality standards.

The pistachio industry has made an important contribution to the economic health of California and the Nation.

Moreover, this contribution was made totally without the help of Government subsidies or other forms of Government intervention.

It has made our Nation self-sufficient in pistachio production, saving the trade deficit some $100 million per year.

With the exception of almond and citrus growers, fruit and nut tree growers were given the option in the Tax Reform Act of 1986 to either capitalize or expense their development costs.

Unfortunately, our pistachio growers were not included in this provision.

The pistachio growers recognized long before many others the potential abuse of using agriculture to shelter nonagriculture income in agricultural projects.

Long before the passive investment rules were discussed in Congress, the pistachio growers requested legislation to require the capitalization of their development costs to discourage tax shelter syndicators from destroying the industry.

The House accepted the industry's request for the capitalization provision and included the amendment in the House tax reform bill.

In the spring of 1986, the Finance Committee made a dramatic decision to adopt the passive investment rules and added a provision that would give growers of fruit and nut trees an option to expense or capitalize.

When the pistachio growers learned of the passive investment rules, they immediately wrote to the Chairman of the Senate Finance Committee and requested that their capitalization provision not be adopted by the Senate and that they be treated like all other fruit and nut tree growers.

The pistachio growers were included in the Senate tax bill and treated like other fruit and nut tree growers.

However, their capitalization provision remained in the House bill.

The pistachio growers urged that the House provision be dropped by the conferees, as the industry recognized that the Senate passive loss provision would discourage the use of pistachios groves as a tax shelter.

Unfortunately, the capitalization provision was not deleted.

I immediately made a floor speech on this issue on September 27, 1986 (S 13936), describing the events and urging that this problem be solved.

The current House tax technical corrections bill includes the amendment for the pistachio growers, but the Senate bill does not accommodate the growers' amendment.

In the Senate tax bill there are two amendments providing similar treatment for free-lance authors, photographers, and artists, and the repeal of the uniform capitalization rules for certain producers of animals.

Mr. President, equity and fairness demand that the pistachio growers receive the same treatment afforded the other fruit and nut tree growers. I urge the Senate conferees on the tax technical corrections measure to yield to the House conferees on the amendment.

DIESEL TAX AND HEIFER TAX

Mr. DASCHLE. Mr. President, as we consider legislation today that would make technical corrections to the 1986 and 1987 tax acts, I would like to draw my colleagues' attention to the many important amendments to the bill that would assist farmers and ranchers. Perhaps the two amendments most vital to farmers and ranchers are those that would repeal what have been referred to as the diesel tax and the heifer tax.

Not long after the Omnibus Budget Reconciliation Act was passed last year, I began hearing from farmers about the difficulties created for them by the new diesel excise collection procedures. They told me that the new rules would require them to pay tax on their purchases of diesel fuel, even though they were exempt from the tax. Although they would ultimately obtain a refund of the tax paid, in effect, farmers would make an interest-free loan to the Federal Government.

Individual farmers purchase hundreds of gallons of diesel fuel a year to operate farm machinery. The tax on this fuel therefore may amount to hundreds of dollars a year. For farmers dealing with seasonal income and hardships such as the drought, the effect of the diesel tax threatens their liquidity.

Farmers are not the only tax exempt users of diesel fuel affected. Producers of oil, marine industries, and many others who use diesel fuel for off-road purposes are harmed by these collection procedures. They are found in virtually every State. Many of these other diesel fuel users are individuals or small companies that will experience the same problems as farmers do with the diesel excise tax collection procedures.

A provision of the technical correction bill now before us would again permit farmers and others who are exempt from the diesel excise tax to purchase their fuel tax-free. Let's not allow the Internal Revenue Service to continue collecting and holding taxes to which they are not entitled.

No less onerous for farmers and ranchers are the provisions in current law now commonly referred to as the "heifer tax." These provisions, enacted in the Tax Reform Act of 1986, were part of the uniform rules for allocating and deducting production expenses. Unfortunately, the uniform capitalization rules simply do not make sense in the context of the production of farm animals.

I hear about the heifer tax from farmers and ranchers and their accountants nearly every day when I am back in my home State of South Dakota. They have told me how unmanageable the tax is, both administratively and financially. Those who have studied the effect of the uniform capitalization rules on farmers and ranchers agree that the uniform rules have meant increased complexity, not simplicity, for these taxpayers.

A provision repealing the heifer tax for farmers and ranchers is included in a Finance Committee amendment to the technical corrections bill. As a member of the Finance Committee, I worked hard with my colleague on the committee, Senator MAX BAUCUS, to see that the committee amendment included the heifer tax repeal. I ask my colleagues in the Senate to support the committee amendment and not let our efforts go to waste.

In closing, let me just say that this may be a bill of "technical corrections," but the impact on farmers and ranchers of the diesel and heifer tax provisions is far from technical. These provisions of the tax law are financially onerous and administratively unworkable for these taxpayers. The legislation we are now considering already contains measures that would alleviate the burdens of the diesel and heifer taxes. It is within our power to pass those measures this year, and I urge the Senate to do just that.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 30 minutes, and I will extend it further if need be, and that Senators may talk therein for not to exceed 5 minutes.

The PRESIDING OFFICER. Without objection, so ordered.

THE INF TREATY NEGOTIATING RECORD—FUTURE ACCESS

Mr. BYRD. Mr. President, the Senate ratification of the INF Treaty was historic not only in terms of arms reduction but also in the way in which the Senate considers treaties. It was the first time that arrangements were made for the Senate to have access to the classified records of our negotiations with the Soviet Union, and referral to those records was an integral part of the process of the Senate's advice and consent procedure.

The dispute between the Senate and the executive branch over the proper interpretation of the antiballistic missile (ABM) Treaty made it clear that the Senate would need to examine the INF Treaty at length. It was also clear that the records of the negotiations, which the administration had relied upon to buttress its interpretation of the provisions of the ABM Treaty, would be relevant to the Senate's consideration of the INF Treaty.

In early December 1987, discussions were held with the administration concerning Senate access to the records of the negotiations, and terms of access were agreed upon between the branches. On December 18, by agreeing to a resolution (S. Res. 348) offered by myself and Senator DOLE, the Senate created the Arms Control Treaty Review Support Office, to provide the Senate with the capability to store and review the records of the INF negotiations.

To assist the Senate in its review, the support office staff created a research data base, containing data on the negotiating record, as well as full text transcripts of the hearings held by the Senate Committees on Armed Services and Foreign Relations. This data base made it possible to locate within minutes any document in the negotiating record and any reference to it in the testimony. The speed with which information could be gathered and analyzed proved to be invaluable in the course of committee markups and floor debate on the treaty. As further proof of the quality of this data base, State Department officials requested, and were granted, access to it during the debate on ratification.

In addition to the data base, the staff of the treaty support office also prepared briefing books on issues, such as future weapon technology, which required indepth study and clarification. Together with the negotiating record documents, these resources made possible a thorough review and analysis of the INF Treaty, thus proving the wisdom of obtaining the negotiating record and setting up the treaty support office.

The access agreement specified that the negotiating record was to be returned to the State Department following treaty ratification. However, because of lingering concerns about reinterpretation and impact on future arms accords, it was deemed prudent to assure continued Senate access to the INF negotiating record.

Prior to returning the negotiating record to the executive branch, I wrote to the Department of State, requesting assurance that, if the need arose in the future, Senators and cleared staff would be granted access to the negotiating record and associated research materials. By letter of August 9, 1988, the Department of State gave such assurance, and on August 15, 1988, the negotiating record, research data base and briefing books were transmitted to the Department of State.

The letter of August 9, 1988, by which the Department of State agreed to a system of continued access to the negotiating records of the INF Treaty, provides that, if the need arises for future Senate access to those materials, Senators and a limited number of cleared staff, at the request of the majority and minority leaders, will have access to those materials on appropriate occasions in the future. The materials will be retained by the Office of the Legal Adviser at the Department of State.

Mr. President, I want to take this opportunity to express my appreciation to Secretary of State Shultz for his leadership and cooperation with the Senate in exercising its advise and consent duty on the INF Treaty.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Mr. WARNER. Mr. President, United States athletes came home from the Olympic games in Seoul, Korea, with 36 gold medals. Just as this Nation is brimming with pride over our athletic achievements, there is another gold medal award that we have won in international competition. This week the Washington Metropolitan Area Transit System [WMATA] is being recognized with the transit industry's highest honor, the Public Transportation System Outstanding Achievement Award for 1988.

WMATA competed with North America's largest transit systems including Toronto, Chicago, New York, Montreal, and Boston to win the American Public Transit Association's [APTA] annual award for extraordinary achievement in all aspects of public transit operation, maintenance and safety. The chair of the WMATA Board, the Honorable H.M. Mason, current and past board members, and Metro general manager, Mrs. Carmen E. Turner, deserve our congratulations. My colleagues in the Senate, PAUL SARBANES and BARBARA MIKULSKI from Maryland, and my partner from Virginia, PAUL TRIBLE, join me in commending Washington Metro for a job well done.

For over three decades, the Federal and local governments in the region have been engaged in a special partnership to build and operate a public transportation system for the Nation's Capital. Planning efforts began in the 1950's to meet the transportation needs of the Washington metropolitan region. The National Capital Transportation Act of 1960 stated that:

> Congress finds that an improved transportation system of the national capital region is essential to the continued and effective performance of the functions of the government of the United States, for the welfare of the District of Columbia, for the orderly growth and development of the national capital region and for the preservation of the beauty and dignity of the Nation's Capital.

Congress has continually reaffirmed the Federal commitment to completion of the 103-mile Metrorail system.

Today WMATA operates 660 rail cars on 70 miles of track serving 64 stations. Travelers throughout the region are served by WMATA's 1,500 bus fleet, and 13,000 bus stops. Combined Metrorail and Metrobus ridership is continuing to increase, reaching 236 million trips in fiscal year 1988.

Several factors have contributed to WMATA's excellent performance, including the enormous dedication of its hardworking employees; substantial reliability improvements through preventive maintenance; a rigorous cleaning program for rail cars, buses, and all passenger facilities; aggressive and imaginative promotional campaigns; and, extremely strong emphasis on safety. For example, a rail car is not put into service if there is any graffiti in it or on it. Buses are washed and vacuumed every night as part of routine maintenance procedures. These are just some of the ways that Metro is working to provide high quality transportation service to the region.

While public transportation in the Metropolitan Washington region has come a long way from the 1950's, there is still much to accomplish. There are 19.5 miles under construction, but 13.5 miles remain to be built in order to complete the full Metrorail system. As more of the system is built, additional rail cars are needed to service the increasing ridership.

The Federal commitment to completing the full Metrorail system has endured for the last quarter of a century. With the massive Federal work force in this region and the thousands of people from across the country and around the world that visit our area, the Federal Government has a special responsibility to finish what we started.

Washington Metro is being built and operated with the highest standards of design, service, maintenance, and safety. As we move forward to complete the Metrorail system, the Congress and the entire Nation can be proud that our Nation's Capital has the finest public transportation system in North America.

Washington Metro, we salute you today.

KURDS AND CHEMICAL WEAPONS

Mr. GORE. Mr. President, with permission, I am submitting a copy of an opinion piece I authored for the Christian Science Monitor yesterday, on chemical weapons, for publication in the RECORD.

A wall of silence surrounds the fate of scores of thousands of Kurds trapped in Iraq by the armed forces of that country, and cut off from escape into Turkey. Anything may be happening: from the "mere" possibility that Kurdish culture within this region is being eradicated by scattering the populace, to the possibility of a final solution, involving the use of chemical weapons.

Indeed, there is no question but that chemical weapons have been used: the issue, rather, is to what extent; whether the deaths should be estimated in the hundreds, the thousands, or tens of thousands. Civilization, always thin in Iraq, has worn entirely through. The protestations of that government are fiction; their show of righteous indignation is the snarl of the guilty, exposed in the commission of their crime.

Iraq expects to get away with it. Because that country is victorious over Iran. Because it has oil money. Because there is big business to be done in provisioning its economy, reconstructing war damage, and equipping its armed forces. Because it has used chemical weapons before without penalty: indeed because it used them successfully, to break the morale of Iran's army and civilian population.

Our Government has acted correctly in condemning Iraq. But the question of next steps is blank.

All of us are united in our feeling of revulsion against the use of chemical weapons by Iraq. Hopefully, Congress will agree before much longer on compromise legislation to impose sanctions. Perhaps then the administration will reconsider its opposition to them. I respect the administration's desire to see whether persuasion and diplomacy can work—but it seems to me that this is a situation where delicacy has little scope, and where we have already been patient enough.

Meanwhile, there is the administration's proposal for an international conference. In principle it has merit, but as yet there is no discernible agenda. Some of us have already signed a letter to the President, originating with Senators KASSEBAUM, COHEN, BIDEN, and BRADLEY, which makes certain suggestions. My editorial column makes others. Since the Government of France has agreed to host such a conference it can be made a reality, and the present administration should be encouraged to work out a set of proposals which will reinforce existing prohibitions concerning the use of chemical weapons.

Mr. President, I deeply believe that if this episode is allowed to slide, then governments contemplating the acquisition or the use of chemical weapons will conclude that they may do so with impunity. This situation is an important test of the will and the ability of nations to exert themselves for the sake not only of a moral imperative, but also for the sake of their common security.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Christian Science Monitor, Oct. 6, 1988]

CLAMPING DOWN ON CHEMICAL WEAPONS

(By Albert Gore Jr.)

The spread of chemical weapons in the Middle East and the willingness of some countries there to use them threaten the world. Nations driven to match each other terror for terror would inevitably be driven to seek the ultimate, nuclear, option.

The Reagan administration deserves credit for condemning Iraq's use of chemical weapons againt the Kurds and for sounding the alarm about Libya's nearly complete chemical weapons production facility. It is puzzling, however, that the administration—having gone this far—now wants to pull its punches.

With respect to Iraq, one of the few moves remaining is to call a special meeting of the United Nations Security Council, but the administration says it needs more time to collect evidence. The problem is that Iraq refuses to admit UN inspectors, and is thereby able to take advantage of our reluctance. What we need from the Security Council is not a final judgment, but a demand for Iraq's cooperation.

Then there is the issue of sanctions. Two weeks ago, the Senate passed a strong sanctions bill against Iraq. The administration opposed it as premature. Yet Iraq has used chemical weapons before: against Iran, and even against its own populace more than once. Under the circumstances, we need punitive measures.

It is also time to shore up international law bearing on chemical weapons. The use of chemical and bacteriological weapons in warfare is banned by the Geneva Protocol of 1925. But some governments—including Iraq—assert the protocol only limits their behavior toward one another. As a result, no one can say it is a violation of the protocol for Iraq to use poison gas against its Kurdish minority. This loophole should be closed, either by amending the protocol, or by getting governments that have made this reservation to waive it. The first-use of chemical weapons should be categorically forbidden.

Gathering evidence about the use of chemical weapons also needs attention. Unless the UN can send people to the scene rapidly, traces of chemicals used in an attack can decay to the point where identification is problematic. It took months for the UN to assemble a team to look into the "yellow rain" story in Southeast Asia and Afghanistan, and more months to negotiate their passage as far as the refugee camps in Thailand and in Pakistan. By that time, a scientifically thorough investigation was impossible. The UN Secretary-General now has the authority to assemble inspection teams on short notice, but governments are not obliged to receive them. The Geneva Protocol could be amended to establish this obligation. Perhaps the International Monetary Fund and the World Bank—both UN affiliates—could take account of non-compliance with such obligations.

Regarding Libya, nothing in international law prohibits that government from acquiring a chemical weapons capability. The absence of such prohibition is bound to impede the efforts among advanced industrial states to block the export of related equipment and supplies.

These events underscore the need for a universal ban on the production of chemical weapons and the destruction of existing stockpiles under verifiable conditions. Such a treaty could be close at hand. The sides are mainly divided by verification-related issues, such as protecting the chemical industry's trade secrets.

More than anything else, however, the US must push other nations to rise above indifference and cynicism. What we are witnessing, if Iraq is allowed to continue with impunity, is the crumbling of what the world once believed was an effective inhibition against barbarism. To be silent is to be an accomplice.

SILVER ANNIVERSARY OF HOPE REHABILITATION NETWORK

Mr. RIEGLE. Mr. President, I would like to take this opportunity to salute the Hope Rehabilitation Network on its 25th anniversary.

Hope Network, located in Grand Rapids, MI, is celebrating 25 years of service to persons with disabilities in western Michigan. I join in appreciation with the thousands of Michigan citizens and their families whose lives have been touched by Hope Network.

Hope Network has given many individuals the inspiration, support, and direction they need. I am confident that they will continue to make a lasting impression on many lives.

Hope Network is one of the largest private, nonprofit rehabilitation programs of its kind in Michigan and in the United States. Their purpose is to enhance the rights, dignity, and independence of persons within the community who are disabled or disadvantaged. Their clients have disabilities that range from being physically challenged, developmentally disabled, emotionally or mentally impaired, to adults with traumatic brain and spinal cord injuries.

Hope Network's accomplishments are impressive. They currently serve over 1500 clients a day. They provide residential services to 150 people with disabilities. Their work services clients earned over $1.3 million in wages last year. In 1987, 450 clients were placed into either supported or competitive employment. They have more than 500 employees providing services everyday.

Hope Network's service to the community and to the disabled persons is truly remarkable. Their service and dedication bring to mind the words of the late President John F. Kennedy, who inspired us in his Inaugural address to "Go forth and lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own."

S. 552 THE FEDERAL COMPENSATION EQUITY ACT OF 1988

Mr. CHAFEE. Mr. President, I rise today in support of my distinguished colleague, Senator Evan's, amendment to attach the Federal Compensation Equity Act to the bill before us. I have been a cosponsor of this so-called Pay Equity bill since it was first introduced in 1983. Through the years, I have watched support for this modest bill grow, and this year, this session, I believe the time has come to make this bill law.

The Federal Equitable Compensation Act would require the Federal Government to examine its own employment practices to determine whether it uses sex as a factor in hiring, promotion and wage-setting. This study will be reported to Congress along with recommendations for necessary change. In this way the Federal Government can set the example for millions of private businesses to take a close look at their own policies, and adjust where fairness demands.

This bill before us is very limited. Indeed it only commissions a study of the Federal Government's pay practices. Large discrepancies currently exist between the average salary for female Government workers and their male counterparts. In 1986, female Government workers earned an average of $21,190 per year, while male Government workers earned an average of $30,590. This $9,000 difference requires an explanation, or an adjustment. The "Pay Equity" Act will help us to know the appropriate response to this discrepancy.

We are not just talking about an abstract $9,000 discrepancy. This bill is not just about the fact that women earn 69 percent of what men earn in the Federal Government. We are talking about an issue that effects the 11 million families in this country that are maintained solely by women. That's a full sixth of all families in this country, and does not include those families where both men and women are contributing to family maintenance. One quarter of today's working mothers with dependent children are raising their children singlehandedly, and 40 percent of them receive no child support.

Every time we allow someone to pay a woman less for a job because she is a woman, or because the job traditionally is one that women enter, we are threatening the very lifeblood of 11 million families and we are cheating tens of million more families out of the American dream which hard work, regardless of gender, is supposed to produce.

This is not a situation I am content to stand by and allow to continue. America's families deserve better. The Federal Equitable Compensation Act is the first step toward righting this wrong, and helping 11 million of America's families in a meaningful way. Honest pay for honest work should not be gender specific. It's time we took that first step that we've been considering since 1983.

I commend my colleague, Senator Evans, for his unwavering leadership on this issue.

Thank you, Mr. President.

ACT FOR BETTER CHILD CARE

Mr. HARKIN. Mr. President, providing safe and affordable child care is of critical importance to the Nation's children, families, and economy. As an original sponsor of the Act for Better Child Care, I am distressed that, with time running out for the 100th Congress, we have failed to act on this proposal.

Here we have a tangible opportunity to strengthen and stabilize America's families—something more than campaign rhetoric—and we are allowing it to slip through our fingers.

In Washington, ideologues of the left and right argue over whether the Government should subsidize day care, or do more to strengthen the traditional family. But in Davenport and Council Bluffs, IA, where I spent 2 of my work days at child care centers, I learned that most families have a more pressing, pragmatic concern—when will there be an opening for their child?

Too many children are now being cared for in crowded and unsafe day care facilities or are simply being left alone at home.

America's families are changing rapidly. More than half of women with young children are in the work force today, some because they want to be, most because they have to be. Two out of three women working outside the home are either the sole providers of their children or have husbands earning less than $15,000 per year.

For families where the mother can afford to stay home, we ought to offer our encouragement and support. The current Tax Code provides a dependent child tax credit, and perhaps this ought to be expanded. Tax breaks can be a part of the puzzle, but they hardly begin to address the magnitude of a problem in which most American families need but cannot find affordable, reliable, and safe day care for their children.

Much has been written, and stated on this floor, about the ABC bill—much of it misleading.

The measure would create no new Federal bureaucracy; all its money would be parceled out to the States, which would be responsible for administering and monitoring child care services. It would encourage diversity and expand, not constrict, parent's child care options—options which would include in-home and church-based care. It would target help to working parents at the lower end of the income spectrum, not the upper brackets.

ABC would help communities increase availability of, and access to, child care by funding grants and loans for building renovation, salaries for child care providers, technical help for businesses seeking to meet employee child care needs, expansion of part-day into full-day program and resource and referral networks.

States could help low- and moderate-income families, earning up to the State's median income average, pay for child care, either through vouchers to parents or subsidies to day care providers.

The ABC bill also establishes an advisory committee including a wide range of day care providers, consumers and State representatives, which will be responsible for setting minimum standards for health and safety. We can no longer force our children to pay the cost of unsafe care.

Of course, better child care entails a cost. But if you think child care is expensive, take a look at the cost of inaction. Our industrial competitors who invest in child care do it because it pays off in increased productivity and economic growth.

We are spending $10 billion a year on welfare. The cost of providing child care is about one-third of the average welfare payment. A small investment in child care can pay dividends down the road, as we reduce the size of the welfare rolls, and recipients get jobs and pay taxes.

Children left unattended, or in inadequate day care facilities, often enter public schools far behind their classmates. Special education programs for disadvantaged children cost $4 billion last year—$4 billion, Mr. President.

But this, of course, is not merely a question of economics. It's a question of how we will provide for our children, and how we want them to grow up.

Mr. President, I will ask that a copy of an editorial titled "A Better Care Bill" printed in the Des Moines Register on August 8 of this year appear in the Record directly following my comments. Its author states that the ABC bill "has the potential to make life better for America's working poor, make life safer for their children, and ease the welfare burden on all of society." I think that says it all.

I want to close by commenting on the tireless efforts of my colleague from Connecticut in pressing for passage of this legislation, and his efforts on behalf of families and children generally. Chris Dodd is a man who truely does care about how our children grow up. He has demonstrated that care these last several days as we have debated parental leave and child care legislation, and on countless other occasions throughout this session. I thank him, and I thank his staff, for working for children.

I ask that the article to which I referred be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Des Moines (IA) Register, Aug. 15, 1988]

A Better Care Bill

Inasmuch as it deals with one of the hottest issues of the 1988 presidential campaign, the $2.5-billion Act for Better Child Care Services is better legislation than might have come out of the pressure cooker.

The measure has the potential to make life better for America's working poor, make life safer for their children, and ease the welfare burden on all of society. Congress should follow the lead of a House committee and adopt the measure and send it to the president.

In an age when both adults in the vast majority of families must work to provide what they consider the necessities, adequate child care has assumed increasing importance. Statistics compiled by the Children's Defense Fund of Washington, D.C., which lobbies on behalf of children's issues, show:

Mothers of more than half of American children under age 1 hold jobs.

By 1995, the mothers of two-thirds of the nation's pre-school children will hold jobs.

The cost of good child-care service is beyond the means of the average American family.

The children's lobby surveyed 129 hospitals that offer child care and found that two out of three applicants are turned away for lack of room. They checked 230 public housing projects with child-care facilities and found waiting lists totalling 96,000 names.

The painful reality is that too many American children are self-supervised, left to entertain themselves in empty apartments or in unsafe streets. Or they go to dangerously understaffed child-care facilities because that's all that is available. The Illinois Department of Children and Family Services recently found an unlicensed child-care center operating in the basement of a woman's home in Waukegan. Alone, the woman tried to care for 47 children, 32 of them under age 2.

The Act for Better Child Care Services, or ABC bill, as it is known, would provide money for child care either in the form of direct subsidies to the baby sitters or as vouchers to the parents to pay for whatever licensed child-care facility they can find. It provides a sliding scale of benefits depending on family income, with greatest support going to the lowest-paid, but structured in such a way that the family is always ahead to earn more. Some help would be provided to households earning as much as 115 percent of the state median family income, which could mean small subsidies could go to families with incomes in the $40,000 range.

Federal standards for child-care facilities would be established, and states could license for federal aid only those facilities meeting those and their own state standards. States could not lower existing state standards to coincide with federal requirements.

The aim of every welfare-reform measure to come down the pike in the past decade has been to substitute "workfare" for welfare, but the grim reality is that a welfare mother taking an entry-level job at approximately the $3.35-per-hour minimum wage will be worse off than she was on welfare, after she pays child-care costs. Child-care expense, quite simply, is the greatest single barrier, to substituting work for welfare.

According to the Children's Defense Fund, each $1 invested in child care returns $4.75 to the public in savings on special education, welfare and a reduced incidence of youth pregnancy. That's how important those early childhood years are in guiding the future behavior and attitudes of youngsters.

Given the benefits, that $2.5 billion cost sounds like a bargain.

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 10:25 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 496. An act to amend title 5 of the United States Code, to ensure privacy, integrity, and verification of data disclosed for computer matching, to establish Data Integrity within Federal agencies, and for other purposes.

S. 945. An act to authorize the Secretary of Health and Human Services to make grants for demonstration projects for foster care and residential care of infants and young children abandoned in hospitals, and for other purposes;

S. 1626. An act to secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the bankruptcy code;

H.R. 2032. An act to authorize the conveyance of the vessel, Land Victory;

H.R. 2596. An act to improve Federal management of lands on Admiralty Island, Alaska;

H.R. 2835. An act to direct the Secretary of Agriculture to release certain restrictions on a parcel of land located in Henderson, Tennessee;

H.R. 4102. An act to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

H.R. 4188. An act to designate the United States Courthouse located at 445 Broadway in Albany, New York, as the "James T. Foley United States Courthouse";

H.R. 4354. An act to designate certain National Forest System lands in the State of Oklahoma for inclusion in the National Wilderness Preservation System, create the Winding Stair Mountain National Recreation and Wilderness Area, and for other purposes;

H.R. 4365. An act to designate the Sunderland National Salmon Station located in Sunderland, Massachusetts, as the "Richard Cronin National Salmon Station";

H.R. 4529. An act extending permission for the President's Commission on White House Fellows to accept certain donations;

H.R. 5291. An act to provide the Secretary of the Air Force with authority to convey certain lands; and

S.J. Res. 364. Joint resolution to designate the week of October 2 through October 8, 1988, as "National Paralysis Awareness Week".

The enrolled bills and joint resolution were subsequently signed by the Acting President pro tempore (Mr. Daschle).

At 12:18 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1911. An act to amend title 5, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies; and

S. 2479. An act to amend the Immigration and Nationality Act to make technical corrections in immigration-related laws.

The message also announced that the House has agreed to the following concurrent resolutions, without amendments:

S. Con. Res. 153. Concurrent resolutions correcting the enrollment of S. 659; and

S. Con. Res. 154. Concurrent resolution to correct additional technical errors in the enrollment of the bill H.R. 1720.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 2399) to provide for study and research on the decline in United States forest productivity and to determine the effects of atmospheric pollutants on forest environments, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 2677) to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the act of June 18, 1934 (48 Stat. 987).

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 990) to direct the Secretary of the Interior to convey a parcel of land located near Ocotillo, CA; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3408) to increase the amounts authorized for the Colorado River storage project; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3105. An act to revise, consolidate, and enact certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46, United States Code, "Shipping", and for other purposes;

H.R. 5069. An act to extend the territorial sea and the contiguous zone of the United States, to establish the Territorial Sea Commission, and for other purposes;

H.R. 5319. An act relating to compensation for members of the United States Park Police and members of the United States Secret Service Uniformed Division;

H.R. 5321. An act to amend the Motor Carrier Safety Act of 1984 to eliminate application of the commercial zone exemption to commercial motor vehicle safety regulations, and for other purposes;

H.R. 5395. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as conditions to the Cheaha Wilderness, and to preserve over thirty thousand acres of pristine natural treasures in the Bankland National Forest for aesthetic and recreational benefit of future generations of Alabamians, and for other purposes;

H.R. 5452. An act to extend the Commission on Merchant Marine and Defense; and

H.R. 5471. An act to amend the Public Health Service Act to revise the authority for the regulation of clinical laboratories.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4140. An act to require an Office of Investigations within the Nuclear Regulatory Commission; to the Committee on Environment and Public Works.

H.R. 4443. An act to make permanent the Martin Luther King, Jr. Federal Holiday Commission; to the Committee on the Judiciary.

H.R. 5069. An act to extend the territorial sea and the contiguous zone of the United States, to establish the Territorial Sea Commission, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5115. An act to amend the Immigration and Nationality Act to revise the numerical limitation and preference system for admission of independent immigrants, and for other purposes; to the Committee on the Judiciary.

H.R. 5321. An act to amend the Motor Carrier Safety Act of 1984 to eliminate application of the commercial zone exemption to commercial motor vehicle safety regulations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5410. An act to provide for the registration of foreign interests in United States property, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 5452. An act to extend the Commission on Merchant Marine and Defense; to the Committee on Armed Services.

MEASURES PLACED ON THE CALENDAR

The following bills and joint resolution were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2848. An act to provide for the interim statutory licensing of the secondary transmission by satellite carrier of superstations and network stations for private home viewing; to prevent piracy of satellite cable programming, and for other purposes;

H.R. 3105. An act to revise, consolidate, and enact certain laws related to shipping definitions and maritime commercial instruments and liens as subtitle III of title 46, United States Code, "Shipping", and for other purposes;

H.R. 4210. An act to reauthorize title II of the Marine Protection, Research, and Sanctuaries Act of 1972, for fiscal years 1989 and 1990, and for other purposes.

H.R. 4211. An act to reauthorize the National Ocean Pollution Planning Act of 1978 for fiscal years 1989 and 1990, and for other purposes;

H.R. 4844. An act to direct the Federal Aviation Administration to provide assistance to law enforcement in their efforts with respect to drug trafficking interdiction, and for other purposes;

H.R. 5318. An act to amend the Egg Research and Consumer Information Act to limit the total costs that may be incurred by the Egg Board in collecting producer assessments and having an administrative staff, to eliminate egg producer refunds, and to delay the conducting of any referendum by egg producers on the elimination of such refunds.

H.R. 5395. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as additions to the Cheaha Wilderness, and to preserve over thirty thousand acres of pristine natural treasures in the Bankland National Forest for aesthetic and recreational benefit of future generations of Alabamians, and for other purposes.

H.J. Res. 644. Joint resolution granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission.

The Committee on Energy and Natural Resources was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 5001. An act to establish the Delaware Water Gap National Recreation Area Citizen Advisory Commission.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 610. An act for the relief of Calvin L. Graham; and

H.R. 5389. An act concerning disaster assistance for Bangledesh.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 7, 1988, he had presented to the President of the United States the following enrolled bills and joint resolution:

S. 496. An act to amend title 5 of the United States Code, to ensure privacy, integrity, and verification of data disclosed for computer matching, to establish Data Integrity Boards within Federal agencies, and for other purposes;

S. 908. An act to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments, and for other purposes;

S. 945. An act to authorize the Secretary of Health and Human Services to make grants for demonstration projects for foster care and residential care of infants and young children adandoned in hospitals, and for other purposes;

S. 1626. An act to keep secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the bankruptcy code;

S. 2800. An act to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of the Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission; and

S.J. Res. 364. Joint resolution to designate the week of October 2 through October 8, 1988, as "National Paralysis Awareness Week."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1950: A bill to amend the Public Health Service Act to reauthorize adolescent family life demonstration projects, and for other purposes (Rept. No. 100-591).

By Mr. HOLLINGS, from the Committee on Commerce, and Science, and Transportation, with amendments:

S. 2810: A bill to amend the Marine Mammal Protection Act of 1972 and to authorize appropriations for that Act, and for other purposes (Rept. No. 100-592).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

H.R. 4399: A bill to facilitate commercial access to space, and for other purposes (Rept. No. 100-593).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 2549: A bill to promote highway traffic safety encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes (Rept. No. 100-594).

S. 2761: A bill to authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992, and for other purposes (Rept. No. 100-595).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2751: A bill to designate certain lands in Montana as wilderness, to release other forest lands for multiple use management, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CONRAD (for himself and Mr. Daschle):

S. 2873. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers who realize capital gain on the transfer of property to satisfy an indebtedness, and for other purposes; to the Committee on Finance.

By Mr. HECHT:

S. 2874. A bill entitled the "Wetland Enhancement and Construction Cost Reduction Act of 1988"; to the Committee on Environment and Public Works.

By Mr. KENNEDY:

S. 2875. A bill to amend the Federal Food, Drug, and Cosmetic Act to revise the authority under that Act to regulate pesticide residues in foods; to the Committee on Labor and Human Resources.

By Mr. DANFORTH:

S. 2876. A bill to direct the Administrator of the Federal Aviation Administration to conduct research into the consequences for the air traffic control system of such system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself and Mr. McCain):

S. 2877. A bill entitled the "Business Incubator Review Act of 1988"; to the Committee on Governmental Affairs.

By Mr. WARNER:

S. 2878. A bill for the relief of Charlotte S. Neal; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By HATFIELD (for Mr. Roth (for himself and Mr. Byrd)):

S. Res. 491. A resolution to express the sense of the Senate that the President establish a bicontinental dialogue on the implications of the integration of the economies of the European Communities; considered and agreed to.

By Mr. SYMMS:

S. Res. 492. A resolution to express concern about the Soviet Bloc Governments; ordered held at the desk.

By Mr. BYRD (for Mr. Pell):

S. Con. Res. 158. A concurrent resolution to authorize a correction in the enrollment of H.R. 4585; considered and agreed to.

By Mr. BYRD (for Mr. Bumpers):

S. Con. Res. 159. A concurrent resolution to make corrections in the enrollment of the bill H.R. 4174; considered and agreed to.

By Mr. BYRD (for Mr. Levin):

S. Con. Res. 160. A concurrent resolution to authorize a correction in the enrollment of S. 508; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD (for himself and Mr. Daschle):

S. 2873. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers who realize capital gain on the transfer of property to satisfy an indebtedness, and for other purposes; to the Committee on Finance.

TAX RELIEF FOR FARMERS ATTEMPTING TO RESTRUCTURE DEBT

Mr. CONRAD. Mr. President, today I am introducing legislation to address a number of tax problems which can arise when farmers attempt to restructure their debts.

The Agricultural Credit Act of 1987 did much to relieve the financial crisis in the Farm Credit System. Key provisions which encouraged farm debt restructuring were absolutely vital to the prospects for economic recovery in rural America. Because of the brutal recession in agriculture in the 1980's—the worst since the Great Depression—farmers had billions of dollars of delinquent loans. The active restructuring efforts envisioned by this bill should salvage a significant portion of this debt, strengthening the Farm Credit System and helping farmers with a crushing financial burden.

The Agricultural Credit Act gave farmers across this country hope that they would be able to make a fresh start. But without some corresponding changes in tax law, that chance will elude many farm families. Under certain circumstances, the adverse tax consequences of restructuring will be overwhelming, and will leave the farmer no alternative to bankruptcy.

One set of problems arises when farmers deed property back to a lender in exchange for debt relief. If the fair market value of the property is above the basis, the farmer will realize a capital gain on the difference. It is the same tax the farmer would face if he sold the land, only in this case there's no cash from a sale. Because land values appreciated rapidly during the 1970's, the possibility that restructuring will produce such illusory gains is very real.

Let me provide a numerical example. Suppose a farmer had a loan for $200,000 and conveyed back land worth $150,000 to eliminate this debt. Assume this land had a cost-basis of $75,000. Under current law, the farmer in this example would have to pay tax on a capital gain of $75,000. And, since the 1986 tax law took effect, such gains are taxed as ordinary income.

This farmer may also face some tax on the debt relief he receives from the transaction. In the above example, the farmer would realize $50,000 of discharge of indebtedness income. To offset this income, he can draw on any tax attributes—such as unused investment tax credits and net operating loss carryovers—that he has, and he can reduce basis in other property. If, after taking these steps, the farmer still has discharge of indebtedness income, he will be taxed on the remainder unless he is insolvent.

My bill would address both of these tax problems for farmers who are technically solvent but clearly lack the ability to pay. When capital gains arise from debt discharge situations, the bill would provide an exclusion for taxpayers who meet the following three tests: First, 80 percent of gross receipts in at least 3 of the last 5 years is attributable to farming; second, modified adjusted gross income is less than the applicable state median; and third, equity in all other property is less than $25,000 or 150 percent of the tax liability. This exclusion for capital gains is limited to $350,000 over the taxpayer's lifetime, and is available only after remaining tax attributes have been used.

A comparable exclusion is provided by the bill for discharge of indebtedness income if the taxpayer meets the first two tests described above. The taxpayer must also meet an equity test and have heavy debts in relation to equity—both before and after the transfer of property—in order to qualify for this relief.

Mr. President, I believe these tests are a fair way to target this relief. They are devised to prevent abuse and the possibility of manipulation by speculative investors or wealthy individuals. They are intended to provide a fresh start for low- and moderate-income farm families with limited assets. If they can restructure their debts, as envisioned by the Agricultural Credit Act, many of these families should be able to remain in farming. But existing tax law raises serious impediments which my bill seeks to remove.

This legislation would also address tax problems connected with chapter 12 bankruptcy proceedings and cases of property abandonments occurring under chapter 7. For some farmers, chapter 12 offers the best means of restructuring farm debt. Yet unlike chapters 7 and 11 debtors, who can treat the bankruptcy estate as a separate tax entity, chapter 12 debtors remain personally liable for any tax consequences of a restructuring. My bill would extend the provisions of the Bankruptcy Tax Act of 1980 to chapter 12 cases, to provide the same tax treatment available for bankruptcies under chapters 7 and 11.

The provisions involving abandonments of property by a bankruptcy trustee are needed to assure chapter 7 debtors a fresh start. The tax issue is whether any gain that results from the foreclosure of abandoned property should be taxed to the bankruptcy estate or to the individual. My bill would clarify that the tax liability in these cases is the responsibility of the bankruptcy estate, rather than the debtor.

To sum up, this bill is a vital complement to the Agricultural Credit Act of 1987. Debt restructuring will not provide the opportunities we envision for farmers if it results in tax liabilities that they have no hope of ever being able to pay. I urge my colleagues to examine this measure, and I ask unanimous consent that a section-by-section analysis and the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CAPITAL GAIN REALIZED FROM TRANSFER OF PROPERTY IN COMPLETE OR PARTIAL SATISFACTION OF QUALIFIED FARM INDEBTEDNESS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

"SEC. 135. CAPITAL GAIN REALIZED FROM TRANSFER OF PROPERTY IN COMPLETE OR PARTIAL SATISFACTION OF QUALIFIED FARM INDEBTEDNESS.

"(a) IN GENERAL.—Gross income of any taxpayer described in subsection (d) does not include so much of the gain from the transfer of property in complete or partial satisfaction of qualified farm indebtedness as does not exceed $350,000.

"(b) PRIOR GAINS TAKEN INTO ACCOUNT.—If for any prior year, gain from the transfer of property in complete or partial satisfaction of qualified farm indebtedness is excluded from the taxpayer's gross income under subsection (a), such subsection shall be applied for the taxable year with respect to such gain by reducing the dollar amount contained in such subsection by the prior year gains excluded under such subsection.

"(c) REDUCTION OF TAX ATTRIBUTES.—

"(1) IN GENERAL.—The amount excluded from gross income under subsection (a) shall be applied to reduce the tax attributes described under section 108(b)(2).

"(2) COORDINATION WITH SECTION 108.—For purposes of this subsection, the amount of tax attributes shall be determined after any reduction under section 108(b) by reason of amounts excluded from gross income under section 108(a)(1).

"(d) TAXPAYER DESCRIBED IN THIS SUBSECTION.—

"(1) IN GENERAL.—A taxpayer is described in this subsection if—

"(A) such taxpayer's modified adjusted gross income for the taxable year in which the transfer of property in complete or partial satisfaction of qualified farm indebtedness occurs is less than 100 percent of the statewide median modified adjusted gross income for the State in which such taxpayer resides,

"(B) 80 percent or more of the gross receipts of the taxpayer for 3 of the 5 taxable years preceding such taxable year are attributable to the trade or business of farming (within the meaning of section 2032A(e)(5)) or the sale of assets with respect to such trade or business,

"(C) such taxpayer materially participates in such trade or business (within the meaning of section 2032A(e)(6), and

"(D) equity in all property held by the tax-payer after each transfer is less than the greater of—

"(i) $25,000, or

"(ii) 150 percent of the excess (if any) of—

"(I) the tax imposed by this chapter determined as if this section did not apply to the transfer, over

"(II) to tax imposed by this chapter determined with regard to this section.

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection the term 'modified adjusted gross income' means adjusted gross income—

"(A) determined with regard to this section and section 108,

"(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

"(C) reduced by the exemptions allowed the taxpayer under section 151 for such year.

"(3) EQUITY.—For purposes of this subsection, the term 'equity' means with respect to any property, an amount equal to—

"(A) the fair market value of such property, minus

"(B) any indebtedness relating to such property.

"(e) QUALIFIED FARM INDEBTEDNESS.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming (within the meaning of section 2032A(e)(5))."

"(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 135 and inserting in lieu thereof the following new items:

"Sec. 135. Capital gain realized from transfer of property in complete or partial satisfaction of qualified farm indebtedness.

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers occurring after December 31, 1986, in taxable years ending after such date.

SEC. 2 DISCHARGE OF QUALIFIED FARM INDEBTEDNESS TARGETED TO CERTAIN SOLVENT FARMERS.

"(a) IN GENERAL.—Section 108(g) of the Internal Revenue Code of 1986 (relating to special rules for discharge of qualified farm indebtedness of solvent farmers) is amended—

(1) by inserting "who is described in paragraph (5) and" after "a taxpayer" in paragraph (1),

(2) by inserting "to the extent such discharge does not exceed $350,000" before the period in paragraph (1),

(3) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) PRIOR DISCHARGES OF INDEBTEDNESS TAKEN INTO ACCOUNT. —If for any prior year, a discharge of qualified farm indebtedness is excluded from the taxpayer's gross income under this subsection, paragraph (1) shall be applied for the taxable year with respect to such discharge by reducing the dollar amount contained in such paragraph by the prior year discharges excluded under such paragraph.", and

(4) by adding at the end thereof the following new paragraphs:

"(4) QUALIFIED FARM INDEBTEDNESS.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming (within the meaning of section 2032A(e)(5)).

"(5) TAXPAYER DESCRIBED IN THIS PARAGRAPH.—

"(A) IN GENERAL.—A taxpayer is described in this paragraph if—

"(i) such taxpayer's modified adjusted gross income for the taxable year in which the discharge of qualified farm indebtedness occurs is less than 100 percent of the statewide median modified adjusted gross income for the State in which such taxpayer resides,

"(ii) 80 percent or more of the gross receipts of the taxpayer for 3 of the 5 taxable years preceding such taxable year are attributable to the trade or business of farming (within the meaning of section 2032A(e)(5)) or the sale of assets with respect to such trade or business,

"(iii) such taxpayer materially participates in such trade or business (within the meaning of section 2032A(e)(6)),

"(iv) the indebtedness of the taxpayer both before and after such discharge is equal to 70 percent or more of the equity in all property held by such taxpayer, and

"(v) equity in all property held by the taxpayer after such discharge is less than $100,000.

"(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income—

"(i) determined with regard to this section and section 135,

"(ii) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

"(iii) reduced by the exemptions allowed the taxpayer under section 151 for such year.

"(C) EQUITY.—For purposes of this subsection, the term 'equity' means, with respect to any property, an amount equal to—

"(i) the fair market value of such property, minus

"(ii) any indebtedness relating to such property.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness occurring after December 31, 1986 in taxable years ending after such date.

SEC. 3. EXTENSION OF TAX TREATMENT OF BANKRUPTCY UNDER BANKRUPTCY TAX ACT OF 1980 TO CHAPTER 12 CASES.

(a) TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS.—Section 108(d)(8) of the Internal Revenue Code of 1986 (relating to reductions of tax attributes in title 11 cases of individuals to be made by estate) is amended by striking out "chapter 7 or 11" and inserting in lieu thereof "chapter 7, 11, or 12".

(b) RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS.—

(1) IN GENERAL.—Section 1398(a) of the Internal Revenue Code of 1986 (relating to cases to which section applies) is amended by striking out "liquidations) or chapter 11 (relating to reorganizations)" and inserting in lieu thereof "liquidations), chapter 11 (relating to reorganizations), or chapter 12 (relating to adjustment of debts of family farmer)".

(2) CONFORMING AMENDMENTS.—

(A) Section 1398(b)(1) of such Code is amended by striking out "chapter 7 or 11" and inserting in lieu thereof "chapter 7, 11, or 12".

(B) Section 6012 of such Code is amended by striking out "chapter 7 or 11" in subsections (a)(9) and (b)(4) and inserting in lieu thereof "chapter 7, 11, or 12".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings, commencing after the date of the enactment of this Act.

SEC. 4. ABANDONMENT OF PROPERTY BY BANKRUPTCY TRUSTEE TREATED AS TAXABLE TRANSFER.

(a) IN GENERAL.—Section 1398(f) of the Internal Revenue Code of 1986 (relating to treatment of transfer between debtor and estate) is amended by adding at the end thereof the following new paragraph:

"(3) ABANDONMENT BY ESTATE TREATED AS DISPOSITION.—With respect to any case under chapter 7 of title 11, United States Code, and abandonment of an asset by the estate under section 554 of such title 11 shall be treated as a disposition for purposes of this title assigning tax consequences to a disposition.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to abandonments made after the date of the enactment of this Act.

SECTION BY SECTION ANALYSIS

Section 1: Provides an exclusion for capital gains that arise when farm property is transferred to a lender in exchange for debt relief if the following conditions apply:

The exclusion of gains under this section does not exceed $350,000 over the taxpayer's lifetime;

The excluded amounts are used to reduce tax attributes to the extent possible;

The taxpayer's modified adjusted gross income is less than 100 percent of the state median modified adjusted gross income;

At least 80 percent of the taxpayer's gross receipts in at least 3 of the last 5 years is attributable to farming, and the taxpayer must have materially participated in the trade or business of farming;

The taxpayer's equity in all post-transfer property is less than $25,000 or 150 percent of tax liability, whichever is greater;

Definitions: modified adjusted gross income means adjusted gross income plus any tax-exempt income minus capital gains and discharge of indebtedness income minus personal exemptions;

Equity means the fair market value of property minus any indebtedness on such property;

Qualified farm indebtedness specifies the farming purposes (cultivation of soil, handling of animals, forestry, etc.) for which the debt was incurred.

Effective Date: Section 1 applies to all transfers occurring after December 31, 1986.

Section 2: Replaces the 50 percent farm income test which now provides a limited exclusion for solvent taxpayers under section 108(g) with an exclusion of this discharge of indebtedness income under the following conditions:

The exclusion is limited to $350,000 over the taxpayer's lifetime;

The taxpayer's modified adjusted gross income in the year of discharge is less than 100 percent of the state median adjusted gross income;

At least 80 percent of the taxpayer's gross receipts in at least 3 of the last 5 years is attributable to farming and the taxpayer must have materially participated in the trade or business of farming;

The taxpayer's debt to equity ratio both before and after the transfer is at least 70 percent;

The taxpayer's equity in all post-transfer property is less than $100,000.

Definitions: same as for section 1.

Effective Date: Section 2 applies to all transfers occurring after December 31, 1986.

Section 3: Extends the provisions of the Bankruptcy Tax Act of 1980 to Chapter 12 cases, to provide a separate tax entity for the estate as well as a short election year assurances against recapture when property is transferred to the bankruptcy estate.

Effective Date: Section 3 applies to proceedings occurring after the date of enactment.

Section 4: Amends the Bankruptcy Tax Act of 1980 to provide that abandonment of property is a taxable transfer, triggering income tax liability to the bankruptcy estate on any gain.

Effective Date: Section 4 applies to abandonments occurring after the date of enactment.

By Mr. HECHT:

S. 2874. A bill entitled the "Wetland Enhancement and Construction Cost Reduction Act of 1988"; to the Committee on Environment and Public Works.

WETLAND ENHANCEMENT AND CONSTRUCTION COST REDUCTION ACT

Mr. HECHT. Mr. President, today I am introducing a bill to apply nationwide some of the opportunities we are discovering in Nevada that I hope will allow my State to improve the condition of its fish and wildlife resources and, at the same time, possibly reduce the financial burden on the taxpayer of constructing expensive water treatment facilities.

Our country's wetlands are the key to the survival of many fish and wildlife species. Despite aggressive conservation efforts, thousands of wetland acres are being lost every year. In my own State, the Interior Department's misguided actions may lead to the destruction of up to 18,000 acres of wetlands over the next 4 years. At the same time that we are destroying our wetlands, we are overlooking opportunities to simultaneously save the taxpayers some money and actually increase our wetland acreage.

This Nation has very correctly invested billions of dollars over the last several decades in plants and equipment to clean up the water used by our homes, factories, and businesses. We are now at the point where the treated effluent waters are really rather clean, but still contain excessive levels of some nutrients. The cost of removing these nutrients is often extremely high. Nature may be in a position to offer us a better deal, that will not only further improve water quality but enhance our natural environment at the same time.

What we can consider doing is applying treated effluent water to manmade or natural wetland areas. This could not only reverse the trend of wetland loss that is so common in our country, but potentially save the public a lot of money by letting nature remove excessive nutrients through natural processes, at minimal cost to the taxpayer.

My bill requires the Environmental Protection Agency to fully evaluate this option for simultaneously improving water quality and promoting fish and wildlife conservation. The bill also requires EPA to consult with the National League of Cities and the National League of Counties to develop a series of guidelines that will help local governments determine when this would be an attractive course of action.

Mr. President, I hope this bill will lead to a reduced tax burden on our citizens, a reversal of the disturbing trend in loss of wetlands nationwide, and a new phase in our Nation's efforts to enhance our fish and wildlife resources. I urge the Senate to consider this matter at the earliest opportunity.

By Mr. KENNEDY:

S. 2875. A bill to amend the Federal Food, Drug, and Cosmetic Act to revise the authority under that Act to regulate pesticide residues in food; to the Committee on Labor and Human Resources.

FOOD SAFETY AMENDMENTS

Mr. KENNEDY. Mr. President, I rise to speak on behalf of the Food Safety Amendments of 1988, a bill I take pleasure in introducing today. Consumers are increasingly concerned about the safety of their food. A recent opinion poll conducted by the Food Marketing Institute revealed that the public considers pesticide residues among the most serious hazards affecting food safety. Last year, according to a food industry poll, 76 percent of the public found pesticide residues a "serious hazard." An additional 20 percent of those polled rated pesticides in food "something of a hazard."

Reports from Government and the private sector underscore the public's concern. In 1987, the National Academy of Sciences reported that legal applications of only 28 food use pesticides could lead to cancers for up to six individuals for every thousand people exposed for a lifetime. The Environmental Protection Agency has identified at least 25 other carcinogenic pesticides which are legally used on food. This year a book entitled Pesticides Alert, written by the Natural Resources Defense Council [NRDC], a national environmental organization, revealed that washing may not remove pesticide residues most often found in 26 common fruits and vegetables. In 1986 Congress' investigative arm, the General Accounting Office, reported that the usual analytic techniques used by the Food and Drug Administration to monitor for pesticides in food can identify only 40 percent of the pesticides which the Agency classifies as posing moderate to high health hazards.

As reports and analyses of the dangers of pesticides in food continue to be discussed and debated, one thing is clear—the current law is not ensuring that all Americans are eating safe food. The Environmental Protection Agency's activity under the Federal Food, Drug and Cosmetic Act [FFDCA] to set tolerances, or limits on the allowable concentrations of pesticides in food, has not incorporated all new health and safety data about pesticides used in agriculture. EPA has a very large task in the years ahead to ensure that legal food is in fact safe food.

The legislation I am introducing today amends and enhances the EPA's current authority under the FFDCA to set tolerances for pesticides that may remain in food. The bill is written as a substitute for section 408 of the FFDCA. The bill makes many important improvements in both EPA procedures and authorities which will help improve the public's confidence in the safety of our food supply.

This bill does not amend the basic pesticide regulatory statute, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). FIFRA is the statute that requires EPA to register pesticides before they may be used in this country. The bill I am introducing only ensures that pesticides which may remain as residues on food are adequately regulated under the FFDCA.

The bill incorporates many of EPA's current practices but also establishes certain fundamental reforms that have been recommended by the National Academy of Sciences to improve the safety of foods bearing pesticide residues. One of the most important provisions of this bill establishes a risk-based food safety standard. Both old pesticides and newer pesticides would be required to meet the same standard. The creation of a single regulatory standard for pesticides in food is important because the National Academy of Sciences has found that old pesticides are currently regulated as strictly as newer chemicals. NAS reported that 90 percent of estimated dietary cancer risk from pesticides stems from tolerances set before 1978. Additionally, a unitary regulatory standard is important because NAS found that pesticide residues in raw agricultural commodities are not currently regulated as strictly as they are when they occur in certain processed foods. Obviously, there is no health benefit to this differential protection of our food supply. The bill I am introducing today would remedy this unwarranted inconsistency.

Another important provision under this bill is the establishment of authority for the administrator of EPA to require the submission of health and safety data. Because many tolerances were set on the basis of incomplete or out-dated health and safety data, authority to require additional data is essential. Even for the new tolerances which are based on today's sciences, EPA also needs the authority to update the data if new concerns or new scientific evidence emerge. The bill grants EPA such authority. Deadlines estalished by the Administrator must be complied with in order to retain tolerances for pesticide residues in food. I expect and urge EPA to strictly enforce data submission deadlines. The bill also creates a narrow exception to ensure that food which was lawfully treated with the pesticide before the deadline can be marketed.

Improvement in our food safety laws to protect the public from potentially dangerous pesticide residues is vitally needed and long overdue. This bill will enhance our ability to interests of farmers, the food industry and chemical companies. I intend to work with all parties to ensure the enactment of food safety legislation at the earliest possible opportunity.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2875

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Food Safety Amendments of 1988".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

SEC. 2. DEFINITIONS.

(a) PESTICIDE.—

(1) PESTICIDE CHEMICAL.—Section 201(q) (21 U.S.C. 321(q)) is amended to read as follows:

"(q)(1) The term 'pesticide chemical' means—

"(A) any substance which is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act and which is used in the production, storage, or transportation of a raw agricultural commodity or processed food, and

"(B) any active or inert ingredient of the pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act.

"(2) Except as provided in subparagraph (B), the term 'pesticide chemical residue' means a residue in or on any raw agricultural commodity or processed food of—

"(A) any pesticide chemical, or

"(B) any other substance that is present in the commodity or food as a result of the metabolism or other degradation of a pesticide chemical.".

(2) FOOD ADDITIVE.—Paragraphs (1) and (2) of section 201(s) (21 U.S.C. 321(s)) are amended to read as follows:

"(1) pesticide chemical residue in or on a raw agricultural commodity or processed food; or

"(2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity or processed food; or".

(b) OTHER DEFINITIONS.—Section 201 (21 U.S.C. 321) is amended by adding at the end the following:

"(bb) The term 'processed food' means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, including canning, cooking, freezing, dehydration, or milling.

"(cc) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

SEC. 3. ADULTERATED FOOD.

Section 402(a)(2) (21 U.S.C. 342(a)(2)) is amended to read as follows:

"(2)(A) if it bears or contains any added poisonous or added deleterious substance (other than a substance which is a pesticide chemical residue in or on a raw agricultural commodity or processed food, a food additive, a color additive, or a new animal drug) which is unsafe within the meaning of section 406;

"(B) if it is a raw agricultural commodity or processed food and it bears or contains a pesticide chemical residue which is unsafe within the meaning of section 408(a); or

"(C) if it is or if it bears or contains—

"(i) any food additive which is unsafe within the meaning of section 409, or

"(ii) a new animal drug (or conversion product thereof) which is unsafe within the meaning of section 512; or".

SEC. 4. TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES.

Section 408 (21 U.S.C. 346a) is amended to read as follows:

"SEC. 408. TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES AND PESTICIDE CHEMICALS.

"(a) REQUIREMENT FOR TOLERANCE OR EXEMPTION.—

"(1) GENERAL RULE.—Except as provided in paragraph (3), any pesticide chemical residue in or on a raw agricultural commodity or processed food or any pesticide chemical added to a raw agricultural commodity or processed food shall be deemed unsafe for the purpose of section 402(a)(2)(B) unless—

"(A) a tolerance for such pesticide chemical residue or pesticide chemical in or on such commodity or food is in effect under this section and the quantity of such residue or chemical is within the limits of such tolerance, or

"(B) an exemption from the requirement of subparagraph (A) is in effect for such pesticide chemical residue.

"(2) PROCESSED FOOD.—If a pesticide chemical has been added to, or a pesticide chemical residue is present in or on, a raw agricultural commodity in conformity with a tolerance or exemption that is in effect under this section, if such commodity has been subjected to processing, and if the resulting pesticide chemical residue on the resulting processed food does not have a tolerance or an exemption from the requirement for a tolerance, the resulting pesticide chemical residue remaining in or on the resulting processed food shall not be considered unsafe within the meaning of section 402(a)(2)(B) if—

"(A) such residue has been removed from such processed food to the extent possible in good manufacturing practice, and

"(B) the concentration of the residue of such chemical in such processed food is not greater than the tolerance prescribed for the pesticide chemical or the pesticide chemical residue in such commodity when such food is ready for consumption or use.

"(3) EFFECT OF TOLERANCE OR EXEMPTION.—While a tolerance or exemption from the requirement for a tolerance is in effect under this section for a pesticide chemical residue or pesticide chemical with respect to any raw agricultural commodity or processed food, such commodity or food shall not by reason of bearing or containing any amount of such residue or chemical be considered to be adulterated within the meaning of section 402(a)(1).

"(b) GENERAL RULE FOR TOLERANCES.—

"(1) AUTHORITY.—The Administrator may promulgate regulations establishing, modifying, or revoking a tolerance for a pesticide chemical residue in or on a raw agricultural commodity or processed food or a pesticide chemical added to a raw agricultural commodity or processed food—

"(A) in response to a petition filed under subsection (d), or

"(B) on the Administrator's initiative under subsection (e).

A regulation establishing or modifying a tolerance for a pesticide chemical residue or pesticide chemical may contain a provision stating an expiration date for the tolerance.

"(2) STANDARD.—

"(A) NEGLIGIBLE RISK STANDARD.—Except as provided in subparagraph (B)—

"(i) a tolerance may be established for a pesticide chemical or a pesticide chemical residue only if the risk to human health, including the health of identifiable population groups with special food consumption patterns, from dietary exposure to the pesticide chemical or the pesticide chemical residue is negligible, and

"(ii) the tolerance for a pesticide chemical or a pesticide chemical residue shall be revoked or modified if the risk to human health, including the health of identifiable population groups with special food consumption patterns, from dietary exposure to the pesticide chemical or pesticide chemical residue is greater than negligible.

"(B) SPECIAL NEGLIGIBLE RISK STANDARD.—If a pesticide chemical residue for a raw agricultural commodity or processed food does not have a tolerance issued under this section, the Administrator may establish a tolerance for the pesticide chemical residue for the raw agricultural commodity or processed food that presents a risk to human health, including the health of identifiable population groups with special food consumption patterns, from dietary exposure to the pesticide chemical residue that is greater than a negligible risk if the Administrator takes the actions specified in subparagraph (E) to reduce the risk, and—

"(i) the Administrator revokes a tolerance or exemption for the same raw agricultural commodity or processed food which is in effect for another pesticide chemical residue which is derived from a pesticide chemical which is used on such commodity or food and which presents a greater risk to human health than the pesticide chemical residue for which a tolerance is requested under this subparagraph,

"(ii) there is no other pesticide chemical which has residues subject to a tolerance or exemption for such commodity or food which presents no more than a negligible risk and which can be substituted for the pesticide chemical which produces the residues subject to the tolerance that is revoked under clause (i),

"(iii) the pesticide chemical which produces the pesticide chemical residue for which a tolerance is requested under this subparagraph can be substituted for the pesticide chemical which produces the residue subject to the tolerance that is revoked under clause (i) and is necessary as a replacement for such pesticide chemical, and

"(iv) the person requesting the tolerance under this subparagraph demonstrates by clear and convincing evidence, or if the Administrator is proposing the tolerance, the Administrator determines, that the benefits from the use of the pesticide chemical which produces the residue for which a tolerance is requested under this subparagraph clearly outweigh the risk from its use.

"(C) CRITERIA FOR NEGLIGIBLE RISK.—For purposes of subparagraphs (A) and (B), the term 'negligible' means—

"(i) for pesticide chemicals which are not likely to have any adverse human health effect below an identifiable level, the level at which the pesticide chemical will not cause or contribute to any known or anticipated adverse effects on human health, and

"(ii) for pesticide chemicals for which there is no level at which the pesticide chemicals will not have adverse human health effects, the level at which the pesticide chemical will not cause or contribute in the population exposed to the pesticide chemical to a risk of cancer which exceeds a rate of one in a million, using conservative models.

In establishing a pesticide chemical level under clause (i) the Administrator shall include an ample margin of safety which is based on consideration of the nature of the toxic effects, the validity, completeness, and the reliability of the data about the pesticide chemical, the variability of individual sensitivities and the sensitivities of population subgroups to the adverse effects, and the possibility that human susceptibility to the adverse effects are significantly greater than that of test animals. For purposes of the preceding sentence, a margin of safety for a level of a pesticide chemical is not ample unless human exposure per unit of body weight to the pesticide chemical is at least 100 times less than the no observable effect level in animals on which the pesticide chemical was tested. The no observable effect level is the level of exposure which reliable experimental data, derived from exposing animals to the pesticide chemical, shows induces no adverse effects in the experimental animals.

"(D) EXPOSURE.—For purposes of subparagraphs (A) and (B)—

"(i) in determining dietary exposure to a pesticide chemical or pesticide chemical residue, the Administrator shall take into account the dietary exposure resulting from the consumption of the raw agricultural commodity or processed food for which the tolerance is proposed or is in effect, all other tolerances or exemptions in effect for the same pesticide chemical or pesticide chemical residue, and all other sources (including drinking water) of dietary exposure to the same pesticide chemical or pesticide chemical residue, and

"(ii) in calculating dietary exposure to the pesticide chemical residue in or on the raw agricultural commodity or processed food for which the tolerance is proposed or is in effect, the Administrator shall consider the level of exposure to be the amount of exposure that would occur if all the commodities and food for which the pesticide chemical residue has a tolerance have amounts of pesticide chemical residues equal to their respective tolerances and human exposure to the pesticide chemical residue at the tolerance level occurs for a period equal to a 70 year lifetime, except that—

"(I) the Administrator may calculate dietary exposure based on the percent of the raw agricultural commodities or processed food in which the pesticide chemical residue occurs if the Administrator has reliable data indicating the percent of such commodities or food in which such residue occurs and that such percent of such commodities or food are distributed, without significant variation, throughout the total national population consuming the total amount of such commodities and food, and

"(II) the Administrator may calculate dietary exposure based on the actual residue levels that occur with use of a pesticide chemical if the Administrator has reliable data indicating the actual residue levels which occur with the use of such pesticide chemical and establishes a new tolerance or modifies an existing tolerance so that the tolerance permits amounts of the pesticide chemical residues which are no greater than the residue levels which are used to calculate the dietary exposure.

"(E) RISK REDUCTION.—When the Administrator is required by subparagraph (B) to reduce the risk to human health of a pesticide chemical residue for which a tolerance is proposed, the Administrator shall, among other actions the Administrator determines to be appropriate, take the following actions unless the Administrator determines that an action may not be carried out:

"(i) Establish a tolerance that is lower than the proposed tolerance.

"(ii) If the pesticide chemical residue has other tolerances for other raw agricultural commodities or processed food, revoke or modify one or more of those tolerances to assure a lower total residue from the pesticide chemical which produces the residue.

"(iii) If the proposed tolerance is to apply to a processed food, permit the tolerance to apply to such food only if the food is processed with those methods that reduce amounts of pesticide chemical residues.

"(F) BENEFITS.—When the Administrator is required by subparagraph (B) to consider the benefits of a pesticide chemical residue, the Administrator shall consider—

"(i) the effect that the use of the pesticide chemical which produces such residue has on the production, transportation, and storage of an adequate, wholesome, and economical food supply,

"(ii) the extent to which the pesticide chemical, and other pesticide chemicals which are considered to be alternatives, may be substituted for each other,

"(iii) the extent to which other practical pest control methods can be substituted for the pesticide chemical, "(iv) the economic impact of the loss of the chemical upon consumers, farmers, and workers, taking into account alternative means of producing the commodity or food and of controlling the pests against which the pesticide chemical is used,

"(v) the effect that meeting the negligible risk standard would have on the price of the commodity or food, and

"(vi) the costs to individuals of the risks and adverse effects (if any) associated with dietary exposure to the pesticide chemical.

When the Administrator considers benefits under this subparagraph, the Administrator shall publish the basis for the Administrator's determination. The Administrator may not consider any benefits relating to an inert ingredient unless the ingredient meets the requirements of subsection (a)(2)(A). The Administrator shall by regulation specify how an analysis of benefits under this subparagraph will be conducted and the factors that will be considered and the data that will be relied upon in such analysis. The Administrator shall propose such regulation not later than 90 days after the date of the enactment of this subparagraph.

"(G) Rules for levels.—

"(i) A tolerance for a pesticide chemical or pesticide chemical residue for a raw agricultural commodity or processed food which is directly treated with the pesticide chemical or the pesticide chemical producing the residue shall not be established or left in effect at a level higher than the Administrator finds to be reasonably required to allow the accomplishment of the physical or other technical effect for which the use of the pesticide chemical involved is intended.

"(ii) If the Administrator determines that a pesticide chemical which is added to an agricultural commodity or processed food meets the standard set out in subsection (b)(2)(A) because the pesticide chemical leaves no detectable residue in or on the raw agricultural commodity or processed food, the Administrator shall establish a tolerance for such pesticide chemical at the most sensitive limit of detection of the practical method for detecting and measuring the pesticide chemical specified by the Administrator under subparagraph (H).

"(H) Practical methods of analysis.—A tolerance for a pesticide chemical added to a raw agricultural commodity or processed food or a pesticide chemical residue in or a raw agricultural commodity or processed food shall not be established by the Administrator unless the Administrator determines, after consultation with the Secretary, that there is a practical method for detecting and measuring the levels of such pesticide chemical or pesticide chemical residue on such commodity or food and that such method is the best available practical method. A method shall be considered practical only if it can be performed by the Secretary on a routine basis with the personnel, equipment, and other resources available to the Secretary.

"(3) Factors to be considered.—In determining whether to establish, modify, or revoke a tolerance for a pesticide chemical residue or pesticide chemical for a raw agricultural commodity or processed food, the Administrator shall consider such factors as—

"(A) the probable consumption of such commodity or food by the population group which consumes the greatest amount of such commodity or food or is at the greatest risk from exposure to such chemical or residue on such commodity or food,

"(B) the cumulative effect of such chemical or residue in the human diet, taking into account any chemically or pharmacologically related substance in such diet, and all other ways in which the consumer may be exposed to the same residue or chemical, and

"(C) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals are generally recognized as appropriate for use in connection with animal experimentation data.

"(c) General Rule for Exemptions.—

"(1) Authority.—The Administrator may promulgate regulations establishing, modifying, or revoking an exemption from the requirement for a tolerance for a pesticide chemical residue in or on a raw agricultural commodity or processed food—

"(A) in response to a petition filed under subsection (d), or

"(B) on the Administrator's initiative under subsection (e).

A regulation establishing or modifying an exemption for a pesticide chemical residue may contain a provision stating an expiration date for the exemption.

"(2) Standard.—

"(A) Risk standard.—An exemption from the requirement for a tolerance may be established for a pesticide chemical residue only if the residue presents no risk to human health, including the health of identifiable population groups with special food consumption patterns, from dietary exposure to the pesticide chemical residue, because human health is not affected by dietary exposure to the pesticide chemical residue regardless of the amount of the residue that could result from such exposure. Such an exemption shall be revoked if the residue presents a risk to human health, including the health of identifiable population groups with special food consumption patterns, from dietary exposure to the pesticide chemical residue, because human health is affected by dietary exposure to the pesticide chemical residue.

"(B) Exposure.—For purposes of subparagraph (A)—

"(i) in determining dietary exposure to a pesticide chemical residue, the Administrator shall take into account the dietary exposure to the raw agricultural commodity or processed food for which the exemption is proposed or is in effect, all other tolerances or exemptions in effect for the same pesticide chemical residue, and all other sources (including drinking water) of dietary exposure to the same pesticide chemical residue, and

"(ii) in calculating dietary exposure to a pesticide chemical residue in or on a raw agricultural commodity or processed food for which an exemption is proposed or in effect, the Administrator shall consider the maximum amount of residue that could reasonably be expected to occur on the raw agricultural commodity or processed food if the instructions for use of the pesticide chemical were not followed.

"(C) Practical methods of analysis.—An exemption from the requirement for a tolerance for a pesticide chemical residue in or on a raw agricultural commodity or processed food shall not be established by the Administrator unless the Administrator determines, after consultation with the Secretary, that there is a practical method for detecting and measuring the levels of such pesticide chemical or pesticide chemical residue on such commodity or food and that such method is the best available practical method. A method shall be considered practical only if it can be performed by the Secretary on a routine basis with the personnel, equipment, and other resources available to the Secretary.

"(3) Inert ingredients.—The Administrator shall not establish an exemption for those inert ingredients of a pesticide chemical which—

"(A) are essential for the active ingredient of the pesticide chemical with which the inert ingredients are combined to have the effect the active ingredient is intended to have,

"(B) cause or contribute to adverse biological effects in any organism,

"(C) may have an adverse effect on human health, and

"(D) meet any other requirement established by the Administrator.

"(d) Petitions for a Tolerance or Exemption.—

"(1) General rule.—Any person may file with the Administrator a petition proposing the issuance of a regulation establishing, modifying, or revoking a tolerance for a pesticide chemical or a pesticide chemical residue or establishing or revoking an exemption of the pesticide chemical residue from the requirement of a tolerance.

"(2) Petition requirements.—

"(A) Establishment.—A petition under paragraph (1) to establish a tolerance for a pesticide chemical or pesticide chemical residue or to establish an exemption from the requirement of a tolerance for a pesticide chemical residue shall contain—

"(i)(I) an informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition, including a summary of the reports required under clause (iv) respecting the safety of the pesticide chemical or pesticide chemical residue and an explanation of the exposure to the pesticide chemical or pesticide chemical residue due to any tolerance already granted for the pesticide chemical or pesticide chemical residue, and of the exposure to the pesticide chemical or pesticide chemical residue which would result if the requested tolerance were granted, and (II) a statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice of filing of the petition to be published under this subsection and as part of a proposed or final regulation issued under this subsection,

"(ii) the name, chemical identity, and composition of such pesticide chemical or the pesticide chemical which produces such residue,

"(iii) data showing the amount, frequency, method, and time of application of such pesticide chemical,

"(iv) full reports of tests and investigations made with respect to the safety of such pesticide chemical, including full information as to the methods and controls used in conducting such tests and investigations,

"(v) full reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue remaining in or on the raw agricultural commodity or processed food, including a description of the analytical methods used,

"(vi) practical methods for detecting and measuring the levels of such pesticide chemical residue in or on the raw agricultural commodity or processed food,

"(vii) practical methods for removing any pesticide chemical residue which exceeds any proposed tolerance, "(viii) a proposed tolerance for such pesticide chemical or pesticide chemical residue, if a tolerance is proposed,

"(ix) all relevant data bearing on the physical or other technical effect such pesticide chemical is intended to have and the quantity of such pesticide chemical required to produce such effect,

"(x) if the petition relates to a tolerance for a processed food, reports of investigations conducted using the processing method used to produce such food,

"(xi) such information as the Administrator may require respecting benefits from the use of such pesticide chemical, including a comparison of the effect of using such pesticide chemical with the effect of using other pesticide chemicals,

"(xii) such other data and information as the Administrator requires by regulation to support the petition.

If information or data required by this subparagraph is available to the Administrator, the person submitting the petition may in lieu of submitting the information or data cite the availability of the information or data. The Administrator may require a petition to be accompanied by samples of the pesticide chemical with respect to which the petition is filed.

"(B) Modification and revocation.—The Administrator may by regulation establish the requirements for petitions to modify or revoke a tolerance or to revoke an exemption from the requirement for a tolerance.

"(3) Notice.—A notice of the filing of a petition which meets the requirements of paragraph (2) shall be published by the Administrator within 30 days after filing. Such notice shall announce the availability of a complete description of the analytical methods available to the Administrator for the detection and measurement of the pesticide chemical residue with respect to which the petition is filed and shall include the summary required by paragraph (2)(A)(i).

"(4) Actions by the administrator.—The Administrator shall, after giving due consideration to a petition filed under paragraph (1) and any other information available to the Administrator—

"(A) issue a final regulation in accordance with the petition establishing, modifying, or revoking a tolerance for the pesticide chemical or pesticide chemical residue,

"(B) issue a final regulation in accordance with the petition establishing or revoking an exemption of the pesticide chemical residue from the requirement of a tolerance,

"(C) issue a final regulation—

"(i) establishing, modifying, or revoking a tolerance for the pesticide chemical or pesticide chemical residue which is different from the tolerance requested in the petition, or

"(ii) establishing or revoking an exemption of the pesticide chemical residue from the requirement of a tolerance which is different from the request in the petition for the establishment or revocation of the exemption, or

"(D) issue an order denying the petition.

The Administrator may not take the action described in subparagraph (A) or (B) with respect to a petition unless the petition meets the requirements of paragraph (2). Before issuing a regulation under subparagraph (C) the Administrator shall provide the notice and opportunity to comment prescribed by subsection (e)(2).

"(5) Effective date.—A regulation issued under paragraph (4) shall take effect upon publication. If the regulation revokes a tolerance or exemption for a pesticide chemical or pesticide chemical residue, the Administrator may delay for a period not to exceed one year the effective date of the revocation to permit the tolerance or exemption to remain in effect for a raw agricultural commodity or processed food which, on the date of the publication of the regulation, contains residues of the pesticide chemical within the tolerance or exemption if there is no dietary risk to human health from such residues during such period.

"(6) Further proceedings.—

"(A) Filing of objections.—Within 30 days after a regulation or order is issued under paragraph (4), any person adversely affected by the regulation or order (including a person without an economic interest) may file objections thereto with the Administrator, specifying with particularity the provisions of the regulation or order deemed objectionable and stating reasonable grounds therefor.

"(B) Evidentiary hearings.—An objection may include a request for a public evidentiary hearing upon any such objection.

"(C) Service and reply.—A copy of each objection filed by a person other than the petitioner shall be served by the Administrator on the petitioner. The petitioner shall have 30 days to make a written reply to the objections.

"(D) Public hearing.—The Administrator shall, upon the initiative of the Administrator or upon the request of the person who filed an objection and after due notice, hold a public hearing if and to the extent the Administrator determines a public hearing is necessary to receive factual evidence relevant to material issues of fact raised by such objections.

"(E) Action taken.—As soon as practicable (but not later than 60 days after receiving such reply or after completion of the hearing, if a hearing was found to be necessary), the Administrator shall issue an order stating the action taken upon each such objection and setting forth any revision to the regulation or order that the Administrator has found to be warranted. If a hearing is held, such order and any revision to such regulation or order shall, with respect to questions of fact at issue in the hearing, be based only on substantial evidence of record at such hearing, and such order shall set forth detailed findings of facts, and conclusions of law or policy, upon which the order or regulation is based.

"(F) Effective date or order.—A regulation or order issued under this paragraph shall not take effect before the 90th day after its publication unless the Administrator finds that emergency conditions exist necessitating an earlier effective date, in which event the Administrator shall specify in the order of his findings as to such conditions.

"(7) Judicial review.—

"(A) In general.—In a case of actual controversy as to the validity of any order issued under paragraph (6) or any regulation which is the subject of such an order, any person who will be adversely affected by such order or regulation (including a person without an economic interest) may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within 60 days after publication of such order, a petition praying that the order or regulation be set aside in whole or in part.

"(B) Filing of petition, standard of review.—A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by the Administrator for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which the Administrator based the order or regulation, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have exclusive jurisdiction to affirm or set aside the order or regulation complained of in whole or in part. The standard of review shall be that specified in section 706 of title 5, United States Code, except that the findings of the Administrator with respect to questions of fact as to which a public evidentiary hearing has been held shall be sustained only if supported by substantial evidence when considered on the record as a whole.

"(C) Additional evidence.—If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may seem proper if such evidence is material and there were reasonable grounds for failure to adduce such evidence. The Administrator may modify the Administrator's findings as to the facts by reason of the additional evidence so taken and may modify the order or regulation accordingly. The Administrator shall file with the court any such modified finding, order, or regulation.

"(D) Review by Supreme Court.—The judgment of the court affirming or setting aside, in whole or in part, any order under paragraph (6) and any regulation which is the subject of such an order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this paragraph shall not, unless specifically ordered by the court to the contrary, operate as a stay of a regulation or order.

"(E) Other provisions of law.—Any issue as to which judicial review is or was obtainable under this paragraph shall not be the subject of judicial review under any other provision of law.

"(e) Action on Administrator's Own Initiative.—

"(1) General rule.—The Administrator may issue a regulation—

"(A) establishing, modifying, or revoking a tolerance for a pesticide chemical or a pesticide chemical residue, or

"(B) establishing or revoking an exemption of a pesticide chemical residue from the requirement of a tolerance.

A regulation issued under this paragraph shall become effective upon its publication and shall upon publication be subject to paragraphs (6) and (7) of subsection (d). If the regulation revokes a tolerance or exemption for a pesticide chemical or pesticide chemical residue, the Administrator may delay for a period not to exceed one year the effective date of the revocation to permit the tolerance or exemption to remain in effect for a raw agricultural commodity or processed food which, on the date of the publication of the regulation, contains residues of the pesticide chemical within the tolerance or exemption if there is no dietary risk to human health from such residues during such period.

"(2) Notice.—Before issuing a regulation under paragraph (1), the Administrator shall issue a notice of proposed rulemaking and provide a period of not less than 30 days for public comment on the proposed regulation, except that a shorter period for comment may be provided—

"(A) if the Administrator finds that it would be contrary to the public interest to do so and states the reasons for that finding in the notice of proposed rulemaking, or

"(B) if the Administrator is acting under subsection (j) to revoke or suspend a tolerance or exemption.

"(3) Imminent Hazard.—

"(A) Determination by Administrator.—If the Administrator determines that—

"(i) revocation of an exemption under subsection (c) from the requirement for a tolerance for a pesticide chemical residue in or on a raw agricultural commodity or processed food,

"(ii) in conjunction with the revocation of such an exemption, establishment of a tolerance for the pesticide chemical residue covered by the exemption under which tolerance only residues which meet the standard under subparagraph (A) or (B) of subsection (b)(2) will be permitted to remain on the commodity or food,

"(iii) establishment of a tolerance for a pesticide chemical residue in or on a raw agricultural commodity or processed food which is lower than a tolerance permitted in a regulation in effect for such pesticide chemical residue and under which new tolerance only residues which meet the standard under subparagraph (A) or (B) of subsection (b)(2) will be permitted to remain on the commodity or food, or

"(iv) revocation of a tolerance in effect for a pesticide chemical residue,

is necessary to prevent an imminent hazard to the public health, the Administrator shall, without regard to the procedures required for such action, by order take such action. In issuing such an order, the Administrator shall give prompt notice of the action to the person who requested the exemption or tolerance which will be changed by the order. Such an order shall be effective upon its publication and shall be published in the Federal Register.

"(B) Public hearings.—

"(i) In general.—Within 5 days of the publication in the Federal Register of an order issued under subparagraph (A), any interested person may request the Administrator to hold a public hearing on the order. If the Administrator receives a request for a public hearing within the time period prescribed by the preceding sentence, the Administrator shall commence such hearing within 5 days of the receipt of the request. Within 10 days of the completion of such a hearing, the Administrator shall either affirm the order which was the subject of the hearing or revise it. The Administrator shall publish in the Federal Register any revised order.

"(ii) Judicial review of order.—If a hearing is requested under clause (i) with respect to an order issued under subparagraph (A), the Administrator shall not delay the effective date of the order. Such an order—

"(I) may not be judicially reviewed under chapter 7 of title 5, United States Code, until the order has been affirmed or revised by the Administrator after the completion of the hearing, and

"(II) may not be set aside by a court while the order is being judicially reviewed.

"(f) Special Data Requirements.—

"(1) Determination of inadequate data.—If a tolerance or an exemption is in effect for a pesticide chemical added to a raw agricultural commodity or processed food or a pesticide chemical residue in or on a raw agricultural commodity or processed food and the data contained in the petition under subsection (d) which had been submitted to establish the tolerance or exemption from the tolerance for such pesticide chemical or pesticide chemical residue, including a petition submitted before the date of the enactment of this paragraph, are not adequate to support the continuation of such tolerance or exemption because—

"(A) based on the data contained in the petition and other data available to the Administrator, there is reason to believe that dietary exposure to such pesticide chemical or pesticide chemical residue from all known sources (including drinking water) may present a risk to human health, including the health of identifiable population groups with specific food consumption patterns, that is greater than a negligible risk, or

"(B) the data contained in the petition do not meet the requirements of clauses (iv) and (v) of subsection (d)(2)(A),

the Administrator shall take the action described in paragraph (2).

"(2) Action by administrator.—When the Administrator makes the determination described in paragraph (1) with respect to a tolerance or exemption for a pesticide chemical or pesticide chemical residue, the Administrator shall require the submission of data to support—

"(A) the existing tolerance, or

"(B) a new tolerance for such chemical or residue,

which meets the standard under subsection (b)(2)(A), (b)(2)(B), or (c)(2), unless the Administrator initiates an action under subsection (e) to modify or revoke the tolerance or exemption because such tolerance or exemption does not meet the standard under subsection (b)(2)(A), (b)(2)(B), or (c)(2).

"(3) Submission of required data.—When the Administrator requires the submission of data under paragraph (2)(A), the Administrator shall publish in the Federal Register an order—

"(A) requiring one or more interested persons to notify the Administrator that such person will submit the required data,

"(B) describing the type of data required to be submitted,

"(C) describing the reports required to be made during and after the collection of the data,

"(D) requiring the submission of the data and reports referred to in subparagraphs (B) and (C), and

"(E) establishing deadlines for the actions described in subparagraphs (A), (B), (C), and (D).

The Administrator may revise any such order to correct an error.

"(4) Deadlines.—If an order is issued under paragraph (3) with respect to a tolerance or exemption and a deadline in the order is not met, the tolerance or exemption shall be considered revoked, except that the Administrator may—

"(A) delay the effective date of the revocation for a period not to exceed one year to permit the tolerance or exemption to remain in effect for a raw agricultural commodity or processed food which, on the date of the deadline in the order, contains residues of the pesticide chemical which are within the tolerance or exemption, or

"(B) if, on the request of the person identified under paragraph (3)(A), the Administrator determines that extraordinary circumstances beyond the control of such person prevented such person from submitting the required data, delay the effective date of the revocation for a period no longer than such time as is necessary for such person to submit the data.

"(5) Review.—An order issued under this subsection is subject to review in accordance with paragraphs (6) and (7) of subsection (d).

"(g) Confidentiality of Data.—

"(1) General rule.—Data submitted to the Administrator in support of a petition under subsection (d) which has not previously been made available to the public without restriction shall upon request of the petitioner be considered as entitled to confidential treatment by the Administrator until publication of a regulation or order under subsection (d)(4) in response to the petition unless disclosure of such data is allowed by this subsection or subsection (h) or is otherwise required by law.

"(2) Disclosure.—Data that is entitled to confidential treatment under paragraph (1) shall not be revealed to any person other than—

"(A) the Congress of the United States,

"(B) employees of the United States authorized by the Administrator to examine such data in the carrying out of their official duties under this Act or other statutes administered by the Environmental Protection Agency, or

"(C) contractors with the United States authorized by the Administrator to examine such data in the carrying out of contracts under such statutes under such security requirements as the Administrator may provide.

"(3) Summaries.—Notwithstanding any provision of this subsection or other law, the Administrator may publish the informative summary required by subsection (d)(2)(A)(i) and may, in issuing a proposed or final regulation or order under this section, publish an informative summary of the data relating to the regulation or order.

"(h) Access to Data in Support of Petition.—

"(1) In general.—If data in support of a petition is submitted to the Administrator, the Administrator, before acting on such petition, shall provide, in accordance with this paragraph, public access to health and safety data that are submitted or cited in support of such petition. To obtain access to such data, a person shall send by certified mail—

"(A) not later than 30 days after the publication under subsection (d)(3) of a notice of the filing of a petition, and

"(B) simultaneously to the Administrator and to the petitioner,

a request for such access and the affirmation required by paragraph (2). Unless within 15 days after the receipt by the Administrator of a request for access to such data and of an affirmation complying with paragraph (2) the petitioner submits to the Administrator an objection to the request asserting that the affirmation is inaccurate and the reasons for the objection, the Administrator shall grant the request. If an objection to a request is submitted to the Administrator within such 15-day period, the Administrator shall determine whether to grant the request within 5 days after the receipt of the objection. If the Administrator determines to grant the request, access shall not be permitted until 5 days after the petitioner making the objection has been notified that access has been granted. If access to data is denied, comments on the petition for which such data were submitted or cited shall be filed within 60 days after the decision of the Administrator denying access.

"(2) Affirmations.—Data referred to in paragraph (1) may be made available only to a person who provides an affirmation (and such supporting evidence as the Administrator considers necessary) which—

"(A) states that the person is not engaged in, and is neither employed by nor acting (directly or indirectly) on behalf of any other person or affiliate thereof engaged in, the production, sale, or distribution of a pesticide,

"(B) identifies any business, employer, or other person, if any, on whose behalf the person is requesting access to the data, and

"(C) states that the person will not intentionally or recklessly violate this subsection.

For purposes of this paragraph, an affiliate of a person is a person who directly or indirectly, through one or more intermediates, controls or is controlled by or is under common control with the other person. Section 1001 of title 18, United States Code, shall apply to an affirmation made under this paragraph.

"(3) Comment on petition.—

"(A) In general.—Data supporting a petition may be made available under paragraph (1) to a person only for the purpose of permitting the person to comment to the Administrator on such petition. Such comments may reasonably quote data submitted to the Administrator. No person, including the Administrator, may make such comments public before the decision of the Administrator on the petition for which such data were submitted or after such decision if the petition is denied.

"(B) Conditions applied to obtaining data.—A person who obtains data under paragraph (1) (directly or indirectly) may not—

"(i) publish, copy, or transfer the data to any other person to obtain approval to sell, manufacture, or distribute a pesticide anywhere in the world, or

"(ii) use the data for any purpose in any court or agency of the United States or any State or political subdivision thereof before the decision of the Administrator on the petition for which such data were submitted or after such decision if the petition is denied.

"(4) Examination of data.—Data made available under paragraph (1) may be examined at an office of the Environmental Protection Agency or an appropriate State agency under the conditions prescribed by this subsection and may not be removed from such office. The Administrator shall maintain a record of the persons who inspect data. A copy of such record shall be sent to the data submitter on request.

"(5) Filing of comments.—Once access to data supporting a petition is granted, the data may be examined and notes may be taken for use in developing comments on the petition. Such comments on the petition shall be filed within 60 days after the decision of the Administrator granting access, unless the comment period is extended by the Administrator for an additional 30 days for good cause.

"(i) Other Regulations.—

"(1) Regulations under section 406.—Regulations affecting pesticide chemical residues in or on raw agriculture commodities promulgated, in accordance with section 701(e), under the authority of section 406(a) upon the basis of public hearings instituted before January 1, 1953, shall be deemed to be regulations issued under this section and shall be subject to modification or revocation under subsections (d) and (e).

"(2) Regulations under section 409.—Regulations establishing tolerances for pesticide chemical residues in processed food under section 409 on or before the date of the enactment of this subsection shall be deemed to be regulations issued under this section only if the tolerances meet the standard under subsection (b)(2)(A)(i). If such tolerances do not meet such standard, the Administrator may, in accordance with such standard and under subsection (e), establish new tolerances for such chemicals.

"(j) Conforming Actions.—

"(1) Cancellation.—

"(A) Revocation of tolerance or exemption.—If the registration of each pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act, containing a specific active or inert ingredient, for use on a particular raw agricultural commodity or processed food has been canceled by the Administrator under such Act due in whole or in part to dietary risks to humans and if the Administrator has not revoked the tolerance or exemption for such pesticide chemical on such commodity or food in accordance with subsection (b)(2)(A), the Administrator, not later than 60 days after the effective date of such cancellation, shall, in accordance with the procedures prescribed by subsection (e), revoke any tolerance or exemption for such active or inert ingredient for such raw agricultural commodity or processed food.

"(B) Delay of effective date.—If the Administrator is required under subparagraph (A) to revoke a tolerance or exemption, the Administrator may delay for a period not to exceed one year the effective date of the revocation to permit the tolerance or exemption to remain in effect for raw agricultural commodities and processed food that bear residues of the active or inert ingredient of the canceled pesticide chemical within the tolerance or exemption as the result of the use of the canceled pesticide chemical before the date of its cancellation if there is no dietary risk to human health from such use during such period.

"(C) New tolerance.—If the Administrator determines that the residue of a canceled pesticide chemical, which is required under subparagraph (A) to have its tolerance or exemption revoked, will unavoidably persist in the environment and contaminate raw agricultural commodities or processed food, the Administrator, in revoking the tolerance or exemption, may establish a new tolerance under subsection (e) for the pesticide chemical residue at a level that permits such unavoidable levels to remain in raw agricultural commodities and processed food. The Administrator shall modify any such tolerance at least once a year so that the tolerance provides for the level of the pesticide chemical residue that is unavoidable.

"(2) Suspensions.—

"(A) Suspension of tolerance or exemption.—If the registration of each pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act, containing a specific active or inert ingredient, for use on a particular raw agricultural commodity or processed food has been suspended by the Administrator under such Act due in whole or in part to dietary risks to humans and if the Administrator has not revoked the tolerance or exemption for such pesticide chemical on such commodity or food in accordance with subsection (b)(2)(A), the Administrator, not later than 60 days after the effective date of such suspension, shall, in accordance with the procedures under subsection (e), suspend any tolerance or exemption for such active or inert ingredient for such raw agricultural commodity or processed food.

"(B) Delay of effective date.—If the Administrator is required under subparagraph (A) to suspend a tolerance or exemption, the Administrator may delay for a period not to exceed one year the effective date of the suspension to permit the tolerance or exemption to remain in effect for raw agricultural commodities and processed food that bear residues of the active or inert ingredient of the suspended pesticide chemical within the tolerance or exemption as the result of the use of the suspended pesticide chemical before the date of its suspension if there is no dietary risk to human health from such use during such period.

"(C) New tolerance.—If the Administrator determines that the residue of a suspended pesticide chemical, which is required under subparagraph (A) to have its tolerance or exemption suspended, will unavoidably persist in the environment and contaminate raw agricultural commodities or processed food, the Administrator, in suspending the tolerance or exemption, may establish a new tolerance under subsection (e) for the pesticide chemical residue at a level that permits such unavoidable levels to remain in raw agricultural commodities and processed food. The Administrator shall modify any such tolerance at least once a year so that the tolerance provides for the level of the pesticide chemical residue that is unavoidable.

"(D) Effect of suspension.—The suspension of a tolerance or exemption for a pesticide chemical shall be effective as long as the registration of the pesticide chemical to which the tolerance or exemption is applicable is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act, and while a suspension is effective the tolerance or exemption shall, except as provided in subparagraph (B), not be considered to be in effect. If the registration of the pesticide chemical ceases to be suspended and is not canceled under such Act, the Administrator shall rescind any such suspension of a tolerance or exemption.

"(k) Fees.—The Administrator shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Administrator's functions under this section. Under such regulations, the performance of the Administrator's services or other functions under this section, including—

"(1) the acceptance for filing of a petition submitted under subsection (d),

"(2) the promulgation of a regulation establishing, modifying, or revoking a tolerance or establishing or revoking an exemption from the requirement of a tolerance under this section,

"(3) the acceptance for filing of objections under subsection (d)(6), or

"(4) the certification and filing in court of a transcript of the proceedings and the record under subsection (d)(7),

may be conditioned upon the payment of such fees. Such regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Administrator such waiver or refund is equitable and not contrary to the purposes of this subsection.".

SEC. 5. INERT INGREDIENTS WITHOUT TOLERANCES.

(a) SUBMISSION OF DATA REQUIREMENTS.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register an order which—

(1) provides a list of each inert ingredient which does not have a tolerance on the date of the enactment of this Act and for which an exemption may not be established under section 408(c)(3) of the Federal Food, Drug, and Cosmetic Act,

(2) requires one or more interested persons to notify the Administrator that such person will submit the necessary data to establish a tolerance for such ingredient,

(3) describes the type of data required to be submitted,

(4) describes the reports required to be made during and after the collection of the data,

(5) requires the submission of the data and reports referred to in paragraphs (3) and (4), and

(6) establishes deadlines for the actions described in paragraphs (2), (3), (4), and (5).

(b) DEADLINES.—If an order is issued under subsection (a) with respect to an inert ingredient and a deadline in the order is not met, any pesticide chemical which contains the inert ingredient shall be considered to be unsafe for purposes of section 402(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act, except that the Administrator may—

(1) delay the effective date of the determination that such pesticide chemical is unsafe for a period not to exceed one year to permit a raw agricultural commodity or processed food which, on the date of the deadline in the order, contains such pesticide chemical containing such inert ingredient, or

(2) if, on the request of the person identified under subsection (a)(2), the Administrator determines that extraordinary circumstances beyond the control of such person prevented such person from submitting the required data, delay the effective date of the determination that such pesticide chemical is unsafe for a period no longer than such time as is necessary for such person to submit the data.

(c) REVIEW.—An order issued under subsection (a) is subject to review in accordance with paragraphs (6) and (7) of section 408(d) of the Federal Food, Drug, and Cosmetic Act.

SEC. 6. GENERALLY RECOGNIZED AS SAFE PESTICIDES.

(a) GENERAL RULE.—Pesticide chemicals which on the day before the date of the enactment of this Act do not have tolerances or exemptions from tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act because they are generally recognized as safe shall on or after such date not be considered unsafe under section 402(a)(2)(B) of such Act solely because the chemicals do not have such a tolerance or exemption.

(b) SUBMISSION OF DATA REQUIREMENTS.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register an order which—

(1) provides a list of all pesticide chemicals which on the day before the date of the enactment of this Act do not have tolerances or exemptions from tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act because they are generally recognized as safe,

(2) requires the identification of the person who will submit the necessary data to establish a tolerance or exemption for such pesticide chemical,

(3) describes the type of data required to be submitted,

(4) describes the reports required to be made during and after the collection of the data,

(5) requires the submission of the data and reports referred to in paragraphs (3) and (4) not later than 48 months after the issuance of the order, and

(6) establishes deadlines for the actions described in paragraphs (2), (3), (4), and (5).

(c) DEADLINES.—If an order is issued under subsection (a) with respect to a pesticide chemical and a deadline in the order is not met, the Administrator may issue an order declaring the pesticide chemical to be unsafe for the purpose of section 402(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act.

(d) REVIEW.—An order issued under subsection (a) is subject to review in accordance with paragraphs (6) and (7) of section 408(d) of the Federal Food, Drug, and Cosmetic Act.

SEC. 7. REVISION OF EXISTING EXEMPTIONS.

(a) SUBMISSION OF DATA REQUIREMENTS.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register an order which—

(1) provides a list of all pesticide chemical residues which, on the date of the enactment of this Act, have exemptions from the requirement for a tolerance and which do not meet the requirements of section 408(c) of the Federal Food, Drug, and Cosmetic Act,

(2) requires the identification of the person who will submit the necessary data to continue the exemption or to establish a tolerance for such pesticide chemical residues,

(3) describes the type of data required to be submitted,

(4) describes the reports required to be made during and after the collection of the data,

(5) requires the submission of the data and reports referred to in paragraphs (3) and (4) not later than 48 months after the issuance of the order, and

(6) establishes deadlines for the actions described in paragraphs (2), (3), (4), and (5).

(b) DEADLINES.—If an order is issued under subsection (a) with respect to an exemption and a deadline in the order is not met, the exemption shall be considered revoked, except that the Administrator may—

(1) delay the effective date of the revocation for a period not to exceed one year to permit the exemption to remain in effect for a raw agricultural commodity or processed food which, on the date of the deadline in the order, contains the pesticide chemical residue subject to such exemption, or

(2) if, on the request of the person identified under subsection (a)(2), the Administrator determines that extraordinary circumstances beyond the control of such person prevented such person from submitting the required data, delay the effective date of the revocation of the exemption for a period no longer than such time as is necessary for such person to submit the data.

(c) REVIEW.—An order issued under subsection (a) is subject to review in accordance with paragraphs (6) and (7) of section 408(d) of the Federal Food, Drug, and Cosmetic Act.

By Mr. DANFORTH:

S. 2876. A bill to direct the Administrator of the Federal Aviation Administration to conduct research into the consequences for the air traffic control system of automation of such system, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CONTROLLER PERFORMANCE RESEARCH ACT

● Mr. DANFORTH. Mr. President, the bill I am introducing today is identical to H.R. 3779, legislation introduced in the House of Representatives on December 17, 1987, by Representative JACK BUECHNER of St. Louis, MO, and passed by the House of Representatives on September 20. The Controller Performance Research Act will enhance aviation safety by directing the Administrator of the Federal Aviation Administration [FAA] to conduct research into the effect of automation of the air traffic control system.

Over the next decade, the FAA plans to install the advanced automation system and other air traffic control enhancements which will automate many of the functions performed today by individual air traffic controllers. These advances are intended to free controllers from routine tasks to allow them more time to focus on safety problems and on reducing air delays.

If the FAA is to get the full benefit of this sophisticated equipment, it must develop new ways to screen and train controllers. Today, the FAA does not know how the men and women with hands-on responsibility for the safety of the air traffic control system will interact with the machines which are supposed to be improving human performance. Congressman BUECHNER has correctly identified a problem: the FAA has not yet done the groundwork necessary for a smooth transition to a more automated air traffic control environment. The Office of Technology Assessment's July 1988 report entitled "Safe Skies for Tomorrow" supports this determination. It concluded that current FAA programs to understand human error and enhance controller performance are inadequate.

The Controller Performance Research Act directs the FAA to investigate the effect of automation on the performance of air traffic controllers and the air traffic control system. Specifically, the FAA will be required to study how to improve and accelerate future air traffic controller training, and to study physical and psychological effects of automation on air traffic controllers. The FAA will also be directed to determine what attributes a controller needs to function well in a highly automated air traffic control system, and to develop ways to identify individuals possessing those attributes.

The National Aeronautics and Space Administration [NASA] has substantial experience in human factors research. For this reason, the bill authorizes the FAA to enter into an agreement with NASA to study the human factors aspects of a highly automated air traffic control system. Within 6 months after enactment, the FAA Administrator must report to Congress concerning the FAA's plan for conducting research under this legislation. The bill authorizes such appropriations as are necessary from the airport airway trust fund for the research required by this legislation.

Mr. President, I urge passage of this legislation. The Controller Performance Research Act is a timely and appropriate response to an aviation safety issue that demands attention.●

By MR. BINGAMAN:

S. 2877. A bill entitled the "Business Incubator Review Act of 1988"; to the Committee on Governmental Affairs.

BUSINESS INCUBATOR REVIEW ACT

● By BINGAMAN. Mr. President, I rise today to introduce legislation, along with Senator McCain, to support the creation and operation of small business incubators—a proven tool for nurturing new companies and fostering economic development.

It is widely recognized that new, startup firms are one of the major engines of economic growth. Yet, under normal conditions, one out of four new businesses fail. Business incubators, however, dramatically reverse those odds. Two new firms coming out of the incubators succeed for every one that fails.

Incubators promote the startup and successful growth of new firms by offering an entrepreneurial environment, affordable office, warehouse and manufacturing space, and share business services. In other words, they offer a supportive environment in which small business can grow—hence the term incubators.

In my home State of New Mexico we have a number of successful business incubators. One of these, the New Mexico Business Innovation Center in Albuquerque, was recognized as one of the most successful economic development programs in the country by the Economic Development Administration of the Commerce Department and the National Council for Urban Economic Development.

Even though business incubators are one of the best community and economic development tools, there is no coherent or coordinated Federal policy to support these centers. The problem is not the lack of Federal funds for incubators. The real problem is the lack of access to Federal funds. There are numerous business development and community development programs. Yet, incubators may not always qualify for these programs. Or incubators may qualify only under special circumstances.

For example, the Community Development Block Grant [CDBG] Program recently issued guidelines for business incubator funding. Because of the existing laws and regulations governing CDBG funds, incubators are eligible for funding if they meet the national CDBG objectives of benefiting low and moderate income persons or preventing or eliminating slums or blight. While incubators, through general economic development and job creation, will accomplish these ends, such requirements limit CDBG funding to incubators in certain areas. These requirements also impose strict documentation and additional paperwork.

My bill seeks to correct the problem of access to Federal economic and community development funds. It does four things. First, it clearly enunciates the policy of the United States that the Federal Government should encourage and support the development and operation of business incubators as a tool of economic and community development.

Second, the bill sets up a business incubator review group, comprised of the Secretaries of Housing and Urban Development, Health and Human Services, Energy, Defense, Commerce, Agriculture, and Labor, and the Administrator of the Small Business Administration. This group will review all policies and programs of the Federal Government touching business incubators and report to Congress the changes needed in existing law to make business incubator centers eligible for current Federal grant or loan programs.

Third, the bill directs the members of this review group to take such steps necessary to insure that business incubators are eligible for existing grants and loans for community development, business promotion, research and development, and export promotion.

Finally, the bill designates the Commerce Department's Clearinghouse for State and Local Initiatives on Productivity, Technology and Innovation as the Federal Government's central point for information on Federal programs in support of business incubators. It also requires the clearinghouse to undertake a study of business incubator centers, including a description of State and local programs.

Mr. President, this legislation will strengthen our economic and community development efforts. Business incubators are a proven job creation tool. We should do all we can to support them. I ask that a copy of this legislation be printed in the Record following my remarks.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Business Incubator Review Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) business incubators provide economic development and promote startup and growth of new firms, by offering an entrepreneurial environment, affordable and efficient workspace, business consulting services, and equipment;

(2) communities which have little economic activity, aging industrial districts, declining commercial areas, and high unemployment can be revitalized by business incubators which combat disinvestment, renovate old and deteriorated buildings, provide employment, and encourage business ownership opportunities, thus fostering a community's long-term economic development;

(3) business incubators help nurture existing economic activity which leads to future growth by helping to stabilize declining industries or by advancing new industries;

(4) business incubators help communities create new firms which have the potential to become high growth industries and provide enhanced employment possibilities; and

(5) business incubators help communities create startup firms to diversify and strengthen the local economy and foster a stable employment base.

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States that the Federal Government should encourage and support the development and operation of business incubators as a tool of economic and community development.

SEC. 4. INTERAGENCY REVIEW GROUP.

(a) Composition.—The President shall establish a Business Incubator Review Group (hereafter referred to as "the Review Group"), to be comprised of—

(1) the Secretary of Housing and Urban Development,

(2) the Secretary of Health and Human Services,

(3) the Secretary of Energy,

(4) the Secretary of Defense,

(5) the Secretary of Commerce,

(6) the Secretary of Agriculture,

(7) the Secretary of Labor,

(8) the Administrator of the Small Business Administration, and

(9) any other Federal officials which the President may consider appropriate.

(b) Chairperson.—The Administrator of the Small Business Administration shall serve as chairperson of the Review Group and shall provide administrative and clerical support.

(c) Review.—The Review Group shall undertake a review of all policies and programs of the Federal Government with respect to business incubators.

(d) Report.—The Review Group shall, within 90 days of the date of enactment of this Act, submit a report to the appropriate committees of the House of Representatives and the Senate containing the findings of its review, including—

(1) a description of existing Federal grant and loan programs, which involve community development, business promotion, research and development, and export promotion, for which business incubators are currently eligible;

(2) recommendations regarding changes to existing law which may be needed to make business incubators eligible for current Federal grant and loan programs for community development, business promotion, research and development, and export promotion; and

(3) recommendations for any additional legislation that may be required to foster and support business incubators.

(e) Termination.—Upon the expiration of the 30-day period following the date on which the report is submitted pursuant to subsection (d), the Review Group shall terminate.

SEC. 5. REGULATORY REVIEW.

Each member of the Review Group is directed to review regulations promulgated by the member's respective department or agency which involve grants and loans for community development, business promotion, research and development, and export promotion and to take such action as may be necessary to ensure that business incubators are eligible for such grants or loans.

SEC. 6. AUTHORITY FOR CLEARINGHOUSE ON STATE AND LOCAL INITIATIVES.

(a) Study of State and Local Programs.—The Secretary of Commerce, through the Clearinghouse for State and Local Initiatives on Productivity, Technology and Innovation, shall conduct a study of business incubators, including a description of available State and local programs.

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce shall submit the results of the study conducted under subsection (a) to the appropriate Committees of the House of Representatives and the Senate.

(c) Clearinghouse Responsibilities.—Section 6(b) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710 et seq.), as amended by section 5122 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418), is amended—

(1) by striking out "and" at the end of paragraph (7),

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon and "and", and

(3) by adding at the end the following new paragraph:

"(9) collect information on Federal programs that support business incubators and provide technical assistance and advice to State and local governments with respect to such programs.".

(d) Authorization.—There is authorized to be appropriated to carry out the provisions of subsections (a) and (b) of this section $100,000 to be available until expended.

By Mr. WARNER:

S. 2878. A bill for the relief of Charolette S. Neal; to the Committee on Armed Services.

RELIEF OF CHAROLETTE S. NEAL

● Mr. WARNER. Mr. President, the bill I introduce today would provide a survivor benefit annuity to Mrs. Charlotte Christian Neal, former wife of Lt. Comdr. Michael D. Christian, USN (retired) (deceased). Commander Christian was a POW during the Vietnam conflict. Upon his retirement from the Navy in 1978, Commander Christian elected to participate in the survivor benefit plan with spouse coverage, which would provide an annuity for his wife if she survived him.

On August 14, 1983, Commander Christian and Mrs. Neal were divorced. In their separation agreement, which was incorporated in the divorce decree, he agreed to maintain survivor benefit plan annuity coverage for her, if legislation which was then pending were to be enacted to allow him to provide annuity coverage for her as his former spouse. He died on September 4, 1983, just 3 weeks before the enactment of the former spouse legislation on September 24, 1983.

In a March 8, 1988 letter to the Congress, the Comptroller General of the United States recommended that Congress should enact a statute that would provide relief to Mrs. Neal, relief in the form of an annuity that Commander Christian, her husband of nearly 20 years wished her to receive, and, in fact, would have provided for her had he lived 3 more weeks. The House has already passed the necessary legislation. I fully realize that time is extremely short for the 100th Congress; however, I strongly urge that the Senate pass this bill.●

ADDITIONAL COSPONSORS

S. 282

At the request of Mr. Riegle, the name of the Senator from Arkansas [Mr. Bumpers] was added as a cosponsor of S. 282, a bill to amend the Internal Revenue Code of 1986 to permit individuals to receive tax-free distributions from an individual retirement account or annuity to purchase their first home, and for other purposes.

S. 2098

At the request of Mr. Hollings, the name of the Senator from Minnesota [Mr. Durenberger] was added as a cosponsor of S. 2098, a bill to amend the Federal Aviation Act of 1958 to prohibit discrimination against blind individuals in air travel.

S. 2258

At the request of Mr. Karnes, the name of the Senator from Alaska [Mr. Stevens] was added as a cosponsor of S. 2258, a bill to amend the Commercial Motor Vehicle Safety Act of 1986 to provide that the requirements for the operation of commercial motor vehicles will not apply to the operation of certain agricultural and firefighting vehicles.

S. 2517

At the request of Mr. Riegle, the name of the Senator from Ohio [Mr. Metzenbaum] was added as a cosponsor of S. 2517, a bill to amend the Social Security Act to take into account monthly earnings in determining the amount of disability benefits payable under title II, to provide for continued entitlement to disability and medicare benefits for individuals under disabled and working status, and for other purposes.

S. 2597

At the request of Mr. Inouye, the name of the Senator from Arizona [Mr. McCain] was added as a cosponsor of S. 2597, a bill to establish an interdisciplinary training grant program for the benefit of rural areas.

S. 2698

At the request of Mr. Dodd, the name of the Senator from Pennsylvania [Mr. Heinz] was added as a cosponsor of S. 2698, a bill to provide Federal assistance to the National Board for Professional Teaching Standards.

S. 2724

At the request of Mr. Riegle, the name of the Senator from Maryland [Ms. Mikulski] was added as a cosponsor of S. 2724, a bill to amend the Export Administration Act of 1979.

S. 2752

At the request of Mr. Evans, the name of the Senator from Washington [Mr. Adams] was added as a cosponsor of S. 2752, a bill to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes.

S. 2755

At the request of Mr. Riegle, the name of the Senator from Michigan [Mr. Levin] was added as a cosponsor of S. 2755, a bill to amend the Social Security Act to provide for improvements in services to applicants and beneficiaries under the old-age, survivors, and disability insurance program and the supplemental security income program.

S. 2775

At the request of Mr. Cochran, the name of the Senator from Alabama [Mr. Shelby] was added as a cosponsor of S. 2775, a bill to create a Commission on the American Family and Employment.

S. 2796

At the request of Mr. Nunn, the name of the Senator from Missouri [Mr. Danforth] was added as a cosponsor of S. 2796, a bill to authorize funding for the Martin Luther King, Jr., Federal Holiday Commission.

S. 2808

At the request of Mr. Matsunaga, the names of the Senator from Alabama [Mr. Heflin], the Senator from Hawaii [Mr. Inouye], and the Senator from Arkansas [Mr. Pryor] were added as cosponsors of S. 2808, a bill to amend section 3104 of title 38, United States Code, to permit service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay after a reduction of 80 percent in either the amount of compensation or retired pay.

S. 2814

At the request of Mr. Reid, the name of the Senator from Colorado [Mr. Wirth] was added as a cosponsor of S. 2814, a bill to provide for the modernization of testing of consumer products which contain hazardous or toxic substances.

S. 2841

At the request of Mr. Karnes, the name of the Senator from Wyoming [Mr. Wallop] was added as a cosponsor of S. 2841, a bill to provide that the Secretary of Transportation may not issue regulations reclassifying anhydrous ammonia under the Hazardous Materials Transportation Act.

S. 2850

At the request of Mr. Pryor, the names of the Senator from South Dakota [Mr. Daschle] and the Senator from Arkansas [Mr. Bumpers] were added as cosponsors of S. 2850, a bill to amend the Egg Research and Consumer Information Act to limit the total costs that may be incurred by the Egg Board in collecting producer assessments and having an administrative staff, to eliminate egg producer refunds, and to delay the conducting of any referendum by egg producers on the elimination of such refunds.

SENATE JOINT RESOLUTION 340

At the request of Mr. Packwood, the name of the Senator from Missouri [Mr. Bond] was added as a cosponsor of Senate Joint Resolution 340, a joint resolution designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week."

SENATE JOINT RESOLUTION 360

At the request of Mr. Bond, the name of the Senator from Georgia [Mr. Nunn] was added as a cosponsor of Senate Joint Resolution 360, a joint resolution to designate February 12, 1989, as "World Marriage Day."

SENATE JOINT RESOLUTION 381

At the request of Mr. Bond, the names of the Senator from Kansas [Mrs. Kassebaum] and the Senator from West Virginia [Mr. Rockefeller] were added as cosponsors of Senate Joint Resolution 381, a joint resolution to designate October 30, 1988 as "Fire Safety at Home Day—Change Your Clock, Change Your Battery."

SENATE JOINT RESOLUTION 386

At the request of Mr. Conrad, the name of the Senator from Wyoming [Mr. Simpson] was added as a cosponsor of Senate Joint Resolution 386, a joint resolution to designate the week of June 18 through 24, 1989 as "National Grasslands Week."

SENATE CONCURRENT RESOLUTION 127

At the request of Mr. Sasser, his name was added as a cosponsor of Senate Concurrent Resolution 127, a concurrent resolution expressing the sense of the Congress concerning support for Amateur Radio and Amateur Radio frequency allocations vital for Public Safety purposes.

At the request of Mr. Wilson, the names of the Senator from Kentucky [Mr. McConnell], the Senator from Texas [Mr. Gramm], the Senator from Delaware [Mr. Roth], the Senator from Iowa [Mr. Grassley], the Senator from Mississippi [Mr. Stennis], and the Senator from Michigan [Mr. Levin] were added as cosponsors of Senate Concurrent Resolution 127, supra.

SENATE CONCURRENT RESOLUTION 150

At the request of Mr. Boschwitz, the name of the Senator from New Hampshire [Mr. Humphrey] was added as a cosponsor of Senate Concurrent Resolution 150, a concurrent resolution concerning human rights of the Sikhs in the Punjab of India.

SENATE CONCURRENT RESOLUTION 152

At the request of Mr. Lugar, the name of the Senator from Oklahoma [Mr. Boren] was added as a cosponsor of Senate Concurrent Resolution 152, a concurrent resolution commending the Republic of Korea in hosting the games of the XXIV Olympiad, and for other purposes.

SENATE CONCURRENT RESOLUTION 158—TO CORRECT THE ENROLLMENT OF H.R. 4585

Mr. BYRD (for Mr. Pell) submitted the following concurrent resolution which was considered and agreed to:

S. Con. Res. 158

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the text of the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 1, insert "Act" before the end quotation marks.

(2) In section 309(a), strike out "Public Law 100-346" and insert "Public Law 100-436".

SENATE CONCURRENT RESOLUTION 159—TO CORRECT THE ENROLLMENT OF H.R. 4174

Mr. BYRD (for Mr. Bumpers) submitted the following concurrent resolution which was considered and agreed to:

S. Cons. Res. 159

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 4174), the Clerk of the House of Representatives shall make the following corrections:

(1) at the end of subparagraph (b)(3) of section 132, strike out 'conference,"; and' and insert "conference."

(2) at the end of subparagraph (b)(2) of section 132, strike out the semi-colon and insert "; and".

(3) in section 132, strike out subparagraph (b)(4).

SENATE CONCURRENT RESOLUTION 160—TO CORRECT THE ENROLLMENT OF S. 508

Mr. BYRD (for Mr. Levin) submitted the following concurrent resolution; which was considered and agreed to:

S. Con. Res. 60

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the text of the bill (S. 508) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes, the Secretary of the Senate is authorized and directed in the enrollment of such bill to make the following correction: in section 1219(a)(3) of title 5, United States Code as added by section 3(a) of the bill, strike out "subsection (f)" and insert in lieu thereof "subsection (e)".

SENATE RESOLUTION 491—RELATIVE TO ESTABLISHMENT OF A DIALOG ON INTEGRATION OF THE EUROPEAN COMMUNITIES

Mr. HATFIELD (for Mr. Roth, for himself and Mr. Byrd) submitted the following resolution which was considered and agreed to:

S. Res. 491

Whereas the United States has a significant stake in trade and investment in the European Communities;

Whereas in 1987, our total bilateral trade with the European Communities was $145,000,000,000 and United States exports to the European Communities amounted to over $60,000,000,000 more than the United States sold to Canada and more than twice as much as the United States sold to Japan;

Whereas the European Communities are the leading purchasers of United States farm products and an important market for United States services;

Whereas direct investments of the United States in the European Communities amounts to $122,000,000,000;

Whereas the European Communities are in the process of implementing ambitious plans for integration of their internal markets which, when implemented, would create a single market of 320,000,000 people with a gross domestic product roughly equivalent to that of the United States;

Whereas the integrated market of the European Communities could create substantial new opportunities for United States exports and for United States subsidiaries in Europe by creating new jobs and more wealth in Europe and increasing European purchasing power, resulting in more sales by United States exporters and more jobs for Americans;

Whereas costs of doing business in Europe would be significantly reduced as physical and technical barriers to trade are eliminated or harmonized when this integration occurs;

Whereas this integration also poses risks to United States trade and investment if, instead of creating new opportunities, this integration deteriorates into a new form of protectionism, what some have referred to as "fortress Europe";

Whereas to help prevent such a deterioration, it is critically important that the next Administration encourage an open discussion between leaders in the United States and Europe of the plans of the European Communities for integration;

Whereas full and timely transparency concerning plans of the European Communities on integration is essential for maintaining mutually supportive trade and investment relations;

Whereas the 1990's are likely to be not only a very important, but also potentially a very stressful, period for United States-European Communities relations;

Whereas the uncertainties of the integration of the European Communities may add to the challenges posed in the military area, as we seek to promote more burden-sharing within the North Atlantic Treaty Organization;

Whereas our clear national interest is to meet these new challenges constructively, anticipating problems and seeking to resolve them in a timely manner, so that our alliance remains strong; and

Whereas an active bicontinental dialogue on the implications of the integration of the European Communities for the United States will help assure that integration is mutually beneficial to the United States and Europe and will help us to maintain strong and positive bilateral relations in the 1990's and beyond: Now, therefore, be it

Resolved, That the next Administration should establish a bicontinental dialogue that includes representatives of the Administration, Congress, the private sector, and their counterparts in the European Communities to discuss the implications of the integration of the European Communities for United States trade and investment. In this dialogue, the United States should seek to obtain—

(1) assurances that the European Communities will keep their commitments to market access for United States products whether civilian or military, agricultural, or industrial;

(2) assurances that the integration of the European Communities is consistent with our efforts to strengthen multilateral trade rules in the Uruguay Round of trade negotiations, particularly in the areas of trade in services, investment, and protection of intellectual property rights; and

(3) assurances that United States companies with subsidiaries in Europe have the same status as firms of the European Communities under any new directives of the European Communities and that new investment by United States firms in the European Communities can take place on a nondiscriminatory basis.

SENATE RESOLUTION 492—EXPRESSING CONCERN ABOUT THE SOVIET BLOC GOVERNMENTS

Mr. SYMMS submitted the following resolution; which was ordered held at the desk until the close of business on October 11, 1988, by unanimous consent:

S. Res. 492

Resolved, That it is the sense of the Senate that the President of the United States should instruct the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Secretary of Commerce to consult immediately with allied governments on the impact on Western security of various types of private and public sector credit flows and debt reschedulings to the Soviet Union, Warsaw Pact countries, Cuba, Vietnam, Libya, and Nicaragua, and to call for a multilateral voluntary initiative, supervised by the Organization for Economic Cooperation and Development, to end untied, general purpose lending to these countries for reasons both of national security and prudent commercial banking.

AMENDMENTS SUBMITTED

PARENTAL AND EMERGENCY MEDICAL LEAVE

COCHRAN AMENDMENTS NOS. 3514 THROUGH 3548

(Ordered to lie on the table.)

Mr. COCHRAN submitted 35 amendments intended to be proposed by him to the bill (S. 2488) to grant employees parental and temporary medical leave under certain circumstances, and for other purposes; as follows:

Amendment No. 3514

At the end add the following new subsection:

(c) Denial of Position Restoration or Health Benefits.—Nothing in this Act shall be construed to require an employer to restore an employee to a position under subsection (a) or to maintain coverage under any group health plan under subsection (b) if the employee—

(1) uses the leave for a purpose other than the purpose stated to the employer at the time the leave commenced; or

(2) without prior approval of the employer, uses the leave time to earn income from sources other the employer.

Amendment No. 3515

At the end add the following new subsection:

(f) Fraudulent Medical Certifications.—

(1) In general.—Any health care provider found to have provided a false, unverifiable or incorrect certificate for leave under this section, shall be liable for actual and punitive damages not to exceed $100,000 or 2 years imprisonment.

(2) Employer cause of action.—An employer that has been directly affected by the provision of a false, unverifiable or incorrect certificate shall have a right of action against any health care provider who has participated in the provision of such certificate.

Amendment No. 3516

At the end add the following new paragraph:

(6) Continuation coverage under group health plans.—Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) shall not apply with respect to an employee if, at the conclusion of leave taken under section 103 or 104, the employee rejects an employer's offer of restoration to position made under this subsection.

Amendment No. 3517

At the end add; section 105(d)(2) is inoperative.

Amendment No. 3518

At the end add the following new subsection:

(f) Proof of Custody.—An employer may require that an employee provide the employer with proof that the employee has legal custody of a stepchild prior to requesting parental leave to care for such stepchild.

Amendment No. 3519

At the end insert the following new paragraph:

(3) Refusals.—An employer may deny leave to any employee who refuses to obtain a second medical opinion as required by the employer.

Amendment No. 3520

At the end add the following: section 134 is inoperative.

Amendment No. 3521

At the end add the following new subparagraph:

Inclusion.—The term "employee" includes any employee of Congress.

In General.—With respect to any employer, including Congress, the functions assigned to the Secretary of Labor under this title shall be exercised by the Comptroller General of the United States.

Definition of Functions.—As used in subsection (a), the term "functions" means powers, duties, obligations, authorities, responsibilities, rights, privileges, or activities.

Amendment No. 3522

At the end add the following new subsection:

Exemption for Cafeteria-Style Plans.—If an employer provides a cafeteria-style insurance benefit plan that includes the provision of parental leave, the employer shall be exempt from the provisons of this title.

Amendment No. 3523

At the end insert the following new subsection:

(g) Effect of Leave Taken by Foster Parents.—An employer may deny parental leave under this section to an employee for the care of a newly adopted child if such employee previously was granted parental leave to care for such child while such child was in the foster care of such employee.

Amendment No. 3524

At the end add the following new subsection:

(g) Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed 4 weeks.

(e) Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed 4 weeks.

Amendment No. 3525

At the end add the following new subsection:

Limitation on Total Number of Employees Taking Leave.—An employer may deny leave to an employee under this section if more than 5 percent of the total workforce of the employer is absent on leave taken under this title.

(e) Limitation on Total Number of Employees Taking Leave.—An employer may deny leave to an employee under this section if more than 5 percent of the total workforce of the employer is absent on leave taken under title.

Amendment No. 3526

At the end add the following new subsection:

Exemption for Flexitime or Flexible Hour Plans.—If an employer provides flexitime or flexible hour plans, the employer shall be exempt from the provisions of this title.

Amendment No. 3527

At the end add the following new subsection:

(g) Able-Bodied Spouse at Home.—During any period in which an employee's able-bodied spouse is providing at-home care for a child, such employee shall not be eligible for parental leave under this section.

Amendment No. 3528

At the end add the following new subsection:

Notice and Use of Leave.—

(1) In general.—An employee desiring to take leave under this section shall, where appropriate, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) Failure to provide notice or inappropriate use.—Failure by the employee to provide reasonable notice, or use of the leave period by the employee in a manner not intended under this title, shall result in—

(A) a loss of the employees reinstatement privileges; and

(B) the required reimbursement of the expenses incurred by the employer resulting from the employee's improper activity under this subsection, by the employee.

(e) Notice and Use of Leave.—

(1) In general.—An employee desiring to take leave under this section shall, where appropriate, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) Failure to provide notice or inappropriate use.—Failure by the employee to provide reasonable notice, or use of the leave period by the employee in a manner not intended under this title, shall result in—

(A) a loss of the employees reinstatement privileges; and

(B) the required reimbursement of the expenses incurred by the employer resulting from the employee's improper activity under this subsection, by the employee.

Amendment No. 3529

At the end add the following new subsection:

(g) Other Options.—If an employer provides parental leave and other benefits designed to assist employees with family responsibilities, the employer shall be exempt from the provisions of this title.

Amendment No. 3530

In lieu of the matter proposed to be inserted, insert the following:

SEC. . HOMEWORK REGULATIONS.

This Act, and the amendments made by this Act, shall not become effective until the Secretary of Labor, using the existing authority of the Secretary under the Fair Labor Standards Act of 1938, promulgates regulations to remove the ban on industrial homework in effect on the date of enactment of this Act.

Amendment No. 3531

At the appropriate place add the following: Notwithstanding anything in this Act to the contrary no employer shall be required to rehire any individual following any medical or parental leave provided by this Act.

Amendment No. 3532

At the end add the following new subsection:

(c) Denial of Position Restoration or Health Benefits.—Nothing in this Act shall be construed to require an employer to restore an employee to a position under subsection (a) or to maintain coverage under any group health plan under subsection (b) if the employee—

(1) uses the leave for a purpose other than the purpose stated to the employer at the time the leave commenced; or

(2) without prior approval of the employer, uses the leave time to earn income from sources other than the employer.

Amendment No. 3533

At the end add the following new paragraph:

(6) Continuation Coverage Under Group Health Plans.—Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) shall not apply with respect to an employee if, at the conclusion of leave taken under section 103 or 104, the employee rejects an employer's offer of restoration to position made under this subsection.

Amendment No. 3534

At the end add the following new subsection:

(f) Fraudulent Medical Certifications.—

(1) In General.—Any health care provider found to have provided a false, unverifiable or incorrect certificate for leave under this section, shall be liable for actual and punitive damages not to exceed $100,000 or 2 years imprisonment.

(2) Employer Cause of Action.—An employer that has been directly affected by the provision of a false, unverifiable or incorrect certificate shall have a right of action against any health care provider who has participated in the provision of such certificate.

Amendment No. 3535

At the end add: section 105(d)(2) is inoperative.

Amendment No. 3536

At the end add the following new subsection:

(g) Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed 4 weeks.

(e) Minimum Period of Leave.—If an employee elects to take leave this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed 4 weeks.

Amendment No. 3537

At the end add the following new subsection:

(f) Proof of Custody.—An employer may require that an employee provide the employer with proof that the employee has legal custody of a stepchild prior to requesting parental leave to care for such stepchild.

Amendment No. 3538

At the end, add the following new subparagraph:

Inclusion.—The term "employee" includes any employee of Congress.

In General.—With respect to any employer, including Congress, the functions assigned to the Secretary of Labor under this title shall be exercised by the Comptroller General of the United States.

Definition of Functions.—As used in subsection (a), the term "functions" means powers, duties, obligations, authorities, responsibilities, rights, privileges, or activities.

Amendment No. 3539

At the end insert the following new paragraph:

(3) Refusals.—An employer may deny leave to any employee who refuses to obtain a medical opinion as required by the employer.

Amendment No. 3540

At the end add the following:
Section 134 is inoperative.

Amendment No. 3541

At the end insert the following new subsection:

(g) Effect of Leave Taken by Foster Parents.—An empoyer may deny parental leave under this section to an employer for the care of a newly adopted child if such employee previously was granted parental leave to care for such child while such child was in the foster care of such employee

Amendment No. 3542

At the end add the following new subsection:

Limitation on Total Number of Employees Taking Leave.—An employer may deny leave to an employee under this section if more than 5 percent of the total workforce of the employer is absent on leave taken under this title.

(e) Limitation on Total Number of Employees Taking Leave.—An employer may deny leave to an employee under this section if more than 5 percent of the total workforce of the employer is absent on leave taken under this title.

Amendment No. 3543

At the end, add the following new subsection:

Notice and Use of Leave.—

(1) In general.—An employee desiring to take leave under this section shall, where appropriate, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) Failure to provide notice or inappropriate use.—Failure by the employee to provide reasonable notice, or use of the leave period by the employee in a manner not intended under this title, shall result in—

(A) a loss of the employees reinstatement privileges; and

(B) the required reimbursement of the expenses incurred by the employer resulting from the employee's improper activity under this subsection, be employee.

(e) Source and Use of Leave.—

(1) In general.—An employee desiring to take leave under this section shall, where appropriate, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) FAILURE TO PROVIDE NOTICE OR INAPPROPRIATE USE.—Failure by the employee to provide reasonable notice, or use of the leave period by the employee in a manner not intended under this title, shall result in—

(A) a loss of the employees reinstatement privileges; and

(B) the required reimbursement of the expenses incurred by the employer resulting from the employee's improper activity under this subsection, by the employee.

AMENDMENT No. 3544

At the end add the following new subsection:

EXEMPTION FOR FLEXITIME OR FLEXIBLE HOUR PLANS.—If an employer provides flexitime or flexible hour plans, the employer shall be exempt from the provisions of this title.

AMENDMENT No. 3545

At the end add the following new subsection:

(g) ABLE-BODIED SPOUSE AT HOME.—During any period in which an employee's able-bodied spouse is providing at-home care for a child, such employee shall not be eligible for parental leave under this section.

AMENDMENT No. 3546

At the appropriate place add the following: Notwithstanding anything in this act to the contrary no employer shall be required to rehire any individual following any medical or parental leave provided by this Act.

AMENDMENT No. 3547

At the end add the following new subsection:

EXEMPTION FOR CAFETERIA-STYLE PLANS.—If an employer provides a cafeteria-style insurance benefit plan that includes the provision of parental leave, the employer shall be exempt from the provisions of this title.

AMENDMENT No. 3548

At the end add the following new subsection:

(g) OTHER OPTIONS.—If an employer provides parental leave and other benefits designed to assist employees with family responsibilities, the employer shall be exempt from the provisions of this title.

ARMSTRONG AMENDMENT NO. 3549

(Ordered to lie on the table.)

Mr. ARMSTRONG submitted an amendment intended to be proposed by him to the bill S. 2488, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

"SEC. . HOMEWORK REGULATIONS.

"This Act, and the amendments made by this Act, shall not become effective until the Secretary of Labor, using the existing authority of the Secretary under the Fair Labor Standards Act of 1938, promulgates regulations to remove the ban on industrial homework in effect on the date of enactment of this Act."

DODD AMENDMENTS NOS. 3550 THROUGH 3576

(Ordered to lie on the table.)

Mr. DODD submitted twenty-seven amendments intended to be proposed by him to the bill S. 2488, supra; as follows:

AMENDMENT No. 3550

Strike all after "(c)" and, insert the following:

"LIABILITY OF EMPLOYEES FOR EMPLOYEE BENEFITS

"(1) IN GENERAL.—If an employee takes leave under section 103 or 104 and fails to return at the end of the leave period provided under such sections, the employee shall be liable to the employer for an amount equal to the value of the employer's share of the health insurance premiums paid on behalf of the employee under section 106 during the period of leave taken by the employee.

"(2) RECOVERY.—An employer may recover the amount of liability imposed on an employee under paragraph (1) by bringing an action against the employee in any Federal or State court of competent jurisdiction.

"(3) EXCEPTION.—No employee shall be liable under paragraph (1) if his or her failure to return is the result of—

"(A) the employee's serious health condition or the serious health condition of the employee's son or daughter, subject to the certification provisions of section 105 and section 106(a)(4); or

"(B) an unforseeable change in circumstances which prevents the employee from returning to work."

At the appropriate place, insert the following new subsection:

"(b)(1) If an employee takes leave under section 6332 or 6333, and fails to return at the end of the leave period provided under such sections, the employee shall be liable to the employer for an amount equal to the value of the employer's share of the health insurance premiums paid on behalf of the employee under section 6337 during the period of leave taken by the employee.

"(2) RECOVERY.—An employer may recover the amount of liability imposed on an employee under paragraph (1) by bringing an action against the employee in any Federal or State court of competent jurisdiction.

"(3) EXCEPTION.—No employee shall be liable under paragraph (1) if his or her failure to return is the result of—

"(A) the employee's serious health condition or the serious health condition of the employee's son or daughter, subject to the certification provisions of section 6334; or

"(B) an unforeseeable change in circumstances which prevents the employee from returning to work."

AMENDMENT No. 3551

At an appropriate place: Strike all of section 517 and substitute the following:

"A. MINIMUM CHILD CARE STANDARDS

"No later than 180 days after enactment of this provision, the Secretary shall issue final regulations that establish minimum child care standards. These standards shall incorporate all applicable Department of Army regulations governing child care centers and family day care homes operated or funded in whole or in part by the Department of Army.

"B. COMPLIANCE WITH STANDARDS

"(1) TIME FOR COMPLIANCE WITH STANDARDS.—Not later than the end of the 4-year period referred to in section 510, States shall comply with the standards established under this section.

"(2) EXCEPTION.—At the expiration of the 4-year period referred to in paragraph (1) the chief executive officer, in consultation with the State advisory committee, may submit a request to the Secretary for a 1 year variance from the requirements of one or more particular standards.

"(3) REQUIREMENTS.—A request for a variance under this subsection shall include—

"(a) a statement by the chief executive officer of the State of any steps taken to implement the relevant standards in the State within the 4-year period;

"(b) the specific reasons for the submission of the variance request; and

"(c) a detailed plan that outlines the additional procedures and resources to be used to come into compliance with the standards at the end of the variance period.

"(4) PERIOD OF VARIANCE.—A variance granted by the Secretary shall be for a 1-year period and may be renewed at the discretion of the Secretary for an additional 1-year period if requested by the State.

"C. MODEL RESOURCE AND REFERRAL REQUIREMENTS

"No later than 180 days after enactment, the Secretary shall develop and make available to lead agencies, for distribution to resource and referral agencies in the State, model requirements for resource and referral agencies. The Secretary shall develop such model requirements in consultation with groups that represent resource and referral agencies and organizations that provide such services or have developed models for such services."

AMENDMENT No. 3552

"At the appropriate place insert the following:

"Three years after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Labor and Human Resources and the Committee on Education and Labor a report containing a detailed and objective analysis of the effect of this Act on employers (especially small- and medium-sized businesses), the economy, and employees (in terms of levels and conditions of employment). The Comptroller General shall assess both costs and benefits, including the effect on productivity, competitiveness, unemployment rates and compensation, particularly with respect to so-called 'cafeteria-style' benefit plans.

"Strike Title III.—Commission on Parental and Medical Commission on Parental and Medical Leave."

AMENDMENT No. 3553

"At the appropriate place insert the following:

"Three years after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Labor and Human Resources and the Committee on Education and Labor a report containing a detailed and objective analysis of the effect of this Act on employers (especially small- and medium-sized businesses), the economy, and the employees (in terms of levels and conditions of employment). The Comptroller General shall assess both costs and benefits, including the effect on productivity, competitiveness, unemployment rates and compensation, particularly with respect to so-called "cafeteria-style" benefit plans."

AMENDMENT No. 3554

Strike all after the first word and insert the following:

At the end of section 103, add the following new subsection:

(g) Exemption for Cafeteria-Style Plans.—With equivalent parental and medical leave provisions.

(1) In general.—If an employer provides a cafeteria-style insurance benefit plan that includes the provision of parental leave and medical leave benefits equal to or greater than the benefits provided under this Act, the employer shall be exempt from the provisions of this title, subject to the provisions of paragraph (2).

(2) Certification of benefit equivalency.—In order to qualify for the exemption permitted under paragraph (1), an employer must receive prior written certification from the Secretary of Labor that the parental and medical leave benefits provided under the employer's cafeteria-style insurance benfit plan have a monetary value that is equal to or greater than the monetary value of each of the other benefit options included in such plan.

Amendment No. 3555

Strike all after the word "SEC." and insert the following:

"SEC. . CREDIT FOR EMPLOYERS PROVIDING QUALIFIED PARENTAL LEAVE.

"The Commission on Parental and Medical Leave shall include in its comprehensive study an examination of the effect of a tax credit for employers that offer paid leave upon the birth of a son or daughter of the employee or as the result of the placement for adoption of a son or daughter with the employee.

"The study shall cover the impact of the tax credit on tax revenues, the likelihood that the tax credit will increase the availability of paid parental leave, the relationship between the tax credit and state parental leave statutes and regulations, and the impact of the credit on low income working families.

"One of the tax credit options studied shall be a parental leave credit for the taxable year equal to 25 percent of 50 percent of the wages and other compensation paid to an employee by an employer while on parental leave for a maximum of six calendar workweeks, not to exceed a total of $288 per employee, for such taxable year."

Amendment No. 3556

Strike all after the first word and insert the following:

At the end of section 106, add the following new subsection:

(c) Exemption Concerning Certain Highly Compensated Employees.—(1) An employer may deny restoration under this subsection to any eligible employee described in paragraph (2) if—

(A) such denial is necessary to prevent substantial and grievous economic injury to the employer's operations,

(B) the employer notifies the employee of its intent to deny restoration on such basis at the time the employer determines that such injury would occur, and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) An eligible employee described in this paragraph is a salaried eligible employee who is among the—

(A) highest paid 10 percent of employees, or

(B) 5 highest paid employees,

whichever is greater, of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

Amendment No. 3557

Strike all after the first word and insert the following:

At the end of section 103, add the following new subsection:

(g) Limitation on Total Number of Employees Taking Leave.—

(1) In general.—Subject to paragraph (2), An employer may deny leave to an employee under this section if more than 10 percent of the total workforce of the employer is absent on leave taken under this title without replacement, and if such leave would disrupt unduly the operations of the employer.

(2) No denial of leave.—No employee may be denied leave under paragraph (1) if such denial would cause undo hardship to the employee or the employee's family.

At the end of section 104, add the following new subsection:

(e) Limitation on Total Number of Employees Taking Leave. (1) In general.—Subject to paragraph (2), an employer may deny leave to an employee under this section if more than 10 percent of the total workforce of the employer is absent on leave taken under this title without replacement, and if such leave would disrupt unduly the operations of the employer.

(2) No denial of leave.—No employee may be denied leave under paragraph (1) if such denial would cause undo hardship to the employee of the employee's family.

Amendment No. 3558

Strike all after the first word and insert the following:

After section 103, add the following new subsection:

(g) "Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt unduly the operations of the employer. Such minimum period shall not exceed one (1) week.

After section 104, insert the following new subsection:

(e) "Minimum Period of Leave.—If an employee elects to take leave under this section the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt the work schedule and operations of the employer. Such minimum period shall not exceed one (1) week.

Amendment No. 3559

Strike all after the first word and insert the following:

After section 103, add the following new subsection:

(g) Minimum Period of Leave.—If an employee elects to take leave under paragraphs (a)(1)(A) or (a)(1)(B) of this section, the employer may require that the employee continue such leave for a specified minimum period so as not to disrupt unduly the operations of the employer. Such minimum period shall not exceed 1 week.

Amendment No. 3560

Strike all after "Sec." and insert the following:

113. NATIONAL SECURITY EXEMPTION.

Nothing in this Act shall be construed to require an employer to grant leave to an employee under section 103 or 104 if—

(1) the employee is—

(A) an employee of a contractor to the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency; or

(B) an employee of an expert or consultant under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order); and

(2) the Federal Government department, agency, or program described in paragraph (1) certifies that the granting of such leave would pose a risk to the national security of the United States.

Amendment No. 3561

At the appropriate place insert the following new section:

Strike all after the word "SEC." and insert in lieu thereof the following:

FINANCIAL IMPACT STATEMENT.

None of the Provisions of this Act shall become effective unless:

(a) The Committee on Labor and Human Resources requests that, immediately following the enactment of this Act, the General Accounting Office prepare a financial impact statement, as described in subsection (b) below.

(b) The financial impact statement required by subsection (a) of this section shall state the extent to which enactment of this bill would result in increased costs to the private sector and State and local governments and shall include, at a minimum, a detailed assessment of the annual impact of the bill (projected annually over a five-year period from its effective date and expressed in monetary terms where appropriate) on—

(1) costs to consumers and business;

(2) national employment;

(3) the ability of United States industries to compete internationally;

(4) State and local governments, fiscally and otherwise, and;

(5) outlays by the Federal Government, including indirect costs it will incur as an employer, as compared to outlays for the same activity in the current fiscal year (as reported by the Congressional Budget Office): *Provided*, That the financial impact statement may consist of a brief summary assessment in lieu of the detailed assessment set forth above if preliminary analysis indicates that the aggregate effect on each of categories (1)-(4) above is less than one hundred million dollars.

Amendment No. 3562

Strike all after the first word and insert in lieu thereof the following:

At an appropriate place insert the following:

SEC. . ADMINISTRATION RESPECTING CERTAIN EDUCATIONAL EMPLOYEES.

(A) Special Rule.—In the case of any employee employed in an instructional capacity by a local educational agency (as defined in section 1471(12)) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)), if such employee intends to return from a period of leave within 28 calendar days prior to the conclusion of an academic term—

(1)(A) under section 103(a)(1)(A) or (B); or

(B) under section 103(a)(1)(C) or 104 and the necessity for such period of leave is forseeable based on planned medical treatment or supervision; and

(2) the return from leave may be scheduled so as not to be within 28 calendar days

prior to the conclusion of the relevant academic term;

the educational agency and the employee (or the employee's representative under the terms of a collective bargaining agreement) may mutually agree on the extension of the period of leave of the employee under any such section until the commencement of the succeeding relevant academic term and on the applicable terms and conditions of such extended leave.

(b) BENEFITS.—The protections provided in section 105 shall continue to apply in the case of any employee covered under an agreement described in subsection (a).

AMENDMENT No. 3563

Strike all after the word "SEC." and insert thereof the following:

ADMINISTERING RESPECTING CERTAIN EDUCATIONAL EMPLOYEES.

Notwithstanding sections 103(a) and 104(a), the following shall apply:

(A) SPECIAL RULE.—In the case of any empoloyee employed in an instructional capacity by a local educational agency (as defined in section 1471(12)) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)), if such employee intends to return from a period of leave within 29 calendar days prior to the conclusion of an academic term—

(1)(A) under section 103(a)(1) (A) or (B); or

(B) under section 103(a)(1)(c) or 104 and the necessity for such period of leave is foreseeable based on planned medical treatment or supervision; and

(2) the return from leave may be scheduled so as not to be within 228 calendar days prior to the conclusion of the relevant academic term;

the educational agency and the employee (or the employee's representative under the terms of a collective bargaining agreement) may mutually agree on the extension of the period of leave of the employee under any such section until the commencement of the succeeding relevant academic term and on the applicable terms and conditions of such extended leave.

(b) BENEFITS.—The protections provided in section 105 shall continue to apply in the case of any employee covered under an agreement described in subsection (a).

AMENDMENT No. 3564

Strike all after the first word and insert in lieu thereof the following:

SEC. . ADMINISTRATION RESPECTING CERTAIN EDUCATIONAL EMPLOYERS.

Notwithstanding sections 103(a) and 104(a), the following shall apply:

(A) SPECIAL RULE.—In the case of any employee employed in an instructional capacity by a local educational agency (as defined in section 1471(12)) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)), if such employee intends to return from a period of leave within 28 calendar days prior to the conclusion of an academic term—

(1)(A) under section 103(1) (A) or (B); or

(B) under section 103(a)(1)(C) or 104 and the necessity for such period of leave is foreseeable based on planned medical treatment or supervision; and

(2) the return from leave may be scheduled so as not to be within 28 calendar days prior to the conclusion of the relevant academic term;

the educational agency and the employee (or the employee's representative under the terms of a collective bargaining agreement) may mutually agree on the extension of the period of leave of the employee under any such section until the commencement of the succeeding relevant academic term and on the applicable terms and conditions of such extended leave.

(b) BENEFITS.—The protections provided in section 105 shall continue to apply in the case of any employee covered under an agreement described in subsection (a).

AMENDMENT No. 3564

Strike all after the first word and insert in lieu thereof the following:

SEC. . ADMINISTRATION RESPECTING CERTAIN EDUCATIONAL EMPLOYEES.

Notwithstanding sections 103(a) and 104(a), the following shall apply:

(A) SPECIAL RULE.—In the case of any employee employed in an instructional capacity by a local educational agency (as defined in section 1471(12)) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)), if such employee intends to return from a period of leave within 28 calendar days prior to the conclusion of an academic term—

(1)(A) under section 103(a)(1) (A) or (B); or

(B) under section 103(a)(1)(C) or 104 and the necessity for such period of leave is forseeable based on planned medical treatment or supervision; and

(2) the return from leave may be scheduled so as not to be within 28 calendar days prior to the conclusion of the relevant academic term;

the educational agency and the employee (or the employee's representative under the terms of a collective bargaining agreement) may mutually agree on the extension of the period of leave of the employee under any such section until the commencement of the succeeding relevant academic term and on the applicable terms and conditions of such extended leave.

(b) BENEFITS.—The protections provided in section 105 shall continue to apply in the case of any employee covered under an agreement described in subsection (a).

AMENDMENT No. 3565

Strike all after the first word and insert the following: "section 103(e)(2)(B), strike out the period and insert in lieu thereof a comma and the following: "and failure of the employee to provide such notice may make such employee ineligible for reinstatement to the prior position of such employee.

In section 104(d)(1)(B), strike out the period and insert in lieu thereof a comma and the following: "and failure of the employee to provide such notice may make such employee ineligible for reinstatement to the prior position of such employee."

AMENDMENT No. 3566

Strike all after the first word and insert: "the end of section 103, add the following new subsection:

(g) NOTICE AND USE OF LEAVE.—

(1) IN GENERAL.—In any case in which the necessity for leave under this section is forseeable, the employee shall, in a manner which is reasonable and practicable, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) Failure to provide notice or inappropriate use.—Failure by the employee to provide reasonable notice in the circumstances described in paragraph (1), or use of the leave period by the employee in a manner not provided for under this title, may result in loss of the employee's reinstatement privileges.

At the end of section 104, add the following new subsection:

(e) NOTICE AND USE OF LEAVE.—

(1) IN GENERAL.—In any case in which the necessity for leave under this section is forseeable, the employee shall, in a manner which is reasonable and practicable, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) FAILURE TO PROVIDE NOTICE OR INAPPROPRIATE USE.—Failure by the employee to provide reasonable notice in the circumstances described in paragraph (1), or use of the leave period by the employee in a manner not provided for under this title, may result in loss of the employee's reinstatement privileges.

AMENDMENT No. 3567

Strike all after the first word and insert: the end of section 103, add the following new subsection:

(g) NOTICE AND USE OF LEAVE.—

(1) IN GENERAL.—In any case in which the necessity for leave under this section is foreseeable, the employee shall, in a manner which is reasonable and practicable, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) FAILURE TO PROVIDE NOTICE OR INAPPROPRIATE USE.—Failure by the employee to provide reasonable notice in the circumstances described in paragraph (1), or use of the leave period by the employee in a manner not provided for under this title, may result in—

(A) a loss of the employee's reinstatement privileges; and

(B) the employee's reimbursement to the employer of the employer's share of the employee's health insurance premiums as provided under section 106 and as paid during the period of the employee's improper activity under this subsection.

At the end of section 104, add the following new subsection:

(e) NOTICE AND USE OF LEAVE.—

(1) IN GENERAL.—In any case in which the necessity for leave under this section is foreseeable, the employee shall, in a manner which is reasonable and practicable, provide the employer with reasonable notice of such leave and shall make use of such leave in the manner provided for in this title.

(2) FAILURE TO PROVIDE NOTICE OR INAPPROPRIATE USE.—Failure by the employee to provide reasonable notice in the circumstances described in paragraph (1), or use of the leave period by the employee in a manner not provided for under this title, may result in—

(A) a loss of the employee's reinstatement privileges; and

(B) the employee's reimbursement to the employer of the employer's share of the employee's health insurance premiums as provided under section 106 and as paid during the period of the employee's improper activity under this subsection.

AMENDMENT No. 3568

Strike all after the first word and insert the following:

"Notwithstanding any other provision of this Act, whenever the phrase "prior notice" appears, it shall be deemed to mean that when reasonable and practicable, the employee shall give written notice within 15 calendar days before taking foreseeable leave."

Amendment No. 3569

Strike all after the first word and insert the following:

At the appropriate place, add the following:

"Notwithstanding any other provision of this Act, whenever the phrase 'prior notice' appears, it shall be deemed to mean that when reasonable and practicable, the employee shall give written notice before taking foreseeable leave."

Amendment No. 3570

Strike all after the first word and insert the following:

At the end of section 105, add the following new subsection:

(f) Proof of Custody.—An employer may require that an employee provide the employer with proof that the employee or his or her spouse has legal custody of a stepchild prior to requesting parental leave to care for such stepchild.

Amendment No. 3571

At an appropriate place, insert the following:

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—

(1) Entitlement to leave.—Any employee who, as the result of a serious health condition, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave, subject to section 105.

(2) Period of entitlement.—The entitlement under paragraph (1) shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 10 workweeks during any 24-month period.

(3) Intermittent leave.—Leave taken under this subsection may be taken intermittently when medically necessary, subject to subsection (d).

(b) Unpaid Leave Permitted.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) Relationship to Paid Leave.—

(1) In general.—If an employer provides paid temporary medical leave or paid sick leave for fewer than 10 weeks, the additional weeks of leave added to attain the 10-week total may be unpaid.

(2) Substitution of paid leave.—An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 10-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—

(1) Duties of employee.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall—

(A) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(B) provide the employer with prior notice of the treatment in a manner which is reasonable and practicable.

(2) Regulations.—The Secretary shall promulgate regulations under section 108(a) that define the term "reasonable and practicable" for purposes of paragraph (1).

SEC. 104A. CAP ON TOTAL LEAVE.

No employer shall be required to provide to any employee more than 15 weeks of parental or medical leave under this title per year, and such 15-week period shall include any periods in which paid leave is substituted for leave under this title under sections 103(d)(2) or 104(c)(2).

SEC. 105. CERTIFICATION.

(a) In General.—An employer may require that a claim for parental leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by the health care provider of the son, daughter, or employee, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) Sufficient Certification.—The certification shall be considered sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the provider regarding the condition; and

(4)(A) for purposes of leave under section 104, a statement that the employee is unable to perform the functions of the employee's position and an estimate of the amount of time that the employee will be unable to perform such functions; and

(B) for purposes of leave under section 103(a)(1)(C), a statement that the employee is needed to care for the son or daughter and an estimate of the amount of time that the employee is needed to care for the son or daughter.

(c) Second Opinion.—

(1) In general.—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning the information certified under subsection (b).

(2) Limitation.—Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employer.

(d) Resolution of Conflicting Opinions.—

(1) In general.—In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) Finality.—The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent Recertification.—The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

Amendment No. 3572

At an appropriate place, insert the following:

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—

(1) Entitlement to leave.—Any employee who, as the result of a serious health condition, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave, subject to section 105.

(2) Period of entitlement.—The entitlement under paragraph (1) shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 10 workweeks during any 24-month period.

(3) Intermittent leave.—Leave taken under this subsection may be taken intermittently when medically necessary, subject to subsection (d).

(b) Unpaid Leave Permitted.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) Relationship to Paid Leave.—

(1) In general.—If an employer provides paid temporary medical leave or paid sick leave for fewer than 10 weeks, the additional weeks of leave added to attain the 10-week total may be unpaid.

(2) Substitution of paid leave.—An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 10-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—

(1) Duties of employee.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall—

(A) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(B) provide the employer with prior notice of the treatment in a manner which is reasonable and practicable.

(2) Regulations.—The Secretary shall promulgate regulations under section 108(a) that define the term "reasonable and practicable" for purposes of paragraph (1).

SEC. 104A. CAP ON TOTAL LEAVE.

No employer shall be required to provide to any employee more than 12 weeks of parental or medical leave under this title per year, and such 12-week period shall include any periods in which paid leave is substituted for leave under this title under sections 103(d)(2) or 104(c)(2).

SEC. 105. CERTIFICATION.

(a) In General.—An employer may require that a claim for parental leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by the health care provider of the son, daughter, or employee, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) Sufficient Certification.—The certification shall be considered sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the provider regarding the condition; and

(4)(A) for purposes of leave under section 104, a statement that the employee is unable to perform the functions of the employee's position and an estimate of the amount of time that the employee will be unable to perform such functions; and

(B) for purposes of leave under section 103(a)(1)(C), a statement that the employee is needed to care for the son or daughter and an estimate of the amount of time that the employee is needed to care for the son or daughter.

(c) Second Opinion.—

(1) In general.—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning the information certified under subsection (b).

(2) Limitation.—Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employer.

(d) Resolution of Conflicting Opinions.—

(1) In general.—In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employer may require, at its expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) Finality.—The opinion of the third health care provider concerning the information under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent Recertification.—The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

Amendment No. 3573

At an appropriate place, insert the following:

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—

(1) Entitlement to leave.—Any employee who, as the result of a serious health condition, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave, subject to section 105.

(2) Period of Entitlement.—The entitlement under paragraph (1) shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 10 workweeks during any 24-month period.

(3) Intermittent leave.—Leave taken under this subsection may be taken intermittently when medically necessary, subject to subsection (d).

(b) Unpaid Leave Permitted.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) Relationship to Paid Leave.—

(1) In general.—If any employer provides paid temporary medical leave or paid sick leave for fewer than 10 weeks, the additional weeks of leave added to attain the 10-week total may be unpaid.

(2) Substitution of paid leave.—An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 10-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—

(1) Duties of employee.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall—

(A) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(B) provide the employer with prior notice of the treatment in a manner which is reasonable and practicable.

(2) Regulations.—The Secretary shall promulgate regulations under section 108(a) that define the term "reasonable and practicable" for purposes of paragraph (1).

SEC. 104A. CAP ON TOTAL LEAVE.

No employer shall be required to provide to any employee more than 10 weeks of parental or medical leave under this title per year, and such 10-week period shall include any periods in which paid leave is substituted for leave under this title under sections 103(d)(2) or 104(c)(2).

SEC. 105. CERTIFICATION.

(a) In General.—An employer may require that a claim for parental leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by the health care provider of the son, daughter, or employee, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) Sufficient Certification.—The certification shall be considered sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the provider regarding the condition; and

(4)(A) for purposes of leave under section 104, a statement that the employee is unable to perform the functions of the employee's position and an estimate of the amount of time that the employee will be unable to perform such functions; and

(B) for purposes of leave under section 103(a)(1)(C), a statement that the employee is needed to care for the son or daughter and an estimate of the amount of time that the employee is needed to care for the son or daughter.

(c) Second Opinion.—

(1) In general.—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning the information certified under subsection (b).

(2) Limitation.—Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employer.

(d) Resolution of Conflicting Opinions.—

(1) In general.—In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) Finality.—The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent Recertification.—The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

Amendment No. 3574

At an appropriate place, insert the following:

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—

(1) Entitlement to leave.—Any employee who, as the result of a serious health condition, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave, subject to section 105.

(2) Period of entitlement.—The entitlement under paragraph (1) shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 10 workweeks during any 24-month period.

(3) Intermittent leave.—Leave taken under this subsection may be taken intermittently when medically necessary, subject to subsection (d).

(b) Unpaid Leave Permitted.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) Relationship to Paid Leave.—

(1) In general.—If an employer provides paid temporary medical leave or paid sick leave for fewer than 10 weeks, the additional weeks of leave added to attain the 10-week total may be unpaid.

(2) Substitution of paid leave.—An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 10-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—

(1) Duties of employee.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall—

(A) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(B) provide the employer with prior notice of the treatment in a manner which is reasonable and practicable.

(2) Regulations.—The Secretary shall promulgate regulations under section 108(a) that define the term "reasonable and practicable" for purposes of paragraph (1).

SEC. 104A. CAP ON TOTAL LEAVE.

No employer shall be required to provide to any employee more than 15 weeks of parental or medical leave under this title per year, and such 15-week period shall include any periods in which paid leave is substituted for leave under this title under sections 103(d)(2) or 104(c)(2).

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—

(1) Entitlement to leave.—Any employee who, as the result of a serious health condi-

tion, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave, subject to section 105.

(2) Period of entitlement.—The entitlement under paragraph (1) shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 10 workweeks during any 24-month period.

(3) Intermittent leave.—Leave taken under this subsection may be taken intermittently when medically necessary, subject to subsection (d).

(b) Unpaid Leave Permitted.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) Relationship to Paid Leave.—

(1) In general.—If an employer provides paid temporary medical leave or paid sick leave for fewer than 10 weeks, the additional weeks of leave added to attain the 10-week total may be unpaid.

(2) Substitution of paid leave.—An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 10-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—

(1) Duties of employee.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall—

(A) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(B) provide the employer with prior notice of the treatment in a manner which is reasonable and practicable.

(2) Regulations.—The Secretary shall promulgate regulations under section 108(a) that define the term "reasonable and practicable" for purposes of paragraph (1).

SEC. 104A. CAP ON TOTAL LEAVE.

No employer shall be required to provide to any employee more than 12 weeks of parental or medical leave under this title per year, and such 12-week period shall include any periods in which paid leave is substituted for leave under this title under sections 103(d)(2) or 104(c)(2).

Amendment No. 3576

At an appropriate place insert the following:

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—

(1) Entitlement to leave.—Any employee who, as the result of a serious health condition, becomes unable to perform the functions of the position of the employee, shall be entitled to temporary medical leave, subject to section 105.

(2) Period of entitlement.—The entitlement under paragraph (1) shall continue for as long as the employee is unable to perform the functions, except that the leave shall not exceed 10 workweeks during any 24-month period.

(3) Intermittent leave.—Leave taken under this subsection may be taken intermittently when medically necessary, subject to subsection (d).

(b) Unpaid Leave Permitted.—Except as provided in subsection (c), leave granted under subsection (a) may consist of unpaid leave.

(c) Relationship To Paid Leave.—

(1) In general.—If an employer provides paid temporary medical leave or paid sick leave for fewer than 10 weeks, the additional weeks of leave added to attain the 10-week total may be unpaid.

(2) Substitution of paid leave.—An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 10-week period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—

(1) Duties of employee.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment, the employee shall—

(A) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(B) provide the employer with prior notice of the treatment in a manner which is reasonable and practicable.

(2) Regulations.—The Secretary shall promulgate regulations under section 108(a) that define the term "reasonable and practicable" for purposes of paragraph (1).

SEC. 104A. CAP ON TOTAL LEAVE.

No employer shall be required to provide to any employee more than 10 weeks of parental or medical leave under this title per year, and such 10-week period shall include any periods in which paid leave is substituted for leave under this title under sections 103(d)(2) or 104(c)(2).

KENNEDY AMENDMENT NO. 3577

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 2488, supra; as follows:

In title V (relating to child care provisions) strike out section 503(16) through section 511(b)(16), and insert in lieu thereof the following:

(16) Lead agency.—The term "lead agency" means the agency designated under section 506(a).

(17) Local advisory council.—The term "local advisory council" means a local advisory council established under section 6(c)(7).

(18) Local educational agency.—The term "local educational agency" has the meaning given that term in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(a)(10)).

(19) Parent.—The term "parent" includes a legal guardian or other person standing in loco parentis.

(20) School-age child care services.—The term "school-age child care services" means child care services that are—

"(A) provided during such times of the school day when regular instructional services are not in session; and

"(B) not intended as an extension of or replacement for the regular academic program, but are intended to provide an environment which enhances the social, emotional, and recreational development of children of school age;

(21) Secondary school.—The term "secondary school" means a day or residential school which provides secondary education, as determined under State law.

(22) Secretary.—The term "Secretary" means the Secretary of Health and Human Services unless the context specifies otherwise.

(23) School facilities.—The term "school facilities" means classrooms and related facilities used to provide education.

(24) Sliding fee scale.—The term "sliding fee scale" means a system of cost sharing between the State and a family based on income and size of the family with the very low-income families having to pay no cost.

(25) State.—The term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.

(26) Unit of general purpose local government.—The term "unit of general purpose local government" means any city, county, town, township, parish, village, a combination of such general purpose political subdivisions including those in two or more States, or other general purpose political subdivisions of a State.

(27) Tribal organization.—The term "tribal organization" has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

(28) Tribally controlled community college.—The term "tribally controlled community college" has the meaning given it in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—To carry out this subtitle, other than section 521, there are authorized to be appropriated $2,500,000,000 for the fiscal year 1990 and such sums as may be necessary in each of the fiscal years 1991 through 1994.

(b) Child Care Liability Risk Retention Group.—

(1) In general.—To carry out section 521, there are authorized to be appropriated $100,000,000 for fiscal year 1990.

(2) Amounts to remain available.—The amounts appropriated pursuant to paragraph (1) shall remain available for assistance to States for fiscal years 1990, 1991, and 1992 without limitation.

SEC. 505. AMOUNTS RESERVED; ALLOTMENTS.

(a) Amounts Reserved.—

(1) Territories and possessions.—The Secretary shall reserve not to exceed one-half of 1 percent of the amount appropriated under section 504(a) in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau, to be allotted in accordance with their respective needs.

(2) Indians.—The Secretary shall reserve an amount, not less than 1.5 percent and not more than 3 percent of the amount appropriated under section 504(a) in each fiscal year, to carry out subsection (c) regarding Indian children.

(b) State Allotment.—

(1) General rule.—From the remainder of the sums appropriated under section 504(a) for each fiscal year, the Secretary shall allot to each State (excluding jurisdictions re-

ferred to in subsection (a)(1)) an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage bears to the sum of the corresponding products for all the States.

(2) Young child factor.—The term "young child factor" means the ratio of the number of children in the State who are less than 5 years of age to the number of children in all the States who are less than 5 years of age.

(3) School lunch factor.—The term "school lunch factor" means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of children in all the States who are receiving free or reduced price lunches under such program.

(4) Allotment percentage.—

(A) In general.—The allotment percentage for a State is determined by dividing—

(i) the per capita income of all individuals in the United States; by

(ii) the per capita income of all individuals in the State.

(B) Limitations.—If a sum determined under subparagraph (A)—

(i) exceeds 1.2, then the allotment percentage of that State shall be considered to be 1.2; and

(ii) is less that 0.8, then the allotment percentage of the State shall be considered to be 0.8.

(C) Per capita income.—For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for the Benefit of Indian Children.—

(1) Tribal organizations.—From the funds reserved under subsection (a)(2), the Secretary may, upon the application of a Indian tribe or tribal organization enter into a contract with, or make a grant to such Indian tribe or tribal organization for a period of 3 years, subject to satisfactory performance, to plan and carry out programs and activities that are consistent with this subtitle. Such contract or grant shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with sections 4, 5, and 6 of the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 655-657), that are relevant to such programs and activities.

(2) Indian reservations.—In the case of an Indian tribe in a State other than the States of Oklahoma, Alaska, and California, such programs and activities shall be carried out on the Indian reservation for the benefit of Indian children.

(3) Standards.—

(A) In general.—Subject to subparagraph (B), the Secretary shall establish, through the application process, standards applicable to child care services provided under such programs and activities. For purposes of establishing such standards, the Secretary shall take into consideration—

(i) the codes, regulations, and cultural factors of the Indian tribe involved, as expressed by such tribe or the tribal organization that represents such tribe; and

(ii) the State licensing and regulatory requirements applicable to child care services provided in the State in which such program and activities are carried out.

(B) Application.—

(i) Rule.—Except as provided in clause (ii), after the Secretary establishes minimum child care standards under section 517(e)(2), such minimum standards shall apply with respect to child care services provided under such programs and activities.

(ii) Waivers and modifications.—The Secretary may waive or modify, for a period not to exceed 4 years beginning on the date such minimum standards are established, any of such minimum standards that would limit the capacity of an Indian tribe or tribal organization to receive funds under this subtitle if the Secretary determines that there is a reasonable expectation that each of such standards requested to be waived will be met by the applicant by the end of the period for which the waiver is requested.

(4) Availability of State child care services.—For the purpose of determining whether to approve an application for a contract or grant under this subsection, the Secretary shall take into consideration the availability of child care services provided in accordance with this subtitle by the State in which the applicant proposes to carry out a program to provide child care services.

(5) Rule of construction.—This subsection shall not be construed—

(A) to limit the eligibility of any individual to participate in any program carried out with assistance received under this subtitle by a State; or

(B) to modify any requirement imposed on a State by any provision of this subtitle.

(6) Coordination.—To the maximum extent practicable, the applicant for a grant or contract under this subsection and the State in which the applicant is located shall coordinate with each other their respective child care programs and activities, including child care programs and activities carried out with assistance received under this subtitle.

(d) Data and Information.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

(e) Reallotments.—

(1) In general.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 507(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations.—

(A) Reduction.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 507(d).

(B) Reallotments.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted.—For purposes of any other section of this subtitle, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

(f) Definition.—For the purposes of this section, the term "State" means any of the several 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 506. LEAD AGENCY.

(a) Designation.—The chief executive officer of a State desiring to participate in the program authorized by this subtitle shall designate, in an application submitted to the Secretary under section 507(a), an appropriate State agency that meets the requirements of subsection (b) to act as the lead agency.

(b) Requirements.—

(1) Administration of funds.—The lead agency shall have the capacity to administer the funds provided under this subtitle to support programs and services authorized under this subtitle and to oversee the plan submitted under section 507(b).

(2) Coordination.—The lead agency shall have the capacity to coordinate the services for which assistance is provided under this subtitle with the services of other State and local agencies involved in providing services to children.

(3) Establishment of policies.—The lead agency shall have the authority to establish policies and procedures for developing and implementing interagency agreements with other agencies of the State to carry out the purposes of this subtitle.

(c) Duties.—The lead agency shall—

(1) assess child care needs and resources in the State, and assess the effectiveness of existing child care services and services for which assistance is provided under this subtitle or under other laws, in meeting such needs;

(2) develop a plan designed to meet the need for child care services in the State for eligible children, including infants, preschool children, and school-age children, giving special attention to meeting the needs for services for low-income children, migrant children, children with a handicapping condition, foster children, children in need of protective services, children of adolescent parents who need child care to remain in school, and children with limited English-language proficiency;

(3) develop, in consultation with the State advisory committee on child care established under section 511, the State plan submitted to the Secretary under section 507(b);

(4) hold hearings, in cooperation with such State advisory committee on child care, annually in each region of the State in order to provide to the public an opportunity to comment on the provision of child care services in the State under the proposed State plan;

(5) assist the chief executive officer in making such periodic reports to the Secretary as the Secretary may by rule require;

(6) coordinate the provision of services under this subtitle with—

(A) other child care programs and services, and with educational programs, for which assistance is provided under any State, local, or other Federal law, including the State Dependent Care Development Grants Act (42 U.S.C. 9871 et seq.); and

(B) other appropriate services, including social, health, mental health, protective, and nutrition services, available to eligible children under other Federal, State, and local programs;

(7) identify resource and referral programs for particular geographical areas in the State that meet the requirements of section 512; and

(8) establish in accordance with subsection (d)(1) several local advisory councils that collectively represent the entire geographical area in the State.

(d) LOCAL ADVISORY COUNCILS.—

(1) APPOINTMENT.—Each local advisory council established under subsection (c)(8) shall be composed of individuals who are collectively representative of the local geographical area for which they are appointed and of the ethnic characteristics of the population of such area. Such council shall be composed of not more than 21 individuals appointed from among all of the following:

(A) Parents of preschool children.

(B) Parents of school-age children.

(C) Individuals who are child care providers.

(D) The heads of Head Start agencies.

(E) The heads of local public agencies that provide social services or human resources.

(F) The heads of local education agencies.

(G) The heads of local public health agencies.

(H) The heads of resource and referral agencies.

(I) Individuals engaged locally in business.

(J) Local representatives of nonprofit private organizations that provide funds for social services or human resources.

(K) Representatives of groups that engage in private activities relating to providing child care services.

(2) DUTIES.—Such council shall—

(A) assess the extent to which there is an unsatisfied need for child care services in the geographical area for which such council is appointed;

(B) submit to the lead agency, not less frequently than biennially, a report identifying the results of the implementation in such area of the State plan included in the application submitted under section 507;

(C) recommend to the lead agency the uses for which assistance received under this Act by the State should be expended in such area, and, with respect to each such use, the amount of such funds that should be so expended;

(D) advise local child care providers regarding the means to collectively obtain training, supplies, and insurance relating to providing child care services; and

(E) otherwise assist the lead agency, and the State advisory committee on child care established under section 511, to carry out their respective duties and functions.

(3) ADMINISTRATIVE SUPPORT.—The lead agency shall provide to such council such funds, and administrative support services (including personnel) directly or by contract, as may be necessary to enable such council to carry out its duties.

(4) CONFLICTS OF INTEREST.—A member of such council may not cast a vote on any matter that—

(A) may result in a financial benefit to such member; or

(B) under Federal, State, or local law would create or appear to create a conflict of interest if such vote were cast by such member.

SEC. 507. APPLICATION AND PLAN.

(a) APPLICATION.—To be eligible to receive assistance under this subtitle, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require by rule.

(b) PLAN.—The application of a State submitted under subsection (a) shall include an assurance that the State will comply with the requirements of this subtitle and a State plan that is designed to be implemented during a 4-year period and that meets the requirements of subsection (c).

(c) REQUIREMENTS OF A PLAN.—

(1) LEAD AGENCY.—The plan shall identify the lead agency designated in accordance with section 506(a).

(2) ADVISORY BODIES.—The plan shall demonstrate that the State will establish in accordance with section 511 a State advisory committee on child care and in accordance with section 506(c)(8) local advisory councils.

(3) POLICIES AND PROCEDURES.—The plan shall set forth policies and procedures designed to ensure all of the following:

(A) That—

(i) all providers of child care services for which assistance is provided under this subtitle comply with all licensing and regulatory requirements (including registration requirements) applicable under State and local law; and

(ii) such requirements are imposed and enforced by the State uniformly on all child care providers that provide child care services under similar child care arrangements.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards or requirements on child care providers who provide services for which assistance is provided under this subtitle and who also receive State funds under any other law to provide child care services under a contract or other arrangement with the State.

(B) That procedures will be established to ensure that child care providers receiving assistance under this subtitle or under other publicly-assisted child care programs comply with the minimum child care standards established under section 517(e)(2) after the expiration of the 4-year period beginning on the date the Secretary establishes such standards, and comply with all applicable State and local licensing and regulatory requirements (including registration requirements).

(C) That the State will not—

(i) reduce the categories of child care providers licensed or regulated by the State on the date of enactment of this subtitle; or

(ii) reduce the level of standards applicable to child care services provided in the State and to the matters specified in sections 513(a) and 517(d), even if such standards exceed the minimum standards established under section 517(e)(2) by the Secretary unless the State, with the concurrence of the State advisory committee established under section 511, requests a waiver of this subparagraph and demonstrates, to the satisfaction of the Secretary, that the proposed reduction is necessary to increase access to and availability of eligible child care providers and will not jeopardize the health and safety of children.

(D) That funds received under this subtitle by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of child care services and related programs in the State, except that States may use existing expenditures in support of child care services to satisfy the State matching requirement under section 516(b) and may not use such expenditures to satisfy the matching requirements of any other Federal program.

(E) That for each fiscal year the State will use an amount not to exceed 8 percent of the amount of funds received under section 505 by the State for such fiscal year to administer the State plan.

(F) That the State will pay funds under this subtitle to eligible child care providers in a timely fashion to ensure the continuity of child care services to eligible children.

(G) That resource and referral agencies will be made available to families in all regions of the State.

(H) That each eligible child care provider who provides services for which assistance is provided under paragraph (4)—

(i) gives priority for provides services to children of families with very low income, taking into account family size;

(ii) after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2), complies with such standards except as provided in clause (iv);

(iii) if such eligible child care provider is regulated by a State educational agency that—

(I) administers any State law applicable to child care services;

(II) develops child care standards that meet or exceed the minimum standards established under section 517(e)(2) and the State licensing or regulatory requirements (including registration requirements); and

(III) enforces the standards described in subclause (II) that are developed by such agency, using policies and practices that meet or exceed the requirements specified in subparagraphs (A) through (K) of paragraph (11);

complies with the standards described in subclause (II) that are developed by such agency; and

(iv) complies with the State plan and the requirements of this subtitle.

(I) That child care services for which assistance is provided under paragraph (4) are available to children with a handicapping condition.

(J) That State regulations will be issued governing the provision of school-age child care services if the State does not already have such regulations.

(K) That child care providers in the State are encouraged to develop personnel policies that include compensated time for staff undergoing training required under this subtitle.

(L) Encourage the payment of adequate salaries and other compensation—

(i) to full and part-time staff of child care providers who provide child care services for which assistance is provided under paragraph (4);

(ii) to the extent practicable, to such staff in other major Federal and State child care programs; and

(iii) to other child care personnel, at the option of the State.

(M) That child care services for which assistance is provided under paragraph (4) are available for an adequate number of hours and days to serve the needs of parents of eligible children, including parents who work nontraditional hours.

(4) CHILD CARE SERVICES.—The plan shall provide that—

(A) subject to subparagraph (B), the State will use at least 70 percent of the amount allotted to the State in any fiscal year to provide child care services that meet the requirements of this subtitle to eligible children in the State on a sliding fee scale basis and using funding methods provided for in section 508(a)(1), with priority being given for services to children of families with very low family incomes, taking into consideration the size of the family; and

(B) the State will use at least 10 percent of the funds reserved for the purposes specified in subparagraph (A) in any fiscal year to provide for the extension of part-day programs as described in section 508(b).

(5) Activities to improve the quality of child care.—The plan shall provide that the State will use not more than 10 percent of the amount allotted to it in any fiscal year to do each of the following:

(A) Provide financial assistance, pursuant to procedures established under the State Dependent Care Development Grants Act (42 U.S.C. 9801 note), to private nonprofit organizations or public organizations (including units of general purpose local government) that meet the requirements of section 512 for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

(B) Improve the monitoring of compliance with, and enforcement of, the licensing and regulatory requirements (including registration requirements) of the State.

(C) Provide training, technical assistance, and scholarship assistance in accordance with the requirements of subsections (b), (c), and (d) of section 513.

(D) Ensure that adequate salaries and other compensation are paid to full- and part-time staff who provide child care services for which assistance is provided under paragraph (4).

(6) Activities to increase the availability of child care.—The plan shall provide that the State will use not more than 12 percent of the amount allotted to it in any fiscal year for any of the following activities:

(A) Making grants or low interest loans to family child care providers and nonprofit child care providers to help such providers pay the cost of—

(i) establishing child care programs; and

(ii) making renovations and improvements in existing facilities to be used to carry out such programs.

(B) Making grants or low-interest loans to child care providers to assist such providers in meeting Federal, State, and local child care standards, giving priority to providers receiving assistance under this subtitle or under other publicly assisted child care programs and which serve children of families that have very low incomes.

(C) Providing assistance for the establishment and operation of after school child care programs.

(D) Making grants or loans to fund the start up costs of employer sponsored child care programs.

(E) Providing assistance for the temporary care of children who are sick and unable to attend child care programs in which such children are enrolled.

(F) Providing assistance for the establishment and operation of child care programs for homeless children.

(G) Providing assistance to link child care programs with programs designed to assist the elderly.

(H)(i) Establishing and administering a revolving loan fund from which any person desiring to make capital improvements to the principal residence of such person (within the meaning of section 1034 of the Internal Revenue Code of 1986) may obtain a loan in order to become a licensed family child care provider, pursuant to State and local law, and to comply with the minimum standards applicable to such providers as established under section 517(e)(2).

(ii) To permit the use of funds provided under this subtitle for the activity described in clause (i), the State shall set forth procedures and guidelines to carry out the purposes of such clause, including procedures—

(I) that provide assurances that only applicants who obtain a license for the operation of a child care facility in accordance with the provisions of State and local law and who will meet the minimum standards applicable to family child care services established under section 517(e)(2), benefit from loans made available pursuant to the provisions of clause (i);

(II) to assure that the revolving fund will be administered by the State and will provide loans to qualified applicants, pursuant to the terms and conditions established by such State, in an amount, determined by such State, that is not in excess of $1,500;

(III) to assure that funds used to carry out the purpose of clause (i) are transferred to such fund to provide capital for making loans;

(IV) to assure that interest and principal payments on loans and any other moneys, property, or assets derived from any action concerning such funds are deposited into such fund;

(V) to assure that all loans, expenses, and payments pursuant to the operation of the revolving loan fund are paid from such fund;

(VI) to assure that loans made from such fund are made to qualified applicants to enable such applicants to make capital improvements so that such applicant may obtain a State or local family child care provider license and so that such applicant may meet the minimum standards applicable to such providers established under section 517(e)(2); and

(VII) that specify how such revolving loan fund will continue to be financed in subsequent years, such as through contributions by the State or by some other entity.

(I) Providing assistance for any other activity deemed by the State to be in accordance with the purposes of this paragraph.

(7) Distribution of funds.—The plan shall provide that funds will be distributed—

(A) to a variety of types of child care providers, including center-based child care providers, group home child care providers, and family child care providers; and

(B) equitably among child care providers to provide child care services in rural and urban areas.

(8) Reimbursements.—The plan shall provide that for child care services for which assistance is provided under this subtitle, an eligible child care provider shall have a right to reimbursement at the same rate charged by that provider for comparable services to children of comparable ages and special needs whose parents are not eligible for certificates under this subtitle or for child care assistance under any other Federal or State program.

(9) Priority.—The plan shall provide that priority will be given, in distributing funds in the State, to child care providers that—

(A) in providing child care services assisted by such funds, will give priority to eligible children of families with very low income;

(B) to the maximum extent feasible, provide child care services to a reasonable mix of children, including children from different socioeconomic backgrounds and children with a handicapping condition;

(C) provide opportunities for parent involvement in all aspects of providing such services; and

(D) to the maximum extent feasible, offer family support services.

(10) Sliding fee scale.—The plan shall provide for the establishment of a sliding fee scale that requires cost sharing based on the services provided to and the income of the families (adjusted for family size) of eligible children who receive services for which assistance is provided under this subtitle.

(11) Parental involvement.—The plan shall establish procedures for parental involvement in State and local planning, monitoring, and evaluation of child care programs and services in the State.

(12) Enforcement of licensing and other regulatory requirements (including registration requirements).—The plan shall provide that the State, not later than 4 years after the date of enactment of this subtitle, shall have in effect enforcement policies and practices that will be applicable to all licensed or regulated child care providers (including child care providers required to register) in the State, including policies and practices that—

(A) require personnel who perform inspection functions with respect to licensed or regulated child care services to have or receive training in health and safety, child abuse prevention and detection, program management, and relevant law enforcement;

(B) to the maximum extent feasible, have personnel requirements to ensure that individuals who are hired as licensing inspectors are qualified to inspect and have inspection responsibility exclusively for children's services;

(C) require—

(i) personnel who perform inspection functions with respect to licensed or regulated child care services to make not less than 1 unannounced inspection of each center-based child care provider and each group home child care provider in the State annually; and

(ii) personnel who perform inspection functions with respect to licensed or regulated child care services to make unannounced inspections annually of not less than 20 percent of licensed and regulated family child care providers in the State;

(D) require licensed or regulated child care providers (including registered child care providers) in the State—

(i) to have written policies and program goals and to make a copy of such policies and goals available to parents; and

(ii) to provide parents with unlimited access to their children and to providers caring for their children, during normal hours of operation of such providers and whenever children of such parents are in the care of such providers;

(E) implement a procedure to address complaints that will provide a reasonable opportunity for a parent, or child care provider, that is adversely affected or aggrieved by a decision of the lead agency or any program assisted under this subtitle, to be heard by the State;

(F) prohibit the operator of a child care facility to take any action against an employee of such operator that would adversely affect the employment, or terms or conditions of employment, of such employee because such employee communicates a failure of such operator to comply with any applicable licensing or regulatory requirement;

(G) implement a consumer education program designed to inform parents and the general public about licensing requirements, complaint procedures, and policies and practices required by this paragraph;

(H) require a child care provider to post, on the premises where child care services are provided, the telephone number of the appropriate licensing or regulatory agency that parents may call regarding a failure of such provider to comply with any applicable licensing or regulatory requirement; and

(I) require the State to maintain a record of parental complaints and to make information regarding substantiated parental complaints available to the public on request.

(13) Data collection.—The plan shall provide for the establishment of procedures for data collection by the State designed to show—

(A) by race, sex, ethnic origin, handicapping condition, and family income, how the child care needs of families in the State are being fulfilled, including information on—

(i) the number of children being assisted with funds provided under this subtitle, and under other State and Federal child care and preschool programs;

(ii) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

(iii) the regional cost of child care; and

(iv) such other information as the Secretary considers necessary to establish how funds provided under this subtitle are being used;

(B) the extent to which the availability of child care has been increased; and

(C) how the purposes of this subtitle and the objectives of the State set forth in the State plan are being met, including efforts to improve the quality, availability, and accessibility of child care;

and shall provide that data collected by the State under this paragraph shall be submitted to the Secretary.

(d) Approval of Application.—The Secretary shall approve an application that satisfies the requirements of this section.

(e) Special Rule.—In carrying out the provisions of this section, the Secretary shall approve any application with respect to the activities described in the plan submitted under paragraph (5) of subsection (c), if the Secretary determines that the State is making reasonable progress in carrying out the activities which are described in subparagraphs (A) and (D) of paragraph (5).

SEC. 508. SPECIAL RULES FOR USE OF STATE ALLOTMENTS.

(a) Funding of Child Care Services.—

(1) In general.—The child care services referred to in section 507(c)(4) that are to be provided out of the allotment to a State, shall be provided—

(A) by contracts with or grants to eligible child care providers who agree to provide such services directly to eligible children;

(B) by grants to units of general purpose local government that agree to enter into contracts with eligible child care providers who agree to provide such services directly to eligible children; or

(C) by distributing child care certificates to parents of eligible children under such terms as the Secretary may prescribe to enable the recipients of such certificates to purchase child care services from eligible child care providers.

(2) Limitation on certificates.—Child care certificates authorized by paragraph (1)(C) may be issued by a State only if a resource and referral program carried out by an organization that meets the requirements of section 512 is available to help parents locate child care services made available by eligible child care providers.

(3) No entitlement to contract or grant.—Nothing in this subtitle shall be construed to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit, or to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subtitle.

(b) Part-day Programs.—

(1) In general.—At least 10 percent of the funds available for activities under section 507(c)(4)(A) shall be used by the State to enable child care providers to extend the hours of operation of the part-day programs described in paragraph (2) to provide full-working-day child care services throughout the year, in order to meet the needs of parents of eligible children.

(2) Eligible programs.—As used in paragraph (1), the term "part-day programs" means—

(A) programs of schools and nonprofit child care providers (including community-based organizations) receiving State or local funds designated for preschool;

(B) programs established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) preschool programs for which assistance is provided under chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 et seq.); and

(D) preschool programs for children with a handicapping condition.

(c) Facilities.—

(1) New facilities.—No financial assistance provided under this subtitle shall be expended for the construction of a new facility.

(2) Existing facilities.—No financial assistance provided under this subtitle shall be expended to renovate or repair any facility unless—

(A) the child care provider that receives such financial assistance agrees—

(i) in the case of a grant, to repay to the Secretary or the State, as the case may be, the amount that bears the same ratio to the amount of such grant as the value of the renovation or repair, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle, bears to the original value of the renovation or repair; and

(ii) in the case of a loan, to repay immediately to the Secretary or the State, as the case may be, the principal amount of such loan outstanding and any interest accrued, as of the date such provider ceases to provide child care services in such facility in accordance with this subtitle;

if such provider does not provide child care services in such facility in accordance with this subtitle throughout the useful life of the renovation or repair; and

(B) if such provider is a sectarian agency or organization, the renovation or repair is necessary to bring such facility into compliance with health and safety requirements imposed by this subtitle.

SEC. 509. PLANNING GRANTS.

(a) In General.—A State desiring to participate in the programs authorized by this subtitle that cannot fully satisfy the requirements of the State plan under section 507(b) without financial assistance may, in the first year that the State participates in the programs, apply to the Secretary for a planning grant.

(b) Authorization.—The Secretary is authorized to make a planning grant to a State described in subsection (a) if the Secretary determines that—

(1) the grant would enable the State to fully satisfy the requirements of a State plan under section 507(b); and

(2) the State will apply, for the remainder of the allotment that the State is entitled to receive for such fiscal year.

(c) Amount of Grant.—A grant made to a State under this section shall not exceed 1 percent of the total allotment that the State would qualify to receive in the fiscal year involved if the State fully satisfied the requirements of section 507.

(d) Limitation on Administrative Costs.—A grant made under this section shall be considered to be expended for administrative costs by the State for purposes of determining the compliance by the State with the limitation on administrative costs imposed by section 507(c)(3)(E).

SEC. 510. CONTINUING ELIGIBILITY OF STATES.

A State shall be ineligible for assistance under this subtitle after the expiration of the 4-year period beginning on the date the Secretary establishes minimum child care standards under section 517(e)(2) unless the State demonstrates to the satisfaction of the Secretary that—

(1) all child care providers required to be licensed and regulated in the State—

(A) are so licensed and regulated; and

(B) are subject to the enforcement provisions referred to in the State plan; and

(2) all such providers who are receiving assistance under this subtitle or under other publicly-assisted child care programs—

(A) satisfy the requirements of subparagraphs (A) and (B) of paragraph (1); and

(B) except as provided in section 517(f), satisfy the minimum child care standards established by the Secretary under section 517(e)(2) of this subtitle.

SEC. 511. STATE ADVISORY COMMITTEE ON CHILD CARE.

(a) Establishment.—The chief executive officer of a State participating in the program authorized by this subtitle shall—

(1) establish a State advisory committee on child care (hereinafter in this section referred to as the "committee") to assist the lead agency in carrying out the responsibilities of the lead agency under this subtitle; and

(2) appoint the members of the committee.

(b) Composition.—The State committee shall be composed of not fewer than 21 and not more than 30 members who shall include—

(1) at least 1 representative of the lead agency designated under section 506(a);

(2) 1 representative of each of—

(A) the State departments of—

(i) human resources or social services;

(ii) education;

(iii) economic development; and

(iv) health; and

(B) other State agencies having responsibility for the regulation, funding, or provision of child care services in the State;

(3) at least 1 representative of providers of different types of child care services, including caregivers and directors;

(4) at least 1 representative of early childhood development experts;

(5) at least 1 representative of school districts and teachers involved in the provision

of child care services and preschool programs;

(6) at least 1 representative of resource and referral programs;

(7) 1 pediatrician;

(8) 1 representative of a citizen group concerned with child care;

(9) at least 1 representative of an organization representing child care employees;

(10) at least 1 representative of the Head Start agencies in the State;

(11) parents of children receiving, or in need of, child care services, including at least 2 parents whose children are receiving or are in need of subsidized child care services;

(12) 1 representative of specialists concerned with children who have a handicapping condition;

(13) 1 representative of individuals engaged in business;

(14) 1 representative of fire marshals and building inspectors;

(15) 1 representative of child protective services;

(16) 1 representative of units of general purpose local government; and

(17) 1 representative of local advisory councils.

OMNIBIS ANTI-SUBSTANCE ABUSE ACT

COHEN AMENDMENTS NOS. 3578 AND 3579

(Ordered to lie on the table)

Mr. COHEN submitted two amendments intended to be proposed by him to the bill (S. 2852) to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a Cabinet-level position to centralize and streamline Federal activities with respect to both drug supply—interdiction and law enforcement—and drug demand—prevention, education, and treatment—to expand Federal support to ensure a long-term commitment of resources and personnel for a substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes; as follows:

AMENDMENT No. 3578

On Page 11, strike out Lines 9-16 and insert in lieu thereof the following:

(4) Section 101 of the National Security Act of 1947 is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following:

"(f) The Director of the Office of Drug Control may, in his role as principal adviser to the National Security Council on national drug control policy and subject to the direction of the President, attend and participate in meetings of the National Security Council.".

AMENDMENT No. 3579

On Page 11, Line 17, strike out "Section 5312" and insert in lieu thereof "Section 5313".

On Page 11, Line 20, strike out "Section 5314" and insert in lieu thereof "Section 5315".

On Page 12, Line 1, strike out "Section 5315" and insert in lieu thereof "Section 5316".

TECHNICAL CORRECTIONS ACT

NICKLES (AND OTHERS) AMENDMENT NO. 3580

Mr. NICKLES (for himself, Mr. Boren, Mr. Gramm, Mr. Wallop, and Mr. Bingaman) proposed an amendment to the bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes; as follows:

Add at the end of Title II, section 207, add the following new section:

SEC. 208. AMENDMENTS RELATED TO CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980.

The reporting requirements of section 4997 of former Chapter 45 of Subtitle D of the Internal Revenue Code of 1986, and the related regulations thereunder, are repealed; *Provided that* this repeal is effective only for crude oil removed after December 31, 1987, for which no tax is due or withheld under former Chapter 45 of Subtitle D of the Internal Revenue Code of 1986.

CRANSTON (AND OTHERS) AMENDMENT NO. 3581

Mr. CRANSTON (for himself, Mr. Evans, and Mr. Durenberger) proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place, insert the following new section:

"SEC. .

(a) Short Title.—This section may be cited as the "Federal Employee Compensation Equity Study Commission Act of 1988.".

EVANS (AND OTHERS) AMENDMENT NO. 3582

Mr. EVANS (for himself, Mr. Cranston, Mr. Durenberger, and Mr. DeConcini) proposed an amendment, which was subsequently modified, to the bill S. 2238, supra; as follows:

At the end of the pending amendment, insert the following:

"(b) Definitions.—For purposes of this section—

"(1) the term "position" means employee positions that are subject to classification under chapter 51 of title 5, United States Code, or the job-grading system under subchapter IV of chapter 53 of such title;

"(2) the term "Commission" means the Commission on Compensation established by subsection (c);

"(3) the term "Director" means the Director of the Office of Personnel Management;

"(4) the term "employee" means an individual to whom chapter 51 of subchapter IV of chapter 53 of such title applies;

"(5) the term "labor organization" shall have the meaning given such term by section 7103(a)(4) of such title;

"(6) the term "economic analysis" means a method of analyzing differentials in pay between and among positions within occupations in order to determine if, and the extent to which, those differentials are attributable to factors such as seniority, merit, productivity, education, work experience, geographic factors, supply and demand factors, or any other factor exclusive of sex, race, or ethnicity, and

"(7) the term "objective job evaluation analysis" means a quantitative method of rating positions within occupations based upon factors such as the skill, effort, responsibilities, qualification requirements, and working conditions involved so that comparisons may be made with respect to the positions and occupations involved."

"(c) Establishment.—There is established a commission to be known as the Commission on Compensation Equity.

"(d) Study.—(1) To determine whether distinction between rates of basic pay for Federal jobs in executive agencies of the United States Government reflect substantial differences in the duties, difficulty, responsibility, and qualification requirements of the work performed, in accordance with sections 5101 and 5341 of title 5, United States Code, and are not based on considerations of sex, race, or national origin, the Commission shall provide, by contract with the consultant selected pursuant to subsection (i), for—

"(A) the conduct of a study of classification, grading, and pay-setting processes within and between the position-classification system under chapter 51 of such title and the job-grading system under subchapter IV of chapter 53 of such title, using standard objective job-evaluation and economic analysis techniques, to determine whether the development or implementation of these processes results in the payment of rates of basic pay for positions in which either sex is numerically predominant or any race or ethnic group is disproportionately represented that are not in proportion to the duties, difficulty, responsibility, and qualification requirements of the work performed, and

"(B) the preparation and submission of a report containing the findings of such study, including a list of any such positions and the extent of the differences in the rates of pay in such cases.

"(2) For the purposes of this subsection, the term "executive agency" shall have the meaning given such term by section 105 of title 5, United States Code.

"(e) Report.—(1) Not later than eighteen months after the effective date of this section, the Commission shall transmit to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Services the report required by subsection (d) and shall provide a copy of this report to the Director.

"(2) The report shall include—

"(A) the Commission's findings resulting from the study; and

"(B) the Commission's recommendations, consistent with the proviso of section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) (as added by section 3 of the Equal Pay Act of 1963), for such administrative or legislative actions, or both, as it considers appropriate (including any recommendations for modification of the provisions of subsection (h)).

"(3) Not later than ninety days after the Commission submits its report to the appropriate Committees of the Congress pursuant to paragraph (1), the Director shall submit to such Committees and the Commission a report which shall include a detailed response to each of the findings and recommendations of the Commission.

"(4) Not later than sixty days after the Director submits the report to the appropriate committees of the Congress pursuant to paragraph (3), the Commission shall submit to such Committees any additional comments that the Commission deems appropriate in resposne to the Director's report.

"(5) The consultant's study and any findings, conclusions, recommendations, or comments by the consultant or the Commission under this section with respect to such study shall be considered to be of an advisory nature only.

"(f) APPOINTMENT OF COMMISSION.—(1)(A) The Commission shall be composed of nine members as follows:

"(i) Four appointed by the President of the United States.

"(ii) One appointed by the majority leader of the Senate.

"(iii) One appointed by the minority leader of the Senate.

"(iv) One appointed by the Speaker of the House of Representatives.

"(v) One appointed by the minority leader of the House of Representatives.

"(vi) Three appointed by the Director to represent Federal employee labor organizations, one designated (and certified to the Director) by each of the three respective labor organizations representing, as exclusive representatives, the largest number of individuals occupying positions that are subject to chapter 51 or subchapter IV of chapter 53, of title 5, United States Code.

"(B) Members of the Commission may not be Members of Congress and shall, to the maximum extent practicable, be chosen from among persons who have extensive knowledge and technical expertise in the major areas of the Commission's consideration and study.

"(2) All appointments under paragraph (1) shall be made not later than sixty days after the effective date of this section.

"(g) ADMINISTRATIVE PROVISIONS.—(1)(A) The President shall designate a Chairman of the Commission from among the Commission members. The Commission shall elect a Vice Chairman from among its members. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman.

"(B) The Commission shall adopt such rules and regulations as it considers necessary to establish its procedures and to govern the manner of its operations, its organization, and its personnel.

"(C) Five members of the Commission shall constitute a quorum.

"(D) Any vacancy in the commission shall not affect its powers except to satisfy the quorum requirements in subparagraph (C). Such vacancy shall be filled in the manner in which the original appointment was made.

"(3) Each member of the Commission who is not an officer or employee of the United States Government shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for level IV of the Executive Schedule for each day the member is engaged in the performance of the duties of the Commission.

"(4)(A) The Commission may appoint, terminate, and subject to subparagraph (B), fix the compensation of such personnel as it considers advisable to employ to assist in the performance of its duties, without regard to the civil service laws, the provisions of title 5, United States Code, or any other law relating to the number, classification, or compensation of employees. The Commission also may procure temporary and intermittent services in carrying out its responsibilities. The Chairman shall appoint an executive director of the Commission with the approval of a majority of the Commission members.

"(B) An employee of the Commission may not receive compensation at a rate exceeding the rate of pay payable for grade GS-18 under section 5332 of title 5, United States Code.

"(C) Service of an individual as a member of the Commission or as an employee of the Commission shall not be considered service in an appropriate or elective position in the United States Government for the purposes of section 8344 and 8468 of title 5, United States Code.

"(4) All members and employees of the Commission and all individuals performing temporary or intermittent services for the Commission shall, while performing the duties of the Commission, be paid per diem, travel and transportation expenses in the same manner as provided for under subchapter I of chapter 57 of title 5, United States Code.

"(5)(A) The Commission or any member authorized by the Commission may, for the purposes of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, have such printing and binding done, enter into such contracts and other arrangements, with or without consideration or bond, and take such other actions as the Commission considers advisable, to the extent that amounts provided pursuant to subsection (k) are available. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member.

"(B) The Commission is authorized to obtain directly from any officer, department, agency, establishment, or instrumentality of the United States Government such information, suggestions, estimates, and statistics as the Commission considers necessary to carry out this section. Each such officer, department, agency, establishment or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made on behalf of the Commission.

"(C) The Commission may use the United States mails and receive administrative support from the Administrator of General Services in the same manner and under the same conditions as departments and agencies of the United States Government.

"(D) No officer or agency of the United States Government shall require the Commission to submit any report, recommendation, or other matter to any such officer or agency for approval, comments, or review before submitting such report, recommendation, or other matter to Congress or Committees of Congress.

"(6) Upon request of the Commission, the head of any federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

"(7) The Commission shall meet from time to time, as its members consider appropriate.

"(h) TERMINATION.—Ninety days after the date the Commission submits its comments pursuant to subsection (e)(4), the Commission shall cease to exist.

"(i) CONSULTANT.—The Commission shall—

"(A) develop the specifications for the study required under subsection (d) in the form of a request for proposals; and

"(B) solicit from the Comptroller General of the United States, the Congressional Office of Technological Assessment, and the National Academy of Sciences a list of consultants who on the basis of the specifications developed under subparagraph (A) and the objectivity, extensive knowledge and technical expertise of such consultants in the matters to be studied pursuant to this section, are appropriate to conduct the study.

"(2) The Comptroller General of the United States and the Congressional Office of Technological Assessment shall provide the lists to the Commission within sixty days after the date of such solicitation pursuant to paragraph (1).

"(3) From among the consultants on the lists provided pursuant to paragraph (1), the Commission shall select one consultant to conduct such study.

"(j) CONSTRUCTION.—(1) Except as provided in paragraph (2), nothing in this Act may be construed to limited or expand any of the rights or remedies provided under the Civil Rights Act of 1964, section 6(d) of the Fair Labor Standards Act of 1938, or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.

"(2) None of the findings, report, or other material resulting from the study conducted by the Commission may be used or entered into evidence as part of any civil action brought under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)), or any other provision of law relating to discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.

"(k) FUNDING.—(1) Of the sums appropriated to the Office of Personnel Management for general operating expenses for fiscal year 1989 and 1990, an amount not to exceed $3,000,000 shall be made available to pay the expenses of the Commission and shall remain available for such purpose until September 30, 1991.

"(2) The Commission, by majority vote, shall determine the necessary expenses of the Commission and notify the Director of the Office of Personnel Management. "*Provided*, that before any provisions of this bill are executed, a specific amount of funds must be reviewed and recommended by the Appropriations Committees of the House and Senate.

"(l) EFFECTIVE DATE.—This section shall take effect on October 1, 1988.".

INOUYE AMENDMENT NO. 3583

Mr. BAUCUS (for Mr. INOUYE) proposed an amendment to the bill S. 2238, supra; as follows:

At the end of the bill, add the following:

SEC. . FOREIGN TRADE ZONES.

Section 3 of the Act of June 18, 1934 (48 Stat. 999, chapter 590; 19 U.S.C. 81c) is amended by adding at the end thereof the following new subsection:

"(d) In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue.".

INOUYE (AND MATSUNAGA) AMENDMENT NO. 3584

Mr. BAUCUS (for Mr. Inouye, for himself and Mr. Matsunaga) proposed an amendment to bill S. 2238, supra; as follows:

On page 1622, after line 16, add the following new subtitle:

Subtitle D—Medicare

SEC. 631. DIRECT PAYMENT FOR SERVICES OF PHYSICIAN-EMPLOYED REGISTERED NURSES AS ASSISTANTS AT SURGERY.

(a) Services Covered.—Section 1861(s)(2)(K)(i) of the Social Security Act (42 U.S.C. 1395x(s)(2)(K)(i), is amended by striking "as an assistant at surgery and which the physician assistant" and inserting "or by a physician assistant or physician-employed registered nurse as an assistant at surgery and which the physician assistant or registered nurse".

(b) Payment Amount.—Section 1842(b)(12)(A) of such Act (42 U.S.C. 1395u(b)(12)(A)) is amended by inserting "or registered nurse" after "physician assistant".

(c) Payment to Employer.—Section 1842(b)(6)(C) of such Act (42 U.S.C. 1395u(b)(6)(C)) is amended by inserting "or registered nurse" after "physician assistant".

(d) Effective Date.—The amendments made by this section shall apply to services furnished on or after April 1, 1989, and before April 1, 1992, and shall apply only to services furnished by a registered nurse who is employed by a physician as of October 1, 1988.

(e) Budget Neutrality.—The amendments made by this section shall only take effect if the Secretary issues regulations which will ensure that this provision is implemented in a budget neutral manner.

The Secretary of Health and Human Services shall promulgate such regulations prior to April 1, 1989.

CRANSTON (AND BRADLEY) AMENDMENT NO. 3585

Mr. CRANSTON (for himself and Mr. Bradley) proposed an amendment to the bill S. 2238, supra; as follows:

At the end, insert the following new section:

SEC. .

Section 527(f) of the Internal Revenue Code is amended by adding the following subsection:

(4). For purposes of this subsection (f), the term "exempt function" shall not include the function of influencing or attempting to influence the selection, nomination or appointment of any individual to any Federal, State or local non-elective public office.

DeCONCINI (AND OTHERS) AMENDMENT NO. 3586

Mr. DeCONCINI (for himself, Mr. Wilson, Mr. D'Amato, Mr. Shelby, Mr. Dodd, Mr. Heflin, Mr. McConnell, Mr. Ford, Mr. Cranston, Mr. Dixon, and Mr. Durenberger) proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. SENSE OF THE SENATE REGARDING TAX-EXEMPT FINANCING OF RESIDENTIAL RENTAL PROJECTS BY NOT-FOR-PROFIT ORGANIZATIONS.

(a) Findings.—The Senate finds that—

(1) section 367 of H.R. 4333, the Miscellaneous Revenue Act of 1988, as passed by the House of Representatives, would extend the existing restrictions that apply to the use of tax-exempt bonds by for-profit developers financing residential rental properties (section 142 of the Internal Revenue Code of 1986) to 501(c)(3) organizations building housing with tax-exempt bonds;

(2) it is inappropriate, without further study, to apply existing restrictions on the use of tax-exempt bonds by for-profit developers financing residential rental housing to charitable entities building housing for the poor, homeless, frail elderly, and other groups with special needs; and

(3) the Senate bill, S. 2238, the Technical Corrections Act of 1988, contains no similar provision.

(b) Sense of the Senate.—It is the sense of the Senate that—

(1) further restrictions on the use of tax-exempt bonds by 501(c)(3) organizations should not be considered by the Congress until public hearings on the use of tax-exempt bonds by not-for-profit organizations have been conducted;

(2) section 367 of H.R. 4333 would dramatically curtail—

(A) activities of not-for-profit organizations serving the needs of low-income families, frail elderly, and physically and mentally disabled individuals, and

(B) other worthwhile endeavors of such organizations; and

(3) the Senate conferees to the conference committee on H.R. 4333 should oppose and reject section 367 and any similar new restrictions on the use of tax-exempt bonds by 501(c)(3) organizations building residential rental properties.

D'AMATO (AND OTHERS) AMENDMENT NO. 3587

Mr. D'AMATO (for himself, Mr. Moynihan, Mr. DeConcini, Mr. Armstrong, Mr. Wilson, Mr. Cranston, Mr. Dodd, Mr. Warner, Mr. Adams, Mr. Specter Mr. Murkowski, Mr. Durenberger, and Ms. Mikulski): proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place insert:

SECTION 1. EXCLUSION FROM GROSS INCOME OF EMPLOYER SUBSIDIES FOR MASS TRANSIT AND VAN POOLING: INCREASE IN GAS GUZZLER TAX.

(a) Exclusion of Certain Employer Transit Subsidies.—

(1) In general.—Paragraph (4) of section 132(h) of the Internal Revenue Code of 1986 (relating to special rule for parking) is amended to read as follows:

"(4) Working condition fringe includes certain transportation subsidies.—

"(A) In general.—For purposes of this section, the term 'working condition fringe' includes—

"(i) parking provided to an employee on or near the business premises of the employer, and

"(ii) qualified transportation provided by the employer between the employee's residence and place of employment.

"(B) Limitation.—Subparagraph (A)(ii) shall only apply to that portion of the qualified transportation provided during any calendar month as does not exceed $38

"(C) Qualified transportation.—For purposes of this paragraph, the term 'qualified transportation' means—

"(i) transportation provided by the employer (whether by payment or reimbursement) on buses, trains, or subways but only is such transportation—

"(I) is available to the general public, and

"(II) is scheduled and along regular routes, and

"(ii) transportation furnished in a commuter highway vehicle (as defined in section 46(c)(6)(B) without regard to clause (iii) or (v) thereof) operated by or for the employer.

Transportation provided to a highly compensated employee shall not be treated as qualified transportation unless the requirements of paragraph (1) are met.".

(2) Effective date.—The amendment made by this subsection shall apply to transportation provided after the date of the enactment of this Act, in taxable years ending after such date.

(b) Increase in Gas Guzzler Tax.—

(1) In general.—Section 4064(a) of the Internal Revenue Code of 1986 (relating to gas guzzlers tax) is amended by adding at the end thereof the following new paragraph:

"(8) In the case of a 1989 or later model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The rate is:
At least 22.5	$0
At least 21.5 but less than 22.5	1,000
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700.".

(2) Conforming amendment.—Paragraph (7) of section 4064(a) of such Code is amended by striking out "or later" and inserting in lieu thereof ", 1987, or 1988".

(3) Effective date.—The amendments made by this subsection shall apply to sales after November 1, 1988.

ANTI-APARTHEID ACT AMENDMENTS

McCLURE AMENDMENTS NOS. 3588 THROUGH 3605

(Ordered to lie on the table)

Mr. McCLURE submitted eighteen amendments intended to be proposed by him to the bill (S. 2756) entitled the "Anti-Apartheid Act Amendments of 1988"; as follows:

Amendment No. 3588

On page 23, strike line 9 through line 15 and insert: "ANC provides written certification to the Secretary of State that it renounces the use of violence to promote political change, and that is not dominated, controlled, or influenced by Communists".".

Amendment No. 3589

On page 23, line 12, following "services", strike "actually engaged in military of paramilitary operations against the ANC or other resistance organizations" and insert in lieu thereof "and that acts of terror, including the murder of civilians, the assassination of political figures and the destruction of property have ceased to be planned, organized, conducted, and funded by the ANC, and that the ANC is not dominated, controlled, or influenced by Communists,"

Amendment No. 3590

On page 23, between lines 15 and 16, insert:

"(b) All recipients of funding under this section shall file with the Secretary of State a written declaration that they oppose the use of violence to promote political change in South Africa."

On line 16, strike "(b)" and insert in lieu therof "(c)".

Amendment No. 3591

On page 22, line 20, following "Namibians" insert "," and add: "provided that recipients of such assistance, or their representatives, shall certify in writing to the Secretary of State that they are not members of the ANC, SWAPO, or any group committed to violence in South Africa or Namibia".

Amedment No. 3592

On page 22, strike line 5 through line 14.

On page 22, line 15, strike "(3)" and insert in lieu thereof "(2)".

Amendment No. 3593

On page 22, line 14, following "movement." add: "For the purposes of this Act, a viable union means a group of individuals in the trade union system dedicated to non-discriminatory, competitive free enterprise, with equal access for all.".

Amendment No. 3594

On page 22, line 14, following "movement" add: "provided that no unions legally constituted and favoring non-discriminatory, competitive free enterprise positions shall be excluded from assistance.".

Amendment No. 3595

On page 22, line 4, after "journalists.".", insert "Alternative education curricula shall be basic skills and shall not include the advocacy or promotion of a political philosophy or outlook,".

Amendment No. 3596

On page 22, line 1, strike "alternative education and".

Amendment No. 3597

On page 21, line 22, following "principles." insert the following: "Recipients of United States funds authorized by this Act shall certify in writing that they support a nondiscriminatory system based on equality of opportunity, individual liberty (including the right to hold and accumulate property), a multiple political party system, freedom of assembly, freedom of association, a judiciary free of political interference, the right to immigrate and emigrate freely, secret ballots in public elections, and a free enterprise economic system.".

Amendment No. 3598

On poage 21, line 22, following "principles." insert the following: "The Administrator of the Agency for International Development shall justify aggregate expenditures in South Africa to Congress, beginning 60 days after enactment of the Act. In his justification, the Administrator shall enumerate (1) how funds authorized by this Act are being used to develop South Africa, and (2) how the use of the funds authorized by this Act compares to the needs in other underdeveloped countries in sub-Saharan Africa. The Administrator may, at his discretion, use unexpended funds authorized for South Africa by this Act in other African countries if he believes the humanitarian or development need is greater in those countries.".

Amendment No. 3599

On page 23, line 17, strike "October 1, 1988" and insert in lieu therof "one year following the enactment of this Act".

Amendment No. 3600

On page 23, between lines 17 and 18, insert:

"(c) Nothing in this section is to be construed as authorizing assistance to any organization for the purpose of providing military training, for the purchase of weapons of war, to support terrorist activites, or to support revolutionary activities, including the dissemination of propaganda.".

Amendment No. 3601

On page 23, between line 6 and line 7, insert:

"All recipients of funding under this section shall file with the Secretary of State a written declaration that they oppose the use of violence to promote political change in South Africa.".

Amendment No. 3602

On page 23, line 6, strike "." and insert in lieu thereof ", or any other organization which advocates, has advocated, or whose members have participated in the practice of necklacing."

Amendment No. 3603

On page 22, line 1, after "enterprise," insert: "assistance to acquire or establish small business enterprises, and to train disadvantaged South Africans to assume leadership positions in business enterprises."

Amendment No. 3604

On page 22, line 4, following the word "restrictions" insert "," and add the following: "provided such assistance is not used for the advocacy or promotion of a political philosophy or outlook.".

Amendment No. 3605

On page 22, line 3, insert "." after "sistance" and strike "(including legal aid in challenging government media restrictions) for South African journalists.".

TECHNICAL CORRECTIONS ACT

BRADLEY AMENDMENT NO. 3606

Mr. BRADLEY proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . DISTRICT OF COLUMBIA APPROPRIATIONS.

CRANSTON AMENDMENT NO. 3607

Mr. CRANSTON proposed an amendment to amendment No. 3606 proposed by Mr. Bradley to the bill S. 2238, supra; as follows:

At the end of the pending amendment, add the following:

Section 117 of the Act entitled "An Act Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1989, and for other purposes" (Public Law 100-462) is amended to read as follows:

"Sec. 117. The provisions of section 117 of the District of Columbia Appropriations Act, 1988 (Public Law 100-202; 101 Stat. 1329-99) shall apply with regard to Federal funds provided in this Act.".

CONRAD AMENDMENT NO. 3608

(Ordered to lie on the table.)

Mr. CONRAD submitted an amendment intended to be proposed by him to the bill S. 2238, supra; as follows:

On page 822, beginning with line 5, strike all through page 827, line 9, and insert in lieu thereof the following:

(1) Part III of subchapter B of chapter 1 of the 1986 Code (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

"SEC. 135. CAPITAL GAIN REALIZED FROM TRANSFER OF PROPERTY IN COMPLETE OR PARTIAL SATISFACTION OF QUALIFIED FARM INDEBTEDNESS.

"(a) In General.—Gross income of any taxpayer described in subsection (d) does not include so much of the gain from the transfer of property in complete or partial satisfaction of qualified farm indebtedness as does not exceed $350,000.

"(b) Prior Gains Taken Into Account.—If for any prior year, gain from the transfer of property in complete or partial satisfaction of qualified farm indebtedness is excluded from the taxpayer's gross income under subsection (a), such subsection shall be applied for the taxable year with respect to such gain by reducing the dollar amount contained in such subsection by the prior year gains excluded under such subsection.

"(c) Reduction of Tax Attributes.—

"(1) In general.—The amount excluded from gross income under subsection (a) shall be applied to reduce the tax attributes described under section 108(b)(2).

"(2) Coordination with section 108.—For purposes of this subsection, the amount of tax attributes shall be determined after any reduction under section 108(b) by reason of amounts excluded from gross income under section 108(a)(1).

"(d) Taxpayer Described in this Subsection.—

"(1) In general.—A taxpayer is described in this subsection if—

"(A) such taxpayer's modified adjusted gross income for the taxable year in which the transfer of property in complete or partial satisfaction of qualified farm indebtedness occurs is less than 100 percent of the statewide median modified adjusted gross income for the State in which such taxpayer resides,

"(B) 80 percent or more of the gross receipts of the taxpayer for 3 of the 5 taxable years preceding such taxable year are attributable to the trade or business of farming (within the meaning of section 2032A(e)(5)) or the sale of assets with respect to such trade or business,

"(C) such taxpayer materially participates in such trade or business (within the meaning of section 2032A(e)(6)), and

"(D) equity in all property held by the taxpayer after such transfer is less than the greater of—

"(i) $25,000, or

"(ii) 150 percent of the excess (if any) of—

"(I) the tax imposed by this chapter determined as if this section did not apply to the transfer, over

"(II) the tax imposed by this chapter determined with regard to this section.

"(2) Modified adjusted gross income.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income—

"(A) determined with regard to this section and section 108,

"(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

"(C) reduced by the exemptions allowed the taxpayer under section 151 for such year.

"(3) Equity.—For purposes of this subsection, the term 'equity' means, with respect to any property, an amount equal to—

"(A) the fair market value of such property, minus

"(B) any indebtedness relating to such property.

"(e) Qualified Farm Indebtedness.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming (within the meaning of section 2032A(e)(5)).".

(2) The table of sections for part III of subchapter B of chapter 1 of the 1986 Code is amended by striking out the item relating to section 135 and inserting in lieu thereof the following new items:

"Sec. 135. Capital gain realized from transfer of property in complete or partial satisfaction of qualified farm indebtedness.

"Sec. 136. Cross references to other Acts.".

(3) Section 108(g) of the 1986 Code (relating to special rules for discharge of qualified farm indebtedness of solvent farmers) is amended—

(A) by inserting "who is described in paragraph (5) and" after "a taxpayer" in paragraph (1),

(B) by inserting "to the extent such discharge does not exceed $350,000" before the period in paragraph (1),

(C) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) Prior discharges of indebtedness taken into account.—If for any prior year, a discharge of qualified farm indebtedness is excluded from the taxpayer's gross income under this subsection, paragraph (1) shall be applied for the taxable year with respect to such discharge by reducing the dollar amount contained in such paragraph by the prior year discharges excluded under such paragraph.", and

(D) by adding at the end thereof the following new paragraphs:

"(4) Qualified farm indebtedness.—For purpose of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade on business of farming (within the meaning of section 2032A(e)(5)).

"(5) Taxpayer described in this paragraph.—

"(A) In general.—A taxpayer is described in this paragraph if—

"(i) Such taxpayer's modified adjusted gross income for the taxable year in which the discharge of qualified farm indebtedness occurs is less than 100 percent of the statewide median modified adjusted gross income for the State in which such taxpayer resides,

"(ii) 80 percent or more of the gross receipts of the taxpayer for 3 of the 5 taxable years preceding such taxable year are attributable to the trade or business of farming (within the meaning of section 2032A(e)(5)) or the sale of assets with respect to such trade or business,

"(iii) such taxpayer materially participates in such trade or business (within the meaning of section 2032A(e)(6),

"(iv) the indebtedness of the taxpayer both before and after such discharge is equal to 70 percent or more of the equity in all property held by such taxpayer, and

"(v) equity in all property held by the taxpayer after such discharge is less than $100,000.

"(B) Modified adjusted gross income.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income—

"(i) determined with regard to this section and section 135,

"(ii) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

"(iii) reduced by the exemptions allowed the taxpayer under section 151 for such year.

"(C) Equity.—For purposes of this subsection, the term 'equity' means, with respect to any property, an amount equal to—

"(i) the fair market value of such property, minus

"(ii) any indebtedness relating to such property.".

GORE (AND WARNER) AMENDMENT NO. 3609

Mr. GORE (for himself and Mr. Warner) proposed an amendment to the bill, S. 2238, supra; as follows:

At the end of the bill, add the following:

TITLE X—COMMUNICATIONS

Sec. 1001. Short Title.—This title may be cited as the "Satellite Television Fair Marketing Act".

Sec. 1002. Fair Marketing of Certain Satellite Communications.—

(a) Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

"(2) No person shall encrypt or continue to encrypt satellite-delivered Armed Forces Radio and Television Service Programming, unless such encryption is required under multinational trade agreements.

"(3) Any person who encrypts any satellite delivered programming for private viewing shall—

"(A) make such programming available for private viewing by home satellite antenna users;

"(B) when making such programming available through any other person, establish reasonable financial and charter criteria under which distributors may qualify to distribute such programming to home satellite antenna users and not discriminate in price, terms, or conditions among different distributors offering similar distribution services to the consumer; and

"(C) conduct such encryption in accordance with uniform standards for encryption of such programming approved by the Commisssion.

"(4) Standards approved by the Commission pursuant to paragraph (3)(C) of this subsection shall be designed as far as possible to provide the public interest benefits of a universal encryption system which permits decryption at the television receiver of a cable television subscriber and a home satellite antenna user.

"(5) The provisions of paragraph (3)(C) of this subsection shall not take effect until the Commission has completed a rulemaking on the standards required under this subsection.

"(6) Any person aggrieved by any violation of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction. Such court may—

"(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain such violations; and

"(B) direct the recovery of full costs to a prevailing plaintiff, including awarding reasonable attorney fees, actual damages, any additional profits of the violator, or statutory damages for all violations in a sum of not more than $500,000 as the court considers just.

"(7) As used in this subsection, the term—

"(A) 'satellite delivered programming' means video programming transmitted by a domestic communications satellite intended for reception by cable television system subscribers; and

"(B) 'reasonable financial and character criteria' means commonly prudent business standards designed to facilitate payment to the programmer and maintenance of the business reputation of the programmer, and which are calculated to facilitate the existence of multiple noncable distributors.".

Sec. 1003. Federal Trade Commission Investigation Into Program Marketing Practices.—

(a) The Federal Trade Commission shall conduct and complete an investigation within 120 days following the effective date of this section into the pricing and distribution terms and practices of persons selling satellite television programming to home satellite antenna owners to determine whether the market for such programming is developing competitively.

(b) Should the Federal Trade Commission determine, after such investigation, that this market is not developing competitively, it is empowered to establish any remedies which is deems necessary to produce adequate competition for such programming.

SEC. 1004. AVAILABILITY OF NETWORK PROGRAMMING TO RURAL AREAS.—The Federal Communications Commission shall initiate a rulemaking to facilitate, to the maximum possible extent, the provision of network broadcasting signals to persons living outside the available broadcast area of local licensees. In undertaking such rulemaking, the Commission shall take into consideration the following:

(1) the extent to which individuals in rural areas are unable to receive broadcast television transmissions;

(2) the extent to which existing Federal rules have prevented the ability of local broadcast entities from providing signals to such persons living outside areas designated as Grade B contours by the Commission;

(3) the potential for serving these persons, and others who cannot receive such transmissions, using home antennas to receive satellite delivered network programming which might be otherwise encrypted to prevent private reception; and

(4) methods by which network programmers may protect certain portions of satellite transmitted signals not intended for public viewing, while providing unencrypted signals to those persons living outside Grade B contours as defined by the Commission.

SEC. 1005. EFFECTIVE DATE.—The foregoing provisions of this title shall take effect upon the expiration of the 30-day period following the date of its enactment.

MATSUNAGA (AND PRYOR) AMENDMENT NO. 3610

(ordered to lie on the table)

Mr. MATSUNAGA (for himself and Mr. PRYOR) submitted an amendment intended to be proposed by him to the bill, S. 2238, supra; as follows:

On page 968, before the end period, insert: "and in the case of a taxpayer using the last-in, first-out method of accounting, by multiplying the resulting allocation ratio by the amount (if any) by which ending inventory exceeds beginning inventory, as specified in the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H. Rept. No. 99-841, Vol. II, 99th Cong., 2d Sess. II-306-307 (1986))".

PRESSLER AMENDMENT NO. 3611

(ordered to lie on the table)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill, S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . PAY OF MEMBERS OF CONGRESS.

(a) SHORT TITLE.—This section may be cited as the "Congressional Pay Accountability Act of 1988".

(b) CONGRESSIONAL VOTE ON PRESIDENTIAL RECOMMENDATIONS TO INCREASE CONGRESSIONAL RATES OF PAY.—Section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended to read as follows:

"(i) EFFECTIVE DATE OF PRESIDENTIAL RECOMMENDATIONS; CONGRESSIONAL VOTE ON INCREASES IN CONGRESSIONAL RATES OF PAY.—(1)(A) Except for the recommendations relating to Members of Congress (which shall be subject to the provisions of paragraph (2)), the recommendations of the President which are transmitted to the Congress pursuant to subsection (h) of this section shall be effective as provided in subparagraph (B) of this paragraph, unless any such recommendation is disapproved by a joint resolution agreed to by the Congress not later than the last day of the 30-day period which begins on the date on which such recommendations are transmitted to the Congress.

"(B) The effective date of the rate or rates of pay which take effect for an office or position under subparagraph (A) of this paragraph shall be the first day of the first pay period which begins for such office or position after the end of the 30-day period described in such paragraph.

"(2)(A) The recommendations of the President relating to the rates of pay of Members of Congress which are transmitted to the Congress under subsection (h) of this section shall become effective only after the enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of such recommendation to increase the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) For purposes of this paragraph the term "Members of Congress" includes all positions described under section 225(f)(A), except for the Vice President of the United States.".

(c) CONGRESSIONAL VOTE TO INCREASE CONGRESSIONAL RATES OF PAY WITH INCREASES IN THE GENERAL SCHEDULE.—Section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) is amended to read as follows:

"(2)(A) Any increase in the rates of pay of Members of Congress which corresponds to an increase in the rates of pay in the General Schedule under section 5305 of title 5, United States Code, in any fiscal year shall become effective only after enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of the increase in the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) If a joint resolution is enacted as provided under subparagraphs (A) and (B), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which such joint resolution is enacted, each annual rate of pay of Members of Congress shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such annual rate which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under section 5305) of the adjustment in the rates of pay under the General Schedule.".

(d) CONGRESSIONAL VOTE ON ANY INCREASE IN THE RATES OF PAY OF MEMBERS OF CONGRESS.—(1) Notwithstanding any other provision of law, any increase in the rates of pay of Members of Congress shall become effective only after the enactment of a joint resolution as provided in subsection (b).

(2) The joint resolution described under subsection (a) shall—

(A) relate only to the issue of the increase in the rates of pay of Members of Congress; and

(B) be recorded to reflect the vote of each Member of Congress thereon.

BINGAMAN (AND DOMENICI) AMENDMENT NO. 3612

(Ordered to lie on the table.)

Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment to the bill, S. 2238, supra; as follows:

On page 1263, between lines 4 and 5, insert the following:

(45)(A) Clause (ii) of section 148(f)(4)(C) of the 1986 Code (as added by paragraph (17)(A) is amended by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively, and by inserting after subclause (I) the following new subclause:

"(II) all bonds issued by a governmental unit on behalf of other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit,".

(B) The amendment made by subparagraph (A) shall apply to bonds issued after December 31, 1988.

NICKLES AMENDMENT NO. 3613

(Ordered to lie on the table.)

Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 2238, supra; as follows:

Strike Section 799. Reversion of Qualified Pension Plan Assets. On page 201, line 12, strike through page 202, line 24.

ARMSTRONG AMENDMENT NO. 3614

(Ordered to lie on the table.)

Mr. ARMSTRONG submitted eight amendments intended to be proposed by him to the bill S. 2238, supra; as follows:

AMENDMENT No. 3614

At the appropriate place in the bill, add the following:

(a) IN GENERAL.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1019 the following new section:

"SEC. 1020. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTES FOR ADJUSTED BASIS.—Except as provided in paragraph (2), if an indexed asset which has been held for more than 1 year is sold or otherwise disposed of, for purposes of this title the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) stock in a corporation, and

"(B) real property (or any interest therein), which is a capital asset or property used in the trade or business (as defined in section 1231(r)).

"(2) Certain property excluded.—For purposes of this section, the term 'indexed asset' does not include—

"(A) Creditor's interest.—Any interest in property which is in the nature of a creditor's interest.

"(B) Options.—Any option or other right to acquire an interest in property.

"(C) Net lease property.—In the case of a lessor, net lease property, (within the meaning of subsection (h)(1)).

"(D) Certain preferred stock.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(E) Stock in certain corporations.—Stock in—

"(i) an electing small business corporation (within the meaning of section 1371(h)),

"(ii) a personal holding company (as defined in section 542), and

"(iii) a foreign corporation.

"(3) Exception for stock in foreign corporation which is regularly traced on national or regional exchange.—Clause (iii) of paragraph (2)(F) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)), and

"(B) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(c) Indexed Basis.—For purposes of this section—

"(1) Indexed basis.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) Applicable inflation ratio.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the gross national product deflator for the calendar quarter in which the disposition takes place, by

"(B) the gross national product deflator for the calendar quarter in which the asset was acquired by the taxpayer (or, if later, the calendar quarter ending December 31, 1984).

The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest ⅒ of 1 percent.

"(3) Gross national product deflator.—The gross national product deflator for any calendar quarter is the implicit price deflator for the gross national product for such quarter (as shown in the first revision thereof.)

"(d) Special Rules.—For purposes of this section—

"(1) Treatment as separate asset.—In the case of any asset, the following shall be treated as a separate asset:

"(A) a substantial improvement to property,

"(B) in the case of stock of a corporation, a substantial contribution to capital, and

"(C) any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) Assets which are not indexed assets throughout holding period.—

"(A) In general.—The applicable inflation ratio shall be appropriately reduced for calendar months at any time during which the asset was not an indexed asset.

"(B) Certain short sales.—For purposes of applying subparagraph (A), an asset shall be treated as not an indexed asset for any short sale period during which the taxpayer or the taxpayer's spouse sells short property substantially identical to the asset. For purposes of the preceding sentence, the short sale period begins on the day after the substantially identical property is sold and ends on the closing date for the sale.

"(3) Treatment of certain distributions.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) Section cannot increase ordinary loss.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which the second sentence of section 1231(a) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

"(5) Acquisition date where there has been prior application of subsection (a) (1) with respect to the taxpayer.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(6) Collapsible corporations.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(e) Certain Conduit Entities.—

"(1) Regulated investment companies; real estate investment trusts; common trust funds.—

"(A) In general.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) Ratio of 90 percent or more.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) Ratio of 10 percent or less.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) Valuation of assets in case of real estate investment trusts.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(E) Qualified investment entity.—For purposes of this paragraph, the term 'qualified investment entity' means—

"(i) a regulated investment company (within the meaning of section 851),

"(ii) a real estate investment trust (within the meaning of section 856), and

"(iii) a common trust fund (within the meaning of section 584).

"(2) Partnerships.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(3) Subchapter s corporations.—In the case of an electing small business corporation, the adjustment under subsection (a) at the corporate level shall be passed through to the shareholders.

"(f) Dispositions Between Related Persons.—

"(1) In general.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) Related persons defined.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employers under subsection (b) or (c) of section 414.

"(g) Transfers To Increase Indexing Adjustment or Depreciation Allowance.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is—

"(1) to secure or increase an adjustment under subsection (a), or

"(2) to increase (by reason of an adjustment under subsection (a)) a deduction for depreciation, depletion, or amortization,

the Secretary may disallow part or all of such adjustment or increase.

"(h) Definitions.—For purposes of this section—

"(1) Net lease property defined.—The term 'net lease property' means leased real property where—

"(A) the term of the lease (taking into account options to renew) was 57 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

"(2) Stock includes interest in common trust fund.—The term 'stock in a corporation' includes any interest in a common trust fund (as defined in section 584(a)).

"(i) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) Clerical Amendment.—The table of sections for part II of subchapter O of such chapter 1 is amended by inserting after the item relating to section 1019 the following new item:

"Sec. 1020. Indexing of certain assets for purposes of determining gain or loss.".

(c) Effective Date.—The amendments made by this section shall apply to sales and exchanges after December 31, 1983.

Amendment No. 3615

At the appropriate place in the bill add the following:

Section 280G(b)(2)(A)(ii) is amended by removing "3" in the third line and replacing it with "2".

Amendment No. 3616

At the appropriation place in the bill amend Title XIII, section (44) of the Tax Reform Act of 1988 "Pool Bonds" by:

(1) Striking out "$300,000,000" in the eleventh item in the table and inserting in lieu thereof "$225,000,000," and

(2) By inserting the following item at the end of the table:

"Colorado Municipal League Pool....................... $75,000,000."

AMENDMENT No. 3617

At the appropriate place in the bill add the following:

Subsection (b) of section 125 of the 1986 Code is amended by adding at the end thereof the following new sentence:

The Secretary shall prescribe regulations for the application of the foregoing rule, which regulations may establish that a different standard shall be applied in determining whether a classification is discriminatory for purposes of this rule than the standard to be applied in determining whether a classification is discriminatory for purposes of section 410(b)(2)(i) and (b)(5)(B).

AMENDMENT No. 3618

At the appropriate place in the bill add the following:

SEC. . APPLICATION OF REDUCED GASOLINE TAX RATE TO BLENDERS.

(a) IN GENERAL.—Paragraph (1) of section 4081(c) of the 1986 Code (relating to gasoline mixed with alcohol at refinery, etc.) is amended by adding after the 1st sentence the following new sentence: "Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

AMENDMENT No. 3619

At the appropriate place in the bill add the following:

(b) DISTRIBUTIONS BY COOPERATIVE HOUSING CORPORATIONS.—

(1) IN GENERAL.—Section 336 (relating to gain or loss recognized on property distributed in complete liquidation) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DISTRIBUTIONS BY COOPERATIVE HOUSING ASSOCIATIONS.—Except as provided in regulations, no gain or loss shall be recognized on the distribution by a cooperative housing association of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation and such exchange qualifies for nonrecognition of gain under section 1034(f). For purposes of this section, any term used in this subsection which is used in section 216 shall have the meaning given such term by section 216."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect upon enactment.

AMENDMENT No. 3620

Strike Section 786 of the committee amendment (relating to the carryover of post-1987 low income housing credit dollar amounts).

AMENDMENT No. 3621

At the Appropriate Place in the bill add the following:

SECTION 1. REQUIREMENT THAT EMPLOYEES APPROVE EMPLOYEE STOCK OWNERSHIP PLAN.

(a) IN GENERAL.—Section 498 of the Internal Revenue Code of 1986 (relating to qualifications for tax credit employee stock ownership plan) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) EMPLOYEES MUST APPROVE PLAN.—

"(1) IN GENERAL.—A plan meets the requirements of this subsection if during the election period, a majority of the employees of the employer establishing the plan approve the establishment of the plan pursuant to an election conducted by secret ballot.

"(2) NOTICE.—An employer seeking to establish a plan meeting the requirements of this section shall notify his employees during the notification period of all material facts concerning the plan, including—

"(A) whether assets will be transferred to the plan from any other plan and whether the plan will replace such other plan.

"(B) the terms of the plan, and

"(C) the terms of the plan (if any) from which the assets are being transferred.

"(3) LIMITATION.—This subsection shall apply only if—

"(A) the plan is proposed (or agreed to) by employees represented by a collective bargaining unit in a corporation with more than 1 of such units,

"(B) at least 30 percent of the employees of such corporation are not represented by a collective bargaining unit, and

"(C) it is proposed (or it is reasonable to assume) that assets from a defined benefit plan will be transferred to the plan.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) ELECTION PERIOD.—The term 'election period' means the period beginning 60 days after the day on which notice is provided under paragraph (2) and ending on the day before the day on which the plan is established.

"(B) NOTIFICATION PERIOD.—The term 'notification period' means the 90 day period ending with the 91st day before the day on which the plan is established."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 409(a) of such Code is amended by striking out "and (o)" and inserting in lieu thereof "(to), and (p)".

(2) Section 4975(e)(7) of such Code is amended by inserting "section 409(p)," after "section 409(o),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans established after March 16, 1988.

WARNER AMENDMENT NO. 3622

Mr. WARNER proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Manassas National Battlefield Park Addition of 1988".

SEC. 2. ADDITION TO MANASSAS NATIONAL BATTLEFIELD PARK.

(a) The Secretary of the Interior ("Secretary") is authorized and directed to acquire not to exceed 80 acres of land, or interest therein, except for existing utility easements, which he determines to be historically signficant, including but not limited to the headquarters of General Lee on Stuarts Hill, within the area depicted on the map entitled "Manassas National Battlefield Park Addition, 1988" and dated September 14, 1988, as "area A" by purchase with appropriated or donated funds or by donation. "Area A" is generally that area which lies within a line which commences at the southeast corner of the intersection of U.S. Route 29 and State Route 705 and runs south 1200 feet along State Route 705, then east 1925 feet generally parallel to U.S. Route 29, then north 1000 feet until it reaches a point which is 200 feet south of U.S. Route 29, then east parallel to U.S. Route 29 until the boundary of the property subject to Prince William County Zoning File 86-61, then generally north along the boundary of said property, then generally west along the southern boundary of U.S. Route 29 until terminating at the southeast corner of the Intersection of U.S. Route 29 and State Route 705. Lands or interests therein owned by the State of Virginia or any unit of local government thereof may be acquired by donation only.

(b) Upon the acquisition of the lands referred to in subsection (a), the Secretary shall modify the boudaries' of the Manassas National Battlefield Park to include such lands and shall thereafter administer such lands as a part of such Park: *Provided*, That the Secretary shall permit (1) vehicular access across such lands at not to exceed two locations off Route 29 which are approved by the Commonwealth of Virignia in Prince Willliam County, (2) the continued operation of any existing utilities and storm drains (including, but not limited to, electric, telephone, gas, or water and sewer) and (3) any future utility easements, including easements for electric, gas, telephone, and water and sewer, as may be required and approved by appropriate State and local governmental entities, subject to such reasonable terms and conditions as he deems appropriate: *Provided*, That development and maintenance of such access and use, including, but not limited to rehabilitation of the sites and any buffers or screening, shall be at no cost to the Federal government including the provision of either above or below ground pedestrian access as the Secretary may determine to be appropriate across the access roads and Route 29.

(c) Not later than 6 months after the date of acquisition of the lands referred to in this section, the secretary shall publish in the Federal Register a detailed description and map depicting the boundaries of the Park as enlarged. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

SEC. 3. PROHIBITION OF MALL.

(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act, there is hereby vested in the United States all right, title, and interest in and to a developmental easement over the area depicted on the map referenced in section 2 as "area B", which easement will allow the construction of: (1) no more than 2,910,000 square feet of non-residential uses, of which no more than a total of 120,000 square feet in the aggregate shall be retail use; (2) no more than 560 residential dwellings; and (3) no structure which exceeds 45 feet in height.

(b) The United States shall pay just compensation to the owners of any property taken pursuant to this section and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to the taking of such property. Payment shall be in the amount of the agreed negotiated value of such property or the valuation of such property awarded by judgment and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304.

(c) In the absence of a negotiated settlement, or an action by the owner, within 1 year after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary may initiate a proceeding at anytime seeking a determination of just compensation with respect to the taking of such property interest.

SEC. 4. TRANSPORTATION.

(a) STUDY.—The Secretary of the Interior (hereinafter in this section referred to as the "Secretary"), in consultation and consensus with the Commonwealth of Virginia, the Federal Highway Administration, and Prince William County, shall conduct a study regarding the relocation of highways (known as routes 29 and 234) in, and in the vicinity of, the Manassas National Battlefield Park (hereinafter in this section referred to as the "park"). The study shall include an assessment of the available alternatives, together with cost estimates and recommendations regarding preferred options. The study shall specifically consider and develop plans for the closing of those public highways (known as routes 29 and 234) that transect the park and shall include analysis of the timing and method of such closures and of means to provide alternative routes for traffic now transecting the park. The Secretary shall provide for extensive public involvement in the preparation of the study.

(b) DETERMINATION.—Within 1 year after the enactment of this Act, the Secretary shall complete the study under subsection (a). The study shall determine when and how the highways (known as routes 29 and 234) should be closed.

(c) ASSISTANCE.— The Secretary shall provide funds to the appropriate construction agency for the construction and improvement of the highways to be used for the rerouting of traffic now utilizing highways (known as routes 29 and 234) to be closed pursuant to subsection (b) if the construction and improvement of such alternatives are deemed by the Secretary to be in the interest in protecting the integrity of the park. Not more than 75 percent of the costs of such construction and improvement shall be provided by the Secretary and at least 25 percent shall be provided by State or local governments from any source other than Federal funds. Such construction and improvement shall be approved by the Secretary of Transportation.

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary not to exceed $30,000,000 to prepare the study required by subsection (a) and to provide the funding described in subsection (c).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. The Secretary is further authorized to use any unobligated balances heretofore appropriated to agencies of the Department of the Interior, notwithstanding any provision of law making such funds available, for the acquisition of the lands referred to in section 2 of the Act: Provided, that no monies may be used from the Land and Water Conservation Fund except those appropriated for the purposes of this Act.

SEC. 6. MISCELLANEOUS PROVISIONS.

Notwithstanding the provisions set forth in section 329 of the Act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1989, or in any other Act, no restrictions or prohibitions shall be in effect with respect to the planning, design, construction or approval of: (1) an interchange or any other highway facility providing access to or from Interstate 66 (I-66) between the existing United States Route 29 interchange at Gainesville (I-66 exit numbered 10) and the existing Route 234 interchange (I-66 exit numbered 11); (2) an interchange or any other highway facility providing access to or from United States Route 29 between the existing I-66 interchange at Gainesville (I-66 exit numbered 10) and the existing Route 234 intersection; and (3) an interchange or any other highway facility that provides access to or from adjacent properties and the proposed Route 234 Bypass between I-66 and United States Route 29.

BUMPERS AMENDMENT NO. 3623

Mr. BUMPERS proposed an amendment to amendment No. 3622 proposed by Mr. WARNER to the bill S. 2238, supra; as follows:

Amend the Warner amendment by striking the amendment in its entirety and inserting the following:

At the appropriate place in the bill add the following language:

SECTION . Nothing in this Act shall become effective until Congress enacts the following:

SECTION . SHORT TITLE.

This Title may be cited as the "Manassas National Battlefield Park Amendments of 1988".

TITLE —

SEC. . ADDITION TO MANASSAS NATIONAL BATTLEFIELD PARK.

The first section of the Act entitled "An act to preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battle of Manassas, and for other purposes", approved April 17, 1954 (16 U.S.C. 429b), is amended—

(1) by inserting "(a)" after "That"; and

(2) by adding at the end thereof the following:

"(b)(1) In addition to subsection (a), the boundaries of the park shall include the area, comprising approximately 600 acres, which is south of U.S. 29, north of Interstate Route 66, east of Route 705, and west of Route 622. Such area shall hereafter in this Act be referred to as the 'Addition'.

"(2)(A) Notwithstanding any other provision of law, effective on the date of enactment of the Manassas National Battlefield Park Amendments of 1988, there is hereby vested in the United States all right, title, and interest in and to, and the right to immediate possession of, all the real property within the Addition.

"(B) The United States shall pay just compensation to the owners of any property taken pursuant to this paragraph and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to the taking of such property. Payment shall be in the amount of the agreed negotiated value of such property or the valuation of such property awarded by judgment and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304. Such payment shall include interest on the value of such property which shall be compounded quarterly and computed at the rate applicable for the period involved, as determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities from the date of enactment of the Manassas National Battlefield Park Amendments of 1988 to the last day of the month preceding the date on which payment is made.

"(C) In the absence of a negotiated settlement, or an action by the owner, within 1 year after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary may initiate a proceeding at anytime seeking in a court of competent jurisdiction a determination of just compensation with respect to the taking of such property.

"(3) Not later than 6 months after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary shall publish in the Federal Register a detailed description and map depicting the boundaries of the Addition. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

"(c) The Secretary shall not allow any unauthorized use of the Addition after the enactment of the Manassas National Battlefield Park Amendments of 1988, except that the Secretary may permit the orderly termination of all operations on the Addition and the removal of equipment, facilitates, and personal property from the Addition."

SEC. . VISUAL PROTECTION.

Section 2(a) of the Act entitled "An Act to preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battle of Manassas, and for other purposes", approved April 17, 1954 (16 U.S.C. 429b-1), is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following:

"(2) The Secretary shall cooperate with the Commonwealth of Virginia, the political subdivisions thereof, and other parties as designated by the Commonwealth or its political subdivisions in order to promote and achieve scenic preservation of views from within the park through zoning and such other means as the parties determine feasible.".

SEC. . HIGHWAY RELOCATION.

(a) STUDY.—The Secretary of the Interior (hereafter in this section referred to as the "Secretary"), in consultation and consensus with the Commonwealth of Virginia, the Federal Highway Administration, and Prince William County, shall conduct a study regarding the relocation of highways (known as routes 29 and 234) in, and in the vicinity of, the Manassas National Battlefield Park (hereinafter in this section referred to as the "park"). The study shall include an assessment of the available alternatives, together with cost estimates and recommendations regarding preferred options. The study shall specifically consider and develop plans for the closing of those public highways (known as routes 29 and 234) that transect the park and shall include analysis of the timing and method of such closures and of means to provide alternative routes for traffic now transecting the park. The Secretary shall provide for extensive public involvement in the preparation of the study.

(b) DETERMINATION.—Within 1 year after the enactment of this Act, the Secretary shall complete the study under subsection (a). The study shall determine when and how the highways (known as routes 29 and 234) should be closed.

(c) ASSISTANCE.—The Secretary shall provide funds to the appropriate construction agency for the construction and improvement of the highways to be used for the rerouting of traffic now utilizing highways (known as routes 29 and 234) to be closed pursuant to subsection (b) if the construction and improvement of such alternatives are deemed by the Secretary to be in the interest in protecting the integrity of the park. Not more than 75 percent of the costs of such construction and improvement shall be provided by the Secretary and at least 25 percent shall be provided by State or local governments from any source other than Federal funds. Such construction and improvement shall be approved by the Secretary of Transportation.

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary not to exceed $30,000,000 to prepare the study required by subsection (a) and to provide the funding described in subsection (c).

STEVENS AMENDMENT NO. 3624

Mr. STEVENS proposed an amendment to the bill S. 2238, supra; as follows:

On page 1027, between lines 17 and 18, insert: (9) Section 415(b)(2)(F) of the 1986 Code is amended—

(A) by striking out "and tax exempt organizations" in the heading of subparagraph (F) and inserting in lieu thereof ", tax exempt organizations and certain employer/employee trusts pursuant to collective bargaining agreements.";

(B) by inserting "qualified plans pursuant to collective bargaining agreements" after "under this subtitle," in subparagraph (F);

(C) by adding at the end of subparagraph (F) the following new sentence: "For the purposes of this subparagraph, the term "qualified plans pursuant to collective bargaining agreements" means a plan maintained pursuant to one or more collective bargaining agreements ratified before March 1, 1986 or the successor to such a plan that provides for a normal retirement age of 45 or less and for increases in benefits for each year after age 45 during which a plan participant does not retire that exceed the annual actuarial reductions applied to such participants who elect retirement prior to age 45."

WILD AND SCENIC RIVERS ACT AMENDMENTS

HATFIELD (AND PACKWOOD) AMENDMENT NO. 3625

Mr. HATFIELD (for himself and Mr. PACKWOOD) proposed an amendment to the bill (S. 2148) to amend the Wild and Scenic Rivers Act of 1968, and for other purposes; as follows:

Page 21, line 20: Insert after the enacting clause "Title I."

Page 21, line 21: Delete "SECTION 1." and insert "SEC. 101."

Page 21, line 22: Strike "Act" and insert "Title".

Page 22, line 1: Delete "SEC. 2." and insert "SEC. 102."

Page 22, line 10: Strike "act" and insert "Act".

Page 22, line 21: Strike "eight-mile" and insert "8-mile".

Page 25, line 12: After "10" insert "(e)".

Page 25, line 12: Strike "act" and insert "Act".

Page 25, line 13: After the word "section", strike "4" and insert "105".

Page 28, line 6: Strike "scenic" and insert "wild".

Page 28, strike lines 12-22 in their entirety and insert:

"( ) IMNAHA, OREGON.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 4-mile segment from Cow Creek to its mouth as a scenic river; and

"(D) the 9-mile segment of the South Fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river."

Page 29, line 2: After the word "Interior", strike the period and insert "as provided in section 10(e) of this Act."

Page 29, line 3: Strike "29.1" and insert "8.6".

Page 29, lines 5-6: Strike the words "Oregon-Washington State line in the following classes:" and insert "Wallowa-Whitman National Forest boundary as a Wild river; to be administered by the Secretary of Agriculture."

Page 29, strike lines 7-15 in their entirety.

Page 29, line 17: After the word "source", insert "in the northwest quarter of section 15, township 26 south, range 6½ east".

Page 31, line 15: After the word "Interior," strike the comma and insert the word "and".

Page 31, line 17: After the word "Reservation," strike "and the State of Oregon".

Page 31, line 17: After "10" and insert "(e).

Page 31, line 18: Strike the word "act" and insert "Act".

Page 31, line 18: Strike "4" and insert "105".

Page 36, line 18: Delete the words "Slack Water" and insert "slack water".

Page 38, line 22: After the word "Agriculture;" insert the word "and".

Page 39, line 9: Delete the ":" after "Act" and insert ".".

Page 39, line 9: Strike *Provided*, That nothing in" and delete lines 10-21 in their entirety.

Page 39, strike lines 22-25 in their entirety.

Page 40, line 19: Strike the word "act" and insert "Act".

Page 41, line 7: After "14" insert "½".

Page 43, line 22: Strike "wild" and insert "scenic".

Page 43, line 24: Strike "22.8" and insert "17.5".

Page 43, line 25: Strike "River Mile 2.2" and insert "Three Mile Creek".

Page 43, line 25-page 44, line 1: Strike "recreational" and insert "scenic".

Page 44, line 2: After the word "Interior;" strike the word "and".

Page 44, line 3: Insert a new section (E):

"(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and".

Page 44, line 3: Strike "(E)" and insert "(F)".

Page 44, line 7: Strike "SEC. 3." and insert "SEC. 103."

Page 45, strike lines 3-11 in their entirety.

Page 45, after line 14 add the following new section:

SEC. 104. UPPER KLAMATH RIVER STUDY.

Section 5(d) of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82 Stat. 910) is amended by inerting "(1)" after "(d)" and by inserting the following new paragraph at the end thereof:

"(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or actions on this segment and its immediate environment."

Page 45, line 15: Strike "SEC. 4." and insert "SEC. 105."

Page 45, line 20: After the word "this" delete "act" and insert "Title".

Page 45, line 24: After the word "this" delete "act" and insert "Title".

Page 46, line 3: After the word "areas" strike the period and insert "as provided in section 10(e) of this Act."

Page 46, line 4: Strike "Act" and insert "Title".

Page 46, strike lines 15-17 in their entirety and renumber the subsequent paragraphs accordingly.

Page 46, line 23: Strike ";" and insert ".".

Page 46, after line 23 insert the following new subsection:

"(c) Nothing in this Title shall preclude or impair the use by the City of Portland, Oregon of water in the Bull Run and Little Sandy Rivers to the extent that such water is necessary for the purpose of municipal water supply."

Page 47, line 1: Strike "SEC. 5." and insert "SEC. 106."

Page 47, line 5: Strike "Act," and insert "Title,".

Page 47, line 6: Strike "$10,000,000; and" and insert "5,000,000;".

Page 47, line 8: Strike "3" and insert "103".

Page 47, line 8: Strike "act," and insert "Title,".

Page 47, line 9: Strike "$2,500,000." and insert "$2,500,000; and"

Page 47, after line 9 insert the following new paragraph:

"(c) for the purpose of preparing the study of the river segment listed in section 104 of this Title, not to exceed $200,000."

At the end of the bill insert the following:

"TITLE II—UMATILLA BASIN PROJECT, OREGON

SEC. 201. SHORT TITLE.

This title may be cited as the "Umatilla Basin Project Act".

SEC. 202. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West

Extension, Westland, and Stanfield Irrigation Districts, for the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report entitled: "Umatilla Basin Project, Oregon, Planning Report" dated February 12, 1988, in the manner specified by this Title. The principal work of the project shall consist of—

(1) lands, water rights, or interests therein acquired for the benefit of fishery resources;

(2) measures to convene water and improve the efficiency of the existing conveyance, distribution, and drainage systems of the Umatilla Project, where such measures are found to make water available for the benefit of fishery resources;

(3) pumping plants and related diversion, conveyance, and distribution features;

(4) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange required to fulfill the purposes of this title;

(5) fish passage and protective facilities and other necessary mitigation measures;

(6) a program to monitor and regulate project operations; and

(7) a program to evaluate fishery resource mitigation measures.

SEC. 203. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this title shall be integrated and coordinated, from an operational standpoint, into existing features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project related water supplies for the purposes herein identified.

SEC. 204. POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

SEC. 205. OPERATION AND MAINTENANCE COSTS.

Non-Federal interests shall be responsible for the cost of operating and maintaining the projects except for those costs associated with implementation of section 204 of this title, and to fulfill the purpose of mitigating losses to anadromous fisheries resources.

SEC. 206. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this title are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary, through the end of fiscal year 1998, to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

SEC. 207. NON-FEDERAL COSTS.

(a) Credit for Non-Federal Fishery Resource Improvements.—The Umatilla Basin Project authorized by this title is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) Treatment of Non-Federal Costs Incurred in Implementing Project Features Before Appropriations.—To the extent any public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

SEC. 208. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such project pumping capacity may be made available for use on presently irrigated lands eligible for service within the irrigation districts that participate in the project authorized in this title at a rate based on the operation and maintenance costs related to such conjunctive use and an appropriate share of capital costs for such use as specified by an agreement between the Secretary of the Interior and the irrigation districts: *Provided*, (a) that boundaries of the irrigation districts may be modified, upon approval of the Secretary of the Interior, to include such lands that received irrigation water service from those districts prior to October 1, 1988; and (b) that such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping, and the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall be borne by irrigation districts receiving the benefit of such water.

SEC. 209. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this title: *Provided*, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated not more than $1,000,000 to accomplish the purposes of this section.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project and the study authorized by section 213 of this title the sum of $42,400,000 (April 1987 prices), less any amounts previously appropriated for the project, plus a minus such amounts as may be required by reason of changes in the cost of construction work of the type involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 210(b) of this title: *Provided*, That such funds are authorized to be appropriated only through the tenth fiscal year after which construction funds are first made available: *Provided further*, That all costs, including operation and maintenance costs, allocated to the mitigation of anadromous fish species and the study authorized to be appropriated such sums as may be required for the Federal share of operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

SEC. 211. WATER RIGHTS.

Nothing in this title shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interestate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(a) contract negotiation and administration;

(b) water conservation plans and activities required by section 210 of the Reclamation Reform Act of 1982 (P.L. 97-293);

(c) allocation of reservoir storage space;

(d) water deliveries outside the authorized service area; and,

(e) water rights held by the United States."

(4) confer upon any non-federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or indian tribe if such rights were estalished by the setting aside of a reservation by treaty, Executive Order, agreements, or Act of Congress.

SEC. 212. REHABILITATION AND BETTERMENT AUTHORIZATION

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Title, Stanfield and Westland Irrigation Districts shall be eligible to receive financial assistance, in an amount not to exceed $2,000,000 each, as demed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

SEC. 213. REVIEW OF UMATILLA PROJECT OPERATIONS.

Within one year from the date of enactment of this Title, the Secretary shall complete a review of current operations of the Umatilla Project, for the purpose of identifying opportunities to further mitigate losses to anadromous fishery resources. Within 90 days of the completion of this review, the Secretary shall transmit a report thereon, together with any conclusions and recommendations to improve the management of the existing project, including measures that may require additional legislation, to the Committee on the Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The review shall iclude, but not be limited to the following:

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ACT

HARKIN AMENDMENT NO. 3626

Mr. BYRD (for Mr. HARKIN) proposed an amendment to the bill (S. 1727) to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and other Communication Disorders; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act shall be cited as the "National Deafness and Other Communications Disorders Act of 1988".

SECTION 2. ESTABLISHMENT AND TRANSFER OF FUNCTIONS.

Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(1) in section 401(b)(1)—

(A) by striking "and Communicative" in subparagraph (J); and

(B) by adding at the end the following new subparagraph:

"(M) The National Institute on Deafness and Other Communication Disorders.";

(2) in the heading for subpart 10 of part C, by striking "and Communicative";

(3) in section 457—

(A) by striking "and Communicative"; and

(B) by striking "disorder, stroke," and all that follows and inserting "and disorder and stroke."; and

(4) in Part C, by adding at the end the following new subpart:

"Subpart 13—National Institute on Deafness and Other Communication Disorders

"PURPOSE OF THE INSTITUTE

"SEC. 464. The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the 'Institute') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

"NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

"SEC. 464A. (a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the 'Program'). The Director or the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

"(b) Activities under the Program shall include—

"(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

"(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

"(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

"(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

"(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

"(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

"DATA SYSTEM AND INFORMATION CLEARINGHOUSE

"SEC. 464B. (a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

"(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

"MULTIPURPOSE DEAFNESS AND OTHER COMMUNICATION DISORDERS CENTER

"SEC. 464C. (a) The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1) use the facilities of a single institution or a consortium of cooperating institutions; and

"(2) meet such qualifications as may be prescribed by the Secretary.

"(c) Each center assisted under this section shall, at least, conduct—

"(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

"(2) training programs for physicians, scientists, and other health and allied health professionals;

"(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

"(4) programs for the dissemination to the general public of information—

"(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

"(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

"(d) A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in subsection (c)(2).

"(e) Each center assisted under this section may conduct programs—

"(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

"(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

"(f) The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

"(g) Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

"NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ADVISORY BOARD

"SEC. 464D. (a) The Secretary shall establish in the Institute the National Deafness and Other Communications Disorders Advisory Board (hereafter in this section referred to as the 'Advisory Board').

"(b) The Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

"(1) The Secretary shall appoint—

"(A) twelve members from individuals who are scientists, physicians, and other health and rehabilitation professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to deafness and other communication disorders, including not less than two persons with a communication disorder; and

"(B) six members from the general public who are knowledgeable with respect to such disorders, including not less than one person with a communication disorder and not less than one person who is a parent of an individual with such a disorder.

Of the appointed members, not less than five shall by virtue of training or experience be knowledgeable in diagnoses and rehabilitation of communication disorders, education of the hearing, speech, or language impaired, public health, public information, community program development, occupational hazards to communications senses, or the aging process.

"(2) The following shall be ex officio members of each Advisory Board:

"(A) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute on Deafness and Other Communication Disorders, the Director of the Centers for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers).

"(B) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

"(c) Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

"(d) The term of office of an appointed member of the Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

"(e) The members of the Advisory Board shall select a chairman from among the appointed members.

"(f) The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

"(g) The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

"(h) The Advisory Board shall—

"(1) review and evaluate the implementation of the plan prepared under section 464A(a) and periodically update the plan to ensure its continuing relevance;

"(2) for the purpose of assuring the most effective use and organization of resources respecting deafness and other communication disorders, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

"(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan and with key non-Federal entities involved in activities affecting the control of such disorders.

"(i) In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

"(j) The Advisory Board shall prepare an annual report for the Secretary which—

"(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

"(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the deafness and other communication disorders;

"(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such disorders in such fiscal year; and

"(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 464A(a).

"(k) The National Deafness and Other Communication Disorders Advisory Board shall be established not later than 90 days after the date of the enactment of the National Institute on Deafness and Other Communication Disorders Act.

"INTERAGENCY COORDINATING COMMITTEE

"SEC. 464E. (a) The Secretary may establish a committee to be known as the Deafness and Other Communication Disorders Interagency Coordinating Committee (hereafter in this section referred to as the "Coordinating Committee").

"(b) The Coordinating Committee shall, with respect to deafness and other communication disorders—

"(1) provide for the coordination of the activities of the national research institutes; and

"(2) coordinate the aspects of all Federal health programs and activities relating to deafness and other communication disorders in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

"(c) The Coordinating Committee shall be composed of the directors of each of the national research institutes and divisions involved in research with respect to deafness and other communication disorders and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to deafness and other communication disorders.

"(d) The Committee shall be chaired by the Director of NIH (or the designee of the Director). The Committee shall meet at the call of the chair, but not less often than four times a year.

"(e) Not later than 120 days after the end of each fiscal year, the Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out subsection (b).

"LIMITATION ON ADMINISTRATIVE EXPENSES

"SEC. 464F. With respect to amounts appropriated for a fiscal year for the National Institutes of Health, the limitation established in section 408(b)(1) on the expenditure of such amounts for administrative expenses shall apply to administrative expenses of the National Institute on Deafness and Other Communication Disorders.".

SEC. 3. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel employed by the National Institutes of Health in connection with the functions vested under section 2 in the Director of the National Institute on Deafness and Other Communication Disorders, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds of the National Institutes of Health, arising from or employed, held, used, available to, or to be made available, in connection with such functions shall be transferred to the Director for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) SAVINGS PROVISIONS.—With respect to functions vested under section 1 in the Director of the National Institute on Deafness and Other Communication Disorders, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, that have been issued, made, granted, or allowed to become effective, and that are effective on the date of the enactment of this Act, shall continue in effect according to their terms unless changed pursuant to law.

PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

JOHNSTON AMENDMENT NO. 3627

Mr. BYRD (for Mr. JOHNSTON) proposed an amendment to the bill (H.J. Res. 597) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes; as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE.

This Resolution may be cited as the "Palau Compact of Free Association Implementation Act".

SEC. 2. ENTRY INTO FORCE OF COMPACT.

Entry into force of the Compact of Free Association between the United States and Palau (set forth in title II of Public Law 99-658 and hereafter in this joint resolution referred to as the "Compact") in accordance with subsections (a) and (d) of section 101 of Public Law 99-658 (100 Stat. 3673) is hereby authorized—

(1) subject to the condition that the Compact, as approved by the Congress in Public Law 99-658, is approved by the requisite percentage of the votes cast in a referendum conducted pursuant to the constitution of Palau,

(2) upon expiration of 30 days after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

SEC. 3. FISCAL PROCEDURES ASSISTANCE.

(a) PROCEDURES ON EXPENDING FUNDS.—Upon request of the Government of Palau, the Secretary of the Interior shall provide assistance, to the Government of Palau to develop and promulgate regulations for the effective expenditure of funds received pursuant to this joint resolution, Public Laws 99-658 and 99-239, or any other Act of Congress.

(b) IMPLEMENTATION OF AUDIT RECOMMENDATIONS.—

(1) The President is authorized to negotiate an agreement with the Government of Palau under which the Government of Palau agrees to develop a plan within 120 days after an audit is submitted to that Government (or any entity or instrumentality thereof) by the Comptroller General of the United States (or his duly authorized representatives), or the Inspector General of the Department of the Interior, to:

(A) implement the recommendations made by such audit, or

(B) inform the Secretary of the Interior of that Government's objections to implementing such recommendations.

(2) Under such agreement the President may agree that the Secretary of the Interior shall provide assistance to the Government of Palau to implement such audit recommendations.

SEC. 4. ANTI-DRUG PROGRAM.

(a) PLAN.—The National Drug Policy Board shall develop, in cooperation with the Government of Palau, a plan for an anti-drug program in Palau. The plan shall be submitted to the Interior and Insular Affairs, and Foreign Affairs Committees of the House of Representatives, the Senate Committee on Energy and Natural Resources, and the Appropriations Committees of the House and Senate by March 1, 1989. The plan shall identify the specific needs and costs of such an anti-drug program. It shall identify all existing resources to be allocated for its implementation by the Government of the United States and the Government of Palau, and it shall recommend priority use for additional resources, assuming such resources are made available.

(b) AGREEMENT.—Following completion of the plan, the President and the Government of Palau shall negotiate an agreement to facilitate implementation of the plan. Such agreement may include:

(1) that the Government of Palau may request, on a long-term or case-by-case basis, that the officers of United States law enforcement agencies may conduct investigations consistent with implementation of the plan in cooperation with the law enforcement agencies of the Government of Palau;

(2) that the Government of Palau or the Government of the United States may agree to provide specific resources, on a one-time, or on a multi-year basis, to strengthen the anti-drug program; and

(3) a specific description of the technical assistance, training, and equipment to be provided to Palau by the United States necessary to implement the plan.

(c) AUTHORIZATION.—To the extent that funds are not otherwise available to appropriate agencies of the United States to implement any agreement entered into pursuant to this section, there is hereby authorized to be appropriated such sums as may be necessary.

SEC. 5. PUBLIC AUDITOR AND SPECIAL PROSECUTOR.

(a) AGREEMENT.—The President shall, upon the formal request of the Government of Palau, negotiate an agreement with the Government of Palau in accordance with section 224 of the Compact which may provide that—

(1) the Government of the United States agrees to provide the Government of Palau with assistance, subject to appropriation, under section 222 of the Compact for maintaining offices of public auditor and special prosecutor;

(2) the Government of Palau agrees to maintain and staff the independent offices of public auditor and special prosecutor established in accordance with the authority of its constitution and laws;

(3) the Government of Palau agrees to provide funding levels adequate for the effective operation of each of the offices of public auditor and special prosecutor during the period the Compact is in effect in addition to the assistance provided by the Government of the United States pursuant to this subsection;

(4) upon request of the Government of Palau the President shall provide, on a nonreimbursable basis, appropriate technical assistance to the public auditor or special prosecutor. The assistance provided pursuant to this subsection for the first five years after the effective date of the Compact shall, upon the request of the Government of Palau, and to the extent personnel are available, include but not be limited to, the full time services of—

(A) an auditor or accountant, as determined by the public auditor, for the office of public auditor and

(B) an attorney or investigator, as determined by the special prosecutor, for the office of special prosecutor, and

(5) the Government of the United States shall, subject to appropriation, provide the Government of Palau with such sums as are agreed to under this section, for each of the offices of public auditor and special prosecutor for the first five years after the effective date of the Compact.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

SEC. 6. POWER GENERATION.

Strike subsection 104(e) of Public Law 99-658, and insert a new subsection 104(e) as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sum and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that the Government of Palau may use any portion of the annual grant under section 211(b) not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities and any portion of the funds under section 212(b) of the Compact for such purpose.".

SEC. 7. DEVELOPMENT PLAN FOR PALAU.

The President shall negotiate an agreement with the Government of Palau under which the Government of Palau agrees to provide current information regarding the National Development Plan proposed pursuant to section 231 of the Compact and submitted pursuant to section 101(d)(1)(C) of Public Law 99-658, including information adapting the existing plan to the first 5-year period following the effective date of the Compact, and to list all capital infrastructure projects to be financed with United States assistance.

SEC. 8. MEDICAL SYSTEM.

(a) REPORT.—The Secretary of the Interior, in cooperation with the Public Health Service, shall submit a report, including the views of the Government of Palau, to the Interior and Insular Affairs, and the Foreign Affairs Committees of the House of Representatives, the Senate Committee on Energy and Natural Resources, and the Appropriations Committees of the Senate and the House of Representatives, by March 1, 1989. The report shall present the range of options, and the cost of such options, for the upgrading of the Koror hospital.

(b) The Government of the United States will sympathetically consider the request of Palau for additional financial assistance to meet the need for medical facility construction based on the report made under this section, and the United States encourages Palauan financial assistance to this project in addition to funds made available by the United States.

(c) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to upgrade the Koror hospital.

SEC. 9. AUDIT CERTIFICATION.

The chief officer of any agency conducting an audit pursuant to paragraph (1) of sections 102(c) and 103(m) of the Compact of Free Association Act of 1985 (Public Law 99-239) and section 101(d)(1)(C) of Public Law 99-658 shall certify that audit.

SEC. 10. ASQUISITION OF DEFENSE SITES.

The provisions of Title III of the Compact relating to future use by the United States of defense sites in Palau do not restrict the authority of the President of the United States to:

(1) request additional funding, subject to appropriation, related to the use of privately owned land in Palau pursuant to Article II of Title Three of the Compact, as may be appropriate in light of actual land use requirements, independent appraisals of such privately owned land accepted by both governments, and other appropriate documentation of actual land use costs; and

(2) consent to an extension of the time set forth in a subsidiary agreement to such Article in which the Government of Palau is required to make such land available to the United States.

SEC. 11. CAPITAL IMPROVEMENTS.

(a) REPORT.—The Secretary of the Interior, in cooperation with the Government of Palau, shall submit a report to the Interior and Insular Affairs, and the Foreign Affairs Committees of the House of Representatives, the Senate Committee on Energy and Natural Resources, and the Appropriations Committees of the Senate and the House of Representatives by March 1, 1989 on the condition of the Palau prison. The report shall present a range of options for upgrading the prison, including replacement of the facility; the cost of these options; and alternatives for funding these options.

(b) The Government of the United States will sympathetically consider the request of Palau for additional financial assistance to meet the need for prison construction based on the report made under this section.

(c) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to upgrade the Palau prison.

SEC. 12. FEDERAL PROGRAMS COORDINATION PERSONNEL.

(a) ASSIGNMENT.—The Secretary of the Interior shall station at least one professional staff person in each of the Offices of the United States Representatives in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands to provide federal program coordination and technical assistance to such governments as authorized under Public Laws 99-239 and 99-658. In meeting the purposes of this section the Secretary shall select qualified persons following consultations with the Interagency Group on Freely Associated State Affairs.

(b) (AUTHORIZATION.—There is authorized to be approriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13. REFERENDUM COSTS.

The Secretary of the Interior shall provide such sums as may be necessary for a further referendum on approval of the Compact, if one is required, or other appropriate costs associated with the approval process in Palau. There is authorized to be appropriated not to exceed $200,000 to carry out the purpose of this section.

SEC. 14. AGREEMENTS.

(a) Pursuant to Section 101(d) of Public Law 99-239, the following agreements are approved and shall enter into force in accordance with their terms:

(1) "Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands to Amend the Governmental Represenatation Provisions of the Compact of Free Association Pursuant to Section 432 of the Compact" signed on March 18, 1988; and

(2) "Agreement Between the Government of the United States and the Government of the Federated States of Micronesia to Amend the Governmental Representation Provisions of the Compact of Free Association Pursuant to Section 432 of the Compact" signed on March 9, 1988.

(b) An agreement between the United States and the Government of the Republic of Palau identical to the agreements referred to in subsection (a) of this section shall take effect upon submission to Congress of such an agreement and entry into force of such an agreement in the manner provided in Section 101(d)(5) of Public Law 99-658.

(c) The provisions of Article IX, paragraph 5(a) of the Agreement referred to in Section 462(e) of the Compact of Free Association as approved by Public Law 99-239, and Article IX, paragraph 5(a) of the agreement referred to in Section 462(f) of the Compact of Free Association for Palau as approved by Public Law 99-658, are extended, in accordance wth the terms thereof, until October 1, 1998, unless earlier terminated or further extended by the laws of the United States.

SEC. 15. STATUS OF FUNDS.

In any year that funds made available by the United States for that year pursuant to this joint resolution, Public Law 99-658 or Public Law 99-239, or any other Act of Congress are not completely obligated by the Government of Palau, the unobligated balances of such funds shall remain available in addition to the funds to be provided in subsequent years.

SEC. 16. SUBMISSION OF AGREEMENTS.

(a) Any agreement concluded with the Government of Palau pursuant to this joint resolution and any agreement which would amend, change, or terminate any such agreement, or portion thereof, shall be submitted to the Congress and may not take effect until after 30 days after the date on which such agreement is so submitted. An amendment or agreement substituting or in addition to the subsidiary agreement negotiated under section 212(a) of the Compact or its annex shall take effect only when approved by an Act of Congress.

(b) The authority under section 2 of this joint resolution for the Compact to enter into force shall not be effective until the agreements set forth in sections 3 and 7 between the Governments of the United States and Palau have been concluded.

SEC. 17. TRANSITION FUNDING.

Section 104(c) of Public Law 99-658 (100 Stat. 3676) is amended to read as follows:

"(c) AUTHORIZATION FOR TRANSITION PURPOSES.—For the purposes of applying section 105(c)(2) of the Compact of Free Association Act of 1985 (99 Stat. 1792) to Palau, the terms "fiscal year 1987", "fiscal year 1988", and "fiscal year 1989" shall be deemed to be the first, second, and third fiscal years, respectively, beginning after the effective date of the Compact.".

SEC. 18. JUDICIAL ASSISTANCE.

(a) The Ninth Judicial Circuit of the United States may provide assistance to the courts of the freely associated states. The Chief Justice of the United States or the Chief Judge of the Ninth Circuit may, upon the request of a duly authorized official of a freely associated state, authorize any circuit judge of, or district court judge within, the Ninth Circuit to serve temporarily as a judge of any court of a freely associated state.

(b) The Congress hereby consents to the acceptance and retention of reimbursement or allowances for expenses related to service on a freely associated state court authorized by this section. All such reimbursement or allowances shall be reported by the judge concerned to the Administrative Office of the United States Courts.

(c) The President is authorized to enter into agreements with the freely associated states that are necessary or appropriate to facilitate implementation of this section.

SEC. 19. CONTROLLED SUBSTANCES IN THE FREELY ASSOCIATED STATES.

(a) The President is authorized to negotiate agreements which provide—

(1) that the United States shall carry out the provisions of part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) as necessary to provide for the lawful distribution of controlled substances in the freely associated states;

(2) that a freely associated state which institutes and maintains a voluntary system to report annual estimates of narcotics needs to the International Narcotics Control Board, and which imposes controls on imports of narcotic drugs consistent with the Single Convention of Narcotic Drugs of 1961, shall be eligible for exports of narcotic drugs from the United States in the same manner as a country meeting the requirements of subsection (a) of 21 U.S.C. 953.

(b) Agreements concluded pursuant to this section shall become effective pursuant to section 101(f)(5) of Public Law 99-239 or section 101(d)(5) of Public Law 99-658, as may be applicable.

SEC. 20. NORTHERN MARIANAS COLLEGE.

The Northern Marianas College is hereby constituted a depository to receive Government publications, and the Superintendent of Documents shall supply to the Northern Marianas College one copy of each such publication in the same form as supplied to other designated depositories.

SEC. 21. MATCHING FUND REQUIREMENT.

The last sentence of section 501(d) of Public Law 95-134, as amended by Public Law 96-205, as amended (48 U.S.C. 1469a(d)), is amended—

(1) by inserting "any Federal program as it applies in" before "American Samoa"; and

(2) by inserting "or other expenditures" after "funds".

SEC. 22. VIRGIN ISLANDS.

The Revised Organic Act of the Virgin Islands is amended by striking out the second sentence of section 25 (48 U.S.C. 1615).

SEC. 23. CABRAS ISLAND.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782) (as amended by section 504 of Public Law 98-454 (98 Stat. 1736)) is amended by striking "30 percent" and inserting "50 percent".

SEC. 24. PONAPE HYDROPOWER DIVERSION.

Section 101 of the Act of March 12, 1980 (94 Stat. 84) is amended by inserting after the word "Ponape;" the following: "for design and construction of the Nanpil river hydropower diversion project;".

FEDERAL COMMUNICATIONS COMMISSION AUTHORIZATION ACT

INOUYE AMENDMENT NO. 3628

Mr. BYRD (for Mr. INOUYE) proposed an amendment to the bill (S. 1048) to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Communications Commission Authorization Act of 1988".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

AUTHORIZATION OF APPROPRIATIONS

"SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $107,250,000 for fiscal year 1988 and $109,250,0oC0 for fiscal year 1989, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1988 and 1989.".

(b) The amendment made by subsection (a) of this section shall apply with respect to fiscal years beginning after September 30, 1987.

TRAVEL REIMBURSEMENT PROGRAM

"SEC. 3. Section 4(g)(2)(D) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)(D)) is amended by striking "1987" and inserting in lieu thereof "1989"

ANNUAL MANAGEMENT REPORT

"SEC. 4. Subsection (g) of section 5 of the Communications Act of 1934 (47 U.S.C. 155) is repealed.

FEE SCHEDULE

"SEC. 5. Section 8(b)(1) of the Communications Act (47 U.S.C. 158(b)(1) is amended by striking "the date of enactment of this section" the first time it appears and inserting in lieu thereof "April 1, 1987,".

OLDER AMERICANS PROGRAM

"SEC. 6.(a) During fiscal years 1988 and 1989, the Federal Communications Commission is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Commission (and consistent with such provisions of law) in providing technical and administrative assistance for projects related to the implementation, promotion, or enforcement of the regulations of the Commission.

(b) Prior to awarding any grant or entering into any agreement under subsection (a), the Office of the Managing Director of the Commission shall certify to the Commission that such grant or agreement will not—

(1) result in the displacement of individuals currently employed by the Commission;

(2) result in the employment of any individual when any other individual is on layoff status from the same or a substantially equivalent job within the jurisdiction of the Commission;

(3) result in filling a position prior to (A) publicly announcing the availability of such position, adn (B) attempting to fill such position in accordance with regular employment procedures; or

(4) affect existing contracts for services.

(c) Participants in any program under a grant or cooperative agreement pursuant to this section shall—

(1) execute a signed statement with the Commission in which such participants certify that they will adhere to the standards of conduct prescribed for regular employees of the Commission, as set forth in part 19 of title 47, Code of Federal Regulations; and

(2) execute a confidential statement of employment and financial interest (Federal Communications Commission Form A-54) prior to commencement of work under the program.

Failure to comply with the terms of the signed statement described in paragraph (1) shall result in termination of the individual under the grant or agreement.

(d) Nothing in this section shall be construed to permit employment of any such participant in any decisionmaking or policymaking position.

(e) Grants or agreements under this section shall be subject to prior appropriation Acts.

CONGRESSIONAL COMMUNICATIONS

"SEC. 7.(a) The prohibition in section 1.1203(a) of title 47, Code of Federal Regulations, shall not apply to any of the types of presentations listed in section 1.1204(b) of such title nor to any presentation made by a member or officer of Congress, or a staff person of any such member or officer, acting in his or her official capacity, in—

(1) any non-restricted proceeding under section 1.1206(b) of such title;

(2) any exempt proceeding under section 1.1204(a)(2) of such title not involving the allotment of a channel in the radio broadcast or television broadcast services; or

(3) any exempt proceeding under section 1.1204 (a)(4) through (a)(6) of such title.

(b) Each reference in subsection (a) of this section to a provision of title 47, Code of Federal Regulations, applies to such provision as in effect on the date of enactment of this Act. No subsequent amendment of the rules or regulations in such title shall have the effect of prohibiting any presentation of the kind that would be permitted under subsection (a) of this section on the date of enactment of this Act.

TARIFF REVIEW

"SEC. 8.(a) Section 5(c)(1) of the Communications Act of 1934 (47 U.S.C. 155(c)(1)) is amended, in the first sentence, by inserting immediately after "this subsection" the following: "and except any action referred to in sections 204(a)(2), 208(b), and 405(b)".

(b) Section 204(a) of the Communications Act of 1934 (47 U.S.C. 204(a)) is amended—

(1) by inserting "(1)" immediately before "Whenever"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 12 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(B) The Commission shall, with respect to any such hearing initiated prior to the date of enactment of this paragraph, issue an order concluding the hearing not later than 12 months after such date of enactment.

"(C) Any order concluding a hearing under this section shall be a final order and may be appealed under section 402(a).".

(C) Section 208 of the Communications Act of 1934 (47 U.S.C. 208) is amended—

(1) by redesignating the existing text as subsection (a); and

(2) by adding at the end the following new subsection:

"(b)(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 12 months after the date on which the complaint was filed, or within 15 months after such date if the investigation raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(2) The Commission shall, with respect to any such investigation initiated prior to the date of enactment of this subsection, issue an order concluding the investigation not later than 12 months after such date of enactment.

"(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a).".

(d) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended—

(1) by redesignating the existing text as subsection (a);

(2) in subsection (a), as so redesignated, by striking "section 5(d)(1)" each place it appears and inserting in lieu thereof "section 5(c)(1)"; and

(3) by adding at the end the following new subsection:

"(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under section 204(a) or concluding an investigation under section 208(b), the Commission shall issue an order granting or denying such petition.

"(2) Any order issued under paragraph (1) shall be a final order and may be appealed under section 402(a).".

HAWAII MONITORING STATION

"SEC. 9.(a) The Federal Communications Commission is authorized to expend such funds as may be required in fiscal years 1989 and 1990, out of its appropriations for such fiscal years, to relocate within the State of Hawaii the Hawaii Monitoring Station presently located in Honolulu (Waipahu), including all necessary expenses for—

(1) acquisition of real property;

(2) options to purchase real property;

(3) architectural and engineering services;

(4) construction of a facility at the new location;

(5) transportation of equipment and personnel;

(6) lease-back of real property and related personal property at the present location of the Monitoring Station pending acquisition of real property and construction of a facility at a new location; and

(7) the re-establishment, if warranted by the circumstances, of a downtown office to serve the residents of Honolulu.

(b) The Federal Communications Commission shall declare as surplus property, for disposition by the General Services Administration, the real property (including the structures and fixtures) and related personal property which are at the present location of the Hawaii Monitoring Station and which will not be relocated. Notwithstanding sections 203 and 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 485), the General Services Administration shall sell such real and related personal property on an expedited basis, including provisions for leaseback as required, and shall reimburse the Commission from the net proceeds of the sale for all of the expenditures of the Commission associated with such relocation of the Monitoring Station. Any such reimbursed funds received by the Commission shall remain available until expended.

(c) The net proceeds of the sale of such real and related personal property, less any funds reimbursed to the Federal Communications Commission pursuant to subsection (b), and less normal and reasonable charges by the General Services Administration for costs associated with such sale, shall be deposited in the general fund of the Treasury.

(d) The Hawaii Monitoring Station shall continue its full operations at its present location until a new facility has been built and is fully operational at a new location.

(e) The Federal Communications Commission and the General Services Administration shall not take any action under this section committing any funds disposing of any property in connection with the relocation of the Hawaii Monitoring Station until—

(1) the Chairman of the Commission and the Administrator of General Services have jointly prepared and submitted, to the Committee on Appropriations, the Committee on Commerce, Science, and Transportation, and the Committee on Governmental Affairs of the Senate, and the Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Government Operations of the House of Representatives, a letter or other document setting forth in detail the plan and procedures for such relocation which will reasonably carry out, in an expeditious manner, the provisions of this section but will not disrupt or defer any programs or regulatory activities of the Commission or adversely affect any employee of the Commission (other than those at the Monitoring Station who may be required to transfer to another location) through the use of appropriations for the Commission, in fiscal years 1989 and 1990; and

(2) at least 30 calendar days have passed since the receipt of such document by such Committees.

WILSON (AND OTHERS) AMENDMENT NO. 3629

Mr. HATFIELD (for Mr. WILSON, for himself, Mr. BOND, Mr. COCHRAN, Mr. COHEN, Mr. DURENBERGER, Mr. KASTEN, Mr. MCCAIN, Mr. NICKLES, Mr. PRESSLER, Mr. STAFFORD, Mr. BUMPERS, Mr. DECONCINI, Mr. FOWLER, Mr. GLENN, Mr. HEFLIN, Mr. NUNN, Mr. PRYOR, Mr. REID, Mr. SHELBY, Mr. DANFORTH, and Mr. PACKWOOD) proposed an amendment to the bill, S. 1048, supra; as follows:

At the end of the amendment add the following:

SENSE OF CONGRESS

SEC. . (a) The Congress finds that—

(1) more than four hundred and thirty-five thousand four hundred radio amateurs in the United States are licensed by the Federal Communications Commission upon examination in radio regulations, technical principles, and the international Morse code;

(2) by international treaty and the Federal Communications Commission regulation, the amateur is authorized to operate his or her station in a radio service of intercommunications and technical investigations solely with a personal aim and without pecuniary interest;

(3) among the basic purposes for the Amateur Radio Service is the provision of voluntary, noncommercial radio service, particularly emergency communications; and

(4) volunteer amateur radio emergency communications services have consistently and reliably been provided before, during, and after floods, tornadoes, forest fires, earthquakes, blizzards, train wrecks, chemical spills and other disasters.

(b) It is the sense of the Congress that—

(1) it strongly encourages and supports the Amateur Radio Service and its emergency communications efforts; and

(2) Government agencies shall take into account the valuable contributions made by amateur radio operators when considering actions affecting the Amateur Radio Service.

SALINAS NATIONAL MONUMENT

DOMENICI AMENDMENT NO. 3630

Mr. HATFIELD (for Mr. DOMENICI) proposed an amendment to the bill (S. 2545) to redesignate Salinas National Monument in the State of New Mexico and for other purposes; as follows:

On page 11, lines 1-2 strike "establishing a landscape museum" and insert in lieu thereof "marking and interpreting the landscapes"

QUINAULT INDIAN NATION

EVANS AMENDMENT NO. 3631

Mr. HATFIELD (for Mr. EVANS) proposed an amendment to the bill (S. 2752) to declare that certain lands to be held in trust for the Quinault Indian Nation, and for other purposes; as follows:

The amendment in the nature of a substitute proposed by the Select Committee on Indian Affairs is further amended—

(a) in Section 1, on page 5, line 5, after "Nation.", by inserting the following new sentence: "The boundary of the Olympic National Forest is hereby modified as depicted on the map referred to in this section.";

(b) in subsection (b) of Section 3, on page 6, lines 11 and 12, by striking "as other National Forest System lands are administered" and inserting in lieu thereof: "in accordance with all laws, rules and regulations applicable to the National forests"; and

(c) in Section 3, on page 6, after line 12, by inserting the following new subsection (c):

"(c) The rights of the Quinault Indian Nation to revenues under subsection (b) of Section 4 shall not affect the management of these lands nor create a trust or fiduciary duty on the Secretary of Agriculture with respect to such management beyond that which the Secretary may have under existing law.".

COMMEMORATION OF THE BICENTENNIAL OF THE UNITED STATES CONGRESS

BYRD AMENDMENT NO. 3632

Mr BYRD proposed an amendment to the bill (H.R. 5280) to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the United States Congress; as follows:

Strike out section 4 and all following sections and insert in lieu thereof the following:

SEC. 4. DESIGN OF COINS.

The design for each coin authorized by this Act shall be selected by the Secretary after consultation with the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Commission of Fine Arts.

SEC. 5. ISSUANCE OF COINS.

(a) FIVE DOLLAR COINS.—The five dollar coins minted under this Act may be issued in uncirculated and proof qualities and shall be struck at the United States Mint at West Point, New York.

(b) ONE DOLLAR AND HALF DOLLAR COINS.—The one dollar and half dollar coins minted under this Act may be issued in uncirculated and proof qualities, except that not more than 1 facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue the coins minted under this Act beginning January 1, 1989.

(d) TERMINATION OF AUTHORITY.—Coins may not be minted under this Act after June 30, 1990.

(e) CONTRACTS.—Any contract to be made by the Secretary involving the promotion, advertising, or marketing of any coins authorized under this Act shall be valid only upon approval by the United States Capitol Preservation Commission.

SEC. 6. SALE OF COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this Act at a price equal to the face value, plus the cost of the designing and issuing the coins (including labor, materials, dies, use of machinery, and overhead expenses).

(b) BULK SALES.—The Secretary shall make any bulk sales of the coins minted under this Act at a reasonable discount to reflect the lower costs of such sales.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted under this Act prior to the issuance of such coins. Sale prices with respect to such prepared orders shall be at a reasonable discount.

(d) SURCHARGES.—All sales of coins minted under this Act shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $1 per coin for the half dollar coins.

SEC. 7. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

SEC. 8. USE OF SURCHARGES.

An amount equal to the amount of all surcharges that are received by the Secretary from the sale of coins minted under this Act shall be deposited in the Capitol Preservation Fund and available to the United States Capitol Preservation Commission.

SEC. 9. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this Act.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

GUS J. SOLOMON UNITED STATES COURTHOUSE

DOMENICI AMENDMENT NO. 3633

Mr. HATFIELD (for Mr. DOMENICI) proposed an amendment to the bill (H.R. 5007) to designate the U.S. courthouse at 620 Southwest Main Street, Portland, OR, as the "Gus J. Solomon United States Courthouse"; as follows:

Insert at the end the following new section:

"SEC. 3. Notwithstanding any other provisions of law not to exceed one-fourth of one per centum of funds apportioned to a State under sections 104(b), 130, 144, and 152 of title 23, United States Code, shall be available to carry out section 140(b) of title 23, United States Code upon a request by the State highway department."

PUBLIC TELECOMMUNICATIONS ACT

INOUYE (AND OTHERS) AMENDMENT NO. 3634

Mr. BYRD (for Mr. INOUYE, for himself, Mr. HOLLINGS, and Mr. DANFORTH) proposed an amendment to the bill (S. 2114) entitled the "Public Telecommunications Act of 1988"; as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Public Telecommunications Act of 1988".

PUBLIC TELECOMMUNICATIONS FACILITIES AUTHORIZATIONS

SEC. 2. Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended—

(1) by striking "and" after "1987,"; and

(2) by inserting "$36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991," immediately after "1988,".

CORPORATION FOR PUBLIC BROADCASTING AUTHORIZATIONS

SEC. 3. Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(1) by striking "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993";

(2) by striking "50 percent" and inserting in lieu thereof "40 percent";

(3) by striking "and" after "fiscal year 1989,"; and

(4) by inserting before the period at the end thereof the following: ", $245,000,000 for fiscal year 1991, $265,000,000 for fiscal year 1992, and $285,000,000 for fiscal year 1993".

PUBLIC BROADCASTING SATELLITE INTERCONNECTION FUND

SEC. 4. (a) Section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended by adding at the end thereof the following new paragraph:

"(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite Interconnection Fund (hereinafter in this subsection referred to as the 'Satellite Interconnection Fund'), to be administered by the Secretary of the Treasury.

"(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

"(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

"(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

"(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

"(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.".

(b)(1) The Corporation for Public Broadcasting shall endeavor to obtain donations to the Satellite Interconnection Fund established under section 396(k)(10) of the Communications Act of 1934 (47 U.S.C. 396(k)(10)) from non-Federal sources and on March 1, 1990, report to Congress describing the actions taken to obtain such donations and stating the funds received, if any.

(2) On or before March 1, 1990, the Corporation for Public Broadcasting on behalf of the public radio and public television licensees and permittees (or their designated representatives) shall submit to Congress a report by such licensees or permittees (or their representatives) detailing the satellite replacement needs of public radio and public television and the difference in cost between leasing satellite transponder capacity and buying such capacity.

FINDING WITH RESPECT TO CERTAIN PROGRAMMING

SEC. 5. Section 396(a) of the Communications Act of 1934 (47 U.S.C. 396(a)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) inserting immediately after paragraph (5) the following new paragraph:

"(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;".

EXERCISE OF BUSINESS JUDGMENT BY CORPORATION

SEC. 6. Section 396(g)(2)(B)(ii) of the Communications Act of 1934 (47 U.S.C. 396(g)(2)(B)(ii)) is amended by striking "contract or".

ALLOCATION OF CORPORATION FUNDING

SEC. 7. (a) Section 396(k)(3)(A)(i) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)) is amended—

(1) by amending subclause (I) to read as follows:

"(I) $10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal year shall be available for such administrative expenses;";

(2) subclause (II) is amended to read as follows:

"(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English, and if the available funding level permits, for projects and activities that will enhance, public broadcasting;"; and

(3) in subclause (III), by striking "clause (ii)(I)" and inserting in lieu thereof "clause (ii)".

(b) Section 396(k)(3)(A)(II) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(II)) is amended by striking "for public" and inserting in lieu, thereof the following: ", and in accordance with any plan implemented under paragraph (6)(A), for national public".

(c) Clause (iii) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

"(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

"(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

"(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.".

(d) Clause (v) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

"(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

"(II) 25 percent shall be available for distribution for the purposes referred to in clause (iii) (II) and (III).".

(e) Section 396(k)(3)(A)(iv)(I) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(iv)(I)) is amended by striking "Subject to the provisions of clause (v)," and inserting in lieu thereof the following: "From the amount provided pursuant to clause (i)(II),".

(f) Subparagraph (B)(i) of section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended to read as follows:

"(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subpargraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunication entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the protection of programs.".

(g) Section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3) is amended by striking subparagraphs (C) and (D).

(h) Paragraphs (6)(A) of section 396(k) of the Communications Act of 1934 (47 U.S.C. 496(k)) is amended to read as follows:

"(6)(A) The Corporation shall conduct a study and prepare a plan, in consulation with public television licensees (or designated representatives of those licensees) and the Public Broadcasting Service, and how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best be allocated to meet the objectives of this Act with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.".

(i) Section 396(k)(6)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(6)(B)) is amended by inserting immediately after the first sentence the following new sentence: "The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available.".

(j) Section 396(k)(7) of the Communications Act of 1934 (47 U.S.C. 396(k)(7)) is amended by inserting "(ii)(I) and (iii)(I)" immediately after "paragraph (3)(A)".

INDEPENDENT PRODUCTION

SEC. 8. Section 396(k)(3)(B) of the Communication Act of 1934 (47 U.S.C. 396(k)(3)(B) is amended by adding at the end the following new clause:

"(iii)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

"(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the purpose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and indpendent production entities.

"(III) The Corporation shall work with organizations or associations of independent producers or independent production entities to develop a plan and budget for the operation of such service that is acceptable to the Corporation.

"(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation's obligations to expand the diversity and innovations of programming available to public broadcasting.

"(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service. At the end of fiscal year 1992, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity of innovativeness of programming available to public broadcasting.".

PROHIBITION AGAINST EDITORIALIZING

SEC. 9. Section 399 of the Communncations Act of 1934 (47 U.S.C. 399) is amended by striking the first sentence.

SCRAMBLING OF PUBLIC BROACASTING SERVICE PROGRAMMING

SEC. 10. Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) No person shall encrypt or continue the encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmission of the same program.".

WILSON AMENDMENT NO. 3635

Mr. HATFIELD (for Mr. WILSON) proposed an amendment to the bill, S. 2114, supra; as follows:

Redesignate sections 9 and 10 as sections 10 and 11, and insert immediately after section 8 the following new section:

NEEDS OF MINORITIES AND OTHER GROUPS

SEC. 9. Section 396 of the Communications Act of 1934 (47 U.S.C. 396) is amended by adding at the end the following new subsection:

"(m)(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences and the ways radio and television can be used to help these underrepresented groups. Such assessment should address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills.

"(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report should address programming (including that which is produced by minority producers), training, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation.

"(3) As soon as they have been prepared, each assessment and annual report required under paragraphs (1) and (2) shall be submitted to Congress.".

INOUYE AMENDMENT NO. 3636

Mr. BYRD (for Mr. INOUYE) proposed an amendment to the bill, S. 2114, supra; as follows:

Insert "(a)" immediately after "SEC. 9."

In the first sentence of paragraph (1) of new subsection (m), as proposed to be added to section 396 of the Communications Act of 1934, strike "audiences and the ways" and all that follows through the end of such sentence and insert in lieu thereof the following: "audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities.".

In the second sentence of paragraph (2) of such new subsection (m), insert "minority employment," immediately after "training,".

At the end add the following new subsection:

(b) Section 398(b)(1) of the Communications Act of 1934 (47 U.S.C. 398(b)(1)) is amended by inserting, immediately after "'recipients'),", the following: "in accordance with the equal employment opportunity regulations of the Commission,".

INFECTIOUS WASTE REGULATION ACT

BAUCUS AMENDMENT NO. 3637

Mr. BYRD (for Mr. BAUCUS) proposed an amendment to the bill (H.R. 3515) to amend the Solid Waste Disposal Act to require the Administrator of the Environmental Protection Agency to promulgate regulations on the management of infectious waste; as follows:

Amend section 2(a) by—

(1) striking new section 11001(b) and inserting in lieu thereof the following:

"'(b) OPT OUT.—(1) If the Governor of any State covered under subsection (a) which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

'(2) If the Governor of any other State covered under subsection (a) notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subtitle and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subtitle, remove such State from the demonstration program.

'(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subtitle.'";

(2) amending new section 11002 (a)(5) by inserting "animal" immediately after "contaminated".

(3) striking new section 11002 (a)(10) and inserting in lieu thereof the following:

"'(10) Biological waste and discarded materials contaminated with blood, excretion, excudates or secretion from human beings or animals who are isolated to protect others from communicable diseases.

"'(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.'"; and

(4) amending new section 11009 by striking "9 months" and inserting in lieu thereof "24 months".

NATIONAL GROUND WATER CONTAMINATION RESEARCH ACT

BURDICK AMENDMENT NO. 3638

Mr. BYRD (for Mr. BURDICK) proposed an amendment to the bill (H.R. 791) to authorize the water resources research activities of the United States Geological Survey, and for other purposes; as follows:

On page 74, lines 4 and 5, strike subsection (i) in its entirety and renumber subsequent subsections accordingly.

ADDITIONAL STATEMENTS

MOU-SHIH DING, WASHINGTON REPRESENTATIVE, REPUBLIC OF CHINA

● Mr. DASCHLE. Mr. President, I rise to welcome the Republic of China's new Washington Representative, former Foreign Minister Mou-shih Ding. As many Senators know, Mr. Ding replaces Dr. Fredrick Chien as the Representative of the Coordination Council for North American Affairs.

In the time that I have served in the United States Senate as a member of the Finance Committee, I have enjoyed a close working relationship with the people of the Republic of China. This relationship started with my close friendship with Dr. Chien, and will extend, I am sure, to a close-working relationship with Mr. Ding.

Mr. Ding brings to this position of Washington Representative an impressive and important background of experience in the foreign service. He has served as Ambassador to a number of countries, including the Republics of Rwanda, Korea, and Zaire. He has served in the European Office of the United Nations and the United Nations General Assembly. Most recently, he has served as the Foreign Minister, playing a pivotal role in shaping the Republic of China's economic liberalization policy.

The Senate can expect Mr. Ding to continue to advance the positive relationship that the Republic of China has with the United States. Nowhere is that relationship warmer and more important than that found in South Dakota. In fact, representatives from the ROC have made numerous buying missions to South Dakota, purchasing millions of dollars in South Dakota agricultural products.

As Mr. Ding assumes his position as Washington Representative of the Coordination Council for North American Affairs, I rise to extend my best wishes and hopes to him and his family for a close working relationship between our countries, as well as with the State of South Dakota.●

LEGISLATION TO ESTABLISH AN INDEPENDENT FAA

● Mrs. KASSEBAUM. Mr. President, I would like to associate myself with the recent remarks by the Senator from Kentucky [Mr. FORD], regarding his intention to reintroduce S. 1600, the Independent Federal Aviation Act, in the 101st Congress. As ranking member of the Aviation Subcommittee, I joined Chairman FORD as a cosponsor of S. 1600 when that measure was first introduced last year.

I share Senator FORD's disappointment that S. 1600 was not enacted into law this Congress. I firmly believe we must find some mechanism to ensure that the FAA can act with the autonomy necessary to find solutions to the problems currently confronting our national air transportation system. Enactment of the Ford bill would have been an all-important step in that direction.

Over the past several years, it has become increasingly obvious that, as a nation, we cannot afford to see the demand for improved airway and airport capacity held hostage to political goals and agendas. There are hard decisions which must be made about the future course of Federal aviation policy. Such decisions should be made on the basis of a thorough analysis of current conditions and future goals. We must get on with that process, and we need an aviation entity solely dedicated to aviation objectives.

Among the most serious of structural defects this legislation could help address is the perennial conflict between the promise of the airport and airway trust fund and the reality of the budget and appropriations process. I am personally convinced that if a clear linkage is established between system demand and the money actually made available to fund and manage the system, we will have taken an important step in fixing a systemic problem. Unfortunately resolution of that problem will have to wait another year.

While I continued to be concerned about the future of aviation policy, and about the FAA, I am optimistic about the future. I believe the favorable reception S. 1600 received this year will carry over to the new Congress.

S. 1600 was reported favorably out of committee this year, and the measure is now cosponsored by a majority of the Members of this body. The momentum behind S. 1600 has already done a great deal to free the hands of the FAA. The political impact of the bill has been uniformly positive.

Mr. President, I am pleased to know that when the 101st Congress meets in January, Senator FORD will reintroduce this legislation. I look forward to again working with him to establish an independent FAA.●

RELATIONS BETWEEN TAIWAN AND MAINLAND CHINA

● Mr. DASCHLE. Mr. President, I want to call to the attention of my colleagues an article I recently had the opportunity to read on the future of relations between Taiwan and Mainland China. The author is Winberg Chai, formerly the chairman of the Third World Conference Foundation in Vermillion, SD and currently the director of international studies at the University of Wyoming.

Dr. Chai provides an interesting perspective on the changing relationships between these two countries. I ask unanimous consent that the speech authored by Dr. Chai be printed in the RECORD for the benefit of my colleagues.

The remarks follow:

THE FUTURE RELATIONS OF TAIWAN AND MAINLAND CHINA [1]

(By Winberg Chai)

Before I had agreed to speak on this topic, I was not fully aware of the complexity and difficulties involved in this subject. It is one of the hottest issues under consideration at this moment by leaders in both Taiwan and Chinese mainland today.

I hope you will bear with me for a few historical background notes, for the benefit of some of you who may not be aware of Chinese history.

Although the Chinese knew of Taiwan in the 7th century, large scale settlement by the Chinese did not begin until well into the 17th century. In 1624, the Dutch established a trading station there and imposed taxes on both the inhabitants and exported items. Two years later, the Spaniards landed at the Keelung, but were driven out by the Dutch in 1641.

In 1661, Cheng Cheng-Kung expelled the Dutch, and established a Ming government in exile from the Manchus, new rulers of China. For 22 years Cheng, his son, and his grandson governed the Island, flying the flag of the Ming dynasty, they instituted in Taiwan the same social and economic systems as in the mainland. The Manchus conquered the Island in 1683, and the following year, the Island was made a prefecture of China's Fukien province and divided into three counties. The Manchu dynasty governed Taiwan for 212 years.

When Taiwan was ceded to Japan after the Sino-Japanese War of 1894, the Chinese inhabitants objected and declared a Republic, which the Japanese had to subdue by force. The Japanese turned the Island into an important military and naval base. They used the island as a source of foodstuffs and raw materials, and endowed the island residents with standards of economic development and education much in advance of those on the Chinese mainland.

As a result of the Japanese surrender after WWII, Taiwan was returned to the Chinese Nationalists on October 25, 1945. This was based upon the Cairo Declaration signed by the Chinese, British, and American governments on December 1, 1943, and the Potsdam Declaration signed on July 26, 1945 by China, the U.S., Britain, and the Soviet Union.

But the soldiers and administrators sent to Taiwan by Chinese Nationalist Government on the mainland immediately after WWII disappointed the natives on Taiwan. They acted more like conquerors rather than liberators of Taiwanese people. Two years later, a revolt against the Nationalist rulers in Taiwan broke out on February 28, 1947, resulting in some 20,000 being killed. When the Nationalists were defeated by the Communists, the National government moved to Taipei in December, 1949, and about a million former mainlanders also fled to the island. After the outbreak of the Korean War, President Truman on January 5, 1950, ordered the U.S. 7th Fleet to prevent any Chinese Communist attack on the Island. Truman also declared: "The future status of Taiwan should not be decided until the restoration of Pacific Security and the conclusion of the Japanese Peace Treaty, or be discussed in the United Nations." However, Chou En-lai, acting as China's foreign minister, replied on June 28, 1950 that: on behalf of the Central People's Government of the People's Republic of China, I declare that, no matter what obstructive action U.S. Imperialists may take, the fact that Taiwan is part of China will remain unchanged forever."

This became more complicated after both governments on Taiwan and Chinese mainland maintained and insisted that there should only be one China and no compromise can be made on this issue. For some time, both governments are each supported by a large number of states, which, in turn, have recognized one of the two governments as the "de jure", government of China.

Thus, the Taiwan issue has long been a key one in Sino-U.S. relations. For more than 30 years, the relations can be characterized as "confrontational", between U.S., Chinese mainland, and Taiwan. Although the U.S. recognized PRC as the sole and legal government of China on December 15, 1978, effective January 1, 1979, but the issue of Taiwan has not been resolved because of the passing of "Taiwan Relations Act" by the U.S. Congress on April 10, 1979.

We do know that the U.S. does not regard Taiwan to be: it is not the "de jure" government of the state of China, much less clear, however, is the question of what the U.S. considers Taiwan to be.

Legally speaking, the U.S. has not taken a definitive stand on the status of Taiwan. In the Joint Communique of December 15, 1978, the U.S. "acknowledges" the Chinese position that there is but one China and Taiwan is a part of China, (and) "recognizes" the People's Republic of China as the sole legal government of China. Within this context, the people of the U.S. will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

Legal scholars have several interpretations with respect to this Communique: One could be simply that the PRC is the successor government to the ROC; the state of China includes Taiwan, and the PRC is the sole legal government of this state. Moreover, since the U.S. can deal with Taiwan only "within this context": the U.S. acknowledges the PRC's ultimate legal authority over Taiwan, including the right to approve future U.S.-Taiwan relations.

An alternative interpretation is that "acknowledgment" of the Chinese position is not tantamount to accepting it. Consequently, the U.S. still retains that option of regarding the status of Taiwan as "undetermined" dealing with it as a "de facto" entity with international personality, or at a later point explicitly accepting the PRC as the successor government to the ROC.

The word "acknowledge" presents a potentially serious linguistic discrepancy between the English and Chinese texts. The Shanghai Communique of 1972 by President Nixon states: "The U.S. acknowledges that Chinese on both sides of the Strait agree that there is but one China and Taiwan is part of China. We do not challenge this position". This Chinese text uses a correct equivalent, jen-shih, for "acknowledges".

However, in the December 15, 1979 Communique, by President Carter, "acknowledges" is rendered in Chinese as "ch'eng-jen" a term carrying a clear connotation of acceptance or agreement.

Reading the Chinese texts of the two communiques together, the U.S. has increased the degree of its acquiescence in the Chinese position from jen-shih (acknowledges or takes note) to ch'eng-jen. U.S. State Department officials have stated that, in interpreting this phrase, the U.S. will adhere only to the English version. Of course, China will adhere only to the Chinese version.

The U.S. may derive some short-term benefits from refusing to clarify its legal rational for continued dealings with Taiwan. Explicitly calling Taiwan a "de facto" entity might annoy the PRC, while adopting the "successor government" theory would damage Taiwan. Nevertheless, in words of an eminent legal scholar, Victor Li, this "policy of intentional ambiguity will be difficult to maintain for an indeterminate time".

Perhaps this is as good as any time to review Chinese positions with respect to their own relations. It must be remembered that during the formative years which encompassed the first two decades of the Presidency of Chiang Kai-shek after he resumed this office in Taipei on February 28, 1950, was an era under which the principal objectives of the ROC government in Taiwan were first, to maintain its legitimacy as the sole legal government of China; secondly, to affiliate Taiwan with the anti-Communist defense alliance of the U.S. and the Free World; and finally, to prevent the U.S. and other friendly governments from recognizing the Communist Government in Beijing. The national government of Taiwan, claimed legitimacy within the framework of the Republic of China Constitution promulgated on January 1, 1947 in Nanking, China; its structure is an emergency model of the ROC government constituted in 1948, when it was still on the mainland.

The Nationalist Chinese on Taiwan treated the Communists as traitors and enemies of the state. This was particularly successful especially after PRC was at war with UN forces in Korea, and the question of Chinese representation was kept off the agenda of the General Assembly for long periods throughout the 1960's. In addition, Taiwan's survival was assured by a Mutual Defense Treaty with the U.S. In fact, with the growth of the Taiwan economy, Taiwan expanded its foreign relations by offering its own foreign assistance programs to other developing nations.

Taiwan had to make some new assessments and changes after Canada's recognition of the PRC in mid-October, 1970, under a formula which permitted Canada to "take note:" of the PRC's claim to Taiwan without explicitly endorsing it. Using the same formula, thirteen governments previously friendly to Taiwan switched sides. Shortly thereafter, the U.N. expelled ROC from its membership, and Japan switched its recognition to Peking in 1972. Twenty-five other countries followed suit between 1971 and 1972. Eighteen additional countries extended their recognition to the PRC in the next three years (1973-1975) including Spain, the Philippines, and Thailand.

When President Carter, after his 1976 campaign pledge that he would "never let the friendship with PRC stand in the way of the preservation of the independence and freedom of the people of Taiwan," announced on December 15, 1978 that the U.S. would sever diplomatic relations with the ROC and terminate the 1954 Mutual Defense Treaty, Taiwan went through a period of total shock. In fact, for the first time since the 1950's, the ROC felt that its security was threatened. By the 1980's, less than two dozen countries maintained formal ties with the ROC government on Taiwan.

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[1] Presented before the Changing Asia Speakers Forum at the Austin World Affairs Council, Austin Texas, June 29, 1988.

It is interesting to note, while Taiwan suffered its severe diplomatic defeats, PRC on the mainland began to extend its olive branch toward the Island-state. On September 30, 1981, the Chairman of the Standing Committee of the National People's Congress, Marshal Ye Jiangying, put forward a nine-point proposal for peaceful reunification with Taiwan; and in September, 1982, China's supreme leader, Deng Xiao-ping presented the concept of "one country, two systems", summarizing the nine-point proposal under which Taiwan can enjoy a degree of autonomy including an independent armed forces.

On June 26, 1983, Deng Xiao-ping in an interview with a Chinese-American professor outlined a proposal that seemed to offer even more generous terms for Taiwan. Fifteen months later, on September 24, 1984, Beijing reached an agreement with Britain in regard to the question of Hong Kong, under which Hong Kong shall maintain its current capitalist systems for 50 years after 1997.

At the same time, Beijing launched a campaign for establishing with Taiwan "three links"—mail, trade, and air and shipping services—and "four exchanges"—relatives and representatives—as a first step toward the ultimate goal of reunification.

Beijing's friendly gesture toward the Taiwanese caught the government in Taiwan unprepared and divided the leadership within the KMT. The conservatives allied with the military within the KMT convinced that Beijing's ultimate goal is to reduce Taiwan's resistance to Communism and make it a local government so that it can then be annexed. The conservatives thus insisted that reunification will not be possible unless Beijing makes fundamental political and economic changes. In their views, ROC must reject all offers and proposals from Beijing, and reunification can be achieved only under the principles as outlined by KMT's founding father Dr. Sun Yat-sen's Three People's Principles. Some KMT leaders also call for China's discarding Communism as a pre-requisite for negotiation.

On the other hand, the late President Chiang Ching-kuo himself was more receptive than the conservatives under him. He insisted that reunification with Chinese mainland is the final goal of ROC, and ordered the relaxation of tensions with the Communist government by lifting a 38-year ban on travel to the mainland to visit relatives, and also permit indirect trade with mainland through a third country or through Hong Kong.

The new policy by Chiang Ching-kuo had a profound effect upon Chinese people on both sides of the Strait. On the first day after lifting the travel ban, some 20,000 people in Taipei filed applications on October 30, 1937. By January 2, 1988, over 16,000 Chinese in Taiwan had set foot on the mainland. As far as indirect trade, Taiwan business men has invested over $50 million in 50 enterprises in Fujian Province alone during the first three months in 1988; and the total over-all trade are already in hundreds of millions of dollars.

This perhaps explains the attitudes of the Communist Party leaders in Beijing over the untimely death of Chiang Ching-kuo in Taipei on January 13, 1988. CCP Party General Secretary Xhao Ziyang sent a rare message of condolence in which he said: "Chiang Ching-kuo upheld a one-China policy, opposed the independence of Taiwan and stood for the reunification of the country. He said that he would not history down and made certain efforts to help relieve tension over the relations between people on the two sides of the Taiwan Strait. Moreover, General Secretary Xhao added, "We sincerely hope to see stability and social tranquility, as well as the continued economic growth and happiness of the people in Taiwan."

It must be remembered that Taiwan under the strong leadership of Chiang Kai-shek (1950-1975) and his son Chiang Ching-kuo, first as Prime Minister and later its President (1978-1988), has become a major economic power. Taiwan today rose to among the world's largest exporting countries, and one of the 10 trading partners of the U.S. The living standard of the Taiwanese is among the highest of Asia.

The ultimate function of political authority in Taiwan under the two Chiangs was not merely "government" but "governing," to borrow a term from Richard Rose who wrote politics of England, in that it has to steer the statecraft through untold storms and tidal waves toward pre-set directions. From its loss of the China mainland (1949) to its expulsion from the United Nations (1971) and the U.S. derecognition (1979), the Republic of China in Taiwan has weathered many an international as well as domestic storm. Thus, its impressive economic performance to date is a testament as well as result of the island's political and social attributes, however imperfect they may appear at times.

Once everything changed except Taiwan, now it can be said that there is nothing in Taiwan that does not change. Since the death of Chiang Ching-kuo, the press and the public seem to question the integrity of everyone associated with the government. In a recent lead article published in the New York Times May 20, 1988, Susan Chira reported that "in Taiwan, the towering Chiang image is losing its luster."

In Taiwan today, there are countless meetings everywhere to discuss and debate every kind of policy issue, including the future relations with the mainland. And there seems to be a protest meeting every week, from protesting Government's selling or not selling lotteries to unfair fares for taxi-drivers. Speaking of taxi-drivers, there is now a "freedom" for not accepting passengers if the drivers deem the destination to be unprofitable, unless of course, one offers a bribe.

Lee Teng-hui, Cornell trained agricultural economist, who was hand-picked by Chiang Ching-kuo as his successor, is a cautious man. He is governing Taiwan today by consensus; and making decisions by Committees. Will Taiwan continue to prosper under Lee is still a question to be answered. What will then be the future relationship between Taiwan and mainland China? While no one can answer certainly, I believe that three factors will influence outcomes of this relationship:

The first and foremost, Taiwan's new policy towards mainland China will be greatly influenced by the policies of the next U.S. administration, be it under Bush or Dukakis. This of course will be affected by the immediate and future relations between Washington and Beijing. However, the current policy of "international ambiguity" will not and cannot be maintained indefinitely, especially given the sense of urgency for re-unification by the leadership in Beijing. The U.S. simply will not support a policy of confrontation with mainland China over the Taiwan issue.

Secondly, how far President Lee of Taiwan would tolerate the rising sentiment on the Island for independence, both within and outside the ruling KMT, will certainly affect the future relations of Taiwan and mainland China.

Third, and perhaps most decisively, the future relations of Taiwan and mainland China will be largely determined by the development within China itself.

The indications of reform and self-improvement in China which have occurred over the past several years are very remarkable. Professor Paul Kennedy in his "The Rise and Fall of the Great Powers" (1987) suggested China's reform under Deng Xiao-ping may be compared with Colbert's France, or the early stages of Frederick the Great's reign, or Japan in the post-Meiji Restoration decades.

That is, as China strains to modernize by every pragmatic means, she balances the desire to encourage enterprise and initiative and change with an etatiste determination to direct events so that the national goals are achieved as swiftly and smoothly as possible.

One example of China's development has been its drive toward modernization. Writing in 1983-1984, Professor B. Reynolds noted that "China had achieved annual growth rates in industry and agriculture since 1952 of around 10 percent and 3 percent respectively and an overall growth of GNP of 5-6 percent per year."

If those figures do not match the achievement of Taiwan, they are nevertheless impressive for a country as large and populous as mainland China. However, it has been noted that the future of China's drive toward modernization is hampered by years of rather heavy-handed planning on the Soviet and eastern European model. Here, Taiwan can play a significant and positive role.

Throughout China, there are already many movements to emulate Taiwan in economics and politics. Many Chinese university students already openly criticize Communist Party leadership and demand more freedom and democracy. With the recent additions of tens of thousands of private businesses throughout China, some financed by Taiwan, they had led impressive rises in manufacturing output.

On April 12 this year, China's Seventh National People's Congress approved, for the first time, an amendment to China's Constitution offering a legal standing to the private economy and the transfer of land-use rights by Chinese citizens. And the Chinese Communist Party itself has also adopted new ideologies to meet the changing conditions such as the so-called "features of China's primary stage of socialism" which in fact, implies the coexistence of diversified forms of ownership with public ownership, and the gradual replacement of the planned socialist economy with more flexible market economy.

In the last analysis, a cooperative Taiwan and mainland China can offer better living standards for millions of Chinese, a better chance for freedom and democracy, and a more responsive and less repressive Communist Party on the mainland.

On the other hand, continuing hostility and non-cooperation between Taiwan and mainland China can prolong the sufferings of Chinese people, delay reforms and modernization on the mainland, and encourage the growth of Taiwan's independence movement, and finally engulf the region with conflict and wars for years to come.

Far-reaching progress toward the mutual reduction of tensions in the Taiwan Strait benefits both Taiwan and mainland China; however it requires equally forceful, far-sighted, flexible leadership on both sides. It requires two leaders able and willing to innovate, initiate and negotiate. We need leaders who realize that in today's world a country's security and safety is more likely to be threatened by political movements and economic forces than by the other's military arsenal.

The world is changing; and one is playing a zero/sum game, in which anything that helps the mainland China hurts Taiwan. A mainland China more open to Taiwan capital and people is also more open to Taiwan ideas and influence. "What immortal hand or eye hath framed thy fearful symmetry," asks William Blake about the tiger in the night. But this symmetry, the symmetry of the Taiwan and mainland China relationship, is to be framed by mortal hands.●

CONGRATULATING OKLAHOMA OLYMPIC GOLD MEDAL WINNERS

● Mr. NICKLES. Mr. President, I would like to take this opportunity to congratulate three Oklahoma athletic standouts whose accomplishments at the XXIV Summer Olympic Games in Seoul, South Korea, have brought them the recognition of "best in the world."

They are wrestlers John Smith and Kenny Monday, and baseball star Robin Ventura, and for years they have thrilled Oklahoma sports fans through their accomplishments at Oklahoma State University. We take pride in their victories as Oklahomans and as Americans.

John Smith captured his gold on September 30, when he defeated Stepan Sarkissian of the Soviet Union on a 4-to-0 shutout. John is a 23-year-old native of Del City, OK, and with his victory he became the 11th native Oklahoman to win a freestyle wrestling Olympic gold medal.

Soon after, however, John's Olympic and collegiate teammate Kenny Monday from Tulsa, OK became the 12th Oklahoman to win a wrestling gold when he scored an upset in overtime over Adlan Varaev of the Soviet Union.

And in the baseball exhibition series, Oklahoma State University third baseman Robin Ventura contributed his substantial fielding and hitting skills to the U.S. baseball team. The United States team beat Japan in the finals on September 27 by a score of 5 to 3 to win the gold. Robin was one of the most consistent players at the plate and had several outstanding plays at third base.

Mr. President, I again wish to congratulate these Oklahomans and all the U.S. athletes who participated in the games. We are very proud of the determination and skill which they exhibited in representing our country.

CONTRIBUTIONS OF HAROLD HUNTER TO THE RURAL ELECTRIFICATION ADMINISTRATION

Mr. NICKLES. Mr. President, I rise today to commend a fellow Oklahoman, Harold V. Hunter, as he prepares to end his distinguished career as Administrator of the Rural Electrification Administration [REA]. Harold is a man who has done much to serve the people in his home state of Oklahoma and his country.

In the nearly 8 years since Harold was first appointed by President Reagan and then confirmed to his position by the Senate, he has accomplished a great deal. The dedication and hard work which he has devoted to the stewardship of REA reflects a genuine concern for rural America. He worked hard to assure that every rural borrower needing help from REA received it. This has been one of his top priorities throughout his years of office, and it is evident from his achievements. Harold's efforts on behalf of the REA Program have had great success and won broad approval in a number of significant areas. For example, he put together a "workout team" that has been instrumental in helping some of REA's most financially troubled borrowers to renewed financial health. With Harold's close oversight, these once troubled borrowers can continue to serve their members while repaying their indebtedness to the Government.

Beyond his administrative accomplishments, Harold has been an inspiring leader of the Oklahoma Republican Party. His contributions have been invaluable in building his party's capacity as a strong, clear voice of leadership. In this capacity and through his stewardship of REA, Harold and I have developed a strong friendship. He's always there when needed as is typical of his character. Harold has demonstrated to all of us who have had a chance to work with him, his fairness, dedication, and good nature.

Harold is a giving individual with undaunted courage and an unmistakable good sense. He will be missed by his associates and his friends. I wish him all the best for the future.●

BILL AND JIM SCHERR: OLYMPIANS

● Mr. DASCHLE. Mr. President, South Dakota was fortunate to be represented at the XXIV Olympics in Seoul by the Scherr brothers of Mobridge. It is with a great deal of pride that I take the Senate floor today to extend my sincere congratulations to Bill and Jim for their outstanding effort in the Olympic wrestling competition.

Demonstrating his wrestling skills, Bill won the bronze medal in the 220-pound freestyle competition, pinning an East German competitor in 3:31.

Jim Scherr was nearly as successful, finishing in fifth place at the 198-pound freestyle by defeating a wrestler from Romania.

No one knows better than these two young men the amount of time and dedication that goes into the preparation for Olympic competition. During the countless hours of training, I am certain that it must have crossed their minds whether it was worth the pain and sacrifice. I am sure they now would respond with a resounding "yes."

The parents of these two young South Dakotans, Frank and Janette, have every reason to be proud of the exemplary performance of their two sons. The entire community of Mobridge, and the State of South Dakota, join with me in sharing in that pride and commendation.

The news article follows:

MOBRIDGE PROUD OF SCHERRS—BILL WINS BRONZE IN OLYMPIC WRESTLING; TWIN JIM HAS FIFTH

(By Tom Kisken)

MOBRIDGE.—Friends and family of the Scherr brothers expressed pride in the Olympic accomplishments of the Mobridge twins.

Bill Scherr pinned Uew Neupert of East Germany in 3:31 to win the bronze medal at 220 pounds in the freestyle competition.

Bill's twin brother Jim finished fifth at 198 pounds with a 3-0 victory over Romania's Roumen Alabakov.

"It's just great," said John Scherr, the twins' older brother. "I'm real proud of both of them.

"They were both underdogs when they went over there."

Bert Dent said Mobridge residents were hoping for gold medals but were still proud of the twins.

"I was very happy for them. Both kids were so close it was unbelievable," said Dent who served as Mobridge High School's first wrestling coach and was the school's athletic director for part of the time the Scherrs were in school.

"They're great kids—the kind of boys you would like to have for sons," Dent said.

Fran Herman, the Scherrs' high school football coach, said he "was tickled and pleased" for Bill and Jim.

"It shows what hard work and dedication can do," Herman said. "It shows that if you set some goals, those goals may be achieved."

Bill and his parents, Frank Jr. and Janette Scherr, are expected to return to Mobridge early next week. Jim will head to his home in Chicago but is expected in Mobridge later, according to city residents.

Welcome back activities are expected but have not been finalized.●

MR. EDMUND EVANS

● Mr. DOMENICI. Mr. President, today I would like to make a brief statement about a very remarkable individual and a personal friend of mine who was from my hometown, Albuquerque, NM—Mr. Edmund Evans. Edmund passed away on the morning of September 22, 1988.

Edmund was special because he devoted part of his life to defending the decent treatment of animals. You see, Edmund founded the local Animal Humane Association branch in his kitchen nearly two decades ago, and then served as president of the Animal Humane Association of New Mexico for 18 years.

He helped the association expand to its current 10,000-square-foot facility on Virginia Street in Albuquerque. It has proven to be so successful that they are currently raising money for further expansion. He helped start up the pet-therapy program, which brings animals for visits to residents of senior health centers, prisons, and other facilities. It was Edmund who recognized that animals are not just pets, but is an invaluable form of therapy for the elderly, and the handicapped. Pets can also play an important role in the rehabilitation process of prison inmates.

Edmund also took on the responsibility of the education program within the association. He would speak to as many as 5,000 youngsters per semester about the proper attitude and care of animals. For some this would seem like a great burden, but for Edmund it was a job that gave him a great deal of personal satisfaction. He truly enjoyed educating people about the importance of kind and proper treatment to animals.

Edmund's wife, Thelma, said her husband was a very shy man, but when it came to the treatment of animals he would not tolerate abuse of any kind. Thelma helped her husband run the association and is now keeping her husband's dream alive.

Edmund believed a pet should be treated as a member of the family, and that adopting an animal as a pet is a lifetime commitment.

If this advice were taken to heart by everyone then there wouldn't be an estimated 85,000 stray pets wandering around the Albuquerque area.

Edmund made a difference. Through his work with the association, an estimated 4,500 animals have been saved each year and at least 125 a month are adopted by loving families. About the same number of pets are reunited with their owners.

Mr. President, Edmund should be an example to us all. He taught us that if people can learn to love animals first, they would be more likely to care for each other better.

Thelma has said her husband would have been touched by all the recognition he has received. But Edmund deserves this recognition because he was truly a great humanitarian. I feel that Edmund serves as an example to others because he acted on his belief that animals, as well as people should not be mistreated or abused.

The work of Edmund Evans was an inspiration to everyone who knew him. Thelma said that the donations have been great, and their hopes of raising the $750,000 needed for the larger kennel is within an arms reach.

I urge that everyone live by Edmund's beliefs and practices—that animals deserve the same treatment as human beings.

I ask that the October 4, 1988, editorial from the Albuquerque Tribune be printed in the Record following my remarks.

The editorial follows:

[From the Albuquerque Tribune, Oct. 4, 1988]

EDMUND EVANS—WE'LL ALL BE BETTER FOR EMULATING ONE OF OUR CITY'S KINDEST RESIDENTS

If everyone in Albuquerque live the way Ed Evans did, the city wouldn't have a problem with stray pets. Every animal in town would be loved and well cared for. People would be kinder to one another, too, and more trusting.

Evans was president of the Animal Humane Association of New Mexico for 18 years. He died a few days ago at the age of 79. He was one of the kindest people the city ever was lucky enough to have for a resident.

The man who always seemed to have dog hairs on his clothes founded the local Animal Humane Association branch in his kitchen nearly two decades ago. He helped it expand to its current 10,000-square-foot facility on Virginia Southeast. He helped start up its pet-therapy program, which brings animals for visits to residents of senior health centers, prisons and other facilities.

For many years he personally took on the burden of the association's education programs, speaking to as many as 5,000 youngsters per semester about the proper attitudes and care of pets. Only with him, it wasn't a "burden"—it was a pleasure.

"He was a very shy man, but he could tear down a wall and be as pushy as he needed to be when it came to defending the decent treatment of animals," said Thelma Evans who helped her husband run the association.

Evans taught and believed that a pet should be treated as a member of the family. When a family decided to take in an animal as a pet, it made a commitment to care for it for the lifetime of the animal.

If people took that advice to heart, there wouldn't be an estimated 85,000 stray pets wandering around the Albuquerque area. And with the lessons of love learned from caring for pets, people would be a lot more likely to care better for each other.

In Evans' memory, we urge readers first to practice what he both preached and practiced. We also urge them to be generous when the association asks for help in trying to build a new kennel for $750,000 where they are located now. It was the project Evans was working on when he died.●

UNITED STATES-CANADA FREE TRADE AGREEMENT

● Mr. DASCHLE. Mr. President, on Monday, September 19, 1988, the Senate passed legislation to implement the United States-Canada Free Trade Agreement. I was one of the many Senators who voted in favor of this legislation because I felt it was good for the State of South Dakota and for the nation.

I would like to draw my colleagues' attention to a recent editorial in the Rapid City Journal which describes the advantages fo the pact. As this editorial points out, even though the legislation is viewed favorably as a total package, there are specific sectors which will require special attention and monitoring during implementation of the agreement.

Agriculture is an area of particular concern to me and to the State of South Dakota. While the FTA did reduce tariffs over a 10 year period, it basically left in place certain Government subsidies provided to Canadian agricultural producers. In order for the United States to be able to compete effectively with regard to these subsidies, through my participation in Agriculture and Finance Committee deliberations, I was able to obtain agreement from the administration to put procedures in place which will help ensure that U.S. industries are not harmed by the subsidy programs of other trading partners.

I intend to follow the subsidy negotiations closely to ensure that progress is being made. The FTA has provisions to proceed on further negotiations in all areas of trade. It can be viewed as a solid beginning to more open economic relations with our largest trading partner. However, without substantive discussions on the future elimination of Canadian subsidies, the FTA will not reach it's full potential.

The editorial follows:

[From the Rapid City Journal, Sept. 21, 1988]

CANADA-U.S. TRADE PACT BENEFITS NATIONS

Monday was a historic day. It brought the United States and Canada closer together.

Monday the U.S. Senate voted 83-9 to approve a free-trade pact with Canada. Those voting for the measure included 40 Republicans and 43 Democrats.

The measure drew some rhetoric from senators sensitive to certain home-state concerns—potatoes in Idaho, wheat in Montana, lobsters in Maine—but overall it is clear that the measure is in the best long-range interests of the United States and Canada.

There was little dispute about the desirability of free trade with Canada on this side of the border. But there is trouble on the northern side of the border. The political future of Canadian Prime Minister

Brian Mulroney rests with Canada's people accepting the pact.

The elected House of Commons approved the agreement Aug. 31. But the non-elected Canadian Senate has blocked approval and forced Mulroney into a position where he is likely to call for elections to break the deadlock. If Canadian voters re-elect Mulroney and his Conservative Party, the issue will be decided in favor of the pact. If the opposition Liberal Party prevails in the upcoming election (probably to be held in November), then the pact is dead.

The trade agreement provides for the elimination of all tariffs over 10 years and dismantling barriers to investment and competition.

The pact does not create a common market. In the European Economic Community, the nations band together to present a unified trade front with the rest of the world. In the U.S.-Canada pact, the agreement only removes barriers between the two nations. Both countries are free to have separate quotas and tariffs with other nations.

Canada is by far the U.S.'s largest trading partner. Last year $131 billion in products flowed between the countries. The agreement, if ratified by Canada, will result in even more trade. Initially, in some cases U.S. producers will be pinched, and in other cases Canadian producers will suffer. But in the future, both countries will benefit.

The major concern of those opposing the pact in Canada is the disparity in sizes between the nations. They fear Canada's 25 million residents will be swallowed up by the economic and cultural power of the 245 million Yankees.

That concern is understandable. But Canada is no more going to be dominated by the U.S.A. than South Dakota is dominated by Colorado.●

PERSONAL TORT LIABILITY OF FEDERAL EMPLOYEES

● Mr. GRASSLEY. Mr. President, as the sponsor of S. 2500, the companion to H.R. 4612, and on behalf of my cosponsors, Mr. HEFLIN, Mr. TRIBLE, Mr. HUMPHREY, Mr. STEVENS, Ms. MIKULSKI, Mr. PRESSLER, and Mr. SIMON, I am pleased to rise in support of H.R. 4612.

Mr. President, earlier this year the Supreme Court dramatically changed the law governing the personal tort liability of Federal employees.

By its January 13, 1988, decision in Westfall vs. Ervin, the Court held that Federal employees may be sued in their personal capacities for common law torts unless the actions giving rise to the suit were both within the scope of their employment and involved an exercise of governmental discretion.

The Court thus severely restricted the scope of traditional common law immunity from tort suits. Available to Federal employees.

As a result of Westfall, we are now faced with an immediate crisis of personal liability exposure for the entire Federal work force—more than 3 million persons in all three branches of government, including more than 16,000 hard-working citizens in my own State of Iowa. Virtually every one of these employees—and particularly rank-and-file civil servants—now face the possibility of being required to defend a lawsuit in which his or her personal fortune is at stake—even when the actions complained of were clearly official duties.

Mr. President, I am not just "crying wolf". The dangerous effects of Westfall are already very tangible. For example, the Justice Department reports that on April 7, 1988, a $25,000 judgment was entered against a Capitol Police officer and $10,000 judgment was entered against a Capitol Police sergeant for a claim arising out of an incident with a gas station owner.

In another case, on July 29, 1988, a $12,500 judgment was entered against a postal worker on a claim arising out of an office dispute.

In yet another case, on March 5, 1988, a $2-million judgment was entered against six employees of the Tennessee Valley Authority in a wrongful death case.

There are dozens of other cases.

The Department of the Air Force reports that they have over 50 active, open lawsuits where Air Force personnel have been sued in Federal court in their individual capacities, and are potentially liable to pay adverse judgments out of their own pockets. The individuals being sued range from the Secretary of Defense to the most senior commander on a base, to secretaries and junior enlisted members. The plaintiff in almost every case are complaining about an act done by a Federal employee as part of his or her official duties: A poor performance rating is alleged as "defamation"; failure to be awarded a Government contract becomes "discrimination"; frustration at nonpromotion yields "emotional distress"; detention by security police becomes "false imprisonment", and the types of claims go on and on.

This has created a new climate of uncertainty. Federal employees now have no way of knowing whether the most routine of their official duties will expose them to a State law tort suit jeopardizing their personal assets.

The prospect of years of personal liability litigation against the Federal work force not only has a devastating impact on individual civil servants' pocketbooks, credit ratings, and morale, but will severely inhibit the ability of many agencies to carry out their mission.

Ironically, the Westfall decision is of little help to most injured plaintiffs, since it is rare that a civil servant will have the resources to pay a substantial tort judgment. Rather, it's more likely that Westfall-type suits will be employed simply to harass and intimidate Federal employees who are only trying to do their jobs.

I suspect that the Supreme Court realized that its decision dramatically changed existing law and would result in substantial personal liability exposure for Federal employees. Indeed, Justice Marshall's opinion in Westfall expressly invited Congress to consider the issue and fashion a more appropriate legislative solution.

Mr. Chairman, the bill that we approve today is an even-handed and fair response to the Court's invitation. This bill amends the Federal Tort Claims Act to make a lawsuit against the United States under the F.T.C.A. the exclusive remedy for anyone injured by governmental negligence.

As my colleagues know, the F.T.C.A. has generally worked well over the past four decades in providing fair and expeditious compensation to persons injured by the common law torts of Federal employees. This bill, by covering Westfall-type cases under the F.T.C.A., assures that victims of common law torts of Federal employees will be fairly compensated. At the same time, it provides a needed measure of employee protection from personal liability.

Mr. President, I would like to emphasize that this bill does not have any effect on the so-called Bivens cases or constitutional tort claims. Although this too is an area of concern to me—and I have introduced corrective legislation in the past—the bill that we pass today has no impact on these cases, which can continue to be brought against individual Government officials.

Mr. President, this legislation is supported by both the administration and the public employee unions, and has earned bipartisan support. The other body has overwhelmingly approved it, and the President is anxious to sign it. I thank my colleagues for their support, particularly the chairman and ranking member of the Judiciary Committee. I am sure the Federal work force will thank them as well.●

LOUIS A. APLICELLA

● Mr. D'AMATO. Mr. President, I rise today to congratulate the Yonkers Columbus Day Committee '88 on its celebration and parade. I was hoping to be grand marshal of their parade, but unfortunately will be unable to attend. I would however, like to offer a few words in honor of Louis A. Aplicella, this year's recipient of the 1988 Savino J. Ferranto Humanitarian Award.

Louis Aplicella is an outstanding member of the Yonkers community and an outstanding American citizen. Born and raised in Yonkers, NY, Mr. Aplicella returned to his hometown after serving in World War II. Mr. Aplicella participated in five European campaigns with General Patton's 3d Army.

After his return to the States in 1945, Mr. Aplicella began his career in the meat business. Since then, he has become active in several unions, presently as the business agent of the United Food and Commercial Workers International Union, Local 489. He is also a trustee of the local's pension welfare fund and a member of the Union Food and Commercial Workers Union District Council of New York and northern New Jersey AFL-CIO, International Foundation of Employee Benefits and Welfare, and the Cleaver Club of the Amalgamated Butchers Workmen.

His service to the Yonkers community includes membership and active participation on the Yonkers parking authority and as cofounder of the Park Hill Neighborhood Block Watch Program. He was also named honorary deputy sheriff of Westchester County. Other posts include former chairmanship of the Congress of Italian American Organizations [CIAO] and president of the Villa Volturno Club and member of the Frank A. Rea American Legion Post.

I salute Mr. Aplicella on his fine and dedicated service to Yonkers, NY, and to the United States. It is my pleasure to congratulate a fellow Italian-American on receiving the Savino J. Ferranto Humanitarian Award. I wish him continued success in the future.●

REMEMBERING DOROTHA MOORE

● Mr. PACKWOOD. Mr. President, long ago I discovered, for those of us in public life, longevity is only one of the tests by which to measure accomplishment.

By any standard, Dorotha Huntley Moore of Moro, OR, who recently passed away at the age of 84, meets all the tests. Dorotha Moore was not simply a friend, she was also a one-of-a-kind American. Until she stepped down this past summer, in her unbroken 32-year tenure, Dorotha Moore served on the Republican National Committee longer than any other person in our history.

Originally a native of Portland, Dorotha spent most of her life with her husband, Collis Moore, wheat ranching in rural Oregon. She started out as a homemaker but soon found herself also serving as a Republican precinct committeewoman. In fact, in the early 1930's, when the local Republican legislator showed up at the Moore ranchhouse, the story goes, he asked Collis Moore if he minded if his wife served on the precinct committee.

Dorotha's response was swift and predictable: "Imagine, as if his opinion made any difference."

Dorotha Moore was a feminist in fact before the modern women's movement was scarcely a glimmer. And over the years, as one of the Republican Party's most enduring champions, she dispensed her counsel widely and well to candidates from the White House to the precinct. Though never seeking elective office herself, her skills as a party builder and seeker of consensus made her indispensable to those of us who do hold office.

Sometimes we use the words "public servant" in a casual and perhaps even a careless manner. Those words have true meaning, however, when applied to Dorotha Moore. She belonged to the people, not only of Oregon, but across this country. I join her friends everywhere in paying tribute to her lifetime of public service.●

IRISH-CATHOLIC DISCRIMINATION

● Mr. DECONCINI. Mr. President, I rise to address a tragic problem in the nation of Ireland, the ongoing civil strife and religious job discrimination against Catholic citizens.

The continuing battle being waged by the Protestant and Catholic religious factions has caused much shame and grief to the Irish nation. We are often reminded of the strife in Ireland through media accounts which poignantly depict sad scenes of death and destruction. This civil war should be addressed. It should be addressed with the same conviction and attention as wars in Nicaragua or Afghanistan.

The consequences of the fighting are devastating to the people of this country. Among the many results is a sluggish economy incapable of supplying enough jobs. This has led to impoverished sectors with astronomical unemployment rates. In some areas it reaches 86 percent. It has become apparent that Catholics carry a disproportionate share of this terrible burden.

It is a disturbing fact that Catholics are 2½ times more likely to be unemployed than are Protestants. A British Government study conducted late last year concluded that religious discrimination is the primary cause of this injustice. In predominantly Catholic areas, unemployment rates range from 50 percent to 80 percent. Up to 95 percent of children in the Divis Flats district in West Belfast live in poverty. This is truly a crisis situation demanding immediate action.

Discrimination against individuals due to their religious preference is a terrible injustice. This is another war and another historically profound tragedy that must be reversed. All over the world, we have seen examples of religous repression. It is time to end such discrimination, both in Ireland and worldwide. We should focus more attention on the situation in Northern Ireland.

The United States is the largest contributor to the International Fund for Ireland. I encourage proper and judicious use of these moneys for the benefit of those most in need. I urge my colleagues to join me in monitoring the allocation of the fund, to insure that it is fairly and wisely distributed. It should serve to create jobs and opportunities while remaining free from religious bias. I am not a big supporter of foreign aid. Most foreign aid does not go directly to people in need. But this fund is beginning to show progress for people destined for a life of poverty.

Mr. President, I look forward to the day when Ireland is no longer plagued by religious strife. Common sense and tolerance must prevail over hatred and discrimination. I hope my colleagues will also speak out about this religious and political war which continues to divide the people of Ireland.●

HUMAN GROWTH FOUNDATION AND TURNER'S SYNDROME SOCIETY

● Mr. WILSON. Mr. President, it is my pleasure to recognize today the Los Angeles Chapter of the Human Growth Foundation and the Turner's Syndrome Society for their efforts to organize and host a seminar on Turner's syndrome that will be held on October 15, 1988. This seminar brings together families from all over the Los Angeles area and helps those affected by the disorder to deal with the problems associated with it and to be educated as to the latest medical developments in the diagnosis and treatment of this condition.

Turner's syndrome is a chromosomal abnormality affecting the female population. This condition affects about one in every 2,500 girls born each year and it impacts about 15,000 families. It is caused by an absence of, or a structural defect in one of the X chromosomes in the cells. The two main symptoms of Turner's syndrome are short stature and infertility. There are other medical and physical ailments related to the condition that are more minor, yet they still add discomfort to the women affected. These women are often treated as if they were children even when they are mature adults.

Turner's syndrome is a condition that can be treated by taking some form of estrogen replacement therapy and other medical treatment, so it is a treatable condition. However, because it is a relatively rare condition, it is possible that a woman with Turner's syndrome would never meet another with the same disorder. This seminar will assure that the women in the Los Angeles area will have a chance to come together and discuss their common problems and feelings together. I commend Dr. Barbara Lippe, Ms. Lynne Tesch, and all those who will participate in this seminar. It is their efforts which raise the public consciousness as to the need to sustain the current research and advances in the treatment of this disorder, so that one day we might rid our world of

Turner's syndrome. I ask my Senate colleagues to join with me in commending this noble endeavor.●

BOYS CLUBS OF AMERICA "YOUTH OF THE YEAR"

● Mr. DECONCINI. Mr. President, a few days ago I had the pleasure of cohosting a congressional breakfast in honor of Shawn Du Fresne, Chad McBride, Angela Thomas, Ralph McCormick and Taylor Pruette, the five Boys Club finalists for the Boys Clubs of America "Youth of the Year" award. These finalists represent the best and brightest of America's youth, and are a fine tribute to the countless hours of devotion by the more than 135,000 volunteers that make the Boys Club movement work.

During the breakfast, we were treated to an inspiring speech by the distinguished former Deputy Attorney General of the United States and a member of the board of directors for Boys Clubs of America, Mr. Arnold I. Burns. I would like to share his inspiring words about that illusive ray of hope in the midst of evaluation of the state of America's youth today and their promise for tomorrow.

Mr. President, I ask that the remarks of Mr. Arnold I. Burns be printed in the RECORD.

The remarks follows:

REMARKS BY ARNOLD I. BURNS, FORMER DEPUTY ATTORNEY GENERAL OF THE UNITED STATES AND MEMBER OF THE BOARD OF DIRECTORS, BOYS CLUBS OF AMERICA

Good morning. Today we celebrate and honor the five "Youth of the Year" finalists. These young people represent the next generation of Americans on whose shoulders will rest the future peace and prosperity of the United States.

And I, for one, am optimistic about that future. These young men and women have made outstanding contributions to their communities. We admire their strength and their determination to overcome the many barriers to success that fate has placed in their paths. We salute them for scoring a victory over the enormous odds that confronted them.

Others, however, have not been so fortunate. Many are too down-trodden by the every-day fight for survival. They are too depressed. They see no way out. That is what life in our cities does to so many young people.

This morning I want to talk to you about our inner cities. Let's begin by putting all of its aspects into a giant cauldron. Our inner cities are troubled and turbulent. There is poverty. There is crime. There are drugs. There is violence. Kids growing up in our cities feel trapped. They are hapless, hopeless, and helpless. They don't know how to break the cycle. They see no light at the end of the tunnel.

In the inner cities, poverty is most pronounced for children living in single-parent households headed by women. In 1985, 66 percent of black children, over 70 percent of Hispanic children and nearly half of all white children living in female-headed households lived in poverty. In addition, nearly 75 percent of all black infants were born to unwed mothers, half of them to teenagers.

Teenage pregnancies continue to plague us. Each year in the United States there are more than 1 million such pregnancies, and the lives of many young, unwed parents are filled with nothing but despair.

Minorities and immigrants are among the most impoverished people in our society. Most of them live in the inner cities. Among black youngsters, one in two lives in poverty: one in two grows up without a father; nearly one in two black teens is jobless, and one in 21 young black men is murdered.

By the 12th grade, 80 percent of all boys and girls in the Nation are periodic drinkers.

Drugs continue to eat away at the very underpinnings of our society, and almost two-thirds of all high school seniors have tried illicit drugs. At the Department of Justice, we saw drugs as the number one problem facing America.

Latchkey teens who are left unsupervised for long periods of time feel abandoned, frustrated and angry. They are victims of social danger, as well as depression and even suicide.

Inner city kids too often join violent youth gangs because they feel the need to be part of something or because they have no other place to turn. This perpetuates the cycle of arson, rape, robbery, and bodily injury.

Kids living in America's inner cities don't know the first thing about how to resist street pressure for drugs and sex. They don't know the first thing about how to find a job and how to lead a productive life.

No doubt about it—the problems or our inner cities are staggering—mind boggling—our cauldron contains one foul brew. We must do something! But what?

Today I'm going to give you a recipe—a recipe for changing this foul mixture into something that is not only tolerable, but which tastes good to the American palate and provides hope. So, if you will bear with me while I put on my cooking gear, we'll begin to neutralize the acid, add some sweeteners and clarify the liquid in our cauldron. (Put on chef's hat and take out big wooden spoon.)

The first thing we must do is add some of our own wholesome ingredients. Let's start by blending slowly into the mixture an organization that has been helping boys and girls "beat the streets" for 128 years. Boys Clubs of America today serves 1 million boys and 300,000 girls. Now let's carefully measure out a cadre—second to none—of 3,200 full-time career professionals and 8,000 part-time workers dedicated to helping young people gain self-esteem and develop the motivation to become productive citizens and leaders. We sift that in, stirring constantly so that all the ingredients will blend together. Aha, I see the mixture gradually changing.

Now we carefully add a dash of another important ingredient—nearly 1,100 club units run by 590 local boys and girls club organizations where kids, ages 6 to 18, can go every day after school, in the evenings and on weekends, to participate in supervised activities. Now we're really beginning to see a difference. A quick taste before we go on.

We stir this slowly and fold in a pinch of another key ingredient—more than 47,000 volunteer program workers and 86,000 board volunteers who help make this movement work. These are people who give of their time, their energy and their treasure to help expand services for a growing number of boys and girls. Now that's really important. These people say "we care" and "we give a damn" about the future generation of Americans.

Now let's add the expenditure of almost $200 million representing the aggregate budgets of our local and national organizations. Now we throw in a healthy sprinkle of assistance from Boys Clubs of America—our national umbrella organization. Boys Clubs of America help community leaders form new clubs, provide training, management consulting and resource materials to clubs, promote greater public and media awareness of club work, and address legislative and public policy issues affecting young people.

Now for the sweeteners—the tried and proven programs that keep kids coming back to the club day after day and year after year—programs that help kids find employment, inculcate good work habits, teach them how to get up in the morning, how to show up on time for an interview, how to become a reliable and important part of the work force. Other program sweeteners help kids say "no" to drugs, "no" to alcohol, "no" to teenage sex and "yes" to school, jobs and family. Note that these sweeteners are not artificial: They literally save hundreds of thousands of kids from harm and destruction each year.

Yes, we must all do our part. The job is too big for the private sector alone or for government alone. I am calling for a consortium and partnership between all parties to produce a just and safe society for our children and our children's children. And how do we know that this recipe really works? Well, the proof of the pudding is in the testing. Boys Clubs of America audaciously commissioned an independent survey of Boys Clubs alumni conducted by Louis Harris & Associates. The survey showed that:

1. More than nine out of ten alumni state that being in a boys club had a positive effect on their lives.

2. Blacks, Hispanics, the economically disadvantaged, and those from tough neighborhoods benefit the most from their Boys Club experience.

3. Three out of four alumni believe their experience helped them avoid difficulty with the law.

4. More than eight out of ten believe their participation enhanced their ability to work with others and had a positive effect on their health and fitness.

5. Nearly seven out of ten alumni report that their Boys Club involvement helped them avoid drugs and alcohol problems.

6. Further, more than nine out of ten alumni believe that being in a Boys Club is important to success in later life. Today, two out of three former club members are professionals, managers, proprietors, skilled workers or in sales occupations.

My friends, we don't need Julia Child to tell us that our concoction is great. We have the right recipe for dealing with the problems faced by inner-city boys and girls. You know it works. I know it works. We have proof that it works.

During my tenure at the Justice Department, I saw no program anywhere that focused on this at-risk population the way our local boys clubs and boys and girls clubs do. Remember, our clubs are located where the action is—where the trouble is: in the inner cities. And club professionals are there to do their job for all the kids who walk through our doors, regardless of race, religion or background of any individual boy or girl.

Remember, kids who come to Boys Clubs and boys and girls clubs really need the services we provide. Sixty-six percent of these kids are from families earning $15,000 per year or less. Seventy-seven percent are from families with three or more children. Fifty-one percent are from minority families. Forty-seven percent are from single-parent families, and 29 percent are from families receiving public assistance.

To turn this country around, we need to do more than we are doing. We need to reach more kids. That's what clubs and BCA are doing with their bold Outreach '91 Program. Outreach '91 really means serving 700,000 more boys and girls who desperately need what our clubs have to offer. It also means adding 300 new facilities and bringing 71 new local club organizations into the Boys Club movement. We cannot sit back and wait for these kids to find our clubs. We have to reach out to boys and girls and make our clubs accessible to them.

So there you have it—a recipe for dealing with young people and their problems, a solution that works and a plan for the future.

I'd like to close by congratulating our "youth of the year" finalist—Shawon, Chad, Angela, Ralph and Taylor—for being an inspiration to us all. You give us cause to celebrate. You make us proud to renew our commitment to a strong and healthy America. Thank you.●

TRIBUTE TO MEL McDANIEL

● Mr. BOREN. Mr. President, I am pleased to rise today to honor and celebrate the life and work of the great country musician Mel McDaniel. From his early years growing up in the small town in eastern Oklahoma of Okmulgee, he has developed and made popular a very special sound in country music history. On October 31, in celebration of his 30 years in country music, Mel will return to Okmulgee to hold a benefit concert in his hometown high school auditorium.

Mel McDaniel was a teen-ager during the years that Elvis Pressley captured the attention of the music world. He was inspired by Elvis and formed his own high-school band, travelling and performing all over Oklahoma. He soon found himself in Nashville, TN, and under the encouragement and tutorage of some of the great producers of country music, continued on the road of hard work and perseverance to write, record and perform the string of country music classics that were to come.

Mr. President, I have a very personal interest in the journey of Mel McDaniel as well. My first cousin, Hoyt Axton, was the first ever to record one of Mel's songs with "Roll Your Own." Many other artists have worked with Mel over the years such as Conway Twitty, Kenny Rogers, and many others of Grand Ole Opry fame. Mel has been awarded numerous Country Music and Grammy nominations, and is recognized in the Country Music Hall of Fame.

It is a special tribute to the talents of Mel McDaniel that he continues to reach the top of the country music charts today, after such a long and distinguished career in the entertainment industry. His most recent hit, "Real Good Feel Song" went all the way to the "top ten" this summer on the country music charts, as fans young and old enjoyed the talents of this great Oklahoman.

Mel's success is certainly due to all of the hard work and commitment applied over the years. But the contributions of his family have also played a large role in helping him attain his goals. We are proud of Mel McDaniel and his family in Oklahoma for working together to achieve the great success and honor that he has brought to country music. From his hometown of Okmulgee, to the brightly lit stages of Nashville, and passing through county fairs and local clubs all across the country, Mel McDaniel has touched the heartstrings and humor of people in all walks of life. Thank you, Mel for your 30 years of services to country music.●

STAFF ASSISTED HOME DIALYSIS

● Mr. DASCHLE. Mr. President, it has come to my attention that the Health Care Financing Administration (HCFA) is considering issuing regulations that would call for a reduction in Medicare payments for staff assisted home dialysis for patients with End Stage Renal Disease. This action follows a transmittal sent earlier this year from HCFA instructing its carriers to review their payments for this service and independently determine whether the current method II payment levels are appropriate.

It is not clear whether HCFA's current reimbursement rate for this service is reasonable or appropriate, and I am certainly not prepared to make that judgment at this time. I am pleased, however, that the General Accounting Office is currently conducting an independent study of staff assisted home dialysis that should provide valuable information on both the benefits and costs of staff assisted home dialysis.

Given our current lack of data about staff assisted home dialysis, I am confident that the GAO study will provide the foundation for HCFA to determine a reasonable and appropriate payment rate for this service. I hope that HCFA will not issue final regulations that depart significantly from current policy before it has the opportunity to review and carefully consider the results of this GAO study.●

"GROCERS CARE" AWARD RECIPIENTS SALUTED BY VICE PRESIDENT BUSH, AND CONSUMER, PHILANTHROPIC, AND GOVERNMENT ORGANIZATIONS

● Mr. LUGAR. Mr. President, I wish to bring to the Senate's attention the contribution of the independent retail grocers. In past years, the House and Senate have recognized the important role these businesses play in our economy through the patronage of National Independent Grocers Week.

Last week, Vice President Bush, other Government representatives, and individuals from philanthropic and consumer groups honored outstanding independent retail grocers for their community service with "Grocer Care" awards.

In a letter to Thomas K. Faucha, president and CEO to the National Grocers Association, Vice President Bush said:

> Active leadership with public service projects * * * reflects the true commitment independent retail grocers and their wholesalers have to the communities they serve. I join you in congratulating the recipients of this year's award and the thousands of independent grocers who daily make valuable contributions to their communities in service and community involvement.

Grocers Care Awards Banquet

The "Grocers Care" Awards Banquet was held Friday, September 30, in Washington, DC. Representatives from 36 companies, organizations and associations from around the country were in attendance to receive awards. They included:

C.E. Toland, Affiliated Food Stores, Little Rock, AR; Harry Boyer, Boyer's IGA, Orwigsburg, PA; Daniel Coborn, Coborn's Inc., St. Cloud, MN; Robert Hand, Dahl's Foods, Des Moines, IA; Jimmy Weekley, Faustos's Food Palace, Key West, FL; George Small, Food Industry Crusade Against Hunger, Washington, DC; Morris Grandstaff, Foodland Inc., Fairmont, WV; Roy Foster, Jr., Foster's Shop-N-Save Food Stores, Hot Springs, AR; Carole Bitter, Friedman's Supermarkets, Butler, PA; Eugene Walters, Gene Walter's Marketplace, Virginia Beach, VA; William Frooks, Georgetown Market Place, Georgetown, OH; Phillip Barger, Dan & Bette Ross, Gerber's Super Valu No. 1, Decatur, IN; Peter Gregerson, Gregerson's Foods Inc., Gadsden, AL; Henry Nemenz, H.P. Nemenz Food Stores, Poland, OH; R. Michael Hatton, Hatton's Food Center, Bridge City, TX; Pat Randolph, Kentucky Grocers Association, Louisville, KY; Charlean Keller, Kon's IGA, Billings, MT; and James Kowalski's Markets, St. Paul, MN.

Other award recipients included:

Sherry Hignite, Laurel Grocery Company, E. Bernstadt, KY; Eugene Southworth, Litchfield Thriftway, Litchfield, MI; Mark Kidd, Mar-Val Food Stores, Lodi, CA; Lee Schear, Metro Markets, Inc., Dayton, OH; Linda Gobler, Michigan Grocers Association, Lansing, MI; Marty Monjay, Monjay's IGA Grocery, Sulpher, OK; John & Bea Martel and Cathy Mack, Piggly Wiggly Interstate, Hot Springs, AR; Lori Pruett and Rachel Pruett, Pruett's Food Town, Chattanooga, TN; William Confer, Roundy's Inc., Pewaukee, WI; Susan Burge, Schwegmann's, New Orleans, LA; William Reitz, Scott's Food Stores, Fort Wayne, IN; Candy Gardiner, Shannon's Food Markets, Concord, MI; David & Rebecca Winston, Siegel's Super Markets Inc., Richmond, VA; Patrick Quinn, Spartan Stores, Grand Rapids, MI; Ken Techau, Techau's Inc., Cynthiana, KY; Charles Knapp, Texas Retail Grocers Association, Austin, TX; Thomas Smith, Tom's Super Thrift, Cardiff, MD; and James Bish, Wagner's Super Market, Arapahol, NE.

These public-spirited entrepreneurs submitted descriptions of their contributions in order to be eligible to participate in the "Grocers Care" award program. According to Nora Briggs, N.G.A. Special Events Manager, these exemplary contributions were representative of their efforts:

An independent supermarket, located in a rural community, offers delivery of free groceries to elderly shut-ins two times a day.

A number of grocery operations, serving communities both large and small, contribute a percentage of daily or weekly receipts to local charities.

A cable network telethon, sponsored by a local food wholesaler, provides the audience the opportunity to contribute to the community's hospital for children.

A program to address illiteracy is sponsored by an independent grocer, and a high school scholarship is funded by another food retailer.

A Christmas food drive is sponsored by an independent grocer in conjunction with the local police department.

A "Run for Fitness" event for elementary school pupils is sponsored by a local food retailer who donates special T-shirts and a health snack to over 1,000 young paticipants.

These were the government, philanthropic and consumer groups represented at the "Grocers Care" Banquet:

The White House and U.S. Congress; Small Business Administration, Department of Agriculture; American Cancer Society; National Kidney Foundation; American Heart Association; American Red Cross; Food Industry Crusade Against Hunger; Food Aid; Second Harvest; United Way; Make A Wish Foundation; Muscular Dystrophy; Salvation Army; Kiwanis; Lions Club; United Cerebral Palsy; Humane Society; Diabetes Association; Easter Seal Society; Society for the Blind; Multiple Sclerosis Society; Boy Scouts of America; March of Dimes; Toys for Tots; and Senior Citizens.●

MENTAL ILLNESS AWARENESS WEEK

● **Mr. DOMENICI.** Mr. President, during "Mental Illness Awareness Week" this year I would like to focus on today's "magical machines" that help read minds.

This is the subject of a fascinating overview on this topic in the May 9, 1988, issue of the Chicago Tribune, "Magical Machines Help Read the Mind." A Los Alamos, NM physicist, Ed Flynn, is featured in this article for his work on the magnetoencephalography [MEG] machine.

Ed Flynn is chief of the neuromagnetism team at the Los Alamos National Laboratory in northern New Mexico. Dr. Flynn's personal story is told as the lead-in to a survey of these magical machines.

"For 18 agonizing months Ed Flynn talked to his comatose wife and stroked her skin, never knowing for sure if she heard him or knew he was there," the story begins. He wondered if there was some way to do what the experts said could not be done. He wanted a machine that would "look inside her brain to see if there was any spark of recognition perhaps a tiny electrical signal that still carried some trace of the love and memories they once shared."

After his wife died, Dr. Flynn vowed to create such a machine. His work and the work of many other talented scientists has led to the development of "marvelous machines that allow them to peer into the living human brain. These new imaging machines "are a key part of the revolution in brain research during the last 10 years that is drastically accelerating man's understanding of the brain." MEG, for example, now allows Dr. Flynn and others "an extraordinary new way of looking inside the brain to see if information from the outside world is being received and if thoughts are being generated."

I note with pride, Mr. President, that Dr. Flynn's MEG research potential has been expanded through a cooperative agreement with the Veteran's Administration Hospital in Albuquerque, NM. I worked hard to help bring this agreement into being, and I look forward to improvements in the treatment of veterans and othes who suffer from serious mental illnesses.

Mr. President, as the world is once again exhilarated by the reentry of manned space craft into the outer spaces, we can be just as thrilled about our new and growing ability to see the functioning of our most sacred inner space—a living human brain.

Since the dawn of science, mankind has pondered this most inaccessible of all life mysteries, the functioning of the very brain that allows us to explore life around us. Now we are entering a new era for the first time in human history. We are refining our new ability to see the brain's activity as we think and feel.

As described in the Chicago Tribune article: "Like other technologies that have opened up previously unseen worlds, scientists hope the new imaging machines will do for brain research what giant telescopes did for astronomy in revealing a breathtaking view of the universe and what microscopes did for biology in exploring the ultrasmall realm of cells, microbes, and molecules."

We also have a new hope for finding cures for mental illnesses, Mr. President. "This unprecedented view is expected to lead to methods for diagnosing mental disorders, predicting behavior and personality, evaluating mental capacities and basically determining when a brain is working well and when it is not."

The physiological basis of mental illness is opening up. This will make diagnosis more accurate in the future. Hopefully, new and better ways to treat mental illness will also result.

There are strong implications in this research for the treatment of drug addiction. Criminal behavior is another potenital field for elucidation by these emerging techniques.

Mr. President, I ask that the Chicago Tribune article of May 9, 1988, "Magical Machines Help Read the Mind," be inserted in the RECORD.

It is my hope, Mr. President, that the focus of this article will be an incentive for my colleagues to continue their valuable support for the continued development of these marvelous and magical machines. There is no better time than "Mental Illness Awareness Week" to bring these machines to the attention of my colleagues.

The article follows:

MAGICAL MACHINES HELP READ THE MIND

For 18 agonizing months Ed Flynn talked to his comatose wife and stroked her skin, never knowing for sure if she heard him or knew he was there.

No neurologist or other expert could tell him. If only there had been some way to look inside her brain to see if there was any spark of recognition, perhaps a tiny electrical signal that still carried some trace of the love and memories they once shared.

Why wasn't there a machine to do that he thought, to give him some hope that she still might recover or at least to show that her brain, the thing that made her uniquely her, had shut down for good and that the nightmare could be drawn to an end?

Out of that helpless desperation, Flynn, a physicist at Los Alamos National Laboratory in New Mexico, vowed after his wife died in May, 1980, to devote his expertise to developing just such a machine.

And now he has his chance. Flynn is hard at work on MEG (magnetoencephalography), an extraordinary new way of looking inside the brain to see if information from the outside world is being received and if thoughts are being generated.

"One of the things we hope to look at is coma," said Flynn, who added that the first experiments to determine if some coma patients can hear are expected to begin soon at the Albuquerque Veterans Administration Hospital. "We now have a technique to see how far information is getting into the brain."

Until recently all of science shared the frustration Flynn had felt as his wife lay in the coma. Protected by the skull, the hardest bone in the body, and a blood-brain barrier that prevents unwanted chemicals from reaching it, the brain has until recently defied all attempts to look inside it in ways that did not damage its delicate fabric.

The only ways scientists could study the brain were to measure its diffuse electrical activity or to dissect it in an autopsy, and them the organ revealed little or no information about how it worked when it was alive. The brain was the body's black box.

That started to change in the 1970s, when scientists began developing a series of marvelous machines that for the first time allowed them to peer inside the living human brain. The new imaging machines are a key part of the revolution in brain research during the last 10 years that is drastically accelerating man's understanding of the brain.

What they saw was astonishing. Not only could they view the structure of the brain in exquisite detail, but they could see its function, its living chemistry. They could see neurotransmitters, the brain's chemical messengers, in action. They could see where the neurotransmitters delivered their messages.

Unbelievably, they were looking at the brain thinking.

Like other technologies that have opened up previously unseen worlds, scientists hope the new imaging machines will do for brain research what giant telescopes did for astronomy in revealing a breathtaking view of the universe and what microscopes did for biology in exploring the ultrasmall realm of cells, microbes and molecules.

"The new imaging techniques are wonderful because they essentially turn the brain to glass so we can look inside and see what's going on," said Dr. Jerre Levy, a University of Chicago biopsycholgist.

This unprecedented view is expected to lead to methods for diagnosing mental disorders, predicting behavior and personality, evaluating mental capacities and basically determining when a brain is working well and when it is not.

"It'll be like taking your car in for an electronic diagnosis to see what's wrong with the wiring," said Dr. Floyd E. Bloom, chief of the division of proclinical neuroscience and endocrinology at the Research Institute of Scripps Clinic in La Jolla, Calif.

"Someday you'll be able to be hooked up to an imaging machine and have a diagnostic workup that tells you whether your brain is responding as normal ones do . . . or as the brains of people . . . with mental illnesses," he said.

Computerized tomography (CT) was the first of the imaging devices. It uses low-dose X-rays and sophisticated computers to make an image of a slice of the brain. Even better images came from the next technique, magnetic resonance imaging (MRI). It uses powerful magnets to tune in to tiny radio signals given off by the molecules that make up brain tissue, the thereby providing their exact location.

Both produce accurate images of the internal structure of the brains in living people that were previously obtainable only postmortem.

Then came SPECT (single photon emission computerized tomography) and PET (positron emission tomorgraphy), which use radioactive tracers to measure the brain's metabolic function as it processes information. Tracers are made up of sugar or oxygen, which have been tagged with a radioactive molecule to tell the imaging sensors where they are in the brain. Because brain cells increase their consumption of sugar and oxygen as they become more active, the radioactively tagged compounds allow researchers to measure which parts of the brain are actively processing information. PET, the more powerful of the two, tracks the chemical residue of thoughts.

MEG (magnetoencephalography) is the latest mental Peeping Tom. Some scientists believe it may eventually be the best because it can detect thoughts as they occur, making it faster and potentially more accurate than PET or SPECT.

The brain is an electrochemical organ. When excited, a brain cell, or neuron, fires an internal electrical charge. Each cell plays a role in the brain's vast communication system. When a brain cell fires, that is a signal for sending its message to other neurons. It does so by releasing chemical transmitters. A second neuron takes up the transmitters and then decides whether to crack its own electrical whip and send chemical messengers charging on to other brain cells. Neurons fire at the rate of 50 to 600 impulses per second, depending on what they are doing and how busy they are.

Unlike PET or MRI, MEG does not use radioactive tracers or X-rays. With supersensitive equipment, it measures the fantastically small magnetic fields in the brain that accompany the electrical activity generated when cells orchestrate the movement of a finger, the recognition of a face or the solution of a math problem. The brain's magnetic fields are a billion times weaker than the Earth's magnetic field and a million times less than the magnetic field in a metal door.

Even the EEG (electroencephalogram) is being resuscitated. EEG, which measures brain electrical activity, has been around for nearly 75 years, and for most of that time it was the only means of getting any kind of information out of the living brain. That information was limited, however, because the electrical activity produced too many confusing signals and it was hard to figure out what they meant. For example, an EEG might show that a coma patient was alive but not whether any recognition or sensory activity was occurring.

But with refined equipment and new computer programs, the EEG is beginning to sort out different electrical patterns associated with mental disorders. Within the last two years EEG programs have become commercially available to help psychiatrists diagnose schizophrenia, depression and other problems.

The machines augur profound changes. For one thing, they will dramatically alter the way psychiatrists make diagnoses. Trying to figure out what is wrong in a person's head has been limited to the symptoms described by the patient, an indirect and often misleading path to the brain.

"We as people are very poor at being introspective in a biologically accurate way," Bloom said. "We can say, 'I feel nervous because my hippocampus [involved in long-term memory] is discharging 12 times more frequently per minute than someone else's.'

"That kind of information will be available to us. We'll be able to be very precise, mechanical and quantitative about the differences between our brains under similar conditions. That kind of information will be totally useful in predicting what's wrong in mental illness," he said.

But that kind of information is also a double-edged sword. The ability to evaluate brains—to measure the learning capacities of children, to diagnose mental disorders, to detect deteriorating brain function in executives or pilots—could be a blessing or a tragedy.

"Almost any technology has some potential for bad as well as good," said Dr. E. Roy John, director of New York University Medical Center's Brain Research Laboratory. "Whether its potential is developed for good or bad is really decisively controlled by the society that uses it."

If, for instance, the technology is used to label children according to their mental capabilities, that could be terribly harmful. If, on the other hand, it is used to identify a child's strengths and weaknesses so that he can be helped to realize his potential, then it could be wonderful.

The ability to evaluate brains is already here, John said. After 15 years of research, John developed the Brain State Analyzer, a computerized program that uses EEG recordings to diagnose learning disabilities and a variety of mental disorders.

The device, which is being marketed by Cadwell Laboratories of Kennewick, Wash., color-codes brain waves. Schizophrenia, depression, manic-depressive disease, alcoholism, dementia and other disorders show up as characteristic patterns. Red indicates abnormally high electrical activity in certain areas of the brain and blue too little.

"We can see pictures of brain abnormalities that correspond to the diagnoses that, until now, psychiatrists have been making on the basis of the words of the patients," he said. "It shows you the physiological basis of mental illness."

Patients suffering from depression and manic-depression, different disorders, often go into a psychiatrist's office complaining of the same symptoms. It's hard to tell them apart based on their complaints, but the Brain State Analyzer can make the correct diagnosis 94 percent of the time, John said.

The most surprising finding is that the brains of normal people all over the world may have more in common than anyone ever thought.

Studies conducted with thousands of normal people in eight countries showed that they have similar EEG patterns. These patterns fluctuated in the same way among all groups as their EEGs changed during their lifetimes.

"We have found that the brain follows electrical rules that change in a lawful way from childhood to old age," he said. "Healthy people have a pattern of electrical activity that is very accurately predicted by those rules, and it doesn't depend on their racial background or their cultural background."

The Brain State Analyzer may also improve treatment because it can detect the effects of drugs or other therapies in normalizing brain waves even before patients notice any improvement, John said.

Although the analyzer is the first imaging device to become commercially available to aid doctors in diagnosing mental problems, some of the other techniques ultimately are expected to be more powerful.

Whereas EEG signals provide a view of diffuse brain activity, MEG measures cell function at exact locations in the brain. It can, for example, tell the different parts of the brain that become active when a finger or a thumb is moved.

MEG also can distinguish the area of the brain where the thought of moving a finger originated, which is a few centimeters away from the area that actually orders the finger to move.

The U.S. Army already is interested in the technique's potential for picking people for specialized tasks, based on how their brains work. Some people make better pilots because they have faster reflexes, while others may be better tank drivers because their peripheral vision is sharper, skills that the brain oversees.

"We're working on programs now for the Army to see if we can develop a screening procedure for troops to see if we can say here's the best guy for the right job," said Flynn, chief of the neuromagnetism team at Los Alamos National Laboratory.

Finding out what in the brain makes some people better at certain things than others will have wide implications.

"It's not going to happen next year, but down the road we hope that we can pick up prospective geniuses in certain areas, or at least people with very useful capabilities, and put them in the right jobs," he said.

"It would be useful for the individuals themselves, if they are willing to accept that, as long as it's not forced on them."

While MEG is still in its infancy, PET is beginning to take its first shaky steps. Dr. Louis Sokoloff of the National Institute of Mental Health was the first to discover a way to make the brain identify its thought processes.

He used glucose, or sugar, the brain's fuel. The more active a brain cell is, the more it gobbles up glucose. He attached a radioactive molecule to glucose so that after the glucose is injected, sensors can follow it as it travels through the brain. But even with a radioactive tag, glucose is burned up by cells too fast to leave much of a trace.

Sokoloff overcame this problem by making a special form of fuel called deoxyglucose that brain cells take in like glucose. The only difference is that deoxyglucose gets temporarily stuck in cells, allowing its radioactive beacon to identify neuronal activity.

Using Sokoloff's technique, David Hubel and Torsten Wiesel made an amazing discovery. They found that specific parts of the visual cortex, the area of the brain at the back of the skull responsible for vision, processed certain kinds of information coming in from the eyes.

Their finding, for which they shared a Nobel Prize in 1981, supported the theory that the brain is made up of modules, that certain areas do certain things. It meant the brain could be mapped and that learning how these networks interconnected could lead to a better understanding of behavior.

Sensory information from your eyes, ears and skin, scientists now think, is broken down into signals that travel to the appropriate modular points in the top layer of the brain. That information then is transmitted to other places in the cortex; where it is interpreted and compared with other events in your recent and distant memory.

Ultimately other systems that deal with emotion and reward check out the data before a decision is made whether to ignore it, store it for long- or short-term memory or act on it immediately. A lot of the process is subconscious, like jerking your finger away from a hot stove. But brain cell activity increases and decreases at every step, and the radioactive beacons faithfully follow it.

These kinds of mental activities now can be seen with PET. Pioneered in the 1970s by Michael Ter-Pogossian, a Washington University physicist, the PET machine is just coming into its own as a sophisticated scanner of brain activity. The device detects radiation from positrons, subatomic particles emitted by radioactive tracers.

The University of Chicago's Levy is using PET to study normal brains and is finding that brain metabolism is stable. People have the same PET images when they do the same task at different times.

Furthermore, images of brain function can be used to predict certain behaviors and possibly even personalities, Levy said.

Some people who make mistakes on a button-pushing test, for instance, will display a certain brain image. Levy can predict that other people with that same pattern will make the same mistakes 70 percent of the time.

In some people the brain's right side is more active than the left; in others just the opposite. Still others have equal activity in both hemispheres. Because the left brain is thought to be involved with language and art, the right brain with logic and nonverbal processes, lopsided activity may predispose people to certain types of personalities, Levy said.

"We have data indicating that these individual differences in the activation levels of the hemispheres are correlated with personality characteristics, cognitive abilities and things like that," she said.

PET can also pinpoint receptors on brain cells where neurotransmitters attach to convey their messages. Tagged with radioactive beacons, transmitters; or substances that mimic them, can be followed to specific cells where they lock in.

The receptor is important as the brain's link to the outside world. It is also the weakest point in the brain; receptor malfunction is responsible for most mental disorders.

In 1973 three teams of scientists discovered the first receptor in animals, the opiate receptor. Because psychoactive drugs work at receptors, the goal of researchers is to develop new compounds for treating mental disorders that either block or enhance the activity of receptors.

The first human receptors examined with PET were lit up in the brain of Dr. Henry Wagner, director of Nuclear Medicine and Radiation Health at Johns Hopkins' School of Public Health. Using himself as a guinea pig, Wagner, in May, 1983, was injected with radioactive tracers that lit up his dopamine receptors. (Dopamine is an important neurotransmitter that is involved with such things as emotions and initiation of movement. Excess dopamine receptors in one part of the brain have been linked to schizophrenia.) About a year later he did the same thing to image his opiate receptors.

"To see the chemistry in your brain and to be able to relate it to your feelings really makes you realize that there are chemical reactions going on in your brain that affect your behavior," Wagner said.

He and neuroscientists at other centers are using the new technology to learn how a person's experiences affect transmitters and how these chemical messengers in turn affect feeling, thinking and behavior.

A person who is learning something nice or pleasant, for instance, may be rewarded with a squirt of enkephalins, one of the brain's own opiate transmitters.

"When you present that idea to people, the first thing they say is that it sounds like a gross and bizarre oversimplification," Wagner said. "But it certainly affects your behavior."

Scientists hope this path may lead them to understand such things as whether squirts of inappropriate transmitters cause aggression or violence. Are drug addicts who use chemicals that plug into the brain's opiate receptors, trying to make up for a lack of enkephalin rewards from an impoverished childhood?

Wagner's group has found that dopamine receptors decline with age, especially in males. Is the decline of dopamine receptors what causes men to mellow as they get older? Could this explain what law enforcement officials have long observed, that adolescents who commit the most violent crimes lose their violent tendencies as they age?

PET scans have also revealed characteristic abnormal patterns in the brains of people with panic attacks and obsessive-compulsive disorders.

"Relating brain chemistry to mind function is an unbelievable ability," Wagner said. "We've had one view of the brain from above through psychology, sociology and linguistics. And we have a view of the brain from below with the study of molecules, synapses and membranes. Now the imaging devices allow us to join these two views."●

MINORITY ENTERPRISE DEVELOPMENT WEEK

● **Mr. WEICKER.** Mr. President, once again I take great pleasure in recognizing the annual celebration of "Minority Enterprise Development [MED] Week," October 2 to 8, 1988. The Small Business Administration [SBA] and the Minority Business Development Agency [MBDA] are sponsoring events honoring distinguished minority entrepreneurs from around the Nation throughout this week and these business owners deserve the highest of praise.

The Development of Minority-Owned Businesses is key to ensuring economic prosperity for all in our Nation. And I urge all of my colleagues to give serious thought to this year's MED Week theme, "Business to Business: Strategies for the Future." We all have a role to play in assuring that minority-owned businesses continue to thrive in America and that opportunities to enter the economic mainstream are just as available to minority as to majority entrepreneurs. The complete strategies needed to accomplish this level of fairness and parity for minority business are yet to be designed in this Nation and I challenge every Member of Congress to take note and get involved.

I believe the Senate and House Small Business Committees have taken a step in the right direction in proposing new legislation to reform the Small Business Administration's Minority Small Business/Capital Ownership Development Program, commonly referred to as 8(a). Last week we concluded the House-Senate Conference on the 8(a) program. This is probably the best known Federal Minority Business Program across the country and unfortunately that may be the case more for the abuses that have been associated with it than with its very real accomplishments. Abuses, I would note, which have been perpetrated in most instances, not by minorities but by others who have sought to exploit the program to their own ends. And there were the usual cries to do away with the program, but that is the coward's way out. Instead, we reformed it in a number of significant ways.

Under the new legislation, the SBA is authorized to hire additional staff to aid in smoother operation of the program. This should make it possible to cut the time it takes for processing new applications down to 90 days, compared with the current 18 months to 2 years. It will also allow a more equitable distribution of personnel to perform the business development tasks that are the program's major focus. Larger contracts will be awarded on a competitive basis and participants will have to demonstrate less dependence on sole-source awards in the latter years of the program by competing for non-8(a) contracts. A perennial weakness of this program has been the number of contractors who graduate having experienced little or no involvement in competitive bidding and in many instances cannot survive in the competitive marketplace. Participation in the program will be fixed at 9 years, thus insuring that firms no longer waste valuable resources negotiating extensions.

The legislation contains two other major initiatives designed to make more Federal contracting opportunities available to minority Americans. It sets a Governmentwide goal of 5 percent contracting with minority businesses beginning in fiscal year 1990, roughly double the current share. And it encourages prime Federal contractors to live up to their commitments by authorizing agencies to assess monetary damages if these contractors fail to abide by their good faith goals for subcontracting to minority businesses. And new sanctions, civil and criminal, are established to ensure that anyone engaged in waste, fraud, or abuse pays a very high price for such actions.

Nearly 2 years of hard work by committee members and our respective staffs has gone into this legislative effort to make the 8(a) program the best it can be and I believe its future is greatly stabilized and enhanced. I commend all involved for their commitment and dedication to minority enterprise development.

Mr. President, while this legislation took some major strides for minority business development, I hasten to add we have a long way to go. Of the more than 17 million small businesses in this Nation, less than 1 million are owned by minorities, and over 90 percent of that number are small sole proprietorships or mom and pop operations. Clearly, there is much to be done in creating strategies that promote the creation, growth, and expansion of minority business in this great Nation.

I congratulate and extend best wishes to every business man or woman who will receive an award during MED week as well as the many who will not be recognized during these events but who continue to struggle to make a difference in our Nation's free enterprise system.●

THE PARENTAL AND TEMPORARY MEDICAL LEAVE ACT OF 1988

● Mr. WEICKER. Mr. President, it is with regret that I note the Senate has failed to invoke cloture on S. 2488, the Parental and Temporary Medical Leave Act of 1988. As an original cosponsor of both this measure and the act for better child care bill, now a part of S. 2488, I know how hard my colleague from Connecticut has worked to gain bipartisan support for these two important pieces of legislation. I will first address my comments to the parental leave section of the legislation, and subsequently to the act for better child care section.

I believe the parental leave bill would promote the stability and economic security of families, and represents an appropriate step toward addressing the demands placed on employees who face loss of their jobs when they are either temporarily disabled or must take care of family members when an unexpected illness occurs. As a result of the modifications made in Senator DODD's second parental leave bill, parents are allowed 10 weeks of unpaid leave from work within a 2-year period upon the birth or adoption of a child, assumption of custody of a foster child, or upon the serious illness of a child. It would also allow an employee to take up to 13 weeks of unpaid leave over 1 year when seriously ill.

This bill is a modest, low-cost means of assisting American workers to cope with crisis family situations, without risking the loss of their jobs.

The Parental and Medical Leave Act is based on the philosophy that strong American families mean a stable and productive work force for our Nation. The basic issue is whether a parent should be forced to choose between his or her job, and the necessity of caring for a new or seriously ill child.

At a time when the United States is struggling to stay competitive in a world market, S. 2488 would strengthen our families, our economy, and our country.

Experts agree that the early months of life are crucial to a child's development—a time when infants are critically in need of their parents love and attention. S. 2488 permits only a relatively short amount of parental leave—10 weeks of unpaid leave—which is a small amount if we are to assure that more American children grow up to be healthy, self-sufficient, and productive citizens.

I am particularly pleased that the bill contained an amendment I offered during the Labor and Human Resources Committee markup of the bill. That amendment recognizes that, in circumstances when an individual has a mental or physical disability, his or her need for parental care does not end upon attaining the age of 18. In this case, parents continue to have an active role in caring for their sons or daughters, and would be permitted to take leave within the limitations set forth in the bill.

The percentage of adults in the care of their working parents due to physical or mental disabilities is growing. Because more disabled individuals are remaining at home with their parents, many of whom are also wage earners, these parents must balance the demands of employers with the needs of their disabled child.

As my colleagues are aware, this bill does represent a compromise between the business community and advocates on behalf of children and families, and it is most unfortunate that the Senate failed to invoke cloture on a measure that would greatly protect the integrity of working families.

With regard to the act for better child care legislation, I would like to make the following observations. This legislation was arrived at after many months of hearings and consultations with the Alliance for Better Child Care, a broad range of child care providers, parents, and other concerned citizens. It is a good bill and it merited passage now, before the October recess. Quality child care for America's children cannot wait.

That is the aim of this bill: Quality and affordable child care. Not, as I have heard it unfairly characterized, to have "the Federal Government tell you how to take care of your children." But to make sure care outside the home is available to those who need it. Not to endorse a particular kind of lifestyle or a particular kind of family, but to make sure that no family is forced to choose between a decent living and decent child care.

No one wants to bring on some "brave new world" where children are taken from the womb and cared for in identical cribs with identical cubicles. The diversity of child care in America will be enhanced, not diminished, by this bill. So will the power of individual parents to decide what is best for their children.

Mr. President, it is estimated that by 1995 two-thirds of all preschool children will have mothers in the work force. For some, having a career is a matter of choice. But for three mothers out of four, it is also a matter of necessity. Without that second paycheck—or, in the case of the single mother, her sole paycheck—these families could not make ends meet.

This title of S. 2488, sometimes called the ABC bill, is about basics. It is about quality. We all know there are many good people providing child care across the country. They want the best for these children just as parents do. Some lack the resources or the know-how to do the best job possible. Other providers do not deserve to be entrusted with the care of our most vulnerable citizens and they must be weeded out.

This bill approaches the question of quality in a variety of ways. It makes funds available to States for training and technical assistance to providers. It requires States to periodically review and bring up to date their licensing standards. Health and safety protections would be strengthened and consumer education programs initiated to help parents make informed choices.

The ABC bill is also about affordability. Like anything worth having, good child care does not come cheap. Costs are high, averaging $3,000 per child per year. This legislation would provide States with funds to make child care financial assistance available to low- and middle-income families, including all those with incomes up to 115 percent of a State's median income, adjusted for family size. The size of this subsidy would be based on a sliding scale determined by the State. And the State would have final say over whether the money goes to the parent or the provider.

Finally, this bill is about availability. New moneys will go to the States to establish grant and low-interest loan funds to start up and expand child care programs. A portion of these moneys can be used to recruit and train the personnel required to staff the new and larger facilities.

That brings me, Mr. President, to the bottom line. The Access to Better Child Care Act promises all of this and more for an authorization of $2.5 billion. That is less than 1 percent of the total we spend on defense every year. Yet it is an investment that will do much to strengthen our families, our work force, and our economy.

Like the parental leave section of this legislation, the ABC bill is pro-family. It offered us an opportunity to go beyond talk to action. I deeply regret that the Senate preferred inaction to action, but this will not be the end of the profamily agenda: It is simply the beginning.●

THE 20TH ANNIVERSARY OF LA RAZA

● Mr. BINGAMAN. Mr. President, on Wednesday, October 5, I had the pleasure of being honored by the National Council of La Raza along with nine other Senators and Representatives for "outstanding service to the Hispanic Community" at La Raza's 20th anniversary dinner.

Other honorees included Senators HATCH and McCAIN, and Representatives BARTLETT, BERMAN, BUSTAMANTE, FISH, HAWKINS, KILDEE, and RODINO.

I would like to congratulate La Raza for their long years of service and accomplishment to the Hispanic community. In addition, I want to call the attention of my colleagues to the well-received remarks of my colleague from the State of Arizona. Without objection, I ask that the remarks of Senator McCAIN be printed in the RECORD following my remarks.

The remarks follow:

REMARKS BY SENATOR JOHN McCAIN BEFORE THE NATIONAL COUNCIL OF LA RAZA'S 20th ANNIVERSARY CELEBRATION, OCTOBER 5, 1988

We Americans are a hopeful people. We believe in the promise of a better tomorrow no matter how content or discontent we are today. Hope is the engine of our successful society, and it is at the core of the ambitions we hold for ourselves and our children.

It is not only our abundant resources and superior technology which have secured so many lasting and historic achievements for our country. Hope has made us a brave people. We believe America is a special place—a place where faith in the individual has released a greater store of human initiative than in any other nation in history. Secure in that belief, we undertake great enterprises that astonish the world for their bravery and their hopefulness. That is all the explanation necessary for our return to space last week. We returned because the courage and faith of the Challenger crew did not perish with them. That courage and faith returned to space with five Americans on board the Discovery.

At a minimum, government should do nothing to diminish the hopes of the people. But that is not enough in a country such as ours. This nation is dedicated to such great endeavors that we expect more than governmental indifference to our ambitions. Yet, neither do we expect unwanted interference in our affairs. We desire from our government neither intolerance nor indifference. We desire the active encouragement of the hopes and aspirations of all Americans. We desire a relationship with our government that helps to make our lives better, and, consequently, makes this country greater.

This relationship is rooted in the understanding that we are still building a nation. It is in the understanding that great accomplishments occur in the process of building a nation and not in its conclusion. The building of our great nation is not the work of immigrants from one or two countries. It is the work of many cultures.

After independence and union, perhaps the most important accomplishment of America's founding generation was the preparation of the country to become, in Thomas Paine's words, "an asylum for mankind," an unprecedented land of immigrants. The epic migration that followed this determination has no parallel in history and it's impact on our development is impossible to overestimate. Our religion, politics, science, arts, industry, and agriculture are the work of a multitude of cultures all united by their attraction to the universal appeal of our national ideals—by the desire to live free and prosperous lives. The fortunes of our multi-cultural heritage are measured in the success of our democratic experiment, and in our unrivaled growth and prosperity.

Therefore, I believe government in this country must encourage the aspirations of every American and help them to prosper. We begin by refusing to construct barriers to opportunity. We begin with the provision of equal opportunity to every culture and every individual in America.

We do this not only as an act of national good will. Goodness is something best understood between each individual and God. I am not talking about charity. We do this because it serves the interest of the entire nation. America is still a vigorous and growing land. We avail ourselves of the genius and industry of all Americans in the continuing tradition that is our history.

When we diminish any culture's identification with its heritage, we erect barriers to opportunity for that culture. Furthermore, by doing so we deny all Americans their participation in a society that is unique for the very reason that it has multiple points of origin. Why should we now cease to tolerate our diversity, when that very diversity has made us a special place? It is not in any American's interest to do so.

Spanish was spoken in my state of Arizona when it was built from a wilderness. It has an equal right to be spoken there today. Spanish culture influenced the making of Arizona society. And our society cannot sustain its character, absent that influence today. Government in America must make its decisions with appreciation for the strength provided the country by our diversity. Jose Marti believed that: "The spirit of a government must be that of the country . . . Government is nothing but the balance of the natural elements of a country."

We provide no balance in the favoring of one culture or one language over another. We provide no balance by refusing from any culture its unique contribution to our national well-being. America would no longer be an unfinished nation. America would no longer be a special place. We would instead begin the era of our decline.

Proficiency in English is necessary to prosper throughout ths great country. This is undeniable. But proficiency in English does not require the abandonment of any other language or culture. On the contrary, to refuse the use of a native language as a tool for teaching another makes learning more difficult than it need be.

We ought to be concerned with the adequate funding encouragement of programs which promote English proficiency within Hispanic communities, among the young and the old, rather than waste time in needless worry that one language threatens the integrity of another. There is no basis in our history for such concern. Our nation and the English language has done quite well with Chinese spoken in California, German in Pennsylvania, Italian in New York, Swedish in Minnesota and Spanish throughout the Southwest. I fail to see the cause for alarm now. It places one culture at a disadvantage while favoring another. It restricts opportunity and diminishes hope. It makes us a smaller country.

I prefer to live in a bigger place. I prefer to live in a growing America, as proud of its diversity as it is of the ideals that unite us. I prefer to live in a country that seeks the participation of all its citizens in a national enterprise to sustain the special character of America. I prefer to live in a hopeful country.

I hope that is why you have honored us tonight. I have every intention of remaining worthy of that honor.

Thank you.●

INFORMED CONSENT: WASHINGTON

● Mr. HUMPHREY. Mr. President, I again present to this body letters in favor of my informed consent legislation, S. 272 and S. 273, something I have vowed to do daily until a persistent injustice toward women has ceased.

The letters follow:

Seattle, WA, *February 10, 1987.*

Dear Sir: I was counseled at a family planning center that my "pregnancy tissue" was just a blob of cells.

Imagine my surprise when someone told me just prior to my scheduled abortion that my 5 week fetus had a heart beating! Yes; it was enough to stop what would have been the greatest mistake of my life. I love my daughter very much, I have never been on welfare and I shudder to think how I would have felt to find out after an abortion what I had done.

Please push informed consent for the women as well as the babies.

Sincerely,

Sharon Hegarty.

Milton, WA, *June 6, 1986.*

Dear Senator Humphrey: As a young girl shortly after my sixteenth birthday I made a decision that has greatly impacted my life. I chose to end the life of my unborn child.

The abortion procedure was terrifying and far from painless leaving me with many emotional scars. The added tragedy is the lack of knowledge that preceded my decision. I was counseled by planned parenthood yet no information was given about the ramifications both physical and emotional pertaining to abortion.

I question the motives of anyone who deliberately choose to keep young women ignorant. My life and the choice I had to make could have been drastically altered. My years of suffering to overcome guilt caused alcohol abuse and Anorexia Nervosa. Women today need to know what they are doing when they choose to destroy their unborn children. My hope is for abortion to stop, but until that day comes isn't it ethical that correct information be given to anyone going through a surgical procedure?

Sir I urge you to consider this problem and make it a priority. Lets move forward with Informed Consent!

Sincerely,

Patty Christofferson.

Mercer Island, WA, *February 10, 1987.*

Dear Senator Humphrey: I am 35 years old today. In 1970 I had an abortion in Renton, Washington after confiding in a "College Campus House Mother". Since it was illegal there and there was no counsel or information. The reason I am writing is to let you know that after marrying, 5 years later, I suffered infertility and two miscarriages. After tremendous grief and heartache, I have been blessed with two beautiful daughters. Maybe I would have had the same trouble conceiving and carrying a child to term, maybe not. I offer this as another statistic.

It is my hope that other scared teen-age girls will not be rushed into abortions where the long-term consequences are not explained. We need informed consent of women considering an abortion.

Thank you for requesting the public's input on this issue.

Sincerely,

T. Frederick.

Federal Way, WA, *June 5, 1986.*

Dear Senator Humphrey: I was a teenager living at home when I discovered I was pregnant. It was in the 12th week of my pregnancy that I told my parents. They were obviously upset and nothing was said until the next day when my mother phoned from her office and told me to meet her at a women's clinic downtown.

The waiting in the outer office was long and silent. I assumed I was there for a second opinion. Not until the doctor had placed the seaweed compound, which dialates the cervix, inside and turned to comment as to what he'd done and why, did I even know what was planned for the following day.

I was never informed about abortion, what it would entail physically and certainly nothing was mentioned about the mental and emotional anguish I would experience. The anniversary dates of the abortion and the expected due date brought on great depression for years. Only the compassion and healing power of Jesus Christ could mend the wounds I'd received.

I share my experience with others that not only the life of an unborn child may be spared but also to prevent someone else from experiencing the anguish I felt.

Abortion does effect every life it touches. Please, help stop abortion.

Sincerely,

Deborah Libby.●

AN ADDRESS BY ENRIQUE V. IGLESIAS, PRESIDENT OF THE INTER-AMERICAN DEVELOPMENT BANK

● Mr. BRADLEY. Mr. President, I ask that I may insert a timely and important statement from the person who, as Uruguay's Foreign Minister, helped launch the Uruguay Round of multilateral trade talks and who as President of the Inter-American Development Bank, may help us resolve the debt crisis that has engulfed Latin America. All who are interested in the economic future of our southern neighbors and the future of our relations with them will want to pay close attention to the speech he recently delivered to the National Press Club.

The address follows:

Address by Mr. Enrique V. Iglesias, President of the Inter-American Development Bank, the National Press Club, Washington, DC, September 13, 1988

Ladies and Gentlemen, as President of the Inter-American Development Bank, I am very pleased to have this opportunity to address you today, at a time that is so difficult and challenging for Latin America and the Caribbean, as well as for the institution which I head.

The Inter-American Development Bank was established some 30 years ago—a product of the creativity and solidarity of the Americas—for the specific purpose of supporting and furthering the economic and social development of Latin America. The Bank broke much new ground with innovations in the areas of international financial and technical cooperation and in the mechanisms for providing assistance to the countries of the region.

The challenge facing the Bank today as in the past, is to understand the problems of growth and development in Latin America and to do its part to overcome them innovatively and with fresh insight by mobilizing collectively the efforts of all its member countries.

Today, I want to focus on the economic situation of Latin America. These are critical, difficult times. Economic problems are taking on social and political dimensions. While we Latin Americans try to cope with our crisis, a process of profound global economic and political change is under way. If we are not successful, the tide may escape us.

TIMES OF CRISIS

More than one observer has described the 1980s as a lost decade for Latin America. And, for the overwhelming majority of the countries in the region, indeed it has been. Two statistics—the declining standard of living and the drop in investment—offer dramatic testimony to this fact.

The per capita income of the average Latin American is 9 percent lower today than it was in 1980. This is the average. In some countries the standard of living has slipped back to what it was 20 years ago. It does not take much imagination to realize that behind this statistic are plummeting real wage levels, soaring unemployment (some of it open, some hidden), increased levels of marginality and acute poverty—in short, an erosion of every measure of social well-being. Today, one-third of Latin America's population—130 million people—live in dire poverty.

The second indicator is no less dramatic. The average investment rate in Latin America in the 1970s was 24.5 percent. Today it is barely 16.5 percent. I cannot stress enough how serious this is in terms of the eventual impact on the future productive capacity and the erosion of human capital. In some, perhaps many cases, the real investment rate is not even enough to replace capital that is depleted. The resurgence of economic growth in our countries is impossible when investment rates are this low.

Equally severe and just as important has been the erosion of investment in the region's people—its "human capital"—as expenditures in health, education, and nutrition have been severely cut in this decade. Unfortunately this means that the costs of this economic crisis will continue to be paid by new generations of Latin Americans.

These economic factors have not occurred in a social vacuum. Sudden, uncontrollable outbursts of inflation hit hardest at the most vulnerable people in society, and have a highly regressive impact on the distribution of income. Economic and political instability continue to fuel capital flight, a long-standing scourge of Latin America's economy, and to discourage private investment, both domestic and foreign.

Many countries in the region have regained democracy only recently. The overlapping economic and social problems strike at the very foundations of democratic nations—old and new alike. Our democracies face mounting social expectations that cannot be met because of economic circumstances, and this simply adds to discouragement and frustration that undermine the difficult tasks of rebuilding democratic institutions and restoring a democratic way of life.

THE ROOTS OF THE CRISIS

How can today's crisis be explained in a region that is so abundantly blessed with human and natural resources, and has so many economic and social achievements to its credit?

It is not easy to explain the crisis of the 1980s without sounding simplistic. There is a temptation to explain problems from a purely economic standpoint, disregarding social and political factors, or without taking into account the international context and Latin America's interdependence with the rest of the world.

But, if Latin American history says anything to the sharp observer, it is to beware of generalizations. Nevertheless, I venture to say that the crisis of the 1980s has been the result of three main factors, whose intensity has varied from country to country, but which in one way or another have contributed to the problem in most of the countries in the region.

(a) The first root cause of the crisis is the legacy of past patterns of economic and social development.

On balance, this legacy has been positive. Latin America today is very different from what it was immediately after the Second World War. The volume and diversity of its output, as well as qualitative indicators of economic and social dvelopment, all attest to this.

However, our past legacy also contributed to distortions and imbalances in the development of the various sectors of the economy, to malfunctioning of the pricing system, to development that was excessively inward-looking. It fostered large scale inefficiencies, and macroeconomic policies that fueled rampant inflation, to mention but a few of the serious economic distortions we have seen.

These distortions overlapped one another, and made it extremely difficult to lay the foundations for development that is lasting, stable, and socially just, and, above all, that is able to reduce the region's vulnerability to changes in the international environment.

We entered the 1980s with this burden of the past and without having experienced hard times. Moreover, the ease with which our countries could borrow in the 1970s made it possible to put off the inevitable day of reckoning. And, although we managed to buy time, in the end we could not avoid the hardships we are now experiencing—quite the contrary, we made the situation worse by going into debt.

(b) Of course, the second root cause of the crisis of the 1980s was this borrowing during the 1970s. Latin America's external debt, which stood at $190 billion in the late 1970s, has risen to some $420 billion today.

This accumulation of debt was made possible through an unhappy combination of laxity in international financial circles that resulted from the flood of petrodollars that the international financial centers wished to recycle, and Latin American countries' appetite for external resources. Unfortunately, only a small portion of these external resources was used for productive investment.

As a result, it is even more difficult today to generate the internal savings and foreign exchange necessary to service the debt. External debt service currently absorbs 4 to 5 percent of Latin America's gross domestic product. Interest payments over the last five years have totaled $150 billion—an amount equivalent to an entire year's investment for the region as a whole.

The consequences of the external debt burden are seen at two levels: (1) countries have been forced to reduce their imports to a minimum in order to generate trade surpluses that would produce foreign exchange to cover debt service requirements; (2) domestic savings that might be directed to productive investment have been reduced and the funds diverted to foreign creditors. In both cases, a further slowdown of economic growth has resulted.

(c) The third root cause of today's crisis is that Latin America—which has always been highly vulnerable to international forces—could not remain aloof from the profound changes that are taking place in the international arena.

In the early 1980s, the repercussions of the historic inflationary trends in the international economy raised real interest rates to previously unheard of levels. Since then, terms of trade for Latin America have been highly unfavorable, deteriorating by 15 percent between 1983 and 1986, with a slight recovery—by just over 2 percent—in 1987.

In addition, private flows of financing dried up and there was a resurgence of trade protectionism. In 1981 the region received a net inflow in the order of $38 billion. In 1985 the inflows fell to just $3.4 billion, and have risen since to around $11 billion a year.

In spite of positive and, indeed, visionary political approaches taken in favor of greater openness in international trade, there is a continuing tendency towards administered or protected trade, especially in areas of vital importance to Latin America, like agriculture.

In addition, the world is undergoing profound rapid change, with especially sharp and unpredictable changes in the realm of technology. In the face of all of these new developments, the comparative economic advantages that we Latin Americans thought we would always enjoy are rapidly disappearing.

There is an economic reality in the world that goes beyond ideologies and economic systems, and drives all countries in an never-ending cycle of competition, adaptation and change in an increasingly interdependent world. But Latin America today does not yet have the flexibility it needs to adjust to these trends from which our economic interdependence will permit no country to escape. Instead, the region has become more and more vulnerable to external events during these past few years.

ADJUSTMENT OF THE 1980S

For Latin America, this vulnerability has meant costly and painful adjustments. In some cases, adjustment has been deliberate. In others, it has been forced by circumstances.

The first line of battle in the adjustment process has been the balance of payments. Latin America has been forced to build up trade surpluses to service most of its accumulated public and private external debt. And remember, too, that in response to prevailing conditions, Latin American governments have assumed responsibility for private debt as well as public debt.

Debt service has had a profound impact on government budgets, aggravating public sector deficits—despite efforts to reduce expenditures—fueling inflation and making it necessary to cut expenditures, particularly investment.

The shrinking of internal economic activity, the reduction of capital and social expenditures, together with increased inflationary pressures, are the most apparent negative results of the adjustment process. But not all the effects have been unfavorable. Some of the policies adopted to cope with the crisis should be seen as positive and auspicious for the region.

For example, in many countries we are seeing a boom in exports with both the volume and variety of exports increasing. This has happened because of greater dynamism in the export sector as well as because of changes in macroeconomic policies. Where in the past countries maintained overvalued exchange rates, now currencies tend to be undervalued. A number of incentives to export have been implemented. This represents an historic change of course for Latin America, and is clear evidence that the region's participation in the world economy will be very different in the future.

The role of the State is also coming under close scrutiny with a view to increasing the State's efficiency, both in administering public enterprises, sometimes by transferring them to the private sector, and in delivering needed services like health and education.

Let's not forget, finally, that some countries have been successful in handling their macroeconomic policies, and this has bolstered confidence and encouraged capital repatriation and private foreign investment. In short, despite the economic and social setbacks that most Latin American countries have been dealt, the crisis has produced certain reactions that have resulted in change for the better.

THE NEED FOR DYNAMIC GROWTH

Now it is plain that after several years of continuing adjustment, the region has to get back on the road to dynamic economic and social development. If it does not, present economic imbalances may worsen, and this would have serious social and political consequences.

The players themselves have the capacity to act. As evidence of this, we have only to look at the progress made on a great many fronts in recent decades, and the admirable ability of the region's nations to respond to the crisis that has plagued their economies in the nineteen-eighties. The region can be equally responsive where regional cooperation is concerned.

It would be an injustice to dwell on the obstacles or difficulties that have hindered integration attempts. Any reference to such difficulties should serve simply as a point of departure for a clearer delineation of the much that could be accomplished if new life were breathed into cooperation efforts. The past is past; but it is well to remember that the gains made in earlier cooperation initiatives are anything but negligible.

We also are witnessing a new, pragmatic approach to regional cooperation, in which far more realistic, effective modes of action are being sought. This augurs extremely well for the future of regional ventures.

These national and regional capabilities now must be bolstered through thoughtful international cooperation efforts, motivated by the mutal benefits that can be expected to accure when Latin America takes its place as a strong, vibrant player in the international concert of nations.

THE PATH FORWARD:

(a) *Internal effort and transformation*:

We admit that solutions to the problems of Latin American development today cannot be found by the traditional approach of looking only at external aspects.

What are at stake are our historical models of growth and the traditional ways in which we fit into the world economy. Latin America is challenged to adopt an aggressive policy of economic modernization and commitment to social equity. Each country may devise its own approach, according to its particular circumstances, but all must be aggressive in their pursuit of modernization and social equity.

The failures and successes of recent years and prevailing world trends have already signaled the changes that are necessary. Latin America cannot ignore world trends without running the risk of finding itself left out of the modernization processes on which its economy depends and for which vast segments of its population are clamoring.

Recognizing the differences among our countries, the widely needed changes are:

(1) A significant increase in the overall productivity of the economic system, both the public and private sectors.

(2) A substantial increase in internal savings and investment which, as a result of the crisis and particularly debt-service requirements, have fallen to leavels that do not permit maintenance of even minimal rates of economic growth or social well-being.

(3) A new role in the international marketplace, based on an increase in the volume and variety of our trade in goods and services.

(4) Profound improvements in the training and development of our human resources and in the way modern technology is incorporated into the productive process.

(5) A social policy that will help cushion the impact and distribute the burden of adjustment fairly among all segments of the population. Emergency social policies with precise objectives are especially and urgently needed to parallel the process of change.

The effort will differ from country to country, but to one degree or another it will have to incorporate three basic lines of policy:

(1) A coherent macroeconomic policy that will promote a productive system that stimulates creative market forces and deflates inflationary pressures through a system of rewards and penalties that fosters production and discourages speculation.

(2) Comprehensive reform of the State that not only will elimimates its structural deficits, which currently are a great source of loss of internal savings, but changes the scope of its activities so as to improve overall public sector efficiency. This does not just mean that the State should be smaller. It means that it should play an active role in guiding development processes without substituting private-sector activity unnecessarily.

(3) An export culture that envisages: (i) promoting regional integration as a means of increasing trade and not simply as an unproductive diversion of trade; (ii) expanding and diversifying the volume of products exportable to world markets. Regional cooperation and integration must be fostered with renewed pragmatism. It should not only serve its specific purposes, but it should provide a base to developing exports outside the region. Integration should not substitute, but must complement, the export effort and facilitate the penetration of external markets.

Given the severity of the economic and social problems, and the vastness of tasks that confront our countries, solutions will not come with a magic wand. We need a deep-seated structural change, aided by a policy of international cooperation that is commensurate with the needs of a region that can and must play a relevant role in the dynamics of the western world.

Allow me to expand on this idea:

INTERNATIONAL COOPERATION

A key point in analyzing and appreciating the region's problems is that international cooperation complements internal efforts, it cannot replace them.

It would be inconceivable to expect that the enormous investment effort required by the growth process could be financed without a vigorous increase in internal savings or that the process of modernization could go ahead without a greater opening outward through renewed effort to export more and to import more. All the structural reforms on which we have to keep on working must keep these objectives in sight.

At the same time, we cannot ignore the fact that the active transfer of resources to service the debt, in the absence of a cooperative international effort to reduce that transfer and a significant inflow of fresh capital could drag certain countries into a vicious circle of prolonged stagnation and increasing social tension which will drastically reduce their ability to pursue adjustment processes.

Thus, the interdependence of the problems and global interests that unite the debtor countries and the international community oblige us to view the adjustment process and renewed international cooperation as parallel and mutually reinforcing processes.

These are three key factors that make a continuing review of today's problems in regard to international cooperation essential: the external debt, international trade, and the inflow of capital from abroad.

(a) *The external debt:*

Without a doubt, this continues to be the most pressing problem facing the region, and indeed it is widely regarded as such in the debtor countries.

I have already discussed the magnitude of the problem, its implications in regard to the transfer of resources abroad, and its strong effect on increasing inflationary pressures in some of the most heavily indebted countries. We have also seen how the international environment has been adversely affected in some cases when the terms of trade have worsened, as has happened over most of the decade, or when interest rates rise. The increases of the past 15 months, amounting to 2.5 percent, have for the region as a whole meant an additional transfer on the order of seven billion dollars.

Neither the debtor countries nor the international community has stood on the sidelines as this problem unfolded. Quite the contrary. Since 1982 the external debt problem has resulted in policy initiatives that have made the issue an extraordinarily dynamic one. This is a positive feature and one that offers encouragement to press forward with new efforts.

Refinancing packages offering fresh resources, longer, deadlines, reduced interest-rate spreads and commissions, the creation of a secondary market for discounting the debt or converting it into assets: these are all continuing to fuel the dynamic process of finding new alternatives for dealing with the debt problem. And it has to be recognized that this dynamic negotiating process—and especially the profound internal adjustments made by the debtor countries—have succeeded in averting havoc in the international financial system.

Nevertheless, we are far from having achieved the stated objectives of the management of the debt problem, namely to sustain adequate rates of growth and reduce excessive levels of debt. In nominal terms, the debt is continuing to increase.

Some countries have managed to cope with debt service and still achieve acceptable rates of economic growth. In most countries, however, the economy continues to stagnate and social conditions continue to worsen. Relations between debtors and banks have not been normalized, and concern and frustration are evident. This is why we have to keep on devising new and creative alternatives to the existing means for dealing with the problem.

This need to continue working in an ongoing dynamic process will become all the more important if there are changes in the international economic environment, particularly if interest rates rise further.

Expanding the menu of options requires in each case the renewed collaboration of all those taking part in the process—debtors, banks, international agencies, and industrialized countries alike—with a view to making the reduction of net transfers of resources abroad and new investment resources compatible with the renewal of economic and social development.

It is encouraging that there is a growing awareness on the part of all these participants in the process that further effort is required in handling the debt problem. This was evident in the Toronto Communique's reference to the special situation of the less developed countries. It is also starting to become apparent in the views expressed by the financial sector, which has recently been looking into new forms of action, ranging from greater involvement by the agencies responsible for regulating banks to consideration, as part of the package of options, of savings measures that would result in the effective reduction and renegotiation of external debt.

The international financial agencies such as the development banks—among them the Inter-American Development Bank—must also become active players in this process of seeking out new ways to solve the debt problem, starting with the infusion of fresh resources that will offset the outflow that some of our countries are now experiencing.

(b) *International trade:*

The other area where bold international cooperation and broad vision are required in order to guarantee open and competitive international markets and thus assure that every country enjoys equality of opportunity is the area of fair international trade, in which each country must have room to develop its comparative advantages.

As I have already said, greater opening outward is not only an unavoidable objective of a growth policy, but it is also an essential prior condition that must be met if the debt is to be serviced.

This greater opening outward requires not only appropriate domestic policies but also open international markets and a reduction in the present levels of trade administration and trade protection. Unfortunately, this is not happening. The trade surpluses that the debtor countries have to achieve require markets that are open and willing to accept those surpluses.

The present Uruguay Round of GATT is the greatest challenge facing the international community in the area of trade since the post-war period. It has to go far beyond the earlier objectives of merely reducing tariffs or lowering non-tariff barriers. The aim of this is to build a new international trade order, one that is open and fair, with rules that will assure trade growth for an expanding world in which we will all come out winners. The interests of all countries—developed and developing alike—are bound up in this objective, and the fullest political energies of the entire international community must be contributed to this effort.

(c) *External financing:*

Renewed flows of external public and private resources and increased private investment are essential components of any strategy that seeks to combine adjustment with growth.

Performance in these areas has certainly not been encouraging during this decade of adjustment.

I have already mentioned how flows of financing from commercial banks have dried up. Flows of officials cooperation and development assistance funds have also been on the decline in real terms. Several countries, in their dealings with multilateral financing institutions, including the Inter-American Development Bank, are now seeing a negative flow of funds, partly because the volume of repayments on old debt is so large and partly because they lack the internal savings necessary to be able to put up the counterpart funds required alongside any external financing they might receive; for some countries, there has even been a decline in their project preparation capacity. Export credit from official sources and guarantees for governments have also fallen off sharply in recent years, at the same time as Paris Club refinancings have increased.

With a few exceptions, foreign private investment has also declined. Thus it is clear that this key support for the mechanism of international cooperation necessary in the present circumstances is not able to meet the needs of rapid growth.

Thus we see ourselves entangled in a web of vicious cycles. Foreign capital and investment are not flowing into the countries as they used to because of lack of confidence and instability. On the other hand, the restoration of confidence and stability depends on adjustments whose aims could be more quickly achieved if inflows of fresh capital increased. The same situation prevails with regard to the return of Latin American capital currently held outside the region—capital that needs to be brought back to fuel the internal investment process which is so vital in the present circumstances.

One external factor that can help break these vicious circles and turn them into virtuous circles is the greater part that can be played by flows of public capital from international development banks.

It is in this context that I would now like to offer some thoughts regarding the role of the Inter-American Development Bank

THE ROLE OF THE INTER-AMERICAN DEVELOPMENT BANK

At the beginning of these remarks, I said that the Inter-American Development Bank's fundamental task is to live with and amid the region's problems. The Bank's task is twofold. On the one hand, it must contribute to the process of economic and social investment at a time when investment indicators have fallen to levels insufficient to maintain minimal rates of economic growth and social well-being. Thus, our chief commitment is to support investment guided by analyses of priorities and projects that are economically and financially viable and necessary for each country's development.

In addition to investment, the Bank must support the process of change and join with governments that request its help in the revision of policies and the renewal of institutions. For this it uses technical assistance resources that under the present circumstances acquire an even greater role.

The task of change at a time of crisis in the region implies internal transformation and adaptation for the Bank as well. The Bank must redimension its resources so that it can contribute more effectively to meeting the countries' investment needs. It must become more dynamic, seek new forms of cooperation with its member countries, broaden the scope of its dialogue with them, and redefine priorities, while maintaining an ongoing dialogue with other international organizations, particularly the Bretton Woods institutions, with the developed member countries and forging links with the private commercial and banking sectors.

As the Bank strives to forge its own unique, dynamic personality, it must develop and even deeper awareness of the economic and social realities of its member nations.

In times of crisis, the social dimension all too frequently is postponed. This is all the more reason for an institution like the IDB to keep social concerns at the forefront, drawing on its long tradition of commitment to social progress.

This means that the Bank not only must contribute to investment programs and projects designed to benefit the less privileged sectors of society, but must devise new avenues of support in areas ranging from efforts to combat drug addiction in Latin America to the promotion of the informal sector, whose small enterprises will be an important target for vigorous IDB efforts in coming years.

The Bank's greatest strength is its knowledge of the region, gained through its nearly three decades of experience, its physical presence in each and every country of the region, and its unstinting commitment to the objectives of Latin American economic and social development.

At this particular juncture, as Latin America tackles the challenge of economic modernization, there is a need to rethink and redefine the region's economic and political links with the rest of the world, and particularly with those nations to which it was historical or present-day links and with which it will surely be associated in the future. Many of those nations are members of the cooperative venture that is the IDB family.

The Bank must recognize the role it is being called upon to play as an instrument for this type of cooperation and a conduit for dialogue, and must take steps to heighten that role. I am committed to making every effort to ensure that this is done.

To meet its commitments, the Bank must demand high levels of efficiency of itself. In this, we are working with the support of national governments, prominent and experienced individuals, and for our own staff. I believe that the region's urgent needs at this time and the interests of the international community argue strongly in favor of a renewed, vigorous IDB that can roll up its sleeves and get to work in putting the crisis of the 1980s behind us that the 1990s can become a decade of modernization and unfettered progress.

I am greatly inspired by the support that the Bank has been receiving from its members, and by their expectations. The Latin American member countries see the Bank as a vehicle for their economic development, and a valuable forum for cooperative dialogue with the organization's developed member countries. The industrialized nations, in turn, are proffering support in a very tangible fashion. My discussions with Japanese Government officials concerning additional resources to set up trust funds—an initiative that has already materialized—to provide more concessional resources, for which negotiations now are under way, and to embark upon new cofinancing operations through the Eximbank of Japan, are heartening evidence that our organization is indeed serving as a conduit for Japanese investment in Latin America. We are also confident that in the near future we will be able to finalize negotiations that will bring financial support from European countries. Nevertheless, allow me to stop here on this topic, because it would be premature for me to make further specific announcements.

Ladies and gentlemen: I have used my time with you today to tell you how I view Latin America's situation as it approaches the end of one of the most difficult decades in its history. The Inter-American Development Bank must strike at the very roots of Latin America's problems, and our governments, our Board members, and our staff are all committed to this task.

We are fully aware that Latin America must continue its adjustment process in order to adapt to the world's new circumstances. But we also realize that in many cases adjustment is reaching the limits of social tolerance, and this inevitably has political consequences.

The region's greatest assets today are the insights derived from past experiences—both good and bad—and a growing pragmatism in confronting its problems. But the process of change needs time, and its worst enemy is economic and social fatigue, which gives rise to political impatience.

This is why it is important that while adjustment goes forward, new and imaginative forms of international cooperation must be found that will encourage countries in their efforts, shorten the length of time necessary for recovery, and raise the living standards that have so seriously deteriorated during this decade of crisis.

I am optimistic in spite of the not always encouraging indicators of economic performance. I believe that processes of change in the region are taking a more realistic and a more modern direction. The Bank must be an instrument of conceptual change as well as change in its mechanisms for international financial cooperation. To this it commits the best efforts of its administration and its member countries.●

BUDGET COMMITTEE HEARING ON THE FINANCIAL STATUS OF FSLIC

● Mr. CHILES. Mr. President, on Wednesday, the Senate Budget Committee held a hearing on the budget implications of the financial status of the Federal Savings and Loan Insurance Corporation, or FSLIC. Although everyone's saying that the fund is going to need a taxpayer bailout, I guess I've come to the conclusion that the strategy pursued by FSLIC last year is already a taxpayer bailout. FSLIC has been incurring obligations way beyond its means to cover, and everyone knows that the Federal Government will stand behind the insurance fund's obligations.

The insurance fund is flat broke. It has been, issuing promissory notes and guarantees that mortgage FSLIC's future income. The fund is currently so leveraged that GAO stated unequivocally that the FSLIC does not have the resources to resolve the crisis. Furthermore, the chairman of the Federal Home Loan Bank Board, Danny Wall, raised his official estimate of the bailout cost to $50 billion, which GAO says is still about $20 billion short. And Chairman Wall said that he needs to extend, from a current 10 years to 30 years, a special assessment on the industry. Witnesses at out hearings raised serious questions about the ability of the industry to bear this additional burden.

I have become convinced of that two steps need to be taken.

First, Congress needs to explicitly put the full faith and credit of the U.S. Government behind all FSLIC and FICO issuances. Lack of this pledge is unnecessarily raising the ultimate cost of the bailout. In addition, many competent, well-run corporations are leery of taking on FSLIC notes of questionable quality (given FSLIC's bankrupt status).

Second, Congress needs to assert budgetary control over FSLIC's spending behavior. I'm not suggesting that we hamstring the ability of the insurance fund to resolve cases. But with the constraints of Gramm-Rudman, every dollar spent on FSLIC is a dollar that we cannot spent on other priorities.

As part of the effort to gain congressional control over the insurance fund's budget, we need to reassess how we account for FSLIC's spending in the Federal budget. I think that the current treatment of both interest payments on FSLIC notes and the various assistance agreements merit serious examination and possible restructuring for next year's budget.

The House Banking Committee has reported out a bill which incorporates both the pledge of full faith and credit and the limitation on notes, and I think that this is a good starting point. Should this bill advance and come before the Senate, I would hope that we could amend that legislation to incorporate a requirement for a serious examination of the current scorekeeping treatment of all FSLIC assistance. I walked away from our hearing with a great concern that we are not sure exactly what our liability is under the current case resolution strategy being pursued by FSLIC. And I think that proper and accurate accounting of that liability is a critical first step in honestly facing up to this crisis.

Now I think a lot of people walked away from the hearing being confused about the specifics. I think that is understandable. We find ourselves with numbers, assumptions, and estimates that are all over the place. We cannot even tie down FSLIC to an overall estimate of the problem for 3 months, let alone get the right answers to our questions.

This all might be funny if it was not costing us $1 billion per month. For instance, I watched with great confusion Chairman Wall telling the press for months that FSLIC was making so many deals because of an October scorekeeping deadline that did not exist. I still cannot figure out why Chairman Wall, who I think is very bright, would purposely put pressure on the Bank Board staff to meet a meaningful deadline on closing deals. It seems like this would reduce his bargaining leverage when he is negotiating deals worth billions, and he has to meet deadlines that the bidders for these institutions do not.

Whatever the case, there is too much confusion and complexity about all of FSLIC's dealings. And after years on the Budget Committee, I have found that usually the more sophisticated and convoluted a deal is, the more money there is being spent. There are clearly billions of dollars being spent here with absolutely no congressional control. This is clearly the fastest growing uncontrollable spending account in the budget at this point. And it is occurring at a time when the Gramm-Rudman limits are very tight.

And because of the aggregate Gramm-Rudman spending ceilings, every dollar that FSLIC spends is a dollar that is not available for other important Federal programs. In fact, the reestimate of FSLIC outlays this past summer was one of the largest changes pushing us closer to sequestration. As a result, spending for other Federal priorities, such as spending on the drug bill, will have to be limited by the amount of increased FSLIC outlays. The reestimate of FSLIC in August took us $1.7 billion closer to the 1989 Gramm-Rudman target. That is just about identical to the 1989 cost of an early version of our antidrug bill.

FSLIC is bankrupt, plain and simple. GAO's recent audits of the Corporation concluded this, showing a progressive deterioration of FSLIC's negative net worth from roughly $6 billion in 1986 to just under $14 billion in 1987. And Frederick Wolf, the Director of GAO's Accounting and Financial Management Division, stated, "we have already seen costs being incurred at a rate showing that FSLIC's projected resources, even under the most favorable assumptions, will not be adequate to cover them." What that means, simply, is that FSLIC doesn't have the money to cover the commitments it has.

Everyone viewing the savings and loan crisis knows that it is going to take a significant amount of resources to resolve problem cases that already exist. Estimates of the cost have recently been put in the range of $45 to $70 billion and more. And the problem is increasing at an estimated rate of about $1 billion per month. But FSLIC's recent estimate of the problem. Up until our hearing, the latest official FSLIC estimate of the cost to resolve the crisis had been $30 billion.

I am pleased to report to you that the Senate Budget Committee made some progress in understanding the true extent of the problem. As I said before, Chairman Wall increased his estimate of the bailout cost to $50 billion. Now I think this is progress, because it seems like the estimates and the actions of FSLIC and the Bank Board all year have been designed to mask the full extent of the problem. In fact, one of the concerns I highlighted in the hearing was that the increasing use of FSLIC of promissory notes and assistance agreement guarantees also acts to conceal the magnitude of the crisis. Use of these notes and guarantees does not cash out the Federal Government's liability for problem cases; these commitments make promises which only defer cash expenditures until the future.

Now, I have to compliment Chairman Wall on his decision to face up to the situation a little more realistically. But I still walk away from the hearing a little confused about the Bank Board's understanding of its own arithmetic. At the hearing, one of the chairman's associates said that it does not matter that the Bank Board and FSLIC are using these notes and guarantees instead of cash, and building up a huge contingent liability. He said that the liability is already there when a thrift fails.

But he completely missed the point. Addressing the problem by putting the cost on the insurance fund's Mastercard does not really solve the problem. Credit cards charge interest. The fact of the matter is that the problem is getting more expensive to the tune of about $800 million to $1 billion per month. And a large part of this cost appears directly related to the strategy that the Bank Board is pursuing. The interest costs on the notes and the as yet unknown liability for payments under the agreements are estimated to be over half of the costs in these estimates. Another significant reason for the increasing cost is asset deterioration. Instead if cashing out our liability and taking our loss up front, the Bank Board is effectively warehousing these institutions by guaranteeing the capital value and return on the bad assets held by these failed thrifts.

Chairman Wall justifies this strategy by saying that these notes are cheaper than FICO borrowing, which produces a stream of cash for FSLIC. But his recognition at our hearing of the need for additional resources stands in stark contrast to his public statements all year long that the fund was in fine shape. So instead of coming up here first thing this year and saying very clearly, "we need help," the chairman has been putting on a good public face and quietly proceeding to dump as many of these notes and guarantees as possible into as many deals as possible. And just like the deficit has a lock on future generations of taxpayers, this strategy mortgages FSLIC's future income to the gills.

Now this raises in my mind real questions about the ability of FSLIC to meet these obligations and the costs of additional assistance, just on a cash basis. And I am not the only one raising these questions. I think the answer clearly is that FSLIC does not have the cash. I would like to insert a table and analysis I provided to Budget Committee members yesterday which shows CBO's and OMB's estimates of the future cash flow of FSLIC. Both estimates show FSLIC running a total cash flow deficit of at least $11 billion through fiscal year 1993. In addition, I would like to include the statement of Fred Wolf of GAO. Mr. Wolf's also does not believe that FSLIC can meet its existing and future commitments.

The key issues from a budgetary standpoint are twofold. First, the budget treatment of all thes notes and agreements does not reflect reality. An exact assessment of the current liability associated with these commitments cannot be independently verified with the information FSLIC has put out to date.

Chairman Wall's answers to my hearing questions indicate the outstanding balance of these credit instruments will cost at least $20 billion. With the exception of the principal value of these notes, which is scored when the note is issued, the fund's liability for note interest payments and subsidy payments under the various guarantee agreements is not recognized on the budget up front. Outlays are only scored when actual cash payments are made.

But the FSLIC deals using these note and guarantees commit us in advance to these expenditures, which go on for a long period of time. I think that we need to take a closer look at how these items are treated in the budget so that we can move to a more honest presentation of the cost that FSLIC is incurring on our behalf.

The second, more important point is that I believe that existing and continued use of these commitments constitutes a taxpayer bailout. Everyone's talking about whether or not Congress is going to bail out FSLIC. I think we already have. We have just put the cost of the bailout on FSLIC's, and ultimately the American taxpayers' credit card instead of paying up front in cash.

These commitments seem to satisfy the Federal Government's insurance obligation for failed institutions. And, while FSLIC, in theory, pays its own way via industry assessments, it is clear that the magnitude of the problem now outstrips the industry's ability to fully manage the total cost.

I think that these two points are critical to recognize and face up to. FSLIC spending is Federal spending, and spending that is deferred will simply cost more. And there are indications that the way FSLIC is structuring these deals may, in fact, be driving up both the cost of the resolutions and the cost of doing business in the savings and loan industry. By not explicitly placing the full faith and credit of the Federal Government behind FSLIC and FICO commitments, we in Congress may also be adding to the increasing cost of the problem.

Further, FSLIC's heavy use of notes and agreements directly contradicts the Bank Board's public statements that the insurance fund has sufficient resources to handle the problem. If FSLIC has sufficient resources, why does it have to rely so heavily on credit card assistance agreements?

Ultimately, I think the most intolerable aspect of this defacto taxpayer bailout of FSLIC is that it is occurring with no congressional control. Now I am all for giving FSLIC the needed flexibility to address this crisis. I think the Bank Board and its employees are working as hard as they can in an impossible situation. And I think Congress needs to address the question of a cash infusion for FSLIC as soon as possible.

But there are absolutely no congressional constraints on FSLIC making commitments which are ultimately the responsibility of the American taxpayer. Other than the Treasury Department, FSLIC seems to be the only Federal agency which prints money. All I have is a commitment made in a hearing by the chairman of the Federal Home Loan Bank Board that FSLIC will not spent more than it can afford to pay back. In place of normal budgetary control and accountability, Chairman Wall is seeking to use the "trust me" method of budgeting.

I do not envy the position of Congress next year, which will have to clean up this mess. I think that Congress must asset itself very forcefully into this situation. First, and most important, serious considertion should be given to explicit the Government's full faith and credit behind both FSLIC and FICO issues to reduce the interest premium on these issues. The speculative nature of these FSLIC notes may be attracting investors with little interest in good management, which could ultimately lead us to the point of needing to bail out these thrifts yet again. An explicit Federal pledge would restore investor confidence, and quite possible attract interest from solid, well-run companies.

Second, a major cash infusion to the insurance fund must occur as quickly as possible to allow FSLIC the needed flexibility to avoid more costly credit arrangements which increase costs.

Third, and most important from a budgetary perspective, Congress must assert control over FSLIC spending through a carefully designed limitation on FSLIC authority. This limit should not impede FSLIC's efforts to expeditiously resolve the current savings and loan crisis. Rather, it should ensure the proper accountability to Congress and the general taxpayer or FSLIC and the Bank Board.

The House Banking Committee has marked up legislation which would extend FICO borrowing authority from the current level of $10,825 billion to $15.825 billion. This legislation also places a cap of $20 billion on issuance of promissory notes and expresses a preference for exhausting the FICO bond authority before promissory notes are issued. This design keeps FSLIC recapitalization off-budget for the time being. However, because FICO bonds lack a full faith and credit backing, a premium higher than other FSLIC debt is required to ensure their market acceptability, raising the cost of case resolutions. In the end all of FSLIC's notes, FICO or otherwise, will probably end up with full faith and credit backing in order to lower the cost of resolving the crisis. Extending FICO bond authority only shuffles the cost off budget temporarily and raises the ultimate expense to the American taxpayer.

Insurance actions taken by the fund do not occur in a void; every dollar spent on case resolutions is a dollar which, under Gramm-Rudman, cannot be spent on other domestic or defense programs.

The material referenced in the remarks follows:

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Washington, DC, October 4, 1988.

To: Budget Committee members.
From: Senator Chiles.
Re: Current FSLIC cash flow projections: CBO and OMB.

On a cash basis, both OMB and CBO project that FSLIC will operate at a net deficit over the next five years. CBO estimates the total operational deficit over this perid to be about $11.4 billion, while OMB projects a total deficit of $13.7 billion. Perhaps more significantly, both CBO and OMB project that FSLIC will expend a significant amount of funds resolving the thrift crisis for the next five years. CBO projects assistance over the 1988-1993 period to total $39.1 billion, while OMB estimates this assistance to cost $45.2 billion. This does not include the full value of all assistance agreements over this period, as they are only scored on budget as actual payments are made. In addition, CBO and OMB estimates do not assume any major change in current case resolution policy.

EXPLANATION OF TABLE

Income: FSLIC derives its income from the Congressional recapitalization enacted last year, assessments on insured institutions, and income from investments, and asset management income. All receipts of the insurance corporaton are offsetting collections, and serve to reduce the deficit.

Receipts from sale of FICO bonds—FICO is an off-budget entity, capitalized by the Federal Home Loan district banks and designed for the sole purpose of recapitalizing the FSLIC. FICO raises funds by selling bonds on the private market.

Receipts from bond sales are channeled from FICO to FSLIC through the purchase of FSLIC capital stock. FICO's purchase is scored as an offsetting collection of FSLIC, and therefore reduces the deficit.

Interest payments on the FICO bonds are met from the regular assessments on insured institutions. FICO has the authority to directly collect the regular assessments in order to pay the interest on the FICO bonds. This transaction is completely off budget, as it is between two private entities.

Assessments on insured institutions—These are FSLIC's special assessments, plus any remaining surplus after FICO's interest obligations are met from the regular assessment. These assessments are on budget, and classified as offsetting collections, reducing the deficit.

Other income—FSLIC derives other income from investments and management of its assets. These funds again constitute offsetting collections to the FSLIC fund, and reduce the deficit.

Expenses: FSLIC expends funds for operating expenses and assistance to insured institutions. Total cash outlays includes expenditures which involve cash outlays of the insurance fund, such as cash assistance, administration expenses, interest payments, and guarantee claims. Issuance of promissory notes records the principal value of notes as outlays when FSLIC issues the agreements. Total assistance recognizes both cash and note expenditures as outlays.

Administrative expenses—FSLIC's operating expenses are scored as outlays when they are paid out.

Assistance to insured institutions—Assistance can take the form of cash, promissory notes, yield subsidy, yield maintenance or capital loss coverage.

Cash assistance (either liquidations, or reorganization assistance) results in direct outlays, and counts against the deficit. In addition, this category includes interest payments on promissory notes.

Yield subsidy, yield maintenance, and capital loss guarantees are scored as guarantees. Therefore, no outlays are scored until actual cash payments under these agreements are made.

Net Outlays: Net outlays are based on the difference between total assistance and total collections. The net outlay figure is the number included in FSLCI's budget account. Thus, this is the key number for deficit calculations, reducing the deficit if it shows negative net outlays and increasing the deficit if it shows positive net outlays.

CBO AND OBM BUDGET IMPACT ESTIMATES FOR FSLIC, 1988–1993

Summary	1988	1989	1990	1991	1992	1993	Total
CBO BUDGET PROJECTIONS							
Income:							
Receipts from sale of FICO bonds	2,900	2,500	2,500	2,500	425	0	10,825
Assessments on insured institutions	1,558	1,441	1,307	1,201	1,264	1,431	8,202
Other income (investment income and liquidations)	1,851	1,532	1,311	1,313	1,327	1,344	8,678
Total collections	6,309	5,473	5,118	5,014	3,016	2,775	27,705
Expenses:							
Administrative expenses	169	180	188	200	215	223	1175
Cash assistance to insured institutions	5,321	4,620	4,054	3,903	1,566	1,376	20,840
Total cash outlays	5,491	4,799	4,242	4,102	1,781	1,599	22,014
Issuance of promissory notes	4,150	4,000	3,000	2,500	2,000	1,500	17,150
Total assistance	9,641	8,749	7,242	6,602	3,781	3,099	39,114
Total net outlays	3,332	3,276	2,124	1,588	765	324	11,409
OMB BUDGET PROJECTIONS							
Income:							
Receipts from sale of FICO bonds	2,900	2,500	1,500	1,500	1,000	1,000	10,400
Assessments on insured institutions and other income (investment income and liquidations)	4,461	3,236	3,257	3,413	3,484	3,209	21,060
Total collections	7,361	5,736	4,757	4,913	4,484	4,209	31,460
Expenses:							
Administrative expenses	169	180	188	199	215		951
Assistance to insured institutions	6,793	3,562	3,983	4,345	4,892	4,599	28,174
Total cash outlays	6,962	3,742	4,001	4,544	5,107	4,599	28,955
Issuance of promissory notes	5,825	4,602	1,745	1,987	1,890	341	16,150
Total assistance	12,449	8,344	5,916	6,531	6,997	4,940	45,177
Total net outlays	5,087	2,608	1,159	1,618	2,514	731	13,717

[General Accounting Office, Oct. 5, 1988]

BUDGETARY IMPLICATIONS OF THE SAVINGS AND LOAN CRISIS

(Statement of Frederick D. Wolf, Director, Accounting and Financial Management Division before the Committee on the Budget, U.S. Senate)

Mr. Chairman and Members of the Committee: We are pleased to appear today to discuss issues related to the budgetary impact of the thrift crisis and of the Federal Savings and Loan Insurance Corporation's (FSLIC) use of notes payable and other commitments to help resolve its caseload of hopelessly insolvent thrifts. In discussing these issues, several points need to be considered. First, the severity of the industry's problems exceeds the resources FSLIC can marshal over the next decade through currently available sources. Accordingly, a substantial cash infusion will probably be required to enable FSLIC to continue to resolve problem cases and stem future losses. Second, because FSLIC's cash resources are severely constrained, it has resorted to issuing billions in notes and other commitments for which the federal government is ultimately responsible. Third, FSLIC's current and future commitments potentially represent significant amounts of federal spending, but, in our view, they have not been adequately disclosed in the budget process. Before discussing these issues in more detail, I would like to briefly discuss the financial condition of the savings and loan industry and its insurer, FSLIC, to provide some perspective on why FSLIC relies on the use of notes and other obligations in its resolution actions.

THE SAVINGS AND LOAN INDUSTRY'S FINANCIAL CONDITION

Over the last decade, the financial condition of many savings and loans, especially those in the Southwest, has suffered as a result of several factors including diversification into risky activities, high cost of funds, insufficient supervision, and severe economic downturn in certain sectors of the economy. Although almost two-thirds of the savings and loan industry was profitable in 1987, earning $6.6 billion, those profits were far outweighed by the $13.4 billion loss experienced by the remaining one-third of the 3,147 FSLIC-insured institutions. Thrifts in the Southwest, which account for only 15 percent of the industry, were responsible for 67 percent of the losses. At the end of 1987, over 500 insolvent institutions, including 124 in Texas alone, with negative net worth of $18 billion as measured by generally accepted accounting principles (GAAP), were still operating.

The industry's decline has continued into 1988. Second quarter results show that the thrift industry experienced an overall net loss of $7.5 billion during the first 6 months of 1988. While solvent institutions had net income of $1.2 billion, insolvent institutions incurred losses of $8.7 billion. As of June 30, 1988, 497 institutions with assets of $188 billion were insolvent with reported negative GAAP net worth of $26 billion. These continuing losses increase the costs of resolving the thrift industry's problems.

FSLIC'S FINANCIAL CONDITION

The worsening condition of the industry's troubled segment has had a corresponding effect on the condition of its insurer, FSLIC. Until relatively recently, FSLIC had been able to operate on a self-sustaining basis, generating sufficient revenues from premiums paid by member institutions to cover the costs of assisting or closing troubled institutions as needed. However, since 1981, FSLIC's insurance fund has steadily declined from a surplus of $6.3 billion in 1981 to a deficit of $6 billion at the close of 1986. As disclosed in our report to the Congress on FSLIC's 1987 financial statements (GAO/AFMD-88-58, July 5, 1988), during 1987, FSLIC incurred a net operating loss of $8.6 billion, resulting in a $14 billion deficit—more than double its 1986 deficit. This operating loss was primarily attributable to the $7 billion increase in FSLIC's liability for failed but still operating savings and loan institutions, as well as $3.5 billion in losses related to institutions that had received financial assistance or had already closed. During 1988, FSLIC's operating losses have continued. FSLIC's records indicate that it has incurred costs of $20.2 billion related to the 126 resolution actions carried out through September 30th of this year.

In the last few years, FSLIC did not act promptly to resolve the industry's problems due in part to its precarious financial condition and limited financial resources. Responding to FSLIC's need for additional funds, in 1987, the Congress authorized FSLIC to receive the proceeds from the sale of $10.8 billion in bonds over a minimum 3-year period. In the first year, FSLIC received the maximum amount allowable from the sale of $3.75 billion in bonds which were issued at interest rates of between 9.4 and 10.7 percent.

While these additional funds have helped, FSLIC's cash resources have remained low. At the end of 1987, FSLIC had cash and Treasury investments of only $2.9 billion; at September 30, 1988, it had cash and Treasury investments of only $1.7 billion. Because its cash resources are limited, FSLIC has been forced to rely upon the use of large promissory notes and other financial commitments in its efforts to act on the industry's most troubled thrifts.

FSLIC'S CURRENT RESOLUTION STRATEGY DEPENDS UPON NOTES TO FINANCE MERGER-TYPE TRANSACTIONS

As previously discussed, FSLIC has been insolvent for the past 2 years and continues to conduct its operations at a loss. Consequently, FSLIC's ability to deal with insolvent savings and loan institutions has been severely constrained. FSLIC is authorized by 12 U.S.C. 1729 and other provisions, at its sole discretion and upon terms and conditions it prescribes, to use loans, deposits, purchases, assumptions, and contributions to resolve cases and reduce the threat to the insurance fund. However, FSLIC is authorized to assist troubled institutions only if the assistance is less than the cost of liquidation, unless FSLIC determines that the continued operation of the institution is essential to its community.

FSLIC has essentially two options for resolving the problems of troubled institutions—liquidations or merger/acquisition transactions. While both options may involve substantial costs, FSLIC estimates have indicated that liquidation is more expensive and, therefore, should be the option of last resort.

In a merger or acquisition action, a troubled institution is acquired by another, presumably healthier, savings and loan, or by investors wanting to enter or expand their presence in the industry. The cost of this resolution action is the result of negotiations between FSLIC and the acquirer, and the action usually requires FSLIC to provide assistance in the form of cash, notes, and various guarantees to eliminate failed institutions' negative net worth and to help shield the acquirer from the risk of future losses on the institutions' assets or from litigation.

FSLIC's strategy for maximizing its limited financial ability to act on seriously troubled institutions, particularly those in the Southwest, emphasizes using acquisitions or mergers rather than liquidations and, to the extent possible, providing assistance in the form of notes and guarantee agreements rather than cash. Between January 1st and September 30th of this year, FSLIC acted on the problems of 126 savings and loan institutions: 106 institutions were merged with and/or acquired by other institutions in 52 transactions, and 20 institutions were liquidated. In carrying out these transactions, FSLIC issued a total of 28 notes, with combined principal amounts of $8.5 billion. The terms of the notes varied, ranging from 6 months to 15 years, and, for the most part, carrying variable interest rates.

FSLIC Is Also Expanding Use Of Assistance Guarantees

In addition to cash and notes to compensate for net worth deficiencies, FSLIC often agrees to compensate acquirers for future losses of failed institutions in merger-type transactions. Assistance agreement provisions usually include some or all of the following guarantees:

Coverage of net capital losses due to write-downs or sales of problem assets;

Yield subsidies on non-performing assets to ensure a specified rate of return on assets;

Indemnification against undisclosed liabilities or litigation; and

Purchase of certain impaired assets from the failed thrift.

Such guarantees represent a significant portion of the costs of FSLIC's resolution actions. For example, FSLIC's guaranteed assistance commitment for Southwest Plan cases thus far amounts to about $9 billion on a present value basis and about $15 billion on a cash basis.

Ultimately, guaranteed assistance represents a claim on FSLIC's future cash resources; however, unlike notes, the ultimate cost of guaranteed assistance can only be estimated when the agreement is signed. Even the best estimates may substantially differ from the eventual costs. We understand that the assistance agreements generally do not establish a limit on the maximum dollar liability to which FSLIC is exposed. Instead, FSLIC's exposure depends on conditions or events about which it has incomplete knowledge and over which it has little or no control. We believe FSLIC should amend its policy in this regard to set an upper limit on all such future guarantee agreements.

In providing guaranteed assistance against future losses, FSLIC is gambling that the thrift's performance will improve through better management, changed economic conditions, or better than anticipated quality of its assets. Favorable changes in interest rates or in real estate markets in certain currently depressed areas could result in FSLIC payments on guaranteed assistance being lower than the amount an acquirer would demand at the time a merger agreement is ratified. However, the downside risk of such guarantees is that future conditions may be unfavorable, thereby increasing the payouts required to meet FSLIC's obligations under the agreements. For the acquirer, FSLIC assistance guarantees remove many of the risks inherent in merging with a thrift with demonstrated asset problems and undisclosed liabilities.

We believe FSLIC commitments under notes and assistance guarantees constitute commitments of the United States. Accordingly, they are of concern from a budget perspective because a strong likelihood exists that appropriated funds will be required to pay at least part of these obligations. For this and other reasons, we recently issued a report (GAO/AFMD-88-57, May 20, 1988) to the Chairman of the Federal Home Loan Bank Board in which we recommended that he publicly announced the total amount of notes and guaranteed assistance FSLIC intends to provide in connection with resolution actions. The Bank Board responded that it has given public assurances that its projected revenues would limit the amount of notes to be issued, and that FSLIC's cash flow projection, as provided to the Congress on July 7, 1988, showed it would be able to meet its commitments for both notes and guarantees.

We believe a more certain limitation on notes and other commitments needs to be established rather than simply linking them to FSLIC's cash forecasts. As discussed later, these projections are based upon extremely optimistic assumptions and are subject to change solely at FSLIC's discretion. Furthermore, FSLIC has already exceeded the amounts of notes to be issued and total notes outstanding for fiscal year 1988 as specified in the cash projection the Bank Board provided to the Congress on July 7, 1988. Accordingly, we believe a specific dollar limit should be established on the total amount of notes and other commitments which FSLIC may issue.

BUDGETARY IMPACT OF FSLIC NOTES AND GUARANTEES

When FSLIC issues notes, the principal amounts of the notes are recorded as outlays, and budget authority and obligations for making the outlays are also recorded at the same time. The recorded outlay, as with other budget outlays, increases the reported budget deficit. We believe that this method of scorekeeping for FSLIC notes, currently employed by the administration and the Congressional Budget Office (CBO), is appropriate.

We understand that FSLIC did not follow these scorekeeping policies prior to the issuance in February 1988 of the President's budget for fiscal year 1989. Consequently, prior budgets did not show outlays for the FSLIC notes when they were issued, but only for the cash payments later made on the notes. Because of the payment terms on the notes, this practice reduced their impact on the deficit for the years in which they were issued.

For the fiscal year 1989 budget and beyond, the Office of Management and Budget (OMB) has required FSLIC to record the face value of the notes as outlays in the fiscal year in which they are issued, on the theory—a reasonable one, we think—that the notes are cash-type transactions intended to satisfy an obligation of government entities. For Treasury reporting purposes, this practice was adopted for fiscal year 1988.

Including outlays in the budget for FSLIC notes provides more timely budget disclosure to the Congress and the public of FSLIC's financial activities. This is a step forward. However, we emphasize that such improved disclosure does not, in itself, reflect a legal constraint on the amount of notes FSLIC may actually issue. For fiscal year 1988, FSLIC issued notes in amounts exceeding those estimated for 1988 in the OMB budget materials. As of September 30, 1988, FSLIC had issued about $10 billion in notes. The President's budget, released in February 1988, estimated that note issuances for 1988 would total only $4 billion. Subsequently, OMB's July 1988 mid-session adjustments to the estimate for the 1988 budget only raised this amount to $5.8 billion.

As for the implications of this 1988 pattern of underestimates for the Gramm-Rudman-Hollings deficit reduction law and procedures, two points should be made. First, the issuance of FSLIC notes in fiscal year 1988 above earlier projections did not trigger any 1988 sequestrations in other parts of the budget to meet overall deficit reduction targets. The deficit reduction statute does not apply to—and therefore no fiscal year spending reductions result from—actual FSLIC note issuances in fiscal year 1988 that exceed the administration projections that were made as required in fiscal year 1987.

Second, the administration's underestimates for fiscal year 1988 raise a question about what to expect for fiscal year 1989. OMB is required by law to include its estimates of FSLIC outlays for fiscal year 1989 in its projection of the 1989 budget deficit. As part of these outlays, OMB estimated that FSLIC will issue $4.6 billion in notes in 1989. Based upon FSLIC costs to date, this estimate appears hopelessly low. The projection was important in OMB's initial determination that a governmentwide sequestration would not be required in 1989. (While FSLIC itself is exempt from sequestration, its activities can effect whether other agencies' spending will be cut under the Gramm-Rudman-Hollings deficit reduction.) Meaningful deficit reduction requires accurate OMB estimates, and we can only hope that OMB's future estimates regarding FSLIC notes are more accurate forecasts.

We agree with OMB's position that requires these notes to be reflected as outlays when issued. We also believe that legislatively placing limits on the amount of notes FSLIC can issue would provide an important control mechanism that is not included in the federal budget process.

Current Budget Treatment Does Not Adequately Reflect Commitments Under Guarantee Agreements

FSLIC guarantee agreements, unlike notes, are not recorded as budgetary outlays until the time of cash payout. Such treatment assumes that these agreements are analogous to traditional loan guarantees, and that payments by FSLIC under these agreements are not certain. Under current budgetary law and convention, there are no recordings of obligations, liabilities and outlays at the time that loan guarantees are extended. This is because the guarantor's responsibility for payment is contingent upon some future occurrence which is considered unlikely or only possible. For example, the government does not incur an obligation and liability for specific loans guaranteed under its student loan program unless the loans go into default.

However, it may be argued that FSLIC guaranteed assistance agreements are not the same as typical guarantees. This is recognized, in part, by the budget's current treatment of the FSLIC guarantees—obligations are recorded for the guarantees at the time of their issuance. This reflects the fact that the FSLIC payment is not an uncertainty at the time an assistance agreement is issued, only the ultimate cost of the required payout is unknown. Therefore, we would go one step further and treat the guarantees as transactions that, like the notes, essentially satisfy FSLIC's commitments under the assistance agreements. For this reason, we would suggest that OMB and CBO report outlays for the assistance agreements in the year of their issuance.

FSLIC analyzes the various types of assistance involved in each agreement and prepares a "best estimate" of the total payout required under the terms of the agreement on both a cash and present value basis. We believe that the cash basis estimate is most useful as an indicator of the size of the government's commitment and should be used to record the budget outlay amount.

Further, reflecting assistance agreements in the budget in a way that captures the essential nature of the transactions would facilitate placing a legislative limit on the amount of the agreements. Because of the strong likelihood the taxpayers will ultimately have to bear some of the cost of honoring these agreements, it is important that the Congress be aware of—and in a position to control—the amounts being spent by FSLIC.

We would add that reporting outlays for the FSLIC guarantees would not affect the fiscal year 1989 budget totals for Gramm-Rudman-Hollings deficit calculation purposes. The technical and conceptual assumptions governing the 1989 calculation have already been published by OMB. Such a change, however, would increase the outlays affecting the calculations for subsequent years.

FSLIC'S RECENT RESOLUTION ACTIONS

The costs of 1988 resolution actions continue to exceed the amounts FSLIC estimated in conjunction with its 1987 financial statements. These statements indicated its total resolution costs could amount to $22.7 billion for about 500 institutions that were insolvent according to generally accepted accounting principles as of December 31, 1987. This amount was comprised of two parts—$17.4 billion primarily for about 200 institutions for which FSLIC had formally accepted responsibility for incurring resolution costs, and $5.3 billion for the remaining 300 or so additional insolvent institutions. In our report on FSLIC's 1987 financial statements, we concurred with the $17.4 billion accrual for the approximately 200 FSLIC cases, but noted that a more realistic estimate for the remaining 300 insolvents would be between $9 and $19 billion. Accordingly, we estimated that total resolution costs at December 31, 1987, ranged from $26 to $36 billion.

FSLIC's resolution costs during 1988 have vastly exceeded the December 31, 1987, estimates.[1] FSLIC has acted on 126 problem institutions in 1988 at a reported cost of $20.2 billion. One hundred six institutions were merged or acquired and 20 were liquidated. For liquidations, the actual cost of $2.3 billion exceeded FSLIC's estimate of $1.7 billion by 35 percent. For mergers, the actual cost of $17.9 billion exceeded the estimate of $8 billion by 124 percent. Bank Board and FSLIC officials have attributed the differences to:

Losses experienced between the time of the estimate and the time of closing;

The decision to liquidate certain high-paying thrifts, rather than continue to search for merger partners, in order to reduce the cost of funds for the industry as a whole; and

Additional guaranteed assistance being demanded by acquirers due to the seriously impaired nature of assets held by failed thrifts.

Based upon the 1988 resolution experience, we have revised our estimate of the total cost of FSLIC for resolving the problems of the currently insolvent thrift institutions. We now believe that the cost will be at least $45 to $50 billion.

Actions Under the Southwest Plan

Included in the actions discussed above were 42 thrifts merged in 10 separate transactions betweeen May 13, 1988, and September 30, 1988, under the Bank Board's Southwest Plan. The total estimated cost to FSLIC of these transactions is $13.9 billion, consisting of $3.6 million in cash outlays, $5.1 billion in notes payable (principal and interest), and $8.8 billion under various assistance and guarantee agreements. According to Bank Board officials, the combined net worth of the individual institutions before merger was negative $9.1 billion. The officials estimated the capital ratios of the new institutions created through the first six Southwest Plan mergers at between 0 and 3.6 percent as calculated using regulatory accounting principles. Attachments II and III provide more data on the individual transactions under this plan.

To date, we have not analyzed the Southwest Plan strategy or its individual transactions in detail. However, based upon the limited information we have, we can offer the following two observations.

First, authoritative information on the net worth of the newly merged institutions, as calculated according to generally accepted accounting principles, will not be available until the new entity is audited as required by the merger agreement. However, based on the reported regulatory capital ratios, these institutions appear to be thinly capitalized. Merging several insolvent institutions into a larger entity that remains thinly capitalized does not necessarily represent a final problem resolution. In our view, the term "resolution" is only appropriate when the new entity has recognized all losses on problem assets, meets established capital requirements, and is otherwise economically viable. Consolidations that fall short of this criteria may result in reduced losses to some extent through such factors as economies of scale, reduced competition for deposits, and enhanced supervisory oversight. However, whether or not such institutions can become viable entities without further assistance remains to be seen.

Second, the cost of the implementing the Southwest Plan is significantly greater than FSLIC anticipated. FSLIC's estimate prepared in conjunction with its December 31, 1987, financial statements amounted to about $7 billion. More recently, the Bank

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[1] Details of FSLIC's 1988 actions are included in Attachment I to this statement.

Board Chairman revised the cost estimate for the Southwest Plan upward to $15.2 billion in his testimony before the House Committee on Banking, Finance and Urban Affairs on July 7, 1988. However, the cost of actions taken under the Southwest Plan this year have already amounted to almost $14 billion. Final costs may be even higher once the auditors determine the final net worth and asset valuation for the newly formed institutions and FSLIC adjusts the note or guaranteed assistance estimate to reflect these audited figures, as provided for in the merger agreements.

In summary, FSLIC actions taken under the Southwest Plan cannot be considered final solutions until the newly created institutions prove viable. In addition, the higher than expected cost of actions taken under the Plan calls into question FSLIC's ability to marshall the financial resources necessary to pursue this strategy without additional funding. The likelihood is therefore increasing that the Congress will be faced with the difficult task of determining where the necessary additional funds may be obtained.

Questionable Assumptions In FSLIC's Financial Forecasts

Despite continuing industry losses and FSLIC's own insolvency, Bank Board officials have maintained that FSLIC can marshall sufficient financial resources to deal with the industry's problems without resorting to a request for federal funds. As you know, the Bank Board has produced various projections of the funds it expects to have available and the corresponding outlays it expects to incur. These cash flow projections indicate that FSLIC will be able to generate about $42 billion in revenues over the next 10 years and will be able to meet all of its obligations. However, we believe that these projections are based upon extremely optimistic assumptions regarding both expected revenues and resolution costs.

In determining the costs related to its caseload, FSLIC has assumed that:

It can minimize its resolution costs by selling or merging substantially all institutions rather than liquidating them since FSLIC liquidation estimates are almost invariably more expensive than mergers. However, in the last 9 months, nearly one-sixth of all resolution actions were liquidations.

New institutions created through the merger process will be economically viable and will not require FSLIC to incur additional assistance or resolution costs beyond those anticipated at the merger date.

It can act on most of the problem institutions in the next 2 years, thus minimizing those institutions' additional losses and cost to FSLIC. Since assistance agreements usually contain provisions requiring FSLIC to, as a minimum, compensate the acquirer for the negative net worth of the troubled institutions, allowing severely troubled institutions to continue to operate and incur additional losses would increase FSLIC's resolution costs.

Interest rates will remain favorable and will not increase to any significant extent. Any significant increase in the cost of funds to the thrift industry could again exacerbate the financial pressures on the industry and cause additional deterioration in capital and profitability.

Virtually no new problem cases will develop in the industry over the next 10 years, and no further significant resolution costs will be incurred beyond those currently identified. FSLIC's cash flow projections show virtually no reserve for future losses at the end of the 10-year period.

Similarly, FSLIC's revenue projections are based on several relatively optimistic assumptions regarding interest rates and future conditions in the savings and loan industry and in the U.S. financial markets. The effects of these assumptions are interrelated—should future conditions vary significantly, both FSLIC's projected revenues and outlays could be adversely affected.

FSLIC assumes that insured deposits will grow about 7 percent annually, roughly doubling insured deposits over 10 years. Because FSLICs premium income (both regular and special assessment) is based upon fixed percentages of insured deposits, its revenues increase significantly under this scenario. While this growth rate is consistent with the overall growth experienced over the past decade, we believe it may be overly optimistic. While deposits grew dramatically in 1983 and 1984, the growth rate declined in 1985, 1986, and 1987. Moreover, the moratorium on thrifts leaving the FSLIC system expires in August 1989—any significant departures of thrifts would result in corresponding decreases in deposit growth. This assumption further implies that other financial institutions are not able to take away any substantial portion of the thrift industry's current business.

FSLIC's forecast assumes FSLIC will continue the special assessment of ⅛ of 1 percent of insured deposits throughout the next 10 years. Long-term continuation of the special assessment could encourage healthy thrifts to transfer to the Federal Deposit Insurance Corporation, thus eroding the deposit base from which FSLIC's premium income is generated. Conversely, not continuing the special assessment would potentially shift a portion of resolving the crisis currently borne by the industry to the taxpayer.

FSLIC's revenue forecast projects that recapitalization bonds will be marketed at interest rates of about 10 percent, which has been the case thus far. While FSLIC receives the proceeds from the bond sales, it must also bear the interest costs on the bonds. The interest costs will be paid from FSLIC's assessment income over the 30-year life of the bonds. Thus, significant increases in overall interest rates would reduce FSLIC's income. Such a reduction would be compounded if higher interest rates were accompanied by slower deposit growth than FSLIC has projected.

We believe that these assumptions are highly optimistic and that a strong likelihood exists that they will prove incorrect. Moreover, we have already seen costs being incurred at a rate showing that FSLIC's projected resources, even under the most favorable assumptions, will not be adequate to cover them. An adverse change in any of these assumptions will reduce the Corporation's available funds and lessen its ability to resolve the industry's problems. In addition, while the Congress initially contemplated, both in originally establishing FSLIC and in recapitalizing it in 1987, that the industry would be able to provide the funds needed to resolve its problems, the deteriorated capital position and poor operating results of a large segment of the industry seriously impair its ability to do so.

Other Sources of Funds

In addition to funds from recapitalilzation proceeds, insurance premiums, investment income, and liquidating assets, FSLIC and the Bank Board have access to funds from other sources. However, each of these sources has drawbacks, and most do not add to FSLIC's reserves because the money must be repaid.[2]

Borrowing From the Treasury.—FSLIC has a $750 million line of credit available if the Bank Board determines funds are needed for insurance purposes.

Borrowing From the Federal Reserve System.—Two statutory provisions provide that the Federal Reserve Banks may make advances to corporations on notes secured by obligations of the United States and discount notes arising from commercial transactions in unusual and exigent circumstances. We are unaware of FSLIC requesting such advances or discounts or that the Federal Reserve Banks have determined whether FSLIC's transactions and available collateral are of the type for which these funding sources should be made available.

Borrowing From the Federal Home Loan Bank.—FSLIC is authorized to borrow from the Bank System under certain limitations.[3] In addition, if the Secretary of the Treasury and the Chairman of the Bank Board certify to the Congress that alternative means of raising funds cannot be used and the ability to supply such funds is impaired, the Treasury can purchase up to $4 billion of Federal Home Loan Bank obligations, which could then be used to assist the thrift industry.

Mandatory Infusion of Up to 1 Percent of Withdrawable Deposits Into FSLIC.—The Bank Board is authorized to require insured thrift institutions to make such deposits into FSLIC. According to Bank Board officials, FSLIC could raise over $9 billion in this manner; however, its liabilities would increase by an equal amount.

FSLIC has not included funds from these sources in its projection and we agree with that decision. In our view, these sources are accompanied by serious disadvantages, and their use should only be considered in an extreme emergency.

SUMMARY

In summary, we would emphasize the following considerations.

A significant imbalance exists between the thrift industry's problems and FSLIC's financial capabilities. The Congress has provided FSLIC the means to obtain some additional resources, but the likely resolution costs for dealing with the currently troubled thrifts far exceed the resources that FSLIC will be able to marshall over the next 10 or so years. More importantly, the long-term effectiveness of FSLIC resources already used to prop up the industry remains to be seen.

FSLIC's financial condition is such that it cannot undertake substantial actions on the industry's problems without resorting to making future commitments. FSLIC notes and guarantees are obligations of the United States but, at present, no statutory provision limits the amount of commitments FSLIC can issue. Accordingly, we believe that the Congress should place a specific limitation on the commitments FSLIC may issue, regardless of whether they are in the form of notes, guarantees, or any other types of obligations.

Whether or not the strategy of merging insolvent institutions results in viable entities remains to be seen and must currently be considered a gamble. Should these newly formed institutions continue to incur losses or require higher than expected payouts under FSLIC's guaranteed assistance agreements, the ultimate cost of resolving the industry's problems could be significantly higher than our current estimates. In this regard, we believe all future assistance guarantee agreements should contain a dollar limit on FSLIC's maximum liability.

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[2] For more detailed information on these sources of funds, see *Thrift Industry: The Treasury/Federal Home Loan Bank Board Plan for FSLIC Recapitalization* (GAO/GGD-87-46BR, March 3, 1987).

[3] FSLIC has used this authority twice to fund pass-through loans to insured institutions.

The costs FSLIC has incurred and will continue to incur in attempting to resolve the thrift industry's problems have not been adequately reflected in the budget. First, the amount of notes to be issued in fiscal year 1988 was grossly underestimated at $5.8 billion only 3 months ago; however, notes actually issued for the year amounted to about $10 billion. Second, in regard to fiscal year 1989, OMB estimates net outlays of $2.7 billion for FSLIC which include $4.6 billion in estimated note issuances. Based upon FSLIC's remaining caseload, this estimate appears totally inadequate and brings into question the deficit calculations for fiscal year 1989 under the Gramm-Rudman-Hollings law. Third, current budget and reporting practices do not fully recognize FSLIC's use of assistance agreements in the year they are entered. Finally, any substantial infusion of taxpayer funds that may be required could reduce amounts available for other government programs.

Mr. Chairman, this concludes my formal statement. At this time, I would be pleased to answer any questions you may have.

ATTACHMENT I.—FSLIC ASSISTED TRANSACTIONS TO MERGE OR CLOSE PROBLEM INSTITUTIONS FROM JANUARY 1, 1988 THROUGH SEPTEMBER 30, 1988

[Unaudited—All figures in thousands]

Transaction number and failed association	Type of action	Total assets at date of FSLIC action	Reported cost to FSLIC	Projected cost at 12/31/87 [1]	Increase/(decrease) over projected cost
1 First FS&LA	Acquisition	$31,100	$14,000	$13,150	$850
2 Magnet Bank, FSB; Traders FS&LA; Mountain State FS&LA	do	710,000	81,500	81,470	30
3 First FS&LA	do	30,900	3,805	3,810	(5)
4 First Federated SB; Perpetual S&LA; First FSB; Peoples FS&LA	do	566,400	157,000	158,180	(1,180)
5 Tri-Cities S&LA	do	54,500	15,800	6,610	(810)
6 Citizens S&LA	do	39,020	6,100	6,780	(680)
7 Valley FS&LA	do	87,500	7,080	7,420	(340)
8 Alliance S&LA; Colorado County FS&LA; Security S&LA; Cameron County S&LA	do	455,800	146,226	48,009	98,217
9 Lamar SA; City S&LA; Stockton SA; Briercroft SA	do	3,998,400	1,980,323	984,620	995,703
10 First FS&LA	do	245,500	72,100	66,290	5,810
11 Eureka FS&LA	do	1,740,000	304,000	285,050	18,950
12 Frontier FSB	do	48,050	11,000	10,640	360
13 Bluebonnet SA	do	24,100	9,900	8,520	1,380
14 First Financial SA; Brownfield FS&LA	do	370,000	83,868	27,997	55,871
15 Stanford SA	do	76,500	8,400	5,840	2,560
16 Lynnwood S&LA	do	24,600	6,100	4,620	1,480
17 Muskegon FS&LA	do	202,000	4,000	4,200	(200)
18 Galva FS&LA; Mutual S&LA; Home FS&LA	do	172,980	33,800	42,000	(8,200)
19 Republic Savings FS&LA	do	36,500	17,800	17,800	0
20 First FS&LA	do	84,900	13,300	19,850	(6,550)
21 First FS&LA	do	36,400	2,700	2,260	440
22 Irving SA; Longview S&LA; Gladewater FS&LA; Richardson S&LA; Majestic SA; Commerce FS&LA; Paris S&LA; American Banc SA; Skyline SA; Ben Milam S&LA; Mercury SA; Southland SA	do	2,217,200	1,313,780	540,128	773,652
23 First Federal Bank FSB; Western FS&LA	do	49,600	13,000	12,210	790
24 Capitol FS of AM	do	242,600	16,100	51,060	(34,960)
25 First FS&LA; First FS&LA; First FS&LA; Washington FSB; Peoples S&LA; Pioneer FS&LA	do	1,088,900	299,000	251,535	47,465
26 State FS&LA	do	454,000	581,787	418,140	163,647
27 Commerce FSB	do	40,200	17,400	17,850	(450)
28 Northwest FS&LA	do	26,700	2,390	170	2,220
29 Homestate S&LA	do	190,000	44,700	41,460	3,240
30 Bell FS&LA	do	953,500	565,000	600,050	(35,050)
31 Sunbelt SA; Independent American SA; Western FS&LA; Summit SA; Texana S&LA; Federated S&LA; First City SA; Multibank SA	Merger	4,826,300	6,166,657	2,488,359	3,678,298
32 Capital FSB; Mutual FS&LA	do	3,559,000	1,898,200	282,528	1,615,672
33 First OK SB; Mid America FS&LA	do				
34 Kingfisher FS&LA; Sunbelt Savings FS&LA	do				
35 Frontier FS&LA; Home S&LA	do				
36 Phoenix FS&LA; Cimarron FS&LA	do				
37 First FS&LA; Heritage S&LA; Home SB, FA; Peoples FS&LA	do				
38 Citizens FS&LA	Acquisition	62,700	0	3,986	(3,986)
39 First FS&LA	do	124,800	19,600	16,450	3,150
40 Fidelity FS&LA	do	41,120	3,700	2,210	1,490
41 Bay City FS&LA; Gulf Coast S&LA; Allenpark FS&LA; Height SA, FSB	do	689,000	556,866	285,318	271,548
42 Coosa FS&LA	do	78,400	12,900	6,357	6,543
43 Freedom FS&LA	do	315,400	23,100	37,250	(14,150)
44 Loves Park FSB	do	42,400	4,900	1,560	3,340
45 Champion SA	do	656,700	533,367	355,020	178,347
46 Arsenal SA; Frankton FS&LA	do	197,000	40,000	37,800	2,200
47 Butterfield FS&LA	do	541,300	281,100	76,670	204,430
48 Delta Savings of Texas; Guaranty FS&LA; First FS&LA	do	3,190,200	1,489,130	291,440	1,197,690
49 Creditbanc SA; Franklin SA; Great West SB	do	1,184,400	999,545	324,396	675,149
50 United SA of Cent. Ind	do	60,800	9,300	4,840	4,460
51 Citizens FS&LA	do	53,600	5,400	6,090	(690)
52 Adobe SB	do	47,000	2,900	412	2,488
Subtotal		29,967,970	17,878,624	7,968,405	9,910,219
53 First SA of East TX	Liquidation	62,900	86,700	87,990	(1,290)
54 Territory S&LA	do	37,800	52,000	46,190	5,810
55 Citizens S&LA	do	150,000	135,000	141,270	(6,270)
56 Mt. Whitney S&LA	do	34,000	46,400	46,380	20
57 Ramona FS&LA	do	45,000	76,300	76,340	(40)
58 First FS&LA	do	130,000	52,300	52,340	(40)
59 Investors S&LA; United S&LA	do	167,600	76,300	84,850	(8,550)
60 First FS&LA	do	128,780	138,200	29,880	108,320
61 American FS&LA	do	164,400	67,200	32,630	34,570
62 Cardinal SB	do	93,800	34,400	25,622	8,778
63 Larue FS&LA	do	13,100	6,600	5,110	1,490
64 Victor S&LA	do	230,000	241,000	124,850	116,150
65 The American FS&LA	do	70,400	106,900	71,690	35,210
66 Universal SA	do	54,800	10,800	29,780	(18,980)
67 North American S&LA	do	98,200	133,000	66,170	66,830
68 Amer. Diversified SB	do	509,000	798,000	631,170	166,830
69 Farmers FS&LA	do	181,500	198,900	119,940	78,960
70 Ultimate SB, FSB	do	192,500	55,700	0	55,700
71 Peoples S&LA	do	21,500	15,700	8,340	7,360
Subtotal		2,385,280	2,331,400	1,680,542	650,858
Total		32,353,250	20,210,024	9,648,947	10,561,077

[1] Represents either amount accrued or negative tangible net worth at 12/31/87.

Source: FSLIC Records.

ATTACHMENT II—ESTIMATED COSTS OF SOUTHWEST PLAN RESOLUTIONS ACTIONS THROUGH SEPTEMBER 30, 1988 (UNAUDITED)

[In thousands of dollars]

Acquirer	Estimated cost of assistance agreements	Cash	Notes— Principal	Notes— Interest	Capital loss coverage	Yield subsidy	Other¹
Percent value basis:							
Coastal Banc SA	$146,226	$3,627	$12,584	$ 22,569	$52,001	$52,888	$2,557
Southwest SA	1,980,323		219,637	290,136	817,137	653,413	
Merabank FSB	665,655		69,122	96,177	291,277	215,326	(6,247)
Gibson Group, Inc	1,313,780		197,393	297,739	317,319	481,404	19,925
Sunbelt, SA	6,166,637		918,691	1,492,472	1,721,533	2,033,941	
Pulte Diversified Co	1,090,233		191,189	330,929	238,959	335,846	(6,690)
Temple-Inland	1,489,130		253,385	426,691	329,844	540,300	(61,090)
Club Corp	999,545		98,766	164,138	294,455	446,061	(3,875)
Total	13,851,529	3,627	1,960,767	3,120,851	4,062,525	4,759,179	(55,420)
Cash basis:							
Coastal Banc SA	237,225	3,627	32,639	35,041	112,752	61,870	(8,704)
Southwest SA	3,521,024		569,682	450,050	1,738,990	762,302	
Merabank FSB	1,241,227		187,602	153,658	662,206	257,014	(19,253)
Gibson Group, Inc	2,379,171		535,743	472,633	752,155	617,277	1,363
Sunbelt, SA	11,509,284		2,459,761	2,383,834	4,061,931	2,603,758	
Pulte Diversified Co	1,993,689		511,840	526,547	562,961	429,733	(37,392)
Temple-Inland	2,808,221		710,146	681,456	804,641	700,065	(88,087)
Club Corp	1,620,461		264,443	258,962	538,782	571,406	(13,132)
Total	25,310,302	3,627	5,271,856	4,962,181	9,234,418	6,003,425	(165,205)

[1] "Other" column includes mark to market adjustments, prepayment penalties on FHLB advances and projected future income from FSLIC ownership interests and return of tax benefits.

ATTACHMENT III.—CAPITAL CONTRIBUTIONS AND COSTS OF ACTIONS UNDER THE SOUTHWEST PLAN THROUGH SEPT. 30, 1988

[In thousands of dollars]

Acquirer	Thrifts acquired	Acquirer contribution	FSLIC assistance	Total assets of acquired associations	FSLIC cost as a percent of assets
Coastal Banc SA	Alliance S&LA; Colorado County FS&LA; Security S&LA; Cameron County SA	$3,500	$146,226	$455,800	32.08
Southwest SA	Lamar SA; City S&LA; Stockton SA; Briercroft SA	25,000	1,980,323	3,998,400	49.53
Merabank FSB	Brownfield FS&LA; First Financial; State FS&LA of Lubbock	28,800	665,655	824,000	80.78
Gibson Group, Inc	Irving SA; Longview S&LA; Gladewater FS&LA; Richardson S&LA; Majestic SA; Commerce FS&LA; Paris S&LA; American Banc SA; Skyline SA; Ben Milam S&LA; Mercury SA; Southland SA.	48,000	1,313,780	2,217,200	59.25
Sunbelt SA	Sunbelt SA; Independent American SA; Summit SA; Western FS&LA; Texana S&LA; Federated S&LA; First City SA; Multibanc SA.	0	6,166,637	4,826,300	127.77
Pulte Diversified	Allenpark FS&LA; Bay City FS&LA; Gulf Coast S&LA; Heights SA, FSB; Champion SA	45,000	1,090,233	1,345,700	81.02
Temple-Inland	Delta Svgs of Texas; Guaranty FS&LA; First FS&LA	128,000	1,489,130	3,190,200	46.68
Club Corporation	Creditbanc SA; Franklin SA; Great West SB	25,000	999,545	1,184,400	84.39
Total		303,300	13,851,529	18,042,000	76.77
Percentage		2.14	97.86		

Source: FSLIC Records.●

GONE FISHING

● Mr. **HATFIELD**. Mr. President, high in Virginia's Shenandoah Mountains is a beautiful place, a peaceful place where trout streams flow and nature is undisturbed by the bustle of the business of Washington, only a few hours away. Tranquil Camp Rapidan was built without the use of Government money as the Presidential retreat by our 31st President and his wife, Herbert and Lou Henry Hoover.

Recently Camp Rapidan, now more commonly known as Camp Hoover, was dedicated as a National Historic Landmark. I cannot think of a more fitting tribute for the mountain hideaway of one of our most environmentally conscience Presidents. At the dedication ceremony, Richard Norton Smith, director of the Hoover Library in West Branch, IA, gave a wonderful account of the Hoovers' time in their mountain paradise.

Mr. President, Mr. Smith's speech is well worth reading and I ask to have the text reprinted in the RECORD at this point.

The speech follows:

HERBERT HOOVER: GONE FISHING

He was born in Iowa, raised in Oregon, and lived as professional nomad. Tailors on five continents kept his measurements, and he was at home in St. Petersburg and San Francisco alike. A true citizen of the world, he was happiest in the woods—tramping a forest path, baiting a hook, savoring the icy perfume of a winter's morning in the Blue Ridge. He found God in a trout stream as well as a church pew. And even before taking the oath of office as America's 31st President, Herbert Hoover resolved to find a natural retreat from the all too artificial ways of Washington.

From the beginning, our capital city has been plagued by hot air, both climatalogical and man-made. It's a town whose monumental tastes are expressed in the statuary it erects and the egoes it inflates. Its values were not those of Madison County, in the spring of 1929, when a White House aide was dispatched to scout a likely campsite, a place where the most powerful man in the world could be reminded of the true source of his power. Some remote glen where Bert and Lou Henry Hoover might temporarily escape the glare of publicity and live in communion with the American earth. Hoover's instructions were characteristically explicit: he sought a trout stream, within a hundred miles of the Oval Office, sufficiently elevated to escape Washington's heat and Virginia's mosquitoes. Congress offered to spend $48,000 on a presidential hideaway, Virginia $100,000 more. Hoover wouldn't touch a penny of public funds. That, too, was characteristic.

Left unsaid was his poignant desire to recapture a lifetime of outdoor memories. Of an old swimming hole in Iowa, where a Quaker boy could foresake the stern dictates of conscience and find sunfish or suckers with a willow pole. Of tree houses in a dozen backyards and bacon and eggs cooked in the heart of a European forest. Of Lou's modern residence at Stanford, where meals were taken on rooftop terraces and the future First Lady could don sensible shoes to hike the countryside at a pace that exhausted companions half her age.

Every President needs an alternative to paperwork and the pressure generated by global responsibilities. Herbert Hoover found his under the green canopy of Camp Rapidan. When asked why he liked to fish, Hoover whimsically replied that there were only two occupations that could guarantee a President's privacy—fishing and prayer. And not even a President could pray all the time!

There was more to it than that. Fishing, said Hoover, was a constant lesson in humility—for all men are created equal before fishes. His own words are worth quoting at length:

"Man and boy," he once declared, "the American is a fisherman. That comprehensive list of human rights, the Declaration of Independence, is firm that all men (and boys) are endowed with certain inalienable rights, including life, liberty, and the pursuit of happiness, which obviously includes the pursuit of fish . . . The great majority of us (except public officials) really work no more than eight hours a day except during the stress of planting or harvest or elections. If we sleep eight hours we have eight hours in which to ruminate and make merry or stir the cauldron of evil.

"This civilization is not going to depend upon what we do when we work so much as what we do in our time off . . . We go to chain threatres and movies; we watch somebody else knock a ball over the fence or kick it over the goal post. I do that and I believe in it. I do, however, insist that no other organized joy has values comparable to the outdoor experience . . . The joyous rush of the brook, the contemplation of the eternal flow of the stream, the stretch of forest and mountain all reduce our egotism, soothe our troubles, and shame our wickedness."

Organized joy—therein lay the key to Hoover's recreational philosophy. Make no mistake: this was no mountain idyll. Its builder was a man constitutionally incapable of doing nothing. As befitting the first president to have a telephone on his desk, he turned Camp Rapidan into a nerve center of national and international affairs. Not a weekend passed without a small caravan of federal officials, congressmen, diplomats, bankers and military men, summoned by their chief to conduct the business of government under the trees. Here the President played host to his new Federal Farm Board. He prepared ham and eggs for the Attorney General and pitched horseshoes alongside Charles Lindbergh.

In perhaps the most famous of Rapidan conferences, Hoover conducted a treetrunk summit with British Prime Minister Ramsay MacDonald. For two days in October, 1929, the leaders of the world's greatest naval powers laid the foundation for worldwide disarmament. On first arriving at the White House, the visitor from Downing Street protested the idea of roughing it in a mountain camp. "But Mr. President," said MacDonald, "I can't go to the mountains in this cutaway and striped trousers."

"Don't worry about that," Hoover replied, before making good with a loan of clothing from his own wardrobe. Like MacDonald, others who visited Camp Rapidan saw a very different man from the executive whose days were blighted by economic crisis. Here the President donned rubber boots and waded into a mountain brook, discarding the formal gear of Washington for white flannels and a Panama hat. In the evening, he entertained guests assembled in Town Hall with droll stories from a lifetime of foreign travel and domestic adventures. Hoover found typically strenuous recreation in stacking rocks along Mill Prong to form habitats for the trout, in strolling the woods hand in hand with his beloved Lou, or just sitting quietly, smoking his pipe and listening for the apolitical reassurance of a mountain stream.

Rapidan was Lou's creation as much as her husband's. She designed a four-tier stone fountain as a centerpiece, and added Black-eyed Susans and Larkspur to complement existing Mountain Laurel. It was Lou who left explicit instructions that the President's Cabin incorporate and not destroy a majestic old Hemlock—Lou who refused to burn live wood, coal or oil—Lou whose scruples made for chilly nights but a warm conscience. Conservationist to the core, she felt half sorry for the Copperhead snakes cleared out by a Marine detachment equipped with razorback hogs. Most days, she rode horseback, sometimes stopping in nearby Madison to patronize local rug makers or furniture craftsmen. In the evening, she invited guests to join her as the moon rose over Fork Mountain. And always, she sought to protect the man she called "Daddy".

Yet for all its woodsy ambience, Camp Rapidan was no island. Marine aircraft dropped a thick stack of the latest newspapers every morning. What they contained was enough to ruin anyone's vacation. Like most of western civilization, Hoover's America had been sucked into an economic vortex. In an effort to escape, the president broke with laissez faire policies of the past. He won pledges from industry to maintain prevailing wages. He created a Federal Home Loan Bank and Reconstruction Finance Corporation. He spent more money on public works than all his predecessors combined—including a scenic highway that encroached on his own privacy, the Skyline Drive. Yet for all his activity, there was little to suggest improvement in the boardrooms, the union halls or the streetcorners of an increasingly bitter land.

Hoover persevered, following the instincts that had earned him reknown as "The Great Humanitarian" and would ultimately rescue more people from starvation than all the dictators of this blood-soaked century could together annihilate. As always, he was at his best with children. Not long before Wall Street went over the edge, a boy from neighboring Dark Hollow wandered into the camp clutching an opossum, his birthday gift for Madison County's most famous resident. From his visior, the President learned that the area's children had no school of their own. So he and Lou promptly donated funds with which to build one. Next they located a young woman to conduct classes in the two room cabin with loft that the state of Virginia has been unwilling or unable to provide on its own.

The incident remained all but hidden from the public, alongside images of a doting grandfather accompanied to work by two skipping youngsters named Peggy and Pete. Or the public servant who anonymously donated $25,000 to the San Francisco Board of Public Welfare. Or the sympathetic husband who, following the uproar caused by the White House visit of a black congressman's wife, advised the woman he called "my Lou" to ignore the cries for his impeachment from the Texas legislature. One of the advantages of orthodox religion, he assured her, was its promise of a hot Hell for—among others—the legislators of Texas.

As reticent as he was generous, for half a century Herbert Hoover has covered his tracks. Only now are we beginning to unravel the puzzle he left for posterity. Only in recent years have we become well acquainted with the orphan boy who figuratively adopted a billion youngsters, and the sophisticated globetrotter who preferred the wind in the woods to palaces and potentates. In a lifetime of adventure, Herbert Hoover met more than his share of disappointment. In his own words, "the trouble with Capitalism is capitalists. They're too damned greedy." For awhile he went out of fashion, eclipsed by a newer style of governing, obscured by his stubborn refusal to play a false part demanded by political convention. "Democracy," he liked to say, "is a fickle employer".

But the earth, the wind, and the sky: those endure, for as long as Old Rag Mountain or the massive boulders that have graced this site for a billion years or more. More than half a century after Hoover abandoned the campaign trail for more welcome trails, Americans find themselves engaged in another election. In a curious way our 31st President is more relevant than ever. For whoever may be chosen our 41st could learn much by emulating Mr. Hoover's outdoor search for worldly purpose and spiritual power.

This year's candidates talk of the environment. We would remind them that it was Herbert Hoover who added two million acres to the national forest system. The candidates talk about ocean pollution. Let them draw lessons from Herbert Hoover's example in saving Chesapeake Bay and preserving the scenic splendors of Niagara Falls. Candidates talk about the public lands. They might better recall President Hoover's success in reclaiming western grazing lands and adding Carlsbad Caverns, Death Valley and the Great Smokey Mountains to the National Park System. Today, that Park System adds a new jewel to its crown, as Camp Rapidan becomes a National Historic Landmark.

More than thirty years have passed since Herbert Hoover last tramped these woods. Even then, he found only the traces of his presidential retreat. But they are illustrious ghosts that haunt this place. Close your eyes, and you can see a fretful President arranging a historic moratorium on European war debts. Unlock your imagination, and hear the transatlantic phone exchanges, or the weekend crisis when the President personally directed a rush order of $35 million so that a key Chicago bank could open on Monday morning. Leave today by the side of the road, and feel the pull of history, made in a simple camp by the side of a country stream. Here you can understand Herbert Hoover. You can share his love of the outdoors. You can experience the spiritual renewal that brought a President and First Lady to the slopes of Madison County nearly sixty years ago. And then you will know why part of them will always remain, here, where they were happiest, in this cathedral of trees, under God's star-speckled night.●

1988 CALL TO CONSCIENCE FOR SOVIET JEWRY

● Mr. CHAFEE. Mr. President, I would like to take a few minutes to join in the 1988 Call to Conscience for Soviet Jewry. I have participated in this effort for many years and am pleased to note the many great strides that have been made toward promoting the human rights of Soviet Jews.

We began 1988 hopefully, bolstered by the National Mobilization for Soviet Jewry, which drew 200,000 people to Washington last December. At President Reagan's summit with Mr. Gorbachev, it was encouraging to see human rights gain a prominent place on the agenda, just as it was to see the cause of Soviet Jews given worldwide attention when President

Reagan met with dissidents and refuseniks this spring in Moscow.

The improvement in the plight of Soviet Jewry is indeed welcome. Yet, we must not be satisfied with scattered, albeit significant, successes. We cannot be content to applaud the release of highly visible refuseniks, while nearly 400,000 Jews still await permission to emigrate.

Despite all that has been achieved, much more can be done by the Soviet Government to curb discrimination against its Jewish citizens and further liberalize emigration rules to approach the 1979 emigration levels of 51,320. Since January 1, 1987, government regulations have limited to parents, children, and siblings those who can initiate the necessary invitation for family reunification. A second problem is the broad ban on the emigration of those with "state secrets." And the third is the requirement that even adult children must have permission of their parents to leave the country.

Mr. Gorbachev sent encouraging signals in late March 1988, when U.S. officials received assurances from the Soviets that they will "liberally" interpret emigration regulations. We have since seen an increase in the number of Soviet citizens allowed to emigrate from the U.S.S.R. The Soviet Government is visibly making greater attempts to comply with the international treaties which it has signed, such as the International Covenant for Civil Rights, which grants every individual the right to "leave any country, including his own," and the Helsinki accords, which verify the signatory nations' commitment to uphold international covenants.

The Helsinki Commission reports that the Soviet Government is seriously attempting to reduce anti-Semitism. For example, admission for Jewish applicants to institutes of higher learning is becoming much easier. A private Jewish library and a Jewish museum have been established in Moscow, and certain Jewish literature has been permitted for import. And there are reportedly over 30,000 citizens' groups in the Soviet Union, representing a wide range of social viewpoints.

Ironically, glasnost inherently demands our watchful attention, as well as our hopefulness. Unfortunately, this new climate of openness has brought with it manifestations of deeply rooted Russian anti-Semitism, which has existed since the Czars ruled. In August 1988 there were reports in several Western newspapers of anti-Semitic acts against Jews in Moscow and other cities in the Soviet Union, including the vandalization of Jewish property, the destruction of 60 Jewish tombstones in a Moscow cemetery, threats of beatings, and anti-Semitic speeches and articles in the Soviet press.

One very frightening such manifestation is Pamyat, an organization dedicated to a "purer" Russian culture, which promotes anti-Semitism in the guise of Russian nationalism. Pamyat claims tens of thousands of followers, most of whom are low-ranking bureaucrats and workers. Its openly anti-Semitic leader, Dmitri Vasiliev, warns his members that "a satanic conspiracy of Freemasons and Zionists" may "destroy our sacred country, its culture, all that is dear to us. Unless we unite and smash these evil forces now." By tying themselves to officially sanctioned drives promoting traditional Russian culture, they have met with some official acceptance. They have been allowed to meet in the headquarters of the Leningrad Region Party Committee, and a march through central Moscow in mid-1987 ended with the leaders being officially received by the city party's then first secretary, Boris Yeltsin.

We must remain vigilant, even as the United States enters a new era of improved relations with the Soviet Union. Unless we maintain as a priority our advocacy for Soviet Jews, they could once again find themselves to the situation that prevailed in the years before the emigration movement, bereft of the hope of ever living freely as Jews. On behalf of the hundreds of thousands of Jews in the Soviet Union who wish to leave, with the Helsinki accords and other human rights agreements in mind, I join those who hope human rights progress will continues to be made within the Soviet Union. And I call once again for free emigration of Jews from the U.S.S.R.●

THE KERRY-McCONNELL AMENDMENT TO CONTROL INTERNATIONAL MONEY LAUNDERING

● Mr. KERRY. Mr. President, on Wednesday I propose an amendment which I propose to offer to S. 2852, the omnibus drug bill. The amendment seeks to control the international laundering of U.S. currency, and is cosponsor by my colleagues on the Foreign Relations Subcommittee on Terrorism and Narcotics, Senator McCONNELL, and by Senators MITCHELL, KENNEDY, and BINGAMAN. The bill was also endorsed by two organizations representing more than 3,700 depository institutions in the United States, the U.S. League of Savings institutions and the National Council of Savings Institutions.

I am pleased to announce today that the amendment now has the support or the two other members of the Foreign Relations Subcommittee on International Narcotics and Terrorism. Senators BROCK ADAMS of Washington, and FRANK MURKOWSKI of Alaska. Incidently, these two individuals have a particular expertise that is relevant to this amendment. Senator ADAMS is a former Federal prosecutor and Senator MURKOWSKI is a former banker.

In addition, the amendment has now been endorsed by another association of financial institutions, the National Bankers Association. I believe that the support this measure has gained from such organizations shows that despite the opposition of some banks, there is significant support in the United States for a truly international approach to the problem of money laundering.

Lastly, our proposal has been endorsed by the National Association of District Attorneys. We believe that this is a particularly important endorsement because it is the State and local law enforcement officials who most frequently prosecute narcotics-related cases, including those concerning money laundering. The National Association of Distict Attorneys understands how vital certain basic financial information can be in the investigation and prosecution of money-laundering cases. Currently, even those foreign banks willing to cooperate with our law enforcement officials do not maintain the necessary records.

I hope that the current negotiations to bring the drug bill up for debate are soon resolved, and I look forward to Senate consideration of this proposal.●

WOMEN'S BUSINESS OWNERSHIP ACT OF 1988

● Mr. WEICKER. Mr. President, I rise in support of the amendment offered by Senator BUMPERS on the Women's Business Ownership Act of 1988, legislation to promote the development and ownership of small businesses owned by women.

There has been an enormous growth in the number of women owned businesses in recent years. According to the Small Business Administration, the number of women-owned businesses has increased by 11 percent annually from 1974 to 1984, as compared to a 5.4-percent growth rate of businesses owned by men during that period. Today, women own one in four of all small businesses, and those businesses contribute jobs to our economy. The phenomenal growth in women owned businesses has occured in many instances despite the continued stereotyping and discrimination that they face.

The bill will provide an important stimulus to encourage policies to foster the development of businesses owned and operated by women. It passed the House of Representatives earlier this week with overwhelming bipartisan support.

The provisions of this amendment, which have already been outlined by

Chairman BUMPERS, are designed to overcome the very critical problems confronting women enterpreneurs. Those problems include getting access to capital and credit and obtaining management and technical assistance.

It is important to note that this body has already concurred in two provisions of this measure: The Demonstration Grant Program to provide management and technical assistance for women was contained in the SBA reauthorization conference report, H.R. 4174, and the State justice commerce appropriations law signed by the President provides $2 million for this program in fiscal year 1989. The second is an initiative to encourage preferred and certified lenders to make smaller loans, less than $50,000, by allowing them to retain half of the 2-percent fee charged on those loans. This provision was also contained in the SBA reauthorization bill.

Another key provision of the bill would amend the Equal Credit Opportunity Act to add business loans to the type of loans covered by the Act. It also would require lenders to keep records relating to loans and to provide written notice to applicants of their right to receive notice of reasons for a loan denial.

In addition to modifying existing programs which should be helpful to women owned businesses, the bill also establishes a National Women's Business Council to study and review existing programs for helping women owned businesses enter the mainstream and to make recommendations to the Congress and the administration on improving efforts to promote women business ownership.

Mr. President, women enterpreneurs have made great gains. This legislation will help continue that process. Furthermore, it will provide a blueprint for future Federal efforts to assist women owned businesses. I urge my colleagues to support passage of the bill.●

EXTENDING COVERAGE OF THE EQUAL CREDIT OPPORTUNITY ACT

● Mr. GARN. Mr. President, this bill extends the coverage of certain provisions of the Equal Credit Opportunity Act to business and commercial loans. But it gives the Federal Reserve the authority to exempt certain commercial loans and to determine the size and nature of the loans to be covered. We are not trying to cover million dollar loans to corporations. What we intend to include would be small business-type loans. We would expect the Federal Reserve to analyze the loan data and arrive at a reasonable figure in exempting large-dollar loans. I would expect that the dollar number might be somewhat around $100,000 or even less, depending on what the data showed.●

OMNIBUS OREGON WILD AND SCENIC RIVERS ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1034, S. 2148.

The ACTING PRESIDENT pro tempore. The clerk will report.

Mr. HATFIELD. Mr. President, may we have order so that we may conduct the business of the Senate?

The ACTING PRESIDENT pro tempore. The Senate will be in order.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2148) to amend the Wild and Scenic Rivers Act of 1968, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Omnibus Oregon Wild and Scenic Rivers Act of 1988".

SEC. 2. AMENDMENTS TO THE WILD AND SCENIC RIVERS ACT.

Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 907), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) BIG MARSH CREEK, OREGON.—The 15-mile segment from the northeast quarter of section 15, township 26 south, range 6 east, to its confluence with Crescent Creek in the northeast quarter of section 20, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture: Provided, Nothing in this act shall prohibit the Secretary from undertaking construction activities to enhance and restore wetland resources associated with Big Marsh Creek.

"( ) CHETCO, OREGON.—The 44.5 mile segment from its headwaters to the Siskiyou National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 25.5-mile segment from its headwaters to Boulder Creek at the Kalmiopsis Wilderness boundary as a wild river;

"(B) the eight-mile segment from Boulder Creek to Steel Bridge as a scenic river; and

"(C) the 11-mile segment from Steel Bridge to the Siskiyou National Forest boundary, one mile below Wilson Creek, as a recreational river.

"( ) CLACKAMAS, OREGON.—The 47-mile segment from Big Springs to Big Cliff; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from Big Springs to the Forest Service Road 4690 bridge as a scenic river;

"(B) the 3.5-mile segment from the Forest Service Road 4690 bridge to the junction with Oregon State Highway 224 as a recreational river;

"(C) the 10.5-mile segment from Oregon State Highway 224 to the June Creek Bridge as a scenic river;

"(D) the 9-mile segment from June Creek Bridge to Tar Creek as a recreational river;

"(E) the 5.5-mile segment from Tar Creek to just south of Indian Henry Campground as a scenic river; and

"(F) the 14.5-mile segment just south of Indian Henry Campground to Big Cliff as a recreational river.

"( ) CRESCENT CREEK, OREGON.—The 10-mile segment from the southwest quarter of section 11, township 24 south, range 6 east, to the west section line of section 13, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture.

"( ) CROOKED, OREGON.—The 15-mile segment from the National Grassland boundary to Dry Creek; to be administered by the Secretary of the Interior in the following classes:

"(A) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring as a recreational river; and

"(B) the 8-mile segment from Bowman Dam to Dry Creek as a recreational river.

"( ) DESCHUTES, OREGON.—Those portions as follows:

"(A) The 40.4-mile segment from Wickiup Dam to northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 11-mile segment from the northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east, to Lava Island Camp as a scenic river; to be administered by the Secretary of Agriculture;

"(C) the 3-mile segment from Lava Island Camp to the Bend Urban Growth Boundary at the southwest corner of section 13, township 18 south, range 11 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 19-mile segment from Oden Falls to the Upper End of Lake Billy Chinook as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 100-mile segment from the Pelton Reregulating Dam to its confluence with the Columbia River as a recreational river; to be administered by the Secretary of the Interior through a cooperative management agreement between the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10 of this act and section 4 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

"( ) DONNER UND BLITZEN, OREGON.—Those segments, including its major tributaries, as a wild river; to be administered by the Secretary of the Interior as follows:

"(A) the 16.75-mile segment of the Donner und Blitzen from its confluence with the South Fork Blitzen and Little Blitzen;

"(B) the 12.5-mile segment of the Little Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(C) the 16.5-mile segment of the South Fork Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(D) the 10-mile segment of Big Indian Creek from its headwaters to its confluence with the South Fork Blitzen;

"(E) the 3.7-mile segment of Little Indian Creek from its headwaters to its confluence with Big Indian Creek; and

"(F) the 13.25-mile segment of Fish Creek from its headwaters to its confluence with the Donner und Blitzen.

"( ) Eagle Creek, Oregon.—The 27-mile segment from its headwaters below Eagle Lake to the Wallowa-Whitman National Forest boundary at Skull Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from its headwaters below Eagle Lake to the Eagle Cap Wilderness boundary at Hummingbird Mountain as a wild river;

"(B) the 15.5-mile segment from the Eagle Cap Wilderness boundary at Hummingbird Mountain to Paddy Creek as a recreational river;

"(C) the 6-mile segment from Paddy Creek to Little Eagle Creek as a scenic river; and

"(D) the 1.5-mile segment from Little Eagle Creek to the Wallowa-Whitman National Forest boundary as a recreational river.

"( ) Elk, Oregon.—The 19-mile segment to be administered by the Secretary of Agriculture in the following classes:

"(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river; and

"(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.

"( ) Grande Ronde, Oregon.—The 43.8-mile segment from its confluence with the Wallowa River to the Oregon-Washington State line in the following classes:

"(A) the 1.5-mile segment from its confluence with the Wallowa River to the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.4-mile segment from the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, to the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 9-mile segment from the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek to Wildcat Creek as a scenic river; to be administered by the Secretary of the Interior; and

"(D) the 15.9-mile segment from Wildcat Creek to the Oregon-Washington State line as a recreational river; to be administered by the Secretary of the Interior.

"( ) Imnaha, Oregon.—The 68-mile segment from its confluence with the North and South Forks of the Imnaha River to its mouth; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 4-mile segment from Cow Creek to its mouth as a scenic river.

"( ) John Day, Oregon.—The 147.5-mile segment from Service Creek to Tumwater Falls as a recreational river; to be administered through a cooperative management agreement between the State of Oregon and the Secretary of the Interior.

"( ) Joseph Creek, Oregon.—The 29.1-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Oregon-Washington State line in the following classes:

"(A) the 8.6-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture; and

"(B) the 20.5-mile segment from the Wallowa-Whitman National Forest boundary to the Oregon-Washington State line as a wild river; to be administered by the Secretary of the Interior.

"( ) Little Deschutes, Oregon.—The 12-mile segment from its source to the north section line of section 12, township 26 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture.

"( ) Lostine, Oregon.—The 16-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 5-mile segment from its headwaters to the Eagle Cap Wilderness boundary as a wild river; and

"(B) the 11-mile segment from the Eagle Cap Wilderness boundary to the Wallow-Whitman National Forest boundary at Silver Creek as a recreational river.

"( ) Malheur, Oregon.—The 13.7-mile segment from Bosonberg Creek to the Malheur National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 7-mile segment from Bosonberg Creek to Malheur Ford as a scenic river; and

"(B) the 6.7-mile segment from Malheur Ford to the Malheur National Forest boundary as a wild river.

"( ) McKenzie, Oregon.—The 12.7-mile segment from Clear Lake to Scott Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 1.8-mile segment from Clear Lake to the head of maximum pool at Carmen Reservoir as a recreational river;

"(B) the 4.3-mile segment from a point 100 feet downstream from Carmen Dam to the maximum pool at Trail Bridge Reservior as a recreational river; and

"(C) the 6.6-mile segment from the developments at the base of the Trail Bridge Reservoir Dam to Scott Creek as a recreational river.

"( ) Metolius, Oregon.—The 28.6-mile segment from the south Deschutes National Forest boundary to Lake Billy Chinook in the following classes:

"(A) the 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2,055.5 feet from Metolius Springs) to Bridge 99 as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as scenic river; by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior, the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10 of this act and section 4 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988: Provided, That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

"( ) Minam, Oregon.—The 39-mile segment from its headwaters at the south end of Minam Lake to the Eagle Cap Wilderness boundary, one-half mile downstream from Cougar Creek, as a wild river; to be administered by the Secretary of Agriculture.

"( ) North Fork Crooked, Oregon.—The 32.3-mile segment from its source at Williams Prairie to one mile from its confluence with the Crooked River in the following classes:

"(A) the 3-mile segment from its source at Williams Prairie to the Upper End of Big Summit Prairie as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 3.7-mile segment from the Lower End of Big Summit Prairie to the bridge across from the Deep Creek Campground as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 8-mile segment from the bridge across from the Deep Creek Campground to the Ochoco National Forest boundary, one-half mile from Lame Dog Creek as a scenic river; to be administered by the Secretary of Agriculture;

"(D) the 1.5-mile segment from the Ochoco National Forest boundary to Upper Falls as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 11.1-mile segment from Upper Falls to Committee Creek as a wild river; to be administered by the Secretary of the Interior; and

"(F) the 5-mile segment from Committee Creek to one mile from its confluence with the Crooked River as a recreational river; to be administered by the Secretary of the Interior.

"( ) North Fork John Day, Oregon.—The 54.1-mile segment from its headwaters in the North Fork of the John Day Wilderness Area at section 13, township 8 south, range 36 east, to its confluence with Camas Creek in the following classes:

"(A) the 3.5-mile segment from its headwaters in the North Fork of the John Day Wilderness at section 13, township 8 south, range 36 east, to the North Fork of the John Day Wilderness boundary as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.5-mile segment from the North Fork of the John Day Wilderness boundary to Trail Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 24.3-mile segment from Trail Creek to Big Creek as a wild river; to be administered by the Secretary of Agriculture;

"(D) the 10.5-mile segment from Big Creek to Texas Bar Creek as a scenic river; to be administered by the Secretary of Agriculture; and

"(E) the 8.3-mile segment from Texas Bar Creek to its confluence with Camas Creek as a recreational river; to be administered by the Secretary of Agriculture.

"( ) North Fork Malheur, Oregon.—The 25.5-mile segment from its headwaters to the Malheur National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture.

"( ) North Fork of the Middle Fork of the Willamette, Oregon.—The 42.3-mile segment from Waldo Lake to the Willamette National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 8.8-mile segment from Waldo Lake to the south section line of section 36, township 19 south, range 5½ east as a wild river;

"(B) the 6.5-mile segment from the south section line of section 36, township 19 south, range 5½ east to Fisher Creek as a scenic river; and

"(C) the 27-mile segment from Fisher Creek to the Willamette National Forest boundary as a recreational river.

"( ) North Fork Owyhee, Oregon.—The 8-mile segment from the Oregon-Idaho State line to its confluence with the Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) North Fork Smith, Oregon.—The 13-mile segment from its headwaters to the Oregon-California State line; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6.5-mile segment from its headwaters to Horse Creek as a wild river;

"(B) the 4.5-mile segment from Horse Creek to Baldface Creek as s scenic river; and

"(C) the 2-mile segment from Baldface Creek to the Oregon-California State line as a wild river.

"( ) North Fork Sprague, Oregon.—The 15-mile segment from the head of River Spring in the southwest quarter of section 15, township 35 south, range 16 east, to the northwest quarter of the southwest quarter of section 11, township 35 south, range 15 east, as a scenic river; to be administered by the Secretary of Agriculture.

"( ) North Powder, Oregon.—The 6-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary at River Mile 20 as a scenic river; to be administered by the Secretary of Agriculture.

"( ) North Umpqua, Oregon.—The 33.8-mile segment from the Soda Springs Powerhouse to Rock Creek in the following classes:

"(A) the 25.4-mile segment from the Soda Springs Powerhouse to the Umpqua National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture; and

"(B) the 8.4-mile segment from the Umpqua National Forest boundary to its confluence with Rock Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) Powder, Oregon.—The 11.7-mile segment from Thief Valley Dam to the Highway 203 bridge as a scenic river; to be administered by the Secretary of the Interior.

"( ) Quartzville Creek, Oregon.—The 12-mile segment from the Willamette National Forest boundary to Slack Water in Green Peter Reservoir as a recreational river; to be administered by the Secretary of the Interior.

"( ) Roaring, Oregon.—The 13.7-mile segment from its headwaters to its confluence with the Clackamas River; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 13.5-mile segment from its headwaters to one-quarter mile upstream of the mouth as a wild river; and

"(B) the 0.2-mile segment from one-quarter mile upstream of the mouth to its confluence with the Clackamas River as a recreational river.

"( ) Salmon, Oregon.—The 33.5-mile segment from its headwaters to its confluence with the Sandy River in the following classes:

"(A) the 7-mile segment from its headwaters to the south boundary line of section 6, township 4 south, range 9 east as a recreational river; to be administered by the Secretary of Agriculture: Provided, That designation and classification shall not preclude the Secretary from exercising discretion to approve the construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Timberline Lodge Winter Sports Area insofar as such construction does not involve water resources projects;

"(B) the 15-mile segment from the south boundary line at section 6, township 4 south, range 9 east to the junction with the South Fork of the Salmon River as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 3.5-mile segment from the junction with the south fork of the Salmon River to the Mt. Hood National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 3.2-mile segment from the Mt. Hood National Forest boundary to Lymp Creek as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 4.8-mile segment from Lymp Creek to its confluence with the Sandy River as a scenic river; to be administered by the Secretary of the Interior.

"( ) Sandy, Oregon.—Those portions as follows:

"(A) The 4.5-mile segment from its headwaters to the section line between sections 15 and 22, township 2 south, range 8 east as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.9-mile segment from the section line between sections 15 and 22, township 2 south, range 8 east to the Mt. Hood National Forest boundary at the west section line of section 26, township 2 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 12.5-mile segment from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west line of the east half of the northeast quarter of section 6, township 1 south, range 4 east, in Multnomah County at Dabney State Park, the upper 3.8 miles as a scenic river and the lower 8.7 miles as a recreational river; both to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 10(e) of this Act: Provided, That nothing in this act shall preclude or impair the licensing, development, operation, or maintenance of City of Portland, Oregon water resources facilities on those portions of the Bull Run or Little Sandy Rivers that are outside the boundary of the wild and scenic river area as designated in this section: Provided further, That nothing in this section is intended or shall be construed to affect any rights, obligations, privileges, or benefits granted to the City of Portland, Oregon under any prior authority of law or under any agreement or administrative ruling entered into or made effective before the effective date of this act.

"( ) South Fork Imnaha, Oregon.—The 9-mile segment from its headwaters to the confluence with the Imnaha River as a wild river; to be administered by the Secretary of Agriculture.

"( ) South Fork John Day, Oregon.—The 47-mile segment from the Malheur National Forest to Smokey Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) Squaw Creek, Oregon.—The 15.4-mile segment from its source to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork; to be administered by the Secretary of Agriculture as follows:

"(A) The 6.6-mile segment and its tributaries from the source to the Three Sisters Wilderness boundary as a wild river; and

"(B) the 8.8-mile segment from the boundary of the Three Sisters Wilderness Area to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch as a scenic river: Provided, That nothing in this act shall prohibit the construction of facilities necessary for emergency protection for the town of Sisters relative to a rapid discharge of Carver Lake if no other reasonable flood warning or control alternative exists.

"( ) Sycan, Oregon.—The 59-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to Coyote Bucket at the Fremont National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 26.4-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to the west section line of section 22, township 32 south, range 14 east, as a scenic river;

"(B) the 8.6-mile segment from the west section line of section 22, township 32 south, range 14 east, to the Fremont National Forest boundary in the southeast quarter of section 10, township 33 south, range 13 east, as a recreational river; and

"(C) the 24-mile segment from the Fremont National Forest boundary in the southwest quarter of section 10, township 33 south, range 13 east, to Coyote Bucket at the Fremont National Forest boundary, as a scenic river.

"( ) Upper Rogue, Oregon.—The 40.3-mile segment from the Crater Lake National Park boundary to the Rogue River National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 0.5-mile segment from the Crater Lake National Park boundary to approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing as a scenic river;

"(B) the 6.1-mile segment from approximately 0.1-mile downstream from the Forest road 6530760 (West Lake Road) crossing to Minehaha Creek as a wild river; and

"(C) the 33.7-mile segment from Minehaha Creek to the Rogue River National Forest boundary as a scenic river.

"( ) Wenaha, Oregon.—The 21.55-mile segment from the confluence of the North Fork and the South Fork to its confluence with the Grande Ronde River; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 18.7-mile segment from the confluence of the North Fork and South Fork to the Umatilla National Forest as a wild river;

"(B) the 2.7-mile segment from the Umatilla National Forest boundary to the easternmost boundary of the Wenaha State Wildlife Area as a scenic area; and

"(C) the 0.15-mile segment from the easternmost boundary of the Wenaha State Wildlife Area to the confluence with the Grande Ronde River as a recreational river.

"( ) West Little Owyhee, Oregon.—The 51-mile segment from its headwaters to its confluence with Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) White, Oregon.—The 46.5-mile segment from its headwaters to its confluence with the Deschutes River in the following classes:

"(A) The 2-mile segment from its headwaters to the section line between sections 9 and 16, township 3 south, range 9 east, as a recreational river; to be administered by the Secretary of Agriculture: Provided; That designation and classification shall not preclude the Secretary from exercising discretion to approve construction, operation, and from exercising discretion to approve construction, operation, and maintenance *of ski lifts, ski runs, and associated facilities for the land comprising the Mt. Hood Winter Sports Area insofar as such construction does not involve water resource projects and is consistent with protecting the values for which the river was designated.*

"(B) the 13.6-mile segment from the section line between sections 9 and 16, township 3 south, range 9 east, to Deep Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 6.5-mile segment from Deep Creek to the Mt. Hood National Forest boundary as wild river; to be administered by the Secretary of Agriculture;

"(D) the 22.8-mile segment from the Mt. Hood National Forest boundary to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 1.6-mile segment from River Mile 1.6 to its confluence with the Deschutes River as a recreational river; to be administered by the Secretary of the Interior.".

SEC. 3. WILD AND SCENIC RIVER STUDIES.

Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) Blue, Oregon.—The segment from its headwaters to the Blue River Reservoir; by the Secretary of Agriculture.

"( ) Chewaucan, Oregon.—The segment from its headwaters to the Paisley Urban Growth boundary to be studied in cooperation with, and integrated with, the Klamath River Basin Plan; by the Secretary of Agriculture.

"( ) North Fork Malheur, Oregon.—The segment from the Malheur National Forest boundary to Beulah Reservoir; by the Secretary of the Interior.

"( ) South Fork McKenzie, Oregon.—The segments from its headwaters to the upper end of Cougar Reservoir and from the lower end of Cougar Reservoir to its confluence with the McKenzie River; by Secretary of Agriculture.

"( ) Steamboat Creek, Oregon.—The entire creek; by the Secretary of Agriculture.

"( ) Upper Klamath, Oregon.—The segment from immediately below John Boyle Dam to the Oregon-California State line; by the Secretary of the Interior: Provided, That nothing in this Act, or any amendments thereto, shall be construed to affect or delay, or to interfere with completion of, any studies or proceedings by any Department or agency of the United States which has jurisdiction over the Salt Caves Hydroelectric Project proposed by the City of Klamath Falls, Oregon.

"( ) Wallowa, Oregon.—The segment from its confluence with the Minam River to its confluence with the Grande Ronde River; by the Secretary of Agriculture.".

SEC. 4. INDIAN TREATY LANDS AND ADMINISTRATIVE PROVISIONS.

(a)(1) Lands now or hereafter held in trust by the United States for the benefit of an Indian tribe or individual Indian shall not be included within the boundaries of the Deschutes or Metolius Rivers as designated by this act without the consent of the applicable tribal council.

(2) When Indian treaty lands exist in association with lands included in the National Wild and Scenic Rivers System under this act, the Secretaries of the Interior and Agriculture, as appropriate, shall fully consult and enter into written cooperative management agreements with the affected Indian tribe for planning, administration, and management of such areas.

(b) Nothing in this Act shall affect:

(1) the jurisdiction or responsibilities of an Indian tribe with respect to fish, wildlife, land, and water management;

(2) the treaty or other rights of an Indian tribe;

(3) the water and land claims, present or future, of an Indian tribe;

(4) the relicensing or amending the license of the Pelton Hydroelectric Project, FERC Project No. 2030 so long as such project does not adversely affect the values for which the Deschutes River was designated;

(5) the licensing of the Whitewater Hydroelectric Project located within the Warm Springs Indian Reservation;

(6) the rights or jurisdiction of Indian tribes over waters or any river or stream within the affected river area or stream, or over any ground water resource; or

(7) the beneficial ownership interest of land held in trust, now or hereafter, by the United States for Indian Tribes or individual Indians;

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after the fiscal year 1988—

(a) for the purpose of acquisition of lands, waters, and interests therein pursuant to this Act, not to exceed $10,000,000; and

(b) for the purpose of preparing the studies for the rivers and river segments listed in section 3 of this act, not to exceed $2,500,000.

AMENDMENT NO. 3625

Mr. HATFIELD. Mr. President, I thank the majority leader for calling up this bill. I propose at this time amendments to the bill that have been cleared on both sides of the aisle. I move that they be considered en bloc, and agreed to en bloc.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

The amendment (No. 3625), agreed to, is as follows:

Page 21, line 20: Insert after the enacting clause "Title I."

Page 21, line 21: Delete "SECTION 1." and insert "SEC. 101."

Page 21, line 22: Strike "Act" and insert "Title".

Page 22, line 1: Delete "SEC. 2." and insert "SEC. 102."

Page 22, line 10: Strike "act" and insert "Act".

Page 22, line 21: Strike "eight-mile" and insert "8-mile".

Page 25, line 12: After "10" insert "(e)".

Page 25, line 12: Strike "act" and insert "Act".

Page 25, line 13: After the word "section", strike "4" and insert "105".

Page 28, line 6: Strike "scenic" and insert "wild".

Page 28, strike lines 12-22 in their entirety and insert:

"( ) Imnaha, Oregon.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 5-mile segment from Cow Creek to its mouth as a scenic river; and

"(D) the 9-mile segment of the South Fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river."

Page 29, line 2: After the word "Interior", strike the period and insert "as provided in section 10(e) of this Act."

Page 29, line 3: Strike "29.1" and insert "8.6".

Page 29, lines 5-6: Strike the words "Oregon-Washington State line in the following classes:" and insert "Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture."

Page 29, strike lines 7-15 in their entirety.

Page 29, line 17: After the word "source", insert "in the northwest quarter of section 15, township 26 south, range 6½ east".

Page 31, line 15: After the word "Interior," strike the comma and insert the word "and".

Page 31, line 17: After the word "Reservation," strike "and the State of Oregon".

Page 31, line 17: After "10" and insert "(e)."

Page 31, line 18: Strike the word "act" and insert "Act".

Page 31, line 18: Strike "4" and insert "105".

Page 36, line 18: Delete the words "Slack Water" and insert "slack water".

Page 38, line 22: After the word "Agriculture;" insert the word "and".

Page 39, line 9: Delete the ":" after "Act" and insert ".".

Page 39, line 9: Strike *Provided*, That nothing in" and delete lines 10-21 in their entirety.

Page 39, strike lines 22-25 in their entirety.

Page 40, line 19: Strike the word "act" and insert "Act".

Page 41, line 7: After "14" insert "½".

Page 43, line 22: Strike "wild" and insert "scenic".

Page 43, line 24: Strike "22.8" and insert "17.5".

Page 43, line 25: Strike "River Mile 2.2" and insert "Three Mile Creek".

Page 43, line 25-page 44, line 1: Strike "recreational" and insert "scenic".

Page 44, line 2: After the word "Interior;" strike the word "and".

Page 44, line 3: Insert a new section (E):

"(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and".

Page 44, line 3: Strike "(E)" and insert "(F)".

Page 44, line 7: Strike "SEC. 3." and insert "SEC. 103."

Page 45, strike lines 3-11 in their entirety.

Page 45, after line 14 add the following new section:

SEC. 104. UPPER KLAMATH RIVER STUDY.

Section 5(d) of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82 Stat. 910) is amended by inserting "(1)" after "(d)" and by inserting the following new paragraph at the end thereof:

"(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or actions on this segment and its immediate environment."

Page 45, line 15: Strike "SEC. 4." and insert "SEC. 105."

Page 45, line 20: After the word "this" delete "act" and insert "Title".

Page 45, line 24: After the word "this" delete "act" and insert "Title".

Page 46, line 3: After the word "areas" strike the period and insert "as provided in section 10(e) of this Act."

Page 46, line 4: Strike "Act" and insert "Title".

Page 46, strike lines 15-17 in their entirety and renumber the subsequent paragraphs accordingly.

Page 46, line 23: Strike ";" and insert ".".

Page 46, after line 23 insert the following new subsection:

"(c) Nothing in this Title shall preclude or impair the use by the City of Portland, Oregon of water in the Bull Run and Little Sandy Rivers to the extent that such water is necessary for the purpose of municipal water supply."

Page 47, line 1: Strike "SEC. 5." and insert "SEC. 106."

Page 47, line 5: Strike "Act," and insert "Title,".

Page 47, line 6: Strike "$10,000,000; and" and insert "5,000,000;".

Page 47, line 8: Strike "3" and insert "103".

Page 47, line 8: Strike "act," and insert "Title,".

Page 47, line 9: Strike "$2,500,000." and insert "$2,500,000; and"

Page 47, after line 9 insert the following new paragraph:

"(c) for the purpose of preparing the study of the river segment listed in section 104 of this Title, not to exceed $200,000."

At the end of the bill insert the following:

"TITLE II—UMATILLA BASIN PROJECT, OREGON

SEC. 201. SHORT TITLE.

This title may be cited as the "Umatilla Basin Project Act".

SEC. 202. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, for the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report entitled: "Umatilla Basin Project, Oregon, Planning Report" dated February 12, 1988, in the manner specified by this Title. The principal work of the project shall consist of—

(1) lands, water rights, or interests therein acquired for the benefit of fishery resources;

(2) measures to convene water and improve the efficiency of the existing conveyance, distribution, and drainage systems of the Umatilla Project, where such measures are found to make water available for the benefit of fishery resources;

(3) pumping plants and related diversion, conveyance, and distribution features;

(4) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange required to fulfill the purposes of this title;

(5) fish passage and protective facilities and other necessary mitigation measures;

(6) a program to monitor and regulate project operations; and

(7) a program to evaluate fishery resource mitigation measures.

SEC. 203. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this title shall be integrated and coordinated, from an operational standpoint, into existing features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project related water supplies for the purposes herein identified.

SEC. 204. POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

SEC. 205. OPERATION AND MAINTENANCE COSTS.

Non-Federal interests shall be responsible for the cost of operating and maintaining the projects except for those costs associated with implementation of section 204 of this title, and to fulfill the purpose of mitigating losses to anadromous fisheries resources.

SEC. 206. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this title are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary, through the end of fiscal year 1998, to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

SEC. 207. NON-FEDERAL COSTS.

(a) CREDIT FOR NON-FEDERAL FISHERY RESOURCE IMPROVEMENTS.—The Umatilla Basin Project authorized by this title is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) TREATMENT OF NON-FEDERAL COSTS INCURRED IN IMPLEMENTING PROJECT FEATURES BEFORE APPROPRIATIONS.—To the extent any public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

SEC. 208. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such project pumping capacity may be made available for use on presently irrigated lands eligible for service within the irrigation districts that participate in the project authorized in this title at a rate based on the operation and maintenance costs related to such conjunctive use and an appropriate share of capital costs for such use as specified by an agreement between the Secretary of the Interior and the irrigation districts: *Provided*, (a) that boundaries of the irrigation districts may be modified, upon approval of the Secretary of the Interior, to include such lands that received irrigation water service from those districts prior to October 1, 1988; and (b) that such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping, and the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall be borne by irrigation districts receiving the benefit of such water.

SEC. 209. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this title: *Provided*, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated not more than $1,000,000 to accomplish the purposes of this section.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project and the study authorized by section 213 of this title the sum of $42,400,000 (April 1987 prices), less any amounts previously appropriated for the project, plus a minus such amounts as maybe required by reason of changes in the cost of construction work of the type involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 210(b) of this title: *Provided*, That such funds are authorized to be appropriated only through the tenth fiscal year after which construction funds are first made avaialble: *Provided further*, That all costs, including operation and maintenance costs, allocated to the mitigation of anadromous fish species and the study authorized to be appropriated such sums as maybe required for the Fedearl share of operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

SEC. 211. WATER RIGHTS.

Nothing in this title shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interestate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(a) contract negotiation and administration;

(b) water conservation plans and activities required by section 210 of the Reclamation Reform Act of 1982 (P.L. 97-293);

(c) allocation of reservoir storage space;

(d) water deliveries outside the authorized service area; and,

(e) water rights held by the United States."

(4) confer upon any non-federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or indian tribe if such rights were estalished by the setting aside of a reservation by treaty, Executive Order, agreements, or Act of Congress.

SEC. 212. REHABILITATION AND BETTERMENT AUTHORIZATION

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Title, Stanfield and Westland Irrigation Districts shall be eligible to receive financial assistance, in an amount not to exceed $2,000,000 each, as demed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

SEC. 213. REVIEW OF UMATILLA PROJECT OPERATIONS.

Within one year from the date of enactment of this Title, the Secretary shall complete a review of current operations of the Umatilla Project, for the purpose of identifying opportunities to further mitigate losses to anadromous fishery resources. Within 90 days of the completion of this review, the Secretary shall transmit a report thereon, together with any conclusions and recommendations to improve the management of the existing project, including measures that may require additional legislation, to the Committee on the Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The review shall iclude, but not be limited to the following:

Mr. HATFIELD. Mr. President, today, Senator PACKWOOD and I seek Senate passage of S. 2148, the Omnibus Oregon Wild and Scenic Rivers Act of 1988. This bill is the result of a thorough public comment process conducted over a period of nearly a year. Public hearings were conducted under the jurisdiction of the Subcommittee on Public Lands, National Parks and Forests of the full Senate Committee on Energy and Natural Resources.

As introduced, S. 2148 proposed to add segments of 40 Oregon rivers—totaling 1,705.5 miles—to the National Wild and Scenic Rivers System. At that time, this represented the largest single effort to expand the System in the lower 48 States since the Wild and Scenic Act's inception in 1968.

Mr. President, I have stated often that I believe water resources use will be the preeminent natural resource issue as we enter the 21st century. The experiences we have had during the last several years with droughts in the West only serve to underscore that concern. Accordingly, I believe that we must begin the process of planning for the protection and utilization of our precious water resources.

While I have been an ardent supporter of many of the Bureau of Reclamation's western water projects, and have supported several water storage projects in Oregon, I do not believe that dams and impoundments are the appropriate solution to all our water problems. Just as important as storing and holding water for irrigation, hydroelectric generation, drinking water, or other purposes, is the preservation of the watersheds of many of our free flowing rivers.

The purpose of this legislation, then, was to make a thorough examination of at least 40 Oregon rivers and to determine whether they should be preserved in their existing free-flowing conditions. Now that we have come to the conclusion of that process, I am confident that the values of the rivers in this bill will be best realized by ensuring that the rivers remain in their free-flowing state.

When S. 2148 was introduced on March 4 of this year, I stated that it was being offered as a discussion document for the purposes of beginning the public comment process. The rivers included in that original proposal were recommended to me by both the Forest Service and the BLM. Both of these agencies currently are involved in their draft forest and land and resource management planning efforts, and I felt that these processes provided a base of information which already had been subjected to some public review and consideration. It was my hope that the list provided to me by these agencies would represent a broad range of rivers throughout the State, and would provide as many Oregonians as possible with an incentive to become involved in the public comment process.

Due to its very nature as a legislative proposal, I fully expected the bill to be revised and shaped further in the public arena. Accordingly, some of the rivers which were included in the bill when it was introduced have been deleted from consideration while others have been added. These changes were instituted predominantly from the oral and written testimony that was received in four official Senate hearings—three Oregon field hearings, one hearing in Washington, DC, and a public meeting that I conducted on my own. The field hearings were held in Oregon City on May 3, Bend on May 30, and Grants Pass on June 1. The hearing here in Washington was conducted on July 26, and the public meeting was held on August 30 in Baker, OR. These proceedings provided the opportunity for over 200 individuals to testify and provide public comment on the merits of S. 2148.

However, Mr. President, public input was not limited to just these hearings. My staff and I also reviewed hundreds of letters written by individuals and organizations from 32 different States. Furthermore, where I was unable to attend meetings personally, representatives of my office attended several public meetings ranging in size from 5 to 500 people in every part of Oregon.

During this process we received many excellent comments and suggestions for improvement of the bill. These suggestions have resulted in the documents before the Senate today. This bill will, upon enactment, designate segments of 40 Oregon rivers totaling over 1,400 miles as wild, scenic, or recreational river areas under the National Wild and Scenic Rivers System.

The increase of one river over the original version of the bill is due to the addition of six rivers—the Elk River, the North Fork of the Middle Fork of the Willamette River, the Sandy River, the Malheur River, the North Fork of the Malheur River, and Squaw Creek—and the deletion of five rivers—the Alsea River, the Burnt River, the Nestucca River, the South Fork of the Crooked River, and the Lower Williamson River.

The legislation also provides for the study of all or part of six other Oregon rivers according to section 5(a) of the Wild and Scenic Rivers Act of 1968. All of these rivers were discussed during the public hearings process, but further information is necessary before a final decision can be made. The Departments of the Interior and Agriculture will embark upon 3-year studies for each of these rivers. At the end of the 3-year period, Congress will have the opportunity to determine whether these rivers should be included in the Wild and Scenic Rivers

System. The rivers to be studied are the Blue River, the Chewaucan River, the North Fork of the Malheur River, the South Fork of the McKenzie River, the Wallowa River, and Steamboat Creek.

A seventh river also will be studied, but is given special attention in the legislation. That river is the Upper Klamath. My decision to include the Upper Klamath River as a study river came only after extensive consideration and deliberation with my congressional delegation colleagues, the Governor of Oregon, representatives of the city of Klamath Falls, and after listening to and reading the testimony of many Oregonians.

Public sentiment about the Upper Klamath River is strong and understandable on both sides. The concern centers around the proposed Salt Caves Hydroelectric Project on the last free-flowing stretch of the river. The sponsor of the project is the city of Klamath Falls. Klamath Falls submitted an application for a license on this project in 1983, and has proceeded through the process for that license application since that time.

Mr. President, as many of my colleagues will attest, I am a stickler for process. I do not believe it is appropriate to avoid or circumvent established process simply for the sake of expediency. With regard to the Salt Caves Dam project, the city has entered into an administrative process, established in law by the Congress through the Federal Power Act. And while I choose not to offer any thoughts or comments on the relative merits of the Salt Caves project, I feel strongly that the city must be able to proceed through the process. The city has expended millions of public dollars during the process to move its application through over the years. If the application were new, I might feel differently about this matter. But the Salt Caves application is a mature one and I believe it is inappropriate to interfere with it.

On the other hand, it is important to note that I received more comments—testimony, letters, and personal statements—on this matter than on any other, except, perhaps, public concern about condemnation of private lands, which I will address shortly. If anything emerged from those comments, it is that an equally large number of Oregonians feel very strongly about the natural values of the Upper Klamath River and believe that it should remain undeveloped. Although much information about the Upper Klamath has been developed in analyzing its natural values in terms of what would be destroyed with the construction of the Salt Caves Dam, there remains a lack of information about the natural qualities of the area in the context of no development.

Therefore, language has been included in the bill which would authorize a study of the Upper Klamath by the Secretary of the Interior in accordance with section 5(d) of the original 1968 act. The study shall run concurrently with and shall not interfere with Federal agency reviews on this section of the Klamath, including the city's license application for the Salt Caves project which is currently pending before FERC. It is the intent of this section that the study of the Klamath River's wild and scenic values should not delay or interfere with FERC's licensing process. It is intended that FERC should proceed without interruption with such process, including the preparation of an environmental impact statement.

We have directed the Secretary of the Interior to complete the wild and scenic study by April 1, 1990, to dovetail the completion of that study with the completion of the FERC EIS for the Salt Caves project. The effect of this timeline is to allow the FERC process to move ahead unimpeded, but a study of the natural values of the Upper Klamath will be provided for FERC and Congress to consider.

Related to the matter of the Upper Klamath River is the Klamath River basin compact. This compact is an interstate agreement between the States of Oregon and California which was approved by Congress in 1957. It addresses the various uses of water in the Klamath River basin, and has served Oregonians and Californians in the river basin very well for over 30 years.

Chief among the concerns expressed during the field hearings on S. 2148 was that wild and scenic river designation might conflict with, and possibly override, the compact. Oregon Attorney General Dave Frohnmayer recently prepared an analysis and opinion addressing this question. The Oregon attorney general concluded that section 13(e) of the Wild and Scenic Rivers Act of 1968 makes it clear that there is no necessary conflict between the compact and wild and scenic designation. As such, a conflict between the compact and any designation which Congress may make in the future could not occur.

I strongly believe in protecting interstate agreements. Congress should not attempt to overturn or override them through backdoor methods. I stated many times during the hearings process that I did not intend for the compact to be overturned by a future wild and scenic river designation, and am pleased that Attorney General Frohnmayer has underscored this principle through his opinion. The text of the attorney general's opinion will be included in the RECORD at the conclusion of my statement.

Section 4 of the bill establishes a process whereby lands along the Deschutes and Metolius Rivers which are held in trust for the Confederated Tribes of the Warm Springs Reservation, cannot be included in the Wild and Scenic Rivers System without the consent of the applicable tribal council. This provides an assurance for the tribes, and individual Indians, that their treaty rights will be fully respected and protected by establishing the full consultation and cooperation we have come to expect between the Federal Government and the Warm Springs Indians. Is is also my understanding that lands are held in trust for the Warm Springs tribes along the John Day River, south of Tumwater Falls. It is my intention that the provisions of section 4 apply to these lands as well.

Mr. President, I also want to make it very clear that our intent and desire is to have the Oregon State Scenic Waterway Program fully administer the lower 100 miles of the Deschutes River from Pelton Dam to the Columbia. In 1987 the Oregon State Legislature passed a bill creating the Deschutes River Management Committee. Where Indian lands lie within the boundary of a national wild and scenic river designated under the act, we expect full consultation and coordination with the appropriate tribal council during development of the river management plan. This is the first and only time the State legislature has ever passed a bill to address river management issues on a specific river. The intent of the committee is to develop a recreational management plan to address human access on the Deschutes. Our intent is to allow the committee and the State Scenic Waterway Program to move forward with its plans unimpeded by this act. Neither Congress nor the Bureau of Land Management should interfere with the program.

One of the major concerns which frequently arose during the public hearings was the Federal Government's authority, under the Wild and Scenic Rivers Act, to condemn private lands within wild and scenic river corridors. Of course, we all know that all levels of government—Federal, State, or local—have the power of eminent domain. Where it is determined to be in the public interest or need, government can condemn private lands or interest in private lands so long as the landowner is compensated for that land or interest. It is important to keep in mind that the Wild and Scenic Rivers Act establishes limits on this power. Section 6(b) of the act eliminates the power of condemnation of fee lands where 50 percent or more of the land in a federally designated wild and scenic river corridor is under some kind of public ownership. I also want to emphasize that when calculating the number of publicly owned and privately owned acres within a federally designated river corridor, the Federal land management agencies should include all designated lands within a river system as a single management unit. For example, the Imnaha River and the South Fork Imnaha River are designated in this bill. When preparing a river management plan for these areas, the Forest Service should prepare a single management plan for this river system.

Mr. President, while I would not go so far as to say that condemnation for national purposes should never occur, I strongly believe that this power is one that should be eliminated wherever possible, and when not eliminated, should be used only as a last resort where all other methods of addressing land use considerations have been fully evaluated and determined unworkable. Because of my sensitivity to the issue of condemnation, this bill does not include rivers which have a preponderance of privately owned land. The evaluations which led to the final proposed river corridors were based on a breakdown of acreage ownership which were provided to me by the Forest Service and the BLM.

Among other concerns I heard during the review of S. 2148 as how other multiple land uses typically associated with river areas would be affected by wild and scenic river designation. As I have told my fellow Oregonians on many occasions, the Wild and Scenic Rivers Act is probably one of the most flexible land use statutes in existence. It recognizes that river areas have been intrinsically important to human development throughout our history. The act does not attempt to undo developments which are already in place, nor does it attempt to interfere with activities which already exist in the designated river area. For example, timber harvesting, mining, agriculture, grazing, and recreational uses are all grandfathered uses in the act and are allowed to continue to the extent they are currently practiced.

For example, if a rancher has cattle grazing in a designated river corridor—even in a wild river corridor—that grazing would be allowed to continue. In fact, with our programs designed to enhance and restore riparian areas from overgrazing, I can envision the day when it would be possible for grazing units to increase with improved riparian management.

Or, if a farmer were raising crops in a river area, he or she would be free to continue that activity. If a farmer were raising corn, and wanted to shift to a different crop, that would also be allowed.

Mining activities are also protected. Section 9 of the Wild and Scenic Rivers Act fully protects valid existing mining claims. Recreational mining is also allowed, particularly in scenic and recreational river areas.

Water rights also are fully protected. Section 12 clearly states that all existing rights in place before enactment of the act, and amendments to it, are protected and may not be abrogated without the consent of the party involved. Further, because of the importance of water projects in central and eastern Oregon, integrated surface water or ground water programs conducted outside the designated corridor which are designed to control runoff, reduce erosion, provide a beneficial impact on the seasonal stability of water flows, or which otherwise restore or enhance the values which led to the designation of the river area are not, per se, adverse to the purposes of this act. An example of these types of projects is the East Fork Cottonwood Creek project along the North Fork of the John Day River.

I also am aware of strong concerns over the legislation's potential impact on timber harvesting. While some slight reductions in the allowable sale quantity [ASQ] are likely to occur, the bill attempts to avoid concentrating these impacts in any particular river area. Based upon information provided by the Forest Service and BLM and my own analysis, I do not expect ASQ reductions to exceed 15 million board-feet [MMBF] statewide under the bill.

Concern over potential timber harvesting impacts focused on the management of lands within, adjacent to, and upstream of designated river corridors. Timber harvesting is a statutorily accepted management activity on public lands which provides both environmental and economic balance in public land stewardship. Although section 12(a) of the 1968 Wild and Scenic Rivers Act provides agency direction with regard to adjacent land management, it is not my intent to create de facto river boundaries encompassing lands beyond the designated corridors.

Management activities should follow existing statutory direction, including that provided in the National Forest Management Act (Pub. L. 94-588, 90 Stat. 2949, as amended), the act of August 28, 1937 (the O&C Lands Act), (43 U.S.C. 1181a et seq., 50 Stat 874, as amended), and the Federal Land Policy Management Act (Pub. L. 94-579, 90 Stat. 2743, as amended) to protect the values for which the rivers were designated. While viewsheds and other values need to be protected, this should not be construed to mean that timber harvesting, and associated road and bridge construction necessary to accomplish that harvesting, not occur on adjacent lands or even within designated scenic or recreational river area corridors. The administering agencies already have land management policies that take into account river designations in the management of adjacent lands, and that will take these new designations into account. Professional agency direction in the management of adjacent and upstream lands is not to be further constrained by these designations. Rather, it should be noted that timber management activities are allowed to continue adjacent to, and within scenic and recreational river areas in a manner consistent with the protection of the values which led to the river's designation.

It is also intended that designation of the wild and scenic river segments contemplated by the legislation should not, by itself, result in any additional restriction of forest management activities in areas upstream from the designated stream segments as a consequence of Oregon's water quality standards, including the State's antidegradation policy (OAR 340-41-026). Concern that the State's water quality standards might result in such additional restrictions prompted other members of the Oregon congressional delegation and I to seek clarification of the applicability of Oregon's water quality standards, including the State's antidegradation policy, to the control of activities—such as timber harvesting—that have the potential to generate nonpoint source pollution in areas upstream from designated wild and scenic river segments. The correspondence between the delegation and the State of Oregon, which will be reprinted at the conclusion of my statement in the RECORD, revealed that designation of additional wild and scenic river segments in Oregon would not, by itself, prohibit forest management activities consistent with State-approved best management practices in areas upstream from designated segments. This understanding of the applicability of the State's water quality standards is fundamental to our intention concerning the effect of designating the river segments contemplated by the amendment. It also is our understanding from the exchange of correspondence that the State's water quality standards and nonpoint source control programs comport with existing EPA policy and the applicable Federal law in these areas.

Mr. President, I also want the Senate to note that I am amending S. 2148 by adding a second title to the bill. This second title is an amended version of S. 1613, the Umatilla Basin Project Act, which was passed by the full Senate early last month. The amendment that I am offering today is very similar to the Senate-passed version of the bill. The substantive changes that have been made are the result of negotiations between my office, the members of the Oregon House delegation, and the staff of the House Subcommittee on Water and Power Resources. It is my hope that this revised version meets the objectives and concerns of the House.

Specifically, the House preferred that language be included in section

208 of title II which directs the irrigation districts to pay an appropriate share of the capital costs for the project, as negotiated with the Secretary of the Interior, and to ensure that the water provided to the irrigators from the project be used only on land presently eligible for irrigation and which are within the boundaries of the irrigation districts. Another concern of the House that was addressed is found in section 212 of title II. Specific language has been included in this section that authorizes the Stanfield and Westland irrigation districts to be eligible for Rehabilitation and Betterment Act loans, in an amount not to exceed $2 million each. The House also requested that a review of the Umatilla project by the Secretary be completed within 1 year from the date of enactment to identify opportunities to further mitigate losses to anadromous fishery resources. That study is authorized in section 213 of Title II.

Finally, Mr. President, I thank Senator BUMPERS, chairman of the Subcommittee on Public Lands, National Parks and Forests, Senator BRADLEY, chairman of the Subcommittee on Water and Power, and Senator JOHNSTON, chairman of the full Senate Committee on Energy and Natural Resources, for their assistance in bringing this bill before the Senate today.

I also express my sincere appreciation to Bob Doppelt and Rick George of the Oregon Rivers Council for their vast knowledge of the rivers in this bill, and their invaluable help and support throughout the entire process. I know they have each spent thousands of hours working on this proposal, and am hopeful that they are pleased with the final version of the bill. Liz Frenkel, representing the Oregon chapter of the Sierra Club, also deserves special recognition for her role in developing this legislation, as well.

I thank the professional staff members of the Committee on Energy and Natural Resources for their expertise and assistance in this process. They have been down this road with me several times over the years, and I continue to be impressed with their grasp of natural resource issues in the State of Oregon. In particular, I want to thank Tom Williams, Jim O'Toole, Mike Harvey, Gary Ellsworth, Jim Beirne, and Russell Brown for their assistance over the past several months. Not only am I thankful for their knowledge of these issues, I am especially appreciative for their willingness to always work with my staff in a friendly and congenial manner.

Two members of my personal staff, Mike Salsgiver and Mark Walker, also deserve special thanks. Mike, who lives and works in Portland, became intimately familiar with every one of the rivers in this bill, and I know that this has been a long and sometimes arduous process for him and his family.

Last but not least, I thank Gal Achterman, Tom Imeson, John Lilly, and Bill Fuji, members of Governor Goldschmidt's staff, for their involvement in the crafting of this bill. Without their help, we would not be where we are today.

My only regret with regard to this legislation is that my dear friend Tony Bevinetto is not here today to share this moment with us. Tony provided valuable assistance to us in the early days of the bill's development, and as any good river guide can tell you, the first few miles are the roughest of any trip.

Mr. President, I ask unanimous consent that copies of letters between the Oregon congressional delegation and the State of Oregon, Attorney General Frohnmayer's opinion on the Klamath River basin compact, a summary of the characteristics of the rivers contained in the bill, and a copy of Senate Report No. 100-488 on the Umatilla Basin Project Act be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 14, 1988.

MR. FRED HANSEN,
Director, Department of Environmental Quality, State of Oregon, Portland, OR.

DEAR MR. HANSEN: As you may know, we are working on legislation to designate over 40 Oregon rivers and streams for protection under the National Wild and Scenic Rivers Act. It is important that we provide these outstanding national resource waters the recognition and protection they deserve. At the same time, it is imperative that we do so in a fashion that minimizes any adverse effects on Oregon's economy and does not result in any unintended impacts on upstream activities.

We are, therefore, writing to you to make sure that we have an accurate understanding of the applicability of Oregon's water quality standards, including the state's antidegradation policy, to the control of activities that have the potential to generate nonpoint source pollution in areas upstream from designated national wild and scenic river segments. This is a concern raised in testimony by forest landowners, including the USDA Forest Service.

Under existing federal Environmental Protection Agency policy, affirmed most recently in an August 19, 1987, EPA policy memorandum, EPA has stated in relevant part, that:

"EPA's water quality standards regulation (40 CFR 131) provides that *State adopted water quality standards shall include designated beneficial uses and water quality criteria to protect those uses as well as include an antidegradation policy.* It is intended that proper installation of State approved BMPs [best management practices] will achieve water quality standards. Therefore, water quality standards are to be used to measure the effectiveness of BMPs. In the review and revision of water quality standards as provided for in the CWA [Clean Water Act], the State should ensure that water quality standards are achievable and that water quality criteria reflect what is needed to assure protection of beneficial uses. As provided for in EPA's National Nonpoint Source Policy Statement, *there should be 'flexibility in water quality standards to address the impact of time and space components of NPS as well as naturally occurring events.'* This involves the consideration of the variability of natural conditions, magnitude and frequency of impact, and level of acceptable risk.

"For proposed management actions, BMPs designed and implemented in accordance with a State approved process will normally constitute compliance with the CWA. The CWA does not itself directly establish a mechanism for enforcing WQSs directly against NPS. BMPs developed under a State approved process may be used as performance standards for proposed actions. Applicable water quality standards along with water quality monitoring should be used to measure the effectiveness of BMPs.

"*Once BMPs have been approved by the State, the BMPs become the primary mechanism for meeting water quality standards. Proper installation, operation and maintenance of State approved BMPs are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards.*" (Emphasis added).

Oregon's water quality standards, promulgated by the EPA properly reflect this direction. At OAR 340-41-026 (1)(b)(7) the rules require that "logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality." It is our understanding that, consistent with existing federal EPA policy, the state's forest practice rules are the state-approved BMPs and, therefore, "are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards," including the state's antidegradation policy at OAR 340-41-026 (1)(a).

The situation on federal lands administered by the USDA Forest Service and the Bureau of Land Management is similar. The aforementioned EPA policy memorandum suggests that:

"States and operators, managers and/or owners of large tracts of private or public land containing areas of high quality water, where changes in the use or management of the land could pose a threat of degradation, may find it advantageous to negotiate and establish comprehensive planning and operating procedures for the NPS management of such tracts or major portions thereof, consistent with this guidance. Such agreements would include, among other things, understanding regarding monitoring responsibilities, BMP implementation and plan enforcement.

Such procedures could be incorporated into memoranda of understandings (MOUs) between the parties, which should be reviewed and reexecuted periodically to allow for changes in conditions and/or policy."

It is our understanding that both the USDA Forest Service and the Bureau of Land Management have entered into such memoranda of understanding, with the DEQ, and that the requirements and practices contained in Forest Service and BLM timber sales contracts are deemed to be equivalent to those in the state forest practices rules. It is our further understanding with respect to the Forest Service, that the state is reviewing each draft plan prepared under the provisions of the National Forest Management Act of 1976 with the expressed purpose of assuring, among other things, that any new land allocations, standards, or guidelines contained in the draft plans would not contribute to a violation of the state's water quality standards.

Based upon the provisions of the preferred alternatives in the draft plans, the Forest Service has informed us in testimony that the designation of wild and scenic river segments as contemplated in our bill should not, by itself, result in any additional restriction of forest management activities in areas upstream from the designated stream segments as a consequence of the provisions of OAR 340-41-026. The Forest Service is confident that existing mechanisms for working with the DEQ are adequate to assure compliance with the state's water quality standards program without significant timber harvest impacts as the NFMA plans are put into final form.

Would you please confirm whether our understanding of these matters is accurate, and whether the state concurs with the Forest Service's assessment of the extent of any upstream impacts from the proposed legislation. It is our intention to include your response in the legislative history of the final bill so that there will be no confusion over the applicability or impact of Oregon's water quality standards on streams above a segment designated in the legislation.

We may move to mark-up this bill as early as next week. Thank you for a prompt response to this inquiry.

Sincerely,

Bob Packwood,
U.S. Senator.
Mark O. Hatfield,
U.S. Senator.
Les AuCoin,
Member of Congress.
Ron Wyden,
Member of Congress.
Denny Smith,
Member of Congress.
Peter DeFazio,
Member of Congress.

Department of Environmental Quality,
Portland, OR, September 22, 1988.

Senator Mark O. Hatfield,
Hart Senate Office Building,
Washington, DC.

Dear Senator Hatfield: I am pleased to respond to your letter of September 14, 1988 and confirm our discussion with your staff that occurred prior to September 22, 1988 regarding the applicability of Oregon's water quality standards, including the antidegradation policy, to the control of forest management activities or other activities that have the potential to generate nonpoint source pollution in areas upstream from designated national wild and scenic river segments.

Your letter accurately reflects our understanding of EPA policy direction regarding state water quality standards, the required antidegradation policy, and control of nonpoint sources of pollution. Your letter also accurately reflects Oregon's current adopted standards and program for control of forest management related nonpoint sources of pollution. Finally, we generally agree with the assessment of the U.S. Forest Service relative to the extent of any upstream impacts from the proposed legislation.

Establishment of a wild and scenic river segment, by itself, will not automatically result in additional restrictions on activities upstream from a designated segment. Under existing laws and rules, such activities would have to be conducted in a manner which assures that best management practices are applied, that existing water quality standards are not violated, and that beneficial uses of the waterway downstream from the activity are not adversely affected by changes in water quality.

Perhaps the most significant issue is whether the antidegradation policy contained in Oregon's Water Quality Standards would be interpreted to mean "no scientifically measurable change" in any physical, chemical or biological properties of the water when applied to a wild and scenic river segment. Water quality varies naturally. Some variation or change in water quality can occur without adversely affecting beneficial uses of a stream. We understand that designation of a wild and scenic river segment would not arbitrarily preclude activities upstream by reinterpreting the existing antidegradation policy as a "no measurable water quality change" policy. In order to protect beneficial uses and the special values associated with a designated wild and scenic river segment, however, it is appropriate to make sure that water quality changes resulting from activities upstream are minimized to the maximum extent practicable by use of best management practices.

The Department of Environmental Quality and Environmental Quality Commission are currently in the process of reviewing it's nonpoint source pollution control program. This review process is expected to result in greater emphasis on monitoring and evaluating the effectiveness of best management practices in meeting water quality standards. Improved monitoring may identify the need in some instances to modify current best management practices to assure that water quality standards are met. In addition, the federal Clean Water Act requires states to review and update water quality standards on a three year cycle as appropriate. In conjunction with this process, and pursuant to Environmental Quality Commission policy direction, the current antidegradation policy is being reviewed. Any clarifications of existing rules resulting from these processes would be generally applicable on a statewide basis.

However, if through ongoing review processes, current best management practices are determined to be insufficient to protect the beneficial uses and values in wild and scenic river segments, and perhaps other segments, improved or additonal best management practices may be required, or it may be necessary to control more strictly or limit specific activities in portions of the upstream area.

Sincerely,

Fred Hansen,
Director.

Department of Justice,
Salem, OR, September 21, 1988.

William H. Young,
Director, Water Resources Department,
Salem, OR.

Re: Opinion Request OP-6268.

Dear Mr. Young: You have asked several questions about the relationship between the Klamath River Basin Compact (Compact) and various possible state or federal management or designation actions. Because of the complexity of the issues involved, we address in this letter only your query as to what constraints, if any, the Compact places on the federal government's authority to designate that portion of the Klamath River governed by the Compact as a wild and scenic river. A letter addressing your remaining questions will follow shortly.

We conclude that the Klamath Compact does not affect congressional authority to designate the Klamath as a wild and scenic river. The Compact, however, may limit the potential effect of that designation.

DISCUSSION

The Klamath River Basin Compact (the Compact), codified at ORS 542.610 and 542.620, became effective in 1957 upon ratification by Oregon and California and consent by the United States Congress.[1] The purposes of the Compact are to provide for orderly development, use, conservation and control of the waters of the river for various purposes, including irrigation, domestic purposes, protection and enhancement of recreational, fish and wildlife resources, and hydroelectric and industrial purposes. See Art I(A).

The Wild and Scenic Rivers Act (Act), as amended, 16 USC §§ 1271-1287, initially was enacted in 1968. The Act provides for the management of wild and scenic rivers in a free-flowing condition. The original Act designated a number of river stretches as wild and scenic, see 16 USC § 1274, and provided a process for additional segments to be designated, see 16 USC §§ 1275, 1276. Congress is considering adding a portion of the upper Klamath River to the wild and scenic rivers system. See HR 4164.

Designation of a river under the Wild and Scenic Rivers Act affects both the federal government and the states. The Federal Energy Regulatory Commission (FERC) may not license a hydroelectric facility "on or directly affecting" any designated river stretch. 16 USC § 1278(a). No other federal agency may "assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect" on a designated stretch. Id. A state may continue to exercise its authority over the waters in the river only "to the extent that such jurisdiction may be exercised without impairing the purposes of [the Wild and Scenic Rivers Act] or its administration." 16 USC § 1284(d).

The effect of designation under the Act may be modified where the designated river stretch is covered by an interstate compact. Congress recognized that designation might interfere with rights and responsibilities established under an interstate compact. The Wild and Scenic Rivers Act provides:

> "Nothing contained in this chapter shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system." 16 USC § 1284(e).

There is little doubt that Congress retains the right to override a compact if it so choose. One session of Congress lacks power to impair the legislative power of the subsequent Congress. *U.S. Stell Corp.* v. *Multistate Tax Comm'n,* 434 US 452, 486 n 10, 98 S Ct 799, 54 L Ed2d 682 (1978); *Pennsylvania* v. *The Wheeling and Belmont Bridge Co.,* 59 US (18 How) 421, 423, 15 L Ed 435 (1855). In consenting to the Klamath Compact, Congress specifically reserved to itself such authority. See Pub. L. No. 85-222, § 6, 71 Stat 497, 508 (1957) ("The right to alter, amend, or repeal this Act is expressly reserved.") However, because your question arises in the context of HR 4164, which does not mention the Compact, we have analyzed your question assuming the applicablity of 16 USC § 1284(e).

Under the terms of the Act, a conflict between wild and scenic designation and the Compact must be resolved in favor of the Compact. For instance, where a compact has allocated water between an upstream and downstream state, nothing in a wild and scenic rivers designation would increase the upstream state's compact obligation. The Klamath Compact does not make such an allocation, but embodies a number of management principles to which the parties have agreed.

Our inquiry, therefore, turns to whether designating a portion of the Klamath as a wild and scenic river would modify or conflict [2] with the Compact. To answer that question, we first must determine the nature of the rights and obligations created by the Compact.

1. *State and Federal Obligations Under the Compact*

Several features of the Compact are important [3] to this discussion: (1) The Compact recognizes existing pre-Compact vested rights, [4] Art III(A); (2) As a general rule, no person may acquire any water rights after the enactment of the Compact except through the state permit process, Art III(B); (3) Post-Compact appropriative rights for domestic uses, and irrigation uses up to the amount necessary to irrigate a total of 300,000 acres,[5] will have priority over post-Compact appropriative rights for other uses, Art III(C).

These substantive obligations bind the states; Article XII(A) provides that "[e]ach state and all persons using, claiming or in any manner asserting any right to the use of the water * * * shall be subject to the terms of this Compact." By and large, the Compact is designed to be self-executing. The provisions of the Compact "shall by operation of law be conditions of the various state permits, licenses or other authorizations relating to the waters of the Klamath River Basin." Art XII(D).

The federal government's obligations under the Compact are more limited than those of the states. Article XI limits the federal obligations to those specifically acknowledged in Article XIII. Article XI(A) provides that no Compact provision other than Article XIII may be interpreted in a way that would "impair or affect any rights, powers or jurisdiction of the United States, its agencies or those acting by or under its authority, in, over and to the waters of the Klamath River Basin."

Article XIII provides that the United States shall comply with: (a) the Article III(A) recognition of vested rights, see Art XIII(B)(1), and (b) a limited recognition of later-acquired rights for domestic and irrigation purposes.[6] Art XIII (B)(2). These requirements are binding on the United States, its agencies, and "any entity acting under any license or other authority granted under the laws of the United States." Art XIII(B).

2. *Effect of Designation Under the Act:*

Were there no Klamath Compact, the designation of the Klamath as a wild and scenic river would have several significant effects. First, it would in effect create a federal reserved water right. See 16 USC § 1284(c). Second, it would preclude impoundments, at least on the designated stretch. Third, it would bar the federal government from authorizing hydroelectric facilities. 16 USC § 1278(a).

We next examine whether the existence of the Compact alters those effects.

a. *Reserved Water Rights:*

The Act effectively reserves to the federal government that amount of unappropriated water necessary to accomplish the purposes of each designation.[7] As stated in a 1979 Interior Department Solicitor's Opinion:

"The Wild and Scenic Rivers Act contains an express, through negatively phrased, assertion of federal reserved water rights:

"Designation of any stream or portion thereof as a national wild, scenic or recreational river area *shall* not *be construed as a reservation of the waters of such streams for purposes* other than those specified in this chapter, or *in quantities* greater than *necessary to accomplish these purposes.*[11]

"The legislative history of the Wild and Scenic Rivers Act emphasizes the congressional intent to reserve unappropiated waters necessary to fulfill the Act's purposes. In explaining the conference report on the Senate floor, Senator Gaylord Nelson, a principal sponsor and floor manager of the bill in the Senate, read the following sectional analysis:

"Enactment of the bill would reserve to the United States sufficient unappropriated water flowing through Federal lands involved to accomplish the purpose of the legislation. Specifically, only that amount of water will be reserved which is reasonably necessary for the preservation and protection of these features for which a particular river is designated in accordance with the bill.[11]

"Thus, the intent to reseve unappropiated waters at the time of river designation is clear and the remaining question is the scope of the reserved water right." 86 I.D. 553, 607–08 (1979) (emphasis in original; footnote and citations omitted).

A recent Department of Interior Solicitor's Opinion reaffirms this view, stating that "the reservation of waters was made, with limitations," in 16 USC § 1284(C). (Slip opinion dated July 28, 1988, at 28.)

The creation of such a reserved water fight probably would conflict with the Compact. Of the provisions to which the federal government has bound itself in whole or in part, we believe that a federal reservation of water has the potential to create a conflict only with: Article III(A), which recognizes vested water rights that preexisted the Compact; Article III(B), which establishes the procedure for appropriating future rights; and with the special priorities established for domestic and irrigation uses.

We conclude that designation under the Act would not conflict with the Compact's recognition of preexisting vested rights. In the 1968 Wild and Scenic Rivers Act, Congress recognized the validity of existing water rights. Congress' intent was to reserve only unappropriated water rights at the time a river is designated. See colloquy between Senators Church and Allott, S Res 119, 90th Cong, 1st Sess, 113 Cong Rec 21747 (daily ed Aug. 8, 1967) ("The reservation of unappropriated waters for a National Wild and Scenic River System is not intended to affect any prior valid water right under State law * * *.")

Regarding rights created after the effective date of the Compact, Article III(B) provides that "rights to the use of unappropriated waters originating within the Upper Klamath River Basin for any beneficial use * * * by direct diversion or by storage for later use, may be acquired by any person after the effective date of this compact by appropriation under the laws of the state where the use is to be made * * * and may not be acquired in any other way." This provision has no bearing on any reserved right created under the Act, because Article II(E) defines "person" to exclude the United States.[8]

Finally, we must explore whether the creation of a reserved right under the Wild and Scenic Rivers Act would conflict with the priority system created by the Compact. Under the Compact, water rights are given a priority based on filing time. See Art III(B)(1). However, in an effort to protect irrigation and domestic uses, Article III(C) of the Compact grants those uses, up to a specific amount, special priority over other uses.

In consenting to the Compact, Congress did not bind the United States to comply with Article III(C). However, in Article XIII(B)(2), the federal government did agree not to impair, without payment of just compensation, water rights for domestic or irrigation uses issued in the Upper Klamath River Basin, to the extent domestic and irrigation depletions above Keno, Oregon, do not exceed 340,000 acre-feet in any calendar year.

Therefore, the states may authorize additional domestic and irrigation uses up to the amount that would bring annual depletions at Keno to 340,000 acre-feet, even if those uses otherwise would conflict with the wild and scenic designation. Those rights, although granted later in time, would have priority over the federal reserved right.

b. *Impoundment for Domestic and Irrigation Purposes:*

Designation under the Wild and Scenic River Act appears to prohibit any further impoundments on the designated stretch of the river, for any purposes, including domestic or irrigation purposes. Upstream of downstream impoundments could be barred if they had an adverse effect on the designated stretch.[9]

One goal of the Compact is to meet the "anticipated ultimate requirements for domestic and irrigation purposes." Art I(B). Article III(C) contemplates the use of an amount of water sufficient to irrigate 100,000 acres in Oregon and 200,000 acres in Calfornia. To achieve that goal, the Compact established the priority and preference provisions discussed above. It is possible that the amount of additional irrigation development could not be realized without further impoundments, which might be within or above the scenic stretch.

Although the drafters of the Compact went to some lengths to assure that barriers to the full anticipated realization of irrigation and domestic uses would be removed, they did not obligate the states to grant all requests that would further such uses.[10] Therefore, even if compliance with the Act will impede development of the river's domestic and irrigation potential, this result does not modify or conflict with the terms of the Compact.

One may argue that 16 USC § 1284(e), quoted *supera* at 2, obligates the federal government not to take any actions that would interfere with a state's power under state law to manage river covered by a compact. Under this interpretation, the federal government would be bound by Virtue of 16 USC § 1284(e), to honor the amounts of water that can be given a special priority by Article III(C).

That interpretation, however, would modify the terms of the Compact, because it would impair the powers specifically reserved to the United States in Article XI(A), which states:

"Nothing in this compact shall be deemed:

"A. To impair or affect any rights, powers or jurisdiction of the United States, its agencies or those acting by or under its authority, in, over and to the waters of the Klamath River Basin, nor to impair or affect the capacity of the United States, its agencies or those acting by or under its authority in any manner whatsoever, except as otherwise provided by the federal legislation enacted for the implementation of this compact as specified in Article XIII."

Further, a fourth preliminary draft of the Compact specified that state-awarded rights to use of water for domestic or irrigation purposes, established already or in the future, could not be limited by any federal assertion of a water right for power production, flood control, navigation or other nonconsumptive uses anywhere in the Klamath River Basin. Under the proposed language, federal authority to designate the Klamath as a wild and scenic river would have been subordinated to state authority to appropriate water for domestic and irrigation uses. This provision was not adopted. We believe that the substitution of the more limited restriction of Article XIII shows that the federal government refused to be so restricted. See proposed Article III(D), Article X(A)(2), dated September 29, 1955.

The federal government's position on state authority over federal activities apparently was stated clearly during the negotiations. In a report on the Compact submitted to the California legislature, the issue was explained as follows:

"Both Commissions felt from the beginning that because of the great importance of federal activities in the Klamath River Basin, the Compact would be of little value unless the United States complied with its provisions the same as any other water user. Vigorous objections were raised, however, by certain federal agencies, particularly the Department of Justice and the Federal Power Commission. They made it plain that they would recommend opposition by the executive department of the federal government to Congressional approval of the Compact, if the Compact required full compliance with its terms by the United States. Because such opposition, if it developed, would seriously endanger the chances of Congressional consent and, further, would probably lead to a Presidential veto of the consent bill even if it did pass, the Commissions adopted another approach to securing adequate federal compliance.

"Article XIII of the Compact states that the Compact shall not go into effect unless the Act of Congress consenting to it subjects federal agencies and licensees to specified Compact provisions. These specified provisions are those which the Commissions believe must be respected by all water users in order for the Compact to be meaningful. They include recognition of existing water rights established under state law, restrictions on out-of-basin diversions, and the superiority of future rights for domestic, municipal, and irrigation uses in the Upper Klamath River Basin over rights for other uses. This approach accomplishes the basic purposes of the Compact and is apparently more acceptable to the objecting federal agencies."

Attachment B to letter from Bert A. Phillips, Chairman, California Klamath River Commission, to Joseph A. Beek, Secretary of the Senate and Arthur A. Ohnimus, Clerk of the Assembly, January 21, 1957, at 8-9.

In Article XIII, Congress carefully delineated the extent of the federal government's obligations under the Compact. Absent some clearer indication of congressional intent,[11] we decline to interpret the general language of 16 USC § 1284(e) to state Congress' intent to ignore those limitations. The better view of that statute is that Congress has reaffirmed whatever federal obligations have been agreed to in the Compact, and has declined to modify the rights and obligations of the states or the federal government under the Compact, but has not increased either federal or state obligations under the Compact.

c. *Effect on Hydroelectric Projects:*

If Congress designates a portion of the Klamath River as a wild and scenic river, that designation will bar hydroelectric development on that stretch of the river. FERC may not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or any other project works under the Federal Power Act. 16 USC § 1278(a). The designation will allow only those other uses that are consistent with wild and scenic status. 16 USC § 1281.

The Compact addresses hydroelectric development in two sections. First, Article IV provides that it shall be the "objective" of each state to provide for the most efficient use of available power head, in order to secure economic distribution of water, and low power rates for irrigation and drainage pumping. Second, Article III(B)(1) provides that each state shall give preference to certain uses over others in the event of conflict among applications for water use. The preferences, from highest to lowest are: (a) domestic; (b) irrigation; (c) recreation use, including fish and wildlife; (d) industrial use; (e) generation of hydroelectric power; and (f) other uses recognized under state law.

Article IV states a goal of the Compact, but creates neither a state nor a federal obligation to grant a hydroelectric permit, or a water right for hydroelectric generation. Nor does it create a preference for hydroelectric uses over other uses. Article III(B)(1) does establish a method for resolving conflicts if applications for different uses are pending at the same time. In such a circumstance, hydroelectric use has a lower preference than the recreation, fisheries and wildlife uses protected by the wild and scenic designation. 16 USC § 1271. Therefore, we conclude that the Compact creates no rights or obligations regarding hydroelectric power that would conflict with the designation of the Klamath as a wild and scenic river.

3. *Relevance of Compact Consent Act:*

One other point bears mention. For different reasons, different parties to the current dispute over the question discussed in this opinion regard section 4(c) of the congressional Act consenting to the Compact as dispositive of the question. That provision states:

"Nothing in this Act or in the compact shall be construed as:

* * * * *

"(c) Impairing or affecting any existing rights of the United States to waters of the Klamath River Basin now beneficially used by the United States; nor any power or capacity of the United States to acquire rights in and to the use of the said waters of said basin by purchase, donation, or eminent domain."

Pub. L. No. 85-222, § 4(c), 71 Stat 497, 508 (1957). Counsel for the City of Klamath Falls appears to argue that this provision sets forth the only ways in which the United States could acquire water rights after the effective date of the Compact.[12] That view is incorrect. The relevant question is what portion of the United States' authority Congress surrendered to the states by consenting to the Compact. The terms of the Compact itself, and specifically Articles XI and XIII, are the source of the answer to that question, as set forth in the preceding pages. The language quoted above does not bear on the issue. That provision is merely an interpretation clause that does not purport to limit federal power under the Compact, but rather to set forth expressly and in plain language that the Compact shall not be construed to impair certain specified, but nonexclusive, powers. Consequently, nothing in that provision affects the proper analysis of your inquiry.

CONCLUSION

The Klamath Compact does not forbid Congress from designating the Klamath River as a wild scenic river. There is no necessary conflict between the Compact and designation, nor does the designation modify the Compact. However, water reserved by that designation is subordinate to the rights of irrigators and domestic users, to the limited extent set out in Article XIII(B)(2).

Very truly yours,

DAVE FROHNMAYER,
Attorney General.

FOOTNOTES

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[1] *See* Note following ORS 542.610. Congress consented to the Compact by Pub. L. No. 85-222, 71 Stat 497 (1957).

[2] 16 U.S.C. § 1284(e) disclaims any intent to "alter, amend, repeal, interpret, modify, or be in conflict" with an interstate compact. First, the Wild and Scenic Rivers Act may not "be in conflict" with the Compact, *i.e.*, forbid what is required or require what is forbidden by the Compact. Second, the Wild and Scenic Rivers Act may not "alter, amend, repeal or modify" the Compact, *i.e.*, add to or subtract from the rights and obligations under the Compact. Finally, the Wild and Scenic Rivers Act may not be used to "interpret" the Compact, *i.e.*, be relied upon to construe language or clarify intent. For purposes of simplication, we will use the phrase "modify or conflict" as a shorthand for these restrictions.

[3] Other significant provisions include the following: (1) Priority of right will be governed by priority in time in the entire basin, Art III(B)(1); (2) In the event of conflicting applications for use of water, certain uses are given perference, Art III(B)(1); (3) With one exception, no out-of-basin diversions are permitted, Art III(B))(2)(a), (3)(a); (4) Diversions upstream from Keno, Oregon, for use in Oregon shall have return flows into the river upstream from Keno, Art III(B)(2)(a); (5) Substantially all return flows from diversion into California shall be returned above Keno, Art III(B)(3)(b); (6) Division out of the Jenny Creek Basin may be limited by the Klamath River Compact Commission.

[4] Article III(A) also recognizes inchoate rights then existing for the Klamath Project. Although project development had not yet been completed, all water rights that eventually might be put to beneficial use were recognized.

[5] Article III(c) refers to the amount of water necessary to irrigate 300,000 acres. In contrast, Article XIII(B)(2) refers to 340,000 acre-feet of water. There are not necessarily equal amounts.

[6] In addition, the federal government also agreed to comply with: (a) the limitations on diversions from the Jenny Creek basin, Art XIII(B))(3); (b) certain limitations on out-of-state diversions, Art XIII(B)(4)(; and (c) the provisions on return flows, Art XIII(B)(5).

[7] The reserved water rights doctrine had its genesis in *Winters v. United States*, 207 U.S. 564, 28 S CT 207, 52 L Ed 340 (1908) (in creating the Fort Belknap Reservation, Congress impliedly reserved enough unappropriated water to fulfill the purposes of that Indian reservation). The doctrine has been applied to reservations of federal land for purposes other than Indian reservations. *E.g., Cappaert v. United States*, 426 U.S. 128, 96 S Ct 2062, 48 L Ed2d 523 (1976) (presidential proclamation designating Devil's Hole as part of National Monument

implicitly reserved sufficient water to preserve the habitat of the rare Devil's Hole pupfish). We understand that a majority of the lands bordering the segment of the Klamath River proposed for designation are public lands managed by the Bureau of Land Management. It is, therefore, unnecessary to determine in this opinion the exact constitutional basis upon which a wild and scenic designation would "reserve" water were the designated stretch wholly in private ownership at the time of designation.

[8] Moreover, this provision would not in any event apply to a wild and scenic designation. Article III(B) does not apply to instream water rights. By its terms, Article III(B) addresses only "rights to the use of unappropriated waters * * * *by direct diversion or by storage for later use.*" (Emphasis added.)

[9] The Secretary of the Interior or the Secretary of Agriculture would determine whether a particular structure would have an adverse effect. *See* 16 U.S.C. § 1278(a). That determination would hinge on the overriding purpose of any designation under the Act: to preserve the stream in its free-flowing condition. *See* 16 U.S.C. § 1271. (In *Diack v. City of Portland*, 306 or 287, 299, —— P2d —— (1988), the Oregon Supreme Court, construing Oregon's Scenic Waterways Act, ORS 290.805 to 390.925, held that the term "free-flowing" is self-explanatory, and is used in a "purely descriptive sense.") No federal department or agency may "recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration * * *." 16 U.S.C. § 1278(a). Under the Wild and Scenic Rivers Act, the state also must exercise its jurisdiction in a manner which will not impair the purpose of the Act or its administration. 16 U.S.C. § 1284(d).

[10] Under the Compact, each state grants to the other the right to construct facilities for storage and conveyance of water from one state to the other, "insofar as the exercise of such right may be necessary to effectuate and comply with the terms of this compact." Art V(A). We do not read this provision to create an absolute right to build an impoundment for storage. If State A authorizes the use of the water, State B will not object if the impoundment is located in State B so long as the location is approved by the Compact commission.

[11] The legislative history of the Wild and Scenic Rivers Act sheds no light on this issue. The only reference to the Compact in the legislative history is a colloquy between Representatives Flood and Aspinall concerning the impact of the Act on a proposed compact between New York, Pennsylvania and Delaware dealing with the Susquehanna River. *See* H.R. 18260, 90 Cong, 2d Sess, 114 Cong Rec 26590 (daily ed Sept. 12, 1968). We do not find this language particularly illuminating, other than to reconfirm the already apparent meaning of 16 U.S.C. § 1284(e), which by its terms pledges not to interfere with specified compacts.

[12] *See* letter dated July 25, 1988, from Richard M. Glick to George Flitcraft, mayor of City of Klamath Falls.

Characteristics and Outstandingly Remarkable Values of Rivers Designated in S. 2148

BIG MARSH CREEK, OREGON

Outstandingly remarkable values for Big Marsh Creek are: geology, fisheries/wildlife and scenic.

Big Marsh Creek is located in a deep, glaciated valley. The stream has been diverted from the natural channel for approximately 5 miles in the area of Big Marsh.

CHETCO, OREGON

The outstandingly remarkable values of the Chetco River are its anadromous fisheries and water quality. The Chetco provides high-quality spawning beds and reading pools, as well as on-site angling. The river's recreation resource is also important.

CLACKAMAS, OREGON

The Clackamas River has several outstandingly remarkable values: a superb fishery, spectacular scenery, and significant recreational opportunities.

The river has been identified as one of the most important anadromous and trout fisheries on National Forest System lands in the Northwest Region. The outstanding scenery coupled with the river's proximity to Portland makes it one of the most popular recreation areas in the state. Another significant feature of the river is the confirmation of seven species of threatened or endangered plants.

The entire Clackamas River is recognized as a distinctive visual resource. Along the upper half of the river, dense forests and steep canyon walls are varied by large open meadows in the Big Bottom country. The lower half of the river is marked by a deep gorge with views of rock cliffs and three-laden slopes.

CRESCENT CREEK, OREGON

The Nationwide Rivers Inventory team identified geology as the outstandingly remarkable value for Crescent Creek.

Crescent Creek flows past some interesting recent lava flow formations and then through a generally flat marshy valley. It is felt to possess both outstanding geologic and scenic values.

CROOKED RIVER, OREGON

Outstanding scenic values exist within this 13.8 mile river segment from Bowman Dam to Dry Creek. The river meanders through a very scenic, rugged canyon that includes towering basalt cliffs up to 600 feet high, with scattered western juniper growing on its steep hillsides. State Scenic Highway 27 is adjacent to the river on the east bank. Several primitive BLM camping areas and the Chimney Rock Recreation Site are also located on the east bank between the highway and the river.

Fish habitat is good to excellent for rainbow and Lahonton trout as well as occasional smallmouth bass. Although this area is not unique or outstanding geologically, the steep, fractured basalt cliffs add significantly to the scenic quality of the area.

The river also provides expert whitewater kayaking and rafting opportunities (Class IV-V) during the spring runoff period.

DESCHUTES RIVER, OREGON

Outstanding scenic, recreational, cultural, geologic, wilderness, fish and wildlife as well as historic and botanical values exist in this area. The Deschutes flows through a rugged, highly scenic, steep-walled basalt canyon that increases in depth as it proceeds northward. The canyon contains outstanding scenery. Three waterfalls and a wide variety of riparian vegetation also enhance the qualities of the area. Excellent fishing opportunities exist for rainow, German brown, Dolly Varden and Kokonee. Access is limited in the corridor due to its rugged character. No developed trails exist in the area. A portion of this river segment is located in the Steelhead Falls Wilderness Study Area. This segment contains significant cultural values which include prehistoric rock art sites, rock shelters and a historic river crossing. Unusual botanical values such as the Estes wormwood which is not known to occur anywhere else in the world is located in the area.

The lower 100 miles of the Deschutes provides excellent whitewater boating opportunities, and has 12 major rapids. Fishing for wild trout, steelhead and Salmon is considered to be some of the best in the nation.

DONNER UND BLITZEN RIVER, OREGON

The Blitzen River and its tributaries lie within, and are part of, Steens Mountain. Its outstandingly remarkable values include wild trout fisheries, scenery, and geology.

Steens Mountain offers an outstanding opportunity to explore a high elevation fault block geologic formation. From its gentle western slope, to the rugged east face, Steens Mountain offers a variety of unique ecosystems, along with textbook examples of glaciated canyons.

Because of the diversity of landform and elevation, Steens Mountain has a wide variety of plant and animal life.

EAGLE CREEK, OREGON

The outstandingly remarkable values of Eagle Creek are: scenic, recreational, and geologic. One section flows through a glaciated "u" shaped valley with mountain meadows and craggy peaks. Another section flows through 500-1,000 foot deep, forested canyon. The river is also extremely rich culturally, both historically and prehistorically.

ELK RIVER, OREGON

Fisheries are the outstanding remarkable value. The Elk River contains one of the most important and valuable wild runs of anadromous fish (steelhead and salmon) in Oregon. The scenic qualities of this small river are very complementary and its water quality and natural features are outstandingly remarkable.

GRANDE RONDE RIVER, OREGON

The outstandingly remarkable values of the Grande Ronde are: scenic, recreational, and wildlife and fisheries. Noted in the State of Oregon study: "The scenic quality from the river, as well as from the adjacent land, is spectacular. The views are enhanced by the dramatic cliffs and rock walls, and an abundant variety of trees, shrubs, and grasses. The character and shape of the canyon seem to change as a boater or hiker moves through it.

The river is also one of the most important and valuable rivers in northeastern Oregon in terms of recreational use. It is heavily used by rafters, kayakers, canoeists, and increasingly, by steelhead fishermen. The Grande Ronde is one of the best streams in this part of the state for rainbow trout fishing and is becoming increasingly important for steelhead fishing. The Grande Ronde and Wallowa canyons are critical winter range for Rocky Mountain elk, deer, mountain sheep, and bald eagle.

IMNAHA RIVER, OREGON

The outstandingly remarkable values of the Imnaha River are: scenic, wildlife and fisheries. The river also has recreational, geological and cultural values.

JOHN DAY RIVER, OREGON

The outstandingly remarkable qualities include scenic, recreation, and fisheries.

The majority of the land adjacent to the John Day River is primitive and undeveloped. The river flows through gentle farmland which is privately owned as well as through rugged 1,000 foot deep basalt canyons which are predominantly public land. In the Dayville to Kimberly segment it flows through the John Day Fossil Beds National Monument. In the area between Butte Creek and Cottonwood Bridge, the river flows through three wilderness study areas which possess outstanding natural values. The river and the unconfined primitive recreation opportunities of the John Day Canyon in these areas are a major attraction for whitewater boaters and other recreationists. Besides the outstanding scenery, the area also offers outstanding bass and steelhead fishing, as well as excellent hunting, archaeological, paleontological, geological and historic values. The river offers 1-5 day whitewater boating opportunities during the spring months of April, May and June.

JOSEPH CREEK, OREGON

The outstandingly remarkable values of Joseph Creek are: scenic, recreational, geological, fisheries and cultural. The stream and its environs are popular for hiking, horseback riding, big game hunting, and supports an anadromous fishery.

The canyon and stream are named for Chief Joseph, famous Nez Perce Indian tribal leader.

LITTLE DESCHUTES, OREGON

The outstandingly remarkable values of the Little Deschutes are scenery and geologic features. The Little Deschutes River exhibits a unique, tight pattern of small loop meanders in a generally flat, broad marshy valley. It exhibits examples of oxbows, meander scars, cut off channels, and old terraces.

LOSTINE RIVER, OREGON

The outstandingly remarkable values of the Lostine River are: scenic, recreational, and wildlife and fisheries. The river is one of the most important drainages in the Eagle Cap Wilderness in terms of scenic quality and recreation potential. Part of it flows through typical glaciated "U" shaped valleys with beautiful mountain meadows surrounded by high, craggy limestone, granitic, and basaltic peaks. Segment B, while also a glaciated valley, is at a lower elevation and consequently more forested. The river offers numerous opportunities for hiking, camping, fishing, and hunting. The Lostine supports anadromous fish and a herd of Rocky Mountain Bighorn Sheep.

MALHEUR RIVER, OREGON

The Malheur River's outstandingly remarkable value is its unique scenic character. The river is in a rugged canyon, in some instances 500 to 600 feet in depth. There are prominent rock outcrops, particularly along the southwestern edge of the canyon. The canyon bottom vegetation is park-like, with sage brush/grass, meadows, and scattered old growth ponderosa pine.

MCKENZIE RIVER, OREGON

The outstandingly remarkable values associated with the McKenzie river are recreational, scenic, and cultural, and the Nationwide Rivers Inventory includes fisheries. The McKenzie River is an important and valuable river to Oregon in terms of challenge to the skills of whitewater rafters and driftboat users, fishing, and magnificent vegetation. Its water clarity and cold temperatures enjoy a national reputation.

METOLIUS RIVER, OREGON

The outstandingly remarkable values of the Metolius include: scenic, recreational, archaeological and historical, geological, water quality, and fisheries. The Metolius River originates from high volume springs of clear, cold water offering a unique point-source feature. One section is noted for its old-growth ponderosa pine stands. The river in this section flows along the base of the Green Ridge Fault and provides a variety of geologic features. Excellent kayaking and rafting opportunities exist in the study area. The river is noted for its excellent fishing and its kokanee spawning in the fall of the year.

MINAM RIVER, OREGON

The outstandingly remarkable values of the Minam River are: scenic, recreational, geological, and fisheries. The river flows through a typically glaciated valley surrounded by high and craggy granitic, limestone, and basaltic peaks. The valley is primarily forested with frequent occurrence of open grassy meadows. The river offers numerous opportunities for hiking, camping, fishing, and hunting.

NORTH FORK CROOKED RIVER, OREGON

The North Fork of the Crooked River is a free flowing river. A 12.5 mile segment of the North Fork flows through an existing wilderness study area. The river canyon has outstanding scenic qualities formed by basalt cliffs ranging from 300 to 900 feet high. The canyon has a large variety of vegetation ranging from Douglas fir, ponderosa pine and aspen groves in several areas to gently rolling hills covered with juniper and sage in others. The river provides outstanding fishing for trout, hunting for deer, elk and antelope, and some whitewater boating. There are two waterfalls located within the study area with vertical drops of 10-15 feet. These features add significantly to the natural beauty of the North Fork Canyon. The area also has significant cultural and geological features and is a favorite winter roosting area for bald eagles.

NORTH FORK JOHN DAY RIVER, OREGON

The outstandingly remarkable values of this study area include scenic, geologic, cultural, recreational, as well as fish and wildlife. The river canyon possesses unique topography created by rugged basalt outcrops. The vegetation of the area varies from dense ponderosa pine and Douglas fir on the upper portions to open juniper and sagebrush covered hillsides near Monument and Kimberly. The North Fork is one of the most important fisheries in the region. It supports the largest spawning population of wild spring chinook and summer steelhead in the Columbia River system upstream from Bonneville Dam.

NORTH FORK MALHEUR RIVER, OREGON

The outstandingly remarkable values of the North Fork Malheur River are scenic and geological. The river is in a steep, rugged canyon with basalt rimrock above the stream course. The canyon is, in some locations, 500 to 800 feet in depth. Each bend of the river brings into view another scene of the canyon's diverse micro-environments.

NORTH FORK MIDDLE FORK WILLAMETTE RIVER, OREGON

The inventory and study of the North Fork of the Middle Fork of the Willamette River for Oregon State Scenic Waterways designation suggests that the outstanding values include: water quality, recreational opportunities, scenery, archaeological and historical sites, and unique plant and animal species.

Water quality is an outstanding value of both Waldo Lake and the rivers. The level of purity of the lake is equal to laboratory distilled water. Waldo Lake is regarded by some experts as one of the purest lakes in the world (Castenholz, R.W., on the scientific value of Waldo Lake, Oregon Legislative Hearing, House Committee on Environment and Energy, May 2, 1983, Exhibit I of HB2435 testimony, Salem, Oregon).

The variety of recreational opportunities available include hiking and fly fishing for wild trout in a primitive setting. The river is well known to local anglers as a high quality fly fishing area.

The river also contains unique natural scenery. Among the scenic features is a steep river canyon that drops 2,400 feet in 3 miles and has 34 waterfalls within twice that distance. The lower 12 miles of one section flow through a steep canyon approximately 1,000 feet deep.

The NFMF has been an important travel and hunting route for nearly 10,000 years (Minor, Rick and Audrey Pecar, 1978, The Cultural Resources of the Williamette National Forest, Willamette National Forest, Eugene, Oregon). There is also evidence of the early logging railroads and Civilian Conservation Corps work.

The NFMF supports a variety of plant and animal life. It is home to several threatended and endangered species, (both State and Federally listed) such as the wolverine, fisher, bald eagle, Northern Spotted owl, bog orchid, coralroot orchid, mountain lady slipper, and others.

NORTH FORK OWYHEE RIVER, OREGON

Wildlife habitat, scenery, geology and recreation. The North Fork has been rated by the Boise (Idaho) BLM District as a "world class" expert kayaking stream. Although that portion of the North Fork in Oregon is very short it does have considerable value in terms of recreation and fish and wildlife habitat.

NORTH FORK SMITH RIVER, OREGON

The North Fork Smith River in Oregon flows out of the Kalmiopis Wilderness, through a short reach of the Siskiyou National Forest, and on into California. At, and below the State line, the North Fork is designated as a Wild and Scenic River. The entire North Fork was originally included in the NRI for its "outstandingly remarkable" scenery, whitewater recreation potential, water quality, and fisheries. The scenery and "emerald hued" water of the Oregon portion of the North Fork greatly enhances and complements these values immediately downstream. From a systems approach, the Oregon portion is integral to the whole.

NORTH FORK SPRAGUE RIVER, OREGON

The NF Sprague contains outstanding scenic and geological features. In one section, the river flows through low sagebrush covered hills. Within another section, the river flows into a steep, basalt canyon returning, and in yet another section, to broad, high elevation meadows with stands of Lodgepole pines.

NORTH POWDER RIVER, OREGON

The outstandingly remarkable values of the North Powder river are its scenery and recreational opportunities. An historic wheel track which follows the stream provides opportunities for motorized use in a relatively primitive setting. There are also opportunities to hike, hunt, and camp.

NORTH UMPQUA RIVER, OREGON

The values which make the North Umpqua suitable for designation are water quality, scenic quality, recreation opportunities, and the fisheries resource.

POWDER RIVER, OREGON

The Bureau has identified this area as having excellent raptor nesting and foraging habitat, bald eagle winter habitat, and outstanding recreational, scenic and cultural values.

QUARTZVILLE CREEK, OREGON

Recreational mining and scenic drive with some white-water boating opportunities at high flows.

ROARING RIVER, OREGON

The Roaring River's primitive character and remoteness are its outstandingly remarkable values. The Roaring River drainage is largely undeveloped with no vehicular access. Scenery and fisheries are two significant resources associated with the river.

SALMON RIVER, OREGON

The Salmon River's outstandingly remarkable values are its cold-water sport fishery and its varied vegetation and topography, and the Nationwide Rivers Inventory includes scenic value. The Salmon River is regarded as the best tributary fishery in the Sandy River drainage. Anadromous species include winter and summer steelhead, and spring chinook and coho salmon. Anadromous species are confined to the lower third of the river. Resident and wild cutthroat trout occur in good numbers above the falls.

From its headwaters through the upper third, the Salmon River is characterized by exposed rock and sparse coniferous vegetation. Steep canyon walls and dense coniferous forest, creating a sense of seclusion and isolation, are typical of the river's mid and lower sections. A 2.5 mile stretch of the river has successive, spectacular waterfalls ranging in height from approximately 15 to 75 feet.

SANDY RIVER, OREGON

The Upper Sandy River's outstandingly remarkable value is its striking scenery. Views from the river include forest, tall bluffs, and cliffs.

The Lower Sandy River's outstandingly remarkable values are its striking scenery and important recreational anadromous sport fishery. The Lower Sandy river flows through deeply cut gorges, with striking views from the river of the tall bluffs in a natural forested setting.

From the State study report, "the Sandy River in this stretch is a paradox: 35 minutes from downtown Portland and within an hour's drive of a million people, man's hand has yet touched it only lightly in passing."

The river, for three miles below Dodge Park, has the feel of a mountain stream in high country. The great shattered boulders along the bank and in the river seem to belong to an alpine area.

SOUTH FORK IMNAHA RIVER, OREGON

The outstandingly remarkable values of the SF Imnaha River are: scenic, recreational, geological, and fisheries. The river flows through a glaciated valley surrounded by high and craggy granitic, limestone, and basaltic peaks. The valley is primarily forested broken with frequent open grassy meadows. There are numerous opportunities for hiking, camping, fishing, and hunting.

SOUTH FORK JOHN DAY RIVER, OREGON

This 47 mile river segment has unique and outstanding scenic value with large basalt outcrops and a wide diversity of vegetation which includes grasses, willows, juniper and ponderosa pine with some Douglas fir on the moist north and east slopes. In the upper reaches the river flows through relatively level agricultural land before entering the more rugged canyon. This area has high value for sightseeing, camping, fishing, and other forms of dispersed recreation. There are 6 small ranches and a well maintained public road that parallels the river throughout the 48 mile length. Except for the road and ranches, the study area is natural in character. There are numerous small rapids and the larger Izee Falls area, where the river drops 55 vertical feet in a short distance. Aldrich Mountain Wilderness Study Area provides a back drop for a portion of the canyon. The Murderers Creek State Wildlife Management Area is also adjacent to a portion of the river.

SQUAW CREEK, OREGON

The outstandingly remarkable values of Squaw Creek and its tributaries include scenic, recreational, archeological and historical. Squaw Creek originates in the Three Sisters Wilderness Area, and flows through high desert lands in unroaded areas. Squaw Creek is known for its old-growth ponderosa stands, and is also well-known for its ancient Indian archeological sites.

SYCAN RIVER, OREGON

The most outstanding characteristic for the river is its distinctive scenery, which varies from a steep canyon to broad meadow. The Nationwide Rivers Inventory also includes geology and wildlife. There is a diversity of rockform, vegetation, and landform. The vegetation is primarily coniferous with scattered old-growth ponderosa pine and lodgepole pine flats intermingled with water-related riparian vegetation such as willows and other deciduous shrubs. Expanses of sagebrush and bitterbrush, in the dryer areas lend diversity. Of noteworthy significance is Sycan Marsh which includes several rare plant communities. Recreational geological and cultural resources are also additional values associated with the river corridor.

UPPER ROGUE RIVER, OREGON

Outstandingly remarkable values of the river corridor include scenic, geologic, and historic features. Included within the river corridor are diverse landforms that vary from pumice flats to steep canyons and deep gorges. Volcanic actions have combined with fluvial and climatic forces to produce a river landscape with a rich diversity of landform, water features, vegetation and ecological systems. The river is an inherent part of a scenic highway corridor that serves as a major tourist route to Crater Lake National Park.

WENAHA RIVER, OREGON

The outstandingly remarkable values of the Wenaha River are: scenic, recreational, and wildlife and fisheries. The river flows between rugged basalt outcrops which rise about 1,600 feet to the plateau above. This is one of the best streams in this part of the state for rainbow trout fishing.

WEST LITTLE OWYHEE RIVER, OREGON

The Upper West Little Owyhee is unique in that it is deeply incised with interesting erosional patterns and varied rock formations. The vegetation within the river corridor is virtually pristine due to the rugged canyon walls that prevent livestock grazing. The canyon also offers superb scenery, unique cultural sites and opportunities for solitude and primitive recreation.

WHITE RIVER, OREGON

One area contains outstanding scenic, fish and wildlife, recreational and geologic values. This 19.2 mile river segment is one of the most scenic river segments in Oregon. The canyon area varies in width from ¼-½ mile. Except for the area west of Highway 197 near Tygh Valley, the canyon is very steep, generally rising 500 feet or more from the river to the canyon rim. A dense forest of Douglas and white fir, ponderosa pine and white oak cover the canyon area. Dense, lush green riverbank vegetation consisting of alder, carex and other species are abundant. The river provides excellent overall habitat for trout. Deer, elk, wild turkey, gray squirrels and nongame species also exist in the area. The 50-60 foot White River Falls are located within the White River State Park. Fish habitat is excellent, due to a stable river channel, riverbank shade and boulders which provide resting areas and escape cover for wild trout. Also, the dynamic forces of glaciation and erosion are readily evident.

FINAL LIST OF RIVERS IN S. 2148, THE OMNIBUS OREGON WILD AND SCENIC RIVERS ACT OF 1988

Designated rivers	Mileage	Agency	Class
1. Big Marsh Creek	15.00	FS	R
2. Chetco	44.50	FS	WSR
3. Clackamas	47.00	FS	SR
4. Crescent Creek	10.00	FS	R
5. Crooked	15.00	BLM	R
6. Deschutes	173.40	BLM, FS	SR
7. Donner und Blitzen	72.50	BLM	W
8. Eagle Creek	27.00	FS	WR
9. Elk	19.00	FS	WR
10. Grande Ronde	43.80	BLM, FS	WSR
11. Imnaha	77.00	FS	WSR
12. John Day (Main Stem)	147.50	BLM	R
13. Joseph Creek	8.60	FS	W
14. Little Deschutes	12.00	FS	R
15. Lostine	16.00	FS	WR
16. Malheur	13.70	FS	W
17. McKenzie	12.70	FS	SR
18. Metolius	28.50	FS	SR
19. Minam	39.00	FS	W
20. North Fork Crooked	32.30	BLM, FS	WSR
21. North Fork John Day	54.10	BLM, FS	WSR
22. North Fork Malheur	25.50	FS	S
23. N. Fk, Mid. Fk. Willamette	42.30	FS	WSR
24. North Fork Owyhee	8.00	BLM	W
25. North Fork Smith	13.00	FS	WS
26. North Fork Sprague	15.00	FS	S
27. North Powder	6.00	FS	S
28. North Umpqua	33.80	BLM, FS	R
29. Powder	11.70	BLM	S
30. Quartzville Creek	12.00	BLM	R
31. Roaring	13.70	FS	WR
32. Salmon	33.50	FS	WR
33. Sandy	24.90	FS	WSR
34. South Fork John Day	47.00	BLM	R
35. Squaw Creek	15.40	FS	WS
36. Sycan	59.00	FS	SR
37. Upper Rogue	40.30	FS	WS
38. Wenaha	21.55	FS	WSR
39. West Little Owyhee	51.00	BLM	W
40. White	46.50	FS	WSR
Total, 40 rivers	1,428.75		

Study rivers: Blue, Chewaucan, North Fork Malheur, South Fork McKenzie, Steamboat Creek, Upper Klamath, Wallowa.

UMATILLA BASIN PROJECT ACT

REPORT

[To accompany S. 1613]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1613) to authorize the Secretary of the Interior to construct, operate, and maintain the Umatilla Basin Project, Oregon, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Umatilla Basin Project Act."

SEC. 2. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, or any other entity which participates in the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report of the Secretary dated February 12, 1988. The principal works of the project shall consist of—

(1) pumping plants and related diversion, conveyance, and distribution features;

(2) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange;

(3) fish passage and protective facilities and other necessary mitigation measures;

(4) a program to monitor and regulate project operations; and

(5) a program to evaluate fishery resources mitigation measures.

SEC. 3. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this Act shall be integrated and coordinated, from an operational standpoint, into other features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project related water supplies for the purposes herein identified.

SEC. 4 POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

SEC 5. FISHERY RESOURCE FACILITIES.

Facilities and any other project features which furnish fishery resource benefits in connection with the project shall be constructed, operated, and maintained in accordance with the Federal Water Project Recreation Act (Public Law 89-72, 79 Stat. 213), as amended, except that costs, which shall be allocated to the mitigation of anadromous fish species, shall be nonreimbursable.

SEC. 6. NON-FEDERAL OBLIGATIONS.

The Secretary shall negotiate and enter into agreements which specify appropriate non-Federal obligations of the operation and maintenance of project facilities authorized in this Act. The Federal responsibility for operation and maintenance shall be limited to those costs in excess of non-Federal obligations as established by such agreements.

SEC. 7. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this Act are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

SEC. 8. NON-FEDERAL COSTS.

(a) Credit for Non-Federal Fishery Resource Improvements. The Umatilla Basin Project authorized by this Act is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific and Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) Treatment of Non-Federal Costs Incurred in Implementing Project Features Before Appropriations. Where a public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

SEC. 9. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such capacity shall be available to supplement the water supply of irrigated lands eligible for service from the irrigation districts that participate in the project authorized in this Act at a rate based upon a share of operation and maintenance costs associated with such use as negotiated by the Secretary of the Interior and the Irrigation districts: Provided, That such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping shall be borne by irrigation districts receiving the benefit of such water. The cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall also be included in the operation and maintenance costs.

SEC. 10. REHABILITATION AND BETTERMENT AUTHORIZATION.

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Act, such districts shall be eligible to receive financial assistance, as deemed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

SEC. 11. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this Act: Provided, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated such sums as required to accomplish the purposes of this section.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project the sum of $42,200,000 (April 1987 prices), plus or minus such amounts as may be required by reasons of changes in the cost of construction work of the types involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 12(b) of this Act. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

SEC. 13. WATER RIGHTS.

Nothing in this act shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or Indian tribe if such rights were established by the setting aside or a reservation by treaty, Executive order, agreements, or Act of Congress.

PURPOSE

As ordered reported, S. 1613 authorizes a management and facilities construction program for the restoration of anadromous fish runs in the Umatilla River Basin (a tributary of the Columbia River in north-central Oregon) and for the continuation of water service to entities currently served by the existing Umatilla project. The bill authorizes $42.2 million for construction of the project. All these costs are allocated to the mitigation of anadromous fishery resources and are thus nonreimbursable. Pumping power for the fish restoration program would be provided by the Bonneville Power Administration.

BACKGROUND

The existing Umatilla project was authorized in 1905 pursuant to authority of the Reclamation Act of 1902. Initial project facilities were completed in 1908 with additional storage and conveyance facilities built during the 1920s. Major features include Cold Springs and McKay dams and reservoirs, three diversion dams, 137 miles of major canals, and one pumping plant. The project supplies irrigation water to approximately 30,000 acres. Principal crops are alfalfa, pasture, mint, grain, and vegetables.

Historically, the Umatilla River supported significant salmon runs but by the 1960s Umatilla River salmon were extinct and the summer steelhead run significantly diminished. The decline in anadromous fisheries was largely the result of irrigation diversions for the Bureau of Reclamation's Umatilla project and the construction of mainstem dams on the Columbia River.

The anadromous fish runs in the Umatilla River were an important resource for the Confederated Tribes of the Umatilla Indian reservation located on the headwaters of the Umatilla River. In addition to providing both income and subsistence, fish runs are central to the religious and cultural traditions of the Tribes. The major purpose of this measure is to reestablish those runs. A series of Indian Treaty right fishing cases in federal courts culminated in the U.S. Supreme Court upholding the treaty rights of certain Indian Tribes (including the Confederated Tribes) to fish. Beginning in 1982, projects were implemented in the Basin to re-establish the fall Chinook salmon run with the first return in 1984; however, the competition between water for irrigation and stream flows to ensure anadromous fish runs still remains.

As part of the effort to restore anadromous fish runs in the Basin, the Bonneville Power Administration (BPA), pursuant to the authority of the Pacific Northwest Electric Power Planning and Conservation Act (P.L. 96-501), has invested $7 million, with an additional $13 million planned, for further fish facilities. In addition, BPA has provided electric power to operate existing pumps to provide limited flow enhancement for fisheries purposes in the interim until completion of other facilities. The Pacific Northwest Power Planning Council is presently reviewing the interim pumping program and has called for public comment.

The management and facilities authorized by S. 1613 would complement the ongoing BPA program within the Umatilla Basin and would enhance the value and effectiveness of fish passage management and facilities at the mainstem dams on the Columbia River downstream from the confluence with the Umatilla River.

The Confederated Tribes, local water interests, and the Bureau of Reclamation have participated in a study in an attempt to resolve the short and long term water use conflicts in the Umatilla Basin. Authority for the feasibility investigation of the proposed project by the Bureau of Reclamation was included in P.L. 89-561. Alternative proposals which were elevated included additional upstream storage and decreased irrigation diversions resulting from increased efficiency. The recommended plan as authorized by S. 1613 is the most cost effective and has a benefit to cost ratio of 1.7 to 1. The Planning Report/Draft Environmental Statement was released for public review in July 1986 and a public hearing was held by the Bureau of Reclamation in the project area in September of 1986.

The Confederated Tribes, local water interests, environmental groups, and the State of Oregon support the program and facilities authorized by S. 1613.

Project facilities

As ordered reported, S. 1613 would authorize the construction of pumping plants and related carriage facilities to deliver water from the Columbia River into storage facilities of the Umatilla project. The Columbia River water would be utilized by existing irrigators who would forgo diversions from the Umatilla River thereby providing instream flows for the passage of anadromous fish. Provision of water from the Columbia would provide for a water exchange between irrigators and the Confederated Tribes allowing maintenance of irrigated agriculture while promoting the restoration of anadromous fisheries.

Major structural features include a 10,000 horse power pumping plant on the Columbia River, two relift pumping plants, 12 miles of canals and pipelines, a pumping plant at the mouth of the Umatilla River, improvement of existing fish passage facilities, and installation of fish screens at diversion points.

LEGISLATIVE HISTORY

S. 1613 was introduced on August 6, 1987 by Senator Hatfield and was referred to the Committee on Energy and Natural Resources. A field hearing was held by the Subcommittee in Pendleton, Oregon on February 8, 1988 (S. Hrg. 100-614). A Washington, D.C. hearing was held before the Subcommittee on June 28, 1988, at which time the Administration opposed enactment.

A House companion measure, H.R. 4093, was introduced on March 3, 1988 by Congressman Smith of Oregon and is cosponsored by Congressmen DeFazio and Wyden. H.R. 4093 is pending before the Subcommittee on Water and Power Resources of the House Committee on Interior and Insular Affairs.

In the 99th Congress, a similar measure, S. 2931, was introduced but Congress adjourned before taking any action on the measure.

At the business meeting on Wednesday, August 10, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1613 to be reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on August 10, 1988, by unanimous vote of a quorum present recommends that the Senate pass S. 1613 with an amendment in the nature of a substitute.

COMMITTEE AMENDMENT

The Committee adopted an amendment to S. 1613 in the nature of a substitute. The amendment specifies the project document (report of the Secretary dated February 12, 1988) to be used as the basis for the authorization of the Secretary to construct, operate, and maintain the Umatilla Basin Project.

The amendment deleted section 5 of S. 1613 as introduced. The original text of section 5 provided for the computation of the interest rate applicable to reimbursable costs. Since the Bureau of Reclamation has determined that all of the construction costs pursuant to S. 1613 will be allocated to the mitigation of andromous fisheries and hence non-reimbursable, the original section 5 has been deleted since it has not application to the program authorized by the bill.

During consideration of S. 1613, concern was expressed that the authority contained in section 10 of the bill as introduced would allow the use of excess pumping capacity to serve newly irrigated lands. The new section 9 of the amendment retains the authorization to use excess project pumping capacity to supply irrigation water, but clarifies the bill to provide that such excess capacity shall be available only to supplement the water supply of irrigated lands eligible for service from the irrigation districts that participate in the project. The new section 9 also requires that the cost of such supplemental water shall be based upon a share of the operation and maintenance costs associated with such use as negotiated by the Secretary and that pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The amendment requires that the cost of such power shall be borne by irrigation districts receiving the benefit of such water and prescribes the rates to be charged. The new section 9 retains the stipulation that provision of a supplemental water supply for irrigation shall be considered as secondary to the purpose of providing water for fishery resource purposes.

The substitute also includes a new section 13 regarding water rights. This section was added to ensure that the bill will not alter any existing water law or water right relating to a state, the federal government, an interstate compact, or an Indian tribe. This section is identical to language approved by the Committee earlier in the 100th Congress in other bills.

SECTION-BY-SECTION ANALYSIS

Section 1 is self-explanatory.

Section 2 is self-explanatory.

Section 3 is self-explanatory.

Section 4 directs the Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), to provide project power to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. During consideration of S. 1613, concern was expressed that passage of the measure would imply that the Bonneville Power Administration would be responsible for repayment of capital expenditures made pursuant to the bill or require additional capital expenditures by the Bonneville Power Administration for anadromous fishery mitigation in the Umatilla Basin. The Committee notes that neither this section, or any other section of the bill creates for the Bonneville Power Administration and responsibility for additional capital expenditures or the reimbursement of such expenditures.

Section 5 is self-explanatory.

Section 6 is self-explanatory.

Section 7 provides for interim flow augmentation. Section 7 authorizes appropriations for the operation and maintenance of existing pumps or other facilities for the purpose of providing interim flow augmentation for anadromous fish. The Committee notes that the Bonneville Power Administration is currently making funds available to provide for interim pumping at one site. The Committee expects that the BPA will continue to make funds available to provide power for such interim pumping until the facilities authorized by S. 1613 are constructed and in operation and as long as such pumping is consistent with the Columbia River Basin Fish and Wildlife Program.

Section 8 is self-explanatory.

Section 9 authorizes the use of project pumping facilities to provide supplemental irrigation water supplies when such pumping capacity is not needed for fishery resource benefits. When pumping capacity is available in excess of that needed to benefit fish and is utilized for pumping supplemental irrigation water supplies, the Administrator of the Bonneville Power Administration shall provide power to the Bureau of Reclamation for provision of the supplemental irrigation water. Pursuant to this section, the rate for this service during peak period hours (generally from 7:00 am until 10:00 pm) shall be the forecasted average rate to be paid by public bodies and cooperatives for irrigation loads during their peak periods. The rate during the off peak period shall be the rate paid by public bodies and cooperatives for irrigation loads during off peak periods. The cost of power for such pumping shall be borne by the irrigation districts receiving such power. The irrigation districts will also be responsible for the cost of transmitting the power from the Federal Columbia River Power System to the project pumping facilities, which cost shall be included as a part of operation and maintenance costs.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC August 22, 1988.

Hon. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1613, the Umatilla Basin Project Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

Congressional Budget Office Cost Estimate, August 22, 1988.

1. Bill number: S. 1613.

2. Bill title: Umatilla Basin Project Act.

3. Bill status: As ordered by the Senate Committee on Energy and Natural Resources, August 10, 1988.

4. Bill purpose:

S. 1613 would authorize the appropriation of $42.2 million plus inflation for the construction, operation, and maintenance of the Umatilla Basin Project in Oregon. The project would be built by the Bureau of Reclamation (BOR) as a means of exchanging water from various sources to restore anadromous fish runs in the Umatilla River Basin and to ensure the continuation of water service to local water districts. The bill would also authorize the appropriation of whatever funds are necessary to provide interim operation and maintenance and flow augmentation and to assist in the long-run operation and maintenance of the new facilities.

The bill would also:

Require the Bonneville Power Administration to provide power to execute the exchange of water authorized in the bill;

Provide for the calculation of project cost-sharing;

Allow for the use of excess project water, when available, for irrigation in the affected districts;

Authorize BOR to acquire certain land and water rights;

Provide for financial assistance for participating water districts for rehabilitation and betterment of project facilities.

5. Estimated cost to the Federal Government:

[In millions of dollars]

1989:	
Estimated Authorization level	3.4
Estimated Outlays	2.8
1990:	
Estimated Authorization level	6.7
Estimated Outlays	6.2
1991:	
Estimated Authorization level	11.6
Estimated Outlays	10.9
1992:	
Estimated Authorization level	20.2
Estimated Outlays	18.8
1993:	
Estimated Authorization level	7.6
Estimated Outlays	9.8

In addition, construction outlays totaling about $2.2 million are estimated to be necessary in 1994 to complete the project. Annual operation and maintenance costs after construction is complete are estimated to total approximately $1.4 million beginning in 1994.

The costs of this bill fall within budget function 300.

Basis of Estimate:

In preparing this estimate, we assumed that S. 1613 would be enacted by the early part of fiscal year 1989 and that appropriations would be provided annually, beginning with fiscal year 1989. Construction outlays for each year were estimated based on information from BOR. They were inflated using CBO's baseline inflation projections. Authorization levels were then estimated based on historical outlay rates for similar projects. After adjusting for inflation, the total authorization is estimated to be $48.8 million, assuming appropriations begin in fiscal year 1989. Annual operation and maintenance costs were estimated based on information from BOR. We do not expect other provisions of the bill to result in significant additional costs to the Federal Government.

6. Estimated cost to State and local governments: None

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Theresa Gullo (226-2860)

10. Estimate approved by:

James L. Blum,
Assistant Director for
Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1613. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in carrying out the actions authorized by S. 1613. Therefore, there would be no impact on personal privacy.

Other than the normal paperwork resulting from the construction of the Umatilla Basin Project, little, if any additional paperwork would result from the enactment of S. 1613 as reported.

EXECUTIVE COMMUNICATIONS

On January 12, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of Energy, Department of the Interior, and the Office of Management and Budget setting forth executive views on S. 1613. These reports had not been received in time for inclusion in this report. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the agencies at the Subcommittee hearing follows:

STATEMENT OF JOHN KEYS, REGIONAL DIRECTOR, PACIFIC NORTHWEST REGION, BUREAU OF RECLAMATION REGARDING S. 1613 TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE UMATILLA BASIN PROJECT, OREGON, FEBRUARY 8, 1988

I am John Keys, Regional Director for the Bureau of Reclamation's Pacific Northwest Region. I appreciate the opportunity to comment on the proposed Umatilla Basin Project being considered for construction authorization in S. 1613.

BACKGROUND

Representatives of the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon appeared before a congressional committee in Washington, DC, a few years ago. They asked that Reclamation formulate a plan that would help resolve an intensifying conflict over need for Umatilla River water for irrigation and for salmon and steelhead. The opportunity for cooperation among these groups and local irrigation districts was apparent, and Congress directed that the planning be done.

This planning effort has been a cooperative endeavor with the Confederated Tribes, State, irrigation districts, citizens committee, Northwest Power Planning Council, Bonneville Power Administration, Federal fish and wildlife agencies, Forest Service, and others. Comments on the plan at a public hearing in Pendleton were very positive.

The Administration has not made recommendations regarding project implementation. Therefore, my comments today are limited to background and technical aspects of the project.

The purpose of the proposed project is to improve streamflow and passage conditions in the Umatilla River to help restore salmon and steelhead runs while continuing to meet irrigation water supply commitments. The project does not address other basin water issues. The project will not abrogate or limit the reserved water rights of the Confederated Tribes of the Umatilla Indian Reservation.

The project is part of a multifaceted program to restore the Umatilla fishery which as been greatly diminished by regional resource development, including construction of the Federal Umatilla Reclamation project in the early 1900's. Features of the basinwide program have already been made a part of the Northwest Power Planning Council's Fish and Wildlife Program and are currently being implemented by Bonneville Power Administration under authorities specifically granted by Congress in the past several years. The Confederated Tribes and the State also are participating where they have authority and funding. The Umatilla basin project under study would provide the streamflow improvements critical to success of the basinwide program.

Umatilla Basin Project Planning

The key feature of the proposed project is a water exchange with the Columbia River on the north boundary of the Umatilla basin. Irrigators would forego some Umatilla River diversions and have that water replaced from the Columbia River. The exchange would improve Umatilla River flows during periods critical to fish.

Plan features

Streamflow objectives in the lower 50 miles of the Umatilla River (from McKay Creek downstream) designed to be satisfied by the project are: 300 cfs from October 1 through November 15; 250 cfs from November 16 through June 30 and September 16–30.

These flow levels were established in cooperation with tribal, State, and Federal biologists and agree with State flow objectives for the basin.

The project's major water exchange feature is a Columbia River pumping complex consisting of pumps and canals to deliver Columbia River water to existing distribution facilities of the Hermiston and Stanfield Irrigation Districts.

Other water exahange features to be constructed include:

Facilities to exchange water (up to 140 cfs) with the West Extension Irrigation District at Three Mile Falls Diversion Dam to improve flows in the lowest reach of the Umatilla River, and

A small pumping station on the Umatilla River at Cottonwood Bend (river-mile 13) to exchange water (30 cfs) with Westland Irrigation District

The exchange water supply pumped from the Columbia River would average about 39,000 acre-feet annually and range from a low of about 13,000 acre-feet to a high of about 74,000 acre-feet depending on natural runoff conditions in the basin. On the average, about 19 million kilowatt-hours of power would be needed to operate project pumping facilities. The Northwest Power Planning Council has adopted a measure which calls for Bonneville Power Administration to provide that power as a part of the council's Fish and Wildlife Program. Legislation such as this bill would give Bonneville authority to provide such power without charge.

In addition to water exchange facilities, fish passage facilities and screens would be installed at Maxwell, Feed Canal, Westland, and Stanfield Diversion Dams and Furnish Ditch, and a fish barrier would be placed at the mouth of McKay Creek. Construction of substantially all of the passage and screen facilities was authorized in the 1987 Department of Energy Appropriation Bill and is being funded by the Bonneville Power Administration.

The proposed project would include a program to monitor postconstruction operations so that streamflows could be "fine tuned" to maximize fishery benefits.

A project oversight committee would be formed to provide a forum of communication among irrigators, tribal leaders, State water managers, fish and wildlife experts, and project operators. This group would develop annual fish passage and flow objectives within project guidelines. Water regulation and enforcement would be provided in cooperation with the Oregon State watermaster office in Pendleton in accordance with State water law and the agreements specific to the Umatilla Basin Project.

Operation and maintenance oversight would be by personnel of Reclamation's Yakima Project office. That staff has experience in managing and operating similar fishery enhancement programs and facilities in the Yakima River basin.

Proposed Project Accomplishments

Streamflow and fishway improvements are critical to restoration of natural and hatchery runs of salmon and steelhead. Reclamation estimates that with the project, adult fish returns to the Umatilla River alone would average 46,000 fish. All together, the project would add an estimated average of 112,000 fish annually to the Columbia River, Pacific Ocean, add Umatilla River fisheries harvest.

Farmers would benefit from a resolution of the conflict over competing water needs for irrigation and fish. Near record runs of chinook salmon migrated up the Columbia River this past fall—evidence that Columbia River fishery restoration is working. In contrast, Umatilla River fall streamflows needed for fish migration were practically nonexistent. Absent a new water source, irrigation water supplies could be in jeopardy under claims of Indian treaty rights. Over 40,000 acres of cropland could risk loss of water supply.

Project cost estimate:	
Construction (4/87)	[1] $46,000,000
Project costs (annual):	
Construction	4,076,000
Operation, maintenance, and replacement	238,000
Power	[2] 673,000
Power wheeling	172,000
Total annual costs	5,159,000
Project benefits (annual):	
Anadromous fish	[3] 7,760,000
Resident fish	79,000
Benefits to unemployed labor resources	316,000
Total annual benefits	8,155,000

[1] Includes about $4 million for ladders and screens to be funded by the Bonneville Power Administration.

[2] Includes power for pumping plants—$421,000 at 22.2 mills, a value of power generation foregone at downstream powerplants—$28,600, and economic value of replacing power from another source—$223,400.

Sport fishing and commercial value.

Project monetary benefits ($8,155,000 annually) compared to annual project costs ($5,159,000) results in a benefit-cost ratio of 1.6 to 1.0.

About 5½ years would be needed to design and construct all project facilities under an optimum construction schedule, following authorization and with adequate appropriations. However, the project can be phase developed. Construction of facilities to exchange water with the West Extension Irrigation District at Three Mile Falls Diversion Dam would be a productive first phase. That exchange would improve streamflows from the Columbia River to the diversion dam. In combination with the new fish passage facilities being built at the dam and recent channel work, this would enable fish to return at least to Three Mile Falls Diversion Dam for harvest or transport to other areas. First phase facilities would cost about $7 million and could be in place within 2 years after authorization. First phase operation and maintenance costs would be about $15,000 annually, and pumping power costs would be about $44,000 (2 million kilowatt-hours at 22.2 mills).

It should be noted that fish and wildlife facilities constructed under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 are considered in the calculation of project benefits and costs.

Cost sharing

The Administration has not yet developed a position on the appropriate level of non-Federal cost sharing for the proposed project.

Local activities

Local interests at this time are investing in Umatilla basin fishery restoration programs. Among these activities are:

$21 million of fishery facilities that have been included in the Fish and Wildlife Program of the Northwest Power Planning Council. To date, $7 million has been expended, and additional projects totaling $8 million are in the final design stage. These activities are being funded by regional ratepayers through Bonneville Power Administration.

The Oregon Department of Fish and Wildlife has funded hatchery outplantings valued at about $200,000 a year.

Irrigators are helping to fund fish monitoring programs and participating in planning studies.

The State of Oregon has funded activities of the Umatilla Basin Project citizens steering committee to aid in resolving critical water conflicts.

CONCLUSION

This concludes my testimony. I will be pleased to answer any questions you may have.

STATEMENT OF JOHN S. ROBERTSON, DEPUTY ADMINISTRATOR, BONNEVILLE POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

INTRODUCTION

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to come before you to discuss the Umatilla Basin Project Act. My name is Jack Robertson, and I am the Deputy Administrator of the Bonneville Power Administration (EPA).

Mr. Chairman, since passage of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), BPA has aggressively met its fish and wildlife obligations and has expended over $120 million on capital facilities and revenue funded projects. Our costs reach nearly $650 million if estimates of foregone revenues for water budget and spill, and costs of operations and maintenance, depreciation, and annualized interest on capital investment are also included.

The bill would authorize $42 million for the Secretary of the Interior to design, construct, and operate pumping plants and other facilities for the Umatilla Basin Project. You will be pleased to know that some project activities which were authorized last year by the Congress in connection with the Department of Energy's appropriations are already being implemented.

The bill seeks to mitigate losses to anadromous fishery resources by improving Umatilla River flows. In accomplishing this, the bill requires that BPA provide electricity for pumping water from the Columbia River into project irrigation district facilities in exchange for water presently withdrawn from the Umatilla River. The bill also provides an opportunity for irrigation districts participating in the flow enhancement to obtain additional irrigation water by utilizing the pumps when they are not needed for pumping water for the purpose of fish flows.

Mr. Chairman, we have serious concerns with the funding responsibilities and the effects such obligations could have on BPA ratepayers in the Pacific Northwest. We also believe that the bill needs technical revisions to provide consistency with the Regional Act. My comments today clarify these concerns and offer possible solutions.

BPA'S COMMITMENT AND INVESTMENT IN THE UMATILLA BASIN

Under the Regional Act, we have a responsibility to protect, mitigate, and enhance fish and wildlife to the extent that these resources are affected by Federal hydroelectric projects. Because the damage to the Umatilla's fishery resource is a result of irrigation practices and not from hydroelectric development, we are not obligated to make fish investments in the Umatilla Basin. However, the Regional Act does provide us the authority to invest in certain fishery improvements in the Umatilla as off-site mitigation for hydropower fish losses elsewhere.

We previously determined that off-site mitigation to improve fish passage conditions, fix degraded habitat, and build new sources of fish for the Umatilla was appropriate. We based our decision on assurances from fish managers that our investments would yield solid returns in terms of increased fish production under existing flows. To date, we have invested $7 million, and we plan to spend an additional $13 million in Umatilla fishery improvements. For this $20-plus million investment, we hope to increase the salmon and steelhead runs back to the Umatilla by about 19,000 fish per year.

This bill seeks to increase existing flows by pumping water from the Columbia River to replace water that irrigators would otherwise draw from the Umatilla River. We are informed that this enhancement is expected to further increase Umatilla fish runs by another 17,400 fish and would come at a capital cost of $42 million and annual power costs of $675,000, plus wheeling costs of $172,000. In light of our present commitment of $20 million in the Umatilla, we do not feel that any further investments or expenditures by BPA ratepayers are appropriate.

BPA CONCERNS WITH IRRIGATION PROVISIONS

If Congress authorizes the additional pumping solely for irrigation purposes when pumping capacity is in excess of that needed for fish flow purposes in the Umatilla River, S. 1613 should require that power be provided at a cost equal to our priority firm rate to public agencies. The bill presently requires BPA to provide such power at irrigation subsidy rates between 2 and 3 mills. The difference in power costs between the priority firm and irrigation subsidy rates could approach $80,000 annually. We strongly recommend that the bill be amended to require that irrigators pay the priority firm rate normally charged Federal agencies and preference customers.

It is our understanding that all of the bill's costs will be allocated to mitigation of anadromus fish species and that, according to section 6, these costs are nonreimbursable. Consistent with this understanding, BPA recommends that the bill state that any costs actually allocated to irrigation be solely an obligation of irrigation beneficiaries so that any additional subsidy by BPA in the form of irrigation assistance is precluded.

INTERIM PUMPING

Our final concern deals with provisions in the bill that provide for interim use of existing irrigation pumps to provide limited flow enhancement until project facilities are operational. The bill requires that BPA provide power to run existing pumps for this purpose. BPA has the authority to do this under the Regional Act. We made available $45,000 last year and $30,000 this year for such pumping purposes. A problem with interim pumping is the difficulty it presents with providing adequate amounts of water at the right times and in the right places. Another problem is that the actual benefits to fish are unknown. We have no evidence to indicate the success of interim pumping.

It is important to note that the Northwest Power Planning Council (Council) is presently considering amending its Fish and Wildlife Program to clarify the Umatilla pumping measure. Concern over interim flows has triggered this public process. If BPA is persuaded through that review that interim flow enhancement efforts would achieve substantial benefit to migrating fish, then BPA would provide funds for such measures under our existing authority. But we believe statutory direction at this time is premature. We therefore recommend that section 8, which authorizes interim pumping, be deleted from the bill.

CONCLUSION

In conclusion, the bill has the potential to enhance the Pacific Northwest's salmon and steelhead resources. However, because of the large investment BPA has already made in the Umatilla Basin, we are opposed to BPA having any obligation to repay the $42 million provided in this legislation. We are also concerned that this bill not require BPA to pay any pumping costs.

I thank you for the opportunity to present our views and would be glad to address any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1613 as reported.

THE OREGON OMNIBUS WILD AND SCENIC RIVERS ACT OF 1988.

Mr. PACKWOOD. Mr. President, passage today of the Oregon Omnibus Wild and Scenic Rivers Act of 1988 is the culmination of many years effort to preserve one of Oregon's most precious resources: our wild, free-flowing rivers.

First, I would like to congratulate my colleague Senator MARK HATFIELD for his vision in introducing this historic bill as well as his dedication in seeing it through to its goal. I am genuinely proud to be an original cosponsor of this landmark bill which will add 41 Oregon rivers encompassing about 1,435 miles to the Wild and Scenic Rivers system and calls for the study of seven additional rivers for possible inclusion in the system.

This legislation represents a year of intense study and information gathering. The bill we are discussing today of course has changed from the bill Senator HATFIELD and I introduced last March. The changes reflect the concerns raised by Oregonians through the hearing process. Many of the changes resulted because of overwhelming public concern over how designation of a river under the Wild and Scenic Rivers Act would affect them personally. I fully understand the fears held by communities and individual property-owners, and both Senator HATFIELD and I recognized the need to address these concerns.

Under this bill today I am confident that our Federal land management agencies will work responsibly with private property owners to bring about cooperative land management agreements. This in turn will result in effective management of our river corridors to benefit all involved.

Obviously, this bill was fashioned under compromise. To meet the most serious concerns, in some instances, entire rivers have been dropped, and in others, segments have been eliminated. We have also developed report language to help clarify our intent and alleviate other local concerns. The Forest Service and the Bureau of Land Management now have the clear directive to work with those property owners along designated stretches of rivers so that the rights of the owners are protected while management goals are achieved.

Passage of this bill is simply the first step to protect many of Oregon's rivers. The next phase begins with the development of management plans and the initiation of studies for those rivers so designated. Developing appropriate managements plans is as important as designation itself in many cases. The rivers in this bill have an enormous variety of resources that need to be protected or enhanced. Some are in need of recreational facilities to allow the public greater use of the river stretch. Others are fragile, supporting important fishery habitat, and need to be protected from overuse. I encourage the agencies which will have these management responsibilities to recognize the wide array and values and manage accordingly.

Designation of these rivers in the Wild and Scenic Rivers Act also affords Federal managers the opportunity to work in conjunction with State and local programs aimed at enhancing and protecting river and water related resources. Watershed enhancement programs and fish and wildlife enhancement programs can benefit greatly with the added emphasis of Wild and Scenic designation.

Passage of the Oregon Omnibus Wild and Scenic Rivers Act does not end the debate in Oregon about management of our important waterways. It is, however, an important step towards a comprehensive water management policy. As the State of Oregon continues with its efforts towards basinwide and statewide water management plans, the Federal Government must be able to respond with laws and policies that complement the State's efforts. Further additions to the National Wild and Scenic Rivers System will undoubtedly be warranted in the near future.

In closing, let me add that my personal commitment to this legislation goes back nearly 20 years, and to our successful battle to preserve the Snake River with passage of the Hells Canyon National Recreation Area Act of 1975. I remember my first visit to Hells Canyon, I realized what was at stake was the destruction of one of the most beautiful and unique spots on earth. Like the Snake River, many of Oregon's rivers and waterways represent a truly unique natural resource.

When Congress originally enacted the Wild and Scenic Rivers Act of 1968 we declared that our established national policy of water resource development should be balanced by a new policy of protecting selected rivers in free-flowing form. I am enormously pleased to see today that Oregon's leadership pushes us a major step forward in accomplishing the goals of that 1968 act.

By passing this bill today, what we are really telling our children and our grandchildren is that we will live up to our pledge to preserve for them our beautiful and irreplaceable natural heritage.

Mr. **HATFIELD**. Mr. President, I ask for third reading of the bill.

The **ACTING PRESIDENT** pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amended in the nature of a substitute, as amended, was agreed to.

The **ACTING PRESIDENT** pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SEC. 101. SHORT TITLE.

This title may be referred to as the "Omnibus Oregon Wild and Scenic Rivers Act of 1988".

SEC. 102. AMENDMENTS TO THE WILD AND SCENIC RIVERS ACT:

Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat: 907), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) Big Marsh Creek, Oregon.—The 15-mile segment from the northeast quarter of section 15, township 26 south, range 6 east, to its confluence with Crescent Creek in the northeast quarter of section 20, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, Nothing in this Act shall prohibit the Secretary from undertaking construction activities to enhance and restore wetland resources associated with Big Marsh Creek.

"( ) Chetco, Oregon.—The 44.5 mile segment from its headwaters to the Siskiyou National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 25.5-mile segment from its headwaters to Boulder Creek at the Kalmiopsis Wilderness boundary as a wild river;

"(B) the 8-mile segment from Boulder Creek to Steel Bridge as a scenic river; and

"(C) the 11-mile segment from Steel Bridge to the Siskiyou National Forest boundary, one mile below Wilson Creek, as a recreational river.

"( ) Clackamas, Oregon.—The 47-mile segment from Big Springs to Big Cliff; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from Big Springs to the Forest Service Road 4690 bridge as a scenic river;

"(B) the 3.5-mile segment from the Forest Service Road 4690 bridge to the junction with Oregon State Highway 224 as a recreational river;

"(C) the 10.5-mile segment from Oregon State Highway 224 to the June Creek Bridge as a scenic river;

"(D) the 9-mile segment from June Creek Bridge to Tar Creek as a recreational river;

"(E) the 5.5-mile segment from Tar Creek to just south of Indian Henry Campground as a scenic river; and

"(F) the 14.5-mile segment just south of Indian Henry Campground to Big Cliff as a recreational river.

"( ) Crescent Creek, Oregon.—The 10-mile segment from the southwest quarter of section 11, township 24 south, range 6 east, to the west section line of section 13, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture.

"( ) Crooked, Oregon.—The 15-mile segment from the National Grassland boundary to Dry Creek; to be administered by the Secretary of the Interior in the following classes:

"(A) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring as a recreational river; and

"(B) the 8-mile segment from Bowman Dam to Dry Creek as a recreational river.

"( ) Deschutes, Oregon.—Those portions as follows:

"(A) The 40.4-mile segment from Wickiup Dam to northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 11-mile segment from the northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east, to Lava Island Camp as a scenic river; to be administered by the Secretary of Agriculture;

"(C) the 3-mile segment from Lava Island Camp to the Bend Urban Growth Boundary at the southwest corner of section 13, township 18 south, range 11 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 19-mile segment from Oden Falls to the Upper End of Lake Billy Chinook as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 100-mile segment from the Pelton Reregulating Dam to its confluence with the Columbia River as a recreational river; to be administered by the Secretary of the Interior through a cooperative management agreement between the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

"( ) Donner und Blitzen, Oregon.—Those segments, including its major tributaries, as a wild river; to be administered by the Secretary of the Interior as follows:

"(A) the 16.75-mile segment of the Donner and Blitzen from its confluence with the South Fork Blitzen and Little Blitzen;

"(B) the 12.5-mile segment of the Little Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(C) the 16.5-mile segment of the South Fork Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(D) the 10-mile segment of Big Indian Creek from its headwaters to its confluence with the South Fork Blitzen;

"(E) the 3.7-mile segment of Little Indian Creek from its headwaters to its confluence with Big Indian Creek; and

"(F) the 13.25-mile segment of Fish Creek from its headwaters to its confluence with the Donner and Blitzen.

"( ) Eagle Creek, Oregon.—The 27-mile segment from its headwaters below Eagle Lake to the Wallowa-Whitman National Forest boundary at Skull Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from its headwaters below Eagle Lake to the Eagle Cap Wilderness boundary at Hummingbird Mountain as a wild river;

"(B) the 15.5-mile segment from the Eagle Cap Wilderness boundary at Hummingbird Mountain to Paddy Creek as a recreational river;

"(C) the 6-mile segment from Paddy Creek to Little Eagle Creek as a scenic river; and

"(D) the 1.5-mile segment from Little Eagle Creek to the Wallowa-Whitman National Forest boundary as a recreational river.

"( ) Elk Oregon.—The 19-mile segment to be administered by the Secretary of Agriculture in the following classes:

"(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river; and

"(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.

"( ) Grande Ronde, Oregon.—The 43.8-mile segment from its confluence with the Wallowa River to the Oregon-Washington State line in the following classes:

"(A) the 1.5-mile segment from its confluence with the Wallowa River to the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.4-mile segment from the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, to the Wallowa-Whitman National Forest bundary approximately one-half mile east of Grossman Creek as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 9-mile segment from the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek to Wildcat Creek as a wild river; to be administered by the Secretary of the Interior; and

"(D) the 15.9-mile segment from Wildcat Creek to the Oregon-Washington State line as a recreational river; to be administered by the Secretary of the Interior.

"( ) Imnaha, Oregon.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 4-mile segment from Cow Creek to its mouth as a scenic river; and

"(D) the 9-mile segment of the South Fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river.

"( ) JOHN DAY, OREGON.—The 147.5-mile segment from Service Creek to Tumwater Falls as a recreational river; to be administered through a cooperative management agreement between the State of Oregon and the Secretary of the Interior as provided in section 10(e) of this Act.

"( ) JOSEPH CREEK, OREGON.—The 8.6-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture.

"( ) LITTLE DESCHUTES, OREGON.—The 12-mile segment from its source in the northwest quarter of section 15, township 26 south, range 6½ east to the north section line of section 12, township 26 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture.

"( ) LOSTINE, OREGON.—The 16-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary; to be administered by the Secretary of Agriculture in the following classes: in the northwest quarter of section 15, township 26 south, range 6½ east.

"(A) the 5-mile segment from its headwaters to the Eagle Cap Wilderness boundary as a wild river; and

"(B) the 11-mile segment from the Eagle Cap Wilderness boundary to the Wallow-Whitman National Forest boundary at Silver Creek as a recreational river.

"( ) MALHEUR, OREGON.—The 13.7-mile segment from Bosonberg Creek to the Malheur National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 7-mile segment from Bosonberg Creek to Malheur Ford as a scenic river; and

"(B) the 6.7-mile segment from Malheur Ford to the Malheur National Forest boundary as a wild river.

"( ) MCKENZIE, OREGON.—The 12.7-mile segment from Clear Lake to Scott Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 1.8-mile segment from Clear Lake to the head of maximum pool at Carmen Reservoir as a recreational river;

"(B) the 4.3-mile segment from a point 100 feet downstream from Carmen Dam to the maximum pool at Trail Bridge Reservoir as a recreational river; and

"(C) the 6.6-mile segment from the developments at the base of the Trail Bridge Reservoir Dam to Scott Creek as a recreational river.

"( ) METOLIUS, OREGON.—The 28.6-mile segment from the south Deschutes National Forest boundary to Lake Billy Chinook in the following classes:

"(A) the 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2,055.5 feet from Metolius Springs) to Bridge 99 as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as scenic river; by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior and the Confederated Tribes of the Warm Springs Reservation, as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988: *Provided*, That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

"( ) MINAM, OREGON.—The 39-mile segment from its headwaters at the south end of Minam Lake to the Eagle Cap Wilderness boundary, one-half mile downstream from Cougar Creek, as a wild river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK CROOKED, OREGON.—The 32.3-mile segment from its source at Williams Prairie to one mile from its confluence with the Crooked River in the following classes:

"(A) the 3-mile segment from its source at Williams Prairie to the Upper End of Big Summit Prairie as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 3.7-mile segment from the Lower End of Big Summit Prairie to the bridge across from the Deep Creek Campground as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 8-mile segment from the bridge across from the Deep Creek Campground to the Ochoco National Forest boundary, one-half mile from Lame Dog Creek as a scenic river; to be administered by the Secretary of Agriculture;

"(D) the 1.5-mile segment from the Ochoco National Forest boundary to Upper Falls as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 11.1-mile segment from Upper Falls to Committee Creek as a wild river; to be administered by the Secretary of Interior; and

"(F) the 5-mile segment from Committee Creek to one mile from its confluence with the Crooked River as a recreational river; to be administered by the Secretary of the Interior.

"( ) NORTH FORK JOHN DAY, OREGON.—The 54.1 mile segment from its headwaters in the North Fork of the John Day Wilderness Area at section 13, township 8 south, range 36 east, to its confluence with Camas Creek in the following classes:

"(A) the 3.5-mile segment from its headwaters in the North Fork of the John Day Wilderness at section 13, township 8 south, range 36 east, to the North Fork of the John Day Wilderness boundary as a wild river; to be adminstered by the Secretary of Agriculture;

"(B) the 7.5-mile segment from the North Fork of the John Day Wilderness boundary to Trail Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 24.3-mile segment from Trail Creek to Big Creek as a wild river; to be administered by the Secretary of Agriculture;

"(D) the 10.5-mile segment from Big Creek to Texas Bar Creek as a scenic river; to be administered by the Secretary of Agriculture; and

"(E) the 8.3-mile segment from Texas Bar Creek to its confluence with Camas Creek as a recreational river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK MALHEUR, OREGON.—The 25.5-mile segment from its headwaters to the Malheur National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE, OREGON.—The 42.3-mile segment from Waldo Lake to the Willamette National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 8.8-mile segment from Waldo Lake to the south section line of section 36, township 19 south, range 5½ east as a wild river;

"(B) the 6.5-mile segment from the south section line of section 36, township 19 south, range 5½ east to Fisher Creek as a scenic river; and

"(C) the 27-mile segment from Fisher Creek to the Willamette National Forest boundary as a recreational river.

"( ) NORTH FORK OWYHEE, OREGON.—The 8-mile segement from the Oregon-Idaho State line to its confluence with the Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) NORTH FORK SMITH, OREGON.—The 13-mile segment from its headwaters to the Oregon-California State line; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6.5-mile segment from its headwaters to Horse Creek as a wild river;

"(B) the 4.5-mile segment from Horse Creek to Baldface Creek as a scenic river; and

"(C) the 2-mile segment from Baldface Creek to the Oregon-California State line as a wild river.

"( ) NORTH FORK SPRAGUE, OREGON.—The 15-mile segment from the head of River Spring in the southwest quarter of section 15, township 35 south, range 16 east, to the northwest quarter of the southwest quarter of section 11, township 35 south, range 15 east, as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH POWDER, OREGON.—The 6-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary at River Mile 20 as a scenic river; to be administered by the Secretary of Agriculture.

"( ) NORTH UMPQUA, OREGON.— The 33.8-mile segment from the Soda Springs Powerhouse to Rock Creek in the following classes:

"(A) the 25.4-mile segment from the Soda Springs Powerhouse to the Umpqua National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture; and

"(B) the 8.4-mile segment from the Umpqua National Forest boundary to its confluence with Rock Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) POWDER, OREGON.—The 11.7-mile segment from Thief Valley Dam to the Highway 203 bridge as a scenic river; to be administered by the Secretary of the Interior.

"( ) QUARTZVILLE CREEK, OREGON.—The 12-mile segment from the Willamette National Forest boundary to slack water in Green Peter Reservoir as a recreational river; to be administered by the Secretary of the Interior.

"( ) ROARING, OREGON.—The 13.7-mile segment from its headwaters to its confluence with the Clackamas River; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 13.5-mile segment from its headwaters to one-quarter mile upstream of the mouth as a wild river; and

"(B) the 0.2-mile segment from one-quarter mile upstream of the mouth to its confluence with the Clackamas River as a recreational river.

"( ) SALMON, OREGON.—The 33.5-mile segment from its headwaters to its confluence with the Sandy River in the following classes:

"(A) the 7-mile segment from its headwaters to the south boundary line of section 6, township 4 south, range 9 east as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, That designation and classification shall not preclude the Secretary from exercising discretion to approve the construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Timerline Lodge Winter Sports Area insofar as such construction does not involve water resources projects;

"(B) the 15-mile segment from the south boundary line at section 6, township 4 south, range 9 east to the junction with the South Fork of the Salmon River as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 3.5-mile segment from the junction with the south fork of the Salmon River to the Mt. Hood National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 3.2-mile segment from the Mt. Hood National Forest boundary to Lymp Creek as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 4.8-mile segment from Lymp Creek to its confluence with the Sandy River as a scenic river; to be administered by the Secretary of the Interior.

"( ) Sandy, Oregon.—Those portions as follows:

"(A) The 4.5-mile segment from its headwaters to the section line between sections 15 and 22, township 2 south, range 8 east as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.9-mile segment from the section line between sections 15 and 22, township 2 south, range 8 east to the Mt. Hood National Forest boundary at the west section line of section 26, township 2 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture; and

"(C) the 12.5-mile segment from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west line of the east half of the northeast quarter of section 6, township 1 south, range 4 east, in Multnomah County at Dabney State Park, the upper 3.8 miles as a scenic river and the lower 8.7 miles as a recreational river; both to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 10(e) of this Act.

"( ) South Fork John Day, Oregon.—The 47-mile segment from the Malheur National Forest to Smokey Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) Squaw Creek, Oregon.—The 15.4-mile segment from its source to the hydrologic Gaging Station 800 Feet upstream from the intake of the McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork; to be administered by the Secretary of Agriculture as follows:

"(A) The 6.6-mile segment and its tributaries from the source to the Three Sisters Wilderness boundary as a wild river; and

"(B) the 8.8-mile segment from the boundary of the Three Sisters Wilderness Area to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch as a scenic river: *Provided*, That nothing in this Act shall prohibit the construction of facilities necessary for emergency protection for the town of Sisters relative to a rapid discharge of Carver Lake if no other reasonable flood warning or control alternative exists.

"( ) Sycan, Oregon.—The 59-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to Coyote Bucket at the Fremont National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 26.4-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to the west section line of section 22, township 32 south, range 14½ east, as a scenic river;

"(B) the 8.6-mile segment from the west section line of section 22, township 32 south, range 14 east, to the Fremont National Forest boundary in the southeast quarter of section 10, township 33 south, range 13 east, as a recreational river; and

"(C) the 24-mile segment from the Fremont National Forest boundary in the southwest quarter of section 10, township 33 south, range 13 east, to Coyote Bucket at the Fremont National Forest boundary, as a scenic river.

"( ) Upper Rogue, Oregon.—The 40.3-mile segment from the Crater Lake National Park boundary to the Rogue River National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 0.5-mile segment from the Crater Lake National Park boundary to approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing as a scenic river;

"(B) the 6.1-mile segment from approximately 0.1-mile downstream from the Forest road 6530760 (West Lake Road) crossing to Minehaha Creek as a wild river; and

"(C) the 33.7-mile segment from Minehaha Creek to the Rogue River National Forest boundary as a scenic river.

"( ) Wenaha, Oregon.—The 21.55-mile segment from the confluence of the North Fork and the South Fork to its confluence with the Grande Ronde River; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 18.7-mile segment from the confluence of the North Fork and South Fork to the Umatilla National Forest as a wild river;

"(B) the 2.7-mile segment from the Umatilla National Forest boundary to the easternmost boundary of the Wenaha State Wildlife Area as a scenic area; and

"(C) the 0.15-mile segment from the easternmost boundary of the Wenaha State Wildlife Area to the confluence with the Grande Ronde River as a recreational river.

"( ) West Little Owyhee, Oregon.—The 51-mile segment from its headwaters to its confluence with Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) White, Oregon.—The 46.5-mile segment from its headwaters to its confluence with the Deschutes River in the following classes:

"(A) The 2-mile segment from its headwaters to the section line between ksections 9 and 16, township 3 south, range 9 east, as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, That designation and classification shall not preclude the Secretary from exercising discretion to approve construction, operation, and from exercising discretion to approve construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Mt. Hood Winter Sports Area insofar as such construction does not involve water resource projects and is consistent with protecting the values for which the river was designated.

"(B) the 13.6-mile segment from the section line between sections 9 and 16, township 3 south, range 9 east, to Deep Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 6.5-mile segment from Deep Creek to the Mt. Hood National Forest boundary as scenic river; to be administered by the Secretary of Agriculture;

"(D) the 17.5-mile segment from the Mt. Hood National Forest boundary to Three Mile Creek as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and

"(F) the 1.6-mile segment from River Mile 1.6 to its confluence with the Deschutes River as a recreational river; to be administered by the Secretary of the Interior.".

SEC. 103. WILD AND SCENIC RIVER STUDIES.

Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) Blue, Oregon.—The segment from its headwaters to the Blue River Reservoir; by the Secretary of Agriculture.

"( ) Chewaucan, Oregon.—The segment from its headwaters to the Paisley Urban Growth boundary to be studied in cooperation with, and integrated with, the Klamath River Basin Plan; by the Secretary of Agriculture.

"( ) North Fork Malheur, Oregon.—The segment from the Malheur National Forest boundary to Beulah Reservoir; by the Secretary of the Interior.

"( ) South Fork McKenzie, Oregon.—The segments from its headwaters to the upper end of Cougar Reservoir and from the lower end of Cougar Reservoir to its confluence with the McKenzie River; by Secretary of Agriculture.

"( ) Steamboat Creek, Oregon.—The entire creek; by the Secretary of Agriculture.

"( ) Wallowa, Oregon.—The segment from its confluence with the Minam River to its confluence with the Grande Ronde River; by the Secretary of Agriculture.".

SEC. 104. UPPER KLAMATH RIVER STUDY.

Section 5(d) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910) is amended by inserting "(1)" after "(d)" and by inserting the following new paragraph at the end thereof:

"(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other

Federal agency with respect to activities or actions on this segment and its immediate environment.".

SEC. 105. INDIAN TREATY LANDS AND ADMINISTRATIVE PROVISIONS.

(a)(1) Lands now or hereafter held in trust by the United States for the benefit of an Indian tribe or individual Indian shall not be included within the boundaries of the Deschutes or Metolius Rivers as designated by this title without the consent of the applicable tribal council.

(2) When Indian treaty lands exist in association with lands included in the National Wild and Scenic Rivers System under this title, the Secretaries of the Interior and Agriculture, as appropriate, shall fully consult and enter into written cooperative management agreements with the affected Indian tribe for planning, administration, and management of such areas as provided in section 10(e) of this Act.

(b) Nothing in this title shall affect:

(1) the jurisdiction of responsibilities of an Indian tribe with respect to fish, wildlife, land, and water management;

(2) the treaty or other rights of an Indian tribe;

(3) the water and land claims, present or future, of an Indian tribe;

(4) the relicensing or amending the license of the Pelton Hydroelectric Project, FERC Project No. 2030 so long as such project does not adversely affect the values for which the Deschutes River was designated;

(5) the rights or jurisdiction of Indian tribes over waters or any river or stream within the affected river area or stream, or over any ground water resource; or

(6) the beneficial ownership interest of land held in trust, now or hereafter, by the United States for Indian Tribes or individual Indians.

(c) Nothing in this title shall preclude or impair the use by the City of Portland, Oregon, of water in the Bull Run and Little Sandy Rivers to the extent that such water is necessary for the purpose of municipal water supply.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after the fiscal year 1988—

(a) for the purpose of acquisition of lands, waters, and interests therein pursuant to this title, not to exceed $5,000,000; and

(b) for the purpose of preparing the studies for the rivers and river segments listed in section 103 of this title, not to exceed $2,500,000; and

(c) for the purpose of preparing the study of the river segment listed in section 104 of this title, not to exceed $200,000.

TITLE II—UMATILLA BASIN PROJECT, OREGON

SEC. 201. SHORT TITLE.

This title may be cited as the "Umatilla Basin Project Act".

SEC. 202. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, for the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report entitled:"Umatilla Basin Project, Oregon, Planning Report" dated February 12, 1988, in the manner specified by this Title. The principal work of the project shall consist of—

(1) lands, water rights, or interests therein acquired for the benefit of fishery resources;

(2) measures to conserve water and improve the efficiency of the existing conveyance, distribution, and drainage systems of the Umatilla Project, where such measures are found to make water available for the benefit of fishery resources;

(3) pumping plants and related diversion, conveyance, and distribution features;

(4) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange required to fulfill the purposes of this title;

(5) fish passage and protective facilities and other necessary mitigation measures;

(6) a program to monitor and regulate project operations; and

(7) a program to evaluate fishery resource mitigation mesures.

SEC. 203. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this title shall be integrated and coordinated, from an operational standpoint, into existing features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provided for the monitoring and regulation of project related water supplies for the purposes herein identified.

SEC. 204. POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

SEC. 205. OPERATION AND MAINTENANCE COSTS.

Non-Federal interests shall be responsible for the cost of operating and maintaining the project, except for those costs associated with implementation of section 204 of this title, and to fulfill the purpose of mitigating losses to anadromous fisheries resources.

SEC. 206. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this title are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary, through the end of fiscal year 1998, to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

SEC. 207. NON-FEDERAL COSTS.

(a) CREDIT FOR NON-FEDERAL FISHERY RESOURCE IMPROVEMENTS.—The Umatilla Basin Project authorized by this title is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) TREATMENT OF NON-FEDERAL COSTS INCURRED IN IMPLEMENTING PROJECT FEATURES BEFORE APPROPRIATIONS.—To the extent any public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

SEC. 208. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such project pumping capacity may be made available for use on presently irrigated lands eligible for service within the irrigation districts that participate in the project authorized in this title at a rate based on the operation and maintenance costs related to such conjunctive use and an appropriate share of capital costs for such use as specified by an agreement between the Secretary of the Interior and the irrigation districts: *Provided,* (a) that boundaries of the irrigation districts may be modified, upon approval of the Secretary of the Interior, to include such lands that received irrigation water service from those districts prior to October 1, 1988; and (b) that such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for the irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping, and the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall be borne by irrigation districts receiving the benefit of such water.

SEC. 209. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this title: *Provided,* That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated not more than $1,000,000 to accomplish the purposes of this section.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project and the study authorized by section 213 of this title the sum of $42,400,000 (April 1987 prices), less any amounts previously appropriated for the project, plus or minus such amounts as may be required by reason of changes in the cost of construction work of the types involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 210(b) of this title: *Provided*, that such funds are authorized to be appropriated only through the tenth fiscal year after which construction funds are first made available: *Provided further*, That all costs, including operation and maintenance costs, allocated to the mitigation of anadromous fish species and the study authorized in section 213 of this Title shall be nonreimbursable. There are also authorized to be appropriated such sums as may be required for the Federal share of operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

SEC. 211. WATER RIGHTS.

Nothing in this title shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or Indian tribe if such rights were established by the setting aside of a reservation by treaty, Executive Order, agreements, or Act of Congress.

SEC. 212. REHABILITATION AND BETTERMENT AUTHORIZATION.

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this Title, Stanfield and Westland Irrigation Districts shall be eligible to receive financial assistance, in an amount not to exceed $2,000,000 each, as deemed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

SEC. 213. REVIEW OF UMATILLA PROJECT OPERATIONS.

Within one year from the date of enactment of this Title, the Secretary shall complete a review of current operations of the Umatilla Project, for the purpose of identifying opportunities to further mitigate losses to anadromous fishery resources. Within 90 days of the completion of this review, the Secretary shall transmit a report thereon, together with any conclusions and recommendations to improve the management of the existing project, including measures that may require additional legislation, to the Committee on the Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The review shall include, but not be limited to the following:

(a) contract negotiation and administration;

(b) water conservation plans and activities required by section 210 of the Reclamation Reform Act of 1982 (Public Law 97-293);

(c) allocation of reservoir storage space;

(d) water deliveries outside the authorized service area; and,

(e) water rights held by the United States."

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I want to thank the majority leader and all others for helping get this bill passed.

Mr. BYRD. Mr. President, my friend is welcome.

RADON DETECTION

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 744.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 744) entitled "An Act to authorize the Environmental Protection Agency to assist States in development of radon programs, to conduct a study to determine the extent to which radon in the Nation's schools poses a threat to children and employees in such schools, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. INDOOR RADON ABATEMENT.

(a) Amendment of Toxic Substances Control Act.—The Toxic Substances Control Act (15 U.S.C. 2601 and following) is amended by adding after title II the following new title:

"TITLE III—INDOOR RADON ABATEMENT

"SEC. 301. NATIONAL GOAL.

"The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.

"SEC. 302. DEFINITIONS.

"For purposes of this title:

"(1) The term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381);

"(B) the owner of any nonprofit elementary or secondary school building; and

"(C) the governing authority of any school operated pursuant to section 6 of the Act of September 30, 1950 (64 Stat. 1107), relating to impact aid for children who reside on Federal property.

"(2) The term 'nonprofit elementary or secondary school' has the meaning given such term by section 202(8).

"(3) the term 'radon' means the radioactive gaseous element and its short-lived decay products produced by the disintegration of the element radium occurring in air, water, soil, or other media.

"(4) The term 'school building' has the meaning given such term by section 202(13).

"SEC. 303. EPA CITIZEN'S GUIDE.

"(a) Publication.—In order to make continuous progress toward the long-term goal established in section 301 of this title, the Administrator of the Environmental Protection Agency shall, not later than June 1, 1989, publish and make available to the public an updated version of its document titled 'A Citizen's Guide to Radon'. The Administrator shall revise and republish the guide as necessary thereafter.

"(b) Information Included.—

"(1) Action levels.—The updated citizen's guide published as provided in subsection (a) shall include a description of a series of action levels indicating the health risk associated with different levels of radon exposure.

"(2) Other information.—The updated citizen's guide shall also include information with respect to each of the following:

"(A) The increased health risk associated with the exposure of potentially sensitive populations to different levels of radon.

"(B) The increased health risk associated with the exposure to radon of persons engaged in potentially risk-increasing behavior.

"(C) The cost and technological feasibility of reducing radon concentrations within existing and new buildings.

"(D) The relationship between short-term and long-term testing techniques and the relationship between (i) measurements based on both such techniques, and (ii) the actions levels set forth as provided in paragraph (1).

"(E) Outdoor radon levels around the country.

"SEC. 304. MODEL CONSTRUCTION STANDARDS AND TECHNIQUES.

"The Administrator of the Environmental Protection Agency shall develop model construction standards and techniques for controlling radon levels within new buildings. To the maximum extent possible, these standards and techniques should be developed with the assistance of organizations involved in establishing national building construction standards and techniques. The Administrator shall make a draft of the document containing the model standards and techniques available for public review and comment. The model standards and techniques shall provide for geographic differences in construction types and materials, geology, weather, and other variables that may effect radon levels in new buildings. The Administrator shall make final model standards and techniques available to the public by June 1, 1990. The Administrator shall work to ensure that organizations responsible for developing national model building codes, and authorities which regulate building construction within States or political subdivisions within States, adopt the Agency's model standards and techniques.

"SEC. 305. TECHNICAL ASSISTANCE TO STATES FOR RADON PROGRAMS.

"(a) Required Activities.—The Administrator (or another Federal department or agency designated by the Administrator) shall develop and implement activities designed to assist State radon programs. These activities may include, but are not limited to, the following:

"(1) Establishment of a clearinghouse of radon related information, including mitigation studies, public information materials, surveys of radon levels, and other relevant information.

"(2) Operation of a voluntary proficiency program for rating the effectiveness of radon measurement devices and methods, the effectiveness of radon mitigation devices and methods, and the effectiveness of private firms and individuals offering radon-related architecture, design, engineering, measurement, and mitigation services. The proficiency program under this subparagraph shall be in operation within 1 year after the date of the enactment of this section.

"(3) Design and implementation of training seminars for State and local officials and private and professional firms dealing with radon and addressing topics such as monitoring, analysis, mitigation, health effects, public information, and program design.

"(4) Publication of public information materials concerning radon health risks and methods of radon mitigation.

"(5) Operation of cooperative projects between the Environmental Protection Agency's Radon Action Program and the State's radon program. Such projects shall include the Home Evaluation Program, in which the Environmental Protection Agency evaluates homes and States demonstrate mitigation methods in these homes. To the maximum extent practicable, consistent with the objectives of the evaluation and demonstration, homes of low-income persons should be selected for evaluation and demonstration.

"(6) Demonstration of radon mitigation methods in various types of structures and in various geographic settings and publication of findings. In the case of demonstration of such methods in homes, the Administrator should select homes of low-income persons, to the maximum extent practicable and consistent with the objectives of the demonstration.

"(7) Establishment of a national data base with data organized by State concerning the location and amounts of radon.

"(8) Development and demonstration of methods of radon measurement and mitigation that take into account unique characteristics, if any, of nonresidential buildings housing child care facilities.

"(b) Discretionary Assistance.—Upon request of a State, the Administrator (or another Federal department or agency designated by the Administrator) may provide technical assistance to such State in development or implementation of programs addressing radon. Such assistance may include, but is not limited to, the following:

"(1) Design and implementation of surveys of the location and occurrence of radon within a State.

"(2) Design and implementation of public information and education programs.

"(3) Design and implementation of State programs to control radon in existing or new structures.

"(4) Assessment of mitigation alternatives in unusual or unconventional structures.

"(5) Design and implementation of methods for radon measurement and mitigation for nonresidential buildings housing child care facilities.

"(c) Information Provided to Professional Organizations.—The Administrator, or another Federal department or agency designated by the Administrator, shall provide appropriate information concerning technology and methods of radon assessment and mitigation to professional organizations representing private firms involved in building design, engineering, and construction.

"(d) Plan.—Within 9 months after the date of the enacement of this section and annually thereafter, the Administrator shall submit to Congress a plan identifying assistance to be provided under this section and outlining personnel and financial resources necessary to implement this section. Prior to submission to Congress, this plan shall be reviewed by the advisory groups provided for in section 403(c) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note).

"(e) Proficiency Rating Program and Training Seminar.—

"(1) Authorization.—There is authorized to be appropriated not more than $1,500,000 for the pruposes of initially establishing the proficiency rating program under subsection (a)(2) and the training seminars under subsection (a)(3).

"(2) Charge imposed.—To cover the operating costs of such proficiency rating program and training seminars, the Administrator shall impose on persons applying for a proficiency rating and on private and professional firms participating in training seminars such charges as may be necessary to defray the costs of the program or seminars. No such charge may be imposed on any State or local government.

"(3) Special account.—Funds derived from the charges imposed under paragraph (2) shall be deposited in a special account in the Treasury. Amounts in the special account are authorized to be appropriated only for purposes of administering such proficiency rating program or training seminars or for reimbursement of funds appropriated to the Administrator to initially establish such program or seminars.

"(4) Reimbursement of general fund.—During the first three years of the program and seminars, the Administrator shall make every effort, consistent with the goals and successful operation of the program and seminars, to set charges imposed under paragraph (2) so that an amount in excess of operation costs is collected. Such excess amount shall be used to reimburse the General Fund of the Treasury for the full amount appropriated to initially establish the program and seminars.

"(f) Authorization.—(1) There is authorized to be appropriated for the purposes of carrying out sections 303, 304 and this section an amount not to exceed $3,000,000 for each of fiscal years 1989, 1990, and 1991.

"(2) No amount appropriated under this subsection may be used by the Environmental Protection Agency to administer the grant program under section 306.

"(3) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under subsection. (a)(2).

"SEC. 306. GRANT ASSISTANCE TO STATES FOR RADON PROGRAMS.

"(a) In General.—For each fiscal year, upon application of the Governor of a State, the Administrator may make a grant, subject to such terms and conditions as the Administrator considers appropriate, under this section to the State for the purpose of assisting the State in the development and implementation of programs for the assessment and mitigation of radon.

"(b) Application.—An application for a grant under this section in any fiscal year shall contain such information as the Administrator shall require, including each of the following:

"(1) A description of the seriousness and extent of radon exposure in the State.

"(2) An identification of the State agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in radon programs, and description of the roles and responsibilities of any municipal, district, or areawide organization involved in radon programs.

"(3) A description of the activities and programs related to radon which the State proposes in such year.

"(4) A budget specifying Federal and State funding of each element of activity of the grant application.

"(5) A 3-year plan which outlines long range program goals and objectives, tasks necessary to achieve them, and resource requirements for the entire 3-year period, including anticipated State funding levels and desired Federal funding levels. This clause shall apply only for the initial year in which a grant application is made.

"(c) Eligible Activities.—Activities eligible for grant assistance under this section are the following:

"(1) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, school buildings, high-risk residential construction types).

"(2) Development of public information and educational materials concerning radon assessment, mitigation, and control programs.

"(3) Implementation of programs to control radon in existing and new structures.

"(4) Purchase by the State of radon measurement equipment or devices.

"(5) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment.

"(6) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees.

"(7) Payment of general overhead and program administration costs.

"(8) Development of a data storage and management system for information concerning radon occurrence, levels, and programs.

"(9) Payment of costs of demonstration of radon mitigation methods and technologies as approved by the Administrator, including State participation in the Environmental Protection Agency Home Evaluation Program.

"(10) A toll-free radon hotline to provide information and technical assistance.

"(d) Preference to Certain States.—Beginning in fiscal year 1991, the Administrator shall give a preference for grant assistance under this section to States that have made reasonable efforts to ensure the adoption, by the authorities which regulate building construction within that State or political subdivisions within States, of the model construction standards and techniques for new buildings developed under section 304.

"(e) Priority Activities and Projects.—The Administrator shall support eligible activities contained in State applications with the full amount of available funds. In the event that State applications for funds exceed the total funds available in a fiscal year, the Administrator shall give priority to activities or projects proposed by States based on each of the following criteria:

"(1) The seriousness and extent of the radon contamination problem to be addressed.

"(2) The potential for the activity or project to bring about reduction in radon levels.

"(3) The potential for development of innovative radon assessment techniques, mitigation measures as approved by the Administrator, or program management approaches which may be of use to other States.

"(4) Any other uniform criteria that the Administrator deems necessary to promote the goals of the grant program and that the Administrator provides to States before the application process.

"(f) Federal Share.—The Federal share of the cost of radon program activities implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the costs incurred by the State in implementing such program in the first year of a grant to such State, 60 percent in the second year, and 50 percent in the third year. Federal assistance shall be made on the condition that the non-Federal share is provided from non-Federal funds.

"(g) Assistance to Local Governments.—States may, at the Governor's discretion, use funds from grants under this section to assist local governments in implementation of activities eligible for assistance under paragraphs (2), (3), and (6) of subsection (c).

"(h) Information.—(1) The Administrator may request such information, data, and reports developed by the State as he considers necessary to make the determination of continuing eligibility under this section.

"(2) Any State receiving funds under this section shall provide to the Administrator all radon-related information generated in its activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

"(3) Any State receiving funds under this section shall maintain, and make available to the public, a list of firms and individuals within the State that have received a passing rating under the Environmental Protection Agency proficiency rating program referred to in section 305(a)(2). The list shall also include the address and phone number of such firms and individuals, together with the proficiency rating received by each. The Administrator shall make such list available to the public at appropriate locations in each State which does not receive funds under this section unless the State assumes such responsibility.

"(i) Limitations.—(1) No grant may be made under this section in any fiscal year to a State which is the preceding fiscal year received a grant under this section unless the Administrator determines that such State satisfactorily implemented the activities funded by the grant in such preceding fiscal year.

"(2) The costs of implementing paragraphs (4) and (9) of subsection (c) shall not in the aggregate exceed 50 percent of the amount of any grant awarded under this section to a State in a fiscal year. In implementing such paragraphs, a State should made every effort, consistent with the goals and successful operation of the State radon program, to give a preference to low-income persons.

"(3) The costs of general overhead and program administration under subsection (c)(7) shall not exceed 25 percent of the amount of any grant awarded under this section to a State in a fiscal year.

"(4) A State may use funds received under this section for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

"(j) Authorization.—(1) There is authorized to be appropriated for grant assistance under this section an amount not to exceed $10,000,000 for each of fiscal years 1989, 1990, and 1991.

"(2) There is authorized to be appropriated for the purpose of administering the grant program under this section such sums as may be necessary for each of such fiscal years.

"(3) Notwithstanding any other provision of this section, not more than 10 percent of the amount appropriated to carry out this section may be used for make grants to any one State.

"(4) Funds not obligated to States in the fiscal year for which funds are appropriated under this section shall remain available for obligation during the next fiscal year.

"(5) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under section 305(a)(2).

"SEC. 307. RADON IN SCHOOLS.

"(a) Study of Radon in Schools.—

"(1) Authority.—The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's school buildings.

"(2) List of high probability areas.—In carrying out such study, the Administrator shall identify and compile a list of areas within the United States which the Administrator determines have a high probability of including schools which have elevated levels of radon.

"(3) Basis of list.—In compiling such list, the Administrator shall make such determinations on the basis of, among other things, each of the following:

"(A) Geological data.

"(B) Data on high radon levels in homes and other structures nearby any such school.

"(C) Physical characteristics of the school buildings.

"(4) Survey.—In conducting such study the Administrator shall design a survey which when completed allows Congress to characterize the extent of radon contamination in schools in each State. The survey shall include testing from a representative sample of schools in each high-risk area identified in paragraph (1) and shall include additional testing, to the extent resources are available for such testing. The survey also shall include any reliable testing data supplied by States, schools, or other parties.

"(5) Assistance.—(A) The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, a list of high risk areas within each State, including a delineation of such areas and any other data available to the Administrator for schools in that State. To assist such agencies, the Administrator also shall provide guidance and data detailing the risks associated with high radon levels, technical guidance and related information concerning testing for radon within schools, and methods of reducing radon levels.

"(b) In addition to the assistance authorized by subparagraph (A), the Administrator is authorized to make available to the appropriate agency of each State, as designated by the Governor of such State, devices suitable for use by such agencies in conducting tests for radon within the schools under the jurisdiction of any such State agency. The Administrator is authorized to make available to such agencies the use of laboratories of the Environmental Protection Agency, or to recommend laboratories, to evaluate any such devices for the presence of radon levels.

"(6) Diagnostic and remedial efforts.—The Administrator is authorized to select, from high-risk areas identified in paragraph (2), school buildings for purposes of enabling the administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such school buildings. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States.

"(7) Status report.—On or before October 1, 1989, the Administrator shall submit to the Congress a status report with respect to action taken by the Administrator in conducting the study required by this section, including the results of the Administrator's diagnostic and remedial work. On or before October 1, 1989, the Administrator shall submit a final report setting forth the results of the study conducted pursuant to this section, including the results of the Administrator's diagnostic and remedial work, and the recommendations of the Administrator.

"(b) Authorization.—For the purpose of carrying out the provisions of paragraph (6) of subsection (a), there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary. For the purpose of carrying out the provisions of this section other than such paragraph (6), there are authorized to be appropriated such sums, not to exceed $1,000,000, as may be necessary.

"SEC. 308. REGIONAL RADON TRAINING CENTERS.

"(a) Funding Program.—Upon application of colleges, universities, institutions of higher learning, or consortia of such institutions, the Administrator may make a grant or cooperative agreement, subject to such terms and conditions as the Administrator considers appropriate, under this section to the applicant for the purpose of establishing and operating a regional radon training center.

"(b) Purpose of the Centers.—The purpose of a regional radon training center is to develop information and provide training to Federal and State officials, professional and private firms, and the public regarding the health risks posed by radon and demonstrated methods of radon measurement and mitigation.

"(c) Applications.—Any colleges, universities, institutions of higher learning or consortia of such institutions may submit an application for funding under this section. Such applications shall be submitted to the Administrator in such form and containing such information as the Administrator may require.

"(d) Selection Criteria.—The Administrator shall support at least 3 eligible applications with the full amount of available funds. The Administrator shall select recipients of funding under this section to ensure that funds are equitably allocated among regions of the United States, and on the basis of each of the following criteria:

"(1) The extent to which the applicant's program will promote the purpose described in subsection (b).

"(2) The demonstrated expertise of the applicant regarding radon measurement and mitigation methods and other radon-related issues.

"(3) The demonstrated expertise of the applicant in radon training and in activities relating to information development and dissemination.

"(4) The seriousness of the radon problem in the region.

"(5) The geographical coverage of the proposed center.

"(6) Any other uniform criteria that the Administrator deems necessary to promote the purpose described in subsection (b) and that the Administrator provides to potential applicants prior to the application process.

"(e) Termination of Funding.—No funding may be given under this section in any fiscal year to an applicant which in the preceding fiscal year received funding under this section unless the Administrator determines that the recipient satisfactorily implemented the activities that were funded in the preceding year.

"(f) Authorization.—There is authorized to be appropriated to carry out the program under this section not to exceed $1,000,000 for each of fiscal years 1989, 1990, 1991.

"SEC. 309. STUDY OF RADON IN FEDERAL BUILDINGS.

"(a) Study Requirement.—The head of each Federal department or agency that owns a Federal building shall conduct a study for the purpose of determining the extent of radon contamination in such building using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

"(b) High-Risk Federal Buildings.—(1) The Administrator shall identify and compile a list of areas within the United States which the Administrator, in consultation with Federal departments and agencies, determines have a high probability of including Federal buildings which have elevated levels of radon.

"(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

"(A) Geological data.

"(B) Data on high radon levels in homes and other structures near any such Federal building.

"(C) Physical characteristics of the Federal buildings.

"(c) Study Designs.—Studies required under subsection (a) shall be based on design criteria specified by the Administrator. The head of each Federal department or agency conducting such a study shall submit, not later than July 1, 1989, a study design to the Administrator for approval. The study design shall follow the most recent Environmental Protection Agency guidance documents, including 'A Citizen's Guide to Radon'; the 'Interim Protocol for Screening and Follow Up: Radon and Radon Decay Products Measurements'; the 'Interim Indoor Radon & Radon Decay Product Measurement Protocol'; and any other recent guidance documents. The study design shall include testing data from a representative sample of Federal buildings in each high-risk area identified in subsection (b). The study design also shall include additional testing data to the extent resources are available, including any reliable data supplied by Federal agencies, States, or other parties.

"(d) Information on Risks and Testing.—(1) The Administrator shall provide to the departments or agencies conducting studies under subsection (a) the following:

"(A) Guidance and data detailing the risks associated with high radon levels.

"(B) Technical guidance and related information concerning testing for radon within Federal buildings and water supplies.

"(C) Technical guidance and related information concerning methods for reducing radon levels.

"(2) In addition to the assistance required by paragraph (1), the Administrator is authorized to make available, on a cost reimbursable basis, to the departments or agencies conducting studies under subsection (a) devices suitable for use by such departments or agencies in conducting tests for radon within Federal buildings. For the purpose of assisting such departments or agencies in evaluating any such devices for the presence of radon levels, the Administrator is authorized to recommend laboratories or to make available to such departments or agencies, on a cost reimbursable basis, the use of laboratories of the Environmental Protection Agency.

"(e) Study Deadline.—Not later than June 1, 1990, the head of each Federal department or agency conducting a study under subsection (a) shall complete the study and provide the study to the Administrator.

"(f) Report to Congress.—Not later than October 1, 1990, the Administrator shall submit a report to the Congress describing the results of the studies conducted pursuant to subsection (a).

"SEC. 310. REGULATIONS.

"The Administrator is authorized to issue such regulations as may be necessary to carry out the provisions of this title:

"SEC. 311: ADDITIONAL AUTHORIZATIONS.

"Amounts authorized to be appropriated in this title for purposes of carrying out the provisions of this title are in addition to amounts authorized to be appropriated under other provisions of law for radon-related activities.".

"(b) Technical Amendments.—The Toxic Substances Control Act (15 U.S.C. 2601 and following) is amended by adding at the end of the table of contents in section 1 the following:

"TITLE III—INDOOR RADON ABATEMENT

"Sec. 301. National goal.
"Sec. 302. Definitions;
"Sec. 303. EPA Citizen's guide.
"Sec. 304. Model construction standards and techniques.
"Sec. 305. Technical assistance to States for radon programs.
"Sec. 306. Grant assistance to States for radon programs.
"Sec. 307. Radon in schools.
"Sec. 308. Regional radon training centers.
"Sec. 309. Study of radon in Federal buildings.
"Sec. 310. Regulations.
"Sec. 311. Additional authorizations.".

Amend the title so as to read: "An Act to amend the Toxic Substances Control Act to assist States in responding to the threat to human health posed by exposure to radon.".

Mr. CHAFEE. Mr. President, I am absolutely delighted that today we are finalizing a bill, S. 744, the State Radon Program Development Act of 1988. This legislation requires the Environmental Protection Agency to assist States in establishing radon abatement programs.

Over a year ago, I and my distinguished colleague, Senator Mitchell, introduced separate bills to combat the problem of radon accumulation and contamination. These bills, S. 743 and S. 744, were combined, forming the basis of the legislation we have passed today. It accomplishes what we have been fighting for: a strong cooperative effort to rid every home, school, and building of dangerous radon gas buildup.

Mr. President, when we talk about radon we are talking about a substance that is responsible for up to 20,000 deaths every year. We are talking about an invisible, odorless natural gas that is the second leading cause of lung cancer. And yet, ironically, radon can nearly always be detected and dispersed without great difficult or cost.

So what exactly is radon? Radon is an invisible radioactive gas that occurs naturally in nature when uranium deposits decay below the soil. The decay products cling to dust particles and, when inhaled, can cause cancer. In the out-of-doors, radon is diluted to nonlethal levels and poses no threat. The danger lies in high concentrations of radon—radon that has accumulated within closed spaces.

Homes, schools, and office buildings situated above or near natural uranium deposits trap radon gas within their insulated walls. Radon enters through cracks in the foundations or walls of the structure and contaminates the indoor air. A recent Environmental Protection Agency report estimates that the radon levels of one in eight American homes exceed the EPA's action level of 4 picocuries per liter. There are also radon hotspots—buildings or areas with unusually high radon level readings just because of their proximity to natural uranium deposits.

Since radon has recently been identified as the largest single source of lung cancer other than smoking, high radon level readings mean high chances of impaired health. By living or working in a building with high levels of radon contamination, a person could unknowingly absorb the equivalent of smoking about 3 packs of cigarettes a week.

It is frightening to learn that, for several reasons, children may be more at risk from the adverse effects of radon than adults. One, studies of other types of radiation indicates that children, because they are still in the developmental stages, are more susceptible to radiation damage. Two, radon experts believe that one-story elementary schools are more likely to have a radon problem than other public buildings. The problem is heightened if the school uses basement areas for cafeterias or gymnasiums. And three, children may receive a double exposure—at school and at home—to radon.

The irony of the situation is that this health hazard does have workable solutions. Testing for radon is easy and relatively inexpensive, with screening detectors ranging from $10 to $50 in cost. Likewise, remedial action techniques, such as sealing or ventilation, do not usually carry costs. And yet, fewer than 25 States have any kind of radon-reduction programs in place. To start getting these solutions in place, we need legislation to provide guidance, information, and assistance.

This measure will do just that. It gives the States a chance to tackle this problem with full Federal backing. In fact, this bill provides over $40 million to address the problem of radon gas. It will help us learn more about radon and what we can do to protect ourselves.

It would set up a proficiency program to certify radon measurement devices and techniques for use in existing buildings. It also requires the EPA to develop model construction standards and techniques for controlling radon levels within new buildings. Furthermore, it would put demonstration radon techniques in place, particularly in low-income homes.

This bill makes $30 million over 3 years in technical and grant assistance available for States. That sum will fund the establishment of a national clearinghouse and database for radon information, as well as training seminars on radon for State and local officials.

In addition, Mr. President, there is a section of the bill that focuses on radon contamination in our children's schools. It authorizes the sum of $1.5 million for the identification and alleviation of radon contamination in schools across the Nation. Working with the appropriate State agencies, the EPA will conduct testing in schools and submit a report to Congress containing the details of its diagnostic and remedial efforts.

Mr. President, there is a real need for this legislation. I heartily applaud my colleagues for approving this measure to lessen the health risks posed by radon contamination. Especially in light of recent EPA surveys on the high levels of radon in many of our States, the passage of this bill comes none too soon.

Thank you Mr. President, I yield the floor.

Mr. MITCHELL. Mr. President, I rise in strong support of the Radon Program Development Act.

I originally introduced this legislation in March of last year with Senators CHAFEE, STAFFORD, LAUTENBERG, and others. The bill was passed by the Senate in July of last year and was recently passed by the House.

When this legislation was introduced last year, we knew that radon was a serious health problem. Recent studies, however, indicate that the radon health threat is even more widespread and serious than we had thought.

The case against radon is overwhelming.

Radon is a colorless, odorless gas which occurs naturally in soils and rock containing granite, shale, uranium and phosphate. It can seep into homes and other structures and build up to harmful levels.

Radon poses a significant threat of lung cancer, second only to cigarette smoking. The Environmental Protection Agency estimates that as many as 20,000 lung cancer deaths each year are attributable to radon.

Recently released studies of radon in seven States found radon above the EPA recommended action level in one in three homes. Radon was above the action level in over 60 percent of the homes in North Dakota, in 45 percent of homes in Minnesota, over 35 per cent of homes in Pennsylvania, and about 25 percent of the homes in Indiana and Massachusetts.

Radon is a serious problem in my home State of Maine. The State department of health estimates that as many as 37 percent of Maine homes may have unsafe levels of radon. The University of Maine estimates that up to 75 people in Maine die each year from exposure to radon.

Nationwide, the EPA estimates that some 8 million homes have unsafe levels of radon. In the seven States most recently tested, some 200,000 homes have very high radon levels needing immediate action.

In response to the mounting evidence of radon's health threat, the Surgeon General recently issued a national health advisory warning the public of the dangers of radon.

And, the EPA has announced a new policy that virtually every home in the Nation should be tested for the presence of the deadly gas.

Congress has taken some preliminary steps to respond to the radon problem. We enacted the "Radon and Indoor Air Quality Research Act," which I introduced, as an amendment to Superfund in 1986. This legislation directs the EPA to expand its research efforts related to radon, to develop radon mitigation methods, and carry out other needed research.

Given what we have learned about the seriousness and extent of the radon problem, it is essential that we build on this research effort and develop an aggressive and comprehensive response program. The legislation we are considering today is an important first step in that direction.

The "Radon Program Development Act of 1987," S. 744, will expand research and assessment of radon and will establish programs to bring about reductions in radon levels in homes and other buildings.

The central provision of the bill creates a new grant program to assist States in responding to the radon problem.

It is essential that we complement our national radon efforts with development of programs addressing radon at the State level. The increase in national attention to the radon problem has increased the public demand for assessment and control of radon contamination. Much of this increased public demand is falling on State governments.

Many States, including my home State of Maine, recognize that they have a radon problem but lack the resources to develop needed new programs. Other States are concerned that they may have a radon problem and would like to investigate, but do not have the resources to conduct a survey or carry out related activities. The bill is intended to help States get radon programs up and running.

A total of $30 million is authorized for grants to States over a 3-year period. States will be able to use funds for a wide range of radon-related activities including hiring and training staff, purchasing laboratory equipment and radon detection devices, and implementating education, and related radon programs.

I should note that, while the primary purpose of the grant program is to encourage States to build high quality programs, the bill allows up to half of a grant to a State to be used for purchase of radon detection devices and demonstration of methods to mitigate radon. These activities can play an important part in an effective radon program. The EPA Administrator, however, should assure that grants to States support balanced programs which take a comprehensive approach to the radon problem.

Another important provision of the bill, which was developed in the House, directs the EPA to develop model building and construction codes for new homes. These standards will help assure that new housing is designed to keep radon levels to a minimum. While there is no requirement that States of other governments adopt radon design standards, the EPA is directed to give preference to States which have adopted standards in the third year of the grant program.

Public confidence in the reliability of radon tests and mitigation methods is essential to an effective response program. Several provisions of the bill will expand and improve the radon proficiency testing program of the EPA.

The Agency is directed to expand proficiency testing programs to include private firms engaging in radon mitigation as well as radon testing. In addition, the bill provides new authority to charge private firms fees for proficiency testing. These fees will help assure that the program has strong and continuing financial support. Senators SPECTER and GORE played a key role in developing this new authority.

The bill also includes several important provisions to expand our understanding of the radon problem.

Section 307 of the bill, which was developed by Senator CHAFEE, directs the EPA to assess the extent of radon contamination in the Nation's schools. There is evidence of radon contamination in schools and concern that children are particularly sensitive to radon. EPA is to develop a report on radon in schools within 2 years and is to demonstrate effective radon mitigation methods in schools.

The bill also includes a provision, developed by Senator BAUCUS, calling for an assessment of radon contamination in Federal buildings. While there is currently very limited data concerning radon in Federal buildings, many Federal buildings are located in areas known to have high levels of radon. We have an obligation to determine the extent and seriousness of radon contamination of these buildings.

Section 308 of the bill, which was originally developed by Senator LAUTENBERG, provides new authority for the EPA to establish not less than three regional radon training centers. These centers will provide radon information and training to State and local officials, employees of radon firms, and the general public. These centers will be an important resource for disseminating the know-how to identify and mitigate radon.

Another key provision of the bill directs the EPA to publish an updated "Citizen's Guide to Radon" by June of next year. The new guide is to include the most recent date on radon and is to give special attention to health threats radon poses to sensitive populations, such as children.

The new citizen's guide will also review the significant increase in risks when people are exposed to both radon and tobacco smoke. The guide is also to review the limitations of various radon measurement methods.

Finally, this legislation provides a national, long-term goal that the air indoors should be as free of radon as the ambient air outside buildings. While this is an ambitious goal, the serious health threats posed by radon demand that we do everything possible to acheive this goal as soon as possible.

This legislation is an important and badly needed step toward addressing some of the key elements of the radon problem. I want to express my appreciation to the other Senators who played such a vital role in developing this bill—this was truly a cooperative effort.

I hope all of my colleagues will give this bill their wholehearted support.

Mr. BURDICK. Mr. President, I rise to support the passage of S. 744 which amends the Toxic Substances Control Act to provide grant and technical assistance to States for control of radon. This bill establishes a national long-term goal of reducing radon to the level in the ambient air and sets up a mechanism to reach that goal.

This bill is necessary and, in the opinion of this Senator, is long overdue. Last month the Environmental Protection Agency and the Public Health Service issued a national health advisory urging the testing of most homes in this country for radon. Over the past year, EPA has been working with a number of States, including my home State of North Dakota, to determine the extent of the radon problem. About one in three homes tested had radon levels above EPA's recommended action level. In North Dakota, over 60 percent of all homes have radon levels above the recommended action levels.

We have devoted a good deal of time and attention to the issue of radon during the past several years. As chairman of the Environment and Public Works Committee, I held a hearing of the committee in Fargo last year in order to gain a fuller understanding of the problem in my State. That hearing produced a solid record and a number of positive recommendations which are included in this bill.

I am confident that this legislation will effectively assist the States in responding to this growing problem. The bill provides $10 million a year for grants to States to develop radon programs. These grants may be used to set up response programs, to train staff, to purchase needed equipment and obtain radon measurement devices. The bill also expands the program for testing the proficiency of private firms engaged in radon detection and mitigation. The bill also contains provisions which will expand EPA's assessment of radon in our Nation's schools.

I express my appreciation for the leadership of Senator MITCHELL, who as Environmental Protection Subcommittee chairman, marshaled support for this bill. I also want to acknowledge the efforts of Senators BAUCUS, LAUTENBERG, and CHAFEE for their contributions in developing this vital piece of legislation. In large measure this bill could not have reached this point without the dedicated work of Jeff Peterson of the committee staff. I am grateful for his efforts.

I urge my colleagues to approve this bill. Evidence of the serious health threats posed by radon is mounting. We have developed an effective response to this pervasive public health problem. I strongly urge the passage of the Radon Program Development Act.

Mr. BYRD. Mr. President, I am very pleased that today we are completing action on the Radon Program Development Act.

It was over a year ago that the Senate recognizing the health consequences of radon pollution indoors passed its version of radon legislation.

Since that time, we have become even more aware of the potential magnitude of this problem. A recent joint announcement by the Administrator of the Environmental Protection Agency and the Surgeon General recommends that every home in the United States be tested for radon contamination.

The announcement illustrates the increased need to put in place a program to assist our State to deal with this issue. The announcement has also created increased interests, across the Nation, in home testing. It has created a concern in my own State of West Virginia that there is a lack of certified firms and individuals who can reliably measure radon in homes and reliably implement mitigation measures if needed.

I ask unanimous consent that the following articles outlining these concerns from the Charleston Gazette be printed in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

STATE HEALTH OFFICIALS PLACE WEST VIRGINIANS ON RADON ALERT

(By Alyssa Lenhoff)

One year ago, state Department of Health officials were telling West Virginians not to worry about radon, an odorless, colorless gas believed to be the second-leading cause of lung cancer next to cigarette smoke.

Although radon has seeped into homes in other states, health officials said it would not be much of a problem in West Virginia, where the gas was believed to have a difficult time getting through rocks.

In one year, their story has changed considerably. Now, those same officials are citing a study that says 60 percent of all homes in West Virginia probably have dangerous levels of the seeping gas.

In 1987, The Environmental Protection Agency said one out of every five homes tested in a 10-state survey was found to contain health-threatening levels of radon. The radon contamination rate in West Virginia is three times higher than that according to the survey of 187 state homes' being cited by the EPA and the Department of Health.

Radon seeps up from the soil and into the air, or into a home's basement, through cracks in the concrete floor or other openings in the foundation. Radon also can pass through cracks in foundations of homes built without basements.

On Sept. 12, the EPA issued an advisory urging the testing of most homes in the country. Dr. Vernon J. Houk, assistant U.S. surgeon general, recently said radon gas in homes may cause people to develop lung cancer.

Although the state Health Department has joined the national radon alert, officials say they have little concrete help to offer state residents who want to see if their homes are actually indiscriminate killers.

West Virginians wanting to test levels of the health-threatening gas in their homes must send $10 to $50 to out-of-state companies.

Those out-of-state companies will in turn mail residents a canister they are to place in an area of their home. After a certain number of days, residents must mail that canister back to the company, who will then mail them a reading from it.

Kazim Shiekh, director of the Health Department's Division of Industrial Hygiene, said his office can supply residents with names of the out-of-state companies. "We can also offer help in interpreting the readings, but they can probably do that themselves. It's pretty self-explanatory," Sheikh said.

If residents learn their homes are contaminated with health-threatening levels of radon, they must again turn to out-of-state companies for help in getting it removed. Some out-of-state companies offer do-it-yourself kits.

In an article in its Sept. 14 issue, The New York Times quoted experts that said it costs anywhere from $500 to $1,500 to have companies remove the gas and $300 to $400 for a do-it-yourself kit.

Costs for having radon tested or removed from West Virginia homes could be much higher than that, Sheikh said.

There are no West Virginia companies licensed to test or remove radom from homes. It's not from lack of trying, says Martin Tighe, who says he has been trying to get the EPA to give him a license for three years. Tighe, an employee of the West Virginia Department of Natural Resources, said he hopes to get a license by November.

If he does get the license, Tighe said he expects to be flooded with calls from hundreds of state residents who are alarmed about the seeping gas.

RADON SCARES BUYERS—HOME SALES DELAYED FOR TESTS

(By Alyssa Lenhoff)

Something that can't be seen or touched and something that may not even exist threatens to sour three homes sales for a Charleston real estate agent.

Two weeks ago, Paul Burdette reached tentative agreements to sell those homes. Before the sales are final and before Burdette of American Dream Home Realty collects one cent of commission, he must supply buyers with a guarantee that homes are not contaminated with radon, an odorless and colorless gas.

Radon, which occurs naturally and seeps from the ground into homes, is believed to cause cancer. Several years ago, scientists and environmentalists discovered that the gas was posing health hazards to thousands of Americans.

Although radon has undoubtedly existed in homes for decades, the gas did not become a household word until one month ago when the surgeon general sounded a radon alert.

The surgeon general said all American homes should be tested for high levels of radon. Local media have carried several stories in the past few weeks about radon.

Burdette said these three home buyers probably read the local stories. "This radon thing might kill these three transactions. I am sure that it was the publicity of the past week that did it," he said.

Burdette believes that home buyers should be concerned about everything from leaky roofs to cracking driveways when they buy homes. But Burdette and other area real estate agents are not convinced that radon is as much of a problem locally as it is in the rest of the State and nation. "If we are ever able to get the tests done, I'm sure they will show nothing," he said.

No companies in West Virginia have Environmental Protection agency approval to test homes for radon.

"This is really presenting a problem," Burdette said. "We haven't been able to get the testing done. We don't have anyone to turn to and I am just at a standstill with these three homes," he said.

Marcia White, executive director of the Kanawha Valley Board of Realtors, said she only knows of two local buyers who asked to have homes tested for radon. "We have never really thought of radon as a problem in the Kanawha Valley and we still don't," White said.

Nevertheless, the Board of Realtors and area real estate agents are expecting that more and more customers will soon request such tests. The Board of Realtors has even asked a radon expert to speak at its next meeting.

That expert, Jim McIntosh, said the public is becoming more informed about radon. As their knowledge of the gas increases, so will their fears about it, he said.

McIntosh, an industrial hygienist with the Charleston office of ERM-Midwest Environmental Resource Management said he expects all home buyers to ask soon for the testing. McIntosh said buyers will probably want a company with no interest in the home sale to do the testing. He hopes that his firm, which is seeking EPA certification, will get called.

Many more firms are also seeking that certification and Tim Runyan, a real estate agent, said there may be great demand for all of them. Runyan of Michael Runyan Realtors, said home buyers definitely have a right to know if a home has high levels of radon.

"I would like to see every home tested," Runyan said.

Radon testing will be yet another hoop agents must jump through before a sale becomes final. Some question just how serious the local radon problem is. "I think everyone is pushing the panic button on radon," White of the Board of Realtors said.

"It's bad for us. It's just another problem," said Steve Fisher of Dobbins-Fisher-Pittman Inc., a local real estate company.

Several months ago, Fisher's agency brought a North Carolina firm in to test a home for radon. "I was surprised that the buyer wanted it. I wouldn't be surprised anymore with all of the publicity there's been about it," he said.

Fisher worries that unscrupulous operators may recognize the need for radon testing and open fly-by-night companies. "It could be worse than with the termite exterminators," he said asserting that many rip-off artists got involved in that business.

"It is all still too new," he said. "We'll see what happens."

The question of who is liable for a radon contaminated house—the seller or the buyer—has to be answered.

"It's an act of God. You can blame anyone for radon," Fisher said.

Once homes are identified to have high levels of radon, some steps can be taken to solve the problem. Those steps range in price from $500 to $1,500. Places where radon has been seeping in are identified and sealed.

McIntosh's firm just started specializing in this radon abatement work. A home sale does not need to be jeopardized just because the dwelling is found to have high radon levels. McIntosh said.

Selling prices of homes can be adjusted to account for costs in radon abatement or the seller will foot the bill. Although there is strong reason to believe that exposure to high levels of radon does cause cancer, McIntosh says there is no reason for home buyers, sellers or real estate agents to panic.

"The problem can be solved," he said.

RADON WORK NOT JUST FOR CONTRACTORS

(By John McCoy)

Expensive contract work isn't the only way to eliminate radon from your home, a West Virginia University professor says.

Dr. Bob Anderson, a professor of environmental education, says many homeowners with radon problems should be able to fix the problems themselves.

"Many of the problems can be fixed by putting better cross ventilation in a basement area, or by sealing off a crawl space from the upper levels of the house with insulation," Anderson said. He added that the repairs are not terribly expensive and don't require a great deal of special training.

The West Virginia University Extension Service periodically conducts three-day classes on radon abatement procedures, according to Anderson. People who want to learn how to do the repairs can do so by attending the courses, which cost $100.

Anderson says a homeowner's first step in finding a radon problem is to have his or her house tested. The test results should be compiled by a U.S. Environmental Protection Agency-approved testing lab.

"People should go by the Environmental Protection Agency-approved lists on file at local health departments," he said. "They should avoid having their houses tested by any lab that's not on the lists."

If the labs find radon levels above the so-called "defect action level," Anderson says another test should be run. If levels are still too high, steps should be taken to get rid of the gas, which the EPA has linked to approximately 20,000 lung cancer deaths each year. If the job is too big for do-it-yourself measures, Anderson says reputable contractors are fairly easy to find.

However, he said some caution is in order. "Don't contract with anyone unless they will guarantee—in writing—that the radon levels will be below the defect action level after the repairs are finished. Any reputable contractor should come back and re-test your house to make sure the work has been done satisfactorily," Anderson said.

More information on the radon repair courses is available by contacting the West Virginia University Extension Service at 293-3912.

Mr. BYRD. Mr. President, this legislation directly addresses these concerns. It directs that EPA provide technical assistance to the States in developing radon programs. These activities include establishing a clearinghouse for radon information, demonstration of radon mitigation methods, and establishing a national database on radon.

EPA is also directed to provide the public with information on firms or individuals who are proficient in measuring radon in homes or other buildings, and proficient to perform mitigation measures. The agency also is to design and implement training seminars for State and local officials as well as professional and private firms on such matters as radon monitoring analysis, mitigation and health effects.

This bill also authorizes $10 million per year in grant assistance to States to aid in the development and implementation of programs for the assessment and mitigation of radon.

Because radon contamination is not confined to homes, this bill requires that EPA conduct a study to determine the extent of a radon problem in our Nation's schools, and that the Departments of Agriculture, Interior, and Defense, the General Services Administration, and the Veteran's Administration conduct studies to determine the extent of radon in Federal buildings.

Mr. President, the radon problem is relatively new on the horizon, as the first indications of a problem didn't even come to light until the early 1980's. In 1986, the Congress passed legislation to research the problem, and that research is now bearing out that the problem is real, and is likely to be widespread.

The legislation before us today is the next step in our efforts to deal with this new health problem. It will ensure that programs are in place to provide the necessary assistance for educating our officials, and for proficient testing and mitigation services that our citizens need.

I am pleased to support this legislation, and that the Congress has recognized the importance of this issue and acted responsibly.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 744, the Radon Program Development Act. This bill, which I joined in introducing last year, expands the Nation's effort to address radon contamination.

First, I want to pay tribute to Senator GEORGE MITCHELL, chairman of the Senate Environmental Protection Subcommittee, for his leadership in introducing this bill. Senator MITCHELL has a long-standing interest in the problem of radon. In 1985, Senator MITCHELL and I introduced legislation to require EPA to establish an indoor air and radon research program. This legislation, together with another bill I introduced requiring EPA to conduct a national radon assessment and a mitigation program, was included in the Superfund Amendments and Reauthorization Act of 1986. These bills provide the legislative backbone for EPA's existing radon program.

We have taken the additional step of passing S. 744 because of the serious health threats posed by radon contamination. A few weeks ago, the U.S. Public Health Service announced a national radon advisory for everyone living in homes and up to the second floor in apartments to test their homes for radon. At the same time, EPA released the results of surveys of rado contamination in seven States carried out in response to my legislation which requires EPA to conduct a national radon assessment. One in three houses in these States had radon levels in excess of the standard established by EPA for taking action.

In my State of New Jersey, the Department of Environmental Protection estimates that nearly 2 million of the State's dwellings may be at risk from high levels of radon. Nationally, EPA estimates that one in eight of the Nation's 75 million homes may contain excessive levels of radon.

Scientists believe that radon causes up to 20,000 lung cancer deaths a year, the second leading cause of lung cancer after smoking. It's clear that the danger posed by radon requires a comprehensive Federal and State effort and that radon contamination is one of the most serious problems facing the Nation's housing policy makers.

The legislation we are passing today expands the Federal radon effort. It provides EPA with authority to undertake additional radon activities including developing model construction standards to reduce radon levels, establishing a radon information clearinghouse, operating a proficiency program for rating the effectiveness of private firms offering radon related services and studying the effect of radon in the Nations' schools. The bill also provides Federal financial and technical assistance to States to develop their radon programs.

I am especially pleased that the bill includes two amendments which I offered originally to S. 1629, the Indoor Air Quality Act of 1987. This bill, together with my amendments, passed the Senate Environment Committee in July 1988.

The first amendment requires EPA to address the problem of radon in child care facilities. EPA's existing radon effort has focused on residential housing. My amendment requires that EPA expand its efforts on assessment and mitigation to nonresidential child care facilities. Over 2 million children nationwide and approximately 100,000 children in my State of New Jersey spend part of their day in child care facilities. This is significant because children spend up to 10 hours a day in these facilities, these facilities are often located in basements where radon levels are highest, children may be more susceptible to harm from certain types of radiation, and exposure to elevated radon levels early in life may increase a child's risk of lung cancer. Under my amendment, EPA would be required to address radon in child care facilities.

My second amendment requires EPA to establish regional radon training centers. These centers will help disseminate information and provide training to government officials, professional and private firms and the public regarding the health risks posed by radon and demonstrated methods of radon measurement and mitigation.

Mr. President, radon is a serious problem but one that can be addressed by prompt and effective action. S. 744 will further the Federal and State efforts to provide this prompt and effective action. I urge my colleagues to support this bill.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that the conference report be agreed to, and that the motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TAFT INSTITUTE AUTHORIZATION—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 4585 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1988.)

TO AUTHORIZE A CORRECTION IN THE ENROLLMENT OF H.R. 4585

Mr. BYRD. Mr. President, I send to the desk a concurrent resolution on behalf of Mr. PELL.

I ask unanimous consent that it be agreed to, and that the motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 158) was considered, and agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the text of the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 1, insert "Act" before the end quotation marks.

(2) In section 309(a), strike out "Public Law 100-346" and insert "Public Law 100-436".

NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be discharged from further consideration of S. 1727 and that the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1727) to establish a National Deafness and Other Communication Disorders Program, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3626

Mr. BYRD. Mr. President, I offer a substitute amendment on behalf of Mr. HARKIN.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. HARKIN, proposed an amendment numbered 3626.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act shall be cited as the "National Deafness and Other Communications Disorders Act of 1988".

SECTION 2. ESTABLISHMENT AND TRANSFER OF FUNCTIONS.

Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(1) in section 401(b)(1)—

(A) by striking "and Communicative" in subparagraph (J); and

(B) by adding at the end the following new subparagraph:

"(M) The National Institute on Deafness and Other Communication Disorders.";

(2) in the heading for subpart 10 of part C, by striking "and Communicative";

(3) in section 457—

(A) by striking "and Communicative"; and

(B) by striking "disorder, stroke," and all that follows and inserting "and disorder and stroke."; and

(4) in Part C, by adding at the end the following new subpart:

"Subpart 13—National Institute on Deafness and Other Communication Disorders

"PURPOSE OF THE INSTITUTE

"SEC. 464. The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the 'Institute') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

"NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

"SEC. 464A. (a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the 'Program'). The Director or the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

"(b) Activities under the Program shall include—

"(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

"(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

"(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

"(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

"(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

"(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

"DATA SYSTEM AND INFORMATION CLEARINGHOUSE

"SEC. 464B. (a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

"(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

"MULTIPURPOSE DEAFNESS AND OTHER COMMUNICATION DISORDERS CENTER

"SEC. 464C. (a) The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1) use the facilities of a single institution or a consortium of cooperating institutions; and

"(2) meet such qualifications as may be prescribed by the Secretary.

"(c) Each center assisted under this section shall, at least, conduct—

"(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

"(2) training programs for physicians, scientists, and other health and allied health professionals;

"(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

"(4) programs for the dissemination to the general public of information—

"(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

"(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

"(d) A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in subsection (c)(2).

"(e) Each center assisted under this section may conduct programs—

"(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

"(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

"(f) The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

"(g) Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

"NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ADVISORY BOARD

"SEC. 464D. (a) The Secretary shall establish in the Institute the National Deafness and Other Communications Disorders Advisory Board (hereafter in this section referred to as the 'Advisory Board').

"(b) The Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

"(1) The Secretary shall appoint—

"(A) twelve members from individuals who are scientists, physicians, and other health and rehabilitation professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to deafness and other communication disorders, including not less than two persons with a communication disorder; and

"(B) six members from the general public who are knowledgeable with respect to such disorders, including not less than one person with a communication disorder and not less than one person who is a parent of an individual with such a disorder.

Of the appointed members, not less than five shall by virtue of training or experience be knowledgeable in diagnoses and rehabilitation of communication disorders, education of the hearing, speech, or language impaired, public health, public information, community program development, occupational hazards to communications senses, or the aging process.

"(2) The following shall be ex officio members of each Advisory Board:

"(A) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute on Deafness and Other Communication Disorders, the Director of the Centers for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers).

"(B) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

"(c) Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

"(d) The term of office of an appointed member of the Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

"(e) The members of the Advisory Board shall select a chairman from among the appointed members.

"(f) The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

"(g) The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

"(h) The Advisory Board shall—

"(1) review and evaluate the implementation of the plan prepared under section 464A(a) and periodically update the plan to ensure its continuing relevance;

"(2) for the purpose of assuring the most effective use and organization of resources respecting deafness and other communication disorders, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

"(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan and with key non-Federal entities involved in activities affecting the control of such disorders.

"(i) In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

"(j) The Advisory Board shall prepare an annual report for the Secretary which—

"(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

"(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the deafness and other communication disorders;

"(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such disorders in such fiscal year; and

"(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 464A(a).

"(k) The National Deafness and Other Communication Disorders Advisory Board shall be established not later than 90 days after the date of the enactment of the National Institute on Deafness and Other Communication Disorders Act.

"INTERAGENCY COORDINATING COMMITTEE

"SEC. 464E. (a) The Secretary may establish a committee to be known as the Deafness and Other Communication Disorders Interagency Coordinating Committee (hereafter in this section referred to as the "Coordinating Committee").

"(b) The Coordinating Committee shall, with respect to deafness and other communication disorders—

"(1) provide for the coordination of the activities of the national research institutes; and

"(2) coordinate the aspects of all Federal health programs and activities relating to deafness and other communication disorders in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

"(c) The Coordinating Committee shall be composed of the directors of each of the national research institutes and divisions involved in research with respect to deafness and other communication disorders and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to deafness and other communication disorders.

"(d) The Committee shall be chaired by the Director of NIH (or the designee of the Director). The Committee shall meet at the call of the chair, but not less often than four times a year.

"(e) Not later than 120 days after the end of each fiscal year, the Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out subsection (b).

"LIMITATION ON ADMINISTRATIVE EXPENSES

"SEC. 464F. With respect to amounts appropriated for a fiscal year for the National Institutes of Health, the limitation established in section 408(b)(1) on the expenditure of such amounts for administrative expenses shall apply to administrative expenses of the National Institute on Deafness and Other Communication Disorders.".

SEC. 3. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel employed by the

National Institutes of Health in connection with the functions vested under section 2 in the Director of the National Institute on Deafness and Other Communication Disorders, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds of the National Institutes of Health, arising from or employed, held, used, available to, or to be made available, in connection with such functions shall be transferred to the Director for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) SAVINGS PROVISIONS.—With respect to functions vested under section 1 in the Director of the National Institute on Deafness and Other Communication Disorders, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, that have been issued, made, granted, or allowed to become effective, and that are effective on the date of the enactment of this Act, shall continue in effect according to their terms unless changed pursuant to law.

Mr. HARKIN. Mr. President, On September 29, 1987, I introduced legislation, S. 1727, establishing within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders [NIDOCD]. Congressman CLAUDE PEPPER, on the same date, introduced identical legislation, H.R. 3361, in the House of Representatives. S. 1727 was referred to the Senate Committee on Labor and Human Resources, and H.R. 3361 to the House Committee on Energy and Commerce, Subcommittee on Health and the Environment. Hearings on the bills were held by the House and Senate on March 4 and March 29, 1988, respectively. On April 13, 1988, the Senate Committee on Labor and Human Resources unanimously reported the provisions of S. 1727 as an amendment to S. 2222, the National Research Institutes Reauthorization Act of 1988, Senate Report 100-363. The House Subcommittee on Health and the Environment marked up H.R. 3361 on June 14, 1988, and the full Committee on Energy and Commerce reported the bill on June 29, House Report 100-761.

The House of Representatives passed H.R. 3361 on July 12 by a vote of 409 to 2, and sent the bill to the Senate where it was placed directly on the calendar. On August 3, H.R. 3361 was laid before the Senate and amended by Senator BYRD, for Senator KENNEDY, to include the provisions of S. 2222, the National Research Institutes Reauthorization Act of 1988. H.R. 3361, as amended, passed the Senate by voice vote. Thus, the proposal creating a National Institute on Deafness and Other Communication Disorders has previously been passed by both the Senate and House of Representatives.

House and Senate conferees have been unable to agree on certain provisions now contained in H.R. 3361 having to do with the National Research Institutes reauthorization, but unrelated to the new Institute on Deafness and Other Communication Disorders. In order to allow members to continue to work out their differences on the general NIH provisions of the bill, without endangering final passage of the new Institute in these final hours of the 100th Congress, the original National Institute on Deafness and Other Communication Disorders Act, S. 1727, has been discharged from the Committee on Labor and Human Resources. To S. 1727, I am offering an amendment in the form of a substitute, which makes minor technical and conforming changes in the bill. Based on previous unanimous passage of this proposal, my bill has the complete support of the chairman and ranking minority member of the committee, Senators KENNEDY and HATCH.

Mr. President, by way of comment on the bill, I believe this proposal will prove to be of tremendous significance to the nearly 30 million Americans with communication disorders—disorders of hearing, balance, voice, speech, language, taste and smell. The public attention this area has drawn recently has underscored the inconsistency between the research support given to communication disorders, and their prevalance. Over 22 million people suffer from hearing disorders, and the number of afflicted individuals rises to more than 30 million when other communication disorders are considered, one-tenth of the U.S. population. Deafness is the most common congenital disorder, affecting one in 1,000 children. Of the hearing impaired, 4 million are senior citizens. This number is expected to rise to over 10 million as we move into the next century and our population ages. And yet, it is estimated that biomedical research support on deafness and other communication disorders presently amounts to only two-tenths of 1 percent of the societal costs associated with these disorders.

Under the umbrella of the National Institute of Neurological and Communicative Disorders and Stroke [NINCDS], where competing demands on resources are great, research in the area of communication disorders has received limited emphasis. For instance, there is a serious problem with the development of young clinical investigations, and the lack of sufficient clinical research centers with a major training component able to train these investigators in the otolaryngological disorders. There are probably less than 50 physicians currently trained and funded for active ongoing clinical investigation in this field; most of those funded clinical investigators are older and the environment is such that fewer and fewer young academicians are being drawn toward an investigative career. Associated with this is an attitude or pessimism regarding the attraction of sustained funding for clinical investigations, and a dearth of clinical reseach centers with a training component.

At the same time, future research efforts hold unprecedented promise of yielding rapid results with practical significance to persons with communication disorders. For example, opportunities exist, using modern technology, to make meaningful strides in understanding the molecular and genetic basis for the hearing process and its dysfunction. This is vital to achieving optimal means of preventing hearing damage or loss, detecting a potential hearing problem at an early, more manageable stage, and developing safe and effective treatment methods.

In order to realize these possibilities, a concerted and defined effort is needed. A separate institute committed to research in this field will bring together a wide range of professionals, galvanize their abilities, give focus to their work, and give visability to deafness and other communication disorders.

In supporting establishment of a separate Instititute for Deafness and other Communication Disorders, the Committee on Labor and Human Resources recognized and clarified the relationship between the new Institute and other existing institutes, particularly NINCDS. As the chief sponsor of the new Institute, I would like to reaffirm my concurrence with the expressions of congressional intent set out in Senate Report No. 100-363. It is my expection that all institutes of the NIH involved with aspects of communication disorders research will continue to support research in this area, including hearing, balance, voice, speech, language, taste and smell. It is also assumed that this research support will be performed in a coordinated fashion with the new National Institute on Deafness and Other Communication Disorders.

In ending I will note once more that this proposal has been through hearings in both the Senate and House of Representatives, has been reported by the appropriate committees on both sides, and has passed both full Chambers. In fact, Congress has approved, and the President has signed into law, an appropriation for the new Institute for fiscal year 1989. I thank my colleagues for the support they have demonstrated for the National Institute on Deafness and Other Communication Disorders throughout this process, and ask them to join me once more today in supporting passage of S. 1727. Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3626) was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PALAU COMPACT OF FREE ASSOCIATION IMPLEMENTATION ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of House Joint Resolution 597, and that the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 597) to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

AMENDMENT NO. 3627

Mr. BYRD. Mr. President, I offer a substitute amendment on behalf of Mr. Johnston.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. JOHNSTON, proposes an amendment numbered 3627.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE.

This Resolution may be cited as the "Palau Compact of Free Association Implementation Act".

SEC. 2. ENTRY INTO FORCE OF COMPACT.

Entry into force of the Compact of Free Association between the United States and Palau (set forth in title II of Public Law 99-658 and hereafter in this joint resolution referred to as the "Compact") in accordance with subsections (a) and (d) of section 101 of Public Law 99-658 (100 Stat. 3673) is hereby authorized—

(1) subject to the condition that the Compact, as approved by the Congress in Public Law 99-658, is approved by the requisite percentage of the votes cast in a referendum conducted pursuant to the constitution of Palau,

(2) upon expiration of 30 days after the President notifies the Committees on Interior and Insular Affairs and Foreign Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the effective date of the Compact.

SEC. 3. FISCAL PROCEDURES ASSISTANCE.

(a) PROCEDURES ON EXPENDING FUNDS.—Upon request of the Government of Palau, the Secretary of the Interior shall provide assistance, to the Government of Palau to develop and promulgate regulations for the effective expenditure of funds received pursuant to this joint resolution, Public Laws 99-658 and 99-239, or any other Act of Congress.

(b) IMPLEMENTATION OF AUDIT RECOMMENDATIONS.—

(1) The President is authorized to negotiate an agreement with the Government of Palau under which the Government of Palau agrees to develop a plan within 120 days after an audit is submitted to that Government (or any entity or instrumentality thereof) by the Comptroller General of the United States (or his duly authorized representatives), or the Inspector General of the Department of the Interior, to:

(A) implement the recommendations made by such audit, or

(B) inform the Secretary of the Interior of that Government's objections to implementing such recommendations.

(2) Under such agreement the President may agree that the Secretary of the Interior shall provide assistance to the Government of Palau to implement such audit recommendations.

SEC. 4. ANTI-DRUG PROGRAM.

(a) PLAN.—The National Drug Policy Board shall develop, in cooperation with the Government of Palau, a plan for an anti-drug program in Palau. The plan shall be submitted to the Interior and Insular Affairs, and Foreign Affairs Committees of the House of Representatives, the Senate Committee on Energy and Natural Resources, and the Appropriations Committees of the House and Senate by March 1, 1989. The plan shall identify the specific needs and costs of such an anti-drug program. It shall identify all existing resources to be allocated for its implementation by the Government of the United States and the Government of Palau, and it shall recommend priority use for additional resources, assuming such resources are made available.

(b) AGREEMENT.—Following completion of the plan, the President and the Government of Palau shall negotiate an agreement to facilitate implementation of the plan. Such agreement may include:

(1) that the Government of Palau may request, on a long-term or case-by-case basis, that the officers of United States law enforcement agencies may conduct investigations consistent with implementation of the plan in cooperation with the law enforcement agencies of the Government of Palau;

(2) that the Government of Palau or the Government of the United States may agree to provide specific resources, on a one-time, or on a multi-year basis, to strengthen the anti-drug program; and

(3) a specific description of the technical assistance, training, and equipment to be provided to Palau by the United States necessary to implement the plan.

(c) AUTHORIZATION.—To the extent that funds are not otherwise available to appropriate agencies of the United States to implement any agreement entered into pursuant to this section, there is hereby authorized to be appropriated such sums as may be necessary.

SEC. 5. PUBLIC AUDITOR AND SPECIAL PROSECUTOR.

(a) AGREEMENT.—The President shall, upon the formal request of the Government of Palau, negotiate an agreement with the Government of Palau in accordance with section 224 of the Compact which may provide that—

(1) the Government of the United States agrees to provide the Government of Palau with assistance, subject to appropriation, under section 222 of the Compact for maintaining offices of public auditor and special prosecutor;

(2) the Government of Palau agrees to maintain and staff the independent offices of public auditor and special prosecutor established in accordance with the authority of its constitution and laws;

(3) the Government of Palau agrees to provide funding levels adequate for the effective operation of each of the offices of public auditor and special prosecutor during the period the Compact is in effect in addition to the assistance provided by the Government of the United States pursuant to this subsection;

(4) upon request of the Government of Palau the President shall provide, on a nonreimbursable basis, appropriate technical assistance to the public auditor or special prosecutor. The assistance provided pursuant to this subsection for the first five years after the effective date of the Compact shall, upon the request of the Government of Palau, and to the extent personnel are available, include but not be limited to, the full time services of—

(A) an auditor or accountant, as determined by the public auditor, for the office of public auditor and

(B) an attorney or investigator, as determined by the special prosecutor, for the office of special prosecutor, and

(5) the Government of the United States shall, subject to appropriation, provide the Government of Palau with such sums as are agreed to under this section, for each of the offices of public auditor and special prosecutor for the first five years after the effective date of the Compact.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

SEC. 6. POWER GENERATION.

Strike subsection 104(e) of Public Law 99-658, and insert a new subsection 104(e) as follows:

"(e) Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sum and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau, except under the procedures established by the Compact and its related agreements. No funds appropriated pursuant to the Compact, this Act, or any other Act for grants or other assistance to Palau may be used to satisfy any obligation or expense incurred by Palau prior to November 14, 1986, with respect to any contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau which has not been specifically authorized by Congress in advance, except that the Government of Palau may use any portion of the annual grant under section 211(b) not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities and any portion of the funds under section 212(b) of the Compact for such purpose.".

SEC. 7. DEVELOPMENT PLAN FOR PALAU.

The President shall negotiate an agreement with the Government of Palau under which the Government of Palau agrees to provide current information regarding the National Development Plan proposed pursuant to section 231 of the Compact and submitted pursuant to section 101(d)(1)(C) of Public Law 99-658, including information adapting the existing plan to the first 5-year period following the effective date of the Compact, and to list all capital infrastructure projects to be financed with United States assistance.

SEC. 8. MEDICAL SYSTEM.

(a) Report.—The Secretary of the Interior, in cooperation with the Public Health Service, shall submit a report, including the views of the Government of Palau, to the Interior and Insular Affairs, and the Foreign Affairs Committees of the House of Representatives, the Senate Committee on Energy and Natural Resources, and the Appropriations Committees of the Senate and the House of Representatives, by March 1, 1989. The report shall present the range of options, and the cost of such options, for the upgrading of the Koror hospital.

(b) The Government of the United States will sympathetically consider the request of Palau for additional financial assistance to meet the need for medical facility construction based on the report made under this section, and the United States encourages Palauan financial assistance to this project in addition to funds made available by the United States.

(c) Authorization.—There are authorized to be appropriated such sums as are necessary to upgrade the Koror hospital.

SEC. 9. AUDIT CERTIFICATION.

The chief officer of any agency conducting an audit pursuant to paragraph (1) of sections 102(c) and 103(m) of the Compact of Free Association Act of 1985 (Public Law 99-239) and section 101(d)(1)(C) of Public Law 99-658 shall certify that audit.

SEC. 10. ACQUISITION OF DEFENSE SITES.

The provisions of Title III of the Compact relating to future use by the United States of defense sites in Palau do not restrict the authority of the President of the United States to:

(1) request additional funding, subject to appropriation, related to the use of privately owned land in Palau pursuant to Article II of Title Three of the Compact, as may be appropriate in light of actual land use requirements, independent appraisals of such privately owned land accepted by both governments, and other appropriate documentation of actual land use costs; and

(2) consent to an extension of the time set forth in a subsidiary agreement to such Article in which the Government of Palau is required to make such land available to the United States.

SEC. 11. CAPITAL IMPROVEMENTS.

(a) Report.—The Secretary of the Interior, in cooperation with the Government of Palau, shall submit a report to the Interior and Insular Affairs, and the Foreign Affairs Committees of the House of Representatives, the Senate Committee on Energy and Natural Resources, and the Appropriations Committees of the Senate and the House of Representatives by March 1, 1989, on the condition of the Palau prison. The report shall present a range of options for upgrading the prison, including replacement of the facility; the cost of these options; and alternatives for funding these options.

(b) The Government of the United States will sympathetically consider the request of Palau for additional financial assistance to meet the need for prison construction based on the report made under this section.

(c) Authorization.—There are authorized to be appropriated such sums as are necessary to upgrade the Palau prison.

SEC. 12. FEDERAL PROGRAMS COORDINATION PERSONNEL.

(a) Assignment.—The Secretary of the Interior shall station at least one professional staff person in each of the Offices of the United States Representatives in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands to provide federal program coordination and technical assistance to such governments as authorized under Public Laws 99-239 and 99-658. In meeting the purposes of this section the Secretary shall select qualified persons following consultations with the Interagency Group on Freely Associated State Affairs.

(b) Authorization.—There is authorized to be approriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13. REFERENDUM COSTS.

The Secretary of the Interior shall provide such sums as may be necessary for a further referendum on approval of the Compact, if one is required, or other appropriate costs associated with the approval process in Palau. There is authorized to be appropriated not to exceed $200,000 to carry out the purpose of this section.

SEC. 14. AGREEMENTS.

(a) Pursuant to Section 101(d) of Public Law 99-239, the following agreements are approved and shall enter into force in accordance with their terms:

(1) "Agreement Between the Government of the United States and the Government of the Republic of the Marshall Islands to Amend the Governmental Represenatation Provisions of the Compact of Free Association Pursuant to Section 432 of the Compact" signed on March 18, 1988; and

(2) "Agreement Between the Government of the United States and the Government of the Federated States of Micronesia to Amend the Governmental Representation Provisions of the Compact of Free Association Pursuant to Section 432 of the Compact" signed on March 9, 1988.

(b) An agreement between the United States and the Government of the Republic of Palau identical to the agreements referred to in subsection (a) of this section shall take effect upon submission to Congress of such an agreement and entry into force of such an agreement in the manner provided in Section 101(d)(5) of Public Law 99-658.

(c) The provisions of Article IX, paragraph 5(a) of the Agreement referred to in Section 462(e) of the Compact of Free Association as approved by Public Law 99-239, and Article IX, paragraph 5(a) of the agreement referred to in Section 462(f) of the Compact of Free Association for Palau as approved by Public Law 99-658, are extended, in accordance with the terms thereof, until October 1, 1998, unless earlier terminated or further extended by the laws of the United States.

SEC. 15. STATUS OF FUNDS.

In any year that funds made available by the United States for that year pursuant to this joint resolution, Public Law 99-658 or Public Law 99-239, or any other Act of Congress are not completely obligated by the Government of Palau, the unobligated balances of such funds shall remain available in addition to the funds to be provided in subsequent years.

SEC. 16. SUBMISSION OF AGREEMENTS.

(a) Any agreement concluded with the Government of Palau pursuant to this joint resolution and any agreement which would amend, change, or terminate any such agreement, or portion thereof, shall be submitted to the Congress and may not take effect until after 30 days after the date on which such agreement is so submitted. An amendment or agreement substituting or in addition to the subsidiary agreement negotiated under section 212(a) of the Compact or its annex shall take effect only when approved by an Act of Congress.

(b) The authority under section 2 of this joint resolution for the Compact to enter into force shall not be effective until the agreements set forth in sections 3 and 7 between the Governments of the United States and Palau have been concluded.

SEC. 17. TRANSITION FUNDING.

Section 104(c) of Public Law 99-658 (100 Stat. 3676) is amended to read as follows:

"(c) Authorization for Transition Purposes.—For the purposes of applying section 105(c)(2) of the Compact of Free Association Act of 1985 (99 Stat. 1792) to Palau, the terms "fiscal year 1987", "fiscal year 1988", and "fiscal year 1989" shall be deemed to be the first, second, and third fiscal years, respectively, beginning after the effective date of the Compact.".

SEC. 18. JUDICIAL ASSISTANCE.

(a) The Ninth Judicial Circuit of the United States may provide assistance to the courts of the freely associated states. The Chief Justice of the United States or the Chief Judge of the Ninth Circuit may, upon the request of a duly authorized official of a freely associated state, authorize any circuit judge of, or district court judge within, the Ninth Circuit to serve temporarily as a judge of any court of a freely associated state.

(b) The Congress hereby consents to the acceptance and retention of reimbursement or allowances for expenses related to service on a freely associated state court authorized by this section. All such reimbursement or allowances shall be reported by the judge concerned to the Administrative Office of the United States Courts.

(c) The President is authorized to enter into agreements with the freely associated states that are necessary or appropriate to facilitate implementation of this section.

SEC. 19. CONTROLLED SUBSTANCES IN THE FREELY ASSOCIATED STATES.

(a) The President is authorized to negotiate agreements which provide—

(1) that the United States shall carry out the provisions of part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) as necessary to provide for the lawful distribution of controlled substances in the freely associated states;

(2) that a freely associated state which institutes and maintains a voluntary system to report annual estimates of narcotics needs to the International Narcotics Control

Board, and which imposes controls on imports of narcotic drugs consistent with the Single Convention of Narcotic Drugs of 1961, shall be eligible for exports of narcotic drugs from the United States in the same manner as a country meeting the requirements of subsection (a) of 21 U.S.C. 953.

(b) Agreements concluded pursuant to this section shall become effective pursuant to section 101(f)(5) of Public Law 99-239 or section 101(d)(5) of Public Law 99-658, as may be applicable.

SEC. 20. NORTHERN MARIANAS COLLEGE.

The Northern Marianas College is hereby constituted a depository to receive Government publications, and the Superintendent of Documents shall supply to the Northern Marianas College one copy of each such publication in the same form as supplied to other designated depositories.

SEC. 21. MATCHING FUND REQUIREMENT.

The last sentence of section 501(d) of Public Law 95-134, as amended by Public Law 96-205, as amended (48 U.S.C. 1469a(d)), is amended—

(1) by inserting "any Federal program as it applies in" before "American Samoa"; and

(2) by inserting "or other expenditures" after "funds".

SEC. 22. VIRGIN ISLANDS.

The Revised Organic Act of the Virgin Islands is amended by striking out the second sentence of section 25 (48 U.S.C. 1615).

SEC. 23. CABRAS ISLAND.

Section 818(b)(2) of Public Law 96-418 (94 Stat. 1782) (as amended by section 504 of Public Law 98-454 (98 Stat. 1736)) is amended by striking "30 percent" and inserting "50 percent".

SEC. 24. PONAPE HYDROPOWER DIVERSION.

Section 101 of the Act of March 12, 1980 (94 Stat. 84) is amended by inserting after the word "Ponape;" the following: "for design and construction of the Nanpil river hydropower diversion project;".

Mr. JOHNSTON. Mr. President, 3 years ago the Compact of Free Association was approved for the Federated States of Micronesia [FSM] and the Republic of the Marshall Islands [RMI] under Public Law 99-236. One year later, essentially the same terms were approved for the compact with the Republic of Palau under Public Law 99-658. The primary difference between the compact with Palau and the compact for the FSM and RMI is that the compact with the FSM and RMI was implemented by mutual agreement of the Presidents, while the compact with Palau required a congressional resolution authorizing its implementation. The reason for this implementation legislation was to allow Congress an opportunity to review Palau's internal approval process which had become surrounded by controversy.

Last summer, by a vote of 73 percent, Palau apparently approved the compact and the President submitted the necessary implementing legislation to Congress. The Senate passed the legislation, Senate Joint Resolution 231, in March and shortly afterward the House Foreign Affairs Committee ordered reported the Senate bill with minor changes. Both versions have only two sections; one, authorizing implementation of the compact, and second, identifying the compact funds available to Palau to repay banks for a loan used to build a powerplant.

The House Interior Committee had stated its intention to delay reporting any legislation until after the Palau Supreme Court ruled on Palau's approval, and after they received "assurances" that certain needs in Palau would be met. In late June the House Interior Committee introduced legislation designed to provide the assurances they sought. In August, the Palau Supreme Court ruled that Palau's approval was invalid, but the court clarified the procedure by which Palau may approve the compact.

Now, 6 months after the Senate passed Senate Joint Resolution 231, the House still has not acted. I am very disappointed with the delay and the debate that has taken place over the past several months. In the midst of this delay the President of Palau, Lazarus E. Salii, committed suicide. We will never know why he killed himself, but I deeply hope that the reason was not the lack of action by the U.S. Congress. Whatever individuals may have thought of President Salii personally, none can dispute his commitment and contributions to the development of self-determination and self-government for the people of Micronesia. His death is tragic.

Instead of the simple authorization of implementation, as anticipated, the House is considering an amendment to Senate Joint Resolution 231 which includes 17 sections on a range of issues. Throughout the debate on these provisions I have made known my determination to uphold three principles: one, that there be no new entitlements for Palau; two, that the Senate position with respect to Palau's debt for the Ipseco powerplant be maintained; and three, that the United States should not impose new conditions on Palau which would be inconsistent with its future status as a freely associated state.

Although I am not fully convinced of the need for many of these provisions, in the interest of resolving this issue I have agreed to much of the House amendment. The amendment I am now offering, with the support of the ranking member of the Committee on Energy and Natural Resources, Senator MCCLURE, includes the basic provisions of the measure currently under consideration by the House to the extent they do not violate the principles I have repeatedly communicated. I hope that this counterproposal is acceptable to the House because it represents a final offer.

This is the third time Congress has considered legislation with respect to the Compact of Free Association. I believe that the United States Government must reach closure on this issue so that the people of Palau will have a clear understanding of the United States position on the terms of the compact. As long as there is debate on the compact in Washington, the people of Palau will be looking to Washington. Only when that debate is over, and legislation is enacted, will the Government of Palau complete its approval process and focus on the problems of implementation. The fate of Palau must be in the hands of the Palauans, that is our fundamental responsibility under the United Nations Trusteeship Agreement, and that is a fundamental principle of the Compact of Free Association.

As I stated upon Senate passage of Senate Joint Resolution 231 in March, there are problems in Palau. However, those problems are not excuses to block implementation of the compact. They are the reason to move forward. Solutions to these problems cannot be easily found within the outdated and ineffective trusteeship arrangement. Our experience in the FSM and RMI demonstrate that the needs of Micronesia can most effectively be met under the framework of free association.

Ever since coming to the Senate in 1972 I have been involved in insular issues. No one has reason to doubt my commitment to meeting the needs of Micronesia. The solution to Palau's problems is not throwing money, or requiring agreements, or demanding greater United States presence. The solution is working together with the Government of Palau, for the long haul, under the framework provided by the Compact of Free Association. Once again, I urge the House of Representatives to authorize implementation of the Compact of Free Association with Palau as approved under Public Law 99-658.

Following is a specific section-by-section analysis of this Senate amendment:

SECTION 1

The Senate resolution did not provide for a short title.

The House amendment provides that the bill may be cited as the "Palau Compact of Free Association Implementation Act".

This amendment accepts the House provision.

SECTION 2

The Senate resolution provision on the entry into force of the Compact provided that the Compact shall take effect only if one of three circumstances existed in Palau, any of which would satisfy the requirement that Palau had approved the Compact pursuant to its constitution.

The House amendment provides that the entry into force of the Compact is authorized subject to two conditions: one, that the Compact is approved by a requisite percentage of the votes cast in a referendum pursuant to the constitution of Palau; and two, upon expiration of 30 days after the President of the United States notifies certain Committees of the Congress of the effective date of the Compact. The House amendment also states that it has been determined by the Government of Palau that 75 percent is the requisite percentage of votes necessary to approve the Compact in the absence of an amendment to the constitution of Palau which changes the percentage of the vote required to approve the Compact.

This amendment includes the House provision except that the statement regarding the requisite percentage of votes necessary to approve the Compact is deleted. This statement is deleted because it is unnecessary, and I believe it is inappropirate for U.S. law to comment on the provisions of the constitution of another government.

SECTION 3

The Senate resolution did not provide for fiscal procedures assistance.

Subsection 3(a) of the House amendment provides that upon the request of the Government of Palau, the Secretary of the Interior shall provide assistance to the Government of Palau to develop and promulgate regulations for the effective expenditure of funds received pursuant to this resolution, Public Laws 99-658 and 99-239, or any other Act of Congress. Subsection 3(b) of the House amendment provides that the President shall negotiate an agreement with the Government of Palau which shall provide that the Government of Palau will develop a plan within 120 days after an audit is submitted to that Government, to either implement the recommendations of the audit or inform the Secretary of the Interior of the Government's objections to implementing the recommendations. Subsection 3(b) also provides that the Secretary of the Interior shall provide assistance to the Government of Palau to implement audit recommendations.

This amendment includes subsection 3(a) of the House amendment. The amendment includes subsection 3(b) with several modifications. First, instead of being required to negotiate an agreement, as under the House provision, under this amendment the President is authorized to negotiate an agreement. At this time audit recommendations are responded to without the need for separate agreements. If such an agreement becomes necessary then the President would be authorized to negotiate. Moreover, the President would have the authority to raise the matter in the dispute resolution procedures provided under Title IV of the Compact. Second, in order to clarify that the Government of Palau would have two options on how to respond to audit recommendations under such an agreement, this amendment has editorial changes identifying the two options under two subparagraphs. Third, the requirement in House subseciton 3(b) that the Secretary of the Interior provide assistance to the Government of Palau to implement audit recommendations has been modified so that the President, under the agreement which is authorized to be negotiated under the subsection, may agree that the Secretary of the Interior shall provide such assistance. The providing of assistance is not required because, prior to Compact implementation, it is not known if a serious problem exists. Moreover, the Department of the Interior operates on extensive technical assistance program which will remain available to Palau to provide assistance. Finally, section 224 of the Compact allows the Government of Palau to seek additional assistance at any time if the need occurs.

SECTION 4

The Senate resolution did not provide for law enforcement assistance beyond that already included in the Compact and Public Laws 99-239 and 99-658.

The House amendment provides that the President shall negotiate an agreement with the Government of Palau which shall provide the Government of Palau with assistance for enforcement of its narcotics abuse and other laws and for the prevention and treatment of narcotics and other substance abuses. The agreement shall describe the assistance to be provided to Palau by the United States necessary to enforce narcotics abuse and other laws in Palau, including not less then $400,000 annually for the second through the sixth years after the effective date of the Compact. These funds are to be spent pursuant to a plan developed by the Government of Palau and approved by the Secretary of the Interior in consultation with other federal government officials. The House amendment provides an authorization for the appropriation of $400,000 annually for the first 15 years after the effective date of the Compact for these efforts. Finally, the House provision requires that the agreement required under this section shall provide that the Government of Palau authorize United States law enforcement officers to conduct investigations in cooperation with the law enforcement agencies of the Government of Palau related to the enforcement of United States laws applicable in Palau under the Compact, this joint resolution, or Public Law 99-658.

This amendment provides that the National Drug Policy Board shall develop a plan for an anti-drug program in Palau and submit it to certain Committees of Congress by March 1, 1989. The plan shall identify the specific needs and costs of such an anti-drug program, including all existing resources to be allocated for its implementation by the United States and the Government of Palau, and it shall recommend priority use for additional resources, assuming such resources are made available. The amendment further provides that following completion of the plan, the President and Government of Palau shall negotiate an agreement to facilitate implementation of the plan. Such agreement may include: (1) that the Government of Palau may request, on a long term or case-by-case basis, that officers of United States law enforcement agencies may conduct investigations consistent with implementation of the plan in cooperation with the law enforcement agencies of the Government of Palau; (2) that the Government of Palau or the Government of the United States may agree to provide specific resources to strengthen the anti-drug programs; and (3) a description of the technical assistance, training, and equipment to be provided to Palau by the United States necessary to implement the plan. Finally, the amendment provides an authorization for such sums as may be necessary to implement any agreement entered into pursuant to this section.

The amendment does not require a specific allocation of funds at this time because the extent of the problem, the cost of an appropriate program, and the availability of existing resources is unclear. The appropriation of additional U.S. funds should follow the completion of a plan and an assessment of available resources.

SECTION 5

The Senate resolution did not provide for a public auditor and special prosecutor.

The House amendment provides that the President shall negotiate an agreement with the Government of Palau which shall provide that: (1) the United States agrees to provide the Government of Palau with assistance for maintaining offices of public auditor and special prosecutor, and (2) the Government of Palau agrees to maintain and staff these offices under its laws for as long as the United States provides financial assistance. This agreement shall also provide that the Government of Palau agrees to expend not less than $100,000 each for these two offices for the first five years after the effective date of the Compact, and it shall provide that upon request of the Government of Palau, or its public auditor or special prosecutor, the President shall provide, on a nonreimbursable basis, technical assistance, including the full time services of an auditor or accountant and an attorney or investigator, for the first five years after the effective date of the Compact. Finally, the agreement shall provide that the Government of the United States shall provide the Government of Palau with not less than $300,000 annually for these two offices for the first five years after the effective date of the Compact. The House amendment also provides an authorization for $300,000 annually for the first 15 years after the effective date of the Compact and other sums as may be necessary to carry out the purposes of this section.

Finally, the House amendment provides that if the Government of Palau fails to maintain these two offices, then the President shall initiate conference and dispute resolution procedures under Title IV of the Compact. If the Government of Palau does not conform its actions to determinations reached through those procedures, then the United States shall treat the nonconformance as a breach of the Compact and if no other efforts obtain compliance by the Government of Palau within 180 days, then the President shall either withhold funds or suspend the effectiveness of the pledge of full faith and credit under section 236 of the Compact.

This amendment provides that the President shall, upon the formal request of the Government of Palau, negotiate an agreement with the Government of Palau which may provide that: (1) the United States agrees to provide the Government of Palau with assistance, subject to appropriation, to maintain offices of public auditor and special prosecutor; (2) the Government of Palau agrees to maintain and staff these offices under its laws for as long as the United States provides financial assistance; (3) the Government of Palau agrees to expend such funds as are available for these two offices for no less than the first five years after the effective date of the Compact in addition to United States' assistance; (4) upon request of the Government of Palau the President shall provide, on a nonreimbursable basis, technical assistance, including the full time services of an auditor or accountant and an attorney or investigator; and (5) the Government of the United States shall, subject to appropriation, provide the Government of Palau with such sums as are agreed to under this section, for each of these two offices for the first five years after the effective date of the Compact. Finally, the amendment provides an authorization for such sums as are necessary to carry out the purposes of this section.

Under this amendment no specific funds are required to be allocated because the extent of the problem, the cost of the solution, and the availability of existing resources under the Compact, is unclear. This amendment requires that the President negotiate an agreement upon the formal request of the Government of Palau. It is through this negotiating process that the necessary information can be developed and the appropriate measures can be adopted as provisions of the agreement.

This amendment does not require the agreement to provide sanctions against Palau for failure to uphold Palauan law, as in the House amendment. I believe such a provision is inconsistent with Free Association. The dispute resolution procedures under Title IV of the Compact are available as a remedy should a serious issue develop with respect to the offices of auditor or prosecutor.

SECTION 6

The Senate resolution amended section 104(e) of Public Law 99-658 to provide that no officer or agent of the United States shall pay or transfer any portion of the amounts payable to the Government of Palau pursuant to Public Law 99-658 to any party other than the Government of Palau except under the procedures established by the Compact and its related agreements. The resolution also provided that no assistance funds to Palau may be used to satisfy any obligation incurred by Palau prior to November 14, 1986, with respect to any debt related to any electrical generating plant, entered into or incurred by Palau which had not been specifically authorized by Congress in advance, except that the Government of Palau may use grant funds under section 211(b), not required to be devoted to the energy needs of those parts of Palau not served by its central power generating facilities, and any portion of the funds under section 212(b) of the Compact for such purpose if subsequent to the effective date of the Compact the President of Palau has formally communicated to the President and the Congress that Palau intends to use such funds for such purpose.

The House amendment also would amend section 104(e) of Public Law 99-658 to provide that no officer of the United States shall pay or transfer any portion of the amounts payable to the Government of Palau pursuant to Public Law 99-658 to other than the Government of Palau except under the procedures established by the Compact and its related agreements. The House amendment also provides that no assistance funds to Palau may be used to satisfy any obligation incurred by Palau prior to November 14, 1986, with respect to any debt related to any electrical generating plant, entered into or incurred by Palau which has not been specifically authorized by Congress in advance. However, the House amendment provides, as the exception, that during the first 15 years after the effective date of the Compact, not more than $3,000,000 annually of such funds may be used by Palau to satisfy any such obligation or expense, unless the Government of Palau provides by law for a different allocation of Compact funds for such purposes.

This amendment reiterates the original Senate provision except that the final phrase is deleted. That phrase required that the President of Palau must formally communicate to the President and the Congress that Palau intends to use the identified funds for satisfying any obligation or expense incurred by Palau with respect to any electrical generating plant. The phrase is deleted because such a notification is unnecessary. Moreover, a notification would likely delay payment of any funds because the notification itself could become a political controversy in Palau.

The amendment does not provide a $300,000 cap on the payments used by the Palau because it is not known how much Palau owes, nor how much it is able to pay. These issues must first be settled in negotiations between Palau and its creditors. It is important to note that the U.S. government specifically indicated its objections to this powerplant project. Moreover, the RMI has met its debt on a similar facility without U.S. assistance.

SECTION 7

The Senate resolution did not provide a section regarding the Palau development plan.

The House amendment provides that the President shall negotiate an agreement with the Government of Palau under which the Government of Palau agrees to provide additional information in connection with its national development plan. The additional information shall include: that the plan covers the first five years of the Compact; lists in priority order the public sector projects to be financed with United States assistance; specifically describes the private sector projects to be financed with United States assistance; and outlines how existing obligations for national and state government capital projects will be met.

This amendment provides that the President shall negotiate an agreement with the Government of Palau under which that government agrees to revise its National Development Plan. Such revisions shall cover the first five years of the development following the effective date of the Compact and shall list all capital infrastructure projects to be financed with United States assistance. This provision is necessary to ensure that the development plan will be updated in light of the delays in implementation of the Compact. It is expected that the development plan will include plans on meeting the electric powerplant debt.

SECTION 8

The Senate resolution did not include a section regarding medical facilities.

The House amendment provides that the United States shall provide up to $5,000,000 on a dollar for dollar matching basis to the Government of Palau for medical facilities which shall be expended pursuant to a plan developed by the Government of Palau with approval of the Secretary of the Interior in consultation with the Secretary of Health and Human Services for fiscal year 1990. The House amendment also authorizes such sums as may be necessary for medical facilities. Finally, the House amendment requires that the United States provide funds to pay the obligations incurred by Palau, the Federated States of Micronesia and the Marshall Islands for the use of United States medical facilities prior to implementation of their respective Compacts.

This amendment provides that the Secretary of the Interior, in cooperation with the Public Health Service, shall submit a report to certain committees of Congress by March 1, 1989 presenting the range of options, and their cost, for upgrading the Koror hospital. The amendment provides that the United States will sympathetically consider the request of Palau for additional financial assistance for medical facility construction based on the report made, and the United States encourages Palauan financial assistance to this project. Finally, the amendment provides an authorization for such sums as are necessary to upgrade the Koror hospital. The amendment does not require the allocation of funds because the necessary information on costs and the availability of existing funds is not available. The amendment does not provide funds for medial referral debts because the Compact, as approved, contains an authorization for the payment for such debts through the annual budget process.

SECTION 9

The Senate resolution did not include a section regarding audit certification.

The House amendment provides that the President shall certify the audits to be conducted by the United States pursuant to the Compact Acts (Public Laws 99-239 and 99-658).

This amendment includes the House provision with a technical change. Instead of the President certifying audits, they shall be certified by the chief officer of the agency conducting the audit. This is necessary to avoid the problem of having the President certify audits that may be conducted by the General Accounting Office (GAO). Because the GAO is an agency of Congress it would be inappropriate for the President to certify GAO audits.

SECTION 10

The Senate resolution did not include a provision on Defense sites beyond the provisions in Public Laws 99-239 and 99-658.

The House amendment has four parts. First, it provides for United States recognition that the Government of Palau is obligated to provide just compensation to the owners of any private land which may be used to provide defense sites to the United States. Second, it provides that if Palau requests additional United States financial assistance in light of the cost of using private lands for United States defense rights, then the President shall enter into appropriate agreements regarding additional funding, and with such agreements to be approved in accordance with the constitutional process of Palau and the United States. Third, any such agreement shall be based on appropriate appraisals and documentation of actual land use costs and must be consistent with the mutual undertakings and interests of the United States and Palau under the security and defense provisions of the Compact, as well as equity and fairness. Finally, the House amendment provides that the President may agree to extend the time in which the Government of Palau is required to make land available pursuant to the Compact.

This amendment reiterates that the Compact does not restrict the authority of the President from requesting additional funding from Congress in light of actual land use requirements in Palua, nor does the Compact restrict the President from consenting to an extension of the time in which the Government of Palau is required to make land available pursuant to the Compact. This amendment does not "require" that the President enter into an agreement upon the request of Palau, because such a requirement could unrealistically raise Palauan expectations regarding additional financial assistance. It is not possible to "require" an agreement to provide additional funding, as this language suggests. It is more accurate to state that nothing restricts the President from negotiating an agreement and thus requesting additional funds. Given the U.S. interest in Palau, if an agreement is reached, then the prospect of additional funds being made available is very good.

SECTION 11

The Senate resolution did not include a section on capital improvements.

The House amendment provides that the United States shall provide Palau with $800,000 for renovation or replacement of prison facilities.

This amendment requires that the Secretary of the Interior shall submit a report to certain committees in Congress by March 1, 1989, on the condition of the Palau prison, and including the options and costs for upgrading the facility. The amendment provides that the United States will sympathetically consider the request of Palau for additional assistance for prison construction based on the report. Finally, the amendment authorizes the funds necessary to upgrade the prison.

The amendment does not require the allocation of funds because a report is needed to determine the specific needs, and the cost of the options available, to upgrade the prison before funds should be made available.

SECTION 12

The Senate resolution did not include a section on federal programs technical assistance personnel.

The House amendment requires the Secretary of the Interior to station at least one person in the Office of the United States Representative in Palau, and one person to serve in each of the two Offices of the United States Representatives in the Federated States of Micronesia and the Marshall Islands. The House amendment also provides an authorization for such sums as may be necessary to carry out the purposes of this section.

This amendment requires the Secretary of the Interior to station at least one person in each of the Offices of the United States Representatives in Palau, the Federated States of Micronesia and the Marshall Islands. The Secretary is required to consult with the Interagency Group on Freely Associated State Affairs, as established under Executive Order 12569, before selecting qualified persons to fill these posts. I expect that the Secretary will give full consideration to personnel recommended by other agencies, and the Secretary shall encourage other agencies to contribute salary, or other costs, if practicable. The amendment also provides an authorization for such sums as necessary to provide for these positions. But, the Secretary is required to fill these positions within 120 days of enactment using existing funds and personnel levels if no additional appropriations are made available.

SECTION 13

The Senate resolution did not include a section on referendum costs.

The House amendment requires that the Secretary provide up to $200,000 to Palau for a further referendum on approval of the Compact.

This amendment includes the House provision with a change clarifying that costs covered by the $200,000 must be associated with the approval process in Palau. It is expected that the Department will provide these funds from existing available funds if no additional appropriation is made.

SECTION 14

The Senate resolution did not include a section on agreements.

The House amendment requires the President to negotiate agreements with the Government of Palau to provide the assistance required under section 8 (Medical Facilities), section 11 (Prison) and section 13 (Referendum costs).

This amendment approves two agreements signed with the Governments of the Federated States of Micronesia, on March 9, 1988, and the Republic of the Marshall Islands, signed on March 18, 1988, respectively, regarding section 432 of the Compact. It approves an identical agreement anticipated to be signed with the Government of Palau. The amendment also extends the provisions of Article IX, paragraph 5(a) of the agreement referred to in Section 462(e) of the Compact, regarding essential air service, until October 1, 1998.

SECTION 15

The Senate resolution did not include a section on status of funds.

The House amendment provides that any United States funds made available to the Government of Palau and not completely obligated in the fiscal year made available, shall remain available until expended. The House amendment also provides that a United States pledge of full faith and credit shall apply to the funds to be provided under section 4(c), law enforcement, $3,000,000; 5(d), Auditor/Prosecutor, $1,500,000; 8(a), Medical Facilities, $5,000,000; and 11, prison renovation, $800,000.

This amendment accepts the House provision keeping unobligated funds available until expended. However, it does not provide a pledge of full faith and credit on any funds for the following reasons: (1) providing new entitlements to Palau would be a breach of the previous agreement that this legislation was intended only to implement the Compact terms as previously approved under Public Law 99-236 and 99-658; (2) such new benefits to Palau would be unfair to the Federated States of Micronesia and the Republic of the Marshall Islands which have implemented the Compact as previously approved; (3) further information is needed on these projects in order to accurately determine the amount of additional U.S. funding needed; and (4) additional entitlements would be scored against the territorial discretionary account which is already small and in danger of getting cut by an across-the-board sequester. Any reduction in the size of the territorial account will, in effect, divest funds from other insular governments to Palau, and will thus reduce the ability of Congress to respond to the numerous requests made annually by the other insular governments.

SECTION 16

The Senate resolution did not include a section on effective dates.

The House amendment provides that the authority to implement the Compact is contingent on the conclusion of agreements which satisfy the requirements of sections 3, 4, 5, 6, 7 and 14. It also provides that any amendments or changes to any agreements would not be effective until after the 30 days after they have been submitted to Congress. Finally, the House amendment specifically requires that any changes to the agreement negotiated under section 212(a) of the Compact, regarding road construction, shall take effect only when approved by Act of Congress.

This amendment accepts the House provisions except that the only agreements required to be concluded in order for the Compact to enter into force are those set forth under sections 3 (fiscal procedures) and 7 (development plan).

SECTION 17

The Senate resolution had no section regarding transition funding.

The House amendment provides a technical correction to section 104(c) of Public Law 99-648 so that the phase-out of certain federal funding in Palau will be delayed to coincide with the delayed implementation of the Compact.

This amendment includes the provision of the House amendment.

INSULAR PROVISIONS

The Senate resolution had no sections regarding insular provisions.

The House amendment also has no sections regarding insular provisions. However, the House is considering eleven such sections as separate omnibus insular affairs legislation, S. 1047. This amendment includes, at least in part, seven of the House provisions. However, given the extremely limited amount of time available for Senate consideration of these provisions, this amendment only includes those which are non-controversial by virtue of the fact that the Administration, and the Senate Committees of jurisdiction, have indicated there is no objection to the enactment of these provisions.

SECTION 18

Section 18 would authorize the Ninth Judicial Circuit of the United States to provide assistance to the courts of the freely associated states, including the temporary service of any circuit judge or district court judge within the Ninth Circuit. Such assistance is discretionary, and the specific terms would have to be negotiated under the necessary government-to-government agreements, and would have to be consistent with the constitutions and laws of the respective states.

SECTION 19

This section would authorize the President to negotiate agreements with the freely associated states with respect to the lawful distribution of controlled substances. In the past, the United States has assisted the governments of the Trust Territory in the purchase and distribution of drugs for medical use. This provision would authorize the President to negotiate the agreements necessary to continue this assistance under the new relationship of free association.

SECTION 20

Section 20 would designate the Northern Mariana College as a depository to receive U.S. government publications, and would require the Superintendent of Documents to supply the College with one copy of each such document as supplied to the other designated depositories. This provision thus provides equal treatment to the Northern Mariana College as received by the other insular areas.

SECTION 21

This provision corrects a technical problem in Public Law 96-205 by clarifying that the waver for matching grants of less than $200,000 to the insular governments, also includes other expenditures, such as in-kind contributions, which total less than $200,000.

SECTION 22

This provisions repeals the requirement in the Revised Organic Act of the Virgin Islands that the courts for St. Croix, St. Thomas and St. John must be located in the towns of Christiansted and Charlotte Amalie, respectively. The government of the Virgin Islands would like to locate the courts outside of these towns in order to take advantage of the lower rents found in other areas.

SECTION 23

Section 504 of Public Law 98-454 provides that 70 percent of any revenues associated with certain lands on Cabras Island in Guam shall be deposited in the Federal Treasury. The balance is to be paid to the Government of Guam. This provision modifies section 504 so that the share of these revenues will now be split 50 percent—50 percent between the Federal government and Guam.

SECTION 24

This section authorizes such sums as may be necessary for the design and construction of the Nanpil river hydropower diversion project. It is intended that the project will proceed as described in the March, 1988, Army Corps of Engineers report entitled: Pohnpei Island Surface Water Resources Study: a Planning Report for Hydropower Addition to the Nanpil River Project.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3627) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the joint resolution.

The amendment was ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMENDING REPUBLIC OF KOREA IN HOSTING GAMES OF THE OLYMPICS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of Senate Concurrent Resolution 152 and that the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The concurrent resolution will be stated.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 152) commending the Republic of Korea in hosting the games of the Olympics.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

Whereas the Republic of Korea has successfully hosted the XXIV Olympiad from September 17 to October 2, 1988;

Whereas nearly 10,000 athletes from 160 countries have participated in thirty-seven competitive events in these Olympic Games;

Whereas national and international political divisions were kept to a minimum with the participation of all but seven countries invited to participate in these Olympic Games;

Whereas the planning, organization, and implementation of the XXIV Olympiad took place under conditions of uncertainty, threats of terrorism, and fears of violent disruption; and

Whereas athletes from fifty-one countries, more than every before, won metals, and athletes from thirty-one nations, more than ever before, won gold medals in these Olympic Games: Now, therefore, be it *Resolved by the Senate (the House of Representatives concurring)*, That the Congress hereby—

(1) salutes the Republic of Korea for successfully hosting the XXIV Olympiad, for advancing the Olympic movement, for furthering the cause of athletic competition among individuals, and for promoting harmony among nations;

(2) congratulates the Republic of Korea and its people for their efficient and effective management of these Olympic Games;

(3) commends the Republic of Korea for this most recent national achievement, and achievement which complements its dynamic economy and continued progress in democracy to bring it worldwide attention and acclaim;

(4) States with pride, on the occasion of these Olympic Games, the admiration of the American people for the Republic of Korea and the people of Korea for their fulfillment of the Olympic mandate; and

(5) expresses the deep appreciation of the American people for the warmth, generosity, and hospitality extended by the people of Korea in welcoming United States athletes, coaches, United States Olympic Committee officials and other Americans to South Korea to participate in the XXIV Olympiad.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President with the request that he further transmit such copy to the Government of the Republic of Korea.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DRUNK DRIVING

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 276, a concurrent resolution calling on the Surgeon General to declare that drunk driving is a national crisis.

The ACTING PRESIDENT pro tempore. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 276) expressing the sense of Congress that the Surgeon General should declare that drunk driving is a national crisis.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution was considered and agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

H.R. 2848 PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 2848 be placed on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

WEST VIRGINIA NATIONAL INTEREST RIVER CONSERVATION ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 900.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 900) entitled "An Act to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New, Gauley, Meadow, and Bluestone Rivers in West Virginia for the benefit of present and future generations, and for other purposes", with the following amendment: In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "West Virginia National Interest River Conservation Act of 1987".

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TITLE V—TECHNICAL CHANGE TO WILD AND SCENIC RIVERS ACT

Sec. 501. Acreage limitations.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) The outstanding natural, scenic, cultural and recreational values of the segment of the New River in West Virginia within the boundaries of the New River Gorge National River have been preserved and enhanced by its inclusion in the National Park System.

(2) The establishment of the New River Gorge National River has provided the basis for increased recreation and tourism activities in southern West Virginia due to its nationally recognized status and has greatly contributed to the regional economy.

(3) Certain boundary modifications to the New River Gorge National River are necessary to further protect the scenic resources within the river's visual corridor and to provide for better management of the national park unit.

(4) Several tributaries of the New River in West Virginia also possess remarkable and outstanding features of national significance. The segment of the Gauley River below Summersville Dam has gained national recognition as a premier whitewater recreation resource. The lower section of the Bluestone River and the lower section of the Meadow River U1 possess remarkable and outstanding natural, scenic, and recreational values due to their predominantly undeveloped condition.

(5) Portions of several of the New River tributaries, including segments of the Gauley River, the Meadow River, U1 and the Bluestone River are suitable for inclusion in the National Park System or the National Wild and Scenic Rivers System.

(6) It is in the national interest to preserve the natural condition of certain segments of the New, Gauley, Meadow U1, U0 and Bluestone Rivers in West Virginia and to enhance recreational opportunities available on the free-flowing segments.

(b) PURPOSE.—The purpose of this Act is to provide for the protection and enhancement of the natural, scenic, cultural, and recreational values on certain free-flowing segments of the New, Gauley, Meadow, U1 and Bluestone Rivers in the State of West Virginia for the benefit and enjoyment of present and future generations.

TITLE I—NEW RIVER GORGE NATIONAL RIVER

SEC. 101. BOUNDARY MODIFICATION.

Section 1101 of the National Parks and Recreation Act of 1978 (16 U.S.C. 460m-15) is amended by striking out "NERI-20,002, dated July 1978" and substituting "NERI-80,023, dated January 1987".

SEC. 102. COOPERATIVE AGREEMENTS WITH STATE.

Title XI of the National Parks and Recreation Act of 1978 is amended by adding the following new section at the end thereof:

"SEC. 1113. COOPERATIVE AGREEMENTS WITH STATE.

"In administering the national river, the Secretary is authorized to enter into cooperative agreements with the State of West Virginia, or any political subdivision thereof, for the rendering, on a reimbursable or nonreimbursable basis, of rescue, fire fighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire preventive agencies.".

SEC. 103. IMPROVEMENT OF ACCESS AT CUNARD.

Title XI of the National Parks and Recreation Act of 1978 is amended by adding the following new section at the end thereof:

"SEC. 1114. IMPROVEMENT OF ACCESS AT CUNARD.

"(a) DEVELOPMENT AND IMPROVEMENT.—The Secretary shall expeditiously acquire such lands, and undertake such developments and improvements, as may be necessary to provide for commercial and noncommercial access to the river near Cunard. No restriction shall be imposed on such access based on the time of day, except to the extent required to protect public health and safety.

"(b) INTERIM MEASURES.—Pending completion of the developments and improvements referred to in subsection (a), the Secretary shall permit the motorized towing of whitewater rafts in the section of the national river between Thurmond and Cunard when the volume of flow in the river is less than three thousand cubic feet per second.".

SEC. 104. FLOW MANAGEMENT.

Title XI of the National Parks and Recreation Act of 1978 is amended by adding the following new section at the end:

"SEC. 1115. FLOW MANAGEMENT.

"(a) FINDINGS.—The Congress finds that adjustments of flows from Bluestone Lake project during periods of low flow are necessary to respond to the congressional mandate contained in section 1110 of this Act and that such adjustments could enhance the quality of the recreational experience in the segments of the river below the lake during those periods as well as protect the biological resources of the river.

"(b) REPORT TO CONGRESS REQUIRED.—The Secretary of the Army, in conjunction with the Secretary of the Interior, shall conduct a study and prepare a report under this section. The report shall be submitted to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives not later than December 31, 1989. Before submission of the report to these Committees, a draft of the report shall be made available for public comment. The final report shall include the comments submitted by the Secretary of the Interior and the public, together with the response of the Secretary of the Army to those comments.

"(c) CONTENTS OF STUDY.—The study under this section shall examine the feasibility of adjusting the timing of daily releases from Bluestone Lake project during periods when flows from the lake are less than three thousand cubic feet per second. The purpose of such adjustment shall be to improve recreation (including, but not limited to, fishing and whitewater recreation) in the New River Gorge National River. Any such adjustments in the timing of flows which are proposed in such report shall be consistent with other project purposes and shall not have significant adverse effects on fishing or on any other form of recreation in Bluestone Lake or in any segment of the river below Bluestone Lake. The study shall assess the effects of such flow adjustments on the quality of recreation on the river in the segments of the river between Hinton and Thurmond and between Thurmond and the downstream boundary of the New River Gorge National River, taking into account the levels of recreational visitation in each of such segments.

"(d) TEST PROCEDURES.—As part of the study under this section, the Secretary of the Army shall conduct test releases from Bluestone Lake project during twenty-four-hour periods during the summer of 1989 when flows are less than three thousand cubic feet per second from the project. All such adjustments shall conform to the criteria specified in subsection (c). The tests shall provide adjustments in the timing of daily flows from Bluestone Lake project which permit flows higher than the twenty-four-hour average to reach downstream recreational segments of the river during morning and afternoon hours. The tests shall develop specific data on the effects of flow adjustments on the speed of the current and on water surface levels in those segments. No test shall be conducted when flows from the lake are less than one thousand seven hundred cubic feet per second and no test shall reduce flows below that level.".

SEC. 105. VISITOR FACILITY.

Title XI of the National Parks and Recreation Act of 1978 (16 U.S.C. 460m-15 and following) is amended by adding the following new section at the end thereof:

"SEC. 1116. GLADE CREEK VISITOR FACILITY.

"In order to provide for public use and enjoyment of the scenic and natural resources of the New River Gorge National River and in order to provide public information to visitors with respect to the national river and associated State parklands, the Secretary is authorized and directed to construct a scenic overlook and visitor information facility at a suitable location accessible from Interstate 64 in the vicinity of Glade Creek within the boundary of the national river. There is authorized to be appropriated such sums as may be necessary to carry out construction (including all related planning and design) of the scenic overlook and visitor information facility.".

TITLE II—GAULEY RIVER NATIONAL RECREATION AREA

SEC. 201. ESTABLISHMENT

(a) IN GENERAL.—In order to protect and preserve the scenic, recreational, geological, and fish and wildlife resources of the Gauley River and its tributary, the Meadow River, there is hereby established the Gauley River National Recreation Area (hereinafter in this Act referrred to as the "recreation area").

(b) AREA INCLUDED.—The recreation area shall consist of the land, waters, and interests therein generally depicted on the boundary map entitled "Gauley River National Recreation Area", numbered NRA-GR/20,000A and dated July 1987 and on the boundary map depicting the Meadow River, numbered WSR-MEA/20,000A and dated July 1988. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(c) BOUNDARY MODIFICATIONS.—Within five years after the enactment of this Act, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a report containing any boundary modifications which the Secretary recommends, together with the reasons therefor.

SEC. 202. ADMINISTRATION.

(a) In General.—The recreation area shall be administered by the Secretary in accordance with this Act and with the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1-4).

(b) Hunting and Fishing; Fish Stocking.—The Secretary shall permit hunting, trapping and fishing on lands and waters within the recreation area in accordance with applicable Federal and State laws. The Secretary may, after consultation with the State of West Virginia Department of Natural Resources, designate zones where, and establish periods when, such activities will not be permitted for reasons of public safety, administration, fish and wildlife habitat or public use and enjoyment subject to such terms and conditions as he deems necessary in the furtherance of this Act. The Secretary shall permit the State of West Virginia to undertake or continue fish stocking activities carried out by the State in consultation with the Secretary on waters within the boundaries of the recreation area. Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of West Virginia with respect to fish and wildlife

(c) Cooperative Agreements With State.—In administering the recreation area the Secretary is authorized to enter into cooperative agreements with the State of West Virginia, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire preventive agencies.

(d) Application of Other Provisions.—The provisions of section 7(a) of the Act of October 2, 1968 (16 U.S.C. 1278(a)), shall apply to the recreation area in the same manner and to the same extent as such provisions apply to river segments referred to in such provisions.

(e) Recreational Access.—

(1) Existing public roads.—The Secretary may enter into a cooperative agreement with the State of West Virginia under which the Secretary shall be authorized to maintain and improve existing public roads and public rights-of-way within the boundaries of the national recreation area to the extent necessary to facilitate and improve reasonable access to the recreation area at existing access points where such actions would not unreasonably diminish the scenic and natural values of the area.

(2) Facilities adjacent to dam.—In order to accommodate visitation to the recreation area, the Secretary shall construct such facilities as necessary to enhance and improve access, vehicle parking and related facilities, and provide river access for whitewater recreation and for other recreational activities, immediately downstream of the Summersville Dam, to the extent that such facilities are not provided pursuant to section 205 and such facilities are within the boundaries of the recreation area. Such construction shall be subject to the memorandum of understanding referred to in subsection (f).

(3) Other locations.—In addition, in order to provide reasonable public access and vehicle parking for public use and enjoyment of the recreation area, consistent with the preservation and enhancement of the natural and scenic values of the recreation area, the Secretary may, with the consent of the owner thereof, acquire such lands and interests in lands to construct such parking and related facilities at other appropriate locations outside the boundaries of, but within one mile of the recreation area as may be necessary and appropriate. Any such lands shall be managed in accordance with the management provisions for the recreation area as defined in subsection (a).

(f) Properties and Facilities of Federal Agencies.—After consultation with any other Federal agency managing lands and waters within or contiguous to the recreation area, the Secretary shall enter into a memorandum of understanding with such other Federal agency to identify those areas within the recreation area which are (1) under the administrative jurisdiction of such other agency; (2) directly related to the operation of the Summersville project; and (3) essential to the operation of such project. The memorandum of understanding shall also include provisions regarding the management of all such lands and waters in a manner consistent with the operation of such project and the management of the recreation area.

SEC. 203. MISCELLANEOUS.

(a) Lands and Waters.—The Secretary may acquire lands or interests in lands within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange. When any tract of land is only partly within such boundaries, the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs.

(b) Jurisdiction.—Lands, waters and interests therein within the recreation area which are administered by any other agency of the United states and which are not identified under section 202 as directly related to the Summersville project and essential to the operation of that project shall be transferred without reimbursement to the administrative jurisdiction of the Secretary.

(c) Protection of Existing Project.—Nothing in this Act shall impair or affect the requirements of section 1102 of Public Law 99-662 or otherwise affect the authorities of any department or agency of the United States to carry out the project purposes of the Summersville project, including recreation. In releasing water from such project, in order to protect public health and safety and to provide for enjoyment of the resources within the recreation area, other departments and agencies of the United States shall cooperate with the Secretary to facilitate and enhance whitewater recreational use and other recreational use of the recreation area.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purpose of this title.

SEC. 205. SPECIAL CONDITIONS.

(a) New Project Construction.—If, after the enactment of this Act, any department, agency, instrumentality or person commences construction of any dam, water conduit, reservoir, powerhouse, transmission line or other project at or in conjunction with the Summersville project, the department, agency, instrumentality or other person which constructs or operates such new project shall comply with such terms and conditions as the Secretary deems necessary, in his discretion, to protect the resources of the recreation area, including such terms and conditions as the Secretary deems necessary to ensure that such new project will not adversely affect whitewater recreation and other recreation activities during or after project construction.

(b) Adverse Effects on the Recreation Area.—If any such new project referred to in subsection (a) will create a direct, physical, adverse effect on access to the recreation area immediately downstream of the Summersville Dam during or after project construction, including vehicle parking, related facilities, and river access for whitewater recreation and other recreational use of the recreation area, the department, agency, instrumentality or person constructing such project shall replace and enhance the adversely affected facilities in such manner as may be appropriate to accommodate visitation, as determined by the Secretary.

(c) New Project Permits.—The terms and conditions referred to in this section shall be included in any license, permit, or exemption issued for any such new project. Any such new project shall be subject to all provisions of this Act, including section 202(d), except that during the four-year period after the enactment of this Act, nothing in this Act shall prohibit the licensing of a project adjacent to Summersville Dam as proposed by the city of Summersville, or by any competing project applicant with a permit or license application on file as of August 8, 1988, if such project complies with this section. If such project is licensed within such four-year period, the Secretary shall modify the boundary map referred to in section 201 to relocate the upstream boundary of the recreation area along a line perpendicular to the river crossing the point five hundred and fifty feet downstream of the existing valve house and one thousand two hundred feet (measured along the river bank) upstream of United States Geological Survey Gauge Numbered 03189600, except in making the modification the Secretary shall maintain within the boundary of the recreation area those lands identified in the boundary map referred to in section 201 which are not necessary to the operation of such project.

SEC. 206. ADVISORY COMMITTEE.

(a) Establishment.—There is hereby established the Gauley River National Recreation Area Advisory Committee (hereinafter in this Act referred to as the "Advisory Committee"). The Advisory Committee shall be composed of fifteen members appointed by the Secretary to serve for terms of two years. Any member of the Advisory Committee may serve after the expiration of his ierm until a successor is appointed. Any member of the Advisory Committee may be appointed to serve more than one term. The Secretary or his designee shall serve as Chairman.

(b) Management and Development Issues.—The Secretary, or his designee, shall meet on a regular basis and consult with the Advisory Committee on matters relating to development of a management plan for the recreation area and on implementation of such plan.

(c) Expenses.—Members of the Advisory Committee shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this Act on vouchers signed by the Chairman.

(d) Membership.—The Secretary shall appoint members to the Advisory Committee as follows:

(1) one member to represent other departments or agencies of the United States administering lands affected by the recreation area, to be appointed from among persons

nominated by the head of such department or agency;

(2) two members to represent the State Department of Natural Resources, to be appointed from among persons nominated by the Governor of the State of West Virginia;

(3) one member to represent the State Department of Commerce to be appointed from among persons nominated by the Governor of West Virginia;

(4) three members to represent the commercial whitewater rafting industry in West Virginia;

(5) one member to represent noncommercial whitewater boating organizations;

(6) one member to represent conservation organizations in West Virginia;

(7) one member to represent individuals engaged in game fishing in West Virginia;

(8) one member to represent the Nicholas County Chamber of Commerce;

(9) one member to represent the Fayette County Chamber of Commerce;

(10) one member to represent recreational users of Summersville Lake; and

(11) two members to represent local citizens or citizens groups which are concerned with the Gauley River or own lands included within the boundaries of the recreation area.

(e) TERMINATION; CHARTER.—The Advisory Committee shall terminate on the date ten years after the enactment of this Act notwithstanding the Federal Advisory Committee Act (Act of October 6, 1972; 86 Stat. 776). The provisions of section 14(b) of such Act (relating to the charter of the Committee) are hereby waived with respect to this Advisory Committee.

TITLE III—BLUESTONE NATIONAL SCENIC RIVER

SEC. 301. DESIGNATION OF LOWER BLUESTONE RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

"( ) BLUESTONE, WEST VIRGINIA.—The segment in Mercer and Summers Counties, West Virginia, from a point approximately two miles upstream of the Summers and Mercer County line down to the maximum summer pool elevation (one thousand four hundred and ten feet above mean sea level) of Bluestone Lake as depicted on the boundary map entitled 'Bluestone Wild and Scenic River', numbered WSR-BLU/20,000, and dated January 1987; to be administered by the Secretary of the Interior as a scenic river. In carrying out the requirements of subsection (b) of this section, the Secretary shall consult with State and local governments and the interested public. The Secretary shall not be required to establish detailed boundaries of the river as provided under subsection (b) of this section. Nothing in this Act shall preclude the improvement of any existing road or right-of-way within the boundaries of the segment designated under this paragraph. Jurisdiction over all lands and improvements on such lands owned by the United States within the boundaries of the segment designated under this paragraph is hereby transferred without reimbursement to the administrative jurisdiction of the Secretary of the Interior, subject to leases in effect on the date of enactment of this paragraph (or renewed thereafter) between the United States and the State of West Virginia with respect to the Bluestone State Park and the Bluestone Public Hunting and Fishing Area. Nothing in this Act shall affect the management by the State of hunting and fishing within the segment designated under this paragraph. Nothing in this Act shall affect or impair the management by the State of West Virginia of other wildlife activities in the Bluestone Public Hunting and Fishing Area to the extent permitted in the lease agreement as in effect on the enactment of this paragraph, and such management may be continued pursuant to renewal of such lease agreement. If requested to do so by the State of West Virginia, the Secretary may terminate such leases and assume administrative authority over the areas concerned. Nothing in the designation of the segment referred to in this paragraph shall affect or impair the management of the Bluestone project or the authority of any department, agency, or instrumentality of the United States to carry out the project purposes of that project as of the date of enactment of this paragraph. Nothing in this Act shall be construed to affect the continuation of studies relating to such project which were commenced before the enactment of this paragraph.".

TITLE IV—GENERAL PROVISIONS

SEC. 401. COORDINATION AMONG RECREATIONAL RESOURCES.

Subject to existing authority, the Secretary of the Interior shall cooperate with, and assist, any regional authority comprised of representatives of West Virginia State authorities and local government authorities in or any combination of the foregoing Nicholas, Fayette, Raleigh, Summers, Greenbrier, and Mercer Counties, West Virginia, for the purposes of providing for coordinated development and promotion of recreation resources of regional or national significance which are located in southern West Virginia and management by State or Federal agencies, including State, local and National Park System units, State and National Forest System units, and historic sites.

SEC. 402. SPECIAL PROVISIONS.

Subject to his responsibilities to protect the natural resources of the National Park System, the Secretary of the Interior shall enter into a cooperative agreement with the State of West Virginia providing for the State's regulation, in accordance with State law, of persons providing commercial recreational watercraft services on units of the National Park System and components of the National Wild and Scenic Rivers System subject to this Act.

SEC. 403. PUBLIC AWARENESS PROGRAM.

The Secretary of the Interior shall establish a public awareness program to be carried out in Mercer, Nicholas, and Greenbrier Counties, West Virginia, in cooperation with State and local agencies, landowners, and other concerned organizations. The program shall be designed to further public understanding of the effects of designation as components of the National Wild and Scenic Rivers System of segments of the Bluestone and Meadow Rivers which were found eligible in the studies completed by the National Park Service in August 1983 but which were not designated by this Act as units of such system. By December 31, 1992, the Secretary shall submit a report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate describing the program undertaken pursuant to this section. Section 7(b) of the Wild and Scenic Rivers Act shall continue to apply to the segments subject to this section until December 31, 1992.

SEC. 404. CONSOLIDATED MANAGEMENT.

In order to achieve the maximum economy and efficiency of operations in the administration of the National Park System units established or expanded pursuant to this Act, the Secretary shall consolidate offices and personnel administering all such units to the extent practicable and shall utilize the existing facilities of the New River Gorge National River to the extent practicable.

SEC. 405. NEW SPENDING AUTHORITY SUBJECT TO APPROPRIATIONS.

Any new spending authority which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as provided in appropriation Acts.

TITLE V—TECHNICAL CHANGE TO WILD AND SCENIC RIVERS ACT

SEC. 501. ACREAGE LIMITATIONS.

Notwithstanding the provisions of section 501(b)(1)(B) of Public Law 99-590, section 3(b) of the Wild and Scenic River Act (16 U.S.C. 1274(b)) is amended to read as follows:

"(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of designation of such component under subsection (a) (except where a different date if provided in subsection (a)), establish detailed boundaries therefor (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments.

"Notice of the availability of the boundaries and classification, and of subsequent boundary amendments shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.".

Mr. BYRD. Mr. President, I am pleased that we are today taking final action on H.R. 900, the West Virginia National Interest River Conservation Act. The passage of this legislation has taken a great deal of hard work, and I commend my colleague from West Virginia, Senator ROCKEFELLER, for his diligence in pursuing this legislation. This measure designates the Gauley River and 5.5 miles of its tributary, the Meadow River, as a national recreation area. The bill also designates 25 miles of the lower Bluestone River as a national scenic river. Both the Gauley and Lower Bluestone Rivers are tributaries of the New River Gorge National River.

The natural beauty of the New River Gorge, has long been recognized. In 1974 I was able to obtain funding for a feasibility study by the National Park Service to do an assessment of that area. Upon the completion of those studies, I, along with Senator JENNINGS RANDOLPH, introduced legislation to establish the New River Gorge National River, and that legislation was signed into law in November 1978.

The New River Gorge has been called the Grand Canyon of the East and is claimed by some to be the oldest river in the world. The New River is truly a national treasure, as are the Gauley and the Bluestone Rivers. This area, with its mountainous terrain, has a natural beauty that is not found in many other places in this country.

Again, I commend my good friend and colleague from West Virginia, Senator Rockefeller, and I also commend the Members of the West Virginia delegation in the House of Representatives, for their hard work and diligence in working out a bill that has the support of West Virginians and will preserve the natural resources of these rivers for generations to come.

Mr. ROCKEFELLER. Mr. President, I am very pleased to rise in support of legislation that will preserve and protect the Gauley, Meadow, and Bluestone Rivers. The West Virginia River Conservation Act of 1987 was passed by the House of Representatives in May 1987. As passed by the House, it would have provided Federal status for the Meadow, Gauley, Bluestone, and Greenbrier Rivers. I introduced similar legislation in the Senate in September 1987. However, my bill did not call for inclusion of the Greenbrier River. After a series of public meetings last summer in Pocahontas and Greenbrier Counties I determined that public support for inclusion of the Greenbrier was not there.

As a result of information presented to me during the hearing process it became very evident that trapping was an issue of great importance to sportsmen in West Virginia and the Nation. After a great deal of thought I decided to amend my bill to ensure that trapping would be permitted in all three rivers being proposed for Federal status. The bill that passed the Senate on September 8, 1988 provided for hunting, fishing, and trapping in all rivers.

Since this bill was different than the one passed by the House, it was necessary for that body to vote on it again. The House accepted the deletion of the Greenbrier, but the addition of trapping was not as well received. After much negotiation we were able to reach a compromise that was acceptable to both the House and the Senate.

Hunting, fishing, and trapping will be permitted in all three rivers. The compromise involved the inclusion of the Meadow River to be part of the Gauley National Recreation Area, rather than designating the 5.5-mile segment of the Meadow to be a Wild River. The second part of the compromise was to delete the reference to trapping in the Bluestone River. Currently, the Corps of Engineers leases a portion of the Bluestone River, slated for designation, to the State of West Virginia. Under this lease agreement, the State has the authority to regulate wildlife management practices and hunting, trapping, and fishing are permitted. The bill language was modified to ensure that the State would have this authority in perpetuity.

Mr. President, this bill has widespread support among the people living in the region. Enactment of H.R. 900 will complement the existing New River Gorge National River and bring about significant economic, recreational, and environmental benefits. Without a doubt, the rivers that I have proposed are worthy of Federal designation. Passage of this legislation will greatly enhance the economic development of southern West Virginia through tourism, and help to ensure that the scenic beauty and natural resources of this area are given the care and protection they deserve.

Again, I am grateful for the consideration of this legislation and I urge passage of H.R. 900.

Mr. BYRD. Mr. President, I move that that the Senate concur in the House amendment.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTEGRATION OF ECONOMIES OF THE EUROPEAN COMMUNITIES

Mr. HATFIELD. Mr. President, I send a resolution to the desk on behalf of Senator Roth and Senator Byrd, and I ask unanimous consideration for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 491) to express the sense of the Senate that the President establish a bicontinental dialogue on the implications of the integration of the economies of the European Communities.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. ROTH. Mr. President, I am seeking the Senate's support for a sense of the Senate resolution on the integration of the European Community and I am pleased that the majority leader is joining me by cosponsoring this resolution. This resolution has been cleared on both sides of the aisle.

With the overwhelming support for the Omnibus Trade and Competitiveness Act this year, I believe the Congress made clear that it strongly supports a strong and coherent global trade policy. Certainly U.S. trade relations with Asia have been and will continue to be very important to the Congress and the future U.S. economic outlook. As we move into the 1990's, however, there are also very significant developments occurring in the European Community which could be at least as important to our future economic well-being.

The European Community is in the process of implementing ambtious plans to integrate its internal market, calling for changes in policies of the community and its member states in nearly 300 different areas. This integration is likely to result in important changes in regulations in the European Community which could well affect U.S. businesses operating in Europe as well as U.S. exports to members of the European Community.

Our stake in commerce with the EC is enormous already. To cite just a few examples: In 1987, we sold about one quarter of our exports to the EC, about $60 billion. The EC is our leading purchaser of U.S. farm products and U.S. direct investment in the EC amounts to $122 billion.

The EC's plan is to create by 1992 a single integrated market of 320 million people, potentially the largest market in the world. This could create enormous opportunities for expanding U.S. exports to the EC and restoring our traditional trade surplus with Europe. However, EC integration also poses risks of the emergence of a "Fortress Europe," new protectionism in the EC against nonmember countries.

It is vital to the United States that in the process of integration the EC keeps its commitments to market access for U.S. products whether civilian or military, agricultural or industrial. It is also vitally important that EC integration meshes with our efforts to strengthen multilateral trade rules in the Uruguay Round of Trade Negotiations, in such areas as services trade.

I am offering this sense of the Senate resolution today with Senator Byrd to help assure that EC integration is trade expanding, increasing jobs both here in America as well as in Europe. This resolution calls on the next administration to establish a "bicontinental dialog" on EC integration that includes representatives of the administration, Congress, the private sector, and their counterparts in the European Community. Some private sector groups, notably the Emergency Committee on American Trade, the United States Council on International Business, the American Chamber of Commerce in Belgium and the Business Roundtable, have already begun work on this issue. It is my hope that a way can be found to integrate their work and advice into this overarching effort for a "bicontinental dialog."

It is important to get this dialog in full swing as quickly as possible. 1992 sounds a long way off. So many may not realize that EC integration needs to be a front burner issue. New policy changes are being put in place in the EC as they are agreed to. The EC's aim is to culminate this integration process in 1992, not to start it at that time. My hope is that this bipartisan call for a "bicontinental dialog" will heighten attention to this issue and help assure that the EC's integration plans will benefit the United States.

In addition, last July I asked the Congressional Research Service [CRS] to prepare a special report on the EC's plans for integration. This report has been completed and I recently circulated it to my colleagues. The report contains very useful background on the EC's plans. The significance of U.S. trade links with Europe and the trade policy issues raised by the EC integration. Today, I will release this CRS to the public. This CRS report can serve to launch U.S. consideration of the impact of the important developments in the EC on our country and help prepare us for the criticial "bicontinental dialogue" called for in this resolution we are to vote on today. Copies of the CRS report are available from the Library of Congress.

Mr. BYRD. Mr. President, this resolution calls on the Senate to urge the next President to establish a dialog, between representatives of the administration, Congress and the private sector of the United States and their European Community counterparts, on the potential implications of European integration on American trade and investment in Europe. The movement toward integration of a large pan-European economy is vigorous and has great momentum, but the implications for United States-European economic relations are not fully apparent and we would be wise to focus on the possible consequences of such a development.

The date for European integration, 1992, is just around the corner but European Community policymakers and European private companies are already starting to adjust to the changes that will come. With integration, frontier, technical, and fiscal barriers to intra-European trade will be eliminated. To date, roughly a third of the European Community's directives for new laws and regulations, aimed at achieving integration, have already been adopted.

With integration, the European Community will encompass a total population of some 320 million people with a gross national product roughly equivalent to our own. Currently total bilateral trade between ourselves and the European Community countries equals $145 billion. United States direct investment in the European communities totals $122 billion. In addition the United States exports over $60 billion to these countries. This figure is more than we export to Canada and is twice as much as we export to Japan.

Mr. President, it is obvious that European integration presents the United States with both tremendous opportunity and potential concerns.

It is estimated that the elimination of the trade barriers will result in a 7-percent boost in European gross domestic product. Increased European purchasing power could lead to increased exports of American goods and services. As the trade barriers within Europe are brought down the costs of trade with Europe should also fall. This is a very welcome prospect.

However, there is also the potential threat that as the intra-European trade barriers fall, extra-European ones will be erected. The European Community's silence as to what its policy will be toward extra-European trading partners has led to speculation as to what the effect of European integration will be for the United States.

In light of these factors, the next administration would be well advised to create a mutually beneficial dialog aimed at cooperative solutions which would avoid a protectionist "fortress Europe." This is the message of the pending resolution.

To this end the Roth-Byrd resolution correctly calls on the next President to establish a dialog with the European Community aimed at a mutually supportive trade and investment relationship. In this way we will have a constructive proactive approach which will seek to mitigate any potential problems between the United States and the European Community before they arise.

Mr. President, the Deputy Secretary of State, Mr. John Whitehead, expressed the concerns that have been raised by some in the American business community as to the possible adverse effects of European integration on our access to Europe's markets. His remarks and a story on this matter appeared in the Washington Post this week and reinforces the need for the next administration to act vigorously on this matter, as is called for by the pending resolution.

Mr. President, I ask unanimous consent that the Washington Post article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

OFFICIAL SAYS U.S. FIRMS FEAR EC WILL BECOME PROTECTIONIST

By Stuart Auerbach

Deputy Secretary of State John C. Whitehead, in the frankest administration assessment yet of the potential dangers to U.S. business from Europe's plan to eliminate internal trade barriers, said yesterday that major American companies "have hedged their bets" by building more factories in Western Europe.

Whitehead, a former investment banker whose opinions are respected in the business community, thus joined a large number of American executives who fear that the planned elimination of trade barriers within the European Community could trigger restrictions throughout the continent on imports from other nations.

Though Whitehead was careful not to suggest the U.S. firms should protect themselves against such restrictions by establishing operations in Europe, he said: "It does provide a hedge against the risk that exports from the United States might be restricted by some kind of protectionism."

He pledged that the United States "will not stand idly by" and allow Europe to erect trade barriers to other countries as it breaks down it internal restrictions. Other high-ranking administration officials have issued similar warnings.

The administration strongly supports the plan to integrate the 12-nation European Community by 1992, both for its potentially positive economic effects and the political ramifications of having a stronger, more efficient Europe as a prime ally.

But major U.S. corporations already have signaled their agreement with Whitehead's assessment of the potential danger of "Europe 1992" by locating an increasing number of factories in Western Europe. His remarks could accelerate that trend.

Chrysler Corp., which exports U.S.-made cars to Europe, is talking with Renault about manufacturing Jeeps in an EC country, possibly Spain. And General Electric Co., which already maintains a strong manufacturing presence in Europe, announced plans yesterday to build a $1.7 billion silicon and plastics manufacturing complex on the southern coast of Spain, a low-wage country that is one of the newest members of the EC.

The Senate Finance and House Ways and Means committees are expected to call today for an investigation by the U.S. International Trade Commission of the impact of EC integration on American businesses and jobs.

The U.S. Chamber of Commerce, reflecting increasing concerns among major American corporations that EC moves to eliminate internal trade barriers could lead to a "Fortress Europe," established a blue-ribbon subcommittee last week to monitor European actions.

"Europe's ambitious plan to create a truly free internal market by 1992 offers great opportunities for U.S. business," but "the American business community must exercise vigilance to ensure that companies from outside the European Community are not denied parity of access to that market," warned Gerald Greenwald, chairman of Chrysler Corp. and head of the Chamber of Commerce panel.

The EC plan will allow companies in any member country to have free access to the EC's $4 trillion market, made up of 350 million consumers. But non-European suppliers also will gain from the switch to a single European market with one set of standards and regulations. By manufacturing in Europe, some U.S. companies believe they can escape restrictions the EC might place on imports to preserve the benefits of the integrated market for themselves.

While recognizing pressures to protect purely European companies, Whitehead said: "This is a huge market that should be available to American business. * * * I believe that our policy of keeping the European markets open will be successful because we have some potent retaliation ability," a reference to the possibility of placing restrictions on European exports to the United States.

Other ranking administration officials also have warned Europe about becoming protectionist as it opens its markets. In a speech in August, for example, Deputy Treasury Secretary M. Peter McPherson called European protectionism "unacceptable" and said it "would certainly evoke a response from the U.S. government."

Commerce Undersecretary Allen Moore underscored that theme when he said last week, "If the EC program falls prey to protectionist forces, the United States' largest foreign market will be at risk."

Moore said the administration is concerned about statements by high EC officials indicating that they will use criteria for granting access that could discriminate against non-European companies. Those fears are highest in the areas of banking and financial service, which are not covered by the international trading rules of the General Agreement on Tariffs and Trade (GATT).

"We need to make sure that Europe does not use the single internal market as a powerful 'private preserve' that will give Europeans advantages in competing for our markets whle denying us access to their markets. We have made this position clear to the European Community, and we will continue to do so," said Moore.

Major U.S. corporations such as GE and Du Pont Co. have said they believe that they will have no problems with an integrated European market because they already are well positioned with plants in EC-member nations. "We have manufacturing units in nine EC countries" despite "cost penalties" on manufacturing, marketing and distribution because of Europe's "present fragmentation," Du Pont Vice President Robert Luft said.

"We have a local presence and are seen as a local company," said GE spokesman Bruce Bunch. He pointed to GE's swap last year of its worldwide consumer electronics business for the medical equipment production of Thompson CGR, a European company that produces goods for export to the United States.

But former Commerce undersecretary Lionel Olmer, vice chairman of the Chamber of Commerce subcommittee on an integrated Europe, warned that U.S. businesses that think a manufacturing presence within the EC will provide a "safe haven" against protectionism may be in for a surprise.

Olmer suggested that the EC is seeking "a European national identity . . . so questions such as national origin [of products] will be examined in great detail.

"They will look at where taxes are paid, research and development is done, decisions made and jobs created. I think that basic philosophy is going to pervade the decision-making process in 1992," he said.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 491

Whereas the United States has a significant stake in trade and investment in the European Communities;

Whereas in 1987, our total bilateral trade with the European Communities was $145,000,000,000 and United States exports to the European Communities amounted to over $60,000,000,000 more than the United States sold to Canada and more than twice as much as the United States sold to Japan;

Whereas the European Communities are the leading purchasers of United States farm products and an important market for United States services;

Whereas direct investments of the United States in the European Communities amounts to $122,000,000,000;

Whereas the European Communities are in the process of implementing ambitious plans for integration of their internal markets which, when implemented, would create a single market of 320,000,000 people with a gross domestic product roughly equivalent to that of the United States;

Whereas the integrated market of the European Communities could create substantial new opportunities for United States exports and for United States subsidiaries in Europe by creating new jobs and more wealth in Europe and increasing European purchasing power, resulting in more sales by United States exporters and more jobs for Americans;

Whereas costs of doing business in Europe would be significantly reduced as physical and technical barriers to trade are eliminated or harmonized when this integration occurs;

Whereas this integration also poses risks to United States trade and investment if, instead of creating new opportunities, this integration deteriorates into a new form of protectionism, what some have referred to as "fortress Europe";

Whereas to help prevent such a deterioration, it is critically important that the next Administration encourage an open discussion between leaders in the United States and Europe of the plans of the European Communities for integration;

Whereas full and timely transparency concerning plans of the European Communities on integration is essential for maintaining mutually supportive trade and investment relations;

Whereas the 1990's are likely to be not only a very important, but also potentially a very stressful, period for United States-European Communities relations;

Whereas the uncertainties of the integration of the European Communities may add to the challenges posed in the military area, as we seek to promote more burden-sharing within the North Atlantic Treaty Organization;

Whereas our clear national interest is to meet these new challenges constructively, anticipating problems and seeking to resolve them in a timely manner, so that our alliance remains strong; and

Whereas an active bicontinental dialogue on the implications of the integration of the European Communities for the United States will help assure that integration is mutually beneficial to the United States and Europe and will help us to maintain strong and positive bilateral relations in the 1990's and beyond: Now, therefore, be it

Resolved, That the next Administration should establish a bicontinental dialogue that includes representatives of the Administration, Congress, the private sector, and their counterparts in the European Communities to discuss the implications of the integration of the European Communities for United States trade and investment. In this dialogue, the United States should seek to obtain—

(1) assurances that the European Communities will keep their commitments to market access for United States products whether civilian or military, agricultural, or industrial;

(2) assurances that the integration of the European Communities is consistent with our efforts to strengthen multilateral trade rules in the Uruguay Round of trade negotiations, particularly in the areas of trade in services, investment, and protection of intellectual property rights; and

(3) assurances that United States companies with subsidiaries in Europe have the same status as firms of the European Communities under any new directives of the European Communities and that new investment by United States firms in the European Communities can take place on a nondiscriminatory basis.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

H.R. 4879 TO BE HELD AT THE DESK

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 4879, a bill to revise the manner in which the service of depository institutions and holding companies are regulated, be held at the desk when it arrives from the House.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2215.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2215) entitled "An Act to amend the Office of Federal Procurement Policy Act to authorize appropriations for an additional four years, and for other purposes", do pass with the following amendments: Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Federal Procurement Policy Act Amendments of 1988".

SEC. 2. POLICY; FINDINGS AND PURPOSE.

(a) POLICY.—Section 2 of the Office of Federal Procurement Policy Act (41 U.S.C. 401) is amended by striking out "the Congress" and inserting "the United States Government".

(b) FINDINGS AND PURPOSE.—Section 3 of the Office of Federal Procurement Policy Act (41 U.S.C. 402) is amended in subsection (a) by inserting "Government-wide" before "procurement policies".

SEC. 3. AUTHORITY AND FUNCTIONS OF THE OFPP ADMINISTRATOR.

(a) IN GENERAL.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405) is amended—

(1) in subsection (a), by striking out "which shall be implemented in the single system of Government-wide procurement regulations and shall be" and inserting a period and the following: "Except as otherwise prohibited by law, these policies shall be implemented by the Federal Acquisition Regulatory Council and";

(2) in subsection (b)—

(A) by inserting after "General Services Administration" the following: ", acting through the Federal Acquisition Regulatory Council,"; and

(B) by striking out "may" and inserting "shall";

(3) in subsection (d)—

(A) by striking out paragraphs (4) and (5) and inserting the following:

"(4)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and

"(B) ensuring executive agency compliance with the record requirements of section 19;

"(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to—

"(A) foster and promote Government-wide career management programs for a professional procurement work force; and

"(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies;";

(B) by striking out "and" at the end of paragraph (7);

(C) by striking out the period at the end of paragraph (8) and inserting "; and"; and

(D) by adding at the end the following:

"(9) issuing and maintaining regulations, in accordance with section 27, to establish standards of conduct and post-employment limitations for employees of the Federal Government involved in procurement or procurement systems."; and

(4) in subsection (f) by striking out "The Director of the Office of Management and Budget" and inserting "The Administrator, with the concurrence of the Director of the Office of Management and Budget,".

(b) REAUTHORIZATION.—Section 11 of such Act (41 U.S.C. 410) is amended by striking out "for each of the three succeeding fiscal years" and inserting "such sums as may be necessary for each succeeding fiscal year".

(c) CONFORMING AMENDMENT.—Section 4 of such Act is amended by striking out paragraph (4) and redesignating paragraphs (5) through (11) as paragraphs (4) through (10), respectively.

SEC. 4. FEDERAL ACQUISITION REGULATORY COUNCIL.

The Office of Federal Procurement Policy Act is further amended by adding at the end the following:

"FEDERAL ACQUISITION REGULATORY COUNCIL

"SEC. 25. (a) There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the 'Council') to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

"(b)(1) The Council shall consist of the Administrator for Federal Procurement Policy and—

"(A) the Secretary of Defense,

"(B) the Administrator of National Aeronautics and Space; and

"(C) the Administrator of General Services.

"(2) Notwithstanding section 205(d) of the Federal Property and Administrative Services Act of 1949, the officials specified in subparagraphs (A), (B), and (C) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official (A) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies; or (B) if no official of such agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 16(3) of this Act. No other official or employee may be designated to serve on the Council.

"(c)(1) Acting through the Council, the Administrator, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities under section 6 of this Act (41 U.S.C. 405), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.), chapters 4 and 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451, et seq.), and subject to section 6(b) of this Act, shall jointly issue and maintain a single Government-wide procurement regulation, to be known as the 'Federal Acquisition Regulation'.

"(2) Any other regulations relating to procurement issued by an executive agency shall be limited to (A) regulations essential to implement Government-wide policies and procedures within the agency, and (B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

"(3)(A) To the extent that any regulation issued by an executive agency relating to procurement is, or would be, inconsistent with a provision of the Federal Acquisition Regulation, the provision of the Federal Acquisition Regulation shall govern, except that, if the head of an executive agency, at the recommendation of the official identified in subsection (b)(2) (A) or (B), determines that there is an urgent and compelling need for a regulation that is inconsistent with a provision of the Federal Acquisition Regulation, the head of such agency may, subject to subparagraph (B) of this paragraph, issue such regulation. Any such inconsistent regulation may be in effect for no more than 6 months and may not be reissued in the same or any different form or variation without the written approval of the Administrator. The authority to make determinations and grant approvals under this subparagraph may not be delegated.

"(B) Nothing in this paragraph shall be construed—

"(i) to permit a regulation by an executive agency that is, or would be, inconsistent with a provision of any Federal statute (including this Act) or any standard (or modification thereof) promulgated by the Cost Accounting Standards Board under section 25 of this Act; or

"(ii) to exempt a regulation issued by an executive agency under the authority of subparagraph (A) of this paragraph from section 6(f) of this Act.

"(d) Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to subsection (b) shall—

"(1) approve or disapprove all regulations that are, after the date of enactment of this section, proposed for public comment, promulgated in final form, or otherwise made effective by such agency relating to procurement before such regulation may be proposed for public comment, promulgated in final form, or otherwise made effective;

"(2) carry out the responsibilities of such agency set forth in chapter 35 of title 44, United States Code, for each information collection request (as that term is defined in section 3502(11) of title 44, United States Code) that relates to procurement; and

"(3) eliminate or reduce (A) any redundant or unnecessary levels of review and approval, in the procurement system of such agency, and (B) redundant or unnecessary procurement regulations which are unique to that agency.

"(e) All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies of section 2 and the policies prescribed under section 6(a) of this Act.

"(f) Subject to section 6(b), the Council shall manage, direct, coordinate, control, and monitor the maintenance of, and issuance of changes in, the Federal Acquisition Regulation.

"(g) The Administrator for Federal Procurement Policy shall—

"(1) publish a report within 6 months after the date of enactment of this section and every 6 months thereafter relating to the development of procurement regulations by the Council and, to the extent appropriate, by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration;

"(2) include in each report published under paragraph (1)—

"(A) the status of each such regulation;

"(B) a description of those regulations which are required by statute;

"(C) a description of the methods by which public comment was sought with regard to each proposed regulation in accordance with section 22 of this Act, and to the extent appropriate, sections 3504(h) and 3507 of title 44, United States Code;

"(D) regulatory activities completed and initiated since the last report;

"(E) regulations, policies, procedures, practices, and forms that are under consideration or review by the Office of Federal Procurement Policy;

"(F) whether the regulations have paperwork requirements;

"(G) the progress made in promulgating and implementing the Federal Acquisition Regulation; and

"(H) such other matters as the Administrator determines would be useful; and

"(3) report to Congress within 180 days after the date of the enactment of this section, in consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

"(A) the extent of the paperwork burden created by the Federal procurement process, and

"(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while at the same time maintaining recordkeeping and reporting requirements necessary to ensure the integrity and accountability of the system.".

SEC. 5. COST ACCOUNTING STANDARDS BOARD.

The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following:

"COST ACCOUNTING STANDARDS BOARD

"SEC. 26. (a)(1) There is established within the Office of Federal Procurement Policy an independent board to be known as the 'Cost Accounting Standards Board' (hereinafter referred to as the 'Board'). The Board shall consist of 7 members, including the Administrator, who shall serve as Chairman, and 6 members, all of whom shall have experience in Government contract cost accounting, and who shall be appointed as follows:

"(A) two representatives of the Federal Government—

"(i) one of whom shall be a representative of the Department of Defense and be appointed by the Secretary of Defense; and

"(ii) one of whom shall be a representative of civilian agencies and be appointed by the head of a civilian agency designated by the Administrator;

"(B) two representatives of industry, each of whom shall be appointed by the Administrator, and one of whom shall have substantial experience and knowledge of problems of small businesses;

"(C) two individuals from the private sector, each of whom shall be appointed by the Administrator and shall have substantial accounting experience and—

"(i) one of whom shall be a member of an academic institution; and

"(ii) neither of whom is employed by, or affiliated with (I) a Government contractor, or (II) any accounting, legal, consultant, or other professional services firm, a substantial part of whose business is providing services to any Government contractor or contractors with respect to Government procurement.

"(2)(A) The term of office of each of the members of the Board, other than the Administrator for Federal Procurement Policy, shall be 4 years, except that—

"(i) of the initial members, two shall be appointed for terms of two years, two shall be appointed for terms of three years, and two shall be appointed for terms of four years;

"(ii) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed; and

"(iii) no individual who is appointed under paragraph (1)(A) of this subsection shall continue to serve after ceasing to be an officer or employee of the Government.

"(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

"(C) The initial members of the Board shall be appointed within 90 days after the date of enactment of this section.

"(b) The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

"(c) The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5, United States Code.

"(d)(1) The Board may use, without reimbursement, any personnel of a Federal agency (with the consent of the head of the agency concerned) to serve on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

"(2) The Administrator, after consultation with the Board, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

"(e) Except as otherwise provided in subsection (a), the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (d)(1), shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or employee. Each member of the Board appointed from private life shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level IV of the Executive Schedule for each day (including travel time) in which the Member is engaged in the actual performance of duties vested in the Board. Individuals hired under subsection (d)(2) may receive compensation at rates fixed by the Administrator, but not to exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5, United States Code, for each day (including travel time) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from homes or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5703 of title 5, United States Code.

"(f)(1) The Board shall have the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States.

"(2) Cost accounting standards promulgated under this section shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States in excess of $100,000, other than contracts or subcontracts where the price negotiated is based on (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation.

"(3) No regulation of an executive agency may be inconsistent with a cost accounting standard promulgated or amended under this section. Costs which are the subject of cost accounting standards promulgated by the Board shall not be subject to regulations established by any executive agency that differ from such standards, by being either inconsistent or more or less restrictive. In any case in which any such regulation established by an executive agency is determined to differ from cost accounting standards promulgated by the Board, contracts and subcontracts subject to the conflicting regulations shall be controlled only by the cost accounting standards promulgated by the Board.

"(4) Not later than 180 days after the date of enactment of this section, the Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this section. Such rules and procedures shall require that any cost accounting standard promulgated, amended, or rescinded (and interpretations thereof) shall be adopted by majority vote of the Board members.

"(5) The Board is authorized—

"(A) to exempt classes or categories of contractors and subcontractors from the requirements of this section; and

"(B) to establish procedures for the waiver of the requirements of this section with respect to individual contractors and subcontractors.

"(g)(1) Prior to the promulgation under this section of cost accounting standards and interpretations thereof, the Board shall—

"(A) take into account, after consultation and discussions with the Comptroller General and professional accounting organizations, contractors, and other interested parties—

"(i) the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

"(ii) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

"(iii) the scope of, and alternatives available to, the action proposed to be taken;

"(B) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1)(A);

"(C)(i) publish an advanced notice of proposed rulemaking in the Federal Register in order to solicit comments on the report prepared pursuant to subparagraph (B);

"(ii) provide all parties affected a period of not less than 60 days after such publication to submit their views and comments; and

"(iii) during this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

"(D) publish a notice of such proposed rulemaking in the Federal Register and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

"(2) Cost accounting standards promulgated or amended by the Board shall have the full force and effect of law, and shall become effective at such time as is specified in the implementing regulations prescribed by the Council for such cost accounting standard. Implementation dates for contractors and subcontractors will be determined by agreement with the cognizant Federal agency, but in no event later than the beginning of the contractor's or subcontractor's next fiscal year. Cost accounting standards and modifications thereof promulgated by the Board will be accompanied by prefatory comments, and by illustrations where deemed necessary.

"(3) The functions exercised under this section are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

"(h)(1) The Federal Acquisition Regulatory Council (established under section 25 of this Act), after consultation with the Board, shall promulgate rules and regulations for the implementation of cost accounting standards promulgated or interpreted under subsection (f). Such regulations shall require contractors and subcontractors as a condition of contracting with the United States to—

"(A) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

"(B) agree to a contract price adjustment, with interest, for any increased costs paid to such contractor or subcontractor by the United States by reason of a change in the contractor's or subcontractor's cost accounting practices or by reason of a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

"(2) If the United States and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

"(3) Any contract price adjustment undertaken pursuant to paragraph (1)(B) shall be made, where applicable, on relevant contracts between the United States and the contractor that are subject to the cost accounting standards so as to protect the United States from payment, in the aggregate, of increased costs. Any contract price adjustment undertaken pursuant to paragraph (1)(B) on a firm fixed price contract shall be made only when the contractor makes a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Government.

"(4) The interest rate applicable to any contract price adjustment shall be the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. section 6621) for such period. Such interest shall accrue from the time payments of the increased cost were made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment.

"(i) The Board shall report to the Congress not later than one year after the date of enactment of this section, and annually thereafter, with respect to the activities and operations of the Board under this section, together with such recommendations as it considers appropriate.

"(j)(1) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations promulgated by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to this section.

"(2) Existing cost accounting standards referred to in paragraph (1) shall be subject to the provisions of this Act in the same manner as if promulgated by the Board under this Act.

"(3) The Administrator, under the authority set forth in section 6 of this Act, shall ensure that no regulation of an executive agency is inconsistent with a cost accounting standard promulgated or amended under this section. Costs which are the subject of cost-accounting standards promulgated under this section shall not be subject to regulations that are established by another executive agency that differ from such standards with respect to the measurement, assignment, and allocation of such costs.

"(k) For the purpose of determining whether a contractor or subcontractor has complied with cost-accounting standards promulgated under this section and has followed consistently his disclosed cost-accounting practices, any authorized representative of the head of the agency concerned, of the offices of inspector general established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States shall have the right to examine and make copies of any documents, papers, or records of such contractor or subcontractor relating to compliance with such cost-accounting standards.

"(l) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.".

SEC. 6. PROCUREMENT INTEGRITY.

(a) AMENDMENT.—The Office of Federal Procurement Policy Act is further amended by adding at the end the following:

"PROCUREMENT INTEGRITY

"SEC. 27. (a) During the conduct of any Federal agency procurement of property or services, it shall be unlawful—

"(1) for any officer, employee, agent, or representative of any competing contractor knowingly to make, directly or indirectly, any offer or promise of future employment or business opportunity to, or knowingly to engage in any discussion of future employment or business opportunity with, any procurement official or employee of such agency;

"(2) for any officer, employee, agent, or representative of any competing contractor knowingly to offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official or employee of such agency;

"(3) for any procurement official or employee of such agency knowingly to ask, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value (including an offer of future employment) from any officer, employee, agent, or representative of any competing contractor for such procurement;

"(4) for any procurement official or employee of such agency knowingly to disclose, directly or indirectly, to any unauthorized person (as defined in regulations prescribed by the Federal Acquisition Regulatory Council to carry out this section), prior to the award of a contract and with regard to the bids or proposals of competing contractors—

"(A) any confidential or proprietary data of the competing contractors for such procurement; or

"(B) any other information the disclosure of which to a competing contractor would give that contractor an unfair competitive advantage with respect to that procurement, or would otherwise undermine or harm the Government's negotiating position with regard to the procurement concerned;

"(5) for any officer, employee, agent, or representative of any competing contractor or any other such unauthorized person knowingly to solicit or obtain any information described in clause (A) or (B) of paragraph (4) prior to the award of a contract; or

"(6) for any person who is given authorized or unauthorized access to information described in clause (A) or (B) of paragraph (4) prior to the award of a contract knowingly to disclose such information to any unauthorized person (as defined in regulations prescribed by the Federal Acquisition Regulatory Council to carry out this section).

"(b)(1) A Federal agency may not award any contract, or agree to any modification or extension of any contract, for the procurement of any property or services to any competing contractor unless—

"(A) the officer or employee of such competing contractor who is responsible for the offer or bid for the contract certifies in writing to the contracting officer for such procurement that—

"(i) to the best of that officer's or employee's knowledge and belief, there has been no violation, with respect to such contract, of the requirements of subsection (a), this subsection, or the regulations issued by the Federal Acquisition Regulatory Council to carry out this section; and

"(ii) each officer, employee, agent, and representative of such contractor who has participated personally and substantially in the conduct of the agency procurement has—

"(I) signed an agreement with such contractor to comply with this section; or

"(II) complied with the requirements of paragraph (2) of this subsection;

"(B) each procurement official and employee of such agency certifies in writing to the contracting officer that neither the competing contractor nor the official or employee, as applicable, has, to the best of that procurement official's or employee's knowledge and belief, violated the requirements of subsection (a), this subsection, or the regulations issued by the Federal Acquisition Regulatory Council to carry out this section; and

"(C) the contract specifies that if the contractor violates the requirements of subsection (a), the contractor shall be in default.

"(2) For purposes of enforcing the requirements of clause (ii) of paragraph (1)(A), if a competing contractor has in place an ethics program which—

"(A) is updated periodically;

"(B) provides written materials to its officers, employees, agents, and representatives that contain specific references to the prohibitions of this section and regulations issued pursuant to this section; and

"(C) requires such officers, employees, agents, and representatives to certify that they have read such materials and that they will comply with the requirements of such ethics program,

then any officer, employee, agent, or representative making that certification shall be considered to have complied with the requirements such clause (ii) of paragraph (1)(A).

"(3)(A) If a procurement official or employee ceases to serve in that capacity with respect to a procurement, the certification required by paragraph (1)(B) shall be required both from such official or employee (at the time of ceasing to so serve) and from any procurement official or employee who assumes responsibility with respect to such procurement.

"(B) If a procurement official or employee refuses to make the certification required by paragraph (1)(B), or agrees to make the certification only with a qualification or restriction, the head of the agency concerned shall conduct a hearing to determine—

"(i) whether such official or employee shall be ineligible for service as a procurement official or employee on any future procurement;

"(ii) whether any other personnel action should be taken in accordance with proce-

dures required by applicable law or regulation for personnel actions taken against employees of the agency concerned; and

"(iii) whether, in light of the requirements of subsection (e), the procurement should proceed or be recompeted and whether debarment proceedings should begin.

"(4) For the purposes of enforcing the requirements of this section, the contracting officer responsible for the conduct of a procurement shall maintain, as part of the procurement file—

"(A) all certifications made by agency procurement officials or employees as required by this subsection;

"(B) a record (including dates of involvement in the procurement) of all individuals serving as procurement officials or employees with respect to such procurement; and

"(C) a record of all other persons who have been given access to information described in clause (A) or (B) of subsection (a)(4).

"(5) Any person making a certification required by paragraph (1) shall be notified of the applicability of section 1001 of title 18, United States Code, to false, fictitious, or fraudulent statements in such certification.

"(c) It shall be unlawful for any individual who, during the conduct of any Federal agency procurement, was engaged as a procurement official or employee of such agency in the conduct of such procurement and who made a certification under subsection (b)(1)(B) with respect to such procurement—

"(1) to participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

"(2) to participate personally and substantially on behalf of the competing contractor in the performance of such contract,

during the 3-year period beginning on the date such individual ceases to be a procurement official or employee with respect to such procurement.

"(d) Any individual who is or was a procurement official or employee, and who is found, after notice and opportunity for a hearing in accordance with procedures required by applicable law or regulation for personnel actions taken against employees of the agency concerned, to have violated knowingly any of the requirements of this section, shall be ineligible for any service as a Federal procurement official or employee for any future procurements. The head of a Federal agency may waive, in whole or in part, such ineligibility if the head determines that such waiver is necessary in the public interest. The authority of the head of a Federal agency under the preceding sentence may not be delegated.

"(e)(1) If an agency receives or obtains information providing a reasonable basis to believe that an officer, employee, agent, or representative of a competing contractor has knowingly violated the requirements of this section—

"(A) in the case of a procurement that is pending, the agency shall determine, in accordance with regulations issued by the Federal Acquisition Regulatory Council, whether such a knowing violation has occurred and, if such a violation has occurred, whether to terminate the procurement;

"(B) in the case of a procurement with respect to which a contract has been awarded, the agency shall determine, after notice and opportunity for a hearing, whether such a knowing violation has occurred and, if such a violation has occurred, whether to void or rescind the contract, to terminate the contract for default, to impose other authorized sanctions upon the contractor, or to permit the contractor to continue to perform the contract, subject to review in accordance with the Contract Disputes Act of 1978; and

"(C) if the agency determines (under subparagraph (A) or (B), or otherwise) that such a knowing violation has occurred, the agency—

"(i) may, in accordance with regulations issued by the Federal Acquisition Regulatory Council, impose an immediate suspension of the competing contractor; and

"(ii) shall initiate a debarment proceeding in accordance with paragraph (2) to determine whether, and for what period of time, the contractor shall be ineligible for award of any contract with, and for participation in any future procurement by, the Government.

"(2)(A) A debarment proceeding subject to this paragraph shall be conducted by the board of contract appeals of the agency which conducts the procurement. The board of contract appeals shall (i) resolve all issues of fact, (ii) determine whether a basis exists for debarment of the contractor, or of a subsidiary, division, affiliate, officer, employee, agent, or representative of the contractor, and (iii) issue a final decision for or against debarment, and (if the decision is for debarment) specify the period (not to exceed 3 years) that the contractor will be ineligible for award of any contract with, or for participation in a future procurement by, the Government.

"(B) In the case of an agency that does not have a board of contract appeals, the General Services Administration Board of Contract Appeals shall make all determinations and issue final decisions under subparagraph (A) for each such agency.

"(C) Sections 8(g), 10(b), and 10(c) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g), 609(b), and 609(c)) shall apply to determinations and decisions of the board of contract appeals of each agency under this paragraph to the same extent as such sections apply to decisions of an agency board of contract appeals under that Act. In applying such sections to a determination or decision under this paragraph, the term 'contractor' as used in those sections shall include any subsidiary, division, affiliate, officer, employee, agent, or representative to whom the determination or decision applies.

"(3) Upon issuance of any final decision under this subsection requiring debarment of a contractor (or subsidiary, division, affiliate, officer, or employee thereof), such contractor, subsidiary, division, affiliate, officer, or employee shall be ineligible for award of any contract with, and for participation in any future procurement by, the Government for a period specified in the decision, not to exceed 3 years, except that the head of an agency may permit such participation if the head determines in writing, on a contract-by-contract basis, that such participation is necessary in the public interest. The authority to make such determination may not be delegated. Upon issuance of any final decision against debarment of the contractor and its subsidiaries, divisions, affiliates, officials, and employees, the contractor may be compensated as provided by law or regulation.

"(4) The requirements, sanctions, and remedies established by this section are in addition to, and not in lieu of, any requirements, sanctions, and remedies established by any other law. Nothing in this subsection shall be construed to limit the applicability of the requirements, sanctions, and remedies established by any other law, but no agency shall be relieved of the obligation to carry out the requirements of this section because such agency has also applied such other requirements, sanctions, or remedies.

"(f) For purposes of this section—

"(1) the term 'conduct' means, with respect to a Federal agency procurement—

"(A) preparation and issuance of the procurement solicitation,

"(B) evaluation of proposals,

"(C) selection of sources, and

"(D) conduct of negotiations for the award, modification, or extension of a contract;

"(2) the term 'competing contractor', with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services, means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any consultant, expert, adviser, and any other person acting on behalf of such an entity;

"(3)(A) the term 'procurement official or employee' means any official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement, as further defined by the regulations issued by the Federal Acquisition Regulatory Council to carry out this section; and

"(B) for purposes of subparagraph (A), the term 'employee of an agency' includes a contractor, subcontractor, consultant, expert, or adviser employed to conduct, or any other person acting (directly or indirectly) on behalf of the agency with respect to, any phase of the agency procurement concerned;

"(4) the term 'contracting officer' means any official or employee of a Federal agency who has been authorized by the agency head or his or her designee to enter into, administer, or terminate contracts and make related determinations and findings; and

"(5) the term 'Federal agency' has the meaning provided by section 3(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(b)) which includes the Postal Service, the Tennessee Valley Authority, and other government corporations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act.

(c) IMPLEMENTING REGULATIONS AND GUIDELINES.—The Federal Acquisition Regulatory Council shall prescribe regulations and guidelines deemed appropriate to carry out section 27 of such Act (as added by subsection (a) of this section) as soon as practicable after the date of enactment of this Act. The chairman of each board of contract appeals shall prescribe rules and procedures governing actions under such section 27.

SEC. 7. PROFIT METHODOLOGY STUDY.

(a) IN GENERAL.—The Administrator shall conduct a study to develop a consistent methodology which executive agencies should use for measuring the profits earned by government contractors on procurements, other than procurements where the price is based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(b) CONTRACTORS' FINANCIAL DATA.—The methodology developed under subsection (a) shall include adequate procedures for verify-

ing and maintaining the confidentiality of contractors' financial data.

SEC. 8. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Section 901 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541) is amended by striking out paragraph (3) and inserting the following:

"(3) The term 'architectural and engineering services' means—

"(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

"(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

"(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.".

SEC. 9. ESTABLISHMENT OF THE COMMERCIAL PRODUCTS ADVOCATE.

The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following:

"ADVOCATE FOR THE ACQUISITION OF COMMERCIAL PRODUCTS

"SEC. 28. There is established in the Office of Federal Procurement Policy the position of Advocate for the Acquisition of Commercial Products. The Advocate shall report directly to the Administrator. The Advocate for Acquisition of Commercial Products shall—

"(1) review all proposed procurement regulations and report to the Administrator as to whether such regulations will encourage or discourage the acquisition of commercial products by Federal agencies;

"(2) provide recommendations to the Administrator as to which procurement regulations should be rescinded or modified to encourage the acquisition of commercial products; and

"(3) provide recommendations to the Administrator as to methods of simplifying procurement regulations governing acquisition of commercial products.".

SEC. 10. STUDY AND REPORT BY THE ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.

No later than April 1, 1989, the Administrator for Federal Procurement Policy, in consultation with the Comptroller General, shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives—

(1) on the extent to which the data collected by the Federal Procurement Data System is adequate for the management, oversight, and evaluation of Federal procurement; and

(2) which shall include any appropriate recommendations for improvements of such system.

Amend the title so as to read: "An Act to amend and extend the Office of Federal Procurement Policy Act, and for other purposes.".

Mr. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to, and the Chair appointed Messrs. CHILES, GLENN, NUNN, BINGAMAN, LEVIN, ROTH, RUDMAN, STEVENS, and COHEN conferees on the part of the Senate.

H.R. 4972, H.R. 5347, AND H.R. 5348 TO BE PLACED ON THE CALENDAR

Mr. BYRD. Mr President, I ask unanimous consent that H.R. 4972, H.R. 5347, and H.R. 5348 be placed on the calendar when received from the House.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DRUNK DRIVING

Mr. LAUTENBERG. Mr. President, I would just like to put a question to the majority leader, to see whether or not we can get a unanimous-consent agreement squared away on the minority side.

The majority leader knows that we have a proposal to try to get drunk drivers off the road and save thousands of lives a year. It has been cleared by the Commerce Committee, by the Environment and Public Works Committee, and I hope the Republican side can get this on the hotline and get a unanimous-consent agreement before we adjourn next week, so that this matter can be considered.

I wonder if we can get a commitment from the minority leader at this point to see if we can pursue the unanimous-consent request.

Mr. BYRD. Mr. President, I wonder if we could proceed with the agreement. The request that the distinguished Senator wishes to make is as follows:

He would ask unanimous consent for the introduction and immediate consideration of the bill by Mr. LAUTENBERG and Mr. DANFORTH and others to encourage State efforts to prevent drunk driving. He would ask that no amendments be in order, no amendments to recommit with or without instructions in order and that there be a time limitation of 20 minutes equally divided and under the control of Mr. LAUTENBERG and Mr. DANFORTH or their designees, and that the agreement be in the usual form.

That is the form of the request that would be made.

So really it is for the introduction and immediate consideration and then for a time agreement on the bill itself.

Mr. HATFIELD. Mr. President, I have been informed that I would be asked and instructed to object to that unanimous-consent agreement.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Oregon. He is in the same position I am put into on many occasions. If I am asked by a Senator to object on his behalf I have to do it, and that is the lot that the Senator from Oregon, Mr. HATFIELD, is put into.

Mr. LAUTENBERG. Mr. President, I appreciate the response.

If the majority leader will yield 1 minute more, I ask the Republican manager this evening whether he could pursue this with his colleagues next week to see if it is possible to get that clearance so that we can move ahead with this. It is an important piece of legislation.

I thank the Republican leader this evening, and I thank the majority leader.

Mr. BYRD. Let me say also that I will certainly be happy to attempt to pursue this when the Senate is back in session next week. I have not read the bill, but from the nature of it, the Drunk Driving Prevention Act of 1988, it sounds like something I would support wholeheartedly, but I would pursue this and it may be both sides can work out an arrangement whereby it would be proceeded with.

FEDERAL COMMUNICATIONS COMMISSION AUTHORIZATION ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 288, S. 1048, the Federal Communications Commission reform bill.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1048) to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That this Act may be cited as the "Federal Communications Commission Authorization Act of 1987".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1988 and 1989.".

(b) The amendment made by subsection (a) of this section shall apply with respect to fiscal years beginning after September 30, 1987.

TRAVEL REIMBURSEMENT PROGRAM

SEC. 3. Section 4(g)(2)(D) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)(D)) is amended by striking "1987" and inserting in lieu thereof "1989".

ANNUAL MANAGEMENT REPORT

SEC. 4. Section 5(g) of the Communications Act of 1934 (47 U.S.C. 155(g) is repealed.

FEE SCHEDULE

SEC. 5. Section 8(b)(1) of the Communications Act of 1934 (47 U.S.C. 158(b)(1) is amended by striking "the date of enactment of this section" the first time it appears and insert in lieu thereof "April 1, 1987".

AMENDMENT NO. 3628

(Purpose: To make an amendment in the nature of a substitute)

Mr. BYRD. Mr. President, I send an amendment on behalf of Mr. Inouye to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be started.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. INOUYE, proposes an amendment numbered 3628.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Communications Commission Authorization Act of 1988".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

AUTHORIZATION OF APPROPRIATIONS

"SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1988 and 1989.".

(b) The amendment made by subsection (a) of this section shall apply with respect to fiscal years beginning after September 30, 1987.

TRAVEL REIMBURSEMENT PROGRAM

"SEC. 3. Section 4(g)(2)(D) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)(D)) is amended by striking "1987" and inserting in lieu thereof "1989"

ANNUAL MANAGEMENT REPORT

"SEC. 4. Subsection (g) of section 5 of the Communications Act of 1934 (47 U.S.C. 155) is repealed.

FEE SCHEDULE

"SEC. 5. Section 8(b)(1) of the Communications Act (47 U.S.C. 158(b)(1) is amended by striking "the date of enactment of this section" the first time it appears and inserting in lieu thereof "April 1, 1987,".

OLDER AMERICANS PROGRAM

"SEC. 6.(a) During fiscal years 1988 and 1989, the Federal Communications Commission is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Commission (and consistent with such provisions of law) in providing technical and administrative assistance for projects related to the implementation, promotion, or enforcement of the regulations of the Commission.

(b) Prior to awarding any grant or entering into any agreement under subsection (a), the Office of the Managing Director of the Commission shall certify to the Commission that such grant or agreement will not—

(1) result in the displacement of individuals currently employed by the Commission;

(2) result in the employment of any individual when any other individual is on layoff status from the same or a substantially equivalent job within the jurisdiction of the Commission;

(3) result in filling a position prior to (A) publicly announcing the availability of such position, and (B) attempting to fill such position in accordance with regular employment procedures; or

(4) affect existing contracts for services.

(c) Participants in any program under a grant or cooperative agreement pursuant to this section shall—

(1) execute a signed statement with the Commission in which such participants certify that they will adhere to the standards of conduct prescribed for regular employees of the Commission, as set forth in part 19 of title 47, Code of Federal Regulations; and

(2) execute a confidential statement of employment and financial interest (Federal Communications Commission Form A-54) prior to commencement of work under the program.

Failure to comply with the terms of the signed statement described in paragraph (1) shall result in termination of the individual under the grant or agreement.

(d) Nothing in this section shall be construed to permit employment of any such participant in any decisionmaking or policymaking position.

(e) Grants or agreements under this section shall be subject to prior appropriation Acts.

CONGRESSIONAL COMMUNICATIONS

"SEC. 7.(a) The prohibition in section 1.1203(a) of title 47, Code of Federal Regulations, shall not apply to any of the types of presentations listed in section 1.1204(b) of such title nor to any presentation made by a member or officer of Congress, or a staff person of any such member or officer, acting in his or her official capacity, in—

(1) any non-restricted proceeding under section 1.1206(b) of such title;

(2) any exempt proceeding under section 1.1204(a)(2) of such title not involving the allotment of a channel in the radio broadcast or television broadcast services; or

(3) any exempt proceeding under section 1.1204 (a)(4) through (a)(6) of such title.

(b) Each reference in subsection (a) of this section to a provision of title 47, Code of Federal Regulations, applies to such provision as in effect on the date of enactment of this Act. No subsequent amendment of the rules or regulations in such title shall have the effect of prohibiting any presentation of the kind that would be permitted under subsection (a) of this section on the date of enactment of this Act.

TARIFF REVIEW

"SEC. 8.(a) Section 5(c)(1) of the Communications Act of 1934 (47 U.S.C. 155(c)(1)) is amended, in the first sentence, by inserting immediately after "this subsection" the following: "and except any action referred to in sections 204(a)(2), 208(b), and 405(b)".

(b) Section 204(a) of the Communications Act of 1934 (47 U.S.C. 204(a)) is amended—

(1) by inserting "(1)" immediately before "Whenever"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 12 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective, or within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(B) The Commission shall, with respect to any such hearing initiated prior to the date of enactment of this paragraph, issue an order concluding the hearing not later than 12 months after such date of enactment.

"(C) Any order concluding a hearing under this section shall be a final order and may be appealed under section 402(a).".

(C) Section 208 of the Communications Act of 1934 (47 U.S.C. 208) is amended—

(1) by redesignating the existing text as subsection (a); and

(2) by adding at the end the following new subsection:

"(b)(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 12 months after the date on which the complaint was filed, or within 15 months after such date if the investigation raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(2) The Commission shall, with respect to any such investigation initiated prior to the date of enactment of this subsection, issue an order concluding the investigation not later than 12 months after such date of enactment.

"(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a).".

(d) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended—

(1) by redesignating the existing text as subsection (a);

(2) in subsection (a), as so redesignated, by striking "section 5(d)(1)" each place it appears and inserting in lieu thereof "section 5(c)(1)"; and

(3) by adding at the end the following new subsection:

"(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under section 204(a) or concluding an investigation under section 208(b), the Commission shall issue an order granting or denying such petition.

"(2) Any order issued under paragraph (1) shall be a final order and may be appealed under section 402(a).".

HAWAII MONITORING STATION

"SEC. 9. (a) The Federal Communications Commission is authorized to expend such funds as may be required in fiscal years 1989 and 1990, out of its appropriations for such fiscal years, to relocate within the State of Hawaii the Hawaii Monitoring Station presently located in Honolulu (Waipahu), including all necessary expenses for—

(1) acquisition of real property;

(2) options to purchase real property;

(3) architectural and engineering services;

(4) construction of a facility at the new location;

(5) transportation of equipment and personnel;

(6) lease-back of real property and related personal property at the present location of the Monitoring Station pending acquisition of real property and construction of a facility at a new location; and

(7) the re-establishment, if warranted by the circumstances, of a downtown office to serve the residents of Honolulu.

(b) The Federal Communications Commission shall declare as surplus property, for disposition by the General Services Administration, the real property (including the structures and fixtures) and related personal property which are at the present location of the Hawaii Monitoring Station and which will not be relocated. Notwithstanding sections 203 and 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 485), the General Services Administration shall sell such real and related personal property on an expedited basis, including provisions for lease-back as required, and shall reimburse the Commission from the net proceeds of the sale for all of the expenditures of the Commission associated with such relocation of the Monitoring Station. Any such reimbursed funds received by the Commission shall remain available until expended.

(c) The net proceeds of the sale of such real and related personal property, less any funds reimbursed to the Federal Communications Commission pursuant to subsection (b), and less normal and reasonable charges by the General Services Administration for costs associated with such sale, shall be deposited in the general fund of the Treasury.

(d) The Hawaii Monitoring Station shall continue its full operations at its present location until a new facility has been built and is fully operational at a new location.

(e) The Federal Communications Commission and the General Services Administration shall not take any action under this section committing any funds disposing of any property in connection with the relocation of the Hawaii Monitoring Station until—

(1) the Chairman of the Commission and the Administrator of General Services have jointly prepared and submitted, to the Committee on Appropriations, the Committee on Commerce, Science, and Transportation, and the Committee on Governmental Affairs of the Senate, and the Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Government Operations of the House of Representatives, a letter or other document setting forth in detail the plan and procedures for such relocation which will reasonably carry out, in an expeditious manner, the provisions of this section but will not disrupt or defer any programs or regulatory activities of the Commission or adversely affect any employee of the Commission (other than those at the Monitoring Station who may be required to transfer to another location) through the use of appropriations for the Commission, in fiscal years 1989 and 1990; and

(2) at least 30 calendar days have passed since the receipt of such document by such Committees.

Mr. INOUYE. Mr. President, we now have before us S. 1048, legislation to reauthorize the Federal Communications Commission [FCC] for fiscal years 1988 and 1989. We have been meeting with our House counterparts to resolve any differences in this legislation, and we have finally reached a resolution. At the end of my statement, I will offer an amendment in the nature of a substitute for the committee reported bill. This substitute contains the following provisions:

AUTHORIZATION AMOUNT

Both the Senate bill and House bill (H.R. 2961) contain the same funding levels for the FCC: $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989. These amounts are acceptable to the FCC, and they represent minor increases in funding from previous years. The additional amounts are needed to fund increases in compensation and benefits, to fund new positions to process and collect fees, and to provide for the relocation of a monitoring station. The substitute includes the same funding levels as contained in the Senate and House bills.

TRAVEL REIMBURSEMENT

Both the Senate and the House bill extend the travel reimbursement program through 1989. This program was first authorized by the Congress in 1982. It permits the FCC to accept payment from outside parties to reimburse the Commission for business-related travel of Commission employees. Because such a program has the potential for abuse, a key element of the statute was that Congress would reauthorize it periodically. The most recent reauthorization was in early 1986. Both bills extend the reimbursement program, finding no reason to question the FCC's administration. The substitute includes this extension through 1989.

ANNUAL MANAGEMENT REPORT

Both the Senate and House bill repeal the annual management report requirement. This requirement was instituted in 1981. It was designed to provide an overview of the FCC's program for the next 3 years. Much of the information in this report, however, is also contained in the FCC's annual report (mandated in section 4(k)). It is for that reason that both bills eliminate this requirement. The substitute includes this repeal.

FEE SCHEDULE

Both the Senate and House bill postpone the date for modifying the fee schedule to reflect changes in the Consumer Price Index. The fee schedule was enacted in 1986. It establishes fees to be paid for certain services of the FCC. It raises about $30 million annually, and this amount is expected to increase.

As part of the fee schedule provision, Congress mandated that the fees be modified every 2 years to reflect inflation, beginning 2 years from the date of enactment. The FCC first implemented the fees on April 1, 1987, and it has found that the initiation of fees has been accompanied by significant confusion, and there have been problems with compliance. Because of these problems, the FCC believes there should be a 1-year delay in changing the fees to reflect inflation. Both bills contain this delay. The substitute also includes this delay.

OLDER AMERICANS PROGRAM

The House bill contains a provision to permit the FCC to initiate a 2-year test program to negotiate the hiring of older Americans to assist in technical and administrative work on Commission projects related to the implementation, promotion, or enforcement of regulations. The House believes that these older Americans can provide valuable assistance to the Commission, especially in these times of tight budgets. We believe a test of this program has substantial merit. It is included in the substitute.

EX PARTE CONTACTS BY MEMBERS OF CONGRESS

The House bill contains a provision precluding the Commission from prescribing or enforcing any regulation or policy that prevents or deters the receipt or consideration of any information, communications, or expression of views from the Congress. This provision represents a concern of the House that the Commission's ex parte rules, particularly those provisions barring third-party contacts with the Commission during the so-called sunshine period, the 7 days period before a matter is to be considered at a Commission meeting, not be applied to congressional contacts. Since the House acted on this provision, the Commission has adopted rules that permit such ex parte contacts by Members of Congress. These rules, however, are susceptible to further change. It is for that reason that the substitute includes this provision.

TARIFF REVIEW

Since both bills were reported from committee, many Members have expressed concern about the lack of accountability for Commission actions on common carrier tariffs. The substitute contains a provision to address this problem.

Under its current procedures, the FCC often allows telephone companies' tariffs to become effective without issuing an order finding the tariff to be lawful. As a result, the FCC will allow telephone rates to go up or down, but, because the FCC issues no formal opinion on the legality of the new rates, the public cannot seek judicial review of the decision to allow the rates to take effect. This provision of the FCC authorization bill corrects this problem by requiring the Commission to issue a decision on the lawfulness of a tariff within a certain number of months after the tariff takes effect. It also establishes that the FCC's decision concluding such investigation shall be reviewable by the courts. The provision will protect the right of consumers and competitors to ensure that the FCC's actions are reasonable and consistent with its mandate to protect the public interest under the Commissions Act of 1934.

A general principal of the due process clause is that members of the public may challenge decisions of Federal Government agencies in court. This right is founded upon the rationale that Federal agencies must be held accountable for their actions under a standard of reasonableness. This right is reaffirmed in the Administrative Procedures Act, which lays out specific rules for seeking judicial review. Judicial review is an essential right of the public to protect itself from arbitrary government action.

The FCC has not been held accountable for its actions because of two related problems. First, the FCC often fails to reach a decision completing a tariff investigation in a reasonable amount of time. Current FCC records show that of the 21 pending tariff investigations, 12 of these are over 1 year old. Two of these have been pending since 1981. This administrative delay in a nontrial proceeding would be troublesome in any context. It is especially troublesome in this case because the new rates are in effect pending the completion of the investigation. Under the Communications Act, the Commission may suspend the operation of any tariff for a maximum period of 5 months after the tariff is scheduled to take effect. After this 5-month period, the tariffs must take effect until the Commission rules that they are unlawful. As a result, potentially unlawful tariffs can be in effect for several years pending the outcome of the FCC's investigation.

Second, even when an order concluding an investigation is issued, that order may not be reviewable in court. These orders are often issued by the Common Carrier Bureau on delegated authority. Under section 5(c)(7) of the act (47 U.S.C. 155(c)(7)), the filing of an application for review to the full Commission of a decision on delegated authority is a condition precedent to obtaining judicial review. Thus, even when the Bureau issues an order concluding an investigation, the petitioner must go through the additional hurdle of filing an application for review. Further, once the Commission rules on such an application, that decision may be subject to reconsideration under section 405. Although a decision on reconsideration is not technically a condition precedent to appealing the decision in court, in practice, the courts often await the resolution of a reconsideration before permitting that judicial process to go forward. Petitioners who challenge a tariff decision should not have to face this many procedural obstacles before being allowed to get to court. This cumbersome procedure impose too great a delay on the administrative process.

This legislation attempts to rectify both problems. First, it establishes time deadlines on any tariff investigations undertaken by the Commission. Second, it establishes that any order concluding an investigation concerning the lawfulness of a tariff, whether conducted under section 204(a) or under section 208, shall be issued by the Commission and shall be reviewable by the courts. I believe that these provisions satisfy the intent of the courts that the FCC be given an opportunity to hold a hearing and develop a record before the courts must review the agency's decision, without requiring the petitioners to hurdle an unreasonable number of regulatory barriers prior to obtaining the right to judicial review.

In establishing a deadline, I have kept in mind that any deadline must balance the need to give the FCC enough flexibility to reach a proper decision with the need to protect consumers and competitors from unlawful rates that are in effect while the investigation is continuing. I do not wish to constrain the FCC's ability to conduct thorough and proper investigations. On the other hand, an argument can be made that no new rates should be allowed to take effect until they are found to be lawful. While we could consider extending the time period for suspensions, this could work too great a burden on the carriers. In this regard, I would remind the Commission that in 1976 Congress set the maximum period for suspension at 5 months and exhorted the Commission to complete all its tariff investigations within that time.

After discussing this matter with the FCC, it appears to me that a period of 12 months strikes the best balance between these two conflicting goals. Although many tariff investigation orders could be completed within 6 months after the tariff, some unusually complicated tariff investigations could take more time. A period of 12 months should give the FCC more than enough time to complete an investigation without imposing too great a burden upon consumers and competitors. This amount of time should avoid constraining the FCC to such a degree that it is forced to issue a rushed, and possibly improper, decision.

To provide the FCC with additional flexibility for those tariffs that present such extraordinarily difficult problems that the FCC absolutely must have more time to complete its investigation, this provision provides that the FCC shall have an additional 3 months after the effective date of the tariff in which to complete its investigation in those instances. Once again, this will ensure that the FCC is able to conduct its investigation properly without overburdening the public. The FCC should not make use of this additional time period in other than the most unusual and complex cases involving a detailed analysis of facts.

A similar deadline is imposed on complaint investigations that challenge the lawfulness of a tariff. This provision is necessary for those cases where the FCC refuses to initiate an investigation and allows the tariff into effect. Several cases have determined that the FCC's decision simply to allow a tariff into effect is a nonfinal order that is not subject to judicial review. See, *Southern Railway Co.* v. *Seaboard Allied Milling Corp.*, 442 U.S. 444 (1979); *Papago Tribal Utility Authority* v. *FERC*, 628 F.2d 235 (D.C. Cir.), cert. denied, 449 U.S. 1061 (1980); *Aeronautical Radio, Inc.* v. *FCC*, 642 F.2d 1221 (D.C. Cir. 1980) cert. denied, 451 U.S. 920 (1981). In declining to review an FCC decision to accept a tariff without an investigation, the Aeronautical Radio court held that: "The Papago and Southern Railway cases require us to hold that the availability of a statutory complaint procedure renders the FCC's acceptance decision in this case nonfinal." Id., at 1235. From these cases, it is clear that, if the Commission refuses to investigate a tariff, a petitioner must then file a complaint prior to obtaining judicial review. If all petitioners are to have an equal right to judicial review, identical procedures must be imposed on the complaint process as on the tariff investigation process.

These provisions do not apply to all complaints. Complaint investigations that do not concern the lawfulness of a tariff, as when a member of the public complains that a carrier has not complied with the terms of its tariffs, are not required to be completed within the 12-month deadline. Nevertheless, it is expected that all complaints will be resolved within 12 months.

The provision also imposes a 3-month time limit on petitions for reconsideration. The 3-month period will run from the time that a petition is filed. A short period for reconsideration is necessary because, even though the initial investigation order can be taken directly to court, the courts often will await the decision on reconsideration before proceeding with the judicial process. As with the initial investigation, the 3-month deadline will apply only to petitions for reconsideration of an order completing a tariff investigation under section 204(a) or new section 208(b).

The FCC is given 12-months after the enactment of this amendment to issue an order concluding pending investigations under section 204(a) or new section 208(b).

In setting a 12-month limit, it is not intended that the FCC take the full 12 months to complete every investigation. The Commission should conclude every investigation as soon as it is possible to do so. The reason for giving the Commission as much as 12 months is that some tariff investigations require the collection and analysis of detailed factual information. The resolution of legal or policy issues should take no more than a few months. For instance, the most recently initiated investigation of customer-specific tariffs should be concluded within 6 months of the enactment of this act. The Commission has already indicated to the committee that it would issue an order concluding its investigation of AT&T's Tariff No. 12 before the end of this calendar year, and the Commission has indicated to the appeals court that it will conclude its investigation of strategic pricing by the local telephone companies in October of this year. As the statute declares, every order issued after the date of enactment of this bill concluding a tariff investigation shall be an order of the Commission. Similarly, every petition for reconsideration of an order concluding a tariff investigation under 204(a) or 208(b), filed after the date of enactment of this bill, shall be subject to the 3-month deadline.

Even though this amendment establishes deadlines, the FCC retains some flexibility to lengthen the time period for conducting these investigations. If the Commission suspends the proposed tariff for the statutory maximum period of 5 months, it may use that time to work on its investigation without starting the 12-month clock. This is because the 12-months begins to run when the tariff actually takes effect, not when it is scheduled to take effect. The Commission also has the option of extending the notice period before which filed tariffs may take effect from 45 days back to 90 days. The FCC could use this additional 45 days to examine the issues required for investigation without starting the 12-month clock.

This legislation does not change the judicial standard for review of Commission tariff decisions. The standard for reviewing an FCC decision as set by relevant case law remains just as it was prior to this law. Neither does the bill attempt to make any policy judgment as to the merits of any particular tariff. This provision applies equally to all investigations of the lawfulness of the tariffs of any carrier. The only change in the current law made by this bill is procedural. From now on, a decision concluding a tariff investigation shall be a final administrative order subject to judicial review under the appropriate standards governing review of agency decisions.

The sole purpose for proposing this legislation is to hold the FCC as accountable for its tariff decisions as for its rulemaking decisions. We expect that the FCC will comply with the time deadlines imposed by this amendment and that the Court of Appeals for the D.C. Circuit will grant petitions for mandamus in short order should the FCC fail to comply.

HAWAII MONITORING STATION

The FCC operates a network of 14 monitoring facilities equipped with long-range radio direction finders in the continental United States, Alaska, Hawaii, and Puerto Rico. These facilities are used in enforcing the Commission's radio spectrum allocations and the accompanying laws, rules, and regulations. Because of this important role, each facility must be located so as to avoid interference.

The FCC established a monitoring station at Waipahu, Oahu, in 1948. This site is located about 11 miles from Honolulu, where the major television transmitters are located, and has proven virtually ideal for monitoring transmissions and interference. For many years, the FCC has tried to preserve this environment by requiring that broadcast facilities locate away from this monitoring station and restrict their transmissions. While this solution worked for many years, the Honolulu area has grown tremendously, and with it, there has been a great increase in the number of radio and television stations operating at higher power. The result is that monitoring operations at Waipahu have been hindered.

Recently, the city of Honolulu has adopted land use requirements that will eventually force all broadcast licensees out of the city. Most, if not all, of the viable transmission sites are near Waipahu. The effect of this will be to render the Waipahu monitoring station useless by the mid-1990's.

Because of the importance of this monitoring activity, it will be necessary to relocate the Waipahu station. The provision in the substitute permits the FCC to move the Waipahu monitoring station to a more suitable location. Because of the great increase in the value of the land at Waipahu, any move should not cost the Government any money, and may, in fact, make money for the Government.

In addition to the provisions in the substitute, the bill before the Senate will include an amendment offered by Senator Wilson. This amendment expresses the sense of the Congress concerning amateur radio operators and the amateur radio service. The intent of this provision is to commend the tens of thousands of amateur radio operators throughout the country. They make important contributions to our nation's communications system, particularly in emergency circumstances. Along with other providers of communications services, they contribute time and valuable resources in service to the American public. It is important that the varous Government agencies throughout the country be cognizant of their efforts. This amendment is general in nature and is not directed to any particular rule, policy, or proceeding.

AMENDMENT NO. 3629

(Purpose: Express the sense of Congress concerning support for amateur radio, and other purposes)

Mr. HATFIELD. Mr. President, I offer an amendment on behalf of Senator Wilson and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Wilson, (for himself) Mr. Bond, Mr. Cochran, Mr. Cohen, Mr. Durenberger, Mr. Kasten, Mr. McCain, Mr. Nickles, Mr. Pressler, Mr. Stafford, Mr. Bumpers, Mr. DeConcini, Mr. Fowler, Mr. Glenn, Mr. Heflin, Mr. Nunn, Mr. Pryor, Mr. Reid, Mr. Shelby, Mr. Danforth, and Mr. Packwood) proposes an amendment numbered 3629.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following:

SENSE OF CONGRESS

Sec. . (a) The Congress finds that—

(1) more than four hundred and thirty-five thousand four hundred radio amateurs in the United States are licensed by the Federal Communications Commission upon examination in radio regulations, technical principles, and the international Morse code;

(2) by international treaty and the Federal Communications Commission regulation, the amateur is authorized to operate his or her station in a radio service of intercommu-

nications and technical investigations solely with a personal aim and without pecuniary interest;

(3) among the basic purposes for the Amateur Radio Service is the provision of voluntary, noncommercial radio service, particularly emergency communications; and

(4) volunteer amateur radio emergency communications services have consistently and reliably been provided before, during, and after floods, tornadoes, forest fires, earthquakes, blizzards, train wrecks, chemical spills, and other disasters.

(b) It is the sense of the Congress that—

(1) it strongly encourages and supports the Amateur Radio Service and its emergency communications efforts; and

(2) Government agencies shall take into account the valuable contributions made by amateur radio operators when considering actions affecting the Amateur Radio Service.

Mr. WILSON. Mr. President, I rise today to offer an amendment to the FCC reauthorization bill, S. 1048, to recognize the invaluable public communications services performed by volunteer radio operators in emergency, and oftentimes life-threatening, situations.

The ability and willingness of amateur radio operators to provide lifesaving emergency communications services when normal lines of contact are down is exceptional, indeed, their efforts have been indispensable to the work of public safety and civic organizations worldwide.

Without the services of our ham radio enthusiasts—which number over 435,000 throughout the United States—we would see a significant and unfortunate reduction in the ability of voluntary groups, like the Red Cross, to meet the needs of individuals, towns, and entire countries in the event of natural disasters, such as earthquakes, tornadoes, hurricanes, and blizzards, and tragic accidents, such as train wrecks and chemical spills.

Relief to areas hit by the forest fires which plagued my State this year and last, as well as to Yellowstone National Park this year, was quickened because of the services provided by these dedicated volunteers. Most recently, these radio operators proved helpful in providing communications between the United States and the Cayman Islands, Jamaica, and the Mexican communities of Cozumel and Cancun following Hurricane Gilbert and the devastating effects it had on these lands and their people—many of whom are poor and were left homeless.

Now I understand that some of my colleagues here in the Senate have reservations about my resolution which I offer today as an amendment. But I simply do not understand why this is a contentious issue. My amendment simply expresses Congress' strong support of the amateur radio service and its emergency communications efforts. In addition, it symbolizes Congress' belief that Government agencies, such as the FCC, should carefully consider the valuable, selfless efforts of amateur radio operators when making decisions that would affect the amateur radio service.

My concurrent resolution, Senate Concurrent Resolution 127, has already drawn broad bipartisan support in the Senate, 41 cosponsors in all. To date, 21 Senators from the other side of the aisle have signed on—Senators ADAMS, BENTSEN, BINGAMAN, BOREN, BUMPERS, CONRAD, DECONCINI, DIXON, FORD, FOWLER, GLENN, HEFLIN, JOHNSTON, NUNN, PELL, PRYOR, REID, RIEGLE, SANFORD, SHELBY, and SIMON. On this side of the aisle, I am pleased to be joined by 20 of my colleagues—Senators BOND, BOSCHWITZ, CHAFEE, COCHRAN, COHEN, D'AMATO, DOLE, DURENBERGER, EVANS, HECHT, HUMPHREY, KARNES, KASTEN, MCCAIN, NICKLES, PRESSLER, STAFFORD, THURMOND, TRIBLE, and WARNER.

I am particularly pleased that of these cosponsors, a number are colleagues of mine on the Commerce Committee—Senators MCCAIN, PRESSLER, TRIBLE, KASTEN, BENTSEN, FORD, RIEGLE, and ADAMS.

Since deciding to offer my concurrent resolution as an amendment to the FCC bill, I have contacted the resolution's cosponsors to ask them to join me in offering this amendment. While I have yet to hear back from some of them, which is understandable at this hectic time of year, I am proud to state that I have so far received the support of Senators BOND, BUMPERS, COCHRAN, COHEN, DECONCINI, DURENBERGER, FOWLER, GLENN, HEFLIN, KASTEN, MCCAIN, NICKLES, NUNN, PRESSLER, PRYOR, REID, SHELBY, and STAFFORD. I have also received the support of two more colleagues who serve on the Commerce Committee—Senators DANFORTH and PACKWOOD.

Mr. President, I think it should be noted that if our illustrious former colleague, Senator Barry Goldwater of Arizona, was in the Chamber today, he would undoubtedly be supporting—if not, indeed, offering—this measure. I believe all of us in the Chamber will agree that the amendment I have offered is not only a tribute to amateur radio operators everywhere, but also one to our distinguished former colleague, Barry Goldwater.

It is time for Congress to recognize the distinguished service of our Nation's amateur radio operators, and I ask for the support of my colleagues on this important matter.

Mr. DANFORTH. Mr. President, today the Senate is considering S. 1048, the Federal Communications Authorization Act of 1987. This legislation, which will reauthorize the Federal Communications Commission [FCC] for fiscal years 1988 and 1989, is a substitute for the bill reported by the Commerce Committee. The substitute contains noncontroversial changes agreed to on both sides of the aisle, and in both Houses.

This bill, and its House companion, authorizes $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989. It also extends the FCC's Travel Reimbursement Program through 1989. The Travel Reimbursement Program permits the FCC to accept reimbursement from outside parties for certain business travel by FCC employees. This legislation repeals the requirement of an annual management report because the FCC's annual report provides much of the same information. The date upon which the FCC's fees would increase is delayed by this legislation to prevent confusion among those who pay the fees.

The substitute bill, and its House companion, provide for a program under which older Americans can be hired by the FCC. The substitute also contains a provision on ex parte contacts that mirrors a provision in the House bill. The provision simply codifies the FCC's regulations regarding ex parte contacts by Members of Congress.

The substitute also contains procedural provisions regarding certain investigations of the rates and practices of common carriers. These provisions are designed to ensure accountability by the FCC and that parties affected by the FCC's decisions can seek judicial review. Under this substitute, the FCC is permitted to move its Hawaii monitoring station to a more suitable location. Monitoring stations allow the FCC to enforce its spectrum allocations, and associated regulations.

I am a cosponsor of this legislation, and I urge my colleagues to support it.

Mr. HATFIELD. Mr. President, I ask for adoption of the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3629) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment, as amended.

The amendment (No. 3628), as amended, was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that the committee substitute as amended be agreed to, that the bill be advanced to third reading, passed, and the motion to reconisder laid on the table, and that Calendar Order No. 379, H.R. 2961 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

S. 1048

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Communications Commission Authorization Act of 1988".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1988 and 1989.".

(b) The amendment made by subsection (a) of this section shall apply with respect to fiscal years beginning after September 30, 1987.

TRAVEL REIMBURSEMENT PROGRAM

SEC. 3. Section 4(g)(2)(D) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)(D)) is amended by striking "1987" and inserting in lieu thereof "1989".

ANNUAL MANAGEMENT REPORT

SEC. 4. Subsection (g) of section 5 of the Communications Act of 1934 (47 U.S.C. 155) is repealed.

FEE SCHEDULE

SEC. 5. Section 8(b)(1) of the Communications Act (47 U.S.C. 158(b)(1) is amended by striking "the date of enactment of this section" the first time it appears and inserting in lieu thereof "April 1, 1987,".

OLDER AMERICANS PROGRAM

SEC. 6. (a) During fiscal years 1988 and 1989, the Federal Communications Commission is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Commission (and consistent with such provisions of law) in providing technical and administrative assistance for projects related to the implementation, promotion, or enforcement of the regulations of the Commission.

(b) Prior to awarding any grant or entering into any agreement under subsection (a), the Office of the Managing Director of the Commission shall certify to the Commission that such grant or agreement will not—

(1) result in the displacement of individuals currently employed by the Commission;

(2) result in the employment of any individual when any other individual is on layoff status from the same or a substantially equivalent job within the jurisdiction of the Commission;

(3) result in filling a position prior to (A) publicly announcing the availability of such position, and (B) attempting to fill such position in accordance with regular employment procedures; or

(4) affect existing contracts for services.

(c) Participants in any program under a grant or cooperative agreement pursuant to this section shall—

(1) execute a signed statement with the Commission in which such participants certify that they will adhere to the standards of conduct prescribed for regular employees of the Commission, as set forth in part 19 of title 47, Code of Federal Regulations; and

(2) execute a confidential statement of employment and financial interest (Federal Communications Commission Form A-54) prior to commencement of work under the program.

Failure to comply with the terms of the signed statement described in paragraph (1) shall result in termination of the individual under the grant or agreement.

(d) Nothing in this section shall be construed to permit employment of any such participant in any decisionmaking or policymaking position.

(e) Grants or agreements under this section shall be subject to prior appropriation Acts.

CONGRESSIONAL COMMUNICATIONS

SEC. 7. (a) The prohibition in section 1.1203(a) of title 47, Code of Federal Regulations, shall not apply to any of the types of presentations listed in section 1.1204(b) of such title nor to any presentation made by a member or officer of Congress, or a staff person of any such member or officer, acting in his or her official capacity, in—

(1) any non-restricted proceeding under section 1.1206(b) of such title;

(2) any exempt proceeding under section 1.1204(a)(2) of such title not involving the allotment of a channel in the radio broadcast or television broadcast services; or

(3) any exempt proceeding under section 1.1204 (a)(4) through (a)(6) of such title.

(b) Each reference in subsection (a) of this section to a provision of title 47, Code of Federal Regulations, applies to such provision as in effect on the date of enactment of this Act. No subsequent amendment of the rules or regulations in such title shall have the effect of prohibiting any presentation of the kind that would be permitted under subsection (a) of this section on the date of enactment of this Act.

TARIFF REVIEW

SEC. 8. (a) Section 5(c)(1) of the Communications Act of 1934 (47 U.S.C. 155(c)(1)) is amended, in the first sentence, by inserting immediately after "this subsection" the following: "and except any action referred to in sections 204(a)(2), 208(b), and 405(b)".

(b) Section 204(a) of the Communications Act of 1934 (47 U.S.C. 204(a)) is amended—

(1) by inserting "(1)" immediately before "Whenever"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 12 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective, or within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(B) The Commission shall, with respect to any such hearing initiated prior to the date of enactment of this paragraph, issue an order concluding the hearing not later than 12 months after such date of enactment.

"(C) Any order concluding a hearing under this section shall be a final order and may be appealed under section 402(a).".

(c) Section 208 of the Communications Act of 1934 (47 U.S.C. 208) is amended—

(1) by redesignating the existing text as subsection (a); and

(2) by adding at the end the following new subsection:

"(b)(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 12 months after the date on which the complaint was filed, or within 15 months after such date if the investigation raises questions of fact of such extraordianry complexity that the questions cannot be resolved within 12 months.

"(2) The Commission shall, with respect to any such investigation initiated prior to the date of enactment of this subsection, issue an order concluding the investigation not later than 12 months after such date of enactment.

"(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a).".

(d) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended—

(1) by redesignating the existing text as subsection (a);

(2) in subsection (a), as so redesignated, by striking "section 5(d)(1)" each place it appears and inserting in lieu thereof "section 5(c)(1)"; and

(3) by adding at the end the following new subsection:

"(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under section 204(a) or concluding an investigation under section 208(b), the Commission shall issue an order granting or denying such petition.

"(2) Any order issued under paragraph (1) shall be a final order and may be appealed under section 402(a).".

HAWAII MONITORING STATION

SEC. 9. (a) The Federal Communications Commission is authorized to expend such funds as may be required in fiscal years 1989 and 1990, out of its appropriations for such fiscal years, to relocate within the State of Hawaii the Hawaii Monitoring Station presently located in Honolulu (Waipahu), including all necessary expenses for—

(1) acquisition of real property;

(2) options to purchase real property;

(3) architectural and engineering services;

(4) construction of a facility at the new location;

(5) transportation of equipment and personnel;

(6) lease-back of real property and related personal property at the present location of the Monitoring Station pending acquisition of real property and construction of a facility at a new location; and

(7) the re-establishment, if warranted by the circumstances, of a downtown office to serve the residents of Honolulu.

(b) The Federal Communications Commission shall declare as surplus property, for disposition by the General Services Administration, the real property (including the structures and fixtures) and related personal property which are at the present location of the Hawaii Monitoring Station and which will not be relocated. Notwithstanding sections 203 and 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 485), the General Services Administration shall sell such real and related personal property on an expedited basis, including provisions for leaseback as required, and shall reimburse the Commission from the net proceeds of the sale for all of the expenditures of the Commission associated with such relocation of the Monitoring Station. Any such reimbursed funds received by the Commission shall remain available until expended.

(c) The net proceeds of the sale of such real and related personal property, less any funds reimbursed to the Federal Communications Commission pursuant to subsection (b), and less normal and reasonable charges by the General Services Administration for costs associated with such sale, shall be deposited in the general fund of the Treasury.

(d) The Hawaii Monitoring Station shall continue its full operations at its present location until a new facility has been built and is fully operational at a new location.

(e) The Federal Communications Commission and the General Services Administration shall not take any action under this section committing any funds disposing of any property in connection with the relocation of the Hawaii Monitoring Station until—

(1) the Chairman of the Commission and the General Services Administration Services have jointly prepared and submitted, to the Committee on Appropriations, the Committee on Commerce, Science, and Transportation, and the Committee on Governmental Affairs of the Senate, and the Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Government Operations of the House of Representatives, a letter or other document setting forth in detail the plan and procedures for such relocation which will reasonably carry out, in an expeditious manner, the provisions of this section but will not disrupt or defer any programs or regulatory activities of the Commission or adversely affect any employee of the Commission (other than those at the Monitoring Station who may be required to transfer to another location) through the use of appropriations for the Commission, in fiscal years 1989 and 1990; and

(2) at least 30 calendar days have passed since the receipt of such document by such Committees.

SENSE OF CONGRESS

SEC. 10. (a) The Congress finds that—

(1) more than four hundred and thirty-five thousand four hundred radio amateurs in the United States are licensed by the Federal Communications Commission upon examination in radio regulations, technical principles, and the international Morse code;

(2) by international treaty and the Federal Communications Commission regulation, the amateur is authorized to operate his or her station in a radio service of intercommunications and technical investigations solely with a personal aim and without pecuniary interest;

(3) among the basic purposes for the Amateur Radio Service is the provision of voluntary, noncommercial radio service, particularly emergency communications; and

(4) volunteer amateur radio emergency communications services have consistently and reliably been provided before, during, and after floods, tornadoes, forest fires, earthquakes, blizzards, train wrecks, chemical spills, and other disasters.

(b) It is the sense of the Congress that—

(1) it strongly encourages and supports the Amateur Radio Service and its emergency communications efforts; and

(2) Government agencies shall take into account the valuable contributions made by amateur radio operators when considering actions affecting the Amateur Radio Service.

ORDER TO PLACE H.R. 5001 ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 5001, a bill to establish the Delaware Water Gap National Recreation Area Citizen Advisory Commission, and that the bill be placed on the calendar.

The ACTING PRESIDENT pro tempore. With objection, it is so ordered.

SALINAS NATIONAL MONUMENT REDESIGNATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1036.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2545) to redesignate Salinas National Monument in the State of New Mexico, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill, which has been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

TITLE I—SALINAS NATIONAL MONUMENT

SEC. 101.

(a) That the Salinas National Monument, as designated by section 601 of the Act of December 19, 1980 (94 Stat. 3231), is hereby redesignated as Salinas Pueblo Missions National Monument.

(b) Any reference in any record, map, or other document of the United States of America to Salinas National Monument shall hereafter be deemed to be a reference to Salinas Pueblo Missions National Monument.

TITLE II—CORONADO NATIONAL TRAIL STUDY

SEC. 201. SHORT TITLE.

This title may be cited as the "Coronado National Trail Study Act of 1988".

SEC. 202. FINDINGS.

The Congress finds that—

(1) Francisco Vasquez de Coronado led an expedition from Compostela on the Southwest Coast of Mexico, into the American Southwest in search of the legendary Seven Cities of Cibola between 1540 and 1542;

(2) Coronado's expedition of approximately 300 Spanish soldiers and 1,000 Indian allies and servants marched through the State of Arizona, then through the States of New Mexico, Texas, Oklahoma, and Kansas;

(3) Coronado and his troops found Pueblo Indian settlements, including the Zuni villages of western New Mexico, Acoma along the Rio Grande River, as far north as Taos, and east to Pecos, as well as those of the Hopi in Arizona and Plains groups in Texas, Oklahoma, and Kansas; and

(4) members of the Coronado expedition became the first Europeans to see the Grand Canyon in Arizona, the Palo Duro Canyon in Texas, and many other Southwestern landmarks.

SEC. 203. DESIGNATION OF TRAIL.

Section 5(c) of the National Trails System Act (82 Stat. 919; 16 U.S.C. 1244(c)) is amended by adding at the end thereof the following new paragraph:

"(32) Coronado Trail, the approximate route taken by the expedition of the Spanish explorer Francisco Vasquez de Coronado between 1540 and 1542, extending through portions of the States of Arizona, New Mexico, Texas, Oklahoma, and Kansas. The study under this paragraph shall be prepared in accordance with subsection (b) of this section. In conducting the study under this paragraph, the Secretary shall provide for (A) the review of all original Spanish documentation on the Coronado Trail, (B) the continuing search for new primary documentation on the trail, and (C) the examination of all information on the archeological sites along the trail.".

TITLE III—NATIONAL MIMBRES CULTURE STUDY

SEC. 301. SHORT TITLE.

This title may be cited as the "National Mimbres Culture Study Act of 1988".

SEC. 302. AUTHORIZATION OF STUDY.

(a) AUTHORIZATION.—The Secretary of the Interior is authorized to conduct a study of the Mimbres culture to determine its significance in illustrating and commemorating the prehistory of the Southwest. The study shall include an analysis of the significance of the culture as it relates to the Mogollon, Salado, and Casas Grandes cultures and shall include a list of appropriate sites for interpreting the culture.

(b) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(1) measures for the preservation of resources associated with the Mimbres culture located in and around the vicinity of Silver City, New Mexico; and

(2) indications of types and general intensities of development, including a visitor facility with sufficient space to accommodate exhibits of Mimbres pottery and information regarding the Masau Trail, that would be associated with public enjoyment and use of the sites, including general location and anticipated costs.

(c) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than one year after the date on which funds are appropriated for the study.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE IV—SPANISH COLONIZATION COMMEMORATIVE STUDY

SEC. 401. SHORT TITLE.

This title may be cited as the "Spanish Colonization Commemorative Act of 1988".

SEC. 402. AUTHORIZATION OF STUDY.

(a) AUTHORIZATION.—The Secretary of the Interior is authorized to conduct a study of the Spanish Frontier culture and Spanish Borderlands story to determine their significance in illustrating and commemorating the Spanish colonization of the Southwest, the Spanish colonial frontier culture, and Spanish colonialism in New Mexico. The study shall include an analysis of the sig-

nificance of the San Gabriel Historic Landmark and the Los Luceros Hacienda as they relate to the Spanish Borderlands story of the Southwest.

(b) Recommendations.—The study shall include recommendations with respect to—

(1) measures for the preservation and interpretation of resources associated with the Spanish colonization of the Southwest; and

(2) indications of types and general intensities of development, including the feasibility of visitor facilities, that would be associated with public enjoyment and use of the sites, including general location and anticipated costs.

(c) Completion of Study.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than two years after the date on which funds are appropriated for the study.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE V—"A" MOUNTAIN LAND EXCHANGE

SEC. 501.

The Secretary of the Interior is authorized to exchange certain lands as identified for disposal in the Southern Rio Grande Plan Amendment for certain mining claims on lands withdrawn for the National Aeronautic and Space Administration and New Mexico A and M College (now New Mexico State University) under P.L.O. 3685 and P.L.O. 2051. Once the United States determines the claims are valid under existing law, the exchange authorized by the preceding sentence shall be made on an equal value basis as determined by an independent appraisal.

SEC. 502.

(a) The Secretary of the Interior is authorized and directed to make available for exchange the Federal interests in the lands described in subsection (b) for the private interests in the lands described in subsection (c). The exchange shall be made in a manner consistent with applicable provisions of law and shall be on the basis of equal value as provided in section 206 of the Federal Land Management Act of 1976 (43 U.S.C. 1716).

(b) The Federal interests to be made available for exchange under this section are those lands in sections 14, 22, 23, 26, and 35 of township 23 south, range 2 east, New Mexico Principal Meridian which are encompassed by P.L.O. 2051.

(c) The private interests to be exchanged pursuant to this section are those lands owned by New Mexico State University in sections 19, 29, 30, and 31 of township 22 south, range 4 east, and section 6 of township 23 south, range 4 east, New Mexico Principal Meridian. The exchange may be made regardless of the reverter provision contained in the patent of those lands to the Regents of the Agricultural College of New Mexico and shall not be deemed to constitute the basis for reversion.

(d) Lands not acquired by New Mexico State University pursuant to this section and which are encompassed by P.L.O. 2051 may be disposed of, when available for disposition, by sale to or exchange with the State of New Mexico, New Mexico State University, or other public entities in accordance with the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.): Provided, however, That New Mexico State University is given a right of first refusal on any proposed disposition.

(e) None of the lands transferred to New Mexico State University pursuant to this section shall be sold by New Mexico State University. All such lands shall be used for the purposes of promoting directly or indirectly educational, scientific, and research activities, including those activities currently authorized under P.L.O. 2051, or promoting the utilization of the natural geothermal resources located within the boundaries of the lands transferred. In the event that the lands transferred to New Mexico State University pursuant to this section are used for any purpose other than those for which conveyance is authorized by this subsection, title to that portion of the lands upon which there is an unauthorized use shall immediately revert to the United States without the necessity for further action to accomplish the reversion of title to the United States.

(f) Notwithstanding any other provision of law or court order, the Secretary of the Interior, if the Secretary determines it is necessary and appropriate for the purpose of consummating a conveyance of lands or interests therein under this Act, is hereby authorized and directed to revoke P.L.O. 2051 or any portion thereof necessary to consummate the transaction authorized by this title.

TITLE VI—AZTEC RUINS NATIONAL MONUMENT

SEC. 601. REVISION OF BOUNDARY.

The boundary of Aztec Ruins National Monument is hereby revised to include the area generally depicted on the map entitled "Aztec Ruins, Addition, Aztec Ruins National Monument," numbered 319/80,015, and dated October 16, 1987. Such map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

SEC. 602. LAND ACQUISITION.

The Secretary of the Interior is authorized to acquire lands, interests in lands, and improvements thereon within the boundary of the national monument as amended by section 601 by donation, exchange, or purchase with donated or appropriated funds.

SEC. 603. ADMINISTRATION.

The Secretary of the Interior shall administer the Aztec Ruins National Monument in accordance with the provisions of law generally applicable to units of the National Park System including the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666).

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE VII—GEORGIA O'KEEFFE STUDY

SEC. 701.

(a) That in recognition of the significant impact Georgia O'Keeffe had on the world of art, the Secretary of the Interior is authorized and directed to conduct a study of the most appropriate way to interpret these nationally significant contributions. The study shall include but not be limited to an evaluation of the feasibility of establishing a landscape museum consisting of the scenes and physical features from which Georgia O'Keeffe drew much of her inspiration.

(b) The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within one year of the date on which funds are appropriated for the study.

SEC. 702.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE VIII—WARM SPRINGS STUDY

SEC. 801. SHORT TITLE.

This title may be cited as the "Warm Springs Study Act of 1988".

SEC. 802. STUDY OF WARM SPRINGS CULTURE.

(a) In General.—The Secretary of the Interior is authorized and directed to conduct a study of the culture that evolved around Warm Springs in Southwestern, New Mexico, to determine its significance in illustrating and commemorating American frontier military history and the development of American Indian policy.

(b) Specifics of Study.—The study shall include—

(1) an evaluation of the history of the people from the Warm Springs area in Victorio's War in relation to American frontier military history and the development of American Indian policy; and

(2) an evaluation of historic and prehistoric resources surrounding the Warm Springs at the headwaters of Canada de Alamosa and the potential for preservation and public use.

(c) Completion of Study.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within 1 year of the date on which funds are appropriated for the study.

SEC. 803. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

AMENDMENT NO. 3630

Mr. HATFIELD. Mr. President, I send an amendment to the desk on behalf of Senator Domenici and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Domenici, porposes an amendment numbered 3630.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 11, lines 1-2 strike "establishing a landscape museum" and insert in lieu thereof "marking and intrepreting the landscapes"

Mr. HATFIELD. Mr. President, I urge the adoption of the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3630) was agreed to.

Mr. BINGAMAN. Mr. President, I rise today in support of S. 2545, important legislation for all New Mexicans.

The legislation includes many provisions, some previously passed by this body, that will significantly increase public attention and appreciation for unique historic and cultural sites in the State of New Mexico.

Specifically, the legislation will redesignate the Salinas National Monument as the Salinas Pueblo Missions National Monument; expand the Aztec Ruins National Monument; transfer BLM lands in Southern New Mexico to New Mexico State University; and authorize studies of the Coronado Trail, the Mimbres culture of southwest New Mexico, the Warm Springs Apaches area, the Spanish Colonization of the Southwest, and the contributions of Georgia O'Keefe.

The redesignation of the Salinas National Monument is needed because it better communicates the nature of the area and helps emphasize its role in the history of our Nation. Salinas was an important center of cultural interchange during prehistoric and historic times for the Anasazi, Mogollon, and Plains indians. It also was an important center of mission activity during Spanish colonial times. Renaming the monument will encourage visits by tourists interested in the Pueblo and mission heritage who might not otherwise realize the unique place this site plays in the history of our area.

The expansion of the Aztec Ruins National Monument would incorporate additional lands critical to the preservation of the existing monument and add key archaeological resources located on adjacent private lands. The monument is threatened by irrigation and development on adjacent lands. The ruins represent an important blending of the cultural styles of the Chacoan and Mesa Verdean people and afford unique insights into the relationships between the two peoples.

The transfer of lands in southern New Mexico from the Bureau of Land Management of New Mexico State University will allow the university to promote education, scientific, and research activities, and the use of natural geothermal resources on the transferred lands. A provision calls for the land to automatically revert to the Federal Government if it is used for unauthorized purposes.

The Coronado Trail Study will revisit the route of Spanish explorer Francisco Vasquez Coronado, who led an expedition across the American Southwest in the mid 1500's. The study will eventually lead to designation of the trail as part of the National Historic Trail System.

The Mimbres provisions authorizes a study of the Mimbres culture in southwestern New Mexico to assess its significance in illustrating and commemorating the prehistory of the Southwest. The study will include measures for the preservation of resources linked to the culture, and the development of a visitors facility in the Silver City area. The study also will analyze the significance of the Mimbres as it relates to the Mogollon, Salado, and Casas Grandes cultures.

The study of the Warm Springs area of New Mexico will assess the culture that evolved around Warm Springs in southwestern New Mexico, to determine its significance in illustrating and commemorating American frontier military history and the development of American Indian policy. The study also will evaluate historic and prehistoric resources surrounding the Warm Springs area, and the potential for preservation and public use.

The study of the Spanish frontier culture and Spanish Borderlands story will point up ilts significance in the Spanish colonization of the Southwest and the Spanish colonization in New Mexico. The study will lead to recommendations for measures to preserve and interpret the resources associated with the Spanish Colonization, including visitor facilities and interpretation centers.

Finally, the bill authorizes a study of the important contributions of New Mexico artist Georgia O'Keefe. It is important that her rich artistic legacy be properly honored and preserved.

I am proud to have introduced this legislation and I am pleased that Senator Domenici is a cosponsor. This legislation represents an important effort to develop a comprehensive strategy for recognizing and honoring the unique history and culture of New Mexico. I urge my colleagues to support it.

Mr. DOMENICI. Mr. President, I rise to support S. 2545, the omnibus New Mexico parks bill.

S. 2545 as originally introduced had the single purpose of changing the name of Salinas National Monument in New Mexico to "Salinas Pueblo Missions National Monument." In committee, the bill was amended to include the provisions of seven other bills affecting units of the National Part Service in New Mexico that the junior Senator from New Mexico, Mr. Bingaman and I have sponsored together. These bills are:

S. 1693, the Coronado National Trail Study Act.

S. 1912, the National Mimbres Culture Study Act.

S. 2157, the Spanish Colonization Commemorative Act.

S. 2264, the "A" Mountain Land Exchange Act.

S. 2617, the Aztec Ruins National Monument Expansion Act.

S. 2750, the Georgia O'Keeffe Study Act.

S. 2767, the Warm Springs Study Act.

All of these measures have been approved separately by the Committee on Energy and Natural Resources, and several of them have been previously approved by the Senate.

The residents of New Mexico are fortunate to live in a State of such magnificent natural beauty and rich history. The provisions of the bill before the Senate are the result of the hard work of many New Mexicans who wish to protect our State's beauty and history. It is a tribute to the people of New Mexico that so many of them want to preserve portions of our State so that future generations can continue to enjoy the New Mexico that we know and love today. I urge the adoption of the Omnibus New Mexico Parks bill so that we can preserve the New Mexico that I love for the Americans to today and tomorrow.

SALINAS NATIONAL MONUMENT REDESIGNATION

Title I of S. 2545 will redesignate Salinas National Monument as "Salinas Pueblo Missions National Monument."

Salinas National Monument encompasses 1,077 acres in three units: Gran Quivira, Abo, and Quarai. These units are named after the ruins of the major prehistoric pueblo contained in each unit.

The main attractions at Salinas are the four large, original seventeenth-century Spanish churches. Only six such structures exist in all of the United States, and four of them are found at Salinas. The four large churches were built by Franciscan friars between 1629 and 1659.

Salinas was abandoned by the Pueblo Indians and the Spaniards in 1670. Thus, Salinas is unique, as it represents a century frozen in time. It provides evidence of seventeenth century Spanish-Indian interaction and affords unusual opportunities for research and interpretation.

When originally designated in 1909, Salinas was proclaimed as the Gran Quivira National Monument. When the monument was enlarged in 1980, the name was changed to Salinas National Monument in recognition of the salt lakes that have been of great importance in the settlement and trade of the region.

Redesignating the monument as "Salinas Pueblo Missions National Monument" will emphasize the historical significance of the unit and will present vistors and potential visitors with a more accurate description of the site.

However, renaming Salinas is just one step in making Salinas more meaningful and accessible to the public.

Since it was enlarged in 1980, Salinas has not received the base funding sufficient to meet its needs for Staff, site stabilization, and maintenance, as spelled our in its general management plan.

In fact, this past winter, the National Park Service had to close down two of the three units because of inadequate funding.

The need for funds is also critical in the area of ruins stabilization and maintenance. Approximately 50 percent of the structures at Salinas require emergency stabilization in order to assure that these unique and irreplaceable buildings are preserved.

For the past 2 years, I have requested the Congress to provide adequate funding for Salinas. This year the Interior Appropriations bill provides an additional $100,000 to allow Salinas to remain open on a full-time basis and to conduct much-needed work to protect the ruins at Salinas.

CORONADO NATIONAL TRAIL STUDY ACT

Title II, the Coronado National Trail Study Act, will direct the National Park Service to evaluate the route taken across the American Southwest by the Spanish explorer Coronado in the 1540's.

Between 1540 and 1542, Francisco Vasquez de Coronado led an expedition from the southwestern coast of Mexico to the American Southwest in search of the fabled "Seven Cities of Cibola." The expedition included 300 conquistadores and 1000 Indian allies.

Coronado marched through what is now New Mexico, Arizona, Texas, Oklahoma, and Kansas. The men in his party were the first Europeans to see the Grand Canyon. Along the route, he encountered the Pueblo Indians of Zuni, Acoma, and Taos in New Mexico, as well as the Hopi in Arizona and the Plains Indians of Texas, Oklahoma, and Kansas.

The Coronado expedition, following so soon after the discovery of the Americas by Christopher Columbus, was an important milestone in the early Spanish development of America.

Title II will direct the National Park Service to study the route the Coronado took across the Southwest and make recommendations as to the route's suitability for designation as a National Trail.

The feasibility study is particularly appropriate in light of the imminent 450th anniversary of the Coronado expedition in 1990 and the 500th anniversary of the 1492 discovery of America by Columbus, as that led to the Spanish expeditions.

NATIONAL MIMBRES CULTURE STUDY ACT

Title III would authorize the National Park Service to conduct a study of the Mimbres Culture and the significance of that culture to the history of southwestern New Mexico.

The study will include recommendations on the preservation of archaeological sites and artifacts associated with the Mimbres Culture and on the presentation of the Mimbres Culture story to the public.

The Mimbres people were a relative small group of people who inhabited the isolated valleys of southwestern New Mexico almost 2,000 years ago. The classic Mimbres Culture lasted from 200 A.D. to its collapse in 1200 A.D. This thousand-year period produced remarkable pottery, stone tools, and a wide variety of decorative objects and ornaments.

Neither the origin of the Mimbres Culture nor the reasons for its demise are known.

The Mimbres people would have remained little known, but for their development of a distinctive style of pottery painted black and white. It is recognized worldwide as a classic example of Native American artwork.

Title III will direct that a study of the Mimbres Culture be conducted in order to determine how we can preserve the remnants of that culture.

SPANISH COLONIZATION COMMEMORATIVE ACT

Title IV, the Spanish Colonization Commemorative Act, will authorize the National Park Service to conduct a study of the culture and history of the Spanish frontier area of North America.

Four centuries ago, Spanish conquistadores headed north from Mexico to found what was to be the farthest, most northern outpost of Spain's empire in the New World: New Mexico. In 1598, Juan de Onate, the first Spanish governor of New Mexico, and his caravan of 130 traveled on foot, on horseback, and in ox-driven carts into New Mexico from Mexico, reaching as far north as Espanola.

At the point where the Rio Chama empties in the Rio Grande, on what is now San Juan Pueblo, Onate established the first Spanish headquarters in what is now the United States. This site was called San Gabriel de Yunque-Ouinge and was the first Spanish capital of New Mexico, and remained the capital until 1609 when it was moved to Santa Fe.

As part of the Spanish colonization of New Mexico, Juan de Onate established 15 haciendas in the northern Rio Grande Valley. These haciendas constituted the first colonization of what is now the United States. Los Luceros Hacienda is believed to be one of those original 15 haciendas.

The purpose of the study mandated by title IV is to determine the significance of Spanish frontier history and culture in commemorating the Spanish colonization of what became the American Southwest. The study will include an analysis of the San Gabriel de Yunque-Ouinge and Los Luceros Hacienda sites.

"A" MOUNTAIN LAND EXCHANGE ACT

Title V incorporates the provisions of S. 2264, which I introduced to resolve a conflict over the competing uses of a parcel of land known as "A" Mountain in Las Cruces, NM. It will remove some mining claims on "A" Mountain that interfere with a very important National Aeronautics and Space Administration [NASA] project and will allow the Bureau of Land Management [BLM] to consolidate its ownership of lands in another area where it proposed to create a new national conservation area.

"A" Mountain, which derives its name from the large letter "A" painted on its face, is situated near the campus of New Mexico State University [NMSU] in Las Cruces. Although "A" Mountain is owned by BLM, the land has been withdrawn for the use of NMSU and NASA under two separate public land orders.

Approximately 1,400 acres of it have been withdrawn from public use and dedicated to use by NMSU for educational purposes. An additional 2,800 acres of "A" Mountain have been withdrawn for use by NASA. NMSU operates a satellite tracking observatory for NASA on the site.

It is necessary to maintain the range in an undisturbed condition to ensure the accuracy of the exacting work which is done there.

Section 1 of title V directs BLM to transfer unpatented mining claims within the two land withdrawals on "A" Mountain for other BLM lands of equal value in the vicinity.

There currently are seven unpatented mining claims on the lands covered by these two withdrawals. Two of these claims are operated as commercial gravel pits, one of which is adjacent to the NASA site. NMSU desires to remove the gravel pit from the site because the traffic at the gravel pit disrupts NASA's readings. NMSU must constantly recalculate its readings and retest its equipment because of interference from moving vehicles.

BLM cannot exchange these claims administratively because it is unable to exchange lands for an unpatented mining claim.

Section 2 of title V permits BLM and NMSU to engage in a transfer of land within the NMSU withdrawal at "A" Mountain for 2,100 acres of land that NMSU owns at BLM's existing Aguirre Springs Recreation Area. This will allow BLM to consolidate its holdings as part of its proposal to create a national conservation area in this area.

In exchange for these lands, NMSU would be granted lands of equal value from the property withdrawn for NMSU on "A" Mountain.

NMSU desires to acquire these lands in order to promote the orderly expansion of the NMSU campus in the future and to prevent encroachments on existing research facilities on the land.

Normally, this exchange could be conducted administratively. However, and administrative exchange could be conducted administratively. However, an administrative exchange is currently blocked because of an ongoing lawsuit between BLM and the National Wildlife Federation. This bill allows the exchange to go forward even though the lawsuit is still pending.

Section 2 has been amended to incorporate a number of changes suggested by BLM and local citizens in their testimony on the measure.

Section 2 differs from the bill as originally introduced in several ways. In addition to permitting the exchange of lands currently withdrawn for NMSU, the original bill permitted NMSU to acquire lands on an adjacent tract that is currently withdrawn for NASA. All reference to that withdrawal and all authority for NMSU to acquire lands within that withdrawal have been deleted from Section 2.

A reverter clause was added to prohibit NMSU from selling the land and to ensure that NMSU uses the lands only for educational, scientific, and research activities or for the development of geothermal resources. If NMSU sells the land or uses them for an unauthorized purpose, the portion of the lands upon which an unauthorized use occurs shall revert to the Federal Government.

Finally, Title V has been amended to include language: (1) to ensure that the "A" Mountain/Aguirre Springs land exchanges is conducted pursuant to the "equal value" requirements of FLPMA; (2) to guarantee that the exchange can move forward regardless of a reverter clause in NMSU's existing patent to Aguirre Springs; (4) to prohibit the disposition of any lands in the NMSU withdrawal not used for the proposed exchange from being disposed except pursuant to the Recreation and Public Purposes Act; and (4) to clarify the authority of BLM to conduct the exchange notwithstanding the pending National Wildlife Federation lawsuit.

AZTEC RUINS NATIONAL MONUMENT EXPANSION ACT

Title VI will enlarge the boundaries of Aztec Ruins National Monument.

Aztec Ruins currently encompasses 27 acres that contain a large Indian pueblo consisting of timber and masonry buildings constructed in approximately the 12th century. Among the most notable features are a massive, 3-story, 500-room, terraced pueblo covering 2 acres, a Great Kiva, and a tri-walled structure known as Hubbard Ruin.

The name "Aztec Ruins" is a misnomer. Early settlers attributed the ruins to the Aztecs of Mexico, but in fact they are unrelated to them. Aztec ruins is actually of Anasazi origin and shows influence from both the Chacoan and Mesa Verde peoples.

Title VI will expand the existing monument to incorporate 292 acres critical to the preservation of the existing monument and add significant archaeological resources located on adjacent private land.

Irrigation activities on the adjacent lands that will be acquired have increased groundwater levels within the monument to the point that the ruins are being damaged.

Acquisition of these additional lands not only will provide greater protection of the existing resource and extend protection to additional sites, but also will allow the development of improved administrative and interpretative facilities, better access, and expanded visitor parking.

GEORGIA O'KEEFFE STUDY ACT

Title VII incorporates the provisions of S. 2750, which I introduced. It will authorize the Department of the Interior to conduct a feasibility study on methods to commemorate the nationally significant contributions of Georgia O'Keeffe.

Georgia O'Keeffe was one of the most important and acclaimed Americans artists of the twentieth century. Her paintings of flowers, desert landscapes, bleached animal bones, and flowing abstractions grace museums throughout the Nation.

Many of her paintings were of the landscape of New Mexico. Ms. O'Keeffe first came to New Mexico in 1929 and moved there permanently in 1946. She lived in the little village of Abiquiu until her death at age 98 in 1986.

Ms. O'Keeffe's art is a testament to her love of New Mexico. The hills near Alcalde, the Ranchos Church at Taos, Taos Pueblo, Bear Lake, the Chama River, the cliffs at Abiquiu, and of course, Ms. O'Keeffe's beloved Cerro Pedernal were all captured on her canvases.

For the past year, I have been working with a group of art lovers and the heirs of Ms. O'Keeffe to develop a proposal to recognize and commemorate the contributions that Ms. O'Keeffe made to American art. The group came up with a number of ideas, including renaming the National Endowment of the Arts' Museum Grant Program as the "Georgia O'Keeffe Museum Grant Program," naming a geographic feature that Ms. O'Keeffe painted after her, establishing a Georgia, O'Keeffe Endowed Chair in Art at the University of New Mexico, and establishing a Georgia O'Keeffe wing at a museum in Santa Fe.

The most exciting proposal to come out of the group, though, was to create a "landscape museum."

A landscape museum, as opposed to the usual museum created of bricks and mortar, would consist of the physical terrain and features from which Ms. O'Keeffe drew much of her inspiration for her works. The features of the landscape would be pointed out to visitors, their significance described, and their relationship to Ms. O'Keeffe's works explained. There would be observation points from which travelers could observe the scenes that Ms. O'Keeffe painted.

Title VII will direct the Department of the Interior to undertake a study to determine the most appropriate way for the Federal Government to commemorate the contributions that Georgia O'Keeffe made to the world of art. In particular, it would direct the Interior Department to evaluate the feasibility of creating a landscape museum to present the New Mexico that Ms. O'Keeffe painted to the public.

WARM SPRINGS STUDY ACT

Title VIII will authorize the Department of the Interior to conduct a study of the history and culture of Warm Springs, NM in order to determine the best way to preserve its historic and cultural legacy for future generations.

Located in the foothills of the San Mateo Mountains in extreme southern Socorro County, Warm Springs—also known as Ojo Caliente—is a huge warm spring that is the source of a 20-mile stream known as Canada Alamosa.

Because of the presence of the spring and the river, the Warm Springs area became the site of numerous settlements over history.

A number of pueblo sites in the vicinity indicate that the spring was used by the Mimbres Indians. Warm Springs and Canada Alamosa were subsequently used by the Warm Springs Apache, who considered this area part of their homeland until they were removed in the mid-1800's. Warm Springs became the focal point for Victorio's War, which pitted the Warm Springs Apache against both the American and the Mexican Armies. In addition, the U.S. Army established Fort Harmony at Warm Springs in the 1800's.

Title VIII would direct the Interior Department to conduct a study on the various cultures that developed around Warm Springs to determine its significance in illustrating and commemorating American frontier military history and the development of American Indian policy. Specifically, the study will focus on the use of the area by prehistoric peoples, the Warm Springs Apache, and early settlers.

Mr. President S. 2545, the Omnibus New Mexico Parks bill, includes a number of provisions to improve the recreational and natural opportunities for the citizens of New Mexico and visitors to the State. I urge its adoption.

The ACTING PRESIDENT pro tempore. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment is the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2545

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SALINAS NATIONAL MONUMENT

SEC. 101.

(a) That the Salinas National Monument, as designated by section 601 of the Act of December 19, 1980 (94 Stat. 3231), is hereby redesignated as Salinas Pueblo Missions National Monument.

(b) Any reference in any record, map, or other document of the United States of America to Salinas National Monument shall hereafter be deemed to be a reference to Salinas Pueblo Missions National Monument.

TITLE II—CORONADO NATIONAL TRAIL STUDY

SEC. 201. SHORT TITLE.

This title may be cited as the "Coronado National Trail Study Act of 1988".

SEC. 202. FINDINGS.

The Congress finds that—

(1) Francisco Vasquez de Coronado led an expedition from Compostela on the Southwest Coast of Mexico, into the American Southwest in search of the legendary Seven Cities of Cibola between 1540 and 1542;

(2) Coronado's expedition of approximately 300 Spanish soldiers and 1,000 Indian allies and servants marched through the State of Arizona, then through the States of New Mexico, Texas, Oklahoma, and Kansas;

(3) Coronado and his troops found Pueblo Indian settlements, including the Zuni villages of western New Mexico, Acoma along the Rio Grande River, as far north as Taos, and east to Pecos, as well as those of the Hopi in Arizona and Plains groups in Texas, Oklahoma, and Kansas; and

(4) members of the Coronado expedition became the first Europeans to see the Grand Canyon in Arizona, the Palo Duro Canyon in Texas, and many other Southwestern landmarks.

SEC. 203. DESIGNATION OF TRAIL.

Section 5(c) of the National Trails System Act (82 Stat. 919; 16 U.S.C. 1244(c)) is amended by adding at the end thereof the following new paragraph:

"(32) Coronado Trail, the approximate route taken by the expedition of the Spanish explorer Francisco Vasquez de Coronado between 1540 and 1542, extending through portions of the States of Arizona, New Mexico, Texas, Oklahoma, and Kansas. The study under this paragraph shall be prepared in accordance with subsection (b) of this section. In conducting the study under this paragraph, the Secretary shall provide for (A) the review of all original Spanish documentation on the Coronado Trail, (B) the continuing search for new primary documentation on the trail, and (C) the examination of all information on the archeological sites along the trail.".

TITLE III—NATIONAL MIMBRES CULTURE STUDY

SEC. 301. SHORT TITLE.

This title may be cited as the "National Mimbres Culture Study Act of 1988".

SEC. 302. AUTHORIZATION OF STUDY.

(a) AUTHORIZATION.—The Secretary of the Interior is authorized to conduct a study of the Mimbres culture to determine its significance in illustrating and commemorating the prehistory of the Southwest. The study shall include an analysis of the significance of the culture as it relates to the Mogollon, Salado, and Casas Grandes cultures and shall include a list of appropriate sites for interpreting the culture.

(b) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(1) measures for the preservation of resources associated with the Mimbres culture located in and around the vicinity of Silver City, New Mexico; and

(2) indications of types and general intensities of development, including a visitor facility with sufficient space to accommodate exhibits of Mimbres pottery and information regarding the Masau Trail, that would be associated with public enjoyment and use of the sites, including general location and anticipated costs.

(c) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than one year after the date on which funds are appropriated for the study.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE IV—SPANISH COLONIZATION COMMEMORATIVE STUDY

SEC. 401. SHORT TITLE.

This title may be cited as the "Spanish Colonization Commemorative Act of 1988".

SEC. 402. AUTHORIZATION OF STUDY.

(a) AUTHORIZATION.—The Secretary of the Interior is authorized to conduct a study of the Spanish Frontier culture and Spanish Borderlands story to determine their significance in illustrating and commemorating the Spanish colonization of the Southwest, the Spanish colonial frontier culture, and Spanish colonialism in New Mexico. The study shall include an analysis of the significance of the San Gabriel Historic Landmark and the Los Luceros Hacienda as they relate to the Spanish Borderlands story of the Southwest.

(b) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(1) measures for the preservation and interpretation of resources associated with the Spanish colonization of the Southwest; and

(2) indications of types and general intensities of development, including the feasibility of visitor facilities, that would be associated with public enjoyment and use of the sites, including general location and anticipated costs.

(c) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than two years after the date on which funds are appropriated for the study.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE V—"A" MOUNTAIN LAND EXCHANGE

SEC. 501.

The Secretary of the Interior is authorized to exchange certain lands as identified for disposal in the Southern Rio Grande Plan Amendment for certain mining claims on lands withdrawn for the National Aeronautic and Space Administration and New Mexico A and M College (now New Mexico State University) under P.L.O. 3685 and P.L.O. 2051. Once the United States determines the claims are valid under existing law, the exchange authorized by the preceding sentence shall be made on an equal value basis as determined by an independent appraisal.

SEC. 502.

(a) The Secretary of the Interior is authorized and directed to make available for exchange the Federal interests in the lands described in subsection (b) for the private interests in the lands described in subsection (c). The exchange shall be made in a manner consistent with applicable provisions of law and shall be on the basis of equal value as provided in section 206 of the Federal Land Management Act of 1976 (43 U.S.C. 1716).

(b) The Federal interests to be made available for exchange under this section are those lands in sections 14, 22, 23, 26, and 35 of township 23 south, range 2 east, New Mexico Principal Meridian which are encompassed by P.L.O. 2051.

(c) The private interests to be exchanged pursuant to this section are those lands owned by New Mexico State University in sections 19, 29, 30, and 31 of township 22 south, range 4 east, and section 6 of township 23 south, range 4 east, New Mexico Principal Meridian. The exchange may be made regardless of the reverter provision contained in the patent of those lands to the Regents of the Agricultural College of New Mexico and shall not be deemed to constitute the basis for reversion.

(d) Lands not acquired by New Mexico State University pursuant to this section and which are encompassed by P.L.O. 2051 may be disposed of, when available for disposition, by sale to or exchange with the State of New Mexico, New Mexico State University, or other public entities in accordance with the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.): *Provided, however,* That New Mexico State University is given a right of first refusal on any proposed disposition.

(e) None of the lands transferred to New Mexico State University pursuant to this section shall be sold by New Mexico State University. All such lands shall be used for the purposes of promoting directly or indirectly educational, scientific, and research activities, including those activities currently authorized under P.L.O. 2051, or promoting the utilization of the natural geothermal resources located within the boundaries of the lands transferred. In the event that the lands transferred to New Mexico State University pursuant to this section are used for any purpose other than those for which conveyance is authorized by this subsection, title to that portion of the lands upon which there is an unauthorized use shall immediately revert to the United States without the necessity for further action to accomplish the reversion of title to the United States.

(f) Notwithstanding any other provision of law or court order, the Secretary of the Interior, if the Secretary determines it is necessary and appropriate for the purpose of consummating a conveyance of lands or interests therein under this Act, is hereby authorized and directed to revoke P.L.O. 2051 or any portion thereof necessary to consummate the transaction authorized by this title.

TITLE VI—AZTEC RUINS NATIONAL MONUMENT

SEC. 601. REVISION OF BOUNDARY.

The boundary of Aztec Ruins National Monument is hereby revised to include the area generally depicted on the map entitled "Aztec Ruins, Addition, Aztec Ruins National Monument," numbered 319/80,015, and dated October 16, 1987. Such map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

SEC. 602. LAND ACQUISITION.

The Secretary of the Interior is authorized to acquire lands, interests in lands, and improvements thereon within the boundary of the national monument as amended by section 601 by donation, exchange, or purchase with donated or appropriated funds.

SEC. 603. ADMINISTRATION.

The Secretary of the Interior shall administer the Aztec Ruins National Monument in accordance with the provisions of law generally applicable to units of the National Park System including the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666).

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE VII—GEORGIA O'KEEFFE STUDY

SEC. 701.

(a) That in recognition of the significant impact Georgia O'Keeffe had on the world of art, the Secretary of the Interior is authorized and directed to conduct a study of the most appropriate way to interpret these nationally significant contributions. The study shall include but not be limited to an evaluation of the feasibility of marking and interpreting the landscapes consisting of the scenes and physical features from which Georgia O'Keeffe drew much of her inspiration.

(b) The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within one year of the date on which funds are appropriated for the study.

SEC. 702.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE VIII—WARM SPRINGS STUDY

SEC. 801. SHORT TITLE.

This title may be cited as the "Warm Springs Study Act of 1988".

SEC. 802. STUDY OF WARM SPRINGS CULTURE.

(a) In General.—The Secretary of the Interior is authorized and directed to conduct a study of the culture that evolved around Warm Springs in Southwestern, New Mexico, to determine its significance in illustrating and commemorating American frontier military history and the development of American Indian policy.

(b) Specifics of Study.—The study shall include—

(1) an evaluation of the history of the people from the Warm Springs area in Victorio's War in relation to American frontier military history and the development of American Indian policy; and

(2) an evaluation of historic and prehistoric resources surrounding the Warm Springs at the headwaters of Canada de Alamosa and the potential for preservation and public use.

(c) Completion of Study.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within 1 year of the date on which funds are appropriated for the study.

SEC. 803. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATION OF A COMPONENT OF THE WILD AND SCENIC RIVERS SYSTEM

Mr. BYRD. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar Order No. 1032.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 850) to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the Wild and Scenic Rivers System.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. DESIGNATION OF RIO CHAMA RIVER.

(a) Designation.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

"(62) Rio Chama, New Mexico.—The segment extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 27.6 miles to elevation 6,308 feet above mean sea level; to be administered by the Secretary of Agriculture and the Secretary of the Interior. For purposes of compliance with the planning requirements of subsection (d), the Cooperative Management Plan for the river prepared by the Secretary of Agriculture and the Secretary of the Interior may be revised and amended to the extent necessary to conform to the provisions of this Act. The segment of the Rio Chama beginning at the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 shall be administered as a wild river and the segment downstream from the beginning of Forest Service Road 151 to elevation 6,308 feet shall be administered as a scenic river.".

(b) Renumbering.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by redesignating the paragraphs relating to the Cache La Poudre River, the Saline Bayou, Black Creek, the Klickitat, and the White Salmon as paragraphs (57) through (61), respectively.

SEC. 2. MANAGEMENT OF OTHER RIVER SEGMENT AND FOREST SERVICE LANDS.

(a) The Secretary of the Army, acting through the Chief of Engineers, the Secretary of the Interior, acting through the Bureau of Land Management, and the Secretary of Agriculture, acting through the Forest Service, shall jointly manage the segment of the Rio Chama River in New Mexico from elevation 6,308 feet above mean sea level downstream to elevation 6,235 feet above mean sea level. Such management shall be pursuant to—

(1) the Preferred Alternative for the proposed Santa Fe National Forest Plan (dated January 1986);

(2) the "Interim Rio Chama River Management Plan," dated May 1986 (as that plan may be revised in the "Final Rio Chama River Management Plan"); and

(3) shall be consistent with the operation of Abiquiu Dam for purposes authorized by section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988.

(b) Nothing in this Act, or any other Act of Congress, shall be construed to require that the Secretary of the Army release water authorized for storage at Abiquiu Dam pursuant to section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988.

(c) The Secretary of Agriculture shall not acquire, except by consent of owner, any interests in the Jolly-Chama Canyon Subdivision: *Provided*, That such subdivision lands are maintained in single unit private residential use.

Mr. BINGAMAN. Mr. President, today I rise to speak for a bill of tremendous importance to the State of New Mexico and to the enhancement of river resources in this Nation. The legislation the Senate considers today would add an important new component to this country's wild and scenic river system—the Rio Chama in northern New Mexico. This great river possesses outstanding natural, ecological, and recreational characteristics that deserve to be protected under the Wild and Scenic Rivers Act.

The New Mexico Legislature designated this portion of the Rio Chama as the State's only "Scenic and Pastoral River" in 1977. The State act encourages eventual wild and scenic designation which this bill will accomplish. I hope the U.S. Senate follows its recommendation today.

Specifically, the legislation would add to the National Wild and Scenic River System a 27.6 mile section of the Rio Chama from the base of the dam at El Vado Lake to an elevation of 6,308 feet. It has not been an easy task bringing this bill before the Senate. It has required a great deal of compromise on all sides, but has produced in legislation all can support.

I cannot stress enough the unique nature of the Rio Chama ecosystem and why it warrants wild and scenic designation. The recreational importance of this river is immense. In the National River Inventory released by the National Park Service in 1982, the Rio Chama was said to be the single most important river in New Mexico in terms of its recreational potential. It is less than 3 hours driving time from three-fourths of the State's population, yet it has maintained its remote and wild character. To rafters, kayakers, and canoeists, it offers unparalleled beauty and tranquility. Its rapids, while not dangerous, lend plenty of excitement amid the splendor and peace of the river canyon.

Among the many values of the Rio Chama is its abundance of riparian habitat for a wide variety of wildlife. The river's banks are important winter habitats for bald eagles and other bird species. Elk, cougar, bear, mule deer, coyotes, and other mammals also inhabit this wild area. The river itself is home to one of the most prolific rainbow and brown trout fisheries in New Mexico.

The section of river between El Vado and Abiquiu is also an important archeological area, including one site considered by many archeologists to be the earliest Navajo settlement in the State. There have also been several major paleontological finds in the area. Near the stretch of river by Ghost Ranch, for example, have been found dinosaur bones that are among the oldest in the world.

This proposal enjoys the strong backing of environmental groups and recreation enthusiasts across New Mexico. Many in our State believe that Federal preservation of the Rio Chama is long overdue. On the basis of this river's extraordinary geological, ecological, archeological, and recreational features, I enthusiastically urge its wild and scenic river designation.

I ask my colleagues to join me.

Mr. DOMENICI. Mr. President, I support this bill with enthusiasm, and urge its immediate passage by the Senate.

To help my colleagues understand the importance of S. 850, as reported by the Committee on Energy and Natural Resources, I would like to discuss this bill and a companion bill, H.R. 5423, which the Senate just passed and sent to the White House.

Both bills are critical. They need to be acted on concurrently. I would have happily put the two bills together as one, but jurisdictional problems required that we use this two-bill approach.

Before explaining the relation and importance of these two bills, I would like to commend my colleague [Mr. BINGAMAN] for his hard work and leadership in developing this fair and reasonable solution.

This is an issue involving conflicting resources. Let me explain.

S. 850 declares a 27.6-mile segment of the Rio Chama in northern New Mexico as part of our national system of wild and scenic rivers. I applaud that and have long supported that goal. The people of New Mexico support that goal.

The segment of the Rio Chama to be protected extends from a point just below El Vado Dam downriver to that point when the river reaches an elevation of 6,308 feet.

What is interesting, and apparently unique, is the fact that the wold and scenic designation of the Chama extends down into the theoretical tailwaters of an existing Corps of Engineers dam, known as Abiquiu Dam.

In fact, if the reservoir behind that dam were filled completely with water, the level of the reservior would stand at an elevation of 6,353 feet.

So what we are doing in this bill is saying—with one caveat that I shall explain shortly—that the beauty of the Chama is more important than the use of the reservior's full storage potential.

If my colleagues will bear with me for a time, I shall attempt to explain the rather complicated—yet quite ingenious—compromise that we have agreed upon.

Let me begin with some of the history of Abiquiu Dam. The dam was authorized for construction in 1948. Construction began in 1959, and the dam was completed by the Army Corps of Engineers in 1963. As originally designed and authorized, Abiquiu Dam was strictly to be used for the temporary storage of flood waters from the Chama system. Once captured, these flood waters would then be released in a slow, nondestructive manner.

The volume of water that is calculated as the "standard project flood" is estimated at 502,000 acre-feet. We, of course, have experienced nothing close to that volume of runoff since Abiquiu's completion. It is very unlikely that such flooding would occur in the lifetime of anyone listening to me.

When constructed, Abiquiu's only permanent pool was a relatively modest 52,580 acre-feet set aside for sediment accumulation.

In 1981, Congress passed Public Law 97-140. Section 5 of that law authorized additional long-term storage at Abiquiu. Prior to that, the city of Albuquerque and other communities in New Mexico had the great foresight to contract to purchase 84,150 acre-feet of water yearly from the Federal Government's San Juan-Chama project. While some of this water was not needed immediately, New Mexican citizens still had to pay for it, and, if they failed to accept delivery, they would lose that water.

So Albuquerque and several other cities arranged, by act of Congress, to store up to 200,000 acre-feet of their bought-and-paid-for San Juan-Chama water at Abiquiu Reservoir.

Eventually, these owners will release all that water for use, drawing down these supplies held temporarily at Abiquiu. It is the understanding of this Senator that the city of Albuquerque and other owners of San Juan-Chama water will begin to draw down this water within a decade. By sometime early in the next century, the city of Albuquerque and other owners will draw down all of the water they have stored at Abiquiu.

Thus, by the early part of the next century, no permanent storage will exist at Abiquiu, beyond the small sediment pool, unless some sort of replacement storage is provided.

This was important for two reasons. New Mexico, like many areas in the West, needs water storage sites. Experts consider Abiquiu Dam an excellent site for storage, one with relatively low evaporation rates.

Second, the San Juan-Chama water now stored at Abiquiu has created significant recreational opportunities. Abiquiu Reservoir is a popular center for boating and fishing. We must not lose it.

But once the San Juan-Chama water is released, that recreational pool will disappear, to be replaced by mudflats. That eventuality is not in the interest of New Mexico.

It has been my view that it is vital that we assure permanent storage authority at Abiquiu in the process of considering this important bill to declare a wild and scenic river.

H.R. 5423, which I have already discussed during its consideration, was key to the compromise. It authorized storage of 200,000 acre-feet of water to replace that San Juan-Chama water now stored. To be used, the State of New Mexico, the city of Albuquerque, or other users would, of course, have to acquire the necessary rights and contract with the corps for the storage of Abiquiu.

Neither of these bills provides that replacement water. They ensure there will be an option for storage.

Now, let me discuss the details of S. 850. The original version of this bill extended the wild and scenic designation to an elevation of 6,283.5 feet above sea level, an additional 1 mile downriver from the elevation approved by the committee and contained in the bill, as reported.

The change of elevation in this modified version of S. 850 will clarify that the 200,000 acre-feet of water, now stored at Abiquiu Reservoir, will not intrude into the wild and scenic river, even in the event of a mammoth "standard project flood."

That is one key change in this bill. But this bill does more. It develops a reasonable approach for cooperative management of the river below the elevation of 6,308 feet, the portion of the river that lies within the reservoir as now authorized by Congress. This system of joint management would cover the 2.7 miles of the Chama, from 6,308 feet of elevation down to 6,235 feet.

Again, the 2.7 miles is the segment of the river above the permanent Abiquiu Reservoir and below the peak of the reservoir, as now authorized by Congress. In other words, this is the area of the river that may be flooded briefly during periods of runoff.

The Corps of Engineers, which operates Abiquiu, together with the Forest Service and the Bureau of Land Management, are directed to manage this 2.7 miles of the river to standards laid out in various reports cited in the bill, as well as the need to recognize the flood control authorities in law.

Let me reiterate: These purposes authorized are the original flood-control authorization, the original sediment storage, and the 200,000 acre-feet of storage, whether the San Juan-Chama storage authorized by section 5 of Public Law 97-140 or the replacement storage authorized in H.R. 5423.

Protecting that 200,000 acre-feet of storage is critical to this Senator. That San Juan-Chama water—or the replacement water—is vital to the future of New Mexico water users. We protected it by setting the base of the designated wild and scenic river at 6,308 feet. We also protected it by saying that even in a period of extreme flooding—flooding greater than a "standard project flood"—those 200,000 acre-feet of water stored for New Mexico's future would not be dumped and lost of the people of New Mexico.

That will be true even if the reservoir, for a brief period, were to back up into the officially designated wild and scenic river. Let me say again, however, I can not imagine that occurring in my lifetime, or that of my great-great-grandchildren.

Such an event has a likelihood, I am told, of something like once every 1,000 years. During its history, the peak elevation of the reservoir at Abiquiu has been 6,261 feet—47-feet below the elevation of the foot of the wild and scenic river.

But since a far larger flood is statistically possible—and because of the importance of the San Juan-Chama waters or any replacement storage to the welfare of New Mexico—this bill prohibits the corps from dumping that 200,000 acre-feet of water.

This bill, in combination with H.R. 5423, protects the Chama, it protects the San Juan-Chama water owned by Albuquerque and other cities, and it protects New Mexico's future water needs.

And it accomplishes all of this without raising the level of Abiquiu Reservoir above currently authorized levels.

Mr. President, I would also point out that section 2(c) prohibits the Forest Service from condemning easements over approximately 17.5 acres of residential in-holdings upriver along the wild and scenic river, so long as that land continues to be used for single family homes.

While modest, this is an important provision to the eight families who own property there, and I believe it is fair to include it. In no way will this provision undercut the intent of S. 850.

Before closing, Mr. President, I must say a few words of particular thanks to the environmental community in New Mexico, which worked so long and hard for passage of this legislation. It will be a law not only protecting a valuable resource, but one that brings national attention to a beautiful region of New Mexico.

In particular, I wish to commend Phillip Wallin. While serving as vice president of both the Trust for Public Lands and the Rio Chama Preservation Trust, Mr. Wallin worked tirelessly to preserve the Chama.

I am absolutely certain that we would not be on the Senate floor today debating this bill if it had not been for Mr. Wallin's perseverance and dedication.

When others gave up, Phil kept at it. When others said let's wait until next year, Phil kept at it. I salute Phil Wallin for what he has helped to accomplish on behalf of all New Mexicans.

And I want to express my thanks to Governor Carruthers of New Mexico, his secretary of natural resources, Tom Bahr, and our legendary State Engineer Steve Reynolds for their continued work in developing this compromise, which I am convinced protects all New Mexicans.

Mr. President, this is sound and wise legislation. I urge its immediate passage by the Senate.

The ACTING PRESIDENT pro tempore. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The ACTING PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING CONTINUED STORAGE OF WATER AT ABIQUIU DAM IN NEW MEXICO

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5423 just received from the House.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5423) to authorize continued storage of water at Abiquiu Dam in New Mexico.

The ACTING PRESIDENT pro tempore. Is there objection to the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOMENICI. Mr. President, I urge passage of this bill, a companion to S. 850.

Let me explain what this bill, H.R. 5423, will accomplish in conjunction with S. 850. S. 850 declares a 27.6-mile segment of the Rio Chama in northern New Mexico as part of our National System of Wild and Scenic Rivers.

The lower end of that designated river lies within the potential tailwaters of Abiquiu Dam, which the Army Corps of Engineers completed in 1963.

In 1981, Congress passed Public Law 97-140. Section 5 of that law authorized storage at Abiquiu of 200,000 acre-feet of water from the Federal Government's San Juan-Chama project.

Eventually, the owners of this water—Albuquerque and other New Mexico communities—will draw down this water held at Abiquiu.

This eventual drawdown is important in a State like New Mexico, which needs to store water for its growth. Experts consider Abiquiu Dam an excellent site for storage, one with relatively low evaporation rates.

Also, the San Juan-Chama water now stored at Abiquiu has created a significant recreational potential. But once the San Juan-Chama water is released, that recreational pool will disappear, to be replaced by mudflats.

For those reasons, it has been my view that, as part of the Rio Chama issue, we need to confront the issue of permanent storage authority at Abiquiu.

That is what this bill, H.R. 5423, accomplishes. It is key to the compromise. It authorizes storage of 200,000 acre-feet to replace that San Juan-Chama water now stored. It simply says that as San Juan-Chama water is drawn down, New Mexico users have the authority to store replacement water at Abiquiu.

The bill does not provide that water; the water will have to be acquired by entities in New Mexico. This bill simply provides the option to store that water, if it is acquired.

This bill is designed to assure that the permanent pool at Abiquiu will neither be larger nor smaller than it is now. That is an important point, one I need to state again. The storage at Abiquiu can be expected to be the same years from now as it is today. If there is any change, it will be less storage.

I would point out that it is my intention, as the proponent of this compromise, that the replacement Rio Grande water be priced at the same level of the San Juan-Chama water, and that there be no additional costs to storing this replacement water.

The provision of section 1 of this bill, which authorize the storage of Rio Grande system water in Abiquiu Reservoir as replacement for the storage allocated in 1981 is no longer needed, contemplates compensation on exactly the same basis as costs were allocated as a result of Public Law 97-140, that is for the incremental operation and maintenance costs attributable to the storage.

I would also point out that this bill directs the corps to straighten out a problem that was not foreseen at the time of the 1981 act. That is the conflict between those using the lake for recreation and those who own adjacent property on which the Frederal Government has flooding easements.

To assure that this conflict is lessened, the bill directs the corps to purchase, at Federal expense, fee title to those easement lands, and to report back to Congress on any additional easements that may be necessary to the proper operation of Abiquiu. Abiquiu is now surrounded by easements up to an elevation of 6,293.5 feet, I am told. It is appropriate, in my view, for the corps to purchase this land to protect the public use of the reservoir.

Mr. President, I urge that the Senate pass H.R. 5423 and send it to the President for his signature.

The ACTING PRESIDENT pro tempore. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5423) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL WOMEN VETERANS RECOGNITION WEEK

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of House Joint Resolution 488, National Women Veterans Recognition Week, and that the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 488) designating November 6-12, 1988, as "National Women Veterans Recognition Week".

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. CRANSTON. Mr. President, I am very pleased that the Senate is today going to vote on House Joint Resolution 488, a joint resolution designating the week beginning November 6, 1988, as National Women Veterans Recognition Week. This measure is substantively the same as Senate Joint Resolution 357, which I introduced on August 2 and which is cosponsored by 55 of our colleagues.

For the past 4 years, the House and Senate have adopted my resolutions designating the week in November, which includes Veterans Day, as National Women Veterans Recognition Week. As chairman of the Veterans' Affairs Committee, I feel strongly that it is important that we recognize the women veterans of our country and bring to the attention of our citizens the many accomplishments of women veterans, as well as the gender specific problems they face.

Women veterans comprise approximately 4.2 percent of the total veteran population, a percentage that is growing as the percentage of women in the active military continues to grow. However, because many are not aware of the implications of their status, they do not apply for various benefits and services, such as health care, education, employment, and home loans, to which they may be entitled. The passage of this resolution and the designation of the week will continue the momentum built over the last 4 years to bring attention to this group of veterans who have so often been ignored.

Mr. President, I urge my colleagues to give their unanimous approval to House Joint Resolution 488.

The ACTING PRESIDENT pro tempore. The joint resolution is before the Senate open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 488) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 1087 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

QUINAULT INDIAN NATIONAL TRUST LANDS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1048, S. 2752.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2752) to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection the Senate proceeded to consider the bill, which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

Sec. 1. Expansion of Quinault Indian Reservation.—The Quinault Indian Reservation is hereby expanded to include those lands consisting of more or less 11,905 acres and generally depicted on the map entitled, "North Boundary Expansion, Quinault Indian Nation," numbered 88-S2752-1 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation.

Sec. 2. Quinault Special Management Area.—The Secretary of Agriculture shall—

(a) manage those Federal lands within the boundaries of the Olympic National Forest consisting of more or less 5,460 acres and generally depicted on the map entitled "Quinault Special Management Area" numbered 88-S2752-2 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation in a manner consistent with Section 3; and

(b) shall distribute the proceeds from the sale of forest products on lands referred to in subsection (a) as provided in Section 4.

Sec. 3. Administration of Lands.—(a) All right, title, and interest in lands owned by the United States and administered by the United States Forest Service and referred to in Section 1, shall hereafter—

(1) be administered by the Secretary of the Interior; and

(2) be held in trust by the United States for the Quinault Indian Nation and to be part of the Quinault Indian Reservation.

(b) All right, title, and interest in lands which are owned by the United States and administered by the United States Forest Service which are referred to in Section 2 shall remain in the United States and, except as provided in Section 4, shall continue to be administered by the United States Forest Service as other National Forest System lands are administered.

Sec. 4. Receipts From National Forest System Lands.—(a) Notwithstanding any other provision of law, the Secretary of Agriculture shall, without further appropriations, receive from the gross proceeds from the sale of forest products from lands referred to in Section 2 a reasonable fee not to exceed ten percent for preparation and administration of timber sales from such lands.

(b) Notwithstanding the requirements of the Act of March 4, 1907 (16 U.S.C. 499) concerning moneys received from revenues generated from the National Forests into the Treasury of the United States, moneys received from the lands referred to in Section 2 shall be distributed in the following manner:

(1) forty-five percent of all moneys received during any fiscal year from said land shall be paid into the account referred to in Section 8; and

(2) forty-five percent of all moneys received during any fiscal year from said lands shall be paid to the State of Washington pursuant to the Act of May 23, 1908 (C. 192, 35 Stat. 251 as amended; 16 U.S.C. 500).

Sec. 5. Limitations on Timber Harvest.—(a) The Secretary of the Interior shall not approve any sale of unprocessed timber from lands referred to in Secton 1 which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: *Provided*, That this limitation shall not apply to specific quantities of grades and species of timber which the Secretary determines are surplus to domestic lumber and plywood manufacturing needs.

(b) In addition to restrictions referred to in subsection (a), the Secretary of the Interior shall—

(1) limit the sale of timber from the lands referred to in Section 1 to a quantity equal to or less than a quantity which can be removed from such lands annually in perpetuity on a long term sustained-yield basis: *Provided*, That in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section so long as the average sale quantity of timber over the decade covered does not exceed such quantity limitation; and

(2) administer all timber and forest products sold from the lands referred to in Section 1 in accordance with the conditions of the Policy Statement for the Grays Harbor Sustained Yield Unit as defined and administered by the Secretary of Agriculture as long as such policy statement remains in effect.

Sec. 6. Existing Rights-of-Way and Other Interests.—The Secretary of Agriculture shall reserve permanent easements for the purpose of continuing access, including public access, to National System lands on Forest Service roads numbers 21, 2110, 2120, 2130, 2140, 2190, 2191, and all numbered extensions or segments thereof. Such easements shall be in a form acceptable to the Secretary of Agriculture, including provisions for cooperative maintenance.

Sec. 7. Access to Lands.—(a) The Secretary of the Interior shall allow such additional rights-of-way through lands referred to in Section 1 as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, considers necessary to provide access to and management of National Forest System lands, including public access. Such rights-of-way shall be located in such manner as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, determines to be appropriate.

(b) The Secretary of Agriculture shall allow such rights-of-way through National Forest lands as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, considers necessary to provide access to lands referred to in Section 1. Such rights-of-way shall be located in such a manner as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation determines to be appropriate.

Sec. 8. Use of Timber Sale Proceeds.—The Secretary of the Interior shall maintain a segregated account and shall deposit in such account all funds derived from the sale of unprocessed timber from the lands referred to in Section 1. The Secretary shall make such funds available only for—

(a) costs incurred by the Quinault Indian Nation for the preparation and administration of timber sales, including road construction and maintenance on such lands;

(b) the mitigation of any adverse environmental impacts from timber harvest activities on such lands;

(c) reforestation of any lands referred to in Section 1 or any other lands within the external boundaries of the Quinault Indian Reservation: *Provided*, That nothing herein shall allow the Secretary of the Interior to substitute these funds for other appropriated funds or for Forest Management Deductions, funds presently available for reforestation; or

(d) for the purchase from willing sellers by the Quinault Indian Nation of any lands or interests in lands within the external boundaries of the Quinault Indian Reservation and any costs incurred by the Quinault Indian Nation incident thereto.

Sec. 9. Savings Provisions.—Nothing in this Act is intended to affect or modify—

(a) the proportional distributive shares of the respective counties of receipts from the sale of timber in the remaining lands of the Olympic National Forest;

(b) any property rights which may exist within the exterior boundaries of the Quinault Indian Reservation as it existed prior to enactment of this Act; and

(c) any valid existing rights-of-way, leases or permits of the Secretary of Agriculture or any person or entity in any of the lands referred to in Section 1.

AMENDMENT NO. 3631

Mr. HATFIELD. Mr. President, on behalf of Senator Evans, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Evans, proposes an amendment numbered 3631.

Mr. HATFIELD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

The amendment in the nature of a substitute proposed by the Select Committee on Indian Affairs is further amended—

(a) in Section 1, on page 5, line 5, after "Nation.", by inserting the following new sentence:

"The boundary of the Olympic National Forest is hereby modified as depicted on the map referred to in this section.";

(b) in subsection (b) of Section 3, on page 6, lines 11 and 12, by striking "as other National Forest System lands are administered" and inserting in lieu thereof: "in accordance with all laws, rules and regulations applicable to the National forests"; and

(c) in Section 3, on page 6, after line 12, by inserting the following new subsection (c):

"(c) The rights of the Quinault Indian Nation to revenues under subsection (b) of Section 4 shall not affect the management of these lands nor create a trust or fiduciary duty on the Secretary of Agriculture with respect to such management beyond that which the Secretary may have under existing law.".

Mr. EVANS. Mr. President, this amendment incorporates changes in S. 2752 to accommodate concerns expressed by the Department of Agriculture. First, the amendment clarifies that the boundaries of the Olympic National Forest are modified to reflect the expansion of the Quinault Indian Reservation. Second, the amendment clarifies that all lands referred in section 2 of S. 2752 will be managed by the Forest Service according to all laws, rules and regulations applicable to all other Forest System lands. Finally, the bill specifies that transfer of receipts to the Quinault Indian Nation from National Forest lands referred to in section 2 does not create a trust or other fiduciary responsibility on the Secretary of Agriculture beyond that which may currently exist.

I believe this amendment improves this bill and I urge its adoption.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3631) was agreed to.

Mr. EVANS. Mr. President, I rise in support of S. 2752, a bill which transfers approximately 12,000 acres of land from the Olympic National Forest to the Quinault Indian Reservation. The parcel of land in question is almost identical to an area erroneously excluded from the Quinault Indian Reservation as the result of an 1890 boundary survey. The bill directs the Forest Service to transfer the land to the Secretary of the Interior to hold in trust for the Quinault Indian Nation. The bill also directs the Secretary of Agriculture to provide a share of timber receipts from approximately 5,500 acres of Forest Service land adjacent to the Quinault Reservation. These lands and timber revenues will enable the Quinault Indian Nation to enhance its economic base and to proceed with its much needed land consolidation program.

Mr. ADAMS. Mr. President, I would like to make a few brief points regarding S. 2752 from my perspective as one who has been deeply involved in negotiating its final form. This legislation provides that certain lands in Washington State be held in trust for the Quinault Indian Nation. These are lands which were erroneously excluded from the Quinault Indian Reservation when boundary lines were drawn during the expansion of the reservation pursuant to an Executive order in 1873. Restoration of these lands to trust status is just, proper, and equitable.

I also believe that it is proper that the bill directs the Secretary to hold this land in trust for the Quinault Indian Nation. In 1947, Congress passed legislation providing that the Quinault Indian Nation, on behalf of all Indians having rights in the reservation, was the property party to pursue a claim in the court of claims regarding the erroneous exclusion of the North Boundary area from the reservation. S. 2752 is, therefore, consistent with previous congressional activity on this issue.

In addition to being consistent with prior congressional action, giving the Quinault Indian Nation control over this land is also consistent with current practice. The Quinault Indian Nation has led the effort to overcome decades of mismanagement of the reservation's timber resources by the BIA. The Quinault Indian Nation currently owns and manages approximately 4 percent of the reservation, and also directs reforestation of all trust land on the reservation through contract with the Bureau of Indian Affairs pursuant to Public Law 98-638. In the last decade, the Quinault Indian Nation has developed a good reputation as an able and environmentally sensitive resource manager. In addition, the Quinault Indian Nation has played a commendable role in Washington State in fostering cooperative resource management negotiation, not litigation. Transfer of this new land to tribal trust status will enable the Quinault Indian Nation to expand and consolidate its land base, and promote integrated management of the reservation's timber resource.

Finally, issues have been raised as to the impact of this bill on any other rights which may exist in the reservation as it existed prior to the passage of this bill. In my opinion, there is no effect. To be specific, I do not believe this bill overrules, limits, or expands the legal rulings which may apply to the situation on the reservation. This includes cases like *William* v. *Clark*, 742 F. 2d 549 (1984), *Wahkiakum Band of Chinook Indians* v. *Bateman*, 655 F. 2d 176 (1981), and *Halbert* v. *United States*, 238 US 753 (1931) which have concerned the possible existence of other rights in the reservation. It also includes those cases, including *Quinault Tribe* v. *Gallagher*, 368 F. 2d 648 (1966), *Cardin* v. *De La Cruz*, 671 F. 2d 363 (1982), and *Sechrist* v. *Quinault*, 9 Indian L. Rep. 3064 (1982), which have concerned the exercise of jurisdiction and governmental authority over the reservation by the Quinault Indian Nation.

I urge my colleagues to support this legislation at this time and ask that my name be included as a cosponsor of this bill. Finally, I do have one question I would like to pose to my good friend and colleague from Washington State, Senator Evans.

I am concerned about the implications of this legislation with respect to rights asserted by individuals with interests in the Quinault Indian Reservation as it exists prior to enactment of this legislation. I am aware that some groups and individuals claim rights within the exterior boundaries of the Quinault Reservation as it currently exists. I understand that nothing in this act is intended to affect the rights of such groups and individuals.

Mr. EVANS. The Senator is correct. I share the concerns of my colleague from Washington about the implications of this legislation with respect to the rights of individuals with interests in the Quinault Indian Reservation as it exists prior to enactment of this legislation. The Federal courts have ruled that members of several tribes have certain property interests in the Quinault Reservation. Consequently, provisions in this legislation state that it is not intended to affect or modify any property rights which may exist within the boundaries of the Quinault Reservation prior to enactment of this act.

Mr. ADAMS. I thank the Senator for this clarification.

Mr. INOUYE. I understand that in 1945 and 1951 the Court of Claims in two decisions, *Quinault Tribe of Indians* v. *United States* 102 Ct.Cl. 822 (1945), and 118 Ct.Cl. 220 (1951), reviewed tribal claims that approximately 15,000 acres were erroneously excluded from the Quinault Reservation.

Mr. EVANS. The Senator is correct. The court agreed that the reservation boundary was erroneously surveyed in 1892. However, the first Court of Claims decision questioned the Quinault Tribe's right to recover. Congress responded to the first Court of Claims decision by enacting a statute declaring the Quinault Tribe the proper party to pursue the claim. In its second decision, the Court of Claims held that recovery for the land improperly excluded from the reservation was offset by payments and gratuities provided by the United States since the Quinault Reservation was established. The case was dismissed without recovery and the tribe sought no further review of the Court of Claims decision.

In its report on S. 2752, the Select Committee on Indian Affairs recognized that principles of finality embodied in the doctrines of res judicata and collateral estoppel may well preclude the Quinault Indian Nation from seeking further judicial relief for the wrongful exclusion of Quinault Reservation lands. Nevertheless, as a separate policy determination within Congress' authority over Indian Affairs, the committee recommended passage of S. 2752 because the committee believes that inconsistent Federal policy during this century has denied the Indian residents of the Quinault Reservation a land base and because the return of the lands at issue will provide the Quinault Indian Nation with resources essential to the implementation of a desperately needed land consolidation program on the Quinault Indian Reservation.

Mr. INOUYE. In recent years the committee has considered several bills to reserve Federal land to be held in trust for Indian tribes. The committee considered each bill on a case-by-case basis and has evaluated each one on its merits—both in terms of the efficacy of extant claims as well as in terms of the best use of a public resource. Here, the committee has agreed that the best use of the land in question is to provide a sound economic base for the Quinault Indian Nation.

The committee's decision is not unlike a decision to reserve Federal land for other purposes such as to establish a wilderness area, a national park, a national scenic area, or a wildlife refuge. The decision is similar to a determination to develop public land, thus denying its use for nondevelopmental purposes, such as a decision to harvest timber or develop recreational activities.

Mr. EVANS. I agree with the Senator's analysis of the committee's recommendation to pass this legislation. The committee's support for transfer of this land is not based on any legal entitlement the Quinault Indian Nation may have to the land. The committee recommends passage of S. 2752 because the committee believes that transfer of the land is the most appropriate use in this instance of public lands and is necessary to meet the Nation's moral commitment to provide an adequate land base for the Quinault Indian Nation.

Mr. INOUYE. I note that section 8 of the committee substitute allows the Quinault Indian Nation to utilize timber proceeds for reforestation of any lands within the boundaries of the Quinault Reservation.

Mr. EVANS. The Senator is correct. The adequacy of the Government's management of timber resources on the Quinault Reservation is the central issue in money damage claims brought by both the Quinault Indian Nation and Indian allottees presently pending before the United States Claims Court in *Helen Mitchell, et al.* v. *United States*, Nos. 772-71, 773-71, 774-71, and 775-71. As do the plaintiffs in these cases, the Government deserves to have the issue of the adequacy of its management litigated in court, rather than to have any presumptions which may arise from the rationale for this legislation preclude the presentation of claims in the litigation. For this reason, the legislation and its legislative history have been carefully crafted to avoid having any affect whatsoever on the Mitchell litigation.

Mr. INOUYE. Finally, I note that S. 2752 expands the boundaries of the Quinault Reservation to include approximately 12,000 acres of Federal land. S. 2752 provides explicit direction to the Secretary of the Interior to hold lands referred to in section 1 for the benefit of the Quinault Indian Nation.

Mr. EVANS. The Senator is correct. Membership in the Quinault Indian Nation is currently open to individuals who have a minimum combined total of one-quarter Chinook, Cowlitz, Chehalis, Quileute, Hoh, Queets, or Quinault ancestry. This open membership policy ensures that the benefits of this legislation will be made available to all reservation residents descended from the original tribes who are not members of other federally recognized Indian tribes. In any event, the bill does not affect the property rights of other tribes or the property rights of individual property owners who are not members of the Quinault Indian Nation.

The Quinault Indian Nation has long been recognized by the Department of the Interior as the governing body of the Quinault Reservation, and is similarly treated by Congress. Each year appropriations are provided to the Quinault Indian Nation for law enforcement, tribal courts, fisheries, and other programs administered for the benefit of Indian residents of the reservation. Furthermore, on two previous occasions, Congress has transferred Federal land within the boundaries of the Quinault Reservation to the Quinault Indian Nation.

The Federal courts also have consistently upheld the exercise of governmental power over the reservation by the Quinault Indian Nation. The Ninth Circuit has upheld the exercise by the Quinault Indian Nation of building, health, and safety regulations over non-Indian residents of the Quinault Reservation. The Federal district court, in a famous decision affirmed by the U.S. Supreme Court, has recognized the Quinault Indian Nation as a self-regulating tribe for the purposes of treaty protected fishing rights.

Mr. INOUYE. I thank my colleague for this clarification. The expressed policy of the committee and of the Congress has been to affirm and strengthen the government-to-government relationship between the Federal Government and Indian tribes. The provisions of this bill are consistent with current Federal Indian policy. The Quinault Indian Nation has been an effective representative of the Indians of the Quinault Reservation. I am encouraged that this legislation will provide the Quinault Nation with the resources to better manage its land base—for the benefit of all reservation residents.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF QUINAULT INDIAN RESERVATION.

The Quinault Indian Reservation is hereby expanded to include those lands consisting of more or less eleven thousand nine hundred and five acres and generally depicted on the map entitled, "North boundary expansion, Quinault Indian Nation," numbered 88-S2752-1 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation. The boundary of the Olympic National Forest is hereby modified as depicted on the map referred to in this section.

SEC. 2. QUINAULT SPECIAL MANAGEMENT AREA.

The Secretary of Agriculture shall—

(a) manage those Federal lands within the boundaries of the Olympic National Forest consisting of more or less five thousand four hundred and sixty acres and generally depicted on the map entitled "Quinault Special Management Area" numbered 88-S2752-2 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation in a manner consistent with section 3; and

(b) shall distribute the proceeds from the sale of forest products on lands referred to in subsection (a) as provided in section 4.

SEC. 3. ADMINISTRATION OF LANDS.

(a) All right, title, and interest in lands owned by the United States and administered by the United States Forest Service and referred to in section 1, shall hereafter—

(1) be administered by the Secretary of the Interior; and

(2) be held in trust by the United States for the Quinault Indian Nation and to be part of the Quinault Indian Reservation.

(b) All right, title, and interest in lands which are owned by the United States and administered by the United States Forest Service in which are referred to in section 2 shall remain in the United States and, except as provided in section 4, shall continue to be administered by the United States Forest Service in accordance with all laws, rules and regulations applicable to the National Forests.

(c) The rights of the Quinault Indian Nation to revenues under subsection (b) of section 4 shall not affect the management of these lands nor create a trust of fiduciary duty on the Secretary of Agriculture with respect to such management beyond that which the Secretary may have under existing law.

SEC. 4. RECEIPTS FROM NATIONAL FOREST SYSTEM LANDS.

(a) Notwithstanding any other provision of law, the Secretary of Agriculture shall, without further appropriations, receive from the gross proceeds from the sale of forest products from lands referred to in section 2 a reasonable fee not to exceed ten percent for preparation and administration of timber sales from such lands.

(b) Nothwithstanding the requirements of the Act of March 4, 1907 (16 U.S.C. 499), concerning moneys received from revenues generated from the national forests into the Treasury of the United States, moneys received from the lands referred to in section 2 shall be distributed in the following manner:

(1) 45 per centum of all moneys received during any fiscal year from said land shall be paid into the account referred to in section 8; and

(2) 45 per centum of all moneys received during any fiscal year from said lands shall be paid to the State of Washington pursuant to the Act of May 23, 1908 (C. 192, 35 Stat. 251 as amended; 16 U.S.C. 500).

SEC. 5. LIMITATIONS ON TIMBER HARVEST.

(a) The Secretary of the Interior shall not approve any sale of unprocessed timber from lands referred to in section 1 which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: *Provided,* That this limitation shall not apply to specific quantities of grades and species of timber which the Secretary determines are surplus to domestic lumber and plywood manufacturing needs.

(b) In addition to restrictions referred to in subsection (a), the Secretary of the Interior shall—

(1) limit the sale of timber from the lands referred to in section 1 to a quantity equal to or less than a quantity which can be removed from such lands annually in perpetuity on a long term sustained-yield basis: *Provided,* That in order to meet overall multiple-use objectives, the Secretary may establish an allowable quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quanitity established pursuant to this section so long as the average sale quantity of timber

over the decade covered does not exceed such quantity limitation; and

(2) administer all timber and forest products sold from the lands referred to in section 1 in accordance with the conditions of the Policy Statement for the Grays Harbor sustained yield unit as defined and administered by the Secretary of Agriculture as long as such policy statement remains in effect.

SEC. 6. EXISTING RIGHTS-OF-WAY AND OTHER INTERESTS.

The Secretary of Agriculture shall reserve permanent easements for the purpose of continuing access, including public access, to National Forest Systems lands on Forest Service roads numbered 21, 2110, 2120, 2130, 2140, 2190, 2191, and all numbered extensions or segments thereof. Such easements shall be in a form acceptable to the Secretary of Agriculture, including provisions for cooperative maintenance.

SEC. 7. ACCESS TO LANDS.

(a) The Secretary of the Interior shall allow such additional rights-of-way through lands referred to in section 1 as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, considers necessary to provide access to and management of National Forest System lands, including public access. Such rights-of-way shall be located in such manner as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, determines to be appropriate.

(b) The Secretary of Agriculture shall allow such rights-of-way through National Forest System lands as the Secretary of the Interior, in consulation with the Secretary of Agriculture and the Quinault Indian Nation, considers necessary to provide access to lands referred to in section 1. Such rights-of-way shall be located in such a manner as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation determines to be appropriate.

SEC. 8. USE OF TIMBER SALE PROCEEDS.

The Secretary of the Interior shall maintain a segregated account and shall deposit in such account all funds derived from the sale of unprocessed timber from the lands referred to in section 1. The Secretary shall make such funds available only for—

(a) costs incurred by the Quinault Indian Nation for the preparation and administration of timber sales, including road construction and maintenance on such lands;

(b) the mitigation of any adverse environmental impacts from timber harvest activities on such lands;

(c) reforestation of any lands referred to in section 1 or any other lands within the external boundaries of the Quinault Indian Reservation: *Provided*, That nothing herein shall allow the Secretary of the Interior to substitute these funds for other appropriated funds or for forest management deductions, funds presently available for reforestation; or

(d) for the purchase from willing sellers by the Quinault Indian Nation of any lands or interests in lands within the external boundaries of the Quinault Indian Reservation and any costs incurred by the Quinault Indian Nation incident thereto.

SEC. 9. SAVINGS PROVISIONS.

Nothing in this Act is intended to affect or modify—

(a) the proportional distribution shares of the respective counties of receipts from the sale of timber in the remaining lands of the Olympic National Forest;

(b) any property rights which may exist within the exterior boundaries of the Quinault Indian Reservation as it existed prior to enactment of this Act; and

(c) any valid existing rights-of-way, leases or permits of the Secretary of Agriculture or any person or entity in any of the lands referred to in section 1.".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISASTER ASSISTANCE FOR BANGLADESH

Mr. PACKWOOD. Mr. President, I understand the Senate has received from the House H.R. 5389. On behalf of Senator HELMS I ask the bill be read for the first time.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5389) concerning disaster assistance for Bangladesh.

Mr. PACKWOOD. Mr. President, I now ask for its second reading.

Mr. BYRD. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

BILLS PLACED ON THE CALENDAR—H.R. 4210, H.R. 4211, H.R. 3105, H.R. 4844

Mr. BYRD. Mr. President, I ask unanimous consent the following bills be placed on the calendar when they arrive from the House: H.R. 4210, the marine sanctuaries authorization bill; H.R. 4211, the Ocean Pollution Planning Act authorization; H.R. 3105, a bill amending maritime commercial law; H.R. 4844, the FAA Drug Enforcement Assistance Act.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CONGRESSIONAL COIN BILL

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5280.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5280) to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the United States Congress.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3632

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3632.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out section 4 and all following sections and insert in lieu thereof the following:

SEC. 4. DESIGN OF COINS.

The design for each coin authorized by this Act shall be selected by the Secretary after consultation with the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Commission of Fine Arts.

SEC. 5. ISSUANCE OF COINS.

(a) FIVE DOLLAR COINS.—The five dollar coins minted under this Act may be issued in uncirculated and proof qualities and shall be struck at the United States Mint at West Point, New York.

(b) ONE DOLLAR AND HALF DOLLAR COINS.—The one dollar and half dollars coins minted under this Act may be issued in uncirculated and proof qualities, except that not more than 1 facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue the coins minted under this Act beginning January 1, 1989.

(d) TERMINATION OF AUTHORITY.—Coins may not be minted under this Act after June 30, 1990.

(e) CONTRACTS.—Any contract to be made by the Secretary involving the promotion, advertising, or marketing of any coins authorized under this Act shall be valid only upon approval by the United States Capitol Preservation Commission.

SEC. 6. SALE OF COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this Act at a price equal to the face value, plus the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, and overhead expenses.

(b) BULK SALES.—The Secretary shall make any bulk sales of the coins minted under this Act at a reasonable discount to reflect the lower costs of such sales.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted under this Act prior to the issuance of such coins. Sale prices with respect to such prepaid orders shall be at a reasonable discount.

(d) SURCHARGES.—All sales of coins minted under this Act shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $1 per coin for the half dollar coins.

SEC. 7. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

SEC. 8. USE OF SURCHARGES.

An amount equal to the amount of all surcharges that are received by the Secretary from the sale of coins minted under this Act shall be deposited in the Capital Preservation Fund and available to the United States Capitol Preservation Commission.

SEC. 9. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) In General.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this Act.

(b) Equal Employment Opportunity.—Subsection (a) shall not relieve any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

Mr. BYRD. Mr. President, as the Senate considers H.R. 5280, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the U.S. Congress, I offer this amendment to reinstate in such legislation a provision passed in the Senate earlier in this session. This provision permits the surcharge proceeds from the sale of the Bicentennial of the Congress commemorative coins to go toward the improvement and restoration of the Capitol.

In approximately 5 months Congress will celebrate the 200th anniversary of its first meeting on March 4, 1789. The First Congress put the words of the Constitution into action for the first time and brought our Government to life by performing such monumental tasks as:

Counting the first electoral ballots and administering the inauguration of our first President, George Washington,

Creating the executive Departments of State, Treasury, and War and establishing the Office of the Attorney General,

Passing the Judiciary Act to establish the Supreme Court and the other courts of the judicial branch, and

Recommending 12 amendments to the Constitution and submitting them to the States for ratification, with 10 of such amendments becoming known as the Bill of Rights.

In the coming year, Congress will also recognize its accomplishment of providing representative government to the American people for 200 years without interruption.

Through the pending legislation, Congress will celebrate its inception and history by authorizing the minting of three commemorative coins. Commemorative coin programs have helped raise funds for major national causes such as the restoration of the Statue of Liberty and support for the U.S. Olympic efforts. These programs are popular and profitable and are an excellent way to stimulate interest in and capture the symbolism of our national pride and heritage.

As the Capitol is the site and symbol of the Congress, and thus of representative democracy, it is fitting that the congressional bicentennial coin surcharges benefit the preservation and improvement of the Capitol. These proceeds will provide historic art, furnishings, and documents for display in public areas of the Capitol to be seen by millions of Americans and international visitors here for generations to come.

Well-known preservation endeavors at the White House, the diplomatic rooms of the State Department, and, most recently, Blair House, which houses official guests, have met with great success and the organizers of those efforts are to be commended. Such undertakings have been long overdue for the Capitol and we now have a superb opportunity to begin an appropriate program. At the same time that the commemorative coin designs carry the message of freedom and democracy, as instituted through the Congress for 200 years, coin purchasers will contribute to the restoration of their national Capitol.

I have spent 30 years of my life serving in both the Senate and the House of Representatives and since the beginning my admiration for the Capital and its national treasures has only grown deeper. I know my colleagues share this appreciation and agree that the most beneficial dedication of the Congressional Bicentennial Coin surcharges is for the protection and enhancement of our "Shrine of Democracy."

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3632) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5280), as amended, was passed.

Mr. BYRD. Mr. President, I move a motion to reconsider be laid on the table.

The motion was agreed to.

FEDERAL CROP INSURANCE COMMISSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be discharged from further consideration of H.R. 5325, the Federal Crop Insurance Commission bill.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5325) to establish a commission to review and make recommendations for the improvement of the Federal crop insurance program.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I mentioned the other day the interest that many Members have in passing a crop Insurance Commisison bill and I understand we have now received it from the House.

IMPORTANT COMMISSION

This is a good idea. The administration had wanted to do an indepth study next year and the Commission's study should help us make crop insurance the major disaster protection instrument for farmers. A sound, low-cost, efficient program that has high participation will be the best means to ensure stability in times of widespread disasters and farmer uncertainty.

We will need to reauthorize FCIC in 1990. So the Commission's work, which will include an interim report by April 1, 1989, will get this process moving in the right direction and in a timely fashion.

AMENDMENT

I considered offering an amendment with a few additional items for the Commission to study. The amendment specifies the Commission should study ways to attract low-risk producers into the program, compliance options, ways to protect yield histories in years of total losses, allowing greater private sector involvement and establishing a separate catastrophic loss pool. However, in discussions between my office and that of the distinguished chairman of the House Committee on Agriculture, Congressman de la Garza, it was decided that sending the bill back to the House might prevent its passage this year.

Therefore, I ask unanimous consent that a letter from Chairman de la Garza indicating his desire for the Commission to study these issues in addition to those enumerated in the bill be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

COMMITTEE ON AGRICULTURE,
Washington, DC, October 5, 1988.

Hon. ROBERT DOLE,
Republican Leader, U.S. Senate,
Washington, DC.

DEAR BOB: We sincerely appreciate your support and cooperation in helping advance H.R. 5325, the Federal Crop Insurance Commission Act of 1988, toward Senate consideration during these final days of the 100th Congress. As you know, the bill was adopted by voice vote in the House on September 26, 1988. Should the Senate approve the House bill without amendment, this legislation will be enacted promptly before adjournment and will demonstrate a serious commitment by Congress to a more effective crop insurance program offering disaster protection to our Nation's farmers.

We especially appreciate your contributions to this effort as embodied in the draft amendments to H.R. 5325 that you previously shared with us this week. Your suggestions regarding additional topics that should be addressed by the Commission for the Improvement of the Federal Crop Insurance Program are excellent, and certainly deserve to be examined fully in any review of the program.

You have our assurances that we will work with you, the Secretary of Agriculture, and the members of the Commission to make certain that the studies and reports issued by the Commission take full account of your concerns. As you know, the Chairmen and Ranking Minority Members of the House and Senate Agriculture Committees (or their designees) will serve as nonvoting members of the Commission. Our primary purpose in designating these positions is to ensure that the Commission's agenda adequately reflects concerns and questions on the minds of those of us with the legislative responsibility to develop a crop insurance program that is sensitive to the needs of those it serves.

Again, thank you for your assistance and support in this effort.

With kindest regards and best wishes.

Sincerely,

Ed Jones, Chairman, Subcommittee on Conservation, Credit, and Rural Development; E. Thomas Coleman, Ranking Minority Member, Subcommittee on Conservation, Credit, and Rural Development; E. (Kika) de la Garza, Chairman, House Committee on Agriculture; Edward R. Madigan, Ranking Minority Member, House Committee on Agriculture.

Mr. DOLE. Hopefully, some of these ideas, in addition to what the Commission is already charged to study, will help us design a program which attracts greater participation, reduces risks to insurance companies, reduces premium costs to farmers, and results in an actuarially sound program.

SUMMARY

I urge my colleagues to support the bill.

Mr. BIDEN. Mr. President, I would like to ask the chairman of the Agriculture Committee a question about the Commission.

Mr. LEAHY. I will be pleased to respond to the Senator.

Mr. BIDEN. The bill we are passing today establishes the composition of the 25-member Commission. However, one group that I have turned to for expert analysis and advice on this issue in Delaware—the extension service—is not represented on the Commission.

I raise this point because the extension service has been active in my State in trying to educate farmers about crop insurance and the role it has in managing the risks of their operation. It is a group, in addition to the ones designated in the bill that has a strong, practical knowledge of the Crop Insurance Program and how it can fit into farmers' plans.

Extension has a great deal to offer the Commission in its review of the Crop Insurance Program and development of recommendations. For over 5 years, the extension service has had an advisory committee reviewing the program and working with the Federal Crop Insurance Corporation to make improvements. The 10-member committee has representation from every corner of the country, an important consideration since crop insurance is supposed to be as effective in Delaware as it is in North Dakota or Oregon.

What role does the chairman foresee for the Extension Service in the deliberations of the Commission?

Mr. LEAHY. The Senator from Delaware raises a good point. The membership of the Commission established in the bill obviously draws from those parties with particular interest in the Crop Insurance Program, but it is by no means an exhaustive list.

The Extension Service Committee described by the Senator has informally worked with and advised the FCIC on Crop Insurance Program issues as they have evolved over time. I expect the Commission to use the resources and expertise the advisory committee already has available as they begin their work. The Commission is on a tight schedule for recommendations. I expect it to look outside the Commission membership for ideas and analyses of the Crop Insurance Program, and the Extension Service is a good place to start.

Mr. BIDEN. I thank the chairman for his comments.

I was pleased to join the Senator from Montana [Mr. MELCHER] in introducing this bill to establish a commission to study the Crop Insurance Program. It is a program that needs to be looked at carefully for two basic reasons. First, crop insurance is supposed to fill a vital role in our Nation's agricultural policy—providing a safety net when natural disasters hit. As the program has shifted from an option for farmers to being a necessity, it only makes sense to review the program to make sure it is up to the task.

The second reason a comprehensive review is needed is because our experience with crop insurance shows there are some holes in the safety net that need to be patched.

My own State of Delaware has been hit by 3 consecutive years of drought. In 1987, Delaware had one of the lowest participation rates in the country for the Crop Insurance Program. A General Accounting Office study of the Crop Insurance Program, requested by me and four other Senators, found that participation varied widely among crops and among States and that farmers in the northeast tended to have low signup rates.

This finding raised a major concern with me. Farmers in Delaware and other Northeast States are, in essence, being asked to rely on a program for which there are low levels of participation at this time. The result is that far too many farmers, who are otherwise excellent managers of their operations, have no protection at all from the vagaries of the weather. That is an unacceptable approach to disaster assistance, but one that even the GAO said would need an indepth review before corrective action should be taken.

The State of Delaware; has acted aggressively to address low participation rates. A special program was established to reduce the premium payments to farmers. The combination of lower cost and increased attention helped quadruple participation, but it remains to be seen whether the effect is long-lasting or a one shot deal.

And I note that even with the dramatic increase, only 12 percent of the State's farmers participated. Even with a special State program, it appears there may be other fundamental problems at work that need to be fixed. That is why the commission is needed, and why I support its creation.

The ACTING PRESIDENT pro tempore. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5325) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move a motion to reconsider the vote by which the bill was passed be laid on the table.

The motion was agreed to.

GRAIN STANDARDS ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4345.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 4345) entitled "An Act to amend the United States Grain Standards Act to extend through September 30, 1993, the authority contained in section 155 of the Omnibus Reconciliation Act of 1981 and Public Law 98-469 to charge and collect inspection and weighing fees, and for other purposes", with the following amendment: In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Grain Standards Act Amendments of 1988".

SEC. 2. GRAIN STANDARDS ACT.

Effective for the period October 1, 1988, through September 30, 1993, inclusive, the United States Grain Standards Act is amended—

(1) by amending subsection (j) of section 7 (7 U.S.C. 79(j)) to read as follows:

"(j)(1) The Administrator shall, under such regulations as the Administrator may prescribe, charge and collect reasonable inspection fees to cover the estimated cost to the Service incident to the performance of official inspection except when the official inspection is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this subsection shall, as nearly as practicable and after taking into consideration any proceeds from the sale of samples, cover the costs of the Service incident to its performance of official inspection services in the United States and on United States grain in Canadian ports, including administrative and supervisory costs related to such official inspection of grain. Such fees, and the proceeds from the sale of samples obtained for purposes of official inspection which become the property of the United States, shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.

"(2) Each designated official agency and each State agency to which authority has been delegated under subsection (e) of this section shall pay to the Administrator fees in such amount as the Administrator determines fair and reasonable and as will cover the estimated costs incurred by the Service relating to supervision of official agency personnel and supervision by Service personnel of its field office personnel, except costs incurred under paragraph (3) of subsection (g) of this section and sections 9, 10, and 14 of this Act. The fees shall be payable after the services are performed at such times as specified by the Administrator and shall be deposited in the fund created in paragraph (1) of this subsection. Failure to pay the fee within thirty days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment, within such period as specified by the Administrator, of the fee currently due plus interest and any further expenses incurred by the Service because of such termination. The interest rate on overdue fees shall be as prescribed by the Secretary, but not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, plus an additional charge of not to exceed 1 per centum per annum as determined by the Secretary and adjusted to the nearest one-eighth of 1 per centum.

"(3) Any sums collected or received by the Administrator under this Act and deposited to the fund created in paragraph (1) of this subsection and any late payment penalties collected by the Administrator and credited to such fund may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. The interest earned on such sums and any late payment penalties collected by the Administrator shall be credited to the fund and shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.";

(2) by amending subsection (l) of section 7A (7 U.S.C. 79(a)(l)) to read as follows:

"(l)(1) The Administrator shall, under such regulations as the Administrator may prescribe, charge and collect reasonable fees to cover the estimated costs to the Service incident to the performance of the functions provided for under this section except as otherwise provided in paragraph (2) of this subsection. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Service incident to performance of its functions related to weighing, including administrative and supervisory costs directly related thereto. Such fees shall be deposited into the fund created in section 7(j) of this Act.

"(2) Each agency to which authority has been delegated under this section and each agency or other person which has been designated to perform functions related to weighing under this section shall pay to the Administrator fees in such amount as the Administrator determines fair and reasonable and as will cover the costs incurred by the Service relating to supervision of the agency personnel and supervision by Service personnel of its field office personnel incurred as a result of the functions performed by such agencies, except costs incurred under sections 7(g)(3), 9, 10, and 14 of this Act. The fees shall be payable after the services are performed at such times as specified by the Administrator and shall be deposited in the fund created in section 7(j) of this Act. Failure to pay the fee within thirty days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment, within such period as specified by the Administrator, of the fee currently due plus interest and any further expenses incurred by the Service because of such termination. The interest rate on overdue fees shall be as prescribed by the Secretary, but not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, plus an additional charge of not to exceed 1 per centum per annum as determined by the Secretary, and adjusted to the nearest one-eighth of 1 per centum.";

(3) by adding before section 8 (7 U.S.C. 84) the following new section:

"LIMITATION ON ADMINISTRATIVE AND SUPERVISORY COSTS

"SEC. 7D. The total administrative and supervisory costs which may be incurred under this Act for inspection and weighing (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1989 through 1993 shall not exceed 40 per centum of the total costs for such activities carried out by the Service for such year.";

(4) by amending section 19 (7 U.S.C. 87h) to read as follows:

"APPROPRIATIONS

"SEC. 19. There are hereby authorized to be appropriated such sums as are necessary for standardization and compliance activities, monitoring in foreign ports grain officially inspected and weighed under this Act, and any other officially inspected to carry out the provisions of this Act for each of the fiscal years during the period beginning October 1, 1988, and ending September 30, 1993, to the extent that financing is not obtained from fees and sales of samples as provided for in sections 7, 7A, and 17A of this Act."; and

(5) by adding at the end thereof the following new section:

"ADVISORY COMMITTEE

"SEC. 21. (a)(1) Not later than 90 days after the date of enactment of this section, the Secretary shall establish an advisory committee to provide advice to the Administrator with respect to implementation of this Act consistent with the declarations of policy in section 2 of this Act. The advisory committee shall consist of 15 members, appointed by the Secretary, who represent the interests of all segments of the grain producing, processing, storing, merchandising, consuming, and exporting industries, including grain inspection and weighing agencies and scientists with expertise in research related to the policies established in section 2 of this Act. Members of the advisory committee shall be appointed to 3-year terms, except that of the initial 15 members of the advisory committee first appointed following the enactment of this section, five shall be appointed for terms of 1 year and five shall be appointed for terms of 2 years. No member of the advisory committee may serve successive terms.

"(2) To ensure a smooth transition, the advisory committee established under section 20 (as in effect prior to October 1, 1988) shall continue in existence until all members of the advisory committee established under this section are appointed; and the Secretary may appoint members of the advisory committee established under section 20 to serve on the advisory committee established under this section, without regard to the time of service of such members on the advisory committee established under section 20.

"(b) The advisory committee shall be governed by the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

"(c) The Administrator shall provide the advisory committee with necessary clerical assistance and staff personnel.

"(d) Members of the advisory committee shall serve without compensation, if not otherwise officers or employees of the United States, except that members shall, while away from their homes or regular places of business in the performance of services under this Act, be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.".

SEC. 3. PILOT PROJECT ON CLEAN GRAIN PREMIUMS.

(a) STUDY OF PREMIUMS AND DISCOUNTS.—

(1) AUTHORITY.—The Secretary of Agriculture (hereinafter in this section referred to as the "Secretary") shall conduct a study of the schedule of premiums and discounts applied to loans made in accordance with the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) in order to determine how premiums and discounts can be used to encourage the production, marketing, and exporting of high quality, clean grain.

(2) REPORT BY SECRETARY.—Not later than May 1, 1989, the Secretary shall prepare and submit, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on the results of the study conducted under paragraph (1).

(3) RECOMMENDATIONS.—The Secretary shall include recommendations with respect to a schedule of premiums and discounts in the report prepared under paragraph (2).

(b) PILOT PROJECT.—

(1) ESTABLISHMENT BY SECRETARY.—The Secretary shall establish a pilot project for the 1989 crops of wheat, soybeans, and feed grains to test the effectiveness of the recommendations contained in the report prepared under subsection (a) in encouraging the production, marketing, and exporting of high quality, clean grain.

(2) SIX MULTI-COUNTY AREAS.—The pilot project established under paragraph (1) shall be conducted in no less than six multicounty areas, of which—

(A) two shall be areas that are predominantly wheat-producing areas;

(B) two shall be areas that are predominantly corn-producing areas; and

(C) two shall be areas that are predominantly soybean-producing areas.

(3) CONSULTATION.—The Secretary, prior to the implementation of the pilot project, shall consult with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) REVIEW OF PILOT PROJECT.—Not later than 180 days after the end of the 1989 marketing year for feed grains, the Secretary shall conduct a review of the pilot project established under subsection (b) and prepare and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the result of the project. The report shall include recommendations for further encouraging the production, marketing, and exporting of high quality, clean grain.

SEC. 4. COTTON STANDARDS.

Subsection (a) of section 5 of the United States Cotton Standards Act (7 U.S.C. 55(a)) is amended—

(1) by striking out the second sentence; and

(2) by adding at the end thereof the following new sentences: "Any fees or charges, late payment penalties, or proceeds from the sales of samples collected under this subsection, and any interest earned through the investment of such funds shall be credited to the current appropriation account that incurs the costs of the services provided under this Act, and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing services and standards under this Act and the United States Cotton Futures Act (7 U.S.C. 15b). Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.".

SEC. 5. STUDY OF EFFECTS OF INCLUDING DOCKAGE WITH FOREIGN MATERIAL AS A GRADING FACTOR FOR WHEAT.

Not later than June 1, 1989, the Secretary of Agriculture, through the Federal Grain Inspection Service, shall—

(1) conduct a study of the effects of including dockage with foreign material as a grading factor for wheat; and

(2) submit a report on the results of such study to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I move that a motion to reconsider the vote by which the motion was agreed to be laid on the table.

The motion was agreed to.

HEALTH MAINTENANCE ORGANIZATION AMENDMENTS—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 3235 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1988.)

Mr. KENNEDY. Mr. President, I rise to urge the adoption of the conference report on H.R. 3235, the Health Maintenance Organization Amendments of 1987.

This legislation is the product of a long and arduous process of negotiation and compromise between all the affected parties—business, labor, the insurance industry, and the HMO industry. The product of this long process is a consensus proposal in which all the involved parties can take pride. The bill we are considering today preserves the essential elements of the legal authority which has resulted in a dramatic growth in prepaid systems of health care and has made this cost-effective insurance alternative available to millions of Americans. At the same time, it reforms those aspects of the law which have proved unduly burdensome in the current health care environment.

The bill makes a number of important changes. Insurance companies and others will be allowed to sponsor HMO's without, as required under current law, establishing the HMO as a separate legal entity. Moreover, HMO's will be allowed to offer a more diverse set of health insurance products than is currently permitted. The rules on out-of-plan utilization of services by HMO members will be made more flexible and realistic. Most important, the rules on community rating of premiums and equal contribution of employers to premiums will be revised to more closely reflect the actual cost of serving employees who choose to enroll in an HMO. This modification will benefit HMO's by allowing them to compete more effectively in the health insurance marketplace, and it will benefit employers by allowing them to pay an HMO premium that more closely reflects the characteristics of the employer group that chooses to enroll with the HMO.

Prompt action on this legislation is essential. HMO's and employers have already begun the process of writing contracts and establishing rates for next year, and they need the flexibility that this bill will provide.

Mr. President, I urge my colleagues to support this bill.

The ACTING PRESIDENT pro tempore. Without objection, the conference report is agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. PACKWOOD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RESOLUTION PLACED ON THE HOUSE JOINT RESOLUTION 644

Mr. BYRD. Mr. President, I ask unanimous consent House Joint Resolution 644, the Lake Wylie Marine Commission Compact, be placed on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

GUS J. SOLOMON UNITED STATES COURTHOUSE

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5007, Calendar No. 1000.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5007) to designate the United States Courthouse at 620 Southwest Main Street, Portland, Oregon, as the "Gus J. Solomon United States Courthouse."

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3633

(Purpose: To allow States, at their discretion, to use highway trust fund apportionments for on-the-job-training programs)

Mr. PACKWOOD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. DOMENICI, proposes an amendment numbered 3633.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Insert at the end the following new section:

"SEC. 3. Nothwithstanding any other provisions of law not to exceed one-fourth of 1 per centum of funds apportioned to a State under sections 104(b), 130, 144, and 152 of title 23, United States Code, shall be available to carry out section 140(b) of title 23, United States Code upon a request by the State highway department."

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3633) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 5007), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTIONS IN THE ENROLLMENT OF H.R. 4174

Mr. BYRD. Mr. President, I send to the desk and ask unanimous consent that the Senate proceed to the immediate consideration of a concurrent resolution, Senate Concurrent Resolution 159 to make corrections in the enrollment of H.R. 4174, the Small Business Administration conference report.

The ACTING PRESIDENT pro tempore. The concurrent resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 159) to make corrections in the enrollment of the bill H.R. 4174.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The concurrent resolution (S. Con. Res. 159) was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (H.R. 4174), the clerk of the House of Representatives shall make the following corrections:

(1) At the end of subparagraph (b)(3) of section 132, strike out 'conference,"; and' and insert "conference."

(2) At the end of subparagraph (b)(2) of section 132, strike out the semi-colon and insert "; and".

(3) In section 132, strike out subparagraph (b)(4).

RELIEF OF HYONG CHA KIM KAY

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 391.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 391) entitled "An Act for the relief of Hyong Cha Kim Kay", do pass with the following amendment: Strike out all after the enacting clause, and insert:

SECTION 1. TEMPORARY RESIDENT STATUS FOR BENEFICIARY AND ADJUSTMENT OF STATUS.

(a) TEMPORARY RESIDENCE.—Notwithstanding section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) or any other provision of that Act, Hyong Cha Kim Kay may be issued a visa and admitted to the United States for temporary residence if she—

(1) is found to be otherwise admissible under the provisions of that Act; and

(2) a petition for immediate relative status is filed on her behalf with the Attorney General by the United States citizen spouse of the alien within two years after the date of the enactment of this Act.

(a) TEMPORARY RESIDENCE.—Notwithstanding section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)), Hyong Cha Kim Kay may be admitted to the United States for temporary residence if she—

(1) is found to be otherwise admissible under the provisions of that Act; and

(2) applies for admission to the United States within two years after the date of enactment of this Act.

(b) PREVIOUSLY KNOWN GROUND FOR EXCLUSION.—The exemption under subsection (a) shall apply only to grounds for exclusion of which the Department of State or the Department of Justice had knowledge before the date of the enactment of this Act.

(c) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall, at the end of the 2-year period after the date on which the beneficiary was granted temporary status under paragraph (1), adjust the status of the beneficiary provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if—

(1) the Attorney General finds, that the beneficary has exhibited conduct during such period which demonstrates good moral character (including drug rehabilitation and community ties);

(2) the beneficiary establishes that she has resided continuously in the United States since the date she was granted such temporary status; and

(3) the beneficiary establishes that she—

(A) is admissible to the United States as an immigrant; and

(B) she has not been convicted of any felony or three or more misdemeanors committed in the United States.

(d) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—During the period the beneficiary is in temporary status under subsection (a), the beneficiary shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of such subsection by virtue of brief, casual, and innocent absences from the United States.

(e) AFFIDAVITS.—The Attorney General may require the beneficiary to submit affidavits for purposes of determinations made under subsection (c).

Mr. BYRD. Mr. President, I move the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

PUBLIC TELECOMMUNICATIONS ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 860, S. 2114.

The ACTING PRESIDENT pro tempore. The clerk will report. The assistant legislative clerk read as follows:

A bill (S. 2114) entitled the "Public Telecommunications Act of 1988."

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Public Telecommunications Act of 1988".

PUBLIC TELECOMMUNICATIONS FACILITIES AUTHORIZATIONS

SEC. 2. Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended—

(1) by striking "and" after "1987,"; and

(2) by inserting "$36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991," immediately after "1988,".

CORPORATION FOR PUBLIC BROADCASTING AUTHORIZATIONS

SEC. 3. Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(1) by striking "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993";

(2) by striking "and" after "fiscal year 1989,"; and

(3) by inserting before the period at the end thereof the following: ", $304,000,000 for fiscal year 1991, $354,000,000 for fiscal year 1992, and $404,000,000 for fiscal year 1993".

PUBLIC BROADCASTING SATELLITE INTERCONNECTION FUND

SEC. 4. Section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended by adding at the end thereof the following new paragraph:

"(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite Interconnection Fund (hereinafter in this subsection referred to as the Satellite Interconnection Fund), to be administered by the Secretary of the Treasury.

"(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

"(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

"(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

"(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

"(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.".

FINDING WITH RESPECT TO CERTAIN PROGRAMMING

SEC. 5. Section 396(a) of the Communications Act of 1934 (47 U.S.C. 396(a)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) inserting immediately after paragraph (5) the following new paragraph:

"(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;".

EXERCISE OF BUSINESS JUDGMENT BY CORPORATION

SEC. 6. Section 396(g)(2)(B)(ii) of the Communications Act of 1934 (47 U.S.C. 396(g)(2)(B)(ii)) is amended by striking "contract or".

ALLOCATION OF CORPORATION FUNDING

SEC. 7. (a) Section 396(k)(3)(A)(i) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)) is amended—

(1) by striking "Fund" the second time it appears and inserting in lieu thereof "Fund, and interest thereon,";

(2) by amending subclause (I) to read as follows:

"(I) not more than 104 percent of the moneys expended by the Corporation for the administrative expenses of the Corporation in the fiscal year during which the Public Telecommunications Act of 1988 is enacted shall be available for the Corporation's administrative expenses in the fiscal year immediately thereafter, and for each succeeding fiscal year thereafter no more than 104 percent of the amount expended by the Corporation for its administrative expenses in the preceding fiscal year shall be available for the Corporation's administrative expenses, except that more of the amounts allocated under subclauses (II), (III), and (IV) shall be used for any administrative expenses of the Corporation;";

(3) subclause (II) is amended to read as follows:

"(II) up to 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and if the available funding level permits, for projects and activities that will enhance public broadcasting;"; and

(4) in subclause (III), by striking "clause (ii)(I)" and inserting in lieu thereof "clause (ii)".

(b) Section 396(k)(3)(A)(ii) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(ii)) is amended—

(1) in subclause (I), by striking "paragraph (6)(B); and" and inserting in lieu thereof "paragraph (6);";

(2) in subclause (II)—

(A) by striking "25" and inserting in lieu thereof "5"; and

(B) by striking "programming." and inserting in lieu thereof "programming; and"; and

(3) by adding at the end the following new subclause:

"(III) 20 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.".

(c) Clause (iii) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

"(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6);

"(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

"(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.".

(d) Section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended by striking clause (v).

(e) Section 396(k)(3)(A)(iv)(I) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(iv)(I)) is amended by striking "Subject to the provisions of clause (v)," and inserting in lieu thereof the following: "From the amount provided pursuant to clause (i)(II),".

(f) Subparagraph (B)(i) of section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended to read as follows:

"(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(I) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. None of the grants made pursuant to this clause shall be used in whole or in part to fund any program series that has been broadcast by public television or radio stations for 4 or more years. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.".

(g) Section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended by striking subparagraphs (C) and (D).

(h) Section 396(k)(6) of the Communications Act of 1934 (47 U.S.C. 396(k)(6)) is amended—

(1) by striking subparagraph (A);

(2) by striking "(B)";

(3) by inserting immediately after the first sentence of the amended text the following new sentence: "The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available."; and

(4) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively.

(i) Section 396(k)(7) of the Communications Act of 1934 (47 U.S.C. 396(k)(7)) is amended by inserting "(ii)(I) and (iii)(I)" immediately after "paragraph (3)(A)".

PROHIBITION AGAINST EDITORIALIZING

SEC. 8. Section 399 of the Communications Act of 1934 (47 U.S.C. 399) is amended by striking the first sentence.

SCRAMBLING OF PUBLIC BROADCASTING SERVICE PROGRAMMING

SEC. 9. Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.".

EFFECTIVE DATES

SEC. 10. (a) Sections 5, 6, and 7, except subsection (a)(2) of section 7, shall take effect on October 1, 1989.

(b) The provisions of this Act other than those with an effective date of October 1, 1989, pursuant to subsection (a) are effective on the date of enactment of this Act.

AMENDMENT NO. 3634

(Purpose: To make an amendment in the nature of a substitute)

Mr. BYRD. Mr. President, on behalf of Mr. INOUYE, I call up a substitute amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. INOUYE (for himself, Mr. HOLLINGS, and Mr. DANFORTH) proposes an amendment numbered 3634.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with, and the substitute amendment be adopted as original text for the purpose of further amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Public Telecommunications Act of 1988".

PUBLIC TELECOMMUNICATIONS FACILITIES AUTHORIZATIONS

SEC. 2. Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended—

(1) by striking "and" after "1987,"; and

(2) by inserting "$36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991," immediately after "1988,".

CORPORATION FOR PUBLIC BROADCASTING AUTHORIZATIONS

SEC. 3. Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(1) by striking "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993";

(2) by striking "50 percent" and inserting in lieu thereof "40 percent";

(3) by striking "and" after "fiscal year 1989,"; and

(4) by inserting before the period at the end thereof the following: ", $245,000,000 for fiscal year 1991, $265,000,000 for fiscal year 1992, and $285,000,000 for fiscal year 1993".

PUBLIC BROADCASTING SATELLITE INTERCONNECTION FUND

SEC. 4. (a) Section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended by adding at the end thereof the following new paragraph:

"(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite Interconnection Fund (hereinafter in this subsection referred to as the 'Satellite Interconnection Fund'), to be administered by the Secretary of the Treasury.

"(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

"(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

"(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

"(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such system; and

"(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.".

(b)(1) The Corporation for Public Broadcasting shall endeavor to obtain donations to the Satellite Interconnection Fund established under section 396(k)(10) of the Communications Act of 1934 (47 U.S.C. 396(k)(10)) from non-Federal sources and on March 1, 1990, report to Congress describing the actions taken to obtain such donations and stating the funds received, if any.

(2) On or before March 1, 1990, the Corporation for Public Braodcasting on behalf of the public radio and public television licensees and permittees (or their designated representatives) shall submit to Congress a report by such licensees or permittees (or their representatives) detailing the satellite replacement needs of public radio and public television and the difference in cost between leasing satellite transponder capacity and buying such capacity.

FINDING WITH RESPECT TO CERTAIN PROGRAMMING

SEC. 5. Section 396(a) of the Communications Act of 1934 (47 U.S.C. 396(a)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) inserting immediately after paragraph (5) the following new paragraph:

"(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;".

EXERCISE OF BUSINESS JUDGMENT BY CORPORATION

SEC. 6. Section 396(g)(2)(B)(ii) of the Communications Act of 1934 (47 U.S.C. 396(g)(2)(B)(ii)) is amended by striking "contract or".

ALLOCATION OF CORPORATION FUNDING

SEC. 7. (a) Section 396(k)(3)(A)(i) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)) is amended—

(1) by amending subclause (I) to read as follows:

"(I) $10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal year shall be available for such administrative expenses;";

(2) subclause (II) is amended to read as follows:

"(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English, and if the available funding level permits, for projects and activities that will enhance public broadcasting;"; and

(3) in subclause (III), by striking "clause (ii)(I)" and inserting in lieu therof "clause (ii)".

(b) Section 396(k)(3)(A)(ii)(II) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(ii)(II)) is amended by striking "for public" and inserting in lieu thereof the following: ", and in accordance with any plan implemented under paragraph (6)(A), for national public".

(c) Clause (iii) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

"(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

"(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

"(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (b)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.".

(d) Clause (v) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

"(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

"(II) 25 percent shall be available for distribution for the purposes referred to in clause (iii)(II) and (III).".

(e) Section 396(k)(3)(A)(iv)(I) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(iv)(I)) is amended by striking "Subject to the provisions of clause (v)," and inserting in lieu thereof the following: "From the amount provided pursuant to clause (i)(II),".

(f) Subparagraph (B)(i) of section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended to read as follows:

"(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunication entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.".

(g) Section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended by striking subparagraphs (C) and (D).

(h) Paragraph (6)(A) of section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended to read as follows:

"(6)(A) The Corporation shall conduct a study and prepare a plan, in consultation with public television licensees (or designated representatives of those licensees) and the Public Broadasting Service, on how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best allocated to meet the objectives of this Act with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.".

(i) Section 396(k)(6)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(6)(B)) is amended by inserting immediately after the first sentence the following new sentence: "The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available.".

(j) Section 396(k)(7) of the Communications Act of 1934 (47 U.S.C. 396(k)(7)) is amended by inserting "(ii)(I) and (iii)(I)" immediately after "paragraph (3)(A)".

INDEPENDENT PRODUCTION

Sec. 8. Section 396(k)(3)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(B)) is amended by adding at the end the following new clause:

"(iii)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

"(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the propose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and independent production entities.

"(III) the Corporation shall work with organizations or associations of independent producers or independent production entities to develop a plan and budget for the operation of such service that is acceptable to the Corporation.

"(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation's obligation to expand the diversity and innovativeness of programming available to public broadcasting.

"(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service. At the end of fiscal year 1992, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity and innovativeness of programming available to public broadcasting.".

PROHIBITION AGAINST EDITORIALIZING

Sec. 9. Section 399 of the Communications Act of 1934 (47 U.S.C. 399) is amended by striking the first sentence.

SCRAMBLING OF PUBLIC BROADCASTING SERVICE PROGRAMMING

Sec. 10. Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsections:

"(c) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.".

AMENDMENT NO. 3635

(Purpose: To provide for television and radio service to minority and diverse audience and for other purposes)

Mr. HATFIELD. Mr. President, I send to the desk an amendment on behalf of Senator Wilson.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Wilson, proposes an amendment numbered 3635.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Redesignate sections 9 and 10 as sections 10 and 11, and insert immediately after secton 8 the following new section:

NEEDS OF MINORITIES AND OTHER GROUPS

Sec. 9. Section 396 of the Communications Act of 1934 (47 U.S.C. 396) is amended by adding at the end the following new subsection:

"(m)(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences and the ways radio and television can be used to help these underrepresented groups. Such assessment should address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills:

"(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report should address programming (including that which is produced by minority producers), training, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation.

"(3) As soon as they have been prepared, each assessement and annual report required under paragraphs (1) and (2) shall be submitted to Congress.".

Mr. WILSON. Mr. President, while I am a new member of the Commerce Committee, I have had a longstanding interest and admiration for public broadcasting, for the dedicated people who work to make it happen, and particularly for the great potential it has to redress serious national problems.

Unfortunately, public broadcasting may not be reaching its full potential because of competing claims for its limited resources and a lack of clear mandate from the Congress.

As we establish national priorities, we must focus on the needs of racial and ethnic minorities, many of whom live in effective cultural isolation. We must focus on the needs of immigrants, whether from Latin America, Asia, or elsewhere, and their desire to learn our language, to educate their children, and to join the mainstream of America. We must also focus on the needs of illiterate adults, who are held back by their inability to read. And of course, we must focus on the needs of our children, for if we ignore them today we may condemn them to a life of unfulfilled potential.

Public broadcasting, both television and radio, provides an unequaled means to meet these needs, and as we in the Congress struggle with our mandate to balance the Federal budget, we must ensure that the scarce Federal resources we devote to public broadcasting are first devoted to this purpose.

Mr. President, I support public broadcasting. However, I am concerned that we have not done enough to emphasize to the Corporation for Public Broadcasting, the Public Broadcasting System, National Public Radio, and other interested groups and their constituent members what we expect them of accomplish with the funds we provide.

In my additional views filed with the committee's report on S. 2114, I expressed my belief that we should more clearly state the mandate of public broadcasting.

I am pleased that the committee has included language which I had urged explicitly requiring the focus of funds for programs meeting the needs of minorities and other underserved groups in communities throughout the United States. However, I believe that we should go further.

Mr. President, both CPB and the public broadcasting stations should be more clearly responsible for meeting the needs of ethnic and racial minorities, immigrants, and adults who lack basic reading skills. That is the underlying purpose of my amendment.

Mr. President, my amendment requires that every 3 years public broadcasting compile an assessment of the needs of these diverse groups that can benefit greatly from public broadcasting programs directed to meet their needs. My amendment requires that, based on this assessment, public broadcasting annually prepare a report on its efforts to meet these needs. My amendment also requires that, beyond programming, public broadcasting look to training of minority employees and development of minority stations in order to meet the needs of the priority audiences I have noted. Finally, my amendment requires that the assessment and report be submitted to Congress in order to help us understand the work that is being undertaken and to help us fulfill our oversight responsibilities.

Mr. President, I want to thank my colleague from Hawaii, the distinguished chairman of the Communications Subcommittee, Senator Inouye, for his willingness to work with me on this issue. He and I share a deep concern for the audiences and potential audiences that can benefit from increased attention from public broadcasting. As a new member of the Commerce Committee, I especially appreciate his help and guidance on the development of my amendment.

I also want to commend Senator Inouye for his dedication to enacting a reauthorization bill this year. I know that he has a very strong interest in reorganizing the public broadcasting funding structure, yet he was willing to reserve many of his concerns in order to move this bill forward. The parties on both sides of this funding debate owe a great deal to Senator Inouye for his statesmanship, for he never lost sight of the overriding interest in maintaining forward funding of public broadcasting.

THE SATELLITE REPLACEMENT ISSUE

Mr. President, on another subject of concern, the satellite replacement issue, there is no doubt that PBS needs a new satellite system. However, it is anything but clear what system it needs. Despite this lack of clarity, the committee bill includes an authorization for $200 million for a turnkey system that requires no financial contribution by PBS.

Despite the great variation in costs projections included in the PBS proposal submitted in late May—from $63 million to $268 million—and despite the fact that a true system replacement would likely require less than $100 million, the committee has decided to authorize enough money to fund the most elaborate system of the three proposals—$200 million.

Beyond the question of cost, there are more basic questions: First, why should PBS buy transponders rather than leasing them? Second, if it should buy transponders, why should Congress foot the whole bill rather than sharing the cost or granting bonding authority to PBS to finance the purchase? Third, why didn't PBS set up a sinking fund years ago to pay for the satellite replacement, and if Uncle Sam should step in now, what mechanism is PBS proposing to pay for the next satellite system that will be needed 10 years after this system is launched? Finally, what justification is there for the number of transponders requested?

On this last area of concern, it should be recognized that PBS currently owns four transponders, which it purchased without direct Federal assistance, yet it only uses three on a full-time basis. The unused transponder is rented-out to generate additional income of $2.5 million per year. It light of this underutilization, why should the Federal Government grant PBS $200 million for six satellite transponders, which would constitute an increase of 50 percent over the number presently owned and 100 percent over the capacity presently in use?

I strongly believe that it is inappropriate for Congress to authorize funds for satellite system replacement when no specific system proposal has been presented to us. And even if some authorization is justified at this time, we should not set such a generous level that it provides no encouragement to PBS to buy anything less than a gold-plated system. While I have no reason to think that that is the intent of PBS, the decision to set the authorization level at $200 million certainly provides a strong inducement to achieve this result.

At a minimum, PBS should be asked to provide the oversight committees with a single configuration proposal, including loading projections for the number of transponders requested, prior to our providing $200 million of general taxpayers' funds.

The Senate has vested in the Commerce Committee the responsibility to oversee public broadcasting and authorize its funding. Therefore, it is incumbent upon the committee to have before it this information in order to meet the expectations of the Senate.

I know that while this bill provides an authorization for the entire replacement system, the appropriations act recently enacted provided only partial funding. While funding beyond this level will be determined by future appropriations bills, it is still incumbent upon the Senate, through the Commerce Committee, to oversee the development and deployment of the new satellite system. Yet, it is very disturbing that to the extent that details on the system have been provided, they have only been provided to the Appropriations Committee.

Mr. President, with these concerns in mind, I appreciate the willingness of the Senator from Hawaii to incorporate language into the bill to require greater scrutiny of the satellite request, including consideration that transponders should be leased, rather than purchased, and that private funds should be raised to support the replacement program.

Mr. President, going back to my amendment, I understand that the Senator from Hawaii has a second degree amendment. Upon its adoption, I urge adoption of my amendment and passage of this bill, S. 2114.

AMENDMENT NO. 3636 TO AMENDMENT NO. 3635

(Purpose: To amend the Wilson amendment to make certain provisions for minority employment)

Mr. BYRD. Mr. President, on behalf of Mr. Inouye, I send to the desk an amendment to the Wilson amendment.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. Byrd), for Mr. Inouye, proposes an amendment numbered 3636.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In the first sentence of paragraph (1) of new subsection (m), as proposed to be added to section 396 of the Communications Act of 1934, strike "audiences and the ways" and all that follows through the end of such sentence and insert in lieu thereof the following: "audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities.".

In the second sentence of paragraph (2) of such new subsection (m), insert "minority employment," immediately after "training,".

At the end add the following new subsection:

(b) Section 398(b)(1) of the Communications Act of 1934 (47 U.S.C. 398(b)(1)) is amended by inserting, immediately after "'recipients'),", the following: "in accordance with the equal employment opportunity regulations of the Commission,".

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3636) was agreed to.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment, as amended.

The amendment (No 3635), as amended, was agreed to.

Mr. INOUYE. Mr. President, we are here to consider an amendment in the nature of a substitute to S. 2114, the Public Telecommunications Act of 1988. This legislation authorizes funding for the Corporation for Public Broadcasting [CPB] for fiscal years 1991 through 1993 and for the Public Telecommunications Facilities Program [PTFP] for fiscal year 1989 through 1991. In addition, the bill restructures the allocation of the funding to further insulate the funds from political influence, ensures the interest is distributed fairly, and conforms the administrative and system support allocations with current spending practices of the CPB.

This legislation is intended to enhance the ability of public broadcasting to bring quality national programming from diverse sources to the full diversity of the American people. Over the past 20 years, the Federal investment has enabled the CPB and the public broadcasting system to build a nationwide service reaching 82 percent of the American people with a public radio signal and 93 percent with a public television signal. It is now time to reorient these goals.

First, funds provided to public radio and television should be used in the production or acquisition of quality national programming. It is this programming that makes public broadcasting unique and important to the American people. Second, these funds should be used to extend the reach of public radio to unserved and underserved audiences. More and more Americans are turning to public radio for indepth domestic and international news coverage and commentaries on political, economic, and social trends. In addition, public radio is creating a national awareness of American cultural treasures in music and drama. It has also stimulated interest in, and greater appreciation for American performers, conductors, directors, and producers. Many more Americans, including the elderly, ethnic minorities, children, and the handicapped, can be better served by public radio if we can substantially increase the number and diversity of CPB qualified stations. Increasing the number of stations will strengthen and expand the diverse pattern of local stations and national programming which is at the heart of public radio's success to date.

Congress believes that funding for replacement of the satellite interconnection system is essential to ensure continued high quality service and must be authorized this fiscal year. Not only is it important to provide for continued service, but replacement of the interconnection facilities also could potentially support increases in program offerings and related services, more specialized programming, and expansion of service areas.

S. 2114 also authorizes an additional $200 million to be used over a 3-year period to replace the satellite interconnection system. The useful life of the transponders is expected to end in mid-1991, and the ground system will then be over 15 years old. For public broadcast stations to continue to operate, the transponders must be replaced and the ground system upgraded. This is a one time authorization. It will not be an ongoing cost after the system has been replaced. The statute clearly prohibits the CPB from using any of the funds allocated to satellite replacement for its administration costs. The Congress expects the CPB to ensure that the funds are spent appropriately, however, the CPB need not duplicate the work or analysis being done by the public radio and television communities, the House and Senate Appropriations Committee or anyone working with the committees, such as the Office of Technology Assessment.

Finally, it is the committee's intent that the new satellite interconnection system be designed so as to be sufficiently flexible as to be capable of adapting to future developments in technology, including advanced or high definition television and digital audio technologies.

Funding for the PTFP is also authorized in this bill. This program provides funds for the construction of new stations and upgrading of existing stations. It helps to ensure public broadcast service to unserved and underserved communities or segments of the population. S. 2114 authorizes $36 million for fiscal year 1989, $39 million for fiscal year 1990, and $42 million for fiscal year 1991. These levels represent smaller annual increases than the 1981 authorization. The Congress believes these increases are necessary to ensure the program's continuation and success.

The increases proposed here are necessary to enable the program to overcome the effects of inflation and to permit a small increase in the number of groups assisted. In 1987, the program received over 300 applications for assistance totaling $88 million, but was only able to accept 115 applications, awarding $19.2 million. In addition, the cost of transmission equipment and other necessary facilities has increased between 8 and 25 percent in the last 5 years. Thus, the increases are necessary to cover some additional funding requests and cover the costs of inflation.

In 1967, the Corporation for Public Broadcasting [CPB] was established by Congress. This law has as its goal: "[to] help make public broadcasting available to all citizens * * * and to afford maximum protection to such broadcasting from extraneous interference and control." In the 20 years since the adoption of the Public Broadcasting Act, public broadcasting has grown and matured. Even with the increased number of programming services, it is largely responsible for much of the quality entertainment and educational video and audio programming.

Public broadcasting is founded on the principle of localism: Every broadcaster's first obligation is to the community to which it is licensed, not to Congress or the CPB. Stations have demonstrated a commitment to serving the communities to which they are licensed both through local and national programming. Moreover, Congress has vested the responsibility with the stations, not the CPB, for determining what programs are broadcast. Thus, no matter what programming the CPB funds, the stations have the control over what is aired. The communities that stations serve through their board of directors, who are representatives of those communities, determine how stations spend their funds and what programs stations broadcast. Congress and the CPB can, however, influence some of those decisions. In order to stay within the confines of the first amendment, the amount of influence must be minimal. Thus, our challenge is to ensure the continued growth and development of public broadcasting while protecting individual programming decisions from political influence.

The Senate Communications Subcommittee and the House Telecommunications Subcommittee have held numerous hearings during the 100th Congress on public broadcasting issues. At those hearings, Members and witnesses expressed concern that the CPB's funding decisions are not sufficiently insulated from political influence.

This problem is inherent in the CPB's structure since, it is controlled by political appointees, and the most visible activity of the CPB is financing programming. The CPB's unilateral control over program funding decisions enables it to affect the content of programming at its most critical point—its source. Programs without funding never get on the air.

Since the CPB was created in 1967, the public broadcasting system has grown and matured. In 1967, public broadcasting consisted of a disparate collection of stations that were not interconnected. Since then, the number of public broadcast stations has doubled, and all of the television stations and most of the radio stations are interconnected. Today, public broadcasters are able to develop and share their programming, increasing the diversity of programming available to the public. In addition, public broadcast stations already aggregate their funds to support existing national programming and develop new national programming.

Recognizing the maturation of the system, Congress and the CPB have been shifting larger and larger portions of the Federal support to the stations. In the early 1970's, the CPB began distributing a substantial percentage of its funds to stations in the form of grants—now called Community Service Grants [CSG's] to be used as the stations deemed appropriate. In 1981, Congress codified the CPB's practice of giving stations unrestricted CSG's. In 1986, the CPB determined to give grants to public radio stations to be used for national programming [NPPAG's]. Today, 93 percent of the radio funds are given directly to the stations in the form of CSG's and National Program Production and Aquisition Grants [NPPAG's]. The bill codifies the current division of CPB radio funding: 70 percent for radio community service grants [CSG's]; 23 percent for radio NPPAG's; 7 percent for the Radio Program Fund. This distribution formula was adopted by the CPB after careful consideration and consultation with the public radio system over a period of 2 years. By codifying this distribution formula, the Congress in no way intends to diminish the obligation of both the stations and the CPB to devote a substantial amount of national program funds to independent productions.

The Congress strongly feels that the primary purpose of all funds allocated under this subsection is to provide money dedicated to the production and acquisition of quality programming from diverse sources intended to serve a national audience. This money is also intended to include programming designed for large segments of the population or specific national communities of interest.

Mr. President, the substitute I offer on behalf of myself, Mr. Hollings, and Mr. Danforth amends S. 2114 as reported by the Commerce Committee in five ways.

AUTHORIZATION LEVELS

Public broadcast stations are finding it increasingly difficult to fund operations and programming, not to mention research and development. To ensure that the CPB can assist stations in the maintenance of their current high quality programming, to enhance program production, and to further technological developments in the industry, this legislation authorizes funding for the CPB in the amount of $245 million for fiscal year 1991, $265 million for fiscal year 1992, and $285 million for fiscal year 1993. S. 2114 and H.R. 4118 proposed substantially higher funding levels, however, the administration approved these amounts. We have now reached an agreement on the new funding levels, which still represent substantial increase in funding. We believe these levels will ensure that public broadcasting will be able to maintain its current service with some expansion. We expect that at the actual appropriations, which have fallen short of the amounts authorized in recent years, will match these levels. If this does not occur, there will be a significant burden on the ability of the public broadcasting system to sustain the current quality of the system, let alone allow it to continue as an innovator and leader in the industry.

MATCHING FUNDS

The substitute raises the matching funds provision from 2-1, non-Federal to Federal funds to 2.5-1. This reflects public broadcasting's success in fundraising in recent years. An increase in the matching funds provision will not result in any decrease in the Federal funds received by public broadcasting because the non-Federal funds raised today exceed the 2.5-1 ratio.

SATELLITE INTERCONNECTION

The substitute contains two new provisions concerning the replacement of the public broadcasting satellite systems. First, the CPB is required to attempt to raise funds from private sources to be used to assist with the financing of the new satellite systems. The CPB shall report to Congress what steps it takes to raise these funds and the amounts raised, if any, on March 1, 1990.

Second, in order to ensure that the satellite replacement funds are used appropriately, the CPB shall submit a report prepared by public radio and television stations—or their representatives—to Congress on or before March 1, 1990, detailing the satellite needs of public television and radio and the cost differential between leasing and purchasing the transponders to be acquired. This report will be used to ensure that the satellite replacement systems purchased are realistic in view of the needs of public broadcasting and to ascertain whether it would be more cost efficient to lease or purchase transponder capacity.

ADMINISTRATIVE EXPENSES

In House hearings, Members expressed concern that excessive Federal funds were being used to sustain the CPB's bureaucratic structure. Both the House and the Senate committees found that the current allocation scheme no longer is consistent with the CPB's actual operational costs. Although statutorily the CPB has been permitted to spend up to 5 percent of the appropriated funds on administrative expenses, in recent years, the percentage of the Federal allocation devoted to administrative costs has dropped from 5 to 4.2 percent. This is a direct result of the fact that the administrative costs do not increase in proportion to the appropriation. Therefore, there is no need to continue to allocate more funds for administrative costs than the CPB is actually spending. There is also the belief that administrative costs in general need to be reduced or at least held constant. The substitute allocates $10.2 million for administrative expenses of the CPB for fiscal year 1989 and limits increases in subsequent years to 104 percent or the Consumer Price Index, whichever is greater, of the previous year's budget. This funding level provides the CPB with an increase over what it had budgeted for 1989 and assures that the funding available for national programming will increase in coming years.

The increases in the CPB authorization levels are intended to increase the amount of programming produced and acquired for public broadcasting, not increase CPB's overhead. The CPB's primary concern should be to direct every dollar possible to national programming. Morever, in recent years, Congress has been reducing, freezing, or limiting increases in administrative budgets for other entities receiving Federal support or Federal funds. Thus, this provision permitting the CPB's administrative expenses to keep pace with the CPI considered a ceiling.

Congress believes that the CPB should continually reevaluate it's administrative expenses and plan future budgets with an eye toward reducing those expenses wherever possible. For example, the CPB should explore the possibility of moving its offices from downtown Washington, DC, to a less expensive location. In addition, we are concerned about the travel expenses of the CPB Board members. While most Board members have limited their travel expenses, others have not. The Congress is also concerned about the duplication of services, programs, and activities by the CPB and other public broadcasting and telecommunications entities. The CPB should evaluate whether, if it is necessary, for it to duplicate services provided by other entities. We intend to have the General Accounting Office undertake a review the CPB's administrative allocation and management of system support funds and report to Congress on its findings.

TELEVISION PROGRAM FUND

After much discussion with the CPB, PBS, NAPTS, and public television station managers, we decided that there should be more time between passage of S. 2114 and the date of enactment to allow the public television system to develop a system of reaggregation to ensure the production, without interruption, of the major series important to their audience.

The substitute amendment postpones making changes in the way public television dollars are allocated between Community Service Grants [CSG's] and the Program Fund. It directs the CPB and the public television community to work together to develop a plan to guarantee the continuation of quality national programming that the public broadcasting audience has come to expect. The establishment of the national program grants for radio has proved successful, and we suggest a similar scheme for television may best serve the public interest. Accordingly, it is our intention that the plan adopted include the establishment of national program grants for television along the lines of the original Senate proposal in S. 2114.

While we recognize that the stations ultimately determine whether or not a program is given airtime, it is critically important that the plan include provisions that guarantee that these funds are reaggregated and expended on underwriting new national programs. Without such requirements, each station could make its own decision on how to spend these funds, and the result would be an overall reduction in the quantity of new national programming. That is clearly not the intention of the Congress. Rather, our goal is both to increase the quantity of new programming underwritten by Federal funds, and decrease opportunities for political interference by the CPB board.

To the extent that the plan calls for the distribution of funds without CPB involvement, the plan must also contain provisions that will result in accountability. In their stewardship of Federal funds, both CPB and the stations have an obligation to account for these funds and demonstrate that they have been expended in a responsible manner. The plan must recognize this obligation, and facilitate appropriate oversight by responsible government officials. While this plan shall be developed jointly by the public television stations and the CPB, the CPB will be responsible for its implementation and shall have responsibility for disbursement of all funds distributed pursuant to the plan. In addition, the CPB, in consultation with the public television stations, their representatives and the Public Broadcasting Service shall establish criteria that stations must meet in order to receive national program grants.

The CPB on behalf of itself and the public television community shall submit this report to the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee by January 31, 1990. While the committee expects the plan to be implemented on or before January 31, 1991, in no event shall the plan be implemented prior to April 30, 1990. This timeframe will give the public television community the necessary time to work out a plan that meets the objectives outlined in the House and Senate reports accompanying S. 2114 and H.R. 4118 and avoid the disruption of its national program schedule. In addition, this timeframe gives Congress sufficient time to review the plan before it is put into effect.

RADIO AND TELEVISION PROGRAM FUNDS

The substitute, like the original bill, provides that the CPB will make grants, not contracts for public radio and television programming awarded through the program funds. A substantial amount of the funding shall go to independent producers, producers of national children's educational programming, and programming addressing the needs of minorities. However, the provision prohibiting the CPB from funding any programs for more than 4 years has been deleted. In addition, at the request of Senator Metzenbaum, a provision has been added to clarify that the CPB has the ability to make grants to the stations and producers of programming in languages other than English.

ALLOCATION OF INTEREST INCOME

Funding new national programming is the most important responsibility of the CPB. Therefore, as much of the funding as possible should be devoted to national programming. To achieve this objective, section 7(d) directs the CPB to allocate all interest income to the national programming accounts for radio and television. Seventy-five percent of the interest income shall go to public television programming and 25 percent to public radio national programming. Of the 25 percent allocated to public radio, 75 percent shall go to the NPPAG's pool and 25 percent to the radio program fund. A similiar division of interest income for public television will be determined after a decision has been made on the distribution of public television national program dollars. Until that time all of the interest allocated to television shall go to the television program fund.

INDEPENDENT PRODUCTIONS

For almost as long as public broadcasting has existed, there have been two major concerns among the independent production community: The lack of funding for independent productions and a perceived inaccessibility of the system to independent producers.

Both the House and Senate committees heard testimony from independent producers and from representatives of the public broadcasting community regarding their views on the sufficiency of use of independent productions by the public broadcasting system. Independent producers' concerns largely are based on the perception of an increasingly "closed system" structure of public broadcasting, in which the CPB and the stations control access to the public airwaves.

Although the CPB has testified that approximately half of its television program funds are allocated to the work of independent producers, representatives of the independent production community suggest that funds to independent productions are significantly less. The Congress is not satisifed that the CPB has allocated sufficient funds to smaller individual producers working independently of stations or station consortia. Greater effort is required to fulfill the congressional intent and achieve the statutory objective of promoting greater innovations and diversity of opportunity and expression in the programming supported by the CPB.

To address this ongoing problem the substitute establishes an Independent Production Service, IPS, an entity developed for the sole purpose of funding independent productions, to provide producers increased access to the public television system, foster an improved, cooperative working relationship between the independent production community and the public broadcasting system and bring innovative programming to the American people. We expect that, despite the advent of IPS, the public broadcasting community will continue to utilize or increase utilization of independent producers or independent productions throughout the structure of public broadcasting, including SPC, program funds and other program selection and funding processes. Neither the creation of the IPS, nor its funding is intended to exhaust the CPB's statutory obligation to provide a substantial portion of its programming fund to independent producers and productions.

We intend that an aggregate initial amount of at least $6 million be provided by the CPB for IPS for each of the first 3 years of service to be utilized for production costs. It is our further intent that funds provided IPS by the CPB be utilized for production costs. We do not intend that overhead and promotional costs of the service be paid from this initial annual funding of $6 million. We assume that the IPS will be in full service by fall of 1989, with the understanding that CPB will provide startup costs for the installation of the service this year with funds from the CPB administrative budget. However, the funding for IPS programming provided by the CPB shall come from allocation available for television national programming.

Section (II) provides that the Service shall be separate from the CPB and will be incorporated under the laws of the District of Columbia for the purposes of contracting with the CPB. We intend that the structure and composition of the Service's governing board will be acceptable to the CPB.

Section (III) provides that the CPB will work with independent producers and production entities to develop and plan an acceptable budget for the operation of the IPS. We recommend that personnel from public television stations as well as independent producers be involved in the planning of the advisory board and that an appropriate number of such personnel will serve on the advisory council and governing board. The advisory board will provide added input to the decision-making governing board. We intend that participation in this service will be open and that present or past association with public television stations will not automatically exclude a particular producer from participation. The determination of who is eligible for funding by the IPS will be made by the governing board or the advisory council.

Section (IV) ensures that funds provided by the CPB to the IPS will be used exclusively to ensure the Corporation's obligation to "expand the diversity and innovativeness of programming available to public broadcasting."

It is also recommended that the CPB ensure that the IPS make a special commitment and effort to produce programs by and about minorities in addition to continuing its support of the minority consortia. Minority programming is an essential foundation of public broadcasting. The existing minority consortia which represents the United States' largest and fastest growing ethnic and racial minority communities, have been an effective vehicle despite a very minimal funding level of only $800,000. The CPB should continue and expand its work and commitment to the minority communities in these creative ways in order to improve incorporation of minority programming and producers into the system and to help cultivate and further increase the participation of ethnic and racial audiences in public broadcasting. The bill does not mandate any specific level of funding for the minority consortia. In an effort to ensure support for culturally diverse programming, we assume that sufficient funds will be allocated for the minority consortia and recommend an annual allocation level of an additional $3 million.

Section (V) requires that the CPB report to Congress each year on the activities and expenditures of the IPS. At the end of fiscal year 1992, the CPB must submit an evalution report on the performance of the IPS to Congress. This report shall examine the IPS with regard to its mission to "expand the diversity and innovativeness of programming available to public broadcasting". We also expect the IPS to contribute to public television's historical and traditional commitment to children's television. Innovative and diverse programming geared to the child, as well as the adult audience should be the goal of IPS. We will closely monitor the performance of IPS in this area.

MINORITY PROGRAMMING AND EQUAL EMPLOYMENT OPPORTUNITY

Historically, the Congress has expressed concern that only a minimal amount of minority and culturally diverse programming is available on public television. The 1978 legislation addressed some of the concerns of minority organizations and public interest groups by expanding station responsibilities to include open board meetings, added accountability and reporting requirements plus mandated increased opportunities for women and minorities. We remain concerned, however, that minorities and women have not had adequate access to funding for program production or in employment and management in public broadcasting stations.

Overall, public broadcasting has made progress in matters affecting minorities since 1977 when the first study of minority participation was released. However, there is a growing and shifting diversity of minority needs as seen in the significant numbers of new immigrant groups from the Caribbean, Africa, Southeast Asia, Central America, the Middle East, and Eastern European communities, for example, who pose new and difficult challenges for local public television and radio stations.

Last year, the CPB awarded $800,000 to the five minority consortia, and the CPB and public television stations devoted a combined total of approximately $3 million to programs addressing the needs of minorities for both new and continuing programming. We believe that this is inadequate. There are 29 million blacks and 18 million Hispanics in the United States. Those two groups alone constitute approximately 30 percent of our Nation's population. This figure does not take into account other ethnic and racial minority groups. Further, this percentage is increasing at a rapid rate. Thus, the need for programming addressing those audiences, including foreign language programming, should be a primary concern of public radio and television stations and the CPB.

While much progress may have been made toward increasing minority participation in public broadcasting in the last decade, we are very sensitive to the need for increased minority and ethnic participation in all aspects of mass media, particularly programming. Although all broadcasters, commercial and noncommercial, are subject to the same FCC equal employment requirements, we believe that the employment record of public broadcasters and, for that matter, production entities involved with public broadcasting, should be a model for the broadcasting community. It is our hope that increased monitoring and reporting of minority employment and programming service to minority audiences will foster a greater diversity of programming.

We expect that the CPB will review the hiring and employment practices of the Corporation, entities within the public broadcasting system and those entities who do not fall under FCC guidelines but who are responsible for development, selection, or production of programming which airs on public television and radio.

The CPB has provided leadership and assistance to interested persons and public broadcasting licensees in the area of minority services. The CPB already collects and analyzes data on minority and women's employment, and on minority programming within public broadcasting. We anticipate that the CPB will be able to use a significant portion of the information it currently gathers to prepare the reports required to be submitted to Congress. At this time, the record of the public broadcasting system compares favorably to other broadcaster and cable entities in the employment of minorities. We note, however, that there is considerable room for improvement in the record of the public broadcasting system, and particularly at the member station level with regard to service to minority communities and employment of women and minorities. We further note that station employment practices are most noticeably deficient in the upper four job category positions. We direct the CPB to work with public broadcasting stations to address this continuing and long-standing problem in an expeditious fashion. The Congress will closely monitor performance in this area.

The requirement that the CPB report to Congress on the stations plans and efforts to address the needs of minorities and diverse communities is not intended to permit the CPB to engage in program content analysis or to permit the CPB to use this authority to influence, or determine program content. The CPB can, of course, review programming to determine to whom the programming was targeted.

The amendment to section 398 of the act requires public telecommunications entities to comply with the equal employment opportunity requirements set forth in section 73.2080 of the FCC regulations. This requirement is included to ensure that telecommunications entities that are integral parts of the public broadcasting system and receive Federal funds are equal opportunity employers.

SYSTEM SUPPORT

The substitute does not alter the provision raising the statutory limit on system support cost to 6 percent. It should be noted that the statute provides that the CPB pays for 50 percent of the satellite interconnection costs of public stations. The public radio stations have entered an agreement with the CPB whereby the CPB does not pay any of the radio satellite interconnection cost. We feel that, public television should consider a similar arrangement. Once the television satellite system has been replaced, the stations should take responsibility for the full amount of their ongoing interconnection costs. This would provide over $5 million in the system support allocation that could be devote to programming or other program related activities.

The substitute includes a provision, included by Senator **Metzenbaum** to insure that the CPB has the ability to provide funding to public broadcast station for technical assistance with foreign language programming. To serve the specialized interests of large segments of the population that are not currently being met requires both the creation of new stations and programming. Stations may choose to provide such service through the use of foreign language programming targeted to specialized audiences. However, all public broadcast licensees are responsible for the content of the programming broadcast on their stations. Some stations may not have the financial resources necessary to monitor such programming in foreign languages. This amendment would allow the CPB to make grants to stations for this purpose. For example, stations may need additional funds to monitor or translate foreign language programming to ensure that their broadcasts are in compliance with the FCC rules and regulations. The Senator from Ohio should be commended for underscoring the importance of service to underserved audiences such as many ethnic communities.

CONCLUSION

Mr. President, my statement does not address in great detail sections of S. 2114 not changed by the substitute. However, there are several issues so important that they deserve restating.

One of those is the requirement that the CPB provide assistance to public radio stations which constitute the only broadcast service available to a community. While this provision will only affect a small number of stations throughout this country, these stations provide an essential service to their communities. Public radio stations that provide the only broadcast service to a community, often are the only daily source of news and information. When natural disasters strike, the information disseminated over public radio can save lives. Thus, it is important that we assist these stations to maintain and improve their service.

The CPB shall be required to submit an annual report to Congress detailing the percentage of funds devoted to new children's educational programming, programming addressing the needs of minorities, and programming produced by independents.

Finally, S. 2114 contains a provision addressing the scrambling of PBS television programming. S. 2114 only permits PBS to scramble its signal if it leaves one clear unencrypted transmission of its programming which home satellite dish owners can receive without purchasing a decoder. PBS is scrambling in order to make stereo programming available to the local stations at a lower cost. The encoded stereo feeds are available to home dish owners at no charge if they have a decoder. The purpose of this provision is to ensure that all satellite dish owners have access to the programming of PBS.

In conclusion, this legislation recognizes the maturation of our public broadcasting stations, and their continued efforts to respond to the needs of the communities that they serve. Our role is to ensure that the act continues to encourage and foster the full development of public broadcasting in America. The primary purpose of funds authorized under this legislation is the production and acquisition of quality national programming by public television and radio. There remain large segments of the population that are not adequately served by public broadcasting. Consequently, we believe that in the coming years we need to encourage the production of programming involving creative risks and designed to serve unserved and underserved audiences, including children and minorities. Achievement of that goal requires that we recognize change and respond. The substitute is the result of careful examination of the CPB and the public broadcast industry today. I believe that these changes will serve the public interest in the continued growth of public broadcasting and I urge you to support S. 2114.

I ask unanimous consent to have a copy of a letter from OMB stating that it will not recommend that the President veto S. 2114 as amended be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Executive Office of the President,
Office of Management and Budget,
Washington, DC., October 6, 1988.

Hon. Ernest F. Hollings,
U.S. Senate,
Washington, DC.

Dear Senator Hollings: This will confirm discussions in recent days between your staff and Carol T. Crawford, Associate Director of OMB for Economics and Government, regarding S. 2114, to reauthorize the Corporation for Public Broadcasting (CPB).

Pursuant to those discussions, it is our understanding that the bill will be revised to authorize appropriations not to exceed $245 million in 1991, $265 million in 1992, and $285 million in 1993, and that the bill will revise the existing matching requirement to encourage greater reliance of CPB on non-Federal sources of funds. It is my further understanding that the bill will require CPB to undertake a study of its satellite purchase options and report back to the Congress no later than March 1, 1990. The study should include a needs assessment, a complete market survey and analysis to determine the most cost-effective system and procurement method (including an examination of lease/purchase options), and the availability of private sector rather than Federal financing.

If S. 2114 is presented to the President as revised pursuant to this agreement, OMB will not recommend that he veto the bill.

Sincerely,

Joseph R. Wright, Jr.,
Deputy Director.

Mr. HOLLINGS. Mr. President, I strongly support the substitute for S. 2114, the Public Telecommunications Act of 1987, authorizing funding for the Corporation for Public Broadcasting [CPB] and the Public Telecommunications Facilities Program [PTFP]. It ensures the continued growth of the American system of public broadcasting, a vital part of our broadcasting industry and an important source of informational, cultural, and instructional programming.

Public broadcasting provides a valuable public service. Many Americans depend on public broadcasting for substantive, indepth treatment of current issues that commercial programs do not provide. Despite numerous changes and obstacles, our public broadcasters have consistently provided the American public with high quality programming. Both public television and radio aggregate their funds to support national programming. For example, public television has aggregated in excess of $60 million to support the development of new programming and ensure the continuation of existing programming such as MacNeil/Lehrer. A substantial amount of that money was devoted to children's programming. In addition, public broadcasting brings cultural events like the Boston Pops into homes of many who might never travel to Boston. This is a clear indication of the strong commitment that public broadcasting has to providing the best service possible to the public.

In the area of education, public broadcasters work with our schools and universities to expand and supplement their curriculums. In view of the rising costs of education, it is imperative that we continue to fund one of the most economical and efficient mechanisms of distributing educational information to our children, in both their homes and schools.

This legislation underscores the importance of educational programming directed to children and programming aimed at serving other diverse communities such as minorities. The substitute expands the description of how the money in the CPB program fund is to be distributed to require the CPB to devote a substantial percentage of the funds to programs addressing the children's educational needs and the needs of minorities. In addition the declaration of policy provision is revised to establish that programming addressing unserved and underserved audiences, including children and minorities is one of the act's priorities. One of the most important services the CPB can provide is to ensure that our national programming reaches as many different communities as possible.

The current allocation scheme is no longer consistent with the actual costs of operating the CPB and some of its programs. In recent years, the percentage of the Federal allocation devoted to administrative costs has dropped from 5 percent to 4.2 percent. This is a direct result of the fact that the administrative costs do not increase in proportion to the appropriation. Therefore, the substitute caps the CPB's administrative expenses at $10.2 million for 1989 and limits future increases. This cap also reflects our concern that the CPB needs to reduce its overhead and ensure that as much money as possible is devoted to the actual production of national programming.

Consistent with the goal of directing the maximum amount of funds to national programming, this legislation requires that all of the interest income received by the CPB be devoted to national programming. Since the CPB will earn approximately $7 million in interest in the coming year, this provision will enable the CPB to fund a number of new radio and television programs.

The substitute also reallocates the funding distributed for public radio to reflect our faith in public broadcasters and our commitment to insulating programming decision from political influence. The CPB currently gives public radio stations funds that can only be used for national programming, in addition to the community service grants. This scheme is codified in the substitute. We believe that this scheme has the benefit of further insulating the funding from political influence. At the same time, by leaving funds with the CPB in the radio program fund, this legislation recognizes that there is still a need for the CPB in the development of new programming and assessing changes in the industry. I believe that this bill will further the goals we set some 20 years ago for public broadcasting.

The substitute also directs the CPB and the public television community to review the current distribution scheme and develop a plan to address the concern over the need to insulate programming decisions from political influence. While the substitute does not implement the proposal establishing national program and acquisition grants for television, we believe that the proposal contained in the reported bill is a sound one and would like to see it implemented. Our public broadcasting stations have demonstrated a clear, unequivocal commitment to serving the needs of our society to the best of its ability.

The funding levels contained in the substitute reflect an effort to balance the needs of public broadcasting to maintain, and if possible expand, its service and the limitations of the Federal budget. In addition, the funding included in this legislation will enable public broadcasting to replace its satellite system. This funding is critical because the current system will no longer be in operation in the earlier 1990's. Finally, this authorization includes funding for the PTFP, which assists provides stations assistance with the purchase and replacement of equipment. This program has been very successful in helping to expand the number of Americans that have access to public broadcasting.

In closing, I feel that this legislation will result in significant improvements in our public broadcasting system. I strongly believe in the merit of S. 2114, as amended, and urge my colleagues to support it.

Mr. **METZENBAUM.** Mr. President, I rise to support the Public Telecommunication Act and the pending amendment.

I have always been a strong supporter of public broadcasting. Unlike commercial radio and TV stations, public stations can air quality programs that do not have mass appeal.

That is because public stations receive their financial support from fundraising appeals and the Federal Government.

At a time of scarce Federal resources we must be certain that our investments serve important national objectives. Public broadcasting's mission clearly meets that test. Public broadcasting is an important median for serving underserved audiences.

For example, public stations air children's educational programming.

Programs that meet the special interests of minorities, and programs produced by independent producers. This bill reemphasizes this public service objective, and underscores the need not to commercialize public broadcasting programs.

Mr. President, the pending amendment includes two provisions which I authored to help public radio stations meet their obligation to serve underserved audiences. The need for these provisions became clear when Cleveland's WCPN terminated foreign language broadcasts arguing that it could not supervise the quality and content of such programs. I do not believe that the inability of a station's management to understand a foreign language should force such programs off the air.

To address this concern my proposal provides funding to local stations for technical assistance to monitor and translate the content of such programs.

By adopting this amendment there is no reason why WCPN, or any other public radio station, should ignore the needs of those who speak foreign languages.

In addition, my amendment directs funding to pay for production and acquisition of foreign language programs. This will allow stations or independent producers to seek Federal funds to produce foreign language programs.

I believe that these changes to the Public Telecommunications Act emphasize Congress' commitment to make public broadcasting an important resource for all segments of our communities. They will help local stations meet their obligations to carry appropriate foreign language programs. And they provide an opportunity for independent broadcasters to seek Federal funds to produce them. These provisions will provide additional tools for the Cleveland community to resolve its differences, and assist other communities where there is a need for foreign language programs.

I urge adoption of this amendment.

Mr. **DANFORTH.** Mr. President, today the Senate is considering S. 2114, the "Public Telecommunications Act of 1988." S. 2114 authorizes the Public Telecommunications Facilities Program, the Corporation for Public Broadcasting, and a satellite interconnection fund. This bill will help ensure the continuation of the rich and diverse programming of public broadcasting in the 1990's. I am proud to be a cosponsor of this bill.

In 1967, Congress recognized the value and potential of public broadcasting by enacting the Public Broadcasting Act. The roots of public broadcasting, however, go back another decade to the educational television of the early 1950's. To this day, one of the central goals of public broadcasting is education. This bill furthers that goal in four ways.

First, by authorizing $36 million for the Public Telecommunications Facilities Program [PTFP] for fiscal year 1989, $39 million for 1990, and $42 million for 1991, the bill provides continued grants for educational and other public broadcasting purposes. A PTFP grant made last year to the Missouri School Boards Association serves as an example of the exciting educational programs that can be developed with PTFP funds. Grant money will help school districts in dozens of rural Missouri counties install equipment so that they can participate in an educational satellite network, and, for the first time, receive a Public Broadcasting System signal. This means rural Missouri schoolchildren will be able to take courses such as advanced placement calculus and physics that would not otherwise be available. Other programs available for the first time to rural students include the Silent Network, for the hearing impaired, SCOLA, daily broadcasts of foreign news programming, and a series on the U.S. Constitution.

Second, by authorizing the Corporation for Public Broadcasting [CPB] in the amount of $245 million for fiscal year 1991, $265 million for 1992, and $285 million for 1993, this bill provides to those rural Missouri schoolchildren, and Americans generally, access to a wide spectrum of educational programming and supplemental educational materials.

Third, continued funding for CPB will help bring cultural and educational programming to Americans through the Public Broadcasting System stations.

Today, satellites are the bridge between the programming and the public. Thus, the fourth way in which this bill furthers education is by authorizing $200 million for a satellite interconnection fund, which gives public broadcasting the needed satellite capacity to continue its diverse and educational programming in the 1990's.

Mr. President, this is important legislation, and the bill before the Senate today is the product of months of negotiations between Commerce Committee staff, public broadcasting stations and organizations, program producers, and the administration. The fact that we have a bipartisan bill which enjoys the administration's support is a significant accomplishment. I would like to thank an individual without whose hard work this legislation would not be possible: Gina Keeney, Commerce Committee Minority Counsel for Communications. Mr. President, I urge my colleagues' support for this measure.

Mr. President, I ask unanimous consent that the text of a letter from Joseph R. Wright, Jr., Deputy Director of the Office of Management and Budget, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 6, 1988.

Hon. JOHN DANFORTH,
U.S. Senate,
Washington, DC.

DEAR SENATOR DANFORTH: This will confirm discussions in recent days between your staff and Carol T. Crawford, Associate Director of OMB for Economics and Government, regarding S. 2114, to reauthorize the Corporation for Public Broadcasting (CPB).

Pursuant to those discussions, it is our understanding that the bill will be revised to authorize appropriations not to exceed $245 million in 1991, $265 million in 1992, and $285 million in 1993, and that the bill will revise the existing matching requirement to encourage greater reliance of CPB on non-Federal sources of funds. It is my further understanding that the bill will require CPB to undertake a study of its satellite purchase options and report back to the Congress no later than March 1, 1990. The study should include a needs assessment, a complete market survey and analysis to determine the most cost-effective system and procurement method (including an examination of lease/purchase options), and the availability of private sector rather than Federal financing.

If S. 2114 is presented to the President as revised pursuant to this agreement, OMB will not recommend that he veto the bill.

Sincerely,

JOSEPH R. WRIGHT, Jr.,
Deputy Director.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2114

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Telecommunications Act of 1988".

PUBLIC TELECOMMUNICATIONS AUTHORIZATION

SEC. 2. Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended—

(1) by striking "and" after "1987,"; and

(2) by inserting "$36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991," immediately after "1988,".

CORPORATION FOR PUBLIC BROADCASTING AUTHORIZATIONS

SEC. 3. Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(1) by striking "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993";

(2) by striking "50 percent" and inserting in lieu thereof "40 percent";

(3) by striking "and" after "fiscal year 1989,"; and

(4) by inserting before the period at the end thereof the following: ", $245,000,000 for fiscal year 1991, $265,000,000 for fiscal year 1992, and $285,000,000 for fiscal year 1993".

PUBLIC BROADCASTING SATELLITE INTERCONNECTION FUND

SEC. 4. Section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended by adding at the end thereof the following new paragraph:

"(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite Interconnection Fund (hereinafter in this subsection referred to as the 'Satellite Interconnection Fund'), to be administered by the Secretary of the Treasury.

"(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

"(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

"(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

"(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

"(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.".

(b)(1) The Corporation for Public Broadcasting shall endeavor to obtain donations to the Satellite Interconnection Fund established under section 396(k)(10) of the Communications Act of 1934 (47 U.S.C. 396 (k)(10)) from non-Federal sources and on March 1, 1990, report to Congress describing the actions taken to obtain such donations and stating the funds received, if any.

(2) On or before March 1, 1990, the Corporation for Public Broadcasting on behalf of the public radio and public television licensees and permittees (or their designated representatives) shall submit to Congress a reprot by such licensees or permittees (or their representatives) detailing the satellite replacement needs of public radio and public television and the difference in cost between leasing satellite transponder capacity and buying such capacity.

FINDING WITH RESPECT TO CERTAIN PROGRAMMING

SEC. 5. Section 396(a) of the Communications Act of 1934 (47 U.S.C. 396(a)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) inserting immediately after paragraph (5) the following new paragraph:

"(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;".

EXERCISE OF BUSINESS JUDGMENT BY CORPORATION

SEC. 6. Section 396(g)(2)(B)(ii) of the Communications Act of 1934 (47 U.S.C. 396(g)(2)(B)(ii)) is amended by striking "contract or".

ALLOCATION OF CORPORATION FUNDING

SEC. 7. (a) Section 396(k)(3)(A)(i) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)) is amended—

(1) by amending subclause (I) to read as follows:

"(I) $10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal years shall be available for such administrative expenese;";

(2) subclause (II) is amended to read as follows:

"(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English, and if the available funding level permits, for projects and activities that will enhance public broadcasting;"; and

(3) in subclause (III), by striking "clause (ii)(I)" and inserting in lieu thereof "clause (ii)".

(b) Section 396(k)(3)(A)(ii)(II) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(ii)(II)) is amended by striking "for public" and inserting in lieu, thereof the following: ", and in accordance with any plan implemented under paragraph (6)(A), for national public".

(c) Clause (iii) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

"(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

"(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

"(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.".

(d) Clause (v) of Section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

"(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

"(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

"(II) 25 percent shall be available for distribution for the purposes referred to in clause (iii)(II) and (III).".

(e) Section 396(k)(3)(A)(iv)(I) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(iv)(I)) is amended by striking "Subject to the provisions of clause (v)," and inserting in lieu thereof the following: "From the amount provided pursuant to clause (i)(II),".

(f) Subparagraph (B)(i) of section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended to read as follows:

"(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(I) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunication entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.".

(g) Section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended by striking subparagraphs (C) and (D).

(h) Paragraph (6)(A) of section 396(k) of the Communications Act of 1934 (47 U.S.C 396(k)) is amended to read as follows:

"(6)(A) The Corporation shall conduct a study and prepare a plan, in consultation with public television licensees (or designated representatives of those licensees) and the Public Broadcasting Service, on how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best allocated to meet the objectives of this Act with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.".

(i) Section 396(k)(6)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(6)(B)) is amended by inserting immediately after the first sentence the following new sentence: "The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available.".

(j) Section 396(k)(7) of the Communications Act of 1934 (47 U.S.C. 396(k)(7)) is amended by inserting "(ii)(I) and (iii)(I)" immediately after "paragraph (3)(A)".

INDEPENDENT PRODUCTION

SEC. 8. Section 396(k)(3)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(B)) is amended by adding at the end the following new clause:

"(iii)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

"(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the purpose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and independent production entities.

"(III) The Corporation shall work with organizations or associations of independent producers or independent production entities to develop a plan and budget for the operation of such service that is acceptable to the Corporation.

"(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation's obligation to expand the diversity and innovativeness of programming available to public broadcasting.

"(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service. At the end of fiscal year 1992, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity and innovativeness of programming available to public broadcasting.".

NEEDS OF MINORITIES AND OTHER GROUPS

SEC. 9. Section 396 Communications Act of 1934 (47 U.S.C. 396) is amended by adding at the end the following new subsection:

"(m)(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities. Such assessment should address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills.

"(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report should address programming (including that which is produced by minority producers), training, minority employment, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation.

"(3) As soon as they have been prepared, each assessment and annual report required under paragraphs (1) and (2) shall be submitted to Congress.".

PROHIBITION AGAINST EDITORIALIZING

SEC. 10. Section 399 of the Communications Act of 1934 (47 U.S.C. 399) is amended by striking the first sentence.

SCRAMBLING OF PUBLIC BROADCASTING SERVICE PROGRAMMING

SEC. 11. Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.".

Section 398(b)(1) of the Communications act of 1934 (47 U.S.C. 398(b)(1)) is amended by inserting, immediately after "'recipients'),", the following: "in accordance with the equal employment opportunity regulations of the Commission,".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RETIREMENT AND SURVIVORS ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on S. 1630 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to provide for retirement and survivors annuities for bankruptcy judges and magistrates, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. THURMOND. Mr. President, I rise today in support of the conference report on S. 1630, the "Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1988." I am a cosponsor of this conference report which provides a revision of the current retirement system in place for bankruptcy judges and Federal magistrates.

Unquestionably, bankruptcy judges and Federal magistrates play an important role in our Federal judicial system. Because of their vital role, an equitable retirement system is necessary to encourage exceptionally well-qualified individuals to seek these judgeships and serve for many years before retirement.

With the steady growth of litigation in our Federal system, we have placed a greater responsibility on the shoulders of both bankruptcy judges and Federal magistrates. These enhanced burdens and responsibilities, along with the shortcomings in the current retirement system, have contributed to an increased turnover rate among these judges in the last several years.

If enacted, S. 1630 will establish a retirement system similar to the current retirement system in place for other Federal judges. After serving a period of 14 years, and upon reaching the age of 65, bankruptcy judges and Federal magistrates would be entitled to a retirement pension at full salary.

I believe legislation such as this will go a long way toward ensuring that we continue to attract and retain quality individuals dedicated to serving the public. Therefore, I support the conference report on S. 1630, and urge my colleagues to do the same.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATING THE WILLIAM W. PARES, JR., POST OFFICE BUILDING

Mr. BYRD. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 3029 and the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3029) to designate the new Post Office Building in Gretna, LA, as the "William W. Pares, Jr., Post Office Building."

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 3029) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE ACTION ON H.R. 3029 VITIATED

Mr. BYRD. Mr. President, I ask unanimous consent that the action that has just been taken be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished acting Republican leader if the following bills have been cleared on his side of the aisle: Calendar Order Nos. 1004, 1005, 1026, 1079 through 1086, and 1088 through 1092.

Mr. HATFIELD. The majority leader is correct. The bills have been cleared on this side.

Mr. BYRD. Mr. President, I ask unanimous consent that the aforementioned measures be considered en bloc; that amendments where shown be agreed to; that any amendments or preambles be agreed to; that the various measures be agreed to en bloc and that the motion to reconsider en bloc be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

URGING RECOGNITION OF SOLIDARITY AS A LEGAL ENTITY

The resolution (S. Res. 475) urging the Polish Government to recognize the independent trade union Solidarity as a legal entity was considered and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 475

Whereas in 1980 the independent trade union solidarity was formed by Polish workers dissatisfied with labor conditions in Poland;

Whereas in the same year the Polish Government recognized Solidarity as a legitimate organization of free trade unions;

Whereas in 1981 the Polish Government invoked martial law and arrested most of the top leaders of Solidarity;

Whereas in 1982 the Polish Government revoked its earlier recognition and officially outlawed Solidarity;

Whereas the same economic difficulties that gave rise to Solidarity not only persist in Poland but have been aggravated by the continuing strife between the Polish people and its government, bringing the country into the most serious crisis it faced since World War II;

Whereas it is becoming increasingly clear for the world community that the development of a modern society and economy cannot be accomplished without the voluntary participation of free citizens and their independent organizations;

Whereas the Polish Government, in search of popular acceptance, has again opened talks with Lech Walesa, the leader of Solidarity, with the assistance and good offices of the Catholic Church of Poland; and

Whereas more than eight million Americans are, at least in part, of Polish extraction and, consequently, the stability and prosperity of Poland and the well-being of the Polish people are a natural and legitimate concern of millions of Americans: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Government of Poland should recognize the important contribution to the economic and social reconstruction of the country to be made by the people of Poland acting through independent, voluntary organizations; and

(2) as evidence of such recognition the Government of Poland should immediately confer legal and independent status upon the trade union Solidarity.

The Secretary of the Senate shall transmit a copy of this resolution to the President with the request that he further transmit such copy to the Government of Poland.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROTECTION OF BIOLOGICAL DIVERSITY

The joint resolution (H.J. Res. 648) to encourage increased international cooperation to protect biological diversity was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONTRIBUTIONS OF THE IROQUOIS CONFEDERACY OF NATIONS

The concurrent resolution (S. Con. Res. 76) to acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution, was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 76

Whereas the original framers of the Constitution, including most notably, George Washington and Benjamin Franklin, are known to have greatly admired the concepts, principles and governmental practices of the Six Nations of the Iroquois Confederacy; and,

Whereas the confederation of the original Thirteen Colonies into one republic was explicitly modeled upon the Iroquois Confederacy as were many of the democratic principles which were incorporated into the Constitution itself; and,

Whereas since the formation of the United States, the Congress has recognized the sovereign status of Indian tribes, and has, through the exercise of power reserved the Federal Government in the Commerce Clause of the Constitution (art. I, s8, cl. 3), dealt with Indian tribes on a government-to-government basis and has, through the treaty clause (art. II, s2, cl. 2), entered into 370 treaties with Indian tribal nations; and,

Whereas from the first treaty entered into with an Indian nation, the treaty with the Delaware Indians of September 17, 1778, and thereafter in every Indian treaty until the cessation of treaty-making in 1871, the Congress has assumed a trust responsibility and obligation to Indian tribes and their members to "exercise the utmost good faith in dealing with the Indians" as provided for in the Northwest Ordinance of 1787, (1 Stat. 50); and,

Whereas Congress has consistently reaffirmed these fundamental policies over the past two hundred years through legislation specifically designed to honor this special relationship; and,

Whereas the judicial system of the United States has consistently recognized and reaffirmed this special relationship; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the Congress, on the occasion of the two hundredth anniversary of the signing of the United States Constitution, acknowledges the historical debt which this Republic of the United States of America owes to the Iroquois Confederacy and other Indian nations for their demonstration of enlightened, democratic principles of Government and their example of a free association of independent Indian nations.

(2) the Congress also hereby reaffirms the constitutionally recognized government-to-government relationship with Indian tribes which has historically been the cornerstone of this Nation's official Indian policy;

(3) the Congress specifically acknowledges and reaffirms the trust responsibility and obligation of the United States Government to Indian tribes, including Alaska Natives, for their preservation, protection and enhancement, including the provision of health, education, social and economic assistance programs as necessary, to assist tribes to perform their governmental responsibility to provide for the social and economic well-being of their members and to preserve tribal culture identity and heritage; and

(4) the Congress also acknowledges the need to exercise the utmost good faith in upholding its treaties with the various tribes, as the tribes understood them to be, and the duty of a great Nation to uphold its legal and moral obligations for the benefit of all of its citizens so that they and their posterity may also continue to enjoy the rights they have enshrined in the United States Constitution for time immemorial.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL FAMILY CAREGIVERS WEEK

The joint resolution (S.J. Res. 278) designating November 20-26, 1988, as "National Family Caregivers Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 278

Whereas the number of Americans who are age 65 or older is growing;

Whereas there has been an unprecedented increase in the number of persons who are age 85 or older;

Whereas the incidence of frailty and disability increases among persons of advanced age;

Whereas approximately 5.2 million older persons have disabilities that leave them in need of help with their daily tasks, including food preparation, dressing, and bathing;

Whereas families provide older persons help with such tasks, in addition to providing between 80 and 90 percent of the medical care, household maintenance, transportation, and shopping needed by older persons;

Whereas families who give care to older persons face many additional expenses, including the costs of home modifications, equipment rental, and additional heating;

Whereas 80 percent of disabled elderly persons receive care from their family members, most of whom are their wives, daughters, and daughters-in-law, who often must sacrifice employment opportunities to provide such care;

Whereas the role of the aged spouse as a principal caregiver has generally been understated;

Whereas family caregivers are often physically and emotionally exhausted from the amount of time and stress involved in caregiving activities;

Whereas family caregivers need information about available community resources;

Whereas family caregivers need respite from the strains of their caregiving roles;

Whereas the contributions of family caregivers help maintain strong family ties and assure support among generations; and

Whereas there is a need for greater public awareness of and support for the care that family caregivers are providing: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 20-26, 1988, is designated "National Family Caregivers Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL HOME CARE WEEK

The joint resolution (S.J. Res. 280) to designate the week of November 27, 1988 through December 3, 1988, as "National Home Care Week," was considered, order to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 280

Whereas organized home health care services to the elderly and disabled have existed in this country since the last quarter of the eighteenth century;

Whereas home health care, including skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, health counseling and education, and homemaker-home health aide services, is recognized as an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving such services;

Whereas the Federal Government has supported home health services since the enactment of the medicare program, with the number of home health agencies providing services increasing from less than five hundred to more than five thousand; and

Whereas many private, public, and charitable organizations provide these and similar services to millions of patients each year preventing, postponing, and limiting the need for institutionalization and enabling such patients to remain independent: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of November 27, 1988 through December 3, 1988 is designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL SKIING DAY

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1081, Senate Joint Resolution 301.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 301) designating January 20, 1989, as "National Skiing Day."

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. WIRTH. Mr. President, I urge all Senators to join me in supporting Senate Joint Resolution 301, which would designate Friday, January 20, 1989, as "National Skiing Day." I am especially pleased to be joined by the Senator from Utah, Senator Garn, who was the original cosponsor of this measure, because he shares my fondness for skiing. Passage of this resolution is especially timely now, as the Nation recovers from a blistering summer of heat waves and drought and we head into the cool relief of ski season.

As we approach the winter months, millions of Americans are anticipating heavy snowfalls that will transform many rugged mountains into silky ski slopes. I am proud to say that my home State of Colorado boasts several of the world's best ski areas. In fact, 1 week after the commemoration of "National Skiing Day" on January 20, 1989—Colorado will host the World Alpine Ski Championships at Vail. This event will mark the first time in 40 years that the United States has hosted this premier event in international skiing.

Of course, skiing is not confined to the beautiful mountains of Colorado. Skiing is enjoyed by men and women, adults and children all across the Nation. More than 15 million Americans, from literally every State, are downhill skiers. Today, there are more than 600 ski areas in 40 States across the country, including 200 areas on public lands managed by the U.S. Forest Service. Just last year, the country's downhill ski areas recorded 54 million skier visits. Another 6 million Americans enjoy cross-country, or Nordic skiing on trails and forests throughout the Nation.

These statistics show that Americans have enthusiastically embraced skiing as an outdoor sport. Beyond the physical challenges and rewards of the sport, skiing fosters a deep appreciation for the outdoors and enriches the human spirit. It is a sport that allows Americans to enjoy mountain peaks and back-country trails even on the coldest days of winter, because sliding down a challenging ski run can warm the heart with exhiliration.

In addition to the enjoyment it brings to millions of Americans, skiing continues to play an important role in the growing recreation and tourism industry in this country. And my State is no exception to this trend. Recreation and tourism is Colorado's second largest industry and on Colorado's western slope, skiing is the leading industry. Last year, Colorado's ski areas had 9.5 million visitors. This sport accounts for one-third of all retail sales, a quarter of all employment, and almost half of the housing construction. Statewide, this industry creates 53,000 jobs, contributes $1.5 billion to Colorado's economy, and produces $146 million in State and local taxes.

Mr. President, skiing is an important part of my State's economy and the economies of many other States. Last fall, working with the Colorado Ski Country, we brought skiing to the Nation's Capital. We constructed "Mount Colorado" on the lawn of the Capitol to encourage Members of Colorado and their staffs to take part in this sport and to enjoy the great outdoors. It is my hope that we can build on the enthusiasm that we saw here last fall by recognizing "National Skiing Day" on January 20, 1989. I urge my colleagues to join me in supporting this joint resolution.

The ACTING PRESIDENT pro tempore. If there be no further debate, the question is on the engrossment and third reading of the joint resolution.

The joint resolution (Senate Joint Resolution 301) was ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. Res. 301

Whereas commercial alpine and nordic skiing operations are among the fastest growing commercial uses of the national forests;

Whereas skiing increases the recreational value of the national forests by providing a winter recreational use for such forests;

Whereas skiing is a healthful activity that promotes physical well-being, contributes to the enrichment of the human spirit, and fosters an appreciation of the outdoor environment;

Whereas skiing provides enjoyment to millions of people each winter;

Whereas skiing improves employment opportunities in, and contributes to the economic stability of, a number of States;

Whereas the people of many rural communities in the United States rely primarily on skiing for winter employment and income; and

Whereas people throughout the world can become aware of the environmental grandeur and recreational resources of the United States by skiing in the United States: Now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That January 20, 1989, is designated as "National Skiing Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day with appropriate ceremonies and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL DAY OF EXCELLENCE

The joint resolution (S.J. Res. 327) commemorating January 28, 1989, as "National Day of Excellence" in honor of the crew of the space shuttle *Challenger,* was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 327

Whereas on January 28, 1986, the seven crew members of the space shuttle Challenger, Commander Francis R. Scobee, Pilot Michael J. Smith, Mission Specialist Ellison S. Onizuka, Mission Specialist Ronald E. McNair, Mission Specialist Judith Resnik, Payload Specialist Gregroy B. Jarvis, Teacher-Observer S. Christa McAuliffe, were killed in a tragic explosion shortly after liftoff;

Whereas each of the crew members of the Challenger was a true American hero who represented the best and the brightest that our Nation has to offer;

Whereas the crew of the Challenger gave their lives while striving for an excellence of technology, of goal, and of personal achievement which fills all Americans with a sense of pride in their fellow human beings and countrymen;

Whereas the most appropriate tribute we could pay the crew of the Challenger is a national day when Americans would dedicate themselves in all their endeavors to the pursuit of excellence which makes our country great;

Whereas the American spirit is most responsive to a living tribute in which all citizens can participate and be enriched by such participation; and

Whereas this is a day for which our national character cries out: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That January 28, 1989, is designated as a "National Day of Excellence". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe that day—

(1) by resolving that in the course of their regular activities they will pursue the spirit of excellence represented by the crew of the space shuttle Challenger; and

(2) with appropriate ceremonies and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL MILITARY FAMILIES RECOGNITION DAY

The joint resolution (S.J. Res. 337) acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 21, 1988, as "National Military Families Recognition Day", was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 337

Whereas Congress recognizes and supports Department of Defense policies to recruit, train, equip, retain, and field a military force that is capable of preserving peace and protecting the vital interests of the United States and its allies;

Whereas military families shoulder the responsibility of providing emotional support for their service members;

Whereas in times of war and military action military families have demonstrated their patriotism through their steadfast support and commitment to the Nation;

Whereas the emotional and mental readiness of United States military personnel around the world is tied to the well-being and satisfaction of their families;

Whereas the quality of life that the Armed Forces provide to military families is a key factor in the retention of military personnel;

Whereas the people of the United States are truly indebted to military families for facing adversities, including extended separations from their service members, frequent household moves due to reassignments, and restrictions on their employment and educational opportunities;

Whereas 75 percent of officers and 60 percent of enlisted personnel in the Armed Forces are married;

Whereas in March 1987, families of active duty military personnel (including individuals other than spouses or children) accounted for 2,992,155 of the 5,197,652 in the active duty community and spouses and children of members of the Reserves in paid status accounted for 1,569,107 of the 2,726,538 in the Reserves community;

Whereas spouses, children, and other dependents living abroad with members of the Armed Forces total nearly 500,000 and these family members at time face feelings of cultural isolation and financial hardship; and

Whereas military families are devoted to the overall mission of the Department of Defense and have accepted the role of the United States as the military leader and protector of the free world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) Congress acknowledges and appreciates the commitment and devotion of present and former military families and the sacrifices that such families have made on behalf of the Nation, and

(2) November 21, 1988, is designated as "National Military Families Recognition Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GREEK INDEPENDENCE DAY, DAY OF CELEBRATION OF GREEK AND AMERICAN DEMOCRACY

The joint resolution (S.J. Res. 346) to designate March 25, 1989, as "Greek Independence Day, A National Day of Celebration of Greek and American Democracy", was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 346

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States of America drew heavily upon the political and philosophical experience of ancient Greece in forming our representative democracy;

Whereas March 25, 1989, marks the one hundred and sixty-eighth anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire;

Whereas these and other ideals have forged a close bond between our two nations and their peoples; and

Whereas it is proper and desirable to celebrate with the Greek people, and to reaffirm the democratic principles from which our two great nations sprang: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 25, 1989, is designated as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy", and that the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the designated day with appropriate ceremonies and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNITED STATES MARSHALS BICENTENNIAL DAY

The joint resolution (S.J. Res. 352) designating September 24, 1989, as "United States Marshals Bicentennial Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 352

Whereas the Office of United States Marshal was created by Act of the First Congress which became law on September 24, 1789;

Whereas for more than a century after the establishment of the United States Government in 1789, United States marshals provided the only nationwide civilian police power available to the President, Congress, and the courts;

Whereas United States marshals have played a crucial role in most of the major episodes in America's history, from the Whiskey Rebellion of 1794, to the Reconstruction era following the Civil War and the enforcement of the Civil Rights Acts of the 1960's;

Whereas more than three hundred United States marshals and deputy marshals have given their lives in the course of carrying out their law enforcement responsibilities;

Whereas United States marshals and their deputies are today charged with responsibilities essential to the operation of the Federal justice system, including the provision of security for the Federal courts and the protection of judicial officers, the pursuit and arrest of fugitives from justice, the enforcement of the orders of the court, and the management of seized criminal assets; and

Whereas through their consistent and tenacious dedication to duty since 1789, United States marshals and their deputies have made and continue to make immeasurable contributions to the rule of law and the protection of human rights through law in the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 24, 1989, is designated as "United States Marshals Bicentennial Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate ceremonies and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOCATIONAL-TECHNICAL EDUCATION WEEK

The joint resolution (S.J. Res. 363) designating November 28 through December 2, 1988, as "Vocational-Technical Education Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 363

Whereas vocational education prepares the Nation's work force by providing students with basic academic and occupational skills;

Whereas vocational education stresses the importance of positive work attitudes and values;

Whereas vocational education builds the leadership skills of students by encouraging them to participate in student organizations;

Whereas vocational education stimulates the growth and vitality of the Nation's businesses and industries by preparing workers for the majority of occupations forecasted to experience the largest and fastest growth in the next decade;

Whereas vocational education encourages entrepreneurship among students through units of study and courses designed to prepare them to start and manage their own businesses;

Whereas a strong vocational education program planned and carried out by trained vocational educators is vital to the future economic development of the Nation and to the well-being of its citizens;

Whereas the Future Business Leaders of America, the Future Homemakers of America and Home Economics Related Occupations, the Future Farmers of America, the Distributive Education Clubs of America, the Vocational Industrial Clubs of America, the American Industrial Arts Student Association, the Health Occupation Students of America, the National Association of State Councils on Vocational Education, and the American Vocational Association have joined efforts to give added definition to vocational education;

Whereas the American Vocational Association, the major professional association for the field of vocational education, will convene its annual convention in St. Louis, Missouri, on December 2, 1988; and

Whereas the planned theme for Vocational-Technical Education Week is "Vocational Education: Building Tomorrow's Leaders": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 28 through December 2, 1988, is designated as "Vocational-Technical Education Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such period with appropriate programs, ceremonies, and activities.

NATIONAL "CHALLENGER" CENTER DAY

The joint resolution (S.J. Res. 365) to designate January 28, 1989, as "National *Challenger* Center Day" to honor the crew of the space shuttle *Challenger,* was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. Res. 365

Whereas the crew of the space shuttle *Challenger* was dedicated to stimulating the interest of American children in space flight and science generally;

Whereas the members of the *Challenger* crew gave their lives trying to benefit the education of American children;

Whereas a fitting tribute to that effort and to the sacrifice of the *Challenger* crew and their families is needed;

Whereas an appropriate form for such a tribute would be to expand educational opportunities in science by the creation of a center that will offer children and teachers activities and information derived from American space research; and

Whereas the *Challenger* Center is the only institution expressly established by the immediate families of the crew of the *Challenger* for the above-named purposes, and is intended to be the living expression of the Nation's commemoration of the *Challenger* crew: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That January 28, 1989, is designated as "National *Challenger* Center Day" and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day—

(1) by resolving that in the course of their regular activities the people of the United States will remember both the *Challenger* astronauts who died while serving their country, and the importance of the *Challenger* Center in honoring the accomplishments of the *Challenger* crew by continuing their goal of the expansion of interest and ability in space and science education; and

(2) with other appropriate ceremonies and activities.

NATIONAL ADOPTION WEEK

The joint resolution (S.J. Res. 372) to designate the week beginning November 21, 1988, through November 27, 1988, as "National Adoption Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

Whereas the week of November 21 has been commemorated as National Adoption Week for the past ten years;

Whereas we in Congress recognize the essential value of belonging to a secure, loving permanent family as every child's basic right;

Whereas approximately fifty thousand children who have special needs—school age, in sibling groups, members of minorities, or children with physical, mental, and emotional handicaps—are now in foster care or institutions financed at public expense and are legally free for adoption;

Whereas the adoption by capable parents of these institutionalized or foster care children into permanent, adoptive homes would insure the opportunity for their continued happiness and long-range well-being;

Whereas public and private barriers inhibiting the placement of these special needs children must be reviewed and removed where possible to assure these children's adoption;

Whereas the public and prospective parents must be informed of the availability of adoptive children;

Whereas a variety of media, agencies, adoptive parent and advocacy groups, civic and church groups, businesses, and industries will feature publicity and information to heighten community awareness of the crucial needs of waiting children; and

Whereas the recognition of Thanksgiving week as "National Adoption Week" is in the best interest of adoptable children and the public in general: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of November 21, 1988, through November 27, 1988, hereby is designated "National Adoption Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NATIONAL YOUTH 2000 WEEK

The joint resolution (S.J. Res. 385) to designate September 11 through 17, as "National Youth 2000 Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

Whereas demographic trends show that by the year 2000 there will be a job available for every qualified young person who wants one;

Whereas employment opportunities will increasingly require workers who are able to read, compute, and learn new skills, and who have acquired education or training beyond high school;

Whereas young people must begin now to prepare and qualify themselves for these employment opportunities;

Whereas 10 to 15 percent of our 16-to-19 year old youth are presently at risk of not successfully making the transition from adolescence into productive and responsible adulthood due to various, often interrelated, problems such as teenage pregnancy, alcohol and drug abuse, dropping out of school, illiteracy, homicide, suicide, and automobile accidents;

Whereas these problems, although particularly acute among our urban and rural poor, cut across all social, economic, and geographic boundaries;

Whereas there is a need for the support, involvement, and commitment of all sectors of society (including business, labor, and religious organizations, voluntary and professional organizations, educational institutions, Federal, State and local governments, adults, parents, and young people themselves) in addressing these problems and working together to develop solutions that build on the strengths of the community and the family;

Whereas there is an urgent need for heightened public awareness about the issues that threaten to prevent millions of young people from becoming healthy, motivated, and self-sufficient members of society;

Whereas our Nation needs the productive energies of all its youth to ensure continued social and economic progress as we move into the 21st century; and

Whereas Youth 2000 is a nationwide "call to action" between now and the year 2000 designed to enlist the involvement of all sectors of society in helping vulnerable and at-risk youth achieve social and economic self-sufficiency and fulfill their potential as viable, contributing members of society: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning September 11, 1988, is designed as "National Youth 2000 Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NATIONAL GRASSLANDS WEEK

The joint resolution (S.J. Res. 386) to designate the week of June 18 through June 24, 1989, as "National Grasslands Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

Whereas there are nearly 4,000,000 acres of publicly owned grasslands located in 14 States across the United States;

Whereas these national grasslands are managed according to the principles of land conservation, multiple-use of land, promotion of development of grassland agriculture and sustained-yield management of forage, fish, wildlife, timber, water, and recreational resources;

Whereas millions of Americans and visitors to our Nation enjoy our national grasslands for camping, hiking, fishing, boating, hunting, snow-mobiling, biking, cross-country skiing, and many other outdoor activities each year;

Whereas our national grasslands continue to provide employment and local stability to rural America and contribute approximately $750,000,000 to gross national product of our Nation from livestock grazing, energy, environmental, tourism, and recreation industries;

Whereas our national grasslands contain an abundant storehouse of historical, archaeological, and anthropological artifacts unique to North America;

Whereas our national grasslands comprise a unique ecosystem providing our Nation with water, minerals, soils, plants, and animals in a habitat not found elsewhere; and

Whereas our national grasslands provide a model demonstrating for the public the principles of conservation, cooperation, multiple-use of the land, and an appreciation of natural resources: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of June 18 through June 24, 1989, is designated "National Grasslands Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this week with appropriate ceremonies and activities.

NATIONAL TEACHER APPRECIATION DAY

The joint resolution (S.J. Res. 355) designating October 7, 1988, as "National Teacher Appreciation Day," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and preamble, are as follows:

S.J. Res. 355

Whereas education of the Nation's youth is the foundation of the Nation's future;

Whereas education is a lifelong process which is beneficial to the individual and thus beneficial to the entire Nation;

Whereas teachers deserve credit for their invaluable role in providing education;

Whereas teaching not only involves traditional areas of education, but today also includes vocational education, continuing education, and education for special needs;

Whereas teachers contribute not only to the academic growth of students, but also to their ethical, social, and emotional development;

Whereas Sharon Christa McAuliffe, a high school history teacher, exemplified the attributes of the Nation's teachers and made a unique contribution to the teaching profession through her participation in the space shuttle program which, tragically, resulted in her death;

Whereas a student's respect for his or her teacher is essential to the student's ability to learn; and

Whereas the contributions of teachers should be celebrated often in order to honor the role of teachers in society and to affirm and foster respect for teachers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 7, 1988, is designated as "National Teacher Appreciation Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SOLID WASTE DISPOSAL

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3515.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3515) to amend the Solid Waste Disposal Act to require the Administrator of the Environmental Protection Agency to promulgate regulations on the management of infectious waste.

AMENDMENT NO. 3637

Mr. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. BAUCUS and Mr. CHAFEE.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. BAUCUS (for himself and Mr. CHAFEE), proposes an amendment numbered 3637.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Amend section 2(a) by—

(1) striking new section 11001 (b) and inserting in lieu thereof the following:

"(b) OPT OUT.—(1) If the Governor of any State covered under subsection (a) which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

"(2) If the Governor of any other State covered under subsection (a) notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subtitle and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subtitle, remove such State from the demonstration program.

"(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subtitle.";

(2) amending new section 11002(a)(5) by inserting "animal" immediately after "contaminated".

(3) striking new section 11002(a)(10) and inserting in lieu thereof the following:

"(10) Biological waste and discarded materials contaminated with blood, excretion, excudates or secretion from human beings or animals who are isolated to protect others from communicable diseases.

"(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment."; and

(4) amending new section 11009 by striking "9 months" and inserting in lieu thereof "24 months".

Mr. BRADLEY. Mr. President, I am very pleased that we are about to pass important legislation to ensure that a program to track medical waste will be implemented by the Environmental Protection Agency. For 2 years, I have been pressing for action on the medical waste problem. I have not been alone in that effort. Senator LAUTENBERG has been vigorously urging action as well. Finally last August, under the auspices of the regional EPA and the congressional offices, New York and New Jersey acted in the absence of national standards to develop a regional medical waste tracking system. Congress has reinforced that action by requiring a broader tracking effort in the region. But when legislation first passed the Senate, we wanted to be sure that our legislation did not interfere with nor duplicate the regulations that New Jersey and New York were already developing with the concurrence of the EPA regional office. Our hope was that the enforcement authority we directed the Federal Government to establish would demonstrate how best to proceed to a national tracking system.

Although the original Senate bill has been broadened, our purpose remains the same. My intent and expectation is that the EPA will use the experience of New Jersey and New York as a model for the regulations they will implement before the beginning of next summer. I want to make it very clear that EPA should avoid any kind of duplication. If the tracking program in place in New Jersey and New York is functionally equivalent to the system EPA plans to implement in a broader area, there should be no requirement to duplicate forms or send them out to generators which had been notified previously.

Mr. MOYNIHAN. I wish to associate myself with the Senator's remarks and concur with their intent and particulars.

Mr. BAUCUS. Mr. President, I am pleased to support the medical waste tracking bill as amended. As my colleagues may recall, the Senate favorably approved the New Jersey, New York, Connecticut Medical Waste Tracking Act on August 3.

Senators LAUTENBERG, MOYNIHAN, BRADLEY, CHAFEE, and DODD are to be commended for their willingness to work on this legislation which begins to stop this reckless handling of medical wastes. The legislation before us today expands the Senate's proposal. The bill also includes States bordering the Great Lakes in the demonstration program.

We need legislation like this to begin to better manage our Nation's medical wastes. And Congress must act now because EPA has failed to act.

EPA has had authority to regulate medical wastes since 1976. Over a decade later, nothing has happened. That's not exactly true—nothing good has happened. This past summer we have all been horrified to learn about the hypodermic needles and vials of contaminated blood floating in our sea and lining our beaches.

The legislation that we are considering today is a welcome start to preventing medical wastes from washing ashore.

It will require medical waste tracking in New Jersey, New York, Connecticut and the States surrounding the Great Lakes for 24 months.

It will put in place for these States a tracking system that must be used by all medical waste generators producing more than 50 pounds of medical waste per month—including physicians, medical clinics, and hospitals.

It will require the proper handling of contaminated sharps, discarded surgical and laboratory materials, wastes that come in contact with infectious agents, and other medical wastes.

And it will require quick action—so that next summer, sun-bathers can visit the beach without the threat of being invaded by needles, blood bags, and other medical wastes.

But, I want to caution my colleagues that this legislation is a demonstration program—nothing more. It should not be viewed as a panacea for resolving our Nation's medical waste problems.

Our medical waste problems are not confined to the shores that border the States in this demonstration program. Its true that most of what we have read in the papers, and seen on television has been about the needles and blood bags that have washed up on many of these beaches. However, medical waste mismanagement is becoming the rule and not the exception in many parts of the Nation.

When a dentist puts used needles in a plastic bag, and one of the needles gets stuck in the trash collector's shoulder it is clear that more than our shores are at risk.

When a welder fixing a garbage truck gets punctured by a glass tube filled with blood, shoving it into his hand, it is clear that more than our shores are at risk.

When a human arm and leg are spotted in a municipal landfill in Oklahoma, it is clear that more than our shores are at risk.

And when children playing in a trash bin in Youngstown, OH, get splattered with broken vials of blood and poke themselves with needles while playing "doctor," it is clear that the problem goes beyond our beaches.

We must act to stop these tragedies from becoming as common as our morning coffee. We must enact legislation that will ensure that the 5 million tons of medical wastes that we generate every year is safely managed.

We must be especially tough on the 10 to 15 percent of this waste which is infectious.

And we must be tough not only on our hospitals but on our Nation's 300,000 small quantity medical waste generators. We must make sure that all medical waste generators—medical laboratories, private physicians and dentists, outpatient clinics, nursing homes, and blood banks—manage all of their medical wastes safely. The trauma to a child that is punctured by a needle is the same whether it came from a hospital or from a doctor's office.

We must make sure that used syringes, needles and other contaminated sharps are placed in leak-proof and puncture-proof containers and safely disposed. They must not be dumped on our beaches or even worse end up in the hands of our children.

And we must make sure that blood, serum, tissues, body parts, and other medical and laboratory wastes are safely managed to prevent injury and infection. It is a crime that in America nearly 200 health care workers die every year from contracting hepatitis B in the workplace. We must protect our health care workers from exposure to these deadly diseases.

Mr. President, as you can see medical wastes have not just washed up on our shores, they have been also abandoned on our door steps.

The RCRA reauthorization bill, S. 2773, that I introduced on September 9 along with Senator DURENBERGER, mandates a comprehensive program to fully address these medical waste problems—as well as the larger problem of solid waste management.

It is the opinion of this Senator, that the medical waste problem will not completely be solved until we tackle the larger issue of waste prevention and waste management. S. 2773 proposes a comprehensive, coherent and enforceable system for managing all solid wastes—including medical wastes.

With respect to medical wastes, S. 2773 will require—

Tracking from generation to disposal;

Storage and transport in clearly labeled leakproof and puncture-proof containers;

Incineration in a permitted unit equipped with the best available emissions controls—or sterilization to render the waste noninfectious:

And it will provide authority for a State or the Federal Government to take civil and criminal enforcement actions against those who ignore the law.

The Medical Waste Tracking Act of 1988 is a necessary first step in controlling medical wastes. The knowledge we learn from this demonstration program will serve as a basis for enacting a strong and effective national medical waste management program. I commend my colleagues for their leadership on this issue and look forward to working with them to reauthorize RCRA next year.

Mr. CHAFEE. Mr. President, I am pleased to rise in support of this bill, the Medical Waste Tracking Act of 1988. On August 3, I had the pleasure of managing, with my good friend from New Jersey, Senator Lautenberg, the Senate version of this bill, S. 2680. Our bill received the support of the entire Senate and today we are considering the House-passed measure.

This bill directs EPA to implement a tracking system which will trace the path of medical waste in New York, New Jersey, Connecticut, and the Great Lakes States from "cradle to grave". This system will create a paper trail from waste producer to disposal site.

As passed by the House, all of these States would have been allowed to "opt out" of the demonstration program without having to make even a minimal showing that they have an adequate substitute in its place. The Senate bill mandated the inclusion of the three Atlantic Coast States, New York, New Jersey and Connecticut, no if's and's or but's.

To resolve this difference, Senator Baucus and I have an amendment that allows the Great Lakes States to opt out as in the House bill but would require the Atlantic Coast States to convince the Administrator of EPA that they have a program no less stringent than the Federal demonstration program before they can be excused from the demonstration program.

This amendment accommodates the concern of the Senate and those of us from the east coast whose beaches were littered with medical waste this past summer while, at the same time, respecting the position of the House and Members from the Great Lakes States who have not had the opportunity to explore this matter fully with their home States and need to preserve the option for them to opt out.

One measure of stringency that EPA must consider when reviewing opt out notices from Atlantic Coast States is the small quantity generator issue. Obviously, since the Federal program does not include a small quantity generator exemption but merely authorizes the Administrator to create one that does not exceed 50 pounds per month, any State program that excludes generators of more than 50 pounds per month can not qualify for the opt out. There are many more measures that must be considered but the small quantity generator issue is the first and the easiest one on which to base a decision. If you cannot pass that threshold, test, you are out of luck.

In addition to the tracking program, this measure will impose criminal penalties on those convicted of improper disposal of medical waste. Anyone implicated in polluting our oceans with hypodermic needles, vials of infectious material and other medical wastes should not just be slapped with a stiff fine, but should spend years behind bars. These actions endanger public health, and those convicted ought to be treated like the criminals they are.

This past summer, over 100 pieces of medical waste were found washed up on Rhode Island beaches. Some amount of infectious waste has been found on nearly every beach in our State.

Fortunately, the amount and types of medical waste washing up on New England beaches was not sufficient to require the closing of New England beaches—at least not this year. In New York, however, it was a different story. There several beaches had to be closed down because it was deemed unsafe for beachgoers to risk coming in contact with infectious waste.

We must not allow this same fact to befall New England beaches.

We cannot continue to use the ocean as a receptacle for all of society's waste. We must make the tough decisions necessary to insure that medical waste will not continue to mar our beaches.

Mr. LAUTENBERG. Mr. President, I rise in support of H.R. 3515, the Medical Waste Tracking Act of 1988. This bill takes the first step toward addressing the problem of illegal disposal of medical wastes which has affected our beaches and shorelines the past two summers. It builds upon legislation, S. 2680, which Senators Moynihan, Bradley and others joined me in introducing earlier this year and which passed the Senate on August 3.

Mr. President, I want to thank Senator Baucus, the chairman of the Subcommittee on Hazardous Wastes and Toxic Substances and Senator Durenberger, the subcommittee's ranking Republican member for their assistance in moving this legislation. H.R. 3515, like S. 2680, deals with the emergency facing our region.

Last summer, the New Jersey shoreline was invaded by a sea of garbage, an invasion which included hypodermic needless, syringes, blood bags, gauze dressings, vials of blood and other medical wastes. From August 13 through August 16, beaches along a 50-mile area were closed because of the garbage washup which included these medical wastes. These closings ruined summer vacations, severely damaged the tourist industry and cost thousands of dollars to clean up. More importantly, the washup undermined the confidence of those who go to the shore about the safety of the water and beaches.

The medical wastes appear to be the work of illegal dumpers. These dumpers threaten the well-being of their fellow citizens to save a few dollars in disposal costs. It is clear from last year's events that more needs to be done to prevent this illegal disposal.

In response, Senator Bradley, together with myself, and 25 other coastal State Senators wrote to EPA on October 20, 1987. We urged the Agency to take immediate action. We urged EPA to implement a system to track medical wastes so that we can be confident that this waste is properly disposed. EPA has had authority under the Resource Conservation and Recovery Act since 1976 to implement such a system. But EPA has chosen not to use that power.

And while EPA sits and thinks about what to do, medical wastes continue to defile New Jersey's shoreline. One woman on a beach in Beach Haven was stuck by a needle as she lay down on the sand. People thinking about a day at the beach shouldn't have to worry that their children will be playing with needles they find in the sand.

But the illegal disposal of garbage and medical waste affects not only New Jersey. Medical waste has washed ashore along the east coast from North Carolina to Massachusetts and on Great Lakes beaches in Michigan and Ohio. Numerous beaches have been closed. Thousands of pieces of medical waste, together with tons of other debris, have washed ashore this year.

When medical wastes are disposed improperly, beaches are closed, vacations are ruined and our tourist economy is injured. Medical waste on the shore is repulsive.

And our health is threatened. While there is virtually no chance of being infected by the AIDS virus because of the virus's poor ability to exist outside the human body, there is a danger of infection from these wastes including infection by hepatitis B. Spending a day at the beach shouldn't have to be followed by a day at the doctor. A week relaxing at the beach shouldn't have to be followed by a week of anxiety waiting for test results.

Some States have moved in to fill this void. But wastes travel across State boundaries so State programs by themselves are inadequate. Without a system to track wastes on a regional basis, we make it easy for the illegal dumper to improperly dispose of his wastes. A tracking system will also deter those who comtemplate illegally disposing of medical waste.

To respond to this crisis, in August the Senate unanimously passed my bill, S. 2680, the New Jersey-New York-Connecticut Medical Waste Tracking Act. The bill requires EPA to set up a demonstration program for the tracking of medical waste generated in New Jersey, New York, and Connecticut within 9 months. Violations of the regulations will result in severe penalties. States would be allowed to impose more stringent requirements. And EPA would have to report to the Congress within 3 years on the demonstration program.

H.R. 3515 builds on the Senate bill. It expands the demonstration program to include Great Lakes States and allows other States to join the demonstration effort. It gives the Administrator more precise guidance on how to define medical waste. It specifically allows States to adopt more stringent requirements and maintains the tough penalties in the Senate bill for violations of the bill. And it requires EPA to report to Congress on the program. I want to commend Congressmen LUKEN and FLORIO who have taken the leadership on this legislation in the House.

Our oceans and beaches are precious resources. They provide aesthetic, recreational and economic opportunities for our citizens and habitat for wildlife resources. EPA has failed to protect them. We must not. We must protect them, for this and for future generations.

I urge my colleagues to support H.R. 3315.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3637) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read a third time, the question is, Shall the bill pass?

So the bill (H.R. 3515), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WHISTLEBLOWER PROTECTION ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 508.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 508) entitled "An Act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Whistleblower Protection Act of 1988".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978, Congress established the Office of Special Counsel to protect whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) from reprisal.

(b) PURPOSE.—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and

(2) establishing—

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers, from prohibited personnel practices;

(B) that the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel; and

(C) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.

SEC. 3. MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; INDIVIDUAL RIGHT OF ACTION.

(a) IN GENERAL.—Chapter 12 of title 5, United States Code, is amended to read as follows:

"CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION

"Subchapter I—Merit Systems Protection Board

"Sec. 1201. Appointment of members of the Merit Systems Protection Board.
"Sec. 1202. Term of office; filling vacancies; removal.
"Sec. 1203. Chairman; Vice Chairman.
"Sec. 1204. Powers and functions of the Merit Systems Protection Board.
"Sec. 1205. Transmittal of informtion to Congress.
"Sec. 1206. Annual report.

"Subchapter II—Office of Special Counsel

"Sec. 1211. Establishment.
"Sec. 1212. Powers and functions of the Office of Special Counsel.
"Sec. 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.
"Sec. 1214. Investigation of prohibited personnel practices; corrective action.
"Sec. 1215. Disciplinary action.
"Sec. 1216. Other matters within the jurisdiction of the Office of Special Counsel.
"Sec. 1217. Transmittal of information to Congress.
"Sec. 1218. Annual report.
"Sec. 1219. Public information.

"Subchapter III—Individual Right of Action in Certain Reprisal Cases

"Sec. 1221. Individual right of action in certain reprisal cases.
"Sec. 1222. Availability of other remedies.

"Subchapter I—Merit Systems Protection Board

"§ 1201. Appointment of members of the Merit Systems Protection Board

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

"§ 1202. Term of office; filling vacancies; removal

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of the member's predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than 1 year after the date on which the term of the member would otherwise expire under this section.

"(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"(c) During the absence or disability of both the Chairman and the Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

"§ 1204. Powers and functions of the Merit Systems Protection Board

"(a) The Merit Systems Protection Board shall—

"(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

"(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) and enforce compliance with any such order;

"(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

"(4) review, as provided in subsection (f), rules and regulations of the Office of Personnel Management.

"(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

"(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.

"(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2)(A), upon application by the Board, the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.

"(e)(1)(A) In any proceeding under subsection (a)(1), any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Managment.

"(B)(i) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

"(ii) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).

"(2)(A) In enforcing compliance with any order under subsection (a)(2), the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued, and no payment shall be made out of the Treasury of the United States for any service specified in such order.

"(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).

"(3) In carrying out any study under subsection (a)(3), the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed.

"(f)(1) At any time after the effective date of any rule or regulation issued by the Director of the Office of Personnel Management in carrying out functions under section 1103, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Council requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b); or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b).

"(3) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(4) The Board shall require any agency—

"(A) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(B) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

"(g) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

"(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

"(i) Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

"(j) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

"(k) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

"(l) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

"(m) Whenever it considers alternative places for conducting a hearing or other proceeding brought by or on behalf of an employee, former employee, or applicant for employment, the Board shall, to the extent practicable, select the place closest to the location of the position held, formerly held, or sought by the individual involved, unless the total administrative costs to the Government in conducting such proceeding would be lesser elsewhere.

"§ 1205. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

"§ 1206. Annual Report

"The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its function under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

"Subchapter II—Office of Special Counsel

"§ 1211. Establishment

"(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

"(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

"§ 1212. Powers and functions of the Office of Special Counsel

"(a) The Office of Special Counsel shall—

"(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

"(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

"(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

"(B) file a complaint or make recommendations for disciplinary action under section 1215;

"(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, filed a written complaint with the Board; and

"(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

"(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, taske depositions, and receive evidence.

"(2) The Special Counsel may—

"(A) issue subpoenas; and

"(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

"(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), upon application by the Special Counsel, the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(B) A subpoena under paragraph (2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

"(4) Witnesses (whether appearing voluntary or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Office of Special Counsel, and represent the Office, in any civil action brought in connection with any function carried out by the Office pursuant to this title or as otherwise authorized by law.

"(d)(1) Except as provided in paragraph (2), the Special Counsel many as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

"(2)(A) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual, except as provided in subparagraph (B).

"(B) The Special Counsel may intervene as a matter of right in an action or appeal referred to in subparagraph (A) if—

"(i) the individual bringing such action or appeal has been charged with conduct constituting a prohibited personnel practice, and the Special Counsel has reasonable grounds to believe that the prohibited personnel practice has occurred, exists, or is to be taken; or

"(ii) the agency initiated the contested personnel action against the individual with the approval of the Special Counsel under section 1214(f).

"(3)(A) The Special Counsel may obtain judicial review of any final order or decision of the Merit Systems Protection Board in any proceeding in which the Special Counsel was a party (other than an order or decision in an action brought under section 1215, unless or to the extent that the order or decision involves conduct covered by section 2302(b)(8)).

"(B) A petition for review under this paragraph shall be filed with such court, and within such time, as provided for under section 7703(b).

"(e)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VII of chapter 33).

"(f) the Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

"(g) The Special Council may not issue any advisory opinions concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

"(h)(1) The Special Counsel may not respond to any inquiry or provide information concerning any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

"(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning a matter described in subparagraph (A) or (B) of section 2302(b)(2) in connection with a person described in paragraph (1)—

"(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

"(B) except upon request of an agency which requires such information in order to make a determination concerning an individual's having access to information the unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.

"§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

"(a) This section applies with respect to—

"(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

"(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

"(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

"(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

"(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

"(23) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

"(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

"(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

"(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

"(1) a summary of the information with respect to which the investigation was initiated;

"(2) a description of the conduct of the investigation;

"(3) a summary of any evidence obtained from the investigation;

"(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(5) a description of any action taken or planned as a result of the investigation, such as—

"(A) changes in agency rules, regulations, or practices;

"(B) the restoration of any aggrieved employee;

"(C) disciplinary action against any employee; and

"(D) referral to the Attorney General of any evidence of a criminal violation.

"(e)(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy of the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

"(2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency appear reasonable; and

"(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

"(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complaints pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General.

"(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and Comptroller General together with a statement noting the failure of the head of the agency to file the required report.

"(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

"(1) the report shall not be transmitted to the complainant; and

"(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(g)(1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head. If the Special Counsel does not transmit the information to the head of the agency, the Special Counsel shall return any documents and other matter provided by the individual who made the disclosure.

"(2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

"(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall—

"(A) return any documents and other matter provided by the individual who made the disclosure; and

"(B) inform the individual of—

"(i) the reasons why the disclosure may not be further acted on under this chapter; and

"(ii) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

"(h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines—

"(1) that the disclosure of the individual's identity is necessary in order to carry out the functions of the Special Counsel; or

"(2) that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

"(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

"(1) specifically prohibited from disclosure by any other provision of law; or

"(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"§ 1214. Investigation of prohibited personnel practices; corrective action

"(a)(1)(A) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(B) Within 15 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall provide written notice to the person who made the allegation that—

"(i) the allegation has been received by the Special Counsel; and

"(ii) shall include the name of a person at the Office of Special Counsel who shall serve as a contact with the person making the allegation.

"(C) Unless an investigation is terminated under paragraph (2), the Special Counsel shall—

"(i) within 90 days after notice is provided under subparagraph (B), notify the person who made the allegation of the status of the investigation and any action taken by the Office of the Special Counsel since the filing of the allegation;

"(ii) notify such person of the status of the investigation and any action taken by the Office of the Special Counsel since the last notice, at least every 60 days after notice is given under clause (i); and

"(iii) notify such person of the status of the investigation and any action taken by the Special Counsel at such time as determined appropriate by the Special Counsel.

"(2)(A) If the Special Counsel terminates any investigation under paragraph (1), the

Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of—

"(i) the termination of the investigation;

"(ii) a summary of relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the allegations of such person; and

"(iii) the reasons for terminating the investigation.

"(B) A written statement under subparagraph (A) may not be admissible as evidence in any judicial or administrative proceeding, without the consent of the person who received such statement under subparagraph (A).

"(3) Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board. An employee, former employee, or applicant for employment may seek corrective action from the Board under section 1221, if such employee, former employee, or applicant seeks corrective action for a prohibited personnel practice described in section 2302(b)(8) from the Special Counsel and—

"(A)(i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and

"(ii) no more than 60 days have elapsed since notification was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or

"(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

"(4) If an employee, former employee, or applicant seeks a corrective action from the Board under section 1221, pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee, former employee, or applicant only with the consent of such employee, former employee, or applicant.

"(5) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

"(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

"(C) The Board shall allow any agency which is the subject of a stay to comment to the Board on any extension of stay proposed under subparagraph (B).

"(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board—

"(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered; or

"(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

"(2)(A) If, in connection with any investigation, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved and to the Office of Personnel Management, and may report such determination, findings and recommendations to the President. The Special Counsel may include in the report recommendations for corrective action to be taken.

"(B) If, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

"(C) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such findings with the Board, together with any written comments which the individual may provide.

"(3) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for—

"(A) oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management; and

"(B) written comments by any individual who alleges to be the subject of the prohibited personnel practice.

"(4)(A) The Board shall order such corrective action as the Board considers appropriate, if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice, other than one described in section 2302(b)(8), has occurred, exists, or is to be taken.

"(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the Special Counsel has demonstrated that a disclosure described under section 2302(b)(8) was a factor in the personnel action which was taken or is to be taken against the individual.

"(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

"(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained—

"(A) by any employee, former employee, or applicant for employment adversely affected by such order or decision; of

"(B) by the Special Counsel.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless—

"(A) the alleged violation has been reported to the Attorney General; and

"(B) the Attorney General is pursuing an investigation, in which case the Special Counsel has discretion as to whether to proceed.

"(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

"(1) that the head of the agency has personally reviewed the report; and

"(2) what action has been or is to be taken, and when the action will be completed.

"(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"§ 1215. Disciplinary action

"(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

"(A) committed a prohibited personnel practice,

"(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

"(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel Shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

"(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

"(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

"(B) be represented by an attorney or other representative;

"(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

"(D) have a transcript kept of any hearing under subparagraph (C); and

"(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

"(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

"(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

"(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

"(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

"§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

"(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

"(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

"(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

"(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5), if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(c)(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

"(2) If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved.

"§ 1217. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Special Counsel or any employee of the Special Counsel designated by the Special Counsel, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

"§ 1218. Annual report

"The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

"§ 1219. Public information

"(a) The Special Counsel shall maintain and make available to the public—

"(1) a list of noncriminal matters referred to heads of agencies under subsection (c) of section 1213, together with reports from heads of agencies under subsection (c)(1)(B) of such section relating to such matters;

"(2) a list of matters referred to heads of agencies under section 1215(c)(2);

"(3) a list of matters referred to heads of agencies under subsection (f) of section 1214, together with certifications from heads of agencies under such subsection; and

"(4) reports from heads of agencies under section 1213(g)(1).

"(b) The Special Counsel shall take steps to ensure that any list or report made available to the public under this section does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

"Subchapter III—Individual Right of Action in Certain Reprisal Cases

"§ 1221. Individual right of action in certain reprisal cases

"(a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board.

"(b) This section may not be construed to prohibit any * * *

* * * * *

or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.

"(2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.

"(e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant.

"(2) Corrective action under paragraph (1) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

"(f)(1) A final order or decision shall be rendered by the Board as soon as practicable after the commencement of any proceeding under this section.

"(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

"(g) If an employee, former employee, or applicant for employment is the prevailing party, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

"(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(i) Subsections (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) is alleged.

"(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

"§ 1222. Availability of other remedies

"Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.".

(b) Conforming Amendment.—The analysis for part II of title 5 of the United States Code is amended by striking the item relating to chapter 12 and inserting the following:

"12. Merit Systems Protection
Board, Office of Special Counsel,
and Individual Right of Action........ 1201".

SEC. 4. REPRISALS.

(a) Amendments to Section 2302(b)(8).—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) by inserting ", or threaten to take or fail to take," after "take or fail to take";

(2) by striking out "as a reprisal for" and inserting in lieu thereof "because of";

(3) in subparagraph (A) by striking out "a disclosure" and inserting in lieu thereof "any disclosure";

(4) in subparagraph (A)(ii) by inserting "gross" before "mismanagement";

(5) in subparagraph (B) by striking out "a disclosure" and inserting in lieu thereof "any disclosure"; and

(6) in subparagraph (B)(ii) by inserting "gross" before "mismanagement".

(b) Amendment to Section 2302(b)(9).—Section 2302(b)(9) of title 5, United States Code, is amended to read as follows:

"(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

"(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

"(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

"(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

"(D) for refusing to obey an order that would require the individual to violate a law;".

SEC. 5. PREFERENCE IN TRANSFERS FOR WHISTLEBLOWERS.

(a) In General.—Subchapter IV of chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3352. Preference in transfers for employees making certain disclosures

"(a) Subject to the provisions of subsections (d) and (e), in filling a position within any Executive agency, the head of such agency may give preference to any employee of such agency, or any other Executive agency, to transfer to a position of the same status and tenure as the position of such employee on the date of applying for a transfer under subsection (b) if—

"(1) such employee is otherwise qualified for such position;

"(2) such employee is eligible for appointment to such position, and

"(3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 3202(b)(8) was taken against such employee.

"(b) An employee who meets the conditions described under subsection (a)(1), (2), and (3) may voluntarily apply for a transfer to a position, as described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

"(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons for the rejection within 30 days after receiving such application.

"(d) An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

"(e) The provisions of subsection (a) shall apply with regard to any employee—

"(1) for no more than 1 transfer;

"(2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and

"(3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

"(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.".

"(b) Technical Amendment.—The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3351 the following:

"§ 3352. Preference in transfers for employees making certain disclosures.".

SEC. 6. INTERIM RELIEF.

Section 7701 of title 5, United States Code, is amended—

(1) by redesignating subsection (b) as paragraph (1) of subsection (b); and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless—

"(i) the deciding official determines that the granting of such relief is not appropriate; or

"(ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and

"(II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

"(B) If an agency makes a determination under subparagraph (A)(ii)(III) that prevents the return or presence of an employee at the pace of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

"(C) Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision in final.".

SEC. 7. SAVING PROVISIONS.

(a) Orders, Rules, and Regulations.—All orders, rules, and regulations issued by the Merit Systems Protection Board or the Special Counsel before the effective date of this Act shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.

(b) Administrative Proceeding.—No provision of this Act shall effect any administrative proceeding pending at the time such provisions take effect. Orders shall be issued in such proceedings, and appeals shall be taken therefrom, as if this Act has not been enacted.

(c) Suits and Other Proceedings.—No suit, action, or other proceeding lawfully commenced by or against the members of the Merit Systems Protection Board, the Special Counsel, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act has not been enacted.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS; RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978; TRANSFER OF FUNDS.

(a) Authorization of Appropriations.—There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated—

* * * * *

(3) Section 1109(a) of the Foreign Service Act of 1980 (22 U.S.C. 4139(a)) is amended by striking "1206" and inserting "1214 or 1221".

(b) Section 3393(g) of title 5, United States Code, is amended by striking "1207" and inserting "1215".

SEC. 10. BOARD RESPONDENT.

Section 7703(a)(2) of title 5, United States Code, is amended to read as follows:

"(2) The Board shall be named respondent in any proceeding brought pursuant to this subection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorney fees, in which case the agency responsible for taking the personnel action shall be the respondent.".

SEC. 11. EFFECTIVE DATE.

This Act and the amendmemts made by this Act shall take effect 90 days following the date of enactment of this Act.

Mr. LEVIN. Mr. President, on August 8, 1988, we passed S. 508, the Whistleblower Protection Act of 1988. A similar bill, H.R. 25, was then pending before the House of Representatives.

Over the past month, we have worked extensively with Representatives Pat Schroeder and Frank Horton and their staffs to agree upon a bill that would be acceptable to both the House and Senate. Representatives Schroeder and Horton first introduced the whistleblower protection bill in the 99th Congress and have long been leaders in the effort to enhance the procedural protections available to Federal employees who disclose waste and fraud in the Government. I commend them for their tireless efforts on behalf of this legislation and for their helpful approach to resolving the differences between the House and Senate bills. I also commend their able staffs.

In addition to working on this legislation with Members of the House, we have been conferring with the relevant offices in the executive branch—the Office of Special Counsel, the Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, and the Department of Justice. The Director of OMB, Joe Wright, has been particularly interested in getting this legislation passed and has involved himself personally in several of the critical compromises we have been able to achieve.

Given the time limitations, in lieu of passing their own version of the bill, the House, earlier this week, passed the compromise bill that we had previously worked out with them. It is my understanding that this compromise is supported by both the administration and public interest groups advocating increased protections for whistleblowers. This broad range of support is a testament to the timeliness and importance of this legislation.

The key provisions of the bill now before the Senate are substantially the same as those in the bill that we passed in August.

Like the original Senate bill, the House-Senate compromise would authorize whistleblowers for the first time to appeal their own cases directly to the Merit Systems Protection Board if the Office of Special Counsel fails to act on their behalf.

Like the original Senate bill, this bill would make it substantially easier for the special counsel, or an employee, to prove that that retaliatory action has been taken in a whistleblowing case.

Like the original Senate bill, it would prohibit the special counsel from revealing information to an agency which had been disclosed in confidence by a whistleblower to the special counsel.

S. 508, as amended, enhances the authorities and responsibilities of the OSC to protect whistleblowers and other employees victimized by prohibited personnel practices. The bill states that the OSC should act in the interests of employees who seek its assistance in its efforts to determine whether a prohibited personnel practice has occurred. As explained in the Senate report, this language does not create a lawyer-client type relationship. While the bill places a special priority on corrective actions and on the protection of whistleblowers from retaliation, the special counsel should act to protect all employees from prohibited personnel practices and other activities prohibited by civil service laws, rules and regulations through its corrective and disciplinary actions.

I will not belabor other provisions of the bill, as they are fully explained in the Senate report, the House report, and the Joint Explanatory Statement that we have issued with the House managers of the bill. The Joint Explanatory Statement is printed in the Congressional Record for the House on October 3, 1988, and I fully endorse that statement. I recently received a letter from Representative Schroeder, the House manager of the bill, clarifying items 3 and 4 of the Joint Explanatory Statement, and I ask unanimous consent that Representative Schroeder's letter be entered in the Record immediately following this statement.

The Joint Explanatory Statement states that "with respect to the agency's affirmative defense, it is our intention to codify the test set out by the Supreme Court in the case of *Mt. Healthy School District* v. *Doyle*, 429 U.S. 274, 287 (1977)." I would like to make it clear that in referring to the agency's "affirmative defense," this statement is referring to the case that must be made by an agency in a dual motivation case to demonstrate that it "would have taken the same personnel action in the absence of such disclosure" under sections 1214(b)(4)(B)(ii) and 1221(e)(2) of the bill, regardless of the procedural posture of the case and whether the OSC or the employee brings the case. The change which we have reflected increases the level of proof which an agency must offer from "preponderance of the evidence" to "clear and convincing evidence" and makes it easier for the employee to have the agency personnel action reversed.

Mr. President, Federal employee whistleblowers can serve as an important check on fraud, waste, and abuse by identifying potential problems and abuses at an early stage. All too frequently, however, Federal employee whistleblowers appear to have been punished, rather than rewarded, for their efforts to save the taxpayers' money.

This bill provides substantial improvements in the laws protecting Federal employee whistleblowers, and I am pleased that it has achieved broad bipartisan support. Protecting whistleblowers is one of the simplest and one of the most effective means available to us to reduce the cost of and improve the functioning of the Federal Government. If we are going to achieve a more honest and efficient Government, it is essential that we restore confidence in Federal employees that their Government will respond in an ethical and responsible manner whenever they disclose wrongdoing.

I thank my cosponsors on this bill—Senators Grassley, Chiles, Riegle, Mitchell, Heinz, Cohen, Sarbanes, Adams, Durenberger, Burdick, Wirth, Gore, Matsunaga, Moynihan, DeConcini, Boren, Nunn, Karnes, Pryor, and Kennedy for their support in this effort. I particularly thank Senator Pryor and Senator Stevens, the chairman and ranking Republican on the Civil Service Subcommittee of the Governmental Affairs Committee which conducted the hearings on this bill. I also thank two very diligent members of my staff who deserve great credit for learning the legal and technical details of this complicated bill—Allie Giles and Peter Levine. Allie is now attending law school, and I think it was her work on this bill that convinced her that law is an intellectual challenge which can also provide an opportunity to improve people's lives. She did yeoman's work on this measure, and we in the Congress, the taxpayers, and future whistleblowers are grateful to her.

Finally, Mr. President, it has been called to my attention that there is a technical error in section 1219(a)(3) of the bill as passed by the House. Because the bill has already passed the House in this form, I am sending to the desk a concurrent resolution to correct this technical problem in the enrollment of S. 508.

Mr. GLENN. Mr. President, I rise in support of the House amendment to S. 508, the Whistleblower Protection Act of 1988, a bill to strengthen the protections available to Federal employees who "blow the whistle" on waste and fraud in Federal programs and enhance the role of the Office of Special Counsel in protecting those Federal employees. S. 508 was introduced by Senator Levin in February 1987 and was referred to the Governmental Affairs Committee. The committee favorably reported the bill to the Senate earlier this year and it passed on a voice vote.

Since Senate passage of the bill, the committee has worked closely with the House Committee on Post Office and Civil Service to reach agreement on strong whistleblower legislation which both Houses and the administration could support. I believe the House amendment to S. 508 more than meets this test. As a result, a conference on this legislation became unnecessary, and I recommend its speedy passage by the Senate and enactment into law.

Congress in 1978 created statutory whistleblower protection for Federal employees in the Civil Service Reform Act. The Office of Special Counsel—an office established pursuant to the 1978 law—was made part of the Merit Systems Protection Board, MSPB to investigate prohibited personnel practices and when appropriate, seek corrective action on behalf of the wronged employee before the Board. Unfortunately, for most of its existence, the Office has been severely criticized for failing to meet its congressional mandate. Indeed, in 1984, the MSPM estimated that 70 percent of Government waste and illegality goes unreported, in part because those Federal employees who personally observe it fear reprisal if they do report.

In order to encourage Federal workers to continue to report waste and fraud, and thereby save taxpayer money, we need to send a signal that the system will treat them fairly. S. 508 addresses this problem by establishing the Office as an independent agency and by clarifying in civil service law that its primary purpose is to protect employees, especially whistleblowers.

S. 508 also amends present civil service law to simplify the burden on the employee to show reprisal for whistleblowing and to establish that any personnel action against an alleged whistleblower must be justified by reasons other than the disclosure of waste and fraud. The elements of proof set forth in the House amendment strike an appropriate balance between ensuring management discretion and protecting employee's rights.

I urge my colleagues to vote in favor of this bill so that it may be sent to the President for his signature.

Mr. PRYOR. Mr. President, today we are considering S. 508, the Whistleblower Protection Act of 1988, as amended by the House. This bill is a victory for Federal workers who have blown the whistle on Government fraud and waste, and have been prosecuted for their honesty. Whistleblowers have come under attack over the past 8 years and have not received the protection that they deserve.

I would like to commend Senators LEVIN and GRASSLEY for their tireless work on this difficult issue. Congresswoman SCHROEDER and Congressman HORTON also deserve our thanks for their efforts in this area.

This bill is a substantial improvement to the protections currently available to whistleblowers. This legislation enables the Office of the Special Counsel to more vigorously protect employees and prosecute those managers who retaliate against whistleblowers. However, as has been demonstrated in hearings before the Subcommittee on Federal Services, Post Office and Civil Service, this legislation will only benefit employees if the Office of Special Counsel works to help and defend whistleblowers. Congress will continue to be concerned about the manner in which the Office of Special Counsel uses its considerable resources and will continue its oversight in this area.

S. 508 alters the current Mount Healthy test and replaces it with a standard which requires the agency to prove by clear and convincing evidence that it would have taken the personnel action even if the whistleblowing activity had not occurred. Currently, agencies only have to show by a preponderance of the evidence that the personnel action would have occurred. This change significantly heightens the standard of proof required from the agency. I am hopeful that this will improve the Office of Special Counsel's ability to protect whistleblowers from unwarranted personnel actions.

S. 508 provides interim relief to those whistleblowers who receive a favorable decision at the Merit Systems Protection Board, MSPB, regional level. This ensures that an employee will not suffer undue hardship waiting for a final decision from the MSPB. The bill also includes a transfer preference for whistleblowers to help them move to a new job if their relationship with management deteriorates as a result of their whistleblowing activity. This preference will only apply to whistleblowers who prevail at the Merit Systems Protection Board.

Mr. President, I believe that this bill addresses many of the concerns that have been raised about current statutory whistleblower provisions. With the assistance of a more vigilant Office of Special Counsel, whistleblowers will be better protected from retaliation and able to expose fraud, waste, and abuse without fear for their jobs.

Mr. GRASSLEY. Mr. President, the time could not be more appropriate than it is right now for the swift passage of the Whistleblower Protection Act. When Senator LEVIN and I introduced this bill last year, we knew that whistleblowers needed more protection and encouragement to disclose waste and corruption in the bureaucracy. But the Pentagon scandal disclosed just a few months ago indicates that reform is essential to the integrity of the Federal bureaucracy.

We learned that some within the defense establishment have been engaged in a gross abuse of public trust and the Federal Treasury. The entire defense procurement scandal was discovered as a result of one courageous individual, a former Navy employee, who reported an offer of inside information for a fee. That individual was no longer working for the Government when he disclosed the attempted sale of information.

But some civil servants, from the inside, are eye witnesses to waste, fraud, and abuse of Federal funds. And 70 percent of those who see wrongdoing are afraid to disclose what they see. First, they believe nothing will be done to correct the situation. And second, they risk their careers and their reputations because of the reprisals they are likely to suffer when they make such disclosures.

In 1978 Congress corrected some of the problems whistleblowers faced. But while the 1978 Civil Service Reform Act made some improvements, the last 10 years have not seen any major change in the institutional attitude toward whistleblowers. The Government still hands out the same prizes to whistleblowers—harassment, demotion, transfer, and discharge. In addition, the agency set up to investigate whistleblower claims, the Office of Special Counsel, has become a rubberstamp for reprisals against the whistleblower.

That is why this bill—the Whistleblower Protection Act—is so important. The legislation, passed by the House and now before the Senate, offers the whistleblower more protection and encouragement to reveal the wrongdoing within our Government.

First, the bill changes the way the Office of Special Counsel conducts its business. The OSC will become an independent agency, so it can be a better advocate for whistleblowers. In addition, we in the Congress will review the work of the OSC over the next 3 years to determine whether it is doing its job.

Second, this bill gives the whistleblower another avenue by which to challenge the Agency's action. Presently, if the OSC refuses to take a case, the whistleblower is stuck with the Agency's decision. Under the bill, the whistleblower would have a right to take the case directly to the Merit Systems Protection Board, after the OSC has had some opportunity to review and investigate the case.

Third, the bill eases the burden of proof the whistleblower will have to meet in order to show the retaliation was based on the whistleblowing activity. If the whistleblowing activity proves to be "a factor" in the employment decision, the employee meets his burden and the burden then shifts to the Agency. And the Agency must establish by "clear and convincing" evidence that whistleblowing activity did not play a part in the adverse employment decision.

This is long awaited legislation for our dedicated Federal employees. In addition, the American taxpayers will benefit by this bill—giving additional protection to the courageous employees who disclose the waste, fraud, and abuse will encourage them to come forward. And whistleblowers are an important asset in the management of an efficient and economic government.

Mr. ROTH. Mr. President, I rise today to express by support for the Whistleblower Protection Act of 1987. I believe that in light of the ongoing criminal investigation into the procurement process at the Defense Department and the historic problem of waste and fraud in Government, that a stronger Whistleblower Protection Act is needed to help to alleviate these very serious problems.

Mr. President, passage of the bill would strengthen the procedural protections available to Federal employees who "blow the whistle" on waste and fraud in Federal programs. During my over 20 years of service in Congress, I have learned first hand, that the problem of waste and fraud in Government is widespread and pervasive. The Whistleblower Protection Act is needed to reduce unnecessary and wasteful Government spending by encouraging and protecting Federal employees who report waste, fraud, and abuse. Many Federal employees are reluctant to report wrongdoing for fear of reprisal. I believe that in order to have an effective whistleblower law we must be able to encourage and protect those employees who decide to "blow the whistle" on waste and fraud in Government. I believe that this bill goes a long way toward accomplishing that goal.

Mr. President, passage of this bill would protect Federal employees who report waste, fraud, and abuse by enhancing the role of the Office of Special Counsel [OSC] in protecting the employee by making this office an independent agency, separate from the Merit System Protection Board [MSPB]. The bill also clarifies the purpose of the OSC by establishing that its primary role is the protection of employees, especially whistleblowers. The bill adds an important additional right for an employee to pursue a claim independent of the OSC.

The compromise legislation that is before us today retains the core provisions of the original bill, but does make several substantive and technical changes to the legislation which help to strengthen the law. For example, the legislation provides the MSPB the authority to grant protective orders to protect a witness or other individual from harassment. The bill facilitates the ability of a whistleblower to prove a prima facie case or retaliation and at the same time raises the level of proof required for an agency to meet in defending its actions. Finally, the bill addresses the desire of Congress and the administration for greater whistleblower protection.

Mr. President, passage of this bill is urgently needed to restore the faith of conscientious Federal employees in the fairness and integrity of our Federal service. Additionally, I believe that the act will contribute substantially to our efforts to eliminate the massive and perplexing problem of Government waste and fraud. A central component to eliminating waste is the ability of our Federal workers to exercise their civic duty and report any wrongdoing that they observe in the workplace. But we are fooling ourselves if we believe that this can occur without having adequate protections in place that will protect those employees who risk their jobs and career to expose the problems of waste and fraud in Government.

I believe that the bipartisan effort by the House, Senate, and the administration, sends a strong signal that the rights of whistleblowers will be strenuously protected and the laws enforced.

Mr. BYRD. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

CORRECTION IN THE ENROLLMENT OF S. 508

Mr. BYRD. Mr. President, I send to the desk a concurrent resolution by Mr. LEVIN to authorize a correction in the enrollment of S. 508. I ask unanimous consent that the measure be considered as having been reported, agreed to, and the motion to reconsider laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 160) was considered and agreed to, as follows:

S. CON RES. 160

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the text of the bill (S. 508) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes, the Secretary of the Senate is authorized and directed in the enrollment of such bill to make the following correction: in section 1219(a)(3) of title 5, United States Code, as added by section 3(a) of the bill, strike out "subsection (f)" and insert in lieu thereof "subsection (e)".

GROUND WATER RESEARCH, MANAGEMENT, AND EDUCATION ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1031, H.R. 791.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 791) to authorize the water resources research activities of the United States Geological Survey, and for other purposes, reported with an amendment in the nature of a substitute.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ground Water Research, Management, and Education Act of 1988".

SEC. 2. FINDINGS.

(a) The Congress finds that—

(1) ground water in the United States is a vast and complex resource comprising 96 per centum of the freshwater available for use;

(2) approximately one-half of the population of the United States and 95 per centum of those living in rural areas rely on ground water for drinking water supplies;

(3) recent surveys of the Environmental Protection Agency and by other agencies and organizations have identified ground water contamination problems in each of the several States including thousands of incidents which have forced abandonment of water supply wells or contaminated public water supply systems;

(4) sources of ground water contamination are diverse, including waste and nonwaste products and activities, point and nonpoint sources, and hazardous and nonhazardous substances;

(5) ground water contaminants are known to cause adverse health and environmental effects and to impose large costs in treatment and remediation;

(6) ground water and surface water are interconnected as related parts of the hydrologic cycle;

(7) ground water resources, uses and sources of contamination are of such diversity across the Nation that ground water protection and management must rely upon the States and local government institutions to identify priorities and implement programs to prevent, detect, and correct contamination;

(8) the Federal Government is making a substantial effort to control and clean up hazardous wastes and hazardous substances which may adversely impact ground water quality and consistent with that role has an interest in programs, developed in coordination with the States, which have a goal of preventing ground water contamination;

(9) most States already have ground water protection and management programs or are developing such programs;

(10) although considerable scientific progress has been made in knowledge about ground water resources and ground water contamination, including the transport, transformation, and fate of ground water contaminants and the effects of ground water contamination on human health and the environment, there remain significant gaps in developing and making available needed scientific knowledge;

(11) there is not an adequate effort by the Federal Government or by the States to collect and disseminate data and information concerning the location and characteristics of ground water;

(12) additional Federal research efforts in ground water are necessary to provide the States with adequate technical information and guidance upon which they can develop

and implement ground water management programs and can better evaluate the effects of the contamination on human health and environmental resources, and so that States can develop ground water standards where appropriate;

(13) presently available technologies to detect, monitor, and mitigate ground water contamination are expensive and highly limited in utility;

(14) there is not an adequate effort by the Federal Government or by the States to investigate, develop, and demonstrate methods, practices and techniques that may be effective in preventing, detecting, and correcting the contamination of ground water resources;

(15) there should be a continuing national investment in ground water and related research and technology commensurate with growing national needs;

(16) there is a shortage of qualified individuals schooled in the fields related to ground water hydrology, toxicology, geochemistry, and other pertinent disciplines, and a need to strengthen research and associated undergraduate and graduate education to provide qualified scientists and engineers, and technicians trained in fields related to ground water resources so that Federal and State agencies will have the personnel necessary to detect, assess, prevent, and remediate contaminated ground water resources;

(17) current Federal programs of research and development with respect to ground water require improved coordination; and

(18) the Federal Government lacks a clear and comprehensive statutory mandate to conduct ground water research.

(b) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Agency" means the United States Environmental Protection Agency;

(3) "assessment" when used with respect to ground water or ground water resources, means the description of the extent and hydrogeologic properties of aquifers; recharge and discharge areas, and flow paths; and the status of and trends in the quantity and quality of ground water at national, regional, and local levels;

(4) "assistance" means any assistance provided by any agency pursuant to provisions of this Act in the form of grants, loans, loan guarantees, property, contracts (except those for the procurement of goods and service of the Government of the United States), cooperative agreements or technical assistance, whether the recipient is a State or local government, a nonprofit organization or other person;

(5) "contaminant" means any solid, liquid, semi-solid, dissolved solid, or gaseous material naturally occurring or anthropogenic chemical, or parameter for measurement of water quality, or biological organism which in its original form or as a metabolite or degradation or waste product may impair the quality of ground water or may have an adverse effect on human health, welfare, or the environment as a constituent of ground water;

(6) "contract" means any contract, grant, agreement, understanding or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder;

(7) "contractor" means any person having a contract with or on behalf of the Administrator;

(8) "demonstration" means the initial exhibition of a new technology, process or practice or a significantly new combination or use of technologies, processes, or practices, for the purpose of proving technological feasibility and cost effectiveness;

(9) "develop" includes activities which assist in the transfer of technology to users of practices, methods, or techniques which may be effective in preventing, detecting or correcting ground water contamination;

(10) "Federal agency" or "agency of the United States" means any department, agency or other instrumentality of the Federal Government, including any independent agency or establishment of the Federal Government, any Government corporation, and the Tennessee Valley Authority;

(11) "ground water" means water below the land surface in the zone of saturation;

(12) "invention" means inventions or discoveries, whether patented or unpatented;

(13) "local government" means any city, town, borough, county, parish, district, or other public body which is a political subdivision of a State and which is created pursuant to State law;

(14) "made" when used in relation to any invention, means the conception or first actual reduction to practice of such invention;

(15) "nonprofit organization" means any organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation pursuant to the provisions of section 501(a) of such Code;

(16) "person" means an individual, trust, firm, joint stock company, corporation (including any government corporation), partnership, association, consortium, joint venture, State, local government, commission, regional agency, interstate agency, or Federal agency;

(17) "source" or "source or potential source of contaminants" includes, but is not limited to—

(A) any facility, building structure, installation, equipment, pipe, pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, tank, or activity which causes contaminants to migrate to ground water, or

(B) any site or area where a contaminant has been deposited, stored, disposed of, or placed, or otherwise come to be located so as to allow the discharge of such contaminant to ground water;

(18) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and federally recognized Indian tribes; and

(19) "vadose zone" or "unsaturated zone" means the zone between the land surface and the zone of saturation.

TITLE I—COORDINATION OF FEDERAL GROUND WATER RESEARCH AND EDUCATION PROGRAMS

SEC. 101. DUTIES OF THE PRESIDENT.

(a) The President shall provide for coordination of activities conducted by agencies of the United States Government related to ground water research, assessment, and monitoring, including technology development and transfer, information dissemination, training, and education.

(b) The President shall establish, within 90 days from the date of enactment of this title, an Interagency Ground Water Research Task Force to provide for the coordination of research, development, demonstration, technology transfer, training, and information dissemination activities authorized in this title.

SEC. 102. ESTABLISHMENT OF INTERAGENCY GROUND WATER RESEARCH TASK FORCE.

(a) The President shall appoint the members of the Interagency Ground Water Research Task Force from each Federal agency involved in ground water related activities, including the Environmental Protection Agency, the Department of the Interior, the Department of Agriculture, the Department of Energy, the Department of Defense, the National Science Foundation, and the Department of Health and Human Services. The Task Force shall be chaired by the Administrator of the Environmental Protection Agency. The Secretary of the Interior and the Secretary of Agriculture shall each serve as vice chairmen. The Task Force shall meet no less often than 4 times per year.

(b) The Interagency Ground Water Research Task Force shall—

(1) identify major research data needs and scientific uncertainties regarding ground water assessment, monitoring, protection, management, and remediation;

(2) recommend overall priorities and a coordinated research plan and where appropriate, disseminate such information to the President and Congress and other Federal agencies for addressing the data needs and scientific uncertainties identified;

(3) facilitate information collection, data management, and storage;

(4) review the academic and related institutional capabilities for education and training of scientists, geologists, hydrologists, and other ground water research related professions and identify opportunities for improving and strengthening education and training programs;

(5) otherwise facilitate, through joint funding and other means, interagency cooperation and coordination on ground water research, development and demonstration programs;

(6) consult with State and local governments, environmental organizations, scientific and professional organizations, industry, academia, and other appropriate institutions to determine the ground water research and information needs of State and local governments and other persons who have responsibilities for protecting or managing ground water resources; and

(7) recommend priorities for the assessment of ground water resources based on the threat to human health or the environment posed by contamination or likely contamination of those resources.

(c)(1) The Task Force shall submit an annual report to the President and Congress describing the results of the preceding year's research, progress and schedule updates, complete and incomplete programs, new

problems to be addressed, revisions of priorities for the program as a whole and for each agency or institution.

(2) The annual report shall serve as the management plan for the National ground water research program of the Federal Government and shall provide for coordination of all research, development and demonstration activities relating to the protection, maintenance, restoration, and management of ground water resources.

(3) The annual report of this section shall reflect an itemized list and discussion of major policy decisions as determined by individual agencies affecting all aspects of protection, maintenance, and restoration of ground water resources which are pending before the Federal Government or which will arise in the foreseeable future and shall specify in a comprehensive manner the type of research relevant to such policy decisions, and define the research and studies necessary to address the deficiencies in the available information.

(4) Every 2 years, the Task Force shall submit an analytical report which summarizes research findings and results of research, education, technical assistance, and demonstration programs.

(d)(1) Coordination shall recognize the principal roles of the participating agencies:

(A) The United States Department of Interior, acting through the Geological Survey, for research in the hydrologic sciences appraising the Nation's water resources, and providing hydrology and geochemical information;

(B) The Environmental Protection Agency for research relating to health and environmental effects of contaminants, the fate and transport of contamination in ground water, risk assessment, source control, and mitigation methods; and

(C) The United States Department of Agriculture, for research on pesticide and nutrient impacts on ground water, plant and animal health effects, and development of farming and forestry practices designed to reduce or prevent contamination.

(2) Nothing in this title shall be construed to diminish or alter the statutory mandates assigned to these agencies, nor their budgetary authorities or appropriations as determined by Congress.

(3) Each participating agency in the Interagency Ground Water Research Task Force shall submit an annual research plan which shall be made available to Congress and which shall be reviewed by the Task Force within 60 days of submission to ensure that—

(A) programs are not unnecessarily duplicative;

(B) memoranda of understanding are in place where necessary;

(C) high priority research topics are given appropriate attention; and

(D) information exchanges among Federal agencies and between Federal agencies and States are facilitated.

(e)(1) Not later than 3 years after enactment of this Act, the Task Force shall organize a national conference on ground water research, to review the national ground water research programs. The Task Force will invite participation by academia, State and local government, and the public.

(2) A proceedings shall be published from the conference presentations.

SEC. 103. ADVISORY COMMITTEE.

(a) There is established an Advisory Committee on Ground Water Research (hereinafter referred to in this subsection as the "Advisory Committee").

(b) The Advisory Committee shall be established within 180 days of the date of enactment of this Act, and shall be exempt from section 14 of the Federal Advisory Committee Act.

(c) The Advisory Committee shall be composed of not more than 15 individuals to be appointed by the President in consultation with the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives, no less than 5 of whom shall be elected or appointed State or local officials or their representatives.

(d) Members shall serve terms of not to exceed 3 years. Members shall be selected from State and local government officials, environmental organizations, scientific and professional organizations, industry, representative of the Water Research Institutes, and the general public. Members should possess a knowledge of ground water and should represent various regions of the country.

(e) A chairman of the Advisory Committee shall be elected by its members on an annual basis.

(f) The Advisory Committee shall advise the President on matters related to ground water research and shall represent to the Interagency Ground Water Research Task Force the views of State and local governments and other interested parties concerning the ground water research programs and policies carried out by participating agencies of the Task Force.

(g) The Advisory Committee shall review and comment on the annual report by the Interagency Ground Water Research Task Force required by subsection (c)(1) of section 102.

(h) The Advisory Committee shall meet on a regular basis and shall meet jointly with the Interagency Task Force at least semiannually.

(i) Such clerical and technical assistance as may be necessary to discharge the duties of the Advisory Committee shall be provided by personnel of the Environmental Protection Agency and the other agencies of the Interagency Ground Water Research Task Force.

(j) Members of the Advisory Committee shall, while attending meetings or conferences of the Committee or otherwise engaged in the business of the Committee, be compensated at a rate to be fixed by the Chairman of the Interagency Task Force, but not to exceed the daily equivalent of the base rate of pay in effect for grade GS-15 of the General Schedule under section 5332 of title 5 of the United States Code, for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Committee. While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

SEC. 104. ESTABLISHMENT OF CLEARINGHOUSE COMMITTEE AND AGENCY INFORMATION CENTERS.

(a) The Interagency Ground Water Research Task Force shall appoint a Clearinghouse Committee within 180 days following the date of the enactment of this Act.

(b) The Clearinghouse Committee shall consist of no more than five individuals, who are not Task Force members, who are knowledgeable in the field of data management and retrieval systems, and who are familiar with the existing data systems at the United States Geological Survey, the Environmental Protection Agency, the United States Department of Agriculture and the Water Research Institutes.

(c) The Clearinghouse Committee shall facilitate coordination of information systems among participating agencies by improving compatibility among systems, including data input and output; bibliographic searches, and other means.

(d)(1) Each participating agency of the Interagency Ground Water Research Task Force shall establish a technical transfer and information center that is responsible as a repository of reliable ground water information relevant to their authorities and related information, and each such agency technical transfer center shall be coordinated through the efforts of the Clearinghouse Committee.

(2) At a minimum the information center at each agency shall establish and make available reports, programs, and materials developed pursuant to this Act.

(3) Each center shall facilitate ready access to data and information gained under the program to Federal, State, and local agencies and other interested persons and shall facilitate requests for data and information from all interested persons by coordinating and communicating with other agencies' systems.

(4) The Clearinghouse Committee shall include in its first annual report recommendations for a National Ground Water Hotline and identification of a Federal public information officer to respond to public inquiries.

(e) The Clearinghouse Committee shall submit a report to the Interagency Ground Water Research Task Force 1 year after the date of enactment of this Act, evaluating the current capabilities of each agency, abilities to exchange information and data between different information systems; recommendations for improving communication links, requests for necessary monies and equipment, procedures, and personnel to fully implement the necessary changes for a fully cross-linked computerized system for information retrieval.

SEC. 105. ESTABLISHMENT OF EDUCATION COMMITTEE.

(a) The Task Force shall appoint an Education Committee within 180 days following the date of enactment of this Act.

(b) The Education Committee shall be chaired by the Task Force representative from the National Science Foundation and shall consist of no more than 14 individuals who are not Task Force members and who have scientific or educational expertise relevant to ground water research and management. The remaining 13 members shall include the President's Science Advisor, a representative from the Water Research Institutes, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Secretary of Agriculture, a representative of the States, two representatives from private academic institutions active in ground water, two representatives from industry, and two representatives from nonprofit environmental organizations.

(c) The Education Committee shall evaluate existing academic training programs at the university and postgraduate levels to identify weaknesses in existing programs, and to recommend a plan to strengthen such

programs through Federal grants and fellowships and improved curricula.

(d) The Education Committee shall prepare a report describing its findings and making such recommendations as it deems necessary and appropriate not less than 2 years from the date of enactment of this Act. Such report shall be included in full in the report provided for in section 102(c)(1).

(e) Such clerical and technical assistance as may be necessary to discharge the duties of the Advisory Committee shall be provided by personnel of the United States Geological Survey and the other agencies of the Interagency Task Force.

(f) Members of the Task Force, other than Federal employees, shall, while attending meetings or conferences of the Committee or otherwise engaged in the business of the Committee, be compensated at a rate to be fixed by the Chairman of the Interagency Task Force, but not to exceed the daily equivalent of the base rate of pay in effect for grade GS-15 of the General Schedule under section 5332 of title 5 of the United States Code, for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force. While away from their homes or regular places of business in the performance of services for the Task Force, members of the Task Force shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

SEC. 106. AUTHORIZATIONS.

For the purposes of carrying out the activities authorized in sections 102 through 105 of this title, there are authorized to be appropriated $3,000,000 for each fiscal year to the Administrator commencing with fiscal year 1989 and ending with fiscal year 1993.

SEC. 107. WATER RESOURCES RESEARCH ACT OF 1984.

(a) Section 104(b)(1) of the Water Resources Research Act of 1984 (42 U.S.C. 10302(b)(1)) is amended to read as follows:

"(1) plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists, engineers, and technicians, (C) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and.".

(b) Section 104(c) of such Act (42 U.S.C. 10302(c)) is amended to read as follows:

"(c) From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than one non-Federal dollar for every Federal dollar during the fiscal year ending September 30, 1989, and each of the next four following fiscal years, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.".

(c) Section 104(e) of such Act (42 U.S.C. 10303(e)) is amended to read as follows:

"(e) The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 5 years to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting, and arranging for research warrants its continued support under this section. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualifications are reestablished to the satisfaction of the Secretary.".

(d) Section 104(f)(1) of such Act (42 U.S.C. 10303(f)(1)) is amended by deleting "September 30, 1985, through September 30, 1989" and inserting in lieu thereof "September 30, 1989, through September 30, 1993,".

(e) Section 104(f)(2) of such Act (42 U.S.C. 10303(f)(2)) is amended by deleting "section 106 of this Act" and inserting in lieu thereof "section 105 of this Act".

(f) Section 105(a)(1) of such Act (42 U.S.C. 10304(a)(1)) is amended by deleting the following: ", on a dollar-for-dollar matching basis,".

(g) Section 105(a)(3) of such Act (42 U.S.C. 10304(a)(3)) is repealed.

(h) For the purposes of carrying out the activities authorized by section 105(c) of the Water Resources Research Act of 1984, there are authorized to be appropriated $10,000,000 for each fiscal year commencing with 1989 and ending with 1993.

(i) Section 106 of such Act (42 U.S.C. 10305) is repealed.

(j) Section 108(6) of such Act (42 U.S.C. 10307(6)) is amended by inserting immediately after "depletion" a comma and the word "contamination".

(k) Section 108(8) of such Act (42 U.S.C. 10307(8)) is amended by inserting immediately after "water" the words "quality and quantity".

(l) Section 104 of such Act is amended by adding the following:

"(g)(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of $5,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993, only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which related to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

"(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals.".

TITLE II—GROUND WATER RESEARCH PROGRAMS OF THE FEDERAL GOVERNMENT

PART A—PROGRAMS OF THE ENVIRONMENTAL PROTECTION AGENCY

SEC. 201. AUTHORITY.

(a) The Administrator shall, in consultation and coordination with the Interagency Ground Water Research Task Force established under title I, establish a research, development, and demonstration program to support the protection, maintenance, and restoration of the ground water resources of the United States, and as part of such program shall conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, sources, effects, extent, prevention, detection, and correction of ground water contamination. In carrying out the provisions of this Act, the Administrator is authorized to—

(1) collect and make available through publications and other appropriate means, information from research, development, and demonstration activities (including pertinent recommendations by the Administrator) conducted pursuant to this section;

(2) cooperate with other Federal agencies, States, local governmental entities, interstate and regional agencies, other public agencies and authorities, nonprofit institutions and organizations, and other persons, in the preparation and conduct of such research, development, and demonstration activities;

(3) make grants to the States and to local governmental entities, to other public agencies and authorities, nonprofit institutions and organizations and to other persons;

(4) conduct investigations and research and make surveys concerning any specific problem of ground water contamination in cooperation with any State or local governmental entity with a view to recommending a solution to such problem;

(5) enter into contracts (including contracts for construction) or cooperative agreements with public agencies and authorities, nonprofit institutions and organizations, and other persons without regard to section 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5);

(6) conduct, in cooperation with the Secretary of the Department of Health and Human Services, studies, including epidemiological studies of the effects of ground water contaminants or potential contaminants on mortality and morbidity and clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including the carcinogenic, teratogenic, mutagenic, and neurotoxic effects of ground water contaminants or potential contaminants;

(7) develop and disseminate informational documents on ground water contaminants describing the nature and characteristics of such contaminants at various concentrations;

(8) collect and disseminate, in cooperation with other agencies of the United States, and with other public agencies and authorities, nonprofit institutions and organizations having related responsibilities, basic data on the chemical, physical, and biological contaminants that may affect ground water quality and other information pertaining to ground water contamination and the prevention, detection, and correction thereof;

(9) develop effective and practical processes, methods, and techniques for the prevention, detection, and correction of ground water contamination;

(10) construct such facilities and staff and equip them as may be necessary to carry out the provisions of this section;

(11) call conferences concerning the potential or actual contamination of ground water resources giving opportunity for interested persons to be heard and to present papers at such conferences;

(12) establish and maintain research fellowships in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(13) utilize, on a reimbursable basis, facilities and personnel of existing Federal scientific laboratories and research centers; and

(14) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, equipment and facilities, and other property or rights, by purchase, license, lease, or donation.

(b) In carrying out the provisions of this section, the Administrator (and the Agency Ground Water Research Committee established by section 202 of this Act) shall give priority to research, development, and demonstrations projects which—

(1) assess the fate and transport characteristics of contaminants or potential contaminants in ground water;

(2) develop practices, methods, techniques, or processes effective in controlling sources or potential sources of ground water contaminants with emphasis on sources which discharge or release nonhazardous waste or contaminants not considered to be waste which shall be in addition to similar development activities already conducted pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, et seq.) with respect to sources of hazardous waste;

(3) determine the effects on human health and the environment of the contaminants which are or may be present in ground water;

(4) develop field, laboratory, and other analytical procedures for monitoring and evaluating ground water quality and the flow characteristics of aquifer systems;

(5) develop methods or techniques to restore ground water resources that have been damaged by contamination; and

(6) develop practices, methods, or techniques effective in reducing the quantity or toxicity of waste materials from the processes or activities which have a potential to contaminate ground water resources.

(c) For purposes of this title, the term "develop" shall include research projects, demonstration projects, or activities which assist in the transfer of technology to users of the practices, methods, or techniques identified.

(d) The Administrator shall conduct or assist research, investigations, studies, surveys, or demonstrations with respect to (but not limited to) the following—

(1) the effects on human health of contaminants or combinations of contaminants whether natural or anthropogenic that are found in or that are likely to be found in the ground waters of the United States;

(2) the exposure of persons to contaminants that are found in ground water, including exposure to such substances from sources other than ground water contamination including air, diet, and workplace exposures;

(3) the effects on the environment including aquatic life, wildlife, and other environmental resources of contaminants that may be found in ground water discharged to the surface;

(4) the hydrologic relationship between surface water and ground water and the likely impact of contamination in one medium on the quality and uses of the other;

(5) methods and techniques for characterizing and modeling subsurface hydrogeology in both the saturated and unsaturated zones;

(6) the transport and dispersion of particular contaminants in the saturated and unsaturated zones;

(7) the fate, including the degradation and transformation, of particular contaminants in the saturated and unsaturated zone including the native ability of the ground water system to modify the nature and threat of human induced or generated contaminants;

(8) methods and techniques to characterize the vulnerability of locations to contamination based on factors including climate, vegetation, topography, soil characteristics, and subsurface hydrology;

(9) methods and techniques to characterize and model zones of influence and wellhead protection areas which contribute recharge to water production wells;

(10) methods and techniques for sampling ground water including well construction, sample collection, and the storage of samples before analysis;

(11) methods for detecting and quantifying contaminants in ground water samples including screening methods to improve the efficiency and reduce the cost of analysis;

(12) methods and techniques for monitoring, sampling, and analyzing the discharge from sources or potential sources of contaminants in various categories and subcategories;

(13) methods and techniques for monitoring, sampling, and analyzing contaminants in the unsaturated zone and correlating the results of such methods and techniques with likely future impacts of ground water quality;

(14) methods and techniques of water conservation in household, agricultural, commercial, and industrial uses;

(15) conduct economic, legal, institutional, engineering, social, biological, geographic, ecological, and other studies related to the protection of ground water quality.

(16) processes and technologies to assure the more efficient use of toxic chemicals and other substances which are potential ground water contaminants including pesticide and fertilizer products;

(17) methods or techniques for controlling discharges, whether intentional, or accidental, from sources or potential sources of contaminants in various categories and subcategories;

(18) the design and operation of waste treatment systems including septic systems, land treatment systems, and containment systems that minimize the potential for contaminants to reach ground water;

(19) methods and techniques for the closure and post-closure care of sources or potential sources of contaminants to minimize the potential for further discharge of contaminants to ground water;

(20) methods and techniques for the remediation and restoration of contaminated ground water resources;

(21) methods and techniques for the treatment of contaminated water supplies to render such supplies potable; and

(22) methods and techniques for remediation, restoration, and treatment of contaminated water resources in the saturated or unsaturated zones utilizing in situ biological, chemical, or physical treatment.

(e) Nothing in this title shall be construed, interpreted, or applied to limit or diminish in any way the authority or responsibility of any Federal agency to conduct monitoring of the quality or quantity of the Nation's ground or surface water resources or any other activity which is necessary or appropriate to carry out the duties assigned to such Agency by this Act or other Federal statutes.

SEC. 202. RESEARCH COMMITTEE AND MANAGEMENT PLAN.

(a) In carrying out the functions pursuant to this part, the Administrator shall establish a mediaspecific research committee for ground water resources (in addition to the media-specific research committees already established) to be cochaired by the Assistant Administrator for Water and by the Assistant Administrator for the Office of Research and Development. The membership of the committee established by this subsection shall be broadly representative of the program and research concerns within the Agency related to the protection, maintenance, and restoration of ground water resources.

(b)(1) The research committee shall make an annual report, which shall cover a period of at least 5 fiscal years, summarizing the major research issues concerning the protection, maintenance and restoration of ground water resources as identified by the committee, describing the research accomplishments of the preceding fiscal year, identifying the status of ongoing research, and outlining the ground water research program for the Agency for the 3 succeeding fiscal years.

(2) The annual report of the committee shall serve as the management plan for the ground water research program of the Agency and shall assure the coordination of all research, development and demonstration activities relating to the protection, maintenance, and restoration of ground water resources conducted by the Agency and shall facilitate and accelerate the development of control technologies as authorized by this Act. The annual report shall constitute the basis upon which requests for appropriations to carry out this title are to be made for the succeeding fiscal year.

(3) The annual report required by this section shall include an itemized list of all major policy decisions affecting all aspects of the protection, maintenance, and restoration of ground water resources which are pending before the Agency or which will arise in the forseeable future and shall specify in a comprehensive manner the type of information relevant to such policy decisions, evaluate the adequacy of available information in each category, and define the research and studies necessary to address the deficiencies in the available information.

(4) The annual report required by this section shall include a description and assessment of each project conducted pursuant to section 203 of this Act.

(5) The annual report required by this section shall include a description of the status of health effects and related research for each contaminant listed pursuant to this part. The report shall identify any additions to the list and summarize any proposals, including applications, recommendations, petitions, for listing pursuant to section 204 and indicate the disposition of such proposals. The report shall identify the status of all research in progress pursuant to this part.

(6) The annual report required by this section shall include a description of the status of environmental effects and related research for each contaminant listed pursuant to section 204 of this Act.

(7) The annual report required by this section shall be released in draft form for review including review by the Science Advisory Board, and shall be available for public comment for a period of 60 days after its submission in draft form. The annual report shall be released to the Congress in final form, not later than April 15 of each year, and shall incorporate such needed revisions as arise from comments received during the review period.

(8) This annual report shall also serve as the annual report to the Interagency Ground Water Research Task Force as required in section 102(d)(3).

(c)(1) The Administrator shall appoint a Ground Water Research Manager in the Office of Research and Development who shall be charged with carrying out the management plan, as incorporated in the annual report required by subsection (b) of this section, and who shall provide central direction for ground water research within the Office of Research and Development.

(2) The Research Manager shall serve as liaison with Clearinghouse Committee and shall ensure that results of all appropriate research and demonstration projects be available through the information centers established by this Act.

SEC. 203. CONTROL TECHNOLOGIES.

(a) The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of practices, methods, technologies, and processes which are (or may be) effective in controlling sources or potential sources of ground water contaminants and preventing the occurrence of ground water contamination. In addition to research, development, and demonstration activities conducted by the Administrator pursuant to section 201 and by the ground water research institutes established by section 210 of this Act, the Administrator may enter into contracts or cooperative agreements, or provide financial assistance in the form of grants, to public agencies and authorities, nonprofit institutions and organizations or other persons, to demonstrate such practices, methods, technologies, or processes only if the Administrator finds that—

(1) such contract, cooperative agreement or grant will serve to demonstrate a new or significantly improved practice, method, technology or process or the feasibility and cost effectiveness of an existing, but unproven, practice, method, technology, or process, and will not duplicate other Federal, State, local, or commercial efforts to demonstrate such practice, method, technology, or process;

(2) such contract, cooperative agreement or grant meets the requirements of this section and serves the purposes of this Act; and

(3) the demonstration of such practice, method, technology, or process will comply with all other laws and regulations for the protection of human health, welfare, and the environment.

(b) The demonstration program established by this section shall include solicitations for demonstration projects; selection of suitable demonstration projects from among those proposed; supervision of such demonstration projects, evaluation of the results of the demonstration projects which are conducted; dissemination of information on the effectiveness and feasibility of the practices, methods, technologies, and processes which are proven effective in controlling sources or potential sources of contaminants through demonstration under this section. The Administrator shall issue regulations to assure satisfactory implementation of each element of the demonstration program authorized by this section.

(c) Within 365 days after the date of enactment of this Act, and no less often than every 24 months thereafter, the Administrator shall publish a solicitation for proposals to demonstrate, prototype or at full-scale, practices, methods, technologies, and processes which are (or may be) effective in controlling sources or potential sources of contaminants. The solicitation notice shall prescribe the information to be included in the proposal, including technical and economic information derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the potential effectiveness and feasibility of the practice, method, technology, or process proposed to be demonstrated.

(d) Any person and any public or private nonprofit entity may submit an application to the Administrator in response to the solicitations required by subsection (c) of this section. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(e) In selecting practices, methods, technologies or processes to be demonstrated, the Administrator shall fully review the applications submitted and shall evaluate each project according to the following criteria—

(1) the potential for the proposed practice, method, technology, or process to effectively control sources or potential sources of contaminants (including control through improved use, management, storage, handling, transfer, or disposal of contaminants) which present the greatest risk to human health or the environment or present the greatest likelihood of ground water contamination and which are not effectively controlled by existing practices, methods, and technologies;

(2) the capability of the person or persons proposing the project to successfully complete the demonstration as described in the application;

(3) the likelihood that the demonstrated practice, method, technique or process could be applied in other locations and circumstances to control sources or potential sources of contaminants, including considerations of cost effectiveness, and feasibility;

(4) the extent of financial support from other persons to accomplish the demonstration as described in the application; and

(5) the capability of the person or persons proposing the project to disseminate the results of the demonstration or otherwise make the benefits of the practice, method, or technology widely available to the public in a timely manner.

(f) The Administrator shall select or refuse to select a project for demonstration under this section within 120 days of receiving the complete application for such project. In the case of a refusal to select a project, the Administrator shall notify the applicant within such 120-day period of the reasons for the refusal. In each 12-month period the administrator shall select at least ten qualified demonstration projects for support according to the provisions of this section.

(g) Each demonstration project under this section shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of a demonstration project, including the use of innovative or alternative waste treatment technologies, and the limitations established by subsection (i) of this section shall not apply to such costs.

(h) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide for monitoring, testing procedures, quality control, and such other measurements necessary to evaluate the results of demonstration projects or facilities intended to control sources or potential sources of contaminants, including hazardous waste treated in situ, whether or not such projects or facilities are constructed and operated under the provisions of this section, for the purpose of obtaining information concerning the performance, and other aspects of such facilities, methods, practices, technologies, or processes. Where the Administrator provides only monitoring and evaluation or personnel and provides no other financial assistance to a facility or project, title to any invention made or conceived of in the course of developing, constructing, or operating such facility or demonstrating such practice, method, technology, or process, notwithstanding the provisions of title IV of this Act, shall not be required to rest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(i) Each demonstration project under this section shall be completed within such time as is established in the demonstration plan. The Administrator may extend any deadline established under this subsection by mutual agreement with the applicant concerned.

(j) In providing financial assistance under this section to a demonstration project, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons or any combination thereof. Total Federal funds for any full-scale demonstration project under this section shall not exceed 50 per centum of the total cost of such project estimated at the time of the award of such assistance. In cases where the Administrator determines, in accordance with criteria established by regulation, that research under this section is of a basic nature which would not otherwise be undertaken, the Administrator may approve grants under this section with a matching requirement other than that specified in this subsection, including full Federal funding.

(k) In carrying out the demonstration program under this section, the Administrator shall conduct a technology transfer program including the collection and dissemination of information, data and recommendations relating to the practices, methods, technologies, and processes for controlling sources or potential sources of contaminants demonstrated under the provisions of this section. In consultation with the Clearinghouse Committee the Administrator shall make available such information through a technical transfer and information center as required in section 104 of this Act. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other government agencies in a manner that will facilitate its dissemination; except that upon a satisfactory showing to the Administrator by any person that records, reports, or information, or a particular part thereof (except data on discharges), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of

such person, the Administrator shall consider such records, report or information or particular portion thereof confidential in accordance with the provisions of section 1905 of title 18, United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. Notwithstanding any provision contained in this section or any other provision of law, all information reported to, otherwise obtained by, the Administrator (or any representative of the Administrator) under this Act shall be made available upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

SEC. 204. HEALTH AND ENVIRONMENTAL EFFECTS OF CONTAMINANTS.

(a)(1) Within 6 months after the date of enactment of this Act, the Administrator shall prepare and publish in the Federal Register a list of the contaminants which are known to occur (or which may be expected to occur) in the ground waters of the United States. The Administrator shall, from time to time and as necessary to carry out the provisions of this section but not less often than annually, review and revise such list adding other contaminants pursuant to the requirements of this section. The listing of a contaminant under this subsection is not an agency rulemaking and is not subject to the requirements of section 553 of title 5, United States Code.

(2) The initial list of contaminants shall include, but is not limited to, the following—

(A) contaminants for which the Administrator is required to promulgate a national primary drinking water regulation pursuant to the provisions of the Safe Drinking Water Act (42 U.S.C. 300f, et seq.);

(B) other contaminants for which a health advisory has been prepared by the Office of Drinking Water at the Environmental Protection Agency;

(C) contaminants listed according to the provisions of section 104(i)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act and which are known to occur in ground water;

(D) contaminants listed pursuant to section 307(a) of the Clean Water Act; and

(E) pesticides which the Administrator determines have the potential to leach to ground water.

(3)(A) The Administrator shall promptly revise the list of contaminants established by paragraph (1) of this subsection to include any contaminant which is found in ground water samples at three or more locations or which is listed pursuant to section 104(i)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act.

(B) Upon application of the Governor of a State, showing that a contaminant or potential contaminant of ground water which is not on the list established by paragraph (1) of this subsection may be reasonably anticipated to endanger public health, public welfare or the environment as a result of its presence or potential for presence in ground water, the Administrator shall, within 90 days, revise the list established by paragraph (1) of this subsection to include such contaminant or publish in the Federal Register a statement of the reasons for not making such revision.

(C) Within 90 days of receiving a recommendation from the Director of the National Toxicology Program, the National Institute of Environmental Health Sciences, and the Administrator of the Agency for Toxic Substances and Disease Registry that a particular contaminant be added to the list established by paragraph (1) of this subsection, the Administrator shall revise the list to include such contaminant or publish in the Federal Register a statement of the reasons for not making such revision.

(D) Any person may petition the Administrator requesting that a contaminant or potential contaminant be added to the list established by paragraph (1) of this subsection. The Administrator shall, within 90 days, either grant or deny the petition based on a showing by the petitioner that the contaminant may have an adverse effect on human health, welfare or the environment due to its presence or potential for presence in ground water. If the petition is granted the Administrator shall revise the list established under paragraph (1) of this subsection to include such contaminant.

(E) The Administrator may remove from the list any contaminant not known to occur in ground waters of the United States.

(b) For each contaminant listed according to the provisions of subsection (a) of this section, the Director of the National Toxicology Program in consultation with the Director of the Agency for Toxic Substances and Disease Registry shall, within 120 days of the listing of that contaminant, develop and transmit to the Administrator a proposed research program for that contaminant including a description of a program of toxicological testing which in the judgment of the Director is necessary to supplement information needed to prepare a risk assessment document described in section 205 for such contaminant. The Director shall consider data, criteria, and analyses developed pursuant to other Federal environmental laws in developing the research programs. In the case of a contaminant listed pursuant to subsections (a)(1) and (a)(2) a research program shall be developed within 120 days of the listing or as soon thereafter as practicable but not later than 3 years after the date of listing. Upon receipt, the Administrator shall publish the proposed research program in the Federal Register and seek comment thereon. Within 60 days after receipt of a proposed research program, the Administrator shall approve such program or make such amendments as the Administrator deems necessary to fulfill the purposes of this title. The research program shall, in combination with available data and information, assure complete and adequate information necessary to prepare a risk assessment pursuant to section 205, including—

(1) studies of the chemical and physical properties and characteristics of the contaminant;

(2) studies of the dispersion, persistence, and fate (including the degradation products and metabolites) of the contaminant when released into the environment;

(3) studies of human exposure to the contaminant as a result of its presence in ground water and through other pathways of contact with human populations;

(4) studies (including, but not limited to, laboratory and epidemiological studies) of the health effects of the contaminant (and its degradation products and metabolites) including studies to determine acute toxicity, subacute toxicity, chronic toxicity, and the potential for the contaminant to cause cancer, gene mutations, or birth defects; and

(5) studies of the ecological effects (including the propensity of the contaminant to bioaccumulate when discharged to surface waters) of the contaminant as a result of its presence in ground water.

The Administrator may use the authorities of section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act to conduct research programs outlined under this section, and shall coordinate with the development of contaminant profiles under section 104(i)(3) and research under section 104(i)(5) of such Act. To the extent practicable the research program developed pursuant to this subsection shall be completed within a 2-year period. Approved research programs shall be transmitted to the States and other interested persons. Nothing in this section shall limit the authority of the Administrator to conduct any study with respect to a contaminant in addition to the studies included in the research program.

(c)(1) The Administrator shall implement research programs developed pursuant to subsection (b). The Administrator shall consult with the Director of the National Toxicology Program and the Administrator of the Agency for Toxic Substances and Disease Registry and may delegate implementation of the research program to the Administrator of the Agency for Toxic Substances and Disease Registry.

(2) It is the sense of Congress that the costs of implementing research programs under this section be borne by the manufacturers and processors of the hazardous substance in question as required in programs of toxicological testing under the Toxic Substances Control Act and Federal Insecticide, Fungicide and Rodenticide Act.

(d) Funds authorized under section 111(m) of the Superfund Amendments and Reauthorization Act may be used to develop and implement research programs pursuant to this part to the extent that the Administrator, in consultation with the Administrator of the Agency for Toxic Substances and Disease Registry, determines that such use will not in any way limit or constrain the full and effective implementation of the activities otherwise authorized to be funded under section 111(m) of the Superfund Amendments and Reauthorization Act.

SEC. 205. GROUND WATER CONTAMINANT RISK ASSESSMENT.

(a) The President shall designate the Administrator as the lead official for the purposes of carrying out the activities authorized in this section. The Administrator shall carry out such activities in consultation and coordination with the members of the Interagency Ground Water Research Task Force and such other agencies as the President may designate.

(b) The Administrator shall conduct and publish a risk assessment for ground water contaminants as identified in section 204. Such risk assessment shall use scientifically sound methodologies to assess the risk to human health and the environment associated with a range of concentrations of the ground water contaminant.

(c) Each risk assessment shall include—

(1) the most recent scientific knowledge on the physical, chemical, biological, and radiological properties of the contaminant and its effects on human health and the environment;

(2) an assessment of factors, including contaminant sources, variable aquifer conditions, and ground water uses, which may influence the effect of the contaminant on human health and the environment;

(3) an assessment of the assumptions, scientific uncertainties, ranges of risk, and data gaps contained in the risk assessments;

(4) the association of the contaminant with various human activities which have the potential to be sources of the contaminant in ground water; and

(5) a comparison of the risks posed by such contaminants to risks posed by other ground water contaminants.

(d) The Administrator shall establish and use a standard format for the presentation of risk assessments to facilitate the use of such analyses by State and local officials in setting ground water standards or in monitoring ground water quality and by the public.

(e) In carrying out this section, the Administrator shall use, to the fullest extent practicable, existing data or analyses developed by other agencies, including the Department of Health and Human Services. The Administrator shall also consider data and analyses developed pursuant to the Federal Water Pollution Control Act, title XIV of the Public Health Service Act (relating to safe drinking water), the Toxic Substances Control Act, the Comprehensive Environmental Responses, Compensation and Liability Act of 1980, and the Federal Insecticide, Fungicide, and Rodenticide Act. The Administrator may conduct such additional studies under the authorities of such Acts to gather data necessary to reduce scientific uncertainties in the risk assessments. Such additional studies may be conducted in consultation with the National Institute of Environmental Health Sciences and the Agency for Toxic Substances and Disease Registry.

(f) The Administrator shall publish, with an opportunity for public notice and comment, risk assessment analyses for not less than 30 contaminants within 24 months after the date of enactment of this title, and not less than 30 additional contaminants within 36 months after the date of enactment of this title. The Administrator shall distribute copies. The Administrator shall continue to publish such assessments for additional contaminants at a rate which is consistent with the needs of the State and local governments in developing ground water quality standards.

(g) The Administrator shall publish risk assessments giving priority to contaminants posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances.

SEC. 206. CONTAMINANT SOURCE SURVEYS.

(a) The Administrator, in consultation with other appropriate Federal agencies and officials of the several States, shall conduct nationwide ground water quality surveys to identify the frequency and concentration of contaminants in ground water associated with various categories of current or potential sources of contaminants. The surveys authorized by this section shall include monitoring as feasible and practicable at wells which supply public water systems and at wells which supply private households to determine effects or potential effects of such sources on public health and at other ground water sampling points to determine effects of such sources on the general quality of the Nation's ground water resources.

(b) The surveys conducted pursuant to the authority of subsection (a) shall include, but need not be limited to, surveys with respect to the categories and subcategories of sources or potential sources of contaminants hereafter listed in clauses (1) through (9). Nothing in this section shall preclude the use of coordinated collection and field efforts. Each survey shall be completed and a report of the survey transmitted to the President and to the Congress not later than the date indicated in the following schedule for each category or subcategory—

(1) pesticide applications, January 1, 1991;

(2) septic tanks and cesspools, January 1, 1992;

(3) landfills, surface impoundments and wastepiles, July 1, 1992;

(4) class V injection wells including agricultural drainage wells, January 1, 1993;

(5) fertilizer applications, January 1, 1993;

(6) irrigation return flows, July 1, 1993;

(7) publicly owned treatment works, July 1, 1993;

(8) light industry, January 1, 1994; and

(9) transportation corridors, January 1, 1994.

(c) The Governor of any State may petition the Administrator to initiate a nationwide survey of a category or subcategory of sources in addition to those listed in subsection (b). The Administrator shall respond to the petition within 90 days and shall include a copy of the petition and any response in the annual plan required by subsection (j).

(d) In conducting the surveys authorized by subsection (a) the Administrator is directed to complete the following preliminary phases for each survey—

(1) in cooperation with the several States, the Administrator shall conduct an analysis to determine the number, type, and geographic distribution of sources in each category or subcategory;

(2) in cooperation with the directors of the national laboratories, the Administrator shall develop the analytical techniques necessary to test for the major contaminants of national concern which may be associated with any category or subcategory of sources;

(3) the Administrator, acting through the Office of Drinking Water, shall prepare health advisories for each of the contaminants which are likely to be associated with any particular category or subcategory of sources;

(4) the Administrator shall publish general guidance on the design of such survey including sampling and analytical protocols, based on the human health and environmental threat of such sources and shall take comment, including comment from the Science Advisory Board, on the elements of the survey; and

(5) the Administrator shall conduct pilot studies as appropriate for each survey the results of which shall be reviewed by the Science Advisory Board before the followup analyses are begun.

(e) The ground water quality surveys conducted pursuant to this section shall be adequate to provide the Administrator with a clear understanding of the need for instituting contaminant source control strategies on a local, state, or national basis. Such surveys may provide data to—

(1) determine the interaction between various characteristics of the saturated and unsaturated zone related to ground water vulnerability and the likelihood that particular source within the category or subcategory will have adverse effects on ground water quality; and

(2) determine the effectiveness of various control strategies and technologies that are practiced or employed in association with particular sources in the category or subcategory to reduce or prevent ground water contamination.

(f) Subject to the provisions of section 104, the data from these and ongoing ground water surveys shall be stored in an electronic data base for use by the States and the public.

(g)(1) To the extent that a contaminant is found in any well supplying a public water system as the result of a survey authorized by this section, the Administrator shall notify the public water system of the presence of such contaminant and the public water system shall in response take all steps required by the Safe Drinking Water Act (42 U.S.C. 300f, et seq.) including notification of the persons served by such system as provided in sections 1414(c) and 1445(a) of such Act.

(2) To the extent that contaminants are found in any well supplying a private household as the result of a survey authorized by this section, the Administrator shall notify the owner of the well (and any other person residing on the property who depends on the well for a potable water supply) and include with the notification a copy of the health advisories for the contaminants detected and shall provide counseling to the owner of the well on the appropriate steps to take in response to the contaminant, but shall assure that information released to the public does not divulge information with respect to water quality in any specific well but is only of a general nature.

(3) To the extent a contaminant is found at any drinking water well or ground water sampling point as the result of a survey authorized by this section and it is possible to identify a particular source of contaminants, the Administrator shall notify appropriate officials of the local, State, or Federal Government for response, including action to abate or correct the contamination as provided in other law.

(h) In conducting the surveys authorized by this section, the Administrator shall to the maximum extent possible, involve appropriate officials of the States in each phase of the survey including: survey of existing sources; conduct of the pilot study; selection of the wells to be sampled; interviews and sampling done as part of the survey; notification of owners of wells where contaminants are found; and actions taken to abate or correct sources of contamination.

(i) In seeking and incorporating the views of the Science Advisory Board in the conduct of the surveys authorized by this section, the Administrator shall provide members of the Board (or the appropriate subcommittee) with all necessary materials in a timely fashion so as to assure prompt completion of each survey. In no event shall the report required by subsection (k) be delayed by the process of consultation with the Science Advisory Board, but such report shall include comments from the Board to the extent that the Board is in full accord with the findings as reported.

(j) To the maximum extent possible (consistent with the need for confidentiality of the results as provided in subsection (e)(2)), the Administrator shall involve the public in the design and conduct of the survey authorized by this section and the Advisory Committee established under section 103 for the purpose of providing the Administrator with technical assistance in the design and conduct of each survey and notice and opportunity for public comment on each report before it is submitted.

(k) The Administrator shall provide to Congress within 2 years following the date of enactment of this Act and annually thereafter, a plan for implementing this section

including a report on the status of each survey required by subsection (b) and any plans to initiate surveys for categories or subcategories not listed in that section.

(l) The Administrator shall prepare a report on the findings of each survey together with any recommendations for Federal, State or local regulatory or legislative modifications which the Administrator determines to be appropriate in light of such findings. The Administrator shall complete draft reports for each survey not later than 90 days before the schedule of completion dates listed in subsection (b). The draft reports shall then be made available for public comment for a period of at least 45 days. The final report shall be submitted to the President and to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Environment and Public Works of the Senate, to the several States and to the public.

SEC. 207. HEALTH EFFECTS OF NITRATES AND NITROSAMINES.

(a) The Administrator, in consultation with the Director of the National Institute of Environmental Health Sciences, shall conduct a study of the effects on public health (including carcinogenic endpoints) of nitrates, nitrosamines and other metabolites of nutrients and nitrogen compounds in public and private drinking water supplies, the sources of such contaminants, current and projected levels of exposure to such contaminants under various conditions, technologies or measures to reduce exposure including modification in agricultural and domestic practices and treatment techniques for water supplies (including private water supplies), and the costs of such technologies, measures or treatment techniques. Such report shall include an evaluation of current standards for such contaminants promulgated pursuant to the Safe Drinking Water Act and whether additional steps are necessary to protect public health (including the health or persons relying on private water supplies) from exposure to such contaminants.

(b) In furtherance of this study, the Administrator may review studies and research conducted by other Federal agencies and State agencies with respect to such contaminants and may invite participation by other concerned persons including other Federal agencies, State and local governments and nonprofit institutions in the conduct of the study.

(c) The Administrator shall publish a report on such study not later than 18 months after the date of enactment of this Act, unless a longer period is necessary to conduct laboratory research, in which case, a preliminary report shall be published on such date and the final report shall be published no later than 48 months after the date of enactment of this Act.

SEC. 208. STUDY OF ABANDONED WELLS.

(a) Not later than September 1, 1989, the Administrator of the Environmental Protection Agency shall report to the Committee on Environment and Public Works in the Senate and the Committee on Energy and Commerce in the House of Representatives information summarizing the available data on abandoned production and injection wells and the impacts that such wells may have on ground water quality. The Administrator's report shall include data and recommendations with respect to—

(1) the number of abandoned wells and their regional distribution including identification of areas where underground sources of drinking water do not exist;

(2) impacts of abandoned wells on ground water quality including information on actual damage cases which have resulted from migration of contaminants through abandoned wells including an indication as to the likelihood that current regulatory requirements would have prevented the damage;

(3) practices and technologies which are available for locating and capping or closing abandoned wells;

(4) the cost of locating and capping or closing abandoned wells including an estimate of the probability of successfully locating, reentering, remediating, and closing abandoned wells;

(5) programs developed by the States or other nations to address the abandoned well problem;

(6) assistance which may currently be available under Federal or State programs to land owners to share the cost of locating and closing or capping abandoned wells; and

(7) programs or requirements which may be adopted by the Federal Government or by the States to assure that ground water quality will not be impaired by abandoned wells, including recommendations with respect to closure requirements at the time the well is abandoned, title to the property on which the well is located is transferred or other schedule.

(b) For purposes of this section—

(1) the term "abandoned well" means an injection or production well including, but not limited to, drinking water wells, industrial supply water wells, mining, storage, oil and gas wells, and wells defined as injection wells under the Safe Drinking Water Act the use or construction of which has been permanently discontinued or which is in such disrepair that its continued use or existence may cause or allow a threat to human health or ground water contamination; and

(2) the term "closing" means the act or process of stopping or preventing the flow of water or other fluids into or out of an underground zone through a borehole or well penetrating that zone.

SEC. 209. ADDITIONAL PROVISIONS.

(a) Nothing in this Act shall be interpreted, construed or applied to limit or diminish the authorities granted to the Administrator, the Secretary of the Interior, or any other head of any Federal agency under any other statute or Executive order or to preclude the collection of information or the conduct of any research, development, or demonstration activities for other purposes including the development of regulatory or remediation measures.

(b) All studies and results of studies conducted under this Act shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the extent practicable within 60 days, and shall be conducted by panels of no less than three and no more than seven members, who shall be disinterested scientific experts selected for such purposes by the Administrator or the head of the agency conducting the study in consultation with the National Science Foundation on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Not later than 12 months after the date of enactment of this Act, the Administrator shall issue guidelines for the implementation of this subsection at the agency including criteria to be used in determining which persons qualify as "disinterested" scientific experts.

(c)(1) A contract or cooperative agreement of the Agency for research, development or demonstration, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, demonstration, or test facilities and equipment that the Administrator determines to be necessary for the performance of the contract or cooperative agreement. The facilities and equipment may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to the contractor at a fair value. This subsection does not authorize new construction or improvements having general utility.

(2) Facilities or equipment that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract or cooperative agreement contains—

(A) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(B) an option in the United States to acquire the underlying land; or

(C) an alternative provision that the Administrator considers to be adequate to protect the interests of the United States in the facilities or equipment.

(3) Proceeds of sales or reimbursements under this subsection shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

SEC. 210. GROUND WATER RESEARCH INSTITUTES.

(a) The Administrator shall make grants to institutions of higher learning or other research institutions (or consortia of such institutions) which are nonprofit organizations to establish and operate 8 ground water research institutes in the United States.

(b) The responsibility of each Ground Water Research Institute established under this section shall include, but not be limited to, the conduct of research and training relating to the protection, maintenance, and restoration of ground water resources and the publication and dissemination of the results of such research.

(c) Any institution of higher learning or other research institution (or consortium of such institutions) which is a nonprofit organization and which is interested in receiving a grant under this section shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(d) The Administrator, acting jointly with the Secretary of the Interior shall select recipients of grants under this section on the basis of the following criteria—

(1) each Ground Water Research Institute shall be located in a region which makes significant use of ground water to meet drinking water, agricultural or other needs and is representative of a given region of the Nation;

(2) each Ground Water Research Institute shall, to the extent practicable, be located in an area which has experienced significant ground water contamination or depletion problems;

(3) each Ground Water Research Institute shall have available for carrying out this section demonstrated research capability;

(4) each Ground Water Research Institute shall have the capability to provide leadership in making national and regional contributions to the solution of both long-range and immediate ground water contamination or depletion problems;

(5) each Ground Water Research Institute shall make a commitment to support ongoing ground water research programs with budgeted institutional funds; and

(6) each Ground Water Research Institute shall have an interdisciplinary staff with demonstrated expertise in ground water management and research.

(e) The Federal share of a grant under this section shall not exceed 50 percent of the costs of establishing and operating each ground water research institute and related activities carried out by the grant recipients.

(f) No funds made available to carry out this section shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

(g) Not less than 20 percent of the funds made available to carry out this section for any fiscal year shall be available to carry out technology transfer activities.

(h) Prior to, and as a condition of receipt each year of funds appropriated to carry out this section, each research institute shall submit to the Administrator for approval a ground water research program that includes assurances, satisfactory to the Administrator, that such program was developed in consultation with the States, local governmental entities, and other agencies and institutions within the region having ground water protection or management responsibilities and interested members of the public. Such program shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the region and the Nation, and shall encourage regional cooperation among institutions in research into areas of ground water protection, maintenance, and restoration that have a regional or national character. The Agency Ground Water Research Committee established under section 202 shall review proposed research programs and advise the Administrator concerning approval of proposed programs.

(i)(1) The Administrator shall establish procedures for a careful and detailed evaluation of each Ground Water Research Institute to determine whether the quality and relevance of its ground water resources research and its effectiveness as an institution for planning, conducting and arranging for research warrants its continued support under this section in the national interest. The evaluation of each Ground Water Research Institute shall be made by a team of knowledgeable individuals including research personnel of the Environmental Protection Agency, other agencies of the United States including the Geological Survey, university faculty or administrators, personnel from State and local governmental entities with ground water management or protection responsibilities, and private citizens selected for this purpose. The Administrator may also secure the cooperation of the National Research Council and the National Academy of Sciences for the purpose of this evaluation. The evaluation team shall visit each Ground Water Research Institute and shall assess the scientific quality of its research program, the potential effectiveness of its research in meeting ground water protection and management needs, and the demonstrated performance in making research results available to users in the region and elsewhere in the Nation. Criteria for making the determination that a Ground Water Research Institute is an effective instrument for ground water resources research shall include the following: accreditation in sufficient disciplines to successfully mount a multidisciplinary research program; sufficient resources, including laboratory, library, computer and support facilities; a sufficiently close proximity to a university to provide an effective working relationship with other researchers, faculty and students in a wide range of disciplines; and an institutional commitment to the support and continuation of an effective ground water resources research and education program.

(2) The Administrator, acting jointly with the Secretary of the Interior shall arrange for each of the Ground Water Research Institutes supported under this section to be evaluated within 2 years after its establishment and to be reevaluated at intervals not to exceed 5 years. If, as a result of any such evaluation, the Administrator and the Secretary of the Interior determine that a Ground Water Research Institute does not qualify for further support under this section, then no further grants to the Ground Water Research Institute may be made until the Ground Water Research Institute's qualification is reestablished to the satisfaction of the Administrator and the Secretary.

SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

(a) For the purpose of carrying out the activities authorized by section 201 and 202 of this Act, there are authorized to be appropriated $40,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(b) For the purpose of carrying out the activities authorized by section 203 of this Act, there are authorized to be appropriated $20,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(c) For the purpose of carrying out the activities authorized by sections 204 and 205 of this Act, there are authorized to be appropriated $20,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(d) For the purpose of carrying out the activities authorized by section 206 of this Act, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(e) For the purpose of carrying out the activities authorized by section 207 of this Act, there is authorized to be appropriated $2,000,000 without fiscal year limitation.

(f) For the purpose of carrying out the activities authorized by section 208 of this Act, there are authorized to be appropriated such sums as necessary for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(g) For the purpose of carrying out the activities authorized by section 210 of this Act, there are authorized to be appropriated $16,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

PART B—PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

SEC. 221. GEOLOGICAL SURVEY.

(a)(1) The United States Department of the Interior, acting through the Geological Survey, has the principal Federal responsibility for research in the hydrologic sciences, for appraising the Nation's water resources, and for providing hydrologic information.

(2) The Secretary of the Interior, acting through the Geological Survey in consultation and cooperation with the Interagency Ground Water Research Task Force, is authorized to undertake basic and applied research; collect hydrologic and related data on surface and ground water quantity and quality; conduct national, regional, and local investigations, resource assessments, and surveys; and undertake other activities related to maintaining a continuing assessment of the state of the Nation's water resources. The Secretary is authorized to undertake such activities in cooperation with other Federal, State, and local governments and agencies, and academic institutions. The Secretary of the Interior is further authorized to disseminate the results of such activities by means of publication, data dissemination, cataloging and referral services, training and education, and technical assistance to Federal, State, and local governments, and to private persons.

(b)(1) The Secretary shall appoint a Ground Water Research Manager in the Department of the Interior who shall be charged with carrying out the research and education plan, as incorporated in the annual report required by section 102(c)(1) of this Act, and who shall provide central direction for ground water research within the appropriate bureau.

(2) The Research Manager shall serve as a liaison with the Clearinghouse Committee and ensure that results of all appropriate research and demonstration projects be available through the Technical Transfer and Information Center established in section 104 of this Act.

(c)(1) The Secretary may undertake the activities authorized by subsection (a) of this section on a reimbursable or cooperative basis with other Federal agencies, State and local governments, and Federal permittees or licensees but only after execution of a written agreement which outlines for whom such reimbursable or cooperative activities are being undertaken, and the purpose, cost and duration of the activities.

(2) The activities authorized by subsection (a) of this section shall include, but are not limited to, a Federal-State cooperative program to determine the quantity and quality of surface water and ground water of the United States and the uses of the Nation's water resources through a series of projects jointly funded on an equal matching basis by the Geological Survey and the States or their political subdivisions and interstate compacts.

(3) In the case of cooperative program activities for mapping of ground water resources, the Secretary shall provide 60 percent of project costs.

(4) The activities authorized by subsection (a) of this section shall include, but are not limited to, a program to investigate ground water quality and flow characteristics in various hydrologic regions of the United States to—

(A) determine the availability and chemical quality of water stored in each aquifer system;

(B) determine the discharge and recharge characteristics of each aquifer system;

(C) determine the hydrogeologic and chemical controls that govern the response of each aquifer system to stress;

(D) develop models to improve understanding of the affects of human activities on each system; and

(E) develop maps at a consistent scale to be determined in consultation with the States delineating ground water resources, aquifer systems and the recharge areas of such systems.

(5) The activities authorized by subsection (a) of this section shall include, but are not limited to, a program to improve understanding of the processes which control the

movement, fate, and alteration of toxic and hazardous substances and other contaminants in ground water.

SEC. 222. NATIONAL GROUND WATER QUALITY INVENTORY.

(a)(1) The Secretary of the Interior, acting through Geological Survey and in consultation with the Interagency Ground Water Research Task Force, and the several States, shall prepare a report which shall include, but need not be limited to, the following:

(A) an assessment of the Nation's ground water quantity and quality based on existing and readily available data and information, including a description of areas where insufficient quantity and quality information is available;

(B) an evaluation of the adequacy of existing ground water data collection and monitoring programs conducted by Federal, State, and local governments and private industry including an assessment of monitoring protocols and recommendations for improvement to such protocols;

(C) a description of changes and trends in the quantity and quality of the Nation's ground water resources to the extent that existing data and information are available; and

(D) an assessment of the water supply needs of the Nation including water supply for public, agricultural, industrial, and other uses and the impact of water supply needs in the future on available ground water quality and quantity.

(2) The Secretary shall complete a draft of the report authorized by paragraph (1) no later than 12 months following the date of enactment of this Act. Such report shall then be made available for public comment for a period of at least 45 days. The final report shall be submitted to the House Committee on Interior and Insular Affairs and the Senate Committee on Environment and Public Works, the several States, and to the public no later than 30 months after the date of enactment of this Act.

SEC. 223. NATIONAL GROUND WATER QUALITY ASSESSMENT.

(a) The Secretary of the Interior, acting through the Geological Survey, is authorized and directed, based on information contained in the report prepared pursuant to section 102(d)(3) and after consultation with the Interagency Ground Water Research Task Force and the several States, to establish and conduct a National Ground Water Quantity and Quality Assessment program to—

(1) identify, assess, and monitor the quantity and quality of the Nation's ground water resources; and

(2) describe changes and trends in the quantity and quality of the Nation's ground water.

(b) In conducting the program authorized by subsection (a) of this section, the Secretary shall ensure that the program—

(1) includes agreements or memorandum of understanding, where appropriate, with the Environmental Protection Agency, other Federal agencies, the several States, local governments, private organizations and individuals detailing the ground water monitoring and assessment responsibilities of each entity in order to assure consistency and avoid duplication of effort;

(2) recommends and seeks to achieve, to the extent possible considering other statutory mandates, uniform data collection protocols for Federal agencies, State and local governments, and private organizations and individuals to use in the collection of reliable ground water data and information;

(3) provides guidance on the use of existing ground water quantity and quality data and information including means to integrate and analyze data collected under varying protocols and various monitoring and assessment programs;

(4) assists Federal agencies in meeting their responsibilities under this Act and the Safe Drinking Water Act (42 U.S.C. 300f, et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1151, et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), the Toxic Substances Control Act (15 U.S.C. 2601, et seq.), the Hazardous Liquid Pipeline Safety Act (49 U.S.C. App. 2001, et seq.), the Surface Mining Control and Reclamation Act (49 U.S.C. 1201, et seq.), the Federal Land Policy and Management Act (43 U.S.C. 1701, et seq.), the Uranium Mill Tailings Radiation Control Act (42 U.S.C. 7901, et seq.), and other Federal statutes with respect to the protection and management of ground water resources;

(5) improves the generic knowledge and understanding of the nature, extent, causes and effects of ground water contamination;

(6) assists State and local governments in the protection and management of ground water resources and the design of ground water monitoring programs; and

(7) is specifically designed to obtain complementary surface water quality data to provide an integrated knowledge of water quality conditions within specific hydrologic regions and subregions.

(c) The Secretary shall report every 3 years to the Congress on the results of the assessment program established by this subsection.

SEC. 224. AUTHORITIES OF THE ADMINISTRATOR AND ANY OTHER FEDERAL AGENCIES.

Nothing in this part shall be construed, interpreted or applied to limit or diminish in any way the authority or responsibility of the Administrator of the Environmental Protection Agency or any other Federal agency to conduct monitoring of the quality or quantity of the Nation's ground water or surface water resources or any other activity which is necessary or appropriate to carry out the duties assigned to the Administrator and the Agency by this Act or other Federal statutes.

SEC. 225. GROUND WATER RESEARCH PROGRAM FOR THE BUREAU OF RECLAMATION.

(a) The scope of research involving the Bureau of Reclamation shall include the effect of existing and proposed dams, reservoirs, and other water diversion projects on the local and regional ground water recharge and the effects of such projects on quality and quantity of ground water aquifers and surface streams, rivers, and lakes.

(b) The Secretary of the Interior, acting through the Bureau of Reclamation, and in consultation with the Interagency Ground Water Research Task Force and with the several States, shall conduct an investigation and analysis and prepare a Ground Water Reclamation Study for Congress, which shall include—

(1) an assessment of the impacts of existing and proposed Bureau of Reclamation projects on the quality and quantity of ground water resources;

(2) analyses of regional water budgets and the impact of the water projects on these budgets under varying annual weather conditions;

(3) a description of methods for optimizing Bureau of Reclamation project operations to ameliorate adverse impacts on ground water, if any;

(4) an analysis of the potential for ground water recharge facilities and the need to demonstrate artificial recharge technologies under a variety of hydrogeologic conditions taking into account the activities and information generated by Public Law 98–434;

(5) an analysis of how the Federal government could assist State and local governments in using artificial recharge facilities and technologies; and

(6) a description of the Federal technical assistance available to State and local agencies on economic engineering and other factors relating to the design and construction of ground water management facilities.

(c) The Secretary of the Interior shall submit his recommendations, along with the recommendations of the Governors of the affected States, concerning the establishment of a Ground Water Management and Technical Assistance Program in the Bureau of Reclamation in order to minimize adverse impacts of projects on ground water through development and implementation of management plans and activities.

(d) The report shall be delivered to Congress prior to the expiration of the 24-month period following the date on which funds are first appropriated pursuant to an authorization contained in this Act.

SEC. 226. INVESTIGATION OF MINING IMPACT ON GROUND WATER.

(a) The Secretary of the Interior acting through the Bureau of Mines and in consultation with the Interagency Ground Water Research Task Force and the several States, shall conduct an investigation and analysis and prepare a report on Ground Water and Mining, which shall include—

(1) a summary of the national mining activities; including a discussion of the methods and impact of these activities on the ground water resulting from tailings ponds, leach pads, tailing pads, and mine water leachates;

(2) an evaluation of procedures or practices that may be adopted that would reduce the amount of waste or mitigate leaching of contaminants into the ground water systems; and

(3) an evaluation of the mine reclamation procedures for open pit and drift mines to determine if reclamation methods are adequately mitigating the potential for ground water contamination.

(b) The report shall be delivered to Congress prior to the expiration of the 24-month period following the date on which funds are first appropriated pursuant to an authorization contained in this Act.

SEC. 227. AUTHORIZATIONS.

(a) For the purpose of carrying out the provisions of sections 221 and 222 of this Act, there are authorized to be appropriated to the Geological Survey $160,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(b) For the purposes of carrying out the activities authorized in section 223 there are appropriated $10,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(c) For the purposes of carrying out section 225 of this Act, there are authorized to be appropriated $500,000 to the Bureau of Reclamation for each of the fiscal years 1989 and 1990.

(d) For the purposes of carrying out provisions of section 226 of this Act, there are authorized to be appropriated $1,000,000 to the

Bureau of Mines for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

PART C—GROUND WATER RESEARCH PROGRAM OF THE DEPARTMENT OF AGRICULTURE

SEC. 231. DEPARTMENT OF AGRICULTURE.

(a) The Secretary of Agriculture, in consultation and cooperation with the Interagency Ground Water Research Task Force, shall be responsible for planning and coordinating the ground water research program within the divisions of the Department.

(b) The Secretary shall oversee the activities of the various divisions to ensure proper cooperation, and timely execution, of all ground water activities within the Department.

(c) In the conduct of such research, development, and demonstration, the Secretary of Agriculture shall give highest priority to projects and activities which improve the efficiencies of agricultural chemicals including nutrients and pesticides in use; reduce water requirements for irrigation; demonstrate integrated pest management techniques; reduce the number of agricultural chemicals in use through the demonstration of effective alternatives; and improve chemical disposal practices.

(d) Participation in the Department of Agriculture ground water research program shall include the Agricultural Research Service Division, the Cooperative State Research Service, the Extension Service, the Soil Conservation Service, the Economic Research Service, the Forest Service, Land Grant Colleges and Universities, the State Agricultural Experiment Stations, and the Cooperative Extensions Services.

(e)(1) The Secretary shall appoint a Ground Water Research Manager who shall be charged with carrying out the management plan, as incorporated in the annual report required by section 102(c)(1) of this Act, and who shall provide central direction for ground water research among the Department's Divisions.

(2) The Research Manager shall serve as liaison with the Interagency Clearinghouse Committee and ensure that results of all appropriate research and demonstration projects be available through the information center established in this Act.

SEC. 232. EVALUATION.

(a) The Secretary of Agriculture shall conduct in consultation and coordination with the Interagency Ground Water Research Task Force, an investigation and analysis and prepare reports to the Congress on the relationship between agricultural practices, policies, and ground water use that shall include—

(1) the current status and level of effort of programs at the Department of Agriculture to evaluate, prevent, and mitigate ground water quality problems; evaluate present water use and predict future use for agricultural and rural residents based upon geohydrological conditions and current and predicted levels of use and withdrawal;

(2) procedures for disseminating data and information and reports both to the public, farming communities, and other researchers, and computerization of data and information based systems;

(3) a detailed description of how ground water quality issues are included in management plans for lands of the Department of Agriculture;

(4) a listing of major policy decisions relating to agricultural impacts on ground water quality which are likely to be pending before the Department of Agriculture within the succeeding 3 fiscal years, and the types of scientific information needed for such policy decisions;

(5) a national overview of the impacts of agricultural operations, including the effect of size and different practices on the quality of ground water, and including identification of specific organic and inorganic sources of pollution, to the extent that current scientific knowledge and data coverage permit;

(6) a review of the roles of the various divisions and services of the Department and recommendations for eliminating duplication in research efforts; and

(7) specific recommendations for changes in existing programs and new initiatives in monitoring research, extension, and technical assistance efforts to address present and potential water quality and quantity problems.

(b) The Agriculture Research Service (ARS) shall fund basic and applied research in ground water, including, but not limited to, control and monitoring technologies as they pertain to agricultural practices and uses of ground water in rural areas as follows:

(1) The Agriculture Research Service shall direct its research toward improving understanding of basic physical processes that govern the movement and fate of agricultural chemicals, including the role of different soil types, and agricultural practices.

(2) The Agriculture Research Service shall direct research efforts into non-chemical alternatives and agricultural practices for controlling insects, pests, weed control, and plant nutrients.

(c) The Cooperative State Research Service shall fund and coordinate the agricultural research program in the Land Grant University system.

(d) The Cooperative State Research Service is directed to coordinate the research program efforts around the State and local data and information needs regarding the identification of contaminants, contaminant sources and prevention; fate and transport research and as established through the Cooperative Extension System.

(e) The Cooperative State Research Service, acting through the State Agricultural Experiment Stations, shall be responsible for research in the effects of various soil types, tillage, and conservation practices have on pesticide and fertilizer contamination in local ground waters. Such effort shall be coordinated with the Agricultural Research Service and with the regional Water Research Institutes to determine the effect of different soil types and climatic conditions.

(f) There is authorized to be appropriated to the Soil Conservation Service such sums as may be necessary to carry out a study of the impact of conservation tillage and other soil and water conservation practices on ground water quality, including the effect of this practice on the use and leach potential of agrichemicals.

SEC. 233. RESEARCH PROGRAM.

(a) The Secretary of Agriculture acting through the Agricultural Research Service and the Cooperative State Research Service, and in consultation and cooperation with the Interagency Ground Water Research Task Force, shall establish a national research, development and demonstration program with respect to the impact of agricultural practices on ground water quality. For purposes of this section agricultural practices shall include, but not be limited to, the application of pesticides and nutrients, irrigation practices and the operation of animal feedlots. In carrying out such program the Secretary may—

(1) conduct, and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys and studies relating to the causes, effects, extent, prevention, detection, and correction of ground water contamination which results, or may result, from agricultural practices, including storage, preparation, application and disposal practices (including back-siphoning and the rinsing and disposal of containers);

(2) encourage, cooperate with, and render technical assistance to the States and to local governmental entities, other appropriate public agencies and authorities, nonprofit institutions and organizations, and other persons in the conduct of such activities;

(3) establish technical advisory committees and interagency working groups composed of recognized experts in various aspects of ground water protection and the agricultural sciences to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

(4) exercise in the same manner and to the same extent those authorities granted to the Administrator in section 201 of this Act.

(b) The Secretary shall conduct or assist research, investigations, studies, surveys, or demonstrations with respect to (but not limited to) the following—

(1) chemical and biological interactions and processes including—

(A) the fate and transport of organic and inorganic substances released by agricultural practices from the point of release through the soil, vadose and saturated zones (and including releases and transport through air and surface waters),

(B) the biological, chemical and physical factors that govern nutrient transformation and mediate pesticide efficacy, stability, fate and transport in the soil, vadose and saturated zones,

(C) the source, extent and occurrence of agricultural chemicals and their metabolites and degradation products including pesticides, nutrients and salts resulting from irrigation in the soil, vadose and saturated zones;

(2) analytical models and testing methodology including—

(A) physical process models to describe the movement of water and agricultural chemicals through the soil, vadose and saturated zones,

(B) methods of measuring, sampling and characterizing the spatial and temporal variability, flux rate, and other features of the physical environment in the soil, vadose and saturated zones,

(C) predictive models to manage the impact of alternative agricultural chemical applications, water management programs, and production systems on ground or surface water quality,

(D) management systems to enable users to determine optimal nutrient and pesticide applications while minimizing effects on ground water quality for various soils, geomorphology and cultural conditions, and

(E) data bases and data base management systems for model testing and validation; and

management and control including—

(i) the effects of changing application technology, irrigation and agricultural production systems on chemical and water flux in the soil, vadose and saturated zones,

(ii) the effectiveness of water management and tillage practices in controlling the

movement of water and its constituents through the interacting soil medium,

(iii) the effect of various water management and agricultural production systems on soil microbiota which may effect the efficacy, persistence and breakdown of agricultural chemicals, and

(iv) new agricultural chemical products including controlled release pesticides and nutrients which may improve the efficacy, reduce application variability, and minimize the possibility of soil and ground water contamination.

SEC. 234. AGRICULTURAL NITROGEN BEST MANAGEMENT COMMITTEE.

(a) The purpose of this section is to protect public health and the environment through development of education programs on agricultural best management practices to minimize nitrogen losses from all potential agricultural sources and practices. The Extension Service, through the Cooperative Extension System, shall be responsible for the development and delivery of these programs.

(b) The Secretary of Agriculture and the Administrator of the Environmental Protection Agency shall establish and cochair an Agricultural Nitrogen Best Management Practices Committee consisting of—

(1) the Administrator of the Agriculture Research Service;

(2) the Administrator of the Extension Service;

(3) the Chief of the Soil Conservation Service;

(4) the Administrator of the Agriculture Stabilization and Conservation Service;

(5) the Administrator of the Cooperative State Research Service;

(6) the Manager of the National Fertilizer Development Center, Tennessee Valley Authority;

(7) the Director of the Office of Water Regulations and Standards, Environmental Protection Agency;

(8) the Director of the Office of Ground Water Protection, Environmental Protection Agency;

(9) a representative of the United States Geological Survey;

(10) an individual selected by the Board of Agriculture of the National Research Council of the National Academy of Science;

(11) a representative of National Association of Conservation Districts;

(12) a representative of farmers nationwide, to be selected by the Secretary of Agriculture;

(13) a representative of State government officials with knowledge of ground water selected by the Administrator of the Environmental Protection Agency;

(14) a representative of national environmental organizations selected by the Administrator of the Environmental Protection Agency;

(15) a representative of the State Agricultural Experiment Stations selected by the Secretary of Agriculture; and

(16) a representative of the State Extension Services selected by the Secretary of Agriculture.

(c) The Committee shall—

(1) develop agricultural best management practices for agricultural nitrogen utilization in crop production and protection of public health and surface and ground water quality;

(2) develop educational and training materials including slide presentations, brochures, and video tapes; and

(3) disseminate the educational materials to American farmers and other information users through appropriate means, including—

(A) county Agricultural Soil Conservation Services offices, and county soil water conservation district offices; and

(B) extension agents.

(d) The Committee shall report back to Congress 1 year after the date of enactment of this Act on the progress of its efforts. The report shall include a description of—

(1) the agricultural best management practices developed, with particular emphasis on practices to minimize the impact of agricultural nitrogen on ground water and surface water quality;

(2) material developed to promote agricultural best management practices;

(3) the strategy for dissemination;

(4) the number of farmers exposed to the information; and

(5) the number of farmers adopting agricultural best management practices.

(e) For the purpose of this section—

(1) the term "agricultural nitrogen" means nitrogen in all forms which may be present and available for crop production (whether natural, physical, manmade, chemical, or biological) including nitrogen supplied by leguminous plants (such as soybeans and alfalfa), animal manure, decaying leaves and other vegetation, commercial fertilizers, human and industrial sewage, precipitation, dustfall, soil and soil bacteria; and

(2) the term "agricultural best management practices" means management practices designed to protect public health and to reduce and prevent contamination of ground water and surface water and erosion and runoff from cropland, including, but not limited to, use of conversion tillage, no till, ridge planting, strip tillage, contour farming, strip cropping, irrigation water management, judicious fertilizer application, slowrelease fertilizers, soil and tissue testing, and vegetative buffer strips.

(f) There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the first 5 fiscal years beginning after the date of the enactment of this Act.

(g)(1) Section 319(c) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(3) Any approved management program and report required by subsection (b) shall be made available to the Interagency Ground Water Research Task Force established in section 102 of the Ground Water Research, Management, and Education Act of 1988.".

(2) Section 319(m)(2) of such Act is amended by adding at the end thereof the following new paragraph:

"In preparing reports under this paragraph, the Administrator shall consider the report of the Agricultural Nitrogen Best Management Practices Committee required under section 234 of the Ground Water Research, Management, and Education Act of 1988.".

SEC. 235. EFFICIENT USE OF NUTRIENTS.

(a)(1) The Secretary of Agriculture, in cooperation with the Administrator and the Director of the National Fertilizer Development Center, shall conduct research and investigations on practices, methods and techniques for improving the efficiency of fertilizer uses in agriculture including practices which would change the timing, rate or methods of fertilizer application to reduce the potential for nitrates and other fertilizer constituents or degradation products to leach to ground water, and soil management practices and animal waste management.

(2) The Secretary of Agriculture shall report the preliminary results of such research and investigations to the Congress within 24 months after the date of enactment of this Act. Such report shall include recommendations as to the policies and programs that may be implemented by Federal agencies or the States to encourage the use of practices that are more efficient. The report shall also include an estimate of the benefits to be derived from the adoption of such practices, methods and techniques and an estimate of any increase in costs associated with such practices, methods and techniques.

(3) There are authorized to be appropriated for purposes of carrying out this subsection not to exceed $3,500,000 in each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

(b)(1) The Administrator, after consultation with the Secretary of the Department of Agriculture and the Director of the National Fertilizer Development Center, shall conduct a study of commercial fertilizer products sold for use in the United States to determine the chemical constituents including the presence of trace elements in such products and the potential for such constituents to leach and to contaminate ground water resources. The study shall include a survey of fertilizer products used in agriculture and sold in commerce for use on lawns, gardens and golf courses.

(2) The Administrator shall report to the Congress the results of the study not later than 18 months after the date of enactment of this Act including any steps which the Administrator will take or will recommend to other Federal agencies to protect human health or the environment from any adverse effect which may result from the use of such products.

(3) There are authorized to be appropriated without fiscal year limitation $1,000,000 to carry out the study and issue the report required by this subsection.

(4) The Administrator shall take such actions as are necessary and appropriate pursuant to the authorities granted the Administrator in the Toxic Substances Control Act (15 U.S.C. 2601, et seq.) to prevent any adverse effect on the human health or the environment which may result from the presence of hazardous constituents in fertilizer products distributed in commerce within the United States.

SEC. 236. STUDY.

(a) The Administrator and the Secretary of Agriculture shall conduct a study of agricultural drainage wells including the impact of such wells on ground water quality, the alternatives to wells for drainage purposes and the costs of plugging or otherwise closing existing wells.

(b) The Administrator shall report the results of such study to the Congress within 24 months after the date of enactment of this Act. Such report shall include an inventory of agricultural drainage wells in each State and a description of Federal or State programs that may be available to assist the owners of such wells with the cost of closure and the installation of alternative practices.

(c) There are authorized to be appropriated for purposes of carrying out this section not to exceed $750,000 without fiscal year limitation.

(d) For the purposes of carrying out the activities authorized by sections 232 and 233 there are authorized to be appropriated $16,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

SEC. 237. EDUCATION.

(a) The Secretary of Agriculture, acting through the Extension Service and the Soil Conservation Service, shall establish a training program for staffs of both agencies. The Cooperative Extension System shall establish an education program for the public to ensure that information on farming practices, alternatives to pest control, soil management practices, leach potential of agrichemicals, and other pertinent information regarding the protection of ground water, resulting from the research programs authorized in this part, is available to the farming communities and individuals.

(b) For the purposes of carrying out the activities authorized in this section, there are authorized to be appropriated $12,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

PART D—ADDITIONAL PROVISIONS

SEC. 261. LAKE OKEECHOBEE ECOSYSTEM, FLORIDA.

(a)(1) The Administrator, in cooperation with the Secretary of the Army, shall conduct a program of research of the Lake Okeechobee ecosystem on the relationship between surface and ground water quality and the management and control of aquatic plants. The Secretary of the Army shall provide such resources and services as may be necessary to assist the Administrator in conducting such program.

(2) The program conducted under this subsection shall—

(A) examine, interpret, and summarize existing data relating to surface and ground water quality and the management and control of aquatic plants, and identify the location of major collections of such data;

(B) examine the impact of existing methods for the management and control of aquatic plants on the Lake Okeechobee ecosystem;

(C) conduct any research which the Administrator determines is necessary for the development of effective methods of management and control of aquatic plants and surface and ground water quality; and

(D) be conducted in coordination with similar programs conducted by other Federal agencies and State, regional, and local authorities engaged in research involved in Lake Okeechobee.

(3) Methods developed under this subsection shall—

(A) be capable of application in a variety of combinations as separate components of systems for such management and control;

(B) be adaptable for application, without a significant loss of accuracy and utility, to a wide variety of surface and ground water ecosystems and regions of the United States; and

(C) be compatible with all aspects of each ecosystem to which they may be applied.

(4) Subject to the availability of appropriations, the Administrator and the Secretary of the Army may each enter into contracts for the performance of research required for the development of methods under this subsection.

(5) The Administrator shall provide information about methods developed under this subsection to any official of State, regional, or local government upon receipt by the Administrator of a request submitted by the official.

(b) The Administrator shall conduct a project demonstrating methods developed under subsection (a) at the Lake Okeechobee ecosystem. Such project shall—

(1) assess the utility of methods developed under subsection (a) as components of a variety of comprehensive systems for the management and control of aquatic plants and surface and ground water quality; and

(2) identify any further research required to allow development of effective methods for the management and control of aquatic plants and surface and ground water quality.

(c) The Administrator shall solicit recommendations regarding activities under subsections (a) and (b) from—

(1) scientists other than those participating directly in activities under such subsections, including scientists representative of the Federal, State, regional, and local scientific communities, universities, and private industry; and

(2) management and operational personnel involved in the management and control of aquatic plants,

and shall utilize such recommendations in the development of methods under subsection (a).

(d) The Administrator shall complete the research program under subsection (a) and demonstration project under subsection (b) not later than 3 years after the date of the enactment of this title.

(e) Not later than 180 days after the date of the enactment of this title, the Administrator and the Secretary of the Army shall each transmit to the Congress a report outlining a plan for carrying out the functions of the Administrator or Secretary of the Army, as the case may be, with respect to the research program and demonstration project to be conducted under this section. Such reports shall each include a description of the cooperative measures to be undertaken by the Administrator or the Secretary of the Army, as the case may be.

(f) Any department or agency of the United States may utilize any recommendation contained in a report on the results of the research program and demonstration projects conducted under this section—

(1) if the recommendation may be utilized without interfering with any management or demonstration project already in progress; or

(2) after consultation with each person conducting such a management or demonstration project.

(g) For the purposes of this section, the term "Lake Okeechobee ecosystem" means Lake Okeechobee, Florida, all rivers and streams entering into and carrying water away from such lake, the surrounding marsh area, the associated 100-year flood plain, and associated ground water resources.

(h) There are authorized to be appropriated to carry out this section $2,500,000 for each of the fiscal years 1989, 1990, and 1991. Upon request of the Secretary of the Army, the Administrator may transfer to the Secretary of the Army such funds as may be necessary for the Secretary of the Army to comply with the provisions of this section applicable to the Secretary of the Army.

SEC. 262. ANNUAL REPORT.

Not later than January 15, 1989, and each January 15 thereafter, the President shall prepare and submit to Congress an annual report on the activities carried out by the Administrator, the Secretary, the Interagency Ground Water Research Task Force, other Federal agencies as appropriate, and State and local governments regarding ground water assessment, protection, management, and remediation activities under this title for Lake Okeechobee. The annual report shall contain a discussion of the ground water assessment and research findings to date, needs of the Federal Government and State and local governments, and an evaluation of the extent to which the programs authorized by this title are addressing those needs.

SEC. 263. WESTERN CENTER FOR NUCLEAR AND GROUND WATER RESEARCH.

(a) DEFINITIONS.—As used in this part, the term—

(1) "Center" means the Western Center for Nuclear and Ground Water Research established by this section;

(2) "Board" means the Board of Directors as established by this section; and

(3) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) FINDINGS.—The Congress finds that—

(1) the protection of ground water from nuclear and hazardous wastes requires further research in the containment of those wastes and in the monitoring of the environment;

(2) growing demands for ground water in arid regions require further research to protect and monitor existing aquifers and locate future aquifers;

(3) a variety of Federal agencies are conducting research in ground water, with a variety of research centers throughout the Nation being utilized;

(4) the Nevada Test Site and surrounding area has been selected as an area where nuclear weapons are tested, nuclear wastes may be stored, and hazardous materials and activities may be evaluated;

(5) unique research capabilities exist within Nevada because of the Nevada Test Site; and

(6) utilization and enhancement of research at universities can be economical, lead to high-quality research, and further lead to the training of additional scientists and professionals to address critical environmental issues.

(c) PURPOSE.—The purposes of this section are to—

(1) establish a Western Center for Nuclear and Ground Water Research within Nevada to evaluate the suitability of man made and natural materials for the isolation of hazardous and nuclear wastes from the environment;

(2) increase research in monitoring the movement and concentration of contaminants in ground water and to coordinate the research with other Federal departments and agencies, and State and private agencies, institutions, and entities;

(3) utilize the resources of the Center to independently review methods for the containment of nuclear or hazardous wastes, and the use of man made or geologic materials for such containment; and

(4) promote and coordinate research in the availability, usage, management, and monitoring of ground water.

(d) ESTABLISHMENT OF CENTER.—(1) The Administrator of the Environmental Protection Agency, in consultation with the Governor of the State of Nevada, is authorized to take such action as may be necessary to establish, in the State of Nevada, the Western Center for Nuclear and Ground Water Research.

(2) The Center shall be under the control, jurisdiction, and direction of the Board.

(3) The Center shall be located at such place or places as the Administrator, after consultation with the Governor and the Board, shall designate.

(4) The Administrator of General Services is authorized, subject to the availability of funds, to assist the Administrator in providing necessary facilities for the purposes of

this part. In providing such facilities, the Administrator of General Services shall consult with the Governor of Nevada and the Board.

(5) The Administrator is authorized to enter into such agreements or other arrangements with the State of Nevada and other public and private agencies, institutions, or entities, as may be necessary to enable the Administrator to carry out the purposes of this part.

(e) BOARD OF DIRECTORS.—(1) There is established the Western Center for Nuclear and Ground Water Research Board of Directors.

(2) The Board shall be composed of 9 members, selected by the Administrator as follows:

(A) one member designated by the Governor of the State of Nevada;

(B) one member designated by the Administrator;

(C) one member designated by the United States Geological Survey;

(D) one member designated by the Bureau of Reclamation;

(E) one member designated by the Environmental Research Center;

(F) one member designated by the University of Nevada, Las Vegas;

(G) one member designated by the University of Nevada, Reno;

(H) one member designated by the Department of Energy; and

(I) one member designated by the Desert Research Institute.

(3) The member designated by the Governor of Nevada shall be Chairman.

(4) Members of the Board shall be appointed for a term of 4 years.

(5) Five members of the Board shall constitute a quorum, but a lesser number may conduct meetings.

(6) The first meeting of the Board shall be called by the Administrator and shall be held within 60 days after the date of the enactment of this Act.

(7) A vacancy on the Board resulting from death or resignation by a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(f) DUTIES OF THE CENTER.—The Center shall—

(1) study and evaluate, on a continuing basis, the suitability of man made and natural materials for the isolation of hazardous and nuclear wastes from the environment;

(2) study and evaluate, on a continuing basis, ways and means of increasing research in monitoring the movement and concentration of contaminants in ground water and to assist the Center in coordinating such research with other Federal departments and agencies, and State and private agencies, institutions, and entities;

(3) study and evaluate the availability, usage, and management of ground water in arid regions;

(4) take such action as may be necessary to promote and coordinate research, governmental and private, in the areas of nuclear and hazardous waste containment and disposal, including methods and materials used or to be used in connection therewith;

(5) review and study existing and proposed Federal, State, and local public and private programs and projects, including research relating to the suitability of the methods for the containment of nuclear or hazardous wastes, and the use of man made or geologic materials for such containment;

(6) make recommendations to the Congress on the creation of interstate compacts and other forms of interstate or interregional cooperation to help further the purposes of this part;

(7) provide a forum for consideration of problems involving the protection of ground water from nuclear and hazardous substances, and, as appropriate, utilize citizens, and special advisory councils; and

(8) make the Center accessible to the public by holding scheduled, well publicized public meetings throughout the State of Nevada.

(g) COMPENSATION.—Each member of the Board who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS-15 under the General Schedule contained in section 5332 of title 5, United States Code, including traveltime, for each day he or she is engaged in the actual performance of his or her duties as a member of the Board. A member of the Board who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Board shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(h) POWERS AND ADMINISTRATIVE PROVISIONS.—(1) The Board is authorized to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(2) The Board is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Board in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

(3) The Board is authorized to procure supplies, services, and property, and make contracts in any fiscal year, only to such extent or in such amounts as are provided in appropriation Acts.

(4) The Board is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(5) The Board or, on the authorization of the Board, a member thereof, may, for the purpose of carrying out the provisions of this part, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of books, records, memoranda, papers, and documents as the Board or such member deems advisable.

(6) The Board, or on the authorization of the Board, any member thereof, may, for the purpose of carrying out the provisions of this part, have such printing and binding done, enter into contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and make such expenditures as the Board or such member deems advisable.

(7) The Board may acquire directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this Act. Each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Board, upon request by the Chairman.

(8) The Chairman of the Board is authorized to appoint, terminate, and fix the compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, of an Executive Director and such additional personnel as the Chairman finds necessary to enable the Board to carry out its duties. The annual rate of compensation of the Executive Director may not exceed a rate equal to the rate provided for level V of the Executive Schedule under section 5316 of such title and the annual rate of compensation of all other personnel may not exceed a rate equal to the maximum rate for GS-15 of the General Schedule under section 5332 of such title.

(9) Upon request of the Board, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Board or to detail any of the personnel of such agency to the Board, on a reimbursable basis, to assist the Board in carrying out its duties under this part, unless the head of such agency determines that overriding reasons will not permit the agency to make such facilities, services, or personnel available to the Board and so notifies the Chairman in writing.

(10) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(11) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board or before such member.

(12) The Board may expend funds made available for purposes of this part for printing and binding, notwithstanding any other provision of law.

(13) No sums appropriated for this part may be used to lease, construct, or purchase physical facilities.

(i) REPORTS.—Not later than 1 year after the date of enactment of this Act, and thereafter upon the request of the Congress, the Board shall prepare and transmit to the Congress, the President, and the governor of the State of Nevada a report describing the findings and activities of the Board, together with any recommendations regarding specific actions necessary to be taken to enable the Center to carry out its mission under this part.

TITLE III—STATE GROUND WATER STRATEGIES

SEC. 301. STATE GROUND WATER STRATEGIES.

(a)(1) The Administrator is authorized to make grants to the States to support the development and implementation of State strategies designed to detect, prevent, and correct ground water contamination which have as an objective the protection of human health and the environment and which are designed to control sources or potential sources of ground water contaminants in that State.

(2) Subject to the requirements of this section, activities assisted may include, but are not limited to—

(A) planning;

(B) identification and mapping of ground water resources within the State, done in consultation with the United States Geological Survey;

(C) identification, control, and regulation of sources or potential sources of ground water contaminants within the State;

(D) research, development, and demonstration of practices, methods, and techniques effective in preventing, detecting, and correcting ground water contamination;

(E) monitoring, including ambient monitoring and monitoring to identify the nature and frequency of ground water contamination problems;

(F) data collection and management including management programs that assure the compatibility of data systems maintained by the State with data systems of other States and agencies of the United States;

(G) assessment of the legal authorities of the State or its political subdivisions for the protection and management of ground water resources and recommendations for new authorities;

(H) enforcement of permits, standards, regulations, conditions, requirements, prohibitions, or orders with respect to the detection, prevention, or correction of ground water contamination;

(I) public education and awareness programs;

(J) programs to increase the expertise and capabilities of the personnel employed by the State or by local governments within the State in ground water protection and management activities; and

(K) program administration.

(3) The strategy of each State should—

(A) identify a lead agency and provide an institutional framework for protection of ground water quality;

(B) identify legal authorities for the protection of ground water;

(C) identify major sources of ground water contamination and the contaminants associated with each source;

(D) assure coordination among Federal, State, and local agencies involved in ground water protection; and

(E) assure coordination of ground water protection programs with surface water protection programs and with the activities of public water supply systems.

(4) From such sums as are appropriated to carry out the purposes of this section in any fiscal year, the Administrator shall make allotments to the several States in accordance with regulations promulgated for that purpose which determine the amount of the allotment for each State on the basis of the extent of ground water contamination in that State or of factors (including the number and nature of the sources of contamination in that State) which contribute to or are likely to contribute to ground water contamination in that State, the geographic area of the State, and the number of persons relying on ground water for drinking water supplies. No eligible State shall receive less than $75,000 or one-half of 1 percent whichever is greater or more than 10 percent of the total allotment or allotments made under this section except that such minimum shall not apply in the case of Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, or the Trust Territories, or federally recognized Indian tribes.

(5) The grant to any State under this subsection shall not exceed 50 percent of the cost of carrying out, during a 1-year period, a State program eligible under this subsection.

(6) The Administrator shall include no maintenance of effort requirement in the regulations for any grant program authorized under this section.

(7) Grants authorized by this section, but not obligated by a State during the fiscal year for which they were first authorized, or during the fiscal year immediately following, shall revert to the Administrator, and shall be added to the funds available for grants under this section.

(8) Grants to the State for the purpose of developing ground water protection strategies shall be made under the authority of this section and not section 106 of the Federal Water Pollution Control Act or other statute.

(9) Federal funds received by a State from other sources shall not be used to pay the State's share of the cost of a program which receives a grant under this section nor shall any funds authorized by this Act be used as a State share to match Federal funds from other sources.

(10) Of the funds received by any State under the authority of this section, not less than 30 percent shall be used to carry out the provisions of sections 1427 and 1428 of the Safe Drinking Water Act.

(b) Each State, which receives any grant according to the provisions of subsection (a), shall submit an application for such grant at least 90 days prior to the beginning of the fiscal year for each fiscal year for which funds are to be received by the State. The manner and form of the application shall be prescribed by the Administrator. The application required by this subsection shall include a statement of the State's plan for use of the funds, information on the types of activities to be supported, and assurances that all requirements of this Act will be met by the State. Applications prepared by the States shall be made available to the public in such State before submission to the Administrator.

(c) The Administrator shall approve or disapprove any application submitted according to the provisions of subsection (b) of this section and if disapproved, the Administrator shall state the reasons for disapproval in writing. The State may modify and resubmit an application that has been disapproved. If the application (or resubmitted application) is approved, the Administrator shall distribute the funds authorized by this Act to the State.

(d) Each State receiving assistance under this Act shall, to the maximum extent practicable, establish procedures including, but not limited to, public hearings and the establishment of technical and citizens advisory committees, to encourage public participation in developing the ground water strategy assisted under this section.

(e) With the approval of the Administrator, a State may allocate to a local government, to a regional planning agency, to an interstate agency, to a public water system, or to a resource management district organization any portion of a grant made under this section to accomplish the purposes of this Act. A State may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

(f) No funds provided to a State under the authority of this section may be used to assist any person or governmental entity in complying with any requirement of the Safe Drinking Water Act (42 U.S.C. 300f, et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), the Clean Water Act (33 U.S.C. 1251, et seq.), the Toxic Substances Control Act (15 U.S.C. 2601, et seq.), or other Federal statutes involving the construction, operation, or maintenance of facilities (or connections thereto) or requirements for monitoring of particular sources of contamination for the presence of pollutants or contaminants or releases of contaminants; or used to clean up any source of contamination or bring any source or potential source of contamination into compliance with Federal, State, or local statutes.

(g) The Administrator or the Comptroller General of the United States may request such information, data, and reports as deemed necessary to carry out their responsibilities to assure that funds made available pursuant to this section are properly used and that only eligible activities are assisted.

(h) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the provisions of this Act satisfactorily.

(i) Each State receiving funds under this section in any fiscal year shall make a report, not later than 60 days after the close of the fiscal year, to the Administrator on the use of such funds, which report shall be sent to the Interagency Ground Water Research Task Force.

(j) Upon request of a State, the Administrator, or another Federal agency, shall, to the extent resources and statutory limitations allow, provide technical assistance to such State in development or implementation of programs addressing ground water protection, management, and restoration. Such assistance may include but shall not be limited to—

(1) design and implementation of surveys of the location and occurrence of ground water contaminants in the State;

(2) design and implementation of public information and education programs;

(3) design and implementation of State or local programs to control sources of ground water contamination;

(4) delineation of wellhead protection areas, and other areas of recharge that are vulnerable to ground water contamination; and

(5) design and implementation of ground water monitoring programs.

(k) There are authorized to be appropriated for grants under this section $50,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, and 1993.

SEC. 302. ASSISTANCE FOR SMALL COMMUNITIES WITH GROUND WATER RADIUM CONTAMINATION.

(a) The Administrator of the Environmental Protection Agency, in cooperation with State public authorities, may assist local governments in demonstrating mitigation of radium contamination in ground water. Upon application of any State public authority, the Administrator may make a grant to that authority for such purposes. Assistance provided pursuant to this subsection shall be used for financing the acquisition and installation of ground water treatment technologies needed to remove radium from ground water used as a source of public drinking water for residents of small communities under the jurisdiction of such local governments.

(b) A grant may only be made under subsection (a) for removal of radium from ground water if the level of contamination from such radium exceeds the maximum contaminant level for radium established under title XIV of the Public Health Service Act (relating to safe drinking water).

(c) Funds made available through grants under subsection (a) may only be used by *the grant recipient for one or both of the following purposes:*

(1) Providing insurance or prepaying interest for local debt obligations issued by a local government to finance the acquisition and installation of treatment technologies described in subsection (a).

(2) Paying for the costs of administration for establishment and operation by such authority of a program to provide financing for such acquisition and installation.

(d) For purposes of this section—

(1) The term "small community" means a political subdivision of a State the population of which does not exceed 20,000 individuals.

(2) The term "State public authority" means an agency or instrumentality of a State which is established for the purpose of assisting local governments in financing capital improvements on a statewide or regional basis.

(e) For the purpose of carrying out the activities authorized by this section, there are authorized to be appropriated $4,000,000 for fiscal year 1989 and $5,000,000 for each of the fiscal years 1990 and 1991.

SEC. 303. EXTENSION FOR WELLHEAD PROTECTION AREA PLANS.

(a) Section 1428(a) of the Safe Drinking Water Act is amended by striking "3 years of the date of enactment" and inserting in lieu thereof "5 years of the date of enactment".

(b) Section 1428(d) of such Act is amended by striking "3 years after the enactment of this section" and inserting in lieu thereof "5 years after the enactment of this section".

SEC. 304. EXTENSION OF SOLE SOURCE AQUIFER DESIGNATIONS.

Section 1427(b) of the Safe Drinking Water Act is amended by striking "24 months after the enactment" and inserting in lieu thereof "48 months after the enactment of".

TITLE IV—PATENT POLICY

SEC. 401. PATENT POLICY.

It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research or development arising out of any contract or other agreement with the Environmental Protection Agency; to ensure that such inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of such inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in such federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of such inventions; and to minimize the costs of administering policies in this area.

SEC. 402. DEFINITIONS.

As used in this title—

(1) The term "Agency" means the Environmental Protection Agency.

(2) The term "funding agreement" means any contract, grant, or cooperative agreement entered into between the Agency and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(3) The term "contractor" means any person, small business firm, or nonprofit organization that is a party to a funding agreement.

(4) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under this title or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(5) The term "subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement: Provided, That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(6) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(7) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(8) The term "small business firm" means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(9) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

SEC. 403. DISPOSITION OF RIGHTS.

(a) Each nonprofit organization or small business firm may, within a reasonable time after disclosure as required by paragraph (c)(1) of this section, elect to retain title to any subject invention: Provided, however, That a funding agreement may provide otherwise (i) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government, (ii) in exceptional circumstances when it is determined by the Agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of this chapter, (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities, or (iv) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs of the Department of Energy. The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (c) of this section and the other provisions of this chapter.

(b)(1) The rights of the Government under subsection (a) shall not be exercised by the Agency unless it first determines that at least one of the conditions identified in clauses (i) through (iii) of subsection (a) exists. Except in the case of subsection (a)(iii), the Agency shall file with the Secretary of Commerce, within 30 days after the award of the applicable funding agreement, a copy of such determination. In the case of a determination under subsection (a)(ii), the statement shall include an analysis justifying the determination. In the case of determinations applicable to funding agreements with small business firms, copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this title or otherwise not in conformance with this title, the Secretary shall so advise the head of the Agency and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions.

(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that the Agency is utilizing the authority of clause (i) or (ii) of subsection (a) of this section in a manner that is contrary to the policies and objectives of this title the Administrator is authorized to issue regulations describing classes of situations in which the Agency may not exercise the authorities of those clauses.

(3) At least one each year, the Comptroller General shall transmit a report to the Committees on the Judiciary of the Senate and House or Representatives on the manner in which this title is being implemented by the Agency and on such other aspects of Government patent policies and practices with respect to federally funded inventions as the Comptroller General believes appropriate.

(4) If the contractor believes that a determination is contrary to the policies and objectives of this title or constitutes an abuse of discretion by the agency, the determination shall be subject to section 404(b).

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

(1) That the contractor disclose each subject invention to the Agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

(2) That the contractor make a written election within 2 years after disclosure to the Agency (or such additional time as may be approved by the Agency) whether the contractor will retain title to a subject invention: Provided, That in any case where publication, on sale, or public use, has initiated the 1-year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Agency to a date that is not more than 60 days prior to the end of the statutory period: And provided further, That the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times.

(3) That a contractor electing rights in a subject invention agrees to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

(4) With respect to any invention in which the contractor elects rights, the Agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: Provided, That the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the Agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreements relating to weapons development and production.

(5) The right of the Agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: Provided, That any such information, as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 404 of this title shall be treated by the Agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(6) An obligation on the part of the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention.

(7) In the case of a nonprofit organization, (A) a prohibition upon the assignment of rights to a subject invention in the United States without the approval of the Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions (provided that such assignee shall be subject to the same provisions as the contractor); (B) a requirement that the contractor share royalties with the inventor; (C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research, or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year, up to an amount equal to 5 percent of the annual budget of the facility, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility provided that if said balance exceeds 5 percent of the annual budget of the facility, that 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D), and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility.

(8) The requirements of sections 404 and 405 of this title.

(d) If a contractor does not elect to retain title to a subject invention in cases subject to this section, the Agency may consider and after consultation with the contractor grant requests for retention of rights by the inventor subject to the provisions of this title and regulations promulgated hereunder.

(e) In any case when an employee of the Agency is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm, the Agency is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor subject to the conditions set forth in this title.

(f)(1) No funding agreement with a small business firm or nonprofit organization shall contain a provision allowing the Agency to require the licensing to third parties of inventions owned by the contractor that are not subject to inventions unless such provision has been approved by the head of the Agency and a written justification has been signed by the Administrator of the Agency. Any such provision shall clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The Administrator of the Agency may not delegate the authority to approve provisions or sign justifications required by this paragraph.

(2) The Agency shall not require the licensing of third parties under any such provision unless the Administrator of the Agency determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination shall be on the record after an opportunity for a hearing by the Agency. Any action commenced for judicial review of such determination shall be brought within 60 days after notification of such determination.

SEC. 404. MARCH-IN RIGHTS.

(a) With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this title, the Agency shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder, to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the Agency determines that such—

(1) action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) action is necessary because the agreement required by section 405 has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is a breach of its agreement obtained pursuant to section 405.

(b) A determination pursuant to this section or section 403(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. 601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 407. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within 60 days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, as appropriate, the determination of the Agency. In cases described in paragraphs (1) and (2), the Agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.

SEC. 405. PREFERENCE FOR UNITED STATES INDUSTRY.

Notwithstanding any other provision of this title, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Agency upon a showing by the small business firm, nonprofit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

SEC. 406. CONFIDENTIALITY.

The Agency is authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, the Agency shall not be required to release copies of any document which is part of an application for patent filed with the United

States Patent and Trademark Office or with any foreign patent office.

SEC. 407. UNIFORM CLAUSES AND REGULATIONS.

The Secretary of Commerce may issue regulations which may be made applicable to the Agency implementing the provisions of sections 403, 404, and 405 of this title and shall establish standard funding agreement provisions required under this title. The regulations and the standard funding agreement shall be subject to public comment before their issuance.

SEC. 408. DOMESTIC AND FOREIGN PROTECTION OF FEDERALLY OWNED INVENTIONS.

(a) The Agency is authorized to—

(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of title 35 of the United States Code as determined appropriate in the public interest.

(3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(b) For purposes of assuring the effective management of Government-owned inventions, the Secretary of Commerce is authorized to—

(1) assist the Agency's efforts to promote the licensing and utilization of Government-owned inventions;

(2) assist the Agency in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and

(3) consult with and advise the Agency as to areas of science and technology research and development with potential for commercial utilization.

SEC. 409. REGULATIONS GOVERNING FEDERAL LICENSING.

The Secretary of Commerce is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention under this title may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

SEC. 410. RESTRICTIONS ON LICENSING OF FEDERALLY OWNED INVENTIONS.

(a) The Agency shall not grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the Agency with a plan for development and/or marketing of the invention, except that any such plan may be treated by the Agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(b) The Agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c)(1) The Agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that—

(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public.

(2) The Agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

(3) First preference in the exclusive or partially exclusive licensing of federally owned inventions shall go to small business firms submitting plans that are determined by the Agency to be within the capabilities of the firms and equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(d) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, the Agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that the Agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(e) The Agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

(f) Any grant of a license shall contain such terms and conditions as the Agency determines appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

(1) periodic reporting on the utilization or efforts at obtaining utilization that are being made by the licensee with particular reference to the plan submitted: Provided, That any such information may be treated by the Agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code;

(2) the right of the Agency to terminate such license in whole or in part if it determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(3) the right of the Agency to terminate such license in whole or in part if the licensee is in breach of an agreement obtained pursuant to paragraph (b) of this section; and

(4) the right of the Agency to terminate the license in whole or in part if the Agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee.

SEC. 411. PRECEDENCE OF CHAPTER.

(a) Except to the extent provided in section 203 of this Act, this title shall take precedence over chapter 38 of title 35 of the United States Code, and any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this title, including but not necessarily limited to the following:

(1) section 10(a) of the Act of June 29, 1935, as added by title I of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);

(4) section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721);

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);

(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

(8) section 6 of the Coal Research and Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

(11) subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5;

(12) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901; 88 Stat. 1878);

(13) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

(14) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);

(15) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

(16) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

(17) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

(18) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);

(19) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

(20) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

(21) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178(j); 92 Stat. 2533); and

(22) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

This title shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

(b) Nothing in this title is intended to alter the effect of the laws cited in subsection (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

(c) Nothing in this title is intended to limit the authority of the Agency to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of the Agency to allow such persons to retain ownership of inventions, except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in sections 403(c)(4) and 404 of this title. Any disposition of rights in inventions made in accordance with the Statement or implementing regulations, including any disposition occurring before enactment of this section, are hereby authorized.

(d) Nothing in this title shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods.

SEC. 412. RELATIONSHIP TO ANTITRUST LAWS.

Nothing in this title shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law.

SEC. 413. DISPOSITION OF RIGHTS IN EDUCATIONAL AWARDS.

No scholarship, fellowship, training grant, or other funding agreement made by the Agency primarily to an awardee for educational purposes will contain any provision giving the Agency any rights to inventions made by the awardee.

SEC. 414. TITLE 35, UNITED STATES CODE.

The provisions of chapter 38 of title 35, United States Code, shall not be applicable to any patent or invention within the purview of this title.

AMENDMENT NO. 3638

(Purpose: To correct a drafting error in the committee bill as reported and printed)

Mr. BYRD. Mr. President, I send to the desk a technical amendment on behalf of Mr. BURDICK.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. BURDICK, proposes an amendment numbered 3638.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 74, lines 4 and 5, strike subsection (i) in its entirety and renumber subsequent subsections accordingly.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3638) was agreed to.

The ACTING PRESIDENT pro tempore. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

Mr. BURDICK. Mr. President, I rise to support the passage of H.R. 791, the Ground Water Research, Management and Education Act of 1988. Ground water research is a major legislative priority of mine. A number of proposals have been introduced during this Congress concerning ground water research. H.R. 791, as amended by the Committee on Environment and Public Works, incorporates the best portions of many of these bills. I am pleased that H.R. 791 contains many elements of S. 1105 which I introduced earlier in this Congress. I want to acknowledge the cooperation of the Committee on Agriculture, Nutrition, and Forestry, the Committee on Governmental Affairs, and the Energy and Natural Resources Committee allowing this legislation to be considered.

Ground water is a national resource of tremendous importance which is often taken for granted. Half of the population of the United States, and a majority of those living in rural areas, rely on ground water for drinking purposes. In North Dakota, 62 percent of the population relies on ground water for domestic supply. Ground water is the only source of water for thousands of family farms and their livestock.

Mr. President, I have stated on a number of occasions that we have long neglected our ground water resources. It is time to recognize the problems facing this resource and take effective action. This bill is a major step toward that goal. This crucial resource is being threatened with contamination on numerous fronts and on a wide scale. The Environmental Protection Agency and various State agencies have identified major ground water problems across the country.

An analysis by the Office of Technology Assessment found that ground water contamination has occurred in every State and is being detected with increasing frequency. That report found that the potential effects of contamination are significant and warrant national attention. The National Academy of Sciences cites a wide range of ground water contamination sources including hazardous waste disposal sites, solid waste disposal sites, solid waste landfills, leaking underground storage tanks, and application of pesticides and fertilizers. Contamination from such sources are known to cause adverse health and environmental effects. They also impose significant costs in remediation and treatment.

We can no longer cast a blind eye to these warnings. Ground water is of vital importance and we have a duty to take appropriate action. This bill, as amended by the Committee on Environment and Public Works, would expand and strengthen research of ground water and ground water pollution problems.

This type of activity is currently conducted by several Federal agencies with little coordinated effort. Ground water contamination is a major national problem. It does not respect geographic boundaries or agency jurisdiction charters. In this era of limited budget resources, this is not the time for duplicated efforts or agency turf wars. Ground water contamination is a growing public health problem and it will require our concerted efforts.

H.R. 791 is intended to coordinate our national ground water research program and to clarify the roles of the Federal agencies involved in this vital work. I would hope we can learn more about the locations and amounts of ground water, the health effects of ground water contamination, the causes and extent of pollution, and the most effective means of preventing and controlling contamination.

This bill establishes the interagency ground water task force. The task force is comprised of the major Federal agencies involved in ground water research and would be chaired by the Administrator of the Environmental Protection Agency. The task force is to identify research needs, recommend research priorities, coordinate interagency activities, and consult with State and local governments concerning their ground water research needs. Also contained in the bill is a Ground Water Advisory Committee which will be made up of 15 members from State and local governments, agricultural groups, environmental organizations, industry, and other groups.

A ground water clearinghouse will be established to assure coordination of ground water data and information. The clearinghouse would provide the public with information concerning ground water and contamination problems. H.R. 791 authorizes an education committee to be chaired by the National Science Foundation and made up of individuals with scientific and educational expertise related to ground water research. This committee will make recommendations regarding the public education and training of professionals and technicians. The bill also reauthorizes the State Water Research Institutes which provide valuable information regarding water resources.

In a comprehensive fashion, H.R. 791, makes recommendations concerning the ground water programs of the Environmental Protection Agency, the Department of the Interior and the Department of Agriculture. The bill authorizes research programs and studies at EPA, USGS, and the Agriculture Department which are needed to increase our understanding of ground water contamination and control technologies.

In an effort to assist the States, the bill provides a 50-percent Federal-State matching grant program to help the States in their ground water management and protection efforts. It is intended that these funds be used for planning, mapping, identification, control of sources, research, monitoring, enforcement, and public education.

H.R. 791 will not answer all of our mounting ground water problems. But it is a significant first step in attempting to address them. I want to thank my colleagues, Senators Moynihan, Mitchell, and Baucus, and particularly my able neighbor from Minnesota, Mr. Durenberger, for their assistance in developing this legislation. This bill, if enacted, will be an initial yet major milestone in creating an effective ground water protection program.

I also wish to acknowledge the efforts of Mike Shields, Nan Stockholm, Jeff Peterson, and Brenda Bohlke of the majority staff of the Environment and Public Works Committee, and Jimmie Powell, of the minority staff. These individuals have worked with other Senate staffs, various agencies, and numerous private groups in developing this legislation. I am grateful for their committed efforts.

Mr. MOYNIHAN. Mr. President, this past year the Subcommittee on Water Resources, Transportation, and Infrastructure of the Senate Environment and Public Works Committee held three hearings on the need for a national ground water bill.

We received testimony from Federal, State and local officials, environmental groups, industry and agricultural interests, and we received comments on our questionnaire and letters from hundreds or more people.

Today, we are voting on a Senate bill which is, I believe an excellent product, forged from several pieces of legislation introduced by members of this committee—S. 20, S. 1105, and S. 2091. I want to thank our chairman, Senator Burdick, Senator Baucus, and Senator Mitchell, as well as Senator Stafford and Senator Durenberger who have worked especially hard on this legislation.

What we have produced will be sent back as a substitute for H.R. 791, the House Ground Water Act, which went through five committees and came to us earlier this session.

We will do our utmost to get this through conference and on to the President before adjournment.

This bill is a balanced, mission-oriented bill which accomplishes three main objectives:

First, it established a ground water research task force in the office of the President to coordinate the Federal agencies' research, to identify gaps in research, and to consult with State and local governments regarding information States require to manage ground water programs.

Second, it authorizes research programs and studies at EPA, the U.S. Geological Survey and the Department of Agriculture which we believe are essential to advance our understanding of ground water contamination and of control technologies for ground water pollution.

Third, it authorizes a 50 percent Federal matching grant program for States to use for such activities as planning, mapping, identification and control or sources, research, monitoring enforcement and education. We specifically left these grants very openended, recognizing that virtually every State has a ground water program of some sort already in place, and that needs vary greatly from State to State. We have authorized $50 million a year for this matching grant program. I think that adequate funding for this program is important, because the States must continue to be our first line of defense in ground water management. It is States that make the land use decisions that affect our ground water, and they must have the funds to do the work on that level.

I ask unanimous consent that the section-by-section analysis be printed in the Record.

There being no objection, the section-by-section analysis was ordered to be printed in the Record, as follows:

Section-by-Section Analysis

Section 1. Short Title.

Section 2. Findings.—The findings contain a statement that nothing in this act shall be construed to change existing State water rights.

Section 3. Definitions.—Key terms are defined in this section.

TITLE I—COORDINATION OF FEDERAL GROUND WATER RESEARCH AND EDUCATION PROGRAMS

Section 101. Duties of the President.—Provides that the President shall assure coordination of ground water research and directs the President to establish an Interagency Ground Water Research Task Force.

Section 102. Interagency Ground Water Research Task Force.—Outlines general authority for the Interagency Ground Water Research Task Force. The Task Force is to be made up of key Federal agencies involved in ground water resarch and is to be chaired by the Administrator of the EPA. The Task Force is to identify research data needs, recommend research priorities, facilitate interagency coordination, and consult with State and local governments concerning ground water research needs.

The Task Force is to submit an annual report to Congress which is to serve as a management plan for Federal Government research of ground water and is to identify ground water policy issues on which research is needed. Each participating agency is to submit a research plan to the Task Force on an annual basis.

In section 102(d) the principal Federal agencies involved in ground water research and their principal roles are defined. This section does not limit the scope of research of any single agency; it is recognized that research programs may overlap.

The committee notes that only agencies with major ground water programs are involved on the Interagency Ground Water Research Task Force. A logical representative for the Department of Defense would be the Corps of Engineers.

Section 103. Advisory Committee.—Establishes an Advisory Committee on Ground Water Research to advise the President and the Interagency Task Force on ground water research issues and needs. The Advisory Committee is to be made up of not more than 15 individuals representing States and local government, environmental organizations, agriculture, industry, and other groups. At least five members of the committee will represent State or local governments.

Section 104. Clearinghouse Committee.—Provides for establishment of a Clearinghouse Committee to assure coordination of data and information systems relating to ground water. This committee shall make recommendations for a National Ground Water Hotline and identify a Federal public information officer to respond to public inquiries.

This section also provides that each participating agency of the Interagency Task Force is to establish a technology and information center to make available reports and related material concerning ground water research.

Section 105. Education Committee.—Establishes an Education Committeee to be chaired by the National Science Foundation and made up of individuals with scientific and educational expertise related to ground water research. The Committee is to evaluate ground water related programs for public eduation and training of professionals and technicians and to make recommendations to strengthen such programs.

Section 106. Authorizations.—Authorizes to be appropriated $3 million for implementation of section 101, 102, 103, 104, and 105 for fiscal years 1989 through 1993.

Section 107. Water Research Institutes.—Amends P.L. 98-242 which reauthorizes a broad research program in water resources, including quantity and quality issues, for 54 Water Research Institutes established in each State and territory.

The research programs are to be evaluated every 5 years by the Secretary of Interior. Grants to each institution from a $10 million authorization are used as seed money for research programs and are matched dollar-for-dollar by the Institutes. A $10 million authorization for a competitive grant program for research on water problems of a national scope amends the preexisting $20 million authorization level. Appropriations have always fallen far short of the original authorization levels. An amendment to the Water Resources Research Act authorizes $5 million for a competitive 50-50 matching grant program to focus on regional or interstate water problems and issues.

TITLE II—GROUND WATER RESEARCH PROGRAMS OF THE FEDERAL GOVERNMENT

Part A—Programs of the Environmental Protection Agency

Section 201. Authority.—This section establishes a general ground water research program at the Environmental Protection Agency. The Administrator is given general authorities to conduct research, cooperate with others doing research, make grants, enter into contracts, acquire patents and so on.

Six priorities are established for the research program.

1. fate and transport of contaminants;
2. control technologies for sources;
3. health and environmental effects of ground water contaminants;
4. analytical procedures for ground water monitoring;
5. remediation and treatment of contaminated ground water; and
6. waste minimization.

Twenty-two specific areas of investigation are listed including: health and environmental effects of contaminants; exposure assessment; hydrogeologic studies; transport and fate of contaminants; analytical methods; control of discharges; and remediation and treatment.

The program is to include development of techniques for detection, prevention and correction of ground water contamination and is to go beyond basic research to demonstration projects that aid in technology transfer.

Section 202. Research Committee and Management Plan.—Research programs at EPA are generally monitored and guided by media-specific research committees. There are currently five such committees (air, waste, water, energy, and toxics). This section adds a sixth group for ground water research. The group is to be jointly chaired by the Office of Water and the Office of Research and Development. Members of the committee are drawn from offices within EPA.

The research committee is to issue a report annually which is to be a 5-year (the preceding fiscal year, the current fiscal year, and 3 succeeding fiscal years) plan and which is to serve as the management tool for the ground water research program. The report is to include a list of upcoming ground water policy decisions and the research needs of the policymakers with respect to those decisions. The report is to be published in draft form for comment and the final report is to be transmitted to Congress each April 15.

This section provides for the appointment of a ground water research manager in ORD who is to provide central direction for the ground water research program.

Section 203. Control Technologies.—This section requires EPA to establish a program to develop control technologies for sources of ground water contaminants in various categories. In general, EPA will be assisting persons who have "invented" control technologies with the "demonstration" and "dissemination" of those techniques.

EPA is to make a biennial solicitation for proposals. The legislation includes criteria for project selection including:

1. potential for the technology to effectively control sources of ground water contaminants;
2. the capability of the person proposing the demonstration to complete the project;
3. the applicability of the technology under a wide range of circumstances;
4. financial support from other sources; and
5. the capability of the developer to disseminate the technology to the public.

EPA is to provide assistance for at least 10 proposals each year. Assistance is generally limited to 50 percent of the project cost, but the Administrator is authorized to provide full Federal funding for basic and essential research projects. EPA is required to make every effort to disseminate the control technologies proven effective. The patent policy of Title IV of this bill applies to technologies developed.

Section 204. List of Contaminants.—This section requires EPA to prepare and update a list of ground water contaminants and to develop research programs for such contaminants.

The initial list of contaminants is to include: each substance for which a primary drinking water regulation is required under the Safe Drinking Water Act; contaminants for which a health advisory has been issued; contaminants listed pursuant to section 104(i) of CERCLA; contaminants listed pursuant to section 307 of the Clean Water Act; and pesticides with a potential to leach to ground water. There is considerable overlap among these lists.

The Director of the National Toxicology Program is to propose a research program for each of the contaminants listed which describes the research necessary to adequately characterize the risk to human health and the environment as the result of the presence of the contaminant in ground water. After public comment on the research program, the Administrator is to make needed changes and publish the program. The Administrator is to assure that the research program is implemented and shall, assure coordination with the Safe Drinking Water Act (42 U.S.C. Sec. 300F et seq.) the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 6901 et seq.), and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.). The Adminstrator may also use funds authorized under section 111(m) of CERCLA to conduct such research.

Section 205. Ground Water Contaminant Risk Assessment.—This section requires the Administrator to prepare risk assessment documents on 30 contaminants within 24 months and an additional 30 contaminants within an additional 36 months. The risk assessment are to serve a role comparable to criteria documents now published under authority of the Clean Water Act.

The risk assessments are to include:

1. a description of recent scientific information about contaminant;
2. factors which contribute to the effects of the contaminant on human health and the environment;
3. clarification of the assumptions and uncertainties in the science related to the contaminant;
4. an assessment of the association of the contaminant with various human activities; and
5. an assessment of a comparison with risk posed by other contaminants.

Section 206. Contaminant Source Surveys.—This section requires the Administrator to conduct a series of surveys of major sources of ground water contamination similar to the National Pesticide Survey which the Agency is now conducting. The purpose of the surveys is to determine whether additinal controls on sources in the category are necessary to adequately protect ground water supplies.

The other source categories to be covered by the surveys include septic tanks and cesspools; landfills, surface impoundments, and wastepiles; class V injection wells; fertilizer applications; irrigation return flows; publicly owned treatment works; light industry; and transportation corridors. Governors may petition EPA to add categories to this list.

Prior to conducting any survey, EPA is to complete (or update) a health advisory for each contaminant which the Agency expects to find in drinking water wells as part of the survey. This information is to be made available to the owners of wells when contamination is found. In addition, referrals for corrective action or compliance action under the Safe Drinking Water Act is to be taken where contamination is found.

Section 207. Study of Health Effects of Nitrates and Nitrosamines.—This section authorizes a study of the health effects of nitrates (a widespread ground water contaminant) and nitrosamines (a metabolite of nitrates thought to be carcinogenic).

Section 208. Study of Abandoned Wells.—This section authorizes a study, to be completed by September 1, 1989 of abandoned production and injection wells, including former drinking water wells, and the impact of abandoned wells on ground water quality. The study is to include recommendations on the most cost effective steps which can be taken to assure that further damage to ground water by abandoned wells is prevented. The purpose of this study is not to gather new information on the impact of wells on ground water quality, but rather to examine the options available for preventing further degradation including requirements that wells be capped on a specific schedule.

Section 210. Ground Water Research Institutes.—This section authorizes EPA to establish and provide grant assistance to eight, regional ground water research institutes at universities across the country. The legislation provides criteria for selecting the locations of the institutes. Federal funding is limited to 50 percent of the research program. The institutes must submit an annual proposal and report. The bill provides for an explicit, on-site review of the institutes every 5 years. The Institutes are to be selected and evaluated by the Administrator acting jointly with the Secretary of the Interior, but are to be funded and managed on a regular basis by EPA.

The institutes should be located, when possible, in areas that include diverse climatic and geologic features in order to reflect the diversity or national ground water resources. For example, consideration should be given a location in a glaciated, nonmountainous northern plains state which includes significant glacial lake, glacial plain, prairie coteau and nonglaciated dry-land farming areas. Such a location should also have climatic variables representative of all the biomes of the Northern Great Plains. The institutes must have significant regional expertise in hydrological and hydrochemical studies.

Part B—Programs of the Department of the Interior

Section 221. Amendment/Authority.—Authorizes a ground water research program within the U.S. Geological Survey. This program builds on an existing research program at the Geological Survey that includes studies of both surface water and ground water. The current authorization is increased by $10 million in this section to $160 million total.

Section 222. Ground Water Inventory Report.—This section directs the United States Geological Survey to prepare an inventory of the ground water resources based on existing data, and an evaluation of the adequacy of existing ground water data collected and monitoring programs conducted by Federal, State, and local governments. The report for this section is required within 12 months.

Section 223. National Assessment of Ground Water Quality.—This section authorizes the United States Geological Survey to develop, based on the information and recommendations of the inventory required in section 222, an assessment of the ground water quality. The assessment is to be based on a nationwide sampling and monitoring program and to identify changes and trends in the nation's ground water quantity and quality.

Section 224. Authorities of the Administrator.—This section states that nothing in this part shall limit the authorities of the Administrator or other head of any Federal agency.

Section 225. Research Program of the Bureau of Reclamation.—This section directs the Department of the Interior, acting through the Bureau of Reclamation, to research the effects of existing and proposed water projects on the quantity and quality of ground water and surface waters. $500,000 is authorized for fiscal years 1989 and 1990.

Section 226. Research Program of the Bureau of Mines.—This section authorizes the Bureau of Mines to study the impact of mining on ground water quality with an authorization of $1 million per fiscal year. The committee recognizes that the U.S. coal mining industry through adherence to the requirements of the Surface Mining Control and Reclamation Act and its attendant regulatory program administered by the Office of Surface Mining, already minimizes the impact of such operations on both ground water quality and quantity.

Part C—Ground Water Research Program of the Department of Agriculture

Several Acts of Congress created a system of land ownership and land development designed to populate the country and produce the food for a growing Nation. The organization of the Department of Agriculture, Land-Grant Colleges, the State Agricultural Experiment Stations, and Cooperative Extension System, were established by the Morrill Act of 1890, the Hatch Act of 1887, and the Smith-Lever Act of 1914, respectively. This system established for research and education should be used to address the problems of ground water quality resulting from agricultural practices.

Section 231. Department of Agriculture.—This section authorizes the Secretary of Agriculture to develop a research program with the participation of the Agricultural Research Service and the Cooperative State Research Service. The plan to be submitted to the Interagency Ground Water Research Task Force and include an evaluation of the current level of effort, a listing of major policy decisions and practices that may impact the quality of ground water. Research and demonstration projects developed by the Department of Agriculture are to include surveys and studies relating to the effects, extent, prevention, detection and correction of ground water contamination resulting from the application or storage of agricultural chemicals. The Department of Agriculture is also authorized to provide technical assistance to the States and local governments regarding problems and issues affecting ground water quality. Research programs are to include fate and transport of organic and inorganic substances, soil management practices, modeling of ground water and chemical migration, sampling methodologies, biological alternatives to chemicals, water management and tillage practices, chemical disposal, and development of new chemical products to improve the efficiency, and application requirements.

Section 233. Agricultural Nitrogen Best Management Practices.—This section provides for the establishment of a Nitrogen Best Practices Committee to develop a study and education program on best management practices to minimize the impact of agricultural nitrogen on public health and ground water quality.

Section 234. Efficient Use of Nutrients.—This section directs the Secretary of Agriculture to conduct research on practices, methods, and techniques for improving the efficiency of fertilizer uses in agriculture.

Section 235. Agricultural Drainage Well Study.—This section authorizes a study of agricultural draining wells and their impact on ground water quality, and includes a provision for the study of alternative drainage methods.

Section 236. Education.—This section directs the Secretary of Agriculture to establish a public education program for the dissemination of information to farmers and rural residents, and a training program for professionals and technicians in issues related to agricultural practices, methods, alternatives and the ground water quality.

The appropriations authorized to carry out the activities of section 236 are not meant to be limiting appropriations to the Extension Service in implementing education programs that address water quality issues. The appropriations authorized in this section are intended to provide for strengthening and expanding programs that address issues associated with ground water quality.

Part D—Additional Provisions

Section 241. Lake Okeechobee Ecosystem Research System.—This section directs the Administrator in cooperation with the Secretary of the Army to study the relationship between the quality and quantity of surface and ground waters and the control of aquatic plants. Authorizations are incremental over 3 years, starting at $5 million and increasing a million each year to $7 million.

Section 242. Western Center and Research Program.—This section establishes a Western Center for Nuclear and Ground Water Research within Nevada to evaluate the potential for leaching of radionuclides and the migration of these contaminants in ground water in an arid climate. The Center shall review existing and proposed programs and projects relating to containment of radioactive waste.

TITLE III—STATE GROUND WATER STRATEGIES

Section 301. State Ground Water Strategies.—This provision authorizes the Federal Government to provide 50 percent matching grants to States for planning and implementation of State strategies for ground water management. The States may use the grants for planning, mapping, identification, and control of sources, research, monitoring, enforcement of permits or standards or education. There is no requirement that any State program contain any specific element(s).

Grant monies are allotted based on the amount and severity of contamination in the State, the geographic area, and the number of persons relying on ground water for drinking water. Each State is to receive a minimum of not less than $75,000 of the funds appropriated in a fiscal year.

Section 302. Assistance to Small Communities for Radium Contamination in Ground Water.—This section directs the Administrator to assist local governments in demonstrating mitigation technologies for radium contamination in ground water. Assistance is used to finance acquisition and installation of technologies that would remove radium from drinking water.

Section 303. Extension of Wellhead Protection Area Plans.—Extends by 2 years the time for States to designate wellhead protection areas.

Section 304. Extension of Sole Source Aquifer Protection Areas.—Extends by 2 years the time for States to designate areas for sole source aquifer protection under the Safe Drinking Water Act, passed by the 99th Congress.

Mr. DURENBERGER. Mr. President, I am delighted that the Senate is today passing and sending on to the House its amendments to H.R. 791, legislation to establish a comprehensive research program for ground water protection and management across the Federal Government.

The heart of this legislation is a bill, S. 1105, which the distinguished chairman of the Environment and Public Works Committee, Senator BURDICK, introduced last year. I was pleased to join him in putting together that bill and want to say to the Senate today how much I appreciate the leadership that he has brought to this issue.

Ground water has proven to be a controversial subject here in the Senate. That is understandable. First, it is an important resource. Fifty percent of our people depend upon ground water for their drinking water supplies. And it plays a major role in agricultural production.

Second, the resource is under a growing threat of contamination from literally millions of sources of discharge. In fact, just this morning, the Geological Survey released a 560-page report detailing ground water contamination incidents in every State in the Nation. From spills of hazardous waste to underground storage tanks to agricultural practices to contamination through overdrafting and saltwater intrusion, there is a wide-range of human activities that threaten ground water quality. And, of course, there are interests organized around those activities that are determined to protect the status quo.

And third, there is a great deal of diversity in the nature of the ground water resource and in the way it is managed across the country. This diversity spawns concern at the State and local level about any Federal program for ground water protection or management.

So, bringing a bill to the Senate that can enjoy broad support has been a difficult task and chairman BURDICK and the Senator from New York, Senator MOYNIHAN, deserve our thanks and our praise for this most excellent product.

I would also note that the bill reflects the commendable efforts of Senators HEINZ and SASSER from the Committee on Government Affairs and Senator BRADLEY, as well. S. 1992 which was sponsored by Senators HEINZ and SASSER served as the model for the interagency task force to coordinate ground water research which is included in this bill. And Senator BRADLEY's legislation to require the consideration of ground water impacts when designing Bureau of Reclamation projects is also included. So we have had the help and advice of many Members and committees in putting this bill together.

The experience was the same over on the House side. H.R. 791, of course, originated in the House. It was approved by five House Committees and sent to us last December. Many Members of the House including Representatives GEJDENSON, MILLER, SCHEUER, and SCHNEIDER played important roles in crafting this legislation in that body.

Mr. President, I will not review each of the provisions of this bill in great detail today. Rather I will try to define for the Senate—and for those who will be implementing this legislation—several themes which guided our committee as we put this bill together. The first is the appropriate relationship between the various agencies of the Federal Government as they carry out their ground water protection and management responsibilities.

Several Federal agencies have been assigned ground water responsibilities by statute. In a 1984 study the Office of Technology Assessment reported that 22 different agencies had some ground water protection or management responsibility. The principal agencies assigned research responsibilities under this bill are the Environmental Protection Agency, the Geological Survey, and the Department of Agriculture. We want those agencies to coordinate their efforts and to avoid unnecessary duplication. And so we have brought it all together here in one bill and started the legislation in the first title with the establishment of a coordinating task force.

But coordination can be overdone. It can stifle important research. If all of the jobs are divided up into mutually exclusive boxes on some organization chart, it can become impossible to move forward as the priorities of agencies conflict and gaps in the knowledge base necessary to get from one point to the next remain unfilled. So there can be too much coordination—to much central direction—in a huge research undertaking like this.

In my view the task force is to be an honest broker—a point where agencies can come to share their resources and make arrangements of mutual advantage on a voluntary basis—and not a politburo or central committee with dictatorial powers. No agency should be denied the authority to conduct the research that is necessary to carry out its basic mission.

For instance, EPA is charged by law with protecting human health and the environment from the adverse effects of man-made pollutants. Fulfilling this responsibility requires knowledge over a broad range of physical and biological phenomena. Although we hope that the work of the Geological Survey on basic hydrologic questions will be of the greatest benefit to EPA in meeting its responsibilities—we don't wish to deny to EPA the authority to conduct the necessary basic research in the event that the Geological Survey has other priorities. Thus, this bill gives EPA a very broad and general grant of authority for ground water research.

In the same vein, it is not expected that EPA would in any way interfere with the mission of the Geological Survey either by excluding it from research in particular areas—the fate and transport of contaminants in soil and ground water—or supporting extramural research that would be more appropriately conducted through the Survey. We have given each agency a broad mission statement to provide direction and a sense of priorities for ground water research at that agency, but these mission statements are not intended to preclude similar work by other agencies when it is essential to complete an assigned task.

Mr. President, I have emphasized this issue of coordination and the division of responsibility among agencies because it is quite important. We must enter this area carefully because the authority to coordinate or assign research responsibilities between agencies is an authority that can be used and abused for policy ends that might not be supported in here in the Senate.

We have too often seen decisions from the Office of Management and Budget which shift research and study responsibilities from one agency to another with the intent of preventing the development of a new program or new regulation which doesn't match the policy predispositions of the budget office and its anonymous analysts. I hope we won't see that kind of policy manipulation practiced by any majority of the interagency task force established by this bill. This is a research bill. And the coordinating mechanism is included in the hope that we can maximize the value of the resources that we invest in ground water research. This is not a tool to control policy outputs across the Federal Government.

I must say that I only reluctantly support the coordination provisions in this legislation for the reasons I have described. I would say to my colleagues that we must oversee the use of these coordinating authorities carefully. And if they are abused, I, for one, will be here before the Senate asking that they be repealed.

The second theme that I would touch upon is the role of the Federal Government in ground water protection in relation to the role of the States. Mr. President, I began working on the subject of ground water protection in 1983 as chairman of the Toxic Substances and Environmental Oversight Subcommittee. In November of that year I chaired a hearing of the subcommittee on the general problem of ground water contamination. It was really my first exposure to the ground water issues, although other members of the committee had been working on solving ground water problems for a long time.

The witnesses at that hearing included three Assistant Administrators from EPA. I asked the simple question—what is the major threat to ground water quality in the Nation today? In response we heard for the first time, I believe, that leaking underground storage tanks and leaching pesticides are a significant threat of our ground water supplies. The headline maker that day was a witness from Maine who said that 11 million gallons of gasoline were being lost from underground tanks to soil and ground water in that State every year.

I am pleased to say that since the 1983 hearings the Congress has tried to respond to the LUST and pesticide issues. In 1984 we passed a regulatory program for tanks. In 1986 we passed a tank cleanup program. And in 1986 both the House and Senate unanimously adopted ground water protection amendments on the bill to reauthorize FIFRA.

I recount that history to make a simple point. These were ground water protection programs, but nobody ever claimed that either one of those bills threatened the right of any State to control its ground water resources. Early on the service station owners were concerned that leak-proof tanks would be to expensive. On the pesticide bill, the chemical manufacturers will tell you that the standards of the drinking water program are too stringent for their products to meet.

But nobody has claimed that the tank program threatened the fundamental and traditional role of the State of Idaho or New York or Maine or Minnesota to regulate its ground water. Nobody from Nebraska or Kansas or Colorado has ever said that the pesticide bill threatens their water rights established under State law.

My point is this, Mr. President. Those of us who support comprehensive ground water protection legislation have no interest in regulating ground water or water rights. We do want or protect ground water quality. Some regulation may be necessary to accomplish that. But there is no State tradition for preventing ground water contamination from pesticides. There aren't many good State programs for sanitary landfills or surface impoundments or the long list of other threats. Maybe the Federal Government can provide a little leadership in these areas. Maybe even some regualitions.

But we don't need to regulate ground water. The underground storage tank program hardly even mentions ground water. There is no water quality standard. There isn't any elaborate aquifer classification scheme. The tank program just says, "Build a better tank. Do a better job installing the tank. Monitor your tank for leaks." It's a technology program. It requires that better technology and better practices be applied to a major source of ground water contamination. And it does so without threatening the water law or traditional authorities of any State. In fact, practically all of the States have duplicated our Federal legislation with new laws of their own, because they had no traditional program for underground tanks.

I could have made just exactly the same case using the 1984 RCRA amendments which include a comprehensive, technology-based program for the disposal of hazardous waste in a wide variety of settings.

Mr. President, we will see a lot of people wave the banner of States rights during the ground water debate. And there are legitimate concerns for important State institutions that have been created to resolve difficult water problems. But I wonder, who is threatening these institutions? Why all of this concern? Might it be that same of those folks marching under the banner of States rights are just folks who don't want their tanks, dumps, pits, ponds, lagoons, and chemical products effectively regulated to prevent ground water contamination?

I hope we are not misled. Ground water protection legislation may represent a departure from what we have done in the past in the sense that it will be comprehensive, rather than source-by-source. But it doesn't represent any new challenge to traditional State authorities.

I think everyone who knows the ins and outs of environmental law would agree that the Clean Water Act is a big Federal environmental program. It works. It has made a substantial contribution to improving and protecting surface water quality over the last 16 years. It is, by the way, a technology program. It doesn't regulate rivers and lakes. It controls discharges from point sources—all industrial point sources. It's comprehensive—with best available technology. I think everyone would agree with that description of the Clean Water Act.

But do you also know that it may no longer be the biggest Federal water pollution control program. In the budget for 1989, construction grants are allocated $1.8 billion. Superfund—a ground water protection program—comes in at $1.6 billion. Add to that the expense of ground water cleanup at Federal facilities and the resources spent on RCRA underground tanks and you realize that the role of the Federal Government has already shifted dramatically. By 1990 or so, we will say with our budget—with the dollars of the American taxpayer—that ground water contamination, not surface water pollution, is the more important Federal priority.

There is, of course, a problem with this new priority. Superfund is a cleanup program. It is not a prevention program. It makes no sense to me that we should, on the one hand, have a $1.6 billion ground water cleanup program—90 cents on every dollar Federal funds—and hear, on the other, that we dare not authorize any Federal role in preventing ground water contamination, because that would infringe on the traditional rights of the States.

If we are to sustain this already substantial Federal commitment to ground water, then at least some of our effort must be directed to prevention. I think we need a ground water pollution prevention program like the Clean Water Act. One that is comprehensive. One that focuses on the points of discharge. One that relies on good technology and good practice to stop pollution. One that is conducted in partnership with the States in the traditional way.

The bill before us today is not a regulatory bill. It is just a research bill. It won't of itself protect ground water from contamination. It will simply provide for us the information that we need to undertake that task. Furthermore, it does not assign responsibilities as between the Federal Government and the States. This bill doesn't say that the States shall today and forever have primacy with respect to ground water protection. And it doesn't presume a stronger Federal role in the future, either. It puts off that difficult question for another day.

I have outlined the existing Federal ground water protection responsibilities including Superfund and RCRA and the underground tank program simply to demonstrate that the Federal Government already does a great deal in this area and has done so without in any way threatening the traditional responsibilities of the States. In fact, we have undertaken these programs in close cooperation with the States. They are the foundation for these Federal efforts and support their continuation.

So, there is no threat in this legislation to the States. It does not elevate ground water protection to an exclusively Federal responsibility. Whatever the Federal role in ground water protection in the future, and I am sure that it will grow as we gain better understanding of the resource and the threats which are posed to ground water quality, this bill is not decisive on the question. And where we have by other legislation in the past established a firm Federal role, we have always done so in full cooperation with the States using the unique strengths of our federal system to the best advantage.

Mr. President, this bill has eight major elements.

GENERAL RESEARCH AUTHORITY

The Environmental Protection Agency is given broad authority to conduct research and investigations with respect to the prevention, detection, and correction of ground water contamination. Priorities for this research include methods to predict the fate and movement of contaminants in ground water, the development of analytical methods for detecting contaminants, efforts to reduce the generation and discharge of waste, and research on the health and environmental effects of contaminants when present in ground water. The bill provides $40 million per year for this EPA research program and establishes a ground water research committee at EPA to manage the effort.

EPA currently conducts ground water related research principally under authority of the Solid Waste Disposal Act and the Superfund Program. In 1985 EPA spent approximately $18 million on ground water research. As one might expect, most of this research was focused on remediation and correction efforts. It is our intent in this legislation to broaden that focus and to put added emphasis on research efforts that will improve our ability to prevent ground water contamination.

CONTROL TECHNOLOGIES

EPA is directed to assist in the development and demonstration of methods and technologies which would be effective in reducing or preventing ground water contamination. Research under this authority might include the development of leak detection systems for underground storage tanks, the development of new pesticide products which are less likely to leach or pest management practices which do not rely on chemicals, the demonstration of best management practices for fertilizer applications, and the development of new caps and liners for waste disposal facilities. This section of the bill authorizes applied research. EPA is to solicit proposals for the demonstration of new methods and technologies and can provide grants for up to 50 percent of the development cost for 10 projects each year. The legislation emphasizes rapid transfer of the new technologies to other users and wide commercial distribution.

HEALTH EFFECTS RESEARCH

EPA in cooperation with the National Toxicology Program and the Agency for Toxic Substances and Disease Registry is to conduct a series of studies to determine the health and environmental effects of contaminants which are found in ground water. A recent study by the Office of Technology Assessment indicated that as many as 200 different chemical and biological contaminants have been found in ground water supplies across the country. For most of these contaminants the toxicological and environmental data is incomplete. Under the authority provided in this bill the NTP will propose a battery of tests for each known contaminant which would be adequate to determine the full range of possible health and environmental effects. The proposed research program is to be reviewed and approved by EPA.

RESEARCH INSTITUTES

EPA is authorized to establish and provide assistance to eight ground water research institutes which are to be located at universities in different regions of the United States. The institutes will conduct basic research using multidisciplinary scientific teams and will provide advanced education in the ground water sciences. In addition, the institutes are to play a strong role in disseminating the information and practices which are developed under the research programs authorized in this bill. The work of the institutes will be reviewed periodically by EPA and representatives of the National Academy of Sciences. The bill provides $16 million per year to assist the institutes.

CONTAMINATION ASSESSMENTS

The bill requires EPA to conduct seven nationwide surveys of potential ground water problems associated with specific sources of contamination: pesticide applications, septic tanks, fertilizer applications, injection wells, irrigation return flows, landfills and solid waste disposal facilities, light industry, transportation corridors, and publicly owned sewage treatment facilites. These assessments would identify the population of such sources nationwide, the types of contamination that might be associated with each source, the likely health effects of the possible contaminants and the degree of contamination that has already been experienced. EPA has already begun the pilot stages on one such assessment for pesticides.

USGS PROGRAMS

The bill authorizes various ground water quality and quantity research programs at the U.S. Geological Survey. Many of these programs are already in place, but have not received a congressional authorization. These programs include the basic water resources research effort of USGS; the Federal-State cooperative program which makes national resources and expertise available to solve problems identified by State officials; the Regional Aquifer System Analysis program which is studying the flow characteristics of 28 major aquifer systems in the United States; and a national ground water quality inventory which USGS has begun on a pilot basis.

Mr. President, this portion of the bill owes much to the efforts of our colleagues in the House of Representatives and in particular Congressman SAM GEJDENSON who has introduced H.R. 791 in that body. We are indebted to the sponsors of the House counterpart to this title of our bill for the leadership they have shown on these issues. We look forward to working with them when our efforts are joined together in a conference committee.

WATER RESOURCES RESEARCH INSTITUTES

This bill reauthorizes the Interior Department program which supports water resources institutes at land grant university in each of the 50 States. This program was begun in 1984 and has proved highly successful. In the past each institute has received a grant of about $100,000 per year. Under this new legislation we would also make available a pool of funds for competitive grants that go beyond the basic program to support special projects that maximize the strengths of the university receiving a competitive award.

AGRICULTURAL RESEARCH

The bill also authorizes a small program of research at USDA which is to focus on the use of agricultural chemicals—pesticides and fertilizer—the impact of such chemicals on ground water quality and steps that can be taken to reduce the negative effects including nonchemical solutions to pest problems. In particular we are concerned about technology transfer and getting the results of all this research out into the hands of those who can and will use it to protect ground water resources.

COORDINATION

The bill requires the President to establish an interagency program to coordinate the ground water research of the various Federal agencies. In addition, the separate agencies are required to consult and cooperate in the conduct of those programs which are assigned to each agency.

Mr. President, that is a brief summary of the major provisions of the bill.

Before concluding this today, Mr. President, I would make just a few brief comments with respect to other aspects of this legislative effort.

The first point I wish to make is in respect to the authorization levels that are in this bill. If one turns to the committee report which contains a letter from CBO and simply looks at the total dollars provided, one may think this is a very expensive bill. That is an inaccurate conclusion to draw, Mr. President. Many of the programs authorized by this bill, and in particular the programs of the Geological Survey, are already in existence. They are already being funded by the Congress. But they have never authorized by the Congress. Nor are they coordinated in a comprehensive way with the programs of the other agencies. And that is the purpose of this bill and the reason that we provide authorizations for existing efforts. But that is old money—money that would be spent whether we enacted this legislation of not.

The actual new commitments made by this bill amount to approximately $175 million per year which is not an unreasonable amount of effort to put forward for ground water protection considering that 117 million Americans are relying on ground water for their drinking water supply. And that many of those Americans are drinking ground water that has not been tested or treated in any way.

The second point I wish to make is that this bill owes a great deal to the work of others. I have mentioned the chairman and members of our committee and the Members of the House who have been working on the various provisions of this bill. But we also need to offer our thanks to the members of the Ground Water Research Review Committee of EPA's Science Advisory Board. This committee was chaired by John Quarles, a former Deputy Administrator of the Agency. The committee made its report in July 1985. The members of the committee bear no responsibility for the mistakes we have made, but their report did serve as a point of departure for our work on this bill and I hope each member of the committee can see fruit for some part of their commitment in this legislation.

We need also to mention the report of the Office of Technology Assessment written by Paula Stone; the report of the Environmental and Energy Study Institute written by Judy Campbell Bird; and the work of the National Ground Water Forum which was directed by the staff of the Conservation Foundation including Toby Clark which have played such a large part in shaping our thinking on the ground water protection issues.

Mr. President, let me just conclude by once again thanking the distinguished chairman of our committee, Senator BURDICK, and the subcommittee, Senator MOYNIHAN, for taking the lead on this issue. I have been working for a long time toward the day when we could pass comprehensive ground water legislation—even if only research legislation—in the Senate. Today is that day. That the Senator from North Dakota and the Senator from New York have been able to make time for this issue among all the other pressing priorities is most gratifying and speaks well of their commitment to protect the environmental resources of our Nation.

Mr. BAUCUS. Mr. President, I rise today to support the passage of H.R. 791, the Ground Water Research, Management and Education Act of 1988. I commend the efforts of my colleagues in developing this legislation. I am particularly appreciative of the efforts of our Chairman Senator BURDICK. Montana and North Dakota share a common border. We also share numerous concerns about our precious ground water resources. My subcommittee, the Hazardous Waste and Toxic Substances Subcommittee, held joint hearings with Senator MOYNIHAN's Water Resources, Transportation, and Infrastructure Subcommittee earlier this year to consider ground water issues.

Ground water is the lifeblood of my State. This bill will go a long way in insuring that his precious resource is protected and available for future generations of Montanans. This bill would reauthorize the Water Research Institutes and thus continue their valuable works concerning water resources.

H.R. 791 as amended by the Committee on Environment and Public Works is a comprehensive and reasonable step toward ground water research and protection. I urge by colleagues to support its passage.

Mr. SASSER. Mr. President, I rise today to address the urgent need for ground water protection legislation.

There is perhaps no resource that is more important to the Nation than our ground water. One-half of the people of America get their drinking water from ground water, while 97 percent of the people in rural areas rely on ground water for their drinking water.

Our use of ground water is increasing dramatically—from 35 billion gallons per day in 1950—to over 75 billion gallons per day in 1985. Currently, this country consumes 95 billion gallons of ground water each day.

Fortunately, ground water is in abundant supply. It constitutes 96 percent of the world's total water resources. Our Nation alone has 15 quadrillion gallons stored a half-mile under the surface. This is equal to 35 years' worth of surface runoff or 400 times our annual use.

Once contaminated, however, ground water is virtually impossible to clean up without considerable expenditures of money and effort. But we are learning that this resource is being jeopardized by a wide variety of contaminants. Indeed, all 50 States have experienced some degree of ground water contamination already.

We know from abundant scientific research that we cannot pour out our wastes on the ground, or bury them, and always depend upon the soil to filter out the impurities before they reach the ground water.

However, we have no uniform national policy for protecting ground water. There are more than 16 major pieces of Federal legislation that affect ground water protection in some way. Moreover, the responsibility for managing ground water has been spread across more than two dozen Federal agencies and offices.

In an effort to streamline and coordinate this bureaucracy, Senators REIGLE, HEINZ, ROTH, and myself have worked long and hard in the Governmental Affairs Committee to report S. 1992—a bill to promote intergovernmental and interagency cooperation on ground water management and protection and to facilitate the dissemination of practical information on ground water protection to the public.

Title I of the Environment and Public Works' amendment to H.R. 791, which is now before the Senate, contains provisions that are patterned after S. 1992.

The measure before us contains provisions that can improve intergovernmental relations in the protection of ground water. It creates an Interagency Ground Water Task Force and an Advisory Committee on Ground Water Research patterned after those in S. 1992.

The Ground Water Task Force would enhance the coordination and cooperation among the various agencies that concern themselves with ground water protection; and would enable us to achieve a consistent national policy for protecting this valuable commodity.

It is abundantly evident from the April 22 and May 18 hearing record of my Subcommittee on Government Efficiency, Federalism, and the District of Columbia, that there is an urgent need for this type of task force. To give my colleagues an idea of the complexity of the Federal ground water protection effort and the need for this legislation, I would like to list some of the agencies and offices within those agencies that share responsibility for some aspect of the regulation of ground water: The Environmental Protection Agency: Offices of Radiation Programs, Water Programs, Water Regulation Standards, Water Enforcement Permits, Solid Waste, Drinking Water, Emergency and Remedial Response, Pesticide Programs, Toxic Substances, Ground Water, Research and Development; Department of Agriculture: Soil Conservation Service, Forest Service, Farmers Home Administration; Department of the Interior: Bureau of Indian Affairs, Bureau of Reclamation, National Park Service, U.S. Geological Survey, Office of Surface Mining, Bureau of Land Management, Fish and Wildlife Service; Tennessee Valley Authority, Department of Commerce, Army Corps of Engineers, U.S. Coast Guard, National Science Foundation, Nuclear Regulatory Commission, Department of Energy, Department of Transportation.

Further contributing to the patchwork nature of ground water legislation, are the many pieces of Federal legislation that impact on ground water. For example: The Atomic Energy Act; Clean Water Act; Superfund; Federal Insecticide, Fungicide, and Rodenticide Act; National Environmental Policy Act; Resource Conservation and Recovery Act; Safe Drinking Water Act; Surface Mining Control and Reclamation Act; Toxic Substances Control Act; and others contain provisions that concern ground water protection.

The legislation before us would enable the various agencies to communicate more effectively, share information, streamline their activities, reduce overlap, and identify areas where work is needed.

I am extremely pleased to say that the provisions of S. 1992 that are now in title I of this bill enjoy the rare distinction of being supported by not only industrial and agricultural groups, but also the environmental community as well. For example, the following groups have endorsed S. 1992: American Farm Bureau Federation, American Mining Congress, Chemical Manufacturers Association, Clean Water Action Project, Environmental Defense Fund, Environmental Policy Institute, National Coal Association, Natural Resources Defense Council, and U.S. Public Interest Research Group. In addition, it is supported by several State governments and interstate ground water organizations, such as Tennessee, Pennsylvania, Delaware, and Wisconsin, and the Interstate Conference on Water Policy and the Western States Water Resources Council.

It is my belief that intergovernmental coordination of Federal ground water protection efforts is so desperately needed, and for other reasons, I urge my colleagues to support this much needed legislation.

Mr. HEINZ. Mr. President, ground water is our lifeblood. It affects all our lives, and once contaminated, ground water is difficult, often impossible, to clean. Today, the Senate at last has an opportunity to review our progress in managing and protecting this invaluable resource.

Critically important, ground water provides 25 percent of our fresh water, and nearly all the drinking water for rural Americans. It meets 40 percent of our irrigation needs. It maintains streamflows in dry weather and nourishes countless ecosystems.

Fortunately, ground water is in abundant supply, constituting 96 percent of the world's total water resources. Our Nation alone has 15 quadrillion gallons, stored a half-mile under the surface, equal to 35 years' worth of all surface water runoff, or 400 times our annual use. And the amount we use daily, 95 billion gallons, is largely replaced through precipitation.

But while we need not worry about the quantity of our ground water, we do need to be concerned about its quality. And there are serious problems in ground water management. We in the Governmental Affairs Committee have learned that intergovernmental and interagency cooperation is essential. States have primary responsibility for ground water management and protection, and yet must deal with a dozen competing Federal agencies and over a dozen Federal statutes to carry out their programs.

One witness, testifying before Senator SASSER's subcommittee, told us that accessing Federal assistance is a hit or miss proposition. Another witness stated that when asked how well the existing ground water system works, he must reply "what system?"

While different layers of management try to sort themselves out, Mr. President, my constituents suffer. Across my State, ground water purity is threatened by virtually every aspect of modern life. Prevention, now, is far preferable to managing the damage, later.

The ground water legislation before us from the Committee on Environment and Public Works incorporates legislation I introduced last December along with Senators SASSER and ROTH, my colleagues on the Governmental Affairs Committee. I particularly want to commend Senators SASSER and ROTH, and our chairman, Senator GLENN, for helping to bring us to the point where critical legislation is on the verge of passage. I believe that when the history of this legislation is written, they will be remembered as its unsung heroes.

S. 1992, which was reported out of our committee in July, was based on provisions originally proposed in H.R. 791 by one of our committee's House counterparts, which identified disorganization and confusion in the vast array of Federal ground water programs. The legislation was substantially revised after an extensive hearing process before our Subcommittee on Government Efficiency, Federalism, and the District of Columbia. The subcommittee, of which I am ranking minority member, held hearings in April and May of this year, at which time representatives of State governments, environmental and agricultural groups, interstate ground water organizations, and industry were resoundingly supportive.

Mr. President, witnesses at our hearings testified about the urgent need for a comprehensive, national ground water policy. They repeatedly emphasized that a large part of the problem entails communication, both among the involved Federal agencies, and between these agencies and those who have hands-on involvement with the resource—the State and local program operators.

The intergovernmental and interagency coordination provisions in S. 1992 as reflected in H.R. 791 will reverse the miscommunication, policy and program overlaps, and general duplication of efforts that have characterized the management and protection of the Nation's ground water resource.

The Governmental Affairs Committee's section of H.R. 791—title I—provides for the establishment of both an interagency ground water research task force and an advisory committee on ground water research as outlined in S. 1992. These coordinative bodies will ensure that the Federal agencies with ground water concerns will both communicate among themselves about ground water policies and programs, and with the States and other interested parties. This avenue for State and local input is essential to the process, Mr. President, since only then can we be sure that Federal policies and regulations are best serving the public.

Mr. President, in his opening statement before our subcommittee on April 22, Senator MITCHELL—a member both of our Governmental Affairs Subcommittee and of Environmental and Public Works—stated that each of the bills before the Environmental Committee addressed to some degree the need for improved coordination of Federal agencies. Subcommittee Chairman SASSER and I were pleased to work Senator MITCHELL's concerns into S. 1992, and believed it to be a good representation of cross-committee cooperation.

I hope that the Senate's version of title I will be enacted into statute in the near future. We cannot delay further. Thank you, Mr. President.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The committee amendment, as amended, was ordered to be engrossed, and the bill to be read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass?

So,the bill (H.R. 791), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE PLACED ON CALENDAR—H.R. 5318

Mr. BYRD. Mr. President, I ask unanimous consent that H.R. 5318, the egg research bill, be placed on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ATROCITIES IN BURUNDI

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of House Concurrent Resolution 371; that the Senate proceed to its immediate consideration; that the concurrent resolution be agreed to; and the motion to reconsider laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 371) was considered and agreed to.

RELIEF OF CALVIN L. GRAHAM

Mr. BYRD. Mr. President, I understand that the Senate has received from the House H.R. 610. I ask that the bill be read for the first time.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 610) for the relief of Calvin L. Graham.

Mr. BYRD. Now, Mr. President, I ask that the bill be read the second time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. HATFIELD. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will stay at the desk.

EXPANSION OF CONGAREE SWAMP NATIONAL MONUMENT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2018.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2018) entitled "An Act to expand the boundaries of the Congaree Swamp National Monument, to designate wilderness therein, and for other purposes", do pass with the following amendments:

Page 4, line 1, strike out "(b)(1)," and insert: "(b)"

Page 4, line 5, strike out "178-80-0009", and insert: 178-80,009A,

Page 4, strike out lines 12-18.

Page 5, after line 6, insert:

SEC. 7. LATE PAYMENT CHARGES UNDER FEDERAL MINERAL LEASES.

(a) Distribution of Late Payment Charges.—Any interest or other charges paid to the United States by reason of the late payment of any royalty, rent, bonus, or other amount due to the United States under any lease issued by the United States for the extraction of oil, gas, coal, or any other mineral, or for geothermal steam, shall be deposited in the same account and distributed to the same recipients, in the same manner, as such royalty, rent, bonus, or other amount.

(b) Effective Date.—Subsection (a) shall apply with respect to any interest, or other charge referred to in subsection (a), which is paid to the United States on or after July 1, 1988.

(c) Prohibition Against Recoupment.—Any interest, or other charge referred to in subsection (a), which was paid to the United States before July 1, 1988 and distributed to any State or other recipient is hereby deemed to be authorized and approved as of the date of payment or distribution, and no part of any such payment or distribution shall be recouped from the State or other recipient. This subsection shall not apply to interest or other charges paid in connection with any royalty, rent, bonus, or other amount determined not to be owing to the United States.

Mr. JOHNSTON. Mr. President, S. 2018, the "Congaree Swamp National Monument Expansion and Wilderness Act," contains a provision that would require the Federal Government to share with the States any interest collected on the late payment of royalties for all Federal minerals.

The Federal Government currently shares with States royalties from mineral leasing on Federal lands within each State on a 50-50 basis pursuant to section 35 of the Mineral Leasing Act.

While Congress specifically provided for the sharing of interest from royalties for onshore oil and gas leases on public domain lands in the Federal Oil and Gas Management Act [FOGRMA], it did not do the same for Outer Continental Shelf [OCS] leases or for interest payments accruing on royalties from leased onshore minerals other than oil and gas. The language of the bill would enable the Secretary to share with States and other recipients of Federal mineral lease revenues interest generated from the late payments of royalties in the same manner as the royalties themselves are being shared.

According to the Department of the Interior, the Department had been sharing with the various Sates any interest collected on late payment of royalties for Federal minerals. However, a recent solicitor's opinion concluded that, except for onshore oil and gas covered by FOGRMA, the Department lacks the authority to share interest receipts. The Department suspended the distribution of interest with the States on July 1, 1988. S. 2018 would deem these receipts to be authorized and approved as of the date of payment or distribution, and would prohibit the recoupment of these moneys from a State or other recipient.

I believe this provision provides a logical extension of sharing royalty receipts with States, and support its adoption.

Mr. BYRD. Mr. President, I move that the Senate concur in the amendments of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that a motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AUTHORIZATION OF CERTAIN WATER DEVELOPMENT PROJECTS

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2772.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate numbered 9 to the bill (H.R. 2772) entitled "An Act to authorize the Lyman-Jones, West River, and Oglala Sioux Rural Water Development Projects", with an amendment as follows:

In lieu of the matter inserted by said amendment, strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

Sections 1 through 12 of this Act may be cited as the "Mni Wiconi Project Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.—The Congress finds that—

(1) thee are insufficient water supplies available to residents of the Pine Ridge Indian Reservation in South Dakota, and the water supplies that are available do not meet minimum health and safety standards, thereby posing a threat to public health and safety;

(2) Shannon County, South Dakota, one of the counties where the Pine Ridge Indian Reservation is located, is the poorest county in the United States, and the lack of water supplies on the Pine Ridge Indian Reservation restricts efforts to promote economic development on the reservation;

(3) serious problems in water quantity and water quality exist in the rural counties of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota;

(4) the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation; and

(5) the best available reliable, and safe rural and municipal water supply to serve the needs of the Pine Ridge Indian Reservation, and the residents of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties is the Missouri River.

(b) Purpose.—The Congress declares that the purposes of sections 1 through 12 are to—

(1) ensure a safe and adequate municipal, rural, and industrial water supply for the residents of the Pine Ridge Indian Reservation in South Dakota;

(2) assist the citizens of Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota, to develop safe and adequate municipal, rural, and industrial water supplies;

(3) promote the implementation of water conservation programs on the Pine Ridge Indian Reservation and in Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota;

(4) provide certain benefits to fish, wildlife, and the natural environment of South Dakota, including the Pine Ridge Indian Reservation, and

(5) repeal the authorization of appropriations for the Pollock-Herreid Unit of the Pick-Sloan Missouri Basin Program.

SEC. 3. OGLALA SIOUX RURAL WATER SUPPLY SYSTEM.

(a) Authorization.—The Secretary of the Interior (hereafter in sections 1 through 12 referred to as the "Secretary") is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Oglala Sioux Rural Water Supply System, as generally described in the report entitled "1988 Planning Report and Environmental Assessment" and dated February 1988. The Oglala Sioux Rural Water Supply System shall consist of—

(1) pumping and treatment facilities located along the Missouri River near Fort Pierre, South Dakota;

(2) pipelines extending from the Missouri River near Fort Port Pierre, South Dakota, to the Pine Ridge Indian Reservation;

(3) facilities to allow for interconnections with the West River Rural Water System and Lyman-Jones Rural Water System;

(4) distribution and treatment facilities to serve the needs of the pine Ridge Indian Reservation, including but not limited to the purchase, improvement and repair of existing water systems, including systems

owned by individual tribal members and other residents on the Pine Ridge Indian Reservation.

(5) appurtenant buildings and access roads;

(6) necessary property and property rights;

(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary or appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Oglala Sioux Tribe and reservation villages, towns, and municipalities.

(b) Agreement With Non-Federal Entity to Plan, Construct, Operate and Maintain the Oglala Sioux Rural Water Supply System.

(1) In carrying out subsection (a), the Secretary, with the concurrence of the Oglala Sioux Tribal Council, shall enter into agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Oglala Sioux Rural Water Supply System.

(2) Such cooperative agreements shall set forth, in manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design, construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Pine Ridge Indian Reservation.

(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Oglala Sioux Tribe.

(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10 for the Oglala Sioux Rural Water Supply System.

(c) Service Area.—The service area of the Oglala Sioux Rural Water Supply System shall be the boundaries of the Pine Ridge Indian Reservation.

(d) Construction Requirements.—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Oglala Sioux Rural Water Supply System shall be planned and constructed to a size sufficient to meet the municipal, rural, and industrial water supply requirements of the Pine Ridge Indian Reservation, the West River Rural Water System, and the Lyman-Jones Rural Water System, taking into account the effects of the conservation plans described in section 5. All three systems may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Oglala Sioux Rural Water Supply System.

(e) Title to System.—Title to the Oglala Sioux Rural Water Supply System shall be held in trust for the Oglala Sioux Tribe by the United States and shall not be transferred without a subsequent Act of Congress.

(f) Limitation on Availability of Construction Funds.—The Secretary shall not obligate funds for the construction of the Oglala Sioux Rural Water Supply System until—

(1) the requirements of the National Environmental Policy Act of 1969 have been met; and,

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than ninety days.

(g) Technical Assistance.—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Oglala Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Oglala Sioux Rural Water Supply System, including (but not limited to) operation and management training.

(h) Application of Indian Self-Determination Act.—Planning, design, construction and operation of the Oglala Sioux Rural Water Supply System within the Pine Ridge Reservation shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638; 25 U.S.C. 450).

SEC. 4. WEST RIVER RURAL WATER SYSTEM AND LYMAN-JONES RURAL WATER SYSTEM.

(a) Planning and Construction.

(1) The Secretary is authorized and directed to enter into cooperative agreements with appropriate non-Federal entities to provide Federal funds for the planning and construction of the West River Rural Water System and the Lyman-Jones Rural Water System in Haakon, Jackson, Jones, Lyman, Mellette, Pennington, and Stanley Counties, South Dakota, as described in the report entitled "1988 Planning Report and Environmental Assessment" and dated February 1988.

(2) The Secretary may not provide more than 65 per centum of the total cost of—

(A) the West River Rural Water System, and

(B) the Lyman-Jones Rural Water System. Such Federal funds may be obligated and expended only through cooperative agreements described in subsection (b).

(3) The non-Federal share of the costs allocated to the West River and Lyman-Jones Rural Water Systems shall be 35 per centum.

(b) Cooperative Agreements.

(1) The Secretary, with the concurrence of the Lyman-Jones and West River Rural Water Systems, shall execute cooperative agreements with the appropriate non-Federal entities to provide Federal assistance for the planning, design, and construction of the West River Rural Water System and the Lyman-Jones Rural Water System. Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

(A) the responsibilities of the parties for needs assessment, feasibility and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

(B) the procedures and requirements for approval and acceptance of such design and construction; and

(C) the rights, responsibilities, and liabilities of each party to the agreement.

(c) Facilities on Which Federal Funds May Be Expended.—The facilities on which Federal funds may be obligated and expended under this section shall include—

(1) water intake, pumping, treatment, storage, interconnection, and pipeline facilities;

(2) appurtenant buildings and access roads;

(3) necessary property and property rights;

(4) electrical power transmission and distribution facilities necessary for service to water system facilities;

(5) planning and design services for all facilities; and

(6) other facilities and services customary to the development of rural water distribution systems in South Dakota.

(d) Service Area.—The service area of the West River Rural Water System and the Lyman-Jones Rural Water System shall be as described in the engineering study entitled "1988 Planning Report and Environmental Assessment" and dated February 1988.

(e) Limitation on Availability of Construction Funds.—The Secretary shall not obligate funds for the construction of the West River Rural Water System and the Lyman-Jones Rural Water System until—

(1) the requirements of the National Environmental Policy Act of 1969 have been met; and,

(2) final engineering reports have been prepared and submitted to the Congress for a period of not less than ninety days.

(f) Prohibitions on Use of Federal Funds.—The Secretary may not obligate or expend any Federal funds for the operation, maintenance, or replacement of either the West River or Lyman-Jones Rural Water Systems.

SEC. 5. WATER CONSERVATION.

In order to reduce costs to consumers and to reduce water consumption, the Secretary, prior to obligating any construction funds, shall issue a public notice finding that plans for the rural water systems include prudent and responsible water conservation measures for the operation of such systems where such measures are shown to be economically and financially feasible. The non-Federal parties (including the Oglala Sioux Tribe) participating in the systems shall develop a water conservation plan containing definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives. The provisions of section 210(c) of Public Law 97-293 (96 Stat. 1268) shall apply with respect to the systems.

SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.

(a) Oglala Sioux Rural Water Supply System and the West River and Lyman-Jones Rural Water Systems.—Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

(b) Oahe and Big Bend Dams and Reservoirs.—The Secretary, in cooperation with the State of South Dakota and other Federal agencies, shall develop and submit recommendations to the Congress for financing and implementing mitigation plans for fish and wildlife losses incurred as a result of the construction and operation of the Oahe Dam and Reservoir and Big Bend Dam and Reservior. Such plans shall incorporate the proposal of the United States Army Chief of Engineers as outlined in Design Memorandum M (Gen)-19 of December 1987 for improved management of existing Federal lands, and purchase of single-purpose mitigation lands, such as the Olson and Mudon Ranches, from willing sellers.

SEC. 7. PROHIBITION ON USE OF FUNDS FOR IRRIGATION PURPOSES.

None of the funds made available to the Secretary for planning or construction of the Oglala Sioux Rural Water Supply System, the West River Rural Water System, or the Lyman-Jones Rural Water System may be used to plan or construct facilities used to supply water for the purpose of irrigation.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in sections 1 through 12 is intended, nor shall be construed, to preclude the State of South Dakota or the Oglala Sioux Tribe from seeking Congressional authorization to plan, design, operate, or construct additional federally assisted water resource development projects.

SEC. 9. USE OF PICK-SLOAN POWER.

(a) In General.—The Systems authorized by sections 3 and 4 of this Act shall utilize power from Pick-Sloan for their operation. This power shall be deemed to be a project use pumping requirement of Pick-Sloan.

(b) Power To Be Used.—As of the date of enactment of this Act, power identified for future project use pumping at the Pollock-Herreid Unit of the Pick-Sloan shall be reserved for and utilized by the Systems and made available for the purpose authorized by subsection (a).

(c) Rate.—The rate for project use power made available pursuant to subsection (a) shall be the wholesale firm power rate for the Pick-Sloan (Eastern Division) in effect at the time the power is sold.

(d) Additional Power.—If additional power beyond that made available through subsection (b) is required to meet the pumping requirements of the Systems, the Administrator of the Western Area Power Administration is authorized to purchase the additional power needed under such terms and conditions the Administrator deems appropriate. Expenses associated with such power purchases shall be recovered through a separate power charge, sufficient to recover these expenses, applied to the Systems.

(e) Definitions.—For purposes of this section—

(1) the term "Systems" means the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System; and

(2) the term "Pick-Sloan" means the Pick-Sloan Missouri Basin Program authorized by section 9 of the Act of December 22, 1944 (58 Stat. 891; commonly referred to as the Flood Control Act of 1944).

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) Planning, Design, and Construction.—There are authorized to be appropriated $87,500,000 for the planning design, and construction of the Oglala Sioux Rural Water Supply System, the West River Rural Water System, and the Lyman-Jones Rural Water System under the provisions of sections 3 and 4. Such funds are authorized to be appropriated only through the end of the ninth fiscal year after which construction funds are first made available. The funds authorized to be appropriated by the first sentence of this section, less any amounts previously obligated for the systems, may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after January 1, 1987, as indicated by engineering costs indices applicable for the type of construction involved.

(b) Operation and Maintenance of Oglala Sioux Rural Water Supply System.—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of the Oglala Sioux Rural Water Supply System.

SEC. 11. WATER RIGHTS.

Nothing in sections 1 through 12 shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights or claims thereto of the Oglala Sioux Tribe, whether located within or without the external boundaries of the Pine Ridge Indian Reservation, based on treaty, Executive Order, agreement, Act of Congress, aboriginal title, the Winter's doctrine (*Winter's* v. *United States,* 207 U.S. 564 (1908)), or otherwise. Nothing contained in this section or in sections 1 through 12, however, is intended to validate or invalidate any assertion of the existence, non-existence or extinguishment of any water rights, or claims thereto, held by the Oglala Sioux Tribe, or any other Indian tribe or individual Indian under Federal or State law.

SEC. 12. REPEAL OF AUTHORIZATION OF APPROPRIATIONS.

(a) Pollock-Herreid Unit.—Section 407 of the Reclamation Authorization Act of 1975 (Public Law 94-228; 90 Stat. 209) relating to the authorization of appropriations for the Pollock-Herreid Unit of the Pick-Sloan Missouri Basin Program is hereby repealed. The Pollock-Herreid Unit shall remain an authorized feature of the Pick-Sloan Missouri Basin Program.

(b) Feasibility Studies.—Delete section 3 of Public Law 97-273 (96 Stat. 1181) and substitute in lieu thereof the following: "Sec. 3. The Secretary is authorized, in cooperation with the State of South Dakota, to conduct a feasibility investigation of the alternate uses of facilities constructed for use in conjunction with the Oahe Unit, initial stage, James Division, Pick-Sloan Missouri Basin Program, South Dakota, and to report to the Congress the findings of such study along with his recommendations.".

SEC. 13. GRAND VALLEY PROJECT, COLORADO.

The Secretary of the Interior is authorized to extend the Grand Valley Project Contract No. 6-07-40-P0080, dated April 10, 1986, among the United States, the Grand Valley Water Users Association, Public Service Company of Colorado, and the Orchard Mesa Irrigation District, for a period not to exceed two years to provide for the continued operation of the Grand Valley Power Project.

SEC. 14. VETERAN, WYOMING TOWNSITE.

(a) Notwithstanding any law or court order to the contrary, the Secretary of the Interior shall amend, subject to valid existing rights, the official subdivision survey and plat for the town site of Veteran, Wyoming, to take into account the actual and common use of streets and alleys on such lands for designation as public reservations in accordance with the Act of April 16, 1906 (34 Stat. 116, as amended).

(b) After completion of the work required to amend the town site survey and plat, the title of the United States in and to the public reservation lands shall be patented to Goshen County, Wyoming. Title of the United States in and to a 90 feet by 75 feet lot of approximately .15 acres which is described in the records of the Goshen County, Wyoming, clerk's office as "a tract in southwest corner of town of Veteran, Block 40 in the original town of Veteran," shall be patented to Goshen County Unified School District Number One.

(c) The Secretary is authorized to dispose of federal lands within the town site area by negotiated sale at fair market value or by public sale.

SEC. 15. CONTRACTS WITH THE REDWOOD VALLEY DISTRICT, CALIFORNIA

(a) Renegotiation of Contracts. —(1) Notwithstanding any other provision of law, the Secretary of the Interior shall renegotiate the schedules of payment for the loans to be Redwood Valley County Water District which are numbered 14-06-200-8423A and 14-06-200-8423A Amendatory.

(2) Such renegotiated schedules of payment may not take effect until October 1, 1989.

(b) The obligation to repay amounts loaned to the Redwood Valley County Water District, California, pursuant to the original negotiated schedule of payment of a loan specified in subsection (a) is suspended until the renegotiated schedule of payment for the loan takes effect. Any obligation to repay amounts under any such loan which is due, but not paid as of the date of enactment of this Act, is suspended. The renegotiated schedules of payment referred to in subsection (a) shall take into account any obligation suspended by this subsection.

(c) No interest may be charged on any payment under either of the loans specified in subsection (a) which is due but not paid before the renegotiated schedule of payment for such loan takes effect.

SEC. 16. WATER PURCHASE BY LAKEVIEW IRRIGATION DISTRICT, WYOMING.

(a) Option to Purchase Water.—The Secretary of the Interior is hereby authorized and directed to offer annually to the Lakeview Irrigation District, Wyoming, an option to purchase up to 15,000 acre-feet of storage in the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming, of which 3,200 acre-feet shall be a firm water supply and the remainder shall be available as needed pending completion of the Polecat Bench Reclamation Project.

(b) Exercise of Option.—The Lakeview Irrigation District may exercise its purchase option only in those water years when there is insufficient yield for the District only after the primary flow rights of the Shoshone Project have been satisfied. Any water purchased by the district pursuant to this section shall be provided through exchange by the Bureau of Reclamation in return for the district's right to continue upstream withdrawals of Shoshone Project water.

(c) Waiver of Certain Requirements.—The Secretary of the Interior is authorized and directed to waive land classification and related study requirements in connection with any contract entered into pursuant to this section.

(d) State Law.—Any allocation or reallocation from existing uses of water stored in the Buffalo Bill Dam and Reservoir resulting from this section shall be pursuant to the laws of the State of Wyoming.

SEC. 17. NAVY LAND, CALIFORNIA.

Section 2 of the Act entitled "An Act to provide for deferment of construction charges payable by Westlands Water District attributable to lands of the Naval Air Station: Lemoore, California, included in said district, and for other purposes", approved August 10, 1972 (86 Stat. 380), is amended by inserting: "Proceeds from the leases in excess of these needs and from lease parcels not within Westlands Water District may be utilized by the Secretary of the Navy to acquire easements in Kings County, California." after "are fully paid.".

SEC. 18. ENERGY PURCHASE FROM SHOSHONE IRRIGATION DISTRICT, WYOMING.

(a) Extension.—The Secretary of Energy, acting through the Western Area Power Administration, is directed to offer an extension of the energy purchase provisions of Article 9 of the contract numbered 2-07-70-PO287 and dated March 15, 1982, to the Shoshone Irrigation District, an irrigation district and municipal corporation organized under the laws of the State of Wyoming. Such extension, if accepted, shall take effect as of April 15, 1988, shall remain in force and effect for a period of five years thereafter, and shall be subject to all of the original conditions, terms, and rates specified in such contract. At the end of the five-year extension, purchases of electric energy under Article 9 of such contract may be extended by mutual agreement between the Western Area Power Administration and the Shoshone Irrigation District for successive one-year intervals at rates for purchase which may not be less than the rates specified in Article 9.

(b) Limitation.—In no event shall sales of electric energy to the United States pursuant to subsection (a) be made after September 30, 1999.

SEC. 19. COLORADO COASTAL PLAINS PROJECT, TEXAS, SHAWS BEND DAMSITE.

(a) Findings.—The Congress finds that—

(1) there have been 5 studies of the Shaws Bend site of the Colorado Coastal Plains project, authorized as part of the study for the Texas Basins project under the Act entitled "An Act to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource development proposals", approved September 7, 1966 (80 Stat. 707), and

(2) there is no need for the construction of a dam at the Shaws Bend site.

(b) Prohibition on Appropriations.—Notwithstanding the first section of such Act and effective after the date of enactment of this Act, no funds may be appropriated for the analysis and study of the Shaws Bend site of the Colorado Coastal Plains project, authorized as part of the study for the Texas Basins project.

SEC. 20. FRANKLIN COUNTY, WASHINGTON ROADS STUDY.

(a) For the purposes of taking actions necessary to protect the county road system in irrigated portions of Franklin County, Washington, within the Federal Columbia Basin reclamation project and which are underlain or adjacent to lands underlain by the unique geological setting identified as the Ringold Formation, the Secretary of the Interior is directed to investigate road instability problems caused by high water tables and landslides, to design corrective actions, and to make recommendations for action.

(b) Funds not to exceed $500,000 are authorized to be appropriated for the investigations directed in subsection (a) of this section, which shall be nonreimbursable, and the Secretary shall submit a report of his findings and recommendations for corrective action to the President and the Congress within three years after the date of enactment of this Act and availability of funds.

SEC. 21. DISTRIBUTION SYSTEM CONTRACTS.

To expedite completion of construction of the irrigation distribution systems of the Maricopa-Stanfield and Central Arizona Irrigation and Drainage Districts, Central Arizona Project, pursuant to Contract No. 4-07-30-W0047, as supplemented, and Contract No. 4-07-30-W0048, as supplement, the 60-day Congressional review period provided for in the Act of June 13, 1956 (70 Stat. 274) is hereby waived.

SEC. 22. CLOSED BASIN PROJECT AMENDMENTS.

The Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964), as amended by the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505), and by the Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941), is further amended as follows:

(1) Section 101(a) is amended by striking the phrase "including channel rectification of the Rio Grande between the uppermost point of discharge into the river of water salvaged by the project, and the Colorado-New Mexico State line, so as to provide for the carriage of water so salvaged without flooding of surrounding lands, to minimize losses of waters through evaporation, transpiration, and seepage, and to provide a conduit for the reception of water salvaged by drainage projects undertaken in the San Luis Valley below Alamosa, Colorado,".

(2) Section 101(c) is amended by striking the phrase "Water Quality Act of 1965 (79 Stat. 903)" and inserting in lieu thereof the phrase "Clean Water Act (Public Law 92-500), as amended.".

(3) Section 102(a) is amended by striking the phrase "except channel rectification,".

(4) Section 102 is amended by adding a new subsection (c) at the end thereof to read as follows:

"(c) The Secretary is authorized to acquire water pursuant to the procedural and substantive laws of the State of Colorado from within the Rio Grande Basin in the State of Colorado by purchase, lease, or exchange from willing sellers for the purpose of this Act, provided that—

"(1) such water is obtained, made available, and delivered for project purposes at less cost for operation and maintenance than the same amounts of water can be made available by operation of project pumping facilities and without necessitating the construction of additional physical facilities by the Secretary;

"(2) such water may be used in lieu of water pumped from the project only if the Secretary has complied with all federal, state, and local laws, rules, and regulations which apply to such water or the facilities other than those of the project which develop such water;

"(3) such water is subject to all of the limitations, conditions, and requirements of this Act to the same extent and in the same manner as water pumped by the project; and,

"(4) this authorization shall not entitle the Secretary to obtain such water or any water rights by condemnation or by exercising the power of eminent domain.".

(5) Section 104(b)(2) is amended by adding a new sentence at the end thereof to read as follows: "The Secretary is authorized to negotiate and enter into an agreement with the Rio Grande Water Conservation District which provides for the temporary delivery or project salvaged water to the refuge and the habitat area in those years in which there is not sufficient water to fully satisfy the purposes of both paragraphs (1) and (2) of this subsection.".

(6) Section 104(b)(4) is amended to read as follows:

"(4) For irrigation or other beneficial uses in Colorado: *Provided*, That no water shall be delivered until contracts between the United States and water users in Colorado, or the Rio Grande Water Conservation District acting for them, have been executed providing for the repayment of such construction costs as in the opinion of the Secretary are appropriate and within the ability of the users to pay and for the payment of all of the costs of operation and maintenance which are allocable to the production of this priority 4 water.".

(7) Section 109 is amended to read as follows:

"Sec. 109. There is hereby authorized to be appropriated the sum of $94,000,000 (October 1988 prices) for the construction of the Closed Basin Division of the San Luis Valley project, of which amount not more than $31,000,000 may be adjusted plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein, and such additional sums for the operation and maintenance of the project as may be required: *Provided*, That none of the funds authorized herein for construction in excess of $75,000,000 may be expended by the Secretary unless and until the State of Colorado or a political subdivision thereof has entered into a binding agreement with the Secretary to contribute during construction one-third of the costs of construction in excess of $75,000,000, or $6,000,000, whichever is less. Such agreement shall include a reasonable limitation on administrative overhead expenses charged by the Secretary.".

SEC. 23. BESSEMER DITCH, COLORADO

The Act of July 9, 1980 (Public Law 96-309, 94 Stat. 940), is amended by adding a section 4 as follows:

"Sec. 4. The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of $1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: *Provided*, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total cost of the design and construction of such additional lining. The non-Federal

contribution may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the construction at cost of the additional gunite lining authorized by this section.".

Amend the title so as to read: "An Act to authorize construction of the Mni Wiconi Rural Water Supply Project, and for other purposes.".

LYMAN-JONES PROJECT

Mr. PRESSLER. Mr. President, I urge the Senate to adopt H.R. 2772, the Mni Wiconi Project Act of 1988. The project, also known as the Lyman-Jones/West River/Oglala Sioux Rural Water System, has a long history.

Local sponsors of the project have been working on it for over 20 years. For years, the local sponsors tried to build it as a FmHA project. Unfortunately, the project was too large for FmHA financing. In 1985, I held a public listening meeting in the area and met with Frank Woster. We discussed the project and decided to pursue it in Congress. Later that year, I introduced legislation authorizing the project. Senator Daschle, who was then a Member of the House of Representatives, introduced a companion bill. In 1986, House and Senate hearings were held. At a Senate field hearing, the Oglala Sioux Tribe expressed its interest in participating in the project. As a result, the legislation was modified to include the Pine Ridge Indian Reservation and was introduced again in 1987.

Early this year, the State of South Dakota reached a cost sharing agreement on the project. The State and local sponsors have agreed to finance 35 percent of the non-Indian portion of the project. This is a significant financial obligation for a small State such as South Dakota and a higher percentage than traditional FmHA rural water systems.

The Mni Wiconi Rural Water System will provide good quality Missouri River water to over 20,000 Indians and non-Indians in western South Dakota. The project will serve an area of approximately 11,000 square miles, or nearly 15 percent of the area of South Dakota. Ground water in this area is of very poor quality and in most cases does not meet safe drinking water standards.

The non-Indian portion of the project will be built by a non-Federal entity. The Indian portion of the project will be built by the tribe. The Oglala Sioux Tribe will operate the Indian portion. This project is an example of how Indians and non-Indians can work together for the benefit of everyone.

Mr. President, I urge my colleagues to support this desperately needed rural water project.

MNI WICONI PROJECT ACT OF 1988

Mr. DASCHLE. Mr. President, I rise today to urge adoption of the Mni Wiconi Project Act of 1988. This legislation was introduced in the House of Representatives by Representative Tim Johnson, and I introduced the Senate bill with my distinguished colleague, Senator Larry Pressler. Differences between the House and Senate bills have been reconciled, and the amended bill has passed the House.

The Mni Wiconi Project Act authorizes the construction of the Lyman-Jones/West River/Oglala Sioux water pipeline. The pipeline will service the West River region of South Dakota, including the Oglala Sioux Tribe on the Pine Ridge Indian Reservation, the West River Rural Water District and the Lyman-Jones Rural Water District. In recognition of the extensive involvement of the Oglala Sioux Tribe, the project has been named Mni Wiconi for the Lakota term meaning "good water."

A great deal of the success of the Mni Wiconi project comes from the ability of various interests involved to see a common goal and to work together for this goal. Without this commonality of purpose and action, the legislation before us today would have been impossible. I must also commend the tireless support of my friend and colleague from South Dakota in the House of Representatives, Tim Johnson. In South Dakota, the support of Gov. George Mickelson has been instrumental.

The setting for the proposed Mni Wiconi pipeline is 11,000 square miles of prairie grasslands in western South Dakota. The area is one of the most isolated regions in the country. It is a starkly beautiful and rugged country, inhabited by approximately 20,300 people, including 12,000 Indians. Most of these inhabitants extract a modest living raising livestock. They do this in an area which lacks one of the most basic living requirements—safe drinking water.

The Mni Wiconi project will finally bring safe drinking water to these people. Today, those who can afford to do so truck their water in at great cost. Others are forced to drink what comes from the ground. Sight and smell indicate that this is far from what most of us consider drinking water to be. Analyses show that the water contains unsafe levels of sodium, dissolved solids, sulfates, iron, and radium. Excessive pipe corrosion and equipment failure are consequences. Far more serious are a myriad of human health problems associated with the bad water, including high blood pressure, kidney disease, skin disease, hepatitis, and shigella.

The proposed Mni Wiconi project will send easily treatable water from the Missouri River, near Fort Pierre, SD, to the project areas. The 30-inch pipeline will pump a maximum of 6,500 gallons of treated water per minute, an amount equivalent to only one-half of 1 percent of the river's flow at the Oahe Dam.

Like the highly successful WEB project, Mni Wiconi has support from local and national conservation organizations who recognize that real water needs can be addressed while still protecting the environment. To ensure that the environment of South Dakota is protected, stringent mitigation measures are required by the act. In particular, any environmental damage will be mitigated on an ecologically equivalent, acre-for-acre basis, using the standard developed for the Garrison diversion project. The act prohibits the use of the project's water for irrigation.

It is difficult to overstate the importance of the Mni Wiconi project for the lives of the Oglala Sioux Tribe and the Pine Ridge Indian Reservation. Shannon County, the county where most of the inhabitants of the Pine Ridge Indian Reservation live, is the poorest county in the Nation. Unemployment on the reservation hovers around 85 to 90 percent. One out of five houses on the reservation does not have running water. The cost of an individual well can be as high as $10,000 to $30,000, and this does not ensure reliable or safe water. Unemployment, poverty, and the quality of life cannot improve without decent drinking water.

Differences between the House and Senate versions of Mni Wiconi were reconciled during the conference process. Some changes I support, others I reluctantly accept. New water rights language is present in the bill before us, clarifying the bill's intent of being neutral regarding the tribe's water rights.

Water conservation provisions were amended by the Senate. While I support the concept of water conservation as agreed to in the original House package, I accept the new language, which I feel still supports strong principles of conservation. I believe that it is important that water conservation measures be included as an integral part of the rural water systems authorized by this bill. As such, capital costs of water conservation measures in any plan approved by the Secretary should qualify for funding in the same manner as other project features.

Mitigation remains strong under the present bill as committee intent is clearly to allow purchase of mitigation lands prior to the beginning of construction if that is necessary or preferable. The current bill allows for cost indexing with a 9-year sunset provision.

Several groups have raised questions regarding the Mni Wiconi Project Act, and I will attempt to clarify some of these concerns for the record. First, the Oglala Sixoux Tribe, long fearful and distrustful of Federal legislation, raises several legitimate concerns.

The tribe is concerned that they will be taxed on the system. As I have stated, the Pine Ridge Reservation has massive unemployment and other financial woes, and they do not want another financial burden. I wish to reassure the tribe that the project is a Federal project, to be held in trust by the United States for the tribe, and as such cannot be taxed by county or States.

The tribe has concerns that the bill does not directly address their ability to have Indian labor perform the construction work on the project. The bill states that construction of the system within the reservation will be subject to provisions of the Indian Self-Determination Act. Thus, the tribe has every right to give preference to the hiring of qualified Indian labor, as stated in the Buy-Indian Act. Moreover, since any contract regarding the construction of the project must receive the support of the tribe, it is clear that the tribe has the authority to see that the contract is drawn and implemented so as to protect their interests in hiring preferences.

Another concern of the Oglala Sioux Tribe is the cost of the water to the people on the reservation. As I have stated, the people of the reservation are poor and cannot afford large water bills. I wish to stress that the delivery of water to the people of the reservation is a tribal concern. It is perfectly within the ability and right of the tribal council to provide its people with water at no cost to the consumers. A major goal of the Mni Wiconi Project Act is to provide safe water to the people of the Oglala Sioux Reservation while providing as much flexibility as possible so that the concerns of the tribe can be met.

The South Dakota Rural Electric Association has expressed concerns that the bill before us today sets a precedent whereby preference power from authorized, though unbuilt, irrigation projects along the Missouri River is reallocated to new drinking water projects, effectively circumventing the traditional role of the REA's in supplying power. The House committee report stresses that no precedent is intended, and I stress this as well. The unique nature of the Mni Wiconi project and the need to supply the Oglala Sioux Indian Reservation with safe, fairly priced water are the reasons why the bill is structured as it is. I repeat, no precedent is intended, and this Senator will do everything possible to see that none is established.

This year the Nation has been rudely confronted with the problem of unreliable water. Drought, polluted beaches, and toxic spills in our waterways are all examples of the problem. Passing the Clean Water Act over the veto of the President showed that the Congress was ready to make a stand against unsafe water. The Federal Government sets safe drinking water standards in recognition of the right of every American to drink safe water. This right extends to rural America where the ground water is unsafe and a pipeline delivering clean water is the only solution.

Today, Congress has a chance to help the lives of some of our Nation's most neglected people. I urge my colleagues to authorize the Mni Wiconi project and continue to send Americans the message that clean and safe water is a basic right of daily life.

MNI WICONI

Mr. DASCHLE. Mr. President, there is an issue that has been raised by the Oglala Sioux Tribe upon which I wish to engage in a coloquy for the purpose of clarification. As you may know, the Mni Wiconi Project Act attempts to address potential fish and wildlife losses incurred during the construction of the project by directing the Secretary of the Interior to mitigate, these losses on an acre-by-acre basis, using the standard developed in the Garrison diversion project.

However, I want to stress that section 6(b), which calls for mitigating the losses of fish and wildlife habitat at the Oahe Dam and Reservoir and the Big Bend Dam and Reservoir affects in no way, or in any way impacts, any hunting and fishing rights or sovereign rights of any Indian tribes, including the Oglala Sioux Tribe.

I ask the chairman if he concurs with this interpretation of section 6(b).

Mr. JOHNSTON. Mr. President, I concur with his interpretation of section 6(b) of the bill.

Mr. DASCHLE. Mr. President, there is a second point upon which I request clarification from the chairman. It was my intention that nothing in the Mni Wiconi Project Act is to limit the amount of power which the Oglala Sioux Tribe can receive. Sections 8 and 9 state, respectively, that nothing in the bill is designed to preclude the tribe from seeking congressional authorization for other water projects, and that the power from the Pollock-Herreid unit is reassigned to the Mni Wiconi project. However, fears have arisen within the tribe that these provisions could be interpreted to mean that all the power the tribe can receive is that allocated by H.R. 2772.

Again, I ask for clarification that it is not the intent of either sections 8 or 9 of H.R. 2772 to in any way limit the ability of the tribe to seek electric power from the Pick-Sloan, and that the tribe is free to seek additional power in the future that it may need from Pick-Sloan, or any other source, and to plan, design, or construct additional federally assisted water resources development projects.

Mr. JOHNSTON. Mr. President, I again concur with the Senator's understanding of the meaning of H.R. 2772.

Mr. DASCHLE. Thank you Mr. President. I yield the floor.

Mr. BYRD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN LAND IN CALIFORNIA

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 990.

The ACTING PRESIDENT pro tempore laid before the Senate the following mesage from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 990) entitled "An Act to direct the Secretary of the Interior to convey a certain parcel of land located near Ocotillo, California", with the following amendment:

Page 2, after line 11, insert:

(d) This Act may be cited as the Imperial Valley College Barker Museum Land Transfer Act of 1988.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that a motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROTECTION OF STRATEGIC PETROLEUM RESERVE

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 836.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 836) entitled "An Act to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for their purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. PROTECTION OF STRATEGIC PETROLEUM RESERVE.

(a) IN GENERAL.—Title VI of the Department of Energy Organization Act (42 U.S.C. 7211-7270) is amended by adding at the end the following new sections:

"GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 661. Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilites, may—

"(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

"(2) arrest without warrant any person for an offense against the United States—

"(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

"(i) has committed or is committing a felony; and

"(ii) is in or is fleeing from the immediate area of the felony; and

"(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

"TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

"SEC. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

"(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than $5,000, imprisonment for not more than one year, or both.".

(b) CONFORMING AMENDMENT.—The table of contents for the Department of Energy Organization Act is amended by adding after the item relating to section 660 the following new items:

"Sec. 661 Guards for Strategic Petroleum Reserve facilities.

"Sec. 661 Trespass for Strategic Petroleum Reserve facilities.".

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment, and that a motion to reconsider be laid on the table.

The motions were agreed to.

RESOLUTION ON UNTIED LENDING TO SOVIET BLOC

Mr. HATFIELD. Mr. President, I send a resolution to the desk on behalf of Senator SYMMS, and ask unanimous consent that it be held at the desk until the close of business, Tuesday, October 11.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENSE-OF-THE-SENATE RESOLUTION ON UNTIED LENDING TO SOVIET BLOC

Mr. SYMMS. Mr. President, I am submitting a sense of the Senate resolution to ask the President to instruct the Secretaries of State, Treasury, Defense, and Commerce to consult with our allies about the growing practice of lending money to the Soviet bloc without any specific or "tied" purpose for giving them hard currencies.

This is a practice that has been increasing rapidly in the past few years, and in this Senator's view, it is a very dangerous practice.

My resolution is intended to focus greater attention on this problem, and to ask the President—and the President-elect, whoever he may be after November 8—to focus on this problem and to consult with our allies about it.

Generally the bulk of lending to the Soviet bloc is not coming from banks and securities underwriting in the United States, but rather from our Japanese and Western European allies. However, Mr. President, in the context of sharing the burden of defense for the free world, it is certainly the case that when hard currency is paid over to the Soviet bloc, it makes the job of the United States Armed Forces and United States foreign policy more difficult.

Japan has reportedly become the largest source of new loans to the Soviet bloc over the past 3 years—as much as 40 percent of total Western loans in 1986—with Western Europe providing about 55 percent and United States banks about 2 to 4 percent.

The sense-of-the-Senate resolution I am introducing is concerned with "untied loans," not with the financing of our grain sales or the financing of any other trade that is consistent with our national interest.

So-called untied loans are loans that do not have any underlying purposes, such as financial support for trade transactions or industrial or infrastructure projects. They simply provide cash, which has traditionally been misspent or squandered by government borrowers.

Accordingly, untied general purpose lending to sovereign borrowers was one of the principal causes of the current trillion-dollar international debt crisis in Mexico, Brazil, Argentina, Peru, and so many other Third World countries.

These unsound and undisciplined credits are not earmarked for productive activities, such as the development of export-oriented industries, and hence do not create the economic growth needed for repayment.

Finally, untied loans do not assist Western exports in the interest of helping reduce trade imbalances, or provide employment opportunities. In short, this type of lending cannot be justified from a purely commercial perspective.

Untied, general purpose bank lending to sovereign borrowers was one of the principal causes of the current trillion dollar international debt crisis and is a lending practice that the Institute for International Finance based in Washington, DC, has strongly recommended against.

The serious commercial problems associated with untied loans by Western banks to Soviet-allied government borrowers are compounded further by the damage to Western security interests that can result from the diversion of untied funds by the Soviet Union and other Warsaw Pact countries.

The cash proceeds of untied loans—totaling about $20 billion in medium-term loans by Western banks to the Soviet bloc in 1986 alone—are, to some extent, being used or diverted to finance Soviet commitments and activities damaging to the national security of the United States and that of our allies. Such commitments include support for Soviet client states, KGB/GRU activities, the theft of militarily-relevant Western technology, and the list goes on.

The Soviets have already entered the international securities markets in the search for new sources of untied funds—that is, the issuing of bonds, notes, and so forth. In January 1988, for the first time the Soviets floated a $77 million bond, led by a West German bank based in Switzerland. A second bond issue, also led by a West German bank, is reportedly imminent.

By entering the securities markets, Moscow can now potentially recruit western securities firms, pension funds, insurance companies, corporations, and even individuals as new lenders of untied funds.

The Treasury Department estimates that medium-term loans made by Western banks and governments to the Soviet bloc in 1986 totaled about $24 billion—an average of roughly $2 billion a month. PlanEcon, Inc., estimates total Western loans to Soviet bloc borrowers in 1986 of about $38 billion when short-term credits are included.

Approximately 80 percent of the total amount of medium-term Western credits to the Soviet bloc in 1986, or about $19 billion, took the form of untied general purpose loans—pure cash with on underlaying trade transactions, projects, or jobs.

The proceeds of untied, cash loans can be easily diverted by the Soviets for purposes inimical to vital Western security interests, such as support for Soviet client states, and KGB/GRU, the theft of militarily-relevant Western technology and so forth.

The interest rates on Western untied loans to the Soviet bloc in 1986 were extremely generous—only about one-eight of 1 percent over the cost of funds—about 7½ percent—to the U.S.S.R., Bulgaria, and Czechoslovakia—a fraction of the spreads paid by Latin American debtors nations and Western companies and citizens, with few exceptions. These low-interest loans are extended for 8 to 12 years for most syndicated credits.

It is estimated that between 85 and 90 percent of all Western loans to the Soviet bloc are from private Western commercial banks compared to only about a 30- to 40-percent share in the 1970's. The remaining credits are provided by Western governments.

The Soviet bloc is estimated to have total external indebtedness in excess of $130 billion—over $40 billion of which is that of the U.S.S.R.

The debt crisis is worsening in Eastern Europe with Western banks having already written off their share of Poland's $38 billion in debt, and with Hungary in the midst of a Western financial rescue effort to help support its $18 billion debt.

Roughly $10 billion in Western bank deposits in Soviet-owned subsidiary banks located in the West are also untied credits. These deposits/loans are currently not included in Western statistics as part of the total indebtedness of the U.S.S.R. and can be used by the Soviets as a kind of invisible, untied reserve checking account at the cost of funds. And there are other serious gaps in Western data collection and reporting concerning Western credit flows to Warsaw Pack countries.

The U.S.S.R. is seriously short of the hard currencies which these untied loans provide. Total Soviet hard currency income in 1986 was only about $30 billion or the equivalent of a little over one-quarter of the total sales of General Motors that same year. Soviet hard currency expenditures in 1986, which included Western imports, the servicing of debt, and the costs of empire, significantly exceeded this level of income. The sizeable financing gap was filed primarily by untied loans from Western commercial banks.

In 1986, nearly 100 percent of the hard currency requirements to support Soviet global commitments and activities were funded on Western financial markets, if one assumes that Soviet hard currency income was earmarked solely for the purchase of imports from the West and to service debt.

The U.S.S.R. derives between 80 and 90 percent of its total annual hard currency income from just four export items—oil, gas, arms, and gold. The energy sector of the Soviet economy is the strategic centerpiece of Moscow's hard currency earnings structure.

On May 10, 1988, Defense Secretary Carlucci acknowledged in testimony before Congress regarding untied loans, "we are unhappy about these kinds of loans. We have raised the question in general terms because it does put an added defense burden on the NATO allies."

Carlucci publicly opposed a recent $2.1 billion West German credit line to the Soviets.

The recent Soviet entry into the international securities market for the first time in history allows Moscow to potentially recruit several new categories of lenders of untied funds to the U.S.S.R. such as securities firms. Indeed, recently three of the four major Japanese securities firms have entered into negotiations with the Soviets to perform this very service.

Securities firms, insurance companies, pension funds, corporations, and even individuals would become vested interests in appeasement. In the past, only Western governments and banks were lenders to the Soviet bloc. The future credit exposure of these non-banking institutions to the U.S.S.R. would not appear in current Western statistical reporting as part of the indebtedness of the Soviet Union. These influential new lenders would also have a vested financial interest in possibly supporting continued Western economic, financial, and even political concessions to the U.S.S.R.

With allied defense burden sharing becoming a growing national concern, we simply cannot afford to have the commercial banks of alliance countries to continue to engage in multibillion-dollar annual untied lending to potential adversaries.

Secretary Carlucci has publicly stated, on May 10, that untied loans by allied commercial banks do add to the burden on U.S. taxpayers in defense-related expenditures. If we are forced to spend some $300 billion a year for the defense of this country and our allies, it makes no sense to tolerate this financial suicide of the West.

For reasons this Senator fails to understand, the Reagan administration has resisted any allied consultations concerning this strategic development. Numerous Senators and Congressmen, on a bipartisan basis, supported an immediate multilateral initiative led by the United States at the Toronto Economic Summit to phase out untied, general purpose lending by Western commercial banks to Warsaw Pact nations, Cuba, Vietnam, Libya, and Nicaragua for solid commercial, national security, and human rights reasons. To our knowledge, no such consultations occurred.

My colleague, the senior Senator from Wyoming [Mr. WALLOP] asked Treasury Secretary Brady, during his confirmation hearings last month, if he would bring this issue up with the finance ministers of the G-7 governments in Berlin, at the meetings in conjunction with the World Bank and IMF annual meetings. We have heard nothing about any discussions.

For this reason, Mr. President, I urge my colleagues to join me in this sense of the Senate resolution—once again to memorialize the President and the administration, and to put our allies—particularly Japan—on notice that the United States Senate is very concerned about this issue.

Mr. President, I ask unanimous consent that following my remarks a series of editorials from the Wall Street Journal and the Washington Post on this subject be printed in the RECORD. In addition, I ask unanimous consent that articles from a recent issue of U.S. News & World Report also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, July 20, 1987]

1/8th Over LIBOR?

Most big banks took second-quarter losses as it became fashionable to write down shaky foreign loans, but one report particularly caught our eye. First Chicago Corp. reported a loss of $698 million after taking an $800 million hit to run bad-loan reserves up to more than 5% of its loan portfolio. A few months earlier. First Chicago had announced it was the lead bank in a $200 million loan to the Soviet Union, untied to any specific purpose and bearing the princely spread of 1/8th over LIBOR.

With Mikhail Gorbachev waging glasnost and seeking Western credits and joint ventures. Western banks are going to have to do a lot of thinking about the credit prospects of the Soviet Union. Today, Rep. Jack Kemp will introduce a bill requiring that banks report the number and size of any untied loans or East bloc investments they make. Last month, Rep. Kemp, Democratic Sens. Howard Metzenbaum and Dennis DeConcini and 15 other congressmen sent President Reagan a letter urging that the U.S. help develop a joint allied policy on untied loans to the Soviet Union. The lawmakers charged that such loans to the Soviets "finance aggression abroad, and oppression and the military buildup at home."

"The loans could of course be used for the military, but we would hope not. I mean they do so much of that kind of thing anyway, it doesn't matter," says a spokesman for First Chicago, adding that part of the purpose is "to help develop peaceful relations."

Shareholders of First Chicago, who probably think they've already had more than their share of bad-loan problems, may be interested in this foreign-policy initiative. In strictly commercial terms, they might wonder whether the interest rate was high enough to cover the risks. LIBOR, the London interbank offer rate, is a good proxy for a bank's cost of funds, and a one-eighth markup won't build reserves very fast. Roger Robinson, former senior director for international economic affairs at the National Security Council, calls the First Chicago terms "among the leanest interest rates in the history of East-West finance."

First Chicago, though, is scarcely alone. The spirit of glasnost has even led Donald Kendall, the former CEO of Pepsi Co. Inc. and longtime Soviet trade champion, to call for repeal of the Stevenson Amendment, which prohibits the U.S. Export-Import Bank from granting Moscow taxpayer-subsidized trade credits. During 1986, Western banks made nearly $4 billion in untied loans to the Soviets, money not linked to any specific trade deal or project. The Soviets have also signaled they want to enter the Eurobond market, another source of untied loans, and they are seeking membership in the World Bank and International Monetary Fund.

Western bankers justify such loans because of the excellent debt-repayment record of Soviet-bloc countries. The credit history of the East bloc is not as spotless as some believe. Castro's Cuba has defaulted on loans to Canadian and Spanish banks. In 1982, both Poland and Romania forced Western banks to reschedule their loans. At the time, bankers no doubt thought that the Soviets would stand behind their clients states as a payer-of-last-resort.

The sluggish Soviet economy is in one of its worst slumps since the 1920s. Lower world oil prices have put the squeeze on Soviet hard-currency earnings. In 1984, oil and natural gas sales brought the Soviets $18.9 billion in export income. In 1986, such earnings fell to less than $11 billion. To make up for this shortfall, Soviet gross indebtedness to the West has risen from $21.8 billion in 1984 to $35.8 billion in 1986. Plan Econ, a U.S. research group, predicts Soviet indebtedness will reach $60 billion by 1990.

Much of the optimism fueling Western financial flows to the Soviets is a reaction to Mr. Gorbachev's glasnost. But there is no guarantee that he will still be in power when the Soviets owe $60 billion. Another reform-minded leader, Nikita Khrushchev, tried to kickstart the Soviet economy in the early 1960s and was sent packing. Nearly 20 years of economic mismanagement followed. Even if Mr. Gorbachev should deliver his promised reforms, there is reason to doubt he will be able to meet payments on all these new loans. Hungary began its flirtation with market economics in 1968, yet today is in the midst of a severe debt crunch.

All of this makes money at ⅛th over LIBOR a pretty risky proposition; this kind of spread is prima facie evidence of banks being blinded by something—glasnost, prospects of a Fed bailout, the no-sovereign-risk illusion or whatever. Lay aside for a moment that this is a net transfer of resources to an unfriendly adversary at terms many domestic U.S. customers can only dream about. The banks need to wonder who they're going to send as collection agent if these loans go bad.

[From the Wall Street Journal, Dec. 7, 1987]

GOING INTO THE RED

Mikhail Gorbachev has a problem and Western banks are helping him solve it. The Soviet economy is in one of its worst slumps since the 1920s. But Mr. Gorbachev is dipping into Western credit markets at the rate of $700 million a month. In Washington this week he will urge U.S. businessmen to supply him with even more capital. They might do well to take a hard look at his balance sheet.

Moscow last year earned less than $11 billion from oil and natural gas, its dominant export. That was down 40% from 1984. Gross indebtedness to the West rose to $36.2 billion from $21.8 billion in that two-year period.

Hard-currency debt of the entire seven-nation East bloc now stands at nearly $127 billion, according to an OECD estimate. That's a leap of 55% from 1984. Given the economic integration of Eastern Europe, that total is as important as Soviet debt standing alone. The entire bloc has a lack of productive and export capacity.

But the Soviets want still more money. Western bankers think they will soon attempt to float Eurobonds. Membership in the World Bank and International Monetary Fund, two other sources of funding, also appears to be a goal, judging from Moscow's recent feelers toward those agencies.

Aside from credit risks, Westerners might consider the wisdom of helping maintain and expand the Soviet empire. Money is fungible. Last year, the Soviet Union's total hard-currency income was only $29 billion, and it spent more than half that amount to prop up allies such as Cuba, Vietnam and Nicaragua.

In 1985, a group of Western banks advanced $500 million to East Germany. Within days, it was reported a check for $20 million was deposited in a Nicaraguan account in Panama.

Japanese and European banks are providing the vast bulk of new private loans. Remarkably, as the debt rises, terms decline. From 1983 to 1986, the Soviet Union saw the average interest rate it pays drop from one to 0.15 point above the Libor bench mark. Brazil pays at least 0.75 of a point above Libor.

Why are bankers so willing to give the East bloc credit? Because, with most of the Third World awash in debt, they are looking for other borrowers who have at least a fairly creditable record of meeting debt service. But the Communist-bloc record is by no means spotless. Both Cuba and North Korea have defaulted on Western loans. Western banks have all but written off their share of Poland's $35 billion foreign debt, and they are now crafting a rescue package to help Hungary pay its debt.

There are other danger signals. OECD documents prepared last month report that the worsening trade position of the Soviet bloc means that "unless current trends are reversed one can envisage a marked deterioration of the creditworthiness of the region in the medium term."

Concerned that many in the West are ignoring such warnings, Rep. Jack Kemp has introduced a bill requiring that U.S. banks report the number and size of any untied loans or East-bloc investments.

Senator Bill Bradley also has some thoughts. "The West, while not overstating its importance, should treat its capital as a strategic asset and develop a plan for its flow eastward," he says. "The flow of capital should be limited and proportionate to the degree of systemic reform. I question the wisdom of helping the Soviets avoid the choice between civilian investment and military buildups."

Western governments and banks would be making some progress if they voluntarily tied loans to specific trade deals or projects. Currently, some 80% of Western loans or credits are free to be spent by the Soviets as they please. This has enabled them to obtain "double-financing" for a variety of projects. Western banks could also better monitor and aggregate deposits in Soviet-owned banks in the West, a key hard-currency source.

No doubt Mr. Gorbachev this week will tell President Reagan that he needs Western capital and trade to ensure the success of his reforms. "It will be the good-cop, bad-cop routine," says Judy Shelton, a scholar at the Hoover Institution. "The implied message will be that if Western cash pipelines don't widen, the good-cop Gorbachev could be replaced by an old-guard bad cop."

But Soviet cops are interchangeable. And there is nothing on the table to suggest that Mr. Gorbachev is offering anything substantive in exchange for the Western aid he is soliciting. That being the case, Western lenders and investors would be quite wise to forget the political games and think of the Soviet bloc as a credit risk. And it might not hurt for them to exercise a bit more hard-headedness in their credit analysis than they have displayed in the past.

[From the Wall Street Journal, June 22, 1988]

SUMMIT OF FORGIVENESS

Even scrooges surely won't begrudge the cheering news for poor nations in the Group of Seven communique issued yesterday at the close of the Toronto economic summit. The Seven are thriving on free-market policies so why not forgive a few debts of African dictators and the like who turned left and went broke? You can't squeeze blood out of a mango anyway; Mozambique's external debt is 17 times its annual exports, for example. And we're not talking about big money—yet.

But it's that "yet" that we'd better watch. As the summit demonstrated, debt forgiveness is acquiring cachet in Western finance ministries, multilateral lending institutions, academia and parliaments. Unsound lending is not all behind us either; West Germany, for example, is hellbent to pour cash into the moribund East Bloc. Few policy makers, with the vital exception of U.S. Treasury Secetary James Baker, are troubled by the thought of having taxpayers, and U.S. taxpayers in particular, ultimately pay the bill.

Secretary Baker has so far held the line, explicitly barring any debt-relief scheme that foists new obligations on U.S. taxpayers. If the French government wants to write off $120 million of debts owed by Togo, Sierra Leone, et al., that is up to Francois Mitterrand and the taxpayers who reelected him. If the Germans want to bid a final goodbye to a piddling $50 million in worthless African paper, that's their business.

But one might suspect that the French and German gestures were a means of softening up fellow summiteers. The center ring is at the International Monetary Fund and World Bank, which of course have substantial obligational backing from the taxpayers of the United States. The truly worrisome goal of some G-7 policy makers, pursued most actively at the summit by the Japanese, is to make these multilateral lenders the official bailout agencies for creditor banks and governments. The World Bank's inclinations toward ill-considered generosity raise dangers that such efforts will ultimately succeed. They probably would have already had not Mr. Baker blocked them.

The Treasury Secretary long ago concluded, quite correctly, that debt problems can be solved only through the hard politics of economic reform. Guarantees and forgiveness merely protect the status quo, which can be rather deplorable in some debtor states. Even rich nations could go broke paying the bills for failed socialist experiments or the venality of national elites.

The Baker approach is forcing political change. Mexico is getting its state subsidies under better control. Argentina's democratic government is struggling against its entrenched economic royalists. Brazil is completing a new constitution to try to bring greater order out of its political chaos.

But some people are restless. The Japanese banks, which have been on a lending spree not unlike the ill-fated recycling of petrodollars in the 1970s by U.S. banks, are worried about their developing-nation exposures. The Germans think they can recycle their own dollar surpluses, create business for their steel and machinery makers and win undying friendship from the likes of Erich Honecker by lending great gobs of money to the Soviet Union and East Bloc. Deutsche Bank is establishing a consortium to lend another $2.1 billion to the Soviets and doing what it can to prepare the way for a large Soviet issue of deustche mark bonds.

Helmut Kohl and Deutsche Bank's Afred Herrhausen try to reassure themselves and others by saying that $40 billion in debt isn't very much for a big country like the Soviet Union. The Soviet Union indeed has millions of square miles of permafrost tundra, but it isn't very productive and doesn't export much except raw materials. Moreover, direct Soviet debt is only the tip of a mountain of obligations owed by the Soviet Bloc. The latest number we have on total Soviet-Bloc debt is $130 billion and it may be much higher. Anyone who thinks that perestroika is going to turn the Soviet Union into a productive market economy should no doubt lend the Soviets money. But if that should just happen to be wishful thinking, the Germans, and in some sense the West as well, will get soaked. We won't even go into the strategic risks, but they are worrisome, as the U.S. Senate last week asserted in a unanimous resolution urging caution on Soviet lending.

No real harm was done at the summit. But even non-scrooges are entitled to worry about some of the attitudes on display there.

[From the Washington Post, May 20, 1988]

Lending to the Soviets

West German banks have begun lending heavily to the Soviet Union, and inevitably that sets off an argument. One side of it holds that large Western loans to the Soviets are always unwise because, directly or indirectly, they help the state carry the immense burden of its military budget. The reply is that Soviet military spending has an absolute priority in any case, and foreign lending can make an important difference in the Gorbachev regime's plans for reform. Either way, the point is that there's a relationship between finance and security.

A group of German banks announced last week that they will extend as much as $2.1 billion in credit to the Soviets. They intend it to be used for improvement of the food and consumer goods industries, in support of perestroika [restructuring] and raising the Russian standard of living.

The bankers' purposes are commercial. The fall of the price of oil has constrained the Soviets' ability to import the capital goods they need to improve production, and they will spend much of the new German loans to buy German machinery. The rise of the mark has made German equipment very expensive compared with its competitors from, for example, some of the Asian countries. To offset their price disadvantage, the Germans are using financing to maintain their position in Eastern European markets that, while still relatively small, have interesting possibilities for the future.

But the political implications of the credits are clearly reflected in the strong support that the German government is giving them. For years German governments of both right and left have held firmly to the view that increased commerce with the East makes war less likely. It's not surprising that a country with no nuclear weapons but formidable industrial wealth should use its greatest resource to pursue its interests.

Although the United States has often been uneasy about this kind of economic diplomacy, it is wise not to try to challenge these loans. Its influence is limited, as it discovered six years ago in the case of the Soviet gas pipeline and the European decision to help build it. The important thing is to ensure that the Western countries' financial strategies for dealing with the Soviets remain consistent with their military strategies. Here in Washington, attention is focused on missiles and the intermediate-range nuclear forces treaty now before the Senate. But there are many ways in which governments try to increase their national security, and the German loans demonstrate that the action currently is not limited to arms control.

[From U.S. News & World Report, Oct. 3, 1988]

Financing Perlstroika: Western Lenders Are Eager To Take Advantage of a Moscow Borrowing Spree But Should We Bankroll a Powerful Political Foe?

Capitalists, Lenin reputedly sneered, will one day sell the rope that hangs them. Today, the West stands poised not only to peddle its merchandise but also to finance the sale with low-interest loans. The arrangement seems to suit both sides just fine.

Soviet leader Mikhail Gorbachev needs large infusions of foreign funds to get his ambitious economic-reform program up and running. No longer able to depend on dwindling hard-currency earnings from oil and gas exports to purchase modern plant machinery, farm equipment or grain, Moscow's central planners have gone on a borrowing binge. Gross debt has soared to $38 billion, nearly double the 1984 figure. And some Western experts predict that Soviet borrowings may increase by $2 billion to $3 billion each year through the middle of the next decade (see chart).

OLYMPIC STRATEGY

As western bankers scramble for business, U.S. officials and financial analysts are growing edgy about putting such large sums into the hands of a rival superpower and potential commercial competitor. Some worry that Moscow will use its newfound economic clout to muscle into such capitalist bastions as the International Monetary Fund and World Bank, meeting this week in West Berlin. "Economic security" issues have caught the eyes of both presidential candidates, who have expressed uneasiness over the possible use of Western cash to fund Soviet proxies. And just last week, Congress opened hearings to push for better coordination among the Western nations on lending policies toward the U.S.S.R. One American currency trader sums it up: "The Soviets want to do in our markets what they do in gymnastics—dominate."

So far, the debate has done little to slow Western bankers eager to take advantage of Moscow's excellent credit rating. Most generous have been the Japanese, who have provided $6.4 billion since 1984, or 40 percent of all new loans to the Soviets. The West Germans are next, with 30 percent. U.S. banks, under stricter government loan and reporting requirements, account for only 2 percent of the total, including transactions among their offshore subsidiaries. That may change soon, however; Chase Manhattan has a representative in Moscow, and other American banks are contemplating similar moves.

Not that the Soviets are sitting home waiting to be wooed; their recent moves into Western financial circles have been increasingly aggressive. Seasoned bullion traders, buying and selling 16 hours a day from a dealing room in Moscow, have replaced simple gold-for-currency swaps overseas. The Soviets also have shed their former inhibitions against anything but straight bank loans, even letting two commercial banks in Leningrad raise funds on foreign markets without Moscow's guidance. For the first time, in fact, Soviet banks must rate the credit worthiness of all borrowers; failing enterprises are said to drain $18 billion a year from the Kremlin's coffers, and 31 state-run companies were recently placed on a first-ever bankruptcy watch list.

Moscow has even sent its top financial advisers abroad for a crash course in capitalism. The most recent, a 10-man delegation that included the deputy minister of finance, spent last week touring London's financial center from the stock exchange to the Bank of England and came away disconcerted by what they saw. In Moscow, an abacus often serves as a backup for a calculator, and savings accounts earn only 2 percent a year. So when the officials learned that the interest charged on Barclay Bank's consumer credit card was 2 percent per month, "their eyes popped out on stalks," reports a British banker.

Still, the Soviets are hardly innocents abroad. Their financial acumen has shown itself most notably this year in several forays into international money market. For the first time since the 1917 Bolshevik Revolution, the Soviet Union floated bonds in the West. One was a $77 million offering in Switzerland, the second a $295 million issue in West Germany. A third offering, for as high as $1 billion, appears likely in London by year's end. The deals have given Moscow access to a wider pool of capital, including pension funds and insurance holdings. In addition, Moscow now underwrites bonds for other countries such as Denmark and Finland, which can be resold or kept as assets.

GUESSING GAME

Such sophisticated dealings just add to the difficulty of piercing Moscow's traditional veil of secrecy, making it virtually impossible to monitor Soviet cash flows and investments. Some analysts claim the Kremlin may even be using the same gold and oil as collateral many times over. In the recent West German bond offerings, the Soviets avoided releasing details of their outstanding debt, currency reserves and balance of payments by invoking a clause in Frankfurt's tendering rules that permits issuers to beg off disclosure if publishing the data would cause economic harm. "That's bad business," chides Jan Vanous, a leading East-bloc economic analyst and head of Plan-Econ Research Associates, Inc., in Washington, DC. "We should not allow them to get away with it."

Many bankers are willing not only to look the other way but to provide favorable rates along with credit. As one Frankfurt financier puts it, "The Soviet Union is a good debtor, and where does one find good debtors these days?" Indeed, some of the recent borrowings have verged on sweetheart deals. In July, the Soviets secured a better rate on their bond issue than even the Bonn government commands, while Moscow's Bank for Foreign Economic Affairs (Vneshekonombank) shaved First Chicago's margin to a fraction in a $200 million syndicated loan arranged in February of last year.

More troubling is that the Soviets may be using the funds to undermine Western security interests. According to Roger Robinson, former director of international economics for the National Security Council, Western banks may be providing as much as $1.6 billion a month to the Soviet bloc in "untied loans," funds not earmarked for any specific purchase or project. This money is distinct from the $30 billion Moscow earns annually from weapons, gold and oil sales, which goes for grain and equipment purchases as well as debt servicing. Without tying loans to specific projects, critics warn, the cash will end up improving Moscow's military and arming its allies.

That fear seems to be justified. According to PlanEcon estimates, Moscow's lending—mostly to Third World countries—ballooned from $13 billion in 1980 to $49 billion last year, much of it to support the purchase of Soviet arms. At the very least, the dollars gleaned from the West give Moscow the flexibility to sell arms to client states with no prospect of repayment or to give them oil that the Kremlin would otherwise have sold on the world market for hard currency. "Banks are kidding themselves if they just run willy-nilly developing ties to the Soviet bloc without attention to the security issue," notes Bankers Trust Senior Vice President Lawrence Brainard. The Pentagon clearly agrees; Defense Secretary Frank Carlucci recently opposed a $2.1 billion West German line of credit to the Soviet Union, warning that such loans added to NATO's defense burden.

The issue has become a presidential-campaign theme as well. Democratic candidate Michael Dukakis supports financial assistance to the Soviet Union only as an inducement to good behavior. As he puts it, "Mr. Gorbachev wants to make his country part of the international community. What is he prepared to do in return?" Although Republicans historically have opposed controls on the flow of capital, the Bush camp has begun to toughen its position. Vice-presidential nominee Dan Quayle came out recently against extending easy credit to the Soviet Union.

Battle lines are being drawn, too, over admitting the Soviets to the board rooms of Western financial institutions. The U.S. has blocked Moscow's petition for observer status at the General Agreement on Tariffs and Trade (GATT), the international body that regulates world commerce. Officials argue that a socialist nation cannot determine the real market value of any commodity and thus cannot set appropriate tariffs. Conservatives add that the Soviets would only use membership in such organizations as the World Bank for propaganda purposes. Asks consultant Robinson: "Do we really want them voting on loans to Chile?"

Perhaps not. Yet inviting Soviet participation could serve to prod the Soviets toward greater financial openness. RAND Corporation analyst Richard Neu suggests a blunt approach. "If you want to be in the IMF and be a real country, then you've got to start reporting like a real country." It may take a decade or more before Moscow cracks the biggest organizations, such as the IMF or World Bank. But the Soviets have recently won observer status at the Asian Development Bank, ironically a group set up to stimulate regional development and stop the spread of Communism.

BOON FOR THE WEST

Moscow's growing presence in Western bond markets also could give America and Europe better leverage over the Kremlin's actions. Gorbachev may not consult a bond analyst before cracking down on a neighbor, but he might think twice if the action seriously jeopardizes the value of Soviet investments. The Kremlin is said to be mulling over just such problems in deciding how far to extend its financial relations with the West. "It's going to create economic pressure on political behavior," PlanEcon's Vanous predicts.

With billions at stake, many Western bankers are chafing at the to and fro over national security. However, under the circumstance, the most that critics hope for is to control the pace of Moscow's financial entente, not block it altogether. "Judicious growth" of loans, coupled with an agreement among Western bankers and their governments to take strategic implications into account when extending loans to the U.S.S.R., would be a logical compromise. Only history can judge if the result will be mutual prosperity or the hangman's noose.

[From U.S. News & World Report, Oct. 3, 1988]

THE KINGDOM OF DISTORTING MIRRORS

(By Mortimer B. Zuckerman)

Mikhail Gorbachev's message to the Russians about their economic crisis is that their government is not part of the solution, but part of the problem. Does this sound familiar? In a way that is remarkable for a Communist leader, he recognizes that the development of a modern, high-tech economy is impeded by the tenets held sacred during 60 years of the Communist state: The state's monopoly ownership of property, the bureaucratic centralized planning and the pervasive party apparatus. To break with this tradition, Gorbachev has attacked the criminality of Stalin and the stagnation of Brezhev, even though such attacks undermine the party's political and moral legitimacy.

The political culture of the party of revolution is paralyzed by these revolutionary thoughts. The result today is typical of a reformist period in that the old structures are working less well and the benefits of the new ones have yet to come on stream. As a Soviet worker summed up perestroika, "It means I work harder for less." Gorbachev is gambling, but he has no choice. The corruptions of the Communist system are rampant.

We have our share of corruption in America, but only in a centralized bureaucracy without accountability and without an independent legal system could fraud flourish on the scale recently exposed in a shocking public show trial. In Uzbekistan, numerous high officials, including a former Minister of the Interior and the son-in-law of Brezhnev, took payment of $6 billion for a bogus 1 million tons of cotton per year, not one pod of which was ever grown, harvested or delivered. Bribes bought silence and complicity among officials all across the Soviet Union.

No wonder the Soviet system is described as the "Kingdom of Distorting Mirrors." The millions of decisions taken every second in a modern market economy on what to make, what to buy, what to use and where to invest cannot be imagined by anyone and could not be planned by a galaxy of geniuses running the largest computers. Soviet planners tell farmers what and when to sow and harvest with limited attention to local conditions and minimal incentives. The result? More farmers than all the Western countries and Japan combined, yet a farm output that is 22 percent of the West's. Prices have so little to do with the cost of production or with supply and demand that it becomes cheaper to feed animals bread instead of grain. With all decisions made from above by a centralized bureaucracy, and with workers paid more or less the same regardless of their work, the Soviet worker has forgotten not only how to work, but how to think.

Inevitably, the Soviet economy is locked in a continuous downward spiral, with declining per capita income and a level of per capita consumption that ranks between 50th and 60th in the world.

All this ought to provoke enthusiasm for reform, but the vested interests are powerful. Bureaucrats want to defend privilege and position. Workers like the predictability of the old order. Both dislike intelluctuals and the media. Both glorify the Soviet past and their role in it. Gorbachev, for all his rhetoric, has had to go slower. His changes have been at the margins, comparable to giving cannibals the ability to eat with knives and forks.

Should the West help out with easy credits and trade? After all, we want the Soviets to concentrate on domestic concerns and political liberalization rather than on foreign adventurism. But Western economic assistance may very well impede reform in the U.S.S.R. by ameliorating the inefficiencies of the command economy and by reducing the leadership's incentive for a new international role. We should remember that it was not Western concessions but Western firmness that brought about the scrapping of medium-range missiles and the pullback from Afghanistan.

Gorbachev has not signaled any intention of reducing the superpower role of the Soviet Union. There are still too many Soviet troops and tanks at the door of Western Europe. They are still organized for attack, not for defense. The Soviets still supply arms to radical countries like Syria. Only when their international role changes through deeds and not just words should we become a part of the solution to their problem by offering economic assistance.

DESIGNATING THE WILLIAM W. PARES POST OFFICE BUILDING, GRETNA, LA

Mr. BYRD. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of

H.R. 3029, and that the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3029), to designate the Post Office Building in Gretna, LA as the William W. Pares Post Office Building.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to third reading of the bill, that it be passed, that the motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CALENDAR ITEMS INDEFINITELY POSTPONED

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Orders Nos. 957, 958, and S. 1459 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

"GUS J. SOLOMAN U.S. COURTHOUSE"

Mr. HATFIELD. Mr. President, I ask unanimous consent that all action just taken on Calendar No. 1000 be vitiated, and that the bill be placed back on the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

OPERATION OF SHUTTLE BUS SYSTEM HARPERS FERRY NATIONAL HISTORICAL PARK

Mr. BYRD. Mr. President, I want to provide the National Park Service with guidance on implementation of a provision in the fiscal year 1989 Interior and related agencies appropriation bill.

West Virginia is fortunate to have Harpers Ferry National Historical Park within its boundaries. Funding was included in the 1989 Interior and related agencies appropriation bill to operate a shuttle bus system between the new parking lot on Cavalier Heights and the lower Town. The operation of the shuttle bus system will benefit West Virginia directly, as Harpers Ferry National Historical Park will implement the transportation system through the public corporation in Jefferson County currently recognized by the State of West Virginia Public Service Commission [Pan-Tram], as was intended by the Senate when including these funds.

SUPPORT OF "EMPLOYEE OWNERSHIP WEEK"

Mr. BYRD. Mr. President, I take this opportunity to express support for "Employee Ownership Week," which is being celebrated this year during the week of October 3-9.

I have long been a strong supporter of employee stock ownership plans, and I believe that the celebration of an Employee Ownership Week is a fitting acknowledgement of the important contribution made to our country by ESOP's. The week is an affirmation that employees and companies alike make this country a better place, and an economically stronger place, when they participate in employee stock ownership plans.

Why do I encourage employee stock ownership plans? The answer is that they are one of the best ways to promote a wider sharing in the ownership benefits of capitalism. Last year, a GAO report revealed that 90 percent of corporate stock is owned by just 10 percent of the households in America. Employee ownership plans are one of the most effective ways to broaden that ownership while preserving the system of private business ownership that our great country is built upon. Employee ownership can extend the opportunity for real prosperity to every American, and in that sense gives effect to the best of our national values.

But the reasons for supporting employee ownership go far beyond its rightness and fairness. The most remarkable thing about employee ownership is that it can substantially increase the wealth and wellbeing of the Nation as a whole. By giving employees a stake in the fortunes of their company, we make our entire economy more competitive. Motivation increases. Dedication, quality and creativity are enhanced. Productivity rises. Absenteeism, turnover, and grievances fall. Customers receive better service. Employee ownership promotes a better understanding by all employees of their company's goals and the challenges involved in achieving those goals. Employee ownership is not simply a more equitable way to slice our economic pie. It is a way to make that pie grow.

Employee ownership also enhances the quality of work life for the working person. With motivated, committed employees, a new style of management is possible which stresses cooperation and teamwork. It promotes a sense of shared values and a sense that everyone in the company is pulling in the same direction. The employee stock ownership plan can provide not only the financial benefits of ownership, but the intangible benefits of feeling like an owner as well. Work becomes more meaningful and satisfying. Personal dignity is enhanced.

These benefits of employee ownership are not simply someone's wishful but unsubstantiated claims. The employee stock ownership plan has developed a reliable track record in the 15 years since my good friend and former colleague, Senator Russell Long, led the effort to create the enabling legislation which brought the plan to life. I was honored then, as I am now, that he asked me to join in cosponsoring that legislation.

Today, over 9,000 companies have shared ownership with over 8 million employee-owners. A recent study of these companies published in the Harvard Business Review found that these companies have grown 40 to 46 percent faster than they would have without employee ownership. Other studies have established that these companies have enjoyed higher rates of sales growth, higher productivity and faster creation of new jobs than comparable companies which have not shared ownership with employees.

I am especially pleased and proud that one of the largest wholly employee-owned companies in the country is located in my home State of West Virginia. The Weirton Steel Corp., in Weirton, WV, is a Fortune 500 company with 8,400 employees. It has been profitable in every one of the 18 consecutive quarters since the employees bought the facility from National Steel following National's announcement that it was going to shut the plant down. As Weirton approaches 5 years of 100-percent employee ownership, we can savor the fact that, through the employee stock ownership plan, this company has not only preserved the jobs of the 7,000 people who worked there when the plant shutdown was announced, but has since that time added more than 1,000 new jobs in a community that badly needs them.

"Employee Ownership Week," has been jointly sponsored by the ESOP Association and the National Center for Employee Ownership. I believe it is a fitting way to recognize the success of the employee stock ownership plan in helping more Americans to share in our Nation's growth and prosperity and in strengthening the competitive edge of our business enterprises at home and abroad. I therefore pledge my support to the continued success of employee ownership.

ORDERS FOR TUESDAY, OCTOBER 11, 1988

RECESS UNTIL 9 A.M.

Mr. BYRD. Mr. President, let me inquire of the Chair. What does the previous order provide as far as the convening time on Tuesday next for the Senate?

The ACTING PRESIDENT pro tempore. The Chair advises the leader that the order provides for 9 a.m.

Mr. BYRD. I thank the Chair.

MORNING BUSINESS

RESUME PENDING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders, or their designees, under the standing order on Tuesday next there be a period for morning business not to extend beyond 9:30 a.m.; that Senators may speak during that period for not to exceed 5 minutes each; and that at the hour of 9:30 a.m. the Senate resume consideration of the tax corrections amendments bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I say thanks again to the very able Republican leader, and to Senator Baucus, Senator Packwood, the managers of the tax technical corrections amendments bill, and to all Senators on both sides of the aisle for their cooperation, courtesy, and help in achieving the agreement that was reached earlier.

PROGRAM

Mr. BYRD. Mr. President, I state for the Record that several votes will in all likelihood occur on next Tuesday. There will be no rollcall votes prior to 2 o'clock hopefully, unless we run into objections that necessitate the votes being held over. And I would expect it to be a long day Tuesday on the disposition of the tax technical corrections amendments, the final hour I believe being 8 o'clock for a vote on the passage of the bill.

Rollcall votes could occur on into the evening beyond that hour on amendments even though no debate may occur thereon. And on Wednesday it is my plan to proceed to take up the drug legislation.

RECESS UNTIL TUESDAY, OCTOBER 11, 1988, AT 9 A.M.

Mr. BYRD. Mr. President, there being no further business to come before this Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 a.m. on Tuesday next.

The motion was agreed to and, the Senate, at 12:07 a.m., recessed until Tuesday, October 11, 1988, at 9 a.m.

EXTENSIONS OF REMARKS

ON CHEMICALS AND CANCER CLUSTERS: A FARMER'S PERSPECTIVE

HON. CHARLES PASHAYAN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. PASHAYAN. Mr. Speaker, on August 30, 1988 the Washington Post published a news story on the rural community of McFarland in north-central Kern County, in my 17th Congressional District. The 13 cases of cancers that struck children in that small community are tragic, the six deaths more so. What we do not need is passioned rhetoric or irresponsible finger-pointing.

Health officials with the Federal Center for Disease Control involved in this issue at my request, working with State and county medical officials, are not convinced as to the cause of these perplexing childhood cancers. Neither am I.

The Washington Post article fell short in accuracy. The following rebuttal, prepared by Pamela Jones, executive director of the Alliance for Food and Fiber, has offered to help to clarify what has been accomplished and what must yet be:

ON CHEMICALS AND CANCER CLUSTERS: A FARMER'S PERSPECTIVE

(By Pamela Jones)

California's 100,000 farmers and ranchers, who produce 50 percent of this country's fruits and vegetables, do not take lightly the environmental or health issues related to pesticides. Over 90 percent of California's farms are family owned businesses. We are each others' neighbors and our workers are often our own families.

Our hearts go to the families of the 13 children that have been stricken with one of nine types of cancer in the farming town of McFarland, California. They are unfortunate victims. But disease researchers predict we may never know the cause.

Said an epidemiologist with the federal Centers for Disease Control and a scientific adviser on the McFarland case, "Given what we know about how often childhood cancer occurs, some places in the U.S. are going to show increases over a period of time, at random, by chance. It's very possible that in McFarland that's what happened." Both the former and present heads of the investigation, epidemiologists with the California Department of Health Services, generally agree. Admittedly, this is no comfort.

Yet a steady ebb and flow into McFarland by politicians, Hollywood stars and leaders of the United Farm Workers Union have said with no hesitation that pesticides are to blame. The parents of the cancer victims feel exploited by the union's attempts to use their misery to generate support for its boycott of grapes—in reality a political battle which attempts to obscure the union's well-recognized failure to organize workers in California's fields, despite the most favorable farm labor law in the country which gives our workers the right to join any union they want.

Pesticides should not yet be ruled out in McFarland. But, at this point, implying they are the cause of the cancers is like hanging a suspect, without compelling evidence and before the trial is complete, because "someone has to pay and you're the best suspect we have."

To say, as a recent Post article did, that "little is done to protect farm communities from contamination of soil, water and air" is inaccurate.

A $50 million-a-year comprehensive regulatory program by the California Department of Food and Agriculture enforces approximately 500 pesticide laws. This includes the only county agricultural department system in the country, a policing mechanism which ensures that local weather, soil and/or neighborhood conditions are accounted for in allowing or denying chemical use permits.

The Department's worker safety and environmental monitoring divisions do continual surveillance, with results feeding back into the regulatory system to determine whether or not a chemical is allowed to be used, or how its use might be restricted where there are potential or actual problems.

This system has allowed the state to selectively mitigate local soil and water problems. As a result, contamination of rivers has been reduced by increasing the time between chemical applications and irrigation to allow the compounds to break down on the fields and not be swept into creeks.

Additionally, the California Department of Food and Agriculture has acted to prevent groundwater contamination by prohibiting the use of a chemical in an area vulnerable to leaching because of its sandy soils and is adopting regulations to alter the use patterns of four pesticides to prevent future leaching.

The Department has mandated changes in chemical application techniques and equipment to reduce off-target drift of chemicals.

California is a pioneer in other aspects of pesticide protection. Safety programs, offered through county Farm Bureaus or privately, are required training for those who apply chemicals.

In the 1970s, California was the first state to adopt re-entry intervals—the time between chemical application and entry into the fields by farmworkers. This doesn't eliminate worker exposure to chemicals, but it does reduce it.

California's regulations and farming practices result in food that is wholesome, nutritious and—by the vast majority of scientific judgment—safe and getting safer. State testing of 15,000 produce samples in 1987 showed 99 percent with no residues or residues within the federally allowable limits. These limits are based, in part, on what the World Health Organization considers safe to ingest daily for over 70 years.

All of these laws don't mean that farmers simply accept the status quo. As scientists, and in turn farmers, have learned more about the life cycles of insects, diseases and weeds, the methods of controlling pests have changed, and will change. The intent is to reduce chemical use, exposure and environmental damage, at the same time producing a quality product in sufficient quantity to keep prices low. There is *no* surplus of fruits and vegetables in this country, especially with the recent Surgeon General's report urging consumers to eat more produce to reduce the risk of certain cancers.

No longer do we just "spray by the calendar" as a preventive measure; we attempt other methods to control insects and diseases and use chemicals primarily when field-by-field examination tells us whatever other method we've been using isn't working well enough, and we'll lose a good part of the crop if we don't control the insect or disease—fast.

Through commodity boards and commissions, farmers tax themselves to pay for university research to find more environmentally sound ways of controlling pests. They and licensed pest advisors attend seminars to learn how to use those methods in the field.

As a result, some orange farmers have reduced chemical use from four and five insecticide treatments a year to one, and sometimes to just one every other year. Artichoke growers in Monterey County have reduced insecticide applications from 12 a year to approximately three a year using insect sex perfumes—called pheromones—to confuse the mating patterns of males. Many other commodities are using this method, with varying degrees of success. But there are no all-purpose answers.

California's farmers and ranchers have room for improvement. We accept that responsibility. But we also are proud of our record of using the most progressive farming techniques, and doing it under the most stringent environmental regulations anywhere, to provide our 250 commodities to the rest of the country and the world.

RECOGNITION OF THE U.S. CULINARY TEAM AND THE CULINARY PROFESSION

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. PANETTA. Mr. Speaker, I would like to bring to the attention of my colleagues an important event in the restaurant and culinary industry. This October the U.S. Culinary Team will once again travel to Frankfurt, West Germany, to compete in the International Culinary Competition. The U.S. team is composed of 14 of America's greatest chefs. They have prepared long and hard for this competition and are hoping to come home with the gold again. In 1984 the U.S. team won 27 gold, 3 silver, and 2 bronze medals, as well as, two special gold medallions.

The American Culinary Team has been competing in this competition since 1964. The team is sponsored by the American Culinary

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Federation and the National Restaurant Association U.S. Culinary Team Foundation. This nonprofit organization finances and promotes the U.S. Culinary Team.

The National Restaurant Association is the leading trade association for the foodservice industry. The NRA represents all facets of the food-service industry, including restaurants, cafeterias, clubs, contract food service management, drive-ins, caterers, institutions, and others engaged in the preparation of food away from home. While the NRA is well-known for its lobbying efforts in Washington and State legislatures, it also is active in education and research for the food-service industry. The NRA has 10,000 members across the country.

The American Culinary Federation is a professional, educational, and fraternal organization of chefs and cooks. The federation was founded in 1929 in New York and since that time has grown to over 17,000 members nationwide with nearly 200 chapters. The ACF provides the means for chefs and cooks to receive education, training, and experience in the culinary profession.

In addition to the culinary competition team, the ACF also provides many educational opportunities to chefs and cooks across the country. First, there is the American Culinary Federation Educational Institute [ACFEI], which recognizes superior culinary schools through an accreditation program. The ACFEI also sponsors the National Apprenticeship Training Program for Cooks, a program recognized by the U.S. Department of Labor. The program consists of a 3-year earn-as-you-learn program combining classroom instruction and employment with a certified chef. Successful completion of the program allows participants the opportunity to enter the culinary field as a certified cook. Presently, 84 apprenticeship programs are in operation across the country. A chef certification program is another one of the activities performed by the ACFEI. Certification ranges from certified cook or certified pastry chef to certified executive chef. Through the ACFEI a chef can be recognized as a certified master chef.

The ACFEI offers financial assistance to qualified culinary students to pursue their education and educational seminars are a large part of the activities at the annual ACF convention, which over 700 members attended last year. The American Academy of Chefs is the honor society of American chefs which is associated with ACF. In addition to the Olympic team sponsored by the ACF, the federation also sponsors many culinary competitions during the year. These competitions are the first experience many chefs have in culinary competition.

Over the years that the United States has been competing in the International Culinary Competition the team has done increasingly well in competition. This is illustrated by the contrast between the 1968 team, which won no medals and the 1984 team, which won gold medals in both the hot and cold food competitions. The 14-member 1988 team has been preparing for over 2 years for the competition in Germany. This year's entries will reflect the trend in the United States toward lighter, more healthy foods and will feature new creations developed by the team members. This years competition promises to be very exciting.

The ACF and the NRA are dedicated to the preservation and expansion of the culinary profession in the United States. These organizations have succeeded in allowing American chefs to successfully compete against European chefs. The accomplishments of the American Culinary Team are commendable. I find the accomplishments of the culinary profession of particular interest, as my parents operated a restaurant in Monterey after their arrival in the United States. I know firsthand the work and dedication needed in the culinary profession. The men and women who make up the American culinary profession and the U.S. Culinary Team deserve to be recognized for their contributions.

UNIVERSITY OF LOUISVILLE'S CENTER FOR EXCELLENCE IN APPLIED MICROCIRCULATORY RESEARCH

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MAZZOLI. Mr. Speaker, as everyone knows, science—especially in the field of medicine—is making enormous technological and research breakthroughs. The rapid advances in recent years in computers, fiber optics, microscopes, and other technical devices have allowed scientists to explore human and scientific landscapes which have lain unexplored since the dawn of time.

At the University of Louisville's Center for Excellence in Applied Microcirculatory Research, these technological advances have been put to use to study microblood vessels—vessels as tiny as 1/10,000th of an inch in diameter.The aim is to determine the role of these tiny blood vessels in revealing the existence of disease in the human body.

Until recently, microvessels were thought only to deliver blood, enriched with vitamins, minerals, and oxygen to human tissue, and to remove waste from such tissue. But now, researchers have found that microvessels are more than deliverers—they are messengers as well. They can tell a doctor if disease exists in the body, and they may well assist that doctor in the prevention and treatment of disease. Scientists have recently learned that there are several sizes of microblood vessels and that each behaves differently in the presence of different diseases.

But, studying and observing these vessels is easier said than done. "The problem was getting in there to see what was going on," according to Dr. Patrick Harris who heads the center at the University of Louisville.

To address this problem, the center developed fiber optic probes, modified catheters and other devices that allow researchers to see into these microscopic veins and measure changes in their structure. "The idea," Dr. Harris continues "is to allow different specialists in the program to work simultaneously on the same problems, with electrical engineers developing devices while medical researchers look for diagnostic and clinical applications through basic research."

Eventually, the center's new diagnostic devices will be used to detect early stages of heart disease, diabetes, high blood pressure, organ failure, and even cancer.

In recognition of their research and contributions, the center was designated by the Kentucky General Assembly as the Commonwealth Center for Kentucky for Applied Microcirculatory Research and Development. Internationally, the center has been recognized by the Japan National Center for Applied Microcirculation, the People's Republic of China, the Federal Republic of Germany, the National Center in the Netherlands, Sweden and Switzerland. And, the Commonwealth center has been selected as the scientific hosts for the 1991 Fifth World Congress on Microcirculation by international vote of official representatives of all national microcirculation professional societies.

We in Kentucky are all very proud of the work being done by Dr. Harris and his colleagues at the center, and we extend to them our heartiest support for their important and laudable efforts.

H.R. 5321, THE MOTOR CARRIER SAFETY AND REGULATORY REFORM ACT OF 1988

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mrs. COLLINS. Mr. Speaker, motor carrier safety is an issue that effects every person who drives on the roads of our country. We have a responsibility to assure the utmost safety of our highways. H.R. 5321 an important step in that direction.

Trucks are an integral part of our economy. Over three-fourths of all goods, from apples to computers, are shipped via trucks. Large trucks, however, are also the most dangerous vehicles on our roads. They are three times more likely to be involved in fatal accidents than automobiles or small trucks. Here on the beltway in metropolitan Washington, DC, we have seen firsthand the dangers of large trucks. Three times in recent weeks, truck accidents have brought traffic to a grinding halt for hours.

This bill will close a longstanding loophole in our motor carrier safety regulations. The commercial zone exemptions was created in 1935 when the trucking industry was smaller and more local in nature. Today, these exemptions allow trucks to operate in many urban areas without being subject to Federal motor carrier safety regulations. Clearly, this loophole must be removed.

The problem of truck safety is not going away. Since the industry was deregulated in 1980, accidents involving heavy trucks have increased 15 percent. This is not to say that deregulation has caused the increases in accidents. Deregulation has, however, placed a tighter economic squeeze on the smaller owner/operator trucking firms who must now operate very close to their profit margin. The result is that these small carriers are often forced to drive longer hours than the regulations allow and must drive at fast, unsafe speeds. Speed has been found to be the most common factor in truck crashes. In a recent survey, a majority of truckers said 70 percent of their peers are regular violators of Federal hour-of-service regulations. Studies show that drivers who operate for more than 8 hours at a stretch are twice as likely to be involved in an accident as drivers who have been at the wheel for 2 hours or less.

The use of onboard computers to monitor truck speeds and hours of service appears to be an ideal way to combat these two common safety violations. H.R. 5321 takes a crucial first step by expediting procedures to allow carriers to utilize this state of the art technology.

Accordingly, this bill requires the Department of Transportation to study and address the issue of mandatory use of onboard computers. These units could be used to prevent drivers from simply falsifying or keeping two sets of log books as well as monitoring the speed of the truck. Presently, trucks can easily avoid police radar guns that catch speeders by using radar detectors and communicating with other truckers over CB radio. Also, it is nearly impossible for trucks to be safely pulled over on crowded freeways. This often disrupts traffic, causing potential for accidents.

All European Economic Community [EEC] countries presently require onboard monitoring equipment for large trucks. When trucks are pulled over or stop at an inspection station, law enforcement officials can catch drivers who violate the speed limit on hours-of-service laws. This system has proved very effective in Europe. The success of onboard monitoring devices has also been demonstrated by several large U.S. motor carriers. Fleet managers have said, "onboard monitors have greatly improved driver safety and fuel economy," and "avoiding accidents is not only a public mandate, it is clearly the only way to stay in business." Operators feel that the units can pay for themselves in one year's time.

Clearly, there are still questions to be answered and issues to be worked out before onboard monitoring devices should be made mandatory. There is myriad different equipment available and a national standard would need to be developed. The trucking industry, individual drivers and law enforcement officials would need to be educated about the onboard computers. Legal issues regarding implementation on a national scale and jurisdictional rights must also be addressed.

My Government Activities and Transportation Subcommittee has been and will continue to study the issue of onboard monitoring of motor carriers. I look forward to being able to report back to you on our work. Mr. Speaker, as a matter of concern for public safety, I strongly encourage all my colleagues to support this legislation.

BURMA REJECTS SOCIALISM

HON. DONALD E. "BUZ" LUKENS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DONALD E. "BUZ" LUKENS. Mr. Speaker, demands for democracy are sweeping through the unfree nations of the world and are pushing many of the world's closed socialist systems to the edge of the cliff.

For the past 26 years, Burma as a nation has not been in tune with the rest of the free world. Their economic plight is provoking their screams for democracy. Let's face it, we know that socialized centralized economic planning doesn't cut it. The rest of the world knows it, and most importantly, the people of Burma know it.

In Burma, fear and tension hang heavy in the air. The people are living in tears and outrage while constantly striving to end the quarter of a century military rule and institute democracy in its place. The Burmese people are rejecting socialism itself.

Protests and riots spring up like weeds. Students are being fired at and wounded while protesting military takeover. According to Amnesty International, soldiers killed 1,000 to 3,000 demonstrators, most of them unarmed, last month.

Burma has had to endure not only political repression, but also the outcome of economic mismanagement by the government, which has reduced a once prosperous nation to a state of poverty. By 1964 the government had nationalized almost everything in the country. What followed in the late 1970's and 1980's was a collapse of commodity prices on the world market. The result was a massive trade deficit, with the country almost bankrupt by last year.

Oil and transportation industries are being shut down due to strikes and the demonstrations. Offices of the ruling party have closed or been destroyed by protesters. An Alliance for Democracy and Peace has been founded and residents in some areas have set up groups to protect their neighborhoods from being vandalized and looted due to the present "no rule" situation. The Nation of Burma has presently reached a transition period that could be compared to anarchy.

Burma is on the leading edge of the fall of socialist economic, political, and social systems. Let's hope that other oppressed nations fall in.

NO!

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MILLER of California. Mr. Speaker, the people of Chile triumphed yesterday. The people of Chile won a great victory.

Chileans voted a resounding "No!" to the continuation of the brutal Pinochet regime under which they have been repressed for 15 long years.

Yesterday, the people of Chile not only rejected General Pinochet's rule, they also voted "No!" to 15 years of murder, torture, and harassment. And they voted "No!" to a decade and a half of intimidation, suppression of civil freedoms, and the stifling of dissent.

In a historic plebiscite, yesterday Chileans broke away from the chains of a ruthless dictator.

The Chilean people braved threats against their lives, fears, and brutality to beat the general at his own game, a game that he was sure he would not lose. Chileans went to the polls for the plebiscite in extraordinary numbers, waited for hours to cast their votes, and finally were able to make their longing for democracy known to the world.

Now, if he plays by his own rules, the general must submit to free elections within a year. All has not been won yet because Pinochet still holds the reigns of power—but the process has been set in motion.

You will remember, Mr. Speaker, that Pinochet gained power in a 1973 coup instigated by the Nixon administration to overthrow a democratically elected government. He has led a reign of terror and intimidation ever since.

Tens of thousands of people were killed in the years after 1973 by the general's military forces and security apparatus. The general quickly instituted a state of emergency—lasting 15 years—that outlawed basic civil liberties, a free press, and the many other freedoms to which Chileans had long been accustomed. Most anyone who objected was thrown in prison, tortured, or murdered.

Pincohet then sent his assassins to our own country in 1976. Here in Washington they blew up the car carrying former Chilean President Allende's ambassador to the United States Orland Letelier, and his colleague Ronni Moffitt—and we lost two great people who had the courage to speak out for the human rights and dignity of the Chilean people.

In Chile in 1986, we were shocked by the murder of Rodrigo Rojas, a 19-year-old Washington, DC, resident, and the critical injury to his companion, Carmen Gloria Quintana, when they were doused with gasoline and set afire by Pinochet's forces.

In 1980, Pinochet forced his own constitution on Chile through a fraudulent plebiscite. His game plan was to rule for 8 more years and tighten his grip on the country, while engineering a system that could keep him in power into the next century. There would be a plebiscite on his rule in 1988 in which a majority "yes" vote would allow Pinochet to continue his dictatorship, or a "no," which would begin the process of returning to democracy.

But earlier this year, 16 diverse parties in opposition to Pinochet courageously decided to unite in a campaign to win the referendum, despite the odds against taking on the powerful regime and despite the grave risk of legitimizing Pinochet's rule. But they fought adversity and overcame threats that campaigners for the "Command for the No" faced as election day approached.

They also overcame the tactics Pinochet used to his advantage, such as using public works projects to encourage "yes" votes, controlling the location of demonstrations, and maintaining the state of emergency until a month before the vote. When the votes were counted, with all the world watching, Pinochet was soundly rejected.

Mr. Speaker, we can all hope that a brutal chapter, a chapter in the history of Chile that we helped write, has come to a close. The Chilean people deserve our warmest congratulations, and our full support during what will be a difficult period of transition.

SHIRLEY ANITA CHISHOLM: ADVOCATE FOR THE PEOPLE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. RANGEL. Mr. Speaker, it is indeed a great honor for me to rise and pay tribute to a great American, former Representative Shirley Chisholm. Next month marks the 20th anniversary of Representative Chisholm's election to the U.S. Congress. In being elected to represent the citizens of the 12th Congressional District in New York in 1968, Shirley made history by becoming the first black woman to serve in Congress. And she did so with assertiveness, loyalty, and utter determination.

Following a brief stint on the Agricultural Committee in 1969, she left and began serving on the Veterans' Affairs Committee in 1970. It wasn't until a year later, however, in 1971 that she became the member of a committee which would allow her to exercise the kind of political might that her conscience demanded. On the Education and Labor Committee she was able to take a more forceful stand for her constituency. Here, she was afforded the opportunity to make three significant contributions. These included her assistance in expanding the coverage of the minimum wage; increasing Federal subsidies for day care centers; and supporting higher education bills that provided more money for poor families.

In 1972, Representative Chisholm ran for President of the United States, receiving 151 votes at the convention and having 24 delegates serve on her behalf. While she tried to craft a solid minority coalition, Representative Chisholm soon learned that being from the same minority does not automatically constitute compatibility.

Nonetheless, Shirley continued to make her presence and influence felt by using the central power structure. In 1977, she became a member of the House Rules Committee as well as the Secretary of the Democratic Caucus. As was neither uncommon nor uncharacteristic of her, she acted independently when her ideology or concern for constituent needs prompted her to do so. For example, while the Budget Committee attempted to push a measure through which would limit Social Security increases to one per year, Shirley stood firmly against this, gaining the support she needed to block its passage.

Mr. Speaker, undoubtedly, hers was a career of exemplary service. In Representative Chisholm's 14 years in the U.S. House of Representatives, she addressed herself to the issues of the people of New York's 12th District. Indeed, these people, as well as those who share their plight elsewhere, are better because of her leadership. To this end, it seems befitting to recognize her contributions and to honor her for making them.

THRIFT SYSTEM BREAKING DOWN

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. PICKLE. Mr. Speaker, I commend to my colleagues the following article which appeared in the Houston Chronicle on September 29, 1988. Our country faces the worst financial crisis since the 1920's. It is often said history repeats itself. I urge my colleagues to carefully consider the ramifications if this proves true in the thrift industry. Congress must address this issue now, it is not a problem for the next Congress or the next administration, but one which we must take responsibility for today.

[From the Houston Chronicle, Sept. 29, 1988]

THRIFT SYSTEM BREAKING DOWN

(By James Flanigan)

Sometimes history does repeat. In the 1920s banks competed for deposits by paying high interest rates, and then made risky loans in order to earn more than they were paying to depositors.

Risky loans often go bad, and many did in the 1920s, leading to more than 10,000 bank failures and the loss of life savings by millions of people in the Depression of the 1930s.

So the government stepped in with insurance for deposits and regulations on how much banks could pay for deposits—extending both deposit insurance and rate regulation to savings and loan associations.

That restored the confidence of savers and ended the destructive competition for deposits. The result was almost 50 years of rising prosperity with affordable credit for housing and for business.

But that happy system has now broken down. Under pressure from inflation, the government ended almost all regulation of interest rates in 1980 so that banks and S&Ls could pay more to attract deposits. At the same time it increased the amount of Federal insurance to $100,000 per deposit, where it stands today.

So what has happened? In the last decade we've seen a return to competing for deposits. Right now S&Ls and banks pay 8 percent and more on insured deposits of less than one year—often more than uninsured investments of the same duration.

And that has caused trouble in the 1980s just as it did in the 1920s. Attempting to earn money on high-interest deposits, many S&Ls have made loans to and invested in risky ventures. Many—at least 500 and probably more than 900 of the nation's 3,092 S&Ls—have become insolvent as a result, a situation that is now arousing intense alarm in Washington because it's evident that the industry-financed Federal Savings & Loan Insurance Corp. won't come even close to covering the damage.

That means Congress will have to appropriate taxpayers' money to see that savers don't lose their deposits as they did in the 1930s.

Lots of taxpayers' money. Sen. William Proxmire, head of the Senate banking committee, estimates that bailing out the S&Ls will cost taxpayers $20 billion; the General Accounting Office estimates $50 billion, and the American Bankers Association—which fears that its own Federal Deposit Insurance Corp. will be tapped to pay for S&L losses—estimates the damage at $74 billion and calls on Congress to set up a $100 billion S&L rescue fund.

What went wrong? S&L managers went hog wild with other people's money. Set up to aid residential housing, S&Ls in Texas financed commercial projects that have gone bust in the long energy depression. Elsewhere, S&Ls have invested in junk bonds, leveraged buyouts and spurious schemes to build windmills. Few worried about bad loans, even incompetently managed S&Ls could always attract new deposits because they offered insurance.

But many are worried now. The FDIC and others in the federal government are studying ways to "reform" deposit insurance—which means provide less of it. But they'll have to move gingerly because the system is fragile; any suggestion of change could cause hurried withdrawals of deposits—often big deposits.

Banks and corporate treasurers frequently invest in S&Ls; breaking down million-dollar deposits into $100,000 units to qualify for the federal insurance that was set up to safeguard small savers. At that, the $100,000 limit on insurance has lost its meaning as the federal government backed multimillion-dollar deposits in the 1984 failure of Continental Illinois Bank, and is backing big deposits today in the rescue of California's American Savings & Loan.

What can be done to remedy the situation? Clearly increased supervision is needed to prevent imprudent loans being made at public expense.

Which could mean a return to regulated interest. That may sound odd—regulation having been out of fashion for a decade and savers having become accustomed to high interest. But you have to admit the idea makes economic sense: In return for absolute safety, the depositor accepts a rate lower than can be earned on a riskier investment.

Besides, regulated interest rates worked before, helping banks and S&Ls to finance 50 years of growing prosperity. Maybe history can repeat in positive ways, too.

TRIBUTE TO BROOKVILLE, PA

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. CLINGER. Mr. Speaker, I rise today to pay tribute to Brookville, PA, an outstanding community in Jefferson County which I am privileged to represent.

Brookville's history can be traced back to the 1830's with origins in the lumbering industry. The town was almost destroyed by a series of fires in the 19th century but the people of Brookville, like their counterparts today, remained determined to rebuild and preserve their town.

In 1977, as downtown shops began moving to suburban malls, Brookville was seen by the National Trust for Historic Preservation as an ideal place for restoration. With massive support from the community, individual citizens of Brookville banded together and organized a "Main Street" approach which encouraged restoration of many of the buildings and homes in the downtown area. Now people do not leave Brookville for the cities, rather, people leave the cities for Brookville. They do this because they appreciate the friendliness, the slower pace of life, and the beautiful Victorian surroundings.

This type of community spirit still fuels Brookville today. People who live there want to preserve the traditions their families have bestowed upon them for their young people. Traditional, independent, determined—these words describe the way Brookville's people fashion their lives. They do not turn to people outside of Brookville when problems arise, instead, they rely on each other. And isn't that why they call it a community.

Mr. Speaker, on behalf of the citizens of the 23d Congressional District of Pennsylvania, I would like to congratulate the people of Brookville for their accomplishments. The dedication they have displayed in preserving their way of life are certainly worthy of our recognition.

AMERICAN HERITAGE TRUST ACT

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. KOSTMAYER. Mr. Speaker, on August 3, the House Interior Committee approved landmark legislation that would greatly enhance our efforts to preserve our country's dwindling open spaces.

H.R. 4127, the American Heritage Trust Act of 1988, establishes a dedicated trust fund into which some $900 million a year in offshore oil and gas revenues would flow. Under the bill, this money would accumulate, and the interest, estimated to eventually reach $1 billion per year, would be given to the States for parks and recreation.

The new trust fund established under the bill would replace the current land and water conservation fund, which was created in 1965 and is the ony Federal program that provides for parkland acquisition and the development of recreational facilities. Since its inception, the LWCF has helped to acquire almost 6 million acres of parkland and to develop tens of thousands of recreational facilities. In the last 20 years, Federal grants have been matched by State and local funds for a total investment in our Nation's recreational needs of over $6 billion.

For example, in my congressional district encompassing Bucks and part of Montgomery County in southeastern Pennsylvania, over $2.6 million dollars have been invested: To purchase Delhaas Woods, a 94-acre tract of coastal forestland; to create a marsh nature preserve in Bristol Borough; to rehabilitate the Washington Crossing State Park; to acquire Five Mile Woods in lower Makefield Township; and to construct a bikeway in Sellersville. These are but a few of the worthwhile projects the LWCF has funded in my area.

Mr. Speaker, the current LWCF has been tremendously important to those of us interested in preserving large portions of our Nation's natural heritage. However, we can and must do more. Although the LWCF is authorized at $900 million per year, on average, only $200 million has been appropriated over the past 8 years. As a result, there is an outstanding, unobligated balance in the LWCF of approximately $5.7 billion.

The missed opportunities that have resulted from our failure to do something about this unexpended balance shows clearly in statistics recently released by the President's Commission on American Outdoors. According to the commission, approximately 1.4 million acres of open space, an area roughly the size of the State of Delaware, are lost to development each year around the country. Bucks County, where I live, as well as parts of nearby Chester, Montgomery, Lehigh and Northampton counties, and many areas in the States of Delaware and New Jersey, are increasingly threatened by development.

H.R. 4127, introduced by my colleague and good friend MO UDALL, the esteemed chairman of the Committee on Interior and Insular Affairs, addresses this crucial issue by requiring that the unexpended balance in the LWCF be used as a capital fund, moneys from which will spin off interest each year to meet our country's environmental needs.

Mr. Speaker, purchase of parkland and recreational facilities is undoubtedly a vital component of our effort to preserve open space. However, I believe it is important that we also concentrate on preserving the natural charm and character of our Nation's countryside.

To accomplish this, I introduced legislation earlier this year which would allow 10 percent of moneys from the new trust fund to be used to purchase development rights on farmland around the country. The Kostmayer amendment was adopted by the Interior Committee on July 28.

Mr. Speaker, since World War II, our Nation has lost some 70 to 100 million acres of farmland to residential and commercial development and other uses. In Pennsylvania, the current rate at which we lose valuable farmland is approximately 90,000 acres a year. In fact, since 1960, Bucks County alone has lost 73 percent of its farms.

Farmland preservation is not only a problem in Pennsylvania and the Northeast but is also a growing concern nationwide. Many States have recognized the seriousness of this problem and have adopted conservation programs aimed at protecting vanishing acreage. States that have such programs currently in place include: Pennsylvania, Connecticut, Maryland, Maine, Massachusetts, Rhode Island, Vermont, and New Hampshire.

In many cases, farmland preservation programs involve the purchase of development rights. Under this system, the States pay farmers the difference between the value of their land if used for agriculture and the value of the land if it were to be sold to developers. The farmer then signs a deed restriction assuring that the land will not be developed and can only be used for farming or an alternative open space use. In the event that the property is sold at a later date, the deed restriction still applies.

H.R. 4127 has been endorsed by nearly every major environmental group, including Defenders of Wildlife, the Sierra Club, the National Wildlife Federation, the American Farmland Trust, the Nature Conservancy, the National Audobon Society, the Coalition for Scenic Beauty, and the National Trust for Historic Preservation. I welcome and acknowledge this support and wish to particularly thank the AFT for its help in crafting the Kostmayer amendment.

Mr. Speaker, it is unfortunate that a tight House calendar and the lack of Senate action has killed any chance for passage of this important bill this year.

On the first day we return in January, however, I plan to reintroduce my legislation regarding farmland preservation. I hope my colleagues will again join me in the 101st Congress to ensure that the American Heritage Trust Act is signed into law.

IN RECOGNITION OF SANGER, CA, THE NATION'S CHRISTMAS TREE CITY

HON. RICHARD H. LEHMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. LEHMAN of California. Mr. Speaker, it was 62 years ago that the famous General Grant Tree, which grows in Kings Canyon National Park, was dedicated as the Nation's Christmas Tree at the request of the citizens of nearby Sanger, CA. As a native of Sanger, I am especially proud of my city's designation as the Nation's Christmas Tree City.

The General Grant Tree stands majestically at a height of 267 feet and is an estimated 4,000 years old. Through the centuries this monarch has stood as an inspiration to millions of individuals, young and old alike. The community of Sanger urged the Federal Government to designate the tree as the Nation's Christmas Tree and on April 28, 1926, the designation was made.

During the Christmas season of 1925, a noted citizen of Sanger, Charles E. Lee, made the trek to the General Grant Tree to celebrate the spirit of the season. Since that year, citizens of Sanger and elsewhere have annually made that same Christmas season trek to place a wreath at the tree's base and reaffirm the hope for "Peace on Earth, Good Will to all Men." Through the years, these annual ceremonies became known worldwide, prompting the U.S. Post Office Department to recognize Sanger as the Nation's Christmas Tree City in 1949.

On January 16, 1956, the U.S. Congress fittingly designated the General Grant Tree as a National shrine to the memory of the men and women of the Nation's Armed Forces who have fought and died for America's democracy. The age-old tree which has withstood the natural elements and disease, is an inspiring symbol of the American spirit and the bravery of the individuals who have fought for the freedom of future generations of Americans.

I know my colleagues in the House of Representatives will join me in this tribute to Sanger for perpetuating America's Christmas tree tradition and the symbolism this holds for individuals worldwide.

QUAYLE-BENTSEN DEBATE

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SOLOMON. Mr. Speaker, as Americans watched the Vice-Presidential debate last night, there could no longer be any question about Senator QUAYLE's ability to be a heartbeat away from the Presidency. DAN QUAYLE is qualified.

The only remaining question is how did LLOYD BENTSEN and Michael Dukakis end up on the same ticket? During his acceptance speech LLOYD BENTSEN said, "Of course we have differences of opinion. But on the basic issues * * * we stand united."

Now let's look at the facts:

MX missile: While Dukakis opposes the MX missile, LLOYD BENTSEN twice voted in its favor.

The B-1 bomber: While Dukakis opposed the B-1 bomber, LLOYD BENTSEN voted four times in its production.

Aid to Contras: While Dukakis vehemently opposes aid to the Contras, LLOYD BENTSEN, on five occasions, voted in favor of such assistance.

SDI: While Dukakis calls for cuts in the strategic defense initiative, LLOYD BENTSEN, on numerous occasions, voted for the program.

The nuclear freeze: While Dukakis supported the nuclear freeze, LLOYD BENTSEN voted to kill a Kennedy amendment calling for a freeze on testing and deployment of nuclear weapons.

LETTER FROM DR. SAMI REPISHTI

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DIOGUARDI. Mr. Speaker, I am in receipt of a copy of a letter that Dr. Sami Repishti, a noted expert on Yugoslavia, sent to my friend and colleague, Congresswoman HELEN BENTLEY. I request that the text of Dr. Repishti's letter be included in today's CONGRESSIONAL RECORD.

BALDWIN, NY, *August 18, 1988.*

Hon. JOSEPH J. DIOGUARDI,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN DIOGUARDI: Recently, I have had the opportunity to read your statement of June 30, 1988 "Serbs Observe Anniversary of Kosovo" (Congressional Record, House, H 4966-67-68). Thank you for giving us the benefit of your views on "the problem of Kosovo." Today, I am taking the liberty of expressing my views on the same problem, hoping that an exchange of views will eventually facilitate a much needed dialogue on the subject.

Historical facts.

1. Historical books say that the 1389 Battle of Kosovo was a joint effort to stop the Turkish invasion. According to the British historian, Lord Kinross, "* * * Serbians, Bosnians, Albanians, Bulgarians, Wallachians and Hungarians from the frontier provinces all rallied around (the Serbian King) Lazar as never before in a determination to drive the Turks out of Europe * * * The battle was lost due to the treason of the Serbian prince Vuk Stankovid * * * Lazar's son, Stephen, himself was quick to come to terms with the Turks * * * (Sultan) Bayezid made an amicable alliance with Stephen which was to endure throughout his reign * * * gave his sister Despina in marriage to Bayezid * * * paid an annual tribute, undertook to command a contingent in the Ottoman army and furnished Serbian troops whenever and wherever Bayezid required them—their earlier grievances now removed by an equitable share in the body. Meanwhile, colonies of Moslems were settled in parts of the conquested Serbian territories. Kosovo was thus forgiven—though never in Serbian legend, forgotten." "The Ottoman Centuries," W. Morow and Co., New York, 1977, pp. 57 and 63. The defeat was transformed by the legend into a victory, nourishing among the Serbs a spirit of vengeance, directed especially against the newly converted to Islam.

2. Once the Serbs were fully defeated again in 1448, history indicates that "* * * in Albania, Skanderbeg from his impregnable fortress of Croia, held out by effective guerrilla warfare against all attempts at conquest, to the humiliation of Murad in his declining years, and under Mehmet for twenty years to come." (Ibid. p. 93.)

Nor did Albanian resistance end with Skanderbeg's death. In 1477, the Turks turned "* * * full attention to Scutari (Shkoder), the last remaining bastion of the West * * * Two major assaults were launched by the Turks, but without appreciable success, and the Sultan with the bulk of his army, decided to retreat, leaving a force to invest and blockade the fortress. Now almost isolated in occupied territory, it was soon reduced to starvation, the inhabitants living on bread and water, with no meat left for their sustenance—not even that of rats and mice. "(Kinross, p.135) Therefore, it is inaccurate to say that the last resistance to Turks was in Serbia.

Unfortunately, present-day reality cannot be lived based on the emotional heritage of the past, glorified by legends. How the map of today's Europe would be if past empires and kingdoms were to be reestablished is easy to conceive—and reject. To whom does Constantinople-Istanbul belong, to use the example as an illustration of the Kosovo case?

3. It is disturbing to read statements such as in "Kosovo Serbs and other Yugoslavs have become a minority people in their own country." Kosovo, we believe, belongs to all the people who inhabit it, without distinction, it belongs to all who love it, cultivate that land, care for it, live from it and for it, to all Albanians, Serbs and others who call it "motherland." The claim that Kosovo is a "Serbian land" is an intentional distortion of historical facts, I regret to say. From the 11th to the 14th century, Serbs had their kingdoms there, but the local population was mixed. Furthermore, Kosovo was not an empty land before the Serbs' arrival there: it was inhabited by the Illyrian tribes called Dardanians, who in the opinion of most historians were the ancestors of the present Albanian-Kosovars. Thus, Albanians have not "migrated in large number eastward into Kosovo"; they have been there before the Serbs, and may have lost their majority due to Serbian invasion of Kosovo during the 11th and 14th centuries, a situation that began to change with the Serb movements northward to better protected areas. The vacuum was filled mostly by new Turkish settlers, and partially by high birth rate among the Albanians. When in 1878, and later in 1912–1913 Balkan wars, Serbo-Montenegrin armies invaded Kosovo, they found the region populated by non-Serbs, and decided to reverse the trend forcefully: what happened then is a sad story of massive massacres, expulsions, and the crematoria against Albanians as illustrated in the writings of the Serbian social-democratic leaders such as D. Tucović, K. Novaković and others.

4. The enumerated historical events from 1941 to the present are either inaccurate or misinterpreted. In 1941, Kosovo-Albanians did not join fascist Italians. Rather, it was fascist Italy that invaded Albania in April 1939, and later Kosovo in April 1941. Being both Albania and Kosovo under Italian occupation, they were organzied as a single administrative unit due to their common identity in language and nationality. Albania and Kosovo were thus both occupied territories with no independent administration.

5. The term "Greater Albania" was coined by the fascists to deceive the local population, and had no meaning among the Albanians. The concept of a "Greater Albania" is a sheer propaganda slogan used to denigrate Albanians' demand for independence in the lands they inhabit for centuries. It is common knowledge that from the 19th century and up to 1920, Serbian and Montenegrin governments have done their best to totally deny even the existence of an independent state of Albania. And, when this state was established in November, 1912, the Serbo-Montenegrin invasions ensued to strangle the newly-born neighbor. Diplomatic documents of the 1913 London Conference and the 1919–1920 Paris Peace Conference are abundant and confirm the Sebro-Montenegrin determination to block the birth of Albania. The same policies were pursued by the Kingdom of Serbs-Croats-Slovenes, later the Kingdom of Yugoslavia during the 1920–1941 years, and more recently by the Tito Communist movement which tried to incorporate Albania as the seventh republic of the Yugoslav Federation. The explanation for these policies is the fact that an independent Albania will always serve as a magnetic pole for all Albanians in Yugoslavia, as a mother country which in their hearts holds the promise of national reunification. Serbs outside Serbia know quite well this feeling from the days of the Austro-Hungarian Empire. And, this is why they are now fighting it, hoping to stop the natural course of events.

6. It is inaccurate to say that the 1912 Albanian state "included the Serbian plain of Kosovo," rather, in 1912, the entire Kosovo and half of Albania were occupied by the Serb and Montenegrin armies (The Balkan Wars) trying to prevent the establishment of the present state of Albania. Under these circumstances, how can Albania expel 100,000 Serbs from Kosovo? On the contrary, Yugoslav statistics indicate that during the 1912–1913 years alone, 12,777 Albanians were massacred by the Serb and Montenegrin armies. The massacres drew

the attention of the British Government and ultimately reached the office of President W. Wilson, through the Reports filed by the U.S. Army's Colonel Sherman Miles. (*See: Foreign Relations of the United States*, 1913-1920, U.S. Government Printing Office.) A detailed account of the massacres was also given by the Carnegie Foundation Commission of Inquiry on the War Crimes in the Balkans, 1914.

7. It is correct that a division of Albanian prisoners of war (formerly of the Royalist Army of Yugoslavia) was organized by the Germans in 1943 and disbanded in 1944 for lack of loyalty. However, in Serbia we had the Quisling Government of General Nedic and its auxiliary forces, the ill-famous Acimovic and its police forces, Voivoda Kosta Pechanac, youth leader Ljotic as well as many well-known Serbian politicians who collaborated with the Nazis up to their last days.

Here, it is appropriate to point out—with no intention of offending the feelings of the brave Serbian people—that even General Drazhe Mihailović's role, oftentimes portrayed as a war hero by chauvinistic elements, is less than heroic, indeed! M.J. Milazzo's "The Chetnik Movement" (John Hopkins U.P. 1975) may be the best monograph on the subject, after having profusely documented Mihajlović's activities during the German and Italian occupations of Yugoslavia wrote:

The overwhelming bulk of the Serb civilian population mostly villagers and small independent peasants wanted security and armed protection, and in moments of overwhelming crisis, were willing to join an armed band Partisan or Chetnik, for purposes of defense, plunder or national revenge * * * (p. 187) He concludes:

* * * The failure of the officers and the Serb non-Communist armed movement was just one reflection of the thorough disintegration which Yugoslavia suffered during World War II * * * World War II was of enormous significance to Yugoslavia not only because of the group it brought to power, but also because of those it eliminated. Had Mihajlović's officers and the Serb civilian nationalist leaders triumphed with some sort of decisive Allied intervention on the Greek model, the restoration of the monarchy would surely had been accompanied by violent political purges and a reign of Serbian vengeance. (Last paragraph)

Therefore, to judge the Albanian people, or the Serbian people, by the actions of those who, consciously or not, erred during the fascist occupation years, is a gross injustice to the history of the two brave peoples who, for centuries, withstood the pressure of the invaders and the suffering brought by them. In addition, the forces of the antifascist resistance, in Albania, Kosovo and Serbia have been by far more numerous, and have enjoyed greater popular support than the local German puppets.

8. It is surprising that even A. Ranković, generally known as the sworn enemy of Albanians, Hungarians, and other non-Slavic people of Yugoslavia, seems to find favor in your statements. And yet, detailed lists of his crimes—including names and places—are made public by the Yugoslav press itself.

9. It is incorrect to say that Albanian language became "official language" in Kosovo. Nor it is true that Kosovo children were educated with Albania's books which made up only for about 2 percent of all textbooks used in Kosovo. It is incorrect to say that Serbs and Montenegrins, Turks and Gypsies are leaving Kosovo under pressure from Albanians. If there is a pressure, that pressure is economic and social:

(a) Economic-unemployment, underdevelopment, rapid increase in population while the land remains the same, undersupported education, no cultural life to speak of, poor health services, anemic infrastructure etc. While Serbs and Montenegrins have the privilege of settling north next to their brothers and start a new life there, ethnic Albanians in Kosovo have tied their fate to the land they inherited from fathers and ancestors. The same situation of Serbian migration north exists in districts of Presheve, Bujanovac, and Medvedje located not in Kosovo but in Serbia Proper: they are leaving the area. Why have the Serbs totally deserted the Raška region, the cradle of the Serbian empire, where there are no Albanians? The answer is one and the same: economic stagnation; or put it simply: no bread to feed their families . . . .

(b) The social aspect of the problem is even uglier. There is almost no Serb or Montenegrin who openly accepts to be neighbor to an Albanian: Albanians, as the Blacks and Hispanic in some areas of the United States, are unwanted, despised, rejected, treated as inferior human beings, offensively referred to as "Siftari"—the equivalent of "kafr" in South Africa.

10 From V. Djordjevic's 1913 assertion that Albanians are sub-humans who spend their nights sleeping in the trees, fastening their tails around the branches, to the present Serbian assertions that Albanians are animal-like with whom it is impossible to co-exist, Serbia's anti-Albanian psychosis has made no progress towards normality: if anything, it has regressed, as it is evident in the avalanche of writings originating in Belgrade and made available to the general public of Yugoslavia. It is in this context that one should see the drowning of truth about Kosovo by a sea of lies and misinformations which portrays them, to use the Congresswoman's words "Albanian chauvinists (who) are using murder, rape, pillage, humiliation, property damage, desecration—their old-age, proven methods—to ensure their goal of an ethnically clean Kosovo."

(According to the statistics made available by the local authorities, between 1984 and 1985, two Albanians killed two Serbs, and three Serbs killed three Albanians. Since 1985 no killings have taken place among the two nationalities. In 1987, no rape against the Serbs took place in Kosovo. When we take into consideration that Kosovo has a population of nearly two million, one should ask the question: where is the country with a lower rate of crime? The irony of the entire anti-Albanian campaign fabricated by Serbian chauvinists is that the highest crime rate is found in Serbia Proper where there are very few Albanians.)

Listening to the abusive anti-Albanian statements coming from Belgrade, one cannot help thinking of the 19th century imperialist methods of colonialization: a press campaign depicting the natives of Africa and Asia as barbarians; then a provoked incident, usually a white man killed or a white woman raped, the front-page titles in the newspapers, parliaments voting war budgets, officers calling for a fight to restore "the national honor", and the inevitable follows: "la mission civilisatrice" of the colonial armies bringing death and destruction on behalf of law and order in a country that is not theirs. It appears now that Serbian hysteria over Kosovo is following the same path: Serbian army units may be on the ready to enter Kosovo, as the July 30, 1988 calls at the Party meeting in Belgrade indicate.

This is also why one aspect of your presentation is especially disturbing. I am referring to your qualifications of the Albanian people as murderers, rapists, arsonists, collaborators with fascists, or expressions such as "the oppression of Turks and Albanians, Facists and Communists," where the analogy is as clear as it is false. Because, one finds it difficult to believe that these passages were pronounced by the Honorable Helen Bentley, of the Congress of the United States, To accuse an entire nation of being inclined to committing, by atavism, such crimes and of being collectively guilty for such outrageous behavior is to flirt with racism in its ugliest form. Today, such expressions are heard from the government of Bootha, in South Africa, and are universally condemned. They also seem as the English translation of what is being said or written by many chauvinists in Belgrade, today. Nevertheless, these statements pronounced before the Congress of the United States are, in our opinion, immensely harmful to the moral prestige of our legislative Body and highly inflammatory for the future relations between Albanians and Serbs. They contain the seeds of a confrontation presently boiling in Yugoslavia, and which could easily be exported to the United States to poison the relations between the Albanian and Serb communities, who are both loyal American citizens, a negative development which would do great disservice to our adopted country.

The problem of Kosovo remains a territorial problem, alas, for the Serbs. It is a matter of existence for Albanians.

The present SAP of Kosovo, as it is officially known, is inhabited almost 85 percent by Albanians, who even by Serbian admission came there at least since the 1690 "Serb exodus," from Kosovo. Even this version—not accepted by indigenous Albanians—makes of Albanian settlers in Kosovo residents for at least 300 years. How can one in good conscience request from them, today, to give up their rights to determine their own fate in favor of a 14th century legend, such as the Battle of Kosovo?

How can one, in good conscience, ask them to submit to the wishes and whims of the 10 percent Serbo-Montenegrin minority because this minority holds the central power in Belgrade, and is willing to use it against them?

How can one, in good conscience, ask them to be quiet when their empty stomachs growl for lack of food, their arms are crossed and still due to the high unemployment, their homes—whenever they have one—are frozen for lack of heat, when their children labor in the fields because they can not go to school, when Albanians are used and abused in the most menial jobs far away from their homes serving the Slavic "gospodar's" (lords) all around the country, as Blacks in S. Africa do, when they are offended and humiliated for their different "Albanian" culture, customs, habits, ways of life, even for their "Moslem" religion?

How can one, in good conscience, expect them to endure the atrocious poverty that has been wrapping them for decades forcing them to live daily that atrocious poverty, to live in the most pauperized areas of Yugoslavia, to be underrepresented in the Government, and as a result to be ruled by "outsiders" who come to Kosovo only to command, supervise, be paid, and return in luxurious limousines to spend the nights in sumptuous Belgrade apartments?

How can one expect, in good conscience, the young generation of Albanians to accept silently the lack of perspective, a present without promise, a future that doesn't promise, while their Serbian and Montenegrin peers are fully employed and welcomed all over the country and Albanian youth roam in the streets of Kosovo looking for a job that doesn't exist there and is denied them elsewhere?

How can one, in good conscience, remain silent when Albanian student demonstrators in Kosovo are massacred by the Yugoslav army tanks and helicopter gunships by hundreds, may be as many as one thousand according to Prof. Pedro Ramet of the Wilsonian Institute, while demonstrators in Belgrade are simply allowed to vent their spleen followed by a police that doesn't arrest them, let alone kill them or send them to jail up to 20 years, as is the case of Albanians in Kosovo?

It is this human aspect of Albanians' suffering that we, Albanians in America, are protesting against. It is not the political destabilization of Yugoslavia that we are pursuing. The political developments in Yugoslavia are the prerogatives of the Yugoslav people who are the sole legitimate actors of the contemporary Yugoslav political scene. Yet, to see people persecuted, as ethnic Albanians are, and their rights constantly violated as they have been since the 1878 Serbo-Montenegrin assault against the Albanian lands, and still remain silent, it means to sin by silence. World War II has taught us that silence kills. It would be twice unforgiveable, if we would choose silence again. Therefore, we have opted for the forceful and public denunciation of the repressive Yugoslav Communist regime in general, and particularly on behalf of the ethnic Albanians, who are target number one of the oppression, as the enclosed paper indicates. Furthermore, the House Concurrent Resolution 162 and Senate Concurrent Resolution 65, were prepared in this spirit and within this context, thus deserving full Congressional support.

DEAR HONORABLE BENTLEY: We applaud your statement that "Members of the Congress should keep in mind that no nationality in Yugoslavia favors a Communist system. Unfortunately, there are times some of these groups blame each other for their plight. Consequently, if Members of the Congress are inclined to respond to injustices in Yugoslavia they should do so on behalf of all the peoples there."

At the same time, we regret to disagree with your statement that ethnic Albanians in Yugoslavia have in fact sought to create a state within a state. Yugoslavia itself is a federation of six states within one state. That's the nature of the country. What ethnic Albanians have asked for is their right to equality with the other "nations" of Yugoslavia who enjoy the right to their own "republic." The Government's assumption, and it is simply an assumption, that once established as a republic, Kosovo will join with Albania is an old political ploy with fear that does not stand the scrutiny of the facts. A secession from the SFR of Yugoslavia is a practical impossibility, since it must receive the approval of *all* other republics; and, one must be insane to expect such an approval from Serbia, Montenegro and Macedonia. And yet, this propaganda has been used with some success even here in the United States.

Your fears concerning the international ramifications of the Kosovo problem are, of course, justified to a large extent. Kosovo could become an explosive point in a dangerous area, which is one more reason why we should do our best to mitigate the circumstances. However, it is not the Albanian demand for republic status and equal treatment as a national group that will destabilize Yugoslavia. One can reasonably expect one day that justice will prevail in that country, and the nations of Yugoslavia will realize the benefits deriving from a fair treatment of ethnic Albanians in a federated state of Yugoslavia. There are now four times more Albanians than Montenegrins, and twice as many as Macedonians; yet, Montenegro and Macedonia have their own republics because they are *Slavic nations*. Albanians are not *Slavic*, but this is not an acceptable reason for denying them the right to their own republic, and it sounds more as a racist explanation.

It is more probable that the destabilization of Yugoslavia will be brought by the powerful political forces now in action, as some recent developments tend to confirm. Kosovo authorities, doubly controlled by the Serbian republican and Yugoslav federal powers, are in no position to shake the foundation of the SFR of Yugoslavia. Serbia, the largest and the strongest of the six republics, is. According to the book by the former president of the SR of Serbia, Ivan Stambolić, "An Analysis of the SR of Serbia, 1979-1987 (Delo:Lubljana, 1987) there are highly placed forces in Serbia who are calling "for the settling of the accounts with the Albanians with the help of a foreign power, who should solve our (Serbian) problem." * * * "We must discover," he wrote, "who is so involved in such things that they call for foreign intervention. We must find out who is doing such things, who is inciting demands for protection by the Soviet Union, for a journey to Gorbachev or the Soviet Embassy in Belgrade, and other things of this kind; we must find out how directives are given from the Serbian nationalist staff, who is formulating slogans, who the ideological leaders are, and who is giving direct instructions in this field." (FBIS-EEU-88-143, July 26, 1988, Albania, pp 10-11.) The attack leaves no doubts that it was directed against Slobodan Molosević the present chairman of the Yugoslav Communist League for Serbia, who, on his part, expelled Stambolić from the ranks of the Central Committee of the Party. The Serbian scenario is frightening, indeed!

The Yugoslav Government claims that it is the only authority to keep Yugoslavia together, and avoid the internal struggle among the various nations of Yugoslavia, or an external intervention. This thesis is flawed in many aspects, although it seems to have your approval. As for myself, it seems to indicate a lack of confidence in the ability of the Yugoslav peoples to take care of their own affairs. I have great faith in the Yugoslav people's ability, including of course, Albanians and Serbs, to opt for freedom and to build for themselves a democratic society where human rights and Western values are respected and promoted instead of being violated, as they are now by the present Yugoslav Communist administration. What the peoples of Yugoslavia need the most is not the blind acceptance of the present regime, but the encouragement of democracy in a country whose eyes are turned everyday more and more towards the Western world.

It is not by stressing the divisiveness of the past, but by encouraging democratic ideals of freedom and human rights that one can help the SFR of Yugoslavia get out of the present morass, and as a result help both Albanians and Serbs choose freely their ways of life and the government they prefer. To insist on the 19th century Serbocentrism attitudes versus Kosovo, a region where Albanians and Serbs have lived together in peace for centuries—anytime that Government or outside interferences were not used—it means to destory the foundations of peace in that region, a course of action that would bring untold suffering to all the inhabitants of Kosovo. Here, being distant from the heat that burns that region, we can help, by showing restraint in our judgments and by avoiding inflammatory statements.

In concluding, I would like to express my readiness to co-operate with anyone whose aim is to serve the cause of peace and democracy in Kosovo, in Serbia, and in Yugoslavia. For, blood and tears roll without asking whether the body and the faces they cover is that of an Albanian victim or of a Serb. We are, first and foremost, members of the one and only human race.

Very truly yours,

SAMI REPISHTI, Ph.D.,
Human Rights Activist,
Member, Amnesty International.

TRIBUTE TO ABE LEVY

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to a dear friend, my former law partner, a most distinguished attorney, a great teacher, a leader and maverick of the labor union movement, and truly a special individual, Mr. Abe Levy. He has been a mentor and an inspiration to me for much of my life.

For well over 40 years, Abe Levy dedicated his life to the labor union movement. Abe's accomplishments are boundless and his career includes a full spectrum of triumphs in matters affecting unions, including private industry, education, public employees, and professionals.

Abe F. Levy was born in Philadelphia, to a family with a long history of leadership in the trade union movement. His boyhood ambition to practice law stems from his exposure at the earliest age to the trade union movement.

Abe's work began with the International Ladies Garment Workers Union. For 7 years he worked as an organizer, a union executive and on the Regional Council. He then entered the private practice of law specializing in the representation of unions and members of unions in matters such as workers' compensation, social security, and unemployment insurance. He is a recognized expert in collective bargaining in all areas and types of industries, and in the use and development of the grievance and arbitration systems of collective bargaining agreements to protect workers rights in their workplace. In the practice of workers' compensation law, he pioneered many concepts which expanded coverage for injured workers under the workers' compensation laws.

Abe Levy also pioneered many areas of labor law in this country before State and Federal courts including both the California and the U.S. Supreme Court. The decisions in litigation that he has handled for his union clients have, in many instances, been "landmark" decisions. He has helped broaden the rights of unions and their members and thus improved the economic conditions of workers.

In 1967, Abe Levy was one of the founders of the California Applicants Attorney Association. The association now has over a thousand attorney members. It fights for and protects the rights of injured workers in the Workers' Compensation Section of the American Trial Lawyers Association. He was chairman of the Association from 1971-1972.

Currently, Abe is on the staff of the Labor Studies Program sponsored by Los Angeles Trade Technical College and is teaching Labor Law, Collective Bargaining, and Organizing. He has been a teacher of labor law courses in most of the universities in the Southern California area. He has been a special lecturer in labor law at UCLA, El Camino College, and other educational institutions. He is the author of the section on Labor Law of the Encyclopedia of the American Judicial System published by Charles Scribner and Sons.

Abe received his Bachelor of Arts from New York University and received his Bachelor of Law degrees (L.L.B.) from the University of Southern California in 1944. He is the father of three grown children, one of whom is a lawyer and partner in his firm.

It is my distinct honor and pleasure to ask my colleagues to join me in saluting Mr. Abe Levy, a life time leader of the labor union movement and a truly dedicated citizen.

A BILL TO REFORM POSTAL SERVICE MAILING REGULATIONS

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. PANETTA. Mr. Speaker, I am introducing legislation today which would require the U.S. Postal Service to amend its regulations regarding simplified addresses for deliveries on certain rural and other routes.

Present regulations permit a nongovernmental mailer who is sending a piece of mail to every address on a rural route or a highway contract route, or to every post office box at a particular location, to use the simplified address "Postal Customer" and avoid using a standard address—name, street, city, State, and ZIP Code.

Generally, such mailings are commercial mailings. Unfortunately, the result of the regulation permitting a simplified address is that bulk mailers competing with other forms of advertising, such as newspapers, obtain an unfair—and, I believe, unintended—advantage. Not only do they receive subsidized mail rates, but they also are not required to follow the same rules that most other mailers must follow in addressing their mail.

I believe this is an issue that needs to be addressed by the Postal Service and, if necessary, by Congress. In my view, the Committee on Post Office and Civil Service ought to look into this matter, and I hope this legislation will serve as a vehicle for that process.

Obviously, this proposal raises concerns about costs for the Postal Service and mailers. Those concerns need to be considered as well. But it seems to me that there is a strong case to be made that the present situation is unfair and ought to be corrected.

I would note that commercial mailers who wish to communicate with consumers living on city routes are not permitted the luxury of not addressing their mail. This being the case, those mailing on other routes should not have that luxury either.

Mr. Speaker, I hope my colleagues will support this legislation, and that the Committee on Post Office and Civil Service will look into this issue at the earliest possible date.

Following is the text of this legislation:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the United States Postal Service shall amend such postal regulations and take such other measures as may be appropriate to provide that, except as provided in subsection (c), any mail as to which this Act applies (as described in subsection (b)) may not be delivered unless it bears at least the following information in the following order:

(1) Name or identification of the intended recipient.

(2) Street and number, or box number, or general delivery, or rural or highway contract route designation and box number (if necessary).

(3) City and State.

(4) ZIP code.

(b) This Act applies to mail intended for general distribution to—

(1) boxholders on a rural or highway contract route;

(2) families on a rural route (at any post office); or

(3) boxholders at a post office without city or village carrier service.

(c) This Act does not apply to official matter mailed by an agency of the Federal Government or of any State, county, or municipal government, or the government of the District of Columbia or the Commonwealth of Puerto Rico.

BLACK LAW ENFORCEMENT OFFICERS UNITE TO FIND SOLUTIONS

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FLORIO. Mr. Speaker, I would now like to turn the attention of my colleagues to a national organization that has been making great strides on behalf of black lawmen across the United States. For 12 years the National Organization of Black Law Enforcement Officers, known as NOBLE, has been working to unite black law enforcement executives, improve their relations with their communities, and find solutions to the toughest problems of our day.

NOBLE's work, aiming to improve the general public's familiarity with law enforcement officers, has sought to remedy a root problem in the communities and has also provided important role models for young people, hopefully increasing the number of black lawmen. I am very proud of the 95 members of NOBLE who reside in my home State of New Jersey and commend them for their efforts.

The Star-Ledger of Newark, NJ, published an article featuring several outstanding New Jersey and New York members of NOBLE, describing their involvement in detail, and I would be pleased if the article might also be included in this RECORD.

The article follows:

[From the Newark (NJ) Star-Ledger, July 1, 1988]

PRESENTING "NOBLE" IDEAS

(By Lauren Robinson)

NEW YORK.—The National Organization of Black Law Enforcement Executives (NOBLE) has become a powerful influence in increasing the number of blacks in law enforcement, improving police and community relations and improving the quality of the criminal justice system, New Jersey members said yesterday.

Today marks the final day of NOBLE's 12th annual week-long conference at which about half of the organization's 1,800 members discussed what they said were the largest problems facing their field—drugs, racial violence, domestic violence and AIDS.

"I am inspired by the great number of NOBLE members there are," said Lt. Anthony Whitaker, who joined the Port Authority of New York and New Jersey to "upgrade" himself after spending 10 years in the New York garment district.

"I always wanted to help people and law enforcement provides the perfect opportunity. Our programs are all geared at helping minority communities," he said.

"The conference created an opportunity for us to network with other black law enforcement officers to discuss mutual problems," Port Authority public safety director Henry DeGeneste said.

"Many of us are the only ones (blacks) at the top of our agencies. This is a chance for us to interact as a group to develop unified approaches to the issues," he said.

DeGeneste, like many of his colleagues, said drugs remains the pervasive problem in communities. One of NOBLE's biggest priorities is its "role model" program, where members reach out to schools and speak of the ills of drugs while promoting positive interaction with law enforcement agents.

He said part of NOBLE's efforts to recruit minorities into law enforcement is providing information about diverse careers, succession planning and trying to fight stereotypes that have developed due to negative encounters with police.

"I would say to blacks who are turned off by cops that the only way to make changes is to work within the system. You can never make changes by throwing stones," he said.

Lonnie Harris, chief deputy U.S. marshal for New Jersey and president of NOBLE's New Jersey chapter, said the state's 95 members are dedicated to improving the communities in which they live and work.

"It's amazing to be here and see so many top blacks," Harris said. "We are discovering problems that exist all over the country in order to prevent them from getting into our neighborhoods."

John Brown, the deputy chief inspector for U.S. Customs in Newark, said he is also very active in encouraging young people to stay away from crime and make something of their lives, using law enforcement as an alternative.

"When kids know their local law enforcement agents, they are less likely to fear them and a lot of the negative interaction comes from fear," he said.

James Spellman, spokesman for the state chapter, said NOBLE has a strong influence on the way many police chiefs and directors relate to their communities.

He said when a member brings the group a "hot topic," such as the recent controversy over high-speed chases, the issue makes its way across the country and goes through a series of committees for resolutions.

GERMAN-AMERICAN DAY

HON. E. THOMAS COLEMAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. COLEMAN of Missouri. Mr. Speaker, today we celebrate German-American Day, both in recognition of the strong relationship we have with the Federal Republic of Germany, one of our staunchest European friends and allies, and in appreciation of the invaluable contribution German-Americans have made to the growth and development of our country.

For those of us in Congress who follow German affairs closely, today is an opportunity to call attention to the close political, social and cultural bond which has formed between America and our West German friends. This relationship spans many years, encompasses many generations, and ultimately will play an extremely important role in how both the United States and West Germany advance into the future.

The deep intertwined nature of German-American relations has many illustrations—whether it is the subtle human links of millions of Americans of German heritage, or the massive highly visible outpouring of help provided by the Marshall plan. There is also undoubtedly an affinity of characteristics and values which our two people share. While most Americans and Germans think of the relationship as one of concrete examples of cooperation or help—such as the Marshall plan—the real foundation of this relationship is the strong feeling the American people have developed for their German friends. This basic fact was probably best expressed by our former Ambassador to West Germany, Arthur Burns, when he remarked that "It was primarily the good will of our people and the interaction between them and the German people that brought democracy and reconstruction to the Federal Republic of Germany and established the partnership that exists today."

It is upon this basic foundation of trust, "good will" and shared aspirations for freedom and democracy, that our two nations have forged a special relationship since the Second World War.

Over the years, this feeling of "good will," combined with the increasingly important role Germany plays in both European and global affairs, has contributed to increased contact between Members of Congress and Members of the German Bundestag. This is largely the result of the growing recognition in Congress that Germany is a key European pillar in our transatlantic alliance. Whether it is in security, political or economic affairs, Germany will be a key partner of the United States as we move toward the year 2000.

A clear example of this new working relationship is the recent formation of a congressional study group on Germany which is composed of Members of Congress interested in fostering a stronger political, economic and military relationship with Germany. We are joined in this effort at achieving mutual understanding and closer cooperation by a similar group organized by our German colleagues in the Bundestag. I have been very honored to serve as the vice chairman of the American study group along with my Democratic colleague, Congressman HAMILTON of Indiana, the chairman of our group.

I believe that our two groups, one in Congress, the other in the German Bundestag, is a simple statement of the current realities of our working relationship with Germany. It is very clear to me that former President Nixon was very correct when he said "we have sometimes treated the Europeans as poor relations who were expected to follow us meekly down any path we chose." This is clearly no longer the case. We must work together as equals, driven to cooperate not by necessity, but rather by shared values and beliefs. In this regard, I believe it is worth quoting Ambassador Burns again. I think his remarks, made in the wake of the sometime divisive and emotional debate in Germany on the deployment of U.S. INF systems, clearly illustrate the durable, enduring nature of German-American relations. "The ability to work together and to practice mutual accommodation even when governments and underlying conditions in our two countries kept changing is a fact of great significance; for it indicates that the interests that unite us—social, political, economic, and military—are strong enough to overcome even divisive issues. That at any rate has proved to be the case thus far, and from that we can draw some encouragement for the future."

CIVIC CLUB OF HARRISBURG CELEBRATES 90 YEARS

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. GEKAS. Mr. Speaker, on October 24, 1988, members of the Harrisburg Civic Club are meeting to celebrate 90 years of many successes in the city of Harrisburg.

In 1898, the Harrisburg Civic Club was organized for the purpose of increasing public interest in all matters relating to good citizenship, and to promote a better social order.

Over the years, the Harrisburg Civic Club was at the forefront of banning litter in the city streets, urged an organized garbage collection system, established the first free kindergarten in Harrisburg and even raised moneys to pay the teachers' salary.

Certainly, the Harrisburg Civic Club has served the community and its people well and warrants a hearty congratulation on its 90 years of existence. No institution lasts a span of 90 years without commanding the respect of its citizenry and delivering on its purposes and goals. Clearly, the Harrisburg Civic Club has done so.

Mr. Speaker, I invite my colleagues in the U.S. House of Representatives to join me in congratulating all those responsible for the success of the Harrisburg Civic Club. I would like the CONGRESSIONAL RECORD to reflect my personal congratulations to those individuals and I wish them a score of 90 year anniversaries in the future.

PERSONAL EXPLANATION

HON. JACK DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DAVIS of Illinois. Mr. Speaker, on Friday, September 30, President Reagan asked me to accompany him on a visit to my home district in Illinois. Unfortunately answering the call of our President forced me to miss several votes on the floor of the House. Though my presence and vote would not have changed any of the outcomes of these rollcalls, I would like to take this opportunity to state for the record, my votes on these important issues.

Were I present, I would have voted "yea" in rollcall No. 372, agreeing to the conference report for Department of Defense appropriations for fiscal year 1989.

If present, I would have also voted "yea" in rollcall No. 373, supporting the conference report on the welfare reform package.

In rollcall No. 374, I would have voted "nay" on the motion to agree to an amendment to H.R. 4776, that would have required religiously affiliated educational institutions in the District of Columbia to offer funds, services, and facilities to homosexual groups and others that directly oppose their religious tenets.

JAMAICA'S LABOR UNIONS SUPPORT ETHANOL INDUSTRY

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. TOWNS. Mr. Speaker, I am inserting into the RECORD for the benefit of my colleagues a copy of a letter I recently received outlining the importance of the infant Jamaican ethanol industry to Jamaican workers. The letter, addressed to the distinguished chairman of the Committee on Ways and Means, was written by officials of the Bustamante Industrial Trade Union [BITU] and the National Workers Union [NWU], the largest labor organizations in Jamaica.

The matter of ethanol and the Caribbean Basin Initiative [CBI] was debated at length during consideration of the omnibus trade bill. In fact, the House specifically rejected efforts, in effect, to bar Jamaican and other Caribbean producers from exporting to the United

States under the CBI. Instead, the new trade law contains a balanced and fair temporary compromise—with appropriate safeguards for U.S. producers—while recommendations for long-term U.S. policy are being developed by the International Trade Commission and GAO.

Unfortunately, there is an effort in the Senate to torpedo the trade act compromise. An amendment is being promoted to the "tax technical corrections" legislation that would require joint approval by the Secretaries of Agriculture, Energy and Treasury for any CBI shipments. This proposal is unfair, unjustified, unworkable and is nothing more than a "killer amendment".

I urge my colleagues to closely review what Jamaican labor leaders have to say about this proposal. As one who recently toured the devastation caused by Hurricane Gilbert, this is not the time to place barriers in the way of Jamaican recovery. We should not jeopardize thousands of jobs in this fledgling industry. This amendment, to the technical corrections package, should be defeated by the Senate or dropped in a House-Senate conference.

September 27, 1988.

Hon. Dan Rostenkowski, III,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

Dear Mr. Chairman: We have been informed that Senator Bob Dole continues his fight to destroy our Jamaican ethanol industry. A fair and equitable short term compromise was agreed to in lengthy negotiations and votes before both the Senate and the House of Representatives during your Trade Bill debate. Senator Dole is trying once again to eliminate our industry, established under the CBI, by personally offering Section 761 to the tax technical corrections bill (Congressional Record, September 12, 1988, p. S12337).

Mr. Chairman, we strongly urge that you reject this provision in your conference committee meeting on the tax technical corrections. Not only was the compromise provision in the trade bill completely fair to all sides of the imported ethanol issue it is also only now in effect for 15 months. We understand that the International Trade Commission (ITC) and General Accounting Office (GAO) have begun a study as part of the Trade Bill legislation which will allow a nonpartisan, objective examination of the industry. Based upon this study Congress must act next year to set the long-term rules under which ethanol may be imported into the United States.

We have suffered our worst disaster of this century. Damage is estimated at two billion dollars. Twenty five precent of our fellow citizens are homeless. Our agricultural economy is in ruins. If Senator Dole's amendment is not stricken from the bill, thousands more of our citizens will be put out of work and what is left of our agricultural sector will be destroyed.

As the national union leaders with responsibility for the sugar/ethanol industry we wish to express to you the devastating impact which will take place on those workers least able to protect themselves should Senator Dole's efforts be successful.

Please, Mr. Chairman, please stand by us in our time of need and reject Mr. Dole's efforts to destroy our ethanol industry.

Sincerely yours,

Vincent Morrison,
Deputy Island Supervisor, National Workers Union.

Lloyd Francis,
Asst. Island Supervisor, Bustamante Industrial Trade Union.

HISTORY OF THE NATIONAL BLACK ALCOHOLISM COUNCIL, INC.

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. CONYERS. Mr. Speaker, the National Black Alcoholism Council is a non-profit, tax-exempt organization of black persons concerned about alcoholism and its devastating effects on black individuals, their families and the black community. The history of NBAC is in separate and distinct phases.

Phase I began when five groups, between 1973 and 1978, initiated efforts to start a national black organization. Fred Davis, New York and Dr. Frederick D. Harper, Washington, DC, were responsible for starting two separate organizations in 1973 and 1975 respectively. Simultaneously, from 1975 to 1977, Vanette Reams, Kansas and James Cooks, Wisconsin started one group, while others were laying an organizational foundation under the leadership of Maxine Womble, New York; John Bland, Maryland; John Emery, Jr., Washington, DC; Dr. Bobby Wright, Illinois; William Haskins, New York; Edward Grant, Connecticut; Paul Bontemps, Massachusetts; and Delores Finger Wright, Washington, DC. Their group held organizational meetings in Connecticut and Washington, DC. The students who attended the 1977 and 1978 Rutgers Summer School of Alcohol Studies [RSSAS] spearheaded a group and contacted many alumni of RSSAS who had expressed an interest in a national black alcoholism organization. Some of the principals in that effort were Rozz Cole, New Jersey; John Robertson, New York; Rev. R.B. Holmes, Florida; Raymond Richmond, Mississippi; and John Saunders of New York.

Phase II was undertaken October 6 and 7, 1978, at a miniconference held at Howard University. The five organizations with limited geographic representation that were conceived as national organizations were invited to the miniconference together with other blacks who were involved in the field of alcoholism. The purpose of the conference was to build on the organizational work started by these five groups. It was decided, after much debate, to merge all of the groups into a single nationwide volunteer organization, National Black Alcoholism Council (NBAC) and an interim steering committee was elected. Peter Bell of Minnesota and Reverend R.B. Holmes were elected steering committee co-chairpersons. Other elected were John Robinson, New York; Dr. Lewis M. King, California; Charles Harper, Michigan; Dr. Frances Larry Brisbane, New York; and Bontemps, Womble, Wright, Bland, Finger Wright, Cole, Robertson, Richmond, Emery, and Cooks.

Phase III was the work of the NBAC steering committee. The steering committee with its broad representation from the major geographic regions of the country held its bimonthly meetings in Washington, DC; Jacksonville, FL; Detroit, MI; and New Brunswick, NJ.

Major accomplishments of the steering committee were the drafting and approval of a constitution, initiating communication with single State agency directors, Congressional Black Caucus and Congressional Black Forum. In these contacts we expressed our concerns with the level of and quality of alcohol services in the black community in addition to making them aware of our organization's goals and objectives. Conjointly, met with Loren Archer, the acting director of NIAAA, and members of the staff, and subsequently with John DeLuca, director of NIAAA. We incorporated as a nonprofit organization. Throughout the tenure of the steering committee, NBAC was involved with legislative matters at the national level, including the reauthorization legislation for NIAAA.

Phase IV began with the First National Conference, October 10-20, 1979, in Washington, DC. The conference theme was "Ujoma (Unity/Family)." The conference chairperson was Brisbane. Representatives came from 28 States including Florida, Maine, Minnesota, Texas, New York, California, and most points inbetween. At the conference were members from the five groups that had previously initiated an organizational effort toward the establishment of a national black alcoholism organization. These individuals, through their participation and continued leadership roles at the conference, laid the foundation for the National Black Alcoholism Council to move from a steering committee to an organization with officers, a board of directors with State representatives, and members-at-large. Paul Bontemps was elected chairperson. Other officers were Womble, vice chairperson; Finger Wright, secretary, Robert "Bob" Dickason, treasurer, Seattle, WA. Standing committee chairperson elected were: organizational development—Bland; research, education and training—King; public policy—Dr. Carolyn R. Payton, Washington, DC (and later, Willie Lynch, Washington, DC); conference committee—Bell; members-at-large to the executive committee—Dr. C. Vincent Bakeman, Illinois; Robertson and Brisbane. The 2 years under this administration were filled with activities which centered on building relationship with other national organizations and strengthening the internal capacity of NBAC to respond quickly and appropriately to its own mandate.

In recognition of his guidance, dedication and loyalty to the steering committee, as well as his assistance in developing the National Black Alcoholism Council, Phillip Dawes of NIAAA was unanimously voted to receive the first proclamation of appreciation from NBAC.

Because the first conference was widely billed as an organizing meeting, similar to a constitutional convention in which all attendees had an opportunity to ratify the NBAC by-laws, it was important to NBAC's history that their names were recorded. Persons who attended the first conference also considered founders of NBAC, they were: Harold Adams, New York; Zoleka Adams, New York; Marshall Alexander, Jr., Mississippi; Frank Austen, New York; Paul Austin, Maryland; Esther Armmand, Connecticut; Joan Avent, Maryland; Marian P. Bailey, Maryland; C. Vincent Bakeman, Illinois;

James T. Beal, Virginia; Peter Bell, Minnesota; Bonita G. Billups, Virginia; John Bland, Maryland; Paul Bontemps, Massachusetts; George L. Borden, Massachusetts; Barbara Boyd, Maryland; Frances L. Brisbane, New York; Annette Brodie, Michigan; Bertha Brooks, Wisconsin; Roger Brunswick, New York; Carl D. Brown, Ohio; Charles Brown, New Jersey; Darryl L. Brown, Florida; Andrew J. Bryant, New Jersey; Frederick D. Burney, Tennessee; Jacqueline P. Butler, Ohio; Elsie Campbell, New York; Theotrise Chatman, New York; Marjorie S. Clark, New Jersey; Rozz Cole, New Jersey; Sy Coleman, Michigan; Essie L. Collins, California; James Cooks, Wisconsin; Barbara A. Conanan, New York; Mosel S. Cooper, Florida; Ralph Cooper, Massachusetts; Walter Corbean, Ohio; Bernice V. Couch, New Jersey; Brenda J. Crawford, Massachusetts; William D. Crisp, Pennsylvania; Donald Cross, Missouri; Clifton R. Davis, New Jersey; Florea Davis, Kansas; Smedley O. Dennis, New York; Robert A. Dickason, Washington; Joseph H. Dixon, Maryland; Curray Donar, New Jersey; Louella Dudley, New York; S. Joyce Dunston, New Jersey; Arthur D. Durant, Illinois; Zelda B. Elder, Washington, DC; John L. Emergy, Sr., Washington, D.C.; and Lawrence H. Everette, Virginia.

Also, Derek Gardner, New Jersey; Pedro Garrido, Massachusetts; William P. Gilmore, Jr., South Carolina; David L. Goodlow, Jr., Minnesota; Charles Grant, New York; James L. Hall, Maryland; William M. Harrington, South Carolina; Charles L. Harper, Michigan; Sherman W. Harris, Maryland; Vincent L. Hayden, Minnesota; Lucinda Herman, Kansas; Edward Hinton, Pennsylvania; James Higgins, Virginia; Toby Hoffler, Virginia; Ophelia M. Howe, Massachusetts; Henry Hudson, New York; Gale Jackson, Ohio; Darryl J. Johnson, New Jersey; Don Johnson, Texas; Richard Joseph, Washington, DC; Hewitt R. Joyner, Jr., California; Delphine E.N. Jackson, Florida; Tommie Kidd, Wisconsin; Albert B. Kilby, California; Lewis M. King, California; Mirita Kizzie, Washington, DC; Daniel Lanier, Jr., Michigan; Ruth Ledbetter, Washington, DC; Annie Lester, New Jersey; Marva A. Lloyd, Missouri; Larry Mahen, Connecticut; Elaine McClay, Louisiana; George McFarland, Washington, DC; Valette Miranda, Maryland; Robert J. Moseley, Maryland; John E. O'Neal, Massachusetts; Anita L. Polk, Ohio; Deloris Porter, Alabama; Kattie Portis, Massachusetts; Jeannie Ranes, New Jersey; Lynvert Rhodes, Connecticut; Fleetwood Roberts, Maryland; William J. Rose, Rhode Island; Dannie Rowell, New York; Kema Sabb, New York; John M. Saunders, New York; Milton B. Shepherd, Maryland; Erma L. Smith, New Jersey; Lizzie Ruth Smith, Massachusetts; Lee W. Manley, Jr., Washington, DC; Arthur McIntosh, Michigan; Olivia McMillan, New York; Lillian A. Miller, Virginia; and George E. Miller, Illinois. Also Robert L. LeMons, Massachusetts; Shirley Morris, New York; Jo Neal, Michigan; Clark Newton, Michigan; Vernon Pierce, Kansas; Christine Powell, New Jersey; Lloyd Simmons, New York; Ereld Pyatt, New York; Joseph Richardson, Washington, DC; Lloyd F. Robbs, California; John Robinson, New York; Sam Roberson, New Jersey; John Robertson, New York; Carolyn Spooner, Florida; Willa Jefferson-Stokes, California; B. Lorraine Stuart, New York; Blanch Summerville, Virginia; Jacqueline Tatum, Missouri; John Taylor, Jr., Massachusetts; Shelia J. Rayser, Maryland; Harold Thompson, North Carolina; Rubie L. Tolbert, Georgia; Norwood Tripp, Jr., Wisconsin; Don Turner, Ohio; Damu Vusha, California; Clarence S. Wallace, Ohio; Mary W. Ware, Missouri; Hattie Wash, Illinois; Tommie M. Watson, Tennessee; Harvey Webb, Jr., Maryland; Ralph Felder Whaley, New York; William Wheeler, Georgia; Cosco Williams, New York; Allen J. Williams, Connecticut; Marjorie Wise, Nebraska; Maxine Womble, New York; and Delores Finger Wright, Washington, DC.

In 1980, the second annual conference with the theme of "Survive and Strive: Black Alcohol Agenda for the '80's", was co-chaired by Peter Bell, Minnesota and Annette Brodie, Michigan. It was held in Chicago, IL, and was a huge success with 33 States represented.

Phase V was both an end and beginning. It concluded two of the most important first years of growing pains which brought into being organizational maturity and realization of "there is no stopping now". Paul Bontemps turned over the reins of leadership to Maxine Womble (then of Chicago, IL), who became the second chairperson of NBAC at the third national conference in New York City, October 29–November 1, 1981. "Networking for Survival in the '80's", was the theme and Robertson was conference chair. Besides Womble as chairperson, other officers elected at the conference, which had a record attendance from 41 States, were: vice chairperson, Frances Brisbane, New York; secretary—Charles Makins, California; and treasurer—Robert Dickason, Washington. Elected to standing committee chairs of organizational development; public policy; research, education and training; and national conference were: Gerald Johnson, Ohio; C. Vincent Bakeman, Illinois; Lewis M. King, California; and Don Newcombe, California, respectively. members-at-large elected to the executive committee were Dannie Rowell, New York; William F. Rosemon, Texas; Delores Porter, Alabama; and Paul Bontemps, immediate past chairperson.

Chairperson Womble's initiation of the "National News and Views—The NBAC Newsletter", No. 1, February, 1982 was an attempt to keep the membership informed of NBAC activities and to acquaint the public with NBAC efforts in the area of alcoholism relative to blacks. Brisbane was the first editor of National News and Views, scheduled for publication twice a year.

In 1982, NIAAA awarded a contract to Birch & Davis Associates, Inc. to develop model professional standards for credentialing alcoholism counselors. Womble and Brisbane were appointed to represent NBAC on the National Task Force to develop the standards. Womble was later elected to serve on the executive committee and board of directors of the National Commission on Credentialing of Alcoholism and Drug Abuse Counselors, Inc., whose name was later changed in 1986 to the National Commission on Accreditation of Alcoholism and Drug Abuse Counselors Credentialing Bodies.

Reflecting on the activities between 1978 to 1982, it was obvious that NBAC had a rich history. Support had come from many religious, educational, social, civic, public, and private organizations throughout the United States. The future looked bright and, indeed, assured because of the interest and encouragement NBAC continued to receive from so many people.

Phase VI, the leadership of NBAC continued under Womble in 1983, with Brisbane remaining as the vice-chairperson; Bland as secretary; Kidd, treasurer; Andrea Wiley of Richmond, VA; Gerald Johnson, and Vernon Pierce as members-at-large; Phillip Dawes, organizational development; Bakeman, public policy; Lonesome, research, education, and training; Marietta Stepney, national conference. Upon the resignation of Philip Dawes, John Robertson was appointed to serve out the unexpired term.

On October 17–19, 1983 NBAC in cooperation with Howard University School of Social Work held its first Black Alcoholism Institute (BAI). This intensive training, designed to provide basic and advance skills building instructions to enhance understanding of the differences and similarities among black people and other ethnic and racial groups. Dr. Ronald Lonesome, dean of the BAI, with the assistance of Brisbane, implemented the Institute. There were about 100 students in attendance in the first class held in Tampa, FL, in 1983. The BAI was held twice a year, 3 days before the annual conference, and the first week in June on the Howard University Campus from 1983 thru 1986. Since 1987, the Institute is held only the first week in June in Washington, DC. NBAC has been able to attract numerous distinguished faculty to teach in the BAI who gave generously of their time and expertise to make this the best training program in the Nation.

In February 1984, NBAC initiated a national campaign to curb drunk driving. February, which is Black History Month, was designated as the month for the State chapters and members to address the issue of drunk driving through community awareness and education activities. This campaign is known as Blacks Against Drunk Driving (BADD), and was spearheaded by Dr. Brisbane and Dr. Bakeman.

In 1985 a book was published entitled, "The Treatment of Black Alcoholics", edited by Dr. Frances Brisbane and Maxine Womble. The book grew out of the recognized dearth of information on treatment of blacks, alcoholics and their families. Several noted treatment therapists contributed to the book including Dr. Lonesome, New York; Henry Hudson, New York; B. Lorraine Stuart of New York; Muriel Gray, Virginia; Dan Lanier, Michigan; Dorothy Knox, New York; Beny J. Primm, New York; and several others. The royalties from the book were donated to NBAC by the editors.

Phase VII, the elections in 1985 continued Womble and Brisbane and Kidd in their offices as chairperson, vice-chairperson and treasurer, respectively. Betty Fletcher of Mississippi was elected secretary; Rosie Hatchett of Indiana, Pamela Lightsey, New York, and Vernon Pierce, Kansas were elected members-at-large. John Robertson and Ronald Lonesome continued in their positions, while Bakeman became chairman of the national conference committee, and Eddie Young, North Carolina, was elected chairman of the public policy committee.

The eighth national conference was held in Chicago, IL, September 24-27, 1987 with the theme—"Quality Services: The Challenge of the 21st Century". The Black Alcoholism Institute took place 3 days before the conference, in keeping with the tradition established in 1983. The illustrious Mayor Harold Washington of the city of Chicago, in his letter of welcome to NBAC said,

"I am particularly pleased to see that the conference agenda will emphasize 'Quality Services: The Challenge of the 21st Century'. I applaud NBAC's efforts in taking on this monumental task to prepare for the future those providers who try to prevent, diagnose and treat people afflicted with the disease of alcoholism".

Phase VIII, 1987 was a time of continued growth and many requests for the "NBAC book on Treating Black Alcoholics", as the book Treatment of Black Alcoholics became known. Brisbane and Womble, based on research done by Brisbane, developed a model for working with Black Children of Alcoholic and Drug Addicted Parents [B/COADAP]. NBAC published the research results and described the model in a booklet which sold over 1,500 copies in 1987. All proceeds from the sale of the book went to NBAC.

Womble was appointed to the National Citizens Commission on Alcoholism of which Health and Human Services Secretary, Otis R. Bowen, M.D. and former First Lady Betty Ford were honorary cochairs. Among the 14 initiatives outlined by Secretary Bowen, as a basis for the commission's work, that were of particular interest to NBAC were: work with health care foundations to increase support for clinical training on alcoholism for health professionals; create a privately run citizens commission to promote community awareness of alcohol abuse and alcoholism, to reduce the stigma, and to encourage early treatment; work with the Federal Communications Commission to investigate voluntary changes in broadcast programming; and develop a comprehensive plan for an HHS public affairs campaign to increase awareness of alcohol-related problems. As Womble serves on the commission representing NBAC, she also serves as liaison representative to the national advisory council on Alcohol Abuse and Alcoholism for NBAC.

The BADD campaign swung into full gear when it received a grant from the U.S. Department of Transportation in April 1988. NBAC awarded grants to four State chapters to assist them in their campaign to prevent and reduce alcohol-related crashes among blacks who are over-represented based on their number in the general population.

In the opening hours, NBAC was in full gear, planning the 10th annual conference. "A Decade of Progress: Challenges and Directions for the Future," was the conference theme. The conference dates and place were: September 21-24, 1988 in Washington, DC, the city of NBAC's birth. An appeal was made for all founding members to attend, participate, and rejoice in the celebration of a decade of progress.

NURSING SHORTAGE AND NURSE REIMBURSEMENT ACT OF 1988—(H.R. 5475)

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. ROYBAL. Mr. Speaker, given the current nursing shortage crisis coupled with the fact that our Nation's health care system depends upon the skill and caring of nurses, a package of reforms from both the public and private sector is critically needed to provide a solution to the nursing shortage. This comprehensive package of reforms should include: First, increasing funding for training, education and recruitment; second, implementing innovative nursing practice models in all health care settings; third, increasing nurses' salaries and benefits; fourth, increasing nurse autonomy and decision making; and fifth, providing direct Medicare and Medicaid reimbursement to nurse specialty groups. These reforms will directly address problems in recruitment, retention, and reentry of nurses into the nursing pool.

One part of this critically needed comprehensive package is the Nursing Shortage Reduction and Education Extension Act of 1988. This legislation would increase funding for nursing programs. A second part of the reform package is clearly the responsibility of health care providers—hospitals, health maintenance organizations, nursing homes, home health agencies, and medical offices. Which should result in increased respect, authority and responsibility, and income for nurses. Most importantly, reforms should include direct reimbursement under insurance programs, including Medicare and Medicaid. That is why I am introducing the H.R. 5475—Nursing Shortage and Nurse Reimbursement Incentive Act of 1988.

The provisions of this bill would:

Amend the Social Security Act to provide coverage of and direct reimbursement of services for, nurse practitioners and clinical nurse specialists, certified registered nurse anesthetists and nurse-midwives under the Medicare and Medicaid Programs.

Direct the Secretary to: First, establish a reimbursement level based on a relative value fee schedule; second, conduct a study of the relative costs for physician services and for nurse services with respect to overhead—including rent, staff, billing, and malpractice insurance—and other resources; and third, recommend to Congress the appropriate relative reimbursement levels for professional services which may be provided either by physicians or by nurses.

Direct the Administrator of the Health Care Financing Administration to provide a toll-free telephone hotline to handle inquiries concerning payment for nursing services.

Expand the scope of Peer Review Organizations [PRO's] to include the nursing services performed by these specialized nursing groups. In conducting such reviews, the organization shall consult with nurse advisors in the same nursing specialty as the nursing specialty providing the services.

Direct reimbursement provides an incentive to the nurse specialty groups—nurse practitioners, clinical nurse specialists, certified nurse-midwives, and nurse anesthetists—who want to remain in nursing, while, at the same time, earning salary and benefits commensurate with their profession credentials, education and experience. Furthermore it would enable these specialized nurses to practice in unserved and underserved areas, expanding access to needed health care. Direct reimbursement would give nurses choices among working as salaried employees, setting up independent practices, or entering into joint practices with physicians or other certified health professionals.

The Congressional Office of Technology Assessment reports that:

> Unless the barriers of direct reimbursement are altered, the potential savings from a greater use of these specialized nursing groups will probably remain unexploited even though studies show that nurse practitioners, clinical nurse specialists, certified nurse midwives, and nurse anesthetists can provide services that both substitute for and complement physicians' services, depending on the particular service or type of practice.

Recognition of these nurses as independent providers of quality health care services through Medicare and Medicaid reimbursement policy will permit nurses to function in a capacity commensurate with their education. By enacting H.R. 5475—the Nursing Shortage and Nurse Reimbursement Incentive Act, one part of the long-term solution to the Nation's current nursing crisis will be addressed.

H.R. 5475

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nursing Shortage and Nurse Reimbursement Incentive Act of 988".

SEC. 2. MEDICARE PROGRAM AMENDMENTS.

(a) DIRECT REIMBURSEMENT FOR NURSING SERVICES.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)(L), by inserting before the semicolon the following: ", nurse practitioner and clinical nurse specialist services, and services of a certified registered nurse anesthetist"; and

(2) by adding at the end the following new subsection:

"NURSE PRACTITIONER AND CLINICAL NURSE SPECIALIST SERVICES

"(ii)(1) The term 'nurse practitioner and clinical nurse specialist services' means such services (and such services and supplies furnished as an incident to the services) furnished by a nurse practitioner or clinical nurse specialist which the nurse practitioner or clinical nurse specialist is legally authorized to perform under State law as would otherwise be covered if furnished by a physician or as an incident to a physician's service, whether or not the practitioner or specialist is under the supervision of, or associated with, a physician or other health care provider.

"(2) The terms 'nurse practitioner' and 'clinical nurse specialist' means an individual who—

"(A) is licensed to practice professional nursing, "(B) holds a master's degree in nursing or a related field or has completed a nurse practitioner continuing education program, and

"(C) is certified (or certified eligible) as such a practitioner or specialist by a national professional organization recognized by the Secretary.".

(b) Payments—Section 1834 of such Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(f) Payments for Nurse Practitioners and Clinical Nurse Specialists, Certified Nurse Midwives, and Certified Registered Nurse Anesthetists.—

"(1) In general.—Notwithstanding any other provision of this part, payment for nurse practitioner and clinical nurse specialist services, services of a nurse midwife, and services of a certified registered nurse anesthetist under this part shall be based on a fee schedule, established by the Secretary and based on the relative value of resources required to furnish the services. For services with the same relative value on such scale, payment amounts shall be the same without regard to the type of nurse who has furnished the services.

"(2) Secretarial duties.—By not later than January 1, 1990, the Secretary shall—

"(A) design the fee schedule described in paragraph (1),

"(B) conduct a study of the relative costs for physicians' services and for services described in paragraph (1) with respect to overhead (including rent, staff, billing expenses, and malpractice insurance) and other resources, and

"(C) make recommendations to Congress on the appropriate relative reimbursement levels for professional services which may be provided either by physicians or by nurses.

"(3) Hotline.—The Administrator of the Health Care Financing Administration shall provide for a toll-free, telephone hotline to handle inquiries concerning payment for nursing services under this subsection and, to the extent feasible, for services described in paragraph (1) under State plans approved under title XIX.".

"(c) Peer Quality Review.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end of the following new paragraph:

"(16) The organization shall conduct review activities with respect to nurse practitioner and clinical nurse specialist services, services of a nurse midwife, and services of a certified registered nurse anesthetist. In conducting such reviews, the organization shall consult with nurse advisors in the same nursing specialty as the nursing specialty providing the services.".

"(d) Effective Date.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 3. MEDICAID PROGRAM AMENDMENTS.

"(a) Coverage of, and Direct Reimbursement for, Certain Nursing Services.—Paragraph (17) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended to read as follows:

"(17) services furnished by a nurse-midwife (as defined in section 1861(ff)), certified registered nurse anesthetist (as defined in section 1861(bb)(2)), or nurse practitioner or clinical nurse specialist (as defined in section 1861(ii)(2)) which the nurse is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse is under the supervision of, or associated with, a physician or other health care provider;".

"(b) Payment Amounts Related to Medicare Payment Amounts.—Section 1902(a)(13) of such Act (42 U.S.C. 1396a(a)(13)) is amended—

"(1) by striking "and" at the end of subparagraph (D),

"(2) by adding "and"' at the end of subparagraph (E), and

"(3) by adding at the end the following new subparagraph:

"(F) for payment for services described in section 1905(a)(17) in an amount equal to (or equal to a percentage of) the amount of payment provided under section 1834(f), and such a percentage may not vary based on the type of nurse described in section 1905(a)(17) furnishing the services;".

"(c) Effective Date.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

PREVENT REGIONAL DISCRIMINATION—AMEND THE FEDERAL MILK MARKETING ORDERS

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. ROTH. Mr. Speaker, in the past few months I have had the opportunity to visit with a number of dairy farmers in Northeast Wisconsin. The No. 1 issue for Wisconsin dairy farmers was clearly the need for an overhaul of the Federal milk marketing order system.

Dairy farmers in traditional dairy-producing States like Wisconsin receive the lowest prices for their milk in the Nation while those in the South and Southwest get the highest prices. In fact, the gap in prices was further widened in 1985 with the mandated increase in the "Class I" differentials.

Earlier this year, the General Accounting Office released its findings on the state of the dairy industry. The GAO report concluded that the milk marketing order system is outdated and should be reformed.

In July, the USDA also released its report on the Federal order system. The report concluded that the system could be modified so that it is more competitive and redistributes producer revenues more evenly among the regions. In addition, the report stated that more efficient shipping patterns could be generated and interregional marketing costs reduced.

The normal economic factors of supply and demand play a minimal role in the price farmers receive for their milk. The price per hundredweight is virtually the same throughout the 44 nationwide milk marketing orders; however, a substantial transportation cost is factored into the price. This difference is the result of an antiquated formula based on the cost of transporting fluid milk from Eau Claire, WI. Thus, marketing orders for regions located farthest from the base point in Eau Claire tend to claim the highest prices.

Milk marketing orders were established in 1933 to safeguard dairy farmers and consumers from great swings in milk supplies and prices. An admirable goal in 1933 since milk was an extremely perishable, bulky commodity and refrigeration and other preservation technologies were primitive.

In 1988, however, 44 national milk marketing orders provide for cumbersome bureaucracy, outdated transportation allowances, and a generally outdated system that costs the U.S. taxpayer an estimated $800 million a year in waste and income transfer. Technological advances that improve the shelf life of milk have essentially eliminated the need for vast transportation differentials based on Eau Claire, WI.

As a first step toward eliminating the inadequacies of the milk marketing order system, I introduced H.R. 5402 on September 24. My bill will repeal the 1985 increases in the "Class I" differentials that have caused such large price variances, and will require USDA to submit a plan to Congress to implement a system of four to eight multiple basing points.

The 1985 increases in "Class I" differentials were not based on economics, but politics. At a time when efforts were underway to lower milk production nationwide, several regions received financial incentives to produce more milk. These unfair price increases have directly led to an explosive expansion of milk production in the South And Southwest. In fact, the Ireland-based Masstock Co. has targeted Georgia to build a 6,000-cow dairy operation complete with a series of processing plants to market the milk.

The development of additional basing points similar to Eau Claire will help eliminate price discrepancies between the orders and bring an element of fairness back into the system. The price of milk would be determined as it is now; however, the transportation differentials would be scaled back to reflect the actual costs of transporting milk from the new basing point. There are several other areas in the United States which have high concentrations of milk production and Wisconsin should not be penalized for being the Nation's No. 1 milk-producing State.

Ideally, I would like to see the price of milk left up to the market forces within the various regions and restrictions lifted on the transportation of milk in any form between the regions. However, changes to the Federal order system will take time. In the meantime, I believe that H.R. 5402 offers a rational first step toward addressing a major inadequacy in our Nation's dairy policy—discrimination against traditional dairy-producing areas.

It is time that we in Congress set aside our regional differences and do what is right for the Nation for a change. It is time for a revision of the milk marketing system, and its time for all farmers across the Nation to be treated equally and fairly. A streamlined milk marketing system is long overdue.

QUESTIONS FUNDING TO PHILIPPINES

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. HALL of Texas. Mr. Speaker, several weeks ago I read with great interest an editorial in the Washington Post written by former

U.N. Ambassador Jeane Kirkpatrick. In her editorial, Ms. Kirkpatrick discussed an issue which I believe the next Congress and the next administration must come to terms with—that is, the continued United States funding for military bases in the Philippines.

The United States has played a key role in the defense of the Philippines since the turn of the century. Many Americans lost their lives while defending that country against Japanese aggression in World War II. In return for our years of assistance, the Philippine Government recently demanded that the United States pay $1.2 billion for the right to use Clark Air and Subic Naval bases. To me, this is simply unacceptable.

Why should the United States have to pay for the right to defend a country which already benefits greatly from its relationship with the United States? If the Philippine Government is ungrateful for our help, then why should the United States taxpayers continue to provide a free ride?

I believe the time has come for us to reevaluate our defense relationship with the Philippines. Ms. Kirkpatrick has suggested that the Philippines, along with Japan and South Korea, should take a more active role in the defense of the Pacific region. These countries could easily form a collective defense arrangement and in the process become more responsible for controlling their own destinies.

The United States, at enormous expense, has unselfishly defended our Pacific allies for over 40 years. The least our allies can do is offer to help. Hopefully, the 101st Congress will take a serious look at this issue when it convenes next year.

THE FAMILY AND MEDICAL LEAVE ACT

HON. LOUISE M. SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Ms. SLAUGHTER of New York. Mr. Speaker, I wish to state my strong support for H.R. 925, the Family and Medical Leave Act. Families are the foundation of our society and we cannot abandon them as they face the challenges of a rapidly changing America. The Family and Medical Leave Act not only benefits the individual family, but also businesses and society as a whole. This legislation is an investment in the future leaders of our Nation, our children, and I strongly urge its passage this Congress. Additionally, I would like to submit for the RECORD a letter from the National PTA in support of this essential legislation on behalf of many parents and educators.

THE NATIONAL PTA,
OFFICE OF GOVERNMENTAL RELATIONS,
Washington, DC, September 13, 1988.

The U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE: The National PTA, an organization of 6.2 million parents, teachers and concerned citizens, urge you to support passage of the Family and Medical Leave Act, H.R. 925.

H.R. 925 is expected to come before the House next week; we hope that you will vote to pass this vital legislation. The Family and Medical Leave Act is a much needed response to a critical need of American Families. The bill would offer job-protected, unpaid paternity and medical leave. Employees would be granted up to 10 weeks to care for a new child and 15 weeks in the event of the workers own illness.

One goal of society must be to strengthen the family unit. The National PTA believes job security through unpaid leave, as provided in H.R. 925, will reduce the amount of stress experienced by families, benefiting children and parents.

H.R. 925 has been revised to incorporate many of the concerns raised during the hearings held on family leave legislation, therefore, we ask that H.R. 925 be adopted without amendments.

Sincerely,

MILLIE WATERMAN,
Vice-President for Legislative Activity.

PRESS FREEDOM IN LATIN AMERICA

HON. JIM SLATTERY

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SLATTERY. Mr. Speaker, one of my constituents, Edward Seaton of Manhattan, KS, has written an opinion piece which was published in the Baltimore Sun regarding disturbing instances of harassment of journalists in Mexico and much of Latin America. He points out that, unfortunately, in Latin America an extraordinary high level of violence against the press is not unique. Most important, he points out that governments in Latin America are increasingly failing in their duty to protect journalists from intimidation and murder.

The United States should try to strengthen in every way the fragile democracies which are struggling today in Latin America but an important priority should be to encourage our allies in the region to respect press freedom and strongly condemn acts such as those described in Mr. Seaton's article.

Edward Seaton is a former Fulbright scholar who has studied and worked in South America. He is editor-in-chief and publisher of the Manhattan (KS) Mercury, and is also vice president of the Inter-American Press Association. I found his commentary very interesting and I encourage my colleagues to review the following opinion piece which I am inserting into the RECORD:

STRUGGLING FOR DEMOCRACY

(By Edward Seaton)

MANHATTAN, KS.—Journalists, for their own sake, hope to see change in Mexico with the election today of Carlos Salinas de Gortari. Under the current six-year administration of President Miguel de la Madrid, gunmen and assassins have killed at least a score of their fellow professionals.

The exact number, 19 or 29, has become a campaign-year issue and depends on whether you believe the government or several media organizations. Unfortunately, in Latin America this extraordinary level of violence against the press is not unique.

In Colombia, the government also fails to provide a climate in which reporters can freely operate. So far this year four Colombian journalists or media employees have been assassinated. Rodrigo Velez Toscano, gunned down last month in Cali, was the 34th journalist murdered in Colombia in the past 10 years.

In Mexico the most recent killing took place April 20, when an automobile overtook Hector Felix Miranda, known as "Felix the Cat," on his way to work in Tijuana. A man stepped out of the car and fired three shots from a 12-gauge shotgun killing Mr. Miranda, who was a columnist and co-editor of the lively weekly *Zeta.* Police made an arrest, but speculate the assassin was acting for high-ranking politicians whom Mr. Miranda had satirized.

Whether in Mexico, Colombia or elsewhere, such deaths illustrate a key principal of the press in many Latin American countries, even democracies: Critical reporting is permitted, but there may be a high price to pay.

The press faces government interference of one kind or another, including censorship, in virtually every country of the hemisphere. But increasing violence against journalists is one of the greatest enemies of press freedom.

The most prominent recent case occurred May 30 in Colombia. Alvaro Gomez Hurtado, the distinguished and outspoken editor of a Bogota daily, *El Siglo,* was abducted as he left church by four men who shot and killed his bodyguard. Mr. Gomez apparently was severely wounded. Ten days ago his newspaper published a photo showing him holding a newspaper with a late June date. The case is more than simply another attack on a journalist. Mr. Gomez was the losing candidate in Colombia's 1986 presidential election, and the country's public affairs have come to a virtual standstill in the crisis.

Although Mr. Gomez apparently was kidnapped by the rightist guerrilla group M-19, the culture of terror in Colombia is largely a creation of the drug cartels. Several of the deaths have resulted from the cocaine mafia's latest scheme of "sentencing" outspoken Colombians who support the extradition of drug criminals to the United States. Guillermo Cano, perhaps Colombia's best known editor, was killed 18 months ago for publicly advocating extradition. Raul Echeverria, editor of a Cali daily, was gunned down in front of his newspaper three months earlier on the day it endorsed the U.S. crackdown on drugs.

At least nine journalists have gone into exile since last August because their names were on death lists attributed to the drug cartels or right-wing death squads. Not surprisingly, a 1987 poll by an independent human rights group in Colombia found 78 percent of the 1,500 journalists surveyed censored their own work because of fear. Bylines rarely run with drug-related stories, and editors regulary reprint articles from foreign papers, in order to avoid blame, instead of using their own.

Colombian justice is similar to the Mexican version. Earlier this year a man under investigation for the 1986 killing of Guillermo Cano was reported simply to have disappeared from the jail in Medellin where he was being held.

Press freedom is inexorably a piece of the larger struggle for democracy, and press freedom advocates routinely see encumbrances on the press from either official or non-government sources as a sort of barometer of the degree of liberty in a society.

The closing of three newspapers last July in Panama, for example, appears to have been the beginning of that perhaps climatic battle for democracy, in Nicaragua, the Sandinista government has permitted re-openings, but continually harasses *La Prensa* publisher Violeta Chamorro personally in the vilest terms. *La Prensa* recently was denied newsprint for a week and had to suspend publication. The government also announced new restrictions in May, prohibiting all "insults of government leaders," reports on military recruitment and use of the term "economic crisis."

In *Chile*, 28 journalists are either charged or serving sentences for things they have written or published. The usual offense is "slandering the armed forces" or President Pinochet. Just last week Pinochet's government, on the verge of announcing elections, effectively prohibited a television ad by the opposition which simply promotes voter registration.

In *Paraguay*, the Stroessner regime promises closed publications will be permitted to re-open, but it doesn't happen. Guatemala's President Vinicio Cerezo closed a television station in May because it had supported a failed coup. The list goes on. A *Brazilian* journalist, whose reports often accused landowners of hiring gunmen to kill squatters, was shot dead last month.

Governments in Latin America are increasingly failing in their duty to protect journalists from intimidation and murder. This is the ultimate form of censorship; it stands as an indictment of the progress toward democracy throughout the hemisphere, including today's elections in Mexico.

DUKAKIS' FOREIGN POLICY: BLAME AMERICA FIRST

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SOLOMON. Mr. Speaker, Americans concerned about Michael Dukakis' lack of experience in foreign policy will be more worried when they look at the few times he has taken a position.

During the Reagan-Bush administration, Dukakis:

Called the rescue mission that liberated Grenada from a Communist rule in 1983 a misuse of United States military power;

Opposed the United States bombing of Libya in 1986, which the President ordered in retaliation for Colonel Qadhafi's support for terrorists; and

Opposed United States aid to the anti-Communist freedom fighters in Nicaragua and Angola.

OPPOSES FREEDOM FIGHTERS

Governor Dukakis attempted to block 13 public relations specialists in the Massachusetts National Guard from being trained and sent to Panama and Honduras, on the grounds that it would aid the anti-Communists freedom fighters. His view: "The administration is using National Guard training in Central America, along with aid to the Contras, as part of its ill-disguised effort to overthrow the Nicaraguan Government.

TRIBUTE TO LOUIS A. APICELLA

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DIOGUARDI. Mr. Speaker, I rise today to pay tribute to Louis A. Apicella, a loyal American, a defender of freedom and democracy, and a dedicated member of his community. Mr. Apicella is the recipient of the 1988 Savino J. Ferranto Humanitarian Award, given to an outstanding member of the community by the Yonkers Columbus Day Celebration Committee.

Louis Apicella is a World War II veteran and served in a combat battalion with General Patton's 3d Army, participating in five campaigns in Europe. He was discharged in 1945 and entered the meat retail business as an apprentice butcher. In 1966, he became an official of the United Food & Commercial Workers International Union, and presently serves as a business agent. Not only is he a member of the United Food & Commercial Workers Union District Council of New York and Northern New Jersey AFL-CIO, he is also a member of the International Foundation of Employee Benefits and Welfare and the Cleaver Club of the Amalgamated Butchers Workmen.

Mr. Apicella was first appointed to the Yonkers Parking Authority in 1970 by former Mayor Alfred Delbello, again by Mayor Angelo Martinelli and again by Mayor Gerald E. Leoher. He later became the authority's vice chairman. Mr. Apicella is a former chairman of the Congress of Italian-American Organizations, a member of the Frank A. Rea American Legion Post and is an honorary deputy sheriff of Westchester County.

He is married to the former Velia Rubio and has two children and three grandchildren.

My colleagues, I ask you to join me today in honoring a true patriot and a credit to the American way of life, Mr. Louis Apicella.

FREDDIE ALVARADO OFFERS HOPE AND SUPPORT FOR LATINO BUSINESSMEN

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FLORIO Mr. Speaker, it is with great pride that I now focus the attention of my colleagues on one of my constituents, Mr. Freddie Alvarado of Camden, NJ. Mr. Alvarado has recently helped to create the Latin American Economic Development Association, a much needed organization intending to provide inspiration, support services, and material help to members of the Latino community exhibiting entreprenurial aspirations.

From his humble beginnings with a corner grocery in Camden, Freddie has grown to serve as a role model for other entrepreneurs and has brought attention to the struggles facing Latino businesssmen today. His achievements as well as the odds he and others like him have faced, and still face today, are described in a Philadelphia Inquirer article on June 21, 1988, and I wish to have it made part of this record. I am proud to call Mr. Alvarado one of my constituents and commend him for his service to his community.

The article follows:

[From the Philadelphia Inquirer, June 21, 1988]

THE "DOLLARS AND CENTS" OF POWER—FOR LATINO ENTREPRENEURS, SHARING CAN BE WAY TO GAIN

(By Patrisia Gonzales)

At age 19, Freddie Alvarado bought a corner of Camden and converted an Italian ice cream parlor and sweet shop into a cramped grocery store.

With $400, he stocked the shelves with food and dry goods and opened Freddie's Groceries at White and Beckett Streets.

All that happened 25 years ago; today, Alvarado is one of Camden's most-venerable bodegueros—neighborhood store owners.

Alvarado nurtured his business on his own. But now he is helping others to emulate his example. For the last year, he has donated his time, money and ideas to help create an economic-development association so that other Latino businesses could benefit from the collective wisdom of compatriots like Alvarado.

Thanks to his efforts and to those of other community leaders, the Latin American Economic Development Association received funding—a total of $100,000 for two years from General Electric Co. and Campbell Soup Co.—on June 7 to help Latino business people.

LAEDA, as the association is known, will offer workshops on loan packages, marketing, public contracts and obtaining licenses and management. LAEDA also will offer technical help on financing and taxes and hopes to establish a revolving fund and become a lending institute. Eventually, it may tackle other social issues.

"There are only two kinds of power: dollars and cents, and votes," said George Rivera, an adminstrative analyst with the city's Department of Community Affairs. He was on the steering committee that engineered the creation of LAEDA.

According to the 1980 U.S. Census, there were 51 Latino firms in Camden, generating average sales of $97,353. In Camden County, there were 114 Latino businesses, averaging sales of $98,851. The state had 6,466 Latino firms with average sales of $71,814.

Gloria Bonilla-Santiago, a professor in the Graduate School of Social Work at Rutgers, Camden, and a consultant on the LAEDA project, said Latino business people often are handicapped by a lack of skills in both the English language and the argot of the business world.

There are other problems, too. They often lack the self-confidence and knowledge to compete for government contracts, Bonilla-Santiago said.

Many also do not have licenses to do business and thus do not report their incomes to the Internal Revenue Service.

"So they're crippled. The psychological impediments cripple our people—our community—to even compete" she said.

LAEDA plans to change that by teaching businesses how to procure contracts, identify purchasing agents and establish credit. In the process, LAEDA also will teach the business owners a little business savvy, such as "how to deal with the politics of the contract, how to deal with the mainstream world," Bonilla-Santiago said.

LAEDA also plans to promote Latino businesses, she said, because "one of several problems impeding Latino businesses is the fact that they're isolated within their community."

Bonilla-Santiago links a strong Latino business community with "power" and "legitimacy" and the "self-sufficiency" of the Latino community. However, she says, the fragmentation of Latino businesses makes them a less-powerful force.

"It's very important for the economic survival of the community. Businesses are the ones who are going to make a difference in the city," she said.

In fact, a group of business people, including Alvarado, donated about $2,000 for informal meetings last year to survey the problems of Latino businesses. Alvarado said he donated his time and money because "I want my people to progress."

When a group of Puerto Rican community leaders started meeting regularly last year to determine how they could invigorate their community, Alvarado chipped in with ideas. Some people wanted to push for housing, others for economic development.

Had there been an economic-development association geared for Latino business, an entrepreneur such as Alvarado might have been able to open a larger food market instead of a corner store. "Maybe I wouldn't have been on this little corner," said Alvarado, 44. "Maybe I could have started bigger."

When Alvarado opened his tiny store, he paid $5,000 in installments to the former owners of the building.

As his business prospered, he began to lend money to people who needed to pay utility bills; he also sells food on credit. Over the years he has expanded his business, and his dream now is open a wholesale food warehouse in Camden.

Alvarado and his wife, Maria, progressed while Camden declined. They once lived in the building where the store is located, but they had to move to expand their stock last year. Alvarado, who now lives in Deptford, had gross revenues of about $200,000.

Now, Alvarado's daughter is at Chestnut Hill College; his 25-year-old son is in the Navy and his 14-year-old son will attend Bishop Eustace High School in the fall.

Alvarado has dabbled in politics and community issues—sometimes on the Republican side of the Democrats. And he kept his little corner business—near one of the toughest drug corners in Camden.

Despite witnessing the slow death of this former Italian neighborhood that now is mostly Puerto Rican and poor, "I'm happy," he said. "I'm with my people."

TRIBUTE TO SHIRLEY CHISHOLM

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. TOWNS. Mr. Speaker, I am pleased to pay tribute to one of this body's most distinguished former Members, Shirley Chisholm, who is being honored by the National Political Congress of Black Women in a "This is Your Life Tribute" this weekend. This tribute is in honor of Shirley's election to this body as the first black woman Member of Congress.

As one of former distinguished Members of the Congressional Black Caucus, last month, Shirley's accomplishments were reported in our 18th annual legislative weekend dinner book.

Those remarks are included below for review by my colleagues. Let me say to my longtime political associate, congratulations on this historic celebration and best wishes for a successful tribute:

Shirley Chisholm, the first Black woman to be elected to the U.S. Congress, represented Brooklyn's 12th Congressional District in the House of Representatives from 1968 until her retirement in 1982.

Her career in politics started in the early 1950's at the lowest rung on the political ladder, in Brooklyn's boss-run Democratic clubhouses. Persistently challenging the inequities of the machine, she came to be regarded as a troublemaking maverick—but one to be reckoned with. Her rise from local clubhouse worker to New York State Assemblywoman in Albany on to Representative in the U.S. Congress was accomplished by the will of a dynamic, fighting woman with an unswerving belief in her own purpose: to put the needs of her people before her political expediency.

In 1972, Congresswoman Shirley Chisholm made history by seriously campaigning for the Democratic Party nomination for President; the first Black woman to seek the nation's highest office. Although she was not successful, her name, her ideals, and her commitment became imbedded in America's consciousness.

Mrs. Chisholm is the author of two books: *Unbought and Unbossed,* her autobiography; and *The Good Fight,* the story of her 1972 bid for the Presidency.

While in Congress, Chisholm served on the House Committees on Education and Labor, and the powerful Committee on Rules. She earned praise for her efforts on behalf of Black colleges, compensatory education, minimum wage for domestics, Native Americans, the Haitian refugees, migrant farmworkers, and the poor.

Mrs. Chisholm most recently held the Purington Chair at Mount Holyoke College, the oldest women's college in the United States.

U.N. PEACEKEEPING FORCES DESERVE NOBEL PEACE PRIZE

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DORGAN of North Dakota. I want to reinforce my vote in favor of House Resolution 570, which commends the United Nations Peacekeeping Forces for winning the Nobel Peace Prize.

The U.N. peacekeeping role has played a major role in stemming the fighting in regional conflicts in the Middle East, Afghanistan, and southern Africa. It's highly unlikely that progress towards peace would have been made in these conflicts absent the neutral and international presence of U.N. peacekeeping resources, as the appended Christian Science Monitor editorial shows.

Today's Washington Post carried an opinion column by Colman McCarthy questioning the wisdom of awarding the Nobel Prize to soldiers in uniform. I respect Mr. McCarthy's dedication to the cause of nonviolence, but I also find his argument against the awarding of the peace prize to be off the mark.

Simply because U.N. peacekeeping forces wear uniforms does not in itself undermine the cause of peace. Their uniforms are no more symbols of war than a surgeon's scapel is a sign of inhumanity. The U.N. forces do not serve as warriors, as Mr. McCarthy contends, but as a buffer between warring factions. This dangerous and thankless role occurs within a war zone, but is not itself an act of war.

Mr. McCarthy asks the rhetorical question of why the world is so riddled with war if the U.N. peacekeepers have been so effective? I would merely observe that the causes and prevalence of war are not necessarily a function of the success or failure of the United Nations or its agencies per se. If anything, the success of the U.N. in preventing or curbing conflict would be enhanced if the United States paid its dues in a timely and faithful manner. Then we might see an even greater measure of success on the part of U.N. peacekeeping missions.

Even this week, the Soviet Union has finally shown the kind of interest in U.N. peacekeeping missions which they have so long warranted. I would suggest that we ought to test Soviet intentions in recommending an even stronger role for U.N. peacekeeping activities. Were this possible, the United States might save itself the loss of lives and diplomatic capital incurred in such operations as our unilateral peacekeeping efforts in Lebanon and the Persian gulf.

The Nobel Peace Prize ought not be handed out to soldiers of fortune or gladiators of war. But the U.N. peacekeeping forces are not "warriors", but the harbingers, guarantors, and instruments of peace. They richly and rightly deserve this year's Nobel Peace Prize.

I include in the RECORD Mr. McCarthy's article.

[From the Washington Post, Oct. 5, 1988]

WHY GIVE WARRIORS THE PEACE PRIZE?

(Colman McCarthy)

Alfred Nobel, the munitions manufacturer turned award giver, would think well of this year's peace prize being given to 10,000 United Nations soldiers. The U.N. troops, known as peace-keepers, are a militia stationed in seven areas of the world called "trouble spots."

In fact, they are war zones, and U.N. soldiers are there as warriors. They wear military uniforms and helmets, are commanded by generals and other officers, and either carry weapons or have access to them. How can a peace prize go to a group that is military in nature? How can peace be created by the same methods of organized violence—fighting with military weapons—that destroyed it?

Alfred Nobel offered his answer in 1892. He was invited to speak to a peace congress in Switzerland. Declining, he wrote to the organizers: "Perhaps my dynamite plants will put an end to war sooner than your congresses. On the day two army corps can annihilate each other in one second, all civilized nations will recoil in horror."

Little recoiling has occurred. Nobel was as wrong in his forecast as are promoters of the idea that armies, whether marching under a U.N. or any other flag, can create peace. If armies are peace-keepers, why did 1987 see more wars—and presumably less peace—than any year in history? Nearly 80 million people have died in wars this century, with the current monthly death toll estimated at 40,000.

The impoverished choice of the U.N. soldiers for the peace prize is in keeping with the gradual cheapening of the word peace. Ronald Reagan refers to his cherished MX missiles as "peace-keepers," equipped apparently with multiple peaceheads. Recruitment ads for the Armed Forces routinely promote the image of the military as peacekeepers. Signs outside a Nebraska SAC base proclaim that "peace is our profession."

It is true that the U.N. troops do more observing and monitoring than fighting. Nor is their bravery to be questioned. The United Nations Interim Force in Lebanon has lost 156 men since 1978 while trying to stop the shooting between Israeli and Lebanese soldiers. And without doubt, the U.N. forces have, as the peace prize citation states, "reduced tensions." If that's the case, award them the Nobel Reduction of Tensions Prize.

Since 1970, only two recipients of the Norwegian Nobel Committee's blessing have been people who were pure believers in peace through nonviolence and who risked governmental retaliation in practicing it: Adolfo Perez Esquivel of Argentina in 1980 and Lech Walesa of Poland in 1983. A condition for winning the award should be that the recipient be grounded in a philosophy of peace through nonviolence and show a willingness to endure suffering or sacrifice while carrying it out.

Both Perez Esquivel and Walesa are profoundly wise in their explanations of their beliefs. "In nonviolent combat," the Argentinian writes in "Christ in a Poncho," "what we do is just exactly what nice players aren't supposed to do. We refuse to play by one of the rules the system tries to foist on us: the rule that says you have to counter violence with violence. If your opponents can get you to swallow that idea, they can unleash still greater violence on you. The essential thing in nonviolent combat is for us to render these tactics inoperative by refusing to play by the rules and by imposing our own conditions instead."

After the Nobel went to Walesa, he was asked by an interviewer: "You've chosen the course of nonviolence. Isn't this a form of weakness, of your inability to achieve freedom or independence by any other means?" Echoing Gandhi and Martin Luther King Jr., Walesa answered: Nonviolent force is "the course chosen by the majority of Poles, and the majority of people worldwide. And it's probably thanks to nonviolence that I am where I am now. I'm a man who believes in dialogue and agreement. . . . We've already tried and tested every form of violence, and not once in the entire course of human history has anything good or lasting come of it."

In 1972, no peace prize was awarded. If the United Nations' militia is the best the Norwegian committee can find as a model for world peace, then this should have been another no-winner year. Better that, than add to the already rampant illusion that armies are our salvation.

[From the Christian Sciene Monitor
September 30, 1988]

Nobel's Latest Nod to the UN

The Nobel Peace Price has for fifth time gone to a group related to the United Nations: this time is peace keeping forces. It was sound choice.

President Reagan and Soviet leader Mikhail Gorbachev were also nominees; they signed a treaty banning medium-range missiles. Had they received the prize, the Nobel Committee might have put itself in the uncomfortable position on helping pick the next president of the United States: The Bush campaign would have appeared favored.

But the committee's choice is sound for other reasons. A quick glance at Peace Prize winners since 1970 suggests three characteristics for peacemakers. The *daily* put their lives on the line for peace: they negotiate solutions to regional conflicts that threaten global security, or they maintain political pressure on the Reagans and Gorbachevs of this world to resolve differences at the bargaining table, not on the battlefield.

The UN has has some 11,000 troops in the field, plus roughly 2,000 support personnel. The main contingents are on Cyprus, in Lebanon, and along the Golan Heights. Their record is mixed. On Cyprus and along the Golan Heights, UN forces have helped keep the peace. In Lebanon, UN troops were to help the Lebanese government exert authority over southern Lebanon; the Israeli Army merely bypassed UN positions when it invaded Lebanon in 1982. Since 1978 when they first arrived in Lebanon, UN troops there have sustained nearly 400 casualties.

This year's award highlights a period of unprecedented progress for UN conflict mediation efforts. In large measure, the award honors Secretary-General Javier Pérez de Cuéllar, whose nomination for the prize was submitted after the Feb. 1 deadline.

It is also a reminder that UN members must pay their bills. The peacekeeping budget is deeply in the red, largely because some members have refused to pay. Peacekeeping cost could hit $2 billion a year-two-thirds of what the world spends *daily* on weapons—if the UN adds expected commitments in southern Africa, the Gulf, and Southeast Asia. Two-thirds of one day's global weapons tab seems a small price for helping underwrite global peace.

TEXTILE APPAREL AND FOOTWEAR TRADE ACT OF 1988—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 100-235)

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. LAFALCE. Mr. Speaker, last Wednesday I attended the White House ceremony at which the President signed the United States-Canada Free-Trade Agreement, an historic accord to strip away the barriers to free trade between the world's greatest trading partners. That same day the President vetoed the textile bill.

Just 2 weeks ago, 360 Members of this body voted for the United States-Canada Free-Trade Agreement, but I wonder how many realize that the textile bill that is before us today would unilaterally abrogate the terms of that agreement, as it would unilaterally abrogate the terms of about 40 other agreements to which the United States is a part? Keeping our word in our personal and professional endeavors is something that is very important to all of us as individuals, and it is very important for the United States as well. Enactment of this measure, Mr. Speaker, would bring into question this basic, yet important question: whether or not the United States will keep its word.

In an effort to protect our domestic textile industry, we have entered into 42 separate bilateral protectionist agreements with other countries that clearly define the terms of our textile trade. These agreements are morally and legally binding. We would break these agreements if this legislation becomes law. The United States is also a party to the multilateral Multifiber Arrangement, the agreement which governs global textile trade. This, too, is morally and legally binding. We would be breaking this agreement, also, if the textile bill were to pass.

Our ability to enter into new international agreements that serve American interests will be severely undercut if this measure is enacted. It would place the entire Uruguay Round of international trade negotiations in jeopardy to satisfy one United States industry.

Even apart from the important question of whether or not the United States honors its commitments, this textile bill is bad legislation—bad for other U.S. industries, bad for labor, bad for the consumer and bad for the country.

We cannot insist that other countries remove barriers to U.S. exports just as we are erecting new import barriers of our own, especially when we erect those barriers after specifically agreeing, in writing, not to do so. Without doubt, the bill would provoke retaliation and other U.S. industries, such as the auto, steel, film, agriculture, and high-technology industries and their workers would suffer the consequences.

If we are to truly improve our trade deficit, we must have an aggressive export strategy. But a number of our most sensitive and competitive export industries, such as agriculture and high technology, are the most likely targets for retaliation if this bill were to become law. Other nations will unquestionably use this legislation as an excuse to close their markets.

The bill would also place enormous burdens on U.S. consumers. The consumer cost of protecting the textile and apparel industries in already substantial. This bill would add an additional $25 to $27 billion in the next 5 years and consumers, particularly those in lower income brackets, will be faced with skyrocketing clothing costs.

I urge my colleagues to sustain the President's veto of this misguided legislation. The textile industry would have us believe that it is somehow unprotected from foreign competition. Nothing could be farther from the truth. In fact, the textile industry is the most extensively protected of all American industries. Protectionism in this industry is a given. The question is whether we will grant even greated protection—that dictated by the industry itself—at the expense the American consumer, other American industries and our Nation's credibility with our trading partners. I think not.

COAST GUARD PROVISIONS IN H.R. 4794 TRANSPORTATION APPROPRIATIONS FOR FISCAL YEAR 1989

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. RANGEL. Mr. Speaker, the conference agreement on H.R. 4794, the Transportation appropriations bill for fiscal year 1989, appropriates a total of $2.7 billion for the Coast Guard, $63.5 million more than the House bill, but $274.1 million less than requested by the administration. The agreement assumes that the Defense appropriations bill, currently in conference, will provide $250.3 million to be available for Coast Guard-related activities—$200 million for operations and $50.3 million for procurement; the House bill originally assumed the Defense bill would provide $410 million—$60 million for operations and $350 million for procurement. If the currently anticipated Defense funds are included with the Coast Guard total, funding for the Coast Guard would be $2.9 billion for fiscal year 1989, just $23.8 million under the amount requested by the administration.

For Coast Guard operations, the agreement provides $1.9 billion, $129.9 million less than the House bill and $204.4 million less than the administration's request. The conference agreement, however, assumes that the Defense appropriations bill will provide $200 million for Coast Guard operations, bringing the total for Coast Guard operations to $2.1 billion—equal to the amount requested by the administration and $146.5 million more than the amount provided in fiscal year 1989. This amount of money will enable the Coast Guard to fully continue drug enforcement activities in fiscal year 1989.

For Coast Guard acquisition, construction, and improvement programs, the agreement provides $295 million, $193 million more than the House bill. Combined with the $50.3 million expected in the Defense bill, $345.3 million would be available for procurement. This is just $2.7 million less than the President's request. Within this total, $148.6 million is for vessels, $101 million is for aircraft, and $50.3 million is for shore facilities.

Mr. Speaker, I am pleased that the transportation appropriations bill will provide sufficient funds to the Coast Guard to continue its drug interdiction mission. To cut Coast Guard funding for drug interdiction, when we have just finished passing in the House of Representatives an omnibus drug initiative bill would clearly be sending the wrong message. I urge all my colleagues to demonstrate their commitment to the war on drugs by voting for passage of H.R. 4794.

THE FAMILY RESOURCE COALITION PARENT ACTION

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MILLER of California. Mr. Speaker, myths play an important role in the life of any society. However, myths can also be mistaken for immutable truths. Indeed, adherence to old myths may even prevent a nation from solving current ills.

Few myths are as enduring as that of the two-parent family with a single male breadwinner. However, only 11 percent of American families fit that model. Today, when we seek public policy solutions to the problems of America's families, we often predicate them on the 11-percent ideal.

It is not difficult to see why solutions sculpted to fit only 11 percent of those affected do not work. Sweeping economic social and demographic changes have brought forth a whole new set of issues such as child care, parental leave, health care and education not faced by earlier generations or considered by policymakers in previous decades.

Seven years ago the Family Resource Coalition [FRC] was founded to help elected officials make informed decisions about those issues we now call family issues. This week, during its annual meeting in Chicago, the FRC is taking the next logical step in the evolution of its work by announcing the formation of a new body, Parent Action. This group will continue the education organizational and advocacy efforts of the FRC but will focus particularly on parents.

As we well know, parent issues are issues affecting the entire society. For example, how we educate our children affects not only the personal development of the child but the economic and social development of the country. Parent Action will help to bring important parent perspectives to these issues, and where appropriate, suggest public sector solutions.

I look forward to the work of this new organization. I believe that all of us in this Chamber will greatly benefit from its efforts in the years ahead as we attempt to make public policy based on facts, not on outdated myths.

AMERICA'S VETERANS OPPOSE H.R. 3822—THE INTELLIGENCE OVERSIGHT ACT

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SOLOMON. Today I am inserting into the CONGESSIONAL RECORD quotes from the Nation's veteran's organizations and military associations expressing their opposition to H.R. 3822, the Intelligence Oversight Act of 1988. These organizations have a membership of over 10 million people in the United States.

Thanks to Speaker WRIGHT's recent leaking of top-secret information, it is doubtful this dangerous bill will again see the light of day. It is still important, however, that Congress be made aware of the growing opposition to the bill.

THE AMERICAN LEGION

"The American Legion cannot support the passage of H.R. 3822, the Intelligence Oversight Act of 1988, in its present form. We urge you to remove those provisions which would require the President to notify selected Members of Congress to a covert operation within 48 hours of its authorization."

ASSOCIATION OF FORMER INTELLIGENCE OFFICERS

"Foreign governments may not participate in covert activity should there be a necessity to disclose their participation to the Congress. The Canadian government made withholding of such information from Congress a condition of their participation in the exfiltration from Iran of certain U.S. Embassy employees. Is the Congress prepared to trade a life for sensitive information?"

RESERVE OFFICERS ASSOCIATION

"The current statutory framework governing the management of covert action is working well and we urge Congress not to impose a mandatory requirement for the President to notify Congress of covert operations within 48 hours."

FLEET RESERVE ASSOCIATION

"It is interesting to note that all intelligence officials of recent Administrations, both Republican and Democratic, fully oppose the 48-hour notice of any covert action provision of H.R. 3822."

NON-COMMISSIONED OFFICERS ASSOCIATION

"This bill is an unfortunate overreaction to a singular incident concerning the timely notification of Congress. The language of H.R. 3822 is so restrictive it could potentially jeopardize all covert operations."

AMVETS

"We feel that the overall ramifications of H.R. 3822 would have an adverse effect on Americans who may find themselves in a hostage situation or other terrorist related situation."

RETIRED OFFICERS ASSOCIATION

"If H.R. 3822 were enacted, the element of trust between the executive and legislative branches, essential in the conduct of foreign policy, would be impaired."

VETERANS OF FOREIGN WARS

"We oppose the 48-hour constraint imposed on the Chief Executive and urge you to vote to reject such language. Several former Directors of Central Intelligence have testified that such a time constraint will have a severe impact on our ability to act decisively when it is in our national interest to do so."

In his testimony before Congress, William Webster, Director of Central Intelligence, expressed his opposition to H.R. 3822 stating, "My first concern is with the provision of the bill that requires notification of a special activity to Congress, without exception, within 48 hours after the signing of a finding. I believe some allowance must be made for that rare case where a limited delay in congressional notification is critical to preserve the absolute security of an operation when, for example, lives are at stake."

Mr. Speaker, I believe most Americans share the concerns expressed by the Director of Central Intelligence.

OPERATION RESCUE SAVES LIVES OF UNBORN BABIES

HON. DONALD E. "BUZ" LUKENS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DONALD E. "BUZ" LUKENS. Mr. Speaker, I rise in support of Operation Rescue, a grassroots prolife movement, dedicated to saving the lives of unborn children. The 1.5 million supposedly legal abortions performed annually in the United States is nothing more than killing babies who have no voice except you and me.

In the past year, Operation Rescue has organized and inspired dozens of direct prolife interventions or "rescues" in major cities across the United States. The group has been successful in helping hundreds of abortion-bound women to reconsider and make a prolife decision.

In May of this year, 100 babies were saved in the New York area in a 4 day rescue attempt. This summer, 16 babies were rescued in Philadelphia and 8 were saved in Chicago. An estimated 20 percent of abortion appointments are canceled through the efforts of the participants in Operation Rescue.

Operation Rescue is now facing its greatest challenge yet. They are holding what is predicted to be the largest "rescue" effort to date October 4 to 8 in Atlanta. Hundreds of prolife activists expect to help save lives from Atlanta and around the United States.

According to the Atlanta Journal, "Since the beginning of the recent protest, records of the Feminist Women's Health Center show a 20-percent drop in the number of abortions. The clinic usually performs 85 a week."

This rescue attempt has also increased the prolife alternatives. The Douglasville Crisis Pregnancy Center and other prolife alternative/support groups have both reported that the number of pregnant women seeking prolife assistance has doubled or tripled since the beginning of the Operation Rescue Atlanta campaign.

I am praying for the success of these brave men and women who believe the answer lies in the words of Thomas Jefferson. They have pledged their lives, their fortunes and their sacred honor to see the cause of justice and freedom prevail for all including the unborn.

CHILD CARE DAY IN NEW JERSEY

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FLORIO. Mr. Speaker, I would like to commemorate today the celebration of "Child Care Day" in my home State of New Jersey. I am proud to represent a State that recognizes the importance of providing affordable, quality childcare for all its residents.

In New Jersey and across the country, two-worker and single parent families are the reality. What for many had once been a choice to work, is now a necessity. It is expected that by the year 2000 nearly 1 million children under the age of 14 will have working parents. The already serious need for childcare is going to grow. As a cosponsor of "An Act for Better Childcare," I have had the opportunity to visit a number of innovative childcare centers in New Jersey. Babyland in Newark, the Grant Avenue Community Center in Plainfield, Mi Casita in Camden, and an employer-based program, the Heller Park Children Center in Edison, all serve as models of the type of childcare services we in New Jersey are committed to providing our children.

But Government alone cannot solve the problem. It will take a far-reaching partnership that must include employers, schools, religious, and community groups. We must make quality childcare available and affordable. We must train and encourage people to be part of a growing profession—and we msut give that profession the respect, standards, and compensation it deserves.

Mr. Speaker, I wish to congratulate all the participants of "Child Care Day" for bringing attention to an issue that deserves all our efforts. Affordable, quality childcare is not only important to our current generation of workers but to our future generations of children.

MEDICARE COVERAGE OF MAMMOGRAPHY

HON. BARBARA B. KENNELLY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mrs. KENNELLY. Mr. Speaker, I am pleased to introduce the Older Women's Cancer Prevention Act, legislation which will significantly improve the Medicare Program.

More than 1 in 10 American women will develop breast cancer sometime in their lives. This devastating disease is the leading cause of cancer deaths among women, taking over 45,000 lives in 1987 alone. Older women are even more susceptible to this cancer. Yet early detection and treatment of this condition can reduce fatality rates significantly. Thus it is recommended by the American Cancer Society that women over the age of 40 undergo complete breast examinations annually. Each exam should include a physical exam, instruction in self-examination, and a low level X-ray called a mammogram. The examination should also include comparison of new mammograms to past ones to identify changes over time, and counseling and followup by doctors for their patients who show positive results.

While Medicare generally does not cover preventive care, Medicare coverage for screening mammography was included in the Medicare Catastrophic Coverage Act which we passed last spring. I supported that provision wholeheartedly. It has become clear, however, that the reimbursement cap will not be sufficient to ensure that mammography will be readily available to women who need it. The current $50 cap on reimbursement severely limits provider options and defeats the intent of the legislation, which was to increase the number of women who are being screened and treated for early signs of breast cancer.

In the 1950's cervical cancer was killing American women at a similar rate to the current one of breast cancer. A test existed which would allow for early detection and treatment of cervical cancer. Yet only 1 of 10 women were tested for this type of cancer because few doctors offered the test in their offices. As the test became widely available in the offices of primary care physicians, however, the number of women receiving the test increased until, today, 9 out of 10 women are regularly tested for cervical cancer. The incidence of deaths from cervical cancer has decreased by over 70 percent since then.

Similarly, screening tests for breast cancer need to be made readily available in doctors' offices so women will undergo these tests on a regular basis. Not only is a woman more likely to undergo the test when under the care of someone she knows and with whom she is comfortable, but doctors are more able to identify changes over time, and are able to provide the analysis, counseling, and followup that are necessary to effectively care for patients who are found to have positive test results.

Yet in most areas of the country, the only providers who can offer mammograms for $50 are mobile vans which hold makeshift screening clinics at shopping centers and other public places. Even these vans can offer the tests at such a bargain only because they are heavily subsidized by charitable organizations.

These mobile vans provide a well-intentioned and valuable service in that they attempt to reach the minority of women who do not visit their doctors on a regular basis. However, such vans cannot and should not become the main provider of these important tests. For example, in the whole of my own State of Connecticut there are only two of these mobile vans. This is clearly inadequate to meet demand. More importantly, however, most women, especially older women, simply will not submit to being examined by a stranger in a van in the parking lot of a shopping mall. In addition, by necessity the care offered by these units is considerably less comprehensive than that provided in a clinic or a doctor's office. These van visits are one-shot deals, where a physician is rarely available to examine and counsel the woman. There is no comparison with older mammograms, so any change in the physiology of the patient cannot be detected. Followup is nonexistent. A woman receives her test results in the mail, and, if the test is at all suspicious, is merely directed to visit her doctor. This can cause undue confusion and alarm, especially for older women.

For these reasons it is very important that screening tests for breast cancer become widely available in doctors' offices. The $50 cap on Medicare reimbursement will prevent this from happening. Doctors and even high-volume clinics cannot realistically offer the test for $50, and will not do so.

The irony of the whole thing is that this test is exactly the same test as the diagnostic mammography currently reimbursable under Medicare. Yet that test is reimbursed at a rate which is "reasonable," which allows regional adjustment for the price of the test. This is much more realistic in terms of the actual price of the test, which currently ranges from about $80 to $200. Coverage at this level would allow more doctors to begin to offer the test in their offices.

The legislation which I am introducing would be a minor adjustment to the Medicare provisions of the Social Security Act, but would be of major benefit to older women in the early detection and treatment of breast cancer. The bill would merely raise the cap on the screening test to be in line with the coverage for the diagnostic test, which falls under the same payment schedule as other radiology treatments and would be adjusted by regional costs.

If we raise the reimbursement cap for screening mammography to reasonable levels, mammography will become widely available to older women. With this availability will come more frequent testing, and with more frequent testing will come the early detection and treatment of breast cancer. Thus we can expect the same dramatic decrease in mortality from breast cancer that we experienced for cervical cancer when pap smears became widely available. It is for this reason that I am introducing the Older Women's Cancer Prevention Act.

The bill currently has 19 cosponsors, and I invite the rest of my colleagues to join us in supporting the goal of saving lives by the early detection and treatment of breast cancer.

HURRICANE GILBERT AND THE DAMAGE TO JAMAICA

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MAZZOLI. Mr. Speaker, on September 12, Hurricane Gilbert, the strongest hurricane ever recorded, hit the island of Jamaica with devastating force, crippling the nation and its economy.

With winds up to 140 miles per hour and torrential downpours, the Jamaican people were faced with flash flooding, mud slides, downed telephone lines, damaged crops, and destroyed homes. It is estimated that the hurricane caused close to 8 billion dollars' worth of damage, and that the replacement of the damaged crops could take up to 7 years. More importantly, tourism, the nation's most vital industry, will not return to a normal level for some time which will result in serious economic implications for the island.

Prime Minister Edward Seaga is appealing to the international community for $400 million in emergency assistance to start the recovery. Nations all over the world are appropriating funds and sending supplies to Jamacia. I believe that the United States should serve as a leader for the world community in aiding the Jamaicans and, in this regard, I am pleased that $35 million in assistance for this country was included in the fiscal year 1989 foreign aid appropriations bill recently passed by Congress and signed into law by the President.

Jamaica has long been a close friend and ally of the United States and deserves our assistance in such a troubled time. We must see to it that the people of Jamaica have the opportunity to rebuild with our help and the help of other nations. I am sure that with the assistance of the international community and with the courage the Jamaican people have exhibited in the face of this tragedy, Jamaica can get back on its feet and look toward the future with optimism.

I am sure that all of the American people join me in expressing the deepest concerns and sympathies toward the Jamaican people and the hope for a speedy and successful recovery.

TRIBUTE TO THE STUDENTS OF TRINITY HIGH SCHOOL WASHINGTON, PA

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MURPHY. Mr. Speaker, what's wrong with today's young people? How many times have we heard that statement? When it comes to talking about the youth of today, it's practically impossible to avoid making comparisons to our own experiences. As in all things past and present, there are bound to be similarities but more than likely, you will find that the differences are far greater.

What are we to make of these differences? Unfortunately, many adults assume the worst. To them, today's music is odd, today's values and goals are different and strange. These differences make us "uncomfortable." "Today's youth have been led down the wrong path, when I was younger life was so much better," seems to be the most natural response for most adults.

Well, I won't disagree totally. Today's music is a little odd, values and goals today are different than when I was young, but I'm not tremendously worried about the future because I think today's youth are heading in the right direction.

During this campaign year, as political rhetoric floods the media, we are faced with many different and competing visions on the best way to accomplish a better tomorrow. In the midst of all this distraction, I am glad that the juniors and seniors of Trinity High School in Washington, PA, took the time to write to me.

They took the time to reflect on the best way to accomplish world peace, and I can certainly say they came up with some creative ideas. From the outright destruction of all nuclear weapons, to a full-scale meeting of all the world's leaders to discuss peace, these students wasted no time in going straight to the heart of the issue. Many of these students were adamant in their belief that people can just as easily sit down and talk with one another as they can launch missiles.

"If adults tell us not to fight, and to talk about our problems," writes one student, "then why can't they follow their own advice?" "Are they just being immature?" asks another. Students who can sum up complex problems this easily can't be all bad. I can only hope that once they become adults, they will carry this philosophy with them.

I rise to commend Mr. Ricky Logue, the assistant principal and coordinator of this program, the faculty, and especially the students of Trinity High School because they have already begun to tackle the hard problems. I believe the students of Trinity are going to make a difference one day, they deserve our confidence and appreciation.

FLOOR STATEMENT IN SUPPORT OF HOUSE CONCURRENT RESOLUTION 339

HON. WAYNE OWENS

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. OWENS of Utah. Mr. Speaker, after hearing about it for years, we are finally entering an exciting, new technological era—the Information Age. Thanks to telecommunications and computers, consumers are now able to exchange all kinds of information and enjoy a host of new services they never imagined. But as we embark on this path, we must make sure these information services are available to all consumers—not merely a select few.

To that end, I strongly urge my colleagues to sponsor House Concurrent Resolution 339, which would allow the Bell operating companies to provide information services, conduct research, and develop and manufacture telecommunications equipment. Though those companies helped build the greatest telephone system in the world, they have been barred from the next logical step—developing and providing modern electronic information services. For now, such services are available in the United States only to large and medium-size businesses with the ability to pay, and owners of sophisticated personal computers.

But if we lift these counterproductive restrictions, the average American could also enjoy the benefits of the Information Age, such as electronic banking and shopping. The French telephone system already offers those services to millions of its customers. The program is successful because France telecom developed a small, inexpensive terminal with voice and data communications capabilities. But because the Bell operating companies are not permitted to develop computer hardware or software, Americans would have to either do without such services, or rely on foreign manufacturers to provide equipment needed to make the Information Age a reality in our country.

More households in America today have telephone service than ever before. The Bell operating companies made that possible. But the promise of extending universal service to include electronic informational services will be fulfilled only if those companies' restrictions are lifted. I urge you to give them that economic freedom and support House Concurrent Resolution 339.

IN SUPPORT OF H.R. 925, THE FAMILY AND MEDICAL LEAVE ACT

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FAZIO. Mr. Speaker, over the last several months, I have heard from various groups and individuals in support of H.R. 925, the Family and Medical Leave Act. They all recognize the importance of this legislation, which will provide basic job protected leave upon the birth or adoption of a child, the serious illness of a child or parent, or a serious illness of the worker.

As a result of the strong support I have received, I would like to insert into the RECORD one of the many letters sent to me in support of the legislation. The letter, from the American Psychological Association, aptly points out the benefits and the need for this legislation.

AMERICAN PSYCHOLOGICAL ASSOCIATION

September 7, 1988.

DEAR REPRESENTATIVE, I am writing to you on behalf of the 90,000 members of the American Psychological Association (APA) to urge you to support H.R. 925, the Family and Medical Leave Act, without amendment, when it comes to the House Floor.

The purpose of a family and medical leave policy is to help employees balance family and work aspects of their lives, promote the economic security and stability of families, and enable workers to take reasonable parental or medical leave without risk of losing their jobs.

Most importantly, job-protected leaves would provide parents with the opportunity to adjust to the new tasks of becoming a parent and building a solid relationship with a new child. Research demonstrates that the development of parent-infant attachment during the child's early months of life has an impact on social and emotional development. However, currently many families are denied the time to build the parent-child relationship right from the start. A significant number of new mothers are expected to return to work within 3-4 weeks of giving birth or adopting. Fathers are typically given even less time.

The importance of H.R. 925 is underscored by the changing composition of America's work-force. The majority of American families are comprised of two-earner couples. 80% of women in prime child-bearing years (18-44) are currently working. Further, 65% of women who work do so out of economic need. Lacking a guarantee of job-security, these women are forced to return to work within a few weeks of the birth of a new child.

According to GAO estimates, the cost of H.R. 925 to American businesses would be minimal. Yet, unlike 75 other advanced industrial nations (including France, Britain, Sweden and Canada), the U.S. has no provisions to guarantee a parent the right to leave work to care for a child. Passage of H.R. 925 would represent a significant advance in U.S. policy toward the family. Therefore, APA urges you to support H.R. 925.

Sincerely,

BRIAN L. WILCOX,
Director,
Office of Public Interest Legislation.

NEIGHBORHOOD HOUSING SERVICES EXPANSION ACT

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. VENTO. Mr. Speaker, yesterday I introduced the Neighborhood Housing Services Expansion Act which will allow the National Neighborhood Housing Services [NHS] network to expand beyond the 245 neighborhoods located in 139 cities currently being served.

NHS is a network of nonprofit community-based organizations dedicated to revitalizing deteriorating neighborhoods and rehabilitating housing for our Nation's low-income families.

NHS is a tremendous asset to low-income neighborhoods and a major component in our efforts to avoid the housing crisis and prevent homelessness. Though appropriated at less than $19 million per year over the past 10 years, our funds have leveraged nearly 5 billion dollars' worth of reinvestment in formerly declining neighborhoods.

The critical housing crisis we are in today would be much worse if the NHS had not been around to pick up some of the broken pieces resulting from the National Government's drastic cuts in housing assistance these past 8 years.

There are plans for the next Congress to look at new policy and directions in tackling the challenge of fulfilling the promise to provide decent and affordable housing for all Americans. It is an appropriate challenge to address during 1989 as it is the 49th anniversary of that promise being signed into law as part of the first Housing Act enacted in 1949.

A number of new programs have been proposed already and I am certain many more will be brought forth next year. In its zeal to stop the hemorrhaging of housing programs caused by this administration, Congress must avoid overlooking some of the outstanding existing programs that are already in place and working in our neighborhoods.

Fifteen of my colleagues have already joined me as cosponsors and I expect that many more will join this effort when I reintroduce it in the next Congress.

Among those who have joined me are: Chairman HENRY GONZALEZ and ranking minority member CHALMERS WYLIE of the Housing Subcommittee; ranking Republican BILL GREEN and the new chairman of the Appropriation's Subcommittee on HUD and Independent Agencies BOB TRAXLER.

This proposed legislation establishes a 5-year authorization which provides a gradual increase in authorization for the Neighborhood Reinvestment Corp., the catalyst for expanding the Neighborhood Housing Services. I urge my colleagues to join me in sponsoring this legislation.

Pursuant to clause 4 of rule XXII of the rules of the House of Representatives, the following sponsors are hereby added to original cosponsors of Neighborhood Housing Services: Chalmers P. Wylie, Henry B. Gonzalez, Bob Traxler, Bill Green, Dan Rostenkowski, Doug Bereuter, Bruce A. Morrison, George C. Wortley, Gerald D. Kleczka, Martin Sabo, Jim Leach, Robert Matsui, Vic Fazio, Kweisi Mfume, and Joseph P. Kennedy.

H.R. —

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Neighborhood Housing Services Act of 1988".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) protecting the existing stock of unsubsidized privately-held lower income housing through the rehabilitation and revitalization of declining neighborhoods is essential to a national housing policy that seeks to increase the availability of affordable housing for low- and moderate-income families;

(2) the Neighborhood Reinvestment Corporation, the anchor of the national neighborhood housing services network, was chartered by Congress more than 10 years ago to revitalize neighborhoods for the benefit of current residents by mobilizing public, private, and community resources at the neighborhood level;

(3) the national neighborhood housing services network has proven its worth as a successful cost-effective program relying largely on local initiative for the specific design of local programs;

(4) the national neighborhood housing services network has had more than 10 years of experience in revitalizing declining neighborhoods, creating housing for low- and moderate-income families, and equipping residents with skills and resources required to maintain safe and health communities; and

(5) expanding upon the existing capabilities, resources, and potential of the national neighborhood housing services network is a cost-effective response to the affordable housing and neighborhood revitalization needs confronting the Nation, and is a strong preventive measure in addressing the national tragedy of homelessness.

(b) PURPOSE.—It is the purpose of this Act to authorize appropriations for the Neighborhood Reinvestment Corporation for fiscal years 1990 through 1994 to permit the corporation—

(1) to carefully expand the capacities of the national neighborhood housing services network;

(2) to begin to meet the urgent need for neighborhood housing services and mutual housing associations in neighborhoods across the Nation as the effort to preserve affordable housing for low- and moderate-income American families increases;

(3) to increase and provide ongoing technical and capacity development assistance to neighborhood housing services and related public-private partnership-based nonprofit institutions involved in the revitalization of neighborhoods for the benefit of current residents, rehabilitation, preservation of existing housing stock, and production of additional housing opportunities for low- and moderate-income families;

(4) to expand the loan purchase capacity of the national neighborhood housing services secondary market, operated by Neighborhood Housing Services of America, for loans made by neighborhood housing services to residents who are unable to meet conventional lending standards, and other loans for community development purposes;

(5) to provide increased capacity development and matching grants to preserve existing privately-held unsubsidized rental housing affordable to low- and moderate-income

households and to create flexible strategies effective in the diverse economic and geographic environments of the Nation;

(6) to expand the national mutual housing association demonstration, which provides technical assistance and matching grants to assist low- and moderate-income families who are paying a greater percentage of income for rental units but cannot afford homeownership;

(7) to increase resources available to neighborhood housing services network programs for foreclosure intervention and prevention; and

(8) to create additional neighborhood housing services partnership organizations to serve rural communities, Native Americans, Native Hawaiians and other communities in need.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 608(a) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8107(a)) is amended to read as follows:

"(a)(1) There are authorized to be appropriated to the corporation to carry out this title $62,000,000 for fiscal year 1990, $92,100,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994.

"(2) Of the amount appropriated pursuant to this subsection for each of the fiscal years 1990 through 1994, amounts appropriated in excess of the amount necessary to continue existing services of the Neighborhood Reinvestment Corporation in revitalizing declining neighborhoods shall be available as follows:

"(A) 43 percent to develop and provide matching capital grants, operating subsidies and technical services to additional mutual housing associations;

"(B) 38 percent to expand the national Neighborhood Housing Services network and to assist network capacity development, including expansion of rental housing resources;

"(C) 19 percent to expand the loan purchase capacity of Neighborhood Housing Services of America's secondary mortgage markets.

H. CON. RES. 381

HON. ERNEST L. KONNYU

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. KONNYU. Mr. Speaker, what is the value of your culture? What is the value of your religion? Your way of life? Your freedom?

Answer: They are priceless!

The mad Communist dictator of Romania Nicolae Ceausescu has embarked on a campaign to destroy property and livelihood of millions of ethnic Hungarians. By destroying their communities and forcibly removing Hungarians from their native Transylvania home, Ceausescu's plan would, in effect, strip these Hungarians of their heritage and repress rural culture.

The Romanian Government has begun to bulldoze ancient village architecture, Hungarian language schools, centuries old churches and cemeteries—unraveling the very fabric of the Hungarian population in Romania. They are crushing the societal foundation of 8,000 villages many in the Hungarian dominated northwest section of Romania. Ceausescu and his nepotistic government is systematically practicing cultural genocide.

Futhermore, they continue to interfere with freedom of religion. Religious believers are harassed and intimidated. Their places of workship destroyed. They have even been arrested for the crime of possessing a Bible.

The consequences of Ceausescu's action have been an exodus over the Romanian border into Hungary. Over 12,000 refugees have fled Romania in a desperate attempt to avoid persecution. Mass demonstrations around the world have been held drawing greater attention to the plight of these people.

Early in August, I outlined on the House floor a six-point proposal to increase pressure on the Romanian Government to correct their gross violations of the Helsinki accord on human rights. In that proposal I suggested the following—

First, we must seriously debate the recall of our Ambassador from Bucharest and issuing an invitation to the Romanian Ambassador to leave.

Second, we must abrogate the commercial treaty with Romania now in effect.

Third, we must strongly consider the freezing of all Romanian assets in the United States.

Fourth, we must publicly state that the above points stay in effect as long as Romania fails to live up to the provisions of human rights spelled out in the Helsinki accords—an agreement signed by Romania.

Fifth, our representative in the United Nations must ask that body to denounce Romania's inhuman acts.

Sixth, our Secretary of State must ask our allies in Europe to take the same steps as points 1 through 3.

The resolution that is before us today, House Concurrent Resolution 381, will begin to make it clear to the Romanian authorities that we are outraged and we will take what action is needed to see that these atrocities end.

BEST WISHES TO PRESIDENT LEE AND THE PEOPLE OF TAIWAN

HON. FLOYD H. FLAKE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FLAKE. Mr. Speaker, Taiwan, also known as the Republic of China on Taiwan, will be celebrating the 77th anniversary of the founding of their nation on October 10, 1988. In Washington, DC, Ambassador Ding Moushih and his colleagues will be hosting a reception in honor of the occasion. I wish to join my colleagues in the United States Congress in congratulating President Lee Teng-hui and the Taiwanese people. I hope that the Taiwanese, under the leadership of President Lee, will achieve even greater economic and political growth in future years.

Taiwan has always been our ally, despite President Carter's derecognition of Taipei in 1979. In fact, the relationship between Taipei and Washington has become ever closer as we deal with each other over many trade matters. In our discussions with Taiwan over trade, Taiwan has demonstrated cooperativeness and responsiveness. I hope that whatever differences we have with Taiwan, we treat Taiwan and other trading partners with kindness and fairness.

Yes, President Lee, you have much to be proud of and we wish you well.

COMMUNITY DEVELOPMENT ASSISTANCE NEEDS TO BE CONSOLIDATED

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. HEFLEY. Mr. Speaker, I am introducing two bills today to streamline the Federal Government's assistance to economically distressed areas of our country. These two bills, by phasing out the Urban Development Action Grant Program and the programs of the Economic Development Administration, will allow Congress to devote more time and money to the Community Development Block Grant Program.

The administration has proposed this goal in several succeeding budgets. In this year's appropriations cycle, Congress implicitly recognized the greater value of the CDBG program by choosing to increase appropriations for the CDBG program over the President's budget request, while failing to approve any new funds for the UDAG program.

I applaud my colleagues on the Appropriations Committee for this decision, and although I believe we should have spent less overall on community development programs this year, the compromise reached by the committee was within the normal give-and-take of the legislative process.

My bill to sunset the statutory authority for the UDAG Program is the logical extension of the Appropriations Committee's decision. The bill does not try to cut off already obligated funds, and would allow the program to operate until all presently existing budget authority was expended. But it does recognize that we can no longer afford our current hodge-podge approach to community development assistance.

Phasing out the UDAG and EDA Programs will help community development in this country in several ways:

First, elimination will focus greater attention on the CDBG Program, which maximizes State and local control over development decisions. No longer will developers waste resources trying to curry favor with a plethora of Federal officials who have no more that a professional interest in how the money is spent. Local officials, who live and work in the communities affected, will have to decide how to allocate scarce resources and then answer for their decisions at the polls.

Second, elimination will free up resources that can be devoted either to reducing the deficit or increasing funding for the CDBG Program. Not only can the dollars that would have gone to UDAG and EDA grant recipients be redirected, but the dollars that funded the administration of UDAG's and the EDA will no longer be needed. If the savings are used to reduce the deficit, it will lower Federal pressures on the credit market and reduce the threat of future tax increases; both of which will promote economic expansion led by the private sector.

Third, elimination will encourage local officials to make more responsible long-range planning decisions. The thought that a community can always turn to Federal categorical grant programs for a bailout softens the blow of potential mismanagement. While the Federal Government can help communities in need, we must make sure that both voters and elected officials know there is a price to be paid for apathetic attention to the needs of their community.

Fourth, while we are searching for ways to increase our national competitiveness, we can hardly continue to defend programs that use Federal subsidies to distort private financial markets. These grant programs siphon productive resources from private investment projects that may provide local benefits, but are less efficient for the national economy as a whole.

In no way do I mean for the introduction of these bills to reflect poorly on the public servants administering these programs at the Department of Commerce or the Department of Housing and Urban Development. All too often we confuse criticism of a program with criticism of public servants acting as best they can within rules given to them by Congress. While many of those affected may very well decide to move to State or local governments to capitalize on their development expertise, those who remain should receive generous assistance to help them relocate within the Federal work force.

There will be State and local officials who will see this as merely a ploy to decrease Federal support for community development. And while I will admit I feel community development programs must take a back seat to other Federal priorities at a time of mammoth deficits, the overall reduction of Federal community development support is neither the logical nor necessary extension of my initiative.

Better organization of community development dollars can benefit both the Government's bottom line and communities struggling to recover from economic setbacks. Our goal should be to ensure that more of every dollar appropriated actually gets to those who need it. We should try to simplify the process of obtaining assistance. Local governments could then spend less on consultants who promise to win grants, and more on development that promises opportunities for citizens. Whether increased efficiency results in budget savings or more development, the Nation will benefit.

CELEBRATING THE 75TH BIRTHDAY OF WARREN SCHAFER

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mrs. BENTLEY. Mr. Speaker, I rise today to pay tribute and wish a very happy 75th birthday to a fellow Marylander and Baltimore Countian, Warren Schafer.

Mr. Schafer proudly served his country for 30 years as a band leader in the U.S. Army. His assignments took him to various spots overseas such as Korea, Italy, and Germany, as well as numerous stops throughout the United States.

Following his retirement from the Army, Mr. Schafer returned to his roots and with the blessings of his father, the late Clyde W. Schafer, assumed control of the family's retail meat business at Hollins Market in Baltimore.

Mr. Schafer currently resides in the home of his youth, Catonsville, MD, with his wife of 53 years, Mary Jane Owings Schafer. He is the proud father of four children and has nine grandchildren and three great-grandchildren. In addition, Mr. Schafer is surrounded by numerous relatives from the Schafer, Owings, Grim, and Blair clans, all long-time residents of Baltimore County.

Mr. Schafer, known for his green thumb, now spends his time caring for his flower and vegetable gardens. He also remains very active in community affairs through his longtime affiliation with the Catonsville Lions Club.

Today, Mr. Speaker, I ask the House to join me in wishing Mr. Schafer congratulations on his 75th birthday, with wishes for many, many happy years to come.

THE INTERGENERATIONAL LIBRARY LITERACY ACT

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Ms. SNOWE. Mr. Speaker, today I am introducing along with my colleague, the Honorable STEVE GUNDERSON, the Intergenerational Library Literacy Act, that will assist libraries in addressing the problem of the growing numbers of latchkey children who are increasingly being left in libraries because of the lack of adequate day care.

As you know, many working families are struggling to find adequate, affordable day care for their children. With the average cost of care totaling $3,000 per child, in addition to the fact that there are not enough day care slots, finding quality care can be an impossible task. Currently, 2.1 million children, ages 5 to 13 years, regularly spend some period of time without adult supervision after school.

Libraries, since the turn of the century, have made a commitment to serving the needs of children. Nothing, however, has prepared libraries to deal with the deluge of unsupervised children who, on a regular basis, are spending extended periods of time in the library because of lack of day care.

A study conducted by the American Library Association in May 1988, indicates that "what to do with and about library 'latchkey children' has become one of the most rapidly developing public library policy arenas." For example, the Brooklyn Public Library has 100 or more unattended children a day; and in Los Angeles County a 1985 survey found about 2,000 children a day whose parents used the libraries as an afterschool center. In places as disparate as Illinois, Texas, and and Oregon, librarians are trying to cope with a problem that is really a community problem—how shall we care for our children and who shall be responsible.

The Intergenerational Library Literacy Act proposes to reallocate, from title II of the Library Services and Construction Act, $5 million in unobligated funds which have been carried over from past years. Funds will be spent for demonstration programs that will match older volunteers with libraries interested in developing afterschool literacy and reading skills programs for latchkey children. Additionally, older volunteers, through program and example, will stress positive images of aging.

At present, library staff time is increasingly being spent in ensuring that latchkey children are not disturbing other patrons or damaging library property, leaving staff less time to devote toward normal duties. With the advent of the Intergenerational Library Literacy Act, libraries will be able to address this problem while joining the two generations in innovative programs which combine a variety of community resources.

Today, both Federal agencies and nonprofit organizations sponsor older volunteer programs. ACTION programs such as the Retired Senior Volunteer Program [RSVP] and organizations such as the American Association of Retired Persons [AARP] provide volunteers in a variety of settings.

As the population ages, there will continue to be an increasingly large number of older adults who seek meaningful opportunities for contributing to society outside of paid employment. Older volunteers bring with them a lifetime of experience which many are eager to share. The natural affinity between the oldest and the youngest generations, as described by researchers, provides a supportive environment in which both groups thrive. Older adults find fulfillment in sharing their skills and many young children have the opportunity to relate to a surrogate grandparent who embodies the positive aspects of aging.

This intergenerational approach to latchkey children in libraries will permit these older adults to contribute their vast knowledge in assisting a new generation of citizens grow and develop as literate, informed adults.

The text of the Intergenerational Library Literacy Act follows:

H.R. 5486

A bill to authorize the Secretary of Education to establish a program to make grants to local public library systems to establish demonstration projects using older adult volunteers to provide intergenerational library literacy programs to children during afterschool hours.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Intergenerational Library Literary Act".

SEC. 2. ESTABLISHMENT OF GRANT PROGRAM.

(a) IN GENERAL.—The Secretary of Education may make grants to local public library systems to establish demonstration projects to provide intergenerational library literacy programs for school children during afterschool hours.

(b) LIMITATION ON AMOUNT OF GRANT.—The aggregate amount of grants under this Act to a local public library system may not exceed $100,000.

SEC. 3. REQUIREMENTS OF DEMONSTRATION PROJECTS.

Each local public library system that receives a grant under this Act shall establish a demonstration project as follows:

(1) New programs.—The local public library system shall use funds from a grant made under this Act only to establish and administer new intergenerational library literacy programs and may not use the funds to assist or expand similar ongoing programs relating to literacy.

(2) Multiple locations.—The local public library system shall, to the extent possible, provide intergenerational library literacy programs in a variety of locations throughout the jurisdiction of the local public library system.

(3) Afterschool hours.—The local public library system shall provide intergenerational library literacy programs only during afterschool hours.

(4) Older adult volunteers.—In the provision of intergenerational library literacy programs, the local public library system shall utilize older adult volunteers and older adult volunteer programs and may utilize other community volunteer resources.

(5) Older adult role models.—In the provision of intergenerational library literacy programs, the local public library system shall emphasize and provide examples of positive older adult role models (by example and through the provisions of information) for the participating children.

(6) 1-year duration.—The local public library system shall design and organize the demonstration project so that any funds received from a grant under this Act are expended not later than the expiration of the 1-year period beginning on the date that the local public library system first receives funds from a grant under this Act.

(7) Evaluation and report.—The local public library system shall conduct an evaluation regarding the demonstration project established pursuant to a grant under this Act and the effect of the intergenerational library literacy programs on the participating children, and shall submit to the Secretary, not later than 18 months after the local public library system first receives funds from a grant under this Act, a report regarding the evaluation.

SEC. 4. APPLICATION AND SELECTION OF GRANT RECIPIENTS.

(a) Application.—To receive a grant under this Act, a local public library system shall submit an application as the Secretary may require, which shall include the following:

(1) Certification of fulfillment of requirements of demonstration project.—Certification that the local public library system will fulfill the requirements of section 3.

(2) Description of programs.—A description of the intergenerational library literacy programs to be established and administered under the demonstration project.

(3) Demonstration of need.—A statement demonstrating the presence in the area served by the local public library system of unsupervised school children who could benefit from a literacy program and interaction with older adults.

(b) Selection of Grant Recipients.—

(1) In general.—The Secretary shall select local public library systems to receive grants under this Act from systems that have applied under subsection (a), and may select only systems that meet the criteria for selection established under paragraph (2).

(2) Criteria for selection—

(A) Establishment.—The Secretary shall establish criteria for the selection of local public library systems to receive grants under this Act.

(B) Preference for local library systems using grants to establish ongoing programs.—The criteria established under subparagraph (A) shall require that, in making grants under this Act, the Secretary shall give preference to any local public library system that includes in the application under subsection (a) a plan for the continued operation of the intergenerational library literacy program after the time at which the funds received by the system from grants under this Act have been expended.

SEC. 5. REPORTS.

Not later than the expiration of the 3-year period beginning on the date that the Secretary first makes a grant under this Act, the Secretary shall submit to the Congress a report setting forth the findings and conclusions of the Secretary regarding the demonstration projects established with grants made under this Act. The report shall include any recommendations of the Secretary regarding the establishment of a permanent program to develop intergenerational library literacy programs in local public library systems.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) Demonstration project.—The term "demonstration project" means a project established and administered by a local public library system under section 3 that consists of intergenerational library literacy programs.

(2) Intergenerational library literacy programs.—The term "intergenerational library literacy program" means a program using older adults to increase literacy, improve reading skills, or encourage reading for unsupervised school children, established under section 3.

(3) Local library system.—The term "local public library system" means any public authority legally constituted within a State for the administrative control or direction of a library that serves free of charge all residents of a community, district, or region, and receives its financial support in whole or in part from public funds. The term includes any agency or board that administers any aggregation of such libraries, including the libraries in a city, county, township, school district, or other political subdivision of a State.

(4) Older adult.—The term "older adult" means any individual who is 55 years of age or older.

(5) School children.—The term "school children" means children who are of the ages appropriate for or attend school in a grade not higher than 12.

(6) Secretary.—The term "Secretary" means the Secretary of Education.

(7) State.—The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, and any other possession of the United States.

SEC. 7. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated, from any unobligated amounts appropriated to carry out title II of the Library Services and Construction Act (20 U.S.C. 351 et seq.), $5,000,000 for fiscal year 1989 for grants under this Act.

RIALTO, CA, SCHOOL WINS NATIONAL AWARD

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. BROWN of California. Mr. Speaker, I would like to take a moment to salute the Levi Bemis Elementary School in Rialto, CA, in the 36th Congressional District which I represent. Bemis has been chosen as one of the 287 best elementary schools in the country, winning the "National Elementary School Recognition Award" and honored by President Reagan at a White House ceremony.

The review process for this honor is an arduous one. It began 8 months ago with a 44-page application, and a selection process that started at the county level. As the school entered into the final selection phase, two onsite visitors observed classroom instruction, and interviewed parents, teachers, staff, community leaders, and students.

All of the honored schools were required to meet a strict list of criteria including demonstrating exemplary student progress and growth.

The nominated elementary schools were further evaluated on the basis of school philosophy and goals; leadership; curriculum and instruction; student success and character development; and school climate and school-community relations. Officials analyzed student test scores and evaluated programs to meet special needs for bilingual, handicapped, gifted and talented students.

The list of winners ranges from a New York school with 1,200 students to a 72-student school in Yakutat, AK. The winning schools represent 48 States, and include public, private, religious, and alternative community schools. Winners also include special schools for handicapped students, and those run by the Bureau of Indian Affairs and the Department of Defense.

Former Education Secretary William Bennett announced the winners by saying, "These outstanding schools are as diverse as the Nation itself, but they also share many common attributes—a commitment to learning, to high standards, and to excellence."

It is with pride that I offer my congratulations to the educators and students at Levi Bemis Elementary School. They personify the best of American education, and offer an example to schools around our country. The value of quality education cannot be overlooked or taken for granted. I agree with William Bennett that these winning schools are models of quality that deserve our praise.

A COMMITMENT TO COMMUNITY

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. BADHAM. Mr. Speaker, it is my privilege today to honor a man who is most deserving of recognition here in the Congress of the United States, the chief executive officer of Security Pacific Corp., Mr. Richard J. Flamson III.

Mr. Flamson will also be honored at a dinner in Los Angeles on October 27 to benefit Junior Achievement of southern California. Mr. Flamson's work for Junior Achievement, the Los Angeles World Affairs Council, the House Ear Institute, the Estelle Doheny Eye Foundation, the Los Angeles Museum of Contemporary Art and the Los Angeles Chamber of Commerce is of tremendous benefit to our State and our Nation. As chairman of the board of trustees at Claremont-McKenna College, he has shown his commitment to education and to our and our children's futures.

Mr. Speaker, Richard Flamson is a man who truly understands the meaning of 1,000 points of light. For these achievements, for these contributions and for his tremendous dedication, I ask my colleagues to join me in honoring Richard Flamson as Junior Achievement prepares to mark his contributions at a dinner given in conjunction with the Japan Business Association.

THE 50TH ANNIVERSARY CELEBRATION OF THE REGO PARK JEWISH CENTER

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. ACKERMAN. Mr. Speaker, I rise today to congratulate the Rego Park Jewish Center as it celebrates its 50th anniversary, commemorating one-half century of service to its congregants and the community. It is my pleasure to take part in the anniversary festivities, including the dedication of a beautiful ramp for the disabled, on October 23.

It should be noted that this special celebration coincides with the 40th anniversary this year of the establishment of the State of Israel. The cornerstone to the magnificent synagogue was laid with that particular event in mind. Now, four decades later the members of the Rego Park Jewish Center are dedicating a ramp that will give the disabled easy access to this beautiful building.

Rego Park Jewish Center came into existence when an ambitious, young group of committed Jews moved into the Rego Park area and recognized the need for a neighborhood house of worship. The success of this idea was assured when the first high holy holiday services were held at a storefront or Weatherole Street with over 75 people in attendence.

From the day it first opened its doors, the center became the focal point of numerous community activities. It is involved in the work of the B'nai B'rith, City of Hope, Cancer Care Group, Persian Jews, Holocaust Survivors, Israel Bonds, Women's League, and many other Jewish organizations. The children were encouraged to pursue their own interest in such places as Hebrew School, United Synagogue Youth, Young Judea, and the Boy Scouts.

Mr. Speaker, as you know, a synagogue is not merely an edifice, but it is also made up of countless committed and dedicated individuals. I want to thank the many people whose hard work and selflessness make the Rego Park Jewish Center a great success. The center thrives today because of the steady leadership of Rabbi Emeritus Josiah Derby and the current rabbi, Dr. Shlomo Blickstein. I also want to praise the current president of the congregation, Mr. Zigfried Loeb. The Men's Club is led by Mr. Steven Denkberg and the Sisterhood is presided by Millie Goldman, Ruth Loewenstein, and Pauline Henner. The chairman of the board is Mr. Marcus Marks and the synagogue assistant is Mr. David Schnitzer. I would also be remiss if I failed to mention Ms. Bette Engle and the wonderful work she performs as the office administrator.

Through the outstanding work of the dedicated people, the Rego Park Jewish Center has become a model community organization. Therefore, I call on my colleagues in the House of Representatives to join me in offering the Rego Park Jewish Center the very best of birthday wishes, and our hopes for its continued success.

SEVENTH ANNIVERSARY OF ANWAR SADAT'S DEATH

HON. TOM SAWYER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SAWYER. Mr. Speaker, today we mark the seventh anniversary of the death of one of our century's most courageous and daring leaders—Anwar Sadat of Egypt. His assassination on October 6, 1981, was a blow to the cause of peace, freedom, and justice everywhere. Today, we quietly honor the memory of this great man, who taught us the importance of reaching beyond hate, beyond war, and beyond prejudice. Anwar Sadat ultimately lost his life for his grand gesture of seeking peace in the Mideast, but his work remains with us.

Exceptional leaders of real courage and vision are rare indeed, and we often don't fully realize their greatness until long after they are gone. But Mr. Speaker, the peoples of Egypt and Israel bring lasting meaning to the peace process begun 10 years ago by Anwar Sadat, Menachem Begin, and Jimmy Carter. And so today we celebrate that work as we celebrate the life of one of its authors in Anwar Sadat. Our own Nation should alway be prepared to assist in maintaining and expanding this peace. The shining example set by Israel and Egypt will surely inspire other nations in the Mideast, especially as time passes. So, on the seventh anniversary of that sad day, we can also take heart in saluting Israel and Egypt for their dedication to the Camp David accords.

Anwar Sadat's bold trip to Israel in 1977 was a first step in tearing down the walls of mistrust, fear and suspicion that had existed between Arab and Jew for thousands of years. President Sadat had been Egypt's leader during its 1973 war with Israel; he knew all too well that violence and bloodshed would beget only more of the same. His killers, acting on this date 7 years ago, never grasped this fundamental principle. They were either unable or unwilling to seek a different way, for it was they who lacked the courage to do what Sadat had done: to forgive, and to join with former enemies to build a future full of hope, and one without paralyzing fear.

Mr. Speaker, Anwar Sadat's death was a tragedy of the highest order, but his legacy of peace and understanding will survive as long as we who are living take care to remember the lessons that have been given to us by the heroes who have gone before us.

ESTATE TAX LAW

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SCHULZE. Mr. Speaker, I am pleased today to introduce legislation with my colleagues Congresswoman BOGGS, and Congressmen MURTHA and ANTHONY, to correct an inconsistency in estate tax law. A basic policy since the estate tax was first enacted has been to allow an executor of a decedent who possessed a vested remainder or reversion interest (usually in trust, but also in a life estate) to defer paying the tax on his decedent's possession of the underlying property after all intervening income interests have ended. The potential hardship we address, is that the remainder interest gives rise to estate tax on the death of the remainderman before all intervening income interests have ended, but the remainderman's executor is not in possession of assets that can be converted into cash to pay the tax.

In a typical case, a decedent was the vested remainderman of a trust and not entitled to the enjoyment of the trust corpus until the income beneficiary dies. When the income beneficiary later dies, the executor finally has a right to the funds and to use them to pay the remainderman's estate tax plus interest. This longstanding provision—section 6163 of the code—is absolutely essential so that the remainderman's executor is able to meet obligations to the remainderman's beneficiaries while only paying the tax on the remainder interest at the later time when the remainder assets become available.

This provision fails to generate much interest because vested remainders and reversions are relatively rare outside of Louisiana. In most jurisdictions, remainders are usually made conditional on the remainderman surviving the life beneficiary so there is no taxable event when a contingent remainderman predeceases the income beneficiary. The major exception is Louisiana which does not recognize contingent remainders. But this does not excuse failure by Congress to correct an error that arises all the time in Louisiana, and some of the time in other States.

When the remainderman's estate contains assets other than the remainder interest, there often is an urgent need to use these to support his surviving family members. However, the executor is taking a risk when he applies assets to the needs of the remainderman's beneficiaries and defers the tax on the remainder interest. Under stable conditions a deferral would be prudent because the tax is computed on the current value of the remainder, reflecting the deferral for the life expectancy of the income beneficiary. Since the current interest rate is determined very similarly to the way the discount rate is determined, the total tax and interest will proximate the burden if there were no deferral. Assuming a 50 percent estate tax rate, the remainderman's executor would anticipate receiving assets double the tax plus interest burden.

However, in 1975 Congress changed the rule so that the interest burden became completely unpredictable. The interest now changes quarterly with current conditions. This has meant that when a valuation was made on, for example, the 4 percent discount rate that was used for over 30 years, the interest rate might be at the current 10 percent rate or higher. In current terms, the present discount rate is 10 percent but current interest rates might be replaced by an interest rate greatly in excess of 10 percent. The result is that the tax plus interest can greatly exceed the value of the property when it finally comes into possession.

This chance that an election could have extremely adverse results has caused executors to be reluctant to take advantage of the provision whenever there are enough other assets in the remainderman's estate to allow them this freedom; fiduciaries are expected not to assume avoidable risks. The result has been that unjustified hardships are imposed on the beneficiaries—the family of the decedent remainderman—because of the risk of a long-term deferral is not acceptable.

The use of the fluctuating interest rate in the case of the typical problem posed by lack of liquidity in other types of estates is very different. In those circumstances, the executor should have an incentive to use due diligence in liquidating the estate assets and in effect, the estate has a series of short-term loans. However, if the decedent had a vested remainder or a reversion, there frequently isn't any option to waiting until the period expires or the income beneficiary dies, and once the assets other than the remainder are distributed, the executor can only wait. There is in effect a loan for the total term of deferral during the period that elapses before termination of the intervening income interests.

The result is that executors who must make the election to defer because the vested remainder interest is the major part of the estate are assuming risks that are both unreasonable and unavoidable. In addition, even an executor who has possession of other assets has a difficult balance between the rights of the decedent's beneficiaries and the risk entailed in the variable interest rates, being asked to accept an unreasonable risk if he relies (or is forced by circumstances to rely) on the latter.

My legislation will restore the historic relationship between the discount rate and the interest rate. When the discount rate is low, the tax is high but interest rates are low. When the discount rate is high the tax is low but the interest rate should be high.

The bill also closes a loophole in present law when the interest rate subsequently falls so that an executor with adequate other assets turns out to have unfairly reduced the tax burden by making the deferral election. If interest rates go down, deferral is continued and the estate has a lower total burden than if the tax had not been deferred. On the other hand, if interest rates go up, the disaster that is a potential for other executors is avoided by then paying the tax and accrued interest. In effect the executor has a no-lose option.

The bill applies to interest that is deferred on taxes on a vested remainder interest under section 6163(a) on the date it is introduced. Some severe hardships have resulted from taxes based on the 4 percent discount rate in effect before 1976 and interest rates that have risen as high as 20 percent. The bill does not change the existing rule for hardship deferrals.

Realistically, the bill is unlikely of consideration in the current Congress because no other tax legislation is scheduled. However, my cosponsors have agreed to join me in reintroducing the identical bill in the next Congress and to push for prompt committee consideration.

This effort to make the tax law more equitable is essential for Louisiana trusts or usufructs, and also is consistent with our continuing efforts for the country as a whole to provide needed revenues without arbitrary and capricious rules.

SETTING THE RECORD STRAIGHT: THE UNEMPLOYMENT RATE AND THE AGE STRUCTURE OF THE LABOR FORCE

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. HAWKINS. Mr. Speaker, the Reagan-Bush administration has claimed that "unemployment has fallen to the lowest level in nearly a decade and a half." It is true that the official average unemployment rate in 1988 is below the rates achieved in the late 1970's. But, as is the case for most of this administration's statements about the economy, the statistics are misleading, and they represent attempts to take credit for developments which have not been the result of their policies.

They seem to be trying to convince the American public that President Reagan and Vice President BUSH took office in January 1983, not in January 1981, hoping that we will forget about the disastrous 1981-82 recession—the worst economic downturn since the depression of the 1930's.

As policymakers, we depend on the accuracy of the unemployment rate to assist us in making the appropriate policy decisions. We act on the assumption that the rate is a true reflection of what is actually occurring in the labor market. Dr. Robert N. Horn, associate professor of economics at James Madison University, argues that this is not the case. He has analyzed the overall unemployment rate and has found that the age structure of the labor force has been the major source of the decline in the jobless rate in the 1980's.

Dr. Horn demonstrates that if adjustments are made, taking into consideration that there are fewer younger workers in the labor force, the unemployment rate for the first 8 months of 1988 is the same as it was in 1978, and that it actually exceeds the jobless rate for 1979.

Younger workers, aged 16 to 24, have traditionally experienced unemployment rates nearly three times as high as those 25 and over. Since there are now fewer of those younger workers in the labor force, current overall rates mask the true extent of joblessness. The official 5.6 percent rate for the first 8 months of 1988 is actually 6 percent when using the age adjustment factor. Unemployment has been much more serious in the last 8 years than it was in the late 1970's.

A description of Dr. Horn's findings, adapted from Challenge magazine (July-August 1988) follows:

THE UNEMPLOYMENT RATE AND THE AGE STRUCTURE OF THE LABOR FORCE

(By Robert N. Horn)[1]

The average civilian unemployment rate for the first eight months of 1988 has been 5.6 percent. This is below the lowest rate achieved in the late 1970s, 5.8 percent, reached in 1979. If the rate for all of 1988 averages 5.6 percent, it would represent the lowest annual average in 15 years, since 1973's rate of 4.9 percent. However, all of the decline in the jobless rate over the last decade is due to a major change in the age structure of the labor force.

The overall unemployment rate is a weighted average of the rates for specific groups of workers, with the weight for each group equal to its share of the workforce.[2] If these labor force shares change over time, the total rate may mask changes which are occurring in the rates affecting the specific age groups. For example, if the labor force share of a group which has traditionally had a high unemployment rate rises sharply, this will increase the overall rate, if the jobless rates for all other groups remain unchanged, or even if they decline slightly. The opposite would be true if the labor force share of a group with a historically high unemployment rate falls—the resulting reduction in the overall jobless rate may mask little, if any, improvement for other groups.

In fact a dramatic change has taken place in the composition of the labor force over the last decade, due to the well-known aging of the post-World War II baby boom. This is shown in the first three columns of Table 1. The percentage of the labor force aged 16-24 rose steadily in the 1970s, peaking at 24.5 percent in 1978. It has since fallen sharply, averaging only 18.7 percent for the first eight months of 1988. This represents a decline in younger workers' share of nearly one-fourth over the decade, to the lowest level since the early 1960s. The labor force share of 25-54 year olds remained approximately constant in the 1970s, but it has risen in the 1980s, as the baby boomers have entered this group. For workers aged 55 and over, their share of the work force has declined steadily over the last two decades.

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[1] Associate Professor of Economics, James Madison University. This is adapted from "An Age-Adjusted Unemployment Rate," Challenge, July-August 1988. The author would like to thank Paul Manchester of the Joint Economic Committee for comments on an earlier draft of this analysis.

[2] For example, in 1987, the unemployment rate was 5.3 percent for white workers and 11.6 percent for black and other racial minority workers. White workers comprised 86.2 percent of the labor force, while minority workers comprised the remaining 13.8 percent. The overall civilian unemployment rate was 6.2 percent—this is equal to 86.2 percent of the white rate (5.3), plus 13.8 percent of the rate for racial minorities (11.6).

The change in the age structure of the labor force has been the major source of the decline in the jobless rate over this period. This fact may be seen by looking behind the overall unemployment rate, to the rates experienced by specific age groups. As shown in the last four columns of Table 1, even though the unemployment rate for the first eight months of 1988 has averaged 5.6 percent, below the late 1970s low of 5.8 percent, this has not been true for two of the three age groups analyzed. For job seekers aged 25-54, the unemployment rate has averaged 4.5 percent to date in 1988, above the 1979 rate of 4.2 percent. This difference of 0.3 percent is not trivial—it is equivalent to an additional 251,000 jobless in today's labor force. Similarly, for those 55 and over, the 1988 jobless rate of 3.2 percent exceeds the rate of 3.0 percent in 1979—equivalent to an additional 30,000 unemployed.

The effects of the change in the age distribution of the work force may also be demonstrated by adjusting the reported jobless rate to obtain an "age-adjusted unemployment rate", which eliminates the effects of these changes in the age structure. This measure answers the question "What would the unemployment rate be if the structure of the labor force had remained constant since 1979?" This is especially useful in this election year, when the incumbent Administration is taking credit for the effects of demographic changes which are clearly not the result of any of its policies—in fact, they were well under way long before the Administration took office in 1981.

TABLE 1.—PERCENTAGE OF THE LABOR FORCE AND UNEMPLOYMENT RATE BY AGE GROUP, 1970–88

Year	Percentage of the labor force			Civilian unemployment rate			
	16–24	25–54	55+	16–24	25–54	55+	Total
1970	21.6	60.9	17.5	11.1	3.4	2.8	4.9
1971	22.3	60.5	17.2	12.7	4.2	3.4	5.9
1972	23.2	60.1	16.7	12.1	3.8	3.3	5.6
1973	23.9	60.2	15.9	10.5	3.2	2.7	4.9
1974	24.1	60.4	15.5	11.9	3.8	3.0	5.6
1975	24.1	60.6	15.3	16.1	6.4	4.7	8.5
1976	24.3	60.8	14.9	14.7	5.7	4.6	7.7
1977	24.4	60.9	14.7	13.6	5.1	4.1	7.1
1978	24.5	61.0	14.5	12.3	4.3	3.2	6.1
1979	24.2	61.5	14.3	11.8	4.2	3.0	5.8
1980	23.7	62.3	14.1	13.8	5.5	3.3	7.1
1981	23.1	63.1	13.8	14.9	5.8	3.6	7.6
1982	22.3	64.0	13.7	17.8	7.9	5.0	9.7
1983	21.7	64.8	13.5	17.2	8.0	5.3	9.6
1984	21.1	65.8	13.1	13.9	6.1	4.5	7.5
1985	20.5	66.6	12.9	13.6	5.8	4.1	7.2
1986	19.8	67.5	12.6	13.3	5.7	3.9	7.0
1987	19.2	68.3	12.5	12.2	5.0	3.3	6.2
1988[1]	18.7	68.9	12.4	11.2	4.5	3.2	5.6
Averages:							
1977–80	24.2	61.4	14.4	12.9	4.8	3.4	6.5
1981–88	20.8	66.1	13.1	14.2	6.1	4.1	7.5

[1] Average for the first 8 months of 1988.

The reported unemployment rates for 1970-88 are compared with these "age-adjusted unemployment rates" in Table 2. The latter are weighted averages of the jobless rates for each of the three age groups, utilizing the labor force shares for 1979 as weights.[3] The difference between the reported rates and the age-adjusted rates is the "age-adjustment factor." This indicates the impact on the jobless rate of the difference between the age distribution in a given year and the age distribution in 1979.

The age distribution in 1970, with a relatively low percentage of younger workers, reduced joblessness from an age-adjusted figure of 5.2 percent to the reported rate of 4.9 percent. As younger workers' share of the labor force rose in the early 1970's the "age-adjustment factor" became less important, so that the reported and age-adjusted unemployment rates were identical for 1973-76. The further increase in the percentage of the workforce aged 16-24 meant that the reported jobless rate slightly exceeded the age-adjusted rate in 1977 and 1978. The sharp decline in younger workers' share of the labor force after 1978 has meant for each of the years since 1985, the reported unemployment rate has been 0.4 percentage point below the age-adjusted rate.

Looking at the last decade as a whole, the reported unemployment rate and the age-adjusted jobless rates yield very different pictures. The reported rate shows a drop in unemployment from 6.1 percent in 1978 to 5.6 percent in 1988, a significant improvement. But the age-adjusted rate has been 6.0 percent in both years, indicating no reduction in the extent of joblessness. And, as shown in the last two rows of Table 2, whichever measure is used, unemployment has been much more serious in the last eight years than it was in the preceding four years.

TABLE 2.—REPORTED AND AGE-ADJUSTED UNEMPLOYMENT RATES, 1970–88

[In percent]

Year	Reported unemployment rate	Age-adjusted unemployment rate	Difference: age adjustment factor[1]
1970	4.9	5.2	+0.3
1971	5.9	6.1	+0.2
1972	5.6	5.7	+0.1
1973	4.9	4.9	0.0
1974	5.6	5.6	0.0
1975	8.5	8.5	0.0
1976	7.7	7.0	0.0
1977	7.1	7.0	−0.1
1978	6.1	6.0	−0.1
1979	5.8	5.8	0.0
1980	7.1	7.2	+0.1
1981	7.6	7.7	+0.1
1982	9.7	9.9	+0.2
1983	9.6	9.9	+0.3
1984	7.5	7.8	+0.3
1985	7.2	7.6	+0.4
1986	7.0	7.4	+0.4
1987	6.2	6.6	+0.4
1988[2]	5.6	6.0	+0.4
Averages:			
1977–80	6.5	6.5	0.0
1981–88	7.5	7.9	+0.3

[1] The difference between the age-adjusted unemployment rate and the reported unemployment rate. The age adjustment factor for 1981–88 (+0.3 percent) is 0.1 percent less than this difference due to rounding.

[2] Average for the first 8 months of 1988.

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[3] Each age group has also been broken down by sex. However, this has little additional impact on the adjusted rates. The predominant factor accounting for the reduction in the unemployment rate over the last decade has been the change in the age structure of the labor force.

SHAME ON OLIVER NORTH

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. COLEMAN of Texas. Mr. Speaker, former Lt. Col. Oliver North's scheduled appearance in EL Paso tomorrow is a shameful reminder of some of the darkest days in the history of this Nation.

I am appalled that this self-confessed liar who is under indictment on Federal felony charges is regarded by some as a proper role model for our youth. In fact, he is the worse possible role model for the next generation. The young people of El Paso should take a close, hard look at a man who is proud of his ability to lie to the American people and to Congress. He mortally wounded the Reagan presidency and destroyed the credibility of the United States in the Middle East. By his own admission in sworn testimony before Congress, he admitted to falsifying official documents, destroying evidence and perpetrating a coverup that rivaled Richard Nixon's Watergate in its brazeness.

In June 1986, I introduced a House resolution of inquiry to investigate what I believed at the time to be a secret and illegal Contra resupply operation coordinated by Lieutenant Colonel North and run out of the National Security Council. When the House Intelligence Committee confronted North about the allegations, North blatantly lied to the committee, an act that he later admitted freely during the Iran-Contra hearings. The Miami Herald later won the Pulitzer Prize for its story about subsequent attempts by the administration and its political allies to retaliate against me and other Members who wanted North investigated.

Mr. Speaker, this is a man who willingly sold arms to the henchmen of the Ayatollah, the same terrorists who helped massacre our Marines in Beirut. He illegally diverted profits from those arms sales to the Contras despite a specific law of the land that prohibited him from doing so.

Lieutenant Colonel North and the others involved in this sordid episode in American history mounted an extraordinary challenge to the U.S. Constitution and the rule of law with a dark web of conspiracy that had not been seen since the days of Richard Nixon. He was so obsessed with his self-appointed mission that he believed he was above the written law. According to recently published reports, he compromised an agent and an operation of the Drug Enforcement Administration that would have resulted in the apprehension of the entire Medellin Cartel by trying to clumsily make it appear that the Sandinistas were smuggling narcotics, which according to the DEA, they were not. He even committed one of the gravest breaches of U.S. intelligence in this decade when Newsweek magazine revealed that he leaked the U.S. capability to conduct signals intelligence intercepts of the hijackers of the cruise ship Achille Lauro, who had murdered Leo Klinghofer.

But perhaps more than anything else, former Lieutenant Colonel North's zealotry dealt a body blow to his country. He may never understand it; he may never accept it. But the reverberations of his shameful conduct can still be heard today. He brought shame on his country; he disgraced his uniform, and he discredited the United States in a key region of the world and with our allies. He made a mockery of our policy to never negotiate with terrorists by doing the unthinkable: forcing America to its knees in front of Middle Eastern terrorists and offering to trade arms for hostages.

Shame on you, Oliver North. Shame on you and your coconspirators who tried to subvert the U.S. Constitution and the rule of law. I hope the Federal indictments send a meassage to the American people that this Nation will never again tolerate the illegal obsessions of self-appointed, right-wing zealots who give patriotism a bad name. Our young people deserve better than you, and I put my trust in God that they develop a stronger backbone when it comes to obeying the law and following our Constitution.

PERSONAL EXPLANATION

HON. FRED GRANDY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. GRANDY. Mr. Speaker, 8 pounds of reasons caused me to be unavoidably absent from rollcall votes 387–425 on the House floor Tuesday, October 4, 1988. Tuesday, my wife Catherine gave birth to an 8-pound baby girl, Monica Mann Grandy. Mother and daughter are doing great. If I had been present, I would have voted in the following manner:

"Yea" on roll No. 387, agreement on Journal.

"Nay" on roll No. 388, House Resolution 563, authorizing the Speaker to entertain motions to suspend the rules on any day for the remainder of this Congress.

"Yea" on roll No. 389, H.R. 4758, public safety officer death benefits.

"Yea" on roll No. 390, H.R. 3914, Racially Motivated Violence Commission.

"Nay" on roll No. 391, H.R. 5164, Mariel Cuban Detention Act of 1988.

"Yea" on roll No. 392, H.R. 5347, Municipal Bankruptcy Amendments.

"Yea" on roll No. 393, H.R. 5348, Intellectual Property Licenses in Bankruptcy.

"Yea" on roll No. 394, H.R. 5280, Congress Bicentennial Coins.

"Yea" on roll No. 395, Senate Concurrent Resolution 137, Use of Rotunda in honoring John F. Kennedy.

"Yea" on roll No. 396, House Resolution 558, House Fair Employment Practices.

"Yea" on roll No. 397, Senate 508, Whistleblower Protection.

"Yea" on roll No. 398, House Resolution 5199, Agriculture quarantine enforcement.

"Yea" on roll No. 399, House Concurrent Resolution 115, Congressional Participation in Constitution Bicentennial.

"Yea" on roll No. 400, House Resolution 4712, Office of Government Ethics Reauthorization.

"Yea" on roll No. 401, House Resolution 5430, Ocean Dumping Fees. This passage was vacated and S. 2030, a similar Senate-passed bill, was passed in lieu after being amended to contain the language of the House bill as passed. Agreed to amend the title of the Senate bill. House then insisted on its amendments to S. 2030, and asked for a conference. Appointed conferees.

"Yea" on roll No. 402, H.R. 4210, NOAA Marine Programs reauthorization.

"Yea" on roll No. 403, H.R. 4211, Ocean Pollution Planning Reauthorization.

"Yea" on roll No. 404, H.R. 4919, U.S.-U.S.S.R. Fishery Agreement.

"Yea" on roll No. 405, H.R. 5315, Congressional Award Program Extension.

"Yea" on roll No. 406, H.R. 5318, Egg Research and Consumer Information Amendments.

"Yea" on roll No. 407, H.R. 4724, Mississippi Reversionary Land Release.

"Yea" on roll No. 408, House Resolution 564, Grain Standards Amendments.

"Yea" on roll No. 409, H.R. 2596, Admirality Island Monument.

"Yea" on roll No. 410, S. 2723, Hoopa Valley Tribe/Yurok Indians Settlement.

"Yea" on roll No. 411, S. 2800, Nuclear Waste Policy Amendments.

"Yea" on roll No. 412, S. 1236, Navajo-Hopi Relocation.

"Yea" on roll No. 413, House Concurrent Resolution 331, Iroquois Confederacy of Nations.

"Nay" on roll No. 414, H.R. 5203, Declaring That Certain Lands Be Held in Trust for the Quinault Indian Nation.

"Yea" on roll No. 415, H.R. 4102, Salt River Pima-Maricopa Indian Water Rights.

"Yea" on roll No. 416, House Resolution 565, Disagreeing With Senate Amendment and Agreeing to Conference on H.R. 5621, Indian Health Care Amendments of 1988.

"Yea" on roll No. 417, House Resolution 566, West Virginia River Conservation.

"Yea" on roll No. 418, H.R. 4028, Targhee Forest Lands.

"Yea" on roll No. 419, H.R. 4354, Winding Stair Mountain Recreation and Wilderness Area.

"Yea" on roll No. 420, S. 2057, Coastal Heritage Trail.

"Yea" on roll No. 421, S. 1047, Northern Mariana Islands covenant.

"Yea" on roll No. 422, H.R. 4267, WEB Water projects.

"Yea" on roll No. 423, House Resolution 567, South Dakota rural water projects.

"Yea" on roll No. 424, S. 795, San Luis Rey Indian water rights.

Roll No. 425, call of the House. I would have loved to record my presence, but Monica had other ideas.

A TRIBUTE TO MARYLOUISE ALLEN LOVETT

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Ms. PELOSI. Mr. Speaker, I rise today to pay tribute to Marylouise Allen Lovett for her many years of unselfish service to the San Francisco community and to our Nation.

On October 16, 1988, the Potrero Hill Neighborhood House, a multipurpose social service agency in San Francisco, will honor Marylouise for her dedication to making the world a better place. I join them in acknowledging her commitment and am proud to bring her work to the attention of my colleagues.

It would be impossible to completely recount all the activities of her life of service. Reflecting on four broad areas of her involvement will, however, provide us with an understanding of why she is worthy of the honor being bestowed upon her.

For over 30 years, Marylouise has worked in the civil rights movement. Encouraged by the words of the young Dr. Martin Luther King, Jr., when she heard him speak in San Francisco in the early fifties, Marylouise began her unceasing effort on behalf of justice and freedom for those who had been denied. In the sixties she was off to the Deep South to fight for the voting rights of those who had been disenfranchised. And back in California, as president of the Young Democrats, she raised money to assist the bus boycott in Montgomery, AL, and coordinated the west coast effort to support the Mississippi Freedom Democratic Party in its challenge at the 1968 Democratic National Convention.

Marylouise has also been at the forefront of the peace movement. In the fifties, she worked against nuclear proliferation; in the sixties, against the war in Vietnam. In the 1970's, hand in hand with her work against the war was Marylouise's involvement with the Women's International League for Peace and Freedom [WILPF]. She attended World Peace Council conferences in Canada and in Hungary. She was elected president of WILPF in 1980, and continues to work with the organization today.

Marylouise began her involvement with the labor movement when she was still in college at Oregon State University. So committed was she that she sold her textbooks to raise money for the defense of labor leader Harry Bridges, whom she believed was being unjustly prosecuted by the Government. From that time to the present, Marylouise has been a champion of the rights of working people, a staunch proponent of the process of collective bargaining. In the seventies, she served as a delegate to the San Francisco Labor Council from the National Association of Broadcast Engineers and Technicians, Local 532. She was a member, in the 1980's, of the executive board of the Office and Professional Employees Union, Local 3, and chair of their Legislative and Political Committee.

As if this were not enough, Marylouise has found time to work for political candidates who share her philosophy and commitment. She has helped elect five members to this body and numerous others to various local, State, and National offices.

Mr. Speaker, Marylouise Lovett's career has been one of unpretentious and effective service to others. Unassuming and shunning personal accolades, she has supported and helped to organize virtually all of the important social and political movements of the past 30 years. It is with great pride that I join with the Potrero Hill Neighborhood House to honor her and to recognize her many years of selfless dedication to making this world a better place.

IF MARY HAD SAID NO

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DORNAN of California. Mr. Speaker, a fellow southern Californian, Mrs. Mary Santomauro, wrote a beautiful poem on behalf of the innocent preborn children. I would like to share her verses with you and encourage all our colleagues to ponder the American tragedy of abortion.

IF MARY HAD SAID NO

She was a young Israelie girl
Living with her mother, Anne,
Thrilled that Joseph, House of David,
Sought her daughter's hand.

Anne was happy for she felt
She had not long to live.
Joseph would be good to her,
A happy life to Mary give.

The betrothal was announced
To family and all friends.
The preparations had been made.
Soon wedding vows would blend.

But then a strange thing happened
One day as Mary prayed.
Gabriel stood by her and spoke
"Hail, full of grace. . ." he said,

Then, ". . . the Lord is with thee.
Blessed art thou among women."
And he told her even more,
She would bear a son, this omen.

She wondered at his greeting words.
She knew no man. How could this be?
"The Holy Spirit shall come upon thee;"
". . . the power . . . Most High . . . overshadow thee; . . ."

This young Israelie girl then spoke,
"Behold the handmaid of the Lord;"
She accepted what God had asked,
". . . be it done . . . according to Thy word."

We all know as a direct result
A Blessed Babe was born
And laid within a manger
Upon a blessed morn.

For thirty-odd years, Emmanuel,
Then we put Him to scorn,
Crucified Him on a Cross
And all man's sins were borne

By One Who could repair
The wrongs that man had done
And once again restore to each,
Adopted daughter, son.

Since that time more have died
Willingly for His Name.
In every age, from every land,
Sprung from martyrs, they came.

Christians, they have long been called,
Followers of the Holy One,
Living what He taught and lived
That triumph over death be won.

Many people since that time
Fought great evils to live as He
Carrying the flame of Eternal Truth,
Heads bowed, on bended knee.

But what if Mary had said, "No!"?
Suppose that she had then
Told God, "It's not convenient."
"Can't afford the stipend."

She might have said, "There's no way!
Everyone will talk!"
"I don't want to have a child."
Today, would any blame her balk?

But if she had, chances are
The world would long be gone
And none of us would be here
To choose the right or wrong.

Long before we even arrived
The world would have become
A more-sophisticated people,
Fewer, hedonistic, every one.

There would be no call to peace,
No inalienable rights assumed,
The mighty would gobble up the weak,
No intercessions for the doomed.

Entire nations would disappear,
Progeny ripped asunder
For within their very bodies
Sprang no new lives to encumber.

Pretty soon God would call off the world
Knowing we would never change.
Why put up with us any more,
This people of such evil-arrange?

One thing, though, we'd have no need
To make decisions we now do . . .
To kill each other, do as we want,
Live our life and abort any new!

Buy Mary didn't do that.
Not a wail of complaint was wrung.
"Behold, the handmaid of the Lord."
For this Jesus Christ was sprung!

MOUNT LEBANON BAPTIST CHURCH'S "YEAR OF DEDICATION"

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. MFUME. Mr. Speaker, I rise in honor of a church in my home district of Baltimore, which over the years has exemplified the best in Christian leadership and family values. I refer, Mr. Speaker, to the Mount Lebanon Baptist Church of Baltimore. From July 1988, through July 1989, Mount Lebanon Baptist Church will be celebrating its "Year of Dedication," in recognition of the church's fifth move to its new home at 2812 Reisterstown Road.

Founded in February 1924, by the late Rev. Hiram Edmund Smith, in the South Baltimore community of Carrolltown, Mount Lebanon quickly outgrew its first home at 1410 Ward Street. Reverend Smith discovered a suitable building at 1330–32 Carroll Street and in 1925 the Mount Lebanon congregation found its way to the new site. Mount Lebanon celebrated its fifth anniversary here with the encouraging support from many prestigious ministers in Baltimore City, who joined the congregation every night of the week during the month of May 1929.

Mount Lebanon's 10th anniversary was celebrated after their third move to 1115–1117 West Saratoga Street, and under Reverend Smith's stellar leadership the church continued to grow and numerous members of the community dedicated their lives to Christ. On the first Sunday in June 1940, the members of Mount Lebanon marched from Saratoga Street to 742–744 George Street to complete its fourth move. It was at the new George Street edifice that Mount Lebanon became more involved in the community through outreach programs and extended worship services. Reverend Smith's committed and dedicated service to politics, community action, and his continued spiritual leadership, earned him many certificates and other accolades. Mount Lebanon celebrated its 25th anniversary at George Street, and continued to worship there for another 14 years.

The membership of Mount Lebanon Baptist Church continued increasing in numbers so that by September 1954, Mount Lebanon made its fourth move to 2320 Reisterstown Road. On the second Sunday in June 1961, Reverned Smith introduced Reverend Olin P. Moyd and his family to the Mount Lebanon congregation. Reverend Smith continued to lead the Mount Lebanon family until his death on June 2, 1964. During Reverend Smith's illness, Rev. Olin Preston Moyd, officiated and gave leadership to the Mount Lebanon congregation.

Sixty-four years after Reverend Smith founded Mount Lebanon, this proud and blessed church family made their way to their newest home at 2812 Reisterstown Road. Reverend Moyd has led Mount Lebanon Baptist Church since being unanimously voted into the pastorship in 1964.

A native of Jamestown, SC, Reverend Moyd received his formal education from Temple Theological Seminary, NY, Morgan State University, Howard University, and a Ph.D from St. Mary's Seminary and University. Additionally, Reverend Moyd has received a host of honorary degrees, traveled extensively throughout the United States, Africa, Europe, and the Holy Land. Pastor Moyd has contributed to many religious periodicals and is the author of Redemption of Black Theology, Turn Right and Go Straight; I Feel Good: 21 Scriptural Reasons Why I Feel Good and Why You Ought to Feel Good, Too; Holiness, Health and Wealth.

Under Reverend Moyd, the Mount Lebanon Food Co-op, Bookstore, Federal Credit Union, Radio Ministry and Open Line to the Good News, The Courier, SWAT [Soul Winning Action Team], were all organized and instituted. Outreach programs such as Mount Lebanon Bible College, the Hour of Prayer, and the Vacation Bible School were also implemented at this time.

Mount Lebanon Baptist Church has only had two ministers since her founding. Both of these men Rev. Hiram Edmund Smith and Rev. Olin Preston Moyd can truly be considered two of Baltimore's all-time best. The church has long played a very pivotal role in the African-American community, and very few ministries exemplify this tradition more than Mount Lebanon Baptist Church.

In closing Mr. Speaker, I am truly proud to have such a spirited and giving church family in my congressional district. To the Moyd family and to "The Church with the Family Atmosphere," I pray that the good Lord continues to watch over your new home and that you continue to spread your goodwill throughout our entire city.

SALUTE TO MYRTLE ANDERSON

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DYSON. Mr. Speaker, I rise today to salute Myrtle Anderson, administrator of the Shore Up!, Inc. Energy Conservation and Community Services Division, and the projects director for the Maryland Energy Assistance Program [MEAP]. Ms. Anderson is this year's recipient of the Most Valuable Player Award, which was given to her by the State of Maryland Department of Human Resources, Community Services Administration.

Mr. Speaker, I wish to share the words on this prestigious award with my colleagues. It reads, "Presented to Myrtle Anderson who has consistently been a Major League Player for the Maryland Energy Assistance Program, exemplifying the highest standards of professionalism and commitment."

The Shore Up!, Inc. Temporary Emergency Food Assistance Program [TEFAP], which is also under the supervision of Ms. Anderson, earned her the Governor's citation. Shore Up! Inc. also received a citation for its Temporary Emergency Food Assistance Program and Perdue Inc. received a citation for their work in transporting the food for Shore Up! Inc.

These awards and citations were presented at a 3-day conference, "Forging Partnerships for Change," which brought together State and local human service workers, business people, community members, volunteers, and elected officials involved in serving low-income people and people in crisis.

Mr. Speaker, I am sure that this Chamber shares the pride of Ms. Anderson and Shore Up!, Inc. in having received three of the five awards presented. I salute these valuable members of the Eastern Shore of Maryland for their untiring efforts on behalf of others.

BRAIN SCIENCE FOUNDATION

HON. TIMOTHY J. PENNY

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. PENNY. Mr. Speaker, I rise today to pay tribute to the Brain Science Foundation, which was created by the American Legion and the American Legion Auxiliary, Department of Minnesota. In particular, I want to recognize the leadership of Duane E. "Bud" Redpenning, former State commander, and Marion Headley, former State auxiliary president, who served in those positions at the time the foundation was established. Thomas P. Mullon, director of the Minneapolis Veterans' Administration Medical Center and Dr. David Brown, dean of the University of Minnesota Medical School, were also instrumental in developing this project.

The Brain Science Foundation is jointly endowed by the American Legion and American Legion Auxiliary of Minnesota and by the University of Minnesota. The American Legion and Auxiliary will raise $1 million for their portion of the funding and the university will match that amount. The $2 million will finance the operation of a brain sciences chair at the University of Minnesota Medical School. The professor selected for this chair will be internationally recognized in patient care, research, and education in the area of brain sciences and will direct the operation of the new brain sciences center located at the Veteran's Administration Medical Center in Minneapolis. The brain sciences center is a neuroscience patient care, research, and educational program which explores diseases of the nervous system and mental illnesses, making use of advanced technology and staff by experts from a variety of specialties, including neurosurgery, psychiatry, nuclear medicine, and neurology. The center is one of the very few in the world to concentrate its efforts in using the latest information for the care of patients with diseases of the brain or central nevous system.

Diseases of the central nervous system are of particular interest to veterans because over 40 percent of veterans entering VA hospitals are afflicted by these types of disorders. Diseases such as Alzheimers, Parkinsons, multiple sclerosis, epilepsy, depression, and schizophrenia are also increasingly common throughout our population. New diagnostic instruments such as computer axial tomography, positron emission tomography, and magnetic response imaging now make it possible to gain further knowledge of the brain. The University of Minnesota Medical School and VA Medical Center will collaborate in laboratory research and clinical studies using this technology for diagnosis and treatment of patients suffering from these diseases. Their work will enhance worldwide research in brain sciences and will make a significant contribution toward the body of medical and scientific knowledge in this area.

The cooperative endeavor represents a continuation of 40 years of affiliated medical research and education between the University of Minnesota and the Veterans' Administration. Even more significantly, it demonstrates how a veterans service organization—the American Legion and Auxiliary—a State university—the University of Minnesota—and the Federal Government—through the Veterans' Administration—can work together to achieve the mutual goal of improved health care for the citizens of our Nation and the entire world.

As a Minnesotan and a member of the House Veterans' Affairs Committee, I am tremendously proud of the leadership of Minnesota veterans in this project and express my deepest gratitude on behalf of the millions who will benefit from their endeavors.

THE HOLOCAUST MEMORIAL MUSEUM

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. GILMAN. Mr. Speaker, yesterday I had the priviledge of attending the solemn cornerstone laying of the new Holocaust Memorial Museum on Raoul Wallenberg Place in Washington.

This Holocaust Museum will be a permanent reminder to the American people of the stark inhumanity of the Third Reich.

It is extremely important that this memorial museum be established as a permanent reminder for only by remembering the past can we make certain that these tragic events will not be repeated.

Mr. Speaker, the President delivered an eloquent address at the time of the laying of the cornerstone which I would like to share with all of our colleagues by inserting his remarks into the CONGRESSIONAL RECORD at this point:

REMARKS BY THE PRESIDENT AT CORNERSTONE-LAYING CEREMONY FOR HOLOCAUST MEMORIAL MUSEUM

Thank you very much. Ladies and gentlemen, good morning. We gather here today, as well have been so eloquently told, here for a solemn, profound, saddening, and yet triumphant occasion. It's an occasion that commemorates all we have lost, the irreplaceable humanity whose monstrous end will ever testify to the hellish depths of human evil.

But it's an occasion that commemorates something else as well. It commemorates the seriousness of our intention—as human beings, as Americans, and, in the case of many here today, as Jews—to keep the memory of the six million fresh and enduring.

We who did not go their way owe them this: We must make sure that their deaths have posthumous meaning. We must make sure that from now until the end of days all humankind stares this evil in the face, that all humankind knows what this evil looks like and how it came to be. And when we truly know it for what it was, then and only then can we be sure that it will never come again.

Some people say evil of this degree is incomprehensible. They say we will never understand it. Some people even say that the word "evil" is insufficient to describe the Holocaust—and instead they use terms like mad, crazy, insane. I think they are wrong. What we saw there, at Treblinka and Belsen and Auschwitz and Dachau, was the image of the inferno. That may have been the ultimate purpose of those who made the Holocaust—a grotesque effort to hurl the Earth into the very pit of the serpent.

I believe the Holocaust is comprehensible. Indeed, we must comprehend it. We have no choice; the future of mankind depends upon it. And that's what we are here for—to lay the cornerstone for the United States Holocaust Memorial Museum, which will help us understand and make it impossible for us to forget.

The Holocaust Memorial Council is committed to this purpose. It is composed of Republicans and Democrats and Independents who understand that partisanship has no place here. There are Jews who serve on it, and Catholics, and Protestants, who understand that religious divisions have no place here. It is composed of those who came through the flames of the Holocaust and those who did not, for we've required no rules for membership except an unyielding commitment to our mission to keep the memory alive.

To fulfill that mission, the museum will study the history of the Holocaust, provide an invaluable resource for researchers, and bring together in one place the greatest array of information and knowledge on this necessary subject.

It will examine the nature and meaning of the continuing curse that is anti-Semitism, I think all of us here are aware of those, even among our own countrymen, who have dedicated themselves to the disgusting task of minimizing or even denying the truth of the Holocaust. This act of intellectual genocide must not go unchallenged, and those who advance these views must be held up to the scorn and wrath of all good and thining people in this nation and across the world.

And yet just as we must challenged it here at home, so too we must challenge anti-Semitism abroad. We know that in certain nations, an infamous and fraudulent document called "The Protocols of the Elders of Zion" is still being distributed and in some cases taught in school. This, the most profoundly cynical piece of anti-Semitic filth ever produced, is full of libels toward the Jewish people, particularly the horrifying "blood libel." We must send the message out to all the world—a blood libel against the Jewish people is a blood libel against all humankind, and no decent person will stand for it. (Applause.)

We know that the United Nations, whose peacekeepers were honored only last week for their service to the world, has yet to repeal its infamous resolution equating Zionism and racism. We know where such intellectual infamy can lead. The world has learned that when the truth is turned on its head, holocausts become possible.

And there are the subtler forms of anti-Semitism. There is the anti-Semitism that seeks to deny Jews their independent identity. In these days of glasnost, we here talk about liberalizing attitudes toward Judaism in the Soviet Union. But it is still true that a Jew must have courage to rise and say with pride, "Yes, I am a Jew, I wish to study Hebrew, and I wish to emigrate to the homeland of my people." Those who speak those words know what follows them—the despair of waiting for permission to do that which is a basic human right—to go where they will when they choose.

There are still tens of thousands—maybe even hundreds of thousands—of Soviet Jews who wait to leave the Soviet Union so that they may live free as Jews. And here, as we lay this cornerstone and vow that the Jewish people will never stand alone against tyranny, I want to ask the Soviet leaders a question. Where are those exit visas? Where are they? (Applause.)

And you and I and all Americans of good will are united in the challenge I propose to the Soviet leaders today. I say, let these people go. (Applause.)

The Jews of silence, Elie Wiesel called them two decades ago, but they're silent no more. They are obeying what the great theologian, Emil Fackenheim, called the 614th Commandment, the Commandment of Auschwitz. And that commandment is this: "Let there be Jews." That commandment is dear to the hearts of all. The Jewish people were on this Earth at the time of the pyramids. Those structures are still standing, and the Jews are still here. We must make sure that when the tall towers of our greatest cities have crumbled to dust in the turnings of time, the Jewish people will still be on this Earth—(applause)—to cast their blessings and remind all of us that this world and the people who live upon it have a history and, yes, even a destiny.

This week we celebrate one of the worst anniversaries of this century. Last Friday, 50 years ago, the European nations met in Munich and accommodated the expansionist designs of Adolf Hitler. Prime Minister Neville Chamberlain returned to Britain and proclaimed that he had brought "peace for our time." And 11 months later the Nazi tanks rolled into Poland and the war began. With the invasion of Poland the West awoke, may God be thanked, but at what—and the Nazis were finally defeated. But at what cost? At what cost?

Even to think about the cost makes sleep impossible. Had the West awakened to the meaning of Hitler, would those dead be with us today? Would there even be a need for this museum?

It's a question without an answer. But we must never allow ourselves to have to ask that question again. American troops who liberated the concentration camps saw things no human eyes should ever see. But if we in America remain strong—if we hold fast and true to the conviction that, yes, there are things worth fighting for, there are things worth dying for, and we will heed the call if we must—humans will never suffer so, nor will others be called upon to save them from such suffering.

Before I go, I'd like to tell those of you who do not know it already about a song that was sung in the camps. It was a Yiddish song, and like many of the camp ballads, it was not about the hunger and the torture and the dying, but about the coming of the Messiah. "What will happen," the song asks, "when the Messiah comes?" And the answer is: "When the Messiah comes, we'll have a banquet."

And the banquet the song describes is no ordinary repast. For that Messianic banquet, the guests will eat of the creature called the Leviathan, and will drink the finest and sweetest wines. And they will sit and watch while Mariam the prophetess dances for their entertainment. And then they will sit and listen as King David plays songs for them on his harp. And they will sit and listen to a lecture given by the wisest of men, King Solomon. And they will sit and study the Torah with Moses.

I hope you will forgive me if I say that I believe those who perished in the Holocaust have, after long suffering, attended that banquet. I cannot imagine our Lord would deny their request. We here will inscribe their names in human memory, and pray that God may bless us all. (Applause.)

IN TRIBUTE TO THE HONORABLE PHIL LANDRUM, SR.

HON. ED JENKINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. JENKINS. Mr. Speaker, almost 12 years ago, I took the oath of office in this Chamber for my first term of office. I succeeded a man who had represented the people of the Ninth District of Georgia in this body for 24 years. The Honorable Phil Landrum, Sr., left big shoes to fill.

Had I not known him personally and had I not worked for him, I still would have known him by his reputation. He left his mark on legislation of national significance, such as the Landrum-Griffin Labor Act and the Elementary and Secondary Education Act of 1965 and numerous pieces of trade legislation. His influence on the Appalachian regional programs broke down the barriers of poverty for many residents of the southern reaches of that mountain chain. And no one ever questioned that he took care of his people in the Ninth District and their future.

A staunch supporter of education, he was instrumental in the foundation of the Gainesville College and Lanier Technical Institute complex in Hall County. This year, the two institutions are celebrating the 25th anniversary. As a part of the anniversary recognition, the sister institutions have joined to honor the former Congressman by naming a street common to both institutions in honor of him and by setting up a scholarship program called the Phil M. Landrum Scholarship Fund for Ninth District students who have demonstrated financial need.

The marker for Landrum Education Drive will be unveiled and the scholarship program announced Tuesday, October 11, in a ceremony honoring him and his family at the institutions. It will be a pleasure for me to participate in that ceremony and host my former boss and mentor at a luncheon.

I join with many in saluting this outstanding educator and legislator and hope that these actions will help secure the Landrum legacy in north Georgia.

AN ASSAULT ON MEDICARE AND MEDICAID IN THE EIGHTIES: THE LEGACY OF AN ADMINISTRATION

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. ROYBAL. Mr. Speaker, contrary to the picture some would like to paint of an administration defending two critical health programs—Medicare and Medicaid, the truth is that this administration did everything it could do to cripple both programs. Their intent was clearly demonstrated by voucher proposals, administrative mishandling, lackluster leadership, failure to form partnerships with either the public or private sector, commitment to competition and marketplace solutions, and massive budget cutting proposals. A recent General Accounting Office study, conducted at my request, provides many of the details of an 8-year administration legacy of continued assaults on Medicare and Medicaid and provides the basis of this report.

For 8 years, this administration has attempted to cripple or perhaps even dismantle Medicare and Medicaid while Congress has been attempting to fend off the assaults and minimize the damage, especially to elderly, disabled, and poor beneficiaries.

This administration's 1987 budget proposal—just one of several big budget-cutting proposals—would have made a 5-year cut in Medicare of $54.5 billion and in Medicaid of $18.1 billion. Medicare part B premiums, already outrageously high, would be 40 percent higher. If this administration had had its way, Medicaid, a program that even now protects less than one-half of the poor, would be capped and, in effect, forced to protect even fewer poor people. Time and time again, Congress rejected this administration's attacks and shielded the health safety net for millions of poor, disabled and elderly.

Even so, GAO documents that Medicare was cut by as much as $35.9 billion—Congressional Budget Office estimates—during the period from 1981 to 1987. When adjusted for inflation and separating out beneficiary premium increases, GAO estimates that Medicare was still reduced by $17.3 billion for the period 1980 through 1986. The magnitude of these cuts would have been much greater if the years 1987 and 1988 could have been included in the analysis and especially if the administration's proposals would have been enacted.

In addition to cutbacks in health care provider payments, these cuts resulted in Medicare beneficiary out-of-pocket costs rising $8 billion—GAO estimates—more than explained by inflation alone during the 1980–86 period. This is an inflation-adjusted increase of 42 percent for each Medicare beneficiary. According to our own Committee on Aging study in 1986, these cuts, coupled with unrestrained price inflation for other health care, resulted in elderly out-of-pocket health costs rising 1½ to 2 times faster than their incomes.

For Medicaid, the GAO study lays out the crippling administration proposals made in the early 1980's. Their fiscal year 1982 Medicaid capping proposal alone would have cut $15 billion from 1981 to 1985. Even with congressional resistance, enacted Medicaid cuts in 1981 and 1982 totaled as much as $4 billion and resulted in 26 States imposing or expanding cost-sharing on poor beneficiaries.

The huge 1981 and 1982 cuts dwarf the modest improvements that Congress was able to get enacted in later years. With Medicaid covering about 40 percent of America's poor and with 37 million Americans being uninsured, this administration should have been pushing for Medicaid coverage for 100 percent of poor people, not for cutbacks in already woefully inadequate protection.

Sadly, the legacy of cuts is matched by a legacy of, at best, indifference to the 37 million with no health insurance and the 200 million with no long-term care protection. This administration's reluctance to fully address itself to the critical health issues of our time and the national disgrace of the uninsured and underinsured, leaves a huge health and long-term care agenda for the next administration.

It is now up to the people of America, the Congress, and the next administration to make sure that Medicare and Medicaid truly protect the elderly, the disabled, and the poor and that full health and long-term care is within the reach of every American regardless of age or economic status.

Mr. Speaker, I ask that the analysis conducted by my House Select Committee on Aging staff, with the assistance of the General Accounting Office, be included in the RECORD. The analysis follows:

AN ASSAULT ON MEDICARE AND MEDICAID IN THE EIGHTIES: THE LEGACY OF AN ADMINISTRATION

(A Report by the Chairman of the Select Committee on Aging, House of Representatives)

THE ENVIRONMENT—ONGOING ADMINISTRATION PRESSURE ON MEDICARE AND MEDICAID BUDGETS

Medicare and Medicaid have been under ongoing pressure from this Administration since they took office in 1981. At a time when poor and near poor Americans needed more Medicaid-type protection, this Administration was committed to a policy of less Medicaid protection and less federal support. When elderly Americans were facing evergrowing long term care costs and had finally received some modest relief from the excessive out-of-pocket cost burden of the pre-Medicare era, this Administration chose to igore long term care and to bring about an escalation of out-of-pocket costs. This pressure on two critically needed health care programs has continued throughout the tenure of this Administration and is their legacy.

Medicaid. In their first full budget proposal (fiscal year 1982), the Administration pushed for a Medicaid cap which would have cut an already inadequate program by over $15 billion during the subsequent five-year period (See Table 1). In 1983, only 45 percent of the poor were covered by Medicaid—down from an already low 53 percent in 1979. Congress rejected much of that proposal but Medicaid was reduced by nearly $3 billion during that same period—about one-fifth the size of the Administration's requested cut.

Next year and, in fact in most subsequent years, Medicaid remained a prime Administration target. For the fiscal year 1983 budget, the Administration proposed cutting Medicaid again and slashing deeply. Their package of proposals would have cut Medicaid by over $12 billion for fiscal years 1983-87. Again Congress rejected most of the cuts, but still Medicaid was cut by just over $1 billion for the five-year period—about one-tenth the size of the Administration's original proposal.

Later years saw the Administration propose first, in the FY1985 budget, to shrink federal matching payments by three percent each year. The FY1986 budget called for a first-year reduction of $1.0 billion and cost increase limits in subsequent years. For the FY1987 buuget, the Administration proposed capping federal funds—a five-year cut estimated at $15.5 billion.

In the FY1988 budget, the Administration tried again to place a cap on federal cost-sharing; a cap which would have cut $18.4 billion from Medicaid. Only in their most recent budget proposal—the last year of this Administration—did they finally back away from pushing huge Medicaid budget cutbacks. Even then, smaller cutbacks were again pushed by the Administration.

Medicare. The attempt to dismantle Medicare took many forms over the last eight years. Proposals were made to institute a voucher program but with no commitments to ensure that vouchers could buy Medicare-level coverage or that vouchers would keep pace with future costs of buying Medicare-level coverage. Congress said "no" to vouchers year after year. Congress said "no" to any attempt by this Administration to abdicate federal responsibility for Medicare protection.

Over the past eight years, this Administration's support for the long term viability of Medicare has often been brought into question. While a direct attempt to "means-test" Medicare was not made by the Administration, it was an underlying theme of the voucher approach and was constantly being raised by friends of the Administration. Few other issues have the potential for undermining Medicare as does the means-testing issue. Since its inception, Medicare has been a social insurance approach to a major societal problem, i.e., protecting the health of older and disabled Americans. Turning it into a welfare-type program by imposing any type of means-test on benefits would threaten the broad societal support upon which the viability of Medicare depends.

The early years (fiscal years 1982 and 1983) of this Administration were ones in which they tried to repeal several benefit expansions which had only recently been enacted into law. Quality was clearly not a priority as evidenced by their proposals to phase out the Professional Standards Review Organizations (PSRO) and to cut back on nursing facility quality review. Beneficiaries were becoming a "priority" target as shown by attempts to delay eligibility, anually increase the Part B deductible, and impose a 5-percent coinsurance on home care. Congress again acted to reject, or at least reduce, the impact of the Administration's proposed cuts (See Table 2).

By the latter years of this Administration, Medicare became a higher priority target and the proposed cuts were much larger. By fiscal year 1987, the Administration's budget was proposing a huge package of provider and beneficiary cuts and premium increases—$54.5 billion over five years. Nearly one-half of these massive cuts were targeted at the beneficiary and would have shifted to beneficiaries as much as $22.5 billion for the five-year period. One proposal—to increase the Medicare Part B premium by 40 percent—would have cost the elderly $17 billion between 1987 and 1991.

These massive cuts were proposed at the same time during which a House Committee on Aging study, based on information supplied by the Health Care Financing Administration, estimated that out-of-pocket health care costs were already rising about twice as fast as elderly income. Furthermore, the elderly were already paying a larger percentage of their incomes (16 percent in 1986) for health care than when Medicare and Medicaid began. The percentage was substantially larger than in either 1977 or 1980—the years immediately preceding this Administration. Assuming no further cuts, the elderly were projected, by the 1986 House Committee on Aging study, to spend as much as 18.5 percent of their incomes for health care by 1991, nearly 1 of every 5 dollars of income.

In spite of Administration pressure, Congress prevailed and rejected virtually all of the Administration's FY 1987 proposals for increasing beneficiary costs. For fiscal year 1988, one of the last years of this Administration, the pressure for cuts continued as did Congressional resistance to those cuts. Administration attempts to increase Medicare beneficiary premiums by 40 percent, index the Part B deductible and delay eligibility were turned back by the 100th Congress.

Even for 1988 and 1989—as concern was growing over health care access and quality, the Administration attempted to severely reduce health care provider payments while showing little interest in the consequences of those reductions. Time and time again during the 1980s, the Congress, under the same pressure of rising budget deficits, requested estimates of the impact of these proposals. Time and time again, the only information provided by this Administration was the estimated impact on the federal budget and not the estimated impact on beneficiaries or on their health care providers. Many of the health care provider payment cuts were pushed through the Congress in spite of deep Congressional concern over the impact of these cuts on health care access and quality.

Only in the late years of this Administration, under strong pressure from Congress, did they finally decide "quality" was important and try to claim ownership of the quality issue. Only in the late years did they recognize that some hospitals were being squeezed too hard by cost containment and that hospitals needed to be treated differently. However, not even in the late years of this Administration did they realize that their policies of denying coverage of certain services, especially home health care, was denying beneficiaries access to services they needed and were entitled to. The Administration never did discover the problem of rising out-of-pocket health costs and never did try to provide any relief.

TABLE I.—THE ADMINISTRATION'S MAJOR MEDICAID BUDGET PROPOSALS FOR FISCAL YEARS 1982–88

[Estimated impact of budget cuts, by fiscal year, in millions of dollars]

Administration Medicaid proposals	Year 1	Year 2	Year 3	Year 4	Year 5	Years 1–5 [1]	Legislation enacted
Fiscal year 1982:							
Establish cap on Medicaid appropriations that would be adjusted annually	1,039	2,012	2,963	3,950	5,055	15,019	OBRA–81 reduced federal sharing rates for 3 years states could avoid reductions by taking specific actions and/or holding down the percentage increase in Medicaid costs.
Fiscal year 1983:							
Eliminate federal sharing for bying recipients into Medicare and reduce sharing rate for family planning services.	258	276	300	322	344	1,500	Not enacted.
Reduce federal sharing for costs of services and recipients not required to be covered by federal law.	600	670	740	810	890	3,710	Do.
Require recipient copayments for certain services and authorize copayments for other services.	329	370	415	460	520	2,094	TEFRA authorized nominal copayments for most services.
Allow states to attach liens on property of the institutionalized	183	200	221	241	263	1,108	TEFRA included some of the proposed modifications or variations of them.
Reduce period of eligibility from 4 months to 30 days after recipients lost AFDC because of increased earnings.	75	85	95	105	115	475	Not enacted.
Eliminate utilization review requirements for hospitals and skilled nursing facilities	16	17	17	17	17	84	Do.
Eliminate, by fiscal year 1989, federal match in erroneous expenditures when thresholds are expected.	59	130	225	329	363	1,106	Similar provision included in TEFRA.
Establish limitation on total federal funds available for sharing in state administrative costs.	227	294	404	466	542	1,933	Not enacted.
Total	1,747	2,042	2,417	2,750	3,054	12,010	
Fiscal year 1984:							
Reduce federal matching payments by 3 percent for fiscal year 1985 and succeeding years.	(2)	(2)	(2)	(2)	(2)		Do.
Change provision concerning third party payments	(2)	(2)	(2)	(2)	(2)		Similar provision included in COBRA.
Require copayments for certain services and permit them for other services	(2)	(2)	(2)	(2)	(2)		Not enacted.
Eliminate utilization review requirements for hospitals and skilled nursing facilities	(2)	(2)	(2)	(2)	(2)		Do.
Fiscal year 1985:							
Make permanent the provision that limits federal payments to state	567	493	541	592	642	2,835	Do.
Require copayments for certain services and authorize them for other services	270	278	289	299	309	1,445	Do.
Total	837	771	830	891	951	4,280	
Fiscal year 1986:							
Cap federal Medicaid cost growth to medical consumer price index and give States flexibility.	1,000	2,091	3,202	4,491	5,885	16,669	
Fiscal year 1987:							
Place cap on federal funds available for Medicaid sharing	1,000	2,323	3,155	4,029	5,024	15,531	Do.
Eliminate special higher sharing rates for administrative costs	260	268	278	288	297	1,391	Do.
Other proposals	130	231	255	253	276	1,145	
Total	1,390	2,822	3,688	4,570	5,597	18,067	
Fiscal year 1988:							
Place cap on federal sharing in Medicaid	1,300	2,544	3,591	4,768	6,152	18,355	Do.
Eliminate federal requirements for state payments rates	(3)	(3)	(3)	(3)	(3)		Do.
Eliminate increased matching rates for administrative costs	255	265	273	280	286	1,359	Do.
Total	1,555	2,809	3,864	5,048	6,438	19,714	

[1] In these tables, "Year 1" refers to the same year as is the year of the budget proposal. For example, for the fiscal year 1982 proposal, "Year 1" is fiscal year 1982 and "Year 2" is fiscal year 1983.

[2] Not available.

[3] Not available or no savings indicated.

Sources: General Accounting Office, Executive Office of Management and Budget, Department of Health and Human Services.

TABLE 2.—THE ADMINISTRATION'S MAJOR MEDICARE BUDGET PROPOSALS FOR FISCAL YEARS 1982–88

[Estimated impact of budget cuts and beneficiary increases, by fiscal year, in millions of dollars]

Administration medicare proposals	Year 1	Year 2	Year 3	Year 4	Year 5	Years 1–5 [1]	Legislation enacted
Fiscal year 1982:							
Modify contracting method for claims processing to include competition	23	47	78	119	127	394	DEFRA authorized less extensive authority for fixed price contracting—two competitive contracts each for parts A and B in fiscal years 1985 and 1986. OBRA–86 extended the authority through fiscal year 1989.
Eliminate routine nursing cost differential	250	285	350	435	530	1,850	OBRA–81 reduced the differential and TEFRA eliminated it.
Eliminate occupational therapy as qualifying basis for home health care coverage	35	41	46	52	58	232	Enacted as part of OBRA–81.
Eliminate part A coverage of alcohol detoxification facility services	70	90	110	120	130	520	Enacted in OBRA–81.
Eliminate additional dental coverage	17	19	22	25	28	111	Not enacted.
Eliminate temporary delay in periodic interim payments	522	0	0	0	0	522	Enacted in OBRA–81.
Repeal utilization review requirements	66	70	103	106	108	447	Not enacted.
Eliminate coverage for pneumococcal vaccine	55	45	45	50	55	250	Do.
Total	1,038	597	754	907	1,036	4,326	
Fiscal year 1983:							
Delay eligibility for benefits until the month after the month in which a person reaches age 65.	131	165	196	228	262	982	Do.
Annually increase part B deductible by percentage increase in consumer price index	46	105	188	250	339	928	Do.
Make Medicare secondary payer for persons age 65 to 70 covered by employer-sponsored health plans.	287	368	421	478	536	2,090	Similar provision enacted in TEFRA.

Administration medicare proposals	Year 1	Year 2	Year 3	Year 4	Year 5	Years 1–5 [1]	Legislation enacted
Require coverage of federal employees for part A	594	794	858	964	1,010	4,220	Similar provision enacted in TEFRA.
Impose 5-percent coinsurance on home health care	35	65	70	80	85	335	Not enacted.
Change reasonable charge update to October 1 and limit increase in prevailing charge levels.	257	293	300	296	298	1,444	DEFRA changed fee screen year to October 1 and froze physician fees; subsequent legislation extended the freeze and changed the fee screen year to January 1.
Eliminate 100-percent reimbursement rate for certain radiologists and pathologists	160	210	250	280	320	1,220	Enacted in TEFRA.
Reduce hospital reimbursement by 2 percent	688	889	995	1,149	1,304	5,025	TEFRA limited the rate of increase in Medicare payments per case for a 3-year period.
Eliminate utilization review requirements for hospitals and skilled nursing facilities	83	86	89	93	96	447	Not enacted.
Total	2,281	2,975	3,367	3,818	4,250	16,691	
Fiscal year 1984:							
Use Medicare economic index to increase annually the part B deductible	46	119	198	(2)	(2)	(2)	Do.
Increase part B premiums to 35 percent of program costs by 1988	151	245	1,292	(2)	(2)	(2)	TEFRA set the premium at 25 percent of part B costs, and this has been extended a number of times, currently through 1989.
Reduce hospital payment rate to market basket index	80	170	200	(2)	(2)	(2)	Modified provision included in DEFRA.
Freeze physicians' reasonable charge levels for 1 year	700	900	1,000	(2)	(2)	(2)	DEFRA included a physician fee freeze provision.
Eliminate utilization review requirements for hospitals and skilled nursing facilities	(3)	(3)	(3)	(3)	(3)	(3)	Not enacted.
Clarify provisions related to Medicare recovery from liable third parties	(3)	(3)	(3)	(3)	(3)	(3)	Similar provision included in DEFRA.
Establishing hospital prospective payment system	(3)	(3)	(3)	(3)	(3)	(3)	Modified provision in Social Securiy Amendments of 1983.
Total	977	1,434	2,690	(2)	(2)	(2)	
Fiscal year 1985:							
Use Medicare economic index to increase part B deductible annually	37	84	155	242	341	859	Not enacted.
Provide for eligibility for Medicare in first full month eligibility requirements are met	249	287	320	353	397	1,606	Do.
Increase part B premium to 35 percent of program costs by 1990	290	1,053	2,200	3,512	5,087	12,142	DEFRA extended through 1987 the TEFRA provision that premium produce 25 percent of est. program costs.
Prospective payment for ambulatory surgery in hospital outpatient department	(3)	(3)	(3)	(3)			Similar provision in OBRA–86.
Total	576	1,424	2,675	4,107	5,825	14,607	
Fiscal year 1986:							
Freeze DRG rate	1,710	2,386	2,428	2,679	2,940	12,143	Reduced, but by lower amount.
Freeze nursing homes, home health, labs, direct medical eduation, PPS exempts	330	685	1,140	1,540	1,975	5,670	Some reductions.
Freeze physician fees	500	425	350	425	525	2,225	Reduced, but by lower amount.
Establish voucher program; Eliminate age 69 cap on Medicare secondary payor status for working elderly.	373	481	547	604	677	2,682	Voucher not enacted.
Reduce indirect medical education add-on by one-half	695	1,115	1,430	1,595	1,760	6,595	Reduced, but by lower amount.
Raise Part B premium to 35 percent of costs by 1990	165	678	1,725	3,046	4,651	10,265	Not enacted.
Require home health copayment after 20 visits; Delay eligibility by about one month; Index Part B deductible to Medicare economic index.	290	495	605	750	900	3,040	Do.
Total	4,063	6,265	8,225	10,639	13,428	42,620	
Fiscal year 1987:							
Establish voucher program	−50	−50	−50	−50	−50	−250	Voucher not enacted.
Increase part B deductible to $100 and annually thereafter increase by percentage increase in the Medicare economic index.	310	490	615	730	850	2,995	Not enacted.
Provide for eligibility for Medicare in first full month all eligibility requirements are met	265	300	325	350	380	1,620	Do.
Require 1-percent coinsurance for home health services	100	110	130	140	160	640	Do.
Over a 5-year period increase part B premium to 35 percent of program costs	725	1,787	3,240	4,830	6,620	17,202	Do.
Make Medicare secondary payer for disabled persons covered by employer-sponsored group health plans.	540	585	635	695	770	3,225	Similar provision in OBRA–86.
Apply deductible and coinsurance to services provided in ambulatory surgical centers	10	10	10	10	10	50	Similar provision incl. in OBRA–86.
Reduce indirect medical education add-on payment to hospitals	990	1,335	1,490	1,640	1,795	7,250	OBRA–86 extended the COBRA adjustments through fiscal year 1989. OBRA–87 reduced indirect medical education adjust. but not as much as proposed.
Freeze fee schedule rates for clinical laboratory tests	55	40	40	45	50	230	OBRA–87 froze Medicare payments from January 1, 1988, through March 31, 1988, and set ceilings thereafter.
Reduce hospital payments for direct medical education costs	495	660	805	960	1,135	4,055	Similar provision included in OBRA–86.
Require uniform modifications to the Medicare economic index	80	40	5	0	0	125	OBRA–86 set the amount of increase in index for 1987 and prohibited HHS from revising the method of computing it.
Updating End-stage Renal Dialysis Rates	1	1	1	1	1	5	
Establish prospective payment for reimbursing hospital capital costs	456	1,436	2,280	3,185	4,099	11,456	
Reform physician payments	432	543	655	744	850	3,224	
Other regulatory and legislative proposals	331	486	568	612	684	2,681	
Total	4,740	7,773	10,749	13,892	17,354	54,508	
Fiscal year 1988:							
Annually adjust part B deductible by percentage increase in the Medicare economic index	25	75	150	200	275	725	Not enacted.
Permanently set part B premium at 25 percent of program costs for current enrollees and 35 percent for new enrollees.	571	1,829	3,059	4,449	5,759	15,667	Do.
Voucher proposal to pay private plans	−50	−50	−50	−50	−50	−250	Do.
Secondary payer provisions to include disabled beneficiaries	120	150	165	180	195	810	Enacted in OBRA–86 and modified by OBRA–87.
Eliminate separate occupational therapy benefit	60	70	85	95	110	420	Not enacted.
Restrict optometrists' services	210	230	260	290	320	1,310	Do.
Provide for eligibility for Medicare in first full month all eligibility requirements are met	295	335	370	395	425	1,820	Do.
Require coverage of all state and local government employees	1,600	2,200	2,200	2,200	2,200	10,400	COBRA requires Medicare coverage of state and local government employees hired after December 1985. This extension was not enacted.
Permit determination of PPS update factor	510	620	660	710	750	3,250	OBRA–87 set update rates for fiscal year 1988 and fiscal year 1989.
Restrict payments for direct costs of medical education	310	365	375	385	395	1,830	Similar provision in OBRA–86.
Reduce payments for indirect costs of medical education	835	1,165	1,265	1,345	1,430	6,040	OBRA–86 extended the COBRA adjustments through fiscal year 1989. OBRA–87 reduced the indirect medical education adjust. but not as much as proposed.
Set rate for capital-related costs	0	0	350	360	360	1,070	Similar provision enacted in OBRA–87.
Require reduction in payments for cataract surgery	100	100	100	100	100	500	Related provision in OBRA–87.
Pay radiologists, anesthesiologists, radiologists through PPS	10	50	120	190	290	660	Do.
Change provision concerning durable medical equipment	15	20	25	25	30	115	Similar provision in OBRA–87.
Eliminate PIP for certain hospitals	1,180	90	100	90	90	1,550	Not enacted.
Change Prompt Payment	890	305	355	160	180	1,890	Related provision in OBRA–87.
Limit customary charges for new physicians	70	120	130	140	160	620	Do.
Total	6,751	7,674	9,719	11,264	13,019	48,427	

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[1] In these tables, "Year 1" refers to the same year as is the year of the budget proposal. For example, for the fiscal year 1982 proposal, "Year 1" is fiscal year 1982 and "Year 2" is fiscal year 1983.

[2] Not available.

[3] Not available or no savings indicated.

Sources: General Accounting Office, Executive Office of Management and Budget, Department of Health and Human Services.

MEDICARE—SURVIVING THE 1980'S, BUT STILL UNDER FIRE

Any analysis of Medicare in the 1980s cannot help but document a program that has high value in the eyes of Americans of all ages and has been under heavy fire. Under the pressure of rapidly rising costs for the federal government, there was little question that Medicare would face major changes in the 1980s. The only question was how the changes would be handled and what would be the consequences. While Congress was trying to make rational policy under difficult conditions, this Administration was trying to find ways to dismantle the backbone of a health care payment system that more than 30 million elderly and disabled Americans depend on.

Administration. Many examples of administrative action and inaction demonstrate this Administration's use of regulation, guidelines, and administrative procedure to undermine Medicare. Through administrative inaction, quality assurance and protections were either neglected or, when Congress intervened, were implemented much later than intended by Congress. Through administrative action, Medicare has become increasingly complex and difficult for both beneficiaries and health care providers to understand.

Through administrative interpretation of Medicare laws, beneficiaries are denied access to critically needed care. A major example of their use of "interpretation" was the denial of home care benefits. Not until this summer did the courts finally step in and order a stop to these denials and a restoration of the full home health benefit.

Through administrative mishandling, they took the Health Maintenance Organization (HMO) program, a program with strong bipartisan support and a bright future, and turned it into a program hit by mismanagement and abuse. House Committee on Aging hearings in the mid-1980s raised major questions with respect to the largest Medicare HMO, International Medical Centers (IMC) and found the Administration slow to take corrective action. Later it was found that high level Administration officials and advisors had close ties to this troubled HMO; several of these ended up with high level positions in IMC. Throughout this period, the Administration's approach to the HMO program was one of "laissez-faire" rather than handling it with appropriate care.

Quality. A threat of a different kind centers around the issue of health care quality for Medicare beneficiaries, as well as all other Americans. In its early years, this Administration, as part of its "de-regulation" effort, made it clear that they did not believe the federal government should play a major role in ensuring quality of care. One of their first actions was to de-regulate the nursing home industry, an area of critical importance to any American who needs nursing home care and to any family member who has deep concerns when seeing a parent, spouse or child enter a nursing home. Rather than deftly balancing the need to ensure the quality of care with the need to avoid over-regulation, the Administration's response was virtual abdication of responsibility.

Only after experiencing tremendous resistance from Congress, nursing home reform groups and elderly groups, and the release of a major study by the Institute of Medicine, did the Administration accept a carefully structured federal program of quality assurance for nursing homes. In many ways, this experience has been repeated in other areas of health care quality assurance. Setting up an adequate program of external review of Health Maintenance Organizations occurred only because Congress acted. Moving Medicare's quality assurance program into areas such as ambulatory care again occurred only because Congress acted. No matter how much the Administration would like to claim "quality" as their issue, they were at best the followers of, and often the opposition to, any effort to ensure quality in American health care.

Coverage. When it came to addressing the adequacy of Medicare benefits and protection, the Administration's first response was to remove benefits enacted into law just before they came into office. When an effort was made to address the inadequacies of a mental health benefit which had failed to keep pace, the Administration was again there in opposition. In spite of their efforts, the mental health improvements were enacted as part of the 1987 reconciliation bill. Throughout this Administration's two terms, they have outrightly opposed any effort to strengthen Medicare protection, with the one notable exception being the Medicare Catastrophic Coverage Act of 1988.

While giving the Administration some credit for having finally recognized a major shortcoming of the Medicare protection package, one must note that their catastrophic health insurance proposal was extremely limited. It did little or nothing to address the problems of low and middle income beneficiaries, the problem of paying for prescription drugs and the problem of paying for long term care. The latter problem was clearly the greatest concern for both elderly and disabled Medicare beneficiaries.

Further, their original proposal and their threats of veto set the stage for a catastrophic package whose financing fell totally upon the backs of current beneficiaries. Any effort to soften the blow by incorporating some non-beneficiary financing (for example, to cover low income beneficiaries) faced a veto by this Administration and ultimately was turned back.

In spite of the many statements that this catastrophic package would bring "peace of mind" to millions of elderly and disabled Americans, the reality is that the bill's provisions which had Administration support provide "peace of mind" only for those whose only concern is large acute care bills and who have the money to pay the nearly $2000 in out-of-pocket costs required before that catastrophic cap takes hold.

Cost restraint. As stated earlier, this Administration attempted year after year to make major cutbacks in the Medicare program. While many of the proposed cutbacks were turned back by the Congress, many cuts were made in health care provider payments. According to a General Accounting Office report prepared at the request of the House Committee on Aging, the Congressional Budget Office estimates that at least $35.9 billion were cut from Medicare for fiscal years 1981-87.

Medicare—Cumulative cuts/savings, fiscal years 1981-87 [1]

[In billions]

Law (date enacted)	*CBO estimate*
ORA (12/5/1980)	$2.3
OBRA-81 (8/13/81)	3.2
TEFRA (9/3/82)	23.1
DEFRA (7/18/84)	6.1
COBRA (4/7/86)	2.0
OBRA-86 (10/2/86)	−1.0
Total	35.9

[1] See footnote at end of article.

Though not included in the GAO analysis for 1981-87, the Health Care Financing Administration has also provided estimates for the impact of the 1987 Omnibus Budget Reconciliation Act. Looking at the budget estimates for the first two years (fiscal years 1988 and 1989) of the act, over $4.3 billion were cut from Medicare. For those two years, the largest cuts were in hospital and physician payments. For the later years of this Act, the biggest impact is on physician payments and beneficiary premiums and cost-sharing. Though we do not have estimates for the impact of earlier bills on fiscal years 1988 and 1989, we do know that the total impact of Administration-initiated cuts and premium increases total well in excess of $40 billion for fiscal years 1981 through 1989.

While this era of cost restraint did result in an improvement in the solvency of the Medicare Hospital Trust Fund, it is important to remember that any progress is fairly short-term and fails to address the problems we face in the years 2010 and beyond. While the Medicare Trust Fund is now projected to be solvent through the year 2005, this Administration chose not to bring any leadership as to how Medicare will serve the Medicare beneficiaries of the next century.

The new hospital prospective payment system, coupled with constraints on DRG (Diagnosis Related Group) payment levels, held down costs for the federal government but it also placed a large burden on beneficiaries. The Administration not only squeezed down severely on hospital payments but also moved to deny access to nursing home and home health benefits. As a result, beneficiaries, many of whom were discharged from the hospital "sooner and sicker," bore much of the burden.

Beneficiary financial impact. During the Administration's era of cost restraint for the federal government, beneficiary costs rose very quickly. For elderly beneficiaries, costs climbed one and one-half to two times faster than their Social Security income. In one year alone (1988), the Medicare Part B premium rose by 38.5 percent; in 1986, the Part A hospital deductible rose by 23 percent.

As a result, elderly out-of-pocket costs rose from 12.7 percent of income in 1980 (the year before this Administration took office) to 16 percent in 1986. As a result, the elderly are spending more of their limited incomes for health care than when this Administration took office eight years ago and when Medicare and Medicaid began more than 20 years ago. The future looks even bleaker.

MEDICAID—SURVIVING THE 80S, BUT SERIOUSLY DAMAGED

The story of Medicaid during this Administration takes less time to tell but the impact is no less severe. As stated earlier, the most telling part of this Administration's legacy is seen in the percentage of

America's poor covered by Medicaid as it dropped substantially from an already too low 53 percent in 1979 to closer to 40 percent currently. Only about two out of five poor Americans are now covered by Medicaid—the program that was supposed to protect poor Americans.

Budget Cuts. Even inaction and indifference would have been better than what this Administration chose to do through the budget. As stated earlier, their budget proposals for fiscal years 1982 and 1987 would have each resulted in a five-year budget cut of nearly $15 billion. Though Congress turned back much of what the Administration was pushing, the Omnibus Budget Reconciliation Act of 1981 (OBRA-81) and the Deficit Reduction Act of 1982 (DEFRA) took their toll. Those two acts alone cut just over $4 billion from what was already an inadequate program of protection.

Some might point to the modest improvements made in subsequent years as a defense of earlier cuts. However, these improvements represent only 10 percent of what was lost in OBRA-81 and DEFRA. Further, none of these improvements were backed by the Administration. In fact, most of these improvements faced outright opposition by this Administration.

Medicaid—Cumulative cuts/savings, fiscal years 1981–87[1]

[In billions]

Law (date enacted)	*CBO estimate*
ORA (12/5/1980)	$−0.008
OBRA-81 (8/13/81)	2.885
TEFRA (9/3/82)	1.141
DEFRA (7/18/84)	−.159
COBRA (4/7/86)	−.091
OBRA-86 (10/21/86)	−.170
Total	$3.598

[1] See footnote at end of article.

A Lack of Leadership. Even when confronted by the increasing numbers of uninsured Americans and the large proportion of elderly Americans at risk of long term care induced impoverishment, this Administration chose not to exert any leadership on the issue of dealing with the problem of Americans who lack health insurance. They chose not to exercise any leadership of or to develop any partnerships with the States who share the responsibility to protect America's poor and uninsured. As a result, 37 million Americans are uninsured for any type of health care—up from the already too high figure of 29 million uninsured in 1979. Even now, more than 200 million Americans are underinsured for long term care. For all practical purposes, only Medicaid provides any real long term care protection.

This Administration's record of action to protect the uninsured and underinsured is almost non-existent. Initiatives to protect and care for pregnant women and their infants came from Congress and survived in spite of Administration opposition. Initiatives to better protect the spouses of Medicaid nursing home residents from impoverishment came from the States and the Congress. The latest action to protect Medicaid spouses was Congress' addition of Medicaid spousal protection to an inadequate Administration catastrophic health insurance proposal—again acting in the face of Administration opposition.

Family Protection. Finally, much has been said by this Administration over the past eight years about their concern for and commitment to the American family. Yet the Administration opposed many efforts to support families, especially poorer families. They opposed any attempt to extend Medicaid to protect "intact" families who are poorer regardless of whether or not they were working. They opposed any attempt to protect the income and assets of the spouses of Medicaid nursing home residents and to ensure that couples would not have to divorce in order to keep even an minimum income for the spouse, usually the wife, remaining in the community. They opposed any attempt to expand Medicaid coverage to poorer pregnant women, infants and children even though good health care is essential to the development of a "healthy" family.

CHALLENGES FOR THE NEXT ADMINISTRATION AND 101ST CONGRESS

The next Administration and the 101st Congress will face many and massive challenges when it comes to health and long term care policy. Their ability and willingness to take on these challenges has been seriously eroded by a diminished tax based resulting from the tax cuts in the early 1980s, from a huge commitment to military spending, from upwardly spiraling and uncontrolled health care cost increases and from budget deficits totaling hundreds of billions of dollars annually. Still, the American people, in poll after poll, have sent a clear message that they want, and they expect, leadership from the federal government on health and long term care.

With respect to the 37 million uninsured Americans (up from 29 million in 1979), the next Administration and Congress need to look at a wide range of proposals for ensuring financial access to needed health care. Whether it be through an expansion of Medicaid eligibility and employer-sponsored health benefits or through more comprehensive approaches, we can no longer sit by and watch millions of Americans slip through the health care "safety net."

With respect to the 200 million-plus Americans who are uninsured or underinsured for long term care, the risk of long term care induced improvement remains great. According to a 1987 House Committee on Aging study, 84 percent of the elderly living alone would spend their income down to either the federal poverty level or Medicaid eligibility level after only 6 months in a nursing home. Given the magnitude of the problem, a wide range of public and private approaches deserve serious and urgent consideration. While some may be tempted to push for "private-sector-only" approaches, virtually everyone agrees that the private sector cannot ensure protection for all Americans, especially lower and middle income Americans. What is needed is a comprehensive national long term care policy that utilizes the best of the public and private sector and ensures protection for all Americans, regardless of age or income.

Any attempt to address access and insurance protection cannot succeed unless it is coupled with strong quality assurance and cost restraint programs. Already health care costs are rising much faster than is our ability to pay for them. In the case of the elderly, a House Committee on Aging study estimates that health care costs will continue to rise as much as twice as fast as their income. For the nation as a whole, 11 percent of the Nation's gross national product (GNP) was spent for health care in 1987. By the year 2000, more than 15 percent of the GNP is projected to be spent on health. While cost restraint is desperately needed, doing it well and without causing greater injury will require the skill of a team of "policy" surgeons.

Any discussion of health care remains incomplete without discussing quality assurance. With all the pressures on the health care system, we must be able to assure our parents, our children and ourselves that we are receiving the quality of health care that we need and deserve. No longer can we talk about quality assurance for Medicare only or for Medicaid only. Instead, the time has come to bring together health professionals of all backgrounds and develop a quality assurance system that is fair to health professionals and protects all Americans, regardless of who pays the bills.

While there is a need to ensure access, affordability and quality for all Americans, some Americans will need special attention. Just two examples of these special challenges are the two "A" diseases—AIDS and Alzheimer's. Each disease, and the people who suffer from these disease, needs to receive extra attention in terms of health care, health research and health promotion. Far too few of our health care dollars are spent on research and prevention which could eliminate the devastation of these diseases in the first place.

As the new Administration and the 101st Congress take their places, there will be a great need for cost-consciousness, commitment and compassion on their part. No longer can we afford attitudes of indifference and inaction as a response to the health care crisis facing this nation. No longer can we afford outright opposition to sincere attempts to ensure health care access, affordability and quality for all Americans.

FOOTNOTE

[1] These multiyear cuts/savings estimates were made as each of the six laws was enacted. Over time, these assumptions have been revised, and the savings estimates would probably change if the effect of the laws had been re-estimated based on the revised assumptions. However, re-estimates of all the laws covered here have not been made; therefore, the figures given are those contained in the original estimates. In addition, savings estimates were made for 3- to 5-year periods, and the figures listed here for the earlier laws do not include any savings that would accrue beyond the estimating periods. For these reasons, the estimates of the cuts/savings are probably low.

TRIBUTE TO KIM GALLAGHER

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. LEVINE of California. Mr. Speaker, today I rise to congratulate Kim Gallagher, whose outstanding performance in the 800-meter run has earned her and Olympic Bronze Medal. She is a remarkable young woman and an outstanding althlete.

In these days, when athletic competition for its own sake is increasingly becoming secondary to winning, Kim Gallagher has shown that she clearly knows what the Olympics are really about. Her joy in participating in the games and her persistently upbeat attitude should remined all of us that the Olympic games are, as the Olympic oath states: "for the glory of sport."

The story of Kim's determination to participate in the games is one that exemplifies the Olympic spirit. Despite several physical setbacks, and despite being edged out of the gold and silver, Kim has done what she intended to do when she went to Seoul: She ran a good race, and proved to everyone that she is among the best middle-distance runners in the world.

I am proud to represent her. She exemplifies what the Olympics are all about.

Finally, Mr. Speaker, I would like to share with my colleagues a recent Los Angeles Times article regarding Kim Gallagher's performance, and ask that it be included in the RECORD at this point.

GALLAGHER'S BRONZE IN THE 800 Is Worth Its Weight in Gold

(By Mike Downey)

SEOUL.—Sometimes it matters not a bit who finishes first and who just plain finishes. Kim Gallagher was not the winner of her Olympic race her Monday, but you would never know it to look at her. She was a bronze medalist, but she seemed as happy as somebody who was going to Disneyland.

In single file, Gallagher, 24, who lives in El Segundo and trains in Santa Monica with the Los Angeles Track Club, had to follow a couple of stoic East Germans into the Olympic Stadium for the awards ceremony after the women's 800-meter run, just as she had shadowed them to the finish line of the race itself.

The runners from the German Democratic Republic, gold medalist Sigrun Wodars and runner-up Christine Wachtel, were as grim and lock-jawed as though they were being forced to attend some depressing and miserable event, such as, oh, as Seattle-Texas basball game.

Gallagher, on the other hand, the instant she strolled into the stadium, started waving to the crowd with both hands, "beaming from ear to ear," as she herself later described it, and was ready to grab an American flag and take a lap, if nobody would mind.

Not really. Gallagher is an upbeat person under most any circumstance, but not that upbeat. The truth of the matter is, she was disappointed not to take the gold or silver. In her heart, however, she understood the magnitude of what she had overcome and accomplished, accepted it for what it was, and rejoiced in the fact that it took two of the world's best middle-distance runners to beat her. Wodars' winning time was 1:56.10 seconds.

Pumping her fist in the air triumphantly, Gallagher discovered that her third-place time, 1:56.91, was a measly one one-hundredth of a second slower than Mary Decker Slaney's American record.

"I didn't know that," she said, stepping off the track. "Darn it!"

Oh, well. No big deal. What meant most to Gallagher was the medal and the effort, and she also was quite aware that, with Slaney nursing an injured calf, it may be that Gallagher and Regina Jacobs have to carry the United States in the 1,500 meters, later in the Games.

"This was just the beginning for me," Gallagher said. "I think I have the speed to kick with the best runners in the 1,500. I'm looking forward to that event even more than I did the 800. The 15 is my main focus here. I'm going to go home tonight, regroup and act as if I haven't even won a medal here yet. I'm going to go into the 15 with a strong head."

What gives Gallagher this sort of optimism, aside from her naturally bubbly personality, is the knowledge of what she already has dealt with in her track career, just to get this far.

The silver medal she won in Los Angeles, at the 1984 Olympics, for that matter, was quite an accomplishment, considering that 6 months before the '84 U.S. trials, she had undergone surgery for polycystic ovaries. And yet, the asterisk that remained next to that 1984 result, because of the Eastern Bloc boycott, was a constant reminder that, well, it was an Olympic medal, but not an *Olympic* medal.

"Everyone was saying that, because the strongest countries weren't there, that my silver medal wasn't really a silver medal," Gallagher recalled. "That's why the bronze means more to me than that one. I had the two best 800 women in the world in front of me, and I was picked ninth going into this race. That's where I read that I was going to finish.

"I am so happy. I wanted the gold, but I have absolutely nothing to complain about. I am extremely pleased with myself."

She ought to be. It was just 3 years ago, at a meet in Modesto, that Gallagher suffered a relapse from her physical difficulties and doubled over in agony, saying later, "I felt like I was being stabbed in the stomach." For a year, the pains persisted. She feared for her running career as well as her health.

There had been some other wasted time. She could have been out running, in 1983, when instead she spent a year at the University of Arizona doing more partying than practicing. Her older brother, Bart, coached her for a time, and then she joined Chuck DeBus and his L.A. Track Club, and started to take off.

Like another runner from the Los Angeles area you may have heard of, Florence Griffith Joyner, Gallagher competes with a flair. Her fingernails might not be as long as Flo-Jo's 3-inch thumbnail, but they are close. It is fast becoming the trademark of these American women. Gallagher wore bright red polish on 5 of her 10 nails—the thumb and ring finger of her left hand, the 1-3-4 fingers of her right hand.

After the U.S. trials at Indianapolis, Gallagher took 4 weeks and went to Davos, Switzerland, to train at high altitude, then 2 more weeks in Colorado Springs, Colo., for the same purpose.

She was ready to make a run at the East Germans, who had gone 1-2 at the 1987 World Championships at Rome. But Wodars and Wachtel work together when they race, plotting their tactics, and they were as ready for Gallagher as she was for them.

Going around the final turn of the final lap, they had her pinned. Gallagher was in fifth place, looking for an opening.

"I wanted the gold, and as I was running, I was thinking, 'I can still get it. I can still get it.' But I had to go wide around them, because I got boxed in. It wasn't the race I wanted to run, but just to come out of it with a bronze, I'm happy.

"That's why I acted the way I did on the way to the awards stand, beaming from ear to ear like that. I just couldn't stop grinning and crying, crying and grinning. The emotions were coming at me from every direction. The kind of feeling it is, there just aren't words to describe it."

Sure, there are:
Good as gold.

RESPONSIBILITY FOR CHILDREN AT RISK

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. FRANK. Mr. Speaker, I was privileged last month to be a speaker at the annual meeting of the Connecticut Association for Human Services, thanks to the efforts of our colleague, the gentleman from Connecticut [Mr. MORRISON.] I very much enjoyed the chance at that meeting to talk with people who are as dedicated as these people are in providing for our fellow and sister citizens who are in need.

At that dinner, I was particularly struck by a poem read by Commissioner Amy Wheaton of the Connecticut Department of Children and Youth Services. Commissioner Wheaton received an award that evening, which from what I can tell was very much deserved. As a public official charged with responsibility for protecting and helping children at risk, I thought it was especially appropriate that she use her time at the dinner to read this touching and eloquent poem to the assembled. Because it does so forcefully and imaginatively call our attention to the importance of doing a great deal more than we do for children all over the world who are in danger, I ask that the poem which Commissioner Wheaton read, written by Ina Hughes of Charlotte, NC, be printed here.

We are responsible for children
who put chocolate fingers everywhere,
who like to be tickled,
who stomp in puddles and ruin their new pants,
who sneak Popsicles before supper,
who erase holes in math workbooks,
who can never find their shoes.
And we are responsible for those
who stare at photographers from behind barbed wire,
who can't bound down the street in a new pair of sneakers,
who never "counted potatoes,"
who are born in places we wouldn't be caught dead,
who never go to the circus,
who live in an x-rated world.
We are responsible for children
who bring us sticky kisses and fistfuls of dandelions,
who sleep with the dog and bury goldfish,
who hug us in a hurry and forget their lunch money,
who cover themselves with Band-aids and sing off key,
who squeeze toothpaste all over the sink,
who slurp their soup.
And we are responsible for those
who never get dessert,
who have no safe blanket to drag behind them,
who watch their parents watch them dies,
who can't find any bread to steal,
who don't have any rooms to clean up,
whose pictures aren't on anybody's dresser,
whose monsters are real.
We are responsible for children

who spend all their allowance before Tuesday,
who throw tantrums in the grocery store and pick at their food,
who like ghost stories,
who shove dirty clothes under the bed, and never rinse out the tub,
who get visits from the tooth fairy,
who don't like to be kissed in front of the carpool,
who squirm in church and scream in the phone,
whose tears we sometimes laugh at and whose smiles can make us cry.
And we are responsible for those
whose nightmares come in the daytime,
who will eat anything,
who have never seen a dentist,
who aren't spoiled by anybody,
who go to bed hungry and cry themselves to sleep,
who live and move, but have no being.
We are responsible for children who want to be carried and for those who must,
For those we never give up on and for those who don't get a second chance.
For those we smother. . . and for those who will grab the hand of anybody kind enough to offer it.—Ina Hughes, Charlotte, NC.

MILTON "HUSSEIN" HOLMES, JR.

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. CLAY. Mr. Speaker, I am happy to take this opportunity to apprise my colleagues of the noteworthy success which has been achieved by a Missouri artist, Milton "Hussein" Holmes, Jr. Mr. Holmes, a former St. Louisan, recently had a highly acclaimed one-man exhibition at the Vaughn Cultural Center in St. Louis. Milton "Hussein" Holmes has demonstrated an extraordinary creative talent and a deep devotion to his work. I commend the Vaughn Cultural Center for its commitment to improving opportunities for artistic growth and expression in the St. Louis community.

I would like to share the following article which details some of Mr. Holmes' work and wish him every continued success in the future.

[From the North Side Journal, Sept. 15, 1988]

HOLMES DIVERSIFIES ART IN ONE-MAN EXHIBIT AT VAUGHN CULTURAL CENTER

(By Howard Derrickson)

Strong draftsmanship and stark simplicity distinguish the 20 diversified portraits that form Milton Homes Jr.'s one-man exhibition currently at Vaughn Cultural Center.

Media used by Holmes, a 41-year-old native St. Louisan who has lived in Kansas City, Mo., for the last 15 years, are oils on canvas and black and green ink and charcoal on white, gray and ivory paper.

These pictures, consistently realistic and deft in execution, vary widely in size, ranging from 12 to 35 inches in height. All are signed "Hussein," which the artist said means "lion" in Arabic and dates from his involvement in the civil rights movement during his days (1965 to 1968) as a scholarship-winning art student at Antioch College, Yellow Springs, Ohio. In St. Louis he attended Soldan and Beaumont high schools.

"Fifteen Years Ago," a life-like charcoal self-portrait at 26, shows him with less weight, more beard and the same merrily twinkling eyes that he characteristically exhibits today. Only because this likeness is a half-profile does it fail to show the four white beads he still wears in his left ear.

An effective if slight departure from realism is his use of solid color, without detailed representation, in the backgrounds of one oil portrait done from life, "Anne," a friend from Kansas City, Kan., and two drawn from photographs—"Nubian Wrestler" and "Toddo: Beads."

Explaining this barren starkness, Holmes said convincingly and simply, "I like simplicity."

In "Anne," the effect is to focus on feminine facial beauty. In the brown-skinned athlete, the solid blue behind him maximizes apparent muscular strength. Framed by white bead-strings entwined in her hair and another string at her throat, "Toddo" peers out from uninterrupted darkness whose lack of objects enhances the picture's haunting mystery.

Holmes most confidently assets his master of draftsmanship in the way he renders drapery and facial expressions. Examples include "Necia at Her Ease," a cigarette-smoking masseuse languidly lolling in the lobby of Kansas City's Penn Valley Community College, and a feminine portrait series in which each title starts with "Woman with Hood," followed by a Roman numeral and a colon that introduces such descriptive expressions as "Regality," "Imperious" and "Cautious."

Absent from this show is the component of this series with a title ending with "Anxious." That drawing, winner of the top $100 drawing prize last April in a national competitive show at Normandy's Garret Gallery, is now owned by a New jersey collector.

This collection of outstanding and distinctive art, though small for Vaughn center's ample exhibition space, is extrordinarily rich in both aesthetic and human interest. "Quiet Conversation," for example is a tender yet ironic dual portrait of handsome lovers who now are lovers no longer. "Can I Get Out Now" depicts the artist's youngest son, now 3, at 8 months of age, eager to be released from his crib.

Cross hatchings, done with fine-lined meticulous shading, seem to invest with disciplined strength many of Holmes' most deeply felt pictures. Facial planes of his sitters give their heads a sense of solid, sculptural mass.

Wood-grain patterns win a wide bar across a spacious window behind the totally relaxed masseuse consist of such devices and embody firm, secure safety.

Hatchwork of the same kind enriches "Innocence," a slumbering infant, and "African Schoolboy," a wide-eyed lad of about 10, for which the model was a classmate of the artist's son, Daoud. This Arabic name, Homes said, means "beloved."

All his children except Christopher, 21 an engineering major at the University of Michigan, Ann Arbor, have Arabic names, Holmes said. Chosen for sound, meaning and other associations, he added, are the names of his youngest boy, Anwar ("Rising Sun"), and his daughter, Asha ("Life").

The artist's wife and mother of his three youngest children is the former Ellen Navies of Brentwood who is now a Kansas City (Mo.) public school teacher aide.

He retains "Jr.," in his own name although his father died in 1971, he and his mother, Easter Holmes of Pine Lawn, both stated.

At her home he completed the current show's final half dozen drawings, they said. That exhibition would have been larger, if not necessarily better, had he not landed a full-time office job after agreeing to provide his first one-man show here shortly after winning his $100 award here.

In the artist's new position he lays out ads, sells ads and manages a four-man Kansas City office for St. Louis publisher Arnette D. French, a graduate of Jefferson City's Lincoln University.

French's enterprises, Holmes said, have so far established Black Pages business phone directories, modeled after Yellow Pages directories, in Kansas City, Dallas and St. Louis.

Among her son's previous jobs, said his mother, have been forklift operator in a manufacturing plant and cook in a Kansas City hotel restaurant. But his drawing and painting have been winning him praise and, recently, collectors' purchases, ever since his grade-school days.

Holmes' exhibit will run at the Vaughn Cultural Center until Oct. 7. Funded by the Urban League of Metropolitan St. Louis, the center is in the Old Sears building, 1408 N. Kingshighway. For hours, call 361-0111.

REFLECTIONS ON THE COURSE OF UNITED STATES-CUBAN DIPLOMATIC RELATIONS

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DELLUMS. Mr. Speaker, we face two very important problems in Latin America today. One is the ever-growing foreign debt that is jeopardizing economic development, and the other is the steady growth of militarization, particularly in the Caribbean Basin, which threatens political stability and democratization. In this context it is important for us to review United States policy in the region, and in particular, United States relations with Cuba, on whom we conveniently place much of the blame for these evils.

As we allocate funds for programs like "TV Marti," we should also be ready for opportunities to reduce tensions with Cuba, as we have done with the Soviet Union, thereby reducing tensions in the Carribbean area.

I urge my colleagues to review the following article on United States policy regarding Cuba which first appeared in the August 31, 1988 issue of the "Washington Report on the Hemisphere," a biweekly publication of the Washington-based Council on Hemispheric Affairs [COHA]. The author of the article is Paul Zaepfel, a research associate with COHA.

TV MARTI THE LATEST IRRITANT IN U.S.-CUBAN RELATIONS

(By Patrick Zaepfel)

The Reagan administration, relations with Havana have been all but unmentionable, with the Castro regime, of all the Soviet-bloc nations, being selected to occupy the most unfavorable corner of Moscow's "evil empire." Washington's participation in the quadripartite Angolan peace talks, which have resulted in a cease-fire, indicates that the Reagan administration can deal with Havana on multilateral concerns. Nevertheless, the White House continues to ignore bilateral issues that divide the two nations, and fails to recognize that a solid list of issues exist that could and should be addressed.

Several of these matters could probably be negotiated successfully without the administration suffering the possible hostile reactions from many of the one million Cuban-Americans living in the United States. While a large number of U.S. companies have filed reimbursement claims worth over $4 billion for property nationalized by Cuban authorities after the 1959 revolution, Havana has countered with compensatory demands of its own, based on losses it suffered as a result of Washington's economic blockade and the covert sabotage of Cuban installations by the CIA in the 1960s and 1970s. Most U.S. companies concluded long ago that they stood little chance of fully recovering their claims and have deducted them as losses on their tax returns.

Havana, for its part, would most likely settle the bulk of its claims for a positive gesture coming from Washington. Any move to lift the U.S. economic embargo would be welcomed by many business leaders in this country, who are anxious to compete for the present $1.25 billion of Cuban trade going annually to other Western nations.

But rather than seeking a modest detente with Havana, Washington seems to have other things on its mind. When Radio Marti, the Voice of America's special service aimed at Cuba, began operations in May 1985, its broadcast abruptly halted what could have been a promising thaw in Cuban-U.S. relations. In heated retaliation, Cuba suspended the immigration accords it had reached with the United States in December 1984. The Reagan Administration, however, strongly influenced by the ultra-conservative head of the Miami-based Cuban-American National Foundation, Jorge Mas Canossa, had previously determined that the facility would be created, accords or not. According to COHA Senior Research Fellow Morris Morley's new books, "Imperial State and Revolution," Secretary of State George Shultz and other senior administration officials had even compiled a list of forty possible measures to be resorted to in retaliation against the expected Cuban jamming of Radio Marti transmissions, including a possible "surgical" military strike against the jamming transmission towers.

The ensuing breakdown of the 1984 Immigration Agreement seems to have been anticipated by Washington policymakers. When Cuba reopened immigration negotiations in 1986 without the precondition that Radio Marti's programming be discontinued, the Reagan administration at first thought it had achieved a significant coup. Later, it discovered that Havana wanted a reciprocal broadcasting agreement that would allow for a Cuban version of Radio Marti to be beamed at the United States. Havana eventually withdrew this request, allowing for a new refugee accord to go into effect.

The limited and disappointing penetration of the Cuban market by Radio Marti foreshadowed the creation of TV Marti. On Sept. 30, President Reagan signed legislation providing $7.5 million for a 90-day test of the program, possibly beginning as early as 1989. The proposal envisions beaming programs via a balloon anchored over the Florida Keys. The initial cost of the project, if test runs are successful, has been estimated at $25 million, with a $10 million annual operating budget.

It appears that the TV Marti proposal would flout the intent of a 1982 United Nations resolution on international communications, which makes it illegal to transmit television signals by satellite into another country without that country's permission. Though it falls through a loophole, a tethered balloon is functionally no different than an orbiting satellite.

Once transmissions begin, TV Marti's effectiveness will most likely mirror that of Radio Marti, with relatively high ratings and low credibility. According to Dr. Wayne Smith, former head of the U.S. interests section in Havana and present chair of the Cuban Studies department at Johns Hopkins School of Advanced International Studies, as well as a COHA trustee, most Cuban listeners would rather hear the more objective, normal VOA broadcasts, since the Cuban-exile management of Radio Marti delivers a steady flow of anti-Castro rhetoric, although some of its programming does have merit. TV Marti will undoubtedly follow in its predecessor's tracks, creating friction that, at least temporarily, will lower hopes for any normalization of relations between the two countries.

However, the damage could be far more profound if Castro decides to jam the station (which would cost only around $200,000) and the Reagan Administration responds with a policy selected from a new version of its volatile options list.

JAPAN AND THE BLACK AMERICAN COMMUNITY

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DYMALLY. Mr. Speaker, I bring to your attention a statement from the Black Business Council, presented to the Congressional Black Caucus, "Concerning Japan and the Black-American Community." The statement was delivered by Mr. Earl G. Graves, Albert L. Nellum and Kent Amos, during hearings conducted by the Congressional Black Caucus, on October 6, 1988, in Washington, DC.

TESTIMONY OF EARL G. GRAVES, ALBERT L. NELLUM AND KENT AMOS DURING THE HEARING OF THE CONGRESSIONAL BLACK CAUCUS CONCERNING JAPAN AND THE BLACK-AMERICAN COMMUNITY

Chairman Dymally (Chairman of the Congressional Black Caucus), I am Earl G. Graves, Chairman of the Board of the Black Business Council and chairman of Earl G. Graves Ltd., a black-owned publishing and communications company. I am accompanied here today by Albert L. Nellum, president of the Black Business Council, president of A.L. Nellum and Associates, Incorporated, the oldest minority-owned management and consulting firm in the United States, and Mr. Kent Amos, president of the Triad Group.

The Black Business Council is an association of some of the largest black-owned businesses in the United States. With a growing membership of more than fifty businesses, the black business council has five major goals:

To provide an organizational vehicle through which the black business community can more effectively express its economic and political needs.

To improve the internal networking between the black business community and the larger black professional community.

To serve as a focal point for the development of international and domestic economic and financial initiatives that will benefit the broader black business community, and by deliberate extension, the entire black American community.

To influence decisions of nations or international businesses as these may affect black Americans socially, culturally or economically.

To plan and promote programs that would have positive economic impact on America's black communities, or black communities in the developing countries of Africa and the Caribbean.

Of particular interest, in light of the purpose of these hearings today, is the fact that a major impetus for the organization of the black business council is the now infamous comment of former Prime Minister Naksone, who suggested to the Japanese people that the presence of so many blacks, Puerto Ricans and Mexicans was sapping the U.S. will to be a world leader. A group of black businessmen and women who eventually became the founders of the Black Business Council responded to this statement by placing advertisements in major newspapers across America asking whether the prime minister's statement was the result of arrogance or ignorance. Since that time the Black Business Council has been aggressively seeking to build better relations between the Japanese and Black-American communities in economic and cultural areas. We have visited Japan and have met with the prime minister, government leaders of the Diet, and heads of major Japanese corporations.

We have established working relationships with personnel at the Japanese embassy and visited with representatives of Japanese corporations doing business in the United States. The thrust of these meetings has been to share concerns, exchange ideas and promote specific opportunities for the development of business relationships between the Japanese corporations and the black business community. The BBC believed that by working diligently to build close working relationships, we could re-educate the Japanese about black people and the black American community, and afford the Japanese an opportunity to demonstrate that they respect and honor the cultural and business contributions black Americans have made to America and the world.

To date response has been minimal. We are continually reminded that we need to become "more educated about culture and how to do business with the Japanese." And, of course more recently we have all seen the even more odious actions of Japanese business and government leaders toward black people. All of this makes the members of the Black Business Council and the Black Community wonder just who really needs to be educated.

Because of the work we have done to improve relations between Japan—its government, its corporations and its people—we feel particularly well qualified to address the subject of this hearing. We want to explore several major issues:

1. What does the Japanese attitude and behavior toward black Americans, other minorities, and foreigners in general, tell us about how to deal with Japan?

2. What is the Japanese record in terms of its relationship with the black American community in general, and the black American business community in particular?

3. What steps should be taken by the Japanese to ameliorate the situation?

4. What steps can the Congress take to change the attitude and behavior of the Japanese Government, as well as its institutions, corporations, and people.

1. Japanese Attitudes and Behavior

Former Prime Minister Nakasone has remarked that "we are as pure as unadulterated rice wine. . . . We have accomplished much, because for more than 2,000 years no foreign race mixed itself with the Japanese." Whether these statements are true or not—and there is evidence that they are not—they are the basis of a Japanese attitide toward the world that we view as extremely troubling. In today's global economy, where an understanding among all peoples and nations across the world is essential to our mutual development and survival, it is troubling, indeed frightening, that one of the world's economic giants possesses this attitude. The evidence of this attitude is myriad.

The Nakasone remarks, followed two years later by the remarks of the leader of the ruling Japanese Liberal Democratic Party, and the absolutely debasing caricature of black Americans as mannequins in retail advertising, and "Black Sambo" toys and beachwear, seem to be symptomatic of this Japanese attitude.

It is also apparent that while the Japanese dislike all "gaijin", they have a particularly strong prejudice toward blacks. We have learned that Japanese parents stopped a cultural exchange program when they learned that their children's penpals were black American children in the United States.

The BBC has proposed a variety of programs to improve mutual understanding between the two cultures, but with no success.

In Japan, there is historical and continued evidence that the Japanese do not treat other ethnic groups fairly, Koreans, aboriginal Ainu people, Burakumin and others experience many forms of prejudice.

The pattern that emerges from these two examples is that of a nation that exalts its own cultural superiority to the extent that it is unwilling to examine its own failings. These attitudes cannot be allowed to remain. As black Americans we know only too well how these attitudes can fester and create problems far beyond what the immediate character appears to be. The Japanese people and government can no longer ignore these issues. We are prepared to cooperate with them to address these problems, but thus far there has been no reaction to the several attempts at resolving these problems.

2. JAPANESE RELATIONS WITH THE BLACK BUSINESS COMMUNITY IN AMERICA

Japanese corporations are doing very little business with the black business community. Moreover, the progress claimed by the Japanese seems to be "Ad Hoc" in nature, and an effort to counter the criticism and pressure they are receiving rather than to deal comprehensively with the problem. They want the business of the black American consumer, but they are not willing to do business with the black business community to a significant extent. This behavior continues in spite of the findings in 1987 that 30 million black Americans generated over $200 billion in income. Since Japanese companies are not required to report the level of business they do with minority-owned companies, locating definitive data is extremely difficult. That is why these hearings are extremely important, because it is vital that Japanese companies, based in the United States, make public the amount of business they now do with minority-owned businesses, so that the record will be clear. Although the data is scant, we know the following:

Although blacks have made noteworthy advances in acquiring dealerships from domestic manufacturers, the Japanese continue to resist granting Blacks dealerships. According to the most recent survey by black enterprise magazine, there are 377 black-owned dealerships of domestically manufacturered automobiles: 213 Ford; 54 Chrysler; and 110 General Motors. Despite efforts by several national black leaders such as Atlanta Mayor Andrew Young and Rev. Jesse Jackson, along with the members of the National Association of Minority Automobile Dealers, there are still only about a half dozen black-owned Japanese import dealerships—all of which resulted from the purchase of an existing franchise rather than an outright appointment by the manufacturer.

In addition, after 6 years of production in the United States Honda, which has two black-owned dealerships (one in Michigan and one in Florida) still has no program to aggressively recruit and develop black managers, dealers and suppliers.

Clearly, the 1988 BE 100 auto dealers list, boasting over $2 billion in gross sales, manifests an overwhelming potential for establishing lucrative business relationships between Japanese auto manufacturers and black auto dealers. Yet, the Japanese corporations have neither recognized nor responded to this potential.

Japanese Corporations do not significantly advertise in Black-Owned Media that are specifically targeted to the black consumer market. And on this particular issue, I speak for myself as a publisher and owner of two radio stations, and on behalf of my colleagues in both the print and electronic media.

Over the past several years, because of intense pressure from diverse business and political leaders, several Japanese corporations have begun modest marketing efforts with black-owned media. For example, in 1987, out of its total advertising budget of $19.4 million, Nissan spent less than 2 percent (or roughly $320,000) with black media; of a total $27.5 million advertising budget, Toyota spent less than 2 percent (or $410,000) with black media; of a $44.2 million advertising budget, Sony spent less than three percent (or roughly $118,000) with black media. And, these are three examples of the better companies. Matsushita spent $4,400 of a $23 million advertising budget with black publications in 1985, and there is no record of Mitsubishi spending any amount of its substantial budget with any black media.

Other Japanese-owned companies, particularly other electronic manufacturers such as Panasonic and Toshiba, camera makers such as Nikon and Minolta, and office equipment manufacturers such as Canon and Mita, all of which enjoy a disproportionately large share of the black consumer market, have no marketing efforts specifically targeted to the black consumers through black-owned media. These manufacturers also provide few—if any—franchise or dealer opportunities for minority entrepreneurs.

Japanese corporations are not doing business with black banks, savings and loan associations, nor with black insurance companies. To our knowledge, such relationships are "non-existent."

There is also the issue of where the Japanese are locating their manufacturing plants. A study of more than 100 Japanese auto manufactures in the United States by Professor Robert Cole of the University of Michigan says: "Japanese locate in (geographical) areas with fewer minorities than do United States automakers." This means fewer opportunities for minority suppliers, as well as fewer jobs for minority workers. The fact that the Honda Motor Corporation—while admitting no guilt—paid $6 million recently to blacks and women to settle discrimination charges at its Marysville, OH, plant clearly underscores this problem.

Taken together these data suggest that the Japanese are not making reasonable efforts to address the concerns of the black American business community. The Japanese describe the efforts in the social and educational arena, and though these are still very small efforts, they are a step forward. But black people in America want a fair share of the economic pie. We have worked hard to get U.S. corporations to do business with us. The National Minority Supplier Development Council reported $9.5 billion in business with minority suppliers last year, and that number will continue to grow. As the Japanese corporations capture a growing share of key markets, we expect them to do at least as well.

3. WHAT CAN THE JAPANESE DO

The first and most important step that the Japanese Government and corporate community must take is to recognize the severity of the problem inherent in their attitudes in the eyes of the black American community and the world in general. The response of the Japanese Government to the recent incidents was totally inadequate in this regard. General apologies will not do. A clear statement recognizing the problems posed by the ignorance are prejudices of the Japanese must be made. Only then can the process of education and reconciliation truly begin.

To begin the process of educating their people and institutions to the cultures of black Americans, the Black Business Council has proposed that the Japanese Government undertake a long term joint program of educational and cultural exchanges. Clearly, an investment here is at least as important as the extraordinary investment the Japanese are making to influence American political opinions. The Japanese do not seem to understand the fact that the incidents of racial prejudice will overwhelm their efforts to influence Americans, and can only contribute to a deterioration in these relationships.

The nature and scope of business relationships between Japanese corporations and black-owned businesses must increase substantially. The corporations must make this a priority, and the Japanese Government must urge them to do so. We often hear of the close relationship between the Japanese Government and the private sector. Now is the time for the Government to use its leverage to move the corporations to act, and act vigorously. Joint ventures must be developed, contracting must increase all across the country, new trading relationships must emerge and include the businesses of black Americans.

Finally, Japanese financial institutions must become far more aggressive in establishing cooperative relationships with black-owned financial institutions which could directly impact upon the development of black-owned businesses.

The Black Business Council stands ready to work in tandem with the Japanese Government and business community to implement these proposals. To date we have reached out to them, but they have not reached out to us. We see no concrete measurable progress—progress that will continue to occur over the long term. We are, therefore, joining with other major black organizations in urging all Americans to make special efforts to selectively purchase only American made-products, specifically to "Buy America", especially during the holiday season.

4. WHAT CAN THE CONGRESS DO

The Congressional Black Caucus has taken the first critical step in addressing the attitudes and behavior of Japan toward the black community by vigorously pursuing the issue, and holding these hearings today. We urge the caucus to continue this vital leadership role, by holding hearings on this issue again after the first of the year. If there is progress let people know. If there is more criticism to be leveled, then let us do that also.

We also urge the Members of the CBC to ensure that the issue of the Japanese role in the American economy become a subject of attention with those committees dealing with these issues in the Congress. The question of the Japanese role in the American economy is an issue for all Americans, and the entire Congress should be paying attention.

Congress should use its authority to secure specific data, or create a special commission that will study the issues of Japanese involvement in the United States economy and minority-owned business in the United States. With the United States having become the world's largest debtor nation in the 5 years, it is vital that we know the scope and impact of investment by foreign countries. Japan should bé the first to be subject to such scrutiny.

And finally, if the Japanese continue to fail to address the concerns of the black American business community, we urge the Congress to implement targeted initiatives that will push, prod and cajole the Japanese to act.

GENERAL NORIEGA AND DRUG TRAFFICKING

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. GEJDENSON. Mr. Speaker, yesterday I ran across a fascinating article in the Village Voice that describes a 1975 Department of Justice report on General Noriega and his personal involvement in international drug trafficking. John Kelly and Joe Conason apparently uncovered what is known as the DeFeo report years after it was squashed by Richard Thornburgh, then Assistant Attorney General at the Department of Justice.

The DeFeo report indicates that there was CIA and Drug Enforcement Agency knowledge of the narcotics trafficking activities by high military officials of the Panamanian Government as early as 1972. Mr. Speaker, it is inconceivable to me that Vice-President BUSH would not have been briefed on the contents of the DeFeo report prior to his meeting with General Noriega a few months later in 1976.

The article is as follows:

BUSH AND THE SECRET NORIEGA REPORT

Before the director of the Central Intelligence Agency meets with a foreign official the agency's standard procedure requires that he be briefed exhaustively about that official's background, character, and relationship to the CIA. In 1976 George Bush, then Director of Central Intelligence, met for the first time with Manuel Antonio Noriega, the Panamanian military intelligence chief who was also a paid CIA informant. As much as a year earlier, the Department of Justice had compiled substantial evidence of Noriega's involvement in narcotics smuggling from Panama to the United States. Portions of that still-secret June 1975 report, which was available to the CIA at the time of Bush's meeting with Noriega, have now been obtained by The Village Voice.

The vice-president insists that he had little or no knowledge of Noriega's alleged drug-related crimes until the Panamanian was indicted in Florida last February. But an analysis of the circumstances under which Bush encountered Noriega in 1976 suggests that the vice president has known all about the Panamanian's drug activities for more than a decade. And new information continues to emerge: last week Stansfield Turner—who succeeded Bush as CIA director in the Carter administration—told reporters that he had removed Noriega from the agency's payroll, clearly implying that the relationship had existed during Bush's tenure.

The Justice Department document whose existence suggests Bush must have known about Noriega is called the DeFeo report, after the Department attorney who was its principal author. The DeFeo report was chiefly concerned with misconduct in the Drug Enforcement Administration and with the DEA's relationship to the CIA. Among other things, it confirms a story, first reported in The New York Times by Seymour Hersh in 1986, that top officials of the federal Drug Enforcement Administration considered assassinating Noriega, then a top aid to Panama's president Omar Torrijos, because of his role in the drug trade. The report—and its classified status—have been controversial in Washington for many years, because it examined many sensitive covert operations and topics.

The matter of its secrecy arose again last August during confirmation hearings for Edwin Meese III's successor as attorney general, Richard Thornburgh. As a Justice Department official during the mid-1970s, Thornburgh participated in a decision to withhold the DeFeo report from Congress. So when Thornburgh appeared before the Senate Judiciary Committee last August 5, Republican Orrin Hatch of Utah demanded that the report be turned over right away, announcing that it would prove "once and for all" that the Panamanian government had been implicated in the narcotics trade since the 1970s. Thornburgh agreed to hand it over as soon as possible.

The secrets of the DeFeo report are now is Hatch's hands. Nathalie Blackwell, a Hatch legislative assistant, said that the Utah Republican "is the only one who saw the DeFeo report. He still has it, but he is not making it available yet." She said there may be "restrictions on when it can be released." Yet New Mexico Democrat Dennis DeConcini, a member of the judiciary committee who joined Hatch in demanding the report, has not been given it, according to one of his aides. Hatch and Thornburgh may now be mindful of what the report could show about George Bush, their party's presidential candidate. Bush himself, through his campaign office, declined to comment on the DeFeo report.

Other members of Congress have meanwhile attempted to learn more about Noriega and Panama, but have encountered a stone wall of silence from the Reagan administration. Democrats Bill Alexander, an Arkansas representative, and John Kerry, the junior senator from Massachusetts, asked the General Accounting Office—Congress's investigative agency—to look at Panama as a "case study" of drug trafficking by a foreign official and its effects on U.S. policy. But as the New York Times reported on August 18, the White House has "ordered" the Defense Department, the State Department, the CIA, and the Justice Department (which includes the DEA) not to cooperate with the GAO's requests for information. A spokesman for the National Security Council cited "statutory and constitutional issues" as the basis for the order of silence, but the political implications are obvious.

WHAT THE REPORT SAYS

The DeFeo Report was actually a series of seven memoranda recounting information gathered by Michael A. DeFeo and a team of Justice Department attorneys, who were assigned early in 1975 to probe allegations of corruption against the DEA. One of the team's final memoranda, which bears the bland title, "Additional Integrity Matters," and the date June 18, 1975, included a tantalizing reference to Panama:

"The Senate Permanent Subcommittee on Investigations inquired into reports that Phillip Smith [acting chief inspector of DEA] and William Durkin [DEA assistant administrator for enforcement] participated in discussions within DEA regarding a proposal to assassinate the President of Panama [Torrijos], who was suspected of being involved in drug trafficking.

"Smith stated that he had not participated in any such discussion but had developed information of a plot to kill General Torrejos [sic]. Smith testified that this information was quickly passed on to the CIA for transmittal to the Republic of Panama. Smith said that he was later informed that the plot had been verified and neutralized. . . .

"It was alleged that a discussion concerning assassination involved the possibility of killing Mr. Noryago [sic], the principal assistant to the president of Panama, and that Smith and William Durkin actually proposed that he be killed. . . . A review of the files does not reveal Smith's position as to discussions concerning Noryago [sic]."

A former DEA official has confirmed to the Voice that such discussions did in fact occur. The official, who spoke on condition of anonymity, held a senior post in the DEA's division of operations during that period. He says that in 1972, be attended a meeting of top agency staff convened by DEA administrator John Ingersoll to consider the problem of Noriega, who had been identified as a "direct drug trafficker." Options, including assassination, were listed in a written plan, along with commentaries on each one, and the official implied that the murder proposal came from Smith and Durkin. Killing the Panamanian intelligence chief was eventually dismissed as "inappropriate" by Ingersoll, who instead complained to Torrijos and was ignored

The same former DEA official, who still holds a position in government, says he knew that Noriega was not only cooperating with the CIA and with U.S. Army intelligence but was also providing information to the DEA. The narcotics accusations against the Panamanian were more than rumors. The official recalls one occasion when smugglers intercepted off the coast of Florida with a boatload of marijuana said they had paid Noriega to bring their contraband cargo through Panama—a story corroborated by an address book with the general's name and private telephone number. There was so much evidence, in fact, that in the early 1970s DEA officials made their first attempt to indict Noreiga on drug charges. But the indictment was never brought because the assistant U.S. attorney in Miami believed Noriega would never be extradited from Panama, according to the former DEA official.

No administrative or criminal action was ever taken against Smith or Durkin, as far as could be determined. Both officials, now retired from the DEA, declined to be interviewed by the Voice.

Among the seven separate documents produced by the DeFeo team was one title "Classified Matter: Panama Materials," whose exact contents remain unknown. According to a Justice Department memorandum dated October 28, 1975, this portion of DeFeo's work dealt with "narcotics activity involving military authorities in the country of Panama, along with the relevant documents. . . . Most of this material is classified Top Secret, Secret or Classified. This material contains a discussion of certain non-conventional DEA investigative techniques." The indications of official secrecy tend to confirm the involvement of the CIA, although the Justice Department attorneys who wrote the report have declined to comment on it.

George Bush did not officially take over as CIA director until January 1976—nearly six months after the DeFeo Report was completed. As CIA director and head of the entire Washington intelligence apparatus, did Bush learn what the DEA and the Justice Department had known about for months and even years?

Despite the vice-president's current denials, there are several reasons to believe he did know. In a deposition given in Washington, earlier this year, Bush's National Security Adviser Donald Gregg—himself a former CIA official—testified that Bush met with Noriega in 1976.

"I believe he met [Noriega] once when he was director of CIA," Gregg said. "Noriega came up to Washington . . . with some other Panamanian officials, and there was a lunch meeting." Gregg said he didn't know what the meeting was about, but last week The New York Times reported that, when Bush met Noriega in 1976, the Panamanian was suspected of having paid U.S. agents to give him sensitive intelligence information. Their luncheon was more than a social occasion.

If only because of its intervention to block the plotted assassination of Torrijos—and even without the DeFeo report—the CIA would have been aware of Noriega's alleged involvement with narcotics. Therefore, this information would in turn have been available to Bush before he met with Noriega. Given the suspicions that Noriega was subverting the U.S. intelligence system at the time he met with Bush, it seems unlikely that the agency would not have provided its director with this derogatory information about the Panamanian official.

Scott Breckinridge, who served as deputy inspector general of the CIA under Bush, told the Voice that he did not personally know about the DeFeo report when he worked at the agency. Breckinridge did say, however, that before a meeting with a figure like Noriega, Bush would have been briefed by the CIA division chief for South America with answers to the following questions: "What kinds of problems should we expect from Noriega? What do I need to know about him? What should I ask him?" In Breckinridge's opinion, such a briefing would be particularly necessary because "so many of these guys are thugs." He says quite frankly that he believes the CIA should not be involved in drug enforcement.

Bush had another overriding reason—aside from his particular concerns about Noriega and Panama—to be aware of the information contained in the DeFeo report. His year as Director of Central Intelligence was marked by a stream of devastating stories, emerging from congressional and media investigations, about the agency he headed; he spent much of his time trying to stop the hemorrhaging of long-held secrets.

"When I took over as DCI," he wrote in his recent autobiography, "there were daily messages from CIA stations on my desk every morning, reporting that we were losing valuable sources of information as a result of worldwide publicity caused by leaks from irresponsible investigators on Capitol Hill." Bush visited Congress to lobby or testify on the average of once a week, and was engaged in a series of disputes with the Justice Department about its demands for information about CIA agents and operations.

Several sections of the report concerned agency—Lucien Conein, a legendary CIA man who worked for DEA, was one of the investigation's chief subjects—and the Justice Department continued to examine the agency's relationship with the DEA for months after the DeFeo report was completed. As part of this continuing investigation, a special aide to the assistant attorney general named Phil White was assigned to review "the exchange of information between the DEA and the CIA related to a CIA narcotic intelligence network," according to a Justice Department memorandum of October 28, 1975.

In a "status report" on the DeFeo report dated December 24, 1975, it was noted that "the CIA investigation" was continuing, and that completion of the entire probe would probably continue for at least "one or two months." By then Bush had been sworn in as CIA director. The same status report noted that in late November 1975, staff members of the two congressional panels investigating the CIA—the Church Committee and the Pike Committee—were beginning to review "various materials relating to the DeFeo report."

According to Breckinridge, the former CIA deputy inspector general, it is also likely that the handling of the DeFeo report after January 1976 would have involved Bush himself. This would be even more certain, he added, if the report concerned a strategic nation like Panama or intelligence coordination with another federal agency like DEA. His observation is bolstered by another investigation of DEA-CIA relations, also conducted in 1975, by the General Accounting Office. Communications with the GAO involving that probe were handled directly by William Colby, Bush's predecessor as CIA director. So Breckinridge considers it likely that Bush himself would have handled the DeFeo report after he took over.

Apparently the bulk of the report, and particularly the classified section on Panama, has never been given to Congress. Nine months after the DeFeo team's work was completed, the Justice Department was still reluctant to turn the sensitive report over to the two senators, Charles Percy and Sam Nunn, who had requested copies.

A March 26, 1976, memorandum to DEA chief Peter Bensinger from Mark Wolf, a special assistant to Attorney General Edward Levi, notes that a meeting had been held a day earlier to discuss the status of the DeFeo report, and "it was decided that we should continue to resist disclosing to Congress any portion of the DeFeo report being reviewed for possible criminal or administrative action."

The same memo discusses the prospect of allowing Percy and Nunn "conditional access to portions of the DeFeo report" when the investigations of the individual corruption cases it described were closed. Because the report discussed a number of topics touching on the CIA, it is difficult to imagine that Bush was not included in any decision to release all or part of it. And for the CIA director to have participated in such a decision, he would have needed to be informed specifically about its contents.

BUSH'S MOTIVE

Underlying the dispute over what Bush knew about Noriega's alleged narcotics trafficking, and when he knew it, is a deeper question. As CIA director, and later as vice-president, did George Bush—and for that matter "seven administrations," as Bush put it during the presidential debate—condone drug smuggling by the Panamanian general because he was a CIA informant? Last March, during the Republican primaries, Senator Bob Dole implied as much at a news conference: "He (Bush) says he made all those decisions at the CIA. What were they? Was Noriega on the payroll when he was CIA director?"

Such a conclusion would be politically damaging to Bush, the titular head of the Reagan administration's antidrug effort, and a candidate who has claimed special expertise on a topic of the gravest concern to American voters (see sidebar). It would also cast doubt upon Bush's recent proposals for an expanded CIA role in the nation's narcotics interdiction program.

The CIA has long been involved in drug enforcement, although there is considerable disagreement as to whether its participation has been constructive. Recent reports of cocaine trafficking among the Nicaraguan contras, whose war has been the largest CIA project of the Reagan years, are hardly the first accusations that the agency has compromised drug enforcement for its own purposes. Former DEA officials tend to feel that long before the contra war, "the CIA as an organization was a problem and a detriment to the entire DEA program as it is now," as one of them put it. They point out that the CIA's approach to sources and methods, while perhaps useful for covert operations or intelligence collection, is inimical to law enforcement. Rather than gathering evidence that would be usable in court, for example, the agency would customarily destroy such evidence because it would reveal CIA involvement. Indeed, CIA participation in a drug case tends to lead to a court dismissal because the agency is so protective of its sources.

The former senior operations official at DEA said he knew personally of many cases, representing years of work by law enforcement officials, which were dismissed because they touched upon the CIA even tangentially. As CIA director, according to this same official, George Bush continued the policy set by his predecessor William Colby of increasing the agency's "involvement with drug matters." He says the agency "demanded all the DEA's case files and lists of informants. The CIA then recruited some DEA targets of investigation [suspected drug traffickers] as CIA assets—unbeknownst to the DEA. When the DEA arrested these drug traffickers, they used the CIA as protection and because of their CIA involvement they were released. . . . The CIA knew full well that their assets were drug traffickers." He also added that the CIA official who took DEA files on Latin American subjects was Theodore G. Shackley, the former head of the CIA's Western Hemisphere division, who was promoted in 1976 by Bush to the even more powerful post of assistant deputy of operations—the covert action section.

The acerbic recollections of former drug enforcement officials may simply reflect a longtime rivalry between the CIA and the smaller, unglamorous, and underfunded DEA. But during Bush's tenure as director of central intelligence, the same basic point—that the CIA role in fighting drugs had been counterproductive—was emphasized in official reports by the DEA and the Justice Department.

When Bush took over the CIA, the agency and the DEA had just completed a three-year series of joint antidrug projects, using covert operations and assets like Noriega, known by the collective code name DEACON. It had been a complete failure. "With the possible exception of one case made in April 1974 [a 20-kilo cocaine bust]," said a DEA report on the project, "there have been no cases made from intelligence collected in DEACON . . ."

But informants were paid and information was filed away by the man who ran DEACON, former CIA agent Lucien Conein. Conein had been brought into the DEA by Egil "Bud" Krogh, a White House aide later convicted in the Watergate scandal, to oversee the Nixon administration's proclaimed "war on drugs." Before he was through, Conein was running some 40 intelligence operations out of safe houses in Washington, but winning very few drug convictions. Conein was a strange character, whose eccentric ways became notorious after his CIA service in Vietnam under master spy Edward Lansdale. In June 1976, CIA director Bush could have picked up his morning *Washington Post* and read quotes from Conein boasting of his "honorary" membership in the Union Corse—the Corsican crime syndicate responsible for a major share of heroin traffic worldwide. Conein also told the *Post* that he would hesitate before launching a DEA campaign against the Corsicans, or, for that matter, against the Miami Cubans formerly employed by the CIA, whose control of the drug trade in Florida was no longer a secret.

During Conein's stewardship of Project DEACON, according to DEA reports, there were 27 U.S. prosecutions of Latin American drug dealers, and two prosecutions of major American drug dealers, which had to be dropped. The reason was a "gentleman's agreement" under which the CIA could request that the DEA seek dismissal of any case against certain arrested traffickers if the prosecution would expose agency sources and techniques. The authors of the DEA report asserted that DEACON had failed in part due to "continuing misperceptions of the importance of the respective roles of Enforcement and Intelligence."

Another negative evaluation of the CIA's role in drug enforcement was produced in 1976 by the Justice Department. If Director Bush read it, he would have learned that "the CIA used electronic surveillance as a method of collecting narcotics intelligence overseas, and because CIA provided such information to . . . DEA, several narcotics investigations and/or prosecutions had to be terminated." The same general conclusions were reached by the General Accounting Office in its report on CIA-DEA conflicts, which was completed just before Bush took over as CIA director. Not only was the CIA too protective of its sources and methods to allow them to surface in court during a narcotics trial, but the agency was legally prohibited from any law enforcement or foreign intelligence operations against U.S. citizens either at home or abroad.

In at least one well-known instance, the CIA insisted that an indictment against one of its own assets be dropped, simply so that the agency would not be publicly embarrassed. This was a matter of Puttaporn Khramkhruan, a Thai national recruited in 1969 by the CIA to provide intelligence against narcotics traffickers in northern Thailand. Four years later, he was arrested in Chicago after selling 60 pounds of opium to three Americans who shipped it to the U.S. Thanks to "exhaustive effort" by the CIA's general counsel, however, there was no trial; as usual, protection of "sources" was the stated reason, although Puttaporn in fact had no knowledge of other CIA agents. Bush knew about this case because it was investigated by the House subcommittee on government information and individual rights while he served at the CIA, and he responded in writing to questions from Bella Abzug, the New York Democrat who chaired the subcommittee.

Again and again, from Laos in the '60s to Costa Rica in the '80s, the CIA has overlooked drug trafficking among its agents and clients. The most recent example is in Afghanistan, where opium fields and laboratories have been tolerated since 1985 to facilitate the CIA's supplying of arms to the anti-Soviet Afghan rebels. The DEA now says that one-third of the heroin reaching the United States comes from this region along the Pakistan border, and that the situation may grow worse when the Soviet troop withdrawal from Afghanistan is completed.

The lesson is that when secrecy has reigned supreme, the actual interdiction of drugs and prosecution of smugglers have languished. But despite the wealth of evidence that the CIA has hindered drug enforcement, George Bush remains an advocate of the agency's role, and if Bush is elected in November, Americans concerned about the narcotics plague can assume that that role will not diminish but grow. Campaigning on the drug issue last June, Bush said he favored greater use of "covert activities" and intelligence agencies. When a reporter asked what kind of covert activities he was talking about, the vice-president answered like a CIA veteran: "Use your imagination. If I tell you, they won't be covert."

BUSH AS 'DRUG CZAR'

In addition to his duties as vice-president, George Bush has effectively assumed the role of "drug czar" for the Reagan administration since 1982. He has headed two special interagency groups devoted to narcotics interdiction: the South Florida Task Force (SFTF), and the National Narcotics Border Interdictions System (NNBIS). Although these outfits once provided copious material for official press releases, Bush has been quieter about them lately—so quiet that his running mate Dan Quayle didn't know about Bush's role when asked about it by a Boston Globe reporter in late August.

Bush's recent discretion about his antidrug activities may reflect the fact that in the opinion of many federal and local law enforcement officials, his record has been rather unimpressive. Reagan's own DEA administrator, Francis Mullen, has called NNBIS "an unnecessary appendage" and a "liability," a criticism echoed even more strongly by scores of Florida sheriffs and police chiefs in discussing SFTF. Despite frequent claims about major seizures of cocaine and marijuana by NNBIS and SFTF, the number of tons of cocaine smuggled into the United States has nearly tripled during the period since Bush took over, according to federal estimates. At congressional hearings on drug enforcement in January 1984, Mullen scathingly attacked the inflated claims of both SFTF and NNBIS, urging that both should be "phased down over the next several months," or they would "become this administration's Achilles heel drug law enforcement." NNBIS was costing so much money, Mullen complained, that normal interdiction functions "such as cargo and border inspections, intelligence collection, and the deployment of fully maintained Coast Guard cutters, are suffering."

In July 1985, 18 months after the Bush operations were lambasted by Mullen, the General Accounting Office issued a report that was equally damning. The GAO reported that "the results of NNBIS's activities as a nationwide coordinator of drug interdictions have been minimal, and the improvements NNBIS has achieved have fallen far short of substantially reducing the flow of illegal drugs into the United States." But such warnings did little to deter Bush's press office. A year later, in August 1986, the vice-president joined Attorney General Ed Meese to announce the creation of Operation Alliance—a new effort to stop drug smuggling along the southwest border. Bush said the operation would function "as part of the NNBIS system." But on December 17, 1987, Assistant Treasury Secretary Frank Keating told a congressional subcommittee that the Bush announcement was wrong: "I suspect that his eager speechwriter misspoke. NNBIS does not run Operation Alliance."

A continuing aspect of Bush's approach to drug enforcement has been a close liaison with the CIA, despite evidence that the agency's involvement tends to hinder real drug enforcement. The man who until his retirement actually ran both SFTF and NNBIS out of the vice-president's office was Admiral Daniel Murphy, who had worked for Bush in 1976 as deputy director of the

CIA. One result was a stronger emphasis on CIA participation in drug enforcement beginning with the creation of SFTF and NNBIS in the early '80s. Murphy told Congress that with former CIA director William Casey's approval, "we used the CIA people not just for providing intelligence, but to help train law enforcement people."

Ironically, the CIA role has also coincided with continuing evidence of the agency's equivocal attitude toward drug smuggling. An October 1985 report by the U.S. Customs Department, for example, showed that an airline—a front company used by the CIA—"has been involved in narcotics and contraband smuggling." Convicted drug-money launderer Ramon Milian-Rodriguez has testified before a Senate committee that the Medellin cocaine cartel of Colombia provided $10 million to the Nicaraguan contras, funneling the contribution through a former CIA agent in order to buy protection. Again, the CIA has been a mixed blessing at best. DEA administrator John Lawn has testified that the agency provided almost no useful intelligence; and assistant U.S. attorney Richard Gregorie, who worked on the Noriega case, has testified that the CIA is actually a barrier to prosecuting drug smugglers in Miami.

Bush was embarrassed by his former chief of staff again earlier this year when the Washington Post reported that Admiral Murphy, now a private consultant, had held two clandestine meetings with General Noriega in 1987. Murphy insisted that his employer was a group of American investors organized by Tongsun Park, the shady South Korean businessman who was the focus of the Koreagate investigation. But among the top U.S. officials with whom Murphy discussed his Noriega meetings was Donald Gregg, the vice president's National Security Adviser.

SUPPORT NEEDED FOR THE STEWART McKINNEY HOMELESS ACT

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. LELAND. Mr. Speaker, I rise to lend my support to the conference agreement on H.R. 4352 which reauthorizes the Stewart McKinney Urgent Relief for the Homeless Act. I strongly urge my colleagues to support this proposal, and in so doing, reaffirm our commitment to the variety of programs and services initiated to meet the emergency needs of homeless individuals across the United States.

Mr. Speaker, I am proud to have had the opportunity to take part in crafting the health care title of this legislation. The Mental Health Grant Program embodied in the bill before us today, responds to the unique needs of the mentally ill homeless by providing outreach, community mental health services, referral for abuse services, and supportive supervisory services in a residential setting, Additionally, the primary health care grant programs extended in H.R. 4352 assures the availability of readily accessible medical treatment and care for the homeless.

The approval of this act is a significant step in the fight against homelessness. However, there is still much for us to do. We must begin to treat the causes of homelessness rather than just the symptoms. Affordable permanent housing must be made available to all persons; if not, the homeless population will continue to grow. Currently, the United States has only 4.2 million subsidized housing units. There are more than 800,000 households on waiting lists for public housing and millions of other households are one pay check away from becoming homeless.

The present administration abandoned this country's commitment to providing affordable housing to low-income families by decreasing Federal funding for housing by 80 percent over the last 8 years. GEORGE BUSH will maintain this legacy by continuing to pour funding into military projects at the expense of our housing and other social programs. His suggested solution for the homeless problem—of sheltering the homeless individuals in unutilized military bases—is proof of this total lack of comprehension of the housing crisis we are experiencing today.

Homelessness is a national tragedy whose growth be harnessed by quick-fix solutions. The next Congress and the next administration must have a long-term policy aimed at creating permanent housing. We must remember that ultimately sheltering the people of this Nation is as important, if not more, than shielding them with defense systems.

THE LIFE AND TIMES OF SHIRLEY CHISHOLM

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. CONYERS. Mr. Speaker, as we look in the history books at leaders, we find that only a few, the best, were ahead of their time. That category might include Frederick Douglas and Abraham Lincoln, Franklin Roosevelt and Martin Luther King, Robert Kennedy and Rosa Parks. And surely in this category we would also find the first black and first woman in American history to run for the Presidency: Shirley Chisholm.

The essence of this extraordinary woman and her career was progress in areas where no one thought possible. She was the first black woman to be elected to Congress, and the first black to seek the office of U.S. President. She was, then, not only a civil rights leader but a pioneer, and the path that she paved and on which so many others can now walk, is one that leads to that shining democratic city on the hill that we all want to reach.

And what makes the trajectory of this leap so unusual and memorable, is the springboard from which it was launched: The political ground floor. In the early 1950's when skin complexion and gender could restrict your right to participate in the Government that represented you, she started on the lowest rung of a political machine that did not welcome change.

But impossible odds for anyone meant an eager challenge for her. And as she rose to the precedent setting ranks of assemblywoman in New York State and then to the U.S. Congress, she carried with her the democratic hopes not only of black Americans, but those of Hispanics, native Americans, Haitian refugrees, migrant farmworkers, the poor, and anyone else that she knew should have a political voice and could not get one. Even today, as Mount Holyoke College's Purlington Professor, the position previously held by W.H. Auden and Bertrand Russell, she has continued her work on behalf of the powerless and the unrepresented.

And as I served with her in Congress I saw not only these great achievements, but the character that made that achievement possible. A calm, graceful, and eloquent passion, a determination for justice and equality, a refusal to let fatigue beat her. Unassuming in the face of historic process, undaunted in the face of seemingly unbeatable odds.

The interminable list of legislative contributions she made in the Halls of Congress on worker rights, equal rights, immigrant rights, poor people's rights, and her countless contributions on the many campaign trails, has a meaning not only to us black and minority Americans but to all of us: That equality and justice are possible if you refuse to tire, if you have the courage, and if you believe in yourself and basic rights.

RADON POLLUTION CONTROL ACT

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DORGAN of North Dakota. Mr. Speaker, last week the Environmental Protection Agency announced a national advisory urging testing for radon gas be done in homes throughout the country. Radon is second only to smoking in causing lung cancer in the United States and the EPA declared that "radon-induced lung cancer is one of today's most serious public health issues."

The EPA came to these conclusions after they had completed a study of radon gas levels in homes. The EPA surveyed seven States this year and found that one in three homes surveyed had radon levels above what the EPA considers to be hazardous. My home State of North Dakota was one of those States surveyed and it had the highest number of homes above a safe level of radon gas. Over 60 percent of the homes surveyed in North Dakota had hazardous radon levels.

Despite the serious results of this survey, very little is being done to address the problem of radon gas pollution. The Radon Pollution Control Act, H.R. 2837, is a bill that provides a good first step in addressing the problem of radon gas pollution. The Radon Pollution Control Act provides for technical assistance to States to address this health problem. The bill authorizes funds to establish proficiency rating programs, provide grants to States, and conduct surveys of school buildings.

Although I enthusiastically support this legislation, I feel that there is much more that needs to be done and that can be done. I am particularly concerned about low-income individuals and families who may not be able to afford to pay for the cost of protecting their homes from radon gas. Second, I think that there should be a long-term commitment by the Federal Government to ensure that all our citizens are informed of this health hazard and that they are protected from the effects of radon pollution. The Radon Polluton Control Act provides authorizations for the next 3 years to assist States in educating the public and establishing radon programs. If the Federal Government is serious about addressing the problem of radon pollution, it must make a long-term commitment.

H.R. 1807, THE SBA MINORITY BUSINESS DEVELOPMENT PROGRAM

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mrs. COLLINS. Mr. Speaker, H.R. 1807, the Business Ownership Development Reform Act of 1988 is a laudable example of comprehensive, well-directed legislation which will take a long stride toward resolving a serious problem.

America's minority-owned businesses and small-owned businesses often find it very difficult to compete against very large, established firms. The motivation is there, but the competitive advantage and resources of a large, long-established firm are not.

Congress has responded to the needs of small and minority-owned businesses by passing laws to protect their interests and promote their participation in Government contracts. But unfortunately, the administration has found ways to make those laws ineffective through the lack of conscientious implementation. Now, H.R. 1807 strengthens those laws by including provisions that will force the administration to implement these laws effectively.

The bill has picked up on the idea which I have long promoted a simple certification process so that we know which contractors and subcontractors are small or minority-owned businesses. Presently, no records are kept and, therefore, we have no idea how often—nor to what extent—the Government contracts with these firms. Requiring all firms who do business with the Government to declare their status as a small or minority-owned business would give us the information we need to protect their interests in the future.

However, I do wish that the language in H.R. 1807 requiring companies to certify their status as small- or minority-owned business—or none of the above—should have been stronger. I proposed language which was more comprehensive. My language would have required that a short self-certification form be submitted by all subcontractors—and their second tier subcontractors—to the contractors who commission them. Without a requirement for reporting on a subcontract-to-subcontract basis, there is no way for us to thoroughly ascertain the state of affairs for small- and minority-owned businesses in America.

Mr. Speaker, it is only right that the programs which Congress initiated be effectively implemented. H.R. 1807 is laudable in that it addresses problems with the administration's recalcitrant implementation of present law. Although it would be further strengthened by the incorporation of my language on certification, the bill nonetheless compels my admiration and I encourage my colleagues to support it.

TRIBUTE TO RAY F. LAUTZENHEISER

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. APPLEGATE. Mr. Speaker, it gives me great pleasure to introduce to my colleagues an outstanding citizen in the 18th Congressional District of Ohio, Mr. Ray F. Lautzenheiser. On October 22, Mr. Lautzenheiser will be awarded the 1988 Community Service Award by the Stanton Ruritan Club in Hammondsville for his excellent contributions to the life of the community.

For over a quarter of a century Mr. Lautzenheiser has been brightening his hometown of Hammondsville and the surrounding communities with music, his own as well as the music of others through his leadership and guidance. As music director at Edison North High School for the past 26 years Mr. Lautzenheiser has directed 22 high school musicals and has served as adviser to several classes and organizations. He has also supervised the yearbook staff during the production of 22 editions of the yearbook.

As well as contributing to the lives of the young adults at the Edison Local School District, Mr. Lautzenheiser has been the choir director at the Irondale United Methodist Church for 25 years. He also serves on the church's board of trustees, administrative board and council of ministers and is the Sunday school superintendent and treasurer. Mr. Lautzenheiser's love for children is also shown through his acting as Methodist Youth Fellowship Adviser and teaching youth and adult Sunday school classes.

In the general community, Mr. Lautzenheiser has directed the Stanton Community Choir since its inception in 1979, has taught piano for 30 years and has played or sung at innumerable weddings. The citizens of Hammondsville enjoy a greater appreciation for song through his teaching.

Mr. Speaker, my community has been greatly enriched through Mr. Lautzenheiser's music. I ask all my colleages to join me in congratulating Mr. Lautzenheiser, recipient of this most distinguished Community Service Award.

CONFERENCE REPORT ON H.R. 1807

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. KLECZKA. Mr. Speaker, I rise in support of the conference report on H.R. 1807 as a conferee from the Government Operations Committee on titles VI and VII of the bill.

Title VII of this legislation, known as the Small Business Competitiveness Demonstration Program, resolves a longstanding problem in certain industries—architecture; engineering; surveying and mapping; construction; including dredging; ship repair; refuse collection; and textiles—which have high size standards and an overwhelming number of small businesses, and a high rate of set-asides.

This title also addresses a related problem: industries which have numerous small businesses, but very few set-asides and very low rates of small businesses participation.

When the Government has too many set-asides in industries that do not need them, and not enough set-asides in other industries that need the assistance of this special tool, the program is obviously failing to achieve a proper balance.

Title VII provides this balance. It sets a goal of 40 percent small business participation in the above-mentioned industries. If this goal is not met in free and fair competition, then set-asides may be reimposed until the 40-percent participation level is reached.

Serving on the Government Operations Committee, I am well aware of our overall responsibility for all Federal procurement policy. With this responsibility in mind, we must seek a balance between our desire to see small business gain an enhanced share of Federal contracts and the need to make sure that Federal contracts are being distributed efficiently and cost-effectively through as high a level of competition as possible.

The success of this demonstration program depends on its administrative workability so that it can be determined whether the expanded use of full and open competition adversely affects the ability of small businesses to successfully win contracts in certain industry categories. Measuring the dollar value of contracts awarded to small business in each industry in each category will enable the Congress to know just how competitive small business can be.

I might also add that there are several respected Wisconsin firms which have previously done quality work for the Federal Government that have recently been adversely impacted by the current system. Our work on title VII of H.R. 1807 will help keep these fine firms in the Federal market.

Mr. Speaker, I support this conference report which arrived at a good, workable solution to a very difficult problem, and urge all my colleagues in the House of Representatives to do likewise.

CONGRATULATIONS TO THE REPUBLIC OF CHINA ON TAIWAN

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DREIER of California. Mr. Speaker, congratulations are in order for the Republic of China on Taiwan, whose national day, honoring 77 years of independence, occurs on Monday, October 10.

The belief that Taiwan remains a backward, provincial island has made it difficult to comprehend the extent of its accomplishments or the depth of its human, technological, and financial resources. While agriculture and manufacturing remain the established basis of the country's wealth, an important new primary industry has been added—finance. Taiwan will soon become a major financial center, like Hong Kong before it.

Mr. Speaker, we as a nation need a change of attitude, a change that must pervade politics, economics and culture, and lead our two nations to an even stronger partnership in the years to come. In this effort, we will be superbly assisted both by Taiwan's current President, Mr. Lee Teng-hui, who has continued his predecessor's liberalization policies, and, closer at hand, the newly designated representative to the United States, former Foreign Minister Mr. Ding Mou-shih.

May I speak for all of America in congratulating the Republic of China and in hoping for continued success in the decades to come.

MILLENIUM OF CHRISTIANITY IN UKRAINE

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Ms. OAKAR. Mr. Speaker, a thousand years ago, Volodymyr, the Grand Prince of Kiev, ruled a vast empire that stretched from the Black Sea to the Baltic. According to legend, St. Andrew the Apostle had visited the bluffs overlooking the Dnieper and predicted that someday a fabulous city with many scores of churches would be built there. By the time of Volodymyr in the 10th century, Kiev was indeed a major city. Trade routes linking commercial centers like Baghdad, Paris, Jerusalem, Scandinavia, Constantinople, Novgorod, Frankfurt, and many others converged in Kiev. In 988, Grand Prince Volodymyr concluded that Kiev along with the rest of his empire known as Rus, would reject paganism and accept Christianity. In one of the most extraordinary events in history, the entire population of Kiev went to the Dnieper River for a solemn baptism. The rest of Kievan Rus was also baptized and Christianity became the leading moral, intellectual and cultural force in Kievan Rus. The prophesy of St. Andrew came true, as Ukraine's ancient capital city blossomed with golden domed churches and cathedrals.

In the past year, Ukrainians throughout the world have celebrated the Millenium of Christianity in their land with solemn church services, concerts, symposiums, a pilgrim to Rome and other observances. Unfortunately, Ukrainians in Ukraine have been restricted in their ability to celebrate this wonderful anniversary. The Ukrainian Orthodox and Catholic Churches were violently disbanded by the Soviets in the 1920's and 1940's respectively. Millions of Ukrainians, however, have remained true to their faith and continue to worship in the catacombs. Despite formal pleas submitted in the spirit of glasnost to allow people to worship openly, the two churches, along with Ukrainian Protestant churches, are still outlawed and continue to be suppressed.

The commemoration of Ukraine's Millenium, therefore, is one where joy mingles with sorrow. Today, I want to join my many Ukrainian friends in joyous celebration of the Millenium of Christianity in Ukraine but I also want to speak out in condemnation of the denial of religious freedom in Ukraine and I call for the immediate restoration of the Ukrainian churches along, with firm guarantees for the free exercise of religion for all citizens of Ukraine, regardless of their religious convictions.

WE NEED STRONG JUDICIAL REVIEW LEGISLATION BEFORE CONGRESS GOES HOME

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. JEFFORDS. Mr. Speaker, recently the House voted on the Montgomery-Solomon Veterans' Judicial Review Act (H.R. 5288). As we all know, this bill passed by an astounding margin of 400 to 0. Even though it received my vote, there are many aspects of the legislation that I feel should be addressed in conference and several ways that the bill could be strengthened.

I have been a supporter of Judicial Review, in its pure form, since my first term in Congress. I feel that veterans have the right to court review of Board of Veterans' Appeals decisions. It is the same right already given to those involved in disputes with the Social Security Administration, the Internal Revenue Service, and the Immigration and Naturalization Service.

I have some basic questions about several aspects of the Montgomery-Solomon Judicial Review bill. While the Board of Veterans' Appeal would be abolished and a Court of Veterans' Appeal established, I am worried that this might amount to nothing more than renaming the Board of Veterans' Appeals. The new court would still be considered an article 1 administrative court.

Another provision would allow veterans review by the Federal Circuit Court of Appeals on "constitutional, statutory, regulatory matters and interpretations of law." Well, veterans can do that now—even without this legislation. I would hope, however, that in the course of conference negotiations, the Federal appeal process could be streamlined to be more accessible to all veterans.

Finally, let me address the issue of attorneys fees. This bill would abolish limitations on fees that attorneys may charge veterans for representing them once the Veterans Administration has made a final decision on a claim. Attorneys could then charge "reasonable fees." It is important that the conferees clearly define the term "reasonable fee" and insure that it is fair to all veterans.

The vote on H.R. 5288 was a difficult one. Yet, there are only a few days left in this session of Congress, and it is imperative that we move this bill directly to conference. I hope that the conferees will take these thoughts into account and report out a strong judicial review bill. We must give veterans their day in court.

IN SUPPORT OF H.R. 2953, REGARDING STATE TAXATION OF INTERSTATE GAS PIPELINES

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DANNEMEYER. Mr. Speaker, I rise in support of H.R. 2953, a bill to permit U.S. district courts to enjoin or suspend certain State ad valorem property taxes on interstate gas pipelines.

By prohibiting States from taxing interstate natural gas pipelines at arbitrarily higher rates than other commercial or industrial property, we are sending a strong message to the States that such discriminatory taxation will not go unnoticed. The rectification of this inequity will result in a $67 million savings to consumers in 11 States who are currently the victims of discrimination.

By permitting the States to levy interstate taxes—effectively imposing taxes on neighboring States—we are also undermining the authority of the Federal Energy Regulatory Commission to regulate interstate commerce. As a cosponsor of this legislation, I believe it is necessary to provide the natural gas companies the same judicial relief that is currently afforded to railroads, trucking, bus, and airline companies involved in interstate commerce.

I urge my colleagues to support this legislation.

IN RECOGNITION OF THE 77TH ANNIVERSARY OF THE REPUBLIC OF CHINA

HON. CLAUDE HARRIS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. HARRIS. Mr. Speaker, today marks the 77th anniversary of the establishment of the Republic of China by Dr. Sun Yat Sen, replacing the ancient Manchu dynasty, and moving the Chinese nation toward greater democracy and control over its own destiny. In the more than three-quarters of a century which has passed since the establishment of the Republic, it has witnessed foreign invasion, economic dislocation, and civil war. Yet, the Republic continues to exist, continues to serve as a beacon representing both China's traditions and classical heritage, as well as an example of a free, prosperous, and democratic future for all of China.

Mr. Speaker, the Republic of China offers an example, not only to the Chinese nation, but to all nations in the developing world which would seek to increase their economic prosperity and advance democratic participation in their governments. At a time when many nations in the developing world must struggle with the burden of foreign debt, when they have difficulty managing the transition from an agrarian to an industrial economy, when they are unable to feed their people, pay for necessary imports, or sell their own products abroad, the experience of the Republic of China on Taiwan offers a model. That Government, working cooperatively with those in business, industry, and finance, planned and implemented a series of economic program which brought prosperity to agriculture, developed both consumer export industries as well as import substitution industries. This Nation has been so successful over the last 40 years that it now has foreign currency reserves second only to the nation of Japan.

Economic prosperity alone is an insufficient basis for a government claiming success. All people have aspirations beyond material well-being. It is both instructive and inspiring that the Government of the Republic of China is moving so quickly and so effectively to meet the further aspirations for democratic development expressed by its people. Today, the Republic of China has one of the freest presses in Asia. Its national legislature reflects greater diversity today than at any time in the past. The Government clearly has a policy of inclusion, to bring in groups and individuals who may previously have felt shut out of the political system. This Government is becoming evermore responsive to the wishes of its population as it moves on such issues as environmental protection and other quality of life issues. There are many nations in the world which could usefully follow this example of greater democracy and freedom. The transition from authoritarian rule or one-party forms of government is never easy. Maintaining public order and stability during a time of transition is a difficult art. We need only look at the Philippines, Korea, or Burma in Asia; or at Haiti, much closer to home, to appreciate the skill with which change is being managed in the Republic of China.

In closing, Mr. Speaker, I again extend to the Republic of China and its people my best wishes on this anniversary, and pledge to them my continued support for their independence and security. Their achievements make them deserving of our support and encouragement. I have every confidence that the political differences that separate the Republic of China from the People's Republic of China will be best resolved by these parties themselves, and that the wisest course for our policy will be to ensure that they are provided sufficient time, free of coercive pressure, in which to resolve what remain fundamental differences.

EXTEND FEDERAL EMPLOYEE HEALTH BENEFITS FOR DEPENDENTS

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. GOODLING. Mr. Speaker, recently it came to my attention that dependents of Federal employees are only covered under the Federal Employee's Health Benefits Program until they reach the age of 22. This is an inequity which places many children of Federal employees at an educational disadvantage as compared to many children of employees in the private sector.

This oversight places a financial burden on those families who have children still attending college or university after they have already turned 22 years of age. Families in this position must purchase health insurance from private carriers so that a child will be covered if some medical catastrophe should occur. There are many instances in which students may find themselves in this position. For example, if a student is held back early in school or flunked a grade, that student may not graduate from college until after turning 22 years old. Also, a student may be forced to leave college for a year or semester because of health reasons; again, this student might not graduate until after turning 22. In each of these instances, it is not the fault of the student that they have not already graduated from college before their health insurance expires. In fact, in some cases it is a credit to the student's character for having completed their education after experiencing an early setback. We in the Federal Government should strive to make it possible for a child to finish his or her education without such extraneous worries.

A student presently caught in the situation which I have been discussing, would be forced to purchase a private health insurance plan. An unemployed, full-time college student would probably not have the means to purchase such a plan without neglecting his or her studies and taking an extra job. Some families might have the means to pay this added expense, but many would not.

This bill is a very simple one that would make graduating from college a little less of a burden than it already is for many families. The bill extends the age for which unmarried, dependents who are full-time college students are covered under their parents' health benefits to the age of 23. This bill would make this provision of the Federal Health Benefits Program consistent with that of the U.S. military, which already covers unmarried, dependent, full-time college students until the age of 23. We all know that in the private sector many dependents are covered up to the age of 25 or 26 in some cases.

In addition, many States such as Pennsylvania have a kindergarten age entry law which states that you must be 5 years old by a certain date in order to attend kindergarten. If a student is held back even 1 year, most likely that student will not graduate from college until after turning 22. This law has only been in effect for about 5 years so we do not know how many future college students this will affect.

I would like to thank my colleague and chairman of the Post Office and Civil Service Committee, BILL FORD, for joining me as an original cosponsor of this bill and I would urge all of my colleagues to join me in cosponsoring the bill I introduced today to amend the Federal Employee's Health Benefits Program to cover unmarried, dependent, and full-time college students.

CARVER RANCHES "SAY NO TO DRUGS" EVENT

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. SMITH of Florida. Mr. Speaker, on Saturday, October 8, the Carver Ranches branch of the Broward County Library will inaugurate its "Just Say No to Drugs" back to school rally. This event in my home city of Hollywood will focus attention on the important of beginning the school year by saying "no" to drugs and "yes" to books.

Parents, students, local groups, and civic leaders will walk as one in the war against drugs at this event. The largest group of participants at the rally will be awarded the 1988 Back to School "Just Say No" Award scheduled to be presented by Florida Attorney General Bob Butterworth.

I want to congratulate William Flakes and the other organizers of this important event for their dedication and commitment to helping the young people of Broward County realize the danger of drugs and the pleasures of education. So many parents, teachers, and students in Broward County understand that now is the time to reclaim our neighborhoods and to build for the future through education.

I hope that the turnout is massive.

A CONGRESSIONAL SALUTE TO RALPH MARTUCCI

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. ANDERSON. Mr. Speaker, I rise today to pay tribute to an outstanding individual who has devoted nearly four decades of his life to the education of this country's youth. Ralph Martucci will be honored on Sunday, November 20, 1988, for his outstanding service to the Los Angeles Unified School District [LAUSD]. This occasion gives me the opportunity to express my sincere appreciation for his many years of hard work and unending commitment to education.

Ralph Martucci was born in Los Angeles, CA, on July 15, 1924. In 1933, his dedication to education became quite evident after the Long Beach earthquake damaged his school, necessitating his attending school in classroom tents. Despite this early hardship, he graduated from Washington High School in 1942 and shortly thereafter joined his peers in the Army during World War II. It was while in the Army that Ralph pursued his interest in music.

Upon completion of basic training, Ralph played trumpet for the Army Air Force Special Services Band. During those years, his outfit united with various USO tours to entertain thousands of service men and women in dozens of military facilities. In 1946, after 4 years of service in the Army Air Force Special Services Band, including one season with the Miami Symphony, he was discharged from the service and embarked upon a college career at the University of Southern California. He received his bachelor's degree in 1950, and a master's degree in 1956. During his college years, his musical endeavors included playing in a dance band in which Betty, Ralph's wife, sang.

Ralph began his illustrious teaching career with the Los Angeles Unified School District at Cahuenga Elementary School in 1950. While at this school, in addition to his daily classroom assignments, he conducted the school orchestra, taught instrument classes and was the after-school playground director. Upon completing 3 years of service at Cahuenga, Ralph spent the next 4 years in teacher-training for USC at the Menlo Avenue and Vermont Avenue Schools. He later became vice principal at Santa Barbara Elementary School. In 1959, Ralph moved up to the rank of principal at Trinity Street School and would remain in that capacity for nearly three decades.

During Ralph's first tenure as principal, he initiated a Tutorial Program, implemented the federally funded Saturday School for Elementary Age Students, and provided the leadership necessary to make Trinity the first inner-city school to become part of the UCLA Teacher-Training Program. He then transferred to Dolores Street School in 1966 to serve as principal for 6 years, and then to Crestwood Street School in 1972. He would serve as principal at the Crestwood School for the next 11 years before moving to Del Amo Elementary in 1983. The final move in Ralph's 38½ years of service with the LAUSD, occurred in 1986, when he moved to the Normont School in Harbor City. It is from this school that he will officially retire on January 3, 1989.

Despite Ralph's numerous achievements in the field of education, perhaps his greatest job has been his strong devotion to Betty, his wife of 40 years, and his son, Chuck, who recently graduated from Long Beach State University with a degree in Speech Communications.

Mr. Speaker, Ralph Martucci commands the respect of his community, the Los Angeles Unified School District, and his country. As the great orator Cicero once said, "What nobler employment, or more valuable to the State, than that of the man who instructs the rising generation." My wife, Lee, joins me in extending our congratulations to this noble man. He is truly a remarkable individual who has devoted his talents and energies to enriching the lives of so many other people. We wish Ralph, his wife, Betty, and their son, Chuck, all the best in years to come.

HONOR 127 FIREFIGHTERS WHO LOST THEIR LIVES

HON. WAYNE DOWDY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. DOWDY of Mississippi. Mr. Speaker, I rise today to honor the 127 firefighters who lost their lives in the line of duty in 1987. Two of those 127 men were from the State of Mississippi, and will be honored with the others at a ceremony on October 16, 1988, at the National Fallen Firefighters' Memorial.

Mr. Therrell E. Schilling served with the Sunnyhill Volunteer Rural Fire Department in Summit, MS, and was one of its founding members in 1972. Mr. Schilling died last year when he suffered a heart attack while en route to a fire at a neighbor's home. He is survived by his wife, Suzanne, and their two daughters.

Mr. Charles Jerry Schultz, Jr., worked with the Gulfport Fire and Rescue Department in Gulfport, MS. He put in 19 years of service with the department until his death in June 1987. Mr. Schultz is survived by his wife, Sarah, his son, Charles, III, and a daughter, Cynthia. Mr. Schultz also had two brothers, one of whom is a police officer, and the other is a fireman. Mr. Schultz' son is now a fireman with the Gulfport Fire and Rescue Department.

These men are only two examples of the type of men who risk their lives every day to battle the disaster of fire. I would like this opportunity today to pay homage to Mr. Therrell E. Schilling and to Mr. Charles Jerry Schultz, Jr., and thank them for the contribution they made to their respective communities. I know that their families are very proud of them, and will miss them.

We cannot forget the dangers which firefighters across America face each day. On October 16, 1988, I would ask that my colleagues join me in remembering these men who do so much for our country, States, and towns.

IN SUPPORT OF H.R. 1510—PATENTS IN SPACE

HON. MANUEL LUJAN, JR.

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. LUJAN. Mr. Speaker, I rise in support of H.R. 1510, the patents in space bill. This legislation is identical to the bill we passed 2 years ago—and it is needed no less today than it was then.

This bill amends our patent laws to deal with inventions in outer space. Very simply it will treat inventions in space the same as they are treated here on Earth. That is if the activity takes place in a vehicle under the jurisdiction or control of the United States, it shall be considered to have taken place in the United States.

Because of the international aspects of the space station, it has been excluded from consideration in this legislation, and is addressed in the space station agreements instead. This is appropriate.

This legislation is critically important now that we're back in space again. We will soon be faced with this issue head on when entrepreneurs successfully develop new products or processes in space. We will need to have appropriate laws in place to deal with this eventuality, and the time to act is now—not after the problem has arisen.

Mr. Speaker, I cannot think of a single substantive reason for opposing this legislation, and I urge my colleagues to join me in support of this much needed legislation.

ALICE GALKA: NATIONAL PRESIDENT OF THE AMERICAN LEGION AUXILIARY

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 6, 1988

Mr. VISCLOSKY. Mr. Speaker, today I want to pay special tribute to Alice Galka, a lifetime resident of Gary, IN. On September 7, 1988, Mrs. Galka was elected national president of the American Legion Auxiliary. This organization is the largest volunteer women's patriotic group in the world.

Mrs. Galka's involvement with the auxiliary is a long and honored one. She has held positions with the auxiliary on every level. She has been membership chairman, junior activities chairman, veterans affairs and rehabilitation chairman, finance chairman, vice president and president of her local unit. Her district record includes 6 years as treasurer, terms as first and second vice president, parliamentarian and district president. Mrs. Galka has held all major chairmanships as well as the offices of treasurer, vice president and president on the State level. On the national level, she has held several chairmanships and now is national president.

Mrs. Galka's devotion to the auxiliary is indeed commendable. But she is as dedicated to her community. She has served as the city of Gary, chairman of the March of Dimes, been president of the Gary Chopin Chorus, representative of the Lake County Commissioners on the board of directors of the Lake County Office of Economic Opportunity and was on the board of directors for United Cerebral Palsey of Northwest Indiana, for which she received their Woman of the Year Award.

Needless to say, I am grateful that Mrs. Galka has decided not to run for Congress!

Mrs. Galka has clearly set high standards for herself. I am not surprised that she has also set a challenging agenda for the auxiliary. Of particular interest to her is the stability of the United Service Organization [USO] and continuing support for a hospice project that deals with the terminally ill. She has also bravely confronted the issue of AIDS and breast cancer by pledging to use the auxiliary to "dispel the myths and present the facts about these feared killers * * *."

The American Legion Auxiliary is fortunate to have the leadership, dedication, and guidance of Mrs. Galka. Her desire to use her energy and skills in service to community and country is worthy of notice, respect and admiration.

FADA ILLEGAL ACCORDING TO GAO

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, the General Accounting Office, in a legal opinion prepared for the Senate Government Affairs Committee, has definitively ruled that the Federal Asset Disposition Association [FADA] was illegally created.

The GAO opinion confirms earlier research done for me by Dr. Harold Seidman of Johns Hopkins University's Center for the Study of American Government. Dr. Seidman research conclusively demonstrates that FADA's creation violates both article II of the U.S. Constitution and the Government Corporation Control Act of 1945.

The GAO has also advised me that we can correct the illegal creation of FADA by passing H.R. 4646 which will be voted on by the full House on Wednesday, October 12, 1988. H.R. 4646 was reported out of the House Banking Committee by a bipartisan majority of 42 to 8.

The GAO held that FADA does not perform any of the basic functions of a savings and loan association and therefore is not a legitimate S&L.

The GAO ruled that in addition to being a wholly owned Government corporation FADA's employees should be considered Federal employees subject to Federal pay caps and other similar restrictions of Federal employment.

I welcome this opportunity to share the relevant portions of the GAO report with my colleagues in the House.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, September 6, 1988.
B-226708.

Hon. DAVID PRYOR,
Chairman, Subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: This is in partial response to your letter of August 14, 1987, which requested the General Accounting Office to undertake a follow-up to our April 1987 fact sheet on Federal Pay—Executive Salaries on Government-Related Banking Organizations, GGD-87-68FS. Among other things, you asked us to review the legality of the Federal Home Loan Bank Board's actions in establishing and placing certain of its functions in entities that consider themselves not subject to the salary limitations in title 5 of the United States Code. This letter and its enclosure address the legality of the Bank Board's actions. The following is a summary of our conclusions with respect to the five entities that we reviewed.

We conclude that the employees of the Office of Regulatory Policy, Oversight and Supervision (ORPOS) (now known as "the Office of Regulatory Activities") and the Office of Finance should be regarded as Bank Board employees and, thus, federal employees. These two entities are organized fundamentally as extensions of the Board itself. They are subject to plenary control by the Board, which appoints their principal officers, prescribes their functions, and formulates their budgets.

We also conclude that the employees of the Federal Asset Disposition Association (FADA) should be regarded as federal employees. While FADA was chartered as a federal savings and loan association, it does not perform any of the basic functions of such an association. Instead, it is wholly owned and controlled by the Bank Board and the Federal Savings and Loan Insurance Corporation (FSLIC), and its sole purpose is to assist FSLIC in carrying out its asset management and disposition functions. Even if FADA is a legitimate federal savings and loan association, it is also, in fact, a wholly owned government corporation. As such, its employees should be regarded as federal employees.

Therefore, we believe that the Bank Board acted improperly in creating ORPOS, the Office of Finance and FADA as entities whose employees are not subject to the salary limitations of title 5, United States Code. Of equal if not greater concern is the fact that the employees of these entities are not considered subject to the conflict-of-interest provisions of title 18.

We agree with the Bank Board that the Federal Home Loan Bank System Publication Corporation and the Bank System Office of Education are entities separate from the Board itself whose employees should not be regarded as federal employees.

The enclosure presents in detail our analysis of each of these entities. We will respond separately to the other issues raised by your August 14 letter.

Sincerely yours,
MILTON J. SOCOLAR
(For Comptroller General
of the United States).

ANALYSIS OF THE LEGAL STATUS OF CERTAIN FEDERAL HOME LOAN BANK SYSTEM ENTITIES

BACKGROUND

An April 1987 fact sheet issued by the General Accounting Office, *Federal Pay—Executive Salaries in Government-Related Banking Organizations,* GAO/GGD-87-68FS, identified several organizations within the Federal Home Loan Bank System which operate under the direction of the Federal Home Loan Bank Board (FHLBB) but which, unlike the FHLBB itself, do not regard their employees as federal employees subject to the salary limitations of title 5, United States Code. These organizations include the Office of Regulatory Policy, Oversight and Supervision (ORPOS), the Office of Finance, and the Federal Asset Disposition Association (FADA). The Chairman of the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs has submitted a follow-up request to the fact sheet which asks, among other questions, "whether the FHLBB's actions in divesting itself of certain functions in favor of establishing entities that consider themselves not subject to the Title 5 salary limitations are lawful and appropriate."

The following analysis addresses this question with respect to ORPOS, the Office of Finance, and FADA, as well as two other entities within the Federal Home Loan Bank System: the Office of Education and the Publication Corporation.

APPLICABILITY OF SALARY LIMITATIONS

Salary limitations for federal employees are contained in the so-called "Classification Act," 5 U.S.C. §§ 5101 *et seq.* The Classification Act provides in 5 U.S.C. § 5102(b):

"Except as provided by subsections (c) and (d) of this section, this chapter applies to all civilian positions and employees in or under an agency * * *."

The term "agency" is defined to include "an Executive agency" and the term "employee" is defined to mean "an individual employed in or under an agency." 5 U.S.C. § 5102(a)(1)(A) and (2). For purposes of title 5 of the United States Code, including the Classification Act, the term "Executive agency" is defined to mean "an Executive department, a Government corporation, and an independent establishment." 5 U.S.C. § 105.

Section 17(b) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. § 1437(b), provides that the FHLBB "shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government . . . ." Therefore, the Board clearly is an "agency" within the scope of the Classification Act. Over the years, however, the Board has urged the Civil Service Commission and later the Office of Personnel Management (OPM) to exempt its employees from the Classification Act, based on both legal and policy arguments. These arguments have been unavailing. As recently as May 30, 1986, OPM reaffirmed its position that FHLBB employees are subject to the Classification Act. while the FHLBB and its employees thus clearly are subject to the Classification Act, the status of the other Federal Home Loan Bank System entities and their employees is less certain. Each of these entities is discussed separately hereafter.

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FEDERAL ASSET DISPOSITION ASSOCIATION (FADA)

The FHLBB, acting as the head of the FSLIC, chartered FADA in 1985 as a federal savings and loan association to liquidate and dispose of the assets of failed thrift institutions which were insured by FSLIC. It is a stock association having a duration of 10 years. FADA is a wholly owned subsidiary of FSLIC, which holds all of FADA's stock, and operates under a board of directors appointed by the FHLBB. FADA does not accept deposits or issue accounts.

The authority cited for the creation of FADA is section 406 of the National Housing Act (NHA), as amended, 12 U.S.C. § 1729, *infra.* In an opinion to the President of FADA dated July 22, 1986,[1] the Acting General Counsel of the FHLBB supported FADA's status as a Federal savings and loan association as follows:

"The defining characteristics of a Federal savings and loan association are set forth in section 5 of the Home Owner's Loan Act of 1933, as amended ('HOLA'), 12 U.S.C. 1464 (1982); and the charter of FADA, issued pursuant to Resolution No. 85-980, appropriately provides for the new association the powers granted by section 5 of the HOLA. The charter was not issued under section 5, however, but under section 406 of NHA, and the Bank Board has limited FADA, in view of the specific purpose for which it was formed, namely to facilitate the liquidation of insured institutions, by issuing a charter that allows FADA to accept deposits only with the express consent of the Bank Board.

"Section 406(a) of the NHA authorizes the Corporation [FSLIC] 'to provide for the organization of a new Federal savings and loan association' for the purpose of facilitating the liquidation of institutions the accounts of which are insured by the Corporation ('insured institutions'). The corporation as receiver of an insured institution or institutions in default is also authorized pursuant to subsections (b) and (c) of section 406 to organize a new Federal savings and loan association to 'take over' the assets of such insured institution or institutions. The cited authority has been employed on numerous occasions by the Corporation to organize new Federal associations to take over and carry on the business of insured institutions in default and to provide for the payment of insured acconts in an institution in default by making available accounts in a new Federal savings and loan association. The terms of the statute, however, do not require that all of the purposes for which a new Federal association may be organized under subsections (a), (b), or (c) of section 406 of the NHA must be implemeted by every new Federal savings and loan association that is so organized. Nor does the section's legislative history contain any indication that it should be so construed." (Footnotes omitted.)

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[1] This opinion addressed the question of whether the establishment of FADA violated section 304(a) of the Government Corporation Control Act, 31 U.S.C. § 9103(a) (1982), which prohibits the creation of a government corporation except pursuant to specific statutory authority.

We do not agree that FADA represents a proper exercise of section 406(a) of the NHA. Section 406(a) provides as follows:

"In order to facilitate the liquidation of insured institutions, the Corporation [FSLIC] is authorized (1) to contract with any insured institution with respect to the making available of insured accounts to the insured members of any insured institution in default, or (2) to provide for the organization of a new Federal savings and loan association for such purpose subject to the approval of the Federal Home Loan Bank Board."

The General Counsel's opinion refers only to instances of section 406(a) being used to organize new Federal savings and loan associations which, in effect, replace failed institutions by making available accounts and carrying on the business of a savings and loan association. However, he maintains that the "purpose" for whch a new federal savings and loan association may be organized under section 406(a) is simply "to faciliate the liquidation of insured institutions * * *." Thus, he seems to suggest that section 406(a) may be used to create an entity which serves this general purpose in any way even if it does not perform the usual functions of a federal savings and loan association, such as issuing accounts.

We do not believe that this expansive interpretation of section 406(a) is supportable. In our view, the "purpose" for organization a new Federal savings and loan association under paragraph (2) of section 406(a) is to make available insured accounts to the members of a failed institution, as an alternative to contracting with an existing institution under paragraph (1) to make available such accounts. In other words, the new association is to carry on the business of the failed institution.

The legislative history of section 406(a) tends to support this more limited interpretation. The language of section 406(a) has remained unchanged since the original enactment of the NHA in 1934. *Sec* 48 Stat. 1259. The House-passed version of the bill (H.R. 9620, 73d Cong.) that was eventually enacted in 1934 contained the following provision as section 307(a):

"In order to facilitate the liquidation of insured institutions the Insurance Corporation may negotiate with and contract for an insured institution to issue new insured accounts to the insured members of any insured institution in default, or the Insurance Corporation may cause the organization and charter of a new Federal savings and loan association subject to the approval of the Board to issue shares to the insured members of such insured institution in default."

This language clearly envisioned the creation of a new Federal savings and loan association to issue shares to the members of the failed institution. The enacted version is substantially the same as the above-quoted language, with only minor editorial changes.

Further, while the report on H.R. 9620 by the House Committee on Banking and Currency does not discuss this specific language, it does state generally: "Adequate provision is made for the liquidation of insured institutions somewhat similar to the plan for the liquidation of banks which are under Federal deposit insurance." H.R. Rep. No. 1922, 73d Cong., 2d Sess., at 4 (1934). We note in this regard that the provisions relating to closed banks insured by the Federal Deposit Insurance Corporation which had been enacted 1 year earlier in the Banking Act of 1933 included the following language with respect to different categories of closed banks:

"As soon as possible thereafter [after a bank closing] the [Federal deposit Insurance] Corporation shall organize a new national bank to assume the insured deposit liabilities of such closed bank, to receive new bank deposits and otherwise to perform temporarily the functions provided for in this paragraph." *See* 48 Stat. 172-173, 174-175.[2]

Thus, in view of its language and legislative history, we conclude that section 406 of NHA authorizes the organization of a federal savings and loan association for the purpose of accepting deposits, issuing accounts and carrying on the usual business of such as association. This conclusion is further supported by reference to section 5 of the Home Owner's Loan Act (HOLA), 12 U.S.C. § 1464, which, as the General Counsel acknowledges, sets forth the "defining characteristics" of a federal savings and loan association. Section 5(a) of HOLA, captioned "chartering and purpose," describes the basic attributes of such associations as follows:

"*In order to provide thrift institutions for the deposit or investment of funds and for the extension of credit for homes and other goods and services,* the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal Savings Banks, and to issue charters therefor, giving primary consideration to the best practices of thrift institutions in the United States. *The lending and investment authorities are conferred by this section to provide such institutions the flexibility necessary to maintain their role of providing credit for housing.*" 12 U.S.C. § 1464(a). (Emphasis supplied.)

Under this subsection the basic functions of a savings and loan association are to accept deposits and make loans. FADA does not carry out either of these basic functions.[3]

"The sole purpose of the Federal Asset Disposition Association is to assist in strengthening the financial health of the FSLIC by using private sector management and marketing techniques to manage assets in the FSLIC system at the lowest cost consistent with sound operations and to sell these assets as fast as is consistent with obtaining the best possible return for the FSLIC and its receiverships."

The organization of FADA is also fundamentally different from that of any other federal savings and loan. All of FADA's stock is owned by FSLIC and is voted for FSLIC by the Board. The charter prohibits FADA from issuing additional stock without the express consent of the Board; it also prohibits FADA from transferring stock to any person or entity other than FADA or FSLIC without the express consent of the Board. FADA is under the direction of a Board of Directors consisting of 11 voting directors and 3 *ex officio* directors, all of whom are appointed by the Board.

The charter granted to FADA literally authorizes it to "pursue any and all of the lawful objectives of a Federal association chartered under section 5 of the Home Owners' Loan Act ('HOLA'), and with respect to both section 406 of the NHA and section 5 of the HOLA, to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto. . . ." However, it is clear that FADA is a federal savings and loan association in name only. It does not perform the functions of a federal savings and loan association and is not organized or operated in the manner of a federal savings and loan association. Instead, FADA is wholly owned and controlled by federal agencies (FSLIC and the FHLBB) and its sole purpose is to assist them in the performance of federal functions. Therefore, we conclude that FADA cannot legitimately be regarded as a federal savings and loan association under section 406(a) of the NHA or otherwise.

We note that several provisions of the recently-enacted Competitive Equality Banking Act of 1987, approved August 10, 1987, Pub. L. No. 100-86, 101 Stat. 552, specifically refer to FADA. Section 306(i) of Pub. L. No. 100-86, 101 Stat. 603, amends the National Housing Act to require that FSLIC include in its quarterly reports and budgets the activities, receipts, and expenditures of FADA. Section 403 of Pub. L. No. 100-86, 101 Stat. 609, amends a provision of the Government Corporation Control Act (31 U.S.C. § 9105(a)) to require the Comptroller General to conduct financial audits of FADA. This amendment describes FADA as—

"the savings and loan association established by the Federal Savings and Loan Insurance Corporation under section 406 of the National Housing Act to manage and liquidate nonperforming assets on behalf of such corporations in accordance with such section."

Finally, section 415 of Pub. L. No. 100-86, 101 Stat. 622, refers to FADA several times as "related entity" of the FHLBB in requiring certain reports to the congressional banking committees on the Board's operations.

In our view, these provisions of Pub. L. No. 100-86 do not ratify FADA's creation. They merely recognize the fact that FADA exists and impose some oversight requirements with respect to it.

Even if we were to conclude that FADA was properly established under section 406 of the National Housing Act or that Congress has ratified the creation of FADA, we still believe that FADA employees should be regarded as federal employees for purposes of title 5 of the United States Code. As discussed at the outset of this analysis, the Classification Act applies to the employees of "an Executive agency," which is defined in 5 U.S.C. § 105 to mean "an Executive department, a Government corporation, and an independent establishment." Section 103(1) of title 5 defines "Government corporation" for purposes of that title to mean "a corporation owned or controlled by the Government of the United States * * *." Whatever other status it may have, FADA clearly meets this definition. As a federally chartered stock savings and loan association it is, in fact a corporation and, as discussed previously, it is both owned and controlled by the government of the United States.

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[2] The current version of this language, contained in 12 U.S.C. § 1821(h), provides:

"As soon as possible after the closing of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the closed bank or the public, shall organize a new national bank to assume the insured deposits of suh closed bank and otherwise to perform temporarily the functions hereinafter provided for. The new bank shall have its place of business in the same community as the closed bank."

[3] Indeed, FADA's charter and the Board resolution approving it specifically prohibit FADA from accepting funds for deposit or issuing accounts except with the express approval of the Board.

FEDERAL HOME LOAN BANK SYSTEM PUBLICATION CORPORATION

In response to our inquiry, the FHLBB. General Counsel provided the following information concerning the origin and nature of the Publication Corporation:

"The Publication Corporation was a result of a proposal to the Board to establish the *Journal of the Federal Home Loan Bank System* ('Journal') encompassing the joint efforts of the twelve banks and the Board. This is not a delegation or assignment of a Board function. The Banks are specifically authorized by 12 U.S.C. § 1428 to conduct studies of such subjects as they deem useful for the general guidance of their policies and operations. The Banks are also authorized to undertake other activities beneficial to themselves and their members and others. 12 U.S.C. § 1421 *et seq.* The publication of the Journal clearly fits under these powers, and the Board was not required to, and did not, invoke 12 U.S.C. § 1437(a) in approving the proposal on May 4, 1984. The Publication Corporation was incorporated in the District of Columbia on August 27, 1984, pursuant to the District of Columbia Nonprofit Corporation Act."

Based on this explanation, we agree that the Publication Corporation does not represent an instance of the Board placing its functions in an entity that is nothing more than its alter ego. Since the Corporation has one class of voting members, consisting of each of the 12 Federal Home Loan Banks, the Banks do control the Corporation. Moreover, the Corporation clearly provides services for the Banks. Therefore, we conclude that the Publication Corporation is not a mere extension of the FHLBB and its employees should not be regarded as federal employees.

[From the Washington Post, Sept. 10, 1988]

GAO SAYS BANK BOARD EXEMPTED EMPLOYEES ILLEGALLY FROM U.S. LAWS

(By Kathleen Day)

Scores of employees at the Federal Home Loan Bank Board have been illegally exempted from laws limiting the pay and political campaign activities of federal workers, congressional auditors have concluded.

In a report that will be made public Monday, the General Accounting Office says that workers in three bank board-subsidiaries are federal employees and the bank board had no authority to bypass federal laws governing them. Among the employees potentially affected by the GAO's conclusion is Gerald P. Carmen, a former Reagan fund-raiser who ran the General Services Administration in the early 1980s.

Along with the pay problem, "Of equal, if not greater concern," is the bank board decision to exempt the subsidiaries employees from conflict-of-interest laws all federal employees must comply with, the report said.

"Obviously this could be devastating." bank board spokesman Karl Hoyle said of the report.

The report throws into question the pay policy of the subsidiaries, which employ several hundred people and whose managers often earn salaries of $100,000 or more for performing government work. Federal workers generally can earn no more than $75,500.

The report also throws into question millions of dollars in contracts the bank board has awarded through the subsidiaries without following standard government procurement procedures that usually require competitive bidding. The divisions routinely hire property management firms and legal firms without public bidding.

Sen. David Pryor (D-Ark.), whos requested the GAO study, said he is trying to determine if the GAO has the authority to force the bank board to revoke the special treatment or if Congress will have to seek remedies. Although the GAO is traditionally a research and auditing agency, an obscure law dating from the 1920s also may give it the power to order the changes.

The bank board created the three subsidiaries in recent years specifically to bypass federal pay caps, officials there have said. The subsidiaries perform functions formerly carried out by the bank board: managing and selling property the government inherits when S&Ls fail and overseeing the bank board's field supervisors as the examine S&Ls.

If the subsidiaries' actions are determined to be improper, Carmen, who is president of the—the Federal Asset disposition Association, or FADA—may have to give up his Republican political activities or resign. FADA, which has several hundred employees, was created in 1986 to manage and sell property from failed S&Ls.

Carmen is a partner in Carmen, Carmen and Hugel, a political consulting firm whose clients include Rep. Jack Kemp (R-N.Y.) and former U.N. ambassador Jeane Kirkpatrick. Carmen, who was Reagan's political fund-raiser in New Hampshire in 1980, joined FADA in February.

At a recent staff meeting at the bank board, employees were told that if they needed to talk to FADA, the should not try to reach Carmen until "after the November 8th election," but should talk to Carmen's assistant, Jerald Fox, bank board sources said.

Until resigning in May, Carmen was for two years the national chairman of Citizens for America, a grassroots lobby group that promotes President Reagan's political agenda, said Ed Priola, deputy field director for the lobby group. "We support the contras, the SDI, strong defense—that type of thing," Priola said.

A board official said he did not know Carmen's salary at FADA, but his predecessor earned $250,000 a year, plus thousands of dollars in bonues. Carmen did not return telephone calls yesterday.

Pryor yesterday asked the GAO to determine what action Congress can take to recover any "misused federal funds." In addition, Pryor asked Carmen for copies of his travel documents and expenses since the beginning of the year.

Rep. James J. Florio (D-N.J.) also has asked the GAO to examine the travel records of top FADA employees since June 1.

The report comes as the bank board and S&L industry face one of the biggest financial crises in U.S. history. Hundreds of S&Ls have failed since the early 1980s, and hundreds will have to be closed in the next five years. The government is expected to ask taxpayers for as much as $60 billion to solve the problem.

The other bank board divisions included in the GAO report are:

The Office of Regulatory Policy, Oversight and Supervision, which employs 146 people. It oversees hundreds of field workers who examine the nation's 3,000 S&Ls to ensure that they are healthy and comply with bank board regulations.

The Office of Finance, which employs 52 people. It raises money that the bank board's 12 regional home loan banks then lend to S&Ls.

NATIONAL RURAL HEALTH CARE ACT

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. ROYBAL. Mr. Speaker, I want to take this opportunity to advise you of the introduction of my National Rural Health Care Act of 1988 (H.R. 5492) on behalf of rural America. The National Rural Health Act will ensure adequate access to health care services, make health care more affordable, and improve the quality of health services. This legislation will improve the health status of and the quality of life for rural Americans.

Twenty-five percent of all Americans, and one-third of the Nation's elderly, live in rural communities. However, they have access to only 14 percent of all physicians, 9 percent of all nurse practitioners and 19 percent of all nurses. The rural physician-to-population ratios have increased at one-third the rate seen in the country as a whole. This unequal distribution, compounded by the fact that 14 percent of our rural citizens are poor, has meant that total Americans lack access to affordable, quality medical care.

The current Medicare physician payment system often has two "prices," one for urban areas and another, lower rate, for rural areas. This fails to take into account the higher costs of doing business in rural areas, such as maintaining 24-hour readiness, and has been a major factor in the low supply of primary care providers—including physicians, nurses, physician assistants, and mental health providers—in rural communities.

The Committee on Aging and the Task Force on the Rural Elderly have spent more than 1 year looking at solutions to this unequal treatment of our rural citizens. We have found that access to physicians is not the only problem. The lack of emergency medical services is a major factor in a rural trauma death rate—61 deaths per 100,000 trauma accidents—that is almost five times the national average. Also, most rural communities have few, if any, mental health providers. By choosing to live in rural communities, Americans face limited access to critically needed care.

My National Health Care Act abandons the piecemeal approach, in favor of a comprehensive one. We are addressing the needs for training caregivers and providing incentives to establish practices in rural areas, as well as ensuring that payments to rural health care providers reflect the true cost of doing business. We are also extending Medicaid protection to all persons living at or below the Federal poverty line. Finally, by providing direct Medicare and Medicaid reimbursement of nurse practitioners, clinical nurse specialists, certified nurse-midwives, and nurse anesthetists we ensure that Americans receive the care they need, regardless of provider.

I hope that I can count on your support and assistance as we attempt to rectify this inequity in the treatment of rural Americans who deserve affordable, accessible medical care.

Mr. Speaker, I insert the bill description and the bill text in the RECORD.

NATIONAL RURAL HEALTH CARE ACT OF 1988

(H.R. 5492)

Encourages development of rural Medical Care Ambulatory Facilities (MedCAF) providing ambulatory, emergency and limited inpatient care.

Adjusts provider payment rates for Medicare and Medicaid to reflect the "cost of doing business" in rural areas, taking into account such things as 24-hour coverage, telephone consultations and additional administrative, facility and equipment costs, unique to rural areas.

Raises Medicaid eligibility to 100 percent of federal poverty level.

Provides direct Medicare and Medicaid reimbursement for nurse practitioners, clinical nurse specialists, certified nurse-midwives, and nurse anesthetists.

Provides a new Rural and Urban Health Assistance Scholarships and Loan Repayment Program.

Establishes a new Medical Practice Development Grant Program.

Makes health insurance for self-employed, small businesses and farms deductible. Allows for a self-financing insurance pool developed by the Secretary of Health and Human Services.

H.R. 5492, NATIONAL RURAL HEALTH CARE ACT OF 1988

(Hon. Edward R. Roybal, Chairman, House Select Committee on Aging)

(A bill to contain health care costs, maintain quality and ensure access for rural Americans)

PURPOSE

This legislation, introduced by Representative Edward R. Roybal on behalf of rural Americans, is designed to ensure adequate access to health care services, to make health care more affordable, to improve the quality of health care services and, as a result, to improve the health status of and quality of life for rural Americans.

BACKGROUND

Health care for rural America has been long overlooked and, as a result, the health status of rural Americans remains substantially worse than for urban Americans. Rural residents have more chronic illness, infant mortality rates, and more serious injuries and accidents than their urban counterparts (of all trauma related deaths in the United States, farming claims 61 per 100,000 compared to 13 per 100,000 for all other occupations).

Rural residents of this country comprise about 25 percent of the total population and about one-third of the total elderly population of the United States. Yet rural areas have only fourteen percent of all physicians, thirty-two percent of all physician assistants, nine percent of all nurse practitioners and nineteen percent of all nurses.

Physician to population ratios have improved in rural areas, but the ratios remain too low and the increase has been only one-third of the increase seen for the nation as a whole. Elderly populations are a greater percentage of the total population in rural small communities. The smallest communities, which have the fewest medical and financial resources, must provide care to the greatest number of elderly.

Provider maldistribution and increases in rural poverty (fourteen percent of rural citizens are poor) dictate special consideration when addressing the needs of rural communities. Shortages in rural areas of nursing care, physical therapy, and basic primary care is widespread now and will worsen in the future as the old get older and require more care. With more rural hospitals closing in 1987 than in previous years and the cost of hospital care higher than ever before, alternative delivery systems must be developed to provide the needed care for the citizens of rural America. Policy changes must be made to attract and retain health care providers for rural America. Finally, federal and state policies must ensure accessibility, affordability, and quality of rural health care for rural Americans.

BILL OVERVIEW

In an effort to strengthen rural health care in America, the National Rural Health Care Act includes the following provisions:

Encourages the development of Medical Care Ambulatory Facilities (MedCAF) providing ambulatory, emergency and limited inpatient care in rural areas. MedCAFs have access to start-up funds (Authorization: $30-45 million), hospital transition funds, enhanced Medicare and Medicaid reimbursement, Medical Practice Development Grants, and Health Assistance Scholarship grantees.

Establishes a rural health clinic demonstration program with enhanced reimbursement, and eligibility for Health Assistance Scholarship grantees and Medical Practice Development Grants. Refinement of current rural health clinic program under Medicare.

Adjusts provider payment rates (medical practices, nursing homes, home health agencies, MedCAFs) for Medicare and Medicaid to reflect the "cost-of-doing-business" in rural areas. "Cost-of-doing-business" adjustments are to take into account such things as 24-hour coverage, telephone consultations, and additional administrative, facility and equipment costs unique to small rural providers.

Rural studies and demonstrations, including Medicare and Medicaid research and demonstrations, Prospective Payment Asessment Commission study of hospital rates, National Center for Health Services Research research projects, Alcohol, Drug Abuse and Mental Health Administration documentation of mental health care in rural areas, and National Institute on Mental Health service delivery research and demonstrations.

Raises Medicaid eligibility to 100 percent of federal poverty level for all persons.

Makes health insurance for unemployed, self-employed, small businesses and farms deductible. Also, Secretary is to develop a legislative proposal for a self-financing insurance pool for these people and businesses.

Moves the Office of Rural Health Care into the Office of the Secretary.

Funds States with formula grants to develop rural health care access plans. (Authorization: $15-17 million.)

Establishes Medical Practice Development Grant Program to assist development of solo and small group practices, rural health clinics and MedCAFs. (Authorization: $5-7 million.)

Expands funding for community and migrant health centers by 10 percent.

Funds States with a formula for Rural Emergency Medical Services (EMS) Block Grant to develop emergency medical transportation and communication and pay for uncompensated trauma care and transportation. (Authorization: $150-160 million.)

Establishes new training programs (Rural and Urban Health Assistance Scholarships and loan repayments (Authorization: $15-22 million), primary care training programs for rural areas (Authorization: $10-13 million) and multi-competent technician training programs (Authorization: $1-2 million)). Expands funding for National Health Service Corps scholarships, Area Health Education Centers, and Geriatric Health Education Centers.

Provides direct Medicare and Medicaid reimbursement for nurse practitioners, clinical nurse specialists, certified nurse midwives, and nurse anesthetists beginning as of January 1, 1991. Services are defined as those services covered as physician services and within the scope of state nursing practice laws. These services could include services provided in nursing homes, hospitals, patient homes, and ambulatory care settings.

THE NATIONAL RURAL HEALTH CARE ACT—BILL DESCRIPTION

In an attempt to deal with the problems facing rural Americans and the health care system that serves rural Americans, a series of changes are proposed. The provisions of the National Rural Health Care Act are as follows:

SECTION 1: MEDICARE PROVISIONS

A. Hospital Payment Rates

PROPAC Study of Rural Hospital Reimbursement: The Prospective Payment Assessment Commission is directed to conduct a study of the relationship between what should be "reasonable" hospital costs paid by Medicare and what is paid by Medicare under DRG reimbursement and cost-based reimbursement. This study should also examine the role of Medicare with respect to charity care for non-Medicare recipients. The study is due on January 1, 1990.

B. Development of Medical Care Access Facilities (MedCAF) and Uses for Underutilized Hospital Bed Capacity

Hospital bed transition funds (currently $15 million, $50,000/hospital) would also apply to the development of MedCAF (Medical Care Access Facility—see below) and would apply whether the hospital is to be closed as a hospital or the hospital is to be restructured. MedCAFs would be eligible for an additional $200,000 development grant to serve as an incentive to either (a) transition hospitals or (b) create MedCAFs in communities without a hospital, but with documented need. Authorized funding is $30 million for 1989, $40 million for 1990 and $45 million for 1991.

Eligible sites are required to be in 1) a rural medically underserved area (MUA), 2) a frontier service area (less than 6 persons per square mile; distant (more than one-half hour travel time) from city of 5,000 or more; minimum of 500 square miles) or 3) a small rural county (less than 20,000).

MedCAF (Medical Care Access Facility) is a facility which provides ambulatory primary, emergency, urgent, and surgical care, provides basic inpatient care with up to 10 inpatient beds and provide ancillary services including radiology and laboratory) in frontier areas with populations between 1,000 and 5,000. The Secretary of the Department of Health and Human Services may waive the minimum and maximum populations qualifying for MedCAF designation when the geographic area is similar in character to the MedCAF areas defined above. The maximum number of days allowed per hospital stay is 2 days (48 hours) with an exception process, through the Peer Review Organizations (PRO), for allowing additional days. Each MedCAF is required to have an approved quality assurance plan. MedCAFs are required to accept both Medicare and Medicaid patients. In addition, MedCAFs must meet the following:

MedCAF Inpatient Care:

Staffing requirements are the same as for rural hospitals under the current waiver program but only apply when inpatient care is actually being provided. The inpatient beds must be capable of being available and staffed in no less than 2 hours.

Standards for the inpatient part of MedCAFs are the same as for other Medicare hospitals, except that MedCAFs are not required to be open 24-hours per day and 7-days per week. In addition, they are not required to have full-time dietician, pharmacist, laboratory technician, medical technologist and radiologic technologist. Quality control and off-site assistance are to be provided by qualified dietician, pharmacist, laboratory technician, medical technologist, and radiologic technologist.

Transfer agreements must be made between the MedCAF and appropriate referral hospitals and must be documented.

Discharge planning expertise and assistance is to be provided under contract with a nearby community hospital.

Reimbursement for hospital care in a MedCAF will be by DRGs tied to a cost-of-doing business index (e.g., index should take into account higher overhead costs and/or stand-by capability). Secretary is to review relative allocation of DRG payment between MedCAF and referral hospitals to assure equitable payments.

Reimbursement for care provided in the inpatient setting by a physician assistant and nurse practitioner is covered as long as care is provided under the supervision of a physician.

MedCAF Ambulatory Care:

Standards for the ambulatory care part of the MedCAF are to be determined by the Secretary in consultation with appropriate provider and consumer organizations.

Multi-competent technicians may be used to staff the emergency room, conduct basic laboratory tests and take basic x-rays (chests, extremities, skull, and abdomen). Standards for multi-competent technicians would include the qualifications for an Emergency Medical Technician plus the demonstration of competency based upon on-the-job-training, an approved training program or a mix of both. Continued competency would be assured by certification of the laboratory and radiology departments of each MedCAF and by the referral hospital.

Reimbursement for emergency visits will be by combination of fee-for-service (determined on the basis of a relative value scale) for the care by a physician, physician assistant or nurse practitioner and cost-based for facility. Reimbursement for primary care will be by fee-for-service determined on the basis of a relative value scale. Reimbursement for care provided in the ambulatory setting by a physician assistant and nurse practitioner is covered as long as care is provided under the supervision of a physician as per an individual State's practice act.

MedCAF Inpatient and Ambulatory Care:

Covered services not provided directly by the MedCAF may be covered if they are available under contract and that availability must be documented. Pharmacy services not provided directly by the MedCAF may be covered if they are available under contract. That availability must be documented.

Utilization review must be provided under contract either by a community hospital or a Medicare PRO.

C. Rural Health Clinic Program

Existing Rural Health Clinic Program: For these rural health clinics qualifying under the current rural health clinic program, changes are made to lower the physician productivity standard to 2.6 visits per hour and to lower physician assistant and nurse practitioner productivity standard to 1.3 visits per hour. Rural health clinics are eligible for rural health assistance scholarship recipient placements and loan forgiveness if they meet the standards for placements and loan forgiveness. In addition, they are required to accept both Medicare and Medicaid patients. Effective date is January 1, 1990.

Rural Health Clinic Demonstration Program: In addition to the current rural health clinic program, there is a new, optional demonstration program for which existing rural health clinics may also qualify as of January 1, 1990. Any site which requests and qualifies for this designation is to be granted this designation. The demonstration program follows the same rules as the current rural health clinic program with the following exceptions:

Clinics are paid on a prospectively set, relative value fee schedule for primary care procedures only. The fee schedule is tied to a cost-of-doing business index (e.g., index should take into account higher overhead costs, 24-hour coverage, stand-by capability).

Additional services are covered including "early detection" procedures, services by nurse practitioners and physician assistants, health education and health risk reduction services.

Clinics are eligible for rural health assistance scholarship recipient placements and loan forgiveness if they meet standards for placements and loan forgiveness.

Clinics are only required to have a minimum of 40% of clinic time covered by physician assistants or nurse practitioners.

While these rural health clinics would no longer be paid "reasonable cost," the Secretary of the Department of Health and Human Services is directed to conduct a limited number of demonstrations of new "reasonable cost" methods for reimbursing rural health clinics.

The physician productivity standard is lowered to 2.6 visits per hour and the physician assistant and nurse practitioner productivity standard is lowered to 1.3 visits per hour. The Secretary of the Department of Health and Human Services has the authority to lower productivity standards in areas of low population density.

Clinics are eligible for start-up Medical Practice Development Grants (see below).

D. Rural Medical Practice Payment (Effective January 1, 1990)

In setting payment rates for rural medical practices, the rates are to utilize a cost-of-doing-business adjustment (incorporating differences in physician cost, nurse cost, utilities, equipment and supplies, capital costs) in each payment category. Also, provide a separate adjustment on a per payment basis for providing the capability (24-hour on-call coverage and "down-time" in low volume areas). In general, the Secretary of the Department and Health and Human Services, in consultation with primary care providers and consumers, is to design an appropriate system and reduce the differential between urban and rural physician, physician assistant, nurse practitioner, nurse and other health personnel cost factors so as to provide a reasonable incentive to practice in rural areas.

Additional changes in payments for rural medical practices include: a) paying at the same rate for the same type of urgent/emergency visits provided at either the hospital emergency room or a physician's office while allowing hospitals to bill for the overhead costs they can currently; and b) paying for an after-office-hours phone call for the purpose of triaging patients.

E. Rural Nursing Home Payment Rates (Effective January 1, 1990)

Rural nursing homes are given the option to be paid on a prospectively set "daily rate" schedule, designed by the Secretary of the Department of Health and Human Services, in consultation with nursing homes and consumers, which varies by type of patient and is tied to a cost-of-doing business index (e.g., index should take into account higher overhead costs and/or stand-by capability).

F. Rural Home Health Agency Payment Rates (Effective January 1, 1990)

Home health agencies are given the option to be paid on a prospectively set "per type of visit" schedule, designed by the Secretary of the Department of Health and Human Services in consultation with home health agencies and consumers, tied to a cost-of-doing business index (e.g., index should take into account higher overhead costs and/or stand-by capability).

G. Rural Health Care Research and Demonstrations (Effective October 1, 1989)

The Health Care Financing Administration is directed to increase research into how the Medicare and Medicaid programs could be changed to better cover care for rural residents. Research on rural issues include demonstrations of rural Health Maintenance Organization (HMO) models and the development of a more refined payment mechanism to accurately pay health care providers, including HMOs, for the health care of rural residents. Secretary is to provide an annual report to the Congress on the progress of rural research and demonstrations by not later than April 1st.

H. Nurse Reimbursement Incentives

(See later section on nurse provisions.)

SECTION II: MEDICAID PROVISIONS

A. Medicaid Eligibility at 100% of Federal Poverty Level

In order to ensure improved and uniform access by lower income rural and urban residents, Medicaid eligibility is changed to cover all people whose incomes are at or below 100 percent of the federal poverty level. (Effective January 1, 1990)

B. Rural Medical Practice Payment (Effective January 1, 1990)

When States set payment rates for rural medical practice payment rates, the rates utilize a cost-of-doing-business adjustment (incorporating differences in physician cost, nurse cost, utilities, equipment and supplies, capital costs) in each payment category. Also, provide a separate adjustment on a per payment basis for providing 24-hour on-call coverage and "down-time" in low volume areas. In general, the Secretary of the Department of Health and Human Services, jointly with the States and in consultation with primary care providers and consumers, is to develop an appropriate system and reduce the differential between urban and rural physician, physician assistant, nurse practitioner, nurse and other health personnel cost factors so as to provide a reasonable incentive to practice in rural areas.

Additional changes in payments for rural medical practices include: a) paying at the same rate for the same type of urgent/emergency visits provided at either the hospital emergency room or a physician's office while allowing hospitals to bill for overhead costs they can currently; and b) paying for an after-office-hours phone call for the purpose of triaging patients.

C. Rural Nursing Home Payment Rates (Effective January 1, 1990)

Rural nursing homes are given the option to be paid on a prospectively set "daily rate" schedule, designed by the Secretary of the Department of Health and Human Services in consultation with States, nursing homes and consumers, which varies by type of patient and is tied to a cost-of-doing business index (e.g., index should take into account higher overhead costs, stand-by capability).

D. Rural Home Health Agency Payment Rates (Effective January 1, 1990)

Home health agencies are given the option to be paid on a prospectively set "per type of visit" schedule, designed by the Secretary of Health and Human Services in consultation with home health agencies and consumers, tied to a cost-of-doing business index (e.g., index should take into account higher overhead costs, stand-by capability).

E. Payment for Medical Care Access Facilities (MedCAF)

Medical Care Access Facilities (MedCAF) can be covered under the Medicaid as under the Medicare program. (See above.) (Effective January 1, 1990)

SECTION III: PRIVATE INSURANCE PROVISIONS

A. Deductibility of Private Health Insurance (Effective January 1, 1990)

Health insurance for self-employed individuals, small businesses and farms is fully deductible under the same rules as for larger businesses.

B. Health Insurance Pool

The Secretary of Health and Human Services, in consultation with insurers, small businesses, farmers, and consumers, is to develop a proposal for creating a self-financing insurance pool for individuals and small businesses and farms which have difficulty finding affordable private insurance. The Secretary is to submit this proposal to the Congress within 18 months of enactment.

SECTION IV: HEALTH CARE SYSTEM DEVELOPMENT PROVISIONS

A. Office of Rural Health Care

The Office of Rural Health Care is to be located in the Office of the Secretary of the Department of Health and Human Services. (Effective January 1, 1989) (Same as or similar to Rural Health Coalition Proposal.)

B. State Rural Health Planning Grants

Health planning grants are to be made available to States in order to develop rural health access plans. State plans are to address how federal and state program funding (including preventive, community health services and EMS block grants, immunization funding, occupational safety and health programs, sexually transmitted diseases funding, and the maternal and child health block grant) could better address access problems in rural areas. The formula for distributing available funds among the States is tied to ratio of non-MSA population in a State to non-MSA population in the U.S. population. Authorized funding is $15 million for 1989, $16 million for 1990 and $17 million for 1991.

C. Emergency Medical Services

A separate rural Emergency Medical Services (EMS) block grant is established. In order to receive funding under the rural EMS block grant, the State is required to have a state rural health plan which is acceptable to the Secretary of the Department of Health and Human Services. Funding is available for start-up costs for transportation and communications and ongoing costs for uncompensated trauma care and transportation. The formula for distributing available funds among the States is tied to ratio of non-MSA population in a State to non-MSA population in the U.S. population. Authorized funding is $150 million for 1989, $156 million for 1990 and $160 million for 1991.

D. Medical Practice Development Grants

Medical Practice Development Grants for solo and group practices, rural health clinics and MedCAFs are to be made available to increase the number of health care providers serving underserved rural areas. (MedCAF Development Grants are to be included as described earlier. (See above.))

Medical Practice Development Grants—Solo and Small Group Practices: Rural Medical Practice Development Grants are to be available for solo and small group practices. These grants (for training, supplies and equipment) are for practices which increase access to primary care and provide 24-hour urgent care. Require documentation of personnel training and/or proficiency. Grantees are required to accept Medicare and Medicaid patients. Start-up grants of up to $20,000 coupled with annual grants of $1000. (Authorizes $6 million for 1989, $7 million for 1990; $5 million for 1991).

Medical Practice Development Grants—Rural Health Clinics: Rural Medical Practice Development Grants are to be available for rural health clinics as well. Grants (for training, supplies and equipment) are available for those which will increase access to primary care and will provide 24-hour urgent care. Clinics are required to accept both Medicare and Medicaid patients. They are also required to provide documentation of personnel training and/or proficiency. Authorized funding is $20 million for 1989; $30 million for 1990 and $30 million for 1991. Start-up grants are available as follows:

Frontier areas: These areas are eligible for start-up grants of up to $120,000 for clinic operations (maximum of 25% of grant), training, supplies, equipment and facility. A 25% match is required from the local area of the State. Also, clinics are eligible for annual non-matching grants of $1000. Eligible sites are required to be in a frontier service area (less than 6 persons per square mile); distant (more than one-half hour travel time) from a city of 2,500.

Rural counties (non-frontier): These areas are eligible for start-up grants of up to $120,000 for clinic operations (maximum of 25% of grant), training, supplies, equipment and facility). A 75% match is required from the local area or the State. Also, clinics are eligible for annual non-matching grants of $1000. Eligible sites are required to be in a small rural county (less than 20,000).

Medically Underserved Areas (MUA): These areas are eligible for start-up grants of up to $120,000 for clinic operations (maximum of 25% of grant), training, supplies, equipment and facility. A 25% match is required from the local area or the State. Also, these clinics are eligible for annual non-matching grants of $1000.

F. Community and Migrant Health Centers

Community health center and migrant health center funding is increased by 10 percent each. Authorized funding for community health centers is $517 million for 1989 and such sums as are necessary for subsequent years. Authorized funding for migrant health centers is $55 million for 1989 and such sums as are necessary for subsequent years.

G. Rural Research Projects

The National Center for Health Services Research is required to commit a minimum of 5 percent of new grant projects (for fiscal years 1989, 1990 and 1991) for research relevant to improving rural delivery systems. In addition, the National Center for Health Statistics is to conduct a study on how to improve the availability of data for determining medically underserved rural areas and for monitoring changes in the health status of rural residents.

SECTION V: HEALTH CARE PERSONNEL DEVELOPMENT PROVISIONS

A. Rural and Urban Health Assistance scholarships and National Health Services Corps Scholarships

In addition to the current National Health Service Corps, Rural and Urban Health Assistance Scholarships and loan repayments are established at an increased level from the current NHSC. A minimum of forty percent of placements (by type of student) are targeted for underserved rural areas. The percentage of total placements which are made at federal prisons is limited to one percent. Eligible sites for placements include those sites eligible under the current NHSC program, MedCAFs, rural health clinics (current and optional demonstration program) and private practice in priority underserved rural or urban areas. Scholarship students are required to serve one year in an eligible site for every year in which a full scholarship is received. Loan repayments are treated the same way as in current loan repayment programs. Eligible students included primary care physicians (with the primary emphasis being on those in family practice), nurses, nurse practitioners, physician assistants, psychologists, clinical social workers, pharmacists, dentists, and other allied health professionals. For the National Health Service Corps, the authorized funding for scholarships and loan repayments is $15 million for 1989, $16 million for 1990 and $17 million for 1991. (Same as or similar to Rural Health Coalition Proposals.) For the Urban and Rural Health Assistance Scholarships and loan repayments, the authorized funding is $15 million for 1989, $20 milion for 1990 and $22 million for 1991.

B. Health Professional Training Program

Primary Care Personnel: Effective January 1, 1990, training programs (for primary care physicians, nurses, nurse practitioners, physician assistants, psychologists, clinical social workers, pharmacists, dentists, and other allied health professionals) funded by the Federal Government would be required to provide assurances that training takes into account special practice conditions of rural areas and target efforts toward students who are more likely to locate in underserved rural areas. To encourage the training of health care professionals who are more likely to serve underserved rural areas, development grants are provided to health training programs (for primary care physicians, nurses, nurse practitioners, physician assistants, psychologists, clinical social workers, pharmacists, dentists, and other allied health professionals) to develop and support training programs which can best place providers in underserved rural areas. Authorized funding is $10 million for 1989, $12 million for 1990 and $13 million for 1991.

Multi-competent Technicians: New training program funding is established to train multi-competent technicians to serve in underserved rural areas. Demonstration program grants may be made to hospitals, colleges and technical schools to develop model training programs for multi-competent technicians. Multi-competent technicians are technicians skilled by education/experience to perform limited routine laboratory procedures; limited radiography (chests, extremities, and abdomen) as well as cross trained as EMT I and/or II per DOT guidelines. Authorized funding is $1 million for 1989, $2 million for 1990 and $2 million for 1991.

Area Health Education Centers: Funding for Area Health Centers is increased and is to be targeted toward those health professions which are in short supply. The requirement for the number of residencies is reduced to two. Medical schools are required to provide at least a half-time tenured faculty member to serve as the director. Authorized funding is $20 million for 1989, $21 million for 1990 and $22 million for 1991. (Same as or similar to Rural Health Coalition Proposal.)

Geriatric Health Education Centers: Funding for the establishment of Geriatric Health Education Centers is increased. These centers are to increase training in geriatric health care and to link health professional to health care sites in underserved areas. Schools of nursing are also eligible to establish these centers. Authorized funding is $10 million for 1989, $12 million for 1990 and $14 million for 1991. (Same as or similar to Rural Health Coalition Proposal.)

Continuing Education for Nursing Personnel: Continuing education of nursing personnel is increased through a program to bring continuing education (e.g., via satellite transmission) to rural areas. This program is designed to offer continuing education to nurses to maintain and upgrade their skills and to counter the sense of professional and educational isolation. (Same as or similar to Rural Health Coalition Proposal.)

SECTION VI: MENTAL HEALTH CARE PROVISION

A. Alcohol, Drug Abuse and Mental Health Block Grant

Documentation of Rural Effort for ADAMH Block Grant: Effective January 1, 1990, States receiving alcohol, drug abuse and mental health block grants from the Alcohol, Drug Abuse and Mental Health Administration are required to document the mental health needs in rural areas and document State's level of effort with respect to providing mental health services in rural areas.

B. Research on Service Delivery

Community Support Program for Rural Residents: Under the community support program of the National Institute of Mental Health, a new effort is funded to demonstrate between approaches to delivering and coordinating mental health care for rural residents. Twenty-five percent of community support funds are to be used for rural research and demonstrations. Authorized funding for the community support program is increased by $6 million for 1989, $6 million for 1990 and $6 million for 1991. (Same as or similar to Rural Health Coalition Proposal.)

Rural Mental Health Services Delivery Research: Funding is provided for research on rural mental health care delivery systems through the National Institute on Mental Health. Authorized funding is $5 million for 1989, $5 million for 1990 and $5 million for 1991.

C. Training of Mental Health Professionals

(See above health professional training programs.)

SECTION VII: NURSE REIMBURSEMENT INCENTIVES

Nurse Reimbursement Incentives

Reimbursement: Provides direct Medicare and Medicaid reimbursement for nurse practitioners, clinical nurse specialists, certified nurse midwives, and nurse anesthetists beginning as of January 1, 1991.

Services: Services are defined as those services covered as physician services and within the scope of state nursing practice laws. The Secretary may designate additional services covered by Medicare or Medicaid as services provided in nursing homes, hospitals, patient homes, and ambulatory care settings.

Definitions of Providers:

Nurse Practitioner and Clinical Nurse Specialists: An individual shall be treated as a nurse practitioner or clinical nurse specialist if the individual is licensed to practice professional nursing; performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law); and is master's prepared in nursing or holds a master's degree in a related field and is certified or certified eligible by a national professional organizations; or has completed a nurse practitioner continuing education program and is certified or certified eligible."

Certified Nurse Midwife: A registered nurse who is educated in the two disciplines of nursing and midwifery, who possesses evidence of certification according to the requirements of the American College of Nurse Midwives.

Nurse Anesthetists: A registered nurse who is a graduate of an approved nurse anesthesia educational program and possesses evidence of certification according to the requirements of the Council on Certification of Nurse Anethetists.

Reimbursement Level: Direct reimbursement will be by a fee schedule based on relative value scales established by the Secretary. For the purposes of this bill and by January 1, 1990, the Secretary is directed: 1) to design a relative value scale fee schedule, 2) to conduct a study of the relative costs for physician services and for nurse services (as authorized under this Act) with respect to overhead (including rent, staff, billing, and malpractice insurance) and other resources and 3) to make recommendations to Congress on relative reimbursement levels for services provided by both physicians and nurses (as defined by this Act).

Peer Quality Review: Expand scope of Peer Review Organizations (PRO) to include the nursing services performed by these specialized nursing groups. Also require PROs to have qualified nurse advisors, from the specialized nursing groups (nurse practitioners, clinical nurse specialists, certified nurse-midwives and nurse anesthetists) on staff to conduct peer level review of nursing services.

Hotline: Direct the Secretary, through the Health Care Financing Administration, to set up a hotline to handle difficulties which the specialized nursing groups are having relative to direct reimbursement.

H.R. 5492

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Rural Health Care Act of 1988".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Section 1. Short title; table of contents.

TITLE I—MEDICARE PROVISIONS

Sec. 101. Study of rural hospital payment rates.
Sec. 102. Development of medicare care access facilities.
Sec. 103. Medicare coverage of services of a medical care access facility.
Sec. 104. Rural health clinic program.
Sec. 105. Rural medical practice payment adjustments.
Sec. 106. Rural nursing home payment rates.
Sec. 107. Rural home health agency payment rates.
Sec. 108. Rural health care research and demonstrations.
Sec. 109. Nurse reimbursement incentives.

TITLE II—MEDICAID PROVISIONS

Sec. 201. Expansion of medicaid eligibility.
Sec. 202. Special payment rules for payment for rural medical practice, rural nursing facilities, and rural home health agencies.
Sec. 203. Coverage of services of medical care access facilities.
Sec. 204. Direct reimbursement for certain nursing services.

TITLE III—PRIVATE HEALTH INSURANCE PROVISIONS

Sec. 301. Deduction for entire health insurance costs of self-employed.

Sec. 302. Health insurance pool proposal.

TITLE IV—HEALTH CARE SYSTEM DEVELOPMENT PROVISIONS

Sec. 401. Placement of office of rural health care in the office of the Secretary of Health and Human Services.
Sec. 402. Rural health services block grant.
Sec. 403. Medical practice development grants.
Sec. 404. Migrant health centers; community health centers.
Sec. 405. Rural health care research projects.

TITLE V—HEALTH CARE PERSONNEL DEVELOPMENT PROVISIONS

Sec. 501. National Health Service Corps scholarship program and loan repayment program.
Sec. 502. Scholarships and loan repayments.
Sec. 503. Health care personnel training programs.
Sec. 504. Area health education centers.
Sec. 505. Geriatric health education centers.
Sec. 506. Continuing education for nurses in rural areas.

TITLE VI—MENTAL HEALTH CARE PROVISIONS

Sec. 601. Alcohol, drug abuse, and mental health block grant.
Sec. 602. National Institute of Mental Health.

TITLE I—MEDICARE PROVISIONS

SEC. 101. STUDY OF RURAL HOSPITAL PAYMENT RATES.

(a) STUDIES.—The Prospective Payment Assessment Commission shall conduct studies of—

(1) the relationship for hospitals located in rural areas between the costs such hospitals incur that are reasonable in providing necessary inpatient hospital services and the amounts paid with respect to such services under the medicare program under title XVIII of the Social Security Act, and

(2) the role of the medicare program in paying for charity care for inpatient hospital services in rural hospitals for patients who are not medicare beneficiaries.

(b) REPORT.—The Commission shall report to the Congress by not later than January 1, 1990, on the studies conducted under subsection (a).

SEC. 102. DEVELOPMENT OF MEDICARE CARE ACCESS FACILITIES.

(a) USE OF RURAL HEALTH CARE TRANSITION FUNDS.—Amounts authorized to be appropriated under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987 (relating to grant program for rural health care transition) shall be available for grants for the development of facilities as medical care access facilities (as defined for purposes of title XVIII of the Social Security Act).

(b) ADDITIONAL DEVELOPMENT GRANT.—

(1) From the amounts appropriated pursuant to paragraph (2), the Secretary of Health and Human Services is authorized to provide grants, of up to $200,000 with respect to facility—

(A) to create a medical care access facility in a community without a hospital, but with a documented need for such a facility, or

(B) to assist a hospital in being restructured to become such a facility.

(2) There are authorized to be appropriated, from the Federal Hospital Insurance Trust Fund for grants under paragraph (1), $30,000,000 for fiscal year 1989, $40,000,000 for fiscal year 1990, and $45,000,000 for fiscal year 1991.

SEC. 103. MEDICAE COVERAGE OF SERVICES OF A MEDICAL CARE ACCESS FACILITY.

(a) COVERAGE.—

(1) PART A.—Section 1812(a)(1) of the Social Security Act (42 U.S.C. 1395d(a)) is amended by inserting "and inpatient care in a medical care access facility".

(2) PART B.—Section 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2) is amended—

(A) by striking "and" at the end of subparagraph (F),

(B) by striking the period at the end of subparagraph (G) and inserting "; and", and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) health care services (other than inpatient care) of a medical care access facility.".

(b) DESCRIPTION ON MEDICAL CARE ACCESS FACILITY AND RELATED DEFINITIONS.—Section 1861 of such Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Medical Care Access Facility and Related Definitions

"(mm)(1) The term 'medical services of a medical care access facility' means the following services provided by or under arrangements with a medical care access facility—

"(A) inpatient care,

"(B) emergency visits, and

"(C) such services and such services and supplies furnished as an incident to services provided by a medical care access facility which the facility is legally authorized to provide and which would otherwise be covered if furnished by a physician or as an incident to physicians' services.

"(2) The term 'medical care access facility' means a facility which—

"(A)(i) provides ambulatory, primary, emergency, urgent, and surgical care, (ii) provides basic inpatient care for at least 1, but not more than 10, inpatient beds and for stays not exceeding 48 hours (unless otherwise approved by a peer review organization), and (iii) provides ancillary services (including radiology and laboratory services);

"(B)(i) is located in a rural area designated under section 330(a)(3) of the Public Health Service Act as a medically underserved area,

"(ii) serves a frontier service area (as defined in paragraph (3)), or

"(iii) is located in a county with a population of less han 20,000;

"(E)(i) has a quality assurance plan approved by the Secretary, and (ii) has entered into a contract with a hospital or with a utilization and quality control peer review organization with a contract in effect under part B of title XI for the performance of utilization review with respect to services provided by the facility;

"(F) has entered into an agreement to participate under the State program approved under title XIX in the State in which the facility is located;

"(G) meets the additional requirements specified in paragraph (4) (relating to inpatient care);

"(H) meets the additional requirements specified in paragraph (5) (relating to ambulatory care); and

"(I) meets the additional requirements specified in paragraph (6) (relating to inpatient and ambulatory care).

A medical facility may meet the requirements of this paragraph with respect to provision of medical care (including pharmacy services) through a contract that assures, in a manner satisfactory to the Secretary, the availability of such care.

"(3) In this section, the term 'frontier service area' means, with respect to a facility, a facility with a service area which—

"(A) is at least 500 square miles

"(B) has a population density of less than 6 persons per square mile.

"(C) is at least 30 minutes travel time from the nearest city with a population of at least 5,000, and

"(D) serves a population of at least 1,000, but not more than 5,000.

"(4) The additional requirements of this paragraph (relating to inpatient care) are as follows:

"(A) To the extent inpatient services are actually being provided, the facility must meet such staffing requirements as would apply under subsection (e) to a hospital located in a rural area.

"(B) The facility must be capable of staffing inpatient beds within 2 hours of the time of need.

"(C)(i) Except as provided in this subparagraph, the facility must meet the same standards as apply with respect to the provision of inpatient hospital services under this title with respect to a hospital located in a rural area.

"(ii) The facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open.

"(iii) The facility, instead of having a full-time, on-site dietician, pharmacist, laboratory technician, medical technologist, and radiological technologist, may provide for quality control of services provided by such individuals through such individuals on a part-time, off-site basis.

"(D) The facility must have in effect a transfer agreement (meeting such terms as the Secretary may specify) between the facility and appropriate referral hospital or hospitals.

"(E) Discharge planning must be provided under a contract with a nearby hospital.

"(5) The additional requirements of this paragraph (relating to ambulatory care) are as follows:

"(A) The facility must comply with standards for ambulatory care, such standards to be established by the Secretary in consultation with appropriate provider and consumer organizations.

"(B) The standards established under subparagraph (A) shall include the following provisions:

"(i) Multi-competent health care technicians may be used by the facility to staff the emergency room, to conduct basic laboratory tests, and to take basic x-rays. In the previous sentence, the term 'multi-competent health care technician' means an individual who is skilled by education or experience to perform a number of routine laboratory procedures and radiography (chest, extremities, and abdomen) and who is trained as an emergency medical technician.

"(ii) The competency of the laboratory and radiology departments of each facility must be certified by the hospital referred to in paragraph (4)(D).".

(c) PAYMENT.—

(1) INPATIENT SERVICES.—Section 1814 of such Act (42 U.S.C. 1395f) is amended—

(A) in subsection (b)(1), by inserting "subsection (1) and" after "subject to the provisions of",

(B) by adding at the end the following new subsection:

"Payments for Inpatient Care of Medical Care Access Facilities

"(l)(1) The amount paid to a medical care access facility with respect to inpatient care for which payment may be made under this part shal be an amount equal to the payment amount that would be established under section 1886(d) if such care were deemed to be inpatient hospital services provided by a subsection (d) hospital, subject to an adjustment to reflect the relative costs (including overhead costs and stand-by capability) that medical care access facilities have of doing business compared to hospitals.

"(2) In the case of an individual who receives inpatient hospital services after receiving inpatient care in a medical access care facility, the payment otherwise provided under section 1886 shall be reduced by such amount as is necessary to reflect the payments made for the inpatient care under this subsection. The Secretary shall periodically review the allocation of payments for inpatient services between medical care access facilities and hospitals under this paragraph.".

(2) OUTPATIENT SERVICES.—

(A) Section 1833(a) of such Act (42 U.S.C. 1395l(a)) is amended—

(i) in paragraph (2), in the matter before subparagraph (A), by striking "and (G)" and inserting "(G), and (H)",

(ii) in paragraph (4), by striking "and" at the end,

(iii) in paragraph (5), by striking the period at the end and inserting "; and", and

(iv) by inserting after paragraph (5) the following new paragraph:

"(6) in the case of services described in section 1832(a)(2)(H), the amounts described in section 1834(f).".

(B) Section 1834 of such Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(f) PAYMENTS FOR HEALTH SERVICES (OTHER THAN INPATIENT CARE) IN A MEDICAL CARE ACCESS FACILITY.—The amount of payments for health services (other than inpatient care) provided in a medical care access facility under this part shall be the amounts determined by the Secretary as follows:

"(1) PAYMENT FOR EMERGENCY VISITS.—With respect to each emergency visit, the payment amount shall be an amount equal to the sum of—

"(A) a professional component (established under a prospective payment system which is established by the Secretary and which takes into account the relative value of the services furnished compared to other professional services), and

"(B) a facility-related component, which takes into account the costs that are reasonable and related to facility overhead costs and similar and related costs of facilities for such a visit.

"(2) PAYMENT FOR OTHER VISITS.—With respect to another visit, the payment amount shall be an amount established under a prospective payment system established by the Secretary and taking into account the relative value of the services furnished compared to other professional services.".

(d) TREATMENT AS PROVIDER OF SERVICES.—

(1) Section 1861(u) of such Act (42 U.S.C. 1395x(u)) is amended by inserting "medical care access facility," after "hospital,".

(2) Section 1861(w)(1) of such Act (42 U.S.C. 1395x(w)(1)) is amended by inserting "medical care access facility," after "hospital,".

(3) Section 1863 of such Act (42 U.S.C. 1395z) is amended by striking "and (dd)(2)" and inserting "(dd)(2), and (mm)".

(4) Section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended, in the first and second sentences, by inserting ", medical care access facility," after "hospital".

(5) Section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended by striking "or 1861(dd)(2)" and "1861(dd)(2), or 1861(mm)".

(6) Section 1861(s)(2)(K)(i) of such Act (42 U.S.C. 1395x(s)(2)(K)(i)) is amended by inserting "medical care assess facility," after "hospital,".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished by medical care access facilities on or after January 1, 1990.

SEC. 104. RURAL HEALTH CLINIC PROGRAM.

(a) CHANGE IN PAYMENT STANDARDS.—In establishing payment amounts for rural health clinic services under section 1833(a)(3) of the Social Security Act, for services furnished on or after January 1, 1990, the Secretary of Health and Human Services shall apply a physician productivity standard of 2.6 visits per hour and a physician assistant and nurse practitioner productivity standard of 1.3 visits per hour.

(b) REQUIRED PARTICIPATION IN MEDICAID PROGRAM.—Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) is amended—

(1) by striking "and" at the end of subparagraph (I),

(2) by redesignating subparagraph (J) as subparagraph (K), and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) if the State in which the facility is located provides for medical assistance for rural health clinic services under its State plan approved under title XIX, the facility has entered into a participation agreement under such title to provide such services under the plan; and".

(c) RURAL HEALTH CLINIC DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall provide, effective January 1, 1990, for a medicare rural health clinic demonstration program under which the provisions of the Social Security Act would be waived to the extent necessary to provide for the following:

(1) Either—

(A) payment for primary care procedures included in rural health clinic services would be paid on the basis of a fee schedule, which adjusts the amounts paid for such services based on the relative value of the professional services, such fee schedule being adjusted through an index that takes into account the higher overhead costs, etc., associated with rural health clinic services; or

(B) payment for rural health clinic services would be paid under new methods relating to the reasonable cost of providing rural heatlh clinic services.

(2) Coverage would be provided for early detection procedures, health education, and health risk reduction services.

(3) Rural health clincis would not be required to have more than 40 percent of the clinic time covered by physician assistants and nurse practitioners.

(4) Physician, physician assistant, and nurse practitioner productivity standards could be reduced for low population density areas below the standards otherwise applicable.

SEC. 105. RURAL MEDICAL PRACTICE PAYMENT ADJUSTMENTS.

(a) COST-OF-DOING-BUSINESS ADJUSTMENT.—The Secretary of Health and Human Services shall instruct carriers, in determining the reasonable charges or other payment rates for physicians' services and other professional services furnished under part B of title XVIII of the Social Security Act on or after January 1, 1990—

(1) to establish such charges or rates to use an index that reflects the particular costs of furnishing such services, and

(2) to permit an adjustment of such charges or rates for services furnished in rural areas to take into account the 24-hour on-call coverage and low volume of services associated with the provision of professional services in such areas.

(b) OBJECT.—The changes under subsection (a) shall be made in consultation with primary care providers and consumers and in a manner designed to reduce the differential in payment rates between health care practitioners located in urban and rural areas so as to provide a reasonable incentive to practice in rural areas.

SEC. 106. RURAL NURSING HOME PAYMENT RATES.

(a) IN GENERAL.—Section 1988 of the Social Security Act (42 U.S.C. 1395yy) is amended by adding at the end the following new subsection:

"(e)(1) Any skilled nursing facility located in a rural area may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (and capital-related costs) of extended care services provided in a cost reporting period. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1861(v) and subsections (a) through (d) of this section and capital-related costs pursuant to section 1861(b).

"(2)(A) The amount of the payment under this subsection shall be determined on a per diem basis and shall be established by the Secretary after consultation with skilled nursing facilities and consumers.

"(B) The amount of per diem payment shall vary depending on the classification of the type of patient provided extended care services.

"(C) The payment rates shall take into account an index of the costs (including overhead and stand-by capability costs) associated with the provision of extended care services by skilled nursing facilities in rural areas.

"(3) The Secretary shall establish prospective payment amounts for each year by not later than October 1 of the previous year. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

"(4) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts under paragraph (2) and reasonable costs of ancillary services.

"(5) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

"(6) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1861(v)(1)(E) (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to skilled nursing facilities for cost reporting periods beginning on or after January 1, 1990.

SEC. 107. RURAL HOME HEALTH AGENCY PAYMENT RATES.

(a) OPTIONAL PROSPECTIVE PAYMENT SYSTEM.—Title XVIII of the Social Security Act is amended by adding at the end the following new section:

"PAYMENT FOR HOME HEALTH SERVICES PROVIDED IN RURAL AREAS ON A PROSPECTIVE PAYMENT BASIS

"SEC. 1893. (a) Any home health agency located in a rural area may choose to be paid under this subsection on the basis of a prospectively established fee schedule for home health services provided in a cost reporting period. Such prospective payment shall be in lieu of payments which would otherwise be made for the reasonable costs of such services pursuant to section 1861(v).

"(b)(1) The Secretary, after consultation with home health agencies and consumers, shall establish a per visit fee schedule for purposes of this section.

"(2) The amount of payment per visit under the schedule shall vary depending on the classification of the type of patient or the type of home health services provided, or both.

"(3) The fee schedule shall take into account an index of the costs (including overhead and stand-by capability costs) associated with the provision of home health services by home health agencies in rural areas.

"(4) The Secretary shall establish the fee schedule for home health services in each year by not later than October 1 of the previous year. A home health agency must notify the Secretary of its intention to be paid pursuant to this section for a cost reporting period no later than 30 days before the beginning of that period.

"(c) The Secretary shall provide for a simplified cost report to be filed by agencies being paid pursuant to this section, which shall require only the cost information necessary for determining payment amounts under subsection (b).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services provided in cost reporting periods beginning on or after January 1, 1990.

SEC. 108. RURAL HEALTH CARE RESEARCH AND DEMONSTRATIONS.

(a) IN GENERAL.—The Administrator of the Health Care Financing Administration shall provide for additional research and demonstration projects into how the medicare and medicaid programs could be changed to better cover care for beneficiaries residing in rural areas. Such research and demonstration projects shall include—

(1) demonstrations of rural health maintenance organizations, and

(2) development of a more refined payment mechanism to pay health care providers (including health maintenance organizations) in an equitable manner for health care provided to beneficiaries residing in rural areas.

(b) ANNUAL REPORT.—The Administrator shall report to Congress by not later than April 1 of each year (beginning with 1991) concerning the progress of the research and demonstration projects conducted under this section.

(c) APPLICATION OF WAIVER PROVISIONS.—The provisions of section 402(a)(2) of the Social Security Amendments of 1967 shall apply to demonstration projects conducted under this section in the same manner as they apply to demonstration projects conducted under section 402(a)(1) of such Act.

(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.

SEC. 109. NURSE REIMBURSEMENT INCENTIVES.

(a) DIRECT REIMBURSEMENT FOR NURSING SERVICES.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)(L), by inserting before the semicolon the following: ", nurse practitioner and clinical nurse specialist services, and services of a certified registered nurse anesthetist"; and

(2) by adding at the end the following new subsection:

"Nurse Practitioner and Clinical Nurse Specialist Services

(ii)(1) The term 'nurse practitioner and clinical nurse specialist services' means such services (and such services and supplies furnished as an incident to the services) furnished by a nurse practitioner or clinical nurse specialist which the nurse practitioner or clinical nurse specialist is legally authorized to perform under State law as would otherwise be covered if furnished by a physician or as an incident to a physician's service, whether or not the praciticioner or specialist is under the supervision of, or associated with, a physician or other health care provider.

"(2) The terms 'nurse practitioner' and 'clinical nurse specialist' mean an individual who—

"(A) is licensed to practice professional nursing,

"(B) holds a master's degree in nursing or a related field or has completed a nurse practitioner continuing education program, and

"(C) is certified (or certified eligible) as such a practitioner or specialist by a national professional organization recognized by the Secretary.".

(b) PAYMENTS.—Section 1834 of such Act (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(f) PAYMENTS FOR NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS, CERTIFIED NURSE MIDWIVES, AND CERTIFIED REGISTERED NURSE ANESTHETISTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part, payment for nurse practitioner and clinical nurse specialist services, services of a nurse midwife, and services of a certified registered nurse anesthetist under this part shall be based on a fee schedule, established by the Secretary and based on the relative value of resources required to furnish the services. For services with the same relative value on such scale, payment amounts shall be the same without regard to the type of nurse who has furnished the services.

"(2) SECRETARIAL DUTIES.—By not later than January 1, 1990, the Secretary shall—

"(A) design the fee schedule described in paragraph (1),

"(B) conduct a study of the relative costs for physicians' services and for services described in paragraph (1) with respect to overhead (including rent, staff, billing expenses, and malpractice insurance) and other resources, and

"(C) make recommendations to Congress on the appropriate relative reimbursement levels for professional services which may be provided either by physicians or by nurses.

"(3) HOTLINE.—The Administrator of the Health Care Financing Administration shall provide for a toll-free, telephone hotline to handle inquiries concerning payment for nursing services under this subsection and, to the extent feasible, for services described in paragraph (1) under State plans approved under title XIX.".

(c) PEER QUALITY REVIEW.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)) is amended by adding at the end the following new paragraph:

"(16) The organization shall conduct review activities with respect to nurse practitioner and clinical nurse specialist services, services of a nurse midwife, and services of a certified registered nurse anesthetist. In conducting such reviews, the organization shall consult with nurse advisors in the same nuring specialty as the nursing specialty providing the services.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

TITLE II—MEDICAID PROVISIONS

SEC. 201. EXPANSION OF MEDICAID ELIGIBILITY.

(a) TO ALL INDIVIDUALS WITH INCOMES BELOW 100 PERCENT OF POVERTY LEVEL.—Title XIX of the Social Security Act is amended by redesignating section 1925 as section 1927 and by inserting before section 1924 the following new section:

"ELIGIBILITY REQUIREMENT

"SEC. 1925. (a) Notwithstanding any other provision of title, as a condition of approval of a State plan under this title as of January 1, 1990, the State plan must provide for medical assistance for each lawful resident of the State—

"(1) whose income (as determined under section 1612 for purpose of the supplemental security income program) does not exceed 100 percent of the official poverty line (described in section 1905(p)(2)(A)), and

"(2) Whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program.

"(b) The medical assistance furnished to individual under subsection (a) shall, notwithstanding any other provision of this title, be the same amount, duration, and scope as the medical assistance made available to individuals described in section 1902(a)(10)(i).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1990, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.

SEC. 202. SPECIAL PAYMENT RULES FOR PAYMENT FOR RURAL MEDICAL PRACTICE, RURAL NURSING FACILITIES, AND RURAL HOME HEALTH AGENCIES.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended—

(1) in section 1902(a)(13)—

(A) by striking "and" at the end of subparagraph (D),

(B) by adding "and" at the end of subparagraph (E), and

(C) by adding at the end the following new subparagraph:

"(F) notwithstanding the previous provisions of this paragraph, for payment for certain services provided in rural areas in accordance with the methodology established under section 1926;"; and

(2) by inserting after section 1925 the following new section:

"SPECIAL PAYMENT METHODOLOGY FOR RURAL HEALTH SERVICES

"SEC. 1926. (a) MEDICAL PRACTICE PAYMENTS.—(1) In establishing payment rates under the plan for rural medical practices (including physicians' professional services), the State plan must, consistent with the system developed under paragraph (2)—

"(1) utilize a cost-of-doing business adjustment (which takes into account differences in physician cost, nurse cost, utilities, equipment, supplies, and capital costs between providers in rural areas and providers generally) in each payment category, and

"(2) provide a separate adjustment, on a per payment basis, for rural providers to take into account factors, such as 24-hour, on-call capability and low volume in certain areas, necessary to assure access to services in rural areas.

"(2)(A) The Secretary, jointly with the States and in consultation with primary care providers and consumers, shall develop an appropriate system to reduce the payment differential between urban and rural physicians, physician assistants, nurse practitioners, and other professional health personnel so as to provide a reasonable incentive for such practitioners to provide services in rural areas.

"(B) Such a system shall provide—

"(i) for payment for emergency or urgent visits at the same rates as apply to such visits at hospital emergency rooms, and

"(ii) for payment for an after-office-hours phone call consultation for the purpose of determining whether the patient requires immediate care.

"(b) RURAL NURSING FACILITIES.—(1) Each State shall permit each nursing facility in a rural area to elect to receive payments for nursing facility services under the plan on the basis of a daily rate schedule established under paragraph (2).

"(2) The Secretary, in consultation with States, nursing facilities, and consumers, shall design a schedule, to be established prospectively, for payment for nursing facility services under paragraph (1). Such schedule shall provide for appropriate adjustments in payment rates under the schedule to take into account the type of patient for whom payment is being made and shall provide for adjustments from time to time in payment rates to take into account changes in a cost-of-doing-business index (established by the Secretary), which takes into account the higher overhead costs and costs for stand-by capability associated with rural nursing facilities.

"(c) HOME HEALTH AGENCIES.—(1) Each State shall permit each home health agency in a rural area to elect to receive payments for home health services under the plan on the basis of a per visit rate established under paragraph (2).

"(2) The Secretary, in consultation with States, home health agencies, and consumers, shall design a schedule, to be established prospectively, for payment for home health services under paragraph (1). Such schedule shall provide for adjustments from time to time in payment rates to take into account changes in a cost-of-doing-business index (established by the Secretary), which takes into account the higher overhead costs and costs for stand-by capability associated with rural home health agencies.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1990, without regard to whether or not regulations have been promulgated to implement such amendments before such date.

SEC. 203. COVERAGE OF SERVICES OF MEDICAL CARE ACCESS FACILITIES.

(a) IN GENERAL.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended—

(1) by striking "and" at the end of paragraph (20),

(2) by redesignating paragraph (21) as paragraph (22), and

(3) by inserting after paragraph (20) the following new paragraph:

"(21) medical services of a medical care access facility (as defined in section 1861(mm)(1)); and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1990, without regard to whether or not regulations have been promulgated to implement such amendments before such date.

SEC. 204. COVERAGE OF, AND DIRECT REIMBURSEMENT FOR, CERTAIN NURSING SERVICES.

(a) IN GENERAL.—Paragraph (17) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended to read as follows:

"(17) services furnished by a nurse-midwife (as defined in section 1861(ff), certified registered nurse anesthetist (as defined in section 1861(bb)(2)), or nurse practitioner or clinical nurse specialist (as defined in section 1861(ii)(2)) which the nurse is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse is under the supervision of, or associated with, a physician or other health care provider;".

(b) PAYMENT AMOUNTS RELATED TO MEDICARE PAYMENT AMOUNTS.—Section 1902(a)(13) of such Act (42 U.S.C. 1396a(a)(13)) is amended—

(1) by striking "and" at the end of subparagraph (D),

(2) by adding "and" at the end of subparagraph (E), and

(3) by adding at the end the following new subparagrph:

"(F) for payment for services described in section 1905(a)(17) in an amount equal to (or equal to a percentage of) the amount of payment provided under section 1834(f), and such a percentage may not vary based on the type of nurse described in section 1905(a)(17) furnishing the services;".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

TITLE III—PRIVATE HEALTH INSURANCE PROVISIONS

SEC. 301. DEDUCTION FOR ENTIRE HEALTH INSURANCE COSTS OF SELF-EMPLOYED.

(a) AMOUNT DEDUCTIBLE INCREASED TO 100 PERCENT.—Paragraph (1) of section 162(m) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent of".

(b) DEDUCTION MADE PERMANENT.—Subsection (m) of section 162 of such Code is amended by striking paragraph (4).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1989, in taxable years ending after such date.

SEC. 302. HEALTH INSURANCE POOL PROPOSAL.

(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with insurers, small businesses, farmers, and consumers, shall develop a proposal for creating a self-financing insurance pool for individuals and small businesses and farms which have difficulty finding affordable private insurance.

(b) REPORT.—The Secretary shall submit to Congress, within 18 months after the date of the enactment of this Act, a report on the proposal developed under subsection (a).

TITLE IV—HEALTH CARE SYSTEM DEVELOPMENT PROVISIONS

SEC. 401. PLACEMENT OF OFFICE OF RURAL HEALTH CARE IN THE OFFICE OF THE SECRETARY OF HEALTH AND HUMAN SERVICES.

Section 711(a) of the Social Security Act (42 U.S.C. 911(a)), as added by section 4401 of the Omnibus Budget Reconciliation Act of 1987, is amended by inserting "in the Office of the Secretary" after "established".

SEC. 402. RURAL HEALTH SERVICES BLOCK GRANT.

Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end the following new part:

"PART D—RURAL HEALTH SERVICES BLOCK GRANT

"GRANTS TO STATES FOR RURAL HEALTH PLANNING

"SEC. 1931. (a) To assist the States in comprehensive and continuing planning to improve the access of residents of rural areas to health services, the Secretary may make grants to States which have submitted for a fiscal year, and had approved by the Secretary for such fiscal year, State plans for comprehensive State rural health access planning.

"(b) Each plan required under subsection (a) shall—

"(1) describe how Federal and State programs applicable to rural areas in the State (including preventive, community health services, emergency medical services, immunization programs, occupational safety and health programs, sexually transmitted disease control programs, and maternal and child health programs) could be changed to improve access to such programs for residents of rural areas;

"(2) set forth the goals, objectives, and priorities of the State regarding improving the access of residents of rural areas to health services; and

"(3) identify the needs on which such goals, objectives, and priorities are based.

"(c)(1) From the amounts appropriated under subsection (d) for a fiscal year and available for allotment under this subsection, the Secretary shall allot to each State an amount which bears the same ratio to the available amounts for that fiscal year as the rural population of the State bears to the rural population of the United States.

"(2)(A) From the amounts appropriated under subsection (d) for a fiscal year, 10 percent of such amounts shall be available to the Secretary to make additional grants to the States described in subparagraph (B) to assist such States in preparing the plan required by subsection (a).

"(B) The States referred to in subparagraph (A) are States in which the average population density in rural areas is less than the average population density in rural areas of all States.

"(d) For purposes of carrying out this section, there are authorized to be apropriated $15,000,000 for fiscal year 1989, $16,000,000 for fiscal year 1990, and $17,000,000 for fiscal year 1991.

"STATE COMPREHENSIVE RURAL EMERGENCY MEDICAL SERVICES

"SEC. 1932. (a) For each fiscal year, beginning with fiscal year 1989, each State shall submit a State comprehensive rural emergency medical services plan to the Secretary. Each State plan under this subsection shall—

"(1) specify the public or private entity which will designate trauma centers in the rural areas of the State;

"(2) contain minimum standards and requirements for the designation of trauma centers by such entity, including standards and requirements for—

"(A) the number and types of trauma patients for whom such centers must provide care in order to ensure that such centers will have sufficient experience and expertise to be able to provide quality care for victims of injury; and

"(B) the resources and equipment needed by such centers;

"(3) contain standards and requirements for the implementation of trauma care systems in rural areas of the State, including standards and guidelines for triage and transportation of trauma patients prior to care in a trauma center; and

"(4) specify procedures for the accreditation and evaluation of trauma centers and trauma care systems in rural areas of the State.

"(b)(1) From the amounts appropriated under subsection (d) for a fiscal year and available for allotments under this subsection, the Secretary shall allot to each State that submits a plan under subsection (a) an amount which bears the same ratio to the available amounts for that fiscal year as the rural population of the State bears to the rural population of the United States.

"(2)(A) From the amounts appropriated under subsection (d) for a fiscal year, 10 percent of such amounts shall be available to the Secretary to make additional grants to the States described in subparagraph (B) to assist such States in carrying out subsection (c).

"(B) The States referred to in subparagraph (A) are States in which the average population density in rural areas is less than the average population density in rural areas of all States.

"(c)(1) From the amounts paid to a State under subsection (b) for a fiscal year, the State shall use such amounts to pay the costs of planning, implementing, and monitoring the operation of trauma care systems in rural areas of the State. Each trauma care system supported with amounts made available under this paragraph shall meet the standards and requirements established under the State plan required by subsection (a).

"(2) From the amounts paid to a State under subsection (b) for a fiscal year, a State may use not more than 50 percent of such amounts to reimburse trauma centers in rural areas for such portions of the uncompensated trauma care expenditures (including transportation costs) of such centers as the State considers appropriate. To receive reimbursement for uncompensated trauma care expenditures under this paragraph, a trauma center shall be a center which meets the standards and requirements established by the State in accordance with the State plan.

"(d) For purposes of carrying out this section, there are authorized to be appropriated $150,000,000 for fiscal year 1989, $156,000,000 for fiscal year 1990, and $160,000,000 for fiscal year 1991.

"DEFINITIONS

"SEC. 1933. For purposes of this part:

"(1) The term 'rural population' means the residents of a State who live in a rural area.

"(2) The term 'rural area' means an area not within a standard metropolitan statistical area.".

SEC. 403. MEDICAL PRACTICE DEVELOPMENT GRANTS.

Part D of title III of the Public Health Service Act (42 U.S.C. 329 et seq.) is amended by inserting after section 330 the following new section:

"RURAL HEALTH

"SEC. 330A. (A) For purposes of this section:

"(1) The term 'rural health clinic' means an entity which either through its staff and supporting resources or through contacts or cooperative arrangements with other public or private entities provides primary health services for residents of the rural area it serves.

"(2) The term 'primary health services' means—

"(A) services of physicians and, where feasible, services of physicans' assistants and nurse clinicians;

"(B) diagnostic laboratory and radiologic services;

"(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

"(D) emergency medical services;

"(E) transportation services as required for adequate patient care;

"(F) preventive dental services; and

"(G) pharmaceutical services, as may be appropriate for particular centers.

"(3) The term 'rural area' means an area of a State not within a standard metropolitan statistical area.

"(4) The term 'frontier rural health clinic' means a rural health health clinic—

"(A) the service area of which has a population density of not more than 6 residents per square mile; and

"(B) which is located not less than a ½ hour drive by automobile from the limits of the nearest city or town of 2,500 or more inhabitants.

"(5) The term 'medically underserved rural populations' means the population of a rural area designated by the Secretary as an area with a shortage of personal health services or a population group in a rural area designated by the Secretary as a population group having a shortage of such services.

"(b)(1) The Secretary may make grants to public and nonprofit private entitles for—

"(A) planning, constructing, equipping, supplying, and operating a rural health clinic (including a frontier rural health clinic or a rural health clinic which will serve a medically underserved rural population); and

"(B) training the personnel at such clinic.

"(2) The amount of a grant under paragraph (1) may not exceed $120,000.

"(3) Not more than 25 percent of a grant under paragraph (1) may be used for operating a rural health clinic.

"(4) A public or nonprofit private entity is eligible to receive a grant under paragraph (1) for a rural health clinic if such entity submits to the Secretary an application in such form, at such time, and containing such information and assurances as the Secretary may require by rule information and assurances as the Secretary may require by rule, including asurances that—

"(A) such clinic will accept as patients Medicare and Medicaid recipients who reside in the service area of such clinic; and

"(B) a State of local government within such service area will provide to such clinic an amount equal to 75 percent (75 percent in the case of a frontier rural health clinic or a rural health clinic which will serve a medically underserved rural population) of the grant.

"(5) The Secretary may make grants under paragraph (1) of not more than $1,000 without regard to the matching funds requirement specified in paragraph (4)(B).

"(c)(1) The Secretary may make grants to public and nonprofit private rural health clinics to assist such clinics—

"(A) in purchasing equipment or supplies for such clinics; and

"(B) in training the personnel of such clinics.

"(2) A public or nonprofit rural health clinic is eligible to receive a grant under paragraph (1) if such clinic submits to the Secretary an application in such form, at such time, and containing such information and assurances as the Secretary may require by rule, including assurances that—

"(A) such clinic will accept as patients Medicare and Medicaid recipients who reside in the service area of such clinic; and

"(B) such clinic will expand the primary health services provided at such clinic and provide 24-hour-a-day emergency medical services.

"(d)(1) The Secretary may make grants to solo and small group medical practices which provide primary health services to medically underserved rural populations to assist such practices—

"(A) in purchasing equipment and supplies for such practices; and

"(B) in training the personnel of such practices.

"(2) A solo or small group medical practice is eligible to receive a grant under paragraph (1) if such practice submits to the Secretary an application in such form, at such time, and containing such information and assurances as the Secretary may require by rule, including assurances that—

"(A) such practice will accept as patients Medicare and Medicaid recipients who reside in the service area of such clinic; and

"(B) such practice will expand its provision of primary health services and provide 24-hour-a-day emergency medical services.

"(3) The amount of a grant under paragraph (1) to a solo or small group medical practice may not exceed $20,000 for the first year and $1,000 for each year thereafter.

"(e) The Secretary may require a recipient of a grant under this section to provide documentation of training undertaken with such grant, including the results of any proficiency examination taken as part of such training.

"(f) There are authorized to be appropriated—

"(A) $20,000 for fiscal year 1989; and

"(B) $30,000 for each of the fiscal years 1990 and 1991; and

"(2) for grants under subsection (d)—

"(A) $6,000,000 for fiscal year 1989;

"(B) $7,000,000 for fiscal year 1990; and

"(C) $5,000,000 for fiscal year 1991.".

SEC. 404. MIGRANT HEALTH CENTERS; COMMUNITY HEALTH CENTERS.

"(1) in paragraph (1)(A), by striking "and such sums" and all that follows and inserting the following: ", $53,350,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991."; and

"(2) in paragraph (2)(A), by striking "$2,000,000" and all that follows and inserting the following: "$2,200,000 for fiscal year 1990, and $2,750,000 for fiscal year 1991.".

(b) Community Health Centers.—Section 330(g) of the Public Health Service Act (42 U.S.C. 254c(g)) is amended—

(1) in paragraph (1)(A), by striking "and such sums" and all that follows and inserting the following: ", $484,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991,"; and

(2) in paragraph (2)(A), by striking "$30,000,000" and all that follows and inserting the following: "$33,000,000 for fiscal year 1990, and $38,500,000 for fiscal year 1991.".

SEC. 405. RURAL HEALTH CARE RESEARCH PROJECTS.

(a) Set-aside for Research on Improving Rural Health Care Delivery Systems.—Section 308(i)(1) of the Public Health Service Act (42 U.S.C. 242m(i)(1)) is amended by adding at the end the following new subparagraph:

"(E) Of the amounts appropriated under this paragraph for any fiscal year, the Secretary shall make available for research under section 3095 improving rural health care delivery systems not less than 5 percent of such amounts.".

(b) Study on Improvements With Respect to Data for Designation of Medically Underserved Rural Areas.—The Secretary of Health and Human Services, acting through the Director of the National Center for Health Statistics, shall conduct a study for the purpose of determining the manner in which improvements can be made in the collection and analysis of data providing the basis for determinations to designate rural areas as medically underserved areas.

TITLE V—HEALTH CARE PERSONNEL DEVELOPMENT PROVISIONS

SEC. 501. NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM AND LOAN REPAYMENT PROGRAM.

Section 338G(b) of the Public Health Service Act (42 U.S.C. 254q(b)) is amended—

(1) by striking "such sums as may be necessary"; and

(2) by inserting before the period the following: "$15,000,000 for fiscal year 1989, $16,000,000 for fiscal year 1990, and $17,000,000 for fiscal year 1991.".

SEC. 502. SCHOLARSHIPS AND LOAN REPAYMENTS.

Part D of title III of the Public Health Service Act (42 U.S.C. 329 et seq.) is amended by inserting after section 338I the following new section:

"RURAL AND URBAN HEALTH ASSISTANCE SCHOLARSHIPS AND LOAN REPAYMENTS

"Sec. 338J. (a) Not later than one year after the date of the enactment of this section, the Secretary shall establish a program of scholarships and loan repayments to assure an adequate supply of trained health care personnel at medical facilities which serve medically underserved populations.

"(b) The provisions of this subpart relating to the operation of the National Health Service Corps Scholarship Program and the National Health Service Corps Loan Repayment Program shall, except as inconsistent with this section, apply to the program established under subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Scholarship Program and the National Health Service Corps Loan Repayment Program.

"(c) Individuals receiving assistance under this section shall not be considered a member of the National Health Service Corps while performing services in exchange for such assistance.

"(d)(1) Not less than 40 percent of the individuals receiving assistance under this section (by type of health care personnel) shall be targeted for placement with medically underserved rural populations.

"(2) Not more than one percent of the individuals receiving assistance under this section shall be placed at a medical facility of a Federal correctional institution.

"(e) For purposes of this section:

"(1) The term 'health care personnel' includes primary care physicians (with emphasis on family practice), nurses, nurse practitioners, physician assistants, psychologists, clinical social workers, pharmacists, dentists, and other allied health professionals.

"(2) The term 'medical facility' has the meaning given to such term in section 332(a)(2), except that such term includes rural health clinics, medical care access facilities, and solo and small group medical practices.

"(3) The term 'medically underserved population' has the meaning given such term in section 330(b)(3).

"(f) There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1989, $20,000,000 for fiscal year 1990, and $22,000,000 for fiscal year 1991.

SEC. 503. HEALTH CARE PERSONNEL TRAINING PROGRAMS.

(a) Special Health Care Conditions of Rural Areas.—Not later than January 1, 1990, the Secretary of Health and Human Services shall issue rules requiring that all persons receiving Federal financial assistance under the Public Health Service Act to operate programs for the training of health care personnel shall—

(1) implement measures so that such training takes into account the special health care conditions of rural areas;

(2) improve efforts to recruit, as students in such training programs, individuals who are likely to practice in medically underserved rural areas.

(b) Training Health Care Personnel To Serve Medically Underserved Rural Populations.—Part F of title VII of the Public Health Service Act (42 U.S.C. 780 et seq.) is amended by inserting after section 788B the following new sections:

"GRANTS FOR TRAINING HEALTH CARE PERSONNEL TO SERVE MEDICALLY UNDERSERVED RURAL POPULATIONS

"Sec. 789. (a) The Secretary may make grants to public or private nonprofit health or educational entities to assist such entities in developing and supporting training programs for health care personnel to increase the number of such personnal who serve medically underserved rural populations.

"(b) For purposes of this section:

"(1) The term 'health care personnel' includes primary care physicians (with emphasis on family practice), nurses, nurse practitioners, physician assistants, psychologist, clinical social workers, pharmacists, dentists, and other allied health professionals.

"(2) The term 'medically underserved rural populations' has the meaning given such term in section 330A(a)(5).

"(c) There are authorized to be appropriated $10,000,000 for fiscal year 1989, $12,000,000 for fiscal year 1990, and $13,000,000 for fiscal year 1991.

"GRANTS FOR TRAINING MULTI-COMPETENT HEALTH CARE TECHNICIANS TO SERVE MEDICALLY UNDERSERVED RURAL POPULATIONS

"Sec. 789A. (a) The Secretary may make grants to public or private nonprofit health or educational; entities to assist such entities in developing and supporting training programs to increase the number of multi-competent health care technicans who serve medically underserved rural populations.

"(b) For purposes of this section:

"(1) The term 'medically underserved rural populations' has the meaning given such term in section 330A(a)(5).

"(2) The term 'multi-competent health care technicians' means individuals who are skilled by education or experience to perform a number of routine laboratory procedures and radiography (chest, extremities, and abdomen) and who are trained as emergency medical technicians.

"(c) There are authorized to be appropriated $1,000,000 for fiscal year 1989, $2,000,000 for fiscal year 1990, and $2,000,000 for fiscal year 1991.".

SEC. 504. AREA HEALTH EDUCATION CENTERS.

Section 781 of the Public Health Service Act (42 U.S.C. 295g-1) is amended—

(1) by adding after subsection (a)(2) the following new paragraph:

"(3) In entering contracts under paragraphs (1) and (2) the secretary shall give priority to projects targeted toward health professions which have an inadequate number of practitioners, either by speciality or geographic location.";

(2) in subsection (d)(2)—

(A) by striking "six" in subparagraph (C) and inserting "two";

(B) by striking "and" in subparagraph (G);

(C) by striking the period in subparagraph (H) and inserting "; and"; and

(D) by inserting after subparagraph (H) the following new subparagraph:

"(I) have a director who shall be appointed from the facility of a medical or osteopathic school participating in the center and who shall be at least a half-time tenured faculty member at such school."; and

(3) in the first sentence of subsection (g)—

(A) by striking "and"; and

(B) by inserting after "1988" the following: ", $20,000,000 for fiscal year 1989, $21,000,000 for fiscal year 1990, and $22,000,000 for fiscal year 1991".

SEC. 505. GERIATRIC HEALTH EDUCATION CENTERS.

Part F of title VII of the Public Health Service Act (42 U.S.C. 780 et seq.) is amended by inserting after section 781 the following new section:

"GERIATRIC HEALTH EDUCATION CENTERS

"Sec. 782. (a) The Secretary shall enter into contracts with schools of medicine, osteopathy, and nursing for the planning, development, and operation of geriatric health education centers to increase training in geriatric health care.

"(b) The provisions of section 781 relating to area health education centers shall, except as inconsistent with this section, apply to the establishment and operation of geriatric health education centers under subsection (a).

"(c) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1989, $12,000,000 for fiscal year 1990, and $14,000,000 for fiscal year 1991.".

SEC. 506. CONTINUING EDUCATION FOR NURSES IN RURAL AREAS.

Part A of title VIII of the Public Health Service Act (42 U.S.C. 820 et seq.) is amended by adding after section 822 the following new section:

"CONTINUING EDUCATION FOR NURSES IN RURAL AREAS

"SEC. 823. (a) The Secretary may make grants to and enter into contracts with public and nonprofit private schools of nursing and other public or nonprofit private entities to meet the costs of special projects to provide continuing education for nurses in rural areas through the use of satellite transmissions.

"(b) For purposes of this section, the term 'rural area' means an area of a State not within a standard metropolitan statistical area.".

TITLE IV—MENTAL HEALTH CARE PROVISIONS

SEC. 601. ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT.

(a) IN GENERAL.—Section 1916(d) of the Public Health Service Act (42 U.S.C. 300x-4(d)) is amended by inserting after the first sentence the following: "Such description shall include an examination of the mental health care needs of residents of rural areas in the State and specify the amount of such payments that will be used to provide mental health services for such residents and the extent of such services in the preceding fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1990.

SEC. 602. NATIONAL INSTITUTE OF MENTAL HEALTH.

(a) COMMUNITY SUPPORT PROGRAM FOR RURAL RESIDENTS.—Section 504(f) of the Public Health Service Act (42 U.S.C. 290aa-3(f)) is amended—

(1) in paragraph (1) by adding at the end of the following: "Such projects shall include projects to demonstrate improved approaches to deliver and coordinate mental health care for residents of rural areas.";

(2) in paragraph (3)—

(A) by striking "and"; and

(B) by inserting before the period the following: ", $32,000,000 for fiscal year 1989, $32,000,000 for fiscal year 1990, and $32,000,000 for fiscal year 1991"; and

(3) in paragraph (4) by adding at the end the following new subparagraph:

"(C) Not less than 25 percent of the amounts made available for a fiscal year under paragraph (3) shall be used for mental health services demonstration projects located in rural areas or serving the mental health needs of residents of rural areas.".

(b) RESEARCH ON IMPROVING RURAL MENTAL HEALTH SERVICES.—Section 504 of the Public Health Service Act (42 U.S.C. 290aa-3) is amended by adding at the end the following new subsection:

"(j)(1) The Secretary, acting through the Institute, shall conduct research on improving rural mental health delivery systems.

"(2) There are authorized to be appropriated to carry out paragraph (1) $5,000,000 for fiscal year 1989, $5,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

GAO SAYS FADA NOT ESSENTIAL

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, a recent GAO study prepared for the Senate Banking Committee and the House Energy and Commerce Committee found, "no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. Such functions could be done by a combination of other private sector asset management firms, receivership employees, and FSLIC headquarters and regional employees."

The GAO also found that FADA is not the most cost-effective way to provide asset management services. The GAO asked a number of FSLIC receiverships to estimate their additional management costs if they had to perform the services FADA now provides them.

The GAO concluded, "The estimates provided by the managing officers were all lower—considerably lower—than the FADA fees billed during the period and also lower than the costs incurred by FADA during the period."

That is why a bipartisan majority of the House Banking Committee voted 42 to 8 to approve H.R. 4646, legislation to abolish FADA. The House will vote on FADA next Wednesday, October 12, 1988.

The GAO report condemning FADA's activities follows:

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.
HON. JAMES J. FLORIO.
Chairman, Subcommittee on Commerce, Consumer Protection, and Competitiveness, Committee on Energy and Commerce, House of Representatives.

This report responds to your May 1988 request for our assessment of the Federal Savings and Loan Insurance Corporation's (FSLIC's)[1] continuing need for the Federal Asset Disposition Association (FADA).

In 1985, the Federal Home Loan Bank Board (FHLBB) created FADA[2] as a wholly-owned FSLIC entity to assist FSLIC in the management and disposition of acquired assets. FADA's sole purpose, according to its mission statement, is ". . . to help strengthen the financial health of FSLIC by using private sector management and marketing techniques to manage problem assets held by FSLIC at the lowest cost consistent with sound operations and to sell those assets as fast as is consistent with obtaining the best possible return."

FADA provides asset management and disposition services to FSLIC in three ways. First, under contracts with some of FSLIC's liquidating receiverships, it provides asset management and disposition services. As of June 30, 1988, FADA was managing $3.9 billion in noncash assets for 38 of 80 FSLIC liquidating receiverships. Second, under contracts with thrifts in FSLIC's Management Consignment Program,[3] it also provides asset management services. As of June 30, 1988, FADA had one contract to manage $326 million in assets for a thrift in this program. Third, under contracts directly with corporate FSLIC, FADA provides specified services related to the liquidation process. (For example, FADA is developing a national marketing plan for certain types of assets.) As of June 30, 1988, FADA was providing services under four corporate FSLIC contracts with a total value of approximately $455,000.

Some Members of Congress have questioned the appropriations of FADA, and legislation has been introduced to revoke its charter.

APPROACH

We looked at both the legality of FHLBB's creating FADA and FSLIC's current need for FADA. To address the legality issue, we considered whether FHLBB's actions, and their effects, conform with the provisions and intent of relevant laws. We (1) examined FADA's charter and other pertinent documents, (2) conferred with FHLBB and FSLIC officials regarding the means and circumstances of FADA's creation, and (3) analyzed provisions of applicable laws.

We considered whether compelling evidence exists that FADA is essential to FSLIC. In looking for such evidence, we (1) had discussions with current and former key officials of FADA, FHLBB, and FSLIC and with the managing officers of seven FSLIC receiverships that have contracted for FADA services; (2) reviewed FADA's handling of 20 selected assets from 6 FSLIC receiverships; (3) compared the education, experience, and other qualifications of FADA employees engaged in asset management with those of similar employees of 5 FSLIC receiverships; and (4) reviewed FSLIC reports of FADA's and other contractors' performance in handling receivership assets. From our discussions with these officials and from our review of documents and employees' qualifications, we determined (1) the reasons for FADA's creation, (2) the services FSLIC currently relies on FADA to provide, and (3) FSLIC's alternatives for obtaining the services. We also sought indications of the quality of the approaches FSLIC currently uses to manage assets. (See app. I for a more complete description of our scope and methodology.)

RESULTS IN BRIEF

We found that FADA was illegally established as a federally chartered savings and loan association. Furthermore, we found no compelling evidence that FADA is essential to FSLIC's management and disposition of acquired assets. FSLIC's combined use of (1) other private sector asset management firms, (2) federal employees in FSLIC headquarters and regions, and (3) employees in FSLIC's receiverships who are handling assets[4] could be increased to provide the services now done under contracts with FADA.

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[1] As used in this report, FSLIC refers both to corporate FSLIC, the insurer of thrift institutions, which sometimes acquires assets through assistance and other transactions involving institutions it insures, and also to FSLIC in its fiduciary capacity, which must manage and dispose of assets when appointed receiver for closed thrifts.

[2] FHLBB chartered FADA as a federal savings and loan association on November 1, 1985, pursuant to section 406 of the National Housing Act.

[3] This is an interim approach used by the FHLBB with the purpose of gaining control of selected failing institutions by replacing deficient management and directors, taking appropriate steps to stabilize the institution, and actively managing the problem areas within an institution before its resolution.

LEGALITY OF FADA'S CREATION

As part of a separate assignment,[5] we reviewed the legality of FHLBB's actions in establishing and placing certain of its functions in entities, including FADA, that consider themselves not subject to the salary limitations for federal employees in title 5 of the United States Code. In a legal opinion[6] issued on September 6, 1988, we concluded that FHLBB had acted improperly in creating FADA and that FADA employees should be regarded as federal employees.

While FADA was chartered as a federal savings and loan association, it does not do any of the basic functions of such an association. Instead, it is wholly-owned and controlled by FHLBB and FSLIC, and its sole purpose is to assist FSLIC in carrying out its asset management and disposition functions.

REASONS FOR FADA'S CREATION

Before 1983, the total number of insured thrift institutions liquidated by FSLIC throughout its entire 50-year history was only 15. That number was matched in the following two years span as FSLIC was appointed receiver to liquidate an additional 6 thrifts in 1983 and an additional 9 thrifts in 1984.

The dollar value of assets in FSLIC's inventory increased over ten-fold, from $267 million as of September 30, 1983, to $3 billion as of September 30, 1985. Also, the complexity of the acquired assets increased.[7] The number of FSLIC federal employees responsible for dealing with these assets, however, rose from 8 to 23 during the same time period.

It was clear to FSLIC officials in 1985 that FSLIC needed to expand its capability, both in terms of the number of people and the amount of specialized expertise, to manage and dispose of a rapidly increasing inventory of assets. FSLIC officials said they had sought to obtain needed personnel and expertise by (1) increasing the number and expertise of FSLIC federal employees, (2) using temporary nonfederal receivership employees, and (3) contracting with private sector firms. Current and former FSLIC officials said those approaches were not fully successful in providing FSLIC with the needed people and expertise. They cited Office of Management and Budget (OMB) restrictions of the number of federal employees, the Office of Personnel Management's (OPM's) position that FSLIC employees are federal employees subject to federal pay rates, and other constraints. (See app. II.)

In July 1985, the Federal Savings and Loan Advisory Council,[8] citing concern with the capacity of FSLIC to manage and liquidate its portfolio of receivership assets, recommended that FHLBB give immediate study to the establishment of an entity to manage and liquidate FSLIC's asset portfolio. On October 2, 1985, FHLBB announced receipt of a formal application to charter, under section 406 of the National Housing Act, a federal savings and loan association to liquidate assets. In the press release, the FHLBB Chairman said that FHLBB welcomed the application. On November 1, 1985, FADA was chartered. (See app. II for details on the creation of FADA.)

The head of FSLIC, its Executive Director, emphasized to us that FADA currently serves two main functions. The primary function is to act as an interface between FHLBB and the savings and loan industry, which is greatly affected by the way FSLIC handles its large inventory of acquired assets. He explained that through FADA's Board of Directors—which is composed of 3 ex officio directors and 11 voting directors from the thrift industry—the industry can have direct knowledge of and input to the asset liquidation process.

The other main function served by FADA, he said, is to provide a vehicle to FSLIC for cost-effective asset management and disposition. He told us that FADA was intended to manage and dispose of some assets itself in a cost-effective manner and also, by its mere existence as an alternative source of asset services, to enhance FSLIC's ability to negotiate least-cost contracts with other private sector asset management firms. He added, however, that the latter function was not fulfilled during FADA's first 2 years of existence because the FADA contracts did not contain sufficient cost control mechanisms.[9]

ALTERNATIVES TO FADA

FSLIC used corporate employees, private sector firms, and receivership employees to help manage and dispose of assets before the creation of FADA and continues to use all of these resources.

FSLIC EMPLOYEES

FSLIC corporate employees, who are federal employees, are responsible for selecting assets from closed thrifts for assignment to FADA, other private sector contractors, and receiverships; for approving their plans for management and disposal of the assets; and for monitoring their performance. In addition, FSLIC in its corporate capacity directly manages and liquidates noncash assets acquired, under certain circumstances, from thrifts. As of July 31, 1988, the total was about $167 million, most of which was real estate. The management of these assets is controlled within FSLIC's Operations and Liquidation Division.

RECEIVERSHIP STAFF

FSLIC liquidating receivership staff directly manage receivership assets that are not assigned to FADA or other private sector contractors, and receivership managing officers monitor the management of all receivership assets. As of July 31, 1988, some 84 FSLIC receiverships employed 940 full-time, temporary, nonfederal employees, of which approximately 196 were engaged in handling acquired assets. Although the FHLBB's Deputy General Counsel for FSLIC told us the only external constraint on receivership hiring, in terms of both number of positions and salary levels, is the mandate that FSLIC act in a manner that is consistent with its fiduciary responsibilities, concerns over the legality of the use of nonfederal employees remain. (See p. 26)

PRIVATE SECTOR CONTRACTS

FSLIC also has had contracts with private sector firms for asset management and disposition services for at least 4 years. At the time FADA was created, FSLIC had contracts with at least five firms that were handling assets with a total value of over $1.1 billion. On June 30, 1988, nine FSLIC liquidating receiverships had contracts with six private sector firms, which were together managing $681.7 million in assets. FSLIC continues to use the asset management services of private firms. In fact, FSLIC's Executive Director recently said FSLIC is increasing its use of such firms.

We did not examine the present availability and unused capacity of private sector asset management firms. However, in a survey of "firms in the troubled asset management industry," a major accounting firm under contract to FSLIC contacted 135 companies and reported that 29 of those companies provided fees they would charge for providing asset services. In addition, FSLIC officials have said that they receive almost daily inquiries from private sector asset management firms seeking contracts with FSLIC. They also said that private firms either currently have, or could quickly develop, sufficient capacity to manage FSLIC's asset portfolio.

QUALITY OF THE ALTERNATIVES

The following sections discuss information relating to the quality of the performance of the present resources used by FSLIC to help manage and dispose of assets.

FADA

For an indication of FADA's effectiveness in managing and disposing of assets, we relied on three sources: (1) contractor effectiveness reviews completed by FSLIC, (2) testimonial evidence from FSLIC, receivership, and FADA officials, and (3) our own review of FADA's handling of selected assets.

The FSLIC unit that oversees receivership operations had completed 12 performance evaluations of asset management contracts as of June 30, 1988. Each evaluation focused on a contractor's compliance with contract provisions and its performance in the execution of its duties under the contract. Four of the 12 evaluations were of FADA's performance on asset management contracts with FSLIC liquidating receiverships. The other eight involved the performance of other private sector asset management firms.

The four evaluations of FADA's performance focused partly on the asset business plans submitted by FADA to FSLIC for the required approval. These plans contain information describing the acquired asset, its proposed management, and a recommended disposition strategy. All four evaluations found that FADA's plans were not submitted to FSLIC on time. The plans submitted under two of the contracts were criticized as being insufficiently comprehensive or thorough, and under one contract, FADA was reported to have taken actions that did not conform to those specified in approved business plans. Other deficiencies of FADA's performance were also reported. The evaluation report on one contract recommended that the contract be terminated.

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[4] Whether such employees should be federal employees or can properly be nonfederal has yet to be resolved.

[5] The legality of FADA's creation was reviewed as part of an assignment undertaken for the Subcommittee on Federal Services, Post Office, and Civil Service of the Senate Committee on Governmental Affairs.

[6] Comptroller General Opinion, B-226708, Sept. 6, 1988.

[7] The Garn-St Germain Depository Institutions Act of 1982, enacted on October 15, 1982, permitted federal savings and loan associations to engage in some activities, such as commercial lending and equipment leasing, from which they were previously prohibited.

[8] Congress established the Federal Savings and Loan Advisory Council in 1935 to provide FHLBB with discussion and advice on major questions facing the industry.

[9] From its first assignment of receivership assets on July 18, 1986, through December 31, 1987, FADA contracts with receiverships provided for compensation in the form of a management fee. In addition, those contracts with receiverships allowed FADA to be reimbursed—without limitation—for all payments to parties that it subcontracted with for asset services. (FADA, in fact, contracted with third parties in the private sector for much of the asset management and disposition services it provided to FSLIC.) These contracts lacked both a cost control mechanism and incentives for FADA to dispose of assets as quickly as possible. The provisions in the current contracts provide for fees that include a disposition fee as well as a management fee and set limitations on reimbursement for subcontracts. (For a more detailed discussion of the contract changes, see app. IV.)

We did not validate the findings of these evaluations, and we recognize that their results may not be projectable to FADA's performance under its other 34 contracts with FSLIC receiverships. Furthermore, we have seen indications that a certain amount of tension has existed between some FSLIC employees and FADA. We realize that this tension could create a bias regarding any assessment of FADA's performance by FSLIC employees. In our review of FADA's handling of 20 assets (see p. 14), however, we found that for 13 of the 20 assets, FADA's business plans were not submitted within the required 90-day time frame. They were from 2 to 14 months late.

The testimonial evidence we gathered regarding FADA's overall asset management performance is conflicting and inconclusive. Some FSLIC officials spoke highly of FADA's performance, while others were critical of it. Some found fault with FADA's early performance but believed that its performance has improved. Still other FSLIC officials said that FADA's performance has varied from contract to contract and from FADA region to region. The managing officers of some receiverships that have contracts with FADA said that FADA manages some assets well but that it should not be managing other assets that were assigned to it because they do not involve legal issues or require sophisticated technical expertise. These managing officers said they believe receivership employees were capable of handling these assets. In fact, the managing officers of at least two receiverships have requested, in writing, FSLIC's permission to withdraw specified assets from FADA for this reason.

To gain a first-hand perspective on the extent and effects of FADA's asset services, we reviewed FADA's handling of 20 FSLIC's assets in two of FADA's five regions. We found that for some assets, the sales price obtained by FADA exceeded the appraised value, while for other assets it did not.

PRIVATE SECTOR FIRMS

In our review of the eight non-FADA contract performance evaluations, we found that four of the contracts contained almost no criticism of the performance of the private sector firms. Reports on the other four contracts contained some criticism for deficiencies that were similar to those noted in the evaluations of FADA's performance (see p. 12). However, none of the eight reports concluded that FSLIC should terminate the existing contractor and assign the assets to another entity.

The testimonial evidence we gathered regarding the performance of these firms was inconclusive, as was the case with FADA. FSLIC officials, while citing little specific criticism, said performance varied from contractor to contractor.

We also note that four of the six non-FADA firms currently providing asset management services to FSLIC are doing so under contracts which contain terms identical to those in FADA's contract. The asset management and disposition fee rates for those four firms are thus no more and no less than the fee rates for FADA.

FSLIC RECEIVERSHIPS

To help determine if FSLIC liquidating receiverships have employees as capable as FADA employees of providing effective asset management services, we compared their qualifications, as listed on their job applications. We compared the 26 employees of 5 FSLIC receiverships in Texas and California who had the title of asset manager, senior asset manager, assistant managing officer, or managing officer with the 42 employees in FADA's Dallas and Los Angeles regions who were managing assets for the 5 receiverships and who had the title of asset manager, senior asset manager, or portfolio manager. Our methodology is described in appendix I.

Overall, we found the two groups had similar qualifications. A slightly higher percentage of FADA employees had advanced education degrees (40 percent to 31 percent) and, on average, FADA employees had more years of work experience in the rural estate field (6.3 years to 3.5 years). However, receivership employees led FADA employees in the attainment of professional certifications (for receiverships, 62 percent had at least one certification, while 50 percent of FADA employees had at least one). In addition, the percentage of employees with loan workout and restructuring experience was about the same for receivership employees and FADA employees. It is noteworthy that the receivership employees in our sample received lower salaries on average than did the FADA employees. The tabular results of our comparison are shown in appendix III.

To obtain an indication of the cost of using the receivership structure for services now provided by FADA, we asked the managing officers of five FSLIC receiverships to develop estimates of the additional costs they would have incurred during a recent 5-month period if they would have had direct management responsibility for assets assigned to FADA. The estimates provided by the managing officers were all lower—considerably lower—than the FADA fees billed during the period and also lower than costs incurred by FADA during the period. We did not validate the managing officers' estimates. However, we cannot disagree with a statement made by one managing officer. He pointed out that if his receivership employed the same FADA employees who had worked on that receivership's assets during the subject period and paid them at their current FADA salaries, it would be less expensive than contracting with FADA, because of FADA's additional "overhead" costs.

FSLIC'S EFFECTIVENESS STUDY

FSLIC has made its own internal study of the effectiveness of some of its sources of asset management services. The principal objective of the project was to evaluate, for the 1984 through 1988 period, the relative cost effectiveness and performance of FSLIC receiverships, private sector asset management firms, and FADA in the management and disposition of assigned assets. Quantitative and qualitative dimensions of performance were assessed. FSLIC officials gave us the staff paper containing the results of the study on September 13, 1988. We were not able, due to the timing of the study's release to us, to analyze its methodology and findings.

We note that the study concluded, on the basis of the qualitative performance measures established, that the quality of private sector firms' asset management was significantly higher than that of FADA. The quality of FADA's asset management was rated the same as the quality of that of receiverships. The study's quantitative analysis focused on the ability to recover value from the managed assets and on the cost to FSLIC of the asset management services. It found the return to FSLIC was the same or larger when FADA managed the asset than when the receiverships or private sector asset management firms managed the asset. From a cost standpoint, the study found FADA costs to be about the same as receivership costs. It also found FADA costs to be the same as or lower than the costs of the private sector asset management firms.

The study contained some noteworthy cautions. One was that "statistical analysis allows us to draw conclusions about the entire population from a sample only if the sample is representative of the entire population. In this case it seems clear that the assets that FADA has sold were not typical of FADA's asset portfolio. We have no way of knowing whether FADA would perform as well if all of their assets were compared with all of the receiver and contractor assets."

CONCLUSION

In conclusion, we found no compelling evidence that FADA is essential to the management and disposition of assets acquired by FSLIC. Such functions could be done by a combination of other private sector asset management firms, receivership employees, and FSLIC headquarters and regional employees.

CRAIG A. SIMMONS,
Senior Associate Director.

GAO REPORT, CHICAGO TOWER INCIDENT UNDERSCORES NEED FOR INDEPENDENT FAA

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. OBERSTAR. Mr. Speaker, this past week the General Accounting Office released a report, undertaken at my request as chairman of the Subcommittee on Investigations and Oversight, indicating that a fragmented, region-by-region recruiting process was a major factor in preventing FAA from meeting essential controller, inspector, and maintenance personnel staffing needs.

The continued incidence of controller errors at Chicago's O'Hare airport, a condition which our subcommittee has signaled in the past, has, at last, prompted the Federal Aviation Administration to limit the number of departures and arrivals at the airport during peak flying periods.

Haphazard recruiting and staffing and the glaring example of O'Hare's overburdened control tower, bluntly underscore the need for a reorganized and independent FAA.

In May of this year, I introduced H.R. 4650, a bill that would remove the FAA from the Department of Transportation and restore it as an independent agency. The primary mission of the FAA is to assure the highest level of safety in commercial and general aviation. My bill would give the FAA the independence it needs to act decisively, objectively, and authoritatively in the best interests of safety.

The Nation's air transportation system has failed to keep pace with the enormous demands placed on it since airline deregulation. Last year the airlines carried 450 million passengers, nearly twice the number carried 10 years ago. We estimate that within the next decade the number of passengers will double once again.

It is imperative that we provide the FAA with powers it needs to meet the demands generated by this growth. An independent and restructured FAA will be better suited to tackle that challenge. We cannot afford the current practice of having separate FAA regions interpret and implement policy in a manner that frustrates efficient decisionmaking and timely implementation of national aviation priorities.

Mr. Speaker, I intend to reintroduce the independent FAA bill next year in the hopes that the House will be able to act on it and give the agency the tools it needs to assure the highest possible level of safety for the traveling public. I invite my colleagues to join me in this effort.

FADA IGNORES THE LAW

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, the Federal Asset Disposition Association claims it is not a Federal agency and thus that it does not have to comply with the laws and restrictions which are imposed on other government agencies.

The GAO has issued a legal opinion that FADA is a Government agency and its employees should be considered Federal employees subject to the same laws and restrictions as other Government employees.

I have asked the GAO to prepare a report on just some of the laws FADA is ignoring when it claims that it is not a Federal agency. This list of laws is an excellent reason why the House should vote for H.R. 4646 on Wednesday, October 12, 1988. H.R. 4646 was supported by a 42-to-8 majority of the House Banking Committee, including a majority of both parties.

GAO's full report on the statutes FADA is ignoring follows.

U.S. General Accounting Office,
Office of the General Counsel,
Washington, DC, September 29, 1988.
B-226708.2

Hon. Paul E. Kanjorski,
House of Representatives.

Dear Mr. Kanjorski: This is in response to the informal request from your staff for information on what federal requirements are avoided by viewing the Federal Asset Disposition Association (FADA) as a non-federal organization. Your staff also asked whether the pending legislation to abolish FADA (title VII of H.R. 5094) would take care of the problems identified in our September 6, 1988, opinion on the legal status of FADA.

There are, of course, a host of statutory and regulatory requirements that apply to federal entities but not to non-federal entities. In the time available, we cannot provide a comprehensive listing of those requirements. Instead, this letter gives a few examples of requirements that would apply, with primary reference to personnel-related matters. Since FADA would in all likelihood be a part of the Federal Savings and Loan Insurance Corporation (FSLIC) or the Federal Home Loan Bank Board (FHLBB) if it were a federal entity, our analysis focuses on requirements that apply to those two organizations.

A. SALARY LIMITATIONS

The Classification Act, 5 U.S.C. §§ 5101 *et seq.*, applies to all civilian positions and employees in or under an executive agency. An "Executive agency" is defined in 5 U.S.C. § 105 to mean "an Executive department, a Governmment corporation, and an independent establishment". Section 103(1) of title 5 defines "Government corporation" for purposes of that title to mean "a corporation owned or controlled by the Government of the United States. . .".

FHLBB employees and FSLIC employees are subject to the salary limitations contained in the Classification Act. Section 17(b) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. § 1437(b), provides that the FHLBB "shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government. . .". Therefore, the Board, including FSLIC, clearly is an "agency" within the scope of the Classification Act. In addition, FSLIC is defined to be a wholly owned government corporation at 31 U.S.C. § 9101(3)(E), and thus again within the scope of the executive agency definition in title 5.

B. CONFLICT-OF-INTEREST LAWS AND ETHICS LAWS

Federal employees are bound by the conflict-of-interest laws set out in chapter 11 of title 18. This criminal statute, at 18 U.S.C. § 208, prohibits federal employees from participating personally and substantially in any particular matter in which the employee, his/her spouse, minor child, partner, organization in which he/she serves, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Federal employees are also prohibiting from acting as agent or attorney for prosecuting any claim against the United States, or representing anyone before any court or federal department or agency in connection with any matter in which the United States has an interest. (*See* 18 U.S.C. § 205.) Section 209 of title 18 of the United States Code prohibits federal employees from receiving any contribution to or supplementation of salary for his/her service to the government from outside parties. The restrictions on what former employees can do after leaving the govenment are contained in 18 U.S.C. § 207. Various other restrictions apply to federal employees through the criminal provisions in title 18 and by regulation. FHLBB and FSLIC employees are subject to the ethics laws and conflict-of-interest laws, with regulations covering both organizations set out at 12 C.F.R. part 511.

C. HATCH ACT

The Hatch Act, 5 U.S.C. §§ 7321 et seq., prohibits employees in an "Executive agency," from taking an active part in partisan political activities, among other restrictions. "Executive agency" is defined at 5 U.S.C. § 105, for the purposes of title 5, to mean "an Executive department, a Government corporation, and an "independent establishment." As discussed earlier, both FHLBB and FSLIC employees meet the definition in title 5 of employees of an Executive agency, and therefore are subject to the Hatch Act.

D. TRAVEL LAWS AND REGULATIONS

Under 5 U.S.C. §§ 5701 et seq. and implementing regulations, restrictions are placed on the amount employees can be reimbursed for travel and subsistence expenses while on official business for the federal government. The term "employee" is defined at 5 U.S.C. § 5701(2) as "an individual employed in or under an agency. . . ." Section 5701(1) of title 5 defines agency to include "an Executive agency," among other entities. For the purposes of title 5, executive agency is defined at 5 U.S.C. § 105 to mean "an Executive department, a Government corporation, and an independent establishment." Restrictions on relocation expenses, and travel and transportation expenses of new appointees, contained in 5 U.S.C. §§ 5721-33, also apply to employees of an executive agency. FSLIC employees and FHLBB employees are subject to the travel laws and federal travel regulations, since both organizations fall under the definition of executive agency in 5 U.S.C. § 105, as was described earlier.

E. FREEDOM OF INFORMATION ACT [FOIA]

The Freedom of Information Act, 5 U.S.C. § 552, provides that each "agency," upon a request for records which (A) reasonably describes such records and (B) is made in accordance with published rules, shall make the records promptly available to that person, subject to certain exemptions. The term "agency" is defined at 5 U.S.C. § 552(e) for purposes of that section as including "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government. . . ." Both FHLBB and FSLIC are covered under FOIA, and the implementing regulations are published at 12 C.F.R. part 505.

As indicated previously, the foregoing discussion addresses only a few of the many requirements that would apply to FADA as a federal entity. There are numerous other requirements, both in the personnel area and otherwise, that would also be implicated.

With regard to the pending legislation, it appears that title VII of H.R. 5094 would address the problems identified in our September 6, 1988, opinion on the legal status of FADA. Due to the time constraints, we limited our review of the legislation to that narrow issue, and did not undertake a comprehensive review of title VII.

Sincerely yours,
Henry R. Wray,
Associate General Counsel.

A TRIBUTE TO MANUEL LUJAN

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise to pay tribute to one of our colleagues who is retiring at the end of the 100th Congress. The Honorable Manuel Lujan, who represents the First District of New Mexico, will be leaving the House of Representatives at the end of this term after 20 years of service.

Since coming to the House in 1985, I have had the distinct pleasure of working with Mr. LUJAN as a member of the Science, Space, and Technology Committee. As the ranking minority member, Mr. LUJAN has been infinitely fair with me and has supported a number of proposals which I have brought before the Subcommittee on Energy Research and Development, as well as the full committee. I want to thank him for his cooperation and support and wish him the very best in any future endeavors.

In the short time period in which I have been a member of the Science, Space, and Technology Committee, I have continually been impressed with the bipartisan manner in which this panel has conducted its business. This positive atmosphere is indeed a credit to the leadership of Chairman BOB ROE and Representative MANUEL LUJAN. The presence of Representative LUJAN will certainly be missed as the committee conducts its business during the 101st Congress.

Again, thank you Mr. LUJAN for your friendship and support.

NATIONAL 4-H WEEK, 1988

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. NATCHER. Mr. Speaker, it is a pleasure for me to join with the members of 4-H as they celebrate National 4-H Week with the theme: "4-H for Youth for America."

4-H is the largest information coeducational program for young people in the world. Participation is open to all interested youth between the ages of 9 and 19. The primary focus of the program is developing life skills. By selecting from over 100 project areas, 4-H'ers not only learn practical skills, but also develop sound judgment, a sense of responsibility and individual motivation for future career choices or later educational pursuits.

4-H is administered by the Cooperative Extension Service of the Department of Agriculture. Public funding for 4-H, channeled through the cooperative extension system, is provided by the U.S. Congress, State legislatures and local governments. The private sector donates approximately $41 million annually to support 4-H at the national, State, and local levels.

Volunteers are essential to the 4-H Program and over 600,000 well-trained volunteers help make 4-H one of the most cost effective publicly supported programs in the 1980's.

More than 300 young people and adults met in Washington, DC, in April to exchange views and chart direction for the nationwide cooperative extension system and its 4-H Youth Program. The conference agenda centered around the national theme—4-H for Youth for America. The conference was conducted by the USDA's Extension Service in cooperation with the Cooperative Extension Service of the Nation's land grant universities and the National 4-H Council.

The Kentucky Leadership Center is operational and the use for the first year has exceeded expectations. The Friends of Kentucky 4-H is putting together a financial package to build the third phase of the center.

I am particularly pleased that the 4-H clubs/units in the Second Congressional District of Kentucky, which I have the privilege of representing in the U.S. Congress, continue to strive to strengthen their programs. James G. Williams of Allen County and Kim Wilkerson of Washington County were named State winners in the 1988 Conrad Feltner Leadership Recognition Program, and Rebecca Rasdell of Warren County and Brent Lauer of Nelson County participated in the international exchange this summer and traveled to Japan. Three of the Kentucky State 4-H officers for 1988-89 are from the Second Congressional District of Kentucky: Russell Lemons of Hardin County, president; Joey Spalding of Washington County, vice president; and Larissa Jeffiers of Spencer County, treasurer.

At this time I would like to commend all of the 4-H members and volunteers for their dedication and efforts during the past years, and I wish them success in all their future endeavors.

TRIBUTE TO JACKIE DELL

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to a dear personal friend of mine, Mr. Jackie Dell. Mr. Dell has played an instrumental role in the political arena in my 17th Congressional District of Ohio for quite some time.

Jackie Dell, a native of Youngstown, OH, has been a sports prognosticator for over 30 years for two local Las Vegas newspapers and many local newspapers in my district. Dell has been called upon to add politics to his repertoire, and has successfully called many of the November elections in the past. In 1986, Jackie Dell correctly predicted five of the five winners in local races in my district, some of which were upsets. He even predicted my upset victory in 1984 over the incumbent Republican whose House seat I now hold.

Clearly, Mr. Speaker, Jackie Dell ranks as one of the premier oddsmakers in this country. I am honored not only to represent him, but to have him as a truly special friend as well.

FDIC AND FSLIC FIND ALTERNATIVES TO FADA

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, the Federal Savings and Loan Insurance Corporation tells us that it cannot live without the Federal Asset Disposition Association [FADA], which would be abolished under the terms of H.R. 4646, legislation reported out of the House Banking Committee on a bipartisan vote of 42 to 8.

Yet FSLIC's own actions speak louder than its words.

Despite massive problems in the thrift industry and increasing number of thrift closures, sales and mergers this year, the FSLIC has not assigned a single dime in new assets to FADA this year.

If FADA is doing such a good job for FSLIC, and if its functions are so essential, why won't FSLIC give it any new work?

Today's newspaper provides us with a partial response to that question. It reports that FDIC and FSLIC are preparing to jointly auction $100 million in property next year in New York.

This shows that there are other, more creative ways to dispose of property, and that FADA is not essential, or the most cost-effective way to dispose of assets.

I hope my colleagues will join the 42 to 8 bipartisan majority ol the House Banking Committee in voting to pass H.R. 4646 on Wednesday, October 12, 1988.

The full story on FSLIC's now option follows:

[From the Washington Post, Oct. 7, 1988]

FDIC, FSLIC TO AUCTION $100 MILLION IN PROPERTY

(By Kirstin Downey)

More than $100 million in real estate properties from failed banks and savings and loans will be auctioned in New York City early next year.

The auction will be a unique joint venture between the Federal Deposit Insurance Corp., the agency that regulates and insures banks, and the Federal Savings and Loan Insurance Corp., which does the same for the savings and loan industry. It will be conducted by Cushman & Wakefield, a real estate brokerage owned by the Rockefeller Group, and Christie's, the international auctioneers.

"We've never done anything like this before," said Steven Seelig, associate director of the FDIC's liquidations division. "We're hoping to tap into the Cushman & Wakefield client base and Christie's client base."

It's also a money-raising venture for the FSLIC, which faces mounting expenses, most recently estimated at $50 billion. The auction is "yet another way to find funds," said Paul Olkhovsky, and FSLIC spokesman.

The properties to be sold include office buildings, hotels shopping centers, warehouses, land and apartment complexes throughout the United States, with most located in overbuilt markets such as Texas, Florida and California.

The FDIC and FSLIC have offered about 50 properties for the auction—the ones they consider their least trouble and least encumbered with debt or litigation—and Cushman & Wakefield is selecting 20 to 40 to be offered to investors.

"They all need tender loving care but they all have potential capital appreciation," said Earl Reiss, executive vice president of Cushman & Wakefield.

The FDIC and FSLIC have acquired the properties within the last eight years because of the avalance of failed financial institutions. In the past six years, 730 banks have failed, leaving the FDIC with some 6,000 to 7,000 properties, which are appraised at about $400 million.

The FSLIC has taken into receivership $7.6 billion in assets, including an estimated $3.1 billion in real estate.

Cushman & Wakefield approached the FDIC with the idea of the auction. I agreed to market properties and sell them at auction on a strict commission basis—an attractive proposition for the agency. The FSLIC later decided to participate in the auction as well as sort of pilot project.

TRIBUTE TO KAY CLARENBACH

HON. ROBERT W. KASTENMEIER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KASTENMEIER. Mr. Speaker, I would like to take this occasion to pay tribute to a very special constituent and dear friend, Dr. Kathryn Clarenbach of Madison, WI.

Kay Clarenbach is a most remarkable woman. She earned her Ph.D. from the University of Wisconsin and became a distinguished professor in the University of Wisconsin's department of political science where she taught for a number of years until her retirement last spring.

In addition to being a member of the UW faculty and helping to raise a family, Kay was and still is a nationally recognized leader of the feminist movement. As a chair of the Wisconsin Governor's Commission on the Status of Women from 1964 to 1979, Kay was the catalyst and leader of a national woman's right convulsion that was responsible for changing the role of women in American society.

Kay was instrumental in establishing the women's studies programs at the University of Wisconsin, an educational reform which was instituted in other colleges and universities across the country. She was the founder and the first president of the National Association of Commission for Women. She served as the executive director of the National Commission for the Observation of International Women's Year in 1978. In addition, Kay was one of a handful of women who founded the National Organization for Women in 1966. She also was a founder of the National Women's Political Caucus and the NOW legal defense and education fund.

Kay Clarenbach issued a powerful challenge to us to eliminate all vestiges of sexism and racism in our society. She said:

> We must all, whether woman or man critically examine the culture in which we live and act, and do battle against the culturally destructive forces—of which sexism and racism are among the most noxious—in order to help build a responsible and creative society.

This is a challenge which we must accept.

Mr. Speaker, it has been my pleasure to work with Kay over the years on behalf of women's equality issues. On October 20, the Wisconsin Women's Network and the Wisconsin Women's Council will honor Kay Clarenbach for her lifelong efforts to advance women's equality. I join with Kay's many friends and admirers in saluting this great and noble woman. Although she may have retired from the University of Wisconsin, her influence as an educator and activist will remain and continue to grow.

Mr. Speaker, at this point, I would like to include a column on Kay Clarenbach by John Patrick Hunter, associate editor of the Madison, WI, Capital Times.

[From the Madison (WI) Capital Times, Oct. 6, 1988]

KAY CLARENBACH: WOMEN HER CAUSE

(By John Patrick Hunter)

Kathryn Clarenbach is a very special woman.

Ask feminists the world over to make a list of American women who in the last 25 years have played big roles in the fight to liberate women from discrimination. There is a good chance Clarenbach's name would be near the top.

Not a bad accomplishment for a Sparta native whose father—a preacher, lawyer and state representative from Monroe County—had to borrow money from the bank in the depth of the Depression to send her to the University of Wisconsin-Madison.

At 67, Clarenbach will retire in mid-July from her post as a UW professor of political science. But it is unlikely the event will end her determined quarter-century crusade on behalf of equal rights for women.

Ironically, when Clarenbach wrote her Ph.D. thesis 42 years ago on anti-democratic forces in American politics, she didn't even discuss the oppression of women.

Nevertheless, she says, her interest in women's issues has grown out of a lifelong concern for a more democratic society.

Society, Clarenbach said in a recent interview, still has not come to grips with job discrimination and other inequities that beset women.

"The growing impoverishment of women and their children is really such a desperate situation and it is not being attended to," Clarenbach said.

Knowing the causes of poverty and yet failing to attack them is "most distressing," Clarenbach says.

Even in such a progressive state as Wisconsin, the ill treatment of women in courts is of major concern to her. She says judges are not giving women a fair shake in divorce settlements and are not meting out the kind of fairness our lawmakers anticipated.

Seeking new careers, she and her late husband, Henry, left Staten Island in 1960 to come back to Madison. They had met here as students. Upon her return, she became interested in education for mature women. It became the springboard for a career that subsequently brought her international attention.

She headed the Governor's Commission on the Status of Women from 1964 to 1979. Then Gov. Lee Sherman Dreyfus allowed the commission to "croak," as he put it.

Next for her came activity with the Wisconsin Women's Network, to be followed by the National Organization for Women in 1966. In 1971, Clarenbach helped develop the National Women's Political Caucus.

She recalls with pleasure one of her more memorable challenges. In 1978 she served as the executive director of the National Commission for the Observance of International Women's Year, Held in Houston, the affair attracted international participation and attention.

Among "the cadre of committed feminists" with whom she has worked are Betty Friedan, Bella Abzug and Frances "Sissy" Farenthold, as well as "others too numerous to mention."

Feminists are those who are concerned not only with the status of women, but with a more democratic society with fairness for everybody, she explains. That definition does not exclude men.

The women's movement has been successful in inspiring grassroots efforts, Clarenbach says. As a result, people are paying more attention to "the rape situation," to educational equity, sports for girls and displaced homemakers.

"These things are being done by volunteers and individual women. They are providing shelters for battered women and their children."

Violence is still occurring, physically as well as economically, but those issues are being attended to. And, importantly, they are now seen as political issues.

"These are the fruits of the women's movement," she says.

She hopes her retirement will give her more time to see her children: state Rep. David Clarenbach, D-Madison, the Assembly speaker pro tempore; Janet, a teacher of earth science and biology at Oswego, NY; and Sarah, a lawyer in California.

FADA DISSOLUTION WILL NOT BE COSTLY ACCORDING TO CBO

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, in order to protect their cushy fiefdom FADA and the Federal Home Loan Bank Board have been attempting to scare members into believing that it will be very costly to abolish the Federal Asset Disposition Association.

CBO's most recent, and final, cost estimate for the bill we will vote on next Wednesday (H.R. 4646), clearly indicates that this is not the case. That is why a majority of both the Democrats and Republicans on the House Banking Committee voted 42 to 8 to pass H.R. 4646.

H.R. 4646 is virtually identical to title VII of H.R. 5094, legislation reported from the House Banking Committee over a month ago.

In its cost estimate on H.R. 5094 the CBO says, "We cannot estimate the total long-term cost or savings from abolishing FADA." FADA's supporters rarely note that CBO states that FADA's dissolution could result in savings to the Federal Government.

In order to address the $5 to $12 million in initial administrative costs that CBO says could result from abolishing FADA, the committee adopted an amendment to H.R. 4646—not included in H.R. 5094—preventing FADA from paying out roughly $8 million in "golden parachute" severance payments. It should be noted that the only reason these expenses exist in the first place is because the FADA board adopted a "poison pill" defense in order to discourage the Congress from passing H.R. 4646.

FADA's "golden parachutes," like its flagrant disregard for government pay caps and other restrictions on Federal employment, are just some of the reasons why we must pass H.R. 4646 and bring FADA back under Government control.

have a job-protected leave in the event of serious illness. But some do not have this job-protection and face a job loss and loss of health insurance just when their medical costs are going to rise and they need more than ever a sense of stability in their lives.

Unfortunately, as the bill is currently drafted, employees who must care for a seriously-ill spouse would not be provided a job-guaranteed leave. Only caregivers of parents would be eligible, despite there being almost as many spouse caregivers as children caring for their parents.

The addition of spouse language would further strengthen the bill, which already strikes a fair balance between protecting the rights of the employee and the interests of the employer. Employers of fewer then 50 employees would be exempt from the bill's provisions, with this threshold decreasing to 35 employees three years after enactment.

Ongoing medical certification could be required by the employer and the employee must make a reasonable attempt to schedule the leave so as not to unduly disrupt business.

In closing, we urge you to vote for families, both young and old, and support passage of the Family and Medical Leave Act, a comprehensive package for all families.

American Association of Retired Persons [AARP], Gray Panthers, National Caucus and Center on Black Aged, Inc., National Council of Senior Citizens [NCSC], Older Women's League [OWL], Villers Advocacy Associates.

AMERICANS ARE WAITING

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. STARK. Mr. Speaker, after many hearings and debates in 1987, the Family and Medical Leave Act was reported out of the last House Committee on February 3, 1986. Since that time, this bill has been ready for floor action.

Many groups across the country have come out in favor of the bill and have urged us to bring the bill to a vote. I would like to share with my colleagues the letter I received recently from the Service Employees International Union, AFL-CIO, CLC.

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC,
Washington, DC, September 22, 1988.

DEAR REPRESENTATIVE: Service Employees International Union (SEIU) represents over 850,000 workers in service sector occupations. Our workers are the janitors that clean your childrens' classrooms, the nursing home workers that care for your parents and the nurses that help care for your ailing families and friends. These workers are typical of the growing service sector workforce in this country where turnover is the norm and job security and benefits are minimal.

While this sector has rapidly expanded, the recognition of service workers' needs has not kept pace. SEIU represents the low and middle-income workers who need the minimum family and medical leave protections provided in H.R. 925. SEIU found that in our unionized low-wage private sector workforce, only 26% of our contracts provided real job protections. Furthermore, only 13% on average of all our private sector workers had any provision for the caregiving of a seriously ill family member.

In the area of emergency medical leave, SEIU has closely looked at the need for worker protections. It is disturbing that the workers who lack this protection are but one accident or illness away from job loss. H.R. 925 provides a short period of unpaid leave to help workers recover and become productive workers again. The medical leave provision would especially help our nations's older workers, which the Bureau of Labor Statistics indicates will soon be our most rapidly growing sector of the labor force.

SEIU urges you to support the Family and Medical Leave Act when it reaches the House floor. A national guarantee of job protected family and medical leave is essential for low and middle-income working Americans.

Sincerely,

JOHN J. SWEENEY,
International President.

With so many Americans waiting for us to take action, I urge passage of this important bill this year.

ROLL CALL COMPLIMENTS EXHAUSTIVE COMMITTEE REPORT ON FADA

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, earlier this year the investigative staff of the House Banking Committee, with the assistance of the General Accounting Office, prepared an exhaustive study of the creation and operation of the Federal Asset Disposition Association [FADA].

That comprehensive report, which concluded that FADA had been badly mismanaged and should be replaced, appeared in the April 20, 1988, CONGRESSIONAL RECORD—printed in the issue dated April 21, 1988—beginning on page H 2203.

Roll Call Editor and Publisher James K. Glassman paid a well deserved tribute to the eloquence and carefully drafted conclusions of that report in a May 22, 1988, Observer column in Roll Call.

Since the Banking Committee's report serves as the foundation for the legislation the House will consider next week to abolish FADA—H.R. 4646, reported out of the House Banking Committee on a bipartisan 42 to 8 vote—I would like to share that column with my colleagues.

FADA-COMPLI: WONDERFULLY BLUNT, WELL-WRITTEN REPORT

(By James K. Glassman)

Last month, Rep. Fernand St Germain (D-RI), the chairman of the House Banking, Finance and Urban Affairs Committee, received permission to print in the Congressional Record a 45-page report on the Federal Asset Disposition Association (FADA—or "Fay-duh"), "notwithstanding the fact that the cost of printing the FADA report is estimated to be $18,634."

Normally, such a report would be printed separately, at a cost of around $1,400. But Steve Ross, the general counsel to the Clerk of the House, was worried that a recent court decision could leave Members open to libel suits if the report was printed first outside the Record.

Perhaps Ross was being overly cautious, but close observers—call them connoisseurs—of this sort of thing could be certain that the FADA report would not be a dull one.

It isn't. I read it last week on a long train ride to New York. Anyone who grumbles over the increase in the size of Congressional staffs, anyone who wonders why the Hill should have oversight authority, anyone who believes Congress is slipshod and unserious should read the FADA report.

I have a special interest in it. I've been following the banking industry—especially savings and loan associations—for years, occasionally writing about the trransformation of what were once the dullest financial institutions into the wildest.

The FADA report begins with a disturbing picture of the current status of the S & L industry today and explains how it got to be that way. Today, 491 S & Ls have negative net worths on their balance sheets, compared with only 16 in 1980.

The main reason for these dire straits is that high interest rates in the late '70s and early '80s produced a severe liquidity crisis for S & Ls, which Congress solved temporarily by allowing a change in their function. Before, they were in the home mortgage business, borrowing short and lending long. But now they were unfettered; they could dive into what the report calls "high risk/high-return investments."

As more of these S & Ls got into trouble, greater demands were placed on the Federal Savings and Loan Insurance Corporation (FSLIC, or "fizz-lick"). But FSLIC didn't have the resources simply to shut down the institutions and pay off insured depositors.

Instead, in 1985, it began a "management consignment program," which "places ailing institutions into a holding pattern and postpones their closing which, otherwise, could have a detrimental impact on FSLIC's cash position."

What this means is that FSLIC sends people in to oversee the running of these troubled and in many cases insolvent S & Ls. One of their key jobs is selling off problem assets—in most cases, commercial real estate that has been foreclosed.

Selling these assets for good prices isn't easy. At first, FSLIC used its own staff, as well as private companies, to do the job.

Then, in November 1985, the Bank Board established FADA, whose sole function was to serve as the main FSLIC contractor in the asset-disposition business. FSLIC, a public agency, owned all of FADA's stock, but FADA operated with a great deal of independence.

Of course, the blame for the mess that FADA now finds itself in was partly the fault of the legislature itself. As this wonderfully blunt and well-written report puts it: "Congress also passed up an opportunity to spell out the agency's role through legislation. As a result, the freshly laid foundation and, thus, malleable cornerstones of this new entity were left open to interpretation, not only by FADA but also by the Bank Board, FSLIC, and Congress."

Now that I've set the stage, I'm going to deprive you of the good, gory stuff. It's all in the report. You'll read about how this government agency was paying its president a salary of $250,000 (plus a bonus of $75,000 in 1986); how an entity that was supposed to have 50 to 80 employees ended up with almost 400; and how, ironically, FADA spent

CBO's final cost estimate on H.R. 5094, which is identical to H.R. 4646 except that H.R. 4646 eliminates the administrative costs, follows.

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1988.
Hon. FERNAND J. ST GERMAIN,
Chairman Committee on Banking, Housing, and Urban Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5094, the Depository Institutions Act of 1988, as reported by the House Committee on Banking, Housing, and Urban Affairs on August 4, 1988. We expect that enactment of this bill would result in net costs to the Federal government of $6 million to $8 million in 1989, and between $9 million and $17 million iach of the fiscal years 1990 and beyond. About $3 million per year of these amounts represent costs of the Federal Reserve Board, which would be reflected in the budget as a decrease in revenues; the remaining costs would appear as increases in outlays, which would not require appropriation action, except in the case of the Securities and Exchange Commission.

In addition, the proposal to abolish the Federal Asset Disposition Association (FADA) may create temporary delays in receipts to receiverships. These receiverships, which are established by the Federal Savings and Loan Insurance Corporation (FSLIC) to manage assets of failed thrifts, make periodic payments to the FSLIC. Given the uncertainty over the timing and amount of funds that FADA would generate for the FSLIC, as well as the effect that abolishing FADA would have on income to the FSLIC, it is not possible to estimate the budget impact, if any, on this proposal at this time.

H.R. 5094 would make changes in the authority of banks to invest in securities, real estate, and insurance activities. It would require that each federal regulator of financial institutions—the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the Federal Home Loan Bank Board (FHLBB)—establish a separate division to conduct examinations of institutions to determine the level of compliance with the laws and regulations relating to consumer protection, including community reinvestment laws. Based on information from the agencies, we expect that they would hire and train new staff to carry out this function. Assuming that beginning in 1991 the agencies would conduct a consumer audit once every two years for each of approximately 17,000 institutions, the additional expenses incurred for this purpose would range from zero to $4 million in 1989, from $5 million to $9 million in 1990, from $11 million to $19 million in 1991, and from $19 million to $31 million in each year thereafter. The costs to the OCC and the FHLBB would be largely offset by fees, resulting in a net budget impact of half that amount or less in each year.

This bill would amend provisions of the Glass-Steagall Act that affect affiliations between banks and securities firms. Based on information from the Securities and Exchange Commission, we expect that costs to regulate and monitor market securities activities, as well as to conduct studies and prepare reports, would be approximately $3 million in 1989, increasing to $4.5 million by 1993, assuming the necessary appropriations.

H.R. 5094 would give the FSLIC three months to abolish FADA, which currently provides a number of services to the FSLIC, including appraising, maintaining and selling assets from failed savings and loans. FADA currently handles about $4 billion in assets, and has over 300 employees. The bill establishes a ceiling of 200 additional staff that the FSLIC could hire to replace FADA, but also allows the FSLIC to hire private management firms. It is not clear at this time how FSLIC would replace FADA staff, and what the cost of the alternatives to FADA would be. As a result, we cannot estimate the total long-term cost or savings from abolishing FADA.

We expect that the initial administrative costs of disbanding FADA could range from $5 million to $12 million in 1989, depending upon the amount of severance pay required for current FADA employees, the additional management and legal fees incurred while assets are being transferred, and the other costs associated with moving equipment and personnel. These costs are not included in our outlay estimate, because in view of the FSLIC's limited resources, they would probably displace other spending. In addition, if sales of assets managed by FADA are delayed until a new staff is available to assume this function, it is possible that FSLIC could experience a temporary drop in collections from liquidations, although we have no way of knowing at this time if this would happen. Furthermore, assuming enactment of the legislation early in fiscal year 1989, cumulative collections during the year probably will not change significantly.

The bill assigns several responsibilities to the Federal Reserve Board in its role of regulating and supervising the commercial banking structure. The Federal Reserve would be required to examine the relationship between the securities affiliate, the bank holding company, and the bank and nonbank affiliates to ensure that the required degree of separability is maintained and that the safety of the holding company and bank affiliates is not jeopardized. The Federal Reserve also would have to prepare several reports and would have certain regulatory duties for the consumer provisions of the bill (Title IV), including the Truth in Savings Act, the Home Equity Loan Consumer Protection Act of 1988, and the Community Benefits Amendments of 1988.

Based on information from the Federal Reserve, we estimate that additional costs for examination, supervision, training and other administrative requirements would be approximately $3 million annually through 1993. Because the Federal Reserve remits its surplus each year to the Treasury as a revenue, any additional operating costs would reduce federal revenues and would not require appropriation action.

In addition, the bill requires numerous studies and reports, and makes a number of other changes, which we do not expect to have a significant budget impact beyond the costs already specified.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mary Maginniss, who can be reached at 226-2860, and Mark Booth, who can be reached at 226-2680.

Sincerely,

JAMES L. BLUM,
Acting Director.

ORGANIZATIONS REPRESENTING THE ELDERLY SUPPORT THE FAMILY AND MEDICAL LEAVE ACT

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. LEHMAN of Florida. Mr. Speaker, the Family and Medical Leave Act is not just for young families. It provides important job security as well to our older Americans.

Recently six organizations wrote Members of Congress to voice their support for this vital legislation. I would like to share a copy of this letter with my colleagues and urge them to vote for H.R. 925.

The letter follows:

AGING ORGANIZATIONS URGE PASSAGE OF MUCH-NEEDED JOB SECURITY FAMILY LEGISLATION

SEPTEMBER 14, 1988.

DEAR MEMBER OF CONGRESS: As organizations representing millions of older persons across the country, we urge you to vote in favor of the Family and Medical Leave Act, H.R. 925.

Truly intergenerational in approach, the Family and Medical Leave Act would provide employees with much-needed job security in times of family responsibilities or serious illness.

The bill recognizes that family needs can be 'sandwiched' between caregiving at both ends of the age spectrum. And that both young and old could need job security in the event of serious illness.

In 1986, there were 32.6 million persons in the workforce age 45 and older, representing 28 percent of the total workforce. By the year 2000, this percentage will increase to 33 percent.

Our members are the midlife and older workers who cannot afford financially or emotionally to lose their jobs when they themselves are suffering from a serious health condition. Our members need to know that their jobs will be waiting for them to return, should they need weeks off for surgery or chemotherapy.

To lose a job means more than just a loss of income. It could mean loss of health insurance, great difficulty in finding a new job, especially for older workers, loss in retirement benefits, and loss of self esteem.

Our members are the estimated 2.2 million caregivers of adults who are seriously-ill or they are the ones themselves receiving the care. These caregivers can spend as much time caring for an adult as for a child.

As a society, we have always depended upon families to provide the bulk of the care given to the elderly. Only one in five of the elderly are living in nursing homes. The remainder continue to live in the community because of the unpaid assistance of family.

But times have changed. Not only are we asking the family to care for the elderly, we are now requiring them to hold down a paying job too. It takes two incomes today to support a family, leaving us in a situation where either our public policies must change or our families must fold under the stress of conflicting work and family demands.

Our members are loyal, productive employees. Some are professionals who already nearly $2 million a year to rent swanky offices, passing over "scores of vacant buildings acquired by FSLIC."

Meanwhile, more important, the committee report charges that FADA isn't doing its job. "The Committee's investigation," writes St Germain, "has proven conclusively that time has run out for FADA. The time has come to abandon this costly experiment."

The report shows what can happen when well-intentioned people are fuzzy in their objectives and lax in their oversight responsibilities. And the report itself is also an example of Congress at its best.

INTERNATIONAL FINANCIAL COOPERATION AND SECURITY ACT

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. GARCIA. Mr. Speaker, I am introducing legislation today on behalf of myself and my friend and colleague Representative CHUCK SCHUMER, legislation that would require the Secretary of the Treasury to enter into negotiations with other nations belonging to the Organization for Economic Cooperation and Development [OECD] to establish multilateral standards for entering into and reporting financial transactions with the Soviet Union. At the same time the Secretaries of Defense and State are instructed to hold discussions at NATO with our allies on the security implications of conducting financial transactions with the Soviet Union.

In addition, I require that Congress be issued an annual report on the progress of both the negotiations and the discussions at NATO as well as the extent of Western financial dealings with the Soviets. I believe that our economic relations with the Soviet Union are becoming increasingly important, and I, therefore, feel that we must do everything we can to get a more complete picture of all financial transactions between the West and the Soviet Union.

I agree with Senator BILL BRADLEY who said that capital must be treated as a strategic asset. I also agree with his assessment of the need to cover all aspects of our economic relations with the Soviets from export controls to Soviet participation in Western economic instititions. The legislation that I am introducing is by no means tailored to answer all those questions. It is designed to get a better reading on one aspect of our economic dealings with the Soviet Union: Soviet activites in Western capital markets.

Nor, is this legislation the final word on how we should structure this aspect of our relationship with the Soviets. Clearly, the United States cannot effectively go it alone with regard to imposing restrictions or capital controls on lending to the Soviets. At a recent hearing conducted by my subcommittee, the Banking Committee's Subcommittee on International Finance, Trade, and Monetary Policy, we learned that United States banks account for only a little over 1 percent of all Western bank loans to the Soviet Union. Even if we stopped all lending to the Soviets, it would make little difference to their overall ability to get hard currency from the West.

That is why I am focusing on the multilateral approach. That is also why I am suggesting that the OECD become involved. Aside from the excellent work they do on economic issues, Japan is also a member of the OECD, and I believe that any arrangement we come to with regard to conducting financial relations with the Soviets must include the Japanese.

I think our first priority should be transparency, that is, a clearer picture of the extent of Soviet involvement in Western capital markets, whether that be through direct lending—tied or untied—or through bond issues. We have a need to know more about these transactions, not only for security and economic reasons, but also because of our human rights concerns. At our recent hearing we had representatives from the two most prestigious organizations working on behalf of Soviet Jewry. Their eloquent testimony made me realize that we must use all leverage with the Soviets in order to help the cause of Soviet Jewry. That is why in the course of the Secretary of the Treasury's negotiations at the OECD on this issues, we have instructed him to raise the issue of human rights. I believe that we must let not only the Soviet Union know, but we must let our allies know as well, that we consider the plight of Soviet Jewry and all human rights victims living in the Soviet Union to be an issue of the utmost importance. The trade in capital is one more bit of leverage we can utilize on their behalf.

Finally, I just want to thank CHUCK SCHUMER and his fine staff for all the work they have done on this issue. I consider this legislation a joint effort, and I look forward to working with him and Senator BRADLEY and others who realize the importance of our economic relations with the Soviet Union in the upcoming Congress.

I am including a copy of the legislation as part of my statement, and I urge my colleagues to cosponsor this most important piece of legislation.

H.R. 5493

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "International Financial Cooperation and Security Act of 1988".

SEC. 2. PURPOSE.

The purpose of this Act is to—

(1) provide for an enhanced system of reporting certain financial transactions with the Soviet Union;

(2) encourage multilateral cooperation among the member countries of the Organization for Economic Cooperation and Development (in this Act referred to as the "OECD") in establishing regulations for monitoring and setting financial transaction standards with the Soviet Union;

(3) provide the Congress with an annual report containing information on financial relations between the member countries of the OECD and the Soviet Union;

(4) require the Secretary of the Treasury to negotiate with other member countries of the OECD for the establishment of multilateral standards for entering into and reporting financial transactions with the Soviet Union; and

(5) require discussions to be held with the other member governments of the North Atlantic Treaty Organization (in this Act referred to as "NATO") on the security implications of conducting financial transactions with the Soviet Union.

SEC. 3. NEGOTIATIONS WITH OTHER OECD COUNTRIES TO ESTABLISH MULTILATERAL STANDARDS FOR ENTERING INTO AND REPORTING FINANCIAL TRANSACTIONS WITH SOVIET UNION.

(a) ANNUAL REPORT TO THE CONGRESS OF FINANCIAL DATA ABOUT THE SOVIET UNION.—Within 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of the Treasury shall prepare and submit to the Congress a report which contains all relevant financial data on the convertible currency balance of payments profile of the Soviet Union, including the following:

(1) BALANCE OF PAYMENTS INFORMATION.—All available data on balance of payments (including data on the financial sector in the aggregate, data on lending by the government of the Soviet Union, and data on private nonbank transactions).

(2) INFORMATION ON LOANS FROM OECD COUNTRIES TO THE SOVIET UNION.—

(A) GOVERNMENT LENDING.—All relevant data on loans made to the Soviet Union by 1 or more governments of the member countries of the OECD.

(B) BANK AND NONBANK LENDING.—All relevant data on loans made to the Soviet Union by 1 or more banks and nonbank persons located in a member country of the OECD.

(3) STATISTICS PUBLISHED BY BANK FOR INTERNATIONAL SETTLEMENTS ON TIED AND UNTIED LENDING TO, AND ON EUROBONDS ISSUED ON BEHALF OF, THE SOVIET UNION.—All statistics published by the Bank for International Settlements on tied loans and untied loans to the Soviet Union, and on bonds issued in Europe to investors outside the Soviet Union the proceeds of which accrue to the Soviet Union.

(b) NEGOTIATION OF MULTILATERAL STANDARDS FOR ENTERING INTO AND REPORTING FINANCIAL TRANSACTIONS WITH THE SOVIET UNION.—

(1) FORMULATION OF POSITION OF THE UNITED STATES.—The Secretary of the Treasury shall, in consultation with the Board of Governors of the Federal Reserve System, the Secretary of State, and the Secretary of Defense, formulate the position of the United States with respect to the establishment of internationally acceptable standards for entering into and reporting financial transactions with the Soviet Union (including detailed descriptions as to terms of credit and uses of funds), taking into account the security, human rights, and economic considerations of the member countries of the OECD.

(2) DUTIES OF SECRETARY OF THE TREASURY.—

(A) REPRESENT UNITED STATES IN NEGOTIATIONS.—The Secretary of the Treasury shall enter into, and act as the representative of the United States in, multilateral negotiations with the other member countries of the OECD to establish the financial transactions standards described in paragraph (1).

(B) NEGOTIATIONS TO BE CONDUCTED THROUGH STRUCTURE SIMILAR TO OECD ARRANGEMENT ON GUIDELINES FOR OFFICIALLY SUPPORTED EXPORT CREDITS.—The Secretary shall conduct the negotiations described in subparagraph (A) through a structure similar to the institutional structure provided for in the Arrangement on Guidelines for

Officially Supported Export Credits accepted by the member countries of the OECD, and shall include representatives from the Bank for International Settlements in such negotiations.

(3) REPORT TO THE CONGRESS.—Within 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of the Treasury shall report to the Congress on the progress of the negotiations entered into pursuant to paragraph (2).

SEC. 4. DISCUSSIONS WITH OTHER NATO GOVERNMENTS ON SECURITY IMPLICATIONS OF CONDUCTING FINANCIAL TRANSACTIONS WITH THE SOVIET UNION.

IN GENERAL.—The Secretary of State and the Secretary of Defense shall jointly hold discussions with the other member governments of NATO on the security implications of conducting financial transactions with the Soviet Union.

(b) REPORT TO THE CONGRESS.—Within 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State and the Secretary of Defense shall report to the Congress on the progress of the discussions described in subsection (a).

PERSONAL EXPLANATION

HON. JACK BUECHNER

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. BUECHNER. Mr. Speaker, I rise today to explain my absence for the vote Taken on October 5, 1988. Had I been present, I would have voted "nay" on roll No. 427, the rule on the Foreign Ownership Disclosure Act. Due to the ceremonies at the Holocaust Memorial Museum I was unable to be present for this vote.

FDIC CHAIRMAN CRITICAL OF FADA

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, FDIC Chairman William Seidman, appearing before the House Banking Committee on August 3, 1988 told the committee, "Well, I have to say that I was asked about the setup for FADA at the time it was proposed and I told them that I didn't think it was a good idea or necessary and would slow the process. And I gather a few others now agree with that."

Chairman Seidman showed courageous candor in his critical comments about another Federal entity.

Chairman Seidman was correct in his analysis and we have an opportunity to correct this problem by passing H.R. 4646 under suspension of the rules on Wednesday, October 12, 1988.

H.R. 4646 was reported out of the House Banking Committee by a bipartisan vote of 42 to 8. It would dissolve FADA and make the FSLIC's asset disposition process more like that of the FDIC's which has functioned well for many years.

IN TRIBUTE TO THE HONORABLE PHIL LANDRUM, SR.

HON. ED JENKINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. JENKINS. Mr. Speaker, almost 12 years ago, I took the oath of office in this Chamber for my first term of office. I succeeded a man who had represented the people of the Ninth District of Georgia in this body for 24 years. The Honorable Phil Landrum, Sr. left big shoes to fill.

Had I not known him personally and had I not worked for him, I still would have known him by his reputation. He left his mark on legislation of national significance, such as the Landrum-Griffin Labor Act and the Elementary and Secondary Education Act of 1965 and numerous pieces of trade legislation. His influence on the Appalachian regional programs broke down the barriers of poverty for many residents of the southern reaches of that mountain chain. And no one ever questioned that he took care of his people in the Ninth District and their future.

A staunch supporter of education, he was instrumental in the foundation of the Gainesville College and Lanier Technical Institute complex in Hall County. This year, the two institutions are celebrating their 25th anniversary. As a part of the anniversary recognition, the sister institutions have joined to honor the former Congressman by naming a street common to both institutions in honor of him and by setting up a scholarship program called the Phil M. Landrum Scholarship Fund for Ninth District students who have demonstrated financial need.

The marker for Landrum Education Drive will be unveiled and the scholarship program announced Tuesday, October 11, in a ceremony honoring him and his family at the institutions. It will be a pleasure for me to participate in that ceremony and host my former boss and mentor at a luncheon.

I join with many in saluting this outstanding educator and legislator and hope that these actions will help secure the Landrum legacy in north Georgia.

DUKAKIS—WAKE ME WHEN THE WAR IS OVER

HON. GERALD B. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. SOLOMON. Mr. Speaker, in a recent article which appeared in Boston magazine, Gov. Michael Dukakis, while apearing before a group of hospitalized veterans said, "I spent 18 months sitting in a rice patty in Korea praying I'd get back in one piece."

Dukakis, who avoided combat in the Korean war with student deferments and who served after the war was over, deliberately deceived these hospitalized veterans, many injured in combat, by inferring he faced grave danger while in Korea. He conveniently left out one minor detail * * * the war was over.

If Michael Dukakis had followed a career path similar to that of Ronald Reagan he would have been a perfect leading man for the movie "Wake Me When the War is Over."

FADA SHOULD BE ABOLISHED ACCORDING TO LEADING INDUSTRY WITNESSES

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. KANJORSKI. Mr. Speaker, problems at the Federal Asset disposition Association [FADA] were first brought to my attention over a year and a half ago by savings and loan officials from my congressional district.

They were understandably upset by the fact that their insurance premiums were being used to support the lavish lifestyles and expensive habits of FADA executives. They also knew that healthy S&L's were paying a heavy special assessment in order to make up for the fact that FADA was doing such a dismal job of disposing of assets for FSLIC.

It should come as no surprise, therefore, that at an August 2, 1988, hearing held by the General Oversight Subcommittee of the House Banking Committee witnesses from three major trade associations all said that FADA had been of little use to FSLIC and would not be missed if it were abolished as proposed in H.R. 4646 which the House will vote on this Wednesday.

H.R. 4646 was reported out of the House Banking Committee by a bipartisan vote of 42 to 8.

Witnesses from the American Bankers Association and the Independent Bankers Association of America both told the subcommittee they favored abolishing FADA. The ABA said, "termination is appropriate," and the IBAA said, "the demise of FADA would be applauded." A witness from the National Council of Savings Institutions said that in his personal opinion FADA had not been effective in his home State of Texas.

These industry representatives join a large group of FADA critics which now includes the Chairman of the Federal Deposit Insurance Corporation, the GAO, Dr. Harold Seidman of the Johns Hopkins Center for the study of American Government, and a majority of both the Democrats and Republican members of the House Banking Committee.

INTRODUCTION OF A BILL TO ASSIST HON. GEORGE ARNEY

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. HORTON. Mr. Speaker, today I introduced, a bill on behalf of my good friend and constituent, Hon. George Arney, supervisor of the town of Sodus, NY. The bill seeks documentation for the boat which George purchased.

Federal law requires documentation for a commercial boat that was sold to a foreign owner at any time. Further, documentation of a vessel is similar to a deed to a property, and the boat cannot be used for financial collateral unless it is documented.

George's boat, the *Terangi,* was built in St. Petersburg, FL, and was documented by its first owner. Unfortunately, the next three owners of the boat, including two Canadians, failed to document it. Thus, it has been impossible for George to demonstrate an adequate chain of title for documentation. Importantly, the *Terangi* has never been docked outside of American waters. The Canadian owners kept the boat at Alexandra Bay on the St. Lawrence River.

By passing this bill, we can offer George some relief from his dilemma. George was unaware of the required documentation procedure at the time he purchased the *Terangi,* and it has caused him financial hardship ever since. Given the circumstances, Mr. Speaker, I believe that providing this good man with his needed documentation is the only fair and equitable course of action to follow.

ECONOMIC IMPACT OF THE PALESTINIAN UPRISING

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. HAMILTON. Mr. Speaker, attached is a letter I requested from the Department of State regarding the economic costs to Israel and to the West Bank and Gaza of the now 10-month uprising of Palestinians in the occupied territories.

The uprising has had an adverse impact on the Israeli economy and an even more severe impact on the economies of the West Bank and Gaza. Because of the uprising, the State Department estimates that GDP growth in Israel in 1988 will be from zero to 1 percent, down from the original estimate of 3.2 percent.

The State Department's letter of October 4, 1988, follows:

ASSISTANT SECRETARY OF STATE,
Washington, DC, October 4, 1988.

Hon. LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request to Assistant Secretary Murphy during your meeting of September 22, I am providing information on the effect of the uprising on Israel's economy beyond that contained in the paper he left with you.

As we wrote to you in July, the effects of an economic slowdown that began in mid-1987 have been aggravated further by the uprising. While the effect of the uprising on Israel's economy has been substantial, it should not deflect attention from underlying trends in Israel that call for the continuation of responsible fiscal and monetary policies. Control of government spending, the deficit, and wages are key to controlling inflation and creating a climate for stable, long-term growth in Israel. Despite pre-election pressures, the Government of Israel has held firm against demands to increase spending, except for defense. We commend the GOI's efforts to date and wish them every success in holding firm against further budget demands and in controlling the deficit.

As Assistant Secretary Murphy noted to you in his briefing, the uprising has increased spending by the Ministry of Defense and the Police; much of the increases have come from ministry reserves and lesser amounts from increased budget allocations. Tourism has declined by 25 percent from 1987. Exports to the territories, Israel's third largest export market after the EC and the U.S., have fallen by 40 percent. Labor shortages due to Palestinian strikes have constrained construction activity. The combination of decreased receipts due to lessened economic activity and increased demands on the budget could increase the deficit to over $1 billion in Israeli fiscal year 1988 (ending March 31, 1989) above the $700 million deficit reported for Israeli fiscal year 1987 (ended March 31, 1988).

Inflation, which had been as high as 22 percent, is now down to 15–16 percent on an annual basis, the same rate as 1987. Real wages in Israel still outstrip productivity gains and remain a potential threat to future inflation levels. Unemployment has remained relatively stable as demand for labor has increased slightly while the available pool has decreased as fewer Palestinians travel to Israel for work and as Israelis are called up for longer periods of reserve duty.

Taking into account the effects of slower growth and the uprising, we anticipate GDP growth in 1988 will be from zero to 1 percent, down from the original estimate of 3.2 percent. Components of the decline are as follows:

Reduced tourism will reduce GDP growth by 1 percent,

Fewer exports to the territories will reduce GDP growth by another 1 percent,

Reduced construction activity will reduce GDP growth by 0.8 percent,

Increased spending for defense and police will increase demand and GDP from 0.3 to 0.4 percent.

The effect of the uprising on the economies of the territories is much more severe. The disturbances themselves and measures taken in response to the disturbances, have reduced economic activity in the territories by at least 25 percent. The budget of the Israeli Civil Administration, which funds development, welfare, and medical care payments in the territories, has been frozen due to tax revenue losses from the Arab tax boycott and lessened economic activity. There has also been a substantial loss of earnings by Palestinians who normally work in Israel, a loss made up only partially by Palestinians drawing down on savings.

Overall the effect of the uprising on Israel is to slow further an economy that has been slowing since mid-1987, before the uprising. To the extent that the slowdown decreases consumer demand and imports, it may assist the government in lowering inflation further. The effect of the distrubances on the territories is of a completely different order of magnitude. For reasons noted above, GDP in the territories will fail by at least 25 percent in 1988.

I hope you and the Committee find this background information useful.

Sincerely,

PAUL J. HARE,
Acting Assistant Secretary for Near Eastern and South Asian Affairs.

NEW CAUSES OF HUNGER IN THE WORLD

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. LELAND. Mr. Speaker, today's Washington Post included an excerpt from The Futurist magazine (September–October 1988) which identifies an emerging understanding of the complex social and political causes of hunger. I commend it to my colleagues:

The causes of hunger in the world today are different from those of a decade ago. Agricultural technology has advanced, allowing food production to outpace demand in many regions, but hunger persists because of poverty, says Peter Hendry, former chief editor of the U.N. Food and Agriculture Organization's journal Ceres.

The ability to produce a sufficient food supply does not mean a nation will eliminate hunger, Hendry points out in a recent report of the Population Reference Bureau. In the United States, for example, where surpluses are so large that farmers are paid to produce less, the government must provide food stamps each month to more than 19 million people so they can obtain food. A more important factor than food production in determining vulnerability to hunger is "the extent of popular access to gainful employment, to arable land, to suitable technologies and to other productive resources," says Hendry. Population growth, too, is a cause of hunger. . . . But population growth is also related to poverty: Poor women's lack of access to family-planning services and to health care that would reduce infant mortality contribute to higher population growth. . . .

"We are learning that the balance among population, food and resources necessary for survival is a continual process," says Hendry. "We are learning that it is not only a physical problem derived from the laws of nature, but that it is equally a social and political problem. Locusts attacking a swath of Africa can be stopped, as they were in 1986; desert areas can be made to bear fruit—the physical problems are solvable: we must learn to resolve the human problems."

THE DUKAKIS FISCAL FOLLIES

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. BROOMFIELD. Mr. Speaker, Michael Dukakis has been selling himself on the campaign stump as a Governor who has balanced eight State budgets. An article in Wednesday's New York Times by an economics professor at Harvard University shows how Mr. Dukakis went about balancing the State's budget for the last fiscal year.

The budgetary miracles that Mr. Dukakis conjured up remind me of some of the accounting legerdemain that brought New York City to the brink of bankruptcy in the mid-1970's. Mr. Lindsey points out that the Dukakis misestimate of its income and expenditures is equivalent to a $100 billion misestimate at the Federal level.

For those of my colleagues who might be interested in the fiscal tricks a Dukakis administration would bring to Washington, I commend the following article:

MASSACHUSETTS MIRACLE—OR MIRAGE?

(By Lawrence Lindsey)

CAMBRIDGE, MA.—I have never been a believer in the Massachusetts Miracle. But last month, Gov. Michael S. Dukakis pulled an economic hat trick that's turned me around. He announced that the state's budget for the last fiscal year ran a surplus of $67 million. Voila! A budget that was in the deepest shade of red turned black with a wave of the Governor's magic wand. The magic lay in the accounting. Simply put, the state balanced its budget by borrowing hundreds of millions of dollars from every conceivable source.

For starters, Mr. Dukakis took $250 million from the state's capital account to fund current services. He then issued bonds to refund the capital account. Mr. Dukakis also borrowed from General Electric by refusing to refund $122 million that was due the corporation because of a tax overpayment. (The court has ordered Massachusetts to cough up the tax refund and it has promised to do so—next year.)

Then there's the state lottery, which, despite its name, must pay all its proceeds to the cities and towns. Here the Governor's budget underestimated the proceeds and then declared that the lottery's excess funds belonged to the state. When the Legislature balked at this maneuver, the Governor line-item vetoed the funds that the lottery law committed to the cities and towns, one town at a time.

And, finally, the state borrowed money from its own pension fund. This was an especially miraculous trick, since the plan is thought to be dangerously underfunded. Indeed, Mr. Dukakis's announcement that the state pension plan had run a $27 million surplus took even the Democratic chairman of the Legislature's Public Service Committee by surprise. He asked how a pension plan that was underfunded by $13 billion could possibly have a surplus.

Given the magic show with last year's budget, there aren't many in the local audience who believe Mr. Dukakis this year. Among the doubters are almost all legislative leaders and the Governor's own Revenue Advisory Board. Although the state's constitution prohibits deficit spending, the current consensus estimates a deficit between $500 million and $1 billion.

While credibility is the major concern about Mr. Dukakis' handling of the budget, the details of his current budget also show an appalling lack of understanding of how budgets work.

The budget overestimates revenues by using economic assumptions that are high even by the optimistic standards of official forecasts. For example, his budget assumes that wages will rise 53 percent faster in Massachusetts than in the rest of the country. Even though the state has lost more than 100,000 manufacturing jobs in the past couple years, job growth is projected to grow at the "miracle" rates of the early 1980's.

Likewise, the budget underestimates spending. Mr. Dukakis has ignored the fact that an allowance must be made for unforeseen costs. In the past five Dukakis budgets, supplemental budgets for agencies that have exceeded their spending authority have averaged 4.4 percent of the original appropriation. If this average holds, we can expect $506 million in extra spending. But to make his proposal look balanced, Mr. Dukakis budgeted zero in unforeseen costs.

The Governor's budget even ignored the need to fund pay raises for state workers whose contracts are being negotiated. Since the budget was proposed, nurses have already received an unbudgeted $29 million raise. Court officers and managers have been promised an unbudgeted $7 million. Three police agencies have been working since July without a contract, and no money has been budgeted for their raises.

Finally, the Governor refused to fund the program of which he claims to be most proud: universal health care. Of $8.5 million the state was supposed to spend to cover bad debts and fee care cases, Mr. Dukakis vetoed $7.5 million. He also vetoed and authorization to spend up to $1 million on uncompensated care for community health centers. A pledge of $50 million to the hospitals to cover medicare shortfalls failed to make the budget. In short, Mr. Dukakis has ignored the first fact of budgets—programs are funded with money, not incantations.

In a budget just 1 percent as big as the Federal Government's, the consequences of these tricks are small. But the state's $1 billion budget mis-estimate extrapolates to $100 billion at the Federal level, its $506 million in expected supplemental appropriations translates into $50.6 billion and its $13 billion public pension shortfall is the equivalent of $1.3 trillion for Uncle Sam. With these numbers in the cards, the next act could be spontaneous combustion on Wall Street.

Here in overwhelmingly Democratic Massachusetts, the Dukakis-Bush race is a dead heat. To some, that's a surprise. Maybe we didn't like the last magic show, or maybe we now know that the Governor's bag of tricks is really empty.

CONGRESSIONAL REVIEW OF THE UNITED STATES-JAPANESE NUCLEAR COOPERATION AGREEMENT

HON. GEORGE J. HOCHBRUECKNER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 7, 1988

Mr. HOCHBRUECKNER. Mr. Speaker, this is the last week for congressional review of a United States-Japanese agreement which gives Japan 30 years' advance approval for making sea shipments from Europe to Japan of weapons-grade plutonium. Because this agreement was termed a "subsequent arrangement" under the United States-Japanese Nuclear Cooperation Agreement, Congress only had 15 days to review its contents and evaluate its effect on national security, its environmental impact, and the costs and benefits to the United States of this arrangement before it could automatically enter into force. I feel this is far too short a period of time to consider an agreement of this breadth and depth. Along with my colleagues WOLPE, SKELTON, JONES (D–NC), SMITH (R–NJ), MILLER (R–WA), LEVINE, BONKER, LANCASTER and MCCLOSKEY, I have cosponsored a resolution to extend the period of congressional review from 15 to 90 days.

I feel this is necessary, particularly in light of the serious concerns raised in a March 1988 technical evaluation of sea and air transportation of plutonium by the Department of Defense [DOD]. That evaluation stated:

> Ensuring the security of separated plutonium in transit is of fundamental importance. Although primarily a Japanese concern, U.S. law requires that the Department of Defense be fully consulted to ensure that physical security measures are adequate. Two basic transportation modalities are available to transfer plutonium from Europe to Japan—by air and by sea. The Office of the Secretary of Defense, Joint Staff, and Services have concluded that air shipment via the polar route is preferable to sea shipment in accomplishing this mission. With appropriate security measures, sea shipment can also provide adequate security, although at a higher cost to military readiness . . . There is precedent for this sea shipment method. In the latter half of 1984 the United States approved the shipment of 253 kilograms of plutonium from France to Japan aboard a dedicated, specially prepared cargo vessel. The United States, France, and Japan coordinated escort services to protect the cargo ship for much of the trip. The logistical problems were significant and there was an adverse impact on military readiness to ensure adequate security protection for that shipment. Indeed, following the 1984 experience, the Department of Defense felt that sea shipment was not the preferred permanent solution to the problem. This discussion will focus first on concerns common to all of the sea alternatives and then turn to the specifics of each.

As a member of the House Armed Services and the Merchant Marine and Fisheries Committees, I believe that the subsequent issues raised by the DOD's technical evaluation of sea shipment security must be addressed before Congress supports this kind of arrangement. For the benefit of those who have not read the DOD analysis, I submit from the executive summary sections two through eight of the "Sea Transportation Alternatives" segment for the RECORD, as it was transmitted with a letter from Deputy Assistant Secretary of Defense Karl Jackson to the Committee on Merchant Marine and Fisheries on March 7, 1988. These excerpts are from the document entitled "Executive Summary of the Department of Defense Assessment of Alternate Means of Transportation for Shipment of Plutonium from Europe to Japan."

2. *Possible Routes.* There are several possible routes for sea shipment. These include: (a) across the Atlantic, through the Panama Canal, and across the North Pacific to Japan (the route used in 1984); (b) across the Mediterranean Sea, through the Suez Canal, across the Indian Ocean, and north to Japan; (c) across the Atlantic, around South America, and on to Japan across the Pacific; and (d) around southern Africa, across the Indian Ocean, and on to Japan. The latter two routes, despite their increased distance, have the advantage of avoiding "choke points."

3. *Threat Assessment.* There are several basic problems with any sea shipment modality. First, in contrast to the high level of security associated with airports, normal civil port security is notably lax. Of course, every effort would be made to provide the most secure sea transshipment point available perhaps even utilizing naval bases.

Moreover, France or Britain would be responsible for port security until the vessel is well underway and Japan would be responsible once the ship arrived in Japan. Nevertheless, port security could be a significant concern. Under some conditions, it would be difficult to keep the details of the voyage secret and to protect the vessel while in port. Second, sea shipment is slow, with the total transit time between 35 and 75 days. Third, the vessel is accessible and vulnerable throughout the voyage, particularly when the vessel is passing through channels, straits, and other restricted waterways ("choke points"), or when it is near the coast. Special precautions would need to be taken at all vulnerable points. Fourth, a vessel would make a more attractive target than an aircraft flying a polar route to a terrorist group. Armed escorts and other security measures would need to be taken to deter and defeat any terrorist threat. Fifth, since a ship has a larger crew and the time of the voyage is much longer, greater efforts would be required to guarantee crew security. Disaffected or disloyal crew members could attempt to sabotage the cargo or ship. Under inducement or coercion such crew members could assist outside terrorists to try to board and hijack the vessel or sabotage the cargo. Moreover, unless adequate response forces were available in the immediate area to deter and defeat such an effort, hijackers might well succeed by transferring the material to another vessel or diverting the ship to a "friendly" port. Properly secured, removal or transfer of the cargo to another vessel while the ship is underway would be quite difficult. However, with enough time and equipment, it could be done.

4. *Adequacy of Physical Security Protection.* To enhance the security of surface shipment by civilian cargo vessel, various steps are essential. A reasonable baseline standard is the security package applied to the 1984 shipment. In that case the United States approved the shipment of plutonium from France to Japan aboard a dedicated, specially prepared cargo vessel. France, the United States, and Japan provided a combatant ship escort and other security services for much of the trip. Essential security precautions include: (a) maintaining secrecy of the route, date and time of departure and arrival, and the nature of the cargo; (b) modifying the ship to make removal of the plutonium at sea more difficult; (c) assigning independent and specially trained security personnel; (d) installing weapons and other equipment to defend the craft and cargo against terrorists and other threats; (e) conducting background investigations of all crew and security team members; (f) maintaining real-time, redundant communications to monitor the location and security status of the vessel for the voyage; (g) providing continuous backup support for the vessel by military security assets; and (h) providing sufficient fuel capacity to permit the completion of the voyage with no intermediate stops. The Department of Defense believes that to adequately "deter" theft or sabotage, it would be necessary to provide a dedicated surface combatant to escort the vessel throughout the trip. While rapid response by long-range military aircraft is possible in some contingencies, the ability to deter or interdict a terrorist act from the air is limited. Whether France or the United Kingdom would be willing to provide naval escort services all the way to Japan, or within 1,000 miles of Japan before turning over escort responsibility to the Japanese, is undetermined. The 1984 experience might provide an acceptable model to divide escort responsibility during the course of the voyage. Finally, even if the most careful precautions are observed, no one could guarantee the safety of the cargo from a security incident, such as an attack on the vessel by small, fast craft, especially if armed with modern anti-ship missiles. Adequate security measures, however, could ensure that nothing short of an effort by a major naval power could divert the ship or acquire the cargo. In any case, the Department of Defense would have to carefully scrutinize any security plans to ensure they are adequate to deter attack and protect the plutonium.

5. *Costs and How They Should be Allocated.* Under the agreement, Japan would bear all the identifiable security-related costs. These would include extensive modifications to the ship, such as extra fuel capability and self-defense weapons, and other special equipment to meet the requirements discussed above. The costs to the U.S. Government would be to monitor, inspect, and certify security procedures are adequate to the degree of risk. The Japanese would also pay for the normal shipping costs, fuel, other provisions, and crew costs, totaling between $900,000 and $1.4 million per voyage. In addition, the Japanese would be expected to bear all the quantifiable costs of having the U.S. naval forces ready to respond to a crisis involving the ship, such as an attack or a hijacking attempt at sea, as well as the cost of contingency response forces to deter any such attack during a transit of any choke points. Such preparation would be expensive, especially where military assets would have to be prepositioned to ensure rapid response. If a U.S., French, or British Navy or Coast Guard vessel (or any combination of these) provided the escort services, additional costs could exceed $2.8 million for the voyage. Moreover, reimbursement for all U.S. costs would be required for the entire period the escort vessel was diverted from its primary operational area.

6. *Impact on U.S. Military Readiness.* Surface transportation would have an adverse impact on U.S. military readiness. Depending on the route, several CINCs, their staffs, and some of their units would have to divert planning resources and emergency response assets from their primary mission responsibilities to ensuring the protection of this ship over a period of 6 to 10 weeks for each voyage. The U.S. military would have to ensure an adequate response capability to cover a wide variety of contingencies. Military units would have to be prepared to respond to any crisis with minimal notice. The expense and the impact upon naval missions if the U.S. Navy were to assign a surface combatant to accompany the cargo ship would be significant, since such as escort ship would be unavailable for other military missions. Finally, if there were any attempt to seize or sabotage the vessel or its cargo, the adverse impact and expense would go up dramatically as the United States took action to protect and, if necessary, recover the crew, vessel, and cargo.

7. *Sea Transportation Alternatives.* Alternatives for shipment of plutonium by sea include: (a) civilian cargo vessel without escort: (b) civilian cargo vessel with U.S. Government escort; (c) civilian cargo vessel with foreign escort; and (d) military cargo vessel without escort. The particulars of each alternative are discussed below:

a. *Alternative V—Civilian Cargo Vessel (Without Escort).* The first sea transportation alternative is to ship the material by sea on a civilian cargo vessel without escort. To maximize security, the Japanese would be expected to take all of the steps discussed in paragraph 4 above. This would include extensive modifications to the vessel's security and other equipment to meet the special needs. The Japanese would also pay for the normal shipping costs, fuel, provisions, and pay for the crew at a total cost of approx. $1.2 million per trip. The Department of Defense believes these steps might not adequately "deter" a terrorist incident and ensure the security of the shipment. While this would be the least expensive sea transportation alternative, if there was an incident, the costs and impact on military readiness would go up dramatically. More significantly, the security of the plutonium cargo could be in jeopardy, with all the enormous risks which that entails.

b. *Alternative VI—Civilian Cargo Vessel (With U.S. Government Escort).* A more secure sea transport alternative is to ship the material by sea on a dedicated civilian cargo vessel with a U.S. Navy or Coast Guard escort. Again, the Japanese would be expected to modify the vessel to comport with the security requirements discussed above. In addition to the costs of operating the civilian cargo vessel, they would bear all the quantifiable costs of having the U.S. Navy or Coast Guard vessel accompany the cargo ship. If a U.S. Navy ship were to escort the civilian vessel, costs would run about $45,000 per day, which would add between $1.8 and $2.8 million for each voyage. A U.S. Coast Guard vessel would cost somewhat less, about $16,200 per day, due to its smaller crew size, for a total of between $650,000 to $1.1 million. Moreover, use of a Coast Guard vessel would impose a far lower impact on military readiness. (Coast Guard vessels, while not part of the peacetime Navy, are important mobilization assets.) Whether the United States can best utilize its limited Coast Guard resources in this manner, however, needs to be evaluated, given the increasing demands being made in the areas of drug interdiction, fishery management, and illegal immigration. Moreover, while the Coast Guard indicates it is willing and able to perform the mission if assigned, the two crucial elements to any Coast Guard participation are availability and complete financial reimbursement.

c. *Alternative VII*—Civilian Cargo Vessel (Foreign Escort). Yet another alternative is for the French or British navies, or Japanese Maritime Safety Agency, to provide some or all of the escort services. This alternative has two advantages: it places primary security responsibility with those countries most directly involved in the shipments; and it provides adequate protection. However, there are several problems. First, the employment of a British or French frigate would detract directly from their regional commitments in Europe, perhaps requiring the United States to assume greater naval responsibilities there. Second, whether France or the United Kingdom would be willing to provide naval escort services all the way to Japan, or to within 1000 miles of Japan before relinquishing escort responsibility to the Japanese, is undetermined. It could have an adverse impact on their military flexibility. Third, there are major logistical problems associated with such a mission. An escort vessel would need to be refueled and replenished in both directions. The total costs for such a naval escort operation could be in excess of $2.8 million or more per mission. Finally, the United States would still need to be ready to respond to any incident which might take place during the voyage, impacting adversely on U.S. military readiness. Pursuit of this alternative would require discussions through diplomatic channels with the British, French, and Japanese.

d. *Alternative VIII—Military Cargo Vessel.* The final transportation alternative is using U.S. naval cargo vessels to transport the plutonium from Europe to Japan. (French or British military cargo vessels, if available, might also be used.) With modifications, several different types of ships could carry such a cargo. The only time that the plutonium would be at any real risk of theft or sabotage would be during the port transfer process before it is loaded or after it has been off-loaded. While protesters could obstruct the ship in restricted waters or a terrorist craft could even damage the ship with rocket-propelled grenades or anti-ship missiles, nothing short of a major naval power could divert the ship or acquire the cargo. The key question is whether security would be adequate at the transshipment ports. The cost of using a naval cargo vessel would be quite high. Japan would have to pay industrial rates for such transportation, recompensing the United States for fuel, wages of the officers and men, consumables, and other expenses. For an ammunition replenishment vessel (AE or AOE), total costs could be over $2.8 million for a 35-day voyage. A dedicated Military Sealift Command (MSC) vessel, because of a much smaller crew, would cost only about $1.4 million. Japan would also have to pay for the ship's return to its area of operations, perhaps doubling the total costs. Costs of other emergency response requirements discussed above would be largely eliminated since such ships could provide their own defense against most threats. The fundamental problem involves diverting military units from their primary missions. Using naval vessels in this manner would have an adverse impact upon U.S. military readiness, diverting a major replenishment ship or logistical support vessel from its primary mission for as much as ten weeks each shipment.

8. *Additional Comments.* As in the 1984 sea shipment, security for the voyage could be provided through a combined effort by those nations concerned and the United States. The operational impact of any of these alternatives is such that the Department of Defense would have to study in detail if any sea shipment alternative were contemplated seriously. While sea shipment provides a possible modality, in the opinion of the Department of Defense, any sea alternatives should be pursued only if air alternatives are not available.